ACT Government

MINISTERIAL BRIEF

OFFICIAL

Environment, Planning and Sustainable Development Directorate

To:	Minister for Water, Energy and Emissions Reduction	**Tracking No.:** 23/127826
Date:	14 December 2023	
From:	Executive Group Manager, Environment Heritage and Water	
Subject:	**Water recovery – minor corrections to two Disallowable Instruments**	
Critical Date:	**19 January 2024**	
Critical Reason:	Approval by 19 January 2024 will enable the tabling of the Instruments in early February 2024. The remake of the Disallowable Instruments is required for finalising the water recovery agreement by June 2024.	

Recommendations

That you:

1. **Sign** the Disallowable Instruments at Attachments A and B;

Signed / Not Signed / Please Discuss

2. **Agree** to notify the signed Disallowable Instruments at Attachments A and B and the Explanatory Statements at Attachment C and D on the Legislation Register; and

Agreed / Not Agreed / Please Discuss

3. **Note** the information in this briefing about progress and next steps towards finalising the water recovery agreement with the Australian Government.

Noted / Please Discuss

Shane Rattenbury MLA 14/1/24

Minister's Office Feedback

Background

1. On 23 October 2023, Cabinet agreed to you entering into a new water recovery agreement (Agreement) with the Australian Government.

2. The Agreement will provide the ACT Government with a one-off payment of $58.83 million if the ACT grants a water access entitlement for 6.36 GL/year to the Commonwealth Environmental Water Holder.

3. Cabinet further agreed that you would make minor amendments to correct two Disallowable Instruments relating to the granting of water access entitlements relevant to finalising the arrangements for the water recovery agreement.

4. The Instruments to be amended are the Water Resources (Water Available from Areas) Determination 2019 (No 2) and the Water Resources (Fees) Determination 2023, in force under the *Water Resources Act 2007*.

5. Although the amendments are minor, accepted practice is to re-make Determinations rather than amend them. Consequently, the Determinations at Attachments A and B will replace the previous Determinations.

6. Changes to Disallowable Instruments require ministerial approval. Following your approval, the Determinations at Attachments A and B and the Explanatory Statements at Attachment C and D will be notified on the Legislation Register and tabled in the Assembly within six sitting days after they are notified.

Issues

Water Resources (Water Available from Areas) Determination 2019 (No 2)

7. Schedule 1 of this Determination lists the volumes of water that comprise the ACT's Sustainable Diversion Limit under the Murray-Darling Basin Plan.

8. The current Determination was made in 2019 before the volumes were finalised through the ACT Water Resources Plan. The volume for take by runoff dams is incorrect and the ACT's shared reduction amount is not mentioned in the current Determination.

9. The amendment required to the list in Schedule 1 is to:

   a. delete: "4.2 GL per annum (take by Runoff Dams), plus"; and

   b. replace it with:
   "4.64 GL per annum (take by Runoff Dams), minus
   4.9 GL per annum shared reduction amount (towards the Basin-wide water recovery target), plus".

10. This amendment will make the Determination at Attachment A consistent with the ACT's Sustainable Diversion Limit set out in the ACT Water Resources Plan that was accredited under the Basin Plan in late 2019, after the current Determination was made.

11. This amendment will also clarify that the ACT will take the shared reduction amount into account when managing water "so as to not exceed the ACT's surface water Sustainable Diversion Limit" as set out in this Determination and in section 17(3) of the *Water Resources Act 2007*.

Water Resources (Fees) Determination 2023

12. Section 5(1) currently provides a fee exemption "for an application for a grant of a water access entitlement" for the shared reduction amount under the Basin Plan". However, fees currently apply to the grant of entitlements, not to applications. Fees may be introduced for applications in future.

13. The new determination will replace "No fee is payable for an application for a grant of a water access entitlement" with "No fee is payable for an application or a grant of a water access entitlement" in section 5(1). This edit will enable a fee exemption to be applied to the grant of an entitlement for the shared reduction amount of 4.9GL/year, as was intended when this exemption was added to the determination in 2020. This means that the fee of approximately $4.4 million will not be applied to the entitlement. However, under the proposed Agreement, the ACT will receive a payment of approximately $45.3 million for 4.9GL/year.

14. A fee of approximately $1.3 million will still be applicable to the additional 1.46GL/year. As negotiated with Department of Climate Change, Energy, Environment and Water (DCCEEW) and agreed with the EPA and Treasury ACT, this fee will be included as part of the $13.5 million the ACT will receive under the Agreement for that volume.

15. The proposed new Determination at Attachment B does not change existing fees or introduce new fees.

Progress towards finalising the water recovery Agreement

16. The Murray-Darling Basin Authority (MDBA) has completed the technical review of the reliability, or Long-Term Diversion Level Equivalent (LTDLE) Factor, of the ACT water entitlements.

17. On 15 November 2023 the MDBA advised EPSDD that it agreed with the ACT's proposed LTDLE Factor of 1. This means that the granting of 6.36GL of ACT water access entitlements to the Commonwealth Environmental Water Holder will provide the equivalent volume of water (6.36GL/year) for use downstream of the ACT in all years.

Next steps

18. In the light of this LTDLE Factor decision, the DCCEEW is completing an evaluation report that is required for the Agreement to be submitted to their Minister for approval.

19. The proposed Agreement will replace the "Project Agreement for Murray-Darling Basin Water Infrastructure, Australian Capital Territory-Led Efficiency Projects", which allowed for up to $50 million to be provided to the ACT for water efficiency measures. EPSDD received $977,400 under that agreement for feasibility studies but the Australian Government did not approve further payments to implement efficiency measures. The funding will instead be provided as part of the proposed new water recovery Agreement negotiated under the strategic purchase framework. DCCEEW and EPSDD will prepare letters for the respective Ministers to extinguish that previous agreement when entering into the new water recovery Agreement.

20. EPSDD has requested that DCCEEW provide the new water recovery Agreement no later than January 2024 for signature, so that the ACT can start implementing water efficiency measures in July 2024. EPSDD is preparing a business case for water efficiency measures

for the 2024-25 ACT budget process.

21. DCCEEW has confirmed that the format of the ACT water access entitlement would be suitable for the purposes of the Commonwealth Environmental Water Holder. Subject to the Agreement being signed, an application is expected in March 2024, for consideration in April 2024, so that the payment under the Agreement can be received by June 2024.

Financial Implications

22. The corrections to the Determinations have no financial impacts.

Consultation

Internal

23. The proposed Determinations and associated Explanatory Statements have been reviewed and cleared by EPSDD Legal Policy and by EPSDD Finance.

External

24. The Environmental Protection Agency has reviewed and agreed to the proposed Determinations.

25. ACT Treasury has been consulted in relation to the fees and the proposed Agreement and has not expressed any concerns.

Work Health and Safety

26. The proposed changes are not expected to impact on Work Health and Safety.

Benefits/Sensitivities

27. There are no known sensitivities associated with the corrections to the Determinations.

Communications, media and engagement implications

28. There are no expected media implications in the corrections to the Determinations.

29. EPSDD will discuss options for a joint Ministerial announcement about the water recovery Agreement with your office and DCCEEW. An announcement could be made when the Agreement is executed by both parties, when an entitlement has granted or when funding is received from the Australian Government

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Attachments

Attachment	Title
Attachment A	Disallowable Instrument – Water Resources (Water Available from Areas) Determination 2024
Attachment B	Disallowable Instrument – Water Resources (Fees) Determination 2024
Attachment C	Explanatory Statement – Water Resources (Water Available from Areas) 2024
Attachment D	Explanatory Statement – Water Resources (Fees) 2024

Australian Capital Territory

Water Resources (Water Available from Areas) Determination 2024

Disallowable instrument DI2024—

made under the

Water Resources Act 2007, s 17 (Amounts of water available from areas)

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1 Name of instrument

This instrument is the *Water Resources (Water Available from Areas) Determination 2024.*

2 Commencement

This instrument commences on the day after its notification day.

3 Determination of amounts of water available from areas

I determine the total amount of surface water and ground water available for taking from each ACT water management area in schedule 1.

4 Revocation

This instrument revokes the *Water Resources (Water Available from Areas) Determination 2019* (No 2) (DI2019-191).

Shane Rattenbury MLA
Minister for Water, Energy and Emissions Reduction
14 January 2024

Schedule 1

(see section 3)

Water available for taking from whole of ACT water management area (ACT Water Resource Plan Area)

Total amount of surface water available for taking from ACT Water Resource Plan (Surface Water) water management area

Total surface water available for taking (GL per annum) from ACT Water Resource Plan (Surface water) water management area - The ACT's overall total surface water available for taking is limited and shall be managed so as to not exceed the ACT's surface water Sustainable Diversion Limit, as detailed in the ACT Water Resource Plan, under the Murray-Darling Basin Plan:

42.7 GL per annum (net take from water courses), plus
11 GL per annum (take by Commercial Plantations), plus
4.64 GL per annum (take by Runoff Dams), minus
4.9 GL per annum shared reduction amount (towards the Basin-wide water recovery target), plus
Net interstate trade volume (trade into ACT minus trade out of ACT).

Note 1. The net take from water courses is calculated based on the gross take from water courses less return flows which include discharges to waterways from sewage treatment plants (the Lower Molonglo Water Quality Control Centre and the Queanbeyan Sewage Treatment Plant). Under the ACT Water Resource Plan it is proposed that increased flows (stormwater runoff) as a result of increased urbanisation (increased impervious areas) since July 2009 are also included as a return flow for calculating net take.

Note 2. In addition to these total amounts of surface water available for taking from the ACT water resource plan area, the total amount of water available for taking from individual sub water management areas is limited and shall be managed such as to not exceed the volumes listed in Table 1.

Total amount of groundwater available for taking from ACT Water Resource Plan (Groundwater) water management area

Total groundwater available for taking (GL per annum) from ACT Water Resource Plan (Groundwater) water management area - The ACT's overall total groundwater available for taking is limited and shall be managed such as to not exceed the ACT's groundwater Sustainable Diversion Limit, as detailed in the ACT Water Resource Plan, under the Murray-Darling Basin Plan, of 3.16 GL per annum.

Note 3. In addition to these total amounts of groundwater available for taking from the ACT water resource plan area, the total amount of water available for taking from individual sub water management areas is limited and shall be managed such as to not exceed the volumes listed in Table 1.

Table 1: Water available for taking from each sub water management area

Sub Water Management Area	Total ACT controlled surface water plus ground water (ML/yr)	ACT environmental allocation (ML/yr)	Total surface water available for taking (ML/yr)	Total ground water available for taking (ML/yr)
Central Molonglo	29,747	23,319	5,743	685
Cotter	106,565	22,849	81,666	2,050
Ginninderra	21,488	19,188	2,061	239
Googong	63,215	8,030	55,185	0
Gudgenby	33,522	29,350	3,002	1,170
Jerrabomberra	0	0	0	0
Lower Molonglo	46,124	13,886	31,941	297
Lower Murrumbidgee	11,497	10,239	1,069	189
Lower Queanbeyan	0	0	0	0
Naas	16,476	14,149	1,472	855
Paddys	34,583	30,621	3,053	909
Tuggeranong	8,507	7,492	825	190
Upper Molonglo	2,403	2,139	240	24
Upper Murrumbidgee	19,833	17,418	1,775	640
Overall total	**393,960**	**198,680**	**188,032**	**7,248**

Note 5: Total ACT controlled water and environmental allocations were derived from the ACT Source Model (Alluvium 2018) and based on the current Environmental Flow Guidelines. 1 GL equals 1000 ML

Australian Capital Territory

Water Resources (Fees) Determination 2024

Disallowable instrument DI2024–

made under the

Water Resources Act 2007, s 107 (Determination of fees)

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1 Name of instrument

This instrument is the *Water Resources (Fees) Determination 2024.*

2 Commencement

This instrument commences on the day after its notification day.

3 Determination of fees

The fee payable in respect of each matter listed in an item in column 3 of the schedule is the amount listed for that matter in column 5 and in the manner listed for that matter in column 6.

4 Payment of fees

A fee mentioned in the schedule is payable to the Territory by the person requesting the goods or services described in the schedule.

5 Fee exemption

(1) No fee is payable for an application or a grant of a water access entitlement under section 20 of the *Water Resources Act 2007* if—

(a) the intended use of the water is to fulfil the Territory's commitments under section 6.05 of the *Basin Plan 2012* (Cwlth); or

(b) the intended use of the water is to participate in a registered measure involving the ACT's water resource plan area established under chapter 7 of the *Basin Plan 2012* (Cwlth).

(2) Clause 5 (1) does not apply for a groundwater water access entitlement.

6 Definitions

In this instrument:

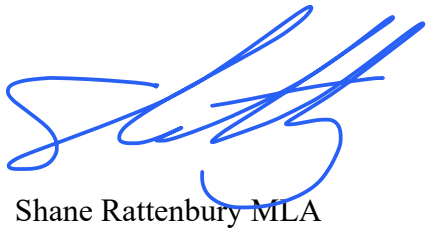
licence year means the first whole year of a licence or subsequent whole years.

repealed Act means the *Water Resources Act 1998*.

WAE means water access entitlement.

7 Revocation

This instrument revokes the *Water Resources (Fees) Determination 2023* (DI2023-128).



Shane Rattenbury MLA
Minister for Water, Energy and Emissions Reduction
14 January 2024

Schedule

(See s 3)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item number	Section of Act	Type of licence	Fee Payable 2022-23 $	Fee Payable 2023-24 $	Payment Requirements
1.1	s 111	Grant of a WAE where a person held a licence to take water under section 35 of the repealed Act but did not hold an allocation. The use of this WAE is restricted to a particular location.	*Nil*	**Nil**	
1.2	s 111 (surviving allocations)	Grant of a WAE where a person held a licence to take water under section 35 of the repealed Act and an allocation held under section 28 of the repealed Act that did not permit trade. The use of this WAE is restricted to a particular location.	*Nil*	**Nil**	
1.3	s 111 (surviving allocations)	Grant of a WAE where a person held a licence to take water under section 35 of the repealed Act and an allocation held under section 28 of the repealed Act that did permit trade. The use of this WAE is not restricted to a particular location.	*Nil*	**Nil**	
1.4	s 20	Grant of a WAE where use is not restricted to a particular location, in all cases except those specifically identified – per megalitre.	*869.80*	**902.40**	As specified in the entitlement.
1.5	s 20	Grant of a WAE to a utility from the Cotter or Googong water management areas. This WAE is limited to use through the Canberra/Queanbeyan urban water supply network.	*Nil*	**Nil**	
1.6	s 20	Grant of a WAE that is limited to stock and domestic purposes and is restricted for use at a particular location.	*Nil*	**Nil**	
1.7	s 20	Grant of a WAE on declared national land and that is restricted for use at a particular location.	*Nil*	**Nil**	
1.8	s 25 (Removal of location restriction)	Change of condition of a WAE from one that is restricted in location to one that is not restricted for use at a particular location – per megalitre.	*869.80*	**902.40**	As specified in the entitlement.
1.9	s 29	Application fee for a licence to take water.	*192.35*	**199.55**	On application for a licence.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item number	**Section of Act**	**Type of licence**	**Fee Payable 2022-23 $**	**Fee Payable 2023-24 $**	**Payment Requirements**
1.10	s 30	Licence to take water – administration fee for each licence year relating to a licensed volume of up to 1000 megalitres per year, except where a licensee has entered into a data collection and sharing agreement with the Environment Protection Authority.	*497.90*	**516.55**	For the first year of the licence, the fee shall be paid in full on application for a licence and thereafter, on a date specified in the licence.
1.11	s 30	Licence to take water – administration fee for each licence year relating to a licensed volume of up to 1000 megalitres per year, where a licensee has entered into a data collection and sharing agreement with the Environment Protection Authority.	*Nil*	**Nil**	For the first year of the licence, the fee shall be paid in full on application for a licence and thereafter, on a date specified in the licence.
1.12	s 30	Licence to take water administration fee for each licence year relating to a licensed volume of more than 1000 megalitres per year.	*9,666.85*	**10,029.35**	For the first year of the licence, the fee shall be paid in full on application for a licence and thereafter, on a date specified in the licence.
1.13	s 30	Licence to take water abstraction fee for water taken for the purposes of urban water supply and calculated on the basis of the water abstracted – per kilolitre.	*0.67*	**0.69**	Payments to be made for water charged to users in each three-month period ending the last day of February, May, August and November each year and within 28 days of the end of the three-month period.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item number	**Section of Act**	**Type of licence**	**Fee Payable 2022-23 $**	**Fee Payable 2023-24 $**	**Payment Requirements**
1.14	s 30	Licence to take water – abstraction fee for all water from surface water or groundwater except for that supplied through a water supply network – per kilolitre.	*0.324*	**0.334**	As specified in the licence. In all cases, where fees relating to a part of a month are due, each day's use will be taken to be equivalent to average daily use for that month and, where monthly meter readings are not available, the Environment Protection Authority shall estimate water use after consultation with the licensee.
1.15	s 34	Three-year driller licence application fee where the applicant does hold an equivalent licence in a state in Australia.	*192.35*	**199.55**	On application.
1.16	s 38	Application fee for a bore work licence.	*192.35*	**199.55**	On application.
1.17	s 48	Application for a Recharge licence.	*192.35*	**199.55**	On application.
1.18	s 50	Recharge licence – yearly administration fee.	*497.90*	**516.55**	For the first year of the licence, the fee shall be paid on application for a licence and thereafter, on a date specified in the licence.
1.19	s 43	Application fee for a Waterway work licence.	*192.35*	**199.55**	On application.
1.20	s 26	Application fee for the transfer of a water access entitlement either permanently or for a period of time.	*192.35*	**199.55**	On application.

Note: The fees set out in column 3 are for comparison purposes only.

Australian Capital Territory

Water Resources (Water Available from Areas) Determination 2024

Disallowable instrument DI2024–8

made under the

Water Resources Act 2007, s 17 (Amounts of water available from areas)

EXPLANATORY STATEMENT

Section 17 of the *Water Resources Act 2007* (the ***Act***) requires the Minister to determine the total amounts of surface and ground water available for taking in each water management area. The determination is also required to meet the Territory's obligations under the *Basin Plan 2012* (Cwlth), made under the *Water Act 2007* (Cwlth).

The Minister determined the amounts of water available for taking through the *Water Resources (Water Available from Areas) Determination 2019 (No 2)* (DI2019-191). This instrument does not change the amounts of water available for taking, which remain the same as determined in DI2019-191. The basis for the amounts determined in 2019 is described further below.

This instrument corrects the volumes and descriptions of the components of the ACT's Sustainable Diversion Limit so that they are consistent with the Territory's Water Resource Plan accredited under the *Basin Plan 2012* (Cwlth).

The instrument corrects the runoff dam take volume from 4.2 GL[1] to 4.64 GL and inserts a reference to the 4.9 GL per annum shared reduction amount (towards the Basin-wide water recovery target).

In 2019, in determining the amounts of water available for taking, the Minister took the following into account as required under section 17 (2) of the Act:

- the Environmental Flow Guidelines;
- the total water resources of the Territory;
- any studies and research undertaken by the Environment Protection Authority to establish sustainable yields for the water management area.

This instrument determines the total annual water available from water and sub-water management areas available to the ACT and reflects the current Environmental Flow Guidelines.

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[1] GL denotes gigalitres, i.e. 1,000,000,000 litres

For all water and sub-water management areas except Cotter and Googong, total surface water available for taking is 10% of the flow greater than the 80th percentile.

In the Cotter and Googong water management areas, the 80th percentile is protected and available take is total flow less the 80th percentile flow.

In the Lower Molonglo and Central Molonglo water management areas, water available for take can include, treated effluent returned to the river from the Molonglo Water Quality Control Centre and the Queanbeyan Sewage Treatment Plant respectively. Total net water take must remain below the ACT net Sustainable Diversion Limit.

Total groundwater available for taking is equal to 10% of the estimated recharge to groundwater.

The amounts in schedule 1 were developed in 2019 through the ACT Source model and are based on the rules in the current environmental flow guidelines, the total water resources of the Territory, the requirements of the Basin Plan and specific investigations undertaken by the ACT Government to establish sustainable yields of surface and groundwater within catchments under ACT responsibility.

The instrument commences on the day after its notification day.

This instrument repeals the *Water Resources (Water Available from Areas) Determination 2019 (No 2)* (DI2019-191).

Regulatory Impact Statement (RIS)
A RIS is not required for this determination due to section 36 (1) (a) of the Legislation Act, which provides that a RIS need not be prepared for a matter that is not of a legislative nature, including, for example, a matter of a machinery, administrative, drafting or formal nature.

Human Rights
The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. In this case, no human rights are impacted.

Australian Capital Territory

Water Resources (Fees) Determination 2024

Disallowable instrument DI2024–9

made under the

Water Resources Act 2007, s 107 (Determination of fees)

EXPLANATORY STATEMENT

Section 107 of the *Water Resources Act 2007* (the ***Act***) permits the Minister to determine fees for the Act.

The purpose of this instrument is to clarify a fee exemption to facilitate the Territory meeting its commitments under the *Basin Plan 2012* (Cwlth) (the ***Basin Plan***).

The instrument clarifies that the exemption applies not only to any application fee but also to any fee for the grant of a water access entitlement (***WAE***), where the intended use of the water involves the Territory complying with commitments or participating in registered measures under the Basin Plan.

This instrument does not change or increase any other fees. The fees for goods and services under the Act for the 2023-24 financial year remain at the same levels set out in the previous *Water Resources (Fees) Determination 2023* (DI2023-128).

This fee exemption was first established in *Water Resources (Fees) Determination 2020* and applies where the entitlement would be granted (a) to provide the shared reduction amount for the southern Basin Australian Capital Territory zone under section 6.05 of the Basin Plan and/or (b) to facilitate the Territory's participation in water efficiency measures under chapter 7 of the Basin Plan.

There are currently no fees for applications for WAEs under section 20 of the Act. Currently, fees apply to the grant of certain WAEs under section 21 of the Act.

The instrument commences on the day after its notification day.

This instrument repeals the *Water Resources (Fees) Determination 2023* (DI2023-128).

Regulatory Impact Statement (RIS)
A RIS is not required for this fee determination due to section 36 (1) (a) a matter that is not of a legislative nature, including, for example, a matter of a machinery,

administrative, drafting or formal nature.

Human Rights
The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. In this case, no human rights are impacted.