

Amendments to floodplain management plans

Under the *Water Management Act 2000* (the Act) there are several statutory management plans which can be prepared. These include plans on any aspect of water management such as water sharing, water source protection, drainage management and floodplain management or other such plans.

These plans are in place for a period of ten years to provide certainty for water users and managers.

Where a change is proposed for a plan within its ten-year term, it may be amended in line with provisions under Section 45 of the Act.

Under Section 45(1) *the Minister may at any time, by order published on the NSW legislation website, amend a management plan –*

- a. if satisfied it is in the public interest to do so, or*
- b. in such circumstances, in relation to such matters and to such extent as the plan so provides, or*
- c. if the amendment is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or*
- d. if satisfied that it is necessary to do so because of requirements arising under the Water Act 2007 of the Commonwealth.*

Part 10 of each floodplain management plan that has been made under the Act includes amendment provisions. While floodplain management plans do not contain mandatory amendment provisions, they contain provisions that allow plans to be amended for specified reasons (non-mandatory amendments). The Minister for the Environment must concur with proposed amendments as required under Clause 45(3) of the Act.

The Natural Resources Commission's audit of the Gwydir Valley Floodplain Management Plan 2016 (NRC 2021) recommended that *'DPIE-Water to formalise and implement a process for documenting the:*

- decision making process that underpins how and whether to implement potential amendments*
- status of potential amendments'*

Identifying amendments

Potential areas for amendment are identified in Part 10 of each floodplain management plan. These may include modifications to the plan map, management zones or rules for granting or amending flood work approvals.

Where amendments are not already identified within the plan, further potential plan amendments may be identified within the department, through other agencies, through Cabinet processes or by other stakeholders.

Opportunities for stakeholder input to proposed amendments occurs through:

- a review of the plan under Section 43 of the Act
- the submission of a suggested amendment directly to the department via email floodplain.planning@dpie.nsw.gov.au (for example, changes to the management zones at a local scale)
- as well as any plan replacement process which will involve public exhibition of the draft plan.

The identification of a potential amendment does not automatically mean it will result in an amendment.

Consideration for progression of a proposed floodplain management plan amendment

Potential amendments are collated in an amendment register held by the department. This register is reviewed on a regular basis by department staff who make a determination whether an amendment is to be progressed, and, if so, the timeframe for the progression. This determination is based on consideration of factors such as:

- the reason for the proposed amendment
- potential implications of making/not making the amendment (including scale and risk)
- if there are other amendments proposed for the same plan and the timing of these
- timeframes for any upcoming work on the plan such as plan replacement
- technical factors underpinning rural floodplain management in NSW as guided by the *Technical Manual for Rural Floodplain Management Plans prepared under the Water Management Act 2000* and the *Floodplain Development Manual*.

A decision to proceed with a proposed amendment is initially approved through the relevant Water Planning Director. More information about the process to make an amendment to a floodplain management plan is provided on page 3 of this factsheet.

Consultation relating to a proposed plan amendment

Under the Act there are no specified requirements in relation to the process to be undertaken for a floodplain management plan amendment other than that concurrence from the Minister for the Environment must be obtained.

Consultation activities at this stage will generally seek stakeholder feedback on the proposed amendments rather than the plan as a whole.

The department has adopted a process which identifies the scale of potential change in relation to the amendment and this determines what consultation may be required in association with the amendment (Table 1).

Table 1. Consultation requirements for floodplain management plan amendments

| Scale of change associated with the amendment | Consultation requirements | Example |
|--|-------------------------------------|---|
| Administrative change with no material effect, change to address, drafting error which aligns with original intent as consulted* | No additional consultation required | Incorrect clause numbering, incorrect map name, typographical error |
| Amendment impacts a small/specific group of floodplain users | Targeted consultation required | Change to the management zones at a local scale to reflect the footprint of a flood work approval |
| Amendment impacts floodplain users or the environment on a larger scale | Public exhibition required | Changes to the rules for flood work approvals in Management Zone A (Part 8) |

*Note there may be instances where the amendment falls into the first category however, the extent of change required to the plan drafting to fix the error is quite substantial. In these instances, the perception may be that the effect of the amendment is larger than it is. In these instances, consideration will be required as to whether consultation would be appropriate to deal with any perception issues.

Process for making a floodplain management plan amendment

In undertaking an amendment to a plan, the following steps are followed by the department:

1. The proposed amendment is scoped and developed with relevant agency staff in accordance with the Act principles and consideration of the Technical Manual for Rural Floodplain Management Plans. This may include a number of options.
2. Consultation requirements are identified (in line with Table 1) and relevant consultation documents developed
3. Interagency support for the proposed amendment is sought ahead of consultation activities
4. Consultation is undertaken as required in line with Table 1
5. Outcomes of consultation are considered on the proposed amendment/s
6. Final amendments proposed and endorsed by management in the department’s Water group
7. Final interagency support for the proposed amendment/s is sought
8. Planning staff draft amendment instructions and provide to legal team who draft or liaise with Parliamentary Counsel's Office to draft the amendment order
9. If the amendment involves a change to the floodplain boundary (the declared floodplain), an amendment order for Schedule 6 of the Water Management (General) Regulation 2018 (the Regulation) will also be drafted

10. Final amendment order/s included in a package for approval. Approval of amendment documentation is sought from both the Minister for Water and the Minister for the Environment as concurrence is required for an amendment to commence. Approval to amend the declared floodplain in the Regulation is sought from the Governor through the Executive Council
11. The concurrence letter and amendment order are provided to the department's Environment and Heritage Group to inform concurrence response, thereby providing advice to the Minister of Environment of the process, consultation activities and the agency's involvement during this
12. Following approval, the signed amendment order is provided to the Parliamentary Counsel's Office for upload to NSW legislation website. This can take a period of time for the interactive plan orders to be updated. Note: Initially the amendment order will be loaded to the 'as made' section of the NSW Legislation website. It generally takes a couple of months for the plan to be updated to incorporate the amendments and appear in the 'in force' section of the website.
13. The department's Water website is updated to link to the NSW Legislation website as appropriate to link to the amendment/amended documentation
14. All relevant staff are notified of the Amendment Order commencement
15. Where flood work approval conditions need to be updated as a result of the amendment the relevant Water group teams are notified to develop these updated conditions and advise WaterNSW and the Natural Resources Access Regulator who apply these and inform flood work approval holders.
16. The department, dependent on the amendment may issue a media release or undertake other forms of notification to stakeholders such as email or newsletter article.

Tracking plan amendments

The department is progressing work to develop and maintain a register of current plan amendments. This will include listing of all amendment provisions, assignment of responsibility, and tracking of amendment status. This information will inform Natural Resources Commission reviews and audits of plans as well as plan replacement activities.