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Department of Water and Environmental Regulation

Via email: fitzroyderbywaterplanning@dwer.wa.gov.au

CC: Hon Don Punch MLA, Minister for Water
Minister.Punch@dpc.wa.gov.au

Dear Water Planning Team and Minister Punch

Submission on Consultation draft – Fitzroy-Derby water resources management plan: policy and guidance

Joombarn-buru Aboriginal Corporation (JBAC) welcomes the opportunity to provide a submission on the Consultation Draft – Fitzroy-Derby Water Resources Management Plan: Policy and Guidance.

JBAC is the Prescribed Body Corporate representing the Joombarn-buru Native Title Holders. Our determination area is located approximately 70 kilometres north-east of Broome and encompasses significant cultural landscapes, waterways, wetlands and groundwater systems that sustain our people, culture and Country.

Water is central to our identity, cultural obligations and connection to Country. It supports our cultural practices, sacred sites, biodiversity and future generations. Any decisions regarding water management must recognise and protect these values.

The Fitzroy-Derby water plan could have a significant impact on our water, our communities and our region. We must take a precautionary, considered approach to make sure our water stays healthy. Healthy water and healthy Country underpin everything else.

The 61 Traditional Owner recommendations developed through the 2025 engagement process between DWER and Kimberley Traditional Owners represent a comprehensive body of work that clearly articulates Traditional Owners' priorities for the draft water plan and future water management in the Kimberley.

The draft water plan does include some positive elements, such as no further licensing of surface water, no dams, and an incremental approach to licensing. We welcome these measures. However, most of the Traditional Owner recommendations from 2025 have not been taken up by the government at this stage. We have significant concerns about many aspects of the draft plan. Changes must be made so that the final water plan provides stronger outcomes for Country and Traditional Owners.

Our main issues and concerns with the draft plan are discussed in the rest of this submission.

1. Limited support for Traditional Owner recommendations

The government has fully adopted only a few of the 61 Traditional Owner recommendations from 2025. The decision not to adopt more of the Traditional Owner recommendations is disappointing and appears

inconsistent with the priorities expressed by Kimberley Traditional Owners throughout the engagement process. We note that there are also some legal barriers under the *Rights in Water and Irrigation Act 1914*.

The Traditional Owner recommendations from 2025 provide strong guidance and detail to government about what Traditional Owners want to see in the draft plan and in broader water management. The government should review the recommendations and make best efforts to adopt them, including by working with the Traditional Owner Working Group to incorporate the recommendations into the final water plan and progress their implementation.

2. Allocation limit must reflect the precautionary principle

The draft plan includes a groundwater allocation limit of 75.7 GL per year, which reflects about 41 per cent of the estimated recharge of the three main aquifers (Wallal, Erskine and Grant-Poole aquifers) – noting, however, that water is already being allocated from other aquifers.

In the 2025 recommendations, Traditional Owners said the allocation limit should be no more than 40 per cent of the estimated recharge, conditional on: the other Traditional Owner recommendations being adopted; and a commitment from DWER to review and improve assessments of aquifers' hydraulic properties, and estimates of recharge and long-term sustainable yields.

However, government has not supported most of the Traditional Owner recommendations, and without all the protective measures Traditional Owners have recommended, it is not clear that the limit in the draft plan is a precautionary limit.

It is critical that the allocation limit reflects the precautionary principle and the public interest. Scientific knowledge about groundwater in the plan area is low. We are concerned that there is too much uncertainty in the recharge estimates that have been used as the basis for the allocation limit in the draft plan. We are also concerned that there is too much uncertainty about the impacts of increased groundwater extraction.

3. No decision-making role for Traditional Owners

Traditional Owners have consistently called for shared decision-making on water. Under both the WA Aboriginal Empowerment Strategy and the National Agreement on Closing the Gap, the WA Government has made commitments to partnerships and shared decision-making with Aboriginal people. The water plan is an opportunity to put into practice the government's commitments and ensure they are not just empty promises.

In the 2025 recommendations, Traditional Owners recommended a statutory committee with shared decision-making authority for the plan area that is made up of at least 50 per cent Traditional Owners. Traditional Owners also recommended the establishment and operation of a regional PBC body to be involved in water planning, licensing and management.¹

The draft plan does not give Traditional Owners any role in decision-making. Instead, it proposes an advisory committee that would be made up of different stakeholders, including Traditional Owners. The idea of an advisory committee was not supported at the water forum in 2023 or by the Working Group in 2025.

The final water plan should give effect to Traditional Owners' strong and ongoing calls for genuine shared decision-making.

4. Not enough autonomy for Traditional Owners to determine and protect cultural heritage

The draft plan acknowledges Traditional Owners and their strong cultural connection to lands and waters. However, it does not go far enough in giving Traditional Owners autonomy to determine and protect cultural

¹ See recommendations 3.1.1, 4.1.1 and 4.1.2 from the 2025 Traditional Owner recommendations.

heritage. Only Traditional Owners – not DPLH or other government departments – can determine what is and is not cultural heritage and how impacts to cultural heritage can be minimised and avoided.

The water plan should state that all watercourses, wetlands and springs are assumed to be Aboriginal cultural heritage, unless advised otherwise by Traditional Owners. Under the water plan, licence applications that will impact cultural heritage should not be approved, unless cleared by Traditional Owners.

Traditional Owners are the primary authority on cultural heritage within their Country. Government agencies and proponents must recognise that cultural values associated with water are often interconnected, living and intangible, and cannot always be identified through desktop assessments or standard heritage surveys.

5. No requirement or process for best-practice engagement with Traditional Owners

The draft plan does not include a process for best-practice engagement between water licence applicants and Traditional Owners. A clear process for best-practice engagement with Traditional Owners must be designed with Kimberley Traditional Owners and included in the final plan. DWER should work with the Traditional Owner Working Group, the KLC and PBCs to co-design a best-practice engagement process.²

6. Aboriginal Water Holding is less than 50 per cent of the total water available and lacks a development package

The draft plan proposes an Aboriginal Water Holding (AWH) of approximately 25 GL per year. This will be the first time an AWH has been developed in the Kimberley, and Traditional Owners will need time and support to consider how the AWH would work in practice. However, the government has not yet made a clear commitment to funding the development and implementation of the AWH. This is essential.

The draft plan's proposed volume of approximately 25 GL per year for the AWH is less than what Traditional Owners recommended last year, which was 50 per cent of the general component. The plan should set the AWH at 50 per cent of the general component. It is also critical that under the water plan, Traditional Owners have the right to choose to use the water in the AWH or leave it in the system, without penalty or loss of the holding.³

7. Baseline data requirements are not robust enough

Having strong baseline data about the health of Country before any water extraction occurs is a priority for Traditional Owners. This was reflected in the 2025 recommendations, which stated that proponents should provide five years of baseline data and be required to collect a robust dataset before they apply for a licence.⁴

Under the draft plan, there is a possibility that DWER will request a licence applicant to do baseline monitoring, but it is not a requirement, and there is no minimum timeframe specified. This is concerning, as a robust baseline dataset is critical for assessing change and impacts over time. The plan should require applicants of licences above a set volume to carry out a minimum of two years, and ideally five years, of baseline monitoring.

As well as baseline monitoring for individual licence applications, it is critical that DWER improves the coverage and quality of its regional groundwater monitoring within and around the plan area. Contaminated water is a significant problem in remote Aboriginal communities and a human rights issue. DWER's monitoring must test for contamination, and any contamination must be rectified as a matter of urgency.

8. No transparency for Traditional Owners on licences and reports

The draft plan encourages but does not require licence holders to provide reports relating to their water licence to relevant native title parties. This lack of transparency means that if proponents do not agree to provide reports

² See recommendation 3.4.7 in the 2025 Traditional Owner recommendations.

³ See recommendations 3.3.2, 4.2.1 and 4.2.2 in the 2025 Traditional Owner recommendations.

⁴ See recommendation 3.4.14 in the 2025 Traditional Owner recommendations.

or copies of licences, Traditional Owners will lack important information about what is required under a licence and what impacts extraction may be having on Country.

DWER should provide copies of licences, including conditions, to native title parties (noting this may require law reform), and licence applicants or holders should be required to provide relevant native title parties with copies of impact assessments, monitoring data and other scientific reports relating to water licences or licence applications (e.g. hydrogeological, environmental and cultural heritage reports).⁵

9. 'May' not 'must' language provides DWER with a high level of discretion in licensing

The language used in the draft plan tends to be 'may' rather than 'must' or 'will'. This language means that DWER is not *required* to consider Aboriginal cultural heritage or Traditional Owner interests in water when making licensing decisions. This vague language gives DWER and the Minister a high level of discretion in the licensing process, and it gives Traditional Owners and other stakeholders little certainty about what a licence applicant or holder will have to do to get and maintain their licence. Where possible, the draft plan should be amended to create mandatory considerations, which would give Traditional Owners more certainty and stronger opportunities for judicial review of licensing decisions.

Because of the language used, the plan gives regional licensing officers significant discretion in how they implement the plan's policies and guidance. We understand that DWER's regional licensing officers will have 'work instructions' about how they will implement the plan in practice. It is crucial that Traditional Owners have input into these work instructions.

10. Need for improved monitoring under the plan

In June 2025, the WA Auditor General released the performance audit report *Regulation of water licences*. The report is critical of DWER's monitoring and enforcement of water licences, finding that DWER does not understand if licence conditions are being complied with or how much water is being used.

With these findings in mind, strong monitoring and enforcement under the water plan is critical to ensure licence holders are meeting their licence conditions and any adverse impacts are identified and addressed. Self-monitoring by licence holders is a significant concern, given the inherent conflict of interest. There must be a move towards independent monitoring.

It is also essential that cultural indicators are considered when monitoring water extraction and the health of Country across the plan area. The draft plan mentions cultural indicators, but more discussion is needed on how to include these into licensing and monitoring. The draft plan does not require DWER or licence holders to involve Traditional Owners in monitoring. DWER should work with the Traditional Owner Working Group, the KLC and PBCs to develop an implementation plan to embed cultural indicators and cultural monitoring in water licensing and monitoring processes.

The Traditional Owner recommendations from 2025 include many measures aimed at strengthening monitoring of water licences and water across the region, including through cultural monitoring and ranger involvement in water monitoring.⁶ The government should review these recommendations and commit to partnering with Traditional Owners to implement them.

Traditional Owner Ranger Programs should be adequately funded and supported to undertake cultural and environmental monitoring activities across the plan area. Rangers provide a practical and culturally appropriate mechanism for ongoing monitoring, compliance observations and the collection of environmental and cultural data, while supporting local employment, skills development and community capacity building.

⁵ See recommendations 3.4.6 and 3.5.4 in the 2025 Traditional Owner recommendations.

⁶ See recommendations 3.5.1-3.5.3, 4.4.1 and 4.4.4-4.4.8 in the 2025 Traditional Owner recommendations.

11. Need for law reform

WA's water laws are outdated and not fit for purpose – the main law regulating water licensing and management in WA, the *Rights in Water and Irrigation Act 1914*, was created over 100 years ago. Under that law, Traditional Owners and native title parties cannot seek merits review of licensing decisions, but proponents can. Some of the limitations in the draft water plan are because of the current water laws.

WA urgently needs new, best-practice water laws that incorporate best-practice water planning and management frameworks, recognise Traditional Owner rights in water and require Traditional Owner involvement in planning and decision-making.

Before new water laws are in effect, the government should make changes to the current laws to ensure native title and cultural heritage are relevant considerations in water licensing and to give native title parties a right of review in the State Administrative Tribunal for licence decisions.⁷

12. Recognition of Native Title Rights and Interests

The draft plan does not adequately recognise the role of Prescribed Bodies Corporate as the legally recognised representatives of native title holders.

PBCs should be formally recognised as key stakeholders in water planning, licensing, monitoring and compliance processes. Adequate funding should also be provided to support PBC participation in water governance and management activities.

Without appropriate resourcing, PBCs are placed at a disadvantage when engaging with increasingly complex water planning and licensing processes.

Resourcing should include funding for technical advice, legal support, participation in decision-making processes, and involvement in monitoring and compliance activities.

Conclusion

This plan is an important opportunity to ensure that water and Country are looked after into the future. We must not repeat the mistakes of overallocation and mismanagement that have occurred in other parts of WA.

The Fitzroy-Derby Water Resources Management Plan must do more than manage water extraction. It must recognise and protect the cultural, environmental and economic interests of Traditional Owners and establish genuine pathways for shared decision-making.

We urge the WA Government to work in partnership with Kimberley Traditional Owners to revise the draft plan, implement the Traditional Owner recommendations from 2025, and develop a water management framework that safeguards Country for future generations.

Yours sincerely



Kylie Gibson



Joombarn-buru Aboriginal Corporation

⁷ See recommendations 5.1.2 and 5.1.3 in the 2025 Traditional Owner recommendations.