

Natural Resource Commission
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SYDNEY NSW 2001
Via email: nrc@nrc.nsw.gov.au



**New South Wales
Aboriginal Land Council**
ABN 82 726 507 500
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Review of the NSW Border Rivers Unregulated River Water Sources 2012

Thank you for the opportunity to comment. The New South Wales Aboriginal Land Council (NSWALC) and the network of 120 Local Aboriginal Land Councils (LALCs) represent over 23,000 Aboriginal people in NSW. We are the democratically elected voice of Aboriginal peoples in NSW.

We note the review of the NSW Border Rivers Unregulated River Water Sources 2012 (**the Plan**) aims to determine to what extent the Plan has contributed to the environmental, social, and economic outcomes and the opportunities for improvement.

NSWALC acknowledges the Department of Planning, Industry and Environment's (DPIE) commitment to '...work closely with Aboriginal communities to develop water sharing plans'¹. Nevertheless, NSWALC has reservations about whether meaningful engagement of Aboriginal peoples has been appropriately undertaken in this review process. In particular, NSWALC has concerns regarding the ease of access to relevant documents relating to this review. The NRC website does not contain any links to the Plan or any other supporting documents.

Aboriginal peoples in NSW and the network of Aboriginal Land Councils have key roles to play in the management of water in NSW. Aboriginal peoples are not merely one stakeholder among others, but we possess inherent and pre-eminent rights, values and interests in the lands and waters on account of our status as Australia's First Peoples. As such, Aboriginal peoples and communities should be engaged in meaningful consultation so the NRC can gain an in depth understanding of how the plan has contributed to Aboriginal social, environmental, economic outcomes.

Furthermore, any future Water Sharing Plans and reviews should:

- Adequately engage Aboriginal people and communities
- Include strong safeguards and targets to protect Aboriginal cultural heritage, Aboriginal fishers, water quality, town water supplies, the environment and downstream users/ impacts.

Below are additional comments. Should you require further information, please contact the NSWALC Strategy and Policy Unit on [REDACTED]

Sincerely,

Yuseph Deen
A/Chief Executive Officer
NSW Aboriginal Land Council
Date: 16 July 2021

¹ <https://www.industry.nsw.gov.au/water/plans-programs/water-sharing-plans/how-water-sharing-plans-work>

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

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NSW Aboriginal Land Council – Submission – July 2021

NSW Border Rivers Unregulated River Water Sources 2012 review 2021.

Introduction

NSWALC is the peak Aboriginal representative body in NSW. Securing the return of land and waters to Aboriginal people is at the heart of our future. As Aboriginal people, our lands and waters are central to our being, and are essential to the spiritual, social, cultural and economic survival of our communities. NSWALC, and the network of 120 LALC's across NSW, work to improve, protect and foster the best interests of all Aboriginal peoples in NSW.

NSWALC, LALCs and Aboriginal people have long called for improved water management practices, involvement of Aboriginal people in water governance and decision-making, increased access to and ownership of water for Aboriginal peoples for cultural and economic purposes, and improved accountability, transparency and compliance.

Maintaining spiritual and cultural relationships with land, water and Country are intertwined for Aboriginal peoples. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance.

NSWALC seeks to ensure that the NSW Government meets its commitments outlined in the National Agreement on Closing the Gap (**CtG**). The CtG provides an important framework for governments to work in partnership with Aboriginal people to ensure we maintain distinctive cultural, spiritual, physical and economic relationships with water, and advance our rights and interests in water.

All governments have committed to increasing Aboriginal water rights through specific CtG targets. NSWALC has previously recommend that this should include increasing the volume of water access entitlements allocated under state and territory water rights regimes to Aboriginal and Torres Strait Islander organisations.

CtG includes four priority reforms which aim to change the way in which governments work with Aboriginal people, these are:

1. Shared decision making
2. Building the Aboriginal community sector
3. Transforming mainstream institutions
4. Data sharing²

Recommendation 1.

- The NSW Government must ensure that the Water Sharing Plan Review is aligned to Closing the Gap commitments including delivering social, cultural and economic outcomes for Aboriginal people.

Engagement with Aboriginal People and Communities

The Plan shows a large gap in engagement with Aboriginal peoples in water planning and does not adequately reflect DPIE's commitment to work with Aboriginal communities³ to develop water sharing plans. Noting that DPIE has also recognised that Aboriginal people have a spiritual, customary and economic relationship with water and can provide important insight into 'best practice' for natural resource management, NSWALC recommends that the NRC and DPIE engage with LALCs and local Aboriginal people, to develop Water Sharing Plans.

² [People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters | Closing The Gap](#)

³ <https://www.industry.nsw.gov.au/water/plans-programs/water-sharing-plans/how-water-sharing-plans-work>

Recommendation 2.

- NRC to engage with LALCs and Aboriginal people to review the contribution the Plan has had on the environmental, social, and economic outcomes for Aboriginal peoples and opportunities for improvement.

Recommendation 3.

- DPIE to engage with LALCs and Aboriginal people to discuss and seek advice and best practice input on Water Sharing Plans.

Aboriginal Cultural Outcomes

The current Plan, at Part 2, 11 *Aboriginal cultural objectives*⁴, attempts to reflect DPIE's commitment to work with Aboriginal communities⁵. Nevertheless, this section does not explicitly reference Aboriginal peoples spiritual, customary and economic relationship with water. NSWALC recommends, in consultation with local Aboriginal communities, further detail is provided in the Aboriginal cultural objectives and performance indicators in the Plan. This would support the intent to recognise the importance of rivers and ground water for Aboriginal peoples and to work closely with Aboriginal communities to develop water sharing plans.

Recommendation 4.

- DPIE, in consultation with local Aboriginal communities, further expand the Aboriginal cultural objectives and performance indicators in the Plan.

Protecting Water Dependent Aboriginal Cultural Assets

The NSW Government has committed to the management, protection and conservation of Aboriginal culture, including Aboriginal Places, objects and significant sites⁶. Aboriginal objects and declared Aboriginal Places are managed and protected under the *National Parks and Wildlife Act 1974*. In its current form the Plan at section 77.5⁷ indicates that it can only be amended after Year 5 to provide rules for the protection of water dependent Aboriginal cultural asset. Noting the NSW Government has acknowledged the importance and significance of protection Aboriginal culture, this rule should be amended to note that the rules for protecting Aboriginal cultural assets be protected immediately.

Recommendation 5.

- The Plan be amended at section 77.5 to remove the Year 5 restriction and allow for the immediate protection of Aboriginal cultural assets.

Limitations on Aboriginal Cultural Access Licences

We note that Water Sharing Plans may provide for Aboriginal Cultural Access Licences, Aboriginal Community Development Water Access Licenses, and Aboriginal commercial licences however with a range of constraining parameters. We ask that the NSW Government remove constraints on these licences and provide support to Aboriginal communities and Aboriginal Land Councils to access these licences. These provisions must be improved to better meet the needs of Aboriginal water users, ensure the health of our communities, and protect our cultural sites.

⁴ [Final Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012](#) Part 2, S11 (pg11)

⁵ <https://www.industry.nsw.gov.au/water/plans-programs/water-sharing-plans/how-water-sharing-plans-work>

⁶ [Conservation of Aboriginal Cultural Heritage | Heritage NSW](#)

⁷ [Final Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012](#) 77.5 (pg57)

Recommendations:

1. The NSW Government must ensure that the Water Sharing Plan Review is aligned to Closing the Gap commitments including delivering social, cultural and economic outcomes for Aboriginal people.
2. NRC to engage with LALCs and Aboriginal people review the contribution the Plan has had on the environmental, social, and economic outcomes for Aboriginal peoples and opportunities for improvement.
3. DPIE to engage with LALCs and Aboriginal people to discuss and seek advice and best practice input on Water Sharing Plans.
4. DPIE, in consultation with local Aboriginal communities, further expand the Aboriginal cultural objectives and performance indicators in the Plan.
5. The Plan be amended at section 77.5 to remove the Year 5 restriction and allow for the immediate protection of Aboriginal cultural assets.