

17 August 2016

Mr Rob O'Neill
General Manager, Licensing and Compliance
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Application under the *Water Industry Competition Act 2006* for a network operator licence and variation of retail supplier licence for Glossodia.

Dear Mr O'Neill,

Thank you for the opportunity to comment on the application by Flow Systems Operations Pty Ltd (**FSO**) for a network operator's licence for non-potable (recycled water) and sewerage infrastructure under *the Water Industry Competition Act 2006* (the WIC Act). We have also included comments on the application by Flow Systems Pty Ltd (**FS**) to vary their retail supplier's licence to include the Jacaranda Ponds development (the **Development**), as the issues raised overlap both applications. Please find below some information we hope will aid the efficient delivery of services to customers in the Development.

In your letter of 20 July 2016, IPART stated that "FSO is proposing to connect to, or use, Sydney Water Corporation's 'water industry infrastructure'". For clarity, we note that the application only indicates a connection to Sydney Water for drinking water top-up for the proposed recycled water system (see comments on page two regarding potable water top-up). Consistent with our discussions with the developer for the Development, there will be no other connection to Sydney Water's infrastructure.

Monopoly Supply (section 3.6)

Both applications state that recycled water and sewerage services are not monopoly services as "[a]ll customer classes have the ability to choose who will provide their sewerage service." Sydney Water strongly disputes this statement. FS is operating as a discrete monopoly in this area and therefore has market power within the Development.

The WIC Act promotes competition **for** the market rather than **in** the market. The result of this is that an individual customer in a particular location is not able to choose between service providers for the same service. The only way consumers can switch suppliers is if they move properties into a development serviced by Sydney Water.

For the Development, individual customers will not be able to choose to receive sewerage or recycled water services from Sydney Water. Sydney Water will not own or operate any sewerage or recycled water infrastructure in the Development. Customers within the Development would not physically be able to connect to Sydney Water infrastructure.

As previously notified to the developer, Sydney Water has no plans to provide wastewater services to the Development as it is not a development listed in our *Growth Servicing Plan 2014-19*. It would be uneconomical for Sydney Water to service an individual customer if they did not want to be serviced by FS. We believe that under any standard market definition and competition assessment, FS would be deemed a monopoly supplier of services within the localised market it is supplying.

Sydney Water strongly believes that IPART should declare the sewerage and recycled water services provided to customers within the Development as being a monopoly service. This is required to ensure that customers are protected from any exercise of market power.

Competition (section 3.7)

FS and FSO suggest that this licence will promote competition within the scheme area.

The WIC Act was created to drive efficient entry into the market and the outcome of any competitive market should see prices reduce or an improvement in value for customers. We note that, while there is no legislative requirement to do so, FS have implemented a “price parity with Sydney Water” policy. Their website suggests they are more efficient than Sydney Water and can provide services for less. However, their customers do not see any benefit of lower prices that FS and FSO may be able to introduce by providing services for less than Sydney Water.

Potable water top-up connection (sections 4.2.4)

Contrary to the application which states that “[p]rovision is made for the recycled water storage system to be topped up via an air-gap by FSO’s own drinking water connection at the LWC”, it is our understanding that FSO will not own the property where the recycled water plant will be located. Rather, Sydney Water will provide a water connection to the property owner of that lot. This connection will be the responsibility of the property owner and Sydney Water cannot guarantee supply to the recycled water plant. This would need to be managed under an agreement between the owner and FSO.

We note that FSO have not requested access to our infrastructure and are not applying to operate potable water infrastructure under the WIC Act.

Sydney Water notes that in section 4.2.4 of the application, FSO states that the recycled water storage system will be topped up via an air-gap by the 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. A backflow containment device (high hazard) must also be installed at the property boundary, or directly after the master water meter to prevent backflow contamination into Sydney Water’s supply system. A direct connection is not permitted. The top-up supply will also need to be metered by Sydney Water and meet any other connection requirements determined at the time. As noted above, this would be managed through the owner of the property.

Commercial Agreement (4.2.12)

FSO state that they will be entering into a commercial agreement with Sydney Water. Sydney Water will not be entering into a commercial agreement with FSO as there is no interconnecting infrastructure as outlined in their application. Sydney Water has yet to be approached by FSO regarding this development.

Potable water top-up availability (4.2.4 and 4.2.6)

The application states that the first 200 lots will be charged by a temporary cross connection to Sydney Water's drinking water reticulation network. There are currently no drinking water services available to the development. We have notified the developer that it must carry out detailed planning work to determine the most appropriate servicing solution to provide water services to the development. The developer is yet to commence this work and therefore we have no indication of the timing of when potable water will be made available to the site. This will impact on the ability for the temporary cross connection to our drinking water network.

Following commissioning of the recycled water plant, FSO have indicated that will need 22ML per year of stormwater or drinking water to top-up the recycled water system in an average year.

FSO have suggested that their first option for recycled water top-up is stormwater. Given that the nature of stormwater is highly variable in both quality and availability, our view is that the security of the scheme will be largely dependent on top-up from Sydney Water's drinking water system.

Further detailed analysis is required to understand the interaction between the drinking water and recycled water systems to determine the impact of this on the capacity of the drinking water network.

Waste streams (sections 4.2.and 4.3)

The application states that the systems and processes for the Development are similar to previous developments and cite Central Park, Pitt Town and Discovery Point as examples. However, these three examples all have discharge capability to another established water utility's sewerage network (Hawkesbury City Council or Sydney Water) as a reserve option. This application has no such back stop.

FSO have suggested that in the event they exhaust all other options and require another disposal method they will obtain an Environment Protection Licence (EPL) to allow them to discharge treated sewage to a local waterway. Sydney Water encourages IPART to consult with the EPA about this application as it is appropriate for the EPA to comment on the associated requirements and likely conditions of such a request. Based on our experience, this option would have a large lead time.

Sydney Water believes FSO's estimated amount of sewage generated per person is conservative and the recycled water demand figure to be ambitious. Our experience suggests that this could lead to the need to have other backup options available before the completion of the development. For reference, for our own planning purposes, and based on our experience with existing recycled water schemes, Sydney Water uses 150L per person per day for estimating sewage generated and assumes the recycled water demand to be about one-third of sewage flow (not 95 per cent as indicated in the application).

Sydney Water notes that in Phase 1 the interim solution for sewage disposal is to tanker the sewage off-site to a registered waste management facility. From experience this option is expensive and it is also difficult to manage and obtain planning approval for the extensive tanker movements that are required to dispose of the sewage. We note that tankering the sewage (untreated) off site may result in Sydney Water ultimately receiving the sewage (via another party) and needing to use our wastewater system to transport, treat and dispose of it. This means that there may be little or no capacity reduction in Sydney Water's infrastructure capacity due to the provision of services by another utility.

Operator of Last Resort (OoLR)

Our final comment relates to the proposed introduction of OoLR provisions to WICA. In the case of a Last Resort event, there could be significant risk incurred by the OoLR if the infrastructure has not been built and/or maintained to adequate standards. 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.

Sydney Water's position is that it would be prudent for all scheme 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 Kate Wild, Senior Analyst, Competition and Licensing on [REDACTED] or by email at [REDACTED]

Yours sincerely

[REDACTED]

Heidi Muras
A/Manager, Competition and Licensing