

An overview of the process for private management of levees on Crown land

Guidance Note 17.4

Introduction

This Guidance Note is intended to help landholders who benefit from unmanaged levees on Crown land understand the potential for them to maintain those levees, at their own expense, via a levee maintenance permit issued by a Catchment Management Authority (CMA) or Melbourne Water. It does this by:

- defining the challenges associated with maintaining unmanaged levees on Crown land
- reiterating the current policies surrounding such levees
- giving an overview of the levee maintenance permit scheme.

The challenges associated with managing levees on Crown land

While the benefits of a particular rural levee may not meet the investment criteria outlined in the Victorian Floodplain Management Strategy (and therefore will not be formally managed by a Local Government Authority or any other agency), there may be individuals who see benefit in that levee and wish to maintain it themselves.

Where the levee is on private land, it will be up to the beneficiaries to negotiate with the private landholders about management arrangements. Where the levee is on Crown land, a permit scheme created by legislation in 2014 means that beneficiaries are able to maintain that levee themselves. Rather than requiring multiple permissions from Crown land managers and CMAs they only need a single permit from their local CMA.

Current policy

Under Policy 17d of the Victorian Floodplain Management Strategy:

- Levees on Crown land that are not being formally managed will be allowed to weather away unless those benefiting from them decide to repair and maintain the levee (or part of the levee) under a levee maintenance permit.
- If no formal arrangements are put in place for a levee on Crown land and a local beneficiary sees

benefit in that levee, they may apply to maintain it themselves – at their own expense – via a Levee Maintenance Permit issued by a CMA.

- Permits to maintain levees on Crown land will be subject to conditions specified by both the Crown land manager and the Minister for Water or a delegate such as a CMA.
- Applicants for levee maintenance permits will need to ensure their activities comply with all relevant approvals, including Aboriginal cultural heritage requirements.

An overview of the levee maintenance permit scheme

The levee maintenance permit scheme is set out in the *Water Act 1989* and the permits are issued by CMAs as delegates of the Minister. A levee maintenance permit can be issued to anyone who wishes to maintain a levee located on Crown land so long as they have made an application that is consistent with the Act and that application is approved by the CMA.

A levee maintenance permit can authorise the person who holds it to:

- ✓ access a Crown land levee, including passing over Crown land
- ✓ remove specified trees and plants from the levee
- ✓ restore heavily eroded sections of the levee, and
- ✓ undertake minor maintenance of the levee for up to five years.

The permit can authorise these activities subject to conditions.

A levee maintenance permit does have limitations, however. For example, it cannot authorise:

- ✗ building a new levee or moving a levee
- ✗ making an existing levee longer, higher, or wider than it originally was
- ✗ maintaining a levee on private land
- ✗ major maintenance or the introduction of soil or other material to the land to carry out maintenance

after the first 12 months of the period the permit is in effect

* approvals outside the provisions of the Water Act.

A single permit may authorise the maintenance of a span of levee even where that span of levee is interrupted by land for which a permit cannot be issued (such as private land). A permit can be issued to any legal person (including an individual, group of named individuals or a legal entity such as a corporation) that makes an Application in accordance with the Act.

A permit may be issued for up to five years. The permit can only authorise the use of machinery (i.e. trucks) and the introduction of soil or other material to the Crown land within the first 12 months of the period of the permit. You must complete these 'major maintenance' activities within the first twelve months otherwise you will be required to apply for a new permit.

A permit cannot authorise the maintenance of those sections of a levee that are located on private land; nor can the permit authorise access over private land to a Crown land levee. If you wish to maintain a levee (or a section of levee) that is located on private land you must discuss and make arrangements with the private landowner. Also note that any private land activities may be subject to the Planning Scheme overseen by the relevant local government authority. In any event, it is advisable that you talk about your intentions to maintain a Crown land levee with neighbours of that levee so that you ensure that you do not trespass on private land when exercising your permit.

A range of different factors are considered when deciding whether to issue a permit. The decision not to issue a permit is at the discretion of the CMA. One reason the CMA may decline a permit is where the levee is already being maintained under a permit or by a Government agency.

If you carry out maintenance without a permit, breach your permit condition or exceed the levee dimensions approved under the permit, you can be found guilty of an offence. Heavy penalties apply in relation to unauthorised activities on Crown land levees (in June 2021, up to \$20,000 or one year in prison). In addition, you can also be held liable for the costs of rectifying damage to the Crown land, including to the levee. You should talk with the CMA before you make your permit application to help ensure that your permit covers everything you want to do.

Depending on the circumstances, the Crown land manager or CMA may require public liability insurance. It is your responsibility to be aware of all hazards on the

site upon which the levee is located. These might include, but are not limited to, overhead powerlines, underground cables, pipes, dangerous trees, mine shafts etc. Your work plans should identify all hazards and how you will ensure the safety of you and anyone acting on your behalf, as well as any other park users from those hazards.

All activities undertaken under a levee maintenance permit, including the use of machinery, are subject to the fire prevention provisions *Country Fire Authority Act 1958* and associated regulations. If you are interested in obtaining a levee maintenance permit you can obtain an application kit from your local CMA.

A levee is a mound or bank constructed primarily of earth, stone or gravel, the purpose of which is to obstruct or deflect the flow of water. Maintenance may include reconstruction of part of that levee. Crown land structures that were built for purposes other than obstructing or deflecting the flow of water cannot be maintained under this permit scheme.