

Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011

Contents

Part 1	Introduction	3
Part 2	Vision, objectives, strategies and performance indicators.....	6
Part 3	Bulk access regime	15
Part 4	Planned environmental water provisions.....	17
Part 5	Requirements for water	19
	Division 1 General.....	19
	Division 2 Requirements for water for basic landholder rights.....	19
	Division 3 Requirements for water for extraction under access licences	20
Part 6	Limits to the availability of water	22
	Division 1 Calculations under this Part	22
	Division 2 Long-term average annual extraction limit.....	22
	Division 3 Long-term average sustainable diversion limit.....	24
	Division 4 Compliance with extraction and diversion limits	25
	Division 5 Available water determinations	26
Part 7	Rules for granting access licences	27
Part 8	Rules for managing access licences	28
	Division 1 Water allocation account management rules	28
	Division 2 Daily access rules	30
Part 9	Rules for water supply work approvals	34
	Division 1 Rules applying to water supply works	34
	Division 2 (Repealed).....	35
Part 10	Access licence dealing rules	36
Part 11	Mandatory conditions.....	39
	Division 1 General.....	39
	Division 2 Access licences	39
	Division 3 Water supply work approvals	41
Part 12	Amendment of this Plan	46
	Schedule 1 Dictionary	50
	Schedule 2 (Repealed).....	52
	Schedule 3 Identified lagoons	53
	Schedule 4 Access licences used to take from the Lower Murray-Darling Unregulated Water Source exempt from cease to pump rules.....	54

Schedule 5	Offices	55
Schedule 6, 7	(Repealed).....	56
Appendix 1	Overview of the Plan Map.....	57
Appendix 2	(Repealed).....	58

Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011

Part 1 Introduction

Notes.

- 1 Part 12 allows for amendments to be made to Part 1.
- 2 In accordance with section 48 of the *Water Management Act 2000*, the Minister must take all reasonable steps to give effect to the provisions of this Plan when exercising functions under the Act.
- 3 In accordance with section 49 of the *Water Management Act 2000*, public authorities must also have regard to the provisions of this Plan to the extent they apply to the public authority.
- 4 The Minister may amend this Plan at any time under section 45 of the *Water Management Act 2000*, including if satisfied it is in the public interest to do so, or in such circumstances, in relation to such matters and to such extent as Part 12 of this Plan provides.

1 Name of this Plan

This Plan is the *Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011* (hereafter **this Plan**).

2 Nature and status of this Plan

- (1) This Plan is made under section 50 of the *Water Management Act 2000* (hereafter **the Act**).
- (2) This Plan is a plan for water sharing and generally deals with the matters set out in sections 20 and 21 of the Act, as well as other sections of the Act.

Note. Where a provision of this Plan is made under another section of the Act, the section is referred to in notes to this Plan.

3 Commencement of this Plan

This Plan commences on 30 January 2012.

Notes.

- 1 In accordance with section 43 of the Act, this Plan will have effect for 10 years from 1 July 2012.
- 2 The Minister may extend this Plan for a further period of 10 years after it is due to expire, in accordance with section 43A of the Act.
- 3 Under the *Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin* and the associated National Partnership Agreement, NSW has agreed to develop water resource plans for Murray-Darling Basin water resources consistent with the requirements of the Basin Plan. This Plan was amended in 2020, partly to meet NSW's commitments under these agreements. Certain provisions of this Plan form part of the water resource plan for the NSW Murray and Lower Darling surface water resource plan area.
- 4 **Basin Plan** is defined in the Dictionary.

4 Application of this Plan

- (1) This Plan applies to the Lower Murray-Darling Unregulated Water Source (hereafter **the water source**) within the Lower Murray-Darling Water Management Area.

Note. The Lower Murray-Darling Water Management Area was constituted by Ministerial order made under section 11 of the *Water Management Act 2000* published in the NSW Government Gazette No 180 on 23 November 2001 at page 9389.

- (2) The water source is shown on the Plan Map called *Plan Map (WSP018_Version 2), Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011* (hereafter the **Plan Map**) held by the Department.

Note. The Plan Map is part of this Plan and is available on the NSW legislation website. An overview of the Plan Map is shown in Appendix 1.

- (3) Subject to subclause (5), the water source includes all water:
- (a) occurring naturally on the surface of the ground within the boundary of the water source as shown on the Plan Map, and
 - (b) in rivers, lakes, estuaries and wetlands within the boundary of the water source as shown on the Plan Map.
- (4) (Repealed)
- (5) The water source does not include water:
- (a) contained between the banks of rivers declared to be regulated within the New South Wales Murray and Lower-Darling Regulated Rivers Water Sources as defined in the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2020*, or
 - (b) contained in the Barwon-Darling Unregulated River Water Source to which the *Water Sharing Plan for Barwon-Darling Unregulated River Water Source 2012* applies, or
 - (c) taken in the course of floodplain harvesting under a floodplain harvesting (regulated river) access licence.

Note. **Floodplain harvesting** is defined in the Dictionary.

Note. This Plan, as amended by the *Water Sharing Plan for the Lower Murray-Darling Unregulated and Alluvial Water Sources Amendment Order 2020*, does not apply to the Lower Darling Alluvial Groundwater Source. The *Water Sharing Plan for the Darling Alluvial Groundwater Sources 2020* applies to that water source.

5 Understanding the rules in this Plan

This Plan contains various rules. Where appropriate, rules specified in this Plan are given effect by mandatory conditions for access licences and approvals contained in Part 11 of this Plan.

6 Interpretation

- (1) Words and expressions that are defined in the Dictionary in Schedule 1 to this Plan have the meaning set out in that Schedule.

- (2) Unless otherwise defined in this Plan, words and expressions that are defined in the Act or in regulations made under the Act have the same meaning in this Plan.
- (3) Unless otherwise specified in this Plan, a clause that applies to a category of access licence also applies to any subcategories of that category of access licence.
- (4) Schedules to this Plan form part of this Plan.
- (4A) The Plan Map forms part of this Plan.
- (4B) A number in brackets following the name of a gauge is the gauge number.
- (5) Notes in the text of this Plan do not form part of this Plan.
- (6) Appendices to this Plan do not form part of this Plan.

Part 2 Vision, objectives, strategies and performance indicators

Notes.

- 1 This Part is made in accordance with section 35 (1) of the Act.
- 3 This Part describes broad objectives, which are the long term outcomes sought by this Plan and are not directly measured but evaluated by considering the cumulative achievement of the associated targeted objectives. Targeted objectives described in this Part are specific outcomes that can be achieved by the strategies in this Plan and can be directly measured so that success or failure to achieve the objective can be quantified.

6A Acknowledgement

Respect is paid to the traditional owners of this country, who are acknowledged as the first natural resource managers within the Lower Murray-Darling Water Management Area.

7 Vision statement

The vision for this Plan is to provide for the following:

- (a) the health and enhancement of the water source and its water-dependent ecosystems,
- (b) the continuing productive extraction of surface water for economic benefit,
- (c) the spiritual, social, customary and economic benefits of surface water to Aboriginal communities,
- (d) the social and cultural benefits to urban and rural communities that depend on surface water.

8 Environmental objectives

- (1) The broad environmental objective of this Plan is to protect, and contribute to the enhancement of, the ecological condition of the water source and its water-dependent ecosystems over the term of this Plan.

Note. The ecological condition of the water source will be assessed by reference to the condition of high ecological value aquatic ecosystems, target species, communities, populations and key ecosystem functions as defined in the MER plan for the water source. Water-dependent ecosystems in the water source include instream, riparian and floodplain ecosystems.

- (2) The targeted environmental objectives of this Plan are to protect, and contribute to the enhancement of, the following over the term of this Plan:
 - (a) the recorded distribution or extent, and population structure, of target ecological populations,

Notes.

- 1 **Target ecological populations** is defined in the Dictionary.

- 2 Targeted ecological populations in the water source may include known or predicted populations of the following:
 - (a) native fish, including Murray cod and silver perch,
 - (b) native vegetation, including red gum woodland and black box woodland,
 - (c) high diversity hotspots and significant habitat for native fish, frogs, waterbirds, native vegetation and low flow macroinvertebrate communities in the water source that are susceptible to increased frequency and duration of low flows and drying.
- 3 Measures of population structure may include the abundance or spatial extent of a species, different age classes or life stages within a species population, or measures that describe the health and condition of species or populations.

- (b) the longitudinal and lateral connectivity within the water source or between the water source and other water sources to support target ecological processes,

Notes.

- 1 Longitudinal connectivity means flows along the length of the river and between hydrologically connected rivers. Lateral connectivity means flows between the river and its anabranches, riparian zones, wetlands and floodplains.
- 2 Target ecological processes in the water source include fish movement across significant barriers, as identified by NSW Department of Primary Industries (Fisheries) and described in the MER Plan for the water source.
- 3 Connectivity may be within the water source in this Plan or between the water source and other water sources.

- (c) water quality within target ranges for the water source to support water-dependent ecosystems and ecosystem functions.

Note. Water quality target ranges for the water source are defined in the Water Quality Management Plan for the NSW Murray and Lower Darling Water Resource Plan Area SW8 and the NSW State Water Quality Assessment and Monitoring Plan.

- (3) The strategies for reaching the targeted environmental objectives of this Plan are as follows:

- (a) establish and maintain compliance with a long-term average annual extraction limit and a long-term average sustainable diversion limit,

Note. Part 6 of this Plan sets out the provisions for maintaining compliance with the long-term average annual extraction limit and the long-term average sustainable diversion limit.

- (b) reserve a portion of flows to partially mitigate alterations to natural flow regimes in the water source,

Notes.

- 1 **Flow regimes** is defined in the Dictionary.
- 2 The provisions in Division 2 of Part 8 of this Plan establish daily access rules that manage the take of water from the water source.

- (c) restrict the take of water from a natural pool, lagoon or lake when the volume of that water is less than full containment volume,

Note.

- 2 The provisions in clause 41 of this Plan restrict the take of water from a natural pool, lagoon or lake when the volume is less than full containment volume.

- (d) restrict the take of water from a lagoon identified in Schedule 3 and Thegoa Lagoon when the volume of that water is less than 50% of full containment volume,

Note. The provisions in clause 41 of this Plan restrict the take of water from a lagoon specified in Schedule 3 and Thegoa Lagoon when the volume is less than 50% containment volume or when an environmental diversion into Thegoa Lagoon has been made.

- (e) restrict or prevent water supply work approvals on lagoons listed in Schedule 3 and Thegoa Lagoon,

Note. The provisions in clause 46 of this Plan prevent the granting or amendment of a water supply work approval which may be used to take or divert water to or from a lagoon listed in Schedule 3 or Thegoa Lagoon.

- (f) reserve a portion of flows to maintain longitudinal connectivity within the water source and between the water source and other connected water sources, including the New South Wales Murray Regulated River Water Source and the Lower-Darling Regulated River Water Source.

Note. The provisions in clause 41 of this Plan ensure that very low flows are protected from extraction.

- (4) The performance indicator used to measure the success of the strategies for reaching the broad environmental objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted objectives in subclause (2) have contributed to achieving the broad objective.
- (5) The performance indicators used to measure the success of the strategies for reaching the targeted environmental objectives in subclause (2) are the changes or trends in ecological condition during the term of this Plan, as assessed using one or more of the following:
 - (a) the recorded range, extent or condition of target ecological populations,
 - (b) measurements of fish movements through priority fish passage areas,
 - (c) the recorded values of water quality measurements, including salinity, turbidity, total nitrogen, total phosphorous, pH, water temperature and dissolved oxygen.
- (6) In evaluating the effectiveness of the strategies in meeting the objectives in this clause, the following will be relevant:
 - (a) the extent to which the strategies in subclause (3) and provisions in this Plan have been implemented and complied with,
 - (b) the extent to which changes in the performance indicators can be attributed to the strategies in subclause (3) and provisions in this Plan,

- (c) the extent to which the strategies in subclause (3) support achievement of the environmental objectives,
- (d) the extent to which external influences on the water source during the term of this Plan have affected progress toward achieving the environmental objectives.

Note. External influences may include climate trends, land use patterns and other factors.

9 Economic objectives

- (1) The broad economic objective of this Plan is to maintain, and where possible improve, access to water to optimise economic benefits for agriculture, surface water-dependent industries and local economies.
- (2) The targeted economic objectives of this Plan are as follows:
 - (a) to maintain, and where possible improve, water trading opportunities for surface water-dependent businesses,
Note. Trading is a generic term referring to dealings under Division 4 of Part 2 of Chapter 3 of the Act.
 - (b) to maintain, and where possible improve, access to water for agriculture, surface water-dependent businesses and landholders,
 - (c) to contribute to maintaining water quality within target ranges for agriculture, surface water-dependent businesses and landholders.
- (3) The strategies for reaching the targeted economic objectives of this Plan are as follows:
 - (a) provide for trade of water allocations and share components, subject to environmental constraints.
Note. The provisions in Part 10 of this Plan permit a variety of dealings within environmental constraints, including assignment of rights under access licences and assignment of water allocations between access licences.
 - (b) provide a stable and predictable framework for sharing water among water users,
Note. The compliance with extraction and diversion limit provisions in Division 4 of Part 6 of this Plan provide certainty in how water will be shared between different categories of access licences.
 - (c) provide flexibility of access to water,
Note. The individual account management provisions in clause 38 of this Plan, including the limit on the volume of water that can be taken in any water year or over three consecutive water years and the amount of water that may be carried over from one water year to the next, provide flexibility that reflects the characteristics of the licence category.

- (d) manage extractions to the long-term average annual extraction limit and the long-term average sustainable diversion limit.

Note. Part 6 of this Plan manages the extraction of water within the long-term average annual extraction limit and the long-term average sustainable diversion limit.

- (4) The performance indicator used to measure the success of the strategies for reaching the broad economic objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted economic objectives in subclause (2) have contributed to achieving the broad objective.
- (5) The performance indicators used to measure the success of the strategies for reaching the targeted economic objectives in subclause (2) are the changes and trends in economic benefits during the term of this Plan, as assessed using one or more of the following:
 - (a) the economic benefits of water extraction and use,
 - (b) the economic benefits of water trading as demonstrated by:
 - (i) the annual number or volume of share components of access licences transferred or assigned,
 - (ii) the weighted average unit price of share components of access licences transferred or assigned,
Note. *Weighted average unit price* is defined in the Dictionary.
 - (iii) the annual volume of water allocations assigned,
 - (iv) the weighted average unit price of water allocations assigned,
 - (c) the recorded values of water quality measurements, including salinity, sodium adsorption ratio, harmful algal blooms, total nitrogen, total phosphorus, pH and dissolved oxygen.
- (6) In evaluating the effectiveness of the strategies in meeting the objectives in this clause, the following will be relevant:
 - (a) the extent to which the strategies in subclause (3) and provisions in this Plan have been implemented and complied with,
 - (b) the extent to which changes in the economic benefits of surface water extraction and use can be attributed to the strategies in subclause (3) and provisions in this Plan,
 - (c) the extent to which the strategies in subclause (3) support achievement of the economic objectives,

- (d) the extent to which external influences on surface water-dependent businesses during the term of this Plan have affected progress toward achieving the economic objectives.

Note. External influences may include trends in urban, agricultural and industrial development, energy costs, commodity prices, interest rates, technology advances, climate or changes in industry policy or regulation.

10 Aboriginal cultural objectives

- (1) The broad Aboriginal cultural objective of this Plan is to maintain, and where possible improve, the spiritual, social, customary and economic values and uses of water by Aboriginal people.

- (2) The targeted Aboriginal cultural objectives of this Plan are as follows:

- (a) to provide access to water in the exercise of native title rights,
- (b) to provide access to water for Aboriginal cultural use, including fishing,
- (c) to protect, and where possible improve, identified surface water-dependent culturally significant areas, including important riparian vegetation communities,
- (d) to contribute to the maintenance of water quality within target ranges to ensure suitability of water for Aboriginal cultural use.

- (3) The strategies for reaching the targeted Aboriginal cultural objectives of this Plan are as follows:

- (a) manage access to water consistently with the exercise of native title rights,
- (b) provide for water associated with Aboriginal cultural values and uses,

Note. The provisions in Part 7 of this Plan provide opportunities for Aboriginal people to access water by allowing for the granting of an access licence of the subcategory 'Aboriginal cultural'.

- (c) reserve a portion of flows to partially mitigate alterations to natural flow regimes in the water source,
- (d) restrict the take of water from a natural pool, lagoon or lake when the volume of that water is less than full containment volume,

Note. The provisions in clause 41 of this Plan restrict the take of water from a natural pool, lagoon or lake when the volume is less than full containment volume, thereby contributing to the protection of native fish populations, swimming and recreational areas and riparian vegetation.

- (e) reserve a portion of flows to maintain longitudinal connectivity within the water source, and between the water source and other connected water sources.

Note. The provisions in clause 41 of this Plan ensure that very low flows are protected from extraction.

- (4) The performance indicator used to measure the success of the strategies for reaching the broad Aboriginal cultural objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted Aboriginal cultural objectives in subclause (2) have contributed to achieving the broad objective.
- (5) The performance indicators used to measure the success of the strategies for reaching the targeted Aboriginal cultural objectives in subclause (2) are the changes or trends in Aboriginal cultural benefits during the term of this Plan, as assessed using one or more of the following:
 - (a) the use of water by Aboriginal people by measuring factors, including:
 - (i) the extent to which native title rights are able to be exercised, consistently with any determination of native title or indigenous land use agreement,
 - (ii) the extent to which access to water has contributed to achieving Aboriginal cultural outcomes,
 - (b) the recorded range or extent of target populations of native fish,
 - (c) the recorded range or condition of target populations of riparian vegetation,
 - (d) the recorded values of water quality measurements, including salinity, harmful algal blooms, total nitrogen, total phosphorus, pH, water temperature and dissolved oxygen.
- (6) In evaluating the effectiveness of the strategies in meeting the objectives in this clause, the following will be relevant:
 - (a) the extent to which the strategies in subclause (3) and provisions in the Plan have been implemented and complied with,
 - (b) the extent to which changes in the performance indicators can be attributed to the strategies in subclause (3) and provision in this Plan,
 - (c) the extent to which the strategies in subclause (3) support achievement of the Aboriginal cultural objectives,
 - (d) the water made available for Aboriginal cultural values and uses during the term of this Plan through available water determinations and the granting of new access licences,
 - (e) the extent to which external influences on surface water-dependent Aboriginal cultural activities during the term of this Plan have affected progress toward achieving the Aboriginal cultural objectives.

Note. External influences may include trends in Aboriginal cultural activity, urban, agricultural and industrial development, climate or changes in policy or regulation.

10A Social and cultural objectives

- (1) The broad social and cultural objective of this Plan is to provide access to surface water to support surface water-dependent social and cultural values.
 - (2) The targeted social and cultural objectives of this Plan are to maintain, and where possible improve, the following:
 - (a) access to water for basic landholder rights, town water supply and licensed domestic and stock purposes, and
 - (b) access to water for surface water-dependent cultural, heritage and recreational uses, including recreational fishing,
 - (c) water quality within target ranges for basic landholder rights, town water supply, domestic and stock purposes and surface water-dependent cultural, heritage and recreational uses, including recreational fishing.
 - (3) The strategies for reaching the targeted social and cultural objectives of this Plan are as follows:
 - (a) provide access to water for basic landholder rights, town water supply, and for licensed domestic and stock purposes,
 - (b) reserve a portion of flows to partially mitigate alterations to natural flow regimes in the water source,
 - (c) restrict the take of water from a natural pool, lagoon or lake when the volume of that water is less than full containment volume,
 - (d) reserve a portion of flows to maintain longitudinal connectivity within the water source, and between the water source and other connected water sources.
 - (4) The performance indicator used to measure the success of the strategies for reaching the broad social and cultural objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted social and cultural objectives in subclause (2) have contributed to achieving the broad objective.
 - (5) The performance indicators used to measure the success of the strategies for reaching the targeted social and cultural objectives in subclause (2) are the changes or trends in social and cultural benefits during the term of this Plan, as assessed using one or more of the following:
 - (a) the social and cultural uses of water during the term of this Plan, by measuring factors, including:
-

- (i) the extent to which basic landholder rights and licensed domestic and stock requirements have been met, and
 - (ii) the extent to which major utility access licence and local utility access licence requirements have been met,
 - (b) the recorded range or extent of target populations of native fish that are important for recreational fishing,
 - (c) the recorded takes of native fish that are important for recreational fishing within legal age and size classes,
 - (d) the recorded values of water quality measurements, including salinity, harmful algal blooms, total nitrogen, total phosphorus, pH, water temperature and dissolved oxygen.
- (6) In evaluating the effectiveness of the strategies in meeting the objectives in this clause, the following will be relevant:
- (a) the extent to which the strategies in subclause (3) and provisions in this Plan have been implemented and complied with,
 - (b) the extent to which the changes in the performance indicators can be attributed to the strategies in subclause (3) and provisions in this Plan,
 - (c) the extent to which the strategies in subclause (3) support achievement of the social and cultural objectives,
 - (d) the extent to which external influences on surface water-dependent social and cultural activities during the term of this Plan have affected progress toward achieving the social and cultural objectives.

Note. External influences may include trends in urban, agricultural and industrial development, social or cultural behaviour, climate or changes in policy or regulation.

Part 3 Bulk access regime

11 Bulk access regime

- (1) This Plan establishes a bulk access regime for the extraction of water under access licences in the water source, having regard to:
 - (a) the environmental water rules established in Part 4 of this Plan,
 - (b) the requirements for water for basic landholder rights identified in Division 2 of Part 5 of this Plan,
 - (c) the requirements for water for extraction under access licences identified in Division 3 of Part 5 of this Plan, and
 - (d) the access licence dealing rules established in Part 10 of this Plan.
- (2) The bulk access regime established in this Plan for the water source:
 - (a) recognises and is consistent with the limits to the availability of water set in relation to the water source contained in Part 6 of this Plan,
 - (b) establishes rules according to which access licences are to be granted and managed contained in Parts 7 and 8 of this Plan and available water determinations are to be made contained in Part 6 of this Plan,
 - (c) recognises the effect of climatic variability on the availability of water as described in clause 12,
 - (d) establishes rules with respect to the priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water due to an increase in average annual extraction against the long-term average annual extraction limit and long-term average sustainable diversion limit, contained in Part 6 of this Plan,
 - (e) contains provisions with respect to the conditions that must be imposed as mandatory conditions on access licences, contained in Division 2 of Part 11 of this Plan, and
 - (f) recognises and is consistent with the water management principles contained in section 5 of the Act.

12 Climatic variability

This Plan recognises the effects of climatic variability on river flow in the water source by having provisions that:

- (a) manage the sharing of water within the limits of water availability on a long-term average annual basis and the priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water due to an increase in average annual extraction against the long-term average annual extraction limit and long-term average sustainable diversion limit, contained in Part 6 of this Plan, and
- (b) manage the sharing of water on a daily basis, contained in Division 2 of Part 8 of this Plan.

Note. Other statutory tools are available to manage for climatic variability within a water source, for example, temporary water restrictions under section 324 of the Act.

Part 4 Planned environmental water provisions

Note. This Part is made in accordance with section 8 of the Act.

13 General

This Part contains environmental water rules for the commitment, identification, establishment and maintenance of planned environmental water in the water source.

Note. In accordance with the Act, planned environmental water is water that is committed by management plans for fundamental ecosystem health or other specified environmental purposes, either generally or at specified times or in specified circumstances and that cannot to the extent committed be taken or used for any other purpose.

14 Commitment and identification of planned environmental water

Water is committed and identified as planned environmental water in the water source in the following ways:

- (a) by reference to the commitment of the physical presence of water in the water source,
- (b) by reference to the long-term average annual commitment of water as planned environmental water,
- (c) by reference to the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

15 Establishment and maintenance of planned environmental water

- (1) (Repealed)
 - (2) This Plan establishes planned environmental water in the water source as follows:
 - (a) the physical presence of water resulting from the access rules specified in Division 2 of Part 8 of this Plan,

Note. The rules in Division 2 of Part 8 of this Plan set flow rates or flow levels below which the taking of water is not permitted. Some limited exemptions apply.
 - (b) the long-term average annual commitment of water as planned environmental water resulting from compliance with the long-term average annual extraction limit and long-term average sustainable diversion limit as specified in Part 6,
 - (c) water remaining after water has been taken under basic landholder rights, access licences and any other rights under the Act, in accordance with the rules specified in Parts 6 and 8 of this Plan.
 - (3) The planned environmental water established under subclause (2) (a) is maintained by the rules specified in Division 2 of Part 8 of this Plan.
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- (4) The planned environmental water established under subclause (2) (b) is maintained by the provisions specified in Part 6 of this Plan.
- (5) The planned environmental water established under subclause (2) (c) is maintained by the provisions specified in Part 6 and Part 8 of this Plan.

Note. The provisions in Part 6 of this Plan ensure that there will be water remaining in the water source over the long term by maintaining compliance with the long-term average annual extraction limit and long-term average sustainable diversion limit. The rules in Part 6 provide for a reduction in available water determinations when the long-term average annual extraction limit or the long-term average sustainable diversion limit have been assessed to have been exceeded.

Part 5 Requirements for water

Division 1 General

16 Application

- (1) This Part identifies the requirements for water from the water source for basic landholder rights (Division 2) and for extraction under access licences (Division 3).
- (2) The amounts of water specified in this Part represent the estimated water requirements of persons entitled to basic landholder rights in the water source and the total volumes or unit shares specified in the share components of all access licences in the water source. The actual volumes of water available for extraction in the water source at any time will depend on factors such as climatic variability, access licence priority and the rules in this Plan.
- (3) This Plan recognises that basic landholder rights in the water source and the total share components of all access licences authorised to extract water from the water source may change during the term of this Plan. This Plan manages such changes by having provisions that manage the sharing of water within the limits of water availability, as provided for in Part 6 of this Plan.

Note. The total share components of access licences in the water source may change during the term of this Plan as a result of:

- (a) the grant, surrender or cancellation of access licences in the water source,
- (b) the variation of local water utility licences under section 66 of the Act, or
- (c) changes due to the volumetric conversion of *Water Act 1912* entitlements that are currently non-volumetric.

Division 2 Requirements for water for basic landholder rights

17 Domestic and stock rights

The water requirements of persons entitled to domestic and stock rights in the water source are estimated to total 2,044 megalitres per year (*ML/year*).

Notes.

- 1 Domestic and stock rights are set out in Division 1 of Part 1 of Chapter 3 of the Act and must be exercised in accordance with any mandatory guidelines established under the Act with respect to the taking and use of water for domestic consumption or stock watering.
- 2 Inherent water quality and land use activities may make the water in some areas unsuitable for human consumption. Water from the water source should not be consumed without first being tested and if necessary, appropriately treated. Such testing and treatment is the responsibility of the water user.

18 Native title rights

The requirement for water to satisfy native title rights is the water that may be taken in the exercise of native title rights in accordance with the *Native Title Act 1993* of the Commonwealth, including:

- (a) the native title determination for the Barkandji Traditional Owners #8 (Parts A and B, National Native Title Tribunal references NCD2015/001 and NCD2017/001), and
- (b) any other determination of native title, and
- (c) any indigenous land use agreement.

Notes.

- 1 A map of the native title determination area can be viewed by searching the National Native Title Tribunal website at www.nntt.gov.au.
- 2 This Plan may be amended if there is an additional or change to a native title determination in accordance with the *Native Title Act 1993* of the Commonwealth by which water is required.
- 3 This Plan may be amended if consultation with native title holders identifies more specific requirements for water to satisfy native title rights.
- 4 Native title rights may be exercised in accordance with the *Native Title Act 1993* of the Commonwealth, including section 211 of that Act.

19 Harvestable rights

The requirements for water under harvestable rights in the water source is the total amount of water that owners or occupiers of landholdings are entitled to capture and store pursuant to a harvestable rights order made under Part 1 of Chapter 3 of the Act.

Division 3 Requirements for water for extraction under access licences

20 Share components of domestic and stock access licences

It is estimated that the share components of domestic and stock access licences authorised to take water from the water source total 29 ML/year.

21 Share components of local water utility access licences

It is estimated that the share components of local water utility access licences authorised to take water from the water source total 0 ML/year.

Note. Clause 35 of this Plan provides for Essential Energy to apply for a local water utility access licence for the purpose of supplying water to Broken Hill and Silverton.

22 Share components of unregulated river access licences

It is estimated that the share components of unregulated river access licences authorised to take water from the water source total 2,424 unit shares.

23 (Repealed)

24 Share components of salinity and water table management access licences

It is estimated that the share components of salinity and water table management access licences authorised to take water from the water source total 0 ML/year.

Note. Clause 35 of this Plan provides that application for salinity and water table management access licences may be made in the water source. It is anticipated that approximately 5000 ML/year will be issued in the water source.

Part 6 Limits to the availability of water

Note. This Part sets out the rules for managing the availability of water for extraction in accordance with the following long-term limits on extraction:

- (a) a long-term average annual extraction limit,
- (b) a long-term average sustainable diversion limit.

Division 1 Calculations under this Part

25 Exclusions, inclusions and variations in calculations

- (1) This clause applies to the calculation of the following:
 - (a) the long-term average annual extraction limit under clause 26,
 - (b) the annual extraction under clause 27,
 - (c) the annual permitted take under clause 30,
 - (d) the annual actual take under clause 30.

Note. *Annual permitted take* and *annual actual take* are defined in the Dictionary.
- (2) The calculations by the Minister to which this clause applies must:
 - (a) exclude the following:
 - (i) allocations assigned from an access licence in the water source to an access licence in another water source, under section 71T of the Act,
 - (ii) in relation to annual extraction under clause 27 only, water committed as licensed environmental water under section 8F of the Act, and
 - (b) include allocations assigned to an access licence in the water source from an access licence in another water source, under section 71T of the Act.
- (3) The calculation by the Minister of the long-term average annual extraction limit under clause 26 must be adjusted by a volume that appropriately reflects the following:
 - (a) the share components of water access licences in the water source that are subject to a dealing under section 71U of the Act,
 - (b) any changes to the amount of water committed as licensed environmental water under section 8F of the Act.

Division 2 Long-term average annual extraction limit

26 Calculation of the long-term average annual extraction limit

The long-term average annual extraction limit for the water source is:

- (a) the estimated annual extraction of water averaged over the period from 1 July 1993 to 30 June 1999 under entitlements issued under Part 2 of the *Water Act 1912* from the water source, plus
- (b) the estimated annual water requirements pursuant to basic landholder rights in the water source at the commencement of this Plan, plus
- (c) the estimated annual extraction of water by the Broken Hill Water Board averaged over the period from 1 July 1993 to 30 June 1999 in the water source, plus
- (d) the estimated annual extraction of water averaged over the period from 1 July 1993 to 30 June 1999 by floodplain harvesting activities for which floodplain harvesting (unregulated river) access licences may be issued in the water source, plus
- (e) the estimated annual take of water from the water source by plantation forestry that existed on 30 June 2009.

Note. *Plantation forestry* is defined in the Dictionary.

Notes.

- 1 Under paragraphs (a), (b), and (c), any water extracted from the water source by the Rufus River Salt Interception Scheme during the period 1 July 1993 to 30 June 1999 is not included within the long-term average annual extraction limit.
- 2 In unregulated river water sources, the extraction of water by floodplain harvesting activities is typically already accounted for within the existing access licence share components. However, there may be instances where this is not the case and floodplain harvesting access licences may be issued in accordance with the NSW Floodplain Harvesting Policy. Subclause (d) applies only to those estimated extractions for which floodplain harvesting access licences are later issued, and not to estimated extractions under entitlements issued under Part 2 of the *Water Act 1912*.

27 Calculation of annual extraction

Following the end of each water year, the Minister is to calculate the total annual extraction from the water source, based on the following:

- (a) the take of water by basic landholder rights and access licences, excluding salinity and water table management access licences, in that water year,
- (b) the estimated take of water by plantation forestry in that year,
- (c) until such time as it is included under paragraph (a), the estimated take of water in that water year by floodplain harvesting, for which floodplain harvesting (unregulated river) access licences may be issued in the water source.

28 Assessment of compliance with the long-term average annual extraction limit

- (1) Following the calculation under clause 27, the Minister is to compare the average of the total annual extraction for the water source over the preceding five water years against the long-term average annual extraction limit.
- (2) There is non-compliance with the long-term average annual extraction limit if the average of the total annual extraction over the preceding five water years exceeds the long-term average annual extraction limit by 5% or more.

Division 3 Long-term average sustainable diversion limit

Note. *Lower Darling SDL resource unit* is defined in the Dictionary.

29 Calculation of the long-term average sustainable diversion limit

- (1) Subject to any variation in accordance with subclause (2), the long-term average sustainable diversion limit for the water source is the component of the baseline diversion limit for the Lower Darling SDL resource unit as determined in accordance with Schedule 3 of the Basin Plan, that in the Minister's opinion is attributable to the water source.
- (2) The long-term average sustainable diversion limit is to be varied as determined under Chapter 7 of the Basin Plan.

Notes.

- 1 **Baseline diversion limit** and **Lower Darling SDL resource unit** are defined in the Dictionary.
- 2 The long-term average sustainable diversion limit for the Lower Darling SDL resource unit specified in Schedule 2 of the Basin Plan covers extractions from both the New South Wales Lower-Darling Regulated River Water Source and the Lower Murray-Darling Unregulated Water Source.

30 Calculation of annual permitted and annual actual take for the water year

- (1) Following the end of each water year, the Minister is to calculate the annual permitted take and annual actual take of water for the previous water year in the water source in accordance with Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- (2) For the purposes of the calculation, references to the SDL resource unit in Division 2 of Part 4 of Chapter 6 of the Basin Plan are taken to be references to the water source.

Notes.

- 1 Under the Basin Plan take of licensed environmental water and under licences held by the Commonwealth Environmental Water Holder are not included in the calculation as it falls outside the definition of take for consumptive use.
- 2 **Consumptive use** and **take** and are defined in section 4 of the *Water Act 2007* of the Commonwealth.

31 Assessment of compliance with the long-term average sustainable diversion limit

- (1) Following the calculation under clause 30 after the end of each water year, the Minister is to undertake an assessment of compliance with the long-term average sustainable diversion limit in accordance with the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- (2) There is non-compliance with the long-term average sustainable diversion limit in the circumstances set out in Division 2 of Part 4 of Chapter 6 of the Basin Plan.

Division 4 Compliance with extraction and diversion limits

32 Action following non-compliance

- (1) Subject to subclauses (2) and (3), if an assessment under clauses 28 or 31 demonstrates non-compliance with either the long-term average annual extraction limit for the water source or the long-term average sustainable diversion limit, the Minister is to make available water determinations for unregulated river access licences of less than 1 ML per unit share.
- (2) The Minister may take the action specified in subclause (1) if an assessment under clause 31 would have demonstrated non-compliance with the long-term average sustainable diversion limit but for there being a reasonable excuse, as provided for in Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- (3) An action taken in accordance with subclause (1) and (2) is to be taken to the extent to which, and only for as long as, the Minister considers the following is necessary:
 - (a) in the case of non-compliance with the long-term average annual extraction limit— to return long-term average annual extraction in the water source to the long-term average annual extraction limit,
 - (b) in the case of non-compliance with the long-term average sustainable diversion limit — to meet the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan,
 - (c) in the case where non-compliance with the long-term average sustainable diversion limit would have occurred but for there being a reasonable excuse— to meet the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan.

Division 5 Available water determinations

33 General

- (1) Available water determinations for access licences with a share component that specifies the water source are to be expressed as either:
 - (a) a percentage of the share component for access licences where share components are specified as ML/year, or
 - (b) megalitres per unit share for access licences where share components are specified as a number of unit shares.
- (2) The sum of available water determinations made for any access licence with a share component that specifies the water source must not, in any water year, exceed:
 - (a) 100% of the access licence share component for all access licences where share components are specified as ML/year, or
 - (b) 1 ML per unit share of the access licence share component for all access licences where share components are specified as a number of unit shares.
- (3) (Repealed)

34 Available water determinations

Unless the Minister otherwise determines, at the commencement of each water year the following available water determinations are to be made for the following access licences:

- (a) 100% of the access licence share component for domestic and stock access licences,
- (b) 100% of the access licence share component for local water utility access licences,
- (c) 100% of the access licence share component for salinity and water table management access licences, and
- (d) 1 ML per unit of share component for unregulated river access licences, unless a lower amount is determined under clause 32.

Note. Division 4 of this Part provides for the making of available water determinations for unregulated river access licences that are less than 1 ML per unit of share component where the long-term average annual extraction limit or long-term average sustainable diversion limit for the water source has been assessed to have been exceeded.

Part 7 Rules for granting access licences

Notes.

- 1 This Part is made in accordance with sections 20 and 61 of the Act.
- 2 Access licences granted in the water source are subject to mandatory conditions and may be subject to discretionary conditions.

35 Specific purpose access licences

Note. Section 61 of the Act allows for the granting of specific purpose access licences under the regulations and the relevant water sharing plan.

- (1) Applications for specific purpose access licences, other than those permitted under regulations to the Act, must not be made in the water source except for:
 - (a) a salinity and water table management access licence, and
 - (b) a local water utility access licence for the purpose of supplying water to Broken Hill and Silverton.
- (2) A specific purpose access licence must not be granted in the water source unless the Minister is satisfied that the share and extraction component of the access licence is the minimum required to meet the circumstances in which the access licence is proposed to be used.
- (3) An access licence of the subcategory “Aboriginal cultural” must not be granted in the water source unless the share component of the proposed access licence is less than or equal to 10 ML/year.
- (4) An access licence of the subcategory “Aboriginal cultural” may only be granted for the taking of water by an Aboriginal person or Aboriginal community for any personal, domestic or communal purpose, including drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, cultural teachings, hunting, fishing, gathering for recreational, cultural and ceremonial purposes.

Note. *Aboriginal person* is defined in the Dictionary.

36 (Repealed)

Part 8 Rules for managing access licences

Division 1 Water allocation account management rules

Note. The Act and the regulations provide for the keeping of water allocation accounts for access licences. The rules in this Division impose further limits on the water that may be taken under an access licence over a specified period of time. These limits are in addition to any other limits on access licences for the taking of water. It is an offence under the Act to take water under an access licence for which there is no or insufficient water allocation.

37 (Repealed)

38 Individual access licence account management rules

- (1) The rules in this clause apply to the taking of water under an access licence with a share component that specifies the water source.
- (2) For the period of the first three water years in which this Plan has effect, the maximum volume of water that may be taken under an access licence to which this clause applies, excluding a salinity and water table management access licence, must not exceed a volume equal to:
 - (a) 50% of the water allocations accrued to the water allocation account for the access licence from available water determinations in the first water year, plus
 - (b) the sum of water allocations accrued to the water allocation account for the access licence from available water determinations in the second and third water years, plus
 - (c) the net amount of any water allocations assigned to or from the water allocation account for the access licence under section 71T of the Act in those water years, plus
 - (d) any water allocations re-credited to the water allocation account for the access licence in accordance with section 76 of the Act in those water years.
- (3) For the period of any three consecutive water years after the first water year in which this Plan has effect, the maximum volume of water that may be taken under an access licence to which this clause applies, excluding a salinity and water table management access licence, must not exceed a volume equal to the lesser of:
 - (a) the sum of:
 - (i) the water allocations accrued to the water allocation account for the access licence from available water determinations in those three water years,

- (ii) the water allocations carried over from the water year prior to those three water years under subclause (5),
 - (iii) the net amount of any water allocations assigned to or from the water allocation account for the access licence under section 71T or 71V of the Act in those three water years, and
 - (iv) any water allocations re-credited to the water allocation account for the access licence in accordance with section 76 of the Act in those three water years, or
- (b) the sum of:
 - (i) the share component of the access licence at the beginning of the first of those three water years,
 - (ii) the share component of the access licence at the beginning of the second of those three water years,
 - (iii) the share component of the access licence at the beginning of the third of those three water years,
 - (iv) the net amount of any water allocations assigned to or from the water allocation account for the access licence under section 71T or 71V of the Act in those three water years, and
 - (v) any water allocations re-credited to the water allocation account for the access licence in accordance with section 76 of the Act in those three water years.
- (4) In any water year, the maximum volume of water that may be taken under a salinity and water table management access licence to which this clause applies must not exceed a volume equal to:
 - (a) the sum of water allocations accrued to the water allocation account for the access licence from available water determinations in that water year, plus
 - (b) the net amount of any water allocations assigned to or from the water allocation account for the access licence under section 71T or 71V of the Act in that water year, plus
 - (c) any water allocations re-credited to the water allocation account for the access licence in accordance with section 76 of the Act in that water year.

- (5) The maximum water allocation that can be carried over in the water allocation account for an access licence to which this clause applies, excluding a salinity and water table management access licence, from one water year to the next, is equal to:
 - (a) 100% of the access licence share component, for access licences with share components expressed as ML/year, or
 - (b) 1 ML per unit share of access licence share component, for access licences with share components expressed as a number of unit shares.
- (6) Water allocations remaining in the water allocation account for a salinity and water table management access licence to which this clause applies cannot be carried over from one water year to the next.

39 (Repealed)

Division 2 Daily access rules

Note. Part 12 of this Plan allows for amendments to be made to this Division.

40 General

The rules in this Division apply to the taking of water under an access licence with a share component that specifies the water source.

41 Access rules

- (1) This clause applies to the taking of water under an access licence with a share component that specifies the water source except for:
 - (a) the taking of water under an access licence that does not nominate a water supply work approval in the water source, where the access licence is used to account for the taking of water in association with an aquifer interference activity, and
 - (b) the taking of water under a salinity and water table management access licence.
- (2) Subject to subclause (9), water must not be taken under an access licence when there is no visible flow in the water source at the location at which water is proposed to be taken. This subclause does not apply to the taking of water from natural pools, lagoons or lakes.
- (3) Water must not be taken from an in-river dam pool unless the in-river dam is passing such flows as specified on the water supply work approval for the in-river dam. This subclause does not apply to the taking of water under a local water utility access licence.

- (4) The inflows to be specified on the water supply work approval for the in-river dam referred to in subclause (3) are:
 - (a) the flows that were specified in conditions on the *Water Act 1912* entitlement that the approval replaces, or
 - (b) where no flows were specified, the amount of flows determined by the Minister.
- (5) Water must not be taken under an access licence where the cease to pump threshold on the entitlement issued under Part 2 of the *Water Act 1912* that the access licence replaces is, in the Minister's opinion, higher than the applicable cease to take condition specified in subclauses (2) or (6) to (8) when flows or storage/containment levels are at or less than the cease to pump threshold that was specified on the replaced *Water Act 1912* entitlement. In this subclause, ***cease to pump threshold*** means a condition or restriction on the replaced entitlement which places a limit on when water may be taken.
- (6) Subject to subclause (9), water must not be taken from a lagoon specified in Schedule 3, when the water level in that lagoon is less than 50% of the full containment volume of the respective lagoon.
- (7) Subject to subclause (9), water must not be taken from a natural pool, lagoon or lake, excluding a lagoon specified in Schedule 3 and Thegoa Lagoon, when the water level in that pool, lagoon or lake is less than 100% of the full containment volume of the respective pool, lagoon or lake.
- (8) Subject to subclause (9), water must not be taken from Thegoa Lagoon when:
 - (a) the water level in that lagoon is less than or equal to 50% of the full containment volume of the lagoon, or
 - (b) an environmental diversion into Thegoa Lagoon has caused the water level in that lagoon to increase from less than or equal to 50% of the full containment volume of the lagoon to greater than 50% of the full containment volume of the lagoon, until such time as the water level in the lagoon increases due to water entering the lagoon that is not from an environmental diversion. For the purposes of this paragraph, an ***environmental diversion*** means licensed environmental water, as defined under section 8 (1) (b) of the Act, or water diverted into Thegoa Lagoon from the Murray Additional Allowance established under the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2020*.

Notes.

- 1 At the commencement of this Plan, it is estimated that 50% of the full containment volume of Thegoa Lagoon equates to a depth of water of 0.87 metres at staff gauge # 42510083.
 - 2 The Minister may make a temporary water restriction order under section 324 of the Act directing that, for a specified period, the taking of water from a specified water source is prohibited, or is subject to specified restrictions, as the case requires, if satisfied that it is necessary to do so in the public interest. Temporary water restrictions may be considered by the Minister in order to protect environmental diversions into Thegoa Lagoon.
- (9) Subclauses (2) and (6) to (8) do not apply to the following:
- (a) the taking of water under an access licence to which clause 1 of Schedule 4 applies, for any of the purposes listed below, provided that the volume of water taken does not exceed 20 kilolitres per day per access licence, or such lower amount specified in accordance with subclause (10):
 - (i) fruit washing,
 - (ii) cleaning of dairy plant and equipment for the purpose of hygiene,
 - (iii) poultry watering and misting, or
 - (iv) cleaning of enclosures used for intensive animal production for the purposes of hygiene,
 - (b) the taking of water for domestic consumption only under a domestic and stock access licence or a domestic and stock (subcategory “domestic”) access licence that existed at the commencement of this Plan, provided that the volume of water taken does not exceed 1 kilolitre per house supplied by the access licence per day,
 - (c) (repealed),
 - (d) the taking of water using a runoff harvesting dam or from an in-river dam pool,
Note. *Runoff harvesting dam* is defined in the Dictionary.
 - (e) the taking of water under a local water utility access licence or an access licence of the subcategory “Town water supply” to which clause 2 of Schedule 4 applies, and
 - (f) the taking of water under a local water utility access licence held by Essential Energy.
- (10) The Minister may reduce the maximum daily volume limit imposed by the rule under subclause (9) (a) if the Minister is satisfied that the reduced volume is satisfactory to meet the purpose referred to in that subclause.
- Note.** A reduction made under subclause (10) will be given effect by amending the mandatory conditions of the water supply work approval nominated by the access licence. Under section 102 (3) of the Act, the mandatory conditions of an approval may be imposed, amended,

revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to a relevant management plan.

42 (Repealed)

43 Total daily extraction limits

At the commencement of this Plan, there are no total daily extraction limits (hereafter *TDELS*) established for any access licences in the water source.

Notes.

- 1 TDELS are an assessment tool only and will be used by the Department to determine which access licences (if any) may require individual daily extraction limits. However, continued exceedance of a TDEL may result in the imposition of individual daily extraction limits under clause 44.
- 2 **Total daily extraction limit** is defined in the Dictionary.

44 Individual daily extraction limits

- (1) At the commencement of this Plan, there are no individual daily extraction limits (hereafter *IDELs*) established for access licences in the water source.
- (2) If the Minister is satisfied that an assessment of daily extraction under access licences for which a TDEL is established under clause 43 indicates that extraction under the access licences exceeds the TDEL, the Minister may amend the extraction component of an access licence under section 68A of the Act to impose an IDEL on any one or more of those access licences.

Note. *Individual daily extraction limit* is defined in the Dictionary.

Part 9 Rules for water supply work approvals

Notes.

- 1 This Part is made in accordance with sections 5, 21 and 95 of the Act.
- 2 Part 12 allows for amendments to be made to Part 9.

Division 1 Rules applying to the granting or amending of water supply work approvals for water supply works

45 General

The rules in this Division apply to water supply work approvals for water supply works authorised to take water from the water source.

46 Granting or amending water supply work approvals

- (1) (Repealed)
- (2) Subject to subclause (3), a water supply work approval must not be granted or amended to authorise a water supply work which, in the Minister's opinion, is being used or is proposed to be used to take or divert water to or from:
 - (a) a lagoon listed in Schedule 3, or
 - (b) Thegoa Lagoon.
- (3) Subclause (2) does not apply to the granting or amendment of a water supply work approval for a replacement water supply work used or proposed to be used to take or divert water from a lagoon listed in Schedule 3 or Thegoa Lagoon. For the purposes of this subclause, a **replacement water supply work** means a water supply work that replaces an existing water supply work constructed and used for the purpose of taking or diverting water from a lagoon listed in Schedule 3 or Thegoa Lagoon, where:
 - (a) the existing water supply work is authorised by a water supply work approval under the Act, and
 - (b) the replacement water supply work is to be constructed to extract water from the same location as the existing water supply work.

Note. The mandatory conditions provisions of this Plan require water supply works that are replaced to be decommissioned (unless otherwise directed by the Minister) and notified to the Minister within two months of decommissioning. See clause 64 (1) (c) and (d).

47 Rules for the use of water supply works located on a pool, lagoon or lake

A water supply work that is authorised to take water from a pool, lagoon or lake must not, in any water year, be used to take more water than the volume of water that is

equal to the sum of the share components of the access licences nominating that water supply work at the commencement of this Plan.

Division 2 (Repealed)

48 - 54 (Repealed)

Part 10 Access licence dealing rules

55 General

The access licence dealing rules established in this Part apply to all access licence dealings in the water source.

Notes.

- 1 Access licence dealings in the water source are subject to the provisions of the Act, the regulations, the access licence dealing principles and the access licence dealing rules established in this Part.
- 2 The access licence dealing principles prevail over the access licence dealing rules in this Plan to the extent of any inconsistency, as provided under section 71Z (3) of the Act.

56 Conversion of access licence to new category

Dealings under section 71O of the Act are prohibited in the water source.

57 Assignment of rights dealings

- (1) Dealings under section 71Q of the Act are prohibited if the dealing involves an assignment of rights from:
 - (a) an access licence that does not nominate a water supply work located within a lagoon listed in Schedule 3 to an access licence that nominates a water supply work located within a lagoon listed in Schedule 3,
 - (b) an access licence that nominates a water supply work located within a lagoon listed in Schedule 3 to an access licence that nominates a water supply work located within another lagoon listed in Schedule 3,
 - (c) an access licence that does not nominate a water supply work located within Thegoa Lagoon to an access licence that nominates a water supply work located within Thegoa Lagoon, or
 - (d) an access licence that does not nominate a water supply work located within the Great Darling Anabranh, as shown on the Plan Map, to an access licence that nominates a water supply work located within the Great Darling Anabranh, unless the Minister is satisfied that the proposed dealing is for an environmental purpose.
- (2) Dealings under section 71Q of the Act between the water source and another water source within the same water management area are prohibited.

58 Amendment of share component dealings (change of water source)

Dealings under section 71R of the Act are prohibited in the water source.

59 Assignment of water allocations dealings

- (1) Dealings under section 71T of the Act within the water source are prohibited if the dealing involves:
 - (a) an assignment of water allocation from an access licence that does not nominate a water supply work located within a lagoon listed in Schedule 3 to an access licence that nominates a water supply work located within a lagoon listed in Schedule 3,
 - (b) an assignment of water allocation from an access licence that nominates a water supply work located within a lagoon listed in Schedule 3 to an access licence that nominates a water supply work located within another lagoon listed in Schedule 3,
 - (c) an assignment of water allocation from an access licence that does not nominate a water supply work located within Thegoa Lagoon to an access licence that nominates a water supply work located within Thegoa Lagoon, or
 - (d) an assignment of water allocation from an access licence that does not nominate a water supply work located within the Great Darling Anabranch, as shown on the Plan Map, to an access licence that nominates a water supply work located within the Great Darling Anabranch, unless the Minister is satisfied that the proposed dealing is for an environmental purpose.
- (2) Dealings under section 71T of the Act between different water sources are prohibited in the water source.

60 Interstate transfer of access licences and assignment of water allocation

- (1) This clause relates to dealings under section 71U or 71V of the Act in the water source.
- (2) Dealings involving the interstate transfer of an access licence to or from the water source are prohibited.
- (3) Dealings involving the interstate assignment of water allocations to or from access licences in the water source are prohibited.

61 Nomination of water supply works dealings

Dealings under section 71W of the Act are prohibited if the dealing involves:

- (a) an access licence that does not nominate a water supply work located within a lagoon listed in Schedule 3 being amended to nominate a water supply work located within a lagoon listed in Schedule 3,
- (b) an access licence that nominates a water supply work located within a lagoon listed in Schedule 3 being amended to nominate a water supply work located within another lagoon listed in Schedule 3,
- (c) an access licence that does not nominate a water supply work located within Thegoa Lagoon being amended to nominate a water supply work located within Thegoa Lagoon,
- (d) an access licence that does not nominate a water supply work located within the Great Darling Anabranh, as shown on the Plan Map, being amended to nominate a water supply work located within the Great Darling Anabranh, unless the Minister is satisfied that the proposed dealing is for an environmental purpose,
- (e) an access licence being amended to nominate a water supply work located in a different management zone to that specified in the extraction component of the access licence, or
- (f) an access licence being amended to nominate a water supply work located in a different water source to that specified in the share component of the access licence.

Part 11 Mandatory conditions

Note. Part 12 allows for amendments to be made to Part 11.

Division 1 General

62 General

In this Part:

- (a) a requirement to notify the Minister will be satisfied by making a notification in writing to the addresses listed in Schedule 5 of this Plan or to the email address for enquiries on the Department's website,

Note. At the commencement of this Plan, the email address for enquiries on the Department's website is water.enquiries@dpi.nsw.gov.au.

- (b) a *metered water supply work with a data logger* means a water supply work with a data-logger, and a meter that complies with Australian Standard AS 4747, *Meters for non-urban water supply*, as may be updated or replaced from time to time, and

Note. The definition of *metered water supply work with a data logger* does not include all water supply works that are metered or have a data logger. The water supply work must meet the parameters of this definition for the water supply work to be a metered water supply work with a data logger.

- (c) if the holder of a water supply work approval is the same as the holder of the access licence under which water is proposed to be taken, then it is not necessary to maintain two separate Logbooks and all the required information can be kept in one Logbook.

Note. *Logbook* is defined in the Dictionary.

Division 2 Access licences

Note. This Division is made in accordance with sections 17 (c), 20 and 66 of the Act.

63 General

- (1) Access licences in the water source must have mandatory conditions to give effect to the following:
- (a) the relevant water allocation account management rules specified in Division 1 of Part 8 of this Plan for the respective category or subcategory of access licence,
- (b) water must not be taken under an access licence otherwise than in compliance with the conditions applying to the water supply work approval for the water supply work through which water is to be taken,

- (c) the holder of the access licence must notify the Minister, in writing, immediately upon becoming aware of a breach of any condition of the access licence, and
 - (d) any other condition required to implement the provisions of this Plan.
- (2) Access licences in the water source, excluding access licences that nominate only metered water supply works with a data logger, must have mandatory conditions to give effect to the following:
- (a) the holder of the access licence must keep a Logbook,
 - (b) the holder of the access licence, except for a salinity and water table management access licence, must record the following in the Logbook:
 - (i) each date and period of time during which water was taken under the access licence,
 - (ii) the volume of water taken on that date,
 - (iii) the water supply work approval number of the water supply work used to take the water on that date,
 - (iv) the purpose or purposes for which the water was taken on that date,
 - (v) for domestic and stock access licences, local water utility access licences and unregulated river access licences in the water source, the volume of water taken in any three consecutive water years after the first water year in which this Plan has effect, by comparison to the maximum volume permitted to be taken in those years under clause 38 (3),
 - (vi) any other information required to be recorded in the Logbook under the rules of this Plan,
 - (c) the holder of a salinity and water table management access licence must record the following in the Logbook:
 - (i) the dates and periods of time during which water was taken under the access licence for the previous monthly accounting period,
 - (ii) the volume of water taken for the previous monthly accounting period,
 - (iii) the water supply work approval number for the water supply work used to take water during the previous monthly accounting period,
 - (iv) the volume of water taken in any water year, by comparison to the maximum volume of water permitted to be taken in that water year under clause 38 (4), and

- (v) any other information required to be recorded in the Logbook under the rules of this Plan,
 - (d) the holder of the access licence must produce the Logbook to the Minister for inspection, when requested, and
 - (e) the holder of the access licence must retain the information required to be recorded in the Logbook for five years from the date to which that information relates.
- (3) The Minister may require the holder of an access licence that nominates only a metered water supply work with a data logger to keep a Logbook in accordance with any requirements from subclause (2).
- (4) All access licences of the subcategory “Aboriginal cultural” must have a mandatory condition that specifies that water must only be taken under the access licence by Aboriginal persons or Aboriginal communities for personal, domestic or communal purposes, including drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, cultural teaching, hunting, fishing, gathering and for recreational, cultural and ceremonial purposes.
- Note.** *Aboriginal person* is defined in the Dictionary.
- (5) All salinity and water table management access licences must have a mandatory condition that specifies that water must only be taken under the access licence for the purpose of reducing or preventing an increase in salinity levels in the water source.
- (6) If an access licence with a nominated water supply work is subject to a mandatory condition imposed by Part 10 or Part 11 of the *Water Management (General) Regulation 2018* relating to the recording or reporting of water that is taken by the work, subclauses (2) and (3) cease to have effect in relation to the work on the day on which the condition applies to the licence.
- Note.** The *Water Management (General) Regulation 2018* will impose a mandatory condition requiring record keeping on access licences and approvals by 1 December 2022.
- (7) Subclauses (2), (3) and (6) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to the water source in accordance with clause 230 (1) of the *Water Management (General) Regulation 2018*.
- Note.** *Mandatory metering equipment condition* is defined in clause 228 of the *Water Management (General) Regulation 2018*.

Division 3 Water supply work approvals

Note. This Division is made in accordance with sections 17 (c) and 100 of the Act.

64 General

- (1) Water supply work approvals for water supply works in the water source must have mandatory conditions to give effect to the following:
- (a) the water supply work must not be used to take water under an access licence unless in compliance with the relevant access rules for the taking of water as specified in Division 2 of Part 8 of this Plan,
 - (b) when directed by the Minister by notice in writing, the approval holder must have metering equipment installed that meets the following requirements:
 - (i) the metering equipment must accurately measure and record the flow of all water taken through the water supply work,
 - (ii) the metering equipment must comply with Australian Standard AS 4747, *Meters for non-urban water supply*, as may be updated or replaced from time to time,
 - (iii) the metering equipment must be operated and maintained in a proper and efficient manner at all times,
 - (iv) the metering equipment must be sited and installed at a place in the pipe, channel or conduit between the water source and the first discharge outlet. There must be no flow of water into or out of the pipe, channel or conduit between the water source and the metering equipment, and
 - (v) any other requirements as to type, standard or other criteria for the metering equipment specified in the notice, and
- Note.** The Minister may also direct a landholder or person to install, replace or to properly maintain metering equipment under section 326 of the Act.
- (c) the approval holder must ensure that, if the water supply work is abandoned or replaced, that it is decommissioned in accordance with any direction from the Minister. The Minister may direct that any such water supply work need not be decommissioned,
 - (d) within sixty days of the decommissioning of the water supply work, the approval holder must notify the Minister in writing that the water supply work has been decommissioned,
 - (e) any other conditions required to implement the provisions of this Plan.
- (1A) If an approval for a water supply work is subject to a mandatory metering equipment condition in relation to the work, subclause (1) (b) ceases to have effect in relation to the work on the day on which the condition applies to the approval.

- (1B) Subclauses (1) (b) and (1A) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to the water source in accordance with clause 230 (1) of the *Water Management (General) Regulation 2018*.

Note. Clause 230 of the *Water Management (General) Regulation 2018* provides that the mandatory metering equipment condition applies to new works required to have a meter from 1 April 2019, and to other access licences and approvals in the water source from 1 December 2022.

- (2) Water supply work approvals for water supply works in the water source must have mandatory conditions to give effect to the following, provided that these requirements do not apply to a water supply work that is a metered water supply work with a data logger:
- (a) the holder of a water supply work approval must keep a Logbook,
 - (b) the holder of a water supply work approval must record the following in the Logbook:
 - (i) for water supply work approvals that nominate an access licence other than a salinity and water table management access licence, each date and period of time during which water was taken using the water supply work,
 - (ii) for water supply work approvals that nominate a salinity and water table management access licence only, the dates and periods of time during which water was taken under the access licence for the previous monthly accounting period,
 - (iii) for water supply work approvals that nominate an access licence other than a salinity and water table management access licence, the volume of water taken on that date,
 - (iv) for water supply work approvals that nominate a salinity and water table management access licence only, the volume of water taken for the previous monthly accounting period,
 - (v) the access licence number of the access licence under which water was taken on that date or if water was taken under some other authority (such as basic landholder rights), the authority under which water was taken,
 - (vi) the purpose or purposes for which the water was taken on that date,
 - (vii) details of any cropping carried out using the water taken through the water supply work, including the type of crop, area cropped and dates of planting and harvesting,

- (viii) where metering equipment has been installed for use in connection with the water supply work, the meter reading before water is taken,
 - (ix) where metering equipment has not been installed for use in connection with the water supply work, details of all pumping activities for the water supply work, including pump running hours, pump power usage or pump fuel usage, pump start and stop times and pump capacity per unit of time, and
 - (x) any other information required to be recorded in the Logbook under the rules of this Plan,
 - (c) the holder of a water supply work approval must produce the Logbook to the Minister for inspection, when requested, and
 - (d) the holder of a water supply work approval must retain the information required to be recorded in the Logbook for five years from the date to which that information relates.
- (2A) If an approval for a water supply work is subject to a mandatory condition imposed by Part 10 or Part 11 of the *Water Management (General) Regulation 2018* relating to the recording or reporting of water that is taken by the work, subclause (2) ceases to have effect in relation to the work on the day on which the condition applies to the approval.
- (2B) Subclauses (2) and (2A) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to the water source in accordance with clause 230 (1) of the *Water Management (General) Regulation 2018*.
- (3) All water supply work approvals must contain mandatory conditions to require that the water supply work must not be used to take water unless, before water is taken, the holder of the water supply work approval confirms that those conditions do not apply. Where the holder is required to keep a Logbook, the holder must record that confirmation and the means of confirmation (such as visual inspection or internet search), in the Logbook.
- (4) Water supply work approvals for runoff harvesting dams and in-river dams must contain a mandatory condition that requires approval holders to comply with any direction by the Minister to modify or remove the dam to ensure that the capability of the dam to capture water is reduced to reflect any reduction in share components arising from:
- (a) a dealing under section 71Q or 71W of the Act,

- (b) the surrender under section 77 (4) of the Act of an access licence and then the subsequent cancellation of that access licence under section 77A (6) of the Act,
- (c) the amendment of the share component of an access licence by the Minister under section 68A of the Act, or
- (d) the cancellation of an access licence under section 78 of the Act or via the compulsory acquisition of an access licence under section 79 of the Act.

65 (Repealed)

Part 12 Amendment of this Plan

66 General

- (1) Amendments specified throughout this Plan and in this Part, are amendments authorised by this Plan.
- (2) Amendments authorised by this Plan are taken to include any consequential amendments required to be made to this Plan to give effect to that particular amendment.
Note. For example, if Part 1 is amended to add a new management zone, this may require amendment to other parts of this Plan to include rules for that management zone.
- (3) An amendment authorised by this Plan which results in a variation of the bulk access regime, is an amendment authorised by this Plan for the purposes of sections 87 (2) (c) and 87AA of the Act.

67 Part 1

Part 1 may be amended to do any of the following:

- (a) apply this Plan to new or additional water sources or water management areas (including part thereof) or to modify (including to amend the boundaries) or remove an existing water source or water management area (including part thereof) from this Plan,
- (b) add, remove or modify a management zone, including the water sources to which a management zone applies and the boundaries of such a zone,
- (c) add, remove or modify an extraction management unit, including the water sources to which an extraction management unit applies, and
- (d) amend the Plan Map.

68 Part 6

Part 6 may be amended to do any of the following:

- (a) modify the long-term average annual extraction limit as a result of the granting of a salinity and water table management access licence,
- (b) combine the long-term average sustainable diversion limit for the water source with the long-term average sustainable diversion limit for the Lower Darling Regulated River Water Source.

69 Part 8

Division 2 of Part 8 of this Plan may be amended to do any of the following:

- (a) establish a new or additional flow class or flow classes in any water source where management zones are added or in any water source or management zone that is amended, during the term of this Plan as specified in clause 67,
- (b) amend clause 41:
 - (i) in relation to aquifer interference approvals,
 - (ii) to establish access rules for salinity and water table management access licences, or
 - (iii) to specify alternate access rules for natural pools, lagoons and lakes.
 - (iv) (repealed)
- (c) establish or assign TDELS in the water source or management zones, following the imposition of an adaptive environmental water condition on an access licence that requires the water to be left in the water source or management zone for environmental purposes,
- (d) establish or assign TDELS in the water source or management zones to protect a proportion of flow within each flow class for the environment,
- (e) amend or remove TDELS if TDELS have been established or assigned,
- (f) include rules for the establishment, assignment and removal of IDELS,
- (g) remove the existing access rules where TDELS and/or IDELS have been established under paragraphs (d) and/or (f) to protect a proportion of flow within each flow class for the environment, or
- (h) reinstate access rules that applied at the commencement of this Plan, where TDELS and IDELS have been removed under paragraphs (e) and (f).

70 Part 9

Part 9 may be amended to do any of the following:

- (a) amend clause 46 to specify water sources or management zones where water supply work approvals must not be granted or amended to authorise an in-river dam on a third or higher order stream,
- (b) amend the definition of a replacement surface water supply work in clause 46 (3).

70A Part 10

The access licence dealing rules may be amended to provide for the conversion of regulated river (high security) access licences that specify regulated river water

sources connected to, and downstream of, the water source to access licences with share components that specify the water source.

71 Part 11

Part 11 may be amended in relation to metering and record keeping, including amendments in relation to requirements for Logbooks.

72 Schedules

- (1) Schedule 1 may be amended to add, modify and/or remove a definition.
- (2) Schedule 3 may be amended to add or remove a lagoon.
- (3) Schedule 4 may be amended to do any of the following:
 - (a) add a new access licence to clause 1 of Schedule 4, provided that a written request has been made to the Minister and the Minister is satisfied that extraction under the access licence is for a purpose listed in clause 41 (9) (a) and that purpose was specified on, or referred to in the conditions of, the former *Water Act 1912* entitlement that was replaced by the access licence or referred to in its conditions,
 - (b) add a local water utility access licence or an access licence of the subcategory “Town water supply” to clause 2 of Schedule 4, provided the Minister is satisfied that the water supply system used to take, store and deliver water has not undergone major augmentation since the commencement of this Plan,
 - (c) remove an access licence or former *Water Act 1912* entitlement from Schedule 4 if:
 - (i) an access licence dealing results in water being taken under the licence from a different location,
 - (ii) an alternative water supply is obtained, or
 - (iii) the licence is surrendered or cancelled or its purpose ceases to exist,
 - (d) remove a local water utility access licence or an access licence of the subcategory “Town water supply” or former *Water Act 1912* entitlement from clause 2 of Schedule 4 if the Minister is satisfied that the water supply system used to extract, store and deliver water has undergone major augmentation since the commencement of this Plan.
- (4) Schedule 4 may be deleted if the Minister is satisfied that it is no longer required.
- (5) Schedule 5 may be amended to add or remove an office.

73 Other

- (1) This Plan may be amended to provide rules for the following:
 - (a) (repealed)
 - (b) the management of floodplain harvesting within the water source,
 - (c) the shepherding of water,
Note. *Shepherding* is defined in the Dictionary.
 - (d) any new category of access licence established for the purpose of stormwater harvesting, provided that the amendment does not affect the long-term average annual extraction limit specified in this Plan,
 - (e) the management of salt interception schemes,
 - (f) the interception of water before it reaches a stream or aquifer by plantations or other means,
 - (g) the development of a management plan for the Great Darling Anabranh, as shown on the Plan Map, or
 - (h) the use of flood control works or water supply works located on the Great Darling Anabranh and its associated lakes.
- (2) (Repealed)
- (3) This Plan may be amended to give effect to, or in connection with, a determination of native title under the *Native Title Act 1993* of the Commonwealth.
- (4) Consequential amendments may be made to this Plan as a result of an amendment to the Act or regulations.
- (5) This Plan may be amended after year five to provide rules for the protection of water dependent Aboriginal cultural assets, including:
 - (a) the identification of water dependent Aboriginal cultural assets in a Schedule to this Plan,
 - (b) amendments to the access rules to protect water dependent Aboriginal cultural assets,
 - (c) restrictions on the granting and amendment of water supply works to protect water dependent Aboriginal cultural assets, and/or
 - (d) amendments to the dealing rules to protect water dependent Aboriginal cultural assets.

Schedule 1 Dictionary

Note. Unless otherwise defined in this Plan, words and expressions that are defined in the Act or in the Regulations have the same meaning in this Plan. See clause 6 (2).

Aboriginal person has the same meaning as under section 4 of the *Aboriginal Land Rights Act 1983*.

annual actual take has the same meaning as it has in section 6.10 of the Basin Plan.

annual permitted take has the same meaning as it has in section 6.10 of the Basin Plan.

baseline diversion limit has the same meaning as it has in section 1.07 of the Basin Plan.

Basin Plan means the *Basin Plan 2012* made under section 44 (3) (b) (i) of the *Water Act 2007* of the Commonwealth.

cease to take condition means any term or condition on a water supply work approval, an access licence or *Water Act 1912* entitlement that prohibits the taking of water in a particular circumstance.

floodplain harvesting means the collection, extraction or impoundment of water flowing across floodplains, including rainfall runoff and overbank flow, excluding the take of water pursuant to any of the following:

- (a) a water access licence other than a floodplain harvesting access licence,
- (b) a basic landholder right,
- (c) an exemption from the need to hold a licence to take water under the Act.

flow regimes means collectively, the magnitude, duration, frequency and patterns of flow that characterise a river or water source.

full containment volume means the volume of water that is impounded in the pool, lagoon or lake when the level of water in the pool, lagoon or lake is at the high water mark.

individual daily extraction limit (IDEL) is the volume of water that may be extracted by an individual access licence from an unregulated river on a daily basis from a particular flow class.

in-river dam means a dam located in a river.

in-river dam pool means the area of water immediately upstream of an in-river dam where the river has pooled as a result of an in-river dam.

Logbook, in relation to an access licence or water supply work approval, means a written record, kept in hard copy or electronic form, which accurately records all information required to be kept in relation to the access licence or water supply work approval under the rules of this Plan.

Lower Darling SDL resource unit has the same meaning as it has in section 6.02 of the Basin Plan.

management zone is an area within a water source in which rules particular to that management zone will apply, for example daily extraction limits and restrictions on dealings.

plantation forestry means a commercial plantation as defined in section 1.07 of the Basin Plan.

runoff harvesting dam is a farm dam on a hillside or minor stream which collects and stores rainfall runoff. For the purposes of this Plan, references to runoff harvesting dams as water supply works include any associated pumps or other works which take water from the dam. For the purpose of clarity, this definition includes dams that are also used to store water diverted into the dam from a river or other source of water.

Note. **Minor stream** is defined in clause 4 of the *Water Management (General) Regulation 2018*.

shepherding means the delivery of a calculated volume of water that was created by the non-activation/reduced extraction at a nominated licence location to a more downstream location, after consideration of losses, where it will be made available for extraction or use for the environment.

target ecological populations means communities of one or more species that are monitored to evaluate the success of targeted objectives for the environment. Populations must be easily monitored (i.e. not rare or cryptic) and may be linked to conservation or other environmental priorities.

total daily extraction limit (TDEL) is the volume of water that may be extracted under access licences from an unregulated river on a daily basis from a particular flow class.

visible flow means the continuous downstream movement of water that is perceptible to the eye.

Water Act 1912 entitlement has the same meaning as an entitlement has in clause 2 of Schedule 10 to the Act.

weighted average unit price means the total value of all units sold divided by the number of units sold for a monetary value.

Schedule 2 (Repealed)

Schedule 3 Identified lagoons

Column 1	Column 2	Column 3	Column 4
Water Source	Name of Lagoon	Location	Parish/County
Lower Murray-Darling Unregulated Water Source	Neilpo Lagoon	Wentworth	Neilpo/Wentworth
Lower Murray-Darling Unregulated Water Source	Boeill Lagoon	Buronga	Mourquong/Wentworth
Lower Murray-Darling Unregulated Water Source	Peacock Creek	Maniette	Maniette/Taila

Schedule 4 Access licences used to take from the Lower Murray-Darling Unregulated Water Source exempt from cease to pump rules

1 General

This clause applies to each access licence which replaces a *Water Act 1912* entitlement listed in the table below.

<i>Water Act 1912</i> entitlements that will be replaced by access licences on commencement of this Plan

2 Local water utility access licences and access licences of the subcategory “Town water supply”

This clause applies to each access licence which replaces a *Water Act 1912* entitlement listed in the table below.

<i>Water Act 1912</i> entitlements that will be replaced by local water utility access licences or access licences of the subcategory “Town water supply” on commencement of this Plan

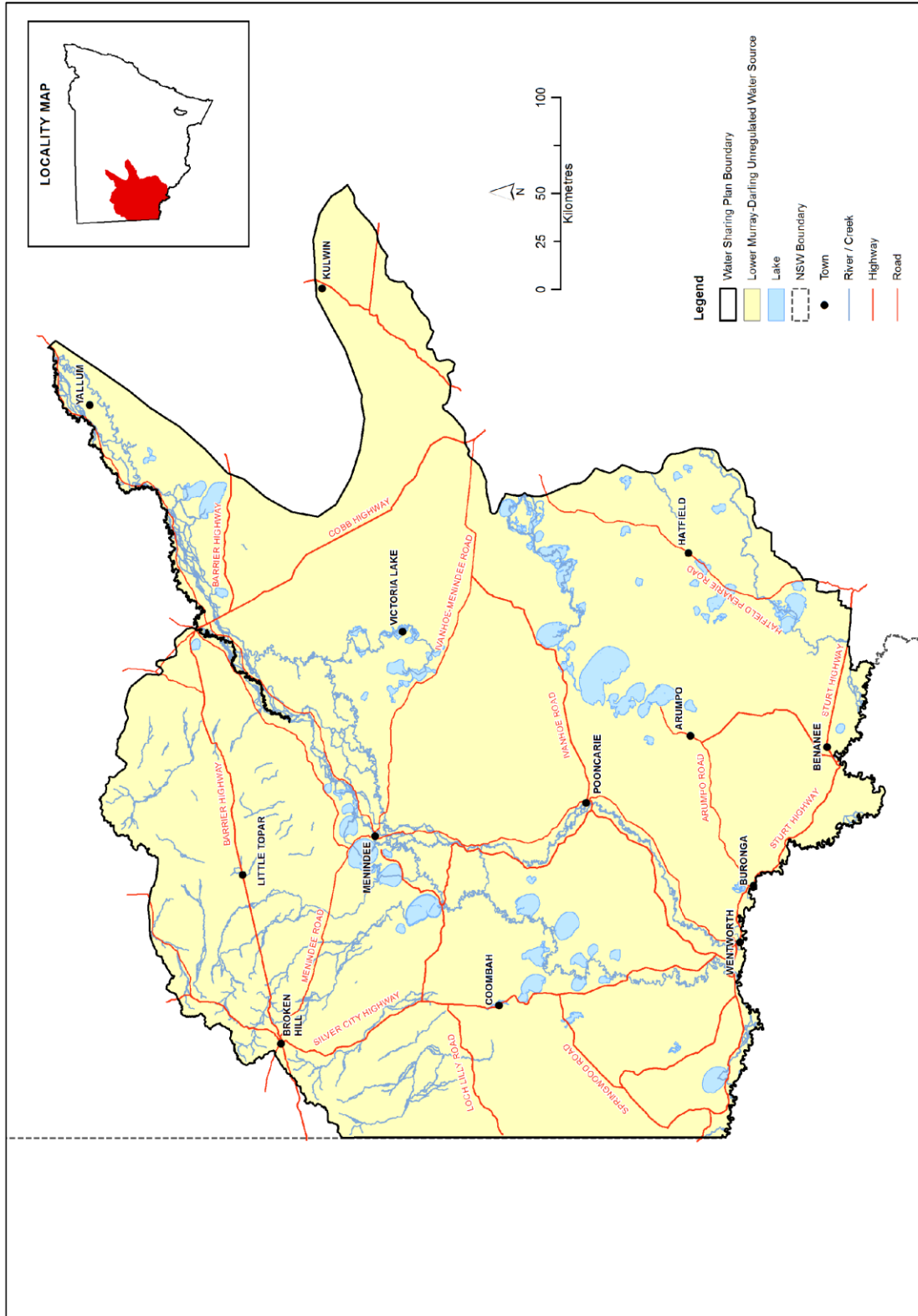
Schedule 5 Offices

NSW Department of Planning, Industry and Environment - Water
32 Enterprise Way
BURONGA NSW 2739

Schedule 6, 7 (Repealed)

Appendix 1 Overview of the Plan Map

Overview of Plan Map (WSP018_Version 2), Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011



Appendix 2 (Repealed)