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Water

Robusto Investments Pty Ltd Drinking Water Preservation Regulatory Determination: Final Decision

Statement of Reasons

June 2023

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Executive Summary

The Essential Services Commission (**Commission**) has made a final regulatory determination to apply to Robusto Investments Pty Ltd (ACN 117 034 545) (**Robusto Investments**), for the 24-month regulatory period 1 July 2023 to 30 June 2025 (inclusive), in accordance with Part 3 of the *Essential Services Commission Act 2002* (**ESC Act**) and Part 4 of the *Water Industry Act 2012* (**WI Act**). The current regulatory determination, which took effect on 1 July 2022, will expire on 30 June 2023.

In the making of this final regulatory determination, the Commission has 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 has had regard to the matters set out in section 6(b) of the WI Act, as well as the other statutory factors and requirements as set out in the ESC Act and the WI Act.

In reaching its final determination, the Commission has taken into account the information and views contained in submissions. Issues raised by Robusto Investments in its submission included, among other things, the term of operation, customer numbers, the treatment of inflation, consultation, network costs (including as operations expand to meet higher demand and greater customer numbers) and a pricing proposal. The customer submissions raised concerns, among other things, about monopoly behaviour, price and service levels, and affordability.

Final determination

The Commission's final determination is, in effect, a form of preservation determination. It is referred to herein as the **preservation regulatory determination**.

This preservation regulatory determination sets Robusto Investments maximum allowable revenue to be recoverable from residential customers and Mount Compass Sand and Loam and it sets out the maximum nominal residential prices for 2023-2024 and the pricing methodology for which maximum nominal residential prices must be set in 2024-2025. The preservation determination carries forward the substantive terms of the current regulatory determination (such as the determination of efficient and prudent costs and the maximum revenue in inflation-adjusted terms that can be recovered by Robusto Investments). It limits variations to only those price-setting-based parameters where the Commission has determined there is new, relevant and verifiable information which justifies adjustments being made. This includes adjustments made to account for forecasts of changes in Consumer Price Index (**CPI**) inflation, customer numbers and customer consumption.

The 24-month term of operation allows for and promotes, engagement, consultation and stakeholder input into a comprehensive review to inform a subsequent determination to apply to Robusto Investments. The term of operation will allow the Commission to assess Robusto Investments latest expenditure proposal. This includes allowing for information gathering and analysis relating to, among other things, capital expenditure, asset values, demand and customer consumption, and operating expenditure. Subject to the paragraph below, the subsequent determination is planned to take effect from 1 July 2025.

The key requirements of made under this preservation regulatory determination are as follows.

1. **Term:** The term of operation of the preservation regulatory determination is a period of 24 months from 1 July 2023 to 30 June 2025. Should the subsequent determination be completed in advance of 1 July 2025, the Commission may, subject to the directions, findings or recommendations of the South Australian Civil and Administrative Tribunal (**Tribunal**), revoke the preservation regulatory determination at that time for the subsequent determination to take effect.

2. **Maximum revenue:** The maximum revenue that Robusto Investments can recover over the regulatory period from residential customers and Mount Compass Sand and Loam is set at \$414,189 (in nominal terms) and \$359,472 (in real, December 2018 prices).
3. **Pricing:**
 - a. **2023-2024:** The maximum nominal prices Robusto Investments can recover from residential customers for 2023-2024 are set out in Table 1 (below). Maximum nominal prices are derived from the maximum nominal revenue allowance (as above). Prices are set on the basis of the pricing structure adopted in the current regulatory determination, which takes into account updated forecasts for customer numbers (including estimates of vacant, but connected, lots) and customer consumption.

Table 1: Final Decision on pricing outcomes

Tariff element	Current period 1 July 2022 to 30 June 2023	<i>Final Decision</i> 1 July 2023 to 30 June 2024	<i>Final Decision</i> 1 July 2024 to 30 June 2025 Prices to be derived in May 2024*
Quarterly supply charge	\$84.59	\$92.59	Methodology set
Tier 1 charge per kL (0-30kL)	\$3.09	\$3.80	Methodology set
Tier 2 charge per kL (30-130kL)	\$4.41	\$5.43	Methodology set
Tier 3 charge per kL (>130kL)	\$4.77	\$5.88	Methodology set

*The pricing methodology is set in this determination. Information will be collected from Robusto Investments in early 2024. Prices will be determined by the Commission and then published in May 2024.

- b. **2024-2025:** The maximum nominal prices Robusto Investments can recover from residential customers for 2024-2025 are set out in the form of a pricing methodology (in accordance with section 25(3) of the ESC Act, which specifies that the Commission may regulate prices, conditions relating to prices or price-fixing factors).
- c. While Robusto Investments is expecting a sharp increase in customer connections over the next few years, the outlook is subject to a range of uncertainties. In particular, the size and speed of the expected increase, particularly relative to the pace of historical increases and in light of current economic conditions, raises questions as to whether this expected demand will eventuate and in what time frame. It is therefore prudent to take an approach that can lower the forecast risk borne by customers (which can help contain the risk of bill shock in future periods). Consequently, the Commission will obtain updated information from Robusto Investments about customer numbers and connections in early 2024. This will be used in the pricing methodology and will allow the Commission to determine maximum nominal residential prices for 2024-2025. The prices for this period will be published in May 2024.
- d. **Reporting:** Robusto Investments must provide to the Commission copies of all the quarterly bills issued to residential customers covering the period January 2024, December 2023 and November 2023. The Commission will use this information to derive an estimate of the

number of customers for 2024-2025, which, combined with the pricing methodology set in this determination, will derive the maximum nominal residential prices for 2024-2025.

4. **Compliance:** The Commission will assess Robusto Investments' compliance with the requirements of the preservation regulatory determination at the conclusion of the regulatory period (ie 30 June 2025, or earlier, if required). This determination will allow for the Commission to review any forecast errors for customer consumption, customer numbers and CPI inflation, and will allow for any under or over recovery of revenue attributable to these factors to be allowed for in any subsequent determination.

Proceedings before the Tribunal

As highlighted in the Commission's draft preservation determination, there are ongoing proceedings before the Tribunal in respect to the regulatory determination made by the Commission in August 2021. Until that process is finalised, the Commission does not propose to consider adjustments (if any) that might arise from Robusto Investments' compliance with the maximum revenues and maximum prices set out in the previous regulatory determination made on 26 August 2021 and varied in a subsequent determination to take effect on 1 July 2022. This is because any new regulatory determination will need to account for findings, directions and/or recommendations made by the Tribunal. This includes accounting for them when the Commission reconciles economic and operational information, on an *ex-post* basis, against Robusto Investments' compliance with the maximum revenues and maximum prices.

If there are relevant findings, directions and/or recommendations made by the Tribunal after the Commission has made its final preservation regulatory determination, that determination can be varied, in order to take those into account, or the Commission's subsequent determination (planned for 1 July 2025) can account for those findings. However, this will depend upon the nature of any findings, directions and/or recommendations made by the Tribunal and the circumstances at the relevant time. Further, notwithstanding the view expressed by Robusto Investments in its submission regarding the expected timing and findings of the Tribunal, the Commission considers that there is uncertainty as to when the Tribunal process will be completed and what may be required by the Tribunal in terms of directions, findings and/or recommendations.

While submissions to the draft decision from some consumers sought the Commission to defer the preservation regulatory determination until Tribunal proceedings are finished, this proposal would not be in the long-term interests of consumers. The current regulatory determination applying to Robusto Investments is set to expire on 30 June 2023. Without the making of a new regulatory determination to apply from 1 July 2023, there is a risk that Robusto Investments (as a monopoly service provider) could use market power to provide service levels that are not valued by its customers and/or set water prices higher than they need to be.

1 Background and submissions

1.1 Previous determinations and external review

- 1.1.1 Pursuant to Part 3 of the *Essential Services Commission Act 2002 (ESC Act)* and Part 4 of the *Water Industry Act 2012 (WI Act)*, the Essential Services Commission (**Commission**) has, currently in place, a regulatory determination that applies to Robusto Investments Pty Ltd (ACN 117 034 545) (**Robusto Investments**), the holder of a water retail licence under the WI Act.
- 1.1.2 The current regulatory determination took effect on 1 July 2022 and, under the ‘rollover’ methodology that was adopted, it 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 regulatory period (1 July 2022 to 30 June 2023 inclusive).¹
- 1.1.3 The Commission previously had in place a regulatory determination applying to Robusto Investments that was made on 26 August 2021. That regulatory determination was in effect across the period 1 April 2021 to 30 June 2022 (inclusive). It, too, set the maximum revenues that could be recovered by Robusto Investments from residential customers and one non-residential customer and the maximum prices that could be charged to residential customers.²
- 1.1.4 Originally, the Commission made a regulatory determination on 25 May 2021 applying to Robusto Investments.³ That regulatory determination was to be in effect across the period 1 April 2021 to 30 June 2022; however, following an internal review application, submitted by Robusto Investments under Section 31 of the ESC Act on 23 June 2021,⁴ the Commission made a regulatory determination on 26 August 2021, which:
- 1.1.4.1 confirmed its decision in relation to the issues raised by Robusto Investments in its internal review application (ie the Commission did not vary its decision on any of those issues), and
- 1.1.4.2 made a variation to the original regulatory determination in relation to the allowance made within the overall revenue requirement for bad

¹ This is known as the further varied regulatory determination. Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 1-18, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21897/20220630-Water-RobustoInvestments-RegulatoryDetermination-FinalFurtherVariationDecision-StatementOfReasons.pdf.aspx?Embed=Y>.

² This is known as the varied regulatory determination. Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 1-8, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21740/20210826-Water-RobustoInvestments-RegulatoryDetermination-ReviewApplicationDecision-StatementOfReasons.pdf.aspx?Embed=Y>.

³ This is known as the original regulatory determination. Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 1-148, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21695/20210525-Water-RobustoInvestments-RegulatoryDetermination-StatementOfReasons.pdf.aspx?Embed=Y>.

⁴ 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>.

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.⁵

- 1.1.5 On 8 September 2021, under Section 32 of the ESC Act, Robusto Investments lodged an application with the South Australian Civil and Administrative Tribunal (**Tribunal**) for an external review of the Commission's regulatory determination made on 26 August 2021.⁶ That external review remains before the Tribunal in accordance with the *South Australian Civil and Administrative Tribunal Act 2013*.
- 1.1.6 It is noted that at the conclusion of the external review process, by virtue of section 32(6) of the ESC Act, the Tribunal may:
- 1.1.6.1 affirm the regulatory determination made by the Commission on 26 August 2021, or
- 1.1.6.2 set aside the decision being reviewed and send the matter back to the Commission for reconsideration in accordance with any directions, findings or recommendations that the Tribunal considers appropriate (or may make any other order the Tribunal considers appropriate).
- 1.1.7 The Commission understands that any new regulatory determination that is made will need to account for any findings, directions and/or recommendations made by the Tribunal (pursuant to section 32(6) of the ESC Act). This includes accounting for them when the Commission reconciles economic and operational information, on an *ex-post* basis, against Robusto Investments' compliance with the maximum revenues and maximum prices.
- 1.1.8 If there are relevant findings, directions and/or recommendations made by the Tribunal after the Commission has made its final preservation regulatory determination, that determination can be varied, in order to take those into account, or the Commission's subsequent determination (planned for 1 July 2025) can account for those findings. However, this will depend upon the nature of any findings, directions and/or recommendations made by the Tribunal and the circumstances at the relevant time.

1.2 Submissions to the Commission's draft decision

- 1.2.1 In April 2023, the Commission published a draft decision to make a preservation regulatory determination applying to Robusto Investments.⁷ Consistent with the Commission's charter of consultation and regulatory

⁵ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 6-7.

⁶ Refer to information available on the Commission's website about the external review, available at <https://www.escosa.sa.gov.au/projects-and-publications/projects/water/decision-to-make-a-price-determination-to-apply-to-robusto-investments>.

⁷ Commission, *Robusto Investments Pty Ltd: Drinking Water Preservation Regulatory Determination: Draft Decision - Statement of Reasons*, April 2023, pp. 1-16, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21951/20230406-Water-RobustoInvestments-PreservationDetermination-DraftDecision.pdf.aspx?Embed=Y>.

practice,⁸ and pursuant to section 26 of the ESC Act, the Commission sought submissions on its draft decision.

1.2.2 Submissions were received from:

1.2.2.1 Robusto Investments⁹

1.2.2.2 Mount Compass Community Association (**MCCA**) (a community association with approximately 100 members)¹⁰

1.2.2.3 Sandra and Michael Reimerink¹¹

1.2.2.4 Resident 1¹²

1.2.2.5 Stewart Glass,¹³ and

1.2.2.6 Jessica Glass.¹⁴

1.2.3 The Commission thanks all parties for their submissions. All submissions – public and confidential – were carefully considered in making this final preservation regulatory determination. Where relevant, certain arguments and submissions have been mentioned in this final decision, either by direct quotation or by reference to themes or arguments, to assist stakeholders to understand the positions that have been reached. A failure to reference an argument or submission does not mean that it has not been considered by the Commission in arriving at its conclusions.

1.3 Proposals and key issues in stakeholder submissions

1.3.1 Three proposals were put forward by stakeholders.

1.3.1.1 **Proposal 1:** Robusto Investments proposed a six-month term of operation with current prices increased by a measure of CPI inflation. In its view this would allow sufficient time for a new regulatory determination to be made (having taken into account any directions, findings or recommendations of the Tribunal).¹⁵

1.3.1.2 **Proposal 2:** Robusto Investments' submission included a second proposal (for consideration by the Commission should Proposal 1 not be accepted). It proposed an annual maximum revenue amount of

⁸ Commission, *Charter of consultation and regulatory practice*, November 2019, pp. 1-9, available at <https://www.escosa.sa.gov.au/ArticleDocuments/11387/20191112-Corporate-CharterOfConsultationRegulatoryPractice.pdf.aspx?Embed=Y>.

⁹ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, 12 May 2023, pp. 1-11.

¹⁰ MCCA, *Submission to Commission regarding Regulatory Preservation Determination*, p. 1.

¹¹ Reimerink S & M, *Submission to Commission regarding Regulatory Preservation Determination*, p. 1.

¹² Resident 1, *Submission to Commission regarding Regulatory Preservation Determination*, pp. 1-5.

¹³ Glass S, *Submission to Commission regarding Regulatory Preservation Determination*, pp. 1-2.

¹⁴ Glass J, *Submission to Commission regarding Regulatory Preservation Determination*, p. 1.

¹⁵ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-4.

\$739,012.¹⁶ Alongside this, Robusto Investments proposed the following prices for 2023-2024 (Table 2).¹⁷

Table 2: Robusto Investments' pricing proposal for 2023-2024, as submitted in May 2023

	Robusto Investments' 2023-2024 proposal
Supply charge per quarter	\$792
Tier 1: 0-30kL	\$5.00
Tier 2: 30-130kL	\$6.00
Tier 3: >130kL	\$7.00

1.3.1.3 **Proposal 3:** Both the MCCA and Mr Glass proposed that the preservation regulatory determination be postponed until Tribunal proceedings are complete.¹⁸

1.3.2 Stakeholders discussed a range of economic and operational issues.

1.3.2.1 Robusto Investments' submission raised issues surrounding, among other things, the term of operation, the treatment of inflation, and the current and future costs of the water supply network (including capital and operating expenditures, and projections of customer connections).¹⁹ These issues are discussed further in Chapter 3.

1.3.2.2 Customer submissions highlighted a range of issues. There were concerns about the operating performance, service delivery and responsiveness of the regulated operator.²⁰ Information cited in submissions included claims regarding inaccurate readings by the operator,²¹ unplanned disruptions to the operator's service,²² and reference to the operator's proposal of a \$250 per quarter supply charge in 2016 with no engagement on the matter with customers (although the charge did not apparently take effect).²³ Some customers also indicate that they do not have trust in the operator.²⁴

1.3.2.3 Customers expressed doubt about the size of the regulated operator's costs to run a small network,²⁵ and other customers expressed concerns that Robusto Investments might exercise market power to the financial detriment of customers (including the risk of using charges for water retail services to cross-subsidise a

¹⁶ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-4.

¹⁷ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-4.

¹⁸ MCCA, p.1; Glass S, pp. 1-2.

¹⁹ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-11.

²⁰ Reimerink, p. 1, Glass S, pp. 1-2, and Resident 1, pp. 1-3.

²¹ Glass S, pp. 1-2.

²² Resident 1, pp. 1-3.

²³ Resident 1, pp. 1-3.

²⁴ Glass S, pp. 1-2, and Resident 1, pp. 1-3.

²⁵ Glass S, pp. 1-2, Glass J, pp. 1-2, and Resident 1, pp. 1-3.

related entity).²⁶ There were also concerns raised about high prices and the risk of financial hardship for households, particularly for vulnerable households and those on low incomes.²⁷

1.3.2.4 In addition, there were various general queries submitted by customers.²⁸ Customers expressed concerns about why Robusto Investments' prices can differ from SA Water's prices, why customers cannot be connected to SA Water's network, and why the Commission was unable to present the draft regulatory determination to customers at Mount Compass. The Commission's website contains responses to frequently asked questions including these general queries.²⁹

Box 1. Hardship policy for residential customers

Customer submissions have understandably raised concerns regarding price increases and affordability. The Commission notes that minor and intermediate retailers, such as Robusto, *must* offer programs to help customers experiencing financial hardship, such as flexible payment arrangements, customer hardship policies, and rules governing supply restrictions and debt recovery.

Retailers must also actively engage with their customers to assist them in meeting their payment obligations. These obligations allow customers who are willing to pay, but are unable to do so due to financial difficulty, to maintain their supply and avoid restriction or debt recovery action. However, where a customer is not willing to participate or ceases making payment for reasons other than financial difficulty, restriction of supply or debt recovery may apply.

²⁶ Glass S, pp. 1-2, Glass J, pp. 1-2, and Resident 1, pp. 1-3.

²⁷ Reimerink, p. 1, Resident 1, pp. 1-3, and Glass J, pp. 1-2.

²⁸ MCCA, p. 1, Reimerink, p. 1, Glass S, pp. 1-2, Glass J, pp. 1-2, and Resident 1, pp. 1-3.

²⁹ Frequently asked questions in relation to the Robusto Investments price determination can be found here: <https://www.escosa.sa.gov.au/industry/water/retail-pricing/robusto-investments-price-determination-frequently-asked-questions>.

2 Final Decision

2.1 Final preservation regulatory determination

- 2.1.1 The Commissions' final decision, having regard to submissions put forward by stakeholders and Robusto Investments, is to make a preservation regulatory determination to apply to Robusto Investments.
- 2.1.2 The final preservation regulatory determination is as follows.
- 2.1.2.1 The term of operation will be 1 July 2023 to 30 June 2025. Should the Commission's planned subsequent determination be completed in advance of 1 July 2025, the Commission may, subject to the directions, findings and recommendations of the Tribunal, revoke the preservation regulatory determination at that time for the subsequent determination to take effect.
- 2.1.2.2 The maximum allowable revenue that Robusto Investments can recover from residential customers and Mount Compass Sand and Loam for the period 1 July 2023 to 30 June 2025 is set at \$414,189 (in nominal terms) and \$359,472 (in real, December 2018 prices).
- 2.1.2.3 The maximum nominal prices Robusto Investments can recover from residential customers for 2023-2024 are as follows.
- A quarterly supply charge of \$92.59
 - A Tier 1 charge of \$3.80 per kL
 - A Tier 2 charge of \$5.43 per kL and
 - A Tier 3 charge of \$5.88 per kL
- 2.1.2.4 The maximum nominal prices Robusto Investments can recover from residential customers for 2024-2025 are set out in the form of a pricing methodology (in accordance with section 25(3) of the ESC Act, which specifies that the Commission may regulate prices, conditions relating to prices or price-fixing factors). The pricing methodology:
- sets out the ratio of the supply charge to the usage charge, and the formula relating to price tiers, customer numbers and consumption per customer, all of which remains the same as set out for 2023-2024
 - sets out the specific amount of consumption per customer, which remains the same as set out for 2023-2024, and
 - allows for the Commission to obtain updated information from Robusto Investments about customer numbers and connections in early 2024. This will allow the Commission to determine maximum nominal residential prices for 2024-2025. The prices for this period will be published in May 2024.
- 2.1.3 The Commission will assess Robusto Investments' compliance with the requirements of the preservation regulatory determination at the conclusion

of the regulatory period (ie 30 June 2025, or earlier, if required). This assessment will allow for the Commission to compare actual and forecast customer consumption, customer numbers and CPI inflation, and will allow for any under or over recovery of revenue attributable to these factors to be considered in any subsequent determination.

3 Methodology and Reasons for Final Decision

3.1 Introduction

- 3.1.1 This final preservation regulatory determination sets Robusto Investment's *maximum allowable revenue* to be recoverable from residential customers and Mount Compass Sand and Loam, and it sets out the *maximum pricing outcomes* for 2023-2024 and the *pricing methodology* for which maximum pricing outcomes must be set for 2024-2025.
- 3.1.2 The methodology provides near-term certainty to Robusto Investments and its customers. At the same time, it accounts for known uncertainties (given the ongoing Tribunal proceedings and the likely increase in customer connections). In terms of the making of a subsequent determination to apply to Robusto Investments from 1 July 2025 (or earlier as the case may be), the methodology allows sufficient opportunity for stakeholder consultation as well as sufficient time for information gathering and analysis by the Commission in relation to Robusto Investments' latest expenditure proposals relating to, among things, capital expenditure, asset values, consumption and demand, and operating expenditure.
- 3.1.3 The methodology is considered to be transparent to all stakeholders. It is also consistent with the Commission's statutory duty to protect consumers' long-term interests with respect to the price, quality and reliability of essential water retail services.
- 3.1.4 The remainder of this chapter outlines: (i) the reasons for making a regulatory determination; (ii) the reasons for selecting a 24-month term of operation; and (iii) the method for the preservation of maximum allowable revenues. Responses to submissions are discussed throughout the chapter.

3.2 Reasons for making the preservation regulatory determination

- 3.2.1 The Commission's final decision is that, in order to protect consumers' long-term interests with respect to the price, quality and reliability of essential water retail services, a preservation regulatory determination applying to Robusto Investments should be in effect during the remainder of the Tribunal proceedings and until a comprehensive review and subsequent determination can be undertaken by the Commission.
- 3.2.2 Submissions from the MCCA and Mr Glass both expressed the view that the preservation regulatory determination should be deferred until Tribunal proceedings are finished.³⁰ However, the current regulatory determination applying to Robusto Investments expires on 30 June 2023. Without the making of a new regulatory determination to apply from 1 July 2023, there is a risk that Robusto Investments (as a monopoly service provider) could use

³⁰ MCCA, p.1, and Glass S, pp. 1-2.

market power to provide service levels that are not valued by its customers and/or set water prices higher than they need to be.

- 3.2.3 The Commission's position is that Robusto Investments' past pricing proposals,³¹ as well as aspects of its 2023-2024 revenue and pricing proposal submitted to the draft preservation regulatory determination,³² have deficiencies that make it inconsistent with efficient costs.
- 3.2.4 In addition, as noted earlier, the proceedings before the Tribunal with respect to the Commission's regulatory determination made in August 2021 remain ongoing. Notwithstanding the view expressed by Robusto Investments in its submission regarding the expected timing and findings of the Tribunal,³³ the Commission considers that there is uncertainty as to when the Tribunal process will be completed and what may be required by the Tribunal in terms of directions, findings and/or recommendations.
- 3.2.5 Consequently, the Commission's final decision is to make a preservation regulatory determination. The methodology for the creation of the final preservation regulatory determination, including reasons and supporting information, is outlined below.

3.3 Term of the regulatory period

- 3.3.1 The Commission's final decision is that the period of regulation will be 24-months from 1 July 2023 to 30 June 2025. As explained earlier, should a full determination be completed in advance of 1 July 2025, the Commission may, subject to the directions, findings and recommendations of the Tribunal, revoke the preservation regulatory determination and introduce the full subsequent determination.
- 3.3.2 The regulatory period of 24 months has been adopted on the basis that:
- 3.3.2.1 it would allow for, and promote, stakeholder input into a comprehensive review informing a subsequent determination to apply to Robusto Investments to take effect from 1 July 2025, and
- 3.3.2.2 it would allow for a detailed assessment by the Commission of Robusto Investments' latest proposal, including capital expenditure, asset values, demand and customer consumption, and operating expenditure.
- 3.3.3 In making this final decision, various regulatory periods (6, 12 and 24 months) were considered as well as those options put forward in submissions.

Consideration of a six-month term

- 3.3.4 Robusto Investments proposed a *six-month term* of operation with current prices increased by a measure of CPI inflation. In its view, this time frame

³¹ For a discussion of deficiencies of past pricing proposals, please see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 29-36.

³² Limitations include insufficient justification and evidence, and in some cases, inaccurate calculations, to support proposals for operating costs, return on capital, depreciation and the pricing structure. These are discussed later on in this statement of reasons for the preservation regulatory determination.

³³ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, p. 2.

would allow sufficient time for a new regulatory determination to be made (having taken into account any directions, findings or recommendations of the Tribunal).³⁴ Further, in its view, information for a new determination is with the Commission, and its operations are sustaining losses.³⁵

3.3.5 However, the positions put forward by Robusto Investments have limitations.

3.3.5.1 First, it is unclear what the Tribunal's directions, recommendations or findings might involve and what the timeframe for any required actions might be.

3.3.5.2 Second, a period of six-months will not allow sufficient time to determine the efficient level of costs. Given information asymmetry between regulated operators and regulators, it is common practice to request information, review and interrogate the information provided and to make follow-up information requests for verification and clarification purposes, compare information with third-party information, and seek advice from third parties. This process to make a regulatory determination can take some time.³⁶ If proposals were accepted without appropriate regulatory scrutiny, outcomes could lead to inefficient increases in customer prices.³⁷

3.3.5.3 Third, a period of six months will not allow sufficient contingency for engagement with customers so as to fully inform the statutory regulatory determination process and decision. Consistent with the Commission's charter of consultation and regulatory practice,³⁸ and pursuant to section 26 of the ESC Act, the Commission is committed to consulting with all stakeholders.

3.3.5.4 Fourth, the Commission's regulatory framework incentivises monopoly retail service providers to operate efficiently and to set prices based on efficient costs – the Commission does not accept that actual stated operational and/or financial costs will necessarily be efficient costs.

3.3.5.5 The costs characterised by Robusto Investments in its submission as losses could reflect inefficiencies in the companies' own operations and decision-making and/or factors outside of the regulatory regime. Given the existence of information asymmetry, a

³⁴ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-4.

³⁵ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-4.

³⁶ The Commission sought information from Robusto Investments on 29 November 2022. Robusto Investments provided some information on 4 January and 31 January 2023 (although this information did not include certain operating expenditure and capital expenditure as was specifically requested by the Commission). Robusto Investments provided information in early April 2023. This information gathering process took four months. This is an example of time frames for which contingency must be allowed for.

³⁷ That Robusto Investments has expressed the view in its submission that its asset value could be much greater than was allowed in previous determinations. This highlights the importance of allowing sufficient time for the regulator to gather information and undertake detailed analysis and verification. Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, p. 2.

³⁸ Commission, *Charter of consultation and regulatory practice*, November 2019, pp. 1-9, available at <https://www.escosa.sa.gov.au/ArticleDocuments/11387/20191112-Corporate-CharterOfConsultationRegulatoryPractice.pdf.aspx?Embed=Y>.

monopoly service provider, such as Robusto Investments, can have incentives not to reveal full information to the regulator about its efficient costs and to overstate the extent of its incurred and allocated costs to the water retail business.³⁹ Moreover, given that Robusto Investments may have operational and financial transactions with related entities (for example, Capitoline Property Pty Ltd), common or joint costs with related entities (for example, Capitoline Property Pty Ltd and the Mount Compass Golf Course and Clubhouse), and/or may provide services outside of the regulatory regime,⁴⁰ Robusto Investments can have the ability and incentive to attribute costs and activities undertaken in providing unregulated services to those activities that provide water retail services.⁴¹ Some current⁴² and historical⁴³ customer submissions have raised concerns about this possibility.

- 3.3.5.6 Fifth, it is noted that under-recovery of revenues (relative to the current maximum revenue allowance) could be related to its own customers not paying bills (Box 2).

Box 2. Customer payments

The Commission acknowledges that water licensees may need to recover outstanding debts from customers. In the first instance, Robusto Investments must give a customer reasonable opportunity to enter into a flexible payment arrangement to allow for more time to make payment of any outstanding debt. If a customer is experiencing financial hardship, Robusto Investments must follow the processes outlined in Robusto Investments' Hardship Policy.

If the customer is not determined to be a customer experiencing hardship, and they do not agree to a flexible payment arrangement, or fail to meet the terms of a flexible payment arrangement, a retailer can commence debt recovery action (clause 5.9 of the Water Retail Code – Minor and Intermediate Retailers, **Code**) or commence action to restrict the flow of water services to a prescribed minimum flow rate (clause 6 of Code).

The Code is very specific in outlining the requirements and time frames for commencing debt recovery or restriction action and it is recommended that Robusto Investments review the relevant requirements of the Code prior to commencing any such action.

- 3.3.5.7 Sixth, forecast errors for parameters such as consumption and customer numbers can impact on prices, and hence on the recovery of revenues (relative to the maximum revenue allowance). Information submitted by Robusto Investments to the Commission

³⁹ Joskow, P, 'Regulation of natural monopolies', *Handbook of Law and Economics*, A Mitchell Polinsky and S Shavell (eds), Volume 2, pp. 285-330, 2007.

⁴⁰ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 18-10, 72-87, 92-106.

⁴¹ Joskow, P, pp. 285-330.

⁴² Resident 1, pp. 1-3.

⁴³ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, p. 17.

on 31 January 2023 suggests that annual consumption per customer (even adjusting for vacant but connected lots) is likely to be below an assumption of 198kL (which is based on the current regulatory determination). Nonetheless, previous determinations included mechanisms to review forecast errors and include an allowance in subsequent determinations for any under or over-recovery directly attributable to certain forecast errors.⁴⁴ Further, the consumption forecast has been lowered in this preservation regulatory determination – section 3.5.

Consideration of Robusto Investment's 12-month maximum revenue and pricing proposal for 2023-2024

- 3.3.6 Robusto Investments' submission included a second proposal (for consideration by the Commission should the six-month proposal not be accepted). It proposed an annual maximum revenue amount of more than \$700,000 for the period 2023-2024. Alongside this, Robusto Investments proposed a set of tiered prices for 2023-2024 (as shown earlier in Table 2).⁴⁵
- 3.3.7 The Commission has determined that Robusto Investments' proposed *annual* revenue and prices, if adopted for the purposes of the regulatory preservation determination, would not be in the long-term interests of consumers. The detailed reasons outlined earlier in section 3.3.5 (regarding the need for sufficient time and contingency to allow for information gathering, analysis and engagement) also apply in response to this annual proposal. Further, this annual proposal has limitations of its own, including insufficient justification and evidence, and in some cases, apparent inaccurate calculations,⁴⁶ to support proposals for operating costs,⁴⁷ return on capital,⁴⁸ depreciation⁴⁹

⁴⁴ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 1-2, and Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 113-114.

⁴⁵ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 4.

⁴⁶ For instance, calculations of depreciation do not appear to be justified in accordance with any verified asset lives, there does not appear to be a methodology employed to calculate an asset rollover, and the inflation forecast used for 2023-2024 is well in excess of the RBA's forecast for the coming year (see discussion later on). An example of an asset rollover methodology is outlined in previous Commission decisions; please see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 39-43.

⁴⁷ Some limitations appear consistent with those limitations pointed out in the Commission's previous May 2021 regulatory determination; see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 54-64.

⁴⁸ There is insufficient justification to support the return on capital. This includes the proposed rate of return adopted and the asset value adopted. Limitations of the rate of return proposed appear consistent with those limitations pointed out in the Commission's previous May 2021 regulatory determination; see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 72-86. Further, the proposal appears to include new capital expenditure and asset value information that the Commission will need to verify and clarify, through analysis and further information requests, as part of any subsequent determination, before it can be considered as a possible input into any regulatory determination.

⁴⁹ The proposed methodology does not justify, and outline calculations for, an asset rollover methodology and for a methodology that calculates depreciation in accordance with verified asset lives. As mentioned earlier, the proposal appears to include new capital expenditure and asset value information that the Commission will need to analyse, verify and clarify.

and the pricing structure,⁵⁰ which make it inappropriate for the purpose of the Commission's preservation regulatory determination.

- 3.3.8 To date, Robusto Investments has undertaken limited, if any, direct engagement with its customers on its expenditure proposals,⁵¹ and some customers indicate that they do not have trust in the operator⁵² and do not understand how such a small network can have such costs.⁵³
- 3.3.9 The magnitude of Robusto Investments' expenditure proposals, including asset values of much greater value previously allowed, re-enforces the need for sufficient time and contingency to allow for information gathering, analysis and engagement, as explained in section 3.3.5, and it highlights why a term of 24 months will be appropriate and necessary. For instance, if capital and operating expenditure proposals were accepted without appropriate analysis, regulatory scrutiny and verification, this could lead to inefficient increases in customer prices. This would not be in the long-term interests of consumers. Customer submissions have raised concerns about high prices and affordability, and these concerns have been expressed based on the Commission's draft decision,⁵⁴ which is lower than expenditure proposals put forward by Robusto Investments for 2023-2024.
- 3.3.10 It is acknowledged that if there are findings, directions and/or recommendations made by the Tribunal relating to the Commission's methodology used in previous determinations, those can be taken into account through a variation in the preservation regulatory determination or in the Commission's subsequent determination (planned for 1 July 2025). However, this will depend upon the nature of any findings, directions and/or recommendations made by the Tribunal and the circumstances at the relevant time.
- 3.3.11 Finally, it is noted that the Robusto Investments' submission included proposed expenditures, assumptions and notes, including for the period 2023-2024 to 2027-2028. Those assumptions, notes and proposed expenditures will need to be carefully assessed as part of the Commission's subsequent determination planned to take effect from 1 July 2025 (or earlier as the case may be).⁵⁵
- 3.3.12 For the purposes of this preservation regulatory determination, certain assumptions and notes contained in Robusto Investments' submission to the Commission's draft decision, which included proposals and details for 2023-2024 to 2027-2028, have been redacted. Nonetheless, going forward, the Commission is committed to an open, transparent and consultative stakeholder process for the subsequent regulatory determination (planned to

⁵⁰ There is insufficient justification and evidence used in support for the proportion of costs to be recovered from the supply charge.

⁵¹ For instance, Robusto Investments' submission contains insufficient evidence on how it has sought to directly engage on, and have regard to, customer preferences in its annual revenue proposal for 2023-2024. Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-2.

⁵² Glass S, pp. 1-2, and Resident 1, pp. 1-3.

⁵³ Glass S, pp. 1-2, Glass J, p. 1, and Resident 1, pp. 1-3.

⁵⁴ Reimerink, p. 1, Resident 1, pp. 1-3, and Glass J, pp. 1-2.

⁵⁵ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 3-11.

take effect 1 July 2025). It is important that all interested stakeholders have access to the appropriate level of information to understand submitted costs, revenues and prices from the regulated operator, and have access to the Commission's regulatory determination and its reasoning. Regulatory determinations impact on a range of stakeholders – not only the regulated but also its customers).

Final decision

- 3.3.13 The Commission's final decision is that a regulatory determination must be enacted, for the reasons stated above, and that it must provide sufficient opportunity to complete a comprehensive subsequent regulatory determination (to take effect 1 July 2025, or earlier as the case may be).

3.4 Preserving maximum allowable revenues

- 3.4.1 The Commission's final decision is to set the maximum allowable revenue that Robusto Investments can recover from residential customers and Mount Compass Sand and Loam at \$414,189 (in nominal terms) and \$359,472 (in real, December 2018 prices) over the regulatory period (24-months).
- 3.4.2 The Commission's final decision is that it has determined that a preservation regulatory determination will be made, which **maintains the annual maximum revenue** (in inflation-adjusted terms, as per the current regulatory determination, for each 12-month period within the 24-month period), but adjusts the maximum nominal revenue to reflect:
- 3.4.2.1 the length of the regulatory period for which the determination will apply (ie 24 months)
- 3.4.2.2 CPI inflation forecasts that were utilised during previous determinations (including 2022-2023),⁵⁶ and
- 3.4.2.3 a percentage change corresponding to the forecast rate of change in CPI inflation for the period 2023-2025 (based on inflation forecasts as published by the Reserve Bank of Australia (RBA), as an accepted source of independent forecasts) (see Box 3).⁵⁷
- 3.4.3 There are risks to the outlook for CPI inflation. These risks include that inflation outcomes could be more persistent than those expected, or goods price inflation could decline significantly and weigh on inflation outcomes.⁵⁸ For that reason, and similar to previous determinations, a mechanism for the Commission to review any forecast errors for certain factors, including

⁵⁶ This methodology is designed to askew any catch up of CPI inflation error until the matter has been settled by the tribunal.

⁵⁷ RBA, *Statement of Monetary Policy - May 2023*, pp. 1-79, available at <https://www.rba.gov.au/publications/smp/2023/may/pdf/statement-on-monetary-policy-2023-05.pdf>. The RBA has reported that CPI inflation is likely to have peaked at the end of 2022 (p. 1, 71). In May 2023, the RBA has reported year-ended CPI inflation forecasts of 3.6 percent for June 2024 and 3.0 percent for June 2025. See Box 1 (above) for a discussion of adjustments made for the expected rate of change in CPI inflation. Issues around forecasts of CPI inflation were discussed in the statement of reasons for the current regulatory determination; see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, p. 9. The use of the RBA forecast represents a transparent, objective and independent estimate of CPI inflation for the upcoming 24-month period.

⁵⁸ RBA, pp. 77-78.

inflation, and to include allowances attributable to those factors in a subsequent determination, has been included in the preservation regulatory determination.

Box 3. Adjustment for CPI inflation

The Commission's previous regulatory determinations applying to Robusto Investments (made in August 2021 and varied in a subsequent determination to take effect on 1 July 2022) provided a mechanism to review forecast errors for certain factors, including CPI inflation, and to make an allowance for under or over recovery attributable to those factors in subsequent determinations. This preservation regulatory determination does not account for any historical CPI inflation forecast errors of those determinations. While actual CPI inflation outcomes have exceeded the Commission's forecasts at the time, given that the Tribunal proceedings remain on foot, the Commission's final decision is that it is not appropriate to adjust for any CPI inflation forecast errors at this time.

In terms of converting revenues that are in real terms (ie inflation-adjusted revenues) into a nominal amount (ie into today's current prices), the Commission's final decision is to adopt the RBA's May 2023 published forecasts of year-ended CPI inflation for the 24-month period of this regulatory determination. By contrast, in the current regulatory determination, published in June 2022, the most recent available observation for year-ended CPI inflation was adopted as the forecast for the year ahead. This determination does not continue this practice for two reasons: first, this determination has a forecast horizon of 24 months, rather than 12 months, and second, according to the RBA, CPI inflation appears to have now peaked (so the use of the latest available observation may risk overstating CPI inflation for the 24-month period).

Robusto Investments proposed using the year-ended CPI inflation for the period 1 July 2022 to 30 June 2023, in order to increase prices for the six-month period between 1 July 2023 to 30 December 2023. However, this CPI inflation proposal has limitations. First, the data for this time period is not yet available – the Australian Bureau of Statistics has only published the data up to March 2023. Second, the proposal is escalating a six-month period by an estimate of CPI inflation for a 12-month period. This would be likely to over-inflate prices. Third, as noted above, CPI inflation appears to have now peaked, according to the RBA. Therefore, the use of the latest available observation may risk overstating CPI inflation for the 24-month period.

3.5 Setting Prices

Pricing outcomes and pricing conditions

- 3.5.1 The maximum nominal prices Robusto Investments can recover from residential customers for 2023-2024 are set out in this determination. Maximum nominal prices are derived from the maximum nominal revenue allowance. Prices are set on the basis of the pricing structure adopted in the current regulatory determination, which takes into account updated forecasts

for customer numbers (including estimates of vacant, but connected, lots) and customer consumption.

- 3.5.2 The maximum nominal prices Robusto Investments can recover from residential customers for 2024-2025 are set out in the form of a pricing methodology (in accordance with section 25(3) of the ESC Act, which specifies that the Commission may regulate prices, conditions relating to prices or price-fixing factors). According to Robusto Investments' submission, there is likely to be a large increase in customer numbers over the coming years. It expects that customer numbers will rise from around 210 currently to [REDACTED] in 2023-2024 and, [REDACTED] in 2024-2025. (Certain information has been redacted as Robusto Investments has submitted confidentiality claims over it)
- 3.5.3 However, there is uncertainty about the timing of when vacant lots will be sold and when customers will be connected to the water supply network. It is therefore prudent to take an approach that can lower forecast risk borne by customers (which can help contain the risk of bill shock in future periods). Consequently, the Commission will collect updated customer information from Robusto Investments in early 2024. The Commission will then determine prices based on the methodology set out in this determination. Maximum nominal residential prices for 2024-25 will be published in May 2024.

Adjusting for customer numbers and volumes

- 3.5.4 For the purposes of setting maximum prices in this final preservation regulatory determination, several recent outcomes and challenges were considered.
- 3.5.5 By way of background, under the Commission's current pricing formula, the maximum nominal prices for residential customers are derived in the current regulatory determination from the maximum nominal revenue, after adjusting for forecasts of customer numbers (assuming implicitly that all customers connected to the network are users of water from the supply network) and forecasts of the volume of drinking water consumption, and adopting an allocated proportion of supply-usage charges.
- 3.5.6 There are three key inputs that have been considered.
- (a) **Increased customer connections:** The number of customer connections has likely increased since the current regulatory determination was published in June 2022, and, based on Robusto Investments' submission, the number of connections is expected to increase sharply over the next few years.⁵⁹
 - (b) **Prevalence of vacant (but connected) lots:** There are reports and indicators that suggest a material number of connected customers do not consume any water from Robusto Investments' water supply network.⁶⁰

⁵⁹ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-11.

⁶⁰ In June 2022, Robusto Investments provided new information about the number of residential customers that are being charged both supply and usage, and those who are being charged for supply only. At that time, the Commission noted that there were inconsistencies in source information originally provided by Robusto

- (c) **Uncertainty regarding consumption per customer:** There are reports and indicators that suggest that consumption per customer has been lower than previously allowed for in the Commission's current regulatory determination (and also as previously allowed for in the Commission's August 2021 determination).⁶¹ As mentioned earlier, this may be a contributing factor to the previous under-recovery of revenues.

3.5.7 Consequently, for prices to be set as part of the Commission's preservation regulatory determination, this new information (as per above) will, to the extent practicable, need to be considered and accounted for. Without adjusting for these factors there is a risk that these limitations may accumulate and impact the calculation of subsequent regulatory determinations. This could increase the risk of bill shock to customers in subsequent determination regulatory periods.

- (a) **Customer connections:** As Chart 1 (below) shows, Robusto Investments is expecting a sharp increase in customer connections. The size and speed of the expected increase, particularly relative to the pace of historical increases and in light of current economic conditions, raises questions as to the accuracy of the forecast.⁶²

The Commission's final decision is that it will set maximum residential prices for 2023-2024, based on the current information available about current customer numbers and connections. It will use a new reporting requirement to obtain updated information from Robusto Investments about customer numbers and connections. This will allow the Commission to determine maximum nominal residential prices for 2024-2025. The prices for this period will be published in May 2024. This approach aims to lower the forecasting risk borne by customers (which can help contain the risk of bill shock in future periods).

Investments to the Commission in submissions and information provided to the Commission throughout the regulatory process. Accordingly, the Commission noted the need to verify new information to determine if and how it may be taken into account in a regulatory determination process. Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, pp. 10-11. Information submitted by Robusto Investments to the Commission on 31 January 2023 has assisted in verifying that there is a material number of vacant (but connected) lots.

⁶¹ For instance, see the reports highlighted by Robusto Investments in the Commission's current regulatory determination; see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, pp. 12-13. Also, information submitted by Robusto Investments to the Commission on 31 January 2023 suggests that – notwithstanding any quarterly and yearly seasonal impacts – annual consumption per customer (even adjusting for vacant but connected lots) is likely to be below an assumption of 198kL (which is based on the current regulatory determination).

⁶² The outlook is subject to a range of uncertainties. On the one hand, higher interest rates may weigh on new housing demand, and high construction costs, low unemployment rates and reported skill shortages may increase the time taken to build new homes and get them connect to the water supply network. On the other hand, the demand for housing may be supported by fundamentals, such as increased local population.

Chart 1: Robusto Investments - customer connections projections



(Certain information has been redacted as Robusto Investments has submitted confidentiality claims over it)

- (b) **Vacant (but connected) lots:** the Commission will account for the presence of vacant lots within the retail water supply network by utilising a **weighted average total customer connection number** approach. The weights applied to the forecasted customer numbers are according to the current portion of revenue allocated to either supply or usage in the current regulatory determination (ie 32.1 percent (supply) and 67.9 percent (usage)).⁶³
- For 2023-2024, the Commission estimates that a total of 162 customers are connected and using water from the network.⁶⁴ To calculate the weighted average total customer connection number the total connection number of 210 is multiplied by 32.1 percent and is added to the total customer connections that are using water from the network of 162 multiplied by 67.9 percent. This gives Robusto Investments a weighted average total customer number for 2023-2024 of 177.
 - For 2024-2025, the Commission will use the same methodology as for 2023-2024.
 - In its submission to the draft preservation regulatory determination, Robusto Investments provided no comment regarding the use of a weighted average customer number approach to account for vacant lots. Further, Robusto Investments' submission provided no material information or

⁶³ The allocation of supply-usage proportions is consistent with the current regulatory determination and the regulatory determinations made in May 2021 and in August 2021. See Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, p. 106, Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 1-8, and Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 11-12, 15-16.

⁶⁴ The customer consumption number of 161 is informed by correspondence from Robusto Investments in June 2022. The Commission assumes one non-residential customer. This takes the total consumption connection numbers to 162.

discussion about vacant lots.⁶⁵ Nonetheless, the Commission considers that this issue of vacant but connected lots could manifest further as the water supply network expands and, as such, the approach will continue to be adopted in order to limit the risk of bill shock in future periods.

- (c) **Consumption per customer:** The Commission understands that average annual consumption per customer in recent years has been below the 198kL⁶⁶ that was adopted in past regulatory determinations⁶⁷. By comparison, SA Water reports an average annual residential customer consumption figure of 180kL.⁶⁸ Therefore, for price setting purposes, there are two options that could be appropriately adopted for annual consumption per customer:
- a per customer consumption forecast of 180kL per year (based on data from SA Water's website) or
 - a per customer consumption of 198kL per (based on the current regulatory determination).

3.5.8 In its submission, Robusto Investments did not comment on the proposed amount of water usage for residential users.⁶⁹

3.5.9 In making the final decision regarding customer numbers and consumption in this preservation regulatory determination, it is worth noting that there are risks surrounding the Commission's forecast of total customer numbers and the adjustment for supply-only customers (ie the weighted average customer number approach), and the Commission's forecast of annual per customer consumption. However, as noted later, those risks can be appropriately mitigated in this final preservation regulatory determination through the inclusion of a mechanism that allows the Commission to review forecast errors for certain factors, such as customer numbers and consumption, and

⁶⁵ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-11.

⁶⁶ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 105, Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 1-8, and Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 16-18.

⁶⁷ Robusto Investments submitted to the current regulatory determination that residential customer usage has been lower than allowed for and supply and tiered prices should be adjusted; see Commission, *Robusto Investments Pty Ltd: Drinking Water Regulatory Determination: Final Further Variation Decision*, June 2022, pp 12-13. In addition, it is noted that information submitted by Robusto Investments to the Commission on 31 January 2023 suggests that – notwithstanding any quarterly and yearly seasonal impacts – annual consumption per customer (even adjusting for vacant but connected lots) is likely to be below an assumption of 198kL (which is based on the current regulatory determination).

⁶⁸ SA Water has reported average usage per residential customer; it is available here: <https://www.sawater.com.au/my-account/water-and-sewerage-prices/water-prices/residential-water-prices#:~:text=While%20there%20is%20no%20right.customer%20uses%20180kL%20per%20year.>

⁶⁹ Robusto Investments, *Robusto Investments / Compass Springs Drinking Water Preservation Regulatory Determination – Draft Decision*, pp. 1-11.

to include an allowance for any under or over recovery directly attributable to these factors in any subsequent determination.⁷⁰

3.6 Reporting requirement

- 3.6.1 Robusto Investments must provide copies to the Commission in February and/or March 2024 of all the quarterly bills issued to residential customers covering the period January 2024, December 2023 and November 2023. The Commission will use this information to derive an estimate of the number of customers for 2024-2025, which, combined with the use of the pricing methodology set out in this determination, will derive the maximum nominal residential prices for 2024-25.
- 3.6.2 Should the information provided by Robusto Investments be determined by the Commission to be incomplete (for example, information gaps and missing customer invoices), the maximum nominal residential prices for 2024-2025 will be set by the Commission according to a pre-determined set of prices published in this preservation regulatory determination (see Chapter 4).
- 3.6.3 The reporting requirement will provide benefits to consumers (by allowing the Commission to update maximum nominal prices for 2024-2025 based on the latest available information). At the same time, the requirement will impose only limited administration costs on Robusto Investments.

3.7 Pricing options for consideration

- 3.7.1 The setting of prices for the preservation regulatory determination has involved weighing up various factors, as explained above and as is also discussed below. The Commission deliberated various forms of the preservation regulatory determination. Below are example options. The options are not an exhaustive list; however, they aim to display some of the issues considered.⁷¹
- 3.7.2 The following example options presented in Table 3 (below) display pricing outcomes when adopting various customer consumption assumptions. The weighted average customer number of 177 has been utilised in 2023-24. The parameter varied in the table is annual consumption per customer.

⁷⁰ This reconciliation mechanism was included in the Commission's regulatory determination made on 26 August 2021 and varied in a subsequent determination to take effect on 1 July 2022. Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 1-2, and Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 113-114.

⁷¹ For example, other approaches could include different forecasts for many of the variables including the usage per customer, customer numbers and their composition, differences in supply, usage split of revenue as well as alternatively adopting the Robusto Investments proposal.

Table 3: Pricing options for 2023-2024

	<u>Example option 1</u> Assumptions Usage: 180kL	<u>Example option 2</u> Assumptions Usage: 198kL
Supply charge per quarter	\$92.59	\$92.59
Tier 1: 0-30kL	\$3.80	\$3.38
Tier 2: 30-130kL	\$5.43	\$4.83
Tier 3: >130kL	\$5.88	\$5.22

3.7.3 Robusto Investments put forward a 12-month proposal for a maximum revenue cap. While there are limitations and deficiencies in the proposal, as explained earlier, Table 4 compares the Commission’s final decision and the 12-month pricing proposal submitted by Robusto Investments.

Table 4: Comparison of Commission’s prices and Robusto Investments’ prices

	Commission Final Decision 2023-2024	Robusto Investments 2023-2024 pricing proposal
Supply charge per quarter	\$92.59	\$792.00
Tier 1: 0-30kL	\$3.80	\$5.00
Tier 2: 30-130kL	\$5.43	\$6.00
Tier 3: >130kL	\$5.88	\$7.00

3.7.4 Furthermore, using information from the Robusto Investments’ submission, the following example option presented in Table 5 (below) shows the outcome of using the customer numbers as expected by Robusto Investments. The prices are calculated using the Commission’s proposed methodology, which uses the same weighted customer number approach and maintains a fixed ratio between supply and usage customers.

Table 5: Alternate pricing option based on customer numbers projected by Robusto Investments

		2023-24	2024-25
Example 1 Assumptions Usage: 180kL Customers (s): [REDACTED] Customers (u): [REDACTED]	Supply charge per quarter	[REDACTED]	[REDACTED]
	Tier 1: 0-30kL	[REDACTED]	[REDACTED]
	Tier 2: 30-130kL	[REDACTED]	[REDACTED]
	Tier 3: >130kL	[REDACTED]	[REDACTED]

(Certain information has been redacted as Robusto Investments has submitted confidentiality claims over it)

3.8 Discussion of risks

- 3.8.1 The pricing outcomes in the Commission's final decision results in a price increase in 2023-2024 (the supply charge rises by around 10 percent and tiered prices rise by 23 percent). This increase largely reflects the adoption of a forecast of an annual consumption per customer of 180kL.
- 3.8.2 The adoption of a lower forecast for customer consumption (of 180kL rather than 198kL) has been made in light of reporting by Robusto Investments.⁷² While forecasts of per-customer consumption will inevitably involve the use of judgment, having regard to the balance of risks, the Commission's final decision is that a forecast of 180kL is appropriate for the purposes of this preservation regulatory determination. It has been informed by publicly available information,⁷³ and its adoption can help to avoid the risk of carrying forward forecast error (while allowing the Commission to monitor customer consumption to inform the subsequent regulatory determination), and as mentioned below, is complemented by several risk mitigating mechanisms built into the preservation regulatory determination.
- 3.8.3 For instance, forecasts of consumption, customers who consume water and CPI inflation could each turn out differently. To the extent that forecasts remain persistently either too high or too low, there is a risk that limitations (and forecast errors) could accumulate and therefore carryover and impact subsequent regulatory determinations.
- 3.8.4 However, these risks are appropriately addressed through several means, including via the selection of parameters for this final preservation regulatory determination and the inclusion of certain risk-mitigating mechanisms.
- 3.8.5 First, the use of 180kL annual customer consumption is based on available information from SA Water and is within a range of reasonable estimates, and its use:
- helps avoid the use of out-of-date assumptions and the reliance on recent outcomes that may have their own set of limitations⁷⁴, and
 - allows more information on consumption to be gathered over the next 12 to 24 months, which can be used, if needed, in the Commission's subsequent determination.
- 3.8.6 Second, the total customer connection number for 2023-2024 aims to capture some of the recent customer growth in Robusto Investments water supply network. It is informed by customer information previously provided by Robusto Investments. However, while Robusto Investments is expecting a sharp increase in customer connections over the next few years, the outlook is subject to a range of uncertainties. In particular, the size and speed of the

⁷² For instance, see Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, pp. 12-13. Also, as noted earlier, information submitted by Robusto Investments to the Commission on 31 January 2023 suggests that – notwithstanding any quarterly and yearly seasonal impacts – annual consumption per customer (even adjusting for vacant but connected lots) is likely to be below an assumption of 198kL (which is based on the current regulatory determination).

⁷³ See SA Water website.

⁷⁴ For example, wetter-than-average weather could be having an impact on the consumption per customer numbers observed. The nearest Bureau of Meteorology weather station to Mount Compass is Kuitpo Forrest. Annual rainfall amounts for calendar years 2020, 2021 and 2022 were all above the long-term mean.

expected increase, particularly relative to the pace of historical increases and in light of current economic conditions, raises questions as to whether this expected demand will eventuate and in what time frame. It is therefore prudent to take an approach that can lower the forecast risk borne by customers (which can help contain the risk of bill shock in future periods). The Commission will minimise the customer connection forecast risk by including a mechanism to revisit customer numbers for 2024-2025. This will require Robusto Investments to report customer invoices in early 2024. The Commission will use this information in setting prices for 2024-2025.

- 3.8.7 Third, the use of a weighted average customer connection number – while having limitations – aims to be a simple approach to capture, in the current pricing formula, some of the potential impacts from consumers who are connected to the network but do not use any water.
- 3.8.8 Fourth, the inclusion of a mechanism in the final preservation regulatory determination which allows the Commission to review forecast errors for factors, such as CPI inflation, customer numbers and consumption, and to include an allowance for any under or over-recovery directly attributable to these factors in any subsequent determination.

4 Steps, assumptions, and the calculation of the final decision

- 4.1 The Commission's final decision for the preservation regulatory determination has been derived as follows. The process of steps below is undertaken for 2023-2024. The steps for 2024-2025 will be undertaken once updated information is received from Robusto Investments by the Commission in early 2024.

For 2023-2024

- 4.2 Step 1: The 12-month maximum revenue allowance (in real December 2018 prices), as determined in the current regulatory determination,⁷⁵ is converted into a maximum nominal revenue allowance based on CPI inflation forecasts and previously used forecasts for CPI inflation.
- 4.3 Step 2: The supply and usage customer numbers are combined to calculate a weighted average customer number. This results in a weighted customer number of 177.
- 4.4 Step 3: The 12-month nominal maximum revenue allowance is converted into maximum prices for residential customers based on assumptions regarding:
- 4.4.1 the weighted average customer number is applied as per Step 2 above,
 - 4.4.2 annual customer usage (customer usage has been adjusted to reflect an updated estimate for actual usage), and
 - 4.4.3 pricing structures (the ratio between supply and usage charges remains fixed at the ratio set out in both previous regulatory determinations, as do the ratios between the three pricing tiers).

For 2024-2025

- 4.5 Step 1: in February 2024 and March 2024, the Commission will obtain the bills issued by Robusto Investments for the months of January 2024, December 2023 and November 2023. The Commission will estimate the number of customers connected and using the water supply network based on the bills issued. Should the information provided by Robusto Investments be *incomplete* (for example, information gaps and missing customer invoices), the maximum nominal residential prices for 2024-2025 will be set by the Commission according to a set of pre-determined prices published in the preservation regulatory determination. Please go to Step 5.
- 4.6 Step 2: The 12-month maximum revenue allowance (in real December 2018 prices), as determined in the current regulatory determination,⁷⁶ is converted into a maximum nominal revenue allowance based on CPI inflation forecasts and previously used forecasts for CPI inflation.
- 4.7 Step 3: The supply and usage customer numbers will be combined to calculate a weighted average customer number. These numbers will be derived from the

⁷⁵ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, p. 1.

⁷⁶ Commission, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, p. 1.

information provided to the Commission through the reporting requirement. This will occur in February and March 2024.

- 4.8 Step 4: The 12-month nominal maximum revenue allowance will be converted into maximum prices for residential customers based on assumptions regarding:
- 4.8.1 the weighted average customer number is applied as per Step 2 above,
 - 4.8.2 annual customer usage (customer usage has been adjusted to reflect an updated estimate for actual usage), and
 - 4.8.3 pricing structures (the ratio between supply and usage charges remains fixed at the ratio set out in both previous regulatory determinations, as do the ratios between the three pricing tiers).
- 4.9 A worked calculation of the steps in the preservation determination is below.
- 4.10 Step 5: Following Step 1, should the information provided by Robusto Investments to the Commission be determined to be incomplete, the maximum nominal prices that Robusto Investments can charge its residential customers from 1 July 2024 to 30 June 2025 will be set as follows:
- 4.10.1 a quarterly supply charge of \$90.75
 - 4.10.2 a Tier 1 charge of \$3.73 per kL
 - 4.10.3 a Tier 2 charge of \$5.33 per kL, and
 - 4.10.4 a Tier 3 charge of \$5.76 per kL.

Appendix A: Worked calculation of the preservation 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

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

$R_{2023-24}$ is the maximum revenue control for the period 1 July 2023 to 30 June 2024 (in nominal terms)

$R_{2024-25}$ is the maximum revenue control for the period 1 July 2024 to 30 June 2025 (in nominal terms)

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

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 forecast for 2022-23 as per the further varied regulatory determination^(a)

$\pi_{2023-24}$ is the inflation forecast for 2023-24 based on the latest annual CPI inflation as forecasted by the RBA^(c)

$\pi_{2024-25}$ is the inflation forecast for 2024-25 based on the latest annual CPI inflation as forecasted by the RBA^(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)

$N\text{-supply}_{2023-2024}$ is the supply customers for 2023-24

$N\text{-supply}_{2024-2025}$ is the supply customers for 2024-25

$N\text{-usage}_{2023-2024}$ is the usage customers for 2023-24

$N\text{-usage}_{2024-2025}$ is the usage customers for 2024-25

N is the weighted customer number

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

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

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, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, p. 17.

(b) Commission, *Robusto Investments Pty Ltd Drinking Water Final Regulatory Determination – Statement of reasons*, May 2021, p. 104-105, 109-110

(c) Reserve Bank of Australia, *Forecasts Table*, Australia, May 2023, available at <https://www.rba.gov.au/publications/smp/2023/may/forecasts.html>.

Data and assumptions for financial year 2023-2024

$$RR_{12\text{-month}} = \$179,736$$

$$Q=4$$

$$\alpha = 32.12849 \text{ percent}$$

$$V_1 = 120$$

$$V_2 = 60$$

$$V_3 = 0.00$$

$$\lambda_{T12} = 42.90909 \text{ percent}$$

$$\lambda_{T23} = 8.14249 \text{ percent}$$

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

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

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

$$\pi_{2023-24} = 3.6 \text{ percent}$$

$$N\text{-supply}_{2023-24} = 210$$

$$N\text{-usage}_{2023-24} = 162$$

Calculation

Step 1

$$\text{Inflation index} = (1 + \pi_{\text{Dec18-June21}}) \times (1 + \pi_{2021-22}) \times (1 + \pi_{2022-23}) \times (1 + \pi_{2023-24}) = (1 + 0.027162) \times (1 + 0.015) \times (1 + 0.051) \times (1 + 0.036)$$

Substituting in the data and assumptions from above gives Inflation index = 1.135187

$$\text{Then, } R_{2023-24} = RR_{12\text{-month}} \times \text{Inflation index} = \$179,736 \times 1.135187$$

Substituting in the data and assumptions from above gives $R = \$204,034$

Step 2

$$N = \alpha * N\text{-supply}_{2023-24} + (1 - \alpha) * N\text{-usage}_{2023-24}$$

Substituting in the data and assumptions from above gives $N = 177$ (N is rounded to the nearest whole number)

Step 3

$$P_s = \frac{\alpha R}{QN}, \text{ and substituting in the data and assumptions from above gives, } P_s = \$92.59$$

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

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

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

Substituting in the data and assumptions gives the following maximum prices for residential customers:⁷⁷

$$P_{T1} = \$3.80$$

$$P_{T2} = \$5.43$$

$$P_{T3} = \$5.88$$

Data and assumptions for financial year 2024-2025

$$RR_{12\text{-month}} = \$179,736$$

$$Q=4$$

$$\alpha = 32.12849 \text{ percent}$$

$$V_1 = 120$$

$$V_2 = 60$$

$$V_3 = 0.00$$

$$\lambda_{T12} = 42.90909 \text{ percent}$$

$$\lambda_{T23} = 8.14249 \text{ percent}$$

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

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

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

$$\pi_{2023-24} = 3.6 \text{ percent}$$

$$\pi_{2024-25} = 3.0 \text{ percent}$$

N-supply₂₀₂₄₋₂₅ = To be confirmed March 2024

N-usage₂₀₂₄₋₂₅ = To be confirmed March 2024

Calculation

Step 1:

Obtain information from Robusto Investments in early 2024. The Commission determines:

N-supply₂₀₂₄₋₂₅ and N-usage₂₀₂₄₋₂₅

Step 2

$$\text{Inflation index} = (1 + \pi_{\text{Dec18-June21}}) \times (1 + \pi_{2021-22}) \times (1 + \pi_{2022-23}) \times (1 + \pi_{2023-24}) \times (1 + \pi_{2024-25}) = (1 + 0.027162) \times (1 + 0.015) \times (1 + 0.051) \times (1 + 0.036) \times (1 + 0.03)$$

Substituting in the data and assumptions from above gives Inflation index = 1.169243

$$\text{Then, } R_{2024-25} = RR_{12\text{-month}} \times \text{Inflation index} = \$179,736 \times 1.169243$$

Substituting in the data and assumptions from above gives R = \$210,155

Step 3

$$N = \alpha * N\text{-supply}_{2024-25} + (1 - \alpha) * N\text{-usage}_{2024-25}$$

⁷⁷ On a rounded basis (to two decimals), the tiered prices can differ very slightly to those calculated and presented in Appendix A. However, for the purposes of the preservation determination the tiered prices have been calculated without rounding.

Substituting in the data and assumptions from above gives $N =$ To be confirmed March 2024 (N is rounded to the nearest whole number)

Step 4

$P_s = \frac{aR}{QN}$, and substituting in the data and assumptions from above gives, $P_s =$ To be set May 2024

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

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

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

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

$$P_{T1} = \text{To be set May 2024}$$

$$P_{T2} = \text{To be set May 2024}$$

$$P_{T3} = \text{To be set May 2024}$$



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