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Water

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

Statement of Reasons

June 2022

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Further Variation Decision – Final

Pursuant to Part 3 of the *Essential Services Commission Act 2002* and in accordance with Part 4 of the *Water Industry Act 2012*, the decision of the Essential Services Commission (**Commission**) is, by virtue of a 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 varied regulatory determination, as further varied, is referred to herein as the **further varied regulatory determination**.

For the reasons set out in this statement of reasons, through this particular determination process the Commission has made minimal further variations to the varied regulatory determination, limited to extending its term of operation and adjusting for inflation and customer numbers (in effect, 'rolling over' the varied regulatory determination, limited to those parameters). It otherwise remains the same in order to maintain the status quo while the varied regulatory determination, made on 26 August 2021, remains subject to a statutory review process. It should be noted that this further varied regulatory determination may be varied again (or a new determination may be made) following the conclusion of that process and having regards to its outcomes.

In reaching its final determination, the Commission has taken into account the evidence and views contained in submissions received from Robusto Investments and two of its customers, submitted in response to the draft determination published by the Commission on 1 June 2022. Issues raised by Robusto Investments included the treatment of inflation, customer numbers and usage, and the allocation between supply charges and usage prices. The customer submissions raised concerns about price and service levels.

Having considered those submissions, the Commission has determined that Robusto Investments' proposals were either not supported by sufficient information and reasons, or were inconsistent with the proposition of 'rolling over' the varied regulatory determination to maintain the status quo for Robusto Investments and its customers (to the extent possible). Similarly, the customer submissions raised issues outside of the 'roll over' concept set out in the draft determination.

The effect of the further variations made under this 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 can recover from residential customers and Mount Compass Sand and Loam over the new 12-month regulatory period are as set out in the table 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) as being connected to Robusto Investments' water supply network.
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 (ie 30 June 2023).

5. 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.

Tariff element	Varied Regulatory Determination (1 April 2021 to 30 June 2022)	Final Decision - 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

Upon publication of the subsequent determination in the South Australian Government Gazette, the further varied regulatory determination, made under Part 3 of the *Essential Services Commission Act 2002*, as authorised by Part 4 of the *Water Industry Act 2012*, will give effect to the Commission's decision.

Essential Services Commission

June 2022

1 Background

1.1 Original regulatory determination

- 1.1.1 On 25 May 2021, pursuant to Part 3 of the *Essential Services Commission Act 2002 (ESC Act)* and in accordance with Part 4 of the *Water Industry Act 2012 (WI Act)*, the Essential Services Commission (**Commission**) made a regulatory determination (**original regulatory determination**) to apply to Robusto Investments Pty Ltd (ACN 117 034 545) (**Robusto Investments**). Robusto Investments is the holder of a water retail licence under the WI Act. The original regulatory determination was accompanied by a Statement of Reasons, published on the same day.¹
- 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. At the same time, it had regard to the matters set out in section 6(b) of that Act, 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.²
- 1.2.4 The Commission's role in 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.

¹ 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>.

² 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 (i.e. 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**).³
- 1.2.6 The varied regulatory determination remains in effect until 30 June 2022.

³ 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 under the ESC Act, the regulated entity that sought the internal review (in this case, Robusto Investments) may apply to the South Australian Civil and Administrative Tribunal (**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. As such, 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, to the extent possible. The methodology to 'roll over' the varied regulatory determination on that basis is explained in detail in the following chapter.

2.3.3 This further varied regulatory determination is consistent in methodology with the previous determination by adopting the hybrid revenue and price regulation. This hybrid model was introduced due to a unique set of circumstances, as explained in the May 2021 determination's Statement of Reasons.⁴ The specific hierarchy is that the maximum revenue cap is the overarching primary regulation control imposed on Robusto Investments and the price control function is subject to the maximum revenue control.

⁴ Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 93, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21695/20210525-Water-RobustoInvestments-RegulatoryDetermination-StatementOfReasons.pdf.aspx?Embed=Y>.

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 during the period the Tribunal undertakes an external review process, the Commission's decision is to further vary the varied regulatory determination in three aspects:

3.1.1.1 **Term** - extend its term for a period of 12 months until 30 June 2023 (noting that the further varied regulatory determination can be revoked or varied further if circumstances arise during the 12-month period that warrant such action):

- the 12-month regulatory period has been adopted 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 will also maintain the status quo over the new regulatory period
- this 'roll over' approach is considered simple, transparent, and clear to all stakeholders, preserving the varied regulatory determination by including only efficient costs within the allowed cost recovery by Robusto Investments, and is also consistent with the Commission's statutory duty to protect consumers' long-term interests.

3.1.1.2 **Maximum revenue adjustment** - adjust the maximum revenue to reflect:

- the shorter length of the extended period for which the determination will apply (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, as a generally accepted independent data source), and

3.1.1.3 **Maximum nominal prices** - adjust the maximum nominal prices (which are derived from the maximum nominal revenue) to reflect the fact that Robusto Investments has, in its latest regulatory performance report, reported that there has been an increase in the number of customers which it supplies:

- the original regulatory determination and the varied regulatory determination proceeded on the basis that, for the purposes of calculating maximum nominal prices, it had 173 customers (172 residential customers and one non-residential customer), whereas the latest regulatory performance report submitted by Robusto Investments shows that it is now supplying 186 residential customers (and so for the purposes of calculating

maximum nominal prices, it is 186 residential customers and one non-residential customer)

- the customer figures reported by Robusto Investments in November 2021 have been adopted in this further varied regulatory determination.⁵

3.1.2 This limited 'roll over' approach 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.

3.2 Process for determining the rollover methodology

3.2.1 On 1 June 2022, the Commission published for consultation its draft further variation determination relating to Robusto Investments for the 12-month period from 1 July 2022 to 30 June 2023.⁶ The two-week time frame for consultation was adopted having regard to:

- 3.2.1.1 the expiry of the varied regulatory determination on 30 June 2022
- 3.2.1.2 the purpose of the further variation determination, being to maintain the status quo while the Tribunal proceedings were on foot, and
- 3.2.1.3 the Commission's Charter of Consultation and Regulatory Practice, which does not adopt a prescriptive time frame for all consultations.⁷

3.2.2 The draft determination proposed:

- 3.2.2.1 a maximum revenue cap of \$196,944 (in nominal terms) and \$179,736 (in real December 2018 prices)
- 3.2.2.2 a pricing structure that must be adopted, and
- 3.2.2.3 maximum nominal prices of 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.⁸
- 3.2.2.4 Submissions regarding the draft decision were received from Robusto Investments, and two residential customers of Robusto Investments.⁹

⁵ Robusto Investments has documented updated customer numbers in its 2020-21 regulatory reporting (submitted to the Commission on 30 November 2021). It reported (and signed off) that it was supplying 186 residential customers as at 30 June 2021.

⁶ Commission, *Robusto Investments Pty Ltd Drinking Water Regulatory Determination Draft Further Variation Decision – Statement of reasons*, pp. 1-11, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21881/20220601-Water-RobustoInvestments-DraftDetermination-StatementOfReasons.pdf.aspx?Embed=Y>.

⁷ Commission, *Charter of consultation and regulatory practice*, November 2019, p. 7, available at <https://www.escosa.sa.gov.au/ArticleDocuments/11387/20191112-Corporate-CharterOfConsultationRegulatoryPractice.pdf.aspx?Embed=Y>.

⁸ Commission, *Robusto Investments Pty Ltd Drinking Water Regulatory Determination Draft Further Variation Decision – Statement of reasons*, p. 1.

⁹ Customer submissions were received from Mr Peter Birmingham (on 9 June 2022) and from Mr Steven Hayes (on 14 June 2022).

3.3 Consideration of the submissions made by Robusto Investments

3.3.1 The Commission has considered the submissions made by Robusto Investments and provides the following thematic responses to the matters raised.

CPI inflation

3.3.2 Robusto Investments submitted that the CPI inflation used by the Commission in its draft decision was inaccurate and should be higher.

3.3.3 **Response:** The Commission does not accept this proposal. The Commission has used 5.1 percent as expected inflation for 1 July 2022 to 30 June 2023 (ie, a forward-looking estimate of inflation). This figure is the Australian Bureau of Statistics' most recent published annual CPI inflation outcome, with the next update due to be published on 27 Jul 2022.¹⁰ The use of the Australian Bureau of Statistics' latest annual CPI inflation outcome is designed to be a transparent estimate of inflation for the year ahead and one that is generally accepted (ie the latest available published estimate can provide an estimate of the year ahead), although alternative estimates do exist.¹¹

3.3.4 The Commission notes that while there are risks that CPI inflation could be higher or lower than the 5.1 percent adopted for financial year 2022-23, the further varied regulatory determination takes this risk into account by containing a mechanism for the Commission to review forecast errors for certain factors, including inflation, and to include an allowance for any under or over recovery attributable to that factor in any subsequent determination. This mechanism is consistent with the mechanism also included in its original regulatory determination and its varied regulatory determination, made on 26 August 2021. It is also consistent with standard regulatory practice when making pricing determinations that have some uncertainty in forecasted variables.

3.3.5 In addition, it is important to place changes in the rate of inflation into context. The size of the difference between adopting slightly differing inflation rates for the determination period 1 July 2022 to 30 June 2023 is relatively small. An increase of 2 percentage points in the inflation rate adopted by the Commission would result in a change on the maximum nominal revenue from \$196,944 to \$200,692 for the 2022-23 financial year.

Residential customer numbers

3.3.6 Robusto Investments submitted that the Commission incorrectly accounted for customer numbers, not only in the overall value, but in the uniformity in which the Commission has treated its customer base and that the further varied regulatory determination should be adjusted for this.

¹⁰ Australian Bureau of Statistics, *Consumer Price Index*, Australia, March 2022. 5.1 percent is the percentage change in all the groups CPI index over the year to March 2022. Data can be accessed here: <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia>.

¹¹ Alternative available estimates could be lower than the 5.1 percent estimate. For instance, the Reserve Bank of Australia's latest public forecasts for CPI inflation for financial year 2022-23 is 4.3 percent; see Reserve Bank of Australia, *May 2022 Statement of Monetary Policy*, p. 60, available at <https://www.rba.gov.au/publications/smp/2022/may/forecasts.html>.

3.3.7 **Response:** The Commission does not accept this argument for the following reasons.

3.3.7.1 First, Robusto Investments reported (separately to its submission) that it was supplying an additional 14 residential customers for 2020-21. For the purposes of calculating maximum prices, this would be 186 residential customers and one non-residential customer, as compared to the 172 residential customers and one non-residential customer, which, for the purposes of calculating maximum prices, was adopted at the time of the original and varied determination (informed by customer numbers reported previously by Robusto Investments). The 186 residential customers were reported in its annual regulatory report to the Commission submitted on 30 November 2021, after the time at which both the original and the varied regulatory determinations were made. Without updating the further varied regulatory determination to account for those additional customers, the assumptions and pricing formula in the varied regulatory determination would likely result in a breach of the maximum revenue allowance (if the maximum prices based on the lower customer numbers were applied to newly reported customer numbers and annual average customer usage was in line with expectations published in the original and varied regulatory determinations).

3.3.7.2 Second, the information provided by Robusto Investments in its submissions contained new information about the number of residential customers that Robusto Investments is charging both usage and supply charges, and those who are just being charged for supply only. Accordingly, it now appears to be the case that there are inconsistencies in source documentation originally provided by Robusto Investments to the Commission in submissions and information provided to the Commission throughout the regulatory process. As such, the Commission will need to undertake a further verification process to fully understand the new information presented to enable it to determine if and how it may be taken into account in a regulatory determination process (potentially including public consultation).

The verification process, however, cannot be undertaken before the varied regulatory determination expires on 30 June 2022 (but can be undertaken before the Commission considers making any further determinations). As the Commission has, in good faith, relied on the customer information Robusto Investments has previously provided to it in pricing proposals and through its annual reporting, it does not consider there is sufficient reason to depart from utilising that information until further verification has occurred.

In addition, changing the approach used regarding customer information in this variation is inconsistent with the concept of 'rolling over' the varied regulatory determination to maintain the status quo.

Accordingly, the Commission has determined it will use the most up-to-date customer information reported to it by Robusto Investments through its November 2021 regulatory reports.

- 3.3.7.3 Third, as mentioned earlier, the further varied regulatory determination contains a mechanism which allows the Commission to review forecast errors for factors such as demand (for both residential and non-residential customers) and customer numbers and to include an allowance for any under or over recovery directly attributable to these factors in any subsequent determination. This approach recognises that under both the varied regulatory determination and the further varied regulatory determination, Robusto Investments is bearing some demand risk. The Commission will have regard to this when assessing Robusto Investments' compliance at the end of the period, or in making any subsequent determination.

Supply/usage allocation

- 3.3.8 Robusto Investments submitted that the allocation between supply and usage charges should be adjusted due to the new customer information submitted

- 3.3.9 **Response:** The Commission does not accept this submission for the following reasons.

- 3.3.9.1 The price formula currently set out in the price schedule of the varied regulatory determination specifies the percentage of the maximum nominal revenue that can be recovered through supply charges. Robusto Investments' proposal would require modification to several elements used in the pricing structure and formula specified in the varied regulatory determination. This is not consistent with the proposition of 'rolling over' the varied regulatory determination to maintain the status quo (to the extent possible) while Tribunal proceedings remain on foot.

- 3.3.9.2 The reasoning for the Commission's decision in relation to the supply-variable charge mix was set out in the statement of reasons published in respect of the original regulatory determination made in May 2021.¹² While, in principle, it was possible for the Commission to adopt any pricing structure that it considered appropriate, it determined that, because it was the first price control introduced for Robusto Investments and was to apply for only a 15-month period, there was merit in maintaining the pricing structure in place prior to the regulatory determination being made. This pricing structure was already known and understood by customers and Robusto Investments.¹³

Further, the relationship between supply charges and price tiers was determined by the Commission on the basis that if there were large changes in the supply-variable charge mix, there could be large distributional impacts for price changes.

¹² Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 108.

¹³ Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 105.

In the absence of detailed information about potential customer hardship, the supply charge-variable charge ratio was set to remain the same for residential customers.¹⁴

Maximum revenue amounts converted to an annual figure

- 3.3.10 Robusto Investments submitted that the maximum revenue amounts should be converted to an annual figure by multiplying the 15-month period amount by the fraction (4/5).
- 3.3.11 **Response:** The Commission accepts this aspect of Robusto Investments' submission as an affirmation of the process it used in the draft determination.

Maximum revenue amount converted based on nominal allowance

- 3.3.12 Robusto Investments submitted that the 15-month maximum revenue amount should be converted into an annual figure based on the nominal maximum revenue cap rather than the real (inflation-adjusted) revenue allowance.
- 3.3.13 **Response:** This proposal would have the effect of marginally *reducing* the maximum revenue that may be recovered by Robusto Investments, relative to the Commission's proposed approach, which starts with the real 15-month cap and converts it to an annual figure. The Commission's approach captures compound effects of inflation and, given that the differences are minor,¹⁵ the Commission has determined to adopt the approach set out in the draft determination.

CPI inflation outcomes

- 3.3.14 Robusto Investments submitted that CPI inflation outcomes have been higher than accounted for in the varied regulatory determination.
- 3.3.15 **Response:** It is noted that CPI inflation for the regulatory period relating to the varied regulatory determination has exceeded the Commission's assumption for inflation, made in August 2021. However, an assessment now of previous inflation outcomes, but not other aspects of the varied regulatory determination, is inconsistent with the proposition that the further varied regulatory determination maintain the status quo while various matters are subject to an external review by the Tribunal. As noted above, the determination provides a mechanism to review forecast errors for certain factors, including inflation, and to include an allowance for any under or over recovery attributable to that factor in any subsequent determination.

Residential customer usage

- 3.3.16 Robusto Investments submitted that residential customer usage has been lower than allowed for and supply and tiered prices should be adjusted.
- 3.3.17 **Response:** This appears to be a reason why Robusto Investments has proposed different supply and tiered prices. However, as explained earlier, the further varied regulatory determination takes demand risk into account by allowing for the Commission to review forecast errors and to include an allowance for any under or over recovery attributable to this factor in any subsequent determination.

¹⁴ Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 112.

¹⁵ Ultimately, this is a very minor issue when scaled against the size of the revenue cap.

This mechanism is consistent with the mechanism also included in the varied regulatory determination made on 26 August 2021 (and the original regulatory determination).

- 3.3.18 In addition, it is important to recognise that the maximum revenue allowance in the varied regulatory determination includes revenue collected from Mount Compass Sand and Loam (MCSL), a non-residential customer. Robusto Investments can negotiate prices independently of those set by the Commission for aspects of MCSL's business activities (noting it must not exceed the maximum revenue allowance in doing so).

CPI increments to apply quarterly

- 3.3.19 Robusto Investments submitted that the further varied regulatory determination should provide for CPI increments to be applied prospectively to the maximum revenue cap and prices each quarter.
- 3.3.20 **Response:** Consistent with maintaining the status quo, the Commission has determined that it is appropriate to continue to use the approach adopted in the varied regulatory determination. The further varied regulatory determination encompasses inflation expectations for the entire 12-month determination period (1 July 2022 to 30 June 2023). This approach reduces the administration burden that would be felt by both the Commission and Robusto Investments if quarterly adjustments were required. Moreover, as mentioned earlier, the inflation assumptions for the further varied regulatory determination (and varied regulatory determination) are subject to review (and potential adjustment, if required) at the end of the 12-month regulatory period.

3.4 Commission's responses to customer submissions

- 3.4.1 The two customer submissions highlighted concerns relating to price and service levels, and risks to the aquifer as more water is drawn from it. These points raised and the Commission's responses are summarised below.

Adoption of SA Water pricing

- 3.4.2 The customer submissions raised concern with the fact that Robusto Investments' prices differ from SA Water's prices.¹⁶
- 3.4.3 **Response:** This is a government policy decision rather than one relating to the Commission's decision to make the further varied regulatory determination. As explained in the Commission's regulatory determination made in May 2021,¹⁷ there are three main reasons why the prices of a minor and intermediate water retailer (such as Robusto Investments) may differ from SA Water's prices:
- 3.4.3.1 Under the regulatory framework applying to minor and intermediate retailers, the prices charged must be consistent with the efficient costs of producing and supplying drinking water retail services and the requirements of NWI pricing principles.

¹⁶ Hayes, p. 1, and Birmingham, p. 1.

¹⁷ Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 46.

- 3.4.3.2 Each individual water network has its own efficient cost of providing drinking water retail services to customers. This reflects the fact that each network has its own set of circumstances and characteristics.
- 3.4.3.3 SA Water has been directed by the South Australian Government to set its residential water prices based on state-wide pricing (a policy sometimes referred to as 'postage stamp pricing'). This pricing approach means that, regardless of where customers live or the cost of providing the service, SA Water's residential customers pay the same price per kilolitre. This requirement does not apply in respect of other water retailers (including Robusto Investments).

Outages and reliability

- 3.4.4 One customer submission raised concern about outages and the reliability of service on Robusto Investments' network.¹⁸
- 3.4.5 **Response:** The customer concern relates to Robusto Investments' compliance with the Water Retail Code¹⁹ (**Code**), rather than the methodology used for, or outcomes of, the further varied regulatory determination. The Code outlines various consumer protections that currently apply to Robusto Investments and will continue to apply under the further varied regulatory determination. In practice, Robusto Investments must provide customers with advance notice of both planned interruptions and entry to properties for the purpose of connecting, disconnecting or maintenance. It must also provide explanations for unplanned interruptions to supply.

Previous customer contracts

- 3.4.6 One customer submission noted concern about contractual issues by pointing to the 'original' contracts that were in place before Robusto Investments took over the water supply network.²⁰
- 3.4.7 **Response:** The customer concern relates to the adoption of standard contracts, rather than the methodology used for, or outcomes of, the further varied regulatory determination. As explained in the Commission's regulatory determination made in May 2021,²¹ the standard retail service contract was implemented by Robusto Investments in September 2018 and currently applies to all of its customers unless: (a) the customer receives a non-standard service, (b) prior to its commencement, a customer on an existing written agreement specifically agreed to the continuation of that agreement or (c) following the introduction of the standard contract in September 2018, a non-residential customer and Robusto Investments entered into an agreement for the services to be provided on different terms and conditions.

¹⁸ Burmingham, p. 1.

¹⁹ Commission, *Water Retail Code – Minor and Intermediate Retailers - Final Decision*, March 2015, available at <https://www.escosa.sa.gov.au/ArticleDocuments/429/20150310-WaterRetailCode-MinorIntermediateRetaile.pdf.aspx?Embed=Y>.

²⁰ Hayes, p. 1.

²¹ Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 46.

Aquifer risks

- 3.4.8 One customer raised concern about the risks to the aquifer from increased usage of Robusto Investments' water supply network.²²
- 3.4.9 **Response:** This customer concern relates to the capacity of the network in an environment of growing demand from residential and non-residential customers. As explained in the Commission's regulatory determination made in May 2021, the Department of Environment and Water (DEW) reported in 2021 that water in the aquifer from which Robusto Investments draws appears to be of relatively sound quality and supply. Moreover, while Robusto Investments' water supply network uses two bores, four bores are owned and licensed by Robusto Investments, and these are metered, and their usage reported to DEW on a quarterly basis.²³
- 3.4.10 Most importantly, notwithstanding any non-standard commercial agreement that Robusto Investments enters into (for example, with a non-residential user), it must also meet its obligations under the standard customer contract, which includes the ongoing provision of drinking water retail services to all of its residential customers.

3.5 Final decision – maximum revenue and prices

- 3.5.1 Having considered the information and views put forward in submissions to the draft determination, the Commission will further vary the varied regulatory determination that applies to Robusto Investments, as follows:
- 3.5.1.1 the term of the varied regulatory determination is for a period of 12 months, from 1 July 2022 to 30 June 2023
- 3.5.1.2 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, MCSL, in relation to the water retail business (in nominal terms, this maximum revenue is \$196,944)
- 3.5.1.3 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
- 3.5.1.4 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.

²² Hayes, p. 1.

²³ Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, pp. 46-47 and p. 99. Also, see DEW, 'Tookayerta Permian Groundwater Management Zone – Groundwater assessment', DEW Technical report 2020/16, March 2021.

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

3.6 Steps, assumptions, and the calculation of the rollover in the final decision

- 3.6.1 The rollover has been derived as follows.
- 3.6.2 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.
- 3.6.3 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.
- 3.6.4 Step 3: The 12-month nominal maximum revenue allowance is converted into maximum prices for residential customers based on assumptions regarding:
- 3.6.4.1 187 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, MCSL²⁴
- 3.6.4.2 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
- 3.6.4.3 pricing structures (the relativities between supply and usage charges remains fixed at the allocation set out in the varied regulatory determination, as do the relativities between the three pricing tiers).
- 3.6.5 Box 1 provides the worked calculation of the three steps in the rollover.
- 3.6.6 As described above, the other components of the real maximum allowed revenue have not been re-assessed or expanded. This is consistent with the roll-over approach aimed at preserving the status quo while the proceedings before the Tribunal are in progress.

²⁴ For the varied regulatory determination made on 26 August 2021, the customer numbers used in the calculations was 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)^(a)

$RR_{12\text{-month}}$ is the real maximum revenue control for the 12-month regulatory period (i.e 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^(a)

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)^(a)

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^(b)

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

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

α 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 (186 residential customers and one non-residential customer)^(d)

λ_{T12} is the price differential between P_{T1} and P_{T2} , as set in percentage terms^(a)

λ_{T23} is the price differential between P_{T2} and P_{T3} , as set in percentage terms^(a)

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

References

^(a) Commission, *Regulatory Determination as varied by subsequent determination on 26 August 2021*, p. 3, pp. 6-7, available at: <https://www.escosa.sa.gov.au/ArticleDocuments/21740/20210826-Water-RobustoInvestments-RegulatoryDetermination.pdf.aspx?Embed=Y>.

^(b) Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 109-110.

^(c) Australian Bureau of Statistics, *Consumer Price Index*, Australia, March 2022, available at <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia>.

^(d) Robusto Investments, *2020-21 Financial and operating regulatory reporting*, 30 November 2021.

Data and assumptions

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

$$Q=4$$

$$QP = 5$$

$$\alpha = 32.12849\%$$

$$V_1 = 120$$

$$V_2 = 78.150289$$

$$V_3 = 0.00$$

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

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

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

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

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

$$N = 187$$

Calculation of the rollover

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

$P_s = \frac{\alpha R}{QN}$, 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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