



Independent Pricing and Regulatory Tribunal

Assessment of Flow Systems Pty Ltd's application to vary its retail supplier's licence 13_001R

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

**Report to the Minister
March 2015**

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1 Summary

We recommend that the Minister¹ varies Flow Systems Pty Ltd's (Flow Systems) retail supplier's licence (licence number 13_001R) to authorise Flow Systems to supply drinking water, non-potable water,² and sewerage services at the North Cooranbong development. This is consistent with the application Flow Systems provided to us.

In assessing Flow Systems' application to vary the licence, we considered the licensing criteria set out in sections 10(3)-(4) of the *Water Industry Competition Act 2006* (NSW) (WIC Act), and had regard to the licensing principles in section 7(1) of the WIC Act.

In addition to assessing the application against the licensing criteria and principles of the WIC Act, we also considered whether Flow Systems' services should be declared monopoly services and subject to price regulation. We consider that the drinking water, recycled water³, and sewerage services at the North Cooranbong development are not monopoly services, and therefore Flow Systems should not be declared a monopoly supplier in relation to these services.

Should the Minister declare any monopoly services, we do not recommend that the Minister refer any of these services to IPART for a determination of pricing or a periodic review of pricing policies, at this time.

2 Background

Flow Systems' retail supplier's licence (licence number 13_001R) authorises Flow Systems to supply drinking water, non-potable water, and sewerage services to four schemes.⁴ Flow Systems applied to vary its retail supplier's licence to enable it to also supply drinking water, non-potable water, and sewerage services at the North Cooranbong development.

¹ The Minister for Natural Resources, Lands and Water.

² In the *Water Industry Competition (General) Regulation 2008*, non-potable water means water that is not drinking water.

³ The *Water Industry Competition Act 2006* refers to recycled water including in section 51(2) 'declaration of monopoly suppliers'. In the WIC Act, recycled water means water obtained from the processing of sewage.

⁴ Central Park, Discovery Point, Wyee (drinking water and non-potable water supply, and sewerage services), and Pitt Town (non-potable water supply and sewerage services).

The North Cooranbong development will consist of around 2,100 residential lots, a school, public open space and a small retail precinct (around 100 equivalent tenements).⁵ It is located near Lake Macquarie, between Newcastle and Gosford. The majority of customers at the North Cooranbong development would be small retail customers as defined in the WIC Act.

We are currently also assessing a network operator's licence application from Cooranbong Water Pty Ltd⁶ (Cooranbong Water), also for the North Cooranbong development. Flow Systems intends to source drinking water, non-potable water and sewerage services from Cooranbong Water for the North Cooranbong development.

3 Consultation and submissions

We invited submissions from NSW Health and Hunter Water Corporation to inform our assessment of:

- ▼ Flow Systems' technical capacity to carry out the activities to be licensed
- ▼ Flow Systems' capacity to carry out the activities to be licensed in a manner that does not present a risk to public health, and
- ▼ the protection of public health.

Our consideration of these submissions is outlined in sections 4.2.1, 4.3 and 4.8.1.

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

- ▼ Vincents Chartered Accountants to inform our financial assessment (see section 4.2.2), and
- ▼ the NSW Self Insurance Corporation (SICorp) to inform our assessment of appropriate insurance arrangements maintained by Flow Systems (see section 4.4).

⁵ The North Cooranbong development is defined using lot and deposited plan (DP) numbers, as outlined in the draft amended licence (13_001R). Customer information provided in Flow Systems' application to vary its licence.

⁶ Cooranbong Water Pty Ltd is a wholly owned subsidiary of Flow Systems Pty Ltd.

4 Assessment of application

This section of the report contains our assessment of Flow Systems' application to vary its retail supplier's licence and our recommendations.

In assessing Flow Systems' application to vary the licence conditions, we considered the licensing criteria set out in sections 10(3)-(4) of the WIC Act, and had regard to the licensing principles in section 7(1)(a) of the WIC Act.

4.1 Disqualified corporation and related entity checks

We consider that Flow Systems is neither a disqualified corporation nor a corporation that is a related entity of a relevant⁷ disqualified corporation.

In making this recommendation, we have considered the following information:

- ▼ A statutory declaration signed by Flow Systems' Chief Executive Officer and Director, and Company Secretary stating that:
 - neither Flow Systems, nor any director or person concerned in the management of Flow Systems is, or would be, a disqualified corporation or a disqualified individual within the meaning of the WIC Act 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 would authorise if granted.
- ▼ 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, and
 - ▼ names of the Chief Financial officer and Chief Executive Officer for each of Flow Systems' related entities (subsidiary companies⁸ and holding companies within Australia⁹).

⁷ A related entity that would have a direct or indirect interest in, or influence on, the carrying out of the activities that the licence authorises. *Water Industry Competition Act 2006* (NSW), section 10(3)(b).

⁸ Central Park Water Pty Ltd, Cooranbong Water Pty Ltd, Discovery Point Water Pty Ltd, Flow Systems Operations Pty Ltd, Green Square Water Pty Ltd, Huntlee Water Pty Ltd, Pitt Town Water Pty Ltd, Wyee Water Pty Ltd. As determined by an assessment of a current ASIC Relational Company Extract search.

⁹ Brookfield Water Holdings Pty Ltd, Brookfield Utilities (Australia) Pty Ltd, BPIH Pty Ltd. As determined by an assessment of a current ASIC Relational Company Extract search.

- ▼ Related entity checks undertaken showed that nine corporations are related to Flow Systems, and would have a direct or indirect interest in, or influence on, the carrying out of activities that the variation to the licence would authorise if granted. Results of ASIC and Dun & Bradstreet reports that we have obtained for Flow Systems, and for these nine related corporations, confirmed that these companies are not disqualified nor are their directors or persons concerned in the management of Flow Systems, disqualified individuals.
- ▼ Results of our search of the WIC Act licence database,¹⁰ confirming in part the above.

We do not consider that Flow Systems should be subject to any additional licence conditions in relation to disqualified corporations, if a licence variation is approved.

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 drinking water, non-potable water, and sewerage services at the North Cooranbong development. Flow Systems is already providing similar services to other schemes under its retail supplier's licence.¹¹

We assessed Flow Systems' technical, financial and organisational capacity to carry out the additional 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 water and provide sewerage services to its customers at the North Cooranbong development.

Our analysis included a review of Flow Systems':

- ▼ Cooranbong Water draft Retail Supply Management Plan (RSMP) provided in the application, which addresses the supply of drinking water and non-potable water supply and the provision of sewerage services.
- ▼ Customer Contract, which provides the terms under which Flow Systems would supply drinking water, non-potable water and sewerage services.

¹⁰ There are currently no disqualified corporations or individuals on the register pursuant to the WIC Act, section 16(e) and 16(f).

¹¹ Central Park, Discovery Point and Wyee (drinking water and non-potable water supply, and sewerage services), and Pitt Town (non-potable water supply and sewerage services).

- ▼ Code of Practice for Customer Complaints, which describes the process Flow Systems uses to respond to complaints by Customers (including owners, tenants and consumers) about those services.
- ▼ Code of Conduct for Missed Payments (debt recovery), which outlines how Flow Systems responds when customers have missed one or more payments.
- ▼ Access to Customer's Property Policy, which outlines the way Flow Systems accesses privately owned property for the purpose of maintaining water, non-potable water and sewerage assets owned by Flow Systems.
- ▼ Technical performance in preparing and implementing required retail systems and procedures at four existing schemes, Pitt Town, Central Park, Discovery Point and Wyee. The applicant proposes to use the same systems, procedures and resources to supply its intended customers.
- ▼ 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 form.

We used the above information to assess Flow Systems' technical capacity to undertake the following retail supply activities at the North Cooranbong development:

- ▼ **Billing:** Flow Systems' Customer Contract addresses the responsibilities of Flow Systems and its customers in relation to: account payment; invoicing arrangements; under and over charging; payment disputes; costs and charges; pricing determination; managing financial hardship; discounts and rebates; restriction of supply for non-payment; and meter reading, installation and maintenance. Flow Systems' RSMP also addresses complaint handling and refers back to the Customer Contract.
- ▼ **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: contact information for customers to make complaints; receipt of complaints; tracking complaints; acknowledgement of complaints; assessment and investigation of complaints; response to complaints; communicating the outcome of complaint investigation; escalation of complaints to the Energy and Water Ombudsman NSW (EWON); and closing the complaint. Both the Code of Practice and Flow Systems' RSMP include the process for evaluation and audits of the Code of Practice.
- ▼ **Missed payments and debt recovery:** Flow Systems' Code of Conduct for Missed Payments addresses how Flow Systems would respond when customers have missed one or more payments, including reminder and warning notification; and actions for non-payment, which include debt recovery. Flow Systems' RSMP also addresses missed payments and debt recovery and refers back to the Code of Conduct.

- ▼ **Financial hardship:** Flow Systems' 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 outlines Flow Systems' approach to reaching an agreement with a customer facing financial hardship. Flow Systems' RSMP states that in no event would an essential service to a customer be disconnected as a result of non-payment.
- ▼ **Providing an appropriate level of service:** Flow Systems' Customer Contract addresses the level of service for the delivery of drinking water supply, non-potable water supply and sewerage services. The Customer Contract includes information on drinking water quality, pressure and flow rate; non-potable water quality, pressure and flow rate; and sewerage discharge rate and overflows. The Customer Contract states that Flow Systems must source drinking water which complies with the *Australian Drinking Water Guidelines 2006*, and non-potable water which complies with the *Australian Guidelines for Water Recycling 2006 (Phase 1 Managing Health and Environmental Risks) National Water Quality Management Strategy*. The Customer Contract sets out provisions for customers with health or special needs.
- ▼ **Continuity of service:** Flow Systems' RSMP addresses continuity of service during interruption due to incidents or operational problems, including: interruptions to sewage service; interruptions to non-potable water supply; interruptions to drinking water supply; and disruptions to the customer centre. Flow Systems' RSMP also provides information on incident identification and responses.
- ▼ **Communication with customers:** Flow Systems' Customer Contract addresses communication with customers, including notice of systems failures; changes to costs and charges; notice of access to property; restriction of services; access to the water meter; and requirement to remove trees. The notice required for a customer to disconnect (30 days written notice) is included in the Customer Contract. Flow Systems' Access to Customer's Property Policy addresses Flow Systems' obligations for providing notice to access private property for the purpose of maintaining systems owned by Flow Systems.
- ▼ **Transfer of customers:** Flow Systems' RSMP addresses transfer of customers by stating it is committed to following the Transfer Code of Conduct as set out in the *Water Industry Competition (General) Regulation 2008* (the WIC Regulation).
- ▼ **Marketing to customers:** Flow Systems' RSMP addresses marketing to customers by outlining its commitment to following the Marketing Code of Conduct as set out in the WIC Regulation.

We have previously provided feedback on Flow Systems' Retail Supply Management Plans for other schemes. The RSMP provided in the Flow Systems application for a variation to its retail supplier's licence has integrated our feedback.

We also considered Flow Systems' preliminary risk assessment for the retail services to be provided at the North Cooranbong development. This demonstrated Flow Systems' technical capacity to identify risks across a number of areas including billing, water quality, and supply outages, and to develop control measures to manage these risks to an acceptable level. The risk assessment does not specify residual risks; however, we consider the control measures identified to mitigate risks result in reduced residual risks.

Hunter Water supports the application to vary Flow Systems' licence and is finalising a 'Utility Services Agreement' with Flow Systems which will outline technical and commercial parameters.¹²

We consider that the information submitted by Flow Systems demonstrates that it has the technical capacity to supply water and provide sewerage services to its customers, including small retail customers, at the North Cooranbong development.

We do not consider that Flow Systems should be subject to any additional licence conditions in relation to technical capacity, if a licence variation is approved.

4.2.2 Financial capacity

We are satisfied that Flow Systems has the financial capacity to supply water and provide sewerage services to its customers at the North Cooranbong development.

In making our assessment of the applicant's financial capacity we have considered the following information:

- ▼ Flow Systems' summarised profit and loss statements
- ▼ Flow Systems' summarised balance sheets
- ▼ Flow Systems' summarised income tax returns, and
- ▼ Flow Systems' key financial ratios.

We engaged an external financial consultant, Vincents Chartered Accountants (Vincents), to assess Flow Systems' financial capacity. Vincents was satisfied that Flow Systems adequately demonstrated its ongoing financial capacity to carry out the activities that the licence variation (if granted) would authorise. As this is a retail supplier's licence application (ie, not involving any construction activity), we consider this assessment to be acceptable for the purpose of considering the retail licence variation application.

¹² Hunter Water, letter dated 24 February 2015.

We note that Vincents' assessment was made on the basis that the insurance policies obtained by the applicant are adequate for its proposed operations. We consider this assumption is reasonable and correct (see section 4.4. for our assessment of insurance).

We do not consider that Flow Systems should be subject to any additional licence conditions in relation to its financial capacity, if a licence variation is approved.

4.2.3 Organisational capacity

We are satisfied that Flow Systems has the organisational capacity to supply water and provide sewerage services to customers at the North Cooranbong development.

Flow Systems demonstrated its organisational capacity to provide retail services at the North Cooranbong development by:

- ▼ providing evidence of its experience in providing similar services to other schemes, including Pitt Town, Central Park and Discovery Point
- ▼ having an organisational structure that includes an Executive Manager Retail, Customer Experience Leader, Customer Experience Specialist 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 that of the role descriptions, and
- ▼ showing evidence of its capacity to negotiate utility service agreements with network operators, through its correspondence with Hunter Water.

We do not consider that Flow Systems should be subject to any additional licence conditions in relation to organisational capacity, if a licence variation is approved.

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

We are satisfied that Flow Systems has the capacity to supply water and provide sewerage services to customers at the North Cooranbong development in a manner that does not present a risk to public health.

We assessed Flow Systems' capacity to manage the following risks to public health, in supplying water and providing sewerage services to the North Cooranbong development:

- ▼ **Source water quality:** Flow Systems has demonstrated its capacity to source water of an appropriate quality to meet its customers' needs at the North Cooranbong development. Flow Systems would source all of its drinking water and non-potable water from Cooranbong Water which, in turn, would source drinking water from Hunter Water Corporation. We reviewed Flow Systems' application, RSMP and Customer Contract. These documents state drinking water quality would be consistent with the *Australian Drinking Water Guidelines 2006*, and non-potable water would be consistent with the *Australian Guidelines for Water Recycling 2006 (Phase 1 Managing Health and Environmental Risks) National Water Quality Management Strategy*. Flow Systems also has a water quality complaints procedure that includes a 24 hour emergency incident number for water quality (drinking and non-potable water) incidents and concerns. The procedure includes notification of the network operator.
- ▼ **Customer exposure through end use:** Flow Systems would supply non-potable water to customers at the North Cooranbong development. 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. This guidance includes appropriate disposal to sewer and irrigation frequency. Flow Systems' customer contract outlines the procedures it has in place if water is required to operate a life support machine or for other special health needs.
- ▼ **Water supply interruption:** Interruptions in supply of drinking water or non-potable water could pose a risk to public health. Flow Systems demonstrated its capacity to mitigate this risk through its risk management assessment, RSMP and Customer Contract, by outlining the control measures and mitigation strategies for supply interruptions. The RSMP for the North Cooranbong development indicates that Flow Systems would continue to provide water at a reasonable flow for basic health and hygiene purposes, even if a customer is to be disconnected as a result of non-payment. Customers would be given reasonable notice if Flow Systems intends to restrict supply. Flow Systems have indicated that should an interruption to non-potable water supply occur, drinking water would be supplied through the non-potable water system. However, we consider this would also be the responsibility of the network operator, and would expect this to be covered in the Code of Conduct as required under the licence condition B9.2 (Licence no. 10_001R).

- ▼ **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 assessment, RSMP and Customer Contract. Flow Systems have indicated that should an interruption to sewerage services occur, sewage would be diverted from the non-potable water facility direct via a by-pass to Hunter Water's sewerage mains. However, we consider this would also be the responsibility of the network operator, and would expect this to be covered in the Code of Conduct as required under the licence condition B9.2 (Licence no. 13_001R).

NSW Health supports the application to vary Flow Systems' licence and did not identify any specific issues in regard to Flow Systems' capacity to protect public health.¹³ NSW Health requested that Flow Systems' water quality complaints procedure is included or referenced in the retail supply management plan.

We do not consider that Flow Systems should be subject to any additional licence conditions in relation to its capacity to protect public health, if a licence variation is approved.

4.4 Appropriate arrangements with respect to insurance

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

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

- ▼ Combined Business Liability Insurance, including Public Liability, Products Liability and Professional Indemnity (Financial Loss arising from a Wrongful Act) insurance policy.
- ▼ Workers Compensation insurance policy.
- ▼ 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 requested the NSW Self Insurance Corporation (SICorp) assess the appropriateness of the insurance maintained by Flow Systems.

¹³ NSW Health, letter dated 27 February 2015.

SICorp is satisfied the limit of indemnity for Public and Products Liability, and the limit of indemnity for Professional Liability (Financial Loss arising from a Wrongful Act) is appropriate.¹⁴

SICorp identified a risk in the terms of the Professional Liability (Financial Loss arising from a Wrongful Act) insurance. Due to the claims made nature of the insurance and the potential for claims to be made after retail services cease, SICorp considered whether the insurance should be maintained for the life of Flow Systems' operation of the retail services, and for a period after its activities have ceased. However, SICorp have considered the exposure of Flow Systems to this risk and determined, based on the information available about its retail activities, the exposure would be relatively low.¹⁵

Further, as retail supplier's licence clauses do not survive the duration of the licence, a clause requiring the maintenance of insurance after the licence is no longer in force would not be enforceable. On balance, we do not recommend any changes to the existing retail supplier's licence conditions to mitigate the risk.

SICorp notes the current underwriter of the insurance is acceptable, however if the underwriting panel were to change away from Lloyds and Berkley, this change would need to be reviewed. The existing retail supplier's licence requires Flow Systems to maintain insurance that is appropriate for the size and nature of the activities authorised under the licence (Licence no. 13_001R, B3.1). We consider that an amendment to the licence and Reporting Manual to include a requirement for Flow Systems to inform us of a change to the underwriting panel of its insurance will reduce the risk associated with a change to its insurers.

We note Cooranbong Water has an application for a network operator's licence to construct, operate and maintain drinking water, non-potable water and sewerage infrastructure for the North Cooranbong development. If granted, Flow Systems would retail drinking and non-potable water, and provide sewerage services from Cooranbong Water infrastructure.

The two entities are related organisations and their names appear within the list of Named Insured on the Liability insurance. SICorp reviewed the insurance and confirmed the insurance contains a Cross Liability clause.¹⁶ This allows each entity to be treated separately and therefore claim against each other within this insurance, noting that the Underwriter's limit of indemnity shall not exceed the Limit of Indemnity for all claims within the insurance.

¹⁴ NSW Self Insurance Corporation, advice received 17 February 2015.

¹⁵ NSW Self Insurance Corporation, advice received 20 February 2015.

¹⁶ NSW Self Insurance Corporation, advice received 17 February 2015.

Our analysis of information provided with Flow Systems' application (including its insurance certificates and product disclosure statements) and consideration of SICorp's advice showed that Flow Systems has demonstrated that it has sufficient insurance coverage in the area of public liability, product liability, professional indemnity and workers' compensation.

We consider that Flow Systems has demonstrated that it has appropriate arrangements with respect to insurance.

We consider that Flow Systems should be subject to an additional licence condition in relation to appropriate arrangements for insurance. This condition would require notice be given if there is a change in the insurer or underwriting panel, or a change to the type, scope or limit of insurance held by the Licensee, if a licence variation is approved. We will also amend the Reporting Manual to include a requirement for licensees to give prior notice of changes in insurance.

4.5 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.

We consider that if a licence variation is granted, Flow Systems will obtain sufficient quantities of water otherwise than from a public water utility. We have assessed all of the schemes covered by the existing Retail Supplier's Licence, 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 North Cooranbong development, but rather all of the water sources used or to be used by Flow Systems (under its existing licence and the variation application under consideration).

Flow Systems currently sources (or will source) non-potable water from Pitt Town Water Factory, Discovery Point Water Factory, Central Park Water Factory and Wyee Water, none of which are public water utilities. In addition, at the North Cooranbong development, Flow Systems intends to source non-potable water from Cooranbong Water¹⁷, which is also not a public water utility.

¹⁷ Should Cooranbong Water be granted a network operator's licence.

4.6 Capacity to carry out those 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 supply water and provide sewerage services to its customers, in a manner that does not present a significant risk of harm to the environment.

We assessed Flow Systems' capacity to manage the key risks to the environment posed by the supply of water and the provision of sewerage services to the North Cooranbong development:

- ▼ **Non-potable water end uses:** Through its existing scheme at Pitt Town, Flow Systems demonstrated its capacity to educate customers about the appropriate end uses for non-potable water, including information on sustainable irrigation.
- ▼ **Sewerage system:** Through its existing scheme at Pitt Town, Flow Systems demonstrated its capacity to educate customers about the appropriate use of the sewerage system, including information on what should and shouldn't be disposed of into the sewerage system.

We do not consider that Flow Systems should be subject to any additional licence conditions in relation to its capacity to protect the environment, if a licence variation is approved.

4.7 Public interest considerations

We did not identify any additional matters with regard to public interest in relation to Flow Systems supplying water and providing sewerage services to customers at the North Cooranbong development.

4.8 Licensing principles under the WIC Act

We have had regard to each of following licensing principles in making a recommendation as to whether or not the retail supplier's licence should be varied and, if so, what licence conditions to impose.

4.8.1 Protection of public health

We have had regard to public health through our assessment of Flow Systems' capacity to supply water and provide sewerage services to customers at the North Cooranbong development in a manner that does not present a risk to public health. As outlined in section 4.3 of this report, we assessed Flow Systems capacity to manage the key risks posed to public health by the additional activities to be licensed.

NSW Health supported the application to vary Flow Systems' licence and did not identify any specific risks to public health.¹⁸

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

4.8.2 Protection of the environment

We have had regard to protection of the environment through our assessment of Flow Systems' capacity to supply water and provide sewerage services to customers at the North Cooranbong development in a manner that does not present a significant risk of harm to the environment. As outlined in section 4.6 of this report, we assessed Flow Systems' capacity to manage the key risks posed to the environment by the additional activities to be licensed.

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

4.8.3 Protection of public safety

We have had regard to the protection of public safety through our assessment of Flow Systems' technical capacity to supply water and provide sewerage services to its customers. As outlined in section 4.2.1 of this report, we assessed Flow Systems' capacity to manage key risks to public safety by the additional activities to be licensed.

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

4.8.4 Protection of consumers generally

We have had regard to the protection of consumers through our assessment of Flow Systems' technical capacity to supply water and provide sewerage services to its customers. As outlined in section 4.2.1 of this report, we assessed Flow Systems' capacity to protect consumers through its RSMP, Customer Contract and other policies.

If the Minister approves this licence variation, we consider that consumers generally will continue to be protected in relation to the activities licensed.

¹⁸ NSW Health, letter dated 27 February 2015.

4.8.5 Encouragement of competition

Historically, Hunter Water has provided monopoly water supply and sewerage services in the Newcastle and Hunter regions. This licence variation would enable a new entity to supply water and provide sewerage services to the North Cooranbong development, thus encouraging competition in the provision of these services.

4.8.6 Ensuring sustainability of water resources

Flow Systems will supply non-potable water to its customers at the North Cooranbong development. This water will be sourced from treated wastewater which would have otherwise been treated and discharged into the environment. The supply of non-potable water also replaces the use of drinking water, contributing to the sustainability of water resources.

4.8.7 Promotion of production and use of recycled water

Flow Systems will provide non-potable water, including recycled water, to its customers at the North Cooranbong development. Through its website and other marketing material, Flow Systems is also committed to promoting the use of non-potable water in the community.

4.8.8 Promotion of policies set out in any prescribed water policy document

The Metropolitan Water Plan is the only prescribed water policy document in the WIC Regulation. The Metropolitan Water Plan outlines strategies to secure greater Sydney's water supply now and in the future. The North Cooranbong development is not within the greater Sydney area, therefore the policies set out in the Metropolitan Water Plan do not apply.

The NSW Government has recently released the Lower Hunter Water Plan which is a package of water supply and demand management measures to ensure the region can withstand extreme drought. Although this is not a prescribed water policy document, we considered whether Flow Systems' provision of services at North Cooranbong is consistent with the document.

The Lower Hunter Water Plan includes the supply of recycled water and notes that "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". Flow Systems' supply of drinking water, non-potable water (including recycled water), and sewerage services at the North Cooranbong development is consistent with this policy.

4.8.9 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 water and provide sewerage services to its customers. As outlined in sections 4.2.1, we assessed Flow Systems' capacity to manage financial hardship. Further, in its application, Flow Systems has indicated in its application that its drinking water and sewerage prices for the North Cooranbong development will match those of Hunter Water. It has also indicated that its non-potable water prices to its customers will be less than its drinking water prices.

4.8.10 Promotion of equitable sharing of the costs of water industry infrastructure that significantly contributes to water security

Flow Systems will source water from Cooranbong Water, which in turn will source drinking water from Hunter Water. The price that Cooranbong Water will pay Hunter Water should incorporate a share of the cost of any infrastructure that significantly contributes to water security in the lower Hunter region.

4.9 Additional matters considered

In addition to assessing the application against the licensing criteria and principles of the WIC Act, we also considered whether the applicant's services should be subject to price regulation, at this time.

4.9.1 Monopoly supply and price regulation

We recommend that the Minister does not declare Flow Systems to be a monopoly supplier in relation to the supply of drinking water, recycled water and sewerage services to the North Cooranbong development.

Should the Minister declare any monopoly services at North Cooranbong, we do not recommend the Minister refer any of these services to IPART for a determination of pricing or a periodic review of pricing policies, at this time.

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 in a specified area to a specified class of customers.¹⁹

¹⁹ *Water Industry Competition Act 2006* (NSW), section 51.

The Minister can declare a monopoly supplier at any time. This declaration does not have to link to the grant or variation of a licence or a change in licence conditions. If the Minister declares a monopoly supplier, the Minister may then refer the monopoly services to IPART for price regulation.²⁰

A monopoly declaration may only be made in relation to a service, if the Minister is satisfied that it is a service:

1. for which there are no other suppliers to provide competition in the part of the market concerned, and
2. for which there is no contestable market by potential suppliers in the short term in that part of the market, and
3. in the case of a water supply service for recycled water, that connection of land to that service is required by or under some other Act.²¹

We have considered the market for each of the services within the North Cooranbong development (the specified area) for all classes of customer. We consider that these are not monopoly services.

We note that, in its application, Flow Systems has indicated that it would match the price of its drinking water supply and sewerage services to Hunter Water Corporation's prices. For this reason, should the Minister declare any monopoly services, we do not recommend that the Minister refer these monopoly services to IPART for price regulation, at this time.

5 Recommendations

We recommend that the Minister:

- ▼ **varies Flow Systems' retail supplier's licence (licence number 13_001R) and conditions imposed on that licence as set out in the attached amended licence, and**
- ▼ **does not declare Flow Systems to be a monopoly supplier in relation to the supply of drinking water, recycled water and sewerage services to the North Cooranbong development.**

Should the Minister declare any monopoly services at the North Cooranbong development, we do not recommend the Minister refer any of these services to IPART for a determination of pricing or a periodic review of pricing policies, at this time.

²⁰ Determination of the pricing and/or periodic review of the pricing policies. *Water Industry Competition Act 2006* (NSW), section 52(1).

²¹ *Water Industry Competition Act 2006* (NSW), section 51(2).

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the application to vary the licence. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.²²

On making a decision whether or not to vary the licence, the Minister is required to provide us with notice of the decision and of the reasons for the decision.²³ 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.²⁴

²² *Water Industry Competition Act 2006*, section 10(2).

²³ *Water Industry Competition Act 2006*, section 10(5).

²⁴ *Water Industry Competition Act 2006*, section 10(6).