

YARRA VALLEY FUTURE WATER

NEGOTIATING FRAMEWORK FOR DEVELOPERS

JANUARY 2013



CONTENTS

1. Application of Negotiating Framework	5
1.1 Introduction	5
1.2 Purpose	5
1.3 Regulatory instruments	5
1.4 Who this negotiating framework applies to	6
1.5 No obligation to provide service, good faith obligation	6
2. Timeframes	8
2.1 Commencing, progressing and finalising negotiations	8
3. Provision of information	10
3.1 By Connection Applicant	10
3.2 By Yarra Valley Water	10
4. Pricing Principles	11
5. Consultation with affected parties	12
6. Payment of Yarra Valley Water's costs	13
7. Termination of negotiations	14
8. Dispute resolution	15
9. Giving notices	16
10. Terms and abbreviations	17
Appendix 1	19
Negotiating Framework for New Customer Contributions Schematic	19

1. Application of Negotiating Framework

1.1 Introduction

This Negotiating Framework forms a part of Yarra Valley Water's 2013 price determination.

In relation to new connections, Yarra Valley Water is responsible for:

- Assessing and approving connections to distribution networks.
- Setting developer charges for those connection works – Yarra Valley Water has a scheduled standard developer charge approved by the Essential Services Commission in its 2013 price determination for standard developments.
- Establishing a process for determining non-standard developer charges that may apply to non-standard developments. Non-standard charges are subject to negotiation and will be determined on a case-by-case basis in accordance with this framework and the Essential Services Commission's pricing principles.

This negotiating framework should be read in conjunction with Yarra Valley Water's Land Development Manual, which sets out Yarra Valley Water's policies and pricing for land development works.

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

1.2 Purpose

This Negotiating Framework sets out procedural and information requirements relevant to services to which developer charges (New Customer Contributions (NCCs)) apply, as defined in the *Water Industry Regulatory Order 2012 (WIRO)*. It requires Yarra Valley Water and any Connection Applicant to negotiate in good faith to agree the price (where the scheduled NCC does not apply), 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 Yarra Valley Water.

1.3 Regulatory instruments

The requirements set out in this negotiating framework are in addition to any requirements or obligations contained in or imposed in the following statutes and regulations (together called "Regulatory Instruments")

- *Water Act 1989*

- *Water Industry Act 1994*
- Yarra Valley Water's Land Development Manual as amended from time to time
- City West Water's Statement of Obligations
- Water Industry Regulatory Order
- *Planning and Environment Act 1987*
- *Subdivision Act 1988*
- *Subdivision (Procedures) Regulation 1989*
- *Owners Corporation Act 2006*
- *Environment Protection Act 1970*
- *Environment Protection and Biodiversity Act 1999 (C'th)*
- *Aboriginal Heritage Act 2006*
- *Equipment (Public Safety) Act 1994*
- *Dangerous Goods Act 1985*
- *Occupation Health and Safety Act 2004*
- *State Building Regulations*

In the case of inconsistency between the Regulatory Instruments or Yarra Valley Water's 2013 price determination and this negotiating framework, the relevant Regulatory Instrument or Yarra Valley Water's 2013 price determination will prevail.

1.4 Who this negotiating framework applies to

This Negotiating Framework applies to Yarra Valley Water and to any property owner – generally a property developer – that is a Connection Applicant who requests connection to Yarra Valley Water's works in accordance with section 145 of the *Water Act 1989*.

It also applies to Yarra Valley Water in responding to such requests from a Connection Applicant.

1.5 No obligation to provide service, good faith obligation

Nothing in the Negotiating Framework imposes an obligation on Yarra Valley Water to allow the Connection Applicant to connect to Yarra Valley Water's works or provide services to the Connection Applicant.

Yarra Valley Water can:

- refuse its consent;
- consent; or
- consent subject to any terms and conditions that Yarra Valley Water thinks fit;

as provided under section 145(3) of the *Water Act 1989*.

However, Yarra Valley Water and the Connection Applicant must negotiate in good faith the price (where the scheduled NCC does not apply), terms and conditions for services sought by the Connection Applicant.

2. Timeframes

Yarra Valley Water and the Connection Applicant will use their reasonable endeavours to achieve the following timeframes:

- a) Meet with the Connection Applicant to agree on the milestones, information requirements and any other relevant issues with an initial meeting to occur within fifteen (15) business days of Yarra Valley Water's receipt of an application. An application for connection under Section 145 of the *Water Act 1989* means a servicing request made to Yarra Valley Water.
- b) Respond to the Connection Applicant's application giving details of the terms and conditions of the Offer to allow connection within eighty (80) business days from the application where a negotiated NCC applies.
- c) Adhere to any timetable established for negotiations, and progress negotiations in an expeditious manner.
- d) Finalise negotiations within a further eighty (80) business days of the Offer being made.

2.1 Commencing, progressing and finalising negotiations

Table 1 below provides an indicative timeframe regarding the process of NCC negotiations. Appendix 1 shows a schematic of these indicative timelines.

Table 1 – Indicative timeframes for negotiating connection

STEP	DELIVERY DATE	TIMING (BUSINESS DAYS)
1.	<p>Application</p> <p>Proponent submits application for connection</p> <p>Connection Applicant pays application fee</p>	X
2.	<p>Initial meeting/discussions</p> <p>Parties discuss:</p> <ul style="list-style-type: none"> • the nature of services required; and • any information (including commercial information) to be provided by the Connection Applicant. 	Up to X+15 business days

STEP	DELIVERY DATE	TIMING (BUSINESS DAYS)
	<p>Parties agree to</p> <ul style="list-style-type: none"> timeframes for negotiation and consultation; and Milestones. <p>Yarra Valley Water provides Connection Applicant with estimate of actual costs to be funded by Connection Applicant (refer section 6).</p>	
3.	<p>Applicant provides information</p> <p>Connection Applicant provides information to Yarra Valley Water where requested in step 2.</p>	Up to X + 30 business days
4.	<p>Connection Applicant provides additional information where required. This may involve multiple requests.</p> <p>During this period, Yarra Valley Water will also commence discussion with potentially affected parties.</p> <p>Connection Applicant notified if timing to be exceeded.</p> <p>All necessary information received by Yarra Valley Water and Yarra Valley Water's initial consultation and investigations completed.</p> <p>Detailed investigation and analysis can now commence.</p>	<p>Up to X+ 50 business days (but could be longer if Connection Applicant has not provided all the information by due time, further information required from Connection Applicant or complex stakeholder consultation is required)</p> <p>= Y</p>
5.	<p>Yarra Valley Water makes Offer</p> <p>Yarra Valley Water makes offer to Connection Applicant, including</p> <ul style="list-style-type: none"> terms and conditions of connection; non-standard NCC to apply; and notation that such offer will expire with a nominated period of time (e.g. 6 months from being made). 	Y + 30 business days
6.	<p>Finalisation of negotiations</p> <p>Parties finalise negotiations.</p> <p>Connection Applicant advised of dispute resolution through VCAT or alternative means.</p>	Within Y +110 business days

3. Provision of information

3.1 By Connection Applicant

The level of information required by Yarra Valley Water, and the detail of its response, will vary depending on the complexity and size of the Connection Applicant's proposal.

The Connection Applicant must provide sufficient information to enable Yarra Valley Water to assess the application and determine the service requirements and cost for the development. Yarra Valley Water may request supplementary information if the Connection Applicant's proposal is found to provide insufficient information.

The information generally required by Yarra Valley Water is detailed in the Land Development Manual.

3.2 By Yarra Valley Water

After consideration of servicing requests Yarra Valley Water may provide an offer, via letter, draft development deed 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 Yarra Valley Water's assets. This includes New Customer Contributions to be paid.

Yarra Valley Water will provide the Connection Applicant with procedural information and certificates as specified in the Land Development Manual.

The information provided by Yarra Valley Water under this Negotiating Framework will specify the Connection Applicant's grounds for appeal.

4. Pricing Principles

Yarra Valley 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, Yarra Valley Water will also comply with:

- a) the regulatory principles set out in clause 14 of the WIRO; and
- b) specific pricing principles approved by the Essential Services Commission as part of Yarra Valley Water's 2013 price determination.

5. Consultation with affected parties

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

- subject to reasonable confidentiality requirements, Yarra Valley Water will share any necessary information with others potentially affected to assess impacts; and
- parties will allow sufficient time for reasonable consultation with affected parties to occur.

6. Payment of Yarra Valley Water's costs

The Connection Applicant will be liable for paying the actual costs of all Yarra Valley Water costs associated with assessing and approving conditions of connections to the distribution networks and where non-scheduled NCCs apply. These costs will include but be not limited to:

- investigating infrastructure configuration options to supply services and connections and estimating costs;
- dealing with third parties and regulatory bodies;
- hydraulic and financial modelling; and
- preparation of the Offer.

Actual costs will be determined in accordance with the pricing principles set out in Yarra Valley Water's 2013 price determination.

7. 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 Yarra Valley Water written notice of its decision to do so.

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

- Yarra Valley Water believes on reasonable grounds that the Connection Applicant is not conducting the negotiation under this Negotiating Framework in good faith;
- Yarra Valley Water reasonably believes that the Connection Applicant will not be able to acquire any negotiated distribution service;
- Where the Connection Applicant has provided false or misleading information to Yarra Valley Water; or
- an act of insolvency occurs in relation to the Connection Applicant.

In the event of termination, the Connection Applicant will be liable for all actual costs incurred by Yarra Valley Water in investigating services and connections to be provided to the Connection Applicant as outlined in section 6.

8. Dispute resolution

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

After Yarra Valley Water provides its Offer, if the Connection Applicant does not accept the Offer, the Connection Applicant has particular rights to seek a review in VCAT of the terms and conditions of connection and the NCC 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*.

9. Giving notices

The address for correspondence and notices to Yarra Valley Water is:

Yarra Valley Water

Private Bag 1

Mitcham, Vic, 3132

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 or facsimile to the recipient's address r; 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.

10. Terms and abbreviations

Applicant - The servicing request to Yarra Valley Water for connection pursuant to Section 145 of the *Water Act 1989*.

Yarra Valley Water – Yarra Valley Water Corporation established pursuant to Part 6 of the *Water Act 1989*.

Connection Applicant - The person making application to connect to the Yarra Valley Water system.

Land Development Manual – Yarra Valley Water’s Land Development Manual, which outlines policies and guidelines for customers to connect to water and sewerage services, available at www.yvw.com.au.

Standard NCC - This is the standard charge for connection applicants wishing to connect to the Yarra Valley Water network(s) and is set in accordance with Yarra Valley Water’s 2013 price determination

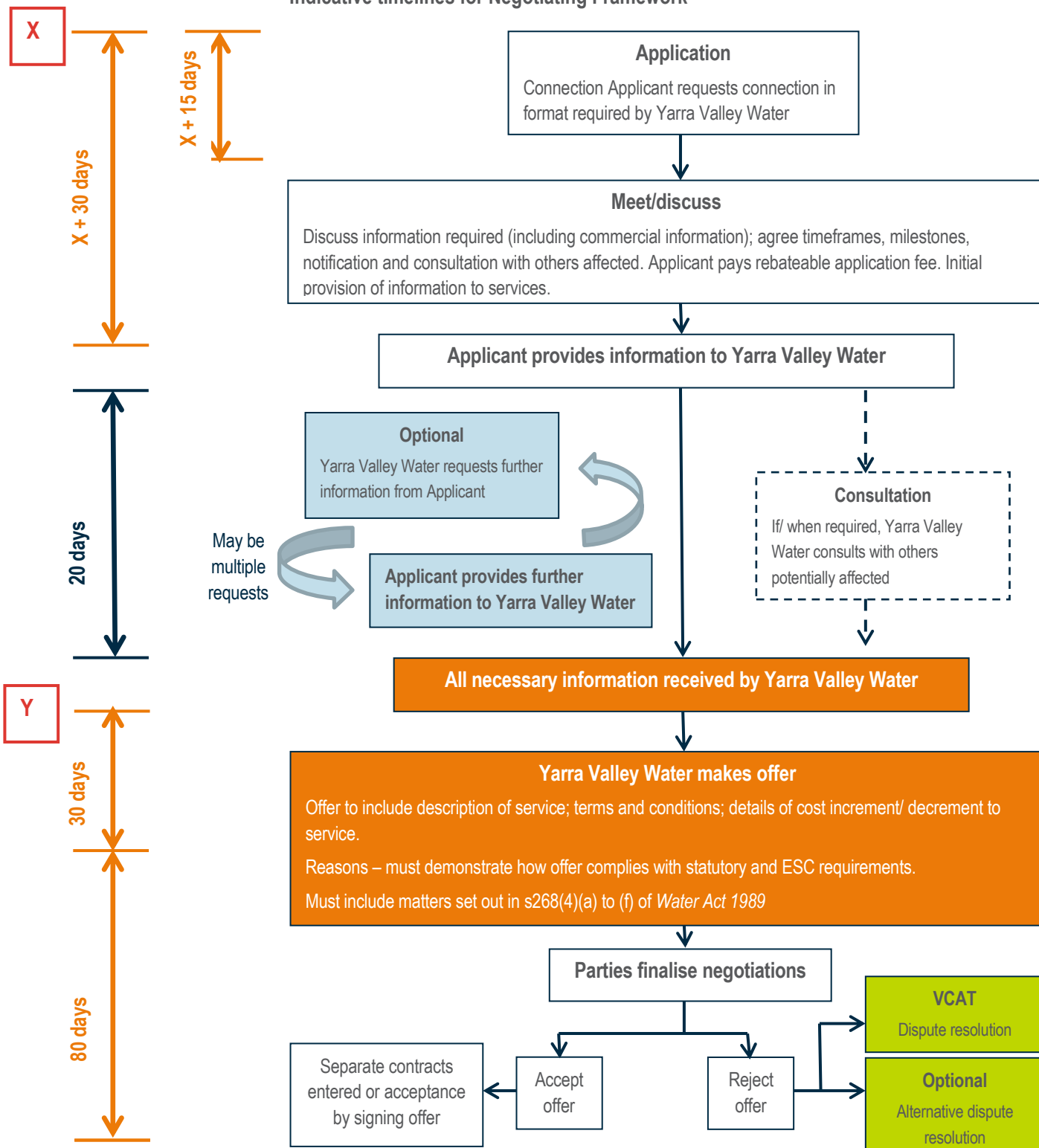
Negotiated NCC (Non-standard NCC) - This charge, derived from the NCC principles developed by Yarra Valley Water will apply where the Standard NCC is not applicable due to the nature and/or locality of the development, timing of the development or where an innovative connection solution or Integrated Water Cycle Management solution leads to substantive material change in Yarra Valley Water’s distribution infrastructure requirements with the Connection Applicant.

Yarra Valley Water’s 2013 price determination – price determination issued by the Essential Services Commission under section 33 of the *Essential Services Commission Act 2001*, pursuant to clause 8 of the *Water Industry Regulatory Order 2003* as amended.

Appendix 1


Negotiating Framework for New Customer Contributions Schematic

Indicative timelines for Negotiating Framework



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