

Office of the Chief Executive

Ref: EC23-000363

The Hon Tanya Plibersek
Minister for the Environment and Water
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Minister

Accreditation of the proposed Darling Alluvium Water Resource Plan

I am writing to provide you with the proposed Darling Alluvium Water Resource Plan ('proposed WRP') submitted by New South Wales (**Attachment A**) and the Murray-Darling Basin Authority's recommendation on accreditation of the proposed WRP (**Attachment B**) in accordance with section 63 of the *Water Act 2007* (Cth) ('the Act').

NSW formally submitted a proposed WRP on 9 December 2022. The resulting package of documents forms the proposed WRP (**Attachment A**) that is the subject of this recommendation.

I have also provided:

1. a detailed assessment report (**Attachment C and C1**), including the Authority's reasoning; and
2. a copy of the advice the Authority received for the Darling Alluvium WRP area from i2i Development Global Pty Ltd (i2i Global) on whether the proposed WRP is consistent with the requirements regarding Indigenous values and uses in Part 14 of Chapter 10 of the *Basin Plan* (Cth) ('Basin Plan') (**Attachment D**).

The Authority has undertaken its assessment of the proposed WRP and recommends that you accredit this proposed WRP.

Officers from the MDBA have worked closely with the New South Wales government officers during New South Wales' preparation of the proposed WRP, providing advice and assistance as contemplated by section 67 of the Act.

The Authority has undertaken a comprehensive assessment and while it considers the proposed WRP meets requirements for accreditation, it has identified the following key implementation issues and risks which will require ongoing monitoring and review.

Indigenous values and uses

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 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.

With respect to s. 10.54 of the Basin Plan (cultural flows), the i2i Global advice (**Attachment D**) advises that the view of nations is 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.*

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. 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 Northern Basin Aboriginal Nations (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.

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.

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 on this within two years of accreditation.

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.

While the proposed WRP (**Attachment A**) meets requirements, the Authority recognises that more ongoing work is needed by NSW to further strengthen relationships with First Nations and to bring consideration of First Nations' interests more fully into the NSW water planning and management framework.

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 matters in relation to the Indigenous values and uses requirements.

Given the matters 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.

The Authority strongly encourages NSW to adopt the engagement principles of Free, Prior and Informed Consent (FPIC) and the Akwé:Kon Guidelines. 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.

Water quality and water level monitoring

While the proposed WRP meets requirements, there is scope to improve monitoring to enable identification of 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.

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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.

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 to be a priority for NSW. The Authority further notes that monitoring through the existing bore monitoring network will be a feature of implementation of the WRP but 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.

Measuring and monitoring water take

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 was extended by six months for the Lower Darling Alluvium meaning that meters in the Lower Darling Alluvium SDL resource unit need to comply with the standard from 1 June 2023 under these revised arrangements in NSW, the amended regulation has not been incorporated into this proposed WRP.

While the proposed WRP meets the requirement to identify the timeframe for implementing these improvements, given the due dates have past, there is a need for NSW to support and enforce the implementation of the agreed metering standards.

In view of the significance of these issues, we would encourage you to raise them with the NSW water minister should you accept the Authority's recommendation to accredit the proposed WRP.

Independently, the MDBA will seek confirmation from NSW about progress on activities and commitments outlined above.

The Authority looks forward to achieving an important milestone in the implementation of the Basin Plan with you, through your consideration of this proposed WRP.

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If you have any questions or require further information about this WRP accreditation package, please contact Megan Winter, General Manager, Basin Plan Implementation (megan.winter@mdba.gov.au or 02 6279 0164) or Tim Goodes, Executive Director, Basin Plan Portfolio (tim.goodes@mdba.gov.au or 02 6279 0500).

Yours sincerely



Andrew McConville
Chief Executive, MDBA

15 June 2023

List of Attachments

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| Attachment A: | The proposed WRP |
| Attachment B: | The Authority's recommendation on the proposed WRP |
| Attachment C: | The assessment report relating to the proposed WRP |
| Attachment C1: | Planned environmental water report: assessment of no net reduction |
| Attachment D: | Darling Alluvium First Nations advice |