

LAUNCESTON FLOOD AUTHORITY

RULES

xxxxxxxxx 2019



LAUNCESTON FLOOD AUTHORITY RULES

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Part 1 - Preliminary

1. Preamble

The Launceston Flood Authority is established by Launceston City Council as a single Authority pursuant to the provisions of Section 30 of the *Local Government Act 1993*.

2. Title

This document is called Launceston Flood Authority Rules.

3. Name

The name of the single authority is Launceston Flood Authority.

4. Purpose

To perform an independent high level monitoring of the strategies employed to minimise flood impacts in Launceston's Flood Risk Area, including the ongoing dredging of the upper reaches of the Tamar and North Esk Rivers.

Commented [MJ1]: Amended as per consultant report

5. Interpretation

In these rules the following words are assigned the meanings given below unless the contrary intention appears:

"Act" means the *Launceston Flood Risk Management Act 2015*.

Commented [MJ2]: I would advise against amending the Act unless the Minister is keen as it is a lengthy process, the powers can be granted away by delegation instead.

"Authority" means Launceston Flood Authority.

"Chair" means the chairperson of the Authority.

"Council" means Launceston City Council.

"Director" means a director of the Authority.

"Flood Risk Area Prone" ~~has the same meaning and~~ applies to the same area ~~as the term flood prone land as used within these rules and means, until amended by the Authority that~~ marked as flood risk-prone area on the Plan attached to and forming part of these rules.

"General Manager" means the General Manager from time to time of Council.

"Related Party" means:

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- Any Director of the Authority from time to time; or
- Any Company, partnership, trust or other entity in which a Director or any spouse or defacto partner or child of the Director is financially interested whether as a shareholder (except a publicly listed Company of which the Director holds less than 5% of the issued share capital) partner, director, employee or beneficiary or like capacity; or
- Any spouse or common law defacto partner of a child of a director.

"Rivers" means the Tamar, North Esk and South Esk Rivers.

"State Agreement" means the deed of agreement dated the 28 April 2008 between Council and the State Government of Tasmania entered into by those parties to regulate funding of the Authority and the duties and responsibilities of each party and the Authority, to initiate agreed measures on flood mitigation and associated works in Launceston.

"Planning Scheme" means Launceston Interim Planning Scheme 2015 as amended and its successor schemes.

Part 2 - Functions and Powers

6. Functions

The Authority has the functions specified in Clause 6 of the Act.

7. Powers

Subject to limitations imposed by Clause 8 of these Rules the Authority in carrying out its functions has the power, after liaison with Council, to:

- 7.1 Perform its functions and exercise its powers both within and outside the municipal boundaries of the Council.
- 7.2 Agree, enter into, and perform and enforce any contract, option or other right relating to part or all of the assets of the Authority which are to be maintained or held by it from time to time.
- 7.3 Institute, prosecute and defend legal proceedings.

8. Limitation on Powers

- 8.1 The Directors will obtain written consent of Council prior to:
 - (a) the exercise of any power to acquire or any decision to deal with interests in land;
 - (b) giving any security over any facility or asset owned by it; and

Commented [MJ3]: Only one is a doing rather than advising function cl.6(1)(a) and this can be delegated under Clause 8. We are prohibited by Clause 10 of making Rules inconsistent with the Act.

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- (c) borrowing any money or giving any guarantee.

9. Related Party Transactions

- 9.1 The Directors shall not without the prior consent of Council:
- a) Sell or otherwise dispose of any Authority asset to any related party.
 - b) Acquire any asset from any related party.
 - c) Cause any Authority asset that comprises cash to be invested or lodged with any related party.
- 9.2 The Directors shall not without the prior written consent of Council, unless they are doing so in the normal course of business and on arm's length commercial terms or on terms more beneficial to the Authority than arm's length commercial terms:
- a) Enter into any contract, agreement or other arrangement with any related party to provide management, administration or other services for the Authority.
 - b) Enter into any other transaction with any related party in relation to the Authority.

10. Delegation

The Authority may delegate its powers in accordance with Clause 8 of the Act.

Commented [MJ4]: These powers are broad and dont need elaboration

11. Constitution of Authority

- 11.1 The Authority is a body corporate with perpetual succession and a common seal.
- 11.2 The Authority consists of persons, known as Directors appointed in accordance with Part 3.

Part 3 - Directors

12. Appointment of Directors

- 12.1 The Directors (individually or en bloc) shall be appointed and removed from office by or at the direction of Council.
- 12.2 Subject to Clause 12.7, the number of Directors shall be three.
Subject to the right of Council to appoint and remove Directors;
One Director shall be a person independent of Government, but with knowledge and competence at a high level as a technical Infrastructure

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asset manager;

One Director shall be a person independent of Government, but with knowledge and competence at a high level as a risk management/community relations manager;

One Director shall be the General Manager of Council, or representative of Council;

- 12.3 If a person appointed as Director ceases to be a General Manager of Council, or representative of Council during his or her term of appointment as Director, that person shall cease to be a Director (but shall not be precluded from being subsequently appointed as a Director).
- 12.4 Each Director shall be appointed for a maximum term of four years. A person appointed as a Director who remains eligible to be appointed a Director, may be reappointed for a further period or periods provided each term does not exceed four years.
- 12.5 A certificate signed by or on behalf of Council to the effect that a person has been appointed a Director or removed from the office of Director shall be conclusive evidence of that fact.
- 12.6 The appointment of a Director shall be vacated if a Director:
- a) Resigns;
 - b) Dies;
 - c) Becomes bankrupt;
 - d) Becomes of unsound mind;
 - e) Becomes for any reason unable to perform the duties of a Director;
 - f) Is convicted of an indictable offence;
 - g) Is removed from office by Council; or
 - h) Is a General Manager of Council, or representative of Council who has ceased to be a General Manager of Council, or representative of Council .
- 12.7 If the number of Directors falls below three for any reason, Council may, but shall not be obliged to, appoint one or more replacement Directors. If Council does not appoint a replacement Director, then the remaining number of Directors, if less than three, shall become the permitted minimum number of Directors under these Rules, until Council does appoint a replacement Director or Directors.

13. Chair

- 13.1 Council may appoint one of the Directors to be Chair of the Authority and that person will be Chair. If not appointed by Council, the Directors shall elect one of them as Chair. The Chair shall hold that office for an initial term of two years and may be appointed pursuant to these Rules for a further term of two years thereafter.

Commented [MJ5]: Altered as suggested by consultant report

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13.2 If the Chair is unable for any reason to perform the Chair's duties then the Directors may elect an acting Chair during the relevant period of inability.

14. Alternate Directors

Council may appoint a person to act as an alternate Director for any Director appointed by Council during any period when that Director is, for whatever reason, temporarily unable to attend to his or her duties as Director.

- 14.1 Each person appointed as an alternate Director under this clause 14 shall:
- a) During the periods when the alternate director is acting as an alternate director, have all the rights, powers, and obligations of the Director for whom the alternate director is acting; and
 - b) Automatically be entitled to act as an alternate director for any relevant Director or Directors from time to time during any periods of absence in accordance with clause 14 until such time as the alternate director's appointment is cancelled.
- 14.2 Council may from time to time revoke the appointment of any person appointed to act as an alternate director in writing to the Chair and may appoint any other person as an alternate director.
- 14.3 Each alternate Director shall be entitled to receive copies of all notices of meetings, Director minutes or other written information forwarded to Directors.

15. Remuneration

- 15.1 Council may, from time to time determine the remuneration to be paid to Directors for performing their duties as Directors.
- 15.2 Unless otherwise determined by Council, the Director's remuneration for their services will be limited to reasonable reimbursement for out-of-pocket expenses incurred by the Directors in relation to the discharge of their obligations under these Rules.

Part 4 - Meetings of Directors

16. Meetings

Subject to these Rules, Directors may meet together for any dispatch of business, and may adjourn or otherwise regulate their meetings as they think fit. All meetings of Directors shall be closed to the public.

- 16.1 At any meeting of the Directors the Chair shall preside, or in the absence of the Chair, the Directors may elect one of their fellows to preside.

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- 16.2 No business shall be transacted at any meeting unless the required quorum in accordance with clause 18.2 is present at the commencement of business. The quorum for passing a resolution shall be a simple majority of the Directors appointed.
- 16.3 An act or decision of the Directors shall not be invalid by reason of:
- a) A fault, or irregularity, in connection with the appointment of a director; or
 - b) A vacancy in the number of Directors including a vacancy arising because of a failure to appoint a Director.
- 16.4 The Directors shall hold up to four general meeting of the Authority in any calendar year.

17. Convening of Meetings

- 17.1 Subject to clauses 16.4 and 17.3 the Authority shall hold such meetings of Directors and committee meetings as are necessary to carry out its functions.
- 17.2 The Chair shall convene a meeting of Directors.
- 17.3 The Chair will convene any additional meetings of Directors if the Chair receives written request from at least two Directors or from Council to hold a meeting. At least two working days prior notice of meeting will be given to all Directors.
- 17.4 Four days notice in writing of a meeting of Directors is to be given to Directors.
- 17.5 The notice of a meeting of Directors is to specify the venue, date, and hour of the meeting and the general nature of the business to be transacted at the meeting.

18. Quorum Not Present At Beginning

- 18.1 If within 15 minutes after the time specified for a meeting of Directors, a quorum is not present the meeting is to be postponed.
- 18.2 A Quorum shall consist of at least 2 Directors in accordance with Clause 16.2.
- 18.3 In the case of a postponed meeting, a meeting is to be held on the same day in the next week at the same time and place or such other date, time and place as the Chair may nominate.
- 18.4 If that day is not a business day, the meeting is to be held on the next business day.
- 18.5 If at the postponed meeting, a quorum is not present within 15 minutes after the time specified for holding the meeting, the meeting is to be abandoned.

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19. Quorum Not Present During Meeting

- 19.1 If at a meeting once commenced, a Director or Directors leave so that the meeting then lacks a quorum, the Chair must adjourn the meeting.
- 19.2 The Chair may resume the meeting when a quorum is present or adjourn the meeting to a date, time and place as nominated by the Chair or Close the meeting.
- 19.3 Business is not to be transacted at an adjourned meeting, other than the business left unfinished from the meeting from which the adjournment took place and other business of which appropriate notice has been given to Directors.
- 19.4 If at the adjourned meeting a quorum is not present within 15 minutes after the time specified for holding the meeting, the meeting is to be abandoned.

20. Conduct of Meeting

- 20.1 The *Local Government (Meeting Procedures) Regulations 2015* will, as far as they are reasonably applicable to proceedings, be adopted as procedures to be followed at meetings of the Authority.
- 20.2 Each Director, including the Chair is entitled to one vote at each meeting.
- 20.3 One vote equals one value.

21. Voting

- 21.1 A question arising at a meeting, and each resolution put to the meeting, is determined by a simple majority.
- 21.2 A tied vote results in the question or the resolution being determined in the negative.
- 21.3 A vote is to be taken in such manner as the Chairperson directs.

22. Proceedings

The Directors shall cause minutes to be kept therein of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the Chair of a meeting shall be receivable as prima facie evidence of the matters contained in such minutes.

- 22.1 All meeting, resolution and decision minutes are to include the names of the Directors participating in the meeting, confirmed at a subsequent meeting of Directors and circulated to all Directors.
- 22.2 The contemporaneous linking together by telephone or other means of communication of a number of Directors not less than the quorum

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(whether or not any one or more of the Directors is out of Tasmania) shall be deemed to constitute a meeting of Directors and all the provisions of these Rules in respect of such meeting shall apply so long as the following conditions are met:

- a) All Directors for the time being entitled to receive notice of a meeting of Directors shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting, shall have first received the required number of working days prior notice of such meeting;
- b) Each Director taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Directors taking part in the meeting; and
- c) At the commencement of the meeting each Director must acknowledge the Directors presence for the purpose of the meeting to all the other Directors taking part.

Commented [MJ6]: I would have thought specialist info is provided and/or organised by Council

23. Role of Council Officer

- 26.1 The General Manager may appoint a Senior Officer of Council to attend and participate in each meeting of Directors, but such Officer shall not have voting power.
- 26.2 Such Council Officer shall receive Notices, Agendas and Minutes and all communications supplied to Directors.
- 26.3 Such Council Officer shall not be entitled to any remuneration for such role.
- 26.4 The General Manager may appoint any Council Officer to take the place of any Council Officer previously appointed, and such appointment shall take effect immediately upon notification of such appointment to the Chair.

Part 5 - Accountability

24. Adverse Events

The Directors must notify Council as soon as practicable of any development which, in their opinion, may:

- 27.1 Significantly affect the financial viability or operational viability of the Authority; or
- 27.2 Otherwise significantly affect the Authority in an adverse manner. Impact upon or has the potential to impact adversely upon their ability to perform their obligations under these Rules.

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25. Reporting

The Directors shall keep proper records and monthly accounts relating to the Authority in a manner that complies with the requirement of the Auditor General and the provisions of the *Financial Management and Audit Act 1990*.

26. Quarterly Reports

The Authority will prepare and submit a quarterly report to Council as soon as practicable after the end of March, June, September and December in each year, in a format agreed with Council. The report shall include but is not limited to a report by the Directors on the performance of their obligations under the Rules and the performance of objectives as may be set out or referred to in the State Agreement. Each report will include relevant financial statements and reports as may be requested by Council from time to time, and will comply with Section 36B of the *Local Government Act 1993*.

27. Annual Report

Each year the Authority will prepare an Annual Report in respect of the Authority's operation for the preceding financial year. This report is to be presented to Council before the end of August in each year and is to include as a minimum the following information and documents.

- 30.1 The reports of the Chair of the Authority summarising the principal activities during the preceding financial year.
- 30.2 A report on performance of the Authority in achieving outcomes and performance targets.
- 30.3 The financial statements of the Authority for the financial year to which the annual report relates.
- 30.4 A copy of the opinion of the Authority auditor in respect of the financial statement.
- 30.5 Any other information the Authority considers appropriate or necessary to inform Council of its performance and progress during the preceding financial year.
- 30.6 Any other information Council might request be included in such annual report.
- 30.7 Any other information required pursuant to the provisions of Section 36A of the *Local Government Act 1993*.

28. Special Reports

Council may from time to time require the Directors to prepare a special report on any matter and in a format that Council, in its absolute discretion, deems appropriate, and the Directors shall compile and submit such a report in a timely manner.

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29. Special Review

Council may in its absolute discretion, for whatever reason, commission any special review, report, investigation or audit of the Authority or any activity or activities undertaken by the Authority, and the Directors shall comply with all reasonable requests to facilitate the execution of any such review, report, investigation or audit.

30. Disclosure of Interests

A Director, as soon as practicable after the relevant facts come to his or her knowledge, must disclose to the Authority any of the following:

- 34.1 A direct or indirect pecuniary interest, in a matter being considered, or about to be considered, by the Authority.
- 34.2 An interest of the Director in a matter that may conflict or be seen to conflict with the proper performance of the Director's duties in relation to consideration of the matter.
- 34.3 A Director who has declared an interest in a matter that is to be considered by the Authority must not be present during any deliberation of the Authority in relation to the matter or take part in any decision of the Authority in relation to the matter.

Part 6 - Financial Matters

31. Receipt of Monies

- 35.1 The Authority may receive monies:
 - a) From both the State Government of Tasmania and Council pursuant to an Agreement between those parties;
 - b) From the Government of the Commonwealth of Australia;
 - c) From such other sources as the Authority may determine from time to time.
- 35.2 The provider of monies, being the State Government or Council may specify the purpose for which those funds are to be applied, and the Authority, in accepting such funds, shall duly apply such funds to that nominated purpose.

32. Financial Reporting

- 36.1 The Authority shall maintain the financial records and systems to enable the recording and reporting of assets, liabilities, revenue and expenditure.
- 36.2 If required accounts, shall be established to enable appropriate reporting of the following expenditure:

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- a) Capital upgrading of the levee system;
- b) Maintenance of the levee system;
- c) Dredging of the rivers; and
- d) General administration.

33. Anticipated Receipts and Expenditure

Not later than the 1 February in each calendar year the Authority shall make a determination in respect of each of the next three financial years the amount of money it reasonably needs to effectively carry out its duties and responsibilities pursuant to these Rules, and operational plans adopted by it.

Having regard to the funds previously agreed to be paid to it, by either the State Government or Council, having regard to anticipated other receipts of income, and having regard to the existing agreement between Council and the State Government as to sharing of costs, and the availability of funds provided by the Government of the Commonwealth of Australia, the Authority shall prior to 30 March in that year advise Council:

- a) The amount of money it reasonably needs to complete the works and other undertakings as set out in its operational plans for the forthcoming financial year;
- b) The amounts it reasonably requires to meet other expenditure for the forthcoming financial year, and details of that expenditure;
- c) In respect of (a) above, detail of respective amounts for each item of work.
- d) The amount of money reasonably required by it for each of the following two financial years:
 - (i) to meet its expenditure associated with proposed works and undertakings as set out in its operational plans adopted by it and as may be amended from time to time.
 - (ii) to meet operational and any other expenses.

34. Funding

- 38.1 The Authority will provide Council with a monthly cash forecast which details the expected funding flows from each funding source;
- 38.2 In reviewing its likely future expenditures, the Authority will have regard to the annual operating and capital budget allocations identified in the plan;
- 38.3 The Authority will assume responsibility for all other funding requirements included in the plan including but not limited to corporate funding and sponsorships, generated income from the Authority activities and project funding or other income received from third

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parties.

35. Lodgement with Auditor General

The Authority shall, at such times as may be required by the Auditor General, lodge with the Auditor General such documents and records as required by the Auditor General so that the Auditor General may conduct such audit or investigation into the financial affairs of the Authority, as determined by the Auditor General. Each Director shall provide such information and assistance as reasonably required by the Auditor General.

36. Independent Audit to Establish Amount of Required Funds

In order to assist in assessing the amount of money reasonably required to carry out the duties and responsibilities of the Authority in each of the forthcoming three financial years, the Authority shall base such determination on the amounts of money reasonably available to it from all sources, and for the purposes of assessing both reserves the money available and money reasonably required, the Authority shall commission an independent audit at least every three years, each audit to relate to a forthcoming three year rolling period.

37. Planning

The Authority will prepare, on a basis and in a format agreed with Council, a Strategic Plan for the Authority, which sets out, as a minimum, the following information:

- 41.1 An analysis of the current financial position of the Authority;
- 41.2 A statement of intent which includes a clear statement of the future outcomes to be achieved, the strategic priorities which will be the focus of the plan and a statement of operating values to be adopted. The statement will deal with anticipated expenditure and timeframe up to the point in time where flood levees have been constructed or repaired and secondly, to the point where the Authority passes from one primarily directed to construction of new levees and remedying faulty levees to one of maintaining the new works. The strategies to achieve the future outcomes with clear performance targets and the related performance measures that will be applied to measure achievement of the targets;
- 41.3 Related operating and capital budgets and cash flow statements showing clearly the sources and applications of income and expenditure and in particular the expected funding requirements of Council and other parties.
- 41.4 The Authority will provide Council with a copy of the plan in a timeframe agreed with Council and the Authority will update that plan from time to time as necessary to reflect any significant changes in operating conditions or alterations to strategies and related budget requirements.

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Part 7 - Miscellaneous

38. Seal

- 42.1 The common seal of the Authority shall be kept by the Authority in the custody of the General Manager of the Council.
- 42.2 The common seal shall be applied by Authority of the Directors by:
- a) Any two Directors; or
 - b) The Chair and the General Manager.

39. Activities Outside Council Area

If the Authority shall become aware of a rezoning of land or development proposed in an area either inside or outside of the municipal area of Council, and the Authority forms a view that:

- a) an area of land should not be rezoned because if it was rezoned, a subsequent development of that land would be likely to have a serious negative impact on the integrity of the levee system; or
- b) a proposed development would, if it proceeded, have a serious negative impact on the integrity of the levee system; or
- c) a parcel of land should be purchased to protect the interest of the levee system; or
- d) a parcel of land;
- e) as to some other matter or matters which might materially affect the integrity of the levee system or the work of the Authority.

The Authority shall immediately on the event occurring advise Council:

- a) of the view or views taken by the Authority;
- b) actions planned to be taken by the Authority;
- c) when each of such actions has been taken.

40. Service of Documents

- 44.1 A document is effectively given to a Director under these Rules if it is marked to the attention of the director; and
- 44.2 Left at, or sent by post to, the Director's principal office; or
- 44.3 Sent by way of electronic mail or facsimile transmission to the Director's electronic mail address or facsimile number.

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41. Alteration of Rules

The Directors from time to time may request Council to amend these Rules.

42. Winding Up

The Authority may be wound up in accordance with Clause 11 of the Act.

Commented [MJ7]: Levee advisory panel duplicates committee power

Commented [MJ8]: The rule is duplicative

43. Liability

Except for actions by the Directors which arise from their own dishonesty, wilful default or wilful breach of trust, the Authority will indemnify the Directors for:

- 48.1 Any losses or liabilities arising from any act or acts or attempted act or acts done in exercise of or pursuant to any power or discretion invested in them by these Rules; or
- 48.2 Any omission or omissions or non-exercise of any trust, power or discretion of the Directors under these Rules; and
- 48.3 The indemnity shall extend to any payments made to any person whom the Director bona fide believes to be entitled thereto though it may be subsequently found that the person was not in fact so entitled.

44. Director Obligation

No Director shall be subject to any greater standard of care diligence and skill in discharging his or her obligations under these Rules by virtue of that Directors professional employment or business. In particular, although the Directors will from time to time include persons whose profession, employment or business is or includes acting as trustee, or investing money on behalf of others, the care diligence and skill to be exercised by the Director in exercising any power of investment shall be the degree of diligence and skill that a prudent person of business would exercise in managing the affairs of others.

45. Notification of Contingent Liability

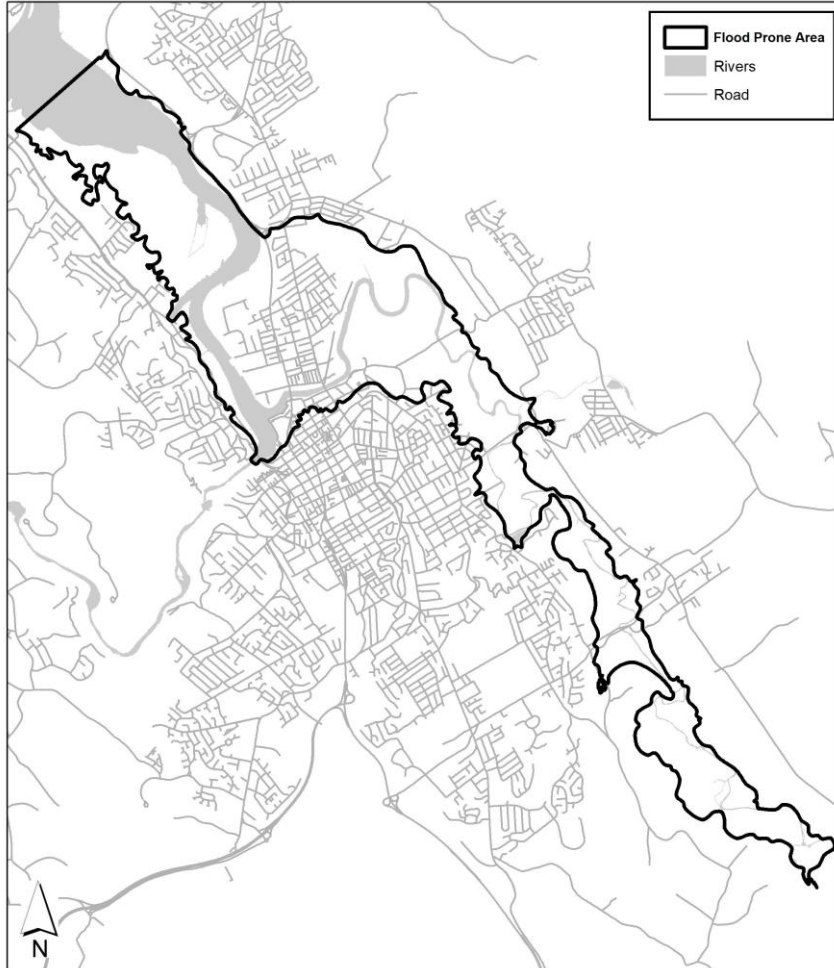
The Authority will notify Council immediately it becomes aware of any contingent liability or expense for which indemnity may be sought under this Clause and act in accordance with the reasonable directions of Council.

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Plan



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Certification

I, Michael John Jacques, legal practitioner, certify that the within rules are in accordance with the law.

.....
M.J. Jacques

.....
Dated

I, Michael Stretton, General Manager, Launceston City Council, certify the within rules are made in accordance with the provisions of the *Local Government Act 1993*.

.....
M. Stretton

.....
Dated