

# Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015

Explanatory notes for SL 2015 No. 121

made under the

*Water Act 2000*

## General Outline

### Short title

*Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015*

### Authorising law

Chapter 2, part 3, division 2 of the *Water Act 2000*

### Policy objectives and the reasons for them

Section 55 of the *Water Act 2000* provides for the Minister to amend a water resource plan.

The objective of the *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015* is to amend the *Water Resource (Fitzroy Basin) Plan 2011* to provide a framework for the allocation and sustainable management of surface water and groundwater in particular parts of the plan area.

### Achievement of policy objectives

To achieve its objective, the *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015* will provide:

- a framework for reducing groundwater entitlements in the Lower Callide groundwater sub-area to sustainable levels and convert these entitlements to unsupplemented water allocations;
- a framework to amend particular supplemented groundwater allocations in the Callide Valley Water Supply Scheme;
- a framework to amend particular water licences in the Don and Dee Rivers and Alma Creek Water Management Area;

- the Don and Dee Rivers and Alma Creek Water Management Area with access to an existing general unallocated water reserve;
- landholders in areas outside water supply schemes, the ability to take water from a watercourse, lake or spring without an entitlement for non-riparian stock or domestic purposes; and
- landholders in areas outside water supply schemes, the ability to take up to five megalitres of water per financial year without an entitlement for prescribed activities, such as for washing down agricultural equipment.

## **Consistency with policy objectives of authorising law**

The subordinate legislation is consistent with the policy objectives of chapter 2 of the *Water Act 2000*, which is to advance the sustainable management of water.

## **Inconsistency with policy objectives of other legislation**

The subordinate legislation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The *Water Act 2000* sets out the framework for the development of, or an amendment to, a water resource plan. There are no alternative means for achieving the policy objectives.

## **Benefits and costs of implementation**

Implementation of the *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015* will provide the following benefits:

- the sustainable management of groundwater;
- expand the water market through the conversion of water licences to tradable water allocations;
- expanding access to an existing unallocated water reserve;
- a framework to amend particular water entitlements to access additional water subject to strict criteria and conditions, to enable economic growth while considering existing water users including the environment;
- a framework for better defined water entitlements;
- access to water without the requirement for an entitlement, to allow landholders in areas outside water supply schemes to take water for non-riparian stock and domestic use, and to take up to five megalitres of water per annum for prescribed activities, such as for washing down agricultural equipment; and
- removal of redundant provisions to improve readability.

## **Consistency with fundamental legislative principles**

The *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015* has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and is consistent with these principles.

## Consultation

Government departments and agencies affected by the changes have been consulted in respect of the *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015*.

The community in the plan area has been consulted throughout all stages of the amendment process via:

- public information sessions across the plan area;
- meetings with key stakeholder groups;
- consideration of written submissions on the proposed plan amendments; and
- follow up discussions with individuals.

Local government authorities in the area received a copy of the draft *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015* for display, as required under section 100(7) of the *Water Act 2000* and were invited to comment. A public notice was published in local papers outlining that the draft *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015* had been released and where further information could be located. Public information sessions were held at Dululu and Goovigen to explain the provisions of the draft *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015*.

No changes of substance were required as a result of consultation on the draft *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015*. Further information about the consultation process and outcomes of community consultation are contained within the 'Fitzroy Basin Water Resource Plan and Resource Operations Plan Amendments—Consultation Report, August 2015'.

## Notes on Provisions

### Short title

Clause 1 specifies the short title of the subordinate legislation as the *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2015*.

### Plan amended

Clause 2 states that this plan amends the *Water Resource (Fitzroy Basin) Plan 2011*.

### Insertion of new s 7A

Clause 3 inserts a new section 7A into the *Water Resource (Fitzroy Basin) Plan 2011* which defines a new water management area in the Fitzroy Basin—the Don and Dee Rivers and Alma Creek Water Management Area. A map of this new water management area is shown in a map in a new schedule 3A.

### Amendment of s 8 (Information about areas)

Clause 4 amends section 8 of the *Water Resource (Fitzroy Basin) Plan 2011* to include the new Don and Dee Rivers and Alma Creek Water Management Area boundary. Section 8 provides information for accessing further detail on the *Water Resource (Fitzroy Basin) Plan 2011* area boundaries.

### Amendment of s 33 (Particular applications made before commencement of plan)

Clause 5 amends section 33 (b)(iii), (c)(iii) and (d)(iii) of the *Water Resource (Fitzroy Basin) Plan 2011* to reflect a change to section 26 of the *State Development and Public Works Organisation Act 1971* where the term ‘significant project’ was changed to ‘coordinated project’.

### Amendment of s 41 (Period for which water is granted for particular State purpose)

Clause 6 amends section 41(1)(a) of the *Water Resource (Fitzroy Basin) Plan 2011* to reflect a change to section 26 of the *State Development and Public Works Organisation Act 1971* where the term ‘significant project’ was changed to ‘coordinated project’.

### Amendment of s 47 (Reserve volumes)

Clause 7 amends section 47(1) of the *Water Resource (Fitzroy Basin) Plan 2011* to provide for changes made to schedule 8, part 3 of the *Water Resource (Fitzroy Basin) Plan 2011*, which sets out the areas which can access the 32 000 megalitres of general reserve unallocated surface water. The areas which are able to access this reserve have been expanded to include the Don and Dee Rivers and Alma Creek Water Management Area, which is part of the Lower Dawson subcatchment area.

### Replacement of ch 5, pt 1, div 4 (Callide Valley Water Supply Scheme)

Clause 8 replaces division 4 of the *Water Resource (Fitzroy Basin) Plan 2011* with updated sections for the Callide Valley Water Supply Scheme. Redundant sections of division 4 that provided for the conversion of interim water allocations to

supplemented water allocations in the scheme area have been removed, as these conversions occurred immediately following the commencement of the Fitzroy Basin Resource Operations Plan 2014.

New section 49 states that the water allocations in the Callide Valley Water Supply Scheme converted from interim water allocations and are managed under a resource operations licence.

The new section 50 provides a process for particular water allocations in the Callide Valley Water Supply Scheme to have their nominal volume amended, provided certain criteria have been met. The criteria include that:

- the water allocation must belong to the high B or medium priority groups;
- before or on the date of close of submissions for the draft resource operations plan (14 February 2014) the holder of the original interim water allocation had:
  - not received a letter explaining the implication of the section 100 notice or
  - had to the best of the holder's knowledge properly made a submission asking for a particular nominal volume and the chief executive had not received the submission; and
- a statutory declaration must be received prior to commencement of this amendment stating the entitlement holder had never received a letter explaining the implication of the section 100 notice; or within the time required, had properly made a submission about the previous draft resource operations plan asking for a particular nominal volume for the converted allocation.

If these criteria are met, the chief executive may amend the nominal volume of the water allocation. In considering whether to amend the nominal volume, the chief executive must consider, but is not limited to, the following:

- the nominal volume for the original interim water allocation (before it was converted to a water allocation);
- the volume stated on the converted water allocation;
- the extent to which the allocation holder's productive capacity is:
  - dependent on supplemented water; and
  - includes the efficient use of supplemented water; and
- the local availability of supplemented water.

The chief executive must not amend a nominal volume if the amended nominal volume on the water allocation exceeds that stated on the original interim water allocation. The total of the additional nominal volumes must not exceed 124 megalitres.

The new division 5 provides for authorised taking or interfering with water without a water entitlement. In this new division the new section 51 states that an owner of land is authorised to take water in any way from a watercourse, lake or spring outside a water supply scheme, for stock or domestic purposes without an entitlement under section 20A(5) of the *Water Act 2000*. This clause allows non-riparian land owners to take water for stock or domestic requirements from a watercourse, lake or spring outside a water supply scheme.

The new section 52 states that for section 20(2) of the *Water Act 2000*, the total volume of water that may be taken or interfered with for an activity prescribed under the *Water Regulation 2002* is limited to five megalitres per financial year and must not be located within a water supply scheme area. Examples of prescribed activities under the regulation include washing down of agricultural equipment and washing down of a dairy.

#### **Amendment of ss 62 and 64**

Clause 9 amends sections 62 and 64 of the *Water Resource (Fitzroy Basin) Plan 2011* to reflect a change to the *State Development and Public Works Organisation Act 1971* (see section 26) where the term 'significant project' is changed to 'coordinated project'.

#### **Insertion of new s 106A**

Clause 10 inserts a new section 106A which allows the chief executive to amend a water licence to specify an additional nominal entitlement for water licence holders in the Don and Dee Rivers and Alma Creek Water Management Area subject to criteria.

In deciding whether to grant additional nominal entitlement, the chief executive must consider, but is not limited to, the following:

- the area of land, if any, which related to the licence before it was amended following the commencement of the Fitzroy Basin Resource Operations Plan 2014;
- the purpose stated on the licence before it was amended following the commencement of the Fitzroy Basin Resource Operations Plan 2014;
- the volume of water taken under the licence before it was amended following the commencement of the Fitzroy Basin Resource Operations Plan 2014;
- the nominal entitlement for the amended (current) water licence;
- the extent to which the enterprise is dependent on unsupplemented water;
- the local availability of unsupplemented water; and
- the volume of water that can be effectively managed by the licence holder's enterprise infrastructure.

To prevent impacts on the performance of existing water entitlements, the additional volume may only be accessed as per the water sharing rules for the Don and Dee Rivers and Alma Creek Water Management Area stated in the resource operations plan.

#### **Amendment of s 116 (Limitation on taking or interfering with groundwater—Act, s 20(2))**

Clause 11 amends section 116(2) of the *Water Resource (Fitzroy Basin) Plan 2011* to clarify that groundwater in a groundwater management area may also be taken or interfered with without an entitlement for an activity prescribed in Schedule 1 of the *Water Regulation 2002*. The restrictions provided in the new section 52 apply. Examples of prescribed activities under the regulation include washing down of agricultural equipment and washing down of a dairy.

**Insertion of ch 5, pt 3, div 4, sdiv 1, hdg**

Clause 12 inserts a new subdivision 1 heading, under which preliminary information such as the relevant water authorisations, purpose and definitions for Division 4 have been grouped.

**Amendment of s 137 (Application of div 4)**

Clause 13 establishes a defined term—‘section 129 authorisation’—for the Lower Callide groundwater sub-area authorisations described in section 129, which are to be converted to water allocations. Clause 13 references section 51 in the previous water resource plan as interim water allocations in the Callide Valley Water Supply Scheme have been converted to water allocations.

**Amendment of s 139 (Definitions for div 4)**

Clause 14 omits the defined term ‘preliminary volume’. This term has been moved to section 145(6) as it is a term used specifically in that section.

Clause 14 references section 51 in the previous water resource plan as interim water allocations in the Callide Valley Water Supply Scheme have been converted to water allocations

A number of new terms specific to the new entitlement reduction methodology for the Lower Callide groundwater sub-area are added to the definitions list that are used throughout division 4.

The definition of ‘annual adjusted use volume’ is amended so that it applies not only to a ‘2010 authorisation’ but also to a ‘converted section 129 authorisation’. It also clarifies that the volume is for a water year in the history of use consideration period.

The definition of ‘converting authorisation’ is amended to refer to the authorisations in section 129 using its new defined term ‘section 129 authorisation’.

A minor amendment is also made to correct a grammatical error in the definition of ‘pre-2010 contributing authorisation’.

**Insertion of new ch 5, pt 3, div 4, sdiv 2, hdg**

Clause 15 inserts a new subdivision 2 heading relating to nominal entitlements, nominal volumes and annual volumetric limits.

**Insertion of new ch 5, pt 3, div 4, sdiv 3, hdg**

Clause 16 inserts a new subdivision 3 heading relating to preliminary nominal volumes, preliminary nominal entitlements and preliminary annual volumetric limits.

**Amendment of s 141 (Preliminary nominal volume, nominal entitlement or annual volumetric limit)**

Clause 17 inserts additional subsections specifically in relation to the method for determining the preliminary annual volumetric limit for converted water allocations in the Lower Callide groundwater sub-area. This amended section provides a different methodology for determining the preliminary volume for entitlements in the Lower Callide groundwater sub-area than previously stated in the Water Resource (Fitzroy Basin) Plan 2011. This methodology has been developed to achieve the sustainable management of the groundwater resource.

Under this methodology preliminary annual volumetric limits are to be determined as follows:

- the preliminary annual volumetric limit for water allocations, to be converted from water licences used for town water supply, is to be the nominal entitlement on the water licence (no reduction in entitlement volume); and
- for other Lower Callide groundwater sub-area water authorisations to be converted, the preliminary annual volumetric limit is dependent on the 'pre-conversion use volume' determined from the metered use of water for the authorisation during the 'history of use period consideration period' (1 July 1997 to 30 June 2010) as follows:
  - if the pre-conversion use volume is nil, then the preliminary annual volumetric limit is to be five megalitres;
  - if the pre-conversion use volume is less than or equal to 5% of the nominal entitlement of the authorisation, then the preliminary annual volumetric limit is to be 5% of the authorisation or five megalitres, whichever is greater;
  - if the pre-conversion use volume is more than 5% but less than or equal to 35% of the nominal entitlement of the authorisation, then the preliminary annual volumetric limit is to be 35% of the nominal entitlement;
  - if the pre-conversion use volume is more than 35% but less than or equal to 65% of the nominal entitlement of the authorisation, then the preliminary annual volumetric limit is to be the pre-conversion use volume;
  - if the pre-conversion use is more than 65% of the nominal entitlement of the authorisation and the nominal entitlement is not greater than 250 ML, then the preliminary annual volumetric limit is to be pre-conversion use volume; and
  - if the pre-conversion use is more than 65% of the nominal entitlement of the authorisation and the nominal entitlement is greater than 250 ML, then the preliminary annual volumetric limit is 65% of the nominal entitlement.

The subsections for section 141 have been renumbered accordingly.

The Chief Executive may decide to grant an additional annual volumetric limit to water allocation holders in the Lower Callide groundwater sub-area under the subdivision 4 and subdivision 5 of chapter 5, part 3, division 4 of the *Water Resource (Fitzroy Basin) Plan 2011*.

#### **Replacement of s 142 (2010 authorisation volume)**

Clause 18 replaces the definition of '2010 authorisation volume' to clarify that the calculation of the volume is based on the period during the 'history of use consideration period' defined in section 139 as the period from 1 July 1997 to 30 June 2010.

Clause 18 also inserts a new section 142A, which provides a definition for 'pre-conversion use volume' required for the new methodology for reducing water entitlements volumes for authorisations in the Lower Callide groundwater sub-area. The new definition avoids duplicating an additional five megalitres for authorisations with no water use.

If no water had been taken under the water authorisation during the 'history of use consideration period', then the pre-conversion use volume is to be zero.



If water had been taken, then the pre-conversion use volume is to be the mean (rounded up to the nearest megalitre) of the five largest 'annual adjusted use volumes' during the 'history of use consideration period', plus five megalitres.

**Amendment of s 143 (Annual adjusted volume)**

Clause 19 amends section 143(1) so that a method is also set out for determining the 'annual adjusted volume' for Lower Callide groundwater subarea authorisations being converted to water allocations by recognising the new 'section 129 authorisation' definition.

**Amendment of s 144 (Deemed use for an authorisation)**

Clause 20 amends section 144 so that the method for calculating 'deemed use' also applies to the Lower Callide groundwater sub-area water authorisations converted to water allocations.

**Insertion of new ch 5, pt 3, div 4, sdiv 4, hdg**

Clause 21 inserts a new subdivision 4 heading relating to submissions for additional nominal volumes, additional nominal entitlements and additional annual volumetric limits.

**Amendment of s 145 (Additional nominal volume, nominal entitlement or annual volumetric limit)**

Clause 22 amends the heading of section 145 to clarify that it only applies to particular authorisations and make reference to the relative *Water Act 2000* section 100 (4).

It also amends the 14 500 megalitres cap for groundwater allocations in the Callide Valley Water Supply Scheme to 14 624 megalitres, to reflect the additional 124 megalitres of nominal volume as mentioned in new section 50.

It also removes the definition of 'enterprise' and 'potential productive capacity'. These terms have been moved into the Dictionary in schedule 13. A definition for 'preliminary volume' is inserted into section 145 (6).

**Insertion of new ch 5, pt 3, div 4, sdiv 5**

Clause 23 inserts a new subdivision 5 relating specifically to additional annual volumetric limit for converted Lower Callide groundwater subarea water allocations.

The new section 145A allows the chief executive to grant an additional annual volumetric limit to a water allocation holder, if satisfied that the preliminary annual volumetric limit for the allocation is not sufficient for its related enterprise.

The chief executive may only do so if the total of the preliminary annual volumetric limits for all 'relevant Lower Callide authorisations' does not exceed 6000 megalitres.

Any additional annual volumetric must not provide an annual volumetric limit for the water allocation that exceeds the nominal entitlement for the authorisation from which it was converted.

In deciding the additional annual volumetric limit, the chief executive must consider but is not limited to the following:

- nominal entitlement for the authorisation that was converted;
- preliminary annual volumetric limit for the converted allocation;
- extent to which the enterprise is dependent on groundwater;
- local availability of groundwater; and
- total volume of water that can be effectively managed under the allocation holder's enterprise infrastructure.

The total of the preliminary volumes and additional volumes for all water allocations in the Lower Callide groundwater sub-area must not exceed 6000 megalitres.

### **Insertion of new sch 3A**

Clause 24 inserts a new schedule 3A which provides a map of the Don and Dee Rivers and Alma Creek Water Management Area.

### **Amendment of sch 6 (Environmental flow objectives)**

Clause 25 amends schedule 6 of the *Water Resource (Fitzroy Basin) Plan 2011* to correct a minor error within the definition of the 'first post-winter flow event'. Part (1) (ii) (A) that describes the qualification of events at nodes other than node 0, '3m' changed to '1.5m'.

### **Amendment of sch 7 (Water allocation security objectives)**

Clause 26 amends schedule 7, section 5, items 1 and 2 to ensure the water allocation group names in the Lower Callide groundwater sub-area are consistent with section 135 of the *Water Resource (Fitzroy Basin) Plan 2011*. To be consistent, 'GWA1A' and 'GWA1B' have been amended to 'GW1A' and 'GW1B' respectively.

### **Amendment of sch 8 (Unallocated water)**

Clause 27 amends the tables in parts 1, 3 and 4 of schedule 8. The headings in column 1 of table under parts 1 and 4 have been amended to be labelled 'Subcatchment area'.

The heading in column 1 of table 3 has been amended to 'subcatchment area or part of subcatchment area' to allow definition of the 32 000 megalitres general reserve surface water volume to apply to the Don and Dee Rivers and Alma Creek Water Management Area.

### **Amendment of sch 13 (Dictionary)**

Clause 28 omits the definition of 'project of State significance' because an amendment to the *State Development and Public Works Organisation Act 1971* saw the term 'significant project' changed to 'coordinated project'. A definition for 'coordinated project' has been added to the definitions list.

A number of other definitions have either been moved into this schedule or new definitions have been inserted that are used throughout the amended plan.