

# Western Davenport Ti Tree Water Advisory Committee

## DRAFT Minutes - Meeting out of Session

Meeting date: Monday 12 October 2022 Start time: 10:00am

Location: Teams meeting (video) and Daly Meeting room, Level 3 Goyder Centre

### Recommendations and Actions

Recommendations from meeting out of session	
1.	The Department to investigate how a progressive ESY would work and ensure it is still lawful. Examine options to introduce a trigger for review of the plan based on use. This will then be brought back to the committee.
2.	Review implement actions to make sure the ones the Department are responsible for to be more precise.

### Meeting Record

#### Welcome and intent of meeting

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

The meeting was requested by Jo Townsend in both her capacity as Water Controller and as CE of the Department of Environment, Parks and Water Security in response to a letter sent to her on the 9 October 2002, expressing their concerns with the new Water Allocation Plan for Western Davenport region. Jo would like to understand their concern, knowing that the members all have different areas of expertise and interest that s and look at what the possible solutions maybe, to look at a way forward.

#### Acknowledgement of country

The Chair provided an acknowledgement of country.

#### Attendance & Confirmation of Agenda

Attendance and apologies were noted. A quorum was reached. Agenda agreed on, no changes.

Members present	Method	Apologies	Department staff	Method
Andrew Johnson (Chairperson)	Online	Paul Burke	Amy Dysart left 11.10	Meeting room
Jade Kudrenko	Online	Michael Liddle	Joanne Townsend left	
Steve Morton for the first 10 minutes only	Online	Barbara Shaw	11.10	
Nick Ashburner	Online	Annette		
		D'Emden		

Paul McLaughlin	Online	Roy Chisholm		
<b>Proxies</b>	Online		<b>Meeting Secretariat</b>	
Kate Peake (for Paul Burke)			Yvette Wilkes	Meeting Room
Observer Ben Kaethner from CLC				

**Correspondence in/out**

Nil in

Out

Date Received	Correspondence	Comment
9 Oct 22	Letter to Water Controller and Chief Executive for Committee	

**Meeting Summary**

Jo, in both her capacity as CE and Water controller, has advised the Minister of the letter from the WAC and indicated the draft plan would not be progressing to her as expected. Instead, Jo would be meeting with the committee to hear their concerns and determine if agreement could be reached on a way forward. The committee was pleased to hear of the delay of the declaration of the current plan to allow the Department time to look at their concerns prior to public consultation.

Jo stated that the current plan ends on the 6 December, which means the region will not have a declared WAP if the new plan is not declared before this date. Jo is comfortable that the new plan is delayed being declared for a few weeks, to enable the Department and the Committee to work on a plan that most of the committee is comfortable with. This is because currently no licence decisions are being made in the Western Davenport region, due to a request from the CLC not to make decisions until the new plan was declared. Jo pointed out to the committee that this decision could be challenged but to date has not been. The Department must have a plan that is completely lawful. It must allow sensible development scenario that is cautious and has the ability to avoid the impacts everyone wants to avoid.

The concerns of the committee are:

- The plan has a substantial water allocation up front and that this will create an over allocation. Lessons from other jurisdictions is once water is allocated it is very difficult to draw it back due to political and economic forces. The preference would be to see that the Department draw back the allocation as much as possible in the early years, while the resource is explored further and understood more. This would increase the ability to manage the resource in the future.
- The current framework does not enable precautionary principle to be adequately recognised. Legislation could be one way to allow this.
- Concern was raised that the new format was adopted without adequate community consultation and was likely to create some confusion as people were expecting the old format. It was agreed that the new format was easier to read but did not contain the detail that had been discussed with the Committee.
- The impact on cultural, GDEs or other irrigators is not in the plan. Plan needs to identify/assure more, how to protect these and other water users.

- The implementation actions do not have any risk analysis, a level of detail that would normally be anticipated in a WAP. It was suggested that the WAP has deviated from what The National Water Initiative guidelines state, that a risk analysis should be in a water plan.
- The Committee noted that the draft plan had been drafted in accordance with Crown Law advice which seems to be a minimum that the Act requires but the Act does not say that you cannot add more.
- It was of concern that the objectives have been removed and that consequently there is no recognition of cultural and environmental issues.
- Committee cannot see their influence and cannot see the values they have previously discussed extensively with the Department expressed in the plan.
- At the current time there are widely different expectations between the Department and the Committee for what a plan represents and it is unlikely to result in a plan that satisfies both. The committee will need time to consider what the revised plan contains and if they can endorse it or not without compromising their values
- The WAP should have limitations on resource exploitation that reflect community expectations as determined by the legislation- to enable beneficial use without unacceptable environmental, social and cultural impacts.
- The committee felt that while they had received information about the new WAP structure it did not adequately explain the implications which were not clear until they received the current draft documents which was too late in the process to adequately consider and provide meaningful input. Given the proposed timetable for release of the WAP the Committee was not comfortable with supporting or otherwise the Plan and some concerns were raised that they were being backed into a corner.

Some of the committee agreed that the science from the Department was solid and acknowledges the good work done around modelling and the numbers. The Committee appreciated Jo's time to meet with them and that she is looking for the middle ground.

The Department advised that under the Act setting a low ESY will not allow sensible, progressive development required for investment decisions to be made with confidence and could be viewed as contrary to the intent of the legislation. Jo indicated that they were prepared to look at the acceptability of adopting some sort of staged ESY or something similar in the plan, as this will allow water to be released not recouped. The staged ESY subject to meeting defined criteria or triggers would ensure that an increase to ESY cannot occur until assurances have been met, including such things as no deleterious impact on sensitive GDE's or consultation with TOs had been undertaken or further cultural mapping work has been done.

Licences currently have this, and they would still remain in the licence conditions but it is not generally visible to the broader community although the information is available. Currently, licences are staged in an attempt to achieve a balance between the development of the project and ensure the water is used productively and not banked. It is assessed on the basis of criteria which requires the user to avoid deleterious impacts on cultural values or GDE's. The time frames will be different for each licence. In the WAP it would be putting in global conditions about verifying how the resource is responding before all the water is used to avoid a future requirement to claw back water from licence holders.

The NT is different from the rest of Australia, because we are starting from a position where there is sufficient water to allocate whereas in most case around Australia the resource base has been used for some time and was often over allocated prior to water allocation plans being developed such as across the Murray Darling Basin where environmental water was being clawed back. Western Davenport is the first region that we have systemically applied staged licenses. Also, other jurisdictions don't have the same legislative provisions, for instance they do not have the use it or lose it clauses.

Some committee members had concerns about the staged ESY, as it would have to be released slowly enough to enable the effects to be measured. It was suggested the current timeline for the release of water in current licences is probably too rapid. It is also felt that a staged ESY may have unintended consequences for the environment. Feel this change is too quick and would need proper consultation.

Another option proposed by Jo was to look at the trigger for the review being usage based rather than time. This is another way to do a usage stop and collate implementation actions and review potential consequences with the committee.

Jo explained in general terms that the legal advice is that you cannot put things into the plan that will constrain decisions by the Water Controller. However, she suggested that does not mean you should not put things in the Plan that you want the decision-maker to be constrained by.

The Department explained that the limits of change was an area that they were happy to step outside the legal advice and put in a constraint, as there is sufficient information and understanding to enable those requirements to be defined and managed to be included in the plan. Rather than restating the criteria in the plan, the plan refers to the guideline document that has the criteria. Part of the improvement process to the plan documents is to not restate things that are said in policy, as over time there is the potential for contradiction when improved policy decisions are adopted.

The committee expressed the importance of monitoring and reporting, ensuring that key performance indicators are determined, which is in the implementation action plan. Implementation actions will feed into the trigger assessment to determine if the ESY and modelling are being achieved. If the work has not been done the development stops, which is a motivation to ensure it is completed, by both the Agency and the developer. This adds publicly available assurances that the Department will just not allow development to occur without checks and balances.

The Committee expects that regional monitoring and reporting undertaken by the Department will give a broader resources base understanding and ensure that the criteria are being met. The license holder then needs to meet and provide specific information on the impact of extraction from their enterprise.

Jo acknowledges that due to the advocacy of the committee the Department has committed and refocused its commitment to separating out GDE's and cultural values from broader environmental values. The previous plan was not an allocation plan as it was inconsistent with the requirements of the Water Act, rather it was a reflection of people's aspirations for the region. The angst around the previous plan and the new one has propelled a whole new way of understanding water extraction impacts on things like cultural values and groundwater dependent eco systems. This puts us far ahead of other regions and jurisdictions.

Jo thanked the committee for their honesty in the discussion and undertook to advise the Minister of the outcomes of the meeting and the new direction being explored by the Department. She suggested that once she has spoken to Amy and the lawyers about how to achieve the intent of the discussions she would expect to have revised documents within about 2 weeks.

Following the departure of the CE and ED the Committee considered the advice and some members raised concern that the new format would compromise their ability to provide considered advice and they were concerned the new documents would not address the issues outlined in the letter.

The Committee considered that the CE was genuine in her desire to achieve an outcome that was acceptable politically and met community expectations. The real issue was how to assess the trade-offs and potential consequences given the new format which lacked adequate detail. As previously identified the Committee was concerned that a staged release may not allow adequate time for any effects to be realised especially in long lived vegetation systems. There was a view expressed that based on external advice the current ESY was not sustainable and that the Plan required a risk analysis to understand the potential implications and risks of over allocation.

The Committee noted that some of the desired detail may require further legislative change. At this point the Departmental objectives as defined by the Act may not reflect actual community aspirations for the region. However, it was the strong view of some members that any proposal for new legislation will require open and transparent community consultation which was not achieved in the last attempt.

The Committee agreed to consider the new material but was concerned that due to the new format that there may be inadequate detail in the WAP to provide confidence that environmental and cultural values would be adequately defined and protected. Some members suggested that the Committee should consider its “not negotiable” position which included ensuring that “safe” and defensible decisions would be made in relation to the environment and cultural values recognising the intent of the legislation to also enable economic development.

It was noted that the Department will attempt to determine what criteria the controller can adopt to ensure future use is within acceptable limits to avoid over allocation which are measurable and defensible. Currently, the implementation plan has tried to reflect this, but it is accepted that there is not a strong connection to the criteria in the WAP. This will need to be looked at carefully by the committee when the review documents are presented.

The Chair advised that the committee’s role is to provide comment on the WAP and if there are differing views the Chair is to reflect this to the Minister and the Water Controller.

### Wrap up

There is still have a way to go. It would be better if the Department can come up with a WAP and associated documents that meet community expectations as reflected in the advice from the Committee. It was considered better to take some extra time now rather than try to put out documents that are likely to raise community concerns. Based on the advice from Jo, the chair suggested that a late December timeframe was the target but noted the view of some members that it may take a bit longer.

### Meeting Close

Meeting closed at 11.58pm