

Compliance with water management principles – amendments to the Water Management (General) Regulation 2018 for floodplain harvesting licence determination

The NSW Government amended the Water Management (General) Regulation 2018 in December 2023. This document explains how the changes comply with the water management principles of the *Water Management Act 2000*.

How the Regulation has been amended

The Water Management (General) Regulation 2018 (the Regulation) has been amended by the Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation (no 2) 2023 (the amending Regulation) to clarify the policy intention behind some clauses applicable to the licensing of floodplain harvesting and to take a more precautionary approach to the licence determination process in unregulated river water sources.

The amending Regulation changes the way that historical groundwater access is considered when calculating proposed floodplain harvesting (unregulated river) access licence entitlements. Previously, only groundwater usage was accounted for in the calculation. Now, the greater of historic groundwater usage or the entitlement held is accounted for. This more precautionary approach ensures that floodplain harvesting licences reflect historic crop areas that could not be met by other existing licensed entitlements.

Additionally, the amending Regulation:

- Clarifies that a model must be adopted after a landholder has an opportunity to make a submission on their proposed entitlement and before the determination of their final entitlement. Models are used to determine entitlement for floodplain harvesting (regulated river) access licences.
- Gives landholders another opportunity to make submissions if there are reductions made to their proposed entitlement following the initial opportunity to make a submission.

- Corrects an administrative error in the eligibility criteria for a floodplain harvesting access licence. Specifically, it corrects the date to state ‘on or before 3 July 2008’ which is consistent with the NSW Floodplain Harvesting Policy.

How we have promoted water management principles

Section 9 (1) of the *Water Management Act 2000* (the WM Act) requires all persons to take all reasonable steps to promote the water management principles of the WM Act when exercising functions under the WM Act. The water management principles are detailed in section 5 of the WM Act. Section 5 (2) contains general water management principles and section 5 (3) contains principles specific to water sharing.

The NSW Government has taken all reasonable steps to promote the water management principles set out in section 5 (2) and 5 (3) of the WM Act in developing the amending Regulation as detailed in Table 1.

Table 1. How the amending Regulation promotes the water management principles of section 5 (2) and 5 (3)

How we have promoted the principle in section 5	Relevant clause in proposed Regulation
<p>Section 5(2)(a) – Water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded.</p> <p>The amending Regulation allows for a more precautionary approach to be taken in determining floodplain harvesting (unregulated river) access licences. This change will help combat the increased risk of growth in use.</p>	<p>Clauses 23D and 23E</p>
<p>Section 5(2)(b) – Habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored.</p> <p>See response above, for Section 5(2)(a).</p>	<p>Clauses 23D and 23E</p>
<p>Section 5(2)(c) – The water quality of all water sources should be protected and, wherever possible, enhanced.</p> <p>See response above, for Section 5(2)(a).</p>	<p>Clauses 23D and 23E</p>

How we have promoted the principle in section 5	Relevant clause in proposed Regulation
<p>Section 5(2)(d) – The cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised.</p> <p>The amending Regulation provides clarification in relation to model adoption and change to a more precautionary approach for floodplain harvesting licence determination. This will ensure that extractions are managed within existing extraction limits.</p>	<p>Clauses 23D and 23E</p> <p>Clause 23F</p> <p>Clause 252</p>
<p>Section 5(2)(e) – Geographical and other features of Aboriginal significance should be protected.</p> <p>The changes to the Regulation are not relevant to this principle.</p>	<p>Not applicable</p>
<p>Section 5(2)(f) – Geographical and other features of major cultural, heritage or spiritual significance should be protected.</p> <p>The changes to the Regulation are not relevant to this principle.</p>	<p>Not applicable</p>
<p>Section 5(2)(g) – The social and economic benefits to the community should be maximised.</p> <p>The amending Regulation provides a social benefit to the community by allowing for a subsequent opportunity for landholders to make submissions if there are reductions made to their proposed floodplain harvesting entitlement.</p>	<p>Clause 23F</p> <p>Clause 252</p>
<p>Section 5(2)(h) – The principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements.</p> <p>The changes to the Regulation are not relevant to this principle.</p>	<p>Not applicable</p>

How we have promoted the principle in section 5	Relevant clause in proposed Regulation
<p>Section 5(3)(a) – The sharing of water from a water source must protect the water source and its dependent ecosystems.</p> <p>The amending Regulation provides clarification in relation to model adoption and change to a more precautionary approach for floodplain harvesting licence determination. This will ensure that extractions are managed within existing extraction limits.</p>	<p>Clauses 23D and 23E</p> <p>Clause 23F</p>
<p>Section 5(3)(b) – The sharing of water from a water source must protect basic landholder rights.</p> <p>See response above, for Section 5(3)(a).</p>	<p>Clauses 23D and 23E</p> <p>Clause 23F</p>
<p>Section 5(3)(c) – The sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b)</p> <p>See response above, for Section 5(3)(a).</p>	<p>Clauses 23D and 23E</p> <p>Clause 23F</p>

More information

To learn more about the Regulation, visit the [Acts and Regulations](#) page on our website.

To read the Regulation, visit the [NSW legislation website](#).