25 October 2025

ABN: 14 127 712 976

Rebecca Billings
Commissioner – Price Monitoring and Regulation Division
Essential Services Commission
Level 8/ 570 Bourke Street
MELBOURNE VIC 3000

Dear Rebecca,

Re: SUMBISSION TO ESSENTIAL SERVICES COMMISSION REGARDING DRAFT NEW CUSTOMER CONTRIBUTIONS FRAMEWORK

Further to our previous two submissions; *"JMP Developments Formal Submission on the Review of NCC Paper 15 August 2024"* and *"JMP Developments Follow Up Submission to the ESC Report on Interested Parties Feedback 18 June 2025"* - we now provide comment on the ESC Draft New Customer Contributions Framework 14 October 2025.

Key Concerns with the Draft New Customer Contributions Framework (NCC)

Our principal concerns with the current draft of the NCC Framework relate to the following key areas:

- **Concern 1: Retirement of Existing Guidance and Case Studies**
- **Concern 2: Lack of Recognition for Shared Assets and Excess Capacity**
- **Concern 3: Strategic Underinvestment and Misuse of the Pricing Framework**
- **Concern 4: Insufficient Clarity in Definitions and Application Principles**
- **Concern 5: Transparency and Information Disclosure**

<u>Concern 1:</u> Retiring of Existing Guidance and Case Studies

We support efforts to consolidate guidance into a single, clear document. However, the proposed removal of existing detailed materials, such as the 2011 case studies and extensive explanatory documents, risks losing critical interpretive context. These resources are vital for understanding how pricing principles and scheduled charges are applied in practice. Rather than being discarded, they should be retained and enhanced to preserve transparency and consistency across the sector.

The retiring of hundreds of pages of detailed guidance (including the 2011 case studies), risks:

- Loss of critical interpretive material,
- Lack of transparency and
- Increased inconsistency in VCAT or other third-party decisions due to missing historical context.

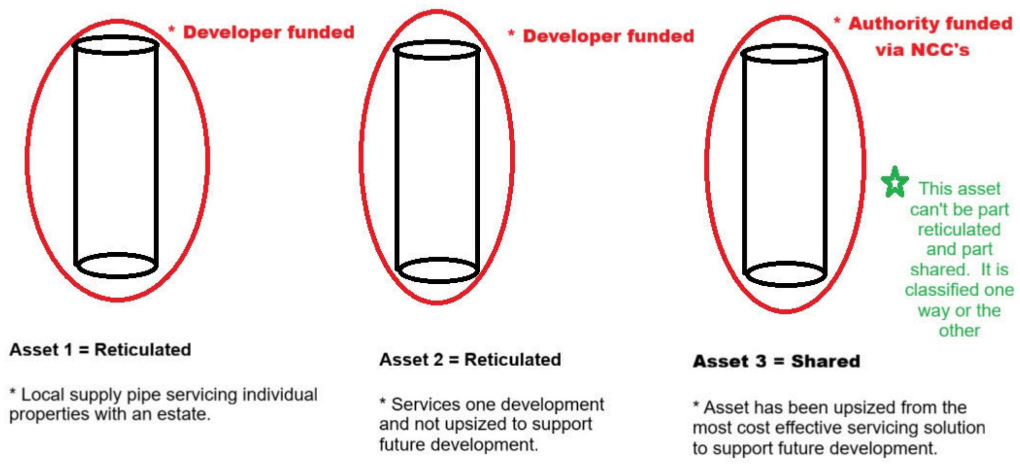
We note that the ESC confirms its intent to replace current case studies but does not commit to retaining or integrating existing case studies, notably the well-constructed June 2011 Case Study document.

<u>We recommend the ESC:</u>

1. **Retain and update the 2011 case studies**, incorporating current examples from both metro and rural projects.
2. **Include worked examples in the final framework** to demonstrate correct application of pricing principles.
3. **Maintain access to archived guidelines and interpretations** to preserve continuity for legal and dispute resolution purposes.

<u>Concern 2:</u> Excess Capacity / Shared Assets Not Properly Acknowledged / Explained

The draft framework does not clearly address how infrastructure with excess (not incidental) capacity intended to service multiple developments should be treated. This is a current industry issue where such infrastructure is wrongly classified as developer-funded reticulation rather than shared growth assets funded via NCCs and the regulated asset base.



The ESC's own guidance (*2011 Case Studies - attached*) makes it clear that infrastructure benefiting more than one development or the broader network should be treated as growth infrastructure and "*the size guidance is subordinate to whether one or more developments are to be serviced".*

The asset is either reticulated (and paid for accordingly) or shared (and paid for accordingly) it isn't part reticulated and part shared. The draft omits this distinction, creating uncertainty, especially in rural areas where lower densities make cost attribution more complex.

Previous documents, namely, *p185 & p186 of Price Review: Regional Urban Water Businesses Final Decision June 2013,* clearly articulates how Assets with Excess Capacity should be dealt with. Eliminating these documents would likely exacerbate existing issues rather than resolve them.

(Extract below) - Where a developer is required to provide an asset that has been designed with excess capacity to service later developments. In this situation, the water business has two options to ensure that the asset's costs are shared across those who connect to it: (the second is typically used for pioneer developments).

- the regulatory asset base option, whereby:
  - the 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 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, which would involve 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.

From our experience, authorities often believe it is fair and reasonable to ask developers to gift part of a growth asset and pay for NCC's whilst the authority pays only for the upsizing. This approach goes against the purpose of NCCs, which are to be used to fund the extension of water and sewer networks to new areas. NCCs are not meant to purely top up shared assets, they are the proper mechanism to fund the entire growth infrastructure.

When an authority is ascertaining whether a situation is "fair and reasonable" the authorities fail to appreciate that developers are gifting them all the reticulated assets within their subject estates (at no cost to the authority), providing X numbers of new customers (whom provide a recurring income) and in addition, pay the nominated New Customer Contribution per connection, which is to be used to extend water and sewer infrastructure to service new areas. It is not "fair and reasonable" for an authority to request the gifting of shared/growth/network assets outside of the NCC framework. This practice amounts to double dipping.

To prevent authorities from unfairly shifting infrastructure costs onto developers, we suggest the Commission include clear, practical classification criteria in the framework. These criteria would help both developers and water authorities consistently determine whether an asset is reticulated (developer-funded) or shared/growth infrastructure (funded via NCCs and the RAB), reducing ambiguity and misclassification.

We recommend the ESC:

Include parameters for Asset Classification to prevent misclassification.

1. **Primary Purpose of the Asset**
    - *What is the asset fundamentally designed to do?*

      ➤ Is its primary function to service one development only, or multiple developments over time?

      ➤ Does it need to be constructed to unlock capacity for future growth beyond the subject site?

2. **Asset Location and Alignment**
    - *Where is the asset situated in relation to the subject development?*

      ➤ Does it run within the development boundary (suggesting reticulation)?

      ➤ Or is it located outside, such as down an existing road corridor or in a future growth area?

3. **Length of Infrastructure**
    - *Is the asset a short extension or a long-distance pipe?*

      ➤ Is the length <100m and local (typical of reticulation), or >1km and forming a regional link (suggestive of shared/trunk infrastructure)?

4. **Connection Point Proximity**
    - *Is there a closer connection point that could have been upgraded using NCCs?*

      ➤ If a viable connection point existed nearby, is a longer alternative being pursued for network planning reasons?

5. **Network Context**
    - *How does the asset fit into the broader servicing strategy?*
      ➤ Does the asset act as a future trunk or spine that will ultimately serve multiple catchments or growth fronts?

6. **Planning History of the Land**
    - *Is the development site newly zoned or long planned?*
      ➤ Is the land zoned residential and within an existing PSP or structure plan area?
      ➤ Was the site identified in the authority's infrastructure plan prior to the development application?

7. **Development Typology**
    - *Is this a pioneer, leapfrog or out-of-sequence development?*
      ➤ Or does it abut existing residential areas and continue logical urban growth?

8. **Authority's Infrastructure Planning and Forecasting**
    - *Has the infrastructure been forecasted in the authority's growth servicing strategy or pricing submission?*
      ➤ If so, was funding allocated (even partially)?
      ➤ Was the asset intended to unlock broader network capacity?

9. **Level of Capacity Provided**
    - *Does the asset contain genuine excess capacity, beyond what is incidental?*
      ➤ Is the sizing such that future development areas will benefit substantially from the initial works?

<u>Concern 3:</u> Concern Regarding Selective Funding and Misapplication of the Pricing Framework

We are concerned that some water authorities are selectively using their pricing submissions to avoid funding infrastructure they know is required. This has enabled them to shift the funding responsibility onto developers under the guise of “outside scope” works, even when such infrastructure was anticipated in previous infrastructure strategies and is necessary for long-term growth.

We believe that the draft New Customer Contributions Framework does not adequately address the critical issue regarding authorities using their pricing submissions as a mechanism to avoid funding essential infrastructure — particularly when:

- The infrastructure need is known and documented in previous plans and
- The authority has included the land in their growth servicing area, yet still
- Authorities refuse to fund works or follow proper NCC cost allocation principles.

Authorities are:

- Withholding acknowledgment of funding responsibility for large-scale growth assets (like sewer rising mains),
- Relying on the excuse that "it’s not in the current pricing submission" or budget,
- Even where the need was previously acknowledged and included in earlier strategies (albeit vaguely or with token allocations),

The draft Framework must go further to prevent misuse of the pricing submission process as a shield against funding obligations. Water authorities should be required to demonstrate that their funding decisions are not based on assumptions that a developer will bear the lion share of the growth-enabling infrastructure.

Where infrastructure clearly services multiple future connections and is included in long-term servicing plans (even with nominal budget lines), it should be classified as a shared asset, funded via NCCs and the RAB. The ESC’s review process must scrutinise not just the presence of budget lines, but also the logic behind cost attribution.

4. Concern: Include more definitions to provide contents and prevent incorrect application

Several key terms remain undefined or are interpreted inconsistently between authorities. The framework would benefit from a glossary with further defined terms (refer below). This will provide clarity and ensure a consistent application of the pricing principles across all Victorian water corporations.

Misclassifying such developments as pioneer developments, out of sequence developments or leapfrogging developments risks undermining the NCC framework by inappropriately shifting the cost of shared growth assets onto individual developers.

We recommend the ESC:

Include additional ESC Glossary Terms (Not in Current Glossary)

1. **Pioneer Developer**
   A developer who is the first to develop land in an area without prior service infrastructure, often required to initiate major infrastructure works that benefit future developments. A developer should not be classified as a pioneer if the site is:
   - Already zoned for development,
   - Recognized in the water authority's infrastructure strategy or pricing submission,
   - Adjacent to existing serviced areas or
   - Serviceable through existing connection points with reasonable augmentation

Labelling such developers as "pioneer" where infrastructure is required for broader town growth rather than their specific development is inconsistent with the intended principles of equitable cost sharing under the ESC's NCC framework.

2. **Leapfrogging Development**
   Development that skips over undeveloped but closer land, requiring new infrastructure to be extended over a distance from existing serviced areas.

3. **Out-of-Sequence Development**
   Development that occurs before it is scheduled in the authority's infrastructure sequencing or servicing plans, potentially disrupting coordinated investment timelines.

4. **Excess Capacity**
   The component of infrastructure built above the immediate needs of the initial development to accommodate future connections and regional growth.

5. **Trunk Infrastructure**
   High-capacity infrastructure such as pump stations or rising mains that service a wider catchment or multiple developments, not just an individual site.

6. **Internal vs External Works**
   - *Internal Works:* Infrastructure located entirely within the development site (typically reticulated).
   - *External Works:* Infrastructure beyond the site boundary, possibly benefitting multiple sites or the broader network.

7. **Connection Applicant**
   Any party requesting a new service connection, including but not limited to property developers.

8. **Network Augmentation**
   Upgrades or expansions to the existing network required to maintain service standards when new development occurs.

<u>5. Concern:</u> Transparency and information disclosure.

The ESC's Draft New Customer Contributions Framework 2025 rightly emphasises transparency as a key principle, however, in practice this is not being realised. Developers often face significant challenges obtaining critical information needed to assess servicing options, cost attributions, or timing—despite the stated intent of cooperation and openness.

We strongly support the proposed performance reporting framework, particularly the requirement to disclose:

- VCAT decisions,
- Disputes escalated to senior management,
- Negotiations that were terminated or abandoned.

However, we recommend adding Freedom of Information (FOI) requests to this list. In many instances, developers have been forced to rely on FOI processes to access documents that should have been readily shared. The inclusion of FOI data would serve as an indicator of information withholding or process breakdown.

We appreciate the ESC's efforts to review and update the NCC Framework to improve consistency, equity and transparency across the water industry. However, based on our experience and the issues outlined above, we remain deeply concerned that the proposed framework does not adequately address several systemic and practical challenges currently facing developers, particularly in rural and regional contexts.

The removal of existing guidance and case studies, the failure to clarify the treatment of shared and excess capacity assets and the lack of accountability for water authorities misusing pricing submissions all risk undermining the intent of the framework.

We remain committed to working collaboratively with the Commission and water authorities to support a framework that is fit for purpose, fair and transparent across both metropolitan and non-metropolitan developments.

Kind regards,

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JMP Developments Pty Ltd

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