

Bullock Creek Drainage Network

Pilot Project fact sheet



Options A to D – further detail

Support is possible for managing rural drainage.

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

1. 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 rural drainage
2. The landholders benefiting from the drainage system agree to pay for the maintenance and administrative costs of the system
3. The benefiting landholders are willing to participate in a formally constituted local drainage management committee
4. The formally constituted drainage committee holds appropriate insurance.

Option A Individually managed rural drains

In some cases, rural drainage is confined to one property and can be managed by a single landholder. Resources are available to help those landholders to understand their obligations and the approvals processes for drainage works. They will continue to be able to get advice from relevant agencies about their options for managing the impacts of rural drainage.

Individual properties often drain into roadside table drains or culverts. Where the capacity of the drain or culvert is inadequate to avoid waterlogging or inundation of the property, the landholder can work directly with the responsible road authority (either a council, VicRoads, or in some cases DELWP) to negotiate a resolution. These matters generally do not involve other agencies unless there is other infrastructure involved, such as rail infrastructure, or there are other regulatory requirements, such as the need for a Works on Waterways permit.

Option B Drainage managed collectively through amicable agreements

In most cases, neighbours need to collaborate to agree on a combined approach to managing rural drainage. This happens where drainage either crosses property boundaries or affects neighbours.

Where rural drainage involves more than one property, the landholders who benefit from that drainage system need to come together to agree on arrangements for managing drainage and develop a set of rules for coordinating their maintenance efforts. Where only a small number of landholders are involved, and the system is relatively simple, landholders might choose to agree informally through neighbourly cooperation – a series of amicable agreements.

The Victorian Rural Drainage Strategy enables these informal arrangements to continue. Resources are available which include information on obligations related to the approvals necessary for works.

Option C Drainage managed collectively through written agreements

There is scope to achieve collective management of drainage through written agreements by establishing a community drainage scheme under Part 12 of the Water Act 1989. The powers and functions of a committee under this part of the Act include constructing works, seeking access over land owned by a participating landholder, negotiating the variation or revocation of the agreement on behalf of the committee and enabling community agreements to be registered under the Transfer of Land Act 1985 (see *Water Act 1989*, Sections 244(3) and 245(3)). The access arrangements and provisions relating to community drainage systems in Part 12 of the Water Act 1989 enable local landholders and groups of landholders to carry out works and manage local systems.

An alternative to using the Water Act, is to use Section 173 of the *Planning and Environment Act 1987*. This section provides provisions for recording agreements on

the title of land so that the owner's obligations under an agreement bind future owners and occupiers of the land. A Section 173 agreement can also be enforced in the same way as a permit condition or planning scheme. The purpose of such an agreement is to make it easier to achieve planning objectives for an area or particular parcel of land than is possible when relying on other statutory mechanisms. Landholders can explore 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.

Landholders working with each other to manage rural drainage might choose to bolster their existing arrangements, and formalise them, through written agreements that are capable of being registered on title. 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.

Ideally, 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.

Formalised written agreements will provide landholders with the option of accessing administrative support from government agencies, which will not be available for landholders managing their drainage through amicable agreements.

Option D Drainage managed collectively through written agreements with administrative support from government agencies

Landholders whose drainage systems have fallen into disrepair, or who have become involved in intractable disputes, may choose to seek support to establish collective management arrangements.

Currently, each individual landholder in a drainage system must separately gain the approvals necessary to remove native vegetation, remove silt or modify channels that cross property boundaries. This has proved to be a stumbling block for the collective management of rural drainage. While it is important that these activities are regulated to minimise or avoid environmental and cultural impacts, this can be done more efficiently on a broader scale (involving many properties) than at the individual property level.

To simplify the approvals process, landholders who choose to manage drainage collectively will have the option to prepare a rural drainage management plan that sets out how the environmental and cultural impacts of drainage will be managed. It will also set out the management and maintenance arrangements for drainage works. Under the arrangements in this strategy, catchment management authorities will facilitate the development of these plans and provide guidance about the information required to manage the environmental and cultural impacts of rural drainage.

The need to collect revenue and acquit funds can also prove to be a stumbling block for collective management. Some landholders seeking to improve their management of rural drainage through formal written agreements may need administrative assistance to collect funds on their behalf. Where a group of landholders have formalised their arrangements and established a community drainage scheme under Part 12 of the Water Act 1989, 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. 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. Importantly, it can be difficult to arrange a special rate and charge where landholders do not agree.

Landholders choosing to manage drainage collectively will be supported where those who benefit from drainage services are prepared to pay for those services.

For more information

Telephone 03 5448 7124 or visit
www.nccma.vic.gov.au

