

Office of the Chief Executive

Ref: EC23-000460

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

Dear Minister

Accreditation of the proposed Lachlan Alluvium Water Resource Plan

I am writing to provide you with the proposed Lachlan Alluvium Water Resource Plan ('proposed WRP') submitted by New South Wales (NSW) (**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 the proposed WRP on 19 October 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 Lachlan Alluvium WRP area from Murray Lower Darling Rivers Indigenous Nations (MLDRIN) 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**).
3. a copy of correspondence from NSW following a request for further information regarding a key concern expressed in the MLDRIN advice that the consultation undertaken by NSW did not explicitly discuss Indigenous objectives and outcomes and values and uses relating to the groundwater resources of the WRP area (**Attachment E**).

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

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

The Authority sought advice from First Nations 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. This First Nations' advice, received 7 December 2022 (**Attachment D**), was provided by Murray Lower Darling Rivers Indigenous Nations (MLDRIN). In preparing this advice, MLDRIN undertook consultation with relevant First Nations of the WRP area on the adequacy of the Part 14 content of the proposed WRP. As a result of this process, MLDRIN has expressed a view that the proposed WRP is not consistent with Basin Plan Part 14 requirements.

A key concern expressed in the MLDRIN advice is that the consultation undertaken by NSW did not explicitly discuss Indigenous objectives and outcomes and values and uses relating to the groundwater resources of the WRP area and instead focussed on surface water. In response to the MLDRIN advice, the MDBA wrote to NSW on 15 December 2022 seeking confirmation and further evidence that the proposed WRP does identify Indigenous objectives and outcomes based on values and uses for management of the groundwater resources of the WRP area.

NSW provided a response on 11 January 2023 that sets out a range of evidence supporting the NSW claim that consultation with First Nations was designed to consider objectives and outcomes based on values and uses associated with both surface water and groundwater. The response is provided at **Attachment E**.

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 MLDRIN regarding the 2020 version of the proposed WRP about the adequacy of the Indigenous values and uses content.

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 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.

The Authority has carefully considered the advice provided by MLDRIN and recognises that this advice is provided in good faith. The Authority has also assessed all material provided by NSW to address the requirements relating to the Indigenous values and uses content, including additional material provided to address concerns raised by MLDRIN in response to the 2020 version of the proposed WRP. In addition, the Authority has also considered associated information sought and received from NSW (**Attachment E**). Considering all of these factors, the Authority's assessment has found that the proposed WRP meets the minimum requirements set out in the Basin Plan itself regarding indigenous values and uses.

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. The proposed WRP 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 MLDRIN, the Authority will strongly encourage NSW to make full use of this 12 month commitment to engage with First Nations people of the WRP area in a culturally appropriate way. The MDBA strongly encourages NSW to adopt the engagement principles of Free, Prior and Informed Consent and the Akwe: 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.

The Authority also notes that the Hon Rose Jackson MLC, NSW Minister for Water, has written to the MDBA outlining the key features of the new NSW Aboriginal Engagement Program. One of the objectives of the Program is to deliver on the commitment in accredited NSW WRPs to consult with First Nations about issues raised during the consultation on Part 14 requirements. A copy of Minister Jackson's letter is available [here](#).

Office of the Chief Executive

The Authority welcomes this NSW initiative and is hopeful that the new Aboriginal Engagement Program will provide for meaningful engagement with First Nations that responds to concerns raised about being part of the decision making processes for water management.

The Authority also recognises the opportunities to further strengthen what the Basin Plan requires of a Basin State in relation to consulting First Nations on water management, including in relation to the preparation of water resource plans. The Authority is undertaking a program of work that will contribute to the review of the Basin Plan. The exploration of opportunities to better incorporate First Nations' values and uses in relation to Basin water management is a key theme of this work and will be carried out in consultation with Indigenous people.

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 consumptive take as well as water quality measures.

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 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-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 were to comply with the standard by December 2022. While the Authority notes the deadline for full implementation of the new and replacement meters has recently been extended by six months, meaning that existing meters in the WRP area will need to comply with the standard by 1 June 2023 under these revised arrangements in NSW, the amended regulation has not been incorporated into this proposed WRP.

Office of the Chief Executive

While the proposed WRP meets the requirement to identify the timeframe for implementing these improvements, given both 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.

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

31 July 2023

List of Attachments

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:	Lachlan Alluvium First Nations advice
Attachment E:	NSW letter to MDBA confirming First Nations consultation matters