

Building a Farm Dam

A new streamlined, risk-based approach for the approval of farm dam construction has been developed by the Tasmanian Government. This is the result of amendments to the *Water Management Act 1999* (the Act) that came into force on 1 January 2016.

If a proposed dam meets all of the specific criteria that deem it to be lower risk, it will go through a simple permitting process. Dams not meeting all of these criteria are considered to be higher risk and will require a full application, assessment and permitting process.

Lower risk dams

must meet ALL of these:

- are not on a watercourse or water way (including a flood plain), *and*
- have a maximum wall height of less than 10 metres, *and*
- do not involve the clearing of more than 1 ha of native vegetation, *and*
- present a low risk to people, infrastructure or the environment in the event of failure, *and*
- on land not subject to any covenants, encumbrances nor owned by a person other than the applicant.

Such dams are entitled to be constructed under Division 4 of the Act with the submission of a Notice of Intent.

Higher risk dams

meet at least one of these:

- are on a watercourse or water way (including a flood plain), *or*
- have a maximum wall height of more than 10 metres, *or*
- involve the clearing of more than 1 ha of native vegetation, *or*
- present a medium or high risk to people, infrastructure or the environment in the event of failure, *or*
- on land subject to covenants, encumbrances or owned someone not the applicant.

Such dams are require an application to be submitted and assessed under Division 3 of the Act.

All proposed dams (both lower risk and higher risk) require a consultant or dam engineer to make an assessment of the dam safety category¹.

Dam Works Codes

These codes include minimum construction standards that the dam owner is responsible for.

Including:

- maximum wall heights
- minimum crest widths
- upstream and downstream batter slope requirements
- minimum spillway widths and flood depths
- minimum dry freeboard depths
- minimum outlet pipe sizes

- DPIPWWE will be managing the application and permitting processes for farm dam construction under delegation from the Minister for Primary Industries and Water.
- Farm dams that are deemed to be lower risk by meeting ALL of the relevant criteria can be constructed under Division 4 of the Act. This requires the submission of a written *Notice of Intention* to commence works. The applicant will be notified by DPIPWWE within 14 days upon receipt of a valid notice and fees.
- The *Notice of Intention* to construct a lower risk dam requires an assessment to be undertaken addressing specific criteria as outlined in the form and supporting documentation.
- Higher risk farm dams, that is those not meeting ALL of the criteria for lower risk, can be applied for under Division 3 of the Act. This requires an application for a permit to be lodged and subsequent assessment and approval obtained. The applicant will be notified by DPIPWWE once the assessment has been undertaken.
- During the construction phase, a dam owner is the person with the authority to construct the dam and/or the person who owns the land the dam is being constructed on.
- Once a dam has been completed, the dam owner is the person who owns the dam or the person who owns the land that is covered by water when the dam is full.
- All dam owners have statutory responsibilities to ensure their dam is constructed according to the relevant Dam Works Code and any other conditions on the permit.
- Upon completion of the construction of a dam, the owner is responsible for the dam and its safety under the Act.

More information on the Dam Construction approval and permitting processes, including relevant codes and forms is available at www.dpipwe.tas.gov.au/water/dams

¹ Information on dam safety categories is available at www.ancold.org.au

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Guideline: Obtaining a Division 3 Dam Works Permit

What should I consider when selecting a dam site and developing a dam works application?

The *Dam Works Assessment Decision Framework* sets out the parameters for dam works assessment in Tasmania. Subject to the application of appropriate conditions, dam works that are consistent with the Framework can generally be considered to be dam works that:

- (a) are consistent with –
 - (i) the objectives of the *Water Management Act 1999*; and
 - (ii) any relevant State Policy; and
 - (iii) any relevant approval guidelines developed under section 142 of the *Water Management Act 1999*; and
- (b) will not result in material environmental harm, serious environmental harm or environmental nuisance; and
- (c) will not have a significant adverse impact on other persons taking water from the relevant water resource affected by the proposed dam works; and
- (d) will not adversely impact on public safety.

Hence, approval of an application for a dam works permit under the Dam Works Assessment Decision Framework is consistent with the requirements for the Minister's approval.

How do I obtain a Division 3 Permit to construct, modify, repair or remove a dam?

A Division 3 permit is obtained by lodging a 'compliant' Division 3 Permit Application to the Minister for assessment and determination. An application form for a Division 3 permit is available at:
<http://dpiwwe.tas.gov.au/water/water-management-forms>

The broad process for the Department's assessment of a Division 3 permit is outlined in figure 1.

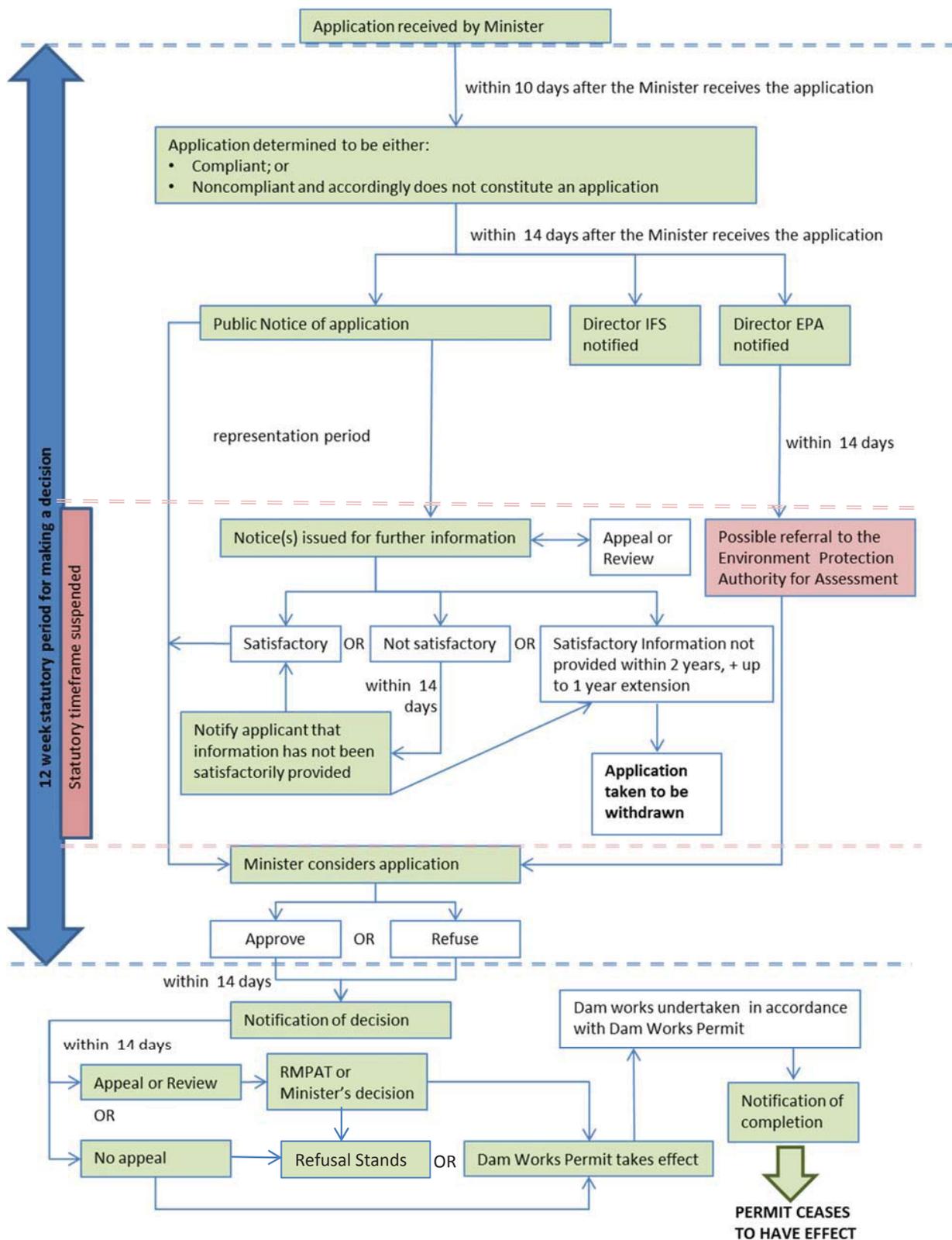
An application fee applies. Refer to the guide '**Dam Works Fee Summary**'.

How do I know if my Division 3 Permit Application is 'compliant'?

A fully completed Division 3 Permit Application will be considered to be a 'compliant' application, which complies with section 12A, and the requirements of section 144(2) and (3), of the *Water Management Act 1999*.

If it is determined that an application does not comply with section 12A, or the requirements of section 144(2) and (3), of the *Water Management Act 1999*, and accordingly does not constitute an application, the Minister will notify the applicant of this fact in writing within 10 days after the Minister receives the application.

Figure 1 – Department’s Assessment of a Division 3 Permit



Will the application be publicly notified?

Within 14 days after receiving a compliant permit application, notice of the permit application will be:

- published in a local newspaper; and
- provided to the Director of the Environment Protection Authority and Director of Inland Fisheries, except where the Director(s) have determined that the dam works proposed are of a type that do not require such a notice; and
- if the proposed dam works are wholly or partly within a pipeline planning corridor, provided to the person licensed to operate that pipeline; and
- if the applicant is not the owner of the land on which the proposed dam works would be undertaken, provided to the owner of the land; and
- if the Minister is of the opinion that the dam works may have an impact³ on any land adjoining the land on which the proposed dam works would be undertaken, provided to the owner of that land; and
- if the Minister is of the opinion that it is in the public interest to do so, provided to any other person the Minister thinks fit.

Any person who may be affected by the proposed dam works, if the application is granted, may make written representations to the Minister within the period specified in the notice and in the manner specified in the notice.

Is there a time limit for decision?

The Minister must approve or refuse an application for a dam works permit within 12 weeks after the day on which the application is made. Notwithstanding that the period for decision may be extended by any period as agreed between the Minister and the applicant, before the end of that 12 week period.

Under the *Water Management Act 1999*, the time limit for a decision in relation to an application for a permit may not run if, for example:

- the Minister has required further information or the taking of action; or
- the EPA call's in an application, until the Board's or Appeal Tribunal's decision; or
- where an applicant has applied to amend a permit, until the Minister approves the amendment to the application.

If the Minister fails to determine a permit application within the relevant period, the Minister must grant the permit application and issue, within 28 days after failing to determine the permit application, a permit on the conditions the Minister thinks fit.

³ Dam works may **impact** adjoining properties in terms of inundation, structure, drainage, stability and safety. Adjoining landowners will be notified if the proposed dam works or inundation area is within 100 m of their property boundary.

Can additional information be required?

The Minister, after the expiration of the relevant period for representations, may, by notice, require the applicant to submit further information or take specified action to assist the Minister in determining the permit application.

An applicant must provide information or action within the period, of not more than two years, specified in the notice, unless the Minister has granted an extension of not more than 1 year.

If the Minister requires the applicant to provide additional information, the time limit for a decision does not run while the request for information has not been answered to the satisfaction of the Minister.

An applicant may appeal to the Resource Management and Planning Appeal Tribunal against a requirement of the Minister for additional information.

Can the Minister provide conditional approval?

Where further information or action has been sought from the dam applicant, the Minister may issue a statement to the applicant stating that a dam works permit is likely to be granted, subject to certain requirements being met. A statement of conditional approval does not authorise the commencement of any dam works or prevent the Minister from refusing to grant the application.

Can I amend the permit application?

An applicant in a permit application may request that the Minister amend the permit application in respect of the design, type, size, location or purpose of the dam works. However, the Minister may only grant the request and amend the permit application if satisfied that the amendment does not significantly alter⁴ the permit application. A fee applies. Refer to the guide '**Dam Works Fee Summary**'.

What if there are environmental effects involved?

The Minister is responsible for conducting an assessment of environmental effects for dam works proposals which are not classified as a level 2 activity in Schedule 2 of the *Environmental Management and Pollution Control Act 1994*. Dam works classified as a level 2 activity, or other dam works 'called in' by the Director of the Environment Protection Authority, must be referred to the EPA Board for an environmental impact assessment.

Under the Minister's offset⁵ guidelines, thresholds have been accepted by the Minister to provide guidance on situations where:

- offsets would normally be required for a particular dam works proposal that impacts on threatened native vegetation communities and/or threatened species; and

⁴ **Significant alterations** include, but are not limited to, alterations that increase the size of the footprint of the dam or place the dam in a higher consequence category, or a change of location.

⁵ **Offsets** are one form of mitigation for adverse impacts of a dam works proposal on natural values. Offsets operate within a "mitigation hierarchy", where the first consideration is whether impacts can be avoided or minimised, followed by remedying of the impacts on site, followed by mitigation options within the footprint area of the development, followed by offsetting some or all of the residual impacts, as appropriate. Offsets are actions that contribute to the conservation of natural values outside of the dam development footprint. Offsets can include the formal reservation and active management of areas of similar natural values adjacent or near to the dam site, and other actions that demonstrate a conservation benefit for a particular natural value.

- in the absence of a significant socioeconomic benefit at the regional or broad community scale, the impact of a proposal on natural values would normally be unacceptable, and the application for a dam works permit could be expected to be refused.

If the Minister considers that the undertaking of dam works in accordance with a permit may be, or is, causing material or serious environmental harm, the Minister may amend a permit to minimise environmental harm.

Can the Minister's decision regarding a Division 3 application or permit be reviewed or appealed?

A Division 3 applicant or permit holder may apply to the Minister for a review of a decision to:

- notify an applicant for a Division 3 permit that the application does not comply with the relevant requirements;
- require an applicant for a Division 3 permit to supply further information or take an action;
- approve or refuse a Division 3 Permit;
- impose conditions on a Division 3 Permit;
- refuse to amend a Division 3 Permit;
- extend the term of a Division 3 Permit.

A Division 3 applicant, or a person who made representation, may apply to the Resource Management and Appeals Tribunal to appeal a decision to:

- approve or refuse a Division 3 Permit;
- impose conditions on a Division 3 Permit;
- to issue a Dam Operation Notice.

An appeal in respect of the determination of an application for a dam works permit may only be instituted, heard and determined on the grounds that the process by which the decision or determination appealed against was procedurally incorrect or unfair having regard to the requirements of the *Water Management Act 1999* and natural justice. An appeal cannot be made on the grounds that any technical information taken into account in making the decision or determination, or that any technical finding made in reaching the decision or determination, was incorrect as a matter of fact.

Can the Minister specify requirements regarding the operation of a dam?

The Minister may issue a Dam Operating Notice in relation to the operation of a dam to ensure that it is operated in such a manner in order to—

- a) ensure that there are no significant adverse impacts on other water users; or
- b) prevent any pollution of water; or
- c) protect the environment, including the riverine and riparian environment; or
- d) prevent the inundation of land not owned by the dam owner.

The decision to issue a Dam Operating Notice is an appealable decision. If a Dam Operating Notice is issued to a person at the same time that an application for a Division 3 permit is granted and the permit is issued to that person, that person may combine an application for a review of, or an appeal against, the notice and an application for a review of, or appeal against, the permit or its conditions into a single application for a review or an appeal.

What other legal obligations may be related to dam works?

A dam works permit under the *Water Management Act 1999* does not absolve a permit holder from their legal obligations under the *Water Management Act 1999* or any other Act. For example, a person holding a dam works permit may need to also:

- apply for an authority to take water into the dam, under the *Water Management Act 1999*; or
- apply for a permit under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) if the dam works may impact on a Matter of National Environmental Significance; or
- apply for a permit under the *Aboriginal Relics Act 1975*, if the dam works are going to interfere with an Aboriginal relic; or
- obtain a certified Forest Practices Plan under the *Forest Practices Act 1985* to harvest more than six tree ferns (*Dicksonia antarctica*); or
- undertake action, under the *Weed Management Act 1999*, against declared weed species.

The above limited examples of potential legal obligations is not a complete list. The onus is on the applicant or permit holder to make themselves aware of their obligations under the *Water Management Act 1999* or any other Act.

If a person is unsure of their legal obligations, it will be necessary to engage the services of an appropriately qualified consultant.

Is land owner notification required to obtain a Division 3 Permit?

A person proposing to undertake dam works under a Division 3 permit must include, with the permit application, a declaration that the applicant has notified the owner of the land upon which the proposed dam works are to be undertaken.

Who is the 'dam owner' and what are their legal obligations?

In the case of a dam under construction, the dam owner is –

- the permit holder under which the dam is being constructed; and
- any person who owns the land on which dam works in relation to the dam are being, or are to be, undertaken.

In the case of a dam, the dam owner is –

- the person who owns the dam; or
- any person who owns land that may be covered by water when the dam is at maximum operating level (other than because of flood discharge) or, if there is a controlled spillway in relation to the dam, when water is at the spillway crest level.

A dam owner is responsible for the dam and its safety in accordance with the requirements of *Water Management Act 1999*. If a person is found guilty of an offence under the *Water Management Act 1999* the Minister may require a dam owner to take a specified action, whether or not the person so required to take action is the person who is found guilty of the offence.