

Flood work approvals

Landholding and application framework

This fact sheet provides clarity on applying for an approval for a flood work located on, passing through or affecting different parcels of land owned by different landholders. It outlines scenarios and provides policy positions for each.

Note: This advice is not applicable to joint private works.

Scenario 1: Single landholding

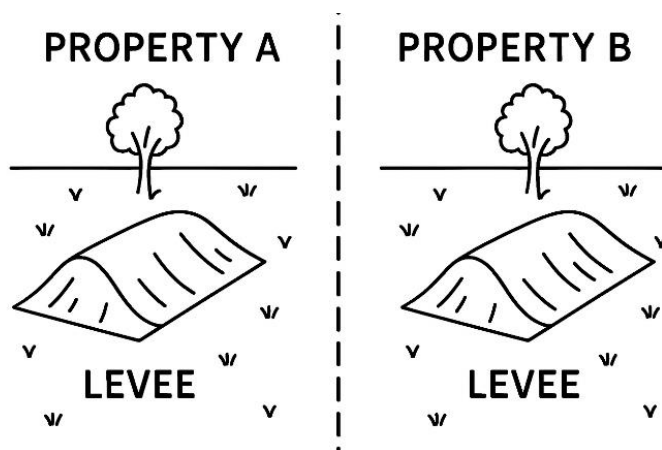
The flood work/s is located wholly within a single landholding.

Policy position 1: An individual application should be lodged by the landholder/s of Property A. The application will be assessed at a property scale, and on its individual merit.



Scenario 2: Flood works on adjacent land parcels

In this scenario, flood works are located on both Property A and Property B, each owned by different landholders, with no flood works extending across property boundaries.



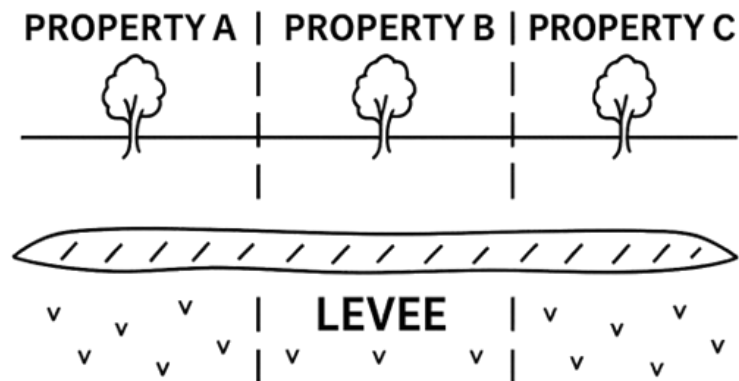
Policy position 2: An individual application should be lodged by the landholder/s of Property A. An individual application should be lodged by the landholder/s of Property B. Each application will be assessed at a property scale, and on its individual merit.

Scenario 3: Flood work/s across multiple landholdings

In this scenario, a flood work extends across all landholdings, traversing Property A, Property B, and Property C, so two options are available:

Option 1: Any one of the landholders – Property A, or Property B, or Property C – obtains a legal easement for the flood work/s extending across all property boundaries and once the easement is registered on title, submits an application in their own right.

Option 2: A joint scheme as per s101 of the *Water Management Act 2000*.



In a joint scheme, the landholders of different parcels of land hold a single water management work approval for a work located on, or passing through those parcels.

An application under a joint scheme will not be accepted under section 92 of the *Water Management Act 2000* unless accompanied by a joint scheme agreement, which is a legally binding agreement, with each party fully informed of, and acknowledging, their respective rights and obligations.

A joint scheme agreement must address, but not be limited to, the following:

- granting of access to the work/s
- operation, management and ongoing maintenance of the work /s
- apportionment of water supplied by the work/s
- apportionment of construction and ongoing maintenance costs
- apportionment of any additional prescribed or agreed costs
- allocation of benefits received (if any) to each party
- identification and allocation of risks to each party (if any)
- agreed liability of each party for known or unforeseen consequences arising from the work/s
- conditions and process for exclusion of land from the scheme
- mechanisms for parties to exit the scheme
- arrangements applying when land ownership changes
- provisions for dissolution of the scheme and the treatment of works post-dissolution
- any other conditions agreed between the parties.

Importantly, the flood work/s specified in the application must overlie the landholdings held by all members of the joint scheme.

The agreement must be executed by all relevant parties and prepared in accordance with applicable legal and regulatory requirements.

If approval is granted, each approval holder (including a successive landholder who is automatically an approval holder) has a duty to comply with the conditions of the approval (s106(1) and 106(2) of the *Water Management Act 2000*).

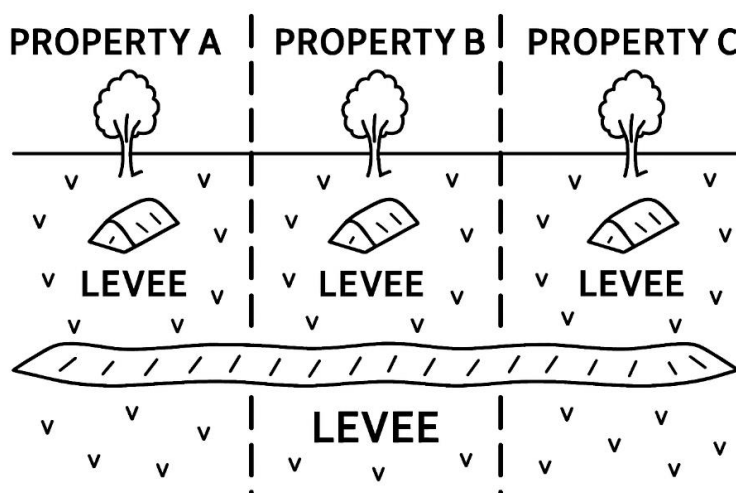
An approval co-holder may commence legal proceedings against another co-holder if they fail to comply with the conditions of the approval (s106(2) of the Act).

Policy position 3: The assessment of an application lodged as a joint scheme will be undertaken at both a property scale and at a combined property scale.

Scenario 4: Flood work/s across multiple landholdings in addition to works on individual landholdings

In this scenario, there are separate flood works on Properties A, B and C, in addition to a single flood work that extends across all individual landholdings.

Any distinct flood works on individual landholdings must be addressed through separate applications. In this scenario, individual applications should be submitted by the landholder/s of Property A, Property B, and Property C for the respective flood works located on each landholding.



In addition, for the flood work that extends across all landholdings, two options are available:

Option 1: Any one of the landholders – Property A, or Property B, or Property C – obtains a legal easement for the flood work/s extending across all property boundaries and once the easement is registered on title, submits an application in their own right and obtains a legal easement for the water supply work/s.

Option 2: A joint scheme as per s101 of the Water Management Act 2000. In a joint scheme, the landholders of different parcels of land hold a single water management work approval for a work located on, or passing through those parcels.

An application under a joint scheme will not be accepted under section 92 of the *Water Management Act 2000* unless accompanied by a joint scheme agreement, which is a legally binding agreement, with each party fully informed of, and acknowledging, their respective rights and obligations.

A joint scheme agreement must address the following matters:

- granting of access to the work
- operation, management and ongoing maintenance of the work /s
- apportionment of water supplied by the work
- apportionment of construction and ongoing maintenance costs
- apportionment of any additional prescribed or agreed costs
- allocation of benefits received (if any) to each party
- identification and allocation of risks to each party (if any)
- agreed liability of each party for known or unforeseen consequences arising from the work
- conditions and process for exclusion of land from the scheme
- mechanisms for parties to exit the scheme
- arrangements applying when land ownership changes
- provisions for dissolution of the scheme and the treatment of works post-dissolution
- any other conditions agreed between the parties.

Importantly, the flood works specified in the application must overlie the landholdings held by all members of the joint scheme.

The agreement must be executed by all relevant parties and prepared in accordance with applicable legal and regulatory requirements.

If approval is granted, each approval holder (including a successive landholder who is automatically an approval holder) has a duty to comply with the conditions of the approval (s106(1) and 106(2) of the *Water Management Act 2000*).

An approval co-holder may commence legal proceedings against another co-holder if they fail to comply with the conditions of the approval (S106(2) of the Act).

Policy position 4: The assessment of an application/s lodged for the distinct flood works will be undertaken at a property scale. The assessment of an application lodged as a joint scheme will be undertaken at both a property scale and at a combined property scale.

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