

**SUBMISSION IN RESPONSE TO:**

***CLEAN AIR FOR ALL VICTORIANS – VICTORIA’S AIR QUALITY STATEMENT (MAY 2018)***

- 1 Goulburn Valley Region Water Corporation (“**GVW**”) acknowledges the opportunity to make a submission in response to the *Clean Air for all Victorians – Victoria’s Air Quality Statement (May 2018)* (“**Air Quality Statement**”).
- 2 GVW’s submission has been prepared in reliance on internal expertise and external legal representation from Russell Kennedy.
- 3 GVW is a statutory corporation constituted under the *Water Act 1989* (“**Water Act**”), which is governed by a Board of Directors responsible to the Minister for Water. GVW was established in 1994 and is one of the largest Victorian water corporations. Its operations include:
  - 3.1 26 wastewater management facilities;
  - 3.2 37 water treatment plants;
  - 3.3 1,800 km of water mains and 1,300 km of sewer;servicing 53 towns extending from the northern perimeter of Metropolitan Melbourne in the south to the Murray River in the north, with a population of approximately 136,000.
- 4 GVW has responsibility for the provision of reticulated water supply (both rural supply and town water supply) and sewerage services (sewerage agreement and trade waste agreement).
- 5 Regulation of Victoria’s water corporations has increased substantially over the past decade or more, with the introduction of the Water Industry Regulatory Orders which set out a series of obligations and functions imposed on water corporations by the Minister for Water.

- 6 Water corporations are constrained in relation to their ability to charge for the services they provide. They are regulated by the Essential Services Commission (“**ESC**”). More particularly, every 5 years a water corporation must prepare a price submission (“**Price Submission**”) (previously Water Plans) which, once approved by the ESC, leads to a price determination (“**Price Determination**”) for each water corporation.
- 7 The relevant Price Submission sets out the operational requirements and capital works program, which is “paid for” through charges controlled by the Price Determination. Any adjustment in operation or capital works spend that constitutes a significant variation from the approved Price Determination must go to the ESC for approval. Such approvals are not regularly sought nor regularly given.
- 8 In May and June 2018 the ESC published its Price Determination for all Victorian water corporations. Despite Victoria accommodating substantial growth, these Price Determinations continue to provide for some of the lowest water bills across Australia driven by substantive work by the Minister for Water and the State Government with Victorian water corporations.
- 9 On 19 June 2018, the ESC published its Price Determination for GVW. The ESC approved the prices submitted in the GVW Price Submission. The price reduction for GVW is the largest in the state, with the highest return on equity. The price changes will come into effect on 1 July 2018.
- 10 A critical aspect to maintaining low water and sewerage charges is the identification, recognition and protection of infrastructure ensuring that the entire life of that infrastructure may be realised, and maintenance and expansion capital and operational costs are proportionate and minimised.
- 11 The most significant threat to capital and operational costs for the GVW and Victorian water corporations is encroachment by incompatible land development and use, leading to

substantial constraints in the continued operation and expansion of infrastructure for water supply and wastewater management. The core aspect to incompatibility and land use conflict is the emission of odour from wastewater management facilities impacting beneficial uses of 'local amenity' and 'aesthetic enjoyment'. Other aspects and considerations such as noise emissions, flooding, traffic and spray drift are relevant, however, the dominant impact on the local communities arises from odour.

- 12 Victoria's Air Quality Statement sets the objective of protecting human health (respiratory failure and premature illness/death) and the environment (impaired plant growth and acidification of soils).
- 13 Victoria's Air Quality Statement references and relies on:
  - 13.1 the scientific report titled 'Future Air Quality in Victoria – Final Report' publication 1535 dated July 2013 published by the Environment Protection Authority ("**EPA**") ("**Air Quality Report**");
  - 13.2 the Victorian Auditor-General's Office report titled 'Improving Victoria's Air Quality' dated March 2018 ("**VAGO Report**");
  - 13.3 the report titled 'Andrews Labour Government's response to the independent inquiry into the Environment Protection Authority' dated January 2017 ("**Government Response to EPA Inquiry**").
- 14 It is important that the objective of the Air Quality Statement and protecting human health and the environment is not addressed by a strategy broadened to address odour impact on beneficial uses of aesthetic enjoyment and local amenity.

- 15 The Air Quality Report specifically excludes odour and nuisance dust for this purpose.<sup>1</sup> GVW cautions against strategies and programs implemented with the best intentions addressing odour impact on beneficial uses of local amenity and aesthetic enjoyment in the context of the Air Quality Statement without proper consideration and evaluation of the consequences for the Victorian water corporations in delivering essential services of sewerage.
- 16 GVW and other Victorian water corporations together with the State Government have continued to invest significant resources into developing and implementing planning controls across Victoria which identify, recognise and protect water treatment and wastewater management infrastructure from encroachment of incompatible land development and use.
- 17 Similar initiatives are being led by the Metropolitan Waste and Resource Recovery Group and Regional Waste Management Groups together with the State Government in relation to landfills, transfer stations and resource recovery infrastructure.
- 18 Government initiatives include those identified in the Government Response to the EPA Inquiry, providing a pilot for local government environment protection officers to prioritise responding to issues such as noise, odour and dust in the context of local amenity and health.<sup>2</sup>
- 19 In this context, there is potential for blurring of the existing legislative distinction, where odour is addressed for potential impact on beneficial uses of local amenity and aesthetic enjoyment as well as protection of human health and the environment.
- 20 GVW cautions against this merger and maintains that the existing distinction in the legislative framework is important and must be maintained.
- 21 Proper construction of the legislative framework in Victoria requires a purposive interpretation that is informed by, and consistent with, the purpose of that legislation.

---

<sup>1</sup> Air Quality Report, pg 38

<sup>2</sup> Government Response to EPA Inquiry, pg 7

- 22 The purpose of the legislation and its context must be considered in the first instance.
- 23 The purpose of the *Environment Protection Act 1970 (Vic)* (“**EP Act**”) is to create a legislative framework for the protection of the environment having regard to the principles of environment protection.<sup>3</sup> Section 1A(3) of the EP Act provides that it is the intention of Parliament that in the administration of the EP Act regard should be given to the environment protection principles.
- 24 The principles of environment protection are laid out at ss 1B-1L of the EP Act. The environment protection principles include the integration of the economic, social and environmental considerations, such that measures adopted should be cost effective and in proportion to the significance of the environmental problems being addressed.<sup>4</sup>
- 25 Further, the environment protection principles include integrated environmental management, such that if approaches to managing environmental impacts on one segment of the environment also have potential impacts on another segment of the environment, then the best practicable environmental outcome should be sought.<sup>5</sup>
- 26 Sections 40 and 41 of the EP Act require that emissions of waste into the atmosphere must comply with the state environment protection policies and provides an indictable offence for pollution of atmosphere whereby the condition of the atmosphere is so changed as to make or be reasonably expected to make the atmosphere detrimental to any beneficial use made of the atmosphere.
- 27 The State Environment Protection Policy (Ambient Air Quality) (“**Ambient Air Quality Policy**”) and the State Environment Protection Policy (Air Quality Management) (“**Air Quality Management Policy**”) are the relevant state environment protection policies declared under section 16 of the EP Act.

---

<sup>3</sup> EP Act, s1A(1)

<sup>4</sup> EP Act, s1B

<sup>5</sup> EP Act, s1J

- 28 The Ambient Air Quality Policy prescribes the air quality objectives in Victoria,<sup>6</sup> which are adopted in the Air Quality Management Policy.<sup>7</sup>
- 29 The Air Quality Management Policy sets out the methodology to assess air quality impact, including plume dispersion modelling and, where design criteria (ground level concentrations) are not met, a health risk assessment.
- 30 No air quality objective is prescribed in Victoria for odour.
- 31 Odour is an unclassified air quality indicator for the beneficial uses of local amenity and aesthetic enjoyment.<sup>8</sup> The method for assessing any impact on the beneficial use (local amenity) is prescribed in the Air Quality Management Policy.
- 32 Air quality indicators are used to determine if the beneficial use is protected.
- 33 Design criteria of odour is established at 1 odour unit at and beyond the boundary of the premises.<sup>9</sup>
- 34 The design criteria for general odour are to be used in the assessment of the design of new or expanded sources of odour emissions, in conjunction with modelling procedures outlined in Schedule C of the Air Quality Management Policy.<sup>10</sup>
- 35 Design criteria for modelling general odour are distinct from air quality objectives and air quality indicators for general odour.
- 36 Where design criteria for general odour in assessing the air quality indicator for beneficial uses of local amenity and aesthetic enjoyment cannot be met, a health risk assessment may be carried out.<sup>11</sup>

---

<sup>6</sup> Ambient Air Quality Policy, cl9(2) and Schedule 2 (Table 1, columns 2 and 4)

<sup>7</sup> Air Quality Management Policy, cl11

<sup>8</sup> Air Quality Management Policy, cl10(1)(d)

<sup>9</sup> Air Quality Management Policy, cl10(4); Schedule A and Note 8; Schedule C, Part C, cl2(c)

<sup>10</sup> Air Quality Management Policy, Schedule A

- 37 The purpose of the modelling and risk assessment is to consider if there will be adverse impacts on beneficial uses of local amenity and aesthetic enjoyment.
- 38 It is in this legislative context that GVW and all other Victorian water corporations and scheduled industries are regulated and required to comply when applying for statutory approvals for modified or expanded facilities and further, in terms of operational controls imposed by licence conditions under the EP Act.
- 39 Licence condition LI\_A1 of licence 73862 issued to GVW on 2 October 2007, last amended on 7 December 2017, requires:
- “You must ensure that odours offensive to the senses of human beings are not discharged, emitted or released beyond the boundaries of the premises.”*
- 40 This licence condition applies to all scheduled wastewater management facilities owned and operated by GVW and to the majority of wastewater treatment facilities operated by Victorian water corporations.
- 41 Contravention of this licence condition is an indictable offence.<sup>12</sup>
- 42 A statutory defence applies where the licence holder did not discharge or emit odour offensive to the senses of human beings in a residential area or a public open space adjacent to a residential area.<sup>13</sup>
- 43 This important distinction of beneficial uses for the air environment, having regard to the surrounding land use, informs the assessment of impact under the Air Quality Management Policy by risk assessment (is there is a loss of local amenity?).

---

<sup>11</sup> Air Quality Management Policy, Schedule C, Part C, cl2(d)

<sup>12</sup> EP Act, s27(2)

<sup>13</sup> EP Act, s30(1), (2), (2A) and (2B)

44 The beneficial use of local amenity of the ambient air environment in proximity to a wastewater management facility must take into account the surrounding land use – typically rural land use impacted by odour from the wastewater management facility.

45 A higher odour level is permissible when considering the amenity of the local area and the planning controls and permissible land use of that area (whereby higher odour emissions are allowed in rural and industrial areas).

46 The legislative framework recognises that the beneficial uses of the ambient air environment for local amenity and aesthetic enjoyment will be impacted by proximity to wastewater management facilities. The framework acknowledges that this is a permissible outcome, having regard to the environment protection principles and the balancing required by the State Government in providing essential services (water and sewerage) at the lowest cost possible for the benefit of the Victorian community.

47 The intent of the Air Quality Management Policy is informative in this context. It states:

*“Emissions to the air environment will be managed so that the beneficial uses of the air environment are protected, ... our air quality continues to improve ... having regard to the State’s social and economic development.*

...

*Proposals for new or substantially modified industrial sources of emissions will be designed to minimise their operational impact ...”<sup>14</sup>*

48 It is erroneous to assimilate air quality indicators and design criteria with mandatory standards that must be achieved at the boundary of a premises for wastewater management facilities and water treatment plants.

---

<sup>14</sup> Air Quality Management Policy, cl8



- 49 The intent of the Air Quality Management Policy identifies protection of beneficial uses. Air quality indicators and design criteria are not beneficial uses of the ambient air environment and serve a fundamentally different purpose in the assessment of odour impact.
- 50 The VAGO Report identifies the EPA's five year plan for review of licences, including at year 4 (2018-19), to review air related conditions (being air discharges, odour risks and fire risk).<sup>15</sup>
- 51 The concern of licensees under-reporting contraventions of the licence (in particular contraventions of condition LI\_A1,) or not reporting at all, is identified with the Offices for the Protection of Local Environment Pilot Program, as a State Government Initiative in response to this concern.<sup>16</sup>
- 52 The VAGO Audit Report identifies that the monitoring program at the boundary of premises needs to be improved to protect the Victorian community from unlawful air discharges from licensees. The Victorian Auditor General's Office recommends that the EPA needs to consider how it could obtain and validate information on licensees air discharges as well as air quality data at and around the boundaries of the licensee.<sup>17</sup>
- 53 GVW is committed to complying with its licence and condition LI\_A1 at all of its wastewater management facilities.
- 54 GVW invests significant resources in fostering relationships with surrounding landowners, including by agreements concerning recycled water supply and stabilised biosolids for land application.
- 55 The legislative framework in which the licence and condition LI\_A1 is imposed must be properly understood in the setting of each facility, including surrounding land uses. This context is derived from the legislative framework, and the assessment of odour impact on

---

<sup>15</sup> VAGO Report, pg 56

<sup>16</sup> Government Response to EPA Inquiry, pg7; VAGO Report, pg 60

<sup>17</sup> VAGO Report, pgs 60-61

beneficial uses of local amenity and aesthetic enjoyment is critical, and influences the EPA's decision on enforcement of the licence and the legislation. This proper construction of the legislative framework, and the distinction between odour impacts on beneficial uses of local amenity and aesthetic enjoyment as compared to impacts on human health or the environment, must be maintained in this context to avoid the potential risk of programs and initiatives seeking to impose standards of no offensive odour at the boundary of a premises, particularly for wastewater management facilities.

56 If programs and initiatives adopt this higher standard, the capital and operational costs imposed on GVW and every other water corporation in Victoria would be fundamentally disproportionate to the significance of the environmental problem sought to be addressed, and would be inconsistent with the environment protection principles.

57 **It is GVW's core submission that this distinction be maintained in the Air Quality Statement and the development of the air quality strategy for Victoria.**

58 This distinction is supported in consideration of the substantive changes implemented by the *Environmental Protection Amendment Bill 2018* introducing the purpose of protecting human health and the environment.

59 GVW request the opportunity to participate in the Clean Air Summit scheduled for August 2018.

60 Thank you for your assistance and consideration of this submission.

61 Please contact Alan Tyson, Manager-Planning, Sustainability & Environment, Goulburn Valley Water or Stefan Fiedler, Principal, Russell Kennedy Lawyers

DATED:

---

Russell Kennedy  
Level 12  
469 La Trobe Street  
Melbourne Victoria 3000  
Tel 03 9609 1555  
Ref - SHF 113975-02386

---