



Drainage: Legal responsibilities and obligations

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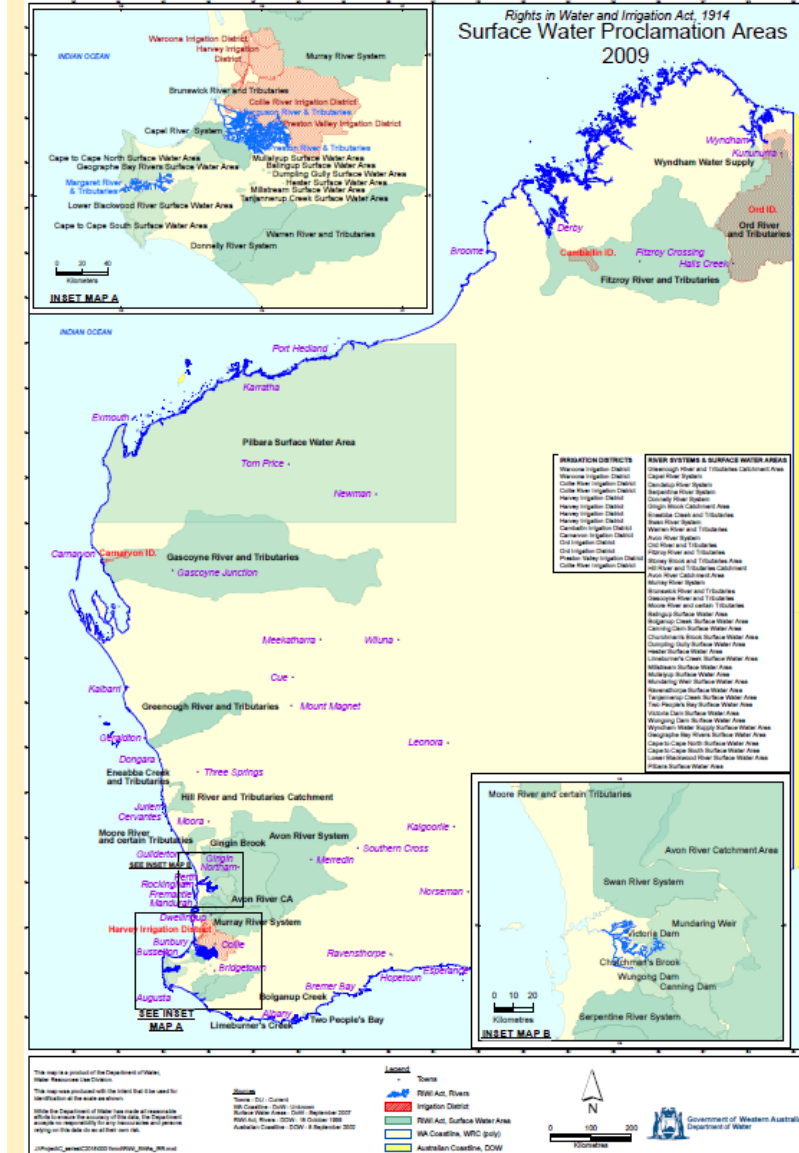


Department of Primary Industries and Regional Development

Law and Legislation

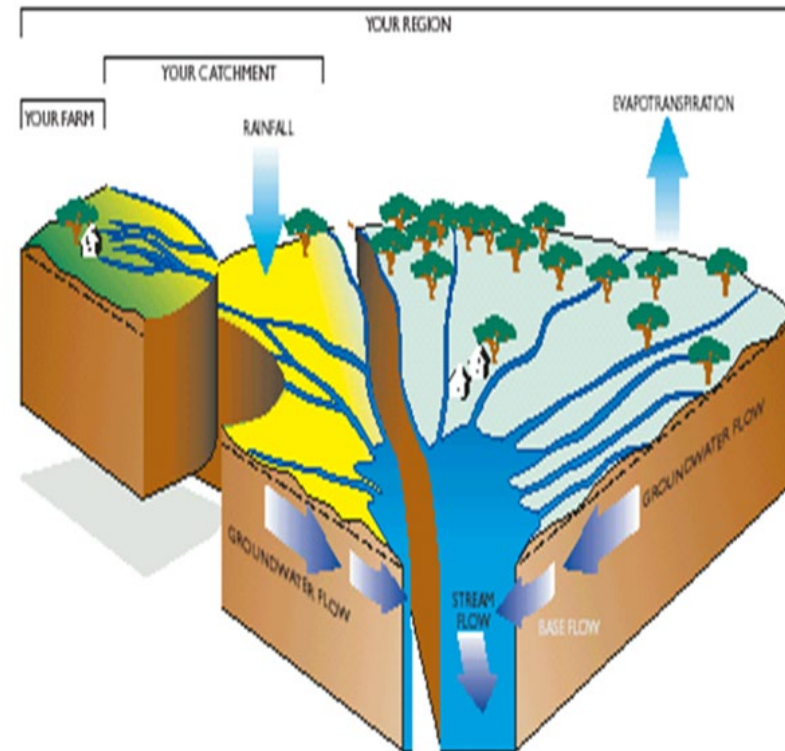


- 1. Common Law;**
rules relating to the cross-boundary effects on one landholder from another landholders activities
- 2. Soil and Land Conservation Act 1945 (SLCA);**
for the conservation of soil and land resources, and to mitigate the effects of erosion, salinity and flooding
Soil and Land Conservation Regulations 1992
- 3. Rights in Water and Irrigation Act 1914;**
regulation of activities that may damage, obstruct or interfere with water flow or the beds and banks of watercourses and wetlands in proclaimed rivers, surface water management areas and irrigation districts
- 4. Waterways Conservation Act 1976**
- 5. Environmental Protection Act 1986**
- 6. ...11 'other' Acts** *to be read in conjunction with the SLCA and to which the SLCA is supplementary*



Drainage (Common) Law No. 1

- Everyone has a 'duty of care' to reasonably ensure their actions do not adversely affect other people, property or the environment
- Water flows from the catchment impact farms and water flows from farms impact the catchment and/or region



Legal considerations under Common

Law



Natural drainage rules

- A natural watercourse must not be obstructed or diverted
- Surface water must not be collected and diverted from one catchment into another that would not naturally receive it
- A landowner cannot accelerate the flow of water to the material damage of lower land



Soil and Land Conservation

Regulations 1992



Notice of Intent to Drain (NOID)

The regulations require landholders (owner or occupier) intending to drain or pump water from under the land surface and then discharge that water onto other land, into other water or into a watercourse, to notify the Commissioner of Soil and Land Conservation at least 90 days before discharging water. Notice is submitted using the notice of intent to drain or pump water (NOID) form.

SOIL AND LAND CONSERVATION ACT 1945
SOIL AND LAND CONSERVATION REGULATIONS 1992
Regulations 5 and 6



OFFICE USE ONLY 7/04

NOTICE OF INTENT TO DRAIN OR PUMP WATER

When is a notice of intent to drain or pump required?

Where an owner or occupier of land wishes to drain or pump groundwater for the purpose of controlling salinity, he or she is required to lodge a notice of intent with the Commissioner of Soil and Land Conservation at least 90 days before discharging water. This includes draining or pumping within the same property. Note that within the Peel-Harvey Catchment Area, a notice of intention is required for **any** draining or pumping works.

What happens if I do not lodge a notice of intent to drain or pump?

It is an offence not to give notice of intent to drain when required to do so. The penalty is \$2,000 for individuals and up to \$10,000 for companies. You may also be liable for charges of causing environmental harm under recent changes to the *Environmental Protection Act 1986*.

Further information

Further information on completing this form is available from the Office of the Commissioner of Soil and Land Conservation in Perth on (08) 9368 3282 (8.30am to 5.00pm Monday to Friday).

1. TYPE OF PROPOSAL

Tick one:

DRAINAGE ONLY

PUMPING ONLY

DRAINAGE AND PUMPING

2. SINGLE OR MULTIPLE PROPERTY NOTIFICATION

WILL THE DRAIN/PUMPING BE CONSTRUCTED ON A SINGLE PROPERTY?

YES → GO TO QUESTION 3

NO → GO TO QUESTION 4

3. DETAILS OF OWNER/OCCUPIER - SINGLE PROPERTY

Mr Mrs Ms Miss Other

SURNAME OR FAMILY NAME:

GIVEN OR FIRST NAME(S):

COMPANY NAME (if applicable):

LOCATION NUMBER(S) OF LAND TO BE DRAINED/PUMPED (e.g. Avon Location 1234):

LOCAL GOVERNMENT DISTRICT (Shire, Town or City council):

POSTAL ADDRESS:

TOWN/SUBURB: POSTCODE:

CONTACT NUMBER: FACSIMILE:

EMAIL:

WHICH ARE YOU? (tick one): OWNER OF THE LAND OCCUPIER OF THE LAND

→ GO TO QUESTION 6

Soil and Land Conservation

Regulations 1999

Notice of Intent to Drain (NOID)



6. DESCRIPTION OF PROPOSED DRAINAGE/PUMPING WORKS

AREA OF LAND TO BE DRAINED/PUMPED ha LENGTH OF DRAIN km

WHERE IS THE WATER TO BE DISCHARGED? (Tick one or more)

WATERCOURSE WETLAND EXISTING DRAIN

EVAPORATION BASIN OR DAM SALT LAKE ROAD OR OTHER PUBLIC LAND

OTHER Describe

IF DISCHARGING INTO AN EVAPORATION BASIN OR DAM, WHAT IS ITS CAPACITY? m³

WILL THE PROPOSED DRAIN RECEIVE WATER FROM AN EXISTING DRAIN? YES NO

For pumping works only: DURATION OF PUMPING MONTHS OR ON-GOING/PERMANENT

7. PLAN OF PROPOSED DRAINAGE/PUMPING WORKS

Please attach plan or aerial photograph of the proposed drainage works which clearly shows a north point and the location of:

- the drainage channels and/or pipes, including the direction of flow of water;
- existing drains or pumping works that may discharge into the proposed works or to which the works may be connected;
- place where the water is to be discharged;
- adjacent land including lot or location numbers;
- all natural watercourses (creeks, rivers etc) and wetlands (lakes, marshes etc);
- roads, railways and water mains adjacent to the land; and
- any other Crown land, such as nature reserves, which is adjacent to the land.

Scale of plan/photograph: 1:10,000 for single properties; 1:25,000 for two or more properties

See Schedules 2 and 3 for examples of plans that meet these requirements.

9. CROSS-SECTIONAL PLAN OF DRAIN

Please complete the cross-sectional plan(s) of the drain(s) including the drain dimensions, whether there will be levee banks etc.

Note: If the proposed drain involves channels of a different cross-section, please provide additional cross-section plans.

Top width of drain

Bottom width of drain

Depth

Berm width

Berm width - left hand side

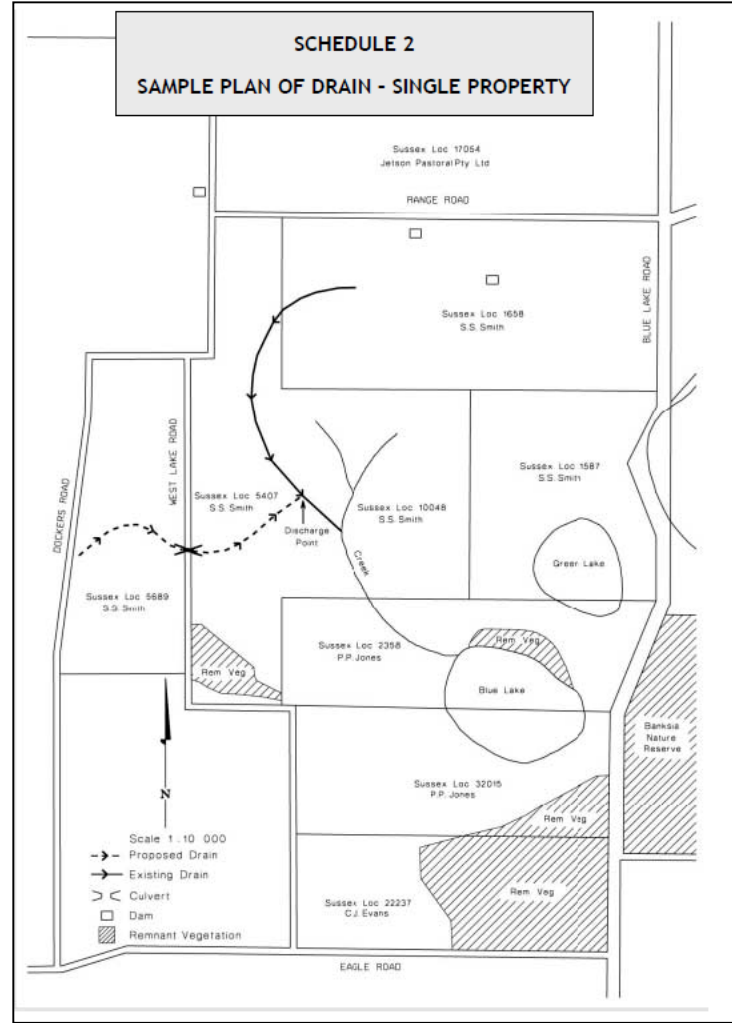
Berm width - right hand side

Levee banks (tick one):

No levee banks

Levee banks on one side only

Levee banks on both sides



SOIL AND LAND CONSERVATION REGULATIONS 1992 OFFICE USE ONLY 7/04

NEIGHBOURS COMMENT FORM

This form is to be completed by the two landholders immediately downstream from land that is proposed to be drained or pumped and any other adjoining landholder who may be adversely affected by the proposal. The Commissioner of Soil and Land Conservation will take these comments into account in assessing the proposal.

TO: The Commissioner of Soil and Land Conservation
Department of Agriculture and Food
Locked Bag 4
BENTLEY DELIVERY CENTRE WA 6983

DEAR COMMISSIONER

I/WE* AM/ARE*

(insert full name(s) here)

THE OWNER(S)/OCCUPIER(S)* OF

(insert location number of your land here)

LOCATED IN THE LOCAL GOVERNMENT DISTRICT OF

(insert local government name here)

I/WE* HAVE BEEN ADVISED BY THAT HE/SHE

(insert name of person proposing to drain here)

PROPOSES TO DRAIN OR PUMP WATER FROM

(insert location number(s) of land to be drained here)

AND DISCHARGE WATER IN THE MANNER DESCRIBED IN THE PLAN ATTACHED TO HIS/HER* **NOTICE OF INTENTION TO DRAIN** MADE UNDER REGULATION 5 OR 6 OF THE SOIL AND LAND CONSERVATION REGULATIONS 1992.

I/WE* HAVE CONSIDERED THIS PROPOSAL AND PROVIDE THE FOLLOWING RESPONSE:

Tick one

I/WE HAVE NO OBJECTION TO THE PROPOSAL

I/WE OBJECT TO THE PROPOSAL

COMMENTS:

YOURS FAITHFULLY

NAME/S

ADDRESS

TOWN POSTCODE

SIGNATURE/S DATE

Soil and Land Conservation

Regulations 1000

Notice of Intent to Drain (NOID)



10. CHECKLIST OF OTHER APPROVALS

Draining or pumping water may require approval/consent from a number of different public authorities. Controls vary from area to area. **It is your responsibility to check what other approvals are required for your proposal.**

The following is a checklist of some of the more common types of approval that may be required:

- Approval to undertake earthworks on a road or railway – local government, Main Roads, Public Transport Authority
- Approval to undertake earthworks on other Crown land – public authority managing the land (e.g. DEC, local govt etc.)
- Development approval under a town or region planning scheme – local government, WA Planning Commission
- Approval to clear native vegetation – Department of Environment and Conservation
- Licence to take groundwater – Department of Water
- Permit to undertake earthworks on bed or banks of watercourses – Department of Water
- Referral of proposal which may impact on Ramsar wetlands – Federal Department of Environment and Heritage
- Location of cables and pipelines etc – **dial 1100 before you dig**
- Approval to undertake works affecting an Aboriginal site – Department of Indigenous Affairs
- Approval to undertake works affecting a heritage place – Heritage Council; local government

Please attach copies of relevant approvals listed above (if any).

Drainage principles



These principles from the [Policy framework for inland drainage](#) are used during the NOID process:

- Drainage should be considered within an integrated catchment management framework and the quality and quantity of drainage water is managed.
- Best practice appropriate to the scale and risks of the proposal should be used for planning, design, consultation, construction and management.
- Consultation and participation is expected for stakeholders affected by drainage proposals



Legal considerations



Before you start

- Contact the Office of the Commissioner of Soil and Land Conservation hosted at DPIRD to enquire if a NOID is or is not required
- Check with your local government authority to see if any approval is required before starting work,
- If your proposed drainage is likely to impact on public land, seek approval from the public authority before starting work,
- To minimise risk of liability under Common Law for damage to neighbouring land, identify the likely adverse impacts and plan safeguards as part of the implementation and operation of the works.



Legal considerations

Summary

1. There are several Acts and legal requirements that must be considered before undertaking drainage work.
2. Ensure your drainage proposals meet “Duty of Care” and Statute and Common Law requirements
3. Keep in mind the “Soil and Land Conservation Act does not sanction one landholder solving his or her own land degradation problem by imposing the cost of it on his or her neighbour.” *Judge J Chaney, State Administrative Tribunal 2006*



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