

---

Department of Planning and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)



# Cultural considerations of floodplain harvesting for the Gwydir Valley and Border Rivers

September 2022



# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

The department acknowledge the Traditional Owners of the Country of the northern NSW Murray-Darling Basin. Special thanks are given to the Aboriginal people and organisations who have contributed to this process.

---

Published by NSW Department of Planning and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Cultural considerations of floodplain harvesting for the Gwydir Valley and Border Rivers

First published: September 2022

DPE-W Reference: PUB22/626

## Acknowledgements

The department would like to acknowledge the contributions and inputs of the Northern Basin Aboriginal Nations (NBAN) in co-designing the consultation approach, facilitating consultation sessions and reporting; representatives of the Mungindi, Collarenebri and Moree Local Aboriginal Land Councils for providing cultural guidance and reflections on the content of the Border Rivers and Gwydir valley summary reports; and Alluvium Consulting Australia for compiling this report. The department will seek further feedback from the community on this report and its recommendations and actions, for continued improvement.

## Copyright and disclaimer

© State of New South Wales through Department of Planning and Environment 2022. Information contained in this publication is based on knowledge and understanding at the time of writing, August 2022, and is subject to change. For more information, please visit [dpie.nsw.gov.au/copyright](http://dpie.nsw.gov.au/copyright)



# Contents

<b>Executive summary</b> .....	<b>5</b>
<b>Introduction</b> .....	<b>7</b>
Reforming floodwater management in the NSW northern Basin.....	8
Implementing the NSW Floodplain Harvesting Policy .....	8
Benefit of licensing and measuring floodplain harvesting .....	8
Measurement allows management .....	8
Floodplain management plans.....	9
Cultural values, assets and uses.....	10
<b>Approach</b> .....	<b>11</b>
Consultation .....	11
<b>Benefits of the floodplain harvesting reform for First Nations Communities</b> .....	<b>12</b>
Gwydir Valley .....	12
Border Rivers.....	13
Summary of benefits.....	15
<b>Impacts of the floodplain harvesting reform for First Nations communities and community recommendations</b> .....	<b>15</b>
Gwydir Valley .....	16
Border Rivers.....	17
Summary of impacts and recommendations.....	19
<b>First Nations general perspectives and recommendations and the department’s responses</b> .....	<b>21</b>
Cultural perspective .....	21
Cultural protection .....	27
First Nations involvement .....	32
Equity .....	35
<b>Summary</b> .....	<b>39</b>
<b>NRAR response on matters of compliance</b> .....	<b>40</b>
<b>References</b> .....	<b>40</b>
Table 1: Issues, recommendations and NSW Government actions relating to cultural perspectives from the Border and Gwydir Rivers First Nations Consultations .....	23
Table 2: Issues and recommendations and NSW Government actions relating to cultural protection from the Border and Gwydir Rivers First Nations Consultations .....	28
Table 3: Issues and recommendations and NSW Government actions relating to First Nations involvement from the Border and Gwydir Rivers Consultations .....	33
Table 4: Issues and recommendations and NSW Government actions relating to equity from the Border and Gwydir Rivers First Nations Consultations .....	37

---

# Executive summary

Floodplain harvesting in the northern Murray-Darling Basin (northern Basin) will be reformed through commencing floodplain management plans and the NSW Floodplain Harvesting Policy and Floodplain Harvesting Measurement Policy. These plans and policies set out the requirements for licensing, measuring and management of floodplain harvesting and make up the floodplain harvesting reform. This reform will bring floodwater take in the northern Basin into the water licensing framework and reduce floodplain harvesting to within legal limits.

Between October 2020 and May 2021, the Northern Basin Aboriginal Nations (NBAN) led a series of First Nations/Aboriginal consultation workshops in the Border Rivers and Gwydir valleys. The aim was to better understand how the floodplain harvesting reform could benefit or impact Aboriginal communities. This report summarises the outcomes of those consultation sessions.

## Benefits and impacts

From the perspective of First Nations communities the potential benefits of the reform are:

- a healthier Country and landscape
- rejuvenation and protection of cultural sites
- increased opportunities to carry out traditional practices and cultural obligations to the land
- increased opportunity for knowledge sharing and cultural continuation
- increased opportunity for involvement and collaboration in floodplain management.

However, in First Nations communities there is doubt that the amount of water being returned through licensing and management of floodplain harvesting will be sufficient to bring about the changes needed to realise the benefits. Also, it was thought that until penalties for breaches of compliance are made tougher and enforced better, the floodplain harvesting reform will make little change to the practice of floodplain harvesting in the northern Basin. A response from the Natural Resources Access Regulator (NRAR) on matters of compliance can be found at the end of this report.

## Collaborative approach

The First Nations engagement approach was co-designed by Department of Planning and Environment - Water together with Northern Basin Aboriginal Nations (NBAN). This was to make sure that consultation would take place in a culturally sensitive and appropriate way. NBAN was engaged to facilitate the consultation sessions and to report on the cultural perspectives heard in the sessions.

On-Country engagement sessions were conducted in the Gwydir valley and the Border Rivers regions between October 2020 and March 2021. The purpose of these sessions was to:

- 
- identify the benefits and impacts of the floodplain harvesting reform to First Nations people, communities and culture
  - empower and provide an opportunity for First Nations people to make formal submissions on the public exhibited draft rules for floodplain harvesting in the relevant water sharing plans
  - identify areas for future improvement of floodplain management for better cultural outcomes.

Following the engagement sessions, NBAN provided a summary report to the department for each valley. These were the *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* (NBAN, 2020) and the *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* (NBAN, 2021). These two reports (the consultation summary reports) outline the benefits and impacts of the reform on each area and some general feedback on water management in the northern Basin from a First Nations perspective

This report, the *Cultural Considerations of Floodplain Harvesting for the Gwydir Valley and Border Rivers*, summarises and brings together the two consultation summary reports.

### **Additional feedback**

This report also summarises feedback on some general issues and recommendations raised by First Nations communities on floodplain and water management in the northern Basin from the consultation summary reports. These issues and recommendations are grouped into 4 priority areas for the department to consider:

- Cultural perspective – better cultural understanding and respect of the floodplain
- Cultural protection – better protection of cultural assets and values on the floodplain
- First Nations involvement – greater involvement of Aboriginal communities and individuals in planning and management for the floodplain
- Equity – greater equality and recognition for First Nations communities and values on the floodplain, as appears to be afforded to agricultural and economic development.

Additionally, this report includes responses from the department on where these general issues or recommendations are being addressed and an indication of future work where the lessons learned from this report are being implemented.

Feedback on the two valley summary reports was sought from NBAN and representatives from the Moree, Collarenebri and Mungindi Local Aboriginal Land Councils (LALCs) regarding the cultural appropriateness and accuracy of those reports, ensuring the true nature of conversations and consultation was reflected.

---

# Introduction

Floodplain harvesting is the collection, extraction or impoundment of water flowing overland across floodplains. Floodplain harvesting has been an important source of water in Australia, particularly in the northern Murray-Darling Basin (northern Basin), where it supplements the amount of water that can be extracted under existing licenses for irrigators.

As floodplain harvesting has sat outside the NSW water licencing framework, it has not been subject to any volumetric limits on take and there is the potential for growth in floodplain harvesting to continue without constraint if licencing is not completed in all valleys. The unconstrained harvesting of water from floodplains is detrimental to the floodplain environment and downstream river health, reducing the volume, frequency, timing and duration of flood events downstream.

The management of flood water in the northern Basin is being reformed through the Healthy Floodplains Project which seeks to licence and manage floodplain harvesting in accordance with the reform for the Barwon-Darling, NSW Border Rivers, Gwydir, Macquarie and Namoi. This project is supported by funding from the Commonwealth Government's Sustainable Rural Water Use and Infrastructure Program, as part of Basin Plan implementation in NSW.

Current modelling shows the volume of floodplain harvesting in some northern Basin valleys, when combined with all surface water take, causes legal limits to be exceeded. The legal limits are set in NSW water sharing plans and the Murray-Darling Basin Plan to be exceeded.

The purpose of the Healthy Floodplains Project is to ensure a more certain and sustainable future for all water users and the environment. The regulation of floodplain harvesting through licencing, measurement and management is a major component of the project.

The return of water to floodplains through licencing of floodplain harvesting is expected to have several benefits for First Nations communities across the northern Basin. To help realise potential benefits, the department seeks to understand the considerations and perspectives of First Nations peoples from across the northern Basin.

A series of consultation workshops were held by NBAN (Northern Basin Aboriginal Nations) to better understand the perspectives of First Nations people relating to the floodplain harvesting reform. Feedback from workshops in the Border Rivers and Gwydir resulted in two summary reports:

- Border Rivers Floodplain Harvesting and Licencing Cultural Considerations and Outcomes Summary Report (NBAN 2020)
- Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report (NBAN 2021)

This report summarises issues and recommendations common to the consultation summary reports from the Border Rivers and Gwydir sessions.

---

# Reforming floodwater management in the NSW northern Basin

## Implementing the NSW Floodplain Harvesting Policy

In 2008 the NSW Government announced that floodplain harvesting would be brought into the licencing framework. Water users harvesting water from floodplains would now need a licenced entitlement and to have eligible works listed on a water supply works approval. Bringing floodplain harvesting into the licensing system will improve accounting and compliance of water use in NSW. This does not mean that more water will be taken for use. It will ensure that water take is measured and managed, and restrictions and rules can be enforced so it is kept within the legal limits.

The *NSW Floodplain Harvesting Policy* (FPH policy) provides a framework for licensing floodplain harvesting take. Only works constructed on or before 3 July 2008 that have an approval, or that did not require an approval, are eligible for a licence under the FPH policy.

The FPH policy is now being implemented across the Northern Basin to stop unconstrained floodplain harvesting. The licensing and measurement framework for floodplain harvesting commenced in the Border Rivers and Gwydir valleys on 15 August 2022 and the department expects to complete implementation in remaining valleys through 2022 and 2023.

---

## Benefit of licensing and measuring floodplain harvesting

Where floodplain harvesting is currently outside the licencing framework, there is no volumetric limit on take and the potential for unconstrained growth. This unlicensed take can reduce the volume, frequency, duration and timing of floods downstream. In turn, this is detrimental to the floodplain environment, downstream river health and Aboriginal cultural sites and values.

The licencing and management of floodplain harvesting through the floodplain harvesting reform will reduce the total volume of water taken from the floodplains by ensuring total surface water take is within the limits set in NSW Water Sharing Plans and the Murray-Darling Basin Plan. This will return more water to rivers and floodplains.

The floodplain harvesting reform aims to ensure a fair share of water for all: Aboriginal and First Nations peoples, irrigated and non-irrigated agricultural producers, downstream users and communities, the environment and river systems throughout the Murray-Darling Basin.

---

## Measurement allows management

For resource managers to make effective decisions they require accurate, reliable and up-to-date information. The measurement of take from the floodplain is a complex and challenging task only made possible by recent advances in technology and practice. The Floodplain Harvesting Measurement Policy (measurement policy) uses new technology and sets out the objectives, methods and rules for measuring floodplain harvesting in the northern Basin.



---

To ensure high-quality measurement data the NSW Government will require landholders with a floodplain harvesting access licence to meet strict rules. A duly qualified person must be employed to install automated, telemetry-enabled storage meters on all dams that are used for floodplain harvesting. The meters must meet minimum specifications outlined in the amended Regulations and be fitted with tamper proof seals. Installation of automated storage meters for floodplain harvesting measurement aligns with the metering requirements of the NSW Non-Urban Water Metering Framework (2018).

The FPH policy and the measurement policy are enabled through amendments to the Water Management (General) Regulations 2018.

Together, licensing and measurement requirements will deliver accurate and reliable water take data and ensure better management of water resources. This will allow a strong compliance and enforcement framework for floodplain harvesting take and will promote fairness and equity for all water users and the environment.

---

## Floodplain management plans

Floodplain management plans set out zones and specific rules for the management of flood works within the floodplain. Flood works are structures built on a floodplain such as levees, embankments, access roads, stock refuges and other types of earth works that redirect or divert floodwater. If these works are not regulated, they can disrupt the flow of water across the floodplain and impact on environmental and cultural assets or values that are dependent on flood flows.

Management Zone A (main floodways) and Management Zone D (areas of ecological or Aboriginal cultural significance) are designed to restrict the types of works permitted. This allows for flood flow connectivity to identified flood-dependent ecological, cultural or heritage assets and values.

Under the *Water Management Act 2000*, a flood work approval is required for the construction and use of a flood work. Floodplain management plans have been developed to provide guidance on the types of flood works permitted within certain areas of the floodplain and assessment criteria to ensure the works do not impact on flood flow connectivity. Flood works in Management Zones A and D that existed before commencement of the floodplain management plans in the Border Rivers (11 September 2020) and Gwydir (12 August 2016) valleys are only permitted if they are minor in nature and must have a thorough assessment process to ensure that flood connectivity is maintained.

Any new flood works proposed by landholders in Management Zone D in the Border Rivers valley will only be considered if the work will provide a positive outcome for a recognised ecological, Aboriginal cultural or heritage value (known as ecological enhancement works, Aboriginal cultural values enhancement works or heritage site value enhancement works). This rule is not currently in the Gwydir Valley Floodplain Management Plan. However, the department aims to amend the plan in 2022/23 to add a large number of significant lagoons and wetlands to Management Zone D with associated rules. This will make it more consistent with the other floodplain management plans. Consultation with Gomeroi and Kamilaroi people about these amendments is being managed by the department separately to the Healthy Floodplains Project.

---

## Cultural values, assets and uses

A cultural 'value' is defined as sites, objects, landscapes, resources and beliefs that are important to Aboriginal people as part of their continuing culture. Aboriginal cultural values also include assets, uses, functions, services and features that benefit Aboriginal people that are listed in Commonwealth, state and local government databases.

Consultation with First Nations communities by the department has taken place during the development of floodplain management plans and water resource plans with cultural values, assets and uses (CVAUs) identified on floodplains across Nations and valleys in the region.

Through this previous consultation, the department has identified Aboriginal cultural values that benefit from flooding. These are outlined in each floodplain management plan and include:

- (a) places that are, or could be, used for cultural activities and that benefit from flooding (such as fish traps made of stone or sticks),
- (b) flood-dependent ecological assets that:
  - (i) are recognised for their spiritual or cultural significance (or both), or
  - (ii) have been culturally modified, including:
    - scarred trees, and
    - tree carvings, or
  - (iii) contain resources that are or were utilised in cultural activities, or
  - (iv) are associated with places that are used for contemporary cultural activities.

The benefits of the flooding within floodplains to Aboriginal people and their cultures include:

- (a) continuation of Aboriginal cultural practices connected with flooding, including:
  - (i) harvesting traditional flood-dependent resources, and
  - (ii) cultural activities connected with and dependent upon floods,
- (b) preservation and longevity of Aboriginal cultural values,
- (c) maintaining potential for cultural renewal,
- (d) maintaining spiritual connections with the floodplain landscape.

DPE Water recognises that the identification and protection of CVAUs in floodplain and water planning and management in collaboration with Traditional Owners and Aboriginal communities is a crucial step in ensuring better cultural outcomes across the state.

---

# Approach

---

## Consultation

DPE Water sought to consult with First Nations communities across the northern Basin on the floodplain harvesting reform. The specific purposes of the consultation were to:

- identify the benefits and impacts of the reform to First Nations people, communities and culture
- empower and provide an opportunity for First Nations communities to make formal submissions on public exhibited draft water sharing plan rules for floodplain harvesting
- identify areas for future improvement of floodplain management for better cultural outcomes

DPE Water is committed to engaging with stakeholders about water policies and reform and recognises the importance of culturally appropriate and sensitive consultation with First Nations communities. Therefore, NBAN (Northern Basin Aboriginal Nations) was engaged to co-design and lead consultation sessions with First Nations communities and to report on the findings from those sessions. Consultation was conducted using On-Country sessions through October 2020 to March 2021.

Initially, NBAN contacted NBAN registered community delegates across the footprint of the northern Basin, including the Gwydir Valley and Border Rivers, to introduce them to the Healthy Floodplains Project. Initially, two engagement workshops were held to familiarise delegates with the floodplain harvesting reform. The aim was to empower and inform delegates so they could communicate back to their communities in preparation for future consultation sessions with NBAN.

In the Border Rivers, 5 workshops were conducted across the Border Rivers Floodplain Management Plan area at Tenterfield, Inverell, Ashford, Boggabilla and Mungindi between 20 October and 30 November 2020. A total of 26 participants were engaged by these workshops with numbers at workshops ranging between 3-12 participants. These workshops presented information on the floodplain harvesting reform and engaged participants on what the benefits and impacts of the licensing of floodplain harvesting might be for First Nations people. Additionally, the workshops supported communities to provide informed feedback to DPE Water, through the public submission process, on the draft water sharing plan rules for floodplain harvesting in the Border Rivers.

In the Gwydir Valley, consultation occurred through an initial workshop presenting similar information to the Border Rivers workshops on 25 February 2021 held at the Moree Sports, Health, Arts and Education Academy, attended by approximately a dozen participants. A follow-up workshop was held a week later (2 March 2021) where the information provided by participants was reviewed to ensure that it was an accurate representation of their perspectives. NBAN provided information on the draft water sharing plan rules for floodplain harvesting in the Gwydir valley and supported participants in submitting formal submissions.

---

Following the engagement sessions in the Border Rivers and Gwydir valley, NBAN provided the Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report (NBAN, 2020) and the Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report (NBAN, 2021) to DPE (collectively known as the consultation summary reports). These reports outlined the benefits and impacts of the reform on each locality from a First Nations perspective, as well as providing general feedback and community recommendations on water and floodplain management in the northern Basin.

---

## Benefits of the floodplain harvesting reform for First Nations Communities

This section summarises the potential benefits of the floodplain harvesting reform heard during the First Nations consultation in the Border Rivers and Gwydir Valley and presented in the consultation summary reports.

---

### Gwydir Valley

Participants in the Gwydir Valley workshops believed that returned water through the reform is a step in the right direction and that licensing could be beneficial to the landscape, First Nations cultural assets and First Nations communities<sup>1</sup>. Participants in the Gwydir valley workshops highlighted the importance of the river and floodplain to their culture, “that’s where all learning started from...from the river... we need to go back there”<sup>2</sup>. Participants highlighted the significant relationship between water and cultural continuation for First Nations communities, “more water is beneficial...provides opportunities for learning...knowledge transfer and teaching the younger generation”<sup>3</sup>.

It is understood by the First Nations community that there could be numerous flow-on benefits to returning water to the floodplain through the floodplain harvesting reform - “You fix that river, it spreads”<sup>4</sup>.

---

<sup>1</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 4

<sup>2</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 5

<sup>3</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 4

<sup>4</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 10

---

The perceived benefits of returned water included:

- a healthier Country and landscape
- rejuvenated cultural sites
- increased opportunities to carry out cultural obligations to the land
- increased opportunity for traditional practices and knowledge sharing
- increased opportunity for involvement and collaboration in floodplain management

“More water is beneficial...provides opportunities for learning...knowledge transfer and teaching the younger generation”

“More water is beneficial”, a greater amount of water on the floodplains through natural events and reduced floodplain harvesting would provide a healthier landscape, with more flora and fauna. This

“People make their own medication”

increased abundance of flora and fauna, found at sites of cultural significance, can be accessed and utilised for traditional practices such as gathering of bush tucker or medicine making. Engaging in these traditional practices and fulfilling cultural obligations to the landscape provides opportunity to pass cultural knowledge onto the younger generation, ensuring cultural continuation and strong cultural identities for young people, and leading to them being involved in the management of Country. The floodplain and water is seen as very important.

---

## Border Rivers

First Nations communities perceive that floodplain harvesting “restricts the ability of floods to meet the needs of ecological processes, natural purposes, environmental and cultural requirements”<sup>5</sup>. Floodplain harvesting is seen as “an act of greed”<sup>6</sup> with many believing that “floodplain harvesting should not happen”<sup>7</sup> at all, while others noted that some flows “are not suitable for harvesting”<sup>8</sup>. First Nations people believe that floodplain water “should be left alone to support the environmental and cultural values and assets”<sup>9</sup> of Country. The lack of a floodplain harvesting management framework, and enforcement of compliance, were seen by participants in the Border Rivers workshops as negligent and a gross mismanagement of such an important resource.

First Nations consultation participants from the Border Rivers agreed that the return of 6.1 GL<sup>10</sup> to the Border Rivers valley through floodplain licensing was “pleasing”<sup>11</sup>. There was hope that this water would contribute to the inundation of areas within the valley which have been dry or

---

<sup>5</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>6</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>7</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>8</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>9</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>10</sup> Correct at time of consultation

<sup>11</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 12

---

unconnected for many years. It is expected that there will be many indirect cultural benefits from this returned water.

Again, an expected benefit of the returned water and increased lateral connectivity are the increases in floodplain flora and fauna.<sup>12</sup> While this can be viewed as a purely environmental benefit, there is the associated cultural benefit for First Nations communities. With greater availability of flora and fauna for bush tucker and medicine, First Nations individuals and communities can participate in traditional hunting and gathering practices, which has flow-on benefits for the transfer of traditional knowledge to the next generation.

“A lot of bush tucker and all that... is growing on the floodplain”

Another perceived benefit relates to First Nation people’s involvement with floodplain harvesting compliance and monitoring. First Nations people and communities want to be involved and collaborate in projects with some seeing this as an opportunity to care for Country and fulfill cultural obligations to the land. They expect to be communicated with and updated on future projects within their cultural footprint by government agencies<sup>13</sup> and would like opportunities to collaborate and be actively involved in floodplain management.<sup>14</sup>

Regarding the draft water sharing plan rules for floodplain harvesting, there was majority support at the Border Rivers workshops for the (at the time) proposed:

- 5-year account management
- 1 ML per unit share
- adaptive management frameworks
- trading zones and restrictions
- event based restrictions under s324
- amendment provisions.

It is worth noting that the support of the floodplain harvesting reform by the participants in the Border Rivers workshop is provisional, with some preferring that there be no floodplain harvesting at all.<sup>15</sup> However, there is an understanding that if this practice is at least licensed it may present an opportunity for better management.<sup>16</sup>

---

<sup>12</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 12

<sup>13</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – Recommendation 13

<sup>14</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – Recommendation 6

<sup>15</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 11

<sup>16</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 11

---

## Summary of benefits

Both consultation summary reports highlighted that the return of water through licensing, measurement and management will have potential benefits for First Nations communities in the northern Basin. These benefits are connected strongly to the return of water to the floodplain and the rejuvenation of native flora and fauna. It is perceived by First Nations people consulted that the floodplain harvesting reform could result in:

- healthier floodplain Country and landscapes
- rejuvenated cultural sites
- increased opportunities to carry out cultural obligations to the land
- increased opportunity for traditional practices and knowledge sharing
- increased opportunity for involvement and collaboration in floodplain management

In the Border Rivers there was also majority support for the proposed rules and amendments to the water sharing plan including 5-year account management, 1ML per unit share, the use of adaptive management frameworks and event-based restrictions under s324.

However, views vary and many people believe that the amount of water being returned through the Policy will be insufficient to result in real benefits for communities and the environment.

---

# Impacts of the floodplain harvesting reform for First Nations communities and community recommendations

This section summarises the impacts of the floodplain harvesting reform heard during the First Nations consultation in the Border Rivers and Gwydir Valley and presented in the consultation summary reports. The First Nations community recommendations heard during consultation are also presented in this section.

---

# Gwydir Valley

## Impacts

There were several indirect impacts on cultural values and assets by the licensing of floodplain harvesting noted in the Gwydir workshop. While the forecast return of water to the floodplain was pleasing, many participants felt that the amount of water being returned to the floodplain was insufficient to make a positive impact in the Gwydir valley.<sup>17</sup> There was a view that the proposed licensing and compliance framework will be insufficient to deter land holders from illegal take of water, resulting in no realistic gain for the landscape, cultural assets or First Nations communities.<sup>18</sup> First Nations communities believe more action and involvement of First Nations people in water monitoring and compliance is needed.<sup>19</sup>

“Seems like with all the harvesting First Nations communities will still be getting bottom of the barrel”

“Farmers will still steal water and cop fines...fines need to be more...”

## Recommendations

Three major recommendations regarding the floodplain harvesting reform emerged from the Gwydir workshop relating to First Nations involvement in monitoring and compliance, transparency of these processes and concerns about penalties for water theft being insufficient.

Firstly, regarding monitoring and compliance, First Nations community members suggested the involvement of “independent community members” from local Nations in monitoring and compliance programs.<sup>20</sup> This is an important recommendation allowing First Nations people to be directly involved in programs and to indirectly communicate the work that the program is doing in returning water to the floodplain. First Nations people need to be meaningfully employed and involved in these programs to build their understanding of what is happening on the floodplain now and into the future.

---

<sup>17</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 4

<sup>18</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 8

<sup>19</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 10

<sup>20</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report* – Issue 8



---

Secondly, First Nations communities would like to have some cultural oversight and visibility of water compliance monitoring.<sup>21</sup> This transparency in the process of water monitoring is fundamental in establishing trust in the program and ties in with the first recommendation.

Thirdly, based on the perception that the penalties for water theft were insufficient, First Nations communities have recommended that tougher penalties should be applied.<sup>22</sup> A review of the current penalties could be conducted with input from First Nations people.

“Tough penalties should be in place for license breaches...take away license...jail terms...”

---

## Border Rivers

### Impacts

Similar indirect impacts of the floodplain harvesting reform discussed were also discussed at the Border Rivers workshops. It was mentioned by some participants that they “don’t think the [new] rules will change anything for our people”.<sup>23</sup> There is a view that the forecast return of 6.1 GL<sup>24</sup> through licensing will only return the additional illegal take in exceedance of the Border Rivers sustainable diversion limits (SDL) that has occurred over the last few decades.<sup>25</sup> This is viewed as the return of what is owed to the landscape and communities, but not as any additional water for the environment or First Nations communities in relation to the Border Rivers sustainable diversion limits. In relation to this some participants at workshops understand the floodplain harvesting reform as a process of legalising the current take from the floodplain, although returning some water.<sup>26</sup>

Several participants at the workshop also believed that the reform insufficiently restricts the take of water from smaller flooding events, which are not suitable for harvesting, and that the licensing framework provides insufficient protection for floodplain water or consequences for taking water illegally.

From the perspective of First Nations communities consulted there is a need to protect smaller flood events which establish floodplain connectivity with the floodplain areas most in need of inundation. Removing water from these smaller flood events impacts their ability to connect waterways, floodplains and

“Some floods aren’t big enough to take water, the natural purposes and needs of the environment and cultural needs don’t get met when these events are interrupted through licensing”

---

<sup>21</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report – Issue 8*

<sup>22</sup> NBAN (2021) *Floodplain Harvesting in the Gwydir Valley First Nations Community Consultation Workshop Summary Report – Issue 8*

<sup>23</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report – page 14*

<sup>24</sup> Correct at time of consultation

<sup>25</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report – page 11*

<sup>26</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report – page 11*

---

riparian areas, limiting the rejuvenation of cultural and environmental assets.<sup>27</sup>

Like the Gwydir workshops, participants throughout the Border Rivers workshops believed that the floodplain harvesting reform still favoured economic development and the agricultural industry at the expense of First Nations people and the environment<sup>28</sup> which indirectly impacts their communities. For example, if irrigators could hold both an extraction license and a floodplain harvesting license this would be seen as unfair in the eyes of the First Nations community<sup>29</sup>. There are continuing perceptions that despite the licensing, there will still be water theft and that penalties for theft are insufficient to deter these actions<sup>30</sup>, which is held in the same esteem as the “government turning a blind eye”.<sup>31</sup> First Nations communities from the Border Rivers believe there is still a need for the “licenses to be audited and proper evaluation [conducted] of what is sustainable take of water”<sup>32</sup>.

“If they have a license to take from the river, they shouldn’t be allowed to have a floodplain harvesting license as well.”

## Recommendations

Several recommendations emerged from the First Nations consultation work in the Border Rivers. These recommendations were at times like those proposed in the Gwydir workshops, relating to:

- a review of licensed floodplain harvesting practices
- First Nations involvement in monitoring and compliance
- better inclusion of cultural knowledge and assets in the floodplain harvesting reform
- First Nations involvement in penalties for breaches of compliance.

First Nations communities believed there was a need for a greater review of licensed floodplain harvesting practices in the Border Rivers<sup>33</sup> and that greater extraction and storage volume limits for floodplain water should be enforced<sup>34</sup>. From their perspective, revised limits would ensure greater flow of water through the floodplain providing increased connectivity and protection for flood dependant ecosystems and cultural assets. In addition, First Nations communities would like to see the water sharing plan rules “reviewed, monitored and evaluated” against their predicted outcomes

---

<sup>27</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>28</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 6

<sup>29</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 14

<sup>30</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – Recommendation 11 & 12

<sup>31</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – page 15

<sup>32</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – Recommendations 1, 10 & page 14

<sup>33</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – Recommendation 1

<sup>34</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* – Recommendation 10

---

with these results communicated to First Nations communities following the licensing and management through the floodplain harvesting reform.<sup>35</sup>

Border Rivers First Nations communities also recommended that the entire floodplain, as a holistic and interconnected environment with important cultural value, be better recognised in current policy and management<sup>36</sup>. Better recognition and inclusion of cultural perspectives, knowledge and assets were also recommended through the development of policy that “encompasses First Nations aspiration, desires, objectives and outcomes with regards to water management”<sup>37</sup>. This cultural recognition and inclusion in the floodplain harvesting reform may be able to be achieved through the co-development of cultural outcomes.

Like the Gwydir workshop, participants also recommended the need for greater involvement of First Nations individuals and communities in the monitoring and evaluation of floodplain harvesting, licensing rules, including DPE Water and NRAR programs<sup>38</sup>. This also extended to First Nations involvement in a review of penalties for breaches of compliance, potentially through a First Nations Compliance Committee.<sup>39</sup> From the perspective of First Nations communities it seems that “monetary penalties are of little consequence to big irrigators and agricultural enterprises” and that future penalties could consider “revocation of licenses and/or entitlements”.

“Monetary penalties are of little consequence to big irrigators...”

The final recommendations from the Border Rivers First Nations communities were for stricter enforcement of penalties for breaches of compliance.<sup>40</sup>

---

## Summary of impacts and recommendations

The major impacts of the floodplain harvesting reform on First Nations communities related to the perception that the reform still favours economic development and agricultural industries over the community and the environment.

There were recurring views that:

- the return of water through the reform was insufficient to result in real beneficial outcomes
- penalties for breaches of compliance were too small and that monetary penalties would not deter illegal take
- compliance would not be enforced correctly.

---

<sup>35</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* - Recommendation 9

<sup>36</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* - Recommendation 2

<sup>37</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* - Recommendation 16

<sup>38</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* - Recommendation 6

<sup>39</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* - Recommendation 11

<sup>40</sup> NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* - Recommendation 12

---

The result of the above would be a continued impact on First Nations people and the environment through an imbalance in water distribution through the floodplain, favouring agricultural industries and economic development.

First Nations communities proposed four recommendations where these issues could be addressed including:

1. Further review of floodplain harvesting practices and licences.
2. A review of the penalties for breach of compliance in consultation with First Nations communities.
3. The involvement of First Nations people in compliance monitoring.
4. Greater involvement of First Nations people and their cultural knowledge in the design of policy and planning.

This summary of impacts and recommendations provides a clear path for DPE Water to address concerns and work towards important cultural outcomes in the northern Basin.

- **Recommendation 4** is covered in the response to issues in Tables 1 to 3 in the next section.
- On **Recommendations 2 and 3** see the separate section on matters of compliance, by the Natural Resources Access Regulator at the end of this report.
- On **Recommendation 1**, the NSW Government is bringing floodplain harvesting into the regulatory framework to control floodplain harvesting through licences and approvals. A comprehensive licensing framework means limits on water take can be measured, managed and enforced. The framework commenced in the Border Rivers and Gwydir valleys in August 2022 and is being rolled out across the Northern Basin, with all remaining valleys to be completed by June 2023.
  - The framework will deliver environmental and downstream benefits by reducing floodplain harvesting take where this is necessary to bring take within the water source legal limits.
  - Downstream triggers written into water sharing plans in combination with temporary water restrictions will protect ‘first flush flows’, ensuring that upstream water extraction does not occur when there are downstream critical human and environmental needs.

---

# First Nations general perspectives and recommendations and the department's responses

The main focus of the Gwydir Valley and Border Rivers consultation was the NSW floodplain harvesting reform and its potential benefits and impacts to First Nations communities and cultural assets. However, through these consultation workshops the Healthy Floodplains Project also heard general perspectives, feedback and recommendations on water management issues relating to First Nations communities in the northern Basin.

These general water management issues (i.e. not directly related to the floodplain harvesting reform) have been broadly grouped into 4 categories.

- Cultural Perspective
- Cultural Protection
- First Nations Involvement
- Equity

The department is committed to continually improving its relationships with First Nations communities across the northern Basin and in turn delivering better outcomes for First Nations people. The Healthy Floodplains Project team recognises that these 4 themes are intrinsically linked to one another and that efforts to improve in one area are likely to have overlapping benefit in the others. Tables 1 to 4 below summarise the issues and recommendations learned through this consultation process and the department's actions that are already completed, in progress or planned that address these.

The department is working to improve outcomes for Aboriginal people and to increase the representation of Aboriginal water rights, interests and access to water. We are working with peak Aboriginal organisations and community groups on what needs to change and will seek further feedback from relevant aboriginal groups on this report and its recommendations and actions.

---

## Cultural perspective

The most evident theme arising in both consultations summary reports was the need for greater understanding and integration of cultural perspectives in floodplain policy, planning and management. First Nations communities felt that current policy, planning and management, including floodplain management plans (FMPs) did not properly acknowledge cultural values, assets and uses (CVAUs). As a result, the objectives and outcomes of current policies and management do not appropriately account for the importance of CVAUs to First Nations people and culture in fulfilling cultural obligations to Country as custodians of the land.

---

There were several recommendations regarding a better integration of cultural perspectives into the floodplain harvesting reform and future floodplain water management. One suggestion was the greater inclusion of CVAUs in policy development and setting cultural outcomes and objectives in collaboration with First Nations communities, separate from environmental outcomes, within planning and policy frameworks. Another recommendation was for a respect and integration of cultural science, such as holistic understanding of floodplain connections, through consultation with First Nations communities during early planning and policy development stages. Participants in the Gwydir workshops outlined that government agencies and NBAN should continue to return for On Country engagement and take the burden of travel off First Nations communities.

“Government should be obligated to come out to country”

“NBAN should come back out and work with the local people”

Table 1: Issues, recommendations and NSW Government actions relating to cultural perspectives from the Border and Gwydir Rivers First Nations consultations

Issue	Recommendation	Actions to address	By When	Responsibility
<p>1. Floodplain management plans do not adequately encompass the upstream areas of floodplains, which are culturally and environmentally crucial to floodplains (Border Rivers).</p>	<p>Floodplain Management Plan (FMP) areas should be extended to encompass the true extent of the floodplain, inclusive of upstream areas where water is being harvested from the floodplain (Border Rivers).</p>	<p>Floodplain management plans (FMPs) come under the <i>Water Management Act 2000</i>. They guide development of flood works on a valley basis and set out management zones and rules for flood works. Examples of flood works are embankments, levees and channels.</p> <p>New FMPs must be approved by the Minister for Water and the Minister for Environment (s41 and s44). FMPs are reviewed and audited within 5 years of their start (s 43 and s44) and revised/replaced 10 years from commencement.</p> <p>Amendments may be made throughout the life of the FMP (s45) if it is in the public interest to do so.</p> <p><b>1. Completed</b></p> <p>The following recommendation has been entered into the department’s Floodplain Management Plan Amendment Register. The purpose of this register is to track issues for review in each floodplain management plan.</p> <p><i>In consultation with First Nations, review the extent of:</i></p> <ul style="list-style-type: none"> <li>- the Border Rivers Valley Floodplain boundary and management zones as they relate to Aboriginal cultural values, assets and uses.</li> <li>- the Gwydir Valley Floodplain boundary and management zones as they relate to Aboriginal cultural values, assets and uses.</li> </ul> <p>The <b>Border Rives FMP</b> commenced in 2020 and the plan is due for review in 2025 and replacement in 2030.</p> <p>The <b>Gwydir Valley FMP</b> commenced in 2016 and the plan is due for replacement in 2026. The 5-year review and audit was completed in 2021.</p>	<p>August 2022</p>	<p>DPE Water Planning</p>

		<p><b>2. In progress</b> Work approvals are required outside of floodplain areas and are assessed to meet legislative requirements for environment and cultural assets.</p> <p><b>3. Planned</b> The <b>Border Rivers Valley FMP</b> commenced in 2020 and will be reviewed in 2025 under s43 of the <i>Water Management Act 2000</i>. The department will seek public feedback as part of this review.</p> <p>The department is currently preparing to seek public feedback on some changes to the <b>Gwydir Valley FMP</b>. While these changes will improve protections for places of Aboriginal cultural significance, no change is currently proposed to the boundary.</p> <p>Practical limitations restrict the scale of amendments that can be made following the 5-year review. Changes made are primarily small scale and in response to Natural Resources Council (NRC) audit actions. Large scale changes such as major boundary expansions require additional design and flood modelling, a multi-year process not anticipated to occur until the FMPs are remade/replaced in 2026 (Gwydir) and 2030 (Border Rivers).</p> <p><b>Note:</b> All works that are likely to have an effect on flood behaviour still require assessment and approval under the <i>Water Management Act 2000</i>, regardless of whether or not they are within a floodplain management plan boundary.</p>	<p>Ongoing</p> <p>Border Rivers FMP review due end June 2025</p> <p>Remake of Gwydir FMP in 2026 and Border Rivers FMP in 2030</p> <p>Ongoing</p>	<p>WaterNSW</p> <p>DPE Water Planning</p> <p>DPE Water Planning</p> <p>WaterNSW</p>
2. Cultural values, knowledges, assets and uses (CVAUs) are not acknowledged in	Include and acknowledge CVAUs in policy, planning and management of floodplains. Cultural outcomes and objectives to be developed and	<p><b>1. Completed</b> Aboriginal Cultural Onboarding training conducted with Healthy Floodplains Project team to ensure greater understanding of First Nations perspectives and floodplain CVAUs.</p>	April 2022	DPE Water Healthy Floodplains Project



<p>current planning, management and development of the floodplain.</p>	<p>implemented by DPE in relation to CVAUs on the floodplain.</p>	<p>Floodplain management plans (FMPs) include a cultural objective, along with related strategies and performance indicators. They include zoning to protect environmental and cultural assets.</p> <p>For example, in the Gwydir Valley FMP 2016:</p> <ul style="list-style-type: none"> <li>• objectives include “(e) contribute to the protection of cultural, heritage and spiritual features of the Gwydir Valley Floodplain that are significant to Aboriginal people and other stakeholders” (<a href="#">Part 2, section 10</a>).</li> <li>• strategies include “(e) identify cultural assets and the cultural benefits of flooding” (Part 2, section 11)</li> <li>• performance indicators (Part 2, section 12) include the following to measure the success of strategies in reaching the objectives of the Plan: <ul style="list-style-type: none"> <li>○ (a) the extent to which flood works are impacting on the flood connectivity of ecological and cultural assets and groundwater recharge,</li> <li>○ (b) the change to flood connectivity to ecological and cultural assets caused by flood works constructed after commencement of the Plan,</li> </ul> </li> </ul> <p><b>2. In progress</b></p> <p>A review of the Gwydir Valley FMP is in progress. Initial engagement with First Nations of the Gwydir Valley Floodplain was completed in April 2022 to confirm possible additions to the special protection zone. The department is now preparing to publicly exhibit the proposed changes to the plan.</p>	<p>Gwydir Valley FMP commenced 2016 with these objectives</p> <p>Border Rivers Valley FMP commenced in 2020 with these objectives</p> <p>Public exhibition Sept/Oct 2022</p>	<p>DPE Water Planning</p> <p>DPE Water Planning</p>
<p>3. Impingement on ability to carry out cultural obligations</p>	<p>Integration of cultural knowledge and science into the FMPs and policies through consultative input will help</p>	<p>All northern Basin FMPs include cultural objectives and provisions for the protection of flood dependent CVAUs. The department is committed to working with First Nations communities for early engagement to integrate</p>		

	<p>First Nations communities exercise their obligations to care for Country</p>	<p>cultural knowledge and science in FMPs through engaging with them at the time of plan review, amendment and replacement.</p> <p><b>1. Completed</b></p> <p>Consultation with First Nations people was prioritised in the recent review of the Gwydir Valley FMP. Early engagement was well received, and changes are proposed.</p> <p><b>2. In progress</b></p> <p>Proposed amendments to the Gwydir Valley FMP, including improved protections for Aboriginal cultural values will be publicly exhibited shortly.</p> <p><b>3. Planned</b></p> <p>The Border Rives FMP commenced in 2020 and the plan is due for review in 2025 and replacement in 2030.</p> <p>The <b>Gwydir Valley FMP</b> commenced in 2016 and the plan is due for replacement in 2026. The 5-year review and audit was completed in 2021.</p>	<p>April 2022</p> <p>Sept/Oct 2022</p> <p>2025 &amp; 2030</p> <p>2026</p>	<p>DPE Water Planning</p> <p>DPE Water Planning</p> <p>DPE Water Planning</p>
--	---	--	--	---

---

## Cultural protection

The need for greater recognition and protection of CVAUs across the floodplain was consistent across both reports. First Nations communities believe that cultural sites and assets were insufficiently identified by government agencies on the floodplain, leading to ignorance of their importance and a lack of protection for them. This was acknowledged as a difficult area to address in both the consultations summary reports as the location of culturally significant sites cannot always be disclosed but must be identified in some way to prioritise their connection to the floodplain and preserve them.

As a solution to this issue, it was proposed that collaborative on Country identification of culturally significant sites, be undertaken with government agencies, led by First Nations communities, to inform them of the location but also cultural importance of sites and assets. This information would need to be protected under cultural and intellectual property laws and used only when permission is granted by Traditional Owners and knowledge holders. This opportunity for knowledge and cultural exchange presents an opportunity to strengthen relationships between First Nations communities and government agencies through knowledge sharing if undertaken in a culturally appropriate and sensitive manner.

First Nations communities also felt that the current protective zoning under FMPs was inadequate. Recommendations came forth that the current Management Zone A and D protections within FMPs should be expanded to include riparian areas in order to reflect their importance, culturally and environmentally, to the floodplain and flood-dependent ecosystems and cultural sites.

Engaged communities across the Border and Gwydir Rivers also felt that current baseline diversion limits were insufficient and unsustainable in providing a recognisable benefit to the floodplain. However, there was support for the event-based restrictions under the *NSW Water Management Act* s. 324. While participants in consultation agreed that the proposed return of water to the floodplain through licensing will be beneficial to the floodplain from a cultural and environmental perspective, it is not believed that this water is sufficient in volume to make meaningful change across the floodplain.

“Not much Zone D on there...”

“Expand Zone D to cater for traditional uses”

“Current plans don’t seem to be working...”

Another area recognised as an issue in the protection of CVAUs across the floodplain was the lack of a united indigenous voice to speak for the floodplain in each valley. While NBAN represents the northern Basin Aboriginal Nations there were recommendations for the formation of an “Aboriginal Coalition” to be engaged with and advance the rights and interests of First Nations communities in floodplain and water policy development and planning. Similarly, the development of an Aboriginal Water Policy or Aboriginal Water Management Plan in relation to floodplains was proposed to provide a united position regarding cultural perspectives on floodplain water management.

Table 2: Issues and recommendations and NSW Government actions relating to cultural protection from the Border and Gwydir Rivers First Nations consultations

Issue	Recommendation	Actions to address	By When	Responsibility
1. Incomplete identification and understanding of cultural asset locations leads to inadequate protection for culturally significant sites.	On country identification of significant sites should be undertaken collaboratively between DPE and local First Nations representatives. This will help to better inform and shape DPE’s understanding of the cultural footprint of the floodplain, the interconnectedness between all its elements and strengthen working relationships. Any information shared should be regarded as specific cultural knowledge and	<p><b>1. Completed</b></p> <p>NSW Water Strategy Priority 2: Recognise Aboriginal water rights, interests and the need to access water by working with First Nations to better understand cultural values and flow requirements to inform water planning and sharing decisions.</p> <p><b>2. In progress</b></p> <p>The department is engaging with First Nations communities to identify culturally significant sites as part of the Gwydir Valley Floodplain Management Plan 5-year review. This work has been via On Country consultation and has been highly valued by participants. This engagement model has been important in communicating the areas that are currently protected within the FMP for cultural reasons. The department will continue On Country consultation for site identification and involve local communities as much as possible. Where possible and culturally appropriate to do so, it will also be important to promote the fact that these sites are protected by zoning in the Floodplain Management</p>	<p>NSW Water Strategy finalised – August 2021</p> <p>Current 2022 and ongoing</p>	DPE Water Planning

Issue	Recommendation	Actions to address	By When	Responsibility
	protected through cultural and intellectual property laws.	<p>Plan and support negotiations for access to these sites for First Nations communities.</p> <p>Proposed amendments to the plan will go on public exhibition in 2022 with additional cultural sites.</p> <p><b>3. Planned</b></p> <p>Action 2.3: Provide Aboriginal ownership of and access to water for cultural and economic purposes.</p> <p>Action 2.4: Work with First Nations/Aboriginal People to improve shared water knowledge</p> <p>Action 2.5 Work with First Nations/Aboriginal People to maintain and preserve water-related cultural sites and landscapes</p>	<p>Action 2.3 June to December 2023</p> <p>Action 2.4 &amp; 2.5 – June 2024</p>	
2. Current zoning by FMPs gives inadequate protection to cultural assets and riparian areas.	FMP Management Zones A and D should be expanded to include protection for riparian areas reflecting their importance as cultural assets and ability to protect flood dependent ecosystems.	<p><b>2. In progress</b></p> <p>Work is already underway in the Gwydir Valley Floodplain to include more areas of cultural and ecological significance in the special protection zone (Management Zone D). The department is preparing to publicly exhibit proposed amendments to the <b>Gwydir Valley FMP</b>.</p> <p><b>3. Planned</b></p> <p>Amendments may be made to FMPs throughout their 10-year life (see Table 1.1) to improve outcomes for all water users, including First Nations people and the environment.</p> <p>The following recommendation has been entered into the department’s Floodplain Management Plan Amendment Register. The purpose of this register is</p>	<p>Public exhibition planned for Sept/Oct 2022</p> <p>Border Rivers Valley FMP review 2025</p>	<p>DPE Water Planning</p> <p>DPE Water Planning</p>

Issue	Recommendation	Actions to address	By When	Responsibility
		<p>to track issues for review in each floodplain management plan.</p> <p><i>In consultation with First Nations, review the extent of the management zones in the Border Rivers Valley FMP as they relate to Aboriginal cultural values and riparian areas.</i></p> <p>The Border Rivers Valley FMP will be reviewed under s43 of the <i>Water Management Act 2000</i> in 2025. This review will include opportunities for community feedback and the above recommendation will be provided to the reviewers.</p>		
<p>3. There is a lack of a united Indigenous voice to speak for cultural protection and heritage within FMP footprints.</p>	<p>Formation of an Aboriginal coalition or organisation to be engaged with to represent and advocate for water and the floodplain. This could include the development of an Aboriginal Water Policy or Aboriginal Water Management Plan.</p>	<p><b>1. Completed</b></p> <p>The department worked with NBAN to co-design an appropriate First Nations consultation approach for seeking feedback about the floodplain harvesting reform. NBAN was engaged in 2020 to represent First Nations of the northern Basin and lead culturally appropriate consultation in the Border Rivers and Gwydir.</p> <p><b>2. In progress</b></p> <p>NSW Water Strategy Priority 2 Action 2.1: The government will partner with Aboriginal people to co-design a statewide Aboriginal Water Strategy.</p> <p>The NSW Aboriginal Water Strategy and Aboriginal Engagement Framework are currently being developed. It is proposed that regionally based Aboriginal groups may be established and supported</p>	<p>2020 – 2022</p> <p>Ongoing consultation with NBAN, LALCs and other groups 2022 – 2024</p> <p>Draft Aboriginal Water Strategy - 2023</p>	<p>DPE Water</p>

---

Issue	Recommendation	Actions to address	By When	Responsibility
		by DPE Water for improved engagement about water planning and management.		

---

## First Nations involvement

Both reports identified a lack of First Nations involvement in floodplain harvesting policy, planning, licensing and management in the current Healthy Floodplains Project and within water and floodplain management more generally.

There was a clear theme that consultation of First Nations communities felt tokenistic, rarely resulting in effective changes in policy, management or planning and where successful outcomes from engagement did occur, this was not communicated back to communities in a meaningful way.

Similarly, it was evident that First Nations communities believed they were often the last to know about changes in floodplain policy, planning and management and were not consulted early in these processes, meaning they had little influence on project outcomes. This has led to disengagement with the process of improving management of the floodplain. Furthermore, the issue of consultation fatigue was evident in both reports, with First Nations communities being repeatedly consulted by various agencies leading to fatigue and confusion for consulted parties which is compounded by the lack of tangible outcomes from consultation.

First Nations communities have recommended that consultation be performed in culturally appropriate and meaningful ways and as early as possible in the process. This includes the use of appropriate language and visual communication, a localised approach to management, on Country yarns and the communications of the results of knowledge sharing. This would provide First Nations People a genuine “seat at the table” regarding how their Country is cared for and managed and better integrate cultural knowledge and science into the Healthy Floodplains Project.

Furthermore, there was significant interest in the development of River Ranger or similar programs in both the Border and Gwydir River Valleys to promote First Nations involvement in the monitoring and evaluation of floodplain water management. This may also provide a link for the communication of the Healthy Floodplains Project outcomes back to First Nations communities.

“We share our knowledge all the time at every meeting, no one listens”

“The voice and presence of Aboriginal Nations is paramount – consider all aspects of engagement and connections to country including...water access and use.”

“We need to start working with local government...to make sure that things are done...local people need representation on government/local government”



Table 3: Issues and recommendations and NSW Government actions relating to First Nations involvement from the Border and Gwydir Rivers consultations

Issue	Recommendation	Actions to address	By When	Responsibility
<p>Consultation is often seen as tokenistic with results and outcomes of knowledge sharing not communicated back to Aboriginal communities. Consultation fatigue exists throughout First Nation communities across NSW. This is due to consultation on many aspects of Aboriginal life, and the lack of resulting visible change.</p>	<p>Consultation must be conducted in culturally appropriate and respectful ways. Importantly, the results of engagement and consultation must be communicated back to the community.</p> <p>When changes to, developments in, or reviews of legislation or policy occur First Nations communities to be informed and provided an opportunity to comment and provide input.</p> <p>Listening to First Nations and incorporating their feedback will build trust for better engagement and decision making.</p>	<p><b>1. Completed</b></p> <p>The Healthy Floodplains Project working with NBAN has begun consultation with First Nations people and communities about the floodplain harvesting reform. However, as outlined in the Consultation Summary Reports, previous and current consultation has fallen well short of expectation.</p> <p><b>2. In progress</b></p> <p>We aim for better consultation with a localised approach. Meetings with local First Nations communities and groups On Country aim for genuine involvement in planning, management and monitoring.</p> <p><b>3. Planned</b></p> <p>We will listen and incorporate feedback from First Nations into meaningful change. We will highlight areas where consultation has led to positive change for First Nations communities.</p> <p>The Aboriginal Engagement Strategy will help with better consultation.</p>	<p>May 2021 - Border Rivers and Gwydir Valleys</p> <p>Ongoing 2022 – 2024</p> <p>2022 - 2024</p>	<p>Healthy Floodplains Project</p>
<p>Opportunities for Aboriginal people to be involved in, take</p>	<p>Greater involvement of First Nations people in the development of policies, planning, management of</p>	<p><b>1. In progress</b></p> <p><u>First Nations Metering Traineeships</u> - Certificate III and 2-year industry placement are available. This is an</p>	<p>2021 – 2024</p>	<p>DPE Water</p>

Issue	Recommendation	Actions to address	By When	Responsibility
ownership of or manage water on the floodplain are limited.	<p>floodplains is necessary. Greater inclusion of First Nations people in monitoring of floodplains and compliance through Ranger programs (or similar) is also recommended. This should include adequate resourcing of these programs in order to build greater First Nations knowledge and understanding of what is happening in floodplain landscapes and management.</p> <p>These are fundamental steps in including First Nations perspectives in the floodplain management and providing a “seat at the table” by increasing involvement in projects.</p>	<p>opportunity to increase Indigenous Australians’ representation in water management.</p> <p><i>*Positions are currently available. If interested contact MEGT Australia.</i></p> <p>The Aboriginal Engagement Framework is being developed. It is proposed that consultation will take place with representative peak groups and regionally based Aboriginal groups for improved engagement about water planning and management.</p> <p><b>2. Planned</b></p> <p>NSW Water Strategy Action 2.2 - The government will partner with Aboriginal people to co-design a state-wide Aboriginal Water Strategy.</p> <p>Delivery of this Strategy will involve: reviewing and identifying required amendments to the water management legislative framework to enable Aboriginal rights, interests and ownership of water; revising existing, and developing new, water policy and planning approaches; designing programs to deliver outcomes; securing sustainable funding and resourcing; building the organisational capacity of First Nations/Aboriginal People to enable self-determination and sustained participation in projects relevant to water interests.</p>	<p>Aboriginal Engagement Framework – in development to June 2023</p> <p>Develop draft Aboriginal Water Strategy – June 2023</p> <p>Release strategy for consultation - September 2023</p> <p>Finalise strategy - December 2023</p>	<p>DPE Water</p> <p>DPE Water</p>

---

## Equity

The need for greater recognition and equal protection of CVAUs across the floodplain was a consistent theme across both reports. First Nations communities believe there is an imbalance in the distribution of water in the landscape, including floodplains, that currently prioritises farmers, irrigators and economic development at the expense of cultural, community and environmental values. This issue is further exacerbated with perceptions of inaction by government agencies in enforcing compliance and penalising offenders, with existing penalties for non-compliance seen as a “slap on the wrist” and insufficient to deter illegal extraction.

“They are making millions and millions of dollars from their crops...but giving nothing back to community”

Other issues of equity regarding floodplain management and cultural values are:

- limited access for First Nations peoples to cultural sites and assets
- water extracted through the Aboriginal Cultural Access Licence cannot be used for economic benefit
- lack of First Nations ‘water literacy’ and understanding of planning and management process and policies.

The ability of First Nations communities to practice and fulfill their cultural obligations is undermined by the lack of physical access to sites of cultural significance upon the floodplain. This is due to land tenure by private ownership or Crown Lands (inclusive of Travelling Stock Reserves) preventing First Nations people from accessing these sites and/or a lack of water in flood dependent culturally significant sites. This has a significant impact on the continuation of important elements of First Nations culture as these sites were traditionally centres of ceremony and learning. If there is an opportunity for DPE Water to promote or increase physical access to cultural sites through avenues like land holder negotiation this should be explored.

“Our kids don’t even know how to swim”

“Kids have nothing to do...when the river is low the crime rate is high”

The inability of the Aboriginal Cultural Access Licence (provisioned under the Water Sharing Plan for the Gwydir River Regulated Water Source 2016) to be used for economic benefit was seen as an issue of equity by the Gwydir community.

While other licenses can be traded and used to make a profit, the extraction of water (up to 10 ML/year) under the cultural access license can only be used for “personal, domestic and communal purposes including the purposes of drinking, food preparations, washing, manufacturing traditional

---

artefacts, watering domestic gardens, cultural teaching, hunting, fishing and gathering and for recreational cultural and ceremonial purposes”<sup>41</sup> not for any economic benefit.

A final issue that arose from the consultation summary reports was the lack of First Nations knowledge and ‘water literacy’. First Nations people and communities often have a limited knowledge and understanding of government water legislation, policy, planning and management. This is in part due to the language used in policy and regulatory documents which many find inaccessible. This is detrimental to the ability of Aboriginal people in exercising their water rights and interests. An example of this is the lack of understanding by First Nations communities in the Gwydir Valley in relation to the 10 ML “Aboriginal Cultural Access Licence” in the Water Sharing Plan for the Gwydir Unregulated River Water Sources (2012). This is further contributed to by the lack of practical experience of First Nations communities in water management addressed in the previous section ‘First Nations involvement’.

“Water licence needs to be updated and reviewed...we should be able to make a profit”

“Why should we buy water? ...we have to buy our own water, our own land back”

## Issues, recommendations and actions relating to equity

Regional Water Strategies in NSW are prioritising 3 actions which aim to help dismantle barriers to Aboriginal people’s water rights and deliver on cultural outcomes. These are

- Develop ongoing arrangements for participation of local Aboriginal people in water management
- Support place-based initiatives to deliver cultural outcomes for Aboriginal people
- Support Aboriginal business opportunities in the Border Rivers region

Actions in Table 4, build on the actions in the regional water strategies, and as such are higher level actions than those in Tables 1 to 3.

It is intended that a state-wide framework be set-up, that can then be tailored to and support local level initiatives. As part of the grassroots engagement undertaken to date, the department has heard that the needs and priorities of Aboriginal communities in different parts of the Northern Basin are different.

The actions in regional water strategies aim to move away from central decision making and develop a flexible program that can be adapted, and one that is driven by the principle of self-determination – local communities ‘speaking with their voice’ to make decisions about the programs needed for their community and their region.

---

<sup>41</sup> Water Sharing Plan for the Gwydir Regulated River Water Source 2016, Part 11, Section 55, clause 10.

Table 4: Issues and recommendations and NSW Government actions relating to equity from the Border and Gwydir Rivers First Nations Consultations

Issue	Recommendation	Actions to address	By When	Responsibility
1. A perception that floodplain planning and management favours the agricultural and economic development of the floodplain rather than its cultural and environmental maintenance.	Partner with First Nations in water planning and management consistent with the principle of self-determination, and building the capacity of First Nations to develop water governance and decision-making processes that empower Traditional Owners; ensuring water related plans, policies and programs deliver social, spiritual, cultural, economic and environmental outcomes for First Nations/Aboriginal People	<p><b>1. In progress</b></p> <p>NSW Water Strategy Action 2.1 - Strengthen the role of First Nations/Aboriginal People in water planning and management by: working with First Nations peak organisations, Aboriginal water interest groups and First Nations communities to determine how we will work together on critical state-wide water strategies, policies, programs and issues; adopting more appropriate and inclusive approaches to engagement and consultation with Aboriginal people, including in accordance with each First Nation’s cultural protocols; ensuring existing water governance and decision-making processes provide for First Nations representation, including through identified First Nations roles on relevant boards and committees and supporting roles for Aboriginal community-controlled organisations in water governance.</p> <p><b>2. Planned</b></p> <p>NSW Water Strategy Action 2.2 Develop the NSW Aboriginal Water Strategy; work with Aboriginal people to improve shared water knowledge and maintain/preserve water-related cultural sites and landscapes.</p>	<p>Ongoing June 2023</p> <p>June – December 2023</p>	DPE Water
2. Access to cultural sites and to Cultural water are limited	Improvement of access to culturally significant sites could be improved or supported through legislative review and	<p><b>Planned</b></p> <p>NSW Water Strategy Action 2.3 - Provide Aboriginal ownership and access to water for cultural and economic purposes by: recognising and providing for the cultural dimensions of water for Aboriginal people; providing</p>	June – December 2023	DPE Water

Issue	Recommendation	Actions to address	By When	Responsibility
	amendments, improving local relationships and establishing agreements with landholders and local governments, including a review of land tenure and ownership.	economic opportunities derived from water and access to water entitlements; increasing water entitlements in First Nations/Aboriginal ownership; seeking shared benefits by using water allocated for environmental and consumptive purposes to deliver cultural benefits where synergies exist; improving and enabling access to Country to maintain healthy waterways and engage in cultural practices.		
3. First Nations Water Literacy and community understanding	Development of better communication tools and methods to aid First Nations people in understanding and building their knowledge of water management, processes and legislation.	<p><b>Planned</b></p> <p>NSW Water Strategy Action 2.4 – Work with First Nations/ Aboriginal People to improve shared water knowledge by: establishing culturally-safe mechanisms for two-way sharing of water knowledge, where appropriate, supported by appropriate mechanisms for data sovereignty that ensure the protection of First Nations/Aboriginal People’s intellectual property rights and interests; delivering programs to improve cultural competency in the water sector; delivering programs to improve knowledge of water management policies, rules and frameworks in Aboriginal communities.</p>	Ongoing June 2023 - June 2024	DPE Water

---

# Summary

The collaborative approach to First Nations consultation between DPE Water and NBAN across the Border Rivers and Gwydir Valley was highly successful in engaging First Nations communities on a local level and facilitating conversations on floodplain and water management in the northern Basin.

Regarding the NSW Floodplain Harvesting Policy, DPE Water and NBAN heard the perceived benefits and impacts of the reform on First Nations communities. First Nations communities are generally in favour of the licensing of floodplain harvesting and the return of water to the environment through this mechanism. From the perspective of First Nations people, the return of water to the floodplain through licensing could result in:

- healthier floodplains and Country with greater numbers of flora and fauna
- rejuvenation of culturally significant sites and increased engagement with them
- increased opportunities to carry out cultural obligations to the landscape
- increased opportunities for knowledge sharing with younger generations through traditional practices and engagement with the landscape
- greater involvement of First Nations people in floodplain and water management.

However, many First Nations communities remain doubtful that the return of water through the reform will be sufficient to deliver environmental and cultural outcomes across the floodplain.

User compliance to the reform was also consistently important to Aboriginal communities involved in consultation. Many perceive that the reform may be ineffective in deterring illegal take of floodplain water if penalties for breaches of compliance are insufficient or poorly enforced. First Nations people have also expressed a belief that the reform still favours economic and agricultural development over the environment and communities.

Through this consultation process DPE Water has also heard more general First Nations concerns regarding water and floodplain management. These perspectives relate to the need for:

- cultural perspectives – greater integration of First Nations cultural perspectives and knowledges into floodplain and water management and planning
- cultural protection – more holistic identification and protection of cultural knowledges, values assets and uses across and in relation to floodplains (cultural protection)
- First Nations involvement – inclusion of First Nations people in floodplain planning and management through employment opportunities and consultation
- equity – greater equity for First Nations people and the environment in current policy and planning of floodplain and water management.

DPE Water recognises that each of these areas is interlinked and that improvement and concerted effort to address one of these areas will lead to flow-on benefits in others.

DPE Water, through the Healthy Floodplains Project and the licensing of floodplain harvesting, is committed to improving cultural outcomes for First Nations communities in the northern Basin.

---

# NRAR response on matters of compliance

The Natural Resources Access Regulator (NRAR) is the state's independent water regulator, it enforces the law but doesn't set penalty amounts or policy.

NRAR is a risk-based regulator, which means it uses intelligence to assess a few key factors including cultural and environmental harm to determine which areas of water compliance to focus on. These regulatory priorities mean NRAR can focus on solving problems that have the greatest impact on water management. NRAR also uses the cultural knowledge and expertise in the department to help plan its approach to protecting cultural and spiritual values.

The regulator has set 3 annual priorities this year and also has 4 enduring priorities, one of which is recognising and protecting the spiritual and culture value of water for First Nations people. NRAR is building its cultural capabilities and ramping up its engagement with Aboriginal people and community groups to ensure it can conduct its work with respect for the values of the Aboriginal people of NSW.

NRAR encourages Aboriginal people and community groups to play an active role in ensuring compliance with the NSW water laws, including the floodplain harvesting framework. By reporting suspicious activities using NRAR's online form, or by contacting the regulator on 1800 633 362, you can help the regulator to identify those doing the wrong thing.

The regulator recently published its compliance approach to floodplain harvesting and will be transparent with Aboriginal people and the wider water community about the work it does to enforce these rules.

## References

NBAN (2020) *Border Rivers Floodplain Harvesting and Licensing Cultural Considerations and Outcomes Summary Report* prepared by Northern Basin Aboriginal Nations for Department of Planning and Environment, November 2020.

NBAN (2021) *Floodplain Harvesting in the Gwydir Valley – First Nations Community Consultation Workshop Summary Report* prepared by Northern Basin Aboriginal Nations for Department of Planning and Environment, February 2021.

NSW DPIE (2016) *Floodplain Management Plan for the Gwydir Valley Floodplain 2016*.

NSW DPIE (2020) *NSW Non-Urban Water Metering Policy, PUB20/447*.



---

## Version control

Version	Reviewer	Date
V1	Marg Duffy	10/05/2022
V2	Marg Duffy, Jamie Morton	30/06/2022
V3	Marg Duffy	5/07/2022
V4	Jamie Morton, Marg Duffy	15/08/2022