Compliance with the Ministers' duty under section 9 of the Water Management Act 2000 and climate change considerations– Water Sharing Plan for the Lachlan Unregulated River Water Sources 2026

This document details how the ministers have given effect to the water management principles of the *Water Management Act 2000* and considered climate change in the making of the *Water Sharing Plan for the Lachlan Unregulated River Water Sources 2026*.

Compliance with section 9 duty

Making a water sharing plan (WSP) requires the approval of the NSW Minister for Water and the concurrence of the NSW Minister for the Environment. When making a plan, section 9 of the *Water Management Act 2000* (the WM Act) requires the ministers to:

- take all reasonable steps to promote the water management principles
- give priority to the water management principles relating to water sharing in the order they are set out under s5(3) of the WM Act.

The water sharing management principles under s5(3) of the WM Act are (in order of priority):

a. Sharing water from a water source must protect the water source and its dependent ecosystems.
b. Sharing water from a water source must protect basic landholder rights.
c. Sharing or extraction of water under any other right must not prejudice the principles set out in points a. and b.

How the water management principles have been promoted and given effect to

When considering whether to approve or give concurrence to this plan, the Minister for Water and the Minister for the Environment respectively can be satisfied that all reasonable steps have been

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taken to promote and give effect to the water management principles of the WM Act, including the prioritisation of water sharing principles under s 5(3) in accordance with s 9(1)(b), in making the *Water Sharing Plan for the Lachlan Unregulated River Water Sources 2026* (the plan).In all instances, the highest priority has been given to the principle contained in s 5(3)(a), which requires that the sharing of water must protect the water sources and its dependent ecosystems, along with the principles contained in s5(2) which contribute to this principle. The second highest priority has been given to the principle contained in s 5 (3)(b), which requires that the sharing of water must protect basic landholder rights.

The remaining principles contained in s 5(2) have been given varying levels of priority that correlate with the intent of a particular provision in the plan. For example, while still considering principle 5(3), a priority has been given to the principle contained in s 5(2)(g) when finalising the trading rules under Part 8 of the plan.

Principles in section 5(3) of the WM Act

Of the water management principles of the WM Act, those in section 5(3) specifically relate to how to share water – a primary role of water sharing plans in the NSW water management framework. In making the water sharing plan, the principles set out in s 5(3) of the WM Act must be weighted in the priority order required under s 9(1)(b) of the WM Act.

How water sharing provisions in the plan protects the water source and dependent ecosystems – s 5(3)(a)

The greatest weight has been given to the protection of water sources and dependent ecosystems in developing the water sharing plan.

In the plan, there are 2 key mechanisms for protecting water sources and dependent ecosystems:

- **Long-term average annual extraction limit** (LTAAEL) for the water sources. On a long-term average annual basis, all water above this limit is protected for environmental benefit.
- **Specific, operational plan rules** that aim to protect explicit ecosystem functions and /or environmental assets in the water sources. The tables below give details of the rules for the plan.

How water sharing provisions in the plan protect basic landholder rights – s 5(3)(b)

Significant weight has been given to the protection of a landholders' ability to exercise basic landholder rights as the second highest priority in accordance with section 9(1)(b). This has been done by identifying the requirements for water to satisfy basic landholder rights and including rules

to ensure the sharing or extraction of water under licences does not prejudice the exercise of basic landholder rights.

How sharing and extraction of water under other rights does not prejudice the above principles - s 5(3)(c)

Section 5(3)(c) provides that in relation to sharing water, the sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs 5(3)(a) and (b).

This has been achieved through several mechanisms, as described below.

The first mechanism is managing extraction to remain within the long-term average annual extraction limit (LTAAEL) specified in the plan. The water sources and dependent ecosystems are protected, consistent with the principle contained in s5(3)(a), by committing all water in the water sources that is not included in the LTAAEL, as planned environmental water.

The second mechanism is setting the LTAAELs to reflect historical conditions to ensure that growth over the long-term does not occur and subsequently impact the amount of water committed as planned environmental water. The LTAAELs have been defined as the average annual extraction of water taken under access licences between 1 July 1993 and 30 June 1999, plus extraction pursuant to basic landholder rights and take from plantation forestry that existed on 30 June 2009 for each extraction management unit. This will be revised to a numeric LTAAEL by 31 December 2026. There is a future work program to determine if the numeric LTAAEL is sustainable.

The third mechanism is the approach to ensure compliance with the LTAAEL. An annual assessment of extraction against the LTAAEL is completed to determine if the LTAAEL has been exceeded. If an exceedance is confirmed, reduced allocations are applied to licensed entitlement, as specified in the plan. This reduction in allocation is not applied to the take of water as part of basic landholder rights, which protects a landholder's ability to exercise basic landholder rights, consistent with the principle contained in s5(3)(b).

The final mechanism is a suite of local access rules which apply to licensed entitlement. Access rules prohibit the take of water under general and specific circumstances, for example if there is no visible flow at the pump site or if there are low flows in that water source (identified as a very low flow class). In this plan, very low flow classes have been established that protect water for environmental outcomes, and these outcomes have been prioritised over social and economic benefits. This approach ensures that the water sources and its dependent ecosystems are protected, especially if there are low flows, and there is no impact on a landholder's ability to exercise basic landholder rights.

Tables setting out considerations of water management principles

Table 1. How the plan promotes the water management principle of section 5(3)(a)

How we have promoted the principle in Section 5(3)(a)	Relevant plan provisions
The plan protects the water source and its dependent ecosystems by the provisions set out in Table 3.	Parts 4, 6, 7, 8 and 10
Identifying planned environmental water by specifying an LTAAEL and limiting total extraction. The LTAAEL and long-term average sustainable diversion limit (SDL) established by the plan, together with the associated compliance provisions, protect water within the water sources for environmental purposes.	Part 4
Providing plan amendment to be made in response to a review of the plan's LTAAEL to determine whether it represents a sustainable level of take.	Part 4
Establishing a default rule to prohibit the take of water when there is no visible flow at the location from which water would be taken. This rule applies to water sources and management zones where there is no suitable gauge for gauge-based access rules.	Part 6
Prohibiting the drawdown of in-river and off-river natural pools or the taking of water when there is no visible flow in relevant water sources to ensure in-river and off-river pools are protected to provide refugia and habitat during dry times.	Part 6
Establishing gauge based rules to limit the take of water in the Lower Mandagery Creek Water Source to protect low flows as they replenish pools, improve connectivity and water quality.	Part 6
Improving protection of the high ecological values by providing a gauge-based rules to limit the take of water in the Crookwell River Water Source.	Part 6
Providing gauge based rules to limit the take of water in the newly established Narrawa Management Zone of the Lachlan River above Reids Flat Water Source to protect high ecological values and low flows.	Part 6
Providing gauge based rules to limit the take of water in the newly established Upper Boorowa River and Hovells Creek Management Zone of the Boorowa River and Hovells Creek Water Source to protect high ecological values and low flows.	

How we have promoted the principle in Section 5(3)(a)	Relevant plan provisions
Prohibiting the construction of in-river dams in water sources that have been identified as having high environmental value.	Part 7
Prohibiting the construction of new water supply works within and 3km upstream of a declared Ramsar wetland and within a prescribed wetland.	Part 7
Prohibiting trades into areas within or 3km upstream of a Ramsar listed wetland and into prescribed wetland to protect from the impacts of surface water extraction by restricting new development and extraction.	Part 8
Prohibiting trade between certain water sources and management zones within the plan area, protecting the environmental values of the water sources.	Part 8
Amendment provisions to enable access rules to be modified in a number of water sources where new gauges have been installed and/or strategic studies are currently underway, if required to better protect the water source, its dependent ecosystems and basic landholder rights.	Part 10

Table 2. How the plan promotes the water management principle of section 5(3)(b)

How we have promoted the principle in Section 5(3)(b)	Relevant plan provisions
The plan gives priority to current and future basic landholder rights by applying actions to licensed users preferentially to ensure compliance with extraction limits. This protects basic landholder rights even when extraction needs to be reduced.	Part 3 and Part 4, Division 2
The plan sets rules which prevent take of water under access licences but still allow access to water for basic landholder rights.	Part 6, Division 4
The plan provides for the recognition of Native Title determinations as they are made. It can be amended to recognise a Native Title determination and any Indigenous land use agreement.	Part 3, Division 1 Part 10

Principles overlapping with section 5(3)(a)

There are principles in section 5(2) that overlap with the principle in section 5(3)(a). These include principles:

- s 5(2)(a) – Water source, floodplains, and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded
- s 5(2)(b) – habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored
- s 5(2)(d) - the cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised.

The greatest weighting has been applied to these 3 principles in accordance with s 9(1)(b) of the WM Act to the extent that they overlap with s 5(3)(a) and to the extent that they do not overlap, it is open to the Minister to weight them at their discretion.

Table 3. How the plan promotes the water management principle of section 5(2)(a)

How we have promoted the principle in Section 5(2)(a)	Relevant plan provisions
The plan aims to protect and restore water sources, floodplains and dependent ecosystems (including wetlands) through the provision of water for the environment and contains rules:	See below
• Specifying the objectives, strategies and performance indicators that measure the effectiveness of plan rules	Part 2
• Identifying planned environmental water by determining an LTAAEL and limiting total extraction. The LTAAEL and long-term average sustainable diversion limit (SDL) established by the plan, together with the associated compliance provisions, protect water within the water sources for environmental purposes	Part 4
• Providing plan amendment to be made in response to a review of the plan's LTAAEL to determine whether it represents a sustainable level of take	Part 4

How we have promoted the principle in Section 5(2)(a)	Relevant plan provisions
• Establishing a default rule to prohibit the take of water when there is no visible flow at the location from which water would be taken. This rule applies to water sources and management zones where there is no suitable gauge for gauge-based access rules	Part 6
• Prohibiting the drawdown of in-river and off-river natural pools or the taking of water when there is no visible flow in relevant water sources to ensure in-river and off-river pools are protected to provide refugia and habitat during dry times	Part 6
• Establishing gauge based rules to limit the take of water in the Lower Mandagery Creek Water Source to protect low flows and high ecological values	Part 6
• Improving the protection of high ecological values by increasing the Cease To Pump (CTP) rules in the Crookwell River Water Source	Part 6
• Establishing management zones in the Lachlan River above Reids Flat Water Source, and amending the gauge-based access rules to protect high ecological values and low flows	Part 6
• Prohibiting the construction of in-river dams in water sources that have been identified as having high environmental value	Part 7
• Prohibiting the construction of new water supply works within and 3km upstream of a declared Ramsar wetland and within a prescribed wetland	Part 7
• Prohibiting trades into areas within or 3km upstream of a Ramsar listed wetland and into prescribed wetland to protect from the impacts of surface water extraction by restricting new development and extraction	Part 8
• Prohibiting trade between certain water sources and management zones within the plan area, protecting the environmental values of the water sources	Part 8
• Amendment provisions that enable access rules to be modified in a number of water sources where new gauges have been installed and/or strategic studies are currently underway, if required to better protect the water source, its dependent ecosystems and basic landholder rights.	Part 10

Table 4. How the plan promotes the water management principle of section 5(2)(b)

How we have promoted the principle in Section 5(2)(b)	Relevant plan provisions
The plan protects and restores animals and habitats through water for the environment and the provisions set out above in Table 3.	Parts 2, 4, 6, 7, 8 and 10

Table 5. How the plan promotes the water management principle of section 5(2)(d)

How we have promoted the principle in Section 5(2)(d)	Relevant plan provisions
The plan manages the cumulative impact of licences through:	See below
• Rules limiting total extraction. The LTAAEL and long-term average sustainable diversion limit (SDL) established by the plan protect water within the water sources for environmental purposes	Part 4
• LTAAEL compliance provisions that reduce water availability where the extraction limits have been exceeded	Part 4, Division 2
• Limiting the volume of water that can be taken from the water sources over a specified period by limiting the volume of water that can be debited from each account	Part 6, Division 2
• Restricting the construction of new water supply works within and 3km upstream of a declared Ramsar wetland and within a prescribed wetland	Part 7
• Prohibiting the construction of in-river dams in certain water sources that have been identified as having high environmental value	Part 7
• Prohibiting trades into areas within or 3km upstream of a Ramsar listed wetland and into prescribed wetland to protect from the impacts of water extraction by restricting new development and extraction	Part 8
• Access licence dealing rules that allow for a variety of dealings (trade) within specified environmental constraints.	Part 8

Remainder of water management principles under s 5(2)

Principles relating to social, economic and cultural outcomes

Table 6. How the plan promotes the water management principle of section 5(2)(c)

How we have promoted the principle in Section 5(2)(c)	Relevant plan provisions
The plan aims to protect and enhance water quality by:	See below
• Establishing the rules and arrangements for committing water as planned environmental water	Part 4, Division 2
• Setting limits on take from unregulated flows that can help manage water quality events in downstream connected water sources.	Part 6, Division 4

Table 7. How the plan promotes the water management principles of section 5(2)(e) and (f)

How we have promoted the principles in Section 5(2)(e) and (f)	Relevant plan provisions
The plan specifies social, cultural, and Aboriginal objectives, strategies and performance indicators which will provide measurable evidence of whether outcomes have been achieved. The collection of information to evaluate the performance indicators will be undertaken through the Monitoring, Evaluation and Review (MER) program.	Part 2
The plan provides for the recognition of Native Title determinations as they are made. It can be amended to recognise a Native Title determination and any Indigenous land use agreement.	Part 3, Division 1 Part 10
The plan gives priority to current and future basic landholder rights by applying actions to licensed users preferentially to ensure compliance with extraction limits. This protects basic landholder rights (including Native Title rights) even when extraction needs to be reduced.	Part 4, Division 2
Planned environmental water rules provide flows which can help to achieve Aboriginal cultural outcomes.	Part4, Division 2 and Part 6

How we have promoted the principles in Section 5(2)(e) and (f)	Relevant plan provisions
The plan makes water available for Aboriginal cultural purposes via a specific purpose access licence category, which could be used to provide some water for features of major cultural, heritage or spiritual significance.	Part 5
The plan provides for its amendment if there is a determination of Native Title in future.	Part 10

Note. The *Access Licence Dealing Principles Order 2004* also applies to assessment of dealings (trade) of entitlements and allocations. Dealings are only approved if they do not adversely affect geographical and other features of indigenous significance, or major cultural, heritage or spiritual significance.

Table 8. How the plan promotes the water management principles of section 5(2)(g)

How we have promoted the principle in Section 5(2)(g)	Relevant plan provisions
The plan maximises the social and economic benefits to the community and contains provisions:	See below
• Specifying economic and social strategies and performance indicators which will provide measurable evidence of whether outcomes have been achieved	Part 2
• Protecting basic landholder rights and local water utility and town water supplies from measures required to maintain total extraction within the LTAAEL and SDL	Part 4 Division 2
• Allowing a person to apply for a specific purpose access licence for Aboriginal cultural purposes	Part 5
• Supporting social and community requirements by setting cease to pump rules which reserve water for basic landholder rights (including Native Title rights) and domestic and stock needs and considers town water supplies	Part 6
• Enabling the construction of in-river dams for town water supply purposes, where the plan otherwise prohibits their construction	Part 7
• Providing rules for trade of licensed entitlement and account water to allow the market to drive improved economic outcomes and water dependent business to manage their own supply requirements and risks	Part 8

Planning improvement principles

Table 9. How the plan promotes the water management principles of section 5(2)(h)

How we have promoted the principle in Section 5(2)(h)	Relevant plan provisions
The plan includes a set of objectives, strategies, and performance indicators. Monitoring of these indicators could trigger an earlier review of the plan, if necessary.	Part 2
The plan includes provisions to review the numeric LTAAEL to determine whether it ensures a sustainable level of take.	Part 4
The plan includes amendment provisions allowing the plan to be changed once the LTAAEL can be expressed numerically.	Part 10
Mandatory metering and reporting requirements will inform the implementation of the plan rules and provision of water for the environment.	Part 9
The plan includes amendment provisions allowing the plan to be changed under particular circumstances that could be in response to monitoring or improvements in understanding of ecological water requirements.	Part 10

Note: As required under sections 43A and 44 of the WM Act, the Natural Resources Commission audits and reviews the plan at 10-year intervals, to inform whether the plan rules are being applied and remain fit for purpose. Under section 45 of the WM Act, the Minister may amend a plan if satisfied it is in the public interest to do so.

Climate change

How climate change has been considered in replacing the plan

Water sharing plans are made for a period of 10 years, with plan review and remake providing an opportunity to apply an adaptive process to respond to climate change. Current climate change

modelling does not provide a clear view on the likelihood or extent of change in the Lachlan Unregulated River area within the 10-year period of the plan. The Department has commenced a major program of integrating climate change and climate variability considerations into water sharing plans. This work has initially focused on a review of minimum inflows to storages in the inland regulated river WSPs and the development of sustainable diversion limits in the coastal unregulated and alluvial systems. However, this has now extended to work that will guide planners including climate data guidance, outcomes definition, impact assessment and decision support tools. The Minister can amend the plan at any time with the concurrence of the Minister for the Environment, if it is in the public interest to do so, which enables the plan to respond to climate change impacts to the water sources.

The plan also expressly provides for a number of circumstances and matters in relation to which the plan may be amended. These include amendments in response to a review of the plan's LTAAEL to determine whether it represents a sustainable level of take. In undertaking the review, the Minister is to consider future climate projections, including likely bounds of climate change impact within the terms of this plan, and the review of the *Basin Plan 2012*.

There are also actions within the NSW Water Strategy and the Lachlan Regional Water Strategy that will further integrate climate change considerations into the water sharing plan framework. Some of these include:

- Priority 4 in the NSW Water Strategy to increase resilience to changes in water availability due to climate variability and change. This includes the development of regional drought resilience plans, as well as the recognition of the need to develop a set of methodologies to incorporate climate risk into water sharing plan and water management decision making
- Priority Action 3.3 in the Lachlan Regional Water Strategy aims to work with industries to better understand, mitigate and adapt to the impacts of climate change on water management. This is achieved by supporting industry to get a better understanding of:
  - the impact of climate variability and climate change on the region's existing diverse industries, both primary and secondary for water availability and management
  - the climate change information needs of industries in the region for water management, so they are empowered to understand the impact climate change may have on businesses and can make well-informed decisions.

As this climate change work progresses, future water sharing plan reviews provide a structured and regular regulatory opportunity to assess and build in further mechanisms in response to these broader actions.

More information

To read the water sharing plan and supporting fact sheets, visit the Department's water sharing plan status page.

To read the manual for making water sharing plans, refer to the Replacement Water Sharing Plan Manual published on the Department's website.