



# Proposed Byrill Ck/Clarrie Hall Dam projects: the assessment process

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# About the EDO

- A community legal centre specialising in public interest environmental law.
- Mission: promote the public interest and improve environmental outcomes through the informed use of the law.
- Functions:
  - Legal Advice and Representation
  - Scientific Assessment and Advice
  - Policy and Law Reform
  - Community Education



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# Environmental assessment process

- Part 5 of the EP&A Act
  - Minister for Water or Council as determining authority
  - Duty to consider all environmental impacts
    - Review of Environmental Factors
    - No public consultation
  - Significant effect on threatened species, EECs
    - Environmental Impact Statement (EIS)
    - Public consultation & submissions (30 days)
    - Concurrence of DECCW required



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This is the process that applies as things stand because:

1. The State Environmental Planning Policy (Infrastructure) 2007 states that development for the purpose of water storage facilities that is carried out by or on behalf of public authorities does not require consent in rural or special purpose zones.
2. Dams are not among the list of projects that fall under the "Major Projects" section of the EP&A Act; and
3. The general order relating to State infrastructure projects did not apply in circumstances where a Council is the proponent

# Part 3A of the EP&A Act

- Order by the Minister for Planning required
- Director General's Environmental Assessment Requirements issued
  - Discretionary criteria
- Environmental Assessment
  - Public consultation (30 days)
- Planning Assessment Commission (optional)
- Director General's Report
- Minister for Planning makes decision



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# Other approvals

- Part 5 assessment – various approvals eg
  - Water Management Act approvals
    - Note Draft Water Sharing Plan (due 1 April 2010)
  - AHIPs (National Parks & Wildlife Act)
  - Approval by Minister for Water (LG Act)
- Part 3A – Above approvals unnecessary



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Draft Water Sharing Plan provides:

## **36 In-river dams**

New in-river dams requiring approval within the Mid Tweed River Water Source and the Byrrell

Creek Water Source on third order stream or higher are prohibited.

The Minister may consider applications for in-river dams within these water sources, excluding the Mid Tweed River Water Source and the Byrrell Creek Water Source, consistent with the principles of the *Water Management Act 2000*.

## **81 Amendments for possible enlargement of Clarrie Hall Dam**

The Minister may, under section 45(1)(b) of the Act, amend any relevant clauses of this Plan as a result of any future enlargement of Clarrie Hall Dam in the Mid Tweed River Water Source.

Under s.60 of the Local Government Act, a Council needs the approval of the "Minister for Land and Water Conservation (now the Minister for Water) to construct or extend a dam for the impounding or diversion of water for public use or any associated works.

# Federal environmental assessment

- Environment Protection & Biodiversity Conservation Act
  - Significant impact on matter of national environmental significance
    - World Heritage property
    - Listed threatened species/EECs
  - Bilateral agreement with NSW
    - Reliance on Part 5 or Part 3A assessment



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# Appeal rights

- Part 3A:
  - Appeals for proponent
    - 3 months
    - Loss of rights if PAC involved
  - No merit appeals for objectors
  - Judicial review
    - 3 months from notification
    - Very limited prospects because of discretion
  - No rights if “critical infrastructure”



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# Appeal rights

- Part 5:
  - Judicial review
    - Limited prospects re environmental assessment
    - Grant of Other approvals



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# EDO Northern Rivers

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