

Operating Licence for Jemalong Irrigation Limited

1.1. Definitions

In this Operating Licence, unless the context or subject matter otherwise requires:

Act means the Water Management Act 2000.

Area of Operations has the same meaning as in section 117 of the Act.

Government means the government of New South Wales.

Customers means any person who has a contractual right to receive water from the Licensee under a water supply contract or similar instrument with the Licensee.

Licensee means Jemalong Irrigation Limited (ACN: 067197782 / ABN: 76067197782).

Minister means the Minister administering the Act.

Ministerial Corporation means the Water Administration Ministerial Corporation constituted by section 371 of the Act

Environment Protection Licence means a licence issued under the Protection of Environment Operations Act 1997.

Operating Licence: has the same meaning as in section 117 of the Act.

Note: Unless otherwise defined, terms that are defined in the Act have the same meaning in this operating licence.

1.2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The *singular* includes the plural and conversely.
- (b) A *gender* includes all genders.
- (c) Where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a *Clause* is to a clause of this Operating Licence.
- (f) A reference to any *party* to this Operating Licence or any other agreement or document includes the party's successors and permitted assigns.
- (g) A reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Operating Licence or that other agreement, or document.
- (h) A reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (i) A reference to a *right* or *obligation* of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (j) A reference to *conduct* includes, without limitation, any omission, statement or undertaking, whether or not in writing.

2. CONDITION PRECEDENT TO COMMENCEMENT OF OPERATING LICENCE

2.1 Date of this Operating Licence

This Operating Licence commences on the date notice of its renewal and amendment is published in the NSW Government Gazette.

3. OPERATING LICENCE

3.1 Purpose of Operating Licence

This Operating Licence authorises the Licensee to carry on the business of supplying water provided to it by the Ministerial Corporation and to exercise its functions under the Act.

Note: This Operating Licence does not prohibit another person from supplying water and providing drainage services in the Area of Operations of the Licensee provided that other person is properly authorised to do so.

4. TERM OF RENEWAL OF OPERATING LICENCE

4.1 Renewed Term

This Operating Licence is renewed for a term of 10 years.

4.2 Commencement of renewed term

The renewed term, specified in Clause 4.1, begins when this Operating Licence commences under Clause 2.1.

5 WATER ENTITLEMENTS

5.1 Acknowledgements

The Governor acknowledges that, under the Combined Water Supply Work Approval and Water Use Approval granted to the Licensee by the Minister.

- (a) the Licensee must, by the 31st of October each year, submit to the Minister a hard copy and an electronic copy of an annual compliance report for the preceding water year (from 1 July to 30 June); and
- (b) the Licensee must provide a plan of the Licensee's Area of Operations and a plan of the authorised water supply works as existing at 30 June of the year of the annual compliance report.

5.2 Governor not to grant another Operating Licence

In the event of a liquidator being appointed to the Licensee, the Governor shall not grant an Operating Licence to another Irrigation Corporation (referred to in this clause and clause 5.3 as the "Applicant") with respect to the Area of Operations of the Licensee unless the Governor is satisfied that the Applicant has established satisfactory arrangements to supply water to the Licensee's Customers.

5.3 No obligations on Government and no preservation of existing water rights

Nothing in this clause 5 (Water Entitlements) shall be taken to mean or imply that in the period (if any) between:

- (i) the appointment of a liquidator to the Licensee; and
- (ii) the granting of an Operating Licence to the Applicant,

the Government, the Minister or the Ministerial Corporation shall be obliged in any way to supply water to the landholdings of the Licensee's Customers.

6. FUNCTION and SERVICES of the IRRIGATION CORPORATION

6.1 Water supply systems

The Licensee must use its best endeavours to construct, maintain, manage and operate efficient, co-ordinated and commercially viable systems and services for supplying water from both surface and subsurface sources having regard to:

- (a) the provisions of any management plan applicable to the whole or part of the Area of Operations of the Licensee;
- (b) the water management principles of the Act;
- (c) the provisions of all necessary access licences and approvals; and
- (d) the provisions of any Environment Protection Licence.

6.2 Water drainage systems

The Licensee must use its best endeavours to construct, maintain, manage and operate co-ordinated adequate and efficient surface and subsurface drainage networks having regard to:

- (a) the amount of water supplied by the Licensee to Customers;
- (b) the provisions of any management plan applicable to the whole or part of the Area of Operations of the Licensee;
- (c) the water management principles of the Act;
- (d) the provisions of all necessary access licences and approvals; and
- (e) the provisions of any Environment Protection Licence.

7. SUSPENSION OF OPERATING LICENCE

7.1 Suspension

Subject to Clause 7.2, if at any time during the currency of this Operating Licence the Licensee ceases to hold:

- (a) all necessary access licence(s) or all necessary approval(s); or
- (b) an Environment Protection Licence

this Operating Licence may be suspended by the Governor.

7.2 Suspension not to take effect until determination of proceedings

- (a) If, within 28 days of the Licensee ceasing to hold:
 - (i) all necessary access licence(s) or all necessary approval(s); or
 - (ii) an Environment Protection Licence,

the Licensee commences proceedings with respect to the suspension of this Operating Licence, the suspension under this Clause shall not take effect until those proceedings are determined.

- (b) If the Licensee does not commence proceedings of the type referred to in subclause (a) within 28 days of the Licensee ceasing to hold:
 - (i) all necessary access licence(s) or all necessary approval(s); or
 - (ii) an Environment Protection Licence,

the suspension under Clause 7.1 shall take effect on the expiration of that 28 day period.

7.3 Effect of suspension

From the time of any suspension of this Operating Licence under Clause 7.1 until that suspension is lifted under Clause 7.4, the Licensee shall be deemed not to have:

- (a) the benefit of any rights or privileges conferred on it; or
- (b) the burden of any obligations imposed on it

by this Operating Licence including without limitation the authority to carry on the business of supplying water provided to it by the Ministerial Corporation and to exercise its function under the Act.

7.4 Lifting of suspension

If, following any suspension of this Operating Licence under Clause 7.1, the Minister is satisfied that the Licensee has been granted or is reasonably likely to be granted

- (a) all necessary access licence(s) and necessary approval(s); and
- (b) an Environment Protection Licence,

the Governor may by notice in writing to the Licensee lift the suspension of this Operating Licence on such terms as the Governor may determine on the advice of the Minister.

7.5 Effect of lifting of suspension

If under Clause 7.4 the Governor lifts any suspension, the Licensee automatically resumes its rights, obligations and privileges under this Operating Licence.

7.6 Suspension not to affect term

A suspension of this Operating Licence under Clause 7.1 does not operate to extend the term of this Operating Licence.

8. CONTRAVENTION OF OPERATING LICENCE

If, in the opinion of the Minister, the Licensee contravenes, or continues to contravene, this Operating Licence, the Governor may take action in accordance with section 125 and section 126 of the Act.

9. CANCELLATION OF OPERATING LICENCE

The Governor may cancel this Operating Licence only in accordance with the provisions of the Act.

10. INFORMATION

The Licensee must provide the Minister with such information as the Minister may reasonably require in order to be satisfied that the Licensee is complying with the terms and conditions of this Operating Licence.

11. AMENDMENT

11.1 Operating Licence may be amended by the Governor

Subject to Clauses 11.2 and 11.3, this Operating Licence may be amended at any time by the Governor by notice published in the NSW Government Gazette.

11.2 Condition precedent to amendment

The Governor may amend this Operating Licence only after:

- (a) providing the Licensee with particulars of the proposed amendment or amendments; and
- (b) consulting with and taking into account representations from the Licensee.

11.3 Amendment not to take effect until determination of proceedings

- (a) If, within 28 days of the Governor providing the Licensee with particulars of a proposed amendment or amendments under Clause 11.2, the Licensee commences proceedings with respect to the amendment of this Operating Licence, the proposed amendment or amendments shall not take effect until those proceedings are determined.

- (b) Subject to sub clause (a), a proposed amendment or amendments shall take effect:
 - (i) upon publication of the relevant notice in the NSW Government Gazette; or
 - (ii) on the date nominated in that notice.

12. ASSIGNMENT

The rights and obligations of the Licensee under this Operating Licence are personal and, except as provided in section 127 of the Act or with the consent of the Minister, cannot be assigned, charged or otherwise dealt with and the Licensee shall not attempt or purport to do so.

13. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Operating Licence will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

14. GOVERNING LAW

This Operating Licence is governed by the laws of New South Wales. The Licensee shall submit to the exclusive jurisdiction of courts exercising jurisdiction there.