

WATER ACT 1989

The Corangamite Catchment Management Authority makes the following by-law:-

Dated:

The Common Seal of the Corangamite Catchment Management Authority was hereunto affixed in the presence of:

..... Chairman

.....Member

.....Secretary

By-law No 1 Waterways Protection

Part 1 - PRELIMINARY

Title:

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

Objectives

2. The objectives of this by-law are to make provision for -
 - (a) the control, management and authorisation of works and activities in, on or over designated waterways and designated land or works;
 - (b) the protection and care of designated waterways and designated land or works;
 - (c) conservation and preservation of flora, fauna and habitat in designated waterways and designated land or works;
 - (d) the manner of setting fees and charges; and
 - (e) the setting of penalties for breaches of this by-law.

Authorising provisions:

3. This by-law is made under sections 160, 161 and 219 of the Act.

Application:

4. This by-law applies to the Corangamite Management District.

Definitions:

5. In this by-law -

“Authorised Officer” means -

- (a) any officer or employee of the Authority, or
- (b) any person appointed in writing by the Authority as an authorised officer for the purpose of this by-law.

“Act” means the Water Act 1989.

“Authority” means the Corangamite Catchment Management Authority.

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

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

“Person” includes a body or association (corporate or incorporated) and a partnership.

“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.

“Waterway” has the same meaning as contained in section 3 of the Act.

“Designated waterways, land or works map” means the map required to be kept by the Authority in accordance with part 2 of this by-law.

“Works” has the same meaning as contained in section 3 of the Act.

Part 2 - ADMINISTRATION OF BY-LAW

Designated waterways, land or works map

6. The Authority shall at all times keep and keep up to date a map of each of its Waterway Management Districts depicting all designated waterways, land or works within each district.

Guidelines

7. The Authority may from time to time prepare guidelines for use by the Authority and its authorised officers and other persons for the purposes of this by-law. Any such guidelines must have regard to and not be inconsistent with the objects of this by-law.

Exempt persons and works and activities that do not require permits

8. (1) This by-law does not apply to -
 - (a) any of the following persons, when acting in the course of that person’s duties -
 - (i) an authorised officer;
 - (ii) a member of the Police force;
 - (iii) a contractor carrying out any work for the Authority;
 - (b) a person dealing with a fire, flood or other public emergency.
 - (c) a person acting in accordance with an authorisation granted by the Authority under clause 27 and any condition of that authorisation.
- (2) Any person who carries out any of the following works is, subject to sub –clause (4), exempt from the requirement to obtain a permit -
 - (a) A public bridge or access crossing on a designated waterway where no deviation of the waterway is involved.
 - (b) A public utility crossing of a designated waterway, or any designated land, being a pipeline, underground cable or the like of the Telstra Corporation Pty Ltd, Optus Communications Pty Ltd, Powercor Pty Ltd and Kinetic Pty Ltd, and their successors, where no deviation of the waterway is involved.
 - (c) Water supply or sewerage or irrigation works constructed on a designated waterway by Southern Rural Water, Barwon Regional Water Authority, Central Highlands Regional Water Authority, South West Regional Water, where no deviation of the waterway is involved.
 - (d) Post and wire fencing within a designated waterway or on any designated land, other than fencing or wires strung across a designated waterway which could cause a safety hazard to boats and other users of the waterway.
 - (e) Planting of vegetation that does not obstruct or is not likely to obstruct a designated waterway.
- (3) Any person who carries out any of the following works is exempt from the requirement to obtain a permit -

- (a) works, other than a deviation of a waterway, associated with a licence to take and use water from a designated waterway issued under Division 2 of Part 4 of the Act; and
 - (b) works, other than a deviation of a waterway, associated with a right to water from a designated waterway under section 8(1) of Division 1 of Part 2 of the Act; and
 - (c) works, other than a deviation of a waterway, associated with 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.
- (4) Any person, who carries out any works or activities to which an exemption under sub-clause (2) applies must -
- (a) do so in accordance with any guidelines issued under clause 7;
 - (b) submit the works or activities proposal to and notify the Authority before commencing the works or activities; and
 - (c) not erode or damage the surrounds of or pollute any designated waterway.

Inspection of documents

9. The Authority shall, free of charge, make available for inspection at its offices, during its normal business hours, to any person, a copy of -
- (a) the designated waterways, land or works map;
 - (b) any guidelines adopted by the Authority; and
 - (c) this by-law.

Part 3 - WATERWAY PROTECTION

Structures and works in, on or over designated waterways, land or works.

10. A person must not -
- (a) construct, alter or remove any structures in, on or over a designated waterway or any designated land or works;
 - (b) construct or carry out any works in, on or over a designated waterway or any designated land or works;
 - (c) construct or carry out any works that will or are likely to deviate a designated waterway; or
 - (d) obstruct or interfere with any works in, on or over a designated waterway or any designated land or works -

without a permit from the Authority.

Interference with designated waterways, land or works

11. A person must not -
- (a) obstruct or interfere with a designated waterway or any designated land or works;
 - (b) erode or otherwise damage the surrounds of a designated waterway or any designated land or works;
 - (c) cut down, interfere with or take any tree or other vegetation within or from a designated waterway or any designated land or works;
 - (d) interfere with or take any soil, earth, sand, gravel or other material within or from a designated waterway or designated land or works -

without a permit from the Authority.

Other prohibited activities

12. A person must not -

- (a) deposit any rubbish on or near a designated waterway or any designated land or works; or
- (b) cause or permit any designated waterway or any designated land or works to be polluted.

Part 4 - PERMITS

Application for a permit

13. An application for a permit shall be -
- (a) in the form (if any) approved from time to time by the Authority; and
 - (b) accompanied by -
 - (i) the relevant fee; and
 - (ii) such plans, specifications or other documents necessary for the Authority to determine whether or not to grant the permit.

Further information

14. Before determining to grant or refuse a permit the Authority may require the person applying for the permit to -
- (a) supply such additional information, plans, specifications or other documentation 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.

Matters taken into account by the Authority

15. In determining whether or not to grant a permit, the Authority shall have regard to -
- (a) the objectives of this by-law;
 - (b) any guidelines prepared by the Authority from time to time;
 - (c) the effect or likely effect of the granting of the permit (with or without conditions) on any designated waterway or designated land or works under the control or management of the Authority or on any waterway, works or other lands within the Authority's district;
 - (d) the effect or likely effect of the granting of the permit (with or without conditions) on any waterway not within the Authority's District;
 - (e) any submissions that may be received in respect of the application; and
 - (f) any other matters it considers relevant.

Granting or refusing approval

16. The Authority may -
- (a) refuse the application for a permit;
 - (b) grant the application for a permit; or
 - (c) grant the application for a permit with conditions.

Permits

17. (1) Any person, who carries out any works or activities for which a permit has been granted by the Authority must -
- (a) do so in accordance with any conditions issued by the Authority and any guidelines issued under clause 7;
 - (b) notify the Authority before commencing the works or activities; and
 - (c) not erode or damage the surrounds of or pollute any designated waterway.

- (2) Unless otherwise stated in the permit, a permit shall be valid for one year from its date of issue.

Amendment and transfer of permit

18. The Authority may, on the application of the person to whom a permit is granted -
- (a) amend the permit (with or without conditions);
 - (b) renew the permit; or
 - (c) transfer the permit.

Revocation of permits

19. The Authority may revoke a permit if in the opinion of the Authority there has been a failure to comply with any condition to which the permit is subject, provided -
- (a) a notice of contravention in accordance with section 151 of the Act has been first served upon the permittee; 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.

Part 5 - FEES AND CHARGES

Fees

20. (1) The fees payable for the processing and investigation of an application for a permit shall be:-
- | | |
|--------------------------|------------------|
| Base fee | 1.5 charge units |
| Additional hourly charge | 1.0 charge unit. |
- (2) The fees payable for the amendment, renewal or transfer of a permit shall be 1.0 charge units.

Payment of fees

- (21) Upon lodging an application for a permit, the applicant shall pay to the Authority the base fee.
- (1) The Authority shall, upon payment of the base fee, make a preliminary assessment of the application, and advise the applicant of its estimate of the additional hourly charges likely to be incurred and require payment of the estimated additional charge by the applicant.
 - (3) Upon payment of the estimated additional hourly charges the Authority shall process the application.
 - (4) Upon completion of processing the application the Authority shall -
 - (a) advise the applicant of the actual additional hourly charge; and
 - (b) either refund to the applicant any amount paid in excess of the actual additional hourly charges or advise the applicant of the further amount payable being the difference between the estimated additional hourly charges and the actual additional hourly charges.
 - (5) The Authority will not grant any application for a permit until all fees payable under this clause are paid.

Waiver or reduction of fees and charges

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

Part 6 – OFFENCES & PENALTIES

Offence to breach by-law

23. Where any provision of this by-law requires something must not be done at all, any person who does that act is guilty of an offence.

Offence to contravene conditions

24. Where any permit issued under this by-law contains conditions, any person who contravenes or fails to comply with a condition of the permit is guilty of an offence.

Penalty

25. Any person who is guilty of an offence shall be liable to a penalty not exceeding twenty (20) penalty units* and in the case of a continuing offence an additional penalty not exceeding five (5) penalty units for each day on which the offence continues -
- (a) after service of a notice of contravention on the person under section 151 of the Act;
or
 - (b) if no notice of contravention is served, after conviction of the person for an offence.

* A penalty unit has the meaning defined in section 110 of the Sentencing Act 1991.

Part 7 - GENERAL

Service of notices

26. Any notice required to be served by the Authority on any person under this by-law may be served in any manner as provided for in the Act.

Authorisation

- 27 (1) The Authority may authorise a person to do anything that would otherwise contravene clause 10 or 11.
- (2) An authorisation under sub-clause 1 -
- (a) must be in writing; and
 - (b) may be granted subject to any conditions determined by the Authority.