

28th August, 2022

Attention:

NSW Groundwater Strategy Team
Water Division | Department of Planning and Environment

MLDRIN submission re Draft NSW Groundwater Strategy

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) is a Confederation of 22 sovereign First Nations from the Southern Murray-Darling Basin (MDB). MLDRIN's core work includes advancing the rights of member Nations to protect, own and manage water rights on (and under) members traditional Country.

Since colonisation, First Nations across the MDB have endured multiple waves of water dispossession. More recently, dispossession has been exacerbated by the separation of land and water and the subsequent creation of tradable water rights. Put simply, First Nations are at a profound disadvantage in a market-based system that requires considerable capital to purchase even a modest quantity of water. This has culminated in First Nations owning 0.022% of available groundwater resources across the MDB and 0.2% of available surface water in the NSW part of the Basin.

Overarching comments on the draft strategy:

MLDRIN is pleased to see the NSW Government recognise and acknowledge First Nations in the draft Groundwater Strategy. MLDRIN is pleased to provide the following feedback on the draft and thanks the Manager Aboriginal Policy Engagement (Aboriginal Water Program) for inviting MLDRIN's comments.

The current draft strategy is pitched at a high level and currently lacks the granularity required to make substantive comment. This notwithstanding, MLDRIN's assessment is that First Nations water interests are not prioritised in the current draft. The NSW Groundwater Strategy lacks ambition in making meaningful steps to return water to First Nations ownership and empowering Traditional Owners to have a greater role in making decisions about groundwater management.

The majority of actions within Action 2.3 are relegated to Horizon 2 or 3 (at least 5-10 years away). By contrast, NSW has prioritised finding opportunities to increase overall groundwater extraction, with the urgency of Horizon one (one-to-five-year delivery). In a revised draft, this misalignment should be addressed so that First Nations interests are given an equivalent status to all other Horizon 1 activities. Failure to recast First Nations interests as Horizon 1 can only lead to one inevitable outcome; maintaining the status quo and continuing with the dispossession and systemic marginalisation of First Nations people.

MLDRIN member Nations have consistently advised MLDRIN on the importance of genuine engagement between governments/agencies and First Nations. As such, we are seeking clarity on how NSW has undertaken the engagement with First Nations with respect to the draft strategy. This request is especially underscored by the fact that in many cases, MLDRIN member Nations reported that First Nations engagement for Water Resource Plan (WRP) development (during 2018 and 2019) did not clearly or transparently include discussion about groundwater. This concerning issue has been well documented and including advice to NSW, and yet assessment of the most recent iteration of NSW's WRPs shows no change.

Recently, over 20 Nation groups engaged with MLDRIN to assess the NSW MDB Fractured Rock WRP as part of the Basin Plan accreditation process, and found that this groundwater WRP includes not a single reference or connection to the draft NSW Groundwater Strategy. This disconnect is highly concerning given that, for example, the NSW MDB Fractured Rock WRP states: "There will be opportunity to further consider First Nations perspectives in groundwater management as the NSW Water Strategy moves to the implementation phase". We are now 11 months into the implementation of the NSW Water Strategy and seeing the completion of Action 3.6 of said strategy, yet there have been limited opportunities to consider First Nations perspectives in groundwater created through the development of the NSW Groundwater Strategy.

Specific comments

Action 2.3. Support Aboriginal rights, values and uses of groundwater - This set of actions will align and build on the NSW Water Strategy and Aboriginal Water Strategy.

To MLDRIN's knowledge, the Aboriginal Water Strategy is not available in the public domain. As such, MLDRIN is unable to comment on how the draft Groundwater Strategy might align with, and/or build upon the Aboriginal Water Strategy.

Many of the actions within 2.3 of the Draft NSW Groundwater Strategy are relegated to Horizon 2, whereas many aligned actions in the NSW Water Strategy exist within Horizon one and two. We fail to see how this aligns and builds on the NSW Water Strategy. Because the NSW Water Strategy places all actions associated with Priority 2 in either Horizon one (one-two year delivery timeframe) or Horizon two (start now, October 2021) for a three-five year delivery timeframe) contradicting the Horizon 2 (5-10 year delivery) placement of actions in the Draft Groundwater Strategy.

Action 2.3.1. Increase access to groundwater for Aboriginal people:

MLDRIN recommends that NSW align Action 2.3.1 with the NSW Water Strategy which includes: "Action 2.3 Provide Aboriginal **OWNERSHIP** of and access to water for cultural and economic purposes" (emphasis added). MLDRIN suggests rephrasing action 2.3.1 to "**Increase ownership of & access to groundwater by Aboriginal people**".

MLDRIN recognises that NSW commits to implementing any Closing the Gap inland water targets that relate to groundwater as part of this Action (p. 68). If Closing the Gap only sets a

water recovery target for surface water, MLDRIN implores NSW to set its own equivalent target for groundwater recovery, recognising that water dispossession is not limited to only one type of water. Additionally, MLDRIN encourages NSW to go further than any Nationally agreed target, and instead (a) advocate that any nationwide water recovery target is only a 'floor' rather than a ceiling; and (b) commits to investing in Traditional Owner-led research that sets a water recovery target that is reflective of First Nation priorities. This last point in particular speaks to the current dissonance between the proposed Horizons and First Nations interests. First Nations-led research to establish the above-mentioned priorities should precede the proposed draft Groundwater Strategy actions, or at a minimum, should occur concurrently with the following Horizon 1 actions:

- Action 1.1 Refresh and expand our approach to sustainable groundwater management
- Action 1.2 Better integrate groundwater management with other land and water management processes (inclusive of 1.2.1 - 1.2.4)
- Action 1.4 Review and update approaches to sustainable groundwater extraction (inclusive of 1.4.1 - 1.4.3)
- Action 2.1 Support towns and cities using groundwater to improve their urban water planning
- Action 2.2 Support economic growth using groundwater (inclusive of 2.2.1 - 2.2.3)
- Action 3.1 Develop a groundwater knowledge plan to improve how we use groundwater information to make decisions
- Action 3.3 Improve our understanding of groundwater resources (inclusive of 3.3.1 - 3.3.3)
- Action 3.4 Expand our groundwater data collection (3.4.1 and 3.4.2)

MLDRIN calls for NSW to invest in a program of Traditional Owner and First Nations-led research, and would welcome discussions with the NSW Government about how this critical work might proceed.

Additionally, and consistent with advice MLDRIN has previously provided to the NSW Government following Controlled Allocations in the last 12 months, we recommend that Action 2.3.1 is redrafted to include the below points:

- *“Work collaboratively with Traditional Owners and First Nations to waive annual entitlement holding and use fees for groundwater and surface water shares, and*
- *Negotiate with Traditional Owners and First Nations to transfer all remaining unallocated groundwater shares to Traditional Owners and First Nations, subject to the same conditions (i.e. without fees and charges).”*

These suggested changes would help to better align the draft Groundwater Strategy with Priority 2 of NSW's Water Strategy.

Action 2.3.2. Protect groundwater-dependent places of significance to Aboriginal communities

First Nations have lost so many culturally significant sites since colonisation, that protection of those that remain must be of the highest priority. Without a clear and robust framework for how

the NSW government will protect Groundwater dependent places of significance, the NSW government cannot in good conscience continue or expand any extraction of groundwater resources.

MLDRIN seeks an explanation from NSW regarding the (de)prioritisation of Action 2.3.2 (i.e. Horizon 2), when other actions within the draft strategy that facilitate increased groundwater use and extraction are considered to be Horizon 1 (for example Action 2.2.1. *“Provide better information on groundwater opportunities and constraints to communities and industries”* and Action 2.2.2 *“Enable the increase of sustainable groundwater use in targeted areas”*). As drafted, MLDRIN sees that this strategy presents significant risks to further harming First Nations’ culturally significant sites. In preparing the Final Strategy, MLDRIN implores the NSW Government to prioritise caring for, and ensuring the protection of these sites, in partnership with Traditional Owners.

MLDRIN is also troubled by the fact the proposed timelines of these actions do not align with the NSW Water Strategy: *“Action 2.5 Work with First Nations/Aboriginal People to maintain and preserve water-related cultural sites and landscapes”* prioritised with horizons one and two.

Action 2.3.3. Better integrate Aboriginal knowledge into groundwater management

MLDRIN welcomes NSW Government's commitment to co-design and to implement a program to empower Aboriginal people to fully participate in groundwater management. Clarity is sought, however, on how NSW specifically defines ‘co-design’. Clarity is further sought on how ‘co-designing’ parties (whether individuals or organisations) are identified along with assurances that these parties will be appropriately resourced to partner in co-design processes.

There are numerous examples of poor design (often misrepresented as ‘co-design’) involving governments, statutory bodies, First Nations and water. In some instances, this has led to avoidable strain between First Nations and various governments and/or agencies. This includes MLDRIN member Nations. MLDRIN could provide guidance on codesign processes that would meet the expectations of MLDRIN member Nations prior to the finalisation of the draft.

MLDRIN similarly welcomes NSW Government's stated intention to review directives under the *Water Management Act 2000* and subordinate legislation to better recognise Aboriginal knowledge and science and ensure it informs decisions about groundwater management. This again speaks directly to the need for the NSW Government to substantively invest in First Nations-led policy and research so that First Nations can take an active role in co-designing instruments that impact First Nations communities and Countries.

Proposed next steps:

MLDRIN would welcome a more collaborative and coordinated approach in working with the Department of Planning and Environment (DPE). MLDRIN is committed to seeing a finalized Groundwater Strategy that is equitable for First Nations impacted by it. MLDRIN proposes meeting with DPE to discuss, amongst other matters, the following:

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- Identify broadly how action items in 2.3 can be transitioned to a horizon 1 priority,
- Developing a NSW's specific target for groundwater recovery
 - A. Support NSW in advocating nationwide water recovery targets (a surface water, and groundwater target) that are 'floors' rather than 'ceilings'; and
 - B. Traditional Owner-led research that sets a water recovery target that is reflective of First Nation priorities
- The transfer of all remaining unallocated groundwater shares to Traditional Owners and First Nations.
- The resourcing required to leave behind a legacy of positive outcomes for First Nations and Countries.
- Participation in policy and research to influence instruments that impact First Nations and their Countries.

MLDRIN is ready to assist in developing a clear and robust framework for how the NSW government can protect Groundwater dependent places of significance. We are keen to provide guidance on codesign processes that would meet the expectations of MLDRIN member Nations prior to this draft's finalisation.

MLDRIN understands that this strategy is a once-in-a-generation opportunity to correct the course of Groundwater management in the state of NSW and trusts that DPE and key decision makers will take up MLDRIN's offer to work collaboratively.

Please contact [REDACTED] to arrange a suitable time to meet about our above commentary and recommendations.

Yours faithfully,

[REDACTED]

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