CONTROLLED ACTIVITIES ON WATERFRONT LAND

Controlled activity exemptions on waterfront land

Under the Water Management Act 2000 (WM Act) an approval is required to undertake controlled activities on waterfront land, unless that activity is otherwise exempt (section 91E).

Controlled activities include the carrying out of building work, such as erecting buildings and other structures, and the installation of infrastructure. They also include excavating or depositing material.

Waterfront land is the bed of any river, lake or estuary and any land within 40 metres of the highest bank of the river, the lake shore or the mean high water mark of the estuary.

The Water Management (General) Regulation 2011 sets out a number of exemptions in relation to controlled activities. Please refer to the Water Management (General) Regulation 2011 Part 3, Division 2, Subdivision 4 and Schedule 5, Part 2 for full details.

Exempt controlled activities

Public authorities

A public authority does not need to obtain a controlled activity approval for any controlled activities that it carries out in, on or under waterfront land.

The WM Act defines a public authority as:

- a minister of the Crown
- a government department or administrative office
- a statutory body representing the Crown
- a statutory state owned corporation (or any of its subsidiaries) within the meaning of the State Owned Corporation Act 1989
- a council or county council within the meaning of the Local Government Act 1993.

Landcom is not a public authority for the purposes of this exemption (clause 30 of the Water Management (General) Regulation 2011).

Third parties undertaking controlled activities on behalf of public authorities

Under the WM Act a public authority is exempt from the need to obtain a controlled activity approval for any controlled activities that it carries out in, on or under waterfront land.

In some cases a third party, such as a contractor, may carry out works on behalf of a public authority. When this happens, the third party will usually benefit from the exemption in favour of the public authority.

Factors used to determine if a third party is acting for and on behalf of a public authority will include the nature of the contractual relationship between the parties and the level of control that the public authority retains over the works, both during and after construction.

Examples of exempt controlled activities undertaken by third parties on behalf of a public authority include:

- a contractor desilting drains for a council
- a contractor maintaining or installing water mains for Sydney Water.

A third party will not benefit from the exemption in favour of a public authority when undertaking controlled activities on their own behalf. This includes works undertaken under a development application or other approval, even when the works will be handed over to a public authority after completion.
Examples of controlled activities that are not considered to be exempt include:

- a developer constructing drainage and detention basin works to be transferred to council ownership after completion
- a developer constructing sewerage and water supply infrastructure to be transferred to Sydney Water ownership after completion.

**Private dwellings**

A controlled activity approval is not required for erecting or demolishing, or the alteration or addition to, or the provision of ancillary facilities for a dwelling house or dual occupancy building, so long as the activity:

- is exempt development for the purposes of *Environmental Planning and Assessment Act 1979* or is subject to a development consent or complying development certificate in force under the *Environmental Planning and Assessment Act 1979*
- is not constructed on or in the bed or bank of a river, the bed or shore of a lake, or the bed or land lying between the high water mark of any estuary.

**Other exemptions**

A controlled activity approval is not required if:

- the waterfront land relates to a river channel that is fully concrete lined or is a fully enclosed pipe channel
- the construction or use of fencing, a vehicular crossing or an access track on waterfront land does not impound water and relates to a minor stream in a rural zone
- the activity is nothing more than removal of vegetation in circumstances that would otherwise be lawful
- the controlled activity is to be undertaken:
  - in accordance with a WM Act water supply works approval
  - in accordance with a WM Act harvestable rights order
  - in accordance with section 52 (domestic and stock rights) of the WM Act in certain circumstances.
  - during an emergency under the direction of a relevant act
  - in accordance with any mining, crown lands or western lands lease, licence, permit
  - in accordance with any lease, licence, permit or other right in force in respect of land under the ownership or control of the maritime authority or a port corporation.

**Harm to waterfront land**

The Minister may, if necessary, require a person to take measures to protect the waterfront land, or any river, lake or estuary to which that land has frontage, when carrying out an exempt controlled activity.

**Where do I go for additional information?**

Find out more about controlled activities at the Office of Water website [www.water.nsw.gov.au](http://www.water.nsw.gov.au)

**Contact us**

Contact a water regulatory officer as listed on the Office of Water website [www.water.nsw.gov.au](http://www.water.nsw.gov.au)  
free call the licensing information on 1800 353 104 or email information@water.nsw.gov.au.