



**KIMBERLEY
LAND COUNCIL**

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

**Submission to the Department of Water and
Environmental Regulation**

30 June 2026



About the Kimberley Land Council

The Kimberley Land Council (**KLC**) was formed in 1978 as a political land rights organisation. Today, the KLC has grown to become the peak Indigenous body in the Kimberley region working with Aboriginal people to secure native title, conduct conservation and land management activities and develop cultural business enterprises.

Based in the Kimberley region of northern Western Australia, the KLC operates across an area celebrated for its enduring Aboriginal culture and heritage, which stretches back more than 65,000 years. As the native title representative body for the region, the KLC has achieved native title recognition across 97 per cent of the Kimberley. The KLC works with native title prescribed bodies corporate (**PBCs**) to build capacity, strengthen governance and create economic development opportunities.

The KLC has offices in Broome and Kununurra, as well as small satellite stations in remote communities that support Aboriginal ranger teams. The KLC is one of the largest employers in the region, with around 150 permanent staff.

The KLC's mandate is driven by its strong membership of Kimberley Aboriginal people, supported by a diverse and regional Representative Council and delivered by a strong Executive Board of Directors. Guided by our vision of a culturally strong, united, and thriving region led by Kimberley Aboriginal people for generations to come, our mission is to work with and for Kimberley Aboriginal people to get back Country, look after Country and get control of the future.

In practice, the KLC works across several interconnected areas: supporting native title and agreement-making, strengthening governance and decision-making for Traditional Owner groups, caring for Country through ranger programs and land management, and creating pathways for cultural, social and economic development. This work helps ensure Kimberley Aboriginal people can continue to protect Country, uphold culture and shape their futures.

Despite the profound changes brought by colonisation, Kimberley Aboriginal people have resisted, survived, and adapted, maintaining deep connections to Country and culture.

THE KIMBERLEY: A SNAPSHOT

423,000km²

TWICE THE SIZE OF
VICTORIA

47%

ABORIGINAL AND/OR
TORRES STRAIT ISLANDER
POPULATION

97%

COVERED BY NATIVE TITLE
DETERMINATIONS

11

INDIGENOUS PROTECTED
AREAS COVERING 13
MILLION HECTARES

33

NATIVE TITLE PBCS

22

ABORIGINAL
RANGER GROUPS

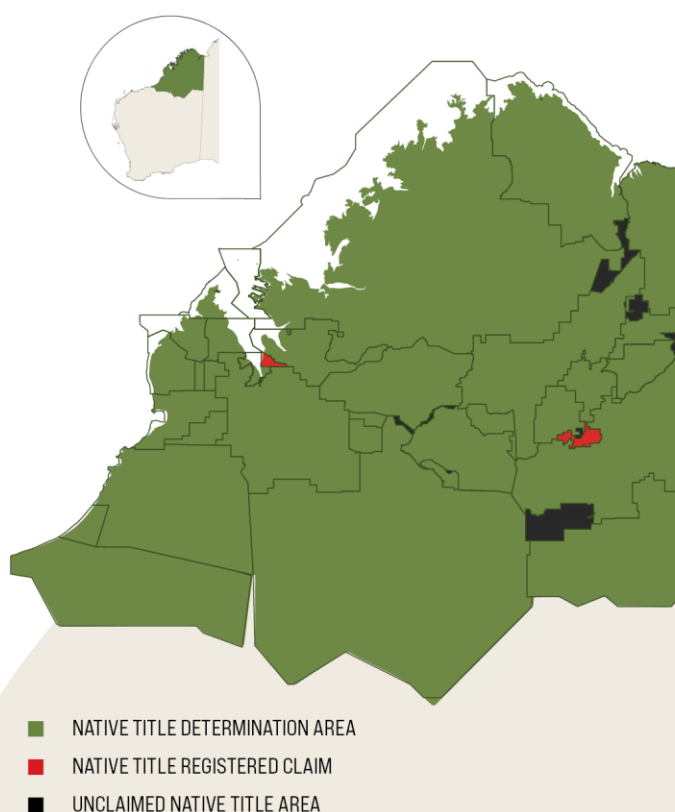




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Executive Summary

1. The KLC welcomes the opportunity to provide a submission to the Department of Water and Environmental Regulation (**DWER**) on the *Consultation draft – Fitzroy-Derby water resources management plan: policy and guidance (draft plan)*.
2. The KLC's position on the draft plan is informed by fundamental issues of importance to Kimberley Traditional Owners with respect to water: Traditional Owners' unique relationships to and understandings of water; the need for genuine partnership and shared decision-making between the Western Australian Government (**WA Government**) and Kimberley Traditional Owners; the need for water law reform; and the need for water planning to be considered in the context of regional development and a management plan. The draft water plan does not address these foundational issues.
3. The KLC does not endorse the draft plan as the optimal model for water planning and management in the Fitzroy-Derby area. The KLC and Kimberley Traditional Owners ultimately seek a water planning and management framework that centres Traditional Owner understandings of water and is underpinned by reformed water laws that recognise Traditional Owner rights in water and provide Traditional Owners with shared decision-making authority. The KLC provides its comments on the draft plan in this context.
4. The Traditional Owner recommendations developed through last year's engagement process between Kimberley Traditional Owners and DWER (**2025 recommendations** – see Appendix A), as facilitated by the KLC, provide strong guidance to government about what Traditional Owners want to see in the plan and in broader water management. The 2025 recommendations remain a standing body of work, and the recommendations in this submission reinforce and build on these recommendations.
5. The KLC acknowledges positive aspects of the draft plan, including the intent to embed Aboriginal interests, cultural values and cultural heritage in the water licensing process and the commitment to no further surface water take and no dams on the Martuwarra Fitzroy River and its tributaries.
6. However, the KLC and Kimberley Traditional Owners have significant concerns about the draft plan. The following are priority issues for Traditional Owners, discussed in more detail in the submission, that must be reflected in the final plan.
 - a. Traditional Owners must have a decision-making role in water planning, licensing and management.
 - b. The allocation limit must reflect the precautionary principle, the Derby Peninsula requires a clear transition plan, and surface water must be proclaimed and regulated across the whole plan area.
 - c. The plan must recognise that only Traditional Owners can determine cultural heritage and highlight the risks of impacting cultural heritage without Traditional Owner consent.
 - d. The plan should include a process for best-practice engagement with Traditional Owners that is co-designed with Traditional Owners.
 - e. The Aboriginal Water Holding must be set at 50 per cent of the general component and requires a development package.
 - f. Baseline data requirements must be more robust.
 - g. Traditional Owners require increased transparency and information about licences.



- h. 'May' not 'must' language in the plan is problematic and provides DWER with a high level of discretion in licensing.
 - i. Monitoring under the plan must be improved.
 - j. The *Rights in Water and Irrigation Act 1914* (WA) (**RiWI Act**) should be amended as soon as possible, prior to comprehensive law reform, to provide native title parties with a right of merits review of licence decisions, specify Aboriginal interests, cultural values and cultural heritage as relevant considerations, and regulate floodplain harvesting and other currently unlicensed water take.
 - k. The plan must provide for Aboriginal community water supply over the long term.
 - l. Climate change needs to be more strongly considered across the plan area.
7. Healthy water and healthy Country are the foundation of human health, cultural practice and a strong economy. The Kimberley must not be subject to the mistakes of overallocation and water mismanagement that have occurred in other places in Western Australia and nationally.
8. The KLC urges DWER and the WA Government to adopt in the final water plan the 2025 recommendations and the recommendations set out in this submission. The WA Government should recognise the invaluable and irreplicable knowledge held by Kimberley Traditional Owners on water and the opportunities presented by a partnership approach with Traditional Owners. The KLC seeks a commitment from government to a genuine partnership with Kimberley Traditional Owners to ensure the long-term health of Kimberley waters for the benefit of all Western Australians.



Summary of Recommendations

1	Establish a formal partnership with Kimberley Traditional Owners to identify, invest in and develop appropriate legal and policy mechanisms for shared decision-making in relation to water planning, water licensing and ongoing monitoring and compliance.
2	Establish a Water Resources Council under Part IIA of the <i>Water Agencies (Powers) Act 1984</i> (WA) to enable the creation of statutory water allocation plans.
3	Adopt recommendation 5.1.1 from the 2025 recommendations: Replace Western Australia's water laws with new 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. These new laws should be developed in consultation with key stakeholders, including Traditional Owners.
4	Adopt recommendation 5.2.1 from the 2025 recommendations: Deliver on the government's 2023 commitment of a process to develop a Fitzroy catchment management plan, including land-use and economic development. This plan should be developed in collaboration with Traditional Owners.
5	Support the KLC to develop and deliver a Kimberley Aboriginal Economic Development Strategy to drive regional economic development and support Indigenous-led industry development, including via funding for PBCs to identify and map economic development opportunities on the Indigenous estate.
6	Retain and strengthen in the final plan the aspects of the draft plan relating to Aboriginal interests, cultural values, cultural heritage, cultural indicators and cultural outcomes, in line with the recommendations in this submission and the 2025 recommendations.
7	Confirm in the final plan, and in legislation, the position that the Fitzroy River and its tributaries will not be dammed and no additional surface water entitlements will be granted.
8	Retain in the final plan all supported 2025 recommendations.
9	Review the 2025 recommendations not yet fully supported and make best efforts to adopt them.
10	Adopt recommendation 3.1.1 from the 2025 recommendations, using Part III, Division 3C of the RiWI Act: Create a statutory committee with shared decision-making authority for the plan area that is comprised of at least 50 per cent Traditional Owners, and plays a decision-making role in licence assessments.
11	If an advisory committee is established under the water plan (not preferred): a. Co-design the terms of reference with Traditional Owners; and b. Allocate appropriate time and resources to co-design and consultation processes with Traditional Owners.
12	The terms of reference for an advisory committee should include, but not be limited to, the following: a. The committee should be comprised of at least 50 per cent Traditional Owners recognised in the plan area. b. The committee's purpose should include making recommendations in relation to water licensing decisions, alongside review of the plan and allocation limits. c. The Minister and/or DWER, as relevant, should report to the committee on all licensing decisions and provide reasons to the committee about why the committee's recommendations are supported or not, as the case may be.
13	Include the committee's recommendations in respect of water licensing decisions as a mandatory relevant consideration in DWER's assessments.



14	Adopt in the final plan a more precautionary groundwater allocation limit than the 75.7 GL in the draft plan.
15	Include in the final plan a transition plan for the Derby Peninsula that includes a clear timeframe and triggers or thresholds for action (i.e. movement of the Water Corporation bores) so as to avoid negative impacts on cultural and environmental values.
16	Proclaim all surface water within the plan area under the RiWI Act so that section 5C of the RiWI Act applies.
17	Amend the draft plan to state that all water places – including watercourses, wetlands, springs and groundwater – are to be considered Aboriginal heritage places for licensing purposes, unless advised otherwise by Traditional Owners.
18	Replace the reference to the Department of Planning, Lands and Heritage in local licencing policy 1.1 with a reference to Traditional Owners.
19	Amend the draft plan so that licence applications that will impact cultural heritage will not be approved, unless proponents have reached agreement with Traditional Owners, preferably through a Heritage Protection Agreement.
20	Adopt recommendation 3.4.7 from the 2025 recommendations: The plan should set out a best-practice consultation process for licence applicants and holders to follow when consulting with Traditional Owners. This consultation process should be developed before the release of the final plan, in partnership with the KLC and Kimberley Traditional Owners.
21	Specify in the plan that consultation and engagement with Traditional Owners should occur through native title parties (i.e. PBCs).
22	Adopt recommendation 3.3.2 from the 2025 recommendations: Create an Aboriginal Water Holding of 50 per cent of the general component: the total water volume for allocation, including water already allocated but excluding water for community use.
23	Adopt recommendation 4.2.2 from the 2025 recommendations: To support the creation and implementation of the Aboriginal Water Holding, provide: a. Adequate time and funding for Traditional Owners to explore appropriate governance and management to ensure fair and equitable access; b. Adequate funding to implement the holding; and c. Adequate funding to support Traditional Owners' access to groundwater.
24	Amend the draft plan to state that DWER will not grant a licence from the Aboriginal Water Holding unless approved by Traditional Owners, in a manner to be determined as the structure and functionality of the Aboriginal Water Holding is developed.
25	Require in the plan baseline monitoring of at least two years, and ideally five years, for licence applications subject to H2 and H3 hydrogeological assessments.
26	Provide in the plan more guidance on what monitoring will be required of applicants in different circumstances.
27	Monitor community water supply for contamination and rectify any contamination as a matter of urgency.
28	Remove local licensing guidance 4.4, 4.5 on page 27 of the draft plan and replace with the following local licensing policy: o <i>4.8 The Department will include a condition that all monitoring data be provided to any relevant native title party/ies and the KLC for review annually.</i>
29	Amend the Regulations to require all water licence applications, renewals or amendments (including those with allocation volumes under 100,000 KL) relating to mining, fracking and irrigated agriculture activities to be advertised.



30	Amend the draft plan to require notification to native title parties and the KLC once an application or renewal has been advertised.
31	Establish a specific future act process for the grant of water licences, similar to what has been negotiated under the Tjiwarl Palyakuwa ILUA.
32	Amend local licensing policies 1.1 and 2.2 in the draft plan as follows: 1.1. <i>Without limiting the matters that may be relevant, the Department will consider the following as relevant in the Plan Area when assessing applications....</i> 2.2 <i>The Department will require the applicant to provide further information, within a specified time, regarding how an application may affect Traditional Owners' water-related rights, interests, cultural values and heritage. This may include evidence that the applicant has consulted with the relevant native title party/ies...</i>
33	Enable Traditional Owners to have input into the practical instructions that will guide DWER licensing officers' implementation of the water plan.
34	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.
35	Commit to a public report on the implementation of the plan and its monitoring and evaluation results five years after the final plan is published.
36	Move towards independent monitoring of water abstraction and licence conditions, rather than relying on self-reporting by proponents, and ensure DWER is appropriately resourced to undertake regular on-ground compliance activities.
37	Adopt the 2025 Traditional Owner recommendations regarding monitoring of water licences and regional monitoring (3.5.1-3.5.3; 4.4.1, 4.4.4-4.4.8).
38	Before new water laws are in effect, amend the RiWI Act to. a. make Aboriginal rights and interests in water, cultural values and cultural heritage relevant considerations in water licensing decisions under clause 7(2), Schedule 1 of the RiWI Act. b. expand section 26GG(2) of the RiWI Act to give native title parties the right to apply to the State Administrative Tribunal to review licensing decisions. c. enable floodplain harvesting to be regulated as a licensable activity requiring a section 5C licence. d. remove section 5 of the Act such that the taking of water from all wetlands and springs becomes a licensable activity under section 5C.
39	Project population growth at least 30 years into the future and reserve water for Aboriginal communities accordingly.
40	List water reserved for Aboriginal communities in Table 5 in the plan, not only in the methods report.
41	Ensure the plan considers climate change projections and prioritise data collection to build models for how climate change may impact relevant factors such as groundwater recharge, streamflow and flooding.



Foundational issues

9. Before making direct comment on the draft plan, it is critical to consider the foundational issues that inform the KLC's position:
 - a. Kimberley Traditional Owners' relationships to and understandings of water
 - b. Partnership and shared decision-making
 - c. The urgent need for water law reform
 - d. The need for water planning to be considered in the context of regional development and a management plan.
10. Kimberley Traditional Owners have raised these foundational issues in advocacy on water for decades, including through the 2025-26 engagement process with DWER on the draft plan. Ultimately, these issues are not (and, in some cases, are not able to be) adequately recognised or reflected in the draft water plan, in its current form and as it sits within the current deficient legal framework. The KLC's feedback on the draft plan should be viewed in the context of these foundational issues, which are discussed in detail below.

Kimberley Traditional Owners' relationships to and understandings of water

11. Water, in all its forms, is a central part of life, law and custom for Kimberley Traditional Owners. Under Aboriginal customary/First Law in the Kimberley, which is underpinned by extensive bodies of knowledge and associated with custodial rights and responsibilities, water has a right to life and to its own natural movement.¹
12. One of the region's most prominent bodies of water is the Martuwarra Fitzroy River – the longest river in the Kimberley, with a catchment of around 94,000 square kilometres. Martuwarra is highly significant to many Traditional Owner groups, both as a traditional means of sustenance and as a key tenet of their foundational beliefs and law. The river is the longest registered Aboriginal heritage site in Western Australia.
13. As well as surface water, there is a rich and well-documented cultural system attached to groundwater within the Martuwarra Fitzroy River catchment area, primarily associated with the presence and movement of the creator/ancestor, the Rainbow Serpent, in aquifers, tunnels, springs and permanent waterholes fed by underground water.²
14. The outstanding significance of the Martuwarra and other water sources to Kimberley Traditional Owners, and to Australia as a nation, is recognised in the West Kimberley National Heritage listing:³

Within the Fitzroy River catchment there are four distinct expressions of the Rainbow Serpent tradition. In the *jila-kalpurtu* domain of the Fitzroy catchment on the northern edge of the Great Sandy Desert, water flows are principally

¹ A Milgin et al., '[Sustainability crises are crises of relationship: Learning from Nyikina ecology and ethics](#)', *People and Nature*, 2020, 2(4), pp 1210-1222; M RiverOfLife et al., '[Living waters, Law first: Nyikina and Mangala water governance in the Kimberley, Western Australia](#)', *Australasian Journal of Water Resources*, 2021, 25(1), pp 40–56.

² Kimberley Land Council, *Annotated bibliography on the cultural significance of groundwater in the Martuwarra/Fitzroy catchment*, Internal document, May 2025.

³ Commonwealth of Australia, *Special Gazette - Inclusion of a place in the National Heritage List: The West Kimberley*, No. S132, 31 August 2021, pp 15-16.



underground and the Rainbow Serpent (kalpurru) is said to exist in the underground structure of the channels, linking excavated waterholes and other water sources of significance. Places like Kurrpurrngu, Mangunampi, Paliyarra and Kurungal are exemplars of this expression of the Rainbow Serpent.

The phenomenon of *Galaroo*, on the other hand, is linked to flowing surface water, in the form of major rivers, and to long and deep permanent waterholes in broad river channels, like Geikie Gorge (*Danggu*). The Rainbow Serpent of the Wanjinna Wunggurr belief system, known as Wunggurr, is typically found in discrete pools of water and is also associated with the sea and with Wanjinna Creator Beings at painted sites and in religious narratives. The upper Hann river is an exemplar of this aspect of the Rainbow Serpent tradition, while the Woonyoomboo-Yoongoorroonkoo narrative of the lower Fitzroy primarily tells the story of the creation of the lower Fitzroy River and its floodplains and its links to the sea.

The Fitzroy River and a number of its tributaries, together with their floodplains and the jila sites of Kurrpurrngu, Mangunampi, Paliyarra and Kurungal, demonstrate four distinct expressions of the Rainbow Serpent tradition associated with Indigenous interpretations of the different ways in which water flows within the catchment and are of outstanding heritage value to the nation under criterion (d) for their exceptional ability to convey the diversity of the Rainbow Serpent tradition within a single freshwater hydrological system.

15. Further, as noted by the Australian Heritage Council:⁴

Freshwater soaks and springs hold intense spiritual significance for desert people, and these water sources also have high biodiversity values. Each place where water can be found is individually named and known, and has many stories associated with it, although some of these stories may be secret or culturally restricted. Permanent water sources are called 'jila' and are all connected through the underlying groundwater system, which is known as *kurtany*, or mother.

16. The rights and interests relating to water that are held by Kimberley Traditional Owners under their traditional laws and customs are recognised through native title. Approximately 97 per cent of the Kimberley is now subject to native title determinations.
17. Kimberley Traditional Owners' relationships to water differ fundamentally to western views of water. In their 2021 report *Indigenous water requirements in the Martuwarra/Fitzroy River catchment, Western Australia*, researchers Sue Jackson and Sarah Laborde present the 'living waters' model to conceptualise Kimberley Traditional Owners' customary management and understanding of relationships between people, other beings and waters.⁵ They explain:⁶

In summary, the system of custodial relationships that underpins living waters emphasises responsibilities on the part of people, animals, plants and other entities. These mutual obligations highlight an important difference between the notions of dependence upon and benefit from a water resource, which is the basis

⁴ Australian Heritage Council, '[Australian Heritage Council's final assessment of national heritage values of the West Kimberley](#)', *National Heritage Places – West Kimberley* (Final Assessment Report, 2011), p 35.

⁵ S Laborde and S Jackson, [Indigenous water requirements in the Martuwarra/Fitzroy River catchment, Western Australia](#), Griffith University, Brisbane, 2021.

⁶ Laborde and Jackson, p 22.



of western water planning and management, and of belonging and responsibility, which is the basis of Traditional Owners' reciprocal relationships with their Country.

18. This relationship to water and Country is captured in the painting *Holy Water* (Image 1), which was painted by Gooniyandi artist Claude Carter to mark the culmination of last year's engagement process between Traditional Owners and DWER. In describing the painting, Mr Carter explains:⁷

'As Traditional Owners we are always connected, and our concern is to protect our Dreamtime Snake, which I painted here. The white forms around the Snake are the clouds that he's travelling with, and the dots on the Snake are rain drops. On Country, the circles are the main Snake places, the main waterholes, and the small ones are the springs. These springs all have names, and our water places' names are part of our identity as Aboriginal people.'

The different colours represent different parts of Country in the Kimberley: from Saltwater Country [painted blue-green], to River Country [blue], Limestone Country [black], Red Hill Country [red], Desert Country [yellow-green]. We, Aboriginal people from all over the Kimberley, are connected with that groundwater that sits underneath us. The water brings life to people, to animals and to the land. It is really powerful. It's spiritual water, too.'

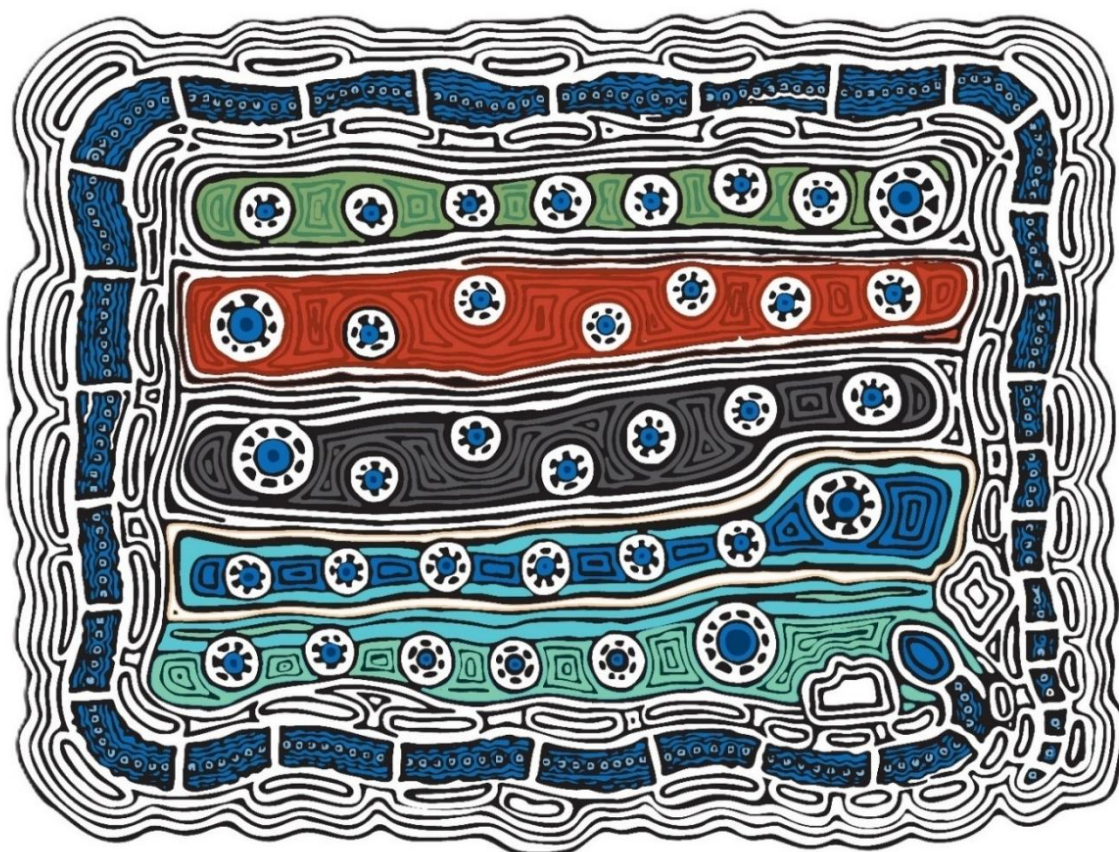


Image 1: Carter, C. (2025) *Holy Water* [Digitalisation of acrylic on canvas]. Gooniyandi Country, Western Australia.

⁷ Claude Carter, discussing his painting *Holy Water*. As told to the KLC, October 2025.



19. Under Aboriginal customary/First Law, Kimberley Traditional Owners have lived reciprocally and sustainably with water for many generations. Conversely, western water planning and use has had severe adverse impacts on the natural environment, as seen in the overallocation of many other parts of Western Australia and the disastrous outcomes in the Murray-Darling Basin. Centring Traditional Owner understandings of water in the way water is managed and used in the Kimberley is fundamentally important as a safeguard against damage to Country.
20. The KLC notes the draft plan's acknowledgement of Traditional Owners' cultural connections to and extensive knowledge of water and the responsibilities they have to care for Country. The draft plan incorporates consideration of Traditional Owner values, interests and cultural heritage into the licensing process, to the extent possible under the current regulatory framework. However, fundamentally, the different views between Traditional Owners and government about how water is understood 'cannot be resolved by incorporating Indigenous cultural values into a water plan within the government's modern water framework'.⁸ As Laborde and Jackson note, '[t]he ontological differences challenge the entire system of governing water'.⁹

Partnership and shared decision-making

21. Kimberley Traditional Owners have consistently called for shared decision-making on water and a partnership between Traditional Owners and government on the management of water in the Fitzroy-Derby area. As a PBC representative said to DWER representatives at the April 2026 water forum in Fitzroy Crossing:

'Why isn't there joint management of water between government and TOs [Traditional Owners]? Our law comes from the ground; your law comes from the books. It would be good for TOs to sit with you in the [licence] application process. We talk about learning from each other – why can't this be the way? When we talk about dreamtime, it's not something to see, but we know about it – we have rules and regulations to abide by our ways. You have rules and regulations – why can't we be part of that decision-making?'
22. The KLC understands that the junction of different laws and world views is a challenging space for government. In our view, the path forward to bridge this difference in understanding and to ensure Traditional Owner knowledge and interests are centred in water management is through respectful, genuine partnership and shared-decision-making, underpinned by the principle of free, prior and informed consent.
23. As outlined in the previous section, Kimberley Traditional Owners hold extensive and unique knowledge about water that cannot be replicated through western science or frameworks – knowledge that has invaluable application in water management and in monitoring of changes on Country.
24. A partnership approach to water planning and management in which Traditional Owners share decision-making authority will benefit from Traditional Owner knowledge, support Traditional Owners to fulfil their customary responsibilities to Country, protect cultural heritage and values (including National Heritage listed values) and ultimately ensure that Kimberley waters are protected and sustained into the future. Consistent with the 'living waters' model, such an approach will help ensure that socio-economic, cultural and environmental objectives of water governance are considered

⁸ Laborde and Jackson, p 33.

⁹ Laborde and Jackson, p 33.



together.¹⁰

25. The WA Government has made commitments to partnerships and shared decision-making with Aboriginal people, including under the WA Aboriginal Empowerment Strategy and the National Agreement on Closing the Gap. Commitments in the Aboriginal Empowerment Strategy include to:
 - a. Ensure Aboriginal people have a defined and systematic role in decision-making, proportional to the potential impacts or opportunities for Aboriginal people
 - b. Support Aboriginal representation in decision-making and build the engagement capacity of both Aboriginal and government participants.¹¹
26. Formal partnerships and shared decision-making is one of four priority reforms under the National Agreement on Closing the Gap. The Productivity Commission has recognised that jurisdictions are not meeting their commitments under Closing the Gap when it comes to water planning policy, and that despite the existence of strategies and action plans, there is limited meaningful involvement of Aboriginal and Torres Strait Islander people in water planning.¹²
27. The Fitzroy-Derby water planning process is an opportunity to put into practice the WA Government's commitments to partnership and shared decision-making and set a positive example to the rest of Australia. Although not optimal, the existing legal framework enables this, with ministerial decision-making delegable to water resources management committees under Part III of the RIWI Act (see paragraph 67). To date, however, the WA Government has not taken up this opportunity, and the draft plan does not provide for shared decision-making with Traditional Owners. Under the draft plan, the Minister for Water (or DWER, by delegation) remains the sole decision-maker on water licensing.
28. In the absence of a genuine partnership with government, Traditional Owners are just another stakeholder. Their position as native title holders and first peoples of the Kimberley is not reflected in water governance and management.
29. Ultimately, partnership and shared decision-making require trust, respect and a willingness to shift from entrenched practice, to achieve better outcomes for all Western Australians, not just Kimberley Traditional Owners. Traditional Owners seek a clear, long-term commitment from the WA Government to genuinely partner with them on water planning and management, both within the water plan and over the longer term.

Recommendations to the WA Government / DWER:

1. Establish a formal partnership with Kimberley Traditional Owners to identify, invest in and develop appropriate legal and policy mechanisms for shared decision-making in relation to water planning, water licensing and ongoing monitoring and compliance.

Urgent need for water law reform

30. Western Australia's water laws are outdated and not fit for purpose – the main law regulating water licensing and management in the state, the RiWI Act, was created over 100 years ago. As one PBC

¹⁰ Laborde and Jackson, p 2.

¹¹ Government of Western Australia, [The Aboriginal Empowerment Strategy Western Australia 2021-2029: Strategy Overview](#), Government of Western Australia, 2021, p 11.

¹² Productivity Commission, [National water reform 2024: inquiry report](#), Commonwealth of Australia, 2024, pp 71-72.



representative stated at the September 2025 water forum in Broome:

‘They made that Act in 1914 when we didn’t even have voting rights.’

31. The shortcomings of the RiWI Act include that it:
 - a. does not provide or protect Aboriginal rights and interests in water, nor list them as relevant matters for consideration by the Minister in assessing water licence applications
 - b. does not afford third parties, such as native title parties, a right to merits review of water licensing decisions
 - c. does not allow for statutory Aboriginal water holdings/reserves or environmental water holdings
 - d. does not regulate floodplain harvesting, water take from springs, and water take from streams in unproclaimed areas
 - e. prohibits transparency and information sharing.
32. Western Australia does not implement binding statutory water allocation plans, despite being empowered to do so under the RiWI Act. Non-statutory plans are non-binding and less enforceable. This does not provide certainty to Traditional Owners that their rights and interests in water acknowledged in the draft plan will be actively considered by DWER in licensing decisions and protected on review to the State Administrative Tribunal.
33. Western Australia urgently needs new, best-practice water laws that incorporate best-practice water planning and management frameworks that comply with national water policy, recognise Traditional Owner rights in water, and require Traditional Owner involvement in planning and decision-making.
34. A new National Water Agreement (**NWA**) has been jointly developed between the Commonwealth and states and territories to replace the 2004 National Water Initiative. Western Australia’s water laws and policies are not compliant with the National Water Initiative, and the Productivity Commission has recommended that Western Australia should introduce NWI-compliant legislation.¹³ The KLC understands that the new NWA has been signed by the Commonwealth and is awaiting sign off from states and territories. The NWA prioritises the recognition and protection of Aboriginal and Torres Strait Islander water interests and values in water management. It includes as an outcome:¹⁴

Water planning and management processes are built on enduring and respectful government partnerships with Aboriginal and Torres Strait Islander peoples, underpinned by shared decision making and the principles of self-determination and free, prior and informed consent.
35. The draft plan and the current Western Australian water laws are insufficient to meet the objectives and outcomes of the new NWA. It would be disappointing for Western Australia to again be lagging when it comes to compliance on national water policy. New Western Australian water laws will inevitably be required to be consistent with the NWA, Australia’s new national water policy.
36. New legislation is also required to recognise and give effect to Traditional Owner rights in water. As the KLC noted in its 2019 submission to the WA Government on the then-proposed Water Resources

¹³ Productivity Commission, p 17.

¹⁴ [Updated draft National Water Agreement](#), Outcome 3B, p 10.



Management Bill: ¹⁵

Traditional Owner rights and responsibilities are manifestly different from other types of access and the creation of specific provisions within and/or alongside the consumptive pool are warranted. Such provisions would usefully serve to protect and enhance Traditional Owner water rights, especially in the face of uncertain knowledge about the water resource and climate change.

37. In 2009, Australia endorsed the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**). Certain sections of UNDRIP are particularly relevant in relation to water. Articles 25 and 26 state that Indigenous peoples have rights to lands and waters that they have traditionally owned, including the right to own, use and develop those resources, as well as rights to maintain and strengthen their spiritual relationship to their lands and waters. Article 31 covers the right to maintain and protect cultural heritage and traditional knowledge. Article 32 requires governments to obtain the free, prior and informed consent of Indigenous peoples prior to the approval of any project affecting their lands or resources, 'particularly in connection with the development, utilization or exploitation of mineral, water or other resources'.¹⁶
38. While UNDRIP is not legally binding in Australia, it should guide the development and implementation of laws, policies and programs. The KLC supports the implementation of free, prior informed consent, and UNDRIP more broadly, into key laws, including the *Native Title Act 1993* (Cth) (**Native Title Act**), cultural heritage laws and water laws.
39. The current independent review of the *Water Act 2007* (Cth) (**Water Act**) is required to identify opportunities under the Act to promote the principles set out in UNDRIP. While much of the current Water Act applies primarily to the Murray-Darling states, some aspects of the Water Act have national application. Presumably, any changes to the law to incorporate UNDRIP principles would apply nationally, further strengthening the need for Western Australian laws to be consistent with these principles.

Recommendations to the WA Government / DWER:

2. Establish a Water Resources Council under Part IIA of the *Water Agencies (Powers) Act 1984* (WA) to enable the creation of statutory water allocation plans.
3. Adopt recommendation 5.1.1 from the 2025 recommendations:
Replace Western Australia's water laws with new 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. These new laws should be developed in consultation with key stakeholders, including Traditional Owners.

Management plan and regional development

40. In contrast to government regulatory processes, Traditional Owners do not view water planning and use in isolation from land use, regional development and potential impacts on Country. Water use must be considered within the context of the overall vision and development direction of the region.

¹⁵ Kimberley Land Council, *Submission on Water Resources Management Bill (WA)*, September 2019, p 13.

¹⁶ [United Nations Declaration on the Rights of Indigenous Peoples](#) (New York, 2007), Article 32.



41. Kimberley Traditional Owners have repeatedly called for a management plan for the Fitzroy catchment area, including through the Fitzroy River Declaration in 2016. A management plan should provide a vision for the protection and management of the river and the catchment, as well as sustainable economic development, with Traditional Owner aspirations at the forefront.
42. The WA Government has publicly committed to a management plan and allocated \$1.9 million for the development of the Fitzroy River Management Plan in the 2019-2020 State Budget.¹⁷ While earlier government publications indicated the management plan would be developed prior to a water allocation plan, the government has gone ahead in developing the water plan in the absence of a management plan. This is concerning. As Jackson and Laborde note, not knowing the nature, scope and impact of developments requiring water use compromises Traditional Owners' ability to provide free, prior and informed consent on water planning and use.¹⁸
43. The KLC has repeatedly advocated to the WA Government that a management plan should precede a water plan. The position of the Traditional Owner Working Group (**Working Group**) and PBC representatives involved in the recent engagement process with DWER is that the water plan cannot be dealt with in isolation from issues of land use and economic development, which the water plan framework does not allow for. As a PBC representative stated at the April 2025 water forum in Fitzroy Crossing:

'What is the end use of the water? This is what we're not talking openly about. Are we talking about farms and unlimited agricultural development? What about the impact of herbicides and insecticides running into the river? That could be catastrophic.

Non-developed land in western terms is non-productive. Constant development is pretty much the centre of western values. Compared to our values which are about maintaining Country.

This water planning is very serious. It's like the door is opening. We need to take our time to really get organised and put facts on the table.'

44. This position is not opposition to economic development. Kimberley Aboriginal people have long-held aspirations for economic development that produces intergenerational wealth *and* sustains and conserves lands, seas and waterways for future generations. Following seminal meetings of Kimberley Aboriginal people convened by the KLC in the 1990s to discuss economic development, then-chair of the KLC Kurijinpi McPhee stated in the introduction to the *Our Place, Our Future* report:¹⁹

[We] all want economic development in the Kimberley region. But we want development that does not damage the unique society, environment and cultures of the Kimberley. And we want development that provides substantial local economic benefit to all the peoples of the region.

45. Traditional Owners must be at the centre of developing a Fitzroy management plan and any economic and land-use plans for the Kimberley. Traditional Owners' expertise regarding their Country, together with their aspirations as native title holders, are key to shaping economic development pathways that do not compromise the cultural and environmental integrity of the Kimberley. In addition to shaping

¹⁷ Government of Western Australia, [Regional Fact Sheet Set, 2019-20 State Budget](#), Government of Western Australia, 2019.

¹⁸ Jackson and Laborde, p 13.

¹⁹ Kimberley Land Council, *The Kimberley: Our Place, Our Future*, Kimberley Land Council, Broome, 1998, p 3.



regional management and development plans, Traditional Owners should be supported to identify and develop Indigenous-led industries that align with cultural values.

Recommendations to the WA Government / DWER:

4. Adopt recommendation 5.2.1 from the 2025 recommendations:

Deliver on the government's 2023 commitment of a process to develop a Fitzroy catchment management plan, including land-use and economic development. This plan should be developed in collaboration with Traditional Owners.

5. Support the KLC to develop and deliver a Kimberley Aboriginal Economic Development Strategy to drive regional economic development and support Indigenous-led industry development, including via funding for PBCs to identify and map economic development opportunities on the Indigenous estate.

Recent engagement between the WA Government and Traditional Owners on water planning

46. Traditional Owners have advocated for decades to protect the Kimberley's waters, including in recent years by issuing the 2016 Fitzroy River Declaration (Appendix B) and the 2025 Ngumpun Statement (Appendix C).

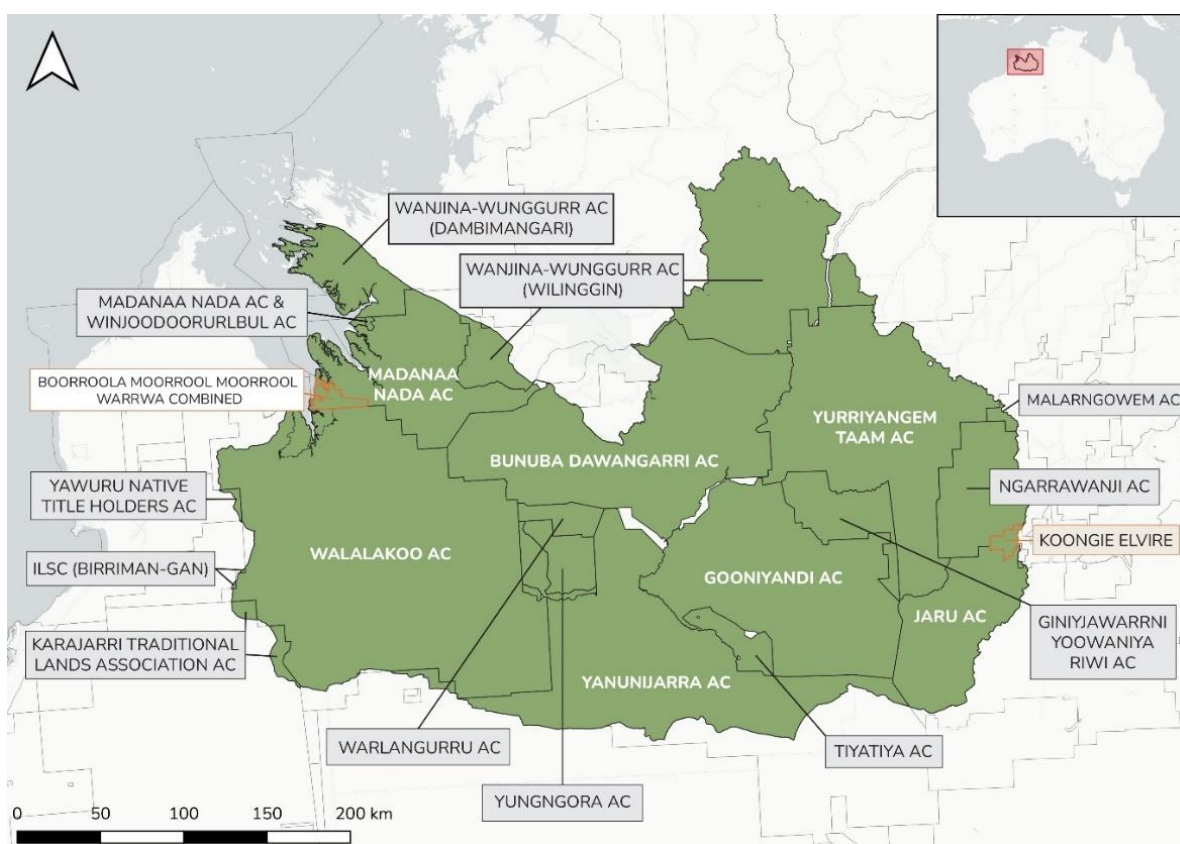


Image 2: PBCs and registered native title claims within the Fitzroy-Derby water resource management plan area. 'AC' stands for 'Aboriginal Corporation'.



47. The draft plan area covers an area of 107,000 square kilometres and overlaps with 19 Kimberley PBCs and two registered native title claim groups (Image 2). Given the cultural and physical connectivity of groundwater and surface water across the Kimberley, the draft plan – and the way water is used and managed under it – has the potential to affect all Kimberley Traditional Owner groups. For this reason, the KLC emphasised to government the importance of engaging with all Kimberley Traditional Owner groups about the plan.
48. Throughout 2025 and into 2026, the KLC facilitated an engagement process between Kimberley Traditional Owners and DWER to inform the draft plan. The process involved two large PBC forums, the establishment of a Working Group comprised of 14 Kimberley Traditional Owners, and four multi-day meetings between the Working Group and DWER. Due to resourcing constraints, the process was unable to facilitate direct engagement with individual PBCs, which would have been optimal. In December 2025 the KLC provided the WA Government with a final report on the engagement process.
49. The engagement process built capacity and understanding amongst participants. Working Group members and PBC representatives developed their knowledge of government water planning and management processes, and DWER staff developed their knowledge of Kimberley Aboriginal law, culture, and water interests and expertise.
50. Through the process, the Working Group led the engagement with DWER on the detail of the draft plan and developed the 2025 recommendations as set of preliminary recommendations, which were endorsed by PBC representatives at the September 2025 water forum in Broome. These 61 recommendations included recommendations for the draft plan itself, its implementation and broader issues relating to water management. The KLC provided the 2025 recommendations to the WA Government in October 2025.
51. The 2025 recommendations are provided at Appendix A. These recommendations remain a standing and relevant body of work. The recommendations set out in this submission are largely in support of, or in addition to, the 2025 recommendations.

Overarching comments on the draft plan

52. With the current deficient and outdated water legislation in Western Australia, the western-centric approach to water planning and the government's refusal to consider shared decision-making, the draft plan does not address the foundational issues discussed above.
53. The KLC does not endorse the draft plan as the optimal model for water planning and management in the Fitzroy-Derby area. The KLC and Kimberley Traditional Owners ultimately seek a water planning and management framework that centres Traditional Owner understandings of water and is underpinned by reformed water laws that recognise Traditional Owner rights in water and provide Traditional Owners with shared decision-making authority.
54. The KLC provides its comments on the draft plan in this context.

Positive aspects of the draft plan

55. Despite the fundamental shortcomings of the plan model and relevant legislative framework, the KLC acknowledges that DWER has made considerable efforts to embed in the draft plan the consideration of Traditional Owner values and interests in water licensing. For instance, the draft plan:



- a. promotes the consideration of Aboriginal values, interests and cultural heritage in licensing assessments and decisions.
 - b. encourages licence applicants to consult early and robustly with Traditional Owners, and to share relevant copies of licences and relevant reports with Traditional Owners.
 - c. includes the recognition of Aboriginal interests, cultural values and cultural heritage and the protection of sites of cultural significance in the plan outcomes.
56. The KLC acknowledges these inclusions, which go further than most other water plans in Western Australia, and appreciates the listening and work done by core DWER project staff throughout their engagement with Traditional Owners.
57. Given the significant discretion afforded to the Minister and DWER under the draft plan (discussed further at 116-117 below) and the fact that it is non-statutory, how these aspects of the plan will be implemented remains to be seen and will determine whether the plan delivers positive outcomes for Traditional Owners – and Country – in practice. Nevertheless, the KLC urges the WA Government to retain and strengthen these aspects of the draft plan in the final plan, in line with the recommendations in this submission and the 2025 recommendations.
58. The draft plan reflects the WA Government's policy positions that the Fitzroy River and its tributaries will not be dammed and no additional surface water entitlements will be granted (unless for essential public purposes). Protecting the Martuwarra Fitzroy River and other water bodies in the catchment has been a long-standing priority of Traditional Owners. The KLC strongly supports these policy positions and urges the WA Government to confirm these positions in the final plan and in legislation.

Lack of uptake of 2025 recommendations

59. The 2025 recommendations provide strong guidance to government about what Traditional Owners want to see in the draft plan and in broader water management. To date, the government has fully supported only one in ten of the 61 Traditional Owner recommendations from 2025. The government's failure to adopt more of the Traditional Owner recommendations appears to be partly a political decision and partly due to legal barriers under the RiWI Act.

	SUPPORTED	PARTLY SUPPORTED	NOT SUPPORTED
Plan drafting	1	1	2
Plan document	6	20	10
Implementation & beyond	0	2	19
TOTAL	7	23	31

Image 3: Table showing the KLC analysis of the 2025 recommendations vs the draft plan as of 30 June 2026.

60. Thus, the draft plan falls short of meeting Traditional Owners' standards for the protection of Country and cultural heritage, respect for Traditional Owners' rights and responsibilities, and the proposal for a partnership approach to water management in the Kimberley.
61. Appendix D summarises the KLC's views on whether the 2025 recommendations relating to the plan document have been supported. Appendix D forms part of this submission.



62. Based on the KLC's assessment, of the 36 recommendations that relate to the plan document within the 2025 recommendations:
 - a. 6 have been supported
 - b. 20 have been partly supported
 - c. 10 have not been supported.
63. The KLC urges DWER to review the 2025 recommendations and the KLC's comments at Appendix D and make best efforts to adopt them, including by working with the Working Group to incorporate the recommendations into the final water plan and progress their implementation.
64. The KLC has focused its assessment in Appendix D on the 2025 recommendations that relate to the plan document, given the focus of DWER's current consultation. The KLC notes that the government's lack of support for the 2025 recommendations relating to plan implementation may in part be a timing issue, with the government currently focusing on finalising the plan rather than its implementation. The KLC is keen to discuss implementation of the plan with government over the coming months, beyond the current public comment period, with the hope for further collaboration on and uptake of the 2025 recommendations relating to implementation.

Recommendations to the WA Government / DWER:

6. Retain and strengthen in the final plan the aspects of the draft plan relating to Aboriginal interests, cultural values, cultural heritage, cultural indicators and cultural outcomes, in line with the recommendations in this submission and the 2025 recommendations.
7. Confirm in the final plan, and in legislation, the position that the Fitzroy River and its tributaries will not be dammed and no additional surface water entitlements will be granted.
8. Retain in the final plan all supported 2025 recommendations.
9. Review the 2025 recommendations not yet fully supported and make best efforts to adopt them.

Specific comments on the draft plan

Traditional Owners must have a decision-making role in water planning, licensing and management

65. As discussed above at 21-29, Traditional Owners have consistently called for shared decision-making on water.
66. 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 and plays a decision-making role in licence assessments. Traditional Owners also recommended the establishment and operation of a regional PBC body to be involved in water planning, licensing and management, which could feed into Traditional Owner representation on the committee.²⁰
67. The draft plan does not establish the statutory committee recommended in the 2025 recommendations; nor does it give Traditional Owners a role in decision-making. This is despite the fact that such measures

²⁰ See recommendations 3.1.1, 4.1.1 and 4.1.2 in the 2025 recommendations (Appendix A).



are possible under the current law. Part III, Division 3C of the RiWI Act allows for local water resource management committees to be established (s 26GK). The Minister is expressly empowered to delegate the performance of any function under the RiWI Act (including decisions on water licence applications) to water resource management committees (s 26GP).

68. Instead, the draft plan proposes an advisory committee that would be made up of different stakeholders, including Traditional Owners. The advisory committee's mandate, composition and terms of reference are still to be determined and remain at the ultimate discretion of the Minister for Water. As an advisory body only, DWER will not be obliged to consider or implement any of the committee's recommendations.
69. The Warren-Donnelly Water Advisory Committee is the only committee of its kind currently operating in Western Australia. The purpose of the committee is limited to providing advice on local water management issues and community engagement and evaluation of the relevant Warren-Donnelly Surface Water Allocation Plan. The committee does not advise on water licence decisions, nor have any delegations or decision-making powers.
70. An advisory committee falls far short of the shared decision-making sought by Traditional Owners. The idea of an advisory committee was not supported at the Fitzroy Crossing water forum held in 2023 or by the Working Group in 2025. Traditional Owners have expressed their concerns that advisory committees are 'fluffy' concepts that lack the ability to have meaningful influence.
71. Ultimately, Traditional Owners want to see comprehensive law reform that gives Traditional Owners decision-making rights within best-practice water management frameworks (see recommendations 1 and 3 above). However, the statutory committee recommended in the 2025 recommendations was a compromise that could be achieved under the current RiWI Act. The KLC urges the WA Government to reconsider this recommendation.

Recommendations to the WA Government / DWER:

10. Adopt recommendation 3.1.1 from the 2025 recommendations, using Part III, Division 3C of the RiWI Act:
Create a statutory committee with shared decision-making authority for the plan area that is comprised of at least 50 per cent Traditional Owners, and plays a decision-making role in licence assessments.
11. If an advisory committee is established under the water plan (not preferred):
 - a. Co-design the terms of reference with Traditional Owners; and
 - b. Allocate appropriate time and resources to co-design and consultation processes with Traditional Owners.
12. The terms of reference for an advisory committee should include, but not be limited to, the following:
 - a. The committee should be comprised of at least 50 per cent Traditional Owners recognised in the plan area.
 - b. The committee's purpose should include making recommendations in relation to water licensing decisions, alongside review of the plan and allocation limits.
 - c. The Minister and/or DWER, as relevant, should report to the committee on all licensing decisions and provide reasons to the committee about why the committee's recommendations are supported or not, as the case may be.



13. Include the advisory committee's recommendations in respect of water licensing decisions as a mandatory relevant consideration in DWER's assessments.

Allocation limit must reflect the precautionary principle

72. The draft plan includes a groundwater allocation limit of 75.7 GL per year, which reflects about 41 per cent of the estimated annual recharge of the three main aquifers (Wallal, Erskine and Grant-Poole aquifers) – noting, however, that water allocation limits in some aquifers are not set, and further noting the local overallocation in the Derby Peninsula subarea (see 79-82 below).
73. The KLC acknowledges that the allocation limit in the draft plan is lower than potential limits the WA Government has previously raised – for instance, both the government's 2020 discussion paper and 2023 policy position paper proposed a groundwater allocation limit of 108.5 GL, and the 2020 discussion paper raised the option of an allocation limit of 408.5 GL, including up to 300 GL of surface water, which was strongly opposed by Traditional Owners and many other stakeholders. The KLC acknowledges that the allocation limit in the draft plan of 75.7 GL (or total 81.7 GL if existing surface water licences are added) is more precautionary than the options previously raised.
74. In the 2025 recommendations, Traditional Owners said the allocation limit should be no more than 40 per cent of the estimated recharge.²¹ This recommendation was conditional on: the other 2025 recommendations being supported; and a commitment from DWER to review and improve assessments of aquifers' hydraulic properties, and estimate of recharge and long-term sustainable yields. The recommendation noted that this scientific work must consider climate change and the highly variable (both spatial and temporal) cyclonic nature of recharge and discharge in the planning area.
75. The introduction to the draft plan states that the groundwater allocation limit of 75.7 GL per year is precautionary and 'consistent with feedback from Traditional Owners'. However, this is not entirely accurate – government has not supported most of the 2025 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 and sustainable limit.
76. 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. Traditional Owners remain 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. Traditional Owners are also concerned that there is too much uncertainty about the impacts of increased groundwater extraction, with additional uncertainty arising from climate change. Further uncertainty arises from water use on Commonwealth land (e.g. Curtin Airbase), because the RiWI Act does not apply, and the Commonwealth is not required to apply for a licence for any water use.
77. In other parts of Western Australia, water resources are overallocated, requiring action to reduce water take to sustainable levels (for example, Gngangara Mound; and Derby, as detailed below). In some places, it is unlikely that sustainable allocation can be achieved even with corrective action. Given the cultural and ecological importance of groundwater in the plan area, this is an error that must not be repeated.
78. Given that the WA Government has not met the conditions in Traditional Owners' 2025 recommendation and in light of the currently limited understanding of groundwater and recharge rates

²¹ See recommendation 3.3.1 in the 2025 recommendations (Appendix A).



in the plan area, the KLC recommends that the groundwater allocation limit in the final plan should be more precautionary than the 75.7 GL in the draft plan.

Derby Peninsula requires a clear transition plan

79. The KLC notes that allocation limits in the Derby Peninsula subarea in both the Wallal and Erskine aquifers are set at unsustainable levels, being more than annual recharge and throughflow. Over the long term this will cause saltwater intrusion (which may already be occurring as the location of the interfaces is not well constrained by data) and impact freshwater seeps in the mudflats. This is a significant concern for Traditional Owners and other Derby residents.²²
80. This issue is recognised in the draft plan – for instance, in the way that no further water is available for licensing in the Derby Peninsula, except for public purposes, and in local licensing policy 5.2 which sets out special conditions for new licences and licence renewals in the Derby Peninsula subarea or the Birdwood Rise Estate.
81. However, the draft plan has no clear strategy to reduce local groundwater take to sustainable levels. The *Consultation draft – Fitzroy-Derby water resources management plan: methods (methods report)* recognises that the Water Corporation's Erskine bores can be moved in the future to the Greater Derby subarea, where water has been reserved to ensure Derby's future water supply. However, there is no detail in the draft plan on the process or timeframes for this. The methods report says this new supply 'may' be required, 'should we identify that abstraction from the Derby Peninsula resource is no longer sustainable'.²³ By definition, taking more than 100 per cent of the recharge is not sustainable.
82. The final plan should include a transition plan for Derby Peninsula that includes a clear timeframe and triggers or thresholds for action (i.e. movement of the Water Corporation bores). These triggers or thresholds should be set so as to avoid negative impacts on cultural and environmental values in and around Derby.

Surface water must be proclaimed and regulated across the whole plan area

83. Significant portions of the plan area are currently unproclaimed surface water areas (as per Figure 3 on page 6 of the draft plan). This means that surface water take in those areas does not require a licence under s 5C of the RiWI Act. The unproclaimed surface water areas include the May River and Lennard River in the north-west of the plan area.
84. The KLC considers that unlicensed surface water take from waterways within the plan area is unacceptable and at odds with the strong public interest in protecting the Martuwarra and other Kimberley waterways. In light of the potential significant cultural and environmental impacts from surface water take, and the government's policy commitment not to license any further surface water from the Fitzroy River, all surface water in the plan area should be proclaimed and subject to the licensing requirements in s 5C of the RiWI Act. This should include removal of floodplain harvesting bunds, minor diversions and small weirs that restrict aquatic fauna movement for critical species such as sawfish during low-flow and cease-to-flow periods.

Recommendations to the WA Government / DWER:

14. Adopt in the final plan a more precautionary groundwater allocation limit than the 75.7 GL in the draft plan.

²² Department of Water and Environmental Regulation (DWER), [Consultation draft – Fitzroy-Derby water resources management plan: methods](#), DWER, Government of Western Australia, April 2026. See Section 6.5.

²³ DWER, [Consultation draft – Fitzroy-Derby water resources management plan: methods](#), p 58.



15. Include in the final plan a transition plan for the Derby Peninsula that includes a clear timeframe and triggers or thresholds for action (i.e. movement of the Water Corporation bores) so as to avoid negative impacts on cultural and environmental values.
16. Proclaim all surface water within the plan area under the RiWI Act so that section 5C of the RiWI Act applies.

The plan must recognise that only Traditional Owners can determine cultural heritage and highlight the risks of impacting cultural heritage without Traditional Owner consent

85. The draft plan acknowledges Traditional Owners and their strong cultural connection to lands and waters. However, it must recognise that only Traditional Owners – not the Department of Planning, Lands and Heritage (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.
86. Given the weight of material explaining the fundamental importance of water (including groundwater) to Traditional Owners in the Kimberley, it can be assumed that all water places comprise Aboriginal cultural heritage. This should be reflected in the plan. Licence applications that may impact cultural heritage should not be approved, unless cleared by Traditional Owners.
87. Under section 24HA of the Native Title Act, native title holders are entitled to compensation for any impact on their native title rights and interests by the grant of a water licence, which is payable by the State. Significant uncertainty remains with respect to the Federal Court's approach to calculating compensation liability for impacts to native title rights and interests in water. The KLC notes the recent decision in *Yindjibarndi Ngurra Aboriginal Corporation RNTBC v State of Western Australia (No 2)* where Justice Burley found at [982]:²⁴

In my view compensation is payable for the spiritual group harm experienced by the Yindjibarndi people arising from the damage to the flow of the groundwater into the Weelumurra creek and the Kangeenarina Creek and the harm caused to country arising from the reduction in water for the vegetation. Contrary to the submission advanced by the State, in my view, it is a factor to take into account when assessing cultural loss.

88. Robust recognition and protection of cultural heritage is crucial to mitigate the potential impacts of water extraction on native title rights and interests and is likely to reduce the State's compensation liability for spiritual and cultural loss arising from the grant of water licences.

Recommendations to the WA Government / DWER:

17. Amend the draft plan to state that all water places – including watercourses, wetlands, springs and groundwater – are to be considered Aboriginal heritage places for licensing purposes, unless advised otherwise by Traditional Owners.²⁵
18. Replace the reference to DPLH in local licencing policy 1.1 with a reference to Traditional Owners.
19. Amend the draft plan so that licence applications that will impact cultural heritage will not be approved, unless proponents have reached agreement with Traditional Owners, preferably through a Heritage Protection Agreement.

²⁴ *Yindjibarndi Ngurra Aboriginal Corporation RNTBC v State of Western Australia (No 2)* [2026] FCA 585.

²⁵ This is consistent with recommendation 3.4.1 in the 2025 recommendations (Appendix A).



The plan should include a process for best-practice engagement with Traditional Owners that is co-designed with Traditional Owners

89. The draft plan does not include a process for best-practice engagement between water licence applicants and Traditional Owners. In the draft plan, local licensing guidance relating to local licensing policy 2.1 'encourages' the applicant to take various steps to obtain information on how an application may affect Traditional Owners' rights, interests, cultural values and heritage. This includes to d) 'apply best-practice engagement considering advice and guidance available from the Department and other agencies'.²⁶ The guidance then lists several other guidelines from other government processes (both state and federal) for the applicant to consider. These examples all include different processes, which may be confusing and overwhelming for the applicant, and are not necessarily examples of best-practice engagement with Traditional Owners.
90. Accordingly, the draft plan does not provide clear guidance to applicants about what best-practice engagement with Traditional Owners should look like.
91. A 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 specific to the water licensing regime.²⁷
92. This process, and the plan more generally, should specify that engagement with Traditional Owners should occur through native title parties. These will be PBCs for applications in areas where native title is determined (which is the vast majority of the plan area). Where native title has not been determined, the proponent should approach the KLC to identify the relevant Traditional Owners.
93. The KLC welcomes other aspects of local licensing guidance relating to local licensing policy 2.1 on page 25 of the draft plan, including encouragement for applicants to respect free prior and informed consent, engage early with native title parties, and enter into Heritage Protection Agreements. The KLC notes that Heritage Protection Agreements are the preferred way for native title parties and proponents to formalise relationships and processes for engagement and heritage assessments.

Recommendations to the WA Government / DWER:

20. Adopt recommendation 3.4.7 from the 2025 recommendations:

The plan should set out a best-practice consultation process for licence applicants and holders to follow when consulting with Traditional Owners. This consultation process should be developed before the release of the final plan, in partnership with the KLC and Kimberley Traditional Owners.

21. Specify in the plan that consultation and engagement with Traditional Owners should occur through native title parties (i.e. PBCs).

²⁶ Department of Water and Environmental Regulation (DWER), [Consultation draft – Fitzroy-Derby water resources management plan: policy and guidance](#), DWER, Government of Western Australia, April 2026, p 25.

²⁷ See recommendation 3.4.7 in the 2025 recommendations (Appendix A).



The Aboriginal Water Holding must be set at 50 per cent of the general component and requires a development package

Volume

94. The draft plan proposes an Aboriginal Water Holding (AWH) of approximately 25 GL per year. This proposed volume is not consistent with the relevant 2025 recommendation, which recommended an AWH of 50 per cent of the general component: that is, the total water volume for allocation, including water already allocated but excluding water for community use.²⁸
95. Consistent with the 2025 recommendation, the plan should set the AWH at 50 per cent of the general component. Alternatively, the plan should:
 - a. Create the AWH at a set volume that is 50 per cent of the general component (excluding exempt water use and public drinking water supply) – under the draft plan's allocation limit, this should be approximately 29 GL, assuming restricted aquifers (e.g. alluvial) are not included.²⁹
 - b. Provide that any increase in the plan's allocation limit (i.e. water available for licensing) will result in a corresponding proportionate increase in the AWH, so that the AWH is always 50 per cent of the water available for licensing.
96. Setting the AWH at 50 per cent of the general component will support work towards the Closing the Gap Inland Water Target, and reflects the fact that Aboriginal and Torres Strait Islander people make up approximately 50 per cent of the Kimberley's population.

Access and use

97. Local licensing policy 3.5 in the draft plan relates to the AWH. This policy states that DWER is 'unlikely' to grant a licence from the AWH unless to a native title holder or another person who has a negotiated agreement or commercial arrangement with a native title holder. Consistent with the purpose of an AWH, the KLC is strongly of the view that water in the AWH should only be licensed with the approval of Traditional Owners, in a manner to be determined as the structure and functionality of the AWH is developed.
98. 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.³⁰

Development and implementation

99. This will be the first time an AWH has been developed in the Kimberley, and Traditional Owners 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. Assuming Traditional Owners support the creation of an AWH under the final plan, the WA Government needs to provide Traditional Owners with adequate time and resourcing to determine the governance, structure and functionality of the AWH.
100. In the future it is also essential that the government provide technical and financial support to Traditional Owners to unlock the economic opportunities presented by an AWH. This should include the funding of relevant experts and consultants with experience developing Aboriginal water holdings in

²⁸ See recommendation 3.3.2 in the 2025 recommendations (Appendix A).

²⁹ Note, however, that recommendation 14 in this submission recommends a more precautionary allocation limit.

³⁰ See recommendations 3.3.2, 4.2.1 and 4.2.2 in the 2025 recommendations (Appendix A).



Western Australia and other jurisdictions, such as the Murray-Darling Basin Aboriginal Water Entitlements Program. As the Productivity Commission has noted:³¹

It can be challenging for First Nations peoples to access water from SAWRs [Strategic Aboriginal Water Reserves]. Applying for a licence to take water can require providing a business development plan that specifies intended economic uses of the water, and scientific studies to assess the potential impacts of extraction and use. These activities require business and technical knowledge and can be costly and time consuming.

Recommendations to the WA Government / DWER:

22. Adopt recommendation 3.3.2 from the 2025 recommendations:

Create an Aboriginal Water Holding of 50 per cent of the general component: the total water volume for allocation, including water already allocated but excluding water for community use.

23. Adopt recommendation 4.2.2 from the 2025 recommendations:

To support the creation and implementation of the Aboriginal Water Holding, provide:

- a. Adequate time and funding for Traditional Owners to explore appropriate governance and management to ensure fair and equitable access;
- b. Adequate funding to implement the holding; and
- c. Adequate funding to support Traditional Owners' access to groundwater.

24. Amend the draft plan to state that DWER will not grant a licence from the Aboriginal Water Holding unless approved by Traditional Owners, in a manner to be determined as the structure and functionality of the Aboriginal Water Holding is developed.

Baseline data requirements must be more robust

101. Having strong baseline data about the health of Country before any water extraction occurs is a priority for Traditional Owners so that changes and impacts can be assessed over time. 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.³²

102. Working Group members have repeatedly emphasised the importance of having a strong baseline dataset. As one participant noted:

'I'm worried about baseline data – we're making decisions without understanding the whole system properly. We're talking about potentially irreversible environmental destruction that could happen.'

103. Under the draft plan, there is a possibility that DWER will request that a licence applicant do baseline monitoring, but it is not a requirement. The draft plan does not specify the types of proposals that would need to do baseline monitoring or the minimum timeframe for baseline data collection.

104. Baseline monitoring requirements should be linked to the level of risk associated with an application,

³¹ Productivity Commission, p 77.

³² See recommendation 3.4.14 in the 2025 recommendations (Appendix A).



noting that there is a balance to be struck so that requirements are not unnecessarily onerous. Accordingly, the KLC suggests that a minimum of two years, and preferably five years, of baseline data should be required for licence applications subject to H2 and H3 hydrogeological assessments.³³

105. There is also a need to move towards independent baseline data collection, and government should look to partner with Traditional Owners to establish a Traditional Owner entity to carry out this work.
106. 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, as there are large gaps in the current monitoring network. The government should be funding additional infrastructure installation (bores) to provide monitoring of the regional context of individual licence applications. Gaps in the draft plan include insufficient understanding of site-specific ecological water requirements for all three types of groundwater-dependent ecosystems (i.e. terrestrial, aquatic and subterranean), shallow-deep aquifer connectivity, insufficient saltwater interface monitoring and lack of groundwater modelling underpinning the plan.
107. Further, contaminated water is a significant problem in remote Aboriginal communities in the Kimberley, and a human rights issue. Some communities, such as Pandanus Park, have had ongoing issues with water contamination, with government failing to fix the problem despite years of advocacy from residents. DWER's monitoring program should test for contamination, and any contamination must be rectified as a matter of urgency.

Recommendations to the WA Government / DWER:

25. Require in the plan baseline monitoring of at least two years, and ideally five years, for licence applications subject to H2 and H3 hydrogeological assessments.
26. Provide in the plan more guidance on what monitoring will be required of applicants in different circumstances.
27. Monitor community water supply for contamination and rectify any contamination as a matter of urgency.

Traditional Owners require increased transparency and information about licences

108. 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 or copies of licences, Traditional Owners will lack important information about the impacts that extraction may be having on Country. This compromises the ability of Traditional Owners to protect Country, in accordance with their fundamental cultural obligations (which are acknowledged in the plan).
109. All new licences should include conditions requiring licence holders 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).³⁴
110. The lack of transparency and guaranteed access to licences and related reports has been raised as a

³³ The KLC notes that levels of hydrogeological assessment are set out in [*Operational policy no. 5.12 – Hydrogeological reporting associated with a groundwater well licence*](#).

³⁴ See recommendations 3.4.6 and 3.5.4 in the 2025 recommendations (Appendix A).



significant frustration at Working Group meetings and PBC forums. As one participant noted at the April 2025 forum:

‘Through this process, hopefully we get more transparency and are not just relying on proponents to volunteer information and have a social conscience.’

111. Another issue relates to restrictions on the advertising and notification to native title parties of licence applications and renewals. Currently, under regulation 23(3)(a) of the *Rights in Water and Irrigation Regulations 2000* (WA) (**Regulations**), licence applications that relate to an underground water source are only advertised where they propose to take over 100,000 KL of water annually or if the Minister considers that there will be a sufficient impact on the water resource for it to be publicly notified. Accordingly, not all licence renewals are necessarily captured.
112. The Regulations should be amended so that all water licence applications, renewals or amendments (including those with allocation volumes under 100,000 KL) relating to mining, fracking and irrigated agriculture activities must be advertised. In addition, the draft plan should be amended to *require* notification to native title parties and the KLC once an application or renewal has been advertised. This will support transparency on licence applications and renewals.
113. Under s 24HA of the Native Title Act, grants of licences to take water are future acts. Native title parties have entitlements of compensation and a right to comment in relation to grants of water licences on their land. The KLC considers that this procedural right to comment is far too weak and does not adequately reflect the spiritual and cultural importance of water to Aboriginal peoples in the Kimberley and across Australia. This concern was highlighted by the Australian Law Reform Commission in its recent review of the future acts regime.³⁵ The Australian Law Reform Commission’s final report, *Fulfilling the Promise of Mabo: Reforming the Future Acts Regime in the Native Title Act 1993 (Cth)*, recommends changes to the Native Title Act so that native title parties have a right to negotiate in relation to the grant of a licence for the taking or use of water at ‘significant impact quantities’.³⁶ It remains to be seen whether the Australian Government will adopt this recommendation.
114. The KLC notes that the WA Government entered the Tjiwarl Palyakuwa (Agreement) Indigenous Land Use Agreement (**Tjiwarl Palyakuwa ILUA**) with Tjiwarl native title holders, which includes a section specific to water. The Tjiwarl Palyakuwa ILUA establishes a specific future act process for grants of water licences, including earlier engagement with licence applicants, a period of negotiation with the applicant, and a right to request confidential information regarding water licence applications and hydrological and monitoring reports.³⁷
115. The KLC recommends that the WA Government establishes a specific future act process for the grant of water licences in the plan area, similar to what has been negotiated under the Tjiwarl Palyakuwa ILUA. This would give the government an opportunity to strengthen procedural rights afforded to native title parties in line with the recommendations of the Australian Law Reform Commission.

³⁵ Australian Law Reform Commission, *Review of the Future Acts Regime: Discussion Paper*, Commonwealth of Australia, 2025, p 37.

³⁶ Australian Law Reform Commission, *Fulfilling the Promise of Mabo: Reforming the Future Acts Regime in the Native Title Act 1993 (Cth)*, Commonwealth of Australia, 2026, p 346.

³⁷ *Tjiwarl Palyakuwa (Agreement) Indigenous Land Use Agreement - Tjiwarl Palyakuwa: Tiiwa kuwarri yampa ngula*, Schedule 5.



Recommendations to the WA Government / DWER:

28. Remove local licensing guidance 4.4, 4.5 on page 27 of the draft plan and replace with the following local licensing policy:
 - *4.8 The Department will include a condition that all monitoring data be provided to any relevant native title party/ies and the KLC for review annually.*
29. Amend the Regulations to require all water licence applications, renewals or amendments (including those with allocation volumes under 100,000 KL) relating to mining, fracking and irrigated agriculture activities to be advertised.
30. Amend the draft plan to require notification to native title parties and the KLC once an application or renewal has been advertised.
31. Establish a specific future act process for the grant of water licences, similar to what has been negotiated under the Tjiwarl Palyakuwa ILUA.

‘May’ not ‘must’ language is problematic and provides DWER with a high level of discretion in licensing

116. The language used in critical parts of the draft plan is enabling rather than mandatory. This significantly undermines the good intentions of the plan. For example, the use of ‘may’ rather ‘will’ in local planning policy 1.1 means that DWER is able but not *required* to consider Aboriginal interests and cultural heritage in water when making licensing decisions.
117. Instead, DWER and the Minister retain a high level of discretion in the licensing process, and Traditional Owners and other stakeholders have little certainty about what a licence applicant or holder will have to do to get and maintain their licence. The draft plan should be amended to create mandatory considerations, which would give Traditional Owners more certainty and ensure that licence decisions are consistent with the intention of the plan.
118. The KLC understands that DWER licensing officers will use practical ‘work instructions’ to guide their implementation of the plan. Traditional Owners should have the opportunity to have input into these practical instructions.

Recommendations to the WA Government / DWER:

32. Amend local licensing policies 1.1 and 2.2 in the draft plan as follows:
 - *1.1. Without limiting the matters that may be relevant, the Department will consider the following as relevant in the Plan Area when assessing applications....*
 - *2.2 The Department will require the applicant to provide further information, within a specified time, regarding how an application may affect Traditional Owners’ water-related rights, interests, cultural values and heritage. This may include evidence that the applicant has consulted with the relevant native title party/ies...*
33. Enable Traditional Owners to have input into the practical instructions that will guide DWER licensing officers’ implementation of the water plan.



Monitoring under the plan must be improved

119. In June 2025, the Western Australian 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 know if licence conditions are being complied with or how much water is being used. The report states:³⁸

[DWER's] current activities provide a limited understanding of actual compliance and do little to deter licence holders from breaching their conditions in the future. ... Most [compliance] activities are desktop reviews of unverified meter readings and information reported by licence holders. Its understanding of compliance is weakened by a lack of on-ground inspections, which decreased by 67% during our audit period. DWER cannot be confident that licence holders are meeting their licence conditions and that water is being extracted appropriately.

120. With these findings in mind, strong monitoring and enforcement under the water plan are 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 clear conflict of interest. There must be a move towards independent monitoring and subsequently increased resourcing of relevant areas of DWER to support this.
121. Monitoring and enforcement are also needed to ensure exemptions to licensing are not exploited. For example, taking water from unproclaimed streams should not 'sensibly diminish' the flow, but it is unclear how, or if, DWER checks that licence-exempt surface-water use complies with this rule. This is particularly important in dry years during periods of low flow.
122. It is also essential that cultural indicators are considered when monitoring water extraction and the health of Country across the plan area. As a PBC representative noted at the April 2025 forum in Fitzroy Crossing:
- 'We need to factor in Indigenous science and lived experience. Country is changing right now. I don't feel confident in the modelling without this input.'
123. 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.
124. The 2025 recommendations include many measures aimed at strengthening the monitoring of water licences and water across the region, including through cultural monitoring and ranger involvement in water monitoring.³⁹ The government should review these recommendations and commit to partnering with and resourcing Traditional Owners to implement them.
125. This is supported by the new NWA, which includes the outcome that planning, management, policies and decisions support Aboriginal and Torres Strait Islander peoples' participation, *including in*

³⁸ Office of the Auditor General Western Australia, *Performance Audit: Regulation of Water Licences*, Office of the Auditor General Western Australia, 2025, p 9.

³⁹ See recommendations 3.5.1-3.5.3, 4.4.1 and 4.4.4-4.4.8 in the 2025 recommendations (Appendix A).



*measurement, monitoring, evaluation and reporting.*⁴⁰

Recommendations to the WA Government / DWER:

34. 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.
35. Commit in the plan to a public report on the implementation of the plan and its monitoring and evaluation results five years after the final plan is published.
36. Move towards independent monitoring of water abstraction and licence conditions, rather than relying on self-reporting by proponents, and ensure DWER is appropriately resourced to undertake regular on-ground compliance activities.
37. Adopt the 2025 Traditional Owner recommendations regarding monitoring of water licences and regional monitoring (3.5.1-3.5.3; 4.4.1, 4.4.4-4.4.8).

The RiWI Act should be amended as soon as possible, prior to comprehensive law reform

126. As noted above at 30-39, Western Australia requires new water laws to replace the current outdated laws – most notably the RiWI Act. Many of the limitations in the draft plan are because of the current water laws. Given that comprehensive law reform is likely to take some time, the KLC urges the WA Government to make immediate discrete amendments to the RiWI Act, as detailed below, to improve its effectiveness and provide greater equity for Traditional Owners.

Right of merits review

127. Under the RiWI Act, licence applicants can seek merits review of licensing decisions in the State Administrative Tribunal, but Traditional Owners and native title parties cannot. The RiWi Act should be amended to give native title parties a right of review in the State Administrative Tribunal for licence decisions.

Relevant considerations

128. The relevant considerations the Minister must have regard to in licensing decisions are set out in clause 7(2), Schedule 1 of the RiWI Act. Currently, these do not include Aboriginal water rights or interests, cultural values or cultural heritage. The RiWi Act should be amended to add these to clause 7(2) Schedule 1 as relevant considerations.⁴¹

Floodplain harvesting and other currently unlicensed water take

129. Floodplain harvesting is currently not regulated by the RiWI Act unless it involves the taking of water from a watercourse, wetland or underground water source. This is a significant concern for Traditional Owners, given the large volumes of water that can be captured through floodplain harvesting and the potential cultural and ecological impacts caused by removing such volumes from Country and disrupting natural flows.
130. In the 2025 recommendations, Traditional Owners recommended that the plan should state that

⁴⁰ *Updated draft National Water Agreement*, Outcome 3F, p 11.

⁴¹ See recommendation 5.1.3 in the 2025 recommendations (Appendix A).



floodplain harvesting is not permitted.⁴² To enable this recommendation to be fulfilled, the RiWI Act should first be amended so that floodplain harvesting can be regulated under it.

131. A further concern around unlicensed use of water is that landowners or occupiers can take water from any springs passing through their property or wetlands wholly within their property without requiring a licence under section 5C of the RiWI Act. Given the large size of properties in the Kimberley (e.g. pastoral stations), this means a number of springs and wetlands are at risk of unregulated water abstraction without regulatory oversight.
132. Springs and wetlands (that are wholly within a property) can fall under section 5C where the water resources management committee for the area considers that there would be significant impact on the flow or level of the spring or wetland if water was taken from it. However, as detailed at 67-68 above, the draft plan does not propose to establish a statutory water resources management committee.

Recommendations to the WA Government / DWER:

38. Before new water laws are in effect, amend the RiWI Act to.
 - a. make Aboriginal rights and interests in water, cultural values and cultural heritage relevant considerations in water licensing decisions under clause 7(2), Schedule 1 of the RiWI Act.
 - b. expand section 26GG(2) of the RiWI Act to give native title parties the right to apply to the State Administrative Tribunal to review licensing decisions.
 - c. enable floodplain harvesting to be regulated as a licensable activity requiring a section 5C licence.
 - d. remove section 5 of the Act such that the taking of water from all wetlands and springs becomes a licensable activity under section 5C.

The plan must provide for Aboriginal community water supply over the long term

133. The KLC strongly supports reserving water for Aboriginal communities' future water supply. However, the draft plan only reserves enough water for projected growth to 2031 (about an 11 per cent increase in water). The KLC notes the difficulties of estimating future water requirements. However, many communities are in areas with restricted water availability. Planning must consider the long-term future of these communities and prioritise their supply.
134. The KLC recommends that DWER project population growth at least 30 years into the future and reserve water for Aboriginal communities accordingly. Population growth projections also need to consider the region more broadly, and the fact that the WA Government has recently named Broome as one of the regional centres in its 'Seven Cities' vision for regional economic development in Western Australia.⁴³
135. Further, the KLC is concerned that some of the water supply reserves for Aboriginal communities are not listed in the main allocation limit table (draft plan, Table 5). These are water reserves in the Greater Derby Canning-Alluvial, the Canning-Broome, the Canning-Liveringa, and Fractured Rock. Water reserved for Aboriginal communities should be listed in this main table, not only in the methods report,

⁴² See recommendation 3.2.6 in the 2025 recommendations (Appendix A).

⁴³ Government of Western Australia, [Seven Cities to drive next wave of regional economic development](#) [media release], Government of Western Australia, 28 April 2026, accessed 23 June 2026.



so that the water is clearly accounted for.

Recommendations to the WA Government / DWER:

39. Project population growth at least 30 years into the future and reserve water for Aboriginal communities accordingly.
40. List water reserved for Aboriginal communities in Table 5 in the plan, not only in the methods report.

Climate change needs to be more strongly considered across the plan area

136. The draft plan does not consider how climate change will impact water. The KLC notes that there is not currently enough data to build models with enough accuracy to be able to meaningfully predict the implications of climate change.
137. Given that the plan area is generally data poor, it is difficult to detect and understand changes when they occur. As per paragraph 106, DWER should expand its monitoring network to fill data gaps, reduce uncertainty and improve understanding of climate change impacts.
138. Several PBCs in the Kimberley gather and record data on Country, such as the location and characteristics of different animal and plant species, and incorporate it into GIS programs. The KLC encourages the WA Government to support PBCs with such projects and incorporate this data into climate change modelling.
139. The plan should ultimately consider projections for climate change, and model how these will impact groundwater recharge, streamflow, flooding and other relevant factors.
140. At the plan level, there could be greater clarity about the adaptive approach, including thresholds, triggers and actions to respond to climate change.

Recommendations to the WA Government / DWER:

41. Ensure the plan considers climate change projections and prioritise data collection to build models for how climate change may impact relevant factors such as groundwater recharge, streamflow and flooding.



Appendix A: 2025 Traditional Owner Recommendations

Available at: <https://www.klc.org.au/newsroom/2026/3/24/ldame28qmdm8dqd6j778zrqrvw76j5>

Guiding Principles

These are guiding principles proposed by the Traditional Owner Working Group, to set direction and framing for the collaborative planning process.

These thirteen principles are ones which can be taken and used across future projects, a blueprint of future engagement when it comes to water in the Kimberley.

1

Respect of Indigenous values and Western values in genuine partnership.

2

Creation of an ongoing, durable and resilient engagement process between Kimberley TOs and the WA government on water.

3

Reflecting the interconnectedness of land, water, people and the environment with a whole-of-government approach.

4

Linking of this process with delivering the National Agreement on Closing the Gap & the state's Aboriginal Empowerment Strategy.

5

Intergenerational equity: thinking long-term for and with future generations.

6

Good faith process and engagement, on the part of both government and TOs.

7

Respect for free, prior and informed consent (FPIC).

8

Regular review and evaluation of the engagement process.

9

Co-design, co-management and joint implementation of the plan with DWER.

10

Support for business and economic development.

11

Ensuring sustainable lifeways and sustainable development.

12

Recognition of, and respect for, Traditional Owners' water custodianship, management knowledge and practices.

13

Recognition of, and respect for, Aboriginal cultural heritage and values.

High-level Positions on Water Planning

Fundamental to these position statements is the understanding that for Kimberley Traditional Owners, the health and integrity of Country is essential to social and cultural wellbeing as well as to suitable business and economic development. Kimberley Traditional Owners' vision of business and economic development is therefore one that is shaped by Aboriginal people's values, leadership and involvement, and does not compromise the health of Country.

1

The protection, health and wellbeing of Country is a high priority. First Law and First People still stand.

2

All stakeholders should shape what development looks like for the future of the Kimberley.

3

Water is fundamental to life, Country and Aboriginal law and culture. It connects all Kimberley groups and should be managed collectively for the good of all.



Sustainable business and economic development is supported, provided that:

- Traditional Owners co-design all economic development in the Kimberley;
- a precautionary approach is adopted that considers climate change;
- Country and Aboriginal cultural heritage are protected;
- Traditional Owners' expertise and cultural authority are respected; and
- Traditional Owners have equal economic opportunities from water use.



Aboriginal cultural heritage must be protected by water planning, whether sites are registered or not. Aboriginal cultural heritage may only be defined and assessed by Traditional Owners.

Priority Recommendations for Plan Drafting

These are the recommendations from the Working Group and forum attendees that require priority consideration by the government. They address the need to a) increase the level of PBC engagement throughout the planning area and Kimberley and b) consolidate the body of work from the first phase of engagement with the Working Group for inclusion in the final plan.

- | | |
|------------|---|
| 2.1 | DWER should provide the KLC and Working Group with a copy of the draft plan for review, following DWER's internal review and before approval by the Minister. The copy of the plan DWER provides should make clear the changes that have been made to the draft plan through DWER's internal review. |
| 2.2 | DWER should release the draft plan for public comment for 3 months. |
| 2.3 | DWER should fund KLC to facilitate a next phase of engagement with Traditional Owners on the Fitzroy-Derby water plan, to enable the KLC to get detailed feedback from PBCs and engage with DWER while the final plan is drafted. This phase of engagement should run from the public release of the draft plan until at least 6 months after the end of the public comment period. |
| 2.4 | DWER and Traditional Owners, as facilitated by the KLC, should co-write the final plan. |

Recommendations for Inclusion in the Plan Document

These recommendations are for inclusion in the plan document. Their implementation will require varying degrees of change to the current process.

Decision Making

- | | |
|--------------|---|
| 3.1.1 | The government should create a statutory committee with shared decision-making authority for the plan area that is comprised of at least 50 per cent Traditional Owners, and plays a decision-making role in license assessments. |
|--------------|---|



Plan Policy

3.2.1	The plan should: - recognise that Traditional Owners are custodians of Country and have been for many generations; - acknowledge and name the native title determinations, registered claims and holders across the planning area; and - acknowledge the many neighbouring native title holding groups who have cultural connections to the water and cultural heritage in the plan area.
3.2.2	The plan should recognise that Traditional Owners have a duty of care for their Country and a responsibility to prevent damage, including ensuring the safety of people on Country.
3.2.3	The plan should recognise that clean drinking water is a human right and is a priority use of water over other purposes.
3.2.4	The plan should recognise that all water in the Kimberley, including groundwater, is culturally significant and underpins the cultural values recognised in the West Kimberley National Heritage Listing.
3.2.5	The plan should acknowledge the scientific uncertainty around Kimberley groundwater resources and the need for a precautionary approach. More specifically, the plan should acknowledge the need for more research to understand aquifer recharge rates, and consider the changing climate, the connectivity within the Canning Basin and between aquifers, and the risks posed by groundwater extraction on Country.
3.2.6	The plan should state that rainwater, runoff and floodplain harvesting for economic purposes is not permitted. Current areas where this is occurring need to be assessed for their impact to cultural values and biodiversity.
3.2.7	The plan should acknowledge that hydraulic fracturing (fracking) can impact aquifers and pollute groundwater resources. The plan should therefore require hydraulic fracturing wells to be monitored and assessed as part of water planning and management, at the proponent's expense. Traditional Owners should have a right to veto on hydraulic fracturing proposals.

Allocation Limit and Aboriginal Water Holding

3.3.1	The plan should set an allocation limit of no more than 40 per cent of the estimated annual recharge. This recommendation is conditional on: - 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. This scientific work must consider climate change and the highly variable (both spatial and temporal) cyclonic nature of discharge and recharge in the planning area.
3.3.2	The plan should create an Aboriginal water holding of 50 per cent of the general component: the total water volume for allocation, including water already allocated but excluding water for community use.



Licensing

3.4.1	The plan should state that all water places are to be considered Aboriginal Heritage places for licensing purposes.
3.4.2	The plan should explicitly state that Aboriginal interests, cultural heritage and knowledge of Country are relevant matters in water licence assessments.
3.4.3	The plan should strongly encourage licence applicants to engage with native title parties and any PBC regional body at the project development stage, in order to obtain guidance on how to prevent impacts on Country and culture, and avoid needless investment in projects that may be unsuitable.
3.4.4	DWER should notify relevant native title parties, the KLC and any regional PBC body as soon as a licence application or renewal is received (in addition to the future acts process).
3.4.5	DWER should provide native title parties with sufficient time to respond to future act notices (at least 5 months) and include in the notice a copy of the application and any supporting documents. DWER must also provide a response as to how DWER has considered native title party comments.



3.4.6	Proponents' impact assessments, monitoring data and other scientific reports should be made available for review by the KLC water unit/team, relevant native title parties and any regional PBC body at the licence application stage, and then annually, as a condition of water licences.
3.4.7	The plan should set out a best-practice consultation process for licence applicants and holders to follow when consulting with Traditional Owners. This consultation process should be developed before the release of the final plan, in partnership with the KLC and Kimberley Traditional Owners.
3.4.8	The plan should provide that the relevant considerations for the purposes of the exercise of the Minister's discretion in deciding applications includes whether the applicant has: a) provided evidence of appropriate consultation as set out in the best-practice consultation process with the affected native title party/ies (noting that this may include neighbouring native title parties, as well as the native title party relevant to the proposed project's location); b) reached agreement with this/those affected native title party/ies on measures to identify and manage impacts on cultural heritage (ideally in accordance with a Heritage Protection Agreement); and c) provided confirmation that a cultural heritage impact assessment has been conducted with the native title party/ies and the application is consistent with the outcomes of that assessment.
3.4.9	Consistent with recommendation 3.4.8, DWER should recommend that applicants enter into a Heritage Protection Agreement with Traditional Owners as a pathway to formalise consultation and cultural impact assessment relating to a water licence.
3.4.10	The plan should highlight the risk of contravening the <i>Aboriginal Heritage Act 1972</i> (WA) and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) through impacts on cultural heritage and National Heritage listed values if proponents do not consult appropriately with Traditional Owners and gain their consent. The plan should state that the relevant considerations as set out in recommendation 3.4.8 will assist an applicant to mitigate this risk.



3.4.11	The plan should state that, because of the Indigenous values associated with groundwater and recognised in the West Kimberley National Heritage listing, DWER may refer all water licence applications to DCCEEW unless the applicant shows evidence of consultation with and consent from the affected Traditional Owners, via their Native Title parties, as set out in recommendation 3.4.8.
3.4.12	Consistent with recommendation 3.4.8, the Minister may not approve applications for water licences that could impact the quantity or quality of water at a site of cultural significance (whether listed or not), unless cleared by Traditional Owners.
3.4.13	Entitlements in individual water licences should be capped at 3 GL, and preferably staged in smaller increments. If DWER receives an application to increase a water licence in excess of 3 GL, it should consult with and seek the advice of the statutory committee with shared decision-making authority for the plan area on matters including: a) whether the licence should be capped at 3 GL; b) whether approval of the licence should be staged in 3 GL or smaller increments, with 5 years of data collection (with Native Title Party/ies involvement) in between.
3.4.14	Proponents should provide 5 years of baseline data (groundwater levels and water quality) before a licence is granted. Proponents should be required to collect a robust dataset, by which to assess impact, prior to license application as opposed to this occurring after a license is granted to reduce risk.
3.4.15	A schedule of incremental (staged) water licensing should be developed for individual licences to align with monitoring and evidence of no impact. For example, a lack of groundwater connectivity between a drawing point and a groundwater dependent ecosystem or cultural water place should be demonstrated by the applicant, not just assumed.
3.4.16	Licences should be adaptive to climate change. DWER should only allow licence holders to use a proportion of the entitlement during an exceptionally dry year or after a series of consecutive dry years. This should be stated as a condition on licences.
3.4.17	Environmental impact assessments carried out by the applicant must demonstrate the maintenance of hydraulic gradients and groundwater levels at all cultural places as well as in the floodplain, tributaries and alluvium.
3.4.18	Water licences should only be granted if a stygofaunal sampling has been completed and an impact assessment can prove no significant impacts to any identified species are predicted
3.4.19	The alluvial aquifer map and corresponding management zone should extend to the Margaret River and all large creeks.
3.4.20	All water licences should carry a condition that repair is required in the case of damage to Country or water quality.
3.4.21	The adaptive review and renewal cycle for water licences should be shorter than 10 years. We recommend 5 years for the initial licence term, and a physical (not just desktop) review of water licences every 3 years.
3.4.22	Licence renewals that arise once the plan is in place must be assessed against the plan.



Monitoring

3.5.1	All licences should have conditions requiring independent water quality monitoring and water quality triggers.
3.5.2	All licences should have conditions requiring groundwater level monitoring which relate to trigger levels and mitigation. There should be a “cease to pump” trigger included for all monitoring bores in all groundwater operating strategies.
3.5.3	Cultural indicators used by Traditional Owners to monitor the impact of the take and use of water on Country and cultural values should be considered equally with ecological indicators.
3.5.4	All monitoring reports (scientific and cultural) should be provided to relevant native title parties on an annual basis.

Recommendations for Plan Implementation

These recommendations are about making the recommendations for the plan document actionable and creating a pathway for efficient and collaborative water decision-making in the Kimberley that aligns with objectives set out in the WA Government’s Aboriginal Empowerment Strategy and the National Agreement on Closing the Gap, to which the WA Government is a signatory.

They will require government to commit to a continued dialogue beyond the water plan, and to supporting: the capacity building of PBCs and rangers; the creation of mechanisms for Aboriginal water governance in the Kimberley; the implementation of the Aboriginal Water Holding; and the ongoing adaptive management of water licences.

Process and Relationship with Government: Partnership, Governance and Capacity-Building

4.1.1	The government should durably fund a statutory committee with shared decision-making authority for the plan area that is comprised of at least 50 per cent Traditional Owners, and plays a decision-making role in license assessments.
4.1.2	The government should fund the establishment and operation of a regional PBC body that is involved in water planning, licensing and management. This involvement may include providing advice to the statutory committee, and providing recommendations to the Minister, including on membership of the statutory committee.
4.1.3	The government should fund, consistently and over the long term, technical support for PBCs, the KLC and any PBC body to understand and respond to water licence applications and water planning processes, including technical reports from licence applicants.
4.1.4	The government should contribute ongoing funding to all Kimberley PBCs to support their engagement on state-based future acts, including water licence applications.



Aboriginal Water Holding Implementation

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| 4.2.1 | Traditional Owners must have the right to choose to use the water in the Aboriginal Water Holding or leave it in the system, without penalty or loss of the holding. |
| 4.2.2 | <p>To support the creation and implementation of the Aboriginal water holding, the government should provide:</p> <ul style="list-style-type: none"> a) Adequate time and funding for Traditional Owners to explore appropriate governance and management to ensure fair and equitable access; b) Adequate funding to implement the holding; c) Adequate funding to support Traditional Owners' access to groundwater. |

Licensing

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| 4.3.1 | A detailed and explicit adaptive management plan is required to accompany the water plan, in order to clarify how monitoring data and processes will feed into adaptive management of licences (see Thomas et al. 2022 for a reference). The plan should be developed in collaboration with Traditional Owners. |
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Monitoring

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| 4.4.1 | DWER should undertake more independent and frequent groundwater and Groundwater Dependent Ecosystems monitoring for large water licences, to avoid the reported issues with self-monitoring and data confidentiality. |
| 4.4.2 | DWER should enter into a partnership with PBCs to enable Aboriginal PBC staff and/or rangers to be trained and resourced to carry out water monitoring, and possibly compliance activities. |
| 4.4.3 | DWER should enter into a partnership with PBCs, to support PBC staff and/or rangers to report compliance incidents or impacts of concern to DWER, and to set out a process for DWER to respond. |
| 4.4.4 | Aquifer recharge should be monitored in current time (annually), including via hydrographs, chloride mass balance and preferably other geochemical tracers. Relevant regional-scale assessments of climatic trends and water resources should be taken into account by DWER's hydrogeologists. |
| 4.4.5 | DWER's monitoring network should be extended to include the upper Martuwarra Fitzroy and Margaret River catchments, where many springs are located. |
| 4.4.6 | DWER should create and maintain a water monitoring database (quantity and quality) and make it accessible to PBCs across the plan area. |
| 4.4.7 | DWER should support more research to establish an ecological baseline and environmental water requirements in the planning area, especially in the east of the planning area. This should be done with PBC involvement, including of rangers when possible (see recommendations 4.4.2 above). |



- 4.4.8** DWER should expand the groundwater monitoring network to include more monitoring bores in the alluvial aquifer, as well as nested piezometers (sites with multiple bores screened over multiple aquifers or parts of an aquifer). If groundwater allocation is proposed in the east of the planning area, monitoring bores should be installed in this area.
- 4.4.9** The monitoring of hydraulic fracturing wells as part of water management, to protect groundwater resources, should include well integrity testing ongoing throughout the well's life (i.e. until decommissioning). Petroleum well integrity/monitoring should be reviewed regularly by Native Title parties, the KLC and any regional PBC body at the proponent's expense. A post decommissioning assessment of the well's integrity should also be required.
- 4.4.10** The water plan's implementation should provide for the establishment of a fund for research, conservation and rehabilitation in the plan area, to assist with developing the body of western and Aboriginal scientific knowledge in relation to groundwater movement and recharge. DWER and/or proponents should provide the required resources for rehabilitation if negative environmental or cultural impacts occur following implementation of the plan.

Recommendations Beyond the Plan

These are recommendations for legislative change and land-use and economic development planning. This vision goes beyond the water plan, but it has been present throughout the process alongside water planning conversations.

Legislative Reform

- 5.1.1** The government should replace WA's water laws with new 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. These new laws should be developed in consultation with key stakeholders, including Traditional Owners.
- 5.1.2** Until comprehensive reform of WA's water laws as recommended in 5.1.1 above is finalised, the government should amend section 7(2) of Schedule 1 of the RiWI Act to explicitly state that native title rights and interests and cultural heritage are relevant considerations for decisions about water licences.
- 5.1.3** Until comprehensive reform of WA's water laws as recommended in 5.1.1 above is finalised, the RiWI Act should be amended to provide native title parties with a right of review in the State Administrative Tribunal for licence decisions, including decisions to approve, amend or renew a licence.

Martuwarra-Fitzroy Catchment Management Plan

- 5.2.1** The Government should deliver on its 2023 commitment of a process to develop a Fitzroy catchment management plan, including land-use and economic development. This plan should be developed in collaboration with Traditional Owners.



Appendix B: Fitzroy River Declaration

Available at:

https://static1.squarespace.com/static/59fecece017db2ab70aa1874/t/5b286f2bf950b776fe5ead56/1529376561505/Fitzroy+River+Declaration._2016.pdf



**This declaration is endorsed by the above Prescribed Bodies Corporates
as well as the Kija native title claim group.**

Traditional Owners from the Fitzroy River catchment area met on the 2nd and 3rd of November 2016 in Fitzroy Crossing. Participants from that meeting developed the below statement:

Fitzroy River Declaration

Traditional Owners of the Kimberley region of Western Australia are concerned by the extensive development proposals facing the Fitzroy River and its catchment and the potential for cumulative impacts on its unique cultural and environmental values.

The unique cultural and environmental values of the Fitzroy River and its catchment are of national and international significance. The Fitzroy River is a living ancestral being and has a right to life. It must be protected for current and future generations, and managed jointly by the Traditional Owners of the river.

Traditional Owners of the Fitzroy catchment agree to work together to:

1. Action a process for joint PBC decision making on activities in the Fitzroy catchment;
2. Reach a joint position on fracking in the Fitzroy catchment;
3. Create a buffer zone for no mining, oil, gas, irrigation and dams in the Fitzroy catchment;
4. Develop and agree a Management Plan for the entire Fitzroy Catchment, based on traditional and environmental values;
5. Develop a Fitzroy River Management Body for the Fitzroy Catchment, founded on cultural governance;
6. Complement these with a joint Indigenous Protected Area over the Fitzroy River;
7. Engage with shire and state government to communicate concerns and ensure they follow the agreed joint process;
8. Investigate legal options to support the above, including:
 - 1) Strengthen protections under the EPBC Act National Heritage Listing;
 - 2) Strengthen protections under the Aboriginal Heritage Act; and
 - 3) Legislation to protect the Fitzroy catchment and its unique cultural and natural values.

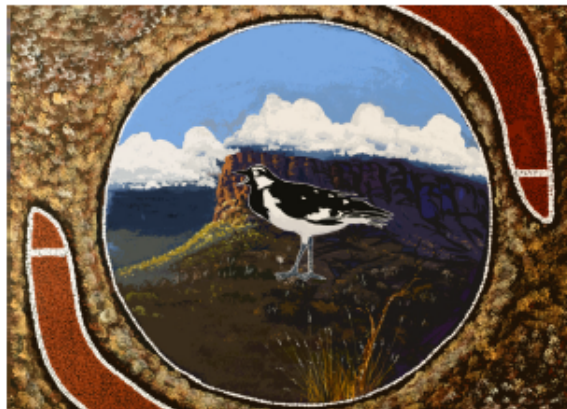


Appendix C: Ngumpun Statement

Available at: <https://www.klc.org.au/newsroom/2025/8/20/ngumpun-statement>



THE NGUMPAN STATEMENT



CELEBRATING 40 YEARS OF LAW, LANGUAGE AND CULTURE

We, the members of the five representative organisations of the Kimberley, speak with one voice for the protection of our Country, our culture and our water. These are the foundation of our identity, our law, our language and our spirit.

As people of the oldest continuous living culture and caretakers of some of the world's most ancient landscapes, we call on Governments to reject short-term thinking. Decisions made today must honour the long view – one that respects Country, culture, and community and protects them for future generations. We cannot afford short-term solutions to long-term challenges.

Water is life. It sustains our Country, our people, and our culture. For thousands of years, we have cared for it, keeping it in balance. Yet WA's water laws, written over a century ago, do not recognise our relationship to water or our rights in it. We cannot allow the mistakes of other regions, where water has been overallocated and mismanaged, to be repeated here. The Kimberley must lead with a precautionary, sustainable approach grounded in Aboriginal knowledge and leadership.

Our cultural heritage is our past, our present, and our future. It holds our stories and connects our people across generations. We have seen it destroyed under weak laws, as with Darrajayin, a highly significant cultural site which included both men's and women's sacred areas and places important to the Serpent Dreaming Story (Jawaren) and the Moon Dreaming Story (Garnkiny) on Malarngowem Country. Still, the laws in WA and nationally fail to provide meaningful protection. This must change. We call for strong, best-practice cultural heritage laws that protect our sacred places and ensure our voices are at the centre of all decisions about our heritage.

Fracking threatens our Country. The risks to water, culture, and community are too great, and the protections too weak. Most of WA is already protected from fracking and the Kimberley should be no different. Until there are genuine rights of veto for Traditional Owners and a robust regulatory framework, there must be a moratorium on all fracking in our region.

Our young people are stepping forward with pride and purpose. They are the future custodians of our Country and culture, and they are already contributing their knowledge, creativity and leadership. We must create pathways that

empower them to carry forward our law, language and stories – supported by strong education, meaningful employment opportunities and deep connection to culture and Country.

Despite these challenges, we continue to grow our own future. We build programs, businesses, and industries that create jobs, strengthen culture, and improve the wellbeing of our people. These enterprises drive economic, social, and cultural outcomes that support self-determination and deliver prosperity for Kimberley Aboriginal people, on our own terms, and in ways that keep Country healthy.

The National Agreement on Closing the Gap promises shared decision-making with Aboriginal people. This is the time to honour that commitment. Not with words, but with action.

We call on the Governments of Western Australia and Australia to:

- Reform water laws to recognise Traditional Owners rights, knowledge and leadership in decision-making.
- Deliver strong, nationally consistent cultural heritage protections that meet best-practice standards.
- Impose a moratorium on fracking in the Kimberley until Traditional Owner veto rights and best-practice regulation are in place.
- Invest in co-designed initiatives that support Kimberley Aboriginal young people to thrive, centred around education, employment and cultural connection.
- Recognise and engage with the Kimberley Aboriginal Regional Body (KARB), as the authority for the voice of the Kimberley Aboriginal People.

We speak with one voice to protect our Country, our language, our culture, and our future. Guided by our old people, whose strength, dignity, and resilience have carried us through generations, we are grounded in the power of our heritage, led by our law and united in our responsibility to those who came before us and those yet to come.



Appendix D: KLC appraisal – 2025 Traditional Owner recommendations in the draft plan

This table provides the KLC's comments on whether, and to what extent, the 2025 Traditional Owner recommendations relating to the plan document have been supported in the draft plan. The full list of 2025 recommendations (including those relating to plan implementation and broader matters) are at Appendix A.

2025 recommendation	Status in draft plan	KLC appraisal
3.1.1 The government should create a statutory committee with shared decision-making authority for the plan area that is comprised of at least 50 per cent Traditional Owners, and plays a decision-making role in license assessments.	Not supported	This recommendation has not been met. The draft plan proposes to establish an advisory committee under the <i>Water Agencies (Powers) Act 1984</i> (WA). The terms of reference are to be determined by the Minister, rather than established by legislation. There is no legal requirement for the Minister to consider or implement any of the recommendations made by the advisory committee and it can be abolished at any time. The State can establish a water resources management committee under s 26GK of the <i>Rights in Water and Irrigation Act 1914</i> (WA) (RiWI Act). Under s 26GP of the RiWI Act, the Minister has the power to delegate any of the Minister's functions under the Act to the water resources management committee, which can include the power to decide licence applications under s 5C.
3.2.1 The plan should: • recognise that Traditional Owners are custodians of Country and have been for many generations; • acknowledge and name the native title determinations, registered claims and holders across the planning area; and • acknowledge the many neighbouring native title holding groups who have cultural connections to the water and cultural heritage in the plan area.	Supported	This recommendation has been met, but the wording in the plan should more strongly acknowledge that neighbouring native title holding groups have cultural connections to the water and cultural heritage in the plan area.



3.2.2 The plan should recognise that Traditional Owners have a duty of care for their Country and a responsibility to prevent damage, including ensuring the safety of people on Country.	Supported	This recommendation is reflected in the expected community outcomes on page 13 of the draft plan. It should also be included in the Acknowledgement of Country on page ii. However, for this recognition to be meaningful, Traditional Owner recommendations regarding monitoring – particularly cultural monitoring – should be implemented.
3.2.3 The plan should recognise that clean drinking water is a human right and is a priority use of water over other purposes.	Supported	Drinking water supply for towns and Aboriginal communities is recognised as a priority use in the plan. However, the specific wording about it being a human right is not included. These water sources also need to be fit for purpose (i.e. free from any contamination) so the term 'clean' must be defined in this context.
3.2.4 The plan should recognise that all water in the Kimberley, including groundwater, is culturally significant and underpins the cultural values recognised in the West Kimberley National Heritage Listing.	Partly supported	There should be a statement to this effect in the plan. Whilst cultural values are mentioned throughout the draft plan, there should be specific reference to the statement (once drafted) at the beginning of the plan. Definitions in the draft plan should be updated so that all water – including groundwater – is included as culturally significant.
3.2.5 The plan should acknowledge the scientific uncertainty around Kimberley groundwater resources and the need for a precautionary approach. More specifically, the plan should acknowledge the need for more research to understand aquifer recharge rates, and consider the changing climate, the connectivity within the Canning Basin and between aquifers, and the risks posed by groundwater extraction on Country.	Partly supported	The overall level of scientific uncertainty in the draft plan is not explicitly acknowledged or quantified. However, uncertainty is mentioned in relation to specific aspects of the plan (e.g. climate change impacts), and there is reference to data-poor areas. The draft plan claims that the 75.7 GL allocation limit is precautionary. It is unclear how data gaps will be addressed at the plan level and the plan should be specific on the timeframe for increased monitoring.
3.2.6 The plan should state that rainwater runoff and floodplain harvesting for economic purposes is not permitted. Current areas where this is occurring need to be assessed for their impact to cultural values and biodiversity.	Not supported	This recommendation has not been met. Capturing rainfall or overland flow (even if for commercial purposes) is not a licensable act under the RiWi Act, so cannot be restricted by a water management plan. Floodplain harvesting is a significant concern for Traditional Owners. The RiWi Act should be amended to enable floodplain harvesting to be regulated and this recommendation to be adopted.



3.2.7 The plan should acknowledge that hydraulic fracturing (fracking) can impact aquifers and pollute groundwater resources. The plan should therefore require hydraulic fracturing wells to be monitored and assessed as part of water planning and management, at the proponent's expense. Traditional Owners should have a right to veto on hydraulic fracturing proposals.	Not supported	There is no acknowledgement in the draft plan of the risks of fracking to water. The plan does not require fracking wells to be monitored and assessed. The RiWI Act does not specifically regulate fracking; however, the taking and use of water for fracking is subject to the RiWI Act, i.e. a licensable activity (see s 7(3) <i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA)). Given public interest and risk of harm, Department of Water and Environmental Regulation (DWER) should consider in more detail the extent to which it can regulate the take and use of water for fracking, particularly in terms of monitoring backflow dams in wet season. The WA Government has not fulfilled its commitment to create veto rights for Traditional Owners on fracking (Action 5a in the WA Government's 2019 Implementation Plan on Fracking⁴⁴). Many other key actions in the Implementation Plan also remain incomplete. The KLC recommends that any water licence application where water is to be used for fracking should be advertised due to the potential significant impacts and public interest.
3.3.1 The plan should set an allocation limit of no more than 40 per cent of the estimated annual recharge. This recommendation is conditional on: • 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. This scientific work must consider climate change and the highly variable (both spatial and temporal) cyclonic nature of discharge and recharge in the planning area.	Partly supported	The allocation limit reflects approximately 41 per cent of the estimated recharge of the three main aquifers (Grant-Poole, Wallal and Erskine). This Traditional Owner recommendation suggested up to 40 per cent as a maximum 'ceiling', conditional on other Traditional Owner recommendations being adopted and data gaps being addressed. However, the majority of Traditional Owner recommendations and particularly implementation recommendations around monitoring have not been supported, providing less assurance that there will be adequate protective measures in place to prevent damaging extraction. Further, there remain areas of local over-extraction – for instance, in the Derby Peninsula, more than 100 per cent of estimated recharge is being extracted.

⁴⁴ Government of Western Australia, [Implementation Plan: Implementation of the Government's response to the Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in Western Australia](#), Government of Western Australia, July 2019.



3.3.2 The plan should create an Aboriginal water holding of 50 per cent of the general component: the total water volume for allocation, including water already allocated but excluding water for community use.	Partly supported	The plan proposes to create an Aboriginal Water Holding (AWH) of approximately 25 GL, which is approximately 50 per cent of the water available for general licensing in the future (i.e. the figure excludes water already licensed). However, the 2025 recommendation was for 50 per cent of the consumptive pool (excluding public water supplies and exempt uses), which should take currently licensed water into account. Under the allocation limit set in the draft plan, 50 per cent of the general component, excluding exempt uses, public water supplies and licensed surface water, would be 29 GL, assuming restricted aquifers (e.g. alluvial) are not included. The KLC also has concerns that if the AWH was taken up in future when the rest of the plan area was near fully allocated, Traditional Owners would be faced with either making impacts worse or not taking up their AWH.
3.4.1 The plan should state that all water places are to be considered Aboriginal Heritage places for licensing purposes.	Partly supported	The draft plan states that all watercourses, wetlands and springs are likely Aboriginal heritage. However, as drafted, this is subject to the advice of the Department of Planning, Lands and Heritage (DPLH). This is a significant concern. Only Traditional Owners can determine what is and is not cultural heritage. It is unclear on what basis DPLH could determine that a particular water place is not cultural heritage. Reference to DPLH in this section of the plan should be replaced with a reference to Traditional Owners.
3.4.2 The plan should explicitly state that Aboriginal interests, cultural heritage and knowledge of Country are relevant matters in water licence assessments.	Partly supported	The draft plan states that DWER <u>may</u> consider water-related Aboriginal interests and cultural values as relevant when assessing licence applications. This provides discretion to DWER to determine whether to consider Aboriginal interests and cultural values in the assessment process, and falls short of the recommendation. To provide certainty to Traditional Owners that Aboriginal water interests, cultural heritage and knowledge of Country will be considered, the plan should state that they are mandatory relevant considerations in water licence assessments.



3.4.3 The plan should strongly encourage licence applicants to engage with native title parties and any PBC regional body at the project development stage, in order to obtain guidance on how to prevent impacts on Country and culture, and avoid needless investment in projects that may be unsuitable.	Supported	This recommendation has been implemented in the draft plan, primarily in the local licensing guidance on page 25 (noting that government has not supported a PBC regional body at this stage).
3.4.4 DWER should notify relevant native title parties, the KLC and any regional PBC body as soon as a licence application or renewal is received (in addition to the future acts process).	Partly supported	The draft plan states that DWER may inform relevant native title parties and KLC once an application or renewal has been advertised. This provides discretion to DWER to determine whether to notify native title parties and KLC of the relevant applications. Further, under regulation 23(3)(a) of the <i>Rights in Water and Irrigation Regulations 2000</i> (WA), licence applications that relate to an underground water source are only advertised where they propose to take over 100,000 KL of water annually or if the Minister considers that there will be a sufficient impact on the water resource for it to be publicly notified. Accordingly, not all licence renewals are necessarily captured. The KLC understands that licence applications are confidential information and cannot be provided to relevant native title parties or the KLC until advertised by DWER. The KLC therefore recommends that the Regulations be amended to require all water licence applications, renewals or amendments (i.e. including those with allocation volumes under 100,000 KL) relating to mining, fracking and irrigated agriculture activities to be advertised. In addition, the draft plan should be amended to require notification to native title parties and the KLC once an application or renewal has been advertised.
3.4.5 DWER should provide native title parties with sufficient time to respond to future act notices (at least 5 months) and include in the notice a copy of the application and any supporting documents. DWER must also provide a response as to how DWER has considered native title party comments.	Partly supported	As above, once an application is advertised, DWER may provide relevant native title parties 30 days to respond and consider these comments. DWER has not committed to providing a response as to how they have considered native title comments and is silent on any changes to the future acts process. The KLC recommends that the State establishes a specific future act process for the grant of water licences, similar to what has been negotiated under Tjiwarl Palyakuwa ILUA.



3.4.6 Proponents' impact assessments, monitoring data and other scientific reports should be made available for review by the KLC water unit/team, relevant native title parties and any regional PBC body at the licence application stage, and then annually, as a condition of water licences.	Not supported	The draft plan includes guidance which encourages licensees to share water licensing reporting with relevant native title parties. This relies on the goodwill of licensees and there are concerns that proponents who have historically not engaged with native title parties or the KLC will simply not follow this guidance. The KLC recommends that policy guidance 4.4, 4.5 should be removed and replaced with the following local licensing policy: <i>4.8 The Department will include a condition that all monitoring data be provided to any relevant native title party/ies and the KLC for review annually.</i>
3.4.7 The plan should set out a best-practice consultation process for licence applicants and holders to follow when consulting with Traditional Owners. This consultation process should be developed before the release of the final plan, in partnership with the KLC and Kimberley Traditional Owners.	Partly supported	The draft plan encourages applicants to apply best-practice engagement with Traditional Owners, but refers to other state and federal government agency consultation guidelines which are not fit-for-purpose in the Kimberley and have not included co-design or collaboration with the KLC or Kimberley Traditional Owners.
3.4.8 The plan should provide that the relevant considerations for the purposes of the exercise of the Minister's discretion in deciding applications includes whether the applicant has: a) provided evidence of appropriate consultation as set out in the best-practice consultation process with the affected native title party/ies (noting that this may include neighbouring native title parties, as well as the native title party relevant to the proposed project's location); b) reached agreement with this/those affected native title party/ies on measures to identify and manage impacts on cultural heritage (ideally in accordance with a Heritage Protection Agreement); and	Not supported	The draft plan states that: • DWER may require the applicant to provide further information regarding how an application may affect Traditional Owners' water-related rights, interests, cultural values and heritage; and • this may include evidence that the applicant has consulted with the relevant native title party/ies (in various manners). This provides discretion to DWER to determine whether evidence of consultation and/or agreement-making and/or a cultural heritage impact assessment will be required, and falls short of the recommendation. Further, it is not clear that an absence of that evidence will be a relevant consideration for the purpose of the water licence assessment.



c) provided confirmation that a cultural heritage impact assessment has been conducted with the native title party/ies and the application is consistent with the outcomes of that assessment.		
3.4.9 Consistent with recommendation 3.4.8, DWER should recommend that applicants enter into a Heritage Protection Agreement with Traditional Owners as a pathway to formalise consultation and cultural impact assessment relating to a water licence.	Supported	This recommendation has been implemented in the draft plan in the local licensing guidance on page 25.
3.4.10 The plan should highlight the risk of contravening the <i>Aboriginal Heritage Act 1972</i> (WA) and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) through impacts on cultural heritage and National Heritage listed values if proponents do not consult appropriately with Traditional Owners and gain their consent. The plan should state that the relevant considerations as set out in recommendation 3.4.8 will assist an applicant to mitigate this risk.	Partly supported	The draft plan includes guidance which states that applicants may need to refer the licence for assessment under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) (EPBC Act) if the take and use of water may harm Aboriginal heritage. DWER may refer the proposal if the proponent does not. The KLC recommends that the guidance language should make the proponent's requirements under the EPBC Act clearer. As the draft plan does not mandate compliance with the EPBC Act before a licence is granted, Traditional Owners may have to seek an injunction under s 475 of the EPBC Act to prevent the proponent from extracting water without EPBC Act approval. This places a significant resource burden on Traditional Owners to ensure compliance through legal action.
3.4.11 The plan should state that, because of the Indigenous values associated with groundwater and recognised in the West Kimberley National Heritage listing, DWER may refer all water licence applications to Department of Climate Change, Energy, the Environment and Water (DCCEEW) unless the applicant shows evidence of consultation with and consent from the affected Traditional Owners, via their Native Title parties, as set out in recommendation 3.4.8.	Partly supported	See comments at recommendation 3.4.10 above.



3.4.12 Consistent with recommendation 3.4.8, the Minister may not approve applications for water licences that could impact the quantity or quality of water at a site of cultural significance (whether listed or not), unless cleared by Traditional Owners.	Partly supported	This recommendation is reflected in local licensing policy 3.6 in the draft plan, which states that DWER is unlikely to grant a licence for abstraction that is 'predicted to impact on the water regime in ways that would have an unacceptable impact on sites of ... cultural or social significance'. Under this wording, DWER retains discretion to approve a water licence irrespective of an unacceptable impact to cultural sites, and thus the draft plan falls short of the recommendation. Further, 'unacceptable impact' is not defined in the draft plan or RiWI Act, and its meaning is vague and unclear (including who makes the assessment of what is acceptable or not). The policy does not establish any consultation process by which Traditional Owners can be involved in determining unacceptable impact.
3.4.13 Entitlements in individual water licences should be capped at 3 GL and preferably staged in smaller increments. If DWER receives an application to increase a water licence in excess of 3 GL, it should consult with and seek the advice of the statutory committee with shared decision-making authority for the plan area on matters including: a) whether the licence should be capped at 3 GL; b) whether approval of the licence should be staged in 3 GL or smaller increments, with 5 years of data collection (with Native Title Party/ies involvement) in between.	Partly supported	Local licensing policy 3.4 says that DWER is 'unlikely' to grant more than 3 GL per application. However, wording is discretionary and does not preclude applications for more water. The statutory committee with shared decision-making authority is not supported in the draft plan.
3.4.14 Proponents should provide 5 years of baseline data (groundwater levels and water quality) before a licence is granted. Proponents should be required to collect a robust dataset, by which to assess impact, prior to license application as opposed to this occurring after a license is granted to reduce risk.	Not supported	Local licensing policy 2.5 says that DWER 'may require' baseline monitoring, but wording is discretionary. It is unclear which applications will require baseline monitoring, and how many years of monitoring should be in the dataset. Hydrogeological advice suggests that groundwater models for impact assessments should be numerical (not analytical) and have undergone calibration a thorough sensitivity analysis and preferably a predictive uncertainty analysis.



3.4.15 A schedule of incremental (staged) water licensing should be developed for individual licences to align with monitoring and evidence of no impact. For example, a lack of groundwater connectivity between a drawing point and a groundwater dependent ecosystem or cultural water place should be demonstrated by the applicant, not just assumed.	Partly supported	The draft plan allows for staged licences and incremental increases. However, it is unclear under what circumstances staged licences will be required, and how much baseline monitoring is required (see comments above at 3.4.14). There remain concerns about the lack of transparency of monitoring data, operating strategies and licence conditions.
3.4.16 Licences should be adaptive to climate change. DWER should only allow licence holders to use a proportion of the entitlement during an exceptionally dry year or after a series of consecutive dry years. This should be stated as a condition on licences.	Partly supported	Under the draft plan, licence operating strategies can have triggers for reducing or stopping abstraction, which may relate to climate impacts. However, it is unclear when these would be required. This is a licence-by-licence approach, in comparison with other Australian jurisdictions that routinely adjust entitlement volumes annually, based on weather conditions that year. The KLC notes that DWER is empowered to make conditions relating to the use, management, protection and enhancement of a water resource, its ecosystem and the environment it is situated in under Clause 2, Appendix to Schedule 1 of the RiWI Act.
3.4.17 Environmental impact assessments carried out by the applicant must demonstrate the maintenance of hydraulic gradients and groundwater levels at all cultural places as well as in the floodplain, tributaries and alluvium.	Supported	The explanation of the key policies in the draft plan includes: 'Water licence applicants should demonstrate sustainable groundwater use, protect water dependent ecosystems and sites of ecological, cultural and social significance, and engage with Traditional Owners early in project design.' (Draft plan, p 4.) The maintenance of hydraulic gradients is implied and should be more explicit.
3.4.18 Water licences should only be granted if a stygofaunal sampling has been completed and an impact assessment can prove no significant impacts to any identified species are predicted.	Partly supported	The wording in the draft plan is discretionary. DWER 'may' require sampling. If a licence is issued, the operating strategy 'may' include stygofaunal surveys.



3.4.19 The alluvial aquifer map and corresponding management zone should extend to the Margaret River and all large creeks.	Partly supported	Based on the map on page 33 of the draft plan, it appears the alluvial management zone has been extended but not as per the recommendation. Based on hydrogeological advice, the KLC understands that extension of the alluvial aquifer management zone is warranted due to the considerable areas of alluvium and evidence of shallow-deep aquifer connectivity in those areas not currently covered by the management zone, particularly in the eastern part of the plan area.
3.4.20 All water licences should carry a condition that repair is required in the case of damage to Country or water quality.	Not supported	This recommendation has not been met. DWER is empowered to make conditions relating to the use, management, protection and enhancement of a water resource, its ecosystem and the environment it is situated in under Clause 2, Appendix to Schedule 1 of the RiWI Act.
3.4.21 The adaptive review and renewal cycle for water licences should be shorter than 10 years. We recommend 5 years for the initial licence term, and a physical (not just desktop) review of water licences every 3 years.	Partly supported	The standard duration for licences in the plan area is unclear, noting that DWER 'may' grant five-year licences – again, the wording is highly discretionary. There is no commitment to physical/on-site licence inspections and reviews. This is concerning, given the findings of the 2025 Auditor General report, which included that DWER's review and compliance activities are insufficient to ensure licensees are meeting conditions and extracting water appropriately.
3.4.22 Licence renewals that arise once the plan is in place must be assessed against the plan.	Not supported	This recommendation has not been met. The KLC notes that there is a requirement under clause 22(2), Schedule 1 of the RiWI Act that licences must be renewed unless any of the matters under clause 22(2)(a)-(e) apply. KLC recommends that the plan is made a statutory plan under the RiWI Act to ensure that all renewals of existing licences are decided in accordance with the plan pursuant to clause 22(2)(a)(ii).
3.5.1 All licences should have conditions requiring independent water quality monitoring and water quality triggers.	Not supported	This recommendation has not been met. DWER is empowered to make conditions relating to the use, management, protection and enhancement of a water resource, its ecosystem and the environment it is situated in under Clause 2, Appendix to Schedule 1 of the RiWI Act. The Auditor General has flagged self-monitoring by licensees and DWER's limited on-ground compliance checks as a significant issue. This is also a significant concern for Traditional Owners.



3.5.2 All licences should have conditions requiring groundwater level monitoring which relate to trigger levels and mitigation. There should be a “cease to pump” trigger included for all monitoring bores in all groundwater operating strategies.	Partly supported	Local licencing guidance on page 27 of the draft plan contemplates the kinds of monitoring and management responses proposed in this recommendation to be incorporated into operating strategies. However, it is not mandatory. Further, operating strategies are not required for all licences.
3.5.3 Cultural indicators used by Traditional Owners to monitor the impact of the take and use of water on Country and cultural values should be considered equally with ecological indicators.	Partly supported	The draft plan ‘makes space’ for cultural indicators to be developed and considered, but it is not clear from the draft plan that they will be considered equally with ecological indicators. Local licensing guidance on page 27 notes that an operating strategy may include ‘cultural indicators developed with native title party/ies’ (noting that not all licences have operating strategies), and cultural monitoring by Traditional Owners is noted on page 30 as a possible source of information for performance indicators relevant to environmental outcomes. Under the plan, it is possible that cultural indicators will be developed and considered for some licences.
3.5.4 All monitoring reports (scientific and cultural) should be provided to relevant native title parties on an annual basis.	Not supported	This recommendation has not been met. DWER is empowered to make conditions relating to the use, management, protection and enhancement of a water resource, its ecosystem and the environment it is situated in under Clause 2, Appendix to Schedule 1 of the RiWI Act.