

Provisions of the Baffle Creek Basin Resource Operations Plan 2011 taken to be included in the Water Plan (Baffle Creek Basin) 2010 – Act ss. 1259 and 1264

Note: This document includes a number of provisions that were previously located in the Baffle Creek Basin Resource Operations Plan 2011. In accordance with section 1259(1)(e) of the *Water Act 2000*¹ the provisions contained in this document, including any associated attachments, are to be read as being provisions of the Water Plan (Baffle Creek Basin) 2010. This means that, despite not currently being located in the water plan these provisions carry the same authority and are subject to the same legislative requirements as the provisions contained in the water plan.

For further information on the new water planning instruments that are now in effect see:

¹ On 6 December 2016 amendments to the *Water act 2000* made by the *Water Reform and Other Legislation Amendment Act 2014*, came into effect.



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Part 1 Criteria and process for granting, refusing, amending or otherwise dealing with water licences – Act s. 1264(1)(c)

Division 1 Dealing with water licence applications

61 Water licence applications to which this chapter applies

- (1) This part applies to each application for a water licence made under section 107 and 122 of the *Water Act 2000* if granting the application would have one or more of the following effects on water to which this plan applies—
 - (a) increase the amount of water that may be taken;
 - (b) change the location from which water may be taken;
 - (c) increase the maximum rate at which the water may be taken;
 - (d) increase the daily volumetric limit for taking water;
 - (e) increase the monthly volumetric limit for taking water;
 - (f) change the flow conditions under which the water may be taken; or
 - (g) increase or change the interference with the water.
- (2) This part applies even if the application was made before 30 November 2009.
- (3) This part does not apply to—
 - (a) an application made under the following provisions of the *Water Act 2000*—
 - (i) section 122 to subdivide a water licence or amalgamate two or more water licences;
 - (ii) section 123 to amend water licence to add or remove land following disposal of part of land to which a water licence to take water attaches;
 - (iii) section 125 to reinstate an expired water licence; and
 - (b) an application to interfere with water by artificially improving or changing the course of a watercourse, lake or spring;
 - (c) an application made in relation to the release of unallocated; and
 - (d) an application made in accordance with part 2 of this plan.

62 Applications to be refused

The chief executive must refuse an application to which this part applies unless this part explicitly provides for granting the application.

63 Application to increase the maximum rate at which water may be taken

- (1) For an application to amend a water licence to increase the maximum rate at which water may be taken, the chief executive may grant the application only if there is an existing development permit associated with an existing water licence, or notice was given under section 40 of the Water Plan (Baffle Creek Basin) 2010 about existing works and the notice has been verified by the chief executive, and—
 - (a) the maximum rate specified on the existing water licence is less than—
 - (i) if there is an existing development permit associated with the water licence that states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the rate stated in schedule 8, column 2 of the Water Plan (Baffle Creek Basin) 2010;

- (ii) if there is an existing development permit associated with the water licence that states a pump size other than a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the rate decided by the chief executive having regard to the rates stated for similar pump sizes in schedule 8, column 2 of the Water Plan (Baffle Creek Basin) 2010;
 - (iii) if notice given under section 40 of the Water Plan (Baffle Creek Basin) 2010 about the works associated with the water licence states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010 and the notice has been verified by the chief executive—the rate stated in schedule 8, column 2 of the Water Plan (Baffle Creek Basin) 2010.
- (b) where schedule 8 of the Water Plan (Baffle Creek Basin) 2010 does not apply—the works authorised by an existing development permit associated with the water licence have the capacity to take water at a rate greater than the maximum rate specified on the existing water licence.
- (2) For an existing water licence amended to increase the maximum rate, the maximum rate must not exceed—
- (a) if there is an existing development permit associated with the water licence that states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the rate stated in schedule 8, column 2 of the Water Plan (Baffle Creek Basin) 2010;
 - (b) if there is an existing development permit associated with the water licence that states a pump size other than a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the rate decided by the chief executive having regard to the rates stated for similar pump sizes in schedule 8, column 2 of the Water Plan (Baffle Creek Basin) 2010;
 - (c) if notice given under section 40 of the Water Plan (Baffle Creek Basin) 2010 about the works associated with the water licence states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010 and the notice has been verified by the chief executive—the rate stated in schedule 8, column 2 of the Water Plan (Baffle Creek Basin) 2010;
 - (d) the rate at which the associated works, either authorised by an existing development permit or notified under section 40 of the Water Plan (Baffle Creek Basin) 2010 and verified by the chief executive, are capable of taking water.

64 Application to increase the daily volumetric limit

- (1) For an application to amend a water licence to increase the daily volumetric limit, the chief executive may grant the application only if there is an existing development permit associated with an existing water licence, or notice was given under section 40 of the Water Plan (Baffle Creek Basin) 2010 about existing works and the notice has been verified by the chief executive, and—
- (a) the daily volumetric limit specified on the existing water licence is less than—
 - (i) if there is an existing development permit associated with the water licence that states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the daily volumetric limit stated in schedule 8, column 3 of the Water Plan (Baffle Creek Basin) 2010;

- (ii) if there is an existing development permit associated with the water licence that states a pump size other than a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the daily volumetric limit decided by the chief executive having regard to the limits stated for similar pump sizes in schedule 8, column 3 of the Water Plan (Baffle Creek Basin) 2010;
 - (iii) if notice given under section 40 of the Water Plan (Baffle Creek Basin) 2010 about the works associated with the water licence states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010 and the notice has been verified by the chief executive—the daily volumetric limit stated in schedule 8, column 3 of the Water Plan (Baffle Creek Basin) 2010;
 - (b) where schedule 8 of the Water Plan (Baffle Creek Basin) 2010 does not apply—the works authorised by an existing development permit associated with the water licence have the capacity to take water at a rate greater than the daily volumetric limit specified on the existing water licence.
- (2) For an existing water licence amended to increase the daily volumetric limit, the daily volumetric limit must not exceed—
- (a) if there is an existing development permit associated with the water licence that states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the daily volumetric limit stated in schedule 8, column 3 of the Water Plan (Baffle Creek Basin) 2010;
 - (b) if there is an existing development permit associated with the water licence that states a pump size other than a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010—the daily volumetric limit decided by the chief executive having regard to the limits stated for similar pump sizes in schedule 8, column 3 of the Water Plan (Baffle Creek Basin) 2010;
 - (c) if notice given under section 40 of the Water Plan (Baffle Creek Basin) 2010 about the works associated with the water licence states a pump size mentioned in schedule 8, column 1 of the Water Plan (Baffle Creek Basin) 2010 and the notice has been verified by the chief executive—the daily volumetric limit stated in schedule 8, column 3 of the Water Plan (Baffle Creek Basin) 2010;
 - (d) the maximum volume the works, either authorised by an existing development permit or notified under section 40 of the Water Plan (Baffle Creek Basin) 2010 and verified by the chief executive, are capable of taking in a day at the maximum rate decided.

65 Applications to interfere with water by impounding flow

- (1) This section applies to an application to interfere with water in a watercourse, lake or spring by impounding the flow of water.
- (2) The chief executive may grant the application—
 - (a) if the proposed interference is not to be located on Baffle Creek or on a watercourse in the Eurimbula Creek catchment area or the Worthington Creek catchment area; and
 - (b) subject to the limitations mentioned in sections 34, 35, 36 and 37 of the Water Plan (Baffle Creek Basin) 2010, including the requirement for a pass flow condition in accordance with sections 36(4) to 36(6).

- (3) Subsection (2) does not limit the matters the chief executive may consider.

Division 2 Overland flow water

Subdivision 1 Granting water licences for taking overland flow water

66 Scope of division 1

For granting a water licence under section 116 of the *Water Act 2000*, this part states—

- (a) for section 53 of the Water Plan (Baffle Creek Basin) 2010—the process for granting or amending a water licence to replace the authority under section 52(2) of the Water Plan (Baffle Creek Basin) 2010;
- (b) matters the chief executive must consider;
- (c) conditions the chief executive must include on the licence; and
- (d) requirements for a certified report for overland flow works.

67 Granting or amending a water licence

- (1) The chief executive may at any time—
 - (a) grant a licence for the take of overland flow water to replace the authority under section 52(2) of the Water Plan (Baffle Creek Basin) 2010; or
 - (b) amend a licence granted under subsection (1)(a).
- (2) Before granting or amending a water licence under subsection (1), the chief executive must issue a notice to the owner of the land—
 - (a) stating that the chief executive intends to grant or amend a water licence for taking overland flow water using the works;
 - (b) requesting that the owner of the land clearly identify the relevant existing works that take overland flow water;
 - (c) requesting additional information including, but not limited to, the water use from the works based on the water requirements and purpose for which the water is used; and
 - (d) requesting any other information required by the chief executive.
- (3) A notice under subsection (2) may also require the owner of the land to provide, in accordance with section 69 of this plan, a certified report about the take of overland flow water using the works.
- (4) In making a decision about granting or amending a licence under subsection (1), the chief executive—
 - (a) must consider—
 - (i) the average annual volume of overland flow water that could have been taken, immediately before the commencement of the Water Plan (Baffle Creek Basin) 2010, using the existing overland flow works to which the authority relates;
 - (ii) the annual volumes of overland flow water estimated by the chief executive to have been taken using the works during the period, of not more than 10 years, immediately before the commencement of the Water Plan (Baffle Creek Basin) 2010;

- (iii) any relevant information available to the chief executive about the works including any certified report prepared in accordance with section 69 of this plan;
 - (iv) any other matters the chief executive considers relevant; and
- (b) may consider the extent to which the works, immediately before the commencement of the Water Plan (Baffle Creek Basin) 2010, allowed—
- (i) the taking of other water under another authorisation; or
 - (ii) the storage of other water taken under another authorisation.

68 Certified reports for overland flow works

- (1) For the purpose of this part, a certified report is a report prepared in accordance with the standards and requirements set out in a notice provided by the chief executive.
- (2) The purpose of the certified report is to provide the chief executive with an accurate representation of—
 - (a) the infrastructure to which the report relates;
 - (b) how the infrastructure is operated; and
 - (c) the ability of the infrastructure to take overland flow water.
- (3) The certified report must be verified and signed by a registered professional engineer.
- (4) For this section—

registered professional engineer means a person registered as a registered professional engineer under the Professional Engineers Act 2002.

69 Content and conditions for a water licence to take overland flow water

A water licence for the taking of overland flow water must be granted in accordance with section 54 of the Water Plan (Baffle Creek Basin) 2010.

Subdivision 2 Water licences used in conjunction with overland flow works

70 Application to amend a water licence to change a condition

- (1) This section applies to an application to amend a water licence to change an existing condition that requires water taken under the licence to be stored in particular works used to take overland flow water.
- (2) If the chief executive decides to grant the application, the chief executive must also issue a water licence for taking overland flow water to the applicant in accordance with division 1.
- (3) If the applicant fails, without reasonable excuse, to provide the information required under division 1 within 90 business days, the application lapses.