



**Walalakoo Aboriginal Corporation
The Registered Native Title Body Corporate**

ICN: 8041

ABN: 13 189 934 505

Ph: (08) 9191 1234

147 Loch Street, Derby WA 6728

PO Box 1115, Derby WA 6728

www.walalakoo.org.au

29 June 2026

Department of Water and Environmental Regulation

Locked Bag 10

Joondalup DC

WA 6919

Hon, Don Punch MLA

Minister for Water

Government of Western Australia

By email: fitzroyderbywaterplanning@dwer.wa.gov.au;
Minister.Punch@dpc.wa.gov.au

Dear all,

**Submission by Walalakoo Aboriginal Corporation RNTBC on Consultation draft – Fitzroy-
Derby water resources management plan: policy and guidance**

- 1 We refer to the **Department** of Water and Environmental Regulation's "Consultation draft – Fitzroy-Derby water resources management plan: policy and guidance" dated April 2026 (**Draft Plan**).
- 2 **Walalakoo** Aboriginal Corporation RNTBC is the Registered Native Title Body Corporate in respect of the Nyikina and Mangala People's Native Title Determination in the Kimberley region in Western Australia (Federal Court Proceeding no. WAD6099/1998; WCD2014/003; WCD2020/008). Walalakoo holds the native title rights and interests of Nyikina and Mangala People on trust.
- 3 Walalakoo welcomes the opportunity to make this submission on behalf of its common law native title holders, the Nyikina and Mangala People.
- 4 We refer the Department to:
 - a) our previous submission made in relation to the June 2018 Derby groundwater allocation plan in which we called for the Western Australian Government to, among others:
 - i) fully implement the Fitzroy River Declaration;
 - ii) amend WA water law and policy to recognise Traditional Owner's inherent rights to water, responsibilities as water custodians, and water managers under First Law; and

- iii) support capacity building and work collaboratively with Traditional Owners to support their rights make decisions about water on Country.
- b) the recommendations made by Kimberley Traditional Owners from the Broome Water Forum held in September 2025 (**2025 Recommendations**).

Nyikina and Mangala People native title rights and interests

Flowing and underground waters

- 5 The Nyikina and Mangala People are responsible for the management, maintenance and security of their determined native title land and waters in accordance with their native title rights and interests.¹
- 6 The Draft Plan may adversely affect and interfere with the Nyikina and Mangala People's determined native title rights to, among other things:²
 - (b) *in relation to flowing and underground waters, the right to use and enjoy the flowing and underground waters, including:*
 - i) *the right to hunt on, fish from, take, use, share and exchange the natural resources of the flowing and underground waters for personal, domestic, cultural or non-commercial communal purposes;*
 - ii) *the right to take, use, share and exchange the flowing and underground waters for personal, domestic, cultural or non-commercial purposes.*
- 7 Walalakoo are concerned as to the impacts of ground water allocations in this part of the Kimberley as there is too much uncertainty in the recharge estimates that have been used as the basis for the allocation limit in the Draft Plan.³
- 8 The Liveringa Formation Aquifer and Grant-Poole Aquifer run beneath Nyikina and Mangala Country, and are underground waters to which we have a native title right to use and enjoy. The changes proposed by the Draft Plan for the allocation of this groundwater has the potential to significantly impact the health of these underground waters, *Martuwarra* (the Fitzroy River) and Nyikina and Mangala People and their ability to exercise and enjoy their native title rights and interests.
- 9 Balginjirr community is within Nyikina and Mangala Country, it is a community in which many of our people live. Any impact to the Liveringa Aquifer and the Fitzroy River will directly affect the Nyikina and Mangala People.
- 10 In 2023, your Department released an explanatory report on the mapping of aquatic ground-water dependent ecosystems in the Fitzroy water planning area. This report found evidence that the Fitzroy River and its floodplains interact with:
 - a) Devonian reef and Grant Poole aquifers on Bunuba and Gooniyandi Country near Fitzroy Crossing;
 - b) Liveringa aquifer on Yi-Martuwarra Ngurrara and Gooniyandi Country;
 - c) Grant-Poole aquifer near Noonkanbah; and

¹ *Walalakoo Aboriginal Corporation RNTBC v State of Western Australia* [2023] FCA 1181, at Attachment A – Varied Native Title Determination: *Watson on behalf of the Nyikina Mangala People v State of Western Australia (No 6)* [2014] FCA 545 (**Nyikina and Mangala People Determination**)

² Nyikina and Mangala People Determination.

³ DWER (April 2026) Consultation draft – Fitzroy-Derby water resources management plan: policy and guidance (**Draft Report**), p. 3 and p. 7.

d) Canning-Wallal near Camballin on Nyikina and Mangala Country.⁴

- 11 Walalakoo is deeply concerned for the environmental safety of their waters, both flowing and underground, and any related impacts of water allocation and use may have on Nyikina and Mangala Country, their ability to exercise and enjoy their native title rights, and the surrounding west Kimberley.
- 12 The *Martuwarra* keeps Nyikina and Mangala People alive, including communities such as those at Balginjirr, it's the lifeblood of Nyikina and Mangala Country and has great cultural significance to us as it was formed by *Woonyoomboo* back in the Dreamtime.

Allocation limit must reflect the precautionary principle

- 13 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.
- 14 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.
- 15 Walalakoo submits that it is critical that the allocation limit reflects the precautionary principle recommended by the Traditional Owners and the public interest.
- 16 Walalakoo requests that further information be provided by the Department in relation to the intended allocation limit for the Liveringa Aquifer, as there is currently no set limit under the Draft Plan. We are concerned that there is little oversight and monitoring in the approach to allocations from this water source, as it is determined on a "case by case basis".⁵

Fitzroy–Derby Aboriginal Water Holding

- 17 We are disappointed that the proposed allocation to the Aboriginal Water Holding under the Draft Plan, being approximately 25 GL per year, does not meet the 2025 Recommendation made by Traditional Owners as recommended to be 50% of the general component.⁶
- 18 Further, Walalakoo is concerned that the Department has not provided adequate information as to how this commitment to the Aboriginal Water Holding allocation will be funded and implemented. We submit that greater consideration needs to be had on how the Aboriginal Water Holding will function in practice. PBCs and Traditional Owners must be empowered to be able to choose when water is withdrawn or retained in the system, without penalty or loss of holding.⁷

Protection of Nyikina and Mangala People's Aboriginal Cultural Heritage

- 19 Walalakoo is concerned as to the potential significant impact of the policy changes under the Draft Plan on the Aboriginal Cultural Heritage of Nyikina and Mangala Country, and our neighbouring Traditional Owners groups, as well as on the West Kimberley National Heritage Place.

⁴ DWER, Explanatory Report: Mapping aquatic groundwater-dependent ecosystems in the Fitzroy water planning area, pp. 7 – 8.

⁵ Table 5, Draft Report, p. 15.

⁶ Recommendation 3.3.2, 4.2.1 and 4.2.2, Broome Water Forum – Traditional Owner Recommendations (September 2025) (**2025 Recommendations**).

⁷ Recommendation 3.3.2, 4.2.1 and 4.2.2, 2025 Recommendations.

- 20 Walalakoo is deeply disappointed that the Draft Plan has failed to acknowledge and provide Traditional Owners with autonomy to determine how their cultural heritage contained in the land and waters affected by the Draft Plan is protected.
- 21 The language used in the Draft Plan provides that proponents “*may*” consider Aboriginal cultural heritage or Traditional Owner interests in waters when making licensing decisions.⁸ This vague language gives the Department 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 in a manner which is conducive to the ongoing protection of our cultural heritage.
- 22 Because of the language used, the plan gives regional licensing officers significant discretion in how they implement the plan’s policies and guidance. We understand that DWER’s regional licensing officers will have ‘work instructions’ about how they will implement the plan in practice. It is crucial that Traditional Owners have input into these work instructions.
- 23 Walalakoo submits that the Draft Plan should be amended to use language such as “*must*” or “*will*” to create mandatory considerations of cultural heritage. These amendments would give Nyikina and Mangala People more certainty and stronger opportunities to protect their cultural heritage, and if necessary seek judicial review of licensing decisions.

Engagement with Traditional Owners

- 24 The Draft Plan fails to provide 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 Traditional Owners and included in the final version of the Draft Plan.
- 25 Traditional Owners have the inherent right to make decisions about water on Country. The Draft Plan must be amended to include a co-designs best practice engagement process. And this process should be developed with Kimberley Traditional Owners, including Walalakoo on behalf of Nyikina and Mangala People.
- 26 Cultural governance of the waters in the Kimberley is a long-term goal of Traditional Owners, it is a key step is the Fitzroy Declaration and is solidified in the following 2025 Recommendations:

3.1 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.

4.1 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.

⁸ Draft Report, Table 6, at p. 16.

- 27 Nyikina and Mangala People have consistently maintained that when decisions are being made about, or activities are being conducted on or adjacent to their native title land and waters, that the relevant organisations and proponents meet with them, fully inform them about the project and how native title rights and interests may be affected so that they may consider the proposal on a free, prior and informed basis.
- 28 In our view, the Draft Plan does not sufficiently empower Traditional Owners to have a shared decision make role in relation to their water. The Department has failed to take the opportunity in the Draft Plan to empower their commitments under the WA Aboriginal Empowerment Strategy and the National Agreement on Closing the Gap, as they relate to partnerships and shared decision-making with Aboriginal People.
- 29 Walalakoo submit that the “best-practise engagement” models for the Local Licencing policies must be amended to include direct consultation with the relevant PBC as a party whom can contribute “Relevant matters when assessing applications”.⁹
- 30 We submit that Policy Position 10 of the Draft Plan is insufficient and culturally inappropriate as it is establishing a Water Advisory Committee, membership of which will be made up of Traditional Owners, State Government representatives and stakeholders. The conception of an advisory committee is not supported by Walalakoo, nor has it been supported in the by the attendees of the 2023 or 2025 Water Forums.

Monitoring of allocations and licensing under the Draft Plan

- 31 In June 2025, the WA Auditor General (**AG**) released their performance audit report on the regulation of water licences. The report criticised the Department’s ability to properly execute its role to monitor and enforce the conditions of water licences. The AG found that the Department is:

“... not doing anywhere near enough to adequately protect our water resources, and does not understand if conditions are complied with or how much water is actually being used”.¹⁰
- 32 With these findings in mind, strong monitoring and enforcement under the water plan is critical to ensure licence holders are meeting their licence conditions and any adverse impacts are identified and addressed. Self-monitoring by licence holders is insufficient.
- 33 Walalakoo submits that independent monitoring must be introduced that includes the consideration of cultural indicators when monitoring water extraction and the health of Country across the plan area. Cultural indicators must be developed in direct consultation with Traditional Owners across the Kimberley.
- 34 The Draft Plan does not require the Department or licence holders to involve Traditional Owners in monitoring. The Draft Plan must be amended to include the development of an implementation plan that embeds cultural indicators and cultural monitoring into water licensing and monitoring processes.
- 35 The 2025 Recommendations included measures aimed at strengthening monitoring of water licences and water across the region, including through cultural monitoring and ranger involvement in water monitoring.¹¹ The Department should review these recommendations and commit to partnering with Traditional Owners to implement them.

⁹ Draft Report, Table 8 at 1.1, pp. 24 – 27.

¹⁰ Auditor General's Overview, Report 20: 2024-25 Regulation of Water Licences, 11 June 2025, accessible here: <https://audit.wa.gov.au/reports-and-publications/reports/regulation-of-water-licences/>

¹¹ Recommendations 3.5.1 - 3.5.3, 4.4.1 and 4.4.4 - 4.4.8, 2025 Recommendations.

Conclusions

- 36 Urgent changes must be made to the current laws to ensure that 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.¹²
- 37 Walalakoo submits that the Department and Western Australian Government must properly address the 2025 Recommendations and commit to implementing a best-practise water planning and management framework that empowers and respects Traditional Owners rights in water and their role in decision-making.
- 38 This plan is an important opportunity to ensure that water and Country are looked after into the future. We must not repeat the mistakes of overallocation and mismanagement that have occurred in other parts of WA.
- 39 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.

Sincerely,



Robert Watson

Chairperson

Walalakoo Aboriginal Corporation RNTBC

¹² Recommendations 5.1.2 and 5.1.3, 2025 Recommendations.