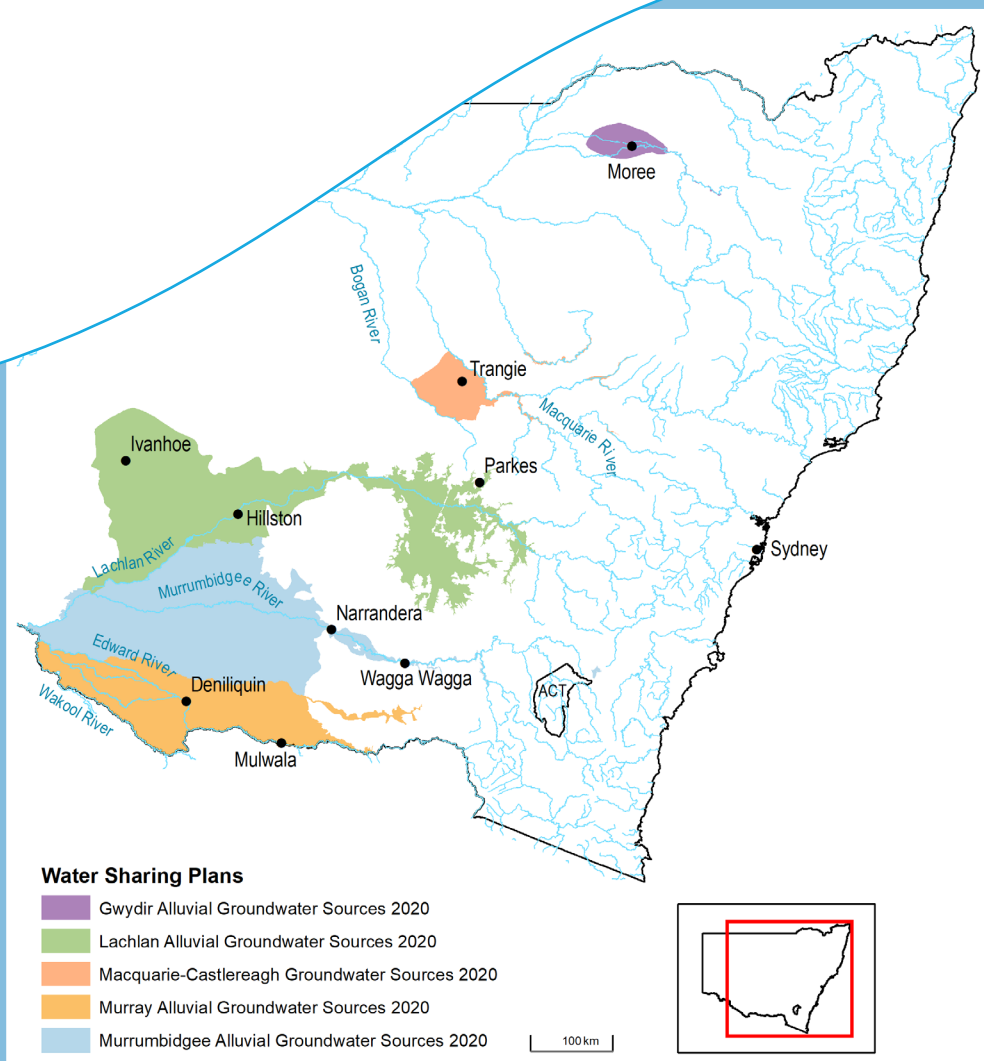


# Final report

## Audit of the implementation of five inland groundwater water sharing plans

### September 2023



## Enquiries

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## Acknowledgement of Country

The Natural Resources Commission acknowledges and pays respect to traditional owners and Aboriginal peoples. The Commission recognises and acknowledges that traditional owners have a deep cultural, social, environmental, spiritual and economic connection to their lands and waters. We value and respect their knowledge in natural resource management and the contributions of many generations, including Elders, to this understanding and connection.

In relation to the Water Sharing Plan areas subject to this audit, the Commission pays its respects to the Barapa Barapa, Barkandji, Gomeroi/Kamilaroi, Maljangapa, Maraura, Muthi Muthi, Nari Nari, Ngemba, Ngiyampaa, Ngunnawal, Nyeri Nyeri, Tati Tati, Wadi Wadi, Wailwan, Weki Weki, Wemba Wemba, Wiradjuri, Wolgalu, Yita Yita and Yorta Yorta traditional owners past, present and future, as well as other Aboriginal peoples for whom these waterways are significant.

## List of acronyms

Act	<i>Water Management Act 2000 No 92 (NSW)</i>
AWD	Available Water Determination
ASAE	Australian Standard on Assurance Engagements
Commission	Natural Resources Commission
Cth	Commonwealth
DPE-EHG	Department of Planning and Environment – Environment and Heritage Group
DPE-Water	Department of Planning and Environment – Water
F	Finding
GL	Gigalitre
Gwydir Plan	<i>Water Sharing Plan for the Gwydir Alluvial Groundwater Sources 2020</i>
iWAS	online Water Accounting System
IPART	Independent Pricing and Regulatory Tribunal
Lachlan Plan	<i>Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020</i>

LTADEL	Long-term average annual extraction limit
Macquarie Plan	<i>Water Sharing Plan for the Macquarie-Castlereagh Groundwater Sources 2020</i>
MDBA	Murray Darling Basin Authority
ML	Megalitre
Murray Plan	<i>Water Sharing Plan for the Murray Alluvial Groundwater Sources 2020</i>
Murrumbidgee Plan	<i>Water Sharing Plan for the Murrumbidgee Alluvial Groundwater Sources 2020</i>
NRAR	Natural Resources Access Regulator
R	Recommendation
Regulation	<i>Water Management (General) Regulation 2018 (NSW)</i>
SPAL	Specific Purpose Access Licence
SDL	Sustainable Diversion Limit
WAL	Water access licence
WAMS	Water Actions Management System
WAS	Water Accounting System
WAVE	Water Added Value Environment
WLS	Water Licensing System
WRP	Water Resource Plan
WRU	Water Resource Unit

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## Executive summary

The Natural Resources Commission (the Commission) has audited five inland groundwater water sharing plans in NSW (referred to in this report as ‘the Plans’) to ascertain whether the provisions of the Plans are being given effect to, as required under Section 44 of the *Water Management Act 2000 No 92* (the Act).<sup>1</sup>

The audited Plans are the:

- *Water Sharing Plan for the Gwydir Alluvial Groundwater Sources 2020* (Gwydir Plan) – version effective from 30 June 2020
- *Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020* (Lachlan Plan) – version effective from 30 June 2020
- *Water Sharing Plan for the Macquarie-Castlereagh Groundwater Sources 2020* (Macquarie-Castlereagh Plan) – version effective from 30 June 2020
- *Water Sharing Plan for the Murray Alluvial Groundwater Sources 2020* (Murray Plan) – version effective from 2 September 2022
- *Water Sharing Plan for the Murrumbidgee Alluvial Groundwater Sources 2020* (Murrumbidgee Plan) – version effective from 30 June 2020.

## Audit conclusion

While many of the provisions of the Plans are being implemented, the Commission considers that on balance the provisions of the Plans have not been given full effect.

The audit conclusion is based on the procedures performed and the evidence obtained. The Commission is of the view that the information presented fairly reflects the implementation of the Plans.

## Audit findings and recommendations

The Commission found that across most of the criteria assessed in this audit, the relevant NSW Government bodies generally have systems, processes and procedures in place that align with legislative requirements and support implementation of the Plans.

Key aspects of the Plans were being implemented, as outlined below:

- provisions relating to long-term average annual extraction limits (LTAAEL)
- provisions relating to available water determinations (AWDs)
- systems, processes and procedures were generally in place to support the implementation of provisions relating to the granting of access licences
- access licence dealing provisions were implemented for most types of dealings during the audit period
- most mandatory conditions required under the Plans have been applied to licences and approvals.

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<sup>1</sup> Note that in this report, ‘the Act’ is used to refer only to the *Water Management Act 2000* and ‘the Regulation’ refers only to the *Water Management (General) Regulation 2018*.

**Table 1** outlines the audit findings and recommendations against the nine audit criteria. Key issues that were identified include:

- a lack of monitoring ,evaluation and reporting plans to guide monitoring and evaluation activities during the life of the Plans (see **Finding 1.1**)
- carryover provisions for Aquifer (town water supply) access licences and other Aquifer subcategories have not been applied in the Water Accounting System in accordance with Aquifer provisions or licence conditions (see **Finding 5.2**)
- aquifer access licences in some water sources have no defined maximum debit or carryover provisions in the Plans and are being managed in different ways in the Water Accounting System (see **Finding 5.3**)
- gaps were identified relating to the documentation and assessment of rules for water supply work approvals under Part 9 of the Plans (see **Findings 6.1 to 6.6**)
- some access licences that require non-urban water metering rules to be applied have not yet been identified and mandatory conditions applied (see **Finding F 8.2**).

The Commission has raised recommendations (R) only for material findings (F) relating to gaps in the implementation of requirements that result in the Plans not being given full effect. The Commission focused on the fundamental elements of plan implementation and did not explore the quality of implementation in detail in this audit.

Recommendations have been made with consideration of the audit period and any information provided by auditees to reflect updated practices. The audit period is defined as the period from the commencement of the Plans on 1 July 2020 to the date of the draft report submission to agencies, on 27 June 2023.

The Commission undertook limited assurance sample testing, walkthroughs and interviews and examined roles and responsibilities, systems, processes, and procedures relevant to the audit criteria. Implementation was found to comply with legislative requirements except where the report identifies gaps. The Commission has provided the audit questions that were examined in each chapter of the report, along with symbols to identify compliance, partial compliance and non-compliance.

The Commission has not prioritised the recommendations or assigned specific timeframes for implementation. However, given that the recommendations address gaps to legislative requirements, the Commission considers that all recommendations should be implemented as soon as practicable within a maximum timeframe of 12 months.

While this report discusses specific consequences for each criterion, the overarching consequence of not giving full effect to plan provisions is that the Plans' objectives are unlikely to be achieved in full. These objectives are intended to support environmental, economic, Aboriginal cultural and social and cultural outcomes. In addition, the water management principles set out in Section 5 of the Act are likely not being given full effect.

**Table 1 Draft audit findings and recommendations**

Finding	Recommendation	Applicable plans
<b>Criterion 1: Have the relevant Government agencies implemented plan provisions relating to vision, objectives, strategies and performance indicators?</b>		
<b>F 1.1</b> DPE-Water has started developing systems and processes to address monitoring and evaluation for water sharing plans. However, there were no monitoring, evaluation and reporting plans in place for these groundwater plans to guide monitoring and evaluation activities during the life of the Plans.	<b>R 1.1</b> DPE-Water to develop systems and processes to facilitate monitoring and evaluation of groundwater plans.	Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee
<b>F 1.2</b> Provisions related to vision, objectives, strategies, and performance indicators under Part 2 of the Plans were largely not implemented during the audit period. There were no defined performance indicators for these groundwater plans to facilitate evaluation of the success of the Plans at meeting their objectives. DPE-Water has begun monitoring and collection of some data which should support assessment of the Plans' performance indicators. There are gaps in the data collection across the environmental, economic, Aboriginal cultural and socio-cultural datasets.	<b>R 1.2</b> DPE-Water to lead the monitoring and evaluation of performance indicators to measure the success of the strategies to reach the objectives set out in Part 2 of the Plans, including to undertake appropriate monitoring.	Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee
<b>Criterion 2: Have the relevant Government agencies implemented plan provisions relating to long-term extraction limits?</b>		
<i>Meets requirements, no findings identified.</i>		
<b>Criterion 3: Have the relevant Government agencies implemented plan provisions relating to available water determinations?</b>		
<i>Meets requirements, no findings identified.</i>		
<b>Criterion 4: Have the relevant Government agencies implemented plan provisions relating to granting access licences?</b>		
<b>F 4.1</b> Specific purpose access licence applications were assessed to determine if the share and extraction component of the licence was the minimum required for the proposed use, as required under Part 7 of the Plans. However, recommended actions from internal specialist advisers that contributed to the assessment and the granting of a licence in the Lachlan were not implemented in full during the audit period.	<b>R 4.1.1</b> DPE-Water to finalise its review of the internal specialist advice which informed the granting of specific purpose access licences during the audit period to confirm whether any actions or updates are required. <b>R 4.1.2</b> DPE-Water to document reasons, and inform internal technical advisors, if it intends to not follow the recommendations or technical advice provided to inform the granting of a specific purpose access licence.	Lachlan  All licence applications



Finding	Recommendation	Applicable plans
<b>Criterion 5: Have the relevant Government agencies implemented plan provisions relating to managing access licences?</b>		
<p><b>F 5.1</b> Maximum water account debit provisions have been applied in the Water Accounting System as an annual use limit to around half of all access licence categories in these groundwater sources. All of the licence categories without a use limit applied in the Water Accounting System appear to be limited in their use by carryover provisions applied in that system. This is also the case for many of the licences that do have annual use limits.</p>	<p><b>R 5.1</b> WaterNSW to apply Annual Use Limits to existing licence categories that have maximum water account debit provisions in the Plans but do not currently have an Annual Use Limit applied in the Water Accounting System.</p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>
<p><b>F 5.2</b> Carryover provisions for Aquifer (town water supply) access licences other Aquifer subcategories have not been applied in the Water Accounting System in accordance with Aquifer provisions in the Plans, or licence conditions. This is the case for Aquifer licence subcategories in most water sources in the Lachlan, Murray and Murrumbidgee.</p>	<p><b>R 5.2</b> WaterNSW to review and update configuration of carryover for Aquifer licence subcategories in the Water Accounting System to align with plan provisions for Aquifer access licences (unless otherwise stated in the Plans).</p>	<p>Lachlan Murray Murrumbidgee</p>
<p><b>F 5.3</b> Carryover has been configured differently in the Water Accounting System for Aquifer licences in three water sources where the Plans have no account management provisions relating to this licence category in these water sources. These were Aquifer licences in the Upper Gwydir Alluvial Groundwater Source, the Belubula Valley Alluvial Groundwater Source and the Cudgegong Alluvial Groundwater Source.</p>	<p><b>R 5.3.1</b> DPE-Water to investigate three water sources where Aquifer access licences exist but there are no plan provisions for their account management, including to investigate the potential for amendments. DPE-Water to advise WaterNSW of the outcome and how to configure these accounts appropriately.</p> <p><b>R 5.3.2</b> WaterNSW to update the Water Accounting System to configure these accounts in line with DPE-Water's advice.</p>	<p>Gwydir Lachlan Macq-Castlereagh</p>
<b>Criterion 6: Have the relevant Government agencies implemented plan provisions relating to rules for water supply work approvals?</b>		
<p><b>F 6.1</b> WaterNSW and DPE-Water (previously NRAR) have procedures and systems for governing the water supply work approval process generally, however gaps were identified in this audit relating to the documentation and assessment of rules for supply works approvals under Part 9 of the Plans (see <b>F 6.2 – F 6.6</b> below). Both agencies advised that they are updating their procedures and systems for processing supply works approvals.</p> <p>Water supply works must not be approved or amended unless the agencies are satisfied that there will be no more than minimal effect on a person's ability to take water using an existing approved water supply work and any associated access licences, and no more than minimal harm done to:</p>	<p><b>R6.1a</b> DPE-Water to finalise updates to its procedures and systems governing the water supply work approval process. As part of this work, DPE-Water to implement its updated processes and templates to assess and explicitly document compliance with the provisions for water supply works approvals under Part 9 of the Plans. This should include rectification of gaps identified in <b>R 6.2a</b> to <b>R 6.5.2b</b> below.</p> <p><b>R6.1b</b> WaterNSW to finalise updates to its procedures and systems governing the water supply work approval process.</p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>

Finding	Recommendation	Applicable plans
<ul style="list-style-type: none"> <li>- any water source, or its dependent ecosystems,</li> <li>- public health and safety or</li> <li>- a groundwater-dependent culturally significant area.</li> </ul> <p>While the Commission observed evidence of assessment of this, there is the potential for greater than minimal harm or effect due to the gaps in assessment and documentation described in <b>F 6.1</b> to <b>F 6.6</b>.</p>	<p>As part of this work, WaterNSW to update processes and templates to assess and explicitly document compliance with the provisions for water supply works approvals under Part 9 of the Plans. This should include rectification of gaps identified in <b>R 6.2b</b> to <b>R 6.6</b> below.</p>	
<p><b>F 6.2</b> The Plans include rules to minimise interference between water supply works, including minimum set back distances under certain situations such as from neighbouring properties or local water utility bores. The Commission did not sight evidence of assessment of all the provisions to minimise interference between water supply works being checked by WaterNSW or NRAR. The current DPE-Water and WaterNSW assessment sheets do not include any checks for the rules to minimise interference to be documented.</p>	<p><b>R 6.2a</b> DPE-Water to assess and explicitly document compliance with the provisions under Part 9 of the Plans for all rules to minimise interference between water supply works.</p> <p><b>R 6.2b</b> WaterNSW to assess and explicitly document compliance with the provisions under Part 9 of the Plans for all rules to minimise interference between water supply works.</p>	<p>Lachlan Macq-Castlereagh Murrumbidgee</p>
<p><b>F 6.3.1</b> The Plans require assessment of potential sources of contamination near water supply works, including on-site sewage disposal systems and any site that: (a) has been declared to be significantly contaminated land under the <i>Contaminated Land Management Act 1997</i>; (b) notified to the EPA (Environment Protection Authority) under section 60 of the <i>Contaminated Land Management Act 1997</i>.</p> <p>The Commission did not sight evidence indicating the consistent assessment of declared and notified potential sources of contamination under the <i>Contaminated Land Management Act 1997</i> by NRAR and WaterNSW during the audit period.</p>	<p><b>R 6.3.1.a</b> DPE-Water to consistently assess and explicitly document compliance against the Plans' schedule requirement for assessment of contamination sources including any site that has been declared to be significantly contaminated land under the <i>Contaminated Land Management Act 1997</i>, or notified to the EPA under section 60 of the <i>Contaminated Land Management Act 1997</i>.</p> <p><b>R 6.3.1b</b> WaterNSW to consistently assess and explicitly document compliance against the Plans' schedule requirement for assessment of contamination sources including any site that has been declared to be significantly contaminated land under the <i>Contaminated Land Management Act 1997</i>, or notified to the EPA under section 60 of the <i>Contaminated Land Management Act 1997</i></p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>
<p><b>F 6.3.2</b> The Plans require assessment of potential sources of contamination near water supply works, including any site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines published under the <i>Environmental Planning and Assessment Act 1979</i>.</p>	<p><b>R 6.3.2a</b> DPE-Water to develop a process to support the assessment and documentation of compliance against the Plans' schedule requirement for assessment of contamination sources including any site that is or has been the subject of an activity listed in Table 1 of the contaminated</p>	<p>Gwydir Lachlan Macq-Castlereagh Murray</p>

Finding	Recommendation	Applicable plans
<p>WaterNSW and DPE-Water indicated that there are currently no processes in place to complete this assessment, and this requirement has not been met during the audit period.</p>	<p>land planning guidelines published under the <i>Environmental Planning and Assessment Act 1979</i>.”</p> <p><b>R 6.3.2b</b> WaterNSW to develop a process to support the assessment and documentation of compliance against the Plans’ schedule requirement for assessment of contamination sources including any site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines published under the <i>Environmental Planning and Assessment Act 1979</i>.</p>	<p>Murrumbidgee</p>
<p><b>F 6.4</b> The Plans have rules to prevent water supply works from being approved within certain distances of high priority groundwater dependent ecosystems or the high bank of a river unless adequate arrangements are in place to protect the ecosystems. The audited assessment summary sheets do not require compliance with these provisions to be recorded or have a check that they are explicitly met.</p> <p>In the sample of relevant water supply work approvals reviewed, NRAR did not document the distance to the high bank of a river or groundwater dependent ecosystems in one of the three tested water supply works approvals.</p> <p>WaterNSW did not document the distance to the high bank of a river in two relevant water supply works approvals, or the distance to groundwater dependent ecosystems in one relevant tested water supply works approval.</p>	<p><b>R 6.4a</b> DPE-Water to consistently assess and document compliance with the provisions under Part 9 of the Plans for water supply works near high priority groundwater-dependent ecosystems and high banks of rivers.</p> <p><b>R 6.4b</b> WaterNSW to consistently assess and document compliance with the provisions under Part 9 of the Plans for water supply works near high priority groundwater-dependent ecosystems and high banks of rivers.</p>	<p>Lachlan Macq-Castlereagh</p>
<p><b>F 6.5</b> The Plans require assessment of water supply work approvals located near groundwater-dependent culturally significant areas.</p> <p>The Commission did not sight evidence that demonstrated assessment of groundwater-dependent culturally significant areas for any of the six relevant water supply work approvals processed by WaterNSW or NRAR during the audit period. Assessments did include an Aboriginal Heritage Information Management System (AHIMS) search with a requirement that works are not within 20 m of a site. Agencies identified in interview that this search is not intended to fulfil the requirements of an assessment for groundwater-dependent culturally significant areas under Part 9 of the Plans. Agencies identified that there is no process to provide the</p>	<p><b>R 6.5.1</b> DPE-Water to develop a process to support the identification of groundwater-dependent culturally significant areas to enable assessments of potential impacts from water supply work approvals.</p> <p><b>R 6.5.2a</b> Upon completion of <b>R 6.5.1</b>, DPE-Water to assess and document compliance with the provisions under Part 9 of the Plans for water supply works near groundwater-dependent culturally significant areas.</p> <p><b>R 6.5.2b</b> Upon completion of <b>R 6.5.1</b>, WaterNSW to assess and document compliance with the provisions under Part 9 of the Plans for water supply works near groundwater-dependent culturally significant areas.</p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>

Finding	Recommendation	Applicable plans
<p>information to allow an assessment of groundwater-dependent culturally significant areas.</p> <p>The current DPE-Water and WaterNSW assessment summary sheets do not have a location to record the results of any assessment of nearby groundwater-dependent culturally significant areas.</p>		
<p><b>F 6.6</b> The Plans only require replacement water supply works to be assessed against some of the criteria in Part 9 due to their lower risk profile. The Plans define the specific features of a ‘replacement’ water supply work.</p> <p>This audit reviewed one replacement water supply work application, approved by WaterNSW under the Gwydir Plan. It did not explicitly comply with two elements of the definition of a replacement groundwater supply work in the Plan (depth and diameter). The Commission understands that the Minister’s exemption clauses were used and conditions applied to the licence in place of meeting the depth requirements. However, the diameter requirement was not met. This means it was not assessed against all relevant Plan provisions that apply to new water supply work approvals.</p> <p>The current DPE-Water and WaterNSW assessment summary sheets do not require documentation of compliance with the criteria for a replacement work under the Plans and the agency’s agreed triage process does not align with the replacement work definitions or exemptions.</p> <p>Further, the assessment did not address provisions which should still be assessed for replacement works, specifically rules for water supply works located near contaminations sources.</p>	<p><b>R 6.6</b> WaterNSW to assess and explicitly document compliance, where relevant, with the definition of a replacement work under Part 9 of the Plans to inform the assessment process.</p>	<p>Gwydir</p>
<p><b>Criterion 7: Have the relevant Government agencies implemented plan provisions relating to access licence dealing rules?</b></p>		
<p><b>F 7.1</b> The Water Licensing System that is used to process dealings reports any 710, 71P, 71R, 71S and 71W dealings as a bundle of dealing types (“710/R/S/W” or “71P(1)(a)/O/R/S/W” for example). 710 (conversion to a new licence category) dealings are prohibited across the Plans and 71R (amendment of licence share component) dealings are typically prohibited. Therefore, the system reports make it appear as if dealings that are prohibited were processed during the audit period. Note, the Commission has not confirmed any instances of prohibited dealings being processed.</p>	<p><b>R 7.1</b> WaterNSW to update the naming conventions for dealings under WAVE to ensure dealing names and system reports accurately reflect dealings undertaken to demonstrate compliance and improve data quality.</p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>

Finding	Recommendation	Applicable plans
<p><b>F 7.2</b> In the sample reviewed of three 71W dealings processed in each of the Gwydir, Lachlan, Murray and Murrumbidgee, the Commission found some minor quality issues relating to requirements of the <i>Access Licence Dealing Principles Order 2004</i> including:</p> <ul style="list-style-type: none"> <li>▪ inconsistent documenting of the assessment of interstate tagging requirements and whether these applied and were met (including 1 dealing in the Murrumbidgee that incorrectly stated these requirements were not met)</li> <li>▪ inconsistent answering of subsequent questions relating to requirements for specific purpose access licences (SPALs) where it had been identified the WAL in question was not a SPAL (including 1 in the Lachlan and 1 in the Gwydir that incorrectly stated these requirements were not met)</li> <li>▪ one WAL in the Murrumbidgee was incorrectly stated as being suspended, which would trigger a rejection.</li> </ul>	<p><b>R 7.2</b> WaterNSW to update the assessment summary sheet structure and process for 71W dealings to:</p> <ul style="list-style-type: none"> <li>▪ include a ‘not applicable’ option for interstate and NSW tagging requirements</li> <li>▪ remove default positions on answers to promote active entry of answers by assessing officers</li> <li>▪ ensure any answers which would trigger a refusal of the dealing are identified and corrected before processing a dealing.</li> </ul>	<p>Gwydir Lachlan Murray Murrumbidgee</p>
<b>Criterion 8: Have the relevant Government agencies implemented plan provisions relating to mandatory conditions?</b>		
<p><b>F 8.1</b> The Commission found that existing access licence and water supply work approval holders were notified of mandatory conditions up to 1 year and 3 months after plan commencement. Specifically:</p> <ul style="list-style-type: none"> <li>▪ Gwydir: August to September 2021 (around 1 year and 2 months after plan commencement)</li> <li>▪ Lachlan: February 2021 (7 months after plan commencement)</li> <li>▪ Macquarie-Castlereagh: September 2021 (1 year and 2 months after plan commencement)</li> <li>▪ Murrumbidgee: July 2021 (1 year after plan commencement).</li> </ul> <p>Licence and approval holders under the Murray Plan were notified within two months, which the Commission considers to be within a reasonable timeframe.</p>	<p><b>R 8.1</b> DPE-Water to complete work to improve systems and processes for notifying licence and approval holders of mandatory conditions, including the Standard Operating Procedure. This should include documenting target timeframes for notification of mandatory conditions.</p>	<p>Gwydir Lachlan Macq-Castlereagh Murrumbidgee</p>

Finding	Recommendation	Applicable plans
<p><b>F 8.2</b> The Commission did not observe any instances of water access licences in the Gwydir and Macquarie-Castlereagh having conditions relating to the new non-urban water metering requirements. DPE-Water confirmed this is appropriate in most cases, as water supply work approvals are the main instrument for the placement of these conditions. Under the <i>Water Management (General) Regulation 2018</i>, only access licences that are exempt from the requirement for a water supply work approval or used for the purpose of prospecting or fossicking for minerals or petroleum must have mandatory metering equipment and reporting conditions placed on the access licence. DPE-Water has commenced a project to identify access licences that require mandatory conditions to give effect to the non-urban water metering requirements. These non-urban water metering requirements came into effect for the Gwydir and Macquarie-Castlereagh on 1 December 2021 and so will be given delayed effect as conditions to access licences.</p>	<p><b>R 8.2</b> DPE-Water to complete work to identify access licences that require relevant non-urban water metering requirements to be applied as mandatory conditions in the Gwydir and Macquarie-Castlereagh and apply appropriate mandatory conditions. This work will also be required for the Lachlan, Murray and Murrumbidgee from 1 June 2023.</p>	<p>Gwydir Macq-Castlereagh</p>
<p><b>F 8.3</b> WaterNSW indicated that conditions for replacement water supply works have been applied as discretionary conditions, rather than mandatory conditions. The Commission has observed one water supply work approved in the Gwydir during the audit period which had conditions for replacement groundwater works applied as a discretionary condition.</p>	<p><b>R 8.3</b> WaterNSW to apply rules for replacement groundwater works as mandatory conditions.</p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>
<b>Criterion 9: Have the relevant Government agencies implemented plan provisions relating to amendments?</b>		
<p><b>F 9.1</b> Some DPE-Water processes to support the review of in-plan amendment provisions were not in place for over two years, which presented a risk to the identification of any in-plan amendments that may have been triggered.</p>	<p><i>Addressed during the audit period, no recommendation.</i></p>	<p>Gwydir Lachlan Macq-Castlereagh Murray Murrumbidgee</p>



# 1 Audit objective and process

## 1.1 The Commission's role in auditing management plans

The Natural Resources Commission (the Commission) is an independent body with broad investigating and reporting functions that aim to establish a sound evidence base to inform natural resource management in the social, economic and environmental interests of NSW.

The Commission has a role under Section 44 of the *Water Management Act 2000* (the Act) to audit water management plans within the first five years of each plan to ascertain whether their provisions are being given effect to. This role began on 1 December 2018 under changes to the Act.

Water management plans include:

- **water sharing plans** – establish the rules for sharing water between the environment and other water users. They also set rules for trading, water allocations and the management and granting of water access licences and water supply work approvals.<sup>2</sup>
- **floodplain management plans** – provide the framework to coordinate flood work development to minimise future changes to flooding behaviour, and to increase awareness of risk to life and property from flooding.<sup>3</sup>

The Commission has a responsibility under Section 9 of the Act to fulfil its responsibilities in accordance with the water management principles and order of priority of water uses described in the Act.

## 1.2 Audit objective

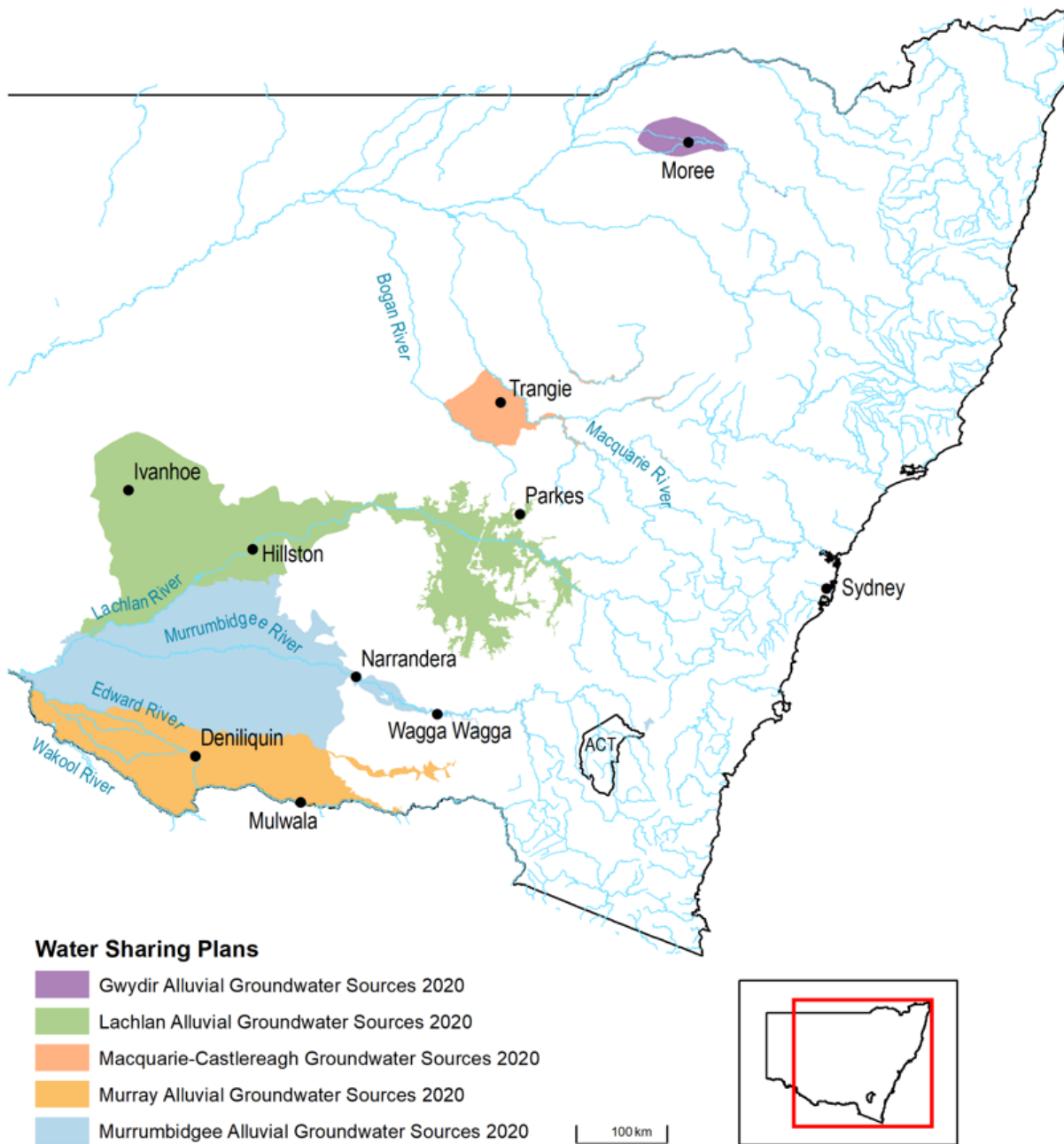
The objective of this audit was to determine, in accordance with Section 44 of the Act, whether the provisions of the following five inland groundwater water sharing plans (the Plans) are being given effect to:

- *Water Sharing Plan for the Gwydir Alluvial Groundwater Sources 2020* (Gwydir Plan) – version effective from 30 June 2020
- *Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020* (Lachlan Plan) – version effective from 30 June 2020
- *Water Sharing Plan for the Macquarie-Castlereagh Groundwater Sources 2020* (Macquarie-Castlereagh Plan) – version effective from 30 June 2020
- *Water Sharing Plan for the Murray Alluvial Groundwater Sources 2020* (Murray Plan) – version effective from 2 September 2022
- *Water Sharing Plan for the Murrumbidgee Alluvial Groundwater Sources 2020* (Murrumbidgee Plan) – version effective from 30 June 2020.

The Commission has audited the versions of the Plans that were in effect at the time of the audit and identified above. Plan amendments may occur in future which could alter clause references. Plan clause references in this report should therefore be read in conjunction with the Plans as made (and in force) on 30 June 2020. The areas of NSW that are covered by the Plans is shown in **Figure 1** below.

<sup>2</sup> Department of Planning and Environment (n.d.) [How water sharing plans work.](#)

<sup>3</sup> Department of Planning and Environment (n.d.) [Developing floodplain management plans.](#)



**Figure 1 Map of the groundwater water sharing plans subject to this audit**

### 1.3 Audit criteria

Audit criteria were developed based on common parts of water sharing plans that the Commission considered warranted examination to ascertain whether provisions are being given effect to. The audit criteria are:

- **Criterion 1:** The relevant responsible parties have implemented plan provisions relating to vision, objectives, strategies and performance indicators
- **Criterion 2:** The relevant responsible parties have implemented plan provisions relating to limits to long-term average annual extraction limits
- **Criterion 3:** The relevant responsible parties have implemented plan provisions relating to available water determinations



- **Criterion 4:** The relevant responsible parties have implemented plan provisions relating to granting access licences
- **Criterion 5:** The relevant responsible parties have implemented plan provisions relating to managing access licences
- **Criterion 6:** The relevant responsible parties have implemented plan provisions relating to rules for water supply work approvals
- **Criterion 7:** The relevant responsible parties have implemented plan provisions relating to access licence dealing rules
- **Criterion 8:** The relevant responsible parties have implemented plan provisions relating to mandatory conditions
- **Criterion 9:** The relevant responsible parties have implemented plan provisions relating to amendments (where these are not optional) and there is evidence that identified amendments (which may include optional amendments) have been given due consideration.

The Commission's audits in regulated river systems have an additional criterion in relation to system operations, however this is not applicable to groundwater plans so there are nine criteria only for this audit.

The Commission developed audit questions to test relating to each criterion above, that align with the provisions of the Plans. Each criterion chapter includes a compliance summary table that contains the relevant plan clauses and audit questions that were examined, as well as a compliance rating. The compliance ratings used throughout the report are categorised as follows:

✓ = Compliant; ~ = Partial compliance; ✗ = Non-Compliant; NA = Not applicable

## 1.4 Auditee agencies

The key entities responsible for implementing water management plans in NSW are the:

- Department of Planning and Environment – Water (DPE-Water)
- WaterNSW
- Natural Resources Access Regulator (NRAR); and
- Department of Planning and Environment - Environment and Heritage Group (EHG).

The responsibility for implementing the provisions described in the nine audit criteria above is assumed to rest with DPE-Water, except where other agencies have been identified as being responsible. In June 2021, DPE-Water, NRAR and WaterNSW signed an agreement which clarifies their roles and responsibilities including those relating to water sharing plans and water supply work approvals.<sup>4</sup>

Some agencies have changed name or role during the audit period. DPE-Water was formerly the Department of Planning, Industry and Environment-Water (DPIE-Water) and DPE-EHG was formerly the Department of Planning, Industry and Environment – Environment, Energy and Science (DPIE-EES) until early-2022. The Commission has adopted the name (as of June 2023) of any responsible agencies throughout this report.

<sup>4</sup> [Roles and Responsibilities Agreement: DPIE, NRAR and WaterNSW](#). Executed 30 June 2021.

The Commission notes that NRAR was previously responsible for licensing and approvals for some customers including local councils, water utilities and state-owned corporations, State Significant Developments, State Significant Infrastructure and Aboriginal communities. However, this function was transferred to DPE-Water during the audit period in mid-2022<sup>5</sup>. In cases where the Commission has made audit findings relevant to the period where NRAR managed this licensing and approvals function, any recommendations have been directed to DPE-Water as the agency with the current responsibility.

## 1.5 Audit procedures

Audit procedures included:

- document review, including of overarching frameworks, procedures, guidelines, manuals, policies and reports
- walk throughs of material activities, including key systems and processes with system implementors and owners
- sampling of data or assessments
- interviews with process owners and implementors that give effect to plan provisions in DPE-Water, and WaterNSW.

These procedures were carried out on a test basis to provide sufficient, appropriate evidence to provide a limited assurance conclusion.

## 1.6 Audit standards

This audit was executed as a limited assurance engagement in accordance with the following standards:

- *Standards on Assurance Engagements (ISAE) 3000 Assurance Engagements other than Audits or Reviews of Historical Financial Information*
- *ISAE 3100 Compliance Engagements*
- *Auditing Standard ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements.*<sup>6</sup>

In accordance with these standards, the Commission has:

- complied with applicable ethical requirements
- planned and performed procedures to obtain independent assurance about whether the relevant responsible parties have implemented the plans, in all material respects, as evaluated against the audit criteria.

## 1.7 Limitations

This audit was a limited assurance engagement. The procedures performed in a limited assurance engagement vary in nature and timing and are of lesser extent than for a reasonable assurance engagement. As such, the level of assurance obtained in a limited

<sup>5</sup> DPE-Water (2022) [Water news](#) – May 2022 – Issue 35.

<sup>6</sup> Australian Standard ASQC 1 was replaced by Auditing Standard ASQM 1 from mid-December 2022 after the commencement of this audit. This audit was therefore planned and executed in accordance with ASQC 1, as the standard in place at the commencement of the audit. ASQM 1 will be considered for future audits where appropriate.

assurance engagement is substantially lower than the assurance that would have been obtained through a reasonable assurance engagement.

Further, the audit cannot be relied on to comprehensively identify all weaknesses, improvements or areas of non-compliance. Inherent limitations mean that there is an unavoidable risk that some material matters may not be detected, despite the audit being properly planned and executed in accordance with the standards outlined in **Chapter 1.6**.

Due to the timing of the audit during 2022-23, the water year of 2022-23 was not completed. Therefore, any audit questions examined that require a full water year to be completed to allow the data or information to confirm compliance with provisions were not audited for the 2022-23 water year.

## 1.8 Exclusions

The audit has not provided an assessment against all provisions or parts in the Plans and does not assess the:

- introduction (Part 1)
- bulk access regime (typically Part 3)
- requirements for water (typically Part 5).

The audit has not examined or provided an opinion regarding:

- compliance or non-compliance of individual water access licence or water supply work approval holders
- whether the Plans are being implemented efficiently
- whether stated objectives in the Plans are being achieved
- whether the Plans are effective, appropriate or in line with the Act
- compliance with any legislation unrelated to the Act
- the role of the Natural Resources Access Regulator (NRAR) which independently sets its compliance and enforcement priorities in accordance with the *Natural Resources Access Regulator Act 2017*
- the role of any Commonwealth agencies or water agencies of other states or territories.

## 2 Criterion 1 – Performance indicators

### ***Have the relevant responsible parties implemented plan provisions relating to vision, objectives, strategies and performance indicators?***

#### **Conclusion**

During the audit period there were no finalised systems or processes in place to guide monitoring, evaluation and reporting (MER) activities for groundwater water sharing plans.

The Plans list datasets that can be used to assess the changes or trends in ecological condition, economic benefits, Aboriginal cultural, and social and cultural objectives during the Plan's term. Of these datasets, WaterNSW regularly collects groundwater level and trading data across the Plan areas. Other datasets to assess Plan performance are not consistently or directly measured. There were no defined performance indicators in place for the Plans to guide data collection during the audit period.

### 2.1 Introduction

Part 2 of the Plans are made in accordance with Section 35(1) of the Act, requiring:

- a vision statement
- objectives consistent with the vision statement
- strategies for reaching objectives, and
- performance indicators to measure the success of strategies.

This audit examined Part 2 of each Plan. Part 2 requires one or more of the performance indicators to be assessed to measure changes or trends in the ecological condition, the economic benefits, the Aboriginal cultural use, and the social and cultural use of water over the term of the Plans. DPE-Water are responsible for the development, and review of management plans across NSW<sup>7</sup> and is the lead agency responsible for developing and assessing performance indicators to measure the success of the strategies in meeting the Plan objectives. Other NSW Government agencies, including WaterNSW and DPE-Environment and Heritage Group, have roles in collecting and evaluating data.

### 2.2 Compliance summary

The Commission considered three overarching audit questions relevant to the Plans' performance indicator provisions. **Table 2** summarises the results of this analysis against these questions.

The Plans commenced on 1 July 2020 and expire on 30 June 2030 after a term of 10 years. Due to the early timing of the audit in the 10-year life of the Plans, the Commission considers it unreasonable for DPE-Water to have already assessed performance indicators. However, as discussed in the next section, the Commission would expect to see a plan for what data will be collected, how they will be collected to undertake this assessment, and some progress towards collecting the data.

<sup>7</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), p 3, Executed 30 June 2021.*

**Table 2: Compliance summary for performance indicator provisions**

Plan clauses	Audit questions for Criterion 1	Compliance
Gwy: Part 2, Cl 8-11 Lach: Part 2, Cl 9-12 Mac-Cas: Part 2, Cl 9-12 Murray: Part 2, Cl 9-12 M'bidgee: Part 2, Cl 9-12	Were there systems and processes in place to manage monitoring, evaluation and reporting of performance indicators?	✘
	Has monitoring and data collection commenced to enable assessment of defined performance indicators over the life of the Plans?	~
	Has any assessment of performance indicator data occurred?	NA <sup>8</sup>

## 2.3 Findings

### 2.3.1 There were limited systems and processes in place to support monitoring and evaluation of groundwater plans

DPE-Water has a large program of work underway to improve the MER of water sharing plan outcomes across the state. However, at the time of this audit, there has been a focus on surface water and state-wide systems or processes are not yet in place to manage the implementation of groundwater water sharing plan provisions relating to performance monitoring. Without a high-level groundwater MER framework or MER plans (such as those developed or being developed for surface water) monitoring of each audited groundwater Plan may not be targeted, consistent, or efficient and relevant data may not be collected in time to facilitate evaluation.

DPE-Water has developed and published the *NSW Water Management Monitoring, Evaluation and Reporting Framework*.<sup>9</sup> This document provides a high-level framework for MER for surface water sharing plans, but not groundwater water sharing plans. Under this high-level framework are intended to sit environmental, socio-economic and cultural methods documents statements and then a customised evaluation plan for each water sharing plan or grouping of plans. DPE-Water has developed draft surface water methods statements for water sharing plan social and economic impact evaluation, and environmental impact evaluation, but has not yet developed comparable methods statements for groundwater, or surface or groundwater cultural impact evaluations. Customised evaluation plans have not been developed for the Plans in the audit period.

DPE-Water has also developed and published the *NSW Groundwater Environmental Monitoring, Evaluation and Reporting Plan*. This document describes the expected groundwater environmental MER program for general environmental objectives and targets for all NSW groundwater water resource plans, of which water sharing plans are a core component.<sup>10</sup> Because water resource plans do not contain specific objectives, the monitoring activities described in the *NSW Groundwater Environmental Monitoring, Evaluation and Reporting Plan* were developed based on the objectives of the water sharing plans as well as the *Water Quality Management Plan* and *Long Term Water Plan*. The *NSW Groundwater Environmental Monitoring, Evaluation and Reporting Plan* contains relevant information that could help guide the MER of groundwater water sharing plans, including

<sup>8</sup> Due to the early timing of the audit in the 10-year life of the Plans the Commission considers it unreasonable for DPE-Water to have already assessed performance indicator data.

<sup>9</sup> DPE-Water (2020) [NSW Water Management Monitoring, Evaluation and Reporting Framework](#).

<sup>10</sup> DoI-Water (2018) [Schedule H: Draft Environmental Groundwater Monitoring, Evaluation and Reporting Plan](#).

the Plans subject to this audit and the Commission understands these will be considered by DPE-Water where relevant.

### Recommendation

DPE-Water should continue the work underway to improve MER of water sharing plans, including development of MER relating to groundwater plans which is scheduled to commence in 2023. The Commission makes one recommendation to address the first non-compliance rating presented in **Table 2** and described in **Section 2.3.1**.

R 1.1

DPE-Water to develop systems and processes to facilitate monitoring and evaluation of groundwater plans.

### 2.3.2 Although some data collection was occurring, there were no defined performance indicators for the Plans

DPE-Water has not defined performance indicators to evaluate the success of the audited groundwater plans at meeting their objectives. DPE-Water intends to develop and implement customised MER plans for groundwater water sharing plans. However, this is a long-term program and the Commission understands these will not be finalised in the near future. DPE-Water has also indicated that NSW is developing an implementation and reporting program for key water sharing plan themes which includes developing annual reporting products to track progress of collection and analysis of plan performance indicators.

While MER plans or defined performance indicators are not yet in place for these groundwater plans, some performance monitoring activities were occurring. Under the Plans, the performance indicators are the changes or trends in the environmental, economic, Aboriginal cultural or social and cultural objectives as assessed using one or more of the listed datasets. DPE-Water has begun monitoring and collecting some of the listed data which should support future assessment.

Due to the lack of defined performance indicators and the gaps in the data collection described below, the Commission considers that DPE-Water is partially compliant with the part of the audit that assessed whether data collection has commenced to enable the assessment of performance indicators (see **Table 2**).

The Plans require one or more datasets to be measured to enable assessment of each performance indicator. The performance indicators are expected to be defined in detail in a future MER Plan.<sup>11</sup> The Commission understands the below datasets are not consistently or directly being measured for water sharing plan evaluation purposes:

- Salinity (as measured by total dissolved solids) is a dataset listed under the Plans for each area described below. DPE-Water and WaterNSW measure water quality including salinity at some locations<sup>12</sup> but not comprehensively. DPE-Water has developed a draft water quality monitoring strategy and plan but it is currently unfunded.
- Environmental: DPE-Water, DPE-Environment and Heritage and the Commonwealth Environmental Water Office are conducting relevant projects, although these are

<sup>11</sup> For example, the Gwydir Plan's (Clause 8(5)) performance indicators includes, "the changes in trends in ecological condition during the term of this Plan as assessed" using the listed datasets.

<sup>12</sup> DPE-Water (n.d.) [Monitoring changes to groundwater quality](#).

funded on an individual basis and may not be targeted to enable water sharing plan evaluation. These include:

- extent and recorded condition of high priority groundwater-dependent ecosystems<sup>13</sup>
- recorded condition of target populations of high priority groundwater-dependent native vegetation.
- Economic:
  - the economic benefits of water extraction and use
- Aboriginal cultural:
  - use of water by Aboriginal people, by measuring the extent to which access to water has contributed to the achievement of Aboriginal cultural outcomes
  - use of water by Aboriginal people, by measuring the extent to which Aboriginal people have considered the operation of this Plan to be beneficial to meeting their needs for groundwater-dependent Aboriginal cultural uses and values
  - changes in the use of water by Aboriginal people
- Socio-cultural:
  - the extent to which basic landholder rights and licensed domestic and stock purposes have been met
  - the extent to which local water utility access licence requirements have been met.

Groundwater level is included as a dataset in the Plans to enable measurement of performance indicators for all the Plans' targeted objectives. WaterNSW measures groundwater levels from bores across the state.<sup>14</sup> WaterNSW also collects trading statistics which can be used to assess economic indicators, and DPE-Water summarises this annually for some groundwater sources.<sup>15</sup>

Performance indicators are intended to be used to measure the success of Plan strategies in meeting their objectives. Potential impacts of not measuring and assessing performance indicators include an:

- inability to determine and demonstrate if plan implementation aligns with the objects and principles of the Act (including to inform Section 43A plan reviews)
- inability to benchmark or identify good practices that could be adopted in other water sharing plan areas
- inability to transparently report on the achievement of plan outcomes
- insufficient information to make evidence-based decisions, apply adaptive management, or continually improve implementation
- inability to measure the consequence of the partial or non-implementation of Plan provisions (see remaining chapters in this report).

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<sup>13</sup> The recent NSW Groundwater Strategy states that DPE-Water “will establish and verify the location, extent, condition and risk to the health of groundwater dependent ecosystems and improve our understanding of the dependence of these ecosystems and stream flows on groundwater”. DPE-Water (2022) [NSW Groundwater Strategy](#).

<sup>14</sup> WaterNSW (n.d.) [Water monitoring network](#).

<sup>15</sup> See DPE-Water (2022) [Groundwater annual reports](#).

## Recommendation

The Commission makes one recommendation to address the partial compliance rating identified in **Table 2**. The Commission acknowledges DPE-Water’s existing monitoring work and its intention to commence tracking progress of collection and analysis of plan performance indicators in 2023-24.

<b>R 1.2</b>	DPE-Water to lead the monitoring and evaluation of performance indicators to measure the success of the strategies to reach the objectives set out in Part 2 of the Plan, including to undertake appropriate monitoring.
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### 3 Criterion 2 – Long-term average annual extraction limits

#### ***Have the relevant responsible parties implemented plan provisions relating to limits to long-term average annual extraction limits?***

#### **Conclusion**

All applicable long-term average annual extraction limit (LTAAEL) provisions were implemented for the Plans in all material respects during the first two years of the audit period.

The Commission found that DPE-Water has adequate systems and procedures in place to manage LTAAEL compliance including documented timing, sign-off, and other responsibilities. Data for some larger groundwater sources is also available on an online dashboard that shows annual extraction, average annual extraction and the LTAAEL compliance trigger.<sup>16</sup>

#### **3.1 Introduction**

Part 6 of the Plans provide rules for the long-term average annual extraction limits (LTAAELs) for each water source. These clauses require that the volume of water taken in each water source must be calculated every year. The average extraction over a period of years (typically 5) is then calculated to compare it with the LTAAEL. If the average annual extraction is greater than the LTAAEL compliance trigger (5 to 10% greater than the LTAAEL), then compliance actions must be taken to return average annual extractions to the LTAAEL. These actions may include a reduction in available water determinations or the maximum water account debit for various categories of licences.

A similar process is required for Sustainable Diversion Limits (SDLs) for Water Resource Units in the Murray Darling Basin; to perform an assessment of extraction, compliance with the limit, and take actions in the event of non-compliance. The Australian Government's Inspector-General of Water Compliance was established in August 2021 and became responsible for responding to SDL compliance.<sup>17</sup> The Basin Plan requirements for SDL compliance are not applicable until the year after the applicable Water Resource Plan commences.<sup>18</sup> The Australian Government's Inspector-General of Water Compliance indicated in the SDL Compliance Statement for 2020-21 that it could not assess SDL compliance as there were no operational water resource plans for NSW water resource units.<sup>19</sup>

None of the water resource plans for the water resource units that align with the groundwater sources of these Plans were in place in 2019-20 or 2020-21. Therefore, the Commission did not assess compliance of plan SDL provisions for 2020-21 or 2021-22 and

<sup>16</sup> DPE-Water (n.d.) [Tracking groundwater extraction against extraction limits](#).

<sup>17</sup> Inspector-General of Water Compliance (2022) [Sustainable Diversion Limit compliance statement for 2020-2021](#), p 1.

<sup>18</sup> Basin Plan Ch6, P4, Div1(5), "The register of take commences in the first water accounting period after 30 June 2019 following the commencement of a water resource plan." and under Basin Plan Ch6, P4, Div3(2), "The method applies to each water accounting period after 30 June 2019 following the commencement of a water resource plan relating to the SDL resource unit."

<sup>19</sup> Inspector-General of Water Compliance (2022) [Sustainable Diversion Limit compliance statement for 2020-2021](#), p 4.

considers that the SDL compliance provisions were not applicable in these years. DPE-Water indicated that it has submitted SDL compliance data to the MDBA under an interim agreement. The Inspector-General of Water Compliance identified that interim arrangements may be useful, but they are not a legislative tool that can be used to determine or enforce compliance.<sup>20</sup>

DPE-Water is responsible for calculating annual extraction and average annual extraction and undertaking LTAAEL compliance assessments for all groundwater sources in NSW.<sup>21</sup> It is also responsible for undertaking SDL compliance assessments for Water Resource Units.

### 3.2 Compliance summary

The Commission examined five audit questions that relate to LTAAEL provisions. The results of this analysis are shown in **Table 3**. The Commission focussed on the first two years of the audit period for this criterion as the year had been completed and so could be assessed. The Commission cross-checked the data that DPE-Water uses to calculate LTAAEL compliance with the Water Register data (which is publicly available). The Commission did not independently verify the accuracy or completeness of the Water Register Data.

**Table 3: Compliance summary for LTAAEL provisions**

Plan clauses	Audit questions for Criterion 2	Compliance
Gwy: Part 6 Lach: Part 6 Mac-Cas: Part 6 Murray: Part 6 M'bidgee: Part 6	Are there procedures and systems in place to govern LTAAEL assessment and compliance in these groundwater sources?	✓
Gwy: Part 6, Cl 25 Lach: Part 6, Cl 26 Mac-Cas: Part 6, Cl 26 Mur: Part 6, Cl 26 M'bidgee: Part 6, Cl 27	Has annual extraction of each groundwater source in the plans been determined for 2020-21 and 2021-22?	✓
Gwy: Part 6, Cl 26 Lach: Part 6, Cl 27 Mac-Cas: Part 6, Cl 27 Murray: Part 6, Cl 27 M'bidgee: Part 6, Cl 28	Has LTAAEL compliance been assessed for each groundwater source in the plans for 2020-21 and 2021-22?	✓
Gwy: Part 6, Cl 27 Lach: Part 6, Cl 28 Mac-Cas: Part 6, Cl 28 Murray: Part 6, Cl 28 M'bidgee: Part 6, Cl 29	Has Basin Plan SDL compliance been assessed for each groundwater water resource unit for 2020-21 and 2021-22?	NA <sup>22</sup>
Gwy: Part 6, Cl 28 Lach: Part 6, Cl 29 Mac-Cas: Part 6, Cl 29 Murray: Part 6, Cl 29 M'bidgee: Part 6, Cl 30	If any non-compliances with limits were identified, were compliance actions taken in line with the plan provisions during the audit period?	✓

<sup>20</sup> Inspector-General of Water Compliance (2022) [Sustainable Diversion Limit compliance statement for 2020-2021](#), p 4.

<sup>21</sup> DPE-Water (n.d.) [Extraction limits](#).

<sup>22</sup> Under the Basin Plan, the method for SDL compliance assessment does not apply until the year following the commencement of the relevant water resource plan.

The Commission found that DPE-Water determined annual extraction and assessed LTAAEL compliance for each groundwater source for the first two years of the Plans. The Lower Murrumbidgee Deep Groundwater Source was the only water source under these Plans that required compliance actions. This groundwater source exceeded the LTAAEL in 2019-20 (prior to the audit period), and Available Water Determinations (AWDs) for Aquifer access licences were reduced in 2020-21 to address this.<sup>23</sup> The average annual extraction in the following year was within the LTAAEL, so a full AWD was given to Aquifer access licences after LTAAEL compliance assessments were finalised on 24 September 2021.<sup>24</sup>

The Commission makes no recommendations for this criterion.

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<sup>23</sup> [Available Water Determination Order for NSW Groundwater Sources 2020](#), 29 June 2020.

<sup>24</sup> [Available Water Determination Order for NSW Groundwater Sources 2021 \(No. 1\)](#), 24 September 2021.

## 4 Criterion 3 – Available water determinations

### ***Have the relevant responsible parties implemented plan provisions relating to available water determinations?***

#### **Conclusion**

All available water determination (AWD) provisions were implemented for the Plans in all material respects during the audit period.

There are adequate systems and procedures in place to manage AWDs including documented timing, sign-off and other responsibilities.

### 4.1 Introduction

Available water determinations (AWDs) are governed by Part 6 of the Plans. They provide for allocations of water to be made to water access licences according to the amount of entitlement. Under these Plans, AWDs are 1ML per unit share or 100% allocation for most types of access licences. However, aquifer (high security) access licences are often given an AWD proportionate to the AWD of associated regulated river (high security) access licences.

DPE-Water is responsible for determining AWDs for all water sources and licence types and publishes both AWD Orders and more descriptive water allocation statements on its website.<sup>25,26</sup> WaterNSW provides groundwater metering data to DPE-Water to facilitate the making of AWDs and applies AWDs to the accounts of all water access licences in its Water Accounting System (WAS).<sup>27</sup>

### 4.2 Compliance summary

The Commission examined five audit questions that align with the clauses of Part 6 of the Plans that relate to AWDs. The results of this analysis are shown in **Table 4**.




**Table 4: Compliance summary for AWD provisions**

Plan clauses	Audit questions for Criterion 3	Compliance
Gwy: Part 6 Lach: Part 6 Mac-Cas: Part 6 Murray: Part 6 M'bidgee: Part 6	Are there procedures and systems in place to govern the AWD process for these groundwater sources?	✓
Gwy: Part 6, Cl 29 Lach: Part 6, Cl 30 Mac-Cas: Part 6, Cl 30 Murray: Part 6, Cl 30 M'bidgee: Part 6, Cl 31	Were AWDs expressed correctly in AWD Orders in 2020-21, 2021-22 and the commencement of 2022-23?	✓

<sup>25</sup> DPE (n.d.) [Available water determinations](#).

<sup>26</sup> DPE (n.d.) [Water allocation statements](#).

<sup>27</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW*, [Schedule 1 – Version 1.2](#), p 4, Executed 30 June 2021.

Plan clauses	Audit questions for Criterion 3	Compliance
Gwy: Part 6, Cl 29 Lach: Part 6, Cl 30 Mac-Cas: Part 6, Cl 30 Murray: Part 6, Cl 30 M'bidgee: Part 6, Cl 31	Was the sum of AWDs compliant with the maximum limits in 2020-21 and 2021-22 for each licence type?	
Gwy: Part 6, Cl 30-32 Lach: Part 6, Cl 31-33 Mac-Cas: Part 6, Cl 31-33 Murray: Part 6, Cl 31-34 M'bidgee: Part 6, Cl 32-34, 36	Were AWDs given and applied to accounts at the commencement of 2020-21, 2021-22 and 2022-23 in line with plan provisions for domestic and stock, local water utility, aquifer and salinity and water table management access licences?	
Gwy: Part 6, Cl 33 Lach: Part 6, Cl 34 Mac-Cas: Part 6, Cl 34 Murray: N/A M'bidgee: Part 6, Cl 35	Were AWDs given and applied to accounts for 2020-21, 2021-22 and the commencement of 2022-23 in line with plan provisions for aquifer (high security) access licences?	

The Commission makes no recommendations for this criterion.

## 5 Criterion 4 – Granting access licences

### ***Have the relevant responsible parties implemented plan provisions relating to granting access licences?***

#### **Conclusion**

Nearly all provisions for granting access licences that were tested have been given effect in all material respects. Elements of assessment of the minimum volume required for the licence purpose was partially compliant.

DPE-Water has a range of procedures and systems in place to manage the specific purpose access licence granting process for these Plans. These include a published application guide,<sup>28</sup> an application form,<sup>29</sup> access to internal technical advisors, an internal assessment document, and procedure and policy documents.

### 5.1 Introduction

Part 7 of the Plans set out provisions for the granting of specific purpose access licences. Specific purpose access licences are a type of water access licence granted for a specific purpose. Examples include local water utility, town water supply and Aboriginal cultural purposes.<sup>30</sup> Water sharing plans have a rule that a specific purpose access licence must not be granted unless the share and extraction component of the licence is the minimum required for the proposed use.

The Commission was advised that DPE-Water manages the granting of most specific purpose access licence applications. For example, it manages the granting of these licences to Aboriginal communities, local councils, water utilities and state-owned corporations.<sup>31,32</sup> Applications may be made to DPE-Water for categories of specific purposes access license including local water utility licences (subcategory “domestic and commercial”), aquifer access licences (subcategory “town water supply”), any category of specific purpose access licence (subcategory “Aboriginal cultural”) for Aboriginal cultural purposes and in some areas salinity and water table management access licences.<sup>33</sup>

WaterNSW indicated it manages the granting of the domestic and stock category (subcategory “domestic”) of specific purposes access licences. The Commission reviewed WaterNSW’s application and guidance documentation for specific purpose access licences. The sample testing focused on licences granted by DPE-Water (previously NRAR) given its role in granting more complex and diverse specific purpose access licences.

<sup>28</sup> DPE (2022) [Guide to applying for a new water access licence with a specific purpose.](#)

<sup>29</sup> DPE (2022) [Application form: New water access licence with a specific purpose.](#)

<sup>30</sup> DPE (2022) [Application form: New water access licence with a specific purpose.](#)

<sup>31</sup> DPE (n.d.) [How to apply for a water access licence.](#)


<sup>32</sup> WaterNSW (n.d.) [Welcome to Water Applications Online.](#)

<sup>33</sup> The Commission notes that NRAR was previously responsible for the granting of specific purpose access licences, however this function was transferred to DPE-Water during the audit period in mid-2022 (DPE-Water (2022) [Water news](#) – May 2022 – Issue 35). In cases where the Commission has made audit findings relevant to the period where NRAR managed this licensing function, any recommendations have been directed to DPE-Water as the agency with the current responsibility.

## 5.2 Compliance summary

The Commission examined six audit questions relevant to the granting access licence provisions under the Plans and an additional question relevant to an Act requirement.<sup>34</sup> The results of this analysis are shown in **Table 5**. Findings and recommendations for the partial compliance identified in **Table 5** are presented in the section below.

**Table 5: Compliance summary for granting access licences provisions**

Plan clauses	Audit questions for Criterion 4	Compliance
Gwy: Part 7 Lach: Part 7 Mac-Cas: Part 7 Murray: Part 7 M'bidgee: Part 7	Are there procedures and systems in place to govern the granting of specific purpose access licences?	
Gwy: Part 7, Cl 34 Lach: Part 7, Cl 35 Mac-Cas: Part 7, Cl 35 Murray: Part 7, Cl 35 M'bidgee: Part 7, Cl 37	Were any specific purpose access licences that were granted in 2020-21 or 2021-22 assessed that the volume was the minimum required for the purpose?	
Gwy: Part 7, Cl 34 Lach: Part 7, Cl 35 Mac-Cas: Part 7, Cl 35 Murray: Part 7, Cl 35 M'bidgee: Part 7, Cl 37	Is it possible for water users to apply for Aboriginal cultural access licences?	
Gwy: Part 7, Cl 34 Lach: Part 7, Cl 35 Mac-Cas: Part 7, Cl 35 Murray: Part 7, Cl 35 M'bidgee: Part 7, Cl 37	Were any Aboriginal cultural access licence applications in 2020-21 or 2021-22 assessed and granted with a maximum of 10 ML per year share component?	NA <sup>35</sup>
Gwy: N/A Lach: N/A Mac-Cas: N/A Murray: Part 7, Cl 35 M'bidgee: Part 7, Cl 37	Were any salinity and water table management access licence applications in 2020-21 or 2021-22 in the Murray and Murrumbidgee assessed and granted in the allowable water sources?	NA <sup>36</sup>
Gwy: N/A Lach: N/A Mac-Cas: N/A Murray: Part 7, Cl 35 M'bidgee: Part 7, Cl 37	Is it possible for water users to apply for salinity and water table management access licences?	
S. 63(2) of the Act	Were any specific purpose access licences granted under the Plans assessed against the requirements of Section 63(2) of the Act, that the specific purpose access licence may be applied for, and no more than minimal harm will be done to any water source?	

<sup>34</sup> The Commission confirmed that no controlled allocations orders were made by DPE-Water during the audit period for any of the water sources under the Plans. Therefore, the Commission's scope focussed on the granting of specific purpose access licences and did not test the granting of water access licences more broadly.

<sup>35</sup> DPE-Water did not receive or grant applications for Aboriginal cultural access licences for the Plans during the audit period.

<sup>36</sup> No relevant clauses for the Gwydir, Lachlan or Macquarie-Castlereagh plans; and DPE-Water did not receive or grant applications for these licences for the Murray or Murrumbidgee plans during the audit period.



## 5.3 Findings

### 5.3.1 Gaps in documentation create a risk in the licencing process

The procedures and systems in place support the application, assessment and granting of specific purpose access licences, including an assessment of the minimum volume of water required to meet the new access licence’s proposed use.

During the audit period NRAR (now a responsibility of DPE-Water) received and granted two specific purpose access licences under two of the plans, the Lachlan Plan and the Murrumbidgee Plan. In both cases the applications were assessed to determine if the volume applied for was the minimum volume required for the purpose. However, for the licence granted in the Lachlan, internal technical advice recommended the entitlement of another licence held by the applicant be reduced by an equal volume to minimise impacts of a new licence being granted. At the time of the audit, this measure (the reduction in one licence to compensate for the approval of a new licence) had not been implemented and no documentation was provided to support the variation between the internal advice and current licence entitlements. The Commission notes that no water supply works had been nominated for the new licence and no water had been extracted under the newly granted licence, so there does not appear to have been an impact during the audit period. While no impacts were identified by the Commission, the reasons for variations from internal advice should be documented by DPE-Water to minimise potential risk in the licensing process. If advice is not followed, then assessing officers should inform the technical advisors

The Commission makes two recommendations in relation to this finding. DPE-Water advised during the audit that it has already commenced a review of its internal technical advice which informed the granting of both specific purpose access licences granted during the audit period as outlined in Recommendation **R 4.1.1**.

<b>R 4.1.1</b>	DPE-Water to finalise its review of the internal technical advice which informed the granting of specific purpose access licences during the audit period to confirm whether any actions or updates are required.
<b>R 4.1.2</b>	DPE-Water to document reasons, and inform internal technical advisors, if it intends to not follow the recommendations or technical advice provided to inform the granting of a specific purpose access licence.

### 5.3.2 Some systems and procedures have room for improvement

The Commission did not identify any other instances of non-compliances or partial-compliances for the granting of specific purpose access licences. However, in relation to the granting of Aboriginal cultural access licences, we have observed that DPE-Water's procedures and systems to support the application and assessment of these licences are not purpose-built for this category of specific purpose access licence. A DPE-Water published factsheet states "*A framework that more clearly outlines how these (Aboriginal cultural access licence) applications are considered needs to be developed*".<sup>37</sup> DPE-Water indicated during the audit that it has commenced development of purpose-built resources to more clearly outline and support the application and assessment of Aboriginal cultural access licences. The Commission supports the development of improved resources for Aboriginal cultural access licences and makes no recommendation under the scope of this audit.

<sup>37</sup> DPE (2020) [Regional water strategies fact sheet: NSW water management for Aboriginal people](#).



The Commission also notes that two DPE-Water documents to support the provision of internal technical advice on the granting of specific purpose access licences has not been updated to reflect the transfer of licence granting roles from NRAR to DPE-Water. While updating these documents would be positive, we consider this opportunity for improvement is not material and make no recommendation in this audit.

## 6 Criterion 5 – Managing access licences

### ***Have the relevant responsible parties implemented plan provisions relating to managing access licences?***

#### **Conclusion**

The provisions for managing access licences (both maximum water account debit and carryover provisions) have partially been given effect by WaterNSW during the audit period.

The Water Accounting System is in place for WaterNSW to manage access licences, although it had some errors and gaps in configuration that resulted in the assignment of two partial compliance ratings.

### 6.1 Introduction

Part 8 of the Plans provide rules for the operation of water allocation accounts. These include maximum water account debits imposed on licences to define the permitted annual take, and carryover provisions for water remaining in an account to be carried over from one year to the next. These provisions may vary for different licence categories and water sources under each plan.

Under its Operating Licence, WaterNSW is required to keep a water allocation account for each access licence under Section 85(1) of the Act.<sup>38</sup> WaterNSW is also responsible for managing water allocation accounts<sup>39</sup> and therefore for implementing plan provisions under Part 8 for the operation of these accounts. The Water Accounting System (WAS) is used by WaterNSW to manage water allocation accounts and a tool called the online Water Accounting System (iWAS) is available to licenced water users to access information and manage their water accounts.<sup>40</sup>

The Commission audits the implementation of water sharing plans by the responsible government agencies. The Commission does not provide an opinion regarding the compliance of individual licence holders with their licence conditions. NRAR is the independent regulator responsible for compliance and enforcement of water users in NSW.<sup>41</sup>

### 6.2 Compliance summary

The Commission examined four audit questions relevant to the managing access licences provisions in the Plans. The results of this analysis are shown in **Table 6**. Testing performed by the Commission included testing account configuration generally for all licence categories and subcategories that are configured in the WAS under these Plans through review of configuration reports. This was supported by a walkthrough of 16 access licences in total in the WAS from various licence categories and water sources across the Plans. Findings and recommendations for the partial compliances identified in **Table 6** are presented in the sections below.





<sup>38</sup> IPART (2022) [Water NSW operating licence 2022-2024](#), p 38.

<sup>39</sup> IPART (2022) [Water NSW operating licence 2022-2024](#), p 42.

<sup>40</sup> WaterNSW (n.d.) [Ordering water](#).

<sup>41</sup> NRAR (n.d.) [Who we are](#).

**Table 6: Compliance summary for managing access licences provisions**

Plan clauses	Audit questions for Criterion 5	Compliance
Gwy: Part 8, Cl 35-36 Lach: Part 8, Cl 36-37 Mac-Cas: Part 8, Cl 36-37 Murray: Part 8, Cl 36-37 M'bidgee: Part 8, Cl 38-39	Were there systems in place to manage water access licence accounts?	
Gwy: Part 8, Cl 35 Lach: Part 8, Cl 36 Mac-Cas: Part 8, Cl 36 Murray: Part 8, Cl 36 M'bidgee: Part 8, Cl 38	Were the correct maximum water account debit limits implemented for each licence category and subcategory?	
Gwy: Part 8, Cl 36 Lach: Part 8, Cl 37 Mac-Cas: Part 8, Cl 37 Murray: Part 8, Cl 37 M'bidgee: Part 8, Cl 39	Were the correct carryover limits implemented for each licence category and subcategory?	
Gwy: Part 8, Cl 35-36 Lach: N/A Mac-Cas: N/A Murray: N/A M'bidgee: N/A	Were any water accounting provisions contained in Schedules for particular licences correctly implemented?	

## 6.3 Findings

### 6.3.1 Annual Use Limits have been applied in the WAS to around half of all configured licences

Part 8 of the Plans require maximum water account debit provisions to be implemented for specified licence categories in certain groundwater sources. The Commission has observed that these provisions have been given effect in the WAS in many cases through application of an Annual Use Limit. The Commission found that where an Annual Use Limit had been applied in the WAS, the limit was almost always in accordance with the relevant plan provisions,<sup>42</sup> and any dealings that occurred raised or lowered the Annual Use Limit in accordance with plan provisions, which include 71T dealings as a form of debit under the maximum water account debit limits.<sup>43</sup>

However, the WAS configuration reports and walkthrough undertaken in this audit showed that around half of the licence categories that are configured and have carryover settings programmed in the WAS do not have an Annual Use Limit applied in the WAS.

Across the Plans, the Commission found that:

- Gwydir: 3 out of 7 licence categories or subcategories tested did not have an Annual Use Limit
- Lachlan: 4 out of 8 licence categories or subcategories tested did not have an Annual Use Limit

<sup>42</sup> A base component of the maximum water account debit is described in part (a) of each clause which aligns to allocations or share components. One likely typo was found which is described further in this section of the audit report.

<sup>43</sup> The Commission observed that 71T dealings into an account increased the Annual Use Limit by the same amount, while 71T dealings out of an account reduced the Annual Use Limit by the same amount.

- Macquarie-Castlereagh: 11 out of 29 licence categories or subcategories tested did not have an Annual Use Limit
- Murray: 10 out of 17 licence categories or subcategories tested did not have an Annual Use Limit
- Murrumbidgee: 15 out of 24 licence categories or subcategories tested did not have an Annual Use Limit.

Some groundwater sources have Annual Use Limits applied to every licence category in the WAS, while others have some applied and other water sources have none applied to any licence category. It is unclear why Annual Use Limits have been applied in some cases and not others.

In almost every case where there was no Annual Use Limit applied, the sum of allocations given in a year plus carryover is equal to or less than the Annual Use Limit, meaning that even if the whole water account balance is used, the maximum water account debit would not be exceeded. Therefore, it is unlikely that the lack of the application of the Annual Use Limit as a control in the WAS had an impact on the volume of water debited from water accounts during the audit period. However, if carryover for Aquifer (town water supply) access licences in the Upper Murray Groundwater Source is adjusted in the WAS as described in the following section, then the maximum water account debit could possibly be exceeded, as the entitlement (allocations of 1ML per unit share plus carryover of 0.74ML per unit share) would be greater than the maximum account debit, or Annual Use Limit in the WAS (1.37 ML per unit share). Therefore, the Annual Use Limit should be applied before updating the carryover settings for these licences.

The Commission notes that not having an Annual Use Limit applied in the WAS does not necessarily mean that water account users are exceeding their maximum water account debit limits. During the walkthrough of 16 access licences, the Commission found no exceedances of the maximum water account debit, despite Annual Use Limits not being applied in several cases.

The Commission observed one example of incorrect Annual Use Limits; for Domestic and Stock access licences in the Lower Macquarie Zone 3 Groundwater source was configured as 1% in the WAS, rather than 100%. WaterNSW has provided evidence that this has been corrected during the audit, and that no licences exist in this category, so this was not considered material. The Commission makes no finding or recommendation in relation to this observation.

There is a risk that with inconsistent application of Annual Use Limits in accordance with provisions, some accounts may not have Annual Use Limits applied where the Annual Use Limit is lower than the sum of allocations plus carryover. DPE-Water also indicated that maximum water account debit provisions may be reduced as part of LTAAEL compliance actions, and so are important to be implemented in the WAS.

### Recommendation

The Commission makes one recommendation in relation to this finding.

<b>R 5.1</b>	WaterNSW to apply Annual Use Limits to existing licence categories that have maximum water account debit provisions in the plans but do not currently have an Annual Use Limit applied in the Water Accounting System.
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### **6.3.2 Carryover entitlement has not been applied to accounts for subcategories of Aquifer licences in line with Aquifer licence provisions**

Carryover provisions for many access licences of Aquifer (town water supply) and other Aquifer subcategories have been configured with zero carryover in the Water Accounting System in the Lachlan, Murray and Murrumbidgee. This is inconsistent with the Aquifer access licence provisions specified in the Plans, and is inconsistent with the mandatory conditions that have been applied to the licences where licences exist under these subcategories. DPE-Water informed the Commission that any subcategories of Aquifer access licences should be configured to have the same carryover provisions as the Aquifer access licence category, unless alternative rules are included in a water sharing plan. The Commission notes that the Plans do not provide any alternative provisions for the management of subcategories of Aquifer access licences.

The Commission found that carryover was configured in the WAS as zero for:

- Aquifer (town water supply) access licences in the Lower Lachlan Groundwater Source (compared to 1ML per unit share carryover for Aquifer access licences in this water source)
- Aquifer (town water supply), Aquifer (Aboriginal cultural) and Aquifer (Research) access licences in the Lower Murray groundwater source (compared to 2 ML per unit share carryover for Aquifer access licences in this water source)
- Aquifer (town water supply) access licences in the Lower Murray Shallow Groundwater Source (compared to 1ML per unit share carryover for Aquifer access licences)
- Aquifer (town water supply) access licences in the Upper Murray groundwater source (compared to 0.74ML per unit share carryover for Aquifer access licences)
- Aquifer (town water supply) and Aquifer (Aboriginal cultural) access licences in the Lower Murrumbidgee Deep groundwater source (compared to 2ML per unit share carryover for Aquifer access licences)
- Aquifer (Aboriginal cultural) access licences in the Lower Murrumbidgee Shallow groundwater source (compared to 2ML per unit share carryover for Aquifer access licences).

In each case above, the Commission confirmed that where access licences exist for the Aquifer (town water supply) categories, the mandatory conditions applied to each water access licence allows for higher carryover in line with the Aquifer provisions described above and provided under the Plans. There are no Aquifer (Aboriginal cultural) and Aquifer (Research) access licences under the Plans. However, incorrect configuration presents a risk that these licence subcategories would also not have access to their carryover if they are granted in the future in these water sources.

The Commission also found that Aquifer (Community and Education) access licences in the Lower Murrumbidgee Deep did not have any carryover settings configured (rather than being configured with zero carryover). Two licences exist which both have mandatory conditions identifying a maximum of 2 ML per unit share may be carried over to the next year.

The Commission found one example in the Billabong Creek Alluvial Groundwater Source under the Murray Plan of an Aquifer (town water supply) access licence being given the same carryover provisions in the WAS as Aquifer access licences, of 2ML per unit share. Other cases of Aquifer (town water supply) access licences having the correct configuration occurred where no carryover applied to the Aquifer access licences in a water source under the plan rules.

These configuration settings have been in place in the WAS since before the start of the audit period; for at least ten years and often longer. The Commission has not tested the carryover settings against provisions that were in place under previous water sharing plans. Having no carryover during the audit period may have impacted the water that was available to water access licence holders responsible for town water supply. It is also a risk for all Aquifer subcategories that may be granted in the future that they may not receive their carryover entitlement if configured incorrectly. The Commission notes that since 1 July 2020, reported water usage appears to have been low for the Aquifer (town water supply) access licences that did not have carryover applied correctly in the WAS, and it appears likely that not having access to carryover did not have a significant impact. However, carryover should be configured in the WAS in line with the relevant Plan provisions and a lack of access to carryover may be more significant for water users in dryer years. The Commission has not investigated whether this finding applies to other water sharing plans under the scope of this audit. We note that this finding may apply to other water sharing plans and groundwater sources not included in this audit.

### Recommendation

The Commission makes one recommendation in relation to this finding.

<b>R 5.2</b>	WaterNSW to review and update configuration of carryover for Aquifer subcategories in the WAS to align with water sharing plan provisions for Aquifer access licences (unless otherwise stated in the Plans).
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### 6.3.3 Undefined licence categories in particular water sources have been managed inconsistently

During testing of maximum account debit and carryover provisions, the Commission found three instances of access licence categories that have been configured in the WAS and access licences exist, but there are no account management provisions specified in the relevant plan for their licence type in the particular water sources. These three instances of licence categories have had different treatment for carryover account settings in the WAS.

Account management provisions are currently undefined for:

- Aquifer access licences in the Upper Gwydir Alluvial Groundwater Source under the Gwydir Plan
- Aquifer access licences in the Belubula Valley Alluvial Groundwater Source under the Lachlan Plan
- Aquifer access licences in the Cudgegong Alluvial Groundwater Source under the Macquarie-Castlereagh Plan.

Aquifer access licences in the Belubula Valley Alluvial have no limit to carryover in the WAS, while Aquifer access licences in the Cudgegong Alluvial have zero carryover applied in the WAS. Aquifer access licences in the Upper Gwydir Alluvial do not appear to have any configuration for carryover. It is unclear what carryover and maximum water account debit provisions should apply for these licences, but current treatment of the carryover configuration for these licence categories in the WAS is inconsistent.

The Upper Gwydir Alluvial and Belubula Valley Alluvial both have only one Aquifer access licence of zero shares. However, the Cudgegong Alluvial has 12 Aquifer access licences that collectively hold 1,828 share components. All of these licences currently have no mandatory conditions relating to maximum water account debit or carryover, which

appears appropriate given the current absence of these provisions in the Plans for these licence categories in these water sources.

DPE-Water indicated that further investigation, including assessment of potential amendments, would be required. Mandatory conditions would also need to be applied if the provisions are updated.

### Recommendation

Although this issue does not directly align with the audit questions that were tested, and so does not constitute a partial or non-compliance, the Commission considers that this issue should be resolved to allow appropriate implementation of account management provisions. The Commission makes two recommendations in relation to this finding.

<b>R 5.3.1</b>	DPE-Water to investigate three water sources where Aquifer access licences exist but there are no plan provisions for their account management, including to investigate the potential for amendments. DPE-Water to advise WaterNSW of the outcome and how to configure these accounts appropriately.
<b>R 5.3.2</b>	WaterNSW to update the Water Accounting System to configure these accounts in line with DPE-Water's advice.

## 7 Criterion 6 – Rules for water supply work approvals

### ***Have the relevant responsible parties implemented plan provisions relating to rules for water supply work approvals?***

#### **Conclusion**

DPE-Water and WaterNSW have systems and procedures in place to support the water supply work approvals assessment process generally. Gaps were identified relating to the consistent and explicit documentation of assessments against certain provisions for supply work approvals under Part 9 of the Plans.

The Commission observed gaps in documentation in the approvals that were processed during the audit period for the requirements described above. Specifically, in assessing water supply work approvals, DPE-Water and WaterNSW have:

- Partially given effect to the provisions for assessing:
  - rules to minimise interference between water supply works
  - rules for water supply works located near contamination sources
  - rules to protect groundwater dependent ecosystems.
- Not given effect to:
  - provisions for assessing distances of groundwater dependent culturally significant sites
  - provisions specific to replacement groundwater works, with the one audited replacement groundwater works assessment appearing to be incorrectly defined.

### 7.1 Introduction

Part 9 of the Plans, as well as the Act and Regulation, include rules for granting or amending water supply work approvals.<sup>44</sup> At the start of the audit period, NRAR and WaterNSW had responsibility for these rules. NRAR's role was transferred to DPE-Water in mid-2021.<sup>45</sup> DPE-Water did not approve any water supply work approval applications during the audit period, with NRAR approving the sampled audited applications. NRAR retains the role to monitor and audit compliance with approvals, specifically detecting instances of non-compliance in a timely manner.<sup>46</sup>

DPE-Water and WaterNSW are each responsible for undertaking all approval application tasks for their customers,<sup>47</sup> including considering how water sharing plan rules and

<sup>44</sup> Broadly, sections 92 to 102 of the Act and clauses 25 to 28 of the Regulation.

<sup>45</sup> DPE-Water (2022) [Water news](#) – May 2022 – Issue 35.

<sup>46</sup> NRAR (n.d.) [Licensing and approvals](#).

<sup>47</sup> DPE-Water assess and grant water supply work approvals for: water supply work approvals to government agencies including other NSW Government agencies, local councils and the Australian Government; state-owned corporations; major water utilities, water supply authorities, and local water utilities; licensed network operators under the Water Industry Competition Act 2006; mining companies; irrigation corporations; Aboriginal communities and businesses; floodplain harvesting; major developments (State significant developments and State significant infrastructure); schools and hospitals. WaterNSW is responsible for assessing and granting water supply work approvals to landholders, industries and developments that are not State significant development or State significant infrastructure.



requirements under the Act apply, and determining whether to grant or refuse an application.<sup>48</sup>

DPE-Water also provides technical hydrogeological advice and assessment for applications including recommendations for granting or refusing the application and conditions that should be applied.<sup>49</sup> The Water Actions Management System (WAMS) is used to refer water supply works applications for hydrogeological technical assessment by DPE-Water. An agreed triage process identifies which lower risk applications do not require referral, including those related to basic landholder rights and replacement water supply works.<sup>50</sup> WAMS assessments provide the assessing officers with additional information regarding potential impacts which can be used to assess compliance with the Plans' provisions. The Commission reviewed evidence provided in the WAMS assessments and other documents provided by the auditee agencies, but considers that the water supply work approvals assessment summary sheets are the primary tool for assessing and recording compliance of individual water supply works applications with Plan provisions.

The Water Licencing System - Approvals Transaction Module is the main system used to grant access licences. It is an automated workflow and storage system capturing all applications, including water supply work approvals which is used by assessment officers to assess applications in line with legislative requirements. Historically NRAR used a semi-automated Assessment Support Tool (AST) to support the approvals process. This tool no longer works within the system and DPE-Water assessment officers must complete necessary searches manually and record their results. WaterNSW complete the searches manually, supported by ArcGIS.

WaterNSW also maintain the NSW Water Register<sup>51</sup> which is required by the Act<sup>52</sup> to be available for public inspection and record every application and approval granted, extended, amended, transferred, surrendered, suspended or cancelled.

Each agency has a variety of internal guides, procedures and assessment summary sheets to support the water supply work approval process. These include agreed triage processes between DPE-Water and WaterNSW, WaterNSW's draft *Assessments and Approval's Manual* (under development), DPE-Water's *Process Guide – Water Supply Work and Use Approvals*, and both agency's assessment summary sheets or checklists, application guides and forms.

## 7.2 Compliance summary

The Commission examined nine audit questions relevant to the water supply work approval provisions in the Plans. **Table 7** summarises the results of this analysis. The Commission tested:

- three new water supply work approvals granted by NRAR in each of the Lachlan, Macquarie-Castlereagh and Murrumbidgee Plan areas during the audit period. Neither DPE-Water nor NRAR granted any applications for water supply work approvals in the Gwydir or Murray Plan areas during the audit period.

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<sup>48</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW*, [Schedule 1 – Version 1.2](#), p 20-21, Executed 30 June 2021.

<sup>49</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW*, [Schedule 1 – Version 1.2](#), p 21, Executed 30 June 2021.

<sup>50</sup> Triage processes are used to define which works receive WAMS assessments and which lower risk works can be assessed without additional hydrogeological technical assessment.

<sup>51</sup> WaterNSW (n.d) [NSW Water Register](#).

<sup>52</sup> Section 113 of the Act.

- eight water supply work approvals assessed by WaterNSW, consisting of three approvals in each Plan area. These included two approvals for new works, two approvals for basic landholder rights works, one approval for a replacement work and three applications for amendments to work approvals. The sampled assessments also included seven applications to make works inactive which were not tested.

The sections below present the findings and recommendations for the partial and non-compliances identified in **Table 7**.

**Table 7: Compliance summary for rules for water supply work approvals**

Plan clauses	Audit questions for Criterion 6	Compliance	
		WNSW	NRAR / DPE-W
Gwy: Part 9 Lach: Part 9 Mac-Cas: Part 9 Murray: Part 9 M'bidgee: Part 9	Are there procedures and systems in place for all responsible agencies to govern the water supply work approval process?	~	~
<i>Act Section 97(2)</i> Gwy: Part 9, Cl 37 Lach: Part 9, Cl 38 Mac-Cas: Part 9, Cl 38 Murray: Part 9, Cl 38 M'bidgee: Part 9, Cl 40	Did the process of granting and amending water supply work approvals ensure that there will be no more than minimal: <ul style="list-style-type: none"> <li>harm done to: <ul style="list-style-type: none"> <li>any water source, or its dependent ecosystems,</li> <li>public health and safety or</li> <li>a groundwater-dependent culturally significant area, or</li> </ul> </li> <li>effect on a person's ability to take water using an existing approved water supply work and any associated access licences?</li> </ul>	~	~
Gwy: Part 9, Cl 38 Lach: Part 9, Cl 39 Mac-Cas: Part 9, Cl 39 Murray: Part 9, Cl 39 M'bidgee: Part 9, Cl 41	Were rules to minimise interference between water supply works implemented?	~	~
Gwy: Part 9, Cl 39 Lach: Part 9, Cl 40 Mac-Cas: Part 9, Cl 40 Murray: Part 9, Cl 40 M'bidgee: Part 9, Cl 42	Were rules for water supply works located near contamination sources including any site that has been declared to be significantly contaminated land under the <i>Contaminated Land Management Act 1997</i> , or notified to the EPA (Environment Protection Authority) under section 60 of the <i>Contaminated Land Management Act 1997</i> implemented?	~	~
Gwy: Part 9, Cl 39 Lach: Part 9, Cl 40 Mac-Cas: Part 9, Cl 40 Murray: Part 9, Cl 40 M'bidgee: Part 9, Cl 42	Were rules for water supply works located near contamination sources including any site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines published under the <i>Environmental Planning and Assessment Act 1979</i> implemented?	✗	✗

Plan clauses	Audit questions for Criterion 6	Compliance	
		WNSW	NRAR / DPE-W
Gwy: Part 9, Cl 40 Lach: Part 9, Cl 41 Mac-Cas: Part 9, Cl 41 Murray: Part 9, Cl 41 M'bidgee: Part 9, Cl 43	Were rules for water supply works located near high priority groundwater-dependent ecosystems implemented?	~	~
Gwy: Part 9, Cl 41 Lach: Part 9, Cl 42 Mac-Cas: Part 9, Cl 42 Murray: Part 9, Cl 42 M'bidgee: Part 9, Cl 44	Were rules for water supply works located near groundwater-dependent culturally significant areas implemented?	✗	✗
Gwy: Part 9, Cl 42 Lach: Part 9, Cl 43 Mac-Cas: Part 9, Cl 43 Murray: Part 9, Cl 43 M'bidgee: Part 9, Cl 45	Were rules for water supply works used solely for basic landholder rights implemented?	~	NA <sup>53</sup>
Gwy: Part 9, Cl 43 Lach: Part 9, Cl 44 Mac-Cas: Part 9, Cl 44 Murray: Part 9, Cl 44 M'bidgee: Part 9, Cl 46	Were rules for replacement groundwater works implemented?	✗	NA <sup>54</sup>

## 7.3 Findings

The Commission makes eight unique recommendations, repeated for DPE-Water and WaterNSW. Although NRAR was responsible for assessing water supply work approvals during part of the audit period, this function was transferred to DPE-Water in mid-2021 and recommendations are therefore assigned to DPE-Water. The Commission considers that recommendations for DPE-Water are primarily relevant for the licensing and approvals team responsible for granting or refusing applications, rather than the team that provides hydrogeological technical advice to the licensing and approvals team.

### 7.3.1 Procedures and systems do not support the explicit documentation of assessments against all relevant Plan provisions

WaterNSW and DPE-Water have procedures and systems for governing the water supply work approval process, however this audit identified gaps relating to the explicit documentation and assessment of certain rules for water supply works approvals under Part 9 of the Plans.

Specifically, DPE-Water and WaterNSW's manuals, procedures and assessment summary sheets do not require specific assessment against, or explicit documentation of compliance against, all the provisions under Part 9 of the Plans. Compliance with Plan provisions should be more explicitly documented for all types of water supply work approval assessments.

<sup>53</sup> DPE-Water and NRAR did not assess any basic landholder rights groundwater works approvals during the audit period.

<sup>54</sup> DPE-Water and NRAR did not assess any replacement groundwater works approvals during the audit period.

Detailed findings about these assessment gaps are outlined in detail in **Sections 7.3.3 to 7.3.7** below, based on the sample of applications that were processed during the audit period and reviewed by the Commission.

The Plans have clauses (‘exemption clauses’) which allow water supply works to be exempt from minimum distances if the Minister is satisfied that the works would result in no more than minimal effect or harm.<sup>55</sup> The Commission assumes these exemption clauses have been applied to various tested assessments without this being stated in the assessment summaries. This includes assessments for new water supply works, basic landholder rights water supply works, amendments to existing works, and replacement works.

The Commission reviewed three amendments of water supply work approvals. It is reasonable to assume that, based on the types of amendments being made, the assessing officers would have considered them to have minimal impact. However, the assessments did not explicitly state how compliance with the relevant Plan provisions was achieved. WaterNSW indicated that the triage processes agreed with DPE-Water have implicit reliance on these exemption clauses. Use of these exemption clauses should be explicit and clearly justified in each water supply work approval assessment, as well as in any relevant processes and procedures.

WaterNSW and DPE-Water advised that they are updating their procedures and systems for processing water supply works approvals to address gaps with legislative requirements. DPE-Water provided an example assessment using their updated process during this audit. The Commission supports these changes and encourages the agencies to update all relevant manuals, procedures and templates. These updates should also address the gaps identified in the following sections.

In previous audits, the Commission has suggested that it would be beneficial to include the latitude and longitude of each work on the Statement of Approvals for transparency and to support enforcement activities. In this audit, water supply work approval applications were assessed which had some uncertainty about the location of existing bores requiring follow up by agency staff. Considering that there are over 10,000 water licence and approval transactions each year across all water sharing plans,<sup>56</sup> including exact locations in Statement of Approvals may improve efficiency and reduce the potential for error.

## Recommendation

The Commission makes one recommendation in relation to this finding to each approval agency.

<b>R 6.1a</b>	<p>DPE-Water to finalise updates to its procedures and systems governing the water supply work approval process.</p> <p>As part of this work, DPE-Water to implement its updated processes and templates to assess and explicitly document compliance with the provisions for water supply works approvals under Part 9 of the Plans. This should include rectification of gaps identified in <b>Recommendations 6.2a to 6.5.2b</b> below.</p>
<b>R 6.1b</b>	<p>WaterNSW to finalise updates to its procedures and systems governing the water supply work approval process.</p>

<sup>55</sup> For example clauses 38(3d), 39(4a), 40(4) and 41(2d) of the Gwydir Plan.

<sup>56</sup> DPE-Water (n.d.) [Reducing red tape for water licences and approvals](#).

As part of this work, WaterNSW to update processes and templates to assess and explicitly document compliance with the provisions for water supply works approvals under Part 9 of the Plans. This should include rectification of gaps identified in **Recommendations 6.2b to 6.6** below.

### **7.3.2 The process of granting and approving water supply works does not ensure there will be no more than minimal harm**

Water supply works must not be approved or amended unless the agencies are satisfied that there will be no more than:

- minimal harm done to:
  - any water source, or its dependent ecosystems,
  - public health and safety or
  - a groundwater-dependent culturally significant area, or
- minimal effect on a person's ability to take water using an existing approved water supply work and any associated access licences.<sup>57</sup>

While the Commission observed evidence of assessment of minimal harm or effect, there is the potential for greater than minimal harm or effect due to the gaps in assessment and documentation described in **Sections 7.3.1 to 7.3.7**. Addressing the recommendations in this chapter will enable compliance with the Act section 97(2), and relevant provisions under the Plans by supporting the assessing officers' assessment of the likelihood and impact of harm occurring due to the water supply works.

The Commission understands that DPE-Water and WaterNSW's updates to their procedures and systems (described in **Section 7.3.1**) requires officers to explicitly address the minimal harm or effect requirements of the Act and Plans. This finding is addressed by **Recommendations 6.1 to 6.6**.

### **7.3.3 Minimising interference between water supply work approvals provisions were not explicitly documented**

The Plans include rules to minimise interference between water supply works, including minimum set back distances under certain situations, such as from neighbouring properties or local water utility bores. These provisions can require written consent from adjacent properties if distance requirements are not met.

The Commission did not sight explicit evidence of assessment of all the provisions to minimise interference between water supply works in the sample of:

- two applicable water supply work approvals processed by WaterNSW for the Macquarie-Castlereagh Plan area
- three applicable water supply work approvals processed by NRAR in the Lachlan, Macquarie-Castlereagh, and Murrumbidgee Plan areas. The assessment in the Murrumbidgee had information suggesting non-compliance with the distance to the landholder's boundary. The water supply work assessment in the Macquarie-Castlereagh had sufficient information to allow the Commission to determine compliance.

<sup>57</sup> Part 9 of the Plans and section 97(2) of the Act.

The audited DPE-Water and WaterNSW assessment summary sheets did not include any checks for the rules to minimise interference to be documented, noting that both agencies are in the process of updating their assessment templates.

### Recommendation

The Commission makes one recommendation in relation to this finding, applicable to each approval agency.

<b>R 6.2a</b>	DPE-Water to assess and explicitly document compliance with the provisions under Part 9 of the Plans for all rules to minimise interference between water supply works.
<b>R 6.2b</b>	WaterNSW to assess and explicitly document compliance with the provisions under Part 9 of the Plans for all rules to minimise interference between water supply works.

### 7.3.4 Distance to contamination source provisions were not all explicitly assessed

The Plans require assessment of potential sources of contamination near water supply works, including on-site sewage disposal systems and any site that:

- a) has been declared to be significantly contaminated land under the *Contaminated Land Management Act 1997*,
- b) notified to the EPA (Environment Protection Authority) under section 60 of the *Contaminated Land Management Act 1997*, or

The Commission did not sight evidence indicating the consistent assessment of declared and notified potential sources of contamination under the *Contaminated Land Management Act 1997* by NRAR and WaterNSW during the audit period.

Both DPE-Water and WaterNSW advised that during the audit period assessments were performed against part (b) above, but not (a). The Commission saw evidence of assessment requirements set out in (b) being checked for new water supply works and new basic landholder rights bore approvals. This assessment requirement has been partially met during the audit period.

### Recommendation

The Commission makes two recommendations in relation to this finding, with each recommendation applicable to each approval agency. These recommendations should be applied to water supply work and domestic and stock basic landholder rights assessments and approvals.

<b>R 6.3.1a</b>	DPE-Water to consistently assess and explicitly document compliance against the Plans' schedule requirement for assessment of contamination sources including any site that has been declared to be significantly contaminated land under the <i>Contaminated Land Management Act 1997</i> , or notified to the EPA under section 60 of the <i>Contaminated Land Management Act 1997</i> .
<b>R 6.3.1b</b>	WaterNSW to consistently assess and explicitly document compliance against the Plans' schedule requirement for assessment of contamination sources including any site that has been declared to be significantly



contaminated land under the *Contaminated Land Management Act 1997*, or notified to the EPA under section 60 of the *Contaminated Land Management Act 1997*.

The Plans require assessment of potential sources of contamination near water supply works, including on-site sewage disposal systems and any site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines published under the *Environmental Planning and Assessment Act 1979*.

WaterNSW and DPE-Water indicated that there are currently no processes in place to complete the assessment requirement outlined above. It was noted this assessment will require additional work to develop a suitable process for determining compliance. The assessment requirement has not been met during the audit period.

### Recommendation

The Commission makes two recommendations in relation to this finding, with each recommendation applicable to each approval agency. These recommendations should be applied to water supply work and domestic and stock basic landholder rights assessments and approvals.

<b>R6.3.2a</b>	DPE-Water to develop a process to support the assessment and documentation of compliance against the Plans' schedule requirement for assessment of contamination sources including any site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines published under the <i>Environmental Planning and Assessment Act 1979</i> .
<b>R6.3.2b</b>	WaterNSW to develop a process to support the assessment and documentation of compliance against the Plans' schedule requirement for assessment of contamination sources including any site that is or has been the subject of an activity listed in Table 1 of the contaminated land planning guidelines published under the <i>Environmental Planning and Assessment Act 1979</i> .

### 7.3.5 Distances to high priority groundwater-dependent ecosystems provisions were not consistently documented

The Plans have rules to prevent water supply works from being approved within certain distances of high priority groundwater dependent ecosystems or from the high bank of a river unless adequate arrangements are in place to protect the ecosystems.

The assessment summary sheets do not require explicit statements of compliance with these requirements. The WAMS assessment process<sup>58</sup> requires hydrogeologists to assess the level of drawdown at groundwater-dependent ecosystems identified in the Plans and at any third or higher order connected surface water source. While some assessments did document these distances, they were not documented in every case tested by the Commission. Specifically:

- NRAR did not document the distance to the high bank of a river or groundwater dependent ecosystems in one of the three tested water supply works approvals.

<sup>58</sup> Note that a WAMS assessment is not required for all basic landholder rights water supply works approvals.

- WaterNSW did not document the distance to the high bank of a river in two relevant water supply works approvals, or the distance to groundwater dependent ecosystems in one relevant tested water supply works approval.

The Commission therefore considers that the agencies have partially complied with the relevant Plan provisions.

### Recommendation

The Commission makes two recommendations in relation to this finding to require explicit documentation of compliance with these provisions for all applicable water supply work approvals assessments.

<b>R 6.4a</b>	DPE-Water to consistently assess and document compliance with the provisions under Part 9 of the Plans for water supply works near high priority groundwater-dependent ecosystems and high banks of rivers.
<b>R 6.4b</b>	WaterNSW to consistently assess and document compliance with the provisions under Part 9 of the Plans for water supply works near high priority groundwater-dependent ecosystems and high banks of rivers.

### 7.3.6 Current processes do not support the identification or assessment of potential impacts groundwater-dependent culturally significant areas

The Plans require assessment of water supply work approvals located near groundwater-dependent culturally significant areas. Agencies identified that there is currently no process to provide sufficient information to allow an assessment of groundwater-dependent culturally significant areas. DPE-Water has identified the need to “develop a program to identify and enhance protection of groundwater-dependent cultural sites and values in a culturally appropriate way.”<sup>59</sup> The agencies currently use an Aboriginal Heritage Information Management System (AHIMS) search to identify cultural sites.

The audited assessments used AHIMS to identify Aboriginal Places or listed Aboriginal sites and objects and assess potential construction impacts of water supply works. If a site was present, there was a requirement that, works are not within 20 m of a site. All the relevant sampled assessments included an AHIMS search. However, agencies indicated that these searches do not identify if the site or object is groundwater-dependent and do not include a range of landscape features that are likely to have cultural significance, such as waterholes, seeps, soaks and billabongs. An AHIMS search is therefore not considered to allow an assessment of the potential harm to any groundwater-dependent culturally significant areas under Part 9 of the Plans.

The Commission did not sight evidence demonstrating assessments of groundwater-dependent culturally significant areas for any of the six relevant water supply work approvals processed by WaterNSW or NRAR during the audit period, which were in the Lachlan, Macquarie-Castlereagh and Murrumbidgee Plan areas. The audited DPE-Water and WaterNSW assessment summary sheets do not have a field to record the results of any assessment of nearby groundwater-dependent culturally significant areas.

We further note that the Plans each have a note stating: “Groundwater-dependent culturally significant areas may be identified during the term of this Plan. Aboriginal people may also identify culturally significant areas when applications for new or amended water supply works

<sup>59</sup> DPE-Water (2022) [NSW Groundwater Strategy](#), page 62.



are advertised. Potential groundwater-dependent culturally significant areas will be considered in the assessment of any application for a water supply work approval within the area of this Plan”.

The advertisements which provide stakeholders with an opportunity to object to water supply work applications do not easily allow for identification of relevant groundwater-dependent culturally significant sites. The advertisements do not appear to be targeted to the relevant audiences and do not present information (such as a map) to aid an understanding of the location of the proposed works or their potential impacts to groundwater-dependent culturally significant sites. The Commission does not raise a recommendation in relation to this observation.

### Recommendation

The Commission makes two recommendations in relation to this finding, one for DPE-Water to develop a process to support the identification of groundwater-dependent culturally significant areas, and another to implement that process which is applicable to both approval agencies. These recommendations should be applied to water supply work and domestic and stock basic landholder rights assessments and approvals.

<b>R 6.5.1</b>	DPE-Water to develop a process to support the identification of groundwater-dependent culturally significant areas to enable assessments of potential impacts from water supply work approvals.
<b>R 6.5.2a</b>	Upon completion of <b>R 6.5.1</b> , DPE-Water to assess and document compliance with the provisions under Part 9 of the Plans for water supply works near groundwater-dependent culturally significant areas.
<b>R 6.5.2b</b>	Upon completion of <b>R 6.5.1</b> , WaterNSW to assess and document compliance with the provisions under Part 9 of the Plans for water supply works near groundwater-dependent culturally significant areas.

### 7.3.7 Assessment summary sheets do not require confirmation that the definition of a replacement groundwater work has been met

The Plans only require replacement water supply works to be assessed against some of the criteria in Part 9 due to their lower risk profile. The Plans define the specific features of a ‘replacement’ water supply work which can vary depending on the plan and water source.

The current DPE-Water and WaterNSW assessment summary sheets do not require documentation of compliance against the criteria for a replacement work under the Plans. WaterNSW and DPE-Water have an agreed ‘triage’ process to support assessing officers regarding replacement works and whether they need to be referred for a WAMS assessment. DPE-Water has a delegated responsibility for setting the criteria for the triage process.<sup>60</sup> Therefore, it may be inferred that the Minister’s position on risk, and what may constitute minimal impact, is embedded in the triage process. The triage process does not reference the Plan’s exemption clauses (see also **Section 7.3.1**) but, based on context the use of these clauses is implied. As discussed in **Section 7.3.1** the use of Plan exemption clauses should be explicit in any processes, as well as in individual assessments.

<sup>60</sup> Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), p 9, Executed 30 June 2021.

This audit reviewed one replacement water supply work application. WaterNSW approved the work under the Gwydir Plan and it does not comply with two elements of the definition of a replacement groundwater supply work (depth and diameter). The Plan's exemption clauses<sup>61</sup> can alter the depth requirement if determined by the Minister to have minimal impact. The Commission understands that the replacement works triage process is intended to implicitly support this logic, as it allows replacement works of different depths to be approved within the water source, as long as certain conditions are met.

However, the exclusion clauses do not permit the Minister to alter the diameter provisions. Therefore, the water supply work should not have been assessed as a replacement work as it does not comply with the diameter requirements of the Gwydir Plan, and the triage process does not allow diameter requirements to be varied. This means it was not assessed against all relevant Plan provisions that apply to new water supply work approvals. The Commission notes that the triage for replacement works does not mention diameter, which may contribute to the requirement being overlooked.

Further, the assessment did not address provisions which should still be assessed for replacement works, specifically rules for water supply works located near contaminations sources. These provisions are considered further in **Section 7.3.4** and should be assessed and documented for all approvals.

### Recommendation

The Commission makes one recommendation in relation to this finding, applicable to WaterNSW. We note that DPE-Water's assessment summary sheets also have a gap with respect to confirmation of meeting the definition of a replacement work. DPE-Water could consider addressing **Recommendation 6.6** to lower the risk of any potential future non-compliances.

<b>R 6.6</b>	WaterNSW to assess and explicitly document compliance, where relevant, with the definition of a replacement work under Part 9 of the Plans to inform the assessment process.
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<sup>61</sup> Specifically, clause 43(2) of the Gwydir Plan can alter the depth requirement in 43(1)(b)(ii).

## 8 Criterion 7 – Access licence dealing rules

### ***Have the relevant responsible parties implemented plan provisions relating to access licence dealing rules?***

#### **Conclusion**

Provisions for access licence dealings have been largely given effect and dealings have been processed in accordance with requirements, with one partial compliance found relating to quality issues for the sample of 71W dealing assessments that were reviewed.

WaterNSW has systems and processes that allow dealings to be assessed and processed, however there is a Water Licensing System limitation whereby some allowed and prohibited dealings are not differentiated in system reports, which makes it unclear if prohibited dealings have been processed. The Commission did not confirm any examples of actual prohibited dealings being processed.

### 8.1 Introduction

Rules for the ways that access licence dealings are allowed or restricted are set by the Act, Regulation, *Access Licence Dealing Principles Order 2004* and relevant water sharing plans. Part 10 of the Plans provide rules relating to various dealings in their groundwater sources. Dealing types established under the Act that are referenced or regulated by the Plans are 71O, 71Q, 71R, 71S, 71T, 71U, 71V and 71W. The Commission has tested the implementation of plan provisions for these types of dealings. The Commission also tested rules relating to these dealings under the *Access Licence Dealing Principles Order 2004* where possible. The Commission did not undertake any assessment of 71M, 71N, 71P, 71QA, 71X or S74 dealings under this audit. These types of dealings are either less common, substantially administrative or less relevant to groundwater licences; and none of these dealings are described or regulated by the Plans. The Commission did not test requirements under the Act or Regulation for dealings under this audit which is focussed on assessing whether the provisions of the plans are being given effect to.

WaterNSW is responsible for managing dealings and trade of water access licences, licence entitlements and allocations. This includes responsibility for all dealings under the Act that are not managed by Land Registry Services (LRS).<sup>62</sup> The Commission did not test the role of LRS under this audit. DPE-Water provides groundwater advice and assessment to WaterNSW for 71T, 71P, 71Q and 71W dealings, among other assessments.<sup>63</sup> The Commission did not audit DPE-Water's activities during the audit period in relation to dealings, as this is a supporting role and WaterNSW has responsibility for undertaking all dealings and trade tasks for all persons.<sup>64</sup>

WaterNSW currently uses the Water Licensing System (WLS) to process permanent dealings (such as 71Q and 71W dealings), and the Water Accounting System (WAS) to process temporary dealings (such as 71T). WaterNSW has projects occurring under the

<sup>62</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), p 16, Executed 30 June 2021.*

<sup>63</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), p 16, Executed 30 June 2021.*

<sup>64</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), p 16, Executed 30 June 2021.*

Water Added Value Environment (WAVE) program, with the intent to consolidate data platforms including licensing and usage data in the future.<sup>65</sup>

## 8.2 Compliance summary

The Commission examined eight audit questions that relate to dealings provisions. Where a sample of processed dealings was available (71Q, 71W and 71T), the Commission tested implementation of rules under both the Plans and the Access Licence Dealing Principles Order.




The Commission reviewed:

- Three 71W dealings processed under four plans (excluding the Macquarie-Castlereagh) – twelve dealings in total
- Three 71Q dealings processed under four plans (excluding the Murray) – twelve dealings in total
- One 71T dealing processed under three plans (excluding the Lachlan and Murrumbidgee) – three dealings in detail
- A summary of all temporary dealings processed in 2020-21 and 2021-22– total of 1000 dealings
- A summary of all permanent dealing applications that were received in 2020-21 and 2021-22.






The Commission requested a sample of 71R and 71S dealings but were informed that none were processed under these Plans.

The results of the Commission’s analysis are shown in **Table 8**. Findings and recommendations for the partial compliances identified in **Table 8** are presented in the sections below.

**Table 8 Compliance summary for access licence dealing rules**

Plan clauses	Audit questions for Criterion 7	Compliance
Gwy: Part 10, Cl 44-49 Lach: Part 10, Cl 45-51 Mac-Cas: Part 10, Cl 45-51 Murray: Part 10, Cl 45-51 M’bidgee: Part 10, Cl 47-53	Were there procedures and systems in place to ensure dealings rules in the Plans are followed and prohibited dealings do not take place?	
Gwy: Part 10, Cl 44 Lach: Part 10, Cl 45 Mac-Cas: Part 10, Cl 45 Murray: Part 10, Cl 45 M’bidgee: Part 10, Cl 47	Were rules for the conversion of access licences to new category dealings followed? (71Q)	
Gwy: Part 10, Cl 45 Lach: Part 10, Cl 46 Mac-Cas: Part 10, Cl 46 Murray: Part 10, Cl 46 M’bidgee: Part 10, Cl 48	Were rules for assignment of rights dealings followed? (71Q)	

<sup>65</sup> NSW Chief Scientist & Engineer (2020) [Review of water-related data collections, data infrastructure and capabilities](#).

Plan clauses	Audit questions for Criterion 7	Compliance
Gwy: Part 10, Cl 46 Lach: Part 10, Cl 47 Mac-Cas: Part 10, Cl 47 Murray: Part 10, Cl 47 M'bidgee: Part 10, Cl 49	Were rules for amendment of share component dealings (change of water source) followed? (71R)	
Gwy: N/A Lach: Part 10, Cl 48 Mac-Cas: Part 10, Cl 48 Murray: Part 10, Cl 48 M'bidgee: Part 10, Cl 50	Were rules for amendment of extraction component dealings followed? (71S)	
Gwy: Part 10, Cl 47 Lach: Part 10, Cl 49 Mac-Cas: Part 10, Cl 49 Murray: Part 10, Cl 49 M'bidgee: Part 10, Cl 51	Were rules for assignment of water allocations dealings followed? (71T)	
Gwy: Part 10, Cl 48 Lach: Part 10, Cl 50 Mac-Cas: Part 10, Cl 50 Murray: Part 10, Cl 50 M'bidgeeee: Part 10, Cl 52	Were rules for interstate access licence transfer and assignment of water allocations dealings followed? (71U and 71V)	
Gwy: Part 10, Cl 49 Lach: Part 10, Cl 51 Mac-Cas: Part 10, Cl 51 Murray: Part 10, Cl 51 M'bidgee: Part 10, Cl 53	Were rules for nomination of water supply works dealings followed? (71W)	

## 8.3 Findings

### 8.3.1 A limitation of the Water Licensing System's naming conventions makes prohibited dealings appear to have been processed in system extracts

The WLS, which is used to process dealings, reports any 71O, 71P, 71R, 71S and 71W dealings as a bundle of dealing types ("71O/R/S/W" or "71P(1)(a)/O/R/S/W" for example). The 71O (conversion to a new licence category) type of dealing is prohibited across all Plans that were audited and 71R (amendment of licence share component) dealings are typically prohibited under the Plans.<sup>66</sup> Therefore, the system reports make it appear as if dealings that are prohibited were processed during the audit period.

WaterNSW's systems and procedures generally support assessment of plan rules for dealings. WaterNSW informed the Commission in interview that prohibited dealings may be rejected either informally via phone conversation with the applicant (before a formal application is submitted) or as part of pre-validation checks. The Commission has observed that assessment summary sheets for dealings require assessing officers to check that the water sharing plan rules permit the dealing type that has been applied for.

The Commission also confirmed by review of a sample of 20 percent (8 out of 40 records) of the reported 71O/R/S/W dealings presented in the list of permanent dealings provided by WaterNSW for 2020-21 and 2021-22 that these were actually 71W dealings. These

<sup>66</sup> The Gwydir Plan, Lachlan Plan, Murray Plan and Murrumbidgee Plan prohibit 71R dealings. The Macquarie-Castlereagh Plan provides a list of circumstances under which a 71R dealing would be prohibited.

dealings are permitted by the Plans and did not include prohibited dealing types. The Commission randomly sampled a further six dealings including two that were listed as 71P(1)(a)/O/R/S/W and confirmed that none of the dealings were prohibited.

WaterNSW identified that the string of dealing type letters (“71O/R/S/W” or “71P(1)(a)/O/R/S/W” for example) reported by the WLS is a system limitation, and that the only way to identify which exact dealing was processed is to open and review the details of the dealing. This means that WaterNSW provided the Commission with a list of processed dealings which appeared to contain many prohibited dealings. The naming of the dealings as a group potentially masks prohibited dealings, as it is not possible to run a report that identifies the individual dealing types that have been processed for 71P, 71O, 71R, 71S and 71W dealings. The Commission understands that the long-term intention is for dealings to be processed in a new system by WaterNSW, which is being developed under the WAVE program. Therefore, the Commission has recommended that this issue be considered and fixed under WAVE as a pragmatic approach.

### Recommendation

The Commission makes one recommendation.

<b>R 7.1</b>	WaterNSW to update the naming conventions for dealings under WAVE to ensure dealing names and system reports accurately reflect dealings undertaken to demonstrate compliance and improve data quality.
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### 8.3.2 Access licence dealing principles order rules for 71W dealings were not always suitably answered and addressed

In the sample reviewed of three 71W dealings processed in each of the Gwydir, Lachlan, Murray and Murrumbidgee,<sup>67</sup> the Commission found some minor quality issues relating to requirements of the *Access Licence Dealing Principles Order 2004*, including:

- inconsistent documenting of the assessment of interstate tagging requirements; whether these applied and were met (including 1 dealing in the Murrumbidgee that incorrectly stated these requirements were not met)
- inconsistent answering of subsequent questions relating to requirements for specific purpose access licences (SPALs) where it had been identified the WAL in question was not a SPAL (including 1 in the Lachlan and 1 in the Gwydir that incorrectly stated these requirements were not met)
- one WAL in the Murrumbidgee was incorrectly stated as being suspended, which would trigger a rejection of the dealing.

The Commission found that the sample of three 71W dealings processed in each of the Gwydir, Lachlan, Murray and Murrumbidgee during the audit period was compliant for all of the Plan and *Access Licence Dealing Principles Order 2004* (ALDPO) requirements. However, the assessment documentation for the dealings incorrectly identified some non-compliances which should have triggered rejection of the dealings if these were actual non-compliances. In each case there was always a check that ALDPO rules had been complied with, which was confirmed by the assessing officer. There were typically also screenshots or PDFs of ALDPO rules supplied as part of the assessment documentation, which provided evidence of an awareness of the rules to be assessed against.

<sup>67</sup> The Commission did not request a sample of 71W dealings for the Macquarie-Castlereagh so it is possible that similar issues may exist for dealings under this plan, which were not tested.



WaterNSW identified potential reasons for some of these inconsistencies, including default answers on the assessment summary sheets not having been changed, and the lack of an 'N/A' option for NSW and interstate tagging questions. WaterNSW also identified that it has engaged a Quality Assurance review for dealings to identify quality issues and make improvements. The Commission supports this action.

### Recommendation

The Commission makes one recommendation.

<b>R 7.2</b>	<p>WaterNSW to update the assessment summary sheet structure and process for 71W dealings to:</p> <ul style="list-style-type: none"><li>▪ include a 'not applicable' option for interstate and NSW tagging requirements</li><li>▪ remove default positions on answers to promote active entry of answers by assessing officers</li><li>▪ ensure any answers which would trigger a refusal of the dealing are identified and corrected before processing a dealing.</li></ul>
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The Commission notes that for 71W and 71Q dealings that were reviewed as part of the audit, the assessment summary sheets do not necessarily have individual checks for each plan rule and ALDPO requirement. However, there were always holistic checks that the plan requirements and ALDPO requirements had been met. This was typically supported by a PDF of the plan and ALDPO rules that applied. The Commission did not identify any non-compliances with rules for the sample provided. However, there is a risk that elements of the applicable rules are not checked by assessing officers, as these checks are not individually documented. While individual checks for each plan rule and ALDPO requirement would improve the assessment process, this does not constitute a finding as no instances of non-compliance were identified and therefore no recommendation has been proposed.

## 9 Criterion 8 – Mandatory conditions

### ***Have the relevant responsible parties implemented plan provisions relating to mandatory conditions?***

#### **Conclusion**

Provisions for mandatory conditions have partially been given effect during the audit period. Most mandatory conditions have been given effect on water access licences and water supply work approvals, however there were some gaps and some delays in notifying licence and approval holders.

DPE-Water and WaterNSW have systems and processes in place to apply, manage and notify licence and approval holders of mandatory conditions, as relevant to their roles.

### 9.1 Introduction

Part 11 of the Plans provide requirements for mandatory conditions that must be applied to water access licences and water supply work approvals. The Commission tested some additional elements of the Act and Regulation where these support, or alter, the implementation of mandatory conditions under the Plans.

The Commission tested conditions on specific purpose access licences and notification of updates to existing licence and approval conditions under the Act. In addition, the Commission tested the removal of plan conditions and application of new conditions under the rollout of non-urban water metering requirements under Part 10 and 11 of the Regulation, noting these were not in effect for all valleys under this audit at the time of analysis.

DPE-Water is responsible for managing mandatory conditions for existing access licences and water supply work approvals. Upon commencement of a new water sharing plan, DPE-Water is responsible for developing mandatory conditions that give effect to plan provisions, identifying the water access licences and water supply work approvals that the conditions apply to, and applying the conditions.<sup>68</sup> WaterNSW notifies all relevant water access licences and water supply work approvals holders of the changes to conditions.<sup>69</sup>

WaterNSW and DPE-Water are each responsible for applying mandatory conditions during the process of granting any new water access licences or water supply work approvals for their customers.<sup>70</sup> The Water Licensing System (WLS) is the system in which mandatory conditions are applied to water access licences and water supply work approvals.

### 9.2 Compliance summary

The Commission examined thirteen audit questions that relate to mandatory conditions provisions. The results of this analysis are shown in **Table 9**. The Commission assessed the conditions that were in place at the time of audit analysis in early 2023, which included

<sup>68</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), Executed 30 June 2021, p10-11, 22.*

<sup>69</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), Executed 30 June 2021, p10, 22.*

<sup>70</sup> *Roles and Responsibilities Agreement: DPE Water, NRAR and WaterNSW, [Schedule 1 – Version 1.2](#), Executed 30 June 2021, p10, 22.*
















some testing of systems and processes. The Commission did not test mandatory conditions that may have applied earlier in the audit period, or would apply after 1 June 2023 when non-urban water metering requirements come into effect in some of these valleys. At the time of analysis, the non-urban water metering requirements under the Regulation applied only to water sources in the Gwydir and Macquarie-Castlereagh (of those plans and water sources being audited).

The Commission used the Water Register to view mandatory conditions, as advised by WaterNSW. The Commission sampled a range of water access licences and water supply work approvals under each plan, including some that were granted before and after the Plans commenced, both WaterNSW and DPE-Water customers and a range of licence types and water sources. The Commission reviewed conditions on a total of 48 water access licences and 42 water supply work approvals.

Findings and recommendations for the partial compliances identified in **Table 9** are presented in the sections below.

**Table 9: Compliance summary for mandatory conditions provisions**

Plan clauses	Audit questions for Criterion 8	Compliance
Water access licences and water supply work approvals		
Gwy: Part 11 Lach: Part 11 Mac-Cas: Part 11 Murray: Part 11 M'bidgee: Part 11	Are there procedures and systems in place to govern the development, application and notification of mandatory conditions for water access licences and water supply work approvals?	
S67 Imposition of conditions after access licence is granted S102 Imposition or change of conditions after approval is granted	Were holders of existing water access licences and water supply work approvals notified of their conditions under the Plans in a reasonable timeframe?	
Water Management (General) Regulation Part 10 and Part 11	Have record keeping and metering mandatory conditions for water access licences and water supply work approvals been updated in line with the non-urban water metering requirements under the Regulation?	
Water access licences		
Gwy: Part 11, Cl 51 Lach: Part 11, Cl 53 Mac-Cas: Part 11, Cl 53 Murray: Part 11, Cl 53 M'bidgee: Part 11, Cl 55	Did water access licences sampled have mandatory conditions to give effect to the general conditions required?	
Gwy: Part 11, Cl 52 Lach: Part 11, Cl 54 Mac-Cas: Part 11, Cl 54 Murray: Part 11, Cl 54 M'bidgee: Part 11, Cl 56	Did water access licences sampled have mandatory conditions to give effect to the record keeping conditions required?	
Gwy: Schedule 2 Lach: NA Mac-Cas: NA Murray: NA M'bidgee: NA	Did water access licences in applicable plan schedules have mandatory conditions required to be applied by the Schedule?	

Plan clauses	Audit questions for Criterion 8	Compliance
Water Management Act S66(2A) Conditions of access licence generally	Did specific purpose access licences have a condition to limit them to the purpose for which they were granted?	
Water supply work approvals		
Gwy: Part 11, Cl 53 Lach: Part 11, Cl 55 Mac-Cas: Part 11, Cl 55 Murray: Part 11, Cl 55 M'bidgee: Part 11, Cl 57	Did water supply work approvals sampled have mandatory conditions to give effect to the general conditions required?	
Gwy: Part 11, Cl 54 Lach: Part 11, Cl 56 Mac-Cas: Part 11, Cl 56 Murray: Part 11, Cl 56 M'bidgee: Part 11, Cl 58	Did water supply work approvals sampled have mandatory conditions to give effect to the metering conditions required?	
Gwy: Part 11, Cl 55 Lach: Part 11, Cl 57 Mac-Cas: Part 11, Cl 57 Murray: Part 11, Cl 57 M'bidgee: Part 11, Cl 59	Did water supply work approvals sampled have mandatory conditions to give effect to the record keeping conditions required?	
Gwy: Part 11, Cl 56 Lach: Part 11, Cl 58 Mac-Cas: Part 11, Cl 58 Murray: Part 11, Cl 58 M'bidgee: Part 11, Cl 60	Did water supply work approvals sampled have mandatory conditions to give effect to the water supply work construction conditions required?	
Gwy: Part 11, Cl 57 Lach: Part 11, Cl 59 Mac-Cas: Part 11, Cl 59 Murray: Part 11, Cl 59 M'bidgee: Part 11, Cl 61	Did water supply work approvals sampled have mandatory conditions to give effect to the water quality conditions required?	
Gwy: Part 11, Cl 58 Lach: Part 11, Cl 60 Mac-Cas: Part 11, Cl 60 Murray: Part 11, Cl 60 M'bidgee: Part 11, Cl 62	Did water supply work approvals sampled have mandatory conditions to give effect to the water supply work decommissioning conditions required?	

## 9.3 Findings

### 9.3.1 Notification of conditions under the Plans for holders of existing water access licences and water supply work approvals was typically late

The Commission found that existing water access licence and water supply work approval holders were notified of mandatory conditions up to 1 year and 3 months after plan commencement. Specifically:

- Gwydir: August to September 2021 (around 1 year and 2 months after plan commencement)
- Macquarie-Castlereagh: September 2021 (around 1 year and 2 months after plan commencement)
- Lachlan: February 2021 (7 months after plan commencement)
- Murrumbidgee: July 2021 (1 year after plan commencement).

It is reasonable that notification of mandatory conditions under the Plans should occur after the Plans are finalised and given effect to ensure they are accurate. The Plans do not identify a timeframe within which conditions must be applied to licences and approvals. The Murray Plan water access licence and water supply work approval holders were notified of their mandatory conditions in late August 2020. The Commission considers this notification was completed within a reasonable timeframe to give effect to the conditions of the Murray Plan.

DPE-Water indicated in interviews that when numerous water sharing plans commence at the same time, a decision is made about which plans to prioritise for notification of the new conditions to access licence and water supply work approval holders. DPE-Water identified that the Plans all had previous versions and mandatory conditions that were applied to access licences and water supply work approvals that would likely have mitigated the impact of delayed notification of new mandatory conditions under the Plans. Other communications were sent out to notify access licence and approval holders of the Plans around the time they commenced. The Commission notes that mandatory conditions are not given effect until the access licence or water supply work approval holder is notified in writing.<sup>71</sup>

### Recommendation

DPE-Water identified a number of system improvements that have recently been implemented or commenced to give effect to mandatory conditions. This includes the development of a Standard Operating Procedure for the notification of mandatory conditions.

<b>R 8.1</b>	DPE-Water to complete work to improve systems and processes for notifying licence and approval holders of mandatory conditions, including the Standard Operating Procedure. This should include documenting target timeframes for notification of mandatory conditions.
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### 9.3.2 Non-urban water metering conditions have not yet been applied to relevant access licences

All water supply work approvals sampled in the Gwydir and Macquarie-Castlereagh Plan areas had mandatory conditions relating to the new non-urban water metering requirements under the Regulation. Whereas, the Commission did not observe any instances of water access licences having conditions relating to the new non-urban water metering requirements. DPE-Water informed the Commission that water supply work approvals are the main instrument for the placement of these conditions. Under the Regulation, only access licences that are exempt from the requirement for a water supply work approval, or used for the purpose of prospecting or fossicking for minerals or petroleum, must have mandatory metering equipment and reporting conditions placed on the access licence.<sup>72</sup>

DPE-Water has commenced a project to identify access licences that are exempt from the requirement for a water supply work approval or used for mining that will require non-urban water metering conditions to be applied. These non-urban water metering requirements came into effect for the Gwydir and Macquarie-Castlereagh Plan areas on 1 December 2021 and so will be given delayed effect as conditions to relevant access licences. The non-urban water metering requirements will be in effect in the Lachlan,

<sup>71</sup> Sections 67(5) and 102(5) of the Act.

<sup>72</sup> Clause 229 of the Regulation.

Murray and Murrumbidgee from 1 June 2023. Access licences requiring mandatory conditions to be applied to give effect to the record keeping and reporting requirements will also need to be identified in these groundwater sources.

The Commission supports DPE-Water's project to identify access licences that need to have mandatory conditions applied to give effect to the non-urban water metering requirements. DPE-Water indicated in interviews that this would typically be the case for State Significant Developments or State Significant Infrastructure and some water taken for mining purposes. Given this work by DPE-Water has not been completed, the extent of the impact during the audit period is unknown.

### Recommendation

The Commission makes one recommendation.

<b>R 8.2</b>	DPE-Water to complete work to identify access licences that require relevant non-urban water metering requirements to be applied as mandatory conditions in the Gwydir and Macquarie-Castlereagh, and apply appropriate mandatory conditions. This work will also be required for the Lachlan, Murray and Murrumbidgee from 1 June 2023.
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### 9.3.3 Conditions for construction of replacement water supply works have been applied as discretionary conditions

Plan provisions for water supply work construction conditions include requirements for replacement groundwater works. WaterNSW indicated in interviews that conditions for replacement water supply works have been applied as discretionary conditions, rather than mandatory conditions. The Commission has observed one water supply work approved in the Gwydir during the audit period which had rules for replacement groundwater works applied as a discretionary condition.

Part 11 of the Plans require that provisions of that Part are given effect as mandatory conditions, which includes the provisions for replacement water supply works. Discretionary conditions may vary in their wording from approval to approval as they are developed by an assessing officer or selected from a long list of options in the Water Licensing System.

A mandatory condition prevails over a discretionary condition to the extent of any inconsistencies between them.<sup>73</sup> Mandatory conditions give effect to the relevant management plan under the Act and do not allow the licence or approval holder to make a submission with respect to the condition.<sup>74</sup> For these reasons, it is important to apply mandatory conditions where required, rather than discretionary conditions.

In addition, DPE-Water indicated that using mandatory conditions allows them to be found and managed in the system, whereas discretionary conditions may be harder to identify and amend in future. DPE-Water indicated that a set of standard mandatory conditions for replacement works has been developed for these Plans which may be applied during the approval process by WaterNSW's assessing officers. DPE-Water identified that these mandatory conditions have been used by WaterNSW in some cases. These conditions should be consistently applied as mandatory conditions to water supply work approvals for replacement works.

<sup>73</sup> Section 66(2) of the Act for access licences and Section 100(2) of the Act for approvals.

<sup>74</sup> Sections 66 and 67 of the Act for access licences and Sections 100 and 102 of the Act for approvals.

## Recommendation

The Commission makes one recommendation.

<b>R 8.3</b>	WaterNSW to apply conditions for replacement groundwater works as mandatory conditions.
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## 10 Criterion 9 – Amendments

***Have the relevant responsible parties implemented plan provisions relating to amendments (where these are not optional) and is there evidence that identified amendments (which may include optional amendments) have been given due consideration?***

### Conclusion

DPE-Water has a range of procedures and systems in place to govern the amendment process for these Plans. These include amendment registers, an internal process guide, and a published protocol.

Some internal processes to support the review of in-plan amendment provision were not in place for over two years, which presented a risk to the identification of any in-plan amendments that may have been triggered. However, DPE-Water updated its internal processes to record and review in-plan amendment provisions towards the end of this audit and advised that it will start implementing these processes. The Commission did not identify any instances where amendments described in Part 12 of the Plans should have been made but were not implemented during the audit period.

### 10.1 Introduction

Section 45(1) of the Act allows for water sharing plans to be amended under four circumstances: where a water sharing plan provides for a future amendment; if it is in the public interest to make an amendment; to give effect to a relevant court decision; or, to give effect to requirements of the *Water Act 2007* (Cth). Amendment provisions are included in Part 12 of the Plans. These provisions allow amendments to be made to various parts of the Plans for specified reasons. DPE-Water manages amendment provisions and updates water sharing plans as required under Section 42 of the Act.<sup>75, 76</sup>

### 10.2 Compliance summary



The Commission examined three audit questions relevant to the Plans' amendment provisions. The results of this analysis are shown in **Table 10**. Findings and recommendations for the partial compliance are presented in the section below.

This audit focused on amendments under section 45(1)(b) of the Act, which relate to the circumstances and matters for amendment that are identified in the Plans. The audit has not explicitly tested other amendments described in the Act, although there may be common systems and processes that were tested.

<sup>75</sup> DPE (2022) [Water sharing plan amendment protocol](#).

<sup>76</sup> The Minister for the Environment must concur with proposed amendments as required under Section 45(3) of the Act.

**Table 10: Compliance summary for amendment provisions**

Plan clauses	Audit questions for Criterion 9	Compliance
Gwy: Part 12, Cl 59-67 Lach: Part 12, Cl 61-69 Mac-Cas: Part 12, Cl 61-69 Murray: Part 12, Cl 61-70 M'bidgee: Part 12, Cl 63-71	Were there procedures and systems in place to govern the amendment process for these groundwater sources?	
Gwy: Part 12, Cl 59-67 Lach: Part 12, Cl 61-69 Mac-Cas: Part 12, Cl 61-69 Murray: Part 12, Cl 61-70 M'bidgee: Part 12, Cl 63-71	Were any mandatory amendments given effect?	NA <sup>77</sup>
Gwy: Part 12, Cl 59-67 Lach: Part 12, Cl 61-69 Mac-Cas: Part 12, Cl 61-69 Murray: Part 12, Cl 61-70 M'bidgee: Part 12, Cl 63-71	Were any optional <sup>78</sup> amendments given effect?	

## 10.3 Finding

### 10.3.1 Internal processes to support the review of in-plan amendment provisions were not in place for over two years

DPE-Water has a range of procedures and systems in place to govern the amendment process for these Plans. These include amendment registers, an internal process guide, and a published protocol.<sup>79</sup> There are also official records of plan amendments (amendment orders) published on the NSW Legislation website.

These procedures and systems support the tracking, prioritisation and making of amendments to water sharing plans. However, there were some internal business processes that needed to be agreed and implemented over the audit period to ensure the regular review of amendment provisions and identification of any triggered in-plan amendments. For example, DPE-Water needed to confirm responsibilities for entering and updating in-plan amendment in its internal system used to store information about water management plans. It also needed to confirm how this system would be used to prioritise and identify the status of in-plan amendments, and make updates to support the regular review of requirements for in-plan studies and the tracking of required in-plan amendments. DPE-Water was aware of these process needs and indicated during this audit that it was addressing them.

The Commission did not identify any instances where amendments described in Part 12 of the Plans should have been made but were not implemented during the audit period. The Commission considers that although there were some internal businesses processes that needed to be implemented to ensure regular review of amendment provisions, this did not appear to have had a material impact during the audit period. Therefore, the Commission considers that DPE-Water has given effect to optional plan amendments during the audit period (see **Table 9**). However, the internal business process gaps that needed to be

<sup>77</sup> There were no mandatory amendments identified in the Plans.

<sup>78</sup> The Plans contain provisions that state they may be amended for a number of specified reasons (referred to in this report as 'optional' amendments).

<sup>79</sup> DPE (2022) [Water sharing plan amendment protocol](#).

agreed and implemented, as discussed above, presented a risk to the identification of any amendments that may have been triggered in the future.

Toward the end of this audit, DPE-Water provided evidence that it had updated its internal processes to record and review in-plan amendment provisions and advised that it will start implementing these processes, which will address the gaps that were in place during most of the audit period. The Commission therefore makes no recommendations for this criterion.