

SECOND READING SPEECH

URBAN DRAINAGE BILL 2013

Mr Speaker, I move that the Bill now be read a second time.

This Bill replaces the *Drains Act 1954* with modern and fit-for-purpose stormwater management legislation.

The Bill does not represent a change in the State Government's policy towards urban stormwater management. Rather, it clarifies the existing powers and obligations under the Drains Act to reflect the current operating environment.

The Bill enables the continued provision of stormwater services by councils. It is consistent with the broader regulatory framework relevant to stormwater management, represents best practice and avoids regulatory duplication.

Urban stormwater is defined as runoff from urban areas that has been concentrated by means of drains, subsoil drains, surface channels or formed surfaces. Many factors influence the volume of stormwater and the contaminants that may be transported by it. These include the duration and intensity of rainfall, topography and land use.

Traditionally, stormwater management has been solely concerned with the collection and removal of runoff water to minimise the risk of flooding in urban areas. Managing stormwater only for flood protection is no longer acceptable to the wider community.

This Bill requires the provision of stormwater services to also be sustainable and environmentally responsible. This means that stormwater management will be considered in the context of ecosystem health, catchment management, social amenity and safety.

This is consistent with the objectives of the Resource Management and Planning System of Tasmania to ensure the protection of the state's resources. It also means that councils are well placed to provide ongoing stormwater services to the Tasmanian community.

The need to replace the Drains Act became apparent through a review of Tasmanian stormwater legislation that was conducted by the Department of Primary Industries, Parks, Water and Environment.

The Drains Act was originally conceived to make better provision for schemes and systems of drainage. The review identified that the current legislation does not meet the contemporary needs of councils to provide stormwater services in a holistic and sustainable manner. Indeed, the Act had not been subject to a review during its operational life of almost 70 years.

Further, the wholesale removal of the provisions relating to sewerage, as part of the reform of the water and sewerage sector, compromised the intent of the Act and the powers bestowed on councils. The Act was also drafted in a manner that is ambiguous and out-of date.

The review of stormwater legislation and development of this Bill has involved extensive consultation. The draft Bill was released for public comment in January 2013. A copy of the draft Bill and an explanatory memo were provided to all councils, the Local Government Association of Tasmania and the water and sewerage corporations as well as being available on the Department's website.

As part of the consultation process, representatives from 23 of the state's 29 councils attended regional briefing sessions which helped shape the framework provided by this Bill.

The Department received valuable feedback from a number of individual councils, the water and sewerage corporations and the Local Government Association of Tasmania.

The object of this Bill is to protect the community by ensuring the safe and sustainable provision of stormwater services. To achieve this, the Bill provides for five key elements:

1. It provides each council with a non-delegable duty to effectively drain the urban part of its municipal area;
2. It provides that each council must develop a stormwater system management plan for its municipal area;

3. It describes the circumstances under which a person may be connected or disconnected from a stormwater management system;
4. It provides councils with the powers necessary to ensure the operation and protection of stormwater management systems; and
5. It provides councils and third party infrastructure owners with a structure for arranging for councils to access infrastructure that is owned and operated by a third party, for the purpose of providing stormwater drainage.

I will address each of these points in turn.

Point 1: The Bill makes the provision of stormwater services for urban areas a clear obligation for local councils. It is the Government's view that a council's duty to ensure the adequate drainage of the urban parts of its municipality includes the obligation to fund that drainage.

Throughout the review of the Drains Act and the development of the Bill the local government sector clearly and consistently identified that the provision of stormwater services should remain a local government responsibility.

Point 2: The Bill requires councils to develop a stormwater system management plan to specify the strategy for managing the assets used to deliver stormwater services.

The plan should identify the flood risk of each stormwater catchment and any other matters that a council considers appropriate.

The requirement for a stormwater management plan is a new obligation for councils, although a number of councils are undertaking this activity already. The planning process means that a council has full knowledge of the capital and operational costs associated with running its stormwater assets. It also enables a council to prepare for planned asset replacement and maintenance expenditure in a sustainable manner, without unplanned rate rises.

The need for councils to undertake asset management activities is also consistent with the Local Government Financial and Asset Reform

Project, which is a partnership between the Local Government Association of Tasmania and the Australian and Tasmanian governments to implement a framework for long term financial and asset management planning.

To ensure that these obligations are not too onerous for councils, the Bill provides councils with six years from the commencement of the legislation to develop their stormwater system management plans.

Point 3: The Bill provides clarity around who is entitled to receive a stormwater service.

Where a property is within 30 metres of a stormwater service, and it is reasonable to make a connection, the stormwater service provider must provide the property with a connection point for the disposal of stormwater. The service provider may set an appropriate fee for the connection.

A stormwater service provider must not prevent a property that is connected to its stormwater system from using the infrastructure unless it can provide an equally effective alternative stormwater system. The term service provider is used in these provisions to cover situations where there is a third party provider, such as a private owner of stormwater infrastructure.

Where a council is concerned that stormwater runoff from properties may be causing or adding to local flooding, a council may require the owner of a property to connect to its stormwater system if that property is located within 30 metres of the system.

Likewise, a council may require a property owner to disconnect from its stormwater system in certain circumstances. A council may require a connection to be removed - if that connection has been made in contravention of this Bill; if it is in the interests of health, safety or the environment to do so; if it is necessary in order to prevent damage to the stormwater system; or if the council thinks it is necessary for any other reason.

Point 4: The Bill provides each council with the necessary operational powers to carry out stormwater related works and protect its infrastructure from interference. For example, it provides the right to enter land and carry out inspections or undertake works.

These provisions will enable a council to execute its statutory duties.

In essence, these operational powers are contained in the Drains Act. In this Bill they have been updated to reflect contemporary practices and provide a clear regulatory framework going forward.

These provisions are not unique to stormwater services in Tasmania. Similar provisions exist in the electricity and water and sewerage sectors. They afford the right degree of flexibility, protection and clarity for both service providers and the community.

Point 5: The Bill provides council and third party infrastructure owners with a formalised structure for negotiating arrangements for councils to access stormwater infrastructure that is owned and operated by a third party.

A council's obligation to supply stormwater services is not contingent upon the ownership of particular assets.

Where existing infrastructure, owned by a third party, is available to convey stormwater, the Bill specifically provides for the consensual use of third party infrastructure to provide stormwater services. A council may engage a third party to provide a service or use the infrastructure of a third party.

A commercial arrangement between a council and the third party should govern the engagement or use of the infrastructure. This agreement should cover the full terms of provision of the stormwater service, including performance criteria, capital expenditure, operational and maintenance arrangements and asset replacement.

Infrastructure owners should be fairly compensated for the use of their infrastructure, and councils should have a sufficient level of protection to ensure that they are not overcharged. The intention is that the burden faced by ratepayers is a fair and reasonable price for the service they receive.

A council has no authority to use third party infrastructure to provide stormwater services, unless the third party consents to that use. However, infrastructure owners cannot unreasonably withhold consent to the use of their infrastructure to provide a stormwater service.

In situations where agreement for a council to make use of a third party's infrastructure cannot be reached, the Bill provides a dispute resolution mechanism. Either party may refer the matter to an arbitrator, in accordance with the *Commercial Arbitration Act 2011*, for a binding decision.

In addition to the powers conferred by the Commercial Arbitration Act, under the Bill the arbitrator has the power to determine the conditions relating to the supply of stormwater services, price levels, and details of the agreement, including service levels and dispute resolution arrangements.

In making a determination, the arbitrator must endeavour to achieve the best outcomes for the community. This means that price shocks and cross subsidisation should be minimised and there should be an equitable distribution of costs.

When making a determination in relation to access to third party infrastructure that was transferred to a water and sewerage corporation from a council, an arbitrator will take into account - that the asset will be renewed over time; that the service provider should be able to recover the efficient operational costs; that both parties are not constrained from executing their statutory obligations; the returns on council-owned stormwater assets in Tasmania; and any other relevant matter.

This principles-based approach will provide guidance to the arbitrator about the outcomes the Government intends to achieve under this Bill, without being overly prescriptive and potentially compromising the commercial arbitration process.

The approach to dispute resolution in the Bill is also consistent with the framework that currently exists under the Drains Act. The Bill clarifies the existing provisions to provide certainty for all parties.

In summary, this Bill provides for the improved management of the stormwater sector by ensuring the accountability of councils, improving the transparency of stormwater service provision and modernising the legal framework that underpins the sector. This will provide clarity to councils, ratepayers and other stakeholders in Tasmania and is a sound foundation upon which this sector can base its future activities.

The Government fully supports the introduction of this Bill.

Mr Speaker, I commend this Bill to the House.