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Water

# Robusto Investments Pty Ltd Drinking Water Regulatory Determination: Draft Further Variation Decision

Statement of Reasons

June 2022

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**Request for submissions:**

The Essential Services Commission (**Commission**) invites written submissions on this draft report. Written comments should be provided by **15 June 2022**.

It is the Commission's policy to make all submissions publicly available via its website ([www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to publish any submission based on length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to: **Robusto Investments Pty Ltd: Drinking Water Draft Further Variation Determination**

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## Draft Further Variation Decision

Pursuant to Part 3 of the *Essential Services Commission Act 2002* and, in accordance with Part 4 of the *Water Industry Act 2012*, the draft decision of the Essential Services Commission (**Commission**) is, by virtue of this subsequent determination, to further vary the varied regulatory determination made by the Commission on 26 August 2021 applying to Robusto Investments Pty Ltd (ACN 117 034 545) (**Robusto Investments**), which itself varied the original regulatory determination made on 25 May 2021.

The determination, as further varied, is referred to herein as the **further varied regulatory determination**.

For the reasons set out in this statement of reasons, the Commission has made minimal further variations to the varied regulatory determination, limited to extending its term of operation and otherwise maintaining the status quo while the varied regulatory determination, made on 26 August 2021, remains subject to a statutory review process. As a consequence, this further varied regulatory determination may be varied again following the conclusion of that process.

The effect of the further variations made under this (draft) subsequent determination are as follows:

1. The term of the varied regulatory determination is extended for a period of 12 months from 1 July 2022 to 30 June 2023.
2. The maximum revenue that Robusto Investments can recover from residential customers and Mount Compass Sand and Loam over the extended 12-month regulatory period is set at \$196,944 (in nominal terms) and \$179,736 (in real, December 2018 prices).
3. Consequentially, the maximum prices Robusto Investments Pty Ltd can recover from residential customers and Mount Compass Sand and Loam over the new 12-month regulatory period are as set out below. The calculation of those prices takes into account the additional customers that Robusto Investments has documented in its 2020-21 regulatory reporting (submitted to the Commission on 30 November 2021). While customer numbers were expected to increase, specific details regarding the exact timing and magnitude of that increase was not provided to the Commission at the time the original regulatory determination (May 2021) or varied regulatory determination on 26 August 2021 were made.<sup>1</sup>

Tariff element	Varied Regulatory Determination (1 April 2021 to 30 June 2022)	Further Varied Regulatory Determination (1 July 2022 to 30 June 2023)
Quarterly supply charge	\$86.74	\$84.59
Tier 1 charge per kL (0-30kL)	\$3.16	\$3.09
Tier 2 charge per kL (30-130kL)	\$4.52	\$4.41
Tier 3 charge per kL (>130kL)	\$4.89	\$4.77

<sup>1</sup> For the varied regulatory determination made on 26 August 2021, customer numbers used in the calculations were 173 (that is, 172 residential customers and one non-residential customer). The further varied regulatory determination adopts in its calculation 187 (186 residential customers and one non-residential customer).

4. The Commission will assess Robusto Investments' compliance with the requirements of the further varied regulatory determination at the conclusion of the extended regulatory period (30 June 2023). Consistent with the varied regulatory determination made on 26 August 2021, the further varied regulatory determination allows for the Commission to review forecast errors for demand (for both residential and non-residential customers), customer numbers and inflation, and to include an allowance for any under or over recovery attributable to these factors in any subsequent determination.

The Commission is seeking stakeholder views on this draft further variation decision by 15 June 2022. Upon publication of the subsequent determination in the South Australian Government Gazette, the further varied regulatory determination, made under Part 3 of the ESC Act, as authorised by Part 4 of the WI Act, will give effect to the Commission's final decision.

**Essential Services Commission**

June 2022

# 1 Background

## 1.1 Original regulatory determination

- 1.1.1 On 25 May 2021, the Essential Services Commission (**Commission**) made a regulatory determination to apply to Robusto Investments Pty Ltd (ACN 117 034 545) (**Robusto Investments**), the holder of a water retail licence under the *Water Industry Act 2012 (WI Act)* (**original regulatory determination**). The original regulatory determination was accompanied by a Statement of Reasons, published on the same day.<sup>2</sup>
- 1.1.2 In making the original regulatory determination, the Commission acted in accordance with its primary statutory objective (as set out in section 6(a) of the ESC Act) – the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services and, at the same time, have regard to the matters in section 6(b) – as well as the other statutory factors and requirements as set out in the ESC Act and the WI Act.
- 1.1.3 The original regulatory determination set the maximum total revenue that Robusto Investments could recover from its residential customers and one non-residential customer (Mount Compass Sand and Loam) and the maximum prices that could be charged to residential customers over the initial regulatory period (1 April 2021 to 30 June 2022).

## 1.2 Internal review application

- 1.2.1 Part 6 of the ESC Act contains a legislative scheme permitting reviews and appeals in relation to price/regulatory determinations made by the Commission, and the conduct of those reviews.
- 1.2.2 Section 31 of the ESC Act provides that a regulated entity can seek an internal review of a regulatory determination that applies to it. If an internal review application is made, the Commission, as the primary decision maker, must reconsider its decision having regard to (amongst other things) the issues raised by the regulated entity.
- 1.2.3 On 23 June 2021, Robusto Investments lodged an application for a review of the original regulatory determination, pursuant to section 31 of the ESC Act.<sup>3</sup>
- 1.2.4 The Commission's role on the review was to consider, in light of the issues raised by Robusto Investments in its review application, and in the context of the overall statutory scheme, whether or not the original regulatory determination should be confirmed, varied or substituted.

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<sup>2</sup> Refer to information published on the Commission website about the making of the original price determination at <https://www.escosa.sa.gov.au/ArticleDocuments/21695/20210525-Water-RobustoInvestments-RegulatoryDetermination-StatementOfReasons.pdf.aspx?Embed=Y>.

<sup>3</sup> Refer to information published on the Commission's website about the application for a review at <https://www.escosa.sa.gov.au/ArticleDocuments/21740/20210826-Water-RobustoInvestments-RegulatoryDetermination-ReviewApplicationDecision-StatementOfReasons.pdf.aspx?Embed=Y>.

- 1.2.5 On 26 August 2021, after completing the review, the Commission:
- 1.2.5.1 confirmed its decision in relation to the issues raised by Robusto Investments in its review application (ie, it did not vary its decision on any of those issues), and
  - 1.2.5.2 made a variation to the original regulatory determination in relation to the allowance made within the overall revenue requirement for bad debt, mediation and dispute resolution expenses; this resulted in the operating cost allowance for those expenses being varied from \$15,000 (in real, December 2018 prices) to \$625 (in real, December 2018 prices) and a decrease in the maximum revenue and maximum prices recoverable by Robusto Investments (**varied regulatory determination**).<sup>4</sup>
- 1.2.6 The varied regulatory determination remains in effect until 30 June 2022.

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<sup>4</sup> Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision. Statement of Reasons, August 2021, page 1.

## 2 The external review process

### 2.1 External Review

- 2.1.1 As explained above, on 26 August 2021, after completing the review of the application lodged by Robusto Investments in accordance with the requirements of the ESC Act, the Commission made its decision on review.
- 2.1.2 Following the conclusion of an internal review process, the regulated entity that sought an internal review by the Commission (in this case, Robusto Investments) may apply to the Tribunal for a further 'external' review of the regulatory determination, if it is dissatisfied with the determination as confirmed, varied or substituted.
- 2.1.3 An external review by the Tribunal is permitted under section 32 of the ESC Act. The relevant parts of section 32 are replicated in full below.

#### *32—Review by Tribunal*

- (1) *The applicant for a review by the Commission under section 31, or any other party to the review who made submissions on the review, who is dissatisfied with the price determination or decision as confirmed, varied or substituted by the Commission on the review may apply to the Tribunal for a review of the determination or decision under section 34 of the South Australian Civil and Administrative Tribunal Act 2013.*
- (2) *For the purposes of proceedings before the Tribunal under this section, a panel of assessors must be established under section 22 of the South Australian Civil and Administrative Tribunal Act 2013 consisting of persons with knowledge of, or experience in, a regulated industry or the fields of commerce or economics.*
- (2a) *In any proceedings under this section, the Tribunal may, if the President of the Tribunal so determines, sit with 1 or more assessors.*
- (3) *An application for review by the Tribunal must be made to the Tribunal—*
  - (a) *within 10 working days after receipt of the written notice of the decision of the Commission on the review; or*
  - (b) *if the Commission failed to make a decision on the review within the allowed period, within 10 working days after the end of that period, (or within such longer period as the Tribunal may allow).*
- (4) *If an application for review by the Tribunal is made under this section, any other party to the review by the Commission who made submissions on the review must be given notice of the application for review and may apply to be joined as a party to the review by the Tribunal.*
- (6) *Section 37(1)(b) and (c)(i) of the South Australian Civil and Administrative Tribunal Act 2013 do not apply to a review by the Tribunal under this section.*



- 2.1.4 At the conclusion of the external review process, by virtue of section 32(6) of the ESC Act, the Tribunal may:
- 2.1.4.1 affirm the regulatory determination made by the Commission, or
  - 2.1.4.2 set aside the decision being reviewed and send the matter back to the Commission for reconsideration in accordance with any directions or recommendations that the Tribunal considers appropriate (or may make any other order the Tribunal considers appropriate).

## 2.2 Review application

- 2.2.1 On 8 September 2021, Robusto Investments lodged an application with the Tribunal for an external review of the varied regulatory determination made by the Commission on 26 August 2021.
- 2.2.2 The external review of the varied regulatory determination is now before (and will be heard and determined by) the Tribunal in accordance with the *South Australian Civil and Administrative Tribunal Act 2013*.

## 2.3 Maintaining the status quo

- 2.3.1 While the maximum revenue and maximum prices set by the Commission under the varied regulatory determination remain in effect, that varied regulatory determination is due to expire on 30 June 2022.
- 2.3.2 There is uncertainty as to when the statutory review process by the Tribunal will be completed. It is the Commission's position that, in order to protect consumers' long-term interests with respect to the price, quality and reliability of water services, a regulatory determination should remain in effect during that process, and therefore it is appropriate to maintain the status quo under the varied regulatory determination for Robusto Investments and its customers.
- 2.3.3 That decision to maintain the status quo is limited to extending the term of operation of the varied regulatory determination and otherwise maintaining the status quo under that varied regulatory determination while it remains subject to the statutory review process. It will give rise to a further varied regulatory determination.

## 3 Methodology to extend the varied regulatory determination

### 3.1 Overview

- 3.1.1 For the purposes of maintaining the status quo of the revenue and pricing arrangements applying to Robusto Investments and its customers under the varied regulatory determination during the external review process, the Commission's draft decision is that it has determined to further vary the varied regulatory determination to:
- 3.1.1.1 extend its term for a period of 12 months (noting that the further varied regulatory determination can be revoked or varied further if circumstances arise during the 12-month period that warrant this approach)
  - 3.1.1.2 adjust the maximum revenue to reflect:
    - the shorter length of the extension period, from 15 months down to 12 months), and
    - a percentage change corresponding to the rate of change in the expected Consumer Price Index (based on published data by the Australian Bureau of Statistics), and
  - 3.1.1.3 adjust the maximum nominal prices (which are derived from the maximum nominal revenue) to reflect the additional customers that Robusto Investments is now supplying, and which were not included in either the original regulatory determination or the varied regulatory determination (given uncertainty about the exact timing and magnitude of the number of new customers and when Robusto would commence supplying them).<sup>5</sup>
- 3.1.2 The 12-month regulatory period has been adopted in the draft decision in order to provide near-term revenue and price certainty to Robusto Investments and its customers while the proceedings before the Tribunal remain on foot. The proposed revenue and price outcomes in the rollover will also maintain the status quo over the new regulatory period. Further, the 'roll over' approach is considered transparent and clear to all stakeholders. It preserves the varied regulatory determination by including only efficient costs within the allowed cost recovery by Robusto Investments. The approach is also consistent with the Commission's statutory duty to protect consumers' long-term interests.
- 3.1.3 The roll over approach also eschews any new assessment of the prudent and efficient costs of the supply of drinking water services during the period that the varied regulatory determination is subject to external review.

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<sup>5</sup> Robusto Investments has documented updated customer numbers in its 2022-21 regulatory reporting (submitted to the Commission on 30 November 2021).

## 3.2 Draft maximum revenue and prices

3.2.1 The Commission's draft decision is that the varied regulatory determination that applies to Robusto Investments is to be further varied to provide that, for the 12-month period from 1 July 2022 to 30 June 2023:

- 3.2.1.1 a maximum allowable revenue of \$179,736 (in real, December 2018 prices) can be recovered by Robusto Investments from residential customers and one non-residential customer, Mount Compass Sand and Loam, in relation to the water retail business (in nominal terms, this maximum revenue is \$196,944)
- 3.2.1.2 the pricing structure that must be adopted by Robusto Investments has been specified in respect of the water retail services it provides through its water retail business to residential customers (consistent with the varied regulatory determination), and
- 3.2.1.3 the maximum nominal prices that Robusto Investments can charge residential customers are:
- a quarterly supply charge of \$84.59
  - a Tier 1 charge of \$3.09 per kL
  - a Tier 2 charge of \$4.41 per kL, and
  - a Tier 3 charge of \$4.77 per kL.

Tariff element	Varied Regulatory Determination (1 April 2021 to 30 June 2022)	Further Varied Regulatory Determination (1 July 2022 to 30 June 2023)
Quarterly supply charge	\$86.74	\$84.59
Tier 1 charge per kL (0-30kL)	\$3.16	\$3.09
Tier 2 charge per kL (30-130kL)	\$4.52	\$4.41
Tier 3 charge per kL (>130kL)	\$4.89	\$4.77

### 3.3 Process, assumptions and calculation of the roll over

- 3.3.1 The rollover has been derived as follows.
- 3.3.2 Step 1: The 15-month maximum revenue allowance (in real, December 2018 prices) (as per the varied regulatory determination) is converted into an allowance for a 12-month period.
- 3.3.3 Step 2: The 12-month maximum revenue allowance (in real, December 2018 prices) is converted into a maximum nominal revenue allowance based on inflation assumptions.
- 3.3.4 Step 3: The 12-month nominal maximum revenue allowance is converted into maximum prices for residential customers based on assumptions regarding:
- 3.3.4.1 residential and non-residential customer numbers (186 residential customers as reported by Robusto Investments in its annual reporting (submitted on 30 November 2021), and one non-residential customer, Mount Compass Sand and Loam)<sup>6</sup>
  - 3.3.4.2 annual customer usage according to pricing tiers (customer usage assumptions are maintained from the varied regulatory determination, but are amended so that it applies to a 12-month period rather than 15 months), and
  - 3.3.4.3 pricing structures (the ratio between supply and usage charges remains fixed at the ratio set out in the varied regulatory determination, as do the ratios between the three pricing tiers).
- 3.3.5 Box 1 (overpage) provides the worked calculation of the three steps in the rollover.
- 3.3.6 As described above, the components of the real maximum allowed revenue have not been re-assessed or expanded. This is consistent with the roll over approach preserving the status quo while the proceedings before the Tribunal are in progress.
- 3.3.7 However, additional customer numbers, as documented in Robusto Investment's regulatory reporting for 2020-21 (submitted on 30 November 2021), have been included. This has been done on the basis that, without updating for customer numbers, were Robusto Investments to charge maximum prices to residential customers (and annual average customer usage was in line with expectations), then the maximum nominal revenue allowance would be breached.
- 3.3.8 While customer numbers were expected to increase, specific details regarding the exact timing and magnitude of that increase was not provided to the Commission at the time the original regulatory determination (May 2021) or varied regulatory determination on 26 August 2021 were made. Consistent with the varied regulatory determination, the further varied regulatory determination allows for the Commission to review forecast errors for demand (for both residential and non-residential customers), customer numbers and inflation, and to include an allowance for any under or over recovery directly attributable to these factors in any subsequent determination.

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<sup>6</sup> For the varied regulatory determination made on 26 August 2021, customer numbers used in the calculations were 173 (that is, 172 residential customers and one non-residential customer).

## Box 1. Worked calculation of the rolled forward determination

The following assumptions and steps can be followed to calculate the proposed maximum nominal revenue and the maximum prices for Robusto Investments' drinking water retail services.

### Parameters

$RR_{15\text{-month}}$  is the real maximum revenue control for the 15-month regulatory period (in real, December 2018 prices)

$RR_{12\text{-month}}$  is the real maximum revenue control for the 12-month regulatory period (in real, December 2018 prices)

$R$  is the maximum revenue control for the 12-month regulatory period 1 July 2022 to 30 June 2023 (in nominal terms)

$Q$  is the number of quarters (or part thereof) in the 12-month regulatory period

$QP$  is the number of quarters (or part thereof) in the previous 15-month regulatory period (as per the varied regulatory determination)

$P_s$  is the quarterly supply charge

$\pi_{\text{Dec18-June21}}$  is the inflation forecast for the period December 2018 to June 2021 as per the varied regulatory determination

$\pi_{2021-22}$  is the inflation forecast for 2021-22 as per the varied regulatory determination

$\pi_{2022-23}$  is the inflation assumption for 2022-23 based on the latest annual CPI as published by the Australian Bureau of Statistics

$\alpha$  is the proportion of  $R$  recoverable via supply charges

$P_{T1}$  is the tier 1 unit charge (per kL)

$P_{T2}$  is the tier 2 unit charge (per kL)

$P_{T3}$  is the tier 3 unit charge (per kL)

$N$  is the number of customers

$\lambda_{T12}$  is the price differential between  $P_{T1}$  and  $P_{T2}$ , as set in percentage terms

$\lambda_{T23}$  is the price differential between  $P_{T2}$  and  $P_{T3}$ , as set in percentage terms

$V_1$  is the assumption regarding annual average customer usage, in kL, applicable to Tier 1

$V_2$  is the assumption regarding annual average customer usage, in kL, applicable to Tier 2

$V_3$  is the assumption regarding annual average customer usage, in kL, applicable to Tier 3

## Data and assumptions

$$RR_{15\text{-month}} = \$224,670$$

$$Q=4$$

$$QP = 5$$

$$\alpha = 32.12849\%$$

$$V_1 = 120$$

$$V_2 = 78.150289$$

$$V_3 = 0.00$$

$$\lambda_{T12} = 42.90909\%$$

$$\lambda_{T23} = 8.14249\%$$

$$\pi_{\text{Dec18-June21}} = 2.7162 \text{ percent}$$

$$\pi_{2021-22} = 1.5 \text{ percent}$$

$$\pi_{2022-23}: 5.1 \text{ percent}$$

$$N = 187$$

NB Various data and assumptions (above) can be found in the varied regulatory determination made on 26 August 2021 and in the original regulatory determination (May 2021).

## Calculation of the roll over

### Step 1

$$RR_{12\text{-month}} = (Q/QP) \times RR_{15\text{-month}} = (4/5) \times \$224,670$$

Substituting in the data and assumptions from above gives,  $RR_{12\text{-month}} = \$179,736$

### Step 2

$$\text{Inflation index} = (1 + \pi_{\text{Dec18-June21}}) \times (1 + \pi_{2021-22}) \times (1 + \pi_{2022-23}) = (1 + 0.027162) \times (1 + 0.015) \times (1 + 0.051)$$

Substituting in the data and assumptions from above gives Inflation index = 1.095740

$$\text{Then, } R = RR_{12\text{-month}} \times \text{Inflation index} = \$179,736 \times 1.095740$$

Substituting in the data and assumptions from above gives  $R = \$196,944$

### Step 3

$$P_s = \frac{\alpha R}{QN}, \text{ and substituting in the data and assumptions from above gives, } P_s = \$84.59$$

$$P_{T1} = \frac{(1-\alpha)R}{(V_1 + (1+\lambda_{T12})V_2 + (1+\lambda_{T12})(1+\lambda_{T23})V_3)N}$$

$$P_{T2} = (1+\lambda_{T12})P_{T1}$$

$$P_{T3} = (1+\lambda_{T23})P_{T2}$$

Substituting in the data and assumptions gives the following maximum prices for residential customers:

$$P_{T1} = \$3.09$$

$$P_{T2} = \$4.41$$

$$P_{T3} = \$4.77$$



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