

Trading Licensed Water Entitlements Policy

Document title	Trading Licensed Water Entitlements Policy
Contact details	Department of Environment and Natural Resources Water Resources Division
Approved by	Northern Territory Government
Date approved	21 July 2020
Document review	Two years, unless required sooner
TRM number	LRM2017/0065-0003~0023

Version	Date	Approver
1.0	21/7/2020	Northern Territory Government

Disclaimer

The information in this policy is for general guidance only and must be read subject to the *Water Act 1992* and *Water Regulations 1992*. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law. Licence holders should obtain professional advice if they have any specific concerns.

This policy does not in any way fetter the Controller's discretion to make water extraction licence decisions, and all statutory decisions concerning trade will be considered on a case-by-case basis in accordance with the Act.

The NT Government accepts no liability for any losses incurred as a result of the time taken to assess a trade application or the refusal of a trade application or the time taken to assess a water extraction licence decision. These timeframes should be considered by buyers and sellers.

Contents

1	Terms used	4
2	Purpose	6
3	Objectives	6
4	Scope	6
5	Commencement	6
6	What is trade?	6
6.1	Term (duration) of a trade	7
6.1.1	Temporary	7
6.1.2	Ongoing	7
7	Eligibility to trade	7
8	Policy Statement	8
8.1	Water allocation plan areas	8
8.2	On-trading	8
8.3	Trade of unused licensed entitlements	8
8.4	Renewal of traded licensed entitlements	9
8.4.1	Temporary trade	9
8.4.2	Ongoing trade	9
8.5	Security of licensed entitlements	9
8.6	Public water supply	9
9	Other matters relevant to trade	10
9.1	Part-period trading	10
9.2	Strategic Aboriginal Water Reserve	10
10	Processing a trade application	10
10.1	Application to trade	10
10.2	Assessing an application to trade	11
10.3	Approval	11
11	Information for buyers	12
12	Information for sellers	12
12.1	Buyers without a licence	12
13	Pricing	13
14	Right to review	13
15	Related documents and legislation	13

1 Terms used

Some of these terms are defined for use in this Policy only. These are **bold** in the table.

Acronyms	Definition
Aboriginal water reserve	refer to the Strategic Aboriginal Water Reserve Policy Framework and the Act.
Act	Water Act 1992 (NT)
annual announced allocation	a decision of the Controller to apply a seasonal water reduction for a period, which reduces the licensed entitlement for the relevant period .
beneficial use	the uses of water specified in section 4(3) of the Act, that is: agriculture; aquaculture; public water supply; environment; cultural; industry; rural stock and domestic; mining activity; and petroleum activity. Water allocation plans may also specify beneficial uses for a plan area.
buyer	a person or licence holder seeking a licensed entitlement or a licence holder whose licensed entitlement will be increased as the result of a trade.
Controller	the Controller of Water Resources, a person appointed under section 18 of the Act, with powers to carry out functions in administering the Act, the principal licensing and regulatory decision-maker in terms of the Act.
department or DENR	NT Department of Environment and Natural Resources, or otherwise the Agency responsible for administering the Act, as defined by the Administrative Arrangements Order from time to time.
licence	in this policy refers only to a water extraction licence granted by the Controller: <ul style="list-style-type: none"> under section 45 of the Act to take water from a waterway; or under section 60 of the Act to take water from a bore.
licensed entitlement	a volume of water that may be taken by a licence holder in a period .
Minister	the Minister responsible for the Act under the Administrative Arrangements Order
NT	Northern Territory
ongoing (term)	see trade term (As the NT does not have 'permanent' water extraction licences, the term 'permanent' is not used in the context of licence terms in this policy.)
over allocated	a water resource or plan area where the total volume of water allowed to be taken from the resource is greater than the volume of the estimated sustainable yield of the resource.
period	The water accounting year listed on the licence. In the Top End, the water accounting year is 1 May until 30 April. In the Arid Zone, the water accounting year is 1 July to 30 June.
public water supply	defined in the Act as a beneficial use for the supply of drinking water through community water supply systems.
seller	a licence holder who is seeking to sell a licensed entitlement by way of a trade or whose licensed entitlement decreases as a result of a trade .
Strategic Aboriginal Water Reserve	refer to the Strategic Aboriginal Water Reserve Policy Framework and the Act.

Acronyms	Definition
temporary (term)	see trade term
trade or trading	a transaction between a buyer and seller that is approved by the Controller and processed by the department resulting in no net change in licensed entitlements but changes to the buyer's and seller's licensed entitlements
trade term	either temporary (less than the remaining term of a seller's licence) or ongoing (for the remaining term of the seller's licence)
trading licensed entitlements	the trading of licensed water entitlements within a water allocation plan area in accordance with the Act, relevant NT Government policies and any guidelines established in declared water allocation plans. Section 6 of this policy explains trading licensed entitlements.
unused licensed entitlement	an unused licensed water entitlement refer to the Recovery of Unused Licensed Entitlements Policy .
water allocation plan	a water allocation plan declared by the Minister under section 22B of the Act. Plans generally detail the area and water resource to which the plan applies, as well as a vision, objectives, strategies and performance indicators.
water extraction licence	see licence

2 Purpose

To establish a general policy to guide the Controller of Water Resources (Controller) in determining applications for trading of licensed water entitlements (trading licensed entitlements) in the NT.

3 Objectives

To complement:

- the Water Act 1992, by establishing general policy principles that apply to trading licensed entitlements; and
- specific, local trading guidelines established in water allocation plans.

4 Scope

This policy applies to the right to take water under a licence granted under section 45 or section 60 of the Act.

This policy does not apply to licences where the extraction point is outside of a declared water allocation plan area.

5 Commencement

This Policy applies from 21 July 2020 (Policy commencement date).

This Policy is not retrospective. Section 8.4 of this Policy does not apply to trade applications accepted by the department (as complete) prior to the Policy commencement date.

6 What is trade?

Trade is the transfer of all or part of a licensed entitlement from one licence to another licence or to a new licence within a water allocation plan area.

A trade does not result in an increase to the total quantity of water that is licensed to be taken from the relevant water resource; it is the transfer of licensed entitlements between licences, not the granting of any additional licensed entitlements.

The Controller can use the power in section 93(1) of the Act to amend the licences to reduce the licensed entitlements of the seller and increase the licensed entitlements of the buyer. If the buyer does not already have a licence, the Controller can use the power in section 60 or section 45 to grant a new licence to the buyer with the traded licensed entitlements.

A trade occurs when the Controller approves an agreement between two or more licence holders and:

- amends the licences to show the traded licensed entitlement; or
- amends the seller's licence to show the traded licensed entitlement and grant a new licence with the traded licensed entitlement to the buyer.

It is important to remember that a trade is not the agreement between the seller and the buyer: trade occurs when the Controller has amended the licences, and if necessary, granted a new licence to the buyer.

Buyers must not take water they have 'bought' through an agreement with a seller until the Controller has modified their licence to reflect the trade.

6.1 Term (duration) of a trade

A trade may be temporary (less than the remaining term of a seller's licence) or ongoing (for the remaining term of the seller's licence).

6.1.1 Temporary

In a temporary trade, a licensed entitlement is traded for a period that is less than the remaining term of a seller's licence.

Water allocation plans may establish a maximum period of time for which a licensed entitlement can be traded.

The buyer's licence for a temporary trade can be a current licence or a new licence granted for the purpose of trade.

A temporary trade will result in the buyer's licence being amended to increase the licensed entitlement by the volume of water traded; and the seller's licence being amended to reduce the licensed entitlement by the volume of water traded; for the length of the trade term only.

At the end of a temporary trade term, the licensed entitlement will be returned to the seller's licence.

6.1.2 Ongoing

An ongoing trade is the trade of a licensed entitlement for the remaining term of the seller's licence.

The buyer's licence for an ongoing trade can be a current licence or a new licence granted for the purpose of trade.

An ongoing trade will result in the seller's licence being amended to reduce the licensed entitlement by the volume of water traded. The buyer's licence will be amended to increase the licensed entitlement by the volume of water traded.

7 Eligibility to trade

A licensed entitlement may only be traded within a water allocation plan area.

Licensed entitlements are issued for the following beneficial uses: Aboriginal economic development, agriculture; aquaculture; public water supply; cultural; industry; mining activity; and petroleum activity. Subject to the terms of any relevant water allocation plan and a determination by the Controller, a seller may trade a licensed entitlement to be taken for a different beneficial use by the buyer.

To sell a licensed entitlement (to be a seller) you must have a licence granted by the Controller. Water taken for rural stock and domestic use cannot be traded because it does not require a licence.

A licensed entitlement can be traded to a person (the buyer) who:

- holds a water extraction licence; or
- obtains a water extraction licence.

A person who does not already have a licence must apply for, and be granted, a licence.

For the avoidance of doubt, an agreement between a buyer and seller for trading a licensed entitlement does not guarantee that the Controller will amend an existing licence or grant a new licence to enable the trade.

Each application for trading licensed entitlements will be considered on its own merits in accordance with the Act, relevant water allocation plans and NT Government policies.

8 Policy Statement

The following principles generally apply to trading licensed entitlements:

1. Licensed entitlements can only be traded within a water allocation plan area.
2. Licensed entitlements bought through a temporary trade cannot be on-traded.
3. Trade of unused licensed entitlements is not generally allowed.
4. The right to renew the licensed entitlements, as part of a licence renewal, depends on whether the trade is temporary or ongoing:
 - For a temporary trade, the seller has the right to renew the licensed entitlements;
 - For an ongoing trade, the buyer has the right to renew the licensed entitlements.
5. The security of the licensed entitlements does not change when the licensed entitlements are traded.
6. Licensed entitlements for the beneficial use of public water supply can only be traded temporarily.

These general principles are addressed in more detail below.

8.1 Water allocation plan areas

Trading licensed entitlements can only occur within a water allocation plan area.

Water allocation plans may set guidelines for how trade can occur within that water allocation plan area. The Controller will consider these trade guidelines when determining an application to trade.

8.2 On-trading

A licensed entitlement subject to a temporary trade cannot be on-traded by the buyer. That is, the buyer cannot trade the licensed entitlement obtained through a temporary trade to a different buyer.

A licensed entitlement that was obtained through an ongoing trade will form part of the buyer's amended licence, all or part of which can be traded as a new trade.

8.3 Trade of unused licensed entitlements

An unused licensed entitlement, as assessed in accordance with the [Recovery of Unused Licensed Water Entitlements Policy](#), is generally not eligible for trade.

When an application to trade is received, the buyer's and seller's use of their current licensed entitlements, and any potential unused licensed entitlements, will be considered by the Controller before the application to trade is determined by the Controller.

For more information about unused licensed entitlements, see the [Recovery of Unused Licensed Water Entitlements Policy](#).

8.4 Renewal of traded licensed entitlements

Both the seller and buyer must apply to renew their licences in accordance with the statutory timeframes and requirements.

8.4.1 Temporary trade

If the buyer applies to renew their licence during the term of the temporary trade, any licensed entitlement resulting from a temporary trade will only form part of the new licence for a term equivalent to the remaining term of the temporary trade. The buyer can apply to renew any other licensed entitlement.

If the buyer does not apply to renew their licence during the term of the temporary trade, the seller can apply to have the traded licensed entitlement returned early.

If the seller applies to renew their licence during the term of the temporary trade, the traded licensed entitlement can be renewed; however, the new licence will continue to reflect the temporary trade by excluding the licensed entitlement that is the subject of the temporary trade.

Once a temporary trade term ends, the seller's licence will include the licensed entitlement that was traded for the temporary trade term and the buyer's licence will exclude a licensed entitlement that obtained for the temporary trade term.

8.4.2 Ongoing trade

Once an ongoing trade has been approved by the Controller, the buyer can apply to renew their licence for a maximum licensed entitlement that includes the traded licensed entitlement. The seller no longer has the right to include the traded licensed entitlement when applying to renew their licence.

8.5 Security of licensed entitlements

In the Top End, water availability changes each year depending on the wet season; therefore, licences in the Top End may be granted with a water security category for the licensed entitlement. There are five security classifications that may be used in the Top End: total/public water supply; high or priority; medium or general; low; and not specified.

When a licensed entitlement is traded, the security level of the licensed entitlement does not change. For example, if the licensed entitlement was medium security on the seller's licence, it will be medium security on the buyer's licence. This applies to both temporary and ongoing trades (see below).

8.6 Public water supply

Licensed entitlements for the beneficial use of public water supply may be traded for a temporary trade term in accordance with trading rules specified in the relevant water allocation plan or the individual licence; however, an ongoing trade is not generally allowed.

For temporary trades of public water supply licensed entitlements, the Controller will consider the appropriate security category on a case-by-case basis.

9 Other matters relevant to trade

9.1 Part-period trading

If a licence holder seeks to trade a licensed entitlement, in part or in full, part way through a period, the licence holder cannot trade any water that has already been taken in that period.

Example:

Sarah Murray has a water extraction licence from the Katherine Tindall Limestone aquifer with a maximum annual entitlement of 200 ML each year. In August, Sarah realises she won't use all her licensed entitlement because she has decided to head off down the track and be a grey nomad for six months. Sarah has an agreement to trade part of her licensed entitlement to her neighbour Jack Cooper for a temporary trade term until 30 April the following year. Jack has a 600 ML water extraction licence.

Because Sarah had used 80 ML since 1 May that year to finish a wet season crop and establish a cover crop, the licensed entitlement Sarah (seller) can trade to Jack (buyer) for the temporary trade term is 120 ML. The Controller approves the trade and issues an amended water extraction licence to Sarah for 80 ML and an amended water extraction licence to Jack for 720 ML.

As the amendment was temporary for a specified term, on 1 May the following year, Sarah's licensed entitlement is again 200 ML and Jack's licensed entitlement is again 600 ML, the same licensed entitlement each held before the temporary trade term.

9.2 Strategic Aboriginal Water Reserve

Licensed entitlements from an Aboriginal water reserve may be traded for a temporary trade term in accordance with trading rules specified in the relevant water allocation plan. However, consistent with the [Strategic Aboriginal Water Reserve Policy Framework](#), an ongoing trade term is generally not allowed where the ongoing trade would result in licensed entitlements being removed from an Aboriginal water reserve.

The [Strategic Aboriginal Water Reserve Policy Framework](#) provides for additional requirements for the consent necessary to trade licensed entitlements. Consent must be given by eligible Aboriginal rights holders or those authorised to act on behalf of eligible Aboriginal rights holders.

The Controller determines all trades, including those from an Aboriginal water reserve.

10 Processing a trade application

10.1 Application to trade

Trade negotiations are a matter for buyers and sellers and the proposed terms are agreed by them. It is the responsibility of buyers and sellers to ensure adequate contractual documentation is used as part of any proposed transaction. Trading is voluntary and terms or prices are set by agreement between buyers and sellers.

The Minister, the Controller and the department will not, under any circumstances, have any involvement in negotiations and agreements relating to a trade, including pricing.

Once buyers and sellers have agreed to the terms of a trade, the parties must complete the approved Application to Trade Form (as approved from time to time by the Controller) and submit the form to the department. The form sets out the submission process.

10.2 Assessing an application to trade

The department provides advice and recommendations to the Controller in relation to trade applications. An application will be returned to the applicant if the application is not complete.

When an application to trade is received, the buyer's and seller's use of their current licensed entitlements, and any potential unused licensed entitlements, will be considered by the Controller as per the [Recovery of Unused Licensed Water Entitlements Policy](#), before the application to trade is determined by the Controller.

Where trade occurs between an existing licence holder and a person who does not hold an existing licence, the Controller is required to follow the processes in Part 6A of the Act, including the publication of a notice of intention to make a water extraction licence decision under section 71B of the Act. This also requires the Controller to take into account any written comments about the application that have been submitted, before making a decision. Trade applications subject to Part 6A take approximately 120 days to process.

For trade applications between existing licence holders, there is no application of Part 6A or related statutory timeframes, and the department aims to assess these and make a recommendation for a decision to the Controller within four weeks of receiving a completed application.

In deciding an application to trade, the Controller must consider the relevant matters set out in section 90(1) of the Act.

Other factors the Controller may consider under section 90(1)(k) of the Act are:

- whether a buyer or seller is in compliance with the conditions of an existing licence;
- any reduction to the licensed entitlement as a result of an annual announced allocation decision;
- the progress of any decision regarding an unused licensed entitlement in accordance with the [Recovery of Unused Licensed Water Entitlements Policy](#); and
- if a contract of sale is known to be in effect for a property.

10.3 Approval

If the Controller approves an application to trade, the Controller will:

- amend and re-issue, the buyer's and the seller's licences to show the traded licensed entitlement; or
- amend the seller's licence to show the traded licensed entitlement and grant a new licence with the traded licensed entitlement to the buyer;
and
- update the NT Government's [Water Trade Register](#).

The traded licensed entitlement will be identified on both the buyer's and seller's licences. For a licensed entitlement traded for a temporary trade term, the licence will identify the expiry date for the trade.

11 Information for buyers

Prior to entering an agreement to trade a licensed entitlement, it is recommended that you:

1. Ensure you understand whether you are entitled to seek renewal of any traded licensed entitlement (see section 8.4 of this Policy).
2. Read and understand the [Recovery of Unused Licensed Water Entitlements Policy](#).
3. Consider the security level of the licensed entitlement you are seeking and whether that security is suitable for your intended use of the water. For example, low security water may not be suitable for a development of perennial crops like grapes or mangoes, but may be suitable for annual crops such as Asian vegetables or for irrigated hay production.
4. Understand that a right to take a licensed entitlement obtained through a trade does not take effect until the trade has been approved by the Controller and an amended (or new) licence has been granted. A signed trade agreement or submitted trade application form IS NOT a right to take water.

Taking water without authorisation is an offence under the Act punishable by up to 2 years imprisonment or fines of up to 1,000 penalty units (\$157,000).

12 Information for sellers

Prior to entering an agreement to trade a licensed entitlement in full or in part, it is recommended that you:

1. Check your eligibility to trade your licensed entitlement. You should check your licence terms and conditions and read the relevant water allocation plan.
2. Read and understand the [Recovery of Unused Licensed Water Entitlements Policy](#) to see whether the licensed entitlement you want to trade is an unused licensed entitlement.
3. Understand what effect the trade will have on any renewal of your licence (see section 8.4 of this Policy).

12.1 Buyers without a licence

If a buyer is seeking to obtain a licensed entitlement and does not have a water extraction licence, the buyer may apply for a licence prior to entering into a trade agreement.

A new water extraction licence takes four to six months to be assessed and granted, so it may be more efficient to apply for a licence with a zero licensed entitlement before securing a trade agreement. This application should indicate that water entitlements will be sought through trade. The assessment of the application for a zero licensed entitlement will consider the impact of a new extraction point on the water resource.

13 Pricing

The NT Government and the department will not provide pricing advice nor mediate pricing disputes between buyers and sellers.

Buyers and sellers are directed to publicly available resources such as the [National Water Markets Dashboard](#).

14 Right to review

Section 30 of the Act allows licence holders to seek a review of a trade decision made by the Controller. Applications for review must be made within 30 days of the notification of the Controller's decision. The form and process for seeking a review is available at: nt.gov.au/waterdecision.

15 Related documents and legislation

[Water Act 1992](#)

[Water Regulations 1992](#)

[Northern Territory Water Allocation Planning Framework](#)

[Strategic Aboriginal Water Reserve Policy Framework](#) (NT Government policy)

[Recovery of Unused Licensed Water Entitlements Policy](#) (NT Government policy)

[Procedure: Recovery of Unused Licensed Water Entitlements](#) (DENR)

Relevant declared [water allocation plans](#).

