**SOUTH EASTERN WATER CONSERVATION AND DRAINAGE BILL 1992**

**Legislative Council, 18 February 1992, pages 2738-9**

**Second reading**

Received from the House of Assembly and read a first time.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second lime.

I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

Explanation of Bill

Flood damage during recent winters in the rural sector of the South-East has prompted a review of the South Eastern Drainage Act. It was evident that there would be advantages in dealing with the flood water problems if the legislation provided for over all coordination and control to achieve solutions on a regional basis. Past remedial actions taken in isolation have accentuated the problems downstream and highlighted the need for a catchment wide management approach. Uncoordinated private works have also contributed to the problem by passing floodwater from one property to another along northerly flowing watercourses in an uncontrolled way. This has caused the acceleration and expansion of flooding and soil salinity problems in the Upper South- East.

The Government and the South Eastern Drainage Board responded to calls from public and private sectors for positive action to resolve the floodwater management dilemma. Many public meetings were held to discuss possible solutions and management options for floodwater control. It was recognised that overall management by one independent authority was the first important area for improvement. There was agreement that the South Eastern Drainage Board had achieved effective and efficient floodwater management within its area of operation. Consequently it was logical for the board's role and area to be expanded rather than create a new authority.

The basic proposals of this Bill were debated at a public meeting when all parties concerned with floodwater management in the South-East gave unanimous support for the concepts incorporated in this legislation. Public comment has been sought on the draft Bill and all submissions were carefully considered in formulating this legislation.

It was decided that a new Bill should be drafted rather than amend present legislation because through age and a number of amendments over the years, the Act had become disjointed and outdated.

The Bill covers the whole rural sector of the South-East and includes the area previously administered by the Tatiara Drainage Trust.

Provision has been made for the District Council of Millicent to retain management of its autonomous drainage system under the same conditions and responsibilities as applies to the remainder of the defined area.

The enlarged area has been divided into three electoral zones and a land-holder will be elected to the board from each of these zones. Submissions strongly favoured local government representation on the board and two extra Government appointees have been added (making four in all) to cover its wider responsibilities. An effort has been made to keep board membership to a reason able number, however, it was found that eight were necessary to meet the diverse conservation and flood protection requirements of the new legislation. Voting franchise for board elections has been extended to all landholdings in excess of 30 hectares where previously voting was restricted to a specific drainage area.

The qualifications for board appointments are left open so that flexibility is retained and the best persons can be appointed to provide expertise and skill during any management phase. The Bill also provides for the establishment of advisory committees to provide input and local knowledge into board management decisions.

In drafting this legislation emphasis has been placed on the board's conservation responsibilities and its wider surface water and groundwater management role. There is a requirement for the board to prepare a management plan and conform with all Government legislation and policies regarding the protection of the environment, and conservation of natural resources. This integration of resource management on a regional basis is consistent with Government objectives. Public involvement is encouraged and will be sought when the board's management plan is being prepared or reviewed.

The Act provides for the board and land-holders to enter into agreements for the joint construction and funding of works. This replaces the involved and complex petition provision of the old Act. These provisions have not been used by land-holders for the past 30 years due to the lengthy and complicated procedure necessary to reach the final outcome. In recent years the board has entered into simple concise agreements for joint works with land-holders, for example, weirs, etc. The proposed legislation formalises agreement procedures presently adopted which has proved satisfactory to the parties concerned.

The main thrust of the Bill is to allow one authority to coordinate and control all private works in the area. This will allow an integrated catchment wide approach to be adopted in finding solutions to flooding and soil salinity problems. Present legislation provides the board with authority to control private works that discharge or effect the flow of water into the Government drainage system. This has proved to be manifestly inadequate in dealing with present day problems and rural water management needs. Support has been given from public and private sectors and the local community for legislation along the lines proposed.

A right of appeal against key board decisions affecting land holders has been included in the new Bill. Appeals against board decisions will be heard and determined by the Water Resources Appeal Tribunal. This approach will forge links between two water resource related pieces of legislation. Rights of individual land holders are protected by the appeal process. This avenue of redress is not available under current legislation.

The Government is fully aware of the important contributions made to the State's economy by the highly productive South-East region. It recognises that floodwater management and soil salinity problems have developed in the area in recent years. This legislation which has strong grass roots support provides a sound legislative base for addressing these complex problems on a regional basis. The ultimate outcome will be to enhance agricultural production and the natural environment by implementing compatible strategies.

In summary, this Bill seeks to:

change the name of the board and the Act to reflect changed rural floodwater management responsibilities.

provide the board with legislative authority to control and coordinate all private works within the boundaries of the expanded defined area.

increase board membership to eight, consisting of four local members and four Government appointees.

increase the proclaimed area under the control of the board to include the Coonalpyn Downs/Tatiara areas and the whole of the Lower South-East.

update and streamline administrative procedures and provide appeal provisions.

provide for advisory committees to be appointed by the Minister in strategic areas.

ensure that a management plan is prepared involving public participation, which will take an integrated approach in managing floodwaters and the natural environment on a regional basis.

repeal the South Eastern Drainage Act 1931 and the Tatiara Drainage Trust Act 1949.

I commend this Bill to the Council.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement on a day to be fixed by proclamation.

Clause 3 provides necessary definitions. The board's area of jurisdiction is all that part of the South-East that does not fall within the Millicent council's area. For the purposes of this Act, the council's area excludes a small portion of land that has Government drains on it and therefore should fall under the board's jurisdiction The total area of the South-East is defined in a schedule.

Clause 4 empowers the Minister to direct the vesting of private water management works in the board or the council or the vesting of board or council water management works in any person. This power can only be exercised at the request of, or with the approval of, all parties concerned (except in the case of the board, which only need be consulted by the Minister).

Clause 5 makes it clear that this Act does not override other Acts.

Clause 6 gives the Minister a power of delegation to the board, but not in respect of powers under Parts I and II of the Act.

Clause 7 sets out the objects of the Act, which are to prevent flooding, improve the quality and productiveness of rural land and enhance or develop wetlands and the natural environment in general. All persons involved in the administration of the Act are required to act consistently with these objects.

Clause 8 continues the current board in existence but changes its name to the 'South Eastern Water Conservation and Drainage Board'. The board continues to be a body corporate.

Clause 9 gives the board a membership of eight. Four members will be nominated by the Minister, and of these, at least one must be an expert in environmental management. One member will be appointed on the nomination of the Local Government Associ ation. The three remaining members will be persons elected by land-holders from the three electoral zones.

Clause 10 provides that elections of board members will be conducted by the Electoral Commissioner in accordance with rules prepared by the Commissioner and approved by the Minister. The Commissioner can declare a person duty elected where there is no contest and, if there are no nominations for an election, the Governor may fill the vacancy.

Clause 11 sets out the rules for determining who is to vote at board elections. Voters' rolls will be prepared for each electoral zone by the board with the assistance of the Valuer-General. A person or body corporate that owns or occupies more than 30 hectares of land in an electoral zone is entitled to be enrolled. A group of joint owners or occupiers of more than 30 hectares is also entitled to be enrolled. Groups and bodies corporate can nominate the person who will vote on their behalf. In the case of a body corporate, it must be a director, manager or other employee of the body corporate. A voters' roll closes 30 days prior to the election. A person may vote both in his or her own right and also as a nominated agent for a group or a body corporate. Voters' rolls will be made available for inspection by the public.

Clause 12 provides for the appointment of the presiding member, the deputy presiding member and such other deputies of other members of the board as may be appropriate.

Clause 13 provides that a board member will be appointed or elected for a term of four years. Casual vacancies, even for elected members, may be filled by the Governor. If the vacancy occurs in the office of an elected member, the person appointed must be an eligible land-holder from the same electoral zone.

Clause 14 entitles board members to receive allowances.

Clause 15 sets out the standard provisions relating to board procedures.

Clause 16 is the usual provision dealing with conflict of interest.

Clause 17 sets out the functions of the board, which are generally to manage surface water on non-urban land in the South- East, to lower the water table of land, to carry out or promote relevant research and to give advice and assistance to others in the board's field of expertise. The board is required to consult with all relevant Government authorities and adhere to their policies when the board is performing its functions. The board is also required to involve the community in water conservation and management, and must, in administering this Act, always endeavour to do so by negotiation first rather than by enforcement.

Clause 18 requires the board to prepare and update on an annual basis a management plan detailing its, and the council's, proposed activities over the ensuing three years. The South-East community is to be given an opportunity to comment on the plan. The Minister has the Final right of approval of the manage ment plan and of any subsequent amendments of it.

Clause 19 sets out the powers of the board to hold and deal with property, enter into any contract, engage consultants, borrow or lend money, and do any other thing incidental to the performance of its functions.

Clause 20 renders the board subject to the Minister's control and direction.

Clause 21 empowers the board to delegate its powers (other than a power delegated by the Minister) to a member or employee of the board or to any of the advisory committees.

Clause 22 sets out that the staff of the board is comprised of Public Service employees assigned to the board and such other persons who the board itself may employ. A person employed by the board is not a Public Service employee.

Clause 23 requires the board to keep proper accounts and requires the Auditor-General to audit those accounts at least once a year.

Clause 24 requires the board to submit an annual report to the Minister. An annual report must include particulars of the progress made by the board and the council in achieving the objectives of the board's management plan during the preceding financial year.

Clause 25 sets out the council's functions under this Act. The council's primary function is to implement the board's approved management plan within the council's area. The council is also required to involve the community in water conservation and management and must seek to administer this Act on the basis of negotiation rather than enforcement.

Clause 26 renders the council subject to the Minister's control and direction in the performance by the council of its functions under this Act.

Clause 27 requires the council to keep a separate fund (from its general revenue) for money received by the council under this Act. The council must keep proper accounts in respect of that fund and those accounts must be audited by the Auditor-General.

Clause 28 provides that the council may delegate its powers under this Act to the board.

Clause 29 establishes the Eight Mile Creek Water Conservation and Drainage Advisory Committee, which will be appointed by the Minister. The board will nominate one person, at least three must be eligible land-holders in the Eight Mile Creek area, and at least one must be from the Government sector. The committee will advise the board on the administration of this Act in the Eight Mile Creek area.

Clause 30 establishes a similar advisory committee for the Upper South-East.

Clause 31 enables the Minister to establish other advisory committees.

Clause 32 sets out the terms and conditions of office for all members of advisory committees. Members of advisory commit tees are entitled to receive allowances.

Clause 33 sets out standard provisions for advisory committee procedures.

Clause 34 empowers the board to construct water management works or alter or remove any of its water management works. All such work must be work that is contemplated by the board's approved management plan, unless the Minister gives special approval for the work.

Clause 35 empowers the council to do likewise, and the council is similarly constrained by the board's management plan.

Clause 36 continues the present right of the council to discharge township stormwater into the council's water management works under this Act. Costs incurred as a result of the exercise of this power must be paid out of the council's general revenue.

Clause 37 continues the existing provision whereby all water in the board's and the council's water management works is the property of the Crown. The Minister can grant rights to this water to any person.

13 February 1992 LEGISLATIVE COUNCIL 2739

Clause 38 gives the board and the council power to enter and inspect land and private water management works and may clean out, deepen, shore up, widen or raise or lower the banks of watercourses, lakes, dams, etc. The power to enter land is only exercisable at a reasonable time of the day and on giving reason able notice (if not less than one day) to the land-holder, except in the case of flood or other emergency.

Clause 39 makes provision for requiring contribution from land-holders for work carried out by the board or the council where the board or council has already reached agreement with some land-holders on the question of funding. The relevant authority may only make such a requirement if it has readied agreement with a number of land-holders who represent between them more than 75 per cent of the land the authority believes will benefit from the proposed work. The authority must make the requirement for contribution no later than three months after completing the work. Payment may be made in instalments if the authority so allows. Such debts are a charge over the land.

Clause 40 empowers the board and the council to fence their water management works. Adjoining land-holders are liable for half the cost of the fencing work, subject to any agreement reached with the relevant authority. If the board or council proposes to enforce this statutory liability, notice must be sent to the adjoining land-holders no later than three months after the completion of the fencing work. Debts under this section are charges over the land in question.

Clause 41 makes it an offence for a person to construct water management works unless he or she has a licence from the relevant authority to do so. It is also an offence to alter or remove water management works (whether constructed before or after the commencement of this Act) without a licence. A licence is only required for the construction, alteration or removal of works if the flow of water onto or from some adjacent land would be affected, or the flow of water into board or council works would be affected.

2740

Clause 42 makes it an offence to construct bridges or culverts over, through or along board or council water management works or drainage reserves.

Clause 43 provides generally for the granting of licences by the board or council.

Clause 44 gives the board and the council the power to direct a person to carry out specified work to remedy certain contraventions of the Act or to counteract the harmful effect private water management works may be having on the proper manage ment or conservation of surface or underground water in the South-East. If a person fails to comply with such a direction, the relevant authority may cause the work specified in the notice to be carried out and the cost recovered from the defaulting land holder. This power may be exercised in relation to successors in title to the land on which the works in question are situated. Debts arising under this provision are a charge over the land in question.

Clause 45 provides that a person cannot take water from board or council water management works without the permission of the relevant Minister.

Clause 46 creates the offence of interfering with board or council water management works without the permission of the relevant authority.

Clause 47 provides that permission under the two preceding sections may be given subject to such conditions as may be thought fit. It is an offence to breach such a condition.

Clause 48 provides a right of appeal against a decision of the relevant authority that particular land would benefit from pro posed works that are to be wholly or jointly funded by land- orders, a decision to refuse a licence for private water management works or a bridge or culvert, a decision to vary or add to the conditions of such a licence or a decision to require a person to carry out certain work pursuant to section 44. Appeals will go before the Water Resources Appeal Tribunal.

Clause 49 enables the relevant authority or the Water Resources Appeal Tribunal to suspend the operation of a decision while an appeal is pending.

Clause 50 gives the board and the council the power to waive or defer payments due by land-holders.

Clause 51 enables the appointment of authorised officers by the board or the council. A board authorised officer may generally only exercise the powers of an authorised officer within the board's area, but the council may give written authority for such an officer to operate within the council's area. The same provisions apply in relation to the council authorised officers.

Clause 52 sets out the powers of authorised officers. A warrant from a justice is required if force is to be used in entering any land, except where the authorised officer believes urgent action is required.

Clause 53 creates the usual offence of hindering, obstructing or using abusive language against an authorised officer or any other person engaged in administering the Act.

Clause 54 provides that offences against the Act are summary offences.

Clause 55 provides that the director and manager of a body corporate that commits an offence against the Act will also be guilty of the same offence.

Clause 56 provides a general 'no negligence' defence.

Clause 57 provides some evidentiary aids.

Clause 58 gives the usual immunity from personal liability for persons engaged in the administration of the Act (whether as a board member or otherwise).

Clause 59 provides for the making of regulations.

The first schedule defines the area of the South-East.

The second schedule defines the land that is excluded from the area of the council.

The third, fourth and fifth schedules define the areas comprising the three electoral zones under the Act.

The sixth schedule, first, repeals the South-Eastern Drainage Act and the Tatiara Drainage Trust Act and, secondly, provides some necessary transitional provisions. The current board members will vacate their offices to enable fresh appointments and elections to be made. The assets, rights and liabilities of the Tatiara Drainage Trust vest in the District Council of Tatiara. The drains and drainage works of the board or the council under the repealed Act continue to be vested in the relevant authority. The drains and drainage works of the Eight Mile Creek area that were vested in the Minister under the repealed Act now become the responsibility of the board. The Minister may continue to correct, if necessary, any of the drain vesting plans that were lodged under Part II of the repealed Act.

The Hon. R.J. RITSON secured the adjournment of the debate.