



New South Wales
Government

Harvestable Rights (coastal-draining catchments) Order 2023

under the

Water Management Act 2000

I, ROSE JACKSON, Minister for Water, in pursuance of section 54 of the *Water Management Act 2000*, make the following Order.

Dated 21 of 9 2023

ROSE JACKSON, MLC
Minister for Water

Explanatory note

This Order is made under section 54 of the *Water Management Act 2000*. The object of this Order is to (amongst other things) constitute land as a harvestable rights area, specify the kind of water that may be captured or stored in the area in exercise of harvestable rights, and specify the method for calculating the maximum harvestable right volume for works constructed or used in exercise of harvestable rights on landholdings in the area.

1 Name of Order

This Order is the *Harvestable Rights (coastal-draining catchments) Order 2023*.

2 Commencement

This Order commences on the day on which it is published on the NSW legislation website.

3 Repeal of other orders

This Order repeals the order titled *Harvestable Rights (coastal-draining catchments) Order 2022*.

4 Constitution of land, name of area and fixing of boundaries

- a) The land identified as 'coastal-draining catchments' on the map at Annexure A (also available on the Department's website) is:
 - i. constituted as a harvestable rights area with the boundaries as shown on the map, and
 - ii. named the 'Coastal-draining catchments harvestable rights area'.
- b) The harvestable rights area comprises all water sources to which the following water sharing plans (as amended or replaced from time to time) apply:
 - i. *Water Sharing Plan for the Bega River Area Regulated, Unregulated and Alluvial Water Sources 2023*
 - ii. *Water Sharing Plan for the Bellinger River Area Unregulated and Alluvial Water Sources 2020*
 - iii. *Water Sharing Plan for the Brunswick Unregulated and Alluvial Water Sources 2016*
 - iv. *Water Sharing Plan for the Central Coast Unregulated and Alluvial Water Sources 2022*
 - v. *Water Sharing Plan for the Clarence River Unregulated and Alluvial Water Sources 2016*
 - vi. *Water Sharing Plan for the Clyde River Unregulated and Alluvial Water Sources 2016*
 - vii. *Water Sharing Plan for the Coffs Harbour Area Unregulated and Alluvial Water Sources 2022*
 - viii. *Water Sharing Plan for the Deua River Unregulated and Alluvial Water Sources 2016*
 - ix. *Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2023*
 - x. *Water Sharing Plan for the Hastings Unregulated and Alluvial Water Sources 2019*
 - xi. *Water Sharing Plan for the Hunter Unregulated and Alluvial Water Sources 2022*
 - xii. *Water Sharing Plan for the Lower North Coast Unregulated and Alluvial Water Sources 2022*

- xiii. *Water Sharing Plan for the Macleay Unregulated and Alluvial Water Sources 2016*
- xiv. *Water Sharing Plan for the Nambucca Unregulated and Alluvial Water Sources 2016*
- xv. *Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2023*
- xvi. *Water Sharing Plan for the Snowy Genoa Unregulated and Alluvial Water Sources 2016*
- xvii. *Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2023*
- xviii. *Water Sharing Plan for the Tuross River Unregulated and Alluvial Water Sources 2016*
- xix. *Water Sharing Plan for the Tweed River Area Unregulated and Alluvial Water Sources 2023.*

c) This Order only applies to landholdings within the harvestable rights area.

Note: *harvestable rights area* and *landholdings* is defined in paragraph 11.

5 Kind of water and type and location of works

- a) The kind of water that may be captured or stored in the harvestable rights area in exercise of harvestable rights is rainfall runoff.
- b) The type of water supply work that may be constructed or used by a landholder to capture or store harvestable rights water is a dam.
- c) A harvestable rights dam must not be constructed or used if, at the time of construction or first use of the harvestable rights dam, the dam is (or would be, if constructed):
 - i. on, in or within 40 metres (measured perpendicularly) of any river or stream that is not a minor stream,
 - ii. on or within 3 kilometres upstream, including in or within the stream and within the catchment generally, of any Ramsar wetland.

Note: *dam*, *harvestable rights*, *harvestable rights dam*, *harvestable rights water*, *landholder*, *minor stream* and *Ramsar wetland* are defined in paragraph 11.

6 Exercise of harvestable rights

If a landholding has both an owner and an occupier who are not the same person, harvestable rights must only be exercised in relation to the landholding by either the owner or the occupier of the landholding.

7 Calculation of maximum harvestable right volume and accounting for water in mixed-rights dams that exceed the maximum harvestable right volume for a landholding

- a) Subject to subparagraph 7 c) and 10 b), the maximum harvestable right volume for a landholding is to be calculated in accordance with the method set out in Schedule 1 and by reference to 10% of the average annual regional rainfall runoff on the landholding.

- b) The maximum harvestable right volume for a landholding is expressed as a dam capacity (in megalitres).

Note: Section 54(3) of the Act provides that the kind of ways in which a maximum harvestable right volume for landholdings in a harvestable rights area may be expressed includes by reference to the capacity of water supply works.

- c) If a landholding resulted from a subdivision approved by a relevant planning authority before 1 January 1999 and the maximum dam capacity for the landholding calculated in accordance with Schedule 1 is less than one megalitre, the maximum dam capacity for that landholding is taken to be one megalitre.
- d) The method for accounting for water that is captured or stored in mixed-rights dams that exceed the maximum harvestable right volume for a landholding is set out in Schedule 2.

Notes:

1: **mixed-rights dam** is defined in paragraph 11.

2: an access licence or water use approval is not required for taking or using water captured or stored by a mixed-rights dam that does not exceed the maximum harvestable right volume for the landholding (see sections 53(2) and (3) of the Act).

8 Rules about purposes for which water may be taken or used

- a) If a landholder constructs and uses, or uses, a harvestable rights dam, the harvestable rights water captured or stored in that dam may be taken and used for any purpose, except that it must not be moved to an excluded work or to any other dam on the landholding that is not a harvestable rights dam.
- b) If a mixed-rights dam captures or stores any water taken in the following circumstances:
 - i. in the exercise of a domestic and stock right under section 52 of the Act,
 - ii. under a domestic and stock access licence or a licence granted under Part 5 of the *Water Act 1912* for stock and domestic purposes,
 - iii. under an exemption provided for in clauses 6 and 7 of Schedule 1 to the *Water Management (General) Regulation 2018*,all water captured or stored in that dam may only be taken and used for the purposes of domestic consumption and stock watering.

Note: **domestic consumption**, **excluded work** and **stock watering** are defined in paragraph 11.

9 Arrangements for permitted shared use of a harvestable rights dam that straddles landholdings

- a) The shared use of a single harvestable rights dam by two or more landholders is permitted only where the dam straddles their landholdings.
- b) The method of apportioning the capacity of a harvestable rights dam where the dam straddles the landholdings of two or more landholders is to apportion the capacity of the dam between each landholding in proportion to the surface area of the water stored on the respective landholding when the dam is full.

10 Savings and transitional provisions

- a) Paragraphs 5 to 9 of this Order do not apply to Preserved landholdings.

Note: *Preserved landholding* is defined in paragraph 11.

- b) Subject to subparagraphs 10 c) to e) below, the previous Order, as in force immediately before the commencement of this Order, continues to apply to Preserved landholdings, as if the previous Order had not been repealed.
- c) No new Type 2 dam may be constructed or used on a Preserved landholding.
- d) An existing Type 1 or Type 2 dam on the landholding must not be enlarged.

Note: *new Type 2 dam*, *Type 1 dam* and *Type 2 dam* are defined in paragraph 11.

- e) The previous Order applies to Preserved landholdings as if amended as follows:

- i. omit subparagraph 5 c) ii)

- ii. insert new paragraph 5A after paragraph 5:

“5A Exercise of harvestable rights

If a landholding has both an owner and an occupier who are not the same person, harvestable rights must only be exercised in relation to the landholding by either the owner or the occupier of the landholding.”

- iii. insert in subparagraph 7 a) after “for any purpose”:

“, except that it must not be moved to an excluded work or to any other dam on the landholding that is not a Type 1 dam.”

- iv. delete subparagraph 7 b) and insert instead:

“If a landholder constructs and uses, or uses, a Type 2 dam, water may only be captured, stored, taken and used for the purposes of domestic consumption, stock watering and extensive agriculture, and must not be moved to an excluded work or to any other dam on the landholding that is not a Type 2 dam.”

- v. delete subparagraph 7 c) and insert instead:

“If a mixed-rights dam captures or stores water taken in the following circumstances:

- i. in the exercise of a domestic and stock right under section 52 of the Act,*
ii. under a domestic and stock access licence or a licence granted under Part 5 of the Water Act 1912 for stock and domestic purposes,
iii. under an exemption provided for in clauses 6 and 7 of Schedule 1 to the Water Management (General) Regulation 2018,

all water captured or stored in that dam may only be taken and used for the purposes of domestic consumption and stock watering.”

- vi. delete subparagraphs 7 d) and e).

- vii. insert in the definitions before the definition for “**the harvestable rights area**”:
“**harvestable rights** has the same meaning as under the Act.”
- viii. insert in the definition for **harvestable rights multiplier**, after “take into account”, the following words “*factors including*”.
- ix. delete the definition for **landholding** in paragraph 10 and insert instead:
“**landholding** for the purposes of this Order means:
 - a) a parcel of land, or
 - b) two or more parcels of land which:
 - i. are contiguous with one another or are separated from one another only by a road, river, creek or watercourse, and
 - ii. constitute or are worked as a single property.”
- x. insert a new subparagraph a) iv) in the definition for **minor stream** in paragraph 10:
“iv) which does not at any time carry flows emanating from a third, fourth or higher order stream, determined in accordance with the Strahler system set out in Schedule 2 to the Water Management (General) Regulation 2018, unless the water from a third or higher order stream is entering the stream in times of flood, and”

11 Dictionary

In this Order:

Act means the *Water Management Act 2000*.

dam for the purposes of this Order excludes an excluded work.

dam reliability factor is a number determined by the Minister for a location and reflects a measure of reliability of water capture and supply for that location.

Department means the Department of Planning and Environment.

domestic consumption has the same meaning as in section 52 of the Act.

excluded work means any of the following –

- a) a dam identified as an excluded work in clauses 1 - 4 of Schedule 1 to the *Water Management (General) Regulation 2018*
- b) a dam that cannot capture rainfall runoff.

harvestable rights has the same meaning as under the Act.

harvestable rights area means the harvestable rights area constituted and named at paragraph 4.

harvestable rights dam means a dam or proportion of a dam on a landholding in the harvestable rights area used in the exercise of harvestable rights.

harvestable rights multiplier is a number determined by the Minister that represents 10% of the average annual regional rainfall runoff in megalitres per hectare for a given locality, as adjusted to take into account factors including evaporation, periods between runoff-producing rainfall events and assumed demands on harvestable rights dams.

harvestable rights water is rainfall runoff captured or stored in the exercise of harvestable rights.

hydroline spatial data has the same meaning as in clause 3(1) of the *Water Management (General) Regulation 2018*.

landholder has the same meaning as under the Act.

landholding for the purposes of this Order means:

- a) a parcel of land, or
- b) two or more parcels of land which:
 - i. are contiguous with one another or are separated from one another only by a road, river, creek or watercourse, and
 - ii. constitute or are worked as a single property.

minor stream means the following:

- a) any stream or part of a stream:
 - i. identified as a watercourse in the hydroline spatial data, and
 - ii. that is a first or second order stream, or part of such a stream, determined in accordance with the Strahler system set out in Schedule 2 to the *Water Management (General) Regulation 2018*, and
 - iii. that does not maintain a permanent flow of water, being a visible flow which occurs on a continuous basis, or which would so occur if there were no water extractions, diversions or obstructions of flows upstream, and
 - iv. which does not at any time carry flows emanating from a third, fourth or higher order stream, determined in accordance with the Strahler system set out in Schedule 2 to the *Water Management (General) Regulation 2018*, unless the water from a third or higher order stream is entering the stream in times of flood, and
- b) any stream or part of a stream which is not identified as a watercourse in the hydroline spatial data.

Note: **hydroline spatial data** is defined above.

mixed-rights dam means a dam for capturing or storing harvestable rights water and other water that has been lawfully taken from a water source.

Notes:

1. Section 53(2) of the Act provides for the use of mixed-rights dams that do not exceed the maximum harvestable rights volume for the landholding calculated in accordance with the method in Schedule 1.
2. Section 53(3) of the Act specifies the circumstances in which harvestable rights water and other water lawfully taken from a water source can be captured or stored in a dam or dams that exceeds the maximum harvestable rights volume for the landholding calculated in accordance with the method in Schedule 1.

new Type 2 dam means a Type 2 dam but does not include any dam:

- a) the subject of a notification form submitted under the previous Order, or
- b) for which, as at commencement of this Order –
 - i. construction had commenced on the landholding, and
 - ii. the relevant landholder had not submitted, and was not yet required to submit, a notification form under the previous Order.

Preserved landholding means a landholding within the harvestable rights area in relation to which the relevant landholder has, at the commencement of this Order either:

- a) constructed or commenced construction of a Type 2 dam or converted an existing dam to a Type 2 dam and submitted a notification form in accordance with the previous Order, or
- b) commenced construction of a Type 2 dam and not yet submitted a notification form under paragraph 8) a) of the previous Order because 28 days had not passed since commencement of the construction of the dam.

Despite b) a Preserved landholding will not remain a Preserved landholding unless the landholder submits a notification form within 28 days of the commencement of construction of the new Type 2 dam in accordance with the previous Order.

previous Order means the order titled *Harvestable Rights (coastal-draining catchments) Order 2022* made on 12 May 2022 and published on the NSW Legislation website on 13 May 2022.

Ramsar wetland means a wetland included, from time to time, in the List of Wetlands of International Importance of the International Convention on Wetlands (Ramsar, Iran, 1971).

stock watering has the same meaning as in section 52 of the Act.

Type 1 dam has the same meaning as defined under the previous Order.

Type 2 dam has the same meaning as defined under the previous Order.

Schedule 1 Method for calculating the maximum capacity of harvestable rights dams on a landholding

- a) The maximum capacity of a harvestable rights dam or dams on a landholding (in megalitres) is to be calculated using the online 'maximum harvestable rights dam capacity calculator' on the WaterNSW website (online calculator).

Notes:

1. The online calculator gives a dam capacity output for landholdings in the coastal-draining catchments harvestable rights area –representing up to 10% of the average annual regional rainfall runoff for the landholding.
2. The online calculator is used in the method for accounting for harvestable rights water in mixed-rights dams that exceed the maximum harvestable right volume for a landholding in Schedule 2.

- b) The method applied by the online calculator is as follows:
- i. identify the location of the landholding,
 - ii. identify the total size of the landholding (in hectares) within the harvestable rights area,
 - iii. to calculate the capacity for a harvestable rights dam or dams which represents up to 10% of the average annual regional rainfall runoff on the landholding - multiply (ii) by the harvestable rights multiplier.

Note: *harvestable rights multiplier* is defined in paragraph 11.

Schedule 2 Method for accounting for harvestable rights water captured or stored in mixed-rights dams that exceed the maximum harvestable right volume for a landholding

This schedule sets out the method for accounting for harvestable rights water that is captured or stored in mixed-rights dams that exceed the maximum harvestable right volume for a landholding.

Water NSW uses this method to determine the maximum volume of harvestable rights water in mixed-rights dams that exceed the maximum harvestable right volume for a landholding in megalitres per year.

The method is:

- i. calculate the maximum capacity for a harvestable rights dam or dams on a landholding in accordance with Schedule 1,
- ii. calculate the capacity of any existing harvestable rights dam or dams on the landholding,
- iii. subtract (ii) from (i),
- iv. divide the dam capacity value calculated at (iii) by the dam reliability factor shown in Column B of the table below for the corresponding harvestable rights multiplier that applies at the location of the landholding. If a harvestable rights multiplier for a landholding is between any two values specified in Column A, the relevant corresponding dam reliability factor will also be between the corresponding values specified in Column B.

Notes:

1. Section 53(2) and (3) of the Act provide for the construction and use of mixed-rights dams.
2. **dam reliability factor** is defined in paragraph 11.

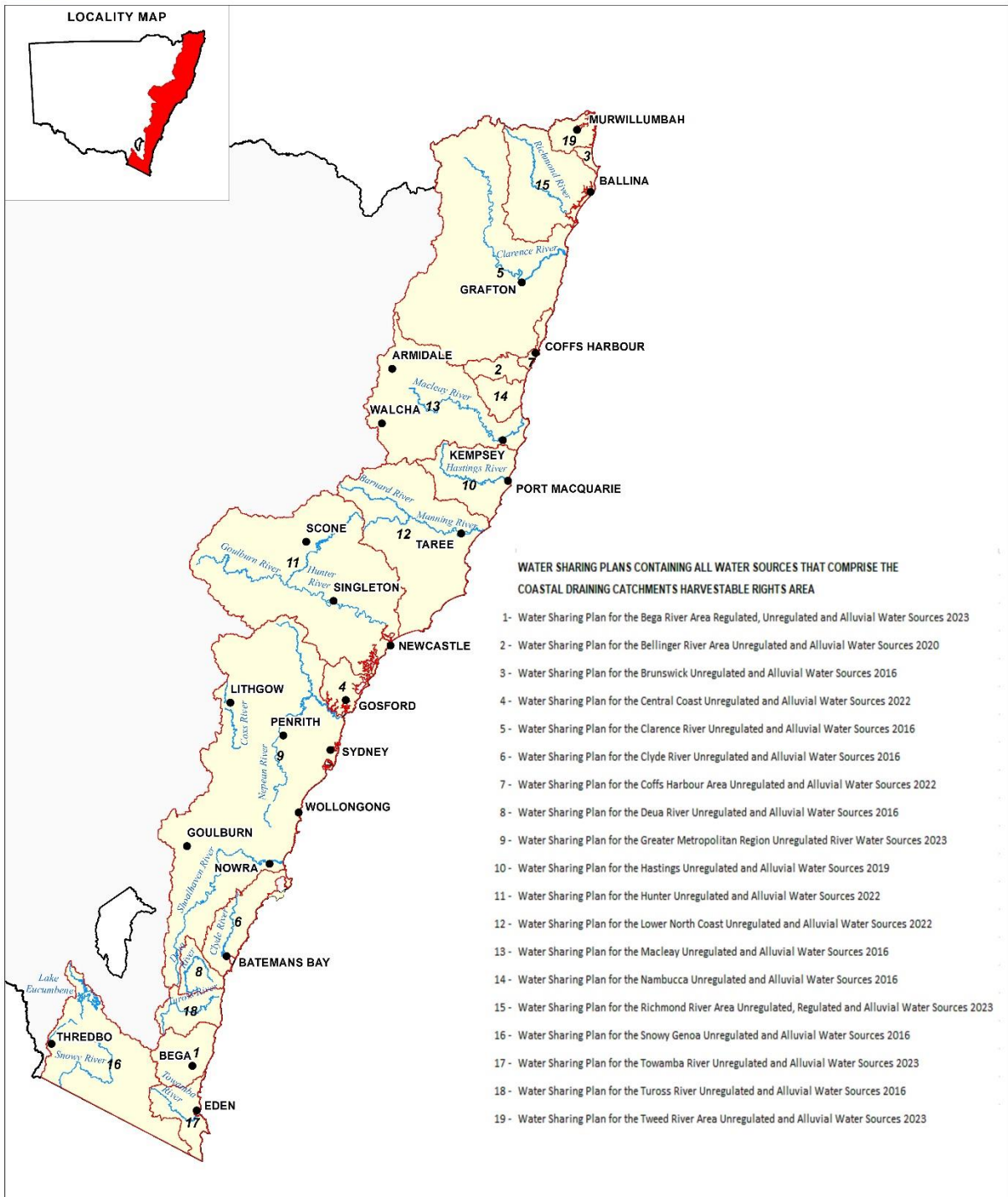
Column A	Column B
Harvestable rights multiplier	Dam reliability factor
0.050	2.50
0.051	2.32
0.052	2.17
0.053	2.04
0.054	1.93
0.055	1.83
0.056	1.75
0.057	1.68
0.058	1.61
0.059	1.55
0.060	1.50
0.062	1.41
0.064	1.33
0.066	1.27
0.068	1.21
0.070	1.17
0.075	1.07
0.080	1.00

0.090	0.90
0.10	0.83
0.11	0.79
0.12	0.75
0.13	0.72
0.14	0.70
0.15	0.68
0.16	0.67
0.17	0.65
0.18	0.64
0.19	0.63

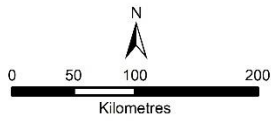
Annexure A – map of the harvestable rights area



Coastal-draining catchments harvestable rights area



- Town
- Major River
- Water Sharing Plan boundary
- Coastal-draining catchments harvestable rights area
- NSW boundary



Data Sources:
 © Spatial Services – NSW Department of Finance, Services and Innovation 2022.

Map produced by DPE Water 10 August 2023