



MG Estates PL

Coliban Water Pricing Submission

ESC Submission

1 December 2022

 **Currie & Brown**

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.

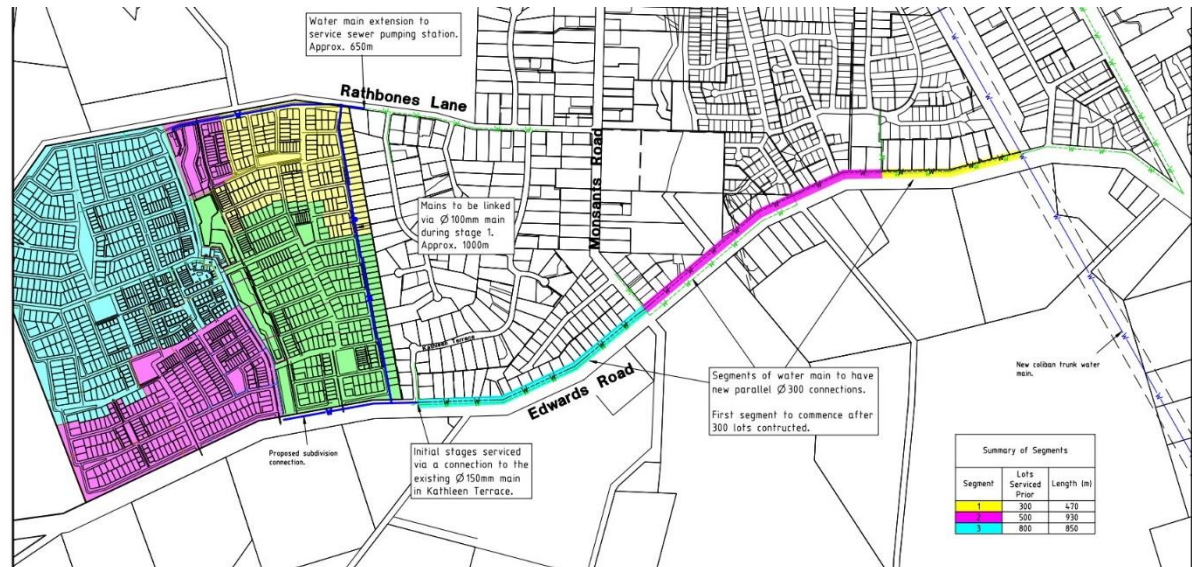
³³ See 3.5 in the PREMO paper.

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.

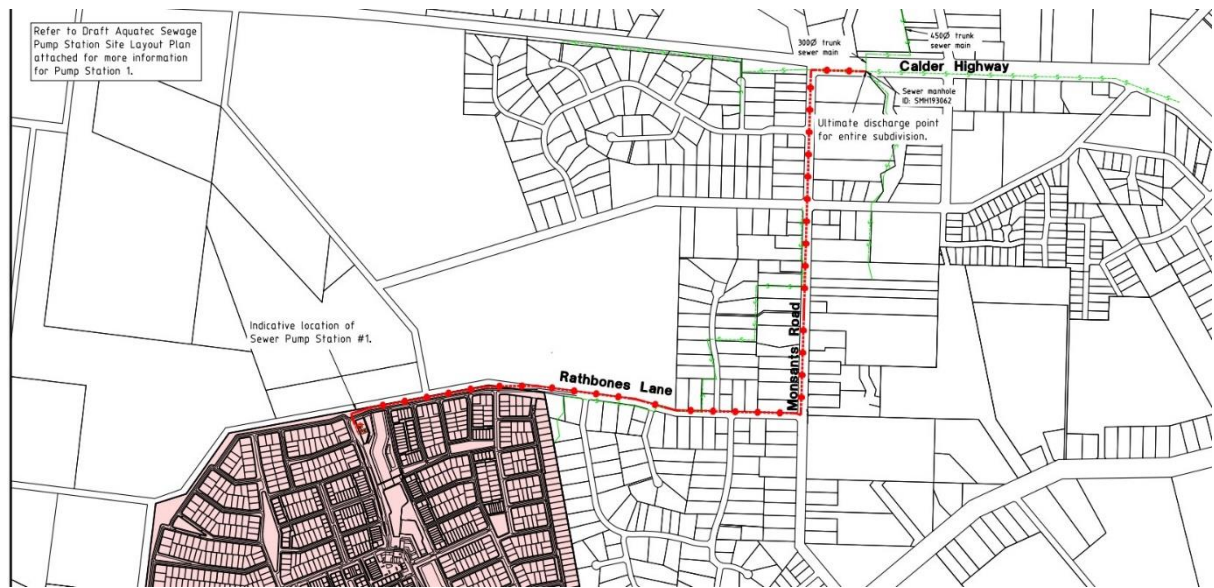


69. The sewer infrastructure to be provided as part of the development, and to be vested in CW, is shown below:



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