

Independent Pricing and Regulatory Tribunal  
New South Wales

Assessment of Aquacell Pty Ltd's application  
to vary its retail supplier's licence no.  
09\_004R

Prepared under the  
*Water Industry Competition Act 2006 (NSW)*



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# 1 Summary

We recommend that the Minister varies Aquacell Pty Ltd's (Aquacell's) retail supplier's licence (licence number 09\_004R, see **Appendix A**). The licence variation will authorise Aquacell to provide sewerage services to the Kurrajong residential scheme.

The Minister granted Aquacell a retail supplier's licence on 2 February 2010. The current licence authorises the supply of non-potable water to the 1 Bligh Street and Workplace 6 schemes.

The Kurrajong scheme involves the collection and treatment of sewage from 42 residences in a new rural residential subdivision at Kurrajong, on the lower eastern slopes of the Blue Mountains in the Hawkesbury City Council local government area. The scheme's treated sewage effluent is disposed of by subsurface irrigation. Under the network operator's licence<sup>1</sup>, Aquacell is responsible for the operation and maintenance of the sewerage infrastructure. If the Minister grants the variation to the retail licence, Aquacell will also undertake all retail activities relating to providing sewerage services for the community within the Kurrajong scheme.

In assessing Aquacell's application for a licence variation, we considered the licensing criteria set out in sections 10(3)-(4) of the *Water Industry Competition Act 2006* (NSW) (WIC Act), and had regard to the licensing principles in section 7(1) of the WIC Act.

The Minister must consider, but is not bound to accept, any advice or recommendation in this Report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.<sup>2</sup>

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<sup>1</sup> Previously granted by the Minister to Aquacell on 26<sup>th</sup> July 2015

<sup>2</sup> WIC Act, section 10(2).

## 2 Background

On 6 August 2013 we received a combined application from Aquacell for a new network operator's licence to construct, operate and maintain sewerage services and to vary its retail supplier's licence to enable it to provide sewerage services to a new residential subdivision at Kurrajong, on the lower eastern slopes of the Blue Mountains.

On 26 July 2015 the Minister granted Aquacell a network operator's licence (number 15\_032) for the Kurrajong scheme. Our Report to the Minister on Aquacell's network operator's licence application outlines our assessment of the application.<sup>3</sup>

On 1 October 2015, in response to a request for information, Aquacell provided us with a revised retail supplier's application.

There has been a significant elapsed time between the first application submitted by Aquacell, the granting of the associated network operator's licence and the final recommendation for the variation to the retail supplier's licence. The time taken to assess was due to:

- ▼ an earlier decision by us to consider the retail supplier's licence variation application separately to that for the network operator's licence,
- ▼ the need to obtain additional information to support Aquacell's original application (in both October 2015 and May 2016),
- ▼ the need to undertake a revised external financial assessment (September 2016),
- ▼ the identification of Aquacell's non-compliance with a condition of its retail supplier's licence (November 2016), the ensuing audit of Aquacell's retail supplier's licence (March 2017)<sup>4</sup> and the subsequent resolution of the non-compliances identified in the audit (as discussed above), and
- ▼ Aquacell's ongoing advice to us that there was not a significant commercial imperative to finalise the licence assessment (until now).

### 2.1 The applicant

Aquacell is a privately owned company. It holds three network operator's licences to construct, operate, and maintain water industry infrastructure under the WIC Act. We have summarised the schemes currently covered by Aquacell's network operator's licences in Table 2.1 below.

<sup>3</sup> [http://www.ipart.nsw.gov.au/files/c81f0c65-e553-4559-ad54-891cc3592b74/Report\\_to\\_the\\_Minister\\_-\\_Assessment\\_of\\_Aquacell\\_Pty\\_Ltds\\_network\\_operators\\_licence\\_application\\_-\\_July\\_2015.pdf](http://www.ipart.nsw.gov.au/files/c81f0c65-e553-4559-ad54-891cc3592b74/Report_to_the_Minister_-_Assessment_of_Aquacell_Pty_Ltds_network_operators_licence_application_-_July_2015.pdf)

<sup>4</sup> Water Futures, *Report on the Operational Audit of Retail Supplier Licence of Aquacell*, Version 2, 31 March 2017.

Aquacell also holds a retail supplier's licence (licence number 09\_004R) which currently authorises it to supply non-potable water to two schemes: 1 Bligh Street and Workplace 6.

**Table 2.1 Aquacell's licensed schemes**

Scheme	Network operator's licence	Licensed for
1 Bligh Street, Sydney	09_003	Non-potable water
Workplace 6, Pyrmont <sup>5</sup>	13_023	Non-potable water
Kurrajong	15_032	Sewerage services

Scheme	Retail supplier's licence	Licensed for
1 Bligh Street, Sydney	09_004R	Non-potable water
Workplace 6, Pyrmont	09_004R	Non-potable water

## 2.2 The Kurrajong scheme

In 2013, Bencorp Developments Pty Ltd engaged Aquacell to provide sewerage services for a residential development at Kurrajong on the lower eastern slopes of the Blue Mountains in the Hawkesbury City Council local government area. Aquacell will provide these sewerage services using a new sewage treatment plant (STP). Aquacell's network operator's licence for the Kurrajong scheme covers the sewerage infrastructure.

The expanded scheme will ultimately collect sewage from 42 dwellings in total, treating it at a centralised STP and disposing of the treated effluent by sub-surface irrigation (sewerage infrastructure). The sewerage infrastructure has been operating since July 2014 and is currently servicing 19 dwellings.<sup>6</sup>


Hawkesbury City Council initially approved the sewerage scheme under section 68 of the *Local Government Act 1993* in August 2013. At the time, a WIC Act licence was not required for the Kurrajong scheme because the scheme was providing services entirely within its own property boundaries. However, the developer expanded the development to include an additional 23 dwellings on a block of land separated from the initial development by a public road, requiring the scheme to have a WIC Act licence. Construction has commenced on the subdivided land. Aquacell's network operator's licence (15\_032) covers these activities. A retail supplier's licence is required before Aquacell is able to provide sewerage services to these additional dwellings.

Aquacell is responsible for the operation and maintenance of the sewerage infrastructure and has entered into a 5-year service agreement with the Tallowood Community Association (TCA) to manage the system. Quarterly levies of TCA members will fund the operating and maintenance costs for the sewerage infrastructure. The TCA members are the lot owners in the development.

Aquacell proposes to provide sewerage services at the Kurrajong scheme. The sole customer will be TCA.

<sup>5</sup> Aquacell has sought to have this licence cancelled and we have made a recommendation to the Minister for Energy and Utilities to cancel the licence.

<sup>6</sup> Aquacell is operating and maintaining the sewerage scheme.



Sydney Water will provide potable water services and, as such, did not form part of this application.



### 3 Consultation and submissions

We consulted with and invited submissions from, the following Ministers and their relevant departments in relation to Aquacell's original retail supplier's licence application for its 1 Bligh Street scheme<sup>7</sup> and a subsequent licence variation application for its Workplace 6 scheme:<sup>8</sup>

- ▼ Minister administering the *Public Health Act 2010 (NSW)*
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000 (NSW)*
- ▼ Minister administering the *Protection of the Environment Operations Act 1997 (NSW)*, and
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979 (NSW)*.<sup>9</sup>

At the same time as we consulted the above Ministers and their respective departments, we also provided a copy of the licence applications to the then Minister administering the WIC Act.<sup>10</sup>

We received no comments in relation to the 1 Bligh Street retail supplier's licence application and subsequent Workplace 6 licence variation application.

In March 2014, we consulted with and invited submissions from the above Ministers and their relevant departments in relation to Aquacell's application for a network operator's licence for its Kurrajong scheme. The submissions received generally supported the application and were addressed in our Report to the Minister in relation to that application.<sup>11</sup> These submissions are available on our website.<sup>12</sup>

As the process for a variation to a licence is not explicitly outlined in the legislation we undertake an internal assessment of the potential impact of the variation to consumers, public health and the environment and the likelihood of departmental and public interest. In this case we took into consideration that Aquacell's previous application for a retail supplier's licence and subsequent variation to the licence attracted no comments. In addition we reviewed the submissions to the application for a network operator's licence at Kurrajong and concluded that the retail supplier's licence:

- ▼ will not result in any material increase in the risk to public health identified and consulted on in the assessment of the Kurrajong network operator's licence application.

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<sup>7</sup> [http://www.ipart.nsw.gov.au/files/0daff281-658d-47ba-808a-9f810101e8a5/Report\\_to\\_Minister\\_-\\_Application\\_for\\_a\\_Network\\_Operator\\_and\\_Retail\\_Supplier\\_licence\\_-\\_Aquacell\\_Pty\\_Ltd\\_-\\_December\\_2009\\_-\\_Website\\_Document.pdf](http://www.ipart.nsw.gov.au/files/0daff281-658d-47ba-808a-9f810101e8a5/Report_to_Minister_-_Application_for_a_Network_Operator_and_Retail_Supplier_licence_-_Aquacell_Pty_Ltd_-_December_2009_-_Website_Document.pdf)

<sup>8</sup> [http://www.ipart.nsw.gov.au/files/82781c80-64f3-42c4-8da8-a38d00e050ae/Aquacell\\_Pty\\_Ltd\\_Workplace\\_6\\_-\\_22\\_May\\_2014\\_-\\_IPARTs\\_Report\\_to\\_the\\_Minister.pdf](http://www.ipart.nsw.gov.au/files/82781c80-64f3-42c4-8da8-a38d00e050ae/Aquacell_Pty_Ltd_Workplace_6_-_22_May_2014_-_IPARTs_Report_to_the_Minister.pdf)

<sup>9</sup> WIC Act, section 9(1)(b) and *Water Industry Competition (General) Regulation 2008*, clause 17(1).

<sup>10</sup> WIC Act, section 9(1)(a).

<sup>11</sup> [http://www.ipart.nsw.gov.au/files/c81f0c65-e553-4559-ad54-891cc3592b74/Report\\_to\\_the\\_Minister\\_-\\_Assessment\\_of\\_Aquacell\\_Pty\\_Ltds\\_network\\_operators\\_licence\\_application\\_-\\_July\\_2015.pdf](http://www.ipart.nsw.gov.au/files/c81f0c65-e553-4559-ad54-891cc3592b74/Report_to_the_Minister_-_Assessment_of_Aquacell_Pty_Ltds_network_operators_licence_application_-_July_2015.pdf)

<sup>12</sup> <https://www.ipart.nsw.gov.au/Home/Industries/Water/Alternate-water-utilities-WICA/WICA-Licenses-Listing-pages/Applications-licences/Aquacell-Pty-Ltd/Kurrajong-Network-Operator?qDh=2>

- 
- ▼ will not require the applicant to obtain an approval under the *Water Management Act 2000*.
  - ▼ will not result in any material increase in the risk to the environment identified and consulted on in the assessment of the Kurrajong network operator's licence application.

Therefore, we did not consult with or seek submissions from the above Ministers and their relevant departments in relation to this variation request.

As it had been more than two years since the Aquacell (Kurrajong) network operator's licence was granted,<sup>13</sup> we did call for submissions from the public on the activity which is the subject of the Kurrajong retail supplier's licence variation.<sup>14</sup> We advertised in the Sydney Morning Herald and Daily Telegraph on 1 June 2016. The closing date for submissions was 29 June 2016. We received no submissions.

While we did consult with Sydney Water and Hawkesbury City Council (HCC) during our assessment of Aquacell's application for a network operator's licence for the Kurrajong scheme, the activities associated with the retail supplier's licence variation application for the Kurrajong scheme have no additional or material impact on Sydney Water and HCC. As such we did not specifically consult with or invite submissions from them regarding this application for the retail licence variation. Sydney Water and HCC had the opportunity to provide comment on the application as part of the public consultation process.

In addition to inviting submissions, in 2016 we sought expert advice from Vincents Chartered Accountants to inform our financial assessment (see section 4.2.2).<sup>15</sup> The assessment was updated in November 2017 using more recent financial information provided by Aquacell.

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<sup>13</sup> Network licence number 15\_032 was granted to Aquacell on 26 July 2015.

<sup>14</sup> WIC Act, section 9(1)(c).

<sup>15</sup> Vincents Chartered Accountants; *Financial Capacity Review for Aquacell Pty Ltd (Kurrajong)*, 15 September 2016.

## 4 Assessment of application

This section of the Report contains our assessment of Aquacell's licence application and our recommendations.

In assessing Aquacell's application to vary the licence conditions, we considered the licensing criteria set out in sections 10(3)-(4) of the WIC Act, and had regard to the licensing principles in section 7(1)(a) of the WIC Act.

### 4.1 Disqualified corporation and related entity checks

**We consider that Aquacell is not a disqualified corporation or a corporation that is a related entity 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 variation, if granted, would authorise.**

In making this recommendation, we have considered the following information:

- ▼ A statutory declaration signed by Aquacell's sole Director stating that:
  - neither Aquacell, nor any director or person concerned in the management of Aquacell is, or would be, a disqualified corporation or a disqualified individual within the meaning of the WIC Act, and
  - Aquacell is not a related entity of a disqualified corporation that would have a direct or indirect interest in, or influence on, the carrying out of activities that the licence would authorise if granted.
- ▼ ASIC and Dun & Bradstreet reports that we have obtained for Aquacell, and for the one related entity,<sup>16</sup> confirmed that these companies are not disqualified nor are their directors or persons concerned in the management disqualified individuals.<sup>17</sup>
- ▼ Results of our search of the WIC Act licence database,<sup>18</sup> confirming in part the above.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to disqualified corporations, if the Minister grants a licence variation.

### 4.2 Capacity (including technical, financial and organisational capacity) to carry out the activities

Aquacell has applied to vary its retail supplier's licence to authorise it to provide sewerage services to the Kurrajong scheme. Aquacell provides retail services to the 1 Bligh Street Scheme and previously provided retail services to the Workplace 6 scheme under its retail

<sup>16</sup> Clearwater Technology Pty Ltd does not undertake any business activities. It has no revenue or operational costs. The sole Director of this company is also the sole Director of Aquacell Pty Ltd.

<sup>17</sup> These searches were conducted on 7 November 2017.

<sup>18</sup> There are currently no disqualified corporations or individuals on the register pursuant to the WIC Act, sections 16(e) and 16(f).

supplier's licence. It no longer provides retail services to Workplace 6, but has chosen to retain its retail supplier's licence for this scheme.

We assessed Aquacell's technical, financial and organisational capacity to provide sewerage services in relation to the Kurrajong Scheme. Our assessment was based on Aquacell's capacity at the time of making the application.

#### 4.2.1 Technical capacity

**We are satisfied that Aquacell has the technical capacity to provide sewerage services to customers at the Kurrajong scheme.**

We consider that the information submitted by Aquacell demonstrates that it has the technical capacity to provide sewerage services to its customer (TCA) for the Kurrajong scheme. Aquacell provides retail services to the 1 Bligh Street Scheme and previously provided retail services to the Workplace 6 scheme under its retail supplier's licence.

Our analysis included a review of Aquacell's:

- ▼ **Retail Supply Management Plan (RSMP)** provided in the application, which describes the retail activities to provide sewerage services to the schemes.
- ▼ **Customer service charter** which outlines Aquacell's commitment to customers as both a network operator and retail supplier. Areas addressed include customer safety (provision of safe non-potable water), reliable supply (online monitoring to enable quick response to any incidents), billing (provision of accurate and timely bills every month), meeting customers' needs (provision of most suitable treatment system at competitive prices), privacy (protecting customers' privacy) and complaint handling (prompt response to any customer concerns).
- ▼ **Code of practice for customer complaints** which describes the processes Aquacell uses to respond to complaints (includes handling, resolution, escalation, compliance and continuous improvement) by customers (including owners, tenants and customers) in relation to the services provided.
- ▼ **Code of practice for debt recovery** which outlines how Aquacell responds when customers have missed one or more payments.
- ▼ **Previous retail experience** (in Australia) in the water industry and the specific personnel nominated for the project, as shown in the information provided to us in its application forms. Aquacell has been operating continuously since 1986 and also operates and services numerous other treatment plants throughout Australia. The procedures, systems and personnel used to undertake the retail activities for these plants are similar to those licensed under the WIC Act.
- ▼ We considered Aquacell's **preliminary risk assessment** of the retail services it will provide at the Kurrajong scheme which identifies risks across a number of areas including business and operational risks, and the control measures to manage these risks to an acceptable level.

- ▼ Aquacell's **technical performance** in operating and maintaining its 1 Bligh Street and Workplace 6 schemes and the supply of non-potable water to these schemes.<sup>19</sup>
- ▼ **Compliance history.** In November 2016, we audited Aquacell's RSMP and compliance with its retail supplier's licence conditions (for 1 Bligh Street and Workplace 6). We also considered Aquacell's compliance history in relation to its network operator's licence.

In relation to the compliance history of Aquacell we note that since January 2015, Aquacell has had a number of non-compliances. These include;

- Their failure to provide a retail supplier's management plan before the commencement of retail activities (1 Bligh Street and Workplace 6).
- Their failure to provide an infrastructure operating plan and an insurance expert's report on time, which delayed the commencement of scheduled operational and licence plans audits for the Workplace 6 scheme. The failure to supply audited licence plans and an insurance report on time resulted in IPART imposing a monetary penalty on Aquacell.
- Infrastructure that was non-compliant with the Plumbing Code of Australia (Workplace 6).
- Their failure to sign their 2016 annual compliance reports in accordance with IPART's Reporting Manual (1 Bligh Street, Workplace 6 and Kurrajong).

In all of the above cases, Aquacell quickly rectified the identified non-compliances when notified by IPART. We consider that these non-compliances did not affect Aquacell's technical capacity to operate and maintain their licensed schemes at 1 Bligh Street, Workplace 6 and Kurrajong and to provide retail services to the 1 Bligh Street and Workplace 6 schemes.

On 2 December 2016 IPART notified Aquacell that it was required to complete an operational audit of compliance with conditions of its retail supplier's licence<sup>20</sup> and to audit the compliance of its RSMP with the relevant guidelines and its overall adequacy. The final audit reports were provided to IPART on 31 March 2017.

The audit of the RSMP cited the following documents:

- ▼ Aquacell Retail Supply Management Plan, Revision 2, reference EM020-2, 6th March 2017
- ▼ Aquacell Customer Service Charter, Revision 2, 6 March 2017
- ▼ Aquacell Code of Conduct for Debt Recovery, Revision 1, 6 March 2017,
- ▼ Aquacell Code of Practice for Customer Complaints, Revision 1, 6 March 2017, and

The auditor found Aquacell's RSMP complied with the relevant requirements and made no recommendations or opportunities for improvement.

However, the operational audit of Aquacell's retail supplier's licence found 24 non-compliances, all of which were insignificant.<sup>21</sup> Aquacell has adequately addressed the non-

<sup>19</sup> As of 30 June 2016, Aquacell ceased providing retail services and operating the treatment plant for the Workplace 6 scheme. This was a commercial decision made by the building's owners. Aquacell has requested that their network operator's licence for Workplace 6 be cancelled. IPART provided the Minister with a report recommending that the licence be cancelled.

<sup>20</sup> The time period for the audit was 1 July 2015 to 31 October 2016.

<sup>21</sup> Water Futures, *Report on the Operational Audit of Retail Supplier Licence of Aquacell*, Version 2, 31 March 2017.

compliances, with the majority already addressed by the close-out of the audit report. We consider that the non-compliances did not affect Aquacell's technical capacity to operate and maintain their licensed schemes at 1 Bligh Street, Workplace 6 and Kurrajong and to provide retail services to the 1 Bligh Street and Workplace 6 schemes.

We used the above information to assess Aquacell's technical capacity to undertake the following retail supply activities at the Kurrajong scheme:

- ▼ **Billing:** Aquacell's Customer Service Charter<sup>22</sup> and the Service Agreements with its customers address the responsibilities of Aquacell and its customers in relation to: the scope of service provided by Aquacell, account payment, invoicing arrangements, change in fees and payment terms. The cost of supply to customers is fully detailed in the Service Agreements.
- ▼ **Complaints handling:** Aquacell has a Code of Practice for Customer Complaints which contains complaint handling procedures and contact details for reporting complaints.<sup>23</sup> Complaint handling is also addressed in Aquacell's Customer Service Charter and in Aquacell's Complaints Handling and Dispute Resolution Policy.<sup>24</sup> These documents were assessed as adequate in a recent audit of Aquacell's RSMP.<sup>25</sup>
- ▼ **Debt recovery:** Aquacell has a Code of Practice for Debt Recovery.<sup>26</sup> This document also addresses overdue invoices, unpaid invoices, supply restrictions and dispute resolution. This document was assessed as adequate in a recent audit of Aquacell's RSMP.
- ▼ **Financial hardship:** Financial hardship is addressed in Aquacell's Code of Practice for Debt Recovery.
- ▼ **Providing an appropriate level of service:** The appropriate levels of service to be provided to customers are contained within Aquacell's Customer Service Agreements with its customers. We consider that Aquacell's risk assessment adequately identifies the potential risks to the retail services and identifies appropriate and reasonable controls to manage those risks.
- ▼ **Continuity of service:** This is addressed in the risk management assessment provided in Aquacell's RSMP, and in the Service Agreements with its customers. Incident response procedures and the contact details of Aquacell personnel are also provided in the Service Agreements.
- ▼ **Communication with customers:** Aquacell addresses all aspects of communication with customers, including monthly performance reporting to customers, billing matters, complaints handling and dispute resolution, financial hardship and provides contact details in its customer Service Agreements, Complaints Handling and Dispute Resolution Policy, Code of Practice for Customer Complaints, Code of Practice for Debt Recovery and RSMP.
- ▼ **Transfer of customers:** This is addressed in Aquacell's RSMP. Information is presented regarding situations where customers may elect to no longer avail themselves of Aquacell's service.

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<sup>22</sup> Aquacell Customer Service Charter, Revision 2, 6 March 2017.

<sup>23</sup> Aquacell Code of Practice for Customer Complaints, Revision 1, 6 March 2017.

<sup>24</sup> Aquacell's Complaint Handling and Dispute Resolution Policy, Revision 4, 6 March 2017.,

<sup>25</sup> Water Futures, *Report on the Audit of the Retail Supply Management plan of Aquacell*, Version 2, 31 March 2107.

<sup>26</sup> Aquacell Code of Practice for Debt Recovery, Revision 1, 6 March 2017.

- ▼ **Marketing to customers:** This is addressed in Aquacell's RSMP. Aquacell is committed to complying with any relevant Codes of Conduct in relation to marketing and transfer operations within the water industry.

We consulted publicly and received no submissions regarding Aquacell's technical capacity in response to its application for a retail supplier's licence variation.

We consider that the information submitted by Aquacell demonstrates that it has the technical capacity to provide sewerage services to its customers at Kurrajong, including small retail customers.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to technical capacity, if the Minister grants this licence variation. The standard Ministerially imposed licence conditions in Aquacell's current retail supplier's licence should continue to apply (see draft licence in Appendix A).

#### 4.2.2 Financial capacity

**We are satisfied that Aquacell has the financial capacity to provide sewerage services to its customers at the Kurrajong scheme.**

In making our assessment we have relied on the expert advice from Vincents Chartered Accountants (Vincents) as well as our own analysis of the most recently available financial information from Aquacell.

We conducted a review of the financial information provided in November 2017 by Aquacell, including financial ratio analysis, comparison with previous financial reports, review of forecast cashflows for the scheme and comparison with previous financial assessments by Vincents. We found that:

- ▼ there was no substantial change in circumstances or financial performance since Vincents assessment concluded that both Aquacell and the Kurrajong project had a low risk of financial failure,
- ▼ our own review of the 2016-17 management financial reports supported Vincents' conclusion in previous years, and
- ▼ the scheme is forecast to have financial viability until at least June 2023.

The timeline of our analysis is as follows:

- ▼ In May 2015, we sought expert advice from Vincents Chartered Accountants (Vincents) for our assessment of Aquacell's network operator's licence application. At the time, Vincents concluded that both Aquacell and the Kurrajong project had a low risk of financial failure.
- ▼ In September 2016 we obtained an updated financial assessment report from Vincents for Aquacell's retail supplier's licence variation application. We requested further analysis as more than 12 months had passed since the May 2015 assessment was undertaken. Again, Vincents concluded that both Aquacell and the Kurrajong project had a low risk of financial failure, but recommended that IPART obtain updated cashflow forecasts for the scheme, that forecast beyond 2020.

- ▼ As 12 months has passed since Vincents' last financial assessment, in September 2016, we requested and received financial information from Aquacell for the most recent (ie, 2016-17 financial year) including:
  - management financial reports (ie, profit and loss and balance sheet)
  - an updated cashflow forecast for the Kurrajong scheme (five years from 2018 to 2023), and
  - a management statement regarding any changes in circumstances of the company, or agreements with third parties that may affect financial capacity, since the last financial assessment in September 2016.

In making our assessment we have considered Aquacell's:

- ▼ financial management reports (ie, profit and loss statements and balance sheet)
- ▼ aged receivables and aged payables reports
- ▼ key financial ratios and trend analysis, and
- ▼ revised projected cash flows for the project.

Additionally, we relied on previous financial assessments undertaken by Vincents which found that Aquacell has the financial capacity to undertake the proposed project. Vincent's assessments relied on the following:

- ▼ financial statements for the years ended 30 June 2014 and 30 June 2015 prepared by Aquacell's external accountant
- ▼ tax returns for the financial years ended 30 June 2014 and 30 June 2015
- ▼ management financial reports (1 July 2015 to 30 April 2016)
- ▼ Australian Tax Office Portal reports for the income tax account and integrated client account (1 July 2014 – current)
- ▼ information regarding debt/ equity finance, and
- ▼ updated cash flows for the project beyond 2017.

As part of its application, Aquacell provided cash flow projections for the first five years of operation of the scheme. We consider this data is sufficient for the following reasons:

- ▼ the cash flow projections provided show the project is cash flow positive from the first year;
- ▼ the project is not a staged development and all capital expenditure costs are incurred and completed in the first year of the project; and
- ▼ the capital expenditure of the project will be funded by the developer .

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to financial capacity, if the Minister grants this licence variation. The standard Ministerially imposed licence conditions in Aquacell's current retail supplier's licence should continue to apply (see draft licence in Appendix A).



### 4.2.3 Organisational capacity

**We are satisfied that Aquacell has the organisational capacity to provide sewerage services to its customers at the Kurrajong scheme.**

Aquacell demonstrated its organisational capacity to provide sewerage services to customers at the Kurrajong scheme by:

- ▼ providing evidence of its experience in providing retail services to other licensed schemes at 1 Bligh Street and Workplace 6.
- ▼ having an appropriate organisational structure to undertake the functions and activities outlined in the contractual arrangements and agreements with its customers. The structure includes specific Accounts, Business and Finance and Administration functions involved in Aquacell's retail activities and is appropriate for the number of customers it proposes to service.
- ▼ providing details of the experience of the key personnel who are engaged in the provision of retail services, as demonstrated in the Curricula Vitae provided to us in their application form. Identified key personnel are supported by other Aquacell personnel with specific experience in other aspects of retail supply, including invoicing and customer relations.
- ▼ demonstrating that business risks have been identified and managed in its risk assessment.

As outlined in section 4.2.1, Aquacell has had a number of non-compliances since early 2015. However, given that most of these were insignificant and Aquacell addressed and rectified all non-compliances to our satisfaction, we consider that Aquacell still has maintained its organisational capacity to provide sewerage services to its customer at the Kurrajong scheme.

We received no submissions regarding Aquacell's organisational capacity in response to its application for a retail supplier's variation.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to its organisational capacity, if the Minister grants this licence variation. The standard Ministerially imposed licence conditions in Aquacell's current retail supplier's licence should continue to apply (see draft licence in Appendix A).

## **4.3 Capacity to carry out those activities in a manner that does not present a risk to public health**

**We are satisfied that Aquacell has the capacity to provide sewerage services at the Kurrajong scheme in a manner that does not present a risk to public health.**

We assessed Aquacell's capacity to manage the following key risks to public health, posed by the provision of sewerage services to the Kurrajong scheme:

- ▼ **Sewerage service interruption:** Interruptions to the provision of sewerage services could pose a risk to public health. Aquacell demonstrated its capacity to mitigate this risk with its risk management assessment and RSMP. Aquacell outlined that in the event of an interruption to sewerage services, there is approximately one week's storage available at ultimate average dry weather flow within the scheme's buffer tank. If this capacity is exceeded, excess wastewater can be tankered to off-site facilities. Aquacell, in its capacity as a retail supplier, has identified service providers in the region with pump-out capability.
- ▼ **Potential for exposure to treated effluent:** As the treated effluent from the sewage treatment plant is disposed via subsurface irrigation, there are minimal risks to public health. Specialist effluent management investigations indicated that there will be no runoff from the effluent disposal area<sup>27,28,29</sup>. A risk analysis undertaken by Aquacell identified the possibility that members of the public could be exposed to treated effluent. Aquacell identified control measures to minimise potential risks to public health. We are satisfied that the risks identified have been adequately addressed, through the implementation of control measures including:
  - covers on all treatment facilities, including storage tanks
  - appropriate training of operators
  - education program for residents on wastewater system operation and risks
  - installation of appropriate signage, and
  - exclusion of public from sewage treatment and disposal areas.

As mentioned in section 3, NSW Health supported Aquacell's application for a network operator's licence for the Kurrajong scheme. It did not identify any specific health issues requiring attention by the applicant.

We consider that the information submitted by Aquacell demonstrates that it has the capacity to provide sewerage services at the Kurrajong scheme in a manner that does not present a risk to public health.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to its capacity to protect public health. The standard Ministerially imposed licence conditions in Aquacell's current retail supplier's licence should continue to apply (see draft licence in Appendix A).

#### **4.4 Sufficient quantities of water supplied by the licensee obtained otherwise than from public water utility**

The proposed scheme does not provide drinking water or recycled water to the development. The scheme will provide sewerage services only.

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<sup>27</sup> Envirotech Pty Ltd, On-site Wastewater Management Report, December 2009.

<sup>28</sup> Woodlands and Wetlands Pty Ltd, Effluent Management Investigations; November 2012.

<sup>29</sup> Woodlands and Wetlands Pty Ltd, Effluent Management Investigations - Supplementary information, November 2012.

## 4.5 Appropriate arrangements with respect to insurance

**We are satisfied that Aquacell has made, and will continue to maintain, appropriate insurance arrangements.**

In making our assessment of Aquacell's insurance arrangements, we have considered Aquacell's:

- ▼ combined business liability insurance, public liability, products liability and professional indemnity (financial loss arising from a wrongful act) insurance policies
- ▼ workers compensation insurance policy, and
- ▼ risk management assessment and control plan.

We note that Aquacell also holds other insurances which are not specific to the risks associated with retail activities, including contract works insurance and marine insurance.

In June 2015, in our assessment of Aquacell's network operator's licence application for the Kurrajong scheme, we requested advice from the NSW Self Insurance Corporation, now trading as icare self-insurance (icare), on the appropriateness of Aquacell's insurance arrangements, with respect to the activities to be licensed.

As part of the review, icare examined the applicant's proposed scope of work, the risk assessment, insurance coverage in the areas of professional indemnity, public liability and product liability, as shown in the applicant's insurance certificates. They also reviewed the product disclosure statements for each insurance certificate, and examined the financial rating of the various underwriters providing the insurance.

icare concluded that at the time the insurances were adequate and that Aquacell has sufficient insurance coverage, for the purposes of the network operator's licence application. It did not provide comment on their appropriateness to Aquacell as a retail supplier.

We note that an earlier review by icare of Aquacell's insurances in relation to the Workplace 6 retail supplier's licence variation had assessed them as being adequate.

Further, in December 2015, Aquacell provided us with an Insurance Expert's report on the adequacy of all Aquacell's insurances for the 2016 financial year. The provision of the report was a requirement of Aquacell's Workplace 6 network operator's licence. The report factored in Aquacell's application for a retail supplier's licence variation for the Kurrajong scheme. We reviewed the report and considered Aquacell's insurances and levels of cover to be adequate.

As Aquacell's insurance policies are renewed annually on 1 July, and the above Insurance Broker's Report only covered the 2015-16 financial year, we requested that Aquacell's insurance broker provide us with a statement for the 2016-17 financial year regarding the adequacy and levels of cover for all insurance policies applying to the Kurrajong scheme, together with copies of all applicable Certificates of Currency.<sup>30</sup> These were reviewed again in July 2017 as part of the Operational audit of Aquacell's 1 Bligh Street network operator's

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<sup>30</sup> Email to Aquacell, Colin Fisher, 8 June 2016.

licence and were found to be current and appropriate to Aquacell's capacity as a WIC Act licensee.<sup>31</sup>

We consider that the information submitted by Aquacell demonstrates that it will continue to maintain appropriate insurance arrangements in its capacity as a retail supplier.

We received no public submissions regarding Aquacell's insurance arrangements.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to its insurance arrangements. The standard Ministerially imposed licence conditions in Aquacell's current retail supplier's licence should continue to apply (see draft licence in Appendix A).

#### **4.6 Capacity to carry out those activities in a manner that does not present a significant risk of harm to the environment**

**We are satisfied that Aquacell has the capacity to provide sewerage services to its customers at Kurrajong, in a manner that does not present a significant risk of harm to the environment.**

We assessed Aquacell's capacity to manage the key risks to the environment posed by the provision of sewerage services to its customers at the Kurrajong scheme as follows:

- ▼ **Sewerage service interruption:** Through its risk management assessment and RSMP, Aquacell has demonstrated that potential environmental problems can be avoided through the provision of sufficient storage capacity of raw sewage, or pump out of sewage for off-site disposal in the event of any prolonged sewerage service interruption.
- ▼ **Sewerage system:** Through its risk management assessment and RSMP, Aquacell has demonstrated its capacity to educate customers about the appropriate use of the sewerage system, including information on what should and shouldn't be disposed of into the sewerage system.

We received no public submissions in relation to protection of the environment.

We consider that the information submitted by Aquacell demonstrated that it has the capacity to provide sewerage services to its customers at the Kurrajong scheme in a manner that does not present a significant risk of harm to the environment.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to its capacity to carry out the activities in a manner that does not present a significant risk of harm to the environment, if this licence variation is granted.

#### **4.7 Public interest considerations**

Our consideration of the public interest includes having regard to each of the licensing principles in section 4.7.1 to 4.7.11. Our recommendation in relation to the public interest

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<sup>31</sup> Cobbitty Consulting/Water Futures, Aquacell (1 Bligh Street) Non-Potable Water Scheme, Operational Audit, Version 2, July 2017.

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criteria also includes our consideration as to whether or not the retail supplier's licence variation should be granted, and if so, what conditions to impose.

#### **4.7.1 Protection of public health**

We have had regard to protection of public health through our assessment of Aquacell's capacity to provide sewerage services to customers at the Kurrajong scheme, in a manner that does not present a risk to public health. As outlined in section 4.3 of this report, we assessed Aquacell's capacity to manage the key risks posed to public health by the additional activities to be licensed.

In addition, Aquacell's risk management plan incorporates business risks that address retail aspects of Aquacell's operations.

NSW Health supported the application to grant Aquacell's network operator's licence and did not identify any specific risks to public health.<sup>32</sup>

We did not receive any submissions regarding protection of public health. If the Minister grants this licence variation, we consider that public health will continue to be protected in relation to the activities licensed.

#### **4.7.2 Protection of the environment**

We had regard to the protection of the environment by assessing Aquacell's capacity to manage the key risks to the environment posed by the provision of sewerage services to the Kurrajong scheme. As outlined in section 4.6, we assessed Aquacell's capacity to manage the key risks posed to the environment by the activities to be licensed.

If the Minister grants this licence variation, we consider the environment will continue to be protected in relation to the activities to be licensed.

#### **4.7.3 Protection of public safety**

We have had regard to the protection of public safety through our assessment of Aquacell's technical capacity to provide sewerage services to its customer (TCA). As outlined in section 4.2.1 of this report, we assessed Aquacell's capacity to manage key risks to public safety by the additional activities to be licensed.

We did not receive any submissions regarding protection of public safety. Aquacell has risk management procedures, including emergency preparedness and response plans applicable to its schemes, which are also referred to in Aquacell's RSMP.<sup>33</sup>

If the Minister grants this licence variation, we consider that public safety will continue to be protected in relation to the activities licensed.

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<sup>32</sup> Letter to IPART, Dr Wayne Smith, NSW Health, 22 April 2014.

<sup>33</sup> Aquacell Retail Supply Management Plan Revision 2, Reference EM020-2, dated 6th March 2017 .

#### 4.7.4 Protection of consumers generally

We have had regard to the protection of consumers through our assessment of Aquacell's technical capacity to provide sewerage services to its customer. As outlined in section 4.2.1 of this report, we assessed Aquacell's capacity to protect consumers through its preliminary risk assessment RSMP and other retail policies and codes.<sup>34,35,36,37</sup>

We consider that Aquacell has the technical, financial and organisational capacity and relevant specific retail experience to undertake the activities to be licensed in a way that will satisfactorily manage risks and afford protection to consumers. While there are no Operator of Last Resort provisions in place, and no requirement to have them under the Act, sewage can be trucked off-site for disposal in emergency situations, thereby providing continuous sewerage services to consumers.

The Minister *may* declare a licensed retail supplier to be a monopoly supplier at any time.<sup>38</sup> This declaration does not have to coincide with the grant or variation of a licence or a change in licence conditions. If the Minister declares a monopoly supplier, the Minister may then refer the monopoly services to IPART for price regulation.<sup>39</sup> We note that no such declaration or referral has been made to date.

We received no submissions regarding the protection of customers.

If the Minister grants this licence variation, we consider that consumers generally will continue to be protected in relation to the activities licensed.

#### 4.7.5 Encouragement of competition

There is currently no public water utility sewerage connection for the development. Without a WIC Act licence, options for providing sewerage services to the development would be limited. It is our understanding that the development would either require each customer to have their own private system, such as a septic tank and absorption trench, which would make the development unsustainable due to a combination of lot size, soil types and slopes or a number of small package sewage treatment plants would need to be constructed to service the development.

However, the introduction of a single centralised sewage treatment system will enable a new entity to provide sewerage services uptake for the market in integrated services to a discrete development, thus encouraging competition in the (retail) provision of these services.

#### 4.7.6 Ensuring sustainability of water resources

The proposed scheme does not provide drinking water or recycled water to the development. It will provide only sewerage services. The activities of the licence will not place an additional burden on the drinking water supply as there are no requirements for

<sup>34</sup> Aquacell Complaints Handling and Dispute Resolution Policy, Revision 4, 6 March 2017.

<sup>35</sup> Aquacell Customer Service Charter, Revision 2, 6 March 2017.

<sup>36</sup> Aquacell Code of Practice for Debt Recovery, Revision 1, 6 March 2017.

<sup>37</sup> Aquacell Code of Practice for Customer Complaints, Revision 1, 6 March 2017.

<sup>38</sup> WIC Act, section 51.

<sup>39</sup> Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

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top up. In addition, the effluent will be treated and disposed of such that there is no impact on the ground water. A retail supplier's licence is required to allow the provision of these sewerage services to the customers.

#### **4.7.7 Promotion of production and use of recycled water**

The proposed scheme does not provide drinking water or recycled water to the development. The scheme will provide sewerage services only. However, it is our understanding that these services provide other beneficial service to the community (ie, improves environment and health outcomes). A retail supplier's licence is required to allow the provision of these sewerage services to the customers.

#### **4.7.8 Promotion of policies set out in any prescribed water policy document**

The Metropolitan Water Plan (MWP) is the only prescribed water policy document in the *Water Industry Competition (General) Regulation 2008*. The MWP outlines strategies to secure greater Sydney's water supply now and in the future.

The plan is not applicable to the scheme as the proposed scheme does not provide drinking water or recycled water to the development. The scheme will provide sewerage services only.

#### **4.7.9 Potential for adverse financial implications for small retail customers**

This scheme proposes to have only one customer: the TCA, whose members are the lot owners in the community (development).

Aquacell will be responsible for the operation and maintenance of the wastewater system and has entered into a 5-year service agreement with the TCA to manage the system. These services will be funded through quarterly levies of TCA members.

As outlined in section 4.2.1, we assessed Aquacell's capacity to manage financial hardship, in its application for a licence variation.

As the cost of this scheme to residents of this development is likely to be less than a septic tank pump out system for each of the lots which is common in this area<sup>40</sup> we consider that the risk for adverse financial implications for residents of the Kurrajong scheme is minimal.

In addition Aquacell is required to be a member of a Ministerially-approved ombudsman scheme, currently the Energy and Water Ombudsman of NSW (EWON).

If the Minister grants this licence variation we consider that the potential risks for adverse financial implications for small retail customers will be adequately mitigated in relation to the activities to be licensed.

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<sup>40</sup> Email to IPART, Justin Taylor, Aquacell, 5 June 2015.

#### **4.7.10 Promotion of equitable sharing of the costs of water industry infrastructure that significantly contributes to water security**

Since this is an effluent disposal system, this principle does not apply. However, the infrastructure provides the opportunity for new housing communities to be established that would otherwise not be possible due to limited options for wastewater treatment and disposal. All participants in the community development share the costs associated with the operation and maintenance of the infrastructure equally via an annual levy administered by the TCA.

#### **4.7.11 Other matters in the public interest**

We did not identify any additional matters with regard to the public interest in relation to Aquacell providing sewerage services to its customers for the Kurrajong scheme.

We recommend that Aquacell should not be subject to any new or amended licence conditions in relation to public interest, if the Minister grants this licence variation.

### **4.8 Additional matters considered**

#### **4.8.1 Consistent licence terminology, language and structure**

We recommend that the Minister varies the retail supplier's licence to align it with the terminology, language and structure (including numbering of conditions) used in the standard licence template, to improve consistency across licences. Consequently, a new Licence Scope section has now been included and Schedule B of the licence (see draft licence in Appendix A) has been amended with some minor editing to reflect these changes.

A summary of the changes and reasons for the changes is provided in Appendix B to this report.



## 5 Recommendations

### We recommend that the Minister for Energy and Utilities:

Varies Aquacell's retail supplier's licence (licence number 09\_004R) as set out in the draft amended licence in Appendix A, to include the Kurrajong scheme and to authorise Aquacell to provide sewerage services to this scheme.

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.<sup>41</sup>

The Act requires the Minister to provide us with a notice of the decision and of the reasons for the decision on making a decision whether or not to grant the licence variation.<sup>42</sup> We will then make the information in the notice available to the public on our website in accordance with the requirements of the WIC Act.<sup>43</sup>

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<sup>41</sup> WIC Act, section 10(2).

<sup>42</sup> WIC Act, section 10(5).

<sup>43</sup> WIC Act, section 10(6).





## Appendices



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## A Draft licence





# **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)

## 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:

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

### 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](http://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"> <li>a) section 1, Table 1.1;</li> <li>b) section 2, Table 2.1; and</li> <li>c) section 3, Table 3.1.</li> </ul>
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](http://www.ipart.nsw.gov.au).

Small Retail Customer has the meaning given to that term in the Regulation.



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## B Summary of template changes to the licence



Clause in old licence No. 09_004R	Clause in new licence	Explanation
<b>Schedule A – Special Ministerially-imposed licence conditions</b>		
<b>A1 – Activities authorised – non-potable water supply</b>	Section 1 – Authorisation to supply non-potable water	Minor amendments for clarity and to conform with new template.
<b>A2 – Activities authorised – drinking water [not applicable]</b>	Not applicable.	No change.
<b>A3 – Activities authorised – sewerage services [not applicable]</b>	Section 3 – Authorisation to provide sewerage services.	Now amended to authorise the Licensee to provide sewerage services to specified persons and in a specified area of operations.
<b>Schedule B – Standard Ministerially-imposed licence conditions for all licensed retail suppliers</b>		
<b>B1 Ongoing capacity to operate</b>	1 – Ongoing capacity to operate	No substantive change.
<b>B2 Obtaining appropriate insurance</b>	2 – Maintaining appropriate insurance	The obligations in clause 2 of the new licence cover the obligations previously contained in clauses B2 and B3. A key difference from the previous licence is that the obligation to obtain and maintain insurance relates only to the activities that the Licensee is actually carrying out under the Licence, rather than all activities authorised under the Licence.
<b>B3 Maintaining appropriate insurance</b>	2– Maintaining appropriate insurance	The obligations in clause 2 of the new licence cover the obligations previously contained in clauses B2 and B3.
<b>B4 Complying with NSW Health requirements</b>	3 – Complying with NSW Health requirements	No substantive change.
<b>B5 Complying with Audit Guidelines from IPART</b>	4 – Complying with Audit Guidelines	No substantive change.
<b>B6 Reporting in accordance with the Reporting Manual</b>	5 – Reporting in accordance with the Reporting Manual	No substantive change.
<b>B7 Reporting information in relation to the Register of Licences</b>	6 Reporting information in relation to the register of licences	Amended to add clause 6.1(e) requiring the Licensee to notify IPART of any change to a network operator or public water utility by means of whose sewerage infrastructure the Licensee provides sewerage services. This amendment is a consequence of the Licence scope being expanded to the provision of sewerage services.
<b>B8 – Provision of copy of plan</b>	No equivalent	The clause is no longer necessary because the requirement is now included in the Audit Guidelines.
<b>B9 Delineating responsibilities</b>	7	Minor amendments to clause 7.4(a) to refer to pipes, pumps, valves or storages or other infrastructure. This is a consequence of the Licence scope being expanded to allow provision of sewerage services.

Clause in old licence No. 09_004R	Clause in new licence	Explanation
<b>B10 Notification of changes to Authorised Person</b>	No equivalent	This condition has been removed because it is not relevant to Aquacell, as there are no Authorised Persons named in the licence.
<b>B11 Infrastructure to be used</b>	8 – Infrastructure to be used	No substantive change
<b>B12 Notification of operation</b>	9 - Notification of supply of water or provision of sewerage services	Inserted clause 9.2, requiring the Licensee to notify IPART that it has commenced to provide sewerage services. This is a consequence of amending the licence to allow provision of sewerage services.
<b>INTERPRETATION AND DEFINITIONS</b>	Schedule C	No substantive change
<b>SCHEDULE C – RELEVANT NETWORK OPERATORS’ LICENCES</b>	No equivalent	For simplicity and ease of reference, the Retail Supplier’s Licence now refers directly to the relevant infrastructure the subject of the Network Operator Licences.