

NSW Healthy Floodplains Review Committee

Terms of Reference

NSW Floodplain Harvesting Policy

The NSW Floodplain Harvesting Policy was first introduced in May 2013 and a revised version was published in 2018. The policy provides a framework for the transition of historically legitimate floodplain harvesting that is accounted for in NSW Water Sharing Plans into the licensing framework provided by the *Water Management Act 2000*. Its primary purpose is to protect the environment and downstream water users from the impacts of unconstrained floodplain harvesting. Furthermore, the policy enables NSW to meet its commitments and obligations under the [Water Management Act 2000](#), the [Cap on diversions](#) under the [Murray Darling Basin Agreement 1982 \(as amended\)](#), the [Basin Plan 2012](#) and the [National Water Initiative \(2004\)](#).

Purpose of Healthy Floodplains Project

The Healthy Floodplains Project (HFP) is a NSW and Australian Government funded project that is reforming the management of floodplains in the NSW northern Murray-Darling Basin through the development of floodplain management plans and the implementation of the NSW Floodplain Harvesting Policy. The project is being implemented across the five northern valleys¹ in the NSW section of the Murray-Darling Basin where floodplain harvesting is most prevalent.

Background

The NSW Floodplain Harvesting Policy provides for a review process to consider issues raised by landholders who have registered to participate in the rollout of floodplain harvesting access licences (registrants) in respect of the following preliminary determinations made by the HFP Team within the Department of Planning, Industry and Environment – Water (DPIE-Water)²:

- Ineligibility of registrants to participate in the rollout of floodplain harvesting access licences. and
- Proposed individual floodplain harvesting volumetric entitlements.

In August 2013, the following process to review decisions 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, and

¹ The affected valleys are the Border Rivers, Gwydir, Namoi, Barwon-Darling and Macquarie.

² Under the proposed amendments to the Water Management (General) Regulation 2018, final determinations are made by the Minister.

- b) An independent review committee to examine those submissions that require further analysis. Consequently the committee was formed and is called the Healthy Floodplains Review Committee.

Floodplain Harvesting Decision Review Process

The NSW Floodplain Harvesting Policy states that the processes followed by the committee will incorporate the following principles:

1. The committee 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 notifications are issued regarding preliminary determinations, DPIE-Water 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

- To analyse issues raised by floodplain harvesting registrants in respect of the preliminary determinations referred to above, namely:
 - Ineligibility of registrants to participate in the rollout of floodplain harvesting access licences; and
 - Proposed individual floodplain harvesting volumetric entitlements.
- Ensure that floodplain harvesting registrants receive procedural fairness through the consistent and equitable application of the NSW Floodplain Harvesting Policy and associated guidelines to their Registrations of Interest and associated submissions.
- To provide appropriate advice and make recommendations to the Director, Healthy Floodplains Project, DPIE-Water regarding resolution of issues raised by registrants, in accord with the NSW Floodplain Harvesting Policy and associated guidelines

Importantly the committee has been established specifically to facilitate the resolution of submissions made by registrants as outlined above. It is not a forum for policy making or policy review. For example, the NSW Floodplain Harvesting Policy prescribes a methodology for determining unregulated river floodplain harvesting entitlements. The committee's role is to ensure that that methodology has been implemented fairly and consistently for all floodplain harvesting registrants who are affected by this methodology. It is not the committee's role to advocate for changes to the methodology.

Membership of the Healthy Floodplains Review Committee

The committee will consist of four members comprising a chair and three committee members.

The composition of the committee is:

- Independent Chair with relevant natural resource management and agricultural expertise
- Member representing the irrigation industry (nominated by the NSW Irrigators Council)
- Member representing the agriculture industry in general (nominated by the NSW Farmers Association)
- Member representing environmental groups (nominated by the Nature Conservation Council of NSW)

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

Membership of the committee will be through invitation from the Deputy Secretary DPIE-Water, who will accept responses to invitations and appoint members to the committee.

Appointed members will hold office for a period of two years. If, at the conclusion of the appointment period, DPIE-Water determines that the committee is still required, nominations for appointment will be invited from the representative organisations. Retiring members will be eligible for reappointment. The Deputy Secretary DPIE-Water reserves the right to accept or decline any such nominations or to terminate appointments. Termination will only occur where there has been non-compliance with these Terms of Reference. The committee will also have access to technical experts from relevant State Government agencies to provide information as required. The committee may also request the department to obtain on their behalf independent advice from individuals or organisations that have specific and relevant local knowledge or technical expertise pertinent to floodplain harvesting. Any costs associated with obtaining this advice will be met by DPIE-Water.

DPIE-Water will provide executive support to the committee as required.

Obligations of Committee members:

- Maintain confidentiality.
- Work cooperatively and inclusively.
- Participate and negotiate constructively to achieve consensus.
- Fully prepare for meetings to ensure efficiency in decision-making.
- Consider advice from DPIE-Water concerning budgetary and statutory limitations when developing advice and recommendations.
- Contribute skills, knowledge and expertise to the decision-making process.
- Have the authority to speak on behalf of the group they represent.

Obligations of the Principal Project Officer, Floodplain Harvesting Licensing:

- Create and manage a cooperative working relationship to help the committee with its deliberations.

- Assist the Chair to ensure that the committee operates within these Terms of Reference.
- Assist the committee towards achieving consensus.
- Use best endeavours to ensure that committee members receive meeting papers no later than seven days before each scheduled meeting so that members have enough lead time to thoroughly prepare for the meeting.
- Assist the committee to ensure that all registrants are treated fairly through the consistent and equitable application of the NSW Floodplain Harvesting Policy and associated guidelines.
- Ensure that, where required, technical experts are invited to provide information to inform the committee's discussions and decision-making.
- Assist the Chair to ensure that the committee follows the code of conduct outlined in the Operating Protocols (Appendix B).
- Use appropriate negotiation, facilitation and conflict resolution tools where required.
- Maintain confidentiality.
- Advise the Deputy Secretary DPIE-Water if the committee becomes ineffective or goes beyond these Terms of Reference.
- Ensure the proceedings of committee meetings are minuted. This will include committee decisions and associated discussions. The minutes will be made available to the committee for review and amendment, if necessary, before they are formally adopted at a meeting of the committee.
- Prepare advice to the Deputy Secretary DPIE-Water regarding matters where the committee members have been unable to reach consensus.

Obligations of Registrants and all Technical Experts:

- 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 chair or committee members.

Frequency of Meetings

The committee will meet on an 'as needed' basis throughout the delivery of the Healthy Floodplains Project as determined by the Principal Project Officer Floodplain Harvesting Licensing in consultation with committee members.

List of Appendices

- Appendix A Current Committee Membership
- Appendix B Committee Operating Protocols
- Appendix C Code of Conduct
- Appendix D Consensus decision-making guidelines
- Appendix E Committee process overview
- Appendix F Committee Governance

Appendix A Current committee membership

The current membership of the committee is as follows:

- Independent Chair – Conrad Bolton³
- NSW Irrigators Council – Mark Winter, irrigator and landholder, Moree
- NSW Farmers Association –Xavier Martin, landholder Liverpool Plains, Alternate member Nick Savage, NSW Farmers Association official
- Nature Conservation Council – Beverley Smiles, landholder Mudgee.

In addition, Timothy Duddy has been appointed as a special adviser but does not have voting rights. Mr Duddy was a foundation member of the committee representing general agricultural interests. He is experienced in the review of registrant submissions and has been appointed as a special adviser in order to assist the committee in collaborative decision making.

³ Mr Bolton has been the chair of the committee since its inception. He was originally appointed by virtue of his position as chair of the Namoi Catchment Management Authority and subsequently as chair of North West Local Land Services (LLS). When he retired from the LLS DPIE-Water decided to retain Mr Bolton as committee chair to maintain consistency in decision making and to retain his depth of experience in natural resource management and agriculture.

Appendix B Committee operating protocols

Alternates

If appointed members are unavailable, alternate members nominated by their respective organisations may attend committee meetings. Alternate members must be approved by the Deputy Secretary DPIE-Water prior to attendance at committee meetings and must comply with the provisions of these Terms of Reference in execution of their duties as an alternate committee member. Alternate members must have the same delegated authority from their representative organisations as does the appointed member.

Where the alternate replaces the appointed member at a meeting, the alternate must be prepared to make all necessary decisions at that meeting in accord with their delegated authority from the representative organisation. Except with the prior approval of the Principal Project Officer, Floodplain Harvesting Licensing, appointed and alternate members should not be present together at the same meeting of the committee. Where approval has been granted for such dual attendance, only the appointed member has voting rights.

Decisions and Recommendations

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

In the event of consensus not being achieved, the Deputy Secretary DPIE-Water, will seek a majority recommendation, with the differences clearly highlighted and documented by the secretariat⁴ for consideration and determination by the Deputy Secretary DPIE-Water.

The foundation of decisions made by individual members should always be to ensure that DPIE-Water has consistently and fairly applied the provisions of the NSW Floodplain Harvesting Policy and associated guidelines. It is not acceptable for members to make decisions based on their own or their nominating organisation's disagreement with Government policy.

All members or their alternates must be present⁵ at committee meetings when advice is provided, and recommendations made.

Meetings

Preferably the date, location and starting time will be set during the prior meeting, however, it is recognised that this will not always be possible and inevitably the arrangements for some meetings will need to be made out of session. Where the arrangements are decided out of session, members will receive a minimum of one week's notice concerning the details of the next meeting.

Additional meetings can be called, if decisions are unable to be made during the allotted meeting time. The committee is able to call its own meetings where required but only after consultation with and the agreement of the Principal Project Officer Floodplain Harvesting Licensing.

Records

The secretariat will be responsible for minuting the committee's deliberations and recommendations and will communicate the review committee decisions to registrants on behalf of the chair via letter (process described in appendix E).

⁴ The secretariat is comprised in the DPIE-Water Healthy Floodplains Licensing Team.

⁵ In these ToR a reference to members attending or being present at meetings includes both actual or virtual attendance or presence, as many meetings are held virtually.

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 or pertinent technical expertise. Such input should be arranged through the Principal Project Officer, Floodplain Harvesting Licensing.

Executive support

Executive support will be provided by the secretariat. 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 functions as prescribed on page 2 of these Terms of Reference.
- Be frank and honest in their official dealings with each other.

Confidentiality

- All material dealt with by the committee must be treated as confidential unless it is on the public record. 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 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.
- All appointed and alternate members must have a current Confidentiality Deed Poll in place prior to attendance at meetings or reviewing documentation relevant to the operations of the committee.

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 and Non-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”.

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 must declare their pecuniary and non-pecuniary interests by:

- completing a statutory declaration which is kept by the Principal Project Officer, Floodplain Harvesting Licensing; and
- declaring their interests at the beginning of each meeting.
- 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 member must, 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 there is not agreement on the committee in relation to pecuniary and non-pecuniary interest, the Chair can have 2 votes.
 - Where a member discloses a pecuniary interest relating to a matter under consideration by the committee, that member must 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 other members 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 DPIE-Water so that the committee can perform its functions.

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

Gifts, gratuities, hospitality

Members must avoid giving any indication that 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

Members of the committee must report any corrupt conduct, or any matter that is suspected, on reasonable grounds, to concern corrupt conduct to the Director, Healthy Floodplains Project Delivery, DPIE-Water.

Members of the committee may also make a complaint about any such conduct or matters directly to the Independent Commission Against Corruption.

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 throughout the process.
- Members should be prepared to make decisions on matters where the supporting information is limited or unavailable.
- Members must be prepared to make decisions 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.

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 procedures. 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 below.

- Members are to discuss options for each submission.
- 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 which must be stated,
 - have concerns but will not block consensus,
 - cannot agree.
- If one or more members strongly disagrees with the option, the committee can choose one of several ways to seek resolution of the issue:

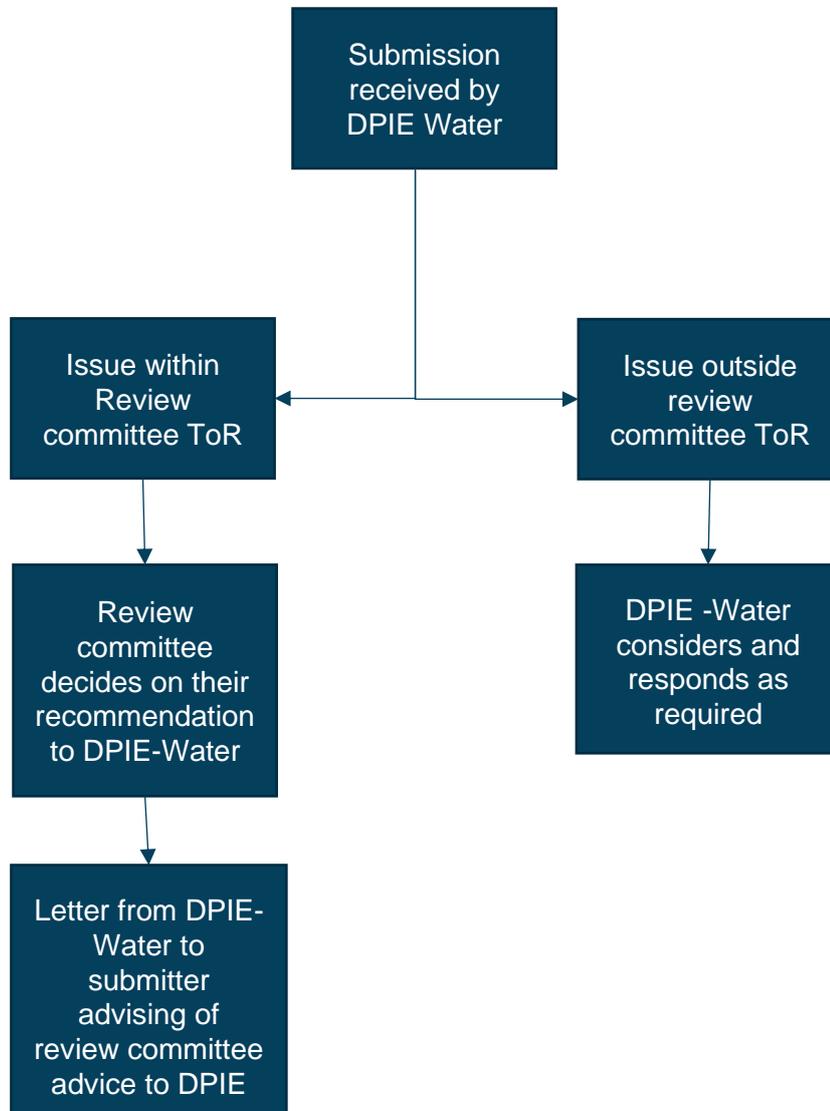
- changing the option or considering new options within the scope of the project,
 - synthesising the ideas of all the members,
 - requesting DPIE-Water to provide additional information or to obtain additional expert advice. In this situation the committee must set a sunset date for making a decision. If a decision cannot be made within the agreed timeframe the matter becomes non-consensus and is dealt with accordingly. See the non-consensus decisions process below.
- 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 which clearly presents their views, objections and implications, and their preferred position.

The reports will be forwarded by the secretariat to the Deputy Secretary DPIE-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



Appendix F – Healthy Floodplains Review Committee Governance

Terms of Reference (ToR)

These ToR have been developed specifically for the committee and have been revised for the current term of office. It is incumbent upon all members to act in accordance with the ToR.

Role of the committee

The committee has been established to provide an appeals mechanism for registrants who are dissatisfied with the department's preliminary determinations of:

- Floodplain harvesting eligibility,
- The volumes of proposed entitlements.

The committee will meet⁶ to consider submissions from registrants in relation to these matters. The foundation for all decisions should be an analysis of the application of the NSW Floodplain Harvesting Policy and associated guidelines to ensure that they have been consistently and fairly applied, and that as a consequence the person making the submission has been the beneficiary of procedural fairness. The committee is not a policy making or policy review body.

Confidentiality

Please refer to Appendix C - Code of Conduct in these ToR concerning confidentiality requirements. If in doubt please seek advice from the Principal Project Officer, Floodplain Harvesting Licensing.

Preparation for meetings

DPIE-Water will provide background material to the committee prior to each meeting (see department's responsibilities below). It is expected that committee members will familiarise themselves with this material prior to the relevant meeting and ensure a level of preparation that allows for efficient decision-making.

Conduct of meetings

Members should attend meetings fully apprised of all matters on the agenda. Members should be prepared to make the decisions required by the agenda, albeit that they will be able to seek advice and further information from the department's specialist staff and advisers. All decisions should be made in accordance with the requirements of these ToR and the NSW Floodplain Harvesting Policy and associated guidelines. It is not acceptable for members to make decisions based on their own or their nominating organisation's disagreement with Government policy. For example the NSW Floodplain Harvesting Policy prescribes a methodology for determining unregulated river floodplain harvesting entitlements. The committee's role is to ensure that that methodology has been implemented fairly and consistently for all floodplain harvesting registrants who are affected by this methodology. It is not the committee's role to advocate for changes to that methodology.

Committee decisions

The committee operates by consensus. Where consensus has been reached, the committee makes recommendations to DPIE-Water for resolution of the issues. Notwithstanding that the final

⁶ The meeting may be virtual or actual.

decisions rest with DPIE-Water, the affected floodplain harvesting registrants will be notified of the committee's recommendations as soon as possible after the meeting at which the decisions were made. If the committee cannot achieve consensus on an issue, the matter must be referred to the Deputy Secretary DPIE-Water for determination.

Communications

Communications to and from DPIE-Water (such as emails) concerning matters before the committee should be shared between all members. Knowledge and information shared in this way will facilitate collaborative decision making.

Responsibilities of the Healthy Floodplains Project Team

Organisation of meetings

Make all necessary arrangements for meetings including:

- Secure suitable venues for meetings, virtual or actual depending on the circumstances.
- Ensure that audio visual and other equipment necessary for the smooth running of meetings is fit for purpose.
- Arrange catering and accommodation for meeting attendees.
- Arrange for the attendance of specialist advisers as required.
- Process claims for payment submitted by committee members.

Meeting agenda and papers

Ensure that the meeting agenda and all necessary background material is circulated to members before meetings and with enough lead time to allow members to thoroughly prepare for the meeting. This material must be provided to the committee at least one week prior to each meeting.

Minutes

Minute the proceedings of each meeting. The draft minutes of the previous meeting should be sent to members along with papers for the next meeting. This should allow sufficient time for review and amendment, if necessary, at the next meeting.

Coordination

The Healthy Floodplains Project (HFP) Team will endeavour to ensure that the committee is supplied with all the information that it needs to analyse and assess landholder submissions placed before it. This will include the submission and supporting evidence provided by the landholder, and the department's analysis of the submission. The department's analysis will have input from the Licensing and Approvals Team, the Modelling Team, the Data Analytics Team and the Licensing Team, depending on the nature of the submission. The department's analysis of modelling submissions will be independently reviewed by the consulting firm Alluvium Australia Pty Ltd for its technical merit before being passed on to the review committee.

Procurement of specialist advice

From time to time the committee may need information or assistance from subject matter experts to facilitate collaborative decision making. The HFP Team will endeavour to obtain such information or assistance.

Responsibilities of other DPIE-W teams that assist the Healthy Floodplains Review Committee

Water Legal

The legal team does not have a lawyer-client relationship with the committee. However, it is able to provide advice to DPIE-Water staff seeking advice on behalf of the committee.

Any requests for legal advice required by the committee should be directed through the Principal Project Officer, Floodplain Harvesting Licensing.

The legal team is not available to attend committee meetings.

Licensing and Approvals Team

This team will provide a documented analysis and recommendation concerning each submission made by floodplain harvesting registrants in relation to works. A representative of the team will also attend meetings to provide expert technical advice and explanatory information.

Modelling Team

This team will provide a documented analysis and recommendation concerning each submission made by floodplain harvesting registrants in relation to modelling. A representative of the team will also attend meetings to provide expert technical advice. As modelling is a highly specialised field and at the request of the committee, the department has arranged for submission analysis and recommendations to be overseen by Alluvium Australia Pty Ltd. The purpose of this external review is to provide the committee with comfort that the department's analysis has been fair, consistent and has used the best available information. Alluvium's representative will be available to the committee to discuss the department's analyses.

Water Analytics Team

The primary role of this team will be to provide remote sensing advice concerning cropping areas associated with unregulated and groundwater only registrations of interest. However, there may be other matters with which this team will be able to assist the committee. This will be done on a case by case basis and will be conducted through the Licensing Team.

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