

Floodplain management under the *Water Management Act 2000*—a guide to the changes

The NSW Department of Planning, Industry and Environment is transitioning from the floodplain management plan and controlled works provisions of Part 8 of the *Water Act 1912* (Water Act) to the equivalent provisions under the *Water Management Act 2000* (WM Act). This will mean some changes in:

- terminology for holders of Part 8 approvals
- the way floodplain management plans are made
- the process for landholders who may wish to apply for flood work approvals in the future.

However, in many respects, the floodplain management plans and flood works provisions of the new WM Act relate closely to those of the Water Act, and many landholders will notice little if any difference as a result of the change.

This fact sheet describes how the transition to the WM Act 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 NSW Department of Planning, Industry and Environment and its predecessors have made floodplain management plans under Part 8 of the Water Act on rural floodplains in the Murray–Darling Basin. The department 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 Water Act to the WM Act affects that division of responsibility.

Administratively, the NSW Government has allocated the responsibility for preparing floodplain management plans made under the Water Act to the NSW Department of Planning, Industry and Environment. WaterNSW is responsible for flood work approvals under the WM Act.

This division of responsibility continues under the WM Act, with some changes to reflect the different requirements of the WM Act. The department's Environment, Energy and Science group is responsible for the initial technical development of floodplain management plans under the WM Act. The department's Water group is responsible for coordinating the review and consultation process for the preparation of floodplain management plans, and for writing the Order (legal plan) under the WM Act. Floodplain management plans must then be approved by the Minister for Water, who must obtain the agreement of the Minister for Environment before finally making a plan. WaterNSW is responsible for implementing floodplain management plans made under the WM Act.

Conversions from the Water Act to the WM Act

The WM Act includes transitional provisions to ensure that actions taken and approvals granted under Part 8 of the Water Act remain valid once the WM Act comes into effect. Floodplains that were designated under the Water Act are automatically considered to be WM Act floodplains.

Floodplain management plans made under the Water Act are taken to be made under the WM Act.

Controlled work approvals

Controlled work approvals granted under the Water Act convert to flood work approvals under the WM Act 2000. Holders of a controlled work approval do not need to take any action to maintain the validity of their approval.

Floodplain management plans under the WM Act

Floodplain management plans made under the WM Act have a number of features similar to their Water Act predecessors. These plans will still 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
- minimise the risk to life and property from flooding.

New floodplain management plans made under the WM Act still establish mapped floodway networks where there is significant discharge of flood flows and they will 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 NSW Department of Planning, Industry and Environment website www.industry.nsw.gov.au/water.

Process for making floodplain management plans under the WM Act

The NSW Department of Planning, Industry and Environment coordinates the preparation of floodplain management plans. The planning process is guided by a technical manual for rural floodplain management plans under the *Water Management Act 2000*.

The department's Environment, Energy and Science Group develops technical content on advice from a technical advisory group. This group includes key experts in water management from NSW Government and other agencies.

The department's Water Group drafts the floodplain management plans. It leads consultation and engagement and facilitates the review process. An interagency regional panel conducts the review

The interagency regional panel is responsible for overseeing the development of floodplain management plans on a whole-of-government basis and considers the advice provided by the technical advisory group, an internal departmental working group and also the comments received from stakeholders during targeted consultation and public exhibition. Key experts from the NSW Department of Primary Industries (agriculture and fisheries interests) and the Department of Planning, Industry and Environment (water and environmental interests) are represented on this panel. Experts from Local Land Services, the Natural Resources Access Regulator and WaterNSW

may also attend meetings of the interagency regional panel to provide advice on consultation activities and other matters relevant to their expertise.

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 will also be discussed. Feedback and submissions received during this period will be considered before the final floodplain management plan is submitted to the Minister for Water for approval and the Minister for Environment for agreement.

Flood work approvals under the WM Act

Under the WM Act, flood work approvals replace approvals for controlled works under Part 8 of the Water Act. 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 WM Act.

All applications for approval for proposed flood works to be constructed within floodplain management plan area made under the WM Act will be assessed against the rules in the plan. Like floodplain management plans made under the Water Act, the WM Act plans may require that applications for some works be advertised. In addition to this, floodplain management plans made under the WM Act will 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 WM Act. However, there are exemptions from the requirement to hold a flood work approval described under the Water Management (General) Regulation 2018.

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 management zone (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 two 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.

More information

More information is available on the NSW Department of Planning, Industry and Environment website www.industry.nsw.gov.au/water

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