

# Review of administrative processes under Part 8 relating to the approval of Division 3 permits during 2020-21

**A review prepared pursuant to section 165 of the *Water Management Act 1999*.**

**March 2022**

## I. INTRODUCTION

Section 165 of the *Water Management Act 1999* (WMA) requires that the Minister is to conduct an annual review of the operation of administrative processes under Part 8 of the Act. The terms of the review have been prescribed in regulation 29 of the *Water Management Regulations 2009* (WMR).

As specified in the WMR, the annual review is to consist of a review of the operation of administrative processes undertaken, during 2020-21, for the purposes of processing and determining applications for Division 3 permits under Division 3 of Part 8 of the Act.

Regulation 29 requires that the annual review will consider:

- (a) the reasons why particular administrative processes are performed in relation to applications for Division 3 permits under Division 3 of Part 8 of the Act and the determination of such applications;
- (b) the simplicity, cost-effectiveness and timeliness of those administrative processes; and
- (c) what improvements, if any, may be made to those administrative processes.

This is the last of six annual reviews with the legislative requirement to undertake a review expiring in 2022. This annual review was conducted on behalf of the Minister by the Water Management and Assessment Branch in Natural Resources and Environment Tasmania (NRE Tas).

## 2. APPROACH

As part of this review, feedback was sought from four consultants in relation to their direct experience with the new approvals process for Division 3 permits<sup>1</sup>. The four consultants selected collectively provided the supporting information for 95% of the dam applications submitted to the Department for assessment in 2020-21.

Views on the following matters were sought from the consultants:

1. whether the Department's website provides sufficient information to guide the preparation of applications for Division 3 dam works permits;
2. whether the Dam Works Assessment Decision Framework<sup>2</sup> provides greater certainty regarding what additional requirements may need to be provided in relation to an application and what the Minister will require from proponents in order to assess a Division 3 permit application;
3. whether the Dam Works Assessment Decision Framework has made it quicker and/or cheaper for proponents to obtain a dam works permit, by clarifying what information must be provided with a Division 3 permit application upfront; and
4. Any suggestions on how to improve the administrative processes relating to the assessment of Division 3 permits.

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<sup>1</sup> Feedback was only sought from those consultants who had submitted applications for Division 3 permits during 2020-21.

<sup>2</sup> The Dam Works Assessment Decision Framework (<http://nre.tas.gov.au/water/dams/dam-works-assessment-decision-framework>) specifies what additional information may be required from a proponent in relation to 13 elements (e.g. public safety, works in floodplains, native vegetation communities & threatened flora and fauna species).

In addition, the Department offered to hold a workshop with the Tasmanian Farmers and Graziers Association (TFGA) in accordance with the Memorandum of Understanding between the Department and the TFGA on the new dam works approval process (refer Doc I reference: H456746). The offer was accepted and a meeting was held with the TFGA Water Committee Chairperson on 8<sup>th</sup> March 2022. It was noted during the meeting that the dam assessment processes were well documented, and the relevant guidelines and factsheets appeared to provide concise information on the various requirements under the Dam Works Assessment Decision Framework. At the conclusion of the meeting the Committee Chairperson advised that they had no issues with the Division 3 permit process. It was further noted that ongoing discussions in relation to water and dam matters are routinely addressed in meetings with Departmental Officers throughout the year, which is greatly appreciated.

### 3. SNAPSHOT OF DIVISION 3 DAM WORKS APPROVALS IN 2020-21

From 01 January 2016, two pathways were provided for obtaining a dam works permit. One pathway provides for an application and integrated assessment process and the granting of a Division 3 permit. The second pathway provides for a Division 4 permit, which enables a permit to be issued without an application being submitted if the criteria set out in section 159 of the WMA are met<sup>3</sup>.

During 2020-21 a total of 99 dam permits were issued with a total capacity of 7,043ML. Under the new Dam Works Assessment Decision Framework, approvals for 56 Division 3 permits were granted with each permit taking an average of 43 days to be finalised. This timeframe is well within the statutory 12 week approval period for a dam permit. Table 1 summarises approvals for both Division 3 and Division 4 dam permits for 2020-21. Table 2 provides further details on the dam works approvals for Division 3 permits during 2020-21.

**Table 1: Approval mechanism for dam permits issued during 2020-21.**

Approval mechanism	Number issued
Division 3 permit	56
Division 4 permit	43
<b>Total</b>	<b>99</b>

**Table 2: Division 3 permit application statistics for 2020-21.**

Actions in relation to a Division 3 permit application	Number
Applications received	60
Notices for further information or action under s.149	2
Notices for further information or action under s.149 that included a statement of conditional approval under s.150	0
Requests granted to amend a permit application	1
Applications approved	56
Applications refused	0
Average approval period	43 days
Applications to the Minister for the review of a decision by a delegate	1
Appeals to the Resource Management and Planning Appeal Tribunal	1

<sup>3</sup> Where a person is entitled to a Division 4 permit, the only requirement is that they notify the Department of their intention to commence work, upon which they are taken to hold a dam works permit.

## 4. FEEDBACK FROM CONSULTANTS AND TASMANIAN IRRIGATION

Feedback was sought from those consultants who have collectively submitted approximately 95% of the Division 3 permit applications during the last 12 months in order to understand their experiences with the new approvals process. All four consultants completed the survey form provided to them by the Department and their comments are presented below.

### *Submitting an application*

Under the new dam works approvals process a matrix has been set up of key issues and requirements that need to be met when a Division 3 permit application is submitted (see the *Dam Works Assessment Decision Framework*<sup>4</sup>).

The Decision Framework and related guidelines provide greater transparency on what is required to support an application, and if an applicant cannot meet the requirements, then it will be a show-stopper and the dam would not be approved.

The drivers for developing the Decision Framework were two-fold namely: to clarify the requirements for an application and to provide certainty on outcomes. The Decision Framework covers 13 elements that need to be addressed. For each element two pathways were provided: Box A and Box B.

The Box A pathway details the circumstances where no additional information is required in the application. Box B addresses what additional matters or information is to be provided up-front in the application. Box A and B provide the same criteria that the ACDC (Assessment Committee for Dam Construction) previously used, but the proponent would be waiting for the ACDC to make a decision on what further information they require, thus delaying the consideration of an application.

There are also guidelines to support the application requirements including *Guidelines for pre-construction reports*, *Guide for preparing a dam works site plan in LISTmap*, *Guidelines for developing a sediment and erosion control plan for dam works sites*, and *Guidelines for establishing offsets for impact on natural values within the Dam Assessment Framework*<sup>5</sup>.

The Division 3 permit application now deals with all the relevant requirements up-front<sup>6</sup>. And the application form has also been tailored to meet specific requirements (application for a new dam, repair or modification of an existing dam or the removal of a dam). Under the old approvals process, an applicant would often have to wait for a notice from the ACDC requesting that a preconstruction report be prepared, when everything else was done. Now applicants do not have to wait for a monthly meeting of the ACDC and the application is considered as soon as practicable. Thus, reducing the potential time delays between receipt of and consideration of an application.

Another benefit of providing the required information up-front is that the likelihood of receiving a representation has reduced because more relevant information is available to support an application and inform people who may be affected by a proposal. Since the commencement of

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<sup>4</sup> Available at: <http://nre.tas.gov.au/water/dams/dam-works-assessment-decision-framework>

<sup>5</sup> Links to these guidelines is available at: <http://nre.tas.gov.au/water/dams/dam-works-permit-guidelines>

<sup>6</sup> Application form is available at: <http://nre.tas.gov.au/water/water-management-forms>

the new process, there have been very few representations made against a Division 3 permit application.

#### *Consideration of an application*

The Minister for Primary Industries and Water has delegated his powers and functions under Part 8 of the WMA to various positions within the Water Resources Group and to date, all applications have been considered under delegation. Depending on the complexity of an application, the issuing of notices for further information and the determination of an application will be made by either the General Manager – Agriculture and Water; or Manager – Water Assessment and Management; or the Section Head (Water and Dam Administration). The turnaround for an application is now on average 43 days from submittal to approval of an application (including advertising).

Once an application is received, an administrative review is undertaken to check that the application is complete, it is then advertised and circulated to technical staff for advice. Notwithstanding that an application may meet all the Box A criteria, a preliminary screen is made to check that there are no outstanding issues that require further consideration at this point.

Once further technical advice has been received, notices for further information may be issued. It should be noted that under the revised dam approvals process very few notices seeking further information from an applicant have been issued. In the past under the ACDC approval process, it was common for notices to be issued, often for dam safety matters that were required to be addressed under the Dam Safety Regulations.

#### *Dam permit conditions*

The ACDC had a belt and braces approach to applying conditions to dam permits that included conditions that were already covered in the Regulations. There are now two codes that provide minimum standards for dam sites in relation to dam safety, construction and site clearance<sup>7</sup>.

Notwithstanding that in some circumstances, a permit condition may override a code requirement, the conditions associated with a Division 3 permit have been simplified and proponents will be told that they need to comply with the relevant dam safety regulations or codes in the construction of a dam. This has enabled dam permit conditions to be standardised where possible.

#### *Timeline*

Under the WMA an application must be advertised within 14 days of acceptance and there is a 10 day period after receipt of an application during which time the applicant can be advised that their application is incomplete.

#### *Information on the current process*

The structure and the content of the Departmental website is acknowledged as requiring some review as it is noted that information set out is not clearly structured on the current 'dams' page<sup>8</sup>.

#### *Ease for proponents to complete forms*

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<sup>7</sup> Refer to <http://nre.tas.gov.au/water/dams/dam-works-codes> for links to the Division 3 Permit Dam Works Code 2015 and the Dam Works Code to Clear Vegetation 2015.

<sup>8</sup> Refer to: <http://nre.tas.gov.au/water/dams>

Under the current process, it is more difficult for a proponent to fill out the application now because all the required information is provided up-front rather than after the application has been submitted. For instance, a consultant will need to be engaged up-front to determine the consequence category rather than being engaged to provide that information once a notice for further information has been issued.

## *Consultant Survey Results*

The consultant survey was set out to address the key areas of the current process.

**1. The DPIPWE website provides sufficient information to guide the preparation of applications for Division 3 dam works permits.**

Strongly Agree    Agree    Disagree    Strongly Disagree    Unsure

Responses: 3 x Strongly Agree; 1 x Agree

Additional Comments: Nil

**2. The Dam Works Assessment Decision Framework provides comprehensive guide to what is required by the Minister in order to assess a Division 3 permit application.**

Strongly Agree    Agree    Disagree    Strongly Disagree    Unsure

Responses: 2 x Strongly Agree; 2 x Agree

Additional Comments: Nil

**3. By clarifying what information must be provided with a Division 3 permit application upfront, the Dam Works Assessment Decision Framework has made it quicker for proponents to obtain a dam works permit.**

Strongly Agree    Agree    Disagree    Strongly Disagree    Unsure

Responses: 2 x Strongly Agree; 2 x Agree

Additional Comments: Nil

**4. By clarifying what information must be provided with an application upfront, the Dam Works Assessment Decision Framework has not increased the overall costs for proponents to obtain a dam works permit.**

Strongly Agree    Agree    Disagree    Strongly Disagree    Unsure

Responses: 2 x Strongly Agree; 2 x Agree;

Additional Comments: Nil

**5. The Dam Works Assessment Decision Framework specifies what additional information may be required from a proponent in relation to I3**

**elements (e.g. public safety, works in floodplains, native vegetation communities & threatened flora and fauna species). This provides greater certainty regarding what additional requirements may need to be provided in relation to an application.**

Strongly Agree     Agree     Disagree     Strongly Disagree     Unsure

Responses: 2 x Strongly Agree; 2 x Agree;  
Additional Comments: Nil

Given that the current process requires all relevant matters under the Decision Framework to be addressed it is recognised that the costs have increased up-front for applicants compared to the old system, but this needs to be considered in the context that this work would still have needed to be done at some stage under the old process, therefore the overall costs have not increased.

Similarly the current process requiring all information to be addressed up front means that, at least initially, there is more time involved in completing applications however given that the *Dam Works Assessment Decision Framework* provides clear guidance on what information will be necessary to be provided up-front as part of an application, it could be argued that the up-front time and costs do make submitting an application more effective and it provides greater certainty of outcome which is a more efficient process.

## **5. WORKSHOP WITH THE TFGA**

The TFGA was provided with a copy of the 2020-21 Annual Report on Part 8 (Dam Works) of the *Water Management Act 1999*, which is prepared pursuant to s.164ZN. This report sets out the exercise of delegated powers relevant to dam works applications for the year.

The Departmental representative provided the TFGA (Water Committee Chairperson) with an overview regarding how the previous dam approvals process worked. The TFGA representative was very supportive of the new approvals process and appreciative of the engagement on the development and implementation of the new process that has occurred with their organisation.

The TFGA Water Committee Chairperson advised that they had no specific or outstanding issues with the dam approvals processes. It was noted that the TFGA is appreciative of the Departments regular routine meetings and discussions in relation to dam and water licence matters throughout the year.

## **6. MATTERS IDENTIFIED BY THE DEPARTMENT**

Internal periodic reviews of the documentation do not raise any substantive issues, it continues to identify that some small clarifications in the *Division 3 Permit Dam Works Code 2015* and the *Dam Works Code to Clear Vegetation 2015* should be amended as well as some minor changes to the application forms be made. It is also recognised that further ongoing improvements could be made to the dam permitting information on the Department's website.

## **7. FINDINGS AND RECOMMENDATIONS**

The findings of the review of the administrative processes for the approval of Division 3 dam permits are that:

- The current approvals process has clarified the matters that need to be addressed in an application for a Division 3 dam permit through the requirements set out in the *Dam Works Assessment Decision Framework*.
- The current approvals process is providing more certainty on the outcomes for potential applicants through specifying requirements in the *Dam Works Assessment Decision Framework*.
- Notwithstanding that it may cost an applicant more initially to submit an application, such costs would have been incurred anyway under the old process when the ACDC issued notices to obtain further information.
- Very few notices for further information were issued to applicants due to the fact that all the required information was provided up-front with the application, thus speeding up the consideration of an application.
- More information is being provided to support an application and this is available for people who may be impacted by an application to consider (during the public notice period).
- The administrative processes, including the delegation of the Minister's powers under Part 8, have resulted in applications being approved in less time compared to the previous approvals process (average timeframe of 43 days compared with 78 days or more in the past).

The following recommendation is made:

- I. Notwithstanding that the Departmental website provides all the required information on the dam approvals process, ongoing improvements should be considered in relation to how that information is presented. This includes minor revisions to the *Division 3 Permit Dam Works Code 2015* and the *Dam Works Code to Clear Vegetation 2015*.