

State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas (1998 EPI 442)

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New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas (1998 EPI 442)



New South Wales

1 Name of Policy

This Policy is *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas*.

Introductory note—

This Policy applies to land in 6 irrigation districts and 5 irrigation areas and some additional mapped land (See clause 3) all situated in the south of the State adjacent to the Murray River. It is intended (by making subsequent amendments) to extend the scope of this Policy to other land in irrigation areas and districts.

2 Aims of Policy

- (1) This Policy aims to require environmental assessment under Part 4 of the *Environmental Planning and Assessment Act 1979* of development for the purpose of artificial waterbodies (other than minor works in restricted locations) that will be carried out under farm plans that implement land and water management plans.

Consequently, that development will be able to be lawfully carried out only with development consent granted by the council of the local government area in which it will be carried out and only after a statement of environmental effects or (in the case of large works or those on environmentally sensitive land) only after an environmental impact statement has been considered by the council.

- (2) This Policy also aims to allow the carrying out of development without development consent for the purpose of the following:
 - (a) small artificial waterbodies, such as those used for the purpose of storing water run-off for reuse, but only in locations restricted by this Policy,
 - (b) routine maintenance of irrigation channels, and the use of land for related access, whether or not a land and water management plan applies to the land concerned,
 - (c) emergency work on irrigation channels by irrigation corporations and their use of land for related access, whether or not a land and water management plan applies

to the land concerned.

Note—

This Policy amends *State Environmental Planning Policy No 4—Development Without Consent* to achieve its aim relating to emergency work and routine maintenance by irrigation corporations. For that purpose, provisions of that Policy that already apply to Sydney Water Corporation Limited are extended to apply to irrigation corporations.

3 Land to which this Policy applies

This Policy applies to land within an irrigation area or district described in Schedule 1 and to the land shown edged heavy black on the maps kept in the Head Office of the Department and marked as follows:

State Environmental Planning Policy No 52—Land and Water Management Plans (Murray Irrigation Areas of Operation)

State Environmental Planning Policy No 52—Land and Water Management Plans (East Cadell)

4 Definitions

(1) In this Policy:

artificial waterbody means a constructed waterway, including a constructed channel, dam or lake, but does not include dry retention basins or evaporation ponds.

farm plan means a natural resources plan prepared for land in an area (or part of an area) specified in Column 1 of Schedule 2 under a land and water management plan that implements Heads of Agreement specified opposite the area (or part) in Column 2 of Schedule 2.

land and water management plan means a land and water management plan specified in Column 3 of Schedule 2.

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) Notes in this Policy are explanatory notes and do not form part of this Policy.

5 Relationship to other environmental planning instruments

(1) If there is an inconsistency between this Policy and another environmental planning instrument made before or after this Policy commenced, this Policy prevails to the extent of the inconsistency, subject to section 36 (4) of the Act.

(2) To remove any doubt:

(a) Part 2 (Planning principles) of *Murray Regional Environmental Plan No 2—Riverine Land* applies:

- (i) when a consent authority determines a development application required by this Policy for land to which that plan applies, and
 - (ii) when a public authority or person proposes to carry out (on land to which that plan applies) development which does not require consent because of this Policy but which has the potential to adversely affect the riverine environment of the River Murray, and
- (b) such of the provisions of Part 3 of that plan as provide for consultation by a consent authority apply when development defined in the Planning Control and Consultation Table in that Part is required to be carried out with consent because of this Policy.
- (3) The following environmental planning instruments are amended as set out in Schedule 3:

State Environmental Planning Policy No 4—Development Without Consent,
Murray Regional Environmental Plan No 2—Riverine Land.

6 Consent required for certain artificial waterbodies

- (1) A person may carry out development for the purpose of an artificial waterbody only with development consent on land to which a land and water management plan applies.
- (2) However, development for the purpose of an artificial waterbody may be carried out on such land without development consent if:
 - (a) its storage capacity is less than 15 megalitres, and
 - (b) it is not within 40 metres of a public road, watercourse or wetland, or of any tree clearing operations.
- (3) The council of the area within which the development is proposed to be carried out is the consent authority for a development application required by this clause.
- (4) Development for which consent is required by this clause is designated development for the purposes of the *Environmental Planning and Assessment Act 1979* if:
 - (a) it is to be carried out in an environmentally sensitive area and the storage capacity of the artificial waterbody is 100 megalitres or more, or
 - (b) it is not to be carried out in an environmentally sensitive area but the storage capacity of the artificial waterbody is 800 megalitres or more.
- (5) Consent required by this clause must not be granted for development to be carried out in an environmentally sensitive area if the storage capacity of the artificial waterbody is 15 megalitres or more (but less than 100 megalitres), unless the consent

authority has considered a statement of environmental effects and a farm plan relating to the proposed development.

- (6) In this clause, **environmentally sensitive area** has the same meaning as in Schedule 3 (Designated development) to the *Environmental Planning and Assessment Regulation 1994*.

7 Consent not required for certain routine maintenance

- (1) Development may be carried out without development consent for the purpose of routine maintenance of an artificial water supply or drainage channel on land to which this Policy applies, whether or not a land and water management plan applies to the land.

- (2) In this clause:

artificial water supply or drainage channel includes an artificially improved part of a natural water supply or drainage channel.

maintenance of a channel means work to restore the channel, such as cleaning and resealing, and includes the creation and use of tracks reasonably necessary for access to the site of the work.

Schedule 1 Irrigation areas and districts

(Clause 3)

Coleambally Irrigation Area
Jemalong Domestic and Stock Water Supply and Irrigation District
Wylde Plains Domestic and Stock Water Supply and Irrigation District
Buronga Irrigation Area
Coomealla Irrigation Area
Curlwaa Irrigation Area
Yanco No 1 Irrigation Area
Mirrool No 1 Irrigation Area
Benerambah Domestic and Stock Water Supply and Irrigation District
Tabbita Domestic and Stock Water Supply and Irrigation District
Wah Wah Domestic and Stock Water Supply and Irrigation District

Schedule 2 Areas (or parts of areas), Heads of Agreement and land and water management plans

(Clause 4 (1))

Column 1	Column 2	Column 3
Area (or part)	Heads of Agreement	Land and water management plan

Berrigan, Conargo, Deniliquin, Jerilderie, Murray, Wakool, Windouran.	Heads of Agreement dated 10 April 1996 between the Minister for Land and Water Conservation, the Water Administration Ministerial Corporation, Murray Irrigation Limited, Murray Shire Council, Cadell Community Land and Water Management Plan Working Group Inc, Berriquin Community Land and Water Management Plan Working Group Inc, Denimein Community Land and Water Management Plan Working Group Inc and Wakool Community Land and Water Management Plan Working Group Inc.	<ul style="list-style-type: none">* “Berriquin Land and Water Management Plan, Final Draft” dated April 1995,* “Cadell Land and Water Management Plan, Final Draft” dated August 1995,* “Denimein Land and Water Management Plan, Final Draft” dated August 1995,* “Wakool Land and Water Management Plan, Final Draft” dated August 1995, all as amended by the “Heads of Agreement—Murray Regional Land and Water Management Plans” dated April 1996.
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Schedule 3 Amendment of environmental planning instruments

(Clause 5 (3))

3.1 State Environmental Planning Policy No 4—Development Without Consent

[1] Clause 11E Emergency and routine work by Sydney Water or irrigation corporations

Insert “or the works of an irrigation corporation” after “Sydney Water Corporation Limited’s works” wherever occurring in clause 11E (1) and (4) (except in the definition of ***Sydney Water Corporation Limited’s works***).

[2] Clause 11E (2), (3)

Insert “or an irrigation corporation” after “Sydney Water Corporation Limited” wherever occurring.

[3] Clause 11E (4)

Insert in alphabetical order:

irrigation corporation has the same meaning as in the [Irrigation Corporations Act 1994](#).

works of an irrigation corporation means such works as are owned or controlled by an irrigation corporation.

3.2 Murray Regional Environmental Plan No 2—Riverine Land

[1] Clause 5 How this plan affects other plans

After clause 5 (1), insert:

- (1A) The application of this plan to land to which *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas* applies is modified by clause 5 of that Policy which provides that the Policy prevails to the extent of any inconsistency with this plan and that, to remove any doubt:
- (a) Part 2 of this plan applies:
 - (i) when a consent authority determines a development application required by that Policy for land to which this plan applies, and
 - (ii) when a public authority or person proposes to carry out (on land to which this plan applies) development which does not require consent because of that Policy but which has the potential to adversely affect the riverine environment of the River Murray, and
 - (b) such of the provisions of Part 3 as provide for consultation by a consent authority apply when development defined in the Planning Control and Consultation Table in that Part is required to be carried out with consent because of that Policy.

[2] Clause 13 Planning Control and Consultation Table

Insert “, but does not apply to development that may be carried out without consent because of *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas*” after “that Table” in clause 13 (1).