



8th February 2016

Water Price Review 2016
Essential Services Commission
Level 37, 2 Lonsdale Street
MELBOURNE VIC 3000

Dear Sir

Submission – Water Price Review 2016

Marina Operations (Aust) Pty Ltd welcomes the opportunity to provide a submission in respect of Melbourne Water Corporation's ("Melbourne Water") 2016 price submission ("price submission").

Marina Operations (Aust) Pty Ltd ("Marina Operations") is the operator of the Patterson Lakes Marina. The Marina precinct comprises 270 individual residences and 7 commercial businesses. Marina Operations has agreements with each of the relevant Owners' Corporations and the commercial businesses.

This submission is directed towards Melbourne Water's proposal on page 80 of the price submission that "a new tariff is proposed for the Patterson Lakes Marina to complement an existing contract. The tariff will recover the renewal and maintenance cost of a tidal gate that services the Marina. The method for calculating the tariff is consistent with the principles used to develop the Patterson Lakes jetty tariffs".

Whilst this cannot properly be described as a "price submission", in effect Melbourne Water proposes to impose a "tariff" on Marina Operations of:

- (a) \$108,027.07 for the financial years 2008-2011
- (b) \$24,652.78 for the financial year 2012-2013;
- (c) \$29,292.76 for the financial year 2013-2014;
- (d) \$34,981.00 for the financial year 2014-2015;
- (e) \$30,000 for the financial year 2015-2016;
- (f) \$38,128 for the financial year 2016-2017;
- (g) \$38,128 indexed for each financial year thereafter;

- (h) \$343,073 for the financial year 2016-2017;
- (i) \$343,073 for each financial year until 30 June 2021;
- (j) an unstated amount presumably in excess of \$343,073 for each financial year from 1 July 2021 until 30 June 2032.

Items (a) – (g) represent a charge in respect of operation and maintenance of the Runaway Bay Flood Gate.

Items (h) – (j) represent a charge in respect of capital cost of replacing the Runaway Bay Flood Gate in the year 2032.

Marina Operations, in summary, submits that the Commission ought not approve the price submission and ought make a price determination that none of the proposed tariff will be imposed for the following reasons:

1. The proposed tariff is inconsistent with the principles identified in the Patterson Lakes Independent Review Management of Patterson Lakes Tidal Waterways & Quiet Lakes 8 March 2013 ('the Review').
2. The proposed tariff is not provided for by the Commercial Marina Agreement.
3. The proposed tariff will impact on the Marina precinct residents and businesses, not on Marina Operations.
4. The proposed tariff is inequitable as between Marina precinct residents and residents in the surrounding area.
5. The proposed tariff will have effectively retrospective application which will create financial and legal difficulties.

These reasons are explained below.

The proposed tariff is inconsistent with the principles identified in the the Review

Melbourne Water has stated that it would base its price submission on the recommendations of the Review.

The following principles underlay the recommendations of the Review.

1. The Tidal Waterways form part of a broader flood mitigation and protection scheme that also includes flood protection levies along the Patterson River, floodgates, pumping station and drainage infrastructure. The three floodgates servicing the Tidal Waterways located at Whalers Cove, Runaway Marina (Middle Harbour) and Inner Harbour/Town Centre also form part of the flood protection scheme (page 51).
2. The Patterson Lakes Waterways are clearly public reserves that have a drainage function and a recreational function (page 61).
3. Melbourne Water's submission that the Precept Rate was needed to meet the costs of the "special unique and private service" that Patterson Lakes residents received for their waterside properties was rejected (page 80).
4. Management and statutory governance of the Tidal Waterways have changed since they were created 40 years ago and applying a Precept Rate over them was no longer relevant and suitable (page 40).
5. Maintenance costs and capital asset renewal costs are conceptually different and Melbourne Water's proposal in the 2013 Water Plan to increase the Precept Rate to cover not only maintenance but also the costs involved in renewing capital assets generated considerable concern amongst the Precept Ratepayers (see, for example, pages iv, xi, 15, 39, 80-81, 85, 86, 91, 94, 96, 102).
6. Under the Development Services Scheme, current assets are paid for by the developer, and transferred to Melbourne Water, which pays for on-going maintenance and asset renewal from the Melbourne Metropolitan Waterways and Drainage Charge (page 29).

Following the Review's Recommendations:

1. The capital asset renewal costs for the floodgates was removed by Melbourne Water from its 2011 funding submission to the Essential Services Commission.
2. The removal of the capital asset renewal costs for the floodgates was accepted by the Essential Services Commission in the June 2011 Decision Paper.
3. The Melbourne Water 'Pricing Proposal for Patterson Lakes Special Drainage Area' again confirmed the removal of the capital asset renewal costs for the floodgates on the basis of the public benefit that they provided the principle that the costs should be recovered through the Melbourne Metropolitan Waterways and Drainage Charge.
4. This position was further confirmed by the Arup Independent Review of March 2014 of the Melbourne Water pricing submission; and
5. The Essential Service Commission draft decision of April 2014 again confirms that the capital asset renewal costs for the floodgates would be funded through Melbourne Metropolitan Waterways and Drainage Charge.

All of the residents and businesses in the Marina precinct pay the Melbourne Metropolitan Waterways and Drainage Charge.

The proposed tariff is inconsistent with the principles identified in the Review as:

- (a) it would effectively reimpose upon the residents and businesses in the Marina precinct the Precept Rate in addition to the Melbourne Metropolitan Waterways and Drainage Charge;
- (b) it would effectively extend the Precept Rate imposed upon the residents and businesses in the Marina precinct to capital asset renewal costs for the Runaway Bay floodgate;

(c) it would effectively mean that Melbourne Water would be “double dipping” in respect of the capital asset renewal costs for the Runaway Bay floodgate both from the Melbourne Metropolitan Waterways and Drainage Charge imposed on all relevant residents and from the proposed tariff reimposed upon the residents and businesses in the Marina precinct.

The proposed tariff is not provided for by the Commercial Marina Agreement.

Although Melbourne Water refers to the proposed charge as a “tariff”, it is not. Any such charge can only be imposed (and Melbourne Water proposes to impose it) pursuant to the “Commercial Marina Agreement Patterson Lakes Marina” agreement, a private commercial agreement, executed 8 June 1994 by Melbourne Water and assigned to Marina Operations (“CMA”).

The CMA originally provided that certain residents and Marina Operations pay a proportion of the maintenance expenses of operating the three (3) tidal floodgates located at Runaway Bay Marina, Inner Harbor Marina and Whalers Cove.

Importantly, this did not include the capital asset renewal costs for the Runaway Bay floodgate (or indeed any floodgate). Melbourne Water has never, until now, sought, in the more than two decades of operation of the CMA, to impose the capital asset renewal costs for the Runaway Bay floodgate on the residents and Marina Operations. As can be seen from the figures set out above, Melbourne Water now effectively seeks to charge for capital asset renewal costs at a rate 10 times the charge for maintenance costs.

However, no capital asset renewal costs were permitted to be charged under the CMA, and Marina Operations asserts that there is no legal basis for the imposition of such a charge under the CMA.

Incidentally, even if there was such a legal basis (which there is not) Melbourne Water has not provided any evidence or material as to calculation of the capital asset renewal costs, despite being requested to do so.

Further, that part of the CMA which relates to maintenance costs no longer has any utility because it does not take into account the significant amount of residential development that has taken place over the last 20 years in the area, which development derives a significant benefit from the floodgate protection.

The provisions in the CMA concerning maintenance costs are no longer applicable and have been waived by Melbourne Water as:

- (a) the express provisions and procedures contained in the CMA in respect of calculating and reviewing maintenance fees have not been followed;
- (b) Melbourne Water ceased to charge maintenance costs in 2007, recognising that management and statutory governance of the Tidal Waterways have changed since they were created 40 years ago and that applying what is effectively a Precept Rate over them was no longer relevant and suitable;
- (c) Melbourne Water ceased to charge the Precept Rate and instead is funding maintenance of the floodgates from the Melbourne Metropolitan Waterways and Drainage Charge;
- (d) the calculation by Melbourne Water of maintenance costs in respect of past years was erroneous and Marina Operations has been overcharged in respect of past years.

Marina Operations considers that the calculation by Melbourne Water of maintenance costs in respect of past years was erroneous and Marina Operations has been overcharged in respect of past years because of the following matters:

The CMA originally provided that 729 properties located within the Canal and Quiet Lakes systems paid 43% and Marina Operations paid 57% of the maintenance expenses.

The CMA provided that the formula might be reviewed on a basis to be determined by consultation between all persons who derived a benefit from the floodgates, and that the apportionment should be reviewed annually. Such reviews never occurred.

The reference to “consultation between all persons who derived a benefit from the floodgates” is important, as it makes clear that the formula applied, in 1984, to all of

the properties which derived a benefit from the floodgates, and that all of the residents who derived a benefit from the floodgates were obliged to contribute to maintenance of the floodgates. In 1984, there were 729 such properties. Today, there are 4,971 such properties, and that number is growing. Yet the formula has not been updated to take into account this growth.

Even in 1984, the formula did not operate correctly. The formula proceeded on the basis that there were only 729 “private berths” to be taken into account. In contrast, 1217 properties (that is, the properties previously charged precept rate) clearly ought to have been taken into account and, given the findings of the review, the remaining 3,700 properties obtaining the benefit of the floodgate ought to have been taken into account.

Further, the number of berths located in the Marina precinct taken into account in the formula has been vastly overstated. The formula proceeds on the basis that there were 554 commercial berths. In fact, there are only 126 commercial berths. Even if one takes into account the 238 commercial dry berths, Marina Operations calculates that it should have paid, in the past, only 6.5% of maintenance costs instead of the 53% it has actually paid over the years.

Further, it ignores the change in the total value of the residential properties over the past decades. The value of the 270 properties in the Marina precinct now subject to the proposed tariff now exceed the value of Marina Operations by a factor of 20 to 1. This is to say nothing of the value of the 1217 properties located within the Canal and Quiet Lakes systems against which Marina Operations share of the maintenance costs are calculated, or the 4,971 properties against which Marina Operations share of the maintenance costs ought have been calculated.

It is also to say nothing of the value of 64 residences which are currently being marketed off the plan and some future 300 additional residences in the area.

This significant change in relative value ought to have impacted on the proportion of the maintenance costs borne by Marina Operations under the CMA.

The proposed tariff will impact on the marina precinct residents and businesses, not on Marina Operations.

Whilst the price submission suggests that the proposed tariff will fall on Marina Operations, in fact, it will not fall upon Marina Operations but upon the residents and businesses in the Marina precinct.

This is because Marina Operations has agreements with each of the relevant Owners' Corporations and the commercial businesses which have the effect that all of the charges imposed by Melbourne Water "flow-through" to the residents and commercial businesses.

Thus, the residents will not only be paying Melbourne Metropolitan Waterways and Drainage Charge, but also the proposed tariff in the amounts set out above, which constitutes not only a heavy but an unfair impost.

WIRO states as a regulatory provision that Melbourne Water must take into account the interests of customers, including low income and vulnerable customers. A number of the Marina precinct residents are on fixed incomes and no doubt will have difficulty paying the extra charge.

We understand that the various Owners' Corporations on behalf of their members will also be providing submissions to the Essential Services Commission.

The submissions will detail the impact of the proposed charges will have on their members and in addition the adverse financial impact on the value of the residences, as these fees must be disclosed in a contract of sale.

We support our residents, and the submissions made by our residents on this matter and suggest that their submissions be given careful consideration.

The proposed tariff is inequitable as between marina precinct residents and residents in the surrounding area.

As Melbourne Water has accepted the Review's recommendations, imposition of the proposed tariff is discriminatory, inequitable and unfair and inconsistent with its overarching goal to provide its customers with the best possible services at a fair price.

Melbourne Water seeks to levy substantial fees on a small number of owners for a benefit that is provided to the whole community.

If the proposed tariff were accepted, residents on the southern side of McLeod Rd would not pay the proposed tariff, while properties located on the northern side of McLeod Rd would.

Similarly, properties located on eastern side of Inner Harbour Drive would not, whilst properties on the western side would have to pay the proposed tariff.

Similarly, properties located on the western bank of Whalers Cove would not pay the proposed tariff while properties located on the eastern bank would.

This is clearly discriminatory, inequitable and unfair.

The floodgates provide the same level of protection to both sides of the road and indeed, as the Review concluded, to a wider geographic area than the immediate community.

The current 270 individual residences and 7 commercial business located in the Marina precinct are in no different position to the individual residences located in the canal system, Quiet Lakes and Patterson Lakes Shopping Centres.

All require and receive the same level of protection, yet Melbourne Water is seeking to introduce a discriminatory and unfair pricing proposal which will result in a situation where one side of the road pays and the other does not.

The proposed tariff will have effectively retrospective application which will create financial and legal difficulties.

The last time that the maintenance charge was imposed on Marina Operations (and thus on the Marina precinct residents and businesses) was for the 2006-2007 financial year.

If the price submission were accepted and the tariff imposed, Marina Operations (and thus the Marina precinct residents and businesses) would be required to pay a very substantial amount for previous financial years as well as for the present financial year; and will be liable for a very substantially increased amount in future years.

This obviously may impose financial hardship on some residents and businesses.

It may also create legal difficulties and possibly disputes, in that properties purchased after 1 July 2007 will be liable for past and future charges not disclosed to the purchaser in the conveyancing process.

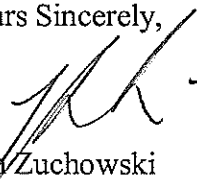
Summary

Melbourne Water has not taken into account that the Marina precinct has been progressively developed over the past 20 years and where it was once a barren field, it is now a comprehensive developed estate.

The principle that on-going maintenance and asset renewal in the Tidal Waterways as part of a broader flood mitigation and protection scheme ought be met from the Melbourne Metropolitan Waterways and Drainage Charge ought be applied to all benefited residents in an equitable way.

We submit that there is no basis for these charges and urge the Commission not to approve the price submission and instead make a price determination that none of the proposed tariff will be imposed.

Yours Sincerely,



Sam Zuchowski
Patterson Lakes Marina
Managing Director