

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

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

Report to the Minister
June 2014

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1 Summary

Flow Systems Pty Ltd (Flow Systems)¹ was granted a company-wide retail supplier's Licence, no 13_001R, under the *Water Industry Competition Act 2006* (NSW) (the Act) on 17 April 2013. The licence authorises Flow Systems to provide retail services for drinking water, non-potable water, and sewerage services to its various schemes (currently Pitt Town and Central Park). The company-wide licence is linked to Flow Systems' relevant network operator's licences.²

The Independent Pricing and Regulatory Tribunal of NSW (IPART) received a retail supplier's licence variation application from Flow Systems on 17 April 2014. The variation request sought approval to undertake all licensed retail activities for the Discovery Point development.

Under the current legislation, the Minister may vary existing licence conditions at his/her own discretion or on the application of a licensee.³ When determining whether or not to grant a licence variation, the Minister must consider the licensing criteria set out in section 10(4)(a) to (e) of the Act and have regard to the licensing principles as set out in section 7(1) of the Act. The Minister may also consider any other matter that it considers relevant.⁴

We have undertaken a detailed assessment of the variation request and, due to the nature of the variation, consulted with NSW Health who raised no concerns about the application.

Following our review, we are satisfied that Flow Systems has satisfactorily met the licensing criteria under section 10(4)(a) to (e) of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7(1) of the Act.

We recommend that the Minister varies Flow Systems' existing retail supplier's licence. We consider that the standard ministerial imposed licence conditions should apply. We have amended Schedule C of the licence to include the Discovery Point development (refer Appendix A).

¹ Previously Water Factory Company Pty Ltd.

² These licences are held by Flow Systems' subsidiaries. Licensees currently include Pitt Town Water for the Pitt Town development in the Hunter region (10_014), and Central Park Water for the Central Park development in Sydney (12_022).

³ Section 15 of the Act and Clause 14 of the *Water Industry Competition (General) Regulation 2008*.

⁴ Clause 14(5) of the *Water Industry Competition (General) Regulation 2008* and section 7(2) of the Act.

Finally, we note that Discovery Point Water Pty Ltd (DPW),⁵ the corresponding network operator's licence holder, has applied to vary to its network operator's licence to undertake network activities relating to drinking water at the development. We have provided a separate report to cover this variation request.

2 Background

On 17 April 2014, we received a request from Flow Systems to vary its existing retail supplier's licence (13_001R) to include Discovery Point for the provision of drinking water, recycled water, and sewerage services. This report summarises our analysis, responses from key stakeholders and our recommendation to grant Flow Systems' licence variation.

2.1 Applicant history

The applicant, Flow Systems, is a privately owned company, primarily held by Brookfield Infrastructure Partners. Flow Systems currently owns several subsidiary corporations, through which it constructs, operates, and maintains water industry networks under existing network operator's licences granted under the Act. Through its subsidiaries, Flow Systems currently holds 3 network operator's licences, as outlined in Table 2.1.

Table 2.1 Flow Systems' licensed schemes, under its subsidiaries

Subsidiary	Scheme	Network operator's licence	Licensed for
Pitt Town Water	Pitt Town development, Pitt Town	10_014	Non-potable water Sewerage
Central Park Water	Central Park development, Sydney	12_022	Drinking water Non-potable water Sewerage
Discovery Point Water	Discovery Point development, Wollie Creek	13_025	Non-potable water Sewerage ^a

^a DPW has applied for a variation to its network operator's licence to include the provision of drinking water services as part of its licence. In parallel with this report, we have provided a report recommending that the Minister grant this variation.

⁵ DPW is a subsidiary company of Flow Systems.

On 17 April 2013, the Minister granted Flow Systems a company-wide retail supplier's licence for all of its schemes (13_001R).⁶ The licence currently authorises Flow Systems to provide:

- ▼ drinking water
- ▼ non-potable water⁷
- ▼ sewerage services.

Through its existing schemes, Flow Systems currently has approximately 1,000 active customers at its Pitt Town and Central Park developments.

Flow Systems seeks to vary its existing retail supplier's licence to include the Discovery Point development area at Wolli Creek.⁸ The licence variation proposes to include activities related to drinking water, non-potable water, and sewerage services. Flow Systems will service both residential and small commercial customers, and the Owner's Cooperative(s) managing the buildings at the development. The scheme will supply water and services to approximately 1,500 residential apartments and 3,000m² of retail floor space across 14 buildings.

2.2 Legislative requirements for considering variations

Under the Act, the Minister may vary existing licence conditions at his/her motion or following an application by the licensee.⁹ Under the *Water Industry Competition (General) Regulation 2008* (the Regulation), an application to vary licence conditions must be in such form as the Minister may approve, accompanied by such fee as the Minister may determine¹⁰ and be lodged at our office.¹¹

Unlike new applications, there are no explicit requirements under the Act or Regulation that require us to invite submissions from the public for a variation.¹² We have considered the nature of the original licence granted, and the scope and associated risks of the proposed variation to determine the level of stakeholder consultation required. Based on our assessment, we consulted NSW Health on this variation request. Further, we received confirmation from Sydney Water Corporation (Sydney Water) that it was in the process of developing an agreement with Flow Systems to outline interconnection responsibilities related to drinking water and sewerage.

⁶ Flow Systems' company-wide retail supplier's licence supersedes the Central Park Water and Pitt Town Water retail licences.

⁷ Uses of non-potable water include replacing potable water for toilet flushing, clothes washing, irrigation, cooling tower make-up, and general wash-down of external surfaces.

⁸ The development area is specified in DPW's network operator's licence 13_025.

⁹ Section 15 of the Act.

¹⁰ The Minister has not yet approved or determined a form or a fee for licence variations.

¹¹ Clause 14 of the Regulation.

¹² Section 9 of the Act.

The Regulation also outlines information required and matters to be considered when assessing a variation request. Such an application must be accompanied by information as per clause 6(1), (2) and (4) (network operator's licence) or clause 10 (retail supplier's licence) of the Regulation, *"to the extent only to which they are relevant to the application, in the same way as they apply to an application for that kind of licence"*.¹³ Clause 6(1) and (2) and 10(1) and (2) of the Regulation require for the applicant to address each of the matters referred to in section 10(4)(a) to (e) of the Act, relevant to the application.

Section 10(4)(a) to (e) of the Act sets out matters that are relevant to the assessment of a licence variation. In considering whether or not to vary the licence, and what conditions (if any) to impose, the Minister must also have regard for the licensing principles as set out section 7(1) of the Act¹⁴ and may have regard to any other matters it considers relevant.¹⁵ These matters have been addressed in our assessment of DPW's variation request and are provided in section 3 below.

3 Assessment of application for variation

This section of the report contains our assessment of Flow Systems' variation request and our recommendations. To assess the adequacy of Flow Systems' capability as a retail supplier, we conducted analysis of the information that Flow Systems provided in its licence variation, stakeholder submissions, and additional information submitted by the applicant through subsequent requests.

The Minister may not grant a variation to the licence unless satisfied that the applicant meets the licensing criteria detailed in section 10(4)(a) to (e) of the Act.

3.1 Licensing criteria

The sections below outline our assessment of the application against the licensing criteria of the Act.

¹³ Clauses 14(2) and 14(3) of the Regulation.

¹⁴ Clause 14(4) of the Regulation.

¹⁵ Clause 14(5) of the Regulation and section 7(2) of the Act.

3.1.1 Technical capacity

We are satisfied that Flow Systems has adequate technical capacity to supply water (drinking water and non-potable water) and provide sewerage services to its intended customers.

Our analysis included review of:

- ▼ Flow Systems' technical performance in preparing and implementing required systems and procedures at 2 previous schemes, Pitt Town and Central Park.¹⁶ The applicant proposes to use the same systems, procedures and resources to supply its intended customers.
- ▼ Retail Supply Management Plans developed for:
 - Central Park - addresses drinking water and non-potable water supply, and the provision of sewerage services.
 - Pitt Town - addresses the supply of non-potable water and the provision of sewerage services.
 - Discovery Point (draft) - addresses the supply of drinking water and non-potable water supply, and the provision of sewerage services.
- ▼ Code of Practice for Customer Complaints developed consistent with the Australian Standards for complaints handling AS ISO 10002-2006.¹⁷
- ▼ Code of Practice for Missed Payments and Debt Recovery developed for Flow Systems' schemes.¹⁸ The document outlines how Flow Systems will manage overdue or unpaid bills, and other potential disputes.
- ▼ Flow Systems' 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 received no submission regarding Flow Systems' technical capacity. We conclude that Flow Systems has the required technical capacity to be granted a variation to its retail supplier's licence for this scheme.

We recommend that the common ministerial imposed licence conditions should be maintained in relation to technical requirements.

¹⁶ This includes online customer billing systems showing billing charges, current and historical usage; and meter readings sent directly to Flow Systems' operating and billing system via telemetry systems.

¹⁷ Relevant to all schemes licensed under Flow Systems' retail supplier's licence (13_001R).

¹⁸ Relevant to all schemes licensed under Flow Systems' retail supplier's licence (13_001R).

3.1.2 Financial capacity

We are satisfied that Flow Systems has adequate financial capacity to supply the proposed retail services.

Our financial assessment for Flow Systems' variation application takes the following matters into consideration:

- ▼ Activities associated with the variation present low financial risk in terms of cost, liability, and revenue. Flow Systems will pass through drinking water purchase costs to its customers.
- ▼ Flow Systems' existing retail supplier's licence requires the applicant to maintain financial capacity to carry out activities authorised in its licence.¹⁹ Should Flow Systems cease to maintain adequate financial capacity to provide retail services, the applicant would be in breach of its licence.
- ▼ A full financial assessment of Flow Systems was conducted in July 2013 when we recommended that a licence be granted to Wyee Water (a subsidiary to the applicant). This assessment indicated that Flow Systems was able to demonstrate ongoing financial capacity to maintain its intended business operations.

We emphasise that our financial assessment represents the applicant's financial capacity as at May 2014. Our recommendation to grant Flow Systems a licence variation should not be viewed as endorsement of the future viability of the corporation. The initial assessment undertaken was based on a combination of information sources, none of which are individually determinative. The assessment was conducted for our own purpose, and the Minister's purposes in assessing the application. The conclusion is not to be relied upon for any other purpose by any other person.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to financial requirements.

¹⁹ Retail supplier's licence 13_001R, clause B1.1.

3.1.3 Organisational capacity

We are satisfied that Flow Systems has adequate organisational capacity (current and ongoing) to supply services to its intended customers, in a manner that would protect health and the environment.

Our analysis showed that Flow Systems has:

- ▼ previous experience (in Australia) in the water industry and has specific personnel nominated to the project as shown in the Curriculum Vitae of its key personnel provided to us in its application form
- ▼ appropriate organisational structure to deliver the proposed work based on its contractual arrangements and agreements
- ▼ appropriate risk management systems to address regulatory requirements.²⁰

Flow Systems currently undertakes similar retail services at its Pitt Town and Central Park schemes. The proposed variation will allow the applicant to provide these retail services to the Discovery Point development.

We received no submissions regarding Flow Systems' organisational capacity. We considered that DPW has demonstrated sufficient organisational capacity.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to organisational requirements.

3.1.4 Public health

We are satisfied that Flow Systems is capable of supplying retail services by means of water industry infrastructure, in a manner that protects public health.

Our analysis showed that Flow Systems has:

- ▼ demonstrated technical capacity to analyse and manage hazards from source to end use through its preliminary risk assessment provided and detailed risk assessments provided for Pitt Town and Central Park.

We previously consulted with NSW Health when Flow Systems applied for a company-wide retail supplier's licence. NSW Health supported the application for a licence provided Flow Systems developed a project specific Retail Supply Management Plan (RSMP) for each network, with NSW Health's input, prior to commencing retail services. Further, we consulted with NSW Health during this licence variation. NSW Health supports Flow Systems' application to vary its existing retail supplier's licence to include the Discovery Point development area

²⁰ Flow Systems has a Compliance and Risk Management Framework, ongoing legal advice from Spake Helmore, an asset management system, workplace health and safety tools, a customer relationship management (retail) platform, and quality assurance and environmental management policies aligned with ISO 9001.

provided a scheme specific RSMP is created with the consultation of NSW Health. We consider that this will be checked during Flow Systems' Retail Supplier Operational Audit, proposed to be undertaken in the coming months.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to public health. The licensee must comply with requirements of NSW Health that we have agreed to, and that we have notified the licensee about, in writing.

3.1.5 Environment

We are satisfied that the proposed activities of the Flow Systems will not present a significant risk of harm to the environmental as a retail supplier at the Discovery Point development.

The environmental impacts at this proposed scheme are primarily associated with the construction and operation of the water industry infrastructure. We consider the environmental impacts from retail activities to be minimal. We note that environmental impacts of the associated network were reviewed when we assessed the relevant network operator's licence application.²¹

We received no submissions regarding Flow Systems' potential environmental impacts. We considered that Flow Systems has demonstrated sufficient capacity to not cause harm to the environment.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to the environment.

3.1.6 Insurance

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

Our analysis showed that Flow Systems has demonstrated sufficient insurance coverage in the area of professional indemnity, public liability, workers' compensation and product liability as shown in its insurance certificates licence application.

Additionally, as part of a New Infrastructure Audit for the corresponding network operator's licence, our auditor reviews the appropriateness of existing insurance arrangements. We consider this is appropriate to review the sufficiency of insurances held by Flow Systems, considering that similar risks may be present for both licences.

²¹ DPW's network operator's licence 13_025.

We received no submissions regarding Flow Systems' insurance arrangements. We considered that Flow Systems has demonstrated sufficient insurance arrangements.

We recommend that the common ministerially imposed licence conditions should be maintained, which requires the licensee to obtain and maintain appropriate insurance, as determined by an independent insurance expert.

3.1.7 Sufficient quantities of water not from public water utility (*Retail Supplier of water only*)

We are satisfied that Flow Systems will obtain sufficient quantities of water not from public water utility.

We consider that by sourcing non-potable water from DPW, Flow Systems will be able to obtain sufficient quantities of water from alternate sources. This will promote source substitution for drinking water and reduce reliance on reticulated water supplies that would otherwise have been obtained from a public water utility.

We conclude that Flow Systems has demonstrated that it will access sufficient quantities of water from other than a public water utility.

We recommend that the common ministerially imposed licence conditions should be maintained.

3.2 Licensing principles

We are satisfied that granting a retail supplier's licence to Flow Systems 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 Flow Systems has the technical capacity and experience to undertake water and sewerage activities in a way that will manage health and environmental risks. Flow Systems will only source and supply drinking water from Sydney Water's potable water network through infrastructure operated and maintained by DPW. Further, should recycled water treatment fail, Flow Systems will divert drinking water into its recycled water networks for supply to its customers. Similarly, should sewerage treatment systems fail, Flow Systems will divert wastewater into Sydney Water's sewer mains, ensuring continuity of services to its customers.

- ▼ **Encouragement of competition** – historically, Sydney Water has provided monopoly supply of services in the Sydney area. A variation to Flow Systems' existing retail supplier's licence to include the Discovery Point development will encourage competition in the provision of drinking water and sewerage services.
- ▼ **Ensuring sustainability of water resources** – under this licence, Flow Systems provides non-potable water to its various developments from recycled water and sewage, which would have otherwise been treated and discharged to the environment. The recycled water replaces drinking water at these developments for toilet flushing, cold water clothes washing, irrigation, car washing, and general wash-down water.
- ▼ **Promotion of production and use of recycled water** – under this licence, Flow Systems' supply of non-potable water to its developments promotes the use of recycled water as a substitute for drinking water.
- ▼ **Promotion of policies set out in any prescribed water policy document** – under this licence, Flow Systems' supply of non-potable water to its developments is consistent with 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** – in its application, Flow Systems has identified that pricing for this scheme will be based on Sydney Water's customer pricing for drinking water and sewerage. It has also identified that the cost of recycled water to its customers will be less than the cost of drinking water.
- ▼ **Promotion of equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security** – Flow Systems will buy drinking water from Sydney Water at the regulated price, as determined by us. This price takes into account the cost of infrastructure that significantly contributes to water security.

We are satisfied that granting a variation to retail supplier's licence 13_001R is consistent with the licensing principles.

3.3 Additional matters considered

3.3.1 Disqualified corporation

Flow Systems is not a disqualified corporation. Its Director and CEO are not disqualified individuals.

We have considered the following information:

- ▼ Results of the ASIC and ITSA searches provided in the Dunn & Bradstreet report, obtained on 4 February 2014, confirming the above.
- ▼ The statutory declaration made by the Director and Chief Operating Officer, stating that Flow Systems, nor any director or person concerned in the management of Flow Systems, is or would be a disqualified corporation or disqualified individual under the Act.
- ▼ Results of our search of the Act's licence database, confirming the above.²²

3.3.2 Monopoly supplier

We considered that Flow Systems is not a monopoly supplier.

Under section 51 of the Act, the Minister may declare a licensed network operator or licensed retail supplier 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.

A declaration can only be made in relation to a service if it is a service:

- ▼ for which there are no other suppliers to provide competition in the part of the market concerned, and
- ▼ for which there is no contestable market by potential suppliers in the short term in that part of the market, and
- ▼ 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.²³

We do not consider the proposed supply of retail services for drinking water and recycled water, or sewerage services by Flow Systems to be monopoly supply as the licensed area is currently serviced by Sydney Water. Further, the scheme is connected to Sydney Water's network and could be supplied by this network in the future if the need arises. We consider that the customer will have the ability to influence selection of the preferred water service provider through negotiation with the owner's cooperative.

²² There are currently no disqualified corporations or individuals on the register pursuant to the section 16(e) and 16(f) of the Act.

²³ Section 51(2) of the Act.

3.3.3 Additional public interest considerations

We are satisfied that Flow Systems' proposed scheme has satisfactorily considered additional public interest

We have not identified or received any submissions identifying any public interest concerns.

4 Recommendations

We are satisfied that Flow Systems has satisfactorily met the relevant licensing criteria under section 10(4)(a) to (e) 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 variation to Flow Systems' existing retail supplier's licence, subject to the conditions as set out in amended licence number 13_001R.

We considered that Flow Systems is not 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.

The Minister is required to provide us with a notice of the decision and of the reasons for the decision on whether or not to grant the licence²⁴. We will then make the information in the notice available to the public on our website, in accordance with the requirements of the Act.²⁵

²⁴ Section 10(5) of the Act.

²⁵ Section 10(6) of the Act.

**A Amended Schedule C of retail supplier's licence
(13_001R)**

SCHEDULE C –RELEVANT NETWORK OPERATORS' LICENCES

Network Operators' Licences

Table C.1 Non-potable water supply

Network Operator's Licence	Water industry infrastructure	Authorised purposes	Area of operations
Central Park Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 2.2 of the Central Park Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 2.3 of the Central Park Network Operator's Licence.	The area of operations specified in Schedule A, Table 2.4 of the Central Park Network Operator's Licence.
Discovery Point Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 1.2 of the Discovery Point Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 2.3 of the Discovery Point Network Operator's Licence.	The area of operations specified in Schedule A, Table 2.4 of the Discovery Point Network Operator's Licence.
Pitt Town Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 1.2 of the Pitt Town Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 1.3 of the Pitt Town Network Operator's Licence.	The area of operations specified in Schedule A, Table 1.4 of the Pitt Town Network Operator's Licence.

Table C.2 Drinking water supply

Network Operator's Licence	Water industry infrastructure	Authorised purposes	Area of operations
Central Park Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 3.2 of the Central Park Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 3.3 of the Central Park Network Operator's Licence.	The area of operations specified in Schedule A, Table 3.4 of the Central Park Network Operator's Licence.
Discovery Point Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 3.2 of the Discovery Point Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 3.3 of the Discovery Point Network Operator's Licence.	The area of operations specified in Schedule A, Table 3.4 of the Discovery Point Network Operator's Licence.

Table C.3 Provision of sewerage services

Network Operator's Licence	Water industry infrastructure	Authorised purposes	Area of operations
Central Park Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 1.2 of the Central Park Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 1.3 of the Central Park Network Operator's Licence.	The area of operations specified in Schedule A, Table 1.4 of the Central Park Network Operator's Licence.
Discovery Point Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 1.2 of the Discovery Point Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 1.3 of the Discovery Point Network Operator's Licence.	The area of operations specified in Schedule A, Table 1.4 of the Discovery Point Network Operator's Licence.
Pitt Town Network Operator's Licence	The water industry infrastructure specified in Schedule A, Table 2.2 of the Pitt Town Network Operator's Licence.	The authorised purposes specified in Schedule A, Table 2.3 of the Pitt Town Network Operator's Licence.	The area of operations specified in Schedule A, Table 2.4 of the Pitt Town Network Operator's Licence.

Definitions

In this Schedule C:

Central Park Network Operator's Licence	means Network Operator's Licence No. 12_022 granted to Central Park Water Factory Pty Ltd (ACN 151 072 838) (as varied by the Minister from time to time); and
Discovery Point Network Operator's Licence	means Network Operator's Licence No. 13_025 granted to Discovery Point Water Pty Ltd (ACN 142 392 541) (as varied by the Minister from time to time); and
Pitt Town Network Operator's Licence	means Network Operator's Licence No. 10_014 granted to Pitt Town Water Factory Pty Ltd (ACN 141 705 660) – (as varied by the Minister from time to time).