

Information on Completing a Joint Works Agreement

Preparing a Joint Works Agreement for a Water Licence or Use Approval under the *Water Sustainability Act*

Purpose of this information sheet

This sheet provides information to applicants for, or holders of, a water licence or use approval (authorizations) who are currently authorized to jointly construct or use works with other authorization holders or who propose to do so. This sheet is simply descriptive in nature and not intended as legal advice.

Questions about joint works agreements:

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JOINT WORKS AGREEMENT: An agreement that describes how responsibilities and costs will be shared among two or more applicants or authorization holders for the construction and maintenance of works that are or are proposed to be jointly used under a water licence or use approval. **Note** that any applicant or authorization holder still remains subject to the *Water Sustainability Act*, the Regulations under that Act and any term and condition in an authorization with respect to those works, even if a provision of a Joint Works Agreement might indicate otherwise.

There are two avenues for developing a joint works agreement: parties voluntarily agree to share works jointly in a manner consistent with their authorizations, or parties may be ordered to jointly construct and use works under section 36 of the *Water Sustainability Act*. **Note** also that the parties to a Joint Works Agreement may also be made subject to additional terms and conditions if so ordered by a Water Manager or the Comptroller of Water Rights.

To be sure that a joint works agreement is enforceable and binding on its parties, it is recommended that a lawyer be retained to assist with preparation of the agreement and to ensure that it meets the specific circumstances of the joint works arrangements. In particular, the lawyer should be directed to consider the following provisions from the *Water Sustainability Act* (WSA):

- Section 31 of WSA in relation to the abandonment of rights by one or more of the parties;
- Section 94 of WSA in relation to the suspension or cancellation of authorization rights;
- Section 122 of WSA in relation to ongoing responsibility for works even on abandonment, suspension, termination or cancellation of authorization rights; and
- Other sections of WSA related to authorization rights and obligations and their transfer.

It is recommended that, subject to any specific legal advice that may be obtained by an applicant or authorization holder, a Joint Works Agreement should contain at least the following information or related provisions:

1. Name(s) of all water source(s) involved in the joint works arrangement;
2. Name and address of all applicants/authorization holders to be parties to the agreement;
3. Description of all the joint works to be covered by the agreement;
4. A detailed drawing showing the appurtenancy for any authorization for each applicant or authorization holder that is party to the agreement and all the works that are to be jointly constructed or used;
5. For each party to the agreement, a clear and complete description of responsibilities for the construction, operation, maintenance, removal, replacement, deactivation or decommissioning of joint works or compensation or payment among the users of joint works;
6. Provisions that ensure the agreement is binding on all future owners of the joint works and on the land, mine or undertaking to which subject authorizations are attached or applicants for such authorizations;
7. Provisions that consider the abandonment of authorization rights by one or more of the parties;
8. Provisions that consider responsibilities for response to regulatory actions, including proceedings for abandonment or suspension or cancellation of authorization rights;
9. Provisions that consider ongoing responsibilities for joint works following abandonment, suspension, termination or cancellation of authorization rights;
10. Provisions that consider the rights and obligations of authorization holders, including on transfer of the appurtenant land, mine or undertaking to which authorizations are attached;
11. Provisions that define a dispute resolution procedure among all parties to the agreement;
12. Provisions that define a process for one or more parties to withdraw from the agreement;
13. Provisions that define a process for the admission of new parties to the agreement;

WORKS: The *Water Sustainability Act* defines “works” very broadly, and includes anything that can be used for diverting, storing, measuring, conserving, conveying, retarding water flow, confining or using water, producing, measuring, transmitting or using electricity, preventing or extinguishing fires, booms and piles placed in a stream or obstructions placed in/removed from streams or stream banks/beds, changes in and about a stream, access roads, and wells and works related to wells.

***Water Sustainability Act* definition of “works”**

“works” means

- (a) anything that can be or is used for
 - (i) diverting, storing, measuring, conserving, conveying, retarding the flow of, confining or using water,
 - (ii) producing, measuring, transmitting or using electricity,
 - (iii) collecting, conveying or disposing of sewage or garbage, or
 - (iv) preventing or extinguishing fires,
- (b) booms and piles placed in a stream,
- (c) obstructions placed in or removed from streams or the banks or beds of streams,
- (d) changes in and about a stream,
- (e) access roads to any of the works referred to in paragraphs (a) to (d) or (f) (i), and
- (f) wells and works related to wells, including
 - (i) wellheads,
 - (ii) anything that can be or is used for injecting or otherwise adding water or any other substance to a well,
 - (iii) anything that can be or is used for constructing, deactivating or decommissioning a well,
 - (iv) anything that can be or is used for exploring for, testing, diverting or monitoring groundwater;
 - (v) anything that can be or is used for disinfecting a well,
 - (vi) an injection system attached to a work that is used for conveying, from a well, groundwater that will be used for applying fertilizers or pesticides, and
 - (vii) anything that can be or is used in relation to a monitoring well or a well made for the purpose of groundwater remediation.