

NSW Government Response

Inquiry into Floodplain Harvesting

Introduction

The NSW Government recognises the critical need to manage water take sustainably, to protect the environment and to maximise social and economic outcomes for the people of NSW and the Murray-Darling Basin, consistent with the requirements of the *Water Management Act 2000* (NSW) and the *Water Act 2007* (Cth). Floodplain harvesting is the last major form of water take in NSW to be licensed and measured. Bringing floodplain harvesting into the licensing framework so that it can be managed within established legal limits for extraction has been the objective of successive NSW Governments since 2000. We remain committed to achieving this objective through implementation of the NSW Floodplain Harvesting Policy.

The NSW Government welcomes the report of the Select Committee on Floodplain Harvesting and thanks the Select Committee for its time and diligence in conducting the inquiry. This response addresses how the NSW Government is working towards addressing the recommendations of the Select Committee's final report, which was tabled on 15 December 2021.

The NSW Government refers to its submission to the Select Committee inquiry (**Attachment A**). Our submission highlighted the following benefits of implementing the NSW Floodplain Harvesting Policy, which require retention of amendments to the *Water Management (General) Regulation 2018*. These benefits include:

- Obligations on relevant landholders to install accurate, reliable, and tamper-proof measurement equipment on all on-farm water storages used for floodplain harvesting, providing data on water take in near real-time.
- Licences and water sharing rules that reduce floodplain harvesting across the northern Basin. For example, modelling indicates a more than 30% decrease in floodplain harvesting in the Gwydir valley.
- Licences and water sharing rules that deliver significant environmental benefits. For example, we expect an approximately 140% improvement in some of the water requirements for waterbirds in the Ramsar listed Gwydir Wetlands.
- That supplementary water allocations won't need to be reduced to compensate for floodplain harvesting. A 50% reduction in allocations for supplementary access licences in the Gwydir is currently required, to ensure total diversions comply with the legal limits for the water source.

Floodplain harvesting reform is vital

Unconstrained floodplain harvesting harms the environment and negatively affects communities and water users downstream, particularly within valley. The recommendations of the inquiry and most stakeholders argue that enforceable controls, including accurate measurement of floodplain harvesting, are essential and immediate needs. Regulating floodplain harvesting through licensing and enforceable measurement requirements is the only means by which these controls can be achieved.

In the past 8 years, over \$17 million has been invested by the Australian and NSW Governments on research, modelling and consultation to develop and implement the NSW Floodplain Harvesting Policy. Implementation of this policy will enable the control and measurement of

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floodplain harvesting to ensure the legal limits on water take, set under statutory NSW water sharing plans and the Murray-Darling Basin Plan (Basin Plan), will be achieved.

Delays to policy implementation, including the issuing of floodplain harvesting licences, risk the ongoing growth in floodplain harvesting and failure in fulfilling the requirements of the *Water Management Act 2000* and the Basin Plan. The primary beneficiaries of delays are those landholders practicing floodplain harvesting that would otherwise have their take restricted by constraints imposed through the new licensing scheme.

The [Water Management \(General\) Amendment Regulation 2021](#)¹ published on 17 December 2021, provided the legislative basis for continued implementation of the NSW Floodplain Harvesting Policy.

The proposed licensing framework is adaptable, allowing changes to licence allocations to be made in response to improved data and information, without triggering the compensation provisions under the *NSW Water Management Act 2000*.

Reforms will generate environmental and downstream improvements

It is estimated that implementation of the NSW Floodplain Harvesting Policy will lead to a more than 25% reduction in current floodplain harvesting across the northern Basin, estimated to return in the order of 100 gigalitres per year on average to floodplains, rivers and creeks. Proposed reductions in floodplain harvesting are expected to result in significant local environmental improvements. In the Gwydir valley, for example, current modelling shows an approximately 140% improvement in some environmental water requirements for waterbirds in iconic Ramsar listed wetland sites.

To further improve management of floodplain harvesting and other water take, the NSW Government is committed to protecting ‘first flush flows’ from extraction following extended dry periods. This is key to ensuring critical human and environmental needs downstream are met first before licensed water take can occur. Restrictions to upstream licences including floodplain harvesting will be initially implemented (when and if required) through temporary water restrictions under section 324 of the *Water Management Act 2000*.

The development of the Western Regional Water Strategy, including complementary work towards the remake of the Water Sharing Plan for the Barwon-Darling Unregulated River Water Source 2012, will be progressed during 2022/23. These processes will contribute to enduring solutions to protect ‘first flush flows’, including the proposal to embed ‘first flush’ protections into NSW water sharing plans.

Options to protect flows from extraction at other important times are also being considered as part of the draft Western Regional Water Strategy which goes on public exhibition in the second quarter of 2022.

Accelerated compliance on unapproved flood works will strengthen reforms

The \$11.3 million [Improving Floodplain Connections](#)² program has commenced and will provide an accelerated compliance regime for unapproved flood works in high priority areas in the northern Basin through to 30 June 2024. The objective of this program is to bring high priority unapproved flood works in the northern Basin into line with the requirements of the statutory floodplain management plans, through either modification or removal of unapproved flood works.

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This program is expected to result in significant social, cultural and environmental improvements across the northern Basin, particularly on the floodplains.

Some works such as dams, embankments and channels, that are intended to be used for floodplain harvesting require both a flood work approval and a water supply work approval. The Department of Planning and Environment (the department) will not include unapproved flood works on water supply work approvals for floodplain harvesting until such time as a flood work approval is obtained. This means that unapproved flood works will not be authorised to take water under a floodplain harvesting licence.

Reforms are underpinned by robust modelling

The NSW Government is committed to ensuring the technical information used to support water management decisions is robust, fully transparent and open to external peer review and public scrutiny. Eminent independent experts have been involved in the modelling for floodplain harvesting, and their views are incorporated into the models adopted for licensing.

The independent peer review process is described on the [department's website](#).³

Models used for Basin Plan purposes are subject to additional review by the Murray-Darling Basin Authority (MDBA). It is expected that these models will be formally adopted by the MDBA prior to the licensing framework commencing in each valley, with the assessment outcomes published for transparency. Additionally, reductions to future water allocations as a result of revised and accepted 'Cap' or 'Baseline Diversion Limit' models, is already permitted by existing water sharing plans.

The NSW Government is continuing to engage independent experts to review our work on climate change projections and impact analysis. This [climate data and modelling work](#)⁴ is being driven through the development and implementation of regional water strategies, and this data and information will be considered and, where appropriate, incorporated into water sharing plan reviews as they fall due.

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Recommendations

The following section details the NSW Government's responses to individual recommendations within the inquiry report.

Recommendation 1 – Supported

THAT THE NSW GOVERNMENT CONDUCT A THOROUGH REVIEW OF LOW AND CEASE-TO-FLOW DATA, AS WELL AS AN ASSESSMENT OF DOWNSTREAM ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL IMPACTS AND NEEDS PRIOR TO FINALISING THE VOLUME OF FLOODPLAIN HARVESTING ENTITLEMENTS IN EACH VALLEY IDENTIFIED IN THE NSW FLOODPLAIN HARVESTING POLICY, AND THIS INCLUDES DETAILED LOCATIONS OF ANY PROPOSED NEW RIVER GAUGES AND REAL TIME MONITORING INFRASTRUCTURE.

The NSW Government is addressing the core elements of this recommendation in several ways.

The objects of the *Water Management Act 2000* are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations, including by applying the principles of ecologically sustainable development. The bulk access regimes established by water sharing plans must be consistent with the water management principles. Under those principles, sharing of water from a water source must protect the water source and its dependent ecosystems and the social and economic benefits to the community should be maximised.

The Australian Government assessed downstream economic, social, cultural and environmental impacts and needs as part of the development of the Basin Plan and the setting of sustainable diversion limits (SDLs). The NSW Government, like all other basin states, is implementing the results of that assessment through the development of water resource plans that comply with those SDLs, and in NSW, these are reflected through the legal extraction limits in water sharing plans that are in place

For the Barwon Darling, the NSW Government is also addressing [the 2019 Natural Resources Commission \(NRC\) review recommendations](#)⁵, the first stage of which is implementing actions to better manage environmental water and the health of fish populations. In 2020, actions were addressed through amendments to the *Water Sharing Plan for the Barwon-Darling Unregulated River Water Source 2012* through:

- the protection of the first flows after an extended dry period;
- the active management of held environmental water;
- introducing daily announcement of flow classes and updated licence conditions;
- introducing individual daily extraction components; and
- changing flow class thresholds for A class entitlements and removing access to imminent flows.

In Stage 2, options for amending the Menindee Lakes Water Savings Project and improving Aboriginal outcomes are being explored, including preparing an Aboriginal water strategy. The

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remake of the Barwon-Darling water sharing plan, will be informed by evidence gathered from an effective monitoring, evaluation and reporting framework to understand how the changes in Stage 1 and 2 are improving environmental, social and cultural outcomes in the Barwon-Darling. This work will provide a better understanding of how the rivers and valleys in the northern NSW Basin are connected.

The NSW Government has also been reviewing and consulting on low flow and cease to flow data to address connectivity requirements as part of the development of the draft Western Regional Water Strategy. A significant amount of this analysis has already been completed, discussed with targeted stakeholders and [published](#).⁶ Through this process, the NSW Government is proposing to establish triggers for restricting access across the northern Basin (including floodplain harvesting) to ensure critical human and environmental needs downstream are prioritised during and immediately following dry periods.

To improve confidence in the NSW Government's programme to licence and meter floodplain harvesting, the government is proposing to include a new rule in water sharing plans that would restrict floodplain harvesting access when there is less than 195GL being stored in Menindee Lakes, until local in-valley targets are forecast to be met.

It is important that controls on (including measurement of) floodplain harvesting proceed immediately. These controls will allow the NSW Government to measure floodplain harvesting take, monitor its impacts and equitably enforce the legal extraction limits. The proposed licensing framework is adaptable, allowing changes to licence allocations and water sharing plan rules to be made in response to improved data and information, without triggering the compensation provisions under the *Water Management Act 2000*.

The NSW Government has recently completed a [review of the state's hydrometric network](#)⁷ and [published a hydrometric improvement plan](#),⁸ which includes a map of top ranked sites in the northern Basin for installation or upgrade. Further, the NSW metering and measurement reforms will account for 95% of potential total water take, including floodplain harvesting, and include real-time capability for large water users, providing more accurate and timely information on water take in NSW.

Recommendation 2 - Supported

THAT THE NSW GOVERNMENT URGENTLY PRIORITISE REGULAR AND GENUINE INVOLVEMENT OF FIRST NATIONS PEOPLES IN THE MANAGEMENT OF FLOODPLAIN HARVESTING, INCLUDING CULTURAL FLOWS.

The NSW Government is committed to improving the way it engages with First Nations peoples, to provide for their involvement in the planning and management of water resources across the State.

The NSW Government has specifically committed to increasing access to and ownership of water for cultural and economic purposes and strengthening First Nations/Aboriginal People's involvement in water planning and management through the [NSW Water Strategy](#).⁹ Delivery on this commitment has commenced through establishment of an Aboriginal Water Program within the department and development of the NSW Aboriginal Water Strategy.

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Specifically, in relation to floodplain harvesting, the department has had a program of consultation with First Nations peoples delivered through culturally-appropriate methods. This consultation program is currently being documented in a Cultural Considerations Report for Floodplain Harvesting, which is due for release in mid-2022. This report will include outcomes of consultation in the NSW Border Rivers and Gwydir valleys. Outcomes from other valleys will be incorporated as that consultation is finalised.

Recommendation 3 - Supported

THAT THE NSW GOVERNMENT'S MODELLING OF FLOODPLAIN HARVESTING VOLUMES USE THE BEST AVAILABLE PROJECTIONS TO EVALUATE THE IMPACT OF CLIMATE CHANGE ON ENTITLEMENT RELIABILITY, DOWNSTREAM OUTCOMES AND ENVIRONMENTAL IMPACTS.

To bring water take for each valley to within existing legal limits (which reflect more than 100 years of historic climate data), enforceable controls on floodplain harvesting take and volumes must commence immediately.

The proposed floodplain harvesting rules are underpinned by robust, independently-reviewed modelling. Licensing floodplain harvesting will ensure that this form of water extraction is clearly and transparently subject to the same controls that already exist for other licensed forms of water extraction.

Ongoing improvements to long-term climate data, projections and modelling analysis are being made through development of our regional water strategies. Climate variability and change data has been generated across the state, and initial analysis of the impacts of climate change on the reliability of a range of licences, including on the amount of water that could be taken by floodplain harvesting under different climate scenarios, has been undertaken. This has been published in the draft regional water strategies for the NSW Border Rivers, Gwydir, Namoi and Macquarie-Castlereagh catchments, available [on the department's website](#).¹⁰

Recommendation 4 – Partially supported

THAT THE NSW GOVERNMENT ESTABLISH AN INDEPENDENT EXPERT PANEL COORDINATED BY THE NATURAL RESOURCES COMMISSION TO:

- ASSESS AND ACCREDIT THE MODELS USED IN WATER SHARING PLANS AND PRODUCE A PUBLIC REPORT ON THE ACCREDITATION THAT INCLUDES THE STANDARD AND MEAN ERROR OF MODELS
- ASSESS THE FLOODPLAIN HARVESTING 'CAP SCENARIO' REPORTS FOR COMPLIANCE WITH THE MURRAY-DARLING BASIN CAP AND PUBLISH ASSESSMENT REPORTS
- ANNUALLY AUDIT THE SUSTAINABLE DIVERSION LIMIT AND MURRAY-DARLING BASIN PLAN LIMIT, PUBLISHING AUDIT REPORTS THAT SEPARATELY IDENTIFIES THE ANNUAL CAP OR SUSTAINABLE DIVERSION LIMIT TARGET AND DIVERSIONS FOR LICENCE AND EXTRACTION TYPE.

The MDBA assesses and reports on compliance with the Murray-Darling Basin Cap on Surface water diversions (Cap) each year, published on the [MDBA's website](#).¹¹

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The MDBA also produces an annual register of take to assist in determining compliance with the Basin Plan's sustainable diversion limits. The register is published annually in [Water Take Reports under the Basin Plan sustainable diversion limits](#).¹²

Additionally, reductions to future water allocations as a result of revised and accepted 'Cap' or 'Baseline Diversion Limit' models, is already permitted by existing water sharing plans.

The NSW Government does not support the proposed role for the Natural Resource Commission (NRC) because it duplicates functions already being performed by the MDBA.

Instead, the NSW Government is considering whether the NRC can be engaged in complementary and non-duplicative ways to support the intent of the recommendation.

Priority 1 of the NSW Water Strategy is to build community confidence and capacity through engagement, transparency and accountability with [Action 1.3](#),¹³ being to enhance modelling capabilities and make more data and models openly available. The NSW Water Strategy also commits the NSW Government to developing best practice guidelines which will include guidance on how models are reviewed and how these reviews are reported.

Recommendation 5 - Supported

THAT THE DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT ENSURE THAT MODEL RUN NUMBER AND LONG-TERM AVERAGE EXTRACTION LIMITS FOR THE BASELINE DIVERSION LIMIT, THE MURRAY-DARLING BASIN CAP, AND THE PLAN LIMITS MUST BE INCLUDED IN WATER SHARING PLANS FOR EACH VALLEY.

The model run numbers and volumetric estimates of the Cap and NSW state limit (long-term average annual extraction limit) were included in some water sharing plans. To ensure the most up to date information is readily available, the department will publish for each water sharing plan on its website, information on the current approved models in use, long-term average extraction limits for the baseline diversion limit (BDL), the Cap, and the plan limits.

Recommendation 6 – Supported

THAT, IF THE NSW GOVERNMENT INTENDS TO AMEND THE SUSTAINABLE DIVERSION LIMITS, THE NSW GOVERNMENT MUST SPECIFY THE LEGAL PATHWAY THROUGH WHICH THEY INTEND TO DO SO.

The NSW Government is not proposing amendments to SDLs and the responsibility for amending SDLs rests with the Commonwealth Government who administer the Basin Plan.

The NSW Government is proposing to submit revised BDL estimates based on the new information collected as part of implementation of the NSW Floodplain Harvesting Policy. The MDBA is responsible for reviewing and approving changes to revised BDL estimates to ensure that they are robust and based on the best available information. This process has been employed by every basin state in the development of their water resource plans, it is not unique to NSW. This [Position Statement](#)¹⁴ covers the process for settling alternative estimates of a surface water BDL.

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Recommendation 7 - Supported

THAT THE NSW GOVERNMENT ENSURE THAT ANY ALLOCATION OF FLOODPLAIN HARVESTING VOLUMES AND ENTITLEMENTS MUST BE WITHIN EXISTING SUSTAINABLE DIVERSION LIMITS.

The intent of NSW's floodplain harvesting reform and licensing framework is to control and manage this form of take within the SDLs established by the Basin Plan.

Section 71 of the *Water Act 2007* (Cth) requires that basin states report on their water take each year, including an assessment of compliance with the annual expression of the SDL. If there is an exceedance, states will be determined to be non-compliant unless they provide a 'reasonable excuse', including 'make good' actions to correct the exceedance. In NSW, these actions may include a reduction in water allocations.

Model scenario reports published by the department detail how entitlements for floodplain harvesting have been calculated to ensure that total diversions are reduced to and/or remain within the diversion limits set in the water sharing plans and, by extension, water resource plans under the Basin Plan. Model scenario reports are currently available for the [NSW Border Rivers regulated river system](#),¹⁵ the [Gwydir regulated river system](#),¹⁶ and the [Macquarie Cudgegong regulated river system](#).¹⁷ Model scenario reports will be available for the Barwon-Darling and Namoi valleys in 2022.

Recommendation 8 – Partially supported

THAT, IF SUSTAINABLE DIVERSION LIMITS ARE TO BE AMENDED, THE MINISTER FOR WATER, PROPERTY AND HOUSING MAKE REPRESENTATIONS TO THE MURRAY-DARLING BASIN AUTHORITY TO ENSURE THAT THE SUSTAINABLE DIVERSION LIMITS ARE REFLECTIVE OF AN ENVIRONMENTALLY SUSTAINABLE LEVEL OF TAKE UNDER THE WATER ACT 2007 (CTH), REGARDLESS OF ANY ADJUSTMENTS TO THE BASELINE DIVERSION LIMITS.

The NSW Government is not proposing to amend the SDLs, nor will licensing floodplain harvesting amend them.

The current process being undertaken with respect to floodplain harvesting seeks to more accurately represent how much floodplain harvesting was occurring under the baseline diversion limits (BDLs). The MDBA has the responsibility to assess the evidence base for any new information supporting changes to volumetric re-estimates.

Recommendation 9 – Partially supported

THAT THE NSW GOVERNMENT URGENTLY ENSURE ALL FLOODPLAIN HARVESTING IS METERED AND MEASURED, INCLUDING FLOWS THAT ENTER AND BYPASS STORAGES, BEFORE ISSUING FLOODPLAIN HARVESTING LICENCES TO ENSURE THE ACCURACY OF VOLUMES AND LONG-TERM EXTRACTION LIMITS.

The NSW Government agrees that metering and measuring is essential to ensure that water take complies with legal limits. For floodplain harvesting, this is achieved through implementation of the [NSW Floodplain Harvesting Measurement Policy \(2020\)](#).¹⁸

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Requirements to meter and measure water taken through floodplain harvesting will be legally binding on landholders when they are made in regulations or water sharing plans and have been applied through water supply work approval and licensing conditions. Requirements to meter and measure floodplain harvesting will be imposed simultaneously with the commencement of licensing arrangements.

Metering and accurately measuring flows that by-pass storages (i.e. water flowing more broadly across the floodplain) isn't technically possible at present. However, the department is developing the technical capability sought by this recommendation, through use of remote sensing and the ongoing refinement of floodplain harvesting models to incorporate flows moving across the floodplain and returning to waterways.

Recommendation 10 - Supported

THAT THE NSW WATER REFORM ACTION PLAN INCLUDE A 'NO METER, NO PUMP' RULE, AS RECOMMENDED BY THE INDEPENDENT INVESTIGATION INTO NSW WATER MANAGEMENT AND COMPLIANCE.

The Water Reform Action Plan is substantially complete, but the NSW Metering and Measurement program will continue to deliver on the independent investigator's 'no-meter, no-pump' recommendation.

The NSW Government's 'no-meter, no-pump' principle has been incorporated into the [NSW Floodplain Harvesting Measurement Policy \(2020\)](#).¹⁹

Recommendation 11 – Supported

THAT THE NSW GOVERNMENT ENSURE THAT THE NSW WATER REGISTER INCLUDES INFORMATION REGARDING STRUCTURES ON FLOODPLAINS, INCLUDING THEIR LOCATION, VOLUME, OWNERSHIP, APPROVALS AND LICENCE CONDITIONS.

Information on licences and approvals is currently freely available online in the [NSW Water Register](#)²⁰, and the same information will be available for water access licences and approvals associated with floodplain harvesting.

Recommendation 12 – Not supported

EXCLUDING STRUCTURES THAT HAVE BEEN ASSESSED AS PROTECTING INFRASTRUCTURE, THAT THE NSW GOVERNMENT ENSURE FLOODPLAIN STRUCTURES DO NOT ALTER THE NATURAL FLOOD FLOWS AT TIMES WHEN EXTRACTION IS NOT PERMITTED.

As all structures on a floodplain alter natural flood flows, this recommendation cannot be implemented in practice. Legislating the NSW Floodplain Harvesting Policy however, will implement the first ever enforceable controls on water taken using floodplain structures and make it illegal to take water from natural flood flows when floodplain harvesting is not permitted. Floodplain management plans, made under the *Water Management Act 2000*, regulate the types of structures which can be built in different areas of the floodplain and allow landholders to

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protect life and property while ensuring connection between flood dependent environmental and cultural assets is not disrupted.

The *Water Management Act 2000* requires a flood work approval to be held for a work situated in a river, estuary or lake, or within a floodplain, that is of a size or configuration that is likely to have an effect on the flow or water or distribution or flow of floodwater in times of flood.

Flood work applications must meet the requirements of the relevant floodplain management plan and are subject to detailed modelling and impact assessment, as well as mandatory advertising and consultation requirements. The [assessment and determination of flood work applications](#)²¹ are undertaken by WaterNSW and the department for their respective customers.

Recommendation 13 – Partially supported

THAT THE NSW GOVERNMENT DECOMMISSION OR REMOVE UNLAWFUL STRUCTURES AND PUBLISH A TIME FRAME FOR THIS INITIATIVE WITHIN 6 MONTHS.

The NSW Government is targeting unapproved flood works in the northern Basin through the \$11.3 million [Improving Floodplain Connections](#)²² program. This program aims to bring high-priority unapproved flood works into compliance.

The Natural Resources Access Regulator, the independent regulator, is responsible for determining whether compliance action is warranted, what action is taken and when. This recommendation is partially supported because, under the program, the removal or modification of unapproved flood works will remain the responsibility of the relevant landholder.

Recommendation 14 - Supported

THAT THE NSW GOVERNMENT ENSURE THAT NO FLOODPLAIN HARVESTING LICENCES ARE GRANTED ON THE BASIS OF ILLEGAL WORKS.

Unapproved flood works will not be authorised to take water under a floodplain harvesting licence. The department will not include unapproved works, that are both water supply works and flood works, on water supply work approvals for floodplain harvesting until such time as a flood work approval is obtained. More information about flood work and water supply work approval assessments can be found on the [Water Management Works and Approvals fact sheet](#).²³

Recommendation 15 – Partially supported

THAT THE NSW GOVERNMENT ENSURES THAT ANY CARRY-OVER RULE INCLUDED IN FLOODPLAIN HARVESTING LICENCES TO PROVIDE FLEXIBILITY IN ACCESSING FLOODPLAIN HARVESTING ENTITLEMENTS DOES NOT ALLOCATE MORE THAN 100 PER CENT OF ENTITLEMENTS IN THE FIRST YEAR OF THE ACCOUNTING PERIOD.

The NSW Government agrees and has taken this approach, with an initial allocation of 1ML/unit share proposed for floodplain harvesting licences in the NSW Border Rivers, Gwydir and Macquarie valleys based on assessments and consultation outcomes. For more information, see

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the ‘What We Heard’ reports for floodplain harvesting in water sharing plans, for the [NSW Border Rivers](#),²⁴ [Gwydir valley](#),²⁵ and the [Macquarie valley](#).²⁶

The NSW Government will also propose a 1ML/unit share for floodplain harvesting licences for remaining valleys in the northern Basin, given flood flows in the north in late 2021 and early 2022.

Beyond the first year, the proposed account management rules in the NSW Border River, Gwydir and Macquarie valleys will allow multiyear accounting. A comparison of environmental benefits under annual accounting rules and multiyear accounting rules in the NSW Border Rivers valley is provided [here](#).²⁷

Recommendation 16 – Partially supported

THAT THE NSW GOVERNMENT ENSURE THAT RAINFALL RUN-OFF IS MEASURED, METERED AND REPORTED AS PART OF EXTRACTION LIMITS, AND IF EXEMPTIONS ARE TO BE GRANTED, THEY SHOULD BE LIMITED TO LANDHOLDERS WITH LESS THAN 500 MEGALITRES OF STORAGE CAPACITY.

The Basin Plan acknowledges that it is not appropriate or practical to licence and measure all diversion types, nevertheless, all diversion types are accounted for under SDLs.

The Basin Plan refers to diversion types that are not licensed and measured as ‘interception activities’. NSW is leading all basin states in the management of interception activities through its implementation of the NSW Floodplain Harvesting Policy, which will include the licensing and measuring of most rainfall-runoff take. With the exception of QLD, no other Basin State is proposing to licence and measure rainfall-runoff.

The Water Management (General) Amendment Regulation 2021 provided a limited state-wide exemption for intercepting rainfall runoff from areas developed for irrigation in tailwater return drains. More information about the reason for this exemption can be found in the [What we heard report](#)²⁸ for the tailwater drain exemption legislative amendment.

Limiting the exemption to storages less than 500ML/year is not supported as the exemption was developed in recognition of the difficulty in distinguishing between rainfall runoff and used irrigation water collected in a tailwater drain. It is unrelated to the storage capacity on the property and it may incentivise further growth in both infrastructure and diversions.

NSW will continue to work with the MDBA and other basin states to improve the accounting of interception activities. This work is prioritised in tranche 3 (2024-25) in the [Sustainable Diversion Limit \(SDL\) Accounting Improvement Strategy 2020-2025](#).²⁹

Recommendation 17 – Partially supported

THAT THE NSW GOVERNMENT DEVELOP CLEARLY DEFINED AND ENFORCEABLE ACCESS RULES BASED ON WITHIN-VALLEY AND DOWNSTREAM FLOW TRIGGERS BASED ON MINIMUM FLOW TARGETS NEEDED TO MAINTAIN OR IMPROVE OUTCOMES FOR ENVIRONMENTAL, CULTURAL AND BASIC LANDHOLDER REQUIREMENTS, WITH FLOODPLAIN HARVESTING TAKE ONLY PERMITTED UNDER THE ACCESS RULES

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WHEN THESE TARGETS ARE MET, AND THAT THESE ACCESS RULES MUST BE IMPLEMENTED BEFORE ANY FLOODPLAIN HARVESTING LICENCES OR ENTITLEMENTS ARE ALLOCATED.

The department is currently analysing and consulting on triggers and flow targets as part of the draft Western Regional Water Strategy and in the lead up to the review of the *Water Sharing Plan for the Barwon-Darling Unregulated River Water Source 2012*, which will occur throughout 2022/23.

Draft critical human and environmental needs triggers have been tested with a targeted group of stakeholders and published on the [department's website](#).³⁰

The suitability of linking access rules for floodplain harvesting upstream to these new downstream critical needs targets will be assessed and consulted on during 2022.

Recommendation 18 - Supported

THAT THE NSW GOVERNMENT WORK URGENTLY TO ENGAGE FIRST NATIONS COMMUNITIES TO ENSURE THAT CULTURAL FLOW TARGETS ARE ESTABLISHED AND MET AS PART OF THE REGULATORY FRAMEWORK ON FLOODPLAIN HARVESTING.

Engaging with First Nations communities and improving access to water for cultural needs is a high priority for the NSW Government. We will work on cultural and economic water reforms on access and rights in the context of all water allocations. The NSW Government will also continue to work directly with First Nations peoples through implementation of NSW Floodplain Harvesting Policy, regional water strategies, the NSW Water Strategy and other water sharing and water management arrangements.

The NSW Water Strategy [Priority 2](#)³¹ includes the development of an Aboriginal Water Strategy that specifically addresses how the NSW Government will do this through engagement and co-design with communities and First Nations representative bodies across NSW.

Recommendation 19 – Not supported

THAT THE DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT ONLY ISSUE FLOODPLAIN HARVESTING LICENCES AT SUCH A TIME AS IT IS SATISFIED THAT THE RECOMMENDATIONS OF THIS REPORT WILL BE MET SO THAT FLOODPLAIN HARVESTING IS FULLY MONITORED AND MEASURED, THERE IS CLEAR EVIDENCE THAT WATER EXTRACTIONS ARE WITHIN LEGAL LIMITS, THE INDEPENDENT OVERSIGHT OF THE NATURAL RESOURCES COMMISSION HAS BEEN ESTABLISHED AND THAT MANDATED ENVIRONMENTAL AND OTHER DOWNSTREAM OUTCOMES ARE BEING ACHIEVED.

Although the NSW Government supports most of the report's recommendations in whole or part, it cannot fully support report recommendations that are preconditions to issuing floodplain harvesting licences. The regulation of floodplain harvesting through issuing licences is considered the crucial remaining step and the only means by which the NSW Government can effectively address the Select Committee's core recommendations, including this recommendation regarding measurement.

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Recommendation 20 – Partially supported

THAT, IF THE NSW GOVERNMENT GRANTS FLOODPLAIN HARVESTING LICENCES OR ENTITLEMENTS, THESE SHOULD BE STRICTLY NON-COMPENSABLE AND SUBJECT TO PARLIAMENTARY OVERSIGHT.

The proposed licensing framework is adaptable, allowing changes to licence allocations and water sharing plan rules to be made in response to improved data and information, without triggering the compensation provisions under the *Water Management Act 2000*. The NSW Government does not anticipate triggering compensation provisions, as any change to allocations will be made through an amendment that is authorised by the water sharing plan (section 87 (2) (c) or 87AA (3) (b) of the *Water Management Act 2000*).

Recommendation 21 – Not supported

THAT THE NSW GOVERNMENT, THROUGH THE NATIONAL FEDERATION REFORM COUNCIL, MAKE REPRESENTATIONS TO REMOVE THE SURFACE WATER TRADING REQUIREMENT FROM THE MURRAY-DARLING BASIN PLAN.

The NSW Government supports the surface water trading rules in the Basin Plan. It is acknowledged that trading rules are important in ensuring appropriate environmental, social and economic outcomes as described in the response to recommendation 22.

Recommendation 22 – Supported

THAT, IN THE ABSENCE OF THE SURFACE WATER TRADING REQUIREMENT BEING REMOVED FROM THE MURRAY-DARLING BASIN PLAN, THE MINISTER FOR WATER, PROPERTY AND HOUSING ENSURE THAT WATER TRADING BE RESTRICTED AND SUBJECT TO A ROBUST ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT PROCESS PRIOR TO EACH TRADE, AND THAT TRADING IS RESTRICTED TO WITHIN CATCHMENT TRADING ONLY.

Proposed water sharing plan rules for the trading of floodplain harvesting entitlements provide strict and appropriate constraints within valleys and specific parts of the floodplain, to avoid and control the potential for adverse environmental, cultural and property impacts. Additional restrictions on floodplain harvesting apply to trade of allocations (temporary trades) and establishment of trading zones that limit trades in areas of the floodplain that are important for flood flow connectivity or that contain flood-dependent environmental or cultural assets.

Temporary trades will be prohibited because of practical implications for landholders and the NSW Government.

Recommendation 23 - Supported

THAT THE NSW GOVERNMENT:

- INSTITUTE A CLEARLY DEFINED ENFORCEMENT AND COMPLIANCE REGIME FOR FLOODPLAIN HARVESTING TAKE AND FLOODPLAIN HARVESTING WORKS

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- ENSURE THAT THE NATURAL RESOURCES ACCESS REGULATOR IS SUFFICIENTLY FUNDED TO UNDERTAKE ITS ENFORCEMENT AND COMPLIANCE FUNCTIONS.

The Natural Resources Access Regulator (NRAR) will undertake compliance of floodplain harvesting in accordance with its published compliance approach.

The NSW Government supports the recommendation that NRAR is sufficiently funded.

Recommendation 24 – Not supported

THAT THE NSW GOVERNMENT ABOLISH THE NSW HEALTHY FLOODPLAINS REVIEW COMMITTEE AND FUTURE APPEALS BE DEALT WITH BY THE PROPOSED INDEPENDENT EXPERT PANEL, REFERRED TO IN RECOMMENDATION 4, AND THE OUTCOMES BE REPORTED PUBLICLY.

The Healthy Floodplains Review Committee (the Committee) was established to provide procedural fairness and natural justice for floodplain harvesting registrants in the application of the NSW Floodplain Harvesting Policy.

The Committee's role is to provide advice to the department on the merit of submissions made by landholders in relation to the preliminary determinations of eligible works, and draft entitlements. The Committee has no formal decision-making powers. To date in more than 90% of cases, the Committee's recommendations in response to appeals align with the recommendations made by the department. The Committee's Terms of Reference and its meeting minutes (with redactions to protect personal information) are published on the [department's website](#).³²

The department commissioned legal firm Maddocks to conduct two probity reviews into work undertaken by the department and the Committee and the findings of these reviews have been published on the [department's website](#).³³ In summary, the probity reviews find that the processes used by the department and the Committee:

- are well documented,
- have provided applicants procedural fairness,
- appropriately manage real and perceived conflicts of interest, and
- will allow the Minister (or the Minister's delegate) to make an evidence-based decision on replacement floodplain harvesting entitlements.

Because the Committee is nearing the end of its role with most matters complete it is too late in the process for another review method to be adopted. To do so would not be fair to either the landholders who have already made submissions to the committee, nor to those who still may need a review mechanism. The same review mechanism should continue to apply for all registrants across the five northern valleys.

Please refer also to the response to recommendation 4.

NSW Government Response

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Recommendation 25 – Not supported

THAT THE DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT ENSURE THAT ALL DECISIONS MADE BY THE NSW HEALTHY FLOODPLAINS REVIEW COMMITTEE BE AUDITED BY THE PROPOSED INDEPENDENT EXPERT PANEL, REFERRED TO IN RECOMMENDATION 4.

Please refer to the response to recommendation 24.

NSW Government Response

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Weblinks

- ¹ <https://legislation.nsw.gov.au/view/pdf/asmade/si-2021-775>
- ² <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/improving-floodplain-connections#:~:text=Study%20area%20and%20identified%20hotspot,be%20delivered%20by%20mid%2D2024.>
- ³ <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting>
- ⁴ <https://www.industry.nsw.gov.au/water/plans-programs/regional-water-strategies/climate-data-and-modelling#:~:text=Regional%20water%20strategies%20will%20be,past%20and%20future%20climate%20risk>
- ⁵ https://nrc.nsw.gov.au/__media_downloads/251359/Barwon-Darling%20-%20Government%20response.pdf?downloadable=1
- ⁶ <https://www.industry.nsw.gov.au/water/what-we-do/stakeholder-engagement/connectivity>
- ⁷ <https://www.industry.nsw.gov.au/water/science/data/hydrometric-network-review>
- ⁸ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/480208/hydrometric-improvement-plan.pdf
- ⁹ <https://water.dpie.nsw.gov.au/plans-and-programs/nsw-water-strategy>
- ¹⁰ <https://www.industry.nsw.gov.au/water/plans-programs/regional-water-strategies/upcoming-public-exhibition>
- ¹¹ <https://www.mdba.gov.au/publications/mdba-reports/cap-compliance-reports>
- ¹² <https://www.mdba.gov.au/publications/mdba-reports/water-take-reports-under-basin-plan-sustainable-diversion-limits>
- ¹³ <https://water.dpie.nsw.gov.au/plans-and-programs/nsw-water-strategy/action-plan-2021-22>
- ¹⁴ https://www.mdba.gov.au/sites/default/files/pubs/WRP-position-statement-3D-changes-to-BDL_0.PDF
- ¹⁵ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0009/326088/model-scenario-report.pdf
- ¹⁶ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0013/350203/scenario-report.pdf
- ¹⁷ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0003/356097/fph-entitlements-macquarie-regulated-river-system-model-scenarios-report.PDF
- ¹⁸ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0006/317859/floodplain-harvesting-measurement-policy.pdf
- ¹⁹ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0006/317859/floodplain-harvesting-measurement-policy.pdf
- ²⁰ <https://waterregister.waternsw.com.au/water-register-frame>
- ²¹ <https://www.waternsw.com.au/customer-service/water-licensing/approvals/flood-work-approvals>
- ²² <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/improving-floodplain-connections>
- ²³ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0015/356001/wswa-fact-sheet.pdf
- ²⁴ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0020/350237/what-we-heard-report.pdf
- ²⁵ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0010/469441/gwydir-what-we-heard-report.pdf
- ²⁶ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0009/469440/macquarie-what-we-heard-report.pdf
- ²⁷ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0003/368139/border-rivers-account-management-comparison.pdf
- ²⁸ https://www.industry.nsw.gov.au/__data/assets/pdf_file/0020/368111/What-We-Heard-Tailwater-Drain-Exemption.pdf
- ²⁹ <https://www.mdba.gov.au/publications/policies-guidelines/sustainable-diversion-limit-sdl-accounting-improvement-strategy>
- ³⁰ <https://www.industry.nsw.gov.au/water/what-we-do/stakeholder-engagement/connectivity>
- ³¹ <https://water.dpie.nsw.gov.au/plans-and-programs/nsw-water-strategy/action-plan-2021-22>
- ³² <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting/document-library>
- ³³ <https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting/probity-review>