



Department of
Primary Industries
Office of Water

Report to the Minister on audit of inland alluvial water sharing plans which commenced in 2006



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The NSW Office of Water manages the policy and regulatory frameworks for the state's surface water and groundwater resources, to provide a secure and sustainable water supply for all users. It also supports water utilities in the provision of water and sewerage services throughout New South Wales.

Report to the Minister on audit of inland alluvial water sharing plans which commenced in 2006

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Acronyms and abbreviations

AWD	Available Water Determination
Basin Plan	Murray Darling Basin Plan developed under the Commonwealth <i>Water Act (2007)</i>
BLR	Basic Landholder Rights
CMA	Catchment Management Authority
DPI	Department of Primary Industries
GDE	Groundwater dependent ecosystem
LTAAEL	Long-term average annual extraction limit
MDB Cap	Murray-Darling Basin Cap
The Minister	Minister for Primary Industries
N/A	Not applicable
NRC	Natural Resources Commission
the Act	Water Management Act 2000
OEH	Office of Environment and Heritage
the panel	Audit Panel appointed by the Minister for Primary Industries under s. 44 of the WMA
WMA	Water Management Act 2000

Glossary

Remake water sharing plan refers to the Minister's decision to roll over the existing plan or make a new one at the end of the first 10 year term

Amend water sharing plan refers to changes made to the plan during its 10 year term. These changes may be provided for in the original plan provisions or made by the Minister under s.45(1)(a) of the Act.

Executive summary

In early 2012, the Minister for Primary Industries appointed an Audit Panel under section 44 of the *Water Management Act (2000)* to audit the implementation of the five water sharing plans which commenced in October and November 2006. Reflecting the requirements of the Act and the terms of reference of the panel, the audit focussed on whether the water sharing plan provisions had been implemented. It did not focus on the effectiveness of the plans as this will be considered at the end of the plans' 10 year term.

This report to the Minister on the audit was prepared by the NSW Office of Water (the Office) under the direction of the panel.

Section 1 of the report outlines the scope of the audit, the process used by the panel in fulfilling its task and the classification system developed by the panel to assess and highlight differences in implementation activity across the plans.

Section 2 summarises the findings of the panel using the classification system employed by the panel. Differences in implementation activity across the individual plans and within plans are discussed.

Key findings are as follows:

- Over 90% of provisions were either not required to be implemented, or were implemented when required
- Due to metering across the aquifers, extraction limits have been able to be reviewed on an annual basis
- New water supply works have been granted in line with plan provisions, however a small amount have not met all the required construction specifications
- Local impact management areas have been implemented in the Lower Murrumbidgee and Upper and Lower Namoi to protect groundwater levels. Management strategies have also been used in the Lower Gwydir and Lower Macquarie to protect groundwater levels
- The Office of Water is undertaking a range of activities that will have an impact on the plans when finalised. For example studies are currently being undertaken to monitor and review recharge, planned environmental water and groundwater dependent ecosystems (GDEs), policies are being developed and finalised (Mandatory guidelines for take and use of water under domestic and stock rights) and the *Water Management Regulation (General) 2011* is being amended to include a new form of specific purpose access licence (salinity and groundwater table management). In the future when these tasks are finalised, the relevant outcomes may need to be incorporated into the plans
- Access licences have been granted with all the necessary mandatory conditions. Some mandatory conditions for works approvals have not been applied to licences in all plan areas.

Section 3 outlines the additional measures identified by the panel which are required to give effect to the current plans, and lessons for future water sharing plans and the Murray-Darling Basin Plan (the Basin Plan) developed under the *Commonwealth Water Act (2007)*.

Key measures identified for the plans include:

- Consider results of any new or updated groundwater models as part of any amendment to the plans or upon remake of the plans to ensure that recharge and planned environmental water estimates are based on the best available information
- In the Lower Murray continue with salinity monitoring and consider changes to the triggers for water quality management strategies as part of an amendment or upon remake of the plan to ensure that water quality management strategies are appropriate and cost effective
- Investigate causes for construction condition non-compliance and implement appropriate strategies to mitigate the impacts of alternative construction methods for bores highlighted in this audit
- Amend licences and approvals to include remediation conditions where required and all mandatory conditions specified in the plans
- Consider amending the Lower Murrumbidgee plan to include the local impact rules as permanent trading rules in the water sharing plan, due to their long standing implementation and effective management in maintaining groundwater levels
- Establish a ongoing groundwater quality monitoring strategy within the NSW Office of Water
- Upon remake of the Upper and Lower Namoi water sharing plan, remove the provision that specifies that dealings within the water source may not occur if the dealing results in the total access licence share components or credited water allocations authorised to be extracted through nominated works at a location exceeding 600 ML/yr per square kilometre.

Section 4 sets out the next steps required to improve implementation of the water sharing plans covered by the audit following submission of the audit report to the Minister, namely:

- Review processes for licence conversion at commencement of new plans to ensure licence categories are correctly carried across to *the Water Management Act 2000* and consider implementing an ongoing process that will identify if licences have been incorrectly converted at the time of plan commencement
- Establish a ongoing groundwater quality monitoring strategy within the NSW Office of Water
- Where a local impact area is in place for a reasonable length of time, investigate the appropriateness of converting the management rules into the relevant water sharing plan upon plan remake
- Translating the additional measures identified by the panel, and adopted by the Minister, into tangible actions. It is acknowledged that this will be the responsibility of the Office of Water. The panel requests that the State Interagency Panel on Water Sharing be kept informed of progress on this.

The Act also requires that when deciding whether to extend or remake an existing plan the Minister considers the most recent audit of water sharing plans (conducted under s.44 of the Act) and a report from the Natural Resources Commission (NRC) on the contribution of the water sharing plans to the achievement of the relevant statewide natural resource management standards and targets in the relevant catchment management area together with any recommended plan changes.

Introduction

Section 44 of the *Water Management Act 2000 (NSW)* requires that management plans (including water sharing plans) be audited at intervals of not more than five years in order to ascertain whether their provisions are being given effect to. The Minister is required to have regard to the results of the most recent audit conducted under this section when setting terms of reference for the preparation of a management plan to replace an existing management plan.

To this end, the Minister appointed a panel in late 2011 (see Attachment A for a list of members and terms of reference) to review implementation of the first five inland alluvial water sharing plans (namely those which commenced on 1 October 2006 or 1 November 2006).

The timing of this audit also presents an opportunity for relevant audit findings to inform the Murray-Darling Basin Plan, and the Natural Resource Commission's review of the NSW Catchment Management Authority (CMA) Catchment Action Plan targets.

Scope of the audit

This 2011 audit covered the five water sharing plans which commenced on either 1 October 2006 or 1 November 2006 (shown in Table 1 below) and considered the degree of implementation of the water sharing plan provisions during the five years from October/November 2006 to June 2011.

Table 1 Water sharing plans covered by the 2011 audit of implementation


Alluvial water sharing plan	Commencement date
Lower Murrumbidgee	1 October 2006
Lower Murray	1 November 2006
Lower Macquarie	1 October 2006
Lower Gwydir	1 October 2006
Upper and Lower Namoi	1 November 2006

Status of the water sharing plans

No plans were suspended during the first five years of their term.


Methodology

The audit of implementation of water sharing plans relied on analysis conducted by the Office of Water for the consideration of the panel. This analysis was summarised and classified the degree of implementation of water sharing plan provisions. Provisions were classified as follows:

 Always implemented when required, or not required to be implemented as triggers for action have not been reached, but everything is in place should action be required.

 Required to be implemented and sometimes implemented.

 Required to be implemented but never implemented.

 Activities not yet scheduled to commence or Minister has not exercised their discretion to act.

Reflecting the requirements of the Act and the terms of reference of the Audit Panel, the focus of the audit is on the implementation of the provisions in the plans. They do not attempt to assess the

outcomes or effectiveness of the plan in achieving its objectives. From this assessment further actions required to address partial or non implementation were identified where required.

The focus on the implementation of water sharing plan provisions also means that the analysis did not summarise all of the water management activities which the NSW government is involved in. Activities which complement the implementation of the plans or are undertaken to fulfil NSW requirements under the National Water Initiative, State Plan or other drivers were not reported on.

For the sake of brevity and to reduce unnecessary duplication, activities with the same implementation requirements and classification across plans were grouped together in the analysis. For example, many of the water sharing plan provisions assessed as being implemented when required covered multiple water sharing plans and multiple years whilst many of those classified as not implemented when required covered one water sharing plan for only some of the past five years. This means that a simple tally of the number of activities in each category in the analysis is not useful in gaining an overall picture of the proportion of implementation activities required by the water sharing plans.

To address this issue, a quantitative analysis of implementation of the water sharing plans was also conducted by the Office of Water staff on behalf of the panel. This involved analysis of the individual provisions in each of the five plans to determine how many implementation activities were required for each plan and identify those which required implementation and those which were not triggered during the five year period under consideration. The number of provisions which required action was then compared to the number actually implemented in each of the past five years. The classification categories (not required, fully implemented, partially implemented and not implemented) used in the assessment was also used in this quantitative analysis. The percentage figures and graphs included in this report rely on this quantitative analysis. It should be noted that, whilst useful, this quantitative analysis was not the only information used by the panel in undertaking its audit of the water sharing plans.

The varying complexity and structure of the individual plan rules meant that a particular implementation activity may not have been required in all plans or in all years. For example, all but the Lower Murray plan included rules for a variation in the extraction limit.

The panel did not have the capacity to independently verify the Office of Water documentation and assessment of water sharing plan implementation in detail. Instead, they drew upon their knowledge of particular plans and/or areas to intuitively assess the accuracy of Office of Water documentation of water sharing plan implementation. This was supplemented via consultation on Office of Water work within each of the panel member's organisations. Where required, the original audit material was modified to take into account feedback from this consultation.

The panel then reviewed the audit material, both quantitative and qualitative, to:

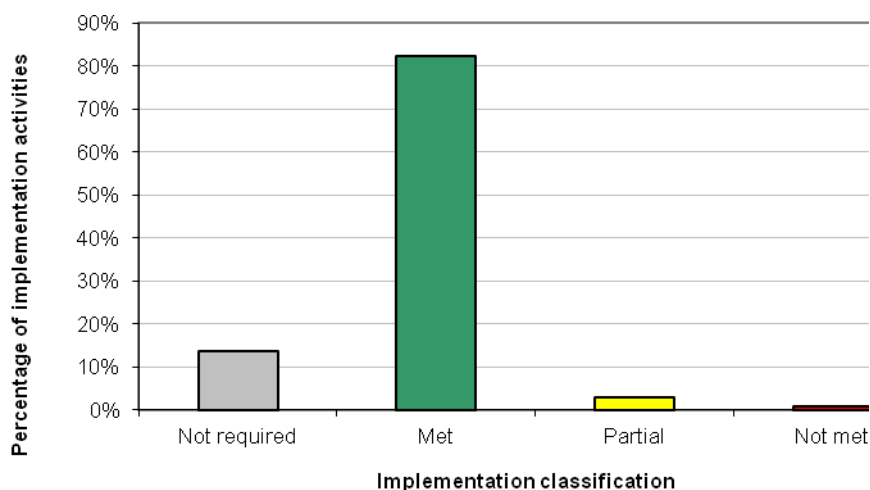
- identify patterns of implementation activities across water source types, across plans and types of water sharing plan provisions
- identify actions required to address instances of partial and non-implementation
- develop broad recommendations for improving the implementation of existing plans and the robustness of new plans and
- identify opportunities for linking the audit findings with other related processes, namely the NSW government's input to the development of the Commonwealth Murray-Darling Basin Plan and review of Catchment Management Authorities' catchment action plan targets.

Findings

Patterns of implementation across water sharing plans

Across all five water sharing plans 82 per cent of plan provisions that required an assessment under the audit were implemented when required (Figure 1). Fourteen per cent of provisions requiring an assessment were not required to be implemented and four percent of provisions were partially implemented or were not implemented when required (Figure 1).

Figure 1: Implementation classification as a percentage of those provisions required to be implemented from 2006 to 2011 across five inland alluvial water sharing plans



Greater consideration was given by the panel to those provisions which were not implemented when required or only partially implemented than to those which were implemented as and when required. This focus is reflected in the discussions in the remainder of this report.

Over 10 per cent of provisions in the plan were not required to be implemented (Figure 1). Often processes described within the plan were not implemented however alternate methods (i.e. management methods not described in the plan) were used to manage impacts on the aquifer.

For example, the Lower Gwydir and Upper and Lower Namoi water sharing plans set out that if groundwater levels need to be managed to manage impacts from extraction a local impact area can be established. Establishing a local impact area is management of declining water levels. Restricting trading is a preventative measure to ensure that declines do not occur. In the Lower Gwydir and Upper and Lower Namoi, a local impact area has not been required, as preventative action in the form of trading restrictions has kept groundwater levels from declining. As the process for management described within the plan has not been implemented, the provision was given a rating of 'not required'.

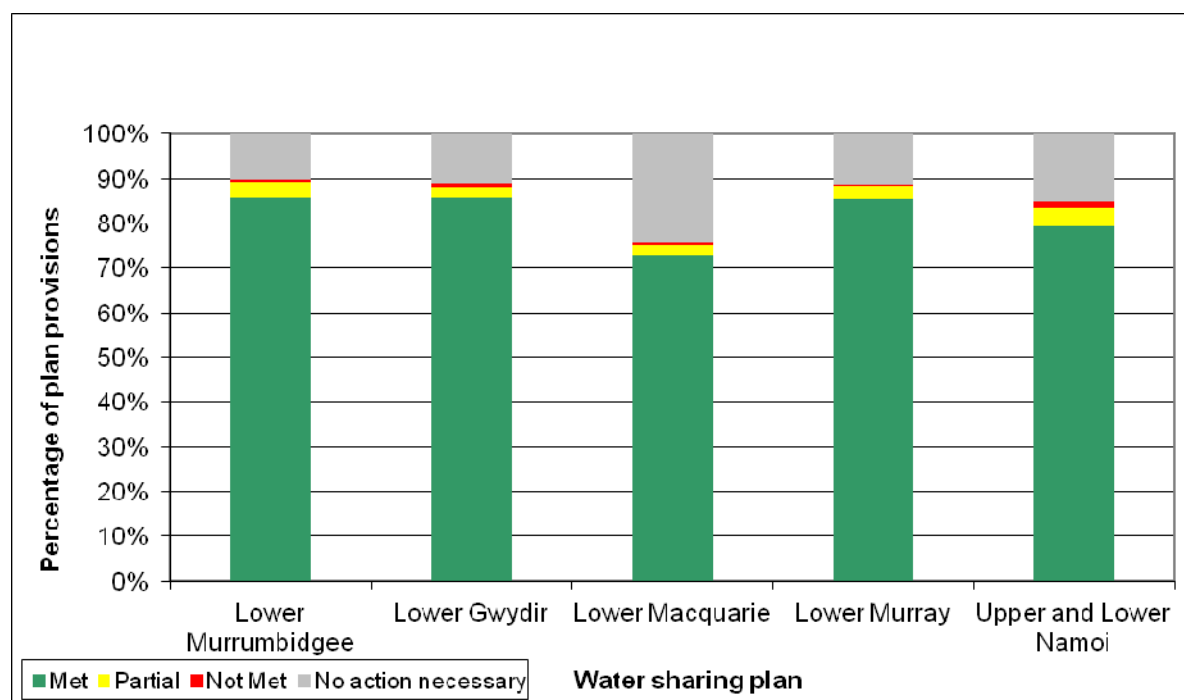
Whilst the local impact management process was not required to be implemented, alternative methods were developed to manage groundwater levels, to the same aim as the provisions set out in the plan. In the Upper and Lower Namoi and the Lower Gwydir this alternative management method took the form of guidelines used by NSW Office of Water staff to restrict trading into high stress areas.

The plan that had the highest percentage of provisions that were not required to be implemented (24%) was the Lower Macquarie (Figure 2). In this plan area, it was notable that whilst provisions to implement a local impact management area in the Lower Macquarie to manage groundwater levels were not implemented, alternative management strategies, to manage groundwater levels, were also

used in this area. These were not described for use within the plan, much like in the Lower Gwydir and Upper and Lower Namoi.

In the Lower Macquarie licence holders in Management Zone 4 agreed to slow or halt extraction when levels in NSW Office of Water monitoring bores are reached. This agreement to link extraction to groundwater level triggers has since been converted into a licence condition for bore owners within the impacted area. This management option was adopted due to support from licence holders and the practical implementation of being able to alter the conditions if a change was warranted due to groundwater levels.

Figure 2 Comparison of implementation across the five inland groundwater water sharing plans from 2006 to 2011



It is evident that whilst many plan provisions were not required to be implemented or the Minister had not used his/her discretion to act, often management options within the plan were not implemented, however, others actions were taken to prevent impacts from occurring.

Because there were differences in the way plan provisions were drafted, this was reflected in differences in the number of provisions which did not require implementation.

For example, the Lower Macquarie plan has the highest number of provisions of all the plans (Figure 3) and had the highest percentage of provisions that did not require implementation (24 per cent or 210 out of 865) (Figure 2).

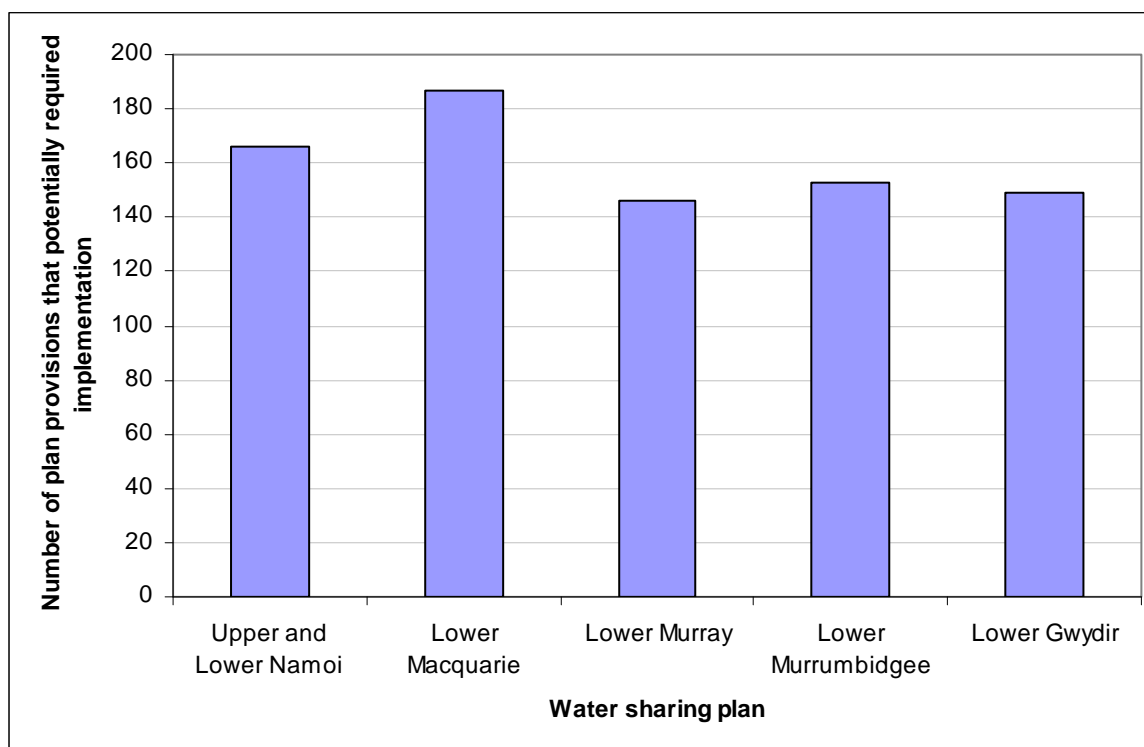
The high level of provisions that did not require implementation in the Lower Macquarie was due to provisions that were intended for initial versions of the plan not being excluded from the final version. In the original plan, entitlements had to be reduced. The volume of the required reduction depended on the estimate of recharge and the percentage of water reserved for the environment. The initial assessment of recharge and planned environmental water was conducted using coarse spread sheet calculations. The original Groundwater Management Committee recognised this and drafted the plan so that it did not have entitlement reductions until year six of the plan and then further reductions at year nine of the plan, in order for a numeric model to be developed and verified to estimate recharge and planned environmental water before full entitlement reductions were introduced. This allowed for a more informed discussion on the impacts associated with a range of extraction scenarios before

entitlements were reduced. However due to the structural adjustment packages offered by the Commonwealth and matched by the NSW Government, the plan was altered so that entitlement reductions occurred from plan commencement.

The original provisions within the plan built in multiple reviews that were to be completed in line with reductions in year nine of the plan. However in a drafting error, these provisions were never removed from the plan and have consequently not been required to be implemented as entitlements were already reduced.

Therefore the Lower Macquarie plan had a high number of provisions, due to the numerous reviews, but also had a large percentage of provisions that did not require implementation, due to reviews not being excluded when the plan was amended before commencement.

Figure 3: Comparison of the number of water sharing plan provisions within five inland alluvial water sharing plans



Patterns of implementation within plans

Partial and non-implementation of the plan provisions were concentrated in a number of sections in the plans (Figure 4).

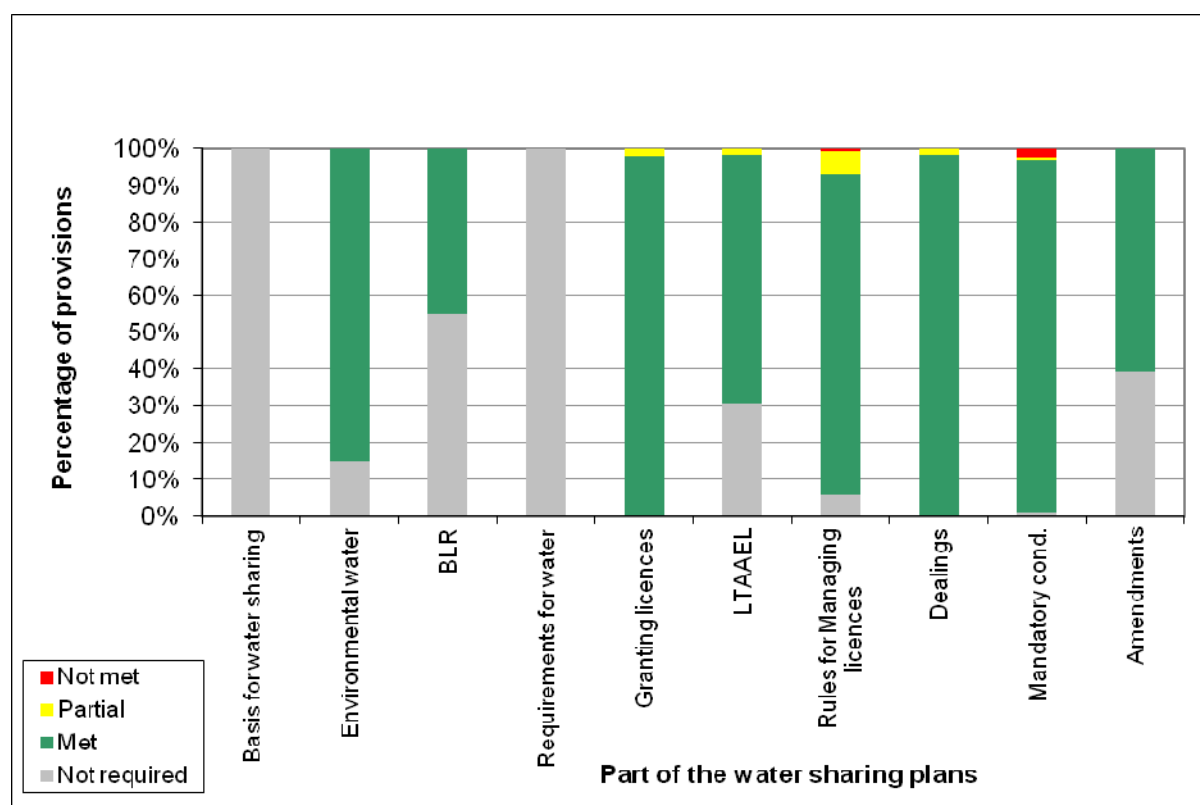
The highest number of water sharing plan provisions that were not implemented related to provisions that detailed mandatory conditions on works approvals (2% of mandatory condition provisions were required to be implemented and never implemented and 1% was partially implemented). Mandatory conditions prescribe rules as to how or when a work approval or access licence can or cannot operate. For example a condition may state that the approval holder must not take water from the approved work at a rate that exceeds 19 litres per second.

Unlike other sections of the plans where rules were implemented to some licences but not others, one mandatory condition, in all plans, was not included on any work approvals. This condition stated that it is the responsibility of the approval holder to determine if any local impact rules apply to their licence.

The reason for this condition not being implemented on any work approvals within the water sharing plans is an oversight by NSW Office of Water.

Whilst this condition was not included on any work approval in any of the plans, local impact restrictions are often developed in consultation with water users and are published in the Government Gazette. These two processes would ensure a degree of awareness of local impact restrictions by water users. As well as this, in the past when a local impact area has been gazetted, those water users who are in the affected area have been notified by mail as to the restrictions and their details.

Figure 4: Implementation of parts of five inland alluvial water sharing plans from 2006 to 2011



Other key sections within these plans where implementation was partial or did not occur but was required to, were rules for managing access licences (6% of provisions were partially met and 1% of provisions were required to be implemented but never were). These sections of the plans include rules relating to water allocation accounts and accounting rules. In almost all plans account management rules were not implemented at all times. Errors that were observed included an account taking more water than was permitted, holding more water than was permitted or carried over more water than was permitted. Two different situations were identified for account management rules not being implemented.

The first situation was when a user took more water than they were permitted. In all occurrences where this has happened the details were passed onto the NSW Office of Water compliance branch from State Water, which monitors accounts.

The second situation was where plan rules were applied incorrectly to account management.

The water sharing plans all contain clauses which limit the maximum volume of water that can be held at any time in a water allocation account; this is known as a maximum account limit. The maximum account limit at any one time is based on the share component of the relevant access licence plus or minus the total section 71T dealings (temporary dealings) (*Water Management Act 2000*) in a water year.

During the life of the plans it was identified that a consequence of the maximum account limit has been that where a 71T (temporary transfer) is followed by a 71Q (permanent transfer), the operation of a maximum account limit may result in an unintended forfeiture of water. In some cases this resulted in a negative account balance.

Options to address this issue were developed and considered by NSW Office of Water and it was concluded that the most practical option was to delete the maximum account limit from the plans. It was found that by deleting the maximum account limit it will not change the amount of water that may be held in the account from year to year. This is due to the fact that all plans have a limit on the amount of water they can carryover from one year to the next. These limits effectively limit the maximum water that may be carried over from year to year.

Therefore, prior to the audit process, the plans were amended to remove the maximum account limit. This was also done for a number of other water sharing plans across the state. Prior to this amendment, the audit assessment rating for these provisions reflected this error.

Rules for managing access licences also includes rules that exempt bores from being outside of specified distances of neighbouring bores, property boundaries and GDEs. The audit identified that this rule was not always applied and many bores were permitted within the distance restrictions. The panel has recommended that these individual licences be investigated to firmly establish they are within the distance specified in the plan and if necessary take any compliance action.

It is important to note that identifying the location of water supply works involves using geographic information systems. This location information, at times, has been found to be imprecise (the unknown location of bores has often been placed in the centre of a lot) and as such an investigation should be taken into each individual licence case to establish its exact location with coordinates and its proximity to other bores, rivers, GDEs and property boundaries before any further action is taken.

Additional measures to give effect to the water sharing plans

Water sharing plans covered by the audit

Where there was less than full implementation of plan provisions, the panel has identified a number of additional measures which it considers to be required to address this. All actions are to be carried out by the Office of Water.

In the groundwater sources, the key recommendations include:

- Consider results of any new or updated groundwater models as part of any amendment to the plans or upon remake of the plans to ensure that recharge and planned environmental water estimates are based on the best available information
- Finalise the mandatory guidelines for take and use of water under domestic and stock rights, that specify the volume of water considered to be reasonable extracted under basic landholder rights, for Ministerial consideration and update basic landholder rights (BLR) figures when plans are remade to reflect estimates made using the refined methodology
- Amend licences and approvals to include remediation conditions where required and all mandatory conditions specified in the plans
- Consider amending the Lower Murrumbidgee plan to include the local impact rules as permanent trading rules in the water sharing plan, due to their long standing implementation and effective management in maintaining groundwater levels
- Establish a ongoing groundwater quality monitoring strategy within the NSW Office of Water

- Upon remake of the Upper and Lower Namoi water sharing plan, remove the provision that specifies that dealings within the water source may not occur if the dealing results in the total access licence share components or credited water allocations authorised to be extracted through nominated works at a location exceeding 600 ML/yr per square kilometre
- Review licensing processes to ensure that they align with plan requirements for bore applications within interference management restricted areas
- In the Lower Murray continue with salinity monitoring and consider changes to the triggers for water quality management strategies as part of an amendment or upon remake of the plan to ensure that water quality management strategies are appropriate and cost effective
- Investigate causes for construction condition non-compliance and implement appropriate strategies to mitigate the impacts of alternative construction methods for bores highlighted in this audit
- Investigate whether alternative options available (including amending the plans) to formalise management of trading in the Lower Gwydir and Upper and Lower Namoi water sharing plans need to be undertaken
- Upon remake of the plans, assess the appropriateness of the mandatory condition on work approvals that details assessment responsibility for any local impact rules
- Where a local impact area is in place for a reasonable length of time, investigate the appropriateness of converting the management rules into the water sharing plan upon remake.

Lessons for future plans

Experiences in implementation of these water sharing plans should inform future plans developed under *the Water Management Act 2000* and/or be reflected in NSW input to the Commonwealth Basin Plan. Key lessons for future plans include:

- Review processes for licence conversion at commencement of new plans to ensure licence categories are correctly carried across to the *Water Management Act 2000* and consider implementing an ongoing process that will identify if licences have been incorrectly converted at the time of plan commencement
- Provisions should be cost effective and practical to implement
- Process should be established to clearly outline internal procedures to implement local impact management areas and undertake groundwater quality monitoring.

Key lessons to be reflected in NSW input to the Commonwealth Basin Plan include:

- Provisions should be cost effective and practical to implement
- A revised method has been developed to estimate basic landholder rights (BLR) and up to date figures are therefore available.

Next steps

The panel acknowledges that a separate process will be required for translating the additional measures identified in this report and adopted by the Minister into tangible actions. This process will necessarily involve analysis of the implications of the additional measures identified by the panel, in terms of practicality, urgency, information availability, resources required to support the measures, community expectations, and synergies with other planning processes, particularly the Commonwealth plan for the Murray-Darling Basin.

Some consultation will be required for a number of the additional measures identified by the panel. The nature and extent of any consultation undertaken should be explicitly considered in the strategy adopted to progress the measures.

The panel requests that the Office reports to the State Interagency Panel on Water Sharing on progress in analysing and further developing the additional measures identified in this report. It is suggested that each time the audit process is commenced for water sharing plans the Office will report to the State Interagency Panel on the progress of outcomes from previous audits.

The Act requires that when deciding whether to extend or remake an existing plan, the Minister consider:

- the most recent audit of water sharing plans conducted under s. 44 when remaking a plan and
- a report from the Natural Resources Commission (NRC) prepared within the previous five years, on the extent to which the water sharing provisions have contributed to the achievement of the relevant State-wide natural resource management standards and targets in the relevant catchment management area (as referred to in section 5 of the [Catchment Management Authorities Act 2003](#)) and whether any changes to the plan are warranted.

It is anticipated that the NRC will consider the relevant key findings of the CMA / water sharing plan integration project in the preparation of their report. This project was aimed at developing a framework to allow the alignment of new and revised catchment action plans developed under the *Catchment Management Authorities Act (2003)* and water sharing plans developed under the *Water Management Act 2000*.

Attachment A: Terms of reference and membership of the 2011 s. 44 Panel

The terms of reference for the 2011 Water Sharing Plan Audit Panel established under section 44 of the *Water Management Act 2000* are as follows:

- Review audit reports prepared by NSW Office of Water
- Advise on appropriateness of the assessments made by the Office of Water in these reports
- Identify any additional measures required to give effect to the water sharing plans

The audit reports which will be prepared by NSW Office of Water will be based on periodic reviews of the implementation programs or other appropriate documentation developed for all of the water sharing plans which commenced in the relevant year and subject to this audit. Where available these implementation programs detail management targets that will deliver the outcomes of the plans and identify strategies the Office of Water will adopt to ensure the requirements established in the plans will be achieved during their term.

Timeframes

The following timeframes will apply:

October	NSW Office of Water commence preparation of report for panel
Mid November	Audit report provided to panel for consideration
End January/February	Panel report to the Minister for Primary Industries on it's deliberations

Membership

Membership of the panel will reflect that of the State Interagency Panel for Water Sharing.

- Mr Robert O'Neill, Director Water Policy & Planning, Office of Water, DECCW (Chair)
- Ms Susy Cenedese, Manager Water & Wetlands Strategy, Water for the Environment Branch DECCW
- Ms Rebekah Gomez-Fort, Policy Manager, Natural Resources Policy Branch, Industry and Investment NSW
- Mr WEJ Paradise, Chair Hunter CMA
- Mr Chris Glennon, General Manager Lachlan CMA
- Mr Tom Gavel, Chair Central West CMA

A representative from the NSW Natural Resources Commission will be invited to participate in the Audit process as an observer.

The NSW Office of Water will provide an Officer to support the panel. Mrs Kimberley Williamson will coordinate the reports provided to the panel.

Decision making

The preferred decision making process will be by consensus. In the event that consensus cannot be achieved, a minority report may be provided where appropriate.

Reporting

The panel will report directly to the Minister for Primary Industries in writing.