

28 June 2022

Department of Planning and Environment – Water
Locked Bag 5022
Parramatta NSW 2124

By email: regionalwater.strategies@dpie.nsw.gov.au

Dear Department of Planning and Environment – Water,

**Re: Draft Regional Water Strategy North Coast – Submission by Yaegl Traditional Owners
Aboriginal Corporation RNTBC**

- 1 Yaegl Traditional Owners Aboriginal Corporation RNTBC thanks the NSW Department of Planning and Environment – Water (**DPE Water**) for the opportunity to provide a submission in relation to the Draft Regional Water Strategy North Coast (**draft Strategy**).
- 2 NTSCORP Limited (**NTSCORP**) acted for the Yaegl People in their successful Native Title Determination Applications (Federal Court Proceedings NSD6052/1998 and NSD168/2011) which were determined by the Federal Court on 25 June 2015 and 31 August 2017. NTSCORP continues to act for Yaegl Traditional Owners Aboriginal Corporation RNTBC (**YTOAC**), the registered native title body corporate which holds the Yaegl People's native title rights and interests on trust, in relation to its management of the native title rights and interests of the Yaegl People.

Background to Yaegl People's native title claims

- 3 On 27 November 1996, Yaegl People made a native title determination application over an area of land and waters including the waters and estuaries of the Clarence River from Harwood to the mouth of the river at Yamba on the north coast of New South Wales. This 'river claim' was successfully determined by the Federal Court on 25 June 2015 (**Yaegl People #1**).
- 4 The Yaegl People #1 determination recognised the following rights of Yaegl native title holders:
 - (a) the right to enter, travel over and remain on a non-permanent basis on the Determination Area;
 - (b) the right to live on the land, to camp, to erect shelters, and to move about the land in the Determination Area but not extending to a right to permanently occupy or possess the land;
 - (c) the right to engage in cultural activities, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death in the Determination Area;
 - (d) the right to hunt in the Determination Area;
 - (e) the right to fish in the Determination Area;
 - (f) the right to take and use the water of the Determination Area for personal, domestic and communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers;
 - (g) the right to gather and use the natural resources in the Determination Area including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments;

(h) the right to light fires on the Determination Area for domestic purposes, but not for the clearance of vegetation;

(i) the right to share, offer and exchange traditional resources derived from the Determination Area;

(j) the right to have access to, maintain and protect from physical harm, sites and places of importance in the Determination Area which are of significance to Yaegl People under their traditional laws and customs;

(k) the right to teach on the Determination Area the physical, cultural and spiritual attributes of places and areas of importance on or in the Determination Area; and

(l) the right to be accompanied on the Determination Area by persons who, though not native title holders, are:

(i) spouses, partners or parents of native title holders, together with their children and grandchildren;

(ii) people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; and

(iii) people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

5 On 25 June 2015, the Federal Court made a second determination of native title which recognised that Yaegl people possessed native title rights and interests in particular land and waters, including further areas of the Clarence River (**Yaegl People #2 (Part A)**).

6 A further determination of native title was made on 31 August 2017 (**Yaegl People #2 (Part B)**), which is generally referred to as the 'sea claim' and includes waters east of the mean high water mark from Woody Head in the north to Woolli in the south.

7 As noted above, large portions of the Clarence River and its related waterways are subject to Yaegl People's native title rights and interests, including the following native title right in relation to water:

the right to take and use the water of the Determination Area for personal, domestic and communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers

8 The above determinations recognise Yaegl People's deep and abiding connection to the land and waters of their traditional country, and the immense cultural significance of the Clarence River and its estuaries to Yaegl People.

9 A healthy water system is critical to Yaegl People's cultural, emotional, and physical well-being.

Draft Regional Water Strategy North Coast

and co-management model

Factors of YTOAC note the following acknowledgement made at page 34 of the draft Strategy:

Current water legislation and water management processes do not adequately bring the North Coast region's Aboriginal people into decision making, nor do they fully reflect Aboriginal perspectives, approaches and values.

- [REDACTED]
- 11 YTOAC agrees with the above statement and encourages DPE Water to take immediate action to address these legislative and procedural deficiencies. YTOAC is of the view that structural reform is required within NSW government decision making processes, in particular, [REDACTED] co-management of waterways with Yaegl People and other Traditional Owners and Native Title Groups.
 - 12 YTOAC proposes that DPE Water adopt a co-management model for all waterways within Yaegl Country, whereby Yaegl People are partners in the management of their waters.
 - 13 YTOAC is of the view that DPE Water has an opportunity through the draft Strategy to develop an innovative strategy that promotes true self-determination and freedom for Yaegl People, whilst also protecting and facilitating the exercise of native title holders' interests. YTOAC is of the view that such an approach will make a greatly improve overall water management and river health within Yaegl Country, to the benefit of the wider community.

River and Sea Rangers

- 14 We encourage DPE Water to explore options to establish (and adequately resource) programs that allow native title holders to actively participate in the management of rivers and water resources, such as programs for rangers, or allocated positions for Traditional Owners in the Natural Resources Access Regulator (**NRAR**).
- 15 Establishing a Land, River and Sea Ranger program is a long-held aspiration of YTOAC and Yaegl Native Title Holders. YTOAC is also of the view that such a program would greatly improve water management and sustainable water management practices within Yaegl Country.
- 16 YTOAC seeks support from DPE Water to assist the Corporation in establishing a Yaegl Ranger Team which can operate throughout Yaegl Country. It is submitted that this Ranger Team could co-manage and collaborate with DPE Water in relation to management of Yaegl Water Country.
- 17 This would be a meaningful and ongoing way to promote healthy waterways in Yaegl Country and to ensure government policies recognise and take into consideration the needs of Yaegl native title holders with regards to water management.
- 18 Noting the importance of engaging Yaegl People to undertake land management activities on Yaegl Country, it is further submitted that DPE Water should provide priority land and water management contracting opportunities within Yaegl Country to YTOAC's Yaegl Wadjarr Gargle Contracting Team.

Supporting Native Title

- 19 YTOAC supports DPE Water's goal to improve access to traditional lands and waterways for Aboriginal People and encourages DPE Water to specify the measures through which it will achieve this goal.

[REDACTED] ongoing and increasing negative impacts of constructed dams, weirs, culverts, locks and floodgates on native fish species due to inference with their migration, as the draft Strategy, will have a tangible impact on traditional Yaegl food sources.

[REDACTED], sustainable water management practices, particularly in relation to water allocations, are urgently needed to address climate change which, as acknowledged in the draft Strategy, will significantly affect Yaegl People's water sources, cultural sites, and impair their ability to exercise their native title rights and interests.

- [REDACTED]
- 22 YTOAC continues to be dissatisfied with policies and legislation implemented by the Commonwealth and State Government due to their inadequacy in effectively recognising and protecting native title rights and interests in land and waters. [REDACTED]
- 23 YTOAC notes that very limited reference is made in the draft Strategy specifically to native title rights and interests.
- 24 Whilst YTOAC is supportive of greater involvement of Aboriginal People in water management in NSW as a general principle, YTOAC is also of the view that native title holders' rights and interests must specifically be addressed, and measures outlined, which will support native title rights in the final strategy.
- 25 Through the Closing the Gap Agreement, the NSW Government has committed to designing its policies to achieve the outcome of a 15 per cent increase in Aboriginal and Torres Strait Islander people's legal interests in Australia's land and waters.
- 26 The obligations which the NSW Government took on in the Closing the Gap Agreement directly impact the content and preparation of NSW water policy. At present in NSW, native title holders are generally unable to obtain allocations on the water market, as it is prohibitively expensive.
- 27 YTOAC submits that the recognition of native title rights and interests requires that the NSW Government put in place measures, policies, and funding to enable native title holders to obtain allocations of water within their determined or claimed areas.
- 28 It also requires that rivers, floodplains and water resources are managed in a way that ensures they are not depleted. YTOAC is deeply concerned about the number of existing licences and interests held by parties which allow for water access and extraction in Yaegl Country. It is essential that the final Strategy ensures that water systems are not overallocated, that monitoring and compliance regimes are adequately resourced, and that responsible Departments and Agencies undertake monitoring, conduct investigations and use enforcement mechanisms available to them in order to deter non-compliance.
- 29 Further, DPE Water should first consult with YTOAC regarding any cultural areas over which it would not be culturally appropriate for licences to be granted.
- 30 We further submit that a portion of licence fees and any related income generated by the water licensing system in Yaegl Country should be paid to YTOAC.
- 31 YTOAC again thanks DPE Water for the opportunity to provide the above submission. YTOAC hopes that the recommendations contained in the above submission are reflected in the final Strategy. YTOAC would be happy to discuss its recommendations further with DPE Water.
- 32 We look forward to receiving your response and please do not hesitate to be in contact with the undersigned if you wish to discuss this correspondence.
- [REDACTED]