



Australian Government



# Assessment of reasonable excuse claim for compliance with sustainable diversion limit (SDL)

Upper Macquarie Alluvium 2019–20

August 2021

Published by the Murray–Darling Basin Authority  
MDBA publication no: 31/21  
ISBN (online): 978-1-922396-62-4



GPO Box 1801, Canberra ACT 2601  
engagement@mdba.gov.au



1800 230 067  
mdba.gov.au

© Murray–Darling Basin Authority 2021

### Ownership of intellectual property rights



With the exception of the Commonwealth Coat of Arms, the MDBA logo, trademarks and any exempt photographs and graphics (these are identified), this publication is provided under a *Creative Commons Attribution 4.0* licence. (<https://creativecommons.org/licenses/by/4.0>)

The Australian Government acting through the Murray–Darling Basin Authority has exercised due care and skill in preparing and compiling the information and data in this publication. Notwithstanding, the Murray–Darling Basin Authority, its employees and advisers disclaim all liability, including liability for negligence and for any loss, damage, injury, expense or cost incurred by any person as a result of accessing, using or relying upon any of the information or data in this publication to the maximum extent permitted by law.

The Murray–Darling Basin Authority's preference is that you attribute this publication (and any Murray–Darling Basin Authority material sourced from it) using the following wording within your work:

### Cataloguing data

**Title:** Assessment of reasonable excuse claim for compliance with sustainable diversion limit (SDL), Murray–Darling Basin Authority Canberra, 2021. CC BY 4.0

### Accessibility

The Murray–Darling Basin Authority makes its documents and information available in accessible formats. On some occasions the highly technical nature of the document means that we cannot make some sections fully accessible. If you encounter accessibility problems or the document is in a format that you cannot access, please contact us.

### Acknowledgement of the Traditional Owners of the Murray–Darling Basin

The Murray–Darling Basin Authority pays respect to the Traditional Owners and their Nations of the Murray–Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

The guidance and support received from the Murray Lower Darling Rivers Indigenous Nations, the Northern Basin Aboriginal Nations and our many Traditional Owner friends and colleagues is very much valued and appreciated.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

# Contents

- Summary ..... 1
- 1 Overview of reasonable excuse claim ..... 3
  - 1.1 Reasonable excuse claim identification ..... 3
  - 1.2 Status of associated water resource plan ..... 4
- 2 Details of state reasonable excuse claim ..... 5
  - 2.1 The status, claim and state submission..... 5
  - 2.2 Reasons for the excess ..... 5
  - 2.3 Steps to make good ..... 6
- 3 Authority’s Assessment of claim ..... 9
  - 3.1 Authority’s evaluation of NSW reasonable excuse claim..... 9
  - 3.2 Reasons for the excess ..... 10
  - 3.3 Steps to make good ..... 11
  - 3.4 Compliance decision..... 12
  - 3.5 Information used in the Authority’s assessment ..... 13
- Appendix A: Map of SDL resource unit ..... 14

# Summary

Sustainable diversion limit (SDL) compliance for the Upper Macquarie Alluvium SDL resource unit is being assessed under the bilateral agreement in place between NSW and the MDBA<sup>1</sup>, as a water resource plan (WRP) for this area had not been accredited prior to 1 July 2019.

The bilateral agreement reflects a commitment to the provision of information and reporting which parallels the requirements of s 71 of the *Water Act 2007* (Cth) and an assessment of compliance with the SDL in accordance with the methods in Part 4 of Chapter 6 of the *Basin Plan 2012* (Cth) (the Basin Plan) and consistent with the [SDL Reporting and Compliance Framework \(2018\)](#) (the Framework).

The Authority's role is to assess that material consistent with Part 4 of Chapter 6 of the Basin Plan and the Framework. This report sets out the assessment and compliance findings of the Authority on that basis.

The Basin Plan describes the circumstances in which Basin states may claim a reasonable excuse and these also apply under the bilateral agreement.

For the 2019–20 water year, NSW has reported an exceedance of the SDL compliance trigger in the Upper Macquarie Alluvium SDL resource unit. The 2019–20 actual take in the SDL resource unit was 22.98 GL, which is 4.2 GL above the annual permitted take (of 18.77 GL) and exceeds the SDL compliance threshold.

NSW undertook a self-assessment of compliance identifying the numerical compliance trigger exceedance and submitted a report to the Authority in January 2021, claiming a reasonable excuse due to the operation of the (proposed) water resource plan for the SDL resource unit, as per s.6.12C(4)(a) of the Basin Plan<sup>2</sup>.

**The Authority has assessed the claim and accepts NSW reasonable excuse as being valid under the Basin Plan for the Upper Macquarie Alluvium SDL resource unit in the 2019–20 water year.**

The Authority agreed that the Upper Macquarie Alluvium was operated by NSW in a manner consistent with the submitted water resource plan in the 2019–20 water year.

The claim submitted by NSW set out its understanding of the reasons for the excess and steps to bring the cumulative balance back to compliance – known as 'make good' actions.

NSW proposed 'make good' actions include:

- continuing to monitor groundwater take and assess whether there is any growth in use (in relation to 'take from groundwater')
- announcing an available water determination if necessary, to reduce extraction back to the compliance trigger

---

<sup>1</sup> Murray–Darling Basin Authority. (2019) Interagency agreement MDBA and NSW, retrieved from [Bilateral agreements with Basin state and territory governments | Murray–Darling Basin Authority \(mdba.gov.au\)](#)

<sup>2</sup> As set out under the bilateral agreement.

- undertaking a review of the variable permitted take method after five years, or earlier, if warranted.

Based on the groundwater take data from the transitional reporting period, NSW have stated in their supporting documentation that they expect cumulative extraction over the next two or three water years will return take to below the compliance trigger.

The data provided for the 2019–20 water year is the first formal SDL compliance data available, however the Authority also reviewed section 71 reporting data from the transition period (2012–2019) and notes that reported use has been consistently high during dry years.

In endorsing the reasonable excuse claim, the Authority noted that it is essential that NSW delivers on the commitments it has made. This includes the implementation of its own legislation, which will assist in achieving SDL compliance. That is, if the trend of high use over recent years has continued in 2020–21 and the NSW limit is exceeded (expected to be known by the end of the 2020/21 water year), the Authority would expect that NSW would implement the actions it has foreshadowed to restrict use and reduce take to within the NSW limit.

# 1 Overview of reasonable excuse claim

The *Water Act 2007* (Cth) (the Water Act) and the *Basin Plan 2012* (Cth) (the Basin Plan), provide the basis for annual SDL reporting and compliance of water resources in the Murray–Darling Basin. The MDBA’s *Sustainable Diversion Limit Reporting and Compliance Framework (2018)*<sup>3</sup> provides further details of the roles and responsibilities, calculations of the compliance cumulative balance and reasonable excuse process in the case of an exceedance.

This report is the Authority’s assessment of reasonable excuse for exceedance of the numerical compliance trigger for Upper Macquarie Alluvium (GS45). Refer to aforementioned documents for background information regarding the operation of SDL reporting and compliance and the 2019–20 SDL compliance assessment.

## 1.1 Reasonable excuse claim identification

Table 2-1. Specifications of the reasonable excuse claim being assessed.

SDL Resource Unit	Upper Macquarie Alluvium
<b>State</b>	NSW
<b>Water resource plan area</b>	Macquarie–Castlereagh Alluvium (GW12)
<b>Date of submission to MDBA</b>	28 January 2021
<b>Reasonable Excuse claim file name</b>	INT21 5723 Attachment A – Upper Macquarie Alluvium 2019–20 compliance, supporting document to NSW reasonable excuse claim.docx
<b>RE type (RE1.1, RE1.2, RE1.3, RE2, RE3, RE4, RE5)</b>	RE1.1 Operation of the WRP, Discover
<b>Reporting Water Year</b>	2019–20
<b>Is this the first year that this Reasonable Excuse has been claimed in this SDL resource unit?</b>	Yes
<b>Years of exceedance of compliance trigger</b>	2019–20
<b>Relevant SDL compliance assessment report</b>	MDBA water take compliance report 2019–20

Refer to map provided in Figure 1, Appendix A.

<sup>3</sup> Murray–Darling Basin Authority. (2018) *Sustainable diversion limit reporting and compliance framework* (publication no: 37/18) [Sustainable Diversion Limit Reporting and Compliance Framework \(mdba.gov.au\)](https://www.mdba.gov.au/publications/sustainable-diversion-limit-reporting-and-compliance-framework)

## 1.2 Status of associated water resource plan

The Upper Macquarie Alluvium SDL resource unit forms part of the Macquarie–Castlereagh Alluvium Water Resource Plan (WRP) area (GW12). A proposed WRP for this area was submitted to the Authority for assessment in early 2020 but has not been accredited.

In the interim, a bilateral agreement between NSW and the Commonwealth<sup>4</sup> provides for the operation of the SDL reporting and compliance framework, assuming the operation of the proposed WRP.

The bilateral agreement indicates that, for a reasonable excuse claim arising as a result of ‘the operation of the WRP’, the application of the methods for determining permitted and actual take and the rules set out in the proposed WRP in relation to s10.11 of the Basin Plan are relevant.

---

<sup>4</sup> Agreement between Murray–Darling Basin Authority and State of New South Wales. (1 June 2020). Accessed at: [new south wales mdba wrp bilateral agreement.pdf](#)

# 2 Details of state reasonable excuse claim

## 2.1 The status, claim and state submission

The SDL and BDL for the Upper Macquarie Alluvium SDL resource unit is 17.9 GL and the annual permitted take in the 2019–20 water year was 18.77 GL, resulting in an SDL compliance threshold (APT plus 20% of SDL) of 22.35 GL. The 2019–20 actual take in the SDL resource unit was 22.98 GL<sup>5</sup>, which is 4.2 GL above the permitted take and exceeds the SDL compliance threshold.

As part of its s.71 reporting, NSW provided its self-assessment of compliance identifying the exceedance. Consistent with Basin Plan s6.12C.(1), (3) and (5), it submitted a claim for reasonable excuse (RE) and a report setting out its understanding of the reasons for the excess and the steps it will take to reach the point where there is no excess (or ‘make good’).

NSW submitted a claim for reasonable excuse that the excess arose because of the operation of the WRP, or reasonable excuse classification RE1.1, as per the MDBA’s SDL Reporting and Compliance Framework.

Supporting documentation associated with the reasonable excuse claim stated that the groundwater resource was managed in accordance with the proposed WRP, although a specific statement of assurance to this effect was not provided with the claim. Reporting on compliance with WRPs (pursuant to Matter 19 in Schedule 12 of the Basin Plan) is not required until the relevant WRP is accredited.

## 2.2 Reasons for the excess

The annual permitted take method in the Upper Macquarie Alluvium SDL resource unit is determined with reference to the total annual rainfall (at Dubbo, NSW). The method is ‘variable’ in that it allows for variation of the permitted take from year to year. The method does not take into consideration the variability of rainfall throughout the year. The method allows a higher annual permitted take volume in dry years (when surface water is scarce) and a lower permitted take volume in wetter years (when there is greater surface water availability); with the determination of ‘dry’ and ‘wet’ years being relative to the average annual rainfall. This variable permitted take method allows for total permitted take to vary from 80–120% of the SDL across years. Both permitted take and annual actual take (AAT) are calculated at the end of the water year.

NSW reported in its supporting documentation<sup>6</sup> that annual rainfall at Dubbo in 2019–20 was 479 mm which corresponded to a total permitted take volume of 18.77 GL (or 105% of the SDL). This

---

<sup>5</sup> The reasonable excuse claim from NSW states that the actual take for 2019/20 was 22.97 GL, whereas actual take in the 2019/20 Section 71 data provided by NSW is 22.98 GL. This minor difference is due to the number of decimal places used to calculate each of the totals.

<sup>6</sup> *Upper Macquarie Alluvium: 2019–20 SDL compliance – supporting document to NSW reasonable excuse claim*

is relatively close to the annual long-term average (553 mm), however, most of the rain fell within the latter part of the water year (February–April 2020), at the end of the irrigation season. So, while the annual rainfall volume corresponded to a permitted take volume close to the SDL when calculated in July 2020, high rates of groundwater extraction had already occurred in the dry period between July 2019 and February 2020.

The exceedance of annual permitted take is considered by NSW to reflect the conjunctive use of surface water and groundwater in this SDL resource unit; the dry period between July 2019 and February 2020 (resulting in greater use of groundwater); and the rainfall events of February–April 2020 (which resulted in an average annual rainfall total at Dubbo).

NSW does not consider the exceedance to have reflected growth in use through development. Whilst 2018–19 and 2019–20 had higher volumes of temporary groundwater trade compared to previous years in the transition period, NSW considers this to be related to trade between existing licences, rather than new developments activating licences.

Given that the 2019–20 exceedance was thought to have been driven by varying climatic conditions and that growth in use is not suspected, NSW expects cumulative actual take to be below cumulative permitted take within the next two or three water years.

## 2.3 Steps to make good

The MDBA SDL Reporting and Compliance Framework sets out the expectations of the Authority in relation to the Basin Plan requirement to ‘make good’.

For an RE1.1, the required actions set out in section 5.4.1 are that, in the first seven months of RE1.1 being granted, the Basin state must complete the following steps:

**Step 1** – an investigation of the issue and a review of the permitted take method

**Step 2** – review other forms of take.

Depending on what the investigation by the Basin state reveals, they may also need to complete **Step 3** – test growth-in-use response.

For Step 1, NSW set out its plans to continue to monitor groundwater take and assess whether there is any growth in use (in relation to ‘take from groundwater’) associated with new development. As a part of the 2020–21 SDL compliance reporting process, an update on the Upper Macquarie Alluvium SDL resource unit will be provided, which will indicate whether cumulative actual take remains above cumulative permitted take. NSW states that it expects cumulative actual take to fall below cumulative permitted take within 2–3 years, based on trends observed in the transition period. NSW intends to undertake a review of the variable permitted take method after five years, however, is prepared to conduct an earlier review if warranted.

Regarding Step 2, there are only two forms of take in NSW Groundwater SDL resource units; ‘take under basic rights’ and ‘take from groundwater’. Both forms of take are captured in the data provided. In the method set out under the submitted WRP, the ‘take under basic rights’ is reported

at full utilization of the volume defined in the water sharing plan for both permitted and actual take (0.3 GL/y). As such, NSW is not proposing to review ‘take under basic rights’ under Step 2.

### ***Managing growth via compliance with state limits (LTAAEL)***

In the supporting documentation, NSW notes that the Upper Macquarie Alluvium SDL resource unit was identified in the NSW Groundwater Allocation Statement (19 May 2020) as having the potential to exceed the water sharing plan compliance trigger if extraction levels increased in future years.

In accordance with the NSW Water Sharing Plan (WSP) for the Macquarie–Castlereagh Groundwater Sources that commenced on 30 June 2020, the long-term average annual extraction limit or LTAAEL is 17,935 ML/y for the Upper Macquarie Alluvium SDL resource unit (marginally greater than the SDL) and the compliance trigger volume is 19,729 ML/y (17,935 + 10%). NSW manages extraction in this groundwater SDL resource unit by managing to the LTAAEL. WSP compliance is triggered if the average of annual take for the groundwater source in the preceding five water years exceeds the LTAAEL by 10%, this is assessed at the end of each water year.

Data submitted by NSW as a part of the s71 reporting for the last 5 years (2015–16 to 2019–20) indicates that the average of annual extractions was 19,294 ML/y. This means that the compliance trigger was not exceeded. However, as a result of higher groundwater take than the LTAAEL, particularly over the last three years, NSW DPIE have been engaging with groundwater licence holders in this SDL resource unit (and several others) in regard to the potential to exceed the WSP compliance trigger.

Stakeholder engagement sessions were held in Dubbo in February 2019, September 2019, and February 2020. Topics are understood to have included how their extraction levels are tracking against compliance limits (NSW SWP and Basin Plan limits), and the methods used to assess available water determinations to manage extractions.

As a part of this engagement, NSW has informed the licence holders that groundwater use may not be compliant with the WSP extraction limit in the 2020–21 water year. If this occurs, the department may need to reduce access in the following year(s) to return extractions to these limits. Groundwater access can be reduced in two ways:

- reduce the amount of water going into accounts (known as an available water determination)
- reduce the amount of water that users can take or trade from accounts (known as the maximum water account debit).

NSW can use one or a combination of these methods to limit the volume of water that licence holders can access from their accounts to return average extraction to the limits.

NSW has also put a maximum 3 years’ time limit to return the average annual groundwater extraction to the limits by using the following steps<sup>7</sup>:

---

<sup>7</sup> NSW Department of Planning, Industry and Environment (2021)  
<https://www.industry.nsw.gov.au/water/allocations-availability/managing-access-to-groundwater/information>

- Year 1 – return extraction back to the compliance trigger
- Year 2 – return extraction back to the extraction limit
- Year 3 – only if year 1 required available water determination less than 0.5 ML/unit share, only reduce to 0.5 ML/unit share in year 1 and extend time to return extractions back to limits to 3 years.

NSW is also publishing a dashboard which tracks groundwater take against the NSW LTAAEL and gives an indication of the likelihood of compliance being triggered<sup>8</sup>. The NSW department will announce available water determinations and maximum water account debit on 1 July each year after considering final assessments.

If the higher groundwater extraction trend continues during the 2020–21 water year, an AWD is expected to be implemented on 1 July 2021 as communicated by NSW during the engagement sessions.

---

<sup>8</sup> [Tracking groundwater extraction against extraction limits - Water in New South Wales \(nsw.gov.au\)](https://www.nsw.gov.au)

# 3 Authority's Assessment of claim

## 3.1 Authority's evaluation of NSW reasonable excuse claim

The Authority has assessed the reasonable excuse claim provided by NSW for the Upper Macquarie Alluvium SDL resource unit in 2019–20, in accordance with the requirements set out in the Water Act (s71), the Basin Plan (Chapter 6 Part 4) and the MDBA's SDL Reporting and Compliance Framework, and considered the reasons provided for the excess and the 'make good' steps proposed.

### ***Submitting a claim for reasonable excuse*** (SDL reporting and compliance framework section 5.2)

NSW first submitted its SDL compliance data to the Authority, under s71 of the Water Act, on 15 December 2020, which was in accordance with the extension that had been provided to NSW in writing by the Authority under s71(2) of the Water Act. Further to review by the Authority, the claim for reasonable excuse for the Upper Macquarie Alluvium was submitted to the Authority on 28 January 2021.

The supporting documentation to the claim presented sufficient evidence to substantiate the claim, including:

- the RE classification considered to apply (further to section 5.3 of the framework)
- supporting evidence collected at the time the report was submitted which provided commentary regarding whether there was any growth in use and the level of certainty in the permitted take estimates.

As this is the first year of the claim, it was not necessary for the state to provide evidence of 'make good' steps that may have been previously required.

The rules for managing take in accordance with the SDL included in the submitted WRP (i.e. in relation to s10.11 of the Basin Plan) are broadly those set out in the NSW WSP for the Macquarie–Castlereagh Groundwater Sources 2020. The supporting evidence has not included an explicit statement assuring that the WRP rules have been complied with, however, the Authority is not aware of any evidence to indicate that these rules have not been implemented. The Authority notes the complexity of this requirement given that the WRP has not yet been accredited, and that reporting on compliance with WRPs (pursuant to Matter 19 in Schedule 12 of the Basin Plan) is not required until it has been accredited.

### ***Assessing a claim for reasonable excuse*** (SDL reporting and compliance framework section 5.3)

The following sections set out the views of the Authority in relation to:

- the evidence and justification provided by the states (section 3.2 below)
- any supplementary evidence acquired by the Authority and
- the relative risk associated with the subsequent action or inaction.

## 3.2 Reasons for the excess

### ***Supporting data and evidence***

The submitted supporting documentation (particularly *Upper Macquarie Alluvium: 2019–20 SDL compliance – supporting document to NSW reasonable excuse claim*) provides the data and an interpretation of the reasons for the numerical exceedance. Evidence covers relevant actual take and permitted take volumes for the water year, historical actual take and trial permitted take volumes for the transition period, monthly rainfall data for the current and preceding two water years, and annual rainfall totals for the transition period.

NSW also provided data relating to the volume of temporary trades, number of accounts, number of accounts that traded in water, for the relevant water year and preceding 7 years during the transition period. NSW interpreted this data to suggest increasing groundwater trade demand was primarily because of existing active groundwater accounts (existing irrigation enterprises) and not new developments. The data indicates there were only an additional 3 licenses that were active from 2017–18 to 2019–20.

It would be useful if NSW could in its next report provide an indication of the volume of entitlement of these activated licenses, and the total amount of water taken during the relevant period, to determine the proportion that these licenses could have contributed to the total actual take volume.

Regarding the data submitted, the Authority has undertaken some quality assurance of NSW's 71 water data. This included checks, for example, that all data was reported as required, that a reasonable excuse had been claimed where required, that methods used were consistent with the WRP (or the bilateral agreement), and logical checks of data with the state narrative and climate conditions. On this basis the Authority agrees that NSW has endeavored to apply the relevant method and provide the best available data for SDL compliance purposes. The final data is published in the 2019–20 SDL compliance report 'Register of Take'.

The SDL Reporting and Compliance Framework (chapter 6) includes audit and assurance to enhance confidence in the process for reporting, assessing and reviewing compliance with the SDLs. The MDBA's published audit and assurance program includes reviews to assess the adequacy and effectiveness of the metering and monitoring processes in place across the Basin.

### ***Climate and permitted take method***

The variable permitted take method was developed by NSW using historical climate data and the best available information, and when the method is applied across the 114 year historical climate period, it does not result in any exceedance of the SDL (as demonstrated in Schedule I of the proposed Macquarie–Castlereagh Alluvium WRP). The Authority's initial assessment considers that the proposed permitted take method meets the requirements of the Basin Plan.

NSW has reviewed the permitted take method in its supporting documentation and set out its limitations.

The primary reason given for the exceedance is that the timing of the rainfall in the 2019–20 water year (low for the first half and much higher in the second half) meant that groundwater utilisation

was high prior to the rain arriving. However, permitted take was lower than anticipated given the wetter conditions of the latter half of the year. The Authority notes that if rainfall in 2019–20 had remained low (<349 mm) and the permitted take was set at the maximum level under the method (21.41 GL), the actual take (22.98 GL) would still have been higher than the permitted take but not the SDL compliance trigger (permitted take + 20% = 24.99 GL).

### ***Is long term growth in actual take occurring?***

NSW discusses this in its supporting documentation and notes that the *'cumulative permitted take over the seven-year transitional period of reporting was 68% of the SDL above the cumulative actual take for the same period.'* As the 2019–20 water was the first year of SDL compliance (under the bilateral agreement), and in accordance with the Basin Plan, the data from previous years was not considered in calculating compliance.

It is noted that the history of water take for this SDL resource unit shows multiple years where the actual take was below the permitted take, and that it is likely that the numerical exceedance from the 2019–20 will be resolved through the variability of water use in subsequent years.

However, the last three years have been dry (2017–18 to 2019–20) and have seen actual take at or in-excess of the permitted take (refer Figure 1 in NSW supporting documentation), even with the variable permitted take method. This is understood to be linked to the very low availability of surface water entitlements. The scenario set out by NSW in relation to resolving the exceedance of the compliance trigger assumes less extreme weather conditions and that these recent trends in increasing water use associated with a drying climate do not persist.

Climate predictions from the Bureau of Meteorology<sup>9</sup>, are that south-east Australia may become drier and hotter, potentially resulting in more years of high groundwater take than was predicted based on historical use. It would be helpful to build a better understanding of the linkages between the conjunctive use of surface and groundwater over time, and the extent to which low surface water availability and or the trade of surface water might be driving the increase in groundwater use. This is an element that could be considered as part of the next review of the Basin Plan in 2026.

## **3.3 Steps to make good**

As indicated in Section 2.3 of this report, NSW has set out the steps it proposes to take to 'make good', which meet the required actions of the framework for an RE1.1 (refer framework section 5.4.1) in a timely manner.

Step 2 – review other forms of take – is not applicable for this SDL resource unit. This is based on the methods for permitted and actual take set out in the proposed water resource plan for 'take under basic rights'. The Authority agrees that these assumptions are reasonable given the limited information currently available now, and that under this approach, no further growth of take under basic rights could occur. The level of risk associated with this form of take is considered low.

---

<sup>9</sup> Bureau of Meteorology. (2020) *State of the Climate 2020*

For Step 1 – investigate the issue and review permitted take method – NSW has committed to monitoring take, to provide an updated report as part of the 2020–21 SDL compliance reporting and to undertake a five-year review of the permitted take method (it will consider an earlier review if this is warranted based on additional seasonal data).

In addition, NSW has described its approach to managing take with its own state limits, and will make an available water determination to reduce use by 1 July each year if required, The Authority is satisfied that the compliance triggers in the water sharing plan are being used to appropriately manage the extraction levels in this SDL resource unit.

### ***The relative risk associated with the subsequent action or inaction***

The actions proposed by NSW are reasonable in the context of the size of the numerical exceedance (0.62 GL above the SDL compliance trigger), the expected return to a compliant status within 2–3 years (presuming that extreme conditions aren't experienced) and considered in conjunction with the actions it has in place to closely monitor and manage compliance with its own LTAAEL. The short-term risk to the resource is considered low, however there may be longer-term risks depending on the extent of the conjunctive use of surface and groundwater, and if more extreme dry years are experienced.

## **3.4 Compliance decision**

NSW submitted a claim for reasonable excuse (RE) that the excess arose because of the operation of the WRP, or reasonable excuse classification RE1.1, as per the MDBA's SDL Reporting and Compliance Framework.

The Authority has assessed the RE claim by NSW in relation to the Upper Macquarie SDL Resource Unit (GS45) for the 2019–20 water year. In summary, the Authority is satisfied:

- with the data provided and the analysis and interpretation of the observed trends
- that the 'rules for take' were implemented as set out in the proposed WRP and
- with the make good actions proposed.

Numerical exceedance occurred because of the WRP being implemented and the weather conditions in the 2019/20 year.

While a delay relative to original timelines occurred, the supporting material provided by NSW sufficiently meets the requirements for a claim for 'reasonable excuse' set out in the Water Act (s71), the Basin Plan (Chapter 6 Part 4) and the MDBA's SDL Reporting and Compliance Framework.

**The Authority has assessed the claims and accepts New South Wales reasonable excuse RE1.1 as being valid under the Basin Plan for the Upper Macquarie Alluvium SDL resource unit in the 2019–20 water year.**

**Compliance action:**

The Basin state must follow and implement the steps that it has committed to, further to the Basin Plan s. 6.12C(5), to reach the point where there is no excess above the compliance trigger in a timely manner.

While accepting the claim for reasonable excuse in the Upper Macquarie Alluvium, the Authority notes that the demand for groundwater take is likely to remain high in dry years and that NSW has commenced discussions with stakeholders regarding how it would reduce use, if required, to ensure that it remains within the SDL and/or its own take limit (the long term average annual extraction limit or LTAAEL).

In accepting the reasonable excuse claim, it is essential that NSW delivers on the commitments it has made in a timely manner.

This includes the implementation of its own legislation, which will assist in achieving SDL compliance. That is, if the trend of high use over recent years has continued in 2020–21 and the NSW limit is exceeded (expected to be known by the end of the 2020–21 water year), the Authority would expect that NSW would implement the actions it has foreshadowed to restrict use and reduce take to within the NSW limit.

If the 2020–21 and 2021–22 water years still show an exceedance, the Authority would consider recommending that NSW conduct an earlier review of its variable permitted take method as NSW intends to undertake a review of the variable permitted take method after five years.

### 3.5 Information used in the Authority’s assessment

This assessment has been undertaken using the following:

- *Upper Macquarie Alluvium: 2019–20 SDL compliance. Supporting document to NSW reasonable excuse claim* (submitted 28 January 2021)
- Statement of Compliance (submitted 28 January 2021)
- Updated groundwater SDL compliance assessment sheet (submitted 28 January 2021)

# Appendix A: Map of SDL resource unit

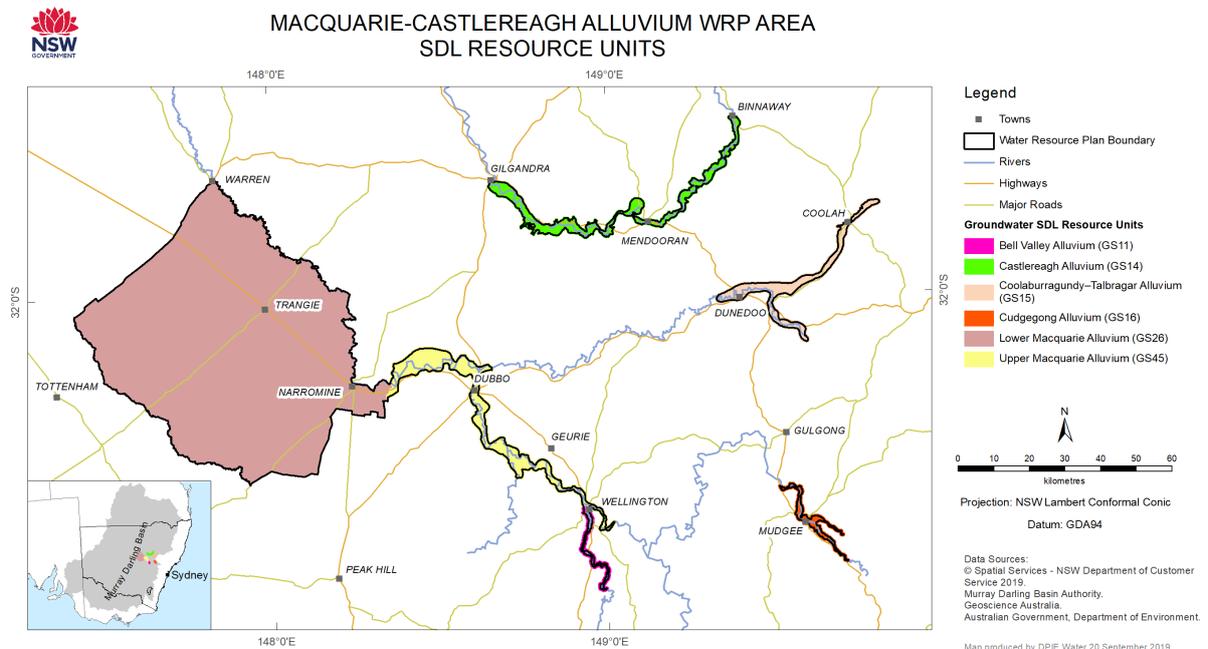


Figure 1 Map of Macquarie–Castlereagh Alluvium WRPA

---

**Office locations**

Adelaide  
Albury–Wodonga  
Canberra  
Goondiwindi  
Griffith  
Mildura  
Murray Bridge  
Toowoomba

 [mdba.gov.au](https://mdba.gov.au)

 1800 230 067

 [engagement@mdba.gov.au](mailto:engagement@mdba.gov.au)