

# Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2003

[2003-115]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 January 2014 to 30 June 2016 (accessed 25 November 2024 at 19:30)

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—

- **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.
- **Repeal**  
This Plan was replaced by cl 4 (5) of the *Water Sharing Plan for the Central Coast Unregulated Water Sources 2009 (346)* (amended by the *Water Sharing Plan for the Central Coast Unregulated Water Sources Amendment Order 2016 (387)*) with effect from 1.7.2016.
- **Note**  
This Plan ceases to have effect on 1.7.2016 — see GG No 46 of 29.5.2015, p 1244 (for previous extension see GG No 45 of 12.5.2014, p 1381).

### 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 1 July 2016

# Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2003



New South Wales

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# Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2003



New South Wales

## Part 1 Introduction

### 1 Name of Plan

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

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

**Note—**

The Central Coast Water Management Area is shown 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 the 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**

- (1) The vision for this Plan is the sustainable, equitable and efficient use, through integrated management, of water in the Jilliby Jilliby Creek Water Source to preserve, enhance or rehabilitate the environmental, social, cultural and economic uses of water for the present and future.
- (2) This Plan also recognises the following respect statement for Aboriginal values in this water source:
  - (a) life-giving water is of extreme significance to Aboriginal culture for its domestic, traditional and spiritual values, and
  - (b) whilst water supplied for the environment will provide protection for native flora and fauna, and also for fishing, food gathering and recreational activities, it is important that the community respects the spiritual significance of water to the Aboriginal people.

## **11 Objectives**

The objectives of this Plan are to:

- (a) protect natural water levels in pools, rivers and wetlands during periods of no flows,
- (b) protect natural low flows,
- (c) protect or restore a proportion of moderate flows (freshes) and high flows,
- (d) maintain or restore the natural inundation patterns and distribution of floodwaters supporting natural wetland and floodplain ecosystems,
- (e) maintain or imitate natural low flow variability in all rivers,
- (f) minimise the impact of in-river structures,
- (g) maintain or rehabilitate downstream (including estuarine) processes and habitats,
- (h) maintain water supply to meet existing and potential basic landholder rights requirements (for domestic and stock, and native title rights), conditional on water availability,
- (i) provide an agreed level of water sharing for agricultural and industrial requirements, conditional on water availability,
- (j) maintain water supply to meet existing and potential domestic needs of urban communities, conditional on water availability,
- (k) maintain water supply to meet the existing and potential industrial and commercial needs of urban communities, conditional in water availability,

- (l) protect and enhance water dependent species and sites of significance to the local Aboriginal communities in this water source, and
- (m) 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 rules and conditions 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 and major water utilities access (where those utilities are involved in urban water provision),
- (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 people, 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 in this water source within the limits of water availability 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.
- (2) The extraction management unit of which this water source is part is known as the Tuggerah Lakes Extraction Management Unit, and is shown on the map in Schedule 5.

### **17 Flow classes**

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

- (a) very low flow class at or less than:
  - (i) 0.5 megalitres per day (hereafter **ML/day**) in year 1 of this Plan,

**Note—**

The 0.5 ML/day in subclause (a) (i) corresponds to the estimated 94<sup>th</sup> percentile of all days with flow, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.

- (ii) 0.75 ML/day in year 2 of this Plan, and

**Note—**

The 0.75 ML/day in subclause (a) (ii) corresponds to the estimated 92<sup>nd</sup> percentile of all days with flow, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.

(iii) 1 ML/day from year 3 of this Plan,

**Note—**

The 1 ML/day in subclause (a) (iii) corresponds to the estimated 90<sup>th</sup> percentile of all days with flow, and is referred to as the cease to pump on a falling river and the commence to pump on a rising river.

**Note—**

There is no A class in this water source.

(b) B class flows:

(i) greater than 0.5 ML/day and at or less than 3.3 ML/day in year 1 of this Plan,

(ii) greater than 0.75 ML/day and at or less than 3.3 ML/day in year 2 of this Plan, and

(iii) greater than 1.0 ML/day and at or less than 3.3 ML/day from year 3 of this Plan,

(c) C class flows greater than 3.3 ML/day and at or less than 8 ML/day, and

(d) D class flows greater than 8 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 estimated 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 a flow gauging station, correlated to 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) Planned environmental water is identified and established as follows:

- (a) In very low flows, the flow occurring in this water source, minus 0.51 ML/day, minus the very low flow access permitted under clause 61A of this plan.

**Note—**

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

- (b) In B class flows, the flow occurring in this water source minus 1.51 ML/day.

**Note—**

This figure is amount of water estimated at the commencement of this Plan for B class total daily extraction limit and basic landholder rights.

- (c) In C class flows, the flow occurring in this water source minus 2.51 ML/day.

**Note—**

This figure is amount of water estimated at the commencement of this Plan for C class total daily extraction limit and basic landholder rights.

- (d) In D class flows, the flow occurring in this water source minus 3.51 ML/day.

**Note—**

This figure is amount of water estimated at the commencement of this Plan for D class total daily extraction limit and basic landholder rights.

(2) Planned environmental water is maintained as follows:

(a) In very low flows:

- (i) the holders of access licences, excluding access licences listed in Schedule 6, are not permitted any access,
- (ii) access licence holders listed on Schedule 6 may have limited access to very low flows in accordance with clause 61A, and
- (iii) persons exercising domestic and stock and native title rights may take a combined total of up to 0.51 ML/day.

**Note—**

In times of severe water shortage the Minister may issue an Order under section 60 (2) of the Act which suspends the provisions of this Plan and the priorities it establishes.

**Note—**

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

(b) In each of B class, C class and D class flows:

- (i) the holders of access licences have restricted access to water as specified in clause 45,
- (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 0.51 ML/day in this flow class the access to water for unregulated river access licences will 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 long-term extraction, and the rate of extraction of water in different flow ranges, thereby achieving the objectives of this Plan.

**Note—**

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

## **22 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.

## **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 Minister may grant an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition and arises through water savings in the system made in that water source as referred to in section 8C (1) of the Act.
- (2A) The Minister may change the category or subcategory of an access licence in a water source to which this Plan applies if the licence is subject to an adaptive

environmental water condition that arises through water savings as referred to in section 8D of the Act.

- (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.

### **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 0.51 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 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 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](#).

### **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 1,016 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:
- (a) local water utility access licences,

**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 a rapid growth in population.

- (b) domestic and stock access licences, or
  - (c) specific purpose access licences for which applications are provided for under the regulations in accordance with section 61 (1) (a) of the Act,
  - (d) unregulated river (Aboriginal cultural) access licences up to 10 ML/yr per application.
- (4) 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) 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) (Repealed)
- (8) 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.

## **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 in this water source will be undertaken in the context of the Tuggerah Lakes Extraction Management Unit (hereafter **this Unit**) referred to in clause 16 (2).

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

- (1) For this unit there will be separate long-term average annual extraction limits applying to extractions under:
- (a) basic landholder rights and access licences, other than those local water utility or any future major utility access licences held by Gosford and Wyong Councils, and
  - (b) local water utility or any future major utility access licences held by Gosford and Wyong Councils (hereafter **the local water utility long-term average annual extraction limit**).
- (2) The long-term average annual extraction limit established under subclause (1) (a) is equal to the total of:
- (a) the sum of share components of access licences in the Jilliby Jilliby Creek Water Source at the commencement of the *Water Sharing Plan for Jilliby Jilliby Creek Water Source 2003*, excluding local water utility or any future major utility entitlements held by Gosford and/or Wyong Councils,

- (b) an estimate of annual extraction of water under domestic and stock rights and native title rights in the Jilliby Jilliby Creek Water Source at the commencement of the *Water Sharing Plan for Jilliby Jilliby Creek Water Source 2003*,
  - (c) the sum of share components of access licences not held by Gosford and Wyong Councils, that have been issued for the purposes of stormwater harvesting in the Unit, and
  - (d) the sum of share components of access licences granted under clause 19 of the Regulation in all water sources, excluding local water utility or any future major utility access licences granted to Gosford and/or Wyong Councils.
- (3) The local water utility long-term average annual extraction limit established under subclause (1) (b) is equal to 36,750 ML/year minus:
- (a) the long-term average annual extraction under local water utility or any future major utility access licences held by Gosford City Council and/or Wyong Shire Council in the Gosford Extraction Management Unit, and
  - (b) the long-term average annual extraction under local water utility or any future major utility access licences held by Gosford City Council and/or Wyong Shire Council in any groundwater source, where the groundwater taken is not being passed through Mardi Water Treatment Plant.

**Note—**

Water flowing from Hunter Water Corp to Gosford/Wyong Councils will be accounted against the local water utility LTAEL in the Tuggerah Lakes EMU. Water transferred from Gosford/Wyong Councils to Hunter Water Corporation will be accounted against the major utility LTAEL in the Hunter EMU.

**Note—**

The 36,750 ML/year figure is based on demand projections to 2013. This is the expected date that releases will commence from Tillegra Dam and upgrade works will be finalised for Grahamstown Dam. At this time operation of the water supply system will vary and a number of relevant plan provisions within the Water Sharing Plan for the Hunter Unregulated and Alluvial Water Sources and this Plan will need to be reviewed to determine their appropriateness in line with the new operations.

**Note—**

Any groundwater extraction that is being passed through Mardi Water Treatment Plant will effectively be counted as surface water extraction against the LTAEL.

- (4) After commencement of releases from Tillegra Dam or after 1 July 2013, whichever occurs sooner, the local water utility long-term average annual extraction limits established under subclause (3) for this Unit will be reviewed, taking into consideration:
- (a) instream habitat and estuary requirements, and
  - (b) local water utility long-term demand requirements.

- (5) The Minister may, amend the local water utility long-term average annual extraction limit specified in subclause (3) in accordance with the outcomes of the review specified in subclause (4).
- (6) The Minister may amend subclause (1) (b) and the local water utility long-term average annual extraction limit specified in subclause (3) following the granting of access licences to Gosford or Wyong Councils for the purpose of stormwater harvesting.
- (7) The Minister may amend the local water utility long-term average annual extraction limit specified in subclauses (3) in accordance with the outcomes of the review specified in clause 36A (10) of this Plan.

### **36 Variation of the long-term average annual extraction limit**

- (1) The long-term average annual extraction limit for this extraction management unit may be varied by the Minister following the purchase and cancellation of an access licence in the extraction management unit.
- (2) The long-term average annual extraction limit for this extraction management unit may be varied by the Minister if dealings under Part 11 of this Plan result in issuing or cancellation of access licences in the respective extraction management unit.

### **36A Compliance with the long-term average annual extraction limit**

- (1) In this Unit the total water extractions under basic landholder rights and access licences, other than local water utility or any future major utility access licences held by Gosford City Council and Wyong Shire Council, will be monitored each water year to determine if there is any growth in volumes extracted above the long-term average annual extraction limit established under clause 35 (2), based on comparison of the extraction limit against the average extraction within this Unit over that year and the preceding 2 years.
- (2) For the purposes of auditing extraction against the long-term average annual extraction limit established under clause 35 (2), the taking of water pursuant to an access licence that has been committed as adaptive environmental water pursuant to section 8C of the Act, shall not be accounted for as extraction under subclause (1).
- (3) For water sources in this Unit, if the 3 year average of total water extractions under basic landholder rights and access licences, other than local water utility or any future major utility access licences held by Gosford City Council and Wyong Shire Council, exceeds the long-term average annual extraction limit established under clause 35 (2) by 5% or greater, then the available water determinations made for unregulated river access licences under clause 37 (8) for the following water year shall be reduced by an amount that is assessed as necessary by the Minister to return subsequent total water extractions under basic landholder rights and access licences, other than those

held by Gosford and Wyong Councils, in this Unit to the long-term average annual extraction limit.

- (4) For water sources in this Unit if the 3 year average of total water extractions under basic landholder rights and access licences, other than local water utility or any future major utility access licences held by Gosford City Council and Wyong Shire Council, is less than 95% of the long-term average annual extraction limit established in clauses 35 (2), the available water determinations made for unregulated river access licences under clause 37 (8) for the following water year for unregulated river access shall be increased to such an extent as to allow total water extraction under basic landholder rights and access licences in this Unit to increase to the respective long-term average annual extraction limit.

**Note—**

The effect of this subclause and clause 37 (8) is that available water determinations for unregulated river access licences can never be greater than 1 ML per unit share, except for the available water determinations made for the first year of the Plan. Therefore this allows for adjustment back towards 1 ML per unit share if a previous growth in use response under 36A (3) resulted in extractions significantly below the LTAAEL.

- (5) Any reduction or increase to the available water determinations made under clause 37 (8) for unregulated river access licences in the Ourimbah Creek Water Source as a result of subclause (3) or (4) shall be equivalent to the corresponding reduction or increase made to available water determinations for unregulated river access licences in the Wyong River Water Source, Tuggerah Lakes Water Source and the Jilliby Jilliby Creek Water Source and should be repeated for each of the subsequent two water years.
- (6) The average annual volume of water taken under all local water utility or any future major utility access licences, held by Gosford City Council and Wyong Council, in any 10 consecutive water years in this Unit may not exceed a volume equal to the respective long-term average annual extraction limit specified in clause 35 (3).
- (7) In this Unit the total water taken under local water utility or any future major utility licences held by Gosford City Council and Wyong Shire Councils will be monitored each water year to determine if there is any growth above the local water utility long-term average annual extraction limit established under clause 35 (3), based on a comparison of the long-term average annual extraction limit against the average annual amount of water taken within this Unit over a rolling ten year period commencing from the start of this Plan, except where subclause (8) applies.
- (8) If the long-term average annual extraction limit specified in clause 35 (3) is amended under clause 35 (5) then growth in the 'water taken' above the respective local water utility long-term average annual extraction limit specified in clause 35 (3) shall be determined based on a comparison of the extraction limit against the average water taken under local water utility or any future major utility access licences held by

Gosford City Council and Wyong Shire Council within the Tuggerah Lakes Extraction Management Unit over a rolling ten year period commencing from the water year in which the amendment was made.

**Note—**

The effect of subclause (8) is if a new long-term average annual extraction limit for the local water utility is required after Tillegra Dam is built within the term of this Plan then a new ten year rolling accounting period will commence.

- (9) For the purpose of assessing growth above the local water utility long-term average annual extraction limit the water taken in the Tuggerah Lakes Extraction Management Unit under local water utility or any future major utility licences within these water sources will be determined as:
- (a) the water passing the outlet of Mardi Water Treatment Plant minus any water passing the boundary meter from Gosford/Wyong Councils to Hunter Water Corporation, plus
  - (b) any water passing the boundary meter from Hunter Water Corporation to Gosford/Wyong Councils, plus
  - (c) water taken by any other local water utility infrastructure nominated by Gosford and Wyong Water Supply Authority and agreed to by the Minister.
- (10) If monitoring of the water taken under local water utility or any future major utility access licences held by Gosford City Council and Wyong Shire Council indicates growth above the local water utility long-term average annual extraction limit as specified in clause 35 (3), then a review shall be undertaken which considers:
- (a) the Councils' urban water supply requirements, and
  - (b) the impacts associated with an increase to the respective local water utility long-term average annual extraction limit.
- (11) The Minister may amend this clause to take account of access licences issued for the purpose of stormwater harvesting.

## **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) All available water determinations in these water sources shall be expressed as either:
  - (a) a percentage of the share component for all access licences where share components are specified as ML/year, or
  - (b) megalitres per unit share for all access licences where share components are

specified as a number of unit shares.

- (3) An available water determination for each category of access licence in these water sources should be made at the commencement of each water year.
- (4) The available water determination made at the commencement of each water year for domestic and stock access licences in these water sources shall provide an allocation of 100% of share components, except where the available water determination is made under subclause (5).
- (5) The available water determination made at the commencement of the first year of this Plan, for domestic and stock access licences in these water sources should be 200% of those licences share components.
- (6) The available water determination made at the commencement of each water year for local water utility access licences in these water sources should be 100% of those licences share components.
- (7) If major utility access licences are established in these water sources the available water determination made at the commencement of each water year for major utility access licences should be 100% of those licences share components.
- (8) The available water determination made at the commencement of each water year for unregulated river access licences in these water sources should be equal to 1 megalitre multiplied by the number of unit shares in the share component, or such lower amount as results from clause 36A (3) except where the available water determination is made under subclause (9).
- (9) The available water determination made at the commencement of the first year of this Plan, for unregulated river access licences in these water sources, should be equal to 2 megalitres multiplied by the number of unit shares in the share component.

**Note—**

The effect of this clause and clause 37 (4) is that available water determinations for unregulated river access licences can never be greater than 1 ML per unit share, except for the available water determination made for the first year of the Plan.

## **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 Individual access licence account management rules**

- (1) Water taken from this water source, excluding that taken by local water utility or any future major utility access licences, 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 71G 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 allocation assigned to another licence, by a water allocation assignment under section 71G of the Act in those years.
- (2) Notwithstanding subclause (1), water taken under an access licence from this water source, excluding local water utility or major utility access licences, 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 licences,
  - (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 allocation assigned to another licence, by a water allocation assignment under section 71T of the Act in those years.
- (3) Water allocation in the accounts of local water utility or major utility access licences shall not be permitted to be carried over from one water year to the next.

### **40-43 (Repealed)**

## **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 for the very low flow class,
  - (b) 1 ML/day for B class,
  - (c) 2 ML/day for C class, and
  - (d) 3 ML/day for D class.

**Note—**

These flows represent 45% of the top of B class flows, 31% of the top of C class flows and in D class flows 29% of the 30<sup>th</sup> percentile flows of all days of flow.

- (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 rights 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) Local water utility access licences:
  - (i) 0.0 ML/day of B class,
  - (ii) 0.0 ML/day of C class, and
  - (iii) 0.0 ML/day of D class.
- (b) Domestic and stock access licences:
  - (i) 0.04 ML/day of B class,
  - (ii) 0.04 ML/day of C class, and
  - (iii) 0.04 ML/day of D class.
- (c) Unregulated river access licences:
  - (i) 0.96 ML/day of B class,
  - (ii) 1.96 ML/day of C class, and

- (iii) 2.96 ML/day of D class.

#### **47 Unassigned TDEL**

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

**Note—**

Unassigned TDEL may vary 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 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 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) The unassigned TDEL in clause 47 may be assigned to access licences in the following circumstances:
  - (a) where they are applied for as part of a new access licence application,
  - (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, or
  - (c) to existing access licences for the purpose of pumping into farm dams if:
    - (i) the purpose of the additional IDEL sought is established by the proponent,
    - (ii) the IDEL sought is the minimum required to satisfy that purpose, and
    - (iii) the extraction is consistent with the objectives and principles of this Plan.
- (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 the 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 the unassigned TDEL specified in clause 47 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 domestic and stock access licences, 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 reduced 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 has 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 71Q, 71S and 71W of the Act, and with respect to water allocation assignments within this water source under section 71T of the Act.
- (2) Dealings are prohibited under this clause if any of the access licences or water allocations involved are not within this water source, unless the dealing is permitted under clause 59.

#### **Note—**

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

### **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, unless the dealing is in accordance with clause 49 (c).

### **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) Dealings under section 71R of the Act are prohibited in this water source, unless provided for in this clause.
- (3) An access licence with a share component specifying this water source may be cancelled and a new licence issued in another water source only if:
  - (a) the new access licence issued is within this Unit, and
  - (b) the access licence dealing rules in the other water source permit such a dealing.
- (4) An access licence with a share component specifying another water source may be cancelled and a new licence issued in this water source under this dealing only if:
  - (a) the access licence cancelled is within this Unit, and
  - (b) the access licence dealing rules in the other water source permit such a dealing.
- (5) The volume of the share component on an access licence issued under a dealing provided for in this clause is to be the volume of the cancelled access licence share component.
- (6) 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,
  - (b) the conversion is from a runoff harvesting access licence to an unregulated river access licence, or
  - (c) (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 are prohibited unless provided for in this clause.
- (3) Dealings that assign water allocations between access licences inside this water source and access licences outside this water source, but inside this Unit, are permitted only if the access licence dealing rules in the other water source permit such a dealing.
- (4) Dealings that assign water allocations between access licences inside this water source, are permitted.

#### **Note—**

Each water allocation assignment must be applied for. Licence holders may enter into private contracts to assign water allocations for a number of years. Such contracts are not guaranteed by the Government, and approval must be sought annually. Approval will be subject to the rules in this Plan, including local impact assessment.

#### **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 sections 17 (c) and 20 (2) (e) 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 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 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 2 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.
- (3) All local water utility access or any future major utility access licences in this water source must have a mandatory condition specifying that water must not be taken if it were to cause the respective local water utility long term average annual extraction limit as specified in clause 35 to be exceeded.

**61A Very low flow access conditions**

- (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 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.

## **62 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.

### **62A 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.

### **63 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,
- (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) a local water utility must prepare a demand management strategy to the specifications and satisfaction of the Minister before commencing to pump under the local water utility access licence.

### **64 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.

#### **65 Runoff harvesting access licences**

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

#### **66 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, and
- (e) extraction under an access licence through an approved work is only authorised with respect to the work nominated by the access licence.

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

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

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

#### **68 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.

## **69 In-river dams**

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.

## **Part 14 Monitoring and reporting**

### **70 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 State priorities for local land services relevant to natural resource management (as referred to in the [Local Land Services Act 2013](#)).

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 Local Land Services region.

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**

### **71 Amendment of this Plan**

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

### **72 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 B class established in clause 17, following field verification.
- (2) Any variation made under subclause (1) should result in the very low flow level:
  - (a) being not less than the level that protects the lowest 5% of days with flow, or
  - (b) being a level that is lower than that at subclause (2) (a) provided that, in the opinion of the Minister, there is sufficient justification for adopting the lower level.
- (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 objectives in clause 11 (a) and (b) are met.
- (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 other interest groups determined by the Minister, 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 clause 11 (a) and (b) are met,
    - (iv) the flow level recommended to meet the objectives, and
    - (v) the socio-economic impacts of recommended changes to the flow level.

### **73 Review of field verification**

- (1) The Minister should seek advice from a review body on the field verification report specified in clause 72 (5) (b) before varying this Plan in accordance with clause 72 (1), 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) Local Land Services, 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 Local Land Services referenced at subclause (2) (a).
- (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.

### **74 Other amendment of this Plan**

This Plan can be amended in accordance with:

- (a) clause 36 in respect to a variation in the long-term average extraction limit, or
- (b) clause 50 in respect to adjustments to TDELs and IDELs.

### **75 Amendment relating to planned environmental water**

- (1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:
  - (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,
  - (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
  - (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.
- (2) The Minister may amend this Plan to specify the purposes for which planned

environmental water committed under section 8A of the Act is to be used.

## 76 Amendment of Plan relating to floodplain harvesting

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:

- (a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the Plan, or
- (b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray-Darling Basin Act 1992*.

## 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 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**.

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

**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 23 March 2001. See also **farm dam** and **in-river dam**.

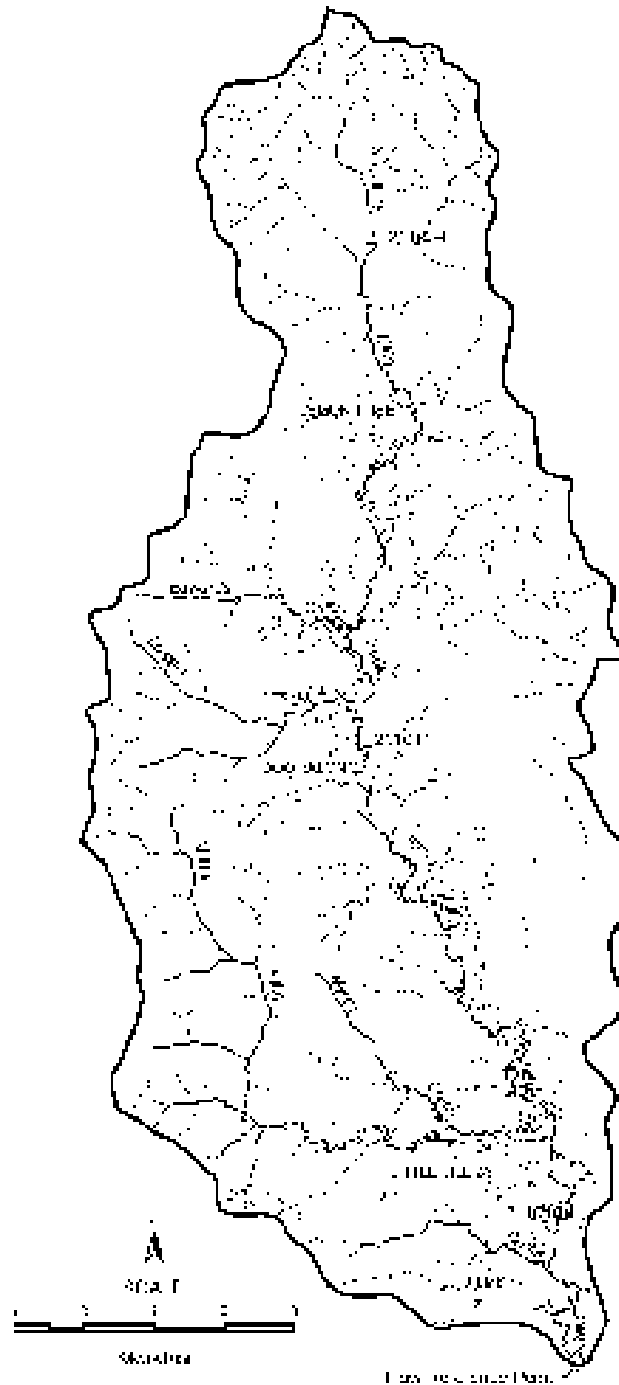
**Note—**

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 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 Jilliby Jilliby Creek Water Source



## Schedule 3 Rivers in the Jilliby Jilliby Creek Water Source

This water source includes, without limitation:

Armstrongs Creek

Calmans Gully

Edwards Gully

Jilliby Jilliby Creek

Little Jilliby Creek

Lowers Gully

Myrtle Creek

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

### Levels of assessed contribution:

FULL—contributes to target in full

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

PARTIAL—goes some way to contributing to the target

LOW—only small degree of contribution to 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>	HIGH	<ul style="list-style-type: none"> <li>Part 9 of this Plan clearly sets out the basis for the extraction limit for the Tuggerah Lakes 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 impacts.</li> <li>Application of daily extraction limits should ensure adequate downstream flows.</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>

**Target 2** 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

- Part 10 of this Plan puts in place comprehensive TDEs to protect/restore environmental flows.
- This Plan has improved low to very low flow protection.
- This Plan is consistent with relevant Threatened Species Recovery Plans.

**Target 4a** 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

FULL

- Total daily extraction limits protect 69–75% of flows.

**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

FULL

- Cease to pump (CTP) levels from 0.5 ML/day in year 1, protect flows below 95<sup>th</sup> percentile of all days, 0.75 ML/day in year 2 protect flows below 95<sup>th</sup> percentile of all days, 1.0 ML/day in year 3 onwards protects below 90<sup>th</sup> percentile of all days with flow.
- Field verification of CTPs is provided for.

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

FULL

- This Plan establishes total daily extraction limits for distribution to individual licence.
- This Plan provides dealing principles for share components and IDEs.

**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 licensed share components for the Tuggerah Lakes Extraction Management Unit should not exceed 200% of the extraction limit for this Unit.

**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 alternative mechanisms to address this target.
- This Plan provides market opportunities.

**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

- To meet this target Statewide, the individual plans should as far as practicable, establish TDEs across the whole water source, and this Plan does this.

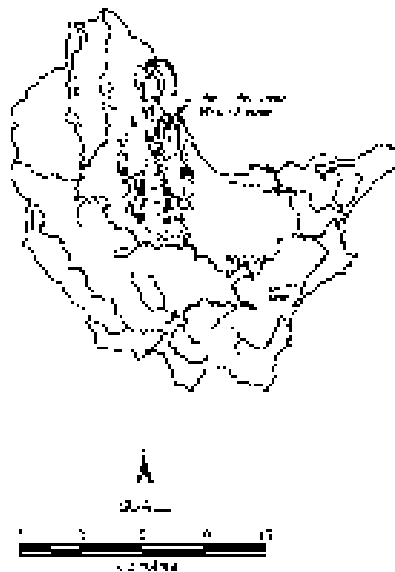
<p><b>Target 12</b> Measures in place in all water sources subject to a gazetted water sharing plan to protect domestic and stock rights from the impact of other water access and use</p>	<p>FULL</p>	<ul style="list-style-type: none"> <li>• Cease to pump level will protect flows for domestic and stock, and TDELS also 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>PARTIAL</p>	<ul style="list-style-type: none"> <li>• A workshop was held with members of the Local Aboriginal Land Council to input ideas into the development of this Plan.</li> <li>• 2 representatives of the Aboriginal community were on the committee that prepared this Plan.</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>HIGH</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 high level of environmental protection which should assist in protecting Aboriginal values.</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>• This Plan clarifies access licence share components and establishes daily extraction limits.</li> <li>• Part 11 of this Plan provides for trading of share components and IDELS.</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>FULL</p>	<ul style="list-style-type: none"> <li>• Part 11 of this Plan establishes an exchange rate of 1:1 for trading between water sources in the Tuggerah Lakes Extraction Management Unit.</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>• This Plan has no unassigned TDEL.</li> <li>• This Plan establishes management rules for future allocation.</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

HIGH

- This Plan includes a generalised water quality objective.
- This Plan does provide reasonably high level of environmental protection which should assist in protecting water quality.

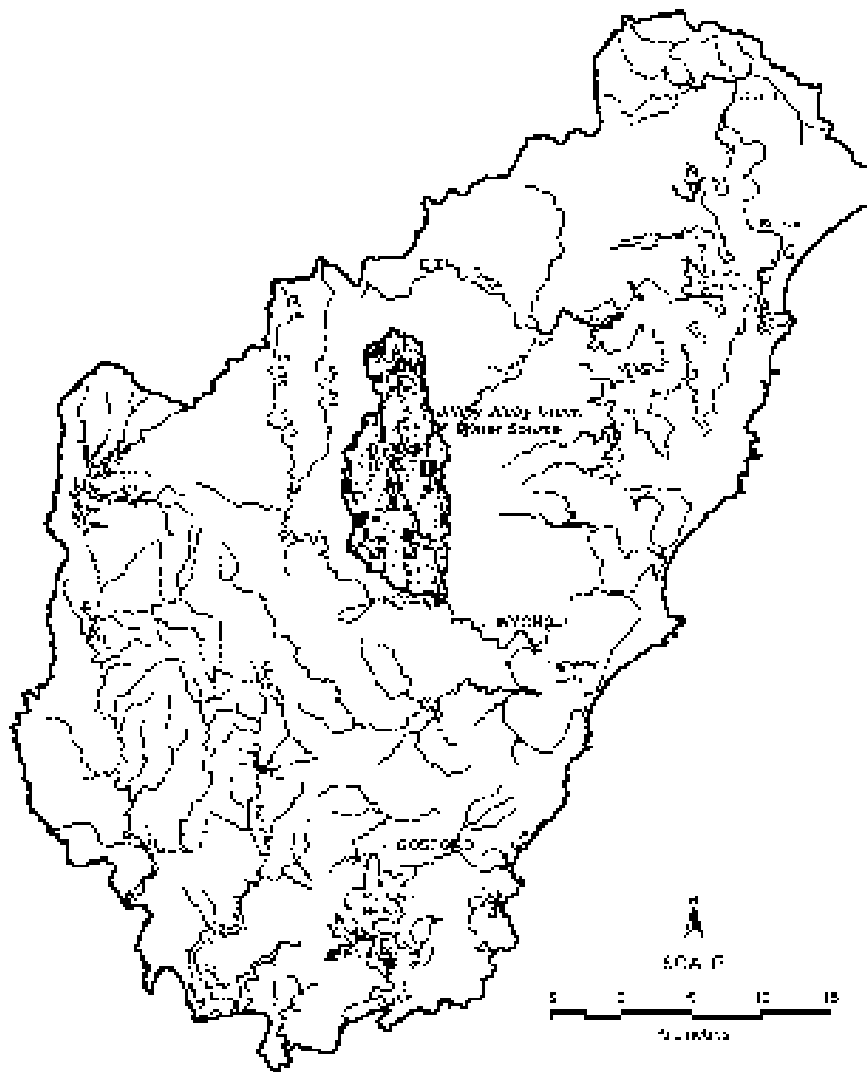
## Schedule 5 Tuggerah Lakes Extraction Management Unit



## Schedule 6 Access licences with very low flow access

(no licences identified at the time of making of this amending order)

## Appendix 1 Central Coast Water Management Area



## Appendix 2 Location of maps for public inspection

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

Regional Office  
Department of Land and Water Conservation  
Newcastle Office  
464 King Street  
NEWCASTLE NSW 2302

District Office  
Department of Land & Water Conservation  
40 Mann Street  
GOSFORD NSW 2205

## Appendix 3 Performance indicators

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

Performance indicator	Related objective	As measured by	Commentary
(a) Change in low flows.	11 (a) 11 (b) 11 (e)	<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 flow 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>

(b) Change in moderate to high flows.	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>• 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 flow 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>
(c) Change in local water utilities and major water utilities access (where those utilities are involved in urban water provision).	11 (j) 11 (k)	<ul style="list-style-type: none"> <li>• Change in safe yield (<b>safe yield</b> is the annual demand that can be supplied from the water supply headworks and is based on the period of records used and an acceptable level of restriction).</li> </ul>	<ul style="list-style-type: none"> <li>• Where safe yield has been determined, or where a hydrologic model can be developed, compare safe yield under the water sharing rules of this plan, and the rules that existed prior to its implementation.</li> <li>• Where there is no known safe yield, but the flow regime at the pump site is known, assessment will be limited to change in the number of days of access. Reporting will focus on an assessment of whether this change in access has led to increased levels of town water supply restrictions during the period of the plan.</li> </ul>



<p>(d) Change in ecological condition of this water source and dependent ecosystems.</p> <p>11 (d) 11 (g) 11 (l)</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 (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 (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 (h) 11 (l)</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 (h) 11 (l)</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)**