

# Water Sharing Plan for the Toorumbree Creek Water Source 2003 (2002 SI 1036)

[2002-1036]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2004 to 9 December 2004 (accessed 25 November 2024 at 17:52)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2004](#)
- **Note**  
In incorporating the amendments made by the *Water Management (Minister's Plans) Order No 2 of 2004*, published in Gazette No 110 of 1.7.2004, p 5072, changes have been made to the numbering of some of the provisions to maintain appropriate numerical or alphabetical order.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Water Sharing Plan for the Toorumbree Creek Water Source 2003 (2002 SI 1036)



New South Wales

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# Water Sharing Plan for the Toorumbree Creek Water Source 2003 (2002 SI 1036)



New South Wales

## Part 1 Introduction

### 1 Name of Plan

This Plan is the *Water Sharing Plan for the Toorumbree Creek Water Source 2003* (hereafter **this Plan**).

### 2 Nature and status of this Plan

- (1) This Plan is made under section 50 of the *Water Management Act 2000* as amended (hereafter **the Act**).
- (2) This Plan covers the core provisions of section 20 of the Act for water sharing, and additional provisions of section 21 of the Act, and other relevant matters.

### 3 Date of commencement

This Plan takes effect on 1 July 2004 and ceases 10 years after that date.

### 4 Area and waters to which this Plan applies

- (1) The area in respect of which this Plan is made is that area of land within the Mid North Coast Water Management Area known as the Toorumbree Creek Water Source (hereafter **this water source**) as shown in Schedule 2.

#### Note—

The Mid North Coast Water Management Area is shown on the map in Appendix 1.

- (2) The waters of this water source includes all water occurring on the land surface shown on the map in Schedule 2 including, but not limited to:
  - (a) all rivers in this water source including, but not limited to, those nominated in Schedule 3, and
  - (b) all lakes and wetlands in this water source.
- (3) The waters of this water source exclude all water contained within aquifers underlying

this water source.

## **5 Interpretation**

- (1) Terms that are defined in the Act have the same meaning in this Plan and the effect of these terms may be explained in Notes.
- (2) Additional terms to those identified in subclause (1) are defined in Schedule 1.
- (3) Notes in the text of this Plan do not form part of this Plan.
- (4) Schedules to this Plan form part of this Plan.
- (5) Appendices to this Plan do not form part of this Plan.

## **6 Inspection of detailed maps**

Maps referred to in this Plan may be inspected at locations listed in Appendix 2.

## **7 Effect on licences, authorities and permits under the [Water Act 1912](#)**

- (1) This Plan applies from commencement to those matters that are administered under the Act at that time.
- (2) This Plan applies to other matters from the date the relevant provisions of the Act are commenced.

### **Note—**

To the extent possible, the rules embodied in this Plan will apply to matters administered under the [Water Act 1912](#) in the interim.

## **8 State Water Management Outcomes Plan**

- (1) This Plan is consistent with the State Water Management Outcomes Plan (hereafter **SWMOP**) in accordance with section 16 (1) (a) of the Act.
- (2) Schedule 4 identifies the SWMOP targets applicable to this Plan and how this Plan contributes to those targets.

### **Note—**

The SWMOP applying at the commencement of this Plan is that gazetted on 20 December 2002 under section 6 of the Act.

## **Part 2 Vision, objectives, strategies and performance indicators**

### **9 Vision, objectives, strategies and performance indicators**

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

## **10 Vision**

The vision for this Plan is that the water needs of the communities dependent on Toorumbree Creek Water Source are addressed, in the context of maintaining its high conservation values.

## **11 Objectives**

The objectives of this Plan are to:

- (a) preserve the high conservation values of the Toorumbree Creek Water Source by limiting extraction from the river to basic landholder rights users, domestic and stock and unregulated river (Aboriginal cultural) access licence users, and by encouraging these users to adopt efficient practices during periods of very low flows,
- (b) maintain high quality waters in the Toorumbree Creek Water Source,
- (c) maintain or improve the overall health of the Macleay River catchment, its estuary and adjoining inshore waters, by enabling sufficient contributions to this system from Toorumbree Creek flows,
- (d) protect and enhance water dependent ecosystems, threatened species and endangered ecological communities within the river by allowing only the holders of domestic and stock rights, native title rights, and domestic and stock and unregulated river (Aboriginal cultural) access licence users access to flows,
- (e) protect water quality and habitat by protecting freshes and low flows throughout the river system by allowing only domestic and stock users, native title rights holders and Aboriginal people to access flows, and by encouraging these users to adopt efficient practices during periods of very low flows, and
- (f) recognise and protect Aboriginal heritage sites and values in access management and water licensing decisions.

## **12 Strategies**

The strategies of this Plan are to:

- (a) identify and make provision for water requirements for basic landholder rights,
- (b) specify the circumstances in which access licences may be granted,
- (c) limit the amount of water that can be extracted on a daily,
- (d) limit the long-term average extraction of water,
- (e) clearly define access conditions for water extraction and rules for extracting water from this water source,



- (f) establish rules for determining the water available from time to time under access licences,
- (g) establish water allocation accounting rules,
- (h) specify mandatory conditions for access licences, and
- (i) specify the rules for water supply works approvals.

### **13 Performance indicators**

The following indicators are to be used to determine the performance of this Plan against its objectives:

- (a) change in low flows,
- (b) change in moderate to high flows,
- (c) change in ecological condition of this water source and dependent ecosystems,
- (d) extent to which basic landholder rights requirements have been met,
- (e) change in economic benefits derived from water extraction and use,
- (f) extent to which native title rights requirements have been met,
- (g) extent of recognition of spiritual, social and customary values of water to Aboriginal people, and
- (h) (Repealed)

**Note—**

Appendix 3 details the objectives to which these performance indicators relate and the proposed methods for assessing these indicators.

## **Part 3 Basis for water sharing**

### **14 Basis for water sharing**

This Part is made in order to give effect to section 5 (3) of the Act, and in accordance with sections 20 (2) (c) and 21 (e) of the Act.

### **15 Climatic variability**

- (1) This Plan recognises climatic variability and therefore river flow variability in this water source.
- (2) This Plan recognises the high conservation value of this water source.
- (3) To give effect to subclauses (1) and (2), this Plan has provisions that:

- (a) manage limited access to the water in this water source, and
- (b) enable the protection of the conservation values of this water source.

#### **16 Extraction management unit**

- (1) The availability of water for extraction from this water source on a long-term average basis will be determined at the level of an extraction management unit.
- (2) The extraction management unit of which this water source is part is known as the Macleay River Extraction Management Unit, and is shown on the map in Schedule 5.

### **Part 4 Environmental water provisions**

#### **17 Environmental water provisions**

This Part is made in accordance with sections 5 (3) and 8 (1), 8 (2) and 20 (1) (a) of the Act.

#### **18 Planned environmental water**

- (1) Environmental health water is identified and established as all flows occurring in this water source minus 0.025 megalitres per day (hereafter **ML/day**).
- (2) Environmental health water is maintained in all flows as follows:
  - (a) persons exercising domestic and stock and native title rights may extract water, and
  - (b) the holders of access licences have restricted access to water as specified in clauses 43 to 46,
  - (c) limits are imposed on the availability of water, in accordance with clauses 33 and 35, that protect a proportion of natural river flows for fundamental ecological needs from increases in long-term water extraction.

#### **Note—**

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

#### **19 Extraction by water supply work**

Notwithstanding all other rights and conditions, extraction of water from a river by an approved water supply work is permitted only if there is visible flow in the river in the vicinity of the work.

#### **20 Planned environmental water**

At the commencement of this Plan, there is no water committed for specified

environmental purposes in accordance with section 8 (1) (b) of the Act.

## **21 Adaptive environmental water**

- (1) At any time an access licence holder may, by a process determined by the Minister, commit all or part of their licence as adaptive environmental water.
- (2) The conditions of the commitment specified in subclause (1):
  - (a) are to be established by the Minister,
  - (b) are to be specified on the licence, and
  - (c) shall be such as to ensure that there is a contribution to the objectives of this Plan.
- (3) At the commencement of this Plan there are no access licences committed to an environmental purpose in accordance with section 8 (1) (c) of the Act.

## **Part 5 Basic landholder rights**

### **22 Basic landholder rights**

This Part is made in accordance with sections 5 (3) and 20 (1) (b) of the Act.

### **23 Domestic and stock rights**

- (1) At the commencement of this Plan the water requirements of holders of domestic and stock rights are estimated to be a total of 0.025 ML/day.
- (2) This Plan recognises that the exercise of domestic and stock rights may increase during the term of this Plan.

**Note—**

Increase in use of domestic and stock rights may occur as a result of an increase in the number of landholdings fronting rivers in this water source and/or as a result of an increase of the exercise of basic rights by existing landholders.

### **24 Native title rights**

- (1) At the commencement of this Plan there are no holders of native title rights and therefore the water requirements for native title rights are estimated to be a total of 0 ML/day.
- (2) This Plan recognises that the exercise of native title rights may increase during the term of this Plan.

**Note—**

Increase in use of native title rights may occur as a result of the granting of native title rights under the Commonwealth's *Native Title Act 1993*.

## **25 Harvestable rights**

The requirement for water under harvestable rights is the amount of water owners of land are entitled to capture pursuant to the harvestable rights Order published in the NSW Government Gazette on 23 March 2001 under section 54 of the Act.

## **Part 6 Bulk access regime**

### **26 Bulk access regime**

- (1) This Part is made in accordance with section 20 (1) (d) of the Act.
- (2) This Plan establishes a bulk access regime for the extraction of water under access licences in this water source having regard to:
  - (a) the environmental water provisions established under Part 4 of this Plan,
  - (b) the requirements for basic landholder rights identified under Part 5 of this Plan, and
  - (c) the requirements for water for extraction under access licences identified under Part 7 of this Plan.
- (3) The bulk access regime established in subclause (2):
  - (a) recognises the effect of climatic variability on the availability of water as provided for under Part 3 of this Plan,
  - (b) establishes rules according to which access licences are granted as provided for in Part 8 of this Plan,
  - (c) recognises and is consistent with limits to the availability of water as provided for in Part 9, Divisions 1 and 2 of this Plan,
  - (d) establishes rules according to which available water determinations are to be made as provided for in Part 9 Division 3 of this Plan,
  - (e) establishes rules according to which access licences are managed as provided for in Part 10 of this Plan, and
  - (f) establishes rules with respect to the priorities according to which access licences are to be adjusted as a consequence of any reduction in the availability of water as provided for in Parts 9 and 10 of this Plan.

## **Part 7 Requirements for water under access licences**

### **27 Requirements for water under access licences**

This Part is made in accordance with section 20 (1) (c) of the Act.

**Note—**

The amount of water specified in this Part represents the total volumes specified on access licences in this water source. It is not a commitment to supply that water.

**28 Estimate of water requirements**

- (1) It is estimated that at the time of commencement of Part 2 of Chapter 3 of the Act in the area in respect of which this Plan is made, the requirements identified for water for extraction under licence within this water source will total zero megalitres per year (hereafter **ML/yr**).
- (2) This Plan recognises that the total requirements for water for extraction within this water source may change during the term of this Plan as a result of the granting, surrender, cancellation or non-renewal of access licences.

**Part 8 Rules for granting access licences**

**29 Rules for granting access licences**

- (1) This Part is made in accordance with sections 20 (2) (b) and 63 of the Act, having regard to the limits to water availability in this water sources and the need to protect the ecological health of the river.
- (2) Access licences may be granted in this water source subject to any embargo on the making of applications for access licences made under Chapter 3 Part 2 Division 7 of the Act.
- (3) The Minister should declare an embargo on the making of applications for access licences in this water source, other than access licences of the following kinds:
  - (a) domestic and stock access licences,
  - (b) specific purpose access licences for which applications are provided for under the regulations in accordance with section 61 (1) (a) of the Act, and
  - (c) unregulated river (Aboriginal cultural) access licences where the access licence share component does not exceed 10 ML/yr per application.

In applying for a new access licence, the applicant must establish the purpose and circumstance relating to that access licence, and that the share and extraction components sought will be the minimum required to meet that purpose and circumstance.

- (5) Subclause (4) does not apply to an application for a new access licence arising from:
  - (a) section 61 (1) (c), of the Act, where the right has been acquired by auction, tender or other open market process, or

(b) an access licence dealing.

(6) (Repealed)

(7) Runoff harvesting access licences may have the share component expressed either as a volume in ML/yr or in terms of the amount of water that can be extracted from time to time from specified works.

### **30 Aboriginal assessment of new access licences**

(1) The Minister should seek the views of the Bellbrook Local Aboriginal Land Council in relation to impacts on significant Aboriginal sites and appropriate mitigation measures, such as buffer distances, for all new access licence or water supply works approval applications.

(2) The Minister should consider any advice under subclause (1) before making a determination of the access licence application.

**30A** In the event of an application for an Aboriginal commercial access licence, the Minister will seek the views of the Aboriginal Reference Group as to the benefit derived from the proposed application. Where an Aboriginal Reference Group has yet to be established, the advice of the Bellbrook Local Aboriginal Land Council will be sought.

## **Part 9 Limits to the availability of water**

### **Division 1 Long-term average extraction limit**

#### **31 Limits to the availability of water**

This Division is made in accordance with section 20 (2) (a) of the Act.

#### **32 Extraction management unit**

Management of the long-term extraction of water in this water source will be undertaken in the context of the Macleay River Extraction Management Unit (hereafter **this Unit**) referred to in clause 16 (2).

#### **33 Long-term average extraction limit**

The long-term average extraction limit for this Unit of which this water source is a part will be the total of:

(a) the quantity of water specified in conditions attached to or included in components issued under Part 2 of the [Water Act 1912](#) in this Unit, immediately prior to the commencement of Part 2 of Chapter 3 of the Act for this Unit, and

(b) an estimate of annual extraction of water (excluding those exercised via a water bore) under:

(i) domestic and stock rights, and

(ii) native title rights,

in this water source at the commencement of this Plan.

### **34 Variation of the long-term average extraction limit**

The long-term average extraction limit of this Unit may be varied by the Minister if dealings under Part 11 of this Plan result in the issuing or cancellation of access licences in this Unit.

## **Division 2 Available water determinations**

### **35 Available water determinations**

(1) This Division is made in accordance with section 20 (2) (b) of the Act.

(2) In making an available water determination under section 59 of the Act, the Minister should consider the following rules:

(a) water extraction in this Unit will be monitored in each water accounting year to determine if there is any growth in volumes extracted above the extraction limit specified in clause 33, based on comparison of the extraction limit against the average extraction within this Unit over that year and the preceding 2 years,

**Note—**

A water accounting year is defined in clause 40 (3).

(b) if water that, pursuant to an access licence, is committed as adaptive environmental water to be left in a river for environmental purposes, then for the purpose of subclause (a), the extraction will be assumed to be 100% of the available water determination,

(c) if water that, pursuant to an access licence, is committed as adaptive environmental water to be extracted for environmental purposes, then for the purpose of subclause (a), the extraction will be that measured through the approved water supply work,

(d) for all access licences, an initial available water determination of two times the access licence share component should be made on 1 July 2003, and such determination should apply for one water accounting year,

(e) from 1 July 2004, available water determinations for domestic and stock access licences should be 100% of the access licence share component, with priority given to making this water available above the making of water available to all other categories of access licence, and such determinations should be made annually,

- (f) from 1 July 2004, available water determinations for unregulated river access licences, including all subcategories, should be 100% of the access licence share component, except as provided in subclauses (g) and (h), and such determinations should be made annually,
- (g) if the 3 year average of extraction in this Unit exceeds the long-term average extraction limit established in clause 33 by 5% or greater, then the available water determination for the following water accounting year for unregulated river access licences in this water source should be reduced by an amount that is assessed necessary by the Minister to return subsequent total water extraction to the long-term average extraction limit,
- (h) when the 3 year average of extraction in this Unit is less than 95% of the long-term average extraction limit established in clause 33, the available water determination for unregulated river access licences in this water source shall be increased to such an extent as to allow extraction to increase to that extraction limit,
- (i) notwithstanding subclause (h), and excepting the initial available water determination made in accordance with subclause (d), the available water determination should not exceed 100% of the total access licence share components,
- (j) a new available water determination for unregulated river access licences determined under subclause (g) or (h) should be repeated for each of the subsequent two water accounting years unchanged in quantity, and
- (k) available water determinations for runoff harvesting access licences should be made annually and should be either the access licence share component or the water that can be extracted from time to time from the approved works, depending on the manner in which the share component is expressed on the licence.

## **Part 10 Rules for managing access licences**

### **36 Rules for managing access licences**

This Part is made in accordance with sections 20 (2) (b) and 21 (a) of the Act, having regard to:

- (a) the environmental water rules established in Part 4 of this Plan,
- (b) requirements for water to satisfy basic landholder rights identified in Part 5 of this Plan, and
- (c) requirements for water for extraction under access licences in Part 7 of this Plan.



## **Division 1 Water allocation account management**

### **37 Water allocation account management**

This Division is made in accordance with sections 20 (2) (b) and 21 (c) of the Act.

### **38 Water allocation accounts**

In accordance with section 85 of the Act, a water allocation account shall be established for each access licence in this water source.

**Note—**

Water allocations may be assigned to, or from, these accounts by a water allocation assignment made under section 71T of the Act, where these are allowed under rules specified in Part 11 of this Plan.

**Note—**

Water allocations may also be re-credited to these accounts in accordance with section 76 of the Act, subject to the operation of a return flows scheme established under section 75 of the Act.

### **39 Accrual of water allocations**

Water allocations will be accrued into water allocation accounts in accordance with the Minister's available water determinations as specified in clause 35.

### **40 Annual accounting for water extraction**

- (1) Water taken from this water source will be accounted for at least annually.
- (2) Water extracted by a water supply work nominated by an access licence is taken to be extracted and will be periodically debited against the access licence water allocation account.
- (3) A water accounting year shall be the 12 month period commencing 1 July.
- (4) The maximum water allocation that can be carried over from one water accounting year to the next is 100% of the access licence share component.
- (5) In any one water accounting year, water taken from this water source under an access licence may not exceed the volume in the water allocation account, subject to clause 41 (1).
- (6) A water allocation account shall remain at or above zero at all times.

### **41 Three year accounting for water extraction**

Water taken from this water source in any 3 consecutive water accounting years under an access licence may not exceed a volume consisting of:

- (a) the water allocations accrued under the licence in those years,

- (b) plus any water allocations assigned from another licence by water allocation assignment under section 71T of the Act in those years,
- (c) plus any water allocations re-credited in accordance with section 76 of the Act in those years, and
- (d) minus any water allocations assigned to another licence, by water allocation assignment under section 71T of the Act in those years.

## **Division 2 Sharing flows on a daily basis**

### **42 Sharing flows on a daily basis**

This Division is made in accordance with sections 20 (2) (b) and 21 (a) of the Act.

### **43 Total daily extraction limits**

This Plan establishes a total daily extraction limit (hereafter **TDEL**) of 0.2 ML/day during all river flows in this water source.

### **44 Initial assignment of the TDEL to categories of access licence**

The TDEL under clause 43 will initially be assigned to categories of access licences according to the following:

- (a) 0 ML/day for domestic and stock access licences, and
- (b) 0 ML/day for unregulated river (Aboriginal cultural) access licences.

### **45 Unassigned TDEL**

At the commencement of this Plan, unassigned TDEL is as follows:

- (a) 0.1 ML/day for domestic and stock access licences, and
- (b) 0.1 ML/day for unregulated river (Aboriginal cultural) access licences.

#### **Note—**

Unassigned TDEL may vary as a result of the surrender, cancellation or non-renewal of an access licence's individual daily extraction limits, or the operation of Part 8 of this Plan.

### **46 Granting of unassigned TDEL**

The unassigned TDEL in clause 45 may be assigned to individual access licences as individual daily extraction limits (hereafter **IDELs**) where they are applied for as part of a new access licence application in accordance with Part 8 of this Plan.

## **Part 11 Access licence dealing rules**

### **47 Access licence dealing rules**

- (1) This Part is made in accordance with section 20 (1) (e) of the Act and with the Minister's access licence dealing principles gazetted on 27 December 2002 under section 71Z of the Act.
- (2) Applications for access licence dealings may be granted subject to the Minister's access licence dealing principles gazetted from time to time under section 71Z of the Act and the rules in this Part.

**Note—**

There are a number of mechanisms within the Act, called access licence dealings, to change either the ownership of all or part of an access licence, or the location within a water source at which all or part of the share and extraction components of access licences can be exercised. These dealings are governed by the principles in section 5 of the Act, the Minister's access licence dealing principles, and the rules in this Part.

**Note—**

Where there is an inconsistency between access licence dealing rules established in this Plan and Minister's access licence dealing principles gazetted subsequent to the commencement of this Plan, section 71Z of the Act provides for the access licence dealing rules in this Plan to prevail.

### **48 Rules relating to constraints within this water source**

- (1) This clause applies to any relevant dealings under sections 71D, 71F, and 71J of the Act, and section 71T of the Act with respect to water allocation assignments within this water source.
- (2) Dealings are prohibited under this clause if:
  - (a) any of the access licences or water allocations involved are not within this water source, or
  - (b) the dealing would result in more than minimal harm occurring to the water source and the environment.

### **49 Rules for access licence dealings which alter the times, rates or circumstances specified in access licence extraction components**

Notwithstanding clause 48, applications under section 71S of the Act to vary the times, rates or circumstances specified in an access licence with respect to the taking of water under the licence are prohibited.

### **50 Rules for change of water source**

- (1) This clause relates to dealings under section 71R of the Act.

**Note—**

Section 71R dealings are the mechanism by which access licences can move from one water source to another. Once the change in water source has been affected, if permitted, the new licence will have to nominate specified works (by a dealing under section 71W of the Act) in the receiving water source before extraction can commence.

- (2) Dealings that result in an access licence being cancelled in another water source and an access licence issued in this water source are prohibited.
- (3) Dealings that result in an access licence being cancelled in this water source and an access licence issued in another water source are prohibited.

#### **51 Rules for conversion of access licence category**

- (1) This clause relates to dealings under section 71O of the Act.
- (2) Conversion of an access licence of one category to an access licence of another category in this water source are prohibited.

#### **52 Rules for interstate access licence transfer**

- (1) This clause relates to dealings under section 71U of the Act.
- (2) Dealings that result in the interstate transfer of an access licence into or out of this water source are prohibited.

#### **53 Rules for water allocation assignments between water sources**

- (1) This clause relates to dealings under section 71T of the Act, in relation to water allocation assignments between water sources.
- (2) Dealings under section 71T of the Act that result in water allocation assignments to or from access licences in this water source are prohibited.

#### **54 Rules for interstate assignment of water allocations**

- (1) This clause relates to dealings under section 71V of the Act.
- (2) Dealings that result in interstate assignment of water allocations to or from this water source are prohibited.

### **Part 12 Mandatory conditions**

#### **55 Mandatory conditions on access licences**

- (1) This Part is made in accordance with section 17 (c) and 20 (2) (c) of the Act.
- (2) All access licences shall have mandatory conditions to give effect to the provisions of this Plan in relation to the following:
  - (a) the specification of share component of the access licence,

- (b) the specification of extraction component of the access licence, including IDELS arising from the operation of Part 10 Division 2 of this Plan where applicable,
- (c) the requirement that extraction under the access licence will be subject to the available water determinations,
- (d) the requirement that extraction under the access licence will be subject to the water allocation account management rules established in Part 10 Division 1 of this Plan,
- (e) the requirement that the taking of water in accordance with the access licence will only be permitted if the resulting debit from the access licence water allocation account will not exceed the volume of water allocation remaining in the account, and
- (f) any other conditions required to implement the provisions of this Plan.

#### **56 Unregulated river access licences**

All unregulated river access licences shall have mandatory conditions such that water may only be taken at a rate not exceeding that specified on the access licence extraction component.

#### **57 Domestic and stock access licences**

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

- (a) water may only be taken for the purposes of domestic consumption or stock watering as defined in section 52 of the Act, and
- (b) water may only be taken at a rate not exceeding that specified on the access licence extraction component.

#### **58 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 shall only be taken by Aboriginal persons or communities for personal, domestic and communal purposes including the purposes of drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, cultural teaching, hunting, fishing, and gathering, and for recreational, cultural and ceremonial purposes,
- (b) water may only be taken in accordance with a flow class determined by the Minister, at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised by an approved group,

- (c) notwithstanding subclause (b), water may be taken without any restrictions in rate from an in-river dam while the dam is passing all inflows, and
- (d) the conditions in subclauses (b) and (c) are not to be imposed if the extraction component of the access licence specifies that water may only be taken from a runoff harvesting dam.

### **59 Mandatory conditions on water supply works approvals**

All approvals for water supply works in this water source shall have mandatory conditions to give effect to the provisions of this Plan in relation to the following:

- (a) flow measurement devices:
  - (i) shall be installed and maintained on all works used for extraction of water under an access licence, and
  - (ii) shall be of a type and shall be maintained in a manner which is acceptable to the Minister,
- (b) water extraction and property water management infrastructure details shall be provided to the Minister on request,
- (c) notwithstanding all other rights and conditions, extraction of water from a river by an approved water supply work is not permitted if there is no visible flow in the river in the vicinity of the work,
- (d) extraction under an access licence through an approved work is only authorised with respect to the work nominated by the access licence, and
- (e) where new licence applications are made in accordance with clause 29 and where an impact to endangered ecological communities is identified from the use of the water supply work, a minimum buffer of 100 metres will be applied between the identified endangered ecological community and the water supply work.

## **Part 13 Granting and amending water supply works approvals**

### **60 Granting and amending water supply works approvals**

This Part is made in accordance with section 21 (b) of the Act.

### **61 Runoff harvesting dams**

Applications for new runoff harvesting dams within this water source should not be approved.

### **62 In-river dams**

Applications for new in-river dams within this water source should not be approved.

**Note—**

Taking of water from an in-river dam requires an access licence unless it is taken in accordance with section 52 of the Act (domestic and stock rights). In either case, however, the dam requires a water management works approval unless exempted by regulation under the Act.

## Part 14 Monitoring and reporting

### 63 Monitoring and reporting of performance indicators

The monitoring and reporting of the performance indicators specified in clause 13 shall be undertaken by the Minister.

**Note—**

Review and Audit of this Plan

In accordance with section 43A of the Act, the Natural Resources Commission must undertake a review of this Plan prior to any decision to extend its term or to make a new plan. The review must consider the extent to which the Plan's water sharing provisions have contributed to achieving or not achieving the relevant natural resource management standards and targets in the catchment management area (as referred to in section 5 of the *Catchment Management Authorities Act 2003*).

When undertaking this review the Natural Resources Commission is required to call for public submissions. The Commission will take into consideration any submission received as well as any other relevant State-wide or regional government policies or agreements that apply to the catchment management area.

In accordance with section 44 of the Act, this Plan will be audited at intervals of no more than five years, for the purpose of ascertaining whether its provisions are being given effect to. This audit is to be carried out by an audit panel appointed by the Minister in consultation with the water management committee, where one exists.

**Note—**

Implementation Program

In accordance with section 51 of the Act, the Minister may establish an Implementation Program that sets out the means by which the provisions of this Plan are to be achieved.

It is proposed that the Minister establish an Implementation Program for this Plan. Pursuant to section 51 (5) of the Act, the Implementation Program is to be reviewed annually by the Minister to determine whether it is effective in implementing this Plan.

The results of the review of the Implementation Program are included in the annual report for the Department.

## Dictionary

The following definitions apply to this Plan in addition to the definitions set out in the Act:

**account water** is the balance in an access licence water allocation account at a particular time.

**Note—**

An access licence water allocation account records water allocations accrued under the licence as well as water allocations acquired, used or transferred, or re-credited. The operation of the account is also governed by rules for the carrying over of credits from one accounting period to the next and rules for the maximum credit that may be allowed to accumulate in the account as established in a water sharing plan. Water allocations are the shares of available water accrued under an access licence from time to time as a result of available water determinations.

**domestic consumption** means the consumption of water for normal household purposes in domestic premises situated on the land.

**ecological community** means an assemblage of species occupying a particular area.

**endangered ecological communities** means ecological communities listed in Schedule 1 of the [Threatened Species Conservation Act 1995](#) or Schedule 4 of the [Fisheries Management Act 1994](#).

**extraction limit** is a limit on the long-term average amount of water that may be extracted from an extraction management unit.

**extraction management unit** is a group of water sources for the purpose of managing annual average extraction.

**farm dam** is a privately owned dam typically of earthen construction designed to collect and/or store water for use on one or a few properties. It does not include publicly owned dams or weirs. See also **in-river dam** and **runoff harvesting dam**.

**Implementation Program** is an Implementation Program established by the Minister under section 51 of the Act to implement this Plan.

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

**in-river dam** is a dam on a 3rd, 4th or higher order river. 3rd, 4th or higher order rivers are as defined in the Order made under section 5 of the [Water Act 1912](#) in relation to the definition of a “river” gazetted 23 March 2001. See also **farm dam** and **runoff harvesting dam**.

**Minister** is the Minister for Land and Water Conservation. The Minister may delegate his functions under section 389 of the Act.

**stock watering** means the watering of stock being raised on the land, but does not include the use of water in connection with intensive animal husbandry.

**runoff harvesting dam** is a farm dam on a hillside or 1st or 2nd order stream which collects and stores rainfall runoff. 1st and 2nd order streams are as defined the Order made under section 5 of the [Water Act 1912](#) in relation to the definition of a river gazetted 23 March 2001. See also **farm dam** and **in-river dam**.

**Note—**

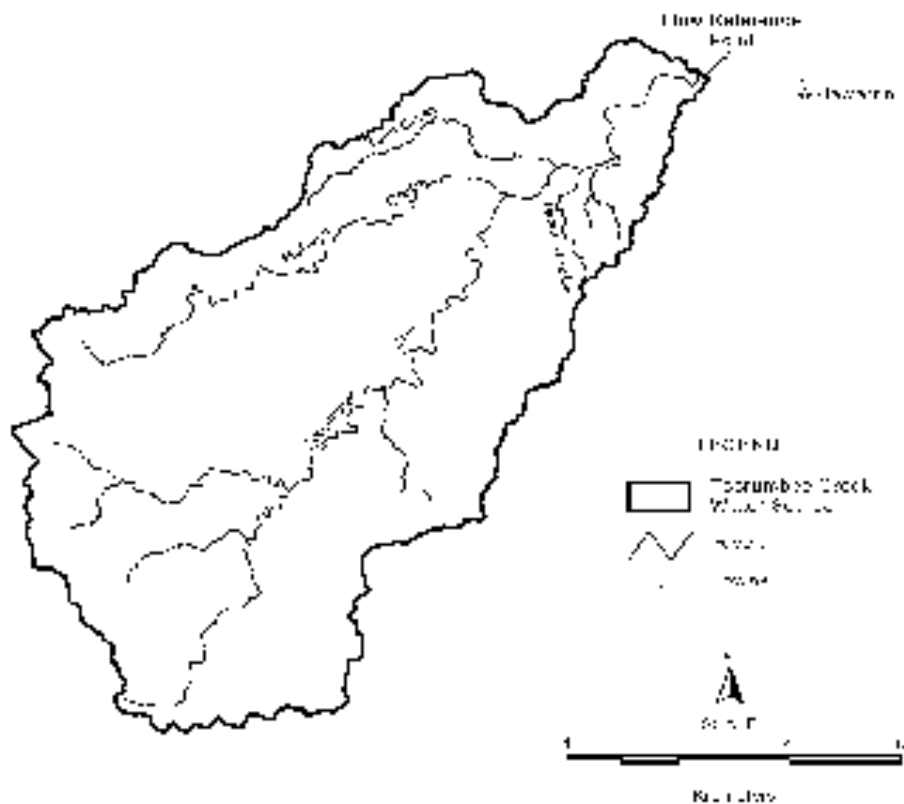
This Order refers to watercourses shown as blue lines on topographic maps. The lines which are uppermost in a catchment are 1st order streams, when two 1st order streams are joined they make a 2nd order stream, etc. For more information see the Farm Dams Assessment Guide available from the Department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

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

**water accounting year** is any twelve month period commencing on 1 July.



## Schedule 2 Toorumbree Creek Water Source



## Schedule 3 Rivers in the Toorumbree Creek Water Source

This water source includes:

- Home Creek
- McCoys Creek
- Parrabel Creek
- Peach Tree Creek
- Taits Creek
- Toorumbree Creek

## Schedule 4 Contribution to targets in the State Water Management Outcomes Plan

### Levels of assessed contribution:

- FULL—contributes to target in full
- HIGH—while not fully contributing to target is a good level of contribution

PARTIAL—goes some way to the target

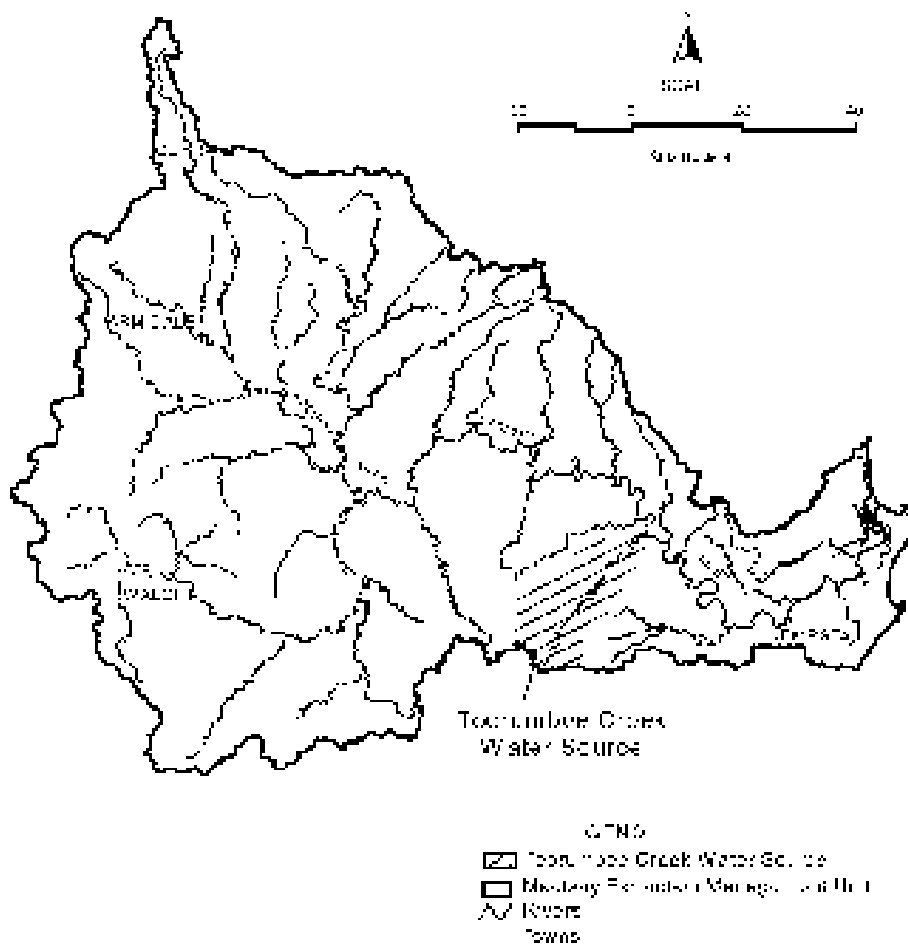
LOW—only small degree of contribution

Relevant Target	Level of Contribution	Comments
<b>Target 1c</b> Long term average annual extraction limits which are ecologically sustainable, and which minimise downstream impacts, established in all coastal water sources	HIGH	<ul style="list-style-type: none"> <li>Part 9 Division 1 of this Plan clearly sets out the basis for the extraction limit for the Macleay River Extraction Management Unit</li> <li>Until the cumulative impact of this limit can be assessed for all of this Unit it is not possible to properly assess ecological sustainability and downstream impact</li> <li>However there are no access licence of share components in this Unit and application of IDELs should ensure adequate downstream flows</li> </ul>
<b>Target 1f</b> Rules for adjustments to future available water determinations in the event that the extraction limits are exceeded, clearly prescribed in consultation with the relevant management committee, and acted upon	FULL	<ul style="list-style-type: none"> <li>Rules set out in Part 9 of this Plan</li> </ul>
<b>Target 2</b> All management plans incorporating mechanisms to protect and restore aquatic habitats, and the diversity and abundance of native animals and plants, with particular reference to threatened species, populations and communities and key threatening processes	HIGH	<ul style="list-style-type: none"> <li>Part 10 Division 2 of this Plan has put in place comprehensive daily extraction limits to protect/restore environmental flows</li> <li>This Plan has significantly improved low to very low flow protection</li> <li>This Plan is consistent with relevant Threatened Species Recovery Plans</li> </ul>
<b>Target 4a</b> Wherever the frequency of “end of system” daily flows would be less than 60% of the predevelopment level without environmental water rules or extraction limits, the flows increased to 60% of predevelopment levels or increased by at least 10% of the predevelopment frequency	FULL	<ul style="list-style-type: none"> <li>Daily extraction limits protect 60% to 100% of flows</li> </ul>

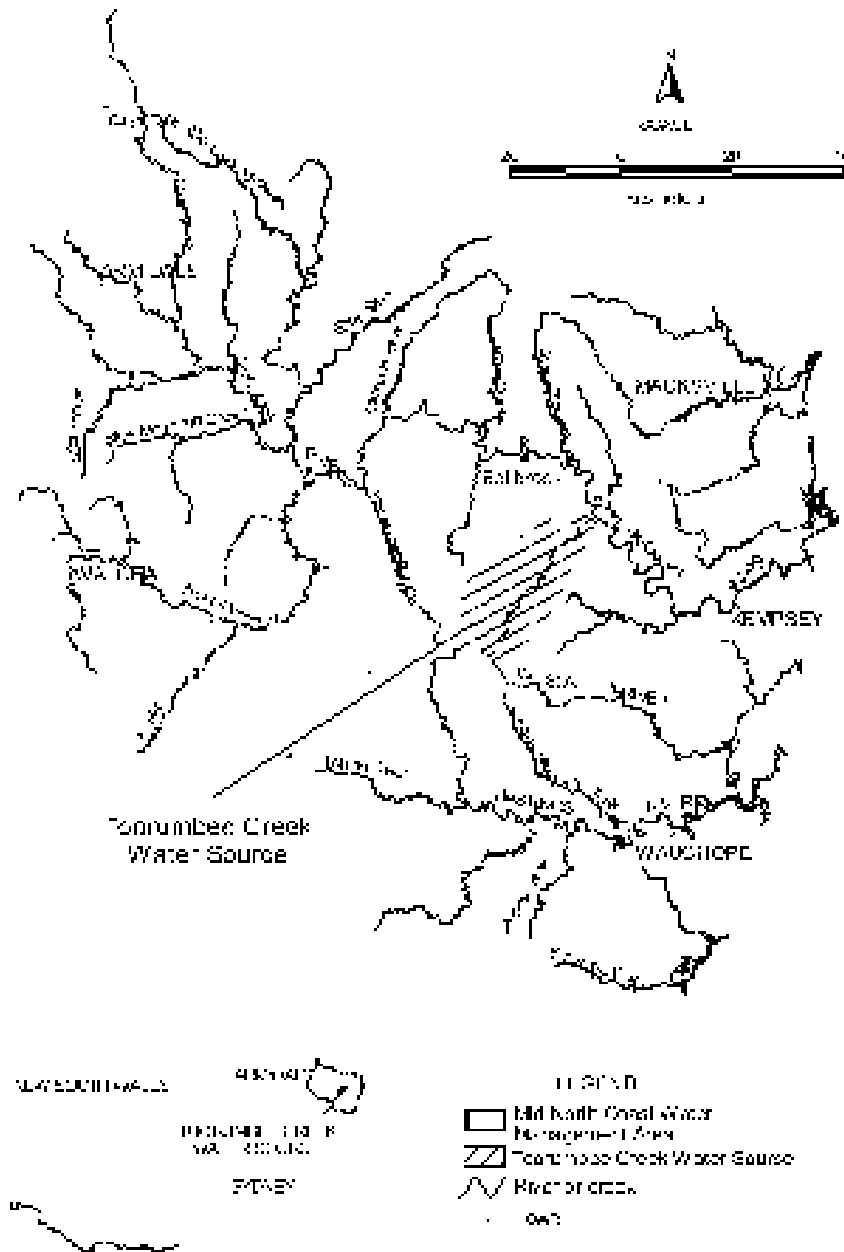
<p><b>Target 4b</b> Frequency of “end of system” daily very low flows (as defined by local field investigation) protected or restored to predevelopment levels to maintain or restore their critical ecological functions, drought refuges and habitat connectivity. In the absence of such local assessments, protection extended up to at least the predevelopment 95<sup>th</sup> percentile</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• Cease-to-pump levels protect flows below 80<sup>th</sup>tile in critical months</li> </ul>
<p><b>Target 5</b> Access rights for water access licensees clearly and legally specified in terms of share and extraction components</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• This Plan establishes total daily extraction limits for distribution to individual licensees</li> </ul>
<p><b>Target 6b</b> A pathway for reducing the share components to 200% of the long-term average annual extraction limit to be established not later than the end of the term of the SWMOP</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• Total licensed share components for the Macleay River Extraction Management Unit should not exceed 200% of extraction limit for this Unit</li> </ul>
<p><b>Target 7</b> Mechanisms in place to enable Aboriginal communities to gain an increased share of the benefits of the water economy</p>	<p>HIGH</p>	<ul style="list-style-type: none"> <li>• The Government has established other mechanisms outside of this water sharing plan to address the target</li> <li>• This Plan proposes an exemption from the access licence embargo for Aboriginal cultural heritage</li> </ul>
<p><b>Target 8</b> Daily extraction components specified and tradeable, subject to metering, reporting and compliance, for at least 50% of unregulated river access licences and for 80% of stressed unregulated rivers</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• To meet this target Statewide, the individual plans should as far as practicable, establish daily extraction limits across the whole water source, and this Plan does this</li> </ul>
<p><b>Target 12</b> Measures in place in all water sources subject to a gazetted water sharing plan to protect domestic and stock rights from the impact of other water access and use</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• Cease to pump level will protect flows for domestic and stock rights</li> <li>• IDELs explicitly provide for domestic and stock requirements</li> </ul>
<p><b>Target 13</b> The knowledge sharing, training and resources necessary to ensure that Aboriginal people have the capacity to be effectively involved in water management identified and addressed</p>	<p>HIGH</p>	<ul style="list-style-type: none"> <li>• Aboriginal community representatives have been actively involved in development of this Plan and their advice has been incorporated into this Plan</li> <li>• The Plan includes provisions to refer licence and approval applications to the Local Aboriginal Land Council</li> </ul>

<p><b>Target 14</b> Water sources, ecosystems and sites of cultural or traditional importance to Aboriginal people identified, plans of management prepared, and measures put in place to protect and improve them</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• This Plan does not address specific Aboriginal cultural or traditional requirements and has not identified any sites of particular importance</li> <li>• This Plan does provide reasonably high level of environmental protection that should assist in protecting Aboriginal values</li> <li>• The Plan includes provisions to refer licence and approval applications to the Local Aboriginal Land Council</li> </ul>
<p><b>Target 16a</b> All share components of access licences tradeable</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• Part 11 of this Plan provides for dealings of share components and daily extraction limits</li> </ul>
<p><b>Target 16d</b> Reduced conversion factors only applied when necessary to offset increased losses associated with water supply delivery</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• This Plan does not impose reduction factors</li> </ul>
<p><b>Target 16e</b> Any unassigned access rights identified and clear mechanisms established for their future assignment</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• Rules established in Part 10 Division 2 of this Plan</li> </ul>
<p><b>Target 16f</b> Zones established where necessary for environmental protection and limits/constraints on water dealings in them made explicit</p>	<p>NIL (Justifiable)</p>	<ul style="list-style-type: none"> <li>• This Plan does not establish water transfer zones and since this water source is relatively small, this position is justified</li> </ul>
<p><b>Target 35</b> All management plans incorporating water quality objectives that have considered Government approved Interim Environmental Objectives, the current Australian and New Zealand Environment and Conservation Council Guidelines and the recommendations of relevant Healthy Rivers Commission Inquiries</p>	<p>HIGH</p>	<ul style="list-style-type: none"> <li>• This Plan includes a generalised water quality objective</li> <li>• This Plan does provide reasonably high level of environmental protection which should assist in protecting water quality</li> </ul>

## Schedule 5 Macleay River Extraction Management Unit



## Appendix 1 Mid North Coast Water Management Area



## Appendix 2 Location of maps for public inspection

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

District Office  
Department of Land and Water Conservation  
Elbow Street  
WEST KEMPSEY NSW 2440

## Appendix 3 Performance indicators

### Performance indicators for the Toorumbree Creek Water Sharing Plan

Performance indicator	Related objective	As measured by	Commentary
(a) change in low flows.	11 (a)	<ul style="list-style-type: none"> <li>Assessment of change in flow duration characteristics, from time of Plan commencement, at identified reference points.</li> </ul>	<ul style="list-style-type: none"> <li>River Flow Objectives (RFOs) 1, 2 and 6. RFOs are the objectives agreed to by the NSW Government aimed at safeguarding river flows for environmental health.</li> </ul> <p><b>Note—</b> Not every objective is relevant to every river in NSW.</p> <ul style="list-style-type: none"> <li>Plan will contribute to a decrease in the frequency and duration of low flows.</li> </ul>
	11 (c)		
	11 (d)		
	11 (f)		
	11 (g)		<ul style="list-style-type: none"> <li>Where data is limited, it is only possible to assess change from the period of plan commencement to the time the indicator is assessed.</li> <li>There will be a high climatic influence on changes to the flow characteristics, depending on if the time period of assessment has been wet or dry.</li> </ul>

- |                                       |  |  |  |
|---------------------------------------|--|--|--|
| (b) Change in moderate to high flows. | 11 (a)<br>11 (c)<br>11 (d)<br>11 (f)<br>11 (g) | <ul style="list-style-type: none"><li>• Assessment of change in flow duration characteristics, from time of Plan commencement, at identified reference points.</li></ul> | <ul style="list-style-type: none"><li>• RFO 3.</li><li>• Plan will maintain or increase the frequency and duration of moderate to high flows.</li><li>• This assessment will focus on the plan's end of system reference point(s), and will be based on a qualitative assessment of compliance with the water sharing rules, due to the current modelling limitations in most unregulated rivers.</li><li>• Where data is limited, it is only possible to assess change from the period of plan commencement to the time the indicator is assessed.</li><li>• There will be a high climatic influence on changes to the flow characteristics, depending on if the time period of assessment has been wet or dry.</li></ul> |
|---------------------------------------|--|--|--|



<p>(c) Change in ecological condition of this water source and dependent ecosystems.</p>	<p>11 (a) 11 (b) 11 (c) 11 (d) 11 (f) 11 (h)</p>	<ul style="list-style-type: none"> <li>• Periodic assessment of identified attributes of this water source and dependent ecosystems.</li> </ul>	<ul style="list-style-type: none"> <li>• The ecological influence of the Plan is limited to providing for changes in flow regime aimed at improving the ecological condition of the water source and dependent ecosystems.</li> <li>• The focus of this performance indicator will be the effect of flow strategies.</li> <li>• Information on flow requirements of ecological systems is limited so physical or hydraulic surrogates will be used to assess the influence of the Plan. For example, the status of wetted area, depth in pools and flow velocity over riffles.</li> <li>• In addition to the environmental water provisions defined in this Plan, there are many other factors that contribute to achievement of ecological objectives. Riparian vegetation, water quality, farming techniques, soil erosion, water flow patterns and other catchment characteristics all significantly influence ecological condition. It is difficult to assess which factor is the most influential at a particular time and place.</li> <li>• Research and development into the impacts of flow on ecological condition will be incorporated into assessment of the plan where the information is available and relevant.</li> </ul>
<p>(d) Extent to which basic landholder rights requirements have been met.</p>	<p>11 (e)</p>	<p>Assessment of cease to pump levels in relation to basic rights requirements.</p>	<ul style="list-style-type: none"> <li>• Basic landholder rights usage figures in water sharing plans are estimated (not actual use).</li> </ul>

<p>(e) Change in economic benefits derived from water extraction and use.</p>	<p>11 (c) 11 (e)</p>	<ul style="list-style-type: none"> <li>• Number of days access provided over the time of the plan.</li> <li>• Number of new off stream storages.</li> <li>• Change in unit price of water transferred.</li> <li>• Change in gross margins.</li> </ul>	<ul style="list-style-type: none"> <li>• There are many factors affecting economic status of a region, for example commodity prices.</li> <li>• Measurement of the number of new off stream storages will indicate the adjustment to the rules and the ongoing access to water.</li> <li>• Assessment undertaken as part of plan performance monitoring will make assumptions to attempt to identify the impact of the plan provisions.</li> <li>• The data can reflect changes in crops, commodity prices, climate, water availability, economic climate and input costs.</li> </ul>
		<p>(f) Extent to which native title rights requirements have been met.</p>	<p>11 (h)</p>
<p>(g) Extent of recognition of spiritual, social and customary values of water to Aboriginal people.</p>	<p>11 (b) 11 (d) 11 (f) 11 (h)</p>	<ul style="list-style-type: none"> <li>• Assessment of amount and type of information collected to identify the range of values of water to Aboriginal people.</li> <li>• Change in consultation on Aboriginal values in water licensing decisions, as measured by the number of licence applications referred to the Bellbrook Local Aboriginal Land Council.</li> </ul>	<ul style="list-style-type: none"> <li>• The collection of information on the values associated with water is considered the first step in addressing the objects of the Act. It would be expected that at the end of five years there should be relevant information collected for each water source, as a minimum requirement.</li> <li>• Consultation with the local Aboriginal community will seek to minimise effects on important social, customary, cultural, and spiritual values.</li> </ul>

## Appendix 4 (Repealed)