



NEW SOUTH WALES GOVERNMENT

Water Industry Competition Act 2006 (NSW)

Network operator's licence

Licence no. 17_042

Flow Systems Operations Pty Ltd

(ACN 603 106 305)



New South Wales

Water Industry Competition Act (NSW) 2006

Section 10

Notice of Decision - Application for a network operator's licence by Flow Systems Operations Pty Ltd

I, The Hon. Donald Harwin MLC, Minister for Energy and Utilities, have decided to grant Flow Systems Operations Pty Ltd (**Applicant**'s (ACN 603 106 305) application (**Application**) for a network operator's licence under section 10(1) of the *Water Industry Competition Act 2006* (NSW) (**Act**) subject to the conditions set out in the licence (licence number 17_042), the Act and the *Water Industry Competition (General) Regulation 2008* (NSW). The reasons for my decision are set out below.

I have considered the Independent Pricing and Regulatory Tribunal (**IPART**)'s advice and recommendations in its report to me on the Application. I attach IPART's report (**Attachment A**). I have also considered further advice provide by my Department.

Based on my consideration of IPART's report and my Department's advice:

- 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 would authorise if granted, 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 and what conditions should be imposed on any such licence granted.

I attach the licence (**Attachment B**).

A handwritten signature in black ink, appearing to read 'D Harwin'.

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

Dated this *13th* day of *October* 20*17*

PRELIMINARY

1. Summary

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

2. Outline

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

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

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

SECTION 1 – ACTIVITIES AUTHORISED: 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 construct, maintain and operate the water industry infrastructure specified in Table 1.2:

- a) for one or more of the purposes for water industry infrastructure specified in Table 1.2; and
- b) within the area of operations specified in Table 1.3.

The non-potable water supplied by means of the water industry infrastructure specified in Table 1.2 may only be used for the authorised purposes for non-potable water specified in Table 1.4.

Table 1.1 Authorised Persons

. Flow Systems Pty Ltd (ACN 136 272 298)
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Table 1.2 Water industry infrastructure and purposes for water industry infrastructure

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| <ol style="list-style-type: none">1) A treatment plant for non-potable water and other water infrastructure used, or to be used, in connection with the treatment plant, where components of the treatment plant or other water infrastructure may be used for one or more of the following purposes for water industry infrastructure:<ol style="list-style-type: none">a) production of non-potable water;b) treatment of non-potable water;c) filtration of non-potable water;d) storage of non-potable water; ande) conveyance of non-potable water.2) A reticulation network for non-potable water and other water infrastructure used, or to be used, in connection with the reticulation network, where components of the reticulation network or other water infrastructure may be used for one or more of the following purposes for water industry infrastructure:<ol style="list-style-type: none">a) production of non-potable water;b) treatment of non-potable water;c) filtration of non-potable water;d) storage of non-potable water; ande) conveyance of non-potable water. |
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Table 1.3 Area of operations

The land situated under the following folio identifiers:

Lot	DP
1 - 7 and 9 -17	19585
1	122205
2	792836
102	1037638
1 - 2	810552
1	713706
1 - 2	930584
1	104280
4	548406
3 and 11 - 18	7130
1	703858
1	322641
1	1205357
2	550006
1 - 2	982743

Table 1.4 Authorised purposes for non-potable water

Toilet flushing, clothes washing, cooling tower top up, car washing, water features and irrigation (including public open space irrigation).

SECTION 2 – ACTIVITIES AUTHORISED: DRINKING 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 2.1 to construct, maintain and operate the water industry infrastructure specified in Table 2.2:

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

Table 2.1 Authorised Persons

Flow Systems Pty Ltd (ACN 136 272 298)
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Table 2.2 Water industry infrastructure and purposes for water industry infrastructure

A reticulation network for drinking water and other water infrastructure used, or to be used, in connection with the reticulation network, where components of the reticulation network or other water infrastructure may be used for the conveyance of drinking water.

Table 2.3 Area of operations

The land situated under the following folio identifiers:

Lot	DP
1 - 7 and 9 -17	19585
1	122205
2	792836
102	1037638
1 - 2	810552
1	713706
1 - 2	930584
1	104280
4	548406
3 and 11 - 18	7130
1	703858
1	322641
1	1205357
2	550006
1 - 2	982743

SECTION 3 – ACTIVITIES AUTHORISED: 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 construct, maintain and operate the water industry infrastructure specified in Table 3.2:

- a) for one or more of the purposes for water industry infrastructure specified in Table 3.2; and
- b) within the area of operations specified in Table 3.3.

Table 3.1 Authorised Persons

Flow Systems Pty Ltd (ACN 136 272 298)
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Table 3.2 Water industry infrastructure and purposes for water industry infrastructure

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| <ol style="list-style-type: none">1) A treatment plant for sewage and other sewerage infrastructure used, or to be used, in connection with the treatment plant, where components of the treatment plant or other sewerage infrastructure may be used for one or more of the following purposes for water industry infrastructure:<ol style="list-style-type: none">f) production of treated non-potable water from sewage;g) treatment of sewage;h) filtration of sewage;i) storage of sewage; andj) conveyance of sewage.2) A reticulation network for sewage and other sewerage infrastructure used, or to be used, in connection with the reticulation network, where components of the reticulation network or other sewerage infrastructure may be used for one or more of the following purposes for water industry infrastructure:<ol style="list-style-type: none">a) production of treated non-potable water from sewage;b) treatment of sewage;c) filtration of sewage;d) storage of sewage; ande) conveyance of sewage. |
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Table 3.3 Area of operations

The land situated under the following folio identifiers:

Lot	DP
1 - 7 and 9 -17	19585
1	122205
2	792836
102	1037638
1 - 2	810552
1	713706
1 - 2	930584
1	104280
4	548406
3 and 11 - 18	7130
1	703858
1	322641
1	1205357
2	550006
1 - 2	982743

1. Notification of changes to Authorised Person

- 1.1. If an Authorised Person ceases, proposes to cease, or receives notification to cease providing any of the services relating to the activities authorised by this Licence, the Licensee must provide IPART with written notice as soon as practicable but no later than 28 days before the date of cessation of the services, or a later date approved by IPART in writing. The written notice must include details of how the services previously undertaken by the Authorised Person will continue to be undertaken.

2. Limits of Approval

- 2.1. The Licensee must only construct, maintain and operate, and must ensure that any Authorised Person only constructs, maintains and operates, the water industry infrastructure specified in paragraph 2) of Table 1.2 or paragraph 2) of Table 3.2 to the extent that such construction, maintenance or operation:
- a) has been granted development consent under the EP&A Act as at the date this Licence is granted; or
 - b) is exempt development under the EP&A Act and may be carried out without development consent under section 76(3)(a) of the EP&A Act; or
 - c) is the subject of the REF.
- 2.2. The Licensee must undertake, and must ensure that any Authorised Person undertakes, the activities set out in the REF that is approved by the Minister, that are authorised by the Licence, in a manner that is substantially consistent with the REF, if applicable. Those activities include, but are not limited to, the environmental mitigation measures set out in the REF.

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 to commercially operate the Specified Water Industry Infrastructure under this Licence, the Licensee must demonstrate that the insurance held is appropriate for the size and nature of those commercial operation 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 those commercial operation 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 source from which the water handled by the Specified Water Industry Infrastructure is derived;
 - b) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of supplying water to its customers;

- c) any other water infrastructure to which the Specified Water Industry Infrastructure is connected;
- d) in the case of non-potable water, the authorised purposes for that water;
- e) the identity of each licensed retail supplier or public water utility that has access to infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of providing sewerage services to its customers;
- f) any other sewerage infrastructure to which the Specified Water Industry Infrastructure is connected; and
- g) the arrangements for the disposal of waste from the water industry infrastructure specified in section 3, Table 3.2.

7. Monitoring

- 7.1. The Licensee must undertake any monitoring that is required for the purposes of this Licence, any Plan, the Act or the Regulation in accordance with this clause 7.
- 7.2. The Licensee must keep the following records of any samples taken for monitoring purposes specified in the Water Quality Plan:
 - a) the date on which the sample was taken;
 - b) the time at which the sample was collected;
 - c) the point or location at which the sample was taken; and
 - d) the chain of custody of the sample (if applicable).
- 7.3. The Licensee must ensure that analyses of all samples taken for the purposes of Verification Monitoring are carried out by a laboratory accredited for the specified tests by an independent body that is acceptable to NSW Health, such as the National Association of Testing Authorities or an equivalent body.

8. Delineating responsibilities

- 8.1. If a code of conduct has not been established under 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 8.
- 8.2. Before the Licensee brings the Specified Water Industry Infrastructure into commercial operation 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 Specified Water Industry Infrastructure; or
- ii) constructs, maintains or operates any water industry infrastructure that is connected to the Specified Water Industry Infrastructure.

8.3. [Not applicable]

8.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 8.2 by, at a minimum, providing for:

- a) who is responsible for repairing, replacing or maintaining any pipes, pumps, valves, storages or other infrastructure connecting the Specified Water Industry Infrastructure to the other water industry infrastructure;
- b) who is responsible for water quality;
- c) who is liable in the event of the unavailability of water;
- d) who is liable in the event of failure of any water industry infrastructure;
- e) the fees and charges payable in respect of the use of the water industry infrastructure; and
- f) who is responsible for handling customer complaints.

8.5. The Licensee must not contravene the Licensee's Code of Conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.

9. Notification of changes to end-use

9.1. If the Licensee proposes to operate the Specified Water Industry Infrastructure to supply non-potable water for an end-use which is not set out in the most recent Water Quality Plan provided to IPART, the Licensee must notify IPART in writing at least 3 months before commencing such operation.

10. Notification of commercial operation

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

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

11. Notification of non-compliant Plumbing

- 11.1. If the Licensee becomes aware that a customer's Plumbing is not Code Compliant, the Licensee must, within 10 days, notify the customer and the Plumbing Regulator, in writing, of that fact.

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.
Code Compliant	has the meaning given to that term under section 7 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
EP&A Act	Means the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001</i> (Cth) that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this network operator's licence granted under section 10 of the Act.
Licensee	means Flow Systems Operations Pty Ltd (ACN 603 106 305).
Licensee's Code of Conduct	has the meaning given in Schedule B, clause 8.1.
Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.

Plan	means any infrastructure operating plan, water quality plan or sewage management plan that the Licensee is required to prepare under the Regulation.
Plumbing	means any pipe, fitting or apparatus that is situated: <ul style="list-style-type: none"> a) downstream of the customer's connection point to a water main, where the water main is Specified Water Industry Infrastructure; b) upstream of a customer's connection point to a sewer main, where the sewer main is Specified Water Industry Infrastructure; or c) upstream of a customer's connection point to a stormwater drain, where the stormwater drain is Specified Water Industry Infrastructure.
Plumbing Regulator	has the meaning given to that term under section 3 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
REF	means the document titled "REF for proposed sewage and recycled water reticulation systems. Shepherds Bay, New South Wales", version 3, prepared by RPS Australia East Pty Ltd, version 3, and dated 2 June 2017 and does not include any modified version of that document or any other document replacing it.
Regulation	means the Water Industry Competition (General) Regulation 2008 (NSW).
Reporting Manual	means the document titled "Network Operator's Reporting Manual", which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au .
Specified Water Industry Infrastructure	means the water industry infrastructure specified in, as applicable: <ul style="list-style-type: none"> a) section 1, Table 1.2; b) section 2, Table 2.2; and c) section 3, Table 3.2.

Verification Monitoring means verification monitoring as described in the document titled "*Australian Drinking Water Guidelines*" or the document titled "*Australian Guidelines for Water Recycling*" as the case may be.

Water Quality Plan means the water quality plan that the Licensee is required to prepare under the Regulation.