

Water sharing plan amendment protocol

Water sharing plans set the rules for how water is managed and shared in NSW. This fact sheet explains how water sharing plans can be amended over their 10-year lifespan.

Several types of management plans can be prepared under the NSW *Water Management Act 2000* (WM Act). This includes water sharing, water source protection, drainage management and floodplain management.

Once enacted, these plans are in place for 10 years so water users, landholders and water managers know what to expect. However, the WM Act includes provisions to amend a plan under certain conditions and circumstances.

Amending a water sharing plan

Under section 45 of the WM Act, a water sharing plan can be amended in only 4 circumstances. As well as the approval of the Minister for Water, amending a plan requires the agreement of the NSW Minister of the Environment (this is known as ‘concurrence’).

The circumstances when a plan can be amended are:

1. where a plan itself identifies its future amendment – the relevant circumstances and matters for amendment are identified in the water sharing plan
2. to give effect to a court decision
3. to give effect to requirements of the Commonwealth *Water Act 2007*
4. other amendments not already identified in the Water Sharing Plan if in the public interest

Considering a proposed plan amendment

Potential amendments can be put forward:

- by Department of Planning and Environment (responsible for water management in NSW)
- by other government agencies
- by the independent Natural Resources Commission (NRC)
- through government’s Cabinet processes
- by non-government stakeholders.

Potential amendments are collated in the department’s water management database. This database includes details of proposed amendments and is regularly reviewed by staff who consider whether an amendment should progress, and if so, the time frame.

We assess whether the amendment is provided for in the water sharing plan, gives effect to a court decision or fulfils a requirement of the *Water Act 2007* (Cwth). If not, the Minister for Water must be satisfied that the amendment is in the public interest.

When considering an amendment, we look at whether it reflects the water sharing management principles and priority of those principles in accordance with the WM Act.

Other factors we consider might include:

- the driver for and urgency of the proposed amendment
- potential implications and risks of making or not making the amendment
- whether there are other amendments proposed for the same water sharing plan and the proposed timing of these
- time frames for any upcoming work on the water sharing plan such as an NRC review and subsequent plan replacement.

A relevant director within the department makes an initial decision on whether to proceed with a proposed amendment. The final decision is made by the Minister for Water.

What does ‘in the public interest’ mean?

Considering amendments ‘in the public interest’ involves a decision-making process that considers matters that affect the public’s interests within the scope and purpose of the WM Act. The meaning of ‘public interest’ is not defined in the WM Act. It is a decision for the Minister for Water, and also the Minister for the Environment when granting concurrence, which involves identifying:

- which sectors of the public these amendments affect
- what public interests there are that are relevant to the amendment
- the weight of each applicable ‘public interest’, which involves considering competing or conflicting public interests to determine if the amendment is in the overall public interest.

These factors affect whether an amendment can be considered to be in the public interest.

Water sharing management principles and amendments

Section 9 of the WM Act 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 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.

When considering a proposed amendment to a water sharing plan in accordance with s45(1) of the Act, the NSW Minister for Water must apply these principles in order. The Minister for Water may also consider factors such as the:

- effect on water users and the environment
- potential of a positive effect on water sharing
- risk that there will be any negative effects on water sharing.

These factors may then influence the minister’s decision.

Consulting on a proposed plan amendment

The WM Act does not specify any requirements for consultation when amending a water sharing plan other than obtaining concurrence from the Minister for the Environment. This means that the Minister for the Environment must agree to the proposed amendment.

However, the department may consult with stakeholders and the public depending on the scale and significance of any potential amendment. Examples of the types of amendments and levels of consultation are shown in Table 1.

Table 1. Consultation considerations for plan amendments

Scale of change associated with amendment	Consultation	Example amendment
Administrative change with no material effect, change to address a drafting error which aligns with original intent as consulted¹	None	Incorrect gauge reference number included in plan
Amendment affects access rights of a small/specific group of users or very localised environmental water rules	Targeted consultation	Change to the ‘cease-to-pump’ provisions in a specific water source
Amendment affects access rights or environmental water provisions on a larger scale	Public exhibition	Change to the access rules in a water source of high conservation value

¹ There may be instances where a change is administrative, but the plan must be significantly rewritten to give effect to the change. In this instance, the amendment may be perceived to be larger than it is. In these instances, consultation may be appropriate to deal with any perception issues.

Water sharing plan amendment process

The process we follow when amending a water sharing plan is shown in Table 2.

Table 2. Steps in the department’s water sharing plan amendment process

Step	Action	Considerations/Information
1	Assess if the WM Act allows the amendment to be made	Determine the kind of amendment and if it falls under any provision of section 45 of the Act
2	Scope and develop the proposed amendment with relevant agency staff ²	Develop the amendment in accordance with water sharing principles and priorities
3	Consultation	Consider who should be consulted and develop relevant consultation documents. Interagency support for the amendment is sought ahead of consultation activities
4	Review outcome of consultation	Review of feedback from consultation by the department and other relevant agency staff
5	Develop final amendments and have them endorsed by senior officers of the department	Include documentation detailing consistency with the principles for water sharing and priorities
6	Seek formal interagency support for the proposed amendment	Provide supporting documentation to relevant agency staff
7	Draft the amendment ‘order’ instrument	The amendment order is drafted by lawyers in consultation with the department and the Natural Resources Access Regulator to ensure drafting accuracy and enforceability
8	Brief the NSW Minister for Water and the NSW Minister for the Environment Seek concurrence from the NSW Minister for the Environment NSW Minister for Water considers making amendment once concurrence is obtained	Key information includes: <ul style="list-style-type: none"> nature of amendment/s, rationale for change, implications of change, agency views, non-government consultation undertaken and outcomes assessment of consistency with water sharing principles and priorities media release and key messages/fact sheets for public understanding and access to amendment information and its implications
9	Publish amendment order on the NSW legislation website	After concurrence is obtained from the NSW Minister for the Environment and the NSW Minister for Water signs the amendment order, the amendment order is provided to the Parliamentary Counsel’s Office to be published on the NSW legislation website for commencement

² Agencies may include Conservation and Heritage, DPI–Fisheries, Natural Resources Access Regulator, DPI–Agriculture, WaterNSW.

Step	Action	Considerations/Information
10	Update the department’s website	The department’s website will link to NSW legislation website and include amendment documentation and explanatory material
11	Internal notification	All relevant staff are notified of the amendment order commencement
12	Public notification	The department, depending on the type of amendment, may issue a media release or undertake other forms of notification to stakeholders such as email or newsletters
13	Implement the amendment	This may include new or amended licence conditions drafted by the department, imposed and notified by WaterNSW

Tracking plan amendments

The department has developed a water management database that tracks amendments carried out in plans and amendments that are proposed. This information informs NRC reviews and audits of plans as well as plan replacement activities.