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New South Wales

Controlled Allocation Order (Various Groundwater Sources) 2021

under the

Water Management Act 2000

I, Graham Attenborough, Chief Operating Officer– Water, having delegated authority from the Minister for Water, Property and Housing, in pursuance of section 65 of the *Water Management Act 2000*, declare that the right to apply for an access licence for specified water sources is to be acquired by tender as set out in the following Order.

Dated 12 October 2021.

GRAHAM ATTENBOROUGH

Chief Operating Officer– Water Department
of Planning, Industry & Environment (by
delegation)

Explanatory note

This Order is made under section 65 of the *Water Management Act 2000*. The object of this Order is to declare the right to apply for an aquifer access licence for the water sources specified in Schedule 1 to this Order is to be acquired by way of tender as specified in this Order.

Controlled Allocation Order (Various Groundwater Sources) 2021

under the

Water Management Act 2000

1 Name of Order

This Order is the *Controlled Allocation Order (Various Groundwater Sources) 2021*.

2 Commencement

This Order commences on the day it is published in the NSW Government Gazette.

3 Duration

This Order remains in force until repealed.

4 Water sources to which this Order applies

- 1) Subject to clause 4(2), this Order applies to each water source specified in Column 2 of Schedule 1 to this Order as described in the water sharing plan specified in the corresponding row of Column 1 of Schedule 1.

Note: Some of the water sharing plans specified in Column 1 of Schedule 1 to this Order may be repealed and remade while this Order is in force. The repeal, replacement or amendment of a water sharing plan specified in Column 1 of Schedule 1 does not affect the application of this Order to the water source as described in that water sharing plan.

- 2) Where a management zone is specified in the corresponding row of Column 5 of Schedule 1 to this Order, this Order only applies to the part of the water source specified in Column 2 of Schedule 1 that is within that management zone.

5 Controlled allocation of aquifer access licences

- 1) The right to apply for an access licence in respect of the water sources to which this Order applies:
 - a) is limited to the category of aquifer access licence,
 - b) cannot exceed the quantity of unit shares specified in Column 3 of Schedule 1 for the water source specified in the corresponding row of Column 2 of Schedule 1, and
 - c) is to be acquired by tender for a price not less than the amount specified in Column 4 of Schedule 1 for a unit share in that water source.

Note: The right to apply for an aquifer access licence does not include the right to apply for other categories of licence such as an aquifer (general security) access licence or an aquifer (high security) access licence which are different categories of access licence.

6 Subcategories of aquifer access licence

The right to apply for an aquifer access licence under this Order does not include the right to apply for a subcategory of aquifer access licence.

7 Controlled allocation process

The tender is to be carried out in accordance with the Terms and Conditions set out at Schedule 2 to this Order.

SCHEDULE 1

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------|--------------------------------------------|------------------------------------------------------------------|
| Water Sharing Plan | Water source | Quantity of unit shares per water source | Minimum bid price per unit share \$ | Management zone in the water source specified in Column 2 |
| <i>Water Sharing Plan for the Brunswick Unregulated and Alluvial Water Sources 2016</i> | Brunswick River Coastal Floodplain Alluvial Groundwater Source | 35 | 500 | |
| <i>Water Sharing Plan for the Clarence River Unregulated and Alluvial Water Sources 2016</i> | Clarence River Coastal Floodplain Alluvial Groundwater Source | 215 | 500 | |
| <i>Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011</i> | Coxs River Fractured Rock Groundwater Source | 472 | 650 | |
| | Goulburn Fractured Rock Groundwater Source | 2,317 | 650 | |
| | Hawkesbury Alluvium Groundwater Source | 153 | 500 | |
| | Metropolitan Coastal Sands Groundwater Source | 1,032 | 500 | |
| | Sydney Basin Central Groundwater Source | 693 | 500 | |
| | Sydney Basin North Groundwater Source | 542 | 750 | |
| | Sydney Basin South Groundwater Source | 1,170 | 650 | |
| <i>Water Sharing Plan for the Hastings Unregulated and Alluvial Water Sources 2017</i> | Hastings River Coastal Floodplain Alluvial Groundwater Source | 38 | 500 | |

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|--------------------------------------------------------------------------------------------------|---------------------------------------------------------|-----------------|-----------------|-----------------|
| <i>Water Sharing Plan for the Macleay Unregulated and Alluvial Water Sources 2016</i> | Coastal Macleay Floodplain Alluvial Groundwater Source | 70 | 500 | |
| <i>Water Sharing Plan for the Nambucca Unregulated and Alluvial Water Sources 2016</i> | Coastal Nambucca Floodplain Alluvial Groundwater Source | 40 | 500 | |
| <i>Water Sharing Plan for the North Coast Coastal Sands Groundwater Sources 2016</i> | Bellinger-Nambucca Coastal Sands Groundwater Source | 54 | 500 | |
| | Clarence Coastal Sands Groundwater Source | 205 | 500 | |
| | Coffs Harbour Coastal Sands Groundwater Source | 152 | 500 | |
| | Great Lakes Coastal Sands Groundwater Source | 478 | 500 | |
| | Hastings Coastal Sands Groundwater Source | 340 | 500 | |
| | Hawkesbury to Hunter Coastal Sands Groundwater Source | 865 | 500 | |
| | Macleay Coastal Sands Groundwater Source | 339 | 500 | |
| | Manning-Camden Haven Coastal Sands Groundwater Source | 160 | 500 | |
| | Richmond Coastal Sands Groundwater Source | 843 | 500 | |
| | Tweed-Brunswick Coastal Sands Groundwater Source | 873 | 500 | |
| | Stockton Groundwater Source | 620 | 500 | |
| <i>Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources 2016</i> | Bulahdelah Sandstone Groundwater Source | 6 | 500 | |
| | Clarence Moreton Basin Groundwater Source | 14,708 | 500 | |
| | Comboyne Basalt Groundwater Source | 77 | 500 | |

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------|-----------------|-----------------|--------------------------------------------------|
| | Dorrigo Basalt Groundwater Source | 207 | 500 | |
| | Liverpool Ranges Basalt Coast Groundwater Source | 420 | 500 | |
| | Lorne Basin Groundwater Source | 446 | 500 | |
| | New England Fold Belt Coast Groundwater Source | 1,739 | 500 | |
| | North Coast Volcanics Groundwater Source | 299 | 500 | |
| <i>Water Sharing Plan for the North Western Unregulated and Fractured Rock Water Sources 2011</i> | Adelaide Fold Belt North Western Groundwater Source | 1,396 | 500 | |
| | Kanmantoo Fold Belt North Western Groundwater Source | 1,286 | 500 | |
| <i>Water Sharing Plan for the NSW Great Artesian Basin Shallow Groundwater Sources 2020</i> | GAB Central Shallow (MDB) Groundwater Source | 429 | 500 | |
| | GAB Central Shallow (North Western) Groundwater Source | 1,592 | 500 | |
| | GAB Surat Shallow Groundwater Source | 431 | 500 | |
| | GAB Warrego Shallow Groundwater Source | 1,638 | 500 | |
| <i>Water Sharing Plan for the NSW Murray Darling Basin (MDB) Fractured Rock Groundwater Sources 2020</i> | Adelaide Fold Belt MDB Groundwater Source | 100 | 500 | |
| | Kanmantoo Fold Belt MDB Groundwater Source | 490 | 500 | |
| | Lachlan Fold Belt MDB Groundwater Source | 5,125 | 650 | Lachlan Fold Belt MDB (Other) Management Zone |
| | New England Fold Belt MDB Groundwater Source | 679 | 750 | |
| <i>Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020</i> | Gunnedah-Oxley Basin MDB Groundwater Source | 4,690 | 650 | Gunnedah-Oxley Basin MDB (Other) Management Zone |
| | Sydney Basin MDB Groundwater Source | 390 | 650 | |
| | Western Murray Porous Rock Groundwater Source | 8,167 | 500 | |

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|------------------------------------------------------------------------|---------------------------------------------|-----------------|-----------------|-----------------|
| <i>Water Sharing Plan for the South Coast Groundwater Sources 2016</i> | Lachlan Fold Belt Coast Groundwater Source | 708 | 500 | |
| | South East Coastal Sands Groundwater Source | 233 | 500 | |
| | Sydney Basin-South Coast Groundwater Source | 1,040 | 500 | |

SCHEDULE 2

Terms and Conditions for the Controlled Allocation Process

Important notes

The Controlled Allocation Process relates to acquiring the right to apply for an access licence under section 61(c) of the *Water Management Act 2000 (Act)*. Should a participant be successful in acquiring the right to apply for an access licence, this does not necessarily mean that an access licence will be granted when it is applied for. If successful in acquiring the right to apply for an access licence, the participant will need to lodge an access licence application which will be determined in accordance with the relevant water sharing plan and the Act.

Water sharing plans may be amended or repealed and remade while this Order is in force. A right to apply for an access licence may still be acquired via the Controlled Allocation Process despite a water sharing plan amendment or repeal and remake. There may be restrictions on granting access licences in certain water sources set out in the relevant water sharing plans. The Rol form makes provision for a management zone to be specified in relation to a water source.

The successful participant may also need to obtain further approvals to take and/or use the water. The approvals required may include, for example, a water supply work approval and/or a water use approval under the Act or an approval/consent under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Prior to taking water, the participant will also need to ensure that a water supply work or extraction point is nominated on the access licence. There may be restrictions on nominating a work in certain water sources due to management zone rules. Participants should check with the Natural Resources Access Regulator (**NRAR**) or WaterNSW¹ to confirm whether there are any restrictions that may prevent them obtaining and using the necessary licences and approvals to take water in their desired manner.

¹ Responsibilities for granting and managing water access licences and approvals under the Act are shared between NRAR and WaterNSW. The division of responsibility is set out in WaterNSW's operating licence. A summary is provided below.

The **NRAR** is responsible for water licences and approvals required by or for or in relation to:

- Government agencies, including other NSW government agencies, local councils and the Commonwealth
- State owned corporations
- Major water utilities, water supply authorities and local water utilities
- Licensed network operators under the *Water Industry Competition Act 2006*
- Major developments (state significant developments and state significant infrastructure)
- Mining companies
- Irrigation corporations
- Schools and hospitals
- Aboriginal communities and businesses
- Floodplain harvesting
- Controlled activities.

WaterNSW is responsible for:

- water licences and approvals required by or for or in relation to the remainder of water users, landholders, industries and developments
- processing water access licence dealings, and managing information relating to licence shares and water allocations.

Acquiring a right to apply for an access licence through the Controlled Allocation Process does not guarantee that groundwater of a particular yield or quality will be able to be accessed by the successful participant. This is because groundwater yield and quality can vary throughout a groundwater source. If successful participants are unable to access suitable groundwater they will not be given compensation or reimbursement. They may be able to sell their access licence on the water market.

Part 1 – Overview

- 1.1 The Department will conduct the tender in accordance with the Terms and Conditions set out in this Schedule (**Controlled Allocation Process**).

Part 2 – The Registration of Interest (RoI) process

- 2.1 The Controlled Allocation Process will consist of one 30 day period which will commence on 1 November 2021 (**Commencement Date**) (**RoI period**) during which the water specified in Schedule 1 to this Order will be made available for tender. On the Commencement Date, a notice will be published on the Department's website notifying of the right to register interest within 30 days from the Commencement Date.

- 2.2 To register interest in the RoI period, a participant must within 30 days from the Commencement Date:
- Complete the RoI form available on the Department website as at the date of the application, and
 - Submit both the completed RoI form and an application fee of \$150 (**RoI Application**) to the Department in the manner specified on the form.

Notes:

- RoI Applications not completed and submitted to the Department within the 30 day RoI period will not be accepted. Applicants should carefully follow the instructions on the RoI form.
- A person may, or may not, be successful in their RoI Application.
- The application fee will not be refunded unless the water source nominated by a person in the Controlled Allocation Process is no longer available during the RoI period. A water source may be revoked, or the number of unit shares may be decreased by an amendment to this Order. RoI forms will only be available on the Department website during the 30 day period from the Commencement Date.

- 2.3 In the ROI form, participants must nominate:
- The water source specified in Column 2 of Schedule 1 to this Order (and the management zone within the water source if specified in Column 5 of Schedule 1),
 - The price per unit share at or above the amount specified in Column 4 of Schedule 1 that they are willing to pay if successful in the tender. The price must be a full dollar amount, and
 - The number of whole unit shares they wish to tender for.

Notes:

- A RoI application nominating a management zone that is not specified in Column 5 of Schedule 1 will be invalid.
- An application nominating a price per unit share lower than the amount specified in Column 4 of Schedule 1 will be invalid.

- 2.4 The Department may request more information if a RoI form is incomplete or further information is required. An applicant who submits an incomplete RoI form may be sent a letter explaining that their RoI form is incomplete and cannot be determined.

- 2.5 A right to apply for an access licence acquired through the Controlled Allocation Process is not transferable.

Notes:

1. The only person who can apply for an access licence arising from the Controlled Allocation Process is the applicant in the successful Rol Application. If the access licence is to be held by more than one person, each person must be identified as an applicant in the Rol Application.
2. 'Person' has the same meaning as defined in section 21 of the *Interpretation Act 1987*.

- 2.6 If a participant is seeking to acquire a right to apply for access licences in more than one water source, they must lodge a separate Rol Application for each water source.

- 2.7 A participant may make multiple bids at different prices for unit shares within the same water source during the Rol period by submitting a separate Rol Application for each bid and paying the application fee of \$150 for each Rol Application. In these circumstances:

- a) Each Rol Application will be processed separately, and
- b) The Terms and Conditions apply in relation to each Rol Application.

Note: A person who is successful in more than one Rol Application must, unless they withdraw within 30 days of issue of the Successful Notice, pay the Total Purchase Price and lodge an access licence application for each –Successful Notice (see Part 4 of this Schedule).

- 2.8 Participants in the Controlled Allocation Process must:
- a) Not engage in unethical or collusive behaviour or seek to obtain an unfair advantage, and
 - b) Comply with all relevant standards and behaviours in Section 2 of the Supplier Code of Conduct.

Notes:

- 1) A copy of the Supplier Code of Conduct is available at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct> and Section 2 of the Supplier Code of Conduct is extracted at Annexure A to this Order.
- 2) Under Part 5 of Schedule 2 to this Order, this behaviour may preclude a participant from participating in the Controlled Allocation Process and future controlled allocation processes.

Part 3 – Selection of successful Rol Applications

- 3.1 Subject to clauses 3.2 to 3.4, the right to apply for an access licence in each water source will be offered to the participant who has submitted a Rol Application for the highest price, provided that the price is at or above the minimum price per unit share set out in Column 4 of Schedule 1 to this Order.

- 3.2 If, within the Rol period, the unit shares available in a water source are not fully exhausted by the highest offered price per unit share, then a right to apply for an access licence may continue to be awarded to participants who have submitted Rol

Applications in the order of the next highest price per unit share until:

- a) The unit shares available for that water source have been fully allocated,
- b) There are no further bids at or above the minimum price, or
- c) An Executive Director of the Department or above (**Executive Director**) decides to hold over any remaining unit shares to a future controlled allocation order made under section 65 of the Act.

3.3 If two or more RoI Applications in the RoI period include:

- a) Bids at the same highest price per unit share in the same water source, or
- b) Bids at the same next highest price per unit share in the same water source (as described in clause 3.2), and
- c) The sum of the unit shares applied for is greater than the unit shares available for the RoI period, then unit shares will be distributed proportionally between the participants who submitted those RoI Applications according to the number of unit shares of each bid, to the extent they can be apportioned as full unit shares. Only whole unit shares will be made available. Where unit shares are distributed proportionally, the proportion of unit shares made available to participants who bid for one unit share will be rounded up, and those who bid for more than one unit share will be rounded down.

Note: This means a participant may only successfully obtain the right to apply for an access licence for some (but not all) of the unit shares applied for in a RoI Application.

3.4 An Executive Director may refuse or refuse to consider a RoI Application at their discretion for any reason, including but not limited to circumstances where the Executive Director:

- a) Reasonably believes that the participant has engaged in collusive behaviour,
- b) Is not satisfied that the RoI Application was submitted within the RoI period,
- c) Considers the RoI form was not completed,
- d) Considers that further information requested from the participant has not been sufficiently provided.

Part 4 – Rights and obligations of participants

4.1 Upon the expiration of the RoI period, an Executive Director will:

- a) Determine the successful RoI Applications based on the criteria set out in Part 3,
- b) Issue successful participants with written notice (**Successful Notice**) that sets out:
 - i. the price at which the participant has, subject to full payment of the total purchase price for all unit shares specified in the Successful Notice (**Total Purchase Price**), been successful in the tender, and
 - ii. the number of unit shares, the water source, and, if applicable, the management zone to which the access licence application relates, and
- c) Issue non-successful participants with written notice (**Unsuccessful Notice**) that they were not successful in the tender.

4.2 After the end of the RoI period and prior to the repeal of this Order, an Executive Director may issue a Successful Notice to any continuing participant who had previously been issued an Unsuccessful Notice.

4.3 A successful participant must either:

- a) **Complete payment:** Pay the Total Purchase Price in the manner set out in the Successful Notice within 30 days of the date of the Successful Notice, or
 - b) **Withdraw:** Withdraw from the Controlled Allocation Process within 30 days of the date of the Successful Notice by written notice to the Executive Director using the withdrawal form included in the Successful Notice, or
 - c) **Extension for payment:** seek an extension for payment within 30 days from the date of the Successful Notice by written notice to the Executive Director.
- 4.4 If an extension of payment is granted, the successful participant will receive written notice and must either:
- a) **Complete payment and comply with the terms of the notice:** Pay the Total Purchase Price in the manner set out in the Successful Notice by the date specified in the notice of extension for payment and comply with the terms of the notice, or
 - b) **Withdraw:** Withdraw from the Controlled Allocation Process by the date specified in the notice of extension for payment by written notice to the Executive Director. using the withdrawal form included in the Successful Notice.
- 4.5 Subject to clause 4.7, a participant acquires the right to apply for an access licence under section 65 of the Act when the Total Purchase Price has been paid.
- 4.6 Upon receipt of the Total Purchase Price, the Department will generate a reference number for the access licence application (**Reference Number**) and provide it to the participant.
- 4.7 A participant must apply for an access licence under section 61(1)(c) of the Act for the total unit shares specified in the Successful Notice within 30 days of the date of the Reference Number.

Note:

1. The access licence application form and fee details will be provided to the participant by the Department when the Reference Number is issued. WaterNSW and NRAR process access licence applications (see "Important note").
 2. The access licence application should be made pursuant to section 61(1)(c) of the Act.
- 4.8 Where an access licence application arising from the Controlled Allocation Process is refused, the Department will refund the Total Purchase Price paid by the participant. The access licence application fees will not be refunded and the Reference Number will be cancelled.

Late withdrawal from the Controlled Allocation Process

- 4.9 If a successful participant wishes to withdraw from the Controlled Allocation Process, after paying the Total Purchase Price in accordance with clause 4.3 or 4.4, the participant may, by written notice to the Executive Director specified on the Successful Notice, apply for a late withdrawal from the Controlled Allocation Process. The notice must set out the reasons for the request and the delay in deciding to withdraw and may be made any time prior to determination of the access licence application arising from the Controlled Allocation Process.

- 4.10 The Executive Director may:
- a) Refuse to grant the late withdrawal, or
 - b) Grant the late withdrawal. Once granted, the Department will refund the Total Purchase Price and the Reference Number will be cancelled.

Note: Access licence application fees will not be refunded if late withdrawal is permitted under this clause.

Part 5 – Default

- 5.1 In the event of a Default, an Executive Director may:
- a) remove a participant from the Controlled Allocation Process
 - b) withdraw a participant's right to apply for an access licence acquired under the Controlled Allocation Process prior to the participant making an access licence application
 - c) preclude a participant and any related parties from participating in future controlled allocation processes under orders made pursuant to section 65 of the Act.

Notes:

1. Rol and access licence application fees will not be refunded and the Reference Number will be cancelled.
2. In making any decision, the Executive Director may invite submissions from the participant, including to demonstrate any exceptional circumstances or financial hardship.

- 5.2 For the purposes of Part 5, **Default** includes:
- a) Failure to complete payment of the Total Purchase Price or withdraw from the Controlled Allocation Process within the time period specified in clause 4.3 or 4.4.
 - b) Failure to comply with all relevant standards and behaviours in section 2 of the Supplier Code of Conduct,
 - c) Failure to submit a licence application within 30 days of the Reference Number being issued to a participant in accordance with clause 4.7,
 - d) Provision of false or misleading information to the Department, NRAR or WaterNSW in the Controlled Allocation Process and
 - e) Circumstances where the Executive Director is satisfied that a participant has engaged in collusive behaviour, unethical behaviour, or has sought to obtain an unfair advantage in the Controlled Allocation Process.

Part 6 – Agreement, liability and advice

- 6.1 By submitting a Rol Application the participant agrees to the Terms and Conditions in Schedule 2 to this Order.
- 6.2 The Order and Terms and Conditions do not constitute a contract between the Department and the participant in any respect.
- 6.3 The participant participates in the Controlled Allocation Process at their own risk and cost. The Crown in right of the State of New South Wales, including the Department and its officers, employees and agents (**State**), accepts no liability in relation to any action,

proceeding, claim, demand, cost, loss, damage or expense (including reasonable legal costs or expenses) arising directly or indirectly as a result of or in connection with the Controlled Allocation Process or any act or omission of the State in connection with the Controlled Allocation Process. Furthermore, the State is not liable for any consequential losses or damages, including but not limited to, loss of profit, loss of contract, loss of revenue, loss of use, loss of opportunity, damage to goodwill, or any other special or indirect losses of the participant.

- 6.4 The participant is responsible for obtaining any legal, financial or technical advice in connection with the Controlled Allocation Process.

Annexure A

Section 2 of the Supplier Code of Conduct

A minimum set of expectations and behaviours for doing business with NSW Government. This Supplier Code of Conduct outlines the ethical standards and behaviours for the Department and Participants.

2. We expect our suppliers and their supply chains to commit to the highest ethical standards

When conducting business with NSW Government we expect that you will:

- comply with applicable laws, regulations, policies, procedures and good business practices
- ensure third parties acting on your behalf comply with this code
- act with integrity and openness
- conduct business in an ethical and safe manner
- disclose any perceived or real conflicts of interest
- not discuss or disclose dealings with NSW Government to the media without approval
- pay your suppliers / contractors on time
- protect and prevent the release of commercial-in-confidence information
- ensure the security and proper use of government information, assets and materials
- not offer NSW Government employees/contractors any financial or non-financial benefits
- respond to reasonable requests for advice and information
- report breaches of this code to NSW Government.

The Supplier Code of Conduct was last updated on 14 February 2020

WEBSITE: <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>