

2 May 2011

Essential Services Commission
Level 2 35 Spring Street
Melbourne Victoria 3000
Phone: 61 3 9651 0222 or 1300 664 969

Dear Sirs

RE: 2011-12 Price Review Melbourne Water's Special Drainage Areas

I have read Melbourne Waters submission to the Essential Services Commission and their request for a significant price rise to the Patterson Lakes Precept Rate. The basis of their proposed price rises are based on a number of historical errors in relation to the application of the Precept Rate, and the Water Ways and Drainage Charge.

I make this submission in relation to the price increases as they relate to the Tidal Waterways, although some elements may have application to the Quite Lakes and believe it is now time to correct those pricing errors.

The area bounded approximately by Patterson River to the North, the Freeway to the East, Eel Race Drain to the South and Myola Street and the Reserve to the West were developed in an area known as the Seaford Lowlands and were subject to significant flooding and is an area proclaimed as land subject to flooding. To enable the land to be developed the tidal Waterways were constructed for two purposes, namely Flood Protection and Recreational use in an agreement with the DVA and the developer.{The Agreement]

The Agreement placed a number of requirements on both the DVA and on the Developer. The Agreement allowed for the DVA to charge a Precept Rate to **COUNCIL** for Flood Protection and Recreational use on an exclusive basis to the adjoining residents. This Agreement only allowed for maintenance costs not Asset renewal as the Assets now belonged to the DVA. The three points to be made here are-:

- Exclusive Use
- Precept Rate Charged to Council
- Maintenance costs only.

When Melbourne Water took over for the DVA in about 1991, Melbourne Water assumed the role and responsibilities of the DVA. However Melbourne Water also fundamentally changed the funding model in three ways. Firstly it elected to charge the residents the Waterways and Drainage Charge, secondly it entered into a Commercial Agreement with Cavendish Properties Limited, the Marina Operator and thirdly the use of the waterways became accessible by the wider community.

This meant that the funding of the area now had four sources of revenue -:

- Water Ways and Drainage Charge
- The Commercial Agreement with the Marina

- Precept Rate
- Council Contribution. (as Per Original Agreement)

The application of these revenues and associated costs have been inappropriately applied in the past and these errors are also again reflected in the current submission.

Residents have paid in the past the following costs which have now correctly been removed from the latest pricing model:

- Pumping Costs for environmental flows in Eeel Race Drain
- Capital Replacement costs of Melbourne Water Assets (ie Tidal Gates in 2010 submission now correctly removed)
- Dredging costs of Patterson River
- Dog Catching
-

However this still leaves a number of costs that should not be paid for via the precept rate as explained below. It also means that the apportionment of the revenues and costs are incorrect.

With the change of revenues also came a change in the beneficiaries, which are not reflected in the Melbourne Water submission;

- Wider Community
- Melbourne Water
- Marina Operator
- Residents with Recreational Facilities
- Residents with Specific and identifiable flood protection.
-

I have broken the costs that should be excluded from the precept rate areas into the following categories:

- Flood Gates
- Dredging
- Walls
- Foreshore Works

FLOOD GATES

The Water Ways and Drainage Charge (WDC) is a standard charge applied to all Greater Melbourne Properties for Flood Protection and Waterways Quality on the fundamental principle that everybody benefits from healthy Waterways. Patterson Lakes residents pay the WDC but are also paying for Flood Protection via the precept rate in the current submission. Clearly this is not equitable. Melbourne Water claims that residents receive a higher level of protection than the rest of Melbourne. This defies logic.

Melbourne Water's charter is to provide Flood protection and with changing climate will increasingly be providing higher and higher flood protection for every Melbourne Property. The fact the Patterson Lakes residents have a level of protection that exceeds other areas means that Melbourne Water is in fact prepared. A simple viewing of the Climatic Change charts which are readily available shows how Patterson Lakes is protected by the Melbourne Water assets, yet Melbourne Water seeks to charge residents the

Maintenance of these assets unlike any other Melbourne Water asset which are all funded by the WDC.

In last years submission to the ESC Melbourne Water believed that Patterson Lakes Residents should pay for the asset renewal, now they believe correctly it should be paid for by the WDC. The current submission shows the maintenance costs of Melbourne Water Drainage Assets being paid for by residents when in fact they should also be paid for by the WDC.

DREDGING

Dredging of the Tidal system provides two functions -:

- Hydraulic Capacity
- Water Depth for Recreation.
-

Dredging of the Tidal System is only required because of the failure of the upstream managers (Melbourne Water and City of Kingston) to limit the amount of silt entering the system. In the recent floods flotsam, jetsam and significant amounts of silt entered the Tidal System where residents are expected (in this Pricing model) to pay for the clean up, yet everywhere else in Melbourne this clean up is met by either Melbourne Water or the Local Council. How can this be equitable when the clean up is occurring in a Water and Drainage Reserve?

City of Kingston in Section 21.09 of the *Kingston Planning Scheme – Environment, Wetlands and Waterways* support regional catchment management initiatives in coordination with Melbourne Water and Councils located upstream of the estuary, to address pollution control, sediment control, riparian vegetation works and other measures to improve the treatment of storm water within the Dandenong Regional Catchment, yet in this pricing model, Patterson Lakes residents are being asked to do the clean up as a result of poor upstream management.

In the commercial Marina agreement (CMA) dated the 28th June 1994 between Cavendish Properties Limited, Melbourne Water , and the Cities of Chelsea and Springvale (now Kingston) Melbourne Water acknowledges that it is its responsibility to carry out dredging as part of its river management practices and yet systematically has not either carried out the dredging or made provision for its costs. In fact in the CMA Melbourne Water details the costs of this activity yet has failed to carry out the activity or previously charge residents for this activity.

Given that Melbourne Water gives dredging an asset life of only 10 years in the pricing model it fails the social equitability test in charging current residents for 30 years of lack of maintenance. Even Melbourne Water agrees that it should have been charging past residents and is now inequitably playing catch up with charges to current residents. This is clearly not equitable.

This leaves one of two possible equitable outcomes -:

- Dredging is paid for via the WDC or

- The Capital amount shown in the Submission need to be discounted to allow for the systematic failure to carry out this activity for the last 20 years.

My strong view is that as dredging is an identifiable Melbourne Water responsibility that it should be paid for by the WDC and that the benefit is for the wider community and its caused by factors outside of the residents control. In the event that ESC does not view it this way, then the dredging costs need to be discounted by the failure to collect revenues from past recipients on the basis of equity.

WALLS

The pricing model seeks to charge residents for the upkeep of Melbourne Water Assets that's primary function is flood protection. Again this should be paid for by the WDC as the depreciation is utilized by Melbourne Water not the residents, is a Melbourne Water Asset whose function is flood protection.

FORESHORE WORKS

The Pricing model has an allowance of approximately \$1M for foreshore works, which is mainly to do with the establishment of a Melbourne Water works depot. These constitute capital works and should be paid for by Melbourne Water for the reasons listed above.

PRECEPT RATE

There is no doubt that residents enjoy an enviable lifestyle (as do other residents adjoining public land in Melbourne) , but for many residents that is limited to visual amenity, in the very same way that properties fronting reserves or the bay enjoy a visual amenity. Yet in these other environments, residents are not asked to pay for flood protection works. If this was the case, as Climate change takes effect the properties of Mordialloc to Carrum fronting the bay would be each individually required to pay for beach protection works.

For non visual amenity and non Drainage and Flood protection, of course, residents should have to pay for their exclusive recreation facilities, but this is limited to the Jetties and Beach Maintenance. All other works are primarily for Drainage and Flood protection by Melbourne Water Assets and should be paid for by the WDC.

OTHER PRICING IRREGULARITIES

Currently the Precept rate is inappropriately applied as there are many anomalies in the rates, properties that should be paying and are not and other properties that are and should not. The use of 1990 valuations does not reflect the current situation. A simple look at the properties paying the Precpt rate shows those anomalies as well as properties receiving very specific flood protection from the Assets that Melbourne Water seeks to charge to residents.

Melbourne Water has a commercial agreement with the Marina Operator and this includes charges for (amongst other things):

- Dredging
- Tidal Gates
-

and has set charges accordingly, yet is charging the residents for charges it is recovering through the Commercial Agreement.

SUMMARY

I strongly disagree with the pricing model put forward by Melbourne Water for the following reasons:

- The Developer Agreement which is the prevailing agreement for when the Assets of Patterson Lakes were handed to Melbourne Water via the DVA requires the precept rate to be charged to the local council (now City of Kingston) not directly to the residents and only makes provision for maintenance not capital renewal.

Further that the application of the precept rate is inequitable in that it fails to meet the two areas of being financially and socially equitable for the following reasons.

- Melbourne Waters Waterways and Drainage Charge is set on the basis of cost recovery across the entire Melbourne rate basis irrespective of specific and identifiable benefit. However in Patterson Lakes Melbourne Water seeks to apply a different criteria by expecting residents to pay for their own flood protection works and at the same time pay for the residents of Greater Melbourne. The residents expect to be treated equitably on the same basis as the entire Melbourne Rate base.
- The current Melbourne Water General Drainage rate includes maintenance of 74 urban lakes yet Patterson Lakes Residents are being asked to pay the costs associated with the Patterson Lakes retarding basin. Clearly this is inequitable.
- Melbourne Water claims that the precept rate is charged to Patterson Lakes Residents on the basis that the revenue provides a facility to residents on an exclusive basis. Clearly this is not true with recipients of the benefit including not only the Water Front/access residents but also adjoining residents, City of Kingston (Rates income), the wider water based community (Canoe Clubs, General Boating Public) and Parks Victoria (Via Launching fees).
- Melbourne Water is seeking an increase in the precept rate to “catch up” the underfunding that has occurred in the past. Melbourne Water admits that this undercharging should not have occurred and that provision for a sinking fund should have been made when Melbourne Water took over the assets 20 years ago. It is not socially equitable for this to occur now.
- The only identifiable private use facilities are the Jetties and Beaches with all other assets and costs being for a community facility or flood protection works. The current amount paid by residents exceeds the amounts to maintain these private use facilities.
- The legal framework that governs the area is no longer appropriate given the community and recreational use of the waterway.

I look forward to the Essential Services Commission, not approving the proposed Pricing Model until Melbourne Water recognizes the Flood and Drainage Components of the system and pay for those costs via the Waterways and Drainage

Charge, which after all is what it is there for. I am happy to meet with you if you require any clarification on the issues raised.

Yours faithfully

Andrew and Lynne Meehan