

**Submission
No 130**

**INQUIRY INTO RATIONALE FOR, AND IMPACTS OF,
NEW DAMS AND OTHER WATER INFRASTRUCTURE IN
NSW**

Organisation: Murray Lower Darling Rivers Indigenous Nations (MLDRIN)
Date Received: 6 October 2020



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Submission to the Inquiry into the rationale for, and impacts of, new dams and other water infrastructure in NSW (Portfolio Committee No. 7 - Planning and Environment)

Murray Lower Darling Rivers Indigenous Nations (MLDRIN) welcomes the opportunity to provide a submission for the Inquiry into the rationale for, and impacts of, new dams and other water infrastructure in NSW to the NSW Legislative Council Portfolio Committee No. 7 - Planning and Environment.

About MLDRIN

MLDRIN is a confederation of Sovereign First Nations from the Southern part of the Murray Darling Basin (MDB). The group currently includes Delegates from 24 Nations across NSW, Victoria, the ACT and South Australia. Our core work includes:

- Advising the Murray-Darling Basin Authority (MDBA) on all matters relevant to Traditional Owners and Aboriginal people in the Southern MDB, in particular, the implementation of the Basin Plan;
- Undertaking projects and having an active role in Natural Resource Management and water planning;
- Providing a forum for our member Nations to keep informed, deliberate on issues, and provide feedback and advice to decision-makers across all levels of government;
- Advocating for our member Nations' rights and interests in land and water, specifically to progress the recognition of Aboriginal water rights and Cultural Flows; and,
- Providing leadership and capacity building for our member Nations.

MLDRIN's Membership includes the Wiradjuri. Traditional Owners from the Wiradjuri Nation have cultural connections to and cultural obligations over areas of Country that are within the direct construction and inundation footprint of proposed new dam projects, including the Wyangala Dam Wall Raising project and Macquarie River Re-Regulating Weir project. The Nari Nari and Yita Yita Nations are also member Nations of MLDRIN, with cultural connection to lands and waters in the Lachlan River valley below the Wyangala storage.

Overview

Of the proposed mass water storage projects subject to this inquiry, this submission concerns those that are located within the Southern Basin and/or the territories of MLDRIN member Nations' territories, including:

- Wyangala Dam Wall Raising;
- the Macquarie River Re-Regulating Storage Project;
- Menindee Lakes Water Savings Project; and,
- Western Weirs Project.

The waterways and landscapes likely to be impacted by these proposed projects are of profound cultural significance to multiple First Nations, including, but not limited to the Barkandji, Euahlayi, Gomeroi/Kamilaroi, Nari Nari, Ngemba, Ngiyampaa, Wiradjuri, and Yita Yita Nations.

This submission details MLDRIN's concerns about the detrimental impacts that construction and operation of these projects will likely have on First Nations' cultural heritage, water-dependent cultural assets, and other culturally sensitive sites within the immediate project footprints as well as the landscapes downstream in many cases. The submission also outlines MLDRIN's concerns about the transparency and acceptability of Traditional Owner engagement and consultation relating to the proposed projects to date. The concerns described in this submission are generally relevant across all the projects but where possible, specific examples and issues arising from individual projects are included to evidence these concerns.

1. Cultural heritage impacts

Existing issues with poor water quality, over-extraction, regulation, and pollution in the waterways in question have already degraded First Nations' critical cultural assets, sacred values, and sites of ongoing significance to First Nations. The proposed projects are likely to exacerbate these impacts and issues.

Following Rio Tinto's recent controversial destruction of the Juukan Gorge rock shelters in Western Australia in May 2020, the Australian public at large is outraged at the poor treatment and protection of Aboriginal cultural heritage. Accordingly, any further wilful destruction of heritage is simply unacceptable and is not in keeping with Australian society's values and expectations.¹ Therefore, MLDRIN implores the NSW Government to abandon these projects.

MLDRIN understands that, in light of the Juukan Gorge rock shelter destruction, Australian government Ministers including from NSW are discussing the inadequacy of Australia's Indigenous heritage protection laws. Ministers have made commitments to modernise them in partnership with First Nations peoples,² with a vision for improving Aboriginal and Torres Strait Islander heritage management in Australia and best practice standards for legislation are under development.³ At the very least, further development and planning of the proposed projects must be halted until such time that the known inadequacies of cultural heritage laws are repealed and sufficiently improved in line with First Nations' expectations.

Traditional Owners are wary and cautious of government cultural heritage legislation and government registers, such as the NSW Aboriginal Heritage Information Management System (AHIMS). This caution stems from a lack of confidence in government processes, substantiated by past damages, disregard, and poor protection of cultural heritages sites that *are* registered through these databases, including the Juukan Gorge rock shelters.

¹ See Peter Hannam, "Cultural genocide': Traditional owners blast Warragamba dam wall plan', *The Sydney Morning Herald* (online), 26 September 2020 <<https://www.smh.com.au/environment/conservation/cultural-genocide-traditional-owners-blast-warragamba-dam-wall-plan-20200925-p55zcy.html>>.

² The Hon Ken Whyatt AM MP 'Ministerial Indigenous Heritage Round Table' (Statement, 22 September 2020) <<https://ministers.pmc.gov.au/wyatt/2020/ministerial-indigenous-heritage-round-table>>.

³ Australian Heritage Council, *Vision & Best Practice Standards Placemat: Heritage Councils of Australia & New Zealand* (2020) National Native Title Council <https://nntc.com.au/news_latest/vision-best-practice-standards-placemat-heritage-councils-of-australia-new-zealand>.

Accordingly, some local Traditional Owners who have rights and obligations to the Country where the projects are proposed have a policy to avoid listing their significant sites and places on these registers. In light of this situation, MLDRIN is of the view that the NSW Government has an even greater responsibility to seek local Traditional Owner inclusion in cultural heritage processes and decision-making, including impact assessment, and must do so as a priority.

a) Impacts from construction and inundation

MLDRIN understands that the construction and operation of the proposed projects will generate wide-ranging detrimental damages and impacts to matters of cultural heritage and significance within the immediate project footprints.

Primary concerns include physical damage to Aboriginal artefacts, and the potential for many cultural heritage features to be damaged or destroyed as a result of clearing and earthworks during construction, and as a result of inundation during operation. New inundation levels will threaten the integrity of many remaining cultural assets, including culturally modified trees, stone artefacts, campsites, burials that are not exposed to water levels at the moment, and other places of significance to families still today.

Example: Menindee Lakes Water Savings Project. *The Menindee Lakes system and surrounding floodplain areas are known to contain many sites of Aboriginal Cultural Heritage significance. The 2017 Business Case⁴ for the project identifies 442 registered sites within the project area, which include “artefact scatters, burials, hearths, scarred trees, shell middens, non-human bone and organic materials, potential archaeological deposits and combinations of up to four individual features in one registered site. Aboriginal Ceremony and Dreaming sites are also located within the study area” (p. 74). It is likely that other non-registered sites and artefacts exist in the project footprint too. This preliminary assessment identifies that “Many of these Aboriginal sites may be impacted by the proposed Menindee Lakes Water Savings Project” (p. 74).*

Of particular concern to local Traditional Owners is that the NSW Government is contemplating installing a regulator in an area with concentrated Aboriginal heritage sites called “Morton Boolka”. Local Traditional Owners are extremely opposed to any construction in this location, a key point that they have already communicated via consultation 20 years ago.⁵ It is deeply troubling that this option remains a proposal despite Traditional Owners’ repeated assertions for decades that this is a “no go” zone due to its cultural value.

For generations, First Nations have watched the deterioration of their Country due to governments’ poor water management policies that permit over-extraction and engineering interference. These actions are still today contributing to significant harm to First Nations’ cultural, social and wellbeing, felt at personal and community scales. Even just the *threat* of further impacts to cultural heritage and values, and the *possibility* of broader irreparable

⁴ Blackwatch Consulting Pty Ltd, ‘Menindee Lakes Water Savings Project: Phase 2 Business Case’ (Report, NSW Department of Primary Industries, June 2017), <https://www.industry.nsw.gov.au/__data/assets/pdf_file/0016/165130/Menindee-Lakes-Water-Savings-Project-business-case.pdf>.

⁵ NSW Department of Industry, ‘Menindee Lakes Water Saving Project: October 2018 Menindee Lakes engagement summary’ (Report, October 2018), <https://www.industry.nsw.gov.au/__data/assets/pdf_file/0011/231104/menindee-lakes-october-2018-engagement-summary-report.pdf>.

modifications to Country that will arise from these projects, is inflicting further violence upon local Traditional Owners and affecting their wellbeing. It is important to understand that Traditional Owners' concerns extend beyond impacts to bio-physical features of the landscape. They also encompass risks to the continuity and transmission of knowledge, wisdom, science and stories that form the core of First Nations' cultural traditions and identity. These serious considerations and impacts have received little attention by the projects' proponent/s.

In addition to the physical, cultural, environmental, and psycho-social damages that will arise from these projects, MLDRIN is troubled by the proponent's approach and processes for managing cultural heritage matters. Key concerns include the minimal on-site cultural heritage assessments that have occurred to date despite the advanced planning for some projects; the lack of commitment to conduct more rigorous and comprehensive assessments that engage local Traditional Owners with cultural authority to speak about cultural sites and appropriate management; and questionable and inappropriate assumptions about possible occurrences of cultural heritage artefacts.

Example: Wyangala Dam Wall Raising. *The preliminary heritage scoping assessment completed by EMM Consulting⁶ for the proposed Wyangala Dam Wall Raising raises concerns about effects on Aboriginal culture, past and present. The study indicates that the project will mainly affect "stone artefact sites associated with transient or longer term open camp activities" (p. 27) and threatens a range of other cultural artefacts too. The assessment further finds that inundation cannot be considered a means for conserving the artefacts, especially since many sites that have already been inundated have been subjected to heavy soil erosion and may have been damaged beyond salvation. Preserving cultural artefacts is of the utmost importance due to their significance in Wiradjuri culture.*

In order for the project to proceed, the assessment report recommends a further, more extensive investigation into the effects of the dam, and to establish a greater understanding of the cultural heritage threatened by the expansion. The report also recommends developing an Aboriginal consultation engagement strategy to better assess the project, as well as thoroughly involving stakeholders and First Nations representatives in any decisions made about Wyangala. MLDRIN wrote to WaterNSW on 31 August 2020 requesting clarification about how WaterNSW will progress these recommendations. At the time of writing, we have not received a reply.

Example: Macquarie River Re-Regulating Storage Project. *MLDRIN is deeply concerned by statements in the Project Scoping Report indicating the likelihood of inundation of cultural heritage features around the Rocky Point area.⁷ This Report also indicates that "The nature of the recorded sites suggests that similar sites are likely to exist at other locations along the river and across the landscape" (p. 47). It is grossly inadequate to suggest that cultural heritage sites subject to induction and destruction can be substituted for other sites along the waterway. All cultural sites bear a unique testimony to cultural traditions and occupation of Country and cannot be substituted.*

⁶ EMM Consulting, 'Aboriginal and historic heritage constraints assessment report: Wyangala Dam Wall Raising' (Report, WaterNSW, February 2020).

⁷ WaterNSW, 'Macquarie River Re-regulating Storage: Scoping Report' (Report, January 2020).

Overall, MLDRIN and local Traditional Owners perceive these (in)actions as blatant disregard not only for matters of cultural heritage which are protected under legislation, but by extension, for First Nations peoples and their internationally recognised rights. MLDRIN is disturbed by the occurrences of procedural injustices so early in the development of these projects. We are apprehensive about what this may foreshadow for the future.

b) Impacts downstream

Cultural heritage impacts from the proposed projects are not limited to the immediate project footprint. Impacts are also expected downstream, particularly for the projects that will capture greater river flows and inflows from tributaries. For these projects, alterations and disruptions to the nature of downstream pulses and flows are expected, as are different release volumes and timings, water pressures, and potentially water temperatures. These kinds of significant changes will directly impact on the ecological character of riverine systems downstream of the proposed projects.

Of particular concern, are end-of-system landscapes like the Macquarie Marshes and Great Cumbung Swamp, which are culturally significant places for local Traditional Owners and are of inter/national environmental significance. MLDRIN and local First Nations are concerned that these systems could face further drying and deterioration if current medium and low flow [patterns and regimes](#) are blocked [or interrupted](#) as a result of the Macquarie River Re-Regulating Storage Project and Wyangala Dam Wall Raising (respectively).

MLDRIN notes that diminished river flows and significant alteration of hydrology along stressed waterways could provide a tipping point for decline of important native fish species. A recently released framework for the MDBA Native Fish Recovery Strategy highlights that flows regulation, water extraction, and infrastructure are key threats to the ecological status of native fish in the MDB.⁸ The proposed projects run counter to key recommendations of [this Strategy, as well as those from](#) major investigations into fish deaths and best available science regarding native fish recovery.⁹

Not only are aquatic ecosystems and species at risk, but so too are downstream riparian and riverbank ecosystems. MLDRIN is concerned that operation of projects could lead to drying out of some parts of Country, as well as inundation and drowning of other parts, including ancient River Red Gums and other physical and biotic features of cultural significance. Fluctuating flows and unnatural periods of wetting and drying have the potential to impact river morphology and may have implications for surface water and aquifer interactions.¹⁰

Wiradjuri Traditional Owners have highlighted their concerns in recent workshops¹¹ and dialogue with MLDRIN in relation to the Wyangala Dam Wall Raising and Macquarie River Re-Regulating Storage project. Construction of new water storage infrastructure and altered

⁸ MDBA, 'Native Fish Recovery Strategy: Working together for the future of native fish' (Report, June 2020), <<https://www.mdba.gov.au/sites/default/files/pubs/Native%20Fish%20Recovery%20Strategy%20-%20June%202020.pdf>>.

⁹ See Australian Academy of Science, 'Investigation of the causes of mass fish kills in the Menindee Region NSW over the summer of 2018-19' (Report, 18 February 2019) <<https://www.science.org.au/files/userfiles/support/reports-and-plans/2019/academy-science-report-mass-fish-kills-digital.pdf>>.

¹⁰ WaterNSW, 'Macquarie River Re-regulating Storage: Scoping Report' (Report, January 2020) p. 38-39.

¹¹ For example, Lachlan Valley Traditional Owners workshop on the Wyangala Dam Wall Raising Project held in Forbes, NSW, 22nd July 2020; personal communication with MLDRIN Wiradjuri Delegates and other Wiradjuri Traditional Owners held between July 2020 and September 2020.

flow regimes as a result of operation will lead to impacts on key water-related sites, values and important ecological knowledge including:

- The lived knowledge and stories of Traditional Owners with cultural responsibilities and connection to areas downstream of the projects;
- Swimming spots and family gathering spots (including sites where numerous generations of Traditional Owners were taught to swim and dive);
- Flow dependencies of cultural sites and values, including unique waterholes with affiliations to key totem species;
- Sacred places with important flow dependencies, including Bunyip holes;
- Burial sites in proximity to rivers; and,
- Fish traps and other cultural modifications of waterways.

Example: Western Weirs Project. *One of the key proposed benefits of this project is improved holistic management of the Barwon-Darling with the Lower Darling.¹² This objective is desirable given that government management of these two parts of the same river system to date has been characterised by poor connectivity; an ongoing significant issue for local Traditional Owners and regional communities.¹³*

However, MLDRIN is concerned that this proposed holistic management is reliant on constructing and/or replacing weir infrastructure rather than allowing the river to flow naturally. While weir pools have a place in supporting towns and some cultural activities, over-reliance on engineering interventions to manage flows is at odds with how First Nations want to see Country managed. Additionally, MLDRIN is worried that these modifications to river infrastructure and operations will be driven by commercial objectives at the cost of social, cultural, and environmental objectives. Consideration of cultural heritage impacts from construction will also be important. Assessment appears to not have occurred yet, and must include Traditional Owners.

Example: Wyangala Dam Wall Raising. *Preliminary cultural heritage assessment for this project has been limited to the new dam footprint and construction. However, a rigorous assessment of the potential impact of the wall raising (and associated increase in storage volumes at Wyangala) on the downstream water dependent cultural assets, values and uses of Wiradjuri and other First Nations along the entire Lachlan River valley is also needed. MLDRIN's letter to WaterNSW on 31 August 2020 (mentioned above) stressed the need for this broader investigation.*

¹² WaterNSW, 'Western Weirs Program' (Fact Sheet, November 2019)
<https://www.waternsw.com.au/__data/assets/pdf_file/0006/151269/WNSW_FactSheet_WesternWeirsProgram.pdf>.

¹³ NSW Department of Industry, 'Menindee Lakes Water Saving Project: October 2018 Menindee Lakes engagement summary' (Report, October 2018),
<https://www.industry.nsw.gov.au/__data/assets/pdf_file/0011/231104/menindee-lakes-october-2018-engagement-summary-report.pdf>.

Existing water storage and regulation structures, combined with the cumulative impacts of years of drought and over-allocation at the hands of the NSW Government, have diminished river flows, significantly altered the hydrology, and compromised the health of these significant ecosystems. Any further reductions to inflows and further stress to these systems resulting from the proposed projects are of grave concern to MLDRIN. The most rigorous assessment possible is warranted and must account for drying conditions under climate change and upstream over-extraction.¹⁴ Stopping these proposed projects can help to avoid reproducing downstream system disasters observed elsewhere in the MDB.

2. Inadequate and inappropriate communication and consultation

MLDRIN is troubled by the quality and quantity of communication to and consultation with First Nations regarding the proposed projects to date. It reflects a grossly inadequate and erroneous understanding by the proponent/s about First Nations people, their legal rights, and their obligations and interests in management of Country.

As established, MLDRIN is a peak representative body, advising the MDBA, as well as NSW agencies (including sections of the Department of Primary Industries and Environment) about appropriate consultation with First Nations on waterway management issues. MLDRIN has a formal statutory role under the Basin Plan to assess water resource plans prepared by State Governments. Until September 2020, MLDRIN had received no formal notifications from or been engaged by the proponent/s of these projects. To date, the only communication we have received regarding these projects has been via external consultants engaged by WaterNSW.

MLDRIN is also deeply concerned about the insensitive and insufficient approach to local First Nation consultation as reported by delegates from member Nations and other Nations in the Southern Basin. Key issues MLDRIN has observed include not engaging with Traditional Owners that have cultural authority to speak for Country; poor local visitation and face-to-face engagement (even before the COVID-19 pandemic); lack of transparency in communication and timeframes; and frequently including First Nations into engagement processes only as an afterthought.

MLDRIN understands that the current COVID-19 pandemic has disrupted community engagement and consultation processes across the country. However, it is worrying that the timelines for some projects, such as the Wyangala Dam Wall Raising, are not being altered or impacted to allow for COVID-19 related disruptions to engagement.¹⁵ This situation raises questions about how seriously the proponent is taking on community engagement and feedback, or if consultation is instead a tokenistic, tick-the-box exercise.

¹⁴ See findings from the Australian Academy of Science, 'Investigation of the causes of mass fish kills in the Menindee Region NSW over the summer of 2018-19', (Report, 18 February 2019) <<https://www.science.org.au/files/userfiles/support/reports-and-plans/2019/academy-science-report-mass-fish-kills-digital.pdf>>.

¹⁵ WaterNSW, *Wyangala Dam Wall Raising: Project Updates* (2020) <<https://www.waternsw.com.au/projects/new-dams-for-nsw/wyangala-dam/project-updates#stay>>.

Example: Macquarie River Re-Regulating Storage Project. Although this project is in early design and assessment phases, the poor inclusion of and communication with Traditional Owners has been deeply concerning. We present two examples to make this case. First, MLDRIN is deeply concerned that the proponent has misconstrued or deliberately misrepresented details about the individuals and organisations with cultural authority to speak for lands and waterways affected by the project. The Scoping Report¹⁶ states that “The project locality is on the lands of the Trangie Local Aboriginal Land Council (LALC), Narromine LALC and Warren Macquarie LALC” (p. 47). This statement is incorrect, as land and waterways affected by the project are part of the Country of the Wiradjuri Nation. LALCs are statutory bodies, established under NSW legislation, that are not vested with custodianship or cultural authority over land and waterways. This inaccuracy is reflected in the detail of consultation. Only LALCs have been consulted while Elders and Traditional Owners of the Wiradjuri Nation with cultural authority to speak for Country have not been engaged.

Second, is that the proponent failed to include Traditional Owners in its list of stakeholders or organisations with a “primary connection to the Macquarie River” for their consultation activities on Facebook about the proposed project (see Figure 1)¹⁷. WaterNSW rectified the error the same day that MLDRIN raised the issue, saying “WaterNSW unreservedly apologises for any misunderstanding from an omission on our Facebook Group form. We recognise Aboriginal Communities as having a special connection to our waterways and we have clearly identified Aboriginal communities as key stakeholders with this project.”¹⁸ Although the omission has now been rectified, this situation is both telling and worrying. It shows that Aboriginal people were originally excluded from consultation and were only added to the process as an afterthought following First Nations raising the issue. Additionally, MLDRIN questions the framing of Aboriginal people as mere “stakeholders” in WaterNSW’s apology, as this framing denies and obscures the true status of First Nations as stewards of, and rights holders in, waters and Country.¹⁹

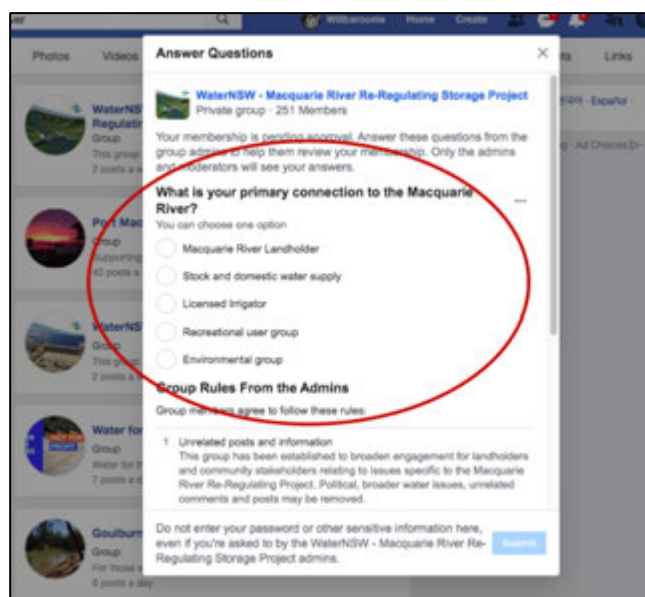


Figure 1: WaterNSW listed organisations with a primary connection to the Macquarie River excluded Traditional Owners

¹⁶ WaterNSW, ‘Macquarie River Re-regulating Storage: Scoping Report’ (Report, January 2020).

¹⁷ @MLDRIN (Twitter, 18 August 2020, 11:58am) <<https://twitter.com/MLDRIN/status/1295540511231504384>>.

¹⁸ @WaterNSW (Twitter, 18 August 2020, 3:42pm) <<https://twitter.com/WaterNSW/status/1295596804591898624>>.

¹⁹ Martuwarra Fitzroy River Council and Water Justice Hub, Submission No 80 to Productivity Commission, *National Water Reform Inquiry*, 20 August 2020, p. 6, <https://www.pc.gov.au/__data/assets/pdf_file/0004/256432/sub080-water-reform-2020.pdf>.

Example: Wyangala Dam Wall Raising. In its 2019-20 budget, the NSW Government committed \$32 million over three years to complete a three-year feasibility study and final business case for the Wyangala Dam Wall Raising.²⁰ This work was to include “extensive” stakeholder and community consultation, as reported in February 2019.²¹ Just over six months later, in October 2019, the NSW Government and Federal Governments together announced that the project was going ahead, with a \$650 million investment commitment.²² MLDRIN questions this timeline, and how the feasibility study, business case and related community consultation could be skipped. Moreover, the timing of the formal funding announcement for the Wyangala Dam Wall Raising (October 2019) conveniently occurred after First Nations’ Water Resource Plan (WRP) consultation had concluded. However, it was also eight months before the Lachlan surface water WRP was submitted by the NSW Government for assessment by the MDBA (June 2020).²³ The absence of this significant project from the Lachlan surface water WRP and engagement with the First Nations of the Lachlan system presents a significant procedural injustice and violates the principal of free, prior, and informed consent. Nation delegates stressed that the information they shared in WRP consultation processes would have been different had they been informed about the Wyangala Dam Wall Raising.

Beyond these issues regarding First Nation specific engagement, MLDRIN is aware of broader poor community engagement concerns and considerable opposition to the proposed projects. These widespread contentions raise questions about the NSW Government’s commitment to due and fair processes, its ability to establish and uphold principles of transparency, and its legitimacy among regional NSW communities.

Example: Menindee Lakes Water Savings Project. Grave concerns about transparency have plagued Menindee Lakes Water Savings Project consultation for years.²⁴ In February 2020, the Barkandji Native Title Group Aboriginal Corporation informed the NSW Water Minister that they were ceasing their engagement until flows returned to the Darling/Barka.²⁵ Then, in August 2020, the Menindee Lower Darling Stakeholder Advisory Group which was established for consultation about the project also suspended further consultation until the NSW Government responds to the Group’s concerns (including cultural heritage impacts).²⁶ The three local councils whose areas are most impacted by the project have unanimously agreed to reject all 12 proposals as part of this project too.

²⁰ NSW Treasurer, ‘Budget Statement 2019-20’ (Budget Paper No. 1, 18 June 2019)

<<https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/2019-20%20Budget%20Paper%20No.%201%20-%20Budget%20Statement%20%281%29.pdf>>.

²¹ WaterNSW, ‘Raising Wyangala Dam wall key step for Lachlan Valley’ (Media Release, 26 February 2019)

<<https://www.waternsw.com.au/about/newsroom/2019/raising-wyangala-dam-wall-key-step-for-lachlan-valley>>.

²² NSW Government, ‘Billion dollar investment in NSW dams’ (Media Release, 13 October 2019)

<<https://www.nsw.gov.au/media-releases/billion-dollar-investment-nsw-dams>>.

²³ MDBA, *Lachlan – Water resource plan* (July 2020) <<https://www.mdba.gov.au/publications/mdba-reports/lachlan-water-resource-plan>>.

²⁴ NSW Department of Industry, ‘Menindee Lakes Water Saving Project: October 2018 Menindee Lakes engagement summary’ (Report, October 2018),

<https://www.industry.nsw.gov.au/__data/assets/pdf_file/0011/231104/menindee-lakes-october-2018-engagement-summary-report.pdf>.

²⁵ Callum Marshall & Craig Brealey, ‘No river, no talks’, *Barrier Daily Truth* (online), 12 February 2020

<<https://bdtruth.com.au/main/news/article/11768-No-river-no-talks.html>>.

²⁶ Declan Gooch & Christopher Testa, ‘Controversial Menindee Lakes proposal labelled a waste of time as stakeholder group puts talks on hold’, *ABC Broken Hill* (online), 20 August 2020

<<https://www.abc.net.au/news/2020-08-20/controversial-menindee-lakes-water-saving-darling-river/12577088>>.

MLDRIN is troubled that projects are proceeding with preliminary works without engaging with First Nations or broader communities, and without appropriate environmental, social, and cultural heritage assessment processes being completed. A recent report by the NSW Auditor-General²⁷ found that the NSW Government has lacked a “strategic evidence-based approach to target investments in town water infrastructure” (p. 2). Given the issues described here, MLDRIN is inclined to see this view is applicable beyond only town water infrastructure to include the proposed projects.

3. Implications for water resource planning objectives

The final issue MLDRIN wishes to raise is that, because the proposed projects will generate significant environmental and cultural impacts, they also pose significant challenges to achieving water resource planning objectives relating to First Nations. There has been no clarity offered about how these impacts and challenges will be considered and accounted for in project design, project assessment, and/or water planning policies.

First Nations related objectives are now threaded throughout the NSW Government’s water regulatory and planning framework. For example:

- Water legislation: The *Water Management Act 2000* (NSW) includes the object “to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including... benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water” (s 3(c)(iv)). The *Water Management Act 2000* (NSW) also includes a “water management principle” that “geographical and other features of Aboriginal significance should be protected.” (s5 (2)(e)).
- Water Resource Plans: The NSW Government has undertaken a process of engagement with Nations to identify objectives and outcomes relating to local water resources as part of developing Water Resource Plans, in accordance with the Basin Plan.
- Water Sharing Plans: Objectives in NSW Water Sharing Plans have recently undergone substantial changes and improvements. They now contain broad and targeted First Nation water objectives as well as strategies for achieving and performance indicators for measuring progress towards these objectives.²⁸
- Regional Water Strategies: The NSW Government has committed to developing Regional Water Strategies across the State. All Regional Water Strategies will include and respond to an objective to “recognise and protect Aboriginal cultural values and rights - including Indigenous heritage assets.”²⁹ Consultation for the development of these strategies is underway for some regions where the proposed projects will occur (including the Lachlan and Macquarie-Castlereagh regions).

²⁷ NSW Auditor-General, ‘Support for regional town water infrastructure’ (Performance Audit Report, 24 September 2020)
<<https://www.audit.nsw.gov.au/sites/default/files/documents/Support%20for%20regional%20town%20water%20in%20infrastructure.pdf>>.

²⁸ We acknowledge that no NSW WRPs have been accredited by the MDBA as yet, and that amended and new WSPs with these improved objectives, strategies and performance indicators are yet to be gazetted. However, when the proposed projects were announced, it seems that the NSW Government intended that these instruments would be accredited and gazetted by 1 July 2020.

²⁹ NSW Department of Planning, Industry and Environment, ‘Regional water strategies’ (Presentation, April 2020)
<https://www.industry.nsw.gov.au/__data/assets/pdf_file/0008/311786/introduction-to-rws-presentation.pdf>.

For example, the *Water Sharing Plan for the Lachlan Regulated River Water Source Order 2020* contains broad and targeted Aboriginal cultural objectives as well as a set of strategies and performance indicators. Targeted Aboriginal Cultural objectives include: (b) to provide access to water for Aboriginal cultural use, including fishing, (c) to protect, and where possible improve, identified surface water-dependent culturally significant areas, including important riparian vegetation communities and (d) to contribute to the maintenance of water quality within target ranges to ensure suitability of water for Aboriginal cultural use. MLDRIN contends that the proposed Wyangala Dam Wall Raising project poses a direct threat to the achievement of these statutory objectives. WaterNSW must be able to demonstrate how the project contributes positively to the achievement of these objectives. It is critical that any assessment of the impact of the dam expansion on Aboriginal culture and heritage considers its impact on the identified water-dependent assets, values and uses as well as these Water Sharing Plan objectives.

It is unclear how the NSW Government will be able to demonstrate achievement of these objectives if the proposed mass water storage projects are constructed. Development, design and environmental assessment of each project must consider and appropriately account for the impacts and challenges they will create for achieving these objectives.

Final remarks

In summary, MLDRIN is deeply concerned that the proposed projects will pose significant, new threats to river systems that are already critically stressed. Related cultural values as well as sites, artefacts and locations of cultural heritage significance are also highly likely to be significantly impacted. Given poor First Nation consultation to date, significant improvements to engagement with affected First Nations must be incorporated into the project design.

Scientists, government agencies, and other stakeholders persistently raise questions and doubts about whether the proposed projects will achieve the intended water security, water savings, and environmental objectives. This is observed most acutely in relation to the Menindee Lakes Water Savings Project,³⁰ with even the NSW Water Minister recently questioning whether this project will achieve the desired outcomes and on time.³¹ MLDRIN finds these enduring doubts and questions of feasibility highly problematic; they further entrench MLDRIN's deep concerns about the proposed projects, as detailed in this submission.

Finally, MLDRIN is extremely alarmed that recent reports about the design and progress of other proposed water storage and engineering projects elsewhere in NSW reveal issues of neglect and negligence by the NSW Government similar to that which we have raised in this submission.³² Clearly, there are deep and systemic problems embedded in the NSW

³⁰ See, for example, Anne Davies, 'The Menindee Lakes project: who loses and who really wins?', *The Guardian* (online), 11 April 2018 <<https://www.theguardian.com/environment/2018/apr/11/the-menindee-lakes-project-who-loses-and-who-really-wins>>.

³¹ Anne Davies, 'Greens accuse NSW of 'blackmailing' other states on Murray-Darling Basin', *The Guardian* (online), 23 September 2020 <<https://www.theguardian.com/australia-news/2020/sep/23/greens-accuse-nsw-of-blackmailing-other-states-on-murray-darling-basin>>.

³² Peter Hannam, 'Raising dam wall risks Indigenous sites in 'Sydney's Juukan Gorge'', *The Sydney Morning Herald* (online), 12 September 2020 <<https://www.smh.com.au/environment/conservation/raising-dam-wall-risks-indigenous-sites-in-sydney-s-juukan-gorge-20200911-p55up9.html>>; Peter Hannam, 'Cultural genocide': Traditional owners blast Warragamba dam wall plan', *The Sydney Morning Herald* (online), 26 September 2020

Government's water governance and planning processes that disadvantage First Nations people. We urge the Portfolio Committee No. 7 - Planning and Environment to intervene and halt the proposed projects. Failure to do so will see the NSW Government continue to ignore Aboriginal peoples' rights and interests and destroy cultural heritage, ultimately contributing to cultural genocide.