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**Submission
Statutory Review
Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River
Water Sources 2016**

Introduction

The Inland Rivers Network (IRN) is a coalition of environment groups and individuals that has been advocating for healthy rivers, wetlands and groundwater in the Murray-Darling Basin since 1991.

We welcome the opportunity to provide comment for consideration under the statutory review of the Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2016 (Namoi Regulated WSP).

We note that the Natural Resources Commission (NRC) conducted an audit of the Namoi Regulated WSP in 2022 under requirements of the *Water Management Act 2000* (WMA). Key findings included that the environment and basic landholder rights have not been prioritised. Planned environmental water provisions were not always met and delivery of replenishment flows did not occur according to requirements in the 2018-19 drought.

The NSW Government has developed a Namoi Regional Water Strategy released in June 2023 that considers the implications of climate change on water availability in the region based on new climate modelling developed by the NSW Government.

The Namoi contains significant environmental values that must be protected through improved rules in a new Namoi Regulated WSP, including a lower Plan Limit for extraction. The high connectivity with the Barwon-Darling/Baaka is a significant issue for broader water sharing arrangements. The recommendations of the Expert Connectivity Panel must be included in a replacement plan.

Environmental significance of the Namoi region

Water is a significant feature of the Namoi region's landscape and environment, with its interconnected systems of rivers, creeks, aquifers and wetlands. The Lower Namoi River in particular is characterised by a network of anabranches, small tributaries, lagoons and wetlands across the floodplain, which need periodic flooding to maintain good condition. Connectivity plays a key role in supporting the environmental needs of the region as well as downstream sites. On average the Namoi region contributes 24% of the flows into the Barwon–Darling River and is a key contributor to water in the Menindee Lakes system.

Across the Namoi and Peel catchment systems, high value river reaches such as instream pools and low-flow channel refuges provide vital habitat supporting local and migratory species and threatened native fish such as the Eel-tailed Catfish and Southern Purple Spotted Gudgeon. Due to the natural wet dry cycles in the region, groundwater also plays an important role in sustaining plant and animal life by recharging waterholes, wetlands and streamflow, during long dry periods.

A range of significant ecosystems include Lake Goran and various billabongs, lagoons and floodplains. Some threatened or key species that are flow dependent or heavily reliant on water include the Murray Cod, Bell's Turtle, Sloane's Froglet, many water birds, rakali and platypus.

For communities across the Namoi region, environmental assets play a crucial role in the liveability of the region, as well as providing recreational opportunities and attracting tourism.¹

Water for the environment

The Namoi has no specific Environmental Water Allowance (EWA) set aside under provisions in the Namoi Regulated WSP. Water held by the Commonwealth in total is 30,491 ML across a variety of entitlements in the region with 26,228 ML in the regulated river. These are low security entitlements.

Regional Water Strategy (RWS)

The Namoi RWS identifies significant impacts to river health with aquatic species under stress through loss of important flows and changes in timing and variability of flows. Climate change could exacerbate these problems and there is limited ability for environmental water holdings to mitigate these impacts.²

While WSP rules set aside water to protect the basic health of the environment, and water reform processes over the last few decades have recovered water entitlements for the environment there is a major challenge in the Namoi for environmental water managers to support environmental needs at critical times.

The RWS has two key actions that will inform changes to the Namoi Regulated WSP:

- Action 3.1: Assess gaps in the flow regime and identify cooperative actions to improve ecological outcomes
- Action 3.6: Investigate ways to improve connectivity with the Barwon–Darling River on a multi-valley scale

¹ DPE, 2023. Regional Water Strategy, Namoi

² Ibid p46

NSW Water Strategy

The NSW Water Strategy includes a commitment to reviewing water allocation frameworks and water sharing plan provisions in response to the last drought. This review will need to determine the most appropriate dataset to use in assessing whether essential needs reserves in dams need to be amended through a risk framework. Analysis undertaken for the Namoi RWS will be considered in this review.

Floodplain Harvesting (FPH)

IRN has had a long time concern about the impact of FPH in the Namoi Valley on water availability downstream particularly connecting to the Barwon-Darling/Baaka. We were engaged in the Healthy Floodplains Review Committee through environmental representation and raised ongoing issues with the assessment and approvals process in the Namoi to the extent that the committee was disbanded before final determinations were made. The NSW Government announced a 40% decrease in access to floodplain flows through entitlements in December 2023 with permissible carryover of 500%. Stronger rules in the WSP are still necessary to better manage FPH extraction because of the significance of Namoi River connectivity to the Barwon-Darling/Baaka.

1. Carryover

IRN strongly objects to the provision for FPH licences to carryover 500% of their licence entitlement. This allows for the capture of significant volumes of floodwaters from the Lower Namoi Valley intercepting essential flows to the Barwon-Darling/Baaka and interrupting a range of environmental triggers. It also allows for entire low and medium floods to be extracted after a long dry period in the catchment. Stronger rules are needed to better share the full range of flood flows that occur intermittently, especially from localise downpours during dry conditions.

Cl 42 (7) allows for carryover of 5ML per unit share. FPH is opportunistic extraction of ecologically significant overland flows. There has been no assessment of the significance of the impacts of historic FPH extraction over time on downstream river health, recharge of groundwater or on cultural values. IRN does not support the carryover of FPH entitlements.

2. Supply works

Rules for FPH supply works under Cl 40A have too many exemptions and are not directly related to the requirement under the LTAAEL based on the level of development for FPH at 1999/2000. They also provide retrospective approval for works on the floodplain not assessed for environmental impact:

- Cl 40A (6) (b) allows for approval of supply works applied for before 31 December 2023. This is possibly a back door method of giving retrospective approval to works constructed on the floodplain without assessment (illegally).
- Cl 40A (7) allows for exemptions under subclauses 3), 4) and 5) if the work was constructed without approval on or before 12 February 2021 or if an application for amendment was made prior to 30 June 2024.

3. Access triggers

IRN strongly supports that Cl 47A (4) river reach access triggers are reviewed in line with sub clause 5. This review should already be underway to help inform the NRC review of the Namoi Regulated WSP.

Review Questions:

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

The Namoi Regulated WSP has contributed to environmental outcomes through the introduction of Schedule 1 Barwon-Darling Flow targets to manage supplementary access events. However, lack of an Environmental Water Allowance (EWA) and reliance on protection of some tributary inflows as the sole source of Planned Environmental Water (PEW) is a key failing of the plan.

The flow triggers in river reaches allowing FPH extraction do not relate to the timing and duration of environmental requirements from low to medium flood flows, particularly in dry scenarios. Provisions for access to uncontrolled flows in the Upper Namoi have no consideration of seasonality, timing or duration impacts on the environmental value of natural inflow into the regulated river system.

The requirements for supporting native fish breeding events, recharging groundwater sources and topping up billabongs and lagoons in the landscape are not provided for through rules protecting PEW in the Namoi Regulated WSP.

There is no provision to establish an Environmental Water Advisory Group to include local knowledge in decisions around use of held environmental water in the water source.

The Plan at Cl 15 does not include the three definitions of PEW provided under the WMA. It excludes the definition *‘the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met’*. This definition is included in the Lachlan Regulated WSP. There needs to be consistency across all WSP so that all three definitions of PEW are included and protected.

Current rules do not enforce principles of the WMA to prioritise the ecosystem and its dependent ecosystems. The LTAAEL is based on historic water use rather than on environmental requirements and outcomes.

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

The Namoi Regulated WSP does not provide for water security for any water user during drought conditions, especially predicted drier scenarios under climate change. Cl 55 (1) maintains an incorrect definition of the drought of record for the Namoi catchment: *‘the period of lowest accumulated inflow to the water source is identified by flow information held by the Department prior to 1 July 2004.’* This rule favours general security licence holders and threatens the ability to supply basic rights, replenishment flows and stock and domestic licences in dry times. Consideration must be given to providing for a drought reserve in Keepit Dam.

Access to basic rights and replenishment flows are often compromised by operational practices such as calling supplementary access events before all replenishment commitments have been met. The use of tributary inflows to fill water orders through the unreported Tributary Utilisation practice impacts on social and cultural outcomes downstream. This also intercepts important flows at critical times for native fish recruitment events.

The Plan does not meet the water quality objective because there is no provision for a specific water quality EWA to dilute blue-green algae outbreaks or major pollution events within the river system.

Objectives relating to improvements in native fish populations for recreational and cultural purposes have not been met. The Namoi is included in the Lowland Darling River endangered ecological community that recognises threats to native fish population, especially from river regulation. A lower LTAAEL, better protection of PEW and specific EWA allocations to enhance native fish recruitment will help to support this social and cultural outcome.

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

Many of the provisions in the Namoi Regulated WSP are biased towards extractive users and contribute to economic outcomes at the expense of other objectives. The only environmental flow rules at cl 54 are tied to storage volumes and restricted to three months of the year.

Operational practices favour economic outcomes. The unreported Tributary Utilisation practice that allocates orders from tributary inflows rather than from storage releases and access to uncontrolled flows in the Upper Namoi allows for the extraction of significant natural inflows that provide essential nutrients, temperature and triggers for improved environmental outcomes. Tributary inflows should contribute to connectivity and end of system flows. The combined extraction of these natural flows through filling water orders, supplementary allocations and FPH interceptions contribute to economic outcomes at the expense of social, cultural and environmental outcomes.

IRN considers that the current Long Term Annual Average Limit (LTAAEL) with no volumetric description favours the economic outcomes at the expense of environmental, social and cultural outcomes. The NRC must investigate the adequacy of the LTAAEL provisions as part of this review.

4. To what extent do you think the plan has contributed to cultural outcomes?

The cultural outcomes of the Namoi Regulated WSP are very poorly met.

While there is provision for Native Title Rights under cl 19 there have been no licences granted. A successful Native Title claim across the Namoi region was granted in August 2024 and must be recognised in a replacement plan.

The large native title claim has been recognized by the Federal Court, encompassing the land and water of the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan Peoples, stretching from the Barwon River in the north to the Lachlan River in the south, covering a vast area of western NSW.³

The specific purpose access licence provisions under cl 40 are too restrictive and do not adequately contribute to achieving cultural outcomes. None of these licences have been allocated during the life of the Plan.

³ Native Title determination details NCD2024/002

5. To what extent do you think the plan has contributed to meeting its objectives?

The Namoi Regulated WSP fails to meet the broad and targeted environmental, social and cultural objectives. There is an inherent bias in the provisions to meeting the broad and targeted economic objectives.

5.1 Cl 8 Environmental objectives:

1) The broad environmental objective of this Plan is to protect and contribute to the enhancement of the ecological condition of the water source and its water-dependent ecosystems over the term of this Plan.

2) The targeted environmental objectives of this Plan are as follows—

(a) to protect and contribute to the enhancement of the following over the term of this Plan—

(i) the recorded distribution or extent, and the population structure, of target ecological populations:

- native fish including golden perch, eel-tailed catfish, Murray cod and olive perchlet,
- native vegetation including river red gum woodland and black box woodland
- high diversity hotspots and significant habitat for native fish, frogs, waterbirds and native vegetation.

(ii) the longitudinal and lateral connectivity within and between water sources to support target ecological processes:

- carbon and nutrient transport pathways, which are the connected networks of streams, riparian zones, floodplains and wetlands that transport dissolved and suspended organic material and nutrients throughout the water source
- fish movement across significant barriers.

(iii) water quality within target ranges for the water source to support water-dependent ecosystems and ecosystem functions,

(b) to support environmental watering in the water source to contribute to maintaining or enhancing ecological condition in streams, riparian zones, dependent wetlands and floodplains.

The lack of an EWA and very poor environment flow rules at cl 54 available to meet specific targets for water quality, fish breeding or wetland requirements is a key failing of the Namoi Regulated WSP to meet its objectives.

Major uncontrolled large flood events have done more to maintain and enhance the ecological condition of water-dependent ecosystems in the water source than provisions in the Namoi Regulated WSP. There is an improvement in meeting connectivity objectives, although this is still compromised by FPH provisions that do not fully protect some of the in-valley mid and low range flows needed to sustain improvements.

The lack of protection of PEW has also caused failures in meeting the Plan environmental objectives.

5.2 This also applies to cl 10 Aboriginal cultural objectives and cl 11 Social and cultural objectives. Evidence of an improvement in threatened native fish species populations is limited. The current drought security measures are insufficient to supply basic rights or to protect important water-dependent cultural values associated with the water source.

6. What changes do you think are needed to the water sharing plan to improve outcomes?

6.1 Definition and protection of PEW

Cl 15 Commitment and identification of PEW must include all definitions of PEW as provided in the WMA:

- (a) the physical presence of water in the water source,
- (b) the long-term average annual commitment of water as planned environmental water,
- (c) the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

Cl 16 must include the protection of PEW that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

Cl 16 b) Compliance with LTAAEL is not effective way of achieving environmental outcomes because it is not based on ecosystem needs and function. The LTAAEL is based on maintaining historic water extraction and is too high.

6.2 Calculation and management of LTAAEL

The LTAAEL needs to be quantified and reduced to the level of current recorded use. The plan limit is currently too high to maintain the health of the river system. The argument from the irrigation industry that they can't access to the full plan limit is a key indicator that it is too high.

6.3 Part 10 System operation rules

This section of Plan provides the main source of PEW as described under cl 15. The lack of an EWA and very poor environment flow rules is a key failing to meet the environmental objectives of the Plan.

6.3.1 Cl 54 is completely inadequate as the only provision of environmental flows in the system to provide very low end of system flows during winter. These provisions must be updated through the adoption of recommendations of the Connectivity Expert Panel.

6.3.2 Cl 55 (1) must be updated to the new drought of record for the Namoi system and take into account climate change predictions under new modelling by DCCEE. Consideration of a drought reserve in Keepit Dam should be included in the NRC review.

6.4 Taking of Uncontrolled Flows

Provisions under cl 44 must be reviewed to take into account environmental requirements of the Upper Namoi regulated water source. Current provisions allow for water orders to be filled first (Tributary Utilisation) and can pull the natural inflows down to 100 ML/day at the Brabi (Merriwee) gauge (419020) and 200 ML/day at the lower Manilla Railway Bridge gauge (419022). These provisions are tied to AWD from Split Rock Dam. The environmental impacts of these provisions must be reviewed.

6.5 Supplementary water events

Provisions under cl 47 are overly complex and need to be reviewed to meet the recommendations of the Connectivity Expert Panel

6.6 FPH provisions

As outlined above Cl 55 must be removed and Cl 40A 6) (b) and 7) need to be reviewed to ensure that retrospective approval of works that have not been subject to environmental assessment is not allowed.

6.7 Part 12 Amendments of this Plan

IRN does not support the following amendment provisions and recommends that they be removed from the Plan:

6.7.1 Cl 70 (2) (b)

FPH available water determinations should not be greater than 1ML per unit share because of the environmental significance of the capture of natural overland flows. The volume of FPH entitlement granted in the Namoi Valley captures natural overland flow is critical for downstream environmental, social and cultural values. There cannot be greater interception than already provided.

6.7.2 Cl 73 Other amendments (general)

(1) (c) provide for the conversion of regulated river (high security) access licences with share components that specify the water sources to access licences with share components that specify connected upstream unregulated water sources.

(3) This Plan may be amended to facilitate total long-term average annual extractions reaching the long-term average annual extraction limit

IRN recommends that the following amendment be altered:

6.7.3 Cl 71

Amendments to minimum flow rules must take into account recommendations of the Connectivity Expert Panel and align with seasonal environmental needs.