

From: [REDACTED]
Sent: Sunday, 1 May 2022 6:08 PM
To: NRC
Subject: Submission to the NRC on the Macquarie Bogan WSP

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Dear NRC

The Nyngan Weir Pool Irrigators Association has had the opportunity to review the submission made by the Bogan Shire Council on the above. Please find our submission below:

1. To what extent do you feel the plan has contributed to environmental outcomes?

The key environment outcome from the Water Sharing Plan was to preserve and enhance the Weir Pools at Nyngan. The Pools have always been an important oasis for the Western region but since the Albert Priest Channel was completed in 1942, they have been a permanent refuge for a variety of wildlife including an Endangered Ecological Community, a Threatened Ecological Community, nine Threatened Species including 8 birds and one fish species, four species of vulnerable Microchiropteran bats and numerous other vulnerable plants and animals. They were the site for the 'Fish Arc' collection of the vulnerable Western population of the Olive Pearchlet (*Ambassis agassizii*) during the last drought, where over 800 were collected and used to repopulate areas where the fish had become locally extinct. It is also the summer home to the most inland colony of Grey Headed Flying Fox (*Pteropus poliocephalus*) and given their survival in years where air temperature has exceeded 48 degrees may well be the source of important genetics for the preservation of the species during the onslaught of Climate Change.

The key factor in the permanency of the both Weir pool is the ongoing connection to regulated flows via the Albert Priest Channel from the regulated Macquarie and, although this review cannot directly impact the management of the Regulated Macquarie it is important to raise the issue here. There have been 3 unsuccessful attempts to pipe the Albert Priest Channel (and thereby cut the gravity fed earthen connection to the regulated Macquarie River). The Nyngan Weir Pool Irrigators will vigorously fight such a move as it would mean the end of any future irrigation at Nyngan, it would also be end of the Nyngan Weir Pools themselves as they would soon evaporate and this recreational, economic, social and environmental asset would be lost. We do not believe a piped Albert Priest Channel could ever be allowed to discharge water into the Weir Pools.

2. To what extent do you feel the plan has contributed to social outcomes?

The key social outcome for any water sharing plan for the Bogan Shire is to preserve the permanent Weir pools at Nyngan. The Upper Weir pool is a significant wetland with great environmental and tourist value and the Lower Weir is the focus of Bogan Shire's major social well-being. The Lower Weir provides a home for the Nyngan Water Ski Club and is consistently used throughout the year but especially Spring to Autumn. It is also home to extensive recreational fishing, swimming and other water sports. It is also home to the members of the Weir Pool Irrigators whose irrigation infrastructure was rendered useless by the

actions of the Department in 1998 when they transferred 2729ML of Town Water entitlement from the Bogan Shire Council (who held the water on behalf of the Weir Irrigators) to a newly created Industrial Allocation for the Cobar Water Board. We discuss this in more detail below but in the context of social outcomes we support subclauses

53(8) Subject to subclause (32), water must not be taken under an access licence with an extraction component that specifies the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source when the water level is at or below 50% of the full capacity of Lower Nyngan Weir Pool. For the purposes of this subclause, the Minister may determine a water level at the telemetric gauge on the Bogan River at Nyngan (421138) that is to be considered equivalent to 50% of the full capacity of Lower Nyngan Weir Pool.

and

53(9) Subject to subclause (32), water must not be taken under an access licence with an extraction component that specifies the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Source when the water level in the Upper Nyngan Weir Pool is 70 centimetres or more below the concrete sill of Upper Nyngan Weir.

Which at least allow us some access to the stored water in the Weir Pools and allows us to contribute to the social well being of Nyngan.

3. To what extent do you feel the plan has contributed to economic outcomes?

In the context of economic outcomes we support subclauses 53(2)(b)(i) and (ii):

Subject to subclause (32), water must not be taken under an access licence when there is no visible flow at the location at which water is proposed to be taken. This subclause does not apply to—

(a) the taking of water from an in-river pool or an off-river pool, or

Note—

Visible flow, in-river pool and off-river pool are defined in the Dictionary.

(b) the taking of water under an access licence with a share component or extraction component that specifies—

(i) the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

(ii) the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

Which allows our irrigators access to a small share of the Weir pool water immediately after a Bogan River flow as defined below:

(8) Subject to subclause (32), water must not be taken under an access licence with an extraction component that specifies the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source when the water level is at or below 50% of the full capacity of Lower Nyngan Weir Pool. For the purposes of this subclause, the Minister may determine a water level at the telemetric gauge on the Bogan River at Nyngan (421138) that is to be considered equivalent to 50% of the full capacity of Lower Nyngan Weir Pool.

And

(9) Subject to subclause (32), water must not be taken under an access licence with an extraction component that specifies the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Source when the water level in the Upper Nyngan Weir Pool is 70 centimetres or more below the concrete sill of Upper Nyngan Weir.

Through we ask that subclause 32(d)(i) which prohibits taking of water using Runoff harvesting dam be removed. It is contrary to some licence conditions and counterintuitive when you consider the potential for leached chemicals reaching the intakes of the Bogan Shire Council pumps if tailwater is not captured.

We also support subclauses 53 (10)-(13) which recognise, in some small way, the historic right of Nyngan Weir Irrigators to access Macquarie River water, unregulated flows since 1942 and regulated flows since 1969. Water licence were issued to Weir Irrigators from as early as 1953 that specifically reference Macquarie river flows and our licences were conjunctive Macquarie/Bogan licences until the Department in 1998 transferred 2729ML of Town Water entitlement from the Bogan Shire Council (who held the water on behalf of the Weir Irrigators) to a newly created Industrial Allocation for the Cobar Water Board. The economic impact of that *ultra vires* transfer stranded most of the irrigation infrastructure held by the members of our Association and we have, quite frankly, struggled to have a viable industry since that time. When confronted by the evidence (obtained via FOI) of the *ultra vires* action, our Association was told that the only way the Department would reverse that decision was via a Supreme Court declaration which was well beyond the resources of the Association. The Association understands that a review of the Macquarie Bogan Water Sharing Plan is not the forum for pursuing this claim, but we thought it was important for the review Committee to bear this in mind when considering our other requests below, especially in terms of freeing up trade of entitlement and allocation into the Weir Pool which will enable us to build up licences large enough to make building off-river storages viable for us.

Clause 53(10) Subject to subclauses (11) and (32), the taking of water under an access licence with an extraction component that specifies the Lower Nyngan Weir Pool Management Zone or the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source must not be commenced following a period in which access was suspended under subclause (8) or (9) unless—

(a) there is a visible flow in the Bogan River at Neurie Plains gauge (421039), and
(b) water has spilled over Lower Nyngan Weir.

(11) Subclause (10) does not apply to the taking of water under an access licence where—

(a) the licence holder also holds an access licence with a share component that nominates the Macquarie and Cudgegong Regulated Rivers Water Source at the time of the taking of the water and has ordered water under that access licence to be delivered to Lower Nyngan Weir Pool or Upper Nyngan Weir Pool via the Albert Priest Channel,
(b) the licence holder is a member of the Albert Priest Channel Association,
(c) the volume of water taken is less than or equal to 80% of the volume of water ordered, and
(d) the water is taken within 30 days of the delivery of the water to Upper Nyngan Weir Pool.

(12) Water must not be taken under an unregulated river (regulated supply—local water utility) access licence or an unregulated river (regulated supply) access licence with an extraction component that specifies the Lower Nyngan Weir Pool Management Zone or the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source unless—

(a) the licence holder also holds an access licence with a share component that nominates the Macquarie and Cudgegong Regulated Rivers Water Source at the time of the taking of the water and has ordered water under that access licence to be delivered to the unregulated river water source that is specified in the share component of the unregulated river (regulated supply—local water utility) access licence or unregulated river (regulated supply) access licence, and
(b) the volume of water taken is less than or equal to 70% of the volume of water ordered.

(13) Water must not be taken under an unregulated river (regulated supply—local water utility) access licence or an unregulated river (regulated supply) access licence with an extraction component that does not specify the Lower Nyngan Weir Pool Management Zone or the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source, unless—

(a) a licence holder who holds an access licence with a share component that nominates the Macquarie and Cudgegong Regulated Rivers Water Source at the time of the taking of the water has ordered water under that access licence to be delivered to the unregulated river water source that is specified in the share component of the unregulated river (regulated supply—local water utility) access licence or unregulated river (regulated supply) access

*licence for the purpose of taking the water under the unregulated river (regulated supply—local water utility) access licence or unregulated river (regulated supply) access licence, and
(b) the volume of water taken is less than or equal to the volume of water ordered.*

We also support the continued protection of replenishment flows under clause 53(26) to support our fellow farmers below the Lower Weir Pool to help top up their stock and domestic dams from the Bogan River (in the section between Nyngan and the confluence of the Gunningbar creek) during times of low bogan river flows:

Clause 53(26) Water must not be taken from replenishment flows made according to clause 58 of the [Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2016](#) (or any relevant replacement plan) under an access licence other than a domestic and stock access licence with a share component or extraction component that specifies—

(a) the Backwater Boggy Cowal Water Source,

(b) the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

(c) the Upper Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

We would like to see the following trading clauses that allow Weir Irrigators to allocation trade out of their Management Zone be retained:

70(2)(h) an assignment of water allocation to an access licence with a share component that specifies the Lower Bogan River Water Source, unless the assignment of allocation is from an access licence with a share component that specifies one of the following water sources—

(i) Bulbodney Grahway Creek Water Source,

(ii) Upper Bogan River Water Source,

And

70(2) (n) an assignment of water allocation to an access licence with a share component that specifies the Upper Bogan River Water Source, unless the assignment is from an access licence with a share component that specifies one of the following water sources—

(i) Bulbodney Grahway Creek Water Source,

(ii) Lower Bogan River Water Source.

4. To what extent do you feel the plan has contributed to meeting its objectives?

The Plan has gone some way towards meeting it's objectives but we consider there is scope to relax some of the more restrictive trading rules as set out in the discussion below. The Weir Pool Irrigators Association supports the rules regarding commence to pump, cease to pump and drawdown which have provided security and certainty for us as Irrigators. No Weir Pool Irrigator has breached these rules since the Water Sharing Plan was declared and no actions by Weir Irrigators endangered Town Water Supply even during the record drought of 2017-2020.

5. What changes do you feel are needed to the water sharing plan to improve outcomes?

The Nyngan Weir Pool Irrigators Association, after consultation with the Bogan Shire Council, ask that there should be a less blunt licence solution that both preserves the historic right to draw down the Weir

Pool but allows more entitlement trades to help develop high value local irrigation. Adding further volume to the already existing holdings on the Upper and Lower Weir Pools will contribute to the economic well-being of Nyngan, promote further development and create additional jobs and economic output. Importantly it will not endanger the Weir Pools as additional entitlement/allocation will not alter the ability to breach or otherwise alter the existing minimum height drawdown criteria.

As set out at page 36 of the *Background Document* for this Water Sharing Plan, the key protection asked for during the discussions with Weir Irrigators and the Department prior to the creation of this Water Sharing Plan was that only existing irrigators would have the right to draw down the Weir pool as set out in Clause 53(2)(b)(i) and (ii), 53(8) and 53(9) but in drafting this protection the Department came up with a total ban on water trading into the Weir Pool Management Zones.

We request the following rules be removed:

Access Licences dealing rules:

Clause 67 (within water sources)

67(c) an access licence with an extraction component that specifies the Bulbodney Grahway Management Zone in the Bulbodney Grahway Creek Water Source to an access licence with an extraction component that specifies the Upper Nyngan Weir Pool Management Zone or the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

Clause 68 (changes of water source)

68(d) the granting of an access licence with a share component that specifies the Bulbodney Grahway Creek Water Source, unless—

(i) the extraction component of the new access licence specifies the Bulbodney Grahway Management Zone, and

Clause 69 (amendment of extraction component dealings)

69(b) an access licence with an extraction component that specifies the Bulbodney Grahway Management Zone in the Bulbodney Grahway Creek Water Source being varied to specify the Upper Nyngan Weir Pool Management Zone or the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

Clause 70 (Assignment of water allocations dealings)

70(1)(d) an access licence with an extraction component that specifies the Bulbodney Grahway Management Zone in the Bulbodney Grahway Creek Water Source to an access licence with an extraction component that specifies the Upper Nyngan Weir Pool Management Zone or the Lower Nyngan Weir Pool Management Zone in the Bulbodney Grahway Creek Water Source,

and

(2) (e) an assignment of water allocation to an access licence with a share component that specifies the Bulbodney Grahway Creek Water Source, unless the assignment—

(i) is to an access licence with an extraction component that specifies the Bulbodney Grahway Management Zone, (And any other restriction which we may have inadvertently overlooked.)

In place of these restrictions we would like to see the Department place a new condition on only the Weir Pool licences that existed in 2016 (that haven't been cancelled or traded out of the Management Zone) which states that they have the right to draw down a maximum of xML (where X equals the volumetric entitlement(water shares) they had in 2016) under clause 53(2) and 53(8) (lower Weir licences) or 53(2) and 53(9)(upper Weir licences).

In applying this, we note the Department's practice will be to note a 'draw down right' of zero Megalitres on any new licence transfer via Section 71M of the Water Management Act 2000. Any increase of entitlement via Section 71R or entitlement increase via Section 71T will have no impact on the drawdown volume already existing on the transferee licence.

We thank you for the opportunity to provide feedback and offer our representatives to be available for any further consultation.

 **Nyngan Weir Pool Irrigators Association**