

Compliance with water management principles - Amending the Water Sharing Plan for the Border Rivers Regulated River Water Source 2021

The NSW Government has amended the *Water Sharing Plan for the Border Rivers Regulated River Water Source 2021* to include provisions to manage floodplain harvesting. This document explains how the amendments comply with the water management principles of the *Water Management Act 2000*.

Requirements for amending a water sharing plan

As well as the approval of the Minister for Water, amending a plan requires the agreement of the NSW Minister for the Environment (this is known as ‘concurrence’). Section 9 of the Water Management Act 2000 (the WM Act) also requires everyone exercising functions under the Act to:

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

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

1. Sharing water from a water source must protect the water source and its dependent ecosystems.
2. Sharing water from a water source must protect basic landholder rights.
3. Sharing or extraction of water under any other right must not prejudice the principles set out in points 1 and 2.

The Minister for Lands and Water obtained the concurrence of the Minister for Environment and Heritage to amend the *Water Sharing Plan for the Border Rivers Regulated River Water Source 2021*. In amending the plan, the Ministers ensured the water management principles were promoted and the water sharing principles were appropriately prioritised, as detailed below.

How water sharing in the plan protects water sources and dependent ecosystems

In the plan for the Border Rivers regulated water source, there are 2 key mechanisms for protecting the water source and its dependent ecosystems:

- **Long term average annual limits on water take**, which include the

- NSW long-term average annual extraction limit for each water source
- sustainable diversion limit for each water resource plan area, established under the Murray-Darling Basin Plan through extensive peer-reviewed, scientific analysis.

We have included both limits in the water sharing plan, which also contains provisions (legal conditions) to assess and ensure water users comply with limits. On a long-term average annual basis, all water above these limits is protected for environmental benefit.

- **Specific, operational plan rules** that aim to protect explicit ecosystem functions and /or environmental assets in the water sources. Rules relevant to floodplain harvesting (regulated river) access licences in the plan are detailed in the tables below.

How water sharing in the plan protects basic landholder rights

The plan also protects basic landholder rights. It allows for the exercise of basic landholder rights, in keeping with Part 1 of Chapter 3 of the WM Act. The plan gives priority to current and future basic landholder rights by ensuring any action to ensure compliance with extraction and diversion limits does not apply to these rights.

A case that may affect the Border Rivers plan

The NSW Government acknowledges that there is currently a court case against the making of the *Water Sharing Plan for the Border Rivers Regulated Water Source 2021*, which could affect this water sharing plan. While there is a risk that the government may need to change the plan based on the outcome of the court case, there is a need for NSW to amend this water sharing plan to include floodplain harvesting.

How we have promoted water management principles

To manage floodplain harvesting and comply with the water management principles under the WM Act, licences must be issued.

The NSW Government has changed the *Water Sharing Plan for the Border Rivers Regulated River Water Sources 2021* to include provisions for managing floodplain harvesting. In developing the rules for floodplain harvesting, the NSW Government has taken all reasonable steps to promote the water management principles set out in the WM Act and to make the Border Rivers plan reflect these principles. Refer to the tables below for details.

Table 1. How the plan amendments promote the water management principle of section 5(3) (a) – Sharing of water from a water source must protect the water source and its dependent ecosystems

How we have promoted the principle in Section 5(3)(a)	Relevant plan provisions (legal conditions)
<p>The plan protects the water source and its dependent ecosystem by identifying certain water as planned environmental water, which cannot be taken or used for non-environmental purposes.</p>	<p>Part 4</p>
<p>The plan ensures water is committed and identified as planned environmental water by establishing:</p> <ul style="list-style-type: none"> • provisions for environmental flow that provide a physical presence of water in the water source, and • both a long-term average annual extraction limit and a long-term sustainable diversion limit to create a long-term average annual commitment of water as planned environmental water. 	<p>Part 6</p>
<p>In particular, the plan ensures floodplain harvesting (regulated river) access licences are included as part of the long-term average annual extraction limit and protects water within the water source above that limit for environmental purposes.</p>	<p>Part 6, Division 2</p>

Table 2. How the plan amendments promote the water management principle of section 5(3) (b) – Sharing of water from a water source must protect basic landholder rights

How we have promoted the principle in Section 5(3)(b)	Relevant plan provisions
<p>The plan includes provisions for maintaining compliance with the long-term average annual extraction limit and long-term sustainable diversion limit. These target general security licences and floodplain harvesting (regulated river) access licences. These provisions give priority to current and future basic landholder rights by allowing their extractions to increase at the expense of future access for general security and floodplain harvesting (regulated river) access licences.</p>	<p>Part 6 Division 2</p>

Table 3. How the plan amendments promote the water management principle of section 5(3) (c) – Sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b).

How we have promoted the principle in Section 5(3)(c)	Relevant plan provisions
<p>The rules previously discussed ensure that we uphold the principles for the protection of planned environmental water and basic landholder rights.</p>	<p>All above</p>

Table 4. How the plan amendments promote the water management principle of section 5(2)(a) – Water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded

How we have promoted the principle in Section 5(2)(a)	Relevant plan provisions
<p>The plan protects and restores floodplains by including provisions to help us roll out of licences and bring floodplain harvesting within the licensing and approval provisions of the WM Act. The rollout of floodplain harvesting licences will make accounting against the long-term average annual extraction limit and long-term sustainable diversion limit more accurate.</p> <p>The plan aims to protect and restore dependent ecosystems through water for the environment and contains provisions to:</p>	See below
<ul style="list-style-type: none"> establish both a long-term average annual extraction limit and a long-term average sustainable diversion limit, which create a long-term average annual commitment of water as planned environmental water. Compliance with these limits also achieves the end of system flow target for Mungindi as identified in the inter-governmental agreement between NSW and Queensland 	Part 6, Division 2
<ul style="list-style-type: none"> include objectives, strategies and performance indicators which measure the effectiveness of plan rules 	Part 2
<ul style="list-style-type: none"> identify and prioritise flood-dependent ecological assets and values on the floodplain. We have used this information to inform the trade rules for floodplain harvesting licences and manage the granting and amending of water supply work approvals. 	Part 7 Part 9

Table 5. How the plan amendments promote the water management principle of section 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

How we have promoted the principle in Section 5(2)(b)	Relevant plan provisions
<p>The plan protects and restores animals, and habitats through water for the environment and the same provisions set out in the above table in relation to section 5(2)(a)</p>	See above

Table 6. How the plan amendments promote the water management principle of section 5(2)(c) – The water quality of all water sources should be protected and, wherever possible, enhanced

How we have promoted the principle in Section 5(2)(c)	Relevant plan provisions
<p>The plan includes amendment provisions that allow us to introduce access rules when appropriate information becomes available.</p>	Part 12

How we have promoted the principle in Section 5(2)(c)	Relevant plan provisions
In future, including access rules for floodplain harvesting will complement existing rules for supplementary water access licences that contribute to the management of water quality events in downstream connected water sources.	Part 8, Division 1A

Table 7. How the plan amendments promote the water management principle of section 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*

How we have promoted the principle in Section 5(2)(d)	Relevant plan provisions
The plan manages cumulative impacts through:	See below
<ul style="list-style-type: none"> rules limiting total extraction. The plan establishes both a long-term average annual extraction limit and long-term sustainable diversion limit which protect water within the water source above those limits for environmental purposes. 	Part 6, Division 2
<ul style="list-style-type: none"> compliance provisions for the long-term average annual extraction limit and long-term average sustainable diversion limit that reduce water availability where the extraction limits have been exceeded. 	Part 6, Division 5
<ul style="list-style-type: none"> access licence dealing rules that allow for a variety of dealings (trade) within specified environmental constraints 	Part 9
<ul style="list-style-type: none"> rules for the granting or amending of water supply work approvals 	Part 7

*Note Division 2 of Part 4 of Chapter 6 of the Basin Plan 2012 specifies the requirements for complying with the SDL

Table 8. How the plan amendments promote the water management principle of section 5(2)(e) – Geographical and other features of Aboriginal significance should be protected

How we have promoted the principle in Section 5(2)(e)	Relevant plan provisions
The plan contributes to the protection of cultural assets and values, including Aboriginal cultural values on the floodplain, by:	See below
<ul style="list-style-type: none"> identifying and prioritising flood-dependent Aboriginal values on the floodplain. We used this information to inform the trade rules for floodplain harvesting licences and manage the granting and amending of water supply work approvals 	Part 9 Part 7

Table 9. How the plan amendments promote the water management principle of section 5(2)(f) – Geographical and other features of major cultural, heritage or spiritual significance should be protected

How we have promoted the principle in Section 5(2)(f)	Relevant plan provisions
The plan contributes to the protection of cultural assets and values, including Aboriginal cultural values and heritage sites on the floodplain, by:	See below
<ul style="list-style-type: none"> identifying and prioritising flood-dependent cultural assets on the floodplain. We used this information to inform the trade rules for floodplain harvesting licences and manage the granting and amending of water supply work approvals 	Part 9 Part 7

Table 10. How the plan amendments promote the water management principle of section 5(2)(g) – The social and economic benefits to the community should be maximised

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 by:	See below
<ul style="list-style-type: none"> defining, and requiring compliance with, a long-term average annual extraction limit and long-term sustainable diversion limit, which provide water for community and economic benefit 	Part 6, Division 2
<ul style="list-style-type: none"> ensuring certainty of access for licence holders for the duration of the plan 	Part 8, Division 1
<ul style="list-style-type: none"> providing rules for trade of licensed entitlement and account water to allow the market to drive strong economic outcomes 	Part 10
<ul style="list-style-type: none"> facilitating the granting or amending of water supply work approvals. 	Part 7

Table 11. How the plan amendments promote the water management principle of section 5(2)(h) – The principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements

How principle has been promoted in Section 5(2)(h)	Relevant plan provisions
The plan is reviewed at 10-year intervals by the Natural Resources Commission, to inform whether the plan rules remain fit for purpose.	S43A of the WM Act
The plan includes a set of objectives, strategies, and performance indicators. An earlier review of the plan could be triggered if required, based on monitoring of these indicators.	Part 2
Mandatory measurement requirements will inform how we apply the plan rules and provision of water for the environment.	Part 11

More information

To read the water sharing plan and supporting fact sheets, visit

<https://www.industry.nsw.gov.au/water/plans-programs/water-sharing-plans/status/border-rivers-region>.

To read the water sharing plan amendment protocol, visit

https://www.industry.nsw.gov.au/___data/assets/pdf_file/0004/509863/water-sharing-plan-amendment-protocol.pdf.