

## NSW Healthy Floodplains Review Committee terms of reference

*This document sets out the terms of reference for the operation of the Healthy Floodplains Review Committee.*

### NSW Floodplain Harvesting Policy

The NSW Floodplain Harvesting Policy was introduced in May 2013. The policy provides a framework for the management of floodplain water extractions through authorising extractions and providing security to eligible floodplain water users. The Policy also enables concerns to be addressed about unconstrained floodplain harvesting eroding the reliability of water supply to downstream water users. Furthermore, the policy enables NSW to meet its commitments and obligations under the *Water Management Act 2000*, the Murray–Darling Basin CAP and the National Water Initiative.

### Purpose of the Healthy Floodplains project

The Healthy Floodplains project is a NSW and Australian Government-funded project that will accelerate floodplain management and the implementation of the Floodplain Harvesting Policy in north-west NSW. The project will be implemented across the five northern valleys in the NSW section of the Murray–Darling Basin (MDB), where floodplain harvesting is most prevalent. The Healthy Floodplains project will roll out in the four regulated river valleys in northern NSW—Gwydir, Namoi, Border Rivers, Macquarie—and the unregulated Barwon–Darling River valley.

### Background

The NSW Floodplain Harvesting Policy provides for the institution of a review process to consider issues raised by floodplain harvesting registrants in respect of the following preliminary determinations made by the Healthy Floodplains project team:

- ineligibility of registrants to participate in the rollout of floodplain harvesting access licences
- proposed individual floodplain harvesting volumetric entitlements.

In August 2013, the following decision review process was established to give effect to the principles outlined in the NSW Floodplain Harvesting Policy:

- a) an internal review mechanism to separate those submissions that clearly have no merit from those that require independent analysis
- b) an independent review committee to examine those cases that require further analysis.

### Floodplain harvesting decision review process

The policy states that the review process will adhere to the following:

1. The process will be similar to the anomalies committees that operated in 2000 for the volumetric conversion of unregulated water licences.
2. Proceedings will be informal.
3. Registrants will have the opportunity to make both written and oral submissions.

4. When it issues notifications regarding the results of preliminary determinations, Department of Planning, Industry and Environment, is to inform registrants of the decision review arrangements, including the deadline for lodging review requests and any specific requirements regarding the content of submissions.
5. Submissions may only be made by registrants in respect of their own registrations.

## Functions of the Healthy Floodplains Review Committee

The functions of the committee will be to:

- analyse issues raised by floodplain harvesting registrants in respect of the preliminary determinations referred to above
- provide appropriate advice and make recommendations to the Director, Healthy Floodplains Project, Department of Planning, Industry and Environment—Water regarding resolution of such issues.

## Membership of the Healthy Floodplains Review Committee

The committee will consist of four members including a chair and three committee members. The composition of the committee is as follows:

- independent Chair
- member representing the irrigation industry
- member representing the agriculture industry in general
- member representing environmental groups

The current composition of the committee is detailed in Appendix A.

Membership to the committee will be through invitation from the Deputy Secretary, NSW Department of Planning, Industry and Environment—Water, who will accept responses to invitations and appoint members to the committee.

Appointed members will hold the position on the committee for a period of two years after which time members may either seek reappointment through their representative group or decline further appointment.

The committee will also have access to technical experts from relevant State Government agencies to provide information as required. The committee may also obtain independent advice from individuals or organisations that have specific and relevant local knowledge.

The committee meetings will be facilitated by the Department of Planning, Industry and Environment—Water, with the Healthy Floodplains Project Manager guiding the review committee. Department of Planning, Industry and Environment—Water will be providing executive support to the committee as required.

## Obligations of committee members

Committee member will be obliged to:

- maintain confidentiality
- work as a team cooperatively and inclusively
- participate and negotiate constructively to achieve consensus

- consider the existing budgetary and statutory limitations when developing advice and recommendations to Department of Planning, Industry and Environment—Water
- contribute skills, knowledge and expertise to the decision-making process
- have the authority to speak on behalf of the organisation they represent.

## Obligations of the Manager, Healthy Floodplains Licensing

The Manager, Healthy Floodplains Licensing will be obliged to:

- create and manage a cooperative working relationship to help the committee with its deliberations
- assist the committee towards consensus outcomes
- ensure that all committee members receive copies of the review documents in a timely manner
- ensure that, where required, technical experts are invited to provide information to inform the committee's discussions and decision making
- ensure that the committee follows the code of conduct outlined in the Operating Protocols
- use appropriate negotiation, facilitation and conflict resolution tools when appropriate
- maintain confidentiality
- advise Department of Planning, Industry and Environment—Water if the committee becomes ineffective or goes beyond operating protocols
- ensure committee decisions are recorded.

## Obligations of registrants and all technical experts

The registrants and technical experts will be obliged to:

- maintain confidentiality
- not participate in the decision-making process
- present information, answer any questions of clarification and participate in any discussion relating to information presented at the invitation of the facilitator or committee members.

## Frequency of meetings

The committee will meet on an 'as needed' basis throughout the delivery of the Healthy Floodplains project.

## Appendices

- Appendix A Current committee membership
- Appendix B Committee operating protocols
- Appendix C Code of conduct
- Appendix D Consensus decision-making guidelines
- Appendix E Review committee process overview

### Appendix A Current committee membership

The current composition of the committee is as follows:

- Chair—Conrad Bolton, Chair North West Local Lands Services
- NSW Irrigators Council—Mark Winter, Local Irrigator and landholder, Moree
- NSW Farmers Association—Tim Duddy, landholder from the Caroon area of the Liverpool Plains and Councillor
- Nature Conservation Council—Beverley Smiles, member of the Nature Conservation Council and landholder Mudgee.

### Appendix B Committee operating protocols

#### Alternates

If appointed members are unavailable, alternate members representing the various organisations may attend committee meetings. Alternate members must be approved by the Deputy Secretary, NSW Department of Planning, Industry and Environment—Water prior to attendance at committee meetings. Alternate members must have the same delegated authority from their representative organisations.

#### Decisions and recommendations

Decisions and recommendations should be through consensus and cooperative means. Every avenue should be explored to try and reach consensus.

However, in the event of consensus not being achieved, the Deputy Secretary, NSW Department of Planning, Industry and Environment—Water, will seek a majority recommendation, with the differences clearly highlighted and documented for consideration and determination by the Deputy Secretary, NSW Department of Planning, Industry and Environment—Water.

All members or their alternates must be present at committee meetings when advice and recommendations are reached.

#### Meetings

The location and starting time of the meetings will be set prior and members will be advised within a reasonable timeframe.

Additional meetings can be called if decisions are unable to be made during the meeting days provided.

### Records

Department of Planning, Industry and Environment—Water will be responsible for recording the committee's deliberations and recommendations. The department will communicate the review committee decisions to submitters on behalf of the chair via letter (process described in Appendix E).

### Independent assistance

From time to time the committee may require information or advice from an individual or organisation that has specific and relevant local knowledge. Such input should be arranged through the Manager, Healthy Floodplains Licensing.

### Executive support

Executive support will be provided by Department of Planning, Industry and Environment—Water. The committee will have access to relevant technical reports and information presented by technical experts at committee meetings.

Technical information requested by the committee from the NSW Government agencies must be provided within a reasonable timeframe.

## Appendix C Code of conduct

### Principles

Members of the committee must:

- ensure that the work of the committee is not compromised or affected by direct or indirect pecuniary or non-pecuniary interest
- ensure the confidentiality of information dealt with by the committee
- act in good faith for proper purposes without exceeding their powers
- be frank and honest in their official dealings with each other.

### Confidentiality

- All material dealt with by the committee shall be treated as confidential, unless otherwise determined by the committee. Any registrant or technical expert tabling a document may identify it as not being of a confidential nature.
- Information available to members must not be used to obtain any advantage, whether direct or indirect, for themselves or for any other person or body.
- Confidential information available to members is to be used only for the official purposes of the Healthy Floodplains Review Committee and must be used only in ways that are consistent with the obligations of members to act impartially, with integrity and in the public interest.
- Where confidential information is provided to a committee member, care must be taken to ensure that the information is kept secure, and that numbers of copies are kept to the minimum necessary. If such information is to be disposed of by a committee member, it must be destroyed.
- Members should avoid investments or business activities in relation to which they might reasonably be perceived to have access to confidential information which might give them an unfair or improper advantage over other persons.

### Improper or undue influence

Committee members must take care not to use their position on the committee to influence any other member on the committee for the purpose of obtaining any advantage for themselves, or any other person or body, whether that advantage is direct or indirect.

### Pecuniary Interests

For the purposes of this code, a pecuniary interest is defined as ‘an interest that a person has in a matter because of **reasonable likelihood or expectation of appreciable financial or other gain or loss to the person**, or another person or body with whom the person is associated’.

### Non-pecuniary interests

For the purposes of this code, a non-pecuniary interest is defined as ‘an interest that a person has in a matter that is **unlikely to result in a financial or other gain or loss** to the person, or another person or body within whom the person is associated’.

Committee members should declare their pecuniary and non-pecuniary interests by:

- completing a statutory declaration which would be kept by the Healthy Floodplains licensing manager
- declaring their interests at the beginning of each meeting.

### Conflicts of interest

If a member of the committee has an interest in a matter being considered or about to be considered at a meeting of the committee, and the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter, the following principles apply:

- The member shall, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest to the Chair and other committee members at the meeting.
- Any such disclosure will be recorded.
- Where a member discloses an interest relating to a matter under consideration by the committee that member may, with the agreement of the committee, contribute to the committee’s discussion of the matter.
- Where there is not agreement on the committee in relation to pecuniary and non-pecuniary interest the Chair can have two votes.
- Where a member discloses a pecuniary interest relating to a matter under consideration by the committee that member shall not participate in the final decision-making.
- Where a member discloses a non-pecuniary interest relating to a matter under consideration by the committee that member may, with the agreement of the committee, participate in the final decision making. In this case, the member must remain objective so that their interest does not bias or be seen to bias their decision making.

### Public resources

Financial, material and human resources are provided through the various government agencies in order that the committee is able to perform its functions.

All these resources should be used for the work of the committee only and be used effectively.

### Gifts, gratuities, hospitality

Members must avoid giving any indication those gifts, gratuities or hospitality relating to their membership of the committee will be accepted, either for them or for any other person or body, or that these may influence decisions.

### Notification of suspected corrupt conduct

Section 11 of the *Independent Commission Against Corruption (ICAC) Act 1988* requires that the principal officer of each public authority report to the commission any matter that is suspected, on reasonable grounds, to concern corrupt conduct.

In the case of members of the committee, any matter that is suspected, on reasonable grounds, to concern corrupt conduct should be reported to the Director, Healthy Floodplains Project, Department of Planning, Industry and Environment—Water.

A member may report suspected corrupt conduct to the principal officer as defined in the ICAC Act (that is the Secretary of each Department) or directly to the ICAC.

## Appendix D Consensus decision-making guidelines

### Definition of consensus

For the purposes of this committee, the definition of consensus is:

- ‘Where the committee is satisfied that an issue has been fully canvassed and that the action proposed is, at the least, acceptable to the committee and consistent with its objectives and targets’.

### Principles of consensus decision-making

- The process is flexible and adaptable to changing needs.
- Members have equal access to relevant information and the opportunity to participate effectively throughout the process.
- Members should be prepared to make decisions on matters where the supporting information is limited or may not be available.
- Members must be prepared to make a decision on behalf of their organisation.
- Members acknowledge and accept each other’s values, interest and knowledge.
- The process identifies timeframes which the decision-making process must be completed within.
- The process includes a commitment to implementation.
- The process allows trade-offs to be used as a means of reaching agreement.

### Consensus decision-making process

The committee may tailor its meeting procedure to support its consensus decision-making process.

Meeting procedures have not been outlined in these terms of reference as the committee’s task is quite focused and will not require normal meeting formalities. Instead, a process for decision making has been included which should guide the proceedings each time the committee convenes.



The process for decision making is briefly outlined as follows:

- Members are to discuss options.
- The chair seeks the views on each option to gauge the most acceptable option. From time to time the chair restates what has been agreed to so far, and what has still to be discussed. In this way the chair is leading the consensus decision-making process rather than the content of its decision-making. The chair is responsible for making sure that everyone who wants to express a view, idea or concern is heard.
- The chair calls for the option to be put as a decision.
- Committee members strive to reach consensus.
- The four levels of agreement available in the decision-making process are:
  - full agreement
  - agree with reservations (stated or not stated)
  - have concerns but will not block consensus
  - cannot agree.
- If one or more member/s strongly disagree/s with the option, the committee can choose one of several ways to resolve the issue:
  - changing the option or considering new options within the scope of the project
  - synthesising the ideas of all the members
  - “parking” an issue to deal with later
  - reviewing or setting a sunset date for a decision
  - making an adaptive or conditional decision
  - having a stepped or phased-in decision.
- Whatever method the committee uses, it must fully, creatively and rigorously explore options, ideas and ways of resolving opposition to the decision.

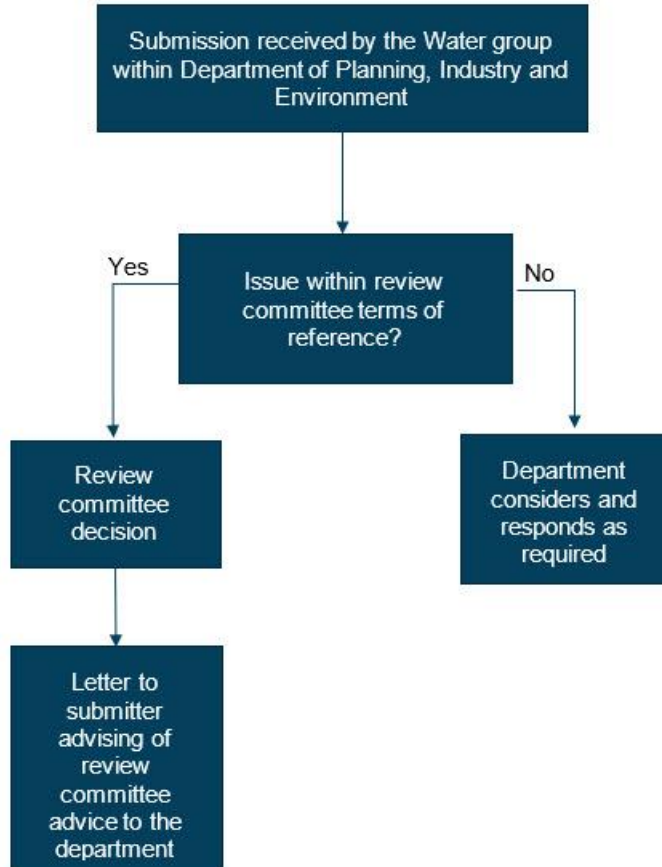
### Non-consensus decisions

If all avenues of the decision-making process have been exhausted and the committee is unable to reach consensus, a report will be prepared by each committee member that clearly presents their views, objections and implications; and their preferred position.

The reports will be forwarded to the Deputy Secretary, NSW Department of Planning, Industry and Environment—Water, who will make a decision on the matter. The committee will be advised of the decision, for their information.



### Appendix E Review committee process overview



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