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Post Office Box 5005
Brunswick North VIC 3056
www.mldrin.org.au
eo@mldrin.org.au
Ph. 0404 163 700
ABN: 45118364079

Submission on the Macquarie River Re-regulating Storage referral (referral number 2020/8652) to Federal Environment Act (EPBC Act).

MLDRIN welcomes the opportunity to provide a submission on the Macquarie River Re-regulating Storage referral (EPBC Referral number 2020/8652) to Federal Environment Act (EPBC Act).

About MLDRIN

The Murray Lower Darling Rivers Indigenous Nations (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 Victoria, NSW, 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 Murray Darling Basin, 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
- Providing leadership and capacity building for our member nations

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Our membership includes Delegates from the Wiradjuri Nation whose Traditional Country includes the area that would be directly impacted by construction of the proposed Re-regulator.

Summary

We urge the Minister to declare the Macquarie River Re-regulating Storage referral (EPBC Referral number 2020/8652) a controlled action to be rigorously assessed by Environmental Impact Statement, or Assessment by Public Inquiry under the EPBC Act. Further, significant improvements in consultation with affected First Nations must be incorporated into the project design.

MLDRIN understands that the construction and operation of the proposed Macquarie re-regulating structure will have significant detrimental impact on matters of national environmental significance, including a Ramsar wetland and Federally listed threatened species. The proposal will also have detrimental impact on places and species of profound cultural significance to Traditional Owners of the Wiradjuri and Wailwan Nations. We also wish to highlight that engagement and consultation with relevant First Nations has been grossly inadequate.

Matters of National Environmental Significance

The project referral notes that the project is likely to have an impact on matters of National environmental significance, including the Ramsar listed Macquarie Marshes and vulnerable Murray Cod. We argue that the Minister should ensure the most rigorous possible assessment of these impacts given the already vulnerable condition of these important assets.

We strongly disagree with the proponents identification of an 'indirect' threat to the Macquarie Marshes as a result of this proposal. The referral identifies alteration of flow regimes as a result of the construction and operation of the re-regulating structure (*'Impacts to other parts of the regulated flow regime that reach the Macquarie Marshes are likely, potentially altering the volume and frequency of these regulated flows,'* Referral, p.6) We understand that water capture will double from 3 GL to 6 GL, and that the project would result in a reduction in Planned Environmental Water as defined by the NSW Water Management Act 2000 in the Macquarie and Cudgegong Regulated Rivers Water Source. The increased capture of river flows, including inflows from tributaries, will cause less water to reach the Macquarie Marshes, this will have a *direct* impact on their ecological character and will increase the impact of drought conditions.

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Any reduction in flows to the already critically endangered Macquarie Marshes warrants the most rigorous possible assessment. The Minister must ensure a rigorous assessment of impacts on this internationally significant wetland by undertaking an EIS or Assessment by Public Inquiry under the EPBC Act.

The referral documentation also clearly identifies the direct and significant threat to the Murray Cod, listed as vulnerable under the EPBC Act. Murray Cod in the Macquarie system have faced the cumulative impact of years of drought and over-allocation. Populations of this vulnerable species are under critical stress. In November and December 2019, hundreds of native fish, including Murray Cod, had to be relocated from the Macquarie system, given worsening drought conditions¹. Any action that will directly impact upon breeding, habitat, food sources and fish passage should be assessed through the most rigorous possible means.

Diminished river flows and significant alteration of hydrology along this stressed waterway could provide a tipping point for decline of important native fish species. A recently released framework for the MDBA Native Fish Recovery Strategy highlights flows regulation, water extraction and infrastructure as key threats to the ecological status of native fish in the Murray Darling Basin.² This project runs counter to key recommendations of major investigations into fish deaths and best available science regarding native fish recovery.

First Nations' values and consultation

We wish to stress that the waterways and landscapes likely to be impacted by the Re-regulator project are of profound cultural significance to multiple First Nations groups. The referral documents indicate that consultation with these Nations has grossly inadequate and that erroneous understandings of First Nations people have underpinned engagement and project design.

MLDRIN is a peak representative body, advising the MDBA, as well as NSW agencies (including sections of the Department of Primary Industries and Environment) regarding 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. MLDRIN has received no formal notification or been engaged by the proponent on this project.

¹ <https://www.theland.com.au/story/6545813/fish-relocation-a-big-mission/>

² <https://www.mdba.gov.au/sites/default/files/pubs/native%20fish%20management%20and%20recovery%20strategy%20draft%20framework.pdf>

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MLDRIN's Wiradjuri Nation delegates have identified the Macquarie Marshes and Murray Cod as critical cultural assets. Existing issues with poor water quality, water extraction, regulation and pollution have already degraded these sacred values. The re-regulator project is likely to greatly exacerbate these impacts.

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 referral indicates that 'The project locality is *on the lands* of the Trangie LALC, Narromine LALC and Warren Macquarie LALC.' This statement is incorrect, as land and waterways affected the project are part of the Country of the Wiradjuri Nation. Local Aboriginal Land Councils are statutory bodies, established under NSW legislation, that do not have cultural authority and are not vested with custodianship over land and waterways. This inaccuracy is reflected in the detail of consultation. Only LALCs have been consulted and Elders and Traditional Owners of the Wiradjuri Nation with cultural authority to speak for Country have not been engaged.

MLDRIN is also deeply concerned by statements indicating the likelihood of inundation of cultural heritage features around the Rocky Point area. The referral 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.*' It is grossly inadequate to suggest that cultural heritage sites subject to inundation 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.

MLDRIN is also deeply concerned that the 30km weir pool that would result from construction of the re-regulating structure will lead to inundation and drowning of ancient River Red Gums and other physical and biotic features of cultural significance

In summary, MLDRIN is deeply concerned that this project will pose significant, new threats to a river system and associated features of National Environmental significance that are already critically stressed. The related cultural values are also likely to be significantly impacted, with poor First Nations consultation evident in the project design.

We urge the Minister to declare the Macquarie River Re-regulating Storage referral (EPBC Referral number **2020/8652**) a controlled action to be rigorously assessed by Environmental Impact Statement, or Assessment by Public Inquiry under the EPBC Act. Further, significant improvements in consultation with affected First Nations must be incorporated into the project design.