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Via email at Sheryl.hedges@environment.gov.au

Submission to the review of the Australian and New Zealand Guidelines for Fresh and Marine Water Quality – Cultural and Spiritual Values chapter

Dear Mrs Hedges,

The NSW Aboriginal Land Council (**NSWALC**) thanks you for the opportunity to make a submission regarding the inclusion of cultural and spiritual values in the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality (Guidelines)*, and for providing an extended timeframe in which to submit comments.

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member-based organisation in Australia. NSWALC is a self-funded statutory corporation under the *Aboriginal Land Rights Act 1983* (NSW), and advocates for the socio-economic and cultural rights of all Aboriginal peoples in NSW.

NSWALC also provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state. LALCs have similar statutory objectives to NSWALC in regards to their own local communities; being to improve, protect and foster the best interests of Aboriginal peoples in NSW.

NSWALC has previously made submissions regarding the importance of accounting for cultural flows in water management regimes across Australia. These have included submissions to the Murray-Darling Basin Authority on the *Guide to the Proposed (Murray-Darling) Basin Plan*, the Natural Resources Commission's review of various Water Sharing Plans and participation in the First Peoples' Water Engagement Council in 2011-12. We refer you to those publically available submissions for further information.

As you are well aware, water is of central importance to the cultural, social, environmental and economic interests of Aboriginal people across NSW, and is interconnected with the ongoing

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~~maintenance and regeneration of Aboriginal cultures. There is an imperative to establish effective mechanisms for cultural and spiritual values to be accounted for in water quality management in Australia. As such, NSWALC welcomes the incorporation of guidance material regarding cultural and spiritual values into the Guidelines.~~

As has been rightly pointed out in the draft chapter 'Cultural and Spiritual Values,' (Draft Chapter) cultural values associated with water use will vary greatly across different local Aboriginal communities. NSWALC considers that broadly, cultural water encompasses the connectivity between water, community, culture, spirituality and history, and may include:

- **Creation sites and cultural hero stories** linking with spiritual significance along a song line/dreaming tracks or even through dance - non-tangible ("Dreaming Sites")
- **Resource sites for:**
 - traditional bush foods
 - medicines; and
 - artefacts, tools, toys, pigments and ochre for art and crafts;
- **Gender specific sites for men's and women's business;**
- **Ceremonial sites**
 - These require a flow at a certain time of year based on traditional knowledge and teachings;
- **Burial areas/sites**
 - Incorrect water management (such as increased flows) at certain times can erode and expose these sites;
- **Teaching sites**
 - The sharing of knowledge, places for teaching and setting for story-telling;
- **Massacre sites** where frontier battles occurred with Aboriginal groups;
 - Incorrect water management may expose sites and in turn bring back painful memories
- **Tribal boundary indicators, landscape features and stone arrangements;**
- **Travel paths or water highways,** these are the rivers, tributaries and estuaries, people travel along them by foot or using water craft (canoe) to move along – but no large healthy trees may mean no canoe trees,
- **Wetlands, Billabongs, Swamps:**
 - If these systems are cut off from overbank floods (because of extraction limits) or cut off by diversions, the cultural value is lost.
- **Cultural sites that are Groundwater dependent,**
 - There is a long way to go with this as there is limited research on the cultural value of Groundwater Dependent Ecosystems, springs, soaks, hanging swamps, recharge and discharge environments, baseflow to rivers and connected waters.
- **Cultural specific environmental conditions to sustain totemic species**
 - Species that require good water at the right time to breed; and
- **Physical/tangible evidence of occupation;**

- Including middens, campsites, artefact scatters, scarred and carved trees, stone arrangements and fish traps.

All of the above may be impacted by water quality issues and management responses.

We would like to commend the work done by the Joint Steering Committee on the Draft Chapter for the purpose of the review of the Guidelines. NSWALC considers the Draft Chapter a thorough publication which accurately captures a range of important considerations regarding the cultural and spiritual importance of water to Aboriginal peoples and conveys information regarding best practice methods for engaging with Aboriginal peoples for the purpose of water quality management activities.

NSWALC supports the content of the Draft Chapter and the general process suggested to guide water quality management. We strongly support the inclusion of LALCs as one of the stakeholders to contact in order to identify the appropriate local Aboriginal people to be involved in water quality assessments. With regard to the Draft Chapter and, more broadly, the Guidelines, we would like to submit the following comments:

- **I. Consideration of cultural and spiritual values in water quality assessments should not be seen as optional;**
- **II. Aboriginal people must have the ultimate decision-making authority regarding cultural and spiritual values;**
- **III. Cultural awareness training for relevant staff members to be recommended;**
- **IV. Cultural and spiritual values encompass economic values; and**
- **V. Appropriateness of cultural and spiritual values being encompassed under environmental values questioned.**

I. Consideration of cultural and spiritual values in water quality assessments should not be seen as optional

It is unclear to what extent the Draft Chapter will form part of the revised Guidelines, and whether in its full form. NSWALC supports the full inclusion of the Draft Chapter into the Guidelines. While we understand that the purpose of the Guidelines is to provide a non-binding reference document for best practice water quality management, we also submit that it should be clearly stated that assessing and accounting for cultural and spiritual values in water quality management processes should never be seen as optional, and that any best practice process will include this as a mandatory element.

II. Aboriginal people must have the ultimate decision-making authority regarding cultural and spiritual values

In line with the right of Aboriginal people to self-determination as recognised in the *United Nations*

Declaration of the Rights of Indigenous People, only local Aboriginal people should have the ultimate authority to make value judgements regarding how their cultural and spiritual values are affected by water quality issues. That is, it is inappropriate for non-local Aboriginal people to be the determinants of whether and to what extent cultural and spiritual values have been affected and how to best recompense for them in water quality management instruments. As such, NSWALC argues that the Draft Chapter should recommend the inclusion of appropriate representative structures for local Aboriginal people to take part in the decision-making processes (for example these could be LALCs, native title groups or those listed on the Aboriginal Owners register). Such structures must allow for meaningful input of local Aboriginal people into the decision-making process which determines the management responses to water quality issues.

Aside from the right of Aboriginal people to determine decisions affecting their Country, there is the risk that non-Aboriginal people will not place adequate value on the cultural and spiritual values identified through the engagement process and that such considerations will not be adequately represented when management responses are being finalised. Language barriers, power imbalances and capacity issues may all limit a local Aboriginal groups' ability to effectively engage with water quality management assessment processes. Furthermore, cultural and spiritual values often involve knowledge systems and ways of thinking incompatible to the Western scientific paradigm, and have historically been discounted and undervalued. There needs to be adequate oversight in management and decision-making structures to ensure that appropriate weight is being placed on cultural and spiritual values, which are often overlooked for economic or other considerations.

While there is some provision in the Draft Chapter for such oversight, such as the proposed processes that provide that the management response options must be discussed with Aboriginal people, it is unclear whether this would be sufficient to address the issues outlined above. We suggest that the Draft Chapter includes provision that local Aboriginal people must have the opportunity to draft, revise, edit and sign-off on any management responses provided for regarding their cultural and spiritual values before such management responses are finalised. The Draft Chapter should also suggest that local Aboriginal people should be given the option to invite any representatives, if requested. This may include legal or other advocates. Such representatives must also be funded in terms of travel allowances to ensure their participation.

III. Cultural awareness training for staff members to be recommended

Given the sensitivities described above, we submit that the Draft Chapter should recommend that staff of local governments or other stakeholders involved in water quality management assessment processes which involve engaging with local Aboriginal people and groups should undertake cultural awareness training. Cultural awareness training should be sourced from local Aboriginal owned and run enterprises in the relevant area in question. This will support local Aboriginal enterprises and also ensure that the training received is appropriate to local Aboriginal knowledge and customs, given the wide array of diversity of law and custom amongst the numerous Aboriginal groups and organisations across NSW.

IV. Cultural and spiritual values encompass economic values

There are some references in the Draft Chapter to the economic dimensions of Aboriginal cultural values in water. NSWALC would like to emphasise our position that in Aboriginal knowledge systems, as opposed to Western scientific paradigms, there is no neat separation between cultural, spiritual, social, environmental and economic factors. As we have previously submitted, “the full diversity of Aboriginal people’s interests in natural resources must not be treated dismissively as merely ‘cultural’¹.”

V. Appropriateness of cultural and spiritual values being encompassed under environmental values

It is unclear precisely how the Draft Chapter will fit into the structure of the Guidelines. Specifically, will cultural and spiritual values be included as a subset of environmental values for the purposes of the Guidelines. NSWALC submits that it is appropriate for cultural and spiritual values to be considered separately and in their own merit. We note that although there may be linkages between Aboriginal cultural and spiritual values in water and environmental values in water, environmental water regimes will not always be adequate to meet Aboriginal cultural water needs.

Summary of Recommendations

In summary, NSWALC’s principal recommendations are that the Draft Chapter recognises:

- The consideration of cultural and spiritual values in water quality management should not be seen as optional. The Draft Chapter should strongly suggest that the recommended provisions be seen as mandatory for relevant agencies;
- The importance of Aboriginal people being the final authority on decision-making regarding their cultural and spiritual values, and water management decisions regarding and affecting aspects of their Country;
- That additional mechanisms are recommended in water quality assessment processes to ensure the full and effective participation of local Aboriginal communities when devising management responses. This should ensuring that local Aboriginal people are involved in the drafting of management responses, are entitled to read over, edit and sign off on any management responses before finalised, and that any representatives are allowed to attend meetings with management planners, as requested;
- That staff members who will be directly consulting with local Aboriginal people regarding their cultural and spiritual values are provided cultural awareness training appropriate to the local Aboriginal knowledge at hand;
- That cultural and spiritual values may involve economic dimensions; and
- That the Draft Chapter and the information it provides regarding cultural and spiritual values in water is included as a separate and distinct facet of the Guidelines rather than as a subset of environmental values.

¹ NSWALC Submission to the Murray Darling Basin Authority, *Guide to the Proposed (Murray-Darling) Basin Plan* 2010, page 5.

Again, we thank you for the opportunity to make comments on this important review. If you have further questions regarding the content of this letter, please contact Julia Martignoni (Policy Officer) on (02) 9689 4427 or julia.martignoni@alc.org.au.

Yours sincerely,



Lesley Turner
Chief Executive Officer

Date:

3/9/15