



Independent Competition and Regulatory Commission Submission

12 May 2017

1. Executive Summary

Canberra Airport welcomes the opportunity to make this submission to the Independent Competition and Regulatory Commission (“ICRC”) in relation to ICON Water’s Water and Sewerage Capital Contributions proposal (“*ICON Proposal*”). ICON Water (“ICON”) is proposing a significant change to the way water and sewerage infrastructure is funded in the ACT. ICON are proposing a completely new model, and have shared no meaningful information and no demonstration or justification that the proposed charging model meets its underlying pricing objectives of being fair, efficient or effective, and has provided no consideration of alternate models.

As we have submitted to ICON, we are deeply concerned with the approach that ICON are proposing, are completely dismayed by the totally inadequate consultation process conducted by ICON, and disappointed by the complete lack of meaningful information shared by ICON in relation to their proposal. There is absolutely no justification presented by ICON for the proposal, and we strongly recommend that ***ICRC refuse to approve the ICON Proposal in its entirety.***

Further, we encourage ICRC to defer the implementation of any change to Water & Sewerage pricing until the 2018 regulatory review, and in the interim require that ICON:

1. Fully discloses their pricing model;
2. Disclose the basis for any charge, including what part, and how much, of existing water and sewerage charges include capex;
3. Consult broadly with industry and the public on the pricing model and basis for any change; and
4. Define “greenfield” and “brownfield”, and engage with stakeholders to establish agreed definitions.

Any proposed change to water and infrastructure funding should be included as part of the 2018-2023 regulatory pricing determination overseen by ICRC – a process which will allow the ICRC and stakeholders an opportunity to undertake a full and comprehensive review of relevant information, undertake appropriate economic analysis of the model (something that has not been possible given the lack of information provided by ICON), engage meaningfully with the ICRC and ICON and perform a detailed assessment of the consequences of the new code.

While we appreciate that ICON is undertaking the ICON Proposal as a capital contribution charge under an industry code rather than as part of its regulated pricing, that does not mean that it would not be more equitable, fair and efficient to undertake this review of the ICON Proposal at the same time as the next regulatory determination process for all of ICON's water and sewerage pricing when the full effect of this new charge can be determined.

In this context, ICON has not explained:

- why ICON's Proposal has to be dealt with now rather than as part of the 2018-2023 regulatory review; or

- why this capital contribution charge should be imposed in addition to the existing pricing regime which was set following consideration of returns on capital, the cost of providing regulated services, forecast demand, and which factored in capital expenditure ("CAPEX"), operational expenditure ("OPEX") and government policies.
- Why ICON does not take into account that individual developers - such as Canberra Airport - have already, at their own cost, significantly upgraded water infrastructure to meet current and anticipated future development. If this charge is imposed, Canberra Airport will be asked to make further capital contributions as a result of ICON's failure over many years to properly invest in infrastructure that meets entirely anticipated development.

Despite the fact that we believe that the ICON Proposal should be rejected in its entirety by ICRC, we also believe that Canberra Airport would be outside the proposed regime in any case, because:

1. Canberra Airport should be treated as "greenfield", and any future development at Canberra Airport is just a continuation of a long-term "greenfield" development;
2. Canberra Airport has already wholly funded off-Airport water and sewerage infrastructure capacity upgrades to an extent sufficient to meet future projected demand of current and future developments at Canberra Airport; and
3. Canberra Airport's Master Plan is our Development Approval, and this is already in place (so we have comfort from the proposed Transition Arrangements).

While we believe that ICON, as a monopoly infrastructure provider, should be entitled to recover the efficient costs of providing its service from the users of those services, including earning a fair return over time on the assets it owns, we believe that the proposed charge goes well beyond that position. The ICON Proposal is unjustified, not necessary, unfair, selectively disadvantages certain landholders, is inappropriate on a range of grounds, and should not be implemented.

We are pleased to lodge our detailed submission, and would be happy for an opportunity to engage further with ICRC and ICON in relation to the ICON Proposal, should that be possible.

2. Background

Canberra Airport, privately owned since 1998, has invested in excess of \$2 billion in facilities at Canberra Airport since acquisition from the Commonwealth Government. The decision to invest in the airport was in recognition of its development potential and the importance of the airport to the local community.

As the aviation gateway to Australia's capital city, Canberra Airport makes a major contribution to the local and national economy. Our Master Plans, released and approved in 1999, 2005, 2009 and 2014, outlined the approach needed to achieve that and we have invested heavily in delivering a critical national infrastructure asset of which the Canberra region community can be justly proud.

With the opening of the new airport terminal on March 13, 2013, Canberra Airport now represents one of the most significant infrastructure projects for the ACT and surrounding region, with a growing role as a national transportation hub, commercial business park and retail destination. More than 30,000 people currently travel to and from Canberra Airport to fly, greet, work, do business or shop, every day, and these numbers will more than double within the next decade.

In addition to Canberra Airport, our broader group business interests include Capital Estate Developments (our residential land development business currently developing Canberra's newest residential suburb, Denman Prospect) and Constitution Place (which will be developing Canberra's premier city office development in Civic). Our submission includes our response on behalf of all of our business activities, and additional sections specific to each of our relevant entities.

Canberra Airport first became aware of the ICON Proposal following a Canberra Times article on **1 February 2017**. At that time, ICON was seeking responses to its proposal by 17 February 2017 – a very short period of time for Canberra Airport to develop a response. The original consultation conducted by ICON allowed limited time for industry to make submissions (noting this was extended by one month to 17 March 2017 to attempt to manage this deficiency) and involved little engagement with the ACT industry or customers. Canberra Airport (and our related entities) responded to ICON with a formal submission on 17 March 2017. We also met with ICON management on two occasions to discuss the ICON Proposal and to raise our significant concerns in a constructive manner, however it is clear that ICON gave our feedback no consideration whatsoever, as there has been no changes to their Proposal in the release of their proposed Code.

Further to the above, we note that to assist in making a proper formal submission to ICON, and now to ICRC, Canberra Airport has requested, and has not been provided with, detailed information from ICON in relation to the assumptions, forecasts (CAPEX, OPEX, usage and customers) and the associated costs that underpin the ICON Proposal.

We note that key information was redacted or is not included in the ICON Proposal now available on ICRC's website. Without this information, it is impossible to produce a submission that adequately deals with all of the issues raised by the ICON Proposal, or indeed for stakeholders to even assess whether the assertions made by ICON have any basis in fact.

We are highly critical of the ICON Proposal on the following grounds:

- the 'appropriateness' of the charge in light of ICON's financial performance;
- the justification for the charge being applied to brownfield areas only, with the definition of "brownfield development" to be determined by ICON itself. This has the effect of making ICON's lack of capital investment to maintain and upgrade the network the responsibility of only a few developers;
- the timing of new revenue from the proposed charge compared to the timing of investment by ICON in relevant infrastructure - we have not seen any undertakings from ICON regarding the actual undertaking of infrastructure investment to meet anticipated demands, that revenue collected from the charge will actually be expended on capital development, any undertaking

regarding the use of the funds collected, **or any reasoning for why the funds need to be paid upfront rather than as and if the investment is undertaken;**

- we have seen no program of works for the purported infrastructure upgrades and have no certainty or information concerning the cost information used by ICON to justify the additional amounts to be paid - absent this it is impossible to assess the new charges;
- linked to the above, if the charge is to cover some perceived capital shortfall there needs to be a date by which the relevant contribution requirements fall away - otherwise ICON will just be the recipient of a windfall gain for all time;
- the appropriateness of the pricing model assumptions, given that there has been no information provided by ICON in this regard;
- the appropriateness of the control and oversight of ICON's behaviour should the proposed code be passed - there appears no way for any party to challenge the approach of ICON, or enforce any obligation against ICON to actually undertake the relevant infrastructure upgrades;
- the appropriateness of the charge given ICON's current regulatory pricing determination, and the apparent double recovery ICON will earn should the proposed code be passed. We will be seeking reductions in water pricing going forward to reflect this additional Capital Contribution charge now passed on to customers; and
- the timing of the proposed introduction of the charge – i.e. why now rather than in the upcoming 2018 - 2023 price determination process (which would allow a detailed and comprehensive review of all of the matters in relation to the proposed charges).

We are also very concerned that the ICON Proposal could be allowed in the context of the ACT's own unique jurisdiction circumstances, where the ACT Government:

- Controls / owns all land;
- Owns the monopoly water and sewerage service provider (ICON) and receives dividends from this entity;
- Controls the release of land to the market;
- Controls the planning of land use; and
- Makes the policy for Urban Renewal.

Our detailed submission follows.

3. Canberra Airport Specific Comments

Canberra Airport acquired the lease of its site in 1998. Canberra Airport's Master Plan (updated each 5 years) outlines Canberra Airport's development plans for the Canberra Airport site. The development of Canberra Airport will be progressive, and occur over the term of the 99 year lease.

Canberra Airport is the developer of the entire Canberra Airport site. As development occurs at the Airport, Canberra Airport delivers all necessary infrastructure at its own expense, including water and sewerage infrastructure. This is typical for a "greenfield" development. However, what is unique about Canberra Airport is that it is responsible for the ongoing maintenance, repair, management and replacement of the entire water and sewerage infrastructure network at Canberra Airport, **not** ICON. To be clear, ICON has no responsibility and bears no cost of the ongoing operation, maintenance, and replacement of on-airport water and sewerage infrastructure. To our knowledge, Canberra Airport is the only site, "greenfield" or "brownfield", in the ACT where this is the case.

Canberra Airport has already made significant contributions (over \$2M) to capital costs of off-site water and sewerage infrastructure under the current regime. Indeed between 1998 and 2010 the Canberra Airport's owners:

- contributed to the upgrade of external infrastructure to build capacity into the infrastructure to the airport boundary for the future development of the Canberra Airport precincts; and
- ensured that the water infrastructure on airport was developed so as to be able to deal with all future capacity issues.

It should be noted that all infrastructure on the airport has been maintained at the cost of Canberra Airport. This is unlike typical "greenfield" or "brownfield" developments, which "gift" water and sewerage infrastructure to ICON for operation and maintenance.

The investment by Canberra Airport in ICON's off-airport water network has provided sufficient capacity to meet both current and future water and sewerage requirements of Canberra Airport, including anticipated future development.

Under the ICON Proposal, Canberra Airport will be required to **pay again** for any new development on Canberra Airport. This situation is clearly grossly unfair in light of Canberra Airport making investments in ICON infrastructure to meet its anticipated development.

In addition, when the investment in infrastructure was made by Canberra Airport, there was no proposal for future development by the ACT Government adjoining the airport and therefore the design criteria dealt only with the future potential development of the airport.

Since then, there has been the development of IKEA in the Majura Valley adjacent to Canberra Airport has utilised part of the capacity in main trunk infrastructure. This infrastructure is off-airport water and sewerage infrastructure capacity that was wholly funded by Canberra Airport to support its own development requirements.

We are aware that the ACT Government intends to further sub-divide and sell land nearby IKEA which again can only be serviced from the current trunk infrastructure **which Canberra Airport paid to upgrade.**

Under no circumstance is it fair that Canberra Airport be required to pay to reinstate infrastructure capacity that is has already wholly funded for its own future growth, to allow other developments such as IKEA and the yet to be developed land adjoining that, simply because ICON has now allocated Canberra Airport funded capacity to other developments. Our own investment in off-Airport water and sewerage capacity to fund our own future growth cannot be lost to the Airport, nor can we now be double charged for our future growth in our “greenfield” site.

Future development of the Airport is managed through the Federal Airports master planning process. The latest approved 2014 Master Plan, supported by the ACT Government, ICON and other utilities service providers, was approved by the then Minister for Infrastructure and Regional Development and Deputy Prime Minister, the Hon Warren Truss MP, in January 2015. This Master Plan forecasts 34,000 jobs on airport by 2034.

The 2014 Master Plan is the current ‘blue print’ for the future development of Canberra Airport and is in fact the development approval for this future development. Development at our “greenfield” estate will proceed by way of building approvals consistent with our Master Plan.

Canberra Airport has relied on its consultants working with ICON and other utility providers to ensure there was adequate capacity in existing infrastructure headworks to service the future development of Canberra Airport consistent with the 2014 Master Plan.

ICON’s initial concept was that Canberra Airport is considered to be part of Fyshwick. Canberra Airport disputed this on three bases:

1. it simply isn’t part of Fyshwick on any geographic, political, socio-economic, demographic or legislative basis.
2. The airport infrastructure capacity has been developed on land north of the Molonglo River, whereas Fyshwick is south and will be the subject to significant and extensive “brownfield” redevelopment and new “greenfield” development for many decades to come. We note the ACT Government is considering further “greenfield” land development in Fyshwick East. The airport is part of the Majura Valley, not Fyshwick.
3. The Majura Valley, in addition to Canberra Airport, includes Campbell Park offices, RMC, ADFA, the Majura ADF training facility, the AFP facility and Pialligo Village.

We note that following alarm in the development industry in February 2017, ICON changed its methodology for proposed Capital Contribution charges to a flat tax applied unilaterally across Canberra of \$1,200/EP, rather than the initially proposed Precinct-based charging approach. We note that despite this variation to the framework, the ICON Proposal still provides ICON the ability to unilaterally alter the Precinct Map which in the means by which different Precinct charges are applied. This would allow ICON to reintroduce the Precinct-based charging approach without needing to consult affected stakeholders. If ICON is to vary the initial framework published late in

2016 then surely there must be another round of consultation, not only to provide awareness of the change, but also to provide justification for a different structure of this development tax.

Finally, Canberra Airport firmly believes that the Airport should be treated as “greenfield”, given its significant recent development and its history of planning approvals for long-term development and infrastructure upgrades to cater for the Airport development consistent with the 2014 approved Master Plan.

4. ICON Regulated Pricing

ICON is currently subject to 5 yearly regulatory price determination by the ICRC. According to ICON’s website:

“The costs of operating Canberra’s water and sewerage networks, and planning and building new infrastructure are met by the households and businesses of Canberra and Queanbeyan through their water and sewerage bills.

*Icon Water **does not** set or change its water and sewerage prices. They are set by the [Independent Competition and Regulatory Commission](#) (ICRC). The ICRC’s most recent determination in 2013 was reviewed by an independent Panel who made a substitute decision on 5 May 2015. The next determination is due in 2018.*

Icon Water prepares detailed submissions to the ICRC on the anticipated operating costs and capital investment requirements for the forthcoming period. Based on a review of the information provided by Icon Water and input through public consultation, the ICRC sets water and sewerage prices.”

In this context, we are strongly of the view that the charges proposed by ICON should be, and indeed probably are being, recovered through ICON’s current regulatory pricing which takes account of return on capital, financial viability, forecast demands and government policy. Even if the current regulatory pricing does not recover the relevant capital costs now claimed by ICON, this merely results in four propositions:

1. **ICON is simply unhappy with the current regulatory price settings** and wishes to obtain additional amounts in the interim from customers - this is not acceptable and in many ways subverts the regulatory pricing process. As further noted below, the introduction of this charge was a matter that should have been raised during the last regulatory process, and considered by all interested parties so that its impact could be properly considered in the context of the overall water pricing position;
2. **ICON can deal with this issue during the next regulatory pricing process.** This seems the most appropriate outcome given the detailed process that would be followed in relation to the setting of any such pricing. We have received no reasons for the urgent introduction of the code provided in the ICON Proposal;

3. **ICON is, and has been, inefficient in its undertaking and maintenance of water infrastructure** in failing to perceive in 2015 (the time of the last regulatory price setting) the magnitude of the asserted infrastructure upgrade problem. ICON failings to manage its network in accordance with good industry practice should not be something that customers are made to bear; and
4. **ICON could simply cover the cost and reduce the dividend paid to the ACT Government.** In any other efficient business these costs would be absorbed by the business with associated impacts on distributions made - ICON appear to want to maintain their distributions to the ACT Government by passing on the costs associated with its deficient forward planning of infrastructure. In any event, we note the ICON Proposal total capital expenditure over the current regulatory period will be below the level forecast which suggests there is no need for an additional charge to be imposed.

5. Lack of Information To Assess ICON Proposal

Industry has been provided with no information in relation to how the proposed charges fit in with the current regulatory pricing determination. The industry needs ICON Water to demonstrate openly and transparently the content of its current pricing approach, and be able to assess the ICON OPEX and CAPEX forecasts used and analyse what has changed so significantly that now warrants a new charge being introduced (i.e. “brownfield” developments were always going to be a significant development market so why were relevant costs not taken into account in either of the CAPEX or OPEX forecasts used by ICON for the current pricing determination).

In this regard, it seems difficult to comprehend that ICON did not know about this potential issue at the time of the last pricing determination - given this we query why this proposed charge (or other similar cost recovery mechanism) was not raised in detail with the community by ICON in the last pricing determination or at the time of the independent panel determination..

ICON also need to justify why this charge needs to be urgently implemented now rather than in the upcoming 2018 - 2023 price determination process - a process that would allow a detailed and comprehensive review of all of the matters in relation to the proposed charges. In this respect, we also query the timing of the implementation of the proposed charges with respect to the 2018-2023 determination process and the effect the determination process may have on the proposed charges and vice versa.

In their consultation, ICON has so far provided no meaningful information in relation to pricing methodology, pricing calculations, or pricing assumptions.

As noted, there is no demonstrated nor enforceable link between the revenue from the new charge and ICON’s investment in augmentation and maintenance of the network.

Further, there is no transparency between how the proposed charge relates to the existing ICON revenues. **There is no information provided by ICON which demonstrates that there is no double charging.**

We accept ICON should be entitled to earn a fair return on existing and future assets through their pricing model over time. However, they should not be entitled to be paid the full cost of infrastructure investment before investment is made (or even 50%), but should rather, as with any other business, receive a return on their own investment, with that return being earned over time (the life of the asset).

In this respect, ICON should engage in a proper consultation process, and any pricing consultation process without transparent sharing of information is secretive, meaningless, and creates an atmosphere of mistrust.

To ensure transparency of pricing calculations, information to be disclosed should include detail on existing network capacity, existing asset values, existing consumption, forecast capital expenditure by project, forecast network capacity (post investment), forecast consumption, required rate of return, and the calculation of prices.

Many examples of detailed infrastructure pricing proposals are available publically. Airservices Australia's Pricing Proposal, which is publically available, is an example of what a regulator (and customers) expects of a regulated monopoly infrastructure provider.

In this example, Airservices' consultation and engagement around new pricing methodology started in 2008, allowing for a thorough consultation process to be conducted ahead of introducing the new pricing in late 2011. Detailed information was provided by Airservices at a number of consultation milestones, with the key papers outlined below:

- 2008 Pricing Structure Options Discussion Paper <http://www.airservicesaustralia.com/services/charges-and-costing/pricing-proposal/2008-pricing-proposal/>
- March 2010 – ASA Services Review <http://www.airservicesaustralia.com/services/charges-and-costing/pricing-proposal/2011-pricing-proposal/2010-terminal-navigation-services-pricing-review/>
- December 2010 – Pricing Proposal <http://www.airservicesaustralia.com/services/charges-and-costing/pricing-proposal/2010-pricing-proposal/>
- March 2011 – Draft Price Notification http://www.airservicesaustralia.com/wp-content/uploads/draft_price_notification_to_ACCC.pdf
- August 2011 – Initial Price Notification http://www.airservicesaustralia.com/wp-content/uploads/formal_price_notification.pdf
- September 2011 – Final Price Notification http://www.airservicesaustralia.com/wp-content/uploads/final_price_notification.pdf

ICON should have regard to the thorough consultation and justification process adopted by Airservices, and to the detailed information provided throughout the process. ICON should prepare similarly detailed pricing proposal information as part of its consultation process before the introduction of any new prices, and before the change to any existing prices.

6. Proposed Capital Contribution Approach

Methodology

As a monopoly infrastructure provider, we accept that ICON should be entitled to recover the efficient costs of providing its service from the users of its services, including earning a fair return over time on the assets it owns.

ICON should in all cases adopt an economically efficient infrastructure pricing model, such as the building block model, which is widely used in Australia by regulated monopoly infrastructure providers. ICON itself adopts this pricing methodology for its regulated pricing. We do not understand, and ICON has not justified why, they have selected an alternate pricing model for the proposed Water and Sewerage Capital Contributions. We would be very interested to understand why ICON has felt it necessary to move away from an accepted pricing methodology that has been reviewed and accepted by Courts and independent competition agencies including the ACCC, IPART and the ICRC.

In the face of overwhelming economic support for pricing models such as the building block model, ICON should not have the ability to select a new pricing model without detailed justification for doing so. To date, no justification has been provided.

In any case, ICON should be open and transparent in its consultation, demonstrating the relationship between current and proposed revenue, current asset values, proposed investments, operating expenditure, system capacity, and current and forecast system demand.

Both the current and the proposed models are inequitable and inefficient

ICON's current infrastructure pricing model requires the last user ("brownfield") of any remaining infrastructure capacity to pay for 100% of the new infrastructure capacity (current model). This is neither fair nor economically efficient.

ICON's proposed infrastructure pricing model requires that only future users of new infrastructure capacity pay for the new infrastructure capacity. This is neither fair nor economically efficient.

Both of the above approaches mean that existing users do not contribute to additional infrastructure capacity investment, despite their use of that infrastructure. The implication is that existing capacity is grandfathered to historical users, or in other words existing users "own" the existing capacity (assuming they do not vary their land use). Only new users would be required to pay for future infrastructure capacity that everyone uses.

The proposed model requires new incremental users to fund the cost of new infrastructure capacity before investment occurs. While ICON should be able to earn a fair return on their investment, it should not have its infrastructure fully (or 50%) paid for in advance by its customers. ICON should only be entitled to earn a fair return on their own investment over the life of their assets – which is provided under current regulated pricing.

Like any infrastructure owner, ICON should fund its own investment through a mix of debt and equity, not through capital contributions from its customers that covers the customers use and future use by other people.

Further, ICON's water and sewerage infrastructure should be treated as a single infrastructure network, with network pricing charged to every user. This is the typical infrastructure pricing model of most regulated infrastructure in Australia, including electricity, rail, gas pipeline, and ports, and typical of ICON's own 5 year regulated pricing.

ICON's determination of "brownfield"

ICON need to justify their decision to apply the charges to "brownfield" developers only, rather than to all users of ICON's services through their usual pricing structures. The charge to "brownfield" developers will be a very significant impost on affected developments, compared to what would amount to an immaterially low increase in price to each user through usual ICON pricing determinations.

Imposing this charge on only "brownfield" developments is a strong disincentive to "brownfield" in-fill and favours "greenfields" development. Ultimately the charge may distort the market depending on how it is enforced by ICON and is:

- a clearly discriminatory charge - something that is inefficient in any given market; and
- penalising the current owners of the "brownfield" site notwithstanding that they were not responsible for either the original design of the infrastructure or indeed ICONs failure to manage and upgrade that infrastructure over time.

We are also very concerned that ICON has provided no justification for their definition of "brownfield development", with the application of that definition seeming to be determined (in the future) by ICON itself. For example, ICON has advised that they believe undeveloped land at Canberra Airport is "brownfield" without providing any justification for that determination. In normal practice, the development of any land which was not subject to existing development would be treated as a "greenfield" development and as such we struggle to understand the approach that ICON is taking with respect to the application of that definition to Canberra Airport.

Further, ICON state the charge is needed due to the ACT Government policy of 50% development being "brownfield" (a policy that may change) and a resulting need to upgrade infrastructure in these brownfield areas. However:

- publically ICON noted a time period for the recovery of the relevant upgrade costs - this time period should be included in the code to ensure that the ICON is not able to continue recovering for costs it has not or will not be incurring;
- "brownfield" sites are by definition limited - meaning there is no need for an indefinite charge to be levied;

- there is no evidence that has been produced of which we are aware that actually establishes that the infrastructure upgrades will be required as a result of the 50% policy. Nor have we seen any modelling of the costs for the relevant infrastructure or a program for the upgrade works; and
- if the charge is introduced as a result of the shareholder in ICON stipulating a particular policy, then presumably that shareholder should be willing to accept a lower dividend payable if the relevant policy results in additional costs to ICON.

ICON Water’s Equivalent Person (EP) logic is flawed.

ICON Water has proposed a calculation of Equivalent Persons (EP) for the purpose of calculating capital contribution charges for “brownfield” developments, with different EP calculations proposed for commercial developments and residential developments. There is a significant problem with the proposed formula, which will lead to a commercial development paying a significantly higher capital contribution compared to a residential development of the same scale on the same site – and this is despite residential uses putting significantly higher burden on water and sewerage infrastructure than commercial uses. Our example below highlights this issue:

Equivalent Person (EP) example

This example applies the proposed capital contribution charge to an office development and an apartment development, assuming the same site and same floor area.

A mid-range 15,000sqm office building in Civic would accommodate approximately 1,500 people based on a ratio of 1 person per 10sqm which is the target for modern activity based workspaces. This would generate a tax of \$540,000 (1,500 x 0.3 x \$1,200).

If a residential development was constructed on the same footprint then it may accommodate approximately 125 apartments. This would generate a tax of \$300,000 (125 x 2 x \$1,200) or roughly half that of the office development.

Given the significant difference in charges for the office versus the apartment development, and that the office component has a significantly lower load on the water and sewer than residential use, there is clearly a problem with the multipliers.

In the above example, the office building construction cost would be roughly \$3,000/sqm or \$45M meaning that the proposed charge would be 1.2% of the construction cost (in the office example) – a cost impact on the development which is significantly higher than the range ICON Water has stated as the likely outcome of their charge.

But in any case, this highlights the complexity of the framework, and also the errors in the multiplier when applied against a practical example.

A more effective calculation would be using number of pedestals, which is an existing pricing basis for some of ICON’s current charges, and has more relationship to the load that different building use types place on water and sewerage infrastructure.

ICON's proposed transition arrangements are unfair to existing landholders.

A developer considering the purchase of a "brownfield" site will be able to take into account the prevalent infrastructure pricing regime before they make their investment decision (and be in a position to take any capital contribution requirements into account in their commercial offer).

Existing landholders who do not have development applications and are not ready to lodge development applications will have no ability to commercially protect themselves from the proposed new water infrastructure capital contribution regime. Existing landholders will be therefore comparatively disadvantaged. Further, the value of their existing landholding will be instantly diminished by the value of the proposed capital contribution for the development of their land.

As a result, we strongly recommend that existing landholders be protected in the transition arrangements such that the regime that existed when current landholders acquired their land be maintained for that land.

Proposed regime to have adverse impact on housing affordability

As the charge is imposed on a per dwelling basis, the developments which will be impacted by ICON's proposed capital contribution model the most will be urban multi-unit residential developments. The ACT Government's policy objective for housing affordability is almost completely met through apartment sales. The typical purchasers of apartments are either first home buyers or lower income earners.

The proposed capital contribution charge paid by future residential developers will be directly passed onto these end purchasers (i.e. low income / first home buyers). The segment of the market with the least capacity to pay the capital contribution charge will almost be completing funding the new capital contribution.

This is immensely unfair and discriminatory to those seeking to enter the housing market and on those renting new apartment stock due to an inability to afford to buy a house. This tax grandfatheres the wealthy existing home owners and is targeted at the most needy.

There is clearly a complete misalignment with the ACT Government policy objective in relation to housing affordability.

7. "Other Charge" In The ICON Code

Within the definition of "capital contribution charge" in the ICON Proposal is an "other charge" which allows ICON to charge customers the "full costs" ICON incurs in making any "changes" to the network "in connection with" a development.

This "other charge":

- can be determined solely by ICON, without agreement needed from the customer;

- can be imposed for any cost incurred by ICON to "remove, relocate, provide protection or made changes to any part" of the existing network;
- can be imposed for changes to infrastructure that is located in the same precinct as the development;
- can be imposed irrespective of previous contributions made by a customer towards the cost of "installing" those "assets"; and
- is not subject to the transition arrangements and can be imposed on any customer from the day the code introduced.

The "full cost" that ICON is allowed to pass to customers under this "other charge" includes:

- making connections to parcels of land not already connected;
- varying the capacity of a connection;
- removing, relocating, providing protection to or making changes to the network;
- all necessary ancillary work;
- design, labour, material, plant, transport, overhead and administrative costs; and
- a "**reasonable profit margin**".

In addition, under the ICON Proposal, ICON can charge this "other charge" for augmentation of Class 1 infrastructure as well as Class 2 - this may be inconsistent with ICON's statement elsewhere in the ICON Proposal that ICON will pay for Class 1 augmentation and "recover [that cost] from all water and sewerage customers". ICON has not provided any explanation of why they are should be able to recover Class 1 infrastructure augmentation costs from customers in connection with a development and simultaneously seek to recover that cost from all customers.

We note there no reference to or discussion of this 'other charge' anywhere else in the ICON Proposal other than in the draft code itself. This 'other charge' is inappropriate in the absence of:

- any evidence that supports introducing this 'other charge'; or
- an explanation of why ICON should be permitted to charge this 'other charge' in addition to the capital contribution charge imposed under the ICON Proposal.

For these reasons we will strongly oppose this discretionary charge.

8. Denman Prospect Specific Comments

Denman Prospect is a “greenfield” site which appears to not be subject to capital contribution for infrastructure under the proposal published by ICON. It is self-evident that the price paid by Capital Estate Developments to the ACT Government did not assume any such charges by ICON, nor did the ACT Government’s tender documents disclose these charges. If Denman Prospect were to become subject to the charge and if this knowledge was available, then the price paid for this englobo development would have been less.

The map downloaded from ICON’s website on 15 March 2017 appears to colour-in Molonglo, including Denman Prospect, which implies that ICON may now be including Denman Prospect in the proposed Capital Contributions regime.

We are extremely concerned if that is the case, and will continue to pursue ICON for clarity.

Furthermore, if introduced, this is a matter that we will need to raise formally given the relationship between ICON and the ACT Government.

But this example demonstrates the lack of clarity, lack of information, and complete control over the outcome that ICON would have if the proposed Capital Contribution Code is passed.

If introduced as currently proposed, ICON would have control over the definition of “brownfield”, would be the decision maker as to who they charge and who they don’t, and would have the ability to deny connection of service if there is any disagreement with future developers.

It surely can't be the position that these rights could be granted to a monopoly water service provider. Our concern is also that Denman Prospect will take 5 – 8 years as a land development, but individual multi-unit sites delivered through the land development will be developed over the next 3 – 12 years. These are all “greenfield” but will the definition change?

9. Constitution Place Specific Comments

Constitution Place appears to not be subject to capital contribution for infrastructure under the proposal published by ICON, assuming development approvals are achieved soon for this project.

It is self-evident that we did not know of any such potential development charges by ICON, nor was it disclosed in the ACT Government’s tender documents, and therefore could not have had regard to these when tendering for this site. If knowledge was available, then the price paid to the ACT Government for this major development site would have been less.

Our concerns outlined above in relation to Denman Prospect apply equally to Constitution Place.

As noted, if the charge is introduced as currently proposed these are matters that we will need to redress through formal means.

10. Recommendations

We recommend that ICRC refuse to approve the ICON Proposal.

Despite the fact that we believe that the ICON Proposal should be refused in its entirety by ICRC, we also believe that Canberra Airport would be outside the proposed regime in any case, because:

- Canberra Airport should be treated as “greenfield”, and any future development at Canberra Airport is just a continuation of a long-term “greenfield” development;
- **Canberra Airport has already wholly funded off-Airport water and sewerage infrastructure capacity upgrades to an extent sufficient to meet future projected demand of current and future developments at Canberra Airport** - if the charge were to apply we would simply be paying for the same infrastructure twice, and with no additional service or infrastructure required to be provided by ICON; and
- Canberra Airport’s Master Plan is our development approval, and this is already in place (so we have comfort from the proposed Transition Arrangements).

We note that ICON does not accept our position outlined here, and that remains of significant concern to us.

ICON appear to be establishing a regime that they are the rule-maker of, and in which they also have the ultimate leverage - denial of service for any new development which does not concede to their future unilateral decisions.

We would be pleased to discuss any aspect of our submission with you in due course.