

# Government response to the Natural Resources Commission recommendations for the Lower Murray-Darling Water Sharing Plan

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This document outlines how the department has responded to the independent review of the *Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011* under S43A of the *Water Management Act 2000*.

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Water sharing plans (plans) are statutory instruments under the *Water Management Act 2000* (the WM Act). They prescribe how water is managed to support sustainable environmental, social, cultural and economic outcomes. They intend to provide certainty regarding rules for water sharing for water users over the life of the plan, which is typically 10 years unless it is extended.

The Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011 (the initial plan) was due to expire on 30 June 2024.

The Natural Resources Commission (NRC) has a role under Section 43A of the WM Act to review plans within five years of expiry and report to the minister on:

- the extent that the plan's water sharing provisions have materially contributed to the achievement of, or failure to achieve, environmental, social and economic outcomes
- if changes to plan provisions are warranted.

The [final review report](#) is available on the [NRCs website](#).

The NRC may recommend extending or replacing water sharing plans (plans) depending on its review findings. In this instance, the NRC recommended replacing the plan by no later than 30 June 2024.

Recommendations and suggested actions arising from the NRC review and how the Department of Climate Change, Energy, the Environment and Water (the department) have responded are outlined below.

# NRC Recommendations

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## Recommendation 1

The plan should be:

- a. extended for a further two years until July 2024, to allow time to complete data collection and analysis
- b. replaced by July 2024, supported by the completion of the recommendations of this review.

## Department response to 2022 review

The replacement plan is scheduled to commence on 1 July 2024.

## Action taken to address NRC recommendation

A replacement plan, the *Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2024* (the new plan), was made under section 50 of the *Water Management Act 2000* and commenced on 1 July 2024.

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## Recommendation 2

When remaking the plan, to ensure all extraction under the plan is managed to protect, preserve, and maintain the water sources and dependant ecosystems, the Department of Planning, Industry and Environment - Water (DPIE-Water)<sup>1</sup> should:

- a. ensure interception on the floodplains is assessed and accounted for within the LTAAEL
- b. ensure the total take is sustainable at the appropriate scales within the Plan and based on best available information, including current knowledge regarding ecological requirements
- c. ensure there is no growth in overall take by establishing and publishing sustainable, numeric LTAAELs, and undertaking the required compliance assessments against LTAAELs.

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<sup>1</sup> Note: All references to the Department of Planning Industry and Environment – Water, DPIE-Water, the Department of Planning and Environment or DPE - Water refer to the NSW government Water Group, which is currently known as the Department of Climate Change, Energy, the Environment and Water – Water Group (DCCEEW - Water).

## Department response to 2022 review

- a. Agree. The interception of water from the floodplain is managed and accounted for within the Long Term Average Annual Extraction Limit (LTAAEL) and the Sustainable Diversion Limit (SDL). Interception of water from the floodplain is accounted for under unregulated river access licence share component. This is because unregulated entitlements originally issued under the volumetric conversion process represented all forms of water consumption without regard to how the water was physically taken. This means this form of water take is considered in the LTAAEL calculation as an estimate of the average annual extraction under entitlements of the replacement plan. Further work will be undertaken if the Floodplain Harvesting Policy is implemented in the southern areas of the inland NSW.
- b. Partially agree. The Basin Plan sets an environmentally Sustainable Diversion Limit for each SDL resource unit. NSW water resource plans demonstrate that the SDL has been with complied with and, where it has not, what action must occur to ensure extraction is reduced below the SDL. This is a requirement of the Basin Plan. The Lower Murray-Darling unregulated plan was amended in 2020 to include provisions to calculate the SDL, explain how the SDL is assessed and what compliance action will occur if the limit is exceeded. The Basin Plan used the best available information at the time to develop the SDLs for each valley. Any review of extraction limits would need to be undertaken within the framework of the Basin Plan review in 2026 and would likely coincide with a future review of the SDL for the Lower Darling Water Resource Plan.
- c. Partially agree. As part of the development of implementation programs for the unregulated water sharing plans, the department will consider methods for assessing compliance with extraction limits, including developing procedures. This will include estimating annual take by Basic Landholder Rights. We note the need for this estimate to be current in this water source. The implementation of the 2018 Non-Urban Metering Regulations will significantly improve the department's Unregulated LTAAEL and compliance regime.

The Basin Plan requires NSW to undertake annual SDL reporting for all SDL resources units. The Murray Darling Basin Authority (MDBA) will provide transparent and timely accounts of all water take in the Basin through the establishment, maintenance and publication of the Register of Take. MDBA will report the status of SDL compliance in its annual water take reports.

The coastal sustainable extraction limit project is reviewing extraction limits in unregulated and alluvial systems along the coast. The methods and outcomes of the project will be

reviewed and where appropriate applied in the inland unregulated systems in conjunction with any Basin Plan related changes.

## Action taken to address NRC recommendation

- a. Section 19(d) of the new plan includes ‘an estimate of the annual average extraction for the purposes of floodplain harvesting between 1 July 1993 and 30 June 1999’ in the calculation of the LTAAEL.
- c. The department has included a provision in the plan for publication of numeric LTAAELs. Based on this information the department may amend the plan to include the numeric LTAAEL. Additionally, this numeric LTAAEL must be further considered to determine a sustainable level of take (required considerations set out in the plan). Input from the NRC will be sought in relation to review of adequacy of calculations and method application for this work.

Additionally, the department will consider the outcomes of a current work program informing maintenance of water supply in inland regulated river systems. This is a key piece of work in relation to climate considerations within plans.

The department is undertaking two pilot unregulated LTAAEL compliance assessments in the Lachlan and Richmond catchments. The method uses the best available information, including remote sensing data, and will be reviewed to include metering data when available. Pending the outcomes of the pilots, the method will be applied to other unregulated water sources. The department has consulted with the NRC on the project plan and intends to consult further on the pilot results, when complete. Section 25 of the new plan includes provisions that ensure compliance against the LTAAEL and SDL.

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## Recommendation 3

When remaking the plans, to improve protection of the water sources and their water dependent ecosystems, DPIE-Water should:

- e. <sup>2</sup>Ensure that the drawdown rules in the Lower Murray-Darling Plan adequately protect lagoon ecosystems and that plan rules fully protect held environmental water released into Thegoa lagoon near Wentworth.

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<sup>2</sup> The NRC’s review of the Lower Murray- Darling Plan was combined with their review of the Water Sharing Plan for the Intersecting Streams Unregulated Water Sources 2011. Therefore, any information relevant only to the Intersecting Streams plan review is not included in this document and as such the document may appear as though sections are missing (e.g., a. to d. for Recommendation 3).

## Department response to 2022 review

- e. Agree. The draw-down rules for off-river pools that were established at the commencement of the 2011 Lower Murray-Darling plan will be retained. The protection of environmental water diverted into Thegoa Lagoon is unchanged in the new plan. Further review of environmental protections occurred during the new plan replacement process.

## Action taken to address NRC recommendation

The drawdown rules for identified off-river pools and the protection of environmental water diverted into lagoons, including Thegoa Lagoon, were reviewed as part of the plan replacement process. No changes to those rules have been made. New rules to better protect significant wetlands are included in the new plan. These prohibit new surface water works into and within 3 km upstream of internationally significant (Ramsar) wetlands and into significant wetlands. This rule does not apply to replacement water supply works. Trade into these wetlands is also prohibited.

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## Recommendation 4

When remaking the plan, to ensure town water supply needs are adequately accounted for, DPIE-Water should:

- a. In consultation with Essential Energy (Essential Water), review the local water utility entitlement for the Lower Murray Darling Water Source that is required for security of town water supply given the NSW regulated Murray is now the main source of town water supply for Broken Hill and surrounding communities
- b. Include the updated local water utility volumetric entitlement in the Plan remake to ensure that use is transparent and managed within sustainable limits
- c. Update the Plan to make it clear that Umberumberka Reservoir, which has historically been used for town water supply, sits outside of the plan area (in the Water Sharing Plan for the North Western Unregulated and Fractured Rock Water Sources 2011) and review the Lower Murray-Darling local water utility licence to ensure entitlement sits with the appropriate plan
- d. If local water utility access licence entitlement is reduced, consider alternative uses of any remaining entitlement within sustainable limits if local water utility access licence entitlement is reduced including the option to use the entitlement to improve outcomes for Aboriginal communities to achieve Aboriginal cultural plan objectives.

## Department response to 2022 review

- a. Disagree. Town Water Supply (TWS) requirements are not reviewed as part of plan replacement. It's not uncommon for Local Water Utilities (LWUs) to have more entitlement than they require (on average) to provide security of supply during drought. It enables water to be supplied in the most cost effective way and ensures alternate water delivery options during unforeseen circumstances.
- b. Agree. The Lower Murray-Darling Unregulated plan will be updated during replacement to reflect the best available licensing information.
- c. See b. above.
- d. See a. above. The department is working with Aboriginal groups to codesign and deliver an Aboriginal Water Strategy. The design of the strategy will consider the matters raised by the NRC, including access to water. Different options for how to provide access to water are being investigated as part of the Aboriginal Water Strategy. This includes licences that may be lapsed or surrendered, the creation of water allowances, and changes to Aboriginal cultural access licences to allow use for broader purposes.

## Action taken to address NRC recommendation

- a. No action taken.
- b. The best estimate of LWU entitlement is included in the 2024 replacement plan.
- c. Matters concerning the water supply works approval for Umberumberka Reservoir and the size of LWU entitlement in the Lower Murray-Darling plan have been forwarded to the department's Licensing team for action.
- d. The department's Water Group is working with Aboriginal groups to codesign and deliver an Aboriginal Water Strategy. The design of the strategy will consider the matters raised by the NRC, including access to water. Different options for how to provide access to water are being investigated. This includes licences that may be lapsed or surrendered, the creation of water allowances, and changes to Aboriginal cultural access licences to allow use for broader purposes.

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## Recommendation 5

When remaking the plan, to better achieve the Aboriginal water objectives, DPIE-Water should:

- a. Ensure that consultation is undertaken to understand specific needs of the Aboriginal communities where there are Native Title determinations, applications and Indigenous Land Use Agreements (ILUAs)
- b. Allow sufficient time and ongoing resourcing for meaningful engagement with a range of Aboriginal Traditional Owners, groups and knowledge holders including Aboriginal women, to better understand the water values and uses, identify the rules to protect them, and support water access and use in plan amendments
- c. Use existing information to identify and protect known high value cultural sites in the replacement plan
- d. Use Country-based plans and governance models as a basis for engagement and management where available and support ongoing country-based planning is supported by Government
- e. Use the National Cultural Flows Methodology to identify, prioritise and support Aboriginal water values – build on any existing examples of cultural flows assessments available for the Plan areas
- f. Ensure that where cancelled or surrender entitlements becomes available, that Aboriginal water needs are assessed and provided for as a priority – starting with the examples outlined in this review
- g. Undertake detailed implementation planning for the State Water Strategy and Aboriginal Water Strategy that includes, at a minimum, state-wide actions identified by the Commission to better support Aboriginal values in water sharing plans.

## Department response to 2022 review

- a. Agree. Through the Aboriginal Water Program (AWP) the department intends to work more closely with NTSCORP<sup>3</sup> (the Native Title representative body for NSW) and Native Title holders.
- b. Agree. Through the AWP the department proposes to stand up a team of eight Aboriginal engagement officers to provide meaningful engagement with a range of Aboriginal Traditional Owners, groups and knowledge holders.
- c. Agree. The AWP is to develop an online keeping place for knowledge about Aboriginal water dependent cultural sites, where the existing and new information can be held. While this information will not be available for consideration during the replacement of this plan, it will be an important piece of information as we replace or amend plans in the future.

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<sup>3</sup> NTSCORP Limited is the Native Title Service Provider for Aboriginal Traditional Owners in NSW and the ACT.



- d. Agree. The AWP proposes to establish 12 Regional Aboriginal Water Committees (RAWCs) across the state to inform and assist the department. The AWP also proposes commissioning six pilot Cultural Watering Plans (CWPs) in 2023.
- e. Agree. The AWP proposes to commission six pilot CWPs in 2023 to help identify, prioritise, and support Aboriginal water values. Four of those plans have already been completed.
- f. Agree. The department is currently developing a risk based framework for assessing how unassigned water is managed. The framework would inform how surrendered licences are managed, and if and when controlled allocations orders should be made. Aboriginal access to water rights for cultural and economic needs will be a key factor when assessing how these licences are managed in the future. The NSW Government has agreed in principle to the Inland Water target 15c in Closing the Gap which states that ‘by 2031, 3% of national water access entitlement allocated to Aboriginal and Torres Strait Islander Corporations’.
- g. Agree. The Aboriginal Water Strategy engagement will commence in early 2024 and conclude late in 2024. The final strategy will include an implementation plan and state-wide actions.

## Action taken to address NRC recommendation

The 2024 replacement plan recognises the requirement for water that may be taken in the exercise of Native Title rights in accordance with the *Native Title Act 1993* of the Commonwealth, including any determination of native title, and any indigenous land use agreement. It can also be amended to reflect the outcome of any pending Native Title claims, once determined.

A pilot Cultural Watering Plan program has commenced which will enable the department to gain a better understanding the Cultural (and other) watering needs of Aboriginal communities and highlight opportunities and barriers to achieving the desired outcomes. Insights from this program will be used to better inform policy and planning decisions to make water more accessible for Aboriginal people.

The Regional Aboriginal Engagement team is dedicated to improving consultation with Aboriginal stakeholders on water management and planning. The team have established 12 Regional Aboriginal Water Committees across NSW. The purpose of the committees is to give greater recognition to Aboriginal water rights and interests, ensuring Aboriginal people can contribute to water management. There are two committees in the far west of the state now in place and actively learning and engaging on water management matters including plans.



The department has committed to improving information provided to First Nations people about water management and access. Improved information and communication materials fosters informed participation in engagement processes and builds greater awareness of water access mechanisms. This is in line with the principles of free, prior and informed consent (FPIC) as outlined in the department's Indigenous Cultural and Intellectual Property (ICIP) Protocol.

The Aboriginal Water Strategy is set to provide the strategic direction to the commitments made by the department. It is proposed to be guided by 4 key priorities which are to:

- strengthen the role of Aboriginal people in water planning and management
- provide Aboriginal ownership of and access to water for cultural and economic purposes
- work with Aboriginal people to maintain and preserve water-related cultural sites and landscapes
- work with Aboriginal people to improve shared water knowledge and build capacity.

The strategy will be co-designed with regional Aboriginal water committees and peak Aboriginal organisations. There will be an opportunity for the public to provide input before its intended finalisation by the end of 2024.

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## Recommendation 6

When remaking the plan, to ensure the plan facilitates equitable sharing of water, DPIE-Water should:

- a. include objectives to provide for equitable sharing of water in the plan
- b. assess the risks associated with a reduction in water availability and potential for growth in use
- c. ensure that plan provisions clearly specify how any potential reductions will be fairly allocated consistent with the priorities of the WM Act
- d. include provisions to specify how any additional water that becomes available will be allocated.

## Department response to 2022 review

- a. Disagree. It is an object of the WM Act, Section 3(e) 'to provide for the orderly, efficient and equitable sharing of water from water sources'. The WM Act, its regulations and other statutory orders go on to put a framework around the various sharing elements to achieve this. Plans are consistent with all these statutory requirements. The economic objectives and strategies in the plan have interpreted the objectives of the WM Act by identifying the

need to provide a stable and predictable framework for water sharing among water users, provide flexibility of access to water and by managing to the LTAAEL. The LTAAEL sets sharing arrangements between the environment and consumptive pool. Available water determinations and accounting rules set out sharing arrangements (including compliance actions when extraction exceeds plan limit) between licence categories.

- b. Agree. In the development of implementation programs for the unregulated water sharing plans, the department will consider methods for assessing compliance with extraction limits. This will include estimating annual take by Basic Landholder Rights. We note the need for this estimate to be current in these water sources. The implementation of the 2018 Metering Regulations will significantly improve the department's unregulated LTAAEL and compliance regime. If allocations need to be reduced as a result of growth in use, this will be done in accordance with the rules in the plan which reflect the priorities of the WM Act.
- c. Agree. The plan clearly sets out the action to be taken if the LTAAEL is exceeded, which is consistent with the priorities of the WM Act.
- d. Disagree. Water sharing plans do not allocate additional water as a result of surrendered or cancelled licences. These licences are held by the Minister for Water and managed under a separate process to determine if they should be re-allocated.

## Action taken to address NRC recommendation

- a. No further action taken.
- b. See response to Recommendation 3 for more detail on work undertaken to develop a method for assessing LTAAEL compliance in unregulated water sources.
- c. No further action taken.
- d. The department is currently developing a risk-based framework for assessing how surrendered licences are managed, including if and when controlled allocations orders should be made.

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## Recommendation 7

By June 2024, to improve plan based Monitoring, Evaluation and Reporting (MER) for the plan, DPIE Water should:

- a. Expedite the finalisation and publication of DPIE Water’s water sharing plan evaluation framework and methods manuals and ensure there is multi-agency support and oversight of their implementation
- b. Identify feasible and appropriate resourcing to support ongoing MER activities in line with the NSW Water Strategy
- c. Specify timely reporting requirements of the results of MER activities to support transparency, public awareness and adaptive management
- d. Identify and address critical knowledge gaps to support adaptive management.
- e. Use the recently developed prioritisation framework to prioritise MER activities based on values and risk. Clearly communicate how this framework interacts with monitoring plans and publicly report on where and why effort is being targeted.

## Department response to 2022 review

- a. Agree. The department is currently developing a NSW Water Sharing Plan Evaluation Program that includes;
  - Monitoring, Evaluation, Reporting and Improvement (MERI) framework
  - A prioritisation tool
  - Evaluation Methods Manuals, and
  - Evaluation and monitoring plans.
- b. The department is working with NSW agencies including the NRC to ensure an agreed approach to water sharing plan Monitoring, Evaluation and Reporting (MER). Implementation of the framework will commence in 2024 beginning with evaluations for water sharing plans due to reach plan term in 2026/27.
- c. Noted. The implementation of any MER program is dependent on having a defined, long-term budget. While every effort to maintain a MER program, the ability to implement aspects in a MER plan is limited by resources.
- d. Noted. See response for a.
- e. Noted. See response for a.

## Action taken to address NRC recommendation

Implementation of the MER program will commence in 2024. This will clarify the roles and responsibilities, reporting requirements, governance arrangements and timeframes associated with the program. Social, economic and environmental outcome evaluation methods have been developed and applied to pilot surface water water sharing plans and reviewed by the NRC.

Work has now commenced on expanding method statements to include groundwater specific components. NSW also undertook the first benchmarking survey to collect primary data that informs evaluation of social outcomes of water sharing plans. Data was collected from communities and water users across all water sharing plan areas.

The Department, as part of plan provisions, has added a requirement for the minister to prepare a monitoring, evaluation and reporting (MER) plan. The MER plan is to be published by 30 June 2025 and each year the minister is to publicly report on the implementation of the water sharing plan, including progress against the MER plan. Additionally, evaluation reporting is to be undertaken by year nine of the water sharing plan.

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## Suggested Action 1

DPIE-Water should review the Macro Water Sharing Plans Approach for Unregulated Rivers Access and Trading Rules for Pools Policy to ensure that it requires that drawdown rules are assessed to determine whether they are adequately protective of the water sources and their water dependent ecosystems to be consistent with the Act.

### Department response to 2022 review

Access rules will be reviewed as part of the replacement process. Any decisions to change water sharing plan rules will be informed by best available information, including High Ecological Value Aquatic Ecosystems (HEVAE) assessments, and be consistent with the WM Act.

### Action taken to address NRC recommendation

The general pool rules and the rules that apply to the significant wetlands identified in Schedule 3 and Thegoa lagoon were reviewed as part of the plan replacement. It was determined to retain the existing rules. For further information see Recommendation 4.