



## Council rights to stormwater: Investment pipeline or resource drain?

The Water Law Review undertaken by the Victorian Government aims to streamline and modernise current legislation without many major changes to the underlying policy intent. However, some noteworthy reforms have been thrown in the mix; the most important of these for councils are the changes to rights for stormwater. We have drafted this note to assist councils in their consideration of these changes for their submissions on the Exposure Draft.

Proposed changes would vest all rights to stormwater in council assets in the Crown. Rights to take and use that water would then be provided to councils or to water corporations. The objective of these changes is to clarify ownership of stormwater (when it is within council drainage assets), thereby encouraging greater investment in harvesting projects. All of this is consistent with current government policy of promoting whole of water cycle management.

These changes also have some similarities to the creation of tradeable water access entitlements in the rural water sector through the 1994 Council of Australian Governments' water reform framework. More than twenty years on, rural water markets are being held up internationally as a success story in water management with numerous reviews showing that they have indeed facilitated investment and allowed water to move to its highest value use.

So, in principle, the proposed stormwater reforms have merit. One proposal requiring further consideration is the proposed declaration of a "local stormwater area". In these instances a water corporation, *not the council*, would be delegated the rights to stormwater passing through councils' pipes and drains, on behalf of the Minister. The water corporation could then issue 'take and use' licences to stormwater harvesters. This approach would help manage the impacts of large demands for stormwater by protecting existing users from new upstream harvesting projects, and managing inter-jurisdictional impacts of stormwater harvesting, such as the harvesting of base flows that may contribute to downstream waterway health.

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As a result, councils will have a more limited say in how the stormwater contained within their assets is used when such declarations are made. Here are some key actions councils might take in developing their submissions:

**1. Assess the impact on commercial prospects:** In our view, there is some risk that uncertainty around the potential future declaration of local stormwater areas may undermine the incentive for stormwater harvesting projects involving councils. Speak to your technical and commercial partners in this space and determine if this is a risk to any potential projects.

**2. Consider infrastructure and maintenance:** It is unclear how management of a declared area would interact with councils ongoing responsibilities for stormwater infrastructure upgrades and maintenance. There is no articulated mechanism for stormwater users to contribute to the upkeep and renewal of council owned stormwater assets. In contrast, such mechanisms do exist in the rural water sector with entitlement holders required to pay fees to cover the cost of headwork infrastructure. Councils could develop a position on how contributions to their infrastructure could be made in the context of “local stormwater areas”.

**3. Look for opportunities in the reform process:** The current reforms require further consideration of the on-ground implications which councils are best placed to provide through their extensive experience in stormwater and drainage. Councils should also be active in the subsequent development of the regulations and guidelines that will support this legislation as these are where many of the practical requirements will be detailed.

Councils’ position at the coalface of stormwater management gives them an important role to play in informing government of the implications of the proposed changes for existing and future initiatives. As we’ve learned from the experience of developing rural water markets, opportunities for input and real empowerment of those directly affected by policy change, combined with transparent decision making process, will ultimately help shape better solutions for all.

**If you would like to discuss your council’s particular challenges prior to your submission, we are here to help.**



## Let’s talk.

Chris Olszak  
Director  
0425 707 170  
chris.olszak@aither.com.au

Lindsey Brown  
Senior Consultant  
0450 400 106  
lindsey.brown@aither.com.au