

NSW Select Committee on Floodplain Harvesting
Legislative Council
Parliament of NSW
Macquarie Street SYDNEY NSW 2000



**New South Wales
Aboriginal Land Council**
ABN 82 726 507 500
alc.org.au

**Re: New South Wales Aboriginal Land Council Submission – The NSW
Legislative Council's Select Committee Inquiry into Floodplain Harvesting**

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

We note the Committee seeks to inquire into and report on the Government's management of floodplain harvesting, in particular the legality of harvesting practices, the water regulations published in April 2021 and how floodplain harvesting can be licensed, regulated, metered and monitored so that it is sustainable and meets the objectives of relevant legislation and plans.

Overall, we are concerned at the significant risks associated with increasing largescale water harvesting, including negative impacts to:

- Aboriginal cultural heritage
- Aboriginal fishers
- Downstream water users and town water supplies, reduced water quality and negative environmental impacts

Whilst NSWALC broadly supports the licensing and metering of floodplain harvesting, there is a range of other impacts, options and mechanisms that must be further explored.

Furthermore, any scheme proposing to maintain or increase rainwater harvesting needs to:

- Enshrine increased transparency, accountability, and compliance measures,
- Be clear in what it is trying to achieve,
- Include strong safeguards and targets to protect Aboriginal cultural heritage, Aboriginal fishers, water quality, town water supplies, the environment and downstream users/ impacts.

Enclosed are additional comments. Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy@alc.org.au.

Sincerely,

Yuseph Deen
A/Chief Executive Officer
NSW Aboriginal Land Council

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

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NSW Aboriginal Land Council – Submission to the NSW Legislative Council's Select Committee Inquiry into Floodplain Harvesting

Introduction

The NSW Aboriginal Land Council (**NSWALC**) is the peak Aboriginal representative body in NSW. Securing the return of land and waters to Aboriginal people is at the heart of our future. As Aboriginal people, our lands and waters are central to our being, and are essential to the spiritual, social, cultural and economic survival of our communities. NSWALC, and the network of 120 Local Aboriginal Land Councils (**LALCs**) across NSW, work to improve, protect and foster the best interests of all Aboriginal peoples in NSW.

Aboriginal peoples in NSW and the network of Aboriginal Land Councils have key roles to play in the management of water in NSW. Aboriginal peoples are not merely one stakeholder among others, but possess inherent and pre-eminent rights, values and interests in the lands and waters on account of their status as Australia's First Peoples. As such, Aboriginal peoples and communities should be engaged in meaningful consultation and regarded in NSW policies and plans relating to water.

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

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

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

The Closing the Gap National Agreement includes five priority reforms (in NSW) which aim to change the way in which governments work with Aboriginal people, and 17 socioeconomic targets.

All governments have committed to increasing Aboriginal water rights through specific targets in the National Agreement on Closing the Gap.

Recommendation 1.

- The NSW Government must ensure that the Floodplain Harvesting Policy is aligned to Closing the Gap commitments and delivering social, cultural and economic outcomes for Aboriginal people.

Aboriginal Culture and Heritage

Floodplains as a whole have cultural significance to Aboriginal people, and floodplain harvesting has a detrimental impact on the various elements that make up that whole, including by disconnecting plains from rivers.

It is important to note that medium and large floodwater events are decreasing in volume. As a consequence, these replenishing flows are not reaching overbank to refresh elements of the

floodplain including wetlands, springs, billabongs, aquifer recharge zones, overflow channels that appear during floods, waterholes and ephemeral lakes, as well as the ecosystems that depend on them.

The NSW Department of Planning, Industry and Environment states that NSW Floodplain Harvesting Policy will “improve cultural outcomes”¹ however there is no mention of outcomes relating to Aboriginal people, communities or culture within the NSW Floodplain Harvesting policy or policy implementation plan. Any policy that has significant impacts on Aboriginal peoples should at a minimum recognise Aboriginal peoples spiritual and cultural relationships with land, water and Country.

The NSW Floodplain Harvesting Policy should identify the need to ensure Aboriginal culture and heritage areas (in or near water particularly rivers or wetlands or on land) are not damaged, destroyed, harmed or desecrated by reduced water flows, increased water storage or the development of larger dams on landholder properties.

Recommendation 2.

- The NSW Government must ensure the NSW Floodplain Harvesting Policy recognises Aboriginal peoples and culture.

Recommendation 3.

- The NSW Government must ensure the NSW Floodplain Harvesting Policy includes content on how it will “improve Aboriginal outcomes” inclusive of specific KPI’s and measures.

Recommendation 4.

- The NSW Government, in partnership with Aboriginal people and Aboriginal peak organisations, must further review the impacts of increased water storage and reduced water flows on Aboriginal cultural areas. Safeguards must be developed to ensure Aboriginal cultural sites and places are protected from any water reductions and changes due to harvesting.

Recommendation 5.

- The NSW Government must ensure that the NSW Floodplain Harvesting Policy addresses infrastructure proposals that may directly or indirectly impact Aboriginal cultural heritage. Aboriginal cultural areas must be protected.

Impacts on downstream Aboriginal communities, fishers and water recipients.

For downstream Aboriginal communities and water recipients as well freshwater Aboriginal fishers, NSWALC is concerned that harvesting more water on land will negatively impact on the flow and quality of water; particularly where our fishers may have aquaculture in freshwater ponds or rivers. We are concerned that impacts on maintaining and supporting Aboriginal cultural fishing practices have not been properly considered in the development of the NSW Floodplain Harvesting Policy or the proposed April 2021 Water Regulations.

NSWALC is also concerned that increased harvesting of water may negatively impact culturally and environmentally with regards to the refresh of rivers and streams for aquaculture and environmental purposes.

NSWALC also has concerns regarding the quality of water supply to downstream Aboriginal communities. In Western NSW, the dire health of our river systems is contributing to the poor health outcomes for communities. For instance, in Wilcannia, the majority Aboriginal community on the

¹ DPIE NSW Floodplain Harvesting Policy infographic [fph-illustration-hi-res.jpg \(3509x2046\) \(nsw.gov.au\)](#)

Darling River has experienced a dry riverbed and unreliable drinking water. This is due to the insufficiency of water allocations for downstream users, poor management, and over-extraction of upstream water allocations.

Recommendation 6.

- Further modelling and engagement is needed regarding the impacts of increased floodplain harvesting on Aboriginal fishers, downstream Aboriginal communities, and the ecosystem.

Water ownership for Aboriginal people

The NSW Floodplain Harvesting Policy does not recognise Aboriginal values and interests in water. Aboriginal peoples are not merely stakeholders in water management, but possess inherent and pre-eminent rights, values and interests in the lands and waters as Australia's first peoples.

Despite the NSW Governments ongoing commitments to work with Aboriginal people to increase water access or ownership, Aboriginal people's access to water remains inequitable. A recent Griffith University study has found that Aboriginal people represent 6.5% of the total MDB population (excluding Victoria) but by comparison, Aboriginal entities hold a mere 0.17% of the available surface water in this area². LALCs are significant property holders in NSW and operate a range of social and cultural enterprises as well as businesses on their lands that require access to water. The NSW Government must work with NSWALC and LALCs to achieve the economic development objectives of the *Aboriginal Land Rights Act* (1983) when implementing new Water policy reforms such as Floodplain Harvesting.

Recommendation 7.

- NSW Government to work with NSWALC and LALCs to improve Aboriginal peoples access to water, Aboriginal water and floodplain harvesting licences.

NSW water management, governance, and compliance

NSWALC strongly believes that improved management of our water requires greater transparency. This must include:

- Clearer requirements for all water stakeholders, including penalties,
- Detailed, regular and publicly accessible reports (including annual reports) on compliance activity and outcomes,
- A NSW Water register that is current, up to date and made publicly available at no cost to the public. The register would note accurate and real-time water data including taken amount for each water holder.
- Clear accountabilities and decision-making responsibilities
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Appropriate and effective management of any resource or natural system requires management of both inputs and outputs. Again, while NSWALC has overarching concerns about the insufficiency of system allocations for social, cultural and environmental purposes, NSWALC is broadly supportive of a stronger regime to more effectively manage floodplain water extractions to increase reliability of downstream water supply, protect the environment, and advance the rights and aspirations of LALCs and Aboriginal people more broadly. The unregulated over-harvesting of floodplain run-off before it can reach the river system and the current regulatory regime undermines the integrity of the water management regime.

² The status of Aboriginal water holdings in the Murray-Darling Basin, Lana D. Hartwig Sue Jackson Australian Rivers Institute Griffith University