

Office of the Chief Executive

Ref: EC20-000743

The Hon Melinda Pavey MP
Minister for Water, Property and Housing
GPO Box 5341
SYDNEY NSW 2001

Dear Minister

I am writing to give New South Wales (NSW) written notice of the grounds on which the Authority considers that it should recommend the Commonwealth water Minister (the Minister) not accredit the content in the proposed Lachlan (Surface Water) Water Resource Plan ('the proposed WRP') relevant to the management of the Lachlan (Surface Water) water resource plan area.

As you are aware NSW formally gave the proposed WRP to the Authority on 29 June 2020 and asked the Authority to give the proposed WRP to the Minister for accreditation in accordance with s 63(1) of the *Water Act 2007* (Cth) ('the Act').

In July 2019 the Minister granted NSW an extension for submission of all NSW water resource plans ('WRPs') to 31 December 2019.

As no NSW WRPs were received by 31 December 2019, the Minister commenced the process under s 73 of the Act for each of the 20 NSW WRP areas, by issuing a preliminary notice to you, as the NSW Minister for Water, setting out the process for NSW to submit WRPs for assessment and accreditation. In response to this notice, NSW submitted all 20 WRPs by 30 June 2020.

Consistent with the requirements of s 63(3) of the Act, Murray–Darling Basin Authority (MDBA) officers have been conducting an assessment of the proposed WRP.

Pursuant to s 55 of the Act, in determining whether a proposed WRP is consistent with the relevant version of the Basin Plan, the Authority is required to have regard to the legislative framework within which the water resource plan operates. At this stage, the Authority has found a number of matters which may support a decision that the proposed WRP is not consistent with the relevant version of the Basin Plan.

As contemplated by s 63(4) of the Act, the Authority must not recommend that the Minister not accredit the proposed WRP until the process required by that section has been completed. This requires that the Authority:

- (a) gives a Basin State written notice of the grounds on which the Authority considers that it should recommend that the Minister not accredit the proposed WRP;

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- (b) gives the Basin State the opportunity to make submissions to the Authority, within the period of 14 days after the notice referred to in paragraph (a) is given, in relation to the grounds set out in the notice; and
- (c) has regard to the submissions made by the Basin State within that period in deciding what recommendations to make to the Minister in relation to a proposed water resource plan.

The Authority may, in writing, extend or further extend the period referred to in paragraph (b).

The details of the grounds on which the Authority considers that it should recommend that the Minister not accredit the proposed WRP are set out at **Attachment A**.

I therefore ask that you take the opportunity to provide submissions, within 14 days of the date of this notice, in relation to these grounds. I am particularly interested in submissions which would assist the Authority in considering whether the treatment of these matters is consistent with the relevant version of the Basin Plan and/or whether, notwithstanding these matters, the proposed WRP is consistent with the relevant version of the Basin Plan.

I would like to take this opportunity to acknowledge the collaborative efforts of your Departmental staff in progressing the proposed WRP to this stage and assure you that the MDBA remains committed to working with you to finalise this plan for accreditation.

The MDBA's key contact for the proposed WRP is _____, A/g General Manager Water Resource Planning Policy and Assessment (_____), and _____, Executive Director Basin Plan Regulation (_____).

Please feel free to contact them should you have any enquiries in relation to the assessment and accreditation of the proposed WRP. I look forward to receiving any submissions from you on or before 18 November 2020.

Yours sincerely

Phillip Glyde

4 November 2020

Attachment A: The grounds on which the Authority considers it should recommend that the Minister not accredit the proposed WRP

Attachment A – The grounds on which the Authority considers it should recommend that the Minister not accredit the proposed WRP

In exercising powers and performing functions under the Act in relation to a water resource plan the Authority must have regard to the Basin Plan and the extent to which a proposed water resource plan is consistent with the relevant Basin Plan (s 56(1) of the Act).

The proposed WRP must be consistent with the relevant Basin Plan including the requirements for water resource plans and any long-term annual diversion limit for the water resources of the water resource plan area (or for a particular part of those water resources (s 55(2) of the Act)). The relevant Basin Plan is version F2018C00451, registered on 11 July 2018 and ending on 31 December 2019.

In determining whether the proposed WRP is consistent with the relevant Basin Plan, and having regard to the legislative framework in which the proposed WRP operates, the Authority has identified the following issues as the grounds on which the Authority considers it should recommend that the Minister not accredit the proposed WRP:

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| Part 2 | | | |
| 2.1 | 10.04(4) | <p>A water resource plan must include a list that specifies:</p> <ul style="list-style-type: none"> (a) each requirement set out in this Chapter (individually or by reference to a group of requirements); and (b) the part of the plan that addresses each requirement (or group of requirements); and (c) the parts of the plan that will cease to have effect or are to be reviewed, and the times at which those parts will cease to have effect or are to be reviewed | <p>The WRP Index refers to WRP s 4.7 as relating to ss 10.19 – 10.22 of the Basin Plan. The proposed WRP does not contain a section headed '4.7'. There is a part of the proposed WRP immediately after WRP s 4.6 headed 'Groundwater Management' that appears to contain material relevant to these requirements. However, due to the WRP Index reference to a section of the WRP that does not exist, the material in this part of the proposed WRP cannot be attributed as addressing these sections of the Basin Plan.</p> |
| 2.2 | 10.04(5) | <p>If a water resource plan is constituted by an instrument or text which contains additional material that is not part of the water resource plan, the water resource plan must identify that material.</p> | <p>The form of the proposed WRP (text for accreditation at WRP s 1.5) incorporates all text that is boxed and highlighted blue ('blue box text'), and any instruments or provisions, text or tables to which such text refers. Consequently, where blue box text incorporates text or a reference to provisions in state instruments that are not relevant to the requirement of Chapter 10 being addressed in that blue box, this results in material that is not relevant to the WRP being incorporated into the WRP. This also results in a consequential inconsistency against s 10.27 of the Basin Plan (see issue 6.2 below).</p> |
| 2.3 | 10.05 | <p>A water resource plan must:</p> <ul style="list-style-type: none"> (a) be prepared having regard to the management and use of any water resources which have a significant hydrological connection to the water resources of the water resource plan area; and (b) describe the way in which paragraph (a) was | <p>Text for accreditation at WRP s 2.2 refers to Part 3.3 of WRP Schedule D (Risk Assessment) and to WRP Table 2-1 as material demonstrating how the proposed WRP was prepared having regard to the management of connected water resources. However, Part 3.3 of Schedule D indicates a significant hydrological connection between the WRP area and the Lower Lachlan Alluvium SDL Resource Unit, whereas WRP Table 2-1 indicates that this connection is not significant. This contradiction between material incorporated for accreditation creates ambiguity about the</p> |

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| | | complied with | nature of connectivity and how regard was had to that connectivity. |
| 2.4 | 10.05 | <p>A water resource plan must:</p> <p>(a) be prepared having regard to the management and use of any water resources which have a significant hydrological connection to the water resources of the water resource plan area; and</p> <p>(b) describe the way in which paragraph (a) was complied with</p> | Text for accreditation at WRP s 2.2 refers to WRP s 4.7 to demonstrate how the proposed WRP was prepared having regard to the management of connected water resources. Examination of the proposed WRP confirms there is no section labelled '4.7'. Further examination shows that there is a section immediately following WRP s 4.6 labelled 'Groundwater management' (pp 56 to 57) which appears to contain the material intended to be referenced in s 2.2. |
| 2.5 | 10.07(1) | A water resource plan prepared by a Basin State must contain a description of the consultation in relation to the plan (including in relation to any part of the plan), if any, that was undertaken before the State gave the plan to the Authority under subsection 63(1) of the Act. | <p>The proposed WRP refers to Schedule C (Lachlan Surface Water Resource Plan Consultation) for a description of the consultation that has been carried out in relation to the development of the proposed WRP. The placeholder in Schedule C for Attachment E Barkandji Nation Report describes the report as 'pending'. Further, supporting information at s 1.3.1 of the proposed WRP (page 3) states that 'At the time of writing this WRP, the report for the Barkandji Nation is being finalised. This is an important step in the integrity of the consultation process with First Nations. Once the report has final endorsement from the Barkandji Native Title Group Aboriginal Corporation, NSW will publish and provide the report to the MDBA.'</p> <p>As such, the proposed WRP has not satisfactorily described all the consultation carried out in relation to the requirements of Part 14 of the Basin as there is no record of the consultation with Barkandji Nation and the requirement is not met.</p> |
| Part 3 | | | |
| 3.1 | 10.08(1)(c) | <p>(1) A water resource plan must identify:</p> <p>(c) the characteristic of each class of right including, where appropriate, the number of rights and any</p> | Text for accreditation at WRP s 5.1.2 incorporates WRP Table 5-1 to describe the characteristics and number of each class of access right in the WRP area. |

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| | | conditions on the exercise of the rights. | <p>With respect to the details provided in Table 5-1:</p> <p>For <u>take from a watercourse</u> (row 14), for the class of right 'Unregulated River access licence' (row 15), a volume of 46,632 is given in column five. However, in the corresponding Water Sharing Plan for the Lachlan Unregulated Water Source 2012, 46,671 unit shares are given.</p> <p>For <u>take under basic rights</u> (row 20), for the class of right 'Domestic and Stock' (row 21) the volume given is 5.961 GL. This does not align with the summed total for this class of right as set out in the three water sharing plans that make up Schedule A, which instead total 5.412 GL. This appears to be the result of incorrectly interpreting the domestic and stock volume listed at cl 17 of the Water Sharing Plan for the Belubula Regulated River Water Source 2010, as 0.55 GL/y rather than 0.55 ML/day as is given in that clause. As a result, there is inconsistency between Table 5-1 and the relevant parts of the Schedule A.</p> <p>For <u>take under basic rights</u> (row 20), column six for the class of water access right 'Domestic and Stock' (row 21) refers to s 55 of the WMA 2000. This appears to be a drafting error as s 55 refers to conditions on Native Title rights holders.</p> <p>For <u>take under basic rights</u> (row 20), column five for the class of water access right 'Native Title' (row 22) incorporates the native title determination for the Barkandji Traditional Owners #8 (Parts A and B) National Native Title Tribunal references NCD2015/001 and NSD6084/1998. However, the determination was not submitted as part of the formal WRP package. Therefore, the proposed WRP is incomplete.</p> <p>For <u>take by runoff dams</u> (row 18), characteristics given are the Harvestable Rights Order as described under NSW Government Gazette 40 dated 31 March 2006, ss 53 and 54 of WMA 2000 and Part 5 of</p> |

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| | | | <p>the Water sharing Plan for the Lachlan Unregulated Water Source 2012 (Schedule A). However, cl 19 of Water Sharing Plan for Belubula Regulated River Water Source 2012 is not referenced, and this clause establishes the harvestable rights for this water source. Further, the conditions of the dams listed as exempt in Schedule 2 of the Harvestable Rights Order are not further characterised.</p> <p>Also, although the Harvestable Rights Order has been incorporated into the proposed WRP through reference in text for accreditation at WRP s 5.4 and Table 5-1, it was not submitted as part of the formal WRP package as described in the letter of transmission to the MDBA. This means the proposed WRP is incomplete.</p> <p>For take by <u>runoff dams</u>, column 6 of Table 5-1 states:</p> <p>The dams listed as exempt in schedule 2 of the Harvestable Rights Orders are either designed to hold small volumes of water, have no catchment, fill/empty intermittently, are required under other legislation, are already accounted under other take, primarily provide an environmental benefit, such as containing contaminated water on a mine site.</p> <p>Further details on the exempt dams to the Harvestable Rights Order is required to meet requirements under s 10.08.</p> <p>The inconsistencies between the characteristics and conditions given in Table 5-1 and WRP Schedule A for <u>take from watercourses</u>, <u>take under basic rights</u> and <u>take by runoff dams</u> and the failure to incorporate cited instruments in the proposed WRP means this requirement is not met.</p> |
| 3.2 | 10.08(2) | A water resource plan must require a holder of water access right to comply with the conditions of that right. | Text for accreditation at WRP s 5.1.2 states WRP Table 5-1 identifies the provisions that oblige water access right holders to comply with the |

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| | | | <p>conditions of a right. As identified in the assessment for s 10.08(1)(c):</p> <p>For <u>take by run off dams</u> Part 5 of the Water Sharing Plan for Belubula Regulated River Water Source 2012 is relevant to establishing compliance with conditions but has not been incorporated into the proposed WRP. Similarly, the conditions of the dams listed as exempt in Schedule 2 of the Harvestable Rights Order has not been described in the proposed WRP. For <u>take under basic rights</u>, s 52 of the WMA 2000 is relevant but has not been incorporated into the proposed WRP. This means that the proposed WRP does not oblige water access right holders to comply with the conditions of those rights.</p> |
| 3.3 | 10.09(1) | A water resource plan must identify the planned environmental water in the water resource plan area and associated rules and arrangements relating to that water. | <p>Text for accreditation at s 4.1.1 (blue box on pages 42-43) identifies planned environmental water (PEW) in the Lachlan WRP area as that set out in Part 4 of all three water sharing plans in WRP Schedule A (Water Sharing Plan for Lachlan Regulated River Water Source 2020, Water Sharing Plan for Belubula Regulated River Water Source 2012, and Water Sharing Plan for Lachlan Unregulated River Water Source 2012)</p> <p>Examination of Part 4 of the three water sharing plans that make up Schedule A confirms that the identification of PEW in those Parts is consistent with the description of PEW in s6 of the <i>Water Act 2007</i></p> <p>However, several provisions within the three water sharing plans that make up Schedule A and that act to ensure planned environmental water is preserved such that it cannot be taken for another purpose to have not been incorporated into the proposed WRP:</p> <ul style="list-style-type: none"> • Clauses 41(4)(a) and 42(3)(a) of the Water Sharing Plan for the Belubula Regulated River Source 2012 act to preserve planned environmental water but have not been identified as PEW to meet requirements of s 10.09. The equivalent clauses in the Water Sharing |

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| | | | <p>Plan for the Lachlan Regulated River Water Source have been incorporated to meet s 10.09.</p> <ul style="list-style-type: none"> • Clause 61 of the Water Sharing Plan for the Lachlan Regulated River Water Source 2020 defines priority of delivery for water orders against access licences and from the Environmental Water Allowance (established under Division 1 of Part 10 of the water sharing plan) but is not identified as a rule or arrangement that protects PEW. This rule directly relates to the protection of PEW by guaranteeing some level of access to water orders from the environmental water allowance during periods of reduced delivery capacity <p>In addition, each of the water sharing plans comprising Schedule A includes a clause identifying strategies for reaching environmental objectives including by reference to relevant provisions of the water sharing plan that commit or preserve water that contributes to achieving those objectives. However, the clauses that identify the strategies and certain relevant provisions have not been identified for the purpose of this requirement, as follows:</p> <ul style="list-style-type: none"> • Clause 8(3)(a)-(e) of Schedule A (Water Sharing Plan for the Lachlan Regulated River Water Source 2020) • Clause 10(3) of Schedule A (Water Sharing Plan for the Lachlan Unregulated River Water Source 2012) • Clause 8(3) of Schedule A (Water Sharing Plan for the Belubula Regulated River Water Source 2012). Further, subclauses 8(3)(b) and (c) identify clauses 26, 47, 48 and 49 as relevant to achieving those objectives whereas only clauses 26 and 48(5)(a) are incorporated in the proposed WRP for the purposes of s 10.09(1) of the Basin Plan. |

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| | | | As such, not all PEW and associated rules and arrangements have been identified in the Lachlan WRP area. |
| 3.4 | 10.09(1) | A water resource plan must identify the planned environmental water in the water resource plan area and associated rules and arrangements relating to that water | <p>Text for accreditation at s 4.1.1 identifies rules and arrangements in Schedule A (Water Sharing Plan for Lachlan Regulated River Water Source 2020, Water Sharing Plan for Belubula Regulated River Water Source 2012, and Water Sharing Plan for Lachlan Unregulated River Water Source 2012) including:</p> <ul style="list-style-type: none"> • Part 4, 6 Divisions 1 to 4, clauses 36(2)(a) and 37(2)(a), and Part 10 Divisions 1 and 2 (Water Sharing Plan for Lachlan Regulated River Water Source 2020); • Parts 4, 6 Divisions 1 to 4, 8 Division 2, and clauses 48(2)(h) and 49(2)(g) under clauses 51 and 53 with exceptions of clauses 48(2)(c) and 49(2)(c) and 'some limited exemptions apply' (Water Sharing Plan for Lachlan Unregulated River Water Source 2012); and • Part 4, cl 26, Part 7 Division 1 to 4, and cl 48(5)(a) with 'some limited exemptions apply' (Water Sharing Plan for Belubula Regulated River Water Source 2012). <p>For several of the cited rules, the text for accreditation states that 'limited exemptions apply'. The nature and extent of these exemptions is not clear from the information incorporated into the proposed WRP. This introduces ambiguity into the application of the rules and arrangements as they apply to the protection of PEW.</p> <p>It is also the case that there is no information provided in the proposed WRP to set out which aspects of the cited rules are 'excluded from the requirements of section 10.09(1)' as described in the text for accreditation. It is therefore not possible to differentiate between aspects</p> |

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| | | | that are included and those that are not. |
| 3.5 | 10.10(1) | For each SDL resource unit in a water resource plan area, and for each form of take, the water resource plan must set out the method for determining the maximum quantity of water that the plan permits to be taken for consumptive use during a water accounting period. | <p>Annual permitted take method: Text for accreditation at WRP s 5.6 provides a formula as the method for determining the annual permitted take (APT) for the Lachlan SDL resource unit (SS16). The formula provided does not provide enough information about how the annual permitted take method is determined for each parameter in the formula.</p> <p>The necessary detail about the parameters and operation of the APT method are set out at WRP Table F-2, titled 'Parameters for the method for determining Annual Permitted Take'. Table F-2 is not incorporated into the proposed WRP to meet s 10.10 requirements. Furthermore, there are several inconsistencies between accredited text, Table F-2 and supporting information relevant to this requirement. These inconsistencies result in material uncertainty about the application of the annual permitted take method as set out in the proposed WRP. Further detail about these matters is provided as Appendix A to this Attachment.</p> <p>BDL estimate: Preliminary analysis of the BDL model by the Hydrological Analysis Section has identified that there are a number of errors and issues with the revised BDL. Consequently, it is not possible to identify which BDL change is relevant and thus cannot offer approval of any proposed BDL changes.</p> <p>SDL local reduction amount: As it is not possible to confirm the proposed BDL changes, this in turn means the SDL cannot be confirmed. It is noted that the operation of the 'scaling factor' in s 4.3.2 of WRP Schedule F Attachment C is also unclear. Particularly, the 'Required SDL reduction' parameter in the scaling factor formula is not defined.</p> <p>SDL adjustment amount: The SDL adjustment amount is part of the annual permitted take method for <u>take from regulated rivers</u>. This is defined in more detail in supporting information at ss 4.3.2 and 4.3.5 of Attachment C to WRP Schedule F (pages 11 and 13 respectively), where s 4.3.2 refers to a scaling factor to adjust for the 'Required SDL reduction' and s 4.3.5 adjusts for 'Net SDL Adjustment amounts'. These two sections</p> |
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| | | | <p>in turn double count the SDL adjustment amount as the 'modelled components of APT' listed in s 4.3.5 is already inclusive of the 'Required SDL reduction'. However, it is not clear if the 'Required SDL Reduction' variable in the formula to determine the scaling factor formula (page 11) includes the SDL adjustment amount as this parameter is not defined.</p> <p>Consequently, the annual permitted take method formula, while appearing to be a formula that changes over time, appears to be over-accounting for the effect of any SDL adjustment amounts. This means the annual permitted take method will not operate as intended</p> |
| | | | <p>Best available information: Noting the issues identified in the annual permitted take method and the inability to confirm BDL changes, it is not possible to conclude that the annual permitted take method for the Lachlan SDL resource unit (SS16) in the Lachlan WRP area, represents and operates as 'best available information'.</p> |
| 3.6 | 10.10(2) | The method for subsection (1) may include modelling, and must be designed to be applied after the end of the relevant water accounting period, having regard to the water resources available during the period. | Text for accreditation at WRP s 5.6 states that APT will be determined at the end of each water accounting period. However, assessment against s 10.10(1) has found the requirement is not met because the annual permitted take method described at WRP Schedule F (Water for consumptive use information) Table F-2 is not incorporated into the proposed WRP. |
| | | The method (or modelling) has regard to availability of water resources during the accounting period. | Assessment against s 10.10(1) has found the requirement is not met as the annual permitted take method described at WRP Table F-2 is not incorporated into the proposed WRP to meet the requirement. |
| 3.7 | 10.10(3)(a), 10.12(1)(a), | <p>10.10(3): The method must:</p> <p>(a) account for the matters in subsection 10.12(1);</p> <p>10.12(1): For paragraph 10.10(3)(a), the following matters must be accounted for:</p> <p>(a) all forms of take from the SDL resource unit and all classes of water access right;</p> | <p>Text for accreditation at WRP s 5.6 (blue box on pages 74-75) states:</p> <p>A detailed explanation for how the annual permitted take methods account for the matters listed in section 10.12 of the Basin Plan is provided in Schedule F, Table F-4.</p> <p>Table F-4 refers to Table F2 for a description of how the APT method account for all forms of take and all class of water access rights.</p> |

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| | | | <p>For <u>take under basic rights</u> the method accounts for this form of take through reference to the BDL estimate in the Basin Plan and through reference to the NSW Harvestable Rights Order. However, it is noted that WRP Table 5-1, which identifies all the classes of access rights in the WRP area and their characteristics, refers to a class of 'exempt dams' listed in Schedule 2 of the Harvestable Rights Orders. It is not clear if these exempt dams are incorporated into the method described at Table F-2.</p> <p>For <u>take under basic rights</u>, the volume identified in Table F-2 for this form of take is not consistent with the method for determining this form of take that is also described in Table F-2.</p> |
| 3.8 | 10.10(3)(a), 10.12(1)(e) | <p>10.10(3): The method must:</p> <p>(a) account for the matters in subsection 10.12(1);</p> <p>10.12(1): For paragraph 10.10(3)(a), the following matters must be accounted for:</p> <p>e) water resources which have a significant hydrological connection to the water resources of the SDL resource unit;</p> | <p>Text for accreditation at WRP s 5.6 (blue box on pages 74-75) states:</p> <p>A detailed explanation for how the annual permitted take methods account for the matters listed in section 10.12 of the Basin Plan is provided in Schedule F, Table F-4.</p> <p>Table F-4 states 'the Lachlan SDL resource unit is not classified as a connected resource under the Basin Plan'. This is true for surface water connections. However, material incorporated into the proposed WRP to meet s 10.05 (regard to other water resources) has demonstrated significant hydrological connections to adjacent groundwater SDL resource units.</p> <p>There is no other material in Table F-4 that addresses how the annual permitted take method accounts for the significant hydrological connections with the relevant groundwater SDL resource units.</p> |
| 3.9 | 10.10(3)(a), 10.12(1)(g) | <p>10.10(3): The method must:</p> <p>(a) account for the matters in subsection 10.12(1);</p> | <p>Text for accreditation at WRP s 5.6 (blue box on pages 74-75) states:</p> <p>A detailed explanation for how the annual permitted take methods account for the matters listed in section 10.12 of the Basin Plan is</p> |

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| | | <p>10.12(1): For paragraph 10.10(3)(a), the following matters must be accounted for:</p> <p>g) changes over time in the extent to which water allocations in the unit are utilised;</p> <p>Note: Paragraph (g) includes what is commonly known as a growth-in-use strategy.</p> | <p>provided in Schedule F, Table F-4.</p> <p>Table F-4 states that 'Growth in use provisions in the WSPs are how the plan responds to changes in utilisation'.</p> <p>Supporting information at s 4.3.2 of WRP Schedule F, Attachment C (Annual Permitted Take Scenario Model for the Lachlan Regulated River System) states:</p> <p>Scaling makes the annual permitted take independent of the current level of utilisation and ensures that the method meets the requirements of 10.12(1) (g)</p> <p>However, the scaling factor does not give effect to the annual permitted take method consistent with any growth in use responses implemented. Further, assessment of material to meet s 10.10(1) has found that the formulation of the scaling factor is not clear.</p> |
| 3.10 | 10.10(3)(b) | <p>The method must:</p> <p>b) be consistent with the other provisions of the water resource plan.</p> | <p>Assessment of material incorporated to meet s10.12(1)(e) has found the annual permitted take method is not consistent with material incorporated to meet s 10.05 (regard to other water resources).</p> <p>It is also the case that the assessment for s 10.13 has found that an inconsistency with the volume nominated for take under basic rights and Table F-2.</p> |
| 3.11 | 10.10(4) | <p>The plan must also set out a demonstration that the method relates to the SDL of each resource unit in such a way that, if applied over a repeat of the historical climate conditions, it would result in meeting the SDL for the resource unit, including as amended under section 23B of the Act.</p> <p>Note 1: Under the Basin Plan, the SDL is the same as the long-</p> | <p>Text for accreditation at WRP s 5.6 states:</p> <p>the demonstration that the annual permitted take method is capable of meeting the SDL over a repeat of the historical climate conditions (1895 – 2009) is provided in Schedule F, Table F-3.</p> <p>The annual permitted take volume of 0.55 GL/yr for take under basic</p> |

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| | | <p><i>term annual diversion limit because the temporary diversion provision for each SDL resource unit is zero. Section 6.04 and Schedules 2 and 4 set out the SDLs for each SDL resource unit.</i></p> <p>Note 2: Amendments under section 23B of the Act are made following proposals for adjustment under Chapter 7.</p> | rights (Belubula Regulated) at column four of Table F-3 is not correct. Assessment of material describing the annual permitted take methods at Table F-2 has found that this volume is 0.55 ML/day. |
| 3.12 | 10.10(5) | <p>If, as a result of an amendment under section 23B of the Act, the SDL for a surface water SDL resource unit is expressed as a formula that changes with time, the SDL for subsection (4) is taken to be:</p> <ul style="list-style-type: none"> (a) for a water accounting period beginning on or after 1 July 2019 – the SDL as it stood on 30 June 2019; and (b) for a water accounting period beginning on or after 1 July 2022 – the SDL as it stood on 30 June 2022; and (c) for a water accounting period beginning on or after 1 July 2024 – the SDL as it stood on 30 June 2024. | <p>Text for accreditation at WRP s 5.6 states:</p> <p style="padding-left: 40px;">the SDL that must be demonstrated as met for section 10.10(4) of the Basin Plan is taken to be the SDL as published on the MDBA website for the dates listed in section 10.10(5)(a)-(c) of the Basin Plan</p> <p>Assessment of material incorporated to meet s 10.10(1) has found the requirements are not met. The material that defines the SDL as a formula that changes with time is in WRP Schedule F Table F-2, which has not been incorporated into the proposed WRP. Further, the SDL adjustment amount appears to be double counted within text for accreditation at s 5.6 and in the <u>take from regulated rivers</u> method defined in Table F-2 and WRP Schedule F, Attachment C.</p> |
| 3.13 | 10.12(1)(a)-(e) | <p>For paragraph 10.10(3)(a), the following matters must be accounted for:</p> <ul style="list-style-type: none"> (a) all forms of take from the SDL resource unit and all classes of water access right; (b) water allocations that are determined in one water accounting period and used in another, including water allocations that are carried over from one water accounting period to the next; (c) for a surface water SDL resource unit—return flows, in a way that is consistent with arrangements under the Agreement immediately before the commencement of the Basin Plan; | <p>An assessment of the responses for s 10.12(1)(a)-(i) is provided under s 10.10(3)(a), which finds that while each matter is addressed, inconsistencies in the material incorporated into the proposed WRP mean the requirements have not been met.</p> |

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| | | <p>(d) subject to subsection (3)—trade of water access rights;</p> <p>(e) water resources which have a significant hydrological connection to the water resources of the SDL resource unit;</p> <p>(f) circumstances in which there is a change in the way water is taken or held under a water access right;</p> <p>(g) changes over time in the extent to which water allocations in the unit are utilised;</p> <p><i>Note: Paragraph (g) includes what is commonly known as a growth-in-use strategy.</i></p> <p>(h) water sourced from the Great Artesian Basin and released into a Basin water resource, by excluding that water;</p> <p>(i) water resources which are used for the purpose of managed aquifer recharge.</p> | |
| 3.14 | 10.13(1) | <p>Subject to this section, a water resource plan must require that the long-term annual average quantity of water that can be taken from a surface water SDL resource unit for consumptive use by:</p> <p>(a) take under basic rights; or</p> <p>(b) take by runoff dam; or</p> <p>(c) net take by commercial plantations;</p> <p>does not exceed the level specified in column 2 of Schedule 3 for that form of take.</p> | <p>Text for accreditation at s 5.4 states:</p> <p>the long-term average annual quantity of water that can be taken under basic rights, by runoff dams and by commercial plantations is limited to the volume specified in column 2 of Schedule 3 of the Basin Plan (2012) for the Lachlan SDL resource unit (SS16).</p> <p>Under Schedule 3 of the Basin Plan, estimated volumes are given for take by runoff dams and net take by commercial plantations. However, for take under basic rights, column 3 of Schedule 2 of the Basin Plan (version F2018C00451) that an estimate volume for this form of take has yet to be made. Therefore, the text for accreditation refers to a volume that does not exist as the long-term average annual quantity of water that can be taken under basic rights.</p> |
| 3.15 | 10.13(2) | The quantity specified in subsection (1) for a form of take may be increased above the level specified in column 2 | The assessment for 10.13(2) has found that, notwithstanding the nomination of an incorrect quantity as the long-term annual average take |

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| | | <p>of Schedule 3 for that form of take if:</p> <ul style="list-style-type: none"> (a) the long-term annual average quantity of water that can be taken by another form of take from the same SDL resource unit is changed at the same time so that there is no overall change in the total long-term annual average quantity of water that can be taken; and (b) take by the forms of take affected by the changes are capable of: <ul style="list-style-type: none"> (i) being accurately measured (for example, through the use of a meter); or (ii) in the case of a form of take that is not capable of being accurately measured at the time the water resource plan is submitted for accreditation or adoption—being reasonably estimated using the best available method immediately before the water resource plan is submitted; and (c) the changes are not expected to result in the take from the SDL resource unit ceasing to be an environmentally sustainable level of take. | <p>for take under basic rights, the proposed WRP does not indicate that the long-term annual average quantity of take by these forms of take has increased or is likely to increase.</p> <p>Due the nomination of the incorrect long-term annual average take volume, it is not possible to determine whether offsets are necessary to meet the requirements of s 10.13(2)(a)-(c).</p> |
| 3.16 | 10.15(1) | <p>A water resource plan must set out how the quantity of water actually taken for consumptive use by each form of take from each SDL resource unit will be determined after the end of a water accounting period using the best information available at the time.</p> <p><i>Note: The annual actual take for the SDL resource unit is the sum of the quantity of water actually taken by each form of take for consumptive use: see subsection 6.10(2) and 6.12B(2). Paragraph 71(1)(c) of the Act requires the annual actual take to be set out in a report to the Authority within 4 months after the end of the water accounting period.</i></p> | <p>Text for accreditation at s 5.5 refers to WRP Schedule F, Table F-1 as providing methods for the determination of annual actual take for each form of take.</p> <p>For <u>take under basic rights</u>, Table F-1 states the method for this form of take is equal to the annual permitted take method in Table F-2.</p> <p>Assessment of material incorporated to meet s 10.10 of the Basin Plan has found that the estimated volume provided in column three of Table F-2 is inconsistent with the method for determining the estimated volume.</p> |

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| Part 5 | | | |
| 5.1 | 10.24 | <p>If a water resource plan includes a list of the kind referred to in subsection 10.23(2), the plan must set out, in respect of each type of interception activity listed, a process for monitoring the impact of that type of activity on:</p> <ul style="list-style-type: none"> (a) the water resources of the water resource plan area; and (b) water resources which are hydrologically connected to the water resources of the water resource plan area. | <p>Text for accreditation states that s 10.24 is applicable to the proposed WRP for runoff dams in the Belubula River at 'Needles' and Crookwell River at 'Narrawa North'.</p> <p>Additional text for accreditation at WRP s 5.7.1 states that:</p> <p style="padding-left: 40px;">the process for monitoring is described in section 3 of the Monitoring, Evaluation and Reporting Plan (Schedule J).</p> <p>Section 3 of Schedule J does not contain any specific monitoring of the impacts of runoff dams. Rather, it sets out a series of monitoring activities around several themes.</p> <p>Supporting information at Table 1-2 (page 7) of Schedule J states that:</p> <p style="padding-left: 40px;">Interception activities are runoff dams, commercial plantations, mining activities, and floodplain harvesting. Monitoring relating to these activities is not explicitly covered in this environmental MER Plan.</p> |
| 5.2 | 10.25(1) | <p>A water resource plan must identify actions that will be taken in the event that monitoring under section 10.24 shows that:</p> <ul style="list-style-type: none"> (a) an impact of a type of interception activity compromises the meeting of an environmental watering requirement; or (b) an impact of several types of activity together compromises the meeting of an environmental watering requirement; or (c) there is an increase in the quantity of water being intercepted by a type of activity; <p>after the commencement of the water resource plan.</p> | <p>Text for accreditation states s 10.24 is applicable to the proposed WRP for runoff dams in the Belubula River at 'Needles' and Crookwell River at 'Narrawa North'.</p> <p>Additional text for accreditation at WRP s 5.7.1 states that interception by runoff dams will be managed through the mechanisms described in WRP Schedule J (Monitoring, Evaluation and Reporting Plan).</p> <p>As set out in WRP s 1.5 (blue box on pages 16 to 18):</p> <p style="padding-left: 40px;">With the exception of Schedule C, which is incorporated in its entirety, other Schedules to this Lachlan WRP form part of the Plan, but only to</p> |

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| | | | <p>the extent that provisions are directly referenced in the blue boxed and highlighted sections of this document.</p> <p>This statement is taken to mean that, as no specific sections of Schedule J are identified in WRP s 5.7.1, Schedule J has not been incorporated for the purposes of accreditation. As such, no actions for s 10.25 have been identified in accreditable material, and the requirements of this section have therefore not been met.</p> |
| 5.3 | 10.25(2) | <p>Subsection (1) does not apply if the relevant outcome in paragraph (1)(a), (b) or (c) is accounted for by the method under subsection 10.10(1).</p> <p>Note 1: This section provides a mechanism to address unanticipated effects of, or changes in, interception activity.</p> <p>Note 2: Section 10.13 sets out the circumstances in which a water resource plan may allow for an increase in anticipated take by an interception activity.</p> | <p>The method under s 10.10(1) accounts for the impact of runoff dams by incorporating permitted take by runoff dams as a component of the overall annual permitted take. As this component is set as a fixed volume as the long-term average estimate of net water taken by runoff dams, any increases in take, which is the pathway to impacts of a kind specified in s 10.25(1)(a)-(c), would exceed the baseline volume and therefore trigger actions under ss 10.11 and 10.13 of the Basin Plan to ensure any increase does not have an impact.</p> <p>The method for s 10.10(1) accounts for the impacts of runoff dams as a significant interception activity, however, the operation of WRP s 5.7.1 means it is unclear which provision is intended to operate, s 10.10(1) or s 10.25(1) in respect of impacts of interception activities.</p> |
| Part 6 | | | |
| 6.1 | 10.26(1) | <p>(1) A water resource plan must provide for environmental watering to occur in a way that:</p> <ul style="list-style-type: none"> (a) is consistent with: <ul style="list-style-type: none"> (i) the environmental watering plan; and (ii) the Basin-wide environmental watering strategy; and (b) contributes to the achievement of the objectives in Part 2 of Chapter 8. | <p>The text for accreditation at s 4.3 of the proposed WRP states that Table E-2 in Schedule E identifies the water management actions and mechanisms that provide for environmental watering consistent with the objectives of the proposed water sharing plans and the LTWP.</p> <p>Examination of Table E-2 confirms the water management actions and mechanisms are set out in Column four and include rules which manage planned environmental water (PEW) and protect held environmental water (HEW) from extraction. While some of these rules are included for accreditation in WRP s 4.1.1 of the proposed WRP, the assessment for</p> |

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| | | | s 10.09 has identified that there are several PEW rules that have not been included for accreditation. |
| 6.2 | 10.27(2) | (2) The water resource plan for each of the areas must provide for the co-ordination of environmental watering between the 2 areas. | <p>The assessment for s 10.27(1) has identified that there are no significant surface water connections between the Lachlan WRP area and other surface water WRP areas, and therefore rules for coordinated environmental watering do not need to be included in the proposed WRP.</p> <p>Text for accreditation at s 4.4 incorporates material for the purpose of ss 10.27 relating to rules and arrangements that support coordination of environmental watering between the connected surface water systems with the Lachlan WRP area. While these provisions have been found to be consistent in meeting s 10.26 requirements, none of the material is relevant to meeting the requirements of s 10.27 of the Basin Plan.</p> |
| 6.3 | 10.28 | A water resource plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under state water management law immediately before the commencement of the Basin Plan. | <p>The proposed WRP identifies that there have been changes to the protection of PEW since the rules that were in place just prior to the commencement of the Basin Plan. The Authority has reviewed the WSPs that were in effect on 23 November 2012 and carried out an assessment against the relevant rules identified in the proposed WRP.</p> <p>The assessment for s 10.09(1) of the Basin Plan has found that several rules and arrangements relating to the protection of PEW have not been incorporated into the proposed WRP as noted above.</p> <p>On this basis of the MDBA's assessment, the Authority is unable to confirm that the proposed WRP ensures there is no net reduction in the protection of PEW.</p> |
| Part 7 | | | |
| 7.1 | 10.32(1) | The WQM Plan must identify the water quality target values for the water resource plan area. | The proposed WRP states Tables 5-1 to 5-3 in Schedule H (Water Quality Management Plan) identify water quality target values that apply to the Lachlan WRPA Examination of Tables 5-1 to 5-3 (pages 34-36) of WRP Schedule H (Water Quality Management Plan) confirms it contains content identifying water quality target values for fresh water-dependent |

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| | | | ecosystems (Tables 5-1 and 5-2, pp 34-35) and irrigation (Table 5-3, page 35). However, a drafting error appears to have occurred such that water quality target values for recreational water identified at Table 5-4 (page 36) of Schedule H have not been incorporated into the proposed WRP. |
| 7.2 | 10.32(2) | (2) The water quality target values are the following: c. for water used for recreational purposes—the values set out in section 9.18. | Text for accreditation (2nd blue box on page 84) refers to Tables 5-1 to 5-3 of Schedule H as identifying water quality target values that apply to the Lachlan WRPA. Examination of subsection 5.1.5 of Schedule H confirms that a water quality target value (noted as blue-green algae targets) for recreational water is provided at Table 5-4 (page 36) does apply to the Lachlan WRPA. The cyanobacteria and algal targets listed in Table 5-4 of Schedule H are taken from Chapter 6 of the Guidelines for Managing Risks in Recreational Waters (developed in 2008 by the National Health and Medical Research Council). Therefore, the targets listed in Table 5-4 are consistent with the targets described at s 9.18 of the Basin Plan. However, as Table 5-4 has not been incorporated into the proposed WRP. |
| Part 9 | | | |
| 9.1 | 10.41(1) | A water resource plan must be prepared having regard to current and future risks to the condition and continued availability of the water resources of the water resource plan area. | As outlined in ss 10.41(2) (b), 10.41(3)(a) and 10.41(4) of the assessment, not all risks to which the risk assessment has had regard to have been listed in the proposed WRP. |
| 9.2 | 10.41(2) | Without limiting subsection (1), the risks include (where applicable): (a) risks to the capacity to meet environmental watering requirements; and (b) risks arising from the matters referred to in subsection 10.20(1); and (c) risks arising from potential interception | Whilst the risk assessment has had regard to the risks described under 10.20(1), the specific risks relating to structural damage to an aquifer (within or outside of the WRP area) have not been listed in the proposed WRP to meet s 10.41(4) requirements. It is noted that none of these related risks are listed in the consolidated risk tables of Schedule D. |

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| | | activities; and (d) risks arising from elevated levels of salinity or other types of water quality degradation. | |
| 9.3 | 10.41(3), 4.02 | <p>(3) In identifying risks for the purposes of subsection (1), regard must be had to:</p> <p>(a) risks identified in section 4.02</p> <p>4.02(2) The consequences of the materialisation of the risks identified in subsection (1) include:</p> <p>(a) that insufficient water is available, or water is not suitable for consumptive and other economic uses of Basin water resources; and</p> <p>(b) that insufficient water is available, or water is not suitable to maintain social, cultural, Indigenous and other public benefit values.</p> | <p>Text for accreditation at WRP s 3.2 refers to sections 7.3.3, 7.4.4, 7.5, 7.6, 8.2.1.6, 8.2.2.1, 8.2.3.2 and 8.2.4.3 of Schedule D as providing the list of risk assessment outcomes relevant to this risk for the Lachlan WRP area.</p> <p>Section 7.6 of Schedule D states that:</p> <p>As there is a related requirement in 10.53(f), refer to sections 1.3.2, 1.7 and 4.6 of the WRP for further information relevant to risks to Indigenous values and uses of surface waters.</p> <p>Examination of the cited sections of the WRP relevant to risks to Indigenous values and uses of surface waters and confirms that WRP s 1.7 (blue box on pages 21-22) details matters relevant to the risks identified in s 7.6 and 8.5 of Schedule D. However, it is determined that there is no material relevant to s 10.41 in text for accreditation at s 4.6 and has confirmed that the reference to WRP s 1.3.2 is incorrect and does not exist in the proposed WRP.</p> |
| 9.4 | 10.41(4) | The water resource plan must list the risks identified for the purposes of subsection (1). | Section 3.2 of the proposed WRP incorporates the consolidated risk Tables and risk outcomes outlined in Schedule D. However, as outlined in ss 10.41(2) and (3) of this assessment, not all risks to which the risk assessment has had regard to have been listed in the proposed WRP. |
| 9.5 | 10.41(5) | The water resource plan must assess each risk. | Text for accreditation at s 3.2 states 'The consolidated risk tables in Schedule D also include a 'risk rating' column that defines the level of each risk as low, medium or high.' However, as outlined in s 10.41(4), not all of the risks have been listed, which means that not all risks have been assessed according to NSW's chosen risk assessment method. |

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| 9.6 | 10.41(6) | <p>The water resource plan must define the level of risk of each risk, using the following categories:</p> <ul style="list-style-type: none"> (a) low; (b) medium; (c) high; (d) if it is considered appropriate, any additional category. | <p>The text sets out the methods used to assess current and future risks and refers to the risks and risk outcomes at Schedule D. A comparison of the risk outcomes of Schedule D that are cited in s 3.2, against the risks and risk outcomes detailed in the consolidated risk tables of Schedule D has been undertaken. However, as outlined in ss 10.41(4) and (5) of the assessment not all risks have been listed or assessed according to NSW's chosen risk assessment method. This means the proposed WRP has not listed all of the required risks as either 'low, medium or high.</p> |
| 9.7 | 10.43(2) | <p>If the water resource plan identifies a risk which relates to a matter dealt with by a requirement in another Part of this Chapter, the strategy must take account of that requirement.</p> | <p>Text for accreditation at WRP s 3.3(second blue box on page 37) states that for the purpose of s 10.43 of the Basin Plan:</p> <p>Columns 1 and 5 of Table 9-7, and Table 9-8 of the Risk Assessment detail the strategies to manage the current and future risks to the condition and continued availability of the surface water resources of the Lachlan WRPA.</p> <p>Examination of column six of Table 9-7 confirms it identifies how strategies address each of the risk requirements in Chapter 10 of the Basin Plan. However, as column six of Table 9-7 does not form part of the accredited text of the proposed WRP, it cannot be relied upon to demonstrate that this requirement has been met. Further, it is not possible to find any other information in the proposed WRP that maps other provisions to each risk.</p> |
| 9.8 | 10.43(3) | <p>A water resource plan must be prepared having regard to:</p> <ul style="list-style-type: none"> (a) the strategies listed in subsection 4.03(3); and (b) any guidelines published by the Authority in accordance with section 4.04. <p>Note: The Authority may publish guidelines in accordance with section 4.04 in relation to the implementation of strategies to manage or address risks identified in section 4.02.</p> | <p>Text for accreditation at WRP s 3.3 states that for the purpose of s 10.43 of the Basin Plan:</p> <p>Columns 1 and 5 of Table 9-7, and Table 9-8 of the Risk Assessment detail the strategies to manage the current and future risks to the condition and continued availability of the surface water resources of the Lachlan WRPA.</p> |

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| | | | The assessment against s 10.43(2) has confirmed that columns one and five of Table 9-7 do not provide material that meet the requirement to link the strategies with the other risk requirements of Chapter 10 and that this material is provided in column six of Table 9-7. However, as column six of Table 9-7 is not incorporated into the proposed WRP, it cannot be relied upon to demonstrate that this requirement has been met. |
| Part 10 | | | |
| 10.1 | 10.44(a) | A water resource plan must include the following information in relation to each class of water access right relating to the water resources of the water resource plan area: (a) the best estimate of the total long-term annual average quantity of water taken that is measured. | <p>Text for accreditation at s 7.1 refers to WRP Table 7-1, in relation to each class of water access right relating to the water sources of the Lachlan WRP area, as containing the best estimate of the total long-term annual average quantity of water take that is measured.</p> <p>The assessment against s 10.44(a) has compared the listed classes of water access rights at column two of Table 7-1 against those listed at WRP Table 5-1 'Forms of take and their related access rights and characteristics in the Lachlan WRPA' (pp 61 to 66). Table 5-1 is incorporated into the proposed WRP to meet the requirements of s 10.08 (identification of water access rights) of the Basin Plan. This comparison has found that Table 7-1 does not include the following classes of access right listed in Table 5-1:</p> <ul style="list-style-type: none"> • Take from a watercourse: <ul style="list-style-type: none"> ○ Domestic and Stock licensed ○ Local Water Utility • Take by runoff dams: <ul style="list-style-type: none"> ○ Harvestable Rights • Take under basic rights: <ul style="list-style-type: none"> ○ Native Title. |
| 10.2 | 10.44(b) | The best estimate of the total long-term annual average quantity of water taken that is not measured. | Consistent with the assessment of material to meet s 10.44(a), Table 7-1 appears to have excluded some classes of water access right that have been incorporated into the proposed WRP to meet the requirements of s 10.08 (identification of water access rights). Also, the quantity provided in Table 7-1 as |

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| | | | the estimated for 'basic landholder stock and domestic' is not consistent with the method given in Table 7-1 for calculating this estimate. |
| 10.3 | 10.44(c) | ...how the quantities under paragraphs (a) and (b) were calculated. | Consistent with the assessment of material to meet s 10.44(a), Table 7-1 appears to have excluded some classes of water access right that have been incorporated into the proposed WRP to meet the requirements of s 10.08 (identification of water access rights). There is also an inconsistency between the estimate of take not measured for take by 'basic landholder stock and domestic' provided in Table 7-1, and the estimate generated through applying the calculation method for this form of take described in WRP Table F-2. |
| Part 12 | | | |
| 12.1 | 10.49(1) | A water resource plan must be based on the best available information. | The assessment has established numerous gaps and typographical errors in various sections of the WRP (as detailed in individual assessments of the Chapter 10 Parts). Some of the inconsistencies that indicate the best available information has not been used are: the model provided for annual permitted take from regulated rivers is not adequately described in the WRP (s 10.10); the long-term average annual quantity of water that can be taken under basic rights in the Lachlan SDL resource unit is not specified (s 10.13); and Table 7-1 has not included the best estimate of long-term annual average water take that is measured for all classes of access rights (s 10.44). |
| 12.2 | 10.49(2) | The water resource plan must identify and describe the significant sources of information on which the water resource plan is based. | The assessment against s 10.49(1) has found the proposed WRP has not been based on the best available information, therefore it is unclear whether the proposed WRP has correctly referenced the significant sources of information used to develop the plan. |
| Part 13 | | | |
| 13.1 | 10.51(1) | A water resource plan must describe how the water resources of the water resource plan area will be managed during the following types of events: (a) an extreme dry period; (b) a water quality event of an intensity, magnitude and duration that is sufficient to render water | Text for accreditation at s 5.8 (blue box on pp 77 to 79) states: For the purposes of section 10.51(1)(c) of the Basin Plan, the predecessor of the <i>Water Sharing Plan for the Lachlan Regulated River Water Source 2020</i> was suspended in July 2004 during the millennium drought and recommenced in September 2011. |

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| | | <p>acutely toxic or unusable for established local uses and values;</p> <p>(c) any type of event that has resulted in the suspension of a statutory regional water plan in the past 50 years (including a transitional water resource plan or interim water resource plan).</p> | <p>The reference in the above text for accreditation that refers to the 'predecessor of the <i>Water Sharing Plan for the Lachlan Regulated River Water Source 2020</i> was suspended in July 2004 during the millennium drought and recommenced in September 2011' causes an inconsistency with the requirements of s 10.51(c) of the Basin Plan.</p> <p>This is because the predecessor of the <i>Water Sharing Plan for the Lachlan Regulated River Water Source 2020</i> (WRP Schedule A) is the current <i>Water Sharing Plan for the Lachlan Regulated River Water Source 2016</i>. This water sharing plan came into effect on 1 July 2016 and so could not have been in effect in 2004 at the time of the suspension nominated in the text for accreditation. The relevant water sharing plan appears to be the <i>Water Sharing Plan Lachlan Regulated River Water Source 2003</i>.</p> |
| 13.2 | 10.51(2) | <p>If an event of a type listed in subsection (1) would compromise a Basin State's ability to meet critical human water needs in the water resource plan area, the water resource plan must set out measures to meet critical human water needs during such an event.</p> | <p>The proposed WRP confirms measures to manage extreme events and that these measures would also apply to the events described to meet s 10.51(1)(c). However, text for accreditation at s 5.8 to meet s 10.51(2) is unclear on the following grounds:</p> <ul style="list-style-type: none"> • how the reference to 'as many towns make use of groundwater' in the first sentence operates in conjunction with the measures incorporated to meet ss 10.51(1)(a) and (b). • it is not clear how the references to townships within the WRP area accessing various water sources operate as measures to meet critical human water needs during a type of event listed under s 10.51(1). <p>While the proposed WRP contains measures which would operate to meet critical human water needs during a type of event listed under s 10.51(1), there is uncertainty in the how the text proposed for accreditation to address s 10.51(2) of the Basin Plan would operate in practice.</p> |

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| Part 14 | | | |
| 14.1 | 10.52(1) | <p>A water resource plan must identify:</p> <ul style="list-style-type: none"> (a) the objectives of Indigenous people in relation to managing the water resources of the water resource plan area. (b) the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people. | <p>The proposed WRP indicates that the objectives and outcomes of Aboriginal people in relation to the management of water resources in the WRP area are listed in attachments to Schedule C. These attachments provide information regarding the consultation with the First Nations people associated with the Lachlan WRP area.</p> <p>There is a referencing error in relation to the Wiradjuri Nation Consultation Report (Attachment C) which means that the objectives and outcomes for the Wiradjuri Nation are not incorporated for accreditation as part of the proposed WRP. Also, the Barkandji and Maljangapa Nation Consultation Report was not included with the proposed WRP package, which means objectives and outcomes for water management based on values and use of the Barkandji and Maljangapa Nations have not been incorporated into the proposed WRP.</p> <p>In addition, MLDRIN's advice to the Authority has expressed concerns about the content of the proposed WRP as it relates to these requirements more generally, as well as, in relation to the nature of consultation and concerns regarding the structure of the Nation's objectives and outcomes in the various reports.</p> <p>As a result of these matters, the Authority is unable to confirm that the proposed WRP identifies the objectives on Indigenous people and the outcomes desired, and this requirement has not been met.</p> |
| 14.2 | 10.52(2) | <p>In identifying the matters set out in subsection (1), regard must be had to:</p> <ul style="list-style-type: none"> (a) the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area (Indigenous values). | <p>As for the assessment of s 10.52(1), the referencing error relating to objectives and outcomes identified through the Wiradjuri Nation Report and the absence of the Barkandji Nation Report mean that the proposed WRP cannot show how it had regard to Indigenous values and uses.</p> <p>MLDRIN's advice to the Authority expresses the view that, although</p> |

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| | | (b) the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people (Indigenous uses); | <p>values and uses have, to some extent, been identified and listed, it is not clear how these matters were considered to inform the development of the objectives and outcomes. In particular, the advice suggests that it is not clear that the consultation clearly covered the content of water sharing plans that the proposed WRP indicates is informed by the identified objectives and outcomes.</p> <p>The Authority considers provision of further evidence clarifying how regard was had to the social, spiritual and cultural values and uses of indigenous people in the WRP area when developing the outcomes and objectives is required.</p> |
| 14.3 | 10.53(1) | A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters: | <p>The assessment against s 10.53 has found that whilst the views of some of the relevant Indigenous organisations have been sought, due to the missing Attachment E (Barkandji and Maljangapa Nation Consultation Report) it is not able to confirm that regard was had to the views of all relevant Indigenous organisations with respect to matters identified in section 10.52.</p> <p>Further, MLDRIN's advice to the Authority raises concerns regarding the timing and nature of the consultation undertaken. Relevantly, the advice points out that the consultation was undertaken late in the WRP development process which raises doubt about whether meaningful regard could have been given to the matters relevant to Basin Plan requirements generally. Concerns were also expressed about insufficient time, resources and information being provided to allow these matters to be properly considered. In addition, participants report not being asked by the NSW Government or their consultants about sections 10.53(1)(a) to (f).</p> <p>As a result, the Authority is not able to confirm that regard was had to the views of all relevant Indigenous organisations with respect to matters identified in section 10.53.</p> |

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| 14.4 | 10.53(1)(a) | Native title rights, native title claims and Indigenous Land Use Agreements provided for by the Native Title Act 1993 in relation to the water resources of the water resource plan area. | While the views of certain relevant Indigenous organisations has been sought in relation to some native title rights, native title claims and Aboriginal Land Use Agreements with respect to the matters in 10.52, the shortcomings raised by MLDRIN concerning participants' views surrounding lack of discussion regarding a current native title claim. Due to the missing Attachment E. Barkandji and Maljangapa Nation Consultation Report, and the previous points raised by MLDRIN, it is not possible to confirm that regard was had to the views of all relevant Indigenous organisations. |
| 14.5 | 10.53(1)(b) | Registered Aboriginal heritage relating to the water resources of the water resource plan area. | <p>A consistent issue raised in the MLDRIN advice corresponding to this sub-section (and other Part 14 sections) relates to the demonstration of how regard was had. For example:</p> <p>...have not further demonstrated how the NSW Government has had regard to the views of First Nations regarding Registered Aboriginal heritage relating to the water resources of the water resource plan area in the preparation of the Lachlan SW WRP.</p> <p>While the views of some of the relevant Indigenous organisations has been sought in relation to registered Aboriginal heritage, due to the missing Attachment E. Barkandji and Maljangapa Nation Report, it is not possible to confirm that regard was had to the views of all relevant Indigenous organisations.</p> |
| 14.6 | 10.53(1)(c) | Inclusion of Indigenous representation in the preparation and implementation of the plan. | <p>The MLDRIN advice states:</p> <p>Participants reported no questions or conversations during engagement about First Nations representation and participation in the WRP's implementation, including roles in ongoing monitoring, evaluating, and reporting.</p> <p>On the basis of the missing Attachment E (Barkandji and Maljangapa</p> |

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| | | | Nation Consultation Report), and MLDRIN's advice regarding the inadequacy of consultation, the Authority is not able to confirm that regard was had to the views of all relevant Indigenous organisations in relation to this requirement. |
| 14.7 | 10.53(1)(d) | Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives. | <p>While the views of some of the relevant Indigenous organisations has been sought in relation Aboriginal social, cultural, spiritual and customary objectives, and strategies for achieving these objectives in respect of subsection 10.53(1)(d), due to the referencing error in Attachment C. the Wiradjuri Nation Consultation Report, the missing Attachment E. Barkandji and Maljangapa Nation Consultation Report this requirement has not been met.</p> <p>In addition, as noted above in relation to issue 14.2, MLDRIN's advice to the Authority raises significant concerns as to whether genuine, proper and realistic consideration has been given to these matters. MLDRIN's advice also notes that the proposed WRP does not specifically identify regard being given to 'strategies for achieving the objectives.</p> |
| 14.8 | 10.53(1)(e) | Encouragement of active and informed participation of Indigenous people. | <p>MLDRIN's advice to the Authority indicates:</p> <p>Workshop participants agreed that the consultation process did <i>not</i> provide clear information to First Nations about water planning processes. In many cases, participants felt the consultation did not provide <i>any</i> information.</p> <p>They felt it <i>discouraged</i> active and informed participation in water planning</p> <p>While the views of some of the relevant Indigenous organisations was sought in relation to encouraging active and informed participation of Aboriginal people, due to the missing Attachment E (Barkandji and Maljangapa Nation Consultation Report) and the concerns of First Nations regarding the nature of the consultation, it is not possible to confirm that regard was had to views of all relevant Indigenous organisations.</p> |

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| 14.9 | 10.53(1)(f) | <p>Risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area.</p> <p><i>Note: For examples of the principles that may be applied in relation to the participation of Indigenous people, see the document titled 'MLDRIN and NBAN Principles of Indigenous Engagement in the Murray-Darling Basin'.</i></p> | <p>Examination of Attachment C (Wiradjuri Nation Consultation Report) finds Table 3-2 outlines participant data of face-to-face interviews with Traditional Owners. The risks to the values and uses identified by the Wiradjuri Nation are listed in Table 5-2. Therefore, there is a referencing error in the text for accreditation.</p> <p>MLDRIN advice states):</p> <p>...Schedule D, the risk assessment states that regard has been had to risks to the suitability and availability of water for public benefit values (Indigenous, social, cultural) as required under 10.41(3)(a) in relation to 4.02(2)(b) "through the assessment of risks to other water uses due to unsuitable water quality" and availability. In other words, the document conflates assessing and addressing risks for First Nations' water values and uses with assessing and addressing others, like ecological and/or environmental risks. Such a surrogate approach is clearly erroneous given the unique specificity of First Nations' values.</p> <p>Further, while the views of some of the relevant Indigenous organisations was sought in relation to risks to Indigenous values and Indigenous uses, due to the missing Attachment E (Barkandji and Maljangapa Nation Consultation Report) it is not possible to conclude that regard was had to views of all relevant Indigenous organisations.</p> |
| 14.10 | 10.54 | <p>A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.</p> | <p>The MLDRIN advice states:</p> <p>First Nations do not have access to or control over cultural flows in current water governance arrangements.</p> <p>and</p> |

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| | | | <p>From the WRP documentation, it is not clear or evident how the NSW Government acknowledged or had genuine, meaningful, and proper consideration for these inseparable cultural flow issues.</p> <p>Also, due to the missing Attachment E (Barkandji and Maljangapa Nation Consultation Report) it is not possible to confirm that regard was had to views of all relevant Indigenous organisations with respect to cultural flows.</p> |
| 14.11 | 10.55 | <p>A water resource plan must provide at least the same level of protection of Indigenous values and Indigenous uses as provided in:</p> <p>(a) a transitional water resource plan for the water resource plan area; or</p> <p>(b) an interim water resource plan for the water resource plan area.</p> | <p>Assessment against this requirement has established the transitional WRPs listed for accreditation are older transitional WRPs that have been superseded, it is not possible to undertake a formal assessment of this section using them and therefore the requirement is not met.</p> |

Appendix A. Inconsistency in the annual permitted take method (s 10.10(1) of the Basin Plan) for take from regulated rivers

| # | Issue summary | Issue description |
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| 1 | Inconsistency between annual permitted take model versions cited in Table F-2 and Attachment C to Schedule F (Annual Permitted Take Scenario Model for the Lachlan Regulated River System) | Table F-2, row 2, column 3 identifies that the 'Lachlan APT Model <u>LachBDL123.SQQ</u> (updated 2019 Belubula SDL)' will be used to determine the APT. However, Attachment C to Schedule F identifies a different model number - 'the IQQM model scenario system file to be used is <u>LachAPT123.sqq</u> ' (page 9). This does not align with the model number presented in Table F-2. Although Attachment C to Schedule F is not incorporated into the proposed WRP, the disagreement between model versions causes ambiguity about which is the correct version for use in determining annual permitted take. |
| 2 | Inconsistent naming of model reports in attachments to Schedule F | The Authority notes that drafting errors in the WRP package have resulted in different titles being used to refer to Attachment C to Schedule F. In the proposed WRP at page 131, Attachment C to Schedule F is titled the 'Lachlan SW WRP – Modelling - APE Scenario Report - December 2019 update'. However, the report itself is titled 'Annual Permitted Take Scenario Model for the Lachlan Regulated River System - Attachment C to Schedule F'. While these titles differ, the heading 'Attachment C to Schedule F' is common and taken to refer to the same report, including its description in Table F-2 as the 'Lachlan Water Resource Plan Annual Permitted Take Scenario Model report'. |
| 3 | Inconsistency between Table F-2 and Attachment C to Schedule F regarding the treatment of HEW entitlement trade | Table F-2 row 3, column 3 describes the method for ' <i>Lachlan regulated HEW</i> ' which states that held environmental water (HEW) entitlement trade is part of the method. Table F-2, row 3, column 5 refers to 'section 4.2 of the Annual Permitted Take Scenario Model report', which is the title of Attachment C to Schedule F. However, s 4.2. of Attachment C to Schedule F states: 'HEW is currently not modelled' and the adjustment for HEW is by using a scaling factor (s 4.3.2, page 11). This means that HEW entitlement trade defined in Table F-2 is inconsistent with Attachment C to Schedule F. |
| 4 | Ambiguity in how the scaling factor given in Attachment C to Schedule F accounts for HEW, including any sustainable diversion limit (SDL) adjustment amount | Attachment C to Schedule F defines a scaling factor in section 4.3.2 (page 11), which adjusts the model target to the APT in the relevant water year. The 'CURR' variable in the scaling factor formula is defined as 'the current conditions model' which is taken to be the APT model run from 1895 to 2009. However, it is not as clear how the 'Required SDL Reduction' variable in the scaling factor formula is defined as no definition is given. Therefore, it is not clear whether this incorporates the local reduction amount, shared reduction amount and the SDL adjustment amount. |
| 5 | Inconsistency between the scaling factor recorded in Attachment C to | The scaling factor given of 1.1354 does not align with the MDBA's calculation of the volumes given for the variables in the formula, which instead gives a scaling factor value of 0.89. s 4.3.2 states the long term total |

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| | Schedule F and the calculation of the scaling factor using the formula given | modelled consumptive take decreased from 288.26 GL/y to 268.67 GL/year. However, Table F-2 gives the APT scenario run volume as 269.17 GL/y. |
| 6 | Minor flaws in the annual permitted take model for the Lachlan WRP area submitted to the MDBA. | <p>Preliminary model advice on the APT model (at trim reference D20/ 32027) notes four low-risk issues including:</p> <ul style="list-style-type: none"> (1) error in file use that results in a discrepancy of 7 GL, (2) HEW is not modelled, (3) the APT long-term number cannot be reproduced and (4) Belubula model outflows differ from Belubula inflows in the Lachlan model. <p>These cumulative errors mean the APT model is not the best available method and does not meet requirements.</p> |