Review of stormwater management legislation and policy: ‘un-muddying’ the water

Issues Paper
November 2018

Note: This is not an LGA Board of Directors endorsed Issues Paper. It has been prepared for consultation purposes only, and is subject to consideration by the LGA Board of Directors.
Summary of LGA project

The LGA is undertaking a project to review South Australian legislation relevant to stormwater management to identify ambiguities (gaps, overlaps and risks) that hinder development of appropriate stormwater management and flood mitigation strategies.

The LGA is seeking to ensure that SA legislation and policy:

- recognises the proper role played by different organisations in stormwater management (i.e. those best placed to do the work should do the work) and minimizes duplication in responsibilities; and
- supports the development of flood mitigation strategies that appropriately balance environmental, social and economic considerations.

The ‘hydro-illogical’ cycle

The term ‘hydrological cycle’ refers to the continuous movement of water on, above and below the earth’s surface. Those working in the stormwater space have come to (tongue in cheek) refer to the ‘hydro-illogical cycle’ which refers to the knee-jerk approach that is often taken to stormwater management policy and planning. It is the ‘hydro-illogical cycle’, from a local government perspective, that this project is seeking to address.
Who has responsibility for stormwater management?

This finger pointing described by the hydro-illogical cycle is evidenced in a letter Ministers Hunter and Brock sent to the LGA after the 2016 flooding events in SA. The letter suggested that the local government sector has primary responsibility for flooding and stormwater management and that the LGA should undertake a review of the flooding.

The LGA does not agree that the local government sector has primary responsibility for flooding and stormwater management in SA. The ambiguity that surrounds roles and responsibilities in relation to stormwater management is, for the purpose of this project, the ‘policy problem.’

A desktop review of the history and development of stormwater policy and planning in SA has revealed that many different disciplines are involved in this space. Stormwater policy engages with:

- Engineers;
- Asset managers;
- Planners;
- Environment or natural resources managers;
- Disaster/emergency managers; and
- Policy-makers/politicians (elected members).

These different disciplines bring different perspectives to stormwater policy and planning and often have different objectives in mind when approaching stormwater management. This multi-objective approach can “muddy the water” when it comes to identifying options to address the policy problem.

Themes for discussion

The purpose of the LGA’s consultation with the sector is to seek a consensus or agreement on the nature of the policy problem and the themes and issues that may be worth exploring in further detail. At this early stage, we are seeking to “unpack” the policy problem – the underlying historical issues, problems and assumptions that contribute to ambiguity in this space.

The LGA would appreciate councils responding to the below issues by contacting Emily Heywood-Smith, Senior Policy Officer at emily.heywoodsmith@lga.sa.gov.au by 18 January 2019.

1. What are the ‘on the ground’ problems?

In a general sense, the LGA would like to develop a better understanding of the stormwater management and flooding issues facing councils, and what councils think of the current stormwater management system in SA.

Issues for consideration:

To develop a better understanding, the LGA has asked the following questions through a survey:

1. Is flooding from stormwater runoff an issue in your council? Are certain areas more prone to flooding, and how often is flooding an issue? How much damage is caused?
2. Does the current system for funding stormwater infrastructure (collaboration between state and local government through the Stormwater Management Authority) work? When does it work? When doesn’t it work?
3. Has your council applied for funding through the Stormwater Management Authority? Was it successful? Why/why not? Do you agree with the Stormwater Management Authority’s priorities for funding?

4. What stormwater management and flooding issues are not being addressed (whether by local government, state government, the Stormwater Management Authority, or another entity)?

5. Is your council dealing with issues relating to drains, watercourses, levee banks and/or dams? Do your council’s issues relate to public or private infrastructure?

The LGA would also be interested in councils’ views of the value of resolving the issues raised in this paper (i.e. would resolving the conceptual problems help to fix the problems ‘on the ground’?)

2. Lack of clear/agreed definition of stormwater and stormwater management

The State Government’s 2011 Stormwater Strategy describes stormwater as ‘surface water or run-off from urban areas.’ It is unclear whether this definition is widely accepted and whether the definition is intended to include run-off resulting from human development, rainfall that becomes run-off even if not the result of human interference, or natural high rainfall events.

*Issue for consideration:*

The LGA would appreciate feedback as to whether councils would benefit from a clear and broadly accepted definition of ‘stormwater’, and what the definition should be.

3. No clear benchmarking/no agreement on acceptable risk or acceptable failure rates

Although there are Australian standards and DPTI guidelines, there is no uniformly adopted stormwater management standard for councils. While council engineers typically design for a 1 in 10 year flood (depending on the nature of the infrastructure involved), there is no local government-wide rule, policy or requirement.

*Issues for consideration:*

The LGA is interested in determining whether councils would benefit from a stormwater management benchmark/standard for local government, and/or an expression of the intended aim of stormwater management (is it 100% zero flooding, or is it something else?).

The LGA would also like to determine whether councils believe the benchmark/standards should be incorporated into regulation, a broader SA flood management strategy, SMPs, or elsewhere.

4. No delineation between retrospective and prospective stormwater management

There does not appear to be delineation between retrospective and prospective stormwater management.

*Issues for consideration:*

The LGA seeks to develop a better understanding of councils’ practice if historical infrastructure fails to meet current design standards.
The LGA would also like to understand current council practice in relation to upgrading and maintenance of stormwater infrastructure (i.e. when is infrastructure upgraded?). The LGA would appreciate understanding whether councils believe:

- Addressing stormwater management though the development approval process is effective, especially in light of the cumulative impact associated with infill development;
- development on floodplains should be allowed and under what circumstances; and
- developers and others (i.e. suppliers/SA Water) should be required to financially contribute towards stormwater management.

5. No clear/agreed method of identifying failures in stormwater infrastructure following flooding events

There does not appear to be an agreed method of identifying failures in stormwater infrastructure. In the letter sent to the LGA by Ministers Hunter and Brock, it was suggested that the LGA undertake a review of the September 2016 flooding. However arguably, the SMA is more appropriately placed to undertake such a review.

**Issue for consideration:**

The LGA is interested in establishing whether councils believe the LGA is the most appropriate body to investigate failures in stormwater infrastructure following events, and if not, what other entities or processes should investigate the failures.

The LGA would also appreciate feedback regarding whether there are any insurance or other practical implications associated with identifying failures in stormwater infrastructure following a flooding event, and how these could be managed.

6. No clear pathway for elevating responsibility from local to State Government

There is currently no ability for a stormwater management issue that has fallen to local government to address, to be formally elevated to the State Government.

**Issues for consideration:**

The LGA seeks council feedback as to whether there are situations where stormwater management should clearly be a State Government issue. For example, when an issue is catchment-wide or when flooding problems are so extensive that they clearly fall within the ambit of disaster/emergency management.

There is already precedent for the state government taking control of an issue typically handled by local government (i.e. the major development proposals process and declarations of emergencies).

**Conclusion**

The LGA will seek to gain an in-depth understanding of councils’ views on these themes in early 2019, with a view to progressing the project throughout 2019.

If you would like to attend a forum, please express your interest with Emily Heywood-Smith, Senior Policy Officer at emily.heywoodsmith@lga.sa.gov.au.