

## Context

i2i Development Global Pty Ltd (i2i Global) have been engaged to assist the Murray-Darling Basin Authority (MDBA) in Water Resource Planning (WRP) assessment by providing facilitated workshops, expert advice and reporting to the MDBA in line with Basin Plan Chapter 10 Part 14 - Indigenous Values and Uses, on whether New South Wales (NSW) has met the requirements of Part 14 for 5 Northern NSW resubmitted WRPs. We note that this process has been playing out over many years, and in these years personnel changes may have occurred. We acknowledge and thank the delegates, including NBAN Members and Traditional Owners, for their efforts across this period.

i2i Global was contracted by MDBA in 2022 to undertake formal workshops. This resulted in the workshop held in St. George, QLD on 28<sup>th</sup> October 2022. i2i Global acknowledges previous First Nations advice provided by NBAN on the original submission of the NSW Great Artesian Basin Shallow WRP in August 2021.

We acknowledge that the resubmitted NSW Water Resource Plans are now submitted as final. And we acknowledge that the simple question to be answered by Traditional Owners remains, 'has NSW met the requirements of Part 14 for 5 Northern NSW resubmitted WRPs?'.

## Consent and Possible Use

i2i Global sought written consent from the delegates for MDBA to use the information provided to reproduce and communicate the heritage material for the purpose of "Water Resource Planning (WRP) assessment activities for the NSW Border Rivers Alluvium and Surface Water WRPs Project". Provided that the information is not used in a derogatory manner, that it is used in a manner that will preserve the integrity of the Heritage Material, and that ownership of any Intellectual Property in the Heritage Material is acknowledged whenever and wherever the information is used.

## Water Resource Planning (WRP) Assessment

As stated above, i2i Development Global Pty Ltd has been engaged to assist the Murray-Darling Basin Authority (MDBA) in Water Resource Planning (WRP) assessment by providing facilitated workshops, expert advice and reporting to the MDBA in line with Basin Plan Chapter 10 Part 14 - Indigenous Values and Uses, on whether NSW has met the requirements of Part 14 for 5 northern NSW resubmitted WRPs. The requirement for, and timing of, this assistance is contingent on NSW provision of WRPs for formal assessment by the MDBA.

The NSW WRP areas are:

- Great Artesian Basin (GAB) Shallow (groundwater)
- Intersecting Streams surface water
- Barwon Darling surface water
- Darling Alluvium (groundwater)
- Border Rivers surface water

Due to the geographical distance between each delegate, i2i Global conducted several engagements via teleconference and email to ensure the delegates were informed and prepared for the workshop. This engagement included one-on-one telephone interviews with the delegates to ensure the maximisation of time, during the physical in-person workshop. In this workshop the delegates were to consider the adequacy of the process, to assess the clause/response proposed by NSW and to ascertain whether, in their opinion, it met the minimum requirement.

Those responses are listed as two possibilities “Agree” “accepted” to “Disagree” “rejected”:

- a) This clause is accepted and agreed that it meets the requirements.*
- b) We do not consent nor endorse the clause as written. We reject this section as presented and deem that NSW has not meet the minimum requirement.*

As this material is now submitted as final by NSW, we acknowledge that a simple assertion is probably all that is needed at this time. However, in the interests of moving forward the more constructive response was deemed appropriate.

We note that some opinions presented in March 2022 may appear inconsistent with opinions presented in this advice from October 2022. That is not unusual, as time passes, people have more opportunity to weigh up the implications, circumstances change, consult more widely with Traditional Owners, new information comes to hand, and personnel change. Nation delegates have offered those responses in good faith.

Nation Delegates conducted a whole day workshop to review, comment, reflect upon and provide feedback to the MDBA (Friday 28 October 2022, St George QLD).

The full day workshop was prepared with briefing materials provided by MDBA to Nation Delegates including previous consultation reports for each nation attending. I2i Global hosted, facilitated and structured the consultation process throughout the preparation of the workshop. All participants and attending facilitators that contributed to discussions and feedback were indigenous people.

The workshop began with an Acknowledgment of Country and MDBA staff offered 1 hour during consultation workshop for introductory comments, responded to questions and queries from delegates as well as clarification on what MDBA wanted to get out of the consultation workshop as well as insights into the drafting of the WRP.

MDBA was invited list some key principles for the consultation workshop, those being 1. Look across 4 requirements, indicate whether those requirements have been met. 2. Where you see there could be broader improvements in requirements. ie. Have regard (weak and tokenistic). 3. How the process went overall? Participants were invited by MDBA Staff to submit the feedback and advice “in your own words” through this consultation process.

The workshop used principles the from March 2022 consultation as a base for how the workshop would be conducted, i2i felt these principles were deemed central to the respective and honourable conduct of the business at-hand and an extension of Indigenous ways of being and knowing together. The principles were drafted as three pillars of respect:

#### CULTURAL PROTOCOLS

All Participants expressed a view that is remains of critical importance to Aboriginal Peoples for respect to be paid to all First Nations Peoples and their Sovereign Nations. This respect is expressed when Indigenous Peoples insist and observe that only a Traditional Owner can speak for their country and their water. It was also expressed that respect and acknowledgement must be had to the importance of men’s business and women’s business being represented separately by a man and woman from each Nation.

This consultation was conducted in that spirit of respect.

#### STRENGTHENING

Each Participant consented to this consultation with the ambition that the feedback would strengthen the final submission and extend Indigenous interests in ways that were consistent with previous consultations.

Nation Delegates are seeking a process that moves practices and planning to a point whereby Aboriginal interests are required for consent and endorsement not merely comment.

#### HONOURING THE ECHUA DECLARATION

In 2007 the Echua Declaration was adopted by MLDRIN and in 2010 adopted by NBAN. It remains a critical and central statement of our intent and principled approach.

Each consultation and planning exercise is called upon to advance the sentiments and wishes expressed in the Echua Declaration.

“We have obligations under our Law/Lore and Custom to care for Country and to respect our neighbours both down and up stream.”

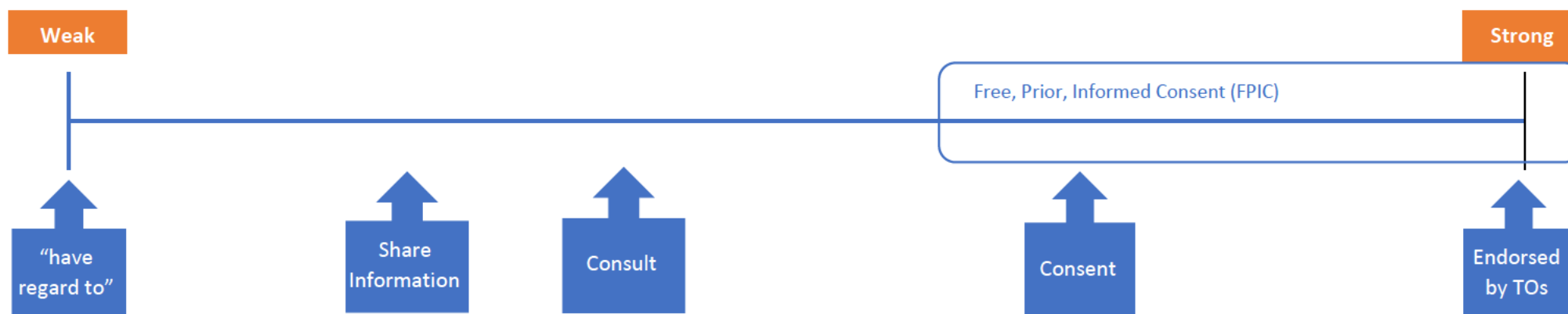
## FEEDBACK TO SECTIONS AND PROVISIONS WITHIN THE DRAFT WRP

Presentation of feedback – the early collective comments will be offered under each section and clause within the table (in blue text)(Table A). Beyond these specific comments sometimes direct quotes may be given from delegates.

*“...with regard to...”* – it is noted that this phrase has been used frequently through the draft WRP. Nation Delegates considers it a weak expression that portends a lack of commitment and a pathway to disregarding First Nation voices. A key objective of gifting some many valuable hours of our time and expertise is an ambition to strengthen this draft WRP.

“We want to change the wording. We must search for the appropriate wording. Needs to be changed. It's a loophole to disregard FN views. We will be coming into more of the environmental process with a change of Government Federally. At the end of the day our gift is sustainability. You can't exist for 40,000 years in a country if you don't know what to do in the Environment. We want to be a part of the Basin's Future Economic Future wellbeing. When you ask how, people start fumbling. Most of our people want to work with our instinctual knowledge. And each nation having a maintenance force. If we can develop healthy water and healthy natural resources that's a big plus for the basin.”

To this end, we've drafted a continuum of **Traditional Owner Interests** to help guide our efforts, monitor progress and to bring some objectivity to the task at hand and the overall planning:





## Free, Prior, Informed Consent

“In 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, recognizing their rights and making specific mention of Free, Prior and Informed Consent (FPIC) as a pre-requisite for any activity that affects their ancestral lands, territories and natural resources.”

“FPIC is a principle protected by international human rights standards that state, ‘all peoples have the right to self-determination’ and – linked to the right to self-determination – ‘all peoples have the right to freely pursue their economic, social and cultural development’. Backing FPIC are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention 169, which are the most powerful and comprehensive international instruments that recognize the plights of Indigenous Peoples and defend their rights.”

[\(https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/\)](https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/)

Table A: Feedback to Specific Clauses

Part 14 provision		Considerations for determining consistency with the Basin Plan	
10.52	Objectives and outcomes based on Indigenous values and uses	NSW Response	Traditional Owner Response
(1) A water resource plan must identify:	<ul style="list-style-type: none"> <li>Has the WRP identified the objectives and outcomes of Indigenous people for the management of the area's water resources?</li> <li>Are the objectives and outcomes set out within the WRP and/or in information supporting the WRP?</li> </ul>	Refer to NSW Great Artesian Basin WRP 2022  Page 9-11	<p><b>i2i (28/102022):</b></p> <p>This section is getting better however there are issues of incorrectly naming Nations throughout the report, as such certain nations can not endorse the draft WRP draft as is without acknowledgement of two different Nation groups that being Guwamu and Kooma. Furthermore, in the case of "have regard to" it is felt that the definition is being made to be purposefully vague and contributes to decisions being made without proper consultation considerations. As such it is felt the requirements are not met and must be rejected without the proper corrections.</p> <p>"There is some concern, with the "Have Regard to" terminology. We need to strengthen that. So, we aren't being treated as insignificant. Only looking at WRP commercially not culturally. Not anti-productivity. Needs to be underpinned by sustainability. We don't want to see this process as just being have regard to. I'm seeing this process as complying with 'Have Regard to'. We need to be more appreciate of FN established science. Without our natural resources we won't have productivity for the basin, we are the custodians of the rivers. Water quality has changed over the years. How do we start to get healthy clean water for the Murray Darling using FN involvement. Irrigators and Agrarian sector are willing, but the bureaucracy isn't. We have a relationship with the private sector but not the public. You need on the ground action happening and regular</p>
(a) the objectives of Indigenous people in relation to managing the water resources of the water resource plan area; and			
(b) the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people.			

			<p>maintenance, our natural resource doesn't have that. Water quality and water health are two different beasts. with i2i and us going forward I don't want to see this as being driven by 'Have Regard To'."</p>
<p>(2) In identifying the matters set out in subsection (1), regard must be had to:</p> <p>(a) the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area (<i>Indigenous values</i>); and</p> <p>(b) the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people (<i>Indigenous uses</i>);</p> <p>as determined through consultation with relevant Indigenous organisations, including (where appropriate) the Murray Lower Darling Rivers Indigenous Nations and the Northern Murray-Darling Basin Aboriginal Nations.</p>	<p>Has the WRP demonstrated:</p> <ul style="list-style-type: none"> <li>Whether 'regard was had' to the values and uses when identifying the objectives and outcomes identified under s. 10.52(1)?</li> <li>Consultation with relevant Indigenous organisations to determine the values and uses that relate to the water resources of the WRP area?</li> </ul> <p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>A 'relevant Indigenous organisation' can be considered as an organisation that can represent the views of some or all of the First Nations people in a WRP area on a particular matter.</li> <li>As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</li> </ol>		<p><b>i2i (28/102022):</b></p> <p>This section is getting better however there are issues of incorrectly naming Nations throughout the report, as such certain nations can not endorse the draft WRP draft as is without acknowledgement of two different Nation groups that being Guwamu and Kooma.</p> <p>Furthermore, in the case of "have regard to" it is felt that the definition is being made to be purposefully vague and contributes to decisions being made without proper consultation considerations. As such it is felt the requirements are not met and must be rejected without the proper corrections.</p> <p>"Language Name Guwamu is not correct that we don't use is included in the report. Senior Traditional Owners are in the report, but who are these people. Kooma should not be in brackets. Correct names should be used. Rightful stories for our waterways."</p>

<p><b>(3) A person or body preparing a water resource plan may identify opportunities to strengthen the protection of Indigenous values and Indigenous uses in accordance with the objectives and outcomes identified under subsection (1), in which case the opportunities must be specified in the water resource plan.</b></p>	<ul style="list-style-type: none"> <li>• There is no obligation to specify as this is a 'may' requirement.</li> <li>• Where opportunities are identified they must be set out in the WRP.</li> </ul> <p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>1. The use of the word 'may' in this sub-section means there is no requirement to identify any opportunities to strengthen the protection of values and uses, or that any identified opportunities have to be developed through consultation.</li> <li>2. The requirement does not consider the merits of existing levels of protections.</li> </ol>		<p><b>i2i (28/102022):</b></p> <p>This section is getting better however there are issues of incorrectly naming Nations throughout the report, as such certain nations can not endorse the draft WRP draft as is without acknowledgement of two different Nation groups that being Guwamu and Kooma. Furthermore, in the case of "have regard to" it is felt that the definition is being made to be purposefully vague and contributes to decisions being made without proper consultation considerations. As such it is felt the requirements are not met and must be rejected without the proper corrections.</p> <p>"When it comes down to reality there is no water there, I'd rather us go down a complimentary process, so that we have a relationship, and we need a paradigm shift in the thinking. The private sector gives us an opportunity. The private sector has fenced us off from our values and uses. We can work on the paradigm shift to benefit both private sector and FN."</p>
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10.53 Consultation and preparation of water resource plan			
<p>(1) <b>A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52</b></p>	<ul style="list-style-type: none"> <li>NSW must have regard to the views of ‘relevant Indigenous organisations’ (RIOs) – that is, an organisation that can represent the views of some or all of the First Nations people of the WRP area about the matters in s. 10.53(1)(a) – (f).</li> </ul> <p><b>Note:</b> As a ‘have regard’ requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA’s Position Statement 1B</a> for further information about ‘have regard’ requirements.</p>	<p>Refer to NSW Great Artesian Basin WRP 2022</p> <p>Page 17-19</p>	<p>i2i (28/10/2022): As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced may times and was voiced by the delegates that their voiced were not heard on the WSP.</p> <p>Collective Statement from Delegates: There is limited reference to First Nations Values and Uses in the NSW WRP. There are concerns that it is limited. There is an opportunity to open dialogue with delegates.</p>
<p>(1) <b>A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:</b></p> <p>(a) <b>native title rights, native title claims and Indigenous Land Use Agreements provided for by the</b></p>	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views that have been provided?</li> </ul> <p>Consideration:</p> <ul style="list-style-type: none"> <li>Have RIOs been consulted about their views on native title rights, native title claims and Indigenous Land Use Agreements in relation to the water resources of the WRP area?</li> </ul> <p><b>Note:</b> As a ‘have regard’ requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions,</p>		<p>i2i (28/10/2022): As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced may times and was voiced by the delegates that their voiced were not heard on the WSP.</p> <p>“We are looking past the 10 year and have impact in the 2026 and have proper sciences that it’s made up of a plan. We need to look at it every few years. We need to combine the sciences and work with i2i to build up a plan to work for our future generations. Opportunity to delegate and have input and not just tokenism. Seen the changes to country every day. We can go</p>

<p><b>Native Title Act 1993 in relation to the water resources of the water resource plan area;</b></p>	<p>arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought, and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</p>	<p>back to our elders and look at the extraction not just climate, change. Look at the climate science and have this through our lore and customs. We have a chance now to move forward on a positive way."</p>
<p>(1) <b>A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:</b></p> <p>(b) <b>registered Aboriginal heritage relating to the water resources of the water resource plan area.</b></p>	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views that have been provided?</li> </ul> <p>Consideration:</p> <ul style="list-style-type: none"> <li>Have RIOs been consulted about their views on registered Aboriginal heritage relating to the water resources of the water resource plan area?</li> </ul> <p><b>Note:</b> As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought, and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</p> <p><b>Note:</b> 'registered Aboriginal heritage' for this purpose is Aboriginal heritage listed on a register held by the NSW or Australian governments. The MDBA notes that this definition may not be</p>	<p>i2i (28/10/2022): As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced many times and was voiced by the delegates that their voiced were not heard on the WSP.</p>

	relevant to the way First Nations people think about and are responsible for their own heritage.		
<p>(1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:</p> <p>(c) inclusion of Aboriginal representation in the preparation and implementation of the plan;</p>	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views that have been provided?</li> </ul> <p>Consideration:</p> <ul style="list-style-type: none"> <li>Have RIOs been consulted about their views on inclusion of Aboriginal representation in the preparation and implementation of the plan?</li> </ul> <p><b>Note:</b> As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</p>		<p>i2i (28/10/2022): As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced may times and was voiced by the delegates that their voiced were not heard on the WSP.</p> <p>"They were trying to meet a deadline and they didn't get all content. They had to extend it. But they didn't stick to the culturally appropriate tender process. Indigenous consultants should have been brought into it. Our people open up to other indigenous people. No consultation was done around the state water strategy."</p>
<p>(1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:</p> <p>(d) Aboriginal social, cultural, spiritual</p>	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views that have been provided?</li> </ul> <p>Consideration:</p> <ul style="list-style-type: none"> <li>Have RIOs been consulted about their views on Aboriginal social, cultural, spiritual and customary objectives and strategies for achieving these objectives?</li> </ul> <p><b>Note:</b></p>		<p>i2i (28/10/2022): As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced may times and was voiced by the delegates that their voiced were not heard on the WSP.</p>

<p><b>and customary objectives and strategies for achieving these objectives;</b></p>	<p>As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</p>	<p>Furthermore, it has been stated that direct quotes from Traditional Owner Nation should be included in the WRP to properly reflect the voices and voices of First Nations People.</p> <p>"Yes, that is an accurate statement. Quotes should be included as a part of the reporting. If the nations would give permissions for the reporting, they should be included. It's powerful stuff that the people are saying and some of it are coming from Elders. Family Elders have that authority."</p>
<p><b>(1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:</b></p> <p><b>(e) encouragement of active and informed participation of Aboriginal people;</b></p>	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views that have been provided?</li> </ul> <p>Consideration:</p> <ul style="list-style-type: none"> <li>Have RIOs been consulted about their views on encouragement of active and informed participation of Aboriginal people?</li> </ul> <p><b>Note:</b> As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</p>	<p>i2i (28/10/2022):</p> <p>As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced may times and was voiced by the delegates that their voiced were not heard on the WSP.</p> <p>As also noted above different nation groups need to be accurately differentiated as separate nation groups "one cannot speak for another's country".</p> <p>"If you talk to different families, you can ask people in those families who to talk to. Lore is the way we do things. You could talk to 6 people, but they could speak for hundreds of people, as soon as their names are written down the families will be happy they are being consulted".</p> <p>"I must abstain because in some parts of it, I do agree, but I wasn't involved. I know we weren't consulted. I'm an active</p>



			person in Kooma. None of us were approached. I can speak for my family, we weren't consulted but I can go back to my brother boys and sister girls, aunties and uncles. I can go back and ask them. Only 4 people were approached but they aren't named. No consultation was done around the state water strategy."
<p>(1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:</p> <p>(f) risks to Aboriginal values and Aboriginal uses arising from the use and management of the water resources of the WRP area;</p>	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views that have been provided?</li> </ul> <p>Consideration:</p> <ul style="list-style-type: none"> <li>Have RIOs been consulted about their views on risks to Aboriginal values and Aboriginal uses arising from the use and management of the water resources of the WRP area?</li> </ul> <p><b>Note:</b> As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</p>		<p>i2i (28/10/2022): As proposed, nation delegates expressed the requirements have not been met. There has been limited input through consultations and is felt that nations have not had enough time to accurately give their full views. It is also noted that consultation on the Water Sharing Plan with First Nations people would greatly benefit the WRP preparation as it is referenced many times and was voiced by the delegates that their voices were not heard on the WSP.</p> <p>"We wanted a water licence. That would have been our protection. They are trying to put the water licence under the native title. We don't need them to negotiate, we negotiate on behalf of ourselves."</p>
<b>10.54 Cultural flows</b>			
A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.	<ul style="list-style-type: none"> <li>Does the WRP demonstrate that regard was had to the views of Indigenous people with respect to cultural flows?</li> </ul> <p><b>Notes:</b></p>	<p>Refer to NSW Great Artesian Basin WRP 2022</p> <p>Page 62</p>	<p>i2i (28/10/2022): As stated by nation delegates this section does not reflect the views of First Nations Peoples. The definitions of cultural flows as stated in the Echua Declaration, in the view of the delegates is not properly or respectfully integrated in to the WRP. The importance of clarity when speaking on Cultural Flows is of top</p>



	<ol style="list-style-type: none"> <li>1. This requirement refers to Indigenous people rather than relevant Indigenous organisations.</li> <li>2. As a 'have regard' requirement, NSW is not required to set out <b>how</b> regard has been had to views. It also <u>does not</u> necessarily impose any further obligation for other action, non-action, or decisions, arising from that consideration. Additionally, NSW is able to consider other matters. A demonstration of regard could be as simple as a statement that views were sought and regard was had to those views. See <a href="#">MDBA's Position Statement 1B</a> for further information about 'have regard' requirements.</li> </ol>		<p>priority. The clause as written has not been accepted by Nation delegates as meeting the requirements.</p> <p>"Under the state water strategy, NSW aren't getting out to the people. On my understanding no regards have been had to the cultural flows. We haven't seen the bilateral agreement with the Minister."</p>
<b>10.55 Retention of current protection</b>			
<p><b>A water resource plan must provide at least the same level of protection of Indigenous values and Indigenous uses as provided in:</b></p> <p><b>(a) a transitional water resource plan for the water resource plan area; or</b></p> <p><b>(b) an interim water resource plan for the water resource plan area.</b></p>	<ul style="list-style-type: none"> <li>Does the WRP provide the same or better level of protection to Aboriginal values and uses as was provided in transitional or interim water resource plans?</li> </ul> <p>Considerations:</p> <ul style="list-style-type: none"> <li>Undertake a comparison of protections between those included in the WRP and any protections that were in the transitional/interim plans.</li> </ul> <p><b>Note:</b> This requirement does not consider whether the level of protection in interim or transitional WRPs was adequate.</p>	<p>Refer to NSW Great Artesian Basin WRP 2022</p> <p>Page 66</p>	<p>12i 28//10/2022</p> <p>The delegates have not accepted this clause and disagree with retention of current protections stated in WRP and view them as inaccurate.</p>

## Basin Plan - Water Resource Plan Assessment

### Aboriginal values and uses

The following assessment will be used to determine if genuine engagement has been undertaken by Basin States to satisfy requirements about Aboriginal values and uses. The assessment focuses on the requirements under **Chapter 10 Part 14 of the Basin Plan**.

#### Part 14—Indigenous values and uses

**Note:** If a water resource plan is prepared by a Basin State, it is expected that the Authority will consult with relevant Indigenous organisations in relation to whether the requirements of this Part have been met, for the purposes of paragraph 63(3)(b) of the Act.

#### 10.52 Objectives and outcomes based on Indigenous values and uses

- (1) A water resource plan must identify:
  - (a) the objectives of Indigenous people in relation to managing the water resources of the water resource plan area; and
  - (b) the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people.
- (2) In identifying the matters set out in subsection (1), regard must be had to:
  - (a) the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area (**Indigenous values**); and
  - (b) the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people (**Indigenous uses**);as determined through consultation with relevant Indigenous organisations, including (where appropriate) the Murray Lower Darling Rivers Indigenous Nations and the Northern Basin Aboriginal Nations.
- (3) A person or body preparing a water resource plan may identify opportunities to strengthen the protection of Indigenous values and Indigenous uses in accordance with the objectives and outcomes identified under subsection (1), in which case the opportunities must be specified in the water resource plan.

#### 10.53 Consultation and preparation of water resource plan

- (1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:
  - (a) native title rights, native title claims and Indigenous Land Use Agreements provided for by the *Native Title Act 1993* in relation to the water resources of the water resource plan area;
  - (b) registered Aboriginal heritage relating to the water resources of the water resource plan area;
  - (c) inclusion of Indigenous representation in the preparation and implementation of the plan;
  - (d) Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives;

- (e) encouragement of active and informed participation of Indigenous people;
- (f) risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area.

Note: For examples of the principles that may be applied in relation to the participation of Indigenous people, see the document titled 'MLDRIN and NBAN Principles of Indigenous Engagement in the Murray-Darling Basin'.

- (2) In this section, **registered Aboriginal heritage** means Aboriginal heritage registered or listed under a law of a Basin State or the Commonwealth that deals with the registration or listing of Aboriginal heritage (regardless of whether the law deals with the listing of other heritage).

#### 10.54 Cultural flows

A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.

#### 10.55 Retention of current protection

A water resource plan must provide at least the same level of protection of Indigenous values and Indigenous uses as provided in:

- (a) a transitional water resource plan for the water resource plan area; or
- (b) an interim water resource plan for the water resource plan area.

### Assessment Guidelines

MDBA will not be assessing the veracity of the Aboriginal objectives and outcomes and associated values and uses identified in water resource plans.

MDBA uses its Aboriginal Engagement Principles to guide our engagement with Traditional Owners. It is anticipated that Basin States will undertake similar approaches for their Aboriginal engagement processes.

To provide confidence that Basin States have undertaken engagement with Traditional Owners consistent with the below criteria, the MDBA will compare the consideration of Aboriginal values and uses in water resource plans with the information contained in the MDBA Aboriginal Submissions Database. The aim of this cross checking is to help validate that appropriate processes have been pursued and will not be used to determine the validity or merit of the objectives and outcomes identified in water resource plans. This comparison process will occur as part of providing advice to a Basin State to assist the development of a water resource plan.

This advice, obtained during the formal assessment of a water resource plan, will go unaltered to the MDBA members for their consideration. It will be taken into account by the MDBA when it prepares its recommendations for the Minister.

Please provide comments and advice on the following criteria:

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A planned approach was applied to properly engaging Traditional Owners and resulted in an Indigenous Engagement Strategy that guided preparation of the water resource plan (e.g. adequate time, appropriate venues and resources)

i2i Development Global Pty Ltd ("i2i Global") provided the Delegates with enough time to engage in our consultations on the WRP proposed. We did receive some initial feedback however Delegates sought more time to review the information provided in order check back in with their Nations.

With the prospect of localised and regional flooding our firm undertook preparations for virtual workshop. This was organized as a Plan B to accommodate for the flooding through NSW, closing off roads and preventing participation for some Delegates traveling interstate.

i2i Global sent through multiple emails for notification, clarification and information on the workshop. We also conducted several phone interviews and consultations with the Delegates to ensure that we were optimising our time for the physical workshop.

Delegates were initially first contacted via email four (4) weeks ahead of the workshop.

Phone calls then began three (3) weeks before the workshop with each Delegate. Individual calls were made daily to update them on workshop information, possible virtual workshop because of the flooding in NSW and possible dates if they were unable to attend our 28<sup>th</sup> October physical workshop.

Those dates are as follows:

- Introductory email to Delegates (29<sup>th</sup> September 2022)
- Workshop details and RSVP email (30<sup>th</sup> September 2022)
- Workshop attendance confirmation phone calls (4<sup>th</sup> – 7<sup>th</sup> October 2022)
- 1<sup>st</sup> Pre-workshop Interviews (12<sup>th</sup> – 14<sup>th</sup> October 2022)
- Delegate computer access details and planning for possible virtual workshop with delegates by phone (18<sup>th</sup> – 21<sup>st</sup> October 2022)
- 2<sup>nd</sup> Pre-workshop Interviews (20<sup>th</sup> – 25<sup>th</sup> October 2022)
- Workshop (in-person) at St. George (QLD) (28<sup>th</sup> October 2022)

The venue was more than appropriate and had the facilities to accommodate the delegates, with online capabilities to video conference in the MDBA representatives.

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Appropriate Traditional Owners were identified and involved throughout all stages of the water planning process.

i2i Global in consultation with the Murray Darling Basin Authority, and the NBAN and with previous Delegates identified the traditional owner groups, which had been given to us from NBAN. This detailed process required multiple engagements with Delegates and sovereign Nations.

After discussions with Delegates and NBAN it was not apparent that the same, or similar, level of diligence had been undertaken by New South Wales to engage with identified Traditional Owners throughout all stages of the water planning process.

Delegates were clear that they were dissatisfied with the practices observed by NSW in many of the stages of the water planning process. This lack of engagement will prove problematic in future consultations.

Some of the information furnished to NBAN, and reviewed by i2i Global, was out of date. i2i Global identified with the NBAN representatives the need for a process to correct this information. The value of information is closely linked to its currency.

For i2i Global, once Traditional Owner groups and Delegates were identified ongoing telephone, and email communication was had with participating for their input into the planning of the workshop. This included pre-workshop interviews to talk through all documents pertaining to the WRP and the consultation process. Further adjustments were made to complete the consultations in spite of massive disruptions caused by flooding across the region. Notwithstanding this challenges i2i Global was able to complete the consultations in a timely manner for the MDBA.

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Traditional Owners were properly notified of the opportunities to be involved in the water resource planning process, (e.g. print, phone, electronic and personal media and town meetings)

Through engaging with the Delegates at the workshop in St. George none of the Delegates believe they had been properly notified of the opportunities to be involved in the water resource planning process by New South Wales.

Each Nation believes there can be substantial improvements from New South Wales to properly notify Nations of opportunities to be involved in the water planning process, specific mention was made by Delegates that involvement in the water sharing plan is an opportunity that is being missed by traditional owner groups.

Delegates also advised that a revised program of consultation and engagement is yet to be provided by New South Wales Government.

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Information about water resource planning processes and content provided was clear to Traditional Owners

As presented by NSW Department of Planning and Environment at this workshop in St George, Delegates advised that the report supplied was not clear to their Traditional Owner Nations.

The work undertaken by i2i Global enabled the information to be understood by Delegates and the information to be shared through Delegates and their nations. Our firm furnished further explanations on some terms and information contained in the WRP in pre-workshop interviews.

In the final twenty (20) minutes of the workshop each Delegate was invited to speak openly about the process leading to the workshop with i2i Global. This was a formal opportunity for feedback and constructive criticism.

Nation Delegates were asked to rate their experience over the period prior to and then including the full day workshop on the 28<sup>th</sup> of October.

Ratings were given out of 1-5:

- 1- Very Poor
- 2- Poor
- 3- Good
- 4- Very Good
- 5- Excellent

The response from every Delegate was "Excellent". Delegates were very happy that each were given opportunity to speak their mind. Delegates were also satisfied with i2i Global's delivery and communications throughout the workshop. The workshop went extremely well from their perspective.

The Delegation Chair also advised via phone call on Monday 1<sup>st</sup> November "we were all talking after the workshop, and everyone said it was the best consultation they've had - so thank you and i2i Global".

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Appropriate tools and mechanisms for recording, understanding and incorporating Aboriginal objectives and outcomes were used.

We have utilised technology to record the views expressed by the delegates. Through written means, the telephone and video conference we were able to record and incorporate the views of the delegates into our report.

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Other comments or advice.

1. [REDACTED] should be included in future engagement's as the new representative for Bidgara. She resides in Charleville. [REDACTED] from NBAN has her details.
2. Each Nation should have a male delegate and a female delegate to ensure that men's and women's business are represented in all future engagements.
3. The name Guwamu should not be referenced as "Guwamu (Kooma)" on future engagements. The delegate representing the Kooma Nation made it clear that the correct name is "Kooma".
4. Fees and Payments have been and continue to be an issue for the delegates. They would like to see a of standardisation of payments from all MDBA contractors (i.e. Travel Payments to be received at least 2 days before travelling and Sitting Fees to be received on the Day of the engagement, once the attendance is confirmed.
5. They want the consultation process to be longer on this and future engagements. They want the ability to take what has been collected back to their Nations.

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