

(It is expected that, in this context, the as yet not released guidelines will set out a series of "trigger" questions based on these criteria. The answers to those questions would be scored by the guideline to produce a numerical result which determines the need for an EIA study.)

Once it has been decided that a State level impact assessment is required, draft terms of reference are prepared by the relevant public sector entity. The Regulation requires that the following items must, as a minimum, be included when preparing terms of reference for EIA studies:

- * development impacts;
- * effects on public infrastructure;
- * justification for the development and availability of feasible alternatives to where and how the development is to be undertaken;
- * the relationship of the development to planning schemes or policy frameworks, including those of a relevant local government or the State or Commonwealth governments; and
- * the way that a developer proposes to implement best practice environmental management.

The draft terms of reference are required to be publicly advertised for comment. A minimum of 28 days is to be provided for submissions on the draft terms of reference from the public and other interested public sector entities. It is then envisaged that the final terms of reference would be prepared (having considered all properly made submissions) and provided to the proponent and those parties which made a submission on the draft terms of reference.

Once the terms of reference have been set, the following processes would apply:

- * the proponent prepares a draft EIA study and submits it to the public sector entity instigating the study;
- * the draft EIA study is made available and advertised for public comment, with submissions to be received within a period of two months;
- * the relevant public sector entity evaluates the study and all properly made submissions (including those from other public sector entities);

- * the public sector entity notifies the proponent of any additional information requirements;
- * the proponent prepares a final EIA study;
- * the final EIA study (including technical reports and advice from other public sector entities) is made available as a public document; and
- * the initiating public sector entity prepares an evaluation report of the EIA study within 42 days of receiving the final EIA study

**Paul Newman
Shaun Messer
Blake Dawson Waldron
Brisbane**

SOUTH AUSTRALIA

Catchment Water Management Act 1995

This Act, which commenced operation on 4 May 1995, is part of a comprehensive program by the Government to solve the problem of water quality in two of South Australia's most polluted urban waterways, the Patawalonga River and the River Torrens. The Act provides for the management and use of catchment water and the prevention and reduction of flooding. The Act primarily revolves around the establishment of catchment areas and catchment water management boards which will control and manage these catchment areas.

Catchment Water

The Act defines "catchment water" as water that has fallen as rain or hail and includes water flowing naturally from a spring, water seeping to the surface from below ground level and water pumped by the Minister administering the *Waterworks Act 1932* (SA) into a watercourse, channel or lake. It does not include, however, water in the waterworks or water in an underground aquifer.

Other relevant definitions are:

"Channel" includes a drain, gutter or pipe or part of a channel.

"**Lake**" includes a natural or artificial lake, pond, lagoon, swamp, or marsh, including a dam or reservoir or part of a lake.

"**Watercourse**" means a river, creek or other natural watercourse (whether modified or not) including a lake through which catchment water flows or part of a watercourse.

Objects of the Act

- * to improve the quality of catchment water with resulting benefits to other natural resources of the State including the land and its soil, native vegetation and native animals;
- * to protect watercourses, channels and lakes and their ecosystems from degradation and to reverse degradation that has already occurred;
- * where appropriate, to make catchment water available for primary production or for industrial, commercial, domestic, recreational or other purposes;
- * to encourage members of the community to take an active part in improving the quality of catchment water;
- * to educate members of the public in relation to the management of catchment water and of catchments.

Catchment Areas

Catchment areas are created by a proclamation of the Governor and they will comprise the area, or part of the area, of one or more councils. The Governor may only proclaim a catchment area on the recommendation of the Minister and the Minister cannot recommend the making of a proclamation without the consent of the relevant council(s). If a Council does not consent to the making of a proclamation, a consultation process must take place between the Minister and the Council.

This process involves the Minister allowing the Council a reasonable opportunity to make written submissions and if the Council so wishes, oral representations. Prior to making the recommendation, the Minister must have regard to those submissions and he/she must not make the recommendation unless the catchment area requires the inclusion of the particular opposing Council and it is fair and reasonable in all the circumstances that the Council be included.

It should be noted that the South East as defined in the *South Eastern Water Conservation and*

Drainage Act 1992 cannot comprise or form part of a catchment area.

Catchment Water Management Boards

A Board is to be established for each catchment area. It will be a body corporate, have perpetual succession and a common seal and be an instrumentality of the Crown. It will therefore hold property on behalf of the Crown and be subject to the direction and control of the Minister.

Boards will consist of between five and nine members appointed by the Governor and will include persons who have knowledge of, or experience in, the management of natural resources, catchment water drainage or flood control, preserving or improving water quality or catchment water management. Persons will be nominated for a Board by either the Council, the Minister or the Local Government Association. Members of a Board hold office for a period of two years, but are eligible for re-nomination upon expiry of their term of appointment.

The Act sets out the procedure to be adopted by a Board in conducting its meetings, which must be in public unless the Board wishes to consider a matter in confidence. The matters that may be considered in confidence are similar to those contained in section 62 of the *Local Government Act 1934* (SA). Notice of a Board meeting must be advertised in a newspaper circulating generally throughout the State and in the particular catchment area giving at least 14 days notice of the meeting.

Duties of Board Members

Members must at all times exercise a reasonable degree of care and diligence in the performance of their functions. This duty includes such things as being aware of the activities of the Board and the circumstances in which it operates, obtaining sufficient information and advice about matters to be considered by the Board and exercising an active discretion when deciding any matters. Members must therefore be diligent in their attendance at and preparation for, Board meetings.

It probably goes without saying that members must at all times act honestly in the performance of their functions and must disclose any conflict of interest as soon as reasonably practicable. Members who breach any of these duties may be subject to both criminal and civil proceedings.

Functions and Powers of Boards

The primary function of a Board is to prepare a water management plan for its catchment area. It must then implement any functions set out in the

plan or any other functions assigned to the Board by the Act. Boards have fairly wide powers and these are set out in section 27 of the Act.

A board may:

- * stop or reduce the flow of water in a watercourse or channel, divert water flowing in a watercourse or channel to another watercourse or channel or to a lake or control the flow of water in a watercourse in any other manner;
- * hold water in a watercourse, channel or lake or in any other manner;
- * divert water in a watercourse, channel or lake to an underground aquifer;
- * dispose of water to a lake, underground aquifer or to the sea;
- * deepen, widen or change the course of a watercourse or channel or deepen or widen a lake;
- * construct or erect any embankment, wall, channel, road or other works;
excavate any land for the purposes of forming a lake or for any other purpose;
- * construct or erect any building or structure;
- * install pipes, machinery or other equipment;
- * inspect, examine or survey any land and for that purpose:
 - fix posts, stakes or other markers on the land; and
 - dig trenches or sink test holes in the land to determine the nature of the top soil and underlying strata; and
 - remove samples for analysis;
- * acquire land pursuant to a contract with the owner of the land or pursuant to the *Land Acquisition Act 1969 (SA)*

The Board also has the power to sell water for primary production or for industrial, commercial, domestic, recreational or other purposes at a price approved by the Minister. The water must meet certain quality standards prescribed by regulation (none are prescribed yet), be water that the Board is entitled to take from an underground aquifer or be

water that would otherwise be disposed into the sea.

The legislation recognises that in the future aquifer recharge is likely to occur on a larger scale within South Australia and therefore the Board must enter into an agreement with the Minister administering the *Water Resources Act 1990 (SA)* if it wishes to divert water to an underground aquifer with the intention of taking water from the aquifer at a later date. The agreement will have to specify the quantity of water that the Board proposes to divert to the aquifer, the quantity of water that the Board will be entitled to take from the aquifer, the time or times at which the water may be taken and any other terms and conditions which the parties wish to include.

Board's Responsibility for Infrastructure

Pursuant to section 7 of the Act the Governor may, by proclamation made on the recommendation of the Minister, vest in a Board the use of any lakes, embankments, walls, channels, buildings, structures, pipes, machinery or other equipment vested in or under the care, control or management of a Council or controlling authority. Such a proclamation can only be made if the Minister considers it is necessary or desirable to enable the Board to carry out its functions. The Board is then responsible for the maintenance or repair of the infrastructure or land. A proclamation that relates to buildings, structures, machinery or equipment cannot be made without the consent of the Council or controlling authority if any of these items could otherwise have been sold or used by the Council or controlling authority, however a Board is not liable to pay compensation in respect of the vesting of these items.

It should be noted that the definition of infrastructure in connection with this provision includes lakes, embankments, walls, channels or other works, buildings or structures, or pipes, machinery or other equipment.

The Board also has the care, control and management of, and is responsible for, the maintenance and repair of lakes, embankments, walls, channels or other works, buildings or structures constructed or erected by it or pipes, machinery or other equipment installed by it.

Entry and Occupation of Land

For the purpose of carrying out its functions, a Board or a person authorised by a Board may enter and occupy any land after giving reasonable notice of the intention to enter the land to the occupier of the land. This notice must be given at least 24 hours prior to the entry, except in an emergency or where the occupier has given his or her consent.

By-Laws

A Board can make any by-laws that can be made by a constituent council or a controlling authority in relation to water that is under the control of the Board or infrastructure that is under the care, control and management of the Board. The definition of infrastructure includes "watercourse". Where the care, control and management of infrastructure is shared by a Board and a council or controlling authority, only the Board may make by-laws. Before making any by-laws, the Board must consult each constituent council in whose area the water or infrastructure to which the by-law will apply is situated.

It should be noted that the functions and powers conferred on a Board either pursuant to the Act or any other Act, operate to the exclusion of the functions and powers of a constituent council or a controlling authority.

Catchment Water Management Plans

There are very detailed provisions in the Act as to what such plans must contain and as to what consultation procedures must be undertaken during the drafting of these plans. The plans will set out any one or more of the following functions of the Board:

- * removal of solid or dissolved impurities from catchment water in a specified watercourse, channel or lake or in a specified system of watercourses, channels or lakes in its catchment area;
- * protection of specified watercourses, channels and lakes and their ecosystems from degradation by pollutants and exotic plants and animals and reversal of such degradation where it has occurred;
- * control of the flow of catchment water and management of catchment water in a specified watercourse or channel or in a specified system of watercourses or channels in its catchment area to prevent or reduce flooding;
- * holding catchment water in lakes or diversion of catchment water to an underground aquifer so that it may be used for primary production or for industrial, commercial, domestic, recreational or other purposes;
- * the care, control and management of a specified watercourse, channel or lake;
- * the use and the care, control and management of land specified in the plan

that adjoins or is adjacent to a watercourse, channel or lake;

- * providing financial or any other form of assistance to constituent councils, community groups engaging in an activity in the catchment area that will improve the quality of catchment water;
- * education of members of the public in relation to the management of catchment water and of catchments.

The plan must set out the means by which the Board proposes to carry out its functions such as the diversion of water from or to a specified watercourse in the channel or lake; the holding of water in a specified lake or diversion of water to an underground aquifer; the modification of a specified watercourse, channel or lake; or the excavation of a lake, dam or reservoir; methods for improving the quality of water and proposals for the use of water for primary production or for industrial, commercial, domestic, recreational or other purposes. The plan must also set out any proposals the Board has for the beautification of a watercourse, channel, lake or adjoining land or to make a watercourse, channel, lake or adjoining land available for public recreation.

The plan must identify any changes that are necessary or desirable to a Development Plan or to any activity of a constituent council or controlling authority in the interests of preventing or reducing flooding, reducing damage caused by flooding or preventing or reducing the pollution of water. Further, the plan must identify any land that is to be acquired by the Board, any of the infrastructure which is to be vested in the Board, the staff that will be employed by the Board, an estimate of the expenditure necessary in each year of the plan for the implementation of the plan, the contribution that must be made by the constituent councils in respect of the first year of the plan and any other information or material that is required by regulation.

If amendments are required to a Development Plan, the Board must prepare a report in relation to these changes and attach this report to the draft management plan. Such a report must be prepared as though it were a plan amendment report pursuant to section 26 of the *Development Act 1993* (SA). This report must then go to the Minister for the necessary action under the *Development Act*.

Consultation

When the Board is preparing a draft management plan, it must consult with each of the constituent councils, the owner or owners of any land that the Board considers should be acquired by the Board, the public, any persons prescribed by regulation

and in some instances, the Minister administering the *Waterworks Act 1932*. After the draft plan is completed the Board must provide copies to the Minister, each constituent council and any other persons prescribed by regulation. The Board must also consult the public in relation to the draft plan. This process of public consultation is intended to be undertaken by public meetings and inviting the public to make written submissions in respect of the draft plan to the Board.

Before approving a draft management plan, the Minister must consult the Board, each of the constituent councils, the Local Government Association, owners of any land that is to be acquired under the plan, any other persons prescribed by regulation and in some instances the Minister administering the *Waterworks Act 1932* (SA). The Minister must also have regard to any submissions received from members of the public and the reports of the person or persons who conducted the public meeting. After consulting with these persons, the Minister may either approve the plan with or without amendment or refer the plan back to the Board for further consideration.

The Board and the Minister must, in preparing and approving these plans, ensure that as far as practicable the plan will preserve or enhance the quality of the State's natural resources including the land, its soil, the water, native vegetation and native animals.

Reviews of plans must be undertaken annually and similar procedures must be undertaken as those necessary for the preparation of the original plans. Boards must complete the preparation of a draft management plan in respect of its catchment area within six months after the Board's establishment.

Contribution by Councils

The Act provides that the constituent councils of a catchment area must contribute to the cost of implementing a management plan for that area. This amount will be determined by the Minister and will be the estimated expenditure of the Board in a financial year less the amount of other funds available to the Board, or that are expected to be available to the Board, to meet that expenditure.

Liability for the amount will be shared between the constituent councils in the same proportions as the capital value of the rateable land situated in the catchment area is distributed between the areas of the councils.

Payment of councils share of the amount is payable quarterly in equal instalments and interest accrues on any amount unpaid at the prime bank rate for the financial year in which the instalment was payable. The amount payable and any interest that

accrues in respect of the amount is recoverable by the Board as a debt.

Imposition of Rate by Councils

The Act provides that in order to reimburse themselves for the amount contributed to the Board, the constituent councils **must** impose a separate rate under Part 10 of the *Local Government Act 1934* (SA) on rateable land in the catchment area of the Board. The basis of the rate imposed by each council must be the same as the basis for the general rates imposed by the council.

The council must fix the rate at a level calculated to raise the same amount as the council's share of the amount to be contributed to the Board before that share is reduced by the deduction of rebates and remissions and the council must not take into account when fixing the rate the fact that rebates and remissions will reduce the amount returned by imposition of the rate. Accounts for rates sent by a council must show the amount separately from any other amount for which the person is liable.

It should be noted that the provisions in the Act relating to contributions by councils and imposition of rates by councils will expire two years after the commencement of the Act.

Compensation

A Board is liable to pay compensation to a person who has a riparian right to take water from a watercourse, channel or lake or who has the right to take water from a watercourse, channel or lake pursuant to a water recovery licence granted under the *Water Resources Act 1990* (SA), for any loss or damage resulting from the effect on the exercise of the right by that person of the Board stopping, reducing or diverting the flow of water in the watercourse or channel or in a watercourse or channel that flows into the lake. A Board must also pay compensation to the owner or occupier of any land that the Board or a person authorised by the Board has entered, or entered and occupied, for loss or damage caused by the entry or occupation of the land.

Compensation is not payable by a Board for loss or damage caused by or as a result of the performance or exercise of the Board of its functions or powers or by or as a result of the Board's decision not to perform or exercise its functions or powers.

Eliza de Wit
Senior Associate
Norman Waterhouse, Solicitors
Adelaide