



New South Wales

# Water Management (General) Amendment (Flood Work Approvals) Regulation 2015

under the

Water Management Act 2000

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Management Act 2000*.

NIALL BLAIR, MLC  
Minister for Lands and Water

## Explanatory note

The objects of this Regulation are:

- (a) to provide for the circumstances in which applications for flood work approvals are to be advertised by the Minister, and
- (b) to provide for certain exemptions from the requirement to hold a flood work approval, and
- (c) to make provision with respect to applications for certain entitlements under Part 8 of the *Water Act 1912* consequent on the repeal of that Part on 21 September 2015 and the conversion of such entitlements into flood work approvals to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies.

This Regulation is made under the *Water Management Act 2000*, including sections 92 (7) and 400 (the general regulation-making power) and clause 1 of Schedule 9.

## **Water Management (General) Amendment (Flood Work Approvals) Regulation 2015**

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Water Management Act 2000

### **1 Name of Regulation**

This Regulation is the *Water Management (General) Amendment (Flood Work Approvals) Regulation 2015*.

### **2 Commencement**

This Regulation commences on 21 September 2015 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Water Management (General) Regulation 2011**

### **[1]    Clause 3 Definitions**

Insert in alphabetical order in clause 3 (1):

*converted floodplain management plan* means a floodplain management plan adopted under section 166A of the former 1912 Act that, by operation of clause 13 of Schedule 9 to the Act, is taken to be a Minister's plan made under the Act in relation to floodplain management.

### **[2]    Clause 24 Advertising of applications for approvals**

Insert after clause 24 (1) (c):

- (d) applications for flood work approvals for flood works that the Minister has assessed under this clause to be non-complying flood works,
- (e) applications for flood work approvals for flood works that are situated in or on a floodplain for which there is no management plan (including a converted floodplain management plan) in force with respect to that floodplain.

### **[3]    Clause 24 (1A) and (1B)**

Insert after clause 24 (1):

- (1A) If an application is made for a flood work approval, the Minister is to assess whether the flood work to which the application relates is a non-complying flood work.
- (1B) A flood work to which an application relates is to be assessed to be a non-complying flood work only if:
  - (a) the work is situated, or proposed to be constructed, in an area to which a converted floodplain management plan applies, and
  - (b) the Minister is not satisfied that the work complies with the converted floodplain management plan.

### **[4]    Part 3 Approvals**

Insert after Subdivision 5 of Division 2:

## **Subdivision 6      Exemption from requirement for flood work approval**

### **41A    Definition**

In this Division:

*designated high risk flood area* means:

- (a) a recognised floodway that is designated by a converted floodplain management plan, or
- (b) an area of a floodplain that is within Management Zone A or D under a management plan that applies to the floodplain.

### **41B    Exemption relating to compliance with State emergency direction**

- (1) A person is exempt from section 91D (1) of the Act if the person constructs, uses or modifies a flood work in compliance with a direction given under the *State Emergency and Rescue Management Act 1989* or *State Emergency Service Act 1989*.

- (2) An exemption conferred by subclause (1) ceases to apply 3 months after the date on which the direction was given or such later date as the Minister may approve of in writing.

**41C Exemption relating to work carried out under development authorisations**

- (1) A local council is exempt from section 91D (1) of the Act in relation to the construction or use of a flood work if:
- (a) the construction or use of the work is carried out under a development authorisation granted by a council, and
  - (b) the work is situated in or on:
    - (i) a place that is located within a managed designated high risk flood area, or
    - (ii) any other place (unless it is located within an unmanaged designated high risk flood area).
- (2) A person (other than a local council) is exempt from section 91D (1) of the Act in relation to the construction or use of a flood work on a landholding that is owned or occupied by the person if:
- (a) the construction or use of the work is carried out under a development authorisation granted by a council, and
  - (b) the work is situated in or on:
    - (i) a place that is located within a managed designated high risk flood area, or
    - (ii) any other place (unless it is located within an unmanaged designated high risk flood area), and
  - (c) the total area of the landholding does not exceed 0.2 hectares.
- (3) In this clause:

***development authorisation*** means:

- (a) a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an approval under Part 5 of that Act.

***managed designated high risk flood area*** means a designated high risk flood area to which a floodplain risk management plan or floodplain risk management study applies (being a plan or study that has been developed and implemented by a local council in accordance with the *Floodplain Development Manual 2005*, or a replacement manual, notified under section 733 of the *Local Government Act 1993*).

***unmanaged designated high risk flood area*** means a designated high risk flood area other than a managed designated high risk flood area.

**41D Exemptions relating to ring embankments around dwelling houses or certain farm infrastructure**

A person is exempt from section 91D (1) of the Act if:

- (a) the person constructs or uses on the person's land a flood work consisting of one or more ring embankments around a dwelling house, shed or storage silo, and
- (b) the area (or total area) enclosed by the embankment (or embankments) does not exceed 2 hectares or 10 percent of the area of the person's land, whichever is the lesser, and

- (c) the work is not situated in or on a place that is located within a designated high risk flood area.

**41E Exemptions relating to certain public authorities**

- (1) Rail Corporation New South Wales is exempt from section 91D (1) of the Act if it constructs or uses a flood work for the purposes of a railway.
- (2) A roads authority for a public road (within the meaning of the *Roads Act 1993*) is exempt from section 91D (1) of the Act if it constructs or uses a flood work for the purposes of the public road.

**41F Exemption relating to certain earthworks**

A person is exempt from section 91D (1) of the Act if:

- (a) the person constructs or uses a flood work that consists of earthworks (including farm tracks and check banks) that are less than 150 millimetres above (but not below) the natural surface of the ground in or on which it is constructed or situated, and
- (b) the work is not situated in or on a place that is located within a designated high risk flood area.

**[5] Schedule 4 Access licences and approvals arising from former entitlements, and certain deemed approvals—particular provisions**

Insert after Division 3 of Part 3:

**Division 4 Flood work approvals arising from applications for Part 8 entitlements (21 September 2015)**

**92 Definition**

In this Division:

**Part 8 entitlement** means an approval referred to in Part 8 (Flood control works) of the former 1912 Act as in force immediately before its repeal.

**93 Application of Division**

- (1) This Division applies to and in respect of any application for or in relation to a Part 8 entitlement that was made (but not determined) under the provisions of the former 1912 Act before the appointed day.
- (2) The provisions of this Division, to the extent that they operate to modify the operation of Schedule 10 to the Act, are made pursuant to clause 1 of Schedule 9 to the Act.

**94 Applications for Part 8 entitlements**

The following subclauses are taken to be inserted after clause 38 (3) of Schedule 10 to the Act:

- (4) Despite subclauses (1)–(3), an application for an approval referred to in Part 8 of the 1912 Act may be refused if the Minister is satisfied that the kind of flood work to which the application relates is exempt from the operation of section 91D (1) because of a provision of Subdivision 6 of Division 2 of Part 3 of the *Water Management (General) Regulation 2011*.

- (5) If the Minister refuses to grant an application under subclause (4), the Minister must cause a written notice of the refusal to be given to the applicant. Any such notice must state the exemption on which the Minister relied in refusing the application.