

Submission: Potential water access for Yallourn coal mine rehabilitation



To: The Hon. Harriet Shing MLC, Minister for Water

Via: Engage Victoria / Department of Energy, Environment and Climate Action

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Re: EnergyAustralia Yallourn - Application A (new rehabilitation Bulk Water Entitlement, up to 27 GL/yr) and Application B (amendment/cessation of the existing 36.5 GL/yr power-generation entitlement)

Date: 17 July 2026

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1. About this submission

Friends of the Gippsland Lakes (FOGL) speaks for the Ramsar-listed lower lakes and the communities downstream of every drop the Latrobe loses. FOGL supports rehabilitating the Yallourn mine. It opposes this application - because the water it seeks is not EnergyAustralia's spare capacity; **it is freshwater that's effectively lost to the Gippsland Lakes Ramsar Site.**

Presented as a cut from 36.5 to 27 GL/yr, the application is in truth a **net increase in depletion**: when generation ends, the 12–21 GL/yr Yallourn now returns to the river stops, and a Ramsar system already in chronic deficit loses more inflows - just as climate change and sea-level rise demand more. On the facts that inform this decision, FOGL relies on the applicant's own documents - its Declared Mine Rehabilitation Plan, its applications, and the Government's technical evidence base - each of which concedes the core objection.

This submission **endorses and builds on** the Concerned Waterways Alliance net-water-balance analysis (Concerned Waterways Alliance, 2026) and extends it to the **Gippsland Lakes Ramsar site.**

2. The decision standard (Water Act 1989 (Vic) s 40)

Before granting a bulk entitlement, the Minister must protect environmental values, public uses, Traditional Owner rights and the reliability of existing entitlements (*Water Act 1989* (Vic) s 40). The Gippsland Lakes are a Ramsar site and maintaining ecological character is a binding obligation (Ramsar Convention, 1971; EGCMA, 2024a). The Commonwealth has determined the neighbouring Hazelwood rehabilitation to be a **controlled action under the EPBC Act, applying the "water trigger"** - understood to be a first for a Latrobe Valley mine-closure proposal - and Victoria has required an EES (IESC, 2025; CWA, 2025; *Environment Protection and Biodiversity Conservation Act 1999* (Cth); *Environment Effects Act 1978* (Vic)). The Ramsar risk profile at Yallourn is materially the same, whether or not the Commonwealth ultimately calls it in.

FOGL's net-reduction test is **not a novel standard**: it operationalises the s 40 duty to protect **environmental values** and the CGRSWS commitment to *reduce* the region's environmental water deficit - **of 129 GL/yr** (Hale, 2020; CGRSWS/DELWP, 2022). A licence that increases net depletion of inflows to stressed waterways runs against both.

In weighing the s 40 matters, the Minister need not choose between competing advocacy: **on the decisive facts, the applicant's own DMRP, applications and evidence base make FOGL's case.**

Test FOGL asks the Minister to apply: *does the proposal cause a net reduction in freshwater reaching the lower Latrobe wetlands and Lake Wellington?* On the evidence, it clearly does.

3. Executive summary

*The application is presented as a net cut in water take: from 36.5 to 27 GL/yr. But that headline measures the entitlement, not the water that reaches the lakes. Today, Yallourn returns 12 to 21 GL/yr to the river. When generation ends, that return flow stops. So on net water reaching Lake Wellington, the proposal worsens the Latrobe systems chronic freshwater deficit, and by extension that of the Gippsland Lakes. FOGL asks the Minister to **refuse the application as framed** and grant a rehabilitation entitlement only on a **net-neutral** basis: fully accounted, fully priced, and fully conditioned.*

FOGL's three priority asks:

- 1. Assess on net water to Lake Wellington** - not the gross 36.5 → 27 GL/yr cut.
- 2. Refuse** any ~27 GL/yr entitlement that does not offset *both* the lost return flow (~13 GL/yr) *and* the lost Morwell contribution.
- 3. If granted, price at full replacement value (~\$2,500/ML)** with an MRD-assurance levy and a bond set to the fully-priced cost - a cost that falls on CLP shareholders, not power bills.

#	FOGL position	Basis
1	Assess on net water to Lake Wellington, not a paper reduction from 36.5 → 27 GL/yr	Alluvium, 2023; CWA, 2026
2	The proposal is a large increase in net depletion once return flows cease	See s 5
3	Loss of Morwell River flows (MRD flow-conveyance reduced) compounds the loss	See s 6; IESC, 2025
4	Both losses land on a Ramsar site in a region already carrying a 129 GL/yr water deficit and declining under climate change	Hale, 2020; CGRSWS/DELWP, 2022; CSIRO, 2022
5	The only credible offset - Thomson releases - has a real cost to Melbourne's supply	See s 8
6	Existing entitlement must cease unconditionally at end of generation; new entitlement sunsets on rehabilitation, no transfer or redeployment to data centres, no double dipping	See s 9

#	FOGL position	Basis
7	If granted: full-value pricing floor ~\$2,500/ML + MRD-assurance levy; cost falls on CLP shareholders, not power bills; bond must match the fully-priced cost	See s 9.1
8	The applicant claims Crown-owned water without an entitlement (clause (d); s 8(4)(c)) - and its own DMRP, applications and evidence base concede the harm	See s 5, s 10; <i>Water Act</i> s 7

4. What is at stake - the Ramsar site depends on Latrobe freshwater

- The Latrobe River contributes **13–46% of total riverine inflow to the Gippsland Lakes**, and on average **~60% of freshwater inflow to Lake Wellington** (Hale, 2020).
- What matters is not Yallourn's share of that gross inflow, but the specific flow components its take removes - the **summer/autumn baseflows and freshes** that hold the salt wedge and flush the wetlands. DEECA's own technical report finds that ceasing return flows hits exactly these, year-round but hardest in summer and autumn (Alluvium, 2023).
- The Latrobe is already heavily drawn down: on average **~25% of its total annual flow is extracted**, rising to **~50% in drought** (e.g. 2006/07) and ~10% in wet years (Hale, 2020). The proposal adds to this baseline stress.
- Ramsar values directly at risk - **Sale Common, Heart Morass, Dowd Morass**: freshwater/brackish marshes dependent on Latrobe flows for waterbird breeding, migratory habitat and threatened species. **Sale Common is the only natural freshwater wetland remaining in the Gippsland Lakes Ramsar site** (Hale, 2020; EGCMA, 2024b; Boon et al., 2015, as cited in FOGL, 2025).
- *Sea-level rise + a larger tidal prism mean more freshwater is needed to achieve the same salinity reset* - the requirement is rising exactly as the applicant proposes to cut supply (FOGL, 2025; CSIRO, 2022).
- The Alluvium technical assessment rates the Latrobe River in the study area **Poor to Very Poor**, with particularly low hydrology scores, against a regional **129 GL/yr water deficit** the Government has committed to *reduce*, not deepen (Hale, 2020; Alluvium, 2023; CGRSWS/DELWP, 2022).

5. Primary objection - the net-water-balance

The framing trap. The application presents 27 GL/yr as a reduction from the 36.5 GL/yr paper entitlement, "leaving 9,500 ML unallocated." That compares against an underused allocation. The correct test is *net water to the river* (Concerned Waterways Alliance, 2026).

Return flows are the hidden variable. Under generation, Yallourn takes ~24–28 GL/yr gross but **returns 12–21 GL/yr of treated water** to the system. Remove the return and the same take becomes a much larger net loss.

Yallourn take, return and net, 2018–2024 (GL/yr):

Year	Gross take (Latrobe)	Return to system	Net take
2018	28.4	12.3	16.1
2019	27.3	14.3	13.0
2020	24.4	13.5	10.9
2021	24.5	11.8	12.6
2022 †	26.9	20.9	6.1
2023 †	26.9	20.1	6.8
2024 †	26.0	20.0	6.0

Source: EnergyAustralia Yallourn Social and Environmental Performance Summaries (audited performance data tables) - "water withdrawal from freshwater resources" (gross take) and "treated wastewater discharged to freshwater bodies" (return). Figures for 2018–2020 and 2022–2024 are taken directly from those tables; 2021 from the same series (EnergyAustralia, 2019–2025).

† From 2022, treated returns rose to ~20 GL/yr, coinciding with the post-2021 MRD-failure period and associated EPA emergency-discharge arrangements (EPA Victoria, 2025). This temporarily *depressed* net take to ~6 GL/yr; those years are set aside from the representative baseline.

The consequence. In normal operation (2018–2021) net take was ~11–16 GL/yr, corroborated by the Government's own Ecological Effects Assessment, which independently records Yallourn taking 27.4 GL/yr with ~13.1 GL/yr returned - net consumption of 14.3 GL/yr (Hale, 2020). But the decisive fact is simpler: every one of those years, **12–21 GL/yr flowed back to the river. Post-closure rehabilitation take of up to 27 GL/yr returns nothing.** Net depletion therefore rises from ~11–16 GL/yr (with returns) to 27 GL/yr (no return) - at least a doubling against normal operation, and more than a quadrupling against the recent 2022–24 net (~6 GL/yr). The conclusion is robust to whichever baseline is chosen.

Consistent across every credible baseline. The exact historic net figure varies with method, but all sit well below 27 GL/yr and point the same way: DEECA's own technical assessment puts Yallourn's net use at **~10.4 GL/yr** (Alluvium, 2023); a full 2016–2024 average is **~11.2 GL/yr**; and the representative normal-operation figure - discounting the anomalous 2022–24 emergency-discharge years - is **~13.5–14.3 GL/yr** (Hale, 2020). The Concerned Waterways Alliance, applying the same emergency-discharge discount, reaches the same representative net of ~13.5 GL/yr (CWA, 2026). On **any** of these baselines -

10.4, 11.2 or ~14 - a future take of up to 27 GL/yr with no return flow is a **net increase**, not the reduction the application claims.

The applicant's own evidence confirms less water: Alluvium/HARC forecast that **reliability for rural diverters falls from 98% to 86–90%** - they must draw on the Latrobe Reserve in 8–12% more years than today (12% at full entitlement, 8–9% with conditions), driven by loss of mine return flows and climate change (Alluvium, 2023). The Reserve is a drought buffer, not an environmental offset - needing it more often *is* proof the balance has worsened.

Anticipating the "artificial subsidy" objection

EnergyAustralia may argue its return flows were an incidental by-product of generation, not a natural entitlement, so ceasing them merely returns the system towards natural equilibrium. FOGL rejects this:

- DEECA's own technical report concedes the return flows "**may provide some benefits to environmental values**," and that ceasing them reduces baseflows and freshes in the affected reaches - the Morwell River and Traralgon Creek, both already stressed by mine groundwater drawdown - year-round, with the biggest impact in summer and autumn (Alluvium, 2023);
- natural or not, the flows are now part of the **contemporary operating balance** on which existing users and the environment rely - the drop in irrigator reliability (98% → 86–90%) is the proof;
- FOGL does **not** ask EnergyAustralia to perpetuate a discharge - only that **net take not increase**. A 27 GL/yr take with no return is more depletion than the status quo *regardless of the "natural" label*.

Reject "water is not consumed": water in a pit void is unavailable at the time, place, frequency, duration and magnitude the river, estuary and wetlands require. Storage in the landscape is not ecological availability (Hale, 2020).

The evidence base doesn't ask the right question. The technical study underpinning the proposed conditions (Alluvium and HARC, 2023) expressly confines itself to protecting environmental values *through conditions on the take* - not to whether the take should proceed given its net effect. It answers only which conditions least worsen an already-high-risk baseline, never the question that matters here: *does the proposal reduce net freshwater to the Ramsar site?* Three points follow, all from the study's own findings:

- **The application sits in the high-risk band, not the reassuring one.** The study's comforting result - that a take at net-historical level produces no change in modelled risk - is pegged to a net take of about **10.4 GL/yr**. The application is for **27 GL/yr gross with no return flow** - roughly **2.6×** that benchmark, in the gross-historical / near-full-entitlement range the same study finds *materially increases* risk. It shows no change to the Latrobe and estuary only *if every condition is imposed* (see s 9).
- **The Government's own numbers disagree.** The study adopts a Yallourn net take of ~10.4 GL/yr (return ~16.6 GL); the Victorian Water Accounts and the Ecological Effects Assessment put it at

~14.3 GL/yr (return ~13.1 GL) (Hale, 2020; Alluvium, 2023). FOGL uses the audited ~13–14 GL figure - but on the study's *own* 10.4 GL the increase to 27 GL is larger still. Under either, net depletion rises.

- **The study concedes an existing-user harm the Minister must weigh under s 40.** Every scenario modelled *reduces* reliability for rural private diverters (the 98% → 86–90% reliability drop, above), and the report finds conditions cannot fully offset it. Section 40(1)(d)(i) requires the Minister to protect the reliability of existing entitlements; on the evidence base's own results, the proposal cuts against that duty.
- **The conditions were set before the plan they must control.** The conditions the applicant adopts derive from the 2023 risk study (Alluvium and HARC); the DMRP that *followed* reveals what that study never modelled - the Morwell's flood flows deliberately routed into the void as a **perpetual** fill and top-up source, and a claim (application clause (d)) to use all water reaching the pit *without restriction* and outside any entitlement. The conditions are calibrated to a scenario that predates, and understates, the applicant's actual plan (EnergyAustralia, 2025; 2026b).

6. Loss of the Morwell River - the Ramsar linchpin

Why the Morwell matters: the Morwell is one of the larger tributaries of the Latrobe upstream of the Thomson that is not dammed, and is therefore accessible to migratory fish and an **important sediment source to the Latrobe - because Lake Narracan blocks fish and sediment movement in the Latrobe River itself** (IESC, 2025). It flows through the Yallourn mine to join the Latrobe, and is one of the few remaining sources of variable, natural-signal freshwater, sediment and nutrients into a heavily regulated system.

Measure	Value	Source
Morwell catchment yield, 1957–2012	~158 GL/yr	FOGL, 2025
Contemporary estimate	~120–180 GL/yr	CGRSWS/DELWP, 2022; CSIRO, 2022 (as cited in FOGL, 2025)
Elevation of Morwell flow above natural (from return flows)	~11% higher	Hale, 2020

Because there are **irrigators upstream of Hazelwood**, the *actual* input to the Latrobe is uncertain - but the Morwell's role as an undammed sediment/fish/nutrient source is not in doubt (IESC, 2025; Alluvium, 2020).

What rehabilitation does to the Morwell River

- Filling the Yallourn void requires **~665 GL** (to ~RL 37m); natural rainfall-only filling would take **~65 years**, which is why the applicant proposes to divert the Morwell and Latrobe Rivers into the pit (EnergyAustralia, 2025).
- The applicant says it will maintain the MRD - but the flow-conveyance function is reduced. EnergyAustralia's public materials describe the plan as maintaining the MRD in its current location with some improvement works. The DMRP detail tells a different story for the river: the MRD carries only the Low Flow Channel's environmental flows, high flows are already routed into the mined-out Township Field, three spillways send Morwell peak/flood flows into the void, and a lake overflow in the north-east corner discharges to the Latrobe (the connected-lake option is preferred). Maintaining a levee is not the same as maintaining the Morwell's flow to the Latrobe; the volume delivered at the reduced rural level is unspecified but plainly less than the current input (EnergyAustralia, 2025).
- **Engineering reality:** the coal-conveyor tunnels will be used to transfer water between the pit lakes (EnergyAustralia, 2025).

The MRD's loss is structural, not speculative. Three points, escalating:

- **A demonstrated failure record.** On the Government's own account, the 2021 cracking was the third serious stability incident at Yallourn in sixteen years, after the 2012 breach - which put both the Morwell and the Latrobe into the pit - and earlier movement (DEECA, 2023c). The independent post-failure review traced the 2012 collapse to fundamental design and material choices - dispersive clays in the embankment core, an under-specified filter, and reliance on a single membrane seal over the conveyor-tunnel joints - rather than a freak flood. Its central engineering lesson was blunt: **"it is possible for a failure to initiate and propagate during a single flood"** (ATC Williams, 2013).
- **Officially deteriorating, with the driver still running.** The DMRP concedes the original design flood level is no longer valid because the structure has degraded over time, and characterises the MRD as **"a progressively deteriorating structure"**; it expects the mining-induced deformation to continue through closure (2028) and for a significant period into rehabilitation (EnergyAustralia, 2025; EPA Victoria, 2025). The same dispersive soils that failed in 2012 will then face prolonged wetting from a standing pit lake and repeated wet-dry cycling.
- **The plan concedes retention is impossible.** Rather than convey the Morwell across the mine, the DMRP reconfigures the MRD to carry only low/environmental flows and routes larger floods - via three spillways - into the void. **A controlled version of the very failure mode (river into pit) is now the designed outcome.** A more durable Eastern Diversion Channel routing the Morwell clear of the mine was reportedly forgone to save ~A\$80 million (FOGL, 2025). And in an uncontrolled breach during filling, the Morwell would avulse into the pit and reach the Latrobe only in extreme floods.

Net effect for the river: whether by design (spillways) or by failure (breach), a large and growing share of the Morwell's ~120–180 GL/yr is progressively captured by the void - and once the lake becomes the receiving water, that capture is permanent. The decision-maker should treat continued Morwell-to-Latrobe conveyance as a **risk to be secured by enforceable condition, not an assumption** (see s 9).

Ecological consequence (the Ramsar impact). Morwell freshes supply freshwater, sediment and nutrients that flush salt from the lower Latrobe and Lake Wellington, build floodplains and fuel food webs (Hale, 2020). Suppressing them drives persistent salinity and fewer inundation events; vegetation shifts (loss of freshwater macrophytes, spread of salt-tolerant taxa); reduced fish recruitment; lost waterbird/amphibian breeding cues; higher algal-bloom risk - i.e. **erosion of the very values the Gippsland Lakes were Ramsar-listed for** (Boon et al., 2015; Hale et al., 2020; Hansen et al., 2024; EGCMA, 2024b). The margin for this is already gone: only **one natural freshwater wetland (Sale Common) remains** in the Ramsar site, and the Government's own Ecological Effects Assessment concludes the system needs *more* freshwater, not less (Hale, 2020). CSIRO independently finds that declining flows and rising salinity make a **change in the site's ecological character likely by 2050** (CSIRO, 2022) - which, for a listed Ramsar site, is the threshold that engages Australia's Convention and EPBC obligations.

Cumulative interception - the Morwell is squeezed at both mines. Hazelwood proposes a 637 GL pit lake (RL +45m) filled with groundwater, a Gippsland Water surface-water agreement, and abstraction of Morwell flood flows and stormwater which the **IESC and Alluvium warn will reduce flows to the Morwell River Southern Wetlands** (threatened-species habitat) (IESC, 2025). The same Morwell water is then at risk again at Yallourn. The IESC notes all three mines may fill their pits simultaneously under climate change - so impacts **must be assessed cumulatively across Hazelwood, Yallourn and Loy Yang**, not reach-by-reach (IESC, 2025).

7. Saline intrusion and the loss of variable flushing

- Reduce Latrobe + Morwell freshwater and the salt wedge advances into the Latrobe estuary and Lake Wellington, exposing **acid sulfate soils** (drawdown priority is to keep cover above known ASS) and collapsing the brackish/freshwater mosaic (Alluvium, 2020; EGCMA, 2024b).
- **The flows needed are large and specific:** Lake Wellington is only flushed of saline water when the Latrobe exceeds **~130 GL/month** (Brizga et al. 2013, as cited in Hale, 2020); the **lower estuary is flushed only above ~4,100 ML/day** (Water Technology 2013, as cited in Alluvium, 2020); and **Sale Common receives overbank freshwater only when the lower Latrobe exceeds ~15,000 ML/day** (Hale, 2020). Reducing take pushes the system below these thresholds more often.
- Under rehabilitation, flushing becomes **man-made and scheduled rather than variable and natural** - removing the flow variability that builds system resilience (FOGL, 2025).

- Climate change makes each loss **permanent and worse**: this is not a one-off transaction against today's conditions but a **lock-in of reduced supply against a declining baseline** (CSIRO, 2022; CGRSWS/DELWP, 2022).
- **The applicant's own DMRP concedes the mechanism.** It acknowledges that reduced freshwater flows in the Latrobe have already driven **increasing salinity** in the lower Latrobe wetlands - which it accepts are **Ramsar-listed and already degraded** from their freshwater condition - yet the application proposes to reduce those flows further (EnergyAustralia, 2025). In 485 pages the Ramsar site is named only twice, and Sale Common and the Latrobe estuary not at all: **the downstream endpoint that matters most is the one the plan assesses least.**

8. The Thomson offset - and its cost to Melbourne

If the Latrobe is drawn down, the only offset is not free.

- **The logic:** restoring commensurate base and minor-event flows to Lake Wellington after return-flow loss + Morwell interception requires **adjusting existing Thomson-system bulk entitlements** to release more.
- **The Thomson already does this job:** flows in the Latrobe are already coordinated with freshes in the Thomson River to meet estuary targets (VEWH, n.d.); the Government's own materials state that **"larger flows from the Latrobe and Thomson rivers help prevent"** saltwater pushing into the estuary under sea-level rise (DELWP, 2020).
- **Both systems are already heavily depleted:** the lower Thomson's total flow has fallen ~**50%** and the Macalister's median annual flow ~**47%** from natural, while the Latrobe retains ~**70%** (CRCFE 1999/2001, as reported in Alluvium, 2020); freshwater discharge to Lake Wellington has fallen ~**33%** from natural (Tilleard et al. 2009, as reported in Alluvium, 2020). There is little slack to redirect.
- **The Thomson directly supplies Melbourne:** Melbourne Water holds a bulk entitlement to the Thomson (the Greater Yarra – Thomson River Pool), and the Thomson is Melbourne's largest single storage (DEECA, 2023d). More Thomson release for Gippsland therefore = **less for Melbourne's supply security** = greater reliance on **more costly Wonthaggi desalinated water** and higher water bills for consumers. This directly implicates **Melbourne Water** and is the real, unpriced cost of "manufacturing" a Latrobe offset. Mimicking historic base and minor-event flows requires substantial volumes **annually**, not occasionally.
- **The cross-system dependency has been quietly narrowed.** The Government's own 2020 LVRRS acknowledges that "shortfalls in flows from the Thomson and Macalister Rivers" **contribute to salinisation of the lower Latrobe estuary and Lake Wellington** (DJPR & DELWP, 2020, p. 53). Yet the surface-water-access assessment scopes the Thomson **out** as "independent of potential extractions from the Latrobe system" for mine rehabilitation (Hale, 2020; Alluvium, 2023). The very

interdependency the Government recognised is set aside in the assessment that matters - and must be reinstated.

This is a system-level consequence the Minister must weigh, not a claim about the four corners of the application.

9. Conditions on any entitlement

The Government's own guidance canvasses several possible access arrangements for rehabilitation water (DEECA, 2023a). Whichever is chosen, FOGL's position is that the following conditions are the **minimum** necessary to prevent a net reduction in freshwater reaching the Ramsar site. These conditions are **not optional refinements**: the technical study's finding that a conditioned take produces no change in modelled risk to the Latrobe River and estuary holds **only if the full set is imposed** - unconditioned, the same take increases risk (Alluvium, 2023). They must therefore be **binding and enforceable in the instrument**, not left to operational discretion.

Condition	Requirement
Existing BWE	Ceases unconditionally when power generation ceases - i.e. the old entitlement is not carried over, banked, or used as a baseline or bargaining chip for the new take. Free/nil-cost, high-quality supply ends with generation. Application B proves the leverage : EnergyAustralia's amendment to the existing entitlement is made <i>expressly conditional</i> on the New BWE being granted <i>on the terms sought</i> - so it will not relinquish the 36.5 GL entitlement unless it secures the new one on its own terms (EnergyAustralia, 2026c; <i>Water Act 1989</i> (Vic) s 44(2)(a)). Cessation must be decoupled from the outcome of Application A.
Purpose limit & sunset	New entitlement is limited to pit filling/rehabilitation and sunset on completion - including if the pit fills earlier than the nominated 30-year window or 2065 .
No transfer or redeployment	The application's own drafting leaves this door open: its Permitted Purposes are tied to the DMRP and the EPA operating licence on an open-ended footing (each applies as amended or replaced over time), with no bar on transfer and no express exclusion of industrial use - and EnergyAustralia characterises the rehabilitation use itself as <i>industrial</i> and openly flags future industrial precincts for the 5,000 ha site (EnergyAustralia, 2026b). Set against the announced \$5 billion-plus "Yallourn Energy Security Precinct" naming site water as a data-centre drawcard (Hopkins, 2025), the instrument must expressly: (i) fix the

Condition	Requirement
	Permitted Purposes to the current DMRP (no open-ended amendment); (ii) prohibit any commercial, industrial or data-centre use of the entitlement water <i>and</i> the resulting pit-lake water; (iii) bar transfer or assignment ; and (iv) hold EnergyAustralia to its own position that on completion the water returns to the Latrobe system. Any use beyond rehabilitation must trigger immediate repricing at commercial market value and reassessment - closing the s 8(4)(c) gap (s 10) through which unpriced water could otherwise be repurposed.
No double dipping	Any Morwell take cannot be additional to Blue Rock supply . Any authorised flood take is metered and debited against the annual cap - never counted as free "excess."
Reliability	Class as very low reliability , explicitly subordinated to environmental and existing users; caps drop to zero in drought ; no compensation for curtailment (FOGL, 2025).

9.1 Pricing - from irrigators' "opportunity cost" to full value

Reject the narrow opportunity-cost frame. The Discussion Paper's \$200–\$260/ML approach omits non-market environmental, cultural and social values and sends perverse allocation signals (Ricardo, 2025). FOGL's primary position remains **zero additional Latrobe freshwater for mines**; pricing applies only *if* Government proceeds - a fallback safeguard, not an invitation to sell.

Price floor - benchmarked to the value forgone, not EA's cheapest fill option

- Long-run cost of manufactured water (advanced recycled/desalination) is **~\$2,500–\$3,000/ML** (DEECA, 2023b); FOGL recommends a **policy floor of ~\$2,500/ML** (desal proxy \$2,464/ML), reflecting **Total Economic Value** - ecological services, cultural values, recreation/tourism, option/existence values - with method and uncertainties published (FOGL, 2025).
- This aligns with the Victorian **Department of Treasury and Finance pricing principles**, which require prices to reflect the **value of the resource to the community**, not merely the private benefit to the user (Ricardo, 2025).
- The floor prices the **value forgone by placing freshwater in a void**, for which manufactured-water cost is a *replacement-cost proxy*. It is **not** the cost of EA's cheapest substitute pit-fill source. EnergyAustralia already contests the price on that basis - arguing the range bakes in storage/treatment/delivery infrastructure "not applicable" to direct river extraction, and that diverted water "may be worth ~\$0." That framing must be rejected: the relevant value is what the Ramsar system loses, not what a hole-filling substitute would cost.

- **Loadings:** indexation (CPI + scarcity factor); reviews that **ratchet upward** if environmental indicators deteriorate; an **MRD-assurance levy** internalising the diversion's structural/legacy risk. Payment must be **annual, with no upfront lump-sum buy-out** - a one-off payment would convert a recurring scarcity signal into a sunk cost and remove the five-yearly review lever. **Hypothecate** all revenue to a **Latrobe–Lakes Restoration Fund** (environmental water recovery, wetland works, Gunaikurnai cultural water), reported publicly. Avoid low initial prices (~\$260/ML) that encourage extraction.

Do not let the Loy Yang price become the template. In 2025 the Minister granted AGL's Loy Yang rehabilitation entitlement (up to 35.8 GL/yr) with a water-access price of just **\$230/ML** (2025 dollars, CPI-indexed) (DEECA, 2025). Yallourn should **not** inherit that figure. \$230/ML reflects the narrow irrigation opportunity-cost frame criticised above; it is **under one-tenth** of the cost of the next-best manufactured supply, so it neither captures the value forgone by a Ramsar system nor deters extraction in favour of alternatives. Carried across all three mines (~99 GL/yr combined), it entrenches a value-destroying price against a Ramsar site already in chronic water deficit. FOGL asks that the Loy Yang figure be treated as a **floor to correct at review, not a precedent to follow** - and that Yallourn's price be set to replacement-cost value (~\$2,500/ML).

Who bears the cost - this does not fall on household power bills

Because the water is consumed **after Yallourn closes in 2028**, there is no electricity product to which the cost can attach:

- **Not energy customers.** Retail energy is fiercely competitive; a closed plant's legacy cost cannot be recovered through tariffs without losing customers, and has no causal link to the price of energy sold today. Any "this raises power bills" claim should be rejected.
- **CLP shareholders.** EnergyAustralia is wholly owned by Hong Kong-listed CLP Group. The cost - largely unprovisioned, since EA's entitlement was historically nil-cost - falls on group equity. This is the intended effect: it internalises an environmental cost long externalised.
- **Taxpayer tail risk - and the bond already assumes free water.** Yallourn's rehabilitation bond is **\$148 million** (Premier of Victoria, 2017). Critically, the Hazelwood Mine Fire Inquiry found that Yallourn's rehabilitation-liability model "**does not allocate any costs for the purchase of water**" and assumes free access to existing bulk entitlements (Hazelwood Mine Fire Inquiry, 2016). The bond is therefore built on a nil-cost-water assumption - so pricing water at full value exposes a gap between the bonded sum and the true cost of rehabilitation, which, if the post-closure entity's means fall short, lands on the public. The neighbouring case proves the pattern: at Hazelwood the **~\$289 million** bond is **less than half** the **~\$743 million** estimated cost (Environmental Justice Australia, 2024). The remedy is to **price high and reset the financial assurance to the fully-priced cost of rehabilitation, water included** - so walk-away is never the cheaper option.

Scale

Affordability is not a barrier - and pricing does not force walk-away. At the applied-for maximum, a \$2,500/ML charge is roughly \$60–70 million a year - under 10% of EnergyAustralia's FY2025 EBITDAF (A\$690 million; EnergyAustralia, 2026a), readily borne by its multi-billion-dollar Hong Kong-listed parent CLP Group, and modest against the **\$5 billion-plus** precinct EnergyAustralia is itself pursuing at the site (Hopkins, 2025). Full-value pricing cannot credibly be called unaffordable, and the financial-assurance bond (above) exists precisely so a proponent cannot price-in walk-away. What protects the river is not the headline total but the **price per megalitre**: pitched at the cost of the next-best manufactured supply, it removes the incentive to default to cheap river water. **Materiality at the margin** - not the size of the bill - is what gives the price its protective force.

Pricing is necessary but not sufficient

A price only *prevents* extraction if it changes behaviour. If the entitlement is granted, EA pays, and the water is taken anyway - readily affordable within a \$5 billion data-centre precinct (see s 9 table; Hopkins, 2025) - the Ramsar site gains nothing and the harm is merely **monetised**. Pricing must therefore sit **behind** hard volume caps, cease-to-pump triggers and the redeployment prohibition, not in place of them.

10. The unlicensed water grab - taking Crown water without an entitlement

These are not conditions to negotiate; they are objections. The application seeks Crown-owned water outside the entitlement framework.

Objection	Basis and remedy
Clause (d): claiming Crown water as private	Application clause (d) asserts that any water reaching the pit - groundwater, rainfall, surface drainage and Morwell flood flows over EAY land - may be used by EnergyAustralia <i>without restriction</i> and outside any entitlement (EnergyAustralia, 2026b). This runs against the Water Act: s 7 vests the use, flow and control of all water in a waterway and all groundwater in the Crown, and the DMRP itself concedes the rivers and floodplains are owned by third parties, not EAY (EnergyAustralia, 2025). Water does not become EnergyAustralia's property by overtopping a (deteriorating) levee into the pit, and the absence of a finalised contract over the diversion structure cannot convert Crown water into private water - it leaves the water under Crown , not EnergyAustralia, control. The DMRP's own water balance counts <i>*Morwell River flood flows as a fill and perpetual input - i.e.</i>

Objection	Basis and remedy
	<i>systematic, in-perpetuity harvesting of a Crown-owned river, on top of the 27 GL take. The instrument must state that water entering the pit from or via a waterway, and groundwater, remains Crown water requiring authorisation, metering and accounting against the entitlement (or a s 51 licence); clause (d)'s without restriction carve-out must be struck or confined to genuine rainfall on EAY land (Water Act 1989 (Vic) ss 7, 8, 15, 51).</i>
s 8(4)(c) "not a take" loophole	The application argues flood water flowing over EAY land into the pit is "unlikely to be a take" and may be retained without an entitlement (<i>Water Act 1989 (Vic) s 8(4)(c)</i>). Whether or not it is a "take" in law, retaining flood water in the pit removes it from the Latrobe and Lake Wellington - the ecological loss is identical. s 8(4)(c) must not become a mechanism to intercept flood flows unaccounted and unpriced. Note the still-outstanding approvals - take-and-use licence (s 51) and licence to construct works (three MRD spillways, MRD works, and the NE-corner lake overflow to the Latrobe) - which the applicant plans to resolve only "around end 2026," i.e. water impacts are being decided before the enabling approvals are settled (EnergyAustralia, 2025).
Data-centre redeployment / water-corporation supply	Not hypothetical - and there is a live precedent. At Hazelwood, ENGIE already holds a commercial surface-water agreement with Gippsland Water of the order of 20–30 GL/yr, outside the bulk-entitlement regime (Environmental Justice Australia, 2024; CWA, 2025). Separately, EnergyAustralia's \$5 billion-plus Yallourn Energy Security Precinct expressly names site water as a data-centre drawcard (Hopkins, 2025). A rehabilitation-framed entitlement is therefore a latent commercial water asset - and at data-centre value, even \$2,500/ML is a bargain, defeating the pricing deterrent. Ring-fence rehabilitation water absolutely from any commercial/industrial/data-centre use; bring any water-corporation supply arrangement under the bulk-entitlement regime with market-value repricing on any breach (ties to s 9, s 9.1).

11. Knowledge gaps and disclosure demands

Raised as preconditions - not asserted as fact. Each must be resolved before any grant.

Item	FOGL demand
Perpetual evaporation top-up	The DMRP's own water balance tabulates an indicative annual pit top-up to offset evaporation once full - roughly 2.6–4.7 GL/yr on the applicant's figures, totalling 170–325 GL over a 100-year simulation (EnergyAustralia, 2025, Tables 8-21/8-22; RGS Environmental, 2025). This is a new, perpetual sink on the system <i>beyond</i> the 30-year fill - and the DMRP concedes the source and approval of this top-up water is an unresolved gap . It must be disclosed, counted in the net balance, priced, and covered by an entitlement. No grant until specified.
Single-gauge monitoring	Compliance relies on a single gauge upstream of Lake Narracan (Willow Grove), which does not capture loss of Morwell flows entering below it. Any base-flow/cease-to-pump trigger set there understates downstream impact. Require a fit-for-purpose network (Latrobe below the Morwell confluence, the Morwell, estuary/Lake Wellington salinity, wetland indicators) with real-time public reporting (Alluvium, 2023; FOGL, 2025).

12. Recommendations

The three highest-priority asks are 1, 2 and 7; the remainder are supporting conditions.

1. **[Priority] Assess on net water to Lake Wellington**, not gross entitlement reduction.
2. **[Priority] Refuse** any entitlement permitting ~27 GL/yr without replacing/offsetting both the lost return flow (~13 GL/yr representative) **and** the lost Morwell contribution.
3. Require **independent, public modelling** of the combined effect of (a) return-flow cessation and (b) MRD reduction/failure on baseflows, freshes, salinity, the lower Latrobe wetlands and Lake Wellington - run as an **explicit with-and-without-Yallourn-return-flows comparison** and **cumulative with Hazelwood and Loy Yang** (all three may fill simultaneously; IESC, 2025).
4. **Resolve before any decision:** the MRD "rural level" volume; the evaporation top-up volume and source (RGS, 2025); the overtopping-ownership claim; and the s 8(4)(c) position.
5. Apply a **"rivers last"** hierarchy - exhaust manufactured/recycled/alternative sources first (DEECA, 2023b).
6. **Existing BWE ceases unconditionally** at end of generation; new entitlement **sunset** on completion, no double dipping, and no transfer or redeployment to data-centre/commercial use

- **with market-value repricing on any breach**; bring any water-corporation supply under the bulk-entitlement regime (see s 9, s 10).

7. **[Priority] If granted: full-value pricing floor ~\$2,500/ML** (manufactured-water LPMC, TEV-based) **plus scarcity loadings and an MRD-assurance levy**, hypothecated to a Latrobe–Lakes Restoration Fund; very-low reliability, zero in drought, no compensation. Because the water is used post-closure, this cost falls on **CLP shareholders, not household power bills**; set the **rehabilitation bond/financial assurance to the fully-priced cost** to cap taxpayer exposure (cf. Hazelwood, where the bond is less than half the cost; Environmental Justice Australia, 2024).
8. If the Latrobe *is* drawn down, require the **Thomson offset and its Melbourne-supply/desalination cost** to be modelled and disclosed - no hidden cross-subsidy from the Ramsar site to the coal proponent.

13. Conclusion

Strip away the framing and the arithmetic is simple: **this application takes more freshwater from the Gippsland Lakes than the status quo, not less**. The applicant's own plan concedes the mechanism - reduced Latrobe flows drive the salinity already degrading these Ramsar wetlands - and its own evidence base concedes the increase. It seeks to fill a coal pit with a Crown-owned river, in perpetuity and largely unpriced, while a system the Government has committed to *restore* slips further into deficit.

Rehabilitation must proceed - but not paid for in the ecological character of an internationally significant wetland. FOGL asks the Minister to apply one test - **does the proposal reduce net freshwater to the lower Latrobe wetlands and Lake Wellington?** - and, because on the evidence it does, to **refuse the application as framed** and grant a rehabilitation entitlement only on a **net-neutral** basis: fully accounted, fully priced, and fully conditioned.

Friends of the Gippsland Lakes

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