



ICRC

independent competition and regulatory commission

Final Determination
**Water and Sewerage
Capital Contribution
Code**

Report 10 of 2017, 8 December 2017

The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

The Commission's objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the *Utilities Act 2000*.

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Foreword

In March 2017, Icon Water submitted a proposed Water and Sewerage Capital Contribution Code (the Code) for the Commission's consideration as an industry code, under Part 4 of the *Utilities Act 2000* (ACT). The Commission has conducted two rounds of public consultation on the Code prior to making this final determination.

The Code sets out the framework by which a utility may require a customer to contribute towards the development or augmentation of the water network or sewerage network, in connection with a development. In effect, urban infill developments will pay a new fee of \$1,200 for each increase in 'equivalent population'. Existing customers will continue to contribute to augmentation costs through the regulated tariff. New developments will not bear the full cost of the augmentations, paying a contribution only based upon increased demand.

The Commission has approved, under section 58 of the *Utilities Act 2000*, the Water and Sewerage Capital Contribution Code. The Code will come into effect from 1 January 2018, with an eighteen month transition period ending on 30 June 2019.

Joe Dimasi
Senior Commissioner
8 December 2017

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Executive summary

On 4 October 2017, the Independent Competition and Regulatory Commission (Commission) released its draft decision on a proposed Water and Sewerage Capital Contribution Code (Code). The draft decision was made after a round of public consultation on a proposal from Icon Water to introduce the Code. The Commission has considered submissions received on the draft decision and is now setting out its final determination.

In finalising the draft, the Commission has considered the comments received during the public consultation period and the underlying objective and purpose of the Code. The Commission accepts the need for a Capital Contribution Code and believes the Code represents a fairer and more transparent way of charging for infrastructure upgrades than the current *‘last person standing’* arrangements it will replace.

The Code will come into effect on 1 January 2018, with an 18 month transition period for properties purchased prior to this date. There has been significant public consultation on the Code, with Icon Water’s original proposal released by the Commission for comment in April 2017, prior to the Commission making a draft decision in October 2017 which also sought public comment.

In making this final determination, the Commission has considered:

- the purpose of the Code;
- issues raised in submissions during the first public consultation period;
- issues raised in submissions on the draft decision;
- capital contribution arrangements in other jurisdictions;
- equitable charging structures and methods for calculating network demand; and
- potential impacts of the charge on the community.

1 Overview

Introduction

In making this determination the Commission responds to the submissions it has received on the draft report and makes a final determination on all matters to be included in the Code.

According to ACT Government projections¹, Canberra's population is expected to increase by 183,000 (47 per cent) between 2015 and 2041. The ACT Government's planning strategy aims for up to 50 per cent of this growth to occur in established areas through urban infill and redevelopment². Urban infill will necessitate upgrades or replacement of certain infrastructure in established areas which will reach or exceed capacity during the forecast period. This Code deals with the question of how these projects should be funded.

In March 2017, Icon Water proposed an arrangement where new customers partly fund infrastructure upgrades, through a new funding model that levies a fee on new developments that increase network demand in established areas (referred to as 'within precinct'³). The Commission sought submissions on Icon Water's proposal. Before making its draft decision, the Commission considered several approaches to infrastructure funding, and agreed that part recovery of infrastructure costs from developers was an equitable, efficient and transparent method of raising required funds that was consistent with practices in other jurisdictions.

To enable this charging arrangement under the *Utilities Act 2000* (Utilities Act), a new industry code is required. Once enacted the Code will become an industry code under Part 4 of the Utilities Act.

1.1 The draft decision

The Commission released a draft report on the introduction of a Water and Sewerage Capital Contributions Code on 4 October 2017. The Commission found that the Code is a more equitable and transparent charging regime than the current informal arrangements that are in place. The Commission also found that the principles and charges underlying the Code were broadly aligned with other jurisdictions, and that charging new developments within the precinct a contribution towards network augmentation for increased demand was reasonable. The draft decision discussed:

- the background and underlying need for a capital contribution code;

¹ ACT Government (2017).

² ACT Government (2007) and (2013).

³ There is a single precinct within the ACT, it is defined by a map and discussed in Chapter 3.

- industry codes and the Commission’s role;
- operational issues for consideration;
- other issues raised in submissions; and
- community impacts and impact on housing costs.

The draft decision considered various issues that had been raised relating to the initial Code that had been proposed by Icon Water. The Commission’s consideration of four key operational aspects were detailed in the draft decision, they were:

- chapter 3 – whether a multi or single precinct was appropriate for the ACT;
- chapter 4 - the use of ‘Equivalent Population’ as a demand metric;
- chapter 5 - contribution methodology and assets covered by the Code;
- chapter 6 – whether augmentation projects were prudent and efficient.

In addition to these primary issues, the Commission also considered, in chapter 7 of the draft:

- moral hazard for a developer that had upgraded infrastructure;
- whether the charge was economically efficient;
- level of consultation;
- transitional arrangements;
- impact on housing affordability and government policy;
- other charges (Clause 8 of the Code);
- whether the Code should have an end date; and
- an exemption for owners of Mr Fluffy properties.

1.2 Background

In considering whether it was appropriate to implement a capital contribution code, the Commission had to consider the current arrangements for funding infrastructure upgrades, and the likely future implications of such arrangements given the projected growth in the ACT.

As was noted in the draft decision, the current ACT arrangements for developer contributions to infrastructure are informal and were developed at the time of self-government with a focus on new suburbs. These informal arrangements can see developers pay 100 per cent of the cost of any augmentation to service their development. This approach is accepted in new land developments, but can be problematic when applied to augmentation or re-development in established suburbs,

creating an unfair charging regime known as the ‘*last person standing*’⁴ issue. It can also lead to inefficient augmentation practices, and uncertainty of cost and delay for developers. The projected growth for the ACT will see these concerns become more frequent and apparent unless a formalised, structured and planned approach can be implemented. With these concerns in mind, the Commission supported the introduction of a new industry code to partially fund future augmentations in established suburbs (within precinct).

The Commission has facilitated two rounds of public consultation on the Code before making this final determination. On 5 April 2017, the Commission released Icon Water’s initial proposed Code for public submissions, 6 formal submissions were received on Icon Water’s proposal. The Commission considered submissions and made some minor amendments to the Code prior to releasing its draft decision on 4 October 2017; submissions closed on 3 November 2017. Two formal submissions were received and discussions were held with the Technical Regulator and under the Utilities Act, with the office of relevant Minister.

1.3 Timeline of the review

Table 1.1 below outlines the Commissions timeline for the Code’s introduction.

Table 1.1 Review timeline

Icon Water submission of draft code to Commission	30 March 2017
Publication of Icon Water’s proposed code	5 April 2017
Notice published in Canberra Times calling for submissions	7 April 2017
Public submissions closed	12 May 2017
Release of draft decision	4 October 2017
Notice published in Canberra Times calling for submissions	4 October 2017
Submissions due date	3 November 2017
Release of Final determination	12 December 2017
Commencement date of the Code	01 January 2018

⁴ The ‘*last person standing*’ issue is when the development that will exceed network capacity, therefore triggering an augmentation, pays the full cost of the augmentation. This is regardless of the development size, or any other developments occurring before or after the augmentation. In effect, only one developer pays, whilst other developments, both before and after the augmentation, whose demand contributes to the need for the augmentation don’t pay at all.

2 Summary of the Code

The Code formalises arrangements for contributions that developers pay towards future water and sewerage infrastructure upgrades that will be necessitated by urban redevelopment and increased housing density in established suburbs (within precinct). The Code does not change arrangements that are currently in place for new suburbs/new areas with no established network infrastructure (outside of precinct).

The Code has the following features:

- an 18 month transitional period, allowing properties purchased before 1 January 2018 to access the infrastructure funding arrangements in place prior the Code's introduction;
- a single precinct within the ACT, with developments either falling within the precinct, or outside of it;
- the establishment of 'equivalent population' (EP), an engineering concept, as the method to calculate anticipated demand for a development, and links any charges payable by developers to a net increase in EP;
- Icon Water and developers⁵ make a 50:50 contribution to future Class 2⁶ shared assets in established areas (within precinct);
- no change to funding arrangements for Class 1 and Class 3 assets⁷; and
- the 'precinct charge' will be included as a miscellaneous service under the Regulated Water and Sewerage Services Price Direction. Any adjustment to the charge and associated precinct map will be subject to scrutiny by the Commission through the price adjustment process.

The Commission has considered the purpose of the Code and current anticipated future augmentation projects necessitated by available population growth forecasts, against the Commission's approach to determining the water and sewerage tariffs across the Australian Capital Territory. The Commission is satisfied that the Code represents a more certain, and equitable funding arrangement than has been in place to date.

⁵ The Class 2 infrastructure charge under the proposed code is payable by the 'Customer'. For the purposes of this determination, the Commission assumes that the developer will be the landholder and 'Customer'.

⁶ Class 2 infrastructure is defined within the Code and includes water mains greater than 200mm, water reservoirs, pumping stations and other shared assets that are not Class 1 or Class 3 infrastructure.

⁷ Class 1 and Class 3 infrastructure is defined within the Code

2.1 Changes to the Code

The Commission has reviewed the Code since releasing its draft decision. In reviewing the Code, the Commission sought to clarify operational aspects, and codify processes that Icon Water (or any other Utility⁸) is to undertake when operating under the Code.

2.1.1 Clarification of processes during transition period

Clause 2.3 of the Code specifies the transition timeframe for properties purchased prior to 1 January 2018. Upon review of the Code, the Commission was not satisfied that the Clause, as drafted, provided clarity on payment expectations for properties that triggered an augmentation during the transition period. An additional Clause 2.3(b) has been added to clarify this process. The effect of this addition is to clarify those developments that meet the transition period criteria are subject to the infrastructure funding arrangement in place prior to the implementation of the Code. In effect, a developer would be subject to the ‘last person standing’ arrangement if their development triggered an augmentation, unless they choose to opt in to the Code’s funding provisions.

2.1.2 Determination of original EP

Clause 9.1(b) of the Code outlines the principles upon which the equivalent population (EP) of a connection is calculated. The previous version of the Code linked the EP determination to the development approval. The Commission notes that the majority of properties within the precinct were initially developed prior to self-government and many of these properties may not have a development approval. The Commission has updated 9.1(b)(iii) to provide a process for evaluating the EP when a development approval does not exist. This means that in cases where a development approval does not exist the utility may use built form, demand data, gauge data and any other relevant material available to assess the EP. This addition ensures that the process for assessing the EP within the precinct is clear and the absence of a development approval will not hinder the objectives of the Code.

Additionally, the Commission has also included a new Clause 9.1(b)(iv) to clarify the process that will occur for land that has recently transitioned onto the precinct map. In effect, such land will be assessed using the estate master plan, which outlines the scale and type of development that has been planned for in the suburb.

2.1.3 Approval of the precinct map

Clause 9.5 has been updated to reflect that the Commission will approve any changes to the precinct map. The reasons for this change are explained in more detail in section

⁸ Utility is the relevant water or sewerage utility licenced under the Utilities Act. In the event another Utility is licenced to provide services the Code would apply to that Utility.

3.3.1. Additionally, subsequent versions of the map are now to include a table of amendments.

2.1.4 Precinct map updated

The precinct map has been reviewed and updated. The Commission noted that the initial precinct map included some errors and sought refinements to the map. The revised initial map is included at Appendix 2. A more detailed map can be found on the Commission's website.

2.2 Purpose of capital contributions

There are currently no formalised water and sewerage services capital contribution arrangements for developments within the Territory. Icon Water contends this is in contrast with water, electricity and gas networks in other jurisdictions⁹. The Commission agrees that given the future development needs of the Territory it is timely to move to codify the arrangements for developer contributions to the upgrade of water and sewerage infrastructure.

The purpose of capital contributions in the context of the Code is to recover the 'uneconomic' component of Class 2 augmentations within precinct¹⁰ from within precinct developments over the coming 20 year period. An augmentation is considered 'uneconomic' where the average prices paid by customers serviced by the augmentation (new and existing) would not be sufficient to recover the full cost of the augmentation itself.

Areas outside the precinct are treated differently and, under current practice and custom, the developer pays 100 per cent of the Class 2 cost, usually by building the new network to the standards required by the utility, and gifting it to the utility to maintain once the development is completed. In limited circumstances, the utility may build the infrastructure itself and charge the costs to the developer. Utility built infrastructure arrangements are negotiated on an as required basis between the developer and the utility. Clause 9.2 of the Code allows this practice to continue by only allowing the utility to recover costs¹¹ for outside of precinct developments; essentially if the infrastructure is built by the developer no costs will be incurred by the utility and therefore there would be no charge.

Capital contributions for developments within the precinct ensure that new customers pay a share of the costs of connecting them to the network. This achieves two things: first, it ensures that existing customers are not disadvantaged (with higher costs or reduced amenity) by the connection of new customers; and second, it provides a price

⁹ Icon Water (2017a).

¹⁰ The precinct is any area contained within the map as detailed in Clause 9.4 of the Code.

¹¹ Costs is a defined term within the Code, relating to actual amounts incurred by the utility, plus a reasonable profit margin.

signal to prospective developers that is broadly reflective of the infrastructure costs associated with urban infill developments across the Territory.

2.3 Issues raised by the Code

The Commission facilitated two rounds of public submissions prior to releasing this final determination. The first call for submissions was on Icon Water’s original proposed code in April 2017. The Commission released a draft decision covering issues raised against Icon Water’s original proposal in October and sought further public comment. Two formal submissions were received on the draft decision. The following chapters discuss the primary issues considered by the Commission in making this final determination.

2.4 Submissions received on the draft decision

On 4 October 2017, the Commission’s draft decision was published for public submissions and sent to ACT Government stakeholders, with the final date for submissions being Friday 3 November 2017. The Commission received two submissions from the following people or organisations during the public consultation period:

1. Mr Kevin Cox
2. Icon Water Limited

Consultation and discussions with the Minister and Technical Regulator also occurred during the period the draft decision was open for submission, satisfying Section 58 (2)(a) of the Utilities Act.

3 Single Precinct

3.1 Draft report

The Commission's draft decision considered the options of whether the Territory should be covered by a single precinct as proposed by Icon Water, or as multiple precincts (associated with sewerage catchment areas).

The Commission considered several factors, including the modelling of costs for individual precincts in a multi-precinct model, equity principals and feedback both Icon Water and the Commission had received on a multi-precinct option, versus the simplicity and lower administrative cost of a single precinct within the Territory.

The Commission considered that a multi-precinct model:

- was more likely to be reflective of the actual costs associated with development within the specific precinct; and
- more likely to reduce cross-subsidisation.

However, the Commission also found it was administratively complex and was not supported by the development community. The Commission considered that attributing proportional costs for augmentations that may benefit several precincts could be problematic. Additionally, pricing in a multi-precinct model was likely to be more volatile than within a single precinct.

In considering this matter, the objectives of the Utilities Act lead the Commission to consider the provision of high quality utility services at reasonable prices; minimise the potential for monopoly power in the provision of utility services and to encourage long-term investment in utility service industries. The Commission believed that a simple and uniform capital contribution charge applicable to all established areas (a single precinct) in the Territory would remove the potential for charges to be set in a discriminatory fashion between suburbs. A single precinct was also administratively simple to implement and for developers and the community to understand.

3.2 Submissions on draft report

No submissions were received that specifically addressed the Commission's preference for a single precinct. Icon Water's submission however, generally supported the Commission's draft decision.

3.3 Commission's consideration

The Commission has reviewed and restates the conclusion in the draft decision supporting the adoption of a single precinct model. The Commission has reconsidered

two operational aspects of the Code and they are outlined in sections 3.3.1 and 3.3.2 below.

3.3.1 Approval of changes to the precinct map

The draft decision noted concerns raised regarding the process for alterations to the precinct map, relating to Icon Water’s role as the determiner of the precinct map and its ability to introduce multiple precincts at a later stage.

The Commission was of the opinion that this was unlikely to arise, given the Commission’s role in approving any changes to the charge (which is linked to the precinct map).

Icon Water’s proposal¹² included a methodology for expansion of the precinct map, however this was not specifically included in the Code itself. This process has been clarified and reconfirmed by Icon Water (see Appendix 3– Icon Water’s letter dated 8 November 2017).

Since publishing the draft decision, the Commission has drafted clauses in the Regulated Water and Sewerage Services Proposed Price Direction 2018–23 that outlines the requirements for updating the precinct charge. The Commission has included a process within the Proposed Price Direction that requires Icon Water to submit to the Commission any changes to the precinct map for approval. In accordance with this process, Clause 9.5 of the Code has been amended to include a reference to the map being subject to the Commission’s approval.

3.3.2 Should some areas be excluded from the precinct?

Section 7.1.1 of the draft decision discussed an issue of broad applicability raised by Canberra Airport in its submission on the draft Code published in April 2017. Canberra Airport argued that it did not consider the airport area to be within the proposed precinct. This raised the general issue of whether specific areas should be excluded. However, this potentially introduces subjective judgement into determining the precinct which was not raised in any other submission.

The principles under which the precinct map was developed are not based upon a subjective measure, such as level of development, but rather whether the property had a connection available. Based upon this principle, the definition of the precinct can be readily understood by developers and easy for Icon Water to administer.

Given this, the Commission does not have sufficient evidence to make an assessment as to whether particular areas should be granted any special circumstances type arrangement within the Code and therefore no ‘special exclusions’ clause in the Code has been proposed or included.

¹² Icon Water (2017a), Page 55

3.4 Final determination

The Code is an improvement on the current approach to funding augmentations in established areas. It is the Commission’s opinion that a single precinct Code is appropriate for the ACT and is consistent with the provisions of Section 58 of the Utilities Act.

4 Equivalent population (EP)

4.1 Draft report

Chapter 4 of the Commission’s draft determination outlined the use of equivalent population (EP) as the demand metric that the Code, and calculation of charges within the Code, is based. EP is an engineering concept most commonly used in sewerage infrastructure planning. It is used to measure part of the demand loadings a development places on a network and seeks to provide a common measure for assessing demand loadings from different types of developments (linked back to the expected demand from a person in a residential household). EP is used around the world and has been adopted by the Water Services Association of Australia¹³. The draft determination provided numerous examples of EP being used within Australia by governments, councils and utilities for the purposes of identifying capital contribution charges¹⁴.

The Commission’s draft determination noted stakeholder concerns regarding the impact of EP in creating differential costing on the basis of building use. In particular, increases in charges for commercial buildings in comparison with residential buildings. The Commission found that EP was a metric designed to account for different demand profiles depending on building use. The Commission was not provided with strong evidence of a beneficial alternative.

4.2 Submissions on draft report

No submissions were received relating to the use of EP as the metric within the Code.

4.3 Commission’s consideration

The Commission has reviewed and restates its position in the draft determination on the use of EP.

4.4 Final Determination

The Commission supports the use of EP as a pricing metric in the Code.

¹³ WSA (2014)

¹⁴ ICRC 2017 pp 25-26

5 Contributions to new and common assets

The precinct charge under the Code is calculated using a forward looking 20-year capital expenditure program. On a simple basis, the capital expenditure program has been developed by looking at current network capacity against the currently available population growth predictions; this shows areas that are expected to exceed capacity and require augmentation to meet demand.

The anticipated cost of those augmentations have been considered, and the price modelled based on a 50 per cent recovery from developments over the 20 year period. The Commission's draft decision was that the precinct charge will be continually monitored and annually in line with population projections, network capacity, actual costs and regulatory prudence and efficiency decisions.

5.1 Draft report

In evaluating Icon Water's initial proposed Code, the Commission sought to examine the constitution of the underlying modelling and satisfy itself of the validity of any decisions or assumptions made in creating the model. As a result of this examination, the Commission's draft position was that the Code, as constructed by Icon Water, was reasonable and likely to deliver on its objectives.

5.2 Submissions on the draft report

A submission from Mr Kevin Cox was received that suggested an alternative funding method to the charge proposed by the Code.

From the submission: *"ACT government can buy the infrastructure paid for by the developers with discounts on Icon Water invoices to the occupants of new dwellings."*

Mr Cox further stated that:

"The system would be easy to implement as it is a book-keeping change and need not change developer arrangements or Icon Water Billing or Icon Water existing contracts with customers. It is an add-on to the existing system not a replacement of, or change to the existing system. Icon Water need not be involved with the development and operation of the system other than to pay the discount when requested."

The submission included a series of possible cost and pricing impacts.

5.3 Consideration of submissions

Mr Cox’s proposal raises a number of policy questions and in the Commission’s view would require the involvement of the ACT Government in administration and implementation. These questions go beyond the scope of the Code proposal and exceed the Commission’s decision making authority.

5.4 Final Determination

It is the Commission’s decision that a charge of \$1200 should be levelled on a per-EP basis on all developments within the precinct. This charge will be continually monitored and subject to annual review, through the Commission’s price adjustment process, in line with population projections, network capacity, the approved return for the regulatory period, actual costs and regulatory prudence and efficiency decisions.

6 Prudent and efficient costs

Icon Water’s water and sewerage services prices are subject to regulation by the Commission, and its capital expenditure subject to a test for prudence and efficiency. The Code provides that the precinct charge can be updated annually subject to the approval of the Commission.

6.1 Draft report

In evaluating the original proposed Code, the Commission reviewed the mechanisms that are in place and available for ensuring Icon Water’s capital expenditure costs were prudent and efficient. The Commission will continue to test Icon Water’s capital expenditure, and projects associated with the calculation of the precinct charge, during each price investigation, which will also account for any contributions received.

The Commission noted its capability to request and publish capital contribution figures collected through the utility licence annual report, and will commence collecting and publishing this information once the Code becomes operational.

6.2 Submissions on the draft report

No submissions were received relating to issues of prudent and efficient costs associated with the Code.

In discussing the Code with interested parties one question that has arisen is whether the Code needs to include information about the expected level of investment in infrastructure augmentations over the coming 20 years. In the Commission’s draft determination the level of required capital expenditure within the precinct was discussed, with the figure of \$154.3 million indicated. Based on an expectation that 50 per cent of this amount would be recovered through the Code, a charge of \$1200 per EP was proposed. The draft determination also indicated the following augmentation projects that had been identified by Icon Water.

Table 6.1 Water and Sewerage Projects of proposed under the Capital Contribution Code

Water and Sewerage Projects	Estimated Project Timeframe
Belconnen Trunk Sewer Augmentation	2017-2020
Constitution Avenue Sewer Upgrade	2020
Fyshwick SPS Augmentation	2020-2022
North Canberra Sewer Augmentation Stage 1	2020-2022
North Canberra Sewer Augmentation Stage 2	2025-2027
Phase 1 – Campbell and Ainslie Water Storage	2027-2029
Woden Valley Sewer Augmentation	2029-2031
North Canberra Sewer Augmentation Stage 3	2034-2036

The total (discounting) value of the proposed water and sewerage projects to be funded by the Code is \$77.1 million.

The EP charge is reviewed every year as part of the price direction associated with the water and sewerage services price determination. This process provides the opportunity to account for changes in costs and in the proposed plan of capital works. It is the Commission's view that should the indicated projects change, or there are step changes in the costs associated with the augmentation projects, these will be identified and disclosed as part of the annual adjustment to the miscellaneous charges.

As noted elsewhere, Icon Water has developed its work plan based on expected population growth and the areas where augmentation of the water and sewerage network is likely to be required. The Commission has cross checked this with the forward capital expenditure program that Icon Water has proposed for its water and sewerage services tariffs for the forthcoming regulatory period of 1 July 2018 to 30 June 2023. This provides some assurance that projects are accounted for in terms of what is funded under the Code and what is funded from general water and sewerage services tariffs.

6.3 Consideration of submissions

The Commission has reviewed and restates its position in the draft determination on the review of Icon Water's capital expenditure.

6.4 Final determination

The Commission will review Icon Water's capital expenditure associated with the Code as part of its price determination process.

Appendix 1 Final Determination – Water and Sewerage Capital Contribution Code

1. INDUSTRY CODE

The Water and Sewerage Capital Contribution Code (Code) is an **Industry Code** determined by the **ICRC** under Part 4 of the **Act**.

2. APPLICATION AND PURPOSE OF THIS CODE

2.1 Application

- (a) This Code applies to a **Water Utility** in relation to its **Water Network** and to a **Sewerage Utility** in relation to its **Sewerage Network**.
- (b) It is a requirement under section 25(2) of the **Act** and the **Utility's** licence that a **Utility** comply with an **Industry Code** relevant to the licensed service.

2.2 Purpose

The purpose of this Code is to outline the principles and procedures by which a **Water Utility** and a **Sewerage Utility** may require a **Customer** to contribute towards the development or augmentation of the **Water Network** or **Sewerage Network**, in connection with a **Development**.

2.3 Transition Period

- (a) No **Class 2 Infrastructure Charge** is payable for a **Development** inside a **Precinct** that is undertaken by a **Customer** (or a **Developer** on behalf of a **Customer**) if:
 - i. the date of the contract for the acquisition by the **Customer** of the land on which the **Development** is being undertaken is before 1 January 2018; and
 - ii. the application for **Development Approval** for the **Development** is lodged before 1 July 2019,unless the **Customer** agrees that the **Class 2 Infrastructure Charge** will be payable for that **Development**.
- (b) For the avoidance of any doubt, a **Development** for which no **Class 2 infrastructure charge** is payable under Clause 2.3(a) will be subject to the **Utility's** infrastructure evaluation and funding arrangements in place prior to the implementation of this Code.

3. DICTIONARY

The dictionary at the end of this Code is part of this Code.

4. DATE FOR PAYMENT OF CAPITAL CONTRIBUTION CHARGE

Where a **Capital Contribution Charge** is payable, it will become payable by the **Customer** at the earlier of:

- (a) the date on which the **Utility's** connection fee for the **Connection** associated with the **Development** is payable; and
- (b) the date on which a **Certificate of Occupancy** is issued in relation to the **Development**.

5. CLASS 1 INFRASTRUCTURE

A **Utility** will construct any **Class 1 Infrastructure** required at its own expense and without requiring payment of a Capital Contribution Charge under this Code, subject to any amount payable by a **Customer** as a **Capital Contribution Charge** under clause 8 of this Code.

This clause 5 applies regardless of whether the **Class 1 Infrastructure** is inside a **Precinct** or outside a **Precinct**.

6. CLASS 2 INFRASTRUCTURE

6.1 Payment of charge

Where a **Customer** undertakes or causes a **Developer** to undertake a **Development** the **Customer** must pay a **Capital Contribution Charge** to the relevant **Utility**, calculated in accordance with clause 9.1 or clause 9.2 (as applicable).

7. CLASS 3 INFRASTRUCTURE

In connection with a **Development**, a **Customer** will (or will cause a **Developer** to) design and construct at the **Customer's** own cost any required **Class 3 Infrastructure**.

No **Capital Contribution Charge** is payable under this Code by a **Customer** in connection with the design or construction of **Class 3 Infrastructure**.

This clause 7 applies regardless of whether the **Class 3 Infrastructure** is inside a **Precinct** or outside a **Precinct**.

8. OTHER CHARGES

8.1 Removals, relocations and specific requirements

If, in connection with a **Development**, a **Customer** requests a **Utility** to, or a **Utility** determines that it is necessary to, remove, relocate, provide protection or make changes to any part of a **Utility's** existing **Sewerage Network** or **Water Network** to:

- (a) permit construction, operation, use or enjoyment of the proposed **Development** or to enable continued provision of **Water Services** or **Sewerage Services**; or
- (b) reduce the risk that the **Sewerage Network** or **Water Network** may constitute an **Environmental Nuisance** to any person where such risk is increased due to the construction, operation, use or enjoyment of the proposed **Development**,

the **Utility** may charge, and the **Customer** must pay, the full **Costs** incurred in carrying out such works.

8.2 Application of clause 8.1

Clause 8.1 applies regardless of:

- (a) whether the works include **Class 1 Infrastructure**, **Class 2 Infrastructure** or **Class 3 Infrastructure**;
- (b) whether the **Infrastructure** is inside a **Precinct** or outside a **Precinct**;
- (c) the age or utilisation of the asset; and
- (d) any previous contribution towards the cost of installing those assets.

8.3 No credit or allowance

The **Utility** will not provide any payment, credit or other allowance for assets removed, relocated or changed.

9. CALCULATION OF INFRASTRUCTURE CHARGES AND PRECINCTS

9.1 Calculation of Class 2 Infrastructure Charge – inside a Precinct

- (a) The **Class 2 Infrastructure Charge** payable for a **Development** inside a **Precinct** is calculated in accordance with the formula:

$$C2IC = (\text{net increase in EP}) \times C$$

Where:

'C2IC' is the **Class 2 Infrastructure Charge** for a **Development** inside a **Precinct**

'net increase in EP' is determined by the **Utility** in accordance with the principles in clause 9.1(b)

'C' is the **Precinct Charge**

- (b) The **Class 2 Infrastructure Charge** payable under this Code for a **Development** inside a **Precinct** will be based on a determination by the **Utility** of the net increase in **EP** in accordance with the following principles:
- i. where the **Development** involves the disconnection of a **Connection (Existing Connection)** and the re-connection of either the same or a new **Connection (New Connection)**, the net increase in **EP** will be calculated by taking the **EP** of the **New Connection** and deducting the **EP** of the **Existing Connection**;
 - ii. if the **EP** of the **New Connection** is equal to or less than the **EP** of the **Existing Connection**, then the net increase in **EP** is taken to be zero; and
 - iii. the **EP** of the **Existing Connection** and the **New Connection** will be determined taking into account the size, scale and nature of development permitted under the **Development Approval** for the **Development** rather than the size, scale or nature of development permitted under the crown lease, Territory Plan or National Capital Plan. Subject to 9.1(b)iv, where a **Development Approval** has not been issued for the **Existing Connection**, the **EP** of the **Existing Connection** will be determined by the **Utility** using built form, demand data, gauge data and any other relevant material available. Where a **Development Approval** has not been issued for the **Development**, the **EP** of the **New Connection** will be determined by the **Utility** using the proposed plans for the **Development** and any other relevant material available.
 - iv. If the **Map** has been updated and the land on which the **Development** is being undertaken was previously outside a **Precinct** but is now inside a **Precinct** and has not previously been

developed, the **EP** of the **Existing Connection** will be determined by the **Utility** using the suburb estate master plan or other relevant material available.

- (c) When calculating the **Class 2 Infrastructure Charge**:
- i. the **Precinct Charge Schedule** that applies will be the version in force as at the date on which the application for the **Development Approval** was lodged or (if no **Precinct Charge Schedule** was in force at that date) the first **Precinct Charge Schedule** issued in relation to this Code; and
 - ii. if it is more than 12 months after the date the application for the **Development Approval** was lodged, the **Precinct Charge** will be increased by an amount of 2.5% per annum, with an increase for any part year calculated on a daily pro-rata basis.

9.2 Calculation of Class 2 Infrastructure Charge – outside a Precinct

The **Class 2 Infrastructure Charge** payable under this Code for a **Development** located outside a **Precinct**, is an amount determined by the **Utility** to cover the **Costs** of the **Class 2 Infrastructure** for the **Development**.

Where the land on which **Development** may occur is not wholly within a **Precinct**, the **Class 2 Infrastructure Charge** will be determined on the basis that the entire **Development** is outside the **Precinct**.

9.3 Updating the Precinct Charge Schedule

A **Utility** will review, and may, subject to approval by the ICRC, update its **Precinct Charge Schedule** annually.

The new **Precinct Charge Schedule** will apply to the calculation of the **Capital Contribution Charge** for any **Development** inside a **Precinct** for which the application for the **Development Approval** was lodged on or after the date specified in the new **Precinct Charge Schedule**.

9.4 The Precinct Map

The **Map** must;

- (a) Be publicly available at no charge directly from the **Utility**;
- (b) Be of sufficient quality and resolution to enable identification of individual parcels of land;
- (c) Contain a clearly identifiable version number and date/s of effect; and
- (d) Include a table of amendments detailing any changes made from the previous version of the **Map**.

9.5 Updating the Precinct Map

A **Utility** will review, and may, subject to approval of the ICRC, update its **Map** annually.

The new **Map** will apply to the calculation of the **Capital Contribution Charge** for any **Development** for which the application for the **Development Approval** was lodged on or after the date specified in the new **Map**.

10. DETERMINATION OF REQUIRED INFRASTRUCTURE

10.1 Required Infrastructure

Whether **Infrastructure** is required is a matter within the discretion of the relevant **Utility** unless the **Utility** is specifically required by law to construct **Infrastructure** assets of a particular type or capacity. **Infrastructure** will be of a standard consistent with the **Utility's** standards and applicable laws.

10.2 Assessment of capacity and reliability

The assessment of the reasonable capacity and reliability of **Infrastructure** is a matter within the discretion of the **Utility** unless the **Utility** is specifically required by law to construct **Infrastructure** assets of a particular type or capacity.

10.3 Ownership of assets and Infrastructure

The payment of any **Capital Contribution Charge** does not confer on the person paying that charge any ownership in, or other legal or equitable right in respect of, any asset or **Infrastructure** to which that charge may relate.

DICTIONARY

Definitions

- (1) “**Act**” means the *Utilities Act 2000*;
- (2) “**Capital Contribution Charge**” means:
 - a. a **Class 2 Infrastructure Charge**; and
 - b. any amount payable by a **Customer** under clause 8 of this Code;
- (3) “**Certificate of Occupancy**” means a certificate of occupancy issued by the relevant authority including by the construction occupations registrar under the *Building Act 2004* (ACT);
- (4) “**Class 1 Infrastructure**” has the meaning set out in Schedule 1;
- (5) “**Class 2 Infrastructure**” has the meaning set out in Schedule 1;
- (6) “**Class 2 Infrastructure Charge**” is determined in accordance with clause 9.1 or clause 9.2 as applicable;
- (7) “**Class 3 Infrastructure**” has the meaning set out in Schedule 1;
- (8) “**Connection**” means a connection or re-connection to a **Sewerage Network** or **Water Network** or replacement of a water meter (where the water meter replacement is as a consequence of the **Development**) and “**Connected**” has the corresponding meaning;
- (9) “**Costs**” means the amount incurred by a relevant Utility in:
 - a. making **Sewerage Services** or **Water Services** available to parcels of land not already connected to a **Sewerage Network** or **Water Network**;
 - b. varying the capacity of a connection to a **Sewerage Network** or **Water Network**;
 - c. removing, relocating, providing protection to or making changes to a **Sewerage Network** or **Water Network**; and
 - d. all necessary ancillary work,
including design, labour, materials, plant, transport, overhead and administration costs, plus a reasonable profit margin;
- (10) “**Customer**” has the same meaning as in the **Act**;
- (11) “**Developer**” means a person undertaking a **Development**. A **Developer** may also be a **Customer**;
- (12) “**Development**” means subdivision, consolidation, use, building, altering or demolishing a building or structure and **Developed** has a corresponding meaning;
- (13) “**Development Approval**” means, in relation to a **Development**, an approval from the relevant authority including a development approval under the *Planning and Development Act 2007* (ACT) or a works approval under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth);

- (14) “**Environmental Nuisance**” means an unreasonable interference with the enjoyment by the public, a section of the public or a person of a place of area, if the interference is caused or likely to be caused by:
- a. dust, fumes, noise, odour or smoke; or
 - b. an unhealthy, unsightly or otherwise offensive condition because of pollution;
- (15) “**EP**” means ‘equivalent population’ which is determined by the **Utility** based on the information available at <https://www.iconwater.com.au/capitalcontributions> and forms part of the calculation of a **Class 2 Infrastructure Charge**;
- (16) “**ICRC**” means the Independent Competition and Regulatory Commission established under section 5 of the *Independent Competition and Regulatory Commission Act 1997* (ACT);
- (17) “**Industry Code**” means a code determined by the **ICRC** under the **Act**;
- (18) “**Infrastructure**” means any or all of Class 1 Infrastructure, Class 2 Infrastructure and Class 3 Infrastructure, as the context permits;
- (19) “**Map**” means the map, as updated from time to time, available from the **Utility** and published on their website;
- (20) “**person**” includes a natural person, a firm, an unincorporated association or body corporate;
- (21) “**Precinct**” means the area identified as a precinct on the **Map**;
- (22) “**Precinct Charge**” means the charge payable per **EP** for a **Development** in a **Precinct**;
- (23) “**Precinct Charge Schedule**” means the charges schedule which sets out the **Precinct Charge**, as updated from time to time, available at <https://www.iconwater.com.au/About/Our-pricing.aspx>;
- (24) “**Sewerage Network**” has the same meaning and functions as defined under the **Act**;
- (25) “**Sewerage Utility**” is a person licensed under the **Act** to provide **Sewerage Services**;
- (26) “**Sewerage Services**” means those services as defined in the **Act**;
- (27) “**Territory**” means the Australian Capital Territory;
- (28) “**Territory Plan**” means the plan prepared under section 46 of the *Planning & Development Act 2007* (ACT)
- (29) “**Utility**” means:
- a. the relevant **Water Utility**, in respect of its **Water Network**, **Water Services** and the **Water Utility’s** associated functions under the **Act**;
or
 - b. the relevant **Sewerage Utility**, in respect of its **Sewerage Network**, **Sewerage Services** and the **Sewerage Utility’s** associated functions under the **Act**;
- (30) “**Utility Service**” has the same meaning as defined under the **Act**;

- (31) **"Water Network"** has the same meaning and functions as defined under the **Act**;
- (32) **"Water Services"** means those services as defined in the **Act**; and
- (33) **"Water Utility"** is a person licensed under the **Act** to provide **Water Services**.

Interpretation

In this Code, except where the contrary intention is expressed:

- the singular includes the plural and vice versa;
- another grammatical form of a defined word or expression has a corresponding meaning;
- a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- headings are for ease of reference only and do not affect interpretation.

SCHEDULE – CLASS 1, 2 AND 3 INFRASTRUCTURE

- (1) “**Class 1 Infrastructure**” means large scale headwork assets required by a **Utility** in order to provide services to **Customers** including:
- a. for a **Water Utility**, works relating to provision of the following infrastructure:
 - i. dams, weirs and associated assets;
 - ii. raw water pumping stations, pipelines and associated assets (upstream of a treatment plant);
 - iii. water treatment plants;
 - iv. bulk supply mains that feed the first reservoir or pressure management infrastructure from the treatment plant (pump station or valve farm);
 - v. any other infrastructure the **Water Utility** deems to be headwork assets;
 - b. for a **Sewerage Utility**, works relating to provision of the following infrastructure:
 - i. gravity sewers that are 750mm diameter or greater and associated assets (including ventilation systems, etc);
 - ii. sewerage treatment plants and associated assets;
 - iii. treated effluent outfalls and associated assets; or
 - iv. any other infrastructure the **Sewerage Utility** deems to be headwork assets.
- (2) “**Class 2 Infrastructure**” means the shared assets that are not Class 1 Infrastructure or Class 3 Infrastructure and which are required by a **Utility** to provide services to one or more **Customers** in connection with one or more Developments, including:
- a. for a **Water Utility**, works relating to provision of the following infrastructure:
 - i. water mains downstream of Class 2 Infrastructure and greater than 200mm diameter and associated assets
 - ii. water reservoirs and pressure management systems;
 - iii. water pumping stations and associated assets that are deployed on Class 1 Infrastructure and Class 2 Infrastructure pipe assets or feeding from Class 3 Infrastructure to a water reservoir in another pressure zone;
 - iv. any other infrastructure the **Water Utility** deems to be shared assets;
 - b. for a **Sewerage Utility**, works relating to provision of the following infrastructure:
 - i. sewers that are between 300mm diameter and 750mm diameter and associated assets (including ventilation systems,

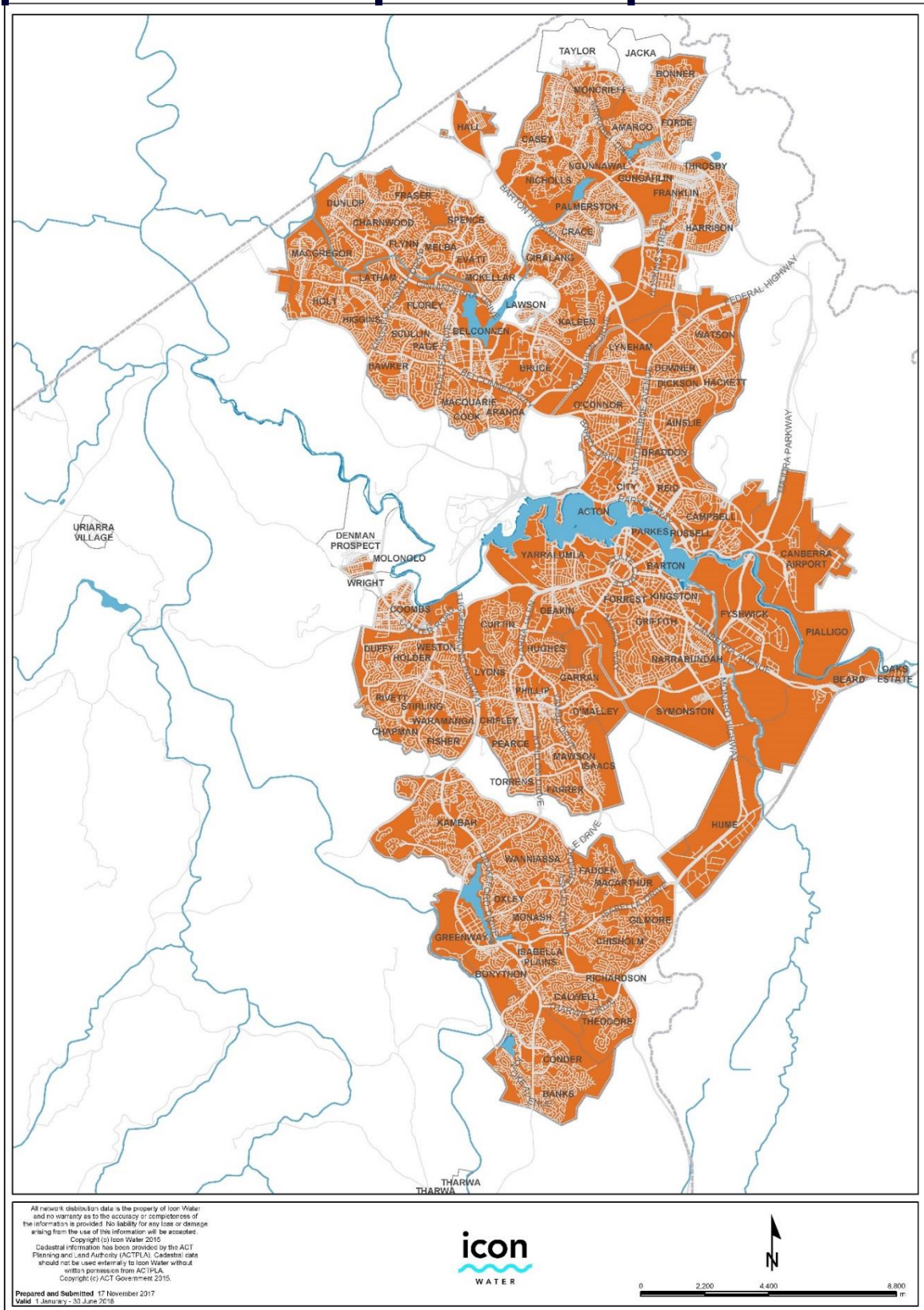
etc);

- ii. sewage pumping stations and associated assets;
- iii. emergency storage and flow attenuation tanks and associated assets;
- iv. any other infrastructure the **Sewerage Utility** deems to be shared assets.

(3) “**Class 3 Infrastructure**” means the reticulation assets required by a **Water Utility** or a **Sewerage Utility** to connect a **Customer** to water and sewerage services including:

- a. for a **Water Utility**, works relating to provision of the following infrastructure:
 - i. water mains that are 200mm or less in diameter;
 - ii. water pumping stations and associated assets that do not meet the Class 2 Infrastructure definition;
 - iii. pressure reducing assets on the Water Utility’s Class 3 Infrastructure;
 - iv. onsite assets including water tanks and associated assets; or
 - v. any other infrastructure the **Water Utility** deems to be reticulation assets; or
- b. for a **Sewerage Utility**, works relating to provision of the following infrastructure:
 - i. sewers that are less than 300mm in diameter;
 - ii. onsite assets including sewage storage capacity and internal sewage pumping stations; or
 - iii. any other infrastructure the **Sewerage Utility** deems to be reticulation assets.

Appendix 2 Initial precinct map



Appendix 3 Letter from Icon Water – precinct map expansion & EP determination



8 November 2017

Mr Joe Dimasi
Senior Commissioner
Independent Competition and Regulatory Commission
GPO Box 296
CANBERRA CITY ACT 2601

Dear Mr Dimasi

Water and Sewerage Capital Contribution Code – clarification of Icon Water's intended internal precinct assessment process

I refer to your request on providing further information on Icon Water's methodology to assess the progression of developments moving into a precinct under Icon Water's Water and Sewerage Capital Contributions (WSCC) proposal. This letter seeks to clarify our annual update process, and provide assurance that our planned internal processes will appropriately manage precinct boundary reviews each year.

Annual review of the precinct boundary

In its submissions Icon Water has proposed that the precinct boundary be updated on an annual basis. Our annual update process will be based on two principles:

- That any addition to the precinct area will have had a Provisional Certificate of Operations (PCOO) signed. These certificates generally occur in zones for new Greenfield developments.
- As a guide, the precinct boundary should only be updated incrementally, based on the finalisation of new build ('greenfield') developments.

It is not Icon Water's intention to radically change the boundary year-to-year based on assumptions or judgement; instead, we expect the boundary to gradually grow, following Canberra's urban footprint in a linear and documented manner.

Late development of a block in a new build ('greenfield') estate

During the public consultation process run by Icon Water and subsequently by the ICRC, a query has been raised regarding a property possibly being charged twice for infrastructure under a hypothetical combination of circumstances, as follows:

- A new development was built outside a precinct resulting in a developer funding for 100% of the Class 2 and Class 3 infrastructure required or augmented.

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iconwater.com.au

Icon Water Limited
ABN 86 069 381 960

- Following the completion of this estate, one or more blocks are undeveloped (as a result of their owners electing to delay building).
- Icon Water, in its annual review process reviews the issued Provisional Certificates of Operation, and classifies the suburb as an in-precinct area and subject to the WSCC charge going forward.
- The block is subsequently developed, triggering an Icon Water assessment regarding whether the WSCC charge should be paid.

Icon Water has specifically considered this situation, and has developed internal processes to ensure that customers / developers are not charged twice for infrastructure. Our assessment process is as follows:

- During Icon Water's standard interactions with greenfield estate developers, Estate Master Plans are reviewed, which lock-in the type of development to occur on each block, with corresponding equivalent population values. Once the PCOO is issued the block is included in Icon Water's precinct area.
- When a Development Application lodgement is reviewed by Icon Water, an initial assessment is made to determine whether the block is within the WSCC precinct. If it is inside the precinct, an initial assessment of the 'existing Equivalent Population (EP)' is made.
- For the blocks mentioned above, Icon Water will use the land use identified in the Estate Master Plan to determine existing EP. For example, if a block was identified as being developed to include one free standing house, it would be assessed as having 3.6 existing EP. Should a free standing house be developed, the effect of this is to make the resulting charge (3.6 EP – 3.6 EP) be zero (0 x \$1,200).
- If a developer increases the utilisation of land on a block, for example by constructing two town houses on the site, a charge will result, as the impact on Icon Water's network is over and above what was originally designed as per the approved Estate Master Plan.

Finally, I note that our proposal included a provision for the ICRC to review any changes to the precinct boundary during our annual charge update process. We believe that this provides a sufficiently robust process to assure the community that changes are appropriate.

Should you have any questions about these matters, please contact me on 02 6180 6180.

Yours sincerely,



John Knox
Managing Director

Abbreviations and acronyms

Code	Water and Sewerage Capital Contribution Code
Commission	Independent Competition and Regulatory Commission (ACT)
EP	Equivalent population
Icon Water	Icon Water Limited ABN 86 069 381 960
ICRC	Independent Competition and Regulatory Commission (ACT)
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997</i> (ACT)
Utilities Act	<i>Utilities Act 2000</i> (ACT)
WACC	Weighted average cost of capital

References

- ACT Government (2007) *Canberra Spatial Plan* viewed on 28 November 2017 from <http://apps.actpla.act.gov.au/spatialplan/introductory/index.htm>, Canberra
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- Icon Water (2017a) *Water and Sewerage capital contributions: Information Paper (Attachment B)*, Icon Water Limited, Canberra
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