

TASMANIA

LAUNCESTON FLOOD RISK MANAGEMENT BILL 2014

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LAUNCESTON FLOOD RISK MANAGEMENT BILL 2014

*(Brought in by the Minister for Planning and Local
Government, the Honourable Peter Carl Gutwein)*

A BILL FOR

An Act to make provision for and in relation to the management of the likelihood, severity or duration of, and emergencies consisting of, floods in Launceston, to repeal the *Launceston Flood Protection Act 1977* and to rescind certain by-laws, and for related matters

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Launceston Flood Risk Management Act 2014*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears –

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Agreement means the Launceston Flood Protection Scheme Agreement 1975 signed on 24 July 1975 under section 10 of the *Launceston Flood Protection Act 1960* as then in force;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

authorised officer means a person appointed under section 9 to be an authorised officer;

Authority means the Launceston Flood Authority established by the Council under section 30 of the *Local Government Act 1993*;

Authority Rules means the rules, as in force from time to time, that are made in relation to the Authority under Division 4 of Part 3 of the *Local Government Act 1993*;

Commission has the same meaning as it has in the Planning Act;

Council means the Launceston City Council;

Council land means land owned by the Council;

Crown land has the same meaning as it has in the *Crown Lands Act 1976*;

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development has the same meaning as it has in the Planning Act;

discretionary permit means a permit to which section 57(1) of the Planning Act applies but does not include a permit to which section 43A of the Planning Act applies;

dredging means to remove, displace, or replace, by mechanical means, sediment present in a body of water;

flood-prone area means the area shown bounded by a thick black line on the map in Schedule 1;

flood protection works means all structures or works erected, constructed, or managed, by the Authority (or the Council) –

(a) so as to reduce the likelihood, severity or duration of flooding in the flood-prone area; or

(b) under section 15 or section 28;

flood-significant planning application means an application to a planning authority for –

(a) a discretionary permit in respect of land within an area of land that is determined under section 18 to be an area of development interest; or

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- (b) an amendment to a discretionary permit, granted under the Planning Act, in respect of land within an area of land that is determined under section 18 to be an area of development interest;

levee includes any apparatus, or structure, that is necessary or convenient for the functioning of a levee;

levee-related land means the areas of land, within the flood-prone area, that are –

- (a) specified in Part 1 of Schedule 2; and
- (b) indicated generally, on the maps in Part 2 of Schedule 2, as areas bounded by thick black lines;

Municipal Committee, for the municipal area of the Council, means the Municipal Committee established under the *Emergency Management Act 2006* for the municipal area of the Council or for a combined area that includes that municipal area;

owner, in relation to land, includes every person who, jointly or severally, whether at law or in equity –

- (a) is entitled to the land for any estate of freehold in possession; or

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-
- (b) is entitled to receive, or receives, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise;

Planning Act means the *Land Use Planning and Approvals Act 1993*;

planning authority has the same meaning as it has in the Planning Act;

planning instrument means –

- (a) a planning scheme or special planning order; and
- (b) an amendment to a planning scheme or special planning order;

planning interest notice means a notice, given under section 17(1), that is in force;

planning scheme has the same meaning as it has in the Planning Act;

public land means –

- (a) Crown land; and
- (b) land that is owned by an instrumentality or agent of the Crown; and
- (c) Council land;

Regional Controller means the Regional Controller, under the *Emergency*

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Management Act 2006, for the region in which the flood-prone area is situated;

representation has the same meaning as it has in the Planning Act;

responsible person means –

- (a) a member of the Authority; and
- (b) an authorised officer; and
- (c) a delegate of the Authority; and
- (d) a delegate of the Council; and
- (e) a person on whom a requirement is imposed under section 28; and
- (f) a person authorised under section 14 to enter land; and
- (g) a person authorised under the *Local Government Act 1993* to enter land for a purpose related to enabling the Council to perform its functions, or exercise its powers, under this Act;

special planning order has the same meaning as it has in the Planning Act;

State Controller has the same meaning as it has in the *Emergency Management Act 2006*;

use has the same meaning as it has in the Planning Act.

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4. Flood-prone areas and levee-related land

- (1) The Minister, by order, may repeal Schedule 1 and substitute for it a Schedule containing a map indicating that the area shown on the map is the flood-prone area.
- (2) An area may only be shown, in a map contained in an order under subsection (1), to be the flood-prone area if the area is the same as the area that is specified in the Authority Rules, as in force immediately before the order is made, to be the flood-prone area.
- (3) The Minister, by order, may repeal Schedule 2 and substitute for it a Schedule that –
 - (a) in Part 1 of the Schedule, specifies the area, or areas, of land that are to comprise the levee-related land for the purposes of this Act; and
 - (b) indicates generally, on a map in Part 2 of the Schedule, that area or those areas.
- (4) An order under this section –
 - (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and
 - (b) is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

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5. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**PART 2 – POWERS, FUNCTIONS AND RIGHTS OF
AUTHORITY**

Division 1 – Launceston Flood Authority

6. Powers and functions of Authority generally

- (1) Subject to this Act, the Authority has the following functions under this Act:
- (a) to take action to reduce the likelihood, severity and duration of flooding in the flood-prone area, including (but not limited to including), if it thinks fit, dredging for such purposes;
 - (b) to provide advice to the Council as to whether levees, additional to any levee constructed before the commencement of this Act, may be required to reduce the likelihood, severity or duration of flooding in the flood-prone area;
 - (c) to take all reasonable steps to ensure that any levees constructed (whether before or after the commencement of this Act) for the purpose of preventing flooding in the flood-prone area –
 - (i) are maintained; and
 - (ii) are redesigned, or augmented, if it is desirable to do so in order to prevent, or to reduce the likelihood, severity or duration

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of, flooding in the flood-prone
area;

- (d) to provide to the Council information to assist the Council to determine the advice that ought to be given by the Council to members of the public about the risk of flooding in the flood-prone area;
- (e) any other function specified in this Act.
- (2) The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions under this Act.
- (3) Nothing in subsection (1) or (2) is to be taken to limit the functions or powers of the Authority under the *Local Government Act 1993* or as set out in the Authority Rules.
- (4) Section 36 of the *Local Government Act 1993* does not prevent the Authority –
 - (a) performing its functions, or exercising its powers, under this Act or under the *Local Government Act 1993*; or
 - (b) performing its functions, or exercising its powers, as set out in the Authority Rules –

outside the municipal area of the Council.

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7. Estimate of costs of Authority to be provided to Council

The Authority must submit to the Council, by 31 March in each year –

- (a) a proposed budget setting out the amount of money, for the next financial year, that the Authority believes it requires in order to ensure the Authority may satisfactorily perform its functions and exercise its powers; and
- (b) a statement specifying the reasons why the amount is necessary and adequate to ensure the Authority may satisfactorily perform its functions and exercise its powers.

8. Delegation by Authority

The Authority may, in writing, delegate to an authorised officer or any other person any of its functions or powers under this Act or the Authority Rules, other than this power of delegation.

9. Authorised officers

- (1) The Authority may, in writing, appoint a person to be an authorised officer for the purposes of this Act.
- (2) The Authority must issue an identifying document to a person who is appointed to be an authorised officer.

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- (3) An identifying document in relation to an authorised officer is –
 - (a) an identification card; or
 - (b) a document that enables the officer to identify himself or herself as an authorised officer to a member of the public.
- (4) An identification card issued to an authorised officer is to contain a photograph of the officer.
- (5) The Authority may, in writing, revoke the appointment of a person under subsection (1).
- (6) A person whose appointment as an authorised officer is revoked must return to the Authority his or her identifying document.

10. Rules in relation to Authority under *Local Government Act 1993*

The Council may not, after the day on which this Act commences, make or amend under Division 4 of Part 3 of the *Local Government Act 1993* a rule that applies or is to apply to the Authority, if the rule as made, or as so amended, would be inconsistent with a provision of this Act.

11. Winding up of Authority

- (1) The Council may not wind up the Authority under section 37 of the *Local Government Act 1993* except with the authority of the Minister under subsection (3).

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- (2) The Council, in writing, may request the Minister to authorise under subsection (3) the winding up of the Authority.
- (3) The Minister, in writing, may authorise the Council to wind up the Authority under section 37 of the *Local Government Act 1993*, if the Minister has received under subsection (2) a request to do so.
- (4) If the Minister issues an authorisation under subsection (3), the Council, as soon as practicable, is to provide to the Minister –
- (a) a copy of the resolution of the Council winding up the Authority under section 37 of the *Local Government Act 1993*; and
 - (b) notice of the day on which the winding up of the Authority occurs or is to occur.
- (5) If the Authority is wound up under section 37 of the *Local Government Act 1993* –
- (a) a reference in this Act (except in this section, in section 36, and in the definitions of ***Authority***, ***Authority Rules*** and ***flood protection works*** in section 3), or regulations made under this Act, to the Authority is to be taken to be a reference to the Council; and
 - (b) a reference in section 36 to the Authority is to be taken to include a reference to the Council; and

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- (c) section 6(1)(b) and (d) and section 6(4), sections 7 and 10, section 28(1)(c) and (d) and section 28(5) and (6) cease to be of effect; and
- (d) the reference in section 12(1) to the *Local Government Act 1993* ceases to be of effect; and
- (e) a reference in Part 3 to a planning authority is not to be taken to include a reference to a planning authority that is the Council; and
- (f) a reference in this Act to the Authority Rules ceases to be of effect; and
- (g) despite paragraph (a), a reference in section 15(2) to a structure constructed or erected by the Authority includes such a structure constructed or erected by the Authority (rather than the Council); and
- (h) a notice (other than a notice under Part 3 in relation to the planning authority that is the Council), approval, authorisation or other instrument issued, or delegation or appointment made, by the Authority under this Act and still in force immediately before the day on which the Authority is wound up, is to be taken to have been issued, or made, respectively, by the Council under this Act.

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Division 2 – Powers and functions in relation to land

12. Rights of Authority in relation to levee-related land

- (1) The Authority may, on the levee-related land, perform the functions and exercise the powers of the Authority under this Act, under the *Local Government Act 1993* or as set out in the Authority Rules.
- (2) Subsection (1) does not limit the area of land on which the Authority may perform the functions, and exercise the powers, of the Authority.
- (3) Subsection (1) applies in relation to land that is levee-related land, whether or not the land is public land or other land.

13. Revocation of Authority's rights in relation to levee-related land

- (1) In this section –

levee-related functions or powers, in relation to the Authority, means –

- (a) the functions of the Authority specified in section 6(1)(c); and
- (b) other functions of the Authority, under this Act or the Authority Rules, in so far as the functions are necessary or convenient for the performance of the functions specified in section 6(1)(c); and

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- (c) the powers of the Authority, under this Act or the Authority Rules, in so far as the powers are necessary or convenient for the performance of the functions referred to in paragraph (a) or (b).
- (2) The Minister, by notice in writing to the Authority, may issue a show cause notice to the Authority.
- (3) A show cause notice issued under subsection (2) is to –
 - (a) contain a statement that the Minister is of the opinion that the Authority is not performing or exercising its levee-related functions or powers in respect of –
 - (i) the levee-related land; or
 - (ii) the part of the levee-related land specified in the notice; and
 - (b) contain a statement that the Minister is considering issuing under subsection (6) a revocation notice in relation to the levee-related land, or the part of the land, declaring that the Authority may no longer perform or exercise its levee-related functions or powers in respect of the land or the part of the land; and
 - (c) invite the Authority to provide to the Minister the relevant information within a period, specified in the show cause

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notice, that is not less than 28 days after
the show cause notice is issued.

- (4) The Authority may, within the period specified in a show cause notice issued to the Authority under subsection (2), provide to the Minister, in writing, the relevant information –
 - (a) in relation to the levee-related land; or
 - (b) if only part of the levee-related land is specified in the notice, in relation to that part.
- (5) For the purposes of this section, the relevant information in relation to levee-related land, or a part of levee-related land, is –
 - (a) information as to the extent to which the Authority is performing or exercising its levee-related functions or powers in respect of the levee-related land or the part of the levee-related land; and
 - (b) reasons why the Minister should not issue a revocation notice under subsection (6) in respect of the levee-related land or the part of the levee-related land.
- (6) The Minister, by notice in writing to the Authority, may issue to the Authority a revocation notice in relation to the levee-related land or a part of the levee-related land specified in the notice.

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- (7) The Minister may only issue a revocation notice in relation to the levee-related land, or a part of the levee-related land specified in the notice, if –
- (a) the Minister has issued to the Authority a show cause notice under subsection (2) in respect of the land or the part of the land; and
 - (b) the period specified in the show cause notice has expired; and
 - (c) the Minister is, after considering the relevant information, if any, that may have been provided to the Minister under subsection (4) in relation to the land or the part of the land, of the opinion that –
 - (i) the Authority is not performing or exercising its levee-related functions or powers in respect of the land or the part of the land; and
 - (ii) there are no reasonable grounds for the Minister not to issue the notice.
- (8) A revocation notice issued under subsection (6) is to declare that the Authority may no longer, except with the permission of the Minister, perform or exercise its levee-related functions or powers in respect of –
- (a) the levee-related land; or

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(b) the part of the levee-related land specified in the notice.

- (9) Despite section 12, if a revocation notice is issued under subsection (6) in relation to the levee-related land, or a part of the levee-related land specified in the notice, the Authority is not permitted to perform or exercise, in relation to the land, or the part of the land, respectively, its levee-related functions or powers.

14. Authority may authorise entry of land, &c.

- (1) The Authority, in writing, may authorise persons to enter land for the purpose of performing a function, or exercising a power, of the Authority under this Act or the Authority Rules.
- (2) A person authorised by the Authority under subsection (1) may enter public land for the purpose of performing a function, or exercising a power, of the Authority under this Act or the Authority Rules.
- (3) A person authorised by the Authority under subsection (1) may, in accordance with this section, for the purpose of performing a function, or exercising a power, of the Authority under this Act or the Authority Rules, enter land, in the flood-prone area, that is not public land.
- (4) A person may only enter land under subsection (3) if, at least 14 days before the entry, the occupier of the land, or, if there is no occupier, the owner of the land, is given notice

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in writing of the person's intention to enter the land.

- (5) Notice is not required to be given under subsection (4) in relation to land if entry to the land by a person under subsection (3) is required because –
 - (a) a flood is imminent, or occurring, in the flood-prone area; or
 - (b) the Authority is of the opinion, on reasonable grounds, that any levees constructed (whether before or after the commencement of this Act) for the purpose of preventing flooding in the flood-prone area require urgent maintenance or repair.
- (6) A person who enters land under subsection (3) must, at the request of an occupier of the land, show the identifying document issued to him or her under section 9(2).
- (7) A person who enters land under subsection (3) is not authorised to enter a building on the land except with the permission of the occupier of the land, or, if there is no occupier, the owner of the land.
- (8) Permission is not required to be given under subsection (7) in relation to a building on land if –
 - (a) a flood is imminent, or occurring, in the flood-prone area; and

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- (b) entry to the building by a person under subsection (3) is required, for the purpose of performing a function, or exercising a power, of the Authority under this Act or the Authority Rules, because the flood is imminent, or occurring, in the flood-prone area.
 - (9) A person authorised by the Authority under this section to enter land may enter and cross over that land, so as to gain access to other land for a purpose for which the person is authorised under this section to enter land.
 - (10) The Authority, in writing, may revoke an authorisation of a person under subsection (1).

15. Authority may construct temporary structures on land

- (1) The Authority may construct or erect a temporary structure, including a road, on public land, so as to enable –
 - (a) the construction of a levee for the purpose of reducing the likelihood, severity or duration of flooding in the flood-prone area; or
 - (b) the repair or maintenance of a levee constructed for the purpose of reducing the likelihood, severity or duration of flooding in the flood-prone area; or
 - (c) dredging to be carried out under this Act by the Authority.

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- (2) If the Authority constructs or erects a temporary structure on land under this section the Authority must, as soon as practicable after the structure is no longer required for the purpose for which it was constructed or erected –
 - (a) remove the structure; and
 - (b) take reasonable steps to restore the land to the condition the land would have been in, but for the construction or erection of the structure.
- (3) The Planning Act does not apply in relation to the construction or erection of a temporary structure under this section.

16. Power to take samples

- (1) The Authority may carry out tests, and take samples and photographs, for the purpose of performing a function, or exercising a power, of the Authority under this Act or the Authority Rules.
- (2) A person authorised by the Authority under section 14(1) to enter land may, on that land, carry out tests, and take samples and photographs, for the purpose of performing a function, or exercising a power, of the Authority under this Act or the Authority Rules.

**PART 3 – REFERRAL OF PLANNING MATTERS TO
AUTHORITY**

**17. Referral to Authority of certain planning
instruments**

- (1) The Authority, by notice in writing given to a planning authority (a *planning interest notice*), may determine that the municipal area in respect of the planning authority, or a part, of the municipal area, that is specified in the notice, is an area of planning interest to the Authority.
- (2) The Authority may only determine that the municipal area, or a part of the municipal area, is an area of planning interest to the Authority for the purposes of subsection (1) if the Authority is reasonably of the opinion that a use or development in the municipal area, or part, respectively –
 - (a) could affect the likelihood, severity or duration of flooding occurring in the flood-prone area; or
 - (b) could be affected by flooding in the flood-prone area.
- (3) A planning interest notice given to a planning authority under subsection (1) is to specify the requirements imposed on the planning authority under subsection (4).
- (4) A planning authority to which a planning interest notice is given under subsection (1) must, on or before the day on which the exhibition of a draft

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planning instrument, in respect of land within the area of land to which the notice relates, begins under the Planning Act, give a notice in writing to the Authority –

- (a) notifying the Authority of the day on which the exhibition of the draft planning instrument is to begin; and
 - (b) inviting the Authority to make a representation under the Planning Act in relation to the draft planning instrument; and
 - (c) if the person who requested the draft planning instrument be prepared also requested under section 43A of the Planning Act that the planning authority consider an application for a permit – inviting the Authority to make a representation under the Planning Act in relation to any permit, relating to that application, that is or may be granted by the planning authority.
- (5) The Authority is to give notice in writing to the Commission that a planning interest notice has been given under subsection (1).
- (6) If –
- (a) the Commission grants or confirms a permit under section 43H of the Planning Act; and
 - (b) the permit relates to an application, of a kind referred to in section 43A of the

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Planning Act, in respect of land within an area of land to which a planning interest notice relates; and

- (c) the permit as so granted or confirmed is not in accordance with a representation of the Authority made, in relation to the application, under the Planning Act –

the Commission must give to the Authority reasons in writing for granting or confirming a permit that is not in accordance with the representation.

- (7) The Authority, by notice in writing given to a planning authority, may revoke a planning interest notice given to the planning authority under subsection (1).
- (8) The Authority is to give notice in writing to the Commission that a planning interest notice has been revoked under subsection (7).

18. Referral to Authority of certain applications relating to discretionary planning permits

- (1) The Authority, by notice in writing to a planning authority to which a planning interest notice has been given under section 17(1), may determine that an area of land, specified in the notice, is an area of development interest to the Authority.
- (2) The Authority may only specify an area of land in a notice given to a planning authority under subsection (1) if –

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- (a) the area of land is within the municipal area of the planning authority; and
 - (b) the area of land is within an area to which a planning interest notice relates; and
 - (c) the Authority is reasonably of the opinion that a use or development in the area of land –
 - (i) could affect the likelihood, severity or duration of flooding occurring in the flood-prone area; or
 - (ii) could be affected by flooding in the flood-prone area.
- (3) A notice under subsection (1) is to specify the requirements imposed on the planning authority under subsections (4), (5), (6) and (7).
- (4) A planning authority must not determine a flood-significant planning application by –
 - (a) granting a discretionary permit; or
 - (b) amending a discretionary permit to which the application relates –

unless the planning authority has complied with the notification requirements in relation to the flood-significant planning application.
- (5) The notification requirements in relation to a flood-significant planning application are that the planning authority must, as soon as

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practicable, but in any case within 14 days, after the day on which notice of the application is given under section 57(3) of the Planning Act –

- (a) give to the Authority a copy of the application; and
 - (b) issue a notice to the Authority inviting the Authority to make under the Planning Act a representation in relation to the application.
- (6) If a planning authority determines under the Planning Act a flood-significant planning application by –
 - (a) granting a discretionary permit; or
 - (b) amending a discretionary permit to which the application relates –

the planning authority must, within 7 days, give written notice to the Authority that the Authority is entitled under section 21(2) to appeal to the Appeal Tribunal against the decision.

- (7) A planning authority that determines a flood-significant planning application otherwise than in accordance with a representation of the Authority made, under the Planning Act, in relation to the application, must, together with the notice under subsection (6), give to the Authority reasons in writing for so doing.
 - (8) The Authority, by notice in writing to a planning authority, may revoke a notice given to the planning authority under subsection (1).

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Part 3 – Referral of Planning Matters to Authority

19. Referral to Authority of applications for special permits

- (1) A planning authority must give notice in writing to the Authority if –
 - (a) a project of regional significance is declared under section 60G of the Planning Act; and
 - (b) the project is to be situated within an area of land, to which a planning interest notice relates, that is within the planning authority's municipal area.
- (2) The notice under subsection (1) is to –
 - (a) be given within 14 days after the project of regional significance is declared under section 60G of the Planning Act; and
 - (b) invite the Authority to make a representation under the Planning Act in relation to the project.
- (3) A Panel that, otherwise than in accordance with a representation of the Authority in relation to a project, decides under section 60T of the Planning Act to grant a special permit in relation to the project, must give to the Authority reasons in writing for so doing.

20. Commission to consider Authority's opinion in relation to dispensations

- (1) In this section –

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application for dispensation means an application that –

- (a) is made under section 30P of the Planning Act for a dispensation; and
 - (b) relates to land that is within an area of land to which a planning interest notice relates.
- (2) The Commission, within 7 days after deciding under section 30Q(1) of the Planning Act that an application for dispensation ought to be exhibited, must –
- (a) give to the Authority a copy of the application; and
 - (b) give a notice to the Authority inviting the Authority to make under the Planning Act a representation in relation to the application.
- (3) If the Commission decides under the Planning Act an application for dispensation otherwise than in accordance with a representation of the Authority made, in relation to the application, under the Planning Act, the Commission must give to the Authority reasons in writing for so doing.

21. Appeals to Resource Management and Planning Appeal Tribunal

- (1) In this section –

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relevant use or development means –

- (a) a use or development on land in the flood-prone area; or
- (b) a use or development on land, outside the flood-prone area, which use or development –
 - (i) is likely to increase the likelihood, severity or duration of a flood occurring in the flood-prone area; or
 - (ii) may, if a flood occurs in the flood-prone area, increase –
 - (A) the potential risk of, or the potential scale of, loss of human life in the flood-prone area; or
 - (B) the potential risk of, or the potential scale of, injury to persons in the flood-prone area; or
 - (C) the potential risk of, or the potential scale of, damage to, or loss of

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property in, the
flood-prone area.

- (2) Even though the Authority has not made under the Planning Act a representation in relation to a flood-significant planning application, the Authority may, by virtue of this subsection, appeal under section 61(5) of that Act to the Appeal Tribunal as if –
 - (a) the Authority had made a representation in relation to the application; and
 - (b) the notice given to the Authority under section 18(6) of this Act were a notice served on the Authority under section 57(7) of the Planning Act.
- (3) The provisions of the *Resource Management and Planning Appeal Tribunal Act 1993* apply in relation to an appeal made pursuant to subsection (2) as if the Authority had made a representation in relation to the flood-significant planning application to which the appeal relates.
- (4) If a person appeals under the Planning Act to the Appeal Tribunal in relation to a decision made in respect of a relevant use or development, the Authority may apply to the Tribunal under section 14(2) of the *Resource Management and Planning Appeal Tribunal Act 1993* to be made a party to the appeal.
- (5) If an application is made under subsection (4) then, despite section 14(3) and (4) of the *Resource Management and Planning Appeal*

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Tribunal Act 1993, the Tribunal must join the Authority as a party to the appeal.

**PART 4 – COUNCIL RESPONSIBILITIES IN
RELATION TO LEVEE-RELATED LAND**

22. Rights of Council in relation to levee-related land

(1) The Council may use or develop, for purposes that –

- (a) increase the amenity of the part of the land; or
- (b) enable the part of the land to be used, or to continue to be used, for community or recreational purposes –

any part of the levee-related land that is public land.

(2) The Council has the powers necessary for the performance of the functions specified in subsection (1).

(3) A use or development of part of the levee-related land may only be made by the Council under subsection (1) in so far as that development or use will not –

- (a) prevent or impede the performance or exercise by the Authority, on the part of the land, of the Authority's functions or powers under this Act or the Authority Rules; or
- (b) reduce the effectiveness, during a flood, of levees constructed or maintained under this Act; or

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- (c) significantly alter, in a manner that may increase the severity or duration of a flood in the flood-prone area, the drainage characteristics of the flood plain in which the levee-related land is situated (whether or not all of the flood plain is within the levee-related land).
- (4) The Council may, on the levee-related land, perform and exercise the functions and powers of the Council under any other section of this Act.
- (5) Subsection (4) does not limit the area of land on which the Council may perform and exercise the functions and powers of the Council under any other section of this Act.
- (6) Nothing in this section is to be taken to limit the application of the Planning Act in relation to the levee-related land.

23. Minister may issue to Council show cause notice in relation to levee-related land

- (1) The Minister, by notice in writing to the Council, may issue a show cause notice to the Council.
- (2) A show cause notice issued under subsection (1) is to –
 - (a) contain a statement for the purposes of subsection (3) or (4); and
 - (b) contain a statement that the Minister is considering issuing a notice to cease, or a

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notice of revocation, under section 24;
and

- (c) invite the Council to provide to the Minister the relevant information within a period, specified in the show cause notice, that is not less than 28 days after the show cause notice is issued.

- (3) A show cause notice issued under subsection (1) may contain a statement that the Minister is of the opinion that the Council is using or developing –

- (a) for a purpose other than a purpose specified in section 22; or
- (b) for commercial purposes; or
- (c) otherwise than in accordance with section 22(3) –

a part, of the levee-related land, specified in the notice, that is either Crown land or land that is owned by an instrumentality or agent of the Crown.

- (4) A show cause notice issued under subsection (1) may contain a statement that the Crown intends to resume, for the reasons, or the purposes, specified in the notice, responsibility for a part, of the levee-related land, that is specified in the notice and that is either Crown land or land that is owned by an instrumentality or agent of the Crown.

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- (5) The Council may, within the period specified in accordance with subsection (2)(c) in a show cause notice issued under subsection (1), provide to the Minister, in writing, the relevant information in relation to the part of the levee-related land that is specified in the notice.
- (6) For the purposes of this section, the relevant information in relation to a part of levee-related land that is specified in a show cause notice is –
 - (a) information as to the manner in which the Council is using or developing the part of the land; and
 - (b) reasons why the Minister should not issue, in respect of the part of the land, a notice to cease, or a notice of revocation, under section 24.
- (7) The Minister, by notice in writing to the Council, may revoke a show cause notice issued under subsection (1) to the Council.

24. Notices to cease and of revocation of rights of Council in relation to levee-related land

- (1) The Minister, by notice in writing to the Council, may issue a notice to cease in relation to a part, of the levee-related land, that is specified in the notice and that is either Crown land or land that is owned by an instrumentality or agent of the Crown.

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- (2) The Minister may only issue under subsection (1) a notice in relation to a part of the levee-related land specified in the notice if –
- (a) the Minister has issued to the Council a show cause notice under section 23(1) in relation to the part of the land; and
 - (b) the show cause notice contains a statement of the kind referred to in section 23(3); and
 - (c) the period specified, in accordance with section 23(2)(c), in the show cause notice has expired; and
 - (d) after considering the relevant information, if any, that may have been provided to the Minister under section 23(5) in relation to the part of the land, the Minister holds the relevant opinion in relation to the part of the land.
- (3) For the purposes of subsection (2)(d), the Minister holds the relevant opinion in relation to a part of land if the Minister is of the opinion that the Council is using or developing the part of the land –
- (a) other than for a purpose specified in section 22; or
 - (b) for commercial purposes; or
 - (c) otherwise than in accordance with section 22(3) –

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and the Minister is of the opinion that there are no reasonable grounds for the Minister not to issue the notice.

- (4) A notice to cease issued under subsection (1) is to declare that the Council must cease, except with the permission of the Minister, to use, or to develop, in the manner specified in the notice, the part, of the levee-related land, that is specified in the notice.
- (5) The Council must comply with a notice to cease issued under subsection (1) in relation to a part, of the levee-related land, that is specified in the notice.
- (6) The Minister, by notice in writing to the Council, may issue a notice of revocation in relation to a part, of the levee-related land, that is specified in the notice.
- (7) The Minister may only issue a notice of revocation in relation to a part, of the levee-related land, that is specified in the notice, if –
 - (a) the Minister has issued to the Council a show cause notice under section 23(1) in relation to the part of the land; and
 - (b) the show cause notice contains a statement of the kind referred to in section 23(4); and
 - (c) the period specified, in accordance with section 23(2)(c), in the show cause notice has expired; and

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- (d) the Minister is, after considering the relevant information, if any, that may have been provided to the Minister under section 23(5) in relation to the part of the land, of the opinion that the Crown ought to resume responsibility for the part of the land, for a reason, or a purpose, specified in the show cause notice.
 - (8) If a notice of revocation is issued under subsection (6), section 22 ceases to apply to the part of the levee-related land specified in the notice.

25. By-laws

- (1) The Council may, under section 145 of the *Local Government Act 1993*, make by-laws in respect of the control, maintenance, protection, supervision, and use, of –
 - (a) the levee-related land; and
 - (b) any works the management of which has been transferred to the Council by virtue of any agreement made under section 10 of the *Launceston Flood Protection Act 1960*; and
 - (c) any land that, by virtue of such an agreement, has been transferred to the Council; and
 - (d) any land that is –

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- (i) situated within the flood plain in which the levee-related land is situated (whether or not all of the flood plain is within the levee-related land); and
 - (ii) land in respect of which any estate or interest is vested in the Crown, the Authority or any body established by or under any enactment.
- (2) A by-law may not be made in accordance with subsection (1) in respect of any land referred to in subsection (1)(d) except with the approval either of –
 - (a) the Minister; or
 - (b) each of the bodies (including the Authority), established by or under any enactment, in which an estate or interest in that land is vested.

26. Infringement notices

- (1) In this section –

infringement offence means –

- (a) an offence against this Act; or
- (b) an offence against the regulations that is prescribed.

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- (2) The Council may authorise a person to issue and serve infringement notices for the purposes of this Act.
 - (3) A person authorised by the Council under subsection (2) may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
 - (4) An infringement notice may not be served on an individual who has not attained the age of 16 years.
 - (5) An infringement notice –
 - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to more than 3 offences.
 - (6) The penalty payable under an infringement notice in respect of an infringement offence consisting of an offence against this Act is 20 penalty units.
 - (7) The regulations –
 - (a) may prescribe, for an infringement offence that consists of an offence against the regulations, the penalty payable under an infringement notice in respect of the offence; and
 - (b) may prescribe different such penalties for bodies corporate and individuals.

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- (8) The penalty prescribed under subsection (7) for an infringement offence is not to exceed 20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.
- (9) Nothing in this section is to be taken to limit the powers of the Council to issue infringement notices under the *Local Government Act 1993* in relation to by-laws made pursuant to section 25 of this Act.

PART 5 – EMERGENCY MANAGEMENT

27. Municipal Committee to consult with Authority

The Municipal Committee for the municipal area of the Council is to consult with the Authority before formulating any plan the Municipal Committee is required to prepare, or assist in the preparation of, for the purposes of the *Emergency Management Act 2006*, in relation to potential flooding in the flood-prone area.

28. Powers of Council in event of flood or imminent flood

- (1) If a flood is occurring, or is imminent, in the flood-prone area, the Council may exercise any of the following powers:
 - (a) take the actions necessary to close any drains, or drainage outlets, that drain water into the flood-prone area;
 - (b) open, close, or erect and close, flood gates, penstocks or similar objects and keep them open or closed as long as is necessary;
 - (c) if the Authority has opened, in the flood-prone area, flood gates, penstocks or similar objects, direct the Authority to close them and keep them closed for as long as the Council considers necessary;
 - (d) if flood gates, penstocks, or similar objects, in the flood-prone area are

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closed, direct the Authority to open them and keep them open for as long as the Council considers necessary;

- (e) close, and keep closed for the period the Council thinks fit, or direct the Authority to close, and keep closed for the period the Council thinks fit, any temporary gaps in a levee in the flood-prone area;
 - (f) close any highway or railway line across, over or under which any levee is constructed;
 - (g) take action, including (but not limited to including), if it thinks fit, dredging, to assist flood waters from the flood-prone area to drain more effectively from the area;
 - (h) take action, including (but not limited to including), if it thinks fit, dredging, to mitigate the effect of a flood that is occurring, or is imminent, in the flood-prone area.
- (2) If a flood is occurring, or is imminent, in the flood-prone area, the Council may construct or erect on land a temporary structure, including roads, for any of the following purposes:
- (a) to enable the taking of any other action under this section;
 - (b) the prevention of an imminent flood in the flood-prone area;

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- (c) the mitigation of the effect of a flood that is occurring, or is imminent, in the flood-prone area;
 - (d) to rescue persons or to protect property in the event of a flood that is occurring, or is imminent, in the flood-prone area.
 - (3) If a flood is occurring, or is imminent, in the flood-prone area, the Council may require a person who owns or is apparently in charge of premises to take, in relation to the premises, action, specified in the requirement, to minimise the risk of aggravating the flood or the effect of the flood in the area.
 - (4) If a flood is occurring, or is imminent, in the flood-prone area, the Council may require a person to provide to the Council the assistance the Council thinks fit to perform the functions, or exercise the powers, of the Council in the flood-prone area.
 - (5) If a flood is occurring, or is imminent, in the flood-prone area, the Council may require the Authority to perform a function, or exercise a power, of the Authority under this Act or the Rules, for the purpose of assisting the Council to perform the functions, or exercise the powers, of the Council in the flood-prone area.
 - (6) The Authority must comply with a direction given to it under subsection (1)(c), (d) or (e) or a requirement imposed on it under subsection (5).

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- (7) The Planning Act does not apply in relation to the construction or erection of a flood gate, penstock or other structure under this section.
- (8) If the Council constructs or erects a temporary structure on land under this section, the Council must, as soon as practicable after the structure is no longer required for the purpose for which it was constructed or erected –
 - (a) remove the structure; and
 - (b) take reasonable steps to restore the land to the condition that the land would have been in but for the construction or erection of the structure, but taking into account the effect of any flood on the land.

29. Officers under *Emergency Management Act 2006* may issue directions to Council

- (1) The State Controller or the Regional Controller may, whether or not a state of emergency has been declared under the *Emergency Management Act 2006* in relation to flooding, or imminent flooding, in the flood-prone area –
 - (a) direct the Council to exercise, or to cease to exercise, a power under section 28; or
 - (b) direct the Authority –
 - (i) to perform a function or to exercise a power; or

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- (ii) to cease to perform a function or exercise a power –

other than a function or power under Part 3.

- (2) The Council, the Authority, and any responsible person acting on behalf of the Council or the Authority, must comply with a direction given under subsection (1).

30. Council to keep Regional Controller informed

The Council must, if a flood is occurring or is imminent in the flood-prone area, take all reasonable steps to keep the Regional Controller informed of all actions taken by –

- (a) the Council under section 28; or
- (b) the Council, the Authority, or another person, in pursuance of a direction given under section 29(1).

31. Application of *Emergency Management Act 2006*

Nothing in this Act, apart from section 36(2), is to be taken to limit the application of the *Emergency Management Act 2006*.

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Part 6 – Offences and Enforcement

PART 6 – OFFENCES AND ENFORCEMENT

32. Offences related to emergencies or hindering Authority, &c.

- (1) A person must not, without reasonable excuse, fail to comply with a requirement imposed on the person under section 28(3) or (4).

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) A person must not –

- (a) assault, resist, impede or obstruct; or
- (b) use threatening, abusive or insulting language in relation to; or
- (c) knowingly provide false or misleading information to; or
- (d) impersonate –

a responsible person who is performing or exercising a power or function conferred or imposed on the responsible person under this Act or who is acting in accordance with a requirement imposed on the responsible person under section 28(3) or (4).

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding

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20 penalty units for each day during
which the offence continues.

33. Offences in relation to flood protection works

- (1) A person must not remove, damage or destroy any part of flood protection works.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) A person must not, except in accordance with an approval issued by the Authority, excavate or change the level or topography of any part of land that constitutes flood protection works or on which flood protection works are situated.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (3) A person must not, except in accordance with an approval issued by the Authority, erect a building or structure on or over any part of flood protection works.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

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- (4) A person must not interfere with the operation of, the flow of water over or through, or the operation of any valves or gates of, flood protection works.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (5) A person must not obstruct any access to flood protection works.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (6) A person must not, except in accordance with an approval issued by the Authority –

- (a) construct any road or access way through or over; or
- (b) put a conduit or cable through or under; or
- (c) plant a tree or other vegetation on –

any flood protection works.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding

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20 penalty units for each day during
which the offence continues.

- (7) Nothing in this section is to be taken to limit the application of the Planning Act to and in relation to land that constitutes flood protection works or on which flood protection works are situated.

34. Defence

It is a defence to a charge of committing an offence against a provision of this Act by taking an action if the person charged establishes that the taking of the action was –

- (a) authorised under this Act; or
- (b) in accordance with a direction, or a requirement, issued to or imposed on the person under this Act or the *Emergency Management Act 2006*.

35. Approvals to carry out actions

- (1) A person may, in a form approved by the Authority, apply to the Authority for the issue of an approval to carry out an activity for which an approval is required under section 33.
- (2) The Authority may issue, or refuse to issue, an approval for which an application was made under subsection (1).
- (3) An approval may be issued under subsection (2) on the conditions the Authority thinks fit and specifies on the approval.

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Part 7 – Concluding Provisions

PART 7 – CONCLUDING PROVISIONS

36. Immunities

- (1) Despite any other provision of this Act or any other Act, no action or proceeding, including any action or proceeding in tort, contract or for breach of statutory duty, lies against the Authority or the Council for any injury, damage or loss of any kind that may be suffered by a person, directly or indirectly, as a result of –
 - (a) the diversion of any waters, the alteration of the flow of any waters, and the accumulation of any waters, which diversion, alteration or accumulation arises from or is related to –
 - (i) the construction or maintenance of any structure or works authorised by this Act, the *Launceston Flood Protection Act 1960*, the *Launceston Flood Protection Act 1977* or the Agreement; or
 - (ii) any dredging carried out under this Act; or
 - (iii) a failure to construct or maintain such a structure or works or a failure to carry out any such dredging; or
 - (b) the performance or exercise, or the purported performance or exercise, of the

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functions or powers of the Authority, in relation to reducing the likelihood, severity or duration of flooding, under this Act, the *Local Government Act 1993*, any other Act or the Authority Rules, or a failure to perform or exercise such a function or power; or

- (c) the taking of action under section 16 or a failure to take such action; or
- (d) an act done, by a person on whom a requirement is imposed under section 28(3) or (4), in accordance with, or as a result of, the requirement; or
- (e) a failure of a person on whom a requirement is imposed under section 28(3) or (4) to do an act in accordance with, or as a result of, the requirement; or
- (f) an act, done by or on behalf of the Authority, in accordance with, or as a result of –
 - (i) a direction given to the Authority under section 28(1)(c), (d) or (e); or
 - (ii) a requirement imposed on the Authority under section 28(5); or
- (g) a failure by the Authority, or a person acting on behalf of the Authority, to do an act in accordance with, or as a result of –

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- (i) a direction given to the Authority under section 28(1)(c), (d) or (e); or
 - (ii) a requirement imposed on the Authority under section 28(5); or
 - (h) the performance or exercise, or the purported performance or exercise, of the functions or powers of the Authority under the Agreement before the Agreement terminated, or a failure to perform or exercise such a function or power; or
 - (i) the performance or exercise, or the purported performance or exercise, of a function or power of the Council under Part 5, or a failure to perform or exercise such a function or power.
- (2) Despite any other provision of this Act or any other Act (including the *Emergency Management Act 2006*), no action or proceeding, including any action or proceeding in tort, contract or for breach of statutory duty, lies against the Crown for any injury, damage or loss of any kind that may be suffered by a person, directly or indirectly, as a result of –
- (a) flooding in the flood-prone area; or
 - (b) anything done, or not done, by the Authority, the Council or a responsible person (or ordered by the Authority or the Council to be done or not to be done) –

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- (i) to prevent, or mitigate the effect of, a flood that was occurring, or was imminent, in the flood-prone area; or
 - (ii) because flooding in the flood-prone area was imminent or was occurring; or
 - (c) any failure –
 - (i) by the Authority, the Council or a responsible person to do, or to not do, an act, or to give an order, for a purpose referred to in paragraph (b); or
 - (ii) by a person to carry out an order referred to in paragraph (b); or
 - (d) the taking of action under section 16 or a failure to take such action; or
 - (e) anything done, or not done, by the Authority, the Council or a responsible person (or ordered by the Authority or the Council to be done or not to be done), in the performance or exercise, or the purported performance or exercise, of a function or power of the Council or Authority under this Act or the Authority Rules; or
 - (f) any failure by the Authority, the Council or a responsible person –

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- (i) to do, or to not do, an act in the performance or exercise, or the purported performance or exercise, by the Council or the Authority of a function or power of the Council or Authority under this Act or the Authority Rules; or
 - (ii) to order an act to be done or not done; or
- (g) the performance or exercise, or the purported performance or exercise, of the functions or powers of the Authority under the Agreement before the Agreement terminated, or a failure to perform or exercise such a function or power; or
- (h) anything done, or not done, under this Act by the State Controller or the Regional Controller (or ordered by the State Controller or the Regional Controller to be done or not to be done under this Act) –
 - (i) to prevent, or mitigate the effect of, flooding that was imminent, or was occurring, in the flood-prone area; or
 - (ii) because flooding in the flood-prone area was imminent or was occurring; or

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(i) any failure by the State Controller or the Regional Controller –

(i) to do an act, or to not do an act, for a purpose referred to in paragraph (h); or

(ii) to order, for a purpose referred to in paragraph (h), an act to be done or not to be done; or

(j) anything done or not done, or ordered to be done or not to be done, by an employee or agent of the Crown in good faith –

(i) to prevent, or mitigate the effect of, flooding that was imminent, or was occurring, in the flood-prone area; or

(ii) because flooding in the flood-prone area was imminent or was occurring –

or any failure, in good faith, by an employee or agent of the Crown –

(iii) to do, or not to do, anything for a reason referred to in subparagraph (i) or (ii); or

(iv) to order, for a reason referred to in subparagraph (i) or (ii), anything to be done or not to be done; or

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- (k) any failure by the Crown to comply with the Agreement before or after the Agreement terminated; or
 - (l) any action taken by the Council under section 22 or any failure by the Council to take action under that section.
- (3) A responsible person is not personally liable for an act or omission done or made in good faith by him or her in the performance or exercise, or the purported performance or exercise, of a function or power of the Authority, the Council, or the responsible person, under –
 - (a) this Act; or
 - (b) the Authority Rules; or
 - (c) the Agreement before it terminated.
- (4) A responsible person is not personally liable for an act or omission done or made in good faith by him or her in accordance with, or as a result of –
 - (a) a direction given to the Authority under section 28(1)(c), (d) or (e); or
 - (b) a requirement imposed on him or her or the Authority under section 28; or
 - (c) taking or failing to take an action under section 16.
- (5) An employee or agent of the Crown is not personally liable for –

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- (a) anything done or not done, or ordered to be done or not to be done, by an employee or agent of the Crown in good faith –
 - (i) to prevent flooding in the flood-prone area or to mitigate the effect of flooding that was imminent, or was occurring, in the flood-prone area; or
 - (ii) because flooding in the flood-prone area was imminent or was occurring; or
 - (b) an act or omission done or made in good faith by him or her in the performance or exercise, or the purported performance or exercise, of a function or power under this Act or the Agreement.
- (6) The State Controller or the Regional Controller is not personally liable for an act or omission done or made in good faith by him or her in the performance or exercise, or the purported performance or exercise, of a function or power under this Act.
- (7) This section applies whether a cause of action arises before or after the commencement of this section.

37. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Authority or the Council.

38. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Planning and Local Government; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

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39. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

40. Legislation repealed

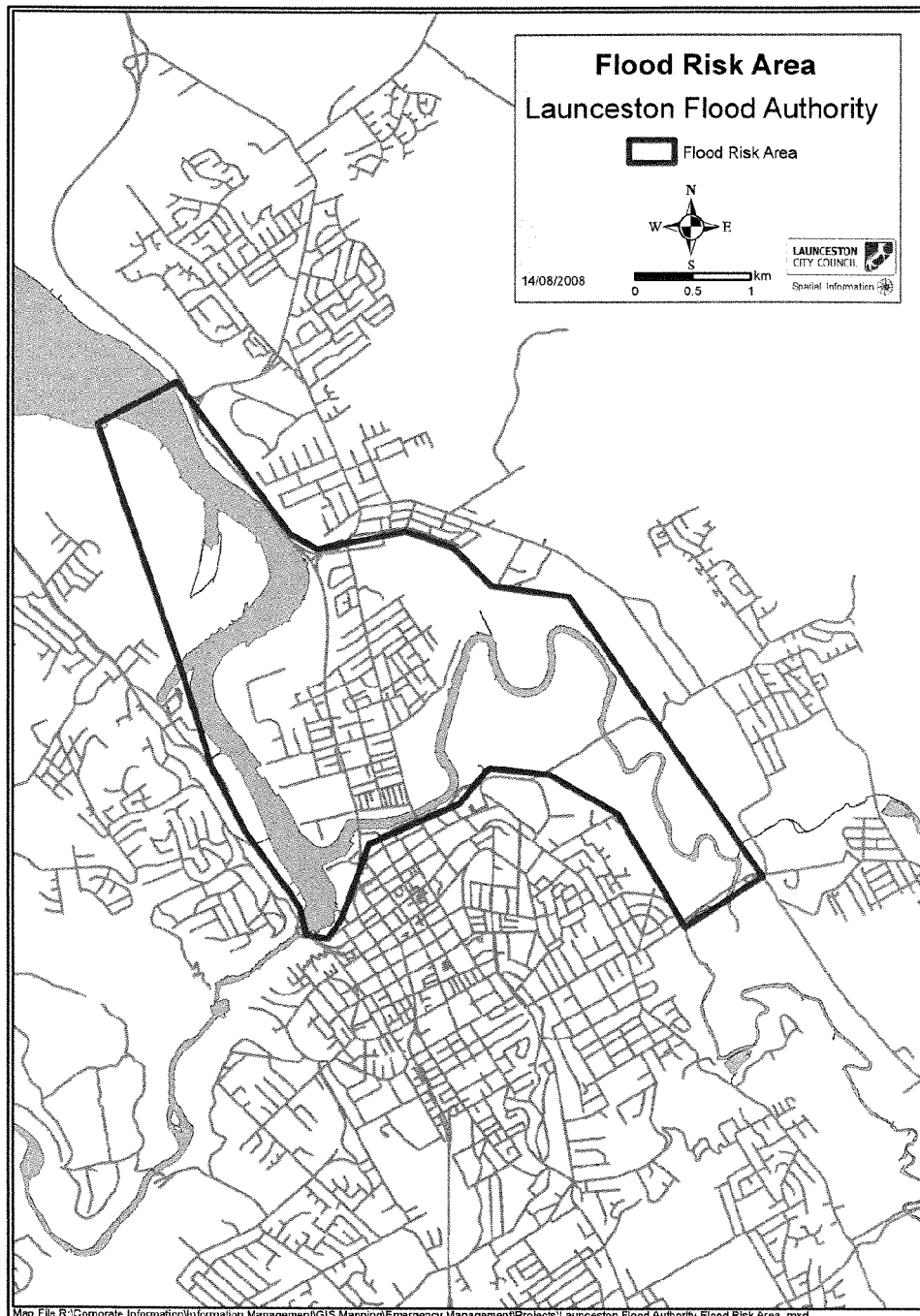
The legislation specified in Schedule 4 is repealed.

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SCHEDULE 1 – FLOOD-PRONE AREA

Sections 3 and 4



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SCHEDULE 2 – LEVEE-RELATED LAND

Sections 3 and 4

PART 1 – AREAS OF LAND

The areas shown bounded by thick black lines in Plan 9311 in the
Central Plan Register

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PART 2 – GENERAL MAP OF AREAS OF LAND
Map 1 – Overview



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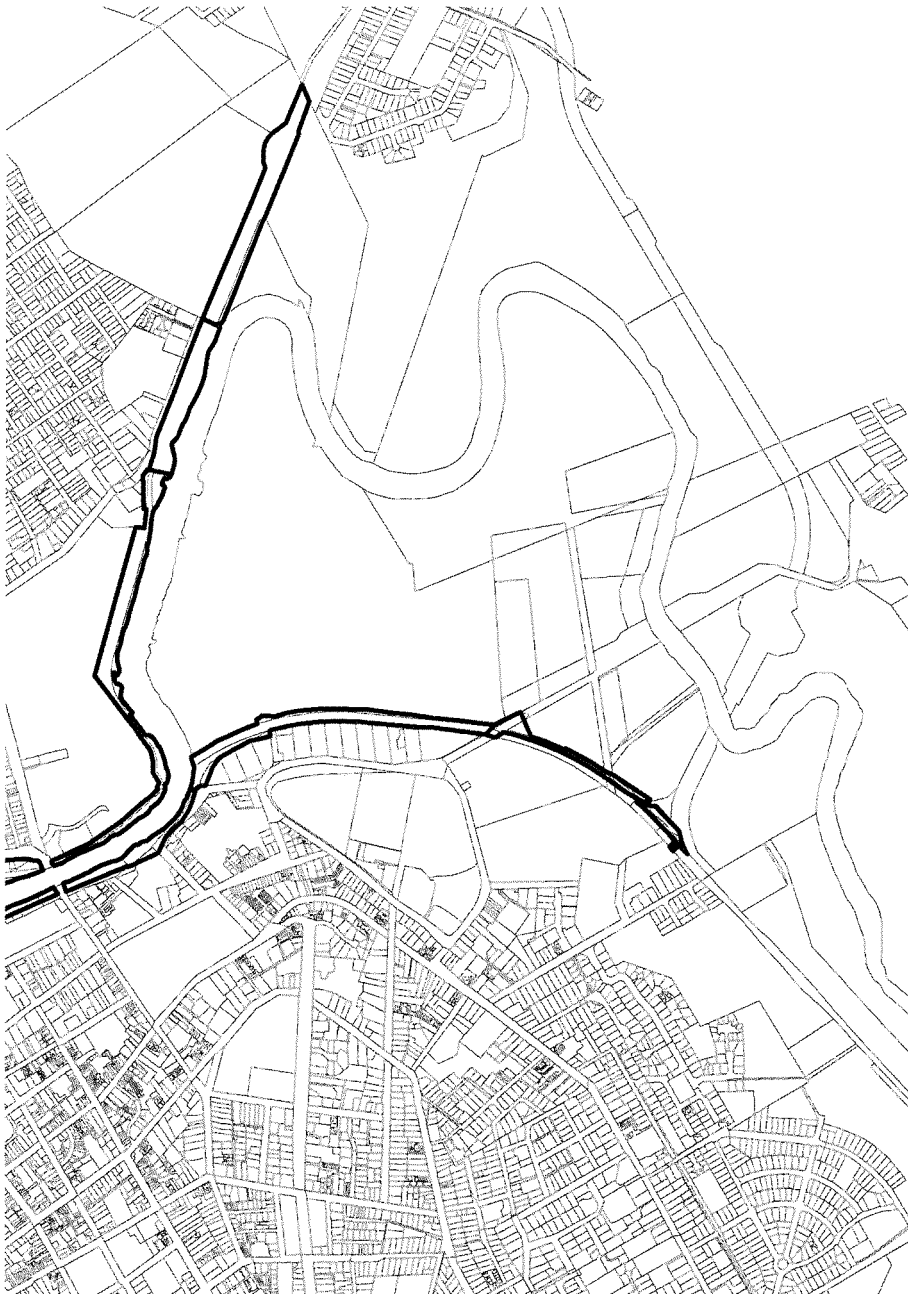
Map 2 – Detail of Map 1



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Map 3 – Detail of Map 1



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SCHEDULE 3 – LEGISLATION RESCINDED

Section 39

Flood Protection Works By-law, (Number 23/2001)

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SCHEDULE 4 – LEGISLATION REPEALED

Section 40

Launceston Flood Protection Act 1977 (No. 102 of 1977)