JMP
DEVELOPMENTS
QUALITY LIVING

ABN: 14 127 712 976

22 July 2025

Chairperson
Mr Gerard Brody
Essential Services Commission
Level 8/ 570 Bourke Street
MELBOURNE VIC 3000

Dear Mr Brody,

Re: JMP DEVELOPMENTS FOLLOW UP SUBMISSION TO THE ESC REPORT ON INTERESTED PARTIES FEEDBACK 18 JUNE 2025

We appreciate the opportunity to provide feedback on the ESC's June 2025 review of New Customer Contributions (NCCs). As a developer actively engaged in water infrastructure negotiations, we welcome greater clarity, consistency and fairness in the application of the NCC framework. However, the review highlights a number of concerning trends and omissions that, if left unaddressed, risk fundamentally undermining the effective implementation of the Water Act and ESC guidelines. This would not only disadvantage connection applicants and compromise the fairness and legality of infrastructure cost recovery but also hinder sustainable development across regional Victoria and increase the likelihood of applicants being forced to pursue costly and time-consuming resolution through VCAT.

Unfortunately, we will not be able to attend the developer forums in September, so outline our key concerns, supported by examples and references to both the current review and previous ESC materials:

1. Industry Knowledge Deficiency and Implications The review explicitly acknowledges a decline in industry understanding, stating on page 3 that water businesses noted a lack of understanding of the legal basis of NCCs and the regulatory framework. This is further evidenced by the fact that gifted assets from developers have increased by 14% per year over the past 10 years.

> *This trend reflects a fundamental problem:* water businesses are asking developers to fund and gift assets that should be recovered under NCC payments. This aligns with the fundamental point that there is a decline in industry understanding.

As such, the need for clear definitions, high-quality case studies and guidance written for an inexperienced audience is critical.

2. Expertise Required for Case Study Development. Given the acknowledged lack of understanding across the industry (as noted numerous times throughout the interested parties' feedback report), the development of case studies and standards should be led or at a minimum overseen by experts familiar with: The Water Act 1989, ESC Documents (e.g. Price Review: Regional Urban Water Businesses Final Decision June 2013, 2011 Case Studies…..) and Statutory pricing principles.

Authorities / industry representatives lacking this experience should not be permitted to create case studies in isolation, as there is a real risk of poor-quality or self-serving outputs that do not align with the above-mentioned documents.

3. Importance of Robust Case Studies Case studies provide transparency, accountability and are a shared learning resource for both authorities and developers. The 2011 NCC Case Studies remain relevant and are an excellent base that can be further elaborated upon: they use diagrams, real-world infrastructure scenarios and identify the distinction between developer and authority obligations.

We urge the ESC to: retain and expand upon the 2011 case studies (an extract included point 13 below). Ensure new examples are written by qualified experts with a strong understanding of the Water Act and ESC guidance. Prevent water authorities with limited expertise from authoring their own case studies without independent oversight, otherwise they may be counterproductive.

4. Misuse of the 2013 Explanatory Note: The 2013 Explanatory Note is referenced 23 times throughout the review. Whilst the document can provide helpful context, it is often misunderstood or misapplied when used without reference to the full suite of ESC guidance and pricing decisions. For example, Section 3.6 (page 12) of the Explanatory Note discusses Increased Capacity but fails to clearly state that the connection applicant pays for their attributable share of capacity *through the calculation of their NCC*. The Explanatory Notes omits this key point relative to the NCC's and instead implies that the water authority may request the asset as a gifted asset, on top of payments of NCC. This creates confusion, facilitates cost overreach and risks undermining the intent of the ESC's pricing principles. The necessary clarification is buried in a footnote within the Explanatory Note document (refer page 12) referencing the *Price Review: Regional Urban Water Businesses Final Decision June 2013 (pages 185–186 – Gifted Assets Excess Capacity)*, which many practitioners may not consult.

5. Pricing Principle Case Study: Page 17 outlines the core pricing principles. We ask that the commission includes very clear explanations / case studies to explain the items and intent of the principles noted below:

- Incremental infrastructure attributable to the connection,
- Incremental future revenue earned from customers at that connection,
- Greater than the avoidable and less than the standalone cost of that connection.

Incremental infrastructure attributable to the connection: refers to the specific infrastructure required solely to service a proposed development. These are new assets or upgrades that would not be needed if the development did not proceed. This includes the portion of infrastructure (e.g. pipes, pump stations) that is directly triggered by and sized for the new lots and paid for through NCC's.

Future revenue offset: The expected revenue the authority will receive from the new customers. This should reduce the NCC's charged to the connection applicant, because the authority will recover part of its investment over time through those future charges.

Avoidable cost (the floor): The minimum cost the water authority would avoid if the development did not go ahead. It reflects the incremental costs the authority incurs because of the development. This is the minimum the authority could seek to recover via NCCs (before subtracting expected revenue).

Standalone cost (the ceiling): The cost the water business would incur to provide services to a development if that development was the only one being serviced."

List of what should be included?

- Assets needed solely to serve the subject development,
- Of a size and scale needed only to service the lots within the subject development,
- Not shared with the broader growth area or existing network.

List of what shouldn't be included?

- Upgrades to existing infrastructure needed regardless of your development (e.g. asset condition, compliance, capacity already exceeded),
- Works designed to facilitate other future developments,
- Broader network optimisation or strategic renewal projects.

6. Revenue Transparency for Negotiation Developers currently lack access to clear information about the projected revenue water authorities will receive from new customers. This makes it impossible to properly negotiate infrastructure contributions, despite ESC guidance requiring revenue offsets to be considered.

7. Misleading Statements About Flexibility and Negotiation: On page 8, the review claims that a less prescriptive approach allows for meaningful negotiations. Our experience is the opposite: we have had to file three Freedom of Information requests to access basic infrastructure information. Based on our experience, water businesses do not engage in genuine negotiation. They often present non-negotiable demands without justification.

This is further confirmed by the review's own statement at section 1.2 (page 3) that some water businesses were unaware that NCCs must be fair and reasonable under the Water Act.

8. Internal Review Lacks Power Without Framework: The concept of internal dispute review only adds value if it is conducted at arm's length from the water authority, involves a genuinely impartial and qualified mediator and is firmly grounded in the requirements of the Water Act and ESC guidelines. In regional areas, senior leadership within the authority is often directly involved in operational decisions, making any internal review process inherently biased and ineffective. Unless the process is managed externally with clear safeguards, it risks becoming a procedural formality with no meaningful avenue for redress. There must be an obligation for the authority to accept outcomes where findings show NCCs are unreasonable.

9. Affordability in Small Towns and NCC justification: Where NCCs are applied in small towns with limited lot yield, the per-lot charges can become prohibitive. Especially when authorities try to include costs that are more appropriately attributed to compliance, renewal projects or network related issues. This extra cost jeopardises regional development and is contradictory to the broader housing policy espoused by both state and federal governments.

We urge the ESC to mandate: Transparent per-lot pricing mechanisms, Consideration of cross-subsidisation to ensure feasibility, Assessment of NCC pricing against development viability in low-growth areas.

10. Tokenistic Stakeholder Engagement: Water authorities often treat stakeholder engagement as a "tick the box" exercise. They frequently reverse-engineer outcomes to fit pre-determined positions. This is especially problematic when documents claim there has been meaningful consultation.

The ESC should require: Engagement to occur by an external facilitator, to enable genuine engagement.

11. Monitoring Dispute Volumes = Transparency Tool. We strongly support the idea that the ESC monitor:

- Number of internal reviews,
- Number of independent arbitration cases,
- Number of VCAT challenges.

12. Gifted Asset Tax Treatment: Section 3.2.3 raises the potential for taxes on gifted assets to be incorporated into NCCs. If an alternative tax treatment is adopted, it is essential that the commissioner ensures connection applicants are not effectively paying twice, once through the gifting of assets and again via NCCs. Customers must contribute to growth.

13. Current ESC Case Studies developed in 2011 - As previously noted, we believe it is imperative that the already developed Case Studies below are not replaced but added to, to improve the applicable cost attribution.

Refer to the extract from the *2011 Case Studies* that outlines which assets the Commission believes is a ***reticulated asset*** versus a ***shared asset.***

Shared assets are funded by the authority using **NCCs**, the **water authority's capital funds**, and **future NCCs** from other developments who will benefit from the shared infrastructure over time.

2.4 Shared assets (upsizing)

Background

A developer who owns land known as development 1, wishes to commence on ground works. The developer approaches the water business for conditions. The water business advises that a 150 mm water main is needed to service the development. The water business classifies the asset as a reticulation asset (based on the size guidance in the determinations) and as such requests the developer to provide it.

The developer believes that the asset is not a reticulation asset and has been planned with a view to serve future developments (2 and 3) as well.

The water business and developer are unable to resolve their differences and the developer raises the issue with the Commission.

Commission interpretation

The Commission seeks to establish whether the asset is shared (serves more than one development) or reticulation (serves one development).

Number of developments served

The Commission seeks to clarify whether developments 1, 2 and 3 are separate developments or are parts of one large development.

The developer advises that developments 1, 2 and 3 are owned separately and each owner will apply to the water business separately to connect to the business's network. Therefore there are three separate developments.

Most cost efficient servicing solution

The Commission asks the water business for its most cost efficient design criteria for a development (development 1) of this size and location. The water business responds that a 100 mm diameter water main meets its most cost efficient servicing solution for a development of this size and location.

The Commission asks the water business whether the 150 mm water main has been planned to serve future developments. The water business responds that the asset has been upsized from 100 mm to 150 mm to serve future developments 2 and 3 as well.

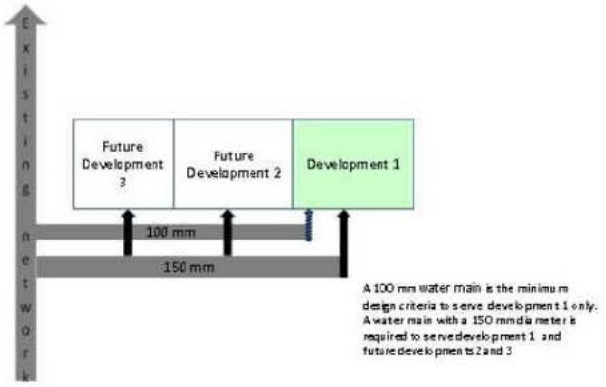
Conclusion

The Commission concludes that the asset is shared. This is because the asset has been upsized from the most cost efficient servicing solution that would serve development 1 alone, to serve future developments (2 and 3) as well.

The determinations state:

Shared distribution assets are infrastructure assets that are generally provided in relation to prescribed services for more than one development.

Diagram 2.4



Even though the case study above is extremely clear it fails to articulate how payment is to be apportioned (relative to the specific example).

Once the asset is categorized by the Commission to be a ***shared*** or ***growth asset***. It would be extremely beneficial if the below section (which is within the PRICE REVIEW 2013 - REGIONAL URBAN WATER BUSINESSES – FINAL DECISION – pages 185 & 186) was incorporated into the current framework, below the relative case study, as it would remove any ambiguity as to how payment for the asset is to be apportioned. If the case studies and the below were incorporated into the most up-to-date NCC Framework it would eliminate a lot of the confusion / manipulation, that is currently occurring.

Where the water business requires the developer to provide an asset that has been designed with excess capacity with a view to servicing later developments, the ESC has stated that there are *two ways* in which the assets' costs are to be shared across those who connect to it:

The regulatory asset base option, *whereby*:

- initial connection applicant pays their required capacity share of the asset through the calculation of their NCC
- any remaining share of the asset's costs (when the asset has been efficiently pre-built to service future growth) would default to recovery through the regulated asset base (RAB) and prescribed retail tariffs
- the NCC calculation for any subsequent connections would include their capacity share of the asset's cost, and the resulting NCCs revenue would be deducted from the water business' RAB

The *reimbursement option,*

- involves the water business charging foundation connection(s) an upfront NCC to recover the full asset cost, with provision to reimburse those connections when subsequent connections start to use the asset'

Kind Regards,

[redacted]