

Dryland Rural Drainage Resource Kit

for Landholders



Acknowledgement

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.

Dryland Rural Drainage Resource Kit for Landholders
Version 2.0

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This Dryland Rural Drainage Resource Kit for Landholders delivers on a commitment in the Victorian Rural Drainage Strategy (2018) to provide landholders with the tools and information they need to understand their options for managing dryland rural drainage.

The Drainage Resource Kit will:

- Provide the information required to manage dryland rural drainage under the arrangements described in the **Victorian Rural Drainage Strategy**¹
- Support landholders to make choices about how they manage dryland rural drainage
- Help landholders to understand their obligations and the approvals processes for drainage works.

Specifically, it includes:

- An overview of the ways landholders can manage dryland rural drainage and the support available to them (**Part 1** – *Frequently asked questions*, **Part 2** – *Processes for landholders to undertake drainage works*, and **Part 3** – *Roles and responsibilities for dryland rural drainage*)
- Information about landholders' obligations to obtain approvals for drainage works and guidance on developing a plan to manage these systems (**Part 4** – *Drainage management plans and approvals for drainage works*)
- Guidance for landholders on getting the best value for money from drainage works, while also minimising the possible impacts of drainage works (**Part 5** – *Choosing a drainage engineer, consultant or earthworks contractor*)
- Options for dispute resolution (**Part 6** – *Managing disputes*)
- Advice on working collectively and information about the legal arrangements for establishing drainage committees and the options for governance structures (**Part 7** – *Forming a drainage committee and formalising arrangements*).

This kit is a guide only. A technical tool to help landholders consider the likely costs and benefits of investing in improved dryland rural drainage is available on the Department of Environment, Land, Water and Planning **website**².

¹ www.water.vic.gov.au/water-for-agriculture/rural-drainage/final-strategy

² www.water.vic.gov.au/water-for-agriculture/rural-drainage/implementation-victorian-rural-drainage-strategy



Part 1 Frequently asked questions

Q. What is dryland rural drainage?

A. Drainage that benefits agriculture in dryland (not irrigated) regions outside of urban areas. It is the works and functions related to the collection, and timely removal, of excess water generated by high rainfall to support agricultural production. It involves enhancing the hydraulic capacity of drainage lines and soils to ensure water will flow off (or through) and away from land, to support increased agricultural production in dryland areas.

What types of works can I (or my neighbours) do?

Q. *I seem to have more water on my land every year. What can I do about it?*

A. First you will need to assess what is causing the increased flows. Has there been increased rainfall or has a neighbour undertaken works that have led to more water flowing onto your land? If it is due to increased rainfall you might wish to consider maintenance or improvement works to your existing drainage system, or re-establishment of an old system. Where works do not impact on existing natural wetlands you may consider implementing a new drainage system under the framework described in the Victorian Rural Drainage Strategy. See **Part 2 – Processes for landholders** to undertake drainage works.

Q. *Can I drain the wet area in my paddock?*

A. First you will need to verify whether the wet area is an ephemeral (seasonally wet and dry) wetland which may be protected under state and/or federal legislation. Significant penalties apply to the destruction of such protected wetlands, so it is vital that you check the status of the area you are considering before changing the way you manage the land. Contact your local council planning department, which can advise you as to planning considerations including land disturbance, potential impacts outside of your property and whether approvals or referrals are required under the *Planning and Environment Act 1987*.

You should then contact the relevant catchment management authority for your area regarding the “wetland status” of the subject land. Some, but not all, significant wetland areas in Victoria are mapped. You might be advised to engage a suitably qualified ecologist to complete an assessment of the subject land

if it is not mapped as a wetland, but in an area where significant wetlands are known to occur. In some instances, there might be opportunities to gain a financial benefit from managing wetlands for their natural values through programs administered by the catchment management authority.

Q. *Can I block a drain to flood my wetland? It's been dry and the plants need water. Is my neighbour allowed to block the drain on their property?*

A. This will depend on a number of factors. Will blocking the drain cause flooding upstream of your property or cut off water supply to your downstream neighbours? What is the natural state of the wetland? Does it need water year-round or is it naturally seasonal? Will it require decommissioning of established works? To undertake these works, you are likely to need planning approvals from your council and a works on waterways permit from your catchment management authority. You might also need a take and use licence from your regional water corporation if you plan to collect and use the water (see **Part 4 – Drainage management plans and approvals for drainage works**). The catchment management authority will also be able to advise you on the potential environmental benefits or potential impacts of the proposed works and in some instances, you might be able to gain assistance to re-instate a wetland affected by drainage.

Q. *Is my neighbour allowed to build a new drain?*

A. Potentially yes, but only if they obtain all of the applicable statutory approvals. See **Part 4** for the full range of statutory approvals likely to apply to the construction of new rural drains. If a new drain is proposed, the first step should always be to gain the support of potentially impacted neighbouring landholders.

What are the roles and responsibilities for rural drainage?

Q: *What is councils' role in the management of dryland rural drainage?*

A: Councils will provide support to the community to manage the ongoing arrangements for dryland rural drainage. This will include administrative support such as collecting fees for management and maintenance of dryland rural drainage following the development of a drainage management plan and the formalisation of a drainage system/committee (on a cost recovery basis for councils). Councils' role in dryland rural drainage management is critical as they:

- Have responsibilities to manage infrastructure such as bridges, roads and culverts
- Consider approvals for earthworks and the removal of native vegetation
- Manage compliance with the approvals for earthworks.

Q: *Who do I need to consult about my drainage works?*

A: Discuss any plans with neighbours who might be impacted by the works. You should then consult with your local council in the first instance about the approvals process likely to apply to your proposed drainage works. Both local councils and catchment management authorities are the key regulating agencies for rural drainage works. Council will be able to advise you on most matters and may refer you to your local catchment management authority for further advice and information on approvals or direct you to the appropriate body.

Q: *I want to maintain the drain alongside the council road. Do I need permission to do this?*

A: Yes, you will need to discuss this with your council, as a permit might be required.

Q: *I have a floodgate on Crown land that protects my property but needs repair. Who is responsible for this gate?*

A: You must first establish ownership of the drainage asset. If this is unknown, check with your local council or catchment management authority to establish ownership and responsibility for maintenance of the asset. Where the asset is the responsibility of a government agency you must further consult with that agency directly.

Where the asset is owned and managed by a drainage trust or similar group, the maintenance of drainage infrastructure and levees is the responsibility of

members of the trust or the beneficiaries of the drainage system. Where floodgates have been installed in a levee to support the functioning of a drainage system, the beneficiaries of this system are responsible for its upkeep and maintenance. The landholder can apply to their catchment management authority for a permit to undertake works where floodgates are in a levee on Crown land.

Approvals

Q: *How can I assess the likelihood of success of getting approval for my proposed works?*

A: Contact the relevant regulatory authorities to discuss your proposal (see **Part 4 – Drainage management plans and approvals for drainage works**), what works you wish to undertake and what the impacts might be. Landholders and drainage committees should expect that:

- Drainage works must be carried out in line with all statutory obligations pertaining to the environmental and cultural impacts of those works.
- Draining natural wetlands (such as swamp or marsh) to establish new drainage areas will generally not be supported, now that we have a greater understanding of the value of these environmentally sensitive areas.
- Extra effort may be required to demonstrate that works will be undertaken in an environmentally sensitive way where drainage works could affect:
 - Ramsar wetlands
 - Flagship waterway sites
 - Wetlands and waterways by:
 - > Changes in watering regimes
 - > Impact on ecological values (this would also apply to a cumulative effect on ecological values), including:
 - Native vegetation (trees, shrubs and grasses)
 - Aquatic and/or terrestrial fauna
 - Aquatic and/or terrestrial habitat
 - Water quality and/or quantity.
- Where a greater level of effort is required to consider applications for environmental approvals, approvals may still be granted. But more detailed investigations and supporting documentation might be necessary to ensure potential impacts from drainage works have been considered and that the impacts can be avoided or minimised to an acceptable degree.

Q. What considerations should be taken into account if I am undertaking works on existing drainage channels?

A. Often, agricultural drains are the only remaining habitat from a wet landscape. This habitat is often the last refuge for once widespread plants and animals, or it can provide connectivity between wetlands and rivers.

Undertaking drainage works and changing the flow of water in the landscape can cause a range of negative impacts. This can include the key environmental impacts of loss of habitat or refuge for plants and animals, and reduced connectivity between wetlands and rivers, as well as:

- Erosion
- Soil acidification
- Increased sedimentation and reduced water quality
- Flooding of upstream and downstream neighbours
- Damage to public and private infrastructure (such as roads, culverts and bridges)
- Damage to culturally significant sites.

Q. What is the benefit in protecting cultural heritage?

A. By protecting these assets, you ensure that they are available for future generations. This can also support Traditional Owners and Aboriginal Victorians to find out more about their past and to share knowledge.

For example, as landholders in the Seven Creeks area near Euroa increasingly realised that the prime objective of Traditional Owners, the Taungurung people, relating to cultural heritage was to find out more about their past and not to impede development, more and more landholders willingly shared information about artefacts they found.

Q. Will the presence of cultural heritage impact on my works?

A. Possibly, but it will not necessarily prevent you from doing basic maintenance works (e.g. clearing of vegetation, desilting). It is advised that you consider and plan for the potential impacts to cultural heritage as early as possible. If the works will cause significant ground disturbance (e.g. deepening, widening, or making a new channel) and are in an area of cultural heritage sensitivity as defined by the Aboriginal Heritage Regulations 2007, you may be issued with a permit to harm by the Registered Aboriginal Party or be required to undertake a Cultural Heritage Management Plan. See [Part 4](#) for more information.

Q. My drains are blocked with saplings. What can I do?

A. You may remove this vegetation as part of your drain maintenance. Normally the removal of established native vegetation requires a permit under the *Planning and Environment Act 1987*. However, where native vegetation removal to maintain existing rural drains is to the minimum extent necessary, landholders may be exempt (see [Appendix 3](#) of this document for more details). You should consult with your local council to confirm the use of these exemptions. These exemptions only apply to Clause 52.17 of local planning schemes and does not provide an exemption from other planning scheme clauses or acts.

Q. What do I do if a permit application is rejected?

A. It might be possible to modify your proposed works to meet permit requirements. If this is unsuccessful, you have the right to appeal the decision through the [Victorian Civil and Administrative Tribunal](#)³.

What can I do if I have a dispute with a neighbour?

Q. My neighbour has no interest in our shared drainage. What can I do?

A. The best course of action is to come to an agreement with your neighbour for alternative management arrangements. For example, you might be able to come to an agreement where your neighbour allows you to access the drains to undertake maintenance but does not provide a financial contribution to the works. It is recommended that these agreements are formalised to help with managing any future disputes. Should this not be possible options for dispute resolution are provided in [Part 6](#) – *Managing disputes*.

Q. My neighbour has done works that seem to have caused water to flow across my land. What can I do? Or my neighbour is blocking the drain on their property and I'm not getting water. Can someone investigate this?

A. There are a range of options available to manage the dispute, depending on the nature of the dispute (see [Part 6](#) – *Managing disputes*). If a neighbour's actions lead to a change to the flow of water that causes harm, this may be in breach of the *Water Act 1989*. You are encouraged to work with your neighbour to resolve these disputes. If you are unable to resolve the issue with your neighbour, you can undertake free arbitration through the [Dispute Settlement Centre of Victoria](#)⁴. If this is unsuccessful, you might choose to take a more formal approach to dispute resolution through the [Victorian Civil and Administrative Tribunal](#), where results are enforced but costs are involved.

³ www.vcat.vic.gov.au

⁴ www.disputes.vic.gov.au

If the change of flow is caused by unauthorised works on a designated waterway, your catchment management authority may be able to take action. If it is caused by unauthorised earthworks, your council may also be able to assist.

Q. How do I get landholders who are no longer paying their drainage subscription to contribute to drainage management?

A. Formal agreements can help manage disputes within drainage systems. Whether this can be used to collect unpaid fees will depend on the mechanism used to set and collect financial contributions in your drainage agreement. For example, if the drainage fees are paid as a special rate under the *Local Government Act 1989*, the drainage fee will be pursued in the same manner as the non-payment of any other council rate. If your drainage agreement is formalised under the *Water Act 1989*, unpaid fees are deemed a civil debt that can be recovered through the courts.

In some circumstances you may be able to compel a neighbour to participate in a drainage system using legislative tools such as a drainage course declaration or water management scheme. However, these tools require significant effort and support from the community and government agencies, are rarely employed and are not always successful in being implemented (see [Part 6](#) – *Managing disputes*).

What support is there for landholders?

Q. What is a drainage management plan and what does it involve?

A. To simplify and streamline the approvals process, drainage management plan content guides are available. There are two content guides available, dependent on the level of complexity or risk of the application (refer to [Part 4](#) and [Appendix 1](#) of this resource kit).

Drainage Management Plan – Individuals is for low complexity, low risk applications. The content guide is designed for use by single applicants (or two direct neighbours) wishing to do low risk works (no expected impacts to values).

Drainage Management Plan – Multiple Landholders (complex) is for higher complexity and/or higher risk applications. The details of the plans will vary from one drainage area to another, and according to the needs of the local community and the drainage system.

Q. Who is going to pay for works on the drain?

A. It is the responsibility of the beneficiaries of the drain – individuals or groups whose properties will be inundated less often than would have been without the drainage works – to fund and manage drainage maintenance.

Q. Is there assistance available to implement the drainage system?

A. Landholders who are willing to work together to manage and maintain their drainage system, and be responsible for the ongoing costs, can seek advice from their catchment management authority on developing a drainage management plan. If landholders agree to pay for management and maintenance and to formalise their system under a written agreement that is ideally attached to title, they will be eligible for support from their council to collect and manage funds, facilitate meetings and commission works.

Q. Do I/we need a formal drainage agreement?

A. While you are not required to have one, a written agreement between all stakeholders can help prevent future disputes and ensure that all parties are aware of their roles and obligations in managing the system. If the agreement is linked to land titles, this will ensure that any future landholders within the system are aware of its operation and their obligations also.

Q. What tools are available to me to support the development and management of my drainage? Where can I find them?

A. This kit contains the information you require to manage your dryland rural drainage under contemporary arrangements outlined in the Victorian Rural Drainage Strategy. The drainage resource kit includes:

- An overview of the ways that landholders can manage dryland rural drainage and the support available to them.
- Information about landholders' obligations to obtain approvals for drainage works.
- Guidance on developing a drainage management plan.
- Information about the legal arrangements for establishing drainage committees and the options for governance structures.
- Options for dispute resolution.

Part 2 Processes for landholders to undertake drainage works

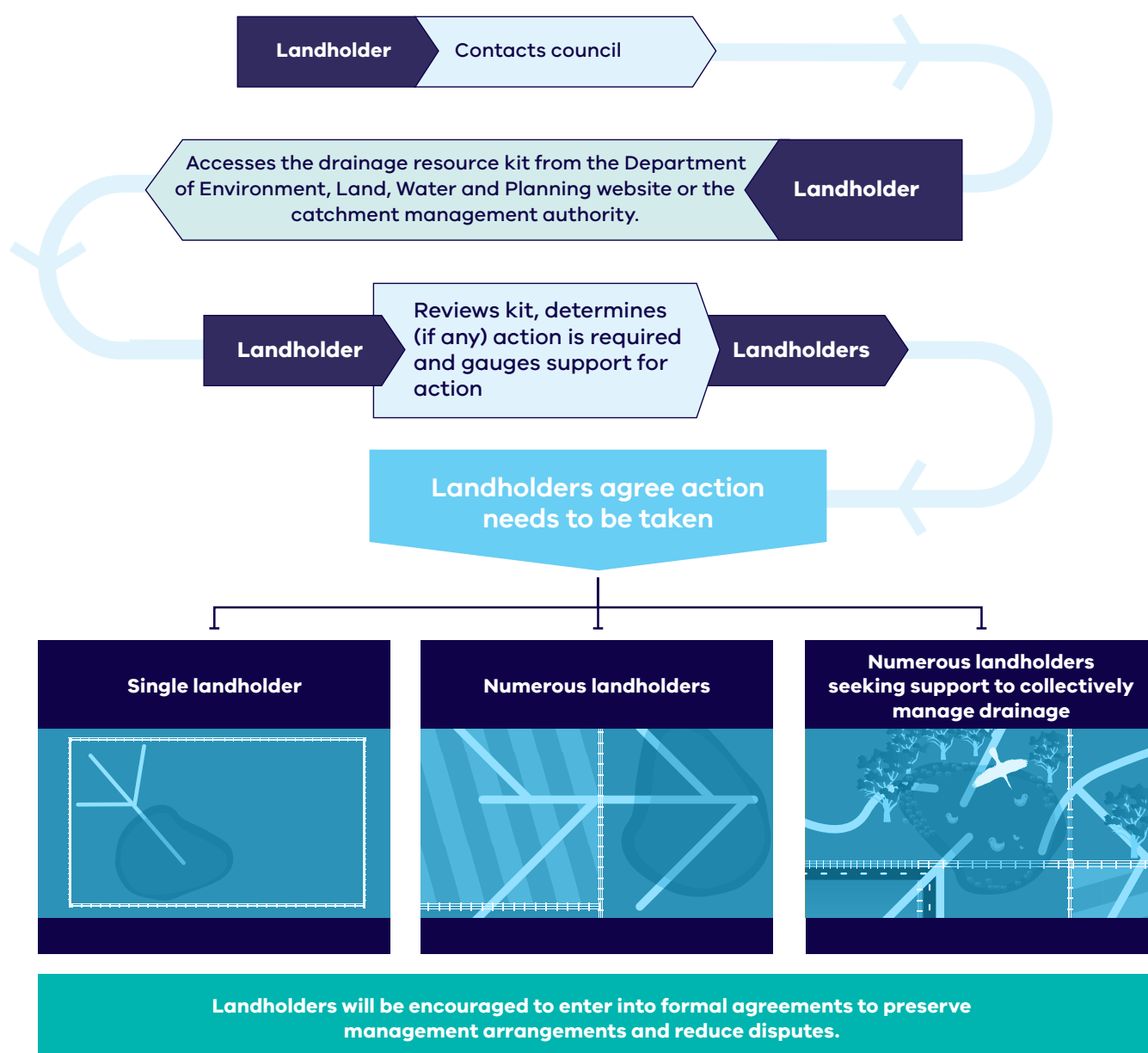
Landholders have four main pathways to improve their drainage arrangements.

Where dryland rural drainage is confined to one property, it can continue to be managed by a single landholder.

Where dryland rural drainage crosses property boundaries, and where landholders can agree to manage their drains collectively, they can do so through:

- Non-written agreements
- Written agreements, or
- Written agreements with administrative support from government agencies.

Regardless of the pathway taken, the initial process for all landholders is the same (see diagram below).



2. Processes for landholders to undertake drainage works

Single landholder or collective management

Rural drainage may be managed individually at a property 'drain' scale or collectively at a landscape 'system' scale.

Single Landholder

Some landholders may wish to do works on their own property (or on adjacent Crown land). The management arrangements for a drain within a single property can be detailed in a 'simple management plan' as outlined in **Part 4** – *Drainage management plans and approvals for drainage works*.

Multiple Landholders

Where rural drainage involves more than one property, coordinated management arrangements are recommended. Information on forming drainage committees and formalising arrangements is provided in **Part 7**. Coordinated management between properties and across interest groups facilitates:

- A simplified statutory approvals process
- Certainty of ongoing arrangements
- Coordination of approvals
- Increased efficiency through cost sharing
- Improved system functioning.

The management arrangements for a collectively managed dryland rural drainage system (either through amicable or formal arrangements) can be detailed in a 'complex management plan' outlined in **Part 4** – *Drainage management plans and approvals for drainage works*.

While a drainage system (or parts of a system) can be managed by individuals working on their own properties, drainage works are likely to be more effective and efficient if landholders work collectively.

Individuals or groups of landholders can manage their rural drainage independently, with guidance from the drainage resource kit. If a group of landholders wishes to establish a formal drainage committee, they will be eligible for administrative support and guidance from agencies if:

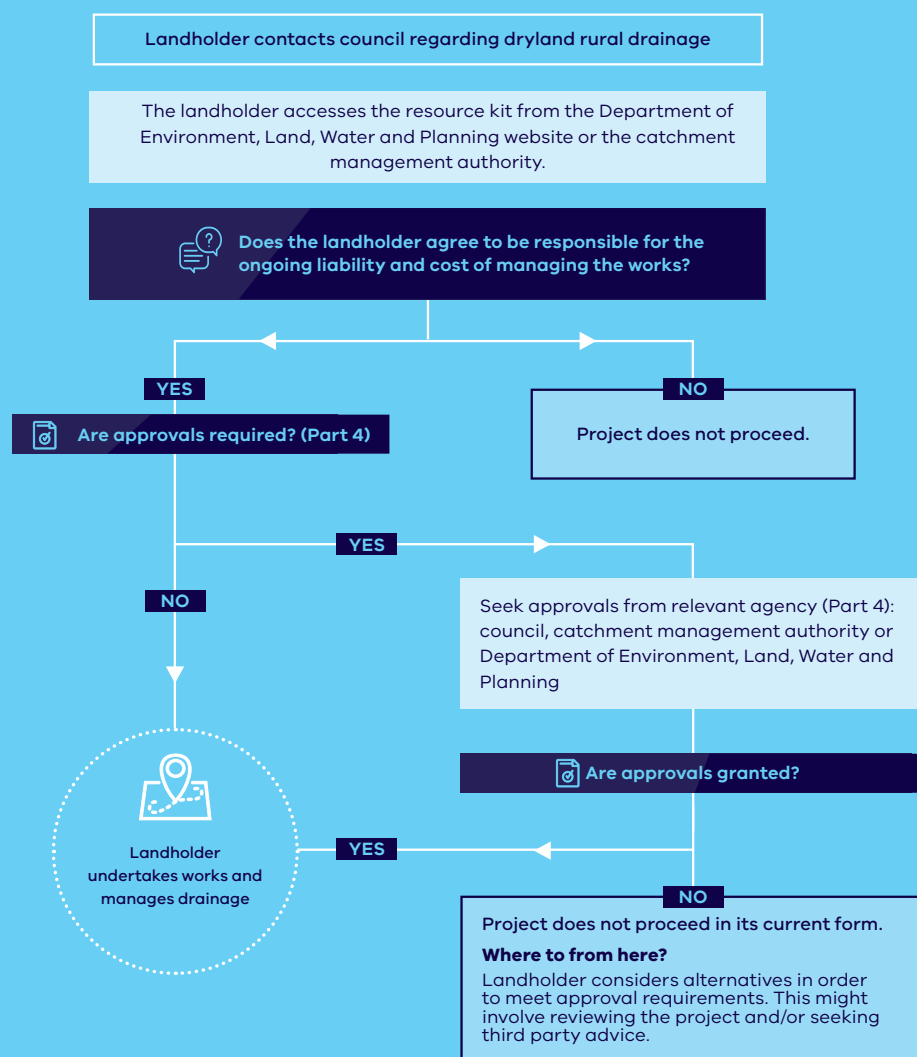
- The need to manage the drainage system has the support of landholders who benefit from the drainage system – that is, those landholders whose land is inundated or waterlogged less often than it would be without dryland rural drainage
- The landholders benefiting from the drainage system agree to pay for the maintenance and administrative costs of the system
- The benefiting landholders are willing to participate in a formally constituted local drainage management committee
- The formally constituted drainage committee holds appropriate insurance.

The following flow diagrams outline the processes for landholders in more detail, whether they are undertaking works individually or collectively (with or without formal agreements).

Guidance on collectively managing a dryland rural drainage system and formalising agreements can be found in **Part 7** – *Forming a drainage committee and formalising arrangements*.

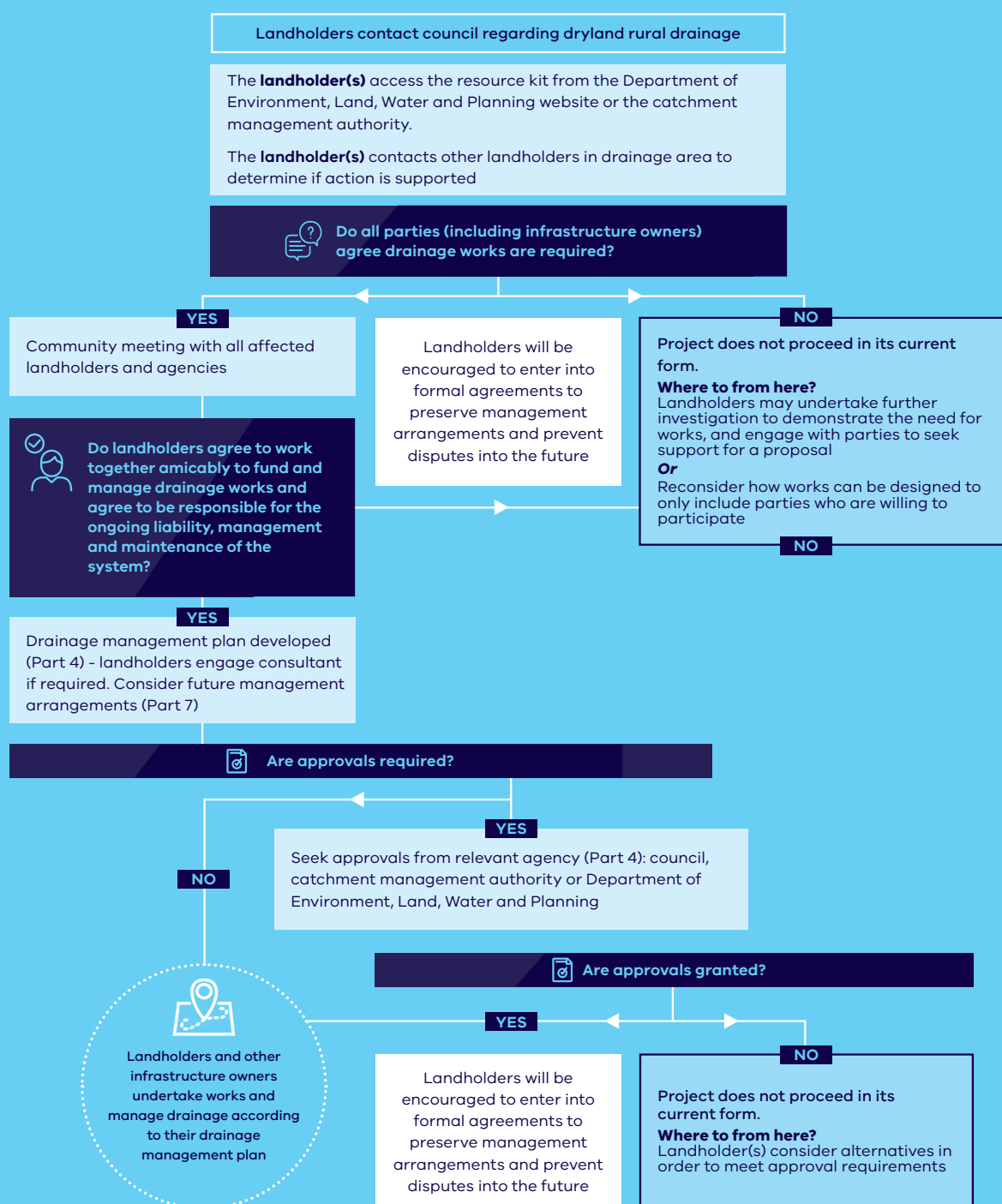
2. Processes for landholders to undertake drainage works

Single landholder



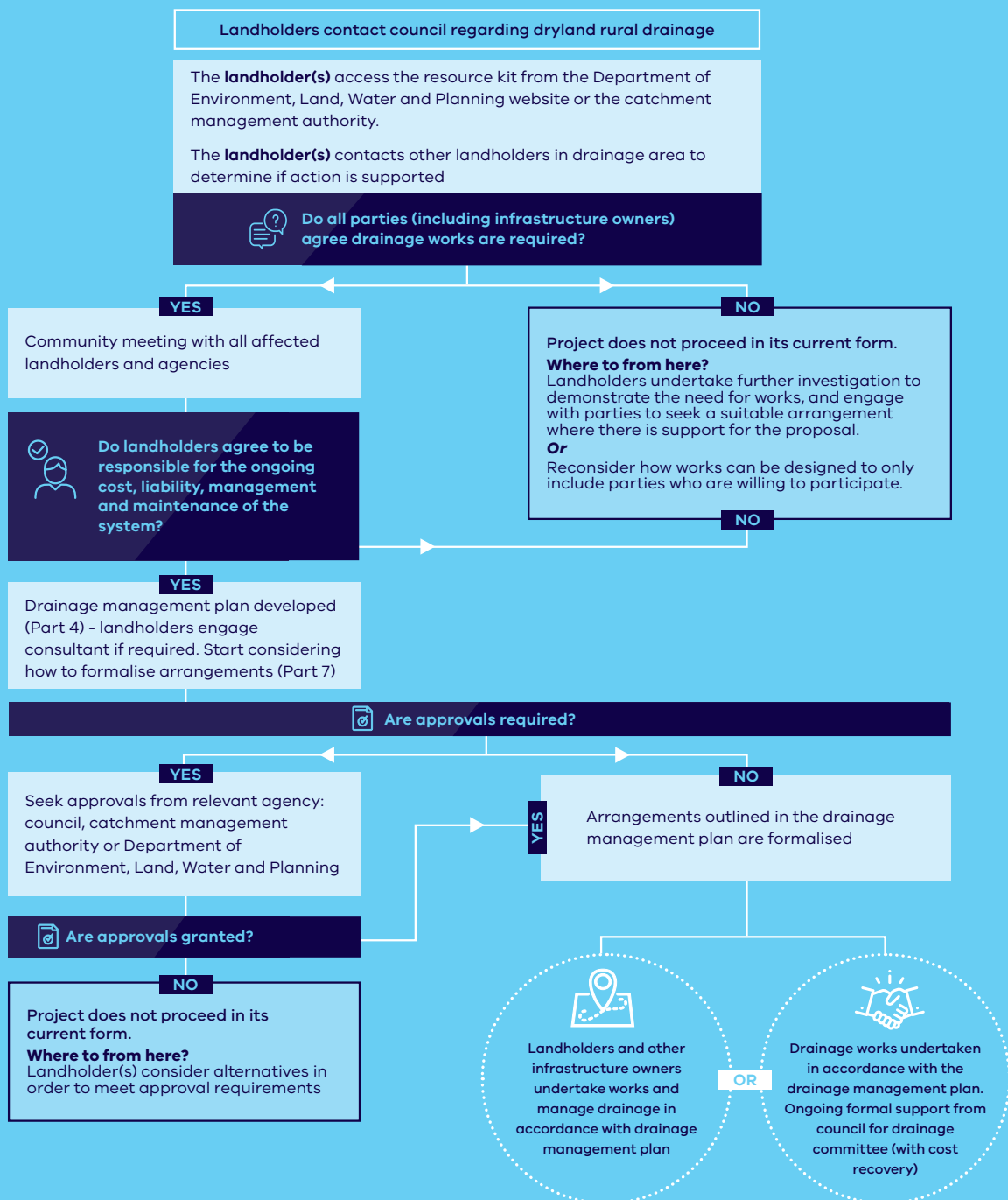
2. Processes for landholders to undertake drainage works

Numerous landholders – amicable agreements



2. Processes for landholders to undertake drainage works

Numerous landholders – formal agreements



Part 3 Roles and responsibilities for dryland rural drainage

All agencies and landholders will continue to be responsible for the management of drainage assets vested in them, and for the management of any of their assets that interact with dryland rural drainage systems, unless the process enabled through the Victorian Rural Drainage Strategy requires new arrangements that are agreed among the relevant stakeholders. An overview of these roles and responsibilities is provided in Table 3.1.

Table 3.1 – Roles and responsibilities

Stakeholder	Roles and responsibilities
Landholders	<ul style="list-style-type: none"> • Manage private dryland rural drainage and develop drainage management plans. • Fund ongoing management and maintenance of drainage systems and infrastructure. • Determine management arrangements for their specific drainage systems (including developing drainage management plans where appropriate). • Identify other landholders willing to participate in agreements to manage dryland rural drainage systems (where appropriate).
Councils	<ul style="list-style-type: none"> • Provide first point of contact for landholders with dryland rural drainage inquiries, including providing tools and information to landholders so they can understand their options for managing drainage. • On request, convene meetings of affected landholders, with support from all relevant agencies, to determine the landholders' willingness to prepare a drainage management plan and enter into formal drainage arrangements. • Provide administrative support to landholders with formal drainage arrangements, including facilitating meetings, commissioning works (if requested to do so) and the collection and acquittal of funds where appropriate (on a cost recovery basis). For example, the collection of administrative fees to develop drainage management plans and ongoing operational fees. • Manage all drainage assets vested in them. • Manage the interaction between their assets and dryland rural drainage systems. • Consider planning permit applications and ensure compliance with permit approvals. This will include considering applications supported by the relevant components of drainage management plans. Approval will be considered where plans meet approved objectives and standards for planning permit applications. • Work with other authorities and government agencies such as the Department of Environment, Land, Water and Planning and catchment management authorities to help facilitate landholder agreements and formalisation of drainage management plans as statutory approval instruments.
Catchment management authorities	<ul style="list-style-type: none"> • Provide advice to landholders developing drainage management plans. • Identify opportunities to improve drainage management for environmental and Aboriginal cultural benefit. • Manage dryland rural drainage assets vested in them. • Consider arrangements for unmanaged infrastructure on waterways where ownership is unknown. • Applications for works on waterways approvals and ensure compliance with approval conditions. Note that catchment management authorities may grant works on waterways approvals for drain maintenance works carried out over a number of years via drainage management plans (where plans meet approved objectives and standards). • Work with other authorities and government agencies such as the Department of Environment, Land, Water and Planning and councils to help facilitate landholder agreements and formalisation of drainage management plans as statutory approval instruments.

Table continued next page ►

3. Roles and responsibilities for dryland rural drainage

Table 3.1 continued

Stakeholder	Roles and responsibilities
Department of Environment, Land, Water and Planning	<ul style="list-style-type: none"> • Prepare tools and guidance to support landholders. • Build capability for agencies and landholders in dryland rural drainage to deliver the outcomes of the Victorian Rural Drainage Strategy. • Attend meetings. • Report on the delivery of the strategy (including provision of information on actively managed systems), and review and support adaptive management to deliver strategy outcomes. • Provide funding for pilot studies. • Simplify the approvals process for works to establish or maintain dryland rural drainage. • Consider applications for dryland rural drainage (where the department is the relevant referral authority – i.e. for Crown land consent and native vegetation removal regulation). • Work with other authorities and government agencies such as the catchment management authorities and councils to help facilitate landholder agreements and formalisation of drainage management plans as statutory approval instruments.
Melbourne Water	<ul style="list-style-type: none"> • Provide regional drainage services within its waterway management district. • Develop and implement plans related to dryland rural drainage.
Rural water corporations	<ul style="list-style-type: none"> • Regulate the take and use of water. • Manage infrastructure and drainage associated with irrigation in regulated districts. • Continue to provide drainage services, mostly in northern Victoria, where dryland rural drainage infrastructure drains into irrigation district infrastructure, or where dryland rural drainage has been established in or near an irrigation area, and existing arrangements are in place for landholders to pay for these services.
VicRoads and VicTrack	<ul style="list-style-type: none"> • Manage infrastructure that interacts with dryland rural drainage (except where the infrastructure is licensed to third parties).
Registered Aboriginal Parties	<ul style="list-style-type: none"> • Assess proposals for cultural heritage, provide approvals where appropriate, and manage compliance with those approvals (with the support of compliance officers) where required. • Clarify expectations about how agencies and landholders need to consider cultural heritage in drainage management.
Traditional Owners and Aboriginal Victorians	<ul style="list-style-type: none"> • Partner with catchment management authorities, where appropriate, to identify opportunities to improve drainage management to maintain and enhance the cultural values of the landscape.



Part 4 Drainage management plans and approvals for works

Part 4 provides a guide to the statutory planning approvals for works on dryland rural drainage systems in Victoria. It directs landholders through the process of planning works, and how statutory endorsement of a drainage management plan can be achieved. A drainage management plan which has been endorsed by the relevant authorities provides for statutory approvals to be granted for up to 10 years.

To simplify and streamline the approvals process, landholders are encouraged to prepare a drainage management plan that sets out how risks arising from drainage works will be reduced and managed. Drainage management plans achieve three key outcomes consistent with the Victorian Government's objectives for dryland rural drainage management including:

1. A basis for collective agreement, commitment and coordination among landholders to undertake drain maintenance
2. A tool for ensuring rural drainage works outcomes reflect an appropriate balance between maintaining benefits to agriculture without undue compromise to other values (environmental, cultural, social and economic)
3. A thorough assessment of risks (environmental, cultural, social and economic) and facilitate the granting of statutory approvals by all the relevant regulatory authorities.

The information provided by drainage management plans (and supporting documentation) provides the regulating authorities with the information required to make determinations on works applications. As a minimum, drainage management plans submitted for the approval of the regulating authorities need to detail how and where works will be done and what measures will be implemented to manage risks. In some cases, it may be necessary to engage specialists to assess the potential impacts from works and to provide design specifications (large-scale systems).

Not all applications for works on dryland rural drainage systems will be approved.

A range of factors are considered when deciding whether works approvals can be granted. The decision not to issue a permit is at the discretion of the administering agency. Protection of biodiversity values and Aboriginal cultural values, as well as minimisation of potential impacts on neighbours and values outside of the system, all need to be considered.

Guidance materials, fact sheets and other sources of information are available online from most authorities. These outline the legislative compliance obligations for landholders. If works are completed without the appropriate approvals, rectification and remediation works may be required at the landholder's cost. In some situations, non-compliance with regulatory requirements may also result in financial penalties and potentially imprisonment for the most serious breaches of legislation.

Once endorsed, and inclusive of any conditions, the drainage management plan is the document which the relevant approvals for works can be issued against. If all works are carried out according to the endorsed plan, no additional approvals would be required for the life of the plan.

Part 4 Overview

- Quick guide: planning considerations and process – planning for works on dryland rural drainage systems
- Support and assistance table – who to speak to about what
- Planning advice – biodiversity values, Aboriginal cultural values, managing impacts to upstream and downstream neighbours and values
- Approval information requirements for a drainage management plan

Appendices to Part 4

- Appendix 1** Content guides for drainage management plans
- Appendix 2** Planning checklist – identifying matters for planning and approval consideration for dryland rural drainage
- Appendix 3** Guidance note for exemptions – *Planning and Environment Act 1987, Environment Protection and Biodiversity Conservation Act 1999* considerations

Quick Guide Planning considerations and process

1.

Strategic pre-planning

What do you want to do, what might be involved?

Single landholder or collectively managed system?

Site planning: what, where, when, how?

2.

What matters need to be considered?
What information might be required for a drainage management plan?
What type of specialist investigation or report might be required as supporting information?

What are the potential costs?
What information might be required for work applications?
What type of specialist investigation or report might be required as supporting information?

Check land use and planning requirements

3.

Contact your local council

Council can assist in contacting neighbours or identifying stakeholders

At a pre-application meeting you can discuss planning and approval requirements and considerations associated with:

- management of biodiversity values
- management of Aboriginal cultural heritage
- consideration of impacts to downstream neighbours and values

4.

For landholders who wish to do works on their own properties with no significant planning considerations (e.g. continuation of maintenance works) draft a drainage management plan for individuals

For works with higher complexity planning considerations and collectively managed systems, draft a complex works plan

- Confirm the drain or drainage system location, land status, form and infrastructure
- Include a biodiversity values map: proponents might require help from a suitably qualified consultant to undertake an environmental values assessment
- Articulate the management efforts made to mitigate impacts - Include work detail such as methods used, locations and timing

Make contact with stakeholders and prepare a plan

(content guides are available)

5.

Get your plan endorsed

Pre-approval endorsement of your plan by referral and regulatory authorities simplifies and streamlines the approval process when applying for a planning permit should it be needed.

6.

START WORKS IN ACCORDANCE WITH YOUR ENDORSED PLAN

4. Drainage management plans and approvals for works

Support and assistance

Government agencies are committed to supporting landholders who wish to do works on Victorian rural drainage systems. Table 4.1 outlines the support provided by key agencies for dryland rural drainage.

Table 4.1 – Agency support available for dryland rural drainage planning

Stakeholder	Support available
Council	<p>Your local council can advise you on works planning and approvals and help connect you with your neighbours for planning.</p> <p>Talk with the planning department about:</p> <ul style="list-style-type: none"> • Assistance with contacting neighbours or identifying stakeholders • Planning for earthworks and approvals requirements • Permission to do works in a road reserve • Land tenure (freehold or Crown land) and planning scheme overlays that might need to be considered (e.g. environmental significance).
Catchment management authority	<p>Your regional catchment management authority can provide technical advice and planning guidance about:</p> <ul style="list-style-type: none"> • Works planning (e.g. installing a crossing, stabilisation works, bank protection, battering retaining structures, impacts to downstream landholders and biodiversity values) • The requirement for a works on waterways permit. <p>NOTE: it is important to talk to your catchment management authority if you are proposing to create new drains, to ensure that your proposed works will not impact on a protected seasonal wetland.</p>
Department of Environment, Land, Water and Planning	<p>The Department of Environment, Land, Water and Planning are the delegated land manager for Crown land consent, the referral authority relating to native vegetation management, and deal with matters relating to threatened species and wildlife in Victoria.</p> <p>Talk to your regional planning and approvals team about:</p> <ul style="list-style-type: none"> • Permit or license requirements if threatened or endangered plants or animals listed are known to occur in the local area (those listed under the <i>Flora and Fauna Guarantee Act 1988</i>) • Working on Crown land (Crown land consent) • Native vegetation removal, destruction or lopping • <i>Wildlife Act 1975</i> considerations • Considerations under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (noting, that this is a federal matter).
Registered Aboriginal Parties and Aboriginal Victoria	<p>Aboriginal Victoria can connect you with local Aboriginal networks in your area.</p> <p>Talk to Aboriginal Victoria about:</p> <ul style="list-style-type: none"> • Connecting with Traditional Owners or Registered Aboriginal Parties • Management planning of Aboriginal cultural values during works • Requirements for a Cultural Heritage Management Plan.

4. Drainage management plans and approvals for works

Expectations for approvals

Works on drainage systems can be categorised under three broad headings; maintenance, new works on existing systems and the development of new drainage systems.

Maintenance works on an existing system will be approved provided:

- Risks to cultural and biodiversity values are managed
- Impacts to neighbours and values outside the system are acceptable.

Planning for the management of biodiversity values, Aboriginal cultural values and impacts to neighbours and values outside of the system is discussed later in Part 4.

New works on existing systems may or may not be approved. New works are subject to contemporary environmental standards and legislative requirements. New works on existing systems are not eligible for approval exemptions.

The development of all new rural drainage systems will be assessed against contemporary legislative requirements and environmental standards. It is likely that a full environmental assessment of the environmental impacts or effects under the *Environmental Effects Act 1978* will be required. This resource kit is not intended to guide proposals for the construction or installation of new rural drainage systems.

Works on dryland rural drainage systems are subject to policy and legislation pertaining to land use and management of cultural and environmental values. This legal requirement is reinforced in the Victorian Rural Drainage Strategy, 2018.

Landholders and drainage committees should expect that:

- Drainage works must be carried out in line with existing obligations pertaining to the environmental and cultural impacts of those works.
- Draining natural wetlands (such as swamp or marsh) to establish new drainage areas will generally not be supported now that there is a greater understanding of the value of these environmentally sensitive areas.

What are maintenance works?

Maintenance works are defined as those that:

- Are on existing rural drainage systems
- Do not disturb the soil beyond the base of the established channel and bank (i.e. do not deepen, widen, or change the course of existing channels)
- Are routine and on-going in nature
- Prevents the drain or asset deterioration
- Conserves the state of the drain or asset as near as possible to its original condition. If the original condition of the drain is unknown, you will need to work with authorities on setting appropriate benchmarks. Your regional catchment management authority can provide further advice.

Maintenance works do not include the expansion of the drain's footprint. Works that do not fit the definition of maintenance works are considered new works.

4. Drainage management plans and approvals for works

Step 1 – Strategic pre-planning

Developing a drainage management plan simplifies and streamlines the approval process and provides for approved works for up to 10 years.

A drainage management plan can be a significant resource to help make your drainage system more effective. It can save you time and money and provide a strong foundation for collective agreement on management of the system. It also provides for recognition and management of potential impacts outside the drainage area and potential impacts on cultural and environmental values.

Before developing a drainage management plan (either individually or collectively) you will need to consider:

- What type of works you want to do and what might be involved?
- Are you a single landholder or is it a collectively managed system? If a collectively managed system who are the people you need to work with?
- What site planning is required – the what, where, when and how of works
- What information is required by authorities to review your plan.

Approval authorities will require information on:

- The drain or drainage system – location, land status, form, infrastructure
- The proposed works – what, where, when, how
- Potential impacts or changes to the surrounding landscape
- How risk to environmental values and neighbours both upstream and downstream will be managed.

Specialist reports might be required as supporting documentation to the drainage management plan. One, some, or all of the following might be required:

- Ecological assessments (flora and fauna assessments)
- Hydrological assessment
- Cultural heritage assessment.

Step 2 – Check land use and planning requirements

To assist landholders in works planning and approval requirements a planning checklist is provided in [Appendix 2](#).

The planning checklist assists landholders in conducting a desktop due diligence assessment – a review of available information that helps identify matters for consideration.

The due diligence assessment allows landholders to reach an informed decision as to whether certain

matters need to be considered and included in a drainage management plan. Table 4.2 provides guidance on whether specific matters for consideration need to be considered in your works plan.

If a 'matter for consideration' is identified during your preliminary planning, you will need to put it in your plan.

Table 4.2 – Matters for consideration and obligations dependent on proximity to works

Matter for consideration	Where do I get advice?	Not within or near works area	Within 50 metres of works area	In or adjacent to works area
Planning overlay	Local council	No action	No action	Needs to be considered in your plan
Crown land	Department of Environment, Land, Water and Planning	No action	May need to be considered in your plan	Needs to be considered in your plan
Wetlands and waterways	Catchment management authority	No action	May need to be considered in your plan	Needs to be considered in your plan
Native vegetation and native animals	Department of Environment, Land, Water and Planning	No action	No action	Needs to be considered in your plan
Aboriginal cultural heritage	Aboriginal Victoria	May need to be considered in planning	May need to be considered in your plan	Needs to be considered in your plan

4. Drainage management plans and approvals for works

Step 3 – Contact your local council

A pre-application meeting with your local council planning department provides an opportunity to discuss requirements and considerations associated with your works and can assist in identifying stakeholder interests.

Discuss the following with your local council:

- Land zoning and overlays (planning permit considerations)
- Land status considerations (such as works on Crown land or the road reserve)
- Upstream and downstream impacts to neighbours (planning permit consideration), where a new drain is being constructed or an existing drain is being altered
- Whether the drain is classified as a waterway (preliminary advice as a works on waterways permit is administered by catchment management authorities)
- Extent and significance of native vegetation that might be disturbed (planning permit consideration)
- Likely presence of threatened species and communities (preliminary advice as the matter is a licence or authorisation consideration administered by the Department of Environment, Land, Water and Planning)
- Likely presence of matters of national environmental significance (preliminary advice as the matter is a federal approval consideration administered by the Australian Government)
- Aboriginal cultural heritage sensitivity of the area and management of potential values (Cultural Heritage Management Plan consideration)
- If the works will require a planning permit.

Note on planning permits

Council will review planning permit considerations and advise whether a permit is required. In most cases general maintenance works are exempt from the requirement for a planning permit however this might not always be the case (e.g. if there is an overlay in the planning scheme which overrides the exemption).

Always discuss your works with council before doing any of the following activities:

- *Earthworks in a Farming Zone* – maintenance works (removal of vegetation and/or silt) in existing drains generally do not require a planning permit. However, enlarging (deepening, widening or altering the course) existing drains or building new drains is likely to require a planning permit.
- *Earthworks that 'change the rate of flow or the discharge point of water across a property boundary'* – a planning permit is generally not required to remove build-up of silt to return an existing drain to its original capacity. However, enlarging (deepening, widening or altering the course) an existing drain or building a new drain is likely to require a planning permit.
- *Works involving the removal, destruction or lopping of native vegetation* – these generally will not require a planning permit. [Appendix 3](#) of this guide outlines conditions for the exemption of works that will result in the removal of native vegetation from within the channel of an existing rural drain. This does not exempt the landholder from permit requirements for the removal, destruction or lopping of native vegetation from riparian areas outside the drain channel.

Each council has its own planning scheme, and planning permit requirements between councils vary depending on the application of zones and overlays across the landscape. If a planning permit is required, the process is as follows:

- Lodge a planning permit application with your drainage management plan as a supporting attachment
- Council will check the application and do an initial assessment (if more information is required, it will be requested)
- Council planning officers will assess the application and prepare a report
- A planning permit will be issued or a notice of decision to refuse a permit.

4. Drainage management plans and approvals for works

Step 4 – Make contact with stakeholders and prepare a drainage management plan

Content guides are provided in [Appendix 1](#).

Drainage management plan for individuals – this guide is designed for use by single applicants wishing to undertake low risk works (no significant planning considerations) in a single property scale drain.

Examples of a low complexity straight forward application include:

- Annual grass cutting and weed spraying
- Continuation of maintenance works – desilting and vegetation removal (on bed and bank only), minor bank stabilisation/ maintenance works.

The drainage management plan for single landholders' content guide is an abbreviated layout of the multiple landholder's content guide.

Your local council planning department can assist in determining which drainage management plan is suitable.

Drainage management plan for multiple landholders (complex) – this guide is for use when planning works across a number of properties or works that require planning considerations associated with identified matters of interest, or larger scale system-based planning.

The structure and content of the complex drainage management plan is designed to address information requirements of multiple agencies that might need to review and endorse your plan and grant statutory approvals. The plan acts as a 'one stop shop' information resource for the approval agencies responsible for regulating the potential impacts of drainage works as per state and federal policy and legislation.

Landholders might wish to engage specialist technical assistance in planning and drafting of a drainage management plan (see guidance in [Part 5](#)).

Ask your local council or catchment management authority for advice on engaging a consultant to assist with development of a drainage management plan. If engaging a consultant, ensure they have the required technical expertise (e.g. hydrological/ hydraulic planning, natural resource management and planning and approvals).

The content guides can be used as the foundation for a project brief to be given to a consultant should specialist assistance, assessment or investigation be required.

Drainage management plans

Drainage management plans provide an opportunity to simplify and streamline the approvals process for landholders and guide the ongoing management of drainage systems.

Landholders are encouraged to prepare a plan whether they wish to undertake work on their property (individual) or if they wish to collectively manage drainage on a regional scale (multiple landholders). The works plans described below are for use in both amicable (informal) and formal arrangement situations.

The drainage management plans are designed to:

- Provide clarity, consistency and reduce administration burden for applicants
- Provide a focus for collective agreement on an appropriate management regime and coordination of group (e.g. drainage committee) administration arrangements
- Provide a foundation for recognition, assessment, and mitigation of risks
- Be the foundation for the simultaneous granting of statutory approvals (such as Crown land consent, *Flora and Fauna Guarantee Act* permits, works on waterways permits) and exemptions by regulating authorities
- Outline a multi-year drainage management plan that provides for approvals to be issued for a 10-year period, reducing the need for additional applications
- Provide confidence to decision makers that works will be completed in a sensitive manner, meeting environmental obligations
- Provide a foundation for monitoring, evaluation, reporting and improvement of the approach to maintenance works and management group (drainage committee) operations.

4. Drainage management plans and approvals for works

Statutory approvals, consents or exemptions might be issued on a conditional basis. Protection measures may be stipulated to reduce risk or impacts during works, and landholders can expect conditions or requirements broadly consistent with the following to be requirements of an acceptable drainage management plan:

- Nominated work and no-go zones (no-go zones are no work zones)
- Restrictions on the time of year when works can be completed
- Frequency of works
- Restrictions on machinery type used to do maintenance works
- Identification of appropriate machinery access points
- Operational monitoring and plan review requirements (some agencies may require the drainage management plan be regularly reviewed and any consequential changes to the plan to be submitted to and approved by the responsible authorities)
- Works completion reports to demonstrate compliance with agreed risk mitigation measures and statutory approval conditions.

Once endorsed, and inclusive of any conditions, the drainage management plan provides for the granting of statutory approval for periods of up to 10 years. Provided all works are carried out according to the endorsed plan, no additional statutory approvals would be required for the life of the plan.

Amendments or variations to a drainage management plan once a permit has been issued

If you wish to make minor changes to your endorsed drainage management plan after a permit has been issued, or if your plan is about to expire, you can request a variation to your existing permits.

The authority which issued the permit will require the following information to review your request:

- Description of the amendment or variation
- Resultant change/s to potential risks to values or land use requirements (additional approval requirements)
- Copy of the original endorsed drainage management plan in which the permit was issued against.

Amendment or variation requests may result in the requirement for further specialist investigation or changes to conditional requirements linked to your approved plan.

4. Drainage management plans and approvals for works

Plan for the management of biodiversity values

The Victorian Rural Drainage Strategy (2018) recognises the environmental importance of waterways and describes how dryland rural drainage should be managed in ways that support environmental values. Chapter 5 of the strategy describes situations where it is unlikely that approval for works may be granted or where extra information will be required before approval is granted. It also sets out how opportunities to improve the management of waterways affected by dryland rural drainage can be realised, particularly where drainage services are no longer required by landholders.

Biodiversity values and their location (what, where) must be clearly and accurately represented on a map in your drainage management plan. You should also explain the management efforts made to mitigate impacts to biodiversity values, and include work details such as methods used, locations and timing in your plan.

The information should include:

- Native vegetation
 - Habitat value
 - Conservation status
 - For land and water protection
 - Protected under the *Aboriginal Heritage Act 2006*
- *Flora and Fauna Guarantee Act 1988* listed species
 - Recorded occurrences
 - Downstream habitat
- Impacted wildlife and/or habitats
- Wetting regimes or requirements of wetlands and water dependent ecosystems
- *Environment Protection and Biodiversity Conservation Act 1999* (federal) matters.

To manage biodiversity values:

- Create no work zones and access points
 - Create no work zones in areas of known occurrences of species protected under state and federal legislation and in areas where endangered ecological vegetation classes occur.
 - Clearly identify access points for works areas.
- Use work methods that minimise disturbance (area and extent)
- Identify access points for work areas.
 - Avoid the use of machinery that might cause undue disturbance (such as large tracked excavators).
 - Use the smallest machine(s) possible to perform the task.
 - Use machinery with tyres where possible.

- Schedule work
 - Outside of breeding or migration times of protected species identified within the drainage system.
 - For drier periods – works during wet periods generally present a higher risk to waterway health.
 - Consider frequency and wetting regimes and requirements for surrounding and downstream values.

Your regional catchment management authority can advise on the conditions likely to apply to a works on waterways permit.

Exemptions

Some statutory approval (permit or licence) exemptions may be accessible for works maintenance on rural drainage systems.

NOTE: no statutory approval exemptions are applicable to proposals to install new drains.

Some maintenance works on rural drainage systems may be exempt from referral requirements:

- *Planning and Environment Act 1987*, systems installed prior to 1987
- *Environment Protection and Biodiversity Conservation Act 1999* (section 43B), systems installed prior to 1999

Applicants that apply for maintenance works exemptions may be required to provide evidence that works are routine and on-going in nature to qualify. Discuss the potential suitability of works exemptions with your local council planning department or regional Department of Environment, Land, Water and Planning.

Appendix 3 provides further information on potential exemptions.

Never assume that your works are exempt. An exemption under one piece of legislation does not mean exemptions exist under all of the legislation which applies to rural drainage. Exemptions may not apply if the works are subject to opposing regulatory requirements and/or conditions.

Prior to doing works, always get advice from each of agencies with a role in regulating dryland rural drainage (see **Step 5** below for the list of responsible agencies). Check the planning checklist in **Appendix 2**.

Works completed without full verification of the regulatory requirements may be in breach of legislation and trigger legal proceedings.

Put exemption notification details in your plan. Exemption notification is written notification from an administering authority that an exemption applies.

4. Drainage management plans and approvals for works

Plan for the management of Aboriginal cultural values

Early planning provides landholders with confidence to undertake land management actions and provides opportunities for broader landscape co-management. If your proposed works involve significant ground disturbance you might need to take measures to minimise harm to Aboriginal cultural heritage values if present.

Aboriginal Victoria's website provides general heritage information and can assist in identifying Registered Aboriginal Parties and Traditional Owner stakeholders. Registered Aboriginal Parties are the voice of the Aboriginal people in the management and protection of Aboriginal cultural heritage in Victoria.

To manage Aboriginal cultural values:

- Identify stakeholders for engagement – check the **Aboriginal Cultural Heritage Register and Information System**⁵ online map for local Registered Aboriginal Parties.
- Complete a preliminary check of areas of cultural heritage sensitivity also using the online map or engage a heritage specialist.
- Determine whether there are any known Aboriginal cultural heritage places, or an area of cultural heritage sensitivity located within the works area. Areas of cultural heritage sensitivity include land within 50 metres of registered cultural heritage places, land within 200 metres of waterways and other locations defined in the Aboriginal Heritage Regulations 2018.
- Determine whether the works are considered a high impact activity – check the Aboriginal Victoria website for the definition.
- Consider whether a Cultural Heritage Management Plan is required for the proposed works.

Complete the **Aboriginal Heritage Planning Tool**⁶ on the **Aboriginal Victoria website**.

A Cultural Heritage Management Plan is mandatory when all or part of the activity is in an area of cultural heritage sensitivity and the activity involves significant ground disturbance, and no exemptions apply.

Include in your drainage management plan, one of the following:

- Evidence that a Cultural Heritage Management Plan is not required (if this is not clear complete a **Preliminary Aboriginal Heritage Test**⁷)

- Cultural heritage contingency plan (voluntary Cultural Heritage Management Plan)
- Cultural Heritage Management Plan.

What is significant ground disturbance?

Disturbance of the topsoil or surface rock layer of the ground or waterway by machinery in the course of grading, excavating, digging, dredging or deep ripping (60cm or deeper). Maintenance works in existing drains (removal of vegetation or desilting to the original design depth of the drain) are not classified as significant ground disturbance.

Source: Aboriginal Victoria **Practice Note: Significant Ground Disturbance**⁸.

Consider and manage impacts to upstream and downstream neighbours and values

Endorsement for works should be sought from adjoining and all potentially affected landholders.

Works that have an unacceptable impact to upstream or downstream neighbours and values will not be approved.

Construction of new channels or alterations to the design or capacity of existing systems has the potential to significantly alter the flow of water across property boundaries. If this is the case, you might not receive approval from regulating authorities without the support of your neighbours and potentially affected downstream and upstream landholders. Hydraulic modelling completed by a suitably qualified consultant might be required by the regulating authorities in the absence of demonstrated support from other potentially affected landholders. Note that returning a drain to its design function through maintenance works is not considered to be significantly altering the flow across boundaries.

When planning works, consider the following risks:

- Increase in the severity and/or duration of upstream and downstream flooding of neighbours
- Potential for causing negative impacts on downstream water quality
- Altering wetting regimes (too much water or not enough water) to water dependent ecosystems
- Impacts to the supply or availability of water upstream and downstream.

Explain the management efforts made to mitigate impacts to downstream neighbours and values in your plan.

⁵ <https://achris.vic.gov.au>

⁶ www.aav.nrms.net.au

⁷ www.aboriginalvictoria.vic.gov.au/preliminary-aboriginal-heritage-test

⁸ www.aboriginalvictoria.vic.gov.au/cultural-heritage-sensitivity

4. Drainage management plans and approvals for works

Step 5 – Get your plan endorsed

Different agencies will need to review your plan for approval consideration.

Your drainage management plan can be reviewed and endorsed (as well as additional consents and permits issued if required) simultaneously by multiple agencies. Pre-approval endorsement of your plan by referral and regulatory authorities simplifies and streamlines the approval process. Table 4.3 outlines a checklist of consents and permits which might be required and which agency provides them.

Some permits, approvals and consents might be issued on a conditional basis. Some conditions landholders might expect from agencies include:

- Nominated work and no-go zones (no-go zones are no work zones; protection measures may be stipulated to reduce risk or impacts during works)
- Timing restrictions on when works can be completed
- Stipulated frequency of types of works
- Restrictions on the type of equipment used to do maintenance works
- Access points for machinery
- Operational monitoring and plan review requirements (some agencies might require the plan be reviewed every three years and any consequential changes to the plan be submitted to and approved by the responsible authorities).

Table 4.3 – Checklist of permits and approvals

Permit type	Stakeholder	Approvals needed
Planning permit – Earthworks in a farming zone	Council	<input type="checkbox"/> Applicable <input type="checkbox"/> Not applicable <input type="checkbox"/> Exempt
Planning permit – Change of flow across boundaries	Council	<input type="checkbox"/> Applicable <input type="checkbox"/> Not applicable <input type="checkbox"/> Exempt
Planning permit – Removal of native vegetation	Council	<input type="checkbox"/> Applicable <input type="checkbox"/> Not applicable <input type="checkbox"/> Exempt
Works on waterways permit	Catchment management authority	<input type="checkbox"/> Not required <input type="checkbox"/> Received Permit number: Conditions attached Y/N
Take (and use) water licence	Rural water corporation	<input type="checkbox"/> Not required <input type="checkbox"/> Received License number: Conditions attached Y/N
Aboriginal cultural heritage	Aboriginal Victoria	<input type="checkbox"/> Evidence that a Cultural Heritage Management Plan is not required or <input type="checkbox"/> Voluntary Cultural Heritage Management Plan or <input type="checkbox"/> Cultural Heritage Management Plan
Permit to take protected species on Crown land	Department of Environment, Land, Water and Planning	<input type="checkbox"/> Received <input type="checkbox"/> Not required Permit number: Conditions attached Y/N
Wildlife impacts authorisation	Department of Environment, Land, Water and Planning	<input type="checkbox"/> Received <input type="checkbox"/> Not required Permit number: Conditions attached Y/N
Crown land manager consent	Department of Environment, Land, Water and Planning	<input type="checkbox"/> Received <input type="checkbox"/> Not applicable Conditions attached Y/N
Matters of national environmental significance	Federal Department of Agriculture, Water and Environment	<input type="checkbox"/> Received <input type="checkbox"/> Not applicable Conditions attached Y/N

4. Drainage management plans and approvals for works

Step 6 – Do the work

Be prepared to do the work. Before works start, the permit holder must advise all persons undertaking works of the conditions associated with each of the approvals you have received and/or the works requirements/methods/ scope detailed in your approved drainage management plan. A copy of all statutory approval documentation should be held on-site by employees and/or contractors carrying out works on your behalf.

Before works start

Prior to the commencement of works, ensure all statutory approval conditions and/or management requirements/commitments in the drainage management plan are met. For example:


- Protection measures for native vegetation (such as no-go zones)
- Sediment or erosion control measures
- Salinity management
- Control of weeds and pathogens
- Cultural heritage management.

Works not included in the endorsed plan

Works outside of the endorsed drainage management plan (including change in methodology and timing) constitute a variation to the plan and will trigger a re-assessment process by the regulating authorities and potentially additional approval/s. Discuss any additional works with your local council or regional catchment management authority to determine whether an official variation to the plan is required. Take particular note to any conditions that might be attached to the endorsed drainage management plan to ensure additional works are not in conflict.

Further queries?

Refer to [Table 4.1](#) Agency support available for dryland rural drainage planning at the beginning of [Part 4](#).



Part 5 Choosing a drainage engineer, consultant or earthworks contractor

Due to the size and complexity of some drainage systems, the services of professional drainage engineers and contractors might be required to plan and supervise construction or refurbishment works.

Engineers

Having an experienced and qualified engineer plan and supervise the construction of new infrastructure can ensure that works are properly designed, work effectively, are built to last and meet current industry standards. For complex projects, a suitably qualified engineer can also manage all aspects of application, documentation, design and supervision of construction works.

You should take care to ensure any engineer or contractor that you select is suitably qualified, and understands and is compliant with the obligations for the works required. You also need to be satisfied that they have the expertise that is appropriate for your works.

A suitably qualified engineer is a professional engineer who:

- Has qualifications sufficient for eligibility for membership of Engineers Australia
- Is recognised by the engineering profession as experienced in the engineering of rural drainage systems
- Is competent to undertake the investigation, design, construction supervision, operation, repair and maintenance activities associated with rural drainage
- Has an appropriate amount of professional indemnity insurance.

A competent and experienced engineer would be able to demonstrate:

- A sound knowledge of relevant design principles and methods to ensure safety, economy and durability
- An appreciation of local meteorological, hydrological and geological conditions
- A knowledge and understanding of current industry practices and standards with respect to drainage

- A broad knowledge of other factors that might be relevant in particular situations, including knowledge of legal obligations such as those under the *Water Act 1989*, *Planning and Environment Act 1987* and *Aboriginal Heritage Act 2006* and awareness of potential problems such as siltation, vegetation maintenance, erosion, and pollution
- Construction and site supervision experience.

Earthworks contractors

The use of inexperienced contractors or undertaking works yourself might cost you more in the long run. Using an experienced contractor, with appropriate equipment and skilled and qualified machine operators, will ensure that your drainage project delivers the desired results.

To ensure that your contractor is able to complete the works to the standard required, landholders will need to confirm that they:

- Are experienced and can provide references
- Have appropriate insurance and safety systems
- Are willing to enter into a formal contract.

Consultants

Where landholders wish to manage their drainage collectively and develop a complex drainage management plan, they might need to employ the services of a consultant to guide them through the process. A qualified consultant will be able to help a group of landholders to:

- Develop a multi-year drainage management plan
- Navigate approvals
- Outline management arrangements.

Your catchment management authority can provide guidance on selecting and engaging a suitable consultant.

5. Choosing a drainage engineer, consultant or earthworks contractor

Choosing an engineer, earthworks contractor or consultant

The following section outlines steps you need to consider when selecting and engaging a drainage engineer, earthworks contractor and/or consultant.

Experience and references

Talk to previous clients. What have the contractor's other clients said about their work, what are their skills, experience, attitude and ability? Also ensure that all operators have appropriate training and qualifications. To carry out excavation work, all persons involved should be qualified and trained for the task (for example, to operate front-end loaders, excavating machines etc.).

Legislation recently passed in the Victorian Parliament will require that all engineers in Victoria are registered to ensure they are appropriately qualified. The *Professional Engineers Registration Act 2019* was passed in the Victorian Parliament in August 2019. The Act introduces a co-regulatory scheme where, among others civil and structural engineers will be registered. Registration will commence from 1 July 2021. Refer to the [Engineers Australia](http://www.engineersaustralia.org.au)⁹ website for further information.

Contracts

Your engineer, consultant or earthworks contractor should present a written quote including timeframes, details of the work, exclusions, and the price. This is a non-legally binding document that gives the landholder/s the chance to negotiate until an agreement is reached between both parties.

A contract can then be developed which includes:

- A clear start date, end date, build duration and details on the scope of the job
- The final price that you agreed on
- All terms and conditions.

Make sure that the contract, service agreement, schedules and any other required documents are clear and legally binding. The contractor should provide a full written description of their role in completing the required work.

Insurance

When selecting a service, make sure that the engineer, consultant or contractors' level of professional indemnity insurance is sufficient to match the cost of the work and the consequences of failure. This is in both the engineer, consultant or contractors' interests and yours.

Safety and risks

Earthworks contractors will need to be aware of any occupational health and safety issues and regulations regarding your works. Contractors should hold the appropriate certificate of competency in accordance with the National Guidelines for Occupational Health and Safety Competency Standards for the Operation of Loadshifting Equipment and Other Types of Specified Equipment.

An [Excavation Compliance Code](#)¹⁰ has been developed by WorkSafe Victoria. This code provides practical guidance on how to manage health and safety risks associated with various excavation works and comply with their duties under the *Occupational Health and Safety Act 2004* and Occupational Health and Safety Regulations 2017.

The code provides guidance on current regulatory requirements, including information on:

- What excavation work is
- Who has duties associated with excavation work and what those duties are
- How to plan work involving excavation
- Practical measures to control risks
- How to reduce the risk of ground collapse.

⁹ www.engineersaustralia.org.au

¹⁰ www.worksafe.vic.gov.au/resources/compliance-code-excavation



Part 6 Managing disputes

Various types of disputes can occur between landholders, or between landholders and agencies, over developing or managing rural drainage. Where the disputes cannot be resolved amicably, a number of options are available to settle them (see [Table 6.1](#)).

The [Dispute Settlement Centre of Victoria](#)¹¹ is a free and confidential dispute resolution service provided by the Victorian Government. The centre offers neighbours who are in dispute an opportunity to meet and, with the assistance of mediators, reach an agreement that works for everyone.

The [Victorian Civil and Administrative Tribunal](#)¹² can be engaged where the dispute cannot be resolved through mediation. You can present your case yourself, without a lawyer and fees are usually lower than the cost of going to court.

The [Victorian Ombudsman](#)¹³ investigates complaints about administrative actions taken by Victorian Government agencies, including departments, most statutory authorities, and local governments. If a landholder or drainage group is in dispute with a regulating authority over gaining approvals that cannot be resolved through mediation, they can make a complaint to the Victorian Ombudsman. Any member of the public or group of people can make a complaint. It is a free service.

[Consumer Affairs Victoria](#)¹⁴ can provide advice to landholders on how to resolve disputes with contractors. Consumer Affairs will contact the business on the complainant's behalf to identify the issues and explore options for a resolution that are consistent with the law. It should be noted that Consumer Affairs Victoria cannot enforce an outcome.

Professional associations such as [Engineers Australia](#)¹⁵ can consider a complaint if it relates to a member of Engineers Australia who has breached the Engineers Australia Code of Ethics.

The [Magistrates' Court of Victoria](#)¹⁶ (civil jurisdiction) can hear civil disputes arising from debts, claims for damages, other monetary disputes or equitable relief. Landholders can seek legal advice considering if formal litigation is appropriate in the circumstances.

Existing forums or fit-for-purpose forums provide a way for landholders to seek guidance when they are having difficulty formalising arrangements for drainage systems. The idea is that the forum will provide consistent advice to landholders from all government agencies that have drainage roles and responsibilities. Local arrangements might be different, and in some cases, this might be a meeting called specifically for this purpose. Another option is to use existing forums.

¹¹ www.disputes.vic.gov.au

¹² www.vcat.vic.gov.au

¹³ www.ombudsman.vic.gov.au

¹⁴ www.consumer.vic.gov.au

¹⁵ www.engineersaustralia.org.au

¹⁶ www.mcv.vic.gov.au

Table 6.1 Options for managing disputes under a range of circumstances

Type of dispute		Options to resolve	Considerations
Change of flow across boundaries due to drainage	← Increasing difficulty	Direct contact between parties	First step before involving agencies. If a drainage management plan or agreement is in place, it can be used to prevent change of flow disputes occurring, or the dispute resolution mechanisms within the agreement can be used to resolve the dispute
		Dispute Settlement Centre of Victoria	Free arbitration service if agreement cannot be reached or there is no written agreement. Results of arbitration are not legally binding
		Victorian Civil and Administrative Tribunal	Applies where the change of flow is unreasonable and causes damage. Hearing or arbitration, results are enforced, costs involved
		Magistrates' Court of Victoria (civil jurisdiction)	Higher costs and potential damage to relationships. Use as a last resort
Failure to do maintenance	← Increasing difficulty	Direct contact between parties	First step before involving agencies. If a drainage management plan or agreement is in place, it can be used to prevent maintenance disputes occurring, or the dispute resolution mechanisms within the agreement can be used to resolve the dispute
		Dispute Settlement Centre of Victoria	Free arbitration service if agreement cannot be reached or there is no drainage management plan. Results of arbitration are not legally binding
		Victorian Civil and Administrative Tribunal	Hearing or arbitration, results are enforced, costs involved
Unauthorised works and permitting	← Increasing difficulty	Raise with relevant authority: catchment management authority, councils, individuals, VicRoads, VicTrack, Melbourne Water	Ensure that all parties understand their obligations
		Victorian Ombudsman	Can consider decisions on permitting by government agencies
		Victorian Civil and Administrative Tribunal	Hearing or arbitration, results are enforced, costs involved
		Magistrates' Court of Victoria	Higher costs and potential damage to relationships. Considered a last resort
Contractor disputes	← Increasing difficulty	Contract management	Having binding contracts and clear expectations prior to undertaking works can prevent future disputes
		Consumer Affairs Victoria	Can provide advice to landholders on how to resolve disputes or manage mediation
		Professional organisations like Engineers Australia	Can support mediation for disputes involving Engineers Australia members
		Victorian Civil and Administrative Tribunal	Hearing or arbitration, results are enforced, costs involved

Table continued next page ►

Table 6.1 Options for managing disputes under a range of circumstances continued

Type of dispute		Options to resolve	Considerations
Minority of landholders unwilling to participate in formal drainage management		Community engagement	Landholders work with or negotiate with neighbours over the need/value of drainage, or manage their system in a way that reduces the impact or cost to neighbours
		Drainage management plan	Requires significant support from community and backing from a catchment management authority
	← increasing difficulty	Existing forums or fit-for-purpose forums with relevant government agencies	<p>Local arrangements vary. Landholders and government agencies will need to consider the most appropriate forum for the local context. It is expected that the majority of landholders will be on board before works proceed. If landholders do not agree to undertake drainage works, representatives may provide guidance on possible next steps. For example:</p> <ul style="list-style-type: none"> • Landholders within a viable, stand-alone part of the drainage system might form a smaller collective to meet their individual needs • Agreements might be made with landholders to access land for works funded by landholders that do agree • Guidance might be provided about negotiating strategies. <p>In rare circumstances, additional legislative tools may be considered. However, these are increasingly costly compared to other options, require significant effort and input from the local community, depend on overwhelming community support, and agreement from the council, and still with no guarantee that they will be approved. Additional legislative tools may include:</p> <ul style="list-style-type: none"> • Water management scheme – s.215 <i>Water Act 1989</i> • Drainage course declaration – s.218(a) <i>Water Act 1989</i> (where works may be required to provide an additional service) • Special rate or charge – s.163 <i>Local Government Act 1989</i> (where the dispute relates to not everyone agreeing to pay).



Part 7 Forming a drainage committee and formalising arrangements

Forming a committee

While non-written amicable agreements can work for some landholders, it is recommended that landholders consider formal written agreements to support ongoing arrangements. Formalised written agreements will provide you with the option of accessing administrative support from government agencies, which will not be available for landholders managing their drainage through casual agreements. Non-written agreements can break down when neighbours change their land uses, or when properties change hands. Formal written agreements are more likely to survive changes in land use and property ownership, where these written agreements are registered on land titles.

Landholders working together to manage dryland rural drainage might choose to bolster their existing arrangements, and formalise them, through written agreements that are capable of being registered on title (to prevent future disputes and guarantee ongoing management arrangements, agreements between landholders should be recorded on land titles and managed through a formal entity). As a legal entity, a formalised community drainage committee can enter contracts in its own name, borrow money, buy equipment, take out insurance, and manage risks. If they choose to do so, one key task for the drainage management committee would be to determine, and record in an agreement, how they will collect revenue and how they will acquit funds.

Incorporated association

An incorporated association is a registered legal entity that can be established for any legal purpose. It must have at least five members and all profits are put back into the association's activities. Incorporation makes an association (in this case, a drainage committee), giving it a legal structure independent of its individual members, making it easier for the organisation to enter into contracts. It can enter into contracts in its own name; for example, to borrow money or buy equipment. This protects the individual members of the association from legal liabilities. Victorian incorporated associations are regulated by Consumer Affairs Victoria and registered under the *Associations Incorporation Reform Act 2012*. Table 7.1 has information on incorporating your drainage group.

Incorporated associations require an approved constitution with rules covering matters such as qualifications for membership, quorums for meetings and provisions for elections. Consumer Affairs Victoria provides model rules for associations or the committee can create its own rules.

Forming an incorporated association is a relatively simple process and can be done online through Consumer Affairs Victoria (administration fees apply), however landholders may wish to engage legal advice as this would likely relate to the operation of businesses.

7. Forming a drainage committee and formalising arrangements

Table 7.1 – Points of difference between operating as an incorporated association or without a formal agreement

Points for consideration	If you incorporate	If you do not incorporate
Membership	Your organisation must have at least five members.	Your organisation can have any number of members.
Not-for-profit status	Your organisation may trade, but not in order to distribute profit to its members.	Your organisation is not restricted from trading or doing business for personal profit.
Legal status	<p>Your organisation becomes a 'legal person' (that is, a legal entity that stays the same even if its members change). It can do the following things in its own name:</p> <ul style="list-style-type: none"> • Accept gifts or bequests • Buy and sell property • Invest and borrow money • Open a bank account • Sue and be sued • Take out public liability insurance with greater ease. 	Your organisation cannot do any of the things described under 'if you incorporate', at left. These would have to be done by an individual member on behalf of the unincorporated association's members.
Legal protection for members	Members and office bearers are protected against personal liability for the organisation's debts.	Members could be personally liable if the organisation incurs debts or has legal problems.
Statutory obligations	Your organisation and its office bearers must comply with requirements in the <i>Associations Incorporation Reform Act 2012</i> , including accounting, auditing and annual reporting requirements.	Your organisation is not bound by the <i>Associations Incorporation Reform Act 2012</i> . However, your organisation is still bound by other state and federal laws, such as tax laws.
Costs	Your organisation must pay fees for incorporating and lodging some administrative forms. There might also be costs involved in meeting ongoing statutory obligations, such as financial reporting.	Your organisation will not have the expense of meeting statutory obligations of incorporation.
Disputes	Your organisation must either have its own procedure for resolving internal disputes or use the procedure in the model rules for incorporated associations.	Your organisation is not required to have or use a dispute resolution procedure.
Contracts and agreements	Your organisation can enter into contracts and agreements in its own name. This offers more certainty to potential contracting parties such as lenders, lessors, employees and suppliers of goods and services.	Your organisation cannot enter into contracts or agreements in its own name.

7. Forming a drainage committee and formalising arrangements

Community drainage scheme

The recommended framework for forming a drainage committee is to develop a community drainage scheme, as set out in Part 12 of the *Water Act 1989*. This legislation provides a framework for landholders to enter into community drainage agreements and establish management committees to administer community drainage schemes. Under the *Water Act*, the community drainage agreement can be registered on the titles of the involved properties making it binding on future owners.

The access arrangements and provisions relating to community drainage systems enable local landholders to carry out works to manage local drainage systems and support collective management of drainage. This section of the Act allows for a drainage committee to be set up under a community agreement and act on behalf of a group of participating landholders. The powers and functions of a committee under this part of the Act include:

- Collection of levies in accordance with the Community Drainage Agreement from the participating landholders (but not from landholders over whose property drainage access has been granted but who are not signatories to the agreement)
- Constructing works
- Seeking access over land owned by a participating landholder
- Negotiating the variation or revocation of the agreement on behalf of the committee
- Enabling community agreements to be registered under the *Transfer of Land Act 1985* (see *Water Act 1989*, sections 244(3) and 245(3)).

The Act sets conditions for a community agreement which are reflected by the drainage management plan framework as set out in this kit and must:

- Describe in detail the works and their location
- Clearly identify the land affected by the scheme
- Provide for the establishment of a committee.

An incorporated association as outlined above is the preferred legal structure for a community drainage management committee. An authority or a council in whose municipal district land affected by a community drainage scheme is situated may, if requested by the committee to do so, exercise the powers and perform the functions of the committee. The *Water Act 1989* provides for municipalities to exercise the powers and perform the functions of the management committee. Under these provisions, councils can provide administrative support to community drainage schemes including the collection of levies in accordance with the agreement. Despite anything to the contrary in any other Act, a council may, if requested, exercise powers and perform functions under this section where part of the affected land is situated outside the municipal district of the council.

Registering on title

Section 173 of the *Planning and Environment Act 1987* provides for the recording of agreements on the title of land, binding future owners and occupiers of the land to these arrangements. A section 173 agreement can also be enforced in the same way as a permit condition or planning scheme. Landholders might wish to consider how the use of section 173 agreements can support attaching written agreements for rural drainage on the title of land. However, these sorts of agreements can only be negotiated with the support of a “responsible authority”, which typically is the relevant council. Forming a drainage committee under the *Water Act 1989* requires that the agreement is registered on title.

Seek legal advice – if you are part of an existing or proposed private drainage scheme you should seek independent professional advice and assistance from an appropriately experienced and qualified provider.

Funding models

Some landholder groups might need administrative assistance to collect funds on their behalf. Where a group of landholders has formalised arrangements and established a community drainage scheme under Part 12 of the *Water Act 1989* (section 246), councils could, at the request of and on behalf of the committee, collect levies from participating landholders. The *Water Act 1989* also includes provisions to allow councils to perform the functions of the committee outside their municipal boundaries.

7. Forming a drainage committee and formalising arrangements

The *Local Government Act 1989* also provides the ability to declare a special rate or charge to meet costs where there is a special benefit. Arrangements under which councils can collect funds already operate in some parts of Victoria. The *Local Government Act 1989* (section 163), where it relates to the performance of a function or the exercise of a power of the council, can apply to declare a special rate or charge, if the council considers that the performance of the function or the exercise of the power is or will be of special benefit to the people required to pay the special rate or charge. However, it can be difficult to arrange a special rate and charge where landholders do not agree.

Two main models are currently in practice for apportioning costs for dryland rural drainage in Victoria:

- Rate per hectare serviced (most historic systems)
- Percentage of capital improved value of land from drainage (e.g. Strathdownie, Koo Wee Rup).

Other models have been proposed (e.g. scaling of cost proportion to time inundated or proximity to drain), however these have been deemed too complex to implement.

The apportionment of costs between individual members must be decided and agreed to by the members. In some instances, apportionment of the cost based on area served may be appropriate or in other cases the apportionment may be based on actual costs in individual properties or the length of drain in each property. It is important that the basis of apportionment of costs be clearly understood and agreed to by all parties before the detailed design phase of the scheme to avoid later conflict.

Case study

Glenelg Shire supporting dryland rural drainage at Strathdownie

While management arrangements for many drainage areas were discontinued following legislative and institutional changes in the 1990s, a number of systems have continued to operate under their historical arrangements. Where these agreements are working, and the landholders and agencies are meeting their obligations, these arrangements will continue under the Victorian Rural Drainage Strategy.

Strathdownie Drainage Trust was established in 1960 under the *River Improvement Act 1958* in the then Shire of Glenelg in south-west Victoria. There are more than 150 landholders in the scheme, which covers approximately 20,000 hectares.

Unlike most river improvement and drainage trusts, the Strathdownie Drainage Trust water management district was not taken over by a catchment management authority in the 1990s. The system continues to be managed primarily by landholder committee, with support from the local council. Committee representatives meet annually with Glenelg Shire representatives and develop an annual management plan, which is funded by a special rate collected by Glenelg Shire based on capital improved value of each property in the drainage area. Any disputes are managed formally through committee processes.

Discussions with landholders on the draft Victorian Rural Drainage Strategy, and public submissions from landholders to the Parliamentary Inquiry into dryland rural drainage, strongly supported maintaining the current arrangements and promoting the role of councils to continue. This is an example for landholders of how the arrangements for dryland rural drainage work, and how under the Victorian Rural Drainage Strategy these arrangements can continue, where obligations continue to be met.



Part 8 Glossary of terms

Aboriginal Victorians An Aboriginal Victorian is a person of Aboriginal descent who identifies as Aboriginal and is accepted as such by the Victorian Aboriginal community in which he or she lives.

Agencies Includes councils, catchment management authorities and the Department of Environment, Land, Water and Planning. It can also include VicRoads and VicTrack.

Assets Resources that provide benefit. Drainage assets can include, for example, infrastructure such as pipes and pumps, culverts, dams, bores and table drains.

Beneficiaries It is the responsibility of the beneficiaries of the drain – individuals or groups whose properties will be inundated less often than would have been without the drainage works – to fund and manage drainage maintenance.

Biodiversity The number and variety of plants, animals and other living beings, including micro-organisms, across land, rivers and oceans. It includes the diversity of their genetic information, the habitats and ecosystems in which they live and their connections with other life forms.

Catchment An area where water falling as rain is collected by the landscape, eventually flowing to a body of water such as a creek, river, dam, lake or ocean, or into a groundwater system.

Catchment management authorities The *Catchment and Land Protection Act 1994* established 10 catchment and land protection regions, each with a catchment management authority responsible for the integrated planning and coordination of land, water and biodiversity management.

Cultural Heritage Management Plan Where rehabilitation work is planned in an Aboriginal place that is associated with ancestral remains, and for which a permit is not applicable, a Cultural Heritage Management Plan may be appropriate. A proponent seeking to undertake works may choose to prepare a Voluntary Cultural Heritage Management Plan.

Culvert A structure that allows water to flow under a road, railroad, trail, or similar obstruction.

Department of Agriculture, Water and Environment Australian Government department that works to protect and strengthen Australia's agriculture, water resources, the environment and heritage.

Department of Environment, Land, Water and Planning Victorian Government department that brings together Victoria's climate change, energy, environment, water, forests, planning and emergency management functions into a single department to maximise connections between the environment, community, industry and economy.

Drainage The works and functions related to the collection and removal of local rainfall runoff from land prone to natural waterlogging.

Drainage area An area of land that encompasses all the landholders who are involved and affected by a drainage system – the former *Drainage Areas Act 1958* established many such areas throughout the state.

Drainage levy A levy raised from landholders within a drainage area, scheme or trust that provides for the maintenance of the drainage system.

Dryland rural drainage For the purposes of the Victorian Rural Drainage Strategy, dryland rural drainage is defined as the works and functions related to the collection, and timely removal, of excess water generated by high rainfall to support agriculture production. It involves enhancing the hydraulic capacity of drainage lines and soils and increasing the rate at which water will flow off (or through) and away from land, to support increased agricultural production in dryland areas.

Drainage scheme Established under various laws, the most recent of which is the *Water Act 1989*, drainage schemes are formally constituted entities, that are declared by the relevant Minister.

Drainage system A drainage system is the total set of drains and drainage works that provide drainage for a drainage area – they can be solely on private land, or on a mixture of public and private lands.

Ecosystem A dynamic complex of plant, animal, fungal and micro-organism communities and the associated non-living environment interacting as an ecological unit.

Floodplain Low-lying land adjacent to a river or stream with unique ecosystems dependent on inundation from flood events.

Floodplain management Flood prevention activities and flood management together with related environmental activities (see also floodplain).

Groundwater Water that is beneath the earth's surface in pores and crevices of rocks and soil. The layers of soil and rock that contain useable quantities of groundwater are called aquifers.

Hydraulic capacity A measure of the maximum volume of flow able to pass through a material, structure or watercourse.

Hydrology The scientific study of water and its movement, distribution and quality.

Irrigation drainage Networks implemented to remove excess surface water generated by rainfall events from irrigated landscapes.

Landholders People who own land and, in particular, individuals who make their living from it.

Lead responsibility Key group or government agency that is accountable to undertake works or provide services to deliver actions and policies.

Melbourne Water Supplies bulk drinking and recycled water to Melbourne, manages its water supply catchments, sewage treatment and rivers, creeks and major drainage systems.

Ramsar wetlands Wetlands of international significance designated under the Ramsar Convention.

Riparian Land or vegetation that adjoins a river, creek, estuary, wetland or lake.

Runoff Rainwater that drains into the surface drainage network to become streamflow; also known as rainfall excess.

Streamflow The flow of water once it enters a river, stream or channel.

Surface water Water on the surface of the planet, including streams, rivers, lakes, wetlands and oceans.

Table drains Normally earthen drains excavated next to, and running alongside, roadways and that are designed to ensure the road is properly drained. This term can also refer to communal drainage for rural drainage schemes.

Traditional Owners People who, through membership of a society of people consisting of families associated with particular regions, language groups or local estate groups, are responsible for caring for Country. Aboriginal people with knowledge about traditions, observances, customs or beliefs associated with a particular area. A Traditional Owner is authorised to speak for Country and its heritage. For the purposes of application of the *Aboriginal Heritage Act 2006*, a Traditional Owner is defined as:

(a) An Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area

(b) A person with responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area; or who is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area.

Water quality Refers to the chemical, physical, biological, and radiological characteristics of water. It is a measure of the condition of water relative to the requirements of one or more biotic species and/or to any human need or purpose.

Waterways Rivers and streams, their associated estuaries and floodplains (including floodplain wetlands) and non-riverine wetlands.

Wetlands Natural, modified or artificial areas subject to permanent or temporary inundation, that hold static or very slow-moving water and develop, or have the potential to develop, biota adapted to inundation and the aquatic environment. Wetlands may be fresh or saline.

Appendix 1 Content guides for drainage management plans

Drainage Management Plan – Individuals ¹⁷	
The drain	<ul style="list-style-type: none"> • Section of drainage system • Details of the drain (height, breadth, width) • Structures and infrastructure in the section • Land status (on private or Crown land (include Crown Allotment/Lot/Plan details where applicable) • Description of works to date (previous works) • Existing environment (location of dams, wetlands, native vegetation) <p>Map/s – location</p> <ul style="list-style-type: none"> • Include other information where appropriate – boundaries, land status and planning context, built structures and drainage system assets
Work details	<ul style="list-style-type: none"> • Description of the maintenance activities (what, when, where, how). Include the type of machinery and public safety arrangements if on Crown land • Management actions (protection measures) for matters for consideration (biodiversity values, Aboriginal heritage values, downstream impacts to neighbours and values) e.g. weeds, minimising impacts to native plants and animals (for applications on Crown land) <p>Map/s – work details</p> <ul style="list-style-type: none"> • Show details of work locations and the location of any protection or special management/condition areas (inclusive of no-go zones and access points if applicable)
Summary of conditions and/or exemption notification (to be added following the pre-approval, endorsement stage)	<ul style="list-style-type: none"> • Include a summary of any consent conditions as directed by referral or administering authorities • Put exemption notification details in your plan. Exemption notification is written notification from an administering authority that exemptions apply.
Attachments	<ul style="list-style-type: none"> • Information to support your drainage management plan application • Specialist assessments as required • Consents, permits or licences

¹⁷ The drainage management plan for individuals' guide is an abbreviated version of the multiple landholder's (complex) guide.

Drainage Management Plan – Multiple Landholders (complex)	
Details of the drain or drainage system	<ul style="list-style-type: none"> • Location • Boundaries • Extent and individual property boundaries within (for collective management) • Land status and planning context • Private, Crown land (include Crown Allotment/Lot/Plan details where applicable) • Zones and Overlays • Details of the drain (height, breadth, width) • Overview of hydrology/hydraulics (detail relevant to application type – drain or system) • Infrastructure or other structures/assets (owner/manager details) • Stakeholders (landholders, groups or agencies that have an interest in the drainage area) • Beneficiaries <p>Map/s – location</p> <ul style="list-style-type: none"> • Include other information where appropriate – boundaries, land status and planning context, built structures and drainage system assets
Management objectives	<ul style="list-style-type: none"> • Include references to system specific matters for consideration: • Management of biodiversity values • Management of Aboriginal cultural values • Manage impacts to downstream neighbours and values.
Administrative and management arrangements	<ul style="list-style-type: none"> • A description of the management arrangements, the drainage committee structure, outline of tariffs or cost sharing/recovery arrangement/s, insurance details.
Existing environment	<ul style="list-style-type: none"> • General description of the land (including topography, geology and climate if necessary, disturbance history) • Biodiversity (including native vegetation) and Aboriginal cultural values <ul style="list-style-type: none"> – Specialist assessments and reports might be required. Speak to the planning department of local council for further advice. <p>Map/s</p> <ul style="list-style-type: none"> • Natural drainage lines, including permanent watercourses, wetlands and dams • Biodiversity values and their location (what, where) – include areas or locations that require management considerations such as known occurrences of listed flora and fauna species, location of endangered ecological vegetation classes and other high value biodiversity values • Aboriginal cultural values – include areas or locations that require management consideration
Work details	<ul style="list-style-type: none"> • Description of any ground disturbing works including machinery to be used and depth and area of works (what, when, where, how) • Table outlining management actions (protection measures) to mitigate impacts to matters for consideration (biodiversity values, Aboriginal cultural values, downstream impacts to neighbours and values) e.g. weeds, minimising impacts to native plants and animals (for applications on Crown land) • Table of a 10-year work program (locations, timing, requirements, responsibilities) • Monitoring, auditing and reporting schedule (if required) • Specialist reports may be required as attachments as supporting information <p>Map/s showing detail of work locations (see work program) and the location of any protection or special management/condition areas (inclusive of no-go zones and access points if applicable)</p>

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Drainage Management Plan – Multiple Landholders (complex)	
Summary of conditions and/or exemption notification (to be added following the pre-approval, endorsement stage)	<ul style="list-style-type: none"> • Approvals check list • Include a summary of any consent conditions as directed by referral or administering authorities. • Put exemption notification details in your plan. Exemption notification is written notification from an administering authority that exemptions apply.
Succession planning (for collectively managed systems)	<ul style="list-style-type: none"> • Statement of intention for drainage system long term management • Transitional arrangements • Decommissioning or discontinuation of use (assets)
Maps	<ul style="list-style-type: none"> • Ideally maps should be not less than 1:2,500 (it is recommended to supply maps at 1:5,000)
Attachments	Information to support your drainage management plan application as required: <ul style="list-style-type: none"> • Ecological assessments (flora and fauna assessments) • Aboriginal cultural heritage assessment • Hydrological assessment • Evidence of consideration of cultural heritage on Crown land sites i.e. is a Cultural Heritage Management Plan needed?

Appendix 2 Planning checklist – identifying matters for planning and approval consideration for dryland rural drainage

Before undertaking any disturbance works landholders should be aware of their legal obligations.

This checklist aims to help identify planning considerations associated with the:

- *Planning and Environment Act 1987* (local planning schemes)
- *Flora and Fauna Guarantee Act 1988*
- *Wildlife Act 1975*
- *Aboriginal Heritage Act 2006*
- *Environment Protection and Biodiversity Conservation Act 1999* (Federal).

Work through the planning checklist and identify matters which are planning considerations. Each planning consideration has a link to desktop data or information that can assist in decision making. This checklist is designed to identify potential matters for consideration, potential implications and requirements and who the lead advisory agency is to assist landholders with technical advice.

The checklist is a preliminary 'due diligence assessment'. Landholders should contact their local council for advice. Landholders who are proposing landscape scale works (that usually involves multiple landholders) might benefit from seeking professional planning advice, for example by a suitably qualified consultancy (see **Part 5** – *Choosing a drainage engineer, consultant or earthworks contractor*).

Matters for planning consideration	Potential requirement	Advisory agency
1. Check any land use planning requirements (planning scheme zones and overlays) <ul style="list-style-type: none"> • Create a planning property report at www.planning.vic.gov.au • Zone – sets out land use requirements • Overlays – sets out additional planning requirements which must be met • Particular Provisions – show requirements for specific uses and developments 	Works might trigger the requirement for a planning permit or other requirements of the planning scheme (e.g. planning permit for earthworks in a farming zone and/or native vegetation requirements at Clause 52.17 of the Victoria Planning Provisions)	Your local council (planning department) will provide advice on the requirements for a planning permit/s
2. Identify land status. Are works on private/freehold land or Crown land? (Crown land might include road reserve, easement or leased easement area)? <ul style="list-style-type: none"> • Land status can be determined at https://mapshare.vic.gov.au/mapsharevic/ 	Works on Crown land will require either Landowner Consent or Public Land Manager Consent to do works. Works on private land will require review of the planning scheme to identify land zoning, overlays and permit trigger requirements (as outlined above).	Your regional Department of Environment, Land, Water and Planning administers Crown land consents
3. Will the works be carried out in, under, on, over, or are likely to impact on a designated waterway? <ul style="list-style-type: none"> • Mapping available through the regional catchment management authority will show the location of designated waterways (some maps are online). Note that some rural drains are also listed as designated waterways. 	Works associated with a designated waterway will require a works on waterways permit . Works that impact on the flow of water across a property boundary will need to demonstrate that there is low risk and/or impact to neighbouring properties and biodiversity or Aboriginal cultural values in the landscape.	Your regional catchment management authority can provide guidance on the requirement for a works on waterways permit and managing risk and impacts to the surrounding environment
4. Will the works change the flow of water across a property boundary?		

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Appendix 2 Table continued

Matters for planning consideration	Potential requirement	Advisory agency
<p>5. Check whether works involve disturbance to habitat for threatened species or interfere with the flow of water into, out of, or within a State Wildlife Reserve or a Nature Reserve?</p> <ul style="list-style-type: none"> Use Nature Kit to determine known records within 5km of the site and then assess the likelihood of occurrence. https://maps2.biodiversity.vic.gov.au/ Conduct an Environment Protection and Biodiversity Conservation Act listed matters (Matters of National Environmental Significance) search. https://www.environment.gov.au/epbc/protected-matters-search-tool Specialist assessment or advice might be required to determine the likely presence of threatened species or communities. Check with your local council or catchment management authority for suitably qualified individuals to offer assessment advice if required. 	<p>The following will need to be in a drainage management plan:</p> <ul style="list-style-type: none"> Biodiversity values and their location (what, where) must be clearly and accurately represented on a map Articulate the management efforts made to mitigate impacts to biodiversity values Include work details such as methods used, locations and timing <p>An Application for a Permit to Take Protected Flora under the <i>Victorian Flora and Fauna Guarantee Act 1988</i> (for listed communities, species or protected flora) will be required for impacts on Crown land (including road reserves).</p> <p>Wildlife Act 1975 management authorisation – consent is required if you intend to change the flow of water into, out of, or within a State Wildlife Reserve or a Nature Reserve.</p> <p>If your plan provides for interaction with wildlife, you will need an authorisation.</p> <p>Approvals for matters of national environmental significance are administered by the Australian Government. An applicant needs to determine whether they are:</p> <ul style="list-style-type: none"> Exempt from approval – works are maintenance, for continual use of the system, or Environmental assessment and referral of a proposed action is required. 	<p>Your regional Department of Environment, Land, Water and Planning can provide guidance.</p>
<p>6. Are the works within an area of Aboriginal cultural heritage sensitivity?</p> <ul style="list-style-type: none"> Do the works trigger a requirement for a Cultural Heritage Management Plan? The Aboriginal Victoria website has information, maps and tools that can assist with management planning for aboriginal cultural values. https://achris.vic.gov.au www.aav.nrms.net.au 	<p>Applications will require one of the following:</p> <ul style="list-style-type: none"> Evidence that a Cultural Heritage Management Plan is not required, or Cultural heritage contingency plan (Voluntary Cultural Heritage Management Plan), or Approved Cultural Heritage Management Plan. 	<p>Aboriginal Victoria can provide guidance as to whether a Cultural Heritage Management Plan is required prior to conducting works.</p> <p>Aboriginal Victoria can also connect you with local aboriginal networks in your area.</p>

Appendix 3 Guidance note for exemptions

Some permit or approval exemptions may apply for works on rural drainage systems. Some activities are exempted from requirements for 'approval'.

Some works on rural drainage systems may be exempt from requirements under the:

- *Planning and Environment Act 1987*, systems installed prior to 1987
- *Environment Protection and Biodiversity Conservation Act 1999* (section 43B), system installed prior to 1999.

To be eligible for a maintenance works exemption, evidence may be required that demonstrates the works are routine and on-going in nature.

Note: an exemption eligibility under one Act does not eliminate the requirements of another Act.

Planning and Environment Act 1987

Exemptions within planning schemes may allow landholders to remove some native vegetation for maintenance works without needing to get a planning permit. A permit may not be required when:

- The removal is a continuation of a lawful existing use for the purposes of section 6(3) of the *Planning and Environment Act 1987*
- There is an exemption to the requirement for a permit under Clause 52.17 of the planning scheme
- The native vegetation is listed in a schedule to Clause 52.17 within the relevant planning scheme.

Proponents should discuss the potential suitability of works exemptions with your local council planning department or regional Department of Environment, Land, Water and Planning. Full guidance information is also available on the Department of Environment, Land, Water and Planning website – [Exemptions from requiring a planning permit to remove native vegetation](#)¹⁸.

Exemption to Clause 52.17 of the Victoria Planning Provisions

Under Clause 52.17 of the Victoria Planning Provisions, a permit is required to remove, destroy or lop native vegetation, including dead native vegetation. This ensures that there is no net loss to biodiversity by applying the avoid, minimise and offset approach in accordance with the guidelines for the removal, destruction or lopping of native vegetation.

However, a table of exemptions in Clause 52.17-7 specifically states that a permit is not required for certain native vegetation removal activities. Where native vegetation removal to maintain existing rural drains is to the minimum extent necessary, landholders may be able to rely on the 'Existing buildings and works in the Farming Zone and Rural Activity Zone' exemption, or the 'Utility installations' exemption. You should consult with your local council to confirm the applicability of one of these exemptions. These exemptions only apply to Clause 52.17 of local planning schemes and do not provide an exemption from other planning scheme clauses or acts.

The exemptions only allow native vegetation removal restricted to what is necessary to maintain existing drains. The exemptions do not allow for the expansion of existing or creation of new drains. Care must be taken to avoid any unnecessary native vegetation removal or damage to adjacent native vegetation.

Conservation works

Clauses 52.16 and 52.17 of all planning schemes in Victoria include a conservation work exemption that can be accessed with written agreement from the Secretary to the Department of Environment, Land, Water and Planning. This could be granted when the loss to biodiversity from the removal of native vegetation is outweighed by the expected gains or improvements to biodiversity from the work.

Contact the regional Department of Environment, Land, Water and Planning office to ensure the proposal would fit under the conservation work exemption.

¹⁸ www.environment.vic.gov.au/__data/assets/pdf_file/0018/91251/Exemptions-from-requiring-a-planning-permit-to-remove,-destroy-or-lop-native-vegetation-Guidance.pdf

Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (the Act), any activities that may have a significant impact upon matters of national environmental significance should be referred to the responsible Australian Government minister for assessment and approval.

Section 43B of the Act exempts certain actions from the assessment and approval provisions. The exemption applies to lawful continuations of land use that started before 16 July 2000 or actions that were legally authorised before 16 July 2000. The questions below can assist in determining the potential qualification for a lawful exemption under this Act:

- Was the drain constructed (man-made) prior to 1999?
- Has the drain been subject to routine maintenance since 1999?
- Are the works contained within the existing drain alignment (i.e. the works do not constitute an enlargement or expansion of the existing infrastructure)?
- Has reasonable due diligence been undertaken to identify potential impacts on matters of national environmental significance downstream and in the broader surrounding landscape?
- Are appropriate mitigation measures in place to ensure there are no impacts on matters of national environmental significance downstream and in the broader surrounding landscape?

If you answer yes to all of the above questions, the proposed works may qualify for an exemption. An exemption notification from the Australian Government will allow works to proceed without further Commonwealth approval (but exemption advice under the Act does not negate requirements under state or local laws).

If not, and the works are likely to cause an impact to a matter of national environmental significance, then a referral to the Australian Government under Part 9 of the Act will be required.

An ecological assessment might be required to identify potential matters of national environmental significance that require consideration.

Further information is available on the Australian Government Department of Agriculture, Water and the Environment website – [Agricultural actions exempt from approval under national environmental law](#)¹⁹.

Exemption notification

An exemption notification from the Australian Government will allow proponents to proceed with works in accordance with their drainage management plan without further approval requirements. The exemption notification may be given with conditions and works must not exceed those specified. These conditions will need to be included in the drainage management plan.

A works exemption notification does not provide exemption from other planning permit requirements or obligations under other existing legislation including the *Victorian Planning and Environment Act 1987*, *Flora and Fauna Guarantee Act 1988*, *Water Act 1989*, and *Wildlife Act 1975*.

Eligibility for exemption of maintenance works

Maintenance works on man-made drains, constructed prior to 1999, that can demonstrate adequate due diligence and mitigation management of impacts to downstream matters of national significance, may be eligible for a works exemption.

To be eligible for a works exemption, proponents must provide the Australian Government with adequate information to determine whether the works constitute an exemption under section 43B of the *Environment Protection and Biodiversity Conservation Act 1999*.

(See [examples](#) on next page)

¹⁹ www.environment.gov.au/system/files/resources/97ab5c23-fa4b-41a9-8cce-e51b473dc2b6/files/agricultural-actions-exempt-approval-under-national-environmental-law-factsheet.pdf

Example	
When the drain was constructed	Smith's drain (part of the Smithville drainage system in Smithville) is a man-made spoon drain constructed in 1951.
What the drain does	The Smithville drainage system was constructed to remove winter and spring rain within a reasonable period to ensure pastures and crops were not adversely affected by flooding. The drain conveys local runoff through Smithville Swamp to Smithville Bay.
Ongoing routine maintenance	Routine maintenance works have been conducted as required to ensure optimum flow rate and velocity to protect agricultural assets. Routine maintenance works includes annual grass cutting and weed spraying with desilting and mechanical vegetation removal on bed and bank subject to climatic conditions. These routine maintenance works are part of an ad hoc maintenance program. This is consistent with how the drain has been maintained since inception. The last works were carried out in 2011.
Summary of works	A drainage management plan has been developed for Smith's drain. No go work zones will be set up in three sections of the drain identified as habitat areas for the Australian Grayling and Growling Grass Frog (see attached biodiversity value map). Works will include annual grass cutting and weed spraying and 500m of vegetation removal and desilting works upstream of Smith Street in Smithville (see attached work zone areas map). Vegetation removal and desilting works will be on the southern bank only (vegetation on the northern bank will be retained). Mechanical desilting works will be up to a depth of 600mm. The works do not constitute an enlargement or expansion of the existing drain. Works will occur between the months of November–March, April–June, outside of the breeding period for identified species (see attached work schedule).
Reasonable due diligence	<p>Adverse potential impacts to matters of national environmental significance have been considered through consultation with the Victorian Department of Environment, Land, Water and Planning. Database records show that some matters of national environmental significance have established over the last 10 years since the last routine maintenance works were carried out 2011.</p> <p>or</p> <p>An ecology consultant has conducted a Flora and Fauna Study for the length of the drain.</p> <p>Two EPBC Act listed fauna species are recorded in the area:</p> <ul style="list-style-type: none"> • Australian Grayling (<i>Prototroctes maraena</i>) • Growling Grass Frog (<i>Litoria raniformis</i>) <p>Downstream of the drain is Smithville Swamp and Smithville Bay (a Ramsar site, wetland of international significance).</p>
Mitigation measures	Silt curtains will be installed, and turbidity monitoring conducted in accordance with the drainage management plan to ensure there is no significant risk to Smithville Swamp and Smithville Bay (downstream through increased sediments). Silt removal is to be left onsite and placed on existing spoil banks adjoining the drain. Vegetation removal and desilting will not occur during the breeding months of April–June: Australian Grayling (<i>Prototroctes maraena</i>) and November–March: Growling Grass Frog (<i>Litoria raniformis</i>). Weed spraying and mechanical grass cutting will be in accordance with the drainage management plan.

