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**E.14 CORNER INLET DRAINAGE AREA ADVISORY (SPECIAL)
COMMITTEE**

**APPENDIX 1 - VICTORIAN GOVERNMENT'S RESPONSE TO THE
ENVIRONMENT AND NATURAL RESOURCES COMMITTEE - INQUIRY
INTO RURAL DRAINAGE IN VICTORIA - JANUARY 2014**

JANUARY 2014

VICTORIAN GOVERNMENT'S RESPONSE TO THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

INQUIRY INTO RURAL
DRAINAGE IN VICTORIA



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BACKGROUND

The Environment and Natural Resources Committee (ENRC) began the Inquiry into Rural Drainage in Victoria in October 2012.

The basis of the inquiry was the impact on rural drainage experienced around the state after extensive floods in 2010, 2011 and 2012 revealed significant community concern about the management, performance and maintenance of Victoria's rural drainage system.

The inquiry was tabled in Parliament in June 2013.

The Victorian Government thanks individuals, industry, Local Government and other stakeholder groups for their contributions to the ENRC in both written and oral submissions. State Government agencies and their officers have also supported the inquiry through submissions, providing evidence at public hearings at Hamilton, East Melbourne and Warragul.

TERMS OF REFERENCE

57th Parliament received from the Legislative Assembly on 10 October 2012 terms of reference for the Inquiry into Rural Drainage in Victoria.

That, under s33 of the *Parliamentary Committees Act 2003*, an inquiry into matters relating to rural drainage in Victoria (but not including irrigation drainage or regional urban and metropolitan drainage) be referred to the Environment and Natural Resources Committee for consideration and report, no later than 30 June 2013, with particular reference to:

- (1) The historical basis for the establishment and operation of former drainage schemes including management arrangements;
- (2) The status of rural drainage across Victoria, including effectiveness, regulation, ownership, responsibility and maintenance on both public and private land;
- (3) The benefits of rural drainage for both productive land and environment together with community expectations for rural drainage programs;
- (4) The impacts of rural drainage, including on other land holders and the environment including waterways, wetlands, flora, fauna and water quality;
- (5) Options for improved rural drainage management across Victoria, including regulation, institutional and funding arrangements, operation, responsibility and maintenance on both public and private land; and
- (6) The committee's report on the inquiry into flood mitigation infrastructure.

GLOSSARY

Advisory Committee	A local committee comprised of a majority of landholders within a drainage area providing advice and management to a drainage scheme or trust.
Beneficiaries	Those who receive a reasonable level of benefit from drainage works. Those immediately adjacent to the drains are not necessarily the only beneficiaries.
CMA/MW	Catchment Management Authority/Melbourne Water. These are regional authorities with floodplain management functions under the <i>Water Act 1989</i> .
DEPI	Department of Environment and Primary Industries.
Drainage area	An area of land that encompasses all of the landholders who are involved and affected by a drainage system – the former Drainage Areas Act established many such areas throughout the state.
Drainage levy	A levy raised on landholders within a drainage area, scheme that provides for the operation and maintenance of the drainage system.
ENRC	Environment and Natural Resources Committee. A committee of Parliament.
Peri-urban drain	A drain that exists in the immediate vicinity of an urban area, in a rural area that is subject to development.
Public good	The whole-of-community benefits the project will bring which are over and above the benefit to the proponent.
Threatened species	A species that is listed as threatened under the state's Flora and Fauna Guarantee Act 1988, or the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cwth).
Waterway	A river, creek, stream or watercourse; or other channel in which water regularly flows, whether or not the flow is continuous; or a lake, lagoon, swamp or marsh.
Wetland	There are both natural and human made wetlands. Natural wetlands are classified into six major types: freshwater meadows, shallow freshwater marshes, deep freshwater marshes, permanent open freshwater wetlands, semi-permanent saline wetlands and permanent saline wetlands.

ACRONYMS AND ABBREVIATIONS

CMA	Catchment Management Authority
DEPI	Department of Environment and Primary Industries
DSCV	Dispute Settlement Centre of Victoria
ENRC	Environment and Natural Resources Committee
LiDAR	Light Detection and Ranging
MW	Melbourne Water Corporation
RDS	Regional drainage strategy
SPPF	State planning policy framework
SoO	Statement of Obligations
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria planning provisions
VRDS	Victorian Rural Drainage Strategy

INTRODUCTION

The report makes **32** recommendations under the themes of:

- > Ownership, responsibility and maintenance for rural drainage.
- > Community expectations of rural drainage.
- > Environmental impacts of rural drainage.
- > Landholder impacts of rural drainage.
- > Future arrangements for rural drainage management.

This document provides the Victorian Government's response to each recommendation, based on these terms:

- > Supported: the Victorian Government agrees with the committee's recommendation.
- > Supported in principle: the Victorian Government agrees with the intent of the recommendation, but not necessarily with the method proposed by the ENRC for achieving that outcome. Alternatively, the Victorian Government may believe that while there is some merit in the recommendation, further analysis is required into some aspects of the proposal.
- > Not supported: the Victorian Government does not agree with the committee's recommendation.

The floodplain component of the waterway performs a storage and drainage function. Therefore it is not always possible for there to be a clear delineation between flood management and rural drainage management. Most flooding in regions is caused by rainfall either in the form of riverine flooding or overland flows. Consequently the principles in this response are entirely consistent with the Victorian Government Response to the Inquiry into Flood Mitigation Infrastructure in Victoria.

This response does not deal with regional drainage in irrigation drainage areas.

OVERVIEW OF THE IMPLEMENTATION APPROACH

Rural drainage systems are estimated to service around 1.5 million hectares of agricultural land.

Drainage removes water from one location to another – usually onto neighbouring property, onto a public road, or a public culvert, and ultimately into a waterway on Crown land. For effective drainage, individuals often need to collectively invest in a drainage network that outfalls into an appropriate waterway. A drainage scheme requires collaboration, coordination and joint investment.

There are three types of rural drainage schemes:

- > very small schemes that service a single property and are owned and maintained by the land owner;
- > small schemes that were cooperatively developed and operated to provide drainage to a small number of neighbouring farms; and
- > large schemes involving many landowners that have had formal ownership and operating arrangements.

Local government has long-standing responsibilities for operating and maintaining drainage systems servicing towns and their road network as well as responsibility for managing many large rural drainage schemes. However, some of the large drainage schemes were operated by catchment management authorities.

Some of the large drainage schemes operated by local government and catchment management authorities ceased operations during the recent 1997-2009 drought as there was no requirement for drainage. The significant institutional changes that occurred, particularly to local government in the 1990s, also reduced the management oversight of these schemes. Consequently, there are now many ad hoc legacy arrangements for operating rural drainage schemes and in some instances there are no effective arrangements. The responsibilities of local government and catchment management authorities have been confused, with both groups being reluctant to take on unfunded activities.

There are particular challenges for landholders serviced by large rural drainage schemes that were neither operated nor maintained during the 1997-2009 drought, where administrative arrangements including collecting drainage fees to pay for operations and maintenance activities were disbanded.

A key issue faced by these landholders is whether to reinstate these schemes. To do so will require landholders to collectively agree on appropriate measures for:

- > formal arrangements and accountabilities for managing the scheme;
- > level of service to be provided, including any refurbishments required;
- > operational and maintenance plans and responsibilities; and
- > arrangements for setting and collecting drainage rates to fund the scheme.

Drainage schemes will be wound up in cases where landholders agree that they cannot justify the on-going costs of running the schemes.

The 32 recommendations made by the ENRC propose that these decisions should be made and funded by the beneficiaries of the schemes. The ENRC proposes that the Government has an important role in clarifying responsibilities for rural drainage in Victoria at both a statewide and regional level through developing a Victorian Rural Drainage Strategy.

The Government supports the ENRC recommendations that local landholders and drainage committees continue to take primary responsibility for rural drainage schemes. But it is concerned about the confusion around the roles of local government and catchment management authorities and the resulting frustration and inefficiency.

Responsibility for supporting local rural drainage committees will be consolidated with local government. Local government will progressively take on responsibility for supporting those rural drainage schemes and committees they currently do not look after, but only where beneficiaries are supportive and are prepared to fund the schemes. Consolidation of all rural drainage schemes with local government complements local government's existing drainage responsibilities for towns and their road network. Many rural drainage schemes will allow local government to streamline activities and provide more responsive services to local communities.

Catchment management authorities' responsibilities will focus on regulating the environmental effects of out-falling drains to waterways.

The Government will prepare a Victorian Rural Drainage Strategy based on these roles and policies.

Roles

- > State Government will be responsible for:
 - clarifying roles and responsibilities
 - preparing the Victorian Rural Drainage Strategy
 - preparing statewide guidelines and policies as required
 - clarifying legislation where necessary.
- > Catchment management authorities will be responsible for regulating the effects of drainage schemes on waterways and wetlands.
- > Local government will be responsible for:
 - continuing to provide drainage services to towns, peri urban areas and their road network
 - providing administrative assistance to local drainage committees based on 'beneficiaries pay' principle
 - collecting drainage rates on behalf of the drainage committees
 - assessing proposals for new drains consistent with current statutory planning requirements.
- > Drainage management committees will be responsible for developing management plans that balance service levels with willingness to pay for large-scale schemes with the support of local government.
- > There will be no change to Melbourne Water's or VicRoads' rural drainage roles and responsibilities.

Policies

- > Rural drainage management arrangements will be flexible and proportionate to suit the different needs of people served by very small, small and large drainage schemes.
- > The 'beneficiaries pay' principle will be applied for funding the costs of rural drainage.

RESPONSE TO RECOMMENDATIONS

Chapter three: Rural drainage in Victoria – ownership, responsibility and maintenance

RECOMMENDATION 3.1

The State Government develops, in consultation with local government, catchment management authorities and local community representatives, a Victorian Rural Drainage Strategy. The strategy should be a high level policy document, which, as well as defining rural drainage and its objectives, should include the following key elements:

- > a summary of the status of rural drainage in Victoria;
- > the respective roles of the State Government, catchment management authorities, regional councils and community committees;
- > the process for identifying the lead rural drainage body in a given area;
- > cost sharing principles, including the process for determining beneficiaries, striking a tariff, and nominating the agency to raise and disburse the tariff;
- > management structure options that may be adopted by the responsible authority;
- > policy for regulating new drainage works and systems/schemes, and where appropriate, the standards to apply; and
- > the relevant legislation and statements of objectives.

Supported.

The State Government supports the development of a Victorian Rural Drainage Strategy. It will build on the work of the ENRC.

RECOMMENDATION 3.2

Catchment management authorities develop, in consultation with local government and local communities, a Regional Drainage Strategy for their catchment management authorities region.

The strategy should be a regional level policy document, which as well as defining local rural drainage and its objectives, should include the following key elements:

- > identifying the drainage systems and assets in the region;
- > the management framework, including roles and responsibilities, for catchment management authorities, councils and local community committees;
- > cost sharing and funding arrangements based on beneficiary pays principles; and
- > design principles and standards, and maintenance schedules where appropriate.

Not supported.

The ENRC emphasised the importance of empowering local groups to manage rural drainage schemes. Government supports this approach and is concerned that the preparation of regional strategies will diminish the role of these local groups.

Therefore, the Government does not support the preparation of regional strategies, but will ensure that the key elements of regional strategies identified by the ENRC are considered for inclusion in the Victorian Rural Drainage Strategy.

Chapter four: Community expectations of rural drainage

RECOMMENDATION 4.1

That the State Government ensures that a responsible authority (i.e. a catchment management authority or local council) be appointed to provide management and/or support in collaboration with local community groups, to all formally declared rural drainage schemes, under the relevant provisions of the *Water Act 1989* (Vic).

Supported.

The Government agrees that it is important to clearly define responsibilities for each formally managed drainage scheme.

Local government will have overarching responsibility for rural drainage in Victoria. Local government will take a leading management role for gazetted drainage schemes, under a beneficiary pays approach. Should a community actively decide that there is not a requirement for drainage functions in an area to continue, a mechanism for local government to revoke a previously gazetted drainage area will be determined.

Local government will consult with the community to determine the ongoing management framework for drainage schemes in the municipality. Local councils will be responsible for supporting existing community drainage management groups in their municipalities under a beneficiary pays model.

State government will strengthen local government's ability to carry out their rural drainage functions by introducing legislative changes. In addition, the State Government will provide new tools and guidance documents to local government.

As recommended by the ENRC, the following three pre-conditions will need to be considered by community groups when determining the ongoing viability of drainage schemes:

- > the drainage system has the support of most landholders within the drainage area;
- > the landholders within the drainage area are willing to pay for the maintenance of the system on the basis of beneficiary pays; and
- > the landholders are willing to participate in a local drainage management committee, the work of which will be supported either, with limited agency support, or, with the full support of an appointed responsible authority, dependent upon the model chosen by the local community.

The current management arrangements for the Woody Yallock and Loch Calvert drainage schemes require review, principally because of the history and complexity of these schemes. Future arrangements will need to consider beneficiary pay principles.

RECOMMENDATION 4.2

The State Government should ensure that all approved drainage schemes have a formally constituted advisory committee under the *Water Act 1989* (Vic).

Supported in principle.

The Government acknowledges that many schemes in Victoria are being adequately managed under a variety of existing arrangements. The Government proposes that existing management arrangements will continue (whether or not they have a formally constituted), if beneficiaries are satisfied with the existing management arrangements.

The inquiry found a mix of community views about local drainage management arrangements, where some groups preferred schemes managed with the assistance of a public authority such as local council, and some communities supported self-management of their own drainage systems. The Government believes that the management arrangements for individual drainage systems must be flexible enough to encompass the differing requirements across the state, including the wishes of the local community. Therefore landholders will be responsible for forming community drainage groups to manage drainage schemes, with the support of local government.

Small-scale drainage systems, involving only a handful of landholders, will continue to be self-managing.

RECOMMENDATION 4.3

When landholders have their own drainage committee, local governments should investigate the formation of a drainage committee under Section 86 of the Local Government Act 1989 (Vic).

Supported in principle.

Landholders opting to manage their own scheme may request local government assistance. Local government should negotiate the terms of assistance directly with the group.

Chapter five: Environmental impacts of rural drainage

RECOMMENDATION 5.1

That the State Government provide adequate funding for catchment management authorities to enable them to perform their functions as the regional managers of rural drainage and specifically to undertake the tasks of monitoring and managing the environmental impacts of rural drainage, including the following:

- > water quality impacts;
- > soil erosion and nutrient export;
- > downstream and other hydrological impacts; and
- > impacts on wetland habitats.

Supported in principle.

As a key principle of drainage management, community drainage committees will be responsible for mitigating unacceptable environmental impacts of their scheme.

Landholders have a duty of care to manage their land to a standard of reasonable care while performing any activities that could foreseeably harm others. Part of the cost of operating and maintaining drainage schemes is ensuring there is no further environmental damage.

Catchment management authorities are funded to be the 'caretakers of waterway health' within their area. As such they have an interest in the effects of rural drainage schemes on waterway health. They also have specific responsibilities to ensure drainage works that outfall rural drainage to waterways comply with the *Water Act 1989*.

If a landholder group decides to improve the condition of environmental assets within a drainage scheme in ways that go beyond their normal duty of care, they can request government assistance. A catchment management authority will consider investing in these environmental enhancement proposals where this is consistent with their broader priorities.

RECOMMENDATION 5.2

That for all declared drainage schemes, which contain known environmental values, an environmental sub-plan will be developed as part of the management plan for the scheme. This plan will be developed with the collaboration of the scheme's advisory committee, responsible authority (local council and/or catchment management authorities) and the Department of Sustainability and Environment.

The plan will demonstrate how critical works are to be conducted while ensuring, to the highest degree feasible, preservation of the identified environmental values. Once formally approved, this plan will form the template for future maintenance works to be conducted in the drain.

Supported in principle.

It is important that each drainage scheme has a management plan that informs landholders and the community about how the scheme is being managed and how their drainage charges are being applied.

The Government supports including in the management plan details about how the environmental values are managed.

Management plans should be tailored to meet the operational needs of the scheme and include proportionate responses to environmental issues. Community drainage committees should periodically review management plans in consultation with beneficiaries and catchment management authorities. Management plans should be available for public inspection.

RECOMMENDATION 5.3

That in instances where the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (Cth) directly impacts on critical rural drainage works being carried out, in areas of high agricultural value, the State Government work in collaboration with federal counterparts, local authorities (including Melbourne Water) and landholders to arrive at long-term solutions, which both protect environmental values, to the highest degree feasible, and support critical maintenance works being carried out.

In addition, the State Government should assist with funding the necessary assessments that will underpin the development of a rigorous management plan.

Supported in principle.

The Government supports the need for streamlined environmental approval processes for maintenance works on rural drainage schemes.

The Government will work with federal counterparts, catchment management authorities (including Melbourne Water), local councils and landholders to develop streamlined processes which protect environmental values and support critical maintenance works.

The Koo Wee Rup strategic assessment project conducted by Melbourne Water and DEPI has been successful in obtaining Commonwealth approval for drainage maintenance works. The process used and solutions developed could be used as a template across the state. The process will be outlined in the Victorian Rural Drainage Strategy.

The Government will not, as a matter of course, fund the development of management plans. The cost should be incorporated into the overall cost of operating and maintaining the scheme and should adhere to the 'beneficiaries pay' principle. There may be opportunities to seek government assistance where broader public benefits can be identified.

Chapter six: Landholder impacts of rural drainage

RECOMMENDATION 6.1

When creating regional drainage strategies, catchment management authorities are to take into consideration both the downstream and upstream impacts of rural drainage on landholders. When developing local management plans for specific drainage areas, the responsible authority will develop appropriate actions to mitigate those impacts, in consultation with the relevant landholders.

Supported in principle.

The Government agrees that consideration of downstream and upstream impacts of rural drainage on landholders and actions to mitigate potential impacts are a key requirement of all schemes and must be included in scheme management plans.

The process to develop and review management plans should include a community consultation step that enables these downstream and upstream issues to be discussed and resolved. The Victorian Rural Drainage Strategy will include principles for resolving these issues rather than the regional drainage strategies proposed by the ENRC (refer to response to Recommendation 3.2).

RECOMMENDATION 6.2

Responsible authorities, including VicRoads and municipal councils, should review the way they communicate with landholders in relation to roadside drains. As part of the review they should, for example, give consideration to publishing guidelines about roles and responsibilities for roadside drains on their respective websites.

Supported in principle.

The Government agrees that it is difficult for landholders to understand who is responsible for drainage issues associated with roadside drainage.

The Victorian Rural Drainage Strategy will clarify the role of the various authorities involved in managing roadside drainage and include statewide principles and processes for resolving disputes.

The principles and processes will be widely communicated.

RECOMMENDATION 6.3

Councils should consider the cumulative effects of new urban developments in rural areas on downstream landholders when assessing planning applications. Councils should take into account downstream hydrological impacts and, in liaison with the local catchment management authorities, consider the available mitigation strategies.

Supported.

Planning provisions already require local councils to consider the cumulative effects of new urban developments on the drainage of downstream areas, and the Government supports greater clarity about this issue through revising guidelines for planning authorities.

The Victorian Rural Drainage Strategy will provide guidance on how these effects should be considered.

Planning applications which may affect drainage are already referred to catchment management authorities and this will continue, although the referral designation of CMAs will change. They will now become 'Recommending authorities' as part of applying changes introduced through the Planning and Environment Amendment (General) Act 2013 in line with Victorian Government policy.

RECOMMENDATION 6.4

When developing their Regional Drainage Strategies, catchment management authorities will, after consultation with local councils, assess and identify the local responsible authority for peri-urban drains in its region.

Support in principle.

Local government will continue to be responsible for peri-urban drains in their municipalities. This reflects the current arrangement across the state.

The Victorian Rural Drainage Strategy will confirm that these current arrangements will continue rather than the regional drainage strategies proposed by the ENRC (refer to response to Recommendation 3.2).

RECOMMENDATION 6.5

That the State Government provides catchment management authorities and local government with the power and resources to offer mediation to parties in dispute over rural drainage issues. Statements of obligations for catchment management authorities will be amended to reflect this new role.

Not supported.

As noted by the ENRC, the *Water Act 1989* provides clear rights to landholders to seek redress and the opportunity to seek compensation for damages through the Victorian Civil and Administrative Tribunal (VCAT) over drainage matters. VCAT can require parties to proceedings to attend a mediation conference to promote a settlement of the proceedings.

The Government does consider there is value in encouraging landholders to attempt to settle disputes through informal arrangements such as the mediation session provided through the Department of Justice. The Dispute Settlement Centre of Victoria (DSCV) is a free dispute resolution service funded by the Victorian Government. The Government will encourage community drainage groups to informally facilitate the resolution of landholder disputes before taking the matter to VCAT.

RECOMMENDATION 6.6

That the *Water Act 1989 (Vic)* be amended to provide for local government to be defined as an 'Authority' under section 157. In addition, any provision of the *Water Act 1989 (Vic)* that relates to the exercise of a function of a rural drainage authority, as appointed by the Act, should also be referred to in this section.

Not supported.

Local government will manage rural drainage under the *Local Government Act*, including the liability provisions. Therefore, there is no need to amend the *Water Act 1989* to include local government as an authority.

RECOMMENDATION 6.7

The State Government give consideration to enacting legislation to provide protection from legal liability for public authorities conducting works on priority drainage works in good faith, acting reasonably and responsibly in the public interest, and in accordance with standards agreed to under approved schemes. Public authorities should not be excluded from liability if they have acted negligently.

Supported in principle.

The Government will consider options to sensibly manage liability through the development of the Victorian Rural Drainage Strategy. However, the current Victorian Government Statutory Immunity Policy is that immunity provisions are rarely appropriate because they remove the legal rights that would otherwise be available to a person who has suffered loss. A complete statutory immunity would not be appropriate because it would remove incentives for a person or body to exercise a reasonable level of care in conducting its functions.

Chapter seven: Future arrangements for rural drainage management

RECOMMENDATION 7.1

That the Victorian Rural Drainage Strategy (VRDS) clearly identifies the state's catchment management authorities as the lead agencies for rural drainage strategy in each of their regions.

Not supported.

The Victorian Rural Drainage Strategy will identify that:

- > landholders are responsible for forming community drainage groups to manage drainage schemes with the support of local government;
- > local government is responsible for supporting community drainage groups;
- > catchment management authorities are responsible for regulating the effects of drainage schemes on waterways and wetlands; and
- > the Government is responsible for rural drainage policy.

(Refer to response Recommendation 3.2)

RECOMMENDATION 7.2

That the Victorian Rural Drainage Strategy (VRDS) will confirm that local councils will continue to be responsible, as identified under section 198 of the *Local Government Act 1989* (Vic), for all public drains not vested in another council, the Minister or other public body.

Supported in principle.

The Victorian Rural Drainage Strategy will confirm local government's ongoing role for rural drainage in addition to their existing drainage roles in relation to towns, peri-urban developments and their road network - as identified under section 198 of the *Local Government Act 1989*.

RECOMMENDATION 7.3

That the Victorian Rural Drainage Strategy (VRDS) will state that the Melbourne Water Corporation provides management of the Port Phillip and Westernport region's waterways, regional drains and floodplain services as provided for under the Water Act 1989 (Vic).

Supported.

The State Government agrees that there should be no change to the rural drainage and floodplain services provided by Melbourne Water.

The Victorian Rural Drainage Strategy will confirm that Melbourne Water manages the Port Phillip and Westernport region's waterways, regional drains and floodplain services as provided by the *Water Act 1989*.

RECOMMENDATION 7.4

In relation to small-scale drainage systems in which only a few landowners receive the benefits, such groupings can continue to form an informal management group or committee that can manage its own affairs, including arrangements for cost sharing and maintenance, provided that drainage systems of this type have no significant environmental impacts, and minimal impacts on landholders downstream. Any maintenance works planned by such groups to be carried out in the floodplain, will be subject to the local planning scheme permit process, and any relevant catchment management authority by-law.

Such small-scale drainage systems will also be identified in the local catchment management authority's Regional Drainage Strategy.

Supported in principle.

The Government fully supports landholders managing their own rural drainage affairs: small-scale drainage systems, involving only a handful of landholders, should continue to be self-managing. As per the government response to recommendation 3.2, the Victorian Rural Drainage Strategy will outline the principles for managing small-scale drainage systems. The management arrangements for individual drainage systems must be flexible enough to meet the needs of local communities subject to having proper regard to the effects on downstream communities and the environment.

Any works planned by small groups will be subject to the relevant local planning scheme provisions. If proposed drainage works outfall to a waterway, the works will require authorisation by the relevant catchment management authority.

RECOMMENDATION 7.5

That the Victorian Rural Drainage Strategy (VRDS) will state that the following pre-conditions will need to be demonstrated in order for a large-scale drainage system to be considered potentially viable:

- > the drainage system has the support of a majority of landholders within the drainage area;
- > the landholders within current drainage areas will contribute to the maintenance of the system on the basis of beneficiary pays; and
- > local landholders will make up a majority of a local drainage management committee.

These statements will also be reflected in the catchment management authorities' Regional Drainage Strategies.

Supported in principle

The Victorian Rural Drainage Strategy will encourage community drainage committees to consider the above mentioned criteria when developing management plans for their drainage schemes. However, decisions to maintain schemes will depend on the landholders and any other beneficiaries being prepared to fund the ongoing costs of the scheme.

Given these responsibilities, the Government supports most members on committees being landholders serviced by the schemes.

RECOMMENDATION 7.6

That the Victorian Rural Drainage Strategy (VRDS) will state that the viability of a large scale drainage system needs to be assessed in relation to the following criteria:

- > that the drainage system does not significantly degrade environmental values present in the system;
- > that the upstream and downstream impacts of the system will not be significantly exacerbated; and
- > that the relevant hydrological and other scientific studies have been undertaken to ensure the future sustainability of the system.

These statements will also be reflected in the catchment management authorities' Regional Drainage Strategies.

Supported in principle.

The Victorian Rural Drainage Strategy will require drainage schemes to:

- > maintain significant existing environmental values;
- > avoid unreasonably contributing to the flooding or drainage issues of landholders upstream or downstream of the scheme; and
- > carry out appropriate studies on the effects of proposed works on environmental values and landholders who may be affected.

RECOMMENDATION 7.7

That both the Victorian Rural Drainage Strategy (VRDS) and the Regional Drainage Strategies of catchment management authorities will state that the role of an appointed responsible authority to a local rural drainage scheme, declared under the Water Act 1989 (Vic), will encompass the following functions:

- > local community consultation, investigations and data collection;
- > provide assistance with the inception and coordination of the local drainage management committee, and provide a member to the committee;
- > assist with the preparation of the drainage area management plan;
- > determine service and operating standards with landholders consistent with a fee for service model;
- > where appropriate, operate, maintain and refurbish the infrastructure required to provide the agreed service standards;
- > ensure the scheme complies with all regulatory requirements; and
- > report to landholders on the performance of the drainage scheme.

Supported in principle.

The Victorian Rural Drainage Strategy (rather than regional drainage strategies - refer to response Recommendation 3.2) will clarify roles and require community drainage groups to consider the above matters when preparing their management plans.

The Government expects local government will support community drainage groups to prepare management plans.

RECOMMENDATION 7.8

That the Victorian Rural Drainage Strategy (VRDS) and the Regional Drainage Strategies of catchment management authorities will state that all large scale drainage groups or schemes require a formally constituted local drainage management committee.

The membership of such committees will be comprised of local landholders from the drainage area, with a minimum of five and a maximum of nine local members, and a representative of the local supporting agency or appointed responsible authority.

Landholder members of such committees will be subject to election, for a period of three years, with the potential for re-election for a further term of three years. The core functions of such committees will be:

- > to act as a forum for the discussion of key issues confronting the drainage area or scheme;
- > assisting in the development of a management plan, including schedule of works, for the drainage area or scheme;
- > providing advice on tariffs to be charged, and where necessary in what proportion across the drainage area; and
- > assisting in the coordination of the management plan.

The membership requirements and provisions and core functions of drainage management committees will be articulated in a new provision of the Water Act 1989 (Vic).

Supported in principle.

The Government agrees that management committees made up of beneficiaries of the drainage scheme are best placed to manage rural drainage.

The Victorian Rural Drainage Strategy (rather than regional drainage strategies - refer to response Recommendation 3.2) will define the governance requirements and the functions of local drainage management committees, based on the ENRC's recommendations.

However, the Victorian Rural Drainage Strategy will outline flexible management proposals to allow local drainage management committees and local government to agree on detailed arrangements to suit local needs.

RECOMMENDATION 7.9

The funding model to support rural drainage management and maintenance will be based on the model of beneficiary pays.

The setting of the levy amount, including any proportionate payments based on relative benefits received, will be a matter for the local drainage management committee to determine, taking advice from the relevant agencies involved.

The levy will be raised in a manner that is fair, equitable, transparent and set at a sufficient level so as to achieve the objectives of the drainage area's management plan.

The levy for each rural drainage area or scheme will be raised and collected by the local council as a special charge under section 163 of the Local Government Act 1989 (Vic), via the annual rate notice.

In the case of Melbourne Water, the Committee supports the retention of its current funding arrangements.

This funding model will be stated in the Victorian Rural Drainage Strategy (VRDS) and the Regional Drainage Strategies of catchment management authorities.

Supported in principle.

The Government fully supports use of the 'beneficiary pays' principle in determining the management and funding arrangements for rural drainage.

Local drainage management committees in consultation with beneficiaries and with the support of their local councils will determine how drainage charges will be set and collected to fund ongoing drainage operations, maintenance and administrative costs associated with the provision of the services.

To properly inform community discussion about funding arrangements, local drainage management committees should prepare management plans for their schemes that include details about:

- > the assets in the scheme area;
- > the management framework for the scheme;
- > design principles and standards;
- > maintenance schedules, where appropriate;
- > cost sharing and funding arrangements based on 'beneficiary pays' principles; and
- > tariff design.

The funding model will be outlined in the Victorian Rural Drainage Strategy rather than the regional drainage strategies (refer to response Recommendation 3.2).

The Government supports Melbourne Water retaining its current funding arrangements.

RECOMMENDATION 7.10

That the State Government give consideration to providing some initial injection of funding for capital works for rural drainage, to bring prioritised rural drains up to a functioning standard.

Only those drainage systems which are declared drainage schemes under the Water Act 1989 (Vic), with a drainage management committee, drainage management plan, and appointed responsible authority should be considered for such funding.

Not Supported.

If the beneficiaries of drainage schemes cannot justify bringing drainage schemes up to a functioning standard, it is usually difficult to justify any Government investment. The main function of rural drainage is to provide private benefits, particularly through improved agricultural production.

The Government will develop transition arrangements to facilitate the transfer of the drainage assets to local government. Government investment is targeted at providing statewide benefits to the community rather than private benefits to a relatively small number of benefiting landholders.

RECOMMENDATION 7.11

That the drainage management committee will develop a management plan for each large scale drainage area.

For a formally declared drainage scheme under the Water Act 1989 (Vic) the plan will need to include the following items:

- > a description of the drainage area, including the boundaries of the scheme and the individual property boundaries within the scheme;
- > the objectives and priority issues for the drainage scheme;
- > the details of the drains with their designs and current condition, including the hydrology and hydraulics of the drainage area where available;
- > a description of the management arrangements and the drainage committee structure;
- > all the beneficiaries identified, with the proposed tariff or rating scheme, how the tariff is to be applied, and on what basis;
- > clear specification of levels of service standards, including a schedule of intended works, upgrades, their estimated costs, and cost recovery arrangements; and
- > regulatory requirements, including any environmental approvals that may need to be obtained.

Where investigations reveal high environmental values are present in the drainage area, an environmental sub-plan will be attached to the management plan, in line with Recommendation 5.2 of this report.

Supported.

The State Government agrees that a management plan for each large-scale drainage area is required.

RECOMMENDATION 7.12

That the Department of Sustainability and Environment develop a set of state-wide minimum standards for the construction, operation and maintenance of the state's rural drainage systems on public and private lands.

The new guidelines will be incorporated into the Regional Drainage Strategies of catchment management authorities.

Not Supported.

The service standards to be met by rural drainage schemes shall be determined by local drainage management committees, rather than the Government, to ensure that the standards best meet the needs of the relevant landholders.

Committees are required to comply with current laws (e.g. Occupational Health and Safety requirements, etc.) and the normal regulatory requirements of local government and catchment management authorities designed to protect the rights of individuals and the environment.

This regulatory framework will be described in the Victorian Rural Drainage Strategy. Guidelines will be prepared where necessary.

RECOMMENDATION 7.13

That the Department of Sustainability and Environment develop a set of criteria for the prioritisation the state's drainage systems, and that catchment management authorities use these criteria to identify and prioritise such systems within their catchments, which can then become the basis for prioritised local works programs, and potential initial State Government financial support.

Such criteria will include the viability standards as outlined in Recommendations 7.5 and 7.6 of this report. Prioritisation of drainage systems will be underpinned by the beneficiary pays principle.

Not Supported.

Elsewhere, the ENRC strongly supports expanding the responsibilities of local drainage management committees and this approach is supported by the Government. Therefore, the Government does not support developing government criteria for prioritising local work programs. This is a matter for local committees to consider.

The Government does not intend to fund capital works (refer to the response to Recommendation 7.9).

RECOMMENDATION 7.14

That the State Government give consideration to amending the Water Act 1989 (Vic) in order to fully clarify roles, powers and responsibilities for the management and maintenance of rural drainage, to reflect and underpin major policy changes recommended in this report.

Amendments to the Water Act 1989 (Vic) may also cause some consequential amendments to be made to the Local Government Act 1989 (Vic) and the Catchment and Land Protection Act 1994 (Vic).

That the Statements of Obligations for catchment management authorities, that are issued under the Water Act 1989 (Vic), be amended to properly reflect the role of catchment management authorities as the regional managers of rural drainage, and the suite of functions and responsibilities as suggested in this report.

Supported.

The Government will consider whether legislative amendments are required as part of the process of preparing the Victorian Rural Drainage Strategy.

The statement of obligations for catchment management authorities will be amended to properly reflect the role of catchment management authorities in drainage approvals.

RECOMMENDATION 7.15

That the State Government give consideration to reviewing the Victoria Planning Provisions to ensure that they are consistent with the changes to policy outlined in this report.

The State Government should also consider the current operation of works on waterways permit approvals, and specifically, the by-laws that underpin them. Some drainage areas are devoid of any form of regulatory oversight of this kind due to these by-laws lapsing in the past.

The State Government may also wish to address the inconsistencies that currently exist in the designation of waterways across the state, and how these inconsistencies impact on drains, that are part of, or lead into, such designated (or non-designated) waterways.

That local councils in regional Victoria universally apply the provision within their schedules to their Farming and Rural Conservation Zones for a permit requirement for earthworks, which change the rate of water flow or the discharge point of water across a property.

Supported in principle.

Regulatory and approvals processes will be put in place to allow effective management of rural drainage for drainage schemes, farm or paddock-scale drainage and peri-urban drainage.

Catchment management authorities have a regulatory role in drainage scheme works on waterways.

Current regulation in drainage areas is limited to works on designated waterways, which require a permit from the relevant CMA. The focus of works on waterways approvals is on maintaining the environmental values of the stream, not on ensuring continuing drainage function.

The Government supports designation and mapping of priority drainage areas as part of the management plan development process. The management planning process adopted by local drainage management committees should identify the range of drainage works required and outline the standards to which the committee might implement those works. The committee would then negotiate sign off with responsible authorities to fast track the approvals processes. Existing planning scheme measures would be retained or removed at the discretion of the local council.

The Government will ensure regulation provisions will be consistent with the VRDS once completed. In addition as part of this process, consideration will be given to the feasibility of developing a model local [bylaw] law (under the Local Government Act) applying to drainage works on private land schemes, for application at the discretion of each relevant council.

RECOMMENDATION 7.16

That where a drain has been identified as low priority, and the local beneficiaries are not willing to contribute to its maintenance, public authorities will inform the beneficiaries of the drain that they will not fund its continued maintenance, and that the drain will be subject to decommissioning.

The State Government may wish to give consideration to drains of this type becoming subject to conversion to new management under programs such as the Wetland Tender program.

Supported in principle.

The Victorian Government supports the need for landholders and communities to make informed choices about the level of drainage service they require. Beneficiaries must have the opportunity to think through affordable ways to maintain drainage schemes. The processes and principles outlined in other recommendations will ensure those opportunities exist.

However, if a majority of the beneficiaries of a particular drainage scheme are not prepared to fund the ongoing operations and maintenance service, it is appropriate to discontinue the service.

RECOMMENDATION 7.17

That the process of the transitioning of former drainage schemes into new schemes, based on beneficiary pays principles, will need to be carefully and sensitively managed.

All of the recommendations that centre on the requirements for declared drainage schemes under the Water Act 1989 (Vic), as outlined in this report, will apply to any large scale drainage systems, either previously gazetted or not, undergoing conversion into schemes.

Proposals for entirely new large scale drainage systems will need to pass a stringency test over and above the criteria that apply to the conversion of former schemes into new drainage schemes. The test will involve a thorough cost-benefit analysis, which includes, but is not limited to, environmental costs, estimated impacts on all landholders upstream and downstream, external impacts, and the demonstration of a proven local and state benefit.

Supported.

Rural drainage management arrangements will be flexible and proportionate to suit the different needs of people served by very small, small and large drainage schemes with support of local government.

Transitional arrangements will be outlined in the Victorian Rural Drainage Strategy and will be carefully and sensitively managed.

Proposals for any new drainage schemes will need to be consistent with the Government's position outlined in this response. Funding will be based on strictly applying the 'beneficiary pays' principle.

