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Department of Environment and Primary Industries

PO Box 500

East Melbourne

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Dear Reference Group members

**Draft Victorian Floodplain Management Strategy**

The Federation of Victorian Traditional Owner Corporations is the peak representative body for Traditional Owners in Victoria. Together our members have legal recognition, rights and interests over almost 50% of the State and we are committed to working in partnership with government to shape policy which impacts the health of our shared Country.

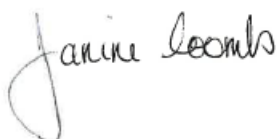
Our member corporations are all working hard to appropriately manage our traditional lands and waters and we appreciate the opportunity to participate in the development of this important strategy.

We understand that floodplains, rivers, wetlands, estuaries and aquifers are all part of an interconnected system that needs to be managed holistically. It is also important to note that the vast majority (95% of the 30,000 recorded significant Aboriginal places and heritage sites) are located on or near Victorian waterways.

While we acknowledge the connection to the Victorian Waterway Management Strategy in this draft, we believe it can be strengthened in a number of ways to deliver better Aboriginal cultural, economic and environmental outcomes. The submission below provides a number of recommendations for how this can be done.

The Federation's National Resource Management Committee, consisting of Traditional Owners from across the State with extensive experience in Cultural Heritage Management would be pleased to discuss any aspect of this submission should this be of assistance.

Yours faithfully



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## **FEDERATION SUBMISSION TO THE DRAFT VFMS**

This submission focusses 9 key areas of the draft Victorian Floodplain Management Strategy as follows:

1. Scope
2. Historical narrative
3. Strategic framework
4. Implementation
5. Measurement and evaluation
6. Governance
7. Key linkages
8. Native Title
9. Case studies

The points provided under these key areas are a mix of comments and recommendations. We believe it is important to consider the draft strategy as a whole rather than the usual approach of focussing on any specific sub-section that references our interests as Traditional Owners.

Indeed, as a general comment we would seek to have more specificity and consistency throughout the document in relation to language and actions relating to Traditional Owners and Aboriginal interests.

### **1. Scope**

- It is acknowledged that the draft strategy makes reference to environmental, social, cultural and economic values for all Victorians (14, pg 9); and that floods and floodplain management activities must take Aboriginal cultural heritage values into account (9.5, pg 24).
- Despite recognising the full range of values however, the approach taken by the draft strategy is too narrowly focussed on asset protection and emergency management, overwhelmingly conceptualising flooding as [only] a threatening process. Indeed, some ecological and cultural values will be threatened by an absence of flooding. This implies there is an unstated hierarchy of values underpinning the strategy.
- A strategic approach to the management of floodplains needs to appropriately consider the full range of values, and clearly differentiate between urban and rural landscapes. While the strong focus on asset protection in and around urban environments makes sense, the strategy might consider a different approach to floodplain management in rural landscapes where cultural and environmental values are more prevalent.
- The strategy needs to include a section outlining the ecological functions and values of floodplains. At present section 13.3.3 is inadequate.
- The strategy needs to go beyond references to significant, places, sites and landscapes and describe how floodplains are (traditionally and currently) used and managed by Traditional Owners.
- A more holistic approach to floodplain management should be contemplated that involves strategically influencing the movement of flood waters in the landscape to protect these values.

- The strategy would benefit from consideration of ecological flood management – both strategic use of flooding to promote ecological health, and strategic use of floodwaters to benefit particular floodplain ecosystems. By looking to past environmental flow regimes, floodplain management can work to improve riparian ecosystems which are of critical importance to Aboriginal people – as a source of food and medicine and as sacred sites and meeting places.
- Options - Section 6 states that the VFMS responds to the national strategy by better regulating land use in areas liable to flooding – does this include the option of reinstating natural floodplains?
- References to managing Aboriginal cultural values need to go beyond a risk management and compliance approach.

## **2. History**

- The history section needs to pick up on the strong Traditional Owner narrative to help contextualise the strategy and encourage a more holistic understanding of floodplains. For example, Traditional Owners talk about waterways moving back and forth across floodplains over time, effectively scattering artefacts and influencing the way cultural practices are undertaken.

## **3. Strategic framework**

- The vision statement is very narrow and should go beyond 'people have awareness and undertake activities' to include an ecological outcome for floodplain landscapes, or the desire to maximise the benefits that flood waters can provide.
- The objectives are also very narrow and do not reflect the fact that flood waters in the landscape can also protect a range of values.

## **4. Implementation**

- It is acknowledged that the strategy makes reference to the limits of the current information base, the need to consult Traditional Owners and the importance of traditional ecological knowledge.
- Explicit reference should be made to the Aboriginal Heritage Register
- For Aboriginal cultural values to become truly embedded into future floodplain management, they must be explicitly incorporated into the standards, methodologies, cost-benefit analyses and planning tools used to undertake assessments and determine priorities. These include the following:
  - Rapid Appraisal Method
  - State-wide and Regional Risk Assessments
  - Standards for engaging Traditional Owner and Aboriginal communities
  - State Policy and Planning Framework
  - Regional Growth Strategies

- Municipal Strategic Statements and heritage overlays
- The strategy suggests past infrastructure developments were undertaken in the absence of full cost-benefit analysis and that there is a need to rethink and reset the approach – yet government continues to announce significant funding for infrastructure projects before this strategy and related assessments have been done.

## **5. Measurement and evaluation**

- The flood risk metrics do not adequately reflect the strategy vision as it is silent on measures of community wellbeing, which we assume includes cultural values.
- Section 7.3 – it is inadequate to assign tangible damages to only those things that have monetary value. Biodiversity, and cultural heritage, must be acknowledged and recognised as tangible assets that are of enormous value to the community. All appraisals, risk assessments and cost-benefit analyses must incorporate these values.
- All future evaluations should consider the health of floodplains and protection of Aboriginal cultural values.

## **6. Governance and consultation**

- Traditional Owners have unique rights and interests that differentiate them from the broader community, which should be explicitly acknowledged and articulated in the document. Lumping Traditional Owners in with the broader community as one broad homogenous stakeholder group is not appropriate.
- Given the central role of CMAs in floodplain management, there should be Traditional Owner representation in key governance processes (eg. the Board - as is currently the case for primary producers under the Catchment and Land Protection Act)
- There needs to be a mechanism in place for floodplain managers (in consultation with Traditional Owner corporations) to engage with both the State and Commonwealth Environmental Water Holders - to enable surplus flows to be redirected to protect cultural heritage sites and flood-dependent flora and fauna.
- Traditional Owners should be appropriately consulted when planning floodplain management activities. The proposal to adopt the engagement processes outlined in the Victorian Waterway Management Strategy is supported.
- Processes must be established to ensure Aboriginal cultural values to be considered as part of government's emergency management activities. This would require that governance arrangements formally include an advisory role for Aboriginal cultural heritage.
- It should be explicitly stated that flood risk maps will be developed in consultation with Traditional Owner Corporations and Registered Aboriginal Parties.

## 7. Key linkages

- The strategy should link to the new emergency management arrangements in Victoria and provide explicit reference to the importance of protecting cultural values from floodwaters. The State control priorities for fire (which form the basis of the Incident Strategy and Incident Action Planning processes) includes the protection of environmental and conservation assets and makes explicit reference to their cultural values.
- Planned infrastructure developments and associated land management activities represent a good opportunity for Government to support economic development among Aboriginal communities (a key policy objective outlined in the Victorian Aboriginal Affairs Framework and the Victorian Aboriginal Economic Development Strategy) - through the employment of Traditional Owner NRM works crews and the opportunity to form joint venture partnerships with construction companies.
- The use of existing mechanisms, such as the Aboriginal Heritage Act 2006, is supported but the policies should go beyond adherence to an already mandated minimum practice. This strategy is an opportunity to redefine the relationship between natural resource managers and Aboriginal people, and should reflect this.

## 8. Technical Native Title considerations:

- The construction of a water levee would trigger a right to comment under the *Native Title Act* 1993.
- If a Land Use Activity Agreement is in place, the rights that construction of a water levee attract are less clear, but would attract a right to comment as a minimum, and potentially the right to negotiate for a Community Benefit (compensation).
- The State's Land Use Activity Agreement template includes the following as an Advisory Activity: The construction of Infrastructure (s 28 (e) of the Act), that is a Specified Public Work, or that does not require a Public Land Authorisation, other than a Major Public Work, that is, or is similar to a pump, bore or other works on a waterway. Advisory Activities are activities that potentially interfere with the Traditional Owners' rights.
- These activities are guided by Ministerial Direction and require the Decision Maker (land manager) to notify the Traditional Owner Group Entity (TOGE) of the activity, why it is required and an invitation to comment. The minimum time period for comment is 28 days, and where the TOGE does provide comment, the Decision Maker must provide a response that acknowledges receipt of the comments, actively consider the comments and where, practical, discuss those comments and possible ways to resolve the issues with the TOGE. Once a decision has been made, and where requested by the TOGE, the Decision Maker must send a subsequent letter detailing what, if any, action was taken in response to the comments received.
- It is also worth noting that the Ministerial Directions describe formal procedures for engagement between a Decision Maker and the Corporation with respect to Advisory Activities. However, the Parties agree that engagement should go beyond formal procedures and establish a relationship between Parties that is flexible enough to respect and accommodate the needs of each party.

- The Land Use Activity Agreement seeks to define Major Public Works (s 27 and s 28 (c) and (e) of the Act), and associated activities, including:
  - The construction of new educational, health or emergency service facilities, or similar;
  - A project that has been declared to be a major project, declared project or similar according to legislation, or has otherwise been enabled through an Act of Parliament
  - Any other works carried out by, or on behalf of, the Crown that will require the exclusion of the public for effective operation
  - A Specified Public Work undertaken by a Utility (s 28 (c) and (e) of the Act), including:
    - A pipeline or other water supply or reticulation facility
    - A drainage facility, or a levee or device for the management of water flows
    - An irrigation channel or other irrigation facility
- While in most cases a levee is likely to be considered an advisory activity (items 2 and 4 of Schedule 2 of the LUAA), it could be categorised as a negotiation class B activity when a utility is constructing it.

## 9. Case Studies

- The Kilter model of land management, in partnership with VicSuper, would provide a useful case study for how landscapes can be re-configured (levees taken out and floodplains reinstated) to provide an important ecosystem service (harm minimisation to surrounding urban areas) whilst retaining and potentially improving the productive capacity of the land for agriculture.
- Some wetland complexes (eg. Lake Boort) have the potential to support cultural tourism and could benefit from flood waters. It should also be noted that too much water, delivered in the wrong way at the wrong time can be a significant risk to cultural values.