

DCCEEW Waters response to the Natural Resources Commission recommendations for the Water Sharing Plan for the Gwydir Unregulated River Water Sources

This document outlines how the department is responding to the independent review of the *Water Sharing Plan for the Gwydir Unregulated River Water Sources 2012* under S43A of the *Water Management Act 2000*. The department is currently publicly exhibiting a draft replacement plan.

Water sharing plans (plans) are statutory instruments under the *Water Management Act 2000* (the WM Act). They prescribe how water is managed to support sustainable environmental, social, cultural and economic outcomes. They intend to provide certainty regarding rules for water sharing for water users over the life of the plan, which is typically 10 years unless they are extended.

The *Water Sharing Plan for the Gwydir Unregulated River Water Sources 2012* (the 2012 plan) is due to expire on 30 June 2025. The Department of Climate Change, Energy, the Environment and Water (the department) is publicly exhibiting the draft *Water Sharing Plan for the Gwydir Unregulated River Water Sources 2025* (the draft plan).

The Natural Resources Commission (NRC) has a role under Section 43A of the WM Act to review plans within five years of expiry and report to the minister on:

- the extent that the plan's water sharing provisions have materially contributed to the achievement of, or failure to achieve, environmental, social and economic outcomes
- if changes to plan provisions are warranted.

The [final review report](#) is available on the [NRC's website](#).

Recommendations and suggested actions arising from the NRC review and how the department has responded in making the draft plan are outlined below. Please note that since the NRC finalised their report the department has changed its name. References to DPE Water are referring to the Department of Climate Change, Energy Environment and Water - Water Group (the department).

NRC Recommendations

Recommendation 1

The Plan should be:

- a) extended for up to two years until 30 June 2025, to allow time to complete data collection and analysis
- b) replaced by 1 July 2025, supported by the completion of these recommendations.

Department response

The department welcomes the recommendation to extend the Plan for a period of two years to provide for a draft plan based on best available information.

The department accepts this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

The current plan was extended for two years and is due to expire in June 2025.

Recommendation 2

To support sustainable extraction and improve transparency, as soon as possible in the next two years, DPE-Water should:

- a) assess the benefits and risks of establishing multiple EMUs for the Plan area and corresponding LTAAELs
- b) establish and include numeric values for LTAAEL(s) in the draft Plan
- c) prioritise LTAAEL compliance assessment using best available estimates of extraction and make this publicly available
- d) review the impact of the Plan's carryover provision on the risk of exceeding LTAAEL(s) and risk to low flows. If the risk is considered significant, only apply carryover provisions to high flow access licences.

Department response

a) The department may consider establishing extraction management units (EMUs) if evidence indicates that this is warranted to improve water management in the plan area. However, this will be difficult to determine without sufficient usage data. The department will be in a better position to consider whether separate EMUs are required after the Long Term Average Annual Extraction Limit (LTAAEL) assessments are undertaken over the next 5 years.

The department accepts this recommendation.

b) Actioned, over a longer timeframe than recommended by the NRC. The department is committed to adding numeric values for LTAAELs to the draft plan by December 2026. A provision is included in the draft plan to allow for this amendment. Any changes will have to be considered within the context of the Basin Plan sustainable diversion limits (SDLs)

c) There is currently a pilot project to investigate using remote sensing to assess the LTAAEL in inland unregulated plan areas, and priority coastal areas. The method has been piloted in the Lachlan and Richmond valleys, and then will be rolled out in the Northern inland and Clarence valleys. The results of the project will inform the extent to which valleys are likely to have exceeded / not exceeded their LTAAEL, and hence whether compliance action is required. The Lachlan pilot will be completed by end December 2024, and subject to approval, the results may then be used to consider growth in use actions.

The department accepts recommendations b) – c) in principle.

d) As stated above the department will focus on developing a method for assessing compliance with extraction limits, including developing procedures. Assessing impacts of carryover on the LTAAEL would be premature given there is limited usage information for the unregulated water sources. The ability to carryover entitlement reflects the opportunistic nature of unregulated extraction and provides some flexibility for water users to take water when available and store on farm. The assessment against the LTAAEL averages usage over the preceding 5 years. The account management rules place limits on carryover i.e. annual carryover only when entitlement has not been used and you cannot use more than 300% in a 3 year period. It should be noted that there are no high flow licences in the 2012 plan.

The department notes this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

a) It was determined changes to the EMU were not required at this time.

b) Provision included in draft plan to allow for LTAAEL to be amended. Basic landholder rights (BLR) estimates have been updated to more accurately reflect current basic landholder rights take.

Changes to the Plan

Provisions have been included to:

- determine and publish a numeric LTAAEL by December 2026.
- review the LTAAEL (by year 5) to ensure a sustainable level of take. This work will be undertaken with advice from NRC and take into account the outcomes of the Basin Plan review.
- review the LTAAEL (by year 5) to consider and adapt to climate change
- allow the plan to be amended to give effect to changes to rules as a result of the reviews

Other actions

The department is undertaking two pilot unregulated LTAAEL compliance assessments in the Lachlan and Richmond catchments. The method uses the best available information, including remote sensing data, and will be reviewed to include metering data when available. Pending the outcomes of the pilots, the method will be applied to other unregulated water sources. The department has consulted with the NRC on the project plan and intends to consult further on the pilot results, when complete.

Recommendation 3

DPE-Water should ensure the replacement Plan includes requirements for:

- a) AWDs to be set conservatively if DPE-Water does not annually make and publish a reasonable estimate of extraction and assess compliance with the LTAAEL(s)
- b) proactive AWDs to support sustainable numeric LTAAEL(s) and revision to account management rules (carryover and account limits) to support any AWD changes. These proactive AWDs should be developed in consultation with stakeholders by Year 5 of the replacement Plan.

Department response

a) & b). It would be inappropriate to include provisions that fetter the minister's discretion. The 2012 plan specifies what compliance action is to occur when extraction exceeds the plan limit, which is reducing Available Water Determinations (AWDs) for lower priority licence categories. However, the amount of the reduction is not specified in the 2012 plan as it varies depending on the amount of

exceedance, the licence category driving the growth, and results from hydrologic analysis which are peer reviewed. On this basis alone it would be inappropriate to specify set figures for AWD reductions in the draft plan. It should also be noted that setting AWDs based on the LTAAEL to entitlement ratio would impact more active users, potentially forcing them to immediately enter the market to secure additional water. This would cause unnecessary financial impacts to some licences holders without any evidence to suggest the plan limit has been exceeded. The department's priority will be to undertake LTAAEL compliance assessments.

The department notes this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

No further action required.

Recommendation 4

To support adaptive management during the next Plan period, the replacement Plan should include a provision requiring DPE-Water to:

- a) determine the sustainable levels of extraction by Year 5 based on best available ecological requirements, hydrological and historical and projected climate information
- b) use these levels to define the Plan's LTAAEL(s) for each extraction management unit.

Department response

The department will include a provision in the replacement plan to review the LTAAEL by year 5 of the plan term to ensure a sustainable level of take.

Any review of extraction limits would need to be undertaken within the framework of the Basin Plan and would likely coincide with a review of sustainable diversion limits for the Gwydir Water Resource Plan. The department will seek the advice of the NRC in this review and also consider the outcomes of a current work program informing maintenance of water supply and minimum inflows in regulated river systems. This is a key piece of work in relation to climate considerations within plans.

The department accepts this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

No further action required.

Changes to the plan

Provision added to review the LTAAEL by year 5 to ensure sustainable level of take and consideration of climate change. .

Recommendation 5

As a priority in the next two years, DPE-Water should complete a hydrological analysis to determine the impacts of the Plan's five-year LTAAEL compliance assessment rule compared to the more common three-year averaging approach. This should consider if there is a material difference between the two assessment time scales, and if the five-year time scale risks environmental or other outcomes. DPE-Water should use this analysis to inform the replacement Plan's provisions.

Department response

As stated above the department will focus on developing a method for assessing compliance with extraction limits, including developing procedures. The 5-year average used in the LTAAEL compliance assessment is considered appropriate as it accounts for the highly variable access to flows in inland unregulated systems.

The department notes this recommendation.

Action taken to address NRC recommendation in drafting replacement plan

Actions during plan replacement process

No further action taken

Recommendation 6

As part of the Plan replacement, to strengthen daily access rules, DPE-Water should:

- a) review the current hydrometric network to identify where the Plan can reference operational gauges for establishing flow classes and flow-based access rules for water sources that currently have a 'no visible' flow rule, and make improvements to gauging where necessary to prioritise high value water sources

- b) review daily access rules and amend them where required, prioritising the 17 high-value water sources at high risk from extraction – this should be informed by existing conditions in Appendix 4 of the Plan, the Gwydir Water Resource Plan’s risk assessment, the Gwydir Long Term Water Plan (the Gwydir Regulated Plan) and any other appropriate evidence
- c) amend the Lower Gingham Watercourse Management Zone A Class cease to pump thresholds to return the intended meaning to the pre-2020 Plan, with a flow rather than gauge height and recognition that the annual measure (4,000 ML per year) must occur over the previous 12 months.

Department response

a) A review of the current hydrometric network to identify suitable telemetric gauges is a standard part of plan replacement process. Where water sources have been identified as being at high risk from extraction, and a reliable gauge is available to manage extraction new access rules have been considered and changes made in relevant water sources. It should be noted that for unregulated areas there are significant gaps in the gauge network. The department can identify high priority areas for new infrastructure during hydrometric reviews, which we undertake periodically. The last inland review was published in 2022. Decisions on the installation of infrastructure are risk based and dependent on available resources for instillation, ongoing operational and maintenance funding.

This recommendation is subject to further consideration.

b) Access rules for the high-risk water sources in the 2012 plan have been reviewed as part of the replacement process.

The department accepts this recommendation in principle.

c) The rules for the Lower Gingham Watercourse have been reviewed as part of Plan remake. The department agrees there is a mistake with the wording in A-Class. Wording will be adjusted to match the intent of the rule in both Very Low Flow Class and A-Class.

The department accepts this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

- a) Potential stream flow gauges were investigated to determine if they were suitable to manage extraction based on gauge reliability, location and hydrological data.
- b) Access rules for high-risk water sources have been reviewed considering new gauges where suitable. Existing flow-based access rules were investigated and amended where appropriate.

Conditions on water access licences as identified in schedules and appendices have been reviewed for currency and functionality. Where implementation issues are identified with individual access conditions changes to these conditions may be required.

c) Matter has been resolved. See changes in the draft plan.

Changes to the plan

Copeton Dam Water Source

- Apply an access rule to licences located on Copes Creek that restricts pumping when flows at the Copes Creek at Kimberly gauge (418005) are less than or equal to 1ML/day
- Standard amendment provision to review access rules after year 5 included.

Halls Creek Water Source

- Introduce a Cease to Pump rule that restricts pumping when flows at the Halls Creek at Bingara gauge (418025) are less than or equal to 2ML/day.

Myall Creek Water Source

- Change the access rule from no visible flow at the pump site to restrict access when flows at the Myall at Molroy gauge (418017) are less than or equal to 1ML/day.

Lower Horton Management Zone in the Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source

- Increase the Cease to Pump volume from less than or equal to 4ML/day at the Horton River at Rider gauge (418015) to less than or equal to 5ML/day.

Lower Gingham Management Zone in the Gingham Watercourse Water Source

- Wording in flow class table for Lower Gingham Water Source will be adjusted to match the intent of the rule in both Very Low Flow Class and A-Class.

A standard amendment provision to review access rules in high risk water sources after year 5 of the plan have been included.

Recommendation 7

As part of Plan replacement, to protect significant wetlands and clarify operating rules for structures involved in delivering water to significant wetlands, DPE-Water should:

- a) refer to Ramsar obligations in the Plan objectives, including to maintain the ecological character of the Ramsar listed Gwydir wetlands sites

- b) update the Plan schedules to include all significant wetlands including those listed as part of endangered ecological communities, internationally, nationally and regionally significant wetlands in the Plan area
- c) address risks of not meeting Plan objectives and Ramsar obligations and water management principles under the Act. This should include consideration of where changes to Plan rules are warranted to manage risks associated with changes to the Gwydir raft to ensure that environmental water is protected from extraction and can achieve its intended purpose.
- d) ensure that interdependencies between regulated and unregulated water sharing plans in relation to significant wetlands are addressed, for example, operating rules for structures regulating flows into significant wetlands are clearly articulated and the Plan cross-references the Gwydir Regulated River Plan.

Department response

The department will continue to work with DCCEEW-Biodiversity Conservation and Science Group (BCS) and Department of Primary Industries and Regional Development Fisheries to identify wetlands to improve environmental outcomes.

- a) The objectives of the plan have been simplified as part of aligning the plans with NSW Government legislation drafting. This recommendation may be included within the Monitoring and Evaluation Reporting (MER) framework.
- b) Schedules 4 and 5 will be reviewed using the most up to date information available during the plan remake.
- c) Risk assessments do assess risk to wetlands and lagoons by including wetlands of the drainage divide of the New England Tablelands Bioregion Ecological Endangered Communities in the High Ecological Values Aquatic Ecosystems (HEVAE) and consequence assessments. The outcomes of the Gwydir Water Resource Plan (WRP) - Risk Assessment was considered as part of the remake process. The Gwydir raft issue will be investigated at a later stage to determine if it should be considered as part of the Gwydir Regulated plan review.

The department accepts recommendations a) – c).

- d) Changes to the Water Sharing Plan for the Gwydir Regulated plan are outside the scope of this review.

The department notes this recommendation.

Actions during plan replacement process

Additional wetlands have been identified and new rules to improve protection have been recommended.

Changes to the plan

- Water Sharing Plan Prescribed Wetlands - Approximately 327 additional wetlands have been identified and new rules which prohibit new surface water works and trades into and 3km upstream of internationally significant (Ramsar) wetlands and into identified wetlands have been included. Trade within these wetlands will be allowed between licences/works within the same significant wetland.
- Additional wetlands and wetlands listed in Schedules 4 and 5 of the current Plan will be displayed on a map.

Recommendation 8

As part of Plan replacement, to improve the protection of active environmental water in the Gwydir via the active management mechanism, DPE Water should:

- a) In line with the intent of existing licence conditions to protect planned environmental water from the regulated river into the unregulated water sources, review the definition of active environmental water for the Gwydir
- b) extend the list of water sources where active management applies to include the Lower Gwydir Water Source
- c) extend the active management mechanism to protect active environmental water from floodplain harvesting.

Department response

a) The department will consider whether additional protection of held environmental water (HEW) in unregulated WSPs is warranted and which mechanisms would be most appropriate. This will be guided by the current policy on protecting HEW. This policy includes a risk-based approach focussing on areas where there is a high risk that HEW will be extracted in unregulated areas.

The department notes this recommendation.

Current NSW policy is not to protect planned environmental water (PEW) when it moves from one water source to another and therefore with the exception of the existing Macquarie EWA2 account, active management is not applied to PEW.

b) The list of water sources identified to implement active management was based on advice from Commonwealth Environmental Water Office and BCS and includes water sources that currently don't receive environmental flows but may in the future. If necessary, this list may be revised during plan replacement. However, based on recent advice from BCS implementing active management in other water sources is a low priority at this stage.

c) The 2012 plan was amended on 1 July 2022 to include floodplain harvesting (FPH) water sharing rules. It does not include rules to protect active environmental water from FPH.

The department accepts recommendation b) -c).

The policy for protecting Active Environmental Water is due to be reviewed by February 2026. A range of issues will need to be considered including the next priorities for implementing active management and the implications of floodplain harvesting and whether additional rules are required to protect active environmental water from this type of extraction.

Action taken to address NRC recommendation

Actions during plan replacement process

The department confirmed with the NSW Environmental Water Manager (BCS) that the list of water sources identified for active management is appropriate and no additional water sources are required to be included.

The department is currently investigating options to protect active environmental water from floodplain harvesting when it spills overbank. Once a suitable option has been identified it is likely relevant plans will be amendment to incorporate this rule. An amendment provision will be retained in the plan to allow rules to be changed to protect active environmental water from FPH.

Changes to the plan

c) The 2012 plan already includes an amendment provision to protect active environmental water from extraction. Clause 77 allows the rules for floodplain harvesting licences (unreg) to be amended. This amendment provision will be retained in the draft Plan.

Recommendation 9

As part of the Plan replacement, ensure that the Plan's rules effectively provide for and protect connecting flows to the Barwon River to align with the Water Sharing Plan for the Gwydir Regulated River Water Source 2016's contribution to downstream flow targets.

Department response

There is an extensive suite of work underway across the department towards better understanding water flow, access and connectivity including in the Barwon Darling. The outcomes of this work may inform future work to revise the rules in various plans. It should be noted that achieving flow targets in the Barwon Darling is best achieved by restricting access to supplementary water in upstream regulated systems. Access to supplementary announcements is at the minister's discretion and a number of factors are considered before an announcement is made (including the triggers in the WSP).

The department accepts this recommendation in principle.

Action taken to address NRC recommendation

Actions during plan replacement process

See response to recommendation 10 on work being done to improve connectivity in the northern basin.

Changes to the plan

An amendment provision has been added to enable rules to be reviewed for water sources identified to support connectivity in the northern basin – see recommendation 10.

Recommendation 10

To inform the replacement Plan and ensure downstream flows are maintained to the Barwon-Darling, DPE-Water should:

- a) define the flows from the Plan water sources required to support downstream outcomes and assess whether Plan provisions support these outcomes
- b) assess the boundary between the Plan and the Water Sharing Plan for the Barwon-Darling Unregulated River Water Source 2012 (the Barwon-Darling Plan). This should include confirming the status of the six watercourses originally included in the Plan's Schedule 1 - Watercourses to which this plan does not apply.

- c) ensure the risk profile for the water source is based on full entitlement, as well as considering transfer of the Barwon Water Source to the Barwon-Darling Plan to align with floodplain management plan boundaries.

Department response

a). The Northern Basin Connectivity Program is undertaking action to enable water to flow across connected catchments of the northern NSW Murray-Darling Basin to improve downstream outcomes. The Connectivity Expert Panel was established to review the departments analysis and provide recommendations to the minister on the way forward.

The department is reviewing the panel's final findings and recommendations and considering next steps. This includes detailed hydrologic and economic modelling of all the panel's proposed changes to fully understand their potential benefits and impacts.

b) The status of the watercourses in question is clear. The watercourses described in the previous Schedule 1 of the 2012 plan are not included in the draft plan and are only included in the Barwon-Darling plan, as described in that plan. Clause 4(5)(b) of the 2012 plan states these water sources do not include water contained in the Barwon-Darling Unregulated River Water Source (as defined by the Barwon-Darling plan). Different management instruments can have overlapping or divided boundaries and still function as intended. Aligning plan boundaries to match boundaries of other management instruments will not be undertaken as part of this plan remake process. Moving water sources from one plan to another would also have implications for LTAAEL in both plans.

The department accept this recommendation in principle.

Action taken to address NRC recommendation

Actions during plan replacement process

The interagency discussions confirmed the boundaries in the 2012 plan are appropriate and change is not required.

Changes to the plan

An amendment provision has been added to enable rules to be reviewed for water sources identified to support connectivity in the northern basin to protect the water source and its dependent ecosystems across a range of flow conditions. The review is to be done for the Carole Creek, Gil Gil Creek, Mehi River, Millie Creek and Thalaba Creek Water Sources, by 2026.

Other actions

There is an extensive suite of work underway across the department to better understanding water flow, access and connectivity, across the North West including in the Barwon Darling. The outcomes of this work may inform future work to revise the rules in various plans.

Recommendation 11

As part of the replacement Plan, to ensure access is equitable within the Plan area and downstream of the Plan, DPE-Water should:

- a) include appropriate minimum cease to pump thresholds (as based on Recommendation 6b) in the body of the Plan for application to all licences in that water source or management zone, and specify that daily access conditions are mandatory conditions on access licences
- b) remove Schedule 1A of the Plan to ensure they are exempt in accordance with Clause 43(13) to extract below full pool capacity
- c) revise the AWD provisions to require reduction for the licence category which causes LTAAEL exceedance, consistent with the rules in the Gwydir Regulated Water Sharing Plan
- d) include explicit equity objectives, strategies and performance indicators.

Department response

- a) As per response to 6 a) & b)
- b) The WM Act lists a range of activities that are exempt from cease to pump (CtPs). Where a licence is exempt for these purposes it is listed in a schedule in the plan. This may be required in the future and therefore the schedule will remain.

The department notes this recommendation.

- c) The department are investigating this issue, in light of amendments for FPH.

The department accepts this recommendation.

- d) The WM Act is not clear about how to share water equitably and refers broadly about sharing water. The economic objectives and strategies in the plans have interpreted the objects by identifying the need to provide a stable and predictable framework for water sharing among water users, provide flexibility of access to water and by managing to the LTAAEL. Whilst cease to pump rules are applied to all water users of the same licence category in a water source, equitable share of water in unregulated systems is not really achieved. Unlike regulated systems where water is

ordered and deliver, as access is dependent on where a water user is located in the system, infrastructure and pump size or individual conditions on licences/works approvals.

The department notes this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

- a) See 6 a) & b)
- d) No further action undertaken

Changes to the plan

The draft plan has been amended to allow the reduction of an AWD for unregulated river or floodplain harvesting (unregulated river) access licences

Recommendation 12

To improve the delivery and protection of replenishment flows from the regulated Gwydir River into unregulated river water sources, DPE-Water should:

- a) review the adequacy and appropriateness of existing replenishment flow requirements for unregulated river water sources given projected climate change
- b) clearly stipulate the conditions under which replenishment flows are to be provided based on climate variability, domestic and stock and environmental needs
- c) ensure that the replacement Plan includes provisions that clarify how replenishment flows will be announced and protected from extraction by access licences other than domestic and stock access licences and under basic rights.

Department response

a) & b). Any review and amendment of the requirements for replenishment and the provisions which provide for their release should be undertaken as part of replacement of the Gwydir Regulated plan.

The department notes this recommendation.

c) Provisions to protect replenishment flows from being extracted for irrigation purposes will be considered during the unregulated plan remake. The Gwydir Regulated plan specifies if and when replenishment flows are provided, however the factors that WaterNSW consider when making this decision is not appropriate to be included in that plan. The department have suggested WaterNSW

develop and publish operating protocols detailing this information to improve transparency and accountability. This would be similar to protocols for managing supplementary water events.

The department accepts this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

a) and b) No further action undertaken

Changes to the plan

c) Provisions to protect replenishment flows delivered to Thalaba Creek Water Source and to Mongyer Lagoon in the Mehi River Water Source have been included in the draft plan in which restrict unregulated water access licence holders from extracting these flows.

Recommendation 13

As part of the replacement Plan, to improve the management of floodplain harvesting, DPE-Water should:

- a) align management units between the Gwydir Regulated Plan, the Floodplain Management Plan for the Gwydir Valley Floodplain and the Plan to:
 - i. quantify total extraction in each unit
 - ii. assess the cumulative impacts of unregulated and regulated floodplain harvesting extraction across the Gwydir Valley
 - iii. develop access rules to manage the cumulative risks
- b) determine the cumulative impact of the total surface water extraction across the Plan and the Gwydir Regulated Plan area and revise Plan rules to reflect the risk of extraction across the flow profiles and adequately protect the water sources
- c) include in the replacement Plan appropriate provisions for floodplain harvesting to adequately protect the water sources, their dependent ecosystems and downstream outcomes
- d) once appropriate thresholds have been defined, align daily access rules for floodplain harvesting access licences between the Plan and the Gwydir Regulated Plan for each water source or management zone to improve equity between licensees who may be accessing the same overland flows.

Department response

a) i. If appropriate management units may be aligned, however it is noted that total extraction for floodplain harvesting access licences is assessed and managed against the relevant extraction limit specified in each water sharing plan. Extraction has no linkage to the floodplain management plan, which deals with the assessment and approval of flood work approvals (not the take of water)

ii. It is important to emphasise that floodplain harvesting access licences are not different to any other category of licence. Cumulative impact is managed through a number of water sharing plan processes including LTAAEL assessment, access and trade rules

iii. Access rules are already provided in the regulated river waters source. There is insufficient information to develop access rules for floodplain harvesting access licences in unregulated water sources. However, changes to access rules for FPH may be considered as part of improving connectivity in the Northern Basin. This will be confirmed once the department has reviewed the findings and recommendations from the Connectivity Expert Panel's Report

The department accepts this recommendation in principle.b) Floodplain harvesting access licences are just one category of licence. Cumulative impact is managed through a number of water sharing plan processes including LTAAEL assessment, access and trade rules

The department accepts this recommendation.

c). There is insufficient information on which to base access rules for floodplain harvesting licences in the unregulated river water sources. See response to a)iii)

The department accepts recommendation a) – c) in principle.

d) Floodplain harvesting access licences are managed at a water source(s) scale, consistent with other categories of licence. The Connectivity Expert Panel has made recommendations regarding floodplain harvesting extraction that the department is reviewing.

The department accepts this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

Interagency discussions considered aligning boundaries of various plans but it was not determined appropriate.

Changes to the plan

An amendment provision has been added to enable rules to be reviewed for water sources identified to support connectivity in the northern basin to protect the water source and its dependent ecosystems across a range of flow conditions. The review is to be done by 2026.

Other actions

c) There is an extensive suite of work underway across the department to better understand water flow, access and connectivity, across the North West including in the Barwon Darling. The outcomes of this work may inform future work to revise the rules in various plans.

Recommendation 14

To inform the replacement Plan, DPE-Water should complete a trade analysis assessing the use of water source groupings as the basis for trading rules. This should include but not be limited to:

- a) the potential for daily access thresholds for high flow access licences which allow a set volume of trade (this requires establishment of low and high flow access licences)
- b) trade into high flows in various water source groupings while managing LTAAEL exceedance and protecting the environment, cultural values and basic landholder rights
- c) potential impacts on all flow categories including high flow dependent environmental values
- d) regulated and unregulated floodplain harvesting to assess hydrological stress and consider separate trade rules for these licence categories
- e) the latest information on connectivity, hydrological stress, HEVAE mapping and cultural assets and values
- f) interrelationships between the unregulated and regulated plans.

Department response

A review of current dealing rules will be undertaken as part of plan remake (using the best available information) to improve flexibility for water users by increasing opportunities for trading. It should be noted that current unregulated licence holders can extract during high flows. As conversion factors are not permitted in the plan, there is no real incentive for licences holders to convert to a high flow licence. Allowing people to move from low flow extraction into high flow extraction is unlikely to enhance economic opportunities as access will be far less reliable and capital investment to build on farm storages may not be feasible. This review will focus on trading at low flow as a priority.

Trading rules for unregulated floodplain harvesting licences will be reviewed during plan replacement.

The department accepts this recommendation in principle.

Action taken to address NRC recommendation

Actions during plan replacement process

A review of current dealing rules across all water sources and management zones was undertaken. Proposed trade may provide opportunities for licence holders and may reduce high hydrological stress in some water sources. Three water sources will be permitted to have limited additional trade into the water source. Recommendation for no net gain trades into high risk water sources were not supported as LTAAEL compliance assessments have not been undertaken and there is a lack of information on current usage.

Changes to the plan

Trade into Boorolong Water Source, Mackenzies Flat Water Source and Mosquito Creek Water Source will be permitted to a limit of 10ML or 15% of current entitlement, whichever is greater.

Recommendation 15

DPE-Water should remove Clause 73(a)(iii) in the current Plan to mitigate the risk of unlimited trade and all water sources should contain high and low flow trading limits.

Department response

There are no trade limits in the current plan because no trade between water sources is permitted. A review of current dealing rules and associated amendment provisions has been undertaken as part of plan remake to consider any risks from current trade rules and improve flexibility for water users by increasing opportunities for trading.

The department accepts this recommendation.

Action taken to address NRC recommendation

Actions during plan replacement process

Dealing rules and amendment provisions were reviewed as part of the replacement process. The general amendment has been removed as it is no longer needed.

Changes to the plan

General amendment provision to review trade rules has been removed.

Recommendation 16

To better achieve the Plan's Aboriginal water objectives, DPE-Water should continue its current related work, address state-wide issues identified in the Commission's water sharing plan reviews and:

- a) ensure Plan objectives and corresponding provisions are consistent with the NSW Water Strategy relating to Aboriginal peoples' rights and values and increase access to, and ownership of, water for cultural and economic purposes
- b) consult with Aboriginal stakeholders to accommodate any future native title determinations, and other water access rights for a range of desired uses, including cultural and economic uses
- c) protect high value water dependent cultural assets in the replacement Plan area, by:
 - i. undertaking detailed engagement with Traditional Owners, native title claimants and other Aboriginal groups and knowledge holders to identify high value water dependent cultural assets in the Plan area and co-design provisions to protect and support these assets
 - ii. reviewing existing provisions to consider if they provide appropriate protection, and revise if appropriate.
- d) include provisions in the replacement Plan to protect water dependent cultural assets identified in R 16(c)(i), consistent with the existing amendment provision
- e) prioritise Aboriginal cultural rights and interest when making controlled allocations and codify this process in relevant guidelines and policies.

Department response

- a) The Aboriginal Water Strategy engagement commenced in early 2024. The final strategy will include an implementation plan and state-wide actions.
- b) The department through its Aboriginal Water Program (AWP) intends to work more closely with NTSCORP (the Native Title representative body for NSW) and Native Title holders.
- c) and d) The AWP is to develop an online keeping place for knowledge about Aboriginal water dependent cultural sites, where the existing and new information can be held. While this information was not available to be considered during the replacement of this plan, it will be an important piece

of information as we replace plans in the future. The amendment provision to allow these cultural assets to be protected will be retained.

e). The department is currently developing a risk-based framework for assessing how unassigned water is managed. The framework would inform how surrendered licences are managed, and if and when controlled allocations orders should be made. Aboriginal access to water rights for cultural and economic needs will be a key factor when assessing how these licences are managed in the future. The NSW Government has in principle agreed to the Inland Water target 15c in Closing the Gap which states that ‘by 2031, 3% of national water access entitlement allocated to Aboriginal and Torres Strait Islander Corporations’.

The department accepts recommendations a) – e).

Action taken to address NRC recommendation

Actions during plan replacement process

See other action

Changes to the plan

The replacement plan can be amended to reflect the outcome of any pending Native Title claims, once determined.

Other actions

To inform these reviews of policy and licensing frameworks a pilot Cultural Watering Plan program is underway. The program enables the department to gain better understanding the Cultural (and other) watering needs of Aboriginal communities and highlights opportunities and barriers to achieving the desired outcome. Insights from this program will be used to better inform policy and planning decisions to make water more accessible for Aboriginal people.

The departments Regional Aboriginal Engagement team is dedicated to Improving consultation with Aboriginal stakeholders on water management and planning. The team have established 12 Regional Aboriginal Water Committees across NSW. The purpose of the committees is to give greater recognition to Aboriginal water rights and interests, ensuring Aboriginal people can contribute to water management. There are two committees in the far west of the state.

The department has committed to improving information provided to First Nations people about water management and access. Improved information and communication materials fosters informed participation in engagement processes and builds greater awareness for water access mechanisms. This is in line with the principles of free, prior and informed consent (FPIC) as outlined in the dept’s Indigenous Cultural and Intellectual Property (ICIP) Protocol.

The Aboriginal Water Strategy is set to provide the strategic direction to the commitments made by the department. It is proposed to be guided by 4 key priorities:

- Strengthen the role of Aboriginal people in water planning and management.
- Provide Aboriginal ownership of and access to water for cultural and economic purposes.
- Work with Aboriginal people to maintain and preserve water-related cultural sites and landscapes.
- Work with Aboriginal people to improve shared water knowledge and build capacity.

The co-design of the strategy commenced in early 2024 with Regional Aboriginal Water Committees and Peak Aboriginal Organisations with an opportunity for the public to provide input mid-year. The strategy is intended to be finalised by the end of 2024.

Recommendation 17

DPE-Water should work with councils to inform the replacement Plan regarding specific provisions to protect town water supplies, using the most appropriate gauging stations. Relevant provisions included in the replacement Plan should be applied to all relevant licences/works approvals.

Department response

The department have engaged with Uralla Shire Council to better understand the potential risks to town water supply (TWS) from unregulated extraction in the Gwydir Unregulated water sources. Review of the access rules has been considered to ensure TWSs are not jeopardised by irrigation if suitable infrastructure is available.

TWS requirements are not reviewed as part of plan replacement. Where augmentations are required to address water security issues, that program is available to assist with funding to meet community and regulator requirements, which can include new or enhanced environmental flow conditions where appropriate. The department recognises the importance of assessing risks to town water supply and will continue to engage and work collaboratively with local water utilities in the development of strategic plans to address water security requirements.

The department accepts this recommendation in principle.

Action taken to address NRC recommendation

Actions during plan replacement process

Consultation was undertaken with Uralla Shire Council to discuss potential impacts of irrigation on Uralla and Bundarra town water supplies. It was confirmed that Uralla TWS (on Kentucky

Creek) is not at risk from irrigation as all access licences are downstream of the TWS dam. Changes are proposed to a number of licences in the Moredun Water Source to provide better protection for Bundarra TWS.

Changes to the plan

Conditions have been imposed on four licences upstream of the Bundarra town water supply that restrict access unless there is a visible flow at the rock bar connection between Warrabinda Pond and Taylors Pond.

Recommendation 18

DPE-Water should:

- a) annually review the Plan's entitlement and estimated basic landholder rights volume and update these figures whenever the plan is being reviewed or amended
- b) undertake a risk assessment if the entitlement and basic landholder rights estimate changes by more than 5 percent in any water source to determine whether plan provisions remain adequate to protect the water source, the environment and basic landholder rights.

Department response

- a) The estimates for BLR and entitlement are updated each time a plan is replaced. The method for estimating BLR is greatly influenced by the number of dwellings located on waterfront land. The estimate is based on the best available information and the department is confident reviewing and updating these numbers at the time of plan replacement remains appropriate.
- b) See recommendation 2, regarding assessment and compliance with the LTAAEL.

The department notes recommendations a) – b).

Action taken to address NRC recommendation

Changes to the plan

Estimates for BLR and licensed water requirement have been updated in the draft plan based on best available information.

Recommendation 19

By June 2025, to improve Plan-specific MER, DPE-Water should:

- a) expedite the finalisation and publication of DPE-Water's water sharing plan evaluation framework and methods manuals and ensure there is multi-agency support and oversight of their implementation
- b) identify feasible and appropriate resourcing to support ongoing MER activities as outlined in the NSW Water Strategy
- c) specify timely reporting requirements of the results of MER activities to support transparency and adaptive management
- d) identify and address critical knowledge gaps to support adaptive management
- e) use the recently developed prioritisation framework to prioritise MER activities based on values and risk.

Department response

The department acknowledges there has been a lack of coordinated and plan specific MER programs as identified in Section 9 of the NRC's review report. To address this issue the department is developing and implementing the NSW Water Sharing Plan Evaluation Framework. Methods to evaluate social, economic, environmental and water quality outcomes for all water sharing plans have been developed and are being applied to evaluate water sharing plans that commenced in 2016. The department continues to engage with the NRC and BCS during the development and implementation of the framework.

- a) There are no additional resources available in 2023-25 to expedite the development of this Framework.
- b) While every effort is being made to maintain a MER program funding for plan performance assessment is allocated under IPART determination. The department may only operate within the funding envelope provided for this activity.
- (c) Provisions included in the draft plan that clarify the minister public reporting on the implementation of the draft plan, including progress against the MER plan and that evaluation reporting will be undertaken by year nine of the plan's term.

The department accepts these recommendations in principle.

- (d) It is not feasible for the department to identify and address all plan knowledge gaps by June 2025 with current resourcing. Any future work to address knowledge gaps will be prioritised based on risk and resources available across all NSW water sharing plans. The department will engage with relevant agencies and consider the knowledge gap areas identified in this report when undertaking future planning.

The department notes this recommendation.

(e) The department is using the MER Prioritisation Tool to guide decision making on evaluation effort. Noting the scale of MER the department is able to implement is wholly dependent on funding received from IPART determinations to assess plan performance.

The department accepts this recommendation.

Action taken to address NRC recommendation in drafting replacement plan

Actions during plan replacement process

During the replacement period new methods for the evaluation of plan social, economic, environmental and water quality outcomes have been developed and trialled. These methods will be used to guide development of MER plans when the plan is replaced.

Changes proposed in the draft plan partially address the NRC recommendations and reflect improvements to the department's approach under the plan Evaluation Framework.

Changes to the plan

An additional sub section has been included to require monitoring and evaluation of performance indicators. A MER plan for the draft plan will be published by December 2026. The implementation of the draft plan, including progress against the MER plan will be publicly reported on annually thereafter. In year 9 of the Plan the minister will publicly report on the results of the monitoring and evaluation undertaken

Other actions

Implementation of the MER program will commence in 2024. This will clarify the roles and responsibilities, reporting requirements, governance arrangements and timeframes associated with the program. Social, economic and environmental outcome evaluation methods have been developed and applied to pilot surface water plans and reviewed by the NRC. Work has now commenced on expanding method statements to include groundwater specific components. NSW also undertook the first benchmarking survey to collect primary data that informs evaluation of social outcomes of plans. Data was collected from communities and water users across all plan areas.