

Water Sharing Plan for the Castlereagh River Unregulated and Alluvial Water Sources Amendment Order 2020

under the

Water Management Act 2000

I, Melinda Pavey, Minister for Water, Property and Housing, in pursuance of section 45 (1) of the *Water Management Act 2000*, make the following Order to amend the *Water Sharing Plan for the Castlereagh River Unregulated and Alluvial Water Sources 2011*.

Dated 29th June 2020

Melinda Pavey, MP
Minister for Water, Property and Housing

Explanatory note

This Order is made under section 45 (1) of the *Water Management Act 2000*. The object of this Order is to amend the *Water Sharing Plan for the Castlereagh River Unregulated and Alluvial Water Sources 2011*. The concurrence of the Minister for Energy and Environment was obtained prior to the making of this Order as required under section 45 of the *Water Management Act 2000*.

1 Name of Order

This Order is the *Water Sharing Plan for the Castlereagh River Unregulated and Alluvial Water Sources Amendment Order 2020*.

2 Commencement

This Order commences on 1 July 2020.

Schedule 1 Amendment of Water Sharing Plan for the Castlereagh River Unregulated and Alluvial Water Sources 2011

[1] Part 1 Introduction

Omit the note. Insert instead:

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.

[2] Clause 1 Name of this Plan

Omit the clause. Insert instead:

1 Name of this Plan

This Plan is the *Water Sharing Plan for the Castlereagh Unregulated River Water Sources 2011* (hereafter *this Plan*).

[3] Clause 3 Commencement of this Plan

Insert at the end of the note:

- 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 arrangements. Certain provisions of this Plan form part of the water resource plan for the Macquarie-Castlereagh surface water resource plan area.
- 4 *Basin Plan* is defined in the Dictionary.

[4] Clause 4 Application of this Plan

Omit the clause. Insert instead:

4 Application of this Plan

- (1) This Plan applies to the following water sources known as the Castlereagh Unregulated River Water Sources (hereafter *these water sources*) within the Central West Water Management Area:
 - (a) Binnaway to Gilgandra Water Source,
 - (b) Castlereagh River below Coonamble Water Source,
 - (c) Castlereagh River Gilgandra to Coonamble Water Source,
 - (d) Nedgera Creek Water Source,
 - (e) Teridgerie Creek Water Source,

- (f) Tooraweenah to Coonamble Tributaries Water Source, and
- (g) Castlereagh River above Binnaway Water Source.

Note. The Central West 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) These water sources are shown on the Plan Map called *Plan Map (WSP012_Version 3), Water Sharing Plan for the Castlereagh Unregulated River Water Sources 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) These water sources consist of all water:
 - (a) occurring naturally on the surface of the ground within the boundaries of these water sources as shown on the Plan Map, and
 - (b) in rivers, lakes and wetlands within the boundaries of these water sources as shown on the Plan Map.
- (4) This Plan, as amended by the Water Sharing Plan for the Castlereagh (below Binnaway) Unregulated and Alluvial Water Sources Amendment Order 2016 replaces the *Water Sharing Plan for the Castlereagh River above Binnaway Water Source 2003*.

Note. This plan, as amended by the *Water Sharing Plan for the Castlereagh River Unregulated and Alluvial Water Sources Amendment Order 2020*, does not apply to the Castlereagh Alluvial Groundwater Source. The *Water Sharing Plan for the Macquarie-Castlereagh Alluvial Groundwater Sources 2020* applies to the Castlereagh Alluvial Groundwater Source.

[5] Clause 6 Extraction management units in these water sources

Omit the clause.

[6] Clause 8 Interpretation

Insert after clause 8 (4):

- (4A) The Plan Map forms part of this Plan.
- (4B) A number in brackets following the name of a gauge is the gauge number.

[7] Part 2 Vision, objectives, strategies and performance indicators

Omit the Part. Insert instead:

Part 2 Vision, objectives, strategies and performance indicators

Notes.

- 1 This Part is made in accordance with section 35 (1) of the Act.
- 2 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.

8A Acknowledgement

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

9 Vision statement

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

- (a) the health and enhancement of these water sources and their 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 result from surface water.

10 Environmental objectives

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

Note. The ecological condition of these water sources 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 these water sources. Water-dependent ecosystems in these water sources include instream, riparian and floodplain ecosystems.

- (2) The targeted environmental objective of this Plan is 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 these water sources may include known or predicted populations of the following:
 - (a) native fish including eel-tailed catfish, Murray cod, and olive perchlet,

- (b) native vegetation including red gum woodland and black box-coolibah woodland,
- (c) high diversity hotspots and significant habitat for native fish, frogs, waterbirds, native vegetation and low flow macroinvertebrate communities in water sources that are susceptible to increased frequency and duration of low flows and drying.

- (b) the longitudinal and lateral connectivity within and between 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 these water sources include fish movement across significant barriers, as identified by NSW Department of Primary Industries (Fisheries) and described in the MER plan for these water sources.
- 3 Connectivity may be within or between these water sources or between these water sources and other water sources.

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

Note. Water quality target ranges for these water sources are defined in the Water Quality Management Plan for the Macquarie-Castlereagh Surface Water Resource Plan Area SW11 and 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 long-term average sustainable diversion limit.

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

Notes.

- 1 **Flow regimes** is defined in the Dictionary.
- 2 The provisions in Division 2 of Part 8 of this Plan ensure that very low flows are protected from extraction, and establish flow classes that manage the take of water for the Castlereagh River above Binnaway Water Source.

- (c) restrict the take of water from in-river and off-river pools when the volume of that water is less than full capacity,

Notes.

- 1 **In-river pool** and **off-river pool** are defined in the Dictionary.
- 2 The provisions in clauses 46 and 46B of this Plan restrict the take of water from in-river and off-river pools when the volume is less than full capacity.

- (d) restrict or prevent water supply work approvals on third order or higher streams,

Notes.

- 1 The provisions in Part 9 prevent the granting or amendment of a water supply work approval for an in-river dam in the water sources listed in clause 50.
- 2 References in this Plan to a third order or higher stream relate to the stream order defined by the Strahler stream ordering method. The Strahler stream ordering method is as described in Schedule 2 of the *Water Management (General) Regulation 2018*.

- (e) reserve a portion of flows to maintain longitudinal connectivity between these water sources.

- (4) The performance indicator used to measure the success in reaching the broad environmental objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted objective 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 objective 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 rules 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 these water sources 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.

11 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 shares 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 and the flow class and access provisions in division 2 of Part 8 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 43 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 or 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 the changes in the economic benefits of 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.

12 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 these water sources,
 - (d) restrict the take of water from in-river and off-river pools when the volume of that water is less than full capacity,
Note. The provisions in clauses 46 and 46B of this Plan restrict the take of water from in-river and off-river pools when the volume is less than full capacity, thereby contributing to the protection of native fish populations, swimming and recreational areas and riparian vegetation.
 - (e) reserve a portion of flows to maintain hydrological connectivity within and between these water sources.
Note. The provisions in clauses 46, 46A and 46B of this Plan ensure that a portion of natural 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 capable of being 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 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 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.

12A 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,

- (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 these water sources,
 - (c) restrict the take of water from in-river and off-river pools when the volume of that water is less than full capacity,
 - (d) reserve a portion of flows to maintain hydrological connectivity within and between these 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 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.

[8] Clause 13 Bulk access regime

Omit “Division 1 of” in subclause (2) (a).

[9] Clause 13 (2) (b)

Insert the word “are” after the words “water determinations” and omit the words “Division 2 of” in this subclause.

[10] Clause 13 (2) (d)

Omit “contained in Division 1 of Part 6 of this Plan”. Insert instead “and the long-term average sustainable diversion limit, contained in Part 6 of this Plan”.

[11] Clause 14 Climatic Availability

Omit “and groundwater levels”.

[12] Clause 14 (a)

Omit the subclause. Insert instead:

- (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 reductions 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

[13] **Clause 14 (b)**

Omit “in these water sources”.

[14] **Part 4 Planned environmental water provisions**

Omit the Part. Insert instead:

Part 4 Planned environmental water provisions

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

15 General

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

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.

16 Commitment and identification of planned environmental water

Water is committed and identified as planned environmental water in these water sources 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, and
- (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.

17 Establishment and maintenance of planned environmental water

(1) This Plan establishes planned environmental water in these water sources 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 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) the 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.
- (2) The planned environmental water established under subclause (1) (a) is maintained by the rules specified in Division 2 of Part 8 of this Plan.
- (3) The planned environmental water established under subclause (1) (b) is maintained by the provisions specified in Part 6 of this Plan.
- (4) The planned environmental water established under subclause (1) (c) is maintained by the provisions specified in Parts 6 and 8 of this Plan.

Note. The provisions in Part 6 ensure that there will be water remaining in these water sources over the long-term by maintaining compliance with the long-term average annual extraction limit and the long-term average sustainable diversion limit. The provisions 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.

[15] Clause 18 Application

Omit “Division 1 of” in subclause (3).

[16] Clause 19 Domestic and stock rights

Omit “2.82”. Insert instead “2.59”.

[17] Clause 19 (g)

Omit the subclause.

[18] Clause 19 (h), note 1

Omit the note. Insert instead:

- 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.

[19] Clause 20 Native title rights

Omit the clause. Insert instead:

20 Native title rights

The requirement for water to satisfy native 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) any determination of native title, and
- (b) any indigenous land use agreement.

Notes.

- 1 No determinations of native title in relation to these water sources have been made in accordance with the *Native Title Act 1993* of the Commonwealth at the commencement of this Plan.
- 2 This Plan may be amended if there is a native title determination in accordance with the *Native Title Act 1993* of the Commonwealth by which water is required.
- 3 Native title rights may be exercised in accordance with the *Native Title Act 1993* of the Commonwealth, including section 211 of that Act.

[20] **Clause 22 (g)**

Omit the subclause.

[21] **Clause 23 (g)**

Omit the subclause.

[22] **Clause 25 Share components of aquifer access licences**

Omit the clause.

[23] **Part 6 Limits to the availability of water**

Omit the Part. Insert instead:

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

27 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 28,
- (b) the annual extraction under clause 29,
- (c) the annual permitted take under clause 32,
- (d) the annual actual take under clause 32.

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 one of these water sources to an access licence in a water source other than these water sources, under section 71T of the Act,

- (ii) in relation to annual extraction under clause 31 only, water committed as licensed environmental water under section 8F of the Act, and
 - (b) include allocations assigned to an access licence in one of these water sources from an access licence in a water source other than these water sources, under section 71T of the Act.
- (3) The calculation by the Minister of the long-term average annual extraction limit under clause 28 must be adjusted by a volume that appropriately reflects the following:
- (a) 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

28 Calculation of the long-term average annual extraction limit

The long-term average annual extraction limit for these water sources is the sum of:

- (a) the 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 these water sources, plus
- (b) the annual water requirements pursuant to basic landholder rights in the following water sources at the commencement of this Plan:
 - (i) Binnaway to Gilgandra Water Source,
 - (ii) Castlereagh River below Coonamble Water Source,
 - (iii) Castlereagh River Gilgandra to Coonamble Water Source,
 - (iv) Nedgera Creek Water Source,
 - (v) Teridgerie Creek Water Source, and
 - (vi) Tooraweenah to Coonamble Tributaries Water Source, plus
- (c) the annual water requirements pursuant to basic landholder rights in the Castlereagh River above Binnaway Water Source at the commencement of the *Water Sharing Plan for the Castlereagh River above Binnaway Water Source 2003*, plus
- (d) the estimated annual take of water from these water sources by plantation forestry that existed on 30 June 2009.

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

29 Calculation of annual extraction

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

- (a) the take of water by basic landholder rights and access licences in that water year,
- (b) the estimated take of water by plantation forestry in that water year.

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

- (1) Following the calculation under clause 29, the Minister is to compare the average of the total annual extraction for these water sources over the preceding three 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 three water years exceeds the long-term average annual extraction limit by 5% or more.

Division 3 Long-term average sustainable diversion limit

Note. *Macquarie-Castlereagh SDL resource unit* is defined in the Dictionary.

31 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 these water sources is the component of the baseline diversion limit for the Macquarie-Castlereagh SDL resource unit as calculated in accordance with Schedule 3 of the Basin Plan, that in the Minister's opinion is attributable to these water sources.
- (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** is defined in the Dictionary.
- 2 The long-term average sustainable diversion limit for the Macquarie-Castlereagh SDL resource unit covers extractions from:
 - (i) the Macquarie and Cudgegong Regulated Rivers Water Source,
 - (ii) the Macquarie Bogan Unregulated Rivers Water Sources, and
 - (iii) the Castlereagh Unregulated River Water Sources.

32 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

these water sources 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 these water sources.

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 they fall 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.

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

- (1) Following the calculation under clause 32 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

33A Action following non-compliance

- (1) Subject to subclause (2) to (4), if an assessment under clauses 30 or 33 demonstrates non-compliance with either the long-term average annual extraction limit for these water sources or the long-term average sustainable diversion limit, the Minister is to take the following actions for the water year after the assessment:
 - (a) make available water determinations for unregulated river access licences of less than 1 ML per unit share,
 - (b) make available water determinations for unregulated river (special additional high flow) 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 33 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 average annual extraction in these water sources 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.
- (4) An action taken in accordance with subclause (1) and (2) to meet the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan is to only apply to a water source to the extent to which extractions from the water source:
 - (a) have caused non-compliance with the long-term average sustainable diversion limit, or
 - (b) would have caused non-compliance with the long-term average sustainable diversion limit but for there being a reasonable excuse.

Division 5 Available water determinations

34 General

- (1) Available water determinations made for access licences with a share component that specifies one of these water sources are to be expressed as either:
 - (a) a percentage of the share component, for access licences which have share components specified as megalitres per year, or
 - (b) megalitres per unit share, for access licences which have share components 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 one of these water sources must not, in any water year, exceed:
 - (a) 100% of the access licence share component for all access licences with share components specified as megalitres per year, or

(b) 1 megalitre 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)

35 Available water determinations for domestic and stock access licences

Unless the Minister otherwise determines, at the commencement of each water year an available water determination of 100% of the access licence share component is to be made for domestic and stock access licences.

36 Available water determinations for local water utility access licences

Unless the Minister otherwise determines, at the commencement of each water year an available water determination of 100% of the access licence share component is to be made for local water utility access licences.

37 Available water determinations for unregulated river access licences

Unless the Minister otherwise determines, at the commencement of each water year an available water determination of 1 ML per unit of share component or such lower amount that is determined in accordance with clause 33A is to be made for unregulated river access licences.

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 respective extraction management unit has been assessed to have been exceeded.

38 Available water determinations for unregulated river (special additional high flow) access licences

Unless the Minister otherwise determines, at the commencement of each water year an available water determination of 1 ML per unit of share component or such lower amount that is determined in accordance with clause 33A is to be made for unregulated river (special additional high flow) access licences with a share component that specifies one of these water sources.

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

39 (Repealed)

[24] Part 7 Rules for granting access licences

Omit the note after the Part heading. Insert instead:

Notes.

1 This Part is made in accordance with sections 20 and 61 of the Act.

- 2 Access licences granted in these water sources are subject to mandatory conditions and may be subject to discretionary conditions.

[25] **Clause 40 Specific purpose access licences**

Insert the note after the clause heading:

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

[26] **Clause 41 Granting of access licences as a result of controlled allocation**

Omit the clause.

[27] **Part 8 Rules for managing access licences**

Division 1 Water allocation account management rules

Insert the note after the Division heading:

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 more water under an access licence for which there is no or insufficient water allocation.

[28] **Clause 42 General**

Omit the clause.

[29] **Clause 43 Individual access licence account management rules for the Castlereagh River Unregulated Water Sources**

Omit “for the Castlereagh River Unregulated Water Sources” in the clause heading.

[30] **Clause 43 (1)**

Omit “the Castlereagh River Unregulated Water Sources.” Insert instead “these water sources.”

[31] **Clause 43 (3)**

Omit “in the Castlereagh River Unregulated Water Sources”.

[32] **Clause 43 (4)**

Omit the subclause. Insert instead:

- (4) In any water year, the maximum volume of water that may be taken under an unregulated river (special additional high flow) access licence must not exceed a volume equal to:
- (a) the sum of water allocations accrued to the water allocations 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 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.

[33] Clause 43 (5)

Omit “in the Castlereagh River Unregulated Water Sources”.

[34] Clause 43 (6)

Omit “the Castlereagh River Unregulated Water Sources”. Insert instead “these water sources”.

[35] Clause 44 Individual access licence account management rules for the Castlereagh Alluvial Groundwater Source

Omit the clause.

[36] Clause 46 Access rules for the taking of surface water from these water sources, excluding the Castlereagh River above Binnaway Water Source

Omit subclause (1) (a).

[37] Clause 46 (4)

Insert the word “table” after the words “Column B of that”.

[38] Clause 46 (7) (c)

Omit the subclause.

[39] Clause 46A Flow classes for the Castlereagh River above Binnaway Water Source

Omit the notes to subclause (6). Insert instead:

Notes.

- 1 On days that accurate flow data is not available, holders of access licences may contact the Department’s office at the address listed in Schedule 4 or check the Department’s website to find out what flow class applies on that day.
- 2 Only those management zones for which flow classes have been established are shown in Table B.

[40] Clause 46B Access rules for the taking of surface water from the Castlereagh River above Binnaway Water Source

Insert the words “under an access licence used” after the words “the taking of water” in subclause (1).

[41] Clause 46B (1) (a) (i)

Insert “and” at the end of the subclause

[42] Clause 46B (1) (b) (i)

Insert “and” at the end of the subclause

[43] Clause 49 General

Omit “that may be used to take water from the Castlereagh River Unregulated Water Sources”. Insert instead “authorised to take water from these water sources”.

[44] Clause 50 Granting or amending water supply work approvals

Insert the word “approval” after the words “water supply work”.

[45] Clause 50 (2)

Omit the subclause.

[46] Division 2 Rules applying to water supply works that take water from the Castlereagh Alluvial Groundwater Source

Omit the Division.

[47] Clause 63 Assignment of water allocation dealings

Omit subclause (2) (c).

[48] Clause 63 (2) (d) and (e)

Insert the word “from” at the start of both subclauses.

[49] Clause 63

Insert after subclause (2):

(2A) Dealings within a water source under section 71T of the Act are prohibited in these water sources if the dealing involves an unregulated river (special additional high flow) access licence.

[50] Clause 65 Nomination of water supply works dealings

Omit subclause (4). Insert instead:

(4) Dealings under section 71W of the Act are prohibited if the dealing involves 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.

[51] Clause 66 General

Omit subclause (a). Insert instead:

(a) a requirement to notify the Minister in writing will only be satisfied by writing to the address listed in Schedule 4 of this Plan or to the email address for enquiries on the Department’s website, and

Note. The email address for the Department’s website is
water.enquiries@dpi.nsw.gov.au.

[52] Clause 67 General

Omit “where required” in subclause (1)

[53] Clause 67 (2)

Omit the subclause. Insert instead:

- (2) Access licences in these water sources, 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 must record the following in the Logbook:
 - (i) each date and start and end time during which water was taken under the access licence,
 - (ii) the volume of water taken on each 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 taken on that date was used,
 - (v) for domestic and stock access licences, local water utility access licences and unregulated river access licences, the volume of water taken in any three consecutive water years after the first water year of this Plan by comparison to the volume of water permitted to be taken in those years under clause 43 (3),
 - (vi) for unregulated river (special additional high flow) access licences, the volume of water taken in a water year by comparison to the volume of water permitted to be taken in that water year under clause 43 (4),
 - (vii) any other information required to be recorded in the Logbook under the rules of this Plan,
 - (c) the holder of an access licence must produce the Logbook to the Minister for inspection, when requested,

- (d) the holder of an access licence must retain the information required to be recorded in the Logbook for five years from the date to which that information relates.

[54] Clause 67 (4)

Omit the subclause. Insert instead:

- (4) 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 2021.

- (5) Subclauses (2) - (4) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to these water sources 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*.

[55] Clause 68 General

Omit “where required” in subclause (1).

[56] Clause 68 (1) (c)

Omit “that”. Insert instead “to”.

[57] Clause 68 (1) (f)

Omit the subclause.

[58] Clause 68 (1) (g)

Omit the subclause.

[59] Clause 68

Insert after clause 68 (1) (h):

- (1A) If an approval for a water supply work is subject to a mandatory metering equipment condition in relation to the work, subclause (1) (a) ceases to have effect in relation to the work on the day on which the condition applies to the approval.

(1B) Subclauses (1) (a) 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 these water sources 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 these water sources from 1 December 2021.

[60] Clause 68 (2)

Omit “or is used for the purpose of taking water under basic landholder rights only, must have mandatory conditions where required”. Insert instead “must have mandatory conditions”.

[61] Clause 68

Insert after clause 68 (3):

(3A) 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, subclauses (2) and (3) cease to have effect in relation to the work on the day on which the condition applies to the approval.

Note. The *Water Management (General) Regulation 2018* will impose a mandatory condition requiring record keeping on access licences and approvals in the water source from 1 December 2021.

(3B) Subclauses (2) - (3A) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to these water sources 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 existing and new water supply works required to have a meter from 1 April 2019, and to other approvals in the water source from 1 December 2021.

[62] Clause 68 (5)

Omit the subclause. Insert instead:

(5) 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 an 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.

[63] Clause 69 Water supply works used to take water from the Castlereagh Alluvial Groundwater Source

Omit the clause.

[64] Clause 72 Part 4

Omit the clause.

[65] Clause 73 Part 6

Omit “the EMU or that water source” in subclause (1). Insert instead “these water sources”.

[66] Clause 73 (2)

Omit the subclause. Insert instead:

- (2) Division 3 of Part 6 may be amended to establish a long-term average sustainable diversion limit that combines the long-term average sustainable diversion limits for these water sources, the Macquarie Bogan Unregulated Rivers Water Sources and the Macquarie and Cudgegong Regulated Rivers Water Source.

[67] Clause 74 Part 8

Omit subclause (b) (iv).

[68] Clause 74 (g)

Omit the word “or” after the words “for the environment,”.

[69] Clause 75 Part 9

Omit the clause. Insert instead:

75 Part 9

Clause 50 may be amended 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 third order or higher streams.

[70] Clause 76 Part 11

Omit the clause. Insert instead:

76 Part 11

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

[71] Clause 77 Schedules

Omit subclauses (5) and (6).

[72] Clause 78 Other

Omit subclauses (1) (e) – (g).

[73] Clause 78 (3)

Omit the subclause. Insert instead:

- (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.

[74] Clause 78

Insert after clause 78 (3):

- (3A) This Plan may be amended to enable a water resource plan to be accredited under the *Water Act 2007* of the Commonwealth.

[75] Schedule 1 Dictionary

Omit the following terms:

alluvial sediments, drawdown, escarpment, fractured rock, grazeable area, groundwater dependent ecosystems, high environmental value areas, karst, Minimum Construction Requirements for Water Bores in Australia and slotted intervals.

[76] Schedule 1 Dictionary

Insert the note:

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.

[77] Schedule 1 Dictionary

Insert the following in alphabetical order:

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.

Macquarie-Castlereagh SDL resource unit has the same meaning as provided for in section 6.02 of the Basin Plan.

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

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.

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

[78] Schedule 4 Contamination sources in these water sources

Omit the Schedule. Insert instead:

Schedule 4 Office

Any notifications that may be required to be made to the Minister as specified in this

Plan can be made to the following office:

Department of Planning, Industry and Environment - Water

209 Cobra St

DUBBO NSW 2830

[79] Schedule 5 High priority groundwater dependent ecosystems

Omit the Schedule.

[80] Appendixes 1-3

Omit the Appendixes. Insert instead:

Appendix 1 Overview of Plan Map

Overview of the Plan Map (WSP012 Version 3), Water Sharing Plan for the Castlereagh Unregulated River Water Sources 2011

