

A guide to the changes

Introduction

The Department of Industry is transitioning from the floodplain management plan and controlled works provisions of Part 8 of the *Water Act 1912* (WA 1912) to the equivalent provisions under the *Water Management Act 2000* (WMA 2000). This will mean some changes in terminology for current holders of Part 8 approvals, changes in the way floodplain management plans are made, and changes in the approval process for landholders who may wish to apply for flood work approvals in the future. However, in many respects provisions of the WMA 2000 regarding floodplain management plans and flood works relate closely to the WA 1912 provisions, and many landholders will notice little if any difference as a result of the change to the WMA 2000.

This guide describes how the transition to the WMA 2000 will affect the roles and responsibilities of different agencies in floodplain management, the development of floodplain management plans, and the granting or amending of flood work approvals. It should be read in conjunction with *An overview of floodplain management plans under the Water Management Act 2000*, which provides more detailed information on the content and format of the new floodplain management plans that are being developed.

Roles and responsibilities

The roles and responsibilities of local government and NSW Government agencies in floodplain management and flood risk management are outlined in the *NSW Flood Prone Land Policy and Floodplain Development Manual (2005)*.

Historically, the Department of Industry and its predecessors have made floodplain management plans under Part 8 of the WA 1912 on rural floodplains in the Murray–Darling Basin. The department has granted controlled work approvals under Part 8 on rural floodplains in the Murray–Darling Basin and in coastal catchments. In urban areas in the Murray–Darling Basin and more broadly in coastal catchments, local councils have primary responsibility in managing flood risk and floodplain development.

Nothing in the transition from the WA1912 to the WMA 2000 affects that division of responsibility.

Administratively, the NSW Government has allocated the initial responsibility for preparing floodplain management plans made under the WA 1912 to the Office of Environment and Heritage. However, those plans are approved and formally made by the Department of Industry. WaterNSW is responsible for flood work approvals under the WMA 2000.

This division of responsibility continues under the WMA 2000, with some changes to reflect the different requirements of the WMA 2000. The Office of Environment and Heritage remains responsible for the initial development of floodplain management plans under the WMA 2000. Floodplain management plans must then be approved by the Minister for Regional Water, who must obtain the concurrence of the Minister for Environment before finally making a plan. WaterNSW is responsible for implementing floodplain management plans made under the WMA 2000.

Conversions from the WA 1912 to the WMA 2000

The WMA 2000 includes transitional provisions to ensure that actions taken and approvals granted under Part 8 of the WA 1912 remain valid once the WMA 2000 comes into effect. Floodplains that were designated under the WA 1912 are automatically considered to be WMA 2000 floodplains. Floodplain management plans made under the WA 1912 are taken to be made under the WMA 2000. And controlled work approvals granted under the WA 1912 convert to flood work approvals under the WMA 2000.

No action on the part of the holder of a controlled work approval is needed to maintain the validity of their approval.

Floodplain management plans under the WMA 2000

Floodplain management plans made under the WMA 2000 have a number of features similar to their WA 1912 predecessors. These plans continue to be designed to contribute to the environmental health of floodplain ecosystems, contribute to the protection of cultural heritage important to Aboriginal people and other stakeholders, effect the orderly passage of floodwaters through the floodplain and minimise the risk to life and property from flooding. New floodplain management plans made under the WMA Act 2000 still establish mapped floodway networks where there is significant discharge of flood flows, and they continue to have rules that govern whether an application for a flood work approval must be advertised.

For additional detail on the content of floodplain management plans, refer to *An overview of floodplain management plans under the Water Management Act 2000*, available on the Department of Industry website www.industry.nsw.gov.au under Plans and Programs > Healthy Floodplains Project.

Process for making floodplain management plans under the WMA 2000

The development of floodplain management plans under the WMA 2000 is undertaken in partnership between the Department of Industry and the Office of Environment and Heritage.

The Office of Environment and Heritage is responsible for developing the content of floodplain management plans based on the advice of a technical advisory group. The Department of Industry is responsible for the consultation and review processes for the development of floodplain management plans.

An interagency regional panel is responsible for overseeing the development of floodplain management plans on a whole-of-government basis, and is made up of representatives from the Department of Industry, the Office of Environment and Heritage, and the Department of Primary Industries (agriculture and fisheries interests).

Consultation on floodplain management plans is undertaken using a two-stage process: targeted consultation with key stakeholders, and then public exhibition of the floodplain management plan.

During targeted consultation key stakeholders are invited to provide feedback on key components of the floodplain management plan. The comments received during targeted consultation are considered before the draft floodplain management plan is prepared and released for public exhibition.

During public exhibition, the draft floodplain management plan is formally exhibited for a minimum period of 40 days, and one-on-one information appointments are held within the plan area to provide information on how the draft floodplain management plan applies at the property scale. Information on the development of the draft management zones, rules, and assessment criteria and how to make a submission is also discussed. Feedback and submissions received during this period will be considered before the final floodplain management plan is submitted to the Minister for Regional Water for approval and the Minister for Environment for concurrence.

Flood work approvals under the WMA 2000

Under the WMA 2000 flood work approvals replace approvals for controlled works under Part 8 of the WA 1912. The process for applying for a flood work approval is similar to the process for applying for a Part 8 approval. However, WaterNSW is now responsible for the approval and compliance of flood works under the WMA 2000.

All applications for flood work approvals for flood works proposed to be constructed within the area of a floodplain management plan made under the WMA 2000 are assessed against the rules in the plan. Like floodplain management plans made under the WA 1912, the WMA 2000 plans may require that applications for some works be advertised. In addition to this, floodplain management plans made under the WMA 2000 include rules governing the physical nature of the flood works that can be built and rules that include criteria for assessing the impacts of flood works.

Exemptions from the requirement to hold a flood work approval

An approval is required to construct or to use a flood work under section 91D(1) of the WMA 2000. However, there are exemptions from the requirement to hold a flood work approval described under the *Water Management (General) Regulation 2011*.

As per the Regulation, the following exemptions apply:

- A person does not need to obtain a flood work approval to construct, use or modify a flood work when following a direction given under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989*. This direction would be given in a flood emergency situation.
- Works constructed by a local council within a managed designated high flood risk area under a development authorisation granted by the council. This exemption applies if the flood work is not located within a floodway or MZ A or MZ D under a floodplain management plan.
- Works constructed by a person (other than a local council) within a managed designated high flood risk area, on a total landholding area of no more than 0.2 ha, under a development authorisation granted by the council. This exemption applies if the flood work is not located within a floodway or MZ A or MZ D under a floodplain management plan.
- Ring embankments around homes and farm infrastructure enclosing not more than 2 hectares in area and comprising not more than 10% of the total property area (whether individually or as a collection of embankments). Farm infrastructure is to be defined as sheds and storage silos. This exemption applies if the flood work is not located within a floodway or MZ A or MZ D under a floodplain management plan.
- Earthworks less than 150 mm above natural surface level including farm tracks and check banks. This exemption applies if the flood work is not located within a floodway or MZ A or MZ D under a floodplain management plan.
- Public roads and railways. This exemption applies to all management zones in floodplain management plans.

Further information is available on the Water NSW website>Customer Services>Approvals>Flood Work Approvals

More information

www.industry.nsw.gov.au

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