

IPA and the *Water Act 2000*



Queensland
Government

The *Water Act 2000* and supporting regulations commenced on Friday, 19 April 2002.

The *Water Resources Act 1989* was repealed on 19 April 2002 and in its place the following legislation commenced —

- The remaining provisions of the *Water Act 2000*
- The remaining provisions of the *Water Amendment Act 2001*;
- Part 7 (Amendment of the *Water Act 2000*) of the *Integrated Planning and Other Legislation Amendment Act 2001*;
- The *Water Regulation 2002*; and
- Relevant sections of the *Integrated Planning Amendment Regulation (No 1) 2002*.

The *Water Resources Act 1989* previously required licenses or water permits to be obtained for various types of water related development. Generally these entitlements dealt with both the water allocation and the construction of works involved. Under the new regime, issues relating to a share of the water resource or interference with the resource are dealt with through a water entitlement or water permit under the *Water Act 2000*, while issues relevant to the effects of developing the resource are dealt with through the *Integrated Planning Act 1997* (IPA), using the Integrated Development Assessment System (IDAS).

The Department of Natural Resources, Mines and Energy (NRM&E) has the responsibility for assessing applications for water related development under the *Water Act*.

This Implementation Note outlines the consequential amendments to IPA and the *Integrated Planning Regulation 1998* (IP Reg) to facilitate the integration of water related development, including amendments to —

- The definition of operational work (s 1.3.5);
- Assessable, self-assessable and exempt development under Schedule 8 of IPA;
- What constitutes a properly made application (s 3.2.1);
- The type of assessment required under Schedule 1 of the IP Reg;
- Alternative assessment managers prescribed under Schedule 1A of the IP Reg; and
- Referral agencies and jurisdiction prescribed under Schedule 2 of the IP Reg.

Definition of operational work (s 1.3.5 of IPA)

The definition of operational work has been expanded to clarify that the definition includes operations of any kind and all things constructed or installed that allow taking or interfering with water (other than using a water truck to pump water)

under the *Water Act 2000*.

Assessable development (Sch 8 part 1 of IPA)

Development made assessable under Schedule 8 of IPA comprises operational work that is operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000* if the operations allow —

- Taking or interfering with water. This means that the following work is assessable development —
 - All work in a watercourse (e.g. a pump, gravity diversion, stream re-direction, weir or dam);
 - All artesian bores anywhere in the State, no matter what their use;
 - Subartesian bores in declared groundwater areas used for purposes other than stock and/or domestic use; and
 - Subartesian bores in certain declared groundwater areas that are used for stock and/or domestic purposes.

Note: The areas where stock and/or domestic bores are assessable development include —

- Bluewater Subartesian Area – for domestic bores;
- Bundaberg Subartesian Area – for domestic and stock bores;
- Clarendon Subartesian Area – for stock bores;
- Duck Farm Subartesian Area – for domestic bores;
- Fraser Island Subartesian Area – for stock bores;
- Great Artesian basin Subartesian Area – for domestic and stock bores.

Schedule 8 of IPA also makes operational work assessable development when it —

- Is construction of a referable dam; or
- Will increase the storage capacity of a referable dam by more than 10%.

What is a referable dam?

The definition of a referable dam is contained within the *Water Act 2000*. Dams that contain hazardous waste and weirs without variable flow control structures on their crest are specifically excluded from being referable dams.

A water dam is not automatically referable because of its height and volume. Instead a procedure called a Failure Impact Assessment is generally used to determine if a water dam is a referable dam. This assessment, requiring certification by a Registered Professional Engineer, evaluates the number of people whose safety could be at risk if failure of the dam occurred. In addition, some dams have been prescribed to be referable by a regulation.

For further information on Failure Impact Assessment, refer to Guide 14 “Does my application involve assessment of a Referable dam?”, available on the IPA website at www.ipa.qld.gov.au

Schedule 8 of IPA also makes operational work assessable development when it is works for taking overland flow water that are mentioned as assessable in a Water Resource Plan under the *Water Act 2000*.

Note:

Currently the following Water Resource Plans make works for taking overland flow assessable development:

- the Border Rivers Water Resource Plan
- the Moonie Water Resource Plan
- the Warrego/Paroo/Bulloo/Nebine Water Resource Plan

Self-assessable development (Sch 8 of IPA)

Development made self-assessable under Schedule 8 Part 2 of IPA includes carrying out operational work that is operations of any kind and all things constructed or installed for taking water if the operations allow —

- Taking water from a watercourse, lake or spring under s 20(3) of the *Water Act 2000*.
- Subartesian bores for stock and domestic purposes that are self-assessable under a Water Resource Plan. Currently the following applies:
 - The Cairns Northern Beaches and the Atherton declared subartesian areas within the Barron Water Resource Plan
- Works for taking overland flow water for stock and domestic purposes that are self-assessable under a Water Resource Plan. Currently the following Water Resource plans apply:
 - the Border Rivers Water Resource Plan
 - the Moonie Water Resource Plan
 - the Warrego/Paroo/Bulloo/Nebine Water Resource Plan

A development permit is not required for these self-assessable works, provided that they remain consistent with the relevant self-assessable code.

IDAS codes for self-assessable development

The applicable State IDAS codes for self-assessable water related development are available on the IPA website at —

<http://www.ipa.qld.gov.au/codes/codesIDAS.asp?title=State+IDAS+codes&tid=60&print=false>

Exempt development (Sch 8 of IPA)

Schedule 8 Part 3 of IPA prescribing exempt development that cannot be made assessable under a local government's planning scheme has also been amended to clarify that operational work associated with management practices for the conduct of an agricultural use is not exempt where the work involves operations of any kind and all things constructed or installed for taking, or interfering with, water (other than using a water truck to pump water) if the operations are for taking, or interfering with, water under the *Water Act 2000*.

NRM&E as assessment manager (Sch 1A of the IP Reg)

If an application is made for operational work for water related development under the *Water Act* as described above, NRM&E is the assessment manager if —

- None of the development is assessable under the local government's planning scheme; and
- The application does not involve any other assessable development, apart from —
 - Other operational work for water related development under the *Water Act*; and/or
 - The clearing of native vegetation on freehold land; and
- There is no other assessment manager prescribed for the development (i.e. the

Port Authority is the assessment manager for strategic port land).

Code assessment

If an application is made for operational work for water related development under the *Water Act 2000* as described above and NRM&E is the assessment manager, the application is code assessable (*Sch 1 of the IP Reg*).

The relevant sections of the *Water Act 2000* are taken to be the applicable State IDAS code for assessable water related development.

Referral triggers (*Sch 2 of the IP Reg*)

The integration of the *Water Act 2000* into IPA has also resulted in the inclusion of new referral triggers outlined in Table 1 below. NRM&E will be a concurrence agency for applications that include water related development under the *Water Act 2000*, where the criteria for NRM&E being the assessment manager are not satisfied.

The referral triggers include the water related development described above and additionally development for the removal of quarry material. Quarrying in a watercourse or lake may already be assessable as a material change of use for Environmentally Relevant Activity (ERA) 19 (dredging) and / or 20 (extracting rock or other material) or under a local government's planning scheme. However, it is also proposed that at the next opportunity Schedule 8 of IPA will be amended to include quarrying in a watercourse or lake under the *Water Act 2000* as assessable development.

Until this amendment is made, special arrangements will apply for NRM&E's role as a concurrence agency for certain applications for quarrying in watercourses. Applications made to the local government as assessment manager, or alternative assessment manager for ERA 20(a) (amounts not more than 5000t a year), will trigger NRM&E as a concurrence agency. However, for applications made to the Environmental Protection Agency (EPA) as alternative assessment manager for ERA 19 or 20 (for amounts greater than 5000t a year), NRM&E will place conditions relevant to the development of the resource on riverine protection permits under the *Water Act 2000*, and applicants for riverine protection permits will be advised that a referral for the subsequent development application for ERA 19 or 20 will not be required. This is consistent with sections 3.3.2(1) and 3.3.3(3) of IPA, which effectively allows a concurrence response to be given before a development application is made.

In this instance, the EPA as alternative assessment manager for the application will not need to give an acknowledgement notice (s 3.2.3(1A)(b)) and the applicant will not be required to refer the application to NRM&E for the removal of quarry material (s 3.3.3(3)). As referral is not required, the requirement to pay the concurrence agency's (i.e. NRM&E's) application fee upon referral of the application will not apply.

These interim arrangements will apply until a trigger for quarrying in a watercourse or lake is inserted in Schedule 8. Assessment manager and referral arrangements which will apply for this trigger are still being finalised and will be advised in a later implementation note.

It is important to note that to obtain riverine quarry materials a quarry material "allocation notice" must be obtained from NRM&E, under the *Water Act 2000*, before applying to Local Government or the EPA for a development approval, or to NRM&E for a riverine protection permit.

Table 1: Referral triggers for water related development

Referral triggers	Referral agency	Status	Jurisdiction
Taking or interfering with water			
Operational work that is taking, or interfering with, water under the <i>Water Act 2000</i> in — a. A drainage and embankment area controlling the flow of water into or out of a watercourse, lake or spring; b. A watercourse, lake or spring; c. A declared subartesian area; or d. An artesian aquifer.	NRM&E	Concurrence	The purposes of the <i>Water Act 2000</i> to the extent the purposes relate to — a. Interfering with water; b. Taking, or interfering with, water and the protection of watercourses and water in watercourse; c. Taking, or interfering with, water for certain purposes and the protection of subartesian aquifers in areas declared in a regulation; d. Taking, or interfering with, artesian water for any purpose and the protection of artesian aquifers.

Referral triggers	Referral agency	Status	Jurisdiction
Referable dams			
Operational work that is the construction of a referable dam under the <i>Water Act 2000</i> or that will increase the storage capacity of a referable dam by > 10%, if — a. It is assessable development under Schedule 8 of IPA; and b. The chief executive administering the <i>Water Act 2000</i> is not the assessment manager for the development under schedule 1A.	NRM&E	Concurrence	The purposes of the <i>Water Act 2000</i> to the extent purposes relate to referable dams.
Removal of quarry material			
Development for the removal of quarry material, if an allocation notice is required for the removal of the material under the <i>Water Act 2000</i> .	NRM&E	Concurrence	The purposes of the <i>Water Act 2000</i> to the extent the purposes related to quarry material and riverine vegetation.

The IDAS Application Form and Guides

The IDAS application form has been expanded, by the addition of Parts K1 to 9, to accommodate applications under the *Water Act 2000*. The Referral Checklist has also been revised and expanded to accommodate referrals to NRM&E for water related development. The forms are available from the IPA website at www.ipa.qld.gov.au.

The Part K components of the form are accompanied by the following Guides, prepared in conjunction with NRM&E, to assist proponents determine if water related development is assessable and if so, complete the applicable form —

- Guide 14 Does my application involve assessment of a referable dam?
- Guide 15 Does my application involve assessment of a water related development?
- Guide 16 Does my application involve the removal of quarry material from a watercourse?

Resource manager's consent

The *Water Act 2000* included an amendment to section 3.2.1 of IPA to require an application for development involving taking, or interfering with, a resource of the State, to be supported by —

- Evidence of an allocation of the resource; or
- The written consent of the Chief Executive of NRM&E to the making of the application.

The application must comply with this requirement for it to be a properly made application under s 3.2.1(6) of IPA. If this evidence is not provided, the application cannot be taken to be properly made even if the assessment manager receives, and after consideration accepts, the application (s 3.2.1(9)).

For developments other than riverine quarry operations, this evidence is given by way of a “Water Manager’s Consent” stamp and a signature of a duly delegated officer of NRM&E. Without this consent, the application is not a properly made application and the timeframes for assessing an application under IPA do not commence.

Note: Applications for riverine quarry operations instead require written evidence of an allocation notice under section 283 of the *Water Act 2000*.

Before providing “Water Manager’s Consent”, NRM&E will ensure that the applicant has the appropriate entitlement or authority to take or interfere with the water under the Water Act. This may require that a water licence or other form of water entitlement be obtained. A water licence allows a person to access a share of the water resource, or to interfere with the flow of the water. Obtaining such an entitlement is a separate process that occurs before development approval can be obtained. An authority to take water can also be provided in a Water Resource Plan. This is the case for taking overland flow for defined purposes in Water Resource Plans for the following:

- Border Rivers Catchment
- Moonie Catchment
- Warrego/Paroo/Bulloo/Nebine Catchment

To make it easier for applicants proposing water related development, NRM&E will allow proponents to submit the application for a water entitlement and the development application under IPA at the same time. The Department will then hold the development application until the water entitlement processes are complete or until the relevant authorisation has been confirmed. Once this has occurred, NRM&E will provide “Water Manager’s Consent”. At this point the development application will be properly made and the IPA timeframes will commence.

When the application is integrated with assessable development under the planning scheme and the application is made to the local government, the application will not be accepted until it is properly made (i.e. including the resource manager’s consent). In this instance, proponents are encouraged to contact NRM&E to obtain the resource manager’s consent prior to lodging the application with the local government.

Owner's consent

The bed and banks of a watercourse that forms the boundary between two or more parcels of land is the property of the State. Therefore, should a development proposal require activity within the bed and banks of a boundary watercourse (eg. a pump, weir or gravity diversion), owner's consent will be required from NRM&E (in addition to the consent of the owner of any other land the subject of the application).

Application fees

The development application fees for water related development are prescribed in item 20, Schedule 16 of the *Water Regulation 2002*. There is currently no fee for a development application for operational work for the taking of, or interfering with water, if the application is made with an application for a water licence. Otherwise the development application fee is currently \$77.40.

Transitional provisions for existing applications not yet decided

Existing applications under the *Water Resources Act 1989* that have not yet been decided are taken to be applications under the equivalent sections of the *Water Act 2000* and IPA. Where an application concerns both the taking of water and the construction of works, the part of the application relating to taking water is taken to be an application for a water licence under the *Water Act 2000* and the part relating to construction of works is taken to be a development application for a development permit under IPA. However, if the development application would have local government or another State agency as the assessment manager, the application will lapse and the applicant will be required to reapply to the relevant assessment manager.

Note: If an application is taken to be an application for a development permit under IPA, the application commences at the applicable stage of IDAS as determined by NRM&E, based on the extent to which the application has already been assessed. For example, where the water licensing aspects of the existing application have not yet been completed, the development application will be taken not to have been properly made as the resource manager's consent will not have been given.

Existing applications for taking quarry material and parts of applications relating to referable water dams lapse. If the development is assessable under IPA, a new development application must be made.

Transitional provisions for existing approvals

Existing approvals for the construction of works, issued under the *Water Resources Act 1989*, are continuing approvals and are taken to be a development permit under IPA (s 1048A of the *Water Act 2000*). As a result, the IPA provisions for changing an approval (s 3.5.24), changing or cancelling conditions (s 3.5.33) and extending the currency period (s 3.5.22) may be used to modify the development permit.

The existing approvals will remain current for the period the licence or permit would have been in force for if the *Water Resources Act 1989* had not been repealed (s 1048A(3) of the *Water Act 2000*).