

Water Plan (Fitzroy Basin) Amendment Plan 2021

Explanatory notes for SL 2021 No.71

made under the

Water Act 2000

General Outline

Short title

Water Plan (Fitzroy Basin) Amendment Plan 2021

Authorising law

Sections 42, 44, 45, 46, 47 and 48 the *Water Act 2000*

Policy objectives and the reasons for them

Section 42 of the *Water Act 2000* (the Act) provides for the Minister to prepare a water plan for any part of Queensland to advance the sustainable management of water.

The objective of the *Water Plan (Fitzroy Basin) Amendment Plan 2021* (the plan) is to provide a framework for the allocation and sustainable management of surface water associated with the proposed Rookwood Weir. The plan's strategies ensure future water requirements can be met whilst protecting natural ecosystems and maintaining supply to existing water users. The plan also provides for the transition of provisions taken to be in the water plan, which were previously stated in a resource operations plan, under section 1264 of the Act, into the plan, and provides for the transition of management arrangements currently stated in the *Water Regulation 2016* into the plan.

Achievement of policy objectives

The plan provides for the allocation and sustainable management of water in the plan area by—

- stating principles for allocating water released from the strategic infrastructure unallocated water reserve for infrastructure on the Fitzroy River; and
- establishing the Rookwood Weir Water Supply Scheme and its trading zones;
- stating water allocation security objectives for future water allocations granted from the Rookwood Weir Water Supply Scheme;

- transitioning rules for seasonal water assignment and water sharing for the Don and Dee groundwater management area and Prospect Creek and Upper Callide groundwater management area from the *Water Regulation 2016* into the plan;
- transitioning rules stated under section 1264 of the Act that were once in a resource operations plan, now taken to be in a water plan, into the plan;
- other minor amendments and corrections.

Consistency with policy objectives of authorising law

The plan is consistent with the main objectives of the Act which is to provide a framework for the sustainable management of Queensland's water resources.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

The Act sets out the framework for preparing a water plan. There are no alternative means for achieving the policy objectives.

Benefits and costs of implementation

Implementation of the plan will:

- provide a framework to be able to grant water allocations for the take of water from the Rookwood Weir Water Supply Scheme;
- ensure agricultural, industrial and town water supply requirements are met when water is released from the strategic infrastructure reserve;
- establish a requirement to grant at least 50 percent of unallocated water held in reserve for infrastructure on the Fitzroy River for agriculture;
- provide clarity with regards to where particular provisions sit within statutory instruments of the water planning framework.

There are no costs associated with the implementation of the plan. All implementation actions are covered within existing departmental budgets.

Consistency with fundamental legislative principles

As subordinate legislation the plan is consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Section 46 of the Act details the requirements for publishing the draft water plan and details on how submissions may be made.

The Minister released the draft water amendment plan on 19 August 2020. The draft amendment plan was accompanied by a public notice stating the availability of the draft plan and details for how to make submissions. The notice stated that submissions must be received by 29 September 2020. A statement of intent also accompanied the draft amendment plan and provided a summary of the intent and effect of the draft amendment plan.

The consultation period of 30 business days included a number of stakeholder teleconferences with a range of groups including local governments, peak agricultural bodies, industry groups, environmental groups and Aboriginal groups. Members of the public could contact the department or SunWater with queries related to the draft amendment plan.

Submissions were invited from entitlement holders and stakeholders. Eleven submissions were received and were considered in finalising the plan. One submission received resulted in the inclusion of two new specific surface water outcomes related to town water supply security. The remainder of submissions received raised no issues that resulted in a change of substance to the draft water plan. Further information about the consultation process and outcomes of community consultation are outlined in a separate document, the *Water Plan (Fitzroy Basin) Amendment Plan 2021 Minister's Consideration Report*.

On 19 December 2016 the Queensland Productivity Commission (QPC) advised the department that where the process to make or amend water plans is followed as per the provisions in the Act, the plans will have undergone an extensive impact assessment process and the QPC therefore considers that, under the Queensland Government Guide to Better Regulation, the department is not required to seek advice from the QPC.

Notes on provisions

Amendments which are not declared or transitional

Clause 1 states that this plan may be cited as the *Water Plan (Fitzroy Basin) Amendment Plan 2021*.

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

Clause 9 inserts a new specific surface water outcome about protecting the probability of being able to take water from the Fitzroy River under a water allocation held by a water service provider. This outcome does not override the requirements of section 12(d), but expands upon the existing outcome, where previously town water supply was a subset of that outcome. This will require that where an application or decision must be consistent with the plans outcomes, it must now consider town water supply distinct to section 12(d).

Clause 9 inserts a second new specific surface water outcome for surface water in the Fitzroy Barrage Water Supply Scheme and the Lower Fitzroy Water Supply Scheme. The outcome requires the operations manuals for the Fitzroy Barrage Water Supply Scheme and Lower Fitzroy Water Supply Scheme to include measures to ensure water security to water service providers when there is a shortage of water.

The requirement to address meeting this outcome will be achieved through section 201 of the Act where the operations manuals may be deemed to be inconsistent with the water plan outcomes. Therefore, under section 201(2), the holder or holders may apply to the chief executive to amend their operations manuals to include new measures that address meeting the outcome. If no application is made, section 201(3) may be enacted whereby the chief executive may direct the holder to review the operations manual to address the inconsistency and the holder must review the manual as required by the chief executive and apply to the chief executive in writing to amend it.

Clause 11 inserts new section 15A stating a new measure about the release of unallocated water from the strategic water infrastructure reserve for infrastructure on the Fitzroy River. The measure contributes to achieving the specific outcome stated in section 13(1)(c), that at least 50 percent of unallocated water held as a strategic water infrastructure reserve released in association with Rookwood Weir is released to agricultural users. Note that any residual volume not released from this reserve is not subject to the requirements of this outcome (i.e. water released associated with a future raising of Eden Bann Weir or a future raising of the Fitzroy Barrage).

The definition for agricultural users is also listed under subsection (3), where an agricultural user is defined as a holder of a water entitlement who uses water for an agricultural activity. The definition for agricultural activity is also included in subsection (3) and lists activities considered in addition to the normal meaning for agricultural activity, to be an agricultural activity. Therefore, this definition is not exhaustive and other uses which may be considered as agricultural may be an agricultural activity.

Clauses 29 and 31 amend sections 101 and 103 of the plan to enable a water licence to state a purpose of relift. Clause 29 states a purpose of relift may be stated on a new water licence granted for that purpose. Clause 31 states that a water licence may be amended to state a purpose of relift if the purpose the water licence is being used for is generally consistent with the definition provided under this section. Note this definition does not apply to section 101 for the granting of a water licence.

Clause 47 inserts a new section 3A which states the performance indicators and the water allocation security objectives for each performance indicator for water allocations in a high priority group, or a medium priority group which take water supplied from the Rookwood Weir Water Supply Scheme. These water allocation security objectives are:

- For water allocations in a high priority group upstream of Rookwood Weir
 - the annual supplemented water sharing index is to be at least 94 per cent;
 - the monthly supplemented water sharing index is to be at least 98 per cent.
- For water allocations in a medium priority group upstream or downstream of Rookwood Weir—the monthly supplemented water sharing index is to be at least 82 per cent.

Clause 48 amends some unallocated water reserve volumes to remove volumes of water already granted from the reserves stated in the amendment plan under a process stated in the *Water Regulation 2016*. For example, for the change stated in subsection (5) for schedule 8, part 5, table, entry for Carnarvon groundwater management area, column 2, 160ML of water was granted from the unallocated water reserve for this groundwater management area. The volume held in reserve prior to the release was 1,000ML, therefore 840ML remains in this unallocated water reserve for future release.

Declared amendments

The following notes are for amendments relating to including rules currently taken to be in the water plan, into the water plan. Section 1259(2)(e) of the Act states those provisions previously stated in a resource operations plan are taken to have effect for the purposes of the water plan and are to be read and construed with the water plan, with necessary changes. These changes came into effect at the commencement of the Water Reform and Other Legislation Amendment Bill 2014. Section 1259(7) of the Act states that the effect of 1259(2)(e) continues to apply for the purposes of a water plan until the plan is amended to include provisions of the kind mentioned in section 1264. An amendment of a water plan to include these provisions must include a declaration that the amendments are made for that purpose. If for any reason a provision is not included in a water plan as part of this amendment regulation, the provision under section 1264 of the Act will continue to have affect until such time the plan is amended to include that provision, or the plan is replaced.

Clause 3 declares that sections 4, 5, 6, 21, 34, 45 and 46 of this amendment plan are made for section 1259(7) of the Act.

Clause 4 amends section 7 to state that maps for the groundwater sub-area zones are stated in schedule 4.

Clause 5 inserts new maps into schedule 3A showing the water management areas and zones for the water management areas.

Clause 6 inserts new sections 7B–7E to state that maps showing water management areas, water management area zones, water licence zones and water supply schemes are stated in schedules 3B, 3C, 4A and 4B respectively. New section 7F states that any zone stated in new sections 7B, 7C and 7E are trading zones for the purposes of section 43 of the Act.

Clause 21 inserts new sections 53-55 for the deciding applications for water licences, and applications for dealings with water licences. With regards to sections 53(1)(a)-(d) and (2), and section 54, these sections have been included in the water plan as they are taken to have effect for the purposes of the water plan and are to be read and construed with the water plan as per section 1259(2)(e) of the Act.

Clause 34 amends section 112 to state that the process for granting a licence to take overland flow water is now a process stated in the water management protocol.

Clauses 37 and 38 insert new maps into the water plan to show the extent of water allocation zones in the plan area.

Amendments to transition management arrangements for groundwater in the Don and Dee and Prospect Creek and Upper Callide groundwater management areas

The following notes are for amendments relating to transitioning water sharing and seasonal water assignment rules for the Don and Dee and Prospect Creek and Upper Callide groundwater management areas. These areas are currently managed under the *Water Regulation 2016* and the water sharing and seasonal water assignment rules are published on the department's website. The amendments will transition these arrangements and rules into the water plan and water management protocol.

Clause 21 inserts new sections 53-55 for the deciding applications for water licences, and applications for dealings with water licences. Note these are in addition to the changes in relation to section 1259(2)(e) of the Act.

Section 53 states the types of licences that may be accepted under section 107 of the Act. All other water licence applications made under 107 of the Act, unless permitted under this section may not be accepted. Note this exclusion includes an application for an overland flow licence, but does not exclude where a person may make a submission to the chief executive under the rules stated in the water management protocol to replace an existing authority to take overland flow water with a water licence.

Section 54 states that the chief executive may decide to grant an application to relocate a water licence, or grant an application for a seasonal water assignment if granting the application is consistent with the requirements under this section, and the requirements stated in the water management protocol. Note that for the section of the water management protocol regarding a change of location, that it is not an application for a change of location made under section 126 of the Act. This terminology has been

carried over from the previous resource operations plan with terminology consistent with the Act at the time at which the resource operations plan was made.

Section 55 states the types of applications made for dealings made under section 129 of the Act, would be inconsistent with this plan. For subsection (c), interference means interference by both impoundment and diversion.

Clause 45 inserts a new map into schedule 4, as map A to show the boundaries of the groundwater sub-areas and groundwater sub-area zones which are now include din the water plan.

Amendments due to completion of particular matters dealt with under the water plan

Clause 16 omits chapter 5, part 1, division 2 because the effects of the moratoriums stated under this section are no longer in effect following the finalisation of the replacing *Water Plan (Fitzroy Basin) 2011* and the Fitzroy Basin Resource Operations Plan.

Clause 18 omits chapter 5, part 1, division 4 because the requirements under this section for dealing with and amending water allocations in the Callide Valley Water Supply Scheme have been completed.

Clause 25 omits chapter 5, part 2, division 5 as any water licences that were able to be granted under this section have been dealt with.

Clause 32 omits section 106A as additional nominal entitlements have been decided for water licences dealt with under this section.

Clause 38 (to the extent it omits subsection (1)) and clause 39 omits chapter 5, part 3, division 2, subdivision 3 and divisions 3 and 4 as the granting of water allocations and amending of nominal entitlements provided for under these divisions has been completed.

Other amendments

Clause 7 amends section 8 to state that details about the areas shown on maps in the schedules of this plan may be obtained from the department in digital electronic form.

Clause 8 inserts a definition previously stated in a repealed section of the water plan to maintain the context of the term defined in the general outcome.

Clause 15 omits section 30 from the water plan. Under section 186 of the Act, this section does not need to be considered when making a decision to approve an operations manual, and is therefore not required.

Clause 17 replaces chapter 5, part 1, subdivision 6 with the current process for releasing unallocated water which aligns with the requirements of the Act and the Water Regulation 2016. The process previously stated in the plan has been superseded.

Clause 24 amends section 77 to update references to where water licences may be granted with respect to sections now superseded or repealed by this amendment plan.

Clause 28 inserts a new section 100 to establish that this division applies to:

- a water licence proposed to be granted by the chief executive under the Act to take water to which this plan applies; or
- a water licence to take water to which this plan applies that is proposed to be amended under section 133 of the Act for consistency with this plan.

However, this division does not apply to a water licence to interfere with the flow of water to which this plan applies.

Clause 39 omits chapter 6 as the monitoring and reporting requirements previously stated under this section are now stated in the Water Regulation 2016.

Clause 40 replaces the implementation schedule with the requirement to prepare a water management protocol for the plan area, and what the water management protocol must address. This change reflects the transitional provisions under section 1259(2)(f) where particular provisions in a resource operations plan are included in the water management protocol. This continues the requirement to develop rules to implement the water management strategies contained in the water plan.

Clause 44 inserts a new section 154 into the water plan to state that if an application was made for a resource operations licence before the commencement of the *Water Plan (Fitzroy Basin) Amendment Plan 2021*, and the application had not been decided, the application must be decided as if section 13 had not been amended by the amendment plan, and chapter 3A had not been inserted into the amendment plan.

Clause 44 also inserts new sections 155-157 to clarify the function of particular parts of the amendment plan. Section 154 clarifies that the repeal of section 34 of the plan does not end its effect. Sections 155 and 156 clarify that an application made under provisions taken to be in a water plan under section 1259(2)(e) and (7) of the Act, those applications are still subject to the criteria now stated in the water plan as sections 53(1)(e) and 55.

Clauses 45 and 46 (to the extent of any mapping details that do not include the Rookwood Weir Water Supply Scheme or its zones or areas transitioned from the *Water Regulation 2016*) amend existing maps already stated in the water plan in Schedules 1-5 to update and correct references, to improve image quality and to specify boundary extents to GDA 2020 specifications.

Clause 49 amends the dictionary to remove words no longer referred to in the water plan, relocate definitions to in text definitions within the water plan and to include new definitions related to transitional, declared and new provisions.

Clause 50 states that the amendment plan expires on the day after it is notified.

The following clauses are considered minor in nature and are to amend aspects of the water plan to remove matters no longer dealt with under the Act, correct references to other instruments, or to other parts of the water plan. These clauses are:

- Clause 10
- Clauses 12-14
- Clauses 18-20
- Clauses 22 & 23
- Clauses 25 & 27
- Clause 30
- Clause 33
- Clause 35-37
- Clause 41-43.

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