

FORMAL SUBMISSION

Consultation Draft – Fitzroy–Derby Water Resources Management Plan: Policy and Guidance

Submitted to: Department of Water and Environmental Regulation (DWER)

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1. Introduction and Summary of Position

This submission is made in response to the public consultation on the Consultation Draft – Fitzroy–Derby Water Resources Management Plan: Policy and Guidance (the Plan), published by the Department of Water and Environmental Regulation (DWER) in April 2026.

Black Mountain Energy has a direct and material interest in water resource allocation and management within the Plan Area, specifically in relation to the Valhalla Exploration and Appraisal Project and relevant aquifer [e.g. the Liveringa aquifer within the Fitzroy subarea]. We have been engaged with the regulatory environment in this region for 7 years.

We acknowledge the importance of protecting the Fitzroy River system, recognise the cultural significance of water to Traditional Owner groups, and support a sustainable, planned approach to groundwater management in the Kimberley region.

However, we hold significant concerns regarding several aspects of this Plan as drafted. Our concerns centre on four principal issues:

- The imposition of duplicative assessment requirements within the water licensing process that replicate functions already performed under existing state and federal legislation;
- The absence of defined allocation limits for key aquifers, including the Liveringa aquifer, creating material uncertainty for investment and project planning;
- The lack of defined assessment timelines, service standards, and agency obligations, which introduces unacceptable regulatory risk for proponents; and
- Ambiguity regarding the governance, legal standing, and interaction of the proposed Fitzroy–Derby Aboriginal Water Holding with existing Native Title rights.

We respectfully request that DWER give careful consideration to the matters raised in this submission and engage with proponents to develop a more administratively efficient and investment-certain framework that achieves the Plan’s environmental and cultural objectives without unnecessary duplication of regulatory burden.

2. Duplication of Assessment Under Existing Legislation

2.1 Overview

A fundamental concern with the Plan as drafted is that the local licensing policies contained in Policy Groups 1 and 2 (Tables 6 and 7) impose assessment obligations on proponents that substantially duplicate requirements already applicable under existing state and federal legislative frameworks, specifically:

- The Environmental Protection Act 1986 (WA) (EP Act) – administered by the Environmental Protection Authority (EPA);
- The Petroleum and Geothermal Energy Resources Act 1967 (WA) (PGER Act); and
- The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act), including its water resources trigger.

The matters that DWER now proposes to assess within the water licensing process – including impacts on groundwater-dependent ecosystems (GDEs), ecological and flora/fauna surveys, subterranean fauna assessments, heritage impact assessment, and Traditional Owner engagement – are either already required under these Acts or fall squarely within the assessment mandate of those regulatory bodies.

Policy guidance 3.6 acknowledges that proponents ‘may need to refer’ under the EP Act, EPBC Act, or Aboriginal Heritage Act 1972 (WA), and that DWER ‘may be required to refer’ if the proponent does not self-refer. However, rather than establishing a clear threshold for referral, the Plan appears to position these pathways as a fallback after DWER’s own assessment process. The result is that proponents may be required to satisfy duplicative obligations across multiple agencies in parallel, with no coordination framework, no defined sequencing, and no mechanism for avoiding duplicated data collection and reporting.

2.2 Proposed Solution: Structured Interagency Referral Protocol

We submit that the most efficient and effective mechanism to achieve the Plan’s objectives – environmental protection, cultural heritage safeguarding, and informed stakeholder engagement – is through a formalised interagency referral protocol rather than through the water licensing process.

Specifically, we recommend that DWER enter into an interagency agreement providing that, upon receipt of a water abstraction licence application that meets any of the following criteria, the application will be referred to the EPA under section 38 of the EP Act prior to the licence being granted:

- The proposed abstraction is in close proximity to sensitive receptors, including groundwater-dependent ecosystems (GDEs) or declared wetlands;
- The project is associated with an unconventional gas or other technically complex resource extraction activity; or
- The application has generated significant stakeholder interest or community concern.

Under this approach, the licence would not be granted until the EPA has completed its assessment – either concluding that environmental impacts are not significant, or completing a formal assessment process. This achieves the same environmental and cultural outcomes sought by the Plan without requiring DWER’s licensing team to assume an assessment function for which we are not sure if it is resourced or structured.

This approach would also provide proponents with a well-understood, properly resourced regulatory pathway, with established processes, precedent, and professional expertise – rather than an emerging and uncertain assessment framework administered by a team whose primary function is allocation management.

3. Absence of Allocation Limits for Key Aquifers

3.1 The Liveringa Aquifer

Table 5 of the Plan sets allocation limits for a number of groundwater resources within the Plan Area. However, several aquifers of direct relevance to existing and prospective proponents have been designated ‘case-by-case’ with no allocation limit set, including:

- Canning–Liveringa (Fitzroy subarea);
- Canning–Broome (Fitzroy subarea);
- Canning–Erskine (Fitzroy subarea);
- Canning–Noonkanbah (Fitzroy subarea); and
- Fractured Rock (Fitzroy subarea).

The Liveringa aquifer is historically utilised in the Fitzroy region. The Government of Western Australia previously acknowledged a sustainable yield of approximately 10,000 megalitres per year for the Canning–Liveringa aquifer in its Water Resources Inventory (2014). The omission of any allocation limit for this aquifer in the Plan – and the absence of any reference to the previously acknowledged sustainable yield – represents a significant and unexplained departure from prior government position.

The practical consequence is that proponents with existing or proposed projects reliant on the Liveringa aquifer have no basis upon which to assess water availability, plan project infrastructure, or secure investment. A ‘case-by-case’ approach, without any published baseline allocation or assessment criteria, is not a transparent or investable framework.

3.2 Recommended Approach

We submit that DWER should, as part of finalising this Plan:

- Either set allocation limits for the Liveringa, Broome, Erskine (Fitzroy) aquifers consistent with available hydrogeological data and previously acknowledged sustainable yields; or
- Commit, with defined timelines, to completing the hydrogeological investigations required to set allocation limits for these aquifers within a specified period post-Plan finalisation, and provide interim guidance on how applications in these aquifers will be assessed in the interim.

We further request that the Plan explicitly acknowledge and reference the previously published sustainable yield estimate for the Liveringa aquifer and explain how this figure has informed (or why it has been departed from in) the current Plan.

4. Absence of Assessment Timelines and Agency Obligations

The Plan imposes extensive obligations on proponents in relation to pre-application investigations, baseline monitoring, hydrogeological assessments, ecological surveys, subterranean fauna assessments, and Traditional Owner engagement (Policies 2.1 to 2.7). In data-poor environments such as the remote Fitzroy region, satisfying these requirements may represent years of fieldwork and millions of dollars in pre-licence expenditure.

Despite these substantial obligations on proponents, the Plan contains no corresponding obligations on DWER in relation to:

- Maximum timeframes for completing licence assessments once a complete application has been lodged;

- Service level commitments or key performance indicators for DWER's licensing team;
- Defined consequences or escalation mechanisms where DWER fails to meet assessment timeframes; or
- Any obligation on DWER to indicate, at or before the pre-application stage, what information will be required to enable a complete application to be lodged.

Policy 3.4 further compounds this issue by establishing that DWER is unlikely to grant a licence for more than 3 gigalitres per year in a single application and that an incremental approach is preferred. For projects requiring volumes in excess of this threshold, this effectively mandates a staged licensing process, potentially spanning multiple assessment cycles with no guaranteed pathway, timeline, or criteria for graduating from one phase to the next.

The combined effect of extensive pre-licence requirements, no defined assessment timelines, a staged licensing approach without defined progression criteria, and assessment by a licensing team that will need to develop new skills and resourcing to administer this regime creates a framework that cannot provide proponents with the investment certainty needed to commit capital.

We request that the finalised Plan include:

- Mandated maximum assessment timeframes for standard and complex licence applications;
- A commitment by DWER to provide a pre-application scoping response within a defined period;
- Published criteria for the incremental licensing pathway, including the information required to support an application for an increased volume above the initial phase; and
- A resourcing commitment by DWER to ensure the licensing team has the expertise and capacity to administer the obligations in this Plan without placing that resourcing burden on industry.

5. The Fitzroy–Derby Aboriginal Water Holding – Governance and Legal Clarity

The Plan proposes to set aside approximately 25 gigalitres per year of available groundwater in a Fitzroy–Derby Aboriginal Water Holding (the Holding), intended to support economic development opportunities for native title holders (Policy 3.5 and Section 2.3, Table 5).

We support the policy objective of facilitating Aboriginal economic participation in water-based development. However, we raise the following concerns regarding the governance and legal framework for the Holding as currently described.

5.1 Governance Framework

Section 2.6 of the Plan states that the committee's terms of reference and membership have not been decided and that governance arrangements for the Holding will be co-developed following consultation. While we appreciate that this reflects a genuine commitment to collaborative design, the absence of a governance framework at the time of Plan release means proponents cannot assess:

- Who has decision-making authority over access to the Holding;
- What process applies to applications to access Holding water;

- What timelines apply to decisions regarding Holding access; or
- What commercial arrangements are required between a proponent and a native title holder to access Holding water.

Policy 3.5 states that the Department cannot indefinitely defer decisions on applications requiring access to the Holding but provides no timeline or criterion for what constitutes an acceptable deferral. This provides insufficient certainty for proponents who may need to factor Holding access into their project water balance.

5.2 Interaction with Native Title Rights

We raise for DWER's consideration the legal relationship between the proposed Holding and existing Native Title rights across the Plan Area. The Plan Area encompasses the country of multiple Traditional Owner groups with differing Native Title determinations and claims. The Holding is described as being for the benefit of 'native title holders', administered in consultation with the Kimberley Land Council and relevant native title holders.

If the governance and administration of the Holding are not carefully structured, there is a material risk that access rights or economic benefits associated with the Holding may be conferred on, or administered through, entities that do not accurately represent or are not coextensive with the Native Title rights of all Traditional Owner groups whose Country is affected. This could have unintended consequences for existing Native Title rights and for the legal standing of water licences granted from the Holding.

We respectfully submit that DWER should obtain clear legal advice on the interaction between the Holding and existing Native Title rights prior to finalising the Plan, and that the governance framework for the Holding should be published for further public comment before the Plan is finalised.

6. Resourcing and Capability of DWER Licensing

The obligations proposed under this Plan – including assessment of hydrogeological impacts, GDE condition, subterranean fauna, ecological and cultural significance, Traditional Owner engagement outcomes, and operating strategy compliance – require specialist expertise that is materially different from the allocation management function that DWER's licensing team has historically performed.

Historically, water licensing in this region has appropriately focused on allocation limits: ensuring that the cumulative volume of licensed entitlements does not exceed sustainable yield. The Plan now proposes to embed within that licensing function a substantially broader environmental impact assessment regime.

We are concerned that without a genuine commitment to resourcing and capability uplift within DWER's licensing team, the practical result will be:

- Protracted assessment timelines as DWER's licensing team seeks to develop expertise in areas outside its core function;
- Continued reliance on proponents to fund and coordinate technical investigations to an extent that is disproportionate to the licensing decision;
- An ongoing burden on industry to 'upskill' government through each assessment, with no institutional accumulation of knowledge; and
- Triplication of scrutiny at state level alone, with the same project assessed under the EP Act, the EPBC Act, and now the RIWI Act licensing process.

We submit that the finalised Plan should be accompanied by a published DWER resourcing and capability strategy that identifies how the Department intends to build the expertise and

staffing required to administer this Plan, and what the implications are for assessment timelines during any transition period.

7. Additional Matters

7.1 Licence Cap of 3 GL Per Application (Policy 3.4)

The Plan states that DWER is unlikely to grant a licence for more than 3 gigalitres per year in a single application. For projects with water requirements in excess of this threshold – which includes most industrial-scale groundwater users – this policy creates a staged licensing pathway with no defined criteria, timeline, or guarantee of progression. We request that DWER publish clear guidance on what information is required to support an application for additional volume following an initial phase, and commit to a defined assessment timeline for such applications.

7.2 Licence Term (Policy 4.3)

Policy 4.3 provides for a standard licence term of five years, or a term aligned with an agreed development timetable. For projects involving significant capital investment in infrastructure, a five-year licence term may be insufficient (when coupled with other uncertainties) to underwrite the investment required. We request that the Plan expressly provide for longer licence terms for demonstrably sustainable projects, with renewal processes initiated well in advance of expiry.

7.3 Pre-Licence Monitoring Obligations (Policy 2.5)

Policy 2.5 allows DWER to require baseline monitoring, including construction of monitoring bores, as a condition of licence assessment. In remote areas with limited infrastructure, this obligation can represent years of fieldwork and substantial cost – all prior to any certainty of licence grant. We request that DWER clearly articulate how pre-licence monitoring obligations will be scoped and limited. We request DWER provide a suite of monitoring standards to which groundwater, GDE, fauna and flora studies are expected to follow (nothing that referring back to EPA guidelines highlights our previous point that a suitable framework already existing in Western Australia).

8. Conclusion and Summary of Requests

We support the objective of this Plan – to manage water sustainably in the Fitzroy–Derby region in a manner that protects the river system, respects cultural values, and supports economic development. We do not submit that these objectives are incompatible with industry activity.

However, we submit that the mechanisms proposed in the Plan as drafted are not the most efficient or effective means of achieving these objectives, and that the framework as currently structured will impose disproportionate costs and uncertainty on proponents without corresponding environmental or cultural benefit.

We respectfully request that DWER give consideration to the following in finalising the Plan:

1. Establish a formalised interagency referral protocol with the EPA under the EP Act to replace duplicative assessment obligations within the water licensing process.
2. Set allocation limits for the Liveringa, Broome, Erskine, Noonkanbah, and Fractured Rock aquifers, or publish a defined timeline for doing so, with reference to previously acknowledged sustainable yield estimates.

3. Include in the finalised Plan mandated assessment timelines, pre-application scoping commitments, and defined criteria for the incremental licensing pathway.
4. Publish the governance framework for the Fitzroy–Derby Aboriginal Water Holding for further public comment prior to finalising the Plan, with clear legal advice obtained on its interaction with existing Native Title rights.
5. Publish a DWER resourcing and capability strategy for administering this Plan, with transparency on implications for assessment timelines during the transition period.
6. Provide for longer licence terms for demonstrably sustainable projects, and publish clear guidance on the 3 GL per application cap and staged licensing pathway.

We welcome the opportunity to discuss any aspect of this submission and are available to present our views at a mutually convenient time.

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