

Independent Pricing and Regulatory Tribunal  
New South Wales

# Assessment of Flow Systems Pty Ltd's application to vary its retail supplier's licence no. 13\_001R

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



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# 1 Summary

We recommend that the Minister grants Flow Systems Pty Ltd's (ACN 136 272 298) (Flow Systems) application to vary its retail supplier's licence (licence number 13\_001R, see Appendix A) to authorise Flow Systems to supply:

- ▼ Drinking water, non-potable<sup>1</sup> water and provide sewerage services to its customers at the Bellbird North development. The development is located in the Hunter Valley in the Cessnock City Council local government area.
- ▼ Non-potable water and provide sewerage services to its customers at the Glossodia development. The development is located north of Richmond in the Hawkesbury City Council local government area.
- ▼ Drinking water, non-potable water and provide sewerage services to its customers at the Shepherds Bay development. The development is located in Meadowbank in the City of Ryde Council local government area.

This is consistent with the applications Flow Systems provided to us.

Flow Systems' retail supplier's licence was last varied on 12 May 2016 to include the Box Hill North scheme and currently authorises Flow Systems to supply drinking water, non-potable water and sewerage services to eight schemes (see Table 2.1).

In assessing Flow Systems' application to vary its retail supplier's licence, we considered the licensing criteria in sections 10(3)-(4) of the 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 applications. The Minister may, if circumstances so require, seek further advice from us in relation to the licence applications.<sup>2</sup>

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<sup>1</sup> In the *Water Industry Competition Act 2006* (NSW) (WIC Act), non-potable water means water that is not drinking water.  
<sup>2</sup> WIC Act, section 10(2).

## 2 Background

We have received three separate applications from Flow Systems to vary its retail supplier's licence for the following schemes:

- ▼ On 8 July 2015, we received an application to vary Flow Systems' retail supplier's licence to include the Bellbird North development, which is located in the Hunter Valley near Cessnock.
- ▼ On 22 December 2015, we received an application to vary Flow Systems' retail supplier's licence to include the Shepherds Bay development, which is located in Meadowbank, Sydney. Flow Systems provided a revised application package on 2 September 2016.
- ▼ On 13 May 2016, we received an application to vary Flow Systems' retail supplier's licence to include the Glossodia development, which is located in northwest Sydney. Flow Systems provided a revised application package on 30 June 2016.

The delays in assessing these applications have been significantly impacted by the time taken by Flow Systems to respond to our requests for information.

Flow Systems' applications seek to enable it to supply non-potable water and provide sewerage services at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water at the Bellbird North and Shepherds Bay developments.

We are currently also assessing network operator's licence applications from Flow Systems Operations Pty Ltd (Flow Systems Operations)<sup>3</sup> for the Bellbird North, Glossodia and Shepherds Bay developments. This report only considers Flow Systems' applications to vary its retail supplier's licence.

### 2.1 The applicant

Flow Systems' retail supplier's licence currently authorises Flow Systems to supply non-potable water to eight schemes, supply drinking water to five schemes and provide sewerage services to seven schemes, as shown in Table 2.1 below.

Flow Systems' ultimate holding company is Brookfield Asset Management Inc (incorporated in Bermuda).

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<sup>3</sup> Flow Systems Operations is a wholly owned subsidiary of Flow Systems.

**Table 2.1 Flow Systems' licence schemes, under its subsidiaries**

Subsidiary	Scheme	Network operator's licence	Licenced for		
			DW <sup>a</sup>	NPW <sup>b</sup>	S <sup>c</sup>
Pitt Town Water Pty Ltd	Pitt Town development, Pitt Town, Sydney	10_014		✓	✓
Central Park Water Factory Pty Ltd	Central Park development, Chippendale, Sydney	12_022	✓	✓	✓
Discovery Point Water Pty Ltd	Discovery Point development, Wolli Creek, Sydney	13_025	✓	✓	✓
Wyee Water Pty Ltd	Wyee residential development, Wyee, Lake Macquarie	14_026	✓	✓	✓
Huntlee Water Pty Ltd	Huntlee residential development, North Rothbury, Hunter Valley	15_030	✓	✓	✓
Green Square Water Pty Ltd	Green Square Town Centre, Sydney	15_031		✓	
Cooranbong Water Pty Ltd	Cooranbong residential development, Cooranbong, Lake Macquarie	15_033	✓	✓	✓
Flow Systems Operations Pty Ltd	Box Hill North residential development, Hills Shire Council	16_037		✓	✓

**a** Supply of drinking water

**b** Supply of non-potable water

**c** Provision of sewerage services

## 2.2 The schemes

The Bellbird North and Glossodia developments are low to medium density residential lots. The Shepherds Bay development comprises large scale residential apartment buildings.

Flow Systems intends to source from Flow Systems Operations:

- ▼ non-potable water and sewerage services for the Bellbird North, Glossodia and Shepherds Bay developments, and
- ▼ drinking water for the Bellbird North and Shepherds Bay developments.

The majority of customers at the Bellbird North, Glossodia and Shepherds Bay developments would be small retail customers as defined in the WIC Act.

### 2.2.1 Bellbird North

Bellbird Ridge Pty Ltd (a development subsidiary of Johnson Property Group) has engaged Flow Systems and its subsidiary, Flow Systems Operations, to establish a local water utility for the Bellbird North development in the lower Hunter Valley. Bellbird is an existing suburb of Cessnock and the Bellbird North release is listed by the NSW Government within the Lower Hunter Regional Strategy as one of 30 precincts within the region.

The developer either owns, or has options on, 240 hectares of the 496 hectares released. The 240 hectare development will consist of approximately 1,600 residential lots, plus 0.62 hectares of land zoned for commercial/business to provide retail facilities to support future

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release. The development is expected to grow at a rate of approximately 80 lots per year over a 20 year period. The development will be released in eight stages.

Hunter Water Corporation (Hunter Water) will be providing drinking water through a service agreement with Flow Systems Operations for the development. Flow Systems will then retail the drinking water to the customers of the scheme.

Flow Systems will retail non-potable water and sewerage services to the customers of the scheme.

### **2.2.2 Glossodia**

Celestino Pty Ltd (a development subsidiary of EJ Cooper and Son Pty Ltd) has engaged Flow Systems and its subsidiary, Flow Systems Operations, to establish a local water utility for the development being marketed as Jacaranda Ponds in Glossodia in northwest Sydney. The 185 hectare site has approval for 580 large lot residential and low density allotments to be developed in five stages.

Currently the land is used as a poultry farm and the majority of the site is cleared and undeveloped. A new public open space surrounding an existing dam is included in the planning consent. No land has been zoned for commercial/business development.

Sydney Water Corporation (Sydney Water) will provide and retail drinking water for the development.

Flow Systems will retail non-potable water and sewerage services to the customers of the scheme.

### **2.2.3 Shepherds Bay**

Shepherds Bay Infrastructure Management Pty Ltd (the developer) has engaged Flow Systems and its subsidiary, Flow Systems Operations, to establish a local water utility for the Shepherds Bay development in Meadowbank in the City of Ryde local government area in Sydney.

The Shepherds Bay development is a new large scale residential development, it will consist of approximately 1,700 new apartments and about 6,000 m<sup>2</sup> of retail floor area. The complete development comprises 10 stages; only eight stages are intended to be serviced by Flow Systems, namely stages two to nine.

Sydney Water will be provide drinking water through a service agreement with Flow Systems Operations for the development. Flow Systems will then retail the drinking water to the customers of the scheme.

Flow Systems will retail non-potable water and sewerage services to the customers of the scheme.



## 2.3 Box Hill

On 12 May 2016, the Minister:

- ▼ Varied Schedule C to Flow System's retail supplier's licence to enable it supply non-potable water and provide sewerage services to the Box Hill North scheme.
- ▼ Granted a network operator's licence to Flow Systems Operations to authorise construction, operation and maintenance of water industry infrastructure at the Box Hill North scheme (licence number 16\_037) (Box Hill Network Operator's Licence).

Due to the timing of the retail supplier's licence variation and the granting of the Box Hill Network Operator's Licence, Schedule C to the retail supplier's licence does not refer specifically to the Box Hill Network Operator's Licence. Rather, it refers to:

- ▼ authorised water industry infrastructure for the provision of the relevant services
- ▼ authorised purposes specified in the licence for the water industry infrastructure by which the relevant services are to be provided, and
- ▼ lot and DP references for the relevant areas of operation.

We recommend that Schedule C to Flow Systems' retail supplier's licence also be varied to refer specifically to the Box Hill Network Operator's Licence (see draft licence in Appendix A). This amendment will ensure consistency between references in Schedule C to water industry infrastructure, authorised purposes and areas of operation for the various schemes.

This amendment is recommended for administrative reasons and would not change the scope of Flow Systems' retail supplier's licence or the Box Hill Network Operator's Licence.

## 3 Consultation and submissions

For all three schemes we provided the licence application<sup>4</sup> to, and invited submissions from, the following Ministers and their relevant departments:

- ▼ Minister (Minister for Health) administering the *Public Health Act 2010* (NSW)
- ▼ Minister (Minister for Lands and Water) administering chapter 2 of the *Water Management Act 2000* (NSW)
- ▼ Minister (Minister for the Environment) administering the *Protection of the Environment Operations Act 1997* (NSW), and
- ▼ Minister (Minister for Planning) administering the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).<sup>5</sup>

At the same time, we also provided a copy of the licence application to the then Minister administering the WIC Act (The Hon. Niall Blair, MLC).<sup>6</sup> We also called for submissions on the applications from the public.<sup>7</sup>

In addition to inviting submissions, we sought expert advice from:

- ▼ Corporate Scorecard to inform our financial assessment (see section 4.2.2), and
- ▼ Insurance and Care NSW (icare self-insurance, formerly NSW Self Insurance Corporation SICorp) to inform our assessment of appropriate insurance arrangements (see section 4.5).

### 3.1 Bellbird North

On 23 September 2015, we provided the licence application to, and invited submissions from, the Ministers listed above.

We notified Hunter Water of the licence application<sup>8</sup> because Flow Systems is proposing to connect to, or use, Hunter Water's water industry infrastructure (as defined in the WIC Act) as part of the activities for which it seeks a licence variation.<sup>9</sup> Hunter Water has confirmed availability for the initial capacity required and the capital works requirements to provide ultimate capacity for drinking water.

We also called for submissions on the application from the public. We advertised in the Sydney Morning Herald and the Daily Telegraph on 23 September 2015 for public submissions. The closing date for submissions was 21 October 2015.

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<sup>4</sup> We invited submissions on the application for a variation to the retail supplier's licence and for the network operator's licence for each of the schemes at the same time.

<sup>5</sup> WIC Act, section 9(1)(b) and *Water Industry Competition (General) Regulation 2008* (WIC Regulation), clause 17(1).

<sup>6</sup> WIC Act, section 9(1)(a).

<sup>7</sup> WIC Act, section 9(1)(c).

<sup>8</sup> Letter to Hunter Water, 23 September 2015.

<sup>9</sup> WIC Act, section 9(1)(b)(iii) and WIC Regulation, clause 17(2).

We invited Cessnock City Council to make a submission<sup>10</sup> as the Council is the consent authority for each stage of the Bellbird North development under Part 4 of the EP&A Act. The planning proposal to rezone the land was approved in 2011, but no development consent has been given to date.

We received five submissions in total, including submissions from Cessnock City Council,<sup>11</sup> NSW Environmental Protection Authority (EPA),<sup>12</sup> Minister for Lands and Water,<sup>13</sup> NSW Health<sup>14</sup> and a member of the public.<sup>15</sup> These submissions are available on our website and are summarised in Appendix B. They are discussed in further detail below.

NSW Health supported Flow Systems' licence application provided that a number of matters were addressed. NSW Health requested that it be consulted, by IPART, during the detailed recycled water and drinking water risk assessments, technology assessments and the development of management plans for recycled water and drinking water. NSW Health requested that it be consulted, also by IPART, following the final compliance audit and before retail supply commences. This is to ensure all relevant public health matters have been considered. Further, NSW Health requested that Flow Systems adapt its generic Incident Notification Protocol to include contact details of all stakeholders involved in the Bellbird North scheme. NSW Health's requests are related to Flow Systems' capacity to carry out activities in a manner that does not present a risk to public health and this is discussed further in section 4.3.

The submissions from Cessnock City Council, EPA and the Minister for Lands and Water and the submission from the member of the public noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Bellbird North Scheme.

### **3.2 Glossodia**

On 20 July 2016, we provided the licence application to, and invited submissions from, the Ministers listed above.

We notified Sydney Water of the licence application<sup>16</sup> because Flow Systems is proposing to connect to, or use, Sydney Water's water industry infrastructure (as defined in the WIC Act) as part of the activities for which it seeks a licence variation.<sup>17</sup> Sydney Water will also be providing and retailing the drinking water for the development.

We also called for submissions on the application from the public. We advertised in the Sydney Morning Herald and the Daily Telegraph on 20 July 2016 for public submissions. The closing date for submissions was 17 August 2016.

We invited Hawkesbury City Council to make a submission<sup>18</sup> as the Council is the consent authority for each stage of the Glossodia development under Part 4 of the EP&A Act. The

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<sup>10</sup> Letter to Cessnock City Council, 23 September 2015.

<sup>11</sup> Submission from Cessnock City Council, 26 October 2015.

<sup>12</sup> Submission from EPA, 30 October 2015.

<sup>13</sup> Submission from the Minister for Lands and Water, 19 October 2015.

<sup>14</sup> Submission from NSW Health, 3 November 2015.

<sup>15</sup> Confidential letter, 21 October 2015.

<sup>16</sup> Letter to Sydney Water, 20 July 2016.

<sup>17</sup> WIC Act, section 9(1)(b)(iii) and WIC Regulation, clause 17(2).

<sup>18</sup> Letter to Hawkesbury City Council, 20 July 2016.

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planning proposal to rezone the land has been approved, but no development consent has been given to date.

We received five submissions in total, including submissions from the Minister for Lands and Water,<sup>19</sup> NSW Health,<sup>20</sup> Department of Planning and Environment,<sup>21</sup> EPA<sup>22</sup> and Sydney Water.<sup>23</sup> These submissions are available on our website and are summarised in Appendix B. They are discussed in further detail below.

NSW Health supported Flow Systems' licence application provided that a number of matters were addressed. NSW Health requested that it be consulted by, IPART, during the detailed recycled water risk assessment, technology assessments and the development of management plans for recycled water. NSW Health requested that it be consulted; also by IPART, following the final compliance audit and before retail supply commences to ensure all relevant public health matters have been considered. Further, NSW Health requested that Flow Systems adapt its generic Incident Notification Protocol to include contact details of all stakeholders involved in this scheme. NSW Health's requests are related to Flow Systems' capacity to carry out activities in a manner that does not present a risk to public health and this is discussed further in section 4.3.

Sydney Water raised a number of issues relevant to our assessment of a retail supplier's licence variation application under the WIC Act. These included issues regarding monopoly supply, competition and financial implications for customers. Sydney Water's view is that Flow Systems should be declared a monopoly supplier for the Glossodia development. We consider this matter in section 4.7.4. Sydney Water also raised concerns regarding competition and the potential for adverse financial implications for customers. We consider these matters in sections 4.7.4, 4.7.5 and 4.7.9. Sydney Water noted other issues with the application which will be addressed in our assessment of the network operator's licence applications for this scheme.

The submissions from the EPA, Department of Planning and Environment and the Minister for Lands and Water noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Glossodia scheme.

### **3.3 Shepherds Bay**

On 9 November 2016, we provided the licence application to, and invited submissions from, the Ministers listed above.

We notified Sydney Water of the licence application<sup>24</sup> because Flow Systems is proposing to connect to, or use, Sydney Water's water industry infrastructure (as defined in the WIC Act) as part of the activities for which it seeks a licence variation.<sup>25</sup>

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<sup>19</sup> Submission from the Minister for Lands and Water, 19 August 2016.

<sup>20</sup> Submission from NSW Health, 23 August 2016.

<sup>21</sup> Submission from the Executive Director Priority Projects Assessments, Department of Planning and Environment (on behalf of the Minister for Planning), 31 August 2016.

<sup>22</sup> Submission from EPA, 17 August 2016.

<sup>23</sup> Submission from Sydney Water, 17 August 2016

<sup>24</sup> Letter to Sydney Water, 9 November 2016.

<sup>25</sup> WIC Act, section 9(1)(b)(iii) and WIC Regulation, clause 17(2).

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We invited City of Ryde Council to make a submission<sup>26</sup> as the Council is now the consent authority for each subsequent stage of the Shepherds Bay development under Part 4 of the EP&A Act.<sup>27</sup>

We also called for submissions on the application from the public. We advertised in the Sydney Morning Herald and the Daily Telegraph on 9 November 2016 for public submissions. The closing date for submissions was 9 December 2016.

We received six submissions in total, including submissions from City of Ryde Council,<sup>28</sup> NSW Health,<sup>29</sup> Minister for the Environment,<sup>30</sup> Sydney Water,<sup>31</sup> Department of Planning and Environment<sup>32</sup> and the Minister for Lands and Water.<sup>33</sup> These submissions are available on our website and are summarised in Appendix B. They are discussed in further detail below.

NSW Health supported Flow Systems' licence application provided that a number of matters were addressed. NSW Health requested that it be consulted by IPART during the detailed drinking water and recycled water risk assessments, technology assessments and the development of management plans for recycled water and drinking water. NSW Health requested that it be consulted, also by IPART, following the final compliance audit and before retail supply commences to ensure all relevant public health matters have been considered. Further, NSW Health requested that Flow Systems develop an Incident Notification Protocol for incidents including, but not limited to, water quality issues, treatment plant critical control point limit exceedances, algae, recycled water issues, cross connections and contact details of all stakeholders involved in this scheme. NSW Health's requests are related to Flow Systems' capacity to carry out activities in a manner that does not present a risk to public health and this is discussed further in section 4.3.

Sydney Water raised a number of issues relevant to our assessment of a retail supplier's licence variation application under the WIC Act. These included issues in relation to monopoly supply, competition and financial implications for customers. Sydney Water's view is that Flow Systems should be declared a monopoly for the Shepherds Bay development. We consider this matter in section 4.7.4. Sydney Water also raised concerns regarding competition and the potential for adverse financial implications for customers. We consider these matters in sections 4.7.4, 4.7.5 and 4.7.9.

The submissions from the City of Ryde Council, Minister for the Environment, Planning and Environment, and the Minister for Lands and Water noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Shepherds Bay scheme.

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<sup>26</sup> Letter to City of Ryde Council, 9 November 2016.

<sup>27</sup> Submission from the Executive Director Priority Projects Assessments, Department of Planning and Environment (on behalf of the Minister for Planning), 20 December 2016.

<sup>28</sup> Submission from City of Ryde Council, 30 November 2016.

<sup>29</sup> Submission from NSW Health, 9 December 2016.

<sup>30</sup> Submission from the Minister for the Environment, 13 December 2016.

<sup>31</sup> Submission from Sydney Water, 16 December 2016.

<sup>32</sup> Submission from the Executive Director Priority Projects Assessments, Department of Planning and Environment (on behalf of the Minister for Planning), 20 December 2016.

<sup>33</sup> Submission from the Minister for Lands and Water, 6 January 2017.

## 4 Assessment of application

We considered the relevant licensing criteria in sections 10(3)-(4) of the WIC Act and had regard to the licensing principles in section 7(1) of the WIC Act in assessing Flow Systems' application for a variation of its retail supplier's licence.

This section of the report contains our assessment of Flow Systems' licence variation application and our recommendations.

### 4.1 Disqualified corporation and related entity checks

**We consider that Flow Systems 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 for each application signed by Flow Systems' Managing Director and Director stating that:
  - Flow Systems is not a disqualified corporation, and
  - Flow Systems 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 variation, if granted, would authorise.
- ▼ Information provided by Flow Systems regarding details of the:
  - trustees (past and current) of any trusts in relation to which Flow Systems is a beneficiary
  - current beneficiaries of any trusts in relation to which Flow Systems is a trustee
  - relevant related entities,<sup>34</sup> and
  - names of the Chief Financial Officer and Chief Executive Officer for Flow Systems and each of Flow Systems' relevant related entities (subsidiary companies and holding companies within Australia).
- ▼ Results of ASIC and Dun & Bradstreet reports that we have obtained for Flow Systems, and for the 10 relevant related entities, confirmed that these companies are not disqualified corporations nor are their directors or persons concerned in the management disqualified individuals for the purposes of the WIC Act.<sup>35</sup>

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<sup>34</sup> Flow Systems identified the following relevant related entities:  
Subsidiary companies: Pitt Town Water Pty Ltd (ACN 141 705 660), Discovery Point Water Pty Ltd (ACN 142 392 541), Central Park Water Pty Ltd (ACN 151 072 838), Green Square Water Pty Ltd (ACN 163 432 906), Huntlee Water Pty Ltd (ACN 167 418 608), Cooranbong Water Pty Ltd (ACN 169 450 453) and Flow Systems Operations Pty Ltd (ACN 603 106 305).  
Holding company within Australia: Brookfield Water Holdings Pty Ltd (ACN 162 523 533), BPIH Pty Limited (ACN 100 364 234) and Enwave Australia Pty Limited (ACN 133 427 022).

<sup>35</sup> The relevant searches were completed on 18 July 2017.



- ▼ Results of our search of the WIC Act licence database<sup>36</sup> confirming, in part, the above.

We recommend that Flow Systems should not be subject to any new or amended licence conditions in relation to the disqualified corporations checks if a licence variation is granted.

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

Flow Systems has applied to vary its retail supplier's licence to authorise the supply of non-potable water and the provision of sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and the supply of drinking water to its customers at the Bellbird North and Shepherds Bay developments.

Flow Systems is already providing similar services to its customers at other schemes under its retail supplier's licence.<sup>37</sup>

We assessed Flow Systems' technical, financial and organisational capacity to carry out the activities to be licensed. Our assessment was based on Flow Systems' capacity at the time of making the application.

### **4.2.1 Technical capacity**

**We are satisfied that Flow Systems has the technical capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.**

Our analysis included a review of Flow Systems':

- ▼ **Retail Supply Management Plan**<sup>38</sup> (RSMP) provided in the applications, which describes the retailing activities to supply drinking water and non-potable water and provide sewerage services to greenfield and urban infill schemes.
- ▼ **Code of practice for customer complaints**<sup>39</sup> which describes the processes Flow Systems 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 conduct for missed payments** (debt recovery),<sup>40</sup> which outlines how Flow Systems responds when customers (eg, tenants or businesses) have missed one or more payments.
- ▼ **Customer contract**,<sup>41</sup> which provides the standard terms under which Flow Systems would supply water and provide sewerage services.

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<sup>36</sup> There are currently no disqualified corporations or individuals on the register pursuant to sections 16(e) and 16(f) of the WIC Act.

<sup>37</sup> Central Park, Discovery Point, Wyee, North Cooranbong and Huntlee (drinking water and non-potable water supply and sewerage services). Pitt Town and Box Hill North (non-potable water supply and sewerage services). Green Square (non-potable water supply). See Table 2.1.

<sup>38</sup> RSMP, revision 4, 11 February 2016.

<sup>39</sup> Flow Systems' Customer Complaints, (FS-WAT-AUS-PO-RET-1249-1), 19 June 2015.

<sup>40</sup> Flow Systems' Missed Payments code of conduct, (FS-WAT-AUS-PO-RET-1286-1).

- ▼ **Compliance management procedure**,<sup>42</sup> which describes at a high level the compliance management within Flow Systems' organisation.
- ▼ **Technical performance** in preparing and implementing required retail systems and procedures at existing operational schemes (Pitt Town, Central Park, Discovery Point, Cooranbong and Huntlee). Flow Systems proposes to use the same systems, procedures and resources to supply its intended customers for each new scheme.<sup>43</sup>
- ▼ **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.
- ▼ **Compliance history.** Flow Systems' RSMP was audited in August 2016. The audit report on the RSMP provided to IPART did not find any non-compliances or any opportunities for improvement.<sup>44</sup>

We used the above information to assess Flow Systems' technical capacity to undertake the following retail supply activities at the Bellbird North, Glossodia and Shepherds Bay developments:

- ▼ **Billing:** Through its web-based platform, Flow Systems administers customer information, generates invoices, and tracks services, usage and complaints. Further, in its standard customer contract,<sup>45</sup> Flow Systems addresses its responsibilities and its customers' responsibilities in relation to account payment, invoicing arrangements, under and over charging, payment disputes, charges, pricing determination, managing financial hardship, discounts and rebates, restriction for supply for non-payment and other reasons and meter reading, installation and maintenance.
- ▼ **Complaints handling:** Flow Systems' code of practice for customer complaints has been developed to be consistent with the Australian Standard AS ISO 10002-2006. The code of practice addresses complaints handling, including complaint definition, contact details to make a complaint, tracking of complaints, assessment of complaints, response to complaints and escalation of complaints to the Energy and Water Ombudsman NSW.
- ▼ **Missed payments and debt recovery:** Flow Systems' code of conduct for missed payments refers to the considerations and actions when customers (including tenants and businesses) have missed one or more payments, including reminder and warning notifications and actions for non-payment, which include debt recovery. Flow Systems' RSMP also addresses missed payments and debt recovery and it refers to the code of conduct for missed payments.

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<sup>41</sup> Flow Systems Customer Contract, 30 October 2015 at <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017.

<sup>42</sup> Flow Systems' Compliance Management Procedure, (FS-ALL-AUS-PR-GOV-1366), 2 July 2015.

<sup>43</sup> The RSMP, codes and compliance procedures are standard documents that apply across all of Flow Systems' schemes.

<sup>44</sup> Report on the Retail Supply Management Plan Audit of Flow Systems: Retail Supplier's Licence No. 13\_001R (Flow Systems), Water Futures, 5 August 2016.

<sup>45</sup> Flow Systems' Customer Contract, 30 October 2015 at <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017.



- ▼ **Financial hardship:** Flow Systems’ standard customer contract and its code of conduct for missed payments addresses Flow Systems’ approach to customers who are having difficulty paying or are concerned about not being able to pay on time. The code of conduct refers to Flow Systems’ approach to reaching an agreement with customers facing financial hardship. Flow Systems’ RSMP states that:
 

...in no event will an essential service to a Customer be disconnected as a result of non-payment.<sup>46</sup>
- ▼ **Providing an appropriate level of service:** Flow Systems’ standard customer contract refers to levels of service for the supply of potable and non-potable water and the provision of sewerage services. Those levels of service refer to drinking and non-potable water quality, pressure and flow rates and sewage discharge rates and overflows. In particular, the standard customer contract states that the drinking water supplied will comply with the *Australian Drinking Water Guidelines 2011*<sup>47</sup> and non-potable water supplied will comply with the *Australian Guidelines for Water Recycling 2006*.<sup>48</sup> Further, the standard customer contract contains provisions for customers with registered haemodialysis machines.
- ▼ **Continuity of service:** The “Incident Identification and Responses” section in the RSMP<sup>49</sup> addresses the continuity of service during interruptions due to incidents or operational problems, including interruptions to sewage service, interruptions to drinking water supply, interruptions to non-potable water supply and disruptions to the customer centre.
- ▼ **Communication with customers:** Flow Systems’ standard customer contract addresses communications with customers including notice of system failures, notification of price variations, notice of access to property, restriction of services, access to the water meter and tree removal requirements. The notice required for a customer to disconnect (30 days’ written notice) is included in the standard customer contract. Flow Systems’ Access to Customer’s Property Policy<sup>50</sup> addresses Flow Systems’ obligations for providing notice to access private property for the purpose of maintaining systems owned by Flow Systems.
- ▼ **Transfer of customers:** The RSMP addresses transfer of customers by stating that Flow Systems is committed to following the Transfer Code of Conduct as set out in the WIC Regulation.<sup>51</sup>
- ▼ **Marketing to customers:** The RSMP addresses marketing to customer by stating that Flow Systems is committed to following the Marketing Code of Conduct as set out in the WIC Regulation.<sup>52</sup>

We also considered Flow Systems’ preliminary risk assessments for the retail services to be provided at the Bellbird North, Glossodia and Shepherds Bay developments. The risk assessments demonstrate Flow Systems’ technical capacity to identify risks across a number

<sup>46</sup> RSMP, revision 4, 11 February 2016, p 11.

<sup>47</sup> Flow Systems’ Customer Contract, dated 30 October 2015, <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017, p 6.

<sup>48</sup> Flow Systems’ Customer Contract, dated 30 October 2015, <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017, p 7.

<sup>49</sup> RSMP, revision 4, 11 February 2016, p 13.

<sup>50</sup> Flow Systems’ Access to Customer’s Property Policy (FS-WAT-AUS-PO-RET-1201-2), 19 June 2015.

<sup>51</sup> RSMP, revision 4, 11 February 2016, p 13.

<sup>52</sup> RSMP, revision 4, 11 February 2016, p 19.

of areas including billing, water quality and supply outages and to develop control measures to manage these risks to an acceptable level. We note that the risk assessments only detail the residual risks.

We received no submissions regarding Flow Systems' technical capacity in response to its application for a retail supplier's licence variation.

We consider that the information submitted by Flow Systems demonstrates that it has the technical capacity to supply non-potable water and provide sewerage services to its customers, including small retail customers, at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers, including small retail customers, at the Bellbird North and Shepherds Bay developments.

We recommend that Flow Systems should not be subject to any new or amended licence conditions in relation to technical capacity, if a licence variation is granted. The standard Ministerially imposed licence conditions in Flow Systems' current retail supplier's licence should continue to apply (see draft licence in Appendix A).

#### **4.2.2 Financial capacity**

**On balance, we are satisfied that Flow Systems has the financial capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.**

We engaged an independent financial consultant, Corporate Scorecard, to assess Flow Systems' financial capacity and the viability of the schemes. At the same time, Corporate Scorecard assessed the financial capacity of Flow Systems Operations in relation to its application for a network operator's licence with respect to the Bellbird North, Glossodia and Shepherds Bay schemes.

Corporate Scorecard concluded that, to have the requisite financial capacity, Flow Systems would need a cross-company guarantee from its parent company, Brookfield Asset Management Inc (Brookfield). However we recommend against requiring a cross-company guarantee for Flow Systems as:

- ▼ Flow Systems is part of a larger and financially capable group that holds WICA licences for other schemes and that has a history of successful scheme management
- ▼ Flow Systems requires financial support from a parent company mainly because of a period of rapid expansion and infrastructure investment rather than because of ongoing structural financial capacity issues
- ▼ Flow Systems' schemes generate positive cash flows and are financially viable in the medium and long term, resulting in a low risk to continuity of service
- ▼ Brookfield has incentives to continue financial support arising from having a majority interest in Flow Systems and a need to protect its reputation and brand in the essential services sectors, and

- ▼ we have a letter of comfort from Enwave Australia Pty Ltd which contributes to our comfort level regarding the intention of the parent/subsidiary corporate relationship.<sup>53</sup>

In making our assessment of Flow Systems' financial capacity we considered the following information:

- ▼ reports from an independent financial consultant, Corporate Scorecard
- ▼ historic financial performance information including profit and loss statements and balance sheets
- ▼ key financial ratios
- ▼ audited financial statements
- ▼ projected cash flow forecasts
- ▼ income tax returns, and
- ▼ a letter of comfort from the Brookfield Group.

We would like to emphasise that our financial assessment represents Flow Systems' financial capacity at a point in time. Our recommendation to grant Flow Systems a licence variation should not be viewed as an endorsement of the future ongoing viability of the corporation. The assessment is based on a combination of information sources, none of which is to be regarded as individually determinative. This assessment is done for our own purposes and for the Minister's purposes in assessing the application. The conclusion is not to be relied upon for any other purpose or by any other person.

We received no submissions regarding Flow Systems' financial capacity in response to its application for a retail supplier's licence variation.

On balance, we consider the information submitted by Flow Systems and Corporate Scorecard demonstrates that Flow Systems has the financial capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.

We recommend that Flow Systems should not be subject to any new or amended licence conditions in relation to financial capacity, if a licence variation is granted. The standard Ministerially imposed licence conditions in Flow Systems' current retail supplier's licence should continue to apply (see draft licence in Appendix A).

#### **4.2.3 Organisational capacity**

**We are satisfied that Flow Systems has the organisational capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.**

Flow Systems demonstrated its organisational capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds

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<sup>53</sup> Letter to IPART, 15 August 2017. We note that Enwave Australia Pty Ltd is a part of the Brookfield Group.

Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.by:

- ▼ Providing evidence of its **experience with providing similar services** to other schemes including those located at Pitt Town, Central Park, Discovery Point, Huntlee, Cooranbong and Green Square.
- ▼ Having an **organisational structure** that includes Executive Manager Retail, Customer Experience Manager, Customer Experience Leader, Customer Experience Agent and Billings Clerk.
- ▼ Providing **role descriptions** for the Executive Manager Retail and Customer Experience Leader that include responsibilities across customer service, billing, complaints handling and continuity of service.
- ▼ Outlining the **experience of the personnel** currently in the Executive Manager Retail and Customer Experience Leader roles, which matched the position descriptions for those roles.

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

We consider that the information submitted by Flow Systems demonstrates that it has the organisational capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.

We recommend that Flow Systems should not be subject to any new or amended licence conditions in relation to organisational capacity, if a licence variation is granted. The standard Ministerially imposed licence conditions in Flow Systems' current retail supplier's licence should continue to apply (see draft licence in Appendix A).

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

**We are satisfied that Flow Systems has the capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments in a manner that does not present a risk to public health.**

We assessed Flow Systems' capacity to manage the following key risks to public health posed by supplying non-potable water and providing sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and by supplying drinking water to its customers at the Bellbird North and Shepherds Bay developments. These included:

- ▼ **Source water of appropriate quality:** Flow Systems has demonstrated it has capacity to source water of an appropriate quality to meet its customers' needs at the Bellbird North, Glossodia and Shepherds Bay developments. Flow Systems intends to source all of its non-potable water from Flow Systems Operations. Flow Systems intends to source all of its drinking water from Sydney Water (Shepherds Bay scheme) and Hunter Water (Bellbird North scheme). Sydney Water will provide and retail drinking water direct to the end use customers for the Glossodia scheme. Flow Systems' licence variation application<sup>54</sup>, RSMP<sup>55</sup> and the standard customer contract<sup>56</sup> state that drinking water quality will be consistent with the *Australian Drinking Water Guidelines 2011* and non-potable water quality will be consistent with the *Australian Guidelines for Water Recycling 2006*. Flow Systems has demonstrated its capacity to meet the requirements of these guidelines with its existing licences. Flow Systems also has a water quality complaints procedure that includes a 24-hour emergency incident number for water quality incidents and concerns.<sup>57</sup> The procedure includes notification to the proposed network operator (Flow Systems Operations).
- ▼ **Customer exposure through end use:** Flow Systems will supply non-potable water to customers at the Bellbird North, Glossodia and Shepherds Bay developments. This could present a risk to public health if customers do not use non-potable water for the appropriate purposes. Flow Systems has demonstrated its capacity to mitigate this risk through its guidance to customers on its existing non-potable water schemes.<sup>58</sup> This guidance includes the appropriate uses of non-potable water (eg, toilets, irrigation, washing machines, car washing, dust suppression etc.) and appropriate items for disposal to sewer and irrigation guidelines. Flow Systems' standard customer contract outlines the procedures it has in place if water is required to operate registered haemodialysis machines.<sup>59</sup>
- ▼ **Water supply interruption:** Interruptions in supply of water could pose a risk to public health. Flow Systems demonstrated its capacity to mitigate this risk through its risk management procedure,<sup>60</sup> RSMP<sup>61</sup> and standard customer contract<sup>62</sup> by outlining the control measures and mitigation strategies for supply interruptions. The RSMP<sup>63</sup> and the missed payments code of conduct<sup>64</sup> indicate that Flow Systems would continue to provide water at a reasonable flow for basic health and hygiene purposes, even if supply of services to a property is restricted as a result of non-payment. Customers would be given reasonable notice if Flow Systems intends to restrict supply.

<sup>54</sup> Applications available on our website: <https://www.ipart.nsw.gov.au/Home/Industries/Water/Alternate-water-utilities-WICA/WICA-Licenses-Listing-pages/WICA-licence-applicants>.

<sup>55</sup> RSMP, revision 4, 11 February 2016, p 6.

<sup>56</sup> Flow Systems' Customer Contract, dated 30 October 2015, <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017, p 6.

<sup>57</sup> Flow System' Customer Complaints Code of Practice, (FS-WAT-AUS-PO-RET-1249-1), 19 June 2015.

<sup>58</sup> See Table 2.1.

<sup>59</sup> Flow Systems' Customer Contract, dated 30 October 2015, <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017.

<sup>60</sup> Flow Systems' Risk Management Procedure (FS-ALL-AUS-PR-GOV-1323), 17 July 2015.

<sup>61</sup> RSMP, revision 4, 11 February 2016, p 13.

<sup>62</sup> Flow Systems' Customer Contract, dated 30 October 2015, <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017.

<sup>63</sup> RSMP, revision 4, 11 February 2016, p 12.

<sup>64</sup> Flow Systems' Missed Payments Code of Conduct (FS-WAT-AUS-PO-RET-1286-1), <https://flowsystems.com.au/governance/MissedPaymentsPolicy.pdf>, accessed on 5 June 2017, p 1.



- ▼ **Sewerage service interruption:** Interruptions to the provisions of sewerage services could pose a risk to public health. Flow Systems demonstrated its capacity to mitigate this risk through its risk management procedure<sup>65</sup>, RSMP<sup>66</sup> and standard customer contract.<sup>67</sup> Flow Systems has indicated that the risks of interruption to sewerage services will be mitigated by the implementation of relevant systems and redundancy measures. Early detection systems will include real-time telemetry data, alarms triggered through the SCADA<sup>68</sup> system and notification by end user customers.<sup>69</sup> Flow Systems' Incident and Emergency Response Management Plan would trigger an emergency response call-out team.<sup>70</sup>
- ▼ **Risk assessment:** We reviewed Flow Systems' risk assessment for the scheme. The risk assessment identified potential public health risks and proposed control measures to manage these risks.

Provided that certain matters were addressed, NSW Health supports the application to vary Flow Systems' retail supplier's licence to include the Bellbird North, Glossodia and Shepherds Bay developments.<sup>71</sup> NSW Health identified a few health related issues regarding specific items in the preliminary risk assessment for each of Flow System Operations' network operator's licence applications.<sup>72</sup> These issues will be addressed in our assessment of the network operator's licence applications for the schemes.

We consider that the information submitted by Flow Systems demonstrates that it has the capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments in a manner that does not present a risk to public health.

We recommend that Flow Systems should not be subject to any new or amended licence conditions in relation to capacity to protect public health, if a licence variation is granted. The standard Ministerially imposed licence conditions in Flow Systems' 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 a public water utility**

**We are satisfied that Flow Systems will obtain sufficient quantities of water to supply to its customers otherwise than from a public water utility.**

<sup>65</sup> Flow Systems' Risk Management Procedure (FS-ALL-AUS-PR-GOV-1323), [17 July 2015].

<sup>66</sup> RSMP, revision 4, 11 February 2016, p 13.

<sup>67</sup> Flow Systems' Customer Contract, dated 30 October 2015, <http://flowsystems.com.au/governance/CustomerContract.pdf>, accessed on 5 June 2017, p 18.

<sup>68</sup> Supervisory control and data acquisition.

<sup>69</sup> Flow Systems Retail Risk Assessment, 19 February 2014.

<sup>70</sup> Flow Systems' Incident Management Plan (FS-WAT-AUS-PL-INC-1266), 19 June 2015, p16.

<sup>71</sup> Letters from NSW Health dated 3 November 2015 (regarding the Bellbird North development), 23 August 2016 (regarding the Glossodia development) and 9 December 2016 (regarding the Shepherds Bay development).

<sup>72</sup> Letters from NSW Health, 3 November 2015 (regarding the Bellbird North development), 23 August 2016 (regarding the Glossodia development) and 9 December 2016 (regarding the Shepherds Bay development).

We have assessed all of the schemes covered by the existing retail supplier's licence,<sup>73</sup> as well as the current application to vary the retail supplier's licence.

In our view, this criterion is not restricted to the water sources that are the subject of a particular variation application, such as the Bellbird North, Glossodia or Shepherds Bay development, but rather all of the water sources used, or to be used, by Flow Systems (under its existing licence and the variation applications under consideration).

Flow Systems currently sources and will source non-potable water from Pitt Town Water Factory, Discovery Point Water, Central Park Water, Wyee Water, Cooranbong Water, Huntlee Water, Green Square Water and Flow Systems Operations (Box Hill North scheme), none of which are public water utilities. Flow Systems intends to source non-potable water, for supply to its customers at the Bellbird North, Glossodia and Shepherds Bay developments, from Flow Systems Operations (which is also not a public water utility).

We recommend that Flow Systems should not be subject to any new or amended licence conditions in relation to its source water, if a licence variation is granted.

#### **4.5 Appropriate arrangements with respect to insurance**

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

The insurance arrangements considered in this application to vary Flow Systems' retail supplier's licence have not materially changed from Flow Systems' existing insurance arrangements. In making our assessment of Flow Systems' insurance arrangements, we have considered Flow Systems':

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

We note that Flow Systems also holds other insurances which are not specific to the risks associated with retail activities including construction insurance, industrial special risks insurance and forefront portfolio insurance.

We received no submissions regarding Flow Systems' insurance arrangements.

We requested advice from Insurance and Care NSW on the appropriateness of Flow Systems' insurance arrangements, with respect to the activities the subject of the licence variation applications.

Insurance and Care NSW considered the limit of indemnity for public and products liability and the limit of indemnity for professional liability (financial loss arising from a wrongful act) for both the supply of water and the provision of sewerage services as appropriate for each scheme.<sup>74</sup>

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<sup>73</sup> See Table 2.1.

<sup>74</sup> Emails from Insurance and Care NSW dated 13 January 2017 and 23 May 2017.

We consider that Flow Systems has demonstrated that it has made, and will continue to maintain, appropriate insurance arrangements.

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

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

**We are satisfied that Flow Systems has the capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherd Bay developments, in a manner that does not present a significant risk of harm to the environment.**

We assessed Flow Systems' capacity to manage key risks to the environment posed by the supply of non-potable water and the provision of sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and the supply of drinking water to its customers at the Bellbird North and Shepherd Bay developments as follows:

- ▼ **Capacity to implement environmental management processes in relation to the activities to be licensed:** Flow Systems has demonstrated its capacity to implement environmental management processes, through its risk assessments for sewerage and non-potable water activities ISO 14001 certification (Environmental Management Systems).
- ▼ **Non-potable water end uses:** Through its existing operational schemes (eg, Pitt Town) Flow Systems has demonstrated its capacity to educate customers about the appropriate end uses for non-potable water, including sustainable irrigation.
- ▼ **Sewerage system:** Through its existing schemes (eg, Pitt Town, Central Park, Discovery Point, etc.) Flow Systems has demonstrated its capacity to educate customers about the appropriate use of the sewerage system including information on what should and should not be disposed of into the sewerage system.

We received a submission from the Department of Planning and Environment advising that Flow Systems has not been subject to enforcement actions under the EP&A Act.<sup>75</sup>

We consider that the information submitted by Flow Systems demonstrated that it has the capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments in a manner that does not present a significant risk of harm to the environment.

We recommend that Flow Systems 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 a licence variation is granted.

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<sup>75</sup> Letter from the Executive Director Priority Projects Assessments, Department of Planning and Environment (on behalf of the Minister for Planning), 20 December 2016.



## 4.7 Public interest considerations

Our consideration of the public interest includes having regard to each of the licensing principles in sections 4.7.1 to 4.7.11. Our recommendation in relation to these criteria 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 Flow Systems' capacity to supply non-potable water and provide sewerage services to its customers at Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments in a manner that does not present a risk to public health. As outlined in section 4.3, we assessed Flow Systems' capacity to manage the key risks posed to public health by the activities to be licensed.

NSW Health supports the application to vary Flow Systems' licence for the Bellbird North, Glossodia and Shepherds Bay developments provided that a number of matters were addressed.<sup>76</sup> As outlined in section 4.3, NSW Health identified a few health related issues regarding specific items in the preliminary risk assessment of Flow Systems Operations' application for a network operator's licence. These issues will be addressed in our assessment of each scheme's network operator's licence application. NSW Health requested that it be consulted, by IPART, following the final compliance audit and before retail supply commences to ensure all relevant public health matters have been considered. Further, NSW Health requested that Flow Systems adapt its generic<sup>77</sup> Incident Notification Protocol to include contact details of all stakeholders involved in the Bellbird North, Glossodia and Shepherds Bay schemes.

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 have had regard to protection of the environment through our assessment of Flow Systems' capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments in a manner that does not present a significant risk of harm to the environment. As outlined in section 4.6, we assessed Flow Systems' 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 that the environment will continue to be protected in relation to the activities licensed.

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<sup>76</sup> Letters from NSW Health, 3 November 2015, 23 August 2016 and 9 December 2016.

<sup>77</sup> NSW Health requested an Incident Notification Protocol be developed for the Shepherds Bay scheme.

### 4.7.3 Protection of public safety

We have had regard to the protection of public safety through our assessment of Flow Systems' technical capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments. As outlined in section 4.2.1, we assessed Flow Systems' capacity to manage key risks to public safety by the activities to be licensed.

We did not receive any submissions regarding protection of public safety. Flow Systems has risk management procedures, including emergency preparedness and response plans applicable to their schemes, which are also referred to in Flow Systems' RSMP.<sup>78</sup>

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

### 4.7.4 Protection of consumers generally

We have had regard to the protection of consumers through our assessment of Flow Systems' technical capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments. As outlined in section 4.2.1, we assessed Flow Systems' capacity to protect consumers through its RSMP, standard customer contract and other processes and procedures in place.

We received two submissions from Sydney Water for the Glossodia and Shepherds Bay developments regarding protection of consumers. Each submission addressed the issue of whether the Minister should declare that Flow Systems is a monopoly supplier. The submission for the Shepherds Bay development states that:

... 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.<sup>79</sup>

The submission for the Glossodia development also echoes the same sentiment. It states that:

... the WIC Act promotes competition **for** the market rather than **in** the market.<sup>80</sup>

The Minister *may* declare a licensed retail supplier to be a monopoly supplier in relation to a specified water supply or sewerage service in a specified area to a specified class of customers.<sup>81</sup>

We understand Sydney Water's concerns and note the Minister can declare a monopoly supplier at any time. 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,

<sup>78</sup> RSMP, revision 4, 11 February 2016, p 7.

<sup>79</sup> Sydney Water submission to IPART, 16 December 2016, p 3.

<sup>80</sup> Sydney Water submission to IPART, 17 August 2016, p 1.

<sup>81</sup> WIC Act, section 51.

the Minister may then refer the monopoly services to IPART for price regulation.<sup>82</sup> We note that no such declaration or referral has been made to date.

We have had regard to the protection of consumers through our assessment of Flow Systems' technical capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments. As outlined in section 4.2.1, we assessed Flow Systems' capacity to protect consumers through its scheme specific RSMP, codes of practice and conduct, compliance management procedure and other policies. Section 4.7.9 further discusses Flow Systems' price parity policy.

We have also considered Flow Systems' previous experience as a supplier of water and a provider of sewerage services, particularly providing water retail services to an increasing customer base of small retail customers in different schemes under its current retail supplier's licence.

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**

Historically, Sydney Water has provided monopoly water supply and sewerage services in the Sydney region and Hunter Water has provided similar monopoly services in the Hunter region. This licence variation would enable a new entity to supply water and provide sewerage services to the Bellbird North, Glossodia and Shepherds Bay developments, encouraging competition in the provision of these services. This is consistent with the stated objective in long title of the WIC Act. If granted, this licence variation will allow an entity other than the incumbent to supply drinking water, non-potable water and provide sewerage services to the developments. Therefore, we consider the licence variation, if made, will promote competition in the provision of these services.

#### **4.7.6 Ensuring sustainability of water resources**

Flow Systems will supply non-potable water to its customers at the Bellbird North, Glossodia and Shepherds Bay developments. The non-potable water will be sourced from sewage which would otherwise be treated and discharged to the environment. The supply of non-potable water also replaces the use of drinking water for toilet flushing, cold water clothes washing, irrigation, car washing, water features and cooling towers, contributing to the sustainability of water resources from where the drinking water is sourced.

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

Flow Systems will provide non-potable water (including recycled water) to its customers at the Bellbird North, Glossodia and Shepherds Bay developments. Through its website<sup>83</sup> and other marketing material, Flow Systems has demonstrated that it is also committed to

<sup>82</sup> Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

<sup>83</sup> Flow Systems Website: <https://flowsystems.com.au/water/>, accessed on 5 June 2017.

promoting the use of non-potable water in the community. This licence variation, if granted, will enable increased production and use of recycled water.

#### **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 WIC Regulation. The MWP outlines strategies to secure greater Sydney's water supply now and in the future.

The increased use of non-potable water (including recycled water) at the Glossodia and Shepherds Bay developments is consistent with the key outcomes of the MWP. These outcomes are in relation to water supply resilience to stresses and shocks and making our urban communities more liveable and resilient.<sup>84</sup> Removing barriers and facilitating investment in cost effective recycled water projects is a key focus of the MWP.<sup>85</sup>

We have also considered whether Flow Systems' provision of services at the Bellbird North development is consistent with the NSW Government's Lower Hunter Water Plan.<sup>86</sup> The Lower Hunter Water Plan is a package of water supply and demand management measures to ensure the region can withstand extreme drought. It includes actions to supply, save and substitute water. In relation to recycled water it notes that there are continuing actions, including:

... private sector suppliers are likely to play a bigger role in providing water supply, wastewater and recycled water services to new developments, particularly in areas remote from urban centres.<sup>87</sup>

Flow Systems will supply recycled water at the Bellbird North development. This is in line with the Lower Hunter Water Plan.

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

We have had regard to the potential for adverse financial implications for small retail customers through our assessment of Flow Systems' technical capacity to supply non-potable water and provide sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supply drinking water to its customers at the Bellbird North and Shepherds Bay developments.

As outlined in section 4.2.1, we assessed Flow Systems' capacity to manage financial hardship. Further, in its applications for a licence variation, Flow Systems has indicated that

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<sup>84</sup> NSW Metropolitan Water Directorate, *2017 Metropolitan Water Plan*, March 2017. <https://www.metrowater.nsw.gov.au/2017-metropolitan-water-plan>, accessed on 5 June 2017.

<sup>85</sup> NSW Metropolitan Water Directorate, *2017 Metropolitan Water Plan FAQs*, March 2017. <https://www.metrowater.nsw.gov.au/planning-sydney/2017-metropolitan-water-plan-faqs>, accessed on 5 June 2017.

<sup>86</sup> The Lower Hunter Water Plan is not a prescribed water policy document under the WIC Act and the WIC Act does not expressly require the Minister to consider the promotion of policies in it. We consider that the Lower Hunter Water Plan is relevant to Flow Systems' licence variation application because: (a) the Lower Hunter Water Plan is a NSW Government policy that concerns the use of water resources; and (b) the Bellbird North scheme is within the area to which the Lower Hunter Water Plan applies. <https://www.metrowater.nsw.gov.au/planning-lower-hunter/2014-lower-hunter-water-plan> accessed on 5 June 2017.

<sup>87</sup> NSW Metropolitan Water Directorate, *Lower Hunter Water Plan*, January 2014, p 3.

it has a price parity policy with the local incumbent water authority.<sup>88</sup> This means the prices Flow Systems charges for the provision of water and sewerage services will match those of Sydney Water and Hunter Water in each region. It also has indicated that its non-potable water prices will be less than the residential drinking water prices charged by Sydney Water and Hunter Water.

In its licence variation applications, Flow Systems states that it offers eligible concessions and medical dependency rebates.<sup>89</sup> Therefore, risks of potential financial implications for small retail customers are mitigated.

As mentioned in section 4.2.1, Flow Systems' RSMP was audited in August 2016 and no non-compliances were identified. The audit scope covered the arrangements that Flow Systems has to ensure that it complies with its code of practice for customer complaints and its code of practice for debt recovery for small retail customers.<sup>90</sup> In section 4.2.1, we also assessed Flow Systems' capacity to manage financial hardship.

In Sydney Water's submission on the Shepherds Bay development, Sydney Water indicated that there are some small price differences between Flow Systems' and Sydney Water's prices, such as ancillary charges (based on hourly rates) and recycled water charges (service charge).<sup>91</sup>

We consider the differences in prices referred to by Sydney Water do not constitute a material risk for potential adverse financial implications for small retail customers.

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.

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

Flow Systems intends to source drinking water from Flow Systems Operations for the Shepherds Bay development, which in turn intends to source drinking water from Sydney Water. We understand the price that Flow Systems Operations will pay Sydney Water will incorporate a share of the cost of any infrastructure that significantly contributes to water security in the Sydney water market.

Similarly, Flow Systems Operations intends to source drinking water to replenish non-potable water supplies at the Glossodia and Shepherds Bay developments, if required, from Sydney Water. We understand the price that Flow Systems Operations will pay Sydney Water will incorporate a share of the cost of any infrastructure that significantly contributes to water security in the Sydney water market. It also reduces the impact on existing drinking water infrastructure and storage by reducing overall demand.


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<sup>88</sup> Applications available on our website: <https://www.ipart.nsw.gov.au/Home/Industries/Water/Alternate-water-utilities-WICA/WICA-Licenses-Listing-pages/WICA-licence-applicants>.

<sup>89</sup> Bellbird North, Glossodia and Shepherds Bay Retail Supplier application forms, section 3.7 Licensing Principles.

<sup>90</sup> Report on the Retail Supply Management Plan Audit of Flow Systems: Retail Supplier's Licence No. 13\_001R (Flow Systems), Water Futures, 5 August 2016.

<sup>91</sup> Letter from Sydney Water, 16 December 2016, p 4.



Flow Systems intends to source drinking water from Flow Systems Operations for the Bellbird North development, which in turn intends to source drinking water from Hunter Water. We understand that Hunter Water does not intend to supply water or provide sewerage services to the development as it is outside the area it currently services. We also understand the price that Flow Systems Operations will pay Hunter Water will incorporate a share of the cost of any infrastructure that significantly contributes to water security in the Hunter water market.

#### **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 Flow Systems supplying non-potable water and providing sewerage services to its customers at the Bellbird North, Glossodia and Shepherds Bay developments and supplying drinking water to its customers at the Bellbird North and Shepherds Bay developments.

We consider that Flow Systems should not be subject to any licence conditions in relation to public interest, if a licence variation is granted.

## 5 Recommendations

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

Varies Flow Systems' retail supplier's licence (licence number 13\_001R) as set out in the draft amended licence in Appendix A, to include the Bellbird North, Glossodia and Shepherds Bay schemes.

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>92</sup>

The Minister is required 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>93</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>94</sup>

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<sup>92</sup> WIC Act, section 10(2).

<sup>93</sup> WIC Act, section 10(5).

<sup>94</sup> WIC Act, section 10(6).







## Appendices





## A Draft licence



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## B Summary of submissions



**Table B.1 Summary of submissions on Flow Systems' applications to vary its retail supplier's licence no. 13\_001R for the Bellbird North, Glossodia and Shepherds Bay schemes**

No.	Agency	Summary of submissions	Comment
<b>Bellbird North scheme</b>			
1	NSW Health	<p>NSW Health supported Flow Systems' licence variation application provided that matters raised by NSW Health are addressed and that NSW Health is consulted by IPART during the detailed recycled water and drinking water risk assessments, technology assessments and the development of management plans for recycled water and drinking water.</p> <p>NSW Health requested that it be consulted with following the final compliance audit and before retail supply commences to ensure that all relevant public health matters have been considered.</p> <p>NSW Health requested that Flow Systems adapt its generic Incident Notification Protocol to include contact details of all stakeholders involved in the Bellbird North scheme.</p> <p>NSW Health noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Bellbird North scheme.</p>	<p>NSW Health's requests are related to Flow Systems' capacity to carry out activities in a manner that does not present a risk to public health.</p> <p>We are satisfied that Flow Systems has the capacity to supply drinking water and non-potable water and provide sewerage services to its customers at the Bellbird North development in a manner that does not present a risk to public health. This is discussed in section 4.3 of the report.</p> <p>These issues will be addressed in our assessment of the network operator's licence application for the Bellbird North scheme.</p>
2	<p>Cessnock City Council</p> <p>EPA</p> <p>Minister for Lands and Water</p> <p>Public submission (CONFIDENTIAL)</p>	<p>These submissions noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Bellbird North Scheme.</p>	<p>These issues will be addressed in our assessment of the network operator's licence application for the Bellbird North scheme.</p>
<b>Glossodia scheme</b>			
3	NSW Health	<p>NSW Health supported Flow Systems' licence variation application provided that matters raised by NSW Health are addressed and that NSW Health is consulted by IPART during the detailed recycled water risk assessments, technology assessments and the</p>	<p>NSW Health's requests are related to Flow Systems' capacity to carry out activities in a manner that does not present a risk to public health.</p>

No.	Agency	Summary of submissions	Comment
		development of a management plan for recycled water. NSW Health requested that it be consulted with following the final compliance audit and before retail supply commences to ensure that all relevant public health matters have been considered.	We are satisfied that Flow Systems has the capacity to supply non-potable water and provide sewerage services to its customers at the Glossodia development in a manner that does not present a risk to public health. This is discussed in section 4.3 of the report.
		NSW Health requested that Flow Systems adapt its generic Incident Notification Protocol to include contact details of all stakeholders involved in the Glossodia scheme.	
		NSW Health noted issues relating to effluent disposal and source water characterisation in the application by Flow Systems Operations for a network operator's licence for the Glossodia scheme.	These issues will be addressed in our assessment of the network operator's licence application for the Glossodia scheme.
4	Sydney Water	Sydney Water's view is that Flow Systems should be declared a monopoly supplier for the Glossodia development.	If the Minister grants this licence variation, we consider that consumers generally will continue to be protected in relation to the activities licensed. This is discussed in section 4.7.4 of the report.
		Sydney Water raised concerns regarding competition and the potential for adverse financial implications for customers.	If the Minister grants this licence variation, we consider that consumers generally will continue to be protected in relation to the activities licensed, the licence variation will promote competition in the provision of the relevant services and the potential risks for adverse financial implications for small retail customers will be adequately mitigated in relation to the activities to be licensed.
		Sydney Water noted issues relating to the network operator's licence for the Glossodia scheme.	This is discussed in sections 4.7.4, 4.7.5 and 4.7.9 of the report.
		Sydney Water noted issues relating to the network operator's licence for the Glossodia scheme.	These issues will be addressed in our assessment of the network operator's licence application for the Glossodia scheme.
5	EPA Department of Planning and Environment (on behalf of the Minister for Planning) Minister for Lands and Water	These submissions noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Glossodia scheme.	These issues will be addressed in our assessment of the network operator's licence application for the Glossodia scheme.



No.	Agency	Summary of submissions	Comment
<b>Shepherds Bay scheme</b>			
6	NSW Health	<p>NSW Health supported Flow Systems' licence variation application provided that matters raised by NSW Health are addressed and that NSW Health is consulted by IPART during the detailed risk assessments for recycled water, drinking water, technology assessments and the development of management plans for drinking and recycled water.</p> <p>NSW Health requested that it be consulted with following the final compliance audit and before retail supply commences to ensure that all relevant public health matters have been considered.</p> <hr/> <p>NSW Health requested that Flow Systems develop an Incident Notification Protocol for incidents including, but not limited to, water quality issues, treatment plant critical control point limit exceedances, algae, recycled water issues, cross connections and contact details of all stakeholders involved in the Shepherds Bay scheme.</p>	<p>NSW Health's requests are related to Flow Systems' capacity to carry out activities in a manner that does not present a risk to public health.</p> <p>We are satisfied that Flow Systems has the capacity to supply drinking water and non-potable water and provide sewerage services to its customers at the Shepherds Bay development in a manner that does not present a risk to public health. This is discussed in section 4.3 of the report.</p>
7	Sydney Water	<p>NSW Health noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Shepherds Bay scheme.</p> <hr/> <p>Sydney Water's view is that Flow Systems should be declared a monopoly supplier for the Shepherds Bay development.</p> <hr/> <p>Sydney Water raised concerns regarding competition and the potential for adverse financial implications for customers.</p>	<p>These issues will be addressed in our assessment of the network operator's licence application for the Shepherds Bay scheme.</p> <hr/> <p>If the Minister grants this licence variation, we consider that consumers generally will continue to be protected in relation to the activities licensed.</p> <p>This is discussed in section 4.7.4 of the report.</p> <hr/> <p>If the Minister grants this licence variation, we consider that consumers generally will continue to be protected in relation to the activities licensed, the licence variation will promote competition in the provision of the relevant services and the potential risks for adverse financial implications for small retail customers will be adequately mitigated in relation to the activities to be licensed.</p> <p>This is discussed in sections 4.7.4, 4.7.5 and 4.7.9 of the report.</p>

No.	Agency	Summary of submissions	Comment
		Sydney Water noted issues relating to the network operator's licence for the Shepherds Bay scheme.	These issues will be addressed in our assessment of the network operator's licence application for the Shepherds Bay scheme.
8	City of Ryde Council Minister for the Environment Department of Planning and Environment (on behalf of the Minister for Planning) Minister for Lands and Water	These submissions noted issues relating to the application by Flow Systems Operations for a network operator's licence for the Shepherds Bay scheme.	These issues will be addressed in our assessment of the network operator's licence application for the Shepherds Bay scheme.