



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

**C/- P.O. Box 359**

**Patterson Lakes Vic 3197**

**2nd 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.***

*We refer to Melbourne Water's 2016 Pricing Submission Dated 30th October 2015 and in particular to the proposed changes to the Tidal Flood Gate Costs within the Patterson Lakes Flood Protection District as briefly noted by Melbourne Water on Page 80 of their Submission.*

*The following submission is provided in response to Melbourne Water's Pricing Submission, in my capacity as the Honorary Chair, for and on behalf of the duly elected Members Committee of the Endeavour Cove Owners Corporation No 2 PS 337700R.*

*The Endeavour Cove Owners Corporation represents the 165 residences located around the foreshore of the Marina Precinct at Endeavour Cove Patterson Lakes including all those residences located in Scarborough Drive, Marina Palms (Port Phillip Bay side of Inner Harbour Drive), North Shore Drive and South Seas Place Patterson Lakes.*

*For ease of reference we have extracted the specific section from Melbourne Water's Submission hereunder and have bolded and highlighted the contents of the relevant final paragraph to which our submission refers:*

Extract from Page 80 Melbourne Water 2016 Pricing Submission:

**"Patterson Lakes and the Koo Wee Rup Longwarry Flood Protection District**

Proposed tariff structures for special precept areas will remain the same over the 2016 regulatory period, with a continuation of price annual adjustments for a 10-year transition of customers from property-based charges to a flat charge in the Koo Wee Rup Longwarry Flood Protection District.

Melbourne Water consulted with the customer advisory committee on standards of services moving forward. The committee indicated that it would like to see the level of service doubled but recognised that this would also result in prices doubling. The committee proposed to do its own consultation to gauge support but did not ultimately propose any change to existing arrangements.

Patterson Lakes will continue to pay for jetty maintenance and renewal services. The advisory committee expressed satisfaction with existing services levels and thanked Melbourne Water for completing the jetty renewal program.

In contrast, the Patterson Lakes Quiet Lakes Owners and Residents Association has expressed dissatisfaction with water quality in the ornamental lakes and wants Melbourne Water to implement and pay for a bore water flushing system. An independent review of pricing conducted in 2012/13 determined that this should be a fee for service arrangement. Melbourne Water will continue to consult with residents to see if they are willing to pay for water quality services. If so, Melbourne Water proposes that a principle-based tariff be determined based on the cost of providing the service.

**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".**

We note that there is no further specific details of this proposed "new tariff" referred to in the Pricing Submission itself however the proposed annual charge figures are included in The Waterways and Drainage Prices figures included on page 95 of Appendix 2 as extracted below:

Extract from page 95 Appendix 2 Melbourne Water 2016 Pricing Review:

**WATERWAYS AND DRAINAGE PRICES**

Estimated tariffs for years 6 – 10 can be found in the regulatory template accompanying this submission

Tariff and Price Component	Price (1 July 2016) (real \$15–16)	PPM (Year 2)	PPM (Year 3)	PPM (Year 4)	PPM (Year 5)
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<b>Patterson Lakes</b>					
Properties with access to timber jetties	1,484.00	-2.5%	-2.5%	-2.5%	-2.5%
Annual maintenance	135.56	-	-	-	-
Properties with access to concrete jetties	1,031.00	-2.5%	-2.5%	-2.5%	-2.5%
Annual maintenance	135.56	-	-	-	-
<b>Marina</b>	<b>343,073</b>	<b>-2.5%</b>	<b>-2.5%</b>	<b>-2.5%</b>	<b>-2.5%</b>
<b>Annual maintenance</b>	<b>38,128</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

We note that Melbourne Water in the opening line of their Executive Summary have clearly stated that; **"Melbourne Water's overarching goal is to provide our customers with the best possible services at a fair price"**.

We submit to the Commission that the proposed introduction of this **"new tariff"** as stated by Melbourne Water in their submission fails to achieve such goals. We submit that the introduction of this **"new tariff"** would actually be discriminatory and potentially impose an inequitable and unfair new and additional cost burden, ranging from under \$1,000 through to in excess of \$2,350pa for some of our individual residential members. We would expect similar imposts to potentially be incurred by the residential members of the adjoining Pier 1 and Pier 9 estates at the marina.

We further submit that the proposed introduction of this **"new tariff"** is in direct contradiction to Melbourne Water's previous formal and public statements and undertakings provided to the Commission during the last four years regarding the funding arrangements for the Patterson River Integrated flood gate replacement project and the ongoing operation and maintenance costs of these Integrated Flood Gates. We note that Melbourne Water on a number of occasions in their prior Pricing Submissions have clearly stated that **"Melbourne Water has fully funded the \$18 million Tidal Gates Renewal Capital Project"** from the Melbourne Metropolitan Waterways and Drainage Charge.

We note that the Melbourne Water in their submission have also stated that; **"The tariff will recover the renewal and maintenance cost of a tidal gate that services the Marina"**.

We further submit that this is in total contradiction to Melbourne Water's previous statements and undertakings regarding the renewal cost funding in terms of the above and their formal and public Submission to the commission in 2013 following the completion of the Patterson Lakes Independent Review, which was called by the then Minister, and the issuance of the Review's final (155 page; **"Report to Patterson Lakes Tidal Waterways and Quite Lakes Stakeholders of 8 March 2013"**). We note that Melbourne Water's subsequent Pricing Proposal for Patterson Lakes Special Drainage Area which covered the whole of the Integrated Tidal Flood gates which was submitted to and approved by the Commission clearly stated and acknowledged 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"**.

Finally we note that Melbourne Water have stated that; **"The method for calculating the tariff is consistent with the principles used to develop the Patterson Lakes jetty tariffs"**.

**We submit that this statement is erroneous and is accordingly misleading to the reader.**

In terms of Melbourne Water's 2013 **"Pricing Proposal for Patterson Lakes Special Drainage Area"** and the supporting **"Essential Services Commission Melbourne Water Special Drainage Areas 2013 Price review - Additional Review"** papers there is clearly no consideration of or inclusion of any Capital Replacement or Operational and Maintenance Costs of the Patterson River Tidal Flood Gates included in **"The method for calculating the Patterson Lakes jetty tariffs"**.

We note that the only capital costs included in the Patterson Lakes Jetty tariffs are the actual private jetty replacement costs which vary according to the actual size of the jetty and whether they are replaced in timber or concrete and the only operational and maintenance costs included are as listed below:

Extract from Melbourne Water's 2013 Pricing Proposal for Patterson lakes Special Drainage Area:

Table 4: Tidal Waterways Operating Expenditure (2012/13 \$Real)

Operating Expenditure	2012/13 Actuals	2013/14 Forecast	2014/15 Plan	2015/16 Plan
Jetties Maintenance	30,500	30,500	30,500	30,500
Maintenance co-ordinator	18,219	18,219	18,219	18,219
Office Overheads	35,957	35,957	35,957	35,957
Public Liability Insurance	10,000	10,000	10,000	10,000
	94,676	94,676	94,676	94,676

We submit that the main underlying difference between (A) the 731 odd private jetties / moorings located in the main canals of Tidal Waterways and (B) the jetties / moorings located within the marina itself is that in the case of:

(A) sole responsibility rests with Melbourne Water to replace and maintain these assets, at the individual licensees cost; and

(B) primary responsibility rests with the Marina Licensee to replace and maintain these assets at their own cost and /or undertake any such additional works as Melbourne Water may direct. The costs incurred by the marina in doing the above are recouped from the actual individual marina mooring lessees by way of the annual charge by the Marina plus a margin of 10%.

We accordingly suggest that for the above extracted comparative figures as shown on page 95 of Appendix 2 to actually represent the true and fair comparison of apples to apples then Melbourne Water's figures for the marina should have only included the actual physical inspection, management coordination and administrative overhead costs incurred by Melbourne Water in respect to their ongoing management of the Licence Agreement with the Marina.

We note that these costs are already incorporated in the annual Licence Fee which Melbourne Water charge the Marina.

*In short in line with Melbourne Water's previous undertakings, commitments and Pricing Submissions following the Patterson Lakes Independent Review there should not be any capital, operational or maintenance costs of the flood gates included in the comparisons shown above.*

*By way of background, the Owners Corporation specific interest in the above proposed introduction of this "new tariff" stems from the historical agreements that were created as part of the residential subdivision created under the Master Concept Plan surrounding the marina wherein any Annual Maintenance and Operating Costs of the Flood Gates as levied by Melbourne Water on the Marina were in fact on-charged to the individual Residential Owners via the Owners Corporations with the balance included in the annual charge by the marina to the residential and commercial operations and mooring holders. The Marina Licence and these agreements only addressed ongoing operational and maintenance costs and did not address any requirement or provision for capital replacement costs given that the flood gate assets were owned and managed by Melbourne Water.*

*Unfortunately it would appear that in proposing this "new tariff" Melbourne Water have not only failed to abide by their 2013 acceptance of the Independent Review funding agreements for the Integrated Tidal Flood Gates but have also inadvertently overlooked, despite their prior knowledge of these historical funding arrangements at the marina, the fact that the actual end cost of the proposal will actually be borne by the individual residents and mooring holders and not the Marina Operators themselves.*

*For your information the historical contribution from our residents along with the mooring holders etc through the Marina to Melbourne Water represented 57.3% of the total Flood Gates Operational and Maintenance Cost across the whole of the Patterson Lakes Flood Gate System. On this basis it would appear that our owners of the 165 residential lots in Endeavour Cove along with the owners of the 65 residential lots at Pier 9 (many of whom, but not all, are also mooring holders) had historically been contributing substantially more per individual residence towards the ongoing maintenance and operation of the flood gates at Patterson Lakes than any of the other 731 plus residential jetty holders across the Tidal Waterways who have direct access to the waterways and their private moorings historically leased at substantially less than cost from Melbourne Water.*

*Having regard to the above the Owners Corporation attended and actively participated in the Patterson Lakes Independent Review in 2012 -13 and in our submission to the Independent Review requested that any potential direct and flow on consequences of any deliberations and recommendations made by the review should be identified and fully considered across the whole Patterson Lakes Waterways including the Patterson Lakes Marina and the Owners Corporation's residents at Endeavour Cove.*

*We were satisfied that the Review considerations, conclusions and recommendations addressed our members concerns and requests, which was then supported by Melbourne Water's subsequent Pricing Submission to the Commission which confirmed Melbourne water's acceptance of the review findings and specifically confirmed that the Patterson River Flood Gate capital replacement cost and the ongoing management and operation costs of the Integrated Flood Gate System had and were going to be met from the Melbourne Metropolitan Waterways and Drainage Charge in acknowledgement of the wider community benefit derived from them across more than 3700 households and businesses.*

Our members were accordingly informed of these outcomes and we have continued to monitor the various pricing submissions closely and in view of the above formal and public statements by Melbourne Water as to the ongoing funding arrangements, we have accordingly in good faith, been preparing our Owners Corporation financial planning and budgeting on the basis that these costs are being covered under the Melbourne Metropolitan Waterways and Drainage Charge and accordingly charged direct by the water utility to the residents.

We understand from Melbourne Water's 2016 Pricing Submission that Melbourne Water are responsible for the operation and maintenance of a total of 10 flood gates (including the 3 located in the Patterson Lakes Flood Plain) however we have been unable to find any reference as to any of these other gates being independently funded by customers.

We would like to take this opportunity to hereby apologise to yourself and the respective Commission Members for any inconvenience caused by the apparent lateness of this submission having regard to the overall timing and progress with your review process.

Unfortunately there was no reference to this **"new tariff"** included in any prior years Funding Submissions or in Melbourne Water's prior Public Consultative Papers Issued earlier in 2015 for Public review and comment, nor was the matter apparently previously raised with the Patterson Lakes Consultative Committee during their ongoing meetings with Melbourne Water.

Likewise despite the Marina Licence being renewed by Melbourne Water in July 2014, apparently subject to negotiation and agreement of the ongoing licence fees and tariffs, there was no indication of or details of any proposed **"new tariff"** In Melbourne Water's 2014 Waterways and Drainage Tariff and Pricing Schedule for 2014 or 2015 as extracted below;

Extract from Melbourne Water - Waterways and Drainage 2014 Price Schedule

**Melbourne Water - waterways and drainage**

Variable water, wastewater, tradewaste charges and Dumping of Effluent are rounded down to 4 decimal places  
All other charges are rounded down to 2 decimal places

Tariff and Price Component	Price	
	(1 July 2014)	(1 July 2015)
<b>Patterson Lakes</b>		
- Timber Jetty Infrastructure Charge (including dredging fee of \$85)		1484.00
- Concrete Jetty Infrastructure Charge (including dredging fee of \$85)		1031.00
- Maintenance (including CPI)	133.80	135.57

We understand that despite apparent repeated requests since July 2014 for details of the actual Marina Licence renewal terms, these terms including this proposed **"new tariff"** were not advised to the Marina Operators themselves until Melbourne Water's Letter dated 29th October 2015 i.e. the day before Melbourne Water's 2016 Price Submission to the Commission.

Given the "Commercial in Confidence" nature of the proposal the details were accordingly not able to be initially shared by the Marina with the affected Owners Corporations until formal permission was subsequently obtained by the Marina Operators from Melbourne Water on the 8th December 2015. Our Owners Corporation's members issues and concerns were subsequently documented and formally communicated to Melbourne Water on 21st December 2015 under notice to the Marina Operators and the Owners Corporation manager for Pier 9 and we have been informed by Melbourne water that as a result of the impact of the Holiday Season that the matters raised are still being investigated and reviewed by Melbourne Water.

Meantime Melbourne Water have acknowledged our advice that we will be making this submission to the Commission. We also note that the Owners Corporation Committees for Pier 9 are also proposing a separate similar submission, their committee having fully supported our actions and stance in opposing this proposed "new tariff". We have also today been advised that Pier 1 Owners Corporation will also be responding, given its members have previously never incurred any such charge.

We also understand from the Marina Operators themselves that they will also be looking at making an appropriate submission to the commission given that the Licence terms are far from being negotiated and agreed and that their review of the terms and impacts of the proposal is yet to be finalised in conjunction with their Barrister. We further understand that this proposal as provided by Melbourne Water dated 29th October 2015 (some 15 months after the Licence renewal) may accordingly need to be the subject to further in-depth commercial negotiations between the parties including the potential possibility of needing to request appointment of an appropriate arbitrator under the dispute resolution provisions of the existing Marina Licence Agreement to endeavour to enable the Marina and Melbourne Water to reach a mutually acceptable conclusion.

**In conclusion we submit that Melbourne Water's proposal for the introduction of this "new tariff", as outlined in Melbourne Water's 2016 Pricing Submission should be Declined by the Commission on the grounds that:**

- the proposed "new tariff" is in total contradiction to the terms of Melbourne Water's prior formal written acceptance of the 2013 Patterson Lakes Independent Review findings and recommendations,
- the proposed "new tariff" is also in total contradiction to the terms of the Commissions prior approval of Melbourne Water's 2013 Pricing Submissions where it was formally recorded that the ongoing cost of the Renewal , Maintenance and Operational costs of the Integrated Patterson River Tidal Flood gates was being covered from the Melbourne Metropolitan Waterways and Drainage Charge,
- Melbourne Water is yet to commercially finalise any agreement with the Marina License Holder as to the appropriate and acceptable fees and tariffs for the 2014 Licence renewal,
- the impact of the proposed "new tariff" is inequitable to our impacted residential owners. As an example it is totally inconceivable and impossible to justify that the 17 residential owners living on the Marina Palms side of Inner Harbour Drive and the 7 residential owners in North Shore Drive backing directly onto Inner Harbour Drive would have to contribute in excess of \$1,500pa and up to over \$2,000pa in a number of cases over and above their current Waterways and Drainage Charge towards this "new tariff" whilst their residential

*and commercial neighbours located directly opposite on the other side of Inner Harbour Drive would contribute nothing but the current Waterways and Drainage Charge. Both sides of Inner Harbour Drive are clearly protected by the Integrated Tidal Flood Control Gates located at both the entrance to the Marina and the entrance to the Town Basin and given the balancing drain across the whole integrated Tidal Waterways indirectly by the gates located at Whalers Cove. We note that the same unexplainable inequity would exist between the Owners of Pier 1 on the Marina Side of Whalers Cove and the Owners in Whalers Cove itself and the owners in Scarborough Drive and Pier 9 and the owners on the Canal side of McLeod Road.*

- *such an ongoing material impost imposed on the relatively small number of individual residential properties and mooring holders is inequitable in light of the other 731 jetty holders in the tidal waterways system and the Independent Review and Melbourne Water's previously acknowledged public benefit to over 3,700 properties provided by the integrated tidal flood gate system of which this gate forms just one integral part, given the existence of the balancing drain running under our Owners Corporation's common property linking the marina basin to the town basin and tidal waterways canal system to ensure water level balancing across the entire Patterson Lakes Tidal waterways System..*
- *the Independent Review found and Melbourne Water acknowledged that the Tidal Flood gate's primary purpose is to comprise part of the Integrated Tidal Waterways Flood Control System, and as such the asset and the responsibility solely rested with Melbourne Water for their ongoing renewal, operation and maintenance of these assets and as such to ensure that the 2013 funding arrangements as recommended by the Independent Review, endorsed by the Minister and formally accepted by Melbourne Water, then all these costs must continue to be funded from the Melbourne Metropolitan Waterways and Drainage Charge.*
- *it is totally inappropriate and incomprehensible for Melbourne Water to now be seeking any such direct contribution for the costs of just one component of the Integrated Patterson River Tidal Waterways flood management system, from one small section of the community, in the face of Melbourne Waters prior willingness and agreement in 2011 and 2013 to forego, on the grounds of the inability to justify the added impost to all the Tidal Waterways residents, who also directly benefit from the same Integrated Patterson River Tidal Waterways flood management system.*

*In short, the introduction of any such "new tariff" would in our view be contrary to and there for in breach of Melbourne Water's 2013 formal acceptance of the Independent review findings and ESC's subsequent approved ongoing funding arrangements.*

*Such a "new tariff" in our view could not be condoned or justified in light of the historical background of the Independent Review and the previously agreed funding arrangements and would accordingly be discriminatory, unjust and inequitable, with the substantial impost falling on to the relatively small number of Owners Corporation Members whilst the acknowledged benefit of the Integrated Tidal Flood gates is for a much greater number across the Patterson River basin.*

*The proposal also fails to satisfy "Melbourne Water's overarching goal is to provide our customers with the best possible services at a fair price".*

*We again thank you for the opportunity to make this submission and again apologise for the impact of its lateness.*

*We confirm that the writer would welcome the opportunity to further clarify and/or discuss any of the above issues and concerns on behalf of the Owner Corporation's members should you or other members of the Commission so require.*

Thanking You in Anticipation

Yours Sincerely



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

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