Government response to the Natural Resources Commission recommendations for the Water Sharing Plan for the Belubula Regulated River Water Source 2012

This document outlines how the department has responded to the independent review of the *Water Sharing Plan for the Belubula Regulated River Water Source 2012* under S43A of the *Water Management Act 2000*.

Water sharing plans (plans) are statutory instruments under the *Water Management Act 2000* (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 Belubula Regulated River Water Source 2012 (the 2012 plan) commenced on 4 October 2012 and expired on 30 June 2025.

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 to which 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 for the 2012 plan is available on the NRCs website. The report was completed as a combined review report with the *Water Sharing Plan for the Lachlan Unregulated River Water Sources 2012* (Lachlan WSP). Where the recommendations are specific to the Lachlan WSP they have not been included in this fact sheet.

The NRC may recommend extending or replacing water sharing plans depending on its review findings. In this instance the NRC recommended replacing the 2012 plan by no later than 30 June 2025.

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The recommendations and suggested actions arising from the NRC review and the status of the response to these actions by the Department of Climate Change, Energy, the Environment and Water, (the department), previously Department of Planning and Environment – Water (DPE-Water), are listed below.

NRC Recommendations

Recommendation 1

The plan should be:

a) extended for a further two years until 30 June 2025, to allow time to complete data collection and analysis, consultation, and development of amended provisions

b) replaced by 1 July 2025, supported by the completion of the recommendations of this review.

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

Replacement plan, the *Water Sharing Plan for the Belubula Regulated River Water Source 2025 (2025 Plan)*, made under section 50 of the *Water Management Act 2000* and commenced upon publication on the NSW legislation website

Recommendation 4

DPE-Water should:

a) review and update the replacement plan with the estimated entitlement shares and basic landholder rights volumes based on best available information

b) continue to update these figures whenever the plan is amended, or at a minimum every five years

c) undertake a risk assessment if the entitlement shares and basic landholder rights estimates change by more than 5 percent in any water source to determine whether the plans' provisions remain adequate to protect the water source, the environment, basic landholder rights and town water supplies

d) include provisions to account for the establishment of Native Title rights, water entitlements beneficially owned by First Nations and cultural flows.

Department response

a) Updating share components in the plan is a standard part of the replacement process. The data is taken from the access licence register which is the source of licencing information.

The department accepts this recommendation.

b) Estimates will continue to be updated when plans are replaced, and if estimates have changed significantly the plan may be updated to reflect the new estimates.

The department accepts this recommendation in principle.

c) The department will undertake Long Term Average Annual Extraction Limit (LTAAEL) compliance assessments for the plan area. An assessment of actual take (not entitlement) is the most appropriate information to use to determine if Available Water Determinations (AWDs) should be reduced.

The departments notes this recommendation.

d) The 2012 plan includes provisions to recognise any Native Title determinations made and requirements for water associated with that determination.

The department accepts this recommendation.

Action taken to address NRC recommendation

Share components have been updated based on the water access licence register and basic landholder rights estimates have been updated to take account of recent data sets for urban areas, numbers for houses and land use.

Other Action:

The department completed LTAAEL compliance assessments for the Belubula Regulated River Water Source for the year 2022-23. The results show current condition long term average annual extractions are less than LTAAEL and that the Belubula Regulated River Water Source is compliant with LTAAEL. LTAAEL compliance assessment for Belubula Regulated River Water Source - July 2023

Recommendation 5

The NRC recommends DPE-Water considers merging the Belubula Regulated Plan into the Lachlan Unregulated Plan and setting up a separate Extraction Management Unit for all surface water resources in the Belubula catchment as part of the Lachlan Unregulated Plan. This would require a

fundamental review of all provisions in the Belubula Regulated Plan and the Lachlan Unregulated Plan that relate to the management and accounting of surface water sources in the Belubula catchment, but would allow for more simplified, targeted and equitable access provisions.

Department response

The department acknowledges the unique features of the Belubula catchment but does not consider merging the plan will result in less complex rules nor help meeting end of system flow rules. The amendments to the 2012 plan have seen the inclusion of a first flush rule (48(2)(b)), changes to the water accounting rules and the taking of uncontrolled flows. During the plan replacement process, the department considered altering these rules to achieve better outcomes.

The department notes this recommendation.

Action taken to address NRC recommendation

Improved drafting of the plan has improved the legibility of the rules.

Recommendation 6

DPE-Water should complete the hydrological modelling for clause 33(2)(b) of the Belubula Regulated Plan and determine which of the plan's two LTAAEL definitions generate a lower value. Once the hydrologic modelling is complete, DPE-Water should:

a) determine and publish numeric estimates of the LTAAEL for the Belubula Regulated River Water Source

b) consider the feasibility of establishing one LTAAEL definition to improve efficiency and transparency and ensure that definition does not reduce environmental protections

c) undertake LTAAEL compliance assessments against the LTAAEL

d) include a provision requiring DPE-Water to determine the sustainable level of extraction by Year 5 of the replacement plan, based on best available ecological requirements, hydrological and climate information.

Department response

a) Numerical LTAAEL figures and extraction compliance reports are published yearly on the department's website.

b) A numeric estimate of the LTAAEL has been included as a note in the 2025 plan. It is standard practice to include LTAAEL as one of two options in the regulated water sharing plans with a hydrologic model: description of the approximate conditions when the plan gazetted or the Murray-Darling Basin Cap for that water source.

The department notes this recommendation. The department published the first LTAAEL compliance assessment for the current plan in 2022. This assessment uses clause 33(2)(a) of the 2012 plan as the LTAAEL.

c) A review will be undertaken by 2028. Any review of extraction limits will need to be undertaken within the framework of the Basin Plan and would likely coincide with a review of baseline/sustainable diversion limits for the Lachlan 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 recommendations a)- d).

Action taken to address NRC recommendation

The department has included a numeric value for LTAAEL as a note in the 2025 plan.

The department has included a provision in the 2025 plan to review the LTAAEL by 2028 to ensure a sustainable level of take. This work will be undertaken with advice from NRC and consider the outcomes of the Basin plan review. The 2025 plan may be amended as a result of the review.

Recommendation 8

To inform the mid-term review of clause 26 of the Belubula Regulated Plan, DPE-Water should assess extractions upstream of Beneree gauge (Flyers Creek) and determine whether extractions in Flyers Creek risk triggering the relaxation of clause 26 of the Belubula Regulated Plan more frequently.

Department response

The department reviewed the potential for an upstream weir and water extraction to impact on the downstream flow regime. The department has amended the end of system flow rule to take into account the upstream extraction.

The department accepts this recommendation.

Action taken to address NRC recommendation

The department reviewed take from upstream users and flow from relevant gauge on Flyers Creek.

The 2025 plan includes an amendment to the end of system flow rule to ensure requirements to deliver end of system flows are not affected by extractions from Cadia mine on Flyers Creek upstream of Beneree gauge.

Recommendation 9

In the next two years, DPE-Water should undertake a detailed review of the following clauses in the Belubula Regulated Plan:

- clauses 47 and 48 to simplify these provisions, and ensure take from uncontrolled flows can be appropriately accounted for consistent with the objects and principles of the Act and to ensure transparent and equitable water sharing
- clause 49 to ensure access to supplementary flows and uncontrolled flows are equitable and transparent to all water users.

Department response

The department undertook a detailed review of the access rules for taking water under supplementary events and uncontrolled flows. The drafting of the access rules was reviewed to include consistent text for when water take is not permitted.

The department along with WaterNSW investigated if there are any gaps in the water accounting for uncontrolled flows. The department reviewed current rules for supplementary flows and uncontrolled flows, noting that an existing supplementary licence holder has specific access rules.

The department accepts this recommendation.

Action taken to address NRC recommendation

Following a review, the department determined it is unnecessary to change the rules for accessing uncontrolled flows or supplementary flows.

Improved drafting of the plan has improved legibility of the rules.

Recommendation 14

As part of the replacement of the Lachlan Unregulated Plan and Belubula Regulated Plan, to deliver better outcomes for Aboriginal peoples through water management, DPE-Water must.

a) undertake culturally appropriate engagement with Traditional Owners and knowledge holders who have connection to Country in the plan areas

b) include registered Native Title claims and identify and include water-dependent cultural values and uses in the plans

c) co-design plan objectives and rules to protect Aboriginal values and uses of water

d) ensure that the definition of 'cultural practice' in the plans includes trade activities and does not restrict cultural access licences to 10 ML per application

e) ensure the plans' objectives and corresponding provisions are consistent with the NSW Water Strategy and Closing the Gap targets

f) when making controlled allocations ensure Aboriginal rights and access including Native Title are prioritised consistent with giving effect to the principles of the Act

g) improve reporting on key performance indicators that increase Aboriginal benefit including external influences (including regulatory action outcomes).

Department response

a) The department will ensure ongoing engagement with Traditional Owners, communities and relevant stakeholders for the best possible outcomes on Country.

b) The department through its Aboriginal Water Program (AWP) is working more closely with NTSCORP (the Native Title representative body for NSW) and Native Title holders.

c) The department is working with Aboriginal groups to co-design and deliver an Aboriginal Water Strategy. The design of the strategy will consider the matters raised by the NRC, including access to water. The department will ensure ongoing engagement with Traditional Owners, communities and relevant stakeholders for the best possible outcomes on Country.

d) The AWP is investigating measures through legislative and policy reforms to reform the 10ML cultural access licence. This is a state wide project and will not form part of the Lachlan unregulated river or Belubula Regulated plan replacement process.

e) The Aboriginal Water Strategy engagement commenced in early 2024. The final strategy will include an implementation plan and state-wide actions.

The department accepts recommendations a) – e)

f) 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 department accepts this recommendation in principle.

g) Further work is being undertaken by the department to development a cultural Monitoring Evaluation and Reporting (MER) framework.

The department accepts this recommendation.

Action taken to address NRC recommendation

Implementation of work under the Aboriginal Water Program and Closing the Gap relevant to recommendation is progressing.

Other Action

To inform the review 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 department's 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.

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 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 15

Insert a clause in Part 12 of the Lachlan Unregulated Plan and the Belubula Regulated Plan that enables the plans to be amended in the event that the Belubula Water Security Project is progressed during the term of the replacement plans.

Department response

The department acknowledges that there are a number of issues that should be addressed prior to a decision being made about progressing the Belubula Water Security Project. In order to address these issues, changes may be required to the plans.

The department accepts this recommendation.

Action taken to address NRC recommendation

An amendment provision to facilitate the Belubula Water Security Project and establish rules relevant to the ongoing management of water infrastructure constructed as part of the project, if it proceeds has been included in the 2025 Plan.

Recommendation 17

To inform the replacement of the Lachlan Unregulated Plan and Belubula Regulated Plan and improve plan-specific MER, DPE-Water should, in consultation with other agencies:

a) identify and address critical knowledge gaps

b) specify what MER activities will be undertaken to address critical knowledge gaps, support transparency and adaptive management of the Belubula Regulated and Lachlan Unregulated

Plans in line with the NSW Water Sharing Plan Evaluation Framework and Prioritisation Tool (i.e., prioritise MER activities based on value and risk)

c) strengthen stakeholder engagement in the lead up to and during the plans' replacement process

d) includes equity objectives and co-designed Aboriginal objectives and corresponding performance indicators

e) specifies timely reporting requirements of the results of MER activities to support transparency and adaptive management. This should include but is not limited to reporting on:

- includes reporting on environmental outcomes
- water management during extreme events that occur in the plan areas
- benefits for Aboriginal people arising from the plan provisions.

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. 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 2012. The department continues to engage with the NRC and DCCEEW - Conservation Programs, Heritage & Regulation Group (CPHR) during the development and implementation of the framework.

The department will continue to work to address knowledge gaps on a prioritised basis and with resources available across all NSW plans. The department will engage with relevant agencies and consider the knowledge gap areas identified in this report when undertaking future planning. 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 notes this recommendation.

(c) Stakeholders will be engaged during the plan replacement process. Noting recommendations on stakeholder engagement in plan development, replacement and amendment are distinct from plan performance MER activities and requirements.

The department accepts this recommendation.

(d) See response to recommendation 14.

(e) The NSW Government is committed to preparing MER plans for each plan area by 31 December 2026. A provision has been added to the 2025 plan clarifying this commitment and will also require the Minister to publicly report on the implementation of the water sharing plan, including progress against the MER plan. Additionally, the draft plan includes a provision requiring evaluation reporting to be undertaken by year nine of the water sharing plan's term.

The department accepts this recommendation.

Action taken to address NRC recommendation

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 to the plan arose from concurrence approval of the 2024 inland unregulated WSPs and reflect improvements to the department's approach under the WSP 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 plan will be published by December 2026. The implementation of the 2025 plan, including progress against the MER plan will be publicly reported on annually. 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 commenced in 2024. This clarified 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.