

By-Law No. 2: Waterways, Land and Works Protection and Management

This By-Law is made by Melbourne Water Corporation pursuant to its powers as a Water Authority under the Water Act 1989.

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Version No.001

By-Law No. 2: Waterways, Land and Works Protection and Management

Dated 9 April 2009

1. Making of By-Law

Melbourne Water pursuant to its powers under the **Water Act 1989** makes this By-Law.

2. Title

This By-Law shall be known as “By-Law No. 2 Waterways, Land and Works Protection and Management”.

3. Objectives

The objectives of this By-Law are:

- (a) the management, protection and use of lands, waterways and works under the management and control of Melbourne Water;
- (b) preventing or minimising interference with or obstruction of the flow of water;
- (c) preventing or minimising the silting up of a designated waterway or designated land or works or any injury to or pollution of it or them, including prohibiting the deposit of material in or near it or them;
- (d) prohibiting or regulating the removal of any material from land forming part of a designated waterway or designated land or works;
- (e) regulating activities carried out on land forming part of a designated waterway or designated land or works; and
- (f) the general management and control of any designated waterways or designated land or works,

for the purpose of Melbourne Water discharging its functions under the Act.

4. Authorising Provisions

This By-Law is made under sections 160 and 219 of the Act.

5. Commencement

This By-Law commences on the day that a notice is published under section 287ZI of the Act.

6. Definitions

In this By-Law –

“Act” means the **Water Act 1989**.

“Authorised Officer” means:

- (a) any officer or employee of Melbourne Water, or
- (b) any person appointed in writing by Melbourne Water as an authorised officer for the purpose of this By-Law.

“designated land” has the meaning given in section 188A of the Act.

“designated waterway” has the meaning given in section 188A of the Act.

“designated works” has the meaning given in section 188A of the Act and includes any drain which is declared as designated works under that section.

“camp” includes using a tent, caravan, trailer or other vehicle or vessel for camping.

“Melbourne Water” means Melbourne Water Corporation.

“rubbish” includes any solid or liquid domestic or commercial waste, refuse or debris and without limitation includes abandoned vehicles or vehicle parts, vegetation and clippings, concrete, stone and bricks, and any animal carcass or part or parts thereof.

“vehicle” includes a bicycle but does not include a motorised wheelchair capable of a speed of not more than 7 kilometres an hour.

“vessel” includes a motorised personal water craft.

“waterway” has the meaning given in section 3 of the Act.

“works” has the meaning given in section 3 of the Act.

7. Application

This By-Law applies to:

- (a) all lands, waterways and works under Melbourne Water's management and control; and
- (b) all designated waterways and designated land or works,

together, "relevant land, waterways or works".

8. Exempt Persons

This By-Law does not apply to –

- (a) any of the following persons, when acting in the course of that person's duties:
 - (i) an Authorised Officer;
 - (ii) a contractor carrying out any work for Melbourne Water; or
 - (iii) a member of the police force;
- (b) a person dealing with a fire, flood or other public emergency; or
- (c) a person acting in accordance with an authorisation granted by Melbourne Water under clause 22 of this By-Law.

9. No Access to certain Land, Waterways or Works

A person must not enter any relevant land, waterway or works if there is a sign displayed at or near the relevant land, waterway or works or any entrance to the relevant land, waterway or works indicating that entry to the relevant land, waterway or works is prohibited.

10. Structures and Works

A person must not:

- (a) construct, operate, alter, obstruct, interfere with or remove any structures or works or carry out any works in, on, under, or over relevant land, waterways or works; or
- (b) carry out or construct any works that will or are likely to realign a relevant waterway or works,

without a permit issued by Melbourne Water.

11. Protection of Waterways, Land and Works

(1) A person must not:

(a) carry out any activity, undertake any works or deposit or discharge any materials, matters or substances in or on any relevant land, waterway or works that:

(i) obstructs or interferes with the flow of water in the relevant land, waterway or works;

(ii) causes silting up, erosion or injury to the relevant land, waterway or works;

(iii) erodes or injures the banks of the relevant waterway;

(iv) pollutes the relevant land, waterway or works; or

(v) is likely to do any of the things set out in paragraphs (i), (ii), (iii), or (iv);

(b) damage interfere with or remove any tree or other vegetation, either alive or dead, in or from relevant land, waterways or works; or

(c) take any soil, earth, sand, gravel or other material within or from relevant land, waterways or works,

without a permit issued by Melbourne Water.

(2) Sub-clause 1 does not apply to the carrying out of any activity or the deposit or discharge of any materials, matters or substances that is authorised by or under the **Environment Protection Act 1970** or the **Planning and Environment Act 1987**.

12. Prohibited Activities

A person must not on or in any relevant land, waterway or works:

(a) damage, interfere with or remove:

(i) any fencing, gate or other structure or building;

(ii) any vehicle, vessel, equipment or other property of Melbourne Water; or

(iii) any sign displayed by Melbourne Water;

- (b) light, maintain or use a fire;
- (c) fish or swim in an area where Melbourne Water has determined that fishing or swimming is prohibited and signs have been erected in the name of Melbourne Water indicating that prohibition;
- (d) drive, ride, propel or use a vehicle or vessel except on any area of land or water set aside for access by vehicles or vessels generally;
- (e) park or leave a vehicle or vessel standing except:
 - (i) in any area indicated by signs as an area set aside for the parking or mooring of vehicles or vessels; or
 - (ii) in any place where the parking or mooring of vehicles or vessels is not prohibited and the parking or mooring of the vehicle or vessel will not cause obstruction to other people, vehicles or vessels,
- (f) enter any drains;
- (g) dump any rubbish;
- (h) camp, or
- (i) plant or cause to become established any noxious weed determined to be a noxious weed listed under the Catchment and Land Protection Act 1994 or a Weed of National Significance under the National Weeds Strategy 1997.

13. Application for a Permit

An application for a permit under this By-Law shall be:

- (a) in writing in the form required by Melbourne Water from time to time; and
- (b) accompanied by:
 - (i) any fee set by Melbourne Water; and
 - (ii) such plans, specifications or other documents required by Melbourne Water in connection with the application.

14. Additional information

Before determining whether to issue a permit, Melbourne Water may require the applicant to:

- (a) supply such additional information, plans, specifications or other documentation that Melbourne Water considers necessary; and

(b) give public notice of the application to such persons that Melbourne Water considers may be affected by the application, at such times and in such a manner as determined by Melbourne Water.

15. Matters to be taken into account by Melbourne Water

In determining whether to issue a permit, Melbourne Water shall have regard to:

- (a) the objectives of this By-Law;
- (b) the effect or likely effect of the issue of the permit (with or without conditions) on any relevant land, waterway or works;
- (c) any submissions received by Melbourne Water in respect of the application, and
- (d) any other matters Melbourne Water considers relevant.

16. Granting or Refusing Approval

Melbourne Water may –

- (a) refuse an application for a permit;
- (b) grant the application for a permit; or
- (c) grant the application for a permit subject to any conditions as determined by Melbourne Water, including the payment of fees (details of which are available on Melbourne Water's website.)

17. Permits

(1) Any person, who carries out any works or activities for which a permit has been issued by Melbourne Water must:

- (a) do so in accordance with any conditions to which the permit is subject; and
- (b) notify Melbourne Water giving ten (10) days notice before commencing the relevant works or activities.

(2) Unless otherwise stated in a permit, a permit issued by Melbourne Water is valid for one year from its date of issue.

18. Amendment, extension and transfer of Permits

Melbourne Water may, on the application of the holder of a permit:

- (a) amend the permit (with or without conditions);
- (b) renew the permit (with or without amended conditions);
- (c) extend the permit;
- (d) transfer the permit: or
- (e) decline to amend, renew, extend or transfer the permit.

19. Revocation of Permits

Melbourne Water may revoke a permit if it considers that the holder of the permit has failed to comply with any condition to which the permit is subject, provided that:

- (a) a notice of contravention in accordance with section 151 of the Act has been served upon the holder of the permit;
- (b) the notice of contravention has not been complied with within the time specified in the notice; and
- (c) the failure to comply continues for a period of five working days after the date specified in the notice or any longer period allowed by Melbourne Water.

20. Offence to Breach By-Law

It is an offence to breach any provision of this By-Law, including, without limitation, to carry out an activity or works without a permit (if applicable) or to fail to comply with a condition of a permit.

21. Penalty

Any person who is guilty of an offence under this By-Law shall be liable to a penalty not exceeding twenty (20) penalty units* and in the case of a continuing offence an additional penalty not exceeding five (5) penalty units for each day on which the offence continues:

- (a) after service of a notice of contravention on the person under section 151 of the Act; or
- (b) if no notice of contravention is served, after conviction of the person for an offence.

* a penalty unit has the meaning defined in section 110 of the *Sentencing Act 1991*.

22. Authorisation

(1) Melbourne Water may authorise a person to do anything that would otherwise contravene this By-Law.

(2) An authorisation under sub-clause 22(1):

(a) must be in writing; and

(b) may be granted subject to any conditions determined by Melbourne Water.

ENDNOTES

1. General Information

By-law No. 2: Waterways and Drainage Protection, S.R. No. 113/1998 was made on 21 August 1998 by the Melbourne Water Corporation and approved on 8 September 1998 by the Governor in Council under sections 240A, 278 and 285 of the **Melbourne and Metropolitan Board of Works Act 1958**, No. 6310/1958 and came into operation on 21 August 1998.

From 1 July 2007, the By-law No. 2: Waterways and Drainage Protection was deemed to be a By-law made under the **Water Act 1989** to continue until revoked under section 5 of the **Subordinate Legislation Act 1994** (namely 21 August 2008) or amended or revoked under the **Water Act 1989** (see item 10, Schedule 16 Water Act 1989 Transitional Arrangements Water (Governance) Act 2006.