

LEGISLATIVE ASSEMBLY

Read 1^o 11 December 1979

(Brought from the Legislative Council)

A BILL

for

An Act to amend the *Local Government Act 1958*, the *Dandenong Valley Authority Act 1963*, the *Drainage of Land Act 1975*, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Local Government (Land Liable To Flooding) Act 1979*. Short title.

(2) This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

10 2. After section 27A of the *Dandenong Valley Authority Act 1963* there shall be inserted the following section: Amendment of No. 7060.

“27B. (1) The Authority may, for the purpose of this Act or any other Act or any regulation made under this Act or any other Act, by notice published in the *Government Gazette* designate a flood level or flood levels in relation to a particular area or areas of land within the district of the Authority. Designation of flood levels.”

15 (2) In designating a flood level pursuant to sub-section (1) the Authority may designate a level on a basis which allows a risk of flooding to exist in the use of land.

(3) Where pursuant to sub-section (1) the Authority has designated a flood level or flood levels the Authority shall as soon as is practicable after that designation—

- (a) publish in some newspaper circulating generally in the locality notice of that designation; and 5
- (b) serve upon the council of every municipality concerned a notice in writing of that designation.

(4) Any person who feels aggrieved by the designation of a flood level or flood levels pursuant to sub-section (1) may within one month after the last publication of such designation pursuant to sub-section (3) appeal to the Minister in the prescribed manner against that designation. 10

(5) The provisions of sub-sections (2), (3), (4), (5) and (6) of section 43 shall apply with respect to an appeal to the Minister under sub-section (4) as they apply with respect to an appeal to the Minister under section 43 (1) against the proclamation of any area of land as a flood prone area pursuant to section 27. 15

(6) Any designation made by the Authority pursuant to sub-section (1) may by notice published by the Authority in the *Government Gazette* be varied or revoked and the foregoing provisions of this section shall apply with respect to any such variation of a designation (other than a variation made for the purpose of giving effect to the decision of the Minister in respect of any appeal under sub-section (4)) as they apply with respect to any designation of a flood level pursuant to sub-section (1). 20 25

(7) The Authority shall not be liable for any loss or damage sustained, whether directly or indirectly, in consequence of the designation of a flood level or flood levels in relation to any land pursuant to this section.”.

Amendment of No. 8811. Designation of flood levels.

3. After section 37 of the *Drainage of Land Act* 1975 there shall be inserted the following section: 30

“37A. (1) The drainage authority may, for the purpose of this Act or any other Act or any regulation made under this Act or any other Act, by notice published in the *Government Gazette* designate a flood level or flood levels in relation to a particular area or areas of land. 35

(2) In designating a flood level pursuant to sub-section (1) the drainage authority may designate a level on a basis which allows a risk of flooding to exist in the use of land.

(3) Where

(3) Where pursuant to sub-section (1) the drainage authority has designated a flood level or flood levels that authority shall as soon as is practicable after that designation—

- 5 (a) publish in some newspaper circulating generally in the locality notice of that designation; and
 (b) serve upon the council of every municipality concerned a notice in writing of that designation.

10 (4) Any person who feels aggrieved by the designation of a flood level or flood levels pursuant to sub-section (1) may within one month after the last publication of such designation pursuant to sub-section (3) appeal to the Minister in the prescribed manner against that designation.

15 (5) The provisions of sub-sections (2), (3), (4), (5), (6) and (7) of section 37 shall apply with respect to an appeal to the Minister under sub-section (4) as they apply with respect to an appeal to the Minister under section 37 (1) against a proclamation made in relation to any area of land pursuant to section 35.

20 (6) Any designation made by the drainage authority pursuant to sub-section (1) may by notice published by that authority in the *Government Gazette* be varied or revoked and the foregoing provisions of this section shall apply with respect to any such variation of a designation (other than a variation made for the purpose of giving effect to the decision of the Minister in respect of any appeal under sub-section (4)) as they apply with respect to any
 25 designation of a flood level pursuant to sub-section (1).

(7) The drainage authority shall not be liable for any loss or damage sustained, whether directly or indirectly, in consequence of the designation of a flood level or flood levels in relation to any land pursuant to this section.”.

30 4. In section 925 of the *Local Government Act* 1958 after paragraph (11) there shall be inserted the following paragraph:

Amendment of
No. 6299 s. 925.

“(11A) The construction of buildings on land liable to flooding;”.

35 5. After section 925 of the *Local Government Act* 1958 there shall be inserted the following section :

New s. 925AA
inserted in
No. 6299.

“925AA. (1) In paragraph (11A) of section 925 and in this section “land liable to flooding” means land which is likely to be flooded by waters from any river, creek, stream, watercourse, lake, lagoon, wamp or marsh.

Provisions as
to construction
of buildings on
land liable to
flooding.

40 (2) In this section “specified flood level” in relation to any land determined in relation to that land by the council concerned having regard to any relevant

flood

flood levels designated pursuant to section 27B of the *Dandenong Valley Authority Act* 1963 or section 37A of the *Drainage of Land Act* 1975.

(3) Any regulation made under paragraph (11A) of section 925 may provide that any permit issued for the construction of a building on any land liable to flooding may require or allow the surface of the lowest floor of that building and any other specified part or parts of that building to be constructed at—

- (a) a level above the specified flood level; or
- (b) subject to this section, a level at or below the specified flood level—

and any such permit may be issued subject to the carrying out of any specified flood proofing works or any other specified measures for the protection of that building.

(4) A permit shall not be granted for the construction of a building on any land liable to flooding which allows the surface of the lowest floor of that building and any other specified part or parts of that building to be constructed at a level at or below the specified flood level unless—

- (a) the Minister has, after consultation with the Minister administering the *Drainage of Land Act* 1975 or the Minister administering the *Dandenong Valley Authority Act* 1963 (as the case requires), consented to the issuing of such a permit in respect of that land; and
- (b) the applicant for that permit has to the satisfaction of the body granting the permit indemnified that body against any liability which that body may incur at any time as a consequence of the granting of the permit.

(5) For the purposes of this section a body empowered by or under this Part to grant a permit for the construction of a building may, with the consent of the Minister given after consultation with the Minister administering the *Drainage of Land Act* 1975 or the Minister administering the *Dandenong Valley Authority Act* 1963 (as the case requires), by notice published in the *Government Gazette* and in some newspaper circulating generally in the locality specify any area or areas of land in relation to which that body may consider issuing permits for the construction of buildings on such land which allow the surface of the lowest floor of such buildings and any other specified part or parts thereof to be constructed at such level as is mentioned in the notice being a level at or below the specified flood level and where land within any such area is the subject of an application for any such permit the provisions of paragraph (a) of sub-section (4) shall be deemed to have been complied with.

(6) Where

(6) Where pursuant to this Part a permit is granted for the construction of a building on any land liable to flooding and that permit requires the surface of the lowest floor of that building and any other specified part or parts of that building to be constructed at a level above the specified flood level, the body granting that permit shall not be liable for any loss or damage caused by flooding which is sustained, whether directly or indirectly, in consequence of the construction of that building in accordance with that permit.

6. After section 926 of the *Local Government Act 1958* there shall be inserted the following section:

New s. 926A
inserted in
No. 6299.

“926A. (1) Any person may upon payment of the prescribed fee make application to the municipal clerk of any municipality for a certificate specifying in respect of any land—

Certificate as to
flood levels, etc.

- (a) the specified flood level (if any) within the meaning of section 925AA;
- (b) whether that land is situated within an area in respect of which a notice has been published under section 925AA (5); and
- (c) whether such a permit as is described in section 925AA (4) has been granted in respect of that land—

and any such certificate shall give particulars of any relevant flood levels designated pursuant to section 27B of the *Dandenong Valley Authority Act 1963* or section 37A of the *Drainage of Land Act 1975*.

(2) Every application under sub-section (1) shall be in writing stating the name and address of the person making the application and the particulars of the land in respect of which the application is made.

(3) Upon receipt of an application under sub-section (1) and payment of the prescribed fee the municipal clerk or some other person authorized by the council in that behalf shall forthwith procure and give to or send by post to the person so applying a certificate signed by him.”.

7. In section 929 of the *Local Government Act 1958* after sub-section (2G) there shall be inserted the following sub-section:

Amendment of
No. 6299 s. 929.

“(2H) Notwithstanding anything in this Act, an appeal shall not lie to the referees against a refusal of the Minister to consent to the issue of such a permit as is described in section 925AA (4).”.

8. Where before the commencement of this Act the Melbourne and Metropolitan Board of Works, the Dandenong Valley Authority or the State Rivers and Water Supply Commission designated a flood level for the purposes of any Act or any regulation made under

Drainage
authorities not
liable for loss
caused by
designation of
flood levels
before the
commencement
of this Act.

any

any Act, that Board, Authority or Commission (as the case requires) shall not be liable for any loss or damage sustained, whether directly or indirectly, in consequence of the designation of that flood level.

Permit-granting
body not
liable for loss
caused by
flooding in
consequence of
the granting
of a permit
before the
commencement
of this Act.

9. (1) Where before the commencement of this Act a permit has been granted for the construction of a building on any land liable to flooding, the body which granted that permit shall not be liable for any loss or damage caused by flooding which is sustained, whether directly or indirectly, in consequence of the granting of that permit. 5

(2) In sub-section (1) "land liable to flooding" has the same meaning as in section 925AA of the *Local Government Act 1958*. 10

