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29th June 2026

Department of Water and Environmental Regulation

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

Malarngowem Aboriginal Corporation RNTBC 9510 (MAC) welcomes the opportunity to provide a submission on the *Consultation draft – Fitzroy-Derby water resources management plan: policy and guidance* (referred to as the ‘draft water plan’).

MAC is the native title prescribed body corporate representing Kija native title holders within Malarngowem determination area.

All water in our region, including groundwater, is interconnected – culturally, spiritually and physically. Water is central to life, law and culture in the Kimberley. Water is valued in many ways traditionally from creation times to renewal of people and culture.

The Fitzroy-Derby water plan is proposing to impact on the below ground water basins. We must take a deliberate and precautionary approach to ensure the water stays healthy and sustainable. Healthy water enables you healthy Country, this underpins everything.

The 61 Traditional Owner recommendations that came out of last year’s engagement process between DWER and Kimberley Traditional Owners are a strong preliminary body of work reflecting Traditional Owners’ priorities for the draft water plan and broader water management.

Whilst the draft water plan does include positive elements, such as the Aboriginal water reserve and an incremental approach to licensing, which are welcomed, unfortunately most of the Traditional Owner recommendations from 2025 have not been taken up by the government. This is of significant concern about why this has occurred.

The Traditional Owner recommendations are deeply thoughtful, they are based on total value relevance (meaning primary values of cultural, environmental, commercial), very practical. For the developmental importance in the best interest of the State of WA the final water plan needs a shared, decision-making partnership, much stronger than an advisory committee, between the State of WA and Kimberley Traditional Owners.

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

1. Limited support for Traditional Owner recommendations

The government has fully adopted only 7 of the 61 Traditional Owner recommendations from 2025. The decision to not adopt more of the Traditional Owner recommendations is unclear, which leaves it open to speculate such as; it appears to be a decision to avoid genuine partnering and power sharing; managing concerns of other stakeholders and the powerful elite businesses demanding access to water is of higher priority for the State; and/or political muscle flexing from the government.

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

2. No decision-making role for Traditional Owners

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

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

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

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

3. Allocation limit must reflect the precautionary principle

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

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

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

The government has moved beyond Traditional Owner recommendations. The protective measures Traditional Owners have recommended are in the interest of all, so not following the precautionary principle and extending the recommended precautionary limit is unacceptable.

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

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

The draft plan acknowledges Traditional Owners and their strong cultural connection to lands and waters. However, it does not go far enough in giving Traditional Owners autonomy to determine and protect cultural heritage. Only Traditional Owners – not DPLH or other government departments – can determine what is and is not cultural heritage and how impacts to cultural heritage can be minimised and avoided.

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

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

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

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

The draft plan proposes an Aboriginal Water Holding (AWH) of approximately 25 GL per year which is less than the 50 per cent of the general component recommended by Traditional Owners. The plan should set the AWH at 50 per cent of the general component. It is also critical that under the water plan, Traditional Owners have the right to choose to use the water in the AWH or leave it in the system, without penalty or loss of the holding.³

This will be the first time an AWH has been developed in the Kimberley, and Traditional Owners need time and support to plan, develop and implement management of the AWH. It is vital the government commits to funding the development and implementation of the AWH.

7. Baseline data requirements are not robust enough

Having strong baseline data about the health of Country before any water extraction occurs is a priority for Traditional Owners. This was reflected in the 2025 recommendations, which stated that proponents

² See recommendation 3.4.7 in the 2025 Traditional Owner recommendations.

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

should provide five years of baseline data and be required to collect a robust dataset before they apply for a licence.⁴

Under the draft plan, DWER may request a licence applicant to do baseline monitoring, but it is not a requirement, and there is no minimum timeframe specified. This is concerning, as having a strong baseline dataset is critical to be able to assess change and impact over time. The plan should require applicants of licences above a set volume to carry out a minimum of two years, and ideally five years, of baseline monitoring.

Also, it is critical that DWER improves the coverage and quality of its regional groundwater monitoring within and around the plan area. DWER's monitoring must test for contamination, and any contamination must be rectified as a matter of urgency.

8. No transparency for Traditional Owners on licences and reports

The draft plan encourages but does not require licence holders to provide reports relating to their water licence to relevant native title parties. This presents the potential for a lack of transparency, if proponents do not agree to provide reports or copies of licences.

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

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

10. Need for improved monitoring under the plan

Strong monitoring and enforcement under the water plan is critical to ensure licence holders are meeting their licence conditions and any adverse impacts are identified and addressed. Self-monitoring by licence holders is a big concern, given the clear conflict of interest. There must be a move towards independent monitoring.

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

The Traditional Owner recommendations from 2025 include many measures aimed at strengthening monitoring of water licences and water across the region, including through cultural monitoring and ranger involvement in water monitoring.⁵ The government should review these recommendations and commit to partnering with Traditional Owners to implement them.

⁴ See recommendation 3.4.14 in the 2025 Traditional Owner recommendations.

⁵ See recommendations 3.5.1-3.5.3, 4.4.1 and 4.4.4-4.4.8 in the 2025 Traditional Owner recommendations.

11. Need for law reform

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

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

Before new water laws are in effect, the government should make changes to the current laws to ensure native title and cultural heritage are relevant considerations in water licensing and to give native title parties a right of review in the State Administrative Tribunal for licence decisions.⁶

Conclusion

This is a rare 'watershed' opportunity, to form a genuine partnership organisation bringing together the collective values to facilitate the use of this precious underground water supply. This collaboration is in the best interest of the State, the Kimberley, Traditional Owners and Industry.

We trust you will carefully consider our comments, and we urge the government to partner with Kimberley Traditional Owners on the implementation of the water plan and water management into the future.

Yours sincerely
Malarngowem Aboriginal Corporation RNTBC 9510

⁶ See recommendations 5.1.2 and 5.1.3 in the 2025 Traditional Owner recommendations.