



*Endeavour Cove Owners Corporation No 2 PS:337700R*

*C/- P.O. Box 359*

*Patterson Lakes Vic 3197*

*15th February 2016*

**The Chair,  
Melbourne Water Price Review  
Essential Services Commission  
Level 37 / 2 Lonsdale Street  
Melbourne Victoria 3000**

*Dear Sir,*

***RE: Melbourne Water Price Review 2016.  
Our Letter 02/02/2016, Your reply 03/02/2016.***

*We refer to the above and would firstly like to thank you on behalf of our members for the invitation extended to attend Melbourne Water's presentation on their 2016 Pricing Submission as hosted by the Essential Services Commission on the 9th February instant.*

*The opportunity to attend and submit questions on behalf of our members to the Melbourne Water representatives in respect to our members concerns regarding the proposed introduction of the "**new tariff**" to the marina and thus in turn on our member residents at Patterson Lakes was greatly appreciated.*

*Unfortunately, as I am sure you can appreciate, we did leave the presentation somewhat bewildered, frustrated and accordingly most disappointed with the response received from the Melbourne Water representative in respect to our questions and members concerns.*

*We accordingly thank you again for allowing us to take this opportunity to submit the following additional comments on behalf of our members in clarification of our understanding of some of the statements made by the Melbourne Water representative on Tuesday.*

### **Stormwater Drainage Functions:**

We are at a total loss as to the alleged basis for the Melbourne Water Representative's response that the Marina Basin is not now apparently considered by Melbourne Water to be part of the Patterson Lakes Drainage Area.

We submit that such an assertion is erroneous given that:

- the Marina Basin is clearly included in **Melbourne Water's Patterson Lakes Drainage Catchment Boundary Diagram of 8/10/2012** (copy attached marked Appendix A) as presented by Melbourne Water in their submission to the Independent Review,
- there are some 48 easements for Drainage in favour of Melbourne Water across our portion of the Plan of Subdivision alone,
- one of these Drainage easements for Melbourne Water includes the entire Marina Basin area to a height of 1.86m for storm water collection,
- all the residential properties located in North Shore Drive, South Seas Place, Marina Palms, Scarborough Drive, Pier 9 and the eastern side of Pier 1 drain into the Marina Basin,
- all the residential subdivision common properties and access roadways of North Shore Drive, South Seas Place, Scarborough Drive, Pier 9 and the eastern side of Pier 1 drain into the Marina Basin,
- the Commercial buildings, access roads and parking for the Marina Operations, Dry Storage Stack and the Cove Hotel all drain into the marina basin,
- the City of Kingston council roadway drains for the western (Marina Palms) side of Inner Harbour Drive and the section of McLeod Road (between Inner Harbour Drive and Whalers Cove) also drain into the Marina Basin, and
- the Melbourne Water underground Drains clearly connect the Marina Basin to the Town Basin and the Tidal Waterways canal system at Manhattan Keys to ensure adequate water movement and balance the heights of water levels across the Tidal waterways. (Completion of the Construction of this drain was required by Melbourne Water under the 1994 Commercial Marina Agreement to rectify A default by the previous developers and to facilitate the circulation of water in the system in order to facilitate the maintenance of adequate water quality in the system. We note that the 1994 Commercial Marina Agreement refers to and defines the System as "the existing Patterson Lakes tidal waterways system".

### **Tidal Waterways Assets:**

We have attached for your information a copy of **Figure 1 Melbourne Water Patterson Lakes Assets dated 07/12/2012** (marked Appendix B) as presented by Melbourne Water to the Independent Review.

The attached diagram shows the location of Melbourne Water's assets including the:

- Drainage Pumping Stations,
- waterways and channels, ( which includes the Marina Basin)
- underground drains, ( which includes the connecting drain between the Marina Basin, Town Basin and the Tidal waterways canal),

- levee banks, (we also note that there is also a 3mt easement in favour of Melbourne Water at the rear of our North Shore Drive Properties which back onto the Patterson River Flood Levee, for Flood Mitigation Works),
- retaining walls, (these do not include the internal Marina Basin walls as these are owned by and the responsibility of the Marina to maintain in terms of the Commercial Marina Agreement),
- jetties, (includes those in the canal system and part of the town basin but does not include those in the Marina Basin as these are owned by and the responsibility of the Marina to maintain in terms of the Commercial Marina Agreement),
- Tidal Flood Gates, (includes the Flood gates at the entrance to the Town Basin, the Marina Basin and the two separate in and out gates at Whalers Cove leading into the canal system), and
- Melbourne water owned land, (does not include the Marina basin as this is owned by the Marina) .

We note that the 1994 Commercial Marina Agreement (which replaced a number of earlier agreements dating back to 1979, 1981, 1983, 1987 and 1988 also refers to and defines the System as "the existing Patterson Lakes tidal waterways system".

**Patterson Lakes Precept Area:**

We have also attached a copy of **Figure 2 Patterson Lakes Precept Area Property Map dated 08/12/2012** (marked Appendix C) as presented by Melbourne Water to the Independent Review.

The attached diagram in addition to reconfirming the Catchment Boundary, Melbourne Water and Council Drains shows the location of:

- properties within the Patterson Lakes Precept Area, (this does include all the Endeavour Cove properties located in North Shore Drive, South Seas Place, Marina Palms, Scarborough Drive, Pier 1 and Pier 9 , and.
- properties in the Quite Lakes Precept area.

Melbourne Water advised the Independent Review that at the time there were 1,217 properties being charged a Precept rate with a further 3,700 properties in the surrounding area (that drain into the Patterson Lakes waterways via the local drainage network) and which is considered to not be within the Precept Area and that under the current DSS framework that would equate to 4,917 properties a new developer would have to contribute for urban development infrastructure.

We understand that the original "Priestley Development" of the area we now call Endeavour Cove did not commence until around 1979 i.e. some 6 years after the Original 1973 Agreement which was specifically referred to at the Independent Review. We also note that the independent review was also provided with and did review the provisions of the Commercial Marina Agreement , which agreement also contained similar provisions for a special precept levy where Melbourne Water were able to impose such a levy on land owners in the:

- Town Centre,
- Runaway Bay Marina, and /or

- *Whalers Cove,*

*for the flood gate operation and maintenance, waterway dredging and other associated works.*

*We have no record of any such levy having either been necessary and / or imposed since the 1994 Commercial Marina Agreement because of the fact that:*

- 1. Melbourne Water were already charging 57.3% of the cost of the flood gate operation and maintenance costs across all four flood gates to the Marina with the remaining 42.7% included in the Precept Charge for the remaining 1217 Tidal waterways residents,*
- 2. Melbourne Water were aware that the above charge to the marina was being on charged to the Endeavour Cove residents and mooring holders,*
- 3. Melbourne were not actually responsible for and accordingly did not carry out any dredging or other works within the Marina Basin as this responsibility rested solely with the Marina Operator to undertake as / if necessary and/or as directed by Melbourne Water,*
- 4. A set proportion of any dredging costs incurred by Melbourne Water in respect to the dredging of the actual Patterson River and river access to the flood gate was charged to the Marina under the Commercial Marina Agreement and accordingly on charged by them to the mooring holders as part of their annual mooring fee.*

*We note that there is no provision within the Commercial Marina Agreement for the charging of any capital renewal costs as proposed by Melbourne Water under this proposed "New Tariff".*

**Patterson Lakes Management Strategy:**

*We note that the 2013 Essential Services Commission endorsed Melbourne Water Management Strategy for the Patterson Lakes Special Drainage Area Melbourne Water included that:*

*"Melbourne Water accepts the findings of the Independent Review Recommendations. Adoption of the key recommendations has lead Melbourne Water to develop the Patterson Lakes management strategy, consisting of:*

- *Melbourne Water ceasing to charge the former precept rate from 1 July 2013*
- *Implementing uniform user pays pricing for those services and assets that are linked to private recreational benefit. This is applicable to jetty replacement and maintenance, and dredging feasibility costs as determined in consultation with the community. The prices will apply to 731 jetty lease holders.*
- *For all other services considered to have a regional and community benefit, these will continue to be funded through the Waterways & Drainage Charge. These services and capital works in the Tidal Waterways include:*
  - *operation, maintenance and dredging of the floodgates*
  - *retaining wall maintenance & monitoring*
  - *interconnecting pipes maintenance*
  - *general civil assets monitoring & works*
  - *community communications/consultations".*

### **Waterways and Drainage Charge:**

*We note in terms of the above, and all their subsequent submissions and public documents that Melbourne Water accepted (without any qualification) the Independent Review Recommendation that the capital works in the Tidal waterways including the renewal, operation, maintenance and dredging of the floodgates would continue to be funded through the Waterways & Drainage Charge.*

*In line with the above the Capital replacement, operational and renewal costs of all the Integrated flood gates irrespective of their actual location were included in the above recommendations and acceptance and all should now continue to be funded through the Waterways & Drainage Charge without any need for Melbourne water to impose any such proposed "New tariff".*

*We are accordingly at a loss as to the alleged basis that Melbourne Water, in their letter of 29th October 2015 to the Marina, could apparently claim under the subheading "Flood Gate Replacement Cost" that "the Melbourne Waterways and Drainage charge does not account for costs or charges relating to the operations and maintenance of Runaway Bay" (i.e. in this instance specifically referring to the flood gate at the entrance of the marina).*

*The proposed "New Tariff" is accordingly inappropriate and unnecessary as it was clearly acknowledged and accepted by Melbourne Water and the Independent Review that the gates were all part of an Integrated flood control system, which was owned and operated by Melbourne Water, with Melbourne Water being solely responsible for the operation, maintenance and renewal of the assets.*

### **Public Vs Private Benefits:**

*We note that the:*

- *Melbourne Water's proposed "New Tariff" is solely calculated and based on the capital replacement, operational and maintenance costs of the Flood Gate, whilst*
- *the only proposed uniform user pays pricing proposal under the ESC endorsed Patterson Lakes Management Strategy was for those services and assets which were linked to private recreational benefit. Melbourne Water further defined this as only being applicable to jetty replacement and maintenance, and dredging feasibility costs as determined in consultation with the community.*

*We are accordingly also at a total loss as to the alleged basis for the Melbourne Water Representative's response regarding their current differentiation of the Public vs. Private Benefits derived between the actual flood gates located at the entrance to the Town Basin and Whalers Cove to those located at the entrance to the Marina Basin as opposed to any potential differentiation of jetties and moorings between the canals and marina basin.*

*The entire Patterson River and tidal waterways including the Marina and Town Basins are part of the designated Patterson Lakes Waterways and are all available for private and commercial vessel navigation. Mooring Licence holders across the entire system are entitled to the private use of their licensed mooring / jetty which are not available for public use.*

*A public dock is provided by the Marina and located in the marina next to the Cove Hotel which is available for hotel guests and other public waterways users to temporarily dock their boats and the only refuelling station for boats on the system is now located in the Town basin.*

*We note that Melbourne Water, City of Kingston and the State Government have all recently also agreed to install a new public jetty at the shopping centre located on the town basin for the temporary docking of public boats in that area.*

*Whilst the flood gates allow boat access to and from the river and around the tidal waterways during normal water levels their underlying primary purpose as agreed by Melbourne water and the Independent Review is for flood mitigation and drainage water management.*

*In line with the approved Patterson Lakes Management Strategy the only areas where there is a deemed strictly private benefit is the actual moorings / jetties available to the individual mooring licence holders. In the case of the Marina Basin these include 126 Commercial licence holders and in the canal system some 731 private licence holders.*

*In terms of our letter of the 2nd February last this desired uniformity in respect to the replacement, operation and maintenance of the jetties and moorings already actually exists:*

- In the case of the 731 private mooring lease holders with Melbourne Water the costs incurred by Melbourne Water to replace and maintain these assets, are now incorporated in the annual replacement and maintenance cost charged to the individual licensees; and*
- in the case of the 126 marina mooring lease holders the costs incurred by the Marina to replace and maintain these assets and /or undertake any additional works as Melbourne Water may direct are also recouped along with calculated portion of the overall operating costs from the actual individual marina mooring lessees by way of the annual charge by the Marina plus a margin of 10%. The 238 dry berth holders are also included in the calculation of the individual's share of the marina operating costs.*

*The Proposed "New Tariff" is accordingly totally unnecessary and thus redundant as there was and remains no need for any inclusion of the flood gate costs to ensure user pays uniformity between the private and commercial mooring lease holders rather, it would actually create greater inequality, given that the majority of any proposed "new tariff" would be borne by the marina residents and not the mooring lease holders.*

**Consultation:**

*We note that Melbourne Water outlined the extensive consultative approach they had taken since October 2014 in seeking customers and community input and feedback into their 2016 pricing Submission. Whilst this may have occurred across some disciplines, this same consultative process was clearly not, for some reason, followed in respect to this proposed "New Tariff".*

*We now advise, based on our involvement / understanding, the following sequence of events that occurred over the last twelve months:*

- The first 20 year extension option under the 1994 Commercial Marina Agreement was exercised by the marina on 09/01/2014,*
- Melbourne Water accepted the extension on 31/07/2014 subject to agreement on revised licence fees and terms,*
- Several subsequent scheduled meetings in late 2014 between Melbourne Water and the Marina to discuss the revised fees and terms were postponed or called off by Melbourne*

*Water, on the grounds that the actual proposals were still yet to be finalised and agreed within Melbourne Water,*

- *The Marina first contacted the Owners Corporation on 30th January 2015 for copies of the Owners Corporations Independent Review submissions and the Final Independent Review findings after they were verbally advised by a Melbourne Water representative that they were thinking about potentially changing and increasing the flood gate costs being charged under the Commercial Marina Agreement, but that no actual decision had yet been made,*
- *The Owners Corporation met with the Marina on 4th February 2014 to further discuss / clarify the position,*
- *Following that meeting copies of the relevant documents were provided to the Marina along with a "Without Prejudice" letter dated 18th February 2015 outlining the Owners Corporations understanding of the principles applied, considerations made, and final conclusions and recommendations of the Independent Review,*
- *The Marina subsequently passed on the contents of that letter to the Melbourne Water representative, with a follow up meeting between the Marina and Melbourne Water scheduled for early March 2015,*
- *This meeting and several other subsequent scheduled meetings between Melbourne Water and the Marina to discuss the revised fees and terms were postponed and/or cancelled by Melbourne Water, on the grounds that the actual proposals were still yet to be finalised and agreed within Melbourne Water,*
- *The owners corporation subsequently continued to follow up potential progress with the Marina on at least a monthly basis,*
- *Whilst the Marina did have some additional discussions with representatives from Melbourne Water, no written proposal was forthcoming,*
- *As the Owners Corporation were endeavouring to finalise their annual accounts for audit and annual budgets for their Annual General Meeting, telephone and then follow up email contact with a further copy of the Owners Corporation's letter of 18th February 2015 was initiated direct with the nominated representative at Melbourne Water's Property Leases and Licensing section on 6th August 2015,*
- *In absence of any update being received by the Marina or the Owners Corporation, further telephone contact was made by the Owners Corporation with the Melbourne Water Representative on the 13th October 2015. This contact was specifically made to endeavour to clarify the position prior to the start of the Owners Corporation's Annual General Meeting that evening. Based on the information provided by the Melbourne Water representative at those telephone discussions, the Owners Corporation members were informed at the AGM that Melbourne Water were still yet to finalised the proposed charges under the Commercial Marina Agreement. (It would now appear that with the benefit of 20/20 vision gained from Hindsight that this message as communicated to our members at the AGM was erroneous, given the lengthy and time consuming process that would actually have been required for the details of the proposed "New tariff" to have been internally ratified, approved and incorporated by Melbourne Water in the 2016 Pricing Submission by the 30th October ),*
- *A further follow up email with attachments was forwarded by the Owners Corporation to the Melbourne Water representative on the 22nd October 2015,*

- *Melbourne Water finally issued the Marina with its first notice as to the proposed fees and terms including the proposed "New tariff" by way of a "Commercial in Confidence" letter dated 29th October 2015, which prevented the Marina sharing the specific details of the proposal with the affected Owners Corporations,*
- *This letter was also accordingly not received in the mail until early November, i.e. after Melbourne Water had already lodged their 2016 Pricing Submission which included the proposed "New Tariff",*
- *Advice from the Marina that they had received a "Commercial in Confidence" proposal from Melbourne Water was received by the Owners corporation on the 18th November 2015,*
- *A Meeting between the Owners Corporation and the Marina was arranged for 27th November at which the implications of the proposal were discussed in general terms and the marina was requested to obtain consent to enable all the pertinent details to be provided to the Owners Corporation,*
- *Agreement was subsequently obtained by the Marina from Melbourne Water to enable the sharing of the pertinent details with the affected Owners Corporations on 8th December 2015,*
- *A "Without Prejudice" letter on the 21st December 2015 was issued to the General Manager Melbourne Water on behalf of our Owners Corporation outlining our members specific concerns and issues regarding a number of the assumption, statements and proposals as contained in their letter of the 29th October.*
- *Following our telephone follow up with Melbourne Water a brief letter from the Acting General Manager, acknowledging receipt and apologising for the delay in a doing so, and that matters raised would be investigated was received dated 21st January 2016,*
- *A further brief letter dated 22nd January 2016 was also received from the Acting General Manager raising concern with a hypothetical what if scenario which was contained in one of the paragraphs within the Owners Corporation's detailed 13 page letter,*
- *A further "Without Prejudice" letter was issued in response on behalf of the Owners Corporation to the Acting General Manager on the 2nd February 2016.*

*To date no acknowledgement of the Owners Corporation's letter of 2nd February or response to the numerous members issues and concerns raised in the letter of 21st December 2015 has been received from Melbourne Water. Meantime during the whole process referred to above we have also been keeping the Managers and through them the Committees of the separate Pier 9 and more recently Pier 1 Owners Corporations informed of developments.*

*In terms of our submission of 2nd February last we have also confirmed that there was:*

- *no prior mention of, or inclusion of the proposed "New Tariff" in any of the prior public consultative information documents made available by Melbourne Water to the public or its customers as part of the consultative process, and*
- *no prior consultation regarding the proposed "New Tariff" with the Patterson Lakes Reference Group or any affected Owners Corporations.*

**Conclusion:**

*Whilst we appreciate that the actual dollars amount involved from the proposed "new tariff" may be seen as immaterial and just a small drop in the bucket when viewed from the Overall Corporate Board Level in the wider context of the total Melbourne Water Annual Operating Budget, it unfortunately does pose a very real and material potential substantial additional discriminatory impost to our members and other affected residents, a number of whom are retired and on fixed incomes, and /or have absolutely no private access to or personal use / benefit from any of the Marina facilities.*

*We understand that in excess of 10% of the residential property owners in Endeavour Cove including Pier 1 & Pier 9 do not have access to of leases for any jetty or moorings within the marina Basin.*

*We accordingly remain of the view that the introduction of this proposed "new tariff" as proposed by Melbourne Water is:*

- *unjustified, discriminatory and inequitable given the above and in the face of Melbourne Water's previous cancellation of any similar charge against the 1,217 properties previously paying the Precept Charge (including the 731 odd Tidal waterways Mooring licensees),*
- *fails to satisfy either the spirit of and/ or the actual historical facts and principles identified and considered and /or the final conclusions and recommendations made by the Independent Review.*

*We again thank you for the opportunity to attend the presentation on the 9th and to be able to make this additional submission in clarification of the above issues and concerns and sincerely apologise for any inconvenience caused to your deliberations by the need for this additional supplementary submission.*

*We do look forward to receiving the Commission's Draft Review Findings and sincerely hope that an appropriate and equitable solution can be reached for all our members and the other affected property owners in line with the conclusions and recommendations of the Independent review and Melbourne Water's overarching goal of providing their customers with the best possible services at a fair price.*

*Meantime, please do not hesitate to contact writer should you wish to clarify /or discuss any of the above further.*

Thanking You

Yours Sincerely



**Lawrence I Cox** MBCI, (Retired FIPA, FTIA, FFIN, AIMM, MRMIA)

**Honorary Chair, Endeavour Cove Owners Corporation No 2 PS 337700**

Appendix A – Patterson Lakes Drainage Diagram



Figure 1 – Melbourne Water Patterson Lakes assets



Appendix C – Patterson Lakes Precept Area Property Map



Figure 2 – Patterson lakes Precept Area property map