

Improving Floodplain Connections: Decision support principles and processes

This document outlines the process for bringing priority unapproved flood works into compliance under the Improving Floodplain Connections program.

Introduction

Floodplain management plans establish rules to ensure structures on the floodplain are managed to protect life and property and ensure that the passage of flood water supports healthy ecosystems and cultural assets.

The Improving Floodplain Connections (IFC) program is an accelerated compliance program in the northern Murray–Darling Basin to improve the passage of floodwaters by helping to bring priority unapproved flood works into compliance with these rules. An unapproved flood work is one that:

- does not have a valid flood work approval under the *Water Management Act (2000)* or a relevant licence under the *Water Act (1912)*, or
- did not need an approval at the time of construction but now needs an approval under a floodplain management plan (FMP), or
- has a flood work approval but is non-compliant with the approval.

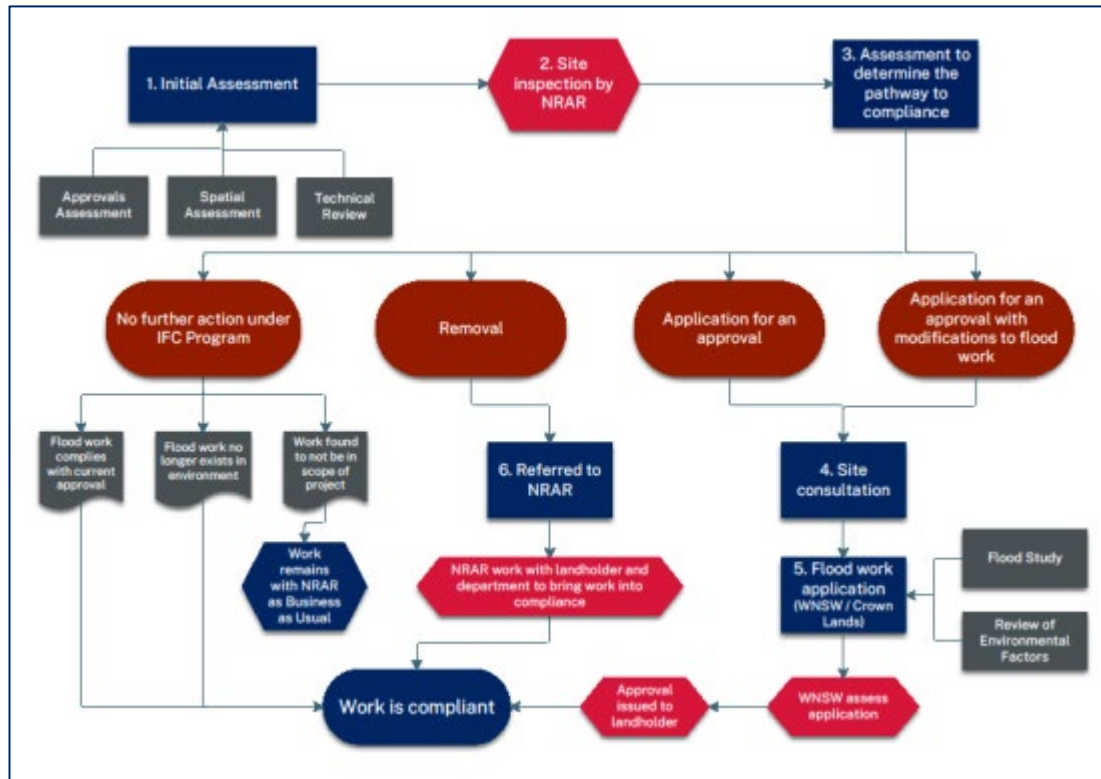
Process for priority unapproved flood works – review, assessment, and pathway to compliance

The main steps for a priority unapproved flood work in the program are:

1. initial assessment by the Department of Planning and Environment – Water (Water group)
2. site inspection by the Natural Resources Access Regulator (NRAR)
3. assessment by the Water group of the pathway to compliance for the unapproved flood work, which is then reviewed and approved by partner agencies
4. site consultation conducted by the Water group for works that can progress through the approvals pathway
5. applications for a flood work approval through WaterNSW, and where the flood work is on Crown land, through a general licence application to the Department of Planning and Environment – Crown Lands (Crown Lands)
6. flood works referred to NRAR where a flood work cannot be approved or a landholder is no longer participating in the IFC Program.

Figure 1 outlines the process for unapproved flood works in the IFC program in more detail.

Figure 1: Process for unapproved flood works in the Improving Floodplain Connections program



Review, assessment, and pathway to compliance for priority unapproved flood works

1. Initial assessment by the Water group

A desktop assessment is completed on each unapproved¹ flood work to understand the condition and impact of the work. The assessment includes an approvals assessment², spatial assessment, and technical review, as outlined in the boxes below. No further IFC program activities are undertaken for works found to be compliant with a valid/current flood work approval. The remainder are deemed to be unapproved or non-compliant flood works or require further investigation.

¹ How flood works were identified as priority unapproved flood works, is covered in frequently asked questions on our website. These flood works are referred to as 'unapproved flood works' throughout this document as they are thought to be unapproved. Their exact status and pathway to compliance is confirmed when the flood work has been more fully assessed through steps 1 to 3.

² Where flood works are determined to be on public land, a licence will be required. See section on "Crown Lands licence application".

Approvals Assessment

To determine if the flood work is associated with a valid flood work approval under the *Water Management Act (2000)* or a relevant licence under the *Water Act (1912)* and to determine if the work occurs on freehold land or public land.

Spatial Assessment

To obtain additional information on the work, such as location in relation to the floodplain management plan zones, the height and length of the work and if it aligns with current approval, the potential restrictions to flood waters and the likely construction date of the work.

Technical Review

To interpret the approval and spatial assessments and determine the potential compliance issues of the work, how the management zones of the floodplain management plans may impact the potential for approval of the work and the requirements for ground truthing field inspections to be conducted by NRAR.

2. Site inspection by the Natural Resources Access Regulator (NRAR)

NRAR will contact landholders to arrange an initial site visit to discuss the history of the work and the role it plays in the landholder's operations. The site visit will also give NRAR the opportunity to verify that the unapproved flood work exists on the ground. NRAR will prepare an initial site visit report which includes the location, dimensions (height length and width), photographs and other imagery of the work. This report will be provided to the Water group.

3. Assessment to determine the pathway to compliance

The Water group undertakes the assessment to determine the appropriate pathway to compliance for the work. This assessment will consider NRAR's initial site visit report, the rules of the relevant floodplain management plan and a licensing review conducted by WaterNSW, as outlined in the boxes below.

Review of NRAR's Report

To summarise the results of NRAR's initial site visit and verify that the unapproved flood work needs to further progress in the categorisation assessment.

Review of Floodplain Management Plan

To confirm which zone the unapproved flood work occurs in, in accordance with the floodplain management plan and identify any restrictions or limitations to its continued existence in this area.

Licensing Review by WaterNSW

To verify the application status of the unapproved flood work and if there is currently an application with WaterNSW.

At the completion of the assessment by the Water group, the pathway to compliance for the flood work is reviewed by a technical working group (Water group, NRAR, WaterNSW and the department's Environment and Heritage Group (for Gwydir only)) and the pathway to compliance determined. That pathway may be:

- **No further action under the program:** the flood work either complies with a current approval, no longer exists, or the work is not considered a flood work, and so is not covered by the program.
- **Application for an approval:** the flood work may be approved through assessment of a flood work application by WaterNSW under the *Water Management Act 2000*.
- **Application for an approval with modifications to the flood work:** the flood work may be approved through assessment of a flood work application by WaterNSW under the *Water Management Act 2000*. However, the flood work will require modifications to meet the requirements of the relevant FMP.
- **Removal:** the flood work cannot be approved under the *Water Management Act 2000* and must be removed.

The department will notify landholders in writing to advise of the relevant compliance pathway³. Flood works that require removal will be referred to NRAR for further action.

4. Site consultation for flood works on application for approval pathway

The department's IFC Delivery team will contact landholders whose unapproved flood work has been determined as 'approval with application' or 'approval with modification' to arrange a site consultation. If necessary, WaterNSW representatives may also attend the site consultation. This process will involve a discussion with the landholder about the flood work application and approval processes, any modifications required for the flood work to comply, and will give the landholder the opportunity to further discuss options, including removal of the flood work if it is no longer required by the landholder.

Options for modification of flood works

Modifications to the flood work may be required to comply with FMP rules. This may be accomplished in multiple ways and some options may be more practical and feasible than others. If this is necessary, the landholder will be consulted about the options and have an opportunity to have input into the process about their preferred option. Any reasonable changes/suggestions requested by a landholder will be considered.

³ Some flood works identified in the IFC program may cross over with the Gwydir Reconnecting Watercourse Country program (RWC), implemented by the department's Environment and Heritage Group (EHG). Flood works may be referred to EHG following step 3 (pathway assessment) and resolution of the work will then be led by the RWC program. For more information on the RWC program, please visit the following link: [Gwydir Reconnecting Watercourse Country Program | NSW Environment and Heritage](#).

The design will be site specific and may entail modifications such as:

- change in location
- flood work geometry (for example, lower height)
- partial removal
- addition of infrastructure to improve the flood work structure and flood conveyance.

After the site consultation, the department will provide the landholder with a letter via email outlining the outcomes of the meeting and the processes moving forward. The department will also try to contact each landholder by phone to confirm the letter has been received and discuss any questions the landholder may have.

The landholder is required to acknowledge the letter within 14 days to ensure continued participation in the IFC program. If the landholder does not acknowledge the outcome letter within this timeframe⁴, the department will consider the work to be removed from the IFC program, and the flood work will be referred to NRAR for further action.

5. Applications

When the Water group and the landholder have agreed to progress with a flood work approval application (flood work requiring modification or a new application), the department will support the landholder by commencing the work required to prepare the flood work approval application on the landholder's behalf. Application fees for all flood works that require an application through WaterNSW and those requiring a licence application through Crown Lands, will be waived through the IFC program.

WaterNSW flood work application

The flood work application will include supporting documentation such as a flood study, and a review of environmental factors. A desktop assessment of environmental and cultural values is initially undertaken by the department to identify any significant values that require consideration. This assessment is incorporated in the Review of Environmental Factors referred to in the boxes below.

In some instances, a Flood Study or REF may not be required. This will be dependent on the FMP management zone the flood work is located in and the nature of the proposed work. Larger more complex flood works on the other hand may require a more detailed REF or additional studies to address identified site constraints. The decision on whether a flood study and REF documentation is required, will be made by the department in consultation with WaterNSW.

⁴ If the landholder is unable to acknowledge the outcome letter within 14 days but has contacted the department about their need for more time and why, the department will consider a limited extension on the timeframe.

Flood Study

An assessment of flood works under the rules and objectives within the floodplain management plan. The cumulative impacts to flood flow, inundation, and assessment of changed hydrology to the environment, cultural assets and values are assessed using existing modelling or development of site-specific models.

Review of Environmental Factors (REF)

A REF is an environmental impact assessment and may be either minor or major, depending on the work. This assessment examines potential environmental impacts of the proposed works. This will ensure that the flood work complies with the requirements of the FMP to maintain adequate flood connectivity to flood-dependent ecological assets, Aboriginal cultural values and facilitate fish passage.

Crown Lands licence application

Flood works located on Crown lands will be required to obtain a licence under the *Crown Land Management Act 2016*. A licence is an authority granted by the Department of Planning and Environment – Crown Lands (Crown Lands group) and gives permission to occupy and use Crown Land for a specified purpose. The department will work with the landholder to submit an application with supporting documentation to the Crown Lands group for a licence.

Timeframes and deadlines

The Water group anticipates that it will take approximately two months to complete supporting documentation for the flood work approval application. Once the application is complete, the department will email the application form and supporting documentation to the landholder. The landholder will have 28 days to review, sign and return the application, for submission to WaterNSW. If the application is not returned by the landholder within 28 days, the department will consider the flood work to be removed from the IFC program and the flood work will be referred to NRAR for further action.

Outcome of WaterNSW flood work application

If the landholder receives a flood work approval, WaterNSW will provide a copy of the Statement of Approval to the landholder. This includes details of the approved flood work/s, a plan of approved work/s and the conditions associated with the approved flood work/s. It is expected that once WaterNSW receives a flood work application, the assessment process will take approximately 2 months to complete.

Outcome of Crown Lands general licence application

If the landholder receives a licence approval, the Crown Lands group will provide a copy of the approved licence agreement to the applicant along with the applicable annual rent.

6. Flood works referred to NRAR

Unapproved works will be referred to NRAR if:

- the works cannot obtain the necessary flood work approval
- the works have not been constructed in accordance with or do not comply with a current flood work approval
- a landholder withdraws from participating in the IFC program.

Works are referred to NRAR in these circumstances as they may be in breach of the *Water Management Act 2000*.

Why

NRAR is responsible for enforcement of water laws in NSW through education, compliance, and enforcement activities. Where a breach of the law is identified, NRAR responds depending on the severity of the breach, the degree to which the offender is responsible for the breach, their attitude to compliance and the public interest. NRAR can use its discretion to determine an appropriate response on a case-by-case basis. For more information about NRAR's compliance and enforcement approach, please visit their website: nrar.nsw.gov.au

Unapproved flood works

In cases where unapproved flood works need to be removed, NRAR will work with the landholder and departmental staff to determine the extent of any actions needed to be taken by the landholder to effectively remove the flood work.

Flood works not constructed in accordance with an approval

Where a flood work was not constructed in accordance with the approval, the landholder will be required to take action to modify these flood works. NRAR will work with the landholder and the Water group to determine the extent of any modifications required. The modifications will bring the flood work into compliance with the conditions of the existing lawful approval.

What happens next

NRAR will contact the landholder and discuss bringing the works into compliance with NSW water law. Depending on the circumstances, NRAR may issue a statutory notice requiring the removal or modification of the unlawful flood work. Depending on the circumstances, NRAR may also take enforcement action in the form of official caution, penalty notices (fines) or prosecution at its discretion, if warranted. NRAR will continue to work with landholders throughout the regulatory process. There are penalties for failing to comply with a lawful statutory direction.