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

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FORMAL SUBMISSION

Submission on the Consultation Draft – Fitzroy–Derby Water Resources Management Plan: Policy and Guidance.

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

We acknowledge the importance of protecting the Fitzroy River system, recognise the cultural significance of water to Traditional Owners, and support a sustainable, transparent and evidence-based approach to groundwater management in the Kimberley region.

Theia Energy has a direct interest in groundwater allocation and management in the Kimberley. Since 2014, Theia Energy has worked closely with the Karajarri Traditional Owners in relation to the Theia Energy project. While the project lies outside the Fitzroy–Derby Plan area, we are concerned that the policy approach proposed in this Plan may be adopted in future water allocation plans across the Kimberley.

Accordingly, we wish to raise several concerns regarding the proposed policy framework, including:

- duplication of assessment requirements that are already addressed under existing State and Commonwealth legislation;
- the absence of defined assessment processes, statutory timeframes and agency service obligations for water licence applications and renewals;
- uncertainty regarding the governance, operation and policy framework for the proposed Fitzroy–Derby Aboriginal Water Holding; and
- the proposed 3 GL per application licence cap and short licence terms, which may undermine investment certainty for major projects.

Duplication of Assessment Requirements

The Plan introduces assessment requirements that overlap substantially with existing statutory approval processes under:

- the *Environmental Protection Act 1986 (WA)*;
- the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*; and

- the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, including the water trigger provisions.

The matters proposed to be assessed through the water licensing process—including groundwater-dependent ecosystems, ecological and flora/fauna surveys, subterranean fauna investigations, cultural heritage assessments and Traditional Owner engagement—are already considered through established environmental and heritage approval frameworks.

Without clear coordination between agencies, proponents may be required to undertake multiple assessments addressing the same environmental and cultural values for different regulators. This duplication increases project costs and approval timeframes without delivering additional environmental or heritage outcomes.

Recommendation

DWER should establish a formal interagency referral and verification framework whereby existing approvals issued under relevant State and Commonwealth legislation satisfy equivalent requirements under the water licensing process, rather than creating an additional assessment pathway.

Absence of Assessment Timeframes and Agency Obligations

The Plan places extensive obligations on proponents to complete baseline investigations, hydrogeological assessments, ecological surveys, subterranean fauna studies and Traditional Owner engagement before a licence application can be assessed.

In remote and data-poor regions such as the Kimberley, these investigations may require several years of fieldwork and represent millions of dollars of expenditure prior to any certainty that a licence will be granted.

Policy 2.5 also allows DWER to require proponents to undertake baseline groundwater monitoring, including construction of monitoring bores, before licence determination. While baseline information is important, the Plan does not explain how these requirements will be scoped, justified or limited. Existing EPA guidance already provides an established framework for determining appropriate environmental baseline information, and duplication should be avoided.

Despite imposing significant obligations on proponents, the Plan contains no corresponding obligations on DWER regarding:

- maximum assessment timeframes once a complete application has been lodged;
- service standards or performance commitments;
- escalation mechanisms where assessment timeframes are exceeded;
- early advice regarding information requirements for a complete application; or
- management and publication of data collected through the licensing process to support cumulative impact assessments.

Policy 3.4 further increases uncertainty by stating that DWER is unlikely to grant licences exceeding 3 GL per annum in a single application, effectively requiring large developments to progress through multiple licensing stages without any defined progression criteria or assessment pathway.

Collectively, extensive pre-licence obligations, the absence of assessment timeframes, staged licensing arrangements and uncertainty regarding agency capacity significantly reduce the investment certainty required for large-scale development.

The Plan also does not explain how existing licences will be managed following adoption of the new policy framework. Existing licence holders have made investment decisions based on the current licensing regime and require clarity regarding transitional arrangements.

Recommendations

The Plan should:

- establish maximum assessment timeframes for standard and complex licence applications;
- publish clear guidance outlining information requirements for licence applications and subsequent applications seeking additional water beyond the proposed licence cap;
- ensure DWER has sufficient technical expertise and resources to administer the proposed framework without transferring administrative burden to proponents;
- provide a transparent framework for management, sharing and publication of groundwater data to support cumulative impact assessment; and
- clarify transitional arrangements for existing water licences.

Fitzroy–Derby Aboriginal Water Holding

The proposed Aboriginal Water Holding represents an important initiative to support Aboriginal economic development. Theia Energy supports this policy objective.

However, the Plan provides very limited information regarding the governance, legal framework and administration of the Holding.

In particular, the Plan does not explain:

- how the proposed allocation of approximately 25 GL per annum was determined;
- how access to the Holding will be allocated;
- who will make allocation decisions;
- the assessment criteria for accessing water from the Holding;
- decision-making timeframes; or
- how governance arrangements will interact with existing Native Title rights and interests.

Given the significant volume of water proposed to be reserved, these matters are critical to ensuring transparency, accountability and long-term confidence in the allocation framework.

The Plan area encompasses multiple Traditional Owner groups with differing Native Title determinations and claims. Without a clearly defined governance structure, there is a risk that access to the Holding may not appropriately reflect the rights and interests of all affected Traditional Owner groups. This could create uncertainty regarding both Native Title outcomes and licences granted from the Holding.

Recommendations

DWER should:

- publish a detailed governance and policy framework for the Aboriginal Water Holding prior to finalising the Plan;
- explain the methodology used to determine the proposed 25 GL allocation;
- clearly define access arrangements, decision-making processes, assessment criteria and statutory timeframes;
- develop governance arrangements in partnership with Traditional Owners and other stakeholders; and
- obtain independent legal advice regarding the interaction between the Holding and existing Native Title rights before the Plan is finalised.

Water Allocation Limits and Licence Terms

The proposed policy of limiting individual licence applications to 3 GL per annum introduces considerable uncertainty for major projects requiring larger volumes of groundwater.

Large-scale industrial developments generally require certainty regarding long-term water availability before significant investment decisions can be made. A staged licensing approach without clear progression criteria creates unnecessary commercial risk and may discourage investment in the region.

Similarly, Policy 4.3 proposes a standard licence term of five years or a period aligned with a development timetable. For projects involving substantial capital investment, a five-year licence term is unlikely to provide sufficient security to underpin financing and long-term project planning.

Recommendations

DWER should:

- provide a clear pathway for projects requiring groundwater volumes exceeding 3 GL per annum;
- establish transparent progression criteria for staged licence applications where required;
- allow longer licence terms where hydrogeological evidence demonstrates sustainable groundwater extraction; and
- ensure renewal processes commence sufficiently in advance of licence expiry to avoid unnecessary disruption to ongoing operations.

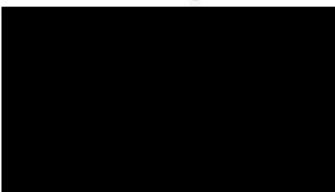
Conclusion

Theia Energy supports the objectives of protecting the water resources and promoting sustainable groundwater management across the Kimberley. However, the proposed framework should be refined to improve regulatory certainty, avoid duplication with existing environmental approval processes, strengthen transparency and provide clear governance arrangements for the proposed Aboriginal Water Holding.

Addressing these matters will improve the efficiency of the licensing framework while maintaining robust environmental protection and supporting investment and economic development across the Kimberley.

We welcome the opportunity to discuss any aspect of this submission.

Yours sincerely,



Theia Energy
