

Recommendation on the accreditation of the proposed Darling Alluvium Water Resource Plan

Meeting No. 173 of the Authority

Recommendation

1. The Murray–Darling Basin Authority ('the Authority') has considered and assessed the proposed Darling Alluvium Water Resource Plan ('proposed WRP') for the Darling Alluvium Water Resource Plan area ('WRP area') (**Attachment A**) provided by New South Wales on 9 December 2022 consistent with section 63(1)(a) of the *Water Act 2007* (Cth) ('the Act').
2. The Authority is satisfied that the proposed WRP is consistent with the relevant Basin Plan (*Basin Plan 2012* (Cth)), version F2021C01067, registered on 27 October 2021 and in force as of the date of the Authority's recommendation, as is required by section 55(2) of the Act including:
 - a. the requirements for water resource plans ('WRPs'), and
 - b. the long-term annual diversion limits ('SDLs') for the water resources of the WRP area.
3. In considering consistency the Authority has had regard to the legislative framework within which the proposed WRP operates, as is required by section 55(3) of the Act.
4. In exercising its powers and performing its functions, the Authority has had regard to the Basin Plan and the extent to which the proposed WRP is consistent with the Basin Plan (in accordance with sections 56(1)(a) and (b) of the Act).
5. In addition, in arriving at its recommendation, the Authority has taken into account the following matters.
6. First Nations' advice was sought on whether the proposed WRP is consistent with Basin Plan requirements regarding Indigenous values and uses. The First Nations advice, received on 14 March 2023 (**Attachment D**), was coordinated by i2i Development Global Pty Ltd (i2i Global). In preparing this advice, i2i Global undertook consultation with relevant First Nations representatives from the WRP area on the adequacy of the Part 14 content of the proposed WRP. As a result of this process, i2i Global expressed a view that the proposed WRP is predominantly consistent with Basin Plan requirements.
7. With respect to s. 10.54 of the Basin Plan (cultural flows), the i2i Global advice (**Attachment D**) finds that the requirements are not met. The i2i Global advice notes that delegates acknowledged that cultural flows were discussed as part of Nation consultation, but that views regarding the link

between cultural flows and the cultural ties that First Nations have to land and water were not captured. Whilst the Authority notes this concern, the assessment (**Attachment C**) determined that the requirements of s. 10.54 have been met.

8. The Authority's assessment (**Attachment C**) has found that the proposed WRP has incorporated significant amounts of new material to meet the Indigenous values and uses requirements of the Basin Plan as compared to the 2020 version of the proposed WRP (considered at Authority meeting 157.1). This new material, particularly in relation to views on: cultural flows (WRP section 4.4.1); strategies to address risks to objectives and outcomes (WRP section 3.4 and Table 3-3); native title (WRP Table 3-3 and Schedule C Table 2); and Aboriginal heritage (WRP sections 1.7 and 4.4.2), addresses concerns raised in previous advice from NBAN (NBAN coordinated Part 14 advice from First Nations regarding the 2020 version of the proposed WRP) about the adequacy of the Indigenous values and uses content in the 2020 proposed WRP.
9. The Authority notes that a Nation Consultation Report for the Barkandji/Maljangapa Nations is not incorporated into the proposed WRP and that as a consequence, Barkandji/Maljangapa Nations objectives and outcomes for water management based on their values and uses are not yet identified.
10. The Authority is advised that the MDBA has received correspondence from NSW explaining why a Nation Consultation Report for the Barkandji/Maljangapa Nations is not available and details are provided in the assessment report (**Attachment C**). In response, NSW has committed in the proposed WRP to seek further opportunities to consult with the Barkandji/Maljangapa Nations, with the aim to finalise the identification of objectives and outcomes based on the Nations' values and uses for the water resources of the WRP area, and to incorporate those objectives and outcomes – subject to each Nations' agreement – into the WRP. The proposed WRP also commits NSW to report back to the MDBA regarding progress within two years of accreditation.
11. Consequently, and noting the i2i Global advice stating all Part 14 requirements (except in relation to section 10.54) are met, and noting also that the proposed WRP (**Attachment A**) contains sufficient material to address the requirements and issues raised previously by First Nations in the WRP area, the Authority has determined that the Indigenous values and uses content of the proposed WRP is consistent with the Basin Plan.
12. While the proposed WRP (**Attachment A**) meets requirements, the Authority recognises that more work is needed by NSW to build a stronger relationship with First Nations and to bring consideration of First Nations' concerns more fully into the NSW water planning and management framework.
13. In addition to commitments to seek further consultation with those Nations where Nation Consultation Reports could not be incorporated into the proposed WRP, the proposed WRP also commits NSW to further consultation with First Nations people of the WRP area over the coming 12 months to resolve any outstanding concerns in relation to the Indigenous values and uses requirements. Given the concerns raised by i2i Global, the Authority strongly encourages NSW to make full use of this 12-month commitment to engage with the First Nations people of the WRP area in a culturally appropriate way.
14. The Authority strongly encourages NSW to adopt the engagement principles of Free, Prior and Informed Consent and the Akwé:Kon Guidelines when undertaking this further consultation. These frameworks ensure that Traditional Owners are engaged in an appropriate manner. This includes providing adequate information about the consent process, appropriate time and information.

15. While the proposed WRP meets requirements, there is scope to improve monitoring to enable it to better identify any adverse impacts which in turn will trigger responses such as the use of temporary restrictions on trade or consumptive take as well as water quality measures.
16. The proposed WRP identifies a core set of indicators that will always be monitored. These include groundwater levels and the measurement of take which informs impacts on the condition of groundwater-dependent ecosystems. The Authority notes that most water quality risks are rated as low for this WRP area but expects that more specific water quality monitoring may be undertaken in the future where there are water quality risks rated medium or higher.
17. The Authority notes that the proposed WRP includes newly mapped groundwater-dependent ecosystems that are subject to confirmation and includes a commitment to establish a confirmation process by the end of 2022. Given this timeframe is now passed, the Authority expects this be a priority for NSW. The Authority also expects that NSW will assess the extent of monitoring to ensure that it provides sufficient coverage to give effect to the triggers in Schedule I, taking account of the location of the newly mapped and confirmed groundwater-dependent ecosystems and guided by the medium and high-level risks relevant to those systems.
18. The NSW *Water Management (General) Regulation 2018* requires all new and replacement meters installed from 1 April 2019 to comply with Australian Standard 4747. Under the arrangements set out in the WRP, existing meters must comply with the standard by December 2021 in the Upper Darling Alluvium SDL resource unit and by December 2022 in the Lower Darling Alluvium. While the Authority notes the deadline for full implementation of the new and replacement meters has recently been extended by six months for the Lower Darling Alluvium in recognition of the impact of significant flooding across the WRP area, meaning that existing meters in the Lower Darling Alluvium SDL resource unit would need to comply with the standard by June 2023 under these revised arrangements in NSW, the amended regulation has not been incorporated into this proposed WRP. Therefore, if this WRP is accredited, the earlier date of December 2022 would apply under the WRP until such time as an amendment to reflect the new arrangements is proposed by NSW and accredited by the Commonwealth Minister in accordance with s. 65 of the Act.
19. While the proposed WRP meets the measuring and monitoring water take requirement to identify the timeframe for implementing these improvements, there is a need for NSW to support and enforce the implementation of the agreed metering standards.
20. **On this basis, the Authority gives the Minister the proposed WRP and recommends that the Minister accredit the proposed WRP.**
21. The Authority's detailed reasoning is set out in the document titled 'Water Resource Plan assessment report, proposed Darling Alluvium Water Resource Plan', May 2023.