

What we heard report

Hunter Water Regulation remake

July 2024





Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

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1 Introduction

The Hunter Water Regulation 2015 is a statutory instrument under the *Hunter Water Act 1991*. It allows Hunter Water to regulate activities in the catchment areas and water storages; ensure compliance with plumbing and drainage standards; protect Hunter Water works or property or assets; and implement water restrictions. These powers facilitate Hunter Water's delivery of drinking water, sewerage, wastewater, recycled water, drainage and some stormwater services to more than 630,000 people across the region.

Public consultation on the draft Hunter Water Regulation 2024 closed on 14 July 2024. Seven formal submissions were received during the public consultation period (24 June – 14 July) from members of the public, and one submission from the organisation 'Future of Farming in Dungog Shire, Dungog District Chamber of Commerce'.

As part of the public consultation process, the NSW Department of Climate Change, Energy, the Environment and Water hosted an online webinar on 4 July. The webinar has been published on the consultation website, and a copy of responses to questions raised during and after the webinar has been shared with participants. The question-and-answer document is also included as an attachment to this report.

The majority of submissions supported the Regulation overall. Feedback during consultation raised the following key issues:

- Restrictions on activities in Special Areas are perceived by some stakeholders as unnecessary fetters on agricultural and other development.
- Penalties are viewed as unnecessary or mere revenue raising.

The department considered all submissions and feedback carefully in recommending changes to the final Regulation. In relation to restrictions in Special Areas, it was found the majority of these restrictions are not absolute (for example, restricted activities may occur with development consent, an environmental protection licence or approval by Hunter Water). The wording has been retained as it provides Hunter Water with the necessary oversight of developments that could impact drinking water quality, without banning lower impact activities in the area.

In response to feedback from the NSW Department of Communities and Justice and stakeholders, the department has also reviewed the penalties and adjusted them to be proportionate to the offence.

The Hunter Water Regulation 2024 is expected to commence by 1 September 2024.

2 What we heard

2.1 Key issues raised

Feedback received during consultation reflected support for the contents of the Draft Regulation overall.

Key issues raised by stakeholders included:

Issue	Feedback	Our response
Part 2 Special Areas offences are too prescriptive and should be replaced with a more outcomes-focussed approach, focussing on Neutral or Beneficial Effects (NorBE) on water quality	Six out of seven formal submissions received raised issues with Part 2 Special Areas offences. The general view expressed was this section of the Regulation was too prescriptive and should be amended to be more outcomes-focussed. The organisation the Future of Farming in Dungog Shire, Dungog District Chamber of Commerce, requested that the Special Areas prohibitions be removed, and replaced with the presumption activities were authorised provided they could demonstrate neutral or beneficial effects on water. Others similarly argued for an 'evidence-based approach that will result in a NorBE outcome'.	Additional controls apply to certain activities like intensive agriculture, aquaculture and on-site sewage management facilities in the special areas of Chichester, Grahamstown, Nelson Bay, North Stockton, Tomago Sandbeds and Williams River Catchment Areas. The intended outcome is to protect water quality in the drinking water catchments. The department concludes the Regulation is not overly prescriptive, as the development types listed in Clause 5 of the Draft Regulation are permissible with relevant approval. Council remains the consent authority for development applications received for development in the special areas. Under Section 51 of the <i>Hunter Water Act 1991</i>, Council must refer applications to Hunter Water,

		where the proposed development, in the view of Council, may significantly adversely affect the quality of the water from which Hunter Water draws its supply of water in a special area, or significantly adversely affect Hunter Water's operations, or significantly damage or interfere with Hunter Water's works. Local council is then required to take Hunter Water's comments into consideration when assessing and determining a development application.
Part 2 Special Areas Offences are an unnecessary barrier to farming and development in the catchment	Stakeholders perceived general prohibitions were an unnecessary barrier to development, agriculture and businesses in the region. 'To put a blanket ban on intensive plant agriculture is an over-reaction...with best management practices now commonplace the risk of contamination in catchment areas would be very low...' 'This is an over kill and intensive plant or livestock agriculture can produce a NorBE...it is just another example of development being hampered in the catchment area'.	The department acknowledges the perception the Hunter Water Regulation places blanket restrictions on agricultural activities in catchment areas. The Regulation is an important instrument in protecting the region's drinking water, but is not the only control. The Regulation is clear that activities can occur provided there is development approval or other appropriate forms of consent. These pathways allow certain activities to be considered by council and referred to Hunter Water for further input where required under section 51 of the <i>Hunter Water Act 1991</i>. On balance the provisions are appropriately targeted to provide Hunter Water with the necessary oversight required

		to perform their functions of ensuring safe drinking and water supply to residents.
Lostock Dam to Glennies Creek Dam Pipeline Project proposal	There was some concern expressed at the webinar, and in one formal submission, about the extension of Special Areas protections to the Paterson Valley in connection to the Lostock Dam to Glennies Creek Dam Pipeline Project proposal. Stakeholders were concerned it would impact the future use of agricultural land in the area and ability of new enterprises to be established.	Hunter Water has previously communicated publicly that it is not proposing to extend additional land use planning or catchment regulations in the Paterson Valley. This remains the case. This Regulation does not extend land use planning or catchment controls to the Paterson Valley.
Penalties are revenue raising	The majority of submissions and feedback supported the penalty provisions, including increases to amounts for failing to follow water restrictions. One submission indicated penalties generally are revenue raising. There was also a question raised at the webinar around whether the National Resources Access Regulator (NRAR) had been consulted on the penalties. The department responded NRAR does not have responsibility for penalties in the <i>Hunter Water Act</i> and Regulation, but NSW Justice provided feedback on the appropriateness of the changes.	After considering feedback from stakeholders and Department of Communities and Justice, the department has reduced the proposed increase in penalty infringement notice amounts for failing to comply with water restrictions, from \$750 for an individual and \$1500 for a corporation, to \$450 and \$900, respectively. Penalty amounts have also been adjusted in line, from 100 and 200 penalty units to 50 and 100 penalty units, respectively. This change ensures the penalties will remain up to date as a deterrent but are proportionate to the offence, and are in line with penalties for other similar offences in NSW.

3 Next steps

Thank you to all who participated in the consultation process. Your feedback has been instrumental in developing the Hunter Water Regulation 2024.

The new Regulation will commence on 1 September 2024.

4 Appendix: Responses to webinar questions

An online webinar was held on 4 July 2024. We responded to participants' questions with the following responses.

Why is Roundup able to be used on the banks of Chichester Dam?

Hunter Water is a large landowner and has legislative obligations to manage invasive weeds and pests. Management of invasive weeds and pests is undertaken in accordance with best practice, by licensed and suitably qualified professionals using approved products.

Roundup is a registered trade name for a group of herbicide products with glyphosate as the active ingredient. Hunter Water uses Roundup and other similar products for weed control in the catchment areas generally (for example, around roads, fire trails, picnic areas and offices), including around Chichester Dam when required. However, Roundup is not used on the banks of the dam close to the water.

Why has the requirement to inform Hunter Water of damage to works been removed?

There was a recognition that individuals should not be compelled to incriminate themselves and that there are other pathways to pursue breaches of the *Hunter Water Act 1991* and the Hunter Water Regulation.

Were the penalty changes made in consultation with the Natural Resources Access Regulator?

The Department of Climate Change, Energy, the Environment and Water is continuing with consultation through the exhibition period with Hunter Water's customers, the Lower Hunter community and other government agencies to ensure the Hunter Water Regulation is fit for purpose.

The penalties in the *Hunter Water Act 1991* (the Act) and the Regulation are captured under a legislative framework established for Hunter Water as a State Owned Corporation, which NRAR is not responsible for. This includes the penalty changes to compliance with a water restrictions order issued by the Minister for Water, with these powers contained in the Act and the Regulation.

If I understand correctly, clauses 5 and 6 were removed because they are captured under the Dungog Local Environmental Plan, but does that remove NSW's control and only leaves council to ensure adherence?

Historically, the Williams River Catchment Area was exempted from the clauses under the Hunter Water Regulation dealing with prohibition of intensive agriculture (including plant, livestock and aquaculture) and on-site sewage management facilities in the Special Areas. This meant there was inconsistency in the application of these clauses across the catchments. Exemptions for the Williams River Catchment Area from catchment protection powers have been removed to achieve

consistency across all Special Areas. This is an administrative change which has no practical impact on the current land use planning situation as the Dungog Local Environmental Plan 2014 already contains controls which regulate development impacts in the Williams River Catchment Area. This does not result in any additional development controls and Dungog Shire Council remains the consent authority for development applications (DAs) received by council under the *Environmental Planning and Assessment Act 1979* and/or applications received under the *Local Government Act 1993*.

It is important to recognise that consent authorities, such as Dungog Shire Council, are still required under section 51 of the *Hunter Water Act 1991* to refer development applications to Hunter Water that may significantly impact water quality in the drinking water catchment. The consent authorities are then required to take Hunter Water's comments into consideration when assessing and determining a development application.

What happens when/if the proposed water take off at Paterson occurs – it is stated that there will be no changes to the Special Area and no extra consideration for DAs in the Paterson Allyn catchment area. Is there a specific reason for this?

Questioner comment: Seems an anomaly where we have 2 separate catchment areas with 2 different conditions for DA approvals. Conditions should be the same – i.e. evidence based and the outcome being a Neutral or Beneficial Effect (NorBE).

The draft Hunter Water Regulation 2024 is not proposing any substantive changes to the land use planning controls and development referral process applying to Hunter Water's drinking water catchments.

The Lostock Dam to Glennies Creek Dam Pipeline Project proposal, including a potential Hunter Water offtake on the Paterson River, is being progressed as a business case on the basis that Hunter Water's access would not impact current water user entitlements, would be above existing end-of-system flow requirements and would not increase the current level of catchment protection regulation. Hunter Water has previously communicated publicly that it is not proposing to extend additional land use planning or catchment regulations in the Paterson Valley.

Regarding DA submission for agriculture in the Special Areas – is it the intention to remove all prescribed agricultural pursuits from the Regulation and leave that to be dealt with in the LEP?

Questioner comment: Common sense would suggest that the preferred outcome would be to consider all agricultural applications on the evidence-based submission with the outcome being to provide a Neutral or Beneficial Effect (NorBE). The commonsense approach would be to not exclude any type of agriculture development before it is properly assessed. Agricultural practices have changed considerably over the years with greater concentration on environmental impacts.

The draft Hunter Water Regulation 2024 is not proposing to remove the prohibition on aquaculture, intensive livestock agriculture and intensive livestock agriculture for the Special Areas.

The proposed update to the Hunter Water Regulation will achieve consistency across all Special Areas. This will occur by removing the exemption from the prohibition of aquaculture, intensive livestock agriculture and intensive plant agriculture in the Williams River Catchment Area in the new Regulation.

This will help streamline regulation and reduce duplication. It is only an administrative change which will not have a material impact. Dungog Shire Council remains the consent authority for development in the Williams River Catchment Area.

Will a recording be available of the webinar?

A recording of the webinar is available on the department's website. This can be accessed at <https://water.nsw.gov.au/hunter-water-regulation-remake>