



New South Wales

# **Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2022**

under the

Water Management Act 2000

I, the Minister for Lands and Water, make the following plan under the *Water Management Act 2000*, section 50.

Minister for Lands and Water

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## Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2022

under the

Water Management Act 2000

### Part 1 Introduction

**Note**— Respect is paid to the traditional owners of this country, who are acknowledged as the first natural resource managers within the South East Water Management Area.

#### 1 Name of Plan

This Plan is the Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2022.

#### 2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

#### 3 Water sources to which Plan applies

- (1) This Plan applies to the following water sources (*the water sources*) identified on the Plan Map, being water sources within the South East Water Management Area—
  - (a) Bondi Lake and Tributaries Water Source,
  - (b) Curalo Lake and Tributaries Water Source,
  - (c) Eden Tributaries Water Source,
  - (d) Far South Coast Water Source,
  - (e) Green Cape Water Source,
  - (f) Jingo Creek Water Source,
  - (g) Lower Towamba River Water Source,
  - (h) Mataganah Creek Water Source,
  - (i) Merimbula Creek Water Source,
  - (j) Merimbula Lake Tributaries Water Source,
  - (k) Myrtle Creek Water Source,
  - (l) Nullica River Water Source,
  - (m) Pambula Lake Tributaries Water Source,
  - (n) Pericoe Creek Water Source,
  - (o) Sandy Beach Creek Water Source,
  - (p) Stockyard Creek Water Source,
  - (q) Towamba Estuary Tributaries Water Source,
  - (r) Towamba River Coastal Floodplain Alluvial Groundwater Source,
  - (s) Tura Beach Tributaries Water Source,
  - (t) Upper Towamba River Water Source,

- (u) Wallagoot Lake and Tributaries Water Source,
  - (v) Wog Wog River Water Source,
  - (w) Wonboyn River Water Source,
- (2) The water sources, other than the Towamba River Coastal Floodplain Alluvial Groundwater Source—
- (a) include surface water and water occurring on the surface of the ground in estuaries, and
  - (b) include all groundwater contained in unconsolidated sediments, other than water contained in the Towamba River Coastal Floodplain Alluvial Groundwater Source.
- (3) The Towamba River Coastal Floodplain Alluvial Groundwater Source—
- (a) includes all groundwater contained in unconsolidated sediments, and
  - (b) does not include surface water.
- (4) The water sources do not include—
- (a) water contained in fractured or porous rocks, or
  - (b) water to which the *Water Sharing Plan for the South Coast Groundwater Sources 2016* applies.

#### **4 Management zones to which Plan applies**

[Not applicable]

**Note**— When this Plan was made, there were no management zones.

#### **5 Extraction management units established by Plan—the Act, s 20(2)(a)**

The following extraction management units are established—

- (a) the Pambula River Extraction Management Unit, which consists of the following water sources—
  - (i) Bondi Lake and Tributaries Water Source,
  - (ii) Curalo Lake and Tributaries Water Source,
  - (iii) Eden Tributaries Water Source,
  - (iv) Merimbula Creek Water Source,
  - (v) Merimbula Lake Tributaries Water Source,
  - (vi) Nullica River Water Source,
  - (vii) Pambula Lake Tributaries Water Source,
  - (viii) Sandy Beach Creek Water Source,
  - (ix) Tura Beach Tributaries Water Source,
  - (x) Wallagoot Lake and Tributaries Water Source,
- (b) the Towamba River Coastal Floodplain Alluvial Groundwater Extraction Management Unit, which consists of the Towamba River Coastal Floodplain Alluvial Groundwater Source,
- (c) the Towamba River Extraction Management Unit, which consists of the following water sources—
  - (i) Jingo Creek Water Source,
  - (ii) Lower Towamba River Water Source,
  - (iii) Mataganah Creek Water Source,
  - (iv) Myrtle Creek Water Source,
  - (v) Pericoe Creek Water Source,

- (vi) Stockyard Creek Water Source,
- (vii) Towamba Estuary Tributaries Water Source,
- (viii) Upper Towamba River Water Source,
- (ix) Wog Wog River Water Source,
- (d) the Wonboyn-Merrica Rivers Catchment Extraction Management Unit, which consists of the following water sources—
  - (i) Far South Coast Water Source,
  - (ii) Green Cape Water Source,
  - (iii) Wonboyn River Water Source.

## 6 Interpretation

- (1) The Dictionary defines words used in this Plan.  
**Note—** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Plan.
- (2) Unless otherwise specified in this Plan, a category of an access licence includes a reference to a subcategory of the access licence.

## 7 Maps

- (1) A reference in this Plan to a named map adopted by this Plan is a reference to a map by that name kept and made available for public access in accordance with arrangements approved by the Minister.  
**Note—** The following maps adopted by this Plan are available on the Department's website—
  - (a) the Plan Map,
  - (b) the High Priority Groundwater-Dependent Ecosystem Map.
- (2) A map that amends or replaces a map adopted by this Plan only has effect if this Plan is amended to give effect to it.

## **Part 2 Vision, objectives, strategies and performance indicators**

### **8 Vision statement—the Act, s 35(1)(a)**

The vision for this Plan is to provide for the following—

- (a) the health and enhancement of the water sources and their dependent ecosystems,
- (b) the continuing productive extraction of water for economic benefit,
- (c) the spiritual, social, customary and economic benefits of water to Aboriginal communities,
- (d) the social and cultural benefits to urban and rural communities that result from water.

### **9 Objectives of Plan—the Act, s 35(1)(b)**

The objectives of this Plan are as follows—

- (a) to protect, and where possible enhance and restore, the condition of the water sources and their water-dependent ecosystems,
- (b) to maintain, and where possible improve, access to water to optimise economic benefits for agriculture, water-dependent industries and local economies,
- (c) to maintain, and where possible improve, the spiritual, social, customary and economic values and uses of water by Aboriginal people,
- (d) to provide access to water to support water-dependent social and cultural values,
- (e) to help prevent structural damage to aquifers resulting from groundwater extraction.

### **10 Strategies for reaching objectives—the Act, s 35(1)(c)**

The strategies for reaching the objectives of this Plan include the following—

- (a) reserve all water volume in excess of each long-term average annual extraction limit for the environment,
- (b) reserve a portion of natural flows to partially mitigate alterations to natural flow regimes in the water sources,
- (c) restrict the take of water from an in-river pool when the volume of water in the pool is less than the volume of water that can be held by the pool when at full capacity,
- (d) reserve a portion of natural flows to maintain hydrological connectivity between the water sources and other connected water sources, including connectivity between tidal pools and estuaries,
- (e) manage the construction and use of water supply works to minimise impacts on instream ecosystems, high priority groundwater-dependent ecosystems and groundwater quality, groundwater-dependent culturally significant areas, basic landholder rights and town water supply,
- (f) restrict or prevent water supply work approvals on third order or higher streams within specified water sources,
- (g) provide for trade of water allocations and share components subject to environmental constraints and local impacts,



- (h) provide a stable and predictable framework for sharing water among water users,
- (i) provide for flexibility of access to water,
- (j) manage access to water consistently with the exercise of native title rights,
- (k) provide for water associated with Aboriginal cultural values and uses, and community development.

**11 Performance indicators—the Act, s 35(1)(d)**

- (1) The performance indicators used to measure the success of the strategies for reaching the objectives of this Plan are the changes or trends, during the term of this Plan, in the following—
  - (a) the ecological condition of the water sources,
  - (b) economic benefits,
  - (c) Aboriginal cultural benefits,
  - (d) social and cultural benefits.
- (2) The performance indicators must be monitored and evaluated in the way approved by the Minister.

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## Part 3 Requirements for water

### Division 1 Requirements for water to satisfy basic landholder rights—the Act, s 20(1)(b)

#### 12 Domestic and stock rights

On the commencement of this Plan, the amount of water required to satisfy domestic and stock rights is estimated to be 1213.6ML/year and is distributed as follows—

- (a) 2ML/year in the Bondi Lake and Tributaries Water Source,
- (b) 14.5ML/year in the Curalo Lake and Tributaries Water Source,
- (c) 11.5ML/year in the Eden Tributaries Water Source,
- (d) 2ML/year in the Far South Coast Water Source,
- (e) 2ML/year in the Green Cape Water Source,
- (f) 35.3ML/year in the Jingo Creek Water Source,
- (g) 121.3ML/year in the Lower Towamba River Water Source,
- (h) 132ML/year in the Mataganah Creek Water Source,
- (i) 29.3ML/year in the Merimbula Creek Water Source,
- (j) 41.8ML/year in the Merimbula Lake Tributaries Water Source,
- (k) 273.6ML/year in the Myrtle Creek Water Source,
- (l) 15.1ML/year in the Nullica River Water Source,
- (m) 226.3ML/year in the Pambula Lake Tributaries Water Source,
- (n) 15.7ML/year in the Pericoe Creek Water Source,
- (o) 18.1ML/year in the Sandy Beach Creek Water Source,
- (p) 24.4ML/year in the Stockyard Creek Water Source,
- (q) 10.1ML/year in the Towamba Estuary Tributaries Water Source,
- (r) 18ML/year in the Towamba River Coastal Floodplain Alluvial Groundwater Source,
- (s) 6ML/year in the Tura Beach Tributaries Water Source,
- (t) 131.4ML/year in the Upper Towamba River Water Source,
- (u) 27.9ML/year in the Wallagoot Lake and Tributaries Water Source,
- (v) 31.5ML/year in the Wog Wog River Water Source,
- (w) 23.8ML/year in the Wonboyn River Water Source.

#### 13 Native title rights

On the commencement of this Plan, the amount of water required to satisfy native title rights is estimated to be 0ML/year.

**Note 1—** A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights—see the Act, section 55.

**Note 2—** When this Plan was made, no determinations of native title had been made in relation to the water sources.

#### 14 Harvestable rights

[Not applicable]

**Note—** The following harvestable rights order has been made in relation to the water sources—

Order under section 54, the Act for harvestable rights—Eastern and Central Division, Gazette No 40, 31 March 2006, pages 1628–1630.

However, on the commencement of this Plan, the amount of water required to satisfy harvestable rights had not been estimated.

## **Division 2 Requirements for water for extraction under access licences**

### **15 Share components of access licences in the water sources—the Act, s 20(1)(c)**

- (1) On the commencement of this Plan, the share components of domestic and stock access licences are estimated to be a total of 101.5ML/year and are distributed as follows—
  - (a) 1ML/year in the Green Cape Water Source,
  - (b) 15ML/year in the Lower Towamba River Water Source,
  - (c) 2ML/year in the Mataganah Creek Water Source,
  - (d) 38ML/year in the Myrtle Creek Water Source,
  - (e) 26ML/year in the Pambula Lake Tributaries Water Source,
  - (f) 5.5ML/year in the Sandy Beach Creek Water Source,
  - (g) 6ML/year in the Upper Towamba River Water Source,
  - (h) 4ML/year in the Wallagoot Lake and Tributaries Water Source,
  - (i) 4ML/year in the Wonboyn River Water Source,
  - (j) 0ML/year in all other water sources.
- (2) On the commencement of this Plan, the share components of local water utility access licences are estimated to be a total of 1,400ML/year and are distributed as follows—
  - (a) 1,400ML/year in the Lower Towamba River Water Source,
  - (b) 0ML/year in all other water sources.
- (3) On the commencement of this Plan, the share components of unregulated river access licences are estimated to be a total of 2,300.5 unit shares and are distributed as follows—
  - (a) 19 unit shares in the Green Cape Water Source,
  - (b) 38 unit shares in the Jingo Creek Water Source,
  - (c) 454 unit shares in the Lower Towamba River Water Source,
  - (d) 133 unit shares in the Mataganah Creek Water Source,
  - (e) 93 unit shares in the Merimbula Creek Water Source,
  - (f) 13 unit shares in the Merimbula Lake Tributaries Water Source,
  - (g) 105 unit shares in the Myrtle Creek Water Source,
  - (h) 810 unit shares in the Pambula Lake Tributaries Water Source,
  - (i) 34.5 unit shares in the Sandy Beach Creek Water Source,
  - (j) 356 unit shares in the Upper Towamba River Water Source,
  - (k) 180 unit shares in the Wog Wog River Water Source,
  - (l) 65 unit shares in the Wonboyn River Water Source,
  - (m) 0 unit shares in all other water sources.
- (4) [Not applicable]  
**Note**—When this Plan was made, there were no unregulated river (high flow) access licences.

- (5) On the commencement of this Plan, the share components of aquifer access licences are estimated to be a total of 330 unit shares and are distributed as follows—
- (a) 6 unit shares in the Curalo Lake and Tributaries Water Source,
  - (b) 20 unit shares in the Mataganah Creek Water Source,
  - (c) 66 unit shares in the Myrtle Creek Water Source,
  - (d) 12 unit shares in the Nullica River Water Source,
  - (e) 27 unit shares in the Pambula Lake Tributaries Water Source,
  - (f) 30 unit shares in the Sandy Beach Creek Water Source,
  - (g) 70 unit shares in the Towamba Estuary Tributaries Water Source,
  - (h) 64 unit shares in the Upper Towamba River Water Source,
  - (i) 34 unit shares in the Wallagoot Lake and Tributaries Water Source,
  - (j) 1 unit share in the Wonboyn River Water Source,
  - (k) 0 unit shares in all other water sources.

**Note—** The total share components of access licences in the water sources may change during the term of this Plan as a result of—

- (a) the grant, surrender or cancellation of access licences in the water sources, or
- (b) the variation of local water utility licences under the Act, section 66, or
- (c) ongoing conversion of entitlements under the *Water Act 1912* to access licences under the Act, or
- (d) amendments to access licences under the Act, section 68A.

## Part 4 Limits to the availability of water—the Act, s 20(2)(b)

### Division 1 Available water determinations

#### 16 Available water determinations

- (1) The sum of available water determinations made for an access licence must not be more than the following in a water year—
  - (a) for an access licence specifying the share component in ML/year—100% of the access licence share component,
  - (b) for an access licence specifying the share component as a number of unit shares—1ML/unit share of the access licence share component.
- (2) At the start of each water year, available water determinations must be made as follows—
  - (a) for domestic and stock access licences—100%,
  - (b) for local water utility access licences—100%,
  - (c) for unregulated river access licences—1ML/unit share,
  - (d) for unregulated river (high flow) access licences—1ML/unit share,  
**Note—** When this Plan was made, there were no unregulated river (high flow) access licences.
  - (e) for aquifer access licences—1ML/unit share,
- (3) This section is subject to sections 22 and 25.

**Note—** The Minister may make available water determinations, at any time, including at the start of the water year, in relation to the availability of water for a category or subcategory of access licence—see the Act, section 59.

### Division 2 Extraction limits

#### Subdivision 1 Preliminary

#### 17 Operation of Division—the Act, s 8

For the Act, section 8(1A)(b) and (2), this Division—

- (a) sets out environmental water rules, and
- (b) commits water as planned environmental water by reference to the long-term average annual commitment of water as planned environmental water.

#### 18 Definitions

In this Division—

**3-year average higher flow extraction** means the average of the annual higher flow extractions for 3 consecutive water years most recently calculated for an extraction management unit.

**annual higher flow extraction limit** means the annual higher flow extraction limit established by section 23.

**annual standard extraction**—see section 20(2).

**higher flow extraction licence** means the following—

- (a) an unregulated river (high flow) access licence,
- (b) an access licence of the subcategory Aboriginal community development,
- (c) a higher flow specific purpose access licence,

- (d) a major utility access licence, but only in relation to the extraction of water from declared dams within the meaning of the *Dams Safety Act 2015*.

**higher flow specific purpose access licence** means a specific purpose access licence granted after the commencement of this Plan, which is permitted to extract water from high flows only.

**reduced available water determinations** means available water determinations that are less than the amount specified in section 16(2) for the category of licence in relation to which the determination is made.

**standard long-term average annual extraction limit** or **standard LTAAEL** means the standard long-term average annual extraction limit established by section 19.

## Subdivision 2 Standard long-term average annual extraction limits

### 19 Establishment of standard long-term average annual extraction limits

The standard long-term average annual extraction limits are as follows—

- (a) for the Towamba River Coastal Floodplain Alluvial Groundwater Extraction Management Unit—202ML/year,
- (b) for all other extraction management units—the sum of the following within the extraction management unit—
  - (i) all access licence share components on the commencement of this Plan,
  - (ii) an estimate of annual extractions in the exercise of native title rights and domestic and stock rights as of 17 December 2010,
  - (iii) an estimate of the volume of water that may be captured by harvestable rights dams in accordance with the 2006 Harvestable Rights Order as of 17 December 2010.

**Note—** The standard long-term average annual extraction limits are taken to be varied by a change to the amount of water committed as licensed environmental water—see the Act, section 8F(2).

### 20 Calculation of annual standard extraction

- (1) As soon as practicable after the end of a water year, the annual standard extraction of each extraction management unit must be calculated for the water year.
- (2) In this section—

**annual standard extraction** means the volume of water taken from an extraction management unit—

- (a) under an access licence, excluding extractions under a higher flow extraction licence, and
- (b) in the exercise of basic landholder rights.

**Note—** The determination of the volume of water taken from each extraction management unit excludes water committed as licensed environmental water—see the Act, section 8F(5).

### 21 Assessment of compliance with standard long-term average annual extraction limits

- (1) As soon as practicable after the end of a water year, the 3-year average standard extraction for each extraction management unit must be compared against the standard LTAAEL for the extraction management unit for the water year.
- (2) In determining the standard LTAAEL for the water year, the following share components, if any, within the extraction management unit must be excluded from the sum referred to in section 19(b)—
  - (a) the share components of an access licence cancelled in order to grant a higher flow extraction licence after the commencement of this Plan,

- (b) the share components of an access licence cancelled after the commencement of this Plan if the licence is cancelled for an environmental purpose.
- (3) There is noncompliance with the standard LTAAEL if the 3-year average standard extraction exceeds the LTAAEL by 5% or more.
- (4) In this section—  
**3-year average standard extraction** means the average of the annual standard extractions for 3 consecutive water years most recently calculated for an extraction management unit.

## 22 Compliance with standard long-term average annual extraction limits

- (1) This section applies to an extraction management unit if there is noncompliance with the standard LTAAEL for the extraction management unit.
- (2) On 1 July in the water year occurring immediately after a noncompliance is assessed, reduced available water determinations, which are likely to result in the extractions from the extraction management unit complying with the standard LTAAEL, must be made for 1 or both of the following categories of licences—
  - (a) an unregulated river access licence,
  - (b) an aquifer access licence.
- (3) The total sum of all available water determinations, including reduced available water determinations, made for the water sources in the extraction management unit within the same water year must be less than the sum specified in section 16(1).  
**Note—** The Minister may make available water determinations, at any time, in relation to the availability of water for a category or subcategory of access licence—see the Act, section 59.

## Subdivision 3 Annual higher flow extraction limits

### 23 Establishment of annual higher flow extraction limit

The annual higher flow extraction limit is the largest sum of the share components of all higher flow extraction licences within the extraction management unit occurring within a water year.

**Note—** The annual higher flow extraction limits are taken to be varied by a change to the amount of water committed as licensed environmental water—see the Act, section 8F(2).

### 24 Calculation of annual higher flow extraction

- (1) As soon as practicable after the end of a water year, the 3-year average higher flow extraction for each extraction management unit must be compared against the annual higher flow extraction limit for the extraction management unit for the water year.
- (2) There is noncompliance with the annual higher flow extraction limit if the 3-year average higher flow extraction exceeds the limit by 5% or more.
- (3) In this section—  
**annual higher flow extraction** means the sum of the volume of water taken from an extraction management unit under all higher flow extraction licences within the extraction management unit.  
**Note—** The determination of the volume of water taken from each extraction management unit excludes water committed as licensed environmental water—see the Act, section 8F(5).

### 25 Compliance with annual higher flow extraction limits

- (1) This section applies to an extraction management unit if there is noncompliance with the annual higher flow extraction limit for the extraction management unit.

- (2) On 1 July in the water year occurring immediately after a noncompliance is assessed, reduced available water determinations must be made for 1 or more of the following categories of licences—
  - (a) an unregulated river (high flow) access licence,
  - (b) an Aboriginal community development access licence,
  - (c) a higher flow specific purpose access licence.
- (3) The total sum of all available water determinations, including reduced available water determinations, made for the water sources in the extraction management unit within the same water year must be less than the sum specified in section 16(1).

**Note—** The Minister may make available water determinations, at any time, in relation to the availability of water for a category or subcategory of access licence—see the Act, section 59.

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## Part 5 Rules for granting access licences

### 26 Specific purpose access licences—the Act, s 20(2)(b)

- (1) A person may apply for the following specific purpose access licences—
  - (a) an unregulated river (Aboriginal community development) access licence for the following water sources—
    - (i) Jingo Creek Water Source,
    - (ii) Mataganah Creek Water Source,
    - (iii) Myrtle Creek Water Source,
    - (iv) Wog Wog River Water Source,
  - (b) an aquifer (Aboriginal community development) access licence for the Towamba River Coastal Floodplain Alluvial Groundwater Source.

**Note**— A person may also apply for a specific purpose access licence in circumstances where the regulations provide that an application for the licence may be made—see the Act, section 61(1)(a).
- (2) An application for a specific purpose access licence must not be made unless the share and extraction components of the access licence are the minimum amount required for the proposed use.
- (3) A person may apply for a specific purpose access licence of the subcategory Aboriginal cultural if—
  - (a) the share component of the licence is not more than 10ML/year, and
  - (b) the licence is only for the taking of water by an Aboriginal person or Aboriginal community for personal, domestic or communal purposes, including the following—
    - (i) drinking and food preparation,
    - (ii) washing,
    - (iii) manufacturing traditional artefacts,
    - (iv) watering domestic gardens,
    - (v) cultural teaching,
    - (vi) hunting, fishing and gathering,
    - (vii) recreational, cultural and ceremonial purposes.
- (4) An application for an unregulated river (Aboriginal community development) access licence must not be made unless—
  - (a) water will be taken from C Class flows only, and
  - (b) there will be no more than minimal harm to the water source as a result of the proposed extraction, and
  - (c) the sum of the share components of all unregulated river (Aboriginal community development) access licences in the water sources referred to in subsection 1(a)(i)–(iv) is not more than 306 unit shares.
- (5) An application for an aquifer (Aboriginal community development) access licence must not be made unless—
  - (a) there will be no more than minimal harm to the water source as a result of the proposed extraction, and
  - (b) the total share components of all aquifer (Aboriginal community development) access licences in the water source is not more than 140ML/year.
- (6) In this section—

*Aboriginal person* has the same meaning as in the *Aboriginal Land Rights Act 1983*.

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## **Part 6 Operation of water allocation accounts and managing access licences**

### **Division 1 Preliminary**

#### **27 Operation of Part—the Act, s 8**

For the Act, section 8(1A)(a) and (c) and (2), this Part—

- (a) sets out environmental water rules, and
- (b) in Divisions 2–5—commits water as planned environmental water by reference to the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met, and
- (c) in Divisions 3–5—commits water as planned environmental water by reference to the commitment of the physical presence of water in the water source.

### **Division 2 Accounting for water allocation accounts—the Act, s 21(c)**

#### **28 Water allocation account debiting**

- (1) The Minister must debit from the water allocation account of an access licence the volume of water extracted by a water supply work nominated by the access licence.
- (2) The volume of water debited from the water allocation account of an access licence must not be more than the sum of the following during a period of 3 consecutive water years—
  - (a) the water allocations credited to the water allocation account from available water determinations,
  - (b) the net amount of water allocations assigned to or from the water allocation account under the Act, section 71T or 71V,
  - (c) the water allocations recredited to the water allocation account under the Act, section 76.
- (3) In this section—  
*debited* means taken, assigned under the Act, section 71T or otherwise debited or withdrawn from a water allocation account.

#### **29 Carryover of water remaining in water allocation account**

- (1) For an access licence, water allocations remaining in the water allocation account must be carried over from 1 water year to the next water year up to an amount that is equal to the following—
  - (a) for access licences with share components expressed as ML/year—100% of the share component,
  - (b) for access licences with share components expressed as a number of unit shares—1ML/unit share.
- (2) Subsection (1) does not apply to an access licence in the Towamba River Coastal Floodplain Alluvial Groundwater Source.

### **Division 3 Flow classes—the Act, s 21(a)**

#### **30 Flow classes for specified water sources and management zones**

- (1) This Plan establishes the flow classes set out in the table to Schedule 1 for the water sources specified.
- (2) In Schedule 1, the flow class applies when the flow concerned meets the flow specified under the flow class threshold as measured at the flow reference point for each water source.

#### **31 Minister may determine flow classes in certain circumstances**

- (1) If the Minister is satisfied that accurate flow data is not available from a gauge used to determine a flow class, the Minister may determine the flow class.
- (2) If the Minister determines a flow class, the Minister must cause a notice to be published on the Department's website specifying the following—
  - (a) the flow class and flow class threshold determined by the Minister,
  - (b) the water source and management zone, if any, to which the flow class applies,
  - (c) the day on which the flow class applies.
- (3) In determining the flow class, the Minister may consider the following—
  - (a) evidence of past and current flows,
  - (b) readings at other functioning upstream and downstream gauges.
- (4) A flow class published in a notice under this section is taken to be a flow class established by this Plan.

### **Division 4 Access rules for take of surface water—the Act, s 21(a)**

#### **32 General**

- (1) Surface water must not be taken—
  - (a) if there is no visible flow at the location from which the water is taken, or
  - (b) for take from a water source under a former entitlement specified in Schedule 2—when flows are at or less than the flows specified in a cease to take condition if, in the Minister's opinion—
    - (i) the cease to take condition is more restrictive than the upper limit of the relevant Very Low Flow Class for the water source or management zone of the access licence, or
    - (ii) the cease to take condition is more restrictive than the access rules specified in section 33.
- (2) Subsection (1)(a) does not apply to the following—
  - (a) an in-river pool,
  - (b) an off-river pool,
  - (c) an in-river dam pool.

#### **33 Specific access rules**

- (1) Surface water must not be taken from the following water sources if flows are in the Very Low Flow Class or A Class on a rising river—
  - (a) Jingo Creek Water Source,
  - (b) Lower Towamba River Water Source,

- (c) Mataganah Creek Water Source,
  - (d) Myrtle Creek Water Source,
  - (e) Pambula Lake Tributaries Water Source,
  - (f) Upper Towamba River Water Source,
  - (g) Wog Wog River Water Source.
- (2) Surface water must not be taken under an unregulated river (high flow) access licence unless flows are in the C Class.

### **34 Exceptions**

- (1) Sections 32 and 33 do not apply to the take of surface water in the following circumstances—
- (a) for the following purposes under an access licence specified in Schedule 3, Table A if not more than 20kl/day or a lower amount specified by the Minister is taken—
    - (i) fruit washing,
    - (ii) cleaning of dairy plant and equipment for the purposes of hygiene,
    - (iii) poultry watering and misting,
    - (iv) cleaning of enclosures used for intensive animal production for the purposes of hygiene,
  - (b) for domestic consumption under a domestic and stock access licence if not more than 1kl/day is taken,
  - (c) from a runoff harvesting dam,
  - (d) under an access licence specified in Schedule 3, Table B until, in the Minister's opinion, major augmentation of the licence holder's water supply system occurs.
- (2) An access rule specified in section 32 or 33 does not apply to the take of surface water under an access licence in relation to an aquifer interference activity for which a planning approval is in force if—
- (a) the licence holder complies with a water management plan, if any, required under the planning approval in relation to the aquifer interference activity, and
  - (b) in the Minister's opinion, the licence holder is not reasonably capable of complying with the access rule concerned.
- (3) Subject to section 33, surface water is permitted to be taken from—
- (a) an in-river pool at or above full capacity, or
  - (b) an off-river pool, or
  - (c) an in-river dam pool if—
    - (i) the in-river dam is at or above full capacity, or
    - (ii) the take is otherwise permitted under the water supply work approval for the in-river dam.

## **Division 5 Access rules for take of groundwater—the Act, s 21(a)**

### **35 Application of Division**

This Division applies to water sources other than the Towamba River Coastal Floodplain Alluvial Groundwater Source.

### 36 General

Groundwater must not be taken in the following circumstances—

- (a) if there is no visible flow in the river at the location closest to the water supply work being used to take groundwater,
- (b) if the location closest to the water supply work being used to take groundwater is a pool that is below full capacity,
- (c) if flows in the water source are in the Very Low Flow Class or A Class on a rising river,
- (d) for take from a water source under an entitlement specified in Schedule 2—when flows are at or less than the flows specified in a cease to take condition if, in the Minister’s opinion—
  - (i) the cease to take condition is more restrictive than the upper limit of the relevant Very Low Flow Class for the water source or management zone of the access licence, or
  - (ii) the cease to take condition is more restrictive than the access rules.

### 37 Specific access rules

Groundwater must not be taken from the Lower Towamba River Water Source under a local water utility access licence held by Bega Valley Shire Council—

- (a) when flows are in the Very Low Flow Class, unless the total volume of water taken is not more than—
  - (i) if Ben Boyd Dam is at 50% capacity or more—1ML/day, or
  - (ii) if Ben Boyd Dam is at less than 50% capacity—2.5ML/day, or
- (b) when flows are in the A Class and there is no visible flow in the river downstream of the Kiah borefield, unless the total volume of water taken is not more than 1ML/day.

### 38 Exceptions

- (1) Sections 36 and 37 do not apply to the take of groundwater in the following circumstances—
  - (a) for the following purposes under an access licence specified in Schedule 3, Table A if not more than 20kl/day or a lower amount specified by the Minister is taken—
    - (i) fruit washing,
    - (ii) cleaning of dairy plant and equipment for the purposes of hygiene,
    - (iii) poultry watering and misting,
    - (iv) cleaning of enclosures used for intensive animal production for the purposes of hygiene,
  - (b) under an access licence specified in Schedule 3, Table B until, in the Minister’s opinion, major augmentation of the licence holder’s water supply system occurs.
- (2) An access rule specified in section 36 or 37 does not apply to the take of groundwater under an access licence in relation to an aquifer interference activity for which a planning approval is in force if—
  - (a) the licence holder complies with a water management plan, if any, required under the planning approval in relation to the aquifer interference activity, and
  - (b) in the Minister’s opinion, the licence holder is not reasonably capable of complying with the access rule concerned.

## Part 7 Construction and use of water supply works—the Act, s 21(b)

**Note**— An approval must not be granted in contravention of this Part—see the Act, section 95(3). An application to amend an approval relating to additional uses, works, activities or land must be assessed and determined in the same way as an application for a new approval, but only in relation to the additional uses, works, activities or land—see the Act, section 107(5).

### Division 1 Water supply works that take surface water

#### 39 Application of Division

This Division applies to a water supply work used in the take of surface water.

#### 40 In-river dams

- (1) An in-river dam must not be constructed within the following water sources—
  - (a) Bondi Lake and Tributaries Water Source,
  - (b) Curalo Lake and Tributaries Water Source,
  - (c) Eden Tributaries Water Source,
  - (d) Far South Coast Water Source,
  - (e) Nullica River Water Source,
  - (f) Pericoe Creek Water Source,
  - (g) Stockyard Creek Water Source,
  - (h) Tura Beach Tributaries Water Source.
- (2) An in-river dam on a third order or higher stream must not be constructed within a water source.
- (3) Subsection (1) does not apply to an in-river dam used to capture or store water only in the exercise of a harvestable right.

#### 41 Wetlands

A water supply work must not be constructed on land within the following areas unless, in the Minister's opinion, there will be no more than minimal harm to the wetland concerned—

- (a) within 3km upstream of, or within, a declared Ramsar wetland,
- (b) within 200m upstream of, or within, coastal wetlands.

### Division 2 Water supply works that take groundwater

#### 42 Application of Division

- (1) This Division applies to a water supply work used to take groundwater.
- (2) In this Part, a reference to a water supply work located within a specified distance includes a reference to a water supply work that is proposed to be located within a specified distance.

#### 43 Replacement groundwater works

- (1) In this Plan, *replacement groundwater work* means a water supply work that—
  - (a) replaces a water supply work authorised by a water supply work approval (the *replaced water supply work*), and
  - (b) is constructed to extract water—
    - (i) from the same water source as the replaced water supply work, and

- (ii) from the same depth as the replaced water supply work, and
  - (c) is located—
    - (i) within 20m of the existing water supply work, and
    - (ii) if the replaced water supply work is located within 40m of the top of the high bank of a river—at the same or a further distance from the top of the high bank of the river, and
  - (d) has an internal diameter or excavation footprint the same as or less than the replaced water supply work unless—
    - (i) if the replaced water supply work is no longer manufactured—the internal diameter of the water supply work will not be more than 120% of the internal diameter of the replaced water supply work, or
    - (ii) if the internal diameter of the replaced water supply work is less than 100mm—the internal diameter of the water supply work will not be more than 100mm.
- (2) A water supply work that does not meet the requirements in subsection (1)(b)(ii) or (c)(i) is taken to be a replacement groundwater work if, in the Minister’s opinion, the water supply work is not likely to—
- (a) result in a greater adverse impact than the replaced water supply work on the following—
    - (i) a water source,
    - (ii) a high priority groundwater-dependent ecosystem,
    - (iii) public health and safety,
    - (iv) a groundwater-dependent culturally significant area, and
  - (b) adversely affect the take of water using an existing water supply work.
- (3) In this section—
- excavation footprint** means the authorised dimensions of an unlined excavation constructed only for water supply.
- internal diameter** means the diameter of the inside of the casing of a water bore.

#### 44 Interference between water supply works

- (1) A water supply work must not be constructed on land within the following areas—
- (a) 200m of a water supply work that is—
    - (i) located on another landholding, and
    - (ii) authorised to take water solely for basic landholder rights from the same water source,
  - (b) 200m of a water supply work that is—
    - (i) located on another landholding, and
    - (ii) nominated by another access licence to take water from the same water source,
  - (c) 100m of the boundary of the landholding on which the water supply work is located unless the owner of the landholding adjoining the boundary has provided written consent,
  - (d) 500m of a water supply work that is nominated by a local water utility access licence or a major utility access licence authorised to take water from the same water source unless the holder of the licence has provided written consent,
  - (e) 100m of a Government monitoring or observation bore.
- (2) Subsection (1) does not apply if—



- (a) the water supply work is used only for basic landholder rights, or
- (b) the water supply work is a replacement groundwater work, or
- (c) the water supply work is for the purpose of monitoring, environmental remediation activities or emergency services, or
- (d) the location of the water supply work at a lesser distance than that specified in subsection (1) would result in no more than a minimal detrimental effect on the water available for take using an existing water supply work.

#### 45 Contamination sources

- (1) A water supply work must not be constructed on land within the following areas—
  - (a) within 500m of a contamination source,
  - (b) within 250m of the edge of a plume associated with a contamination source,
  - (c) between 250m and 500m from the edge of a plume associated with a contamination source unless no change in groundwater level will occur within 250m of the plume.
- (2) Subsection (1) does not apply if—
  - (a) the location of the water supply work is adequate to protect the water source, the environment and public health and safety, or
  - (b) the water supply work is for the purpose of monitoring, environmental remediation activities or emergency services.
- (3) A water supply work must not be constructed on land within 250m of an on-site sewage disposal system unless the water supply work is—
  - (a) constructed with cement grout in the borehole annulus to a minimum depth of 20m from the ground surface, and
  - (b) located at a sufficient distance from the on-site sewage disposal system to prevent migration of septic contamination in the aquifer.
- (4) The Minister may reduce the depth requirement in subsection (3)(a) if—
  - (a) adequate arrangements are in place to protect the water source, the environment, and public health and safety, or
  - (b) the water supply work is for the purpose of monitoring and environmental remediation activities.
- (5) In this section—  
**contamination source** means a contamination source specified in Schedule 4.

#### 46 High priority groundwater-dependent ecosystems

- (1) A water supply work must not be constructed on land within the following areas—
  - (a) 40m of the top of the high bank of a river,
  - (b) 200m of a high priority groundwater-dependent ecosystem,
  - (c) 200m of a wetland,
  - (d) 500m of a karst,
  - (e) 200m of a spring.
- (2) Subsection (1) does not apply if—
  - (a) the water supply work is used only for basic landholder rights, or
  - (b) the water supply work is a replacement groundwater work, or

- (c) the water supply work is for the purpose of monitoring, environmental remediation activities or emergency services.
- (3) Subsection (1)(b) does not apply if, in the Minister's opinion—
  - (a) there is not a high probability of groundwater dependence for the ecosystem concerned, and
  - (b) the location of the water supply work is likely to cause no more than minimal harm to the high priority groundwater-dependent ecosystem concerned.
- (4) Subsection (1)(c)–(e) does not apply if, in the Minister's opinion, the location of the water supply work is likely to cause no more than minimal harm to the wetland, karst or spring concerned.

#### 47 Potential acid sulfate soils

- (1) A water supply work must not be constructed on land within an area classed as having a high probability of occurrence of acid sulfate soils on the Acid Sulfate Soil Risk Map.
- (2) Subsection (1) does not apply if there is not likely to be a significant risk of acidification of the water sources as a result of the construction and location of the water supply work.
- (3) In this section—

***Acid Sulfate Soil Risk Map*** means an Acid Sulfate Soil Risk Map authorised by the Department and published on the Department's website.

***acid sulfate soils*** means naturally occurring sediments and soils containing iron sulphides, principally pyrite, or their precursors or oxidation products, whose exposure to oxygen leads to the generation of sulphuric acid, for example by drainage or excavation.

#### 48 Groundwater-dependent culturally significant areas

- (1) A water supply work must not be constructed on land within 200m of a groundwater-dependent culturally significant area.

**Note**— Groundwater-dependent culturally significant areas may be identified after the commencement of this Plan.
- (2) Subsection (1) does not apply if—
  - (a) the water supply work is used only for basic landholder rights, or
  - (b) the water supply work is a replacement groundwater work, or
  - (c) the water supply work is for the purpose of monitoring, environmental remediation activities or emergency services, or
  - (d) the location of the water supply work at a lesser distance would result in no more than minimal harm to a groundwater-dependent culturally significant area.

#### 49 Water supply works used only for basic landholder rights

- (1) A water supply work used only for basic landholder rights must not be constructed on land within the following areas—
  - (a) 100m of a Government monitoring or observation bore,
  - (b) 40m of the top of the high bank of a river,
  - (c) 100m of a high priority groundwater-dependent ecosystem unless, in the Minister's opinion—

- (i) there is not a high probability of groundwater dependence for the relevant ecosystem, and
    - (ii) the location of the water supply work is likely to cause no more than minimal harm to the high priority groundwater-dependent ecosystem,
  - (d) 100m of a groundwater-dependent culturally significant area unless, in the Minister’s opinion, the water supply work is likely to cause no more than minimal harm to the groundwater-dependent culturally significant area,
  - (e) 200m of a wetland,
  - (f) 500m of a karst,
  - (g) 200m of a spring.
- (2) Subsection (1) does not apply if the water supply work is a replacement groundwater work.
- (3) Subsection (1)(e)–(g) does not apply if, in the Minister’s opinion, the location of the water supply work is likely to cause no more than minimal harm to the wetland, karst or spring concerned.

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## Part 8 Access licence dealing rules—the Act, s 20(1)(d)

**Note—** The access licence dealing principles established by the *Access Licence Dealing Principles Order 2004* prevail over the access licence dealing rules in this Part to the extent of an inconsistency.

### 50 Conversion of access licence to new category dealings

A dealing under the Act, section 71O is prohibited unless the conversion is from—

- (a) an unregulated river access licence to an aquifer access licence in the same water source, but only if the share component of each licence is equal, or
- (b) an unregulated river access licence to an unregulated (high flow) access licence in the Myrtle Creek Water Source or the Mataganah Creek Water Source, but only if—
  - (i) the share component of the unregulated (high flow) access licence is equal to 2.5 times the share component of the unregulated river access licence, and
  - (ii) for the Myrtle Creek Water Source—the total amount of all converted share components is not more than 44 unit shares, and
  - (iii) for the Mataganah Creek Water Source—the total amount of all converted share components is not more than 65 unit shares.

**Note—** The *Access Licence Dealing Principles Order 2004*, clause 11(3) contains restrictions relating to dealings under the Act, section 71O.

### 51 Assignment of rights dealings

- (1) An assignment of rights under the Act, section 71Q from an aquifer access licence that nominates a water supply work located further than 40m from the top of the high bank of a river to an access licence that nominates a water supply work located within 40m of the top of the high bank of a river is prohibited.
- (2) The following assignments of rights under the Act, section 71Q between water sources in the same water management area are prohibited—
  - (a) an assignment to an access licence in a different extraction management unit,
  - (b) an assignment from an access licence in a water source to which this Plan does not apply,
  - (c) an assignment to an access licence in a water source to which this Plan applies, except as permitted under subsection (3).
- (3) The following assignments of rights under the Act, section 71Q between water sources in the same water management area are permitted—
  - (a) an assignment from an access licence in either of the following water sources to an access licence in the Lower Towamba River Water Source—
    - (i) Jingo Creek Water Source,
    - (ii) Mataganah Creek Water Source,
    - (iii) Myrtle Creek Water Source,
    - (iv) Upper Towamba River Water Source,
  - (b) an assignment from an access licence in either of the following water sources to an access licence in the Upper Towamba River Water Source—
    - (i) Mataganah Creek Water Source,
    - (ii) Myrtle Creek Water Source,
  - (c) an assignment from an access licence in 1 of the following water sources to an access licence in the Wog Wog River Water Source—
    - (i) Mataganah Creek Water Source,

- (ii) Myrtle Creek Water Source,
- (iii) Upper Towamba River Water Source,
- (d) an assignment from an access licence in the Upper Towamba River Water Source to an access licence in either of the following water sources—
  - (i) Mataganah Creek Water Source, if the sum of the share components of all access licences in the Mataganah Creek Water Source is not more than 155 unit shares,
  - (ii) Myrtle Creek Water Source, if the sum of the share components of all access licences in the Myrtle Creek Water Source is not more than 209 unit shares.
- (4) An assignment of rights under the Act, section 71Q from an access licence that nominates a water supply work (the *first water supply work*) in the Lower Towamba River Water Source to an access licence that nominates a water supply work located upstream of the first water supply work is prohibited.

**52 Amendment of share component dealings—change of water source**

- (1) The following dealings under the Act, section 71R are prohibited—
  - (a) the cancellation of an access licence in order to grant an access licence in a water source that is in a different extraction management unit,
  - (b) the cancellation of an access licence in a water source to which this Plan does not apply in order to grant an access licence in a water source to which this Plan applies,
  - (c) the cancellation of an unregulated river access licence in order to grant an aquifer access licence in another water source,
  - (d) the cancellation of an access licence in order to grant an access licence in a water source to which this Plan applies, except as permitted under subsection (2).
- (2) The following dealings under the Act, section 71R are permitted—
  - (a) the cancellation of an access licence in either of the following water sources in order to grant an access licence in the Lower Towamba River Water Source—
    - (i) Jingo Creek Water Source,
    - (ii) Mataganah Creek Water Source,
    - (iii) Myrtle Creek Water Source,
    - (iv) Upper Towamba River Water Source,
  - (b) the cancellation of an access licence in either of the following water sources in order to grant an access licence in the Upper Towamba River Water Source—
    - (i) Mataganah Creek Water Source,
    - (ii) Myrtle Creek Water Source,
  - (c) the cancellation of an access licence in 1 of the following water sources in order to grant an access licence in the Wog Wog River Water Source—
    - (i) Mataganah Creek Water Source,
    - (ii) Myrtle Creek Water Source,
    - (iii) Upper Towamba River Water Source,
  - (d) the cancellation of an access licence in the Upper Towamba River Water Source in order to grant an access licence in either of the following water sources—

- (i) Mataganah Creek Water Source, if the sum of the share components of all access licences in the Mataganah Creek Water Source is not more than 155 unit shares,
  - (ii) Myrtle Creek Water Source, if the sum of the share components of all access licences in the Myrtle Creek Water Source is not more than 209 unit shares.
- (3) The extraction component of a new access licence granted in accordance with the Act, section 71R does not carry over the extraction component from the cancelled access licence.

### **53 Assignment of water allocations dealings**

- (1) An assignment of water allocations under the Act, section 71T from an aquifer access licence that nominates a water supply work located further than 40m from the top of the high bank of a river to an access licence that nominates a water supply work located within 40m of the top of the high bank of a river is prohibited.
- (2) The following assignments of water allocations under the Act, section 71T between water sources in the same water management area are prohibited—
- (a) an assignment from an access licence in an extraction management unit to an access licence in another extraction management unit,
  - (b) an assignment from an access licence in a water source to which this Plan does not apply,
  - (c) an assignment from an unregulated river access licence to an aquifer access licence in another water source,
  - (d) an assignment to an access licence in a water source other than the following water sources—
    - (i) Jingo Creek Water Source,
    - (ii) Lower Towamba River Water Source,
    - (iii) Mataganah Creek Water Source,
    - (iv) Myrtle Creek Water Source,
    - (v) Upper Towamba River Water Source,
    - (vi) Wog Wog River Water Source.
- (3) An assignment of water allocations under the Act, section 71T from an access licence that nominates a water supply work (the *first water supply work*) in the Lower Towamba River Water Source to an access licence that nominates a water supply work located upstream of the first water supply work is prohibited.

### **54 Interstate access licence transfer and assignment of water allocations dealings prohibited**

Dealings under the Act, sections 71U and 71V are prohibited.

### **55 Nomination of water supply works dealings**

The following dealings under the Act, section 71W are prohibited—

- (a) an access licence under which groundwater may be taken being amended to nominate a water supply work authorised by its approval to take surface water,
- (b) an access licence under which surface water may be taken being amended to nominate a water supply work authorised by its approval to take groundwater,
- (c) an aquifer access licence that nominates a water supply work located further than 40m from the top of the high bank of a river being amended to nominate

- a water supply work located within 40m from the top of the high bank of a river,
- (d) an access licence being amended to nominate a water supply work located in a different management zone than the zone specified in the extraction component of the licence,
  - (e) an access licence being amended to nominate a water supply work located in a different water source to that specified in the share component of the access licence,
  - (f) an access licence being amended to nominate a water supply work outside of the State.

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## Part 9 Mandatory conditions—the Act, s 17(c)

### Division 1 General

#### 56 Definition

In this Part—

*AS 4747* has the same meaning as in the *Water Management (General) Regulation 2018*, clause 228.

*Logbook*, in relation to an access licence or a water supply work approval, means a record in the form approved by the Minister that is notified on the Department's website.

*operational meter* means an operational meter that complies with AS 4747.

*water account debit* means a water allocation that is taken, assigned under the Act, section 71T or 71V, or otherwise debited or withdrawn from a water allocation account.

### Division 2 Access licences

#### 57 General conditions

Each access licence must be subject to the following mandatory conditions—

- (a) the water taken under an access licence must not be more than the maximum water account debit permitted under section 28,
- (b) the relevant access rules for the taking of water specified in Part 6, Divisions 3 and 4,
- (c) on becoming aware of a breach of a condition of the access licence, the licence holder must—
  - (i) notify the Minister as soon as practicable, and
  - (ii) if the notification is not provided in writing, give the Minister written notice within 7 days of becoming aware of the breach,
- (d) notice to the Minister must be given by writing to the email address for enquiries specified on the Department's website,
- (e) other conditions required to implement the provisions of this Plan.

#### 58 Record keeping conditions

- (1) Before water is taken under an access licence, the licence holder must—
  - (a) confirm that a cease to take condition does not apply, and
  - (b) record the confirmation, including the way in which the confirmation was established, in a Logbook whenever the water supply work does not have an operational meter or an operational data logger.
- (2) Each access licence must have mandatory conditions to give effect to the following—
  - (a) the licence holder must record the following information in a Logbook each time water is taken using a water supply work that does not have an operational meter or an operational data logger—
    - (i) the date and the start and end time during which water was taken under the licence,
    - (ii) the volume of water taken on that date,
    - (iii) the water supply work approval number of the water supply work used to take the water on that date,



- (iv) the purposes for which the water was taken on that date,
  - (v) the volume of water taken in a water year compared with the water account debit permitted under section 28 for the licence,
  - (b) the licence holder must retain the information required to be recorded in the Logbook for 5 years from the date to which that information relates.
- (3) Subsection (2)(a) is repealed on 1 December 2023.
- Note**— The *Water Management (General) Regulation 2018* will impose a mandatory condition requiring record keeping on access licences and approvals by 1 December 2023.

### **Division 3 Water supply work approvals**

#### **59 General conditions**

- (1) Water supply work approvals must have mandatory conditions to give effect to the provisions of this Plan.
- (2) A water supply work approved for the purpose of monitoring, an environmental remediation activity or emergency services must be used only for that purpose.
- (3) On becoming aware of a breach of a condition of the approval, the approval holder must—
  - (a) notify the Minister as soon as practicable, and
  - (b) if the notification is not provided in writing, give the Minister written notice within 7 days of becoming aware of the breach.

#### **60 Record keeping conditions**

- (1) This section does not apply to a water supply work approval if the work is used only for the purpose of taking water under basic landholder rights.
- (2) Before water is taken under an access licence, the licence holder must—
  - (a) confirm that a cease to take condition does not apply, and
  - (b) record the confirmation, including the way in which the confirmation was established, in a Logbook whenever the water supply work does not have an operational meter or an operational data logger.
- (3) The approval holder must—
  - (a) record the following information in a Logbook whenever the water supply work does not have an operational meter or an operational data logger—
    - (i) the date and the start and end time during which water was taken using the water supply work,
    - (ii) the volume of water taken on that date,
    - (iii) the access licence under which water was taken on that date or, if water was taken under some other authority, the authority under which water was taken,
    - (iv) the purposes for which the water was taken on that date,
    - (v) details of any cropping carried out using the water taken through the water supply work including the type of crop, area cropped and dates of planting and harvesting,
    - (vi) if metering equipment has been installed for use in connection with the water supply work and is operational, the meter reading before each time water is taken,
    - (vii) if metering equipment has not been installed for use in connection with the water supply work, or has been installed but is not operational,

details of all pumping activities for the water supply work including pump running hours, pump power usage or pump fuel usage, pump start and stop times and pump capacity per unit of time, and

- (b) retain the information recorded in the Logbook for 5 years from the date to which that information relates.
- (4) If the holder of a water supply work approval is the same person as the holder of the access licence under which water is proposed to be taken, the holder may comply with the requirements of this Plan in 1 Logbook.
- (5) Subsection (3)(a) and (4) are repealed on 1 December 2023.

**Note**— The *Water Management (General) Regulation 2018* will impose a mandatory condition requiring record keeping on access licences and approvals by 1 December 2023.

#### 61 Metering conditions

- (1) This section applies to water supply works used to take water under an access licence.
- (2) The approval holder must install metering equipment, as directed by the Minister, that complies with AS 4747.
- (3) If directed to install metering equipment under subsection (2), the approval holder must ensure the following—
  - (a) the metering equipment accurately measures and records the flow of all water taken through each water supply work,
  - (b) the metering equipment is operated and maintained in a proper and efficient manner at all times,
  - (c) the metering equipment—
    - (i) is sited and installed at a place in the pipe, channel or conduit between the water source and the first discharge outlet, and
    - (ii) there is no flow of water into or out of the pipe, channel or conduit between the water source and the metering equipment,
  - (d) other requirements relating to the type, standard or other criteria for metering equipment are complied with, as directed by the Minister.
- (4) This section is repealed on 1 December 2023.

**Note**— The *Water Management (General) Regulation 2018*, clause 230 provides that the mandatory metering equipment condition applies to all access licences and approvals from 1 December 2023.

### Division 4 Water supply work approvals for groundwater

#### 62 General conditions

- (1) This Division sets out the conditions required to be imposed on a water supply work approval for a work that takes groundwater.
- (2) In this Division—

*Minimum Construction Requirements for Water Bores in Australia* means the document titled *Minimum Construction Requirements for Water Bores in Australia*, ISBN 978-0-646-81881-8, published by the National Uniform Drillers Licensing Committee, 2020.

#### 63 Water supply work construction conditions

- (1) An approval holder must ensure that a water supply work is constructed to ensure the following—

- (a) the water supply work must be situated in the location specified in the application for the water supply work,
  - (b) water must be taken through the water supply work only from the water source specified in the share component of the access licence that nominates the water supply work,
  - (c) the water supply work must be sealed off from all other water sources,
  - (d) construction of the water supply work must comply with the construction standards for that type of bore prescribed in the *Minimum Construction Requirements for Water Bores in Australia*,
  - (e) construction and use of the water supply work must prevent contamination of the aquifer and between aquifers,
  - (f) construction and use of the water supply work must prevent the flow of saline water between aquifers.
- (2) If contaminated water is encountered during the construction of a water supply work, other than a water supply work constructed to monitor or remediate contaminated water, the approval holder must do the following—
  - (a) notify the Minister within 48 hours of becoming aware of the contaminated water,
  - (b) take all reasonable steps to minimise contamination and environmental harm,
  - (c) ensure that the contaminated water is sealed off by inserting casing to a depth sufficient to exclude the contaminated water from the water supply work,
  - (d) place an impermeable seal in the borehole annulus, when and as directed by the Minister,
  - (e) comply with other requirements, if any, specified by the Minister.
- (3) The approval holder must provide details of the water supply work to the Minister in the approved form—
  - (a) within 60 days of completion of the construction of the water supply work, or
  - (b) if the approval is for the amendment of an existing water supply work—within 60 days after the issue of the amended water supply work approval.
- (4) The approval holder must ensure—
  - (a) the construction of the water supply work is completed within 3 years of the approval being granted, and
  - (b) the water supply work is not used unless construction is completed within 3 years of the approval being granted.
- (5) A water supply work approval for a replacement groundwater work must impose conditions that give effect to section 42(1)(b)–(d).

**64 Water quality condition**

The approval holder must, if directed by the Minister by written notice, provide a report in the form specified in the notice detailing the quality of water obtained using the water supply work within the time frame, if any, specified in the notice.

**65 Water supply work decommissioning condition**

- (1) An approval holder must, at least 60 days before decommissioning a water supply work, give written notice to the Minister of the intention to decommission the water supply work.
- (2) The written notice must include a work plan for the decommission.

- (3) The work plan must be prepared in accordance with the *Minimum Construction Requirements for Water Bores in Australia*.
- (4) The Minister must, within 60 days of receiving notice under this section, give a direction that the water supply work—
  - (a) must not be decommissioned, or
  - (b) must be decommissioned in accordance with the requirements specified in the direction.
- (5) In decommissioning the water supply work, the approval holder must comply with the work plan and the requirements specified in the direction.
- (6) The approval holder must, no later than 60 days after decommissioning the water supply work, give the Minister written notice that the water supply work has been decommissioned and provide the name of the driller who decommissioned the work.

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## Part 10 Amendment of this Plan—the Act, s 17(d)

### 66 Amendments

- (1) This Plan authorises the following amendments—
  - (a) to extend the application of this Plan to a water source or water management area, or to modify or remove a water source or water management area to which this Plan applies,
  - (b) to add, remove or modify a management zone, including the water sources to which a management zone applies and the boundaries of the zone,
  - (c) to replace Part 4, Division 2 to establish extraction limits that have been determined based on a proportion of flow,
  - (d) to add or modify flow classes, flow reference points, surface water access rules and groundwater access rules in response to changes in water availability resulting from climate change by amending Part 6, Divisions 2–4 and Schedule 1,
  - (e) to add or modify provisions relating to the following—
    - (i) the management of waters in coastal sands,
    - (ii) managed aquifer recharge,
    - (iii) the interception of water before it reaches a stream or aquifer by plantations or other means,
    - (iv) the management of aquifer interference activities, including the granting of aquifer interference approvals,
    - (v) the protection of groundwater-dependent culturally significant areas,
    - (vi) stormwater harvesting,
    - (vii) total daily extraction limits,
    - (viii) individual daily extraction components,
  - (f) to protect water-dependent Aboriginal cultural assets, including as follows—
    - (i) by identifying water-dependent Aboriginal cultural assets,
    - (ii) by establishing new flow classes or access rules,
    - (iii) by restricting the construction and use of water supply works,
    - (iv) by establishing new access licence dealing rules,
  - (g) to give effect to, or in connection with, a determination of native title under the *Native Title Act 1993* of the Commonwealth,
  - (h) if, within 3 years of the commencement of this Plan, an analysis of the uptake of harvestable rights determines the take of harvestable rights has increased above the take permitted under the 2006 Harvestable Rights Order—to modify Parts 6–8 to protect critical environmental needs and basic landholder rights,
    - (i) to add, modify or remove a definition,
    - (j) to amend Schedule 2 or 3 to add or remove an access licence,
    - (k) to add or remove a contamination source by amending Schedule 4,
    - (l) amendments consequential on an amendment to the Act or regulations.
- (2) An amendment authorised by this Plan is taken to include consequential amendments, if any, to give effect to the authorised amendment.

## Schedule 1 Flow classes

section 30

Column 1	Column 2	Column 3	Column 4
Water source	Flow class	Flow class threshold	Flow reference point
Jingo Creek Water Source	Very Low Flow Class	6.5ML/day or less	Towamba gauge (220004)
	A Class	More than 6.5ML/day and less than or equal to 34ML/day	
	B Class	More than 34ML/day and less than or equal to 51ML/day	
	C Class	More than 51ML/day	
Lower Towamba River Water Source	Very Low Flow Class	6.5ML/day or less	Towamba gauge (220004)
	A Class	More than 6.5ML/day and less than or equal to 34ML/day	
	B Class	More than 34ML/day and less than or equal to 51ML/day	
	C Class	More than 51ML/day	
Mataganah Creek Water Source	Very Low Flow Class	6.5ML/day or less	Towamba gauge (220004)
	A Class	More than 6.5ML/day and less than or equal to 34ML/day	
	B Class	More than 34ML/day and less than or equal to 51ML/day	
	C Class	More than 51ML/day	
Myrtle Creek Water Source	Very Low Flow Class	6.5ML/day or less	Towamba gauge (220004)
	A Class	More than 6.5ML/day and less than or equal to 34ML/day	
	B Class	More than 34ML/day and less than or equal to 51ML/day	
	C Class	More than 51ML/day	
Pambula Lake Tributaries Water Source	Very Low Flow Class	0.5ML/day or less	Pambula River at Lochiel gauge (220003)
	A Class	More than 0.5ML/day and less than or equal to 3.4ML/day	
	B Class	More than 3.4ML/day	
	Very Low Flow Class	6.5ML/day or less	
A Class	More than 6.5ML/day and less than or equal to 34ML/day		

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Water source</b>	<b>Flow class</b>	<b>Flow class threshold</b>	<b>Flow reference point</b>
Wog Wog River Water Source	B Class	More than 34ML/day and less than or equal to 51ML/day	Towamba gauge (220004)
	C Class	More than 51ML/day	
	Very Low Flow Class	6.5ML/day or less	
	A Class	More than 6.5ML/day and less than or equal to 34ML/day	
	B Class	More than 34ML/day and less than or equal to 51ML/day	
	C Class	More than 51ML/day	

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**Schedule 2 Access licences subject to cease to take condition**

sections 32(1)(b) and 36(1)(d)

<b>Access licence number</b>	<b>Water source</b>	<b>Cease to take condition</b>
23244	Mataganah Creek	Water must not be taken when the flow in the Towamba River at Towamba gauge (220004) is 10ML/day or less
23287	Upper Towamba River	Water must not be taken when the flow in the Towamba River at Towamba gauge (220004) is 8.5ML/day or less
23292	Upper Towamba River	Water must not be taken when the flow in the Towamba River at Towamba gauge (220004) is 8.5ML/day or less
23296	Upper Towamba River	Water must not be taken when the flow in the Towamba River at Towamba gauge (220004) is 13ML/day or less

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### **Schedule 3 Access licences permitted to take from very low flows**

sections 34(1) and 37

**Table A – Access licences other than local water utility access licences and domestic and stock (town water supply) access licences**

<b>Water source</b>	<b>Access licence number</b>
Pambula Lake Tributaries	23250
Sandy Beach Creek	30162

**Table B – Local water utility access licences and domestic and stock (town water supply) access licences**

<b>Water source</b>	<b>Access licence number</b>
Lower Towamba River	30172
Myrtle Creek	24066
Myrtle Creek	41087

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## Schedule 4 Contamination sources

section 44(5)

A site that has been declared to be significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*.

A site that has been notified to the Environment Protection Authority under the *Contaminated Land Management Act 1997*, section 60.

A site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines within the meaning of the *Environmental Planning and Assessment Act 1979*.

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## Dictionary

**2006 Harvestable Rights Order** means the *Order under section 54, the Act for harvestable rights—Eastern and Central Division*, Gazette No 40, 31 March 2006, pages 1628–1630.

*AS 4747*, for Part 9—see section 56.

**borehole annulus** means the space between the bore casing and the wall of the borehole.

**cease to take condition** means a term or condition of an access licence or a works approval that prohibits the take of water in a particular circumstance.

**coastal wetlands** means land identified as coastal wetlands on the Coastal Wetlands and Littoral Rainforests Area Map.

**Coastal Wetlands and Littoral Rainforests Area Map** has the same meaning as in *State Environmental Planning Policy (Resilience and Hazards) 2021*.

**declared Ramsar wetland** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

**extraction management unit** means an extraction management unit established under section 5.

**flood-runner** means a stream or part of a stream that only flows during a flood.

**former entitlement** has the same meaning as in the Act, Schedule 10, clause 2.

**fractured rock** means sedimentary, igneous or metamorphic rock containing fractures, joints, bedding planes or cavities in the rock mass that are capable of transmitting water.

**Government monitoring or observation bore** means a bore owned or operated by or on behalf of the Minister, the Ministerial Corporation, the Department or WaterNSW and used for observation or monitoring purposes.

**groundwater** means water occurring beneath the ground surface in the saturated zone, being the area below the water table where all soil spaces, pores, fractures and voids are filled with water.

**groundwater-dependent culturally significant area** means an area determined by the Minister to be a groundwater-dependent culturally significant area.

**groundwater-dependent ecosystem** means an ecosystem that has its species composition and natural ecological processes wholly or partially determined by groundwater.

**high priority groundwater-dependent ecosystem** means a high priority groundwater-dependent ecosystem identified on the High Priority Groundwater-Dependent Ecosystem Map.

**High Priority Groundwater-Dependent Ecosystem Map** means the Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2022 High Priority Groundwater-Dependent Ecosystem Map.

**in-river pool** means a natural pool, lagoon or lake within a river or stream, but does not include—

- (a) a pool on a flood-runner or floodplain, or
- (b) a pool on an effluent that only begins to flow during high flows.

**karst** means an area of land, including subterranean land, developed in soluble rock through the processes of solution, abrasion or collapse, together with its associated bedrock, soil, water, gases and biodiversity.

**kl/day** means kilolitres per day.

**Logbook**, for Part 9—see section 56.

**ML/day** means megalitres per day.

**ML/unit share** means megalitres per unit share.

**ML/year** means megalitres per year.

**off-river pool** means a natural pool, lagoon or lake that is not within a river or stream, regardless of stream size, and that is located—

- (a) on a flood-runner or floodplain, or
- (b) on an effluent that only begins to flow during high flows.

**operational meter**, for Part 9—see section 56.

**Plan Map** means the Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2022 Plan Map.

**planning approval** means—

- (a) a development consent under the *Environmental Planning and Assessment Act 1979*, Part 4, or
- (b) a State significant infrastructure approval under that Act, Part 5.1, or
- (c) a transitional Part 3A project approval under that Act, Schedule 6A.

**porous rock** means consolidated sedimentary rock containing fractures, joints, cleats, voids, pores or other openings that are interconnected in the rock mass and capable of transmitting water.

**replacement groundwater work**—see section 43.

**surface water** means all water occurring on the surface of the land, including all rivers, lakes and wetlands, within the boundaries of the water sources shown on the Plan Map.

**third order or higher stream** means a stream identified as a third order or higher stream, as determined in accordance with the system set out in the *Water Management (General) Regulation 2018*, Schedule 2.

**top of the high bank of a river**, in relation to the location of a water supply work, means the top of the highest bank on the side of the river where the work is located, unless otherwise determined by the Minister.

**visible flow** means the continuous perceptible downstream movement of water.

**water account debit**, for Part 9—see section 56.

**water year** means a period of 1 year commencing on 1 July.

**wetland** means the following—

- (a) coastal wetlands,
- (b) a declared Ramsar wetland.