

Mitchell
resource operations plan
consultation report

November 2009

Prepared by:

Water Allocation and Planning

Department of Environment and Resource Management

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Message from the Deputy Director-General

This report has been prepared to document how issues that arose in finalising the Mitchell Resource Operations Plan 2009 have been assessed and dealt with. The issues arose from the formal submissions that were received following the release of the draft Mitchell Resource Operations Plan in October 2008. The final plan will implement the *Water Resource (Mitchell) Plan 2007* and play a key role in the sustainable allocation and management of the region's water resources.

The level of participation and the issues raised in the submissions gives an indication of the importance of water resources to the Mitchell community. The final plan supports future growth in the plan area and in the adjoining region, while maintaining the health of the natural environment and other critical ecological values.

This report explains how the final resource operations plan was shaped and influenced by the submissions process, and where decisions were constrained by requirements of the *Water Resource (Mitchell) Plan 2007* or other factors.

I would like to take this opportunity to acknowledge the contribution made to the process by the groups and individuals who prepared submissions in response to the release of the draft plan. I trust this report provides them with a useful record of how their input has been considered in this process.

The final Mitchell Resource Operations Plan 2009 will play an important part in responding effectively to changing local and global markets and the challenges of climate variability.

Debbie Best
Deputy Director-General
Department of Environment and Resource Management

Table of Contents

1	INTRODUCTION.....	1
1.1	PURPOSE OF THIS REPORT	1
1.2	BACKGROUND	1
1.2.1	<i>What the process must do</i>	1
1.2.2	<i>The issues that arose</i>	1
1.2.3	<i>How the issues were assessed</i>	1
1.3	WHERE YOU CAN GET A COPY OF THE PLAN	2
1.4	HISTORY OF DEVELOPMENT OF THE RESOURCE OPERATIONS PLAN	2
1.5	REFERRAL PANEL.....	2
1.5.1	<i>Background and Purpose</i>	2
2	ISSUES RAISED IN SUBMISSIONS	3
2.1	WATER LICENCES—2 SUBMISSIONS	3
2.1.1	<i>Permanent and seasonal trading—2 submissions</i>	3
2.1.2	<i>Increased rate of take—2 submissions</i>	4
2.2	INDIGENOUS ACCESS TO WATER AND RIGHTS—1 SUBMISSION	5
2.2.1	<i>Indigenous water rights and interests, present and future—1 submission</i>	5
2.2.2	<i>Traditional custodians and mining leases—1 submission</i>	6
2.3	ENVIRONMENTAL—2 SUBMISSIONS	6
2.3.1	<i>Water quality improvement targets—1 submission</i>	6
2.3.2	<i>Land and Water Management Plans—1 submission</i>	7
2.3.3	<i>Environmental management objectives—1 submission</i>	8
2.3.4	<i>Environmental remedial action framework—2 submissions</i>	9
2.3.5	<i>Southedge Dam—1 submission</i>	9
3	PLAN FINALISATION.....	11
3.1	THE FINAL MITCHELL RESOURCE OPERATIONS PLAN PROVISIONS	11
3.2	CHANGES TO THE FINAL PLAN	11

1 Introduction

1.1 Purpose of this report

This report has been prepared to provide a record of the consultation process that followed the release of the Mitchell draft Resource Operations Plan in October 2008. This report also details the issues that were raised in submissions and how they were addressed as part of the plan's finalisation.

1.2 Background

1.2.1 What the process must do

The Mitchell Resource Operations Plan 2009 (the plan) was prepared to implement the *Water Resource (Mitchell) Plan 2007*. The plan implements the water resource plan by providing a scheme of updated conditions and characteristics for water entitlements on the streams within the plan area. Together, the two plans provide a strategic framework for allocating and sustainably managing the surface water and groundwater resources located within the plan area.

Community consultation was a cornerstone for development of the plan. Submissions on the plan were first invited when the intention to prepare the plan was announced in November 2006, and again on release of the draft plan in October 2008. This report deals with the process associated with the second round of submissions. Also, in order to provide the opportunity for face-to-face discussions, a number of information sessions and meetings were held in various locations throughout the plan area. A general invitation for people to attend these public information sessions was included in the public notice for the release of the draft plan. The notice stated locations and dates for the information sessions. A number of meetings were held for the key stakeholders of the water supply schemes.

1.2.2 The issues that arose

A total of five submissions were received about the draft plan. The main issues that arose were related to:

- the proposed volumetric conversion of entitlements and their subsequent characteristics
- the volumes of unallocated water set aside for release under the plan
- water reserved for Indigenous social and economic use
- the tradability of water allocations and entitlements, including seasonal assignments
- environmental management rules
- implementation arrangements.

1.2.3 How the issues were assessed

Submissions were recorded, assessed and considered upon receipt by the department. Each submission was assessed for its applicability and appropriateness to the resource operations plan process and consistency with the water resource plan. Issues raised in the submissions could not be considered if inconsistent with the outcomes or objectives of the water resource plan.

As the issues raised by the submitters have been addressed (through an amendment to the draft plan) or are outside the scope of the resource operations planning process or inconsistent with the water resource plan, an independent referral panel was not required to

be convened. Refer to section 1.5 below. As per section 103(1) of the *Water Act 2000*, all properly made submissions must be considered by the chief executive.

1.3 Where you can get a copy of the plan

A CD copy of the final plan may be obtained free of charge from the Department of Environment and Resource Management (DERM) office located at 28 Peters Street, Mareeba. Alternatively, an electronic copy of the plan can be requested from any DERM office.

The plan can also be downloaded from the DERM website: www.derm.qld.gov.au

1.4 History of development of the resource operations plan

The final plan was developed in accordance with Part 4, sections 95–103 of the *Water Act 2000*. Important milestones in the development of the plan are outlined below.

Public notice of proposal to prepare a draft resource operations plan and submissions invited	3 November 2006
Consultation with stakeholders on preparation of draft plan	November 2006
Submissions close and preparation of draft plan begins	14 March 2007
Draft plan released and submissions invited Public information sessions held throughout plan area	24 October 2008
Ongoing consultation with stakeholders on draft plan	October 2008–January 2009
Submissions close	30 January 2009
Analysis and consideration of submissions and issues	January 2009–April 2009
Completion and release of final plan	November 2009

1.5 Referral Panel

1.5.1 Background and Purpose

An independent referral panel is required under section 102(1) of the *Water Act 2000* if a properly made submission about a draft resource operations plan requests a change be made to:

- (a) a proposed water allocation
 - (b) an environmental management rule
 - (c) a water sharing rule
- or
- (d) an implementation schedule.

However under section 102(4) of the *Water Act* 2000, the referral panel is not required to consider a submission if the chief executive is satisfied that:

- (a) the submission is inconsistent with the water resource plan
or
- (b) the draft resource operations plan should be amended in accordance with the submission.

In the case of the submissions made on draft Mitchell ROP, all submissions made on matters that were within the referral panel's jurisdiction were either inconsistent with the water resource plan or have been addressed through an amendment to the provisions of the draft plan.

As such, there was no requirement to convene the independent referral panel.

2 Issues raised in submissions

2.1 Water licences—two submissions

2.1.1 Permanent and seasonal trading—two submissions

What the draft plan proposed

The plan provided for the seasonal assignment of water licences in highly allocated watercourses in the upper Mitchell catchment. The plan sets out three relocation zones comprising defined reaches of river.

Background

Due to the small existing irrigation base and the low level of utilisation of existing licences in the Mitchell plan area, the draft plan proposed to limit seasonal water trading to the Bushy, Rifle and Mary creeks only. In these reaches, high demand for water, along with a more reliable rainfall, led to the development of seasonal water assignment rules and their inclusion in the draft plan. Seasonal assignment of these water licences is allowed but the water licence remains attached to land. No water allocations will be established in the life of this ROP.

The issue

The submitters requested that permanent trading be available within the whole Mitchell plan area. One submitter also requested seasonal trading in Rifle Creek.

How the issue was assessed

Many small irrigation licences to take water from the perennial tributaries of the Upper Mitchell River catchment (Mary Creek, Rifle and Bushy creeks) have remained relatively unused since the deregulation of the tobacco industry in the mid-1990s. During the development of the water resource plan, many irrigators from within the upper Mitchell area, specifically Mary Creek, Rifle Creek and Bushy Creek, requested access to water locked up in underutilised water licences.

The majority of licences in Mary, Rifle and Bushy creeks are in the order of 20 hectares. Licences of this size on their own are fairly restrictive in what can be irrigated with such small volumes. Existing water licence holders and potential buyers have indicated their support for allowing entitlements in this part of the plan area to be bought and sold for relocation to other parcels of land. It was believed that unused entitlements were locking up

the resource from other users and therefore preventing others from furthering their developments.

There is limited water use data and hydrological information about the water resources in the Mitchell plan area. As such, there is little value in extending trading to other parts of the plan area or allowing permanent trading until such time as our understanding of water use and the resource is increased and decisions about relocation can be made with greater confidence.

What the final plan says

No change will be made to the final plan. However, the department will consider establishing tradable water allocations under the next planning process at which time all licences would be volumetric, all existing works would be metered and better information (improved technical assessments) would be available on which to advise the planning process. In the meantime, any demand for additional water can be satisfied from the unallocated water reserves.

2.1.2 Increased rate of take—two submissions

What the draft plan proposed

The draft plan provided the rules for amending existing water licences for taking or interfering with unsupplemented surface water to include a maximum rate, a daily volumetric limit, and an annual volumetric limit.

Background

The *Water Resource (Mitchell) Plan 2007* states that water licences must include a maximum rate, a daily volumetric limit, and an annual volumetric limit. The draft plan provided the rules for amending existing water licences for taking or interfering with unsupplemented surface water to specify these conditions. Determinations on the maximum rate and the daily volumetric limit to apply will be obtained from the corresponding pump sizes as specified in schedule 6 of the *Water Resource (Mitchell) Plan 2007*.

The issue

Two submissions requested an increase in their water entitlements. One submitter requested an increase to 250 megalitres annually, while the other submitter requested that they be allowed to pump additional water in times of high flows.

How the issue was assessed

The rules set out in the water resource plan and the draft plan for granting authorisations for the management and taking of, and interfering with, water are consistent with national water reform measures which aim to ensure a nationally compatible water market with a regulatory and planning-based system of managing water. Allowing users to take water over and above their authorisations does not contribute to a fair, orderly and efficient allocation of water or improve the confidence of water users regarding the availability and security of water entitlements.

The draft plan outlined the process of making unallocated water available. There is no justification for arbitrarily increasing the annual entitlement on existing licences or increasing the amount of water allowed to be taken, as proposed by the submitters. The final plan will allow applications to amend a water licence to be dealt with, in limited circumstances—for example, increase the maximum rate or take or the daily volumetric limit where this is an inconsistency with the capacity of the existing authorised works.

What the final plan says

No change to the draft plan.

2.2 Indigenous access to water and rights—one submission

2.2.1 Indigenous water rights and interests, present and future—one submission

What the draft plan proposed

The draft plan established an Indigenous Reserve of unallocated water in the Cape York Peninsula Region. A water licence granted for unallocated water from the Indigenous Reserve may be granted only for helping Indigenous communities in the Cape York Peninsula Region to achieve their economic and social aspirations. Indigenous people not in the Cape York Peninsula Region can access other unallocated water that is available for future consumptive use.

Background

The *Cape York Heritage Act 2007 (the Act)* specifies provisions that seek to protect Indigenous cultural values. The Act requires that water resource plans reserve unallocated water as ‘Indigenous reserves’ to facilitate the achievement of social and economic aspirations for Indigenous communities situated within the Cape York Peninsula Region. Part of the Cape York Peninsula Region, as defined under the Act, falls within the Mitchell plan area. As such, the draft plan, proposed an Indigenous reserve of unallocated water of 5000 megalitres for the Cape York Peninsula Region.

The issue

The Mitchell River Traditional Custodian Advisory Group’s submission raised issues concerning access by Indigenous communities to water in the present and for future generations. These issues related to:

- promotion of inherent land and water rights
- protection of rights and interests of future generations of traditional custodians
- processes for protecting and promoting water rights
- continued dialogue between the Mitchell River Traditional Custodian Advisory Group and State Government departments.

How the issue was assessed

As a requirement of the *Cape York Heritage Act 2007*, the resource operations plan specifies an Indigenous reserve for the area that lies within the Cape York Peninsula Region. Outside of this area, the resource operations plan has no power to establish Indigenous reserves. The establishment of a reserve of water for Indigenous purposes in the Cape York Peninsula Region does not prevent Indigenous people in that region or other parts of the water resource plan area, from accessing the other unallocated water that is available for future consumptive use in the draft plan. The draft plan outlined the process for the release of this unallocated water.

What the final plan says

There is no change to final plan.

2.2.2 Traditional custodians and mining leases—one submission

What the draft plan proposed

Unallocated water reserves are available for a number of purposes, including water used to supply mining or industrial use.

The issue

The submitter requested that the granting of mining leases and water licences would not have an adverse impact on the economic or cultural interests of traditional custodians of the Mitchell Catchment.

How the issue was assessed

Applications for new mining leases (and the issuing of a water licence from unallocated water reserves) will be subject to the applicant obtaining all necessary state and Commonwealth planning and environmental approvals. This may require preparation of an environmental impact statement (EIS). Consideration of the implications for traditional owners is an important part of this process.

What the final plan says

The final plan includes an additional subsection that states that the chief executive must consider the effect of granting from the unallocated water reserves on Indigenous cultural values and the social and economic wellbeing of local Indigenous communities. Refer to section 27 (2) of the plan.

2.3 Environmental—two submissions

2.3.1 Water quality improvement targets—one submission

What the draft plan proposed

One of the aims of the draft plan included facilitating the sustainable management of water including, where possible, the reversal of degradation of water in watercourses, lakes, springs, aquifers, natural ecosystems and other resources. The plan's monitoring arrangements will measure the effectiveness of the plan in achieving this aim.

Background

A resource operations plan implements the outcomes and strategies specified in its corresponding water resource plan. Together, the two plans provide enhanced certainty and security for human needs and for the natural environment. A resource operations plan provides the management detail and water sharing rules needed to deliver the outcomes specified in the water resource plan.

The issue

Two submitters requested that the plan include specific water quality improvement criteria, and that they include objectives, outcomes and targets.

How the issue was assessed

Setting out objectives, outcomes and targets is not within the scope of what the resource operations plan is intended to deliver. The issue of improving water quality is dealt with in the *Water Resource (Mitchell) Plan 2007*, largely through:

- metering requirements
- data collection and analysis

- the use of performance indicators.

The resource operations plan cannot set new environmental objectives and outcomes as they would be in addition to, and contradict, those already appearing in the water resource plan.

What the final plan says

There is no change to the final plan.

2.3.2 Land and water management plans—one submission

What the draft plan proposed

The draft plan required applicants who intend to use unallocated water for irrigation purposes to provide information about the land's suitability for irrigation. The plan also states that a land and water management plan must be prepared if a licence allowing the use of unallocated water for irrigation is granted.

The issue

The submitter requested that all water users in the plan area must be required to have land and water management plans.

How the issue was assessed

Provisions for preparing a land and water management plan under the draft plan apply to those seeking to access unallocated water for irrigation purposes only. The head of power for this provision is the *Water Act 2000* (s72-82). Under the Water Act, a person is required to have a land and water management plan approved by the department before using water from an entitlement for irrigation when:

- obtaining a new or additional water allocation or interim water allocation
 - using a seasonal assignment of water as the only source of water on the same land in any two out of three consecutive water years
 - using, on the same land, a seasonal assignment of water and water taken under an allocation, or an interim allocation, in any two of three consecutive water years, and water use will exceed the nominal allocation volume on an entitlement
 - the land is identified in a water use plan as land where a land and water management plan is required
 - moving some or all of an existing water allocation from one resource operations plan zone to another
 - a person is in an area where a resource operations plan zone specifies that you require a land and water management plan to obtain a water licence
- or
- constructing works to capture tail water or contaminated run-off, which require a development permit (requirement of the *Integrated Planning Act 1997*) under a water resource operations plan.

Unless there is already a requirement for a land and water management plan, one is not needed if:

- a water licence is converted to a water allocation and the same person (family) has continuously owned the benefit of both
- a person purchases a water allocation or interim water allocation with the associated land as an ongoing enterprise.

Once an approved land and water management plan is in place, the holder is responsible for its implementation. Where appropriate, the land and water management plan will incorporate a formal reporting framework where the holder provides information for performance verification to the department. This information can then be used to demonstrate progress on specific actions at specified intervals. Reporting could include documentation such as monitoring results, photographic evidence of works undertaken, a schedule of work related to the implementation and/or completion of infrastructure. The reporting framework need not be onerous, but needs to provide meaningful information to demonstrate compliance with the land and water management plan's requirements.

What the final plan says

The final plan retains the requirement for those accessing unallocated water for irrigation purposes to have an approved land and water management plan in place.

2.3.3 Environmental management objectives—one submission

What the draft plan proposed

One of the aims of the draft plan included facilitating the sustainable management of water including, where possible, the reversal of degradation of water in, watercourses, lakes, springs, aquifers, natural ecosystems and other resources. The draft plan provided the management detail to meet the objectives and requirements set out in the *Water Resource (Mitchell) Plan 2007*.

Background

Provisions of the draft plan meet water resource plan requirements for environmental management and water resource management. Resource operations plan provisions meeting water resource plan requirements include:

- metering
- monitoring and data collection
- requirements for information about land suitability
- standard conditions for new licences
- regulation and licensing of overland flow water
- new licences to be granted from finite and accountable unallocated water reserves.

The issue

The submitter requested that specific management objectives relating to the following be developed and incorporated into the plan:

- environmental management, informed by the 'Ecological and Geomorphological Assessment for the Gulf and Mitchell draft Water Resource Plan
- the spread of exotic fish and pest organisms
- the taking of overland flow water
- fish passage.

How the issue was assessed

Many of the objectives suggested for inclusion in the plan by the submitter have already been stated in the water resource plan. As a result, provisions in the draft plan already reflect the issues raised by the submitter. Fish passage has not been dealt with in the plan's

provisions as there are no ‘in-channel’ supplemented water supply schemes within the plan area. As such, there is no supply infrastructure or storage operating rules which can be tailored to suit the protection of fish passage.

What the final plan says

The final plan remains unchanged.

2.3.4 Environmental remedial action framework—two submissions

What the draft plan proposed

The draft plan stated a process for reporting on emergency situations in relation to the water supply schemes, which ensures details and information about such an event would be quickly transferred to the department thereby enabling a timely response.

The issue

The submitter suggests that a remedial action framework be developed and incorporated into the resource operations plan.

How the issue was assessed

The draft plan outlined the implementation requirements for scheme licence holders and requires the plan to be implemented as soon as possible and practicable. Where a scheme licence holder is unable to meet the requirements of this plan, they must notify the chief executive of instances when the requirements cannot be met and submit a program for meeting the requirements of the plan.

Separate provisions apply for emergency or unforeseen operational incidents. In these instances, the scheme licence holder may submit an interim program with timeframes for meeting the requirements of the plan. There is little value in specifying remediation actions and timeframes in the plan as remediation cannot be prescriptive—not all scenarios can be prepared for or predicted. Should emergency incidents occur, the department will work closely with the scheme licence holders to ensure that problems are rectified quickly with minimal harm to existing water users and the environment.

What the final plan says

The final plan remains unchanged.

2.3.5 Southedge Dam—one submission

What the draft plan proposed

The draft plan set out a scheme of monitoring and assessment requirements, including the requirement to assess data collected in order to indicate that outcomes in *Water Resource (Mitchell) Plan 2007* are being achieved.

Background

The *Water Resource (Mitchell) Plan 2007* includes objectives for:

- maintaining natural flow variability for water courses, floodplains, wetlands, lakes and springs to support the habitats of plants and animals
- maintaining connectivity of river systems
- minimising changes to the natural variability in water levels which support ecological processes
- maintaining permanence of naturally perennial streams.

The issue

The submitter requested that stringent management criteria be developed and incorporated into the final plan to reduce and mitigate environmental damage that has occurred to downstream ecosystems since the construction of the Southedge Dam (Lake Mitchell).

How the issue was assessed

One of the general outcomes of the *Water Resource (Mitchell) Plan 2007* is to make water in Lake Mitchell (Southedge Dam) available to be used for consumptive purposes. Proposals to rescind the licence are inconsistent with the water resource plan.

The *Water Resource (Mitchell) Plan 2007* recognises that the natural state of watercourses, lakes, springs and aquifers has changed because of water infrastructure and the take of water. The rules in the plan work to minimise further environmental degradation to the Dam's downstream ecosystems.

What the final plan says

No change has been made to the final plan.

3 Plan finalisation

3.1 The final Mitchell Resource Operations Plan provisions

The final resource operations plan:

- sets out a processes for dealing with 70 000 megalitres of unallocated water
- establishes seasonal water assignment provisions for water licences in areas of high water demand
- establishes a process for granting or amending entitlements to take overland flow water
- details water and natural ecosystem monitoring and assessment requirements
- details monitoring and reporting requirements that will be used to assess the effectiveness of the implementation of the water resource plan.

3.2 Changes to the final plan

The final resource operations plan incorporates numerous changes that resulted from the community consultations that followed release of the draft plan. Changes of note include:

- an additional section in the unallocated water chapter which requires the chief executive to consider the impact of granting water entitlements for irrigation on Indigenous social and cultural values.