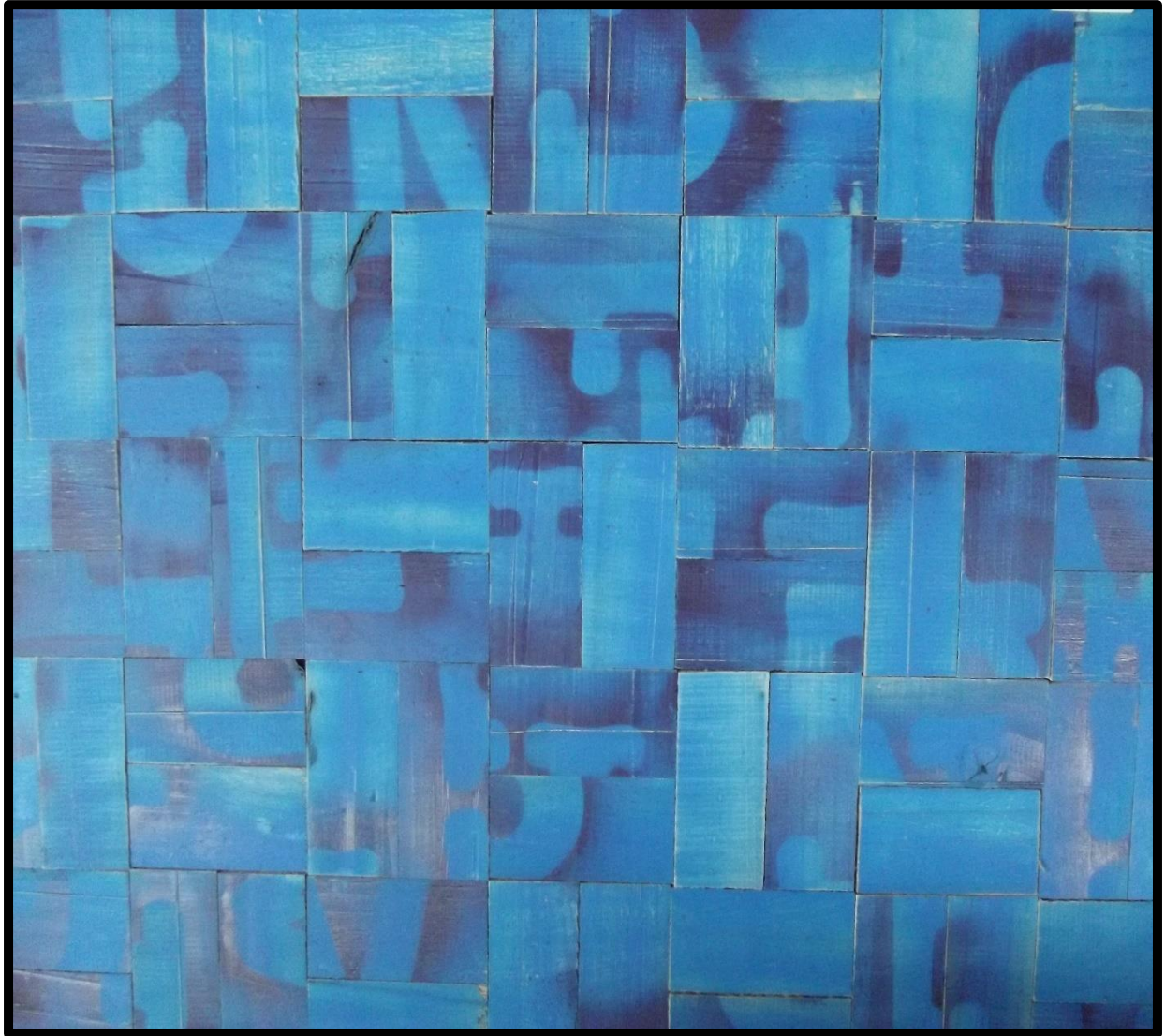


# **“Section 78 notice – 2018”**



**OTWAY WATER BOOK 42D**

*Cover photograph by Simon & Georgie, "Never Give Up."*

## **Disclaimer**

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[www.stopgroundwatermining.com.au](http://www.stopgroundwatermining.com.au)

25 October 2018

Malcolm Gardiner

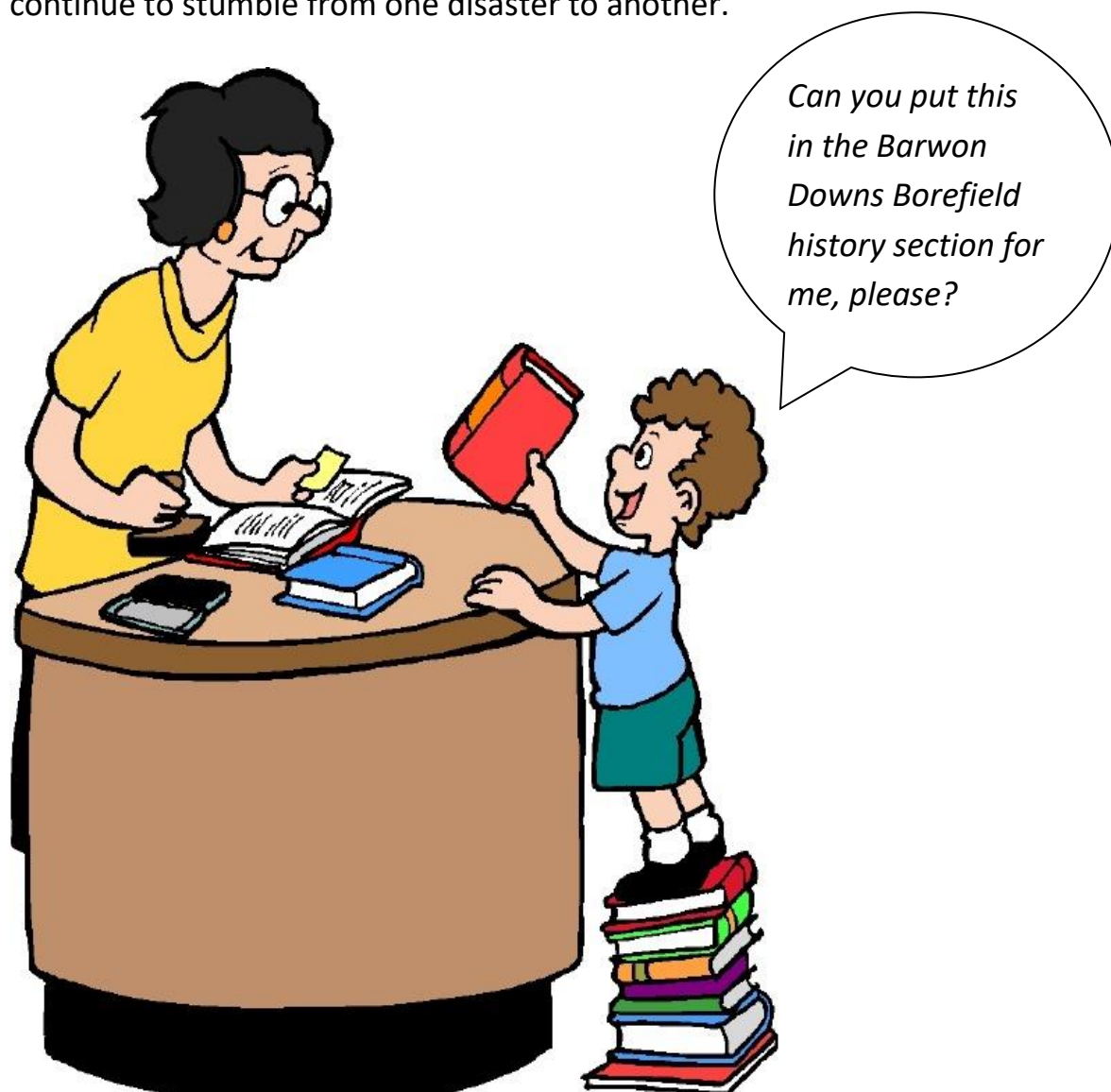
Email: [otwaywater@yahoo.com.au](mailto:otwaywater@yahoo.com.au) [www.otwaywater.com.au](http://www.otwaywater.com.au)

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## INTRODUCTION

Attempting to keep abreast of developments and record the process for perpetuity is sometimes drawn-out and tedious. Never the less it is most important that such a record is kept so that history may not be allowed to repeat itself. But more importantly, those people in the position of authority and responsibility who act on our behalf are kept accountable. Without this the management of the groundwater resources of the Otway Ranges will continue to stumble from one disaster to another.





## **982-2018**

Between these dates Barwon Water extraction over 120,000 million litres of water from the Barwon Downs Borefield for use within the Greater Geelong Region.<sup>(1)(2)</sup> Extractions during the 1982-83 drought are reported to have supplied 50% of Geelong's needs. During the Millennium Drought this figure rose to 70%.<sup>(6)(7)</sup>

Unfortunately over this period, and despite numerous predictions and warnings of what could/would take place with over extraction, the extractions far exceeded what could even be vaguely regarded as sustainable.<sup>(6)(10)(11)</sup> The pumping of water from the Barwon Downs Borefield has been conducted as what could best be described, a mining operation.

The short and long term impacts over this 30 year period have been comprehensively documented.<sup>(3)(4)(5)</sup> Prediction of longer term ramifications have also been made and include deep water aquifer pollution; more creeks and rivers will stop flowing, including the Gellibrand River; fire risk will continue to be an ever increasing problem with the creation of desert like conditions in the Otway Ranges.<sup>(4)(5)(8)</sup>

## **2012**

In the lead up to the licence renewal (June 2019) for groundwater extraction at the Barwon Downs Borefield, Barwon Water began to prepare the case for renewal.

## **October 2013**

A Barwon Water Groundwater Community Reference Group (CRG) met for the first time.

## **November 2017**

Barwon Water had planned to have its licence renewal application sent to Southern Rural Water by the end of 2017.<sup>(14)</sup> This has been postponed on several occasions since and has now been delayed indefinitely (see pages 7, 9, 17).

## **2017-2018**

Late in 2017 and early 2018 Barwon Water convened several Community Workshops broadening the representation allowing discussion along the lines of the CRG deliberations.

## April 2018

After nearly five years of deliberations the CRG<sup>(13)</sup> delivered its recommendations to the Barwon Water Board of Management.

These recommendations included:

- Implement a remediation plan for known impacts created.
- No groundwater extraction during this period other than 100 ML/year for maintenance of the infrastructure.
- Fill any knowledge gaps, and
- continue to monitor the recovery of the borefield so that at the end of the remediation process it can be established whether there can be future sustainable extractions.

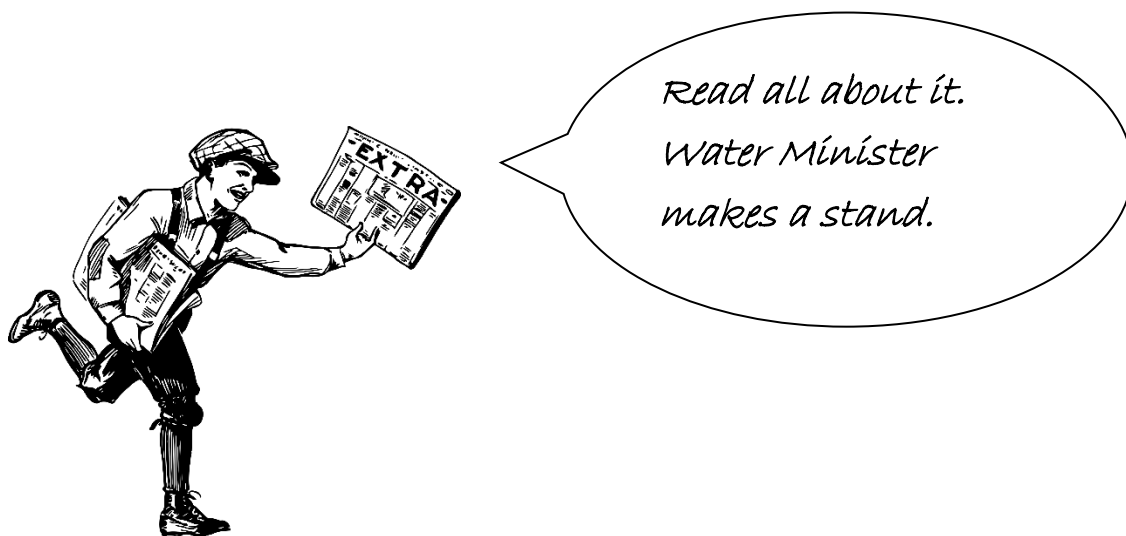
## May 2018

Barwon Water established a Community Remediation Group to focus on the remediation plan for the Big Swamp and Boundary Creek.

Otway Water Book 42B, “A Fresh Start,” deals with some of the difficulties encountered with this process and discusses developments since the first workshop.<sup>(8)</sup> Otway Water Book 42C “Dracula Once Again being Given Keys to the Blood Bank? (One hopes Not)” has continued this story.<sup>(3)</sup>

## Remediation Workshop 3. (July 2018)

Otway Water Book 42C covers a multitude of issues and happenings related to the remediation of the Barwon and Gellibrand River Catchments, but far the most significant item contained in this book is the Minister for Water, Lisa Neville’s, press release of 9 August 2018 (see page 7).



# Media Release

The Hon Lisa Neville MP  
Minister for Police  
Minister for Water



Thursday, 9 August, 2018

## REMEDIATION PLAN FOR OTWAY WATERWAYS

The Andrews Labor Government is protecting the health of Otway waterways by ensuring Barwon Water repair the environmental impacts of past groundwater extraction in the region.

Minister for Water Lisa Neville has intervened through Southern Rural Water (SRW) to request a legally enforceable remediation plan, under Section 78 of the Water Act, to improve and protect the health of key waterways in the Otways.

Ms Neville said she was also requesting extra work to determine whether any further extraction is sustainable. This is in addition to the normal assessment process.

The announcement – which affects waterways such as the Big Swamp, Boundary Creek and Barwon River (between Boundary Creek and Winchelsea) and important groundwater reserves – includes the following directions to SRW:

- That Barwon Water prepare a thorough remediation plan, given findings that past groundwater extraction have affected pH conditions in Boundary Creek
- That in addition to the normal assessment process, SRW establish an independent technical review panel to assess Barwon Water's groundwater extraction license renewal application
- That SRW work with DELWP to determine whether a change to the overall permissible consumptive volume for the Gerangamete Groundwater Management Area should be reduced
- That Barwon Water discontinue any extraction activities, other than for maintenance and emergency response purposes, while the assessment is being completed and until all remediation work dictated under the remediation plan has been completed.

While groundwater extraction to supplement supply hasn't been undertaken in the borefield in two years, the environmental impact from past extraction means there needs to be a change in approach.

★ In addition, SRW will create a community reference group to provide input into the groundwater license renewal assessment process and a forum for issues to be raised in a formal manner.

People who wish to register interest to take part in the community reference group can contact Southern Rural Water on 1300 139 510.

The Labor Government has already invested in large-scale infrastructure projects such as the desalination plant, the Melbourne-Geelong pipeline and Anglesea borefield – which now means Geelong's water supply is future-proofed, more secure than ever before and less reliant on groundwater.

### Quotes attributable to Minister for Water Lisa Neville

*"Maintaining the health of these vital waterways is vital for both the Geelong community and local environment."*

*"I've placed strict requirements on Barwon Water's licence renewal process and I expect them to be complied with."*

*"I will ensure the health of our local waterways is prioritised, and that locals are kept well-informed on the development of the remediation plan."*

**Media contact:** Elisa Fernandes 0438 021 203 | [elisa.fernandes@minstaff.vic.gov.au](mailto:elisa.fernandes@minstaff.vic.gov.au)



Because Barwon Water has delayed any licence renewal application (see Page 9 Colac Herald Article headed, "Application for pumping postponed") Southern Rural Water has

notified people who applied to be on the Southern Rural Water Community Reference Group that the group will not be formed until the licence renewal application is made. As things stand this could be years away. This then begs the question what happens when the licence expires in June 2019.

From: **Barwon Water Licence Renewal** <BarwonLicenceRenewal@srw.com.au>  
Date: Thu, Oct 11, 2018 at 4:11 PM  
Subject: Barwon Downs Licence Community Reference Group (Southern Rural Water)  
To: andrewkmclennan@gmail.com <andrewkmclennan@gmail.com>

Dear Andrew,

We wanted to give you an update on the timeline since we last contacted you to thank you for registering interest to join the Barwon Downs Licence Community Reference Group, which we intend to establish.

Barwon Water has still not applied for a renewal of its licence under section 58 of the Water Act (1989), so we are not yet in a position to convene our Community Reference Group.

As soon as we have received the renewal application, we will be in touch and provide you with a form to complete the nomination process. Once the group is convened, we will be able to provide a timeline and more information about the section 58 process.

You may have seen some recent media and updates on Barwon Water's website regarding the separate Ministerial notice issued to Barwon Water under section 78 of the Water Act (1989), requiring action on remediation planning and implementation. Please note that this is a separate process to the section 58 application for a licence renewal.

If you have any further questions please contact Penny Winbanks, Project Manager on 1300 139 510.

Regards,

**Anouk Meereboer**

This letter makes it appear that there will be a selection process put into play re: the Southern Rural Water's Community Reference Group composition. However, Grace Mitchell's letter (see page 35) states all applicants have been accepted.



# Application for pumping postponed

**Barwon Water has delayed an application to renew its Barwon Downs borefield extraction licence after Victoria's Water Minister ordered it to remediate the effects of past pumping.**

The water authority said previously it would submit an application to Southern Rural Water for a 15-year extraction licence at the borefield by midyear. The submission included implementing a non-legally binding remediation plan.

But Victorian Water Minister Lisa Neville in September ordered Barwon Water to complete a legally enforceable remediation plan to repair the impact of past groundwater extraction at the site.

A notice published on Barwon Water's website shows the water authority must submit a remediation plan for the site to Southern Rural Water by December 2019, with remediation underway by March 2020.

Barwon Water says it has now delayed its licence application and will keep the community informed of any new submission date while it complies with the minister's notice.

The authority last pumped water from the borefield be-

tween April and September 2016, with past groundwater pumping proven to have contributed to acid sulphate soils in Yeodene's Big Swamp releasing into Boundary Creek.

Barwon Water managing director Tracy Slatter welcomed the minister's intervention, pointing out that Barwon Water had already been working on a remediation plan.

"I wrote to Southern Rural Water in November 2017 to advise that we would not operate the borefield during the licence renewal process except for maintenance purposes," Ms Slatter said.

"Barwon Water is undertaking significant consultation with the community and key stakeholders, and has established a community and stakeholder working group to design the remediation plan.

"This group has met three times already and is benefiting from the advice of three independent technical experts, who they nominated to support them in their discussions."

The minister's notice remains in effect until Barwon Water demonstrates to Southern Rural Water that the remediation plan has been implemented and the intended outcomes achieved.

It seems quite clear from this press release that the only extractions to take place before the implementation of, and success of the remediation plan, will be for maintenance of the infrastructure or in emergency situations (also see page 25).



## Emergency Situations.

The section 78 notice has clearly defined how an emergency situation could bring about continued groundwater extraction (see page 18). However, Barwon Water and the Minister for Water have made assurance that groundwater extraction would be at the bottom of any emergency contingency (see pages 23 and 33). Anglesea groundwater and water kept in storage in the Yarra-Thompson system would be utilized first. If need be the desalination plant would be used to top up any shortfall from the Yarra-Thompson system.

*“Back up options can be called upon if needed, such as the Melbourne to Geelong pipeline, connecting Geelong to the Melbourne water system, which is secured by the desalination plant.”* Barwon Water’s Infrastructure Systems Manager, Dr. Will Buchanan (see Geelong Indy article, page 36).

To deliver water from the Yara-Thompson system to the door of customers in Geelong costs approximately \$6.80 per 100 litres. Cheap water if it stops the devastation taking place from groundwater extraction.

## Since early 2018 dramatic shifts have taken place.

What appeared to be a relatively straight forward licence application back in 2012 has taken many twists and turns. During 2018 at least two other strands of investigation have come to light, involving the future of groundwater extraction from the Barwon Downs Borefield.

## The Three Separate Strands of Investigation.

Licence Renewal	Remediation of Impacts	Permissible Consumptive Volume (PCV).
<ul style="list-style-type: none"><li>• Barwon Water submits an application.</li><li>• SRW sets up a technical &amp; community panels to validate and review Barwon Water’s application.</li><li>• SRW asks for public submissions.</li><li>• SRW makes a decision.</li><li>• If no objections the licence is granted.</li><li>• If objections the decision is appealed at VCAT.</li></ul>	<p>The legally binding directives the Minister for Water has initiated as set out in section 78 of the Water Act, can be found on pages 14-20. Barwon Water’s response to these directives can be found on pages 22-25.</p> <p>Both these documents are also available on the Barwon Water website.</p>	<p>The Minister for Water has directed DELWP to review the Permissible Consumptive Volume for the Gerangamete Groundwater Management Area. This is the amount of groundwater that can be sustainably extracted at the Barwon Downs Borefield.</p>

These three strands of investigation are interwoven and the outcome of each impacts on the final decision of whether groundwater extraction is feasible and or sustainable in the future. The Permissible Consumptive Volume review can and should go ahead irrespective, and so should the remediation of impacts. It would appear that an application for licence renewal is being delayed until the outcome of these other two strands is finalized.

### **Success or Failure.**

This section headed “*Success or Failure Depends on Community Involvement,*” has been taken from Otway Water Book 42C.

#### ***Success or Failure Depends on Community Involvement.***

*The question still remains do any of the people charged with carrying out the Minister’s wishes and directives understand or know what the concerns with the unsustainable extraction of groundwater from the Barwon Downs Borefield are? Unfortunately, “Given the significant concerns,...” (MinisterNeville) none of the authorities involved in the remediation and or licence renewal process have itemised these concerns.*

*Further it has not been made clear which key waterways are to be protected and how their health will be improved. Minister Neville states...“Given the significant concerns, I have intervened to ensure there is a legally enforceable remediation plan to improve and protect health of key waterways in the Otways.” (MinisterNeville) With this in mind it is paramount that local community input is listened to ensuring that these significant concerns and key waterway protections are clearly defined and implemented.*

### **Minister’s Directives.**

*The Minister’s pro-action...*

- a. to discontinue extraction except for maintenance and emergency contingencies,*
- b. to have a remediation plan for Boundary Creek prepared, and*
- c. to include in the plan remediation for the surrounding environment impacted by groundwater pumping at the Barwon Downs Borefield,*

*is most welcome and provides a solid foundation on which to build.*

*And, to state that there will be no further extractions...*

*a. while assessment is being completed, and*

*b. until **ALL** remediation work dictated under the remediation plan has been completed,*

*shows an extremely clear and strong commitment that any future extraction will only take place after a thorough examination of what can be regarded as a sustainable level.*

### **Miserable Track Record**

*This task of conducting a thorough examination and protection of key waterways has been given to Southern Rural Water (SRW) and the Department of Environment, Land, Water and Planning (DELWP) - but their track record at implementing earlier Ministers' directives has been miserable and is of some considerable concern.*

*The question paramount in many people's mind is will this promised, thorough and independent examination that will be led by SRW and DELWP be done any better?*

Comments made on page 21 of this Book 42D, (regarding s78 part 1.3) indicate that little has changed and it is looking likely things will not be done any better.



## Section 78. Is this the start of the change?

Hi all, Friday 14/09/2018 to ALK Remediat<sup>n</sup> Workshop participants.

It has been a few weeks since workshop 3 and I wanted to give you a quick update on where the remediation plan is at with the nominated experts as well as the release of the section 78 Ministerial Notice.

### Boundary Creek remediation plan

- On behalf of the nominated experts, Dr Darren Baldwin will be taking the lead to draft up a report documenting information gaps and outline research activities to close out the information gaps. This report will have input from all the experts to agree on the priority information gaps and corresponding field work.
- We expect that the report on information gaps and recommended field work will be complete by the end of October.
- We are aiming to have another meeting with the working group in November to share with you what the field program looks like and what it is trying to address.

### Section 78 Ministerial Notice

- Earlier this week, we received a Section 78 Ministerial Notice under the Water Act 1989, directing us to develop and implement a remediation for the Boundary Creek and Big Swamp environments.
- This notice was welcomed because it not only provides added assurance to the community but legally enshrines Barwon Water's intention to remediate Boundary Creek and Big Swamp.
- We will fully cooperate with the Section 78 notice to get the right outcomes.
- Furthermore, we will continue working closely with the local community, key agencies and technical experts in the months and years ahead towards developing and implementing the remediation plan.

We will be in touch about the next workshop closer to the date – in the meantime, if you have any questions please give me a call or email.

Have a great weekend,

Jo

Joanna Lee

Coordinator Water Resource Planning

Still no mention in this email has been made of the omissions to the minutes of Workshop 3 (August 2018), as outlined in Otway Water Book 42C. These omissions will need to be dealt with as the first item on the Workshop 4 agenda.

The following 6 pages contain the Southern Rural Water section 78 notice given to Barwon Water.



## MINISTERIAL NOTICE

Issued pursuant to Section 78 of the Water Act 1989

<b>Issued to:</b>	Barwon Region Water Corporation (Barwon Water)		
<b>Property Address (the Property):</b>	<b>BW asset name</b>	<b>Bore ID</b>	<b>Address</b>
	GW4	64248	Dewing Bridge Road, Gerangamete VIC 3243
	GW2a	64246	Dewing Bridge Road, Gerangamete VIC 3243
	GW6	S56301/01	Dewing Bridge Road, Gerangamete VIC 3243
	GW5	64245	Dewing Bridge Road, Gerangamete VIC 3243
	GW8	S56301/02	Dewing Bridge Road, Gerangamete VIC 3243
	GW3	64247	Dewing Bridge Road, Gerangamete VIC 3243
<b>Property Description:</b>	Gerangamete Groundwater Field		
<b>Licence Number:</b>	BEE032496		
<b>Legal Reference:</b>	Water Act 1989 (Vic) s.78		

Trevor McDevitt (Delegate)  
Manager Applications  
Groundwater & Rivers

11 / 9 / 2018

Date Notice Issued

*Email from J Lee 05/10/2018 (otwaywater@)*



## Preamble

**Who we are:** Southern Rural Water (SRW) is a government-owned statutory Corporation, governed by a skill based Board appointed by the Minister for Water as outlined in “Water Corporations and Former Water Authorities” outlined in Column 1 Schedule 1 of the *Water Act 1989* (Vic).

**Our purpose:** The Groundwater & Rivers Group within SRW services over 8,000 groundwater and river users across southern Victoria in a region stretching from the SA border to the NSW border south of the Dividing Range. This function includes managing licences and ensuring compliance to protect the resource, the environment and other users as outlined in the purposes of the *Water Act 1989* (Vic).

**Why we serve Section 78 directions:** SRW is acting as a delegate of the Minister for Water. The Minister for Water may, by notice in writing direct the occupier of any works on a waterway or of a bore-

- To operate or alter those works in compliance with the conditions specified in the notice;
- To take measures specified in the notice; being measures that the Minister thinks necessary to protect the environment, including the riverine and riparian environment

**What happens if you do not comply:** The occupier of works or of a bore must comply with any direction given under section 78. Penalty provisions are described in Section 3 of this notice.

**What to do if you need more time:** Make a formal request to SRW giving reasons for any extension and providing at least 7 days notice prior to the compliance date.

**What are your appeal rights:** If you feel you are affected by a decision under the *Water Act 1989* (Vic) an application for review of the decision can be made to the Victorian Civil and Administrative Tribunal (VCAT) within 28 days of receipt of the decision.

## Notice structure

### **1. Background and reasoning**

This section outlines background and reasoning that led to the issuing of the s78 notice.

### **2. Requirements of the notice**

Considering the view that has been formed, this section lists the requirements or actions to address the environmental risk(s) or impact(s).

### **3. Penalty Provisions**

Outlines the penalty provisions should there be failure to comply.

## 1. Background and reasoning

1.1 The Minister for Water, the Hon Lisa Neville wrote to SRW on 7 August 2018 requiring SRW, as a delegate, issue a notice (under Section 78 of the *Water Act 1989* (Vic)) requiring Barwon Water to:

- a) continue no extraction, other than for maintenance and emergency response, and
- b) prepare a plan for the remediation of Boundary Creek, Big Swamp and the surrounding environment impacted by groundwater pumping at Barwon Downs, and
- c) describe the environmental outcomes for the waterways to be achieved by the remediation plan.

1.2 It is acknowledged that:

- a) Barwon Water has operated the Barwon Downs Borefield under groundwater extraction licence BEE032496. Barwon Water has undertaken a monitoring and assessment program over the past six years, with input from a Community Reference Group, to improve the understanding of the impacts of operation of the borefield.
- b) Barwon Water has been working to address confirmed impacts and has commenced the development of a remediation plan for Boundary Creek and Big Swamp with input from community, stakeholders and independent technical experts nominated by the community and stakeholders.

1.3 A report commissioned by Barwon Water titled "*Barwon Downs Hydrogeological Studies 2016-17: Numerical model calibration and historical impacts*" (Jacobs June, 2017) found that: operation of the borefield over the past 30 years is responsible for two thirds of the reduction of groundwater base flow into Boundary Creek; the dry climate experienced during the same period accounts for the remaining one third, and operation of the borefield has increased the frequency and duration of no flow periods in lower reaches of Boundary Creek."

1.4 A further report commissioned by Barwon Water titled "*2016-2017 Technical Works Program Yeodene Swamp Study*" (Jacobs, November 2017) found that the current groundwater licence condition requiring the release of the 2 ML/d of supplementary flow into Boundary Creek has not been effective at offsetting the impacts of operation of the borefield on groundwater base flows in Boundary Creek.

1.5 This led to the swamp drying, acid sulphate soils being generated and the release of acid water downstream of the swamp and impacting the downstream environment.

1.6 On this basis, and considering the observations previously stated, I have formed a view and I am satisfied that a process or activity which is being/or has been carried out at the

property has caused a measurable negative environmental impact on Boundary Creek, Big Swamp and the surrounding environment and legal enforcement of protective works is required under s78(1).

## **2. Requirements of the notice**

Barwon Water must undertake the following requirements.

- 2.1 Barwon Water must not extract from the works for any purpose other than maintenance or emergency access until this notice is rescinded (as defined by the requirements outlined in section 2.11 of this notice).

For the purpose of this notice, emergency access is defined as circumstances resulting in the need for Barwon Water to declare a water shortage under s33AAA of the Water Act 1989. Under these circumstances Barwon Water should notify SRW of their intention to make this application to the Minister.

- 2.2 Barwon Water must prepare and implement the 'Boundary Creek, Big Swamp and Surrounding Environment - Remediation and Environmental Protection Plan' (the Plan) in accordance with the requirements set out in this notice.

- 2.3 For the purposes of this Plan, remediation is deemed to be the controls and actions that could be practicably carried out to achieve improved environmental outcomes for Boundary Creek, Big Swamp and the surrounding environment that has been impacted by groundwater pumping at Barwon Downs.

- 2.4 By 20 December 2018 Barwon Water must submit a scope of works for approval by SRW. The scope of works should include the identification of the area covered by the Plan, the environmental values to be included, and the necessary environmental assessments and methodology for how it proposes to develop the Plan.

- 2.5 By 20 December 2019 Barwon Water must submit to SRW the Plan which includes:

- a) A description of the current environmental conditions of Boundary Creek, Big Swamp and the surrounding environment; this will include:
- Hydrogeological conditions (groundwater levels and quality)
  - Hydrology (Surface water quality and flow monitoring)
  - Ecological assessment
  - LIDAR topographic mapping
  - Results of soil sampling program (Soil chemistry, peat profile, incubation tests)
  - Additional matters arising from the scope contemplated in Item 2.4.



- b) An outline and risk assessment of the processes/activities on the Property which may impact on Boundary Creek, Big Swamp and the surrounding environment (including, but not limited to hydrogeology, hydrology and soil chemistry);
- c) A range of controls and actions that could be practicably carried out to protect and improve the condition of Boundary Creek and Big Swamp and the surrounding environment, including reasonable targets and/or measures of success to be adopted for the purposes of the implementation of the Plan;
- d) A comprehensive risk assessment of proposed controls and actions documented in c);
- e) The controls and actions to be implemented, including reasonable targets and/or measures of success to be adopted for the purposes of the implementation of the Plan;
- f) A monitoring program to check the controls and actions documented in e);
- g) Contingency measures designed to address any issues identified from monitoring results;
- h) A schedule of timeframes by which the controls and actions documented in e) will be carried out; and
- i) A reporting schedule, whereby Barwon Water will provide a minimum of quarterly updates to SRW which report on the progress of the Plan, as well as an Annual Report. The Annual Report must be submitted to SRW and made publicly available by 30 September each year.

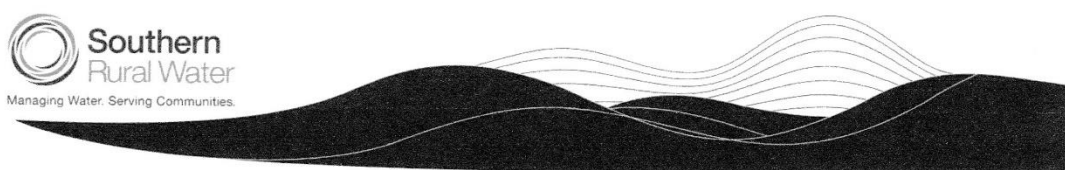
2.6 In preparing both the scope of works and the Plan, Barwon Water must:

- a) Identify all appropriate hydrogeological, hydrological and geochemical assessments to support the development of the Plan (during the scope of works process);
- b) Carry out appropriate hydrogeological, hydrological and geochemical assessments to support the assumptions, controls, actions and targets described in the scope of works (during the development of the Plan);
- c) Provide quarterly updates on progress to SRW;
- d) Consult with the Corangamite Catchment Management Authority;
- e) Consult with the SRW appointed Expert Reviewer;
- f) Engage with the local community to seek their ideas and feedback;
- g) Ensure the State Environmental Protection Policy (Victorian Waters) are considered and;
- h) Present each of the points in 2.5 under separate headings (in the Plan).

2.7 Barwon Water must submit the scope of works and the Plan prepared in accordance with this notice to SRW for review by the independent expert or panel of experts (Expert Reviewer) appointed by SRW. SRW will consider the advice provided by the Expert Reviewer in order to:

- a) Confirm any changes to the Plan that are required to be made by Barwon Water;
- b) Confirm and accept the scientific methodology used to prepare the Plan; and
- c) Verify and accept the preferred controls and actions presented in the Plan.



- 
- 2.8 If requested under Section 2.7(a), Barwon Water shall update the Plan and resubmit it under Section 2.7 for review by the Expert Reviewer appointed by SRW. Note that this resubmission process can occur on more than one occasion until it is accepted by SRW under Section 2.9.
- 2.9 Upon acceptance of the Plan by SRW, Barwon Water must finalise the Plan (Including any changes required by SRW) by 1 March 2020 and implement the Plan. Nothing in this clause prevents earlier implementation.
- 2.10 Timelines may be varied by SRW, at our discretion or upon request, in order to achieve compliance with the nominated objectives.
- 2.11 This notice will remain in effect until such time that Barwon Water can demonstrate to the satisfaction of SRW that the Plan has been implemented and the measures and outcomes have been achieved as outlined in section 2.5.
- 2.12 Further to Section 2.11 in order to resume extracting groundwater pursuant to the conditions on Licence Number BEE032496 Barwon Water must:
- a) seek express written permission from SRW; and
  - b) provide sufficient scientific evidence to support the request.

### **3. Penalty Provisions**

- 3.1 Failure to comply with this notice is an offence – 20 penalty units, calculated at the time of the offence.
- 3.2 If you fail to comply with this direction the Minister may arrange to carry out the works and recover costs from the occupier.

### **Regarding the Use of Jacobs's Reports in the s78 notice**

Sections 1.3 and 1.4 of the s78 notice prepared by Southern Rural Water refers to two of Jacobs's reports. This is of some concern to the local community because:

1. Jacobs work has not been validated,
2. Jacobs work has not been peer reviewed,
3. both these things were to be done by Southern Rural Water as part of the licence renewal process, and
4. Southern Rural Water was aware that local community scrutiny of Jacobs work found numerous mistakes/inaccuracies etc.

There will be no confidence in Southern Rural Water's processes and ability to deliver a satisfactory outcome if unvalidated reports are continued to be used as credible reference by Southern Rural Water.



**NOTE:** Beside the declaration at Remediation Workshop 3 in July 2018, that Jacobs's reports have neither been validated or peer reviewed, an example of these processes of review having "slipped through the net" can be read in Appendix One pages **45 - 46**.

The next 5 pages contain Barwon Water's response to the section 78 notice.

*Email from Kate Vallance 5/10/2018 otwaywater@*



## Remediation approach for Boundary Creek and Big Swamp – Section 78 notice released

Barwon Water welcomes the direction from the Minister for Water in relation to a legally enforceable remediation plan for Boundary Creek, Big Swamp and surrounding environments impacted by past groundwater extraction at Barwon Downs, under Section 78 (s78) of the Water Act 1989.

The notice includes the following directions:

- Barwon Water discontinue any extraction activities, other than for maintenance and emergency response purposes, while the assessment is being completed and until all remediation work dictated under the remediation plan has been completed.
- Barwon Water prepare and implement a remediation and environmental protection plan for Boundary Creek, Big Swamp and surrounding area.

Managing Director Tracey Slatter said Barwon Water has already been working proactively on activities consistent with these objectives, which are now legally enshrined in the s78 notice.

<https://www.barwonwater.vic.gov.au/about-us/news-and-events/news/boundary-creek-big-swamp-section-78-notice-released>

5/10/2018, 14:45  
Page 1 of 6

"I wrote to Southern Rural Water in November 2017 to advise that we would not operate the borefield during the licence renewal process except for maintenance purposes," Ms Slatter said.

"Barwon Water is undertaking significant consultation with the community and key stakeholders, and has established a community and stakeholder working group to design the remediation plan," Ms Slatter said.

"This group has met three times already and is benefiting from the advice of three independent technical experts, who they nominated to support them in their discussions. These experts are currently collaborating with the community and stakeholder working group and our existing technical consultant to refine the remediation concept and plan," Ms Slatter said.

"Barwon Water is committed to providing our customers and community with affordable, secure and quality water while protecting and enhancing the environment in which we operate" Ms Slatter said.

Southern Rural Water and the Department of Environment, Land, Water and Planning are working together to review the overall permissible consumptive volume for the Gerangamete Groundwater Management Area. Barwon Water is supporting this process, by providing numerous technical and scientific studies developed over the previous five years.

**Ministerial notice issued pursuant to section 78 of the Water Act 1989 - Gerangamete Groundwater Field (PDF, 655.7 KB)**  
([https://www.barwonwater.vic.gov.au/\\_\\_data/assets/pdf\\_file/0024/74445/Ministerial-notice-issued-pursuant-to-section-78-of-the-Water-Act-1989-Gerangamete-Groundwater-Field.pdf](https://www.barwonwater.vic.gov.au/__data/assets/pdf_file/0024/74445/Ministerial-notice-issued-pursuant-to-section-78-of-the-Water-Act-1989-Gerangamete-Groundwater-Field.pdf))

## Frequently asked questions

### What is the geographic area covered by the Section 78 notice?

The s78 notice issued by Southern Rural Water defines the area as "Boundary Creek, Big Swamp and the surrounding environment" with directions for Barwon Water to further define and describe the area as a part of the 'scope of works' document. The 'scope of works' document will be reviewed by SRW and an Independent Technical Review Panel to confirm whether the geographic area they have defined is adequate.

### What process will be followed with the Section 78?

<https://www.barwonwater.vic.gov.au/about-us/news-and-events/news/boundary-creek-big-swamp-section-78-notice-released> 5/10/2018, 14:45



**By 20 December 2018:** Barwon Water must submit a 'scope of works' for approval. The s78 notice provides guidance on what needs to be considered and how the document should be prepared.

For example, the notice specifies that Barwon Water must engage with the local community and other relevant stakeholders in developing its remediation plan.

Once submitted, Southern Rural Water and its Independent Expert Review Panel will review the 'scope of works' and will advise any required changes.

During the development of the "Boundary Creek, Big Swamp and Surrounding Environment – Remediation and Environmental Protection Plan" (the Plan) Barwon Water is required to engage with the community and relevant stakeholders, as well as providing quarterly updates to Southern Rural Water and consult with its Independent Expert Review Panel where appropriate.

**By 20 December 2019:** Barwon Water is required to submit the Plan for review. Once the Plan is submitted, it will be reviewed by the Southern Rural Water and its Independent Technical Review Panel, and Southern Rural Water will advise any changes required to ensure its approval.

**By March 2020:** Barwon Water is required to finalise the Plan and begin to implement it.

The notice remains in effect until Barwon Water can demonstrate to the satisfaction of Southern Rural Water that the Plan has been implemented and the agreed measures and outcomes have been achieved.

## Is there a right of appeal?

Those affected by a decision to *issue the notice* under the *Water Act 1989* (Vic) may make an application for review of the decision to the Victorian Civil and Administrative Tribunal (VCAT).

## Why did the Minister use Section 78 of the *Water Act 1989* rather than the *Catchment and Land Protection (CaLP) Act 1994* to direct Barwon Water to remediation of the impacts of the Barwon Downs borefield

The *Water Act 1989* is a stronger approach to addressing this matter because notices under section 78 require greater accountability to water licence holders to protect the environment.

A Special Area plan under the CaLP Act does not impose any mandatory requirements and implementation of any plans, if developed, would not be able to require Barwon Water to implement remediation measures or actions.

The *Water Act 1989* also offers a more immediate approach to start to address the matter.

<https://www.barwonwater.vic.gov.au/about-us/news-and-events/news/boundary-creek-big-swamp-section-78-notice-released>

5/10/2018, 14:45



Using notices has allowed intervention to require remediation, and for it to be managed independently of Barwon Water's application to renew its groundwater licence.

The use of notices will also require that Barwon Water does not recommence groundwater extraction, thereby eliminating the risk that impacts are exacerbated by further pumping.

These were important considerations for the protection of the environment and to reassure the community that Barwon Water must address the impact of its groundwater extraction.

*The provisions of the Water Act 1989 provide a stronger, more timely and effective response than is available under the CaLP Act.*

### **When will the Barwon Downs licence application be submitted?**

Barwon Water has delayed the submission of the Barwon Downs groundwater licence renewal application following the receipt of the s78 notice for the remediation of the Boundary Creek and Big Swamp environments.

Barwon Water will continue to keep the community and key stakeholders informed of the application submission date.

### **Will Barwon Water be extracting from the borefield?**

In November, 2017, Barwon Water wrote to Southern Rural Water to advise it would not operate the borefield during the licence renewal process except for maintenance and/or emergency events (such as infrastructure failure, drought or natural disaster).

The s78 notice provides added assurance to legally enshrine Barwon Water's commitment to not operate the borefield until the s78 notice is lifted.

### **How will Barwon Water engage with the community to remediate the Boundary Creek and Big Swamp environments (as outlined in the s78)?**

Barwon Water is committed to working closely with the local community, key agencies and technical experts to remediate the Boundary Creek and Big Swamp environments.

Since May, 2018, Barwon Water has been consulting with the community and key stakeholders to help design a remediation plan including identifying what the success measures might be.

At the request of the remediation working group, three independent technical experts have been contributing to the process. These experts will collaborate with Barwon Water's existing technical consultant and the remediation working group to refine the remediation concept and address any important information gaps before finalising the plan.

## More information

Learn more about the Barwon Downs Borefield licence renewal

(<https://www.barwonwater.vic.gov.au/about-us/major-projects/barwon-downs-borefield-licence-renewal>)

Your say: Barwon Downs borefield licence renewal (<https://www.yoursay.barwonwater.vic.gov.au/barwon-downs-borefield-licence-renewal>)

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## We'd love to hear your feedback

Name **\*** (required)

Name

Tell us about your experience with us **\*** (required)

Would you like to be contacted? ☐ Email ☐ Phone

Submit

Follow us:



<https://www.barwonwater.vic.gov.au/about-us/news-and-views/news/boundary-creek-bio-swamp-section-78-action-released> 5/10/2018 14:45

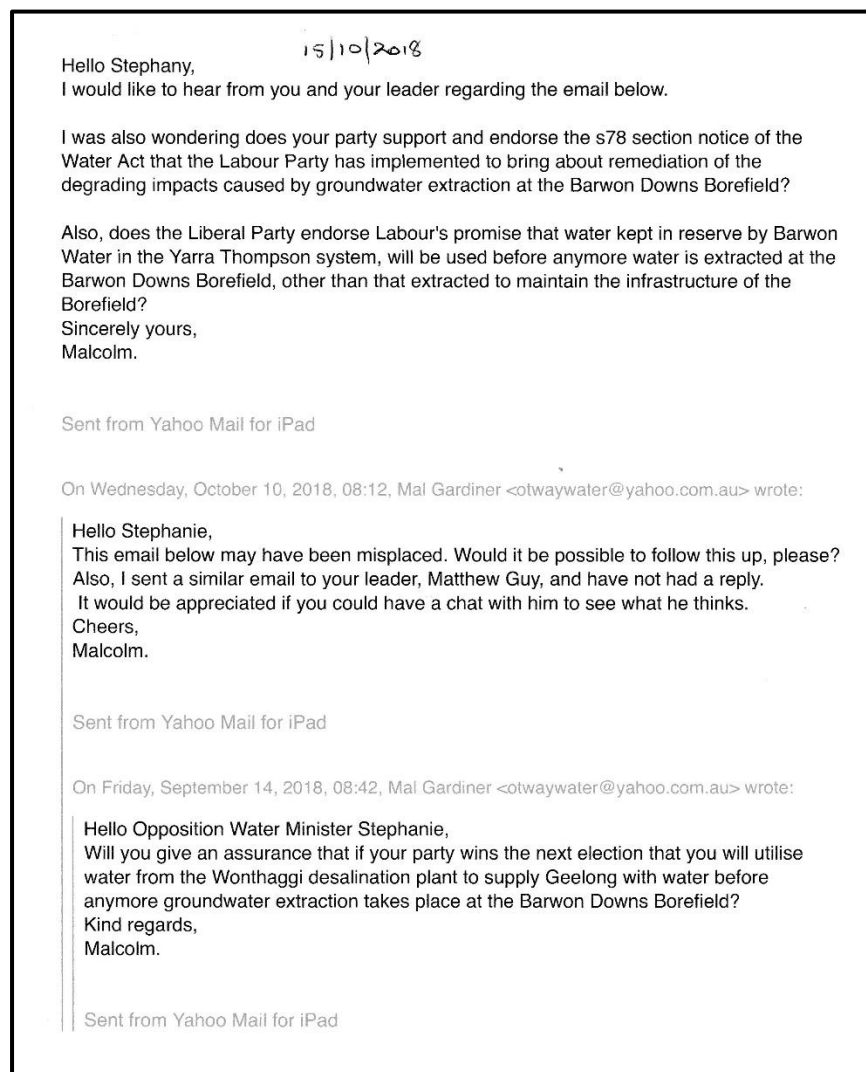
At this juncture it must be reiterated that Barwon Water continues to make an effort to be open and transparent in its efforts to;

- Remediate the impacts caused from groundwater extraction, and
- Maintain its stance that an application for licence renewal will be made.

It is also worthy of note that Labor Minister for Water, Lisa Neville, is the first politician in 30 years of struggling to resolve issues created by extraction of groundwater from the Barwon Downs Borefield, to actually make a specific legislative directive and policy change in an attempt to overcome the problems.

### **Silence of the Liberal/National Coalition.**

Despite years of attempts the Liberal/National coalition refuses to give any assurance that the coalition will do anything to resolve the ongoing issues of groundwater extraction at Barwon Downs.



The Liberal/National Parties may not find the difficulties farmers are experiencing due to impacts from the groundwater extraction sufficient to do anything about it, but the Victorian Farmers' Federation council most definitely does. The VFF moved a motion at council urging the Minister for Water to



accept the Barwon Water Groundwater Community Reference Group's recommendations. This she has done. The Liberal/National Coalition has done nothing.

(Otway Water Book 44 deals solely with the farmers' plight)

### Deathly silent.

There can be absolutely no doubt that Labor Minister for Water, Lisa Neville, has made substantial commitment to put things right with verbal, written and legally enforceable directives. However, throughout this whole sorry saga the Liberal/National coalition "executive" has remained deathly silent. New politician and local to the area, MP Richard Riordan, has tabled a petition in Parliament asking that groundwater extraction at the Barwon Downs Borefield be stopped. How this sits with his party has yet to be played out.

## MP presents petition on water extraction

**Polwarth MP Richard Riordan has presented a petition to State Parliament demanding the government cut entitlements to the Barwon Downs borefield and rule out any future water extraction.**

"The unsustainable mining of water from this region has had a detrimental effect to a wide ecosystem," Mr Riordan said in a statement.

"There is now irrefutable evidence that that the Gerangamete peat bog, Boundary Creek and the upper reaches of the Barwon River have suffered with the exposure of acid sulphate soils, acid water and fish kills.

"Over 500 people strongly petition the government to cut the entitlements to this resource, and to rule out the use of this borefield while other water options exist with the Melbourne interconnector."

Otway landcare group LAWROC started the petition in August after members campaigned for nearly two decades to stop Barwon Water's groundwater pumping at the site and for research into the environmental impacts of the pumping.

Victorian Water Minister Lisa Neville intervened last month



**"Over 500 people strongly petition the government to cut entitlements to this resource"**

**RICHARD RIORDAN**

to request Southern establish a legally enforceable remediation plan to repair the impact of past groundwater extraction at the site.

The minister also requested an independent review of Barwon Water's application for a groundwater extraction licence, which requires renewal.

Asked about the petition, a spokesperson for Ms Neville referred the *Colac Herald* to a previous statement outlining her expectation that Barwon Water discontinue pumping "other than for maintenance and emergency purposes" until remediation was complete.

Barwon Water last extracted water from the Barwon Downs borefield between April and September in 2016.

But LAWROC member Malcolm Gardiner said that while he supported the minister's action, it fell short of providing "certainty" the borefield could not be used.

Mr Gardiner said the petition was requesting a moratorium on water extraction at the site.

"A moratorium would mean no pumping at all even for maintenance and emergencies," he said.

"It gives short-term certainty that pumping won't occur."

Mr Gardiner also said that while the minister had committed to use the state's desalination plant as an alternative to any future groundwater pumping, the opposition was yet to match the commitment.


P5 Colac Herald 21st Sep 2018



## The Greens are Active.

In September Samantha Dunn MP (Greens) made the following statement.

Barwon Downs borefield

Page 5125 

19 September  
2018

COUNCIL

Adjournment

SAMANTHA DUNN

**Ms DUNN** (Eastern Metropolitan) (17:44:06) — My adjournment matter tonight is for the Minister for Water, Lisa Neville, and pertains to overextraction of groundwater. Barwon Water has been pillaging groundwater from the Barwon Downs borefield in the Otways for over 30 years. The overpumping has resulted in once-perennial creeks and swamplands running dry, including the upper Barwon River for extended periods.

Some of the environmental and ecological impacts of this overextraction are that platypus, blackfish and trout have died out; the Big Swamp wetlands and other wetlands have almost dried out; many artesian bores in the region have stopped flowing; and drying wetland low flows to creeks and the Barwon River have turned acidic due to acid sulphate soil exposure. In 2016 a massive fish kill in 30 kilometres of the Barwon River occurred due to the acid and heavy metals released. This year there was another fish kill in the upper Barwon. Spontaneous combustion peat fires are occurring in the drying swamps, which are of particular concern considering the increasing severity of our summer bushfire season.

The riparian rights of over 100 farms in the Otway Ranges have been disrupted with perennial creeks becoming ephemeral and stream banks drying out. There are indirect impacts on the riparian rights for the farms downstream along the Barwon that have less water flowing past their land for stock and domestic use. Barwon Water carts water to at least one major farm, which is an acknowledgement that their overpumping has led to a localised drought.

The Barwon Downs borefield relies on aquifers 300 to 600 metres below ground, which were once artesian, with pressures some 10 metres above ground. However, overextraction over many years has led to pressure elevations 50 metres below ground. In the 1980s the environmentally safe annual extraction was assessed at 4000 megalitres per year, and in the 1990s this assessment was lowered to 1500 megalitres per year, but Southern Rural Water, the resource manager, granted a licence to Barwon Water to extract 20 000 megalitres per year.

The licence has come up for renewal, and the decision-maker is the Minister for Water and member for Bellarine, Lisa Neville, MP. There is a great fear in the community that Barwon Water will press for continuation of the 20 000-megalitre-per-year licence or another amount well above the safe yield of the aquifer system. There is also a great fear that they will seek to continue the outdated conditions that have no regard for the social, environmental or economic impacts of overextraction.

The minister announced on 9 August 2018 that Barwon Water would be legally mandated to implement a remediation plan, but it appears that this focuses solely on acidity in Boundary

Creek. It is as if Barwon Water is admitting culpability for only a small portion of the total impacts that overextraction has had on farms and the environment. The action I seek is that the minister listen to the community in the region and cancel the existing extraction licence, desist from issuing any further extraction licence to Barwon Water and, given the environmental impacts, conduct an independent inquiry into the impact of past extraction.

Samantha was sent this reply to her queries.



I have also asked Southern Rural Water to work with the Department of Environment, Land, Water and Planning to advise me on the need to change the permissible consumptive volume (cap) for the Gerangamete Groundwater Management Area. The permissible consumptive volume is another important mechanism available under the *Water Act 1989* to ensure future groundwater extraction is limited to a sustainable level.

If you have any further questions about this issue please contact Patrick O'Halloran, Manager Licensing Groundwater and Unregulated Systems, Department of Environment, Land, Water and Planning on (03) 9637 8068 or [patrick.ohalloran@delwp.vic.gov.au](mailto:patrick.ohalloran@delwp.vic.gov.au).

Thank you for raising this matter with me.

Yours sincerely



Hon Lisa Neville MP  
Minister for Water  
9/10/18

• A gem in this reply is... ***“There will be community input into the remediation plan that will also ensure that the full extent of environmental impact is identified and that they are addressed by the remediation plan.”***

If only this plays out this way – namely - *that the full extent of environmental impact is identified and addressed*. Unfortunately, as is pointed out in Otway Water Book 42C the majority of the State Government authority “heads” have little idea what has to be remediated. It seems only the locals have any idea.

### Who Actually Has Their Finger on the Pulse?

One difficulty when trying to resolve an issue is the number of people one has to deal with. Sometimes it feels that one is being passed from “pillar to post.” The following string of correspondence highlights this and makes one wonder who actually has “their finger on the pulse.”

This first series of emails covers correspondence between a LAWROC Landcare Group treasurer, Minister Neville, Patrick O’Halloran, Keith Armistead, Malcolm Gardiner, Grace Mitchell and shows how the roundabout sometimes works.



Hon Lisa Neville MP

Minister for Police  
Minister for Water

8 Nicholson Street  
East Melbourne, Victoria 3002  
Telephone: 03 9637 9654  
DX210098

Mr Keith H. Armistead  
57 Harris Road  
ELLIMINYT VIC 3250

Ref: CC0103799



Dear Mr Armistead

**GROUNDWATER EXTRACTION AT THE BARWON DOWNS BOREFIELD**

Thank you for your correspondence about groundwater extraction at the Barwon Downs borefield in the Gerangamete Groundwater Management Area (GMA).

Clearly the impacts of groundwater extraction, as documented in Barwon Water's Yoedene Swamp study, are a significant concern for you and many other members of the community. It is a concern that I share.

Barwon Water has been working with the community through its Boundary Creek and Big Swamp Remediation Working Group to address these issues. I understand that it is Barwon Water's intention to fully remediate Boundary Creek, Big Swamp and the surrounding environment. I also understand that Barwon Water intends to submit an application to Southern Rural Water to renew the groundwater licence.

Given the significant concerns, I have intervened to ensure there is a legally enforceable remediation plan to improve and protect the health of key waterways in the Otways. Specifically, I have asked Southern Rural Water as my delegate to immediately issue a notice under section 78 of the *Water Act 1989* requiring Barwon Water to discontinue extraction, other than for maintenance and emergency response, and to prepare a plan for the remediation of Boundary Creek, Big Swamp and surrounding environment impacted by groundwater pumping at Barwon Downs. There will be no further extraction while assessment is being completed and until all remediation work dictated under the remediation plan has been completed.

Southern Rural Water's notice will require Barwon Water to describe the environmental outcomes for the waterways to be achieved by the remediation plan and set out clear triggers that would lead to the notice being lifted. Southern Rural Water will subject this plan to an independent technical review to ensure it adequately addresses the complex processes occurring in the catchment.

In respect to an application to renew the groundwater licence, I have requested that Southern Rural Water's process for assessing the application will include a community reference group to advise and assist with community consultation. I have also requested that, in addition to the normal assessment process, it establishes an independent technical review panel to assess Barwon Water's groundwater extraction licence renewal application.



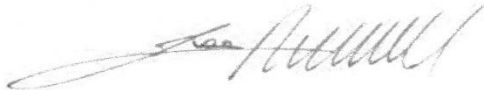
Barwon Water will not extract groundwater, other than for maintenance and emergency response purposes, while the application to renew the groundwater licence is assessed and until all remediation work dictated under the remediation plan has been completed.

I have also asked Southern Rural Water to work with the Department of Environment, Land, Water and Planning to provide advice on the need to change the permissible consumptive volume for the Gerangamete GMA, consistent with technical information gathered and the conclusions drawn through the assessment of Barwon Water's licence application.

If you have queries regarding the licence renewal, please contact Patrick O'Halloran, Manager Licensing Groundwater and Unregulated Systems at Department of Environment, Land, Water and Planning, via telephone on (03) 9637 8068, or email at [patrick.ohalloran@delwp.vic.gov.au](mailto:patrick.ohalloran@delwp.vic.gov.au)

Thank you again for your letter.

Yours sincerely



**Hon Lisa Neville MP**  
**Minister for Water**

03/09/2018

CC0103799

Page 2



This email prompted writing to Patrick O'Halloran in an attempt to make it quite clear that there is not a lot of confidence to be had for the process if the people carrying out the Minister's directives are the very same people charged with this task in the past.

Email 17/09/2018

Hello Patrick,

Following up on Minister for Water's letter Ref.C0103799 and her press release, 9 August 2018, I have a few comments to make.

Firstly it is excellent to see that the Minister has set out clear directives instructing SRW and DELWP that the unsustainable groundwater extraction from the Barwon Downs Borefield has to be stopped and things put right.

2. However, unless the community is given a significant role to play in both the technical and community consultancy review process there will be little confidence given to the process.

3. The authorities Lisa has given this responsibility to are the very ones that have been the ones overseeing the past 30 years of mis management. The community will only provide social licence to this process if it is intricately involved.

4. Considering LAWROC Landcare Group had no luck finding independent and or "experts" within the state of Victoria to assist and conduct Studis and works for it in the early 2000s, it would appear that SRW will have the same problem finding experts willing to take the job of reviewing work.

One of the reason experts declined to help was that funding and livelihood depended on the very source that the LAWROC studies would have been questioning.

5. Little notice appears to have been taken of the work and recommendations from 5 years the Barwon Water Groundwater Community Reference Group has conducted.

6. Earlier this year Lisa Neville assure the LAWROC Landcare Group that SRW would keep it informed. Not a peep has been heard. Any correspondence from SRW has been in response to Requests. Not an encouraging start to community involvement.

7. Why is it that the notice given to Barwon Water under Sction 78 cannot be made available?

I would like to reiterate that if the Minister's directives are carried out AND the local community has meaningful consultation then nothing but socially accepted outcomes can be expected.

A reply to this letter would be appreciated.

Yours sincerely,  
Malcolm.

Sent from Yahoo Mail for iPad



Department of Environment,  
Land, Water and Planning

PO Box 500, East Melbourne,  
Victoria 8002 Australia  
[delwp.vic.gov.au](mailto:delwp.vic.gov.au)

Mr Malcolm Gardiner  
[otwaywater@yahoo.com.au](mailto:otwaywater@yahoo.com.au)

Ref: MIN048624



Dear Mr Gardiner

**GROUNDWATER EXTRACTION AT THE BARWON DOWNS BOREFIELD**

Thank you for your email of 17 September 2018 to Mr Patrick O'Halloran, Manager Licensing Groundwater and Unregulated Systems about Barwon Downs borefield. As this matter is in my area of responsibility, I have responded on his behalf.

I note you are pleased that the Minister for Water, Lisa Neville MP, has set out clear directives for the pumping of groundwater to cease at the Barwon Downs borefield and for a remediation plan to be prepared. The notice, issued under section 78 of the *Water Act 1989*, will be made publicly available by Barwon Water.

Both Barwon Water and Southern Rural Water (SRW) have been working to address this issue and ensure that the community's contribution is considered. The Minister for Water expects community consultation will be an important part of the proposed licence renewal. A key requirement of this process is for Southern Rural Water to involve a community reference group to advise and assist with community consultation.

Southern Rural Water has accepted all nominations it received for the Barwon Downs Licence Community Reference Group, which includes a LAWROC representative, and appointed Shaun Cox as chair. The group will assist SRW to review Barwon Water's application and any submissions received about the application during the public consultation period. Southern Rural Water will convene the group when it receives Barwon Water's application.

Southern Rural Water has advised it has contacted people with the relevant expertise for an independent technical review panel to undertake the independent review of the remediation plan and the proposed licence renewal application.

I look forward to discussing the matter further with yourself and Neil Longmore when we meet in the coming weeks. You can also contact me in the intervening time on 03 9637 9448 or email [grace.mitchell@delwp.vic.gov.au](mailto:grace.mitchell@delwp.vic.gov.au).

Thank you for raising this matter.

Yours sincerely

7/10/18

**Dr Grace Mitchell**  
Executive Director Water Resource Strategy

05 OCT 2018

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to [foi.unit@delwp.vic.gov.au](mailto:foi.unit@delwp.vic.gov.au) or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.





Malcolm Gardiner and Neil Longmore are travelling to Melbourne to meet with Grace, Patrick, Randal Nott and Richard Marks *“in the coming weeks,”* to discuss some of the topics that have been thrashed around so many times before. Richard Marks from the EPA is a new comer to the discussions. Neil has been acting as lawyer, for LAWROC Landcare over several issues all related to the Barwon Downs Borefield (see pages 37-43).

## Desalination

Barwon Water purchases the right to store 16,000,000,000 litres (16 GL) of water each year in the Yara-Thompson system. Geelong is connected to this system and has already a substantial amount of water kept in reserve. The Yara-Thompson can be supplemented by the desalination plant in times of need. Indirectly it can be argued that Geelong is “hooked” up to the desalination plant. Barwon Water have this assurance of security of water supply and safeguard in place for years to come and during emergencies.

## NEWS

Geelong Indy P.7 Frid 7<sup>th</sup> September 2018

# Water ‘secure’ for season

By Gill Cooper

Barwon Water is confident Geelong's supplies for spring and the summer will be safe and secure despite the region's relatively dry winter.

Infrastructure systems manager Will Buchanan said Geelong's total water storage was sitting at “a good level despite a warmer-than-usual winter”.

“Geelong's water storages are currently at 65.8 per cent. This is 3.2 per cent lower than this time last year but still high enough to meet the projected water needs of the region,” Mr Buchanan said.

“By comparison, 10 years ago, during the drought, water storage levels were at 30.7 per cent.”

Mr Buchanan said the Barwon system's storages had risen more than 2000 million li-

tres during the final weeks of August.

“We carefully monitor our storage levels and quality to ensure a secure, reliable and high quality water supply at all times of the year,” he said.

Storage figures take into account only surface water reserves, so Mr Buchanan was confident supply would meet demand despite Geelong's increasing permanent and seasonal population.

“We don't expect we will need to draw on any additional sources of water this summer, even with an increase in tourist numbers,” Mr Buchanan said.

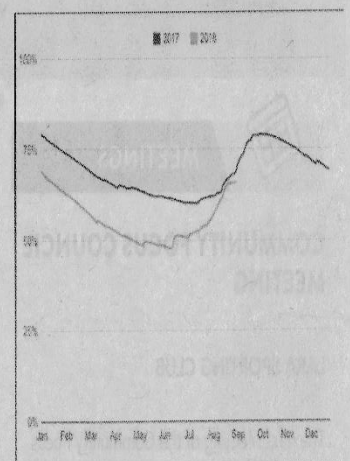
“Spring is traditionally the most productive water harvesting period and, should we receive decent rainfall over the next month, we would expect a boost to storages ahead of summer.

“Back-up options can be called upon if needed, such as the Melbourne to Geelong pipeline, connecting Geelong to the Melbourne water system, which is secured by the desalination plant.

Barwon Water is the state's largest regional water corporation with more than 280,000 customers spread over 8000 square kilometres. The authority has a long-term water planning strategy in place.

“Barwon Water invested in the pipeline as part of our commitment to planning ahead and responding proactively to the global trends of climate change and population growth,” Mr Buchanan said.

“This ensures we will continue to deliver safe, secure and sustainable water supplies over the next 50 years.”



HIGHER: A Barwon Water graph showing storage levels rising to a similar level as at the same time in 2017.



### Special Area Plan

In an effort to ensure that everything is being done to resolve and the issues involved with unsustainable groundwater extraction from the Barwon Downs Borefield another line of enquiry has been taking place. This would involve the declaring of a Special Area Plan under the Catchment and Land Protection Act. The following correspondence is just a little “peek” into the work the LAWROC Landcare lawyer has been conducting at this front. Unfortunately, with little success.



**NEIL L. LONGMORE**

**Planning Lawyer**

LLB (Beakin) LL.M (Melb.) Grad Cert Urban & Regional Planning (UNE)



28 September 2018  
The Honourable Lisa Neville  
Water Minister  
Level 17, 8 Nicholson Street  
EAST MELBOURNE VIC 3000

Dear Minister,

**Impracticality of Section 78 *Water Act* 1989 Order to Ameliorate Damage Caused by Over-extraction from Barwon Downs Bore Field**

We wrote to you on 26 July 2018 on behalf of the Land and Water Resources Otway Catchment Landcare Group ("LAWROC") recommending that you and the Minister for the Environment declare the wider drawdown area of the Barwon Downs bore field as a Special Area under section 27 of the *Catchment and Land Protection Act* 1994 ("the *CALP Act*"). Several months later, we are yet to receive a reply from you.

You have, however, apparently issued an Order to your delegate Southern Rural Water under section 78 of the *Water Act* 1989 requiring Barwon Water to undertake remediation of some of the damage caused by 30 years unsustainable extraction from the Barwon Downs bore field. As far as we know, the text of your Order has not been made public, therefore it is difficult to know whether it is something to welcome or not, although the secretive nature of the process is concerning.

We have had three telephone discussions with Grace Mitchell from your department in which we have emphasised that the community will not accept token efforts at remediation in just a small portion of the 200 square kilometre drawdown area. What the community requires is careful mapping of the complete drawdown area with thorough identification of all Potential Acid Sulphate Soil and Actual Acid Sulphate Soil sites.

What your department does not seem to appreciate is how widespread these soils are in the drawdown area and how 30 years of over-extraction is exposing more and more of these soils to oxidation processes. You have done no work at all on properly identifying the problem. A s.78 Order applying to the Big Swamp will do nothing to address the extensive scope of the drawdown that is spreading out from the bore field in an ever-widening circle.

Once the drawdown area itself and those sites within the drawdown area have been clearly identified, then a declaration is required of a Special Area under section 27 of the *CALP Act* that includes all sites requiring long-term management by the Corangamite Catchment Management Authority which is the only organisation with the expertise and credibility to manage the problem. Southern Rural Water and Barwon Water are both water extraction authorities with no experience or expertise in solving environmental problems of this magnitude. They both have poor environmental reputations, with no credibility in the community that they have the intention or capability to solve the problems they have caused. A trusted independent third party is needed.

What the *CALP Act* process will allow that the s.78 *Water Act* process does not is the imposition of Land Use Conditions on (a) the bores operated by Barwon Water and (b) the sites where acid sulphate soils exist, to enable a charge to be levied against the Barwon Water bores for the carrying out of capital works on the acid sulphate soil sites exposed to oxidation. There is no mechanism in the *Water Act* to do this.

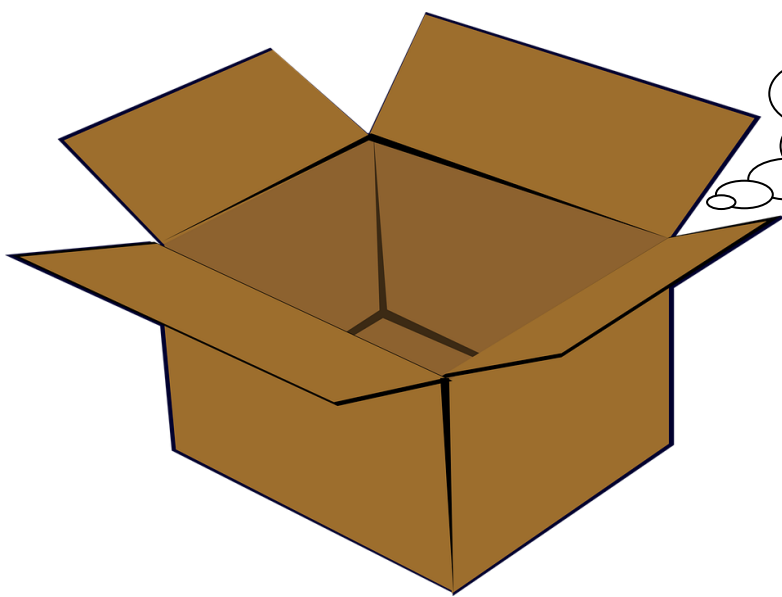
Grace Mitchell confirmed to us that Barwon Water still sees the bore field as an asset, which explains its perverse intention to proceed with licence renewal while promising piecemeal and inadequate remediation. The bore field can only be seen as an asset while you and your department remain in denial concerning the substantial financial liabilities involved in remediating the entire drawdown area.

Choosing denial over recognition at this stage would be a failure of public administration that only delays addressing the real issue and causes long-term harm to the reputations of the public officials involved.

We once again urge you to consult with your colleague the Minister for the Environment to begin the process of making a declaration of a Special Area Plan under section 27 of the *CALP Act*.

Yours faithfully,

Neil Longmore



**Sorry Neil, the box seems to be empty.**

Email to Minister Lily D'Ambrosio 24/09/2018 & 23 others. (Stop CALP)

Hello Minister for the Environment,

The drawdown from the Barwon Downs Borefield has an ever expanding area of influence with devastating impacts taking place within the region of the Otway Ranges. Neil Longmore a lawyer acting on behalf of the LAWROC Landcare Group, has been pursuing the declaring of a Special Area Plan under section 27 of the Catchment and Land Protection Act 1994 ("the CALP Act"). This action has been necessary as there is no provision under the Water Act 1989 that requires a licensee to carry out remediation capital works on land tenures owned by a third party not under legal control of the licensee. This excludes hundreds of people being impacted from the Borefield extractions.

There are three problems with what is taking place...

1. The impacts other than the ones along Boundary Creek and the Big Swamp are not being listed or recognised, and
2. it would appear that no one is responsible for these other impacts, most certainly not under the Water Act provisions. And, no one is prepared to do anything about this situation. All efforts so far regarding the CALP Act, starting in February 2018, have not been finalised at a Ministerial level.
3. A large number of people continue to be disenchanted with Government efforts to resolve their water issue problems.

Minister for Water, Lisa Neville, suggested on the 20 February 2018 to follow these issues up with Patrick O'Halloran. Neil spoke to Patrick and was referred to the Corangamite Catchment Authority. A letter was sent to Graham Phelps (CEO of the CCMA) on 2 March 2018.

LAWROC Landcare Group members met with the CCMA on 16 March 2018.

Mr. Phelps took some time to respond, writing that in his authority's opinion there was no need to set up a Special Area Plan, believing that Barwon Water and Southern Rural Water are following an appropriate process under the Water Act.

This is totally unacceptable to those landholders being impacted from Barwon Water's groundwater extraction. Impacts have not been listed, taken into consideration or covered under the Water Act.

Also...

1. The "track" record of Barwon Water and Southern Rural Water to plan, implement, review and manage the water resources in the Barwon River and Gellibrand Catchments is deplorable.
2. The CALP Act appears to fall under your jurisdiction, as does this problem.
3. The notification under Section 78 of the Water Act given to Barwon Water by Southern Rural Water has not been made accessible. Most disappointing and consequently viewed with suspicion.
4. A final word from Minister Neville on the CALP query still has not been given. Minister Neville was urged to consult with you on 1 August 2018 - by 24 September 2018 still no reply.
5. Is it good enough that The CCMA reply can dismiss the issuing of a Special Area Plan when the Water Act does not cover the issue and the present remediation plan completely



ignores any groundwater extraction impacts outside of the Boundary Creek and the Big Swamp area?

6. Extensive efforts with Government authorities to obtain a list of impacts within the area of drawdown influence has been fruitless - no official list exists.

Considering that efforts to obtain a clear and definitive answer to the declaration of a Special Area Plan under Section 27 of the CALP Act have been going on since February 2018, it would be appreciated if a speedy answer could be given to this email.

Kind regards,  
Malcolm.

It is nearly a month later and there has been no reply, but Neil has maintained a dialogue and it would appear there is still room to negotiate. As stated earlier, Neil and Malcolm are meeting at 8 Nicholson Street Melbourne on the 26 October 2018 at which this topic will be discussed.

(Neil is maintaining a file containing all dealings of this CALP issue)





Hon Lisa Neville MP

Minister for Police  
Minister for Water

8 Nicholson Street  
East Melbourne, Victoria 3002  
Telephone: 03 9637 9654  
DX210098

Mr Neil Longmore  
Planning Lawyer  
nlongmore@netspace.net.au

Ref: MIN049314



Dear Mr Longmore

#### **CALP ACT - BARWON DOWNS BOREFIELD**

Thank you for your letter of 28 September 2018 about which legal instrument should be used to require remediation of environmental damage caused by groundwater extraction at Barwon Downs borefield.

I trust that you have recently received my reply to your letter of 1 August 2018 which explains my reasons for using a notice under section 78 of the *Water Act 1989* to address the environmental impact of Barwon Water's groundwater extraction in the Gerangamete Groundwater Management Area.

Based on the advice I have received, I am confident that the notice under section 78 of the *Water Act* is the appropriate tool, is enforceable, and that Barwon Water and Southern Rural Water (SRW) are taking their responsibilities towards the environment seriously, with the oversight of the Department of Environment, Land Water and Planning (DELWP).

DELWP, SRW and Barwon Water are all committed to transparency of the process regarding the section 78 notice. To that end, Barwon Water as the recipient of the notice has now released it on their website.

I note your confidence in the Corangamite Catchment Management Authority (CMA). The section 78 notice requires Barwon Water to consult the Corangamite CMA to prepare the scope of works for development of the draft and final remediation plans.

Barwon Water is responsible for all the impacts deemed to have been caused by the operation of the borefield, and the notice applies to Big Swamp, Barwon River and the surrounding environment. The process for remediation planning includes independent technical review and will determine the scope of impact. This will involve a thorough investigation and assessment, and must be done with input from the community and an expert reviewer appointed by SRW. The plan will be reviewed by SRW's expert review process.

Please note that the permissible consumptive volume, otherwise known as the cap on groundwater resources in Gerangamete Groundwater Management Area will also be reviewed by DELWP, with the assistance of SRW and support of Barwon Water, to determine long-term sustainable extraction of the resource.

I have asked DELWP to arrange a meeting with you to discuss your thoughts on the use of the Special Area declaration under section 27 of the *Catchment and Land Protection Act 1994*. This will also provide the opportunity to discuss your interest in the mapping of the drawdown area, the identification of potential and actual acid sulfate soil sites, and to answer questions you may have about the process from here for the section 78 notice.



If you would like more information about this matter, please call Grace Mitchell, Executive Director Water Resource Strategy, DELWP on (03) 9637 8870 or email [grace.mitchell@delwp.vic.gov.au](mailto:grace.mitchell@delwp.vic.gov.au).

Thank you again for your letter.

Yours sincerely

  
**Hon Lisa Neville MP**  
**Minister for Water**  
9 / 10 / 18

## Conclusion

The application for the renewal of the groundwater extraction licence for the Barwon Downs Borefield has been postponed indefinitely, way past the expiry date. What arrangements will be made in the mean time are yet to be determined.

The Department of Environment, Land, Water and Planning is investigating the sustainability of the present Gerangamete Groundwater Management Area Permissible Consumptive Volume.

A remediation plan has been set in place as outlined in the Section 78 of Water Act notice given to Barwon Water.

Local community input into the remediation process has been promised to be at such a level it will “...*ensure that the full extent of environmental impacts is identified and that they are addressed by the remediation plan.*” (see page 30)

The only down side to these promises and developments is the continued reliance on inaccurate, unvalidated reports that have not been peer reviewed.





## Appendix One

From: **Angus Ramsay** [AngusR@SRW.com.au](mailto:AngusR@SRW.com.au)  
Subject: RE: Licence BEE032496  
Date: 20 June 2016 at 10:37  
To: Malcolm Gardiner [otwaywater@yahoo.com.au](mailto:otwaywater@yahoo.com.au)

Hi Malcolm,

In the end we didn't get a peer review of the report as we had both DELWP and the CCMA assist us in the process.

The previous studies were reviewed and the determination highlighted that there was going to be issues in some of the older sites.

The latest study will give us a much better base set of data and sites to monitor change into the future, but was unable to give us a view of the past.

Regards

**Angus Ramsay**

Field Supervisor West | Southern Rural Water

Managing Water. Serving Communities.

p: (03) 5564 1713 m: 0419 509 087 e: [angusr@srw.com.au](mailto:angusr@srw.com.au) w: [www.srw.com.au](http://www.srw.com.au)

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**From:** Malcolm Gardiner [<mailto:otwaywater@yahoo.com.au>]

**Sent:** Friday, 17 June 2016 1:52 PM

**To:** Angus Ramsay

**Subject:** Re: Licence BEE032496

Hello Angus,

BW have sent me the amendment to the licence, which is good. Thanks for your help with that.

Have you had any luck tracking down the peer reviewer of the 2015 vegetation study?

Kind regards,  
Malcolm.

Malcolm Gardiner

Email [otwaywater@yahoo.com.au](mailto:otwaywater@yahoo.com.au)

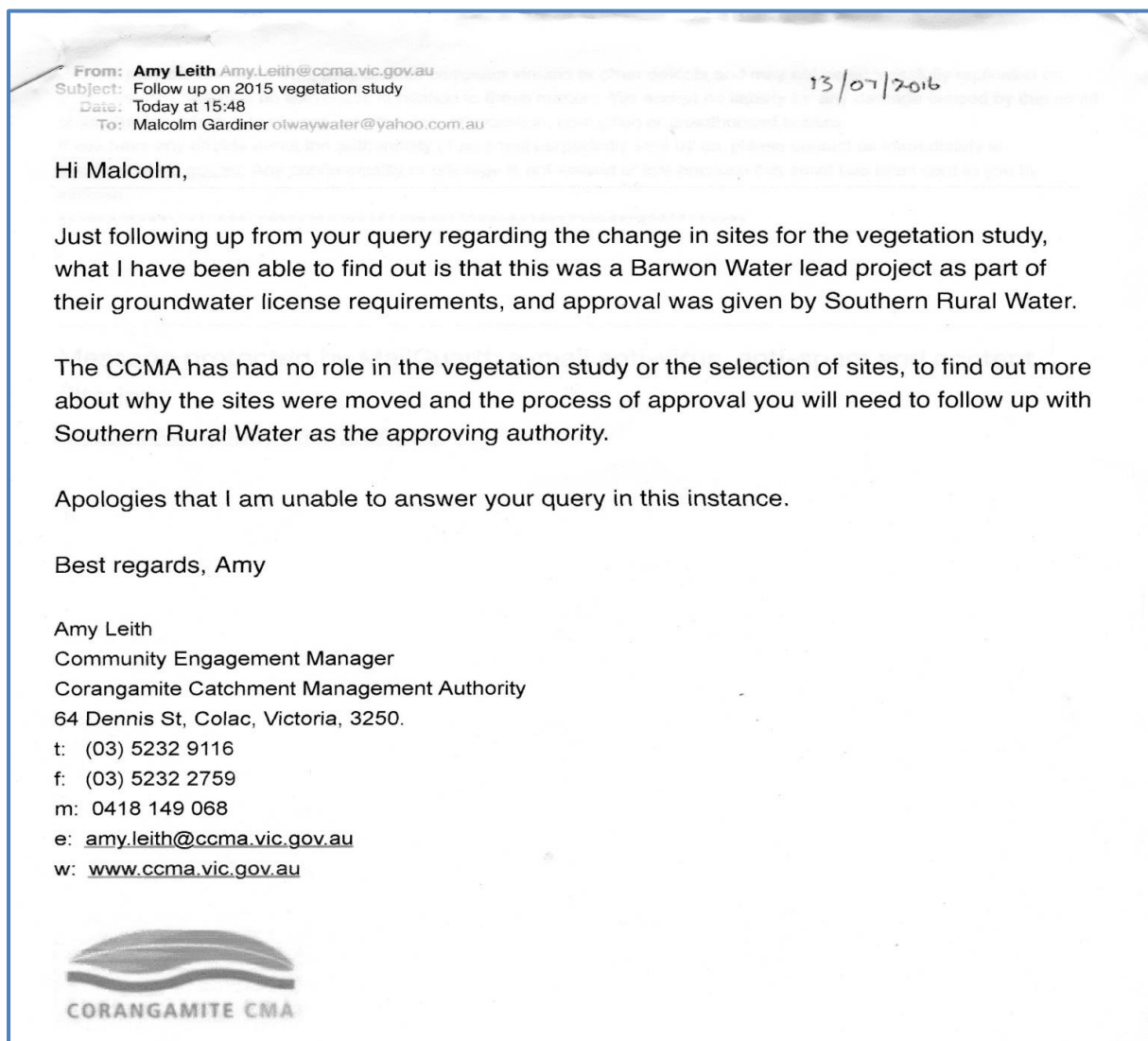
[www.otwaywater.com.au](http://www.otwaywater.com.au)

Phone +61 3 52358325

The full report on this issue involving Southern Rural Water, the CCMA and DELWP has been written up in an earlier Otway Water Book. Actually, the CCMA had no involvement and after receiving the following email to this effect, whether DELWP had been involved or not, was placed on the bottom of a lengthy list of priorities.

When attempting to ascertain the degree of CCMA assistance given to Southern Rural Water to:

- a. accept reports to change the vegetation sites mid-way through a licence period, and to
- b. review and scrutinize the 2015 Jacobs's vegetation report, this was the reply from the CCMA.



Actually, the query was answered in some detail and highlights how easy it is that “expert” reports can be accepted unchallenged.

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