

Our Ref: F17/1550

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Karen Lau
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Sent by email: Water.SEPPreview@delwp.vic.gov.au

Dear Ms Lau

COMMENTS ON THE SEPP (Waters) Review – Policy Impact Assessment

The Victorian Aboriginal Heritage Council (**Council**) welcomes the opportunity to provide comment on the SEPP (Waters) Policy Impact Assessment (**Impact Assessment**).

Council is a statutory authority established under the *Aboriginal Heritage Act 2006* (**the AHA**). One of Council's primary functions is to appoint Registered Aboriginal Parties (**RAPs**). RAPs are Traditional Owner organisations that hold decision-making responsibilities under the AHA for the protection, management and preservation of Aboriginal cultural heritage in their appointed areas. To date Council has appointed 11 RAPs that cover approximately 60 per cent of the state. Other primary functions of the Council include advising the Minister of the Aboriginal Affairs and the Secretary of the Department of Premier and Cabinet about the protection of Aboriginal cultural heritage, and promoting awareness and understanding of Aboriginal cultural heritage.

Council provides the following comments on the Impact Assessment:

1. Council notes and fully supports the following statements made in section 7.3.4 of the Impact Assessment:
 - Water quality indicators and objectives have not yet been specifically identified for the protection of Aboriginal cultural values.
 - The establishment of water quality objectives and indicators for the protection of Aboriginal cultural values needs to be based on consultation with appropriate Traditional Owners at the scale of individual waterways, wetlands and river reaches (segments and sub-segments), with a focus on locally specific cultural values and uses.
 - Close engagement will allow Traditional Owners (in partnership with waterway managers) to communicate water dependent values, articulate objectives for water quality, identify traditional indicators of water quality condition and to inform the setting of regional targets.

Council acknowledges the traditional Aboriginal owners of country throughout Victoria and pays its respect to them, their culture and their Elders past, present and future

2. Council notes the beneficial use of “Traditional Owners’ and Aboriginal Victorians’ cultural values” (**beneficial use**) and the particular choice of words for the beneficial use. Council **does not** agree that “Aboriginal Victorians” should be retained in the title of the beneficial use for two reasons. Firstly the wording is technically flawed as Traditional Owners are Aboriginal Victorians. Secondly, Council believes the wording suggests the beneficial use applies to the general Aboriginal community and Traditional Owners equally. This contradicts statements made in the Impact Assessment highlighted under point one above. “Aboriginal Victorians” in the title of the beneficial use diminishes the primacy of Traditional Owners where management of Aboriginal cultural heritage (including water resources and other natural resources) is concerned.

Traditional Owner primacy regarding Aboriginal cultural heritage management exists by virtue of the status of Traditional Owners as First Nation peoples who have occupied and cared for their Country for tens of thousands of years. This status is formally recognised and protected under state, national and international laws. The most prominent examples of such legislation relevant to Victorian Traditional Owners are the AHA, the *Native Title Act 1993* (NTA), the *Traditional Owner Settlement Act 2010* (TOS Act).

- The AHA: The AHA is Victoria’s principal legislation for the protection and management of Aboriginal cultural heritage that all Victorians must comply with. RAPs have decision making responsibilities in approval processes concerning activities or developments that have the potential to harm Aboriginal cultural heritage.
- The NTA and TOS Act: Native title determinations and Indigenous Land Use Agreements under the NTA and settlements under the TOS Act can recognise and give effect to distinctive Traditional Owner rights on Crown land, including the rights of Traditional Owners to access and use land and waters, take and use natural resources and provide input into the management of natural resources. Four of Victoria’s Traditional Owner corporations have native title determinations and two have TOS Act settlements.

Council has the following position about the responsibility of Traditional Owners in water management and how that relates to participation of the general Aboriginal community in water management:

Traditional Owners have primary responsibility for protecting the values of water for cultural needs. Embodied in this responsibility is the involvement of the broader Aboriginal community in protecting these values to ensure Aboriginal people continue to enjoy cultural practices associated with water.

Accordingly Council proposes that the beneficial use “Traditional Owners’ and Aboriginal Victorians’ cultural values” be amended to be “Traditional Owners’ cultural values”.

3. As is acknowledged in the Impact Assessment, the identification of suitable water quality indicators and objectives and regional targets for the protection of Aboriginal cultural values will require close engagement with Traditional Owners. In this regard Council emphasises the need for early engagement and a commitment to a partnership approach with Traditional Owners to establish agreed project parameters around objectives, steps, responsibilities, engagement procedure and cost of Traditional Owner participation.

4. Regarding text relevant to Traditional Owner cultural values in *Appendix 2 – Existing and proposed beneficial uses* (columns 2 and 3 on page 163), Council proposes that the words “spiritual” and “ceremonial” be removed as “cultural” encompasses these terms. For clarity sake these proposed changes and other minor changes are shown below by track changes:

Column 2: Beneficial uses proposed for SEPP (Waters)
Traditional Owner cultural and spiritual values
Column 3: Beneficial use purpose or intent
Water quality that is suitable for cultural and spiritual needs and that will ensure that Traditional owner <u>Owner</u> cultural, spiritual and ceremonial practices can continue. These include the spiritual-cultural values of surface and groundwater held by I traditional O owner communities.

If you wish to discuss this letter further, please contact the Office of the Victorian Aboriginal Heritage Council on 03 8392 5368 or via email vahc@dpc.vic.gov.au.

Yours sincerely

Eleanor A. Bourke
Chairperson
Victorian Aboriginal Heritage Council