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Dear Ms Hodge,

NTSCORP's comments on the Far North Coast, Border Rivers and South Coast Regional Water Strategies

Thank you for providing NTSCORP Limited (**NTSCORP**) with the opportunity to comment on the Far North Coast, Border Rivers, and South Coast Regional Water Strategies being developed by the Department of Planning, Industry & Environment (**DPIE**).

NTSCORP has statutory responsibilities under the Native Title Act 1993 (Cth) (**NTA**) to protect the native title rights and interests of Traditional Owners in NSW (**NSW**) and the Australian Capital Territory (**ACT**).

NTSCORP is funded under Section 203FE of the NTA to carry out the functions of a native title representative body in NSW and the ACT. NTSCORP provides services to Aboriginal Peoples who hold or may hold native title rights and interests in NSW and the ACT, specifically to assist them to exercise their rights under the NTA.

In summary, the functions and powers of NTSCORP under sections 203B to 203BK (inclusive) are:

- Facilitation and assistance, including representation in native title matters;
- Dispute resolution;
- Notification;
- Agreement-making;
- Internal review;
- Certification; and
- Other functions.

The comments provided in this letter are focused on the impacts of the Regional Water Strategies on native title claimants and holders in NSW. Specific comments in relation to native title rights and interests for each of the three Regional Water Strategies mentioned above are provided at Section 3 of this letter; the comments are otherwise intended to

apply to all Regional Water Strategies being prepared by DPIE generally. The impact and interests of the broader Aboriginal and First Nations communities across NSW is beyond the scope of this correspondence.

1. NTSCORP's involvement in the Aboriginal Water Coalition

NTSCORP was contacted by the Department of Industry – Water (as it then was) in September 2019 to participate in an informal advisory group (**Advisory Group**) to provide recommendations to the Department on how to consult with Aboriginal People in NSW in relation to the development of Regional Water Strategies.

At this time, the Greater Hunter Regional Water Strategy had already been finalised, having been published in November 2018. Unfortunately, in terms of recognising Aboriginal People and Traditional Owners, it contains only a short section on 'the history of Indigenous communities' in the area, acknowledges the connection of Aboriginal People to water in a general sense and the only references to native title are in the description of basic landholder rights under the *Water Management Act 2000* (NSW). We understand that the Department acknowledges that consultation with Aboriginal People and Traditional Owners for the Greater Hunter Regional Water Strategy was not adequate.

Since September 2019, NTSCORP's participation in the Advisory Group, which is now referred to as the Aboriginal Water Coalition (**AWC**) has included representatives attending meetings of the AWC, assisting the Department in sending notices for consultation meetings using our contact lists and providing recommendations for locations for consultation meetings. The AWC is comprised of NTSCORP, NSWALC, NBAN and MLDRIN.

During this time, the scope of the AWC's work has evolved from providing input in relation to consultations with Aboriginal People and Traditional Owners, to providing substantive comments on the Regional Water Strategies themselves and also providing input on the development of the draft State Water Strategy and proposed Aboriginal Water Policy. NTSCORP welcomes these developments and the opportunity to provide input on these policies, but notes that we are not adequately resourced to participate fully in these processes.

2. Native Title and Water rights

Native title is an important recognition of the rights and interests of Traditional Owners. The NTA defines 'native title rights and interests' as being communal, group or individual rights and interests of Aboriginal Peoples or Torres Strait Islanders in relation to land or waters.

When the Federal Court of Australia makes a native title determination, the rights and interests that are, and always have been, held by the Traditional Owners in accordance with traditional law and custom are recognised at law.

Native title rights and interests claimed in NSW, which directly concern water, have included:

- (a) the right to take and use water;
- (b) the right to have access to and use the natural water resources of the application area;
- (c) the right to fish in the application area; and
- (d) the right to share and exchange resources derived from the land and waters within the application area.

Other native title rights and interests claimed in NSW, which may be exercised on or in relation to water and waterways, include:

- (a) the right to hunt on the application area;
- (b) the right to participate in cultural and spiritual activities on the application area;
- (c) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;
- (d) the right to conduct ceremonies and rituals on the application area; and
- (e) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area.

The native title rights exercisable on or in relation to land may also be impacted by the Regional Water Strategies where the land is physically or culturally connected with the waters or where an option is included that would involve inundation of land by water.

Section 211 of the NTA provides that where a licence, permit etc. is required for a certain activity, native title holders are not required to obtain the licence, permit etc. for hunting, fishing, gathering or cultural and spiritual activities, where they do so for the purpose of satisfying their personal, domestic or non-commercial communal needs.

3. Recognition of native title in water policy/legislation

The recognition of native title rights and interests in water requires, as a starting point, a legislative and policy setting which ensures that native title holders are able to *exercise* their rights and interests. As such, Commonwealth, State and Territory legislation and policy should provide for, amongst other things, access to water and waterways, cultural flows, and water allocations to be made to native title holders.

It also requires that rivers and water resources are managed in a way that ensures they are not depleted, which of course impacts on the exercise of native title. This requires that

water from rivers is not overallocated, that monitoring and compliance regimes are adequately resourced, and that responsible Departments and Agencies undertake monitoring, conduct investigations and use enforcement mechanisms available to them in order to deter non-compliance.

The Regional Water Strategies defines native title rights with respect to water as rights to “*take and use water for personal, domestic and non-commercial communal purposes*”. At law, this is incorrect. Native title rights and interests are defined in accordance with the laws and customs by which they are held. The laws and customs of a native title holding group may provide that a native title holder has the right to take resources, including water, for any purpose, including to trade, share, exchange or to take for a commercial purpose.

NTSCORP identifies further limitations with the proposed definition being that it is not a comprehensive description of the rights and interests to water which native title groups may hold, nor a comprehensive description of the interaction between native title and water policy or legislation. Detailed descriptions of the native title rights and interests held by the Githabul People, the Bandjalang People, the Bundjalung People of Byron Bay and the Western Bundjalung People and claimed by the Gomerioi People, the South Coast People, the Bandjalang People and the Widjabul Wia-bal People as per determinations and proceedings of the Federal Court are outlined below. The Regional Water Strategies should include detailed lists of these rights and interests and include mapping for context.

The Regional Water Strategies should also include a statement in relation to section 55 of the *Water Management Act (NSW) 2000* which provides:

(1) A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.

...

(3) The maximum amount of water that can be taken or used by a native title holder in any one year for domestic and traditional purposes is the amount prescribed by the regulations.

We also encourage the NSW Government and its agencies to explore options wherever possible to hand back land and waters to native title holders and to consider establishing (and adequately resourcing) programs that allow native title holders to actively participate in the management of rivers and water resources, such as programs for river rangers.

It should be acknowledged that the nature of native title rights and interests in water and therefore the manner in which Commonwealth, State and Territory policy and legislation should recognise, protect and accommodate these native title rights and interests is a developing area of the law. We expect further decisions and commentary from the Courts on these issues in the coming years, but also expect that Commonwealth, State and Territory Governments give serious consideration as to how these issues should be

addressed in policy and legislative reform processes.

3.1. Far North Coast Regional Water Strategy

3.1.1. Acknowledgement of the Bundjalung Nation and the Githabul Nation

The draft Far North Coast Regional Water Strategy (**FNC RWS**) acknowledges the Bundjalung Nation and the Githabul Nation as 'holding a significant connection to the lands in which the Far North Coast Regional Water Strategy falls upon', and as being the 'main traditional custodians' for the region (page 80).

The FNC RWS does not name all of the groups comprising the Bundjalung Nation, despite including some details of relevant native title applications and determinations on pages 81-82.

NTSCORP considers that the FNC RWS could be enhanced by making reference to the various groups comprising the Bundjalung Nation including the Bandjalang People, the Widjabul Wia-bal People, the Bundjalung People of Byron Bay, the Western Bundjalung People, the Nyarbal People, the Minjungbal People and the Cudjinburra People.

Similarly the reference to the Githabul Nation should include reference to both Githabul People and Galibal People, in accordance with the rules of the Githabul Nation Aboriginal Corporation RNTBC.

Page 82 of the FNC RWS makes reference to a determination in a native title matter brought by Tweed Byron Local Aboriginal Land Council. NTSCORP notes that this matter was a non-claimant application. As it was not a native title determination application brought by a native title claim group, NTSCORP consider that reference to this non-claimant application should be removed.

3.1.2. Acknowledgement of the Githabul People

The FNC RWS acknowledges the Githabul People, but does not outline the specific rights and interests held by the Githabul People.

NTSCORP suggests that the FNC RWS be amended to include a section which sets out details of the Githabul Native Title Determination, including the specific native title rights as they have been recognised by the Federal Court of Australia (NSD 6019 of 1998).

3.1.3. Native title rights held by Githabul People

As per the native title determination (NSD 6019 of 1998), the Githabul Native Title Holders

hold native title rights and interests exercisable on or in relation to water, or that may often relate to water or rely upon a water source for their exercise, as follows:

- the right to access, and camp on, the Consent Determination Area;
- the right to fish, hunt and gather animal and plant resources for personal, domestic and non-commercial communal consumption
- the right to take and use water for personal, domestic and non-commercial communal purposes;
- the right to access the Consent Determination Area for spiritual purposes and to access sites of spiritual significance in the Consent Determination Area; and
- the right to protect, by lawful means, places of importance to the Githabul People in the Consent Determination Area from physical harm.

3.1.4. Acknowledgement of Bundjalung People

The FNC RWS acknowledges the Bundjalung Nation as 'a large federation of around 15 groups or clans', but does not outline the specific rights held by the Western Bundjalung People, the Bundjalung People of Byron Bay or Bandjalang People as they have been recognised by the Federal Court of Australia.

NTSCORP suggests that the FNC RWS be amended to include a section which sets out details of the Western Bundjalung, the Bundjalung People of Byron Bay and the Bandjalang People Native Title Determinations, including the specific native title rights held by the respective groups which are outlined at 3.1.5, 3.1.6 and 3.1.7 respectively below.

3.1.5. Native title rights held by the Western Bundjalung People

As per the native title determination (NSD 2300 of 2011), the Western Bundjalung People hold native title rights and interests exercisable on or in relation to water, as follows:

- the right to enter, traverse across and remain on the land;
- the right to take and use the water for personal, domestic, communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes;
- the right to gather and use the traditional natural resources (other than water) including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements, and making artwork and musical instruments;
- the right to fish;
- the right to hunt;
- the right to engage in cultural activities, conducting and participating in ceremonies and rituals including in relation to birth and death; holding cultural gatherings;

- the right to visit places of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity;
- the right to pass on knowledge about the physical and spiritual attributes of places of importance; and
- the right to be accompanied by persons who, though not Native Title Holders, are specified family, whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies, or other people requested by the Native Title Holders to assist in, observe or record cultural activities, practices or ceremonies.

Those native title rights and interests held by Western Bundjalung People that are exercisable on or in relation to land, and that often relate to water or rely upon a water source for their exercise include but are not limited to:

- the right to camp on, erect shelters and live but not to permanently camp on, possess or occupy the land; and
- the right to light fires for domestic purposes, but not for the clearance of vegetation.

3.1.6. Native title rights held by the Bundjalung People of Byron Bay

As per the native title determination (NSD 6020 of 2001), the Bundjalung People of Byron Bay hold native title rights and interests exercisable on or in relation to water, as follows:

- the right to enter, travel over and remain on the land or waters;
- the right to take and use the water for personal, domestic and communal purposes (including cultural purposes), but not extending to a right to control the use and flow of the water in any rivers or lakes;
- the right to take and use, for personal, domestic and communal purposes (including cultural purposes), the natural resources (other than water);
- the right to hunt for personal, domestic and communal purposes (including cultural purposes);
- the right to engage in cultural activities, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death including burials where permitted by the laws of NSW on the land or waters;
- the right to have access to, to maintain and to protect from physical harm sites and places of importance which are of significance to the Bundjalung People of Byron Bay under their traditional laws and customs;
- the right to teach the physical, cultural and spiritual attributes of places and areas of importance;
- the right to fish for personal, domestic and communal purposes (including cultural purposes);

- the right to be accompanied by persons who, though not Native Title Holders, are specified family, whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies, or people requested by the Native Title Holders to assist in, observe or record cultural activities, practices or ceremonies.

Those native title rights and interests held by Bundjalung People of Byron Bay that are exercisable on or in relation to land, and that often relate to water or rely upon a water source for their exercise include but are not limited to:

- the right to camp and erect temporary shelters and temporary structures for personal, domestic and communal purposes (including cultural purposes); and
- the right to light fires for personal, domestic and communal purposes (including cultural purposes), but not for the clearance of vegetation.

3.1.7. Acknowledgement of the Bundjalung People

The FNC RWS does not include the Bundjalung People as native title holders and claimants within the area of the FNC RWS, despite noting the details of their native title applications and determinations on page 82.

The Bundjalung People have had their native title recognised in the Federal Court of Australia in Bundjalung People #1 (NSD 6034 of 1998) and Bundjalung People #2 (NSD 6107 of 1998), and have claimed rights under two further registered native title claims (Bundjalung People #3 (NSD 426 of 2016) and Bundjalung People #4 (NSD 122 of 2019)).

NTSCORP suggests that the FNC RWS be amended to include the Bundjalung People as native title holders and claimants within the region, and include a section which sets out details of the Bundjalung Native Title Determinations and Applications, including the specific native title rights both held and claimed by the Bundjalung People.

As per the Federal Court decision for Bundjalung #1 and #2 (NSD 6034 of 1998 and NSD 6107 of 1998), the Bundjalung People hold native title rights and interests exercisable on or in relation to water, or that are exercisable on or in relation to land and that often relate to water or rely upon a water source for their exercise, as follows:

- the right to hunt, fish and gather the traditional natural resources of the Consent Determination Area for non-commercial personal, domestic and communal use;
- the right to take and use waters on or in the Consent Determination Area;
- the right to access and camp on the Consent Determination Area;
- the right to do the following activities on the land:
 - conduct ceremonies;

- teach the physical, cultural and spiritual attributes of places and areas of importance on or in the land and waters; and
- have access to, maintain and protect from physical harm, sites in the Consent Determination Area which are of significance to the Bandjalang People under their traditional laws and customs.

In the registered native title claims Bandjalang People #3 and #4 (NSD 426 of 2016 and NSD 122 of 2019), the Bandjalang People have claimed the same rights as outlined above.

3.1.8. Acknowledgement of the Widjabul Wia-bal People

The FNC RWS does not include the Widjabul Wia-bal People as native title claimants within the area of the FNC RWS, despite noting the details of their native title application on page 82.

The Widjabul Wia-bal People native title claim has been accepted for registration (NSD 1213 of 2018).

NTSCORP suggests that the FNC RWS be amended to include the Widjabul Wia-bal People as native title claimants within the region, and to include a section which sets out details of the Widjabul Wia-bal Native Title Application, including the specific native title rights claimed by the Widjabul Wia-bal People.

The claimed rights of the Widjabul Wia-bal People (NSD 1213 of 2018) exercisable on or in relation to waters are as follows:

- the right to access the application area;
- the right to use and enjoy the application area;
- the right to move about the application area;
- the right to live being to enter and remain on the application area;
- the right to fish in the application area;
- the right to hunt on the application area;
- the right to gather and use the natural resources of the application area (including food, medicinal plants, timber, tubers, charcoal, wax, stone, ochre and resin as well as materials for fabricating tools, hunting implements, making artwork and musical instruments);
- the right to have access to and use the natural water resources of the application area;
- the right to manage natural resources of the application area;
- the right to share and exchange resources derived from the land and waters within the application area;
- the right to participate in cultural and spiritual activities on the application area;
- the right to maintain and protect places of importance under traditional laws,

- customs and practices in the application area;
- the right to conduct ceremonies and rituals on the application area;
 - the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area;
 - the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;
 - the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs; and
 - the right to control access to or use of the lands and waters within the application area by other Aboriginal People in accordance with traditional laws and customs.

Native title rights and interests claimed by the Widjabul Wia-bal People (NSD 1213 of 2018) exercisable on or in relation to land that will be affected where the land is physically or culturally connected to waters include but are not limited to the following:

- the right to camp on the application area; and
- the right to erect shelters and other structures on the application area;
- the right to hold meetings on the application area.

3.2. Border Rivers Regional Water Strategy

The draft Border Rivers Regional Water Strategy (**Border Rivers RWS**) acknowledges the Bigambul, Githabul, Kambuwal, Gomeri/Kamilaroi/Gamilaroi/ Gamilaraay, Kwiambul and Ngarabal Peoples as holding a 'significant connection to the lands in which the Border Rivers Regional Water Strategy falls upon'.

3.2.1. Acknowledgement of the Gomeri People

The draft Border Rivers RWS acknowledges the Gomeri People Native Title Application (NSD 37 of 2019), but does not outline the specific rights claimed by Gomeri People.

NTSCORP suggests that the Border Rivers RWS be amended to include a section which sets out details of the Gomeri Native Title Application, including the specific native title rights claimed by the Gomeri People.

3.2.2. Native title rights claimed by the Gomeri People

The native title rights claimed by the Gomeri People in their native title application which are exercisable on or in relation to waters are as follows:

- the right to access the area;
- the right to use and enjoy the area;
- the right to move about the area;

- the right to fish in the area;
- the right to have access to and use the natural water resources of the application area;
- the right to have access to share and exchange resources derived from the land and waters;
- the right to participate in cultural and spiritual activities on the area;
- the right to gather natural resources of the area;
- the right to manage natural resources;
- the right to hunt in the area;
- the right to maintain and protect places of importance under traditional laws, customs and practices on the area;
- the right to participate in cultural and spiritual activities on the area;
- the right to conduct ceremonies and rituals on the area;
- the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area;
- the right to speak for and make non-exclusive decisions about the area in accordance with traditional laws and customs;
- the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs; and
- the right to control access to or use of the lands and waters within the application area by other Aboriginal People in accordance with traditional laws and customs.

Native title rights and interests claimed by the Gomeri People that are exercisable on or in relation to land, and that often relate to water or rely upon a water source for their exercise, and/or that will be affected where the land is connected culturally or physically to waters, include but are not limited to:

- the right to possession, occupation, use and enjoyments of the lands and waters where exclusive native title can be recognised;
- the right to camp in the area;
- the right to erect shelters and other structures;
- the right to live in the area; and
- the right to hold meetings on the area.

3.2.3. Acknowledgement of the Githabul People

The FNC RWS acknowledges the Githabul People, but does not outline the specific rights and interests held by the Githabul People.

NTSCORP suggests that the FNC RWS be amended to include a section which sets out details of the Githabul Native Title Determination, including the specific native title rights as they have been recognised by the Federal Court of Australia (NSD 6019 of 1998).

3.2.4. Native title rights held by Githabul People

As per the native title determination (NSD 6019 of 1998), the Githabul Native Title Holders hold native title rights and interests exercisable on or in relation to water, or that may often relate to water or rely upon a water source for their exercise, as follows:

- the right to access, and camp on, the Consent Determination Area;
- the right to fish, hunt and gather animal and plant resources for personal, domestic and non-commercial communal consumption
- the right to take and use water for personal, domestic and non-commercial communal purposes;
- the right to access the Consent Determination Area for spiritual purposes and to access sites of spiritual significance in the Consent Determination Area; and
- the right to protect, by lawful means, places of importance to the Githabul People in the Consent Determination Area from physical harm.

3.3. South Coast Regional Water Strategy

The draft South Coast Regional Water Strategy (**South Coast RWS**) acknowledges the Yuin Nation as having 'a significant connection to the lands and water' of the region, but does not outline the specific native title rights and interests claimed by the South Coast People in their registered native title application, NSD 1331 of 2017.

NTSCORP suggests that the South Coast RWS be amended to include a section which sets out details of the South Coast People Native Title Application, including the specific native title rights claimed by the South Coast People.

It is noted that although 'Yuin' is a name used by some Traditional Owners of the NSW South Coast, the native title claim group have elected to use the name 'South Coast People' for their native title application.

Further, the South Coast RWS refers to the lands of the Yuin Nation as extending "along the coastal plains from the Shoalhaven River in the north to the Victorian border". In this regard, we note that the South Coast People have filed a native title application which extends to Port Hacking in the north. The South Coast RWS should be amended to reflect this.

We note that the South Coast RWS provides that:

"Aboriginal people can apply for Aboriginal cultural water access licences. If granted, this licence can provide up to 10 ML/year for drinking, food preparation, washing and watering domestic gardens, as well as for Aboriginal cultural uses."

Consistent with the Border Rivers RWS, NTSCORP considers that the South Coast RWS should acknowledge that any licence assessment framework needs to be culturally appropriate and accessible.

Furthermore, NTSCORP notes that section 211 of the NTA provides that where a licence, permit etc. is required for a certain activity, native title holders are not required to obtain the licence, permit etc. for hunting, fishing, gathering or cultural and spiritual activities, where they do so for the purpose of satisfying their personal, domestic or non-commercial communal needs.

3.3.1. Native title rights claimed by the South Coast People

Where exclusive native title can be recognised, the South Coast People claim the right to possession, occupation, use and enjoyment of the lands and waters of the application area to the exclusion of all others subject to the valid laws of the Commonwealth and State of NSW.

Where exclusive native title cannot be recognised, the native title rights claimed by the South Coast People (NSD 1331 of 2017) exercisable on or in relation to waters, or that are exercisable on or in relation to land that will be affected where the land is connected culturally or physically to waters, are as follows:

- the right to access, to remain in and to use the land and waters for any purpose;
- the right to access and to take resources from the land and waters for any purpose;
- the right to maintain and protect places and objects of significance; and
- the right to be accompanied onto those areas by persons who, though not native title holders, are specified family, people required under traditional laws and customs for the performance of cultural activities, practices or ceremonies, and people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

4. Inadequate recognition in water policy/legislation

In NTSCORP's view, the Commonwealth, State and Territory policy and legislation are presently failing to recognise and protect native title rights and interests in water.

The mismanagement at a Commonwealth and State level, including through the overallocation of water from rivers and a lack of effective monitoring and compliance, has meant that in recent years, some rivers in NSW have either not flowed, run dry, and/or have had poor water quality for extended periods, which has also resulted in a number of fish kill incidents across the State.

The various and complex factors contributing to these events are beyond the scope of these comments, but in our view, the policy and legislative setting which allowed this to

occur constituted – and continues to constitute – an impairment and in some cases suppression of the native title rights and interests held by Traditional Owners along those rivers.

At present in NSW, native title holders are generally unable to obtain allocations on the water market, as it is prohibitively expensive. We believe recognition of native title rights and interests requires that the NSW Government put in place measures, policies and funding to enable native title holders to obtain allocations of water within their determined or claimed areas.

5. Consultations with Aboriginal People and Traditional Owners

We acknowledge the consultation that has been undertaken thus far by Governments with Aboriginal People and support the ongoing involvement of the AWC with water policy in NSW. However, to date, the method of consultation in relation to the Regional Water Strategies has not been adequate to allow for proper consultation with Aboriginal People and, in particular, native title holders and Prescribed Bodies Corporate (**PBCs**).

NTSCORP echoes the sentiments expressed by the AWC members in various meetings with DPIE that consultation with Aboriginal People must be comprehensive and culturally appropriate. Aboriginal People, including native title holders, must be involved in the development and implementation of all water policy, legislation, schemes, and grants. Aboriginal People have been the Traditional Owners of country for over 60,000 years, and with the benefit of the wealth of environmental and cultural knowledge amassed over this time, have sustainably managed land and water resources throughout history. It is crucial that Aboriginal People are included and represented in all decision-making processes relating to water policy in NSW.

The COVID-19 pandemic of course impacts DPIE's ability to undertake consultation meetings at present and NTSCORP recognises the need to postpone any consultation meetings which presents a risk to the health and wellbeing of Aboriginal communities.

Having said this, the short timeframes adopted by the Department for the development of the Regional Water Strategies have prevented NTSCORP from facilitating consultations with native title holders in a culturally appropriate way.

In addition, the Department's administrative processes related to the notification of consultations has also hampered meaningful engagement by Aboriginal People in the recent consultations. We note in this regard that the correspondence sent by DPIE to native title holders and those who may hold native title (**the intended recipients**) for the Far North Coast Regional Water Strategy did not reach the intended recipients, due to an error with the postage stamp as coordinated by DPIE. NTSCORP has previously discussed this

issue with DPIE, but further wish to highlight the subsequent impacts on the capacity of the intended recipients to participate in consultation on the RWS.

We encourage the Department to take a more flexible approach with these timeframes and to not finalise any policies until Aboriginal People and Traditional Owners confirm that they have been adequately consulted and their comments addressed.

As has been noted by various participants in the AWC meetings, we consider that a significant barrier to Aboriginal People and Traditional Owners participating in these processes is the complexity of water policy and law.

We support the development of educational resources, such as fact sheets, notices and videos, tailored to the needs of Aboriginal People and Traditional Owners, to ensure the purpose and content of any policy Aboriginal People are being consulted in relation to is understood to enable effective participation in these processes.

In our experience, consultation meetings with Government Departments and Agencies on water can be ineffective because Government representatives can speak only to very specific policies or aspects of policies, which does not enable a wide-ranging discussion on water and on the issues that affect Aboriginal People and Traditional Owners. We recommend that for consultation meetings, Government representatives are equipped to answer questions across a range of water policies and legislation and are able to contextualise the policy being discussed, to enable these conversations to be more productive.

6. Summary of NTSCORP Recommendations

In relation to water legislation and policy generally, NTSCORP recommends that:

- Commonwealth, State and Territory legislation and policy should provide for, amongst other things, access to water and waterways, cultural flows, and water allocations to be made to native title holders.
- DPIE reconsider its current method of consultation with Aboriginal People and, in particular, native title holders and Prescribed Bodies Corporate (**PBCs**) to allow for comprehensive, culturally appropriate and genuine engagement with Traditional Owners in the drafting of water policy and legislation.

In relation to the Regional Water Strategies generally, NTSCORP recommends that:

- the current definition of native title rights used in the Regional Water Strategies be amended to recognise that native title rights and interests are defined in accordance with the laws and customs by which they are held; and
- each Regional Water Strategy should include:
 - a detailed list of the rights and interests held or claimed by the native title groups that fall within the relevant region and include mapping for context; and
 - a statement in relation to section 55 of the *Water Management Act (NSW) 2000*.

In relation to the FNC RWS, NTSCORP recommends that:

- the FNC RWS should accurately refer to and include all of the Aboriginal Nations and Peoples within the strategy area, being the Githabul Nation, including the Githabul People and Galibal People, and the Bundjalung Nation, including the Bandjalang People, the Widjabul Wia-bal People, the Bundjalung People of Byron Bay, the Western Bundjalung People, the Nyarbal People, the Minjungbal People and the Cudjinburra People;
- the FNC RWS be amended to include sections that set out details of the Western Bundjalung, Bandjalang, Bundjalung of Byron Bay and Githabul Native Title Determinations, including the specific native title rights held by the Western Bundjalung People, the Bandjalang People, the Bundjalung People of Byron Bay and the Githabul People; and
- the FNC RWS be amended to include the Bandjalang People and the Widjabul Wia-bal People as native title claimants within the region, and include a section which sets out details of the Bandjalang Native Title Determination Applications and the Widjabul Wia-bal Native Title Application, including the specific native title rights both claimed by the Bandjalang People and the Widjabul Wia-bal People.

In relation to the Border Rivers RWS, NTSCORP recommends that the Border Rivers RWS be amended to include sections that sets out details of:

- the Gomeri Native Title Application, including the specific native title rights claimed by the Gomeri People; and
- the Githabul Native Title Determination, including the specific native title rights held by the Githabul People.

In relation to the South Coast RWS, NTSCORP recommends that the South Coast RWS be amended to include:

- reference to the 'South Coast People';
- a correct description of the area over which the South Coast People assert native title rights and interests; and
- a section which sets out details of the South Coast People Native Title Application, including the specific native title rights claimed by the South Coast People.

If you require any further information or would like to discuss this submission, please do not hesitate to contact [REDACTED], or [REDACTED] at NTSCORP.

Yours sincerely,

[REDACTED]