

# Western Davenport Ti Tree Water Advisory Committee

## Minutes of meeting #7

Meeting date: Tuesday 26 January 2023

Start time: 9.22 am

### Meeting record

### Agenda item 1. Welcome and intent of the meeting

The Chair opened the meeting and welcomed members, proxies and observers.

The Chair indicated that following the last meeting there had been various representations to the Minister and Chief Minister on the preliminary draft Water Allocation Plan (WAP). As a consequence, the department made further changes to the documents previously considered. The Executive Director, Water Resources will provide a presentation on these changes which will be followed by any clarification. The main focus of the meeting is to discuss how we move forward considering there is no plan for the Western Davenport allocation plan in effect. The committee needs to identify any amendments or further refinement of the WAP which are considered essential prior to its release.

### Acknowledgment of country

The Chair provided an acknowledgement of country.

### Attendance and confirmation of agenda

Attendance and apologies were noted. A quorum was reached. Agenda agreed on.

Members present	Method	Apologies	Department staff	Method
Andrew Johnson (Chairperson)	Meeting room	Paul Burke	Amy Dysart, Executive	Meeting room
Steve Morton	Meeting room	Michael Liddle	Director WR	
Paul McLaughlin	Online	Barbara Shaw	John Gaynor	Meeting room
Annette D'Emden	Online			
Roy Chisholm	Phone			
<b>Proxies</b>				
Kate Peake (for Paul Burke)	Online			
Adrian Tomlinson (for Jade Kudrenko)	Meeting room			
<b>Observer</b>			<b>Meeting secretariat</b>	
Evie Rose from CLC			Yvette Wilkes	Meeting Room

## Correspondence in/out

Nil in and nil out

## Endorsement of minutes

Minutes of out of session 2 were accepted and comments from Nick Ashburner are attached.

Several points were raised with respect to details of the previous discussion as addressed in the draft minutes but as the issues were not raised at the meeting it was agreed that it was inappropriate to add further matters not addressed at the time.

## Meeting summary

### Agenda item 5

The Executive Director (ED) presented an overview of the regulatory framework within which a WAP operates including the *Aboriginal Land Rights Act*, the *Aboriginal Areas Protection Act*, the *Environmental Protection Act*, and other regulatory tools. The ED also identified how licence decisions need to be consistent with various Acts, regulations, plans, policy, and guidelines.

The ED acknowledged that the WAC process has been very valuable for the department by enabling broad ranging as well as detailed discussions, receiving feedback, and recommending significant amendments to the various documents. Four critical adjustments that have been made through this process, acknowledging that there will continue to be ongoing debate on the scope and content of these adjustments:

- The reduction of estimated sustainable yield
  - Central Plains was reduced from 87,700 to 81,500 ML/year
  - monitoring outlined in the implementation plan.
- Objectives were reintroduced
  - revised objectives have been included and aligned to implementation actions.
- Addition of risk management
  - this is the basis of the approach – will be added back into BR linked to objectives WAP and implementation actions.
- Introduced trigger for review of the WAP based on water use
  - expand this trigger to both low use / 70% actual water use
  - recognition that the staging and triggers of water licences provide a precautionary approach to delivery.

The department will be continuing work in the below areas:

- Structure of separate documents across all plans in the NT
  - WAP; aligns to the *Water Act* ; which requires estimated sustainable yield, allocation to beneficial uses including Aboriginal water reserve and allowing for trade
  - Implementation actions; aimed at identifying the priorities for the regulator and aid with transparency in its delivery of services within allocated resources, and fulfil section 34 of the *Water Act*

- Background report; contains remaining information from the previous plan not included in the other documents that support the plan.
- Cultural protection
  - *Aboriginal Sacred Sites Act 1989, Aboriginal Lands Rights Act 1976*, rights and obligations that are complementary to the *Water Act*.
  - Licence decisions – section 90 considerations in the *Water Act*
  - Additional implementation actions to be developed with land councils.
- Environmental protection
  - Extensive work completed already and will continue committed in the implementation actions.
- Further updates to stock and domestic demand to be quantified.

The department advised that the learnings from this process will apply cross the Territory and there are areas that the department needs to continue to work on, including consultation with our partners to ensure progress to identify and protect key cultural values and meet broader social expectations.

The department has recognised that the process for how plans are undertaken has changed over the last 12 months while the committee has been in place. In the past, there was a lack of consistency in the preparation of different plans, which has now been addressed in the planning process and documentation has been aligned to purpose – background for information, plan for management rules and implementations for ongoing management of the water resource. The process has been standardised and will be applied more consistently across all plans in the future.

#### **Agenda item 6**

Committee members have concern about the increasing emphasis on policy and guidelines and have seen a reduction in risk mitigation content in the plans. Concern was raised that the practice of a collaborative approach to water management appeared to be reducing over time. Plans are the only place where broader stakeholders have significant input but feel that given the new structure that this will be reduced. The committee has spent a long time discussing social licence and having a plan that includes content that gives the public confidence and reassurance that water is being managed effectively and appropriately. The department has acknowledged these issues, however will continue to be the direction in the short term to medium term aligned to the current requirements for a plan in the *Water Act*

The committee is particularly concerned that the gazetted plan has gone from a single comprehensive and detailed document to three separate documents where much of the detail is now removed from the gazetted document and placed into supporting documents that may not have a statutory status. Some members of the committee did not accept the reassurances from the department that the supporting documents have their own statutory status that can be used to inform decisions in accordance with other relevant sections of the Act and continued to advocate for all the material to be included as part of the plan. The committee recognised that the department was unwilling to compromise due to legal advice and that some of the detail has been included in policy and guidelines that is not repeated however they did not consider this an acceptable position. It was suggested that the committee should make a very strong recommendation to the Minister address these concerns through legislative change as a matter of urgency.

It was stated by a committee member that the department approach was adopted in response to potential litigation and by separating the documents it will make it more difficult for the community to understand that only the gazetted document will need to be considered by the controller in making license decisions. However, an alternate view was made that suggested the new approach was easier to understand. The response from department remains that the plan is supported by the regulatory framework (legislation, policies and guidelines) in which it is operating and by meeting these obligations it is responsible to address inadequacies that have been identified (not duplicating content of the other documents and aligning clear

responsibilities to legislation). The committee identified that there had been a significant shift in the approach and it will be important for the department to have clear messages to the community throughout the process.

It was raised that the National Water Initiative identified what should be in a plan, including a risk and adaptive management framework, which are no longer in this plan. Normally they would be in a plan to inform the implementation process. The department confirmed that these will be integrated into the documents.

Concern was raised that the implementation actions are not legally binding and are just a commitment for the agency. The ED advised that the plan provides objectives for sharing and measurement of outcomes, which establishes the requirements for consideration of cultural values.

Some of the committee expressed frustration with four matters that the committee had considered in detail during its deliberation process including:

- a view that the ESY has not truly shifted in any meaningful way
- objectives that included consideration from the committee have been reintroduced into the plan document but they were not the exact objectives that the committee had debated in prior meetings and that the current objectives are ambiguous
- risk management will be included in the documentation but the committee has not seen this material
- the trigger for the plan review has been added which is unlikely to be triggered in the next 10 years of the plan and was considered too high. It appears to be a trigger for a much longer time frame than the proposed plan and consequently this trigger should be lower.

The committee is concerned that the current document is not a comprehensive, standalone document and requires the support of various pieces of legislation, policies and other regulatory instruments. Consequently, it is considered that it will be difficult for the community to understand the water management of the region which the committee considered as an essential prerequisite for a social licence for the department.

The committee was concerned that the scope of the plan had changed over period of the committee's deliberations. One member shared a summary of the agenda papers provided to the committee during the current plan consultation process to highlight that there has been a significant shift in department attitude to what a plan should contain throughout the consultation process. Initially it was proposed that the Plan would be a more comprehensive document but that in response to litigation and legal advice the Plan aligns to those elements identified in the *Water Act*. This led to the development of proposed structure and content of the three documents.

The committee acknowledged legislative reform was required to ensure plans are more comprehensive. Committee members would like to see a continuing commitment to having a comprehensive water allocation plan that really defines how a Water Controller would make a decision.

The department accepted that there were significant lessons to be learned from the Singleton case and there was a genuine desire to see the allocation plan improved. The department agreed with the committee that the plan should contain messages that highlight the need for the precautionary approach and provide an approach to reduce estimated yield in the future. It was agreed that there was a need for a broader education framework to explain the water allocation planning process and how it works for the whole of the Territory.

There was a suggestion that the department would include information in the new allocation plan that would inform the staging of licences and strengthen information on the process and details for cultural impact assessments. It would include guidance on how it would be reviewed periodically, while it is in the draft Plan, it was acknowledged that it could be more detailed.

A precautionary approach was referred to when considering the consumptive pool. It was stated that the consumptive pool should be based upon a conservative estimate of long-term net recharge, and critically, that to be sustainable, groundwater systems must achieve a balance between the volume entering it by recharge and the volume leaving it via pumping and discharge. The discussion around net recharge has slipped away as the conversation has progressed over the last few meetings.

A review of the limits of acceptable change was previously stated as a very high priority, and now it has been effectively taken out of the plan and put into a guideline, initially the conversation was about including it in the plan.

It was critical for the CLC that the Plan identified and established a meaningful engagement partnership with traditional owners, which was needed to rebuild relationships and contribute to the implementation of the Plan. Reflection on the consultation meeting held in Tennant Creek in September 2022 with Traditional Owners highlighted that the consultation did not reflect the scope and detail of the new plan and did not inform traditional owners of the current WAP and its format.

Concern was raised that cultural values contained in the initial draft had been removed and although some consideration has been included in this draft they are ambiguous and do not really have any teeth.

The committee acknowledged the advice and will provide it to the department for further consideration. The ED indicated that the department is dedicated to building relationships with traditional owners and acknowledges this will be long-term process and that additional funding has been allocated for this purpose. It was noted that during consultations undertaken by the department and CLC during the WAC development process traditional owners stated that they want to be part of the WAC.

It was pointed out that the National Water Initiative review singled out the NT for having the first in first serve rule apply and hence is part of the reason for a focus on any Plan and it also highlights the need to amend the water legislation. If that were to occur, it was suggested that the NT should look at a more modest estimated sustainable yield rather than one which on face value will lead to possible water "mining" over the next 100 years.

Adrian expressed the view that the committee was right to seek modelling over 100 years and this could have been done by using the end conditions at 50 years as starting conditions for a further 50 years. Furthermore the modelled drawdown mapping should have provided information in finer detail than 5 m contours as drawdowns of far less amounts can damage or destroy GDEs and that graphs of predicted drawdowns at key points should have been provided. Although this had been extensively discussed at previous meetings.

Data is key to understanding the resource long term, which comes from the implementation plan. There must be a mechanism to ensure public reporting around the implementation plan The committee would like to see the department include annual reporting in the Plan.

The committee does not feel it has the information and data at the moment to make an informed decision on what is acceptable given that there is minimal extraction in the region on which to base any analysis. The ED emphasised that established monitoring program will provide greater confidence in the future and that given current water licence conditions and low level of extraction there was minimal risk to the resource over the proposed life of the Plan. The department has attempted to understand the science of the resource and try to apply an adaptive management approach. It was considered by some committee members that this has been largely subjective and there was a fear that this Plan is exposing the resource to unnecessary risk given current allocations.

Adrian indicated that the loss of 30% of groundwater ecosystems permitted by the GDE guideline was unacceptable. Furthermore the modelling offered no assurance that this was the maximum amount impacted and had not recognised the occurrence of important shallow groundwater areas (<5 m) near Thring Swamp. He noted the drawdown modelling suggests even greater impacts than 30% loss of

ecosystems after just 50 years. He suggested that there was a need for a map showing where groundwater dependent ecosystems occurred and that management rules applied in the statutory document. He further raised the view that the proposed extraction may lead to salinity impacts. His view was this had not been addressed in the plan but was a significant issue.

It was agreed that the department had heard the concerns of the committee and that further debate by the committee was unlikely to result in any further major changes to the documents. It was considered that a written submission was the most effective way to articulate the concerns with the proposed plan and format expressed by various organisations represented on the committee as well as exposing the material to the broader community.

It was noted the committee members have disparate views and are not supportive of the Plan in its current form or its content given the potential implications of a pre-existing major allocation. A member of the committee did not support the plan going out for public comment.

### **Agenda item 7 and 8 wrap up and meeting close**

The majority of the committee supports the Plan going out for public consultation. The committee has varied views and concerns and is not supportive of the Plan and associated documents. The committee is concerned about the potential implications of existing allocations and would seek the department to consider a further amendment to the plan which clearly identifies the staged approach to any major licence and include any implementation and reporting arrangements to enable the community to monitor future water use. The plan should include public reporting of the implementation plan actions to ensure transparency in water management in the region. The committee considers the review of the *Water Act* as critical.

The ED sought advice from the committee on the length of public consultation. The committee agreed that a consultation period of 8 weeks was adequate. The committee understood the importance of allowing the department adequate time to prepare the consultation summary and potential plan updates and reiterated the need for comprehensive public consultation.

It is expected that there will be a final meeting to consider the consultation summary reports and the final Plan, with the committee then providing the final advice to the Water Controller and Minister. The meeting is will be confirmed at a later date.

Meeting closed at 1.00pm

### **Attachments**

- Minutes of out of session 2 were accepted with comments from Nick Ashburner
- Presentation by the Executive Director on the regulatory framework within which a WAP operates