

Office of the Chief Executive

Ref: EC20-000174

The Hon. Keith Pitt MP
Minister for Resources, Water and Northern Australia
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Minister

Accreditation of the proposed Australian Capital Territory (Surface Water) Water Resource Plan

I am writing to give you the proposed Australian Capital Territory (Surface Water) Water Resource Plan ('proposed WRP') submitted by the Australian Capital Territory (ACT) on 15 January 2020 (**Attachment A**) and the Murray-Darling Basin Authority's recommendation on accreditation of the proposed WRP (**Attachment B**) in accordance with the process agreed to between your predecessor and Minister Gentleman under section 73(14)(a) of the *Water Act 2007* (Cth) ('the Act').

I have also provided:

1. a detailed assessment report (**Attachment C**), including the Authority's reasoning; and
2. a copy of the advice the Authority sought from the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) on whether the proposed WRP is consistent with the requirements regarding Indigenous values and uses in Part 14 of Chapter 10 of the *Basin Plan* (Cth) ('Basin Plan') (**Attachment D**).

I note that the ACT submitted a previous version of the proposed WRP in April 2019. The Authority assessment found several inconsistencies which were communicated to the ACT with a notice of intention to recommend against accreditation under s 63(4) of the Act on 11 September 2019. The ACT subsequently withdrew their proposed WRP on 27 September 2019. On the basis that the ACT had not provided a WRP for accreditation, your predecessor wrote to Minister Gentleman on 8 November 2019 giving preliminary notice under s 73(2) of the Act on the consideration of exercising the power under s 68 of the Act to request the Authority to prepare a WRP for the ACT Surface Water and Groundwater WRP areas. Your

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predecessor proposed that the circumstances be resolved without resort to the step-in power and that the ACT would give a proposed WRP to the Authority by 31 March 2020. The Authority would then be requested to assess the proposed WRP in accordance with s 63 of the Act. On 21 November 2019 the ACT agreed to this approach.

The ACT submitted a new version of the proposed WRP on 20 December 2019. That version was found to have minor formatting errors and a revised version was provided on 15 January 2020.

On 12 March 2020, you requested that the Authority assess the proposed ACT Water Resource Plan that was provided by the ACT to the Authority on 15 January 2020.

The Authority has undertaken its assessment of the proposed WRP and recommends you accredit this proposed WRP.

Officers from the MDBA have worked closely with the ACT government officers during the ACT's preparation of the proposed WRP, providing advice and assistance as contemplated by s 67 of the Act.

We have undertaken a comprehensive assessment and while we consider the proposed WRP meets requirements for accreditation, it has identified the following key implementation issues and risks, some which require further action and/or monitoring.

Recovery of water for the Shared Reduction Amount

Recovery of 4.9 GL of surface water is required to meet the relevant SDL for the WRP area as part of the Shared Reduction Amount for the southern Basin Australian Capital Territory zone, as set out in s 6.05 of the Basin Plan. At the time of this recommendation this water is not yet recovered.

The water recovery was previously considered to be complete following the purchase of entitlements by the ACT in the NSW Murrumbidgee SDL Resource Unit which were transferred to the Commonwealth, however the construction of the Basin Plan makes it difficult to formally attribute this recovery against the Shared Reduction Amount for the ACT.

The Authority is of the view that the Commonwealth and ACT governments are considering options to address this matter and remain committed to finding a resolution. This does not impede the function of the proposed WRP.

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Revised Baseline Diversion Limit (BDL) estimates

The proposed WRP includes a revised estimate of the BDL for take by runoff dams (excluding basic rights) and take by runoff dams under basic rights. Take by runoff dams was estimated to be a combined volume of 1 GL per year in the Basin Plan. The revised estimate is based on new and improved methods for estimating this form of take, with a revised estimate for take by runoff dams under basic rights of 4.64 GL, and for take by runoff dams (excluding basic rights) of 0 GL. The Authority is satisfied that the updated BDL estimate is based on the best available information, and is consistent with the description in Schedule 3 of the Basin Plan.

Changes to the protection of Planned Environmental Water

The proposed WRP has included changes to the protection of Planned Environmental Water (PEW) compared to those in effect immediately prior to the commencement of the Basin Plan. These changes relate to base flows below Corin and Bendora Dams under Stage 2 drought restrictions. Prior to commencement of the Basin Plan, these flows were expressed in the ACT's Environmental Flow Guidelines as 'maintain an average of 20 ML/day' when the ACT enters Stage 2 water restrictions. The proposed WRP has included a change to 'maintain an average of 20 ML/day, or inflow, whichever is lower' during Stage 2. This change more transparently represents conditions that have been in place in the ACT water utility's Licence since before the Basin Plan was developed.

As an additional measure to ensure the protection of PEW is maintained, the proposed WRP has included an adaptive management plan to more actively manage flows in the affected river in circumstances where stage 2 water restrictions have been triggered. These new arrangements require the ACT to convene a technical advisory group of relevant experts to provide advice on flow management arrangements required to protect critical species during the restricted periods. This commitment ensures there is no net reduction in the protection of PEW.

Consistency with the relevant version of the Basin-wide environmental watering strategy

It is a requirement of the Basin Plan that a WRP provide for environmental watering in a manner consistent with the Basin-wide environmental watering strategy (BWS), which was first published in November 2014. The proposed WRP was developed against this version of the BWS.

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On 22 November 2019, the MDBA published an update to the BWS, as required by s 8.17 of the Basin Plan. The resubmission process for the proposed WRP was initiated prior to this date on 27 September 2019. As the proposed WRP was initially developed prior to 22 November 2019, the Authority is satisfied this is a reasonable approach given the timing of resubmission in relation to the BWS update. As such, the Authority has assessed the proposed WRP against the 2014 version of the BWS that was in place at the time of development of the proposed WRP.

As there were few changes between the 2014 and 2019 BWS, the proposed WRP is expected to be consistent with the 2019 version. The Authority also expects that the proposed WRP will be updated as part of any future amendment process to ensure consistency with the relevant version of the BWS.

MLDRIN Assessment of the proposed WRP

As anticipated in the Note to Chapter 10, Part 14 of the Basin Plan, the Authority consulted MLDRIN on whether the proposed WRP is consistent with the Basin Plan requirements concerning Indigenous values and uses. The Authority has considered the advice provided by MLDRIN when undertaking its assessment of whether the proposed WRP is consistent with the Basin Plan requirements.

MLDRIN, in consultation with the Ngunnawal Traditional Owners, have undertaken an assessment. An initial assessment was conducted and provided to the Authority on 21 April 2020. In this assessment, MLDRIN noted significant improvements in the proposed WRP against the previous version of the proposed WRP, however identified two concerns that were considered to be grounds to not recommend the proposed WRP for accreditation. This advice was subsequently amended (as set out below) to recommended accreditation on 27 May 2020 (**Attachment D**). Consistent with this amended advice, the Authority is satisfied the requirements of Part 14 of Chapter 10 of the Basin Plan have been met.

The Authority would like to take this opportunity to commend the efforts of the ACT government to quickly and effectively engage in genuine consultation with the Ngunnawal community. After the ACT were made aware of Ngunnawal concerns with their proposed WRP, they worked to develop a resolution which enabled the Ngunnawal community and MLDRIN to amend their advice and recommend accreditation of the proposed WRP. This resolution is a commitment to work with the Dhawura Ngunnawal Committee to amend the

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proposed WRP following accreditation. While this commitment to a future amendment is beyond the scope of consideration in making a recommendation or decision on accreditation of the proposed WRP, the Authority welcomes the agreement. It is an indication of the ACT's ongoing commitment to water reform and improving relations and outcomes for Ngunnawal Traditional Owners.

Implementation of the proposed WRP, including effective compliance arrangements, is of keen interest to the Authority. The MDBA will continue to work closely with the ACT government to manage compliance against the proposed WRP and ensure it is appropriately implemented, and to progress any potential future amendments.

We would encourage you to raise these issues with the ACT water minister should you accept our recommendation to accredit the proposed WRP.

The Authority looks forward to progressing the implementation of the Basin Plan with you, through your consideration of this proposed WRP.

If you have any questions or require further information about this WRP accreditation package, please contact Phil Alcorn, A/g General Manager, Water Resource Plans Branch (phil.alcorn@mdba.gov.au or 02 6279 0799) or Dr Peta Derham, A/g Executive Director, Water Resource Planning and Accounting Division (peta.derham@mdba.gov.au or 02 6279 0633).

Yours sincerely



Phillip Glyde

29 May 2020

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List of Attachments

- Attachment A:** The proposed WRP
- Attachment B:** The Authority's recommendation on the proposed WRP
- Attachment C:** The assessment report relating to the proposed WRP
- Attachment D:** MLDRIN advice