

Policy approaches to mitigation - feedback summary and next steps report

Reconnecting River Country Program

December 2024





Acknowledgement of Country

The Department of Climate Change, Energy, the Environment and Water acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Contents

Definitions.....	4
Introduction	5
Purpose of report	5
Program background.....	6
Program update	6
Engagement	7
1. General program feedback.....	9
2. Communication and engagement	11
3. Mitigation principles	13
4. Flow corridors.....	15
5. Mitigation works	17
6. Easements.....	19
7. Compensation approach	22
8. Negotiation assistance	24
9. Agreement components.....	26
10. Tax implications.....	27

Definitions

Business case	A requirement of the Infrastructure NSW Gateway risk-based assurance approach for capital infrastructure projects. The Business Case informs the investment decision by the NSW Government through demonstrating that a preferred solution has been developed in accordance with government policy/strategy.
Declared stakeholder	Private Landholder Reference Group members nominated a minimum of five declared stakeholders who own/manage land identified as falling within the flow options being considered by the program (as shown on the inundation mapping).
First Nations reference group	The First Nations reference group includes representatives from Nations across the program area appointed to support transparent, equitable, fair and consistent engagement with a broad range of potentially affected First Nations communities.
IMT	Impact Management Toolbox
Just Terms Act	<i>Land Acquisition (Just Terms Compensation) Act 1991 (NSW)</i>
OEF	Options Evaluation Framework, a decision support tool which uses qualitative and quantitative information to investigate trade-offs between environmental, social, economic and First Nations outcomes under the proposed flow options.
Private landholder reference group	Three private landholder reference groups (two from the Murray, one from the Murrumbidgee) have been established to represent the views and interests of the directly affected landholders.
SDLAM	Sustainable Diversion Limit Adjustment Mechanism, which aims to achieve improved environmental outcomes using existing water for the environment.
The program	Reconnecting River Country Program
Water Management Act	<i>Water Management Act 2000 (NSW)</i>

Introduction

Purpose of report

The purpose of this report is to summarise and respond to the feedback received through specific engagement with members (and declared stakeholders) of the First Nations Reference Group, Landholder Reference Groups, and the Advisory Committee, as part of the Reconnecting River Country Program's stakeholder engagement. The report provides a program update, summarises engagement activities and the key points raised in feedback by interested parties. The report also outlines how the program will consider this feedback. This report will be provided to members and declared stakeholders and be made available on the program website.

During group meetings policy information was presented to the groups to inform program development, specifically the Impact Management Toolbox. Feedback was then requested on the development of policy approaches. This feedback was mainly gathered via formal surveys distributed to reference group members and declared stakeholders following information sessions held between June and September 2023. Important discussions captured during these sessions have also been included in this report. It is important to recognise the policy approaches presented were in draft form at the time of engagement and were for testing and refinement purposes prior to broader engagement. Some topics introduced in the first round of engagement were explored in more detail in the second round of engagement.

In this report, feedback on these topics is combined in one summary of key points, raised across both meetings. The feedback received will inform the development of these policy positions.

We would like to sincerely thank those who participated in the engagement process and provided valuable feedback. Your input is a critical part of ensuring the program is responsive to local needs and incorporates the knowledge of potentially affected communities.

Please note, some references in this report may now be outdated.

Program background

The Reconnecting River Country Program is currently in development. The program's goal is to increase the frequency rivers connect to wetlands and floodplains, to improve the health of Country in the Murray and Murrumbidgee valleys. Should the program proceed to delivery, relaxing constraints would enhance wetland and floodplain connectivity by enabling more frequent inundation of wetlands, disconnected from rivers by river regulation.

The program forms part of the NSW Government's continued commitment to delivering sensible Murray-Darling Basin Plan outcomes, informed by community feedback. The program has the potential to provide positive economic, social, cultural, and environmental outcomes for communities and ecosystems along the Murray and Murrumbidgee River systems.

A range of flow options are currently being considered, in addition to potential policy approaches to mitigation.

Program update

Some feedback received through our engagement activities requested further information on how the program would interact with Victoria, and how it would contribute to the Sustainable Diversion Limit Adjustment Mechanism (SDLAM). Since the engagement sessions, there have been some significant shifts in external factors influencing program development. This section provides an update on the program's progress during the period June – September 2023 when engagement sessions were held.

The program welcomes the Australian Government's extension of the 30 June 2024 delivery deadline for some of our major projects under the Murray-Darling Basin Plan, including the Reconnecting River Country Program. It's important to note changes to the Basin Plan and Australian *Water Act 2007* give effect to this agreement and the potential to extend the delivery deadline to the end of 2026. A further extension to 2026 would give NSW more time and flexibility to continue developing the program as it moves toward delivery.

It's important to note, the program is still in development. During the next phase, the program is shifting focus to the Murrumbidgee program area to align with the Australian Government's Basin Plan agreement announcement and consideration of Victoria's position on the Basin Plan. As part of Murrumbidgee milestones, the program will work to inform development of an Options Evaluation Framework (OEF) report by 31 May 2024. This report, in conjunction with a cost benefit analysis, will assist with informing the recommendations in the Murrumbidgee Final Business Case (subject to funding).

For the Murray, it is important to understand Victoria's position on constraints projects and any implications of the Australian Government's constraints roadmap before proceeding to final business case development. To align with the recent Australian Government's Basin Plan agreement our focus will be to scope a package of early works to achieve on-ground outcomes ahead of full program delivery in the Murray, downstream of Yarrawonga. This package of program measures will form a project plan for consideration by the Australian Government, by 31 May 2024. The plan will include eligible measures which could be delivered by December 2026.

The program is also a nominated SDLAM supply project and, if it proceeds to delivery, would contribute to the 605GL of water recovery under the Basin Plan.

Engagement

Our engagement approach is to share information and seek feedback from affected private landholders and First Nations communities to inform program development. The program's collaboration model seeks to engage and receive feedback from private and public landholders, First Nations communities and other stakeholders on key aspects of the program including (but not limited to):

- the benefits and potential impacts of flow options being considered by the program
- the accuracy of flow option extent maps through on-ground validation
- potential mitigation works and measures
- how we can improve and strengthen our stakeholder engagement and communication with communities
- landholder and community sentiment about the program.

This layered approach ensures a wide range of perspectives are incorporated into ongoing program development. In total, 10 meetings were held with affected private landholders, First Nations representatives and the advisory committee between June and September 2023. These activities are a key part of ensuring the NSW Government meets its commitment to engaging with affected communities in a manner that is transparent, fair and equitable.

The process for the development of this feedback report, including engagement activities, is shown in Figure 1.

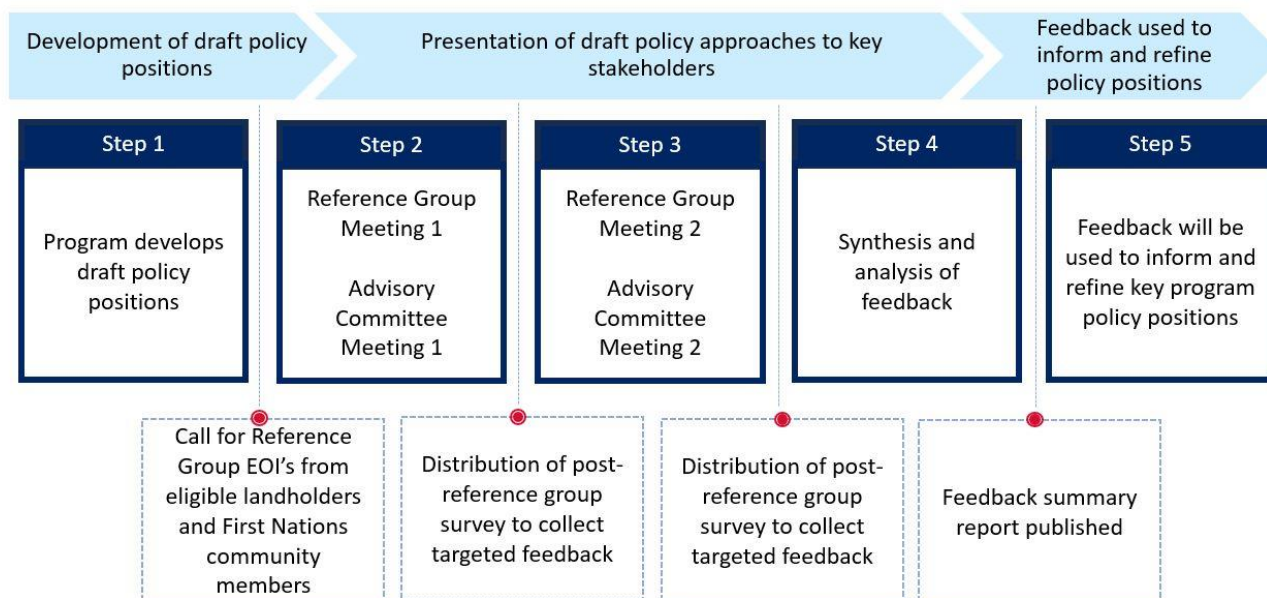


Figure 1. Engagement and feedback summary report development process.

Meetings with private landholder and First Nations reference groups were held in June and September of 2023, and with the advisory committee in July and September. The main purpose of these meetings was to present members with draft program-policy positions to inform feedback.

Surveys were sent out following these meetings to request detailed responses on the information presented during the meetings. Important discussions captured during these sessions, and comments from the advisory committee, have also been included in this report. It is important to recognise the policy approaches presented were still in draft form at the time of engagement to enable them to be tested and refined, and some topics introduced in the first round of engagement were then explored in more detail in the second round.

In this report, feedback on these topics is combined into one summary of the key points raised across both meetings. The feedback received will inform further development of these policy positions.

About the reference groups and Advisory Committee

The reference groups comprised of three private landholder groups (two in the Murray River and one in the Murrumbidgee program areas) and one First Nations group. Private landholder reference group members were selected via an application process for two groups in the Murray River area and one in the Murrumbidgee. Reference groups are made up of private landholders or First Nations representatives whose land or Country may be affected by the higher environmental flows being considered by the program. The members were asked to consult with their Nation, or five directly affected private landholders, and communicate their views.

The Advisory Committee is made up of a diverse range of members with experience and expertise in relevant fields and with extensive knowledge of the Murray or Murrumbidgee River system, towns and/or communities within the program area. To ensure all fields were represented, members were selected by a panel.

Engagement

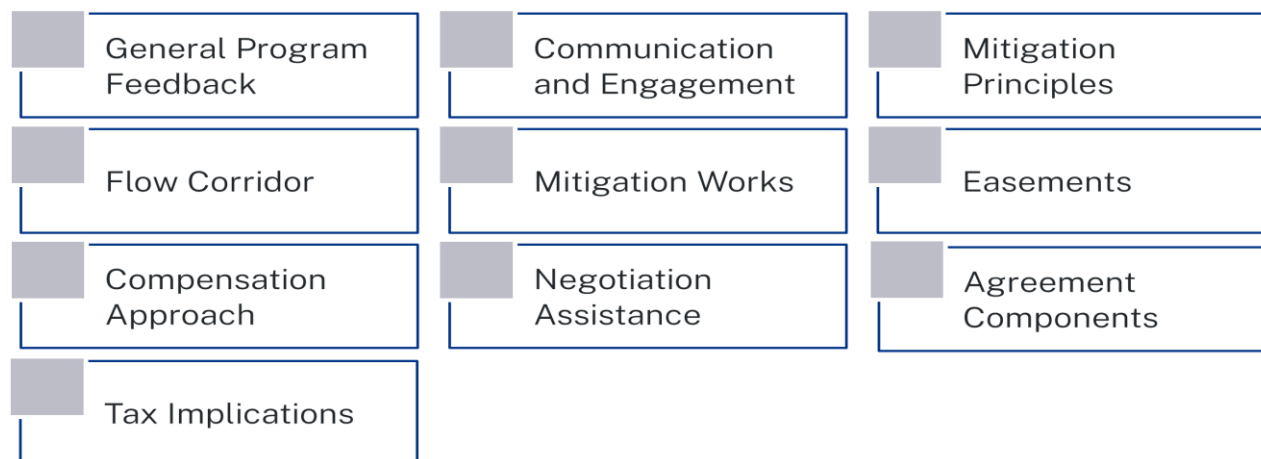
After meeting one, 14 of 15 private landholder reference group members, 29 of 75 declared stakeholders and 5 of 9 First Nations reference group members, provided feedback via a post meeting survey. After meeting two, 11 of 15 private landholder reference group members, 8 of 75 declared stakeholders and two First Nations reference group members, provided feedback via a post meeting survey.

What we heard

During meetings, and via post-meeting surveys, reference group members, declared stakeholders and the advisory committee provided a range of commentary on the information presented by program staff.

These issues have been organised into the following themes aligning, for the most part, with the way information was presented to members during meetings (with the exception of general program feedback (section 1) and communications and engagement (section 2):

Figure 2. Commentary was received on the following themes.



1. General program feedback

Most landholders reported a strong understanding of the program and recognised, if delivered, the program would lead to a range of beneficial environmental outcomes. In survey one 86 per cent of reference group members and 72 per cent of declared stakeholders found inundation mapping useful, however, respondents identified several areas of the mapping that could be improved.

What we heard	Response and next steps
<ul style="list-style-type: none"> Comments recognising the environmental benefits of the program, if successfully delivered, and comments that socio-economic impacts on communities needed to be better considered. Landholders also requested that the program consider both positive and negative mental health impacts associated with the program. Comments recognising several other benefits to landholders and the broader community from the range of mitigation works considered, including the benefits of wetlands and lakes to local economies, economic benefit to broader community, road upgrades, visual amenity and fencing/gate repairs. 	<ul style="list-style-type: none"> Feedback received on benefits and impacts of the program, including mental health, will be considered in the ongoing development of the program to inform options evaluation and business case development. Data inputs into program decision-making tools will include surveys and feedback from private landholders, reference groups, the advisory committee, on-Country assessments and the broader community.

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- All First Nations reference group members agreed on the need to increase access to important cultural areas, increase connection to Country, increase First Nations involvement in decision making and to continue to establish stronger relationships with First Nations peak bodies and organisations. The improvement of the frequency and duration of overbank flows to water Country would be a significant outcome for Traditional Owners.
-
- The program acknowledges this feedback and the significance of improved environmental flows for First Nations people.
 - The program is documenting the impacts and benefits of increased flows for First Nations people and communities within the program area.
 - First Nations engagement aims to foster respectful and collaborative engagement with First Nations communities about the program, and to record information to best represent the story of Country in relation to the program.
 - As part of data gathering, the program is conducting on-Country assessments, a broad spatial desktop assessment and further engagement with the First Nations reference group.
 - The program is also looking at opportunities to share information with reviews of relevant strategic plans including Water Sharing Plans, Long Term Watering Plans and Regional Water Strategies to ensure water dependent cultural values are consistently supported.
-
- Comments raising concerns about the accuracy of inundation mapping, the modelling assumptions and methodology, and the need for further ground truthing with landholders. Several comments were also received requesting changes to inundation map presentation and features, including the need to add the buffer, greater magnification to see more detail, a request for a feature to highlight areas which will be disconnected by higher environmental flows, DP/Lot number and boundary overlays and a request to represent the upper limit of selected flow in just one colour.
 - Further suggestions for improvements to inundation mapping, including adding sites of significance such as scar trees, Aboriginal places and shell middens, and to include which wetlands will be reached at each level.
-
- The program thanks members and declared stakeholders for the inundation mapping suggestions. All suggested improvements will be considered and incorporated where possible, noting variation in requests (some people requested buffers be shown while others preferred max. inundation extent).
 - The program is continuing to validate, ground truth and update inundation mapping and will publish refined inundation mapping in a staged process as the program progresses through development and delivery.
 - The inundation mapping on the information hub includes an explanation of the mapping and description of modelling assumptions. A modelling webinar is also available on the program's [information hub](#) webpage which provides further explanation of the modelling process and assumptions.
 - We will continue to improve our communication materials in response to feedback.
 - The program will consider the inclusion of features requested by First Nations reference group members on inundation mapping. Prior to release of this information the program will ensure compliance with Indigenous cultural and intellectual property rights and the guidelines for the ethical publishing of Aboriginal and Torres Strait Islander authors and research from those communities.
 - For on-ground engagement purposes, we will provide more detailed maps.
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- Comments requesting further detail on program governance, decision making and reference group membership.
 - In response to this feedback from meeting one, details on program governance and its decision-making framework were provided to reference group and advisory committee members as part of meeting two materials. Reference group membership will be shared across reference groups.
-
- Comments recommending looking at how social and emotional wellbeing of First Nations communities could be tied into outcomes for the broader community.
 - The program acknowledges this feedback, and notes that this is currently being captured through on-Country assessments. Social and emotional wellbeing is also being captured through a broader community social survey.
-
- Some comments on the use of good faith in the **Water Management Act 2000**, requesting clearer explanation of how it would operate and work in relation to compensation, works and easements.
 - If the program proceeds to delivery, the objective will be to reach agreement through negotiation with landholders and to achieve a flow corridor enabling river operators to deliver water for the environment.
 - Flow easements are being considered by the program for the purpose of conveying water for the environment. These flow easements would be enduring on title and established in perpetuity. Any changes to these flow easements and their terms would require re-negotiation with the landholder in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
 - While the flow easements would be registered on title, legal title and ownership of the land will remain with the landowner.
 - The creation of flow easements would be underpinned by the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*, which is a well-established pathway to establishing easements. See Sections 7 and 8 of this report.
 - The program is considering cross-jurisdictional implications of program measures.
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2. Communication and engagement

Advisory committee and reference group members raised concerns that program communication needs to be improved. It was also reported many people are still unfamiliar with the program and there is mistrust of government amongst affected landholders. There was consensus amongst survey respondents that face-to-face engagement (either one-on-one or group meetings) would be the most effective way to communicate information about the program to landholders and the wider community, and several other complementary communication methods were also supported.

What we heard**Response and next steps**

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|---|--|
| <ul style="list-style-type: none">• Comments that program visibility needs to be improved and requires simple, clear communication. There is a perception that there is still a lack of awareness of the program among the majority of the landholders and the public. | <ul style="list-style-type: none">• The program is taking on board this feedback and is undertaking a review of program language to simplify communication and seek to increase stakeholder awareness by rolling out an awareness raising campaign through a variety of mediums. |
| <ul style="list-style-type: none">• Comments requesting further information and detail on the goals, principles and ramifications of the program, and concerns around transparency. | <ul style="list-style-type: none">• The program acknowledges this feedback which will inform future engagement approaches. Reference groups and the advisory committee have been a forum to test and refine several program aspects prior to broader public-facing engagement.• We are committed to continuing engagement with stakeholders (landholders, First Nations people, public authorities and broader community) across the program area as it progresses. |
| <ul style="list-style-type: none">• Comments requesting more face-to-face engagement, including on farm visits, as well as one-on-one and group meetings. | <ul style="list-style-type: none">• The program acknowledges this feedback which will inform future engagement approaches. The program is actively expanding engagement and registrations are open for affected landholders interested in participating in property specific engagement process. |
| <ul style="list-style-type: none">• Comments suggesting the organisation of field trips for members to allow them to see the impact and benefits of water on both upstream and downstream properties.• Comments suggesting the approach to the reference group and advisory committee meetings, including providing materials in advance and giving adequate notice of meetings. | <ul style="list-style-type: none">• The program acknowledges this feedback which will inform future engagement approaches. Continuation of reference groups and the advisory committee beyond October 2023, including meeting and administrative processes and potential field visits, will be subject to review, funding and resource availability. |
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3. Mitigation principles

In survey one, the overall support for the mitigation principles was relatively low with an average score of 2.4 out of 5. A total of 29 per cent of the reference group members, and 41 per cent of the declared stakeholders, reported the principles did not meet their expectations. Key concerns related to a perceived lack of detail, and respondents noted all short and long-term impacts of the program need to be considered and compensated. All First Nations survey respondents agreed the current list of mitigation principles will achieve outcomes for First Nations people.

What we heard	Response and next steps
<ul style="list-style-type: none">• Comments suggesting mitigation principles could better meet respondent's expectations by considering and compensating long-term operations, management and impacts to assets, land, soils and weed management.	<ul style="list-style-type: none">• The program acknowledges this feedback. Communication material will be refined to more accurately reflect the purpose of the mitigation principles.• The mitigation principles have been developed through consultation with stakeholders and most recently through program reference groups and the advisory committee. In the current development phase of the program, they have been used as a mechanism for communicating and consulting on preliminary program policy positions. The principles provide standards for modelling, communication, valuation and mitigation and will guide more detailed policy development on specific aspects of the program if it proceeds to delivery.• Further detail on the process of negotiation, including the provision of mediation will be included in the draft Landholder Negotiation Scheme Regulation and guidelines which are currently being developed.• Agreements and flow easement compensation will consider long-term impacts, impacts to assets, land, soils and weeds where relevant, as described in Sections 8 and 10.• Program funding requirements oblige the NSW Government to make a once-off payment, which has considered impacts on market value including long-term impacts (see Section 7 of this report for further information on the programs approach to compensation).• The program is considering how mitigation works may form part of flow easement compensation, given a high-level of landholder concerns about ownership, operation and maintenance costs.
<ul style="list-style-type: none">• Comments on the need for further information on the principles before providing feedback.	<ul style="list-style-type: none">• The program will work to refine communications to more accurately reflect the purpose of the mitigation principles.• The program previously considered and incorporated feedback on the principles. The process of review was outlined in reference group and advisory committee meeting materials.

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- Comments provided suggestions on how mitigation principles could be improved, including:
 - negotiations being informed by independent qualified valuers
 - taking into consideration individual circumstances and risks
 - ensuring no landholder will be worse off
 - incorporating the timing, frequency, and duration of flows
 - flood risk in the mitigation principles
 - editorial changes.
 - The mitigation principles have been used as a mechanism for communicating and consulting on preliminary program policy positions. The principles provide standards for modelling, communication, valuation, and mitigation and will guide more detailed policy development on specific aspects of the program to inform program delivery (subject to funding)
 - The program will work to refine communications to more accurately reflect the purpose of the mitigation principles.
 - Should the program proceed to delivery, negotiations with landholders would be informed by independent qualified valuers.
 - In addition, landholders would be reimbursed for their independent, qualified valuation costs reasonably incurred during the negotiation period.
 - If the program moves to delivery, negotiations with landholders would be in good faith, taking into consideration landholders' individual circumstances and risks, as well as requirements for compensation on just terms (see Section 7 of this report for further information on the program approach to compensation).
 - The program will evaluate flow easement term options including the specifics of timing, frequency and duration of managed environmental flows under the program.
 - The program's mitigation principles have been developed to address the impacts associated with higher environmental flow deliveries. The flow modelling, underpinning the flow option mapping, considers a range of previous factors and unregulated tributary inflow conditions along with operational risk mitigation protocols. The resulting flow option extent maps, cover a wide range of scenarios and ensure inundation risks will be appropriately mitigated by the program.
 - Suggested editorial changes received from reference group members have also been considered and incorporated where appropriate.

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- Comments requesting the inclusion of case studies/scenarios as a way of clearly illustrating the principles in practice.
 - The program will work to refine our communications to more accurately reflect the purpose of the mitigation principles.
 - We will consider the feedback to provide more information on mitigation measures. However, the principles are high-level and intended to guide the program, not to provide specific details of application, which are addressed in guidance and communication aligned with themes in the following sections of this report.
 - We note land valuations are highly property specific and there is no 'one size fits all' approach to valuations and assessing compensation for flow easements. As such, individual case studies cannot be provided.

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- Comments from all survey respondents agreeing the current list of mitigation principles would achieve outcomes for First Nations People, and the reference group process was a good opportunity to reflect on the 'deep stuff' of the past and think about the future.
 - The program acknowledges the feedback and thanks the First Nations reference group members.
 - The First Nations reference group is exploring a draft First Nations vision statement to record their aspirations for the program.
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4. Flow corridors

Most reference group members, (79 per cent), and declared stakeholders (62 per cent) responded they understood the need to create flow corridors to support water for the environment. Concerns were raised about whether the outcomes achieved by establishing flow corridors would be fair and equitable. Respondents requested further explanation of how flow corridors would operate and provided suggestions to be considered for their establishment.

What we heard	Response and next steps
<ul style="list-style-type: none">• Comments requesting further explanation on flow corridors, relating to easements, legal and property rights, outcomes and goals, alternative options/mechanisms, buffers, and whether flow corridors would be limited to environmental flows. Comments were also received objecting to the term flow corridor applying to ‘man-made flooding’.	<ul style="list-style-type: none">• The flow corridor was introduced to reference groups and the advisory committee in meeting one, and further detailed in meeting two. Comments and questions received following meeting one, informed meeting content and materials for meeting two.• The flow corridor is a continuous corridor of riparian and floodplain land across which the river operator would be able to deliver environmental flows with confidence once landholders have had the opportunity to reach an agreement for an easement and impacts have been addressed through compensation and/or works. This would enable improved environmental benefits for rivers and floodplains compared to current river operations by establishing a more natural flow regime. The flow corridor mimics natural flow paths.• A flow easement would provide confidence for the river operator and certainty for the landholder. Legislation requires landholders be compensated on just terms for the impacts of the easement terms on market value (and other factors). Further details are provided under Section 6 of this report.• The program considered other mechanisms to secure flow corridors, including covenants and land use planning. Flow easements are the preferred option because they provide an enduring right to inundate (within the easement terms) and ensure compensation on just terms to landholders, while enabling landholders to retain ownership and use of the land at other times.• The flow easements would allow delivery of environmental flows to occur at higher flow levels than is currently feasible due to existing constraints.• Flow buffers are not a target for delivery. For the program, a buffer relates to risk mitigation and gives assurance to landholders that compensation for the flow corridor has considered the risk of flow targets being exceeded due to unforeseen rainfall and tributary inflows. Appropriate buffers are still being investigated and will require a government decision regarding a risk tolerance level.• It should also be recognised that buffers are just one approach to risk management, and river operations will also respond to forecast rainfall and tributary inflows, for example by reducing or cancelling releases when required.• River operators follow robust risk management protocols to guide water releases and would continue to do so after program delivery. Water release orders are cancelled if risks are too great.

<ul style="list-style-type: none"> Multiple comments suggesting factors the program should consider in establishing flow corridors including, but not limited to, restrictions on flow timing, flow notification, river heights pre-development or weirs and levees, easement value, capital gains tax implications and environmental impacts. 	<ul style="list-style-type: none"> The program is assessing whether easements within the flow corridor should include restrictions on environmental flow frequency, timing, duration, and extent. The compensation associated with flow easements would be estimated by a land valuation conducted on individual properties and taking into account the specific circumstances of the landholders and their businesses (see Section 7 of this report for further information on the programs approach to compensation). Addressing impacts of river development to establish a more natural flow regime is one of the objectives of the program. The program will also investigate flow notifications. We anticipate this system will be implemented before releases are made. Comments on tax implications are addressed in the Section 10 of this report.
<ul style="list-style-type: none"> Comments regarding the uncertainty of flood events, river operations and data accuracy and comments concerning the need for clear communication with landholders on flow variability and the influence of tributary flows. 	<ul style="list-style-type: none"> The program acknowledges the feedback and will continue to work to improve our communication materials in response. The program will consider developing and publishing a brief technical summary to accompany inundation mapping and provide further information on the modelling assumptions and methodology. Modelling assumes wetter conditions to provide a conservative/worst case scenario. River operations follow robust risk management protocols to guide water releases and will continue to do so after program delivery. Orders are cancelled if risks are too great. The program will assist river operators to ensure notification of environmental flow releases to landholders is timely and through appropriate communication platforms. The program will also be investigating flow notifications. We anticipate that this system will be implemented before releases are made.
<ul style="list-style-type: none"> Concerns around adequate consideration of business impacts and viability following flow delivery. 	<ul style="list-style-type: none"> Please refer to the easements (Section 6) and compensation approach (Section 7) sections of this report for further information on how business impacts will be considered.
<ul style="list-style-type: none"> Discussions concerning the potential to set up wetland conservation agreements with landholders and the Biodiversity Conservation Trust. 	<ul style="list-style-type: none"> Thank you for this valuable feedback. The program will investigate options to work with existing private land conservation bodies.

5. Mitigation works

In survey one, opinion was divided among reference group members and declared stakeholders on the effectiveness of proposed mitigation works in addressing landholder concerns about impacts of program flows. A majority (57 per cent) of reference group members were supportive, while most declared stakeholders (68 per cent) believed works would not be effective. Landholders expressed a reluctance to take on responsibility for ongoing operation and maintenance of program funded mitigation works. Landholders also emphasised the need for the factors considered in determining works to take into account individual circumstances, and the need for landholders to be equitably and fairly treated.

What we heard	Response and next steps
<ul style="list-style-type: none"> Comments recognising benefits from the proposed suite of mitigation works would likely include improved access during high flows and a range of ecosystem benefits leading to a healthier river system. 	<ul style="list-style-type: none"> Should the program proceed to delivery, the need for works will be a part of the compensation assessment in negotiations. For landholdings eligible for access mitigation works, landholders would also benefit from the access during natural / unregulated flows as well as during inundation associated with environmental flows. Current engagement with landholders is informing program development by scoping potential mitigation options for participating properties. Program wide mitigation options will be assessed in the program's final business case. Final property specific mitigation options will not be confirmed until the program moves into delivery and negotiations are complete.
<ul style="list-style-type: none"> Comments suggesting additional mitigation works should include retaining walls, bank stabilisation, the removal of trees at risk of falling into the river and additional security settings. 	<ul style="list-style-type: none"> The list of mitigation works presented during reference group and advisory committee meetings were draft for testing and we sought feedback on additional considerations. Feedback will be considered and final mitigation will be determined during landholder negotiations, in the delivery phase. This program is focused on achieving higher frequency flows for the environment. Full consideration of water and land management issues are outside of the scope of the program.
<ul style="list-style-type: none"> Comments suggesting factors considered in determining works were not appropriate as they would result in variable outcomes between communities and individual landholders. 	<ul style="list-style-type: none"> The program is considering feedback on potential works. This feedback will inform eligibility criteria and assist in determining mitigation options for landholders that align with the objectives of the program.

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- Comments providing suggestions on how factors considered in determining works could be improved, including:
 - considering site specific needs and concerns, on-site assessment and consultation
 - giving regard to landholder knowledge when decision making.
 - See above.
 - Landholder knowledge will be considered when assessing whether works are required and, if so, the design of works.
 - Views of individual landholders will be balanced against the need for eligibility criteria. The criteria aims to deliver sustainable and feasible mitigation options across the program area and achieve equitable outcomes for all stakeholders.
-
- Suggestions for alternative ways of funding works included:
 - cost sharing
 - the voluntary installation of 'lower level' mitigation works and sharing of cost savings
 - the establishment of a contingency fund to allow for additional works, at a later time as needed
 - the option to forgo works altogether in favour of in-kind contributions to landholders.
 - The program is considering the role of works, given some landholder concern about ownership, operation and maintenance costs. This feedback will inform development of eligibility principles/criteria targeted to achieve equitable outcomes, financial sustainability, and alignment with the objectives of the program. We will investigate strategies and options as part of the Murrumbidgee final business case.
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6. Easements

Survey two showed support for easements was mixed, with 37 per cent of respondents indicating they were not at all supportive, 11 per cent indicating they were somewhat supportive, 31 per cent indicating they were neutral, 15 per cent indicating they were supportive and 5.3 per cent indicating they were not sure. A total of 10 per cent of respondents indicated their view of easements had changed after considering the information provided, with 63 per cent indicating their response had not changed and 26.3 per cent indicating they were not sure whether their view had changed. Some landholders believed they had not been provided sufficient information on easements, and any impacts to landholders and to property values, to be able to provide informed feedback.

What we heard

- Comments indicating while most respondents understood why easements are the program's preferred option to create flow corridors, some still have concerns about using easements to secure the flow corridor for environmental water delivery. These included (but were not limited to):
 - concerns easements would allow public access, enable government to take control of the easement land and be used for operational flows (i.e., flows that are not water for the environment)
 - concerns around the inclusion of buffers in easements, and how buffers would be accounted for in infrastructure specifications.
 - opinions easements should not allow for flows to exceed 30,000 ML/d at Yarrawonga under any circumstances
 - concerns easements would not be able to account for changed landscapes and flow paths into the future
 - concerns around long-term protection against liability for river operators
 - a perception of a general lack of information
 - concerns easement terms might be changed in the future
 - concerns easements would undermine property rights and this would contradict mitigation principles
 - some opposition to easements and suggestions events-based agreements would be preferable.

Response and next steps

- The flow corridor is a continuous corridor of riparian and floodplain land across which the river operator would be able to deliver environmental flows, with confidence, once landholders have had the opportunity to reach an agreement for an easement and impacts have been addressed through compensation and/or works. This would enable improved environmental benefits for rivers and floodplains compared to current river operations by establishing a more natural flow regime. The flow corridor mimics natural flow paths.
 - A flow easement would provide confidence for the river operator and certainty for the landholder. Legislation requires the landholder be compensated on just terms for the impact of the easement terms on market value (and other factors).
 - As outlined in meeting materials, event-based agreements and mitigation works without easements do not provide the enduring right to inundate for river operators and are impractical to implement, with many landholders, each year.
 - If the program proceeds to delivery, all parties with an interest in the property (e.g., mortgage holders, lease holders) will need to be consulted as part of the negotiation period. The negotiation will follow processes of the Just Terms Act.
 - There are varying perspectives on how much detail is required in easement terms. Some landholders would like more detail regarding environmental water delivery while others prefer less detail. Further work is required to establish a simple and pragmatic approach to establishing easement terms.
 - River operations follow robust risk management protocols to guide water releases and will continue to do so should the program proceed to delivery and thereafter. Water release orders are cancelled if risks are too great.
 - No decisions have been made about flow options. The program will assess Murrumbidgee flow options through the Murrumbidgee final business case.
 - For the Murray, it is important to understand Victoria's position on constraints projects and any implications of the Australian Government's constraints roadmap before proceeding to final business case development.
 - The program acknowledges the feedback regarding opposition to easements from some landholders and will continue to engage with stakeholders to better understand and address concerns.
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<ul style="list-style-type: none"> Comments recognising easements are the best way to provide river operators with the enduring right to release environmental flows within the flow corridor and easements would be supported, provided all conditions and terms of agreement were adhered to. 	<ul style="list-style-type: none"> We acknowledge this feedback and note there were mixed views on flow easements. Should the program proceed to delivery, once agreements and easements are finalised, all parties would be subject to easement conditions, including river operators.
<ul style="list-style-type: none"> Feedback was received on program messaging regarding flow easements, suggesting the program could improve linkages to environmental water benefits. Suggestions also noted there needs to be an improved, simpler explanation of why the program needs to be delivered. 	<ul style="list-style-type: none"> The program is taking on board this feedback and is undertaking a review of program language to simplify communication and seek to increase stakeholder awareness through an awareness raising campaign.
<ul style="list-style-type: none"> Most respondents believed flows should be restricted to the period between late Autumn to early Spring. Some comments stated there should be no restrictions and flow timing should be determined only by good science and outcomes. Feedback was also received suggesting flexibility is required to ensure releases can address poor water quality. 	<ul style="list-style-type: none"> Through this process the complexity and diversity of views associated with timing, seasonality, frequency, and duration of flows were identified. This information will be used to inform easements terms. The program will assess the costs and benefits of flow restrictions to see if there is a restriction that both maximises the environmental benefits and minimises impacts on landholder businesses.
<ul style="list-style-type: none"> Comments received stating some landholders would be resistant to negotiating easements under any circumstances and that fear of easements should be considered a risk for the program. 	<ul style="list-style-type: none"> We acknowledge there are divergent views on easements and we are working to clarify the nature of flow easements the program is considering as a priority. The program is currently assessing landholder sentiment to inform recommendations for the final business case.

7. Compensation approach

In survey two 37 per cent of landholders indicated the draft approach to compensation was clear, while 63 per cent of survey respondents indicated the approach was not clear. Concerns were expressed there was a general lack of information provided on the compensation process and agreement terms and suggestions were provided as to how these could be improved. The program's compensation approach is currently in draft. It should be noted, the program is in the development stage. No decision has been made to proceed to delivery.

What we heard	Response and next steps
<ul style="list-style-type: none">Comments stating the draft approach to compensation will be supported if compensation amounts delivered to landholders are considered 'adequate'. Concerns noting costs to taxpayers could potentially become significant.	<ul style="list-style-type: none">A program objective will be to reach agreement through negotiation with landholders.If the program proceeds to delivery, program costs will need to be sufficient to meet the requirement to compensate impacts on just terms.Value for money principles will be used to determine appropriate program measures.Testing of the value for money of program measures will be undertaken through the final business case's cost benefit analysis.
<ul style="list-style-type: none">Comments indicating more information and consultation on potential impacts and mitigation options should be provided to landholders before the commencement of the official negotiation period.	<ul style="list-style-type: none">The program is still in the development phase and is seeking to expand stakeholder engagement to communicate the program to as many affected stakeholders as possible.If the program proceeds to delivery, compensation negotiation will involve fair and transparent engagement. Negotiation will consider each landholder's individual circumstance and provide information on the benefits and impacts of the program, together with valuation of compensation for impacts.The program is still in a development phase and has not received funding for delivery. Through stakeholder engagement the program is sharing information with landholders on proposed compensation methods. This is important to ensure transparency of the proposed approaches. The compensation offered to landholders if the program proceeds to delivery will be based on their specific property, circumstances and degree of inundation impact.The compensation valuation methodology will apply established and well-tested standards and practices as used by qualified valuers and required by the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>.

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- Comments suggesting 'one-off' payments for compensation would be considered inadequate by some landholders and the program should clearly communicate arrangements for compensation for future disturbance costs.
 - Comments suggesting the program should consider payments in perpetuity for post-event costs (e.g., fence replacement costs).
- Program funding is likely to be available for once-off payments only. In addition, program funding requirements oblige the NSW Government to provide once-off compensation on just terms, considering impact on market value and other factors. These requirements ensure future impacts are considered.
 - Feedback will help us improve communication on compensation arrangements.
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- Comments indicating further information was required on the draft compensation approach, it needs more work and questions remained to be answered. In particular, some landholders were concerned about whether compensation would be provided if an easement was not agreed upon.
- If the program proceeds to delivery, specific information will be developed for landholders. At this stage the program is still in the development phase and further work is required to refine the compensation approach. The materials provided were drafts, for testing purposes, to help refine the compensation approach prior to broader engagement.
 - The program's objective will be to reach agreement through negotiation with landholders and to achieve a flow corridor to enable river operators to deliver water for the environment. The program is considering the approach if agreement is not reached.
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- Landholders had concerns about ensuring the integrity of contractors involved in valuation and construction.
- The program will consider this feedback for future development if the program proceeds to delivery.
 - The NSW Government must abide by procurement and construction guidelines providing standards and integrity requirements for valuation and construction.
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8. Negotiation assistance

A majority of survey two respondents, (73 per cent), said the draft approach to negotiation assistance was not clear. Most respondents did not believe the approach was fair and reasonable. Respondents were concerned they were not provided sufficient information, the terms were not well defined and stated more information was needed on compensation amounts relating to negotiation costs. Respondents also requested greater clarification around the term 'reasonable' as applied to negotiation assistance for 'reasonably incurred' legal and other financial cost.

What we heard	Response and next steps
<ul style="list-style-type: none">Comments suggesting landholders should not be out of pocket at any point. Other comments requesting further clarity on the details of how payments and invoicing for valuation services, negotiation services etc., would be handled by the program.	<ul style="list-style-type: none">The qualified valuer fees and legal fees would be those reasonably incurred as a direct result of the negotiation and agreement process for establishing flow easements, should the program proceed to delivery. The NSW Government is required to pay these fees under the <i>Just Terms Act. Land Acquisition (Just Terms Compensation) Act 1991</i>.
<ul style="list-style-type: none">Comments suggesting negotiation assistance should include the provision of a detailed list of things to consider prior to participating in the negotiations process, including, legal advice, financial advice, business impacts etc.	<ul style="list-style-type: none">Further information on the approach to compensation, negotiation and options open to landholders will be made available if the program proceeds to delivery.
<ul style="list-style-type: none">Concerns over who the property valuers would be, whether they would be familiar with local issues and if they would have experience in the field.	<ul style="list-style-type: none">Property valuers are an existing field of practice with professional qualification requirements. Should the program proceed to delivery, valuers with the appropriate qualifications must be used in the program.
<ul style="list-style-type: none">Some comments noting a belief the current draft negotiation assistance, would not be 'fair' nor 'reasonable'. Comments requesting clarification around how the term 'reasonable' would be applied. Comments also stating this was primarily because they did not have enough information to be able to make informed comment.	<ul style="list-style-type: none">The proposed negotiation assistance for the program is set by the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>.Further information on the approach to compensation, negotiation and options open to landholders will be made available if the program proceeds to delivery.

What we heard	Response and next steps
<ul style="list-style-type: none"> • Comments requesting clearer explanation of the 'Just Terms Act' and how this works to protect landholders. • Comments suggesting the 'Just Terms Act' was unclear, with respondents stating they were unsure about how they were protected by the Act, and who has the final say on what is 'reasonable'? 	<ul style="list-style-type: none"> • See Section 6 of this report for further information on easements. • Further information on the approach to compensation, negotiation and options open to landholders will be made available if the program proceeds to delivery.

9. Agreement components

When asked for their thoughts on proposed agreement components, a range of concerns were raised. Respondents asked for assurance that river operators would remain accountable for flow impacts in the future and noted that this accountability is needed to ensure the river operator is always acting in the best interest of the landholder, as well as water holders and the public interest. Respondents further requested evidence that the environmental benefits of the program would outweigh the impacts caused.

What we heard	Response and next steps
<ul style="list-style-type: none"> • Comments from some landholders raising the following specific concerns surrounding the draft agreement components: <ul style="list-style-type: none"> ○ clear communication is needed on the relationship between the Compensation Agreement and the Easement Agreement ○ assurance river operators would remain accountable for future flow impacts ○ assurance the environmental benefits of the program would outweigh the impacts ○ more information is needed on the schedule of compensation payment ○ concerns the process of drafting agreements would be long and complex, potentially drawing out the negotiation process. 	<ul style="list-style-type: none"> • The program welcomes this feedback. Further details on the agreement components and compensation will be provided once these have been fully developed and should the program be funded for delivery. • The purpose of flow easements is to create an enduring right for river operators to inundate land with environmental flows up to the flow limit plus buffer (see section 4 and section 6 of this report). An agreement would include a clause stating both parties agree to enable the accompanying process of registration of an easement on title. • The program is still in development. Flow buffers are not a target for a delivery phase. For the program, a buffer relates to risk mitigation. It gives assurance to landholders that compensation, for the flow corridor, has considered the risk of flow targets being exceeded due to unforeseen rainfall and tributary inflows. Appropriate buffers are still being investigated and will require a government decision regarding a risk tolerance level. • The final business case will assess the costs and benefits of the various flow options using environmental, cultural, social and economic criteria and cost-benefit analysis. • The program acknowledges the complexities of the negotiation process and is considering options to streamline the negotiation and agreement process, if the program proceeds to delivery.
<ul style="list-style-type: none"> • Comments were received that agreement components should consider the following: <ul style="list-style-type: none"> ○ easement terms should include a flow limit of 30,000 ML/d at Yarrowonga ○ concerns whether agreements would permit government or public access ○ concerns whether the easements would be cancelled if river operator(s) breach conditions ○ preference that the program should be responsible for ongoing maintenance of mitigation works ○ monitoring requirements and processes included in the program. 	<ul style="list-style-type: none"> • The program has not decided on the preferred flow rates in the Murray or the Murrumbidgee. These flow rates will be assessed in the final business cases. • If the program proceeds, it would seek to negotiate easement terms that are simple and limited to permitting the delivery of environmental flows in the flow corridor, not agreements for public access (see section 4 and section 6 of this report). • Flow easements provide an enduring right for river operators to inundate land within the flow corridor. River operators would only be able to inundate the easement within the terms of the easement.

10. Tax implications

Respondents provided mixed views on the tax implications of the program. Some respondents strongly expressed there should be no tax implications for the landholders, whilst others expressed if there were tax implications they needed to be clearly communicated.

What we heard	Response and next steps
<ul style="list-style-type: none">• Comments requesting further information on the potential tax implications of the program, including impacts of compensation payments and tax advice costs.• Some comments stating payments to landholders from a 'forced government program' should not have tax implications and should be exempt.• Comments stating tax implications will hinder landholder support of the program.• Comments noting the chosen delivery model would have varying tax implications (e.g., whether the government delivers works directly or funds landholders to arrange delivery), and this should be considered by the program.	<ul style="list-style-type: none">• If the program proceeds to delivery landholders should seek their own tax advice, for their unique circumstances, from a qualified practitioner.• Program design will consider potential tax implications, but cannot provide tax advice, nor consider individual circumstances.
