

Regulatory Impact Statement for review of the Water NSW Regulation 2020

Prepared for Department of Climate Change, Energy, the Environment and Water

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16 January 2026



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Glossary

Abbreviation	Stands for
Act	<i>Water NSW Act 2014</i>
ADWG	Australian Drinking Water Guidelines, refer NRMMC (2011)
ARA	Appropriate regulatory authority under the POEO Act
DCCEEW	Department of Climate Change, Energy, the Environment and Water
EDM	Electronic Direct Messaging
EPA Act	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>
EPA	Environment Protection Authority
ILP Act	<i>Inclosed Lands Protection Act 1901(NSW)</i>
IPART	Independent Pricing and Regulatory Tribunal
NPV	Net present value
NPW Act	<i>National Parks and Wildlife Act 1974 (NSW)</i>
NPWS	NSW National Parks and Wildlife Service
PIN	Penalty Infringement Notice
POEO Act	<i>Protection of the Environment Operations Act 1997(NSW)</i>
RIS	Regulatory Impact Statement
SASPOM	Special Areas Strategic Plan of Management (WaterNSW and OEH, 2015).
SCA	Sydney Catchment Authority
SEPP-BC	<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021 (NSW)</i>
SI-PLEP	Standard Instrument – Principal Local Environment Plan
SL Act	<i>Subordinate Legislation Act 1989 (NSW)</i>
Regulation	Water NSW Regulation 2020
WMP	Water monitoring program
WTP	Willingness to pay

Executive summary

WaterNSW is a NSW Statutory State-Owned Corporation established under the *Water NSW Act 2014* (the Act). WaterNSW's role includes managing and protecting Greater Sydney's water supply catchments and infrastructure and being a bulk supplier of water to its customers.

The Act reflects the multi-barrier approach to water quality of establishing the catchments as a critical first barrier in preventing pollutants entering the water supply. The Act establishes Special Areas surrounding the water storages that act as buffer zones and as a filter to help protect water quality. These areas are primarily located on land that is owned by WaterNSW or NSW National Parks and Wildlife Service (NPWS). Similarly, the Act establishes Controlled Areas, which are primarily declared over land owned by WaterNSW that contains and surrounds key WaterNSW water supply assets such as pipelines and canals.

The *Water NSW Regulation 2020* (the Regulation) is a regulation made under the Act that supports the WaterNSW's water quality protection and catchment management functions, in particular, its regulation of Special Areas and Controlled Areas. Sections 51 and 55 of the Act stipulate the types of provisions the regulations may make regarding the Special Areas and Controlled Areas.

In accordance with the *Subordinate Legislation Act 1989*, this regulation is due to lapse on 1 September 2026. Before the Regulation can be remade a regulatory impact statement (RIS) assessing the economic and social costs and benefits of the proposed regulation, and any alternatives, is required. This report is a RIS prepared for Department of Climate Change, Energy, the Environment and Water (DCCEEW) for the making of the proposed regulation for 2026.

The objective of the Regulation

The objective of the Regulation is to support WaterNSW in fulfilling one of its principal statutory objectives under the Act of protecting the quality and quantity of water in declared catchment areas. The regulation does this by:

- regulating conduct in Special Areas and Controlled Areas by:
 - regulating access and conduct
 - establishing offences and penalties relating to prohibited access and conduct
- conferring on WaterNSW functions that include enforcement powers under the *Protection of the Environment Operations Act 1997* (POEO Act) in and around the catchments.

The rationale for regulation rests on the efficiency and effectiveness of enforcing compliance with the Act. In the absence of regulation:

- there would be insufficient disincentives for activities that pose risks to water quality and the environment in and around the catchments
- residual compliance powers would be insufficient and the costs of enforcing compliance primarily due to the remote locations involved would be unnecessarily high.

Proposed regulation and alternative options

Three options have been considered as part of this RIS process. These are:

- a 'do nothing' case, where the current regulation is repealed, and no replacement regulation is introduced (Option 1)
- a 'minimalist' (roll-over) case, where a replacement regulation is introduced which mirrors the current regulation in place (Option 2)
- a 'proposed' case, where the current regulation is combined with various amendments. (Option 3). The proposed amendments and their rationale are summarised in Table 1 below.

Table 1: Option 3 amendments and net benefit/cost relative to Option 2 Amendment Rationale Net benefit/cost

Amendment	Rationale
Regulatory provisions to achieve compliance and enforcement outcomes	
1. Clarify that the definition of a vehicle includes bicycles	Current definition is vague
2. Clarify that it is an offence to remove, interfere with or damage fences, locks and chains in Special Area and Controlled Area lands	Reduce vandalism and damage
3. Clarify that damaging, defacing or interfering with water catchment infrastructure is prohibited	Reduce risk of damage to catchment infrastructure (e.g. water storages, water mains, associated works and plant)
4. Clarify that collection of firewood (i.e. dead plant material) is prohibited	Improve protection of habitat
5. Enable signage to prohibit unmanned vehicles	Increase flexibility for WaterNSW to manage risks associated with drones
Other provisions affecting WaterNSW enforcement powers	
6. Improve WaterNSW's power to seek remediation/repair of damage caused by pollution or contamination	Provide additional incentives to reduce illegal activity and reduce WaterNSW's costs
7. Improve WaterNSW's power to recover costs related to removing property left without consent	Provide additional incentives to reduce illegal activity and reduce WaterNSW's costs

Amendment	Rationale
8. Address incongruity between Regulations and SEPP-BC	Remove unnecessary conflict between the Regulation and planning controls.
9. Increase penalty notice amounts	Reflect increases in inflation and ensure the penalties provide sufficient incentive for compliance
10. Remove WaterNSW's power to remove people by force	Current power not in line with modern practice or safety for WaterNSW staff. If force is required, it is appropriate to call the police

Definition and classification of the Special Areas

11. Address inconsistent approach to defining Controlled Areas	Remove an inconsistency as to how Controlled Areas are defined
12. Reclassify area below Warragamba dam	Reduce unnecessary risks to safety during water releases and prevent vandalism

Management of information

13. Remove notices from the public register when withdrawn or revoked	Avoid unjustified reputational damage to individuals and businesses
14. Remove reference to the public register being available at the office of WaterNSW	Reduce an unnecessary and inefficient requirement given it is accessible on the website
15. Remove reference to maps being deposited at the office of WaterNSW	Reduce an unnecessary and inefficient requirement given it is accessible on the website

Costs and benefits of options

The costs and benefits of the three options were evaluated. Option 1 (no-regulation) is the 'base case' against which other options are evaluated.

A roll-over of the existing regulation (Option 2) is estimated to have significant benefits over the base case (Option 1) primarily in reducing the WaterNSW's (and others) costs of managing the catchments to meet the objectives of the Act and in reducing risks to water quality.

The proposed regulation (Option 3) includes amendments, which individually and collectively provide additional benefits over and above Option 2. Each amendment is minor with no or negligible cost and some benefit in excess of the cost.

A summary of the evaluation is provided in the table below. While the values provided should be considered indicative, the conclusions are not sensitive to any reasonable changes in assumptions.

Table 2: Summary comparison of options

	Net benefit relative to Option 1 (base case)	Note
Option 1 – No regulation	Not applicable as Option 1 is the base case.	
Option 2 – Rollover of existing regulation	<p>Substantial positive net benefits.</p> <ul style="list-style-type: none"> Management cost savings ~\$51 million NPV Reduction in water quality risks (in order of \$45 million NPV) <p>Total benefits in excess of \$90 million NPV.</p>	<ul style="list-style-type: none"> Includes costs to WaterNSW and other agencies
Options 3 – Proposed regulation	Same as Option 2 plus additional unquantified net benefits.	<ul style="list-style-type: none"> Each proposed amendment has a clear net benefit. None of the proposed amendments impose material costs.

Consultation

A consultation plan has been developed that involves public exhibition of the draft regulation and the RIS. The communication of the public exhibition will include an update to WaterNSW's and DCCEEW's website, advertising using social and traditional media and direct correspondence to identified stakeholders.

1. Introduction and overview

1.1 Introduction

Water NSW (WaterNSW) is a Statutory State-Owned Corporation established under the *Water NSW Act 2014* (the Act).¹ WaterNSW owns and operates 41 dams across the state, and supplies two-thirds of water used in NSW to regional towns, irrigators, Sydney Water Corporation and local water utilities. WaterNSW's role includes identifying and managing impacts on water quality in 'declared catchment areas', which at present refers to the catchment area that supplies the drinking water for the 5.5 million people living in Greater Sydney (encompassing Sydney and the Illawarra, Blue Mountains, Southern Highlands, Goulburn, and Shoalhaven regions).

The *Water NSW Regulation 2020* (the Regulation) is subordinate regulation to the Act. The Regulation's primary existing purpose is to enable WaterNSW to control access activities to Greater Sydney's drinking water catchments. Indirectly, this enabling piece of legislation plays a part in ensuring the WaterNSW can fulfil its obligation to its customers, and Sydney has access to quality water supplies. Sections 51 and 55 of the Act stipulate the types of provisions that the regulations may make regarding the Special Areas and Controlled Areas.

Under the *Subordinate Legislation Act 1989 (NSW)* (SL Act) the Regulation will lapse on 1 September 2026. The Department of Climate Change, Energy, the Environment and Water (DCCEEW) proposes to remake the Regulation. To do so, it is required under the SL Act to prepare a regulatory impact statement (RIS) to assess the economic and social costs and benefits of the proposed Regulation and its alternatives. The SL Act also requires that the RIS and the draft of the proposed Regulation are publicly exhibited, and that the community is given an opportunity to comment.

This report is a RIS for the making of the proposed Water NSW Regulation 2026.

1.2 Purpose of the RIS and structure of this report

The purpose of the RIS process is to improve the quality of regulatory proposals, to ensure that alternative options are considered, and that the regulations selected provided the best approach to meet the objectives proposed.

The SL Act (Schedule 2) requires that a RIS include:

- a) a statement of the objectives sought to be achieved and the reasons for them
- b) an identification of the alternative options by which those objectives can be achieved (whether wholly or substantially)
- c) an assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance

¹ In the Act, WaterNSW is spelled "Water NSW"; however, in all public communication it is spelt WaterNSW.

- d) an assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance
- e) an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community
- f) a statement of the consultation program to be undertaken.

The rest of this report broadly follows this structure. Following the next sub-section which provides a background:

- Section 2 reviews the objectives and rationale for the Regulation
- Section 3 reviews the alternative options including the proposed regulation and the option of no-regulation
- Section 4 examines the costs and benefits of the proposed regulation and alternatives and provides an overall evaluation
- Section 5 outlines the planned consultation program.

1.3 Background

1.3.1 About WaterNSW

1.3.1.1 Legislative and policy background

WaterNSW's activities are guided and regulated by a range of legislation and other instruments.²

As defined by the Act (s 6), the principal objectives of WaterNSW are to:³

- a) to capture, store and release water in an efficient, effective, safe and financially responsible manner, and
- b) to supply water in compliance with appropriate standards of quality, and
- c) to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment, and
- d) to provide for the planning, design, modelling and construction of water storages and other water management works, and
- e) to maintain and operate the works of Water NSW efficiently and economically and in accordance with sound commercial principles.

The Regulation exists primarily to support objective (c), which relates to the declared catchment areas serving Greater Sydney.

² See <https://www.waternsw.com.au/about-us/water-in-nsw/legislation-and-guides>. These include: *Water NSW Act 2014*, *Water NSW Regulation 2020*, *Water Management Act 2000*, *Water Act 1912*, *Dam Safety Act 2015*, Operating licences, Water sharing plans, Memoranda of understanding, Water supply agreements, Catchment audits, NSW draft rural water pricing,

³ In this report the word 'catchments' is used to mean the term 'catchment areas' that is defined in the Act.

The Act also specifies other objectives, which of relevance to the RIS include:

- to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development.⁴

WaterNSW also has additional obligations established by other legislation. These include a general obligation as a NSW State-Owned Corporation to identify and maintain heritage assets under its care.⁵

Another relevant legislative instrument independent of the Regulation is the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (SEPP-BC), which includes provisions (under Chapter 6) to support the water quality objectives for the Sydney drinking water catchment. It is essentially a planning instrument under which the WaterNSW has a concurrence role rather than an approval role for development in the catchments. The SEPP-BC also provides for a range of initiatives to address water quality issues in the catchments.

The declared catchments

The declared catchment area has five sub catchments which together cover 16,000 square kilometres and extends from the headwaters of the Coxs River north of Lithgow to the Shoalhaven River south of Braidwood.

The catchments incorporate natural systems such as rivers and bush land as well as farms, industry, animals and people. The Sydney catchment area is home to over 125,000 people. It includes regional population centres (including Lithgow, Goulburn and Bowral) and 4,850 square kilometres of agricultural land (around one third of the total declared catchment area).

The catchments are critical to the protection of water quality and thus public health. They form the first and, as is commonly recognised, significant barrier in a multi-barrier approach to protecting water quality (as illustrated in Figure 1 below).

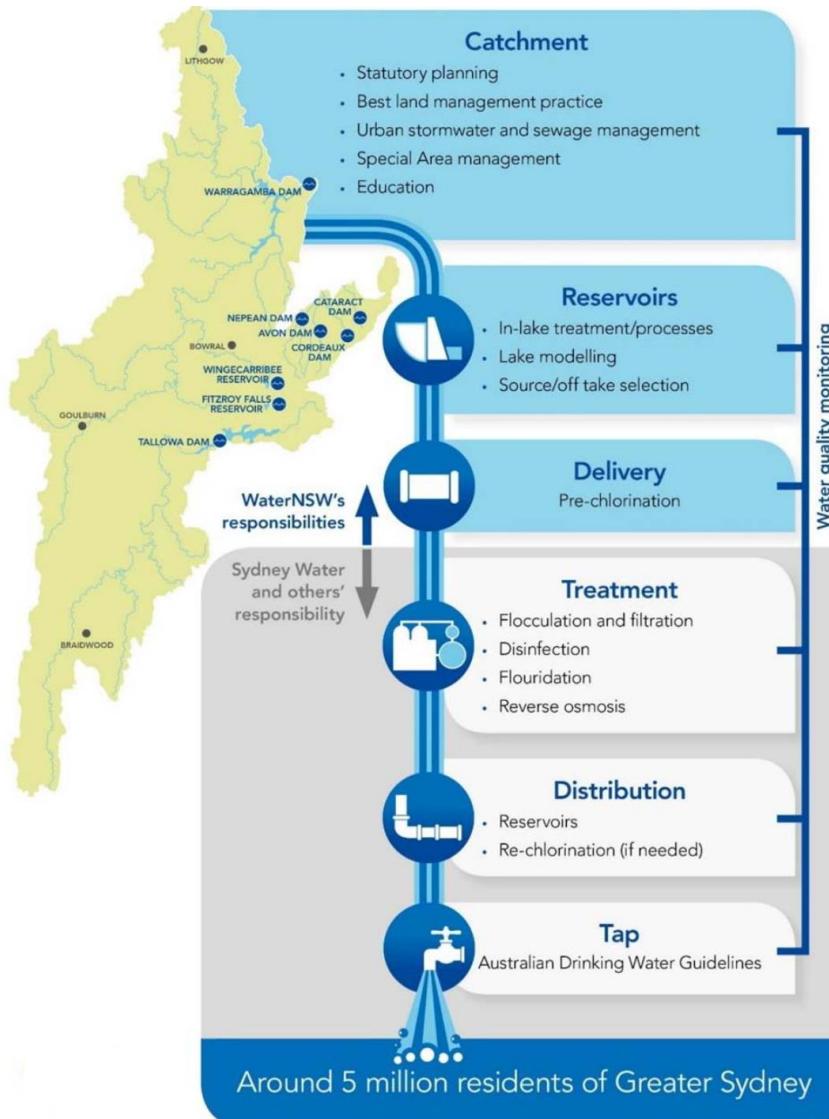
The importance of the catchments was recognised in the 1998 Sydney Water Inquiry (which led to the NSW Government passing the *Sydney Water Catchment Management Act 1998*), which recommended that 'Water quality should be the primary consideration in decision making affecting the catchment.' This recommendation was reaffirmed in the 10-year review of the inquiry (O'Keefe 2010, p. 12) which stated the catchments are the 'first and most important barriers to the entry of pathogens into the water supply system'.

⁴ These principles are contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*. Of note, the principles of ecologically sustainable development emphasise the application of the precautionary principle; that is if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

⁵ *NSW Heritage Act 1977*, section 170–170B.

This view is also found in the Australian Drinking Water Guidelines⁶ (ADWG)⁷ principles (see Box 1 below) which include statements that a 'multiple barrier approach is universally recognised as the foundation for ensuring safe drinking water' and 'protection of water sources [...] are of paramount importance'.

Figure 1: The multi-barrier approach to protect Greater Sydney drinking water quality⁸



⁶ NRMMC (2011).

⁷ The ADWG are designed to provide an authoritative reference on what defines safe, good quality water, how it can be achieved and how it can be assured.

⁸ Source: <https://www.waternsw.com.au/education/keeping-waterways-healthy/maintaining-water-quality>

Box 1: Key ADWG principles regarding catchments as a preventative barrier

The ADWG includes principles that:

- Protection of water sources and treatment are of paramount importance and must never be compromised.
- All waterborne disease outbreaks are avoidable. Pathogens can only cause disease and death in humans if water source protection, pathogen removal by disinfection or filtration, or integrity of distribution systems fail.
- The drinking water system must have, and continuously maintain, robust multiple barriers appropriate to the level of potential contamination facing the raw water supply.
 - The multiple barrier approach is universally recognised as the foundation for ensuring safe drinking water. No single barrier is effective against all conceivable sources of contamination, is effective 100 per cent of the time or constantly functions at maximum efficiency.
 - The drinking water system must have, and continuously maintain, robust multiple barriers appropriate to the level of potential contamination facing the raw water supply.
- Prevention of contamination provides greater surety than removal of contaminants by treatment, so the most effective barrier is protection of source waters to the maximum degree practicable.
- Risk management is about taking a carefully considered course of action. As the obligation is to ensure safe water and protect public health, the balancing process must be tipped in favour of taking a precautionary approach.

Source: Selected statements from ADWG, Section 1.1.

The Special Areas

To support WaterNSW in meeting its catchment management functions, the Act enables Special Areas to be declared. These are areas of land around the water storages that act as buffer zone to help stop nutrients and other substances that could affect the quality of water entering the storages. In total there are 364,917 hectares of land in the Special Areas (shown in Figure 4 in Appendix A). The land in the Special Areas is owned by WaterNSW and a mix of government agencies, private land holders and the Crown (see Table 3 below). A large portion of the land is owned by NSW National Parks and Wildlife Service (NPWS).

In accordance with the Act (s 52), WaterNSW and the former Office of Environment and Heritage (OEH) jointly developed a plan of management for the Special Areas, which is known as the Special Areas Strategic Plan of Management (SASPOM).⁹ The SASPOM also establishes a framework for jointly managing the Special Area lands.

⁹ WaterNSW and OEH (2015). Note that OEH is presently a division (named Conservation Programs Heritage & Regulations) within the NSW Department of Climate Change, Energy, the Environment and Water.

The Act also enables the declaration of Controlled Areas; lands WaterNSW owns (or vests) and uses to protect key assets. These are primarily water supply infrastructure such as canals and pipelines (also shown in Figure 4).

Table 3: Land tenure in Special Areas

Land tenure	Area (Hectares)	Per cent of Special Area
NPWS reserves	243,634	66.76
WaterNSW freehold	69,026	18.92
Other	52,118	14.29
Total	364,778	100

Note: 'Other' includes Crown lands, private freehold and leases and no data areas.

Source: SASPOM (WaterNSW and OEH 2015, p.7).

1.3.1.2 The Water NSW Regulation

The Regulation (*Water NSW Regulation 2020*) commenced on 1 September 2020 as a replacement for the *Water NSW Regulation 2013* (2013 Regulation).¹⁰

The Regulation is a similar regulatory instrument to those that have previously been made.¹¹ Its primary effects are to:

- regulate conduct in (and access to) Special Areas and Controlled Areas that are defined under the Act
- allow WaterNSW to exercise certain powers of the EPA and other regulatory authorities under the *Protection of the Environment Operations Act 1997* (POEO Act) in and around the catchments,¹² and
- provide for other miscellaneous items in accordance with the Act.

The Regulation establishes a number of offences and penalties that WaterNSW has authority to apply. The offences largely relate to failure to comply with access and conduct conditions established by WaterNSW. For most offences the size of the penalties is \$750 for individuals and \$1500 for corporations. The number of incidents is provided in Table 4 below.

¹⁰ The 2013 Regulation was repealed on 1 September 2020 by section 10 (2) of the SL Act.

¹¹ The Regulation was similar in effect to, the Sydney Water Catchment Management (Environment Protection) Regulation 2001 and the Sydney Water Catchment Management (General) Regulation 2000, which were repealed on 1 September 2008. Regulation of access to catchments was a long standing policy of the Water Board, and the Warragamba "inner catchment area" was first proclaimed in 1942.

¹² More specifically 'relating to relevant non-scheduled activities within a catchment area or outside a catchment area but being of such a nature as affect or may affect a catchment area.'

Table 4: Compliance incidents

Function exercised	2019-20	2020-21	2021-22	2022-23	2023-24
Under the Regulation					
Authorised officers entered onto land	6	8	5		
Authorised officers issued search warrants	0	0	0	0	0
Authorised officers exercised the power to require a person to answer questions	5	1	1	0	0
Authorised officers issued notice requiring a person to provide information and records	2	53	60	44	17
Authorised officers require person to state name and address or produce drivers licence	12	8	6	31	13
Under POEO Act					
Clean-up notices (section 91)	0	9	3	4	1
Prevention (section 96)	0	0	0	0	0
Compliance cost notices (section 104)	0	0	0	0	0
Requirements to provide information and records notices (sections 192 and 193)	0	2	5	8	0
Requirements to answer questions (section 203)	1	0	0	0	0
Prosecutions commenced	0	0	0	0	0
Penalty infringement notices issued	1	0	1	0	0
Warning letters issued	0	0	6	4	0

Source: Data for year to 2021-22 from WaterNSW Annual reports. Data for last two years provided by WaterNSW.

The Regulation divides the Special Areas into Schedule 1 and Schedule 2 lands with differing levels of access.

- Schedule 1 lands are, in general, lands immediately surrounding the water storages. With a few exceptions, no public access is allowed to these areas
- Schedule 2 lands are a second-tier buffer zone that generally adjoin Schedule 1 lands. While some public access and activities are permitted, restrictions apply.

The Regulation also establishes that WaterNSW can provide consent to enter Special Areas and Controlled Areas. A summary of WaterNSW's access consent policy is in Appendix 1.

WaterNSW has an advisory role but not a concurrence role in state significant developments, such as mining developments in the catchments. As noted on WaterNSW's website:¹³

The NSW Department of Planning and Environment, Independent Planning Commission and the Division of Resources and Geosciences are responsible for assessing and approving mining and coal seam gas activities. The final decision on specific activities usually rests with the Minister for Planning (or delegate).

WaterNSW has no legislated power to control or stop mining in declared catchments. However, as the partial owner and joint manager of the special areas, we have a role in influencing the planning decisions and for holding mining operations to account for all impacts which significantly harm:

- *water quantity and quality*
- *water supply infrastructure*
- *ecological integrity of our special areas*

We influence planning decisions by providing advice to regulators, agencies, and mining companies. Our advice is based on our assessment of whether a mining proposal conforms to our policy positions, and whether the mining impacts are consistent with the predictions contained in the application and performance indicators provided in mine approvals criteria.

¹³ <https://www.waternsw.com.au/water-services/catchment-protection/mining>

2. Objective of the Regulation

The objective of the Regulation is to support WaterNSW in fulfilling its statutory objectives under the Act and one of its functions of protecting the quality and quantity of water in catchment areas. It provides WaterNSW with a means of regulating activity in and around the catchments by:¹⁴

- regulating conduct in Special Areas and Controlled Areas by:
 - regulating access and conduct
 - establishing offences and penalties relating to prohibited access and conduct
- conferring on WaterNSW certain regulatory functions under the POEO Act in and around the catchments.

The rationale for regulation¹⁵ rests on improving the efficiency and effectiveness of implementing the objectives of the Act and the POEO Act with regards to water quality.

In the absence of a regulation, WaterNSW would need to rely on other legislation (and possibly common law) and existing enforcement authorities (including the police, councils and EPA) to achieve its objectives. This would neither be efficient nor effective, for the following reasons.

First, there would be insufficient disincentives for activities that pose risks to water quality and the environment in and around the catchments. For example, the penalties for trespass relate only to access, are less and would be relatively difficult to enforce as WaterNSW would no longer be able to issue a Penalty Infringement Notice.

Second, in the absence of regulation, the efficiency and effectiveness of catchment protection and the enforcement of activities would be diminished. The majority of key assets (the catchment and built structures) are in remote locations away from regular law enforcement and so it is more efficient for WaterNSW to undertake enforcement activities relating to water quality given its objectives and its presence in the catchment areas.

Some form of regulation is required to address these failings.

¹⁴ The Regulation also addresses a number of other miscellaneous administrative matters (the Act Part 4), such as prescription of prescribed local councils to whom the WaterNSW supplies water.

¹⁵ This might also be characterised as addressing issues in the enforceability of property rights. The enforceability of property rights is a condition for efficient markets. Thus, weaknesses in the enforceability of rights can be a cause of 'market failure' (situations where markets fail to efficiently allocate resources). As noted in NSW Treasury (2019, p. 10), regulation is commonly justified in responding to market failures, which include market power, externalities, public goods and asymmetric information.

3. Proposed regulation and alternative options

3.1 Overview

As part of the RIS process, the SL Act requires the identification and consideration of the alternative options by which those objectives can be achieved (whether wholly or substantially).¹⁶

DCCEEW in consultation with WaterNSW have identified three options that have been considered as part of this RIS process. These are:

- a 'do nothing' case, where no replacement water catchment management regulation is introduced, and the current regulations are repealed (Option 1)
- a 'minimalist' (roll-over) case, where a replacement water catchment management regulation is introduced which mirrors the current regulation in place (Option 2)
- a 'proposed' case, where the current water catchment management regulation is combined with various additional changes and is implemented as the new regulation in place (Option 3).

This section discusses these options and considers whether there are other options that should be evaluated. In doing so it first considers the substantive costs and benefits that are relevant, and the key issues associated with the Regulation.

3.2 Consideration of alternatives

3.2.1 Key issues for consideration

It is desirable to find the option that meets the required objectives with the highest net-benefit; that is, the option whose sum of benefits less costs is the greatest.

There are four key issues that affect the costs and benefits of the options being considered. These relate to:

- water quality
- environmental and culture heritage values
- alternative land uses
- management costs.

As the objectives of the Regulation primarily relate to the protection of catchment lands held by WaterNSW, other government agencies and the Crown from illegal activity, there are negligible costs of complying with the Regulation (compliance costs).

¹⁶ SL Act, Schedule 2, section 5(1)(b).

3.2.1.1 Water quality

The consequences of poor water quality can be severe. Water is a known potential carrier of pathogens and chemicals that can cause disease in humans. The impacts of these diseases range from mild discomfort to death.

The costs associated with poor water quality include:¹⁷

- direct costs of illness including loss of quality of life and medical expenses
- indirect costs of illness, including impact on carers and workplaces
 - risks associated with large scale outbreaks of disease
 - avoidance costs by water users, for example, the costs of purchasing bottled water and/or boiling water
 - management costs associated with managing a water crisis
- the social impact of a loss of confidence in water quality.

The costs of poor water quality are difficult to quantify due to the uncertainty as to the risk. Nevertheless, there are a number of public estimates that provide some indication of the importance. Tooth and Zhang (2018) recommended using a baseline estimate of \$135 per-person per-year for the benefits of meeting Australian Drinking Water Guidelines (ADWG). Adjusting for inflation and the population served, this equates to a little over \$820 million per year for Greater Sydney.

The management and avoidance costs by themselves can be significant. For example, the 1998 Sydney water crisis (see Box 2 below) caused boil-water alerts to be issued for 35 days and a substantial increase in Sydney Water's operating expenses. The total social costs of this incident have been estimated at around \$690 million.

Box 3: Costs of the 1998 Sydney water crisis

The 1998 outbreak of Cryptosporidium and Giardia contamination in Sydney caused boil water alerts to be put into place for 35 days. The operating expenses and foregone revenue to Sydney were estimated by the Productivity Commission (2001, p. 120) at \$74.6 million. The abnormal operating expenses included compensation to customers, insurance claims, monitoring and testing costs, inquiry costs, and other costs. Jaguar Consulting (2004) undertook a broader estimate of the costs. Costs from direct health effects and indirect costs were estimated to be nearly negligible; however, the costs of averting behaviours were extremely large. These 'averting behaviour costs' included cash expenses (e.g. boiling water costs, buying bottles of water or substitutes) and the loss of utility. Based on a previous study, which had estimated the average aversion costs per person per day for a giardiasis outbreak, they estimated the total aversion behaviour costs for Sydney (given the duration of the boil alerts and the population affected) to be around \$308 million in 2004, which in 2025 (adjusting for inflation and population growth) is equivalent to around \$690 million.

Given its significance, there has been substantial work on establishing effective approaches to ensuring water quality. The current approach employed is based on the principle of establishing the catchments as a barrier in a multi-barrier approach to prevent contamination of the water supply. As

¹⁷ Conceivably poor water quality could have other 'non-human' impacts such as impacts to animals.

discussed in Section 1.3.1.1, this approach is consistent with the 1998 Sydney Water Inquiry recommendations and best practice as reflected in the ADWG.

The Regulation is critical to this approach to managing water quality as it regulates access and conduct in the Special Areas and Controlled Areas. Changes in the level and type of access (such as commercial and recreational activities) that can be undertaken in water catchment areas may have a variety of impacts to water quality including:

- the introduction of pollutants to the catchments
- increased fire risk, and
- the deterioration of land, resulting in an increase of soil run-off.

3.2.1.2 Environmental and cultural value

The catchments are home to a diverse range of native flora and fauna and areas of cultural heritage. As such the catchments have value over and above their use for managing water quality and/or alternative land-uses as discussed below. This value incorporates:

- the benefits of maintaining biodiversity
- peoples' intrinsic desire for the areas to be preserved
- the option values associated with being able to use the resource in the future.

Maintaining the Special Areas and broader catchments for water quality has the additional benefit of protecting these lands from environmental impacts. In effect, this benefit is equal to the avoided costs associated with damage to the environment.

The value of this benefit is significant. The NSW Government provides guidelines¹⁸ for valuing preservation based on research that has estimated people's willingness to pay (WTP) to preserve biodiverse environments. For example, the recommended¹⁹ value for preserving grassy woodlands is an annual value (in 2022 dollars) of \$0.07 per household per square kilometre (applied to 50% of households). This equates to around \$0.4 billion per year. While great care is required in applying such values, the results provide an indication of the order of value people place on preserving the catchment environment.²⁰

The Special Areas are also home to some sites of cultural significance. Thus, an additional benefit of the Special Areas is in preventing damage to these areas.

¹⁸ Department of Planning and Environment (2023a).

¹⁹ *Ibid* (pp. 39-40).

²⁰ For example, surveys used to estimate people's WTP for preservation are typically conducted over only a marginal range. The results would not be expected to be reflective of preserving all land within the catchment.

3.2.1.3 Alternative land-uses

The key 'cost' associated with regulating activity in the Special Areas and Controlled Areas and catchments relates to limiting the use of the land covered by the Regulation. The Special Areas and Controlled Areas have potential value for alternative uses.²¹ These alternative land-uses include:

- recreational uses such as:
 - walking, fishing and non-powered boating, which is currently allowed only in some Schedule 2 lands
 - mountain biking, which is currently allowed in limited areas in the Woodford Special Area (which is no longer used for water supply), Narrow Neck Trail and some designated recreational areas.²²
 - other activities which are generally not allowed including powered vehicle use, which are prohibited on Schedule 1 and Schedule 2 lands
- commercial activities, such as farming and mining
- other activities such as waste disposal that are currently disallowed.

Of note, a feasibility study is underway to consider options for increased recreation opportunities at Prospect Reservoir (which is within a Special Area). As noted in the project discussion paper, maintaining the integrity, security, safety and quality of Sydney's drinking water is a key consideration and any changes to allow recreation in the Special Areas requires an act of Parliament.²³

3.2.1.4 Management costs

The different alternatives have a potentially significant effect on the amounts WaterNSW, and others, spend on activities to protect the catchment and manage and monitor water quality.

The WaterNSW's annual catchment management expenditure amounts to around \$25 million (refer Table 8 in the Appendix). These catchment management activities include:

- monitoring, modelling and research projects²⁴
- supporting activities relating to rural lands and sewage management and storm water management²⁵
- integrating water quality policy and practice (e.g. by providing input into development processes and provision of advice on mining activities)
- fulfilling land management responsibilities including activities relating to fire prevention, pests and weed, soil erosion, mining, cultural heritage, picnic sites at the dams and one camp site
- enforcing catchment protection laws

²¹ As noted above the Regulation has only limited relevance to developments that have received environmental planning approval.

²² These include Woodford Special Area (no longer used for water supply), Narrow Neck Trail and some designated recreational areas.

²³ Department of Planning and Environment (2023b).

²⁴ Included in Table 8 in the program 'Scientific approach'.

²⁵ Included in Table 8 in the programs 'Creating water sensitive towns', 'Ensuring water quality compatible development' and 'Increasing regenerative agriculture'.

- educating and engaging communities.

These catchment management activities may be for different purposes, including actions in relation to:

- water quality: such as fencing programs, signage requirements, education programs, surveillance activities, clean-up activities, fencing activities, surveillance programs, environmental protection functions such as fire prevention, education programs, land inspection activities
- security of catchment lands and WaterNSW assets: for example, erection of perimeter barriers and signage near WaterNSW assets, physical and remote surveillance, and working with police to respond to incidents
- general agency operations: including building internal capacity in relation to water catchment management, and devoting time and resources to building and maintaining effective working relationships with other agencies WaterNSW may draw on in managing catchment lands (for example, local councils, National Parks and Wildlife Services, the NSW Police).

In addition to catchment management, WaterNSW has a significant water monitoring program (WMP), within its catchments, storages and raw water supply system and in rivers downstream of storages. WaterNSW's annual expenditure on the WMP is around \$6.5 million. WaterNSW (2024c, p. 7) reports that the 'program incorporates locations, frequency, benchmarks or guideline values for more than 200 water quality characteristics. It includes routine and event monitoring employing field sampling, laboratory testing and telemetered 'real-time' data collection. The data collected is used to inform operational decisions and verification of water quality to demonstrate compliance.'

A reduction in the effectiveness of the Regulation would have implications for the extent, and costs, of the WMP. Due to the heightened risk, there would be an increase in the number of monitoring sites and frequency of monitoring focussed on diffuse sources where there are access points into the catchment.²⁶

The Regulation also has implications for management costs by other parties. The Regulation provides WaterNSW with functions (e.g. enforcement powers) that may otherwise be undertaken by other agencies. Thus, modification of the Regulation that impact the relative efficiency and effectiveness of WaterNSW in management activities has potential for costs to be transferred to other agencies, which would increase their compliance costs.

3.2.1.5 Other issues

Regulations often impose significant compliance costs on parties that are subject to, or responsible for administering, regulations; that is costs (including effort and money) of parties (businesses, other organisations or individuals) in complying with the regulatory requirements. Such compliance costs are often a key issue that are reviewed as part of a RIS.

²⁶ More information on the water monitoring program can be found in the Annual Water Quality Monitoring Report 2023–24: Sydney Catchment Area, available at <https://www.waternsw.com.au/water-services/water-quality/monitoring-and-reporting>.

Compliance costs are not a material issue in this case as the Regulation does not seek to impose additional requirements or functions on other parties; rather the purpose of the Regulation is primarily based around improving the efficiency and effectiveness of WaterNSW in enforcing existing obligations.

Restrictions on land-use might be considered a 'compliance cost', however these are considered as part of the alternative land-uses discussion. There are also some other possible minor exceptions. For example, under the current regulation (clause 13 (4)) a person may be asked to comply with a direction given by WaterNSW for the removal of waste. Such a direction may be viewed as an additional compliance cost. These appear to be minor matters and, regardless, have also been considered within the category of alternative land-uses.

3.2.2 Discussion of alternative options

The current regulatory approach (included the proposed approach) can be characterised as:

- the regulation of access to and conduct in Special Areas and Controlled Areas
- other provisions affecting WaterNSW enforcement powers
- the imposition of penalties for non-compliance.

These are discussed below.

3.2.2.1 The regulation of access to and conduct in Special Areas and Controlled Areas

The current approach to regulating conduct in Special Areas and Controlled Areas can be described as follows. WaterNSW's objectives relating to the catchment (which focus on promoting water quality, protecting public health and safety, and protecting the environment) are defined in the Act and therefore outside of the scope of a review of the Regulation. The current (and proposed) regulations can then be characterised as:

- establishing a default level of access and conduct that can occur in Special Areas and Controlled Areas (effectively bushwalking and non-powered boating on Schedule 2 land)
- allowing WaterNSW to modify access and conduct from the default.

The current regulation allows for WaterNSW to provide consent. WaterNSW has established guidelines and a process for providing its consent for access and conduct in Special Areas and Controlled Areas. The Regulation also allows WaterNSW to regulate conduct on WaterNSW and Crown land by way of signage (clause 17) and restrict access by way of physical barriers (clause 24).

The Regulation does not specify WaterNSW's criteria for consent, but it is guided by WaterNSW's objectives, particularly relating to promoting water quality and protecting public health and safety. WaterNSW will only give consent when there is no increase in water quality risk. This approach is consistent with the ADWG principles and approach as described above.

It is possible this approach will result in some situations whereby activities in Special Areas and Control Areas are prevented despite their societal benefit outweighing any water quality risks. Given

its role and objectives, WaterNSW may be expected to err on the side of caution and disallow any activity that increases water quality risk, even when risk is negligible.

An alternative approach would be to use the Regulation to provide for greater access for some activities that may have societal benefit. In effect this approach would be simply changing the default level of conduct allowed. As WaterNSW's objectives are fixed by the Act, the result would be a change in the level of management activity undertaken by WaterNSW to maintain the same level of water quality risk. Such an alternative was considered in previous reviews²⁷ but rejected as having a negative societal benefit. Nevertheless, this alternative is considered further below (Section 3.3.4).

Of note, there does not appear any merit in reducing WaterNSW's flexibility in modifying access and conduct (e.g. by removing the WaterNSW's ability to provide consent or deny access). There appears to be no downside to the current approach of allowing WaterNSW to provide consent where it deems it is consistent with its objectives. Any reduction in WaterNSW's ability to control activities in Special Areas and Controlled areas would lead to an increase in management cost and/or water quality risk to catchments.

3.2.2.2 The allocation of enforcement powers to WaterNSW

For efficiency and effectiveness, enforcement powers are provided to WaterNSW.²⁸ In the absence of these enforcement powers, the burden of enforcement relating to the management of water quality, environmental damage and WaterNSW water assets would be shifted to other parties that include the police force, the EPA and councils.

There appears to be no downside to the provision of WaterNSW's powers so long that they are limited to the stated purpose. The provision of enforcement powers to WaterNSW has not created concern or issues historically. There does not appear to be any realistic alternatives that might have a net benefit over the current broad approach.

3.2.2.3 The imposition of penalties for non-compliance

The regulation specifies the penalties for offences relating to the Regulation and the Act. The penalties that apply when a matter is dealt with a Penalty Infringement Notice (PIN)²⁹ are mostly³⁰ \$750 for individuals and \$1500 for corporations.

²⁷ Tooth and Heft (2013), and Tooth (2020).

²⁸ Section 65 of the Act provides for the Minister to appoint any person or class of persons to be authorised officers, including NSW Police officers and authorised officers under the *National Parks and Wildlife Service Act 1974*. As such, WaterNSW is not the only agency that can apply the offence provisions set out in the Act and Regulation.

²⁹ There are maximum penalties referred to in the Regulation which could be imposed if the matter is dealt with by a Court.

³⁰ The penalty varies for a few offences. For one offence it is \$300 for individuals and \$1,000 for Corporations and for three offences the penalties are \$1,250 for individuals and \$2,000 for Corporations.

3.3 Description of options considered

3.3.1 Option 1: The do-nothing case

Under Option 1, the Regulation would expire on 1 September 2026, and no replacement regulation would be introduced.

Under this option, WaterNSW would still be required to meet its objectives under the Act. The existing offences and penalties under the Act would also remain. Similarly, the offences that WaterNSW enforces under the POEO Act would remain, although WaterNSW would have to rely on third parties for enforcement.

The Special Areas and Controlled Areas, defined under the Act, would also exist. WaterNSW would still be jointly responsible for determining how NPWS Reserves within the Special Areas are managed.

However, the absence of the Regulation would have significant implications.

First, WaterNSW would no longer be able to undertake functions under the POEO Act for non-scheduled activities in and around the catchments. In these cases, the appropriate regulatory authority (ARA) would generally be the local council. This would likely be less effective and efficient as:

- the efficiencies from having WaterNSW resources actively managing catchments and undertaking the functions from the POEO Act would be lost
- the councils would have to increase the level of skilled resources to manage and investigate water quality to compensate for WaterNSW no longer undertaking this activity
- the councils do not have the same focussed objectives in protecting catchments and water quality.

Second, controls specific to the Special Areas and Controlled Areas would be removed, in particular:

- 'no interference with water', and 'control of pollution' regulations (Division 2) that apply to all land in Special Areas and Controlled Areas
- 'animal management' regulation (Division 5) that applies to land in Special Areas other than Excluded Land³¹
- regulations of access and conduct that apply to WaterNSW and Crown land (Division 3) including offences and penalties and WaterNSW's authority to apply them
- regulation of conduct on Schedule 1 land and Schedule 2 land (Divisions 4 and 5).

In the absence of a specific regulation granting WaterNSW powers to control land access and permissible activities in the Special Areas and Controlled Areas, WaterNSW will need to rely on the general powers granted by other relevant legislation, and by the common law. This alternative enforcement framework in relation to land access would potentially consist of:

- offences of trespass through the *Inclosed Lands Protection Act 1901* (the ILP Act) and, where this does not apply, common law

³¹ Excluded Land is defined in the Regulation. It consists of a part of the township of Nattai Village, Yerrinbool or Medlow Bath.

- the NPW Act.

Under the ILP Act it is an offence to trespass; enter lands without the consent of the owner or occupier of the land. This applies to any land that is surrounded by fence or feature that makes that makes the boundaries recognisable. Where an offence occurs, the ILP Act (sect. 4) imposes monetary fines and allows WaterNSW staff to ask for details and people to leave the lands.

However, relying on the ILP Act would be problematic for a number of reasons. First, it only provides WaterNSW with opportunities for recourse in relation to unauthorised land access, and not issues relating to the protection of water catchments. Thus, for example, in the absence of regulation, there would be no separate offence for polluting the waters or for prohibited animal management practices. Furthermore, in the absence of regulation WaterNSW would have reduced evidence seeking powers. For example, WaterNSW currently (under clause 15) may inspect any article in a person's possession on WaterNSW or Crown land.

Second, the ILP Act would provide a lesser deterrent to illegal access. The penalties under the ILP Act are lower than in the current regulation.³² In addition, enforcing the penalties are likely to be more difficult as WaterNSW would not be able to issue a PIN and consequently need to rely on court action, which would bring additional transaction costs (legal costs, delays in court proceedings, internal business administration costs etc). There would be the risk that the penalty, or threat of penalty, is not in proportion to the potential damage that could be caused.

Third, WaterNSW is the direct land owner of only some of the land in the Special Areas. WaterNSW would likely be reliant on the NPWS in managing access to NPWS reserves. Furthermore, in the absence of regulation WaterNSW would not be able to regulate currently prohibited activities (relating to pollution of waters and animal management) on private lands within the Special Areas.

On NPWS reserves, WaterNSW could, in conjunction with the NPWS, draw on the NPW Act to help achieve its objectives. However, maintaining water quality, or restricting access to lands for the purposes of maintaining water quality, is not an objective or concern of the NPW Act.³³ Furthermore, the offences in the NPW Act primarily relate to conduct within national park lands as it relates to the conservation of flora and fauna, rather than illegal entry and access. Consequently, WaterNSW's reliance on this legislation to achieve its objectives would be of limited value.

Given these difficulties, it is assumed WaterNSW would need to expend more on defensive expenditure protection of water quality, environmental management and security, including:

- increased activities to stop access to the Special Areas including:
 - erection of more physical barriers
 - more signage and educational material
 - increased level of security controls

³² The penalties under the ILP Act (Sect. 4) (for non-prescribed premises) are 5 penalty units (equal to \$550). The penalties in the current Regulation are predominantly \$750 for individuals and \$1500 for businesses.

³³ In summary the objects of the NPW Act (see section 2A(1)) are: a) the conservation of nature, b) conservation of objects, places or features of cultural value, c) the fostering of public appreciation, understanding and enjoyment of natural and cultural heritage and their conservation, and d) providing for the management of lands reserved under the NPW Act.

- increased surveillance in Special Areas
- increased efforts to detect and address water quality risk incidents
- greater use of other agencies, for example, approaching other state government agencies and local councils to negotiate agreements aimed at protecting water quality.

The loss of the Regulation would not necessarily change what activities WaterNSW and NPWS allow on the lands they control in the Special Areas and Controlled Areas. Given the objectives of the Act, WaterNSW, as owner of WaterNSW land and (via the Minister) joint sponsor of the NPWS reserves in Special Areas, would seek to ensure that currently prohibited conduct and access remains prohibited. Rather than allow increased access – in response to the increased challenge in regulating conduct – WaterNSW in conjunction with the NPWS may choose to reduce access in Special Areas.

Nevertheless, removal of the Regulation may lead to pressure to provide increased access in some Schedule 1 areas, which would lead to WaterNSW undertaking additional expenditure (e.g. in providing wastewater facilities) to help manage the risk this access creates.

The removal of the Regulation would also significantly change WaterNSW's ability to enforce what is allowed in WaterNSW and Crown land. As such, despite an increase in defensive expenditure, it is likely that there would be an increase in the use of these lands. Furthermore, as noted, the loss of regulation reduces some restrictions on private land in relation to pollution and animal management.

3.3.2 Option 2: No change

Option 2 is simply a roll-over of the existing regulation (in-effect, the status-quo).

3.3.3 Option 3: Proposed case

The proposed regulation involves a suite of fifteen amendments. These have been categorised as relating to:

- Regulatory provisions to achieve compliance and enforcement outcomes
- Other provisions affecting WaterNSW enforcement powers
- The definition and classification of the Schedule 1 and Schedule 2 lands
- Accessibility and correctness of information.

In addition, there are general changes to language and layout proposed in the new regulation to improve understanding and compliance. The entire 2020 Regulation has been re-written to align with new legislation writing styles and trends, and to ensure the drafting of the new regulation is consistent throughout. The Parliamentary Counsel's Office has also simplified and modernised the drafting of the new regulation, clarified the intent of the provisions and made it legally robust. This resulted in changes in clause numbers, wording and the re-arrangement of provisions.

Regulatory provisions to achieve compliance and enforcement outcomes

3.3.3.1 Clarify that the definition of a vehicle includes bicycles

The Regulation currently restricts use of vehicles in the Special Areas.³⁴ The definition of vehicle states that it 'includes motor vehicle and vessel' but does not explicitly include bicycles.³⁵

WaterNSW has concerns with the use of such vehicles. These include:

- People can use e-bikes and electric boats to access Special Areas faster and further into more secluded areas. Allowing more people to enter secluded areas which could have a cumulative impact on water quality.
- There are public safety issues with e-scooters (and other vehicles) in recreational areas. These include concerns of people accessing secluded areas who may not be fit enough to get themselves out if something goes wrong.
- Biking and other wheeled transport can increase erosion and damage to the habitat.

The proposal is to amend the definition of vehicle so that it clearly includes bicycles to ensure these would be subject to the same control and exclusion provisions as other vehicles.

3.3.3.2 Clarify provisions relating to gates and barriers

WaterNSW is concerned the Regulation provides insufficient protection of certain water catchment structures (fences, locks and chains) from damage. In the current Regulation, a fence falls within the definition of a "barrier" but only if it acts to restrict or obstruct access to a road, track, trail, path or similar.³⁶ In 2023/24, WaterNSW recorded 233 instances of damage to fences, gates, signs (including cut locks and chains) and over 1000 instances since the Regulation was remade in 2020.

To help address this issue, it is proposed to amend the provisions³⁷ relating to removing, interfering or damaging gates and barriers on Schedule 1 and Schedule 2 land (excluding private land) to specifically include fences, locks and chains. This will make it an offence to remove, damage or interfere with any fence, lock or chain irrespective of its location on the land.

WaterNSW expects this will contribute to preventing vandalism and damage of the infrastructure within drinking water catchment areas and deliver better compliance and enforcement outcomes.

³⁴ As noted above WaterNSW consents to biking in some specific locations.

³⁵ In this regard, the 2013 Regulation was clearer in stating that a vehicle also includes 'a trailer or caravan, whether or not it is in the course of being towed,' and 'an apparatus (other than a wheelchair, pram or stroller) that is propelled by human, animal or mechanical power, or by the wind, and is used wholly or partly for the conveyance of persons or things'.

³⁶ Clause 24(2) states that 'In this clause – **barrier** includes any obstruction that has been positioned or created, by any means, so as to restrict or obstruct access to a road, track, trail, path or the like.'

³⁷ Clause 24(1) states 'A person must not open, pass, remove, interfere with, damage or obstruct a gate or barrier on or to Schedule 1 land or Schedule 2 land.'

3.3.3.3 Damage of water storages etc

The current Regulation (clause 25) prohibits a person from damaging, defacing or interfering with any building, structure or fixture on Schedule 1 and Schedule 2 land (excluding private land).³⁸ However, there is a concern this provides insufficient protection of certain water catchment infrastructure (water storages, water mains, associated works and plant), which is at risk of vandalism.

The proposed amendment is to extend the provision (currently under clause 25 of the Regulation) relating to 'building, structure or fixture' to also include catchment infrastructure works (as defined in the Act) which will ensure it covers water supply infrastructure and delivers better compliance and enforcement outcomes.

3.3.3.4 Clarify that firewood collection is prohibited

The removal of firewood is recognised as impacting ecological integrity and protection of endangered ecological communities. This risk relates to both firewood collection and tree felling for collection.³⁹

The current Regulation (clause 25(g)) prohibits a person from damaging or removing a plant or part of a plant but does not explicitly refer to the removal of firewood on Schedule 1 and Schedule 2 land (excluding private land).

To address this, an amendment is proposed to explicitly prohibit "damaging, interfering with or removing a plant or part of a plant, **whether dead or alive**," thereby clarifying it is an offence to collect firewood on Schedule 1 and Schedule 2 land.

3.3.3.5 Enable signage to prohibit unmanned vehicles

WaterNSW is concerned that it has insufficient ability to regulate the use of unmanned vehicles (including drones) on Crown land and WaterNSW land.

Currently the Regulation (clause 25(1)(d)) prohibits a person from operating 'an unmanned vehicle (including by causing the unmanned vehicle to enter, or fly or otherwise move over, the land)' on Schedule 1 land and Schedule 2 land (excluding private land). However, WaterNSW is concerned that the Regulation is limited and not sufficiently flexible and that there may be times and locations when WaterNSW wishes to prohibit via signage, rather than permanently.

Furthermore, amendments to the wording are needed to ensure consistency between how unmanned vehicles are referred to in Schedule 1 and Schedule 2 areas.

³⁸ In addition, clause 31 prohibits destroying or maliciously damaging WaterNSW-owned structures.

³⁹ In 2003, Scientific Committee, established by the *Threatened Species Conservation Act* (TSC Act), made a Final Determination to list 'Removal of dead wood and dead trees' as a 'Key threatening process' in Schedule 3 of the TSC Act. A summary of the reasons for the determination can be found at <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2000-2003/removal-of-dead-wood-and-dead-trees-key-threatening-process-listing>. A related fact sheet can be found at <https://www.environment.nsw.gov.au/resources/nature/factsheetktpdeadwoodremoval.pdf>

To address these concerns, it is proposed to amend the provision (clause 17) enabling activities on Crown land and WaterNSW land to be regulated or prohibited by erecting a sign or notice, to include the operation of unmanned vehicles (including drones) over land and water within those areas.

Other provisions affecting WaterNSW enforcement powers

3.3.3.6 Improve WaterNSW's power to seek remediation/repair of damage caused by pollution or contamination in Special and Controlled areas

Situations may arise where WaterNSW wishes to require a person to remediate and repair damage caused by pollution or contamination on WaterNSW land; however, the Regulation currently does not include such provisions. While in theory WaterNSW could seek recompense through civil proceedings, unless it was a very large sum, such an approach is unlikely to be cost effective in practice. To address this issue an amendment is proposed to provide WaterNSW with a power to direct a person to remediate an area affected by pollution or contamination.

3.3.3.7 Improve WaterNSW's power to recover costs related to removing property left without consent in Special and Controlled areas

Occasionally WaterNSW needs to remove property left without consent in Special and Controlled areas. Currently, the Regulations do not include provisions enabling WaterNSW to recover its costs for the removal. As with the prior proposed amendment, seeking recompense through civil proceedings is unlikely to be cost effective.

To address this issue, an amendment is proposed to enable WaterNSW to recover its costs incurred as a result of the removal, impoundment, disposal or sale of property (including stock or other animals and things) not authorised or unlawfully left in an area.

3.3.3.8 Address incongruity between the Regulation and the concurrence provisions of the SEPP-BC

WaterNSW has a concurrence role under the SEPP-BC requiring it to consider whether a development will have a neutral or beneficial effect on water quality. However, in assessing developments as part of that role, WaterNSW cannot also consider requirements of the animal management provisions set out in the Regulation for special areas.

This creates a situation where WaterNSW might concur to a development under the SEPP- B&C that could be in breach of the animal management provisions of the Regulation.

To address this issue, it is proposed to amend provisions relating to buildings and structures used for animal management on Schedule 1 or Schedule 2 land to limit the application of the offence provisions to works undertaken without the consent of WaterNSW or in accordance with a licence, consent or approval granted under the POEO Act or EPA Act.

Of note, the amendment offers a temporary fix for the incongruity between the Regulation and planning instruments. A more enduring solution would be to amend the relevant planning legislation, particularly the SEPP-BC to ensure that permissible development is aligned with activities that are

restricted or prohibited by the Regulation and the broader role of the WaterNSW Act in protecting the ecological integrity of the declared catchment area.

3.3.3.9 Increase penalty notice amounts

The current penalty notice amounts were set 5 years ago when the Regulation was remade. Over the last 5 years there has been 20 per cent general inflation in prices.⁴⁰

While current level of penalties in the Regulation largely aligns with similar penalties under the regulations under the POEO Act, for some offences the POEO Act penalties are significantly higher. For example, the penalty for 'illegal dumping of waste or litter in a sensitive place' under the relevant POEO regulation⁴¹ is \$2,500 for individuals. The penalty for similar offence under the Regulation (in contravention of cl. 13) is \$750. Furthermore, higher penalties may be justified due to the relative high costs of detection and the relatively high potential impacts associated with breaches of the Regulations to the water supply and surrounding environments. To reflect inflation and to that ensure the effect of penalty is sufficient it is proposed that the penalty notice amounts are increased as follows. Penalties:

- for individuals which ranged from \$300 to \$1,250 have been increased to range from \$450 to \$1,500 (most increasing from \$750 to \$1000)
- for corporations which ranged from \$450 to \$2,000 have been increased to range from \$1,500 to \$4,000 (most increasing from \$1500 to \$2000).

3.3.3.10 Remove the power to remove people by force

The Regulation (cl. 19(3)) allows an authorised officer to use 'reasonable force' to remove a person who contravenes the Act or Regulation from the Special Areas or Controlled Areas.

This power is not in line with modern practice or safety for WaterNSW staff. If force is required, it is appropriate to call the police. Consequently, it is proposed that the power be removed.

Definition and classification of areas

3.3.3.11 Address inconsistent and unclear definitions of Controlled Areas.

Currently there is an inconsistency as to how Controlled Areas are defined in the Regulation and the Act. The Act enables Controlled Areas to be declared by order published in the Gazette (s. 54(1)). However, the Regulation (Schedule 1) describes Controlled Areas with no reference to the Gazette as follows:

All Water NSW land on or in which there are any one or more of the following—

- (a) water transfer structures (being canals, tunnels, pipelines, water mains or drainage channels),*

⁴⁰ Measured as growth in the consumer price index for Sydney for the 5 years to March 2025.

⁴¹ POEO (General) Regulation 2022 (s. 144AE(2)).

- (b) roads,
- (c) a device that is used to monitor water and infrastructure associated with that device.

The above approach contrasts to how Special Areas are described in the Regulation. As with Controlled Areas, the Act enables Special Areas (s. 47(1)) to be declared by order published in the Gazette; however, the Regulation (Schedule 1) describes Special Areas by specifically naming the portions of land with reference to the relevant proclamation in the Gazette.

It is proposed to remove the above inconsistency by amending Schedule 1 to list Controlled Areas in the same manner as Special Areas; that is by listing Controlled Areas with reference to the relevant proclamation in the Gazette.

This amendment will address an inconsistency between the Act and the Regulation.

3.3.3.12 Reclassify an area below Warragamba Dam

Currently the area immediately downstream of the Warragamba Dam wall is classed as a Controlled Area on the south-east bank and Schedule 2 land on the north-west bank. Consequently, the public may access the west bank using non-powered water vessels and for recreation, including fishing.

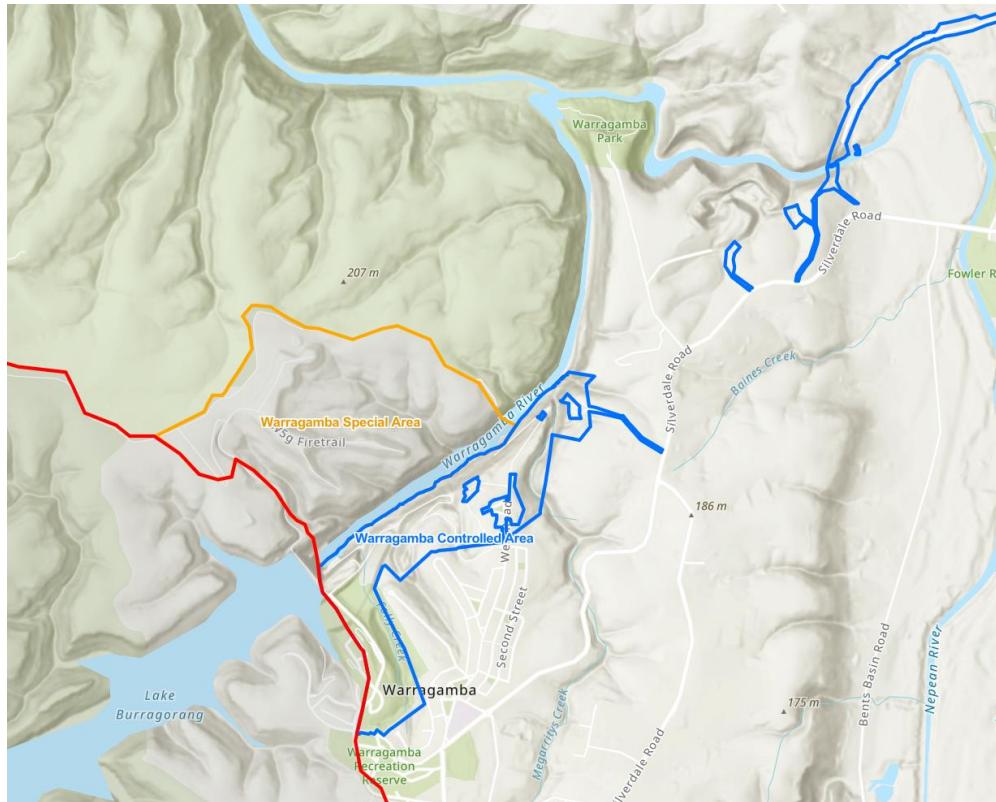
WaterNSW is concerned that access to this area creates unwarranted risks, including:

- vandalism and damage to the base of the dam wall, tunnel, dissipator pool and weir
- risks to public safety during water release events.

To address these risks, it is proposed to change the classification of the Special Area immediately downstream of the Warragamba Dam and upstream of, and including, the weir from a Schedule 2 area to a Schedule 1 area (labelled as the Warragamba Special Area in Figure 2 below) to introduce a higher level of public access restriction. The proposed area is approximately 157 hectares in size and is wholly owned by WaterNSW. It is only accessible by people who make their way up the river.

This change may affect a small number of people who wish to fish from, or just visit, the location. However, there are alternative accessible fishing spots, off the Warragamba River and Nepean River near the area labelled Warragamba Park in Figure 2.

Figure 2: Proposed area to be converted from Schedule 2 to Schedule 1.



Note: The road leading to Warragamba Park is Norton's Basin Road.

Figure 3: View from atop of Warragamba Dam.



Note: The proposed area to be converted from Schedule 2 land to Schedule 1 land is to the left of the water.

Management of information

3.3.3.13 Remove notices from the public register when withdrawn or revoked

In accordance with clause 8 of the Regulation and section [308](#) of the POEO Act, WaterNSW, as the Regulatory Authority, must maintain a public register⁴² that details each environment protection notice issued, each penalty notice issued and convictions in prosecutions under the POEO Act.

Some of the environmental protection notices previously issued have been withdrawn or revoked. However, there is no provision in the Regulation to remove these from the public register. This can cause unjustified reputational damage for persons and businesses who are named on these notices.

The proposed modification is to include a provision that – consistent with the POEO Act (Sect 308 (4)) – enables WaterNSW to remove environmental protection notices from the public register that are no longer in force because they have been withdrawn or revoked.

3.3.3.14 Remove reference to public register being at WaterNSW office

Currently the Regulation (cl. 8(3)) requires that [emphasis added]

A copy of the register is to **be available for inspection at the principal office** of the Regulatory Authority [WaterNSW] during ordinary office hours and on the website maintained by the Regulatory Authority.

As the register is available on the website, the requirement to have a copy available for inspection at WaterNSW's office is both an unnecessary and inefficient use of WaterNSW resources.

The proposed modification to remove reference to a copy of the register being available at the office of WaterNSW.

3.3.3.15 Reference to maps at WaterNSW office

The Regulation (Schedule 1) specifies that the Schedule 1 Areas are [emphasis added]

shown on the map marked "Schedule 1 Areas" **deposited in the office of Water NSW**.

While the maps are available on the WaterNSW website,⁴³ the requirement to have them 'deposited in the office of Water NSW' is both an unnecessary and inefficient use of WaterNSW resources given that they are now digitally produced.

The proposed modification is to amend the Regulation so that Schedule 1 lands (and any other areas relying on maps to define the restricted areas) can be published on the WaterNSW website rather than having to be physically deposited in the office of WaterNSW. This is in line with modern

⁴² https://www.waternsw.com.au/_data/assets/pdf_file/0017/171026/Water-NSW-POEO-Public-Register.pdf

⁴³ [Special Areas - Public Map](https://nula.waternsw.com.au/portal/apps/experiencebuilder/experience/?id=209dcb0ddf81449e97896a804d2077b1)
<https://nula.waternsw.com.au/portal/apps/experiencebuilder/experience/?id=209dcb0ddf81449e97896a804d2077b1>

legislative practice. Also is more helpful to members of the public to access the map (noting that WaterNSW offices are not public facing).

4. Costs and benefits of each option

4.1 Approach

Consistent with the RIS requirements, the alternative options are evaluated by consideration of the costs and benefits associated with the proposed regulation and alternatives.

Option 1 is the base-case from which other options are compared. However, for ease of presentation, we estimate the costs and benefits of Option 2 (the status quo) by considering the implications of the base-case (Option 1 – no regulation) relative to the status-quo. The sub-options contained in Option 3 are largely independent of each other and are considered as an increment to Option 2.

The costs and benefits have been estimated with assistance of the WaterNSW. While there is significant subjectivity in the assessment of most amounts, we do not consider these to be material to the conclusions of the evaluation.

As some costs and benefits are measured over different periods, it is necessary to compare amounts in terms of a present value (PV). For discounting future costs, a twenty-year period and a discount rate of 5 per cent is used.⁴⁴ Costs and benefits for each discrete change are estimated in terms of a net present value (NPV).

4.2 Option 1

Option 1 is considered the base case and as such there are no costs or benefits to evaluate.

4.3 Option 2: Roll-over of existing regulation

Under Option 2 the current regulation would be rolled over and continue to be in force from 1 September 2026. As this represents a 'status-quo' scenario, all current activities and expenditures would be maintained at their current levels.

To evaluate the costs and benefits of Option 2 relative to the base-case (Option 1 – No regulation) we consider the effect of removing the Regulation. If this were to occur, the key changes to the status quo would likely be:

1. an increase in defensive expenditure by WaterNSW on protecting the catchment areas and addressing water quality risks
2. a residual increase in risk to water quality and environmental and cultural value of the Special Areas
3. a change in value from land-use, primarily relating to an increase in (illegal) activity on WaterNSW and Crown lands in Special Areas.

⁴⁴ This is consistent with the NSW Treasury guide to economic analysis (NSW Treasury 2023). Also consistent with this guide, analysis using discount rates of 3 per cent and 7 per cent has also been undertaken.

Items 1 and 2 represent a net cost relative to the status-quo (and thus represent a benefit to Option 2). Item 3 involves some cost and benefits. As discussed earlier, there do not appear to be any material compliance costs associated with the Regulation. These items are discussed in more detail below.

4.3.1 Defensive expenditure

A starting point for estimating the change in WaterNSW's defensive expenditure is its current annual expenditure for catchment management. Budgeted operational expenditure for 2024-24 (FY25) (shown in Table 8 in Appendix 1) amounted to approximately \$25 million; around \$17 million of which with relevance to the Regulation.

If there was no regulation, WaterNSW would increase its catchment management expenditure and activities to mitigate the additional risks arising as result of losing the Regulation. An indicative assessment of the additional expenditure is summarised in Table 5 below categorised into areas of:

- protection
- surveillance and enforcement
- remediation and monitoring
- other general costs.

Some of this cost includes additional costs imposed on other agencies (e.g. local councils).

Table 5: Increased management costs associated with removing regulation

Management activity	Response /assumptions	Estimated cost (\$ millions)
Protection		
Increased fencing, barriers and signage	<p>Increased fencing requirements, including both 'human-proof' fencing, stock fencing, general fencing for boundary marking purposes.</p> <p>Additional expenditure on locks/ barriers</p> <p>Existing signs would need to be modified to reflect changes. Increase signage to control access and conduct to catchment areas.</p>	<p>\$1m capital (\$0.8m fencing +\$0.2m for signage)</p> <p>\$0.1m ongoing due to damage</p>
Education programs	Increased education programs and materials to promote awareness and understanding of permitted and prohibited access and conduct in relation to catchment areas, and about the impacts of activities on water quality.	\$0.5m per annum increase (likely including capex and opex)
Surveillance and enforcement	<p>Surveillance and enforcement costs would increase due to:</p> <ul style="list-style-type: none"> • increase in patrols 	\$0.6 m per annum increase

Management activity	Response /assumptions	Estimated cost (\$ millions)
	<ul style="list-style-type: none"> increased cost due to use of other agencies in patrols (e.g. local councils and police) increased use of surveillance cameras some increase in compliance costs. 	

Remediation / monitoring

Fire prevention and monitoring	With loss of regulation assume this WaterNSW expenditure would need to increase due to higher risk. Estimated additional \$0.6 million per year for fire patrols and rapid response to unauthorised fires. This excludes the cost/risk of a large fire.	\$0.6m per annum increase
Clean-up of illegal dumping	Additional expenditure to deal with the clean-up of illegal dumping. Assume this significantly increases with loss of regulation.	\$1M per annum increase
Water quality monitoring programs	Assume need an additional 25 (range 20-30) water quality sites requiring an additional \$82k capital per site plus \$6k/year for renewals and \$0.26m per year operating cost (for visits and sampling) for all sites.	\$2.05m in capital (one-off) \$0.45m per annum increase

General costs

NPWS arrangement	Increased fund to support activities on NPWS lands (including for staffing and wastewater facilities)	\$0.25m per annum increase
Interagency costs	<p>Increase in staff positions required to establish and maintain arrangements across agencies.</p> <p>Assume (at least) a doubling (from 2 to 4 FTE) of staff positions required to establish and maintain arrangements across agencies. Estimated cost of \$0.1m per FTE per annum.</p>	\$0.2m per annum increase
Total	<ul style="list-style-type: none"> \$3.05m capital (one-off) \$3.7m per annum increase Combined NPV \$51m (over 20 years at 5% real discount rate) 	

4.3.2 Change in risks to water quality

Under a no regulation scenario, it is likely that despite the increased defensive expenditure on maintaining water quality by WaterNSW, there would still be a residual increase in the risks associated with poor water quality. This is because despite the increased expenditure on prevention, surveillance, remediation and monitoring it is expected there will be some increase in undesired access in Special Areas and increase in risks to the broader catchment.

The potential costs of diminished water quality are significant. As noted in Box 3 (page 11), the costs of the 1998 Sydney water incident – which involved no loss of life – has been estimated at around \$690 million.

The costs of diminished water quality will be determined by changes in frequency and severity of a water quality incident. If it is assumed that the change in access and conduct under a no regulation scenario results in an increased frequency and severity of water quality incidents, then the costs will be very high. The 2013 and 2020 RIS used an indicative estimate for the residual costs by considering:

- the cost of a 1 in 200 year increase in the likelihood of event similar to the 1998 crisis. Applying the \$690 million estimate this is equal to around \$3.5m per year (an NPV of \$45 million over 20 years)
- the additional (in excess to that considered in the table above) defensive surveillance expenditure to further control illegal access to remove the residual risk. WaterNSW staff indicatively estimated doubling the annual cost included in the table above; that is an additional \$3.7m (an NPV of \$44 million over 20 years).

An increase in (illegal) activity in the Special Areas may also result in costs associated with impacts on WaterNSW's ability to meet its statutory obligations to protect the environment under other legislation such as the *Biodiversity Conservation Act 2016*. While WaterNSW's increased defensive measures would help to mitigate these impacts, there may be some small residual risk. These may include:

- costs associated with the loss of ecological integrity and values arising from the impacts of erosion, land clearing, physical damage to flora and fauna, and the spreading of weeds and foreign species
- the potential loss of sites of heritage and cultural value due to illegal access and conduct (for example, vandalism to historical sites)
- the potential negative impact on the ability to undertake scientific studies of preserved areas, due to ecological degradation and malicious damage to scientific monitoring equipment.

Nevertheless, we judge that these costs of these residual risks to be negligible compared to the water quality risk.

4.4 Option 3: Proposed regulation

As described in section 3.3.3 above, Option 3 involves fifteen specific amendments to the current Regulation. The proposed changes have been costed separately as incremental changes to Option 2.

Each of the amendments is minor in nature and is unlikely to have any measurable impact that might be quantified.

A summary of each amendment, assessment of the rationale of each and the net benefit/cost is provided in the table below. Each amendment has a benefit to:

- WaterNSW (all items with exception of item 13) in:
 - reducing its costs (or risk of cost)
 - improving its effectiveness in meeting its objectives under the Act
- the broader community (items 10, 12 & 13).

None of the amendments impose a material cost on WaterNSW. The broader community is only affected to the extent that they are restricted from undertaking activities that WaterNSW wishes to restrict in meeting its objectives.

Table 6: Option 3 amendments and net benefit/cost relative to Option 2 Amendment Rationale Net benefit/cost

Amendment	Rationale	Net benefit/cost
Regulatory provisions to achieve compliance and enforcement outcomes		
1. Clarify that the definition of a vehicle includes bicycles	Current definition is vague	No cost and negligible but clearly positive expected benefit
2. Clarify that it is an offence to remove, interfere with or damage fences, locks and chains in Special Area and Controlled Area lands	Reduce vandalism and damage	No cost and negligible but clearly positive expected benefit
3. Clarify that damaging, defacing or interfering with water catchment infrastructure is prohibited	Reduce risk of damage to catchment infrastructure (e.g. water storages, water mains, associated works and plant)	No cost and negligible but clearly positive expected benefit
4. Clarify that collection of firewood (i.e. dead plant material) is prohibited	Improve protection of habitat	No cost and negligible but clearly positive expected benefit
5. Enable signage to prohibit unmanned vehicles	Increase flexibility for WaterNSW to manage risks associated with drones	No cost and negligible but clearly positive expected benefit

Amendment	Rationale	Net benefit/cost
Other provisions affecting WaterNSW enforcement powers		
6. Improve WaterNSW's power to seek remediation/repair of damage caused by pollution or contamination	Provide additional incentives to reduce illegal activity and reduce WaterNSW's costs	Clear net benefit associated with reducing frequency of illegal activities and reducing the costs to address damage cause by illegal activities
7. Improve WaterNSW's power to recover costs related to removing property left without consent	Provide additional incentives to reduce illegal activity and reduce WaterNSW's costs	Clear net benefit associated with reducing frequency of illegal activities and reducing the costs to address damage cause by illegal activities
8. Address incongruency between Regulations and SEPP-BC	Remove unnecessary conflict between the Regulation and planning controls.	Clear benefit in removing a cost to WaterNSW and affected property owners should a conflict occur
9. Increase penalty notice amounts	Reflect increases in inflation and ensure the penalties provide sufficient incentive for compliance	No cost and small positive benefit in reducing offences
10. Remove WaterNSW's power to remove people by force	Current power not in line with modern practice or safety for WaterNSW staff. If force is required, it is appropriate to call the police	No cost and negligible but positive expected benefit
Definition and classification of the Special Areas		
11. Address inconsistent approach to defining Controlled Areas	Remove an inconsistency as to how Controlled Areas are defined	No cost and negligible but clearly positive expected benefit
12. Reclassify area below Warragamba dam	Reduce unnecessary risks to safety during water releases and prevent vandalism	Clear net benefit on basis of: <ul style="list-style-type: none"> negligible inconvenience to those wishing to access the area (given nearby alternatives)

Amendment	Rationale	Net benefit/cost
		<ul style="list-style-type: none"> positive benefit to WaterNSW and community in risk reduction. <p>Given the presence of existing signage, the costs to WaterNSW to implement the change would be negligible (in order of \$3,000)</p>

Management of information

13. Remove notices from the public register when withdrawn or revoked	Avoid unjustified reputational damage to individuals and businesses	No cost and negligible, but positive, benefit to the community.
14. Remove reference to the public register being available at the office of WaterNSW	Reduce an unnecessary and inefficient requirement given it is accessible on the website	Small cost saving and thus positive benefit
15. Remove reference to maps being deposited at the office of WaterNSW	Reduce an unnecessary and inefficient requirement given it is accessible on the website	Small cost saving and thus positive benefit

4.5 Conclusion and evaluation of alternatives

The purpose of the Regulation is to support WaterNSW in efficiently and effectively meeting its objectives under the Act.

The preferred option for ensuring that WaterNSW meets this objective under the Act is to make the proposed regulation (Option 3).

The preferred option has some advantages over the existing regulation (Option 2) and is clearly preferred to the 'no regulation' (Option 1) alternative. No other options were identified.

The conclusions are not sensitive to any reasonable modifications to the assumptions made.

Table 7: Summary comparison of options

	Net benefit relative to Option 1 (base case)	Note
Option 1 – No regulation	Not applicable as Option 1 is the base case.	
Option 2 – Rollover of existing regulation	<p>Substantial positive net benefits.</p> <ul style="list-style-type: none"> Management cost savings ~\$51 million NPV Reduction in water quality risks (in order of \$45 million NPV) <p>Total benefits in excess of \$90 million NPV.</p>	<ul style="list-style-type: none"> Includes costs to WaterNSW and other agencies
Options 3 – Proposed regulation	Same as Option 2 plus additional unquantified net benefits.	<ul style="list-style-type: none"> Each proposed amendment has a clear net benefit None of the proposed amendments impose material costs.

5. Consultation process

5.1 Context for consultation

Consistent with the requirements of the SL Act⁴⁵, the section outlines the process for consultation.

In formulating the public consultation program, DCCEEW has had regard to the nature and extent of the changes proposed. It has also considered that:

- The proposed regulation involves minor change to the existing regulation.
- There has been limited prior interest in the Regulation
 - There were only seven submissions received on the draft 2020 WNSW Regulation. These included four submissions from public institutions, a mining company operating in the Special Areas and two individuals. The submissions were reviewed and resulted in some minor amendments to the proposed regulation.
 - There was a review in 2020 the (then) NSW Department of Planning, Industry and Environment conducted a five-year statutory review of the *Water NSW Act 2014*. None of the submissions to the Act raised matters relevant to the Regulation.

5.2 Consultation plan

Consultation involving a public exhibition of the proposed regulation and the RIS is expected to be conducted by DCCEEW in first quarter of 2026. The consultation process will include notifying stakeholders, including government agencies and the community at large, about the review at the commencement of the public exhibition period. It is proposed this communication will include:

- a notice in the Gazette and in a daily newspaper
- electronic direct messaging (EDM) to key stakeholders advising about the public exhibition of the proposed regulation. These stakeholders include:
 - NSW Government agencies
 - local councils
 - peak environment/conservation groups
 - local Aboriginal organisation groups
 - recreational groups
- social media advertisements and messaging
- an article in DCCEEW's external monthly *Water News* publication, which has a large number and wide range of interest group subscribers
- public exhibition information to be made available on the DCCEEW website with a corresponding link from the WaterNSW website

⁴⁵ The SL Act Schedule 2 clause 1 (f) requires that the RIS includes 'A statement of the consultation program to be undertaken.' The SL Act section 5(b) states that 'Consultation is to take place with appropriate representatives of consumers, the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule.'

- internal (to DCCEEW and WaterNSW) publication.

Public notices will state the objects of the proposed regulation, advise where the RIS may be obtained or inspected, and invite comments and submissions within a specified timeframe. As per the requirements of the SL Act, the draft regulation will be on public exhibition for a minimum of 21 days.

The consultation process will also include DCCEEW with WaterNSW hosting a public webinar (including question and answer) on the proposed regulation.

It is proposed that following the consultation process there will be additional communication to stakeholders informing them of the publication of the revised regulation. This communication will likely include:

- updated information on the DCCEEW and WaterNSW websites
- EDM to consultation participants advising of the publication of the revised regulation
- EDM to other stakeholders (who may not have participated in consultation) advising of the publication of the revised regulation.

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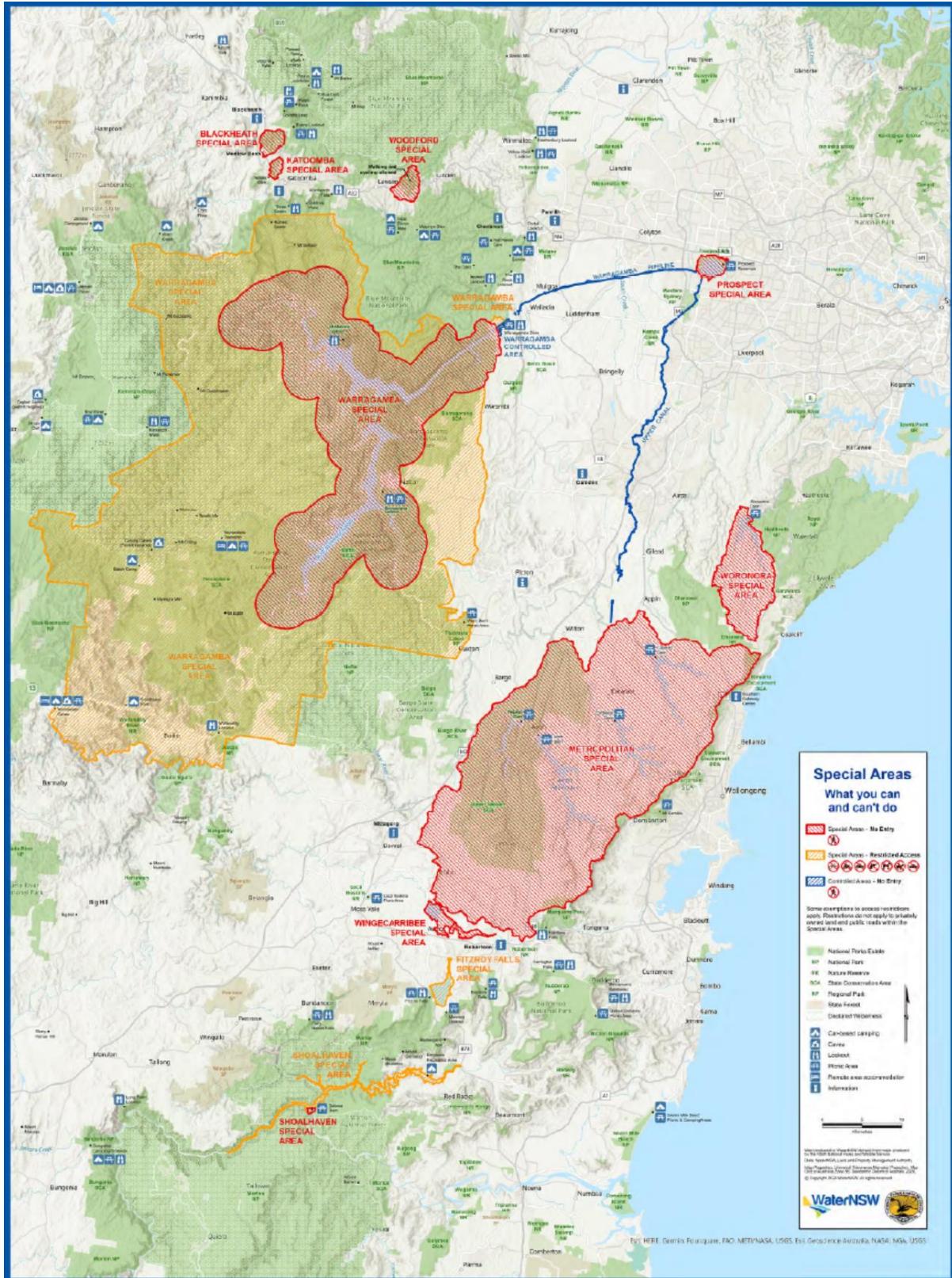
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Appendix A Background information

Figure 4: Map of the Special Areas



Source: <https://www.waternsw.com.au/water-services/catchment-protection/protected-and-special-areas>

WaterNSW Consent Guidelines

Box 4: WaterNSW's Guidelines for consent to enter Special Areas and Controlled Areas

WaterNSW will only grant consent to enter these lands for individuals, companies or groups who can show that their proposed activity meets ALL of the below standard assessment criteria and specific criteria for the relevant category:

- It is for an activity that cannot be carried out elsewhere
- It is for an activity or purpose that will benefit WaterNSW's management of the Special and Controlled Areas, or provide a broader public benefit
- It will not compromise the integrity, operation or management of any WaterNSW infrastructure or catchment areas
- The activity will not:
 - lower the quantity of water in the water storages or catchments
 - lower the quality of surface and groundwater inflows to water storages or catchments
 - have a negative impact on the ecological integrity of the Special Areas.
- Must meet the requirements under one of the permitted categories.

The permitted categories related to:

- Research
- Cultural connection
- Managing public utilities
- New developments and activities
- Managing public utilities
- Investigations or environmental assessments
- Military and emergency services training
- Filming, photography or media
- Environmental and conservation activities
- Vehicle or motorised watercraft use
- Other access

Source: <https://www.waternsw.com.au/water-services/catchment-protection/protected-and-special-areas>

Table 8: WaterNSW Catchment Management Budget FY25

Program / activity	Budget (\$'000)	Relevant to the Regulation
Scientific approach	2,779	Unlikely
Creating water sensitive towns	1,334	No
Ensuring water quality compatible development (undertaking assessments)	1,751	No
Integrating water quality policy and practice	566	Minor relevance
Increasing regenerative agriculture	2,622	No
Fulfilling land management responsibilities	14,344	
<i>Fencing</i>	180	Yes
<i>Land management</i>	3,394	Yes
<i>Regulation Heritage Mgt Act</i>	384	Minor relevance
<i>Management of Recreation Areas</i>	2,343	Some relevance
<i>Fire Programs</i>	4,088	Yes
<i>Erosion Control</i>	205	Minor relevance
<i>Pest and Weed management</i>	1,337	Yes
<i>Roads and Trails</i>	512	Yes
<i>Special Areas and Freehold Lands</i>	1,324	Yes
<i>Maintain Portable Plant & Equipment</i>	207	Minor relevance
<i>Opex Contamination & HBM Management - GS</i>	38	No
<i>Health and Safety</i>	209	Some relevance
<i>Training Operational - WNSW</i>	122	Yes
Enforcing catchment protection laws	938	Yes
Educating and engaging communities	965	Yes
Total	25,298	
Of relevance to the Regulation (at least minor relevance)	16,774	

Source: Provided by WaterNSW.

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