



Queensland

Water Resource (Barron) Amendment Plan (No. 1) 2009

Explanatory Notes for SL 2009 No. 266

made under the

Water Act 2000

General outline

The *Legislative Standards Act 1992* (s 22(2)) requires that significant subordinate legislation is accompanied by explanatory notes that are prepared under the authority of the responsible Minister. The explanatory notes form a 'plain English' version of the *Water Resource (Barron) Amendment Plan (No. 1) 2009* ('the plan').

The purpose of the explanatory notes is to provide a simple explanation and background information on each of the amendments to assist the reader in understanding the provisions. The notes are not intended to be comprehensive but rather to guide the reader. These notes should be read in conjunction with the plan as the detail is contained in the plan itself. Each clause is explained and corresponds to the sections in the plan.

Authorising law

Chapter 2, Part 3, Division 2 of the *Water Act 2000*

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 sets out the short title to the amendment.

Plan amended

Clause 2 states that the plan being amended is the *Water Resource (Barron) Plan 2002*.

Part 2 Areas and water to which plan applies

Clause 3 inserts a new clause 7A Water Management Area. This clause states that the water management area for the management of unsupplemented water allocations is called the Barron Water Management Area. Each unsupplemented water allocation must state the water management area in which it is located. This amendment reflects changes to the *Water Act 2000* which have been made since the water resource plan was finalised in December 2002.

Part 4 Performance Indicators and Objectives

Amendment of s 19 (Performance indicators for water allocation security objectives)

Clause 4 amends section 19. This clause states the performance indicators for water allocation security objectives associated with supplemented or

unsupplemented water allocations. These indicators allow for water allocation security objectives to be established and so protect the long-term probabilities of obtaining water under a water allocation.

The specified performance indicators represent the annual, monthly and other probabilities that are important to water allocation holders obtaining water from supplemented water supply schemes and those taking unsupplemented water from variable stream flows.

This clause has been amended to include an additional provision, namely, the annual volume probability. For a group of water allocations, the annual volume probability means the percentage of years in the simulation period in which the volume of water that may be taken by the group is at least the total of the nominal volumes for the allocations in the group.

Part 5 Strategies for achieving outcomes (surface water)

Omission of part 5, Division 4 (Granting water entitlements)

Clause 5 omits Division 4 which contained sections 28 and 29 which were transitional clauses specifying that water entitlements must be granted for hydro-electric power generation and to replace local government authorities. As these water entitlements have been granted, sections 28 and 29 are now redundant and have been removed.

Amendment of s 31 (Application of division 5)

Clause 6 amends section 31 by removing subsection (c) of this clause as it refers to local government authorities replaced with water entitlements under section 29 which has been removed.

Replacement of s 33 (Purpose to be stated on water allocation)

Clause 7 inserts a clause that states that the purpose of the entitlement must be stated on the water allocation. The clause defines when that purpose is to be 'rural', 'distribution loss' or 'any'. The list of purposes that will become 'rural' has been extended to include, dairy, water harvesting and

aquaculture. The purpose ‘any’ has been included in this section for all other purposes such as industrial and urban.

Subdivision 3 Unsupplemented Surface Water

Replacement of s 37 (Volume of unsupplemented water)

Clause 8 removes section 37 and replaces it with a more comprehensive section, Elements of a water allocation to take unsupplemented water. Clause 8 amends and expands on the attributes that must be stated on a water allocation, such as location; purpose; nominal volume; maximum rate of take; daily volumetric limit; annual volumetric limit; seasonal volumetric limit; flow conditions and the water allocation group.

The ‘location’ for a water allocation is the ‘zone’ that a water allocation is in, as opposed to a fixed parcel of land. This is due to water allocations being separated from property and having the ability to be traded.

This clause also states the attributes that can be stated on a water allocation such as the monthly volumetric limit.

Amendment of s 39 (Annual volumetric limit for unsupplemented water)

Clause 9 amends the title and removes section 39(b) and replaces it with two new subclauses that specify how the annual volumetric limit is to be determined for water that may be taken under the water allocation. An annual volumetric limit will be determined using the following rules:

- If an authority already states such a volume, that volume will be used.
- If an authority specifies a condition that states the annual volumetric limit then that volume will be the annual volumetric limit for the new water allocation.
- If an authority states an area to be irrigated in subcatchment area C, the volume will be decided by multiplying the area by 10 megalitres per hectare.

For example—

An existing entitlement of 20 hectares will be converted to a volume by multiplying 10 megalitres per hectare to determine the annual volumetric limit resulting in 200 megalitres.

- For other existing authorisations, the chief executive will decide the volume having regard from the water taking capacity of the works; the amount used historically; the efficiency of the use; and the conditions under which water may be taken.

Insertion of new s 39A (Seasonal volumetric limit)

Clause 10 is a new clause. The seasonal volumetric limit is the maximum amount of water that is permitted to be taken between July and December in a water year. If the full volume of the seasonal volumetric limit is not taken during this time it may be taken during January to June.

If a water allocation is derived from a licence or authority that stated an area to be irrigated then a seasonal volumetric limit will be determined by the chief executive using a conversion factor of 6.6 megalitres per hectare.

For example—

To determine a seasonal volumetric limit an existing entitlement of 20 hectares will be multiplied by 6.6 megalitres per hectare resulting in 132 megalitres. 132 megalitres is the maximum amount of water that may be taken between the months of July and December.

A seasonal volumetric limit for water allocations that were derived from a licence or authority that previously stated a volumetric limit will be determined by the chief executive multiplying the annual volumetric limit by 1. The amount of water taken in a water year cannot exceed the annual volumetric limit.

For example—

A water allocation with a volume of 10 megalitres will have a seasonal volumetric limit of 10 megalitres. In effect this water may be used at any time of year.

Insertion of new s 40A (Daily volumetric limit)

Clause 11 inserts a new clause that specifies how the daily volumetric limit for an unsupplemented water allocation is to be determined. The clause states that if the daily volumetric limit is stated on the existing authorisation then that same daily limit will apply to the water allocation.

Section 40A(1)(b) states that where the daily volumetric limit is not stated on the existing authorisation but the associated development permit states a pump size that is listed in schedule 8, column 1, then the limit stated in schedule 8, column 3 applies. If the development permit states a pump size

that is not mentioned in schedule 8, column 1, then the chief executive must determine the daily volumetric limit having regard to schedule 8, column 3.

However, for section 40A(1)(b), if the holder of the authorisation satisfies the chief executive that the daily volumetric limit is different from the limit listed in schedule 8, the chief executive can determine a new limit having regard to the conditions under which water may be taken under the authorisation, the water taking capacity of the existing pump, the irrigation or water distribution system associated with the authorisation during the period of not more than 10 years prior to the commencement of the plan, and the efficiency of the water use.

If the daily volumetric limit is not stated on the existing authorisation and the associated development permit does not state a pump size for the works, the daily volumetric limit will be determined by the chief executive having regard to the type of authorisation and an estimate or measurement of the rate at which water can be taken under the authorisation.

Importantly, the chief executive must ensure that the daily volumetric limit for a water allocation is not more than the total volume that could be taken in a day at the maximum rate decided under section 41.

Amendment of s 43 (Water allocation groups for unsupplemented water allocations)

Clause 12 amends section 43 to state how the water allocation groups are determined for unsupplemented water allocations. A water allocation group represents a grouping of water allocations for which a water allocation security objective is specified.

The authorisations for taking town water supply in subcatchment area C have been assigned to water allocation group CA. Water harvesting authorisations have been assigned to water allocation group CC with all other authorisations stating any other purpose being assigned to water allocation group CB.

Specific water management rules will apply to each water allocation group. These will be determined in the resource operations plan and may, or may not, be different for each water allocation group.

Division 6

Licences for taking unsupplemented water

Replacement of s 44 (Volume of unsupplemented water)

Clause 13 replaces section 44. This clause is now an overarching section that states the attributes that must be stated on a water licence. This includes the location, purpose, maximum rate of take, daily volumetric limit, annual volumetric limit, seasonal volumetric limit and any flow conditions for the licence.

The location of a water licence is the parcel of land to which the licence attaches as opposed to a zone for water allocations.

This clause also states the attributes that can be stated on a water licence. This may include the monthly volumetric limit.

Insertion of new section 44A (Purpose to be stated on water licence)

Clause 13 also inserts a new section that states that the purpose of the entitlement must be stated on the water licence. The clause defines when that purpose is to be 'rural', 'stock and domestic' or 'any'. The list of purposes that will become 'rural' includes irrigation, stock intensive, agriculture, water harvesting, dairy and aquaculture. Entitlements with stock or domestic purpose will become 'stock and domestic'. All other purposes will be respecified as 'any'.

Amendment of s 45 (Nominal entitlement for unsupplemented water)

Clause 14 amends the title of "Annual volumetric limit for unsupplemented water" to "Nominal entitlement for unsupplemented water". This clause removes section 45(b) and replaces it with two new subclauses that specify how the nominal entitlement is to be determined. A nominal entitlement will be determined using the following rules:

- If an authority already states such a volume, that volume will be used.
- If an authority specifies a condition that states a volume then that volume will be the nominal entitlement for the new water allocation.

- If an authority states an area to be irrigated in subcatchment area C or H, the volume will be decided by multiplying the area by 10 megalitres per hectare.

For example—

An existing entitlement of 20 hectares will be converted to a volume by multiplying 10 megalitres per hectare to determine the nominal entitlement resulting in 200 megalitres.

- For other existing authorisations, the chief executive will decide the volume having regard from the water taking capacity of the works; the amount used historically; the efficiency of the use; and the conditions under which water may be taken.

Insertion of new ss 45A to 45C

Clause 15 inserts three new sections: section 45A Seasonal volumetric limit; section 45B Monthly volumetric limit and 45C Daily volumetric limit.

Section 45A Seasonal volumetric limit

Section 45A is a new clause for water licences in subcatchment areas C and H. The seasonal volumetric limit is the maximum amount of water that is permitted to be taken between July and December in a water year. If the full volume of the seasonal volumetric limit is not taken during this time it may be taken during January to June.

If a water licence is derived from a licence or authority that stated an area to be irrigated then a seasonal volumetric limit will be determined by the chief executive using a conversion factor of 6.6 megalitres per hectare.

For example—

To determine the seasonal volumetric limit the 20 hectares will be multiplied by 6.6 megalitres per hectare resulting in 132 megalitres. 132 megalitres is the maximum amount of water that may be taken between the months of July and December.

A seasonal volumetric limit for a water licence that is derived from a licence or authority that previously stated a volumetric limit will be determined by the chief executive multiplying the annual volumetric limit by 1. The amount of water taken in a water year cannot exceed the nominal entitlement.

For example—

A water allocation with a volume of 10 megalitres will have a seasonal volumetric limit of 10 megalitres. In effect this water may be used at any time of year.

Section 45B Monthly volumetric limit

Section 45B details the matters the chief executive must have regard for when determining the maximum monthly volume for water licences. The monthly volumetric limit specified on a licence works as a water sharing mechanism to account for the seasonal variations in water availability for a licensee. In determining the monthly volumetric limit, the chief executive considers the local availability of water, the amount of water taken in previous years and the conditions imposed on the existing authorisation, the peak demand on water and what water is available.

Section 45C Daily volumetric limit

Section 45C specifies how the daily volumetric limit for a water licence is to be determined. This section states that if the daily volumetric limit is stated on the existing authorisation then that same daily limit will apply to the water licence.

Section 45C(1)(b) states that where the daily volumetric limit is not stated on the existing authorisation, but the associated development permit states a pump size that is listed in schedule 8, column 1, then the limit stated in schedule 8, column 3 applies. If the development permit states a pump size that is not mentioned in schedule 8, column 1, then the chief executive must determine the daily volumetric limit having regard to schedule 8, column 3.

However, for section 45C(1)(b), if the holder of the authorisation satisfies the chief executive that the daily volumetric limit is different from the limit listed in schedule 8, the chief executive can determine a new limit having regard to the conditions under which water may be taken under the authorisation, the water taking capacity of the existing pump, the irrigation or water distribution system associated with the authorisation during the period of not more than 10 years prior to the commencement of the plan and the efficiency of the water use.

If the daily volumetric limit is not stated on the existing authorisation and the associated development permit does not state a pump size for the

works, the daily volumetric limit will be determined by the chief executive having regard to the type of authorisation and an estimate or measurement of the rate at which water can be taken under the authorisation.

Importantly, the chief executive must ensure that the daily volumetric limit for a water licence is not more than the total volume that could be taken in a day at the maximum rate decided under clause 46.

Part 6 Strategies for achieving outcomes (subartesian water)

Replacement of pt 6 (Strategies for achieving outcomes (subartesian water))

Clause 16 removes the previous Part 6 and replaces it with a new Part 6.

The new Part 6 has been restructured to contain a division on general provisions that apply to both of the subartesian areas and a division for the Cairns Northern Beaches Subartesian Area and a division for the Atherton Subartesian Area. As a result, some sections have been renumbered and others have been removed.

Insert new Division 1 General provisions

Division 1 has been expanded to include some of the provisions that were in the original Division 2. This division now contains sections that apply to both the Cairns Northern Beaches Subartesian Area and the Atherton Subartesian Area. A new section, Section 49, now states “the matters a water licence must state”. The section on “bore pumping test” has been removed.

Insert new s 48 Application of pt 6

This part applies to subartesian water in the Atherton Subartesian Area and Cairns Northern Beaches Subartesian Area only.

Insert new s 49 Matters that water licence must state

This section has been renamed and states the matters a water licence must state. This includes the nominal entitlement and the purpose for which water may be taken.

Insert new s 49A Purpose to be stated on water licence

Section 49A is a new section and states that the purpose of the entitlement must be stated on the water licence. The section defines when that purpose is to be 'rural' or 'any'. The list of purposes that will become 'rural' includes irrigation, stock intensive, agriculture, water harvesting, dairy and aquaculture. All other purposes will become 'any'.

Insert new s 50 Limitation on taking water—Act, s 20(6)

Section 50 has moved from division 2 into division 1. This section now applies to both the Atherton Subartesian Area and the Cairns Northern Beaches Subartesian Area. Under this section, water can only be taken for stock and domestic purposes where no licence is required, or in accordance with a licence or permit.

Insert new s 51 Relationship with Integrated Planning Act 1997

Section 51 was previously numbered 54. This section has been moved to Division 1 as it is a general provision that applies to both the Atherton Subartesian Area and the Cairns Northern Beaches Subartesian Area.

This section outlines the interaction of the plan with the *Integrated Planning Act 1997*, regarding works for taking and interfering with subartesian water. Works for taking subartesian water for 'stock and domestic' purposes are self-assessable development. Works for taking subartesian water for any other purposes are assessable development (refer to schedule 8 of the *Integrated Planning Act 1997*).

Insert new Division 2 Strategies for Atherton Subartesian Area only

Division 2 contains 5 new clauses that replace clauses 55, 56 and 57.

Insert new s 52 Applications for subartesian management area A

Section 52 applies to management area A only. An application in area A can only be granted if the total nominal entitlement of all water licences for management area A does not exceed 14 500 megalitres if the resource operations plan includes a process for granting the water. Currently, the nominal entitlement exceeds 14 500 and accordingly no new licences can be granted for management area A.

Insert new s 53 Applications for subartesian management area B

Section 53 states that applications to increase the amount of water that can be taken from management area B will be refused.

Insert new s 54 Exceptions for particular applications

Section 54 lists the exceptions for application for a water licence in management areas A or B (sections 52 and 53) that may be dealt with under the Plan. These include, reinstating an expired water licence, amalgamating two or more water licences, replacing an original licence with two or more water licences, or for one or more licences to replace an expired licence. All these exceptions are dealt with in sections 221, 224, 225 and 229 of the *Water Act 2000*.

Subdivision 2 Continued authorisations for part of subartesian management area B

Insert new 55 Definition for sdiv 2

This is a new section which provides the definition for *existing works* for this section.

Insert new s 56 Taking water using existing works authorised

This is a new section for the owners of an existing water bore that is located in that part of the Atherton Subartesian Management Area B that was outside the “declared area” prior to 20 December 2002. If water was being

taken from this bore for a purpose other than stock and domestic without a licence or permit, then the owner may continue to take groundwater for 1 year after the amended plan notification date, or after the owner notifies the chief executive about its taking.

If the owner notifies the chief executive they may continue to take water until a water licence is issued. The owner may not take more water than the annual volume of groundwater that the owner was taking before 20 December 2002.

Insert new s 57 Granting water licences

This is a new section which states that in accordance with section 212 of the *Water Act 2000* the chief executive must grant a water licence to a person authorised under section 56(3) to continue taking groundwater. The owner will not be granted more water than the annual volume of groundwater that the owner was taking before 20 December 2002. This section also details what the chief executive must consider when granting a water licence.

Insert new s 57A Restriction on nominal entitlement

This is a new section which determines the maximum amount of water that the chief executive may grant a water licence under section 57(2).

Insert new Division 3 Strategies for the Cairns Northern Beaches Subartesian Area

Division 3 has been renamed as it applies to the Cairns Northern Beaches subartesian area only.

Insert new s 57B Decisions about taking subartesian water

Section 57B was previously section 51 and has been amended to refer to Cairns Northern Beaches Subartesian Area only. This section applies to all applications for, or about, a water licence which seek to: increase the volume, change the location, or change the conditions under which water is taken. If an application is made to do any of these things then the chief executive must consider the requirements outlined in this section, in addition to all other matters contained in section 210 of the *Water Act 2000*.

This section also lists other applications for a water licence in the Cairns Northern Beaches Subartesian Area that may be dealt with under the Plan and to which this section does not apply. These include, reinstating an expired water licence, amalgamating two or more water licences, replacing an original licence with two or more water licences, or for one or more licences to replace an expired licence. All these exceptions are dealt with in sections 221, 224, 225 and 229 of the *Water Act 2000*.

Insert new s 57C Restriction on nominal entitlement

Section 57C was previously section 53, and has been amended to refer to the Cairns Northern Beaches Subartesian Area only.

All subartesian water licence applications in the Cairns Northern Beaches Subartesian Area may be accepted and dealt with in accordance with section 206 of the *Water Act 2000* after the commencement of this Plan.

All licences must state a nominal entitlement which is to be determined by the chief executive.

If the licence is to take water for irrigation then the chief executive cannot give more than 1.75 megalitres for each hectare of land to be irrigated.

If the licence is not for irrigation the chief executive must estimate the volume required for the proposed purpose.

Part 7 Monitoring and Reporting Requirements

Amendment of s 58 (Monitoring)

Clause 17 amends section 58 to reflect updated departmental policy on monitoring requirements.

General monitoring requirements include, water monitoring, natural ecosystem monitoring and other monitoring required by the chief executive in the plan area.

Specific water monitoring requirements include, monitoring for stream flows, taking and diverting water, releases from water storages and water quantities for water storages including inflows, storage volumes and

outflows. Natural ecosystems monitoring requirements include the volume, frequency, duration and timing of stream flows and information on hydraulic habitat requirements of ecological assets in the plan area.

Amendment of s 60 (Resource operations licence holders to give reports)

Clause 18 amends section 60 to reflect updated departmental policy on reporting requirements for resource operations licence holders. These amendments are minor and the intent of this section remains the same.

Amendment of s 64 (Minor amendment of plan—Act, s 57)

Clause 19 amends section 64 to update a reference made in subsection (j) regarding a moratorium notice in the *Water Act 2000*. The reference has been updated from section 42 of the Act to section 26 of the Act. This section reflects earlier amendments made to the *Water Act 2000*.

Part 10 Transitional provision for Water Resource (Barron) Amendment Plan (No. 1) 2009

66 Appeals against particular decisions

Clause 20 inserts this new transitional provision that provides for a person that made an application for, or about, a water licence that had the effect of increasing the volume of water taken in subartesian management area B, and started an appeal relating to the application that has not been fully resolved by either the courts or by an agreement between the department and the person involved before the commencement of these amendments.

If an appeal relating to the application has not been fully resolved before the commencement of these amendments, then part 6 of the original water resource plan remains in force for that particular person, rather than part 6 of the amended plan.

Schedules

Amendment of sch 3 (Subcatchment areas)

Clause 21 replaces the subcatchment area map with a new map that includes the new subcatchment area H. Subcatchment area H has been excised from subcatchment area A, and comprises Cherry, Rocky and Spring Creek catchments.

Amendment of sch 5 (Environmental flow objectives)

Clause 22 amends Table 7 in schedule 5 to respecify the mean annual flow for the Barron River at Goonara Creek, Node 7.

Table 8 has also been amended to respecify the annual proportional flow derivation for the Barron River at Goonara Creek, Node 7.

Part 2—Medium to high flow objectives

Table 7

Minor changes have occurred at node 7, Barron River at Goonara. This includes a change of three per cent in the mean annual flow objective (a reduction in the pre-development average from 96 per cent to 93 per cent) and a change from 0.4 to 0.7 in the extent to which the proportion of annual flow is allowed to deviate from pre-development patterns.

These minor changes have occurred due to the increase in the area-to-volume conversion factor from 6.6 megalitres per hectare to 10 megalitres per hectare in subcatchment areas C and H.

Amendment of sch 6 (Water allocation security objectives)

Clause 23 amends the annual volume probabilities for water allocation groups CA, CB and CC in schedule 6.

Clause 23 also includes a new table for the annual volume probability for unsupplemented water users.

Amendment of sch 7 (Total volumes for water allocation groups)

Clause 24 amends the maximum total nominal volume for water allocation groups within subcatchment areas.

The maximum total nominal volume for water allocation group CB has been amended to reflect the changes to the conversion factor for the existing area based water entitlements. The maximum total nominal volume for water allocation group CC has been reduced to reflect the fact that unallocated water will no longer be available as a result of adoption of the higher conversion factor for the entitlements in the CB water allocation group.

Replacement of sch 8 (Rates and pump sizes)

Clause 25 amends schedule 8 by replacing the rate and pump size table. This schedule has been amended to include a greater range of pump sizes and to specify the daily volumetric limit (expressed in megalitres) for each pump size stated.

Amendment of sch 9 (Priority areas)

Clause 26 amends schedule 9 by extending the priority area for the conversion or granting of water allocations under clause 61, within the plan area. The priority area above Lake Tinaroo area has been extended to include tributaries of the Barron River, notably, the Leslie, Mazlin, and Peterson creeks and their tributaries.

Amendment of sch 10 (Dictionary)

Clause 27 amends the dictionary to include definitions for, annual volume probability, nominal entitlement, daily volumetric limit and seasonal volumetric limit.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Resource Management.

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