



City of
KINGSTON

19 February 2014

Mr Jason Fitts
Water Regulation
Essential Services Commission
Level 37
2 Lonsdale Street
MELBOURNE VIC 3000

Dear Mr Fitts

Re: Pricing Proposal for Patterson Lakes Special Drainage Area

The City of Kingston appreciates the opportunity to provide feedback to the Essential Services Commission on the Pricing Proposal for Patterson Lakes Special Drainage Area (the Pricing Proposal) prepared by Melbourne Water.

Council would like to raise a number of concerns relating to the Pricing Proposal. The Pricing Proposal states that “the management strategy aims to provide more equitable funding and service delivery arrangements while maintaining service levels for all residents” which the Council officers believe is inaccurate. Council officers are of the opinion that the proposed funding arrangements are not equitable in light of the limited revenue raising capacities of the Council.

It is noted that Melbourne Water’s submission relies on the City of Kingston taking over responsibilities. Whilst the Council has yet to formally consider and decide on this issue, the recommendations of the Independent Review were tabled at the Ordinary Meeting of Council held on 24 June 2013 (Attachment 1: Agenda Ordinary Council Meeting).

Officers have discussed with Councillors the issues of cost shifting from State Government and officers advised an appropriate response to the Review recommendations would be to “advise Melbourne Water that the Council will not take on any further responsibility than what is identified in the 1973 Agreement if it results in a shift in additional costs to Kingston. If Council were to pursue taking on additional responsibilities beyond that in the 1973 Agreement, it should be compensated by the parties to the agreement”. I note that this is a preliminary officer advice and the Council position has not yet been determined.



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If the Council were to take on additional maintenance and operational responsibilities, it is estimated that on average each rates notice across 20 suburbs would increase by an additional \$10 a year taking all costs into account. If Council were to implement significant capital works, the cost to ratepayers would be even more, or to avoid a rates increase, other capital projects would need to be deferred which would result in an increase in our asset renewal gap.

Council officers consider the Review's assessment of potential funding sources to be deficient in terms of identifying additional sources of funding for the Council apart from municipal rates. In contrast, Melbourne Water as a designated water corporation has a much wider "taxation" base and a clear legislative mandate to collect funds for such purposes for the broader benefit of the metropolitan area.

It is also not clear the extent to which a broader community benefit is being derived by having some limited access to the assets in Patterson Lakes (the Waterways) and whether that justifies other parts of the Kingston community in essence providing subsidies for that area. Council officers do not consider it appropriate that Council should be subsidising the overwhelmingly private benefit the adjoining landowners derive due to their proximity to the Waterways and alternate funding opportunities need to be investigated.

As part of the Steering Committee process, or separately in discussion between Melbourne Water and the Council, there should be discussion to explore all funding opportunities before reaching an agreed position on additional responsibilities that Council would be willing to undertake and be compensated for. No agreed position has been reached between the parties so far.

Prior to an agreement on funding, Council officers would be recommending that wider community consultation across the entire municipality is undertaken to communicate the implications of an alternative funding model. Community consultation on our Rating Strategy has clearly demonstrated that our ratepayers do not believe that it is appropriate to pay more as a community when the benefit is available to only a few. Such consultation would clearly allow consideration regarding the extent to which a broader community benefit is being derived by having limited access to the assets in Patterson Lakes to an extent whereby other parts of Kingston should be providing greater subsidies.

Conclusion

In light of the above, Council officers would like to bring to the notice of the Essential Services Commission that the Pricing Proposal submitted by Melbourne Water does not achieve a key objective envisaged by the Patterson Lakes Independent Review to facilitate a 'shift in the traditional approach to water management to a more collaborative approach of governance which involves the sharing of responsibility amongst key actors – State Government, Local Government, state agencies, industry and community groups'.

The Pricing Proposal outlines a management strategy that is not substantiated by a detailed audit of the financial implications and is not supported by a wider community mandate. It just proposes devolution of maintenance responsibilities to the Council without any associated changes to the legislative framework and alternative funding arrangements in place. The Pricing Proposal is considered to be premature and lacking in detail and as a result, the Council is unable to extend its support at this point in time.

The ESC should be very mindful of the implications of this proposal when considering the broader portfolio of comparable assets for which Melbourne Water is and will continue to remain responsible for. Significant implications exist with a model that requires 'tailored' localised solutions mindful of the diversified relationship Melbourne Water holds with the numerous Local Governments across its catchment.

In summary, the comments in relation to the Pricing Proposal for Patterson Lakes Special Drainage Area are as outlined below:-

- The Council has not yet agreed to take on any further responsibility than what is identified in the 1973 Agreement. If Council were to pursue taking on additional responsibilities beyond that in the 1973 Agreement, it should be compensated by the parties to the agreement.
- Council officers consider the Independent Review's assessment of potential funding sources to be deficient in terms of identifying additional sources of funding for the Council apart from municipal rates.
- It is not considered appropriate that Council should be subsidising the overwhelmingly private benefit the adjoining landowners derive due to their proximity to the Waterways and alternate funding opportunities need to be investigated.
- There must be discussion to explore all funding opportunities before reaching an agreed position on additional responsibilities that Council would be willing to undertake and be compensated for.
- Consultation with the wider Kingston community should be undertaken as a precursor to determining future funding models.

Council looks forward to further constructive dialogue with Melbourne Water as part of the ongoing Steering Committee process to further refine the management strategy so that it meets the objective to "provide more equitable funding and service delivery arrangements while maintaining service levels for all residents".

Should you have any queries or require any further information, please contact Rachel Hornsby, General Manager Environmental Sustainability on ☎ 9581 4708.

Yours sincerely



Paul Franklin
ACTING CHIEF EXECUTIVE OFFICER

Attachment 1:

Ordinary Meeting of Council

24 June 2013

Agenda Item No: 9.6

RESPONSE TO THE PATTERSON LAKES INDEPENDENT REVIEW DATED 8 MARCH 2013

Contact Officer: Rachel Hornsby, General Manager Environmental Sustainability

Purpose of Report

To inform Council of the recommendations of the Patterson Lakes Independent Review Report and seek a decision from Council on how it wants to respond.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

OFFICER RECOMMENDATION

Officers recommend that Council:

1. Notify the Independent Review, Melbourne Water, Parks Victoria and the Patterson Lakes community that Council has reviewed the recommendations of the Review and that the General Manager Environmental Sustainability or delegate will participate as part of the proposed Steering Group, AND
2. Note that as part of the Steering Group process Council wants to further explore the implementation of recommendations that would result in additional costs to the City of Kingston noting that any additional costs to the City of Kingston would more appropriately be part of the 2014/15 budget process rather than during the 2013/14 financial year.

1. Executive Summary

The Patterson Lakes Independent Review (the Review) has prepared a report taking into account the historical context and current issues relating to the management of the Patterson Lakes Waterways (the Report). The Review made 15 conclusions and 26 recommendations on a way forward for managing the Patterson Lakes Waterways (the Waterways). In the Report, the Review recommends a new management framework to replace the 1973 Agreement which is considered to be no longer operational. The new framework would be based on a collaborative approach to governance involving the sharing of responsibility between Melbourne Water, Parks Victoria and the City of Kingston. The proposed financial and management responsibilities for the three Authorities was based on their perceived roles as outlined in the Review. While the Review has concluded that the overarching responsibility for the management and maintenance of the Waterways rests with Melbourne Water, it has also recommended that Parks Victoria, Kingston City Council and the Patterson Lakes community work together to achieve a long term management framework for the Waterways.

Due to the limited (if any) public benefit provided by the Tidal & Quiet Lakes, any shared management arrangement that results in a shift in additional costs to Kingston is considered unacceptable. Further investigation and engagement with all relevant parties should be undertaken to inform any other position. The recommendations of the Review have specific and potentially broader financial impact.

2. Background

In September 2012, an Independent Review was established by the Minister for Water, Peter Walsh to assess management of the Patterson Lakes Waterways. The Independent Review considered the historical context and current issues relating to the management of the Patterson Lakes Waterways and prepared a report.

A summary of the key conclusions of the Report are below.

- The Review found that generally applying a Precept Rate by Melbourne Water over the Patterson Lakes Waterways properties is no longer relevant and suitable as the 1973 Agreement is no longer in operation. The Precept Rate in its current form is to cease from the end of 2012/13 financial year, and be replaced by a new funding framework, augmenting the Melbourne Water Waterways and Drainage Charge for the Waterways.
- The Quiet Lakes and Tidal Waterways are reserved for drainage and recreational functions. The Review formed the view that the Tidal Waterways are used for public purposes, both in terms of their drainage function and being a place of recreation. The Quiet Lakes have a public drainage function.
- Maintaining water quality for primary contact purposes (including swimming) in waterways and lakes in urban areas cannot be guaranteed. The goal should be to maintain water quality to secondary contact standard as a minimum and warnings posted when quality falls below this standard or when algal blooms are a health hazard.
- A variety of funding sources are available to support a sustainable management framework. The primary sources of on-going funding are considered to be associated with the Melbourne Metropolitan Waterways and Drainage Charge for those services considered to have a regional and community benefit or the application of user pays funding alternatives for those services and assets that are linked to private recreational benefit. (Note, this contradicts a later recommendation that sees some costs shift to Kingston Council.)
- The Review considered that shared governance is an appropriate way forward.
- A review concluded that Management Plan needs to be developed by Melbourne Water collaboratively with the Patterson Lakes Waterways stakeholders to complement the Review's Report.

The Independent Review makes a number of recommendations that outline Melbourne Water's responsibilities as the authority responsible for discharging the regional drainage related functions. The Review also recommends that Melbourne Water empower Parks Victoria as "Waterways Manager" for all the Patterson Lakes Waterways subject to contractual agreement covering services provision and funding revenues.

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The key recommendations of the Report that are directly relevant to the City of Kingston are:

- The Melbourne Water, in conjunction with Kingston City Council and Parks Victoria conduct and report on a full audit of the assets and conditions of the Patterson Lakes Waterways, prior to the roles and responsibilities being transferred.
- That City of Kingston take on responsibility for beach raking, litter debris removal, and grass mowing at Tidal Lakes.
- That Parks Victoria and Kingston City Council work cooperatively with Melbourne Water and the community to achieve a long term management framework for the Patterson Lakes Waterways.
- That Melbourne Water liaise with Kingston City Council to pursue a rezoning of the Patterson lakes Waterways from the Residential 3 Zone to the Public Use Zone 1 – Service and Utility.
- That Kingston City Council investigates the pre-treatment of stormwater inflows into the Quiet Lakes to achieve the appropriate water quality standard to maintain secondary contact criteria in the Quiet lakes. Any redevelopment projects that stem from this investigation should be scoped and designed in consultation with the Patterson Lakes community and Melbourne Water.
- That Kingston City Council maintains the local drainage network in accordance with its Integrated Water Cycle Strategy 2012, to ensure maximum water volume inflows, and the highest practical water quality stormwater flows into the waterways. This is to be funded from rate revenue, and other government project funds. Deliverables are to be audited annually, and reported to the Patterson Lakes community.

3. Issues

The Review's conclusions and recommendations have several financial and management implications in terms of City of Kingston's responsibilities now and into the future. The key implications for Council stem from the Review's conclusion that *'there are strong policy grounds for recognising the public recreational benefits of the Tidal Waterways and managing them in accordance with State Government Policy'* (page 61) which is contrary to Council's position outlined in its submission dated 13 March 2013 where it was submitted that *'it is not clear that a broader community benefit is being derived by having some limited access to the assets in Patterson Lakes Waterways'*.

The Review's view - that the Tidal Waterways have associated public recreational benefits lead it to conclude that *'many of the Patterson Lakes services that Melbourne Water provides are routinely part of the works programs of Kingston City Council, DSE, and Parks Victoria – both capital works and maintenance'* (page 86). This is based on a very limited understanding of the specific capital and maintenance works that Council undertakes.

The Review goes on to recommend that *'Melbourne Water, Kingston City Council, and Parks Victoria should deliver services related to their respective responsibilities'* as outlined in the following table.

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Table 1: Proposed allocation of management responsibilities for the Patterson Lakes Waterways

	Tidal canals, including Whaler's Cove & Pier One	Mariner's Cove / Inner & Town Centre Harbour	Quiet Lakes	Estimated Council expenditure p.a.
Kingston Council	Beach raking. Promenade maintenance & cleaning. Litter & debris removal. Beach weed control. Grass mowing at access points. Maintenance of drains and pits. Enforce Planning ordinance compliance.	Beach raking. Promenade maintenance & cleaning. Litter & debris removal. Beach weed control. Grass mowing at access points. Maintenance of drains and pits. Enforce Planning ordinance compliance.	Beach raking. Litter & debris removal. Beach weed control. Grass mowing at access points. Maintenance of drains and pits. Civil works outside MW Title. Enforce Planning ordinance compliance.	\$205 016 per annum for beach grooming, weed control and debris collection. Does not include costs related to equipment, training or specialist skills and enforcement costs or costs associated with other recommendations of the Review.
Parks Victoria	Dredging. Waterweed control. Retaining Wall maintenance. Jetty maintenance and replacement. Waterway management (under the Marine Safety Act).	Dredging. Waterweed control. Retaining Wall maintenance. Jetty maintenance and replacement. Waterway management (under the Marine Safety Act).	Sand retrieval (if deemed appropriate). Waterweed control.	NA
Melbourne Water	Tidal floodgates operation and maintenance. Interconnecting pipelines and pumps maintenance & operations.	Tidal floodgates operation and maintenance. Interconnecting pipelines and pumps maintenance & operations.	Bore and groundwater supply. Interconnecting pipelines and pumps maintenance & operations. Water quality monitoring and improvement program. Algae monitoring. Solar bee. Civil works within the MW Title.	NA

Source: Based on Table 6, Patterson Lakes Independent Review - Report of the Independent Review, 8 March 2013, p96-97

In the Report, the primary source of on-going funding is considered to be either associated with Melbourne Metropolitan Waterways and Drainage Charge for those services considered to have a regional and community benefit or the user pays funding alternatives for those services and assets that are linked to private recreational benefit. However the recommendations result in a cost shift to Council without a specific recommendation that these costs can be recovered from property owners that benefit from the proposed works. Services, maintenance and assets renewal itemised in the Review's Report (Table 6 & 7) have been split between the three Authorities.

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Based on the indicative costs submitted by Melbourne Water, the following annual expenditures have been suggested:

MW \$159,800 =	\$517,416 per annum
KCC \$205,016 =	
PV \$152,600 =	

It should be noted that the figures do not take account of a number of expenditure items that Council will incur if it agrees to a shared management approach as recommended in Option 1 of the Report. This is discussed further in the following sections of this report.

4. Discussion

4.1. Council Plan Alignment

Planned Outcome 3 – Healthy Strong and Connected Communities

Strategy 3.4 – Effective planning for the changing needs and aspiration of the community that supports a partnership approach and effective use of resources.

4.2. Consultation/Internal Review

The following sections outline the responses to the key issues that have emerged from internal consultation with the City Strategy Department, the Infrastructure Department and the Property, Arts and Leisure Services Department.

4.2.1. Public v/s Private

One of the fundamental equity questions before Council as a result of the Independent Panel Review is that of the public benefit of the Patterson Lakes Waterways. The 1973 Agreement recites:

The Parties hereto recognise the benefits to be gained by all properties within the Project by virtue of the lakes and waterways to be constructed thereon and accept the principle that the design of these lakes and waterways is based on the desire that they shall be used solely for the benefit of properties within the Project and that the lakes and waterways which shall be constructed on the Drainage and Recreation Reserves shown on the plan marked "A" are associated with and for the private use of the properties.

Clearly it was the intent of the parties that the Waterways are for the sole benefit of the properties and are for the private use of the properties. In contrast the Review concludes that:

Any intention in the 1973 Agreement to designate the lakes and waterways as a private reservation was displaced by their consequent reservation in the subdivision plans and their design and construction as public drains (page 61).

Council officers concur with the Review's conclusion that the 'beaches' located abutting private property in the Tidal Waterways and Quiet Lakes to be of almost exclusively of private benefit due to the lack of public access to the beaches:

The Tidal Waterways include a series of sandy beaches. The Review does not consider that these beaches are significantly used by the public, or that

they are, in many instances capable of public access, primarily due to many beaches being fronted at the water's edge by rock walls and beaching. Aside from their intrinsic amenity value, the beaches are a private benefit for the adjoining residents who can access them by foot (page 56).

The Report goes on to say that the limited accessibility of the beaches does not however affect the Review's overall conclusion about the public recreational character of the Tidal Waterways. This seems to be a contradiction.

Council officer's position on this matter is that the Waterways can only be considered as a public recreational area owned by Melbourne Water if the following conditions are met:

- The designation of the Tidal Waterways under s 122ZA of the *Water Act* as a "recreational area" (with the exception of the Runaway Bay/Middle Harbour/Endeavour Cove area and part of inner Harbour/Town Centre area); and
- Land access to the Waterways is enhanced ensuring the public has access to it as of right.

The rezoning of the Waterways from Residential to Public Use Zone – Service and Utility (PUZ1) would provide some support its designation as a public recreational asset; but would not increase practical access or use by the public.

To improve public usage of the Patterson Lakes beaches, Council would need to install significant infrastructure such as paths, retaining walls, and decking areas. These would require significant investment to install and maintain. It is likely the cost would outweigh the expected public benefit.

4.2.2 Logistics and costs to Council

Many of the beaches throughout Patterson Lakes are isolated and unable to be reached by vehicles. In some instances they can only be accessed via the water using boats or barges. This lack of access is a major hurdle to overcome if it was decided that Council should undertake maintenance of these beach areas, e.g. beach grooming, weed spraying and debris collection.

Neither Council nor its contractors own or operate the specialised equipment required to clean beaches accessed via water, therefore the purchasing of a special barge would be required unless Melbourne Water would allow the use of their barge, boat and small tractor.

Significant OH & S systems would also need to be put in place to ensure the safety of the contractors and staff. It is estimated that in order for Council's contractors to undertake the beach grooming, weed control and debris collection, on the current Melbourne Water frequency, would cost approximately \$175,040 annually. This does not include the initial costs of purchasing a small tractor, boat, barge or mooring fees. As Council nor its contractors have the equipment, training or specialist skills required to undertake the works e.g. barge and Mooring, boat license. OH&S procedures, it is recommended that Melbourne Water continue to undertake these works.

4.2.3. Costs to residents

One of the key drivers behind the Patterson Lakes Independent review was the concern of residents in relation to the precept charge. While the Review recommends removing the precept charge it recommends a move to a user pays approach for moorings and jetties.

Information from Melbourne Water is that under a user pays approach someone with a mooring licence will likely be required to pay up to \$4000. Someone with two mooring licences would need to pay up to \$8000, and so on.

If the Council were to take on responsibility for beach raking (which would be maintenance of Melbourne Water assets that are providing private benefit) it is estimated that on average each rates notice would increase by an additional \$4 or \$5 a year. If other operational requirements were implemented (e.g. auditing of structures, monitoring and enforcement of structures on Melbourne Water land) this could increase by another \$5 a year. If Council were to implement significant capital works the cost to ratepayers would be even more, or to avoid a rates increase, other capital projects would need to be deferred.

4.2.4. Enforcement

If the beaches were to be made public and managed in the same way as the foreshore, all infrastructure encroachments located between the residents properties and the high tide mark would need to be removed. This includes retaining walls, temporary pools, plantings and landscaping, personal paths etc. Site visits and discussions with the current maintenance team from Melbourne Water show that large amounts of inappropriate encroachments, particularly personal water craft, are present and it is expected that the abutting residents would contest the removal of these structures. On-going audits of the beaches would be required to ensure no additional encroachments are installed.

Council officers do not consider it to be justified that Council has been assigned sole responsibility for enforcement of all infrastructure encroachments located between the residents' properties and the high tide mark. Currently, this responsibility is shared between Melbourne Water and Council. Council has powers under the *Planning and Environment Act 1987* to take enforcement action for breaches of the Kingston Planning Scheme. Council officers reiterate that enforcement burden continues to be significant for both Council and Melbourne Water and must be viewed against the broader enforcement regimes of the two organisations.

If the Tidal Waterways are formally designated as a "recreational area" under s 122ZA of the *Water Act*, Melbourne Water could adopt the *Model By-Law: Recreational Areas (Model By-Law)* as stated in the Report (page 109-110). The Model By-Law would enable Melbourne Water to impose restrictions on a number of recreational activities and take enforcement action for breaches.

4.2.5. Rezoning

The Patterson Lakes community should be consulted in relation to the Review's conclusion regarding the public nature of the reserves and the need to include the land (0-3m setback from the high water mark) in a PUZ1. The Patterson Lakes community had extremely strong opposition to Amendment 55 to the Kingston Planning Scheme which proposed a similar rezoning. Council officers recommend Melbourne Water to initiate a community engagement process, preferably involving the local Member of Parliament, with a view to obtain a firm

commitment from the Patterson Lakes community that the Waterways will no longer remain an 'exclusive and private facility'.

If Melbourne Water wishes to initiate a Planning Scheme Amendment, they should formally lodge a request with Council. It is to be noted that further community consultation would be undertaken as part of the public exhibition process for the amendment.

4.2.6. Water quality

One of the key conclusions from the report is that the water quality should be maintained to secondary contact standard. The recommendations place a significant emphasis on this being achieved via Council funding (or seek grants to fund) measures to pre-treat stormwater from the local catchment to ensure the 'highest practical water quality stormwater flows into the waterways'. This is only one part of the broader solution as outlined in a separate report prepared by Design Flow in 2011. Meaningful improvements to the water quality would require an integrated approach involving substantial investment in upgrading inflows, improved water circulation, fish management, sediment removal and wetland vegetation management within the Quiet Lakes themselves, in addition to treating the local catchment. The cost of implementing the required water quality improvements have not been adequately discussed within the report or within the estimated costing model outlined under Option 1. This has the potential to place a significant financial burden on Council and raise community expectations around Council acceptance of the responsibility for water quality.

The additional cost to upgrade the local drainage system to pre-treat the stormwater is unknown at this stage and would require a detailed study, extending over a 6 month period, at an estimated cost of \$50,000. One of the complexities is that the local Council drainage system consists of more than 10 separate small catchments with limited public space available within the road reserve for treatment systems. Whilst the cost to treat the local drainage system is likely to be in the hundreds of thousands of dollars, the water quality is unlikely to improve unless Melbourne Water or the state government also committed to expensive upgrades to improve the operation of the Quiet Lakes system.

The Report references Kingston's *Integrated Water Cycle Strategy 2012 (IWSC)*. Whilst this important strategy defines Council's aspirations about transforming Kingston into a water sensitive city by 2040, there is no commitment by Council that the Quiet Lakes district has priority for redevelopment over any other district, or is there sufficient funding within Council's current 5 year works program to implement improvements in this area.

4.2.7. Governance and legislation

The independent Panel has concluded that the 1973 agreement is no longer operational and therefore a new agreement is required. There is of course a difference between an agreement that has not been enforced and one that is at an end. Kingston as successor to Springvale Council, Melbourne Water as successor to the Dandenong Valley Authority and the residents as purchasers from the developer have an agreement that has been variously applied. At law the 1973 agreement remains in force until it is ended, by agreement, by the parties.

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Council officers think that it is appropriate to take that agreement as the basis upon which any future modernised agreement would be designed. It is extremely problematic to sustain a viable rating equity argument if public funds are to be drawn upon for the provision of open space of almost exclusively private benefit.

In light of the above, Council officers recommend the following three principles that should inform Council's position in regards to the development of a new shared governance model for the Patterson Lakes Waterways:

- No additional cost shift to Council;
- Legislated roles and responsibilities; and
- Careful management of public expectations.

The four stages towards achieving a new governance approach can be outlined as:

Stage 1: Communicate Council's position on the Review's recommendations

Advise Melbourne Water that the Council will not take on any further responsibility than what is identified in the 1973 Agreement if it results in a shift in additional costs to Kingston. If Council were to pursue taking on additional responsibilities beyond that in the 1973 Agreement, it should be compensated by the parties to the agreement.

Stage 2: Reach an agreement on funding arrangements

Council officers consider the Review's assessment of potential funding sources to be deficient in terms of identifying additional sources of funding for Council apart from municipal rates. As stated in Council's submission to the Review, it is not clear the extent to which a broader community benefit is being derived by having some limited access to the assets in Patterson Lakes Waterways and whether that justifies other parts of Kingston in essence providing subsidies.

Council officers do not consider it appropriate that Council should be subsidising the overwhelmingly private benefit the adjoining landowners derive due to their proximity to the Waterways and, alternate funding opportunities need to be investigated. There is the opportunity to replace the 1973 Agreement with (1) a new s173 agreement; or (2) the declaration of an owner's corporation over the estate. It is noted that while the Review reasoned that *'the Tidal Waterways are a public reserve and should be managed by a public statutory authority'* (page 106), the same cannot be said to apply to the Quiet Lakes.

There are various other mechanisms that Council officers feel should be explored further to fund asset replacement and maintenance costs:

- The creation of a Special Rate under a new s173 agreement;
- The creation of a differential rate;
- Continuing the current Precept Charge under the existing or modernised agreement;
- Via owners' corporation fees under the owners corporation option; or
- Via a lump sum (paid by Melbourne Water) providing an annuity.

The calculation of the level of compensation would include a lump sum to provide for a perpetual annuity to cover maintenance and asset replacements over time. It is anticipated that this would be a substantial sum.

As part of the Steering Committee process, or separately in discussion between Melbourne Water and the Council, there should be discussion to explore all of the above funding opportunities before reaching an agreed position on additional responsibilities that Council would be willing to undertake and be compensated for.

Stage 3: Manage community expectations

Following an agreement on funding, Council officers strongly recommend that consultation with the wider Kingston community is undertaken to communicate the implications of the funding model agreed to by all parties. Such consultation would clearly allow consideration regarding the extent to which a broader community benefit is being derived by having limited access to the assets in Patterson Lakes to an extent whereby other parts of Kingston should be providing greater subsidies.

Stage 4: Legislate

Finally, the new governance and funding model that clearly defines the legislative and regulatory powers and functions of the involved parties should be enshrined in various legal instruments.

4.3. Options

4.3.1. Option 1 – Participate in the Steering group but no shift in additional costs to Council

Under this option, Council would participate in the proposed Steering Committee but it would be on the basis that Council is unwilling to accept any shared management arrangement that results in a shift in additional costs to Kingston. This would be followed by the broader Kingston community being notified of this resolution and the reasons why Council does not accept this cost shift.

4.3.2. Option 2 – Investigate full cost audit and respond

Council could participate in the Steering Group to get greater clarity of the potential cost to Kingston ratepayers before deciding on a response to the recommendation. Under this option Council (or Melbourne Water) would undertake an audit of the costs, benefits and other outcomes associated with adopting the recommendations of the Report.

Council then would be in a position to advise the Independent Review, Melbourne Water and the Patterson Lakes community of its position on the conclusions and recommendations of the Review's Report.

This option requires funding to undertake the audit work and may also include a significant amount of staff time.

4.3.3. Option 3 – Accept the recommendations of the Review

This option would involve Council resolving to support the recommendations of the Review and accept any additional costs that may involve. This would result in significant, and as yet undetermined, additional cost to Council.

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5. Conclusion

The Patterson Lakes Independent Review was conducted to address community concern about the precept charge being used by Melbourne Water to cover the cost of asset maintenance and replacement. The Review recommendations mean Melbourne Water can now share most of those costs across all of their customers. However, the recommendations also include a cost shift to Kingston ratepayers for a service that has little if any public or community benefit relating to land owned by Melbourne Water.

It would be more appropriate for those costs to continue to be borne by Melbourne Water and/or the individual land owners. As such it is recommended that Council agrees to participate in the Steering Committee but does so on the basis of discussing any potential costs shift to Council before accepting those recommendations.

Author/s: Rachel Homsby, General Manager Environmental Sustainability

Reviewed and Approved By: Rachel Homsby, General Manager Environmental Sustainability