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(Via Engage Victoria website)

15 November 2024

Dear Commissioners

**MG ESTATES PTY LTD SUBMISSION: ESSENTIAL SERVICES COMMISSION (ESC)
REVIEW OF NEW CUSTOMER CONTRIBUTIONS (NCCs)**

The submission is being made by MG Estates Pty Ltd (MGE) in response to the Essential Services Commission's (ESC) Review of New Customer Contributions (NCCs).

MGE proposes to develop land located at 244 Edwards Road, Maiden Gully (land) by, amongst other things, a staged subdivision of the land into 1,380 lots (development). The development is authorised by a planning permit AM/798/2017/A (and plans, endorsed under that permit) issued by the Greater Bendigo City Council.

MGE lodged the following submissions to the ESC Review of the Coliban Water 2023-2028 Price Review:

- Coliban Water (CW) Price Review 2023-28: Submission of MG Estates Pty Ltd (MGE) 1 December 2022.
- ESC Coliban Water Pricing Draft Decision Submission 11 May 2023.
- Supplementary Submission – ESC Draft Decision on Coliban Water Pricing 18 May 2023.
- Supplementary Submission on Coliban Water's Negotiating Framework for New Customer Contributions 29 May 2023.

The following were the concerns raised in the above submissions, copies attached, about the proposed NCCs:

- Inclusion of a statement on how the cost of assets are apportioned to growth when there are multiple drivers. Also, how costs allocated to growth are further apportioned to new customers (as opposed to climate change, for example). (We note that the Board of Coliban Water has endorsed some cost allocation principles, so these should be included in the published framework)
- Inclusion of a statement on the treatment of sunk costs and any conditions precedent for their inclusion in any NCCs applied. This should include a statement on how

Coliban Water will ensure fair treatment between developers and between pricing periods.

- Inclusion of a statement on the calculation of net revenues and net costs included in NCC calculations, and how any postage stamp pricing of service and usage charges is accommodated.
- Inclusion of a statement on the treatment and explicit exposure of any geographic cross-subsidies and who pays (new customers only or the whole customer base).
- Inclusion of a statement on the treatment of the uncertainty inherent in these inputs and calculations how the uncertainty will be accommodated.

This current submission relies on and supports the issues raised in the previous documents. We note the following from the *Review of new customer contribution related capital expenditure for Coliban Water May 2023* by FTI Consulting:

“The methodology and approach provided by Coliban Water describes the approach to allocating capital expenditure to new customer contributions. However, it does not outline how Coliban Water has had regard to the commission’s pricing principle as outlined in its guidance.” Page 13 refers

“In the absence of evidence of how Coliban Water has had regard to the commission’s pricing principles, we have had to assess the capital expenditure based on a degree of confidence that it would be appropriate. As outlined in section 2.3, we have rated this confidence level as either high; medium or low.” Page 14 refers

“For upgrades to network assets and treatment plants (\$70.5 million), it is not clear why these projects/programs have been fully allocated to new customers. We would expect that in most instances these types of assets would be utilised by both new and existing customers, although that is not necessarily the case. Coliban Water has not provided a detailed rationale for why these assets should be fully allocated to the calculation of new customer contributions. We acknowledge that there is likely to be a large amount of this capital expenditure that is due to growth, therefore we have a medium level of confidence that this capital expenditure is appropriate to include in the calculation of new customer contributions.” Page 14 refers

“We acknowledge that growth is a key driver in the need to augment water supplies, and in this case, it may be possible that it is entirely attributable to new customers. However, we have not been provided with sufficient detail to be entirely confident that this is the case. Documentation that provides deep analysis on water supply and demand projections over the medium to long term, both with and without new customers, would be helpful to explain the allocation approach for this cost category. Given this lack of a fully documented methodology and approach, we have a medium level of confidence that this capital expenditure is appropriate to include in the calculation of new customer contributions.” Page 15 refers

“In summary we have a high level of confidence that \$73.9 million of assets associated with growth should be included in the calculation of new customer contributions, and a medium level of confidence that all the remaining \$207.6 million of capital expenditure should be included.” Page 16 refers

Later in this document there is reference drawn to the level of detail provided by Barwon Water as an industry standard. It has been the basis of our previous submissions and this submission that the foundation of costings upon which the standard Coliban Water NCC rate was derived is not detailed, not adequate and not transparent. Concerningly Coliban Water have budgeted to raise \$151.8 million for sewer works and \$98.8 million for water supply works between 2023-2033 by way of Standard NCC’s that it is submitted lacks credibility and

transparency for implementation. Regardless of any ESC approval the opportunity remains for the market to challenge the veracity of this lack of information through legal means. Therefore, possibly generating precedent against the foundation for these costs.

It is noted that the ESC has proposed a change in terminology from New Customer Contributions to Developer Contributions. It is submitted that this modification would reflect industry expectations that these contributions should be calculated on a similar basis to a Development or Infrastructure Contribution Plan. That is, they should be transparent and include appropriate consultation. Additionally, all projects within the estimated budget are listed, justified, estimated, and a percentage contribution weighted according to its demands resulting from the growth of the catchment. This cost is distributed across the catchment or developable area (just like an NCC).

Additionally, projects that form part of a negotiated contribution package should relate specifically to the impact that the development will have on the sewer and water supply systems.

Coliban Water have an approved standard NCC. The standard NCC applies across the whole catchment and includes projects that may not relate to specific subdivisions within Bendigo. It also potentially leads to cross subsidisation by developments in Bendigo of developments in smaller townships.

Coliban Water also have an approved NCC Negotiating Framework. The authority considers that any negotiated NCC is in addition to the Standard NCC as follows:

“Should the particular Application require a Non-standard/Negotiated NCC Charge, in addition to the Standardised NCC Charge, this will arise from the relevant negotiation, subject to the Regulatory Instruments in place at the time.” (Paragraph 12 p6 refers)

The ESC principles establish that the use of negotiated NCC's should be undertaken where the standard charges would not be fair or reasonable and do not have a clear connection to the development being assessed.

It is also noted that Coliban Water equate negotiated NCCs to nonstandard uses and developments such as caravan parks, commercial developments or nursing homes rather than to residential subdivisions.

The Coliban Water Negotiated NCC Framework restates the ESC pricing principles in Section 9 of the framework. It is also publicly available. The framework however is not adopted by the authority as it focuses on applying standard NCC's. These Standard NCC's are also to be applied in addition to any negotiated outcome.

It is noted that the discussion on the use of average incremental cost model adopted by Coliban Water against the net incremental costs supported by the ESC. The issue is not so much the model chosen if the costs are fair and reasonable, and it is transparent as to which costs are attributable to growth and can also tied to a specific project. As the submission outlines above UDIA is still concerned that it is not clear and how costs were attributed.

In relation to the timing of servicing plans it is submitted that the detailed approach undertaken by Barwon Water is preferred to the adhoc approach from Coliban Water. Coliban Water have published for Bendigo sewer and water supply plans with no timeframes other than delivery in the current pricing period.

The Barwon Water approach NCC document includes sequencing plans. These identify the delivery sequence for water and sewer between 2023 and 2034. The plans also identify

developer funded works and clearly outlines growth assumptions. Additionally, it clearly outlines the process for gifting assets. The Barwon Water approach also provides detailed and transparent costings of projects and still allows for negotiated outcomes.

This level of information and transparency should be an integral part of any industry standard.

Our recommendations are that the NCC framework needs to include:

1. A statement that Negotiated NCCs are the default basis of calculating NCCs, and Standard NCCs will apply for administrative ease in some cases. For example, Coliban Water might decide that any subdivision of less than “X” lots will be required to pay a Standard NCC.
2. A statement that it is a land owner or developer’s right to seek a Negotiated NCC, not for it to be at the sole discretion of Coliban Water.
3. Removal of an error – the current framework states Negotiated NCCs apply in addition to Standard NCCs, whereas our understanding of the Commission’s material is that it is one or the other.
4. Dispute resolution - better practice might be to offer a disaffected land owner or developer an escalation process before referral to VCAT. This might be a) referral to more senior officers within the organisations of both parties and b) referral to a mutually agreed independent arbiter. A choice of one or both or neither of these processes could save both parties time and money.
5. Provide a link to a public copy of Coliban Water’s long-term (20+ years) strategic servicing plans that are consistent with the latest planning schemes and precinct plans, to assist with identification and timing of back-bone infrastructure and sequential versus leap-frog development.
6. A statement on guiding pricing principles that are to be used, those being soundly based on Water Law, Planning Law, VCAT precedents and the Water Industry Regulatory Order. This should include any principles for the consideration of infrastructure other than pipes, such as pumping stations, re-treatment facilities, rising mains, pressure reduction, network monitoring equipment etc. In particular:
 - a. What are “reticulation” assets for which a developer is responsible? Pipe size alone should not be the sole criterion as there are pipe depth and onsite versus offsite issues to consider as well as non-pipe infrastructure.
 - b. What are “headworks/tail works” assets and how are costs apportioned to existing customers and future customers? Together with treatment plants, consideration needs to be given to back-bone infrastructure such as balancing tanks, transfer water mains, main and trunk sewers, and rising mains
 - c. What are “shared” assets and how are costs apportioned to existing customers and future customers?
7. Inclusion of a statement on how reimbursements will be administered.
8. Inclusion of a statement on how the cost of assets are apportioned to growth when there are multiple drivers. Also how costs allocated to growth are further apportioned to new customers (as opposed to climate change, for example). (We note that the Board of Coliban Water has endorsed some cost allocation principles, so these should be included in the published framework)

9. Inclusion of a statement on the treatment of sunk costs and any conditions precedent for their inclusion in any NCCs applied. This should include a statement on how Coliban Water will ensure fair treatment between developers and between pricing periods.
10. Inclusion of a statement on the calculation of net revenues and net costs included in NCC calculations, and how any postage stamp pricing of service and usage charges is accommodated.
11. Inclusion of a statement on the treatment and explicit exposure of any geographic cross-subsidies and who pays (new customers only or the whole customer base).
12. Inclusion of a statement on the treatment of the uncertainty inherent in these inputs and calculations how the uncertainty will be accommodated.

The Commission's guidance material and explanatory notes on NCCs provide useful check-lists for the topics on which Coliban Water should publicly state its position within its Negotiating Framework for NCCs.

The proposed change in terminology from New Customer Contributions to Developer Contributions is also supported.

I hope the letter is clear and please do not hesitate to contact me on [REDACTED] to discuss.

Yours sincerely

For and on behalf of

Currie & Brown (Australia) Pty Ltd



Gerard Gilfedder
Associate
Manager Planning Services

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M

[REDACTED]
Encl: Previous Submissions



MG Estates PL

Coliban Water Pricing Submission

ESC Submission

1 December 2022

Coliban Water (CW) Price Review 2023-28: Submission of MG Estates Pty Ltd (MGE)

Introduction

1. This submission is being made by MGE in response to the request by the Essential Services Commission (**ESC**) for feedback from customers and stakeholders with respect to CW's Price Submission 2023-2028 (**PS2023**), presently open for consultation until 1 December 2022.
2. MGE proposes to develop land located at 244 Edwards Road, Maiden Gully (**land**) by, amongst other things, a staged subdivision of the land into 1,380 lots (**development**). The development is authorised by a planning permit¹ (and plans², endorsed under that permit) issued by the Greater Bendigo City Council.
3. Condition 24(a) of the permit, relevantly, requires MGE to:
 - *"...reach agreement with Coliban Water for the provision of reticulated potable, recycled water services and sewerage services to each of the lots within the subdivision and comply with any requirements arising from any effect of the proposed development on Coliban Water assets. Services are to be provided in accordance with Coliban Water's specifications".*
4. MGE has reached agreement with CW with respect to the satisfaction of condition 24(a) (the details of which are set out in the paragraphs which follow) to provide the required water and sewer infrastructure to service the development at MGE's cost (presently estimated at \$19,730,000.00³).
5. If the rate per lot of New Customer Contributions (**NCCs**), presently proposed in PS2023, is approved by the ESC, MGE (and, ultimately, the future home owners) will pay to CW between approximately \$7,243,600.00 and \$9,313,600.00 over the 10 years⁴ estimated to complete the development. Such payment will be in addition to the \$19,730,000.00 in assets to be vested in CW and the approximately \$1,932,000.00⁵ in annual revenue which would accrue to CW once the development has been completed.

¹ Permit No AM/798/2017/A, issued on 28 March 2018 and amended on 18 July 2018 (**permit**). The permit allows up to 1,400 lots in the subdivision.

² The plans were endorsed on 1 December 2021 (**endorsed plans**).

³ Approximately \$6,620,000.00 of that total is referable to pumping stations and sewer and water mains pipelines located (mostly) external to the land. **All costings are exclusive of GST.

⁴ The rates in years 6 to 10 are assumed to remain at the year 5 rates proposed in PS2023. The estimate of \$7,243,600.00 is based upon the assumption that the maximum discount of \$1,500.00/lot is allowed by CW for the provision of the pumping stations on the land. See at 14.5.7/Table 64 of PS2023.

⁵ 1,380 residential lots x \$1,400/lot per annum (averaged over 5 years – see Table 65 – "Household: average use")

6. Notwithstanding CW's claim that it had "...develop[ed] a consistent methodology for calculating NCCs,..."⁶, no such methodology, let alone the calculations, upon which the NCCs proposed are based is contained in PS2023 or in the Coliban Water 2023 Price Submission Price Review Model (**price model**)⁷.
7. As at the date of filing this submission, CW had provided a response to MGE's request for further information but that response contained no new information and, in particular, did not include the critical information requested (and identified in the submissions which follow).⁸ CW's response will be addressed in further below.
8. As identified in the submissions which follow, PS2023 (insofar, at least, as it relates to the proposed maximum price for the sewer and water NCCs) neither complies with the:
 - *Water Industry Regulatory Order 2014 (WIRO)*; nor
 - *2023 water price review – Guidance Paper (guidance paper)*.
9. For the reasons outlined below, MGE submits that the ESC ought:
 - not approve PS2023, at least, insofar as it relates to NCCs;
 - require CW to provide to the ESC, and publicly disclose, details of the methodology adopted and the calculations made in arriving at the maximum price sought by it for those NCCs; and
 - following such public disclosure, provide MGE (and other affected persons) an opportunity to make further submissions with respect to the maximum price then proposed by CW.
10. Such an approach would be entirely consistent with the guidance contained the ESC's *Water Pricing Framework and Approach (PREMO paper)*⁹. That guidance has been adopted by Barwon Water (discussed further below)¹⁰.

Statutory scheme of the price review

11. Under the over-arching framework of the *Essential Services Commission Act 2001 (ESC Act)* and the *Water Industry Act 1994 (WI Act)*, the ESC's review of PS2023 is governed by the terms of the WIRO.
12. The ESC's review of PS2023 must, primarily, seek to "...promote the long term interests of Victorian consumers..." having regard to "...the price, quality and reliability of essential services"¹¹.

⁶ At 5.8.2 in PS2023.

⁷ Or, for that matter, in any other publicly available document.

⁸ See letter from Currie & Brown to CW (10 November 2022) and CW's letter and attachment (NCCs - Proposal summary) in response (29 November 2022 – **CW's response**).

⁹ *Water Pricing Framework and Approach – Implementing PREMO from 2018*

¹⁰ *Application of ESC's New Customer Contributions framework – 2018 – 2023 Pricing Period (July 2018)- Barwon NCC framework*.

¹¹ Section 8 of the ESC Act. See also s 33.

13. Section 4C(a) of the WI Act provides that an objective of the ESC, in addition to that under the ESC Act, is to:
- *“wherever possible, to ensure that the costs of regulation do not exceed the benefits”.*
14. Of particular relevance is the requirement in clause 11(d) of the WIRO that the ESC must have regard to the principle that any price that might be approved should, amongst other things:
- *“enable customers or potential customers of the regulated entity to easily understand the prices charged by the regulated entity for prescribed services or the manner in which such prices are calculated, determined or otherwise regulated” [underlining added].*
15. MGE acknowledges that the guidance paper notes that:
- *“Much of the supporting information detailed in this guidance can be provided by completing the financial model template (issued by us) that forms part of a water business’s price submission. We encourage businesses to keep their price submissions as clear and succinct as possible. To this end, a business need not include all the supporting information for the claims made in its submission. However, it must be able to provide any supporting information requested by us”.*
16. Nevertheless, if neither PS2023 nor the price model contain readily ascertainable information which would enable customers to either *“...easily understand the prices charged by the regulated entity for prescribed services or the manner in which such prices are calculated”*, the completion of the price model template alone ought not be accepted, without additional supporting information being publicly disclosed prior to any price determination being made.
17. Of particular relevance are the requirements in the guidance paper that:
- *“The forecast capital expenditure to be included for the purposes of determining the required revenue is capital expenditure that would be incurred by a prudent service provider acting efficiently to achieve the lowest cost of delivering service outcomes, taking into account a long-term planning horizon (prudent and efficient forecast capital expenditure)” [at 3.9.1]; and*
 - with respect to “Other capital expenditure”¹², a water business must also, amongst other things:
 - *“explain the methodology used to estimate forecast capital expenditure”*; and

¹² NCCs are listed in the price model under “Capital type” as “ Other Capital expenditure” – see the *Capex_FO input* sheet at rows 98 – 99 and the *Capex_FO_AC* sheet rows 79 – 80.

- “*identify and explain the key assumptions which underpin the capital expenditure forecasts by each major service category, and how any risks or uncertainties have been addressed*”; and
- “*justify the total forecast capital expenditure against the criteria in Section 3.9.1,...*” [at 3.9.2 – underlining added].

18. Importantly, the guidance paper provides that a price submission must, amongst other things, provide:

- “*...the model(s) used to calculate the maximum NCC charges, including accompanying notes describing the data sources and input assumptions used, in order for us to assess that proposed NCC charges have been established in accordance with the NCC pricing principles (Box 3.3)...*”;
- “*...evidence of consultation with developers and how their views have informed the proposed charges, particularly if proposed Standard NCCs are significantly higher than the existing NCCs*”; and
- “*...details about how the forecast developer contributions in the financial model template have been derived and explain how past outcomes for contributions have been considered, and assumptions about future connections growth*” [underlining added].¹³

19. The statutory scheme which regulates price review by the ESC has not been the subject of guidance contained in any judgment delivered by the Supreme Court of Victoria. Further, given the limited grounds for review of a price determination¹⁴, it is not surprising that there has not been a decision of the Victorian Civil and Administrative Tribunal with respect to any application for review brought pursuant to s 55(1)(c) of the ESC Act.

20. Nevertheless, MGE submits that the fundamental tenet of the statutory scheme of price review by the ESC is that a price determination must result in an equitable outcome vis-à-vis the interests of consumers of prescribed services of a regulated entity and the entity itself. The content of the WIRO and the guidance paper clearly require the establishment of a nexus between the determined, or calculated, prices and the service delivered to consumers. That much is clear from the principles and criteria identified in paragraphs 11 to 19 above.

¹³ Paradoxically, the guidance paper also notes that “If water businesses develop and submit bespoke NCC models instead of using the ESC’s illustrative working model, we expect comprehensive documentation to facilitate the assessment of the models used” [at 3.21.2].

¹⁴ Section 55(2)(c) of the ESC Act.

Development contributions under the *Planning and Environment Act 1987 (PE Act)*

21. Given the absence of judicial guidance with respect to the statutory scheme of price review by the ESC, MGE submits that the approach adopted with respect to development contributions plans (**DCPs**) in relation to developments carried out under the authority of the PE Act are both apposite and applicable to a price determination by the ESC, insofar as such determination approves prices for NCCs.
22. In *Casey City Council v Carson Simpson Pty Ltd* [2007] VSC 25, the court quoted with approval¹⁵, the following passages (amongst others) from the reasons for decision of the tribunal in the *Hunt Club Estate case* [2006] VCAT 2372:
- “Although not stated explicitly in Part 3B of the [PE] Act, it was assumed that approved development contributions plans would be based on the principles of need, equity, accountability and nexus enunciated in the Eddie Barron case” (at [37] in *Hunt Club Estate*); and
 - “Codifying the application of development contributions was intended to satisfy concerns held by the development industry about the unconstrained requisition of development contributions by councils. It was also intended to provide certainty to councils that, once they had justified the basis of a development contributions plan by an amendment to their planning scheme, the plan could not subsequently be challenged at appeal (at [38] – underlining added).
23. The court in *Carson Simpson* also reproduced parts of the Minister’s second reading speech, when introducing amendments to the PE Act to improve the statutory scheme for DCPs, including that:
- “The revamped system will ensure all development contribution plans satisfy the tests of need, nexus, equity and accountability.
 “Need” is the test by which the need for the proposed infrastructure must be demonstrated;
 “Nexus” is the test of the connection between the new development and the infrastructure need generated;
 “Equity” is the test of the fair and reasonable apportionment of the cost of providing the infrastructure; and
 “Accountability” is the test of ensuring that funds collected must be spent on the infrastructure for which they were levied, and be accounted for in an open and transparent manner.
 Development contribution plans are subject to the publicly contestable planning scheme amendment process. This ensures public exhibition of the plan,

¹⁵ At [21] in *Carson Simpson*.

consideration of submissions by an independent planning panel, and the need for final approval by the Minister for Planning”.

24. MGE submits that adopting the criteria of:

- Need – the infrastructure is required;
- Nexus – the connection between the new development and the required infrastructure;
- Equity – fair and reasonable cost apportionment; and
- Accountability – funds collected expended on the infrastructure for which they were levied (**assessment criteria**);

in reviewing a price submission, such as PS2023, will ensure that the statutory scheme under the ESC Act and the WIRO (as clarified in the guidance paper) is faithfully observed and implemented, in the long term interests of Victorian consumers and the viability of regulated entities.

25. Application of the assessment criteria is entirely consistent with the ESC’s principles-based NCC charging framework which aims to:

- *“send signals to developers about the costs of developing in different locations;*
- *share the costs and benefits of growth between new and existing customers; and*
- *administer NCCs in a transparent way”*.¹⁶

26. Such an approach will verify (or not) the rationale, assumptions and costings contained in PS2023 with respect to the proposed rate of the NCCs; *“a prudent service provider acting efficiently to achieve the lowest cost of delivering service outcomes”* ought welcome such a rigorous assessment of its price submission.

27. While a regulated entity’s price submission is subject to a “publicly contestable” price review process conducted by the ESC, there is not the same opportunity for customers and other stakeholders to participate in hearings (such as those conducted by a planning panel appointed by the Minister for Planning), including to call expert evidence and to cross-examine witnesses.

28. The content of a DCP, once gazetted into a planning scheme, cannot be challenged in the tribunal and, only in limited circumstances, in the Supreme Court; on one view an appropriate regime given the extensive opportunities for participation in the planning scheme amendment process by affected persons. By contrast, a price determination by the ESC is much more constrained in the opportunities for participation by affected persons and yet only open to very limited review in the tribunal.

¹⁶ Section 3.9.1 – PREMO paper

29. Accordingly, MGE submits that it is critical that the ESC, consistently with the statutory scheme, require CW to properly justify its case in support of the proposed prices for the NCCs (discussed below). The ESC's published guidance supports such an approach.

PS2023 – NCCs

30. There is little information contained in PS2023 and the price model which could properly be assessed against the assessment criteria and, more generally, against the statutory scheme and the guidance paper.

31. That is so because, apart from the allocation of amounts to be collected via NCCs (set out in the tables below), there is no information which could assist the ESC to be satisfied that the rates proposed for the NCCs reflect, in particular, the “equity” and “accountability” criteria.

32. While CW cites the “recent growth boom”¹⁷ as the primary driver for the substantial increase sought in the rate of the NCCs, there is little (if not, no) qualitative or quantitative justification provided by CW. Notwithstanding CW's claim, MGE submits that PS2023, the price model and other publicly available information do not evidence “...a principled, evidenced, transparent and consultative reform process”¹⁸.

33. The funds to be collected via the sewer and water NCCs is identified in the price model as follows:

	2023-24	2024-25	2025-26	2026-27	2027-28	Total ¹⁹ (\$m)
Water (\$m)	3.16	3.55	3.97	4.45	4.99	20.12
Sewer (\$m)	2.31	3.01	3.87	4.93	6.23	20.35

	2028-29	2029-30	2030-31	2031-32	2032-33	Total ²⁰ (\$m)
Water (\$m)	5.08	5.18	5.27	5.37	5.47	26.37
Sewer (\$m)	6.36	6.49	6.62	6.75	6.89	33.11

34. Notwithstanding CW's claim that its “...overarching objective was to consider approaches that not only manage the uncertainty surrounding future growth, but also to establish a pricing methodology that better meets the Commission's principles and is consistent with customer expectations”, PS2023 and the pricing model do not include any description of:

- the pricing methodology adopted;

¹⁷ At 14.4.1 of PS2023.

¹⁸ At 14.4.3.

¹⁹ Price model – Capex_FO input at AM98-AQ98/AM99-AQ99.

²⁰ Capex_FO input at AR98-AV98/AR99-AV99.

- the sewer and water infrastructure to be delivered by CW referable to the funds collected, including identification of the location of the development of land which is said to trigger the requirement for that infrastructure, the anticipated numbers of lots and the timing sequence for the roll out of those subdivisions;
 - any credit for works-in-kind to be provided by developers, save for the offer in PS2023 that up to \$1,500.00 per lot would be discounted from the sewer NCC “...where a developer needs to build their own private sewer pump station”²¹; and
 - the calculation used to arrive at the rates proposed for the NCCs.
35. The information referred to in the preceding paragraph is critical to an understanding by the ESC, let alone the lay consumer, of the provenance of the prices proposed to be charged for the NCCs or the manner in which such prices are to be calculated. The absence of this information is all the more curious given CW’s acknowledgement that the “...third driver is a perceived lack of transparency in the rationale and calculation for current NCCs. Developer feedback has consistently highlighted that the provision of more information would enhance understandability of the NCC approach”²².
36. In particular, in the context of express provision being made in the price model for \$10.92m in each of the 10 years to 2032-33 for “Gifted Assets”, the failure to identify and account for the value of such assets as they relate to, for example, mains pipelines which would service a wider catchment than the development in relation to which it was constructed is difficult to reconcile.²³
37. While, for example, MGE having agreed the scope and nature of the infrastructure to be constructed by it as part of the development; the absence of fundamental and critical information renders it impossible to analyse the proposed rates of the NCCs against the assessment criteria and, in particular, whether the “equity” and “accountability” criteria are satisfied.
38. The final apportionment of the costs of that infrastructure to be borne by MGE has not yet been agreed with CW based on the NCC pricing submission. It appears that CW expects MGE to bear the costs of the water mains and rising sewer mains (external to the development) and also pay the proposed NCCs. MGE submits that no meaningful, balanced negotiation of that apportionment may be conducted in the absence of such critical information.

²¹ Table on page 51 of PS2023. Note that detail of how that maximum discount was derived, and the bases upon which the “up to” \$1,500 per lot would be calculated, are not include in CW’s publicly available documents.

²² At 14.4.1/p 103.

²³ See below, in the discussion of the “The development”, the identification of the assets to be vested in CW as agreed (for the purposes of condition 24(a) of the planning permit).

CW's response

39. CW's response, essentially, constitutes a summary restatement of PS2023 and other previously published material but does not provide the information requested by MGE. For example, in response to the request for the identification of the catchments and projects which are included in the NCCs, a table of catchments and suburbs has been provided. This information does not add to an understanding of the calculation of the NCCs.
40. By contrast, Barwon NCC framework sets out readily understandable qualitative and quantitative data in the following table²⁴:

Table 2 – Growth assumptions

Growth Area	Predicted Average Lots Year (2018-23)	Predicted Average Lots Year (2023-28)
Armstrong Creek	1,000	1,056
Clifton Springs / Drysdale	128	150
Fyansford	82	100
Lara	130	200
Leopold	85	112
Ocean Grove	142	200
Point Lonsdale (CoGG & BoQ)	52	28
Portarlinton	30	30
St Leonards / Indented Heads	30	30
Balance of Greater Geelong	449	462
TOTAL: Greater Geelong	2128	2368
Torquay	261	220
Winchelsea	20	30
Balance of Surf Coast	25	21
TOTAL: Surf Coast	306	271
Bannockburn	78	80
Balance of Golden Plains	40	40
TOTAL: Golden Plains	118	120
Colac / Elliminyt	30	30
Apollo Bay	20	20
Balance Colac Otway	22	20
TOTAL: Colac Otway	72	70
VIF2016 Numbers	2624	2830

41. MGE does not doubt that CW engaged in detailed work in arriving at the rates for the NCCs. Accordingly, basic information such as that contained in the table above ought readily be able to be disclosed upon request, instead of the bare listing provided in its letter of 29 November 2022:

²⁴ In section 5(e)

What catchments and projects are included in the NCCs?

Catchments, systems and suburbs with growth related projects are as follows:

Catchment	System	Suburbs
Campaspe	Goornong	Goornong
Coliban Northern	Axedale	Axedale
	Bendigo	Bendigo Central
		Bendigo West
		Bendigo East
		Strathfieldsaye and Junortoun
		Maiden Gully and Marong
		Huntly
		Golden Square
		Kangaroo Flat
		Big Hill
		Eaglehawk
Coliban Southern	Castlemaine	Castlemaine
		Harcourt
		Newstead
		Campbell's Creek
	Kyneton	Kyneton
		Malmsbury
		Tylden
	Trentham	Trentham
Loddon	Wedderburn	Wedderburn
Murray	Cohuna	Cohuna

42. The information contained in CW's "New Customer Contributions – Proposal Summary" (**NCC summary**) indicates, in generalised terms, that the funding via the proposed sewer and water NCCs is to be expended, for example, for "...*asset upsizing right along the networks, as well as upgrades at storages and treatment facilities*" to cater for growth in the west of Bendigo (including Maiden Gully).
43. That document also identifies Echuca, Castlemaine, Kyneton and Trentham as growth areas which necessitate upgrades in CW's infrastructure to be funded via the proposed NCCs but PS2023, the price model and the NCC summary do not contain information which relate to satisfying the assessment criteria and, in particular, "nexus", "equity" and "accountability".
44. Without access to the detail of the inputs and calculations, neither the ESC nor customers will be able to test the proposed rates for the NCCs against the assessment criteria. It is also not possible to ascertain the level of cross-catchment subsidy built into the NCCs in the absence of information necessary to assess against the "nexus" criterion.²⁵

²⁵ See sections 3.2 and 5 – Barwon NCC framework

45. That the information is available, and in the possession of CW, is underlined by its recent inclusion in PS2023, in response to feedback, of the offer to cover, from NCC funds, 100% of the cost of a sewer pumping station “...required to serve two unrelated developments...” and to “...provide a discount up to \$1,500 per lot”²⁶ where the pumping station serves only one development.
46. In CW’s letter, a pumping station which serves only one development is referred to as a “Private” pumping station, in circumstances in which that pumping station, together with all related internal and external infrastructure, will vest in CW once commissioned.
47. In any event, CW’s decision to fully-fund from the NCC funds “shared” pumping stations and allow a discount for “private” pumping stations must have been based upon analysis of the relevant data originally used to arrive at the rates proposed for the NCCs.
48. While CW has indicated that it would allow a discount to account for pump stations, such as those to be installed by MGE; it has not indicated any inclination to allow a credit (or discount) for works external to the development which would be capable of servicing other future developments such as water mains and rising sewer mains.
49. By contrast, the Barwon NCC framework makes express provision for such credit²⁷ and has published a clear and transparent “negotiating framework”²⁸. Barwon Water accepts that it is required to negotiate NCCs (against the maximum price approved by the ESC) in accordance with the ESC’s pricing principles²⁹.
50. There is presently no indication by CW to credit (or treat as works-in-kind) any portion of the cost of infrastructure to be installed by MGE which would also serve other future development or to treat that infrastructure as shared assets.
51. The material upon which CW relies neither addresses nor makes any allowance for the upsizing of mains sewer and water pipelines to be funded and delivered by MGE (as agreed), external to the development and which would both facilitate and support other future growth along the route of that upsized infrastructure.

PREMO rating

52. MGE disputes the PREMO ratings adopted by CW in PS2023 with respect to the “Engagement” (Advanced) and “Management” (Standard) components.
53. While it would appear that CW had engaged extensively with retail customers and community interest groups, by its own admission, it has not done so with developers (including MGE) who are, relevantly, CW’s partners in key infrastructure provision via

²⁶ p 3 of CW’s letter

²⁷ Section 5(b) - Barwon NCC framework

²⁸ Section 6 - Barwon NCC framework

²⁹ Section 3.1 - Barwon NCC framework

gifted assets which, in turn, serve CW's retail customers into the future. Those gifted assets would also generate part of CW's ongoing income stream.

54. As set out in Table 26 and section 5.8.1³⁰, engagement with developers was substantively limited when compared to the other groups identified in that table. That limited and late engagement was exacerbated by the fundamental dearth of accessible and transparent information (detailed in this submission), without which any meaningful and productive engagement was rendered nugatory³¹.
55. While it appears that CW conducted best practice engagement with retail customers and community groups, it did not engage with the development sector, its key infrastructure partners, as envisaged by the ESC³².
56. While CW's amended position with respect to shared pumping stations and the offer to discount "up to" \$1,500.00 per lot of the sewer NCC for developer-installed pumping stations might, at first blush, appear to demonstrate productive engagement; the continuing lack of information which underpins those decisions, at best, continues the information vacuum vis-à-vis any understanding by developers of the rationale and assumptions upon which the proposed NCCs are based.
57. The concessions for shared and developer-installed pumping stations make clear that the cost of those assets had been included in funds to be collected via the sewer NCC. That then begs the question as to what portion of the NCCs also relate to upsized pipelines and other infrastructure to be delivered by, for example, MGE?
58. Given that the impost of the NCCs will, ultimately, be borne by future home owners; the lack of critical information identified in this submission also affects those future owners. Their interests are not, and will not be, served as required by the statutory scheme if avoidable cost impacts could have been, but are not, ameliorated in the process of the price determination.
59. MGE respectfully submits that the ESC ought not accept an "Advanced" rating for the "Engagement" component.
60. CW has adopted a "Standard" rating for the "Management" component which, on one view, indicates an acceptance by CW that it could have done better.
61. Critically, as identified in this submission, CW has not demonstrated prudence and efficiency in its expenditure forecasts.³³
62. In the absence of critical and transparent information, it is difficult to reconcile the rate of the proposed NCCs other than as, at least, partially an attempt to deal with

³⁰ p 46

³¹ See the ESC's five key principles, in particular, principle 2 (at p 16 of *Water Pricing Framework and Approach – PREMO paper*).

³² "Good engagement is therefore broad, deep, and starts early." – p 16, PREMO paper.

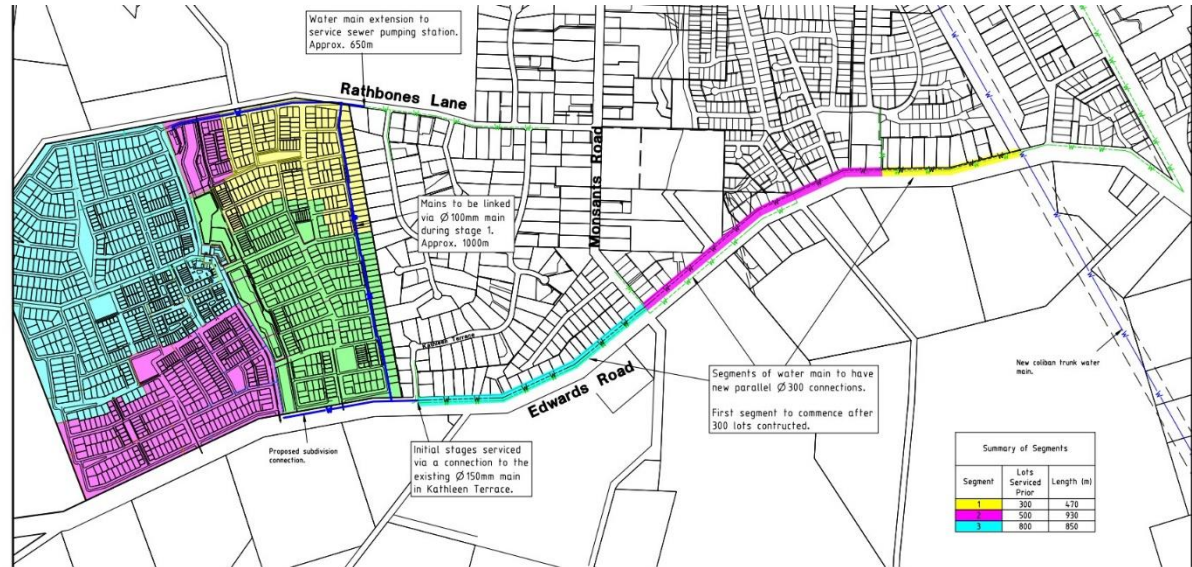
³³ See 3.5 in the PREMO paper.

underinvestment in infrastructure over some time. Such potential cost-shifting fails against all of the assessment criteria.

63. MGE respectfully submits that the ESC ought not accept a “Standard” rating for the “Management” component.

The development

64. The water infrastructure to be provided as part of the development, and to be vested in CW, is shown below:



65. While the lots shaded yellow (first 300 lots) may be serviced utilising the existing 150mm pipeline, subsequent stages cannot proceed until MGE constructs a new parallel 300mm pipeline along approximately 2.25km along Edwards Road (external to the land).

66. While critical for the development, that upsized infrastructure will make possible further growth along Edwards Road, including within the presently developed area immediately to the east of the land. As requested by CW, MGE will provide three new T-connections into existing urban areas along that upsized pipeline to facilitate future growth, including in-fill development.³⁴

67. MGE submits that, once constructed, that pipeline would constitute a shared asset which would ordinarily be funded by NCC moneys or be treated as works-in-kind against MGE’s liability to pay NCCs.

³⁴ The existing residential area to the east of the land is subject to a Design and Development Overlay (DDO10 in the *Greater Bendigo Planning Scheme*) under which further intensification of development, including via in-fill development, may occur once the upsized water main is installed.

68. CW's Maiden Gully Marong Water Augmentation Plan 2023-2033 (**2023 water plan**) identifies the MGE's upsized water pipeline and also expressly identifies greenfields sites (to the east of the land) along Edwards Road which would benefit from the new pipeline (see below). That pipeline will be installed by MGE at an approximate cost of \$2.25m.

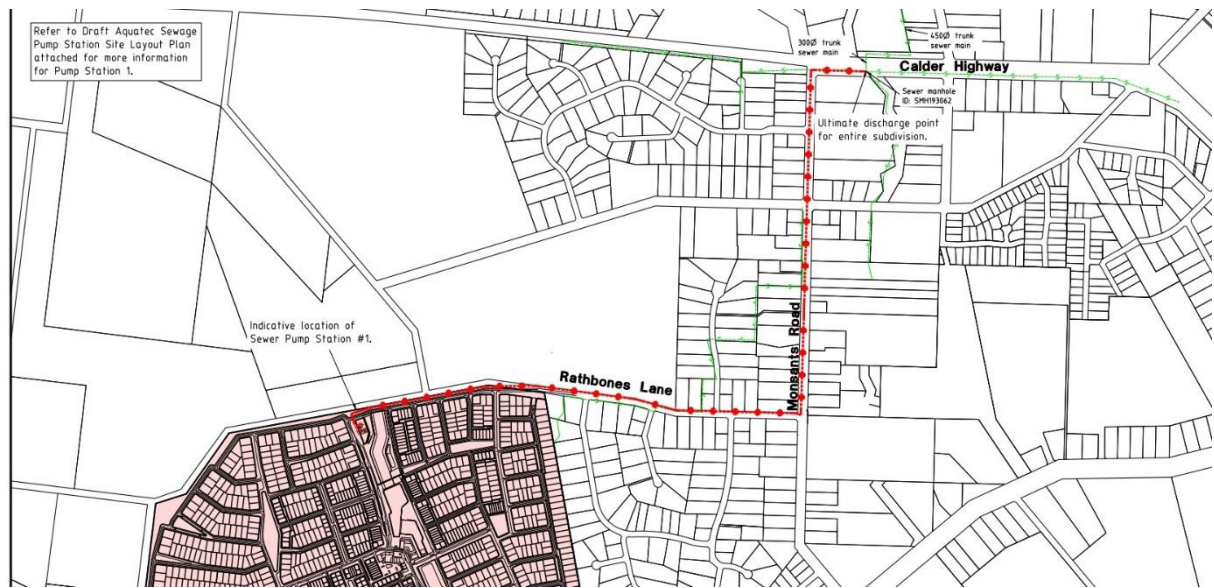


69. The sewer infrastructure to be provided as part of the development, and to be vested in CW, is shown below:



70. The works proposed include a main pumping station (with provision for a second) and 225mm trunk sewer main along Rathbones Lane and Monsants Road to a connection to existing trunk at the Calder Highway.

71. The full extent of the main sewer pipeline to be constructed by MGE is shown below:



72. The pumping stations will be installed at an approximate cost of \$2.79m, rising mains at \$0.655m and the associated trunk main (largely external to the land) is anticipated to cost \$0.94m. The new trunk main will traverse land to the Calder Highway connection point and would, in turn, facilitate the growth of the adjacent greenfield areas.

73. The main pumping station and the trunk sewer main are shown on CW's Maiden Gully/Marong Sewer Augmentations 2023-33 plan (**2023 sewer plan**) as "Developer Sewer Pump" and "Developer Rising Main". The upsized water main along Edwards Road is shown on the 2023 water plan as "Developer Water Mains".

74. Given that PS2023 is yet to be approved, it is curious that CW has published the 2023 water plan and the 2023 sewer plan on its web site. The ESC-approved 2018 versions of those plans show that upsized water main³⁵ and the trunk sewer main³⁶ as CW's works in the 2023-33 period.

Summary and Conclusion

75. For the reasons outlined above, MGE submits that PS2023, the price model and CW's response do not, at least insofar as the rates proposed for the NCCs, comply with the principles established by the ESC and, in particular, do not contain sufficient and transparent information to make provision for the:

- sending of signals to developers about the costs of developing in different locations;
- sharing of the costs and benefits of growth between new and existing customers; and

³⁵ Maiden Gully Future Developments Water System 2016 - 2018

³⁶ Maiden Gully Future Developments Sewer System 2016 - 2018

- administration of NCCs in a transparent way.
76. MGE's agreement with CW with respect to the scope and nature of the water and sewer infrastructure to be constructed will benefit the development but also improve and modernise CW's asset base (upon vesting), add to its ongoing revenue streams and render viable the efficient and economical future, greenfield and in-fill, development in the surrounding area.
77. Save for the proposed discount of up to \$1,500 per lot of the sewer NCC, there is no indication that CW would negotiate an appropriate rate of the sewer and water NCCs with respect to the development, having appropriate regard to the value which the infrastructure to be delivered by MGE would provide for consumers, in addition to those within the development, and CW.
78. Without access to the information outlined above, MGE (and other developers) would be at a distinct disadvantage in attempting to negotiate appropriate custom rates for the sewer and water NCCs, as envisaged in the pricing principles established by the ESC. Nothing contained in the material relied upon by CW comes close to the transparent, facilitative and principled approach which appears to have been adopted, for example, by Barwon Water; an approach expected by MGE, consistently with the ESC's pricing principles.
79. Indeed, absent that information, the ESC could not, with respect, have any confidence that any price approved for the NCCs, let alone the proposed maximum rates, would satisfy the principles required to be satisfied under the statutory scheme under the ESC Act, the WI Act, the WIRO and the guidance paper (together with the other guidance published by the ESC).
80. Likewise, MGE is in no better position to properly assess the appropriateness of making any NCC payment invoiced by CW, let alone to negotiate the appropriate apportionment of costs to be borne by it for the infrastructure to be vested in CW.
81. Accordingly, MGE respectfully submits that the ESC ought:
- not approve PS2023, at least, insofar as it relates to NCCs;
 - require CW to provide to the ESC, and publicly disclose, details of the inputs, assumptions and the methodology adopted and the calculations made in arriving at:
 - the maximum prices sought by it for the sewer and water NCCs respectively; and
 - the concession of up to \$1,500.00 per lot in the sewer NCC proposed to compensate for the installation of pumping stations such as those to be delivered by MGE;

- require CW to provide to the ESC and publish a document similar in content to the Barwon NCC framework, in which is set out the details of its approach to the negotiation of custom NCCs, including the parameters which CW propose to take into account in engaging in such negotiations, consistent with the pricing principles established by the ESC; and
- following such public disclosure of the information identified in the two previous dot-points, provide MGE (and other affected persons) an opportunity to make further submissions with respect to the NCCs proposed by CW before making any price determination in relation to PS2023.

Prepared for MG Estates Pty Ltd

By Currie & Brown

1 December 2022



MG Estates PL

ESC Coliban Water Pricing Draft Decision Submission

ESC Draft Coliban Water Decision Submission

11 May 2023

11 May 2023

Kate Symons
Chairperson,
Essential Services Commission
Level 8
570 Bourke Street
MELBOURNE VICTORIA 3000

(Via Engage Victoria website)

Dear Commissioners

DRAFT DECISION FOR COLIBAN WATER - MG ESTATES PTY LTD SUBMISSION

Thank you for the opportunity to comment on your draft decision for Coliban Water. Our comments are in relation to New Customer Contributions (NCCs) and should be read in the context of our detailed submission to you on 1 December 2022 and Coliban Water's response dated 12 January 2023, both of which are on your website.

To recap, MG Estates is developing 1,380 lots with maximum infrastructure efficiency on one site in Maiden Gully, Bendigo to be released over the next 10 years. MG Estates is asked to contribute over \$20m on infrastructure to be gifted to Coliban Water and in addition is requested by Coliban Water to pay over \$7m in NCC charges based on the proposed prices. In excess of \$7m of the MG Estates \$20m infrastructure expenditure will be creating new connection upgrades outside the site to allow for new customers to connect to the network. This clearly lacks parity with proposed NCC charging in other growth areas and is inconsistent with Essential Services Commission (ESC) guidelines particularly in relation to negotiation of NCCs and accepted practice for the provision of developer contributions including the ability to provide external infrastructure to connect new customers. Despite the scale of investment and the quantum of the increase in NCC prices, Coliban Water has not explained its input assumptions or its new calculation methodology.

In line with the ESC guidelines, MG Estates for some time has been seeking a negotiated NCC agreement with Coliban Water. To date Coliban Water have refused to participate in a negotiation process. It is our belief that a negotiated outcome for a site of this scale is more appropriate under the ESC guidelines than the application of a standard NCC.

In your final decision, we recommend that you:

- a. Reject Coliban Water's proposed methodology for calculating new customer contributions because it fails to meet the requirements of your Guidance Paper, as Coliban Water is unable to demonstrate it has "*had regard to*" incremental future revenues.
- b. Reconsider your assessment of "advanced" for the engagement component within the PREMO framework because of Coliban Water's poor engagement on NCC processes, regardless of the quality of the engagement on other aspects of its submission.

- c. If Coliban Water does respond to your draft decision with the required explanations and new estimates of NCCs, you should assess if Coliban Water has had sufficient time and invested sufficient genuine effort to explain its approach and expose its assumptions to those developers in a position to review, test and if necessary, challenge them.

We also suggest that you commit to a Commission led, industry-wide review of the NCC framework, commencing soon after your final decision, considering amongst other things:

- i. an assessment of the methodology for calculating new customer contributions which some water corporations have proposed, and the resultant loss of consistency across the water sector.
- ii. the use and application of standard NCCs at the expense of negotiated NCCs and the resultant loss of cost reflectivity.
- iii. principles used by water corporations for deciding what conditions are placed on subdivisions, and principles used by water corporations for deciding what infrastructure is the responsibility of a developer, within the context of impact on the calculation of NCCs. This should include how decisions are made on how and when developers are reimbursed for works built by developers on behalf of a water corporation.
- iv. expanding your performance monitoring and reporting to include and expose the choices made by water corporations in administering the discretionary elements within the NCC framework.
- v. where policy clarity and coherence might assist the Commission and water corporations.

Each of the points above are elaborated upon in the rest of this submission.

We believe there are broader failings than the proposed method for calculating NCCs. It has been hastily developed and creates inconsistency and uncertainty and appears to be a process to reallocate funds to the existing customers at the expense of new customers for whom affordability challenges are likely to be material. Additionally, there is no established transparent nexus to new development in designated growth locations.

[a. Proposed method for calculating NCCs](#)

1. Coliban Water has proposed a method different to the one offered by the Commission. The differences appear to be that there is no provision for net revenue to reduce NCCs, and there is no residual value assigned to infrastructure that might serve new customers beyond the planning period. It is unclear if it is the method or the input assumptions that have resulted in 76 per cent increase in the standard NCCs for water, and a 149 per cent increase for sewerage.
2. Your analysis in the draft decision focusses on numerical inconsistencies and 'potential' for the proposed NCC methodology to comply with the Water Act. We believe the Commission should be assessing compliance with the Guidance Paper.
3. Our understanding is:
 - 3.1. The Water Act gives water corporations the *power to charge* fair and reasonable NCCs.

- 3.2. The Water Industry Act via the Water Industry Regulatory Order (WIRO) gives the Commission *power to regulate the price* of NCCs charged by water corporations.
 - 3.3. The WIRO requires the Commission to issue a Guidance Paper prior to a price review, after consultation, and to make a price determination which is *consistent with the Guidance Paper*.
 - 3.4. The Guidance Paper requires water corporations to use three pricing principles, which *together* the Commission has decided demonstrate prices are fair and reasonable.
 - 3.5. The second listed principle is “have regard to the incremental future revenues that will be earned from customers at that connection.”
4. Coliban Water’s spreadsheet for applying the proposed methodology to calculate NCCs appears to have no provision for including incremental future revenues. This is evidence that Coliban Water is unable to demonstrate it has “*had regard to*” those revenues at that connection. While “have regard to” allows Coliban Water to decide not to include an allowance for future revenues, it should only do so after considering the circumstances of each case. Coliban Water, by omitting any provision for these revenues, is applying it in all circumstances, thereby not being fair and reasonable.
 5. It is missing the point if the new methodology interpretation is that regard does not have to be made for incremental future revenue because Coliban Water’s allowable revenue calculated in the building block formula does not change much because no gifted or funded assets are included in the regulatory asset base. The point is not about Coliban Water’s total revenue allowance; it is about how the revenue is collected from existing customers relative to new customers. On the one hand, new customers will increase the tax burden on Coliban Water as a result of paying tax on the value of gifted assets and the revenue from NCCs. On the other hand, new customers will have new infrastructure that will have much lower maintenance and operating costs than the typical aged infrastructure in the existing system. These are the issues that Coliban Water needs to have regard to.
 6. Your draft decision references a March 2022 negotiating framework proposed by Coliban Water. In section 7 page 6 of that framework, Coliban Water states that in most cases negotiated NCCs apply *in addition to* standard NCCs, whereas your guidance requires that a standard NCC applies *or* a negotiated NCC applies. Also, the Coliban Water framework is silent on the option of a developer instigating a negotiated NCC. The responses of the Coliban Water at the ESC forum on 1 May 2023 demonstrates that this issue requires a clear direction from the ESC in relation to its guidelines.
 7. We believe Coliban Water’s proposed methodology for calculating NCCs is inconsistent with the Guidance Paper and should be rejected by the Commission. While this may appear problematic for Coliban Water, we have proposed a possible interim solution (see paragraphs #23-25 later in this submission).

b.PREMO assessment (engagement component)

8. The Commission’s five key principles for good customer engagement have not been met by Coliban Water. Our assessment against each principle is:

- 8.1. The form of customer engagement was not tailored to the introduction of significant price increases for new customers.
 - 8.2. Developers were not given appropriate instruction and information, considering the introduction of a new methodology, reassignment of infrastructure previously the responsibility of Coliban Water to now be a developer responsibility, and significant increases in capital expenditure assigned to growth.
 - 8.3. Reasonable consideration was not given to developers who pay NCCs on behalf of new customers given the services provided and prices proposed to be charged by Coliban Water. The engagement has not been commensurate with the level of infrastructure partnership that exists. In fact, it has exposed a lack of trust and understanding in the development sector from Coliban Water which has driven the poor-quality engagement.
 - 8.4. Coliban Water did not start engagement with developers early in its planning for a new methodology, engagement has not been ongoing, and Coliban Water has sought to deflect negotiations until after the draft decision.
 - 8.5. Coliban Water, as mentioned in the draft decision, has not taken into account the views of developers.
9. Your reasoning in the draft decision in relation to engagement is somewhat difficult to understand.
 - 9.1. You have recognised that Coliban Water has engaged poorly with developers who pay NCCs on behalf of new customers.
 - 9.2. You have recognised that Coliban Water engaged extensively and well in other aspects and with other customer segments.
 - 9.3. How has one negated the other and led to an 'advanced' rating?
 10. If your decision was weighted based on customer numbers, it would mean that new customer issues could not be heard. Given the Commission's focus on minority groups of customers we can assume this was not your intention.
 11. If your decision was to be weighted based on price impacts, then the overall negotiation rating would be more closely aligned to what has happened with developers, leading to a 'basic' rating (the lowest rating possible).
 12. We contend that assessing the PREMO rating based on the significance of the issues or price changes is a better incentive for water corporations to engage on the important issues, and it better assists the Commission to effectively regulate while being light handed.
 13. We encourage the Commission to reconsider the "advanced" rating for the engagement component within the PREMO framework given to Coliban Water in the draft decision, and to clarify the basis for the assessment to provide the broader industry with clarity on your approach.

c. Insufficient time to amend and engage

14. In your draft decision you require Coliban Water to a) explain its new methodology, align its cost input assumptions with those in the price submission template and revise its

prices; or b) adopt the methodology referred to in the Guidance Paper and produce new prices, also with aligned input assumptions.

15. We cannot see how Coliban Water could pursue path a) and have this accepted by the ESC within the timeframe, given the extent of the uncertainty and range of issues that require clarification. For example, we are uncertain if it is the methodology or the inputs that are creating the significant uplift in NCCs. If it is increased growth expenditure because of deferred expenditure in the past, has this expenditure not been recovered already from NCCs? If it is increased growth expenditure reflecting accelerated rates of development, isn't this offset by the increased number of new customers?
16. If it is the methodology creating the significant uplift in NCCs, is it due to the lack of regard for net revenues? Or is it due to lack of regard for residual capacity beyond the planning horizon? There is a lot of explaining to do.
17. Even if the only issue to be resolved was the methodology, there is very little time for Coliban Water to document its methodology, explain it to developers and allow sufficient time for them to comment. Following that engagement, Coliban Water would need time to consider any feedback from developers and amend its price submission. The Commission themselves need time to review the documentation, engagement process and changes, and still have time to issue a determination before 1 July 2023. Coliban Water has belatedly commenced a process of consultation with individual developers and consultants while maintaining its current methodology, however it lacks rigour in relation to the following:
 - 17.1. A review of each growth area and infill areas including rates of potential future development and population growth. For example, in the Maiden Gully Area the MG Estates project has a permit and is currently undergoing detailed design demonstrating delivery within the proposed pricing period. The Council's MGNE growth area is still in the planning stages and due to the need to resolve bushfire and vegetation issues is unlikely to receive rezoning approval and therefore a need for servicing within the next five (5) years.
 - 17.2. The infrastructure projects required by catchment to support the projected growth.
 - 17.3. The cost estimate for each project.
 - 17.4. How costs are allocated between future and current customers, including provision for incremental future revenues.
18. However, the methodology is not the only issue to be resolved. Coliban Water has not produced, or has chosen not to share, much of the material that developers need to review and become confident that Coliban Water is being fair and reasonable. This included an interview on 5 May during which an outline of four (4) models was provided and a request made for responses to two questions. Given the volume of information provided detailed responses to the questions could not be provided in the 30-minute engagement. We were informed that further information from Coliban Water would be emailed by COB 5 May. This information is yet to be received. That transparency and the review by developers with an intimate knowledge of regional development is an essential input for the Commission to be confident in its determination of prices.

It appears that Coliban Water are confused between parity and protection for existing customers at the expense of new customers and see the development sector not as an

enabling infrastructure partner for new customers but somehow as an apparent detractor from existing customers. We note that it is Coliban Water's responsibility for the balance between existing and new customers produced by the NCC pricing model and not the development sector. However, the lack of transparency has the development sector concerned about cost shifting for ageing asset replacement, climate change adaptation, regulatory compliance and inter-generational investment into the NCC calculations. Coliban Water has not demonstrated through engagement that this has not occurred.

- 19 It is apparent from Coliban Water's approach to the ESC consultation process that Coliban Water see New Customer Contributions as a developer charge not a future client cost. Coliban Water in their submission have had most regard to current clients and little regard to future clients on price parity, nexus and future income.
- 20 The material referred to in paragraph #17 is referenced in your NCC Explanatory Note, and includes:
 - 20.1 Incremental costs.
 - 20.2 Incremental benefits.
 - 20.3 Bring-forward financing costs and rate of development assumptions.
 - 20.4 What, if any, existing assets are being included.
 - 20.5 Assets to be provided by developers rather than Coliban Water, and why it is so?
 - 20.6 Development servicing plans for each system or sub-system, to demonstrate cost reflectivity.
 - 20.7 Treatment of pioneer developers.
 - 20.8 Provision of increased capacity and how shares in the costs are calculated.
- 21 If Coliban Water accepts your offer to submit explanations and new estimates of NCCs, the Commission should consider if Coliban Water had sufficient time to explain its approach, expose its assumptions to those in a position to challenge them, and consult meaningfully, compounding the already inadequate engagement process.
- 22 It seems neither path (a) nor path (b) in paragraph #14 above is achievable, consequently we have taken the liberty of offering a possible interim solution.

[d.A possible interim solution](#)

- 23 If Coliban Water cannot realistically and appropriately deliver on the Commission's offer for the reasons described in the previous paragraphs, it begs the question about what can be done and by when.
- 24 We suggest the Commission considers using its powers under the WIRO to substitute prices for standard NCCs with prices as at 30 June 2023, and that they remain frozen until the Commission undertakes a longer-term review (see next section) and Coliban Water has had time to implement any changes, after meaningful engagement.

25 This is not as harsh as it sounds because Coliban Water will still have the option of applying negotiated NCCs. It will give them the incentive to put in place the information necessary for the calculation of negotiated NCCs and good faith negotiations.

e.Recommended longer-term solution

26 The NCC methodology, guidance and explanatory material date back to 2013, so a review is warranted. It is also timely to record the differences between water corporations in how they applied the discretionary elements of the NCC framework, to identify systemic difficulties and opportunities for improvement in the explanatory material.

27 A goal should be to identify best practice water corporations and improvements that can be made across the industry.

28 We suggest the Commission commits to leading a review of the NCC framework, commencing soon after the final decision, considering amongst other things:

28.1 the new methodology proposed by Coliban Water (and some other water corporations, we believe).

28.2 the use and application of standard NCCs at the expense of negotiated NCCs and the resultant loss of cost reflectivity.

28.3 the minimum level of information required to support a standard NCC and to be provided in negotiations for a negotiated NCC.

28.4 principles used by water corporations for deciding what conditions are placed on subdivisions¹, and principles used by water corporations for deciding what infrastructure is the responsibility of a developer, within the context of impact on the calculation of NCCs.

28.5 the fairness of reimbursement arrangements for water corporation assets which the developer has agreed to construct on behalf of a water corporation.

28.6 developing further clarity around the preconditions for inclusion of sunk costs from previous pricing periods.

28.7 expanding your performance monitoring and reporting during the pricing period to include and expose the choices made by water corporations in administering the discretionary elements within the NCC framework (to allow early identification and remediation of issues).

28.8 where policy clarity and coherence might assist the Commission and water corporations.

28.9 Other matters determined by the Commission through your own initiative or at the suggestion of others.

¹ VCAT has established several principles which have been upheld by the courts and also applied in guidelines by successive state government Ministers over the past 30 years. These principles are **need**, **nexus**, **equity** and **accountability**. In short, the *need* must be generated by the development (and not be existing backlog demand); there must be a *nexus* between the delivery of the assets and the development (the assets serve the demand from the development; and not using the funds collected to provide assets elsewhere); there must be an *equitable sharing of the cost* of the assets commensurate with the proportion of demand generated by the development; and there must be a level of *accountability*, which is taken to mean that the funds collected are held on trust for the purpose for which they have been collected and are only spent on the assets which form the basis of the contributions.

f.Request summary

- 29 Overall, it is our contention that it is implausible for the ESC to accept Coliban Water's current method and proposed increases in NCCs because it does not and cannot comply with the Guidance Paper nor meet even basic standards of customer engagement based on the missing information on method and inputs.
- 30 In our view the Commission has a pragmatic alternative which is to revert to the previously approved default NCCs, and we note that this doesn't negatively affect Coliban Water as they still have the opportunity to apply negotiated NCCs, something which MG Estates has been consistently seeking to do provided it is with open and transparent explanations and supporting material.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Gilfedder', with a long horizontal flourish extending to the right.

Mr Gerard Gilfedder
Currie & Brown (Australia) (acting for MG Estates)



MG Estates PL

Supplementary Submission –
ESC Draft Decision on Coliban Water Pricing

18 May 2023

18 May 2023

Kate Symons
Chairperson, Essential Services Commission
(Via Engage Victoria website)

Dear Commissioners

DRAFT DECISION FOR COLIBAN WATER – supplementary submission

Our comments are in relation to New Customer Contributions (NCCs) and should be read in the context of our detailed submissions to you on 1 December 2022 and 11 May 2023, and Coliban Water's response dated 12 January 2023.

Since your public consultation forum on your draft decision in Bendigo on 1 May 2023, Coliban Water has further engaged with the development sector in a series of 30 minute one-to-one sessions, in the week after the ESC forum and a group session on 15 May 2023. During a discussion following its last forum, the Managing Director of Coliban Water made a verbal commitment for a Negotiated NCC process for MG Estates.

MG Estates had written on 20 April 2023, though representatives seeking a negotiated NCC process. Coliban Water, while indicating verbally it would undertake a negotiated NCC process is yet to commit to do so in writing in a response to the request.

Our reason for wanting a Negotiated NCC is that the information presented to us so far, including in the latest forum has:

- only been high level and difficult to scrutinise without a detailed information provision of other towns/systems. In relation to infrastructure costs in Maiden Gully MG Estates has a very good understanding of costs and issues and is able to comment authoritatively
- included inconsistent treatment of sunk costs in the ESC model and Coliban Water's proposed model
- not provided justification for the percentage allocations of headworks and other costs to new customers, and the principles which underlie those allocations
- not provided reasons for allocating responsibility for construction and financing of shared works outside our development without a corresponding process for reimbursement/refunds to reflect the benefits to other developments and existing customers

MG Estates has both a fiduciary duty and an obligation to its stakeholders (many of whom will become Coliban Water's future customers in the five year period commencing on 1 July 2023) to know that it is paying NCCs which are fair and reasonable, and demonstrate parity and nexus in the way the NCCs are calculated, negotiated and agreed.

MG Estates has a planning permit for this key project for delivering housing supply in a constrained market. It is in the detailed engineering design phase of the project and is in a position to enter into detailed discussions with the authority. We also expect that Coliban Water will enter good faith negotiations within a negotiating framework which the Commission is yet to approve. MG Estates has not seen the latest proposed negotiating framework that the attendees of the most recent forum were advised was to be submitted by Coliban Water.

We appreciate your independent scrutiny and, given our interest in the parity and nexus of these matters we would be happy to be a party to any future water sector-wide review you may conduct into the calculation and negotiation of NCCs.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Gilfedder', with a long horizontal flourish extending to the right.

Mr Gerard Gilfedder
Currie & Brown (Australia) (acting for MG Estates)



MG Estates PL

Supplementary Submission On
Coliban Water's
Negotiating Framework for New Customer Contributions

29 May 2023

29 May 2023

Kate Symons
Chairperson, Essential Services Commission
(Via Engage Victoria website)

Dear Commissioners

COLIBAN WATER's proposed Negotiating Framework for New Customer Contributions (NCCs)

On 25 May 2023 we were notified in writing by Coliban Water that it has agreed to commence negotiations with MG Estates around New Customer Contributions (NCC's) in accordance with Coliban Water's framework currently with your Commission for review and determination.

While it is good news that Coliban Water has responded positively to our request for a Negotiated NCC, there is a need to establish sound "ground rules" to facilitate good faith negotiations. We did note at a Coliban Water engagement session on Monday 15th May the statement in question time from Coliban that a negotiated NCC would not be cheaper than a standard NCC. We are surprised that Coliban Water can arrive at this opinion without having undertaken an in good faith negotiation in relation to any future negotiated NCC discussion.

Our analysis of Coliban Water's negotiating framework submitted to you as Attachment 6 on 18 May 2023, is that it requires changes to make it a comprehensive framework.

Our recommendations are that the framework needs to include:

1. A statement that Negotiated NCCs are the default basis of calculating NCCs, and Standard NCCs will apply for administrative ease in some cases. For example, Coliban Water might decide that any subdivision of less than "X" lots will be required to pay a Standard NCC.
2. A statement that it is a land owner or developer's right to seek a Negotiated NCC, not for it to be at the sole discretion of Coliban Water.
3. Removal of an error – the current framework states Negotiated NCCs apply in addition to Standard NCCs, whereas our understanding of the Commission's material is that it is one or the other.
4. Dispute resolution - better practice might be to offer a disaffected land owner or developer an escalation process before referral to VCAT. This might be a) referral to more senior officers within the organisations of both parties and b) referral to a mutually agreed independent arbiter. A choice of one or both or neither of these processes could save both parties time and money.
5. Provide a link to a public copy of Coliban Water's long-term (20+ years) strategic servicing plans that are consistent with the latest planning schemes and precinct plans, to assist with identification and timing of back-bone infrastructure and sequential versus leap-frog development.
6. A statement on guiding pricing principles that are to be used, those being soundly based on Water Law, Planning Law, VCAT precedents and the Water Industry Regulatory Order. This should include any principles for the consideration of infrastructure other

than pipes, such as pumping stations, re-treatment facilities, rising mains, pressure reduction, network monitoring equipment etc. In particular:

- a. What are “reticulation” assets for which a developer is responsible? Pipe size alone should not be the sole criterion as there are pipe depth and onsite versus offsite issues to consider as well as non-pipe infrastructure.
 - b. What are “headworks/tail works” assets and how are costs apportioned to existing customers and future customers? Together with treatment plants, consideration needs to be given to back-bone infrastructure such as balancing tanks, transfer water mains, main and trunk sewers, and rising mains
 - c. What are “shared” assets and how are costs apportioned to existing customers and future customers?
7. Inclusion of a statement on how reimbursements will be administered.
 8. Inclusion of a statement on how the cost of assets are apportioned to growth when there are multiple drivers. Also how costs allocated to growth are further apportioned to new customers (as opposed to climate change, for example). (We note that the Board of Coliban Water has endorsed some cost allocation principles, so these should be included in the published framework)
 9. Inclusion of a statement on the treatment of sunk costs and any conditions precedent for their inclusion in any NCCs applied. This should include a statement on how Coliban Water will ensure fair treatment between developers and between pricing periods.
 10. Inclusion of a statement on the calculation of net revenues and net costs included in NCC calculations, and how any postage stamp pricing of service and usage charges is accommodated.
 11. Inclusion of a statement on the treatment and explicit exposure of any geographic cross-subsidies and who pays (new customers only or the whole customer base).
 12. Inclusion of a statement on the treatment of the uncertainty inherent in these inputs and calculations how the uncertainty will be accommodated.

The Commission’s guidance material and explanatory notes on NCCs provide useful check-lists for the topics on which Coliban Water should publicly state its position within its Negotiating Framework for NCCs.

Yours sincerely



Mr Gerard Gilfedder
Currie & Brown (Australia) (acting for MG Estates)