



Government of **Western Australia**  
Department of **Water and Environmental Regulation**

# Derby

groundwater allocation plan  
for public comment  
Summary of submissions



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### **Acknowledgements**

The Department of Water and Environmental Regulation thanks Department staff from the Water Allocation Planning team.

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## Acknowledgement of Country

The Department of Water and Environmental Regulation acknowledges the Traditional Owners and custodians across the Derby area and their deep and continuing connection to the land and waters of the region.

We pay our respects to Elders past and present, and to all members of the Aboriginal communities in the area and their cultures. We accept Traditional Owners are the first scientists and water managers on Country. We acknowledge that Traditional Owners have been custodians of Country for countless generations and that water is integral to life.

We recognise that Aboriginal peoples and their culture across the Derby area are diverse and that continued custodianship of the land and water is fundamental to their health, spirit, culture and community.

We embrace the spirit of reconciliation, and we seek to listen, learn and build strong partnerships with genuine opportunities for Aboriginal peoples throughout our business.

# Contents

Acknowledgement of Country .....	3
What we heard: a summary .....	5
Introduction .....	6
Consultation .....	6
Submissions .....	7
Summary of submissions .....	8
Intersect between Derby and Fitzroy water planning .....	8
Water to support ecological, cultural and social values .....	8
Roles of Traditional Owners in water planning and management .....	9
Aboriginal economic development and the proposed Derby Aboriginal Water Reserve .....	10
Use of best available scientific evidence and basis for decision-making .....	11
Climate change .....	12
Saltwater interface .....	12
Licensing policies and management zones in the plan .....	13
Monitoring, evaluation and reporting .....	14
Continuing the conversation .....	15
Traditional Owners and organisations representing Aboriginal peoples .....	15
Water Corporation .....	15
Shire of Derby – West Kimberley .....	16
Community information event .....	16
Martuwarra Fitzroy River Water Forum .....	16
Next steps .....	18
References .....	19

## What we heard: a summary

The Department of Water and Environmental Regulation (the Department) released the *Derby groundwater allocation plan: for public comment* in November 2020 (plan for public comment; DWER 2020). Twelve written submissions were received which raised complex water-related issues relating to:

- advocating for more involvement of Traditional Owners in the decision-making processes for water planning and policy
- greater engagement on the concept of the Aboriginal Water Reserves, particularly establishing the water licensing framework, how much should be reserved, and understanding how it will work
- improved processes and understanding of how the Department will notify native title holders of a new water licence and how Aboriginal heritage and cultural values will be incorporated into the licensing requirements.

Specific queries relating to the content of the plan were received, including:

- establishing a clearer pathway and timeframe for how the Water Corporation will manage salinity risks to the aquifer and the Derby town water supply
- technical questions about the setting of allocation limits, impacts of climate change, identifying cultural and ecological values, risk management (water quality and environment, including cultural values) and ongoing monitoring and evaluation. Traditional Owners and conservation and environment groups generally advocated for a more precautionary approach, and further scientific and cultural research
- queries about the proposed management zones; including the need for a zone covering the freshwater springs and seeps along the Derby coastline, and parts of the lower Fitzroy, May and Meda rivers. Traditional Owners and conservation and environment groups advocated for additional protections, while mining, agriculture and industry groups wanted to ensure that new rules did not impact on existing users.

Several other issues were raised that are outside the scope of this water planning project. These were:

- water legislation reform and new legislation or regulations
- improving capacity and understanding of water policy and planning, and how it relates to the *Native Title Act 1993* (Cth)
- Traditional Owners seeking access to funding for economic development, for example, for commercial activities that access water through a licence from the Aboriginal Water Reserves.

## Introduction

This report summarises the submissions received by the Department of Water and Environmental Regulation (the Department) on the *Derby groundwater allocation plan: for public comment* (plan for public comment; DWER 2020). A revised plan based on this draft was intended to replace the current *Derby groundwater management plan 1992* and update management of groundwater in the Derby plan area.

The plan for public comment was released at the same time as *Managing water in the Fitzroy River catchment: discussion paper for stakeholder consultation* (Government of Western Australia 2020; discussion paper). The feedback on the discussion paper raised similar issues to those we received on the plan for public comment, and many interested parties were involved in both areas.

After consultation in 2023 with stakeholders and Traditional Owners, the Department combined the two planning processes to produce a *Consultation draft – Fitzroy–Derby water resources management plan: policy and guidance* (DWER 2026a, draft Fitzroy–Derby plan).

This report is a supporting document to the draft Fitzroy–Derby plan, with a focus on the Derby water planning area. For a full account of the consultation undertaken to date, refer to the following documents in addition to this report:

- *Summary of submissions: Managing water in the Fitzroy River Catchment discussion paper for stakeholder consultation, 2020* (DWER 2023)
- *Consultation summary: Fitzroy–Derby water planning* (DWER 2026b).

The submissions received and ongoing conversations since November 2020 have informed our water planning for the Fitzroy–Derby plan area.

## Consultation

The Department released the *Derby groundwater allocation plan: for public comment* (plan for public comment) in November 2020 for a six-month public comment period<sup>1</sup> to May 2021 to enable Traditional Owner, stakeholder and community input into the water planning process.

More than 60 letters and emails were sent to licensees and stakeholders informing them of the release of the plan for public comment and invited them to submit a response. An invitation to receive a copy of, and submit comments on, the plan for public comment was advertised in:

- *The West Australian* (23 November 2020, 27 November 2020, 3 May 2021 and 7 May 2021)
- *Broome Advertiser* (26 November 2020 and 6 May 2021).

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<sup>1</sup> Public comment periods for water allocation plans are normally three months.

We held a community drop-in session in Derby during the public comment period in May 2021. At this session, we presented general information and provided an opportunity for people to ask questions and give feedback about water planning in Derby, as well as about water planning and economic development in the Fitzroy River Catchment.

## Submissions

The Department received 12 submissions, comprising feedback from a total of 16 different organisations (Table 1). We also considered the feedback we heard from all the discussions with the community during the public comment period.

This report outlines what we heard, and the issues raised in response to *Derby groundwater allocation plan: for public comment* (DWER 2020; plan for public comment).

We thank everyone for their comprehensive submissions and comments, which have informed water planning in the Derby area.

*Table 1 Organisations and groups who submitted a response on the plan for public comment*

Respondent	Interest group
Walalakoo Prescribed Body Corporate representing Nyikina Mangala native title holders	Traditional Owners
Warrwa Peoples Prescribed Body Corporate and Warrwa native title Claimants	
Boorroola Moorrool Moorrool native title Claimants	
Kimberley Land Council	Organisation representing Aboriginal peoples
Martuwarra Fitzroy River Council*	
Kimberley Pilbara Cattleman's Association	Agriculture and industry
Pastoralists and Graziers Association of Western Australia	
Groundwater Consulting Services, Pardoo Beef Corporation and the Mowanjum Aboriginal Corporation	
Association of Mining and Exploration Companies (AMEC)	
Environs Kimberley	Conservation and environment
Environmental Defenders Office and the Water Justice Hub*	
Environmental Equity	
Water Corporation	Public water supply

\* A combined submission was received from the Martuwarra Fitzroy River Council, Environmental Defenders Office and the Water Justice Hub.

## Summary of submissions

The Department collated and summarised the responses from each interest group to identify the consistent and key messages. These are presented below by topic.

### Intersect between Derby and Fitzroy water planning

The *Derby groundwater allocation plan: for public comment* (DWER 2020; plan for public comment) was released for public comment at the same time the State Government released *Managing water in the Fitzroy River Catchment: discussion paper for stakeholder consultation* (Government of Western Australia 2020; discussion paper). The collective feedback on the plan for public comment and the discussion paper made a case for aligning or merging the water planning for the Derby and Fitzroy areas. Comments included:

- Country and Living Waters do not stop at the borders of aquifers. Traditional Owners have relationships, First Law and knowledge that crosses these planning boundaries. This needs to be acknowledged in both plans.
- The policy for Aboriginal Water Reserves overlaps the Fitzroy and Derby plan areas and the two should be consistent.
- There was insufficient information presented to make decisions on the rainfall recharge to the aquifers and the interactions between the river, and alluvial and regional groundwater aquifers between the plan areas.

### Water to support ecological, cultural and social values

The importance of groundwater to maintain ecological, cultural and social values was raised by several groups. This included a clear call to recognise the intrinsic link between Country and water. Contributors stated that:

- Water is important for the environment and maintaining culture and economy. Cultural values and ecological integrity are interwoven. Impacts to wetlands and rivers affect Aboriginal peoples' way of life, including food sources, cultural practices and spiritual connections.
- Water entitlements should only be allowed after outcomes have been set to protect the environment and cultural values, and to provide for the sustainable use of water resources.
- There should be recognition of cultural connections to water and there is a great depth of cultural knowledge and values in the plan area. This knowledge is diverse and complex and the Department needs to be aware of this when setting policy and making decisions in the Derby plan area.
- The plan for public comment inadequately conserves and protects heritage. The concept of Living Waters is central to cultural and natural heritage and should be seen, not as discrete sites, but rather as part of a connected cultural landscape.

- The environmental impact of water abstraction, particularly drawdown impacting on wetlands, rivers, soaks and significant sites, such as the numerous freshwater coastal soaks.
- Cultural values are not sufficiently represented in the plan and need to be protected from impacts by abstraction.
- The Department's process for identifying harm to heritage sites from groundwater use is lacking. It stated that an assessment of cultural and heritage values is required for the final plan.
- The plan area contains important ecological values, and there was not enough evidence to support allocation limit decisions. The final plan should include ecological water requirements for important ecological and cultural assets.

## Roles of Traditional Owners in water planning and management

Traditional Owners, organisations that represent Aboriginal peoples, and conservation and environment groups called for recognition of the role of Traditional Owners in managing water and a say in decisions made that affect their Country.

Contributors stated:

- Water has highly significant spiritual, cultural and social significance. It is much more than a resource.
- The rights and interests of native title holders are not adequately addressed in accordance with legislation, including cultural water values and water allocated for 'traditional cultural purposes'. The plan needs to acknowledge Traditional Owners' vested interests in water.
- Current legislation is limited in recognising Aboriginal peoples' rights, interests and obligations to water under First Law.
- The importance of Traditional Owners in water management is not explained. There should also be a commitment to consultation that is genuine and based on trust.
- Traditional Owners should have a role in decision-making for water and land on Country. Some felt this could be a statutory Traditional Owner-led group to inform decision-making on water across the Kimberley.
- There is a lack of policy on how the Department carries out native title notifications and considers native title rights in water planning and licensing.
- There was a lack of consultation undertaken to develop the plan for public comment and on water planning more broadly.
- Traditional Owners should be consulted as part of the assessment and decision-making on a water licence.

- The issue of rights to compensation under the *Native Title Act 1993* (Cth) and opportunities to discuss State Government's commitment to negotiate settlement agreements were raised.

## Aboriginal economic development and the proposed Derby Aboriginal Water Reserve

The concept of holding water in the Derby Aboriginal Water Reserve was commented on by all interested groups. Concerns were raised regarding lack of effective engagement, confusion on how water held in reserve could be accessed, and a lack of transparency in government policy-making. Respondents commented that:

- The concept of an Aboriginal Water Reserve requires wider consultation because there was insufficient clarity on how these Reserves would operate and inadequate consultation on the concept and its impact on communities.
- Aboriginal Water Reserves require further discussion at both Prescribed Body Corporate level and across the region to determine if the concept is suitable for the Kimberley.
- There should be a statewide policy framework on Aboriginal Water Reserves, developed in consultation with Traditional Owners and stakeholders. Some comments noted that a similar model to Northern Territory could be adopted.
- Given that more than 90 per cent of the plan area is subject to native title, Traditional Owners should have more than 30 per cent of the available water in the greater Derby subarea. Greater than 30 per cent available water will give Traditional Owners more certainty to negotiate economic opportunities into the future.
- The 30 per cent of available water proposed was being used in absence of a proper policy framework.
- The Derby Aboriginal Water Reserve is an important mechanism to support future Aboriginal economic development.
- There should be a strategy to consult with Traditional Owners to review and amend the Aboriginal Water Reserve, given it is an estimation and a new concept. There should be a fixed term for the Aboriginal Water Reserves, in the same manner as public water reserves.
- Free, prior and informed consent is needed before decisions are made on Aboriginal Water Reserves. Traditional Owners requested further engagement on Aboriginal Water Reserves and Aboriginal economic development.
- Aboriginal Water Reserves would not deliver tangible economic benefits to native title holders without access to land and financing. Native title holders would need support and resources to enable them to participate in economic activities that require a water licence.

- To access the Aboriginal Water Reserve, Traditional Owners should not have to apply for a 'regular' licence [under the *Rights in Water and Irrigation Act 1914 (WA)*], rather an alternative and specific system should be negotiated with Traditional Owners.
- Access to the Aboriginal Water Reserve by landholders should be advocated through partnerships with native title holders.

## Use of best available scientific evidence and basis for decision-making

Most interest groups raised concerns over the lack of information and scientific evidence used to make the decisions on water across the plan area and the lack of transparency and accuracy of the methods used to set allocation limits. The plan needs to be based on the best available scientific evidence including evidence about groundwater–surface water interactions, rainfall recharge and future climate.

Contributors:

- advocated for a precautionary approach, to ensure the adequate protection of the aquifers
- generally supported the extended Derby plan area and reduced allocation limits on the Derby peninsula
- raised questions about the accuracy of the Department's method to determine allocation limits and the impact of the overallocation of the Lower Erskine water resource
- lacked confidence in the determination of water available and that there is a lack of clarity on how these amounts were determined
- stated the use of hydrogeology to inform the plan area and quantification of water resources was adequate and there were questions about the presentation of this information in the plan
- expressed a level of uncertainty about the available information, hydrogeological understanding and concerns that the lack of data has made it difficult to manage the resource effectively. There was a call for further investigations and information before the plan is finalised
- sought more detail on the impact of climate change to water resources in the final plan. This included the impact of water abstraction, particularly drawdown impacting wetlands, rivers, soaks, springs and culturally significant sites
- stated that abstraction in the Derby subarea is already having an impact and monitoring is inadequate to measure it. The Department should consider reducing current abstraction
- stated that access to water should be risk based and outcome focused. The Department should assess the risk of impacts from abstraction, not the

licensee. Existing water users should be evaluated within the policies of the new plan

- stated that the preliminary method of recharge estimation undermines the scientific merit of the plan and is inadequate for setting allocation limits
- sought more detail on the recharge estimates to inform allocation limits including uncertainty in recharge calculations, and clarity is needed on the method used to set the allocation limit
- stated that Traditional Owners should be approached to share knowledge to inform allocation limits.

## Climate change

Climate change is a pressing global issue that creates both challenges and opportunities for Western Australia. Evidence-based decision-making for water management is vital in the north where climate projections include both increases, and decreases in wet season rainfall, as well as changes in cyclone frequency and intensity. Traditional Owners are reporting climate impacts, and the submissions conveyed the following points on climate change. Submissions received stated that:

- The best available climate change information should guide water planning in the Derby plan area and, if necessary, additional independent research concerning climate change should be commissioned.
- Water allocation limits in the plan do not account for climate change. Climate change should inform any groundwater allocation limits.
- The allocation limit decisions should specifically consider the impact of current and future climate.
- Following the precautionary principle, allocations should be based on a reduced rainfall scenario and changes in rainfall sequences.
- A more robust risk management approach should be adopted that considers uncertainty in climate change, recharge estimation, the impact of groundwater abstraction on aquifer levels, reduced throughflow into the Derby area and the impact on saltwater intrusion.

## Saltwater interface

Most respondents raised concerns about the previous allocation limits set on the Derby peninsula and the history of changes in groundwater salinity associated with the saltwater interface. Contributors stated that:

- The plan did not adequately respond to the growing problem of saltwater intrusion into the aquifers along the coast, particularly on the Derby peninsula. There appears to be a lack of baseline data which inhibits the ability to make effective decisions.

- The saltwater interface requires adequate monitoring and clarity on how much it has moved over time.
- The interface between fresh and salt water is important to Aboriginal peoples in the plan area and this was not identified in the Derby plan.
- Saltwater intrusion in Derby is evidence that abstraction exceeds recharge. The plan reduces the allocation limit in the impacted area but does not set objectives or a plan for remediation.
- The Department should rectify the decisions of the past and ensure that future water use protects the quality of groundwater on the Derby peninsula. Some felt that the Department is knowingly allowing Water Corporation to contaminate the Erskine aquifer beneath the Derby peninsula.
- Water users should pay the environmental costs of water use, not the public. This includes remediating saltwater intrusion and implementing a robust monitoring regime to prevent future impact.
- The Department and Water Corporation should manage the impact of abstraction for public water supply on the saltwater interface, including transitioning to future sources of groundwater to meet demand.
- It is unclear how potential increased abstraction in the greater Derby subarea will impact on the saltwater interface. There is increased risk of impact on the saltwater interface from:
  - reduced throughflow
  - rising sea levels due to climate change
  - possible reduced recharge due to climate change
  - changes to the water balance resulting from changes in land use including increased vegetation cover resulting from clearing to enable irrigated agriculture.
- The Department should commit to further research to understand the impacts of abstraction in the greater Derby subarea on saltwater intrusion in the Derby peninsula. Research should also consider impacts of climate change.

## Licensing policies and management zones in the plan

Issues were raised about the proposed local licensing policies and management zones, ranging from concerns about onerous additional regulatory burdens, to insufficient management actions and a lack of transparency. Generally, respondents wanted to see good water governance to enable development to occur, while still protecting the water resources. There were conflicting views expressed about whether the new local licensing policies should be applied to existing water users. Respondents said:

- The plan needs to contain clear rules to prevent further overallocation and a pathway to recovery.

- The water licensing approach is vague and the local licensing rules rely on operating strategies and self-reporting.
- To reduce the risks of adverse impacts, there should be strict pumping rules, annual licence reviews, accurate metering and effective compliance measures (such as regular on-ground auditing and licensees' penalties).
- Further clarification is required on how the Department would encourage projects to operate, at an appropriate scale, and in an adaptive manner to prevent impacts.
- The plan did not consider cumulative impacts, putting the onus on the proponent to determine their impact and ecological water requirements.
- The management zones do not appear to include all water places that Traditional Owners would expect to be protected. Further investigation with Traditional Owners is required to ensure that all sites requiring protection are recognised in the plan.
- The management zones require clear justification and rules, including how they were developed.

## Monitoring, evaluation and reporting

Generally, most submissions noted that there was insufficient monitoring in the plan area, considering the overallocated state of the resource, particularly water quality, and the mechanisms to evaluate, report and act on any changes should be improved. Respondents said:

- The current monitoring bore network is not comprehensive, and the plan is over-reliant on data collected from existing user bores rather than a strategically placed monitoring network.
- They have concerns about our monitoring program, which related to:
  - a lack of adequate monitoring data, including ecological data
  - Traditional Owners aren't involved in monitoring and evaluation
  - the need for metering with telemetry to inform accurate recording of water use.
- The evaluation program and its performance indicators need to be more specific, feasible and transparent. Including when we may review allocation limits based on additional information.
- Traditional Owners should be involved in decision-making, monitoring, management responses and evaluation of the water resource under the plan.
- The adaptive management approach should be more specific with a commitment towards further research and mitigation measures to be effective.

## Continuing the conversation

Some of the submissions stated that the consultation undertaken up to November 2020 was inadequate. To address this, the Department continued conversations on some of the complex issues presented in submissions. These are detailed below.

### Traditional Owners and organisations representing Aboriginal peoples

Traditional Owner groups and organisations representing Aboriginal peoples sought further discussion on several matters including:

- a response from the State Government on the water policy positions presented in the draft plan and how they intersect with their recognised native title rights
- a discussion on Aboriginal Water Reserves across the wider community, with the discussion to include Fitzroy and Derby
- a technical discussion on how the allocation limits and management measures were reached.

The Department responded individually to each group in August 2022. It provided written feedback to summarise what was heard in their submission and an initial response to specific comments that:

- identified issues that could be addressed in future planning
- identified issues that might be addressed in partnership, or that need further conversation
- acknowledged issues that are important to Traditional Owners that need to be resolved in the future, particularly where a water allocation plan may not be the appropriate mechanism.

These individual statements and the subsequent conversations that were held with Traditional Owners have informed future water planning in Derby.

### Water Corporation

Water Corporation provided a submission to the Department that outlined its concerns about how we had used historical water level and water quality monitoring data to inform the allocation limits presented in the plan.

Water Corporation welcomed the opportunity to discuss with the Department a collective understanding of the risk of saltwater intrusion into the confined Erskine aquifer. Since November 2020, Water Corporation have drilled new saltwater interface monitoring bores in the Erskine aquifer that have shown the saltwater interface is still offshore under the current rate of abstraction. The Department and Water Corporation are working collaboratively to monitor and manage the saltwater

interface in the Erskine aquifer on the Derby peninsula to ensure the take and use of water from this aquifer for public water supply is sustainable.

## Shire of Derby - West Kimberley

The Department met with the Shire of Derby – West Kimberley (the Shire) before releasing the plan for public comment, at the community drop-in session, and twice in May 2021 during the public comment period. These meetings were used to brief the Shire on the contents of the plan and to create a shared understanding around key issues such as managing the saltwater interface, public water supply and water to support economic opportunities in the region. The Department and the Shire discussed future water forums to facilitate conversations with key parties, including Traditional Owners, and the collective support needed for this to occur.

The Department has met with the Shire on several occasions since the close of the public comment period. These discussions focused on the Shire's water needs and its interest in water for economic opportunities in the area. The Shire agreed that there was a need for a whole-of-government approach to economic development to ensure that it is culturally acceptable, ecologically sustainable and provides benefits to Traditional Owners and the local community.

## Community information event

A community information session was held in Derby in October 2022 with support from the Shire. The session provided an update on the plan for public comment, including:

- what we heard from the submissions
- how the submissions will inform future planning
- what the science says and how this was used.

Presentations were delivered by both the Department and Water Corporation. Attendees represented various interest groups, government and the public.

## Martuwarra Fitzroy River Water Forum

The Kimberley Land Council and the Martuwarra Fitzroy River Council hosted the Martuwarra Fitzroy River Forum on 31 October and 1 November 2023. More than 80 Traditional Owners from nine Traditional Owner groups came together with representatives from the State Government to discuss water planning across the Fitzroy River Catchment.

Traditional Owners represented Country in and around both the Derby and Fitzroy plan areas. This event followed the release of the State Government's *Water allocation planning in the Fitzroy – Policy position paper* (Government of Western Australia 2023), *Summary of submissions – Managing water in the Fitzroy River*

*Catchment: Discussion paper for stakeholder consultation (2020)* (DWER 2023) and five technical documents.<sup>2</sup>

The overlapping issues between Fitzroy and Derby were discussed at this forum. Traditional Owners presented a strong case on the reasons the Department should merge the Derby and Fitzroy areas into one water allocation plan.

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<sup>2</sup> <https://www.wa.gov.au/government/document-collections/technical-reports-the-fitzroy-water-planning-area>

## Next steps

The information we received through the submissions and the discussions held across the catchment, highlighted the complexity of the issues and needs of the community, Traditional Owners and stakeholders.

In response to the submissions and the overlapping needs of the Fitzroy and Derby plan areas, the Department has combined the water planning areas in the *Consultation draft – Fitzroy–Derby water resources management plan: policy and guidance* (DWER 2026a). The draft Fitzroy–Derby plan addresses concerns raised in submissions to the plan for public comment.

The Department seeks feedback on the draft Fitzroy–Derby plan to continue the conversation and ensure appropriate management of water resources. We encourage submissions and participation in consultation events. We will continue to talk to Traditional Owners and stakeholders during the public consultation period to inform the shaping of the final plan.

## References

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