

## Office of the Chief Executive

Ref: EC21-000087

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 Namoi Alluvium (Groundwater) Water Resource Plan ('the proposed WRP') relevant to the management of the Namoi Alluvium (Groundwater) water resource plan area.

As you are aware NSW formally gave the proposed WRP to the Authority on 9 April 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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### Office locations

Adelaide, Albury-Wodonga, Canberra,  
Goondiwindi, Griffith, Mildura,  
Murray-Bridge, Toowoomba

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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 26 February 2021.

Yours sincerely

Phillip Glyde

12 February 2021

### **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 WR

Issue Ref.	Relevant Basin Plan provision	Requirement of Basin Plan provision	Description of the potential inconsistency (including references to relevant WRP material)
Part 2			
2.1	10.04(4)	A water resource plan must include a list that specifies: (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 part 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.	There are several references in WRP Schedule B (Index) which do not accurately identify the part of the proposed WRP that addresses requirements, as follows: <ul style="list-style-type: none"> <li>WRP s 3.1 is identified as addressing the requirements of s 10.41. The Authority considers that s 3.1 does not contain appropriate material to address all subsections of 10.41 but considers that such material is contained in other sections in the proposed WRP.</li> <li>WRP s 5.2.2 is identified as addressing the requirements of s 10.11. The Authority considers that s 5.2.2 does not contain appropriate material to address s 10.11 but considers that such material is contained in s 5.5.2 of the proposed WRP.</li> <li>WRP s 8.1 is identified as addressing the requirement of ss 10.49 and 10.50. Section 8.1 does not exist in the proposed WRP but the Authority considers that appropriate material is contained in WRP s 8.</li> </ul> <p>As a result of these errors, the requirement of s 10.04(4)(b) is not met. In addition, there are consequential inconsistencies for ss 10.11, 10.41, 10.49 and 10.50.</p>
2.2	10.04(5)	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.	The form of the proposed WRP incorporates state instruments as cited in 'blue box text'. Consequently, where a reference to whole instruments is cited in blue box text without specifying relevant clauses or sections it has the effect of incorporating the entire instrument. This results in material that is not relevant to the proposed WRP being incorporated into the proposed WRP and results in consequential inconsistencies across several other parts. Specific examples are noted below in issues for Parts 3, 4 and 8.
2.3	10.05	A water resource plan must be prepared having regard to other water resources which have a significant hydrological connection to those of the water resource plan area. Since the proposed water resource plan must describe how this regard has been had, it must clearly articulate the nature of connectivity with all adjoining and connected water resources.	Connectivity between a number of SDL resource units is not described clearly or is inconsistent with the description of connectivity in the corresponding proposed Namoi surface water WRP.  Specifically, Schedule D of the proposed WRP describes connectivity between both the Upper and Lower Namoi Alluvium WRP areas and the overlying surface waters as 'not significant' at the scale of the SDL resource unit. By contrast, the proposed Namoi surface water WRP contains Table 2-1, which indicates that these connections are significant, but less highly connected. Similarly, the nature of connectivity between the Lower Namoi Alluvium (GS29) and the Barwon Darling Watercourse (SS19) resource units is not clearly described in the proposed WRP.  Improved descriptions of connectivity with adjoining resources that are consistent with the those in the corresponding WRP are needed to verify that any significant connections have been consistently identified and considered.
Part 3			
3.1	10.09(1)	A water resource plan must identify the planned environmental water in the water resource plan and associated rules and arrangements relating to that water.	The proposed WRP identifies PEW in the WRP area and associated rules and arrangements in place relating to PEW. The assessment has determined certain rules and arrangements in the <i>Namoi Alluvial Groundwater Sources 2020</i> that protect PEW have not been identified: <ul style="list-style-type: none"> <li>Clause 4(4) of incorporates a high priority GDE map which constitutes a PEW rule and arrangement. Clause 4(4) has not been identified as a rule or arrangement to protect PEW for the purposes of s 10.09 of the Basin Plan.</li> <li>Part 10 concerning trade and the restrictions between SDL resources units of this WRP area. The Authority notes that the supporting information for s 4.1.1 identifies Part 10 as including rules relating to PEW but this Part is not incorporated through text for accreditation for s 10.09. In addition, rules of this type have been included for other proposed NSW groundwater WRPs.</li> <li>Clause 9(3) of Schedule A which identifies the strategies for achieving the targeted environmental objectives set out in the plan and links key clauses of Schedule A to these objectives. As such this clause is considered a rule or arrangement relating to PEW.</li> </ul> <p>Therefore, not all PEW and associated rules and arrangements are identified, and this requirement is not met.</p>
3.2			Text for accreditation at WRP s 4.1.1 refers to the <i>Access Licence Principles Order 2004</i> but does not specify the relevant clauses or sections. As such, the instrument is considered to have been incorporated in its entirety, result is a consequential inconsistency due to the application of s 10.04(5), as set out in Issue 2.2 above.
3.3	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.	The method outlined for subsection (1) provides for the maximum quantity of water available for consumptive take to be calculated at the end of the water accounting period. While the proposed WRP includes appropriate methods for determining the annual permitted take for each SDL resource unit, the proposed WRP does not clearly identify

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			that the methods are to be applied at the end of the relevant water accounting period. Therefore, this requirement is not met.
3.4	10.10(3)(a)	The method must: (a) account for the matters in subsection 10.12(1)	In establishing a method for annual permitted take that is consistent with s 10.10, a WRP must take account of the matters set out in s 10.12.  In addressing s 10.12(1)(f), the proposed WRP has incorporated the entire <i>Water Sharing Plan for the Namoi Alluvial Groundwater Sources 2020</i> . Therefore, there is a consequential inconsistency from 10.04 due to global reference to the water sharing plan. In addressing s 10.12(1)(h), the information included relating to whether water sourced from GAB should be accounted for under the annual permitted take method is inconsistent with information in other parts of the proposed WRP.
3.5	10.10(3)(b)	The method must: be consistent with the other provisions of the water resource plan.	The assessment of material for the purposes of s 10.12(1)(h) and s 10.14 of the Basin Plan has found that there is inconsistent information in the proposed WRP relating to the effect of the connection between the Namoi Alluvium WRP area and the Great Artesian Basin. Therefore, this requirement is not met.
3.6	10.10(4)	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. Note 1: Under the Basin Plan, the SDL is the same as the long-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. Note 2: Amendments under section 23B of the Act are made following proposals for adjustment under Chapter 7.	Text for accreditation incorrectly refers to s 2.2 of WRP Schedule I as demonstration that the relevant SDLs will be met if the variable methods for determining the annual permitted take are applied over a repeat of the historical climate record. Schedule I does not have a section 2.2. The correct section in Schedule I is section 2.1.  In addition, the proposed WRP notes that there are currently no adjustments under s 23B of the Water Act 2007 (Cth) relevant to the Namoi Alluvium WRP area. The Authority considers that a commitment to 'review and amend' the proposed WRP within a reasonable period in the event of any future amendment under s 23B that affects SDL resource units of this WRP area would provide an appropriate level of assurance that the adjustments would be applied.
3.7	10.11(1)	(1) A water resource plan must set out rules (including, if applicable, rules for water allocations) that ensure, as far as practicable, that the quantity of water actually taken from each SDL resource unit for consumptive use in a water accounting period that beginning on or after 1 July 2019 does not (after making any adjustments for the disposal or acquisition of held environmental water) exceed the unit's annual permitted take for the period. Note 1: <i>Water resource plans are not required to give effect to the long-term average sustainable diversion limits until 1 July 2019. Compliance with the long-term annual diversion limit will then be measured using the annual permitted take (see Part 4 of Chapter 6). The annual permitted take is defined in subsection 6.10(1) and 6.12B(1).</i> Note 2: <i>Water allocations can be made during or before a water accounting period. The annual permitted take is usually worked out after the end of a water accounting period.</i>	WRP Schedule B (Index) refers to WRP s 5.2.2 as addressing this requirement. This section of the WRP contains only supporting information relevant to SDL adjustments under ss 7.25 and 7.26 of the Basin Plan and does not address the requirements of s 10.11 of the Basin Plan. The assessment found that, while rules are included to satisfy s 10.11 in WRP s 5.5.2, as Schedule B refers to s 5.2.2, this requirement is not met.
3.8	10.12(1)(f)	For paragraph 10.10(3)(a), the following matters must be accounted for: ... (f) circumstances in which there is a change in the way water is taken or held under a water access right.	In addressing s 10.12(1)(f), the proposed WRP has incorporated the entire <i>Water Sharing Plan for the Namoi Alluvial Groundwater Sources 2020</i> . Therefore, there is a consequential inconsistency from 10.04 due to global reference to the water sharing plan.
3.9	10.12(1)(h)	For paragraph 10.10(3)(a), the following matters must be accounted for: ... (h) water sourced from the Great Artesian Basin and released into a Basin water resource, by excluding that water.	In addressing s 10.12(1)(h), the information included relating to whether water sourced from GAB should be accounted for under the annual permitted take method is inconsistent with information in other parts of the proposed WRP.
3.10	10.14(1)	A water resource plan must identify the effect, or potential effect, if any, of the following on the use and management of the water resources of the water resource plan area: (a) the taking of groundwater that is not a Basin water resource resulting in water being removed from a groundwater SDL resource unit in the water resource plan area because of a pre-existing hydrological connection or a hydrological connection created by the process of taking that groundwater;	The two sentences in text for accreditation at WRP s 2.2 are internally inconsistent regarding the hydraulic connectivity between water resources in the WRP area and the Great Artesian Basin (GAB). Notwithstanding this inconsistency, a description of the management and use of connected water resources is in WRP Schedule D (Risk assessment). This description implies that whilst the connection may not be significant, the connectivity may still have an effect or potential effect on the management of water resources in both the GAB and those of the Namoi Alluvium WRP area and indicates that any such connection is managed by the setting of the SDLs for the SDL resource units and the LTAAELs of the non-Basin resources.

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		(b) the taking of groundwater that is not a Basin water resource resulting in water that would otherwise flow directly or indirectly into an SDL resource unit in the water resource plan area no longer flowing into that unit.	The internal inconsistencies in the identification of effects, or potential effects, demonstrate that the proposed WRP has not clearly identified the effects or potential effects specified under this requirement.
3.11	10.14(2)	If a water resource plan identifies an effect, or potential effect, of the kind referred to in subsection (1), the water resource plan must set out: (a) a process for monitoring that effect or potential effect; and (b) actions that will be taken to respond to that effect or potential effect.	The WRP has not adequately identified effects or potential effects for the purposes of s 10.14(1), as noted above. No process for monitoring or actions to be taken to manage potential effects have been identified for the purposes of s 10.14(2).  The Authority notes that, WRP Schedule D (Risk assessment) indicates that effects or potential effects are monitored and managed through the rules in the Water Sharing Plan for the <i>Namoi Alluvium Groundwater Sources 2020</i> which limit take to the SDL, and that the rules limit take to the LTAAEL as noted in <i>Water Sharing Plan for the NSW Great Artesian Basin Groundwater Sources 2008</i> . This could be considered sufficient demonstration of management of any potential effects, subject to any such effects being consistently identified. However, text for accreditation at s. 2.2 incorporates the LTAAELs and compliance clauses for both LTAAELs and the SDLs in Division 1 of Part 6 of Schedule A (Water Sharing Plan for the Namoi Alluvium Groundwater Sources 2020). However, the LTAAELs and SDL compliance are also managed through additional rules in Division 2 of Part 6 which provide for annual water determinations. Furthermore, the incorporation of the whole of the <i>Water Sharing Plan for the NSW Great Artesian Basin Groundwater Sources 2008</i> in section 3.3 of Schedule D introduces irrelevant material to the proposed WRP and is inconsistent with the requirements of s 10.04(5) (as per issue 2.2 above).
3.12	10.15(4)	The quantity of water actually taken must: (a) include water that was held environmental water which was disposed of and then used in the SDL resource unit for consumptive use; and (b) exclude water sourced from the Great Artesian Basin and released into and taken from a Basin water resource.	The WRP must set out how actual take for consumptive use by each form of take from each SDL resource unit will be determined after the end of a water accounting period. The WRP must describe whether the circumstances in 10.15(4)(a) and / or (b) are relevant to this WRP area and, if so, ensure that the method for determining annual actual take addresses those circumstances as required.  However, there are inconsistencies within the proposed WRP regarding connectivity between the resources of the Namoi Alluvium WRP area and the GAB. As a result, the Authority is unable to determine the extent to which s 10.15(4)(b) applies and therefore cannot confirm that this requirement is met.
Part 4			
4.1	10.18(1)-(3)	(1) A water resource plan must be prepared having regard to whether it is necessary for it to include rules which ensure that, for priority environmental assets and priority ecosystem functions that depend on groundwater, the operation of the plan does not compromise the meeting of environmental watering requirements. Note: The environmental watering requirements of priority environmental assets and priority ecosystem functions will be set out in long-term watering plans and may also be set out in the Basin-wide environmental watering strategy. Long-term watering plans are required to use the methods in Part 5 of Chapter 8 to identify those requirements. (2) Without limiting subsection (1), regard must be had to whether it is necessary for the water resource plan to include rules that specify: (a) the times, places and rates at which water is permitted to be taken from a groundwater SDL resource unit; and (b) resource condition limits, being limits beyond which the taking of groundwater will, for a priority environmental asset that depends on groundwater, compromise an environmental watering requirement; and (c) restrictions on the water permitted to be taken (including the times, places and rates at which water may be taken) in order to prevent a resource condition limit from being exceeded.  (3) If the outcome of the requirement in subsection (1) is that such rules are necessary, the water resource plan must include those rules.	The assessment of the material provided to address s 10.05 of the Basin Plan has determined that the proposed WRP (at s 3.3. of Schedule D) has not clearly described the nature of all connections with adjacent resources. Therefore, it is not clear that all material relevant to the management of significant hydrological connections and the impact on the need for rules to protect EWRs has been considered for the purposes of determining whether rules are needed. As such, the Authority cannot confirm that appropriate regard has been given to these matters for s 10.18.  In addition, text for accreditation at s 2.2 refers to cl 44 of WRP Schedule A (Water Sharing Plan for the <i>Namoi Alluvial Groundwater Sources 2020</i> ). Examination of cl 44 confirms that clause (44)(5) makes the operation of clause 44(1)(b) – set back distance from the top of the high bank of a river - conditional on confirmation of groundwater dependence. This appears to be a drafting error in Schedule A as the conditionality clause should apply to the confirmation of GDEs, i.e. it should apply to cl 44(1)(c). This referencing error in Schedule A prevents the rule incorporated into the WRP from operating as intended.  Text for accreditation at WRP s 4.1.1 refers to the <i>Access Licence Dealings Principles Order 2004</i> but does not specify the relevant clauses or sections. As such the instrument is considered to have been incorporated in its entirety, resulting in a consequential inconsistency due to the application of s 10.04(5), as set out in issue 2.2.  The assessment has determined that not all PEW and associated rules and arrangements are identified, as set out in issue 3.1. The reliance on the provisions to address the s 10.09 requirement as also meeting the s 10.18 requirement means the proposed WRP does not demonstrate that all of the rules are included that are needed to protect groundwater dependent PEAs/PEFs.  The absence of specific arrangements to manage the connection between the Cockburn River Alluvium Management Zone (within the Peel Alluvium SDL resource unit) and the surface water pools of the Cockburn River results in further inconsistencies arising in relation to s 10.18 of the Basin Plan on the basis that there is insufficient rationale for not including specific rules to manage this connection.

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4.2	10.19(1)-(3)	<p>(1) A water resource plan must be prepared having regard to whether it is necessary for it to include rules which ensure that, for groundwater that has a significant hydrological connection to surface water, the operation of the plan does not compromise the meeting of environmental watering requirements (for example, base flows).</p> <p>(2) Without limiting subsection (1), regard must be had to whether it is necessary for the water resource plan to include rules that specify:</p> <ul style="list-style-type: none"> <li>(a) the times, places and rates at which water is permitted to be taken from a groundwater SDL resource unit; and</li> <li>(b) resource condition limits, being limits beyond which the taking of groundwater will compromise the discharge of water into any surface water resource; and</li> <li>(c) restrictions on the water permitted to be taken (including the times, places and rates at which water may be taken) in order to prevent a resource condition limit from being exceeded.</li> </ul> <p>(3) If the outcome of the requirement in subsection (1) is that such rules are necessary, the water resource plan must include those rules.</p>	<p>The assessment of the material provided to address s 10.05 of the Basin Plan has determined that the proposed WRP (at s 3.3. of Schedule D) has not clearly described the nature of all connections with adjacent resources. Therefore, it is not clear that all material relevant to the management of significant hydrological connections and the impact on the need for rules to protect EWRs has been considered for the purposes of determining whether rules are needed. As such, the Authority cannot confirm that appropriate regard has been given to these matters for s 10.19.</p> <p>In addition, text for accreditation at s 2.2 refers to cl 44 of WRP Schedule A (Water Sharing Plan for the <i>Namoi Alluvial Groundwater Sources 2020</i>). Examination of cl 44 confirms that clause (44)(5) makes the operation of clause 44(1)(b) – set back distance from the top of the high bank of a river - conditional on confirmation of groundwater dependence. This appears to be a drafting error in Schedule A as the conditionality clause should apply to the confirmation of GDEs, i.e. it should apply to cl 44(1)(c). This referencing error in Schedule A prevents the rule incorporated into the WRP from operating as intended.</p> <p>Text for accreditation at WRP s 4.1.1 refers to the <i>Access Licence Dealings Principles Order 2004</i> but does not specify the relevant clauses or sections. As such the instrument is considered to have been incorporated in its entirety, resulting in a consequential inconsistency due to the application of s 10.04(5), as set out in issue 2.2.</p> <p>The assessment has determined that not all PEW and associated rules and arrangements are identified, as set out in issue 3.1. The reliance on the provisions to address the s 10.09 requirement as also meeting the s 10.18 requirement means the proposed WRP does not demonstrate that all of the rules are included that are needed to protect groundwater dependent PEAs/PEFs.</p> <p>The absence of specific arrangements to manage the connection between the Cockburn River Alluvium Management Zone (within the Peel Alluvium SDL resource unit) and the surface water pools of the Cockburn River results in further inconsistencies arising in relation to s 10.19 of the Basin Plan on the basis that there is insufficient rationale for not including specific rules to manage this connection.</p>
4.3	10.20(1)-(3)	<p>(1) A water resource plan must be prepared having regard to whether it is necessary for it to include rules which ensure that the operation of the plan does not compromise</p> <ul style="list-style-type: none"> <li>(a) the overall structural integrity of the aquifer (whether within or outside the water resource plan area) arising from take within the long-term annual diversion limit for an SDL resource unit; or</li> <li>(b) the overall hydraulic relationships and properties between groundwater and surface water systems, between groundwater systems, and within groundwater systems.</li> </ul> <p>(2) Without limiting subsection (1), regard must be had to whether it is necessary for the water resource plan to include rules that specify:</p> <ul style="list-style-type: none"> <li>(a) the times, places and rates at which water is permitted to be taken from a groundwater SDL resource unit; and</li> <li>(b) any zones in the water resource plan area where continued groundwater extraction will result in a long-term decline in groundwater levels; and</li> <li>(c) measures to prevent any long-term decline in groundwater levels in that zone, except where the groundwater is a non-renewable groundwater resource; and</li> <li>(d) for a non-renewable groundwater resource—the planned rate of decline in groundwater levels and the anticipated groundwater levels after 50 years from the commencement of the water resource plan; and</li> </ul>	<p>The assessment of the material provided to address s 10.05 of the Basin Plan has determined that the proposed WRP (at s 3.3. of Schedule D) has not clearly described the nature of all connections with adjacent resources. Therefore, it is not clear that all material relevant to the management of significant hydrological connections and the impact on the need for rules to protect EWRs has been considered for the purposes of determining whether rules are needed. As such, the Authority cannot confirm that appropriate regard has been given to these matters for s 10.20.</p> <p>Text for accreditation at WRP s 4.1.1 refers to the <i>Access Licence Dealings Principles Order 2004</i> but does not specify the relevant clauses or sections. As such the instrument is considered to have been incorporated in its entirety, resulting in a consequential inconsistency due to the application of s 10.04(5), as set out in issue 2.2.</p> <p>The assessment has determined that not all PEW and associated rules and arrangements are identified, as set out in issue 3.1. The reliance on the provisions to address the s 10.09 requirement as also meeting the s 10.18 requirement means the proposed WRP does not demonstrate that all of the rules are included that are needed to address the requirements of s 10.20.</p>

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		<p>(e) resource condition limits, being limits beyond which the taking of groundwater from the SDL resource unit will compromise the objectives in paragraphs (1)(a) and (b); and</p> <p>(f) restrictions on the water permitted to be taken (including the times, places and rates at which water may be taken) in order to prevent a resource condition limit from being exceeded.</p> <p>(3) If the outcome of the requirement in subsection (1) is that such rules are necessary, the water resource plan must include those rules.</p>	
4.4	10.22	<p>A water resource plan must:</p> <p>(a) describe what was done to comply with the requirements in this Part; and</p> <p>(b) if a risk of a kind referred to in subsection 10.41(1) has been identified in relation to the water resources of the water resource plan area—explain why rules addressing the risk have or have not been included in the plan.</p>	<p>The assessment of material provided for the purposes of ss 10.18-10.20 has found that there is insufficient rationale for the exclusion of certain rules as identified in those assessments with respect to the identified risks relating to water available for the environment and impacts on resources with a significant hydrological connection.</p>
Part 6			
6.1	10.26(1)	<p>A water resource plan must provide for environmental watering to occur in a way that:</p> <p>(a) is consistent with:</p> <p style="padding-left: 20px;">(i) the environmental watering plan; and</p> <p style="padding-left: 20px;">(ii) the Basin-wide environmental watering strategy; and</p> <p>(b) contributes to the achievement of the objectives in Part 2 of Chapter 8.</p>	<p>The proposed WRP relies on the approaches to addressing Parts 3 and 4 of Chapter 10 to meet the requirements of s 10.26(1). As set out above the requirements of those parts have not been met, and therefore there is a consequential inconsistency for s 10.26(1).</p>
6.2	10.28	<p>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>	<p>The assessment found that not all relevant PEW rules have been included for accreditation to meet s 10.09 requirements. While some of these rules are included elsewhere in the proposed WRP, cl 9(3) of Schedule A which identifies strategies for achieving targeted environmental objectives is not incorporated into the proposed WRP for any purpose. This omission contributes to the reduction in the protection of PEW.</p> <p>In addition, the proposed WRP and Schedule A have omitted a rule relating to the Cockburn River surface water pool connection that had been in place immediately before the commencement of the Basin Plan. This rule change results in a reduction in the level of protection of PEW. There is currently insufficient information to assess whether this rule change has been balanced by the inclusion of water level triggers across the WRP area.</p> <p>As a consequence, the Authority has been unable to confirm that the proposed WRP will operate to ensure there is no net reduction in PEW protection and therefore is not satisfied that this provision has been met.</p>
Part 8			
8.1	10.36	<p>This Part does not apply to water access rights of a kind that are not able to be traded under State water management law.</p>	<p>Text for accreditation at WRP s 5.7.2 refers to the <i>Access Licence Dealings Principles Order 2004</i> and the <i>Water Sharing Plan for the Namoi Alluvial Groundwater Sources 2020</i> but does not specify the relevant clauses or sections. As such the instrument is considered to have been incorporated in its entirety, resulting in a consequential inconsistency due to the application of s 10.04(5), as set out in issue 2.2.</p>
	10.37	<p>(1) A water resource plan must set out the circumstances in which trade between 2 locations within a groundwater SDL resource unit is permitted. In setting out the circumstances, a water resource plan must ensure that each condition set out in section 12.24 will be met in relation to the proposed trade.</p>	<p>Text for accreditation provides insufficient details in WRP s 5.7.2 and Figure I-3 in WRP Schedule I as to how trade between two groundwater locations is permitted and does not set out how each of the conditions listed in s 12.24 of the Basin Plan will be met, specifically how measures are in place to address the impact, as a result of trade, on the characteristics of the traded water access rights or on water availability in relation to a water access right held by a third party.</p>
Part 9			



Issue Ref.	Relevant Basin Plan provision	Requirement of Basin Plan provision	Description of the potential inconsistency (including references to relevant WRP material)
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 the assessment against ss 10.41(3)(a), 10.41(4) and 10.51(5) of this assessment, not all risks to which the risk assessment has had regard to have been addressed in the proposed WRP. (See items 9.2, 9.3 and 9.4 below)
9.2	10.41(3)(a)	In identifying risks for the purposes of subsection (1), regard must be had to:  (a) risks identified in section 4.02	When identifying risks for the purposes of s 10.41(1) it is necessary to have regard to various matters, including the risks arising from their being insufficient water available for Aboriginal values. The proposed WRP refers to the material addressing s 10.53(1)(f) to address this requirement. However, the assessment against s 10.53 of the Basin Plan (Indigenous consultation on WRPs) to which the text for accreditation at WRP ss 1.3.1 and 1.7 applies, has found requirements have not been met relating to the identification of risks to Indigenous values and uses. Therefore, the assessment cannot confirm that appropriate regard has been given to these matters when identifying risks under s 10.41(1).
9.3	10.41(4)	The water resource plan must list the risks identified for the purposes of subsection (1).	WRP Table 3-1 presents a consolidated list of risk outcomes at the SDL resource unit level resulting in some risks for those SDL resource units with multiple groundwater sources/zones (including the Upper Namoi Tributary Alluvium and Upper Namoi Alluvium), having multiple risk outcomes listed for a single risk in Table 3-1. For example, Table 3-1 lists a single risk outcome of "low/medium/high" for risk R2 (risk of groundwater extraction inducing connection with poor quality groundwater), however Table 4-9 in Schedule D lists individual risk outcomes of either "low", "medium" or "high" for the Upper Namoi Alluvium Zones 1 to 12. This introduces uncertainty as to the risk outcomes for such risks. Further, the proposed WRP does not contain a definition or explanation of how these additional categories of risk are considered through WRP Table 3-1 and it is not clear that all current and future risks have been included. In addition, as noted above, Schedule B does not accurately identify the part of the WRP that addresses s 10.41(4). Therefore, this requirement has not been met.
9.4	10.41(5)	The water resource plan must assess reach risk.	<p>The assessment test is that the risks must be assessed according to the State's chosen risk assessment method. WRP Schedule D indicates that the risk assessment was conducted using a combination of quantitative and qualitative methods. Material in Schedule D indicates that the risk assessment approach is not consistent with the state's primary risk assessment methods.</p> <p>The assessment for s 10.41(4) has concluded that the list of risks provided for accreditation in WRP Table 3-1 does not contain all of the current and future risks, and therefore the Authority is not satisfied that each of these risks has been assessed according to the State's chosen risk assessment.</p> <p>In addition, a qualitative assessment of the risks has been undertaken for risks associated with s 4.02(2)(b), as listed in s 7 of Schedule D and WRP s 1.3.1. However, assessment against s 10.53 of the Basin Plan (Indigenous consultation on WRPs) to which the text for accreditation at WRP ss 1.3.1 and 1.7 applies, has found requirements have not been met relating to the identification of risks to Indigenous values and uses. Therefore, it is not clear that all relevant risks have been identified and assessed in an appropriate manner.</p> <p>In addition, as noted above, Schedule B does not accurately identify the part of the WRP that addresses s 10.41(5). Therefore, this requirement has not been met.</p>
9.5	10.41(6)	The water resource plan must define the level of risk of each risk, using the following categories: (a) low (b) medium (c) high (d) if it is considered appropriate, any additional category	<p>WRP Table 3-1 indicates that for some risks, the risk outcomes have been listed as a combination of 'nil', 'low', 'medium' and 'high', without explanation. The use of a combination of risk assessment outcomes is considered to as an 'additional category' and are not considered to be appropriate to the State's chosen risk assessment method. This introduces a degree of uncertainty as to the risk assessment outcome for such risks.</p> <p>As noted above, while not formally assessed and given the risk ratings listed in this subsection, a qualitative assessment of risks associated with s 4.02(2)(b) has been undertaken (as listed in s 7 of Schedule D and WRP s 1.3.1). While the Authority considers a qualitative assessment is acceptable in principle, assessment against s 10.53 of the Basin Plan (Indigenous consultation on WRPs) to which the text for accreditation at WRP ss 1.3.1 and 1.7 applies, has found requirements have not been met relating to the identification of risks to Indigenous values and uses. Therefore, it is not clear that all relevant risks have been identified and assessed in accordance with the State's chosen method.</p>

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			Schedule B does not identify WRP s 3.2 (and, by extension, Table 3-1) for this requirement. Therefore, material for this requirement has not been incorporated into the proposed WRP.
9.6	10.41(7)	The water resource plan must describe the data and methods used to identify and assess the risks.	Text for accreditation at s 3.1 incorporates Table B-1 in Appendix A of Schedule D to identify and assess risks. Table B-1 is not contained in Appendix A of Schedule D. A summary of the data used to identify and assess risks is contained in Table B-1 of Appendix B of Schedule D.
9.7	10.42	A water resource plan must describe: (a) each risk which is identified in accordance with subsection 10.41(6) as having a medium or higher level of risk; and (b) factors that contribute to those risks.	There is an inconsistency between the detailed risk tables in Schedule D and the consolidated list of risk outcomes in Table 3-1 (as outlined at issue 9.1 above). As a result of the uncertainty this introduces, and because the proposed WRP does not contain a definition or explanation of the additional risk categories, the description of risks is not described adequately for this requirement.
<b>Part 10</b>			
10.1	10.44	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; (b) the best estimate of the total long-term annual average quantity of water taken that is not measured; (c) how the quantities under paragraphs (a) and (b) were calculated; (d) the proportion of the quantity referred to in paragraph (a) that is measured in accordance with standards for measuring agreed by the Basin States and the Commonwealth.	Text for accreditation incorrectly incorporates WRP Table 7-1 as containing the total long-term annual average quantity of water taken that is measured or not measured. Table 7-1 contains statistics on active monitoring bores for the Namoi Alluvium WRP area.  WRP 7-2 contains material relevant to this requirement. If correctly incorporated, the following matters would need to be addressed in order to meet requirements: - There is a statement immediately below the table relating to the application of utilisation factors. However, an apparent drafting error means there is no indication in Table 7-2 to show which volumes or estimate methods this statement refers to. As such the Authority cannot assess whether Table 7-2 meets the requirements of s 10.44(a)-(c).  Given the incorrect referencing of Table 7-1 and the inability to determine which volumes or estimates have been determined using a utilisation factor, this requirement has not been met.
10.2	10.45(1) & (2)	(1) A water resource plan must specify measures for maintaining and, if practicable, improving: (a) the proportion of take that is measured in the water resource plan area; and (b) the standard to which take is measured.  (2) The water resource plan must specify the timeframe for implementing the measures.	Text for accreditation for WRP s 7.1 refers to the Water Management (General) Amendment (Metering) Regulation 2018 but does not specify the relevant clauses or sections. As such the instrument is considered to have been incorporated in its entirety, resulting in a consequential inconsistency due to the application of s 10.04(5), as set out in Issue 2.2.
<b>Part 12</b>			
12.1	10.49	(1) A water resource plan must be based on the best available information. (2) The water resource plan must identify and describe the significant sources of information on which the water resource plan is based.	The Authority considers that s 8 of the proposed WRP includes appropriate material to address s 10.49 of the Basin Plan. However, the Authority considers that as Schedule B identifies s 8.1 (which does not appear in the WRP) as addressing this requirement, the requirement has not been met.
12.2	10.50	A water resource plan must identify any significant method, model or tool that has been used to develop the water resource plan.	The Authority considers that s 8 of the proposed WRP includes appropriate material to address s 10.50 of the Basin Plan. However, the Authority considers that as Schedule B identifies s 8.1 (which does not appear in the WRP) as addressing this requirement, the requirement has not been met.
<b>Part 14</b>			
14.1	10.52(2)	In identifying the matters set out in subsection (1), regard must be had to: (a) the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area ( <i>Indigenous values</i> ); and (b) the social, spiritual and cultural use of the water resources of the water resource plan area by Indigenous people ( <i>Indigenous uses</i> ); as determined through consultation with relevant Indigenous organisations, including (where appropriate) the Murray Lower Darling Rivers Indigenous Nations and the Northern Murray-Darling Basin Aboriginal Nations.	Statements in blue box text refer to material in Attachment A to Schedule C as meeting this requirement. The NBAN advice notes the following issues with the relevant statements. NBAN considers that conducting a consultation process does not amount to 'having regard' and there is insufficient evidence to support the assertion that regard has been had to Aboriginal values and uses.  Although the Authority is satisfied that the proposed WRP has identified social, spiritual and cultural values and uses, as result of the NBAN advice the Authority is unable to determine that adequate regard to these values and uses has been had. Further evidence clarifying how regard was had to the identified values and uses when developing the outcomes and objectives is necessary.
14.2	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	The NBAN advice states that blue box text needed to (a) ensure consultation directly and intentionally sought and obtained Gomeroi Nation views about each of the s 10.52 matters, and (b) needs to demonstrate how regard was

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		10.52 and the following matters [in letters (a) to (f)]	<p>had to those views. The WRP material indicates that views were sought and obtained in a general sense, and not intentionally collected.</p> <p>Noting the NBAN concern that the proposed WRP and associated documentation provided limited demonstration of regard to Gomeroi Nation views as a result of the timing of the consultation, and consequential concern of how regard was had to their views for all matters in 10.53(a) to (f), the Authority is not able to confirm that regard was had to the views of all relevant Indigenous organisations with respect to all matters identified in section 10.53. Therefore, this requirement is not met.</p>
14.3	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	<p>The NBAN advice considers that text for accreditation lacks evidence that the views of the Gomeroi Nation or Aboriginal organisations on native title matters in relation to water resources were sought, and how regard was had to such views (even if collected). The NBAN advice notes that the proposed WRP discussed contact with the Native Title Services Corporation, but that only one native title claimant was interviewed and it is not clear whether their views on native title in relation to water resources were sought.</p> <p>On the basis of the advice from NBAN delegates regarding the shortcomings of the consultation as represented in the proposed WRP and Schedule C, the Authority is not satisfied that the views of all relevant Indigenous organisations with respect to 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, were considered in the preparation of the WRP. Therefore, the requirement is not met.</p>
14.4	10.53(1)(b)	registered Aboriginal heritage relating to the water resources of the water resource plan area	<p>The NBAN advice states that reliance on Local Aboriginal Land Councils is inappropriate because they do not have cultural authority to speak for Gomeroi Country or cultural heritage.</p> <p>The proposed WRP includes some evidence that heritage matters did arise during consultation, but it is not clear whether or how views about registered Aboriginal cultural heritage relating to water were collected from any Aboriginal organisations or First Nations people, or how those views were genuinely, properly and realistically considered in the development of the WRP.</p> <p>In addition, the Authority notes that it is unclear whether the cultural or sacred sites identified and considered during consultation are registered Aboriginal Heritage as defined in s 10.53(2) for the purposes of this requirement. The accredited text refers to NSW's existing cultural heritage management system to respond to this requirement (ie. the Aboriginal Heritage Information Management System (AHIMS)). However, it is unclear whether this covers all registered Aboriginal Heritage (under Commonwealth or State law), relevant to the WRP area. As a result of the issues outlined above, the Authority is not satisfied that the views of the relevant Indigenous organisations in relation to registered Aboriginal heritage have been given proper regard, and the requirement is not met.</p>
14.5	10.53(1)(c)	inclusion of Indigenous representation in the preparation and implementation of the plan	<p>The NBAN Delegates observed that the explanatory text on page 41 of the Namoi Alluvium WRP does include some promising commitments and objectives for the future that align with Gomeroi Nation input and priorities. However, they consider that insufficient detail is provided in this section (and indeed, throughout all the WRP documentation) about the substance of these commitments and ongoing engagements. NBAN considers the material collected during the consultation and has been poorly reflected in the Attachment A to Schedule C (Gomeroi Nation Consultation Report), and there is no evidence available that this material has been given proper regard in the development of the WRP. The Authority is satisfied that material demonstrates that the views of some relevant Indigenous organisations have been sought in relation the inclusion of Indigenous representation in the preparation and implementation of the plan. However, in light of the concerns raised by the NBAN advice regarding the limited nature of the consultation process it is not clear that the views of all relevant organisations have been sought. Further, it is not clear that the views identified have been given genuine, proper and realistic consideration in the preparation of the proposed WRP. Therefore, the requirement is not met.</p>
14.6	10.53(1)(d)	Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives	<p>The Authority acknowledges that there are objectives, and (where relevant) activities or actions that may be interpreted as strategies for achieving those objectives, included in Attachment A to Schedule C. However, they are not clearly identified as strategies for achieving identified objectives. NBAN also expressed concern about the lack of clear statements identifying strategies for achieving identified objectives and the lack of evidence in the WRP or Schedule A that the objectives and strategies had informed the WRP.</p>

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			Therefore, although the Authority is satisfied the development of the proposed WRP has had regard to the views of relevant Indigenous organisations with respect to Indigenous social, cultural, spiritual and customary objectives, it is not satisfied that regard has been had to the views of relevant Indigenous organisations with respect to strategies for achieving these objectives. Therefore, this requirement is not met.
14.7	10.53(1)(e)	encouragement of active and informed participation of Indigenous people	Noting that 'active and informed participation' is not defined either in the Basin Plan or the WRP, the NBAN advice observed that such participation could have been much greater. NBAN also considered statements in text for accreditation to be contradictory to statements in Attachment A to Schedule C. For example, the list of recommendations to improve the consultation process resulted in a process that was not 'active and informed'. Rather it was too narrow, insufficient and inappropriate. While the Authority considers that there is some evidence of efforts to undertake consultation in a culturally appropriate manner, as a result of the concerns identified in the NBAN advice regarding the engagement approach, the Authority is not able to confirm that the proposed WRP was prepared having regard to the views of the relevant Indigenous organisations regarding the encouragement of active and informed participation of Indigenous people. Therefore, this requirement is not met.
14.8	10.53(1)(f)	risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area	Text for accreditation states that risks to Aboriginal values and uses are included in Attachment A to Schedule C, but considered that the material in Section 6.2.2 of Attachment A also ought to be cited in accredited text as this underpins and explains these risks. NBAN queried whether the WRP had been developed with proper regard for Aboriginal people's views about identified (and possibly other) risks. The NBAN advice asserts that data yielded during consultation ought to have been directly incorporated into Schedule D and treated and managed as other risks identified in the WRPA. It also asserts using risks identified in Schedule D as a proxy for identifying and assessing risks to First Nations' water uses and values is not appropriate. The NBAN Delegates consider this approach lacks regard to First Nations' views about risks to values and uses. Further, there is no evidence that the WRP was prepared with regard to the risks identified during Gomerioi Nation consultation. Although the Authority is satisfied that risks have been identified, it is not satisfied that there is evidence that genuine, proper and realistic consideration of these risks has been given. Therefore, this requirement is not met.
14.9	10.54	A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.	<p>Part 2 of WRP Schedule A (<i>Water Sharing Plan for the Namoi Alluvial Groundwater Sources 2020</i>) sets out a clear set of objectives, strategies and performance indicators 'to maintain the spiritual, social, customary and economic values and uses of groundwater by Aboriginal people'. However, the Authority considers that it is not clear that this provision, in itself, demonstrates a consideration of the views of Indigenous people regarding 'cultural flows'. The NBAN advice notes the following issues with the material included for this requirement:</p> <ol style="list-style-type: none"> <li>1. WRP s 1.3.1 does not 'specify' objectives and outcomes. The section refers to Table 7 to 11 in Attachment A. Although the Authority agrees this is not within a narrow definition of 'specify' it adequately refers to objective and outcomes for the purposes of s 10.54.</li> <li>2. The objectives and outcomes listed in Tables 7 to 11 contain only a few specific references to cultural flows and some implicit references to ideas and principles that underpin cultural flows. As the WRP does not clarify the meaning of 'cultural flow' it is not clear which of the objectives in Tables 7 to 11 are relevant for s 10.54 purposes.</li> <li>3. The proposed WRP cites the inclusion of Attachment A to Schedule C to demonstrate that regard has been had to the views of Aboriginal people about cultural flows. However, as noted above the NBAN advice indicates that the consultation process, including with respect to cultural flows, was too narrow.</li> <li>4. The <i>preparation</i> of the proposed WRP (not just the WRP itself) must have regard to the views of Indigenous people about cultural flows.</li> </ol> <p>The NBAN advice sets out concerns that supporting material in WRP s 4.4 appears to conflate cultural and environmental objectives in some text but acknowledges that the risk that environmental water and cultural water can be confused (p. 41, Namoi Alluvium WRP). In light of this acknowledgement the NBAN Delegates are seeking a commitment to working with the Gomerioi Nation to develop and resource a cultural flow regime.</p> <p>The Authority notes NBAN's concerns regarding these matters and considers that there is some evidence of efforts to demonstrate regard for the views of Indigenous people with respect to cultural flows. However, as a result of the concerns identified in the NBAN advice regarding the overall engagement approach, the Authority is not able to confirm that appropriate regard has been had to the views of Indigenous people with respect to cultural flows. Therefore, this requirement is not met.</p>

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14.10	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>Text for accreditation at WRP s 4.4 refers to Table 4-2 to demonstrate some of the arrangements that operated in the nominated transitional WRP and that have been retained in the proposed WRP.</p> <p>Column one of Table 4-2 lists 'relevant NSW Legislation/Regulation, column two describes where the item in column one is implemented and column 3 describes the change as a result of the proposed WRP as either 'improved' or 'Retained from pre WRP arrangements'. However, column two includes an entry stating that 'Aboriginal commercial, Aboriginal cultural, and Aboriginal community development subcategories of access licences' are established under the NSW Water Management (General) Regulation 2011 and column three describes this arrangement as 'Retained from pre WRP arrangements'.</p> <p>The NSW Water Management (General) Regulation 2011 has been repealed and replaced by the NSW Water Management (General) Regulation 2018. As such the proposed WRP claims it retains arrangements under a regulation that no longer exists. Therefore, the validity of the claim that protections are either retained or improved cannot be verified. As a result, the proposed WRP does not meet the requirements of s 10.55.</p>