

# Water Sharing Plan for the Kangaroo River Water Source 2003

[2003-185]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2004 to 9 December 2004 (accessed 26 June 2024 at 18:46)

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](#).

File last modified 19 November 2004

# Water Sharing Plan for the Kangaroo River Water Source 2003



New South Wales

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# Water Sharing Plan for the Kangaroo River Water Source 2003



New South Wales

## Part 1 Introduction

### 1 Name of Plan

This Plan is the *Water Sharing Plan for the Kangaroo River 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 to which this Plan applies

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

#### Note—

The Southern Water Management Area is shown on the map in Appendix 1.

#### Note—

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

### 5 Waters to which this plan applies

- (1) The waters of this water source include 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.

(2) The waters of this water source exclude all water contained within aquifers underlying this water source.

## **6 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.

## **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) In accordance with section 16 (1) (a) of the Act, this Plan is consistent with the State Water Management Outcomes Plan published in the NSW Government Gazette on 20 December 2002 (hereafter **the SWMOP**).

(2) Schedule 4 identifies the SWMOP targets applicable to this Plan and how this Plan contributes to those targets.

## **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 water sharing arrangements contribute to the protection and rehabilitation of the Kangaroo River Water Source and its dependent ecosystems, whilst the social, cultural and economic future of the community of the Kangaroo River is recognised, maintained and fostered.

## 11 Objectives

The objectives of this Plan are to:

- (a) keep the pools of this water source full during periods of low flows and very low flows, with natural drying processes maintained during periods of no flow,
- (b) protect indicator riffles during periods of low flows and very low flows,

**Note—**

Indicator riffles will be identified by the Minister as part of the implementation of this Plan.

- (c) provide for the passage of low flows and very low flows through new and existing in-river works and activities in this water source,
- (d) maintain the natural flow variability of a proportion of freshes as they pass through this water source,
- (e) ensure equitable access to water for household consumption, stock watering and gardening (in this order of priority) at all times, except during periods of very low flows and no flow,
- (f) foster economic benefits related to the use of water through the implementation of this Plan,
- (g) provide for access to available water of this water source by all access licence holders in accordance with the water sharing arrangements stated in this Plan,
- (h) provide rules for water trading in this water source,
- (i) support recreational opportunities, river health and the aesthetic appeal of this water source through the maintenance of pools, riffles and flow variability,
- (j) protect and enhance the cultural presence of the community of Aboriginal and non-Aboriginal peoples that may be affected by river flow, including places of heritage, and spiritual significance, scientific and educational opportunities and rural industries,
- (k) contribute to the requirements of water users and other water sources and their dependent ecosystems downstream of this water source through agreed water sharing arrangements for this water source, and
- (l) contribute to the achievement of water quality to support the environmental values of

this water source.

**Note—**

This objective refers to maintaining water quality. Although there are no specific strategies directly related to this objective in this Plan, the environmental water provisions in this Plan make a positive contribution to maintaining water quality.

## **12 Strategies**

The strategies of this Plan are to:

- (a) establish cease (and commence) to pump levels and flow classes,
- (b) limit the amount of water that can be extracted on a daily basis from different flow classes,
- (c) limit the long-term average extraction of water,
- (d) clearly define access conditions for water extraction and rules for extracting water from this water source,
- (e) establish rules for determining the water available from time to time under access licences,
- (f) establish water allocation accounting rules, and
- (g) specify access licence dealing rules that maximise flexibility for water users without adversely impacting on this water source.

## **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 local water utilities access,
- (d) change in ecological condition of this water source and dependent ecosystems,
- (e) extent to which basic landholder rights requirements have been met,
- (f) change in economic benefits derived from water extraction and use,
- (g) extent to which native title rights requirements have been met,
- (h) extent of recognition of spiritual, social and customary values of water to Aboriginal peoples, and

- (i) (Repealed)

**Note—**

Appendix 3 details the objectives to which these performance indicators relate and the 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) To give effect to subclause (1), this Plan has provisions that manage:
  - (a) the sharing of water within the limits of water availability in this water source on a long-term average basis, and
  - (b) sharing of the flows that occur in this water source on a daily basis.

### **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, which for the purpose of this Plan is the boundaries of the water source.
- (2) The extraction management unit of which this water source is part is known as the Kangaroo River Extraction Management Unit, and is shown on the map in Schedule 2.

### **17 Flow classes**

This Plan establishes the following flow classes as the basis for sharing of daily flows:

- (a) very low flow class:
  - (i) at or less than 2.96 megalitres per day (hereafter **ML/day**) on a falling river and at or less than 4 ML/day on a rising river in the first year of this Plan,
  - (ii) at or less than 4 ML/day on a falling river and at or less than 5.4 ML/day on a rising river, in year 2 of this Plan, and
  - (iii) at or less than 5.4 ML/day on a falling river and at or less than 7 ML/day on a rising river in years 3 to 10 of this Plan.

**Note—**

2.96, 4 and 5.4 ML/day are referred to as the cease to pump on a falling river, and 4, 5.4, and 7 ML/day are referred to as the commence to pump on a rising river. The 7 ML/day corresponds to the estimated 95th percentile flows in the critical month.

**Note—**

Provisions are established for access to the very low flows under clause 62.

(b) A class:

- (i) flows greater than 2.96 ML/day and at or less than 30 ML/day on a falling river, and flows greater than 4 ML/day and at or less than 30 ML/day on a rising river in the first year of this Plan,
- (ii) flows greater than 4 ML/day and at or less than 30 ML/day on a falling river, and flows greater than 5.4 ML/day and at or less than 30 ML/day on a rising river in year 2 of this Plan, and
- (iii) flows greater than 5.4 ML/day and at or less than 30 ML/day on a falling river, and flows greater than 7 ML/day and at or less than 30 ML/day on a rising river in years 3 to 10 of this Plan.

(c) B class flows greater than 30 ML/day and at or less than 118 ML/day, and

(d) C class flows greater than 118 ML/day.

**Note—**

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

## **18 Flow reference point**

For the purpose of this Plan, all flows referred to relate to the recorded flows at the flow reference point at the downstream end of this water source, as shown on the map in Schedule 2.

## **19 Determination of flow class**

Announcement of daily flow classes will be made from time to time by the Minister based on the flow at the flow gauging station, at the flow reference point established in clause 18.

## **Part 4 Environmental water provisions**

### **20 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.

## 21 Planned environmental water

(1) Environmental health water is identified and established as follows:

- (a) In very low flows, the flow occurring in this water source, minus 1.12 ML/day, minus the very low flow access permitted under clauses 62 and 62A of this plan.

**Note—**

1.12 ML/day is the amount of water estimated at the commencement of this Plan for basic landholder rights extraction.

- (b) In A class flows, the flow occurring in this water source minus 19.12 ML/day.

**Note—**

19.12 ML/day is the amount of water estimated at the commencement of this Plan for A class total daily extraction limit and basic landholder rights.

- (c) In B class flows, the flow occurring in this water source minus 41.12 ML/day.

**Note—**

41.12 ML/day is the amount of water estimated at the commencement of this Plan for B class total daily extraction limit and basic landholder rights.

- (d) In C class flows, the flow occurring in this water source minus 49.12 ML/day.

**Note—**

49.12 ML/day is the amount of water estimated at the commencement of this Plan for C class total daily extraction limit and basic landholder rights.

(2) Environmental health water is maintained as follows:

(a) In very low flows:

- (i) the holders of access licences, excluding access licences listed in Schedules 5 and 6, are not permitted any access,
- (ii) the holders of access licences listed on Schedule 5 may have limited access to very low flows in accordance with clause 62,
- (iii) the holders of access licences listed on Schedule 6 may have limited access to very low flows, to comply with the Food Production (Safety) Act or the Prevention of Cruelty to Animals Act, in accordance with clause 62A, and
- (iv) persons exercising native title and domestic and stock rights may take a combined total of up to 1.12 ML/day.

(b) In A class, B class and C class flows:

- (i) the holders of access licences have restricted access to water as specified in clause 46,
- (ii) persons exercising domestic and stock and native title rights may take water,

and

(iii) if the water taken under domestic and stock and native title rights is assessed to be exceeding 1.12 ML/day in this flow class the access to water for access licences shall be reduced in accordance with clause 50 to maintain the environmental water in this flow class.

(c) In all flow classes, limits are imposed on the availability of water in accordance with clauses 35 and 37, that protect a proportion of natural river flows for fundamental ecological needs from increases in long-term water extraction.

**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, for traditional Aboriginal, spiritual, social, customary and cultural use, and contributes to improved water quality.

## **22 Extraction by water supply works**

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.

## **23 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.

## **24 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

### 25 Basic landholder rights

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

**Note—**

The Minister may issue an Order under section 328 of the Act to restrict the exercise of domestic and stock and native title rights from this water source to protect the environment, for reasons of public health, or to preserve basic landholder rights.

### 26 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 1.047 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 and lakes in this water source and/or as a result of an increase of the exercise of basic landholder rights by existing landholders.

### 27 Native title rights

- (1) At the commencement of this Plan the water requirements of holders of native title rights is estimated to be a total of 0.073 ML/day.
- (2) This Plan recognises that the exercise of native title rights may increase during the term of this Plan.

**Note—**

Increase in the 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](#).

### 28 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

### 29 Bulk access regime

- (1) This Part is made in accordance with section 20 (1) (e) 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, Division 1 of this Plan,
  - (d) establishes rules according to which available water determinations are to be made as provided for in Part 9 Division 2 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**

### **30 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.

### **31 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 access licences within this water source will total approximately 4,313 megalitres per year (hereafter **ML/yr**).
- (2) 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, there will be several runoff harvesting access licences in this water source, that will have their access licence share



component expressed as the water that can be extracted from time to time from the approved works.

- (3) 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:
- (a) the granting, surrender, cancellation or non-renewal of access licences, or
  - (b) variations to local water utility licences arising from sections 66 (3) or 66 (4) of the Act.

## **Part 8 Rules for granting access licences**

### **32 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 source 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:

**Note—**

Pursuant to sections 66 (3) and 66 (4) of the Act, the Minister may also vary a local water utility's share component at 5 year intervals, or on application of the local water utility where there is rapid growth in population.

- (a) specific purpose access licences for which applications are provided for under the regulations in accordance with section 61 (1) (a) of the Act,
- (b) unregulated river (Aboriginal cultural) access licences where:
  - (i) the total share component granted under these licences does not exceed 10 ML/yr, and
  - (ii) the individual daily extraction limit is assigned in proportion to the share component and the cumulative daily extraction limit assigned to this category of licence does not exceed 0 ML/day in very low flows during years 1, 9 and 10 of this Plan, 0.006 ML/day in very low flows during year 2 of this Plan, 0.009 ML/day in very low flows during years 3 to 8 of this Plan, 0.050 ML/day in A class flows, 0.112 ML/day in B class flows, and 0.134 ML/day in C class flows, or
- (c) unregulated river (research) access licences where:

- (i) the total share component granted under these licences does not exceed 10 ML/yr, and
  - (ii) the individual daily extraction limit is assigned in proportion to the share component and the cumulative daily extraction limit assigned to this category of licence does not exceed 0 ML/day in very low flows during years 1, 9 and 10 of this Plan, 0.006 ML/day in very low flows during year 2 of this Plan, 0.009 ML/day in very low flows during years 3 to 8 of this Plan, 0.050 ML/day in A class flows, 0.112 ML/day in B class flows, and 0.134 ML/day in C class flows.
- (4) In applying for a new access licence, the applicant must establish the purpose and circumstances 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) Any individual daily extraction limit (hereafter **IDEL**) granted in accordance with this clause cannot exceed the IDEL initially assigned to an equivalent share component for that category of access licence, as varied by clause 50.
- (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.
- (8) (Repealed)

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

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

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

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

#### **34 Extraction management unit**

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

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

The long-term average extraction limit for this water source will be the total of:

- (a) the quantity of water specified in conditions attached to or included in entitlements issued under Part 2 of the *Water Act 1912* in this water source, immediately prior to the commencement of Part 2 of Chapter 3 of the Act for this water source, and
- (b) an estimate of annual extraction of water under domestic and stock rights, and native title rights, in this water source at the commencement of this Plan.

### **36 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, surrender or cancellation of access licences in this Unit.

## **Division 2 Available water determinations**

### **37 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 35, 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 42 (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 shall 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 such volume of water as is equivalent to 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 local water utility and domestic and stock access licences should be of such volume of water as is equivalent to 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 such volume of water as is equivalent to 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 35 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 necessary by the Minister to return subsequent total water extraction to the long-term average extraction management limit,
- (h) if the 3 year average of extraction in this Unit is less than 95% of the long-term average extraction limit established in clause 35, the available water determination for unregulated river access licences in this water source should be increased to such an extent as to allow extraction 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**

### **Division 1 General**

#### **38 Rules for managing access licences**

This Part is made in accordance with sections 20 (2) (b), 21 (a) and 21 (c) 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 2 Water allocation account management**

### **39 Water allocation account management**

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

### **40 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 recredited 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.

### **41 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 37.

### **42 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 43 (1).
- (6) A water allocation account shall remain at or above zero at all times.

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

- (1) 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 a water allocation assignment under section 71T of the Act in those years,
  - (c) plus any water allocations recredited in accordance with section 76 of the Act in those years, and
  - (d) minus any water allocations assigned to another licence, by a water allocation assignment under section 71T of the Act in those years.
- (2) Notwithstanding subclause (1), water taken under an access licence from this water source in the first 3 water accounting years of this Plan may not exceed a volume consisting of:
- (a) 3 times the share component of the access licence,
  - (b) plus any water allocations assigned from another licence by a water allocation assignment under section 71T of the Act in those three years,
  - (c) plus any water allocations recredited in accordance with section 76 of the Act in those years, and
  - (d) minus any water allocations assigned to another licence, by a water allocation assignment under section 71T of the Act in those years.

### **Division 3 Sharing flows on a daily basis**

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

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

#### **45 Total daily extraction limits**

- (1) This Plan establishes a total daily extraction limit (hereafter **TDEL**) for each flow class as follows:
- (a) 0 ML/day during years 1, 9 and 10 of this Plan, 2 ML/day during year 2 of this Plan, 3.4 ML/day during years 3 to 5 of this Plan and 2.44 ML/day during years 6 to 8 of this Plan for the very low flow class,

**Note—**

Limited access to very low flows by water users is provided under clause 62 for the first 8 years of this Plan.

- (b) 18 ML/day for A class,
- (c) 40 ML/day for B class, and

(d) 48 ML/day for C class.

**Note—**

These flows represents 50% of very low flows during year 2 of this Plan, 63% of very low flows during years 3 to 5 of this Plan, 45% of very low flows during years 6 to 8 of this Plan, 60% of the top of A class flows, 34% of the top of B class flows and in C class flows 23% of the 30<sup>th</sup> percentile flows in December.

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

**Note—**

The harvestable rights order applying to this area 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.

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

The TDEL for each flow class will initially be assigned to categories of access licences according to the following:

(a) Domestic and stock access licences:

- (i) 0 ML/day of the very low flow class during year 1, 9 and 10 of this Plan,
- (ii) 0.030 ML/day of the very low flow class during year 2 of this Plan,
- (iii) 0.051 ML/day of the very low flow class during years 3 to 5 of this Plan,
- (iv) 0.038 ML/day of the very low flow class during years 6 to 8 of this Plan,
- (v) 0.272 ML/day of A class,
- (vi) 0.605 ML/day of B class, and
- (vii) 0.726 ML/day of C class.

(b) Local water utility access licences:

- (i) 0 ML/day of the very low flow class during years 1, 9 and 10 of this Plan,
- (ii) 0.040 ML/day of the very low flow class during year 2 of this Plan,
- (iii) 0.067 ML/day of the very low flow class during years 3 to 5 of this Plan,
- (iv) 0.048 ML/day of the very low flow class during years 6 to 8 of this Plan,
- (v) 0.356 ML/day of A class,
- (vi) 0.791 ML/day of B class, and

(vii) 0.949 ML/day of C class.

(c) Unregulated river access licences:

(i) 0 ML/day of the very low flow class during year 1, 9 and 10 of this Plan,

(ii) 1.919 ML/day of the very low flow class during year 2 of this Plan,

(iii) 3.262 ML/day of the very low flow class during years 3 to 5 of this Plan,

(iv) 2.34 ML/day of the very low flow class during years 6 to 8 of this Plan,

(v) 17.272 ML/day of A class,

(vi) 38.381 ML/day of B class, and

(vii) 46.058 ML/day of C class.

(d) Unregulated river (Aboriginal cultural) access licences:

(i) 0 ML/day of the very low flow class during year 1, 9 and 10 of this Plan,

(ii) 0.006 ML/day in very low flows during year 2 of this Plan,

(iii) 0.009 ML/day in very low flows during years 3 to 5 of this Plan,

(iv) 0.007 ML/day in very low flow during years 6 to 8 of this Plan,

(v) 0.05 ML/day in A class flows,

(vi) 0.112 ML/day in B class flows, and

(vii) 0.134 ML/day in C class flows.

**Note—**

Where this category of licence is granted, and IDELs are issued in A, B or C class flows, pursuant to section 45 (1) (b) of the Act and the provisions of clause 50, the TDEL for the licences in clause 46 (c) (iii), (iv) and (v) may be reduced.

(e) Unregulated river (research) access licence:

(i) 0 ML/day of the very low flow class during year 1, 9 and 10 of this Plan,

(ii) 0.006 ML/day in very low flows during year 2 of this Plan,

(iii) 0.009 ML/day in very low flows during years 3 to 5 of this Plan,

(iv) 0.007 ML/day in very low flow during years 6 to 8 of this Plan,

(v) 0.05 ML/day in A class flows,

(vi) 0.112 ML/day in B class flows, and



(vii) 0.134 ML/day in C class flows.

**Note—**

Where this category of licence is granted, and IDELs are issued in A, B or C class flows, pursuant to section 45 (1) (b) of the Act and the provisions of clause 50, the TDEL for the licences in clause 46 (c) (iii), (iv) and (v) may be reduced.

**47 Unassigned TDEL**

At the commencement of this Plan, there is no unassigned TDEL.

**Note—**

Unassigned TDEL may increase as a result of the surrender, cancellation or non-renewal of an access licence's IDELs, or the operation of Part 8 of this Plan.

**48 Daily extraction limits for individual access licence holders**

- (1) Each access licence requiring an IDEL, as specified in Part 12 of this Plan, is assigned the same proportion of the TDEL specified in clause 46 as its share component bears to all the share components of access licences of that category.
- (2) Notwithstanding subclause (1), in relation to those access licences that are currently excluded from a flow class or part of a flow class by existing conditions on the access licence or the water supply work approval nominated by the access licence, the IDEL resulting from subclause (1) will be adjusted to reflect as far as possible such an exclusion.

**49 Granting of unassigned TDEL**

- (1) Any unassigned TDEL may be assigned to access licences in the following circumstances:
  - (a) where they are applied for as part of a new access licence application, or
  - (b) to a local water utility access licence where the Minister varies the access licence in accordance with sections 66 (3) or 66 (4) of the Act.
- (2) Where additional IDELS are assigned to an access licence in accordance with this clause, the amount of IDEL so assigned shall be determined by the Minister consistent with the ratios of share component to IDEL for the specific category of access licence as initially assigned under clause 48, as amended by clause 50.

**50 Adjustment to TDELS and IDELS**

- (1) Where IDELS are assigned under clause 49 any unassigned TDEL is reduced accordingly, and the TDEL assigned to the appropriate licence category in clause 46 is increased accordingly.
- (2) Pursuant to section 45 (1) (b) of the Act, if total extraction of water under domestic

and stock or native title rights exceeds the level specified in Part 5 of this Plan:

- (a) first, any unassigned TDEL then, if necessary, the TDEL for unregulated river access licences in clause 46 (c) shall be diminished to allow these additional basic landholder rights to be met, and
- (b) the IDELs of each unregulated river access licence will then be reduced to comply with this diminished TDEL.

(3) Pursuant to section 45 (1) (b) of the Act, if any unassigned TDEL cannot meet either:

- (a) the IDEL requirements of applicants for new access licences for domestic and stock access, unregulated river (Aboriginal cultural) access or unregulated river (research) access, or
- (b) a local water utility's IDEL requirements,

then the TDEL for unregulated river access licences in clause 46 (c) will be diminished to such an extent as to allow those requirements to be met.

(4) Following an adjustment to the TDEL for unregulated river access licences in subclause (3) the IDELs of each unregulated river access licence will then be reduced to comply with this diminished TDEL.

(5) Any adjustment to unregulated river access licence IDELs arising from this clause will be done at intervals of no greater than 5 years.

(6) If water that, pursuant to an access licence:

- (a) is committed to adaptive environmental water, then the TDEL for classes specified on the committed access licence in the specified category, will be increased by the IDEL on the access licence so committed and clauses 45 and 46 adjusted accordingly, or
- (b) is uncommitted to adaptive environmental water, then the TDEL for classes specified on the committed access licence in the specified category will be increased by the IDEL on the access licence so uncommitted and clauses 45 and 46 adjusted accordingly.

## **51 Administrative arrangements for managing access to daily flows**

Notwithstanding the forgoing provisions of this Division, this Plan provides that access licences may be managed as a group with respect to the IDELs, subject to the following rules:

- (a) all access licences (excepting local water utility licences) with IDELs shall be made part of a group established and maintained by the Minister at the time when IDELs are first assigned under clause 48,

- (b) access licence holders have the right to have their access licence removed from the group, in which case they shall be permitted to extract under that access licence a maximum of the licensed IDEL,
- (c) where an access licence is removed or added to a group, the group combined IDEL shall be adjusted by the amount of IDEL on the subject access licence,
- (d) access licence holders may make a request to form a group for their access licences,
- (e) daily extraction under all access licences within a group will be assessed as a whole against the combined IDELS,
- (f) daily extraction by a group cannot exceed the combined IDELS of all access licences in the group,
- (g) where it been assessed that a holder of a licence within a group is repeatedly causing the combined IDEL to be exceeded then the Minister may remove that licence from the group,
- (h) where daily extraction by a group exceeds the combined IDELS of all access licences in the group, then the Minister may dissolve the group and require each access licence holder to comply with the licensed IDELS,
- (i) should a holder of an access licence which is part of a group commit the IDELS of that access licence to the environment consistent with section 8 (1) (c) of the Act, then those IDELS shall be removed from the group,
- (j) an access licence may not be in more than one group, and
- (k) the Minister may refuse to allow an access licence to be included in a group, and may refuse a request to form a group.

## **52 Infrastructure failure**

In the event of infrastructure failure, the Minister can elect to:

- (a) continue to announce the current flow class,
- (b) announce another flow class based on climatic conditions and any other flow gauging information, or
- (c) restrict access to water to the lowest flow class.

### **Note—**

Infrastructure is defined in the dictionary.

### **Note—**

If satisfied that it is necessary to do so in the public interest, the Minister may direct the holders of an access

licence to cease using a water supply work in accordance with section 323 of the Act.

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

### **53 Access licence dealing rules**

- (1) This Part is made in accordance with section 20 (1) (d) 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.

### **54 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,

**Note—**

Clause 56 relates to any dealings that involve an access licence moving from one water source to another.

- (b) the dealing would result in an increase in the total access licence share components nominating works in the escarpment zone above the 500 metre contour on 1:25 000 topographic maps Kangaroo Valley 9028-4-S, Robertson 9028-4-N and Bundanoon 8928-1-S to more than a total of 1,257 ML in any one year, or
- (c) the dealing would result in an increase in the total access licence extraction components nominating works in the escarpment zone above the 500 metre contour on 1:25 000 topographic maps Kangaroo Valley 9028-4-S, Robertson

9028-4-N and Bundanoon 8928-1-S to more than the following:

- (i) 0 ML/day of very low flows during years 1, 9 and 10 of this Plan,
- (ii) 0.58 ML/day of very low flows during year 2 of this Plan,
- (iii) 0.986 ML/day of very low flows during years 3 to 8 of this Plan,
- (iv) 5.22 ML/day of A class flows,
- (v) 11.6 ML/day of B class flows, or
- (vi) 13.92 ML/day of C class flows.

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

Notwithstanding clause 54, 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.

#### **56 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) Dealing under section 71R of the Act are prohibited in this water source.
- (3) An access licence with a share component specifying this water source may be cancelled and a new access licence issued only if the access licence dealing rules in the other water source permit such a dealing, and the access licence granted is in Bugong Creek, Bomaderry Creek, Shoalhaven Estuary, Jaspers Brush or Broughton Creek.
- (4) The volume of share component on an access licence issued under this clause is to be the volume of the cancelled share component multiplied by a conversion factor established by the Minister, and published in an Order made under section 71Z of the Act, that protects environmental water, basic landholder rights, and the reliability of supply to all other access licences subject to this Plan.
- (5) The extraction component of the cancelled access licence is not to be carried over to the new access licence.

### **57 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 may be permitted only if:
  - (a) the conversion is from an unregulated river access licence to a runoff harvesting access licence, or
  - (b) (Repealed)

**Note—**

Any access to very low flows previously possible under the domestic and stock access licence will not be carried over to the new unregulated river access licence.

- (3) The volume of share component on an access licence issued under this clause is to be the volume of the cancelled share component multiplied by a conversion factor established by the Minister, and published in an Order made under section 71Z of the Act, that protects environmental water, basic landholder rights, and the reliability of supply to all other access licences subject to this Plan.

### **58 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.

### **59 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 to an access licence in another water source are prohibited unless provided for in this clause.

### **60 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**

### **61 Mandatory conditions on access licences**

- (1) This Part is made in accordance with section 17 (c) and 20 (2) (e) of the Act.
- (2) All access licences shall have mandatory conditions to give effect to the following:
  - (a) the specification of the share component of the access licence,
  - (b) the specification of the extraction component of the access licence, including IDELs arising from the operation of Part 10 Division 3 of this Plan where applicable, and the variation thereof,
  - (c) the requirement that extraction under the access licence will be subject to the available water determination,
  - (d) the requirement that extraction under the access licence will be subject to the water allocation account management rules established in Part 10 Division 32 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,
  - (f) the requirement that water may only be taken under the access licence by the water supply work nominated by the access licence, and
  - (g) any other conditions required to implement the provisions of this Plan.

### **62 Access to very low flows**

Access licence holders on Schedule 5 may extract water during very low flows in accordance with clause 46 to 48 in the following circumstances:

- (a) access to very low flows shall only be available during years 2 to 8 of this Plan in accordance with subclauses (b) to (f),
- (b) extraction in the very low flow class can commence on the next day following 7 consecutive days of cease to pump flow conditions referred to in clause 17 (a),
- (c) the volume of water that may be extracted in the very low flow class is limited to a proportion of the TDEL identified at clause 46 available as an IDEL to that access licence, or to the combined very low flow class IDEL of all access licences within an approved group,
- (d) extraction from the very low flow class shall cease when:
  - (i) flow is at or below 2 ML/day (for years 2 to 5 of this Plan) and 2.96 ML/day (for

- years 6 to 8 of this Plan) at the flow reference point, or
- (ii) after 10 days of consecutive access to very low flows, or
- which ever circumstance occurs first,
- (e) the count for the 7 consecutive days of very low flow access referred to in clause (b) can only recommence once flows recorded at the flow reference point reach:
- (i) 5.4 ML/day in year 2 of this Plan, or
- (ii) 7 ML/day in years 3 to 8 of this Plan, and
- (f) if an access licence on Schedule 5 is cancelled, not renewed, or is assigned elsewhere, then it shall be removed from the Schedule.

**62A Access to very low flows to comply with the Food Production (Safety) Act or the Prevention of Cruelty to Animals Act**

- (1) Notwithstanding any cease to pump conditions established on the licence, during periods of very low flows, holders of access licences listed on Schedule 6 may continue to access water to comply with the requirements of the Food Production (Safety) Act or the Prevention of Cruelty to Animals Act for the following purposes:
- (a) fruit and vegetable washing,
- (b) cleaning of dairy plant and equipment for the purpose of hygiene,
- (c) poultry watering and misting, and
- (d) cleaning of enclosures used for intensive animal production for the purposes of hygiene.
- (2) The maximum daily volume that can be extracted under subclause (1) will be the minimum required to satisfy the purposes in that subclause, will be individually assessed and specified on each access licence within 12 months of the commencement of this Plan, will not exceed 20 kilolitres per day, and will not be increased.
- (3) Upon written request by the holder of an access licence, the Minister may add a licence to Schedule 6, but only if the licence meets the purpose requirements established in subclause (1), and the purpose existed prior to 1 July 2004.
- (4) A licence will be removed from the Schedule if:
- (a) any access licence dealing results in the water being extracted from a different location,
- (b) an alternative water supply is obtained, that satisfies the requirements of



subclause (1), or

(c) the licence is surrendered, cancelled, or not renewed.

- (5) Notwithstanding subclauses (1) to (4), extraction of water by an approved water supply work is only permitted if there is visible flow in the river in the vicinity of the work.
- (6) An assessment of the continuing requirements for access under this clause will be undertaken before the end of the Plan, and the Schedule amended or deleted at the end of the Plan, if such a review determines that this concessional access is no longer required.
- (7) The assessment made under subclause (6) will be undertaken for the Plan as a whole, and for each individual licence on the Schedule.

### **63 Unregulated river access licences**

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

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

### **64 Local water utility access licences**

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

- (a) water may only be taken for the purposes of supplying water for the exercise of a water supply function of the local water utility or for other such purpose provided for under the Act,
- (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, and
- (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.

### **65 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,
- (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.

#### **66 Runoff harvesting access licences**

All runoff harvesting access licences shall have a mandatory condition imposed on them stating that water may be taken without restriction in rate, but only from the specified work.

#### **67 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.

#### **68 Unregulated river (research) access licences**

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

- (a) water shall only be taken for the purpose of scientific research, experimentation or

teaching by accredited tertiary institutions, government bodies or other approved organisations, where any primary production resulting from the research program is not sold for profit,

- (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 licence specifies that water may only be taken from a runoff harvesting dam.

#### **69 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) it is the responsibility of the work approval holder to ascertain from the Minister the flow class at any time before commencing to take water under an access licence with an IDEL,
- (d) 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,
- (e) extraction under an access licence through an approved work is only authorised with respect to the access licences specified on the work approval,
- (f) approvals for in-river dams must include a condition requiring the passing of such flows as the Minister determines to be appropriate to achieve the objectives of this Plan,
- (g) in accordance with clause 72, where the Minister finds that the water supply work modifies or will modify flow adversely and recommends that the work is retained,

mandatory conditions shall be placed on the water supply work approval to ensure that the operation of the water supply work reflects the objectives of this Plan, and

- (h) all applications for an approval to modify or to renew a water supply work on a river that may inhibit fish passage shall require a fishway.

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

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

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

### **71 Runoff harvesting dams**

- (1) New or expanded runoff harvesting dams shall, in addition to other considerations, be subject to the dam capacity not exceeding that which is consistent with the access licence share component specifying the runoff harvesting dam as the nominated work.
- (2) When the water allocations that may be taken from a runoff harvesting dam are reduced either by the Minister, or on application of the approval holder, or by an assignment in accordance with Part 11 of this Plan, the Minister may impose an additional condition requiring the dam to be modified so as to reduce its capacity, or requiring the water taken and evaporated from the dam to be reduced, consistent with the reduction in water allocations available.

#### **Note—**

Extraction of water from a runoff harvesting dam requires a runoff harvesting access licence, unless the runoff harvesting dam is within the maximum harvestable right dam capacity for the property on which it is located, in which case no licences or approvals are required. Runoff harvesting is a category of access licence to be established by regulation under section 57 (k) of the Act.

### **72 Rules for granting other water supply works approvals**

- (1) No new in-river dams shall be approved within this water source.

#### **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.

- (2) The Minister, when considering any application for the renewal of a water supply works approval under section 104 (2) of the Act, that obstructs the flow in a river, should consider whether:
  - (a) the originally authorised purpose of the water supply work continues to apply, and
  - (b) the water supply work fulfils an economic or social purpose, or has geomorphological integrity, ecological health or heritage values.

- (3) If the Minister considers that the water supply work no longer meets its original authorised purpose or does not fulfil the purposes or values outlined in subclause (2) (b), the Minister may refuse to renew the approval and cause the work to be removed or modified unless the retention of the work can be justified on the basis of geomorphological integrity, ecological health and heritage values.
- (4) If the Minister considers that the approval should be renewed, the Minister may place mandatory conditions on the approval where necessary, for the water supply work to be modified or other such directions, to ensure that the work meets the objectives of this Plan.

## **Part 14 Monitoring and reporting**

### **73 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.

## **Part 15 Amendment of this Plan**

### **74 Amendment of this Plan**

This Part is made in accordance with section 45 (1) (b) of the Act.

## **75 Amendment of very low flow provisions**

- (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 levels established in clause 17 and consequently the bottom of A class established in clause 17, following field verification.
- (2) Any variation made under subclause (1) should not result in the very low flow level being less than 4 ML/day or being greater than 7 ML/day.
- (3) The Minister should cause the field verification in subclause (1) to be undertaken as soon as practical, but before the review of this Plan under section 43 (2) of the Act.
- (4) The field verification should assess the degree to which the following objectives of the *Water Quality and River Flow Interim Environmental Objectives* (NSW Government 1999) are met:
  - (a) Objective 1—to protect water levels in natural river pools and wetlands during periods of no flow, and
  - (b) Objective 2—to protect natural low flows.
- (5) In undertaking the field verification the Minister should:
  - (a) consult with the NSW Environment Protection Authority, NSW Fisheries, NSW Agriculture and the NSW National Parks and Wildlife Service, and
  - (b) prepare a report documenting:
    - (i) the methodology adopted,
    - (ii) the hypotheses tested,
    - (iii) the field results and conclusions in terms of the degree to which the objectives in subclause (4) are met,
    - (iv) the flow level recommended to meet the objectives in subclause (4), and
    - (v) the socio-economic impacts of recommended changes to the flow level.

## **76 Review of field verification**

- (1) The Minister should seek advice from a review body on the field verification report specified in clause 75 (5) (b) before varying this Plan in accordance with clause 75 (2), if the field verification recommends a variation in the very low flow levels established in clause 17.
- (2) This review body may be:
  - (a) a water management committee with water sharing responsibilities for this water

source,

(b) the relevant Catchment Management Authority, or

(c) an expert advisory panel or advisory committee established for this purpose by the Minister on the recommendation of a water management committee or Catchment Management Authority referenced at subclause (2) (a) or (b).

(3) The review body should provide advice to the Minister on the field verification report, and advise on any changes to the recommendations contained in the report in relation to any variation of the very low flow levels.

(4) The review body should respond to the Minister as soon as practical after receiving the report, or within 3 months of that date at the latest.

## 77 Other amendments of this Plan

This Plan can be amended in accordance with clause 50 in respect to adjustments to TDEs and IDEs.

## 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 taken, assigned 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.

**conversion factor** refers to the adjustment factor that is to be applied to share components when they are cancelled or reissued in a different water source and visa versa, or when the licence category is changed. It is designed to provide for the fact that the value of a unit of share component in terms of the average water allocations that result from it may vary from one water source to another, or from one category of licence to another.

**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 amount of water that may be extracted from this water source.

**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**.

**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,
- (c) moderate flows may be categorised as 'B' class,
- (d) high flows may be categorised as 'C' class,
- (e) very high flows may be categorised as 'D' class, and
- (f) extremely high flows may be categorised as 'E' class.

**flow gauging station** is a device that is used to measure the height of a river, from which the flow in the river can be calculated.

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

**infrastructure** includes, but is not limited to, a:

- (a) flow gauging device or any other appliance that is used to measure the height of a river relative to a known datum point, from which the flow in the river can be calculated, or
- (b) flow announcement system which is the mechanism by which the Minister communicates daily flow classes to the holders of an access licence within this water source.

**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 23rd March 2001. See also **farm dam** and **runoff harvesting dam**.

**management zone** is an area within the water source in which total daily extraction limits may be defined or where dealing restrictions are approved. Management zones may be designated where the water source to which the plan applies is divided into areas and total daily extraction limits are defined for each area. They may also be designated where local dealing restrictions are in place.

**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 in the order made under section 5 of the [Water Act 1912](#) in relation to the definition of a river gazetted 23rd 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 volume of water that may be extracted under access licences from an unregulated river on a daily basis from a particular flow class.

## **Schedule 2 Kangaroo River Water Source and Extraction Management**



## Unit



### Schedule 3 Rivers in the Kangaroo River Water Source

This water source includes, but is not limited to:

#### **Kangaroo River**

Dtharowal Creek  
Douglas Creek  
Pheasants Brush Creek  
Yarrowa Creek  
Kangaroo Creek  
Gerringong Creek  
Kings Creek  
Coopers Gully  
Cabbage Tree Gully  
Nugents Creek  
Myrtle Creek

#### **Brogers Creek**

Lamonds Creek  
Rydes Creek  
Devils Glen Creek  
Sawyers Creek

#### **Barrengarry Creek**

Johnstons Gully  
Burrawang Creek  
McNights Gully  
Mannings Gully  
Trimbles Creek  
Millers Creek

#### **Note—**

Rivers/Creeks highlighted in bold are the main tributaries

### Schedule 4 Contribution to relevant targets in the December 2002 State Water Management Outcomes Plan

#### **Levels of assessed contribution:**

FULL—contributes to the target in full

HIGH—while not fully contributing to the target there is considered a good level of contribution

PARTIAL—goes some way to contributing to the target

LOW—only a small degree of contribution to the target

Relevant Target	Level of Contribution	Comments
<p><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</p>	FULL	<ul style="list-style-type: none"> <li>• This Plan sets out the basis for the extraction limit for the Kangaroo River Water Source.</li> <li>• Rules set out in Part 9 of this Plan.</li> </ul>
<p><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</p>	FULL	<ul style="list-style-type: none"> <li>• Rules set out in Part 9 of this Plan.</li> </ul>
<p><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</p>	PARTIAL	<ul style="list-style-type: none"> <li>• This Plan has put in place daily extraction limits to protect/restore environmental flows.</li> <li>• Significantly improves low to moderate flows.</li> <li>• Is unlikely to protect very low flows to the level necessary to ensure continuity or maintenance of riffle and pool habitats. It is also questionable whether it would meet the requirements of Macquarie Perch (a listed threatened species).</li> </ul>
<p><b>Target 4a</b> Wherever the frequency of “end of system” daily flows would be less than 60 percent of the predevelopment level without environmental water rules or extraction limits, the flows increased to 60 percent of predevelopment levels or increased by at least 10 percent of the predevelopment frequency</p>	FULL	<ul style="list-style-type: none"> <li>• As compared with the period prior to Plan commencement, this Plan provides approximately an 18% improvement in A class flows.</li> <li>• Daily extraction limit protects 40% of A class, 66% of B class and 77% of C class flows.</li> <li>• Rules set out in Part 10 of this Plan.</li> </ul>

**Target 4b** 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 95th percentile

PARTIAL

- Cease-to-pump (CTP) level increases from 2.96 in year 1 to 5.4 in year 3 to 10.
- Commence to pump level of 4 ML/day in year 1 to 7 ML/day in year 3 to 10.
- This is improvement on current CTP of 1 ML/day for commercial irrigation.
- Whilst 7 ML/day is equivalent to the 98<sup>th</sup> percentile for all days, 7 ML/day is the 95<sup>th</sup> percentile for the minimum month, which is consistent with NSW Government policy.

**Target 5** Access rights for water access licensees clearly and legally specified in terms of share and extraction components

FULL

- This Plan recognises the access licence share components, and also establishes daily extraction limits for distribution to individual access licences.

**Target 6b** For surface water sources, a pathway for reducing the share components to 200 percent of the long term average annual extraction limit to be established not later than the end of the term of the SWMOP

FULL

- Total Kangaroo River entitlements should not exceed 200% of extraction limit for Kangaroo River Water Source.

**Target 7** Mechanisms in place to enable Aboriginal communities to gain an increased share of the benefits of the water economy

HIGH

- The Government has established other mechanisms to address this target.
- This Plan provides reasonable market opportunities within this water source.

**Target 8** Daily extraction components specified and tradeable, subject to metering, reporting and compliance, for at least 50 percent of unregulated river access licences and for 80 percent of stressed unregulated rivers

FULL

- This Plan establishes daily extraction limits across this water source.

**Target 12** 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

PARTIAL

- This Plan protects flows for domestic and stock basic rights only for the first 7 days of CTP conditions.
- This Plan does not protect domestic and stock basic rights after 7 consecutive days of CTP.
- A, B and C class flows provide for domestic and stock basic rights requirements. Very low flow access ceases at the end of year 8 of this Plan.

<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>PARTIAL</p>	<ul style="list-style-type: none"> <li>• 4 Aboriginal community representatives have been involved in development of this Plan.</li> <li>• This Plan does not recognise specific cultural or traditional values or sites.</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>LOW</p>	<ul style="list-style-type: none"> <li>• This Plan prevents further reduction in low to moderate flows but the relatively low level of protection in very low flows may fail to improve Aboriginal values.</li> <li>• This Plan exempts from any embargo a category of licence, being the unregulated river (Aboriginal cultural) access licence to provide for traditional cultural, spiritual and customary uses.</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 sets out the rules for access licence dealings.</li> <li>• This Plan allows for the assignment of share components to selected water sources within the Shoalhaven catchment.</li> </ul>
<p><b>Target 16c</b> Conversion factors and protocols established to facilitate trading and dealings between water sources, whilst also protecting existing access and environmental water</p>	<p>HIGH</p>	<ul style="list-style-type: none"> <li>• This Plan provides a cap on the assignment of access licence share and extraction components into the escarpment zone.</li> <li>• This Plan leaves the exchange rates to the discretion of the Minister.</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>• No unassigned water identified in this Plan at commencement.</li> <li>• Rules established in Part 10 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>FULL</p>	<ul style="list-style-type: none"> <li>• This Plan establishes 2 zones with no trading of water rights permitted into the upper zone.</li> </ul>

**Target 35** 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

PARTIAL

- This Plan includes a specific water quality objective to improve or maintain water quality through flow management.

## Schedule 5 Water Act 1912 licences with access to very low flows

### Licence number:

10SL017782	10SL031328	10SL031389
10SL024801	10SL032160	10SL034653
10SL030068	10SL033762	10SL038332
10SL031038	10SL043794	10SL040348
10SL031375	10SL044601	10SL041856
10SL033121	10SL044687	10SL046159
10SL039489	10SL045997	10SL049053
10SL040496	10SL047696	10SL051881
10SL040822	10SL039191	10SL055164
10SL044520	10SL055104	10SL055362
10SL050081	10SL055148	10SL055752
10SL055020	10SL041880	10SL050440
10SL055123	10SL045854	10SL041114
10SL055135	10SL015909	10SL055015
10SL055150	10SL040473	10SL014902
10SL055153	10SL045189	10SL050022
10SL055282	10SL055693	10SL051617
10SL055289	10SL025261	10SL056448
10SL055353	10SL039732	10SL055813
10SL041000	10SL042268	
10SL049244	10SL045881	
10SL055500	10SL041660	

10SL055602	10SL055478
10SL055721	10SL055190
10SL017793	10SL028044
10SL021519	10SL036630
10SL025311	10SL044913
10SL026680	10SL045361
10SL029987	10SL015021
10SL030803	10SL030553

**Note—**

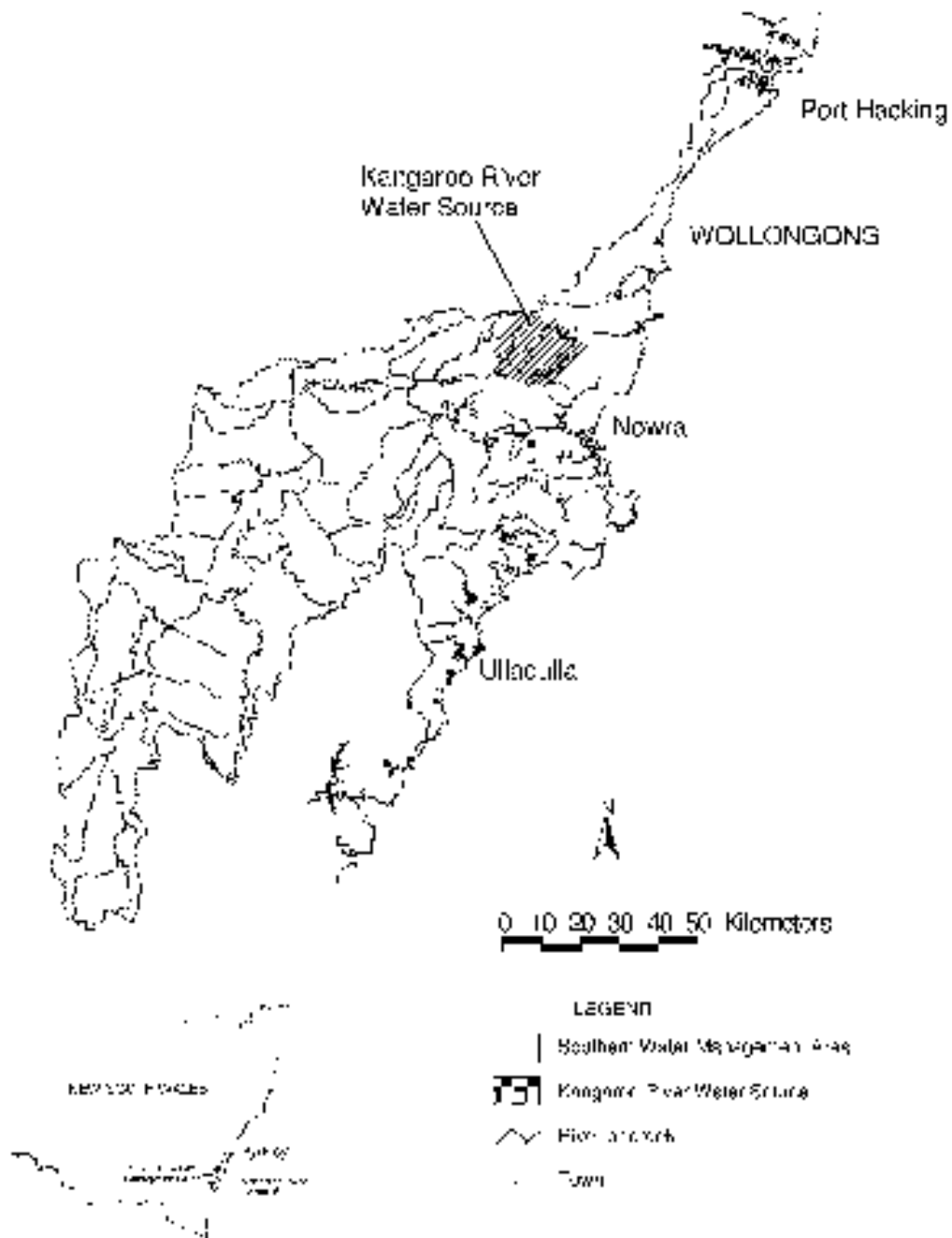
The licence details in this Schedule may change during the period of this Plan. The Offices of the Department of Land and Water Conservation, shown in Appendix 2, should be contacted for a current list.

## **Schedule 6 Access licences with access to very low flows under clause 62A**

The following licences have access to very low flows under Clause 62A of this plan:

<b>Licence No</b>	<b>River</b>	<b>Purpose</b>
10SL040496	Kangaroo River	Dairy washdown
10SL040822	Kangaroo River	Dairy washdown
10SL055153	Kangaroo River	Dairy washdown
10SL021519	Barrengarry Creek	Dairy washdown
10SL033762	Barrengarry Creek	Dairy washdown
10SL055148	Barrengarry Creek	Dairy washdown
10SL015021	Brogers Creek	Dairy washdown
10SL031389	Brogers Creek	Dairy washdown
10SL051617	Devils Glen Creek	Dairy washdown
10SL044687	Barrengarry Ck	Grape washing

## Appendix 1 Southern Water Management Area



## Appendix 2 Location of maps

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

District Office  
Department of Land and Water Conservation  
50 O'Keefe Avenue  
NOWRA NSW 2541

District Office  
 Department of Land and Water Conservation  
 Level 3  
 84 Crown Street  
 WOLLONGONG NSW 2500

District Office  
 Department of Land and Water Conservation  
 Shop 4, Calaroga Centre  
 Kirkham Street  
 MOSS VALE NSW 2577

## Appendix 3 Performance indicators

### Performance indicators for the Kangaroo River Water Sharing Plan

Performance indicator	Related objective	As measured by	Commentary
(a) hange in low flows.	11 (a) 11 (b) 11 (c) 11 (d)	<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></p> <p>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> <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>(b) Change in moderate to high flows.</p>	<p>11 (d)</p>	<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> <li>• Water sharing plans for unregulated water sources have the potential to impact on urban water supplies.</li> </ul>
		<p>(c) Change in local water utilities and major water utilities access (where those utilities are involved in urban water provision).</p>	<p>11 (g)</p>
<p>11 (h)</p>			
<p>11 (k)</p>			

<p>(d) Change in ecological condition of this water source and dependent ecosystems.</p>	<p>11 (a) 11 (b) 11 (c) 11 (d) 11 (i) 11 (k)</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>(e) Extent to which basic landholder rights requirements have been met.</p>	<p>11 (e) 11 (k)</p>	<ul style="list-style-type: none"> <li>• Assessment of cease to pump levels in relation to basic rights requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Basic landholder rights usage figures in water sharing plans are estimated (not actual use).</li> </ul>

<p>(f) Change in economic benefits derived from water extraction and use.</p>	<p>11 (f) 11 (g) 11 (h) 11 (i)</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>(g) Extent to which native title rights requirements have been met.</p>	<p>11 (j) 11 (k)</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> </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> </ul>
<p>(h) Extent of recognition of spiritual, social and customary values of water to Aboriginal people.</p>	<p>11 (j) 11 (k)</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> </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 5 years there should be relevant information collected for each water source, as a minimum requirement.</li> </ul>

## Appendix 4 (Repealed)