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SUBMISSION TO THE DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION

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

Submitted by: Save Our Macleay River Inc. (SOMR) Location: Kempsey, NSW Mid North Coast. Contact: Rupert Milne Home Date: May 2026

Opening Statement

Save Our Macleay River Inc. (SOMR) is a community organisation working on the ecological health and governance of the Macleay River catchment on the NSW Mid North Coast. We submit as an organisation with experience of the structural governance failures that allow rivers to be degraded incrementally - decision by decision, agency by agency, each choice defensible in isolation, non-accountable to the living system as a whole.

The Macleay River is that story. Its upper catchment carries legacy mining contamination extending 300 kilometres downstream. Its downstream communities have been systematically excluded from upstream planning decisions. Water allocation, mining approvals, and planning assessments have proceeded through separate regulatory processes with no authority accountable for the catchment as a whole. The result is a river managed to the edge of ecological failure.

We recognise a similar structure in the Fitzroy-Derby Water Resources Management Plan. We do not want the Martuwarra Fitzroy River to become the Macleay.

This submission addresses three compounding technical vulnerabilities and the governance structure underlying all three. We endorse the more detailed technical submissions of organisations with direct catchment expertise, including the Martuwarra Fitzroy River Council, the Water Justice Hub and the Environmental Defenders Office, whose 2021 submission on the Derby Groundwater Allocation Plan material deficiencies this draft plan does not demonstrate have been resolved.

1. The Allocation Framework, Irrigation, and the Shifting Climate Baseline

The plan sets groundwater allocation limits at 40% of estimated annual rainfall recharge, described as a precautionary approach. That figure rests on one foundational assumption: that historical rainfall recharge estimates reliably represent the system's future behaviour, but in the climate we now inhabit, 40% of a shrinking number is not the same as 40% of a stable baseline. The precautionary principle needs to be based on that shrinking number.

Northern Australian monsoon behaviour is documented to be shifting toward increased variability, greater wet season intensity, and reduced dry season rainfall. Recharge to alluvial and sandstone aquifers in monsoonal systems is acutely sensitive to rainfall timing and distribution, not just total annual volume. A shift toward fewer, more intense events with longer dry intervals reduces effective recharge even where total annual rainfall remains nominally stable. Allocation limits set without climate scenario stress-testing are historically calibrated, not genuinely precautionary.

The irrigation question makes this more acute. Total groundwater availability under this plan is approximately 50 gigalitres per year, of which roughly half is reserved for the Aboriginal Water Holding, leaving approximately 25 gigalitres for general licensing. That sounds substantial until measured against irrigation demand at scale: a single irrigated cotton or fodder operation in northern Australia can consume 5,000 to 15,000 megalitres annually. The plan's 3GL cap on individual licence applications offers some protection, but it does not prevent the cumulative licensing of multiple operations drawing from the same aquifer system. The plan contains no explicit cap on total irrigated area, no regional carrying capacity assessment and no trigger mechanism linked to cumulative extraction. The plan references the Mosaic Agriculture guide but does not reference the Ord River irrigation scheme, the most directly comparable development in northern Western Australia - and what six decades of irrigation-scale water use has meant for that river system structurally: altered hydrology, changed sediment regimes, fertiliser and pesticide loads, and the progressive conversion of floodplain habitat to production land. The Fitzroy is described throughout this plan as one of Australia's last large free-flowing rivers. That description and the Ord trajectory are in direct tension. The plan does not acknowledge this tension.

The licensing framework is project-by-project. What it cannot do - by design - is assess the cumulative effect of multiple individually-compliant licences drawing from the same aquifer over a 20 or 30 year horizon in a contracting hydrological system. In a stable climate, 40% of recharge as an allocation limit is not sustainable. In a contracting system, the same percentage progressively consumes a larger share of a smaller resource, and the licensing framework contains no mechanism to adjust in real time.

Traditional Owner ecological observation is already recording what no monitoring bore has yet registered: the disappearance of food and medicine plants from locations where they have grown for as long as memory reaches, the loss of species whose presence marked seasonal reliability, coastal and estuarine changes consistent with tidal hydraulics already responding to sea level change. These are reliable longitudinal ecological monitoring of extraordinary resolution conducted by people whose survival has depended on its accuracy. They constitute leading indicators. The plan notes that cultural monitoring data is not currently collected or provided to the Department. This submission asks that this be addressed.

The 2021 MFRC/WJH/EDO submission formally identified inadequate recharge rate calculations, unassessed climate change impacts on groundwater recharge, and insufficient saltwater intrusion analysis. It is now 2026. This draft plan fails to demonstrate those concerns have been addressed.

SOMR requests that DWER:

- Commission climate scenario stress-testing of all groundwater allocation limits before finalisation, modelling sustainability across 20, 50 and 100-year rainfall trajectory ranges for the Kimberley region
- Establish a formal allocation review trigger in response to observed recharge decline, operable without requiring full plan amendment
- Formally incorporate Traditional Owner ecological observation as a leading indicator and formal trigger for hydrological investigation within the adaptive management framework.
- Adopt a licensing model in which licences are expressed in nominal volumes with permitted annual extractions dependent on actual recharge conditions - the only mechanism that genuinely ties extraction to the resource rather than to a historical estimate of it.
- Publicly confirm how each concern raised in the 2021 MFRC/WJH/EDO submission has been addressed and if not, explain why.

2. The Saltwater Interface: A Reactive Framework for an Anticipatory Threat

King Sound experiences tidal ranges among the largest on Earth, regularly exceeding 10 metres. The freshwater-saltwater interface in the Wallal and Erskine aquifers is not a stable boundary slowly migrating under abstraction pressure - it is a dynamic boundary of extraordinary magnitude, against which groundwater pressure must be actively maintained. Sea level rise in this context is an amplification of a tidal force already operating at the extreme end of the global range. A rise of even 20-30 centimetres

materially changes the hydraulic balance in aquifer systems where tidal excursion already reaches kilometres inland.

The King Sound Coastal Management Zone establishes licence conditions requiring regular salinity sampling and baseline monitoring. This is a framework for detecting intrusion after it has begun. It cannot detect the early-stage ecological signatures of saltwater stress that Traditional Owner observation is already recording (changes in coastal and estuarine vegetation, the retreat of freshwater-dependent species, altered behaviour in tidal and freshwater transition zones).

By the time salinity registers in a production bore sample, ecological damage in the surrounding landscape has already occurred. The inadequate assessment of saltwater intrusion from increased extraction in the Greater Derby subarea was specifically identified in the 2021 submission. The current coastal management zone represents an improvement but does not constitute the comprehensive assessment then requested.

SOMR requests that DWER:

- Commission hydrological modelling of saltwater interface dynamics under current IPCC sea level rise scenarios before any new general licences are granted in the Derby Peninsula subarea and maintain the existing licensing restriction until this modelling is complete.
- Establish ecological monitoring of saltwater stress indicators in coastal and estuarine vegetation as a formal performance indicator, not an optional addition to operating strategies.
- Recognise Traditional Owner observation of coastal and estuarine ecological change as a formal input to saltwater interface assessments.

3. Project Valhalla

In January 2026, while this plan was being finalised, the WA EPA recommended that Bennett Resources be permitted to frack up to 20 wells in the West Kimberley under Project Valhalla. Each well proposes to use up to 100 megalitres of water. *Black Mountain Energy's long-term vision extends to an estimated 2,000 wells across the Kimberley.*

This plan does not mention Project Valhalla. It does not mention hydraulic fracturing. It does not address the possibility that the aquifer systems it is simultaneously allocating and promising to protect could be contaminated by industrial operations proceeding through an entirely separate regulatory process.

The plan's groundwater allocation framework sets limits designed to protect those systems. The EPA's fracking assessment operates under the Environmental Protection Act, a separate legislative regime with no formal obligation to conform to this plan's allocation limits, water management zones or saltwater interface policies.

This is not an oversight. It is a structural feature of how WA's regulatory system is designed. The EPA's own assessment acknowledges that the Liveringa Aquifer discharges into the Martuwarra approximately 20 kilometres down-hydraulic gradient from the Valhalla development envelope - the hydrological connection to the river is not in dispute. What is absent is any mechanism requiring that connection to be assessed against the protective framework this plan establishes.

Hydraulic fracturing compromises aquifer-to-aquifer connectivity through induced fracturing of confining layers, precisely the connectivity this plan's Alluvial Connectivity Management Zone exists to protect. The Grant Poole, Wallal and Erskine aquifers allocated for general licensing and the Aboriginal Water Holding are the same systems within whose catchment Project Valhalla proposes to operate. The monsoonal wet season risk compounds this: fracking operations produce contaminated wastewater requiring surface pond storage. In a landscape capable of generating rapid and extreme flooding, the risk of chemical pond overflow into watercourses and connected groundwater is not theoretical.

The WA Government has committed in this plan to protecting the Martuwarra as a free-flowing system. All Australians are aware of the Kimberley's high natural values. Yet it has simultaneously, through the EPA, recommended approval of a fracking project within the catchment, while eight of twenty promised fracking safeguards remain incomplete - five years past the deadline by which they were committed. The Code of Practice setting minimum standards for hydraulic fracturing does not exist. Traditional Owner veto rights over fracking on their country have not been legislated. A water management plan and a fracking approval proceeding simultaneously through separate processes with no formal connection between them is not a coherent approach to managing a living river system.

SOMR requests that DWER:

- Confirm explicitly that water licence requirements under this plan apply to hydraulic fracturing operations within the plan area, including Project Valhalla, without exemption.
- Formally acknowledge within the final plan that Project Valhalla and any future hydraulic fracturing proposals represent a material threat to the groundwater systems this plan allocates and protects.
- Recommend to the WA Government that no fracking production approvals be granted within the plan area until this plan is finalised, the Aboriginal Water Holding governance framework is established, all twenty Hatton inquiry safeguards are fully implemented, and Traditional Owner veto rights over fracking on their country are legislated.
- Establish a formal referral mechanism requiring EPA environmental impact assessments for projects within the plan area that propose to use or potentially contaminate groundwater to be assessed against this plan's allocation limits, protective policies and water management zone requirements - as an integrated process, not a parallel one.

4. The Governance Gap: The Case for River Rights

The three vulnerabilities above share a common structural root. The plan manages water. No authority is accountable for the Martuwarra as an integrated living system. The EPA assesses fracking. DWER allocates groundwater. Conservation agencies manage reserves. Heritage agencies administer cultural values. Each manages its designated domain. None is the river's custodian. When a fracking assessment and a water plan proceed simultaneously through separate processes, no authority has either the mandate or the obligation to ask: what does this mean for the Martuwarra Fitzroy River as a whole?

Nature rights - the legal recognition of rivers and ecosystems as entities with rights to exist, flow and flourish - is the fastest-growing area of environmental law in the world. Since the Whanganui River achieved legal personhood in 2017, comparable frameworks have been established or are in active development across dozens of jurisdictions on every inhabited continent. This is a governance response to a demonstrated failure: that the legal framework treating nature purely as property or resource, available for allocation and extraction until proven harmful, is structurally incapable of protecting it. Jurisdictions moving toward nature rights are doing so in explicit recognition that First Nations peoples have understood for thousands of years what Western law is only now beginning to articulate: that rivers are not resources to be managed but living systems to be related to.

The Traditional Owners of the Martuwarra catchment have not been waiting for this conversation to catch up with them. The Fitzroy River Declaration, signed in 2016 and the Martuwarra Fitzroy River Council, established in 2017, represent arguably the most developed river rights governance infrastructure in Australia - built by Elders from independent nations across the catchment, asserting in precise and unambiguous terms that the Martuwarra is a living entity with rights to flow, to nourish, to give life.

This plan does not reference the Fitzroy River Declaration in its operative framework. It does not recognise the Martuwarra Fitzroy River Council as a governance body with formal standing in implementation. Yet these are the most authoritative available statements of what this river needs, made by the people most qualified to make them.

Legal personhood for the Martuwarra would give the river standing across regulatory boundaries - in fracking assessments, in mining approvals, in planning decisions - through guardians empowered to speak

for the whole system. The Aboriginal Water Holding gives Traditional Owners economic rights over water. Legal personhood would give those same Traditional Owners standing to speak for the river as its guardians across all processes affecting it. These are complementary instruments. One without the other is incomplete. This plan cannot legislate river rights. But it can recommend them and a formal recommendation from the State's own water planning process would carry significant weight.

SOMR requests that DWER:

- Formally reference the Fitzroy River Declaration and the Martuwarra Fitzroy River Council in the plan's operative framework and establish their formal standing in implementation and monitoring processes.
- Explicitly recommend to the WA Government that legal personhood for the Martuwarra, developed in genuine partnership with Traditional Owners and building on existing Traditional Owner governance infrastructure, is the governance structure necessary to resolve the regulatory fragmentation this plan identifies but cannot within its mandate address.
- Recognise the Aboriginal Water Holding and river legal personhood as complementary instruments requiring both to be complete.

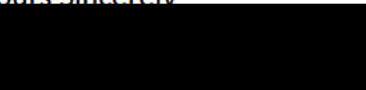
Conclusion

We make this submission as an organisation that has lived the consequences of the governance structure this plan risks reproducing and one that has watched how regulatory fragmentation, historically calibrated baselines, and the absence of any authority accountable for a river as a whole combine to produce outcomes no single decision-maker intended but that the structure made inevitable.

The Martuwarra is one of the last large free-flowing rivers on this continent. The Traditional Owners of its catchment have built the governance infrastructure, articulated the vision, and borne the cost of watching their country change. They have done everything that could be asked of them. What remains is for the institutions of the state and for organisations like SOMR, watching from other catchments, to meet them at the river.

The Macleay did not have to become what it has become. The Martuwarra does not have to follow.

Yours Sincerely


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