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## Water sharing plans in coastal NSW



**Information for Aboriginal communities:** *The NSW Government aims to sustainably manage water for the benefit of present and future generations. This includes managing water for communities, industries, the environment and Aboriginal peoples. This fact sheet explains water management in NSW, including rights relating to water and water licences available to Aboriginal communities.*

### Overview

Water sharing plans are legal documents made under the NSW *Water Management Act 2000*. They are the primary tools for defining water sharing arrangements in NSW and:

- how much water users can take out of the river or ground without impacting a healthy environment (place sustainable limits on extraction)
- define rights to water without a licence, including native title rights, basic landholder rights and harvestable rights
- define rules for when licence holders can take water out of the river or ground.

Uses such as town water supply, domestic supply, stock watering, industry, irrigation, Aboriginal cultural access and Aboriginal community development require licences.

Licence holders must adhere to the rules in the water sharing plan. Rules that define when users can take water from a river or from the ground are called ‘access rules’. Access rules for licence holders cover:

- when people must stop taking any water for commercial purposes (cease to pump)
- when people should reduce the amount they take
- where new bores and replacement bores can be located
- rules for water trading (dealings).

Each water sharing plan operates for 10 years. Water sharing plans can be either an individual plan covering a specific river or groundwater system, or a plan that covers a number of rivers or groundwater systems.

By setting the rules for how to allocate water for a 10-year period, a water sharing plan provides a decade of certainty for the

environment and water users. This ensures that the environment receives water through a legally binding plan and allows licence holders to better plan their business activities.

In addition, water sharing plans set rules for buying and selling water licences and water allocations. An allocation is the amount of water a water licence holder can extract or sell subject to account management rules.

Water sharing plans include Aboriginal cultural objectives to maintain the spiritual, social, customary and economic uses of water and groundwater by Aboriginal people. These plans also define strategies for reaching the Aboriginal cultural objectives of the plan and performance indicators to measure the success and effectiveness of the strategies.

Aboriginal people have opportunities to use water for cultural activities and business through licences for Aboriginal cultural access and Aboriginal community development (discussed later in this document). Aboriginal people can also provide input into determining how much water should remain in the river or groundwater system.

## Unregulated rivers

An unregulated river is a river that typically has no large in-stream dam to control the flow of water.

In most unregulated rivers, the greatest concern for the health of the river is during drier periods when flows are naturally low. This is when pools become shallow, water quality is poor, algal blooms occur, the oxygen level in the water declines, and fish and other water life compete for less food.

Water sharing plans for unregulated rivers therefore require licence holders to stop pumping when the river flow falls below a certain level. In addition, many of the plans set limits on how much water users can take from different types of flow.

## Groundwater sources

Aquifers are underground water sources where the water is contained in rocks and soil. These are protected in NSW under groundwater water sharing plans.

Groundwater water sharing plans provide water for the environment by:

- protecting the long-term storage component of the aquifer
- reserving a proportion of the average annual recharge for the environment
- protecting groundwater-dependent ecosystems (GDEs), such as springs, from groundwater extraction through distance limits to keep extracting points away from GDEs.

In addition, the Water Management Act allows the government to establish local restrictions on pumping at certain times if the water level falls below a specified level or if water quality declines.

## Regulated rivers

A regulated river is a river in which the flow of water is regulated by artificial structures such as dams, weirs, off-takes and storages. Not all rivers with structures are regulated rivers. The responsible minister must declare a regulated river.

In coastal NSW, regulated rivers include parts of the:

- Richmond River
- Paterson River
- Hunter River
- Bega and Brogo rivers.

Water in regulated rivers is managed by releasing water from storages for particular purposes such as in response to an order for water from a licence holder or for an environmental, social or cultural purpose.

## Consultation with Aboriginal people on water sharing

We develop water sharing plans through a public consultation process. This consultation includes public exhibition that involves meetings and distribution of information on the draft plans for comment.

Engagement with Aboriginal people has evolved over time. Initial engagement was through river/groundwater management committees that included a range of representative stakeholders within a catchment. This included Aboriginal representation. This consultation was technically complex and had short timeframes.

Consultation processes progressed to run alongside the planning process, allowing for longer engagement and building greater awareness of opportunities. This approach involved an Aboriginal team working with Traditional Owners, local Aboriginal land councils and communities to identify water-dependent values and uses and to improve education around water licensing and planning.

In inland NSW, the government has most recently adopted a Nation-by-Nation approach to consultation as part of the water resource planning process. This work focused on identifying objectives and outcomes that Aboriginal people were seeking concerning water management.

## Water sharing provisions for Aboriginal communities

### Native title rights

Native title recognises that Aboriginal and Torres Strait Islanders have rights and interests to lands and waters according to their traditional law and customs. The Australian Government's *Native Title Act 1993* governs native title and establishes the

process for claiming and recognising native title lands and waters in Australia.

Anyone who holds native title with respect to water, as determined under the Native Title Act, and listed in their determination, can take and use water for personal, domestic and non-commercial communal purposes, such as manufacturing traditional artefacts, hunting, fishing, recreation, cultural and ceremonial purposes.

The Water Management Act recognises the cultural and spiritual importance of water to Aboriginal people in NSW. Under Section 55 of the Act, a native title holder can take and use water to exercise native title rights without needing an access licence, water supply work approval or water use approval. However, native title holders cannot construct dams or bores without approval.

### Aboriginal cultural water access licences

Water sharing plans recognise Aboriginal cultural values within water sources and make special provision for Aboriginal people and communities to access water for cultural purposes.

Aboriginal cultural water access licences may be granted to an Aboriginal person or community to provide up to 10 megalitres per year for drinking, food preparation, washing and watering domestic gardens. The water can also serve Aboriginal cultural uses, such as manufacturing traditional artefacts, hunting, fishing, gathering, recreation and ceremonial purposes, as long as the uses are not associated with commercial activities.

Aboriginal cultural licences are available in all rivers, streams, lakes and underground water. As with all water access licences, the licence holder must meet certain conditions to be eligible to apply.

The main conditions are:

- Applicants need to be of Aboriginal descent.
- The application needs to clearly define the cultural purpose (seasonal water for a wetland, water to fill a billabong or the like), requires the endorsement of the relevant Traditional Owners or a relevant nominee and, where necessary, needs the support of the local Aboriginal land council.
- There is a time limit – once the purpose no longer exists, the licence can be cancelled.
- Applicants cannot trade or sell the licence to someone else or put it in someone else's name.
- Applicants cannot use the water for financial gain, such as growing crops or vegetables to sell at local markets.
- The maximum volume of water available is 10 megalitres per application (a megalitre equals 1,000,000 litres).

### Aboriginal community development water access licences

The NSW Government is committed to providing Aboriginal people with opportunities to become involved in water-related businesses and can grant water extraction licences specifically for Aboriginal commercial activities in certain situations. Such situations must recognise the need to protect our rivers and aquifers from increased extraction.

Aboriginal community development water access licences are available in some water sources in coastal water sharing plans.

These licences and the water they access must benefit the community in a way that fosters economic and social development.

Aboriginal community development licences can be used for commercial enterprises that Aboriginal people own and could include:

- irrigated cropping, such as maize
- horticulture, such as fruit, vegetables, flowers or ornamental plants
- irrigated pasture, such as lucerne for a dairy farm
- aquaculture, such as oyster growing or prawn farms
- non-agricultural activities, such as manufacturing or craft.

Unlike most other categories of specific-purpose licences, Aboriginal community development licences are tradeable, but only in limited circumstances. They have similar conditions to the Aboriginal cultural water access licence, except that:

- they are available only to those in water sharing plan areas on the coast and in some aquifer systems
- they are for commercial purposes, such as irrigating a crop or running a nursery
- they are subject to an assessment process
- the amount of water available (volume) is limited for each water source
- in unregulated systems, they are available only in high flows and where water use does not impact the environment
- there is a maximum limit of 500 megalitres in any given water source
- there is no individual limit of 10 megalitres per licence
- they are tradeable in certain limited circumstances.

### Plan review

Water sharing plans are valid for 10 years from their starting date. Near the end of the 10-year term, the independent Natural Resources Commission formally reviews the plan to identify the necessary changes to deliver better outcomes for all water users, including the environment.

Under the Water Management Act, the minister may, on recommendation from the Natural Resources Commission, extend a water sharing plan for another 10 years without change or replace the plan.

### Upcoming coastal plan replacements

There are a number of coastal plans where consultation will occur in 2021 and 2022. These include water sharing plans for surface water and groundwater covering:

- the Hunter
- lower North Coast
- Coffs Harbour
- Richmond
- Tweed
- Towamba
- Bega/Brogo
- Murrumbidgee
- Greater Sydney.

There are 21 more coastal water sharing plans due for review before 2029.

### Non-English speakers



If English is not your first language, please call the federal government's Translation and Interpreting Service on 131 450.

Ask for an interpreter in your language and then ask to be connected to our Information Centre on 1300 305 695.



**Figure 1. Royal National Park, Dharawal Country, Bundeena NSW. Photo taken by Lisa Sturis (DPIE).**

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