

Water Act 1989

1.1 NOTICE OF MAKING OF THE BY-LAW NO. 1 WATERWAYS PROTECTION 2014

1.2 MALLEE CATCHMENT MANAGEMENT AUTHORITY

By resolution of 23 July 2014 the Mallee Catchment Management Authority under section 287ZC of the Water Act 1989 made By-Law No.1 Waterways Protection 2014.

The purpose of the by-law is to make provision for –

- (a) the control, management and authorisation of works and activities in, under, on or over designated waterways and designated works;
- (b) the protection and care of designated waterways and designated land or works;
- (c) conservation and preservation of flora, fauna and habitat in designated waterways and designated land or works.

The by-law is made using the Waterways Protection Model By-law made by the Minister for Water under section 287ZB of the Water Act 1989 on 20 February 2014.

A copy of the by-law is available on the Mallee Catchment Management Authority website, www.malleecma.vic.gov.au. A copy is also available for inspection during the ordinary business hours of the Authority, free of charge, at the Mallee Catchment Management Authority offices at the DEPI Complex, corner Koorlong Avenue and Eleventh Street, Irymple.

A copy of the by-law is able to be purchased, on demand, at the offices of the Authority during ordinary business hours.

In accordance with section 16A of the Subordinate Legislation Act 1994 a full copy of the by-law follows this notice.

MALLEE CATCHMENT MANAGEMENT AUTHORITY
DEPI Complex, Corner Koorlong Avenue & Eleventh Street, Irymple 3498

WATER ACT 1989

The Mallee Catchment Management Authority makes the following by-law –

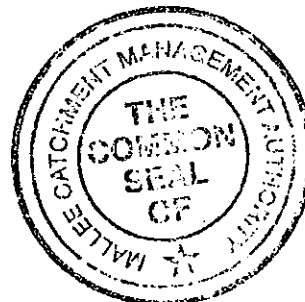
Dated

The Common Seal of the Mallee Catchment Management authority was hereunto affixed in the presence of:

Sharyon Peart
..... Sharyon Peart, Chairman

John White
..... Member

J. Collins
..... Jenny Collins, Chief Executive Officer



By-law No 1 Waterways Protection

Part 1 - PRELIMINARY

Title:

1. This by-law may be cited as by-law No. 1 Waterways Protection.

Objectives

2. The objectives of this by-law are to make provision for -
 - (a) the control, management and authorisation of works and activities in, under, on or over designated waterways and designated land or works;
 - (b) the protection and care of designated waterways and designated land or works;
 - (c) conservation and preservation of flora, fauna and habitat in designated waterways and designated land or works.

Authorising provisions:

3. This by-law is made under sections 160, 219 and 287ZC of the Act.

Application:

4. This by-law applies to the Mallee Waterway Management District.

Definitions:

5. In this by-law -

"Act" means the *Water Act 1989*.

"Authority" means the Mallee Catchment Management Authority.

"Charge unit" is the unit of monetary value set by the Authority under section 160(4) of the Act for the purposes of calculating the value of fees set under a by-law.

"Designated land or works" means any land or any works or any part of any works which the Authority has declared to be designated land or works under section 188 of the Act.

"Designated waterway" means any waterway or any part of any waterway which the Authority has declared to be a designated waterway under section 188 of the Act.

"Emergency" has the same meaning as under section 4 of the **Emergency Management Act 1986**;

"Government agency" means –

- (a) any body corporate or unincorporated constituted by or under any Act for a public purpose; and
- (b) any member or officer of such a body; and

- (c) any person in the services of the Crown in the right of the State of Victoria upon whom any function, power, duty or responsibility is conferred by or under any Act;

"Penalty unit" has the meaning provided for under section 110 of the **Sentencing Act 1991**.

Explanatory note: A penalty unit is a unit of monetary value that is used to calculate penalties for offences under legislation. The value of a penalty unit is set each year by the Treasurer under the Monetary Units Act 2004.

"Person" means an individual, a body or association (corporate or incorporated) or a partnership.

"Rubbish" includes any solid or liquid domestic or commercial waste refuse or debris and without limiting the generality of the above includes abandoned vehicles or vehicle parts, clippings and vegetation, concrete, stone and bricks and any part of an animal carcass.

"Water Corporation" has the same meaning as in section 3 of the Act.

"Waterway" has the same meaning as in section 3 of the Act.

"Works" has the same meaning as in section 3 of the Act.

Part 2 - WATERWAY PROTECTION

Prohibited works and activities

6. A person must not -

- (a) deposit any rubbish in a designated waterway or on any designated land or works;
- (b) erode or damage the surrounds of a designated waterway or any designated land or works; or
- (c) cause or permit any designated waterway or any designated land or works to be polluted.

Penalty: 20 penalty units
Penalty for continuing offence: 5 additional penalty units for each day on which the offence continues.

7. A person must not do any of the following unless in accordance with a permit issued under this by-law -

- (a) construct, alter, remove, obstruct or interfere with any structures or works in, under, on or over a designated waterway or any designated land or works; or
- (b) construct or carry out any works that deviate or are likely to deviate a designated waterway.
- (c) obstruct or interfere with a designated waterway or any designated land or works;
- (d) cut down, interfere with or take any tree or other vegetation within or from a designated waterway or any designated land or works;
- (e) interfere with or take any soil, earth, sand, gravel or other material within or from a designated waterway or designated land or works.

Penalty:	20 penalty units
Penalty for continuing offence:	5 additional penalty units for each day on which the offence continues.

Persons who do not require permits

8. Despite anything to the contrary in this by-law, the following persons do not require a permit

- (a) a person acting in the course of his or her duties as –
 - (i) an officer, employee or contractor of the Authority;
 - (ii) an authorised officer appointed in writing by the Authority for the purpose of this by-law;
 - (iii) a member of the Police force;

- (b) any of the following bodies, or officer within such body, taking action that is required to respond to or prepare for an emergency –
 - (i) the Country Fire Authority established under the **Country Fire Authority Act 1958**;
 - (ii) the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**;
 - (iii) the Victoria State Emergency Service Authority established under the **Victoria State Emergency Service Act 2005**;
 - (iv) local council, water corporation or other government agency;
 - (v) telecommunications, gas, electricity or other utility.

- (c) a person undertaking works, other than a deviation of a waterway, associated with –
 - (i) a licence to take and use water from a designated waterway issued under Division 2 of Part 4 of the Act;
 - (ii) a right to water from a designated waterway under section 8(1) of Division 1 of Part 2 of the Act;
 - (iii) a dam or weir situated on a designated waterway, a licence for which has been issued under Division 2 of Part 5 of the Act;

- (d) a telecommunications, gas, electricity or other utility company constructing a pipeline or underground cable that crosses a designated waterway;
- (e) a water corporation constructing water supply, sewerage or irrigation works in, under, on or over a designated waterway;
- (f) a local council constructing a public bridge or access crossing on a designated waterway;
- (g) a person authorised under an Act to undertake the works or activities, in relation to the relevant designated waterway, land or works, that would otherwise be prohibited under clause 7;
- (h) a person undertaking routine maintenance of existing previously authorised works or works under paragraphs (d), (e), (f) or (g) being low impact, minor, maintenance of such works, including but not limited to re-planting, vegetation clearing, cleaning, or minor structural repairs.

Requirements applicable to person who does not require a permit

9. A person who does not require a permit due to the operation of clause 8(d), (e), (f), (g) or (h) in undertaking works of the kind described in those clauses, must –
- (a) do so in accordance with any guidelines issued by the Authority;
 - (b) submit a works proposal to the Authority prior to commencing the works;
 - (c) notify the Authority when commencing the works.

Penalty: 20 penalty units
Penalty for continuing offence: 5 additional penalty units for each day on which the offence continues.

Permits

10. For the purposes of clause 7 of this by-law a person may apply to the Authority for a permit.
11. After assessing the application and the risk of degradation to the designated waterway or its surrounds, the Authority may issue or refuse to issue a permit.
12. On making decision to issue or refuse to issue a permit, the Authority must –
- (a) in the case of a permit being issued, advise the applicant of that approval and any conditions that apply to the permit; or
 - (b) in the case of a permit being refused, advise the applicant of that refusal.
13. Where a permit is issued under this by-law, the holder of the permit must act in accordance with –
- (a) conditions (if any) determined by the Authority as being applicable to the permit; and
 - (b) guidelines issued by the Authority.

Part 3 – PROCEDURAL REQUIREMENTS APPLYING TO PERMITS

Application for a permit

14. An application for a permit shall be -
- (a) in the form (if any) approved from time to time by the Authority; and
 - (b) accompanied by -
 - (i) the relevant fee as determined under Part 4 of this by-law; and
 - (ii) such plans, specifications or other documents necessary for the Authority to determine the application to grant the permit.
15. A person applying for a permit may request the Authority to issue a single permit for multiple similar or related works or activities.
16. If required to do so by the Authority a person applying for a permit must –

- (a) supply such additional information, plans, specifications or other documentation that the Authority considers necessary to determine the application; and
- (b) give public notice of the application or give notice of the application to such persons the Authority considers may be affected by the application, at such times and in such manner as determined by the Authority.

Amendment or transfer of a permit

17. The holder of a permit issued under this by-law may apply to the Authority to –

- (a) amend the permit (with or without conditions);
- (b) renew the permit; or
- (c) transfer the permit.

Notification of commencement and completion of works or activities

18. Any person, who carries out any works or activities for which a permit has been issued by the Authority must –

- (a) notify the Authority at least seven days before commencing the works or activities; and
- (b) notify the Authority upon completion of the works or activities.

Validity of permit

19. Unless otherwise stated in the permit, a permit issued under this by-law is valid for one year from its date of issue unless earlier revoked by the Authority.
20. The Authority may renew a permit for a period of up to 12 months with additional or varied conditions as necessary.

Revocation of permit

21. The Authority may revoke a permit if in the opinion of the Authority there has been a failure to comply with this by-law or the permit or its conditions, provided –

- (a) a notice of contravention has been provided to the permit holder; and
- (b) there has been a failure to comply with the notice of contravention; and
- (c) the failure to comply continues for a period of 7 days or any longer period allowed by the Authority, after the date specified in the notice.

Application of other requirements

22. A permit issued under this by-law does not remove the requirement for the person to whom the permit has been issued to apply for any authorisation or permission necessary under any other Act with respect to anything authorised by the permit.

Part 4 - FEES AND CHARGES

Fees

23. The fee payable for an application for a permit is –
 - (a) a base fee of 1.5 charge units; and
 - (b) any additional amount as determined by the Authority in accordance with clause 25.
24. The fee payable for the amendment, renewal or transfer of a permit is 1 charge unit.
25. For the purposes of clause 23(b) –
 - (a) the Authority shall estimate any additional time likely to be required to assess the application; and
 - (b) advise the applicant of the estimated additional cost of considering the permit application on the basis of an hourly charge of 1 charge unit.
26. Upon payment of the estimated additional hourly charges the Authority shall process the application.
27. Upon completion of processing the application the Authority shall -
 - (a) advise the applicant of the actual additional amount; and
 - (b) either refund to the applicant any amount paid in excess of the actual additional amount or advise the applicant of the further amount payable being the difference between the estimated additional hourly charges and the actual additional hourly charges.

Waiver or reduction of fees

28. The Authority may waive, reduce or alter any fee or charge with or without conditions.

Payment of fees

29. The Authority will not issue a permit until all required fees are paid.

Subordinate Legislation Act 1994

CERTIFICATE OF CONSULTATION UNDER SECTION 12C AND EXEMPTION UNDER SECTION 12F

BY-LAW NO. 1 WATERWAYS PROTECTION 2014
MALLEE CATCHMENT MANAGEMENT AUTHORITY

I, Peter Walsh, Minister for Water, and Minister responsible for administering the **Water Act 1989**, certify that there has been consultation in accordance with the guidelines made under the **Subordinate Legislation Act 1994** with:

- (a) every other Minister whose area of responsibility may be affected by the proposed *By-Law No.1 Waterways Protection 2014* and there is no overlap or conflict with any other existing or proposed legislative instrument, other legislation or stated government policy; and
- (b) Water Corporations, Municipal Association of Victoria, Vicroads, VicTrack, Gas, Electricity and Telecommunications Companies, being sectors of the public on which a significant economic or social burden may be imposed by the proposed *By-Law No.1 Waterways Protection 2014*, so that the need for, and the scope of the proposed *By-Law No.1 Waterways Protection 2014* has been considered.

I also certify under section 12F(1)(g) of the **Subordinate Legislation Act 1994** that in my opinion, the proposed legislative instrument has undergone an analytical and consultation process which is equivalent to the process for a regulatory impact statement required under section 12E.

Accordingly, a Regulatory Impact Statement is not required for this legislative instrument.

Dated: 16.5.2014



PETER WALSH MLA
Minister for Water

Subordinate Legislation Act 1994

HUMAN RIGHTS CERTIFICATE

(Section 12D)

BY-LAW NO.1 WATERWAYS PROTECTION 2014
MALLEE CATCHMENT MANAGEMENT AUTHORITY

I, Peter Walsh, Minister responsible for Water, and Minister responsible for administering the **Water Act 1989** certify that, in my opinion the proposed *By-Law No.1 Waterways Protection 2014* does not limit any human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**.

Dated: 16.5.2014

A handwritten signature in black ink, appearing to read 'Peter Walsh', written in a cursive style.

PETER WALSH MLA
Minister for Water

