

LOWER MURRAY WATER NEW CUSTOMER CONTRIBUTION (NCC) NEGOTIATING FRAMEWORK

1. Application of Negotiating Framework

This Negotiating Framework forms a part of Lower Murray Waters approved water plan for the 2013 price determination which applies to the 2013-18 regulatory period.

1.1 Purpose

This Negotiating Framework sets out procedural and information requirements relevant to services to which developer charges (New Customer Contributions) apply, as defined in the WIRO. New Customer Contributions (NCC) are levied when new connections are made to the water corporation's water and sewerage networks. The framework requires Lower Murray Water and any Connection Applicant to negotiate in good faith to agree on the price, standards and conditions of services to be provided. It also provides for transparent information to enable the Connection Applicant to understand the reasons for decisions made by Lower Murray Water.

The requirements set out in this negotiating framework are in addition to any requirements or obligations contained in or imposed under the *Water Act 1989*, the *Planning & Environment Act 1987* (including under any planning scheme or permission), the *Subdivision Act 1988*, subordinate regulation under the described legislation or any other relevant legislation or instruments (the "Regulatory Instruments").

In the case of inconsistency between the Regulatory Instruments and this negotiating framework, the relevant Regulatory Instruments will prevail.

This Negotiating Framework does not alter the rights of a Connection Applicant to seek a review of a Lower Murray Waters decision by the Victorian Civil and Administrative Tribunal (VCAT).

1.2 Who this negotiating framework applies to

This Negotiating Framework applies to Lower Murray Water and to any property owner - generally a property developer – that is a Connection Applicant who requests connection to Lower Murray Waters works in accordance with section 145 of the *Water Act 1989* ("Application").

It also applies to Lower Murray Water in responding to such requests from a connection applicant.

1.3 No obligation to provide service, good faith obligation

Nothing in the negotiating framework imposes an obligation on Lower Murray Water to allow the Connection Applicant to connect to Lower Murray Water's works or to provide services to the Connection Applicant.

Lower Murray Water can refuse its consent, consent, or consent subject to any terms and conditions that Lower Murray Water thinks fit, as provided under section 145(3) of the Water Act 1989.

However, Lower Murray Water and the Connection Applicant must negotiate in good faith the price, terms and conditions for services sought by the Connection Applicant.

2. Timeframes

Lower Murray Water and the Connection Applicant will use all reasonable endeavours to achieve the following timeframes:

- (a) Agree the milestones, information requirements and any other relevant issues within fifteen [15] business days of Lower Murray Water's receipt of an Application. An Application, under Section 145 of the Water Act 1989, for connection means a servicing request made to Lower Murray Water, the applicable format for any such request will be provided to the applicant in writing
- (b) Respond to the Application giving details of the terms and conditions of the Offer to allow connection:
 - within forty five (45) business days where a Standardised NCC Charge applies; and
 - within one hundred and twenty (120) business days where a Negotiated NCC Charge applies.
- (c) Adhere to any timetable established for negotiations and progress negotiations in an expeditious manner; and
- (d) Finalise negotiations within one hundred and twenty (120) business days of the initial Application.

2.1 Commencing, progressing and finalising negotiations

Table 1 below provides an indicative timeframe regarding the process of NCC negotiations. As mentioned above, dependant on the location and specific requirements of the development, either a standardised or a negotiated NCC will be applicable. The timeframes for these two charges will differ. It is likely that a Negotiated NCC Charge will require additional design and modelling to be undertaken by Lower Murray Water and/or the Connection Applicant. The two timelines are presented below.

table 1 – Indicative timeframes for negotiating connection

Step	Actions	Timing Standardised NCC Charge (Business Days from Application date)	Timing Negotiated NCC Charge (Business Days from Application date)
1	Application (Section 145) for service requirements and costings of connection Application fee paid	Application date	Application date
2	Negotiation Meeting Parties discuss: the nature of the services required; any additional information to be provided by the Connection Applicant; and notification and consultation with other persons potentially affected Parties agree to timeframes for negotiation and consultation and milestones if different to these indicative timeframes;	+ 15 (if required)	+ 15
3	Connection Applicant provides additional information Connection Applicant provides additional information to Lower Murray Water if requested This includes: Original completed application; Additional information (if required);	20	35
4	Lower Murray Water Investigation completed <ul style="list-style-type: none"> Where required, Consultation with others potentially affected. Additional designs & modelling 	35	90
5	Offer Lower Murray Water makes offer, in accordance with relevant regulatory instruments, including: <ul style="list-style-type: none"> terms and conditions of connection; NCC (ie developer charge) to apply; and such Offer will (unless otherwise specified) expire 12 months from being made. Will need to fix dot points 	45	120

3. Provision of information by Connection Applicant

The Connection Applicant must provide sufficient information to enable Lower Murray Water to assess the Application and determine the service requirements and costings for the development. The connection applicant will be notified in writing as to the nature of the information required by Lower Murray Water to complete this process.

The level of information required by Lower Murray Water and the detail of its response will vary depending on the complexity and size of the development. As stated above, additional information may be sought by Lower Murray Water in the event of a Negotiated NCC Charge being sought.

4. Provision of information by Lower Murray Water

After consideration of servicing requests Lower Murray Water may provide an offer, via letter, draft agreement and/or notice (“Offer”). The Offer will include

specific requirements for the particular development and also include various standard conditions and other information including charges and fees to achieve connection to Lower Murray Waters assets. This includes New Customer Contributions.

The Offer is provided by Lower Murray Water pursuant to the Regulatory Instruments.

5. Pricing Principles

Lower Murray Water's charges will:

- (a) have regard to the incremental infrastructure and associated costs in one or more of the statutory cost categories attributable to a given connection;
- (b) have regard to the incremental future revenues that will be earned from customers at that connection; and
- (c) be greater than the avoidable cost of that connection and less than the standalone cost of that connection.

In setting charges, Lower Murray Water will also comply with:

- (a) the regulatory principles set out in clause 14 of the WIRO; and
- (b) any specific pricing principles approved by the Essential Services Commission as part of Lower Murray Water's Water Plan.

6. Consultation with affected parties

If Lower Murray Water considers that persons other than the Connection Applicant may be affected by proposed connection services, then:

- (a) subject to legal confidentiality requirements, Lower Murray Water will share any necessary information with others potentially affected to assess impacts and
- (b) parties will allow sufficient time for reasonable consultation with affected parties to occur

7. Payment of Lower Murray Water's Costs

All developments of land requiring new or upgraded connection to Lower Murray Waters system will incur associated fees and charges payable to Lower Murray Water

Fees and charges levied by Lower Murray Water are subject to approval processes under the *Water Act 1989* and/or as approval by the ESC. Details about the fees and charges can be found on Lower Murray Water's Website.

Should the particular Application require a Negotiated NCC Charge, rather than the Standardised NCC Charge this will arise from the relevant negotiation, subject to the Regulatory Instruments in place at the time.

8. Termination of negotiations

The Connection Applicant may elect not to continue with its application for a service to which a developer charge applies, and may terminate the negotiations by giving Lower Murray Water written notice of its decision to do so.

Lower Murray Water may terminate a negotiation under this Negotiating Framework by giving the Connection Applicant written notice of its decision to do so where:

- (a) Lower Murray Water believes on reasonable grounds that the Connection Applicant is not conducting the negotiation in good faith; or
- (b) Lower Murray Water reasonably believes that the Connection Applicant and the particular development will not be able to receive a service from Lower Murray Water; or
- (c) an act of insolvency occurs in relation to the Connection Applicant; or
- (d) Lower Murray Water reasonably believes that the Connection Applicant has provided false or misleading information to Lower Murray Water.

9. Dispute resolution

In the event of a dispute between parties, Lower Murray Water will continue attempts to resolve the matter by negotiation.

After Lower Murray Water provides its Offer, if the Connection Applicant does not accept the Offer, generally the Connection Applicant has particular rights to seek a review in the Victorian Civil and Administrative Tribunal ("VCAT") of the terms and conditions of connection and the NCC charge applied. These VCAT review rights, including various time lines, rights and process are set out in the *Water Act 1989* and the *VCAT Act 1998*.

10. Giving notices

The address for correspondence and notices to Lower Murray Water is:
PO Box 1413 Mildura Vic 3502

A notice must be:

- (a) in writing and signed by a person duly authorised by the sender;

- (b) hand delivered or sent by prepaid post, facsimile or email to the recipient's address for Notices, as varied by any Notice given by the recipient to the sender; and
- (c) if given or received under any Regulatory Instruments or other statute of regulation, must be given under the requirements of that relevant instrument, or other statute or regulation.

11. Terms and abbreviations

Lower Murray Water – A water corporation established pursuant to Part 6 of the *Water Act 1989*.

Connection Applicant – The person making application to connect to the Lower Murray Water system pursuant to Section 145 of the *Water Act 1989*.

Standardised NCC Charge – This is the standardised charge for Connection Applicants wishing to connect to the Lower Murray Water System.

Negotiated NCC Charge – This charge, derived from the NCC principles developed by Lower Murray Water will apply where the Standardised NCC Charge is not applicable due to the nature and/or locality of the development or arising out of negotiation with the Connection Applicant.