



Water

Robusto Investments Pty Ltd – Preservation regulatory determination further variation: Draft Decision

Statement of Reasons

December 2024

Request for submissions:

The Essential Services Commission (**Commission**) invites written submissions on this draft decision. Written comments should be provided by 24 January 2025.

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

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

Responses to this paper should be directed to: **Robusto Investments Pty Ltd – Preservation regulatory determination further variation: Draft Decision**

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Table of contents

Executive Summary	1
1 Background and context	4
1.1 Preservation regulatory determination (as varied on 3 October 2023).....	4
1.2 Previous regulatory determinations and legal reviews	5
2 Methodology and reasons to extend the varied preservation regulatory determination	9
2.1 Overview	9
2.2 Reasons for a 12-month variation.....	10
2.3 Proposed methodology for 12-month variation	16
2.4 Discussion and consideration of risks.....	19
3 Decision.....	24
3.1 Commission’s draft decision.....	24
3.2 Intended implementation of the decision	25
Appendix A: Worked example.....	26

Executive Summary

The Essential Services Commission (**Commission**) has made a draft decision to further vary the varied preservation regulatory determination that applies to Robusto Investments Pty Ltd (A.C.N. 117 034 545) (**Robusto Investments**) for the period 1 July 2023 to 30 June 2025 (inclusive).¹

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

In summary, the Commission has determined, for the reasons and based on the information as set out in this draft decision, that the varied preservation regulatory determination be varied so that it continues in effect for a further 12 months (ie, until 30 June 2026). This will allow sufficient time to undertake further information and evidence gathering, analysis and consultation (by both Robusto Investments and the Commission) to continue the process of making a longer-term determination to apply to Robusto Investments. The further varied preservation regulatory determination will protect the interests of consumers and allow Robusto to recover appropriate revenue pending a longer-term determination.

In effect, this will mean that, from 1 July 2025 to 30 June 2026, the further varied preservation regulatory determination will maintain the current form of economic regulation, setting the maximum allowable revenue to be recoverable by Robusto Investments from residential customers and Mount Compass Property (formerly known as Mount Compass Sand and Loam) and the maximum pricing outcomes for residential customers.

Recognising the importance of utilising the best available information in calculating revenue outcomes, it is proposed that variations will be made to parameters where there is updated information which underpin the revenue control calculation: updated forecasts of Consumer Price Index (**CPI**) inflation and Robusto's revised customer numbers for 2025-26. This includes a proposed variation to the reporting requirements, to allow the Commission to obtain copies of customer invoices from Robusto Investments so that the Commission can best forecast customer numbers, thereby deriving the maximum prices for residential customers for 2025-26.

The proposed variations set out in this draft decision promote, support and provide the time for necessary engagement, consultation and stakeholder input into the ongoing process to make a subsequent longer-term regulatory determination to apply to Robusto Investments. While that longer-term regulatory determination was planned to take effect from 1 July 2025, various circumstances, including ongoing legal proceedings, have impacted the original timetable, as outlined in further detail in this draft decision.

Nevertheless, the need for, and importance of, making a longer-term determination to apply to Robusto Investments remains. Without extending the term of the current determination, there is a risk that were there a period of time where there was no regulatory pricing control in place (that is, post 30 June

¹ The varied preservation regulatory determination, made by the Commission on 3 October 2023, was originally made in June 2023 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). For more information, see Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 1-86, available at <https://www.escosa.sa.gov.au/ArticleDocuments/22006/20231003-Water-RobustoInvestments-PreservationDetermination-ReviewApplication-StatementOfReasons.pdf.aspx?Embed=Y>. Also, see the original preservation regulatory determination made in June 2023; Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Robusto Final Decision - Statement of Reasons*, June 2023, pp. 1-36, <https://www.escosa.sa.gov.au/ArticleDocuments/21964/20230629-Water-RobustoPreservationRegulatoryDetermination-Final-StatementOfReasons.pdf.aspx?Embed=Y>.

2025), Robusto Investments could use market power to provide service levels that are not valued by its customers and/or set customer prices higher than they need to be.

In summary, the effect of the variations proposed to the varied preservation regulatory determination by virtue of this draft decision are as follows:

1. The term of the varied preservation regulatory determination is to be extended for a period of 12 months, from 1 July 2025 to 30 June 2026 (inclusive).
2. The maximum revenue that Robusto Investments can recover over the regulatory period 1 July 2025 to 30 June 2026 (inclusive) from residential customers and Mount Compass Property is \$179,736 (in real, December 2018 prices) and \$217,091 (in nominal terms) (the latter is to be updated for the final decision on the basis of updated forecasts of CPI inflation).
3. The maximum nominal prices to be recovered from residential customers for the period 1 July 2025 to 30 June 2026 (inclusive) will be derived using updated information about customer numbers and connections (informed by customer invoices is to be provided by Robusto Investments) and using updated forecasts of CPI inflation. The methodology to derive maximum prices, including the specific pricing structure and tiers, will remain as determined in the varied preservation regulatory determination.

However, should updated customer invoice information provided by Robusto Investments in 2025 be determined by the Commission to be materially incomplete for the purposes of deriving prices, the Commission has determined that the (draft) maximum nominal prices that Robusto Investments can charge its residential customers from 1 July 2025 to 30 June 2026, as follows:

- Quarterly supply charge of \$101.97
- Tier 1 (0-30kL) charge of \$4.19 per kL
- Tier 2 (30-130kL) charge of \$5.98 per kL, and
- Tier 3 (>130kL) charge of \$6.47 per kL

Note the prices listed above are to be updated for the final decision on the basis of updated forecasts of CPI inflation.

4. The additional reporting requirements in the further varied preservation regulatory determination directly relate to the Commission's ability to set maximum prices for the further 12-month period. It will require Robusto Investments to provide customer invoices to the Commission by a specified date.
5. The Commission will assess Robusto Investments' compliance with the requirements of the further varied preservation regulatory determination at the conclusion of the extended regulatory period (ie, 30 June 2026). Consistent with previous regulatory determinations, the Commission will review forecast errors for customer usage, customer numbers and CPI inflation, and will allow for any under or over recovery attributable to these factors in subsequent (longer-term) determinations.

The Commission's draft decision takes place in the context of ongoing proceedings brought by Robusto Investments before the Supreme Court and the South Australian Civil and Administrative Tribunal (**Tribunal**). If there are relevant findings, orders, directions and/or recommendations made by the Supreme Court (and/or Tribunal) before the Commission makes a final decision on this matter, those will, to the extent practicable, be taken into account. If findings, orders, directions and/or recommendations are made by the Supreme Court (and/or Tribunal) after the Commission has made a final decision, the further varied preservation regulatory determination can be varied again, or

alternatively the longer-term regulatory determination (planned to commence on 1 July 2026) can account for those outcomes. The approach adopted will depend upon the nature of any findings, orders, directions and/or recommendations made by the Supreme Court (and/or Tribunal) and the circumstances at the relevant time.

In proposing this further variation, 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.

Next steps

The Commission is seeking stakeholder views by 24 January 2025 on the draft decision to further vary the varied preservation regulatory determination that currently applies to Robusto Investments. The Commission aims to publish its final decision in March 2025, following the consideration of the submissions it receives.

1 Background and context

1.1 Preservation regulatory determination (as varied on 3 October 2023)

- 1.1.1 On 29 June 2023, 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**) made a regulatory determination (known as the **preservation regulatory determination**) to apply to Robusto Investments Pty Ltd (A.C.N. 117 034 545) (**Robusto Investments**), the holder of a water retail licence under the WI Act, until 30 July 2025.²
- 1.1.2 On 26 July 2023, Robusto Investments lodged an application for a review of the preservation regulatory determination made by the Commission. Pursuant to section 31 of the ESC Act and in accordance with Part 3 of the ESC Act, the Commission reviewed and considered Robusto Investments' application for review and its submission and the information advanced.³
- 1.1.3 On 3 October 2023, the Commission's decision on review confirmed most terms and conditions of the preservation regulatory determination, but it varied the scope of a reporting requirement and the maximum nominal revenue for the regulatory period.⁴ This determination is known as **the varied preservation regulatory determination**.⁵
- 1.1.4 The varied preservation regulatory determination remains in effect until 30 June 2025. This determination sets out:⁶
- 1.1.4.1 the maximum total revenue (in real and nominal terms) that Robusto can recover from its residential customers and one non-residential customer (Mount Compass Property, formerly known as Mount Compass Sand and Loam) over the period (1 July 2023 to 30 June 2025)
 - 1.1.4.2 the pricing structure (the ratio of the supply charge to the usage charge, and the formula relating to price tiers, customer numbers

² Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Robusto Final Decision - Statement of Reasons*, June 2023, pp. 1-36. Also, see Essential Services Commission of South Australia, *Preservation Regulatory Determination 1 July 2023*, pp. 1-3, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21964/20230629-Water-RobustoPreservationRegulatoryDetermination.pdf.aspx?Embed=Y>.

³ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 1-86. Also, see Essential Services Commission of South Australia, *Subsequent determination to vary the preservation regulatory determination made on 29 June 2023*, 3 October 2023, pp. 1-3, available at <https://www.escosa.sa.gov.au/ArticleDocuments/22006/20231003-Water-RobustoInvestments-SubsequentVariedPreservationRegulatoryDetermination.pdf.aspx?Embed=Y> and Essential Services Commission of South Australia, *Preservation Regulatory Determination as varied by a subsequent determination on 3 October 2023 (consolidated version)*, 2023, pp. 1-10, available at <https://www.escosa.sa.gov.au/ArticleDocuments/22006/20231003-Water-RobustoInvestments-ConsolidatedVariedPreservationRegulatoryDetermination.pdf.aspx?Embed=Y>.

⁴ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 1-3.

⁵ Ibid, pp. 1-3.

⁶ Ibid, pp. 1-86.

and consumption) to be used in setting maximum nominal prices for the period 1 July 2023 to 30 June 2025

- 1.1.4.3 the forecast of water consumption per customer to be used to derive maximum nominal prices for the period 1 July 2023 to 30 June 2025
- 1.1.4.4 maximum nominal prices to be recovered from residential customers for the period 1 July 2023 to 30 June 2024, and
- 1.1.4.5 reporting requirements relating to customer numbers and connections which was provided by Robusto Investments and assessed by the Commission in 2024 in order to derive the maximum nominal prices to be recovered from residential customers for the period 1 July 2024 to 30 June 2025.⁷ In June 2024, the Commission implemented the pricing methodology, in accordance with the terms of the varied preservation regulatory determination.⁸

1.2 Previous regulatory determinations and legal reviews

- 1.2.1 Since May 2021, the Commission has made previous regulatory determinations that have applied to Robusto Investments, setting the maximum revenues that can be recovered, and the maximum prices that can be charged, in accordance with a transparent methodology. Ultimately, these regulatory determinations have a practical impact on Robusto's customers, in particular, the water retail services they receive and the prices they pay.
- 1.2.2 The first regulatory determination took effect on 1 April 2021 and was for a fifteen-month period (ending 30 June 2022). It 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.⁹ Robusto Investments submitted an internal review application in relation to the first regulatory determination (as permitted under section 31 of the ESC Act). The Commission considered that application and the supporting information provided by Robusto Investments and, on 26 August 2021, determined to:¹⁰
 - 1.2.2.1 confirm its decision in relation to the issues and additional information raised by Robusto Investments in its internal review

⁷ The determination set out that should the customer invoice information provided by Robusto in 2024 be determined by the Commission to be materially incomplete, the Commission set out prices that would apply in those circumstances. Ibid, pp. 1-86.

⁸ Essential Services Commission of South Australia, *Prices for 1 July 2024 to 30 June 2025: Robusto Investments Pty Ltd Drinking Water Preservation Regulatory Determination*, Explanatory document, June 2024, pp. 1-9, available at <https://www.escosa.sa.gov.au/ArticleDocuments/22066/20240624-Water-Robustodetermination2024-25Prices-ExplanatoryDocument.pdf.aspx?Embed=Y>.

⁹ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 1-148, available <https://www.escosa.sa.gov.au/ArticleDocuments/21695/20210525-Water-RobustoInvestments-RegulatoryDetermination-StatementOfReasons.pdf.aspx?Embed=Y>.

¹⁰ Essential Services Commission of South Australia, *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>.

- application (for instance, the Commission did not vary its decision on any of those issues), and
- 1.2.2.2 make a variation to that first regulatory determination in relation to the allowance made within the overall revenue requirement for bad debt, mediation and dispute resolution expenses; this resulted in a decrease in the maximum revenue and maximum prices recoverable by Robusto Investments.¹¹
- 1.2.3 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 2021.¹²
- 1.2.4 Pursuant to the external review process, the Tribunal was permitted to:
- 1.2.4.1 affirm the regulatory determination made by the Commission on 26 August 2021, or
- 1.2.4.2 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 considered appropriate).¹³
- 1.2.5 That external review remained before the Tribunal until 17 November 2023, when it handed down its decision.
- 1.2.6 While the Commission has considered the Tribunal's decision, before it could consider and, if necessary, make any adjustments to this regulatory decision, Robusto Investments lodged an appeal against the Tribunal's decision in the Supreme Court of South Australia on 15 December 2023. The Supreme Court's consideration of Robusto Investments' appeal application remains ongoing.
- 1.2.7 It is also noted that, given the passage of time over which the Tribunal was undertaking its external review, the Commission made two more regulatory determinations to apply to Robusto Investments. These determinations applied for the period 1 July 2022 to 30 June 2023¹⁴ and, given no decision had been made by the Tribunal on 1 July 2023, a subsequent period of 1 July

¹¹ Ibid, pp. 6-7.

¹² 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>.

¹³ Refer to section 32(6) of the ESC Act,

¹⁴ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd Drinking Water 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>.

2023 to 30 June 2025 (which is the current or varied preservation regulatory determination).¹⁵ Among other things, these were made to:

- 1.2.7.1 provide certainty to Robusto Investments and its consumers while Tribunal proceedings remained ongoing
 - 1.2.7.2 protect the long-term interests of consumers (without having regulatory protections in place, there was a risk that Robusto Investments could use market power to set prices higher than they needed to be or provide service levels that are not valued), and
 - 1.2.7.3 provide simple, transparent and clear information to stakeholders regarding the pricing controls in place in respect of water retail services provided by Robusto Investments.
- 1.2.8 In terms of the regulatory determinations referred to in paragraph 1.2.7 above, it is noted that Robusto Investments sought an internal review of the preservation regulatory determination made on 29 June 2023 and then subsequently lodged an application with the Tribunal for an external review, of the varied preservation regulatory determination.
- 1.2.9 This second external review by the Tribunal is in its early stages and remains ongoing.
- 1.2.10 The above background and context are relevant to why the Commission now proposes to make further variations to the varied preservation regulatory determination, which is explained in more detail below. Table 1 (below) provides a summary list of the previous regulatory determinations that have applied to Robusto Investments.

Table 1. Previous regulatory determinations applying to Robusto Investments

Determination and regulatory period	Status
May 2021 Determination (applied to regulatory period 1 April 2021 to 30 June 2022)	This separate regulatory determination was subject to an internal review, pursuant to section 31 of the ESC Act, on application submitted by Robusto.
August 2021 Determination (applied to regulatory period 1 April 2021 to 30 June 2022)	This separate regulatory determination varied the May 2021 Determination. Robusto lodged an application for an external review by the Tribunal on 8 September 2021. The Tribunal published the Tribunal's Reasons for Decision on 27 October 2023 and handed down the Decision 17 November 2023. Robusto lodged an appeal to the Supreme Court on 15 December 2023. Proceedings before the Supreme Court remain ongoing.
June 2022 Determination (applied to regulatory period 1 July 2022 to 30 June 2023)	This separate regulatory determination rolled forward the substantive terms and conditions of the August 2021 Determination for a one-year period. There was no application for an internal review under Section 31 of the ESC Act.

¹⁵ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Robusto Final Decision - Statement of Reasons*, June 2023, pp. 1-36, and Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 1-86.

<p>June 2023 Determination (applied to regulatory period 1 July 2023 to 30 June 2025)</p>	<p>This separate regulatory determination rolled forward the substantive terms and conditions of the June 2022 Determination for a two-year period. This determination was subject to an internal review, pursuant to section 31 of the ESC Act, on application submitted by Robusto.</p>
<p>October 2023 Determination (applied to regulatory period 1 July 2023 to 30 June 2025)</p>	<p>This separate regulatory determination varied the June 2023 Determination. Robusto lodged an application for an external review by the Tribunal on 16 October 2023. Proceedings before the Tribunal remain ongoing.</p>

2 Methodology and reasons to extend the varied preservation regulatory determination

2.1 Overview

- 2.1.1 This draft decision proposes that the varied preservation regulatory determination be further varied so that it continues in effect for a further 12 months, thereby maintaining the same form of economic regulation until 30 June 2026 and providing certainty for Robusto Investments and its customers regarding the provision of water retail services. While the substantive provisions of the varied preservation regulatory determination will be maintained and continued for a further 12 months, some variations will be made (as discussed below and in this chapter).
- 2.1.2 The maximum revenue allowed under the further varied preservation regulatory determination will be preserved in inflation-adjusted terms and adjusted for the additional regulatory period, from 1 July 2025 to 30 June 2026. The proposed methodology includes only the recovery of (previously determined) efficient and prudent costs of supplying water retail services. In this respect, the further varied determination is maintaining what the Commission considers to be efficient costs and cost recovery for an appropriate period of time, while also allowing the Commission to undertake further investigation into what efficient costs should be in future years. This is consistent with the National Water Initiative (NWI) pricing principles.¹⁶
- 2.1.3 This draft decision also sets out the proposed *methodology* that will be utilised by the Commission to determine maximum nominal pricing outcomes for residential customers for the additional regulatory period, from 1 July 2025 to 30 June 2026. It is intended that this methodology will be implemented by the Commission in May 2025 / June 2025, as this is when relevant and updated information, to be provided by Robusto Investments, will be available for the Commission to review, assess and utilise in deriving maximum prices.
- 2.1.4 Overall, in making this draft decision, it is intended that the determination will provide near-term certainty to Robusto Investments and its customers.
- 2.1.5 This further varied preservation regulatory determination accounts for known uncertainties (given the ongoing Supreme Court and Tribunal proceedings), allows for stakeholder engagement in the making of this variation (consistent with the Commission's usual processes), and, importantly, allows sufficient opportunity for stakeholder consultation in the making of a subsequent longer-term determination to apply to Robusto Investments from 1 July 2026. The proposed methodology for the further varied preservation regulatory determination is transparent to all stakeholders and is 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.
- 2.1.6 The remainder of this chapter outlines:
- 2.1.6.1 the reasons to vary the varied preservation regulatory determination. This includes ongoing legal proceedings, deficient

¹⁶ The National Water Initiative pricing principles are available here: <https://www.dcceew.gov.au/water/policy/policy/nwi/pricing-principles>.

previous pricing proposals and the need to make a subsequent longer-term determination

- 2.1.6.2 the proposed methodology to be utilised for the further varied preservation regulatory determination. This includes how the maximum allowable revenue will be set for the additional 12-month regulatory period, how the proposed price-setting methodology will be implemented and what variations will be made to enable maximum prices to be derived, and
- 2.1.6.3 the factors and risks that were considered by the Commission in making the draft decision. This includes alternative lengths of additional regulatory periods considered and the advantages and disadvantages of carrying forward the terms and provisions of the current determination.

2.2 Reasons for a 12-month variation

- 2.2.1 The regulatory period of the varied preservation regulatory determination was from 1 July 2023 to 30 June 2025 and was determined on the basis that:¹⁷
 - 2.2.1.1 it would allow for, and promote, stakeholder engagement by both the Commission and Robusto Investments such that there would be informed stakeholder input into a longer-term determination
 - 2.2.1.2 it would provide an incentive for Robusto Investments to engage with the Commission and its customers in the process relating to a longer-term determination, and
 - 2.2.1.3 it would allow sufficient time and opportunities for the Commission to conduct, through a public process, a thorough and detailed review of Robusto Investments' proposed costs in relation to a longer-term determination.^{18,19}
- 2.2.2 However, over the past year there have been a range of factors that, in effect, have impacted the ability of a longer-term price determination being made in accordance with previously identified timeframes. These factors include:
 - 2.2.2.1 ongoing legal proceedings, and
 - 2.2.2.2 previously deficient pricing proposals (see paragraph 2.2.4 and paragraphs 2.2.9 to 2.2.12 below).
- 2.2.3 Further, the need for, and importance of, making a longer-term determination to apply to Robusto Investment remains. There is, therefore, a need (as

¹⁷ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 1-4, 25-33.

¹⁸ This included allowing time for the Commission to seek further information, justification and clarification from Robusto, obtain expert opinions, and allow a reasonable opportunity for Robusto to provide further information or consider and respond to any matters raised or preliminary positions reached by the Commission through that process. *Ibid*, p. 26.

¹⁹ While the Commission's varied preservation regulatory determination, made in October 2023, set out a regulatory period of 24 months, in practice this meant that a longer-term determination timeframe was, at maximum, 21 months (given that July, August and September involved the Commission's review, in accordance with section 31 of the ESC Act and in accordance with Part 3 of the ESC Act, and the varied determination was made on 3 October 2023).

previously outlined and as stated in 2.2.1.1, 2.2.1.2 and 2.2.1.3) to allow sufficient time for that consumer engagement to occur, as well as for further information gathering, detailed analysis and updated reviews of Robusto Investments' proposed costs in the longer term.

- 2.2.4 Moreover, Robusto Investments is a *monopoly provider* of water retail services and, in the Commission's assessment, its previous pricing and cost proposals have had deficiencies that make them inconsistent with efficient costs.²⁰ Therefore, without extending the term of the current determination, there is in these particular circumstances, a risk that, if there was a period of time where there was no separate pricing control in place (ie, post 30 June 2025) that Robusto Investments could use market power to provide service levels that are not valued by its customers and/or set customer prices higher than they need to be.
- 2.2.5 The Commission considers that these factors (further described below) will have a significant impact on the provision and future regulation of Robusto Investments' water retail service operations and the appropriate terms and conditions of a longer-term regulatory determination to apply to these services.

Ongoing legal proceedings

- 2.2.6 As noted above, there are ongoing legal proceedings that have, over the past 12 months or so, impacted the making of a longer-term regulatory determination.
- 2.2.7 These proceedings have included the following:
- 2.2.7.1 The proceedings before the Supreme Court, initiated by Robusto Investments to appeal the Tribunal's decision of 17 November 2023. As these proceedings remain ongoing, there remains some uncertainty as to what the decision (and reasons for decision) may be and how it might impact upon previous, current and future regulatory determinations. Further, there are additional appeal avenues that may be considered or pursued when the Supreme Court's decision is handed down.
- 2.2.7.2 The second external review before the Tribunal that relates to the varied preservation regulatory determination, was initiated by Robusto Investments on 17 October 2023, and has not yet commenced in earnest. Accordingly, there remains uncertainty as to when this process will be completed, what the decision may be and how it might impact upon previous, current and future regulatory determinations. Once the Tribunal process progresses, it can, from experience (and noting the complexities of such proceedings), be expected to take some time; the first external review took approximately 24 months to complete.
- 2.2.7.3 Further, it is important to highlight that there are inter-related and contingent features across current, previous and future price determinations such that a finding, order, direction and/or

²⁰ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 21-53.

recommendation made by virtue of legal proceedings in relation to one decision will likely have flow-on impacts to how various factors in previous and subsequent determinations may be treated (including a future longer term price determination).²¹

- 2.2.8 Given the matters raised in 2.2.7.1, 2.2.7.2 and 2.2.7.3, the Commission's position is that, if there are relevant findings, orders, directions and/or recommendations made by the Supreme Court (and/or Tribunal) before the Commission makes its final decision on varying the varied preservation regulatory determination, those will, to the extent practicable, be taken into account when making that final decision. If findings, orders, directions and/or recommendations are made by the Supreme Court (and/or Tribunal) after the Commission has made its final decision, the further varied preservation regulatory determination can be varied again, or the longer-term regulatory determination (planned for 1 July 2026) can account for those outcomes. The approach adopted will depend upon the nature of any findings, orders, directions and/or recommendations made by the Supreme Court (and/or Tribunal) and the circumstances at the relevant time.

Deficient previous pricing proposals

- 2.2.9 The Commission has previously identified its concerns with respect to cost and pricing profiles as submitted by Robusto Investments.²² This has included the cost and pricing proposals reviewed, analysed and considered by the Commission as part of the May 2021 and August 2021 regulatory determinations,²³ and the June 2023 and (varied) October 2023 preservation regulatory determinations.²⁴
- 2.2.10 Further, as highlighted in the varied preservation regulatory determination, the Commission reviewed, analysed and considered cost and pricing

²¹ For example, see Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 113-114, Essential Services Commission of South Australia, *Robusto Investments Pty Ltd Drinking Water Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, p. 2, 9-12, and Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision - Statement of Reasons*, September 2023, p. 30, 51, 56-57.

²² Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 34-36, Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 1-8, Essential Services Commission of South Australia, *Robusto Investments Pty Ltd Drinking Water Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 9-15, and Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision - Statement of Reasons*, September 2023, pp. 24-63.

²³ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 34-36, and Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 1-8.

²⁴ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd Drinking Water Regulatory Determination: Final Further Variation Decision - Statement of Reasons*, June 2022, pp. 9-15, and Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision - Statement of Reasons*, September 2023, pp. 24-63.

proposals and information advanced by Robusto Investments, and the Commission assessed that:

- 2.2.10.1 the undetermined factors, unreconciled information and limitations in aspects of Robusto Investments' pricing and cost proposals indicate that sufficient time, process and contingency needs to be allowed for in order for the Commission to seek further information, justification and clarification from Robusto Investments (such as for historical data and forward-looking projections) and obtain expert opinions on technical aspects of the determination (such as, but not limited to, capital expenditure and asset values). Further, the Commission needs to provide Robusto Investments with a reasonable opportunity to provide further information and submissions or consider and respond to any matters raised, or preliminary positions reached, by the Commission through that process²⁵, and
- 2.2.10.2 the range of undetermined factors and the degree of unreconciled information, including the fact the Robusto Investments' proposals had not had regard to any engagement with its customers, combined with the magnitude of Robusto Investments' pricing and cost proposals, has supported the need to allow sufficient time, process and contingency for engagement, information gathering and analysis to inform a subsequent longer-term determination to apply to Robusto Investments. If Robusto Investments' proposals for pricing and costs were accepted without appropriate assessment as to their efficiency, there may be inefficient increases in customer prices. This would not be in the long-term interests of Robusto Investments' customers and would be inconsistent with the Commission's statutory objective to protect the long-term interests of consumers in respect of the price, service and reliability of essential water retail services.²⁶
- 2.2.11 Accordingly, the Commission's assessment, for the purpose of this draft decision, is that the pricing and cost proposals previously submitted by Robusto Investments continue to have deficiencies that make them inconsistent with efficient costs, including that they were developed with insufficient customers consultation.²⁷ As outlined in the varied preservation regulatory determination, Robusto Investments' previous pricing and cost proposals were not consistent with the concept of efficient costs and cost recovery, and accordingly, would not meet NWI pricing principles.²⁸
- 2.2.12 Consequently, as matters currently stand, the Commission does not consider that Robusto Investments' previous pricing and cost proposals alone are appropriate to inform the need, form and nature of the further varied

²⁵ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 24-52.

²⁶ Ibid, pp. 24-52.

²⁷ Ibid, pp. 24-52.

²⁸ Ibid, pp. 62-63.

preservation regulatory determination or the form and nature of a subsequent longer term regulatory determination.

The need to make a longer-term regulatory determination

- 2.2.13 As previously foreshadowed, the Commission intends to make a longer-term regulatory determination to apply to Robusto Investments.
- 2.2.14 Among other factors, a longer-term price determination can:
- 2.2.14.1 provide certainty to stakeholders over an extended regulatory period
 - 2.2.14.2 allow for longer-term plans and projections of demand, prices, costs and capital expenditure to be taken into account
 - 2.2.14.3 provide incentives for efficiency improvements in the regulated business over time, and
 - 2.2.14.4 encourage information to be revealed, thereby mitigating, in part, certain aspects of asymmetric information between the regulated business and the regulator.
- 2.2.15 Over the past year, various ongoing internal activities have been undertaken to better understand Robusto Investments' water retail services to inform a longer-term regulatory determination. Those actions include:
- 2.2.15.1 co-ordinating and reviewing an external consultant's initial workings of the current state of Robusto Investments' water supply network²⁹
 - 2.2.15.2 considering observations and developments in the number and nature of customers of Robusto Investments' water supply network,³⁰ and
 - 2.2.15.3 undertaking preliminary internal research on possible future tariff structures.³¹
- 2.2.16 However, finalising the terms and conditions of a subsequent longer-term determination involves significant further work, research and engagement (as

²⁹ As noted in the varied preservation regulatory determination, the Commission offered in November 2022 to collaborate in engaging a consultant to review asset condition and capital outcomes and needs; however, Robusto Investments questioned the need for further engineering advice. At that time the Commission explained that it was '*... engaging a third party to provide an independent opinion in respect of the underlying asset condition and asset register of the drinking water network. That work, for which consulting firm, Inside Infrastructure, has been engaged, is still underway. The initial work highlights the need for more analysis and work to be undertaken in relation to the regulatory treatment of the capital expenditure proposed by Robusto. The Commission will continue to investigate this material issue as part of the making of a longer-term subsequent determination*'. Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, p. 44.

³⁰ Essential Services Commission of South Australia, *Prices for 1 July 2024 to 30 June 2025: Robusto Investments Pty Ltd Drinking Water Preservation Regulatory Determination*, Explanatory document, June 2024, pp. 6-9.

³¹ Internal research involves consideration and analysis of other regulatory determinations and other research on the topic. Examples of other regulated businesses, for which approaches to pricing have been reviewed as part of internal analysis, has included Tas Water, Hunter Water and Sydney Water. Also, a relevant research paper on the topic of pricing tariffs is the following: Sibly H and Tooth R, 'The consequences of using increasing block tariffs to price urban water', *Australian Journal of Agricultural and Resource Economics*, Issue 58, pp. 223-243.

outlined by the Commission's Charter of Consultation and Regulatory Practice,³² as well as the Commission's general statements as to expectations on regulated businesses regarding regulatory determination processes³³). This will require further work to be undertaken not only by the Commission, but also by Robusto Investments.³⁴

- 2.2.17 In particular, and as highlighted by the Commission in May 2021, it is important that regulated businesses engage with customers in preparing for and during determination processes.³⁵ At that time, the Commission made the following observation, which remains relevant and applicable today:³⁶

'All water retailers, irrespective of size, are expected to engage with their customers, noting that the type and level of engagement will be dependent on the size of the customer base and resources of the water retailer. This engagement is an important mechanism through which retailers can understand the level and type of services that customers value and are willing to pay for and can take that information into account in pricing and investment decisions'

- 2.2.18 In October 2023, the Commission explained that:³⁷

'Given the societal and personal criticality of water retail services (as emphasised through the NWI [National Water Initiative]), the views of customers (as the people using and paying for the water retail services) should be obtained, considered and appropriately taken into account, not only by the Commission in regulatory processes, but also by a regulated business, as a standard and ongoing part of its

Ultimately, a longer-term determination, which includes an assessment of tariff structures, would involve considering factors such as the efficiency and incentive-impacts of price structures, but would involve potential distributional impacts. Examples of alternate pricing structures include different supply-usage ratios, and simplified approaches (such as setting a singular marginal cost per unit), and research may be needed to estimate the long run marginal cost.

³² Essential Services Commission of South Australia, *Charter of consultation and regulatory practice*, October 2024, pp. 1-12, available at <https://www.escosa.sa.gov.au/approach/charter-of-consultation-and-regulatory-practice>.

³³ For example, see Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 19-20, and Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 26-27, and see Essential Services Commission of South Australia, *SA Water Regulatory Determination 2024, Final – Statement of reasons*, June 2024, pp. 41-53, available at <https://www.escosa.sa.gov.au/ArticleDocuments/22067/20240625-Water-SAWRD24-SAWaterRegulatoryDetermination2024-FinalDetermination-StatementOfReasons.pdf.aspx?Embed=Y>.

³⁴ Previous submissions and information advanced by Robusto Investments was not informed by engagement with its customers. Further, Robusto Investments' customers have previously raised concerns about the price they pay for their drinking water service and other matters relating to the provision of that service, such as billing and meter reading. See Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 26-27.

³⁵ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 19-20.

³⁶ *Ibid*, p. 19.

³⁷ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, p. 26.

business practice. Informed consumer involvement is likely to lead to outcomes that better reflect consumers' long-term interests'

- 2.2.19 These engagement processes will, however, take time and cannot be robustly and reliably completed within a compressed timeframe. The Commission recognises that appropriate consultation and engagement by Robusto Investments will require time, as will the Commission's analysis, verification and ongoing information gathering elements of a regulatory determination.³⁸
- 2.2.20 Given that it is only seven months before the current determination applying to Robusto Investments is set to expire, and a longer-term regulatory determination should be made to protect consumers' long-term interests with respect to the price, quality and reliability of essential water retail services, the above factors indicate that a new longer-term determination cannot be properly finalised within that seven-month window.
- 2.2.21 Without the making of a subsequent determination to extend the term of the current determination, and given that Robusto Investments' previous pricing proposals have had deficiencies that make them inconsistent with efficient costs, including that they were developed with insufficient stakeholder consultation,³⁹ there is a risk that, if there was a period of time where there was no separate pricing control in place (ie, post 30 June 2025) Robusto Investments could use market power to provide service levels that are not valued by its customers and/or set customer prices higher than they need to be.

2.3 Proposed methodology for 12-month variation

Maximum allowable revenue

- 2.3.1 The Commission's draft decision is to make a regulatory determination, which:
- 2.3.1.1 maintains the annual maximum revenue (in inflation-adjusted terms, as per the varied preservation regulatory determination),

³⁸ The time taken for consultation, analysis and verification was discussed in the varied preservation regulatory determination; *Ibid*, pp. 21-34.

³⁹ *Ibid*, pp. 21-53.

for the extended 12-month regulatory period, but adjusts the maximum nominal revenue to reflect:

- the length of the additional regulatory period for which the determination will apply, and
- a percentage change corresponding to the forecast rate of change in Consumer Price Index (CPI) inflation (based on inflation forecasts as published by the Reserve Bank of Australia (RBA), as an accepted source of independent forecasts).⁴⁰ Note that the final decision regarding the further varied preservation regulatory determination will utilise any available up to date forecasts from the RBA – these forecasts are expected to be published in February 2025.

2.3.2 The Commission considers that the regulatory period must provide sufficient opportunity to complete a longer-term determination (to take effect 1 July 2026, or earlier or later as the case may be). As explained earlier, the reasons for the 12-month variation include ongoing legal proceedings, deficient previous pricing and cost proposals and the need to make a subsequent longer-term determination after having obtained and considered the necessary information and appropriate consultation having been undertaken. Subject to these factors, including any outcomes of ongoing legal proceedings, the 12-month variation, combined with the remaining months within the varied preservation regulatory determination, should allow stakeholders the opportunity to make submissions and attend public meetings across stages in the process and for the Commission to obtain and consider these submissions. The regulatory period will also allow for information gathering processes; for example, the Commission may need to examine particular matters, seek copies of information and relevant records and ask questions or seek clarification from stakeholders.

Price-setting methodology and adjustment for customer numbers

2.3.3 Under the Commission's current pricing formula set out in the varied preservation regulatory determination, the maximum nominal prices for residential customers are derived from the maximum nominal revenue, after adjusting for forecasts of customer numbers (assuming implicitly that customers connected to the network are users of water from the supply network) and forecasts of the volume of drinking water usage, and adopting an allocated proportion of supply-usage charges.

2.3.4 For the purposes of determining the methodology to derive the maximum prices for the additional 12-month period under the proposed further varied preservation regulatory determination, the Commission has utilised, in most

⁴⁰ Reserve Bank of Australia, *Statement of Monetary Policy – August 2024*, August 2024, p.57, available at <https://www.rba.gov.au/publications/smp/2024/aug/pdf/statement-on-monetary-policy-2024-08.pdf>.

respects, the existing parameters, variables and methodology for maximum prices as determined in the varied preservation regulatory determination.

2.3.5 Overall, the Commission's assessment is that these price-related factors remain appropriate for the additional regulatory period 1 July 2025 to 30 June 2026.

2.3.5.1 The methodology is to maintain the allocated proportion of supply-usage charges and the tiered price ratios as per those set out in the varied preservation regulatory determination. While there are a range of potential tariff structures that could, in principle, be implemented in any regulatory determination (whether it is for water, electricity, gas or rail industry monopolies), the further varied preservation regulatory determination aims to maintain the substantive terms of the previous determination, and so does not consider new or different tariff structures. The process for a subsequent longer-term determination will allow for the consideration of tariff structures, efficiency and incentive-impacts of price structures, and potential distributional impacts.

2.3.5.2 The methodology is to maintain a forecast of average usage per connection of 180kL as per that set out in the varied preservation regulatory determination. While there are risks around this assumption, as was previously discussed in June 2023⁴¹ and October 2023,⁴² the further varied preservation regulatory determination aims to maintain the substantive terms and provisions of the previous determination. Further, to justify a change in this assumption would require detailed analysis of usage per connection. This would be most appropriately analysed and addressed in a longer-term determination. Moreover, forecast errors regarding usage and customer numbers will, in any case, be considered and addressed on an ex-post basis during the ex-post compliance assessment.

2.3.5.3 Consistent with previous discussions in June 2023⁴³ and October 2023,⁴⁴ the number of customer connections is likely to have increased and further increases are expected. Accordingly, the proposed methodology in this determination will involve collecting (via a reporting requirement) Robusto Investments' latest customer invoices. The customer invoices will allow prices to be set based on the latest available customer information. This

⁴¹ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Robusto Final Decision - Statement of Reasons*, June 2023, pp. 22-23.

⁴² Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 54-58.

⁴³ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Robusto Final Decision - Statement of Reasons*, June 2023, pp. 2-3, 18-26.

⁴⁴ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 54-58.

methodological approach is consistent with the varied preservation regulatory determination.

- 2.3.5.4 Furthermore, as also previously discussed in June 2023⁴⁵ and October 2023,⁴⁶ there are reports and indicators that suggest some connected customers may not consume water from Robusto Investments' water supply network. Accordingly, the methodology will maintain the methodology from the varied preservation regulatory determination which involved calculating an estimate of a weighted average total customer connection number.

Reporting requirement to facilitate price-setting for 2025-26

- 2.3.6 In addition to the proposal to vary the term of the further varied preservation regulatory determination, the Commission considers it necessary to update the current reporting requirements on the basis that similar requirements will be required for the additional 12-month regulatory period.
- 2.3.7 In summary, the draft decision is that there will be an update to the reporting requirements which will require Robusto Investments to provide the Commission with a copy of customer invoices relating to a specific (end of calendar year) billing period, by no later than 30 business days after the end of the period for which the relevant bills are to be issued.
- 2.3.8 Due to billing practices, this will mean that invoices issued by Robusto Investments for the final quarter of the 2024 calendar year, should be supplied to the Commission by 18 February 2025 (equivalent to approximately 30 business days after the end of the quarter, which should have allowed sufficient time for Robusto Investments to have issued bills to customers). In circumstances where a bill has not been issued to a customer by Robusto Investments, Robusto Investments should provide reasons for why this is the case.

2.4 Discussion and consideration of risks

- 2.4.1 The proposed methodology for the further varied preservation regulatory determination has involved considering and weighing up various factors, as explained above and as is also discussed below. The Commission deliberated various matters. This is not an exhaustive list; however, the discussion below aims to display some of the issues considered.

What alternative variation periods could be possible?

- 2.4.2 There are advantages and disadvantages whatever the length of the extension period. In determining the need for a 12-month variation, the Commission considered the potential for either a *shorter* or *longer* variation period.
- 2.4.2.1 A shorter period (for example, six months, ie until 31 December 2025) was considered to have the practical consequence of not

⁴⁵ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Robusto Final Decision - Statement of Reasons*, June 2023, pp. 19-22.

⁴⁶ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 54-58.

allowing sufficient time to complete a longer-term determination, and thereby would likely:

- limit the ability of Robusto Investments' customers to provide input and comment on any Robusto Investments' cost and pricing proposal/s (and aspects of the proposal/s)
- limit the ability of Robusto Investments to present its plans and proposals directly to its customers and subsequently incorporate feedback and comments from its customers, and
- limit the ability of all stakeholders to attend public meetings and provide submissions to the Commission.

2.4.2.2 A longer period (for example, a further 24 months, ie until 30 June 2027) was considered to have both advantages and disadvantages.

- A 24-month variation period may allow for more contingency in relation to information gathering processes, stakeholder engagement processes and undertaking analysis and verification, which would reduce the risk of the potential need for a further extension to be implemented prior to 30 June 2026.
- On the other hand, a 24-month variation period may bring a risk of carrying forward terms and conditions for a longer period than necessary. Moreover, insofar as market conditions and real (inflation-adjusted) costs of supplying water retail services increase materially, maintaining the same terms and provisions could increase the risk of bill shock for customers in future regulatory determinations once costs are passed through.

2.4.2.3 On balance, having regard to the options available, the Commission considered that an extension of the regulatory term by 12 months would best align with the Commission's objective of the protection of the long-term interests of consumers. If certain factors (for example, ongoing legal proceedings) continue to impact the ability of a longer-term price determination being made in accordance with the planned timeframe, a further 12-month variation could be implemented.

What risks are there from carrying forward the terms of the current determination?

- 2.4.3 The approach proposed in this draft decision eschews any new or updated assessment of the prudent and efficient costs of Robusto Investments' supply of drinking water services during the regulatory period. While this approach has some limitations, it also has advantages.
- 2.4.4 The Commission recognises that activities associated with, and the inflation-adjusted costs of, the supply of water retail services, have likely changed since August 2021 (at least to some extent). For instance, there are additional customer connections, and some capital expenditure for the regulated business has apparently taken place. However, the magnitude and extent of

the connections and the prudence and efficiency of any increased inflation-adjusted costs (both operating and capital costs) is currently unclear.

2.4.5 On balance, having regard to the information available and the various factors to be weighed up, the Commission considers that any changes in inflation-adjusted costs should be comprehensively assessed as part of a subsequent longer-term determination.

2.4.6 The Commission notes the following considerations in this regard.

Maximum revenue

2.4.6.1 The maximum revenue (in inflation-adjusted terms) is based on the Commission's detailed and comprehensive analysis, which was published in May 2021⁴⁷ and externally reviewed in August 2021.⁴⁸ By contrast, and as explained earlier, the cost proposals put forward by Robusto Investments have had deficiencies, and as it currently stands, the Commission does not consider that the proposals alone are appropriate to inform the need, form and nature of the further varied preservation regulatory determination or the form and the nature of a subsequent longer term regulatory determination.⁴⁹

2.4.6.2 The maximum allowable revenue used in this draft decision remains the most updated, evidence-informed position for the setting of a 12-month revenue determination. While the Tribunal has made findings (as noted in paragraph 1.2.5), given that there are ongoing proceedings before the Supreme Court this draft decision does not make any adjustments on this basis.

Rate of return, assets and return on assets

2.4.6.3 While indicators of financing conditions, including the cost of debt, have increased over recent years, and some may claim that the rate of return is therefore higher than previously determined, other rate of return parameters, such as expectations of inflation, may have also simultaneously increased, providing some offsetting counter force to any determination of the real rate of return.⁵⁰

2.4.6.4 As outlined in 2023, the rate of return directly interacts with the efficient asset value in order to derive a return on assets. The return on assets reflects the opportunity cost of the investment by the regulated business.⁵¹ Therefore, in the Commission's view, the

⁴⁷ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination - Statement of Reasons*, May 2021, pp. 19-20.

⁴⁸ Essential Services Commission of South Australia, *Robusto Investments Pty Ltd: Drinking Water Final Regulatory Determination: Review Application Decision - Statement of Reasons*, August 2021, pp. 1-8.

⁴⁹ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 24-52.

⁵⁰ The varied preservation regulatory determination outlined that, if market conditions were updated and applied to the previously determined efficient value of the assets, it would add only a relatively small amount (nothing close to the previous amounts claimed in Robusto Investments' proposals). Further, it explained that if certain economic assumptions were replaced by the assumptions proposed by Robusto Investments in mid-2023, then, this could in fact lower the real, post-tax rate of return. *Ibid*, pp. 37-43.

⁵¹ *Ibid*, pp. 37-43.

rate of return should be considered and re-updated with financial market data once the Commission has, as part of making its longer-term determination, been able to reconcile information relating to Robusto Investments' proposed capital expenditure, depreciation and asset value, and determined an efficient asset value to take effect from the start of the long-term determination.⁵²

- 2.4.6.5 Further, while some regulated capital expenditure has apparently taken place in recent years, the magnitude and extent of the prudence and efficiency of that capital expenditure is currently unclear. This is an area to be comprehensively assessed as part of a subsequent longer-term determination and for this reason should not be included on a piecemeal basis in a 12-month extension period.

Operating expenditure

- 2.4.6.6 Third, while certain aspects of Robusto Investments' operating costs may have increased, including as a result of increased customer connections, there are also reasons to expect that the operations of a regulated business, such as that of Robusto Investments, should be expected to improve its efficiency over time, and hence, contain its costs over time. Consequently, there can be some offsetting forces (and revenue benefits).⁵³
- 2.4.6.7 Further, given the previous information provided by Robusto Investments regarding the composition of its customers (ie supply-usage mix), the lower number of customers consuming water retail services means that there would, all things being equal, be a potential overstatement of operating costs in the original (May 2021 and August 2021) determination (eg less energy costs for pumping and less maintenance costs than previously considered).
- 2.4.6.8 As outlined in October 2023, previous submissions and information advanced by Robusto Investments has had deficiencies that limits its direct applicability to the further varied preservation regulatory determination and to a subsequent longer-term determination.⁵⁴ Accordingly, the Commission's view is that there continues to be a need to further assess and review the operating expenditure of Robusto Investments, including the potential need to consider obtaining independent expert advice.

⁵² The forthcoming report from a third-party consultant, engaged to provide an updated assessment of the state of the conditions of Robusto Investments' assets, may be of use as part of the longer-term determination. Ibid, p. 44.

⁵³ Essential Services Commission of South Australia, *Robusto Investments Drinking Water Preservation Regulatory Determination: Review Application Decision – Statement of Reasons*, September 2023, pp. 48-50.

⁵⁴ Given information asymmetry, there can be an incentive and ability for Robusto to exaggerate the extent of its operating costs (both individual and collective costs) and not reveal the full extent of information available to it relating to the efficiency of those operating costs. Furthermore, there can be an incentive for Robusto to overstate the extent of its incurred and allocated costs to the regulated business (i.e., in order to pass on costs from its unregulated businesses, such as those incurred by Capitoline, Connor Consulting and the Mount Compass Golf Club and Golf Course). Ibid, pp. 48-50.

The Commission contends that it is appropriate to conduct additional information gathering, analysis and advice to determine the efficient operating expenditure of Robusto as part of making the subsequent longer-term determination.⁵⁵

⁵⁵ Ibid, pp. 48-50.

3 Decision

3.1 Commission's draft decision

3.1.1 Having had regard to the above methodology and the reasons outlined in earlier chapters, pursuant to section 26(8) of the ESC Act the Commission's draft decision is to further vary the varied preservation regulatory determination to:

- 3.1.1.1 Extend the term of the determination for a 12-month period, being 1 July 2025 to 30 June 2026.
- 3.1.1.2 Set the maximum allowable revenue that Robusto Investments can recover from residential customers and Mount Compass Property for the regulatory period 1 July 2025 to 30 June 2026, being \$179,736 (in real, December 2018 prices) and \$217,091 (in nominal terms). The latter is to be updated for the final decision on the basis of updated forecasts of CPI inflation.
- 3.1.1.3 Set a methodology to determine residential prices for the period 1 July 2025 to 30 June 2026, and determine that the methodology will be implemented on the basis that:
- the allocated proportion of supply-usage charges and the tiered price ratios will be maintained as per the those set out in the varied preservation regulatory determination
 - the forecast of average usage per connection will be maintained as per the those set out in the varied preservation regulatory determination, at 120kL per tier 1 and 60kL per tier 2
 - the forecast of CPI inflation for 2025-26 will be determined based on the latest available forecast published by the RBA (an approach consistent with that of the varied preservation regulatory determination), and
 - the customer numbers used in price-setting will be those based on (i) the Commission's assessment of connected customers, having obtained and assessed an updated set of customer invoices to be submitted to the Commission from Robusto Investments in early 2025, and (ii) a weighted average customer number will be used in the calculation that derives maximum prices. Both (i) and (ii) are consistent with that of the approach adopted in the varied preservation regulatory determination.
- 3.1.1.4 Include a reporting requirement regarding the customer invoice information that Robusto Investments must provide to the Commission so that it can set the maximum prices for residential customers for the additional regulatory period 1 July 2025 to 1 July 2026. It is expected that the methodology for deriving maximum prices will be implemented by the Commission in May

2025 / June 2025, in accordance with the terms of the further varied preservation regulatory determination.

- Specify maximum nominal prices for the additional regulatory period in the event customer invoice information required to be provided by Robusto Investments in 2025 is determined by the Commission to be materially incomplete for the purposes of deriving maximum prices. In that circumstance the maximum nominal prices will be as follows:
 - A quarterly supply charge of \$101.97
 - A Tier 1 charge of \$4.19 per kL
 - A Tier 2 charge of \$5.98 per kL and
 - A Tier 3 charge of \$6.47 per kL.

The prices listed above are to be updated for the final decision on the basis of updated forecasts of CPI inflation.

3.1.1.5 Clarify that compliance will be assessed at the conclusion of the new regulatory period expiry date (ie, 30 June 2026). This allows the Commission to review forecast errors for customer usage, customer numbers and CPI inflation, and will allow for any under or over recovery attributable to these factors in subsequent longer-term determinations.

3.1.2 For the avoidance of doubt, all other terms and conditions of the varied preservation regulatory determination will remain the same.

3.2 Intended implementation of the decision

3.2.1 The following section details the intended implementation of the further variation preservation regulatory determination.

3.2.2 **Step 1:** A 12-month maximum revenue allowance (in real December 2018 prices), as previously determined, will be converted into an annual maximum nominal revenue allowance based on previous and current forecasts of CPI inflation.

3.2.3 **Step 2:** The customer invoices provided by Robusto Investments in 2025 will be reviewed, considered and assessed by the Commission. Having regard to this information, a weighted average customer number will be determined.

3.2.4 **Step 3:** The 12-month nominal maximum revenue allowance is then converted into maximum prices for residential customers based on assumptions regarding:

3.2.4.1 the weighted average customer number as applied in Step 2

3.2.4.2 annual customer usage per connection (this remains at 180kL as set in the current determination), and

3.2.4.3 the pricing structures (the ratio between supply and usage charges remains fixed at the ratio set out in current determination, as do the ratios between the three pricing tiers).

3.2.5 Appendix A provides a worked example.

Appendix A: Worked example

The following worked example shows how the methodology will be implemented.

The example includes various assumptions. All parameters are given in Table 2.

Table 2. Worked example parameters for Robusto Investments methodology

Variable	Description	Value
Previously determined variables		
RR _{12-month}	<i>the real maximum revenue control for the 12-month regulatory period (in real, December 2018 prices)^(a)</i>	\$179,736
Q	<i>the number of quarters (or part thereof) in a 12-month period</i>	4
$\pi_{\text{Dec18-June21}}$	<i>the inflation forecast for the period December 2018 to June 2021 as per the varied regulatory determination^(b)</i>	2.7162 %
$\pi_{2021-22}$	<i>the inflation forecast for 2021-22 as per the varied regulatory determination^(b)</i>	1.5 %
$\pi_{2022-23}$	<i>the inflation forecast for 2022-23 as per the further varied regulatory determination^(a)</i>	5.1 %
$\pi_{2023-24}$	<i>the inflation forecast for 2023-24 as per the preservation regulatory determination^(c)</i>	3.6 %
$\pi_{2024-25}$	<i>the inflation forecast for 2024-25 as per the preservation regulatory determination^(c)</i>	3.0 %
α	<i>the proportion of R recoverable via supply charges</i>	32.12849 %
λ_{T12}	<i>the price differential between P_{T1} and P_{T2}, as set in percentage terms^(b)</i>	42.90909 %
λ_{T23}	<i>the price differential between P_{T2} and P_{T3}, as set in percentage terms^(b)</i>	8.14249 %
V_1	<i>the assumption regarding annual average customer usage, in kL, applicable to Tier 1</i>	120
V_2	<i>the assumption regarding annual average customer usage, in kL, applicable to Tier 2</i>	60
V_3	<i>the assumption regarding annual average customer usage, in kL, applicable to Tier 3</i>	0
Worked example parameters (assumptions)		
$\pi_{2024-25}$	<i>the inflation forecast for 2025-26 based on the latest annual CPI inflation as forecasted by the RBA^(d)</i>	3.2 %
N-supply ₂₀₂₅₋₂₀₂₆	<i>the supply customers for 2025-26</i>	201
N-usage ₂₀₂₅₋₂₀₂₆	<i>the usage customers for 2025-26</i>	157
Outcome parameters		
R ₂₀₂₅₋₂₆	<i>the maximum revenue control for the period 1 July 2025 to 30 June 2026 (in nominal terms) (See Step 1 below)</i>	\$217,091
N	<i>the weighted customer number (See Step 2 below)</i>	171
P_s	<i>the quarterly supply charge (See Step 3 below)</i>	\$101.97
P_{T1}	<i>the tier 1 unit charge (per kL) (See Step 3 below)</i>	\$4.19

Variable	Description	Value
P _{T2}	<i>the tier 2 unit charge (per kL) (See Step 3 below)</i>	\$5.98
P _{T3}	<i>the tier 3 unit charge (per kL) (See Step 3 below)</i>	\$6.47

Calculation

Step 1

$$\text{Inflation index} = (1 + \pi_{\text{Dec18-June21}}) \times (1 + \pi_{2021-22}) \times (1 + \pi_{2022-23}) \times (1 + \pi_{2023-24}) \times (1 + \pi_{2024-25}) \times (1 + \pi_{2025-26}) = (1 + 0.027162) \times (1 + 0.015) \times (1 + 0.051) \times (1 + 0.036) \times (1 + 0.030) \times (1 + 0.032)$$

Substituting in the data and assumptions from above gives Inflation index = 1.208

$$\text{Then, } R_{2023-24} = RR_{12\text{-month}} \times \text{Inflation index} = \$179,736 \times 1.208$$

Substituting in the data and assumptions from above gives R = \$217,091

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 = 171 (N is rounded to the nearest whole number)

Step 3

$$P_s = \frac{\alpha R}{QN}, \text{ and substituting in the data and assumptions from above gives, } P_s = \$101.97$$

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

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

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

Substituting in the data and assumptions gives the following maximum prices for residential customers:⁵⁶

$$P_{T1} = \$4.19$$

$$P_{T2} = \$5.98$$

$$P_{T3} = \$6.47$$

⁵⁶ 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.



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