

16 December 2016

Mr Hugo Harmstorf
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Mr Harmstorf

Re: Application under the *Water Industry Competition Act 2006* for a Network Operator Licence and variation to the Retail Supplier Licence for Shepherd's Bay

Thank you for the opportunity to comment on the application by Flow Systems Operations Pty Ltd (FSO) for a network operator licence and Flow Systems Pty Ltd (FS) for a variation to its retail supplier licence under the *Water Industry Competition Act 2006* (the WIC Act).

Sydney Water has reviewed the applications and notes some issues for IPART's consideration in this response. All of our comments and references in this response relate to the network operator licence application. As a general comment, we note that the proposed scheme set up is different to other schemes already in place and there is uncertainty around some issues. Accordingly, we request further discussions with IPART and, if desired, the licence proponents, to ensure all aspects of the application can be appropriately considered by our organisation and IPART.

Some key issues to note are:

- FSO states that it will not be responsible for the operation and maintenance of any drinking water infrastructure, however is applying for a drinking water network operator's licence.
- Sydney Water and FSO have not yet commenced negotiations for a Utility Services Agreement (USA) or a Trade Waste Agreement (TWA). Our understanding to date has been that there would only be a USA required for wastewater, as there would be no connection between FSO and Sydney Water with regard to drinking water infrastructure.
- From discussions with the developer to date, our understanding is that a decision regarding the intended supplier of drinking water services to the development is yet to occur.

Uncertainty around need for network operator for drinking water

In section 4.1.4 of the application, FSO notes that the infrastructure used to deliver all services will be designed and constructed by the developer. The application also states that:

FSO will not be responsible for the operation and maintenance of any drinking water infrastructure except for the drinking water meter inside each customer's tenement.

Under section 6(1)(a) of the WIC Act, a network operator's licence authorises a licensee to construct, maintain and operate water industry infrastructure. If FSO are not intending to

construct, operate or maintain infrastructure, it is unclear why they would need a network operator licence to do so. Our understanding is that all water mains throughout the development including between each building are to be owned and operated by Sydney Water.

The WIC Act defines 'water industry infrastructure' as:

any infrastructure that is, or is to be, used for the production, treatment, filtration, storage, conveyance or reticulation of water, but does not include:

- a) any pipe, fitting or apparatus that is situated downstream of a customer's connection point to a water main, or*
- b) any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a stormwater drain.*

It appears that FSO are seeking a network operator's licence for drinking water infrastructure that would only apply to meters.

Unlike previous WIC Act licence applications for other schemes, FSO will not be responsible for any drinking water infrastructure that has a physical connection to Sydney Water's infrastructure. This will create additional complexity if FSO is seeking to establish a USA with Sydney Water (as requested under section 4.1.1) that includes the provision of wholesale water services.

Our standard USA (which FSO refers to in section 4.1.4) is built on the assumption that a physical connection exists between Sydney Water's infrastructure and a network operator's infrastructure. The lack of a connection with the network operator may also result in the need for end-use customer transfers under the WIC Act Transfer Code of Conduct, if a deemed Customer Contract with Sydney Water arises (we discuss these issues further below).

General lack of clarity around responsibility for infrastructure

The application does not contain a clear description of which parties will be responsible for the ongoing operation and maintenance of infrastructure. This makes it difficult to provide comment on the application. For example:

- **drinking water infrastructure**

Section 4.1.5 states that FSO "will not be responsible for the operation and maintenance of **any** drinking water infrastructure (emphasis added)"; however, Appendix 4.1.1 indicates that FSO will own/be responsible for drinking water reticulation infrastructure in the development.

- **non-potable water infrastructure**

Section 4.2.4 states that there will be no permanent connections with any other infrastructure not part of the scheme, including interconnections with public utilities. This is inconsistent with text throughout the application (for example, in section 4.2.15 and section 4.3.1) that notes that both waste stream and excess sewage not required to be treated will be discharged to Sydney Water's wastewater network. It is also inconsistent

with the diagram in Appendix 4.3.1(b) that shows a direct connection from the recycled water plant to Sydney Water's wastewater network.

- **sewerage infrastructure**

Section 4.3.4 does not include a description of who will be responsible for construction, operation and maintenance of the sewerage infrastructure within the development boundary, as required by the licence template. This should be clarified in the application.

Appendix 4.3.1 suggests that Flow Systems (not FSO) will be responsible for wastewater infrastructure within the development. Our understanding is that Sydney Water will be responsible for some wastewater mains within the development. This should be clarified in the application.

There is no reference to sewer mining in the application. However, Appendix 4.2.1(a) indicates that there may be a sewer mining arrangement, which would require a connection to Sydney Water's wastewater network (subject to agreement).

Servicing strategy

Sydney Water has not been advised by the developer that it has engaged FSO for the provision of drinking water services. Rather, our understanding is that the developer was yet to make a decision regarding the service provider for drinking water in the Shepherd's Bay precinct.

As requested by the developer, Sydney Water is currently finalising section 73 certificates for servicing of both water and wastewater to stages 4 and 5 of the Shepherd's Bay development. As noted above, our understanding is that all water mains throughout the development including between each building are to be owned and operated by Sydney Water. We also understand that wastewater mains located on the exterior of the development are to have individual connections for each building for bypass/overflow and are to be owned and operated by Sydney Water.

Once transfer of the ownership of the reticulation infrastructure and connection to Sydney Water's system occurs, this will trigger a deemed Customer Contract between Sydney Water and the property owner under section 55 of the *Sydney Water Act 1994*. If a customer then wishes to become a customer of FSO, the transfer process under the WICA Act will need to be applied.

Monopoly provider

Section 3.6.1 of the application states that the proposed Shepherd's Bay scheme is not a monopoly because it lies within Sydney Water's area of operations. The presence of multiple service providers within Sydney Water's operating area does create a broadly competitive environment. However, it is unlikely that customers within the Shepherd's Bay precinct will, in practical terms, be able to choose their service provider for water or wastewater services.

As such, it is our firm view that IPART should recommend to the Minister that FSO and FS should be declared as monopoly suppliers for the Shepherds Bay developments in accordance with section 51 of the WIC Act.

Commercial agreement

The licence application states that Flow Systems will have a USA and TWA with Sydney Water. We have recently been notified by FSO of their wish to begin such negotiations. However, discussions have not yet commenced. Negotiation of any potential USA for this scheme may need to consider additional metering or other measures to allow calculation of IPART's determined wholesale prices. This is dependent on the outcome of IPART's current review of wholesale pricing.

Potential for adverse financial implications for customers

Section 3.7.1 suggests there is no potential for adverse financial implications for customers due to their 'price parity' policy. We note that there are some small price differences between FS and Sydney Water prices, such as different ancillary charges (based on hourly rates) and different recycled water charges (service charge).

Potable water top-up availability

The application states that during the initial development stages the recycled water reticulation network will be supplied by drinking water until recycled water becomes available. Section 4.2.4 of the application states that the recycled water storage system will be topped up via an air-gap from FSO's own drinking water connection.

Sydney Water must protect its assets and the quality and safety of the drinking water supplied to our customers at all times. Therefore, the proposed potable water top-up to the applicant's recycled water supply tank must have a **registered** air-gap installed.

The top-up supply will also need to be metered by Sydney Water and meet any other connection requirements determined at the time. In the past, this has been managed through the owner of the property. In the future, this type of service may be captured under IPART's wholesale pricing determination.

Capacity required in Sydney Water assets

As outlined in the section 4.3.6 of the application, the storage onsite is intended to provide a buffer for the provision of water and wastewater services but not full contingency. FSO notes:

any sewage not required to be treated to meet recycled water demand is proposed to bypass the LWC and be discharged directly into Sydney Water's sewerage network.

As no provision nor agreement relating to the nature of this bypass has been made (in terms of volume, quality, quantity and frequency), it appears that FSO expects to fully rely on Sydney Water to provide water and wastewater backup for the entire development. Sydney Water will have no control over the discharge of sewage not required for recycled water to our wastewater network. As such, Sydney Water's infrastructure must be sized accordingly to service the entire development. This means we have no ability to reduce, delay or downsize our infrastructure required to service the development.

This is why Sydney Water considers a non-residential price is not appropriate for the wholesale wastewater service provided to this site (as recently mooted in IPART's draft determination on wholesale pricing).

Waste streams generated

Section 4.2.15 of FSO's application states that it proposes to discharge waste activated sludge and/or brine into the Sydney Water wastewater system through a TWA.

To date, FSO and Sydney Water have not commenced discussions to establish a TWA for the acceptance of the brine product from the reverse osmosis process or the impact of including stormwater into their process which may be discharged to our network. Any discharge to our wastewater system must meet our acceptance standards.

Connections and metering

Under the proposed scheme set up there will be additional complexity in developing an appropriate USA with FSO if they are not the party connected to our drinking water system.

As previously stated, the proposed potable water top-up to the applicant's recycled water supply tank must have a registered air-gap installed. The application does not make comment on any other connection points for drinking water, presumably because there will not be any physical connections between Sydney Water and FSO for drinking water infrastructure. A backflow containment device (high hazard) must also be installed on all connection points to prevent backflow contamination into Sydney Water's supply system. A direct connection is not permitted. If these connections are owned, maintained and operated by the body corporate, that party will be required to ensure these requirements are met to the satisfaction of Sydney Water.

Section 4.1.1 states that drinking water will be sourced from Sydney Water at the **boundary** of the development; however, the same section indicates that each **stage** (ie building) will be serviced by a private drinking water pipe connected via a Sydney Water bulk water meter from the Sydney Water drinking water main. Appendix 4.1.1(a) also suggests a single bulk water meter at the boundary of the development. Sydney Water is yet to discuss metering requirements with FSO and FS. This will occur during negotiation of a USA.

Operator of Last Resort (OoLR)

As a potential Operator of Last Resort, Sydney Water supports and recommends that the minimum requirement for all infrastructure, including water recycling plants, should be based on WSAA standards and codes to minimise potential future Last Resort risks and costs. We also believe it would be prudent for operators to demonstrate a suitable level of financial security before scheme approval in order to reduce the likelihood and impact of a Last Resort event.

If you would like to discuss any of these matters further, please contact me on [REDACTED] or by email at [REDACTED]

Yours sincerely

[REDACTED]

Danielle Francis
Competition and Regulation Manager

16.12.16

