



9 August 2021

Mr David Blunt
Clerk of the Parliaments
Parliament House
Macquarie Street
Sydney NSW 2000

Ref: D21/41438

Dear Mr Blunt

Legality of floodplain harvesting practices

As you are aware, one area being examined by the Select Committee on Floodplain Harvesting is the legality of floodplain harvesting practices. On 9 July 2021, the committee resolved that I write to you and request that you obtain independent legal advice on this issue from a suitably qualified QC.

In accordance with the resolution, I request that you seek legal advice on the following questions:

1. Following the disallowance of the Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020 in September 2020, is it an offence under section 60A of the *Water Management Act 2000* to carry out floodplain harvesting if a person does not have a water access licence?
2. Was it an offence to carry out floodplain harvesting without a water access licence prior to the exemptions introduced by the Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020?
3. What effect does the rollout of NSW Government's [Floodplain Harvesting Policy](#) have on the legality of floodplain harvesting in NSW?
4. Is the take of water through floodplain harvesting a legal activity under the *Water Act 1912*?
5. Are floodplain harvesting works constructed without approvals an offence under section 91B of the *Water Management Act 2000*?
6. Is there any circumstance under which the take of water through floodplain harvesting could be considered a legal activity?



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7. Is paragraph 3 of the of the Harvestable Rights Order – Eastern and Central Division (HRO) published on pages 1628-30 of the Government Gazette No. 40 on 31 March 2006 to be read collectively or distributively?
 - a. Does the exemption for dams listed in Schedule 2 of the HRO only apply if the storage is located on minor streams?
 - b. Does Schedule 2 of the HRO allow for unrestricted take of rainfall runoff without the need for an access licence or water supply work approval for the purposes of meeting landholder obligations to prevent the contamination of a water source if the captured water is not mixed with water captured from other sources (such as water accessed and stored pursuant to a form of licensed entitlement)?
 - c. Does Schedule 2 of the HRO allow for unrestricted take of rainfall runoff without the need for an access licence or water supply work approval for the purposes of meeting landholder obligations to prevent the contamination of a water source?
8. How best can the practice of Floodplain Harvesting be legislated?

The committee is expecting to hold its first public hearing on Monday 20 September 2021. It would therefore be appreciated if the legal advice sought could be received by **Monday 13 September 2021**.

To provide some background, I note that the inquiry has come forward in the context of longstanding contention on floodplain harvesting practices. This was evident in the Legislative Council's disallowance of the Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020 in September 2020, and more recently three floodplain harvesting regulations being disallowed in May 2021. I have also attached to this letter legal advices obtained by the Department of Planning, Industry and Environment for further context (**Attachments A – C**).

Please do not hesitate to contact the committee if you or the legal adviser have any questions in relation to our request. Mr Joseph Cho, Principal Council Officer – Committees is supporting this inquiry and is available on _____ or _____

Yours sincerely

Ms Cate Faehrmann MLC
Committee Chair
