

NSWALC Response - Border Rivers Draft Regional Water Strategy and Options List



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Aboriginal Land Council

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Thank you for the opportunity to provide comment. The below initial feedback is provided on a 'without prejudice' basis in response to the Draft Board Rivers Regional Water Strategy (RWS) List of Options.

NSWALC notes that the Department of Planning Industry and Environment (DPIE) did not engage in a specific consultation process with Aboriginal communities in the Border River RWS area in the process of the developing the draft Strategy. NSWALC understands that DPIE has relied on consultation relating to the development of Water Resources Plans.

NSWALC is concerned that the lack of engagement prior to developing the Draft strategy and options will deny Aboriginal people within the Region the opportunity to provide full and frank feedback on the full list of options being proposed and for the feedback to be properly considered. It is noted that reference is made to feedback provided in other Regions in developing the long list of options. We understand that DPIE intent to hold consultations with Border River Region Aboriginal communities in late 2020 and seek clarification regarding proposed arrangements.

We are concerned that the draft Strategy and Options are silent on and do not make a genuine attempt to adequately address the concerns Aboriginal communities regarding threats posed to Aboriginal cultural heritage by a number of options proposed. The framing of many of the options either need to be reframed or do not go far enough to address environmental, economic, cultural and social needs of Aboriginal communities particularly those intended to "Improve the recognition of Aboriginal people's water rights, interests and access to water".

NSWALC is also concerned that DPIE may not have a full appreciation of the breadth of issues encompassed by Aboriginal cultural heritage including environmental considerations including environmental concerns. While potential combinations are listed there appears to be potential for greater coordination/leveraging of options under the strategies for "Protecting and enhancing natural systems" and "Improve the recognition of Aboriginal people's water rights, interests and access to water" given the close synergies between cultural heritage and environmental concerns. In addition, further measures are needed to support Aboriginal peoples rights and interests.

Finally, the document needs to be updated to recognise and include measures to support the NSW Government's commitments to the Closing the Gap Agreement, specifically the four priority reforms.

Strategy - Maintain and diversify water supplies, including new dam & water infrastructure works

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

Head office

Western Zone

Northern Zone

Northern Zone
(Tamworth)

Eastern Zone

Southern Zone

Far Western Zone



NSWALC notes that Aboriginal cultural heritage is listed in the considerations for a number of options below. As noted above NSWALC is concerned that lack of engagement with Aboriginal communities results in the draft Options not adequately addressing concerns of the Aboriginal community. The various options being considered do not show full consideration or exploration of Aboriginal community concerns despite feedback available from other Regions.

Options:

- 1) Final business case for building a new dam on the Mole River.
Feedback – NSWALC notes that Aboriginal cultural heritage is listed in the considerations for this option. As mentioned above NSWALC is concerned that lack of engagement with Aboriginal communities results in the draft Strategy and Options not adequately addressing concerns of the Aboriginal community.

Concerns have been raised by the Local Aboriginal Land Council (LALC) and members of the Aboriginal community regarding the impact construction of a dam will have on tangible and intangible Aboriginal cultural heritage.

At a minimum, NSWALC recommends that Aboriginal communities are properly engaged prior to finalising the business case for Mole River Dam and that measures to identify and protect cultural heritage values are included in the final Strategy and business case.
- 2) Raising Pindari Dam’s Full Supply Level (FSL)
Feedback – NSWALC notes this option is likely to have a lesser impact on the environment than the proposed Mole River Dam. Concerns remain that option does not adequately consider Aboriginal cultural heritage concerns. At a minimum, NSWALC recommends that Aboriginal communities are properly engaged on the impacts of the proposed changes.
- 3) Raising Mungindi Weir
Feedback – Aboriginal communities within the area have expressed concerns that the proposed weir will have negative impacts on Aboriginal cultural heritage. At a minimum, NSWALC recommends that Aboriginal communities are properly consulted on the impacts of the proposed changes to the weir.
- 4) Piping water to stock and domestic users in the unregulated section of Boomi River
Feedback – This option should be more clearly articulated, including the proposed changes to water holding rights that are currently held.
- 5) Improve cross-border management of flows at major breakout points
Feedback – Agree in principle.
- 6) Reliable access to groundwater by towns
Feedback – Agree in principle.
- 7) Intra- and inter-regional connections project investigation
Feedback – Agree in principle.
- 8) Inland diversions from the east
Feedback – While this option may hold some merit there is concern that without proper due diligence, management and screening this option would pose a risk to biodiversity through potential to introduce species not native to the region and invasive species in to waterways having a negative ecological effect and impacting on cultural practices.

- 9) Managing groundwater salinity
Feedback – NSWALC suggests exploring engagement of Aboriginal land care experts and implementation of Aboriginal land care practices as part of the strategy to manage salinity. NSWALC also suggests investigating incentivising agricultural and horticultural businesses to implement regenerative farming practices to the ability of soil to retain moisture and reduce irrigation run-off.

Strategy - Protecting and enhancing natural systems

Aboriginal communities share a deep concern for the health of waterways, fish stock levels and related biodiversity concerns. NSWALC agrees in principle with many of the options listed below however believes that some options need to be expanded.

Options:

- 10) NSW Fish Passage Strategy
Feedback – Agree in principle. Government should partner with local Aboriginal communities and Aboriginal land council on such initiatives.
- 11) Diversion screens to prevent fish extraction at pump offtakes
Feedback – Agree in principle also note that this option may lessen the remediation work proposed in option 10.
- 12) Cold water pollution mitigation measures
Feedback – Agree in principle.
- 13) Investigation of surface water quality mitigation measures
Feedback – Agree in principle.
- 14) Implement state-wide groundwater quality monitoring program and management program
Feedback – Agree in principle.
- 15) Modification and/or removal of existing flood work structures causing adverse impacts
Feedback – Agree in principle however a greater emphasis needs to be placed on ensuring cultural heritage values and ecological balance is restored including a stronger focus on partnership and shared decision making with Aboriginal communities. Incentivising individual land holders could be explored as an option including around regenerative farming practices and incorporating Aboriginal knowledge to offset the removal of flood work structures.
- 16) Providing incentives to landholders to conserve and rehabilitate riparian, wetland and floodplain vegetation
Feedback – Agree in principle. There should be strong focus on engagement and partnership with Aboriginal land managers and Aboriginal land councils, including to assist in identifying appropriate native place species that will help to improve water quality and biodiversity benefits.
- 17) Riparian habitat restoration and re-establishing threatened species
Feedback – There should be strong focus on engagement and partnership with Aboriginal land managers and Aboriginal land councils, including to assist in identifying appropriate native place species that will help to improve water quality and biodiversity benefits.

- 18) Investigate land use change impacts on water resources
Feedback – Agree in principle. This should be reframed to focus on encouraging land use practices that are more water efficient, have a greater benefit to the environment, and are designed and delivered with Aboriginal people. While horticulture and agriculture are important to the economy of the region NSWALC believes this option should include stronger accountability mechanisms, stronger partnerships with Aboriginal people and Aboriginal land councils and focus on rewarding land users that have a lesser impact on water resources.
- 19) Revise water sharing plan provisions for planned environmental water
Feedback – Agree in principle.
- 20) Improve benefits of planned environmental water
Feedback – Agree in principle.
- 21) Active management to protect water for the environment in unregulated water sources
Feedback – This option needs further consideration and strengthening. Aboriginal communities have indicated environmental flows should be protected to ensure they meet the intended purpose and greater compliance monitoring of unregulated water sources should be included.
Aboriginal communities have also indicated that more should be done to monitor unregulated water ways as they see it as critical to ensuring water take provisions under current arrangements are not being misused.
- 22) Improve understanding of water use in unregulated water sources
Feedback – Agree in principle, feedback from other Regions has indicated that this is a significant concern. Aboriginal community members have expressed frustration that water take licences on unregulated water ways are not metered and should be as they notice down stream flows are affected.
- 23) Improve connectivity with downstream systems
Feedback – Agree in principle.
- 24) Protecting ecosystems that depend on groundwater resources
Feedback – Agree in principle.

Strategy - Support water use efficiency and conservation

Options to increase water efficiency and conservation should be pursued. NSWALC agrees in principle with many of the options listed below however believes that some options need to be expanded. Further options are needed regarding larger water users to ensure efficiencies and pursue conservation.

Options:

- 25) Review of water markets in the Border Rivers region
Feedback – Agree in principle. This option should also include examining compliance monitoring focused on ensuring that regulated water users adhere to licence conditions.
- 26) Reuse, recycle and stormwater projects

Feedback – Agree in principle, there is certainly potential benefit to the region. This option should go further to include options for communities not currently connect to town water supplies to facilitate funding and co-funding opportunities are available to improve efficiency and conservation.

- 27) Water efficiency projects (towns and industries)

Feedback – Agree in principle.

- 28) Review urban water restrictions policy

Feedback – Agree in principle.

Strategy - Strengthen community preparedness for climate extremes

NSWALC agrees in principle that options to increase community preparedness are needed however further work is needed to strengthen the options. Some options need to be reframed or need to include greater clarity.

Options:

- 29) New drought operational rules

Feedback – Agree in principle though there needs to be greater clarity on the weighting that proposed new operational rules will place on guaranteeing supply. Feedback from Aboriginal communities in other regions has included the need for there to be a more even weighting on importance of supply. Industry and economic considerations should not outweigh social, cultural and environmental concerns.

- 30) Review of regulated river water accounting and allocation process

Feedback – This option doesn't appear to go far enough. It is concerning that environmental needs aren't listed in intent or description of this option. Aboriginal cultural flows and cultural rights are closely connected to the health of river systems.

- 31) Investigation of licence conversions

Feedback – Agree in principle however the intent should not be to increase access for industry at the expense of social, environmental and cultural users. Feedback from Aboriginal communities in other regions also points to the need for the definition/explanation of the differences between licence types needs to be simplified and easier to find.

- 32) Improved data collection and information sharing

Feedback – Agree in principle, Aboriginal communities across the state have requested greater transparency and greater ease in access.

- 33) Training and information sharing program

Feedback – Agree in principle, however NSWALC is concerned that there needs to be more balance of focus on factors beyond regional economic concerns. The focus of training and information sharing should extend beyond economic considerations and also be used to identify high value environmental, social and cultural uses and economic considerations beyond agricultural, horticultural and mining.

- 34) Investigation to maintain amenity for regional towns during drought
Feedback – Agree in principle, this option should however focus on option 26 rather than Option 8.
- 35) Sustainable access to groundwater
Feedback – Agree in principle, there needs to be clarity on what the balance will be in the definition of sustainability, the scale used and how it will be applied. Aboriginal communities across the state have expressed concern that the scale of sustainability will be skewed to favour industry and mining interests at the expense of environmental, social and cultural needs.
- 36) Improved clarity in managing groundwater resources sustainably
Feedback – Agree in principle however this option should be strengthened. Ground water systems where current entitlements and basic rights extractions exceed extraction limits need more than just clarity. This option should also explicitly include options adjust/reduce entitlements and rights to match extraction limits. Aboriginal communities across the state have also indicated the need to include Aboriginal knowledge and cultural heritage considerations managing resources.
- 37) Improved understanding of groundwater processes
Feedback – Agree in principle. This option is critical and should be undertaken prior to implementation of options 35 & 36 and prior to increasing allocations from ground water sources. With the intent of this option being on scientific knowledge Aboriginal communities across the state have raised the need for Aboriginal knowledge considerations to be included in these processes.
- 38) Extending the Cap and Pipe the Bores Program—Border Rivers catchment
Feedback – Agree in principle, uncontrolled flow or inefficient bores should be replaced, any proposed extension of the program should include bores constructed post 1965 especially for any situations where Aboriginal communities have inherited legacy issues prior to ownership of land being transferred.
- 39) Maintaining the Great Artesian Basin for the future
Feedback – Agree in principle.
- 40) Support reforms to simplify and strengthen cross-border groundwater management
Feedback – Agree in principle.
- 41) Improved knowledge of fractured rock groundwater sources in the upper catchment
Feedback – Agree in principle, Aboriginal knowledge considerations and cultural heritage concerns should be included in processes associated with this option.

Strategy - Improve the recognition of Aboriginal people's water rights, interests and access to water

As mentioned above NSWALC is concerned that these options have been developed without Aboriginal communities within the Border Rivers Region having the opportunity to provide direct

feedback. While feedback is provided on based on issues that have been raise by LALCs within the Border Rivers Region and elsewhere it is not an adequate substitute for direct feedback.

Additionally, while a number of the measures would likely represent a positive step forward, overall the below measures fall short of proper recognition and support of Aboriginal people's water rights, interests and access to water.

Options:

42) Culturally appropriate water knowledge program

Feedback – Agree in principle. However this option should be strengthened. Aboriginal communities across the state have raised that there needs to be mechanisms that allow the input and application of Aboriginal knowledge principles to land and water management. The need for Local, State and Federal governments need to be culturally competent is only one element, there is also the need for the knowledge program to facilitate the opportunity of Aboriginal land and water management experts to contribute inputs to design and implementation of options deployed, and enshrine roles for Aboriginal people in decision making. NSWALC believes this option could be combined with option 46.

43) Water-dependent cultural practice and site identification project

Feedback – Agree in principle. However this option should be strengthened. This option should be operationalised and combined with options 19 & 24 as well as options 15, 16 & 17 and options 44. The culturally appropriate mapping of sites, led by Aboriginal people, should be used to support the implementation of other options that provide for environmental, economic and Aboriginal cultural benefits.

44) Secure flows for water-dependent cultural sites

Feedback – Agree in principle, there is opportunity for this to be leveraged with environmental options. This option along with the options needs to ensure that there are partnerships pursued Aboriginal communities within the Region to ensure it is reflective the needs of Aboriginal communities.

45) Shared benefit project (environment and cultural outcomes)

Feedback – Agree in principle with this option. This option has potential to identify opportunities for coordination of options. Any shared benefit project should not be used to diminish, remove or reduce Aboriginal cultural rights or allocations but be used as a means to assist different users to coordinate or leverage off each other.

46) Establish a regional Aboriginal Water Advisory Committee

Feedback – This option should be reconsidered. We are very concerned at proposals for government appointed advisory bodies that have no decision making rights, and undermine our representative Aboriginal community controlled structures. The NSW Government needs to recast this option to meet its commitment to Closing the Gap, including shared decision making, and building the Aboriginal community controlled sector. There should be legislative requirements for governments to ensure any initiatives impacting on Aboriginal communities are undertaken in genuine partnership with communities, through their representative structures, and that support shared decision making between government and Aboriginal people.

47) Water allocations for Aboriginal communities

Feedback – NSWALC suggests reframing this option to include a greater focus on water security for communities as well economic outcomes. Many Aboriginal communities across the state have raised concerns that they risk being forgotten or not included in arrangements within their local government area especially communities that are responsible for providing their own water supplies.

48) Aboriginal cultural water access licence review

Feedback – As a first step, this should be reframed to focus on simplifying the process making it easier for Aboriginal land holders and organisations to apply for licences and more clearly or simply defining what the licence can be used for. Aboriginal communities have also indicated a desire to be able to trade water under the cultural access licence with other Aboriginal communities. Government needs to include additional measures to support the uptake of Aboriginal community develop and Aboriginal commercial water licences.

49) Co-management investigation of Travelling Stock Reserves

Feedback – A key existing mechanism to improve access to water ways for Aboriginal people is for Travelling Stock Reserves to be returned to Aboriginal ownership via processes available under the *Aboriginal Land Rights Act*. Co-management or access to Travelling Stock Reserves by other users could be negotiated with Local Aboriginal Land Councils as part of an Aboriginal Land Agreement which would provide certainty for all interested parties but importantly returns ownership of culturally significant land to Aboriginal ownership. The document needs to be updated to reflect this.

50) Regional Cultural Water Officer Employment Program

Feedback – NSWALC sees that there is also an opportunity for this option to be combined with option 51 to formalise the use of Aboriginal expertise. This option should focus on building the Aboriginal community controlled sector, not increasing roles for government. Government should direct resources to Aboriginal land councils and Aboriginal community controlled organisations to support this initiative.

51) River Ranger Program

Feedback – Agree in principle. This option should focus on building the Aboriginal community controlled sector, not increasing roles for government. Government should direct resources to Aboriginal land councils and Aboriginal community controlled organisations to support this initiative. This option should be explored as a preferred option and used in combination with options 16, 17, 42, 46 and 50. There may also be opportunity to work in partnership with Local Land Services on projects that look at rehabilitation of land and shorelines above riparian zones.

In summary while NSWALC has provided feedback on the issues known to be of broader general concern for Aboriginal people across NSW and issues that have been raised within the Border Rivers Region. This feedback is by no means exhaustive and should not be considered as a substitute for proper face to face consultation with Aboriginal communities within the Border Rivers Region. NSWALC looks forward to DPIE holding the face to face Aboriginal Community consultations providing members of the Aboriginal community within the region opportunity to provide feedback on the draft Border Rivers Regional Water Strategy. We would also welcome the opportunity to provide further comment.