



**Queensland
Government**

**Natural Resources
and Mines**

Natural Resource Services Water Industry Compliance

Work Practice Referable Dams 2.5 (version 1)

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

Introduction

The following work has been deemed to be assessable development under the *Integrated Planning Act 1997* (“the IPA”):

- Operational work that is the construction of a referable dam;
- Operational work that will increase the storage capacity of a referable dam by more than 10%.

This means a development permit must be held for the above work to be carried out. It is an offence under the IPA for a person to start the above work without a development permit for that work.

This procedure focuses on the processing of a development application for the above work, in those cases where the **referable dams area** of the Department of Natural Resources and Mines (“NR&M”) is required to act as a Departmental unit contributing to an **internally coordinated response** for the application. This will occur in cases where the chief executive of NR&M is required to act as either the assessment manager, or a referral agency, for the application, but where there are several areas of NR&M (**not** just the referable dams area) with a jurisdictional interest in the application. In these cases, an officer **outside** the referable dams area will take on the administrative role of assessment manager, or referral agency, as the delegate of the chief executive.

For those cases where the referable dams area does **not** act as a Departmental unit contributing to an internally coordinated response for the development application, see Work Practice Referable Dams 2.3 and 2.4:

- *Processing a development application for a referable dam, as an assessment manager (2.3);*
- *Processing a development application for a referable dam, as a*

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

concurrency agency (2.4).

Officers should also be familiar with Work Practice Referable Dams 3.1 – *Management of Conditions Relating to Dam Safety, Under the Water Act 2000* which may be relevant to changing conditions after a development permit has issued for a referable dam.

Key issues

Obtaining a development permit for referable dam related development

The first formal step under the IPA in the process of obtaining a development permit for the above work is to lodge an application for a development permit (a “development application”) with a person, or organisation, called an assessment manager. Assessment managers have the role of administering development applications (s.3.1.7(3) of the IPA).

The **chief executive of NR&M** is sometimes required to act as the **assessment manager** for development applications for water related and vegetation clearing development (see Schedule 1A of the *Integrated Planning Regulation 1998* (“the IPR”).

In other cases, the **chief executive of NR&M** is required to act as a **referral agency** for development applications for water related, vegetation clearing and other development (see Schedule 2 of the IPR)). In this situation, the chief executive may, depending on the nature of the application, be required to act as an advice agency, a concurrency agency, or both, for the application. **Note:** The chief executive will not act as a referral agency in cases where it is already the assessment manager for the development application.

The process of allocating the chief executive’s role for a development application to a particular person or business unit within NR&M is an administrative issue for NR&M that, at the time of writing, had not yet been set out in any formal NR&M policy. It is likely the referable dams area of NR&M will be required to take on the assessment manager and concurrency agency roles for at least some development applications.

It should be noted that this procedure assumes the **referable dams area** will act as assessment manager or a referral agency for a development application **only** in those cases where:

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

1. If the chief executive is required to act as the assessment manager for the development application, the application involves **only** the referable dam jurisdiction;
2. If the chief executive is required to act as a referral agency for the development application, the aspects of the application referred to NR&M for referral agency consideration involve **only** the referable dam jurisdiction.

In other words, this procedure assumes that in those cases where the application involves more business units within NR&M than the referable dams area, the referable dams area's involvement in the application will be by way of a **contribution to an internally coordinated Departmental response to the application**. This procedure also assumes that in these coordinated situations, an officer **outside** the referable dams area will be responsible for coordination of the application.

Officers should note that this procedure has been prepared on the basis of the IPA and the IPR, in force as at **21 June 2002**. If changes are made to this legislation, this procedure may need to be altered.

When the chief executive of NR&M acts as assessment manager

The IPR provides that the **chief executive of NR&M** is the assessment manager for a development application if:

- The development applied for is **any** of the following:
 - Operational work that is the clearing of native vegetation on freehold land (item 3A of Schedule 8, Part 1 of the IPA); or
 - Operational work that allows taking or interfering with water under the *Water Act 2000* (item 3B of Schedule 8, Part 1 of the IPA); or
 - Operational work that is the construction of a referable dam or that will increase the storage capacity of a referable dam by more than 10% (item 3C of Schedule 8, Part 1 of the IPA); and
- The development is **not** assessable development under the local government's planning scheme; and
- The application does **not** include other assessable development; and
- There is no other assessment manager prescribed for the development (e.g. another assessment manager is prescribed if the development is wholly on strategic port land).

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

When the referable dams area acts as assessment manager

The **referable dams area** will act as assessment manager for a development application **only** if the following requirements are satisfied:

- The chief executive of NR&M is the assessment manager for the development application (see above) and
- The development applied for is **only** operational work that is the construction of a referable dam or that will increase the storage capacity of a referable dam by more than 10% (item 3C of Schedule 8, Part 1 of the IPA).

If the above requirements are not satisfied, the referable dams area's involvement in the application will be by way of a contribution to an internally coordinated Departmental response to the application.

When the chief executive of NR&M acts as a referral agency

The IPR provides that the **chief executive of NR&M** is a referral agency for a development application if the application involves:

- Operational work that is the clearing of native vegetation on freehold land (item 3A of Schedule 8, Part 1 of the IPA) and the application triggers the concurrence agency jurisdiction of NR&M; or
- Development that triggers the acid sulfate soils advice agency jurisdiction of NR&M; or
- Development that triggers the declared catchment areas concurrence agency jurisdiction of NR&M; or
- Operational work that allows taking or interfering with water under the *Water Act 2000* (item 3B of Schedule 8, Part 1 of the IPA) and the application triggers the concurrence agency jurisdiction of NR&M; or
- Operational work that is the construction of a referable dam or that will increase the storage capacity of a referable dam by more than 10% (item 3C of Schedule 8, Part 1 of the IPA) and the application triggers the concurrence agency jurisdiction of NR&M; or
- Development for the removal of quarry material that triggers the concurrence agency jurisdiction of NR&M.

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

When the referable dams area acts as a concurrence agency

The **referable dams area** will act as a concurrence agency for a development application **only** if the aspects of the application referred to NR&M for referral agency consideration involve **only** operational work that is the construction of a referable dam or that will increase the storage capacity of a referable dam by more than 10% (item 3C of Schedule 8, Part 1 of the IPA) and the application triggers the concurrence agency jurisdiction of NR&M.

If the above requirements are not satisfied, the referable dams area's involvement in the application will be by way of a contribution to an internally coordinated Departmental response to the application.

Brief outline of the IDAS process

Refer to the outlines in Work Practice Referable Dams 2.3 and 2.4:

- *Processing a development application for a referable dam, as an assessment manager (2.3);*
- *Processing a development application for a referable dam, as a concurrence agency (2.4).*

Changes to applications

If the assessment manager receives written notice of a change to a development application, the assessment manager will refer to s.3.2.9 of the IPA to determine the effect of the change and action that may need to be taken.

Referral agencies must be informed by the assessment manager of changes made to applications under this section.

Lapsing of applications

Section 3.2.12 of the IPA sets out the circumstances in which a development application lapses.

Withdrawal of an application

Section 3.2.11 of the IPA sets out the circumstances in which a development application can be withdrawn.

Referral agencies must be informed by the assessment manager of the

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

withdrawal of applications.

Responsibilities when contributing to an internally coordinated application

When acting as a business unit contributing to an internally coordinated application, the referable dams area has final responsibility for:

- Assessing applications in accordance with the requirements of the IPA and the *Water Act 2000*;
- Providing instructions to the coordinating officer for the application, within the time frames set by that officer;
- Updating records **within the referable dams area** about the application (i.e. the Referable Dam Register and any referable dams area file/s).

The referable dams area will expect the coordinating officer for the application to be responsible for:

- Ensuring development applications accepted for processing are either properly made or properly referred applications, depending on whether the chief executive's role for the application is assessment manager or referral agency;
- Coordinating the processing of applications, in accordance with the requirements of the IPA and other relevant legislation;
- In conjunction with decision makers for coordinated applications, determining the response to be given to applications (including, where necessary, on the basis of advice received from relevant business units of NR&M) and issuing appropriate notices and letters on behalf of NR&M that may be required;
- Keeping relevant business units of NR&M informed of the progress of the application (including updating the Trackjob system).

Staff within the referable dams area that are responsible for processing development applications should nevertheless familiarise themselves with relevant provisions in the IPA, particularly those contained in Chapter 3 (Integrated Development Assessment System). This is essential as the IPA prescribes various time frames for carrying out activities relevant to the processing of development applications and knowledge of those time frames will help the action officer to understand the timeframes imposed by the coordinating officer for the giving of responses or instructions by the action officer. Some examples of the timeframes imposed by the IPA are as follows:

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

- Issuing an acknowledgment notice (usually 10 business days) (s.3.2.3 of the IPA);
- Giving material to a referral agency (3 months) and responding to an information request (12 months, but this can be extended) (s.3.2.12 of the IPA);
- Issuing an information request (10 business days, but this can be extended) (s.3.3.6 of the IPA);
- Assessing the application as a referral agency (30 business days, but this can be extended) (s.3.3.14 of the IPA);
- Issuing a referral agency response (30 business days, but this can be extended) (ss.3.3.14, 3.3.16 and 3.3.17 of the IPA);
- Deciding the application as an assessment manager (20 business days, but this can be extended) (s.3.5.7 of the IPA);
- Issuing a decision notice as an assessment manager (5 business days) (s.3.5.15 of the IPA).

In addition, staff within the referable dams area that are responsible for processing development applications need to be aware that the IPA imposes obligations on assessment managers and concurrence agencies in relation to how development applications must be assessed and about the conditions that can lawfully be imposed on development approvals. So far as the referable dams area is concerned, some important sections to be aware of include:

- Requirements for assessing applications as a referral agency (ss.3.1.8 and 3.3.15 of the IPA);
- Concurrence agency's response powers (s.3.3.18 of the IPA);
- Requirements for assessing parts of applications requiring code assessment (relevant to assessment managers) (s.3.5.4 of the IPA);
- Obligations when making a decision as an assessment manager (s.3.5.11 of the IPA);
- Making a decision as assessment manager if the application requires code assessment (s.3.5.13 of the IPA);
- Division 6 – Conditions (ss.3.5.29 to 3.5.37 of the IPA) (which covers issues such as the type of conditions that can be imposed).

It should be noted that the above does not comprise an exhaustive list of an assessment manager's or concurrence agency's obligations under the IPA.

Staff within the referable dams area that are responsible for processing development applications should also familiarise themselves with relevant provisions in the *Water Act 2000*, particularly those contained in Chapter

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

8, Part 2 (Relationship with *Integrated Planning Act 1997*). This is essential as the *Water Act 2000*:

- Prescribes additional criteria for assessing development applications (s.966 of the *Water Act 2000*);
- Indicates when the chief executive's consent is required to a development application being made (ss.967, 971 of the *Water Act 2000*);
- Indicates when additional documentation must accompany a development application (ss.969, 971 of the *Water Act 2000*);
- Varies the appeal process applying to decisions made concerning the development application, in certain situations (s.972 of the *Water Act 2000*).

Rights of appeal

If disputes arise about conditions imposed on development approvals, or refusals of development applications, the IPA provides for appeals to be instituted in the Planning and Environment Court (see Chapter 4, Part 1 of the IPA). However, for certain forms of development related to activities authorised under the *Mineral Resources Act 1989*, appeals may be started in the Land and Resources Tribunal (s.972 of the *Water Act 2000*).

The IPA also provides for declaration proceedings to be brought the Planning and Environment Court in certain circumstances (s.4.1.21 of the IPA). These proceedings are commonly instituted in cases where disputes or issues arise about the manner in which a development application has been processed.

Purpose

Provide a framework for the referable dams area to use when responding to an internally coordinated development application, which takes account of the statutory requirements outlined above and NR&M's potential exposure to appeal and declaration proceedings.

This Work Procedure should be read in conjunction with other documents that may be developed by NR&M for use in implementing IDAS. For example, a variety of IDAS letters and forms have been developed for use by NR&M staff, which can be accessed through NR&M's Trackjob system (see the link to the IDAS letters and forms schedule at the Trackjob website: http://iis1/idas_dev/). It has been assumed that relevant staff within NR&M will use these IDAS letters and forms when processing development applications.

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

Definitions

Refer to the definitions in Work Practice Referable Dams 2.3 and 2.4:

- *Processing a development application for a referable dam, as an assessment manager (2.3);*
- *Processing a development application for a referable dam, as a concurrence agency (2.4).*

However, this procedure assumes that, as far as the referable dams area is concerned, there will be more than one “decision maker” for the application:

- A decision maker within the referable dams area who has the authority to provide advice about referable dam requirements;
- A decision maker outside the referable dams area who has been delegated authority to make decisions in cases involving “internally coordinated applications” (sometimes requiring advice to be obtained from officers within the referable dams area prior to making a decision).

Responsibility

The chief executive of NR&M is sometimes required to act as the assessment manager or a referral agency for development applications for referable dam related development. The IPA and the IPR give the chief executive the power to carry out various tasks and make certain decisions when undertaking this role. The chief executive can delegate these powers to any person, using s.57 of the *Public Service Act 1996*. However, delegation does not prevent the chief executive from exercising these powers.

As at the time of writing, the *Natural Resources (IPA) Delegation (No. 1) 2002* was in force. Under that instrument of delegation, the powers of the chief executive of NR&M as an assessment manager and as a referral agency under the IPA were delegated to numerous positions within the Department.

The delegations given vary according to the particular power being exercised. Special classes of delegations apply in the case of internally coordinated applications. On occasions, decision makers for internally coordinated applications are required to consult with the referable dams area before making a decision. Relevant officers from the referable dams area to be consulted may include:

- General Manager, Water Industry Compliance;
- Director, Water Industry Asset Management & Standards;

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

- Director, Dam Safety (Water Supply), Water Industry Compliance;
- Principal Engineer, Water Industry Asset Management & Standards, Water Industry Compliance.

The above limitations mean officers must consult the instrument of delegation before they make any decision as an assessment manager, or as a concurrence agency, to ensure they have, at the time of making their decision, a current delegation allowing them to make their decision. Checking the instrument of delegation is also important as instruments of delegation can be revoked and replaced from time to time.

Contact officer Name of contact officer: Peter Allen, Director, Dam Safety (Water Supply)
 Phone (07) 322 47636 or 0418 728 755
 Fax (07) 322 47999
 Email peter.allen@nrm.qld.gov.au

Procedure The processes outlined in Work Practice Referable Dams 2.3 and 2.4:

- *Processing a development application for a referable dam, as an assessment manager (2.3);*
- *Processing a development application for a referable dam, as a concurrence agency (2.4);*

will generally be used to process the development application, with some adjustments to take into account the fact that:

- Several areas of the Department will be involved in providing input before a decision is made about the application and thus there may be “informal” decision makers within individual Departmental units and “formal” decision makers for the whole of the application;
- Input from the Departmental units involved in the processing of the application in many cases will need to be considered by the formal decision maker before decisions are made about the application;
- A coordinating officer will be responsible for issuing letters and notices relating to the application, rather than action officers from within individual Departmental units involved in the processing of the application.

Action officers within the referable dams area will receive documentation from the coordinating officer about the development application after its

Continued on next page

Processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application

receipt by the Department.

The coordinating officers for the application will indicate when they require particular information or instructions from the referable dams area (for example, about further information required to assess the application) and action officers within the referable dams area must process the application within these time frames, or promptly contact the coordinating officer to determine whether it is possible to obtain an extension of time.

Action officers within the referable dams area should also complete the development application assessment forms in Attachment A (if the chief executive is acting as assessment manager) or Attachment B (if the chief executive is acting as referral agency) as the application progresses. The decision forms in the Work Practices Referable Dams 2.3 and 2.4 should be able to be used, without the need for further amendments.

Officers involved in the processing of a development application should also be familiar with, and comply with, the requirements of the following Departmental Standards:

1. Departmental Standard AS.10.002 *Document Management*;
2. Departmental Standard AS.10.003 *Paper Based Document Management*;
3. Departmental Standard AS.10.004 *Electronic Document Management*;
4. Departmental Standard AS.16.004 *Decisionmaking and Requests for Statements of Reasons under the Judicial Review Act 1991*.

Coordinating officers should forward copies of letters and notices issued in relation to the application (for example, information requests, referral agency responses, decision notices) to the business units affected by the application and keep those areas informed of the status of individual applications.

Coordinating officers should update the Trackjob system as the application is processed, however, action officers within the referable dams area will be responsible for maintaining records specific to that area (for example, up-to-date data within the referable dam register).

Continued on next page

ATTACHMENT A

**DEVELOPMENT APPLICATION ASSESSMENT FORM
(NR&M is assessment manager)****1. General information**

- 1.1 Name of dam _____
- 1.2 Reference number (from Referable Dam Register) _____
- 1.3 Dam owner/proponent contact details _____

- 1.4 Department's Trackjob and file references _____

- 1.5 Department's regional office contact details _____

- 1.6 Local government contact details _____

- 1.7 Name and position of action officer within referable dams area _____

- 1.8 Name and position of decision maker within referable dams area _____

- 1.9 Name and position of coordinating officer for the application _____

- 1.10 Name and position of decision maker for the entire application _____

- 1.11 Date development application received by the Department _____
- 1.12 Date development application accepted as a properly made application, and by whom _____

Information for action officers

Action officer responsibilities

When assessing a development application for referable dam related development, an action officer is required to carry out the assessment having regard to the matters outlined in this form and the notes to this form. The action officer is expected to complete this form, as the assessment occurs, and must take the requirements of the following into account during the course of the review:

1. The *Water Act 2000*, the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*;
2. The procedure for processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application;
3. Departmental training received in relation to processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application.

While action officers are expected to conduct their assessments of development applications having regard to the issues listed in this form and the notes to this form, action officers should also **note** that this form is **not** intended to be relied upon by action officers as an exact statement of the requirements imposed by the *Water Act 2000*, the *Integrated Planning Act 1997*, or the *Integrated Planning Regulation 1998* with respect to the processing and assessment of development applications.

It is essential that action officers refer to the full text of the relevant legislation to determine the precise details of these requirements. This form should **not** be used as a substitute for referring to the relevant legislation.

Making recommendations

Similarly, when making recommendations to decision makers about action to be taken in relation to development applications, action officers should refer to the full text of the *Water Act 2000*, the *Integrated Planning Act 1997*, and the *Integrated Planning Regulation 1998* to determine the precise details of the requirements imposed by that legislation.

While various options for future action are listed in the recommendations section of this form, this form should **not** be used as a substitute for referring to the relevant legislation.

Communicating with the dam owner and other people

In some situations action officers will need to communicate with the dam owner, or other persons, to clarify certain issues for the assessment being carried out. **Accurate and written records of any communications, including verbal communications, must be kept and retained on the relevant Departmental file.** These records should indicate who was contacted or consulted about particular issues, when this occurred and the advice that was given.

It may also be appropriate for the action officer to make some reference to the communications that have taken place with the dam owner, or other persons, in this form. In this regard, action officers are expected to exercise some discretion in deciding on the amount of information it is necessary or appropriate to provide in this form.

Where insufficient space is provided in the form, action officers should indicate this and attach where necessary additional documentation, information and/or comments.

Action officers need to be aware that the information and documents referred to in this form and information and documents kept on Departmental file/s may later need to be made available to the decision maker, or other people, for independent consideration or inspection.

2. Information about the “referable dam” status of the dam

2.1 Provide a full description of the dam:

Name: _____

Height: _____

Storage capacity: _____

Watercourse or off stream storage name: _____

Locality (affected city/town): _____

Location (lot on plan, parish, county, shire/city): _____

2.2 How did the dam become a referable dam? For proposed dams there must have been a failure impact assessment _____

2.3 Current failure impact rating of the dam _____ Date given _____

2.4 Population at risk from dam failure _____

2.5 For alterations to an existing dam, is the dam already subject to safety conditions or development conditions? If so, how were they imposed? _____

3. Information needed to assess the development application

- 3.1 What documentation is held by the Department that is/is likely to be relevant to the assessment of the development application? _____

- 3.2 Has the accuracy of these documents been confirmed, and how did this occur? _____

- 3.3 Has sufficient information been provided to assess the application? _____
- 3.4 Due date for preparation of a draft list of information needed from the applicant to assess the development application _____
- 3.5 Date decision maker in referable dams area approved the list of information needed from the applicant to assess the development application (decision maker must initial and indicate when the list of information was approved)

- 3.6 Date instructions about information request sent to the coordinating officer for the application _____
- 3.7 Date information request issued to applicant _____
- 3.8 Date response received to information request _____
- 3.9 Due date for preparation of a draft list of information needed from third parties to assess the development application _____
- 3.10 Date decision maker in referable dams area approved the draft list of information needed from third parties to assess the development application (decision maker must initial and indicate when the list of information was approved)

- 3.11 Date instructions about information needed from third parties sent to the coordinating officer for the application _____
- 3.12 Date request for information issued to third parties _____

- 3.13 Date response received to request for information _____
- 3.14 Has the additional information requested from the applicant/third parties been taken into account when preparing draft conditions to be applied to the dam? _____
- 3.15 Has the dam owner/proponent been consulted about the proposed development conditions? _____
- 3.16 Did the dam owner/proponent object to/agree to/make submissions about any of the proposed development conditions? _____
- 3.17 Comment on the matters raised by the dam owner/proponent _____

- 3.18 Due date for submission of a final report to the decision maker in the referable dams area about the development application _____
- 3.19 Due date for submission of a final report to the coordinating officer about the development application _____
- 3.20 Date final report sent to the coordinating officer about the development application _____
- 3.21 Date final decision required to be made about the development application _____

4. Recommendation

- The development application should be approved in full, subject to conditions.

Proposed conditions: _____

Reasons for recommending conditions: _____

Type of development approval that should be granted: _____

- The development application should be approved in full, subject to no conditions.

Type of development approval that should be granted: _____

- The development application should be approved in part, subject to conditions

Part of application that should be approved: _____

Proposed conditions: _____

Reasons for recommending conditions: _____

Type of development approval that should be granted: _____

Part of application that should be refused: _____

Reasons for recommending refusal: _____

- The development application should be approved in part, subject to no conditions

Part of application that should be approved: _____

Type of development approval that should be granted: _____

Part of application that should be refused: _____

Reasons for recommending refusal: _____

- The development application should be refused

Reasons for recommending refusal: _____

5. Certification

- 5.1 Documents taken into account when making this recommendation _____

- 5.2 Certification and signature of action officer

I have complied with the procedure for processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application, when making this recommendation.

I have taken the material described in item 5.1 above, the requirements of the *Water Act 2000*, the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*, the matters outlined in the procedure for processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application, and Departmental training I have received in the processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application, into account when making this recommendation.

Signature of action officer _____

- 5.3 Date recommendation made _____

Endnotes:

When deciding whether to approve a development application for a referable dam, decision makers may need to have regard to a number of matters, including:

- Relevant provisions of the *Water Act 2000* and the purposes of that Act so far as it relates to referable dams;
- Relevant provisions of the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*;
- The content and adequacy of documentation held by the Department in relation to the dam;
- Information supplied by or obtained from the dam owner/proponent, or other people of relevance to the dam;
- Submissions made by the dam owner/proponent in relation to any draft conditions for the dam;
- Departmental policy and recommended practices outlined in the *Queensland Dam Safety Management Guidelines* and the *Instructions on How to Formulate Conditions Relating to Dam Safety for Referable Dams* (an internal Departmental advisory document (*currently in draft form*));
- Departmental Standard AS.16.004 *Decision making and Requests for Statements of Reasons under the Judicial Review Act 1991*;
- Their own professional expertise and judgment.

Decisions made with respect to development applications are subject to an appeal process in the Planning and Environment Court under Chapter 4 of the *Integrated Planning Act 1997* and, in certain cases, the Land and Resources Tribunal (s.972 of the *Water Act 2000*). Therefore, decision makers must ensure that any decisions made about development applications are lawful and comply with the requirements of the relevant legislation. The decision maker should also be satisfied that the reasons for the decision are properly presented and are sufficient to justify the decision made.

Threshold issues

The *Integrated Planning Act 1997* (s.3.5.30) requires conditions applied under the IPA to be relevant to, but not an unreasonable imposition on, the referable dam or the use of the dam **or** reasonably required in respect of the dam or the use of the dam.

Therefore, when applying conditions under the *Integrated Planning Act 1997*, a threshold issue that must be considered by the decision maker is whether the proposed conditions meet this requirement.

Generally, if a dam safety condition is imposed for a legitimate reason associated with the regulation of referable dams, it will be considered to be “relevant” to the referable dam. However, decision makers need to be aware that simply establishing a dam safety condition is “relevant” to the regulation of referable dams generally may not be sufficient to justify its lawful application to a particular referable dam. This is because a “relevant” condition imposed on a particular referable dam, must also not be an “unreasonable imposition” on the dam.

Whether a dam safety condition imposes an “unreasonable imposition” on a particular referable dam is a question of fact. It is an issue that will only be determined, in the event of a challenge to the condition’s validity, by reference to the particular facts and circumstances. Resolution of this issue may ultimately require expert evidence to be given about the reasonableness and appropriateness of the actions required to be taken under the dam safety condition, in the context of the particular referable dam the dam safety condition is being applied to.

A similar question of fact arises if a dam safety condition is sought to be imposed on a particular referable dam on the basis that it is “reasonably required” for the dam. Again, this is an issue determined, in the event of a challenge to the condition’s validity, by reference to the particular facts and circumstances. Resolution of this issue may ultimately require expert evidence to be given about the reasonableness and appropriateness of the actions required to be taken under the dam safety condition, in the context of the particular referable dam the dam safety condition is being applied to.

Given the above, some professional expertise and judgement needs to be exercised when deciding whether to apply or change dam safety conditions. When decision makers are considering whether the threshold requirements have been met for particular dam safety conditions, the following questions should be considered for each condition:

- Does the condition have a legitimate “dam safety” purpose?
- Does the condition fairly and reasonably relate to the referable dam or use of the dam?
- Is the condition considered reasonable? It must not be open to challenge on the basis it is so unreasonable that no reasonable regulating authority could have imposed it.

Decision makers should be satisfied that the answer to each of the above questions is “yes”, for each of the dam safety conditions they propose to impose.

Secondary issues

In addition to the threshold issues outlined above, there are also other important issues that need to be taken into account when applying conditions to development applications.

Consideration of the issues outlined below will maximise the enforceability of the proposed conditions and help to reduce the risk of the conditions being challenged as unlawful on the basis of general legal principles.

1. Legislative requirements associated with drafting and imposing the conditions must be complied with.

Legislative requirements associated with drafting and imposing conditions on development applications, in addition to the threshold issue outlined above (s.3.5.30 of the *Integrated Planning Act 1997*), are imposed by both the *Water Act 2000* and the *Integrated Planning Act 1997* (see in particular Chapter 3 of the *Integrated Planning Act 1997*).

Decision makers must ensure they are familiar with these requirements and that they are complied with.

2. Procedural requirements associated with imposing the conditions must be complied with.

Development applications must be processed within the time frames set out in the *Integrated Planning Act 1997*.

Also, decision makers must ensure any notices given about development applications comply with the requirements of the *Integrated Planning Act 1997* and the *Acts Interpretation Act 1954*.

3. Conditions must be certain.

Consider whether it is clear what the condition requires the dam owner to do? The dam owner should not be left in any doubt about what is required.

4. Conditions must be final.

A condition must not defer a decision that is central to the decision process, to a later time.

For example, this principle would be breached if a condition was imposed that simply required a dam owner to submit a report about the dam to the chief executive, with that report to be used by the chief executive to decide if safety conditions should be imposed on the dam.

ATTACHMENT B

**DEVELOPMENT APPLICATION ASSESSMENT FORM
(NR&M is referral agency)**

1. General information

- 1.1 Name of dam Burnett River Dam
- 1.2 Reference number (from Referable Dam Register) 1997
- 1.3 Dam owner/proponent contact details Burnett Water Pty Ltd
Mr Graeme Newton
Ph 3224 3675 Fax 3224 2840
Email: graeme.newton@burnettwater.com.au
- 1.4 Department's Trackjob and file references Application for
Burnett River Dam Alliance, (SMEC, HYDRO TAS, WALTER, MACMAHON)
- 1.5 Department's regional office contact details Natural Resources & Mines, Bundaberg
Mr Glenn Flatley, Senior Officer, Planning & Environment
Ph 4131 5874 Fax 4131 5823
Email: Glenn.Flatley@nrm.qld.gov.au
- 1.6 Local government and assessment manager contact details AS PER 1.5
- 1.7 Name and position of action officer within referable dams area David Ryan, Principal Engineer, Dam Safety
- 1.8 Name and position of decision maker within referable dams area Peter Allen, Director, Dam Safety
- 1.9 Name and position of coordinating officer for the application Mr Glenn Flatley, Senior Officer, Planning & Environment
- 1.10 Name and position of decision maker for the entire application Peter Allen, Director, Dam Safety
- 1.11 Date development application received by the Department 22nd August, 2003
- 1.12 Date development application accepted as a properly referred application, and by whom 22nd August, 2003 – Mr Glenn Flatley

Information for action officers

Action officer responsibilities

When assessing a development application for referable dam related development, an action officer is required to carry out the assessment having regard to the matters outlined in this form and the notes to this form. The action officer is expected to complete this form, as the assessment occurs, and must take the requirements of the following into account during the course of the review:

1. The *Water Act 2000*, the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*;
2. The procedure for processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application;
3. Departmental training received in relation to processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application.

While action officers are expected to conduct their assessments of development applications having regard to the issues listed in this form and the notes to this form, action officers should also **note** that this form is **not** intended to be relied upon by action officers as an exact statement of the requirements imposed by the *Water Act 2000*, the *Integrated Planning Act 1997*, or the *Integrated Planning Regulation 1998* with respect to the processing and assessment of development applications.

It is essential that action officers refer to the full text of the relevant legislation to determine the precise details of these requirements. This form should **not** be used as a substitute for referring to the relevant legislation.

Making recommendations

Similarly, when making recommendations to decision makers about action to be taken in relation to development applications, action officers should refer to the full text of the *Water Act 2000*, the *Integrated Planning Act 1997*, and the *Integrated Planning Regulation 1998* to determine the precise details of the requirements imposed by that legislation.

While various options for future action are listed in the recommendations section of this form, this form should **not** be used as a substitute for referring to the relevant legislation.

Communicating with the dam owner and other people

In some situations action officers will need to communicate with the dam owner, or other persons, to clarify certain issues for the assessment being carried out. **Accurate and written records of any communications, including verbal communications, must be kept and retained on the relevant Departmental file.** These records should indicate who was contacted or consulted about particular issues, when this occurred and the advice that was given.

It may also be appropriate for the action officer to make some reference to the communications that have taken place with the dam owner, or other persons, in this form. In this regard, action officers are expected to exercise some discretion in deciding on the amount of information it is necessary or appropriate to provide in this form.

Where insufficient space is provided in the form, action officers should indicate this and attach where necessary additional documentation, information and/or comments.

Action officers need to be aware that the information and documents referred to in this form and information and documents kept on Departmental file/s may later need to be made available to the decision maker, or other people, for independent consideration or inspection.

2. Information about the “referable dam” status of the dam

2.1 Provide a full description of the dam:

Name: Burnett River Dam

Height: 48 metres

Storage capacity: 300,000 megalitres

Watercourse or off stream storage name: Burnett River (AMTD 131.4km)

Locality (affected city/town): Booyal (15km NE of dam)

Location (lot on plan, parish, county, shire/city): Lot 3 CK2702, Lot2 SP135369, Lot4 BN37379

2.2 How did the dam become a referable dam? For proposed dams there must have been a failure impact assessment

Failure Impact Assessment, prepared by SunWater, June, 2003

2.3 Current failure impact rating of the dam 2 Date given 28th July, 2003

2.4 Population at risk from dam failure 235 Minimum

2.5 For alterations to an existing dam, is the dam already subject to safety conditions or development conditions? If so, how were they imposed?

N/A

3. Information needed to assess the development application

3.1 What documentation is held by the Department that is/is likely to be relevant to the assessment of the development application? _____

1) Failure Impact Assessment (prepared by SunWater, June 2003)

2) Burnett River Dam Alliance, Volume 2A, Respondent's Proposed Design, & Volume 2C: Respondent's Proposed Design: Drawings

3) Burnett River Dam – NTAR No 30 (fax transmittal – response to additional Information request

3.2 Has the accuracy of these documents been confirmed, and how did this occur? _____

Failure Impact Assessment – reviewed by R. Guppy, Principal Engineer, Dam Safety
Preliminary Design Report – reviewed by D. Ryan, Principal Engineer, Dam Safety

3.3 Has sufficient information been provided to assess the application? YES

3.4 Due date for preparation of a draft list of information needed **from the applicant** to assess the development application 2nd September, 2003

3.5 Date decision maker in referable dams area approved the list of information needed **from the applicant** to assess the development application (decision maker must initial and indicate when the list of information was approved)

3.6 Date instructions about information request needed **from the applicant** sent to the coordinating officer for the application 1st September, 2003

3.7 Date information request issued **to the applicant** 2nd September, 2003

3.8 Date response received to information request **from the applicant** 9th September, 2003

3.9 Due date for preparation of a draft list of information needed **from third parties** to assess the development application N/A

3.10 Date decision maker in referable dams area approved the draft list of information needed **from third parties** to assess the development application (decision maker must initial and indicate when the list of information was approved)
N/A

3.11 Date instructions about information needed **from third parties** sent to the coordinating officer for the application N/A

- 3.12 Date request for information issued **to third parties** N/A
- 3.13 Date response received to request for information **from third parties** N/A
- 3.14 Has the additional information requested from the applicant/third parties been taken into account when preparing draft conditions to be applied to the dam? YES
- 3.15 Has the dam owner/proponent been consulted about the proposed development conditions? NO
- 3.16 Did the dam owner/proponent object to/agree to/make submissions about any of the proposed development conditions? N/A
- 3.17 Comment on the matters raised by the dam owner/proponent N/A
- 3.18 Due date for submission of a final report to the decision maker in the referable dams area about the development application _____
- 3.19 Due date for submission of a final report to the coordinating officer about the development application _____
- 3.20 Date final report sent to the coordinating officer about the development application _____
- 3.21 Date final decision required to be made about the development application 15th October, 2003

4. Recommendation

- Conditions should attach to any development approval

Proposed conditions: Conditions as outlined in the attached Dam Safety Condition Schedule

Reasons for recommending conditions: _____

To comply with Dam Safety Management Guidelines – February 2002

- Any development approval should be for part only of the development

Part of development that should be approved: _____

Referable Dam Component

Part of application that should be refused: _____

N/A

Reasons for recommending refusal: _____

N/A

- Any development approval should be a preliminary approval only

Reasons for recommending preliminary approval only: _____

N/A

- There should be no concurrence agency requirements

Reasons for recommending no requirements: _____

N/A

- The development application should be refused

Reasons for recommending refusal: _____

N/A

- Advice should be offered about the development application

Advice that should be offered: _____

5. Certification

- 5.1 Documents taken into account when making this recommendation _____

_____ *As Listed in Item 3.1* _____

- 5.2 Certification and signature of action officer

I have complied with the procedure for processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application, when making this recommendation.

I have taken the material described in item 5.1 above, the requirements of the *Water Act 2000*, the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*, the matters outlined in the procedure for processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application, and Departmental training I have received in the processing a development application for a referable dam – as a Departmental unit contributing to an internally coordinated application, into account when making this recommendation.

Signature of action officer _____

- 5.3 Date recommendation made _____

Endnotes:

When deciding whether to approve a development application for a referable dam, decision makers may need to have regard to a number of matters, including:

- Relevant provisions of the *Water Act 2000* and the purposes of that Act so far as it relates to referable dams;
- Relevant provisions of the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*;
- The content and adequacy of documentation held by the Department in relation to the dam;
- Information supplied by or obtained from the dam owner/proponent, or other people of relevance to the dam;
- Submissions made by the dam owner/proponent in relation to any draft conditions for the dam;
- Departmental policy and recommended practices outlined in the *Queensland Dam Safety Management Guidelines* and the *Instructions on How to Formulate Conditions Relating to Dam Safety for Referable Dams* (an internal Departmental advisory document (*currently in draft form*));
- Departmental Standard AS.16.004 *Decision making and Requests for Statements of Reasons under the Judicial Review Act 1991*;
- Their own professional expertise and judgment.

Decisions made with respect to development applications are subject to an appeal process in the Planning and Environment Court under Chapter 4 of the *Integrated Planning Act 1997* and, in certain cases, the Land and Resources Tribunal (s.972 of the *Water Act 2000*). Therefore, decision makers must ensure that any decisions made about development applications are lawful and comply with the requirements of the relevant legislation. The decision maker should also be satisfied that the reasons for the decision are properly presented and are sufficient to justify the decision made.

Threshold issues

The *Integrated Planning Act 1997* (s.3.5.30) requires conditions applied under the IPA to be relevant to, but not an unreasonable imposition on, the referable dam or the use of the dam **or** reasonably required in respect of the dam or the use of the dam.

Therefore, when applying conditions under the *Integrated Planning Act 1997*, a threshold issue that must be considered by the decision maker is whether the proposed conditions meet this requirement.

Generally, if a dam safety condition is imposed for a legitimate reason associated with the regulation of referable dams, it will be considered to be “relevant” to the referable dam. However, decision makers need to be aware that simply establishing a dam safety condition is “relevant” to the regulation of referable dams generally may not be sufficient to justify its lawful application to a particular referable dam. This is because a “relevant” condition imposed on a particular referable dam, must also not be an “unreasonable imposition” on the dam.

Whether a dam safety condition imposes an “unreasonable imposition” on a particular referable dam is a question of fact. It is an issue that will only be determined, in the event of a challenge to the condition’s validity, by reference to the particular facts and circumstances. Resolution of this issue may ultimately require expert evidence to be given about the reasonableness and appropriateness of the actions required to be taken under the dam safety condition, in the context of the particular referable dam the dam safety condition is being applied to.

A similar question of fact arises if a dam safety condition is sought to be imposed on a particular referable dam on the basis that it is “reasonably required” for the dam. Again, this is an issue determined, in the event of a challenge to the condition’s validity, by reference to the particular facts and circumstances. Resolution of this issue may ultimately require expert evidence to be given about the reasonableness and appropriateness of the actions required to be taken under the dam safety condition, in the context of the particular referable dam the dam safety condition is being applied to.

Given the above, some professional expertise and judgement needs to be exercised when deciding whether to apply or change dam safety conditions. When decision makers are considering whether the threshold requirements have been met for particular dam safety conditions, the following questions should be considered for each condition:

- Does the condition have a legitimate “dam safety” purpose?
- Does the condition fairly and reasonably relate to the referable dam or use of the dam?
- Is the condition considered reasonable? It must not be open to challenge on the basis it is so unreasonable that no reasonable regulating authority could have imposed it.

Decision makers should be satisfied that the answer to each of the above questions is “yes”, for each of the dam safety conditions they propose to impose.

Secondary issues

In addition to the threshold issues outlined above, there are also other important issues that need to be taken into account when applying conditions to development applications.

Consideration of the issues outlined below will maximise the enforceability of the proposed conditions and help to reduce the risk of the conditions being challenged as unlawful on the basis of general legal principles.

1. Legislative requirements associated with drafting and imposing the conditions must be complied with.

Legislative requirements associated with drafting and imposing conditions on development applications, in addition to the threshold issue outlined above (s.3.5.30 of the *Integrated Planning Act 1997*), are imposed by both the *Water Act 2000* and the *Integrated Planning Act 1997* (see in particular Chapter 3 of the *Integrated Planning Act 1997*).

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For example, this principle would be breached if a condition was imposed that simply required a dam owner to submit a report about the dam to the chief executive, with that report to be used by the chief executive to decide if safety conditions should be imposed on the dam.