

STRATEGIC ABORIGINAL WATER RESERVE

POLICY FRAMEWORK

VERSION 13/10/17



CONTENTS

1	Background.....	3
2	Policy context.....	3
3	SWR Policy Framework	3
3.1	Establishing Strategic Aboriginal Water Reserves.....	4
3.2	Right to consent to access to a Strategic Aboriginal Water Reserve.....	4
3.3	Determining Strategic Aboriginal Water Reserve percentage and volume.....	4
3.4	Administering access to Strategic Aboriginal Water Reserves.....	5
3.5	Risk assignment.....	5
3.6	Maintaining Strategic Aboriginal Water Reserves.....	6
3.7	Inclusion in Water Allocation Plans	6
3.8	Trading water from Strategic Aboriginal Water Reserves	7
3.9	Pending applications for water extraction licences	7

3.2 Right to consent to access to a Strategic Aboriginal Water Reserve

- 3.2.1 Eligible Aboriginal rights holders (or their authorised representatives) will provide or withhold consent for access to a Strategic Aboriginal Water Reserve by any party.
- 3.2.2 The Strategic Aboriginal Water Reserve may be divided into portions in instances where more than one eligible Aboriginal entity holds rights to access water for consumptive beneficial use in a water allocation plan area. Each eligible rights holder (i.e. group) will have the right to provide or withhold consent for access to their portion of the Strategic Aboriginal Water Reserve. The portion will correspond to the percentage of eligible land area held by each rights holding group. For example, if Aboriginal Land Trust 'A' comprises 30% of the eligible Aboriginal land, Aboriginal Land Trust 'A' may provide or withhold consent for access to and benefit from 30% of the Strategic Aboriginal Water Reserve volume.
- 3.2.3 Eligible Aboriginal rights holders are defined as those whom, by virtue of their existing land rights, have rights to take water resources for consumptive beneficial uses. These include Aboriginal rights holders vested in the following land:
 - i. Aboriginal land (scheduled under the Aboriginal Land Rights Act);
 - ii. Aboriginal land (Northern Territory enhanced freehold); and
 - iii. Exclusive Possession Native Title Determination Areas.



3.3 Determining Strategic Aboriginal Water Reserve percentage and volume

- 3.3.1 The Strategic Aboriginal Water Reserve will be a percentage of the available consumptive pool identified in each water allocation plan.
- 3.3.2 Available consumptive pool means the portion of the consumptive pool available for economic consumptive use, not including water allocated for public water supply or rural stock and domestic use, which are prioritised above other uses.
- 3.3.3 The percentage of available consumptive pool reserved in a Strategic Aboriginal Water Reserve will be formulated in proportion to the percentage of eligible Aboriginal land (refer 3.2.3) with direct access to water resources for consumptive use in a Water Allocation Plan (WAP) area or applicable management zone within the plan area.
- 3.3.4 The percentage of the available consumptive pool reserved in a Strategic Aboriginal Water Reserve will be determined according to the following table to provide objectivity and certainty of SWR calculation to all stakeholders.

Area of eligible Aboriginal land with direct access to water resource as a percentage of all land with access to the water resource in WAP area (or applicable zone)	Percentage of available consumptive pool reserved in SWR
0%	No Strategic Aboriginal Water Reserve
More than 0% less than 10%	10%
Between 10% and 30%	Corresponding with actual percentage of eligible land
30% or greater	Capped at 30%
100%	No Strategic Aboriginal Water Reserve

3.6 Maintaining Strategic Aboriginal Water Reserves

- 3.6.1 Strategic Aboriginal Water Reserves will provide eligible Aboriginal rights holders with an exclusive right to access a volume of water for current or future economic development. The volume of water available from the Strategic Aboriginal Water Reserve component of the consumptive pool will reduce over time as it is allocated to users in the form of water extraction licences.
- 3.6.2 Water entitlements surrendered due to non-renewal, amendment or cancellation of water extraction licences that were sourced from a Strategic Aboriginal Water Reserve shall return to the Strategic Aboriginal Water Reserve, not the general consumptive pool.
- 3.6.3 Water entitlements that are traded or on-traded that were sourced from a Strategic Aboriginal Water Reserve shall remain tied to the Strategic Aboriginal Water Reserve, not the general consumptive pool.
- 3.6.4 The DENR underutilised water policy will apply to all extraction licences including those issued from the Strategic Aboriginal Water Reserve. The underutilised water policy involves the reduction of the licence entitlement or cancellation of licences in instances where allocations are consistently underutilised either through extraction or water trading.

3.7 Inclusion in Water Allocation Plans

- 3.7.1 Strategic Aboriginal Water Reserves will be included in water allocation plans unless it can be demonstrated Aboriginal rights holders:
 - i. Do not hold any rights that enables access to and use of water for consumptive beneficial uses covered by those plans; or
 - ii. Hold all land that could conceivably access water for beneficial consumptive uses applicable to an SWR, as in this instance the Aboriginal rights holders have exclusive access to the water resources.
- 3.7.2 Until such time as Strategic Aboriginal Water Reserve is defined as a discrete beneficial use under the Act, the SWR is to comprise water allocated to one or more of the following consumptive beneficial uses: agriculture, industry, aquaculture, and cultural (the later only where cultural use is considered consumptive). The allocation of SWR to beneficial uses must be clearly articulated in water allocation plans. (Note: a water allocation plan may consist of allocations to consumptive beneficial uses from the SWR in addition to allocations to consumptive beneficial uses from the general consumptive pool, however the sum of all allocations must remain within the estimated sustainable yield).
- 3.7.3 A 'notional' Strategic Aboriginal Water Reserve shall be identified in water plan areas if existing allocations result in insufficient un-allocated water to provision the SWR or beneficial uses contained therein. Water entitlements returned through surrendered, amended or cancelled licences would be re-allocated in the following order of priority:
 - i. Environmental and cultural beneficial uses (over-allocated systems only); then
 - ii. Public water supply (where current allocations are deemed inadequate); then
 - iii. Strategic Aboriginal Water Reserve or beneficial uses within the SWR (if not already fully provisioned); then
 - iv. General consumptive pool.
- 3.7.4 If the sustainable yield within a water plan area increases due to improved water assessment knowledge, or from changes in natural or managed aquifer recharge, the increased volume of water available will be allocated in the order of priority consistent with 3.7.3.
- 3.7.5 The Controller of Water Resources will not cancel, refuse to renew or reduce existing licence entitlements for the primary purpose of provisioning an SWR.

3.8 Trading water from Strategic Aboriginal Water Reserves

- 3.8.1 Eligible Aboriginal rights holders may negotiate with third parties to provide them with temporary and conditional consent to access a portion of the Strategic Aboriginal Water Reserve. For example, an Aboriginal group could provide consent for third party access to the Strategic Aboriginal Water Reserve in exchange for employment, payments, or a financial stake in a project.
- 3.8.2 All applications to access water from Strategic Aboriginal Water Reserve via trade are also conditional upon meeting standard licence application requirements under the *Water Act* and will be subject to same standard conditions and licence security protocols that apply to all other water extraction licences in that water allocation plan area.
- 3.8.3 Water extraction licences that access the Strategic Aboriginal Water Reserve may be temporarily traded or on-traded in accordance with trading rules specified in the water allocation plan; however permanent trading is prohibited. All water trades (including on-trades) of water sourced from the Strategic Aboriginal Water Reserve must be negotiated in good faith and have consent from the eligible Aboriginal rights holders or their authorised representatives.

3.9 Pending applications for water extraction licences

- 3.9.1 The SWR policy will be applied to all licence applications assessed after the SWR policy is adopted by Government, including pending applications received prior to SWR policy approval, with the exception of applications identified under 3.9.2. That is, any decision to grant a licence to take water made after this policy is approved will require consideration of Strategic Aboriginal Water Reserves when determining water availability.
- 3.9.2 Following the removal of the <15 l/sec exemption, a number of new applications from existing users are being progressed in the Darwin Rural Area. Such licence applications from existing users shall take precedence over the SWR.
- 3.9.3 With the exception of the Darwin Rural licences under 3.9.2, new licence applications may access water entitlements from the remaining consumptive pool, or may seek to obtain water through trade with existing licence holders or from an applicable Strategic Aboriginal Water Reserve.



