

Launceston Flood Risk Management Bill 2014

Clause Notes

PART 1 - PRELIMINARY

Clause 1. Short Title

Clause 2. Commencement

This Act will commence on the day it receives Royal Assent.

Clause 3. Interpretation

Defines the key terms used throughout the Act, including “Authority”, which refers to the Launceston Flood Authority, established by the Launceston City Council in 2008 under section 30 of the *Local Government Act 1993*. All references to the “Council” are to the Launceston City Council. Other significant definitions include: “flood-prone area”, defined by reference to Schedule 1; “levee-related land”, defined by reference to Schedule 2; and “public land”, comprising Crown land and Council land (both separately defined) and land owned by an instrumentality or agent of the Crown.

Clause 4. Flood-prone areas and levee-related land

Permits the Minister to substitute new maps for Schedule 1 (flood-prone area) and Schedule 2 (levee-related land). The flood-prone area must be same as the area specified in the Authority Rules in force immediately before the order is made.

Clause 5. Act binds Crown

The Crown will be bound by the Act.

PART 2 – POWERS, FUNCTIONS AND RIGHTS OF AUTHORITY

DIVISION 1 – Launceston Flood Authority

Clause 6. Powers and functions of Authority generally

The Authority is governed in its normal activities by its Rules. This Clause gives the Authority the following functions under this Act, and the power to do all things necessary or convenient to perform these functions:

- (a) to take action to reduce the likelihood, severity and duration of flooding in the flood-prone area, including dredging for such purposes.
- (b) to provide advice to the Council as to whether additional levees may be required.

- (c) to take all reasonable steps to ensure all levees constructed for the purpose of preventing flooding are maintained, and redesigned or augmented as necessary.
- (d) to provide information to assist the Council to determine the advice that ought to be given to the public about the risk of flooding in the flood-prone area; and
- (e) any other function specified in this Act.

The clause also states that the functions and powers of the Authority are not limited to the matters articulated in this clause, and confirms that the Authority can perform its functions outside the municipal area of the Council.

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

Requires the Authority to submit a proposed budget to Council for the upcoming financial year by 31 March each year. (This reflects the provisions of section 5.3, "Costs", of the 2008 *Launceston Flood Risk Management Deed*.)

Clause 8. Delegation by Authority

Gives the Authority the ability to delegate in writing any of its functions or powers under the Act or the Authority Rules, other than this power of delegation.

Clause 9. Authorised officers

The Authority may appoint authorised officers, to whom the Authority must issue an identifying document.

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

This clause constrains the Council from making rules that apply to the Authority if they are inconsistent with this Act, after the Act commences. (It refers to Division 4 of Part 3 of the *Local Government Act 1993*, which permits Councils to establish and oversee Authorities, and under which the Launceston Flood Authority was itself established in 2008.)

Clause 11. Winding up of Authority

This clause prevents the Council from winding up the Authority without the permission of the Minister. The Minister may authorise the winding up if the Council requests this in writing. The clause also sets out the changes to the operation of the Act that will take effect if the Authority is wound up.

DIVISION 2 – Powers and functions in relation to land

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

This clause gives the Authority the ability to carry out its functions on levee-related land, public or otherwise, but does not limit the land on which the Authority can perform its functions. (Note that a small proportion of the levee-related land – about 3% – is privately owned.)

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

This clause permits the Minister to revoke the Authority's power under clause 11 over part or all of the levee-related land, if he or she considers that the Authority is not adequately performing its functions (see especially subclause (7)(c)). The Minister must first issue a show cause notice, and provide the Authority with an opportunity to respond.

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

This clause enables the Authority to authorise persons to enter or to cross any land to perform a function or exercise its powers under this Act or the Authority Rules.

- If the land is not public land, notice must be given in writing 14 days before to the occupier or owner of the land. Notice is not required if flooding is imminent or occurring, or if the Authority is of the opinion that the levees require urgent maintenance or repair.
- Buildings cannot be entered without the permission of the occupier/owner, but permission is not required if flooding is imminent or occurring, and entry to the building is necessary.

Clause 15. Authority may construct temporary structures on land

This clause permits the Authority to construct a temporary structure (including a road) on public land to enable the construction of a levee, the repair or maintenance of a levee, or to carry out dredging. The Authority must remove the structure as soon as practicable thereafter, and restore the land to its previous condition. Planning permission is not required for this work.

Clause 16. Power to take samples

This clause enables the Authority to carry out tests, and take samples and photographs, for the purposes of exercising its powers and functions. It provides that it may do so on land entered under clause 13.

PART 3 – REFERRAL OF PLANNING MATTERS TO AUTHORITY

Clause 17. Referral to Authority of certain planning instruments

This clause gives the Authority the option of becoming a referral authority so that it is automatically asked if it would like to make representations in relation to certain planning instruments – that is, new or amended planning schemes, and any permits applied for in relation to an amendment requested under section 43A of the Planning Act.

The Authority may give a planning authority notice in writing (a “planning interest notice”) that a municipal area is an area of planning interest to the Authority, if use or development of the area could affect the likelihood or severity of flooding occurring in the flood-prone area, or could be affected by flooding in the flood-prone area.

The planning authority must then invite the Authority to make a representation on any relevant draft planning instruments. The Tasmanian Planning Commission must also be informed in writing that a planning interest notice has been issued by the Authority. The

Commission must provide to the Authority reasons in writing if it grants or confirms a permit under section 43H of the Planning Act (ie relating to a section 43A application) which is not in accordance with the Authority's representations.

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

Clause 18 provides the option for the Authority to become a referral authority so that it is automatically asked if it would like to make representations on certain discretionary development applications. To exercise this power, it must first identify to the planning authority the area of land in question, being land that could either affect flooding, or be affected by flooding in the flood-prone area.

Planning authorities that have received a notice relating to such land from the Authority must thereafter notify and invite the Authority to comment if they have received an application to grant or amend a discretionary permit in relation to that land under section 57 or section 56 of the Planning Act. The Authority therefore has the right to appeal such decisions, and it must be given reasons in writing if the decision is not in accordance with the Authority's representations on the application. The Authority can also revoke a notice given under this section.

Clause 19. Referral to Authority of applications for special permits

The Authority must be informed if a project of regional significance is declared under section 60G of the Planning Act, and the project is situated on land subject to an Authority notice under clause 17. The notice must invite the Authority to make a representation on the project. The Authority must be given reasons in writing if a special permit is subsequently given to the project that does not accord with the Authority's representations.

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

This obliges the Planning Commission to notify and invite the Authority to comment on any application for a special dispensation under section 30P of the Planning Act, if the land is within a municipal area about which the Commission has received notice from the Authority under clause 16 of this Act. The Authority must be given reasons in writing if the Commission determines an application for a dispensation in a manner that does not accord with the Authority's representations.

Clause 21. Appeals to Resource Management and Planning Appeal Tribunal

This ensures the right of the Authority to appeal planning decisions (including by being joined to appeals by other parties) that pertain to uses or developments which may impact on the flood-prone areas, whether or not it has made a representation on the matter under s.57 of the Planning Act.

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

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

The Council has the power to use or to develop levee-related land which is public for purposes that increase its amenity, or for community or recreational purposes. The use or development cannot prevent or impede the Authority's work, reduce the effectiveness of the levees, or significantly alter the drainage of the flood plain, and the Council must still comply with the Planning Act. (This clause has the effect, among other things, of giving the Council a limited use right in relation to the levee-related land that is Crown land or land owned by an instrumentality or agent of the Crown.)

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

This clause sets out the circumstances in which the Minister can issue a show cause notice to the Council, if the Minister is of the opinion that the Council is using levee-related land that is Crown land or land owned by an instrumentality or agent of the Crown for purposes other than those permitted in clause 21. It specifies that the causes for such a notice include use of the land for commercial purposes or in contravention of clause 21(3) – that is, in a manner that might compromise flood protection. The Council must then be given 28 days to respond.

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

The Minister may issue a notice to the Council to cease in relation to levee-related land owned by the Crown (or by an instrumentality or agent of the Crown). The Minister can only issue such a notice if a show cause notice under section 22 has been duly issued, the response period has expired, and the Minister considers there are no reasonable grounds not to issue the notice. The Minister may further issue a notice of revocation, if the Minister is of the opinion that the Crown ought to resume responsibility for the land specified in the notice, after which section 21 ceases to apply to that specified land.

Clause 25. By-laws

This clause reserves the right of the Council to make by-laws for the control, maintenance, protection, supervision and use of the levee-related land. However, it requires the Council to seek the approval either of the Minister, or of the relevant body, to make by-laws for land situated within flood plains enclosed by works under the *Launceston Flood Protection Act 1960*, and of which any estate or interest is vested in the Crown, the Authority, or a body established by or under any enactment.

Clause 26. Infringement notices

This clause enables the Council to issue infringement notices (instead of having to always initiate a court prosecution) for offences under this Act or prescribed offences under the Regulations. The maximum penalty for an infringement notice under the Act is 20 penalty units, or under the Regulations, 20% of the maximum penalty. The Council retains the power

to issue infringement notices under the *Local Government Act 1993* in relation to by-laws made under clause 25.

PART 5 – EMERGENCY MANAGEMENT

Clause 27. Municipal Committee to consult with Authority

Requires the relevant Emergency Management Municipal Committee to consult with the Authority before formulating any plans under the *Emergency Management Act 2006* in relation to potential flooding in the flood-prone area.

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

If a flood is imminent or occurring, this clause provides the Council with a range of powers it can use in relation to the flood-prone area, primarily to prevent, mitigate or to protect persons or property during a flood. It includes issuing directions to the Authority, erecting temporary structures, and directing landowners or other people to take specific actions.

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

Permits the State or Regional Controller, under the *Emergency Management Act 2006*, to direct the Council and/or the Authority to act or to cease an action (except in the case of the Authority's powers and functions in planning matters). This power applies whether or not a state of emergency has been declared.

Clause 30. Council to keep Regional Controller informed

If a flood is imminent or occurring, the Council must take all reasonable steps to keep the Regional Controller informed of all actions undertaken by the Council or any other person under clause 28, or by the Council, the Authority or any other person as directed under clause 29(1).

Clause 31. Application of *Emergency Management Act 2006*

This Act does not limit the application of the *Emergency Management Act 2006*, apart from in respect to the immunities for the Crown under clause 35(2).

PART 6 – OFFENCES AND ENFORCEMENT

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

This clause outlines the most serious offences under the Act, with maximum penalties of 100 penalty units: failure to comply with Council orders under clause 28, or hindering, threatening, misleading, impersonating or otherwise impeding persons acting under the Act or under an instruction issued under clause 28. The penalties include a maximum of 20 penalty units a day for continuing offences.

Clause 33. Offences in relation to flood protection works

This clause outlines the second most serious offences under the Act, specifically:

- removing, damaging or destroying any part of the flood protection works.
- excavating or changing the topography of flood protection works land (except with Authority approval).
- erecting a building or structure on or over flood protection works (except with Authority approval).
- interfering with the flow of water, or the operation of valves or gates of the flood protection works.
- obstructing access to the flood protection works.
- constructing roads or access ways, placing conduit or cable, or planting trees or vegetation over, through, under or on flood protection works (except with Authority approval).

They carry maximum penalties of 50 penalty units and include a maximum of 20 penalty units a day for continuing offences.

This clause also clarifies that this clause does not limit the application of the Planning Act to flood protection works.

Clause 34. Defence

This clause establishes a defence to a charge of committing an offence under clause 33 of this Act, if the person establishes that they were authorised to do so under the Act, or if they were acting in accordance with directions under the *Emergency Management Act 2006*.

Clause 35. Approvals to carry out actions

This clause permits a person to apply to the Authority for the issue of an approval to carry out an activity that might otherwise be in contravention of clause 33 of this Act. The Authority may issue or refuse the requested authorisation, or issue an authorisation with whatever conditions it thinks fit.

PART 7 – CONCLUDING PROVISIONS

Clause 36. Immunities

This clause provides a comprehensive range of immunities against actions for injury, damage or loss as a result of flooding in the flood-prone area, or as a result of the performance of other functions and powers under this Act. The immunities apply to the Authority, the Council, the Crown, responsible persons, employees and agents of the Crown, and to the State or Regional Controller. The immunities will apply retrospectively to any causes of action that arose before the Act commenced.

Clause 37. Regulations

Sets out the powers and scope of regulations that can be made under the Act. (Note that it is not necessary to make Regulations for the operation of the Act and that none are envisaged at this stage.)

Clause 38. Administration of Act

The Act is to be administered by the Minister for Planning and Local Government and the Department of Primary Industries, Parks, Water and Environment.

Clause 39. Legislation rescinded

The *Flood Protection Works By-law, Number 23/2001* is rescinded by the Act.

Clause 40. Legislation repealed

Repeals the legislation in Schedule 4 (the *Launceston Flood Protection Act 1977*).

SCHEDULE 1 – FLOOD-PRONE AREA

Contains an indicative map of the flood-prone area

SCHEDULE 2 – LEVEE-RELATED LAND

Contains an indicative map of the levee-related land, otherwise defined by reference to plan 9311 in the Central Plan Register.

SCHEDULE 3 – LEGISLATION RESCINDED

Rescinds the *Flood Protection Works By-law, Number 23/2001*

SCHEDULE 4 – LEGISLATION REPEALED

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