

Utilities (Water and Sewerage Capital Contribution Code) Approval 2017*

Disallowable instrument DI2017–291

made under the

***Utilities Act 2000* s58 (Approved codes) and s63 (Public access)**

1 Name of instrument

This instrument is the *Utilities (Water and Sewerage Capital Contribution Code) Approval 2017*

2 Commencement

This instrument commences on 1 January 2018.

3 Determination of code

The Commission has approved under section 58 of the *Utilities Act 2000* the Water and Sewerage Capital Contribution Code.

4 Purpose of code

The Water and Sewerage Capital Contribution Code sets out the framework by which a utility may require a customer to contribute towards the development or augmentation of the water network or sewerage network, in connection with a development.

5 Public access to documents

Copies of the Water and Sewerage Capital Contribution Code are available for inspection by members of the public between 9:00 am and 5:00 pm, Monday to Friday, at the Commission's offices at Level 8, 221 London Circuit, Canberra City ACT and on the Commission's website (www.icrc.act.gov.au). Copies of these documents can be made at the Commission's offices. Electronic copies are available on request. No charge will apply.

Joe Dimasi
Senior Commissioner
Independent Competition and Regulatory Commission
8 December 2017

*Name amended under Legislation Act, s 60

Australian Capital Territory



Independent Competition and Regulatory Commission

Water and Sewerage Capital Contribution Code

January 2018

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1. INDUSTRY CODE

The Water and Sewerage Capital Contribution Code (Code) is an **Industry Code** determined by the **ICRC** under Part 4 of the **Act**.

2. APPLICATION AND PURPOSE OF THIS CODE

2.1 Application

- (a) This Code applies to a **Water Utility** in relation to its **Water Network** and to a **Sewerage Utility** in relation to its **Sewerage Network**.
- (b) It is a requirement under section 25(2) of the **Act** and the **Utility's** licence that a **Utility** comply with an **Industry Code** relevant to the licensed service.

2.2 Purpose

The purpose of this Code is to outline the principles and procedures by which a **Water Utility** and a **Sewerage Utility** may require a **Customer** to contribute towards the development or augmentation of the **Water Network** or **Sewerage Network**, in connection with a **Development**.

2.3 Transition Period

- (a) No **Class 2 Infrastructure Charge** is payable for a **Development** inside a **Precinct** that is undertaken by a **Customer** (or a **Developer** on behalf of a **Customer**) if:
 - i. the date of the contract for the acquisition by the **Customer** of the land on which the **Development** is being undertaken is before 1 January 2018; and
 - ii. the application for **Development Approval** for the **Development** is lodged before 1 July 2019,unless the **Customer** agrees that the **Class 2 Infrastructure Charge** will be payable for that **Development**.
- (b) For the avoidance of any doubt, a **Development** for which no **Class 2 infrastructure charge** is payable under Clause 2.3(a) will be subject to the **Utility's** infrastructure evaluation and funding arrangements in place prior to the implementation of this Code.

3. DICTIONARY

The dictionary at the end of this Code is part of this Code.

4. DATE FOR PAYMENT OF CAPITAL CONTRIBUTION CHARGE

Where a **Capital Contribution Charge** is payable, it will become payable by the **Customer** at the earlier of:

- (a) the date on which the **Utility's** connection fee for the **Connection** associated with the **Development** is payable; and
- (b) the date on which a **Certificate of Occupancy** is issued in relation to the **Development**.

5. CLASS 1 INFRASTRUCTURE

A **Utility** will construct any **Class 1 Infrastructure** required at its own expense and without requiring payment of a Capital Contribution Charge under this Code, subject to any amount payable by a **Customer** as a **Capital Contribution Charge** under clause 8 of this Code.

This clause 5 applies regardless of whether the **Class 1 Infrastructure** is inside a **Precinct** or outside a **Precinct**.

6. CLASS 2 INFRASTRUCTURE

6.1 Payment of charge

Where a **Customer** undertakes or causes a **Developer** to undertake a **Development** the **Customer** must pay a **Capital Contribution Charge** to the relevant **Utility**, calculated in accordance with clause 9.1 or clause 9.2 (as applicable).

7. CLASS 3 INFRASTRUCTURE

In connection with a **Development**, a **Customer** will (or will cause a **Developer** to) design and construct at the **Customer's** own cost any required **Class 3 Infrastructure**.

No **Capital Contribution Charge** is payable under this Code by a **Customer** in connection with the design or construction of **Class 3 Infrastructure**.

This clause 7 applies regardless of whether the **Class 3 Infrastructure** is inside a **Precinct** or outside a **Precinct**.

8. OTHER CHARGES

8.1 Removals, relocations and specific requirements

If, in connection with a **Development**, a **Customer** requests a **Utility** to, or a **Utility** determines that it is necessary to, remove, relocate, provide protection or make changes to any part of a **Utility's** existing **Sewerage Network** or **Water Network** to:

- (a) permit construction, operation, use or enjoyment of the proposed **Development** or to enable continued provision of **Water Services** or **Sewerage Services**; or
- (b) reduce the risk that the **Sewerage Network** or **Water Network** may constitute an **Environmental Nuisance** to any person where such risk is increased due to the construction, operation, use or enjoyment of the proposed **Development**,

the **Utility** may charge, and the **Customer** must pay, the full **Costs** incurred in carrying out such works.

8.2 Application of clause 8.1

Clause 8.1 applies regardless of:

- (a) whether the works include **Class 1 Infrastructure**, **Class 2 Infrastructure** or **Class 3 Infrastructure**;
- (b) whether the **Infrastructure** is inside a **Precinct** or outside a **Precinct**;
- (c) the age or utilisation of the asset; and
- (d) any previous contribution towards the cost of installing those assets.

8.3 No credit or allowance

The **Utility** will not provide any payment, credit or other allowance for assets removed, relocated or changed.

9. CALCULATION OF INFRASTRUCTURE CHARGES AND PRECINCTS

9.1 Calculation of Class 2 Infrastructure Charge – inside a Precinct

- (a) The **Class 2 Infrastructure Charge** payable for a **Development** inside a **Precinct** is calculated in accordance with the formula:

$$C2IC = (\text{net increase in EP}) \times C$$

Where:

'C2IC' is the **Class 2 Infrastructure Charge** for a **Development** inside a **Precinct**

'net increase in EP' is determined by the **Utility** in accordance with the principles in clause 9.1(b)

'C' is the **Precinct Charge**

- (b) The **Class 2 Infrastructure Charge** payable under this Code for a **Development** inside a **Precinct** will be based on a determination by the **Utility** of the net increase in **EP** in accordance with the following principles:
 - i. where the **Development** involves the disconnection of a **Connection (Existing Connection)** and the re-connection of either the same or a new **Connection (New Connection)**, the net increase in **EP** will be calculated by taking the **EP** of the **New Connection** and deducting the **EP** of the **Existing Connection**;

- ii. if the **EP** of the **New Connection** is equal to or less than the **EP** of the **Existing Connection**, then the net increase in **EP** is taken to be zero; and
 - iii. the **EP** of the **Existing Connection** and the **New Connection** will be determined taking into account the size, scale and nature of development permitted under the **Development Approval** for the **Development** rather than the size, scale or nature of development permitted under the crown lease, Territory Plan or National Capital Plan. Subject to 9.1(b)iv, where a **Development Approval** has not been issued for the **Existing Connection**, the **EP** of the **Existing Connection** will be determined by the **Utility** using built form, demand data, gauge data and any other relevant material available. Where a **Development Approval** has not been issued for the **Development**, the **EP** of the **New Connection** will be determined by the **Utility** using the proposed plans for the **Development** and any other relevant material available.
 - iv. If the **Map** has been updated and the land on which the **Development** is being undertaken was previously outside a **Precinct** but is now inside a **Precinct** and has not previously been developed, the **EP** of the **Existing Connection** will be determined by the **Utility** using the suburb estate master plan or other relevant material available.
- (c) When calculating the **Class 2 Infrastructure Charge**:
- i. the **Precinct Charge Schedule** that applies will be the version in force as at the date on which the application for the **Development Approval** was lodged or (if no **Precinct Charge Schedule** was in force at that date) the first **Precinct Charge Schedule** issued in relation to this Code; and
 - ii. if it is more than 12 months after the date the application for the **Development Approval** was lodged, the **Precinct Charge** will be increased by an amount of 2.5% per annum, with an increase for any part year calculated on a daily pro-rata basis.

9.2 Calculation of Class 2 Infrastructure Charge – outside a Precinct

The **Class 2 Infrastructure Charge** payable under this Code for a **Development** located outside a **Precinct**, is an amount determined by the **Utility** to cover the **Costs** of the **Class 2 Infrastructure** for the **Development**.

Where the land on which **Development** may occur is not wholly within a **Precinct**, the **Class 2 Infrastructure Charge** will be determined on the basis that the entire **Development** is outside the **Precinct**.

9.3 Updating the Precinct Charge Schedule

A **Utility** will review, and may, subject to approval by the ICRC, update its **Precinct Charge Schedule** annually.

The new **Precinct Charge Schedule** will apply to the calculation of the **Capital Contribution Charge** for any **Development** inside a **Precinct** for which the application for the **Development Approval** was lodged on or after the date specified in the new **Precinct Charge Schedule**.

9.4 The Precinct Map

The **Map** must;

- (a) Be publicly available at no charge directly from the **Utility**;
- (b) Be of sufficient quality and resolution to enable identification of individual parcels of land;
- (c) Contain a clearly identifiable version number and date/s of effect; and
- (d) Include a table of amendments detailing any changes made from the previous version of the **Map**.

9.5 Updating the Precinct Map

A **Utility** will review, and may, subject to approval of the ICRC, update its **Map** annually.

The new **Map** will apply to the calculation of the **Capital Contribution Charge** for any **Development** for which the application for the **Development Approval** was lodged on or after the date specified in the new **Map**.

10. DETERMINATION OF REQUIRED INFRASTRUCTURE

10.1 Required Infrastructure

Whether **Infrastructure** is required is a matter within the discretion of the relevant **Utility** unless the **Utility** is specifically required by law to construct **Infrastructure** assets of a particular type or capacity. **Infrastructure** will be of a standard consistent with the **Utility's** standards and applicable laws.

10.2 Assessment of capacity and reliability

The assessment of the reasonable capacity and reliability of **Infrastructure** is a matter within the discretion of the **Utility** unless the **Utility** is specifically required by law to construct **Infrastructure** assets of a particular type or capacity.

10.3 Ownership of assets and Infrastructure

The payment of any **Capital Contribution Charge** does not confer on the person paying that charge any ownership in, or other legal or equitable right in respect of, any asset or **Infrastructure** to which that charge may relate.

DICTIONARY

Definitions

- (1) “**Act**” means the *Utilities Act 2000*;
- (2) “**Capital Contribution Charge**” means:
 - a. a **Class 2 Infrastructure Charge**; and
 - b. any amount payable by a **Customer** under clause 8 of this Code;
- (3) “**Certificate of Occupancy**” means a certificate of occupancy issued by the relevant authority including by the construction occupations registrar under the *Building Act 2004 (ACT)*;
- (4) “**Class 1 Infrastructure**” has the meaning set out in Schedule 1;
- (5) “**Class 2 Infrastructure**” has the meaning set out in Schedule 1;
- (6) “**Class 2 Infrastructure Charge**” is determined in accordance with clause 9.1 or clause 9.2 as applicable;
- (7) “**Class 3 Infrastructure**” has the meaning set out in Schedule 1;
- (8) “**Connection**” means a connection or re-connection to a **Sewerage Network** or **Water Network** or replacement of a water meter (where the water meter replacement is as a consequence of the **Development**) and “**Connected**” has the corresponding meaning;
- (9) “**Costs**” means the amount incurred by a relevant Utility in:
 - a. making **Sewerage Services** or **Water Services** available to parcels of land not already connected to a **Sewerage Network** or **Water Network**;
 - b. varying the capacity of a connection to a **Sewerage Network** or **Water Network**;
 - c. removing, relocating, providing protection to or making changes to a **Sewerage Network** or **Water Network**; and
 - d. all necessary ancillary work,including design, labour, materials, plant, transport, overhead and administration costs, plus a reasonable profit margin;
- (10) “**Customer**” has the same meaning as in the **Act**;
- (11) “**Developer**” means a person undertaking a **Development**. A **Developer** may also be a **Customer**;
- (12) “**Development**” means subdivision, consolidation, use, building, altering or demolishing a building or structure and **Developed** has a corresponding meaning;
- (13) “**Development Approval**” means, in relation to a **Development**, an approval from the relevant authority including a development approval under the *Planning and Development Act 2007 (ACT)* or a works approval under the *Australian Capital Territory (Planning and Land Management) Act 1988 (Cth)*;

- (14) “**Environmental Nuisance**” means an unreasonable interference with the enjoyment by the public, a section of the public or a person of a place of area, if the interference is caused or likely to be caused by:
- a. dust, fumes, noise, odour or smoke; or
 - b. an unhealthy, unsightly or otherwise offensive condition because of pollution;
- (15) “**EP**” means ‘equivalent population’ which is determined by the **Utility** based on the information available at <https://www.iconwater.com.au/capitalcontributions> and forms part of the calculation of a **Class 2 Infrastructure Charge**;
- (16) “**ICRC**” means the Independent Competition and Regulatory Commission established under section 5 of the *Independent Competition and Regulatory Commission Act 1997* (ACT);
- (17) “**Industry Code**” means a code determined by the **ICRC** under the **Act**;
- (18) “**Infrastructure**” means any or all of Class 1 Infrastructure, Class 2 Infrastructure and Class 3 Infrastructure, as the context permits;
- (19) “**Map**” means the map, as updated from time to time, available from the **Utility** and published on their website;
- (20) “**person**” includes a natural person, a firm, an unincorporated association or body corporate;
- (21) “**Precinct**” means the area identified as a precinct on the **Map**;
- (22) “**Precinct Charge**” means the charge payable per **EP** for a **Development** in a **Precinct**;
- (23) “**Precinct Charge Schedule**” means the charges schedule which sets out the **Precinct Charge**, as updated from time to time, available at <https://www.iconwater.com.au/About/Our-pricing.aspx>;
- (24) “**Sewerage Network**” has the same meaning and functions as defined under the **Act**;
- (25) “**Sewerage Utility**” is a person licensed under the **Act** to provide **Sewerage Services**;
- (26) “**Sewerage Services**” means those services as defined in the **Act**;
- (27) “**Territory**” means the Australian Capital Territory;
- (28) “**Territory Plan**” means the plan prepared under section 46 of the *Planning & Development Act 2007* (ACT)
- (29) “**Utility**” means:
- a. the relevant **Water Utility**, in respect of its **Water Network, Water Services** and the **Water Utility’s** associated functions under the **Act**; or
 - b. the relevant **Sewerage Utility**, in respect of its **Sewerage Network, Sewerage Services** and the **Sewerage Utility’s** associated functions under the **Act**;
- (30) “**Utility Service**” has the same meaning as defined under the **Act**;
- (31) “**Water Network**” has the same meaning and functions as defined under the **Act**;

- (32) "**Water Services**" means those services as defined in the **Act**; and
- (33) "**Water Utility**" is a person licensed under the **Act** to provide **Water Services**.

Interpretation

In this Code, except where the contrary intention is expressed:

the singular includes the plural and vice versa;

another grammatical form of a defined word or expression has a corresponding meaning;

a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and

headings are for ease of reference only and do not affect interpretation.

SCHEDULE – CLASS 1, 2 AND 3 INFRASTRUCTURE

- (1) “**Class 1 Infrastructure**” means large scale headwork assets required by a **Utility** in order to provide services to **Customers** including:
- a. for a **Water Utility**, works relating to provision of the following infrastructure:
 - i. dams, weirs and associated assets;
 - ii. raw water pumping stations, pipelines and associated assets (upstream of a treatment plant);
 - iii. water treatment plants;
 - iv. bulk supply mains that feed the first reservoir or pressure management infrastructure from the treatment plant (pump station or valve farm);
 - v. any other infrastructure the **Water Utility** deems to be headwork assets;
 - b. for a **Sewerage Utility**, works relating to provision of the following infrastructure:
 - i. gravity sewers that are 750mm diameter or greater and associated assets (including ventilation systems, etc);
 - ii. sewerage treatment plants and associated assets;
 - iii. treated effluent outfalls and associated assets; or
 - iv. any other infrastructure the **Sewerage Utility** deems to be headwork assets.
- (2) “**Class 2 Infrastructure**” means the shared assets that are not Class 1 Infrastructure or Class 3 Infrastructure and which are required by a **Utility** to provide services to one or more **Customers** in connection with one or more Developments, including:
- a. for a **Water Utility**, works relating to provision of the following infrastructure:
 - i. water mains downstream of Class 2 Infrastructure and greater than 200mm diameter and associated assets
 - ii. water reservoirs and pressure management systems;
 - iii. water pumping stations and associated assets that are deployed on Class 1 Infrastructure and Class 2 Infrastructure pipe assets or feeding from Class 3 Infrastructure to a water reservoir in another pressure zone;
 - iv. any other infrastructure the **Water Utility** deems to be shared assets;
 - b. for a **Sewerage Utility**, works relating to provision of the following infrastructure:
 - i. sewers that are between 300mm diameter and 750mm diameter and associated assets (including ventilation systems, etc);
 - ii. sewage pumping stations and associated assets;

- iii. emergency storage and flow attenuation tanks and associated assets;
 - iv. any other infrastructure the **Sewerage Utility** deems to be shared assets.
- (3) "**Class 3 Infrastructure**" means the reticulation assets required by a **Water Utility** or a **Sewerage Utility** to connect a **Customer** to water and sewerage services including:
- a. for a **Water Utility**, works relating to provision of the following infrastructure:
 - i. water mains that are 200mm or less in diameter;
 - ii. water pumping stations and associated assets that do not meet the Class 2 Infrastructure definition;
 - iii. pressure reducing assets on the Water Utility's Class 3 Infrastructure;
 - iv. onsite assets including water tanks and associated assets; or
 - v. any other infrastructure the **Water Utility** deems to be reticulation assets; or
 - b. for a **Sewerage Utility**, works relating to provision of the following infrastructure:
 - i. sewers that are less than 300mm in diameter;
 - ii. onsite assets including sewage storage capacity and internal sewage pumping stations; or
 - iii. any other infrastructure the **Sewerage Utility** deems to be reticulation assets.