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In-House Memorandum

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The Neglected Powers of Water Authorities

Water authorities have a wide range of responsibilities which interlock with the work and objectives of planning authorities, as well as having a key role in the wider planning process. Too often the focus of water authorities is solely on water supply or drainage, when statutory muscles would be better applied to environmental concerns such as waterway management, floodplain management and endangered species protection.

Waterway management powers encompass the management of economic, social and environmental values including biodiversity, ecological functions and water quality.

These powers are conferred on water authorities by s189(1), *Water Act 1989* ('Water Act'), and include identifying and planning State and local community needs relating to the use and (economic, social and environmental) values of land and waterways, developing and implementing effective schemes for use, protection and enhancement of land and waterways and developing and implementing plans and programs as well as works and activities that improve environmental values and health of water ecosystems (their biodiversity, ecological functions, water quality and environmental condition).

Powers in regards to floodplain management functions are specified under s202(2), *Water Act*, and include finding out how far floodwaters are likely to extend and how high they are likely to rise, declaring flood levels and flood fringe areas, declaring building lines, controlling developments that have occurred or that may be proposed for land adjoining waterways, developing and implementing plans and taking necessary action to minimise flooding and flood damage.

Although case law often separates planning and water functions (e.g. in *Victorian National Parks Association Inc v Iluka Resources Ltd*¹), the objectives of planning authorities and water authorities are closely aligned. Whilst responsibilities for water authorities arise when developments are earmarked near waterways, authorities are too often not involved in the early stages of the planning process².

Furthermore, where a waterway provides habitat for a listed threatened species, the water authority has obligations under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) to ensure that its actions do not have a negative impact upon any 'Matter of National Environmental Significance'.

These statutory functions bring water authorities directly into the process of integrated planning and development as custodians of waterway preservation. Their responsibility is to ensure wider environmental issues relating to water are being given proper consideration over and above the supply and drainage of water.

Cameron Algie
4 February 2015

¹ [2004] VCAT 20.

² Though traditionally inclined to distinguish water and planning regimes, VCAT has recently indicated willingness to integrate both in two recent decisions: *White v Hepburn SC* [2015] VCAT 6 and *Kennedy Plant Hire Pty Ltd v LaTrobe CC* [2015] VCAT 52.

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