

## Water Act 1989

### NOTICE OF MAKING OF THE BY LAW NO. 2 WATERWAYS PROTECTION 2024 MALLEE CATCHMENT MANAGEMENT AUTHORITY

By resolution of 26 June 2024 the Mallee Catchment Management Authority under sections 160, 219 and 287ZC of the **Water Act 1989** made By-Law No. 2 Waterways Protection 2024.

The purpose of the by-law is to make provisions 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; and
- c) the 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 6 March 2024.

A copy of the by-law is available on the Mallee Catchment Management Authority website, [www.malleecma.com.au](http://www.malleecma.com.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 Agriculture Victoria Complex, 308-390 Koorlong Ave, Irymple, Victoria 3502.

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

**MALLEE CATCHMENT MANAGEMENT AUTHORITY**  
Victoria Complex, 308-390 Koorlong Ave, Irymple, Victoria 3502

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## WATER ACT 1989

The Mallee Catchment Management Authority:

- revokes the By-law No. 1 Waterways Protection 2014, when the following by-law comes into effect; and
- makes the following by-law –

Dated 26 June 2024

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

..... Allison McTaggart, Chair  
..... Janice Kelly, Board Member  
..... Jenny Collins, Chief Executive Officer



OFFICIAL

**By-law No 2 Waterways Protection 2024**  
Mallee Catchment Management Authority

**Part 1 - PRELIMINARY**

**Title:**

1. This by-law may be cited as by-law No. 2 Waterways Protection 2024.

**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; and
  - (c) the 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.

“Council” has the same meaning as under section 3 of the **Local Government Act 2020**.

“designated land” means any land which the Authority has declared to be designated land under section 188 of the Act.

“designated waterway” means any waterway which the Authority has declared to be a designated waterway under section 188 of the Act.

“designated works” means any works which the Authority has declared to be designated works under section 188 of the Act.

“emergency” has the same meaning as under section 4 of the **Emergency Management Act 1986**.

**Explanatory note:** The definition of emergency under section 159A(3) of the Act is encompassed by this definition of emergency in the Emergency Management Act 1986.

“government agency” means –

- (a) any body corporate or unincorporated body 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” has the same meaning as in section 3 of the Act.

“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.

“Traditional Owner group agreement” means an agreement under Part 6 of the **Traditional Owner Settlement Act 2010**.

“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 designated works; or
  - (b) erode or damage any designated land or designated works.

**Explanatory note:** See section 75A of the *Water Act 1989* for other offences as to the obstruction, interference, erosion or damage etc of waterways.

Penalty:	a penalty not exceeding 20 penalty units.
Penalty for continuing offence:	an additional penalty not exceeding 5 penalty units for each day on which the offence continues: <ul style="list-style-type: none"><li>- after service of a notice of contravention on the person under section 151 of the Act; or</li><li>- if no notice of contravention is served, after conviction of the person for the offence.</li></ul>

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;
- (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; or
- (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:	a penalty not exceeding 20 penalty units
Penalty for continuing offence:	an additional penalty not exceeding 5 penalty units for each day on which the offence continues: - after service of a notice of contravention on the person under section 151 of the Act; or - if no notice of contravention is served, after conviction of the person for the offence.

### **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 undertaking their 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 an 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) Fire Rescue Victoria established under the **Fire Rescue Victoria Act 1958**;
  - (iii) the Victoria State Emergency Service Authority established under the **Victoria State Emergency Service Act 2005**;
  - (iv) a Council, Water Corporation, or other government agency; or
  - (v) a telecommunications, gas, electricity or other utility company or entity;
- (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 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 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 member of a Traditional Owner group which has entered into a Traditional Owner group agreement, and who
  - (i) is bound to that agreement, and
  - (ii) undertakes an agreed activity on a designated waterway, designated land or designated works, on the land to which the agreement applies, that would otherwise be prohibited under clause 7;
- (i) a person undertaking routine maintenance of existing previously authorised works or works under paragraphs (d), (e), (f) or (g) being:
  - (i) low impact, minor maintenance of such works, including but not limited to re-planting, vegetation clearing, cleaning, or minor structural repairs, and
  - (ii) provided they meet any conditions applied as part of the authorisation.

#### **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), (h) or (i) in undertaking works of the kind described in those clauses, must –
  - (a) undertake the works in accordance with any guidelines issued by the Authority;
  - (b) submit a works proposal to the Authority prior to commencing the works; and
  - (c) notify the Authority when commencing the works.

Penalty:	a penalty not exceeding 20 penalty units
Penalty for continuing offence:	an additional penalty not exceeding 5 penalty units for each day on which the offence continues: <ul style="list-style-type: none"> <li>- after service of a notice of contravention on the person under section 151 of the Act; or</li> <li>- if no notice of contravention is served, after conviction of the person for the offence.</li> </ul>

#### **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 including the risk of degradation to the designated waterway or its surrounds, the Authority may issue or refuse to issue a permit.
12. The Authority may apply any conditions to the permit that the Authority considers reasonably necessary.
13. After making a 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.
14. 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 (if any) issued by the Authority.

### **Part 3 – PROCEDURAL REQUIREMENTS APPLYING TO PERMITS**

#### **Application for a permit**

- 15. An application for a permit must be -
  - (a) in the form (if any) approved from time to time by the Authority; and
  - (b) accompanied by -
    - (i) the relevant fee (if any) 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.
- 16. A person applying for a permit may request the Authority to issue a single permit for multiple similar or related works or activities.
- 17. If required to do so by the Authority, a person applying for a permit must –
  - (a) supply such additional information, plans, specifications or other documents 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**

- 18. 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.
- 19. After assessing the application including the risk of degradation to the designated waterway or its surrounds, the designated land or the designated works, the Authority may:
  - (a) amend, renew or transfer the permit; or
  - (b) refuse to amend, renew or transfer the permit.

#### **Validity of permit**

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

#### **Revocation of permit**

- 22. 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**

23. A permit issued under this by-law does not remove the requirement for the permit holder 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**

24. 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 26.
25. The fee payable for the amendment, renewal or transfer of a permit is 1 charge unit.
26. For the purposes of clause 24(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.
27. Upon payment of the estimated additional hourly charges the Authority shall process the application.
28. 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**

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

#### **Payment of fees**

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