

MELBOURNE WATER – QUIET LAKES BORE FLUSHING TARIFF PROPOSAL

Final Decision

21 June 2017

An appropriate citation for this paper is:

Essential Services Commission 2017, Melbourne Water – Quiet Lakes Bore Flushing Tariff Proposal – Final Decision, June.

Copyright notice

© Essential Services Commission 2017



This work, 2017 *Melbourne Water Quiet Lakes Bore Flushing Tariff Proposal, Final Decision*, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

CONTENTS

SUMMARY	2
1 BACKGROUND	3
1.1 THE QUIET LAKES	3
1.2 MELBOURNE WATER'S ABILITY TO CHARGE A TARIFF	3
1.3 MELBOURNE WATER'S BORE FLUSHING TARIFF PROPOSAL	4
1.4 THE COMMISSION'S DRAFT DECISION	5
2 COMMISSION'S ASSESSMENT	7
2.1 THE COMMISSION'S POWERS TO ASSESS AND APPROVE A TARIFF	7
2.2 SUBMISSIONS ON THE DRAFT DECISION	9
2.3 OUR ASSESSMENT	11
2.4 HEALTH, SAFETY, ENVIRONMENTAL AND SOCIAL OBLIGATIONS	18
2.5 OTHER ISSUES	21
2.6 ISSUES OUTSIDE THE COMMISSION'S ASSESSMENT FRAMEWORK	24
2.7 FINAL DECISION	24
APPENDIX A: ASSESSMENT FRAMEWORK	26
APPENDIX B: SUBMISSIONS	30

SUMMARY

- On 28 November 2016, Melbourne Water submitted a proposal to the Essential Services Commission (Commission) to introduce a new bore flushing tariff.
- Melbourne Water proposed a tariff of \$156 (nominal) per property per annum to be levied on 251 properties that border Lake Legana and Lake Illawong – within the Quiet Lakes area in Patterson Lakes.
- The tariff is proposed to commence on 1 July 2017 and would recover the costs associated with:
 - provision of bore flushing to be undertaken at Lake Legana and Lake Illawong over the period 1 October to 31 March each year; and
 - monitoring services during October and November each year.
- The Commission released a draft decision on Melbourne Water’s proposal in March 2017. We proposed to vary Melbourne Water’s existing price determination to provide for a bore flushing tariff. However, the Commission proposed to specify the maximum price that could be charged for the service of \$135 (nominal) per property per annum after revising the efficient (electricity) costs of the bore pumping service.
- This paper sets out the Commission’s final decision on Melbourne Water’s proposed bore flushing tariff. In reaching our final decision, we assessed Melbourne Water’s proposal against the legislation and regulation that guides the Commission’s pricing role. We considered all feedback from our consultation process.
- Based on the matters set out in this decision, we have decided to vary Melbourne Water’s existing price determination to specify a maximum annual tariff of \$118 per annum for the bore flushing and monitoring services, to be levied on properties that border either Lake Legana or Lake Illawong in the Quiet Lakes area of Patterson Lakes, to apply from 2017-18.

1 BACKGROUND

1.1 THE QUIET LAKES

Located 32 km south-east of Melbourne's central business district, the Quiet Lakes area in Patterson Lakes is a series of three interconnected, storm water fed lakes – Lake Legana, Lake Illawong and Lake Carramar.¹

Melbourne Water has had a role in managing the lakes and the contained water (including managing blue green algae blooms) since 1991 when it took over the responsibilities of the Dandenong Valley Authority.

1.2 MELBOURNE WATER'S ABILITY TO CHARGE A TARIFF

Under the Water Act², Melbourne Water has the power to impose fees under a tariff on properties within its district. The fee imposed by Melbourne Water under a tariff may be an amount fixed according to:

- a) the use of the property; or
- b) how the use or development of the property is controlled under a planning scheme; or
- c) a combination of (a) and (b).

¹ Melbourne Water's tariff proposal only relates to Lake Legana and Lake Illawong.

² *Water Act 1989* (VIC), s 259(1).

1.3 MELBOURNE WATER'S BORE FLUSHING TARIFF PROPOSAL

After the Commission released its March 2016 draft decision on Melbourne Water's 2016-17 to 2020-21 price submission, we received Melbourne Water's proposal for a new tariff to pay for bore flushing services and monitoring services from October to November each year for Lakes Illawong and Legana.

Prior to the Commission's final decision on the 2016–17 to 2020–21 price submission, three submissions were received which opposed the proposed tariff. As the proposed tariff had not been included in Melbourne Water's initial 2016–17 to 2020–21 price submission, we considered that there was insufficient time to assess key issues raised by stakeholders before our final decision. We did not approve the proposed tariff, but invited Melbourne Water to provide a proposal by 1 December 2016.

In November 2016, Melbourne Water resubmitted its bore flushing tariff proposal. The submission proposed a tariff of \$156 (nominal) per property per annum for the period 2017–18 to 2020–21. The tariff would apply to the 251 properties that border Lake Legana and Lake Illawong in the Quiet Lakes.

The tariff is proposed to commence on 1 July 2017 and would recover the annual costs associated with:

- provision of bore flushing to be undertaken at Lake Legana and Lake Illawong over the period 1 October to 31 March each year; and
- monitoring services during October and November each year.

The bore flushing service consists of 253 mega litres of bore water being pumped into Lake Legana and Lake Illawong for six months each year (1 October to 31 March), and weekly blue green algae monitoring during October and November each year.³

³ It is noted that Melbourne Water also undertakes monitoring activities in the period December to March each year, however this period was not included in the services covered by Melbourne Water's proposed tariff.

1.4 THE COMMISSION'S DRAFT DECISION

On 10 March 2017, the Commission released its draft decision on Melbourne Water's November 2016 tariff proposal. The Commission's draft decision proposed to vary Melbourne Water's existing price determination to provide for a bore flushing tariff. However, the Commission proposed to specify the maximum price that could be charged for the service of \$135 (nominal) per property per annum after revising the efficient (electricity) costs of running the bore pumping service.

2 COMMISSION'S ASSESSMENT

2.1 THE COMMISSION'S POWERS TO ASSESS AND APPROVE A TARIFF

The Water Industry Regulatory Order 2014 (WIRO) provides the Commission with powers and functions in respect of the economic regulation of prescribed services provided by Melbourne Water. The Commission must review proposals from regulated water businesses against the WIRO, and may either approve the proposed prices or specify the maximum prices that may be charged for a prescribed service. The Commission may specify a maximum price to apply to a prescribed service where we consider that a water business's price submission does not have adequate regard for the matters specified in clause 11 of the WIRO.⁴

In making this decision, the Commission has had regard to all the matters specified in Appendix A.⁵ The following were of particular relevance to this decision:

- The promotion of:
 - the efficient use of prescribed services by customers⁶
 - efficiency in regulated entities and the regulated water industry⁷
- the provision to regulated entities of incentives to pursue efficiency improvements⁸
- efficiency in the industry and incentives for long term investment⁹

⁴ WIRO clause 14(a) & (b).

⁵ The Commission considered any relevant and international benchmarks for prices, return on assets, the cost of regulation and the expected benefits, and the financial viability of the industry during our 2016 review of Melbourne Water. We consider the proposed tariff and associated costs do not relevantly impact on our 2016 findings on these matters.

⁶ WIRO clause 8(b)(i).

⁷ WIRO clause 8(b)(ii).

⁸ WIRO clause 8(b)(iii).

- the efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation¹⁰
- the health, safety, environmental and social obligations applying to Melbourne Water and the efficient costs of complying with those obligations¹¹
- the principles that the tariffs should provide signals about the efficient costs of providing prescribed services to customers¹²
- the interests of customers of Melbourne Water, including low income and vulnerable customers,¹³ and
- the ease of understanding of these costs proposed by Melbourne Water by customers or potential customers.¹⁴

In assessing Melbourne Water’s proposal against the WIRO, we have considered submissions responding to Melbourne Water’s proposal and our draft decision, and advice from the Department of Land, Environment, Water and Planning and the Department of Health and Human Services.

In response to requests, the Commission also met with stakeholders who had made submissions on the draft decision. We carefully considered each issue raised, and where relevant to our assessment framework (as set out in Appendix A), took that issue into account in arriving at the final decision.

Melbourne Water’s proposed bore flushing tariff relates to prescribed services.¹⁵ The most recent price determination for Melbourne Water was issued by the Commission in June 2016, and covered the period 2016–17 to 2020–21. By proposing to introduce a new tariff, Melbourne Water is proposing a variation to its current price determination.

⁹ ESC Act s8A(1)(a).

¹⁰ ESC Act s33(3)(b).

¹¹ ESC Act, s 8A(1)(d) and 33(3)(b); Water Industry Act, s 4C(c).

¹² WIRO clause 11(d)(ii).

¹³ WIRO clause 11(d)(iii).

¹⁴ WIRO clause 11(d)(i).

¹⁵ WIRO clause 7(b)(vii).

2.2 SUBMISSIONS ON THE DRAFT DECISION

The Commission received eleven submissions on its draft decision (Appendix B lists all submissions received). The majority of submissions were made by individual residents affected by the proposed tariff.

All submissions supported continuation of the bore flushing services, however views differed on whether they should be paid for by customers with properties abutting Lake Legana and Lake Illawong, or funded through those customers of Melbourne Water who are required to pay the metropolitan waterways and drainage charge.¹⁶

Three submissions indicated in principle support for the bore flushing tariff, including three representatives of the Illawong Retirement Village.¹⁷ Seven opposed the application of the bore flushing tariff, including the submissions from representatives of the Patterson Lakes Quiet Lakes Owners and Residents Association Incorporated (PLQLOR) and the Residents Association of Patterson Lakes Incorporated.¹⁸ In its submission, Melbourne Water outlined its agreement with the draft decision.

Most submissions opposing the proposed tariff disagreed with the Commission's draft decision to apply the tariff to the 251 properties bordering Lakes Legana and Illawong, and considered that the cost of providing the services should be covered by the metropolitan waterways and drainage charge. One submission suggested the bore flushing would have downstream benefits.¹⁹

Some also questioned the adequacy of the consultation process undertaken by Melbourne Water for the proposed tariff. Some submissions contended that there were factual errors in the draft decision relating to the Commission's interpretation of Melbourne Water's responsibilities for water quality, the results of bore flushing trials and the history of bore flushing activities in the Quiet Lakes.

¹⁶ Essential Services Commission 2016, Metropolitan Melbourne Water Price Review 2016 Final Decision: Melbourne Water Determination, June, p.25.

¹⁷ Graham Tonta (28 March 2017), James Middleton (6 April 2017) & Nannette Stubbs (13 April 2017).

¹⁸ Anthony Moffatt (19 April, 4 May, and 19 June 2017), Andrew Meehan (14 April 2017), Alison Yates (18 April 2017), Nancy Grant (19 April 2017) & Tamsin Bearsley (2 May 2017).

¹⁹ Anthony Moffatt (4 May 2017).

A number of submissions made in response to the draft decision referred to the Patterson Lakes Independent Review²⁰ (Independent Review) and suggested that the Commission is bound to give effect to the recommendations made in that review.²¹

The Commission is not legally bound by the Independent Review recommendations. However, the Independent Review final report is useful as it sets out the background to the development of the Quiet Lakes and canvasses a number of issues that have arisen with respect to the management of the lakes. The recommendations of the review include:

“A variety of funding sources are available to support a sustainable management framework. The primary sources of ongoing funding are considered to be associated with the Melbourne Metropolitan Waterways and Drainage Charge for those services considered to have regional and community benefits or the application of user pays funding alternatives for those services and assets that are linked to private recreational benefit”²²

“That any additional services sought and agreed between the Authorities and the property owners are to be delivered on a user pays cost recovery basis.”²³

We have considered the findings of the Independent Review in assessing Melbourne Water’s proposal.

Our assessment against the main factors we considered in making our final decision on Melbourne Water’s proposed tariff is set out below.

²⁰ Patterson Lakes Independent Review 2013, Management of Patterson Lakes Tidal Waterways & Quiet Lakes, March 2013.

²¹ See for example: Anthony Moffatt (4 May 2017) p 1 and 6.

²² Patterson Lakes Independent Review 2013, Management of Patterson Lakes Tidal Waterways & Quiet Lakes, March 2013, p. viii.

²³ Ibid, p. xi.

2.3 OUR ASSESSMENT

In undertaking our analysis of Melbourne Water's proposal the Commission is required to have regard to a range of matters set out in the WIRO (2014), the *Essential Services Commission Act (2001)* (Vic) and the *Water Industry Act (1994)* (Vic). This includes a range of objectives, certain price determination considerations set out in the ESC Act, guidance provided by the Commission in accordance with the WIRO and a number of pricing principles.²⁴

The WIRO also requires the Commission, when seeking to achieve the objectives identified in clause 8 of the WIRO, to place a particular emphasis on the promotion of, and incentives to pursue efficiency.²⁵ Matters related to efficiency are also included in the requirements in the WIRO that the Commission have regard to: efficiency in the industry,²⁶ the pricing principle concerned with the provision of signals about the efficient costs of providing services to customers,²⁷ the objective of promoting efficient use by customers of prescribed services,²⁸ and in the ESC Act requirements to have regard to the incentives for long term investment²⁹ and the efficient costs of supplying regulated services.³⁰

As a general proposition, the Commission considers that efficiency is promoted, and incentives are created to pursue efficiency improvements when tariffs are set at a level that reflects efficient levels of service provision and efficient expenditure, and when tariffs are paid by those who benefit from the service (that is, the beneficiaries).

Submissions to the Commission (before and after issuing our draft decision) indicate there is demand for the services covered by the proposed tariff.^{31 32}

²⁴ See Appendix A.

²⁵ WIRO clause 8(b).

²⁶ See WIRO clause 8 and ESC Act, s 8A(1)(a).

²⁷ WIRO clause 11(d)(ii)

²⁸ WIRO clause 8 (b)(i).

²⁹ ESC Act, s 8A(1)(a).

³⁰ ESC Act, s 33(3)(b).

³¹ See for example, Graham Tonta (2 December 2016), Nancy Grant (7 February 2017), Anthony Moffatt (10 February 2017), Andrew Meehan (14 April 2017).

In considering the above, we:

- (a) sought to identify the extent to which Melbourne Water's forecast costs for delivering the bore flushing and blue green algae monitoring services reflect efficient expenditure.
- (b) have had regard to who benefits from the services included in the proposed tariff. This informed our decision on who should pay for the services covered by the proposed tariff. In doing so we have reviewed the submissions made on this issue, considered previous reviews and undertaken a visit.

2.3.1 FORECAST EFFICIENT COSTS

In making this final decision, the Commission considered the extent to which Melbourne Water's forecast costs for delivering the bore flushing and monitoring services reflect efficient levels of expenditure.

Setting tariffs at efficient levels provides for incentives to pursue efficiency improvements³³ and efficiency in the industry and incentives for long term investment.³⁴ Approving tariffs that reflect efficient levels of expenditure also promotes the efficient costs of supplying regulated services.³⁵

Before our draft decision, we reviewed Melbourne Water's forecast costs for running the bore flushing service. In response to our request for further information on these costs, Melbourne Water provided the Commission with its invoices for electricity costs (from its energy provider) for running the bore pumping service. Based on our review of the information in these invoices, we lowered the forecast of electricity costs for the purposes of our draft decision.³⁶

³² A ballot commissioned by Melbourne Water indicates customers are willing to pay for the services covered by the proposed tariff. The ballot outlined Melbourne Water's proposed cost (\$156 per property per year) and the services covered, including bore flushing and monitoring services. Around 75 per cent of affected residents (188 of 251) voted in support of the proposal. See Melbourne Water's Quiet Lakes Bore Flushing Tariff Proposal – November 2016.

³³ WIRO clause 8(b)(iii).

³⁴ WIRO clause 8(b)(ii) ESC Act, s 8A(1)(a).

³⁵ ESC Act, s 33(3)(b).

³⁶ Essential Services Commission 2017, Melbourne Water Quiet Lakes Bore Flushing Tariff Proposal, Draft Decision, March, p. 20-21.

In our draft decision, we reduced the forecast of efficient costs by \$5,408 per annum (compared with Melbourne Water's proposal) to allow for an efficient cost benchmark of \$33,749 per annum.

In its response to the draft decision, Melbourne Water accepted the reduction in electricity costs because it would result in an efficient cost of service.³⁷ The lower electricity costs in our draft decision have been incorporated without change to our final decision.

In response to our draft decision, three submissions queried the cost assumptions for Melbourne Water's monitoring services covered by the proposed tariff.³⁸

We requested and reviewed further information from Melbourne Water on forecast costs for its monitoring program. Our analysis indicated that the monitoring costs assumed in its November 2016 submission incorporated laboratory testing.

Examination of invoices provided by Melbourne Water showed that costs associated with the monitoring service reflected a visual inspection program.

Our final decision has incorporated a benchmark cost for the monitoring service based on a visual inspection program. The costs of a visual inspection program are significantly lower than a program incorporating laboratory testing. We believe this reflects a better estimate of forecast efficient costs for the monitoring service.

Compared with Melbourne Water's submission (and our draft decision), we reduced the forecast of efficient costs for the monitoring service by \$4,051 to \$749 per annum. The estimated cost of the monitoring service for each property is around \$3 per annum.

Table 2.1 summarises the adjustments made by the Commission relative to Melbourne Water's proposal.

³⁷ Melbourne Water, 13 April 2017.

³⁸ Anthony Moffatt (19 April 2017) p.11-12; Nancy Grant (19 April 2017), p.5; Tamsin Bearsley (2 May 2017) p.4-5.

TABLE 2.1 FORECAST EFFICIENT COSTS OF BORE FLUSHING AND MONITORING SERVICES (ANNUAL)
Nominal\$

	Bore flushing	Monitoring services
Melbourne Water's Proposal		
Total	\$34,357	\$4,800
Draft Decision		
Reduction in electricity costs	(-\$5,408)	
Total	\$28,949	\$4,800
Final Decision		
Reduction in BGA monitoring costs		(-\$4,051)
Total	\$28,949	\$749

2.3.2 WHO SHOULD PAY?

In making this final decision and in considering the public submissions we received, the Commission considered the extent to which the proposed bore flushing tariff results in the promotion of efficient use of prescribed services by consumers³⁹ and provide price signals about the efficient costs of providing services to customers.⁴⁰ We consider that the allocation of a tariff to consumers that benefit from the services can promote efficient use of services and provide appropriate price signals about efficient costs.

The Commission considered the position in the submissions that the Quiet Lakes provide a public drainage function and that the proposed bore flushing and monitoring services would have downstream benefits.

Melbourne Water's proposed tariff relates to bore flushing for six months each year (from 1 October to 31 March) and weekly visual inspection monitoring activities to be undertaken in the months of October and November each year.

We consider that the primary beneficiaries of the bore flushing and monitoring services are the properties that border Lake Legana and Lake Illawong.

This view was informed by:

- (a) the Independent Review final report, which included descriptions of the access arrangements at the Quiet Lakes⁴¹ and statements that:

“...the Review considers that the recreational and amenity features of the Quiet Lakes are a private benefit that is exclusive to the dwellings that adjoin the lakes. This is largely because of their lack of accessibility – no provision has been made for the general public to enter from the surrounding streets.”⁴²

³⁹ WIRO clause 8 (b)(i)

⁴⁰ WIRO clause 11(d)(ii)

⁴¹ Patterson Lakes Independent Review 2013, Management of Patterson Lakes Tidal Waterways & Quiet Lakes, March 2013, p. 53-55.

⁴² Ibid p 53.

- (b) the observations of Commission staff during a site visit which was consistent with the Independent Review findings.

The Commission considers a user pays approach to recovering the costs of the bore flushing services is appropriate and efficient for the following reasons:

- The residents adjacent to Lake Legana and Lake Illawong are the primary beneficiaries of the services covered by the bore flushing tariff, and thus the user pay approach promotes the efficient use of those services by the residents.
- It is efficient to allocate costs to the residents and achieve cost reflective pricing where the residents are the clear primary beneficiaries of the services.
- The residents place value on the bore flushing and monitoring services and want those services to be provided.
- A user pays approach provides an appropriate price signal about the efficient costs of providing the bore flushing and monitoring services to the residents.

In the past the Commission has approved charges that vary by location despite a similar or identical service being provided, reflecting differences in the cost structures of transport and treatment in different locations.⁴³ It is also common for bulk water charges to provide locational price signals. For example, Melbourne Water charges the three metropolitan urban retailers different variable water charges depending on the system that is used to supply their customers.⁴⁴

2.3.3 THE INTERESTS OF CUSTOMERS, INCLUDING LOW INCOME AND VULNERABLE CUSTOMERS

In making this final decision, the Commission considered the interests of consumers, including low income and vulnerable customers⁴⁵ and the long term interests of

⁴³ Essential Services Commission 2011, 2013 Water Price Review – Tariff Issues Paper, July, p.30.

⁴⁴ Essential Services Commission 2016, Metropolitan Melbourne Water Price Review 2016 Final Decision: Melbourne Water Determination, June, p.18.

⁴⁵ WIRO clause 11(d)(iii).

consumers.⁴⁶ Promoting efficiency is consistent with the interests of consumers; for example, when tariffs reflect efficient costs for delivering a service, and tariffs are paid by customers benefiting from the service (as described above).

We note that South East Water, which is responsible for passing on Melbourne Water charges via retail water bills in the Quiet Lakes area, offers a range of payment options and advice for customers experiencing difficulty paying bills.⁴⁷ We consider these options and advice provide avenues for low income and vulnerable customers to seek assistance.

2.3.4 ABILITY TO UNDERSTAND THE TARIFF

Two submissions suggested that the Commission should consider charging the residents a different tariff. They noted:

- the proposed bore flushing service costs should be allocated among residents of Lakes Legana and Illawong based on their property's waterfront meterage, or property value, rather than a fixed tariff,⁴⁸ and
- due to the flow of water coming from the bore, some bays within Lakes Legana and Illawong receive little flow through of water from the bore flushing service so should not be required to pay the bore flushing tariff.⁴⁹

Since 1 July 2008 Melbourne Water has ceased charging residential drainage tariffs that are based on property values, moving to fixed tariffs.⁵⁰ The Commission approved this change because property value based tariffs typically do not reflect the costs or benefits of drainage services.⁵¹

⁴⁶ ESC Act, s 8.

⁴⁷ Information on payment options and assistance is available on South East Water's website: <http://southeastwater.com.au/Residential/Pages/Support.aspx>

⁴⁸ James Middleton (6 April, 2017) p.1 & Nannette Stubbs (13 April, 2017) p.1.

⁴⁹ James Middleton (6 April, 2017) p.2.

⁵⁰ Essential Services Commission 2008, 2008 water price review, Melbourne Water determination – metropolitan drainage services and diversion services, 1 July 2008 – 30 June 2013, June, p.24.

⁵¹ The Commission's support for a transition away from property value based tariffs is outlined in – Essential Services Commission 2008, 2008 water price review and waterways water plan 2008-2013 – draft decision, May, p.29.

In addition, the private amenity benefits available to the residents living adjacent to Lakes Legana and Illawong are relatively uniform. This is because the walkways around the lakes and recreational activities are accessible to all residents who live beside each lake. As indicated above we consider that promoting efficiency is consistent with the long term interests of consumers.

We also note that a fixed tariff applying on a per property basis is transparent and easily understood by customers or potential customers.

2.4 HEALTH, SAFETY, ENVIRONMENTAL AND SOCIAL OBLIGATIONS

In making this final decision, the Commission considered Melbourne Water's health, environmental sustainability and social obligations of regulated entities.⁵²

A number of submissions responding to our draft decision argued that we had incorrectly interpreted Melbourne Water's water quality responsibilities in the draft decision.⁵³ The submissions suggested that Melbourne Water is required to carry out bore flushing as part of its existing obligations to maintain water quality and reduce the risks of blue green algae. As such, they argued the services covered by the proposed tariff should be recovered by the metropolitan waterways and drainage charge.

2.4.1 BORE FLUSHING

The Commission sought guidance from the Department of Environment, Land, Water and Planning (DELWP), the agency responsible for setting standards for blue green algae management. DELWP is responsible for publishing the annual Blue Green Algae Circular which provides updated information, roles and responsibilities on blue green algae bloom coordination within Victoria.⁵⁴

⁵² Water Industry Act, s 4C(c); ESC Act, s 8A(1)(d).

⁵³ Anthony Moffatt (19 April 2017) p.10; Alison Yates (18 April 2017) p.3 & Tamsin Bearsley (2 May 2017) p. 1.

⁵⁴ Blue Green Algae Circular 2016-17 – Management Framework, Department of Environment Land Water and Planning, p.3.

The Blue Green Algae Circular risk-based trigger values for blue green algae have been derived from the National Health and Medical Research Council (NHMRC) 2008 Guidelines for Managing Risks in Recreational Water.⁵⁵

DELWP confirmed in writing to the Commission that:

- the Blue Green Algae Circular does not seek to obligate or restrict water managers from implementing specific measures to minimise the occurrence of algal blooms, such as conducting bore flushing in the Quiet Lakes area, and
- DELWP supports the position that without bore flushing, Melbourne Water is meeting its obligations under the Blue Green Algae Circular by monitoring, sampling and warning the public with signage and other information of any bloom.⁵⁶

The Commission also sought guidance from the Department of Health and Human Services (DHHS) which provides advice about the potential public health impacts of blue green algae blooms. DHHS assists DELWP to update the Blue Green Algae Circular each year and liaises with national, interstate government departments and other agencies to maintain, disseminate and manage information on blue green algae.

DHHS confirmed in writing to the Commission that:

- the NHMRC Guidelines do not make any statement that specifically requires bore flushing to be undertaken in order to manage blue green algae, and as a result adherence to the guidelines can be achieved without requiring bore flushing, and
- Melbourne Water's management approach of monitoring, sampling and informing the community to avoid contact with algae affected water to prevent public health risk is consistent with the guidelines.⁵⁷

⁵⁵ National Health Management and Medical Research Council, Guidelines for Managing Risks in Recreational Water 2008.

⁵⁶ Department of Environment Land Water and Planning, Letter, 9 May 2017.

⁵⁷ Department of Health and Human Services, Letter, 11 May 2017.

2.4.2 MONITORING SERVICES

In relation to the monitoring services covered by the proposed tariff, some submissions on the draft decision queried the application of a tariff for these services on the basis that it is part of Melbourne Waters responsibilities, or is covered by the Melbourne metropolitan waterways and drainage charge.⁵⁸

The Commission consulted DELWP in relation to Melbourne Water's water quality monitoring and testing responsibilities. DELWP indicated that in accordance with the Victorian State Government Blue Green Algae Circular (2016–17)⁵⁹ the local water manager (in this case Melbourne Water) should review blue green algae risks for a water body, prepare and update a Risk Management Plan (RMP) annually,⁶⁰ monitor and sample for blue green algae in accordance with the RMP⁶¹ and manage local blooms in accordance with the RMP (including monitoring, signage and media releases).⁶² Further, DELWP indicated that any incremental service above this standard should be consistent with customer willingness to pay.⁶³

In response to queries by the Commission, Melbourne Water indicated that it considered that weekly monitoring in October and November each year was above the level of monitoring it was required to provide. Thus, the position put to the Commission by the responsible local water manager was that weekly monitoring in the period October to November is appropriately recovered on a user pay basis.

In response to a request from the Commission, Melbourne Water also provided us with a copy of its Blue Green Algae Risk Management Plan (RMP).

The RMP provides for fortnightly monitoring over the period from the start of December to the end of March each year or longer if blue green algae blooms are present.

⁵⁸ See for example: Alison Yates (18 April 2017) p.5 & Nancy Grant (19 April 2017) p.6.

⁵⁹ Blue Green Algae Circular 2016-17 – Management Framework, Department of Environment Land Water and Planning p.10.

⁶⁰ Ibid.

⁶¹ Ibid, p.7 & p.10

⁶² Ibid, p.7

⁶³ Request For Information, Department of Environment Land Water and Planning, email received 26 May 2017.

The RMP does not suggest, in the absence of blue green algae blooms, that monitoring should occur on a weekly basis during October and November.

The position advanced in the submissions (that Melbourne Water is required to carry out the bore flushing services and monitoring services – the subject of the tariff proposal – as part of its existing obligations) is therefore not supported by the advice received by the Commission; rather the advice supports Melbourne Water’s proposal for the application of the tariff.

The Commission has considered the submissions that have been made in connection with the health, safety, environmental and social obligations on Melbourne Water. Consideration of Melbourne Water’s health, safety, environmental and social obligations does not weigh against the imposition of a bore flushing and monitoring tariff on the primary beneficiaries of the proposed services.

Thus in considering Melbourne Water’s proposal, the Commission has assessed the forecast efficient costs of providing the bore flushing and monitoring services (section 2.3.1) and how those costs should be recovered (section 2.3.2).

The Commission has determined that the efficient costs are \$29,698 per annum (2016–17\$) and that it is appropriate to recover these costs via a tariff paid by the primary beneficiaries of the proposed service being the residents adjacent to Lake Legana and Lake Illawong.

2.5 OTHER ISSUES

2.5.1 EFFECTIVENESS OF THE BORE FLUSHING

In considering the issues raised in submissions⁶⁴, the Commission reviewed the Design Flow Report which outlines:

⁶⁴ Several submissions highlighted an error in the draft decision’s discussion of the bore flushing trial results - Anthony Moffatt p. 10; Graham Tonta p. 1, 5-7; Alison Yates, p. 3; Tamsin Bearsley, p. 1. The draft decision indicated that Melbourne Water’s trial results showed there was at least one blue green algae bloom during each of the summer trial periods in Lakes Legana and Illawong, despite the bore flushing. The Commission has investigated further and notes

“The trial results suggest that flushing groundwater through the lake system, particularly through Lake Legana and Lake Lake Illawong, appears to have had a positive impact on cyanobacterial biovolumes (below 10 mm³ / L) during all three trial periods.

It is (sic) should be noted that the cyanobacterial biovolumes observed in both Lake Legana and Illawong prior to the commencement of each flushing period were low for all three trials; and therefore it is uncertain what impact groundwater flushing would have had if elevated cyanobacterial biovolume levels were present at the commencement of the flushing periods.”⁶⁵

The Commission acknowledges that while there may be some uncertainty about the impact of the bore flushing trials on blue green algae levels, there does appear to be some indication of positive effects and there is a strong demand from the residents to continue with the proposed services.

2.5.2 MELBOURNE WATER’S CONSULTATION

In late 2015, to inform its tariff proposal Melbourne Water engaged Evaluation Solutions to carry out an independent ballot of the residents and property owners on Lake Legana and Lake Illawong. The ballot polled whether property owners were in favour of, or against the bore flushing service and tariff.

The ballot outlined both the cost (\$156 per property per year) and the service proposal, including bore flushing and increased water quality monitoring. Ballot results showed strong support for the bore flushing tariff, with 188 of 251 affected customers voting in support of the proposal.⁶⁶

Some submissions on the draft decision argued that the ballot conducted by Melbourne Water to test support for a bore flushing tariff was coercive, because the choices Melbourne Water provided on the ballot should have included a third option to have the

that the blue green algae blooms referred to were for Lake Carramar, which is not part of the bore flushing trial. This was an inadvertent inclusion that did not affect the draft decision, and does not affect this final decision.

⁶⁵ Quiet Lakes Water Quality Management Plan, Design Flow, Updated April 2015, p.58

⁶⁶ Melbourne Water’s Quiet Lakes Bore Flushing Tariff Proposal – November 2016, p.9.

bore flushing service funded from its waterways and drainage charge (paid by all Melbourne residents).⁶⁷

The Commission does not agree that the ballot was coercive. The questions contained in Melbourne Water's ballot appropriately reflected the likely cost to be incurred if the bore flushing and monitoring continued, and if it was to be levied it would apply to property owners on Lake Legana and Lake Illawong

There was some concern from residents that Melbourne Water's consultation process on the proposed tariff was inadequate.⁶⁸ Following the ballot, subsequent engagement activities by Melbourne Water included:

- a letter box drop in August 2016 updating residents on the status of Melbourne Water's initial water quality tariff proposal, and
- bulletins placed on the Quiet Lakes notice board and the Lake Illawong retirement village notice board in September 2016, updating residents of the 2016–17 bore flushing trial, and Melbourne Water's intention to resubmit a bore flushing tariff proposal in late 2016.

The Commission considers that Melbourne Water's consultation on the proposed tariff provided sufficient information to residents on Melbourne Water's intentions and an opportunity for affected residents to express their willingness to pay for the services. In principle support for the bore flushing tariff is also provided in three submissions responding to the draft decision.⁶⁹

⁶⁷ Anthony Moffatt (19 April 2017) p. 1; Alison Yates (18 April 2017) p.1 & Nancy Grant (19 April 2017) p.3.

⁶⁸ Anthony Moffatt (19 April 2017) p.3-4.

⁶⁹ Graham Tonta (28 March 2017) p.1; James Middleton (6 April 2017) p.1 and Nannette Stubbs (13 April 2017) p.1.

2.6 ISSUES OUTSIDE THE COMMISSION'S ASSESSMENT FRAMEWORK

Submissions on Melbourne Water's proposal and the Commission's draft decision raised a number of additional issues which are outside of the Commission's assessment framework, including:

- blue green algae blooms in Lake Carramar (which does not currently have the infrastructure in place to receive any effect from the bore flushing in Lakes Legana and Illawong) and Melbourne Water's provision of services in Lake Carramar.
- Sand raking, weed removal and other services in the Quiet Lakes.
- The history of the use of the bore, and its original purpose.
- Additional services to improve the operation of the bore flushing, such as the addition of recycle lines.
- Concerns raised in submissions in connection with Melbourne Water's visual inspection program.

These issues have not been considered in the final decision because they do not relate to Melbourne Water's proposed bore flushing tariff for bore flushing and monitoring services in Lakes Illawong and Legana.

2.7 FINAL DECISION

The Commission has reviewed Melbourne Water's proposal to introduce a flat fixed tariff for bore flushing and monitoring services to properties that border either Lake Legana or Lake Illawong in the 'Quiet Lakes' area of Patterson Lakes. For the reasons herein the Commission's final decision is as follows:

BOX 2.1 THE COMMISSION'S FINAL DECISION

This determination of the Commission is an amendment to the "Melbourne Water Determination" dated 15 June 2016 (Principal Determination).

The Commission approves Melbourne Water's application for the introduction of a bore flushing and monitoring tariff and specifies a maximum annual tariff per property of up to \$118 per annum (not subject to indexation or increase in the period to and including 2020–21) for properties that border either Lake Legana or Lake Illawong in the 'Quiet Lakes' area of Patterson Lakes.⁷⁰

The Principal Determination is amended with effect from 1 July 2017 by inserting the following into Schedule 2 between items 2.4 and 2.5:

Quiet Lakes Bore Flushing Tariff

For properties that border either Lake Legana or Lake Illawong in the 'Quiet Lakes' area of Patterson Lakes, from 2017-18 an annual tariff per property of up to \$118 per annum (not subject to indexation or increase in the period to and including 2020-21).

⁷⁰ We have specified a maximum price under clause 14(a)(ii) (rather than approving the prices proposed by Melbourne Water's under clause 14(a)(i) of the WIRO as we consider that Melbourne Water's proposal did not comply with clause 11 of the WIRO because the costs included in that proposal were not efficient.

APPENDIX A: ASSESSMENT FRAMEWORK

The following table contains the key legal requirements that guide the Commission’s decision.

Legal instrument	Requirement / Obligation
<p>Clause 11 of the WIRO</p>	<p>When making a price determination the Commission must have regard to:</p> <ul style="list-style-type: none"> • the objectives specified in clause 8 of the WIRO; • the matters specified in section 33(3) of the ESC Act; • the matters specified in the Commission’s guidance issued under clause 13; • pricing principles, that the prices to be charged or the manner in which they are calculated or determined should: <ul style="list-style-type: none"> ○ enable customers or potential customers to easily understand the prices charged or the manner in which they are calculated; ○ provide signals about the efficient costs of providing prescribed services to customers, either collectively or to an individual customer or class of customers) while avoiding price shocks where possible; and ○ take into account the interests of customers of the regulated entity including low income and vulnerable customers.
<p>Clause 8 of the</p>	<p>A) The objectives of the Commission when performing its</p>

WIRO

functions and exercising its powers in relation to the regulated water industry are those set out in section 8 of the ESC Act and section 4C of the Water Industry Act.

b) In seeking to achieve those objectives the Commission is required to have regard to the matters in section 8A of the ESC Act and to place particular emphasis on:

(i) the promotion of efficient use of prescribed services by customers;

(ii) the promotion of efficiency in regulated industries as well as efficiency in, and financial viability of, the regulated water industry; and

(iii) the provision to regulated entities of incentives to pursue efficiency improvements.

Section 8 of the ESC Act

- 1) In performing its functions the objective of the Commission is to promote the long term interests of Victorian consumers.
- 2) In seeking to achieve that objective, the Commission is required to have regard to the price, quality and reliability of essential services.

Section 8A of the ESC Act

In seeking to achieve the objectives in section 8 of the ESC Act the Commission must have regard to certain matters to the extent they are relevant in any particular case. The Commission considered the following to be relevant to its consideration of the proposal for the bore flushing and monitoring tariff:

- efficiency in the industry and incentives for long term investment (Section 8A(1)(a));
- the relevant health, safety, environmental and social legislation applying to the industry (Section 8A(1)(d));
- any matters specified in the empowering instrument (Section 8A(1)(g)).

Section 4C of the Water Industry Act Sets out three objectives of the Commission under the Water Industry Act, being:

- a) wherever possible, to ensure that the costs of regulation do not exceed the benefits;
- b) to ensure that regulatory decision making and regulatory processes have regard to any differences between the operating environments of regulated entities;
- c) to ensure that regulatory decision making has regard to the health, safety, environmental sustainability and social obligations of regulated entities.

Section 33 of the ESC Act (3) In making a price determination the Commission must have regard to:

- a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;
- b) the efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation and relevant health, safety, environmental and social legislation applying to the industry;
- c) the return on assets in the regulated industry;
- d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries⁷¹;
- e) any other factor the Commission considers relevant.

Guidance Paper for the Melbourne Noted that proposed tariffs must provide signals to customers about the efficient costs of providing services.

⁷¹ The Commission considered whether there were any relevant and international benchmarks for prices, return on assets and the financial viability of the industry during our 2016 review of Melbourne Water. No submissions made to us identified any relevant benchmarks and the Commission did not consider that there were any relevant benchmarks.

**Water 2016 price
review**

APPENDIX B: SUBMISSIONS

Table B1 lists the written submissions received on our draft decision – Quiet Lakes bore flushing tariff proposal. The submissions are available on our website: <http://www.esc.vic.gov.au/document/water/36626-quiet-lakes-bore-flushing-tariff-proposal/>

TABLE B1

Name	Date received
Graham Tonta	28 March 2017
James Middleton	6 April 2017
Nannette Stubbs	13 April 2017
Andrew Meehan	14 April 2017
Alison Yates	18 April 2017
Melbourne Water	18 April 2017
Nancy Grant	19 April 2017
Anthony Moffatt (3 submissions)	19 April 2017, 4 May 2017 and 19 June 2017
Tamsin Bearsley	2 May 2017