

Water Regulatory Reform 2023

Information paper

Introduction

The *Water Act 1992* provides for the investigation, allocation, use, control, protection, management and administration of water resources in the Northern Territory.

This information paper presents information on the proposed approach to resolve the immediate issue of licensing water extraction for mining activities and licensing commercial irrigated horticultural water extraction in the Darwin rural area. The paper also discusses the approach for supporting ongoing subdivision development in the Darwin rural area.

The reforms proposed under the Water Regulatory Reform 2021-23 Information Paper¹ are deferred.

Transitioning mining activities under the Water Act

Problem

Water resource management across the Territory is hampered due to insufficient information and transparency about water taken by mining activities.

Without change, transitioning of mine water users to the licensing framework will take many years, and for mining operations that do not trigger a requirement for a mine management plan to be reviewed and re-approved, they may never transition.

Objective

Regulate the water taken by mining activities through the grant of water extraction licences that specify the volume of water that may be taken, requiring water extraction to be measured and reported for improved water resource management across the Northern Territory.

Solution

Amend the existing transitional arrangements to set a 2-year timeframe for pre-2019 mine operators that use water to apply for a water extraction licence. This removes the existing trigger for transitioning, which is dependent on a review and re-approval of mine management plans.

A 2-year timeframe for transition provides a hard deadline for pre-2019 mine operators to apply for a water extraction licence. It ensures this water use is included in the licensing framework in a timely manner, are measuring their water use and adhering to licence conditions.

Applicants will need to demonstrate they had a mining authorisation, approved mine management plan and a water requirement prior to and after 1 July 2019.

¹ <https://depws.nt.gov.au/water/legislation/water-act>

Reflecting the fact that eligible mine operators have already been subject to scrutiny in the grant of their mining exploration permit, mineral lease, mining authorisation and access authorities, applications during this transition period for pre-2019 mine operations will not require public notification periods.

New mine operations commencing after 1 July 2019 or any request for an increase in volume of water greater than that approved under the previous mine management plan will continue to go through the standard notification process that invites public comment during both the Notice of Intent, and Notice of Decision stages.

Transparency in water licensing is maintained through the legislated requirements to publish a register of licences on the department website.

The register is freely available to the public through the Water Licensing Portal².

The portal has a field that can be used to select **Beneficial use – mining activity** for direct access to water extraction licences for mining activities.

If a mining operator wants to increase water use above what has been previously authorised, this additional water will also be subject to the standard process, including both public comment periods that applies to new mining operations.

Background

The Water Act was amended in 2018 to apply to mining activities. This means, amongst other things, a water extraction licence is required by mining operators to take water. Transitional arrangements included in the amendments provided that from 1 July 2019, previously authorised water use under a mine management plan would be required to be licensed under the Water Act when the mine management plan was amended.

The process for licensing this previously exempt use followed standard decision making protocols as prescribed under Part 6A of the Water Act including advertising notices of intention to make decisions, addressing relevant factors in a statement of decision and publishing notices of decisions. The Water Extraction Licensing – Mining and Petroleum Activity Policy³ supports decision making prioritising licence applications with previously authorised water entitlements, and preferences licensing of these entitlements to the application of the Northern Territory Water Allocation Planning Framework⁴.

The transitional arrangements were established on the basis that mine management plans were approved annually; this practice changed prior to the commencement of the amended Water Act. The result of this operational change means the thresholds for requiring a water extraction licence may not be triggered for several years, if at all where a mine management plan has no review date or mining operations do not change. This is contrary to the intent of the transitional arrangement to have water extraction licences linked to approved mining activities within a short period of time.

² <https://ntg.maps.arcgis.com/apps/dashboards/0ec71b3d7e774e64b434034211708514>

³ <https://depws.nt.gov.au/water/policy/water-licensing-policies>

⁴ <https://depws.nt.gov.au/water/policy/water-allocation-policies>

Transitioning commercial groundwater users in Darwin rural

Problem

The exemption on licensing for commercial users in the Darwin rural area taking a rate up to 15 litres per second was revoked in 2016. An active public campaign resulted in most commercial users who were previously exempt obtaining a licence. However, there are several commercial water users in the Darwin rural area who remain unlicensed.

Objective

Quantify and manage groundwater take in the Darwin rural area while supporting the long standing and accepted irrigated horticultural industry.

Solution

Amend the Water Act to provide a framework that transitions water users who were previously exempt from licensing requirements into a licensing regime.

Create regulations that prescribe the requirements for applying for a licence.

Commercial applicants will need to demonstrate they were using water prior to and continued to use water after the revocation of the exemption in the Darwin Rural Water Control District.

Reflecting the fact that commercial water use was accepted use and an accepted level of impact up until the point of the revocation, the application will not require publishing for public comment.

Transparency in water licensing will be maintained through the legislated requirements to publish a register of licences on the department website.

The register is freely available to the public through the Water Licensing Portal⁵.

The portal has a map display that allows you to select the **Layer – Water Control Districts** which displays the boundary of the Darwin Rural Water Control District. Zooming into this area each water licence and decision can be selected and viewed.

If a commercial users wants to increase water use above what has been previously used, this additional water will be subject to the standard process, which applies to new licence applications.

Background

The Darwin rural area historically was promoted for its horticultural potential. To support industry growth in that area an exemption was declared that allowed commercial uses to take water at a rate of less than 15 litres per second without the requirement for a water extraction licence.

That campaign was successful, with Darwin rural horticultural activities contributing more than \$180M⁶ annually to the Northern Territory's economy.

⁵ <https://ntg.maps.arcgis.com/apps/dashboards/Oec71b3d7e774e64b434034211708514>

⁶ Northern Territory Farmers Association, 2019

The desire for rural living has also grown in the area and competition for water resources is high. Water use in the Darwin rural area has in some areas had a detrimental impact on the environment e.g. Howard Springs flows.

To improve management of water use and better understand commercial water use in the Darwin rural area, the exemption was revoked on 6 July 2016, and commercial users transitioned into a licensing regime that limits the volume of water that a licence holder can take and requires the licence holder to monitor and report water use.

The process for licensing these previously exempt users followed standard decision making protocols as prescribed under Part 6A of the Water Act including advertising notices of intention to make decisions, addressing relevant factors in a statement of decision and publishing notices of decisions. The Darwin Rural Water Licensing Policy supported decision making, prioritising licence applications from previously exempt users, not charging costs for publishing notices in the newspaper and recognising that commercial water users in the Darwin rural area would be considered in preference to the application of the Northern Territory Water Allocation Planning Framework. This policy expired 1 March 2019.

Around 300 water licence applications were processed under this policy prior to its expiry.

Applications for water licences are continuing to be processed for commercial users in the Darwin rural area and there will likely be further applications as the department moves into its compliance and monitoring phase.

Statutory rights to access groundwater

Problem

Development in the Territory's rural areas is limited by the availability of groundwater to fulfil the statutory rights of owners and occupiers to access groundwater for rural stock and domestic purposes under the *Water Act 1992*.

Subdivision development in these rural areas are also limited by requirements under the *Planning Act 1999* to demonstrate that an adequate supply of groundwater is available for domestic purposes.

Tension between the Planning Act and the Water Act limits the opportunity for developing subdivisions in areas where competition for groundwater use is high and continued extraction of groundwater has or could lead to adverse effects on the environment and cultural values associated with water and other water users. It also prevents developments that may be supported by an alternative water supply.

Objective

To support development of rural centres through subdivisions by restricting the statutory rights to groundwater in areas with high levels of competition for water resources.

Solution

Amend the Water Act to include the power for the Minister to declare Restricted Water Extraction Areas where resources are at risk.

If a landholder chooses to subdivide in a Restricted Water Extraction Area, only one of the new land titles generated as a result of the subdivision will carry a statutory right to access water.

The applicant proposing to subdivide will be required to identify which of the proposed new lots will retain a statutory right to access water as part of their application under the Planning Act. On the remaining new titles, all bores will require decommissioning. The applicant will also be required to place a statutory notice, provided by the department, on the land title proposed for subdivision. The statutory notice will carry forward to all new land titles, created as a result of the subdivision, explaining the effect of the Restricted Water Extraction Area.

Complementary amendments to the *NT Planning Act 1999* and NT Planning Scheme will follow, allowing decision makers to consider alternative sources of water, other than groundwater, to support proposed subdivision developments.

Background

Section 14 of the Water Act establishes a statutory right for all owners and occupiers of land in the Northern Territory to take groundwater for domestic purposes and for grazing and travelling stock otherwise known as beneficial use rural stock and domestic.

Recognising this statutory right is important when allocating water resources and planning for development across the Territory. In rural areas outside of Darwin, Katherine and Alice Springs where there is high competition for groundwater resources between domestic and commercial purposes and a desire for development through the subdivision of land is of particular importance. This is because in the allocation of water, the right to access water for rural stock and domestic use is allocated based on the number of land titles, when a parcel of land is subdivided that effectively multiplies the volume of water that must be allocated to that beneficial use.

Under the Planning Act, subdivisions are also required to be consistent with the “protection of the natural environment including sustainable use of....water resources”; and to “demonstrate an adequate supply of groundwater is available for domestic purposes”.

While subdivisions may be approved with conditions that require the subdivision to include access to a reticulated water supply, this does not prevent owners or occupiers of the land (the end users) from exercising their statutory right to access groundwater. This has resulted in a number of applications for subdivision of properties being declined or deferred in recent times.

Contact

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