

Bulk Sewage Transfer, Treatment and Disposal Agreement

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South East Water Limited

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BULK SEWAGE TRANSFER, TREATMENT AND DISPOSAL AGREEMENT

DATE

PARTIES

Melbourne Water Corporation ("MW")

South East Water Limited ACN 066 902 547 ("SEWL")

RECITALS

- A. Under the *Melbourne and Metropolitan Board of Works Act 1958*, MW has power to receive, transfer and treat sewage within the metropolis and to dispose of effluent and sludge resulting from sewage treatment, in accordance with licences issued under the *Environment Protection Act 1970*.
- B. SEWL, as a water and sewerage licensee under the *Water Industry Act 1994*, has the function of providing, managing and operating systems for conveying and disposing of sewage within the area of its Licence.
- C. MW has previously agreed to receive, transfer, treat and dispose of sewage delivered to it by SEWL, under an agreement dated 30 December 1994.
- D. The parties wish to enter into a new agreement, in place of the former agreement, on the terms set out in this document.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this agreement.

"**Emergency Response Plan**" means an Emergency Response Plan referred to in paragraph 12.2(a).

"**former agreement**" means the agreement referred to in Recital C.

"**Hydraulic Information Point**" means an Hydraulic Information Point designated in Schedule 1.

"**Interface Point**" means a point specified as an Interface Point between MW and SEWL assets in the Sewerage Asset Interface Register held by the Office of the Regulator-General.

"**Licence**" means a water and sewerage licence granted under the *Water Industry Act 1994*, with respect to part of the metropolis as determined under section 3(1) of the *Melbourne and Metropolitan Board of Works Act 1958*.

"**Licensee**" means a person who holds a Licence.

"**Plant Capacity Statement**" means a Plant Capacity Statement referred to in sub-clause 17.3.

"**sewage**" includes trade waste.

"**Sewage Treatment Plant**" means Melbourne Water's Eastern Treatment Plant and Western Treatment Plant.

"**Sewerage Service**" means an obligation imposed on MW by clause 3.

"**SEWL's Sewage Quality Management System**" means the Sewage Quality Management System referred to in sub-clause 11.1.

"**trade waste**" has the meaning prescribed by regulation 401 of the Water Industry Regulations 1995.

"**trade waste agreement**" includes trade waste consent.

"**Standards for Trade Waste**" mean the Standards for Trade Waste set out in the Licence.

"**waste discharge licence**" means a waste discharge licence granted to MW under the *Environment Protection Act 1970* with respect to a Sewage Treatment Plant.

1.2 Rules for interpreting this agreement

Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.

- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A party may give a notice or report under this agreement in written or electronic form.

2. **TERM OF AGREEMENT**

- 2.1 This agreement commences on the date of this agreement.
- 2.2 This agreement may be terminated in accordance with clause 33.
- 2.3 The parties agree to terminate the agreement referred to in Recital C in accordance with paragraph 23.5(a) of that agreement on the date determined under sub-clause 2.1.

RIGHTS AND OBLIGATIONS OF MELBOURNE WATER

3. **TO PROVIDE SEWERAGE SERVICES AND SELL TREATED EFFLUENT**

- 3.1 MW must, in accordance with and subject to this agreement:
 - (a) receive all sewage delivered by SEWL to an Interface Point in accordance with SEWL's Licence; and
 - (b) transfer that sewage for treatment at a Sewage Treatment Plant; and
 - (c) treat that sewage; and
 - (d) dispose of all sludge and effluent resulting from treatment of that sewage; and
 - (e) dispose of effluent provided to MW by SEWL, resulting from treatment of sewage by SEWL at the Mornington, Hastings and Rosebud Sewage Treatment Plants.
- 3.2 MW may, at its discretion, recycle, re-use and supply treated sewage effluent.

4. **TO RECOVER CHARGES**

MW may recover from SEWL any charges or interest due to MW under clauses 21-25.

RIGHTS AND OBLIGATIONS OF SEWL

5. TO DELIVER SEWAGE

SEWL may, in accordance with this agreement, deliver to MW:

- (a) sewage collected by SEWL pursuant to its Licence, at the Interface Points; and
- (b) effluent resulting from treatment of any such sewage by SEWL, in accordance with Schedule 7.

6. TO PAY CHARGES

SEWL must pay to MW charges and interest determined, calculated and invoiced in accordance with clauses 21-25.

JOINT OBLIGATIONS

7. TO CO-OPERATE AND LIAISE

7.1 General Obligation

Each party must co-operate and liaise fully with the other to ensure that this agreement is implemented effectively.

7.2 Examples of Obligation

For example, the parties must co-operate and liaise fully:

- (a) to agree upon and adopt any protocol referred to in sub-clauses 8.2, 11.5, 13.4, 15.2 and 20.1; and
- (b) to resolve any difficulties which may arise in implementing this agreement because of any legal or regulatory right or obligation of a party which may conflict with a provision of this agreement; and
- (c) to allow each party to comply with its statutory and contractual rights or obligations to other persons; and
- (d) to reduce unacceptable risks to persons, equipment, sewage treatment processes or the environment which may arise in delivering, receiving, transferring, treating and disposing of trade waste under this agreement; and
- (e) to agree on policies to be pursued by SEWL when negotiating trade waste agreements which minimise the difficulties and risks referred to in paragraphs (b) and (d); and

- (f) to review any Standards for Trade Waste adopted by SEWL, whenever the Environment Protection Authority makes material alterations to any waste discharge licence; and
- (g) to review and, if necessary, to amend SEWL's Sewage Quality Management System in accordance with sub-clause 11.8; and
- (h) to undertake co-operative planning as required by clause 15; and
- (i) to make any joint approach referred to in sub-clause 15.4; and
- (j) to adopt the Three Year Capital Works Program referred to in sub-clause 19.1; and
- (k) to review and, if necessary, to amend this agreement in accordance with clause 32.

7.3 Proposed Variations to Licence

- (a) If, in any year, SEWL becomes aware of any proposal to amend SEWL's Licence (including any provision of the Customer Contract referred to in section 19 of the *Water Industry Act 1994* or of the Standards for Trade Waste) SEWL must promptly consult MW about any proposed variation which SEWL considers will, or is likely to have a material impact on MW, before SEWL agrees to the variation under section 14(1)(b) of that Act.
- (b) If MW reasonably concludes that the proposed variation would:
 - (i) substantially and materially alter MW's rights and obligations under this agreement; or
 - (ii) create a substantial risk that MW will be unable to comply with a waste discharge licence for either Sewage Treatment Plant,

SEWL must:

- (iii) advise the Office of the Regulator-General of MW's concerns; and
- (iv) include any written report by MW setting out its conclusions under paragraph (b) in any representation which SEWL is given an opportunity to make under section 14(2)(b) of that Act; and
- (v) take every other reasonable step in the circumstances to assist MW to resolve its concerns.

7.4 Proposed Variations to Waste Discharge Licence

- (a) If at any time the Environment Protection Authority proposes to MW any amendment to a waste discharge licence issued to MW with respect to a Sewage Treatment Plant, MW must promptly consult with SEWL about the proposed amendment.
- (b) If SEWL reasonably concludes that the proposed amendment would:
 - (i) substantially and materially alter SEWL's rights and obligations under this agreement; or
 - (ii) create a substantial risk that SEWL will be unable to comply with its obligations both to its trade waste customers and to MW,MW must:
 - (iii) advise the Environment Protection Authority of SEWL's concerns; and
 - (iv) take every other reasonable step in the circumstances to assist SEWL to resolve its concerns.

7.5 Activities which may contravene a waste discharge licence

- (a) Subject to paragraph (b), SEWL will use its best endeavours at all times to avoid any act or omission which might cause MW not to comply with a waste discharge licence.
- (b) Paragraph (a) does not require SEWL to act in a way which contravenes its Licence or any law.
- (c) If the parties agree that there is a conflict between SEWL's rights or obligations under its Licence and the requirements of a waste discharge licence, the parties must use their best endeavours to resolve that conflict pursuant to sub-clause 7.3, 7.4 or 15.4.

8. TO COMPLY WITH LAWS AND AGREED PROTOCOLS

8.1 Each party:

- (a) must comply with all laws relevant to the subject matter of this agreement; and
- (b) expects to comply with its respective obligations under the Licence and a waste discharge licence, by diligently performing its obligations under this agreement.

8.2 The parties may from time to time, through their Principal Representatives, agree upon and adopt a written protocol for the performance by either or both parties of any obligation under this agreement.

- 8.3 A protocol adopted under sub-clause 8.2:
- (a) may be amended or terminated in writing signed by the parties; and
 - (b) takes effect as if it were part of this agreement; and
 - (c) may include, as a party, any other Licensee; and
 - (d) must be included in this agreement as part of Schedule 8 – Protocols.
- 8.4 This agreement prevails over any protocol adopted under sub-clause 8.2, to the extent of any inconsistency between them.

IMPLEMENTATION

9. PERFORMANCE STANDARDS FOR HYDRAULIC SERVICES

9.1 General Obligation

MW must receive sewage delivered by SEWL and transfer it for treatment by MW in accordance with this clause.

9.2 In Dry Weather

- (a) This sub-clause applies whenever no rainfall has been recorded in the preceding 48 hours for the relevant catchment area.
- (b) MW must accept the estimated flows of sewage specified in Schedule 1, without exceeding the normal operating capacity of either MW's or SEWL's sewerage system.

9.3 In Wet Weather

- (a) This sub-clause applies whenever rain has fallen in the preceding 48 hours in the relevant catchment area.
- (b) Subject to paragraph (c), MW must accept the estimated flows of sewage resulting from rain equal to or less than a 1-in-5 year average occurrence as specified in Schedule 1, without allowing any sewer belonging to MW or SEWL to overflow.
- (c) The parties acknowledge that sewers belonging to either party may overflow:
 - (i) if they are connected to an Hydraulic Information Point designated in Schedule 1 as requiring work to be undertaken before MW will be able to comply with this sub-clause;
 - (ii) until the parties have co-operatively planned and implemented that work, pursuant to clauses 15, 16 and 18.

- (d) Each party must take all reasonable care to operate its sewers in a way which:
 - (i) protects the sewerage assets of both parties; and
 - (ii) minimises overflows referred to in paragraph (c).

9.4 In Extremely Wet Weather

- (a) This sub-clause applies whenever rainfall greater than a 1-in-5 year average occurrence has fallen in the preceding 48 hours in the relevant catchment area.
- (b) MW must accept at the Interface Point such flow as MW's sewer is capable of receiving in those circumstances.
- (c) The parties acknowledge that sewers belonging to either or both of MW and SEWL may overflow.
- (d) Each party must take all reasonable care to operate its sewers in a way which:
 - (i) protects the sewerage assets of both parties;
 - (ii) minimises overflows wherever possible; and
 - (iii) minimises customer and environmental impacts.

9.5 When Performance Standards are not met

Sub-clause 18.1 applies whenever MW has not accepted sewage in accordance with sub-clause 9.1, 9.2 or 9.3.

9.6 Consequential Obligations

Whenever a party is required to undertake work because of the operation of sub-clause 9.5, both parties must co-operate to minimise the occasions upon which and the extent to which either:

- (a) the flow exceeds the normal operating capacity of MW's sewer; or
- (b) overflows occur,

until the work is completed.

9.7 Power to revise standards

The parties may (through their Principal Representatives) from time to time agree in writing to alter any requirement of Schedule 1 and the Schedule is deemed to be amended accordingly.

10. PERFORMANCE STANDARDS FOR TREATING POLLUTANTS

10.1 General Obligation

MW must treat and dispose of sewage received from SEWL in accordance with this clause.

10.2 Categories of Pollutants

The parties acknowledge that sewage transferred to MW under this agreement will contain potential pollutants which:

- (a) the Sewage Treatment Plants are designed to treat; and
- (b) the Sewage Treatment Plants are not designed to treat, including the critical pollutants specified in Part A and Part B of Schedule 3.

10.3 Pollutants which the Sewage Treatment Plants are designed to treat

MW must receive, transfer, treat and dispose of Biochemical Oxygen Demand, Suspended Solids and Total Kjeldahl Nitrogen loads contained in sewage delivered by SEWL. The current estimated levels of each such load are set out in Schedule 2.

10.4 Other Pollutants, including Critical Pollutants

- (a) MW must receive, transfer, treat and dispose of sewage delivered by SEWL containing pollutants referred to in paragraph 10.2(b), including any critical pollutant referred to in Schedule 3, only in accordance with and subject to, the other terms of this agreement.
- (b) Paragraph (a) does not require MW to receive, transfer, treat or dispose of any sewage containing pollutants that would, or are reasonably likely to:
 - (i) endanger human life; or
 - (ii) compromise the safety of any person, or
 - (iii) compromise the works of MW or any Licensee; or
 - (iv) significantly adversely affect the operation of a Sewage Treatment Plant or any part of the environment.

10.5 Consequential action

- (a) Sub-clause 18.1 applies whenever sewage transferred to a Sewage Treatment Plant contains either Biochemical Oxygen Demand, Suspended Solids or Total Kjeldahl Nitrogen at a mass load referred to in paragraph 17.4(b).
- (b) Paragraph 17.5(b) applies whenever MW is unable to accept sewage at a Sewage Treatment Plant because of paragraph 10.4(b).

10.6 Power to revise standards

- (a) The parties may (through their Principal Representatives) from time to time, agree in writing to alter any requirement of Schedule 2 and the Schedule is deemed to be amended accordingly.
- (b) The parties:
 - (i) must, within two months after the date on which this agreement commences, review; and
 - (ii) may agree in writing to make any changes to, Schedule 3 and the Schedule is deemed to be amended accordingly.
- (c) Either party may, at any time, propose an addition to, or deletion from, the list of critical pollutants in Schedule 3 for the purpose either or both of:
 - (i) sub-clause 17.5; and
 - (ii) sub-paragraph 11.5(a)(i); and
 - (iii) sub-clause 11.6.
- (d) The parties must consult about the reasons for proposing any change referred to in paragraph (c).
- (e) The parties and each other Licensee which may be affected by a proposal, may agree on any proposal made under paragraph (c).
- (f) If the parties and each other Licensee which may be affected by a proposed change do not agree on that change, they must:
 - (i) promptly jointly appoint an independent technical expert to consider, report upon and make any recommendations with respect to, the proposed change; and
 - (ii) meet the costs of the independent technical expert in equal shares.
- (g) MW must:
 - (i) consider any recommendations made under sub-paragraph (f)(i) before deciding whether any change should be made to Part A of Schedule 3, for the purposes of sub-clause 17.5; and
 - (ii) if it decides not to accept any recommendation made under sub-paragraph (f)(i), give SEWL notice of that recommendation and MW's reasons for not accepting it.

- (h) If SEWL does not agree with MW's decision under paragraph (g), the matter must be determined in accordance with clause 30.
- (i) The parties must adopt any recommendation made under sub-paragraph (f)(i) for the purposes of sub-paragraph 11.5(a)(i) and sub-clause 11.6.
- (j) Schedule 3 is deemed to be amended in accordance with:
 - (i) MW's decision under paragraph (g), if SEWL agrees with it; or
 - (ii) any resolution or determination of the matter under paragraph (h); and
 - (iii) any recommendation adopted pursuant to paragraph (i).

11. SEWL'S SEWAGE QUALITY MANAGEMENT SYSTEM

11.1 Obligation to Operate a Sewage Quality Management System

SEWL must :

- (a) develop and operate a Sewage Quality Management System which complies with the requirements of Schedule 4; and
- (b) review and revise that System in accordance with sub-clause 11.7 and 11.8.

11.2 Purpose of SEWL's Sewage Quality Management system

The primary purpose of SEWL's Sewage Quality Management System is to manage any risk that sewage (including trade waste) delivered, received, transferred, treated or disposed of under this agreement may cause MW or SEWL not to comply with any statutory obligation imposed on it relating to public health or environmental protection by or under the *Environment Protection Act 1970* or any other Act.

11.3 Respective obligations concerning trade waste.

- (a) SEWL must only deliver trade waste to MW which SEWL receives:
 - (i) in accordance with a trade waste agreement, which either:
 - (A) is in existence when this agreement commences; or
 - (B) in the case of any new trade waste agreement, within the meaning of paragraph 11.5(h), complies with sub-clause 11.5; or
 - (C) complies with the Standards for Trade Waste; or
 - (D) does not comply with the Standards for Trade Waste, but the trade waste agreement is Risk Ranked 4 or 5 under item 2.3 of Schedule 4; or

- (ii) in breach of a trade waste agreement, where SEWL complies with sub-clause 11.4 and 11.6; or
 - (iii) into its sewers in contravention of section 93(b) of the *Water Industry Act 1994*, of which SEWL is unaware at the time it is discharged.
- (b) Subject to paragraph (c) and (d), MW must receive, transfer, treat and dispose of trade waste referred to in paragraph (a).
- (c) SEWL must not intentionally or negligently deliver to MW trade waste containing pollutants that would, or are reasonably likely to:
- (i) endanger human life; or
 - (ii) compromise the safety of any person; or
 - (iii) compromise the works of MW or any Licensee; or
 - (iv) significantly adversely affect the operation of a Sewage Treatment Plant or any part of the environment.
- (d) Sub-paragraph (a)(iii) does not apply where the discharge would have been prevented, but for SEWL's failure at the relevant time:
- (i) to comply with SEWL's Sewage Quality Management System from time to time specified in Schedule 4; and
 - (ii) to review SEWL's Sewage Quality Management System in accordance with sub-clause 11.8; and
 - (iii) to take all reasonable care in the circumstances to ensure that trade waste is not discharged into SEWL's sewerage system in contravention of section 93(b) of the *Water Industry Act 1994*.

11.4 Duty to enforce trade waste agreements

SEWL must:

- (a) enforce the provisions of each trade waste agreement made by SEWL; and
- (b) inform MW, in accordance with sub-clause 11.6 and Schedule 4, whenever it becomes aware that a customer has discharged trade waste to SEWL's sewer that does not comply with any requirement of a trade waste agreement; and
- (c) manage trade waste customers in accordance with Schedule 4.

11.5 New Trade Waste Agreements

- (a) SEWL must not enter into a trade waste agreement described in sub-paragraph (i) or (ii), without first obtaining MW's written consent:
 - (i) An agreement to discharge trade waste which complies with the Standards for Trade Waste but which contains:
 - (A) a critical pollutant referred to in Part B of Schedule 3 that will increase the mean concentration of that pollutant (as described in the Plant Capacity Statement for the relevant year) by more than 1.0%; or
 - (B) any other pollutant at a level which would increase the mean concentration of that pollutant (as described in the Plant Capacity Statement for the relevant year) by more than 5%.
 - (ii) An agreement for trade waste which does not comply with the Standards for Trade Waste and which has Risk Rank 1, 2 or 3 under item 2.3 of Schedule 4.
- (b) An application for consent under paragraph (a) must include sufficient information to enable MW to reach informed conclusions about the matters referred to in paragraph (c).
- (c) MW must not give consent under paragraph (a) if it reasonably concludes that trade waste discharged under the proposed agreement will:
 - (i) endanger human life; or
 - (ii) compromise the safety of any person; or
 - (iii) compromise the works of MW or any Licensee; or
 - (iv) significantly adversely affect the operation of a Sewage Treatment Plant or any part of the environment.
- (d) If MW does not give consent under sub-paragraph (a)(i), SEWL may, by notice to MW, require the parties to jointly appoint an independent technical expert to consider, report upon and make any recommendations with respect to, the proposed trade waste agreement.
- (e) The parties must meet the costs of any independent technical expert appointed under paragraph (d) in equal shares.
- (f) The parties must accept and implement any recommendations made by an independent technical expert under paragraph (d).
- (g) The parties may adopt a protocol under sub-clause 8.2 for co-operatively handling any application for a trade waste agreement referred to in paragraph (a).

- (h) In this sub-clause, "**new trade waste agreement**" means:
 - (i) any proposed trade waste agreement between SEWL and a new trade waste customer; or
 - (ii) any variation or renewal of an existing trade waste agreement with SEWL.
- (i) MW must notify SEWL whether or not it consents:
 - (i) under sub-paragraph (a)(i), within 7 days; and
 - (ii) under sub-paragraph (a)(ii), within 14 days,of receiving SEWL's request for consent, unless the parties agree otherwise.

11.6 Failure to comply with trade waste agreements

- (a) Whenever SEWL becomes aware of a breach by a customer of a trade waste agreement which may have any or all of the effects set out in sub-paragraph 11.5(a)(i) or paragraph 11.5(c), SEWL must promptly advise MW and any other Licensee who may be affected by the breach.
- (b) If MW reasonably concludes that the breach referred to in paragraph (a) will have an effect referred to in paragraph 11.5(c), MW may require SEWL to instruct the customer to cease discharging trade waste which could have that effect.
- (c) MW may agree to continue to accept trade waste referred to in paragraph (a), if the relevant trade waste agreement is revised to include conditions, approved by MW, which will ensure either or both of the following (as MW may decide):
 - (i) The trade waste will not have an effect referred to in paragraph 11.5(c);
 - (ii) MW recovers any commercially reasonable additional costs incurred by MW, as a result of receiving that trade waste, which exceed \$10,000.

11.7 Audits of Compliance with SEWL's Sewage Quality Management System

- (a) SEWL may, from time to time, audit SEWL's compliance with SEWL's Sewage Quality Management System.
- (b) SEWL must promptly give MW a management summary report of an audit referred to in paragraph (a).
- (c) The parties must, before 30 June 2000 and thereafter at intervals of not more than two years, commission an independent audit of SEWL's compliance with SEWL's Sewage Quality Management System.
- (d) The parties must:

- (i) agree on the terms of reference for, and the person to undertake, an audit under paragraph (c); and
- (ii) meet the costs of an audit in equal shares.
- (e) SEWL must co-operate with, and give all reasonable assistance to, an independent auditor appointed under paragraph (c).
- (f) SEWL must, within 30 days of receiving the auditor's report, determine whether to accept any or all of the findings and recommendations in the report and when and how it will act on those findings or implement those recommendations.
- (g) SEWL must:
 - (i) as soon as practicable and within 30 days of receiving the auditor's report, report to MW on each matter determined under paragraph (f); and
 - (ii) if it determines not to accept any finding or recommendation in the report, set out in the report referred to in sub-paragraph (i) that finding or recommendation and SEWL's reasons for not accepting it.

11.8 Review of SEWL's Sewage Quality Management System

- (a) SEWL may, from time to time, after consulting MW, alter SEWL's Sewage Quality Management System to improve the method of managing, or reduce the cost to the community of managing, risks associated with the management of trade waste at and from the point where trade waste is discharged to SEWL's sewer, to an Interface Point.
- (b) Before 31 December 1999 and thereafter at intervals of not more than three years, the parties must review, and, if appropriate, amend SEWL's Sewage Quality Management System in accordance with this clause.
- (c) The parties must:
 - (i) prepare mutually acceptable terms of reference for a review; and
 - (ii) appoint an independent reviewer to conduct the review.
- (d) Unless the parties agree otherwise, terms of reference referred to in sub-paragraph (c)(i) must require the reviewer to:
 - (i) assess all relevant risks associated with the management of trade waste from the point where trade waste is discharged to SEWL's sewer to an Interface Point, by employing methods comparable to a Hazard Analysis Critical Control Point evaluation; and
 - (ii) identify critical control points within the meaning of the evaluation method referred to in sub-paragraph (i); and

- (iii) determine what actions, works or measures have been or should be undertaken by SEWL to manage the relevant risk at each critical control point; and
 - (iv) recommend a consistent method for ranking relevant risks to be applied by SEWL; and
 - (v) recommend such changes to SEWL's Sewage Quality Management System as the auditor considers appropriate; and
 - (vi) examine and report upon such other matters as the parties determine; and
 - (vii) report to MW and SEWL upon those matters and recommendations.
- (e) SEWL must meet the costs of each review.
- (f) Each party must co-operate with, and give all reasonable assistance to, an independent reviewer appointed under sub-paragraph (c)(ii).
- (g) SEWL must, within 30 days of receiving the reviewer's report, determine whether to accept any or all of the findings and recommendations in the report and when and how it will act on those findings or implement those recommendations.
- (h) SEWL must:
- (i) as soon as practicable and within 30 days of receiving the reviewer's report, report to MW on each matter determined under paragraph (g); and
 - (ii) if it determines not to accept any finding or recommendation in the report, set out in the report referred to in sub-paragraph (i) that finding or recommendation and SEWL's reasons for not accepting it.
- (i) SEWL must promptly advise MW of any change which SEWL makes to either:
- (i) SEWL's Sewage Quality Management System; or
 - (ii) SEWL's method of managing trade waste risks.
- (j) The parties may agree in writing to amend Schedule 4:
- (i) following an audit under sub-clause 11.7 or a review under this sub-clause; or
 - (ii) at any other time,
- and the Schedule is deemed to be amended accordingly.

11.9 Trade Waste Customer Risk Profiles

- (a) Commencing on 1 January 2000, SEWL must request from each trade waste customer, in the order agreed with MW and in accordance with paragraph (b), a report setting out:
- (i) a description of the processes, practices and systems used by the customer to identify, assess and manage all relevant risks associated with the generation, storage and conveyance of trade waste on, and discharge of trade waste from, the customer's premises; and
 - (ii) a description of actions, works or measures that have been, or must be, taken by the customer to manage the relevant risk at each critical control point during the generation, storage and conveyance of trade waste on, or discharging of trade waste from, the customer's premises; and
 - (iii) a summary, highlighting those risks which, in the normal course of operations, are most likely to cause an event that will, or is reasonably likely to, have an effect referred to in paragraph 11.5(c); and
 - (iv) a summary of those conceivable events, however improbable, which may cause unexpected disruption to the customer's normal course of operations, and the effect that disruption may have on trade waste discharged to SEWL's sewer; and
 - (v) what actions, works or measures, have been, or must be, taken by the customer to reduce the possible effects on SEWL's or MW's sewerage systems, arising from events referred to in sub-paragraph (iii) or (iv).
- (b) SEWL must use all reasonable endeavours to procure reports under paragraph (a):
- (i) from 50% of all customers with trade waste agreements Risk Ranked 1 under item 2.3 of Schedule 4, within 18 months; and
 - (ii) from 100% of all customers with trade waste agreements Risk Ranked 1 or 2 under item 2.3 of Schedule 4, within 3 years; and
 - (iii) from such customers with trade waste agreements Risk Ranked 3 under item 2.3 of Schedule 4, chosen by SEWL, within 5 years,
- after the date on which this agreement commences.
- (c) SEWL must promptly give MW a copy of each report received by SEWL under paragraph (a), but may exclude from that copy any confidential information concerning the customer.
- (d) If the parties agree that a report given by a customer under paragraph (a):
- (i) is either deficient or inadequate; or

- (ii) identifies an unacceptable level of risk in any aspect of managing trade waste,

SEWL must use all reasonable endeavours, as appropriate in the circumstances, to ensure that the customer:

- (iii) undertakes a more comprehensive and appropriate assessment of those risks; and
 - (iv) gives SEWL a further report, once the assessment is complete; and
 - (v) thereafter undertakes such actions, works or measures as may be appropriate to achieve and maintain an acceptable level of risk.
- (e) The parties must review the operation of the arrangement set out in paragraphs (a) to (d) no later than 30 June 2000.
 - (f) If MW, as a result of that review, concludes that the information provided by customers is either inadequate or inappropriate to assist MW in better managing the risks which trade waste presents to MW's:
 - (i) sewerage system; or
 - (ii) ability to comply with any waste discharge licence,the parties must promptly agree whether or not to revise the arrangement set out in this sub-clause.
 - (g) If the parties fail to agree under paragraph (f), the arrangement set out in this sub-clause continues.
 - (h) The parties must:
 - (i) before 30 June 2000; and
 - (ii) before 30 June 2001; and
 - (iii) before 31 December 2002,

review the operation of the arrangements set out in, or revised under, this sub-clause and make any further revisions which may promote the objective referred to in paragraph (f).

11.10 Allocation of risk of liability for damage

In accordance with and subject to this agreement:

- (a) subject to paragraphs (b), (c)(i) and (ii), MW accepts sole responsibility and liability:

- (i) related to providing the Sewerage Services; and
 - (ii) for all losses or damage caused to its assets, property or other interests as a result of receiving, transferring, treating and disposing of sewage delivered to it by SEWL; and
- (b) SEWL accepts liability for such proportion of the losses or damage caused to MW's assets, property or other interests as a result of receiving, transferring, treating and disposing of sewage:
- (i) referred to in sub-paragraph 11.3(a)(iii); and
 - (ii) which SEWL is not otherwise permitted to deliver to MW under this agreement,

which:

- (iii) is agreed between the parties on each occasion; or
 - (iv) if the parties cannot agree, is 50%.
- (c) SEWL must:
- (i) endeavour to identify persons who are responsible for trade waste accidentally leaking into, or being discharged into SEWL's sewers in the manner contemplated by paragraph (b); and
 - (ii) co-operate with, and assist MW to identify persons referred to in sub-paragraph (i) and to procure prosecution of offenders against section 93(b) of the *Water Industry Act 1994*; and
 - (iii) from the date on which this agreement commences, monitor and gather data on the occurrence of incidents referred to in paragraph (b); and
 - (iv) in co-operation with MW and other Licensees, review all data referred to in sub-paragraph (iii) upon the expiration of:
 - (A) 18 months; and
 - (B) 3 years,after the commencement of this agreement, to determine strategies and procedures for improving ways of preventing, identifying and instituting prosecutions for, events referred to in paragraph (b).

12. SYSTEM OPERATION PERFORMANCE STANDARDS

12.1 Obligations in relation to adverse effects

- (a) Subject to paragraph (b):
 - (i) a party which operates its sewerage system in a way which causes an adverse effect to the sewerage system of the other party must, if the other party so requires, pay to that party any additional reasonable costs directly incurred by that party in discharging its obligations under this agreement, or any law and, in the case of SEWL, the Licence and any contract with a customer, as a result of the adverse effect; and
 - (ii) any failure by MW to comply with clause 9 or 10 which is directly attributable to an adverse effect caused by SEWL is not a breach of this agreement.
- (b) Sub-clause (a) does not apply if a party (through its Principal Representative) gives consent to an adverse effect caused by the other party:
 - (i) in writing; and
 - (ii) before the adverse effect is caused; or
 - (iii) after the adverse effect is caused, if the other party advises the first party of the event which caused the adverse effect and of its anticipated consequences.
- (c) For the purpose of this sub-clause, "**adverse effect**" includes:
 - (i) causing a sewer to exceed its normal operating capacity; or
 - (ii) causing a sewer to overflow.
- (d) A party may only require the other party to pay such additional reasonable costs under paragraph (a) as have, on the balance of probabilities, been caused by the other party.
- (e) The amount of additional reasonable costs referred to in paragraph (d) must be agreed between the parties or, if the parties cannot agree, determined under clause 30.

12.2 Emergency Response and Co-ordinated Crisis Management Plans

- (a) Within 6 months after the date on which this agreement commences, each party must develop and adopt an Emergency Response Plan which includes:
 - (i) incident management plans; and

- (ii) generic contingency plans; and
 - (iii) contingency plans for particular sites; and
 - (iv) standard operating and notification procedures; and
 - (v) provision for the parties to jointly review each emergency after it has occurred and to identify and agree upon works or measures to prevent, or minimise the likelihood of, such an emergency recurring.
- (b) Within 6 months after the date on which this agreement commences, the parties must jointly develop and adopt a protocol under sub-clause 8.2, to which any other Licensee may be a party, setting out a Co-ordinated Crisis Management Plan to be followed by the parties when any event dealt with by the Plan occurs.
- (c) The parties and any other Licensee referred to in paragraph (b) must review, and if, necessary, agree to revise the Co-ordinated Crisis Management Plan referred to in paragraph (b) before 30 June in every year.
- (d) Each party must implement the party's Emergency Response Plan and the Co-ordinated Crisis Management Plan, as revised from time to time, for the duration of this agreement.
- (e) MW must:
- (i) maintain SERPS pumps and, subject to paragraph (g), make them available to SEWL for use during emergency incidents in the sewerage system on a fee-for-service basis; and
 - (ii) identify a skilled team of specialists to deploy and operate the SERPS pumps.
- (f) MW may determine priorities between MW and each of the Licensees for allocating the SERPS pumps to undertake work in an emergency.
- (g) MW will make the team of specialists and equipment available to SEWL in accordance with paragraphs (e) and (f), at the request of SEWL.
- (h) The parties must develop and adopt a protocol under sub-clause 8.2, to which any other Licensee may be a party, to provide further for the matters referred to in paragraphs (e), (f) and (g).

12.3 Emergency Response Plan Incidents

- (a) Whenever:
- (i) an incident is declared under an Emergency Response Plan of a party; or
 - (ii) that party believes that an event,

with respect to the sewerage system of the party may:

- (iii) affect the security of that system; or
- (iv) prevent the party from performing any obligation under this agreement,

the party must:

- (v) notify the other party promptly; and
 - (vi) explain to the other party the nature of the event and the effect it has had or is likely to have; and
 - (vii) if the other party so requests, after each incident is declared, provide the other party with an interim verbal report on:
 - (A) the reason for the incident occurring; and
 - (B) what action the party needs to take to deal with the incident; and
 - (C) the party's estimate of how long it will take the party to deal with the incident; and
 - (D) options proposed by the party for any additional works or measures which the party needs to undertake to prevent any similar incident occurring; and
 - (viii) as soon as practicable, but within 21 days after each incident, provide the other party with a written report on each of the matters referred to in sub-paragraph (vii); and
 - (ix) immediately deploy a team of people experienced in the operation of the system and capable of dealing with the incident, until any problem is rectified; and
 - (x) establish and maintain a 24 hour-a-day contact point for liaison between the parties, until any problem is rectified.
- (b) If an incident referred to in paragraph (a) is declared with respect to MW's sewerage system, MW must:
- (i) continue to supply Sewerage Services under this agreement, to the extent that MW's sewerage system is capable of doing so; and
 - (ii) use all reasonable endeavours to reinstate its sewerage system and resume fully supplying Sewerage Services, as soon as possible; and

- (iii) consult with SEWL to determine whether MW can provide Sewerage Services under this agreement by alternative means, without affecting MW's ability to provide such services to another Licensee; and
 - (iv) provide Sewerage Services by such alternate means as are agreed by the parties under sub-paragraph (iii).
- (c) If an incident referred to in paragraph (a) occurs which may:
- (i) cause harm to the environment; or
 - (ii) cause a risk to the health or safety of any person; or
 - (iii) interrupt or diminish the provision of Sewerage Services to any customer of SEWL,
- a party may undertake emergency work or measures in relation to the sewerage assets of the other party, but it must advise the other party that it has done so as soon as possible (and no later than 3 hours) after commencing the work or measure.
- (d) A party which undertakes a work or measure under paragraph (c) with reasonable care and diligence may recover its reasonable costs of so doing from the other party.

13. ACCESS TO ASSETS

- 13.1 Each party must provide the other party access to its assets and data for the purpose of the other party carrying out its obligations under this agreement, in accordance with this clause.
- 13.2 Each party must provide the other with access, in circumstances agreed between an Operating Representative of each party, or set out in a protocol referred to in sub-clause 13.4, to that party's:
- (a) land, sewers, buildings and other equipment or structures; and
 - (b) other assets and data concerning the management and operation of sewers and other equipment relevant to this agreement (including videos, inspection reports, monitoring information and real-time operational data).
- 13.3 Each party must give notice to the other party of its intention to access the other party's assets.
- 13.4 The parties may adopt a protocol under sub-clause 8.2, concerning the respective obligations of the parties when accessing assets relevant to this agreement.
- 13.5 In the absence of a protocol referred to in sub-clause 13.4, a party must:

- (a) give written notice to the other party whenever it proposes to undertake work in a sewer within a distance of five manholes from an Interface Point; and
- (b) give similar written notice to each other Licensee which may be affected; and
- (c) nominate, in any notice, a contact person to answer any enquiries from the other party or other Licensees before and during the execution of the proposed work.

14. SEWL'S CUSTOMERS

- 14.1 MW must refer to SEWL any enquiry from a customer of SEWL about sewerage services provided by SEWL.
- 14.2 MW must take all reasonable action to ensure that services supplied to SEWL's customers are not disrupted by any planned or emergency work or measures undertaken by MW.
- 14.3 Where the premises of a customer of SEWL are directly connected to MW's sewerage system:
- (a) at the date on which this agreement commences, MW must continue to provide sewerage services to that customer at the same standard as at the commencement of this agreement; and
 - (b) after the date on which this agreement commences, MW must provide sewerage services to that customer at a level comparable to the level referred to in paragraph (a) unless the parties otherwise agree; and
 - (c) except in an emergency, MW must give SEWL at least 7 days' written notice (or such shorter time agreed between the parties) whenever it proposes to undertake work which may disrupt sewerage services to the customer.
- 14.4 (a) MW must consult with SEWL before MW allows any connection referred to in sub-clause 14.3 to be altered.
- (b) A party must not allow a customer to make a direct connection to MW's sewerage system unless:
- (i) SEWL has previously given consent; and
 - (ii) MW has previously approved the connection, subject to such conditions as MW sees fit; and
 - (iii) SEWL has accepted the conditions referred to in sub-paragraph (ii).

PLANNING IMPROVEMENTS AND FUTURE SERVICES

15. PRINCIPLE OF CO-OPERATIVE PLANNING

- 15.1 The parties must co-operate with each other as set out in clauses 16-19 to undertake studies and analyses and to exchange data and information relevant to determining what Sewerage Services will be required in future years.
- 15.2 The parties may adopt a protocol under sub-clause 8.2 to which any other Licensee may be a party, for mutual co-operation between each party to the protocol for the purposes referred to in sub-clause 15.1.
- 15.3 Without detracting from sub-clause 7.3 or 7.4, each party must give prompt written notice to the other whenever it:
- (a) wishes to initiate any change; or
 - (b) becomes aware of any change or pending change,
- to its rights or obligations under any law, which is or may be relevant to the rights or obligations of either party under this agreement.
- 15.4 (a) Subject to paragraph (b), each party agrees, on the written request of the other party, to join in requesting the Minister, Department or authority named in the written request not to make, or to review, make, suspend, alter or revoke, any pending change or change referred to in sub-clause 15.3.
- (b) Paragraph (a) does not apply if a party reasonably considers that it would not be in the best interests of that party to act on the written request of the other party.
- (c) Where the parties join in making a request under sub-clause (a), each party must use its best endeavours to ensure that each party complies with any relevant legal obligation to which the request relates, until the relevant Minister, Department or authority either grants or denies the request.

16. HYDRAULIC IMPROVEMENTS AND FUTURE SERVICES

16.1 Flow forecasts

- (a) By 30 September in each year, SEWL must give MW its estimate of the maximum flow and a hydrograph of the estimated daily or event variation in flow at each Hydraulic Information Point specified in Schedule 1 when:
- (i) no rainfall has been recorded in the preceding 48 hours in the relevant catchment area; and
 - (ii) rainfall equal to a 1-in-5 year average occurrence has been recorded in the preceding 48 hours in the relevant catchment area,

for:

- (iii) the current year; and
 - (iv) the fifth, tenth and twentieth year after the current year; and
 - (v) any other year during which SEWL estimates that there will be a significant alteration to maximum flows.
- (b) Each party must provide the other party with access to all historical data accumulated or held by the party relevant to estimating future flows.

16.2 Assessment of hydraulic demand

- (a) MW must, in relation to each year for which an estimate is provided under sub-clause 16.1, determine the hydraulic demand which will be placed on MW's sewerage system under each circumstance referred to in sub-clause 16.1.
- (b) SEWL may, at its cost, appoint an independent auditor to review and report upon the suitability of MW's methods, models and practices in:
 - (i) calculating hydraulic demands; and
 - (ii) reaching conclusions about the capacity of MW's sewerage system.
- (c) MW may, at its cost, appoint an independent auditor to review and report upon the suitability of SEWL's methods, models and practices in making estimates under paragraph 16.1(a).
- (d) Each party must:
 - (i) co-operate in all respects with an audit and auditor referred to in paragraphs (b) and (c); and
 - (ii) on receiving an auditor's report, promptly give a copy to the other party; and
 - (iii) within 30 days of receiving an auditor's report, determine whether to accept all or any of the findings and recommendations in the report and when and how it will act on those findings or implement those recommendations; and
 - (iv) as soon as practicable and within 30 days of receiving the auditor's report, report to the other party on each matter determined under sub-paragraph (iii); and
 - (v) if it determines not to accept any finding or recommendation in the report, set out in the report referred to in sub-paragraph (iv), that finding or recommendation and the party's reasons for not accepting it.

16.3 Improvements and alterations to Schedule 1

- (a) If a determination made under paragraph 16.2(a) indicates in any year that the hydraulic demand will be less than the system capacity the parties must, with the agreement of each other Licensee, determine what consequential amendments should be made to Schedule 1.
- (b) If a determination made under paragraph 16.2(a) indicates that, in any year, the hydraulic demand will be greater than the system capacity:
 - (i) MW must take timely action under sub-clause 18.1 to ensure that the system capacity will be greater than the hydraulic demand in that year; and
 - (ii) the parties must determine what consequential amendments should be made to Schedule 1.
- (c) Schedule 1 is deemed to be amended in accordance with the determination of the parties under paragraph (a) or sub-paragraph (b)(ii), respectively.

17. POLLUTANT IMPROVEMENTS AND FUTURE SERVICES

17.1 Monitoring obligations

- (a) MW must, at its cost, monitor the quality of sewage received at each Sewage Treatment Plant.
- (b) SEWL must, at its cost, monitor the quality of sewage discharged to its sewers in accordance with SEWL's Sewage Quality Management System set out in Schedule 4.
- (c) Each party must make available to the other party the results of all monitoring undertaken by the party under this clause.
- (d) The parties may agree to adopt a joint program for monitoring sewage in the sewerage systems of the parties.
- (e) Subject to paragraph (f), each party must meet the cost of any monitoring under paragraph (d) in the sewerage system of that party.
- (f) The parties must meet the cost of any monitoring under paragraph (d) in the vicinity of any Interface Point or meter referred to in clause 25, in equal shares.

17.2 Load forecasts for BOD, SS and Total N

- (a) By 30 September in each year, SEWL must give MW its estimate of the mass load and concentrations of Biochemical Oxygen Demand, Suspended Solids and Total Kjeldahl Nitrogen (calculated in accordance with Schedule 5) which will be delivered to MW by SEWL for:

- (i) the current year; and
 - (ii) the fifth, tenth and twentieth year after the current year; and
 - (iii) any other year during which SEWL estimates that there will be a significant alteration to maximum loads.
- (b) Each party must provide the other with access to all historic data accumulated or held by the party relevant to making estimates required by paragraph (a).
- (c) Any estimate given under paragraph (a) must be accompanied by a report, which explains:
- (i) how the estimate has been prepared; and
 - (ii) the reasons for any significant differences between the estimate and estimates prepared in the preceding year.
- (d) SEWL, together with other Licensees, must each year appoint an independent reviewer approved by MW to:
- (i) adjust any estimate for the current year so that the sum of the estimates prepared by each Licensee is equal to the total mass load or concentration for any parameter estimated for the current year by MW, based upon a statistically significant number of samples taken by MW at the intake of each Sewage Treatment Plant and analysed, at MW's cost, during the preceding 12 months; and
 - (ii) make any consequential adjustments to estimates made under sub-paragraph (a)(ii) and (iii); and
 - (iii) give a copy of any review report to MW,
- by 30 September in that year.
- (e) Each party must:
- (i) co-operate in all respects with a review and reviewer referred to in paragraph (d); and
 - (ii) accept any adjustment made under sub-paragraph (d)(i) or (ii) as the best estimate of the relevant mass loads and concentrations to be delivered to MW by SEWL in the relevant year.
- (f) SEWL must adopt and implement any cost-effective recommendation made in a report of the review to improve the reliability of estimates made under paragraph (a).

- (g) SEWL must meet that part of the cost of the review which relates to activities for which SEWL is responsible.

17.3 Plant Capacity Statements

- (a) By 31 March in each year, MW must give SEWL a Plant Capacity Statement for each Sewage Treatment Plant which sets out those pollutants which, in the reasonable opinion of MW, are likely to be present in sewage received at the relevant Sewage Treatment Plant with a mass load or in a concentration which, during or after treatment may:
 - (i) endanger human life; or
 - (ii) compromise the safety of any person; or
 - (iii) compromise the safety of works of MW; or
 - (iv) significantly adversely affect the operation of the Sewage Treatment Plant, or any part of the environment or
 - (v) cause MW not to comply with a waste discharge licence.
- (b) A Plant Capacity Statement must also set out, in reasonable detail and with appropriate explanations:
 - (i) why each pollutant may have an effect referred to in paragraph (a); and
 - (ii) an estimate of the capacity of the Sewage Treatment Plant to accept each pollutant without causing such an effect; and
 - (iii) an estimate of the current mass load or concentration of each pollutant in sewage received at the Sewage Treatment Plant.

17.4 Improvements and Alterations to Schedule 2

- (a) If both the sum of the adjusted estimates produced under sub-paragraph 17.2(d)(i) and (ii) and the Plant Capacity Statement for any year indicate that the mass load or concentration of Biochemical Oxygen Demand, Suspended Solids or Total Nitrogen in sewage received at a Sewage Treatment Plant will be :
 - (i) greater than the relevant mass load or concentrations specified in Schedule 2; but
 - (ii) less than the capacity of the Sewage Treatment Plant to accept, without causing an effect referred to in paragraph 17.3(a),

the parties must, with the agreement of each other Licensee, determine what consequential amendments should be made to Schedule 2.

- (b) If both the sum of the adjusted estimates produced under sub-paragraph 17.2(d)(i) and (ii) and the Plant Capacity Statement for any year indicate that the mass load or concentration of Biochemical Oxygen Demand, Suspended Solids or Total Kjeldahl Nitrogen in Sewage received at a Sewage Treatment Plant will be greater than the capacity of the Sewage Treatment Plant to accept without causing any effect referred to in paragraph 17.3(a):
 - (i) MW must take timely action under sub-clause 18.1(a), to ensure that the relevant capacity of the Sewage Treatment Plant is increased to avoid that effect; and
 - (ii) the parties must determine what consequential amendment should be made to Schedule 2.
- (c) Schedule 2 is deemed to be amended in accordance with a determination of the parties under paragraph (a) or sub-paragraph (b)(ii), respectively.

17.5 Planning for critical pollutant improvements

- (a) Based on monitoring by MW under paragraph 17.1(a) and the Plant Capacity Statement for any year, the parties must, in consultation, determine whether the projected mass load or concentration of any critical pollutant mentioned in Part A of Schedule 3 delivered to a Sewage Treatment Plant by the Licensees in the coming year is reasonably likely to cause:
 - (i) an effect referred to in sub-paragraph 17.3(a); or
 - (ii) MW not to comply with any provision of a waste discharge licence, with respect to that Plant.
- (b) If the parties agree that an occurrence referred to in sub-paragraph (a)(i) or (ii) is reasonably likely:
 - (i) SEWL must prepare and give to MW its estimate of the mass load or concentration of the relevant critical pollutant for that year; and
 - (ii) SEWL must review and report to MW on any action it might take to reduce the mass load or concentration of the relevant critical pollutant received by that Sewage Treatment Plant in that year; and
 - (iii) MW must report to SEWL on any action it might take to increase the capacity of MW to accept and remove or, if appropriate, treat the relevant critical pollutant; and
 - (iv) the parties must, together with any other Licensee likely to be affected by an occurrence, form a working group to examine and report on:
 - (A) the source or origin of the relevant critical pollutant; and

- (B) the sewage treatment and environmental problems posed by that critical pollutant; and
 - (C) options for resolving the problems posed by that critical pollutant; and
 - (D) the cost and implications of each option; and
 - (E) such other matters which the parties and other Licensees may require.
- (c) MW, SEWL and each other Licensee likely to be affected by an occurrence must meet:
- (i) its own costs of participating in a working group referred to in sub-paragraph (b)(iv); and
 - (ii) any other costs incurred by a working group in equal shares.
- (d) After receiving the report from the working group referred to in sub-paragraph (b)(iv), each party must, within 30 days, determine whether to accept any or all of the findings and recommendations in the report of the working group and when and how it will act on those findings or implement those recommendations.
- (e) Each party must:
- (i) as soon as practicable and within 30 days of receiving the working party's report, report to the other party on each matter determined by it under paragraph (d); and
 - (ii) if it determines not to accept any finding or recommendation in the report, set out in the report referred to in sub-paragraph (i) that finding or recommendation and the party's reasons for not accepting it.

18. PLANNING AND MAKING CAPITAL INVESTMENTS

18.1 Works Affecting Performance Standards

- (a) Whenever a party is required under this agreement to undertake works or measures to improve a performance standard, either for:
- (i) sewerage services referred to in sub-clause 9.2 or 9.3; or
 - (ii) treating pollutants, referred to in sub-clause 10.3 or 10.4,

or to augment the capacity of sewerage works for such a purpose, the parties must, together with any other Licensee which will benefit from the proposed improvement or augmentation, establish a working group to agree on the terms of reference for, and to undertake, an initial study to:

- (iii) identify, assess and estimate the cost of feasible options to make the relevant improvement or augmentation; and
 - (iv) identify and recommend:
 - (A) the least-cost community solution for any relevant works or measures; and
 - (B) when such works and measures must be undertaken; and
 - (v) estimate the capital and operating costs of such works and measures; and
 - (vi) determine how such costs must be met; and
 - (vii) determine the location of any interface point which may be required as a result of the works or measures.
- (b) If the parties, and any other Licensee represented on the working group, do not all accept the recommendations of the working group, they must:
- (i) jointly select and commission a consultant to consider and make recommendations upon such of the matters referred to in paragraph (a) as they determine; and
 - (ii) meet the cost of the study in equal shares.
- (c) The parties and any other Licensee represented on the working group must either:
- (i) adopt and implement the least-cost community solution recommended by the consultant; or
 - (ii) promptly adopt and implement some other least-cost community solution agreed between them; or
 - (iii) implement the solution determined in accordance with clause 30.
- (d) Subject to paragraph (e) and (f):
- (i) MW must undertake, at its cost, any relevant works or measures downstream of an Interface Point; and
 - (ii) SEWL must undertake, at its cost, any relevant works or measures upstream of an Interface Point.
- (e) Where the recommended least-cost community solution requires the creation of a new interface point, it must be located:
- (i) in a manner and position which will not cause any additional overflows from the sewerage system of either MW or SEWL; and either

- (ii) no further upstream than will allow MW effectively and efficiently to:
 - (A) regulate downstream flows; or
 - (B) control an existing downstream MW sewerage asset; or
- (iii) no further upstream than will prevent any Licensee from:
 - (A) adversely affecting MW's ability simultaneously to provide sewerage services to any other Licensee; or
 - (B) adversely affecting the cost to MW of operating its sewerage system; or
 - (C) exercising unreasonable control over any part of the new works to the detriment of another Licensee; or
- (iv) no further upstream than either:
 - (A) an existing Interface Point; or
 - (B) a proposed new junction point in MW's sewerage system,
if the new works either:
 - (C) are exclusively required for MW purposes; or
 - (D) require the particular expertise of MW, in its capacity as a provider of Sewerage Services to operate or maintain them (for example, a major pumping station, a large main or trunk sewer, usually greater than 600mm in diameter, a major sewage treatment plant or a brick sewer); or
 - (E) are similar to, and more conveniently maintained and operated in conjunction with, immediately contiguous sewerage assets of MW.
- (f) An interface point determined under paragraph (e):
 - (i) is an Interface Point for the purpose of paragraph (d); and
 - (ii) must be entered as an Interface Point in the Sewerage Asset Interface Register held by the Office of the Regulator-General.
- (g) A party which undertakes work pursuant to sub-clause (d) becomes the owner of the resulting asset and must maintain and operate that asset, at its cost, for the purposes of this agreement.
- (h) Any matter concerning the respective obligations of the parties, with respect to the undertaking, ownership, maintenance or operation of works or measures under

this clause, which is not provided for by this clause, must be determined under clause 30.

- (i) Before MW undertakes any works or measures which may:
 - (i) have an effect on a performance standard referred to in paragraph (a); or
 - (ii) increase the capacity of MW's sewerage system,

but which are not works or measures referred to in paragraph (a), MW must seek and obtain confirmation from SEWL that the proposed works or measures will meet SEWL's needs.

18.2 Other MW Works or Measures

- (a) Unless the parties expressly agree to the contrary, sub-clause 18.1 does not apply to works or measures proposed by MW which:
 - (i) are not undertaken pursuant to a provision referred to in paragraph 18.1(a); or
 - (ii) are undertaken pursuant to MW's general program for maintaining, repairing, renewing or improving the efficiency and effectiveness of its sewerage system; or
 - (iii) are undertaken for the purpose of complying with its statutory obligations under the *Environment Protection Act 1970* or any other Act.
- (b) Before executing any works or measures referred to in paragraph (a), which may have a direct or indirect effect on SEWL, MW must consult with SEWL and invite and take into consideration any comments made by SEWL, about:
 - (i) the reasons for undertaking the works or measures; and
 - (ii) the proposed effects of the works or measures; and
 - (iii) feasible options, other than the proposed works or measures, for achieving those proposed effects; and
 - (iv) the methods of estimating and the estimate of the cost of the works or measures.

19. SCHEDULING AND CO-OPERATIVE PLANNING FOR NEW WORKS AND RENEWALS

19.1 Obligation to adopt a Three Year Capital Works Program

Within 2 months after the date on which this agreement commences, and thereafter by 15 May in every year, the parties must adopt a Three Year Capital Works Program for the ensuing three years, commencing on 1 July in that year.

19.2 Contents of a Three Year Capital Works Program

A Three Year Capital Works Program must:

- (a) identify each project or significant capital works to be undertaken by MW or SEWL for the purposes of this agreement; and
- (b) identify which party must undertake the relevant project or works; and
- (c) set out the anticipated benefits from each project or works, including any benefits concerning:
 - (i) the capacity of the system; and
 - (ii) the ability of the parties to meet their respective legal obligations; and
 - (iii) the achievements of relevant performance standards; and
- (d) set out details of any particular works and anticipated benefits (including any benefit identified under paragraph 18.1(a)) which have been agreed upon by the parties including:
 - (i) when such works must be undertaken; and
 - (ii) the estimated cost of those works; and
- (e) for other projects or works referred to in paragraph (a), set out:
 - (i) the indicative dates upon which it is proposed to commence and complete the project or works; and
 - (ii) indicative costs of the project or works.

19.3 Duties of parties to comply

- (a) Subject to paragraph (b) and sub-clause 19.4, each party must comply with every aspect of the details referred to in sub-clause 19.2 excluding those details referred to in sub-paragraph 19.2(d)(ii).
- (b) A party which is required to undertake works referred to in paragraph 19.2(d)
 - (i) must meet the actual cost of the works, whether they are less than, or greater than, the estimated costs; and
 - (ii) may retain the benefit of any saving, if the actual costs of the works is less than the estimated cost.

19.4 Power to vary a Three Year Capital Works Program

The parties may (through their Principal Representatives) agree in writing to vary any aspect of, or postpone any obligation under, a Three Year Capital Works Program.

19.5 Reporting obligations

Each party must give a written report to the other party by 31 January and 31 July in every year unless the parties agree otherwise (and at such other times when the other party reasonably requests) on:

- (a) its progress in implementing its obligations under the Three Year Capital Works Program and sub-clause 19.3 since its last report; and
- (b) the degree to which a project or works undertaken by the party under the Three Year Capital Works Program has provided the anticipated benefits referred to in paragraph 19.2(c) since its last report.

20. TECHNICAL AUDIT OF MW'S ASSET MANAGEMENT PRACTICES

- (a) The parties must, as required by this sub-clause, agree upon:
 - (i) terms of reference for an independent audit of MW's asset management practices relevant to this agreement (including MW's design standards, risk profiles, inspection programs and models for, and methods of, making decisions); and
 - (ii) an independent auditor to undertake that audit.
- (b) If the parties are unable to agree on any matter to be agreed from time to time under paragraph (a), the matter must be determined in accordance with clause 30.
- (c) An audit referred to in paragraph (a) must be undertaken:
 - (i) within 12 months of the date of this agreement; and
 - (ii) thereafter, before the expiration of each period of three years.
- (d) MW must:
 - (i) at its cost, engage the independent auditor to undertake the audit agreed under paragraph (a); and
 - (ii) co-operate in all respects with that audit and auditor; and
 - (iii) on receiving the auditor's report:
 - (A) promptly give SEWL a copy of all outcomes of the audit; and

- (B) within 30 days, determine whether to accept all or any of the findings and recommendations in the report and when and how it will act on those findings and recommendations; and
- (C) as soon as practicable, and within 30 days of receiving the auditor's report, report to SEWL on each matter determined under sub-paragraph (B); and
- (D) if it determines not to accept any finding or recommendation in the report, set out in the report referred to in sub-paragraph (C) that finding or recommendation and MW's reasons for not accepting it.

20.1 Protocol for co-operation and responsibility in executing works

The parties may adopt a protocol under sub-clause 8.2 concerning their respective obligations in planning, deciding upon, implementing and managing risks associated with, projects, works or measures to be undertaken by either or both of them for the purposes of this agreement.

CHARGES FOR SEWERAGE SERVICES

21. SEWL'S OBLIGATION TO PAY

Charges and interest payable by SEWL to MW under clause 6 must be determined, calculated, invoiced and paid in accordance with clauses 22 to 25.

22. CHARGES

The charges are as set out in Schedule 6.

23. INVOICING AND PAYMENT OF CHARGES

23.1 When invoicing will occur

- (a) MW must invoice SEWL:
 - (i) in advance for the fixed availability charge, on the first of each month, or if that is not a Business Day on the next Business Day; and
 - (ii) in arrears for the usage charge, each Wednesday, or if that is not a Business Day, on the next Business Day.
- (b) For the purpose of this clause, "**Business Day**" means a day (other than a Saturday, Sunday or Public Holiday) on which banks are open for general banking business in Melbourne.

23.2 What an invoice must contain

Each invoice for the usage charge must set out:

- (a) the measured volume of sewage delivered to MW at each meter since the last invoice; and
- (b) details of any malfunctioning or out-of-service meter; and
- (c) the period for which any such meter malfunctioned or was out of service; and
- (d) any volume of sewage estimated, rather than measured, by MW and the method of making that estimate; and
- (e) any adjustment required as the result of any inaccuracy in a previous invoice; and
- (f) the amount payable by SEWL.

23.3 When an invoice must be paid

- (a) SEWL must pay any invoice given in accordance with sub-clauses 23.1 and 23.2:
 - (i) for the availability charge, by electronic transfer on or before the 15th day of the month (or, if that day is not a Business Day then the next Business Day) in which the invoice is given; and
 - (ii) for the usage charge, by electronic transfer on or before the Monday after the invoice is given.
- (b) An electronic transfer under paragraph (a) must be made to such bank account as MW may, from time to time, advise SEWL in writing.

23.4 Interest payable

- (a) SEWL must pay interest at the interest rate on any amount not paid in accordance with sub-clause 23.3, calculated from the date upon which the amount is due until the amount is paid in full.
- (b) For the purposes of paragraph (a), the interest rate is the Bank Bill Reference Swap Rate on the date upon which the amount is due.
- (c) MW must invoice SEWL separately for any interest payable under this sub-clause. SEWL must pay any such invoice within seven days of the date of the invoice.

23.5 Disputes about amounts payable

- (a) SEWL may give MW written notice if it disputes any invoice given under this clause.
- (b) If SEWL so requests, MW must promptly give SEWL further information about the volume of sewage referred to in the invoice and how any estimate of volume was made.

- (c) Notwithstanding any dispute, SEWL must, on the relevant date referred to in paragraph 23.3(a), pay:
 - (i) the availability charge; and
 - (ii) the greater of:
 - (A) the amount of the usage charge not in dispute; and
 - (B) the average usage charge for the preceding three weeks.
- (d) Any dispute under this sub-clause must be determined in accordance with clause 30.
- (e) A party required to make a payment by a determination made under paragraph (d) must do so within seven days of the date of the determination.

23.6 Deductions or set-offs not allowed

A party must not set-off or deduct moneys payable to the other party under this agreement:

- (a) against or from any other moneys payable by the other party; or
- (b) to make good any breach of this agreement by the other party; or
- (c) for any reason not referred to in paragraph (b),

without first obtaining the written consent of the other party.

23.7 Adjustment for failure to chlorinate wastewater

- (a) Subject to paragraph (b), MW must adjust every invoice by adding an amount of \$250 for every megalitre of treated effluent delivered to MW by SEWL in accordance with Schedule 7 during any event when no chlorine has been added to the treated effluent, since the previous invoice.
- (b) MW may not add more than \$25,000 with respect to any one event referred to in paragraph (a).

24. POLLUTION LOAD PRICING TRIAL

24.1 Within six months after the date of this agreement the parties must commence a mutually agreed trial of pricing pollution loads for Biochemical Oxygen Demand, Suspended Solids and Total Kjeldahl Nitrogen with a view to developing feasible and mutually acceptable techniques for calculating variable pollution load charges.

24.2 The objects of the trial are:

- (a) to develop a method for determining variable pollution load charges; and
- (b) to assess how such charges might affect future capital investment by the parties or other Licensees; and
- (c) to estimate what benefits might accrue from those effects; and
- (d) to assess what financial effects such charges might have on the parties and other Licensees and customers, who may be affected; and
- (e) to test whether proposed methods for measuring pollution loads and calculating charges are feasible and acceptable to the parties and other Licensees; and
- (f) to adjust those methods, if necessary.

24.3 If the results of the trial are mutually acceptable, the parties may agree to conduct:

- (a) further studies to improve methods for measuring pollution loads or calculating variable pollutant load charges; and
- (b) comparable trials for other pollutants.

24.4 The parties may, as a result of trials conducted under this clause, propose changes to the method of calculating charges referred to in Schedule 6.

25. CALCULATING USAGE CHARGES

25.1 The usage charge referred to in Schedule 6 must be calculated by reference to volumes determined in accordance with this clause.

25.2 MW must measure and calculate the flow volume of sewage delivered to MW by SEWL in accordance with the Flow Monitoring and Billing Manual employed for the purpose immediately before the date on which this agreement commences.

25.3 The parties may amend the Flow Monitoring and Billing Manual by agreement, at any time.

25.4 MW must:

- (a) observe every requirement of the Flow Monitoring and Billing Manual; and

- (b) promptly give SEWL a copy of the report of every independent audit required to be undertaken under the Flow Monitoring and Billing Manual.
- 25.5 MW must provide SEWL with copies of all data relevant to measuring and calculating flow volumes referred to in sub-clause 25.2, in every month, which is relevant to SEWL, after they have been validated and corrected in accordance with the Flow Monitoring and Billing Manual.
- 25.6
 - (a) MW must arrange for a device referred to in the Flow Monitoring and Billing Manual to be independently tested and calibrated upon the written request, and at the expense, of SEWL.
 - (b) If a test under paragraph (a) reveals that the device was not registering accurately, MW must reimburse SEWL the cost of testing the device.
- 25.7 MW is not required to adjust any invoice with respect to a device which is found to be registering incorrectly, before the date on which one party notifies the other of a suspected error in registration by that device.
- 25.8 MW must, from time to time, provide SEWL with such information as SEWL may request, about MW's procedures for determining the flow of sewage and calculating and invoicing charges under clauses 23, 24 and 25.
- 25.9 The parties, together with each other Licensee:
 - (a) may at any time review and, if appropriate, revise any formula set out in the Flow Monitoring and Billing Manual; and
 - (b) must review and, if appropriate, revise any such formula:
 - (i) by 30 June 2000; and
 - (ii) thereafter at intervals no greater than five years,to reflect:
 - (iii) data about population in the metropolis contained in the most recent census conducted by the Commonwealth Government; and
 - (iv) any recent data about trade waste agreed to by each Licensee.

ADMINISTRATIVE PROVISIONS

26. APPOINTMENT AND AUTHORITY OF PRINCIPAL REPRESENTATIVES

- 26.1 Each party must appoint and must, for the duration of this agreement, keep appointed, a Principal Representative for the purpose of this agreement.
- 26.2 The person named in the address of a party set out in clause 34 is deemed to be the Principal Representative of that party.
- 26.3 Each party must, from time to time, advise the other party in writing of any change to the name, postal address, e-mail address, telephone number, facsimile number or after hours contact details of its Principal Representative.
- 26.4 Each party must confer upon its Principal Representative, and hereby warrants to the other party that it has so conferred, all necessary power to give or receive any notice, to give any approval, undertaking or assurance, to enter any agreement, to adopt any protocol or to do any other thing which a party may do under this agreement, on behalf of the party appointing that Principal Representative.
- 26.5 Each party must ensure that the Principal Representatives of the parties:
- (a) meet regularly to discuss and to resolve any issues arising in the performance of this agreement; and
 - (b) liaise with each other for the duration of this agreement to ensure that it is implemented effectively.

27. APPOINTMENT OF OPERATING REPRESENTATIVES

- 27.1 Each party must appoint, and must for the duration of this agreement keep appointed, one or more Operating Representatives for the purpose of this agreement.
- 27.2 Each party must, from time to time, advise the other party in writing of:
- (a) the name, postal address, e-mail address, facsimile and telephone number of each Operating Representative appointed from time to time; and
 - (b) the particular obligations of the appointing party under this agreement for which that Operating Representative is responsible.
- 27.3 Each party must confer on each Operating Representative and warrants to the other party that it will so confer, all necessary power to be responsible for the day-to-day administration of those obligations of the appointing party notified under paragraph 27.2(b) in relation to that Operating Representative.
- 27.4 Each party must ensure that the Operating Representatives of the parties for particular obligations of that party:

- (a) meet regularly to discuss and resolve any issues arising under the agreement in relation to those obligations; and
- (b) liaise with each other for the duration of this agreement to ensure that the agreement is implemented effectively with respect to those obligations.

28. OVERRIDING EVENTS

28.1 If either party is unable, because of an overriding event, to perform any obligation, either in whole or in part, under this agreement (other than an obligation to pay money) the obligation is suspended, as far as it is affected by the overriding event and while that event continues.

28.2 The party affected will:

- (a) give the other party prompt written notice of the overriding event (and, in any case, within 7 days of learning of it) with reasonably full particulars and, as far as it knows, the probable ways in which it will be unable to perform or be delayed in performing any obligations; and
- (b) use all possible diligence to remove and mitigate either or both of the overriding event and its effect, as quickly as possible (including expending reasonable funds, deploying other resources and re-scheduling other commitments); and
- (c) keep the other party informed at regular intervals, or promptly upon the request of the other party, of:
 - (i) any change in the party's estimate of the duration or effect of the overriding events; and
 - (ii) action taken or proposed by the party under paragraph (b); and
 - (iii) whether the overriding event has ceased and whether its effects have been successfully mitigated or minimised; and
 - (iv) any other matter in connection with the overriding event or its effects as the other party reasonably requires.

28.3 Paragraph 28.2(b) does not require a party to:

- (a) settle any dispute on terms; or
- (b) meet any claims or demands of any person or public authority,

contrary to the reasonable wishes of the party affected, or its reasonably perceived best interests.

28.4 In any dispute concerning the occurrence, duration or effect of an overriding event, the party affected has the onus of proving that it has complied with paragraph 28.2(b).

28.5 "Overriding event" means any event or circumstance or combination of them which is:

- (a) beyond the reasonable control of the party affected; and
- (b) could not have been prevented or remedied by the party affected taking reasonably prudent steps, including, but not limited to, the expenditure of reasonable sums of money.

28.6 For example, an overriding event might be:

- (a) an act of God;
- (b) war, declared or undeclared, blockade revolution, riot, insurrection, civil commotion, sabotage, explosion;
- (c) a strike, lock out, or other labor dispute;
- (d) lightning, fire, earthquake or epidemic;
- (e) a drought, storm, flood or other natural disaster;
- (f) restraint, expropriation, intervention, direction or embargo imposed by any Parliament or Government or Government agency;
- (g) inability to obtain, or delay in obtaining any necessary approval or other authority from any Parliament or Government or Government agency;
- (h) change of law.

29. **CONFIDENTIALITY**

29.1 Except as provided in sub-clauses 29.2 and 29.6, a party must:

- (a) not disclose any confidential information of the other party, without the prior written approval of the other party; and
- (b) not require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party; and
- (c) take reasonable steps to enforce obligations imposed under this clause.

29.2 Despite sub-clause 29.1, a party may disclose confidential information of the other party:

- (a) to any employee, contractor or consultant of the party who reasonably needs to know the confidential information for that party to exercise its rights or perform its obligations under this agreement; and
- (b) if it is:

- (i) required by any Act; or
 - (ii) compelled by law or a court order,
to disclose it; or
 - (iii) demanded by the Relevant Minister.
- (c) In this sub-clause, "**Relevant Minister**" means a Minister responsible for administering an Act which confers functions or powers or imposes duties upon a party that are necessary for that party to enter into and perform this agreement.
- 29.3 A party may only disclose confidential information under paragraph 29.2(a) if it imposes upon the person to whom the confidential information is disclosed, an obligation:
- (a) only to use the confidential information; and
 - (b) not to disclose that confidential information to any other person, except,
for the sole purpose for which the confidential information is disclosed.
- 29.4 If a party is required or compelled to disclose confidential information of the other party under paragraph 29.2(b), it must:
- (a) immediately give written notice of that fact to the other party; and
 - (b) use its best efforts only to disclose that confidential information of the other party on terms which preserve the strictest confidentiality.
- 29.5 The parties agree and acknowledge that:
- (a) a party may bring proceedings to restrain any breach of threatened breach by the other party of this clause; and
 - (b) the unauthorised use, disclosure or divulgence of, or dealing with, the confidential information of a party by the other party will cause irreparable harm to that party, for which damages will not be an adequate remedy.
- 29.6 The parties do not intend this clause to prevent MW disclosing to a Licensee other than SEWL information about MW's operation and management of, and plans for improving, MW's sewerage system, for the purposes of any bulk sewage transfer, treatment and disposal agreement between MW and that Licensee.
- 29.7 This clause survives the termination of this agreement.
- 29.8 For the purposes of this clause, "**confidential information**" means:
- (a) any knowledge, information or know-how relating to a party's business, systems, customers, property, assets or affairs which:

- (i) has been or is disclosed, communicated or delivered to the other party under or in connection with this or the former agreement; and
 - (ii) has come or comes to the knowledge, or into the possession, of the other party under or in connection with this or the former agreement; and
- (b) in the case of SEWL, any knowledge, information or know-how relating to SEWL's business, systems, customers, property, assets or affairs, concerning SEWL's activities under its Licence, which were known to MW before 1 January 1995 because of its activities as a supplier of water and sewerage services in the area of SEWL's Licence,

but does not include the provisions of this agreement other than Schedule 6.

30. **DISPUTE RESOLUTION**

30.1 **When a dispute arises**

- (a) If any difference or dispute arises between the parties under or in relation to this agreement or its subject matter, they agree to seek, in good faith, to resolve the matter by negotiations between the Principal Representatives.
- (b) A difference or dispute arises at the time when one party notifies the other party in writing that there is a difference or dispute about a matter specified in the notice.
- (c) If the Principal Representatives do not resolve the dispute within 7 days of it arising either party may give written notice to the other party, requiring the matter to be:
 - (i) resolved by the panel under sub-clause 30.2; or
 - (ii) referred to mediation under sub-clause 30.3; or
 - (iii) referred to an expert referee under sub-clause 30.4.
- (d) A party may only commence legal proceedings in respect of a difference or dispute referred to in paragraph (a) after an expert referee referred to in sub-clause 30.4 has had a reasonable opportunity to decide or to make a determination in respect of the difference or dispute.
- (e) If a difference or dispute is referred for resolution under any or all of sub-clauses 30.2, 30.3 and 30.4 neither party may oppose an application for a stay of legal proceedings in respect of the dispute, pending the conclusion of proceedings or the making of a decision or determination, as the case requires, under any or all of those sub-clauses.

30.2 Reference to the panel

- (a) The panel consists of:
 - (i) the Managing Director of MW; and
 - (ii) the Managing Director of SEWL.
- (b) The panel must meet to consider any difference or dispute within 7 days of it being referred to the panel.
- (c) A decision of the panel may only be made by the unanimous agreement of the members of the panel.
- (d) If the panel is unable to reach an agreement on a decision within 14 days of the meeting referred to in paragraph (b), the parties must either refer the matter to:
 - (i) mediation under sub-clause 30.3; or
 - (ii) an expert referee under sub-clause 30.4.

30.3 Mediation

- (a) The mediator is a person:
 - (i) nominated jointly by the party; or
 - (ii) if the parties cannot agree,
 - (A) nominated by the chair of Lawyers Engaged in Alternative Dispute Resolution (or that person's nominee); or
 - (B) determined by some other process agreed between the parties at the time.
- (b) Mediation must occur within 30 days of the appointment of a mediator.
- (c) The parties must meet the mediator's costs in equal shares.
- (d) Mediation must occur in accordance with the Law Institute of Victoria Code of Practice for Mediation, or an equivalent code agreed to by the parties.
- (e) If the parties fail to resolve the difference or dispute within 14 days after mediation has concluded, the difference or dispute must be determined by an expert referee under sub-clause 30.4.

30.4 Reference to expert referee

- (a) The expert referee is a person or persons:

- (i) nominated jointly by the parties; or
- (ii) if the parties cannot agree:
 - (A) nominated by the chair of President of the Institution of Engineers Australia (Victorian Division) (or that person's nominee); or
 - (B) determined by some other process agreed between the parties at the time,

who must decide the matter within 30 days of the expert referee's appointment.

- (b) If the expert referee is more than one person, any decision must either be unanimous or made by a majority.
- (c) The expert referee is not an arbitrator.
- (d) An expert referee must give written reasons for a determination, if either party so requests.
- (e) Unless the expert referee otherwise determines, each party must:
 - (i) bear its own costs of proceedings before the expert referee; and
 - (ii) meet the costs of the expert referee in equal shares.

30.5 **Dispute deposit**

- (a) Within 7 days of the appointment of an expert referee, each party must lodge with the expert referee a dispute deposit of \$50,000 as security against costs and the expert referee's determination.
- (b) Failure by a party to lodge a dispute deposit does not invalidate the appointment of an expert referee or prevent the referee from making a determination.
- (c) An expert referee, as part of its determination, must make an award for some or all of the dispute deposit lodged by a party either to be applied to:
 - (i) the costs of the other party; or
 - (ii) to any amount awarded to the other party as part of the determination,or to be returned to that party.

30.6 **Consequences of a dispute**

- (a) Any decision of the panel or the expert referee is binding on the parties for all purposes, providing that the panel or expert referee has not made a manifest error of fact or law, or failed to observe natural justice.

- (b) Subject to paragraph (a), this clause does not prejudice or affect any right of a party to take any other action under this agreement.
- (c) Each party must, to the extent possible, continue to perform its obligations under this agreement while a difference or dispute is being dealt with under this clause.

31. **REMEDIES**

- (a) If a party breaches any provision of this agreement and that breach is not excused either by this agreement or by written notice from the other party, the party in breach must pay to the other party any costs or expenses directly incurred by the other party as a result of that breach, without prejudicing any other right which the other party has under this agreement.
- (b) A party must do everything it reasonably can to mitigate any loss resulting from a breach referred to in paragraph (a).
- (c) Costs or expenses referred to in paragraph (a), in the case of SEWL, include:
 - (i) any amount which SEWL is required to pay in relation to loss or damage suffered by a customer of SEWL as a direct result of MW's breach; and
 - (ii) the difference between:
 - (A) the revenue lost by SEWL as a result of MW's breach; and
 - (B) all direct and indirect costs that SEWL would have incurred in performing this agreement if the breach had not occurred.

but do not include:

- (iii) any amount paid under sub-paragraph (i) which is attributable to indirect, rather than direct, loss or damage; and
 - (iv) any amount calculated under sub-paragraph (ii) which is less than \$10,000; and
 - (v) any amount paid by SEWL to a customer of SEWL with respect to a breach by MW, after MW has paid an amount to that customer with respect to the same breach.
- (d) SEWL must:
 - (i) take all proper and reasonable action to avoid, resist, compromise and defend any claim by a customer of SEWL with respect to loss or damage referred to in sub-paragraph (c)(i); and
 - (ii) must not compromise or make any payment with respect to such a claim, without the prior written consent of MW.

- (e) MW must do anything which SEWL reasonably requests to assist SEWL to avoid, resist, compromise and defend a claim referred to in sub-paragraph (c)(i), at SEWL's cost.

32. **AMENDMENTS**

- (a) This agreement may be amended in writing signed by both parties.
- (b) If a party wishes to negotiate a change or addition to this agreement, including any matter not expressly dealt with in this agreement, it may give the other party written notice of the facts, with full details of any changed circumstance and any proposed change or addition.
- (c) Within 7 days of a party receiving a notice under paragraph (b) or such longer period as is agreed between the parties, the parties must enter into good faith negotiations, having regard to all factors relevant to the proposed change or addition.
- (d) The parties must jointly review this agreement and agree on any appropriate amendments at intervals no greater than 3 years.

33. **TERMINATION**

This agreement will terminate if:

- (a) the parties so agree in writing; or
- (b) SEWL ceases to hold a Licence.

34. **NOTICES**

34.1 A notice, consent or other communication under this agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or e-mail. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form. If it is sent by e-mail, it is taken to have been received when the sender receives an e-mail acknowledgement that the message has been received.

34.2 A party's address and fax number are those set out below, or as the party notifies the other party:

Melbourne Water

89 Millers Road
Brooklyn
Vic 3025

Principal Representative:

Responsible Officer: Tony Antoniou
Responsible Group: Service Delivery
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Dr David Lynch
General Manager Sewerage

Fax No: 9235 2692

E-mail address: david.lynch@melbwater.com.au

Telephone: 9235 2669

South East Water Limited

20 Corporate Drive
Moorabbin
Vic 3189

Principal Representative:

Mr Denis Santamaria
General Manager
Asset and Engineering

Fax No: 9552 3964

E-mail address: denis.santamaria@sewl.com.au

Telephone: 9552 3601

35. GST

35.1 For the purpose of this clause "GST" means any consumption tax imposed by a Commonwealth Act, whether at the point of sale or upon some other specified occurrence, by whatever name, which operates during the term of this agreement and includes a goods-and-services tax, a broad-based consumption or indirect tax and a value-added tax.

35.2 Each amount, of whatever description, specified as being payable by one party to the other party under this agreement is expressed net of GST.

35.3 If GST is payable in relation to the Sewage Services:

(a) the amount payable is the amount determined in accordance with clauses 22-25;

PLUS

(b) an amount which will put MW in the same position as if the Sewage Services were "GST-free", within the meaning of *A New Tax System (Goods and Services Tax) Act 1999*.

35.4 Where payment under this agreement is calculated by reference to a liability incurred by a party, the amount of the liability, for the purpose of that payment is:

- (a) the amount of that liability;

LESS

- (b) the amount of any GST input tax credit which the payee is entitled to claim with respect to that liability;

PLUS

- (c) an amount which will put the payee in the same position as if the payment were "GST-free", within the meaning of *A New Tax System (Goods and Services Tax) Act 1999*.

35.5 For the purpose of sub-clause 35.4, "**liability**" means a payment required under:

- (a) paragraph 11.10(b); or
(b) sub-paragraph 12.1(a)(i); or
(c) paragraph 12.3(d); or
(d) clause 31.

35.6 An amount referred to in paragraph 35.3(b) or 35.4(c) does not include any incidental administrative or overhead costs incurred by a party in the course of complying with the relevant Commonwealth Act.

35.7 The parties must, in good faith and before 30 June 2000, decide when a "tax invoice" within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* will be provided for a payment referred to in sub-clause 35.3 or 35.4 and amend this agreement accordingly.

35.8 The parties must, in good faith, review the operation of, and, if necessary, amend this clause before 30 June 2000.

36. **GENERAL**

36.1 **Governing Law**

This document is governed by the law in force in Victoria.

36.2 **Liability for Expenses**

Each party must pay its own expenses incurred in negotiating and executing this agreement.

36.3 **Giving effect to this agreement**

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this agreement.

36.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
- (b) a waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

36.5 Operation of agreement

- (a) Except as provided in sub-clause 8.2, this agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty related to that subject matter is replaced by this agreement and has no further effect.
- (b) Any right that a person may have under this agreement is in addition to, and does not replace or limit, any other right that the person may have.

36.6 Consents

Where this document contemplates that a party may agree or consent to something (however it is described) the party may:

- (a) agree or consent, or not agree or consent; and
- (b) agree or consent subject to conditions,

but must do so reasonably, unless this document expressly contemplates otherwise.

36.7 Publicity

A party must not make any public statement relating to this agreement unless:

- (a) the other party has previously agreed to the form and content of the statement; or
- (b) the statement is required to be made by law or a stock exchange.

36.8 Relationship between parties

Nothing in this agreement creates a relationship of partnership, principal and agent or trustee and beneficiary between MW and SEWL.

36.9 Operation of Indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes any payment in respect of which the indemnity is given.

36.10 Survival

The termination of this agreement does not release a party from any obligation relating to this agreement that, by its nature, survives completion of the agreement, including any obligation of indemnity or confidentiality.

36.11 Counterparts

This document may be executed in counterparts.

EXECUTED as an agreement

THE OFFICIAL SEAL of MELBOURNE WATER CORPORATION was fixed in the presence of and the sealing is attested by:

Signature of authorised person

Chairman
Office held

C J Stewart
Name of authorised person

Signature of authorised person

Director
Office held

A A Brown
Name of authorised person

SIGNED for SOUTH EAST WATER LIMITED under power of attorney in the presence of:

Signature of witness

Thomas Mollenkorf
Name of witness

Signature of attorney

Russell Cooper
Name of attorney

12 July 1999
Date of power of attorney

SCHEDULE 1 - PERFORMANCE STANDARDS FOR HYDRAULIC SERVICES

(sub-clauses 9.2, 9.3)

SOUTH EAST WATER

In this Schedule:

"ADWF" & "PDWF" means the average and peak dry weather flow referred to in Clause 9.2 (b)

"PWWF" means the peak wet weather flow referred to in Clause 9.3 (b)

The flow estimates represent the best available information at the time and may be revised by agreement between the parties.

HIP	BASIN	MW SYSTEM ENTRY MANHOLE	CURRENT ESTIMATED ADWF (m3/s) AS AT 1 OCT 2004	CURRENT ESTIMATED PDWF (m3/s) AS AT 1 OCT 2004	CURRENT ESTIMATED PWWF (1:5 yr,24hr rain event) (m3/s) AS AT 1 OCT 2004	Growth Multiple @ 2008 (4)
LOR2	HOBSONS BAY/CAULFIELD	HBM3	0.007	0.015	0.108	1.08
CHL1	HOBSONS BAY/CAULFIELD	HBM122	0.014	0.030	0.039	1.003
NCRIJ	HOBSONS BAY/CAULFIELD	HBM70	0.020	0.035	0.148	1.012
SCS1	HOBSONS BAY/CAULFIELD	HBM78	0.014	0.024	0.092	1.012
WEL1	HOBSONS BAY/CAULFIELD	HBM82	0.011	0.018	0.077	1.003
WSI3	HOBSONS BAY/CAULFIELD	WSI2	0.040	0.069	0.202	1.003
SRD1	HOBSONS BAY/CAULFIELD	WSI2	0.003	0.005	0.035	1.003
GRV1A	HOBSONS BAY/CAULFIELD	HBM106	0.021	0.037	0.088	1.003
HAW1	HOBSONS BAY/CAULFIELD	NRR11	0.035	0.054	0.163	0.996
ELC1A	HOBSONS BAY/CAULFIELD	NRR11	0.007	0.011	0.043	0.996
NTH29A	HOBSONS BAY/CAULFIELD	BIS3	0.005	0.008	0.026	0.996
ELC16B	HOBSONS BAY/CAULFIELD	BIS13	0.073	0.135	0.274	0.996
BIS25	HOBSONS BAY/CAULFIELD	BIS24	0.092	0.138	0.334	0.981
CIS16-1a	HOBSONS BAY/CAULFIELD	CIS16	0.024	0.039	0.072	0.996

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KEF1		HOBSONS BAY/CAULFIELD	HBM23	0.004	0.008	0.016		1.003
MLS1		HOBSONS BAY/CAULFIELD	HBM24	0.004	0.006	0.017		1.003
ALP1		HOBSONS BAY/CAULFIELD	HBM30	0.020	0.035	0.079		1.003
CFW1A		HOBSONS BAY/CAULFIELD	HBM38	0.092	0.164	0.292		
CFW1A		HOBSONS BAY/CAULFIELD	HBM38	0.073 ⁵	0.130 ⁵	0.232 ⁵		1.003
DIC1		HOBSONS BAY/CAULFIELD	HBM43	0.001	0.002	0.006		1.003
BYN1		HOBSONS BAY/CAULFIELD	HBM49	0.004	0.007	0.012		1.003
SHL1		HOBSONS BAY/CAULFIELD	HBM51	0.004	0.008	0.015		1.003
GLH1		HOBSONS BAY/CAULFIELD	HBM58	0.004	0.007	0.021		
GLH1		HOBSONS BAY/CAULFIELD	HBM58	0.023 ⁵	0.040 ⁵	0.121 ⁵		1.003
NTH1		HOBSONS BAY/CAULFIELD	HBM61	0.021	0.033	0.091		1.003
FBB1		HOBSONS BAY/CAULFIELD	HBM11	0.050	0.068	0.080		1.080
HBM12-1		HOBSONS BAY/CAULFIELD	HBM12	0.004	0.005	0.007		1.080
BDG1		HOBSONS BAY/CAULFIELD	MEL5	0.008	0.012	0.014		1.080
ING1		HOBSONS BAY/CAULFIELD	MEL8	0.011	0.015	0.017		1.080
NMR1		HOBSONS BAY/CAULFIELD	MEL9	0.006	0.009	0.010		1.080
LOA1		HOBSONS BAY/CAULFIELD	MEL12A	0.011	0.017	0.019		1.502
NTT1		HOBSONS BAY/CAULFIELD	HBM17	0.011	0.015	0.018		1.080
PIC1		HOBSONS BAY/CAULFIELD	HBM19	0.019	0.026	0.032		1.080
CIS12-1		HOBSONS BAY/CAULFIELD	CIS12	0.057	0.109	0.266		0.996
LEI10		HOBSONS BAY/CAULFIELD	CIS4	0.012	0.018	0.038		0.996
HBM107-1		HOBSONS BAY/CAULFIELD	HBM107	0.010	0.019	0.023		1.003
HBM105A-1		HOBSONS BAY/CAULFIELD	HBM105A	0.006	0.010	0.010		1.003
HBM38-1		HOBSONS BAY/CAULFIELD	HBM38B	0.007	0.016	0.020		1.003
HBM14-1		HOBSONS BAY/CAULFIELD	HBM14	0.006	0.009	0.019		1.080
SPS806		GARDINERS CK/STH YARRA	SYM12	0.019	0.056	0.056		1.000
SDS1		GARDINERS CK/STH YARRA	SYM13	0.004	0.008	0.022		1.080
HAN1		GARDINERS CK/STH YARRA	SYM14	0.013	0.021	0.120		1.080

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QUE1		GARDINERS CK/STH YARRA	SYM14	0.013	0.020	0.113		1.080
HOD1		GARDINERS CK/STH YARRA	SYM21	0.002	0.003	0.014		1.080
PRE4		GARDINERS CK/STH YARRA	PRE3	0.010	0.017	0.056		0.998
CPL1		GARDINERS CK/STH YARRA	SYM25	0.001	0.001	0.004		0.998
PER1		GARDINERS CK/STH YARRA	SYM26	0.030	0.053	0.158		0.998
TRK1		GARDINERS CK/STH YARRA	TRK1G	0.030	0.060	0.209		0.998
HYP1		GARDINERS CK/STH YARRA	SYM38	0.002	0.003	0.036		0.997
EOP1		GARDINERS CK/STH YARRA	SET16	0.031	0.047	0.051		0.984
OID1		GARDINERS CK/STH YARRA	SET17	0.028	0.046	0.078		0.984
MUB14C		GARDINERS CK/STH YARRA	SET18	0.028	0.044	0.075		0.984
THB21	7	RINGWOOD	THB20	0.026	0.054	0.153		0.996
BOR1		RINGWOOD	THB20	0.044	0.096	0.250		0.996
ARM1		RINGWOOD	THB2	0.004	0.006	0.022		0.996
HAV1		RINGWOOD	RIS36A	0.005	0.008	0.021		0.996
RAC1	6	RINGWOOD	RIS26	0.008	0.015	0.030		0.996
WON1		RINGWOOD	NNG1	0.005	0.007	0.021		0.995
BCM1		RINGWOOD	DVT15	0.135	0.238	0.501		0.996
WAN1		RINGWOOD	DVT14	0.002	0.002	0.005		0.995
CAT1		RINGWOOD	WAV2	0.016	0.023	0.053		0.995
CCM2		RINGWOOD	CCM1	0.175	0.330	0.794		1.056
DAN4A		DANDENONG	STM3A	0.093	0.184	0.593		0.982
STM4		DANDENONG	STM3A	0.035	0.054	0.161		0.983
DIS4		DANDENONG	DIS3	0.165	0.252	0.866		0.983
AMB6A		DANDENONG	DIS2	0.051	0.077	0.278		0.982
EUM23		DANDENONG	EUM20	0.051	0.090	0.285		0.992
CMM1A		DANDENONG	CMM1	0.002	0.005	0.011		0.992
HLY1		DANDENONG	EUM2	0.014	0.031	0.051		0.992
BDR1		DANDENONG	DVT2	0.039	0.087	0.095		0.992

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ORD13		DANDENONG	DVT2	0.029	0.063	0.080		0.992
BNE1		DANDENONG	DVT1J	0.005	0.011	0.015		0.992
ABT1		DANDENONG	EUM4	0.007	0.011	0.016		0.992
STH28A		BERWICK	STH28	0.006	0.033	0.102		1.222
TCPS(SPS160)¹		BERWICK	STH29A	0.034	0.081	0.081		
SRPS(SPS262)¹		BERWICK	STH29A	0.069	0.179	0.237		
HVM4A		BERWICK	HVM4	0.103 ²	0.260 ²	0.670 ²		1.222
HMP17		BERWICK	HMP15	0.034	0.060	0.167		1.100
PDR1		BERWICK	HVM2J	0.006	0.012	0.027		1.100
CRB13		CRANBOURNE	CRB12	0.063	0.103	0.144		1.388
FRN12		FRANKSTON	FRN10	0.230	0.362	0.789		0.987
WLY10		FRANKSTON	WLY9	0.063	0.131	0.291		1.171
CHE51		CHELSEA	CHE48	0.034	0.059	0.067		0.996
CAR1		CHELSEA	CHE1	0.018	0.031	0.037		0.996
CSH1		CHELSEA	SPS58	0.035	0.056	0.069		0.996
PAT1A		CHELSEA	SPS58	0.023	0.038	0.061		0.996
SAN7		SETS	SAN6	0.007	0.013	0.039		1.003
WAR31		SETS	MIS15	0.030	0.061	0.189		1.004
WRR7		SETS	WRR5	0.051	0.086	0.365		1.004
POI48		SETS	MIS24	0.023	0.044	0.122		0.990
BLR1A		SETS	MIS44	0.022	0.036	0.062		0.990
BCH70A		SETS	MIS35	0.004	0.008	0.053		0.992
CHP26		SETS	CHP25	0.095	0.134	0.365		1.043
BCH1		SETS	SPS9	0.045	0.075	0.137		0.992
SET8-1		SETS	SET8	0.021	0.052	0.052		1.043

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DOW1		SETS	SET14	0.018	0.024	0.026		0.989
POI1		SETS	MRD17	0.018	0.028	0.046		0.992
WAR1		SETS	MRD16B	0.009	0.015	0.025		0.992
CLY1		SETS	MRD9A	0.014	0.022	0.037		1.055
DIN1		SETS	MIS1	0.034	0.045	0.079		1.043
TAR1		SETS	MIS2	0.001	0.002	0.002		1.055
CLY62	3	SETS	SET13	0.099	0.124	0.153		0.989
MCN1		SETS	WES35	0.011	0.016	0.023		0.980
MIR1		SETS	WES46	0.003	0.005	0.008		0.980
MIL1	3	SETS	WES49	0.070	0.102	0.139		0.996
WES13-1		SETS	WES13	0.025	0.025	0.025		0.980
CDR1		SETS	SET11	0.0010	0.0020	0.003		1.043
CLY18	3	SETS	MIS7	0.030	0.057	0.129		1.055
WAR30		SETS	WAR29	0.000	0.000	0.000		
TWW1A		SETS	SET7	0.001	0.002	0.003		1.043

Notes:

- 1 Current HIP's TCPS (SPS160) and SRPS (SPS 262) to be removed upon completion of ongoing Hallam Valley Main Sewer Extension by South East Water Limited (SEWL) and replaced with new HIP at HVM 4A
- 2 Current estimate of flows to be used for future flow projection only after new HIP HVM 4A is established
- 3 Includes YVW flow contribution
- 4 The growth multiples at year 2008 provide an indication of the changes in ADWF over the period of the Water Plan, based on projections provided by SEWL.
- 5 Current estimate of flows to be used for future projection for CFW1A & GLH1 after flows from CFW1A catchment is diverted into GLH1 catchment
- 6 RAC1 ownership resides with YVWL, however the full catchment contribution is SEWL
- 7 Ringwood Interceptor Sewer requires investigation and possible works pursuant to clause 9.3 (c) to serve Ringwood Basin HIPs. Timing to be agreed between SEWL and MWC as part of the annual review of the Capital Plan.

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SCHEDULE 2 PERFORMANCE STANDARDS FOR POLLUTANTS WHICH SEWAGE TREATMENT PLANTS ARE DESIGNED TO TREAT

(Sub-clause 10.3)

In this Schedule, each value is a value per annum.

1. EASTERN TREATMENT PLANT

Pollutant	Average Flow (ML)	Concentration (mg/l)	Load (tonnes)
BOD	79761	302	24129
Suspended Solids	79761	257	20463
Total Kjeldahl Nitrogen	79761	47	3783

2. WESTERN TREATMENT PLANT

Pollutant	Average Flow (ML)	Concentration (mg/l)	Load (tonnes)
BOD	24787	294	7299
Suspended Solids	24787	288	7135
Total Kjeldahl Nitrogen	24787	60	1483

SCHEDULE 3 CRITICAL POLLUTANTS

(Paragraph 10.2(b);(sub-clause 17.5)

PART A

*(Paragraph 10.2(b);
(sub-clause 17.5)*

1	Eastern Treatment Plant	2	Western Treatment Plant
	Total dissolved solids Cadmium Copper Mercury Nickel Zinc Chromium Colour (true)		Total dissolved solids Cadmium Copper Mercury Nickel Zinc Chromium Lead Arsenic

PART B

*(Paragraph 10.2(b);
sub-paragraph 11.5(a)(i);
sub-clause 11.6)*

1	Eastern Treatment Plant	2	Western Treatment Plant
	Total dissolved solids Cadmium Copper Mercury Nickel Zinc Chromium Colour (true)		Total dissolved solids Cadmium Copper Mercury Nickel Zinc Chromium Lead Arsenic

SCHEDULE 4 SEWL'S SEWAGE QUALITY MANAGEMENT SYSTEM

(Sub-clause 11.1)

1. INTERPRETATION

In this Schedule, a reference to a trade waste agreement as having a "Risk Rank" means that the agreement has been ranked at the nominated level under procedures developed and applied under item 2.3.

2. MANAGING TRADE WASTE

2.1 Identifying Customers

In order to ensure that SEWL identifies all customers discharging trade waste to SEWL's sewers, SEWL:

- (a) must develop and apply procedures to determine when the occupier of premises discharging trade waste changes; and
- (b) must consider and may develop and apply, procedures to:
 - (i) survey SEWL sewage catchments, to identify customers discharging trade waste without an agreement; and
 - (ii) monitor decommissioned treatment apparatus on premises where an agreement has expired or has been terminated.

2.2 Assessing Risks

In order to identify any pollutants which customers might discharge to SEWL's sewers, SEWL:

- (a) must develop and apply procedures to:
 - (i) identify pollutants which each customer is likely to discharge; and
 - (ii) review relevant Material Safety Data Sheets for agreements Risk Ranked 1, 2 and 3; and
 - (iii) review available existing monitoring data about discharges; and
- (b) must consider and may develop and apply, procedures for:
 - (i) using broad spectrum analysis to identify pollutants in trade waste discharges; and
 - (ii) requiring new trade waste agreements to be reviewed by an appropriately qualified person, to identify pollutants likely to occur in trade waste

discharged under those agreements and ensure that they are appropriately managed.

2.3 Ranking Risks

In order to classify trade waste agreements according to the level of risk which each entails, SEWL:

- (a) must develop and apply procedures to rank trade waste agreements in a descending order of risk, on a 5 point scale, which takes into account:
 - (i) the distance of the point where the trade waste is discharged from the relevant Sewage Treatment Plant; and
 - (ii) the volume of trade waste discharged; and
 - (iii) the previous record of the trade waste customer in complying with the trade waste agreement; and
 - (iv) the substances in trade waste discharged by the customer; and
- (b) must consider and may develop and apply, procedures for continuously calculating and adjusting the ranking of each trade waste agreement.

2.4 Contents of trade waste agreements

- (a) SEWL must develop and apply procedures to ensure that each new trade waste agreement:
 - (i) sets out the maximum daily volume of trade waste which may be discharged; and
 - (ii) requires trade waste either:
 - (A) to comply with the Standards for Trade Waste; or
 - (B) to comply with such variation from the Standards for Trade Waste, agreed to by MW under paragraph 11.5(a), as is specified in the agreement; and
 - (C) in the case of an agreement Risk Ranked 4 or 5, which is not otherwise subject to paragraph 11.5(a), to comply with such variation from the Standards for Trade Waste as SEWL may determine.
 - (iii) requires a customer to report to SEWL any incident which causes, or is reasonably likely to cause trade waste not to comply with the conditions of the agreement; and

- (iv) requires a customer whose trade waste agreement:
 - (A) is Risk Ranked 1, 2 or 3; or
 - (B) which sets out a variation, approved by MW under paragraph 11.5(a), from the Standards for Trade Waste,
to prepare a Waste Management Plan, where appropriate; and
 - (v) requires those customers discharging "priority wastes" set out in Schedule A of the Industrial Waste Management (Waste Minimisation) Policy 1990, to the extent practicable, to apply best available technology in relation to those wastes; and
 - (vi) requires all other customers to apply waste management technology to the extent practicable, which is commonly available and appropriate to the industry in which the customer is engaged; and
 - (vii) contains provisions requiring customers to cease discharging trade waste in specified circumstances; and
 - (viii) requires a customer to install, operate and maintain relevant on-line monitoring equipment, where SEWL considers it necessary.
- (b) SEWL must consider and may develop and apply, procedures to ensure that each new trade waste agreement:
- (i) requires the customer, where appropriate, to monitor and to report to SEWL the physical and chemical characteristics of trade waste discharged by the customer; and
 - (ii) in appropriate cases, requires customers whose trade waste may have a significant adverse effect on the sewerage system of either party or a Sewage Treatment Plant, to adopt special requirements to guard against that effect; and
 - (iii) sets out particular measures to control trade waste discharges relevant to the industry of the customer; and
 - (iv) requires the customer to pay charges calculated by reference to the particular physical and chemical characteristics of trade waste discharged by the customer.
- (c) SEWL may develop other arrangements for trade waste agreements Risk Ranked 5, relating to greasy waste discharges.

2.5 Monitoring requirements

- (a) SEWL must develop and apply procedures to ensure that SEWL conducts:

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- (i) routine monitoring of trade waste discharges, which:
 - (A) is appropriate to the particular risk which each customer poses to the sewerage system of either party or a Sewage Treatment Plant; and
 - (B) requires appropriate inspection of the premises and operations of such customers and sampling and analysis of the trade waste discharged and assessment of a customer's compliance with the relevant agreement; and
 - (ii) unscheduled monitoring of trade waste discharges by customers; and
 - (iii) Periodic monitoring of headspace in specific SEW sewers, at a frequency that is appropriate to a particular risk likely to be present due to trade waste, to demonstrate that headspace air affected by trade waste discharges, complies with the relevant Work Safe Australia Exposure Standard for short-term exposure.
- (b) SEWL must consider and may develop and apply a list of substances which must usually be monitored by SEWL for different activities which may occur on a customer's premises.

2.6 Managing breaches of Trade Waste Agreements

SEWL must develop and apply procedures to respond, after detecting trade waste discharges which do not comply with the customer's trade waste agreement that:

- (a) cover all events detected by SEWL which do not comply with the terms of a customer's agreement; and
- (b) ensure that the customer promptly resumes complying with the terms of the agreement; and
- (c) require SEWL to notify MW within 30 minutes of becoming aware of any trade waste discharge which will, or is reasonably likely to:
 - (i) have an effect described in paragraph 11.3(c); or
 - (ii) cause MW not to comply with a waste discharge licence or other statutory requirement; and
- (d) require each trade waste customer to notify SEWL of every event detected by the customer which does not comply with the terms of that customer's agreement; and
- (e) ensure that SEWL provides a 24 hour per day service for trade waste customers to contact SEWL; and

- (f) define the circumstances in which a customer must cease or suspend discharging trade waste.

2.7 Requests to vary Standards for Trade Waste

In the absence of the parties adopting a protocol under sub-clause 8.2 for the purpose, SEWL must develop and apply procedures to ensure that the following information is provided to MW with any request to approve a variation from the Standards for Trade Waste under sub-paragraph 11.5(a)(ii):

- (a) The Customer's name.
- (b) The location and Melway reference of the premises from which trade waste is discharged.
- (c) The current Risk Ranking of the customer's trade waste agreement.
- (d) The current average and maximum volumes, concentration of pollutants and estimates of pollutant loads discharged.
- (e) The proposed future average and maximum volumes of pollutants, concentration of pollutants and estimates of pollutant loads to be discharged.
- (f) The period of time for which, and the reasons for which, a variation is requested.

2.8 Training Trade Waste Personnel

SEWL must develop and apply procedures which ensure that all personnel with responsibilities relating to trade waste:

- (a) are appropriately trained to exercise those responsibilities; and
- (b) are otherwise aware of all significant issues relating to the management and the possible effects of mismanagement of, trade waste.

2.9 Monitoring Performance of Trade Waste Personnel

SEWL must develop and apply procedures to monitor the performance of all personnel with responsibilities relating to trade waste.

2.10 Trade Waste Data

- (a) SEWL must develop and maintain a comprehensive database, setting out the significant details of every trade waste agreement made or granted in SEWL's Licence area.
- (b) SEWL must consider and may develop and include in the database:

- (i) procedures for automatically alerting Trade Waste Personnel when each agreement is about to expire; and
- (ii) processes for continuously reviewing and, if appropriate, adjusting the ranking of trade waste agreements under item 2.3(a); and
- (iii) procedures for automatically alerting Trade Waste Personnel whenever a customer fails to comply with a trade waste agreement.
- (iv) procedures for automatically alerting Trade Waste Personnel whenever incomplete sample data are entered.

2.11 Educating Trade Waste Customers

- (a) SEWL must develop and undertake a program for educating trade waste customers.
- (b) SEWL must consider including, and may include, in that program:
 - (i) an annual seminar for trade waste customers to promote risk management and waste minimisation techniques and new technologies for customers to treat and monitor trade waste;
 - (ii) providing technical support to assist customers to develop technology to treat problem trade wastes; and
 - (iii) conducting, both generally and as particular needs arise, publicity programs to educate trade waste and other customers about issues relating to sewage.

3. DOMESTIC SEWAGE

3.1 Identifying Domestic Customers

SEWL must develop and apply procedures to determine whenever new domestic premises are connected to SEWL's sewerage system.

3.2 Educating Domestic Customers

SEWL must develop and undertake programs for educating domestic customers, as specific needs arise.

4. MANAGING TANKERED WASTES

4.1 Interpretation

- (a) This item only applies when SEWL accepts tankered waste.
- (b) In this item:

"**tankered waste**" includes septage and wastes produced by cleaning wet wells, routine eductions from isolated parts of SEWL's sewerage system and emergency eductions from SEWL's sewerage system.

"**septage**" means wastes collected from domestic septic tanks and domestic pans by private contractors, under agreements with householders.

4.2 Registering Tankers

SEWL must consider and may develop and implement, procedures for:

- (a) requiring each tanker delivering tankered waste to a facility referred to in item 4.3(a) to be registered with SEWL; and
- (b) imposing conditions upon the delivery and acceptance of tankered waste; and
- (c) requiring confirmation that each tanker referred to in item (a) is covered by appropriate third party and public liability insurance.

4.3 Managing Septage

- (a) In order to ensure that all septage received for treatment is appropriately monitored and managed, SEWL must develop and apply procedures:
 - (i) to receive septage only at a facility agreed with MW; and
 - (ii) to ensure that such a facility is manned at all times during operating hours by a person representing the parties and each other Licensee; and
 - (iii) requiring that person:
 - (A) to visually inspect and determine the volumes and pH of all tankered waste before it is discharged; and
 - (B) to keep accurate records of each action referred to in item (A); and
 - (iv) to ensure that random samples are taken from at least 5% of all loads of septage received at the facility and that the samples are analysed for copper, nickel, iron and % inhibition.
 - (v) for requiring the driver to complete a declaration:
 - (A) setting out where the load of septage originated; and
 - (B) that the load solely comprises septage; and
 - (C) setting out the name and telephone number of the relevant household.

- (b) SEWL must consider and may develop and apply procedures:
 - (i) for receiving into SEWL's sewers septage collected at sites owned and operated by a person authorised by SEWL to undertake such activities; and
 - (ii) for requiring all samples taken under item 4.3(iv) to be kept for at least 30 days; and
 - (iii) suspending a tanker's registration with SEWL for a period of 12 months, if the results of analysis of samples taken under item 4.3(iv) are not consistent with the driver's assurances about the composition of the relevant load, or a declaration made under item (a)(v).

4.4 **Managing Other Tankered Waste**

In order to ensure that all loads of tankered waste received from wet well clean-outs, routine eductions, treatment of sewage at licensee's sewage treatment plants and emergency eductions are appropriately monitored and managed, SEWL must either develop and apply the procedures referred to in item 4.3, or must develop and apply procedures:

- (a) for only receiving wastes from wet well clean-outs, routine eductions, treatment of sewage at Licensee's sewage treatment plants and emergency eductions delivered, pursuant to a significant contract with SEWL or SEWL's sewer maintenance contractor; and
- (b) requiring, in the case of wet well clean-outs and emergency eductions, a representative of SEWL's maintenance contractor to complete and give to SEWL a daily log:
 - (i) setting out the origin of each load and the facility to which the load was delivered; and
 - (ii) declaring that no waste other than waste from wet well clean-outs or emergency eductions was included in any load; and
 - (iii) signed by that representative.

5. **MANAGING INCIDENTS**

SEWL's Emergency Response Plan referred to in sub-clause 12.2(a), or SEWL's Sewage Quality Management System must include plans and procedures to deal with any incident arising when any significant variation in the quality of sewage is detected in either party's sewerage system, or at a Sewage Treatment Plant.

6. **ARRANGING ACCESS TO CUSTOMER PREMISES**

- (a) MW may, with SEWL's consent, visit and inspect the premises of trade waste customers in the company of SEWL in order to better understand risks associated with trade waste discharges.
- (b) For example, visits under paragraph (a) may be made to the premises of customers:
 - (i) where the risks caused by trade waste discharges are either unknown or are unacceptably high; or
 - (ii) who have provided inadequate or deficient information in a report under sub-clause 11.9 or who have failed to provide such a report; or
 - (iii) who have been identified as having a poor record of complying with the relevant trade waste agreement; or
 - (iv) to assist in the management of any incident declared under either party's Emergency Response Plan.
- (c) MW must not use any information it obtains from visits under paragraph (a) to the commercial disadvantage of SEWL or the customer.

7. REPORTING

7.1 Bi-Monthly Reports

SEWL must give MW a report setting out the following information in relation to the preceding period. SEWL may report at either of the following frequencies:

- Monthly; by the 10th working day following each month; or
 - Quarterly, by the 10th working day of January, April, July and October.
- (a) The name and address of each trade waste customer whom SEWL knows has discharged trade waste which has not complied with the customer's trade waste agreement, together with:
 - (i) if the failure to comply concerns a pollutant, the name of the pollutant and the concentration or load detected; and
 - (ii) the risk ranking of the trade waste agreement under item 2.3(a); and
 - (iii) a summary of the actions taken, or to be taken, by the customer to remedy the failure to comply and to ensure that the failure does not recur.
 - (b) A summary of the volume of septage and routine education wastes received by SEWL at each facility, and delivered to MW, referred to in item 4.3(a).

7.2 Annual Reports

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On or before 31 July in each year, SEWL must give MW a report setting out the following information in relation to the 12 months up to 30 June in that year.:

- (a) The number of trade waste agreements in each of the five Risk Ranks as at 30 June.
- (b) The number of customers who:
 - (i) commenced to discharge; and
 - (ii) ceased to discharge,trade waste and the Risk Ranking of the relevant agreements.
- (c) The proportion of trade waste customers who have completed Waste Management Plans, as required by their trade waste agreements.

SCHEDULE 5 MASS BALANCE METHODOLOGY

(Sub-clause 17.2)

Overview

Separate assumptions are to be made for

1. Trade Waste, which includes
 - (a) Industrial
 - (b) Greasy Waste
 - (c) Batch dischargers
2. Commercial & Non-rateable (not greasy waste)
3. Domestic
4. Infiltration and Inflow

1. Trade Waste customers

- (a) Use industry types.
- (b) For each industry type calculate the average of the agreement maximum volume (in kL/d) divided by 1.5 of all customers in that industry type, with the following exceptions
 - (i) For all charging Category 2 and 3 customers the annual billed volumes should be used, from the last financial year. This includes batch dischargers.
 - (ii) For all charging Category 1 Greasy Waste customers of the following industry types the following assumptions should be made:
 - Hotel / motel 5 kl/day
 - Restaurant 2 kl/day
 - Takeaway 1.5 kl/day
 - Bakery 1 kl/day
- (c) For each industry type calculate the average concentration of all monitoring results of all customers in that industry type. Note: Where a customer's quality

concentrations does not appear to be representative of the industry average concentrations, individual customer loads should be calculated separately.

- (i) Outliers - results outside three standard deviations from the mean of each industry type are to be discarded, and the mean recalculated.
 - (ii) Results that are less than detection are assumed to be zero.
 - (iii) Where there are insufficient monitoring results (ie. less than 12) for a particular industry type, then an industry type average should be obtained from discussions with other retail companies.
 - (iv) If there is not sufficient data in any retail company to calculate an industry average concentration, then an appropriate assumption (domestic, potable or zero) should be made.
- (d) For Category 1 customers, the number of days of operation is determined as 260 (52 x 5). This does not include Greasy Waste customers for whom an assumption of 360 days per year should be made.
 - (e) The annual volume for each industry type is therefore the daily volume multiplied by the number of days of operation for all Category 1 customers in that industry type plus the sum of the annual billed volumes for the Category 2 and 3 customers in that industry type.
 - (f) The annual load from each industry type is then calculated by the annual volume multiplied by the concentration

2. Commercial & Non-Rateable Customers

- (a) This also includes domestic volumes discharged by trade and greasy waste customers and excludes charging category 1 volumes estimated in clause 1 (b) (ii) and 1 (e).
- (b) The volume for this group is obtained from the retail company's billing system and is to be divided by a factor of 0.9, minus the estimated charging Category 1 trade and greasy waste volumes.
- (c) The concentration for this group is assumed to be domestic, as that determined in the Domestic Sewage Study (Connor & Wilke 1995)
- (d) The annual load is then calculated by multiplying the concentration by the annual volume.

3. Domestic

- (a) The volume for this group must be obtained from the retail company's billing system and is to be divided by a factor of 0.9.

- (b) The domestic concentration is assumed to be domestic, as that determined in the Domestic Sewage Study (Connor and Wilke 1995).
- (c) The annual load is then calculated by multiplying the concentration by the annual volume.

4. Inflow and Infiltration

- (a) The volume for this group is estimated as follows:
 - (i) **Inflow (stormwater flow)**
This averages 7 percent for the whole system. The volume of inflow in each retail company must therefore be assumed to be 7 percent of the total annual billed volume for that retail company.
 - (ii) **Infiltration (groundwater flow)**
The volumes of infiltration in each retail water company will be estimated by subtracting trade waste, commercial, domestic and inflow volumes up to a maximum of the following percentages of the Melbourne Water billed volumes.

Eastern Treatment Plant - 4.6%

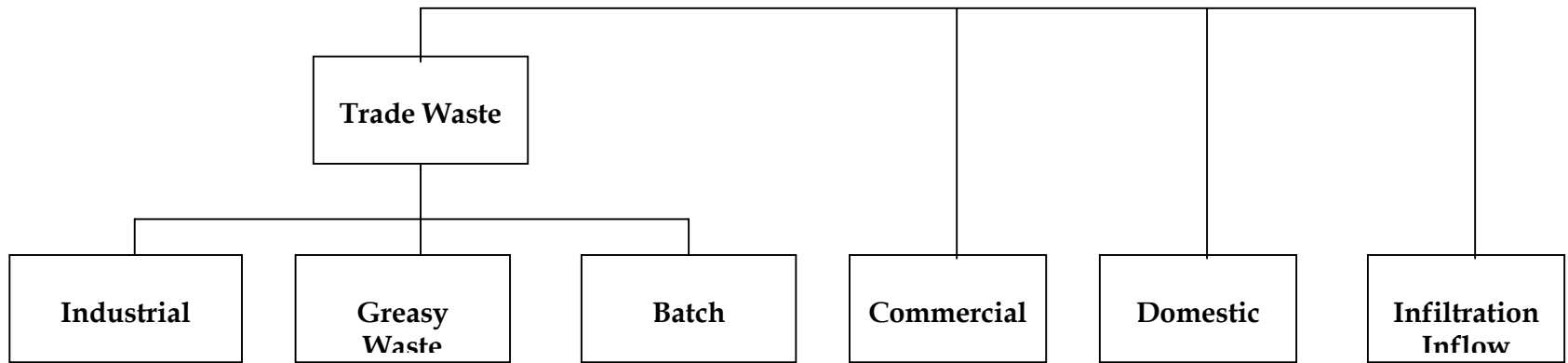
Western Treatment Plant - 9%

- (b) The concentration for this group varies from parameter to parameter. The following concentration assumptions should be made for those parameters currently under investigation:

Parameter	Inflow	Infiltration
Total Kjeldahl Nitrogen	Urban Stream Water Quality *	DNRE groundwater database*
BOD	Urban Stream Water Quality*	DNRE groundwater database*
Suspended Solids	Urban Stream Water Quality*	DNRE groundwater database*

* Or as otherwise agreed between the parties.

- (c) The annual load is then calculated by multiplying the concentration by the annual volume.



Volume	Cat 2,3 : Billed ¹ Cat 1 : Qmax/1.5 260d/yr	Cat 2,3 : Billed ¹ Hotel/motel : 5kL/d Restaurant : 2kL/d Takeaway : 1.5 kL/d Bakery : 1kL/d Other : Qmax/1.5 360d/yr	Billed ¹	Billed ¹ /0.9	Billed ¹ /0.9 And Unallocated volume ³	Inflow (ie stormwater: - 7% of total volume for billing. Infiltration (ie continuous groundwater): - By difference to an agreed % of billed volumes.
Concentration	By industry type: - Retailer observed ² or - Agreed default	By industry type: - Retailer observed ² or - Agreed default	By industry type: - Retailer observed ² or - Agreed default	Domestic	Domestic	Inflow – urban stream quality. Infiltration – ground- water quality.

1. Based on billed volumes for last full financial year
2. Each Retailer uses own industry average if >12 results in last three years excluding data $\pm 3\sigma$ from mean. Otherwise use default value agreed between all three retailers.
3. Unallocated volume calculated as the difference between total billed volume and estimated volumes (ie: trade waste, commercial, domestic inflow and infiltration).

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SCHEDULE 6 CHARGES

(Clause 22)

The Bulk Wastewater Charges as set out in the Melbourne Metropolitan Water, Wastewater and Drainage Services Pricing Order that is in effect from time to time.

SCHEDULE 7 DISCHARGES TO SOUTH EASTERN OUTFALL

(Paragraphs 3.1(e), 5(b))

1. INTERPRETATION

In this Schedule:

"**Operations Manager**" means the Operations Manager at the Eastern Treatment Plant.

"**Plant**" means the Mornington, Rosebud or Hastings Sewage Treatment Plant, operated by SEWL.

"**SEO**" means the South Eastern Outfall.

2. OPERATING PROCEDURES

2.1 SEWL must develop and apply:

- (a) management arrangements for each plant which:
 - (i) specify the acceptable range for relevant process characteristics for each plant; and
 - (ii) set out:
 - (A) arrangements for reporting; and
 - (B) procedures to be observed,when monitoring detects that process characteristics are outside the acceptable range for a plant ; and
- (b) emergency response and contingency plans to deal with any failure of a plant or sewage treatment process at a plant; and
- (c) arrangements for managing and treating trade waste received at each plant.

2.2 SEWL must:

- (a) make available arrangements and procedures referred to in item 2.1 for review by MW; and
- (b) review and, if necessary, amend those arrangements and procedures annually.

3. MONITORING PLANT PERFORMANCE

- (a) SEWL must, for each plant, take and analyse samples of:
 - (i) each parameter;
 - (ii) at the monitoring frequency,
- (b) specified in Table 1, at each sampling point specified in SEWL's procedure *for internal laboratory testing.

*(*This procedure must be included in the operating procedures referred to in item 2.1(a)(ii)(B).*

SEWL must, for each plant:

- (i) take samples of:
 - (A) each parameter;
 - (B) at the monitoring frequency,specified in Table 2, at each sampling point used to monitor SEWL's compliance with the waste discharge licence granted under the *Environment Protection Act 1970* for the plant; and
- (ii) ensure that each sample is analysed by an independent laboratory, accredited by the National Association of Testing Authorities, for that purpose.

4. REPORTING

- (a) SEWL must give the Operations Manager within 10 working days after the end of each month, a report for each plant, with respect to that month, setting out:
 - (i) results of the monitoring program referred to in item 3(b); and
 - (ii) whether and why any equipment referred to in Table 3 at that plant has been out of service for any part of that month; and
 - (iii) a summary of any public complaints received at the plant.
- (b) SEWL must promptly give the Operations Manager a copy of those sections of any annual report made by SEWL to the Environment Protection Authority, with respect to the operation of a plant.

5. **DISCHARGES TO SOUTH EASTERN OUTFALL**

SEWL must ensure that effluent discharged to the SEO from each plant complies with each performance limit specified in Table 2 with respect to a parameter.

6. **MANAGING INCIDENTS**

(a) SEWL must:

- (i) promptly report to the Operations Manager by telephone whenever SEWL becomes aware that:
 - (A) sewage received at a plant is outside the range of relevant process characteristics for that plant, referred to in item 2.1(a); and
 - (B) the sewage will or may cause the discharge to the SEO from that plant not to comply with the performance limits set out in Table 2; and
 - (C) during any outbreak of Blue Green Algae at a plant, effluent from that plant contains 500 or more cells/ML; and
- (ii) include information about an incident referred to in item (i)(A) or (i)(C) in the next report given under item 4(a).

(b) SEWL must promptly:

- (i) report to the Operations Manager and MW's Operating Representative by telephone; and
- (ii) confirm that report in writing,

whenever SEWL becomes aware that the discharge to the SEO from a plant has not complied with the performance limits set out in Table 2.

(c) SEWL must give the Operations Manager an incident notification report within 24 hours of becoming aware:

- (i) of an outbreak of Blue Green Algae at a plant equal to or greater than 500 cells/ML; or
- (ii) that the discharge to the SEO from a plant has not complied with a performance limit set out in Table 2,

and keep in regular contact with the Operations Manager for the duration of the incident.

Table 1: Plant Performance Monitoring Program Requirements

Parameter	Monitoring Frequency		
	Mornington	Rosebud	Hastings
Suspended Solids	twice weekly	weekly	weekly
Total Residual Chlorine	daily	daily	Not applicable
pH	twice weekly	weekly	weekly

Table 2: Effluent Quality Monitoring Program and Performance Requirements

Parameter	Monitoring Frequency	Performance Limit
Flow	daily	Not applicable
<i>E coli</i>	weekly	Annual Median 200 orgs/100 mL Annual 90th Percentile 1000 orgs/100 mL
Total Residual Chlorine	weekly	Maximum 1.0 mg/L
pH	weekly	6.0 - 9.0
Biochemical Oxygen Demand	weekly	Annual Median 20 mg/L
Total Suspended Solids	weekly	Annual Median 30 mg/L

Table 3: Schedule of Essential Plant Equipment

HASTINGS	
Equipment	Stand-by Equipment
1 - 2 Rotors	1 standby Rotor
1 Secondary Clarifier	1 Secondary Clarifier
1 Outfall Pump	1 standby Pump
2 RAS Pumps	1 standby Pump
MORNINGTON	
Equipment	Stand-by Equipment
1 Secondary Clarifier	1 Secondary Clarifier
2 Blowers	2 standby Blowers
Chlorination Unit	Sodium hypochlorite tanks
1 Outfall Pump	2 standby Pumps
1 RAS Pump	1 standby Pump
ROSEBUD	
Equipment	Stand-by Equipment
2 Secondary Clarifiers	Divert to Sludge Lagoon
Chlorination Unit	Bring in sodium hypochlorite
8 Mechanical Aerators	Capacity to operate at high speed, minimum 4 required
1 - 2 Outfall Pumps	1 standby pump
2 RAS Pumps	1 standby pump