



New South Wales

Order amending Water Sharing Plan for the Coopers Creek Water Source 2003

under the

Water Management Act 2000

Amendment to Management Plan

Water Sharing Plan for the Coopers Creek Water Source 2003

PURSUANT to section 45 (1) (a) of the *Water Management Act 2000*, I, PHILLIP COSTA, MP, Minister for Water, with the concurrence of the Minister for Climate Change and the Environment, being satisfied it is in the public interest to do so, do, by this Order, amend the *Water Sharing Plan for the Coopers Creek Water Source 2003* in the manner set out in Schedule 1.

This Order takes effect from the date it is published in the *NSW Government Gazette*.

Dated this 21st day of January 2009.

PHILLIP COSTA, M.P.,
Minister for Water

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Schedule 1

[1] Clause 4 Area to which this Plan applies

Omit clause 4. Insert instead:

4 Area to which this Plan applies

- (1) The area in respect of which this Plan is made is that area of land within the Northern Rivers Water Management Area known as the Coopers Creek Water Source (hereafter *this water source*) as shown on the map in Schedule 2.

Note. The Northern Rivers Water Management Area is as shown on the map in Appendix 1.

Note. Maps referred to in this Plan may be inspected at offices of the Department of Water and Energy listed in Appendix 2.

- (2) This water source is divided into the following management zones as shown on the map in Schedule 2:
 - (a) Upper Coopers Creek Management Zone, being all creeks and rivers flowing into and including Coopers Creek upstream of the junction of Bennys Creek and Coopers Creek, excluding Bennys Creek, and
 - (b) Lower Coopers Creek Management Zone, being all creeks and rivers flowing into and including Coopers Creek from the junction of Bennys Creek and Coopers Creek to the downstream end of this water source, including Bennys Creek.

Note. This water source has been divided into two management zones in order to separate the areas of high instream value (the Upper Coopers Creek Management Zone) from the area containing the greatest concentration of economic production assets (the Lower Coopers Creek Management Zone), which in turn allows more flexible water sharing rules to be established.

[2] Clause 17 Flow classes

Omit clause 17. Insert instead:

17 Flow classes

- (1) This Plan establishes the following flow classes as the basis for sharing of daily flows in the Upper Coopers Creek Management Zone:
 - (a) the Very Low Flow Class is:
 - (i) in the first five years of this Plan, when flows are at or less than 14 megalitres per day (hereafter *ML/day*) during the period 1 October to 30 June,

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- Note.** 14 ML/day corresponds to the estimated 97th percentile of flows in the critical month of December, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.
- (ii) in the first five years of this Plan, when flows are at or less than 20 ML/day during the period 1 July to 30 September,
- Note.** 20 ML/day corresponds to the estimated 93rd percentile of flows in the critical month of December, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.
- (iii) after the first five years of this Plan, when flows are at or less than 17 ML/day during the period 1 October to 30 June, and
- Note.** 17 ML/day corresponds to the estimated 95th percentile of flows in the critical month of December, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.
- (iv) after the first five years of this Plan, when flows are at or less than 31 ML/day during the period 1 July to 30 September,
- Note.** 31 ML/day corresponds to the estimated 95th percentile of all days of flow, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.
- (b) A Class is:
- (i) in the first five years of this Plan, when flows are greater than 14 ML/day and at or less than 36 ML/day during the period 1 October to 30 June,
- (ii) in the first five years of this Plan, when flows are greater than 20 ML/day and at or less than 36 ML/day during the period 1 July to 30 September,
- (iii) after the first five years of this Plan, when flows are greater than 17 ML/day and at or less than 36 ML/day during the period 1 October to 30 June, and
- (iv) after the first five years of this Plan, when flows are greater than 31 ML/day and at or less than 36 ML/day during the period 1 July to 30 September,
- (c) B Class is when flows are greater than 36 ML/day and at or less than 115 ML/day, and
- (d) C Class is when flows are greater than 115 ML/day.

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Note. The flow classes have been determined based on flow information that inherently includes seasonal effects as well as evaporation and seepage losses.

- (2) This Plan establishes the following flow classes as the basis for sharing of daily flows in the Lower Coopers Creek Management Zone:
- (a) the Very Low Flow Class is:
 - (i) in the first five years of this Plan, when flows are at or less than 14 ML/day,
 - (ii) after the first five years of this Plan, when flows are at or less than 17 ML/day during the period 1 October to 30 June, and
 - (iii) after the first five years of this Plan, when flows are at or less than 31 ML/day during the period 1 July to 30 September,
 - (b) A Class is:
 - (i) in the first five years of this Plan, when flows are greater than 14 ML/day and at or less than 36 ML/day,
 - (ii) after the first five years of this Plan, when flows are greater than 17 ML/day and at or less than 36 ML/day during the period 1 October to 30 June, and
 - (iii) after the first five years of this Plan, when flows are greater than 31 ML/day and at or less than 36 ML/day during the period 1 July to 30 September,
 - (c) B Class is when flows are greater than 36 ML/day and at or less than 115 ML/day, and
 - (d) C Class is when flows are greater than 115 ML/day.
- (3) Notwithstanding subclauses (1) (b), (1) (c), (1) (d), (2) (b), (2) (c) and (2) (d), A Class, B Class and C Class will only be applied if, in the opinion of the Minister, the flow classes are required to better manage the sharing of water between water users and the environment in one or both management zones and the Minister has made a determination of flow class under clause 19.
- (4) The Minister may, under section 45 (1) (b) of the Act, amend subclauses (1) (a) (iv), (1) (b) (iv), (2) (a) (iii) and (2) (b) (iii) in accordance with clause 77 of this Plan.

[3] Clause 19 Determination of flow class

Omit clause 19. Insert instead:

19 Determination of flow class

In accordance with clause 17 (3), the Minister may, from time to time, make a determination of daily flow class in the Upper Coopers Creek Management Zone and/ or the Lower Coopers Creek Management Zone, based on the flow at a flow gauging station correlated to the flow reference point established in clause 18, if, in the opinion of the Minister, the flow classes are required to better manage the sharing of water between water users and the environment in one or both management zones.

[4] Clause 21 Planned environmental water

Omit clause 21. Insert instead:

21 Planned environmental water

- (1) Planned environmental water is identified and established in this water source as follows:
 - (a) in the first five years of this Plan:
 - (i) during the period 1 October to 30 June, when flows are less than or equal to 14 ML/day, then planned environmental water is the flow occurring in this water source minus 0.05 ML/day and minus the Very Low Flow Class access permitted under clause 63 of this Plan,

Note. 0.05 ML/day is the amount of water estimated at the commencement of this Plan for basic landholder rights in this water source.
 - (ii) during the period 1 July to 30 September, when flows are less than or equal to 14 ML/day, then planned environmental water is the flow occurring in this water source minus 0.05 ML/day and minus the Very Low Flow Class access permitted under clause 63 of this Plan,

Note. 0.05 ML/day is the amount of water estimated at the commencement of this Plan for basic landholder rights in this water source.
 - (iii) if A Class has been determined by the Minister in the Upper and Lower Coopers Creek Management Zones, then during the period 1 October to 30 June, when flows are greater than 14 ML/day and less than or equal to 36 ML/day, planned environmental

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water is the flow occurring in this water source minus 18.12 ML/day,

Note. 18.12 ML/day is the amount of water estimated at the commencement of this Plan for A Class total daily extraction limit in the Upper Coopers Creek and Lower Coopers Creek management zones and basic landholder rights in this water source.

- (iv) if A Class has been determined by the Minister in the Lower Coopers Creek Management Zone, then during the period 1 July to 30 September, when flows are greater than 14 ML/day and less than or equal to 20 ML/day, planned environmental water is the flow occurring in this water source minus 16.58 ML/day,

Note. 16.58 ML/day is the amount of water estimated at the commencement of this Plan for A Class total daily extraction limit in the Lower Coopers Creek management zone and basic landholder rights in this water source.

- (v) if A Class has been determined by the Minister in the Upper Coopers Creek Management Zone, then during the period 1 July to 30 September, when flows are greater than 20 ML/day and less than or equal to 36 ML/day, planned environmental water is the flow occurring in this water source minus 18.12 ML/day,

Note. 18.12 ML/day is the amount of water estimated at the commencement of this Plan for A Class total daily extraction limit in the Upper Coopers Creek and Lower Coopers Creek Management Zones and basic landholder rights in this water source.

- (b) after the first five years of this Plan:

- (i) during the period 1 October to 30 June, when flows are less than or equal to 17 ML/day, then planned environmental water is the flow occurring in this water source minus 0.05 ML/day and minus the Very Low Flow Class access permitted under clause 63 of this Plan,

Note. 0.05 ML/day is the amount of water estimated at the commencement of this Plan for basic landholder rights in this water source.

- (ii) during the period 1 July to 30 September, when flows are less than or equal to 31 ML/day, then planned environmental water is the flow occurring in this water source minus 0.05 ML/day and minus the Very Low Flow Class access permitted under clause 63 of this Plan,

Note. 0.05 ML/day is the amount of water estimated at the commencement of this Plan for basic landholder rights in this water source.

- (c) if B Class has been determined by the Minister, then planned environmental water is the flow occurring in this water source minus 58.12 ML/day,

Note. 58.12 ML/day is the amount of water estimated at the commencement of this Plan for B Class total daily extraction limit in the Upper Coopers Creek and Lower Coopers Creek Management Zones and basic landholder rights in this water source.

- (d) if C Class has been determined by the Minister, then planned environmental water is the flow occurring in this water source minus 60.12 ML/day,

Note. 60.12 ML/day is the amount of water estimated at the commencement of this Plan for C Class total daily extraction limit in the Upper Coopers Creek and Lower Coopers Creek Management Zones and basic landholder rights in this water source.

- (e) in the first five years of this Plan, planned environmental water is also the flow occurring in this water source in the 48 hour period after flows have risen from 14 ML/day to 31 ML/day minus basic landholder rights extractions and minus extractions by licence holders listed in Schedule 4,

- (f) after the first five years of this Plan, planned environmental water is also the flow occurring in this water source in the 48 hour period after flows have risen from 17 ML/d to 31 ML/day minus basic landholder rights extractions and minus extractions by licence holders listed in Schedule 4.

- (2) Planned environmental water is maintained as follows:

- (a) in the Very Low Flow Class:

- (i) the holders of access licences, excluding access licences listed in Schedule 4, are not permitted to take water,
- (ii) access licence holders listed on Schedule 4 may take water in the Very Low Flow Class in accordance with clause 63, and
- (iii) persons exercising native title and domestic and stock basic landholder rights may take water up to a combined total of 0.05 ML/day,

Note. The Minister may, by order made under section 323 of the Act, impose temporary water restrictions to direct that, for a specified period, the taking of water from this water source by persons exercising native title and domestic and stock basic

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landholder rights is totally prohibited or is restricted as specified in the order, when it is necessary to do so in the public interest (such as to cope with a water shortage or threat to public health or safety).

Note. The Minister may, by order made under section 328 of the Act, direct a landholder exercising domestic and stock basic landholder rights to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.

- (b) if A Class, B Class or C Class has been determined by the Minister, then:
- (i) the holders of access licences have restricted access to water as specified in clause 46,
 - (ii) persons exercising native title and domestic and stock basic landholder rights may take water, and
 - (iii) if the water taken by persons exercising native title and domestic and stock basic landholder rights is assessed to be exceeding 0.05 ML/day in this flow class, the access to water for access licences will be reduced in accordance with clause 51, to maintain the planned environmental water in this flow class,
- (c) limits are imposed on the availability of water, in accordance with clauses 36 and 38, to protect a proportion of natural river flows for fundamental ecological needs from increases in long-term water extraction,
- Note.** These rules protect water for the environment by limiting both the water extracted over the long term and the rate of extraction of water in different flow ranges, thereby achieving the objectives of this Plan.
- (d) in the first five years of this Plan, during the 48 hour period after flows have risen from 14 ML/day to 31 ML/day, the holders of access licences, excluding access licences listed in Schedule 4, are not permitted to take water, and
- (e) after the first five years of this Plan, during the 48 hour period after flows have risen from 17 ML/day to 31 ML/day, the holders of access licences, excluding access licences listed in Schedule 4, are not permitted to take water.

Note. These rules protect the water for the environment by limiting both the water extracted over the long-term, and the rate of extraction of water in different flow ranges, thereby achieving the objectives of this Plan.

Note. This Plan recognises that the planned environmental water provisions provide non-extractive benefits, including traditional Aboriginal spiritual, social and cultural benefits, and a contribution to improved water quality.

[5] Clause 24 Adaptive environmental water

Omit clause 24. Insert instead:

24 Adaptive environmental water

- (1) Water may be committed in this water source for environmental purposes by an adaptive environmental water condition imposed on an access licence, pursuant to sections 8, 8B, 8C, 8D and 8E of the Act.
- (2) The holder of an access licence may request that the Minister impose an adaptive environmental water condition in respect of the whole or a part of the share component of the access licence.
- (3) The condition imposed under subclause (2) will continue until the holder requests its removal in writing, and the condition is revoked by the Minister, pursuant to section 8B (2) of the Act.
- (4) An access licence may be granted in this water source, pursuant to section 8C of the Act, by the Minister to the Minister, a catchment management authority or other public body, without the need for an application to be made for the licence in accordance with Part 2 of Chapter 3 of the Act, so long as:
 - (a) works or other actions result in water savings in the system being made in this water source, and
 - (b) the share component of the access licence is equal to the value of water savings made in the system, and
 - (c) an adaptive environmental water condition is imposed on the access licence and the condition is not removed,where “system” means that part of this water source that is not identified by this Plan for commitments to basic landholder rights and for sharing and extraction under any other rights.
- (5) The Minister may keep an access licence surrendered by the holder of the licence or transfer it to a catchment management authority or other public body, and may change the licence to a different category or subcategory, if:
 - (a) the licence has been surrendered as a result of water savings made by any means (for example, works or other improvements or recycling), and
 - (b) the share component of the licence is equal to the value of the savings made, and
 - (c) an adaptive environmental water condition is imposed on the access licence and the condition is not removed.

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- (6) An adaptive environmental water condition is a mandatory condition and the terms of an adaptive environmental water condition specified in subclause (1):
 - (a) are to be imposed by the Minister or Minister's delegate, and
 - (b) are to be specified on the access licence, and
 - (c) shall further the objectives of this Plan.
- (7) The allocation of water for access licences with an adaptive environmental water condition will be in accordance with the available water determination made for the relevant category of access licence under this Plan.
- (8) If the adaptive environmental water condition on an access licence requires the water to be left in this water source for environmental purposes, then the water allocation account is to be debited when the water is available in accordance with the adaptive environmental water condition on the access licence.
- (9) If the adaptive environmental water condition requires the environmental water to be taken from this water source, then the water allocation account is to be debited when it is taken.
- (10) For the purposes of auditing compliance with the long-term average extraction limit under this Plan, the delivery of water pursuant to an access licence with an adaptive environmental water condition:
 - (a) in the case of a licence arising under subclause (4), shall not be accounted for as extraction where it occurs, and
 - (b) in the case of a licence arising under subclause (2) or subclause (5), shall be accounted for as extraction where it occurs.
- (11) To the extent that the water allocation of an access licence which is subject to an adaptive environmental water condition is not required to meet the requirement of the adaptive environmental water condition, it may be the subject of an assignment dealing in accordance with the Dealings Rules in Part 11 of this Plan.
- (12) Notwithstanding subclause (11), an access licence with an adaptive environmental water condition may be the subject of any other dealing permitted by the Dealing Rules in this Plan, provided the benefit to the environment provided for in the adaptive environmental water condition is not diminished.

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- (13) At the commencement of this clause, there were no access licences with an adaptive environmental water condition in this water source.

[6] Clause 31 (c)

Omit 31 (3) (c). Insert instead:

- (c) the granting of an application to an existing access licence holder under the provisions of clause 32 (2) (d), up to a maximum total additional share components in this water source of 3,000 unit shares.

[7] Clause 32

Omit clause 32. Insert instead:

- (1) This clause is made in accordance with sections 20 (2) (b) having regard to the limits to water availability in this water source and the need to protect dependent ecosystems.
- (2) In addition to those applications for specific purpose access licences permitted under clause 19 of the *Water Management (General) Regulation 2004* (hereafter **the Regulation**) applications may also be made in this water source for:
- (a) an access licence that may be granted in accordance with a dealing,
- (b) a domestic and stock access licence,
- (c) an unregulated river [Aboriginal community development] access licence where the share component does not exceed 10 ML/year per applications,
- Note.** An unregulated river [Aboriginal community development] access licence will not be fully tradeable. Allocations under these licences will be able to be traded to non-Aboriginal people, however the licence itself can only be traded amongst Aboriginal people, and as such, will remain in the Aboriginal community for the life of the licence. These licences will not be able to be converted to any other category of licence. Aboriginal communities, enterprises and individuals are encouraged to seek financial assistance from funding bodies to purchase fully commercial licences.
- (d) an unregulated river access licence share component for existing access licence holders, provided that individual daily extraction limits (hereafter **IDEL**) are surrendered as follows:
- (i) the access licence share component may increase by 100% if all A Class IDELs are surrendered,

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- (ii) the access licence share component may increase by 200% if all A and B Class IDELs are surrendered,
 - (iii) IDEL in C Class will not change,
 - (iv) to be eligible for additional share component under subclause (2) (d), the IDEL surrendered must be the full IDEL initially assigned to the access licence, as amended by clause 51,
 - (v) the share component that is increased in accordance with subclauses (2) (d) (i) or (ii) cannot exceed the initial share component of the access licence to which the IDEL was originally assigned,
 - (vi) the total daily extraction limit in clauses 46 and 47 will be reduced by the amount of IDEL surrendered in A and B Class, and
 - (vii) the granting of these additional share components may continue as long as the additional share components for this water source resulting from subclause (2) (d) do not exceed 3,000 unit shares,
- (e) an unregulated river (research) access licence where the share component does not exceed 10 ML/year per application.

Note. At 1 July 2008, clause 19 of the Regulation provides that applications may be made for the following specific purpose access licences:

- (i) a local water utility access licence (subcategory "domestic and commercial"), for the purpose of domestic consumption and commercial activities,
- (ii) a domestic and stock access licence (subcategory "domestic"), for the purpose of domestic consumption,
- (iii) an unregulated river access licence (subcategory "town water supply"), for the purpose of supply to communities for domestic consumption and commercial activities,
- (iv) an aquifer access licence (subcategory "town water supply"), for the purpose of supply to communities for domestic consumption and commercial activities, and
- (v) any category of specific purpose access licence (subcategory "Aboriginal cultural"), for Aboriginal cultural purposes.

Section 61 (b) of the Act allows for a person to apply for an access licence with a zero share component.

Section 61 (c) of the Act allows for a person to apply for an access licence where the right to apply for that access licence has been acquired under section 65 of the Act.

Sections 66 (3) of the Act allows the Minister to vary a local water utility's share component at 5 year intervals, to reflect any variation in population, together with any variation in associated commercial activities that has occurred during the period.

Section 66 (4) of Act allows the Minister to vary a local water utility's share component, on application of the local water utility to reflect any rapid growth of population within the utility's area requiring an immediate increase in the availability of water for supply by that utility.

- (3) An access licence of the subcategory (Aboriginal cultural) can only be granted if the application does not exceed 10 ML/yr.
- (4) An application for a specific purpose access licence will only be granted if the share or extraction component of the access licence is the minimum required to meet the circumstances in which the access licence is proposed to be used.
- (5) Any IDELs for licences granted in accordance with this clause will not exceed the IDEL initially assigned to an equivalent share component for that category of access licence, as varied by clause 51.
- (6) Any new access licence granted in this water source in accordance with this clause, must have a share component within the respective total daily extraction limit initially assigned.

[8] Clause 36 (c)

Omit clause 36 (c). Insert instead:

- (c) any access licence share component granted in accordance with clause 32 (2) (d).

[9] Clause 46 Total daily extraction limits

Omit clause 46. Insert instead:

46 Total daily extraction limits

- (1) This Plan establishes a total daily extraction limit (hereafter **TDEL**) for each flow class as follows:
 - (a) in the Upper Coopers Creek Management Zone:
 - (i) 1.53 ML/day for A Class,
 - (ii) 4.92 ML/day for B Class, and
 - (iii) 5.09 ML/day for C Class.
 - (b) in the Lower Coopers Creek Management Zone:
 - (i) 16.54 ML/day for A Class,
 - (ii) 53.15 ML/day for B Class, and
 - (iii) 54.98 ML/day for C Class.

Note. The combined TDEL in each flow class represent 45% of the top of A Class flows, 45% of the top of B Class flows and for C Class flows 30% of the 30th percentile flows in December.

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Note. The TDELs for the Upper and Lower Coopers Creek Management Zones have been established based on the proportion of total access licence share component within each management zone at the commencement of this Plan.

- (2) The TDEL for each flow class specified in subclause (1) applies to all rivers within the specified zone of this water source, apart from those rivers identified as minor streams in a harvestable rights order made under section 54 of the Act.

Note. The harvestable rights order applying to this water source at the commencement of this Plan is that gazetted on 23 March 2001 under section 54 of the Act. It identifies minor streams as non-permanent 1st and 2nd order streams as shown on topographic maps.

[10] Clause 47 Initial assignment of the TDEL to categories of access licence

Omit clause 47. Insert instead:

47 Initial assignment of the TDEL to categories of access licence

- (1) The TDEL for each flow class will initially be assigned to local water utility access licences according to the following:
- (a) in the Upper Coopers Creek Management Zone:
 - (i) 0 ML/day of A Class,
 - (ii) 0 ML/day of B Class, and
 - (iii) 0 ML/day of C Class,
 - (b) in the Lower Coopers Creek Management Zone:
 - (i) 0 ML/day of A Class,
 - (ii) 0 ML/day of B Class, and
 - (iii) 0 ML/day of C Class.
- (2) The TDEL for each flow class will initially be assigned to domestic and stock access licences according to the following:
- (a) in the Upper Coopers Creek Management Zone:
 - (i) 0.01 ML/day of A Class,
 - (ii) 0.01 ML/day of B Class, and
 - (iii) 0.01 ML/day of C Class,
 - (b) in the Lower Coopers Creek Management Zone:
 - (i) 0.06 ML/day of A Class,
 - (ii) 0.06 ML/day of B Class, and
 - (iii) 0.06 ML/day of C Class.
- (3) The TDEL for each flow class will initially be assigned to unregulated river access licences according to the following:
- (c) in the Upper Coopers Creek Management Zone:

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- (i) 1.52 ML/day of A Class,
 - (ii) 4.91 ML/day of B Class, and
 - (iii) 5.08 ML/day of C Class,
 - (d) in the Lower Coopers Creek Management Zone:
 - (i) 16.48 ML/day of A Class,
 - (ii) 53.09 ML/day of B Class, and
 - (iii) 54.92 ML/day of C Class.

[11] Clause 51 Adjustment to TDELS and IDELS

Insert following new subclause:

- (8) The TDELS specified in clause 46, and the assignment of TDELS specified in clause 47, shall be varied in accordance with any dealing under sections 71M, 71N or 71Q of the Act between the Upper Coopers Creek Management Zone and the Lower Coopers Creek Management Zone.

[12] Clause 51 (2) (a)

Omit the reference to clause 47 (c) and insert instead clause 47 (3).

[13] Clause 51 (6)

Omit the reference to clause 32 (3) (c) and insert instead clause 32 (2) (d).

Omit the reference to clauses 46 (1) (b) and 46 (1) (c) and insert instead clause 46 (1).

Omit the reference to clauses 47 (c) (i) and 47 (c) (ii) and insert instead clause 47 (3).

[14] Clause 55 (2) (b)

Omit clause 55 (2) (b). Insert instead:

- (b) the dealing would result in an access licence extraction component that had nominated a work outside of the Restricted Trading Zone, nominating a work within the Restricted Trading Zone, shown on the map in Schedule 2.

[15] Clause 64 Unregulated river access licences

Omit clause 64. Insert instead:

64 Unregulated river access licences

All unregulated river access licences shall have mandatory conditions to give effect to the following:

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- (a) water may not be taken when flows are within the very low flow class,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by a registered group,
- (c) notwithstanding subclause (b):
 - (i) in the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 14 ML/day to 31 ML/day, and
 - (ii) after the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 17 ML/day to 31 ML/day,
- (d) subclause (a) shall not apply to an access licence listed in Schedule 4, and
- (e) notwithstanding subclauses (a) and (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows.

[16] **Clause 65 Local water utility access licences**

Omit clause 65. Insert instead:

65 Local water utility access licences

All local water utility access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the very low flow class,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by a registered group,
- (c) notwithstanding subclause (b):
 - (i) in the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 14 ML/day to 31 ML/day, and
 - (ii) after the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 17 ML/day to 31 ML/day,

- (d) subclause (a) shall not apply to an access licence listed in Schedule 4, and
- (e) notwithstanding subclauses (a) and (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows.

[17] Clause 66 Domestic and stock access licences

Omit clause 66. Insert instead:

66 Domestic and stock access licences

All domestic and stock access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the very low flow class,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by a registered group,
- (c) notwithstanding subclause (b):
 - (i) in the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 14 ML/day to 31 ML/day, and
 - (ii) after the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 17 ML/day to 31 ML/day,
- (d) subclause (a) shall not apply to an access licence listed in Schedule 4, and
- (e) notwithstanding subclauses (a) and (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows.

[18] Clause 68 Unregulated river (Aboriginal commercial) access licences

Omit clause 68. Insert instead:

68 Unregulated river (Aboriginal commercial) access licences

The following conditions shall be imposed on unregulated river (Aboriginal commercial) access licences:

- (a) water may not be taken when flows are within the very low flow class,

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- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by a registered group,
- (c) notwithstanding subclause (b):
 - (i) in the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 14 ML/day to 31 ML/day, and
 - (ii) after the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 17 ML/day to 31 ML/day,
- (d) subclause (a) shall not apply to an access licence listed in Schedule 4, and
- (e) notwithstanding subclauses (a) and (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows.

[19] **Clause 69 Unregulated river (Aboriginal cultural) access licences**

Omit clause 69. Insert instead:

69 Unregulated river (Aboriginal cultural) access licences

All unregulated river (Aboriginal cultural) access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the very low flow class,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by a registered group,
- (c) notwithstanding subclause (b):
 - (i) in the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 14 ML/day to 31 ML/day, and
 - (ii) after the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 17 ML/day to 31 ML/day,
- (d) subclause (a) shall not apply to an access licence listed in Schedule 4, and

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- (e) notwithstanding subclauses (a) and (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows.

[20] Clause 70 Unregulated river (research) access licences

Omit clause 70. Insert instead:

70 Unregulated river (research) access licences

All unregulated river (research) access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the very low flow class,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by a registered group,
- (c) notwithstanding subclause (b):
 - (i) in the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 14 ML/day to 31 ML/day, and
 - (ii) after the first five years of this Plan, water may not be taken during a 48 hour period after flows have risen from 17 ML/day to 31 ML/day,
- (d) subclause (a) shall not apply to an access licence listed in Schedule 4, and
- (e) notwithstanding subclauses (a) and (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows.

[21] Clause 77 Assessment of fish passage requirements

Omit clause 77. Insert instead:

77 Assessment of fish passage requirements

- (1) The Minister may, under section 45 (1) (b) of the Act, and by notice published in the NSW Government Gazette, vary the Very Low Flow Class established in clause 17 (1) (a) (iv), 17 (2) (a) (iii) and consequently the bottom of A class established in clause 17 (1) (b) (iv) and 17 (2) (b) (iii), following an assessment of fish passage and habitat requirements.
- (2) Any variation made under subclause (1) may result in the Very Low Flow Class at clause 17 (1) (a) (iv) and 17 (2) (a) (iii) and

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the bottom of A class established in clause 17 (1) (b) (iv) and 17 (2) (b) (iii) being varied to any level within the range of 20 ML/day and 31 ML/day.

- (3) The fish passage assessment should assess whether the provisions in this Plan regarding fish passage flow requirements for the Eastern Freshwater Cod (*Maccullochella ikei*) have changed as a result of the removal or modification of artificial barriers in this water source, or a changed scientific understanding of the flow requirements.
- (4) In undertaking the assessment, the Minister should:
 - (a) consult with the NSW Department of Environment and Climate Change and the NSW Department of Primary Industries, and
 - (b) prepare a report indicating:
 - (i) the results and conclusions in terms of the degree to which the fish passage flow requirements are met,
 - (ii) the flow levels recommended to meet the fish passage flow requirements, and
 - (iii) the socio-economic impacts of any recommended changes to the flow levels.

[22] Clause 78 (1)

Change reference to clause 77 (5) (b) to clause 77 (4) (b).

[23] Schedule 1 Dictionary

Delete the definition of *flow classes*. Insert instead:

flow classes are categorised by the size and duration of flow levels in unregulated rivers, for example:

- (a) Very Low Flows may be a class on their own,
- (b) low flows may be categorised as A Class flows,
- (c) moderate flows may be categorised as B Class flows, and
- (d) high flows may be categorised as C Class flows.

[24] Schedule 1 Dictionary

Delete note below definition of *runoff harvesting dam*. Insert instead:

Note. This Order refers to watercourses shown as blue lines on topographic maps. The lines which are uppermost in a catchment are 1st order streams, when two 1st order streams are joined they make a 2nd order stream, etc. For more information, see the Farm Dams Assessment Guide available from the Department of Water and Energy.

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[26] Schedule 4 Access licences with very low flow access

Omit the heading to Schedule 4. Insert instead:

Schedule 4 Access licences with access to the Very Low Flow
Class

[27] Schedule 4 Access licences with very low flow access

Omit the note from Schedule 4. Insert instead:

Note. The access licence details in this Schedule may change during
the period of this Plan. The offices of the Department of Water and
Energy, shown in Appendix 2, should be contacted for a current list.

[28] Appendix 2 Location of maps

Omit the Appendix 2. Insert instead:

Appendix 2 Location of maps

The maps in relation to this Plan may be inspected at:

Department of Water and Energy
Suite 6, Alstonville Plaza
ALSTONVILLE NSW 2477

Department of Water and Energy
76 Victoria Street
GRAFTON NSW 2460

BY AUTHORITY
