Dear Geoff

Floodplain harvesting project – Probity advice

1. **Scope of review**

1.1 You have asked us to provide an opinion on probity aspects of certain elements of the Healthy Floodplains Project (Project) that were carried out by the Department of Primary Industries – Office of Water (as it then was) (DPI Water). The elements of the Project that we considered were:

   1.1.1 the registration of interest (ROI) process;
   1.1.2 the irrigator behaviour questionnaire (IBQ); and
   1.1.3 water infrastructure plan (WIP) processes.

1.2 These processes are described in the NSW Floodplain Harvesting Policy which was published in 2013. A further version of that policy was published in 2018.

2. **Opinion**

2.1 In summary, based on the information provided, it is our view that:

   2.1.1 the ROI, IBQ and WIP processes were lawful, documented and followed;
   2.1.2 the ROI criteria were consistently applied; and
   2.1.3 the ROI, IBQ and WIP processes afforded natural justice to people who had submitted an ROI.
2.2 DPI Water published the *NSW Floodplain Harvesting Policy* in 2013, and in 2018 a further version of that policy was published by the Department. These documents set out the criteria for determining which works are eligible for assessment for approvals and licences. We have sighted internal documents that indicate that DPI Water applied these criteria in assessing the ROIs that were submitted, and that no single person within DPI Water was responsible for determining eligibility. We have also seen correspondence between DPI Water and people who submitted ROIs that indicates that, where a person’s ROI was determined to be ineligible, DPI Water provided an opportunity to have that determination internally reviewed and, in appropriate circumstances, referred to an external review committee.

2.3 It is worth noting that once Part 2 of Chapter 3 of the *Water Management Act 2000* (NSW) commences to apply to floodplain harvesting access licences, it is our opinion that registrants under the ROI and IBQ process would not be prevented from making an application for a flood work or a floodplain harvesting access licence, and the Minister would be required to determine the application in accordance with that Act.

3. **Qualifications**

3.1 In providing this opinion, it is important to note that this is a retrospective review. That is, we provide an opinion on processes that have already been carried out. This opinion is based on the sample documents provided to us, which we understand are representative of the documentation of the relevant aspects of the Project. We assume that no controversial or unusual issues have been excluded from this sample.

3.2 We do not provide an opinion on the merits of matters in the documents, the use and storage of information collected in the IBQ, or modelling or policy decisions. We have assumed that all the necessary delegations were in place and that DPI Water staff complied with the Code of Ethics and Conduct in force during the relevant period.

Yours sincerely

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Partner