



Independent Pricing and Regulatory Tribunal

Assessment of Discovery Point Water Factory's network operator's licence application

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

Report to the Minister
November 2013

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1 Summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) received and assessed a network operator's licence application from Discovery Point Water Factory (DPWF), under the *Water Industry Competition Act 2006* (NSW) (the Act).

DPWF proposes to construct, operate and maintain a sewerage network, water recycling facility and recycled water network at the Discovery Point development at Wolli Creek. The network would service around 1,500 residential apartments and other small commercial customers across 14 buildings.

We consider that DPWF has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.

A key issue from the stakeholder submissions was the scope of existing environmental planning approvals granted for the project. DPWF has adequately addressed these issues through revising its application and minimising the area of operations specified in the licence.

We recommend that the Minister for Finance and Services (the Minister) grants a network operator's licence to DPWF, subject to the conditions as set out in licence 13_025.

In the future, we expect DPWF's parent company, Flow Systems, to apply for a variation to its existing retail supplier's licence to service this development.

2 Background

We received DPWF's application for a network operator's licence on 27 November 2012.

In accordance with the Act, IPART must consider the licence application and any stakeholder submissions, and provide a report on the application to the Minister. The Minister may determine an application for a licence by granting the licence or refusing the application, and determining the conditions to which the licence (if granted) should be subject.¹

This report summarises our analysis, issues raised by stakeholders through their submissions and our recommendation to grant the licence. It also contains proposed licence conditions.

¹ *Water Industry Competition Act 2006* (NSW), sections 9 and 10.

The applicant corporation, DPWF, is a subsidiary company of Flow Systems Pty Ltd (Flow Systems); previously Water Factory Pty Ltd. DPWF has no direct employees, and relies on the support of Flow Systems for operation.

Flow Systems' major shareholder is Brookfield Infrastructure Partners, part of the Brookfield Asset Management Group, a global alternative asset manager with over \$175 billion in assets under management.

Through its subsidiary companies, Flow Systems currently operates two other licensed water networks, at Pitt Town and Central Park, both of which include the supply of recycled water.

DPWF proposes to construct, maintain and operate water industry infrastructure within the Discovery Point development at Wolli Creek, which includes:

- ▼ non-potable water and sewerage networks
- ▼ a non-potable water treatment plant.

DPWF proposes to treat sewage effluent collected from within the development to a standard suitable for the following purposes:

- ▼ toilet flushing
- ▼ clothes washing
- ▼ garden irrigation (unrestricted)
- ▼ general wash down (connection points for hoses)
- ▼ car washing
- ▼ water features (landscape architecture).

DPWF will service both residential and small commercial customers, and the strata bodies managing the buildings within the development. The scheme will connect to around 1,500 residential apartments, and 3000 m² of retail floor space across 14 buildings. The sewerage collection system will have a bypass connection to Sydney Water's centralised sewerage network. The recycled water system will have a backup connection to Sydney Water's potable water network.

3 Stakeholder consultation and submissions

On 19 February 2013, we provided the licence application to, and invited submissions from, the following Ministers and their relevant departments:

- ▼ Minister administering the *Public Health Act 2010* (NSW) (Minister for Health)
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000* (NSW) (Minister for Primary Industries)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (NSW) (Minister for the Environment)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) (Minister for Planning and Infrastructure).²

We also provided a copy of the licence application to the Minister for Finance and Services, who is responsible for administering the Act, at the same time.

The closing date for the submissions was 28 March 2013. We received submissions from:

- ▼ The Minister for Primary Industries – who noted that a water access licence or water supply work approval may be required if rainwater is collected for reuse purposes. DPWF subsequently removed stormwater collection for reuse from the licence application.
- ▼ The Environment Protection Authority (EPA) – which indicated DPWF would not require an Environment Protection Licence, and there were no significant areas of concern in the licence application.
- ▼ The NSW Ministry of Health (NSW Health) – which supported the licence application and requested NSW Health be involved at a later stage. (Further details are provided in Section 4.1.5.)
- ▼ The Department of Planning and Infrastructure – which noted that any development outside the area of Discovery Point, approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), would be development without consent under Part 5 of the EP&A Act.

These submissions are available on our website.

Sydney Water was notified of the licence application. It did not raise any concerns with the proposed scheme and application. However, it requested that DPWF provide a detailed servicing strategy to allow the connection points with the Sydney Water networks to be identified. Sydney Water also noted that it does not intend to directly compete with DPWF for the provision of sewerage services or recycled water at Discovery Point.

² *Water Industry Competition Act 2006*, section 9(1)(b).

We also called for public submissions on the application.³ We advertised in the Sydney Morning Herald and Daily Telegraph on 27 February 2013 for public submissions. Submissions closed on 28 March 2013. No public submissions were received.

4 Assessment of application

This section of the report contains a summary of our assessment of DPWF's licence application and our recommendations. To assess the applicant's capability as a network operator, we considered the information the applicant provided in its licence application, stakeholder submissions, specialist financial consultant advice, and additional information submitted by the applicant through subsequent requests.

Our assessment is based on each of the licensing criteria and principles outlined in the Act. The Minister may not grant the licence unless satisfied of certain licensing criteria, namely that the applicant:

- ▼ is not a disqualified corporation, or a related entity of a disqualified corporation (ie, it meets the 'fit and proper' criteria)
- ▼ has, and will continue to have, the technical, financial and organisational capacity to carry out the activities to be authorised by the licence
- ▼ has the capacity to carry out its activities in a manner that does not present a risk to public health
- ▼ has made, and will continue to maintain, appropriate insurance arrangements
- ▼ in the case of a licence to supply water, will supply sufficient quantities of water that have not been obtained from a public water utility
- ▼ such matters as required by the regulations
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.⁴

In considering whether or not to grant the licence, and what conditions (if any) to impose on the licence, the Minister must also have regard to the following licensing principles:

- ▼ protection of public health, the environment, public safety and consumers generally
- ▼ encouragement of competition in the supply of water and the provision of sewerage services
- ▼ ensuring sustainability of water resources

³ *Water Industry Competition Act 2006*, section 9(1)(c).

⁴ *Water Industry Competition Act 2006* (NSW), sections 10(3) and (4).

- ▼ promotion of production and use of recycled water
- ▼ promotion of policies set out in any prescribed water policy document
- ▼ promotion of the equitable sharing among participants in the drinking water market of the costs of the water industry infrastructure that significantly contributes to water security.⁵

4.1 Licensing criteria

Our assessment of DPWF against each of the licensing criteria is outlined below.

4.1.1 Disqualified corporation

Discovery Point Water Factory is not a disqualified corporation. Its Director and CEO are not disqualified individuals.

In reaching this conclusion, we have considered the following information:

- ▼ Results of the ASIC⁶ and ITSA⁷ searches provided in the Dun & Bradstreet report that we have obtained, confirm the above.
- ▼ The statutory declaration made by the Director and Chief Executive Officer stating that DPWF, nor any director or person concerned in the management of DPWF, is or would be a disqualified corporation or disqualified individual within the meaning of the Act.
- ▼ Results of our search of the Act's licence database,⁸ confirming the above.

4.1.2 Technical capacity

We are satisfied that Discovery Point Water Factory has adequate technical capacity to construct, operate, and maintain water industry infrastructure.

We have reached this finding after reviewing:

- ▼ the reports and plans that Pitt Town Water Factory (PTWF) prepared for a similar project, which it operates at Pitt Town (see below)
- ▼ the results of detailed audits carried out for PTWF's above-mentioned Pitt Town project
- ▼ DPWF's preliminary risk assessment and design of its scheme

⁵ *Water Industry Competition Act 2006* (NSW), section 7.

⁶ Australian Securities and Investment Commission.

⁷ Insolvency and Trustee Service Australia.

⁸ There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, section 16(1)(e) and 16(1)(f).

- ▼ Flow Systems Pty Ltd's previous technical experience (within Australia), evident from a review of the CVs of specific personnel nominated to the project in the application.

DPWF is a wholly owned subsidiary of Flow Systems Pty Ltd (formerly Water Factory Company Pty Ltd). DPWF has no direct employees, and will rely on Flow Systems for resourcing and business support.

PTWF is another subsidiary company of Flow Systems, and operates similarly to DPWF. Both PTWF and DPWF are managed by the same Flow Systems staff.

DPWF has nominated Permeate Partners Pty Ltd to provide design, procurement, technical and operational support in connection with the construction and operation of the water recycling facility. This company has provided similar services to other subsidiaries of Flow Systems Pty Ltd, including PTWF.

We conclude that DPWF has the required technical capacity to be granted a network operator's licence for this scheme, subject to both Flow Systems and Permeate Partners being specified as authorised persons in the licence. We recommend that the standard Ministerially imposed licence conditions should apply, which includes that the licensee must have the technical capacity to carry out the activities authorised by the licence.

4.1.3 Financial capacity

We are satisfied that Discovery Point Water Factory has adequate financial capacity to construct, operate and maintain water industry infrastructure.

We engaged an external financial consultant, Vincents Chartered Accountants (Vincents), to assess the financial capacity of the applicant. Since DPWF is a newly formed subsidiary of Flow Systems, we asked Vincents to review both companies.

In summary, Vincents reported that it was satisfied that Flow Systems adequately demonstrated its ongoing financial capacity to maintain business operations.

We would like to emphasise that a financial assessment only represents the applicant's financial capacity at the time the assessment is completed. Our recommendation to grant DPWF a licence should not be viewed as endorsement of the future 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 purpose and for the Minister's purposes in assessing the applicant's application. The conclusion is not to be relied upon for any other purpose by any other person.

We recommend that the standard Ministerially imposed licence conditions should apply, which includes that the licensee must have the financial capacity to carry out the activities authorised by the licence.

4.1.4 Organisational capacity

We are satisfied that Discovery Point Water Factory has adequate organisational capacity (current and ongoing) to construct, operate and maintain water industry infrastructure in a manner that would protect public health and the environment.

Our analysis showed that, through its relationship with Flow Systems Pty Ltd, DPWF has:

- ▼ Previous experience (within Australia) in the water industry, as shown by the biographies of its key personnel (provided in the application).
- ▼ An appropriate organisational structure to manage its nominated third parties to deliver the proposed work, based on contractual arrangements and agreements.

As previously mentioned, DPWF relies on its parent company, Flow Systems, for business support.

We recommend that the standard Ministerially imposed licence conditions should apply, including that the licensee must have the organisational capacity to carry out the activities authorised by the licence.

4.1.5 Public health

We are satisfied that Discovery Point Water Factory is capable of constructing, operating and maintaining water industry in a manner that protects public health

Our analysis showed that DPWF, through its relationship with Flow Systems, has:

- ▼ Demonstrated previous experience (within Australia) in the water industry and sufficient technical and organisational capacities to satisfactorily operate and maintain the proposed system.
- ▼ Demonstrated sufficient technical capacity to design and construct the proposed water industry infrastructure to minimise risks to public health.
- ▼ Demonstrated technical capacity to analyse and manage hazards from source to end use, through the risk management plan it provided.

We have also considered NSW Health's submission on DPWF's capacity to protect public health.

NSW Health supports the licence application, and requested that it be consulted in the following later stages of the regulatory process:

- ▼ during a technology assessment (if completed)
- ▼ during development of the Recycled Water Management Plan, specifically with regard to incident notification and management procedures, and
- ▼ following initial audit, prior to commercial operation of the scheme, to ensure all relevant health matters have been addressed.

We recommend that the standard Ministerially imposed licence conditions should apply, including that the licensee must comply with any requirements of NSW Health that we agree to, and that we notify the licensee about, in writing.

4.1.6 Environment

We are satisfied that the proposed activities of Discovery Point Water Factory as a network operator at the Discovery Point development, Wolli Creek, will not present a significant risk of harm to the environment.

DPWF, in conjunction with Flow Systems, has:

- ▼ Demonstrated previous experience (within Australia) in relation to preparing environmental impact assessments and implementing environmental impact mitigation measures for the construction of recycled water and sewerage infrastructure in urban areas.
- ▼ Demonstrated capacity to identify and manage environmental risks. DPWF's preliminary risk assessment outlined the controls for managing a number of environmental risks. We will audit the adequacy of these controls prior to DPWF commencing commercial operation of the scheme.
- ▼ Demonstrated understanding of regulatory approval requirements, as confirmed by our own assessment and DP&I. The developer has already obtained concept and project approval under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) from DP&I.
- ▼ Provided the environmental assessment prepared for the aforementioned project approval.

We have limited the area of operations within the licence to the area covered by the concept and project approvals. The EPA stated in its submission that while no environmental assessment had been prepared specifically for the recycled water scheme, it did not note any significant areas of concern from the information provided. We do not recommend the inclusion of any specific licence requirements related to the environment.

4.1.7 Insurance

We are satisfied that Discovery Point Water Factory has made, and will continue to maintain, appropriate insurance arrangements.

Our analysis showed that DPWF has:

- ▼ Demonstrated appropriate insurance coverage in the areas of professional indemnity, public liability, workers' compensation and product liability, as shown in its insurance certificates in its licence application.

We recommend that the standard Ministerially imposed licence conditions should apply, including the requirement that the licensee must obtain and maintain appropriate insurance, as certified by an independent insurance expert.

4.1.8 Additional public interest considerations

No additional matters were raised with regard to public interest during the stakeholder consultation process. We support Discovery Point's vision to be a sustainable development and the implementation of initiatives such as replacing drinking water with non-potable water for a number of end uses.

4.2 Licensing principles

We are satisfied that granting a network operator's licence to Discovery Point Water Factory is consistent with the licensing principles.

We considered each of following licensing principles in making a recommendation as to whether or not the licence should be granted, and what licence conditions to impose.

- ▼ **Protection of public health, environment, public safety and consumers generally** - We consider that DPWF has the technical capacity and experience to undertake the activities in a way that will manage risks, subject to Permeate Partners and Flow Systems being named as authorised persons in the licence. If the scheme were to fail, there is capacity for sewage to be discharged into the Sydney Water sewerage network, and for recycled water to be replaced directly by potable water from Sydney Water's drinking water network.
- ▼ **Encouragement of competition** - The scheme proposes to provide sewerage services and supply non-potable water to the individual customers within the Discovery Point development. Historically, Sydney Water had a monopoly on sewerage services and drinking water supply in the Sydney area. This project will enable a new entity to provide sewerage services and non-potable water to a discrete development, thus encouraging competition in the provision of these services.

- ▼ **Ensuring sustainability of water resources** - The non-potable water will be sourced from sewage that would have otherwise been treated and discharged to the environment. It will replace drinking water for toilet flushing, cold water clothes washing, irrigation, car washing and general wash-down water.
- ▼ **Promotion of production and use of recycled water** - The supply of non-potable water to the Discovery Point development promotes the use of recycled water as a substitute for drinking water.
- ▼ **Promotion of policies set out in any prescribed water policy document** - The supply of non-potable water by DPWF to the Discovery Point development is consistent with the objectives of the NSW Metropolitan Water Plan.
- ▼ **Potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence** - This is not applicable for a network operator's licence, but it will be considered in any future retail licence application by the applicant or its parent company.
- ▼ **Promotion of equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security** - Not applicable, as the licence does not cover the supply of drinking water.

4.3 Additional matters considered

In assessing the licence application, we also considered the matters outlined below.

4.3.1 Monopoly supplier

We considered that Discovery Point Water Factory is not a monopoly supplier.

Under section 51 of the Act, the Minister may declare a licensed retail supplier or licensed network operator to be a monopoly supplier in relation to a specified water supply or sewerage service, area and class of customers. Such a declaration would result in the licensee being subject to pricing regulation.

For this type of scheme, we consider that this matter is better considered as part of a retail supplier's licence application or variation (see next section). We therefore propose that consideration of this issue is delayed until such an application is lodged.

4.3.2 Retail Supply

We have not received an application for a retail supplier's licence to supply customers connected to DPWF's networks. Flow Systems currently holds a retail supplier's licence covering its operations in Pitt Town and Central Park. We understand that Flow Systems intends to apply for a variation to this licence in future to include the DPWF network. We will assess all relevant retail licensing issues at that time.

5 Recommendations

We are satisfied that Discovery Point Water Factory has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.

We recommend that the Minister grants a network operator's licence to Discovery Point Water Factory, subject to the conditions as set out in licence number 13_025.

We consider that Discovery Point Water Factory should not be declared a monopoly supplier.

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.⁹

The Minister is required to provide us with a notice of the decision and the reasons for the decision on making a decision whether or not to grant the licence.¹⁰ We will then make the information in the notice available to the public on our website, in accordance with the requirements of the Act.¹¹

⁹ *Water Industry Competition Act 2006*, section 10(2).

¹⁰ *Water Industry Competition Act 2006*, section 10(5).

¹¹ *Water Industry Competition Act 2006*, section 10(6).