

**PLANNING PANELS VICTORIA
IN THE MATTER OF AMENDMENT C145
TO THE MACEDON RANGES PLANNING SCHEME**

SUBMISSION ON BEHALF OF COLIBAN WATER

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INTRODUCTION

1. This submission is made on behalf of the Coliban Region Water Corporation, trading as Coliban Water (**Coliban Water**).
2. Coliban Region Water Authority was established on 1 July 1992 under the *Water Act 1989* as a Regional Urban Water Authority. The Authority became the Coliban Region Water Corporation on 1 July 2007 and operates as Coliban Water.
3. This submission is divided into parts. Part A provides an overview of the submission. Part B provides a background of amendment c145macr (**Amendment**). Part C provides Coliban Water's submissions on each of the proposed Schedules. At Annexure A, Coliban Water provides comment regarding issues raised in the public submissions.
4. Coliban Water, as the initiator of the Amendment, is strongly supportive of the Amendment.

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PART A: OVERVIEW

5. In these submissions Coliban Water will outline its support for the Amendment. The Amendment represents the culmination of a process that seeks to implement concepts from the Upper Coliban Integrated Catchment Management Plan 2019 (**ICMP**), a joint initiative of Coliban Water and North Central Catchment Management Authority (**NCCMA**).
6. The objective is to protect and improve water quality within relevant catchments from which water is sourced for supply to the residents of the towns and cities for which Coliban Water is primarily responsible, numbering some 130,000 people.
7. The protection of water quality within catchments is of significant public importance and recognition, as is clear from the seminal decisions and judgments in the Rozen litigation¹, which broadly apply the environmental precautionary principle to the consideration of the developments that were the subject of that litigation in the context of government policy at the time in regard to protection of open potable water supply catchments from the cumulative impacts of the use of septic tanks within open potable water supply catchments.
8. The Amendment seeks two principal outcomes. The first of those is in relation to the environmental benefits associated with improvements in catchment management and the second is to remove from the planning referral trigger unnecessary requirements currently in Environmental Significance Overlay Schedule 4 (**ESO4**) that require a referral in circumstances in which the relevant water authority has no interest.
9. The Amendment was placed on public notice as outlined in the Planning Authority's Part A submission. ~12,000 letters providing notice of the Amendment were sent to members of the community. 16 submissions were received. Of those, 3 were in support, and 13 objected. Accordingly, of the total number of letters sent, the level of objection was just 0.11%: this Amendment, we can deduce, enjoys very considerable community support.
10. In regard to those who objected, the chief concern seems to stem from a perceived concern around additional regulatory burden, upon particular farmers. With all due respect, it likely such concern arises from a misunderstanding as to the operation of the control.
11. In fact, the control *reduces* the regulatory burden because it reduces the circumstances in which referral is required currently under ESO4.
12. Coliban Water has no interest in receiving referrals currently required by ESO4 in circumstances in which those referrals do not affect its interests from a water quality perspective. It is estimated that presently approximately 30% of its referrals fall into this category. Accordingly, if the Amendment is approved, it is likely to result in a 30% reduction in referrals. This has benefits to Coliban Water in terms of the efficient administration of its limited resources, and one assumes, that from the perspective of submitter concern around regulatory burden, this would also be beneficial.
13. One of the principal concerns held by some of the submitters centred upon requirements for fencing, whereby under the originally exhibited planning scheme amendment fences proposed in the vicinity of waterways triggered a permit requirement and referral. In response to that

¹ *Rozen v Macedon Ranges SC* (includes Summary) (Red Dot) [2009] VCAT 2746; *Rozen v Macedon Ranges SC* (Red Dot) [2007] VCAT 1814; *Rozen & Anor v Macedon Ranges Shire Council & Anor* [2010] VSC 583.

concern, Coliban Water supports removal of that requirement, and accordingly the proposed ESO4 no longer triggers a permit for fencing.

14. In view of these facts, those submitters who continue to have concerns regarding the Amendment are invited to specifically identify any other aspects of the Amendment that present concern and why that is the case.
15. More broadly a question which arises, in view of the proposal to reduce the level of referrals by changing permit triggers, is whether that has any deleterious effects upon the catchment from a catchment management perspective.
16. In this regard, the evidence of Mr Duncan Wallis of RMCG is central. It is Mr Wallis' opinion that the changes do not have any such negative effect. To the contrary, not only do the changes not have a negative effect, additional requirements under the proposed ESO4 will also have a beneficial effect from a catchment management perspective. Mr Wallis' key conclusions are:
 1. *From a catchment water quality perspective, Amendment C145 is meritorious.*
 2. *The Amendment will strengthen the role that planning controls play in the wider integrated planning approach.*
 3. *There is a strong justification for a water corporation seeking to control the highest-risk developments in the catchment areas of their water supply systems.*
 4. *The planning controls as proposed under C145 will establish a common and accepted tool that will help achieve protection of the Macedon Ranges part of the wider catchment from a water quality perspective.*
 5. *The specific permit controls, while they will not eliminate all risks (either from permitted or exempt activities, or indeed from current land uses) will focus the permit requirements to a 60 m wide corridor along the waterways, as well as on the higher risk uses outside that 60 m corridor.*
 6. *This will force landholders developing close to waterways and undertaking higher-risk works elsewhere to consider the implications for drinking water, which they might not normally do*
 7. *The ESO4 controls sit within the broader planning scheme requirements and do not reduce other relevant land management and vegetation controls in force elsewhere in the planning scheme and in legislation.*
 8. *Similarly, the controls complement, for example, requirements for septic tanks permits, compliance with Australian Standard AS/NZ 1547 Onsite Domestic Wastewater Management, and obligations under the Victorian Environment Protection Act such as the general environmental duty and requirements for owners and occupiers of land with an onsite wastewater management system.*
 9. *The planning controls provided through ESO4, together with broader integrated catchment planning initiatives, will provide Coliban Water (and it's 150,000 drinking water customers) with the surety that the necessary and cost-effective catchment "Barrier" initiatives are being implemented consistent with the drinking water risks and the type of water treatment processes in place.*
17. Accordingly, the Amendment implements a risk-based approach. Risk is the function of likelihood and consequences. Risk-based regulation is appropriate. The Panel will be aware of the relatively recent reforms to Victoria's environmental laws, in respect of which risk is foundational, with the introduction of the General Environmental Duty that makes clear that business have a

responsibility to reduce risk to human health and the environment. Another relevant instance of risk-based regulation Part 2 of the *Safe Drinking Water Act 2003* which requires Water Corporations to prepare and implement drinking water quality risk management plans.

18. In broad terms in regard to the Amendment, those applications which present the highest level of risk to the catchment will require referral, and the associated application requirements and decision making guidelines, seek to put in place measures to manage risk; and in regard to proposals that are of low risk, the level of regulation is accordingly reduced such that in the lowest risk categories there is not even a referral.
19. These measures are broadly developed around the most sensitive pathways to the potable water supply, being the waterways. Where development is proximate to waterways, that is one of the chief factors that presents risk and is accordingly the most heavily controlled; and conversely, if a development is distant from a waterway, for instance, risk is reduced and accordingly the level of control is also reduced.
20. Planning Panels Victoria has already recently endorsed the kind of approach now proposed under the Amendment, through its support of Amendment C80 the Hepburn Planning Scheme. A copy of the Panel Report for Hepburn C80 is **tendered**.

PART B: BACKGROUND

Coliban Water

21. Coliban Water manages, maintains and operates 35 reservoirs and water storage basins across the Coliban Water region. Coliban Water provides water and wastewater services to 49 towns across 16,500 square kilometres in North-Central Victoria.
22. As one of Victoria's 12 urban (regional) water corporations, Coliban Water is principally concerned with the protection of human health, by ensuring the supply of safe drinking water to its customers, and the cost-effective provision of water and sewerage infrastructure to its customer base.
23. The Upper Coliban catchment (**Catchment**) is in the southwest part of the Campaspe River basin on the northern slopes of the Great Dividing Range in central Victoria.
24. The Catchment covers approximately 27,750 hectares spanning two municipalities, Hepburn Shire and Macedon Ranges Shire.
25. The Catchment is a major source of drinking water, servicing approximately 130,000 people. It also provides water for irrigation, stock, commercial purposes and environmental flows. The townships of Trentham, Tylden, Drummond, Spring Hill, and Lauriston are located within the Catchment.
26. The Catchment contains the Lauriston, Malmsbury and Upper Coliban Reservoirs. The Catchment is significant in terms of its environmental and cultural values and importance to human health.
27. The organisations sharing responsible for managing the Catchment and its natural resources, are the NCCMA and Coliban Water.
28. The Catchment is within the declared Eppalock Special Water Supply Catchment (**ESWSC**) boundaries. The ESWSC was gazetted on 2 March 1966 in the Victorian Government Gazette No1 (a copy of which is **tendered**).
29. The ESO4 covers the ESWSC within the Macedon Ranges municipality. To the extent that it is in the Macedon Ranges municipality, the Catchment is also within the extent of the ESO4.

Risks to the Catchment

30. The Catchment is susceptible to pollution from both human and animal waste. Human faecal matter is a potent source of pathogens that have been known to cause harm. Risks to human health are also posed by pathogens resulting from animal faecal matter. Grazing animals pose a greater risk of contaminating water supplies with *Cryptosporidium* than humans, due to the greater numbers of the parasite contained in animal waste.
31. The main sources of contaminants in the Catchment are:
 - (a) On-site Waste Water Treatment Systems i.e. septic systems. These systems can be effective if working as designed, however, there is a high failure rate.
 - (b) Unrestricted access of livestock to water sources. Livestock contribute to both contamination of waterways and damage to the riparian environment.
32. Macedon Ranges is experiencing growth in residential development. There is a high density of unsewered dwellings existing in the Catchment. The potential for further development, including

disposal of domestic wastewater and a broad range of diffuse pollutants associated with development, will put further pressure on the resources of the Catchment.

33. All of these risks are further exacerbated by the increased extreme weather events brought on by climate change both in the form of both flooding and drought.

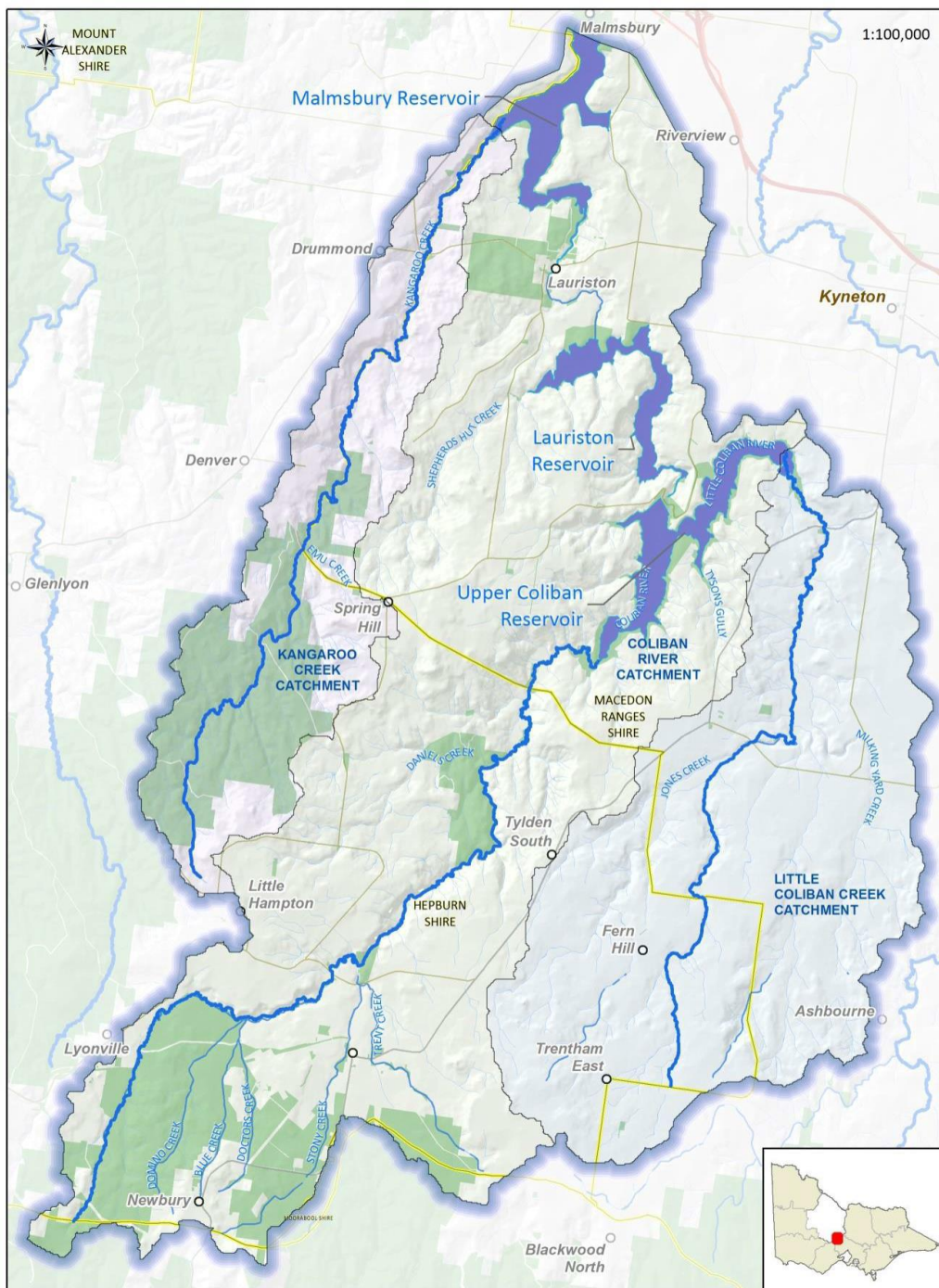


Image showing Coliban Catchments - Source: Upper Coliban Catchment Management Plan



Image showing the extent of the ESO4.

Catchment Management – An integrated approach

34. The NCCMA and Coliban Water have collaborated to achieve a coordinated approach to management of the Catchment. As part of this approach they have created the ICMP.
35. The ICMP sets out the key issues facing the Catchment and states:

Coliban Water's duty of care to its customers is the need to supply safe and secure drinking water sourced from open water supply catchments, manage associated risks and maintain sustainability of the resource. The North Central CMA is primarily focused on waterway, riparian and catchment health outcomes. The aspiration of the two organisations is a shared vision and approach to improving the catchment and waterway health over coming decades through a combination of public and private investment and community engagement.

36. The ICMP aims to protect future supplies of drinking water. It is anticipated that the ICMP will help:
 - (a) provide reliable and safe supplies of raw water for drinking water purposes;
 - (b) ensure greater sustainability of the water resource for communities throughout central and northern Victoria;

- (c) facilitate sustainable approaches to use and development within the catchment whilst avoiding detrimental impacts to natural resources and community liveability values;
 - (d) provide the local community the opportunity to develop whilst minimising the risks to natural resources;
 - (e) improve river health; and
 - (f) provide broader biodiversity outcomes for the catchment.
37. In preparation for the ICMP, NCCMA and Coliban Water commissioned research into pathogen risk in the Catchment to better understand the risks to human health from contamination in the Catchment. This research confirmed that:
- (a) a multiple barrier approach is universally recognised as foundation for ensuring safe drinking water;
 - (b) no single barrier is effective against all conceivable sources of contamination, nor are they effective 100 per cent of the time or constantly function at a maximum efficiency; and
 - (c) prevention of contamination provides greater surety than removal of contaminants by treatment, so the most effective barrier is protection of source waters to the maximum degree practicable.
38. Protecting water quality and environmental qualities of the Catchment is a multi-disciplinary approach that requires a complementary suite of on- ground actions, planning controls, community education as well as a parallel program of research and monitoring. Taking steps to address contamination risk to source waters in the first instance is the most reliable and cost effective step to protect water quality.
39. This is where the planning system can play an integral role in protecting the Catchment as part of the “multiple barrier approach” through the management of use and development of land. Although not the only measure, effective use of planning scheme provisions such as the Environmental Significance Overlay (**ESO**) and associated Schedules can assist in preventing or controlling use or development that may have detrimental effects on the Catchment.

Why the Amendment is important to Coliban Water

40. The ICMP identified that consistency in approach was required to most effectively manage and protect the Catchment. To implement this, Coliban Water have been working to revise the relevant ESO schedule to both the Hepburn Shire and Macedon Ranges Shire Planning Schemes.
41. On 10 February 2022, amendment C80hepb (**C80hepb**) was made to the Hepburn Planning Scheme. C80hepb updated Schedules 1 and 2 of the ESO in light of the ICM, to better integrate the revised Planning Policy Framework and comply with the current “*Ministerial Direction on the Form and Content of Planning Schemes*”.
42. The proposed ESO4 is similar to the updated Schedule 1 of the ESO in the Hepburn Planning Scheme. The extent of Schedule 1 includes the Catchment as it exists within the Hepburn municipality and also the majority of the remainder of the municipality, other than land covered by Schedule 2.
43. The intention of Coliban Water with the proposed ESO4 is to achieve a consistency and best practice performance when it comes to the protection of quality of water in the Catchment.

44. The ESO4 already plays an integral role for addressing water quality issues caused by development throughout the Catchment within the Macedon Ranges Municipality and the ESWSC.
45. By requiring all applications for building and works under ESO4 to be referred to the relevant Water Corporations, the Amendment will ensure a consistent approach to assessing the potential impacts of development in the entire Catchment, balancing the reasonable needs of development with the effective protection and management of the catchment.

Other Water Corporations

46. There are three types of Water Corporations in Victoria:
 - (a) Urban (metropolitan): Melbourne is served by three water retailers and a wholesaler, Melbourne Water.
 - (b) Urban (regional): 12 water corporations provide water and sewerage services in regional cities and towns across the state.
 - (c) Rural: four water corporations provide rural water services across Victoria for irrigation, stock and domestic, environmental and recreational purposes.
47. Water Corporations hold responsibilities within defined regions.
48. Throughout the extent of the ESO4 (current and proposed), Goulburn-Murray Water (**GMW**) is the relevant rural Water Corporation. Coliban Water are the relevant urban (regional) Water Corporation throughout the majority of the extent of the ESO4. Greater Western Water (**GWW**) are the urban (metropolitan) Water Corporation over a minor extent of the ESO4, in and around the town of Woodend.
49. Where the Macedon Ranges Planning Scheme requires referral of permits to Water Corporations or (the “relevant water authorities”) under Schedule to Clause 66.04, Council will refer the permit to both the relevant rural and urban Water Corporations. Accordingly, across the extent of the ESO4, Council will always refer an application to GMW and also to Coliban Water or GWW as relevant.
50. Both Water Corporations will then assess the permit application independently and will either:
 - (a) not object to the granting of the permit;
 - (b) not object if the permit is subject to conditions it specifies; or
 - (c) object to the granting of the permit.
51. As Water Corporations are determining referral authorities under the ESO4 as per Schedule to Clause 66.04, Water Corporations’ decisions are determining and must be implemented.
52. It is Coliban Water’s experience that its assessment of the permit application often aligns with the assessment of GMW.
53. When assisting to prepare the Amendment, Coliban Water collaborated with other Water Corporations. GMW and GWW have both confirmed their support for the Amendment as part 2 of submission 14; and
54. Preparation of Schedule 1 of the Hepburn ESO proceeded on the basis that a consistent control would be introduced to Macedon Ranges Planning Scheme, the proposed ESO4.

PART C: COMMENTS ON PROPOSED SCHEDULES

Coliban Water's support for the ESO4

55. Coliban Water is supportive to Council's proposed post-exhibition changes to the ESO4 subject to the further changes specified below.

Further suggested changes to the ESO4

56. A marked up version of the ESO4 with Coliban Water's suggested changes is **tendered**.
- (a) At clause 3, where the term "site cut" appears twice, Coliban Water suggests replacing the word "required" with "associated with the new building or works".
 - (b) Also at clause 3, where the term "stormwater" appears, Coliban Water suggests inserting the following phrase immediately after; "from the new building or works".
 - (c) The purpose of these changes would be to clarify that the ESO4 permit exception requires certain characteristics of the new building or works, not of other, pre-existing building or works on the relevant land.
 - (d) Coliban Water suggests rewording the third final permit exception of clause 3 as follows:
 - (e) *Construct a building, construct or carry out works, ~~construct a fence~~ the remove, destroy or lop any vegetation, or to subdivide land that is undertaken by or on behalf of a Minister, government department, public authority or municipal council*
 - (f) The purpose of these suggestions is to change certain nouns to verbs as appropriate and to remove the redundant exception for construct a fence, because the fence exemption exists in its own dot point below and because no permit is required to construct a fence under the ESO unless specified in a Schedule.
 - (g) Where "storm water" appears in clause 4, Coliban Water suggests changing to "stormwater" for internal consistency.
 - (h) Coliban Water suggests including the following additional decision guideline for reasons discussed below:
 - (i) *Whether the proposed development restores or enhances the natural environment in a way that will contribute to improving the quality and quantity of water in the catchment.*
 - (j) Coliban Water suggests removing the words "gullies" and "water supply channels" from the clause 4 decision guidelines for reasons discussed below.

Clause 1 of the ESO4

57. Clause 1 of the ESO4, the statement of environmental significance, now properly emphasises that the cumulative impacts of development in the catchment have the potential to degrade the quality and quantity of water in the Catchment and that protecting waterways from inappropriate development is essential to enhancing and protecting the health of the catchment environment, habitat, vegetation and the community.
58. The new statement of environmental significance better reflects the significance of the affected land and will assist landowners affected by ESO4 to have a better understanding of the risks associated with development in a water supply catchment.

Clause 2 of the ESO4

59. Clause 2 of the ESO4, the objective, now better identifies the outcomes to be achieved i.e. development that protects and enhances the Catchment and mitigates any detrimental impacts on water quality and quantity. The new clause 2 appropriately brings to prominence the importance of protecting and enhancing the natural resources and environmental systems of the ESWSC in addition to protecting water quality.
60. The changes in clauses 1 and 2 align the statement and objective in the ESO4, the objective in clause 14.02-1S and clause 14.02-1L.

Clause 3 of the ESO4

61. Clause 3 of the ESO4, the permit exceptions, now:
- (a) appropriately exempts permits for buildings and works that are unlikely to adversely affect the natural resources, environmental systems and quality and quantity of water of the Catchment and the ESWSC; and
 - (b) appropriately requires permits for buildings and works that are likely to adversely affect the natural resources, environmental systems and quality and quantity of water of the Catchment and the ESWSC.

62. The strategic basis for proposed ESO4 is set out in detail in the Strategic Assessment Report prepared by Tract on 28 October 2021. A copy of Strategic Assessment Report prepared by Tract on 28 October 2021 is **tendered**.

63. In addition, Coliban Water relies upon Mr Wallace's expert opinion on the merits of the new permit exemptions.

64. At Part 5.5.3 of his report, Mr Wallace states:

From a water quality perspective, the permit requirements introduce more matters to be considered which will assist in protecting water quality, including any type of additional wastewater, significant earthworks, stormwater within 100m of a waterway, disposal fields and subdivision.

From a water quality perspective, vegetation works will only need a permit if within 30 m of a waterway rather than across the whole catchment. From a water quality perspective this change seems logical, given that there are other more targeted vegetation controls in the scheme

65. At page 11 of his report, Mr Wallace states:

Coliban Water seeks to amend the existing ESO4 to improve the planning processes for all parties by:

Targeting activities that occur close to waterways, as broadly speaking, these are higher risk than those further away, but also triggering permits for higher-risk developments everywhere.

...

The proposed Clause 3: Permit requirements utilise proximity to waterways (30 m and 100 m) to trigger applications. From a catchment water quality and protection of waterways perspective this makes sense for both of the following reasons:

a. What constitutes a waterway – this will be achieved by adopting the Section 3: Water Act definition.

b. Deciding on the set-back distance – the 30 m buffer distance is consistent with Scheme Clause 14.02-1S: Catchment planning and management. One of the relevant strategies in 14.02-1S states: “Retain natural drainage corridors with vegetated buffer zones at least 30 metres wide along each side of a waterway to: i) Maintain the natural drainage function, stream habitat and wildlife corridors and landscape values, ii) Minimise erosion of stream banks and verges, and iii) Reduce polluted surface runoff from adjacent land uses.”

The new controls proposed under C145 will trigger permits for the higher-risk land use practices in open drinking water catchments.

- 66. Coliban Water estimates the new ESO4 will result in approximately 30% less referrals.
- 67. This would reduce the burden on landowners within the ESO4 associated with applying for permits for development. This will also reduce administrative burden on Council and Coliban Water in relation to having to assess as many permit applications.

Clause 4 of the ESO4

- 68. Clause 4 of the ESO4, the application requirements, now requires the information necessary for Coliban Water to adequately assess, consider and determine its referral response for permit applications under the ESO4.
- 69. Under the current ESO4, Coliban Water has found that permit applicants would on many occasions only provide a wastewater management assessment via a Land Capability Assessment which did not address the risks to catchment and waterway health from development. This would require Coliban Water to request further information from the permit applicant under section 55(2) of the *Planning and Environment Act 1987* such as the information that would now be required from the outset under clause 4 of the new ESO4. Alternatively, to address information shortfalls, Coliban Water would provide conditional consent to the permit application requiring secondary consent conditional on the provision of further information or further action.
- 70. In both cases, the absence of sufficient information at the stage of the initial referral increases the administrative burden on Coliban Water and Council and the time by which permission is eventually granted for the development. Appropriately expanding and clarifying from the outset what information is required will increase certainty and streamline the referral process. It would also assist permit applicants to make a more informed choice as to whether apply for a permit in the first instance. This would also reduce burden on the permit applicant associated with further costs and delays.
- 71. Lastly, the new application requirements, in conjunction with the statement of environmental significance and the objective will also assist permit applicants to appreciate the purpose of the overlay.

Clause 5 of the ESO4

- 72. Clause 5 of the ESO4 now better reflects the considerations necessary for Coliban Water to determine applications to achieve the outcomes identified in clauses 1 and 2 of the ESO4.
- 73. Mr Wallis suggests the inclusion of an additional decision guideline to help achieve better alignment with the Clause 2 objective. Mr Wallis suggests the following:

Whether the proposed development restores or enhances the natural environment in a way that will contribute to improving the quality and quantity of water in the catchment.

74. Coliban Water is supportive of this inclusion for the reasons set out by Mr Wallis and has included the suggested inclusion in the enclosed marked up version of the proposed ESO4.

Coliban Water's support for Schedule to Clause 66.04

75. An updated Schedule to Clause 66.04 is **tendered**.
76. Subject to the suggested changes below, Coliban Water supports the proposed changes to clause 66.04. Coliban Water considers that all applications for buildings and works that are not exempt under clause 3.0 of ESO4 pose a level of risk to water quality. Accordingly, it is appropriate that all of these applications are referred to Coliban Water for consideration.
77. Coliban Water agrees with Council's Part A submission in that the wording of Referral authority type should be changed from "Determining authority" to "Determining referral authority" as is its original form. The reason for this is that the Amendment would not alter Council's role as Responsible Authority nor Coliban Water's role as determining referral authority. Coliban Water is already the determining referral authority for permits required under clause 42.01. The reason for the proposed change is likely a clerical error that is liable to cause confusion.
78. Coliban Water also suggests reverting the wording of "authority" to "authorities" to reflect the fact that referrals under ESO4 will go to two Water Corporations as discussed above. The reason that the proposed Schedule to Clause 66.04 would change "authorities" to "authority" is also likely a clerical error.

Coliban Water's support for Schedule to Clause 72.08

79. To bring the existence of the Waterway Identification Guidelines 2022 to the attention of users of the Macedon Rangers Planning Scheme, Coliban Water suggests adding the document to Schedule to Clause 72.08 background documents. An updated Schedule to Clause 72.08 with marked up changes is **tendered**.
80. Subject to the suggested change below, Coliban Water is supportive of the proposed change to the Schedule to Clause 72.08. As per Clause 72.08, the ICMP:
- (a) informed the preparation of the Amendment;
 - (b) provides information to explain the context within which the Amendment has been framed; and
 - (c) assists the understanding of the Amendment, particularly the proposed ESO4.
81. The meaning of the term "waterway" is essential in the operation of the proposed ESO4. For this reason, the proposed ESO4 gives "waterway" the same meaning as the definition of "waterway" under section 3 of the *Water Act 1989*. Section 3 of the *Water Act 1989* provides that "waterway" means –
- a river, creek, stream or watercourse; or*
- a natural channel in which water regularly flows, whether or not the flow is continuous; or*
- a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or*
- a lake, lagoon, swamp or marsh, being—*
- a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole*

or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or

a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or

land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or

land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or

if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip.

82. Coliban Water's interpretation of this definition is guided by the Waterway Identification Guidelines 2022 released by the Department of Environment, Land, Water and Planning and signed by the then Minister of Water, the Hon. Lisa Neville MP on 28 February 2022.

83. As per Clause 72.08, the Waterway Identification Guidelines 2022:

- (a) informed the preparation of the proposed ESO4; and
- (b) would assist users of the Planning Scheme to understand the operation of the proposed ESO4.

Conclusion

84. Coliban Water strongly supports Amendment C145.

**Holding Redlich
For and on behalf of
Coliban Water**

ANNEXURE A: ISSUES RAISED IN SUBMISSIONS

Fencing

1. A number of submitters questioned the inclusion of the requirement for a permit for fencing in some circumstances. Coliban Water agrees with the removal the requirement for a permit for fencing. Coliban Water does not consider that the removal will negatively impact the health of the ESWSC. Coliban Water also agrees with the following rationale regarding fencing in Council's Part A submission:

Coliban Water revised their position and support the removal of the fencing trigger altogether. It was noted that if included, the trigger could act to impede current riparian revegetation efforts. It was considered that requiring a planning permit might discourage landowners from erecting fences to protect riparian areas due to the cost, time and uncertainty in obtaining planning approval. Council officers support Coliban Water's position to remove the permit trigger for fences from draft ESO4.

2. This change has already been effected in Council's proposed post-exhibition changes to the ESO4.

Impact on farming

3. Some submitters demonstrate concern that the Amendment would negatively impact their ability to use their land for farming. Coliban Water's intention with the Amendment is not to negatively impact those who use their land for farming. As a whole, the Amendment is unlikely to place significant additional burdens on those who use their land for farming. In fact, depending on the development in question, the Amendment is more likely to *reduce* the burden on those using their land for farming by expanding permit exemptions.
4. The ESO already imposes a requirement to obtain a permit to construct a building or construct or carry out works and to remove, destroy or lop any vegetation, including dead vegetation unless an exemption applies in the relevant schedule. The new ESO4 provides a number of exemptions to this requirement for land contained within the schedule. Generally, by expanding clause 3.0 in the proposed ESO4, the Amendment broadens permit exemptions.
5. Where ESO4 does require a permit, the development in question is likely to have potential to harm water quality and thus the burden is justified as discussed above.

The meaning of "waterways"

6. Some submitters are concerned about the potential breadth of the term "waterway". To assist submitters, Coliban Water confirms that it relies on the definition of "waterway" set out in section 3 of the *Water Act 1989* as guided by the [Waterway Identification Guidelines 2022](#) released by the Department of Environment, Land, Water and Planning and signed by the then Minister of Water, the Hon. Lisa Neville MP on 28 February 2022. As above, Coliban Water suggests that these guidelines be included as a background document to the Scheme.
7. Whether particular land constitutes a "waterway" within the meaning of section 3 of the *Water Act 1989* can only be assessed on a case-by-case basis. Short of incorporating a separate document setting out each and every waterway in the ESWSC, it is not practicable at this stage to determine each and every waterway that currently exists within the ESWSC.
8. It is Coliban Water's view that the section 3 definition and the Waterway Identification Guidelines 2022 provide sufficient clarity in addition to an appropriate breadth of the meaning of waterway in the circumstances of a special water supply catchment.

9. Notwithstanding the technicality of the section 3 definition and the Waterway Identification Guidelines 2022, it is Coliban Water's experience that common sense is typically a sound guide as to whether a waterway exists. The Amendment is not intended to greatly increase the number of waterways within the area of ESO4.
10. Some submitters express concern regarding whether the definition of waterway includes every surface runoff. Generally, the section 3 definition and the guidelines require more than surface runoff to constitute a waterway.
11. Where landowners are unsure whether a waterway, in the relevant sense, exists on their land for the purpose of the proposed ESO4, they are encouraged to contact Council or Coliban Water to confirm.

Decision guidelines referring to more than waterways

12. Submitter 6 raised a concern that the decision guidelines at Section 5 of the proposed ESO4 require the responsible authority to consider matters that are more than just "waterways". In particular the following decision guidelines are identified:
 - (a) The potential impact of the development on the quantity and quality of water in waterways, drainage lines, water supply reservoirs and springs.
 - (b) Whether the development provides buffers to and from waterways, drainage lines, gullies, property boundaries and any existing or new disposal areas or systems.
13. Submitter 6 notes that the determination of what is a 'drainage line' or 'gully' and the like is open to interpretation. Reference to the decision of the Victorian Civil and Administrative Tribunal (VCAT) in *St Leonards Property Holdings Pty Ltd V Macedon Ranges SC* [2022] VCAT 26 is provided in support of this concern. A copy of the decision in *St Leonards Property Holdings Pty Ltd V Macedon Ranges SC* [2022] VCAT 26 is **tendered**.
14. The statement of environmental significance at Clause 1 of proposed ESO4 makes specific reference to the "...protection, restoration and enhancement of all waterways (as defined by section 3 of the *Water Act 1989*) within the catchment." "Waterways" are defined in Section 3 of the *Water Act 1989* and further guidance is provided through the application of the Waterway Determination Guidelines 2022 as discussed above.
15. While there may always be some discussion of terms or meaning in a provision based on individual facts and circumstances, and especially when dealing with a natural feature, it is prudent to minimise these ambiguities as much as possible. The meaning of "gullies" is likely narrower than and within the meaning of "waterway". So is the meaning of "water supply channels". Accordingly, the submission to modify the decision guidelines to remove reference to "gullies" is generally accepted. In addition, Coliban Water suggests removing the phrase "water supply channels".
16. Other terms such as "drainage lines", "water supply reservoirs" and "springs" and "ground water" have meanings beyond "waterway" and are proposed to be retained as the terms fulfil important purposes within the proposed ESO4 to protect water health in the ESWSC.

Farm critical infrastructure

17. Submitter 3 raised a concern whether "farm critical infrastructure such as a pump/shed/slab is exempt" from requiring a permit under the proposed ESO4.
18. Section 3.0 of proposed Schedule 4 to Clause 42.01 states that a permit is not required to:

Construct a building or construct or carry out works that are located more than 30 metres from a waterway, if all of the following are met:

- The building and works do not generate any additional wastewater unless it is connected to a reticulated sewerage system,*
- Any site cut required is less than one metre in depth.*
- Any site cut required is less than 300 square metres in area.*
- No stormwater is discharged within 100 metres from a waterway unless it is discharged into the street drainage system or into a legal point of discharge.*
- The buildings and works are an extension to an existing building and the extension does not encroach on the capacity of the existing effluent disposal field.*

19. Subject to general exemptions to buildings and works at Clause 62.02 of the Scheme, this would apply to any buildings or works and would include items identified as farm critical infrastructure in the submission (provided the exemption conditions of the proposed ESO4 were not met). The importance of not impeding primary production is understood; however, there is a balance that needs to be achieved between this and the protection of the health of the catchment and its waterways. The proposed control achieves this balance by focusing only on matters that may detrimentally affect the health of the catchment which may include farm critical infrastructure if it is too close to a waterway and generates additional wastewater.

Application of requirement for permit to remove, destroy or lop vegetation in event of flood/storm debris, damage or fire risk

20. Submitters 6 and 11 raised concerns that the proposed ESO4 does not appear to provide exemptions to remove, destroy or lop vegetation in the event of flood/storm debris, damage or fire. The concern presumably relates need to clear fallen or lop existing vegetation close to a waterway and that the control may be a deterrent to the planting of native vegetation along waterways if they cannot be managed.
21. Clause 42.01-3 sets out exemptions in relation to the removal, destruction or lopping of native vegetation. These exemptions do include matters such as emergencies and bushfire protection. Vegetation that was either planted or grown as a direct seeding for crop raising or grazing animal production does not require a permit.
22. Coliban Water notes that Clause 52.17 requires planning permits for the removal, destruction or lopping native vegetation in certain circumstances. The ESO in conjunction with the proposed ESO4 regulate removal, destruction and lopping of native vegetation more strictly, as is appropriate in the ESWSC. In particular, the ESO and the proposed ESO4 require permits for removal, destruction and lopping of all native vegetation within 30 metres of a waterway, subject only to the exceptions to Clause 42.01-3. These exceptions are narrower than the exceptions contained in Clause 52.17-7 and do not contain matters such removing/destroying/lopping native vegetation by domestic stock grazing.
23. Coliban Water notes further that while the proposed ESO4 would require a permit to remove/destroy/lop native vegetation within 30 metres of a waterway, as a whole it decreases regulation of vegetation across the extent of the ESO4 compared to the current ESO4. In particular, it would no longer require a permit for removal/destruction/lopping of non-native vegetation across the ESO4 and not require a permit for removal/destruction/lopping of native vegetation outside of 30 metres of a waterway across the ESO4 (though this would be subject to Clause 52.17).

Requirement for plan to show proposed native revegetation

24. Submitter 6 raised a concern relating to the following Clause 4 application requirement:

A plan to be implemented as part of the development outlining measures to protect and enhance the natural environment of the area, including

Proposed vegetation retention and revegetation including native vegetation buffers along waterways, drainage lines and property boundaries.

25. Submitter 6 stated:

mandating of revegetation that includes native vegetation along property boundaries and drainage lines. This requirement is excessive and onerous on permit applicants

26. As noted by Mr Wallace, native vegetation works close to waterways can have implications for catchment water quality. In addition, the requirement for plans to show revegetation, rather than mere retention, is consistent with the new objective – to restore and enhance natural resources and environmental systems, rather than to protect and maintain water quality.

Overreach of environment objective to be achieved

27. Submitter 6 raised a concern that the proposed control seeks to protect more than just the 'quality of volume of water within the Eppalock catchment'. The concern is that the previous Schedule 4 to Clause 42.01 was about protecting water quality and water yield within the Eppalock Water Supply Catchment Area and that the update is an 'over-reach' of that original intent. There is a concern that this will conflict with the purpose of the Farming Zone.

28. Two of the purposes of the ESO are:

To identify areas where the development of land may be affected by environmental constraints.

To ensure that development is compatible with identified environmental values.

29. The proposed amendments to the ESO4 are based on work carried out by the North Central Catchment Management Authority and Coliban Water outlined in the ICMP. The ICMP clearly identifies that the protection of water quality in the catchment and the ecological and natural values of the catchment are interrelated and that both are necessary to protect water quality. The work undertaken to prepare the ICMP provides the strategic basis on which the updates to ESO4 are based. This includes an update to the Statement of environmental significance at Section 1 of the ESO4 to outline identified environmental values (as per the purpose of the overlay). The underlying intent of this amendment is to protect the health of the ESWSC. To do this a number of matters needed to be updated including the relationship between waterway health and the ecological health and natural value of the catchment.

Application to the entire ESO4

30. Submitter 9 raised a concern that the basis for the amendments to proposed ESO4 are based on the ICMP when the ESO applies to other catchment areas. The concern is that the specific needs of the other catchments have not been considered and that the proposed ESO4 is not appropriate for other areas.
31. The Amendment does not propose to modify the extent of the ESO4 as it currently applies. While the updates to ESO4 are based on work undertaken for the Upper Coliban Catchment the requirements are such that they are suitable for other catchment areas in the greater ESWSC. It is

noted that GMW are in support of the Amendment. Modifying the extent of the catchment to only include the Upper Coliban Catchment Area is likely to be to the detriment of the other areas.

32. In further support of this, Coliban Water refers to Mr Wallace's comment on this question:

Applying the controls across the whole of the Macedon Ranges part of the Lake Eppalock catchment area (as is proposed and is already the footprint for the ESO4) seems a logical and defensible approach. Even though Coliban Water's recent preparatory planning and research work has focussed on a subset area (being the Upper Coliban catchment within which sit the three Coliban River Storages), drinking water offtakes feeding supply channels and water treatment plants are located throughout the catchment, so applying the provisions across the whole catchment (as is proposed) makes sense. The fact that the whole of the Lake Eppalock catchment is a special water supply catchment also supports this view.

Requested clarification of first two permit exceptions of ESO4

33. Submitter 9 sought clarification of the proposed permit requirements for a number of matters.

34. Submitter 9 asked:

Do these changes capture wastes produced from new agricultural, commercial and industrial activities in unsewered areas, road making, and tourism (accommodation)?

35. A permit is required for the construction of a building or the construction or carrying out of works relating to any use unless specific conditions are met. Works are defined under Section 3 of the *Planning and Environment Act 1987* as follows: 'includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil;'

36. Submitter 9 asked:

Is "street drainage system" a reticulated street drainage system, or any drain within a street (or road)?

37. A street drainage system would be any drain within a street but could include a reticulated system.

38. Submitter 9 asked:

Is "legal point of discharge" an approved legal point of discharge, or any point someone determines?

39. A legal point of discharge is identified by a Council (for its municipal area) as a location to which stormwater from a property must be discharged.

40. Submitter 9 asked:

How (or where) is "waterway" defined?

41. Section 1 of the proposed ESO4 states that waterways are as defined in Section 3 of the *Water Act 1989*. This definition is given further guidance through the application of the *Waterway Determination Guidelines 2022* which is proposed to become a background document listed in the Schedule to Clause 72.08 as discussed above.

42. Submitter 9 stated:

There is no clarity in regard to permit requirements for outbuildings.

43. The definition of building under the *Planning and Environment Act 1987* includes outbuildings (among others). Therefore when the control says a permit is required to construct a building that includes outbuildings.

Criticism of the third permit exception of ESO4 (deletion of permit requirement for vegetation)

44. Submitter 9 raised a concern that the proposed modifications to permit requirements around the removal of vegetation except within 30m of a waterway do not appear to be consistent with the Statement of Planning Policy and other environmental protection policies. Submitter 9 states that there are few other controls over the removal of vegetation in Macedon Ranges Shire and this exemption would further limit this.
45. As discussed throughout this submission, vegetation within 30 metres of waterways is the most important to enhance and maintain. Regulation of vegetation outside of this area is less likely to protect waterways and will constitute excessive burden on landowners, Council and the relevant Water Corporations.
46. Coliban Water agrees with Council's comment in its Part A submission (which references page 75 of Council's Biodiversity Strategy (2018)):

It is noted that the ESO4 has functionally acted as an incidental trigger for planning permits for native and non-native vegetation in instances where a vegetation removal permit is exempt under 52.17. Council's Biodiversity Strategy (2018) suggested that ESO4 should only apply to vegetation removal that is likely to affect water quality and supply, and not in other instances.

47. Clause 52.17 will continue to regulate native vegetation across the Macedon Ranges municipality.

Criticism of the fifth and sixth permit exceptions of ESO4

48. Submitter 9 raised concerns that the first and sixth permit exceptions of the proposed ESO4 are too broad and that consequently, the health of the ESWSC will not be sufficiently protected. The relevant permit exceptions are as follows:

Construct a building, construct or carry out works, construct a fence the removal, destruction or lopping of any vegetation, or to subdivide land that is undertaken by or on behalf of a Minister, government department, public authority or municipal council.

Construct a building or construct or carry out of works associated with any activities conducted on public land by or on behalf of the public land manager under the relevant provisions of the Crown Land (Reserves) Act 1978, Fisheries Act 1995, Forests Act 1958, Land Act 1958, Local Government Act 1989, National Parks Act 1975, Reference Areas Act 1978, Water Act 1989 or Wildlife Act 1975.

49. Ministers, government departments, public authorities, municipal councils and public land managers all have regulatory compliances, and other constraints and oversight that make these permit requirements redundant. The application of regulation needs to weigh the benefit of the regulation against the burden that it may create. From a practical perspective the issues with the health of water in the catchment do not result from the action of these agencies. In addition, there are other mechanisms available to catchment management authorities to deal with such issues that are more appropriate when dealing with public agencies. One of the requirements set out by the Department of Transport and Planning when creating planning scheme controls is to minimise the overlap of regulations particularly when other more appropriate legislation exists.

Criticism of amended decision guidelines

50. Submitter 9 raised a concern that the proposed decision guidelines do not include reference to vegetation in recharge areas, septic tanks within 100m of a watercourse, existing degradation, the density of septic tanks in the areas, litter traps and local land care policies. The concern is that these matters have are all considered important and have been overlooked.
51. The proposed amendments to Schedule 4 to Clause 42.01 are a holistic change to the requirements of the Schedule to focus on development that directly impacts the health of the catchment and its waterways. Some of the matters listed in the current decision guidelines are no longer relevant. Others are more correctly dealt with as application requirements (geotechnical reports and environment protection plan).
52. Put another way, in the words of Mr Wallace:

the new decision guidelines do address all the significant matters contained in the old decision guidelines. The new guidelines are broad and provide coverage for the few specific omissions such as septic density, habitat and litter traps.