

Procedure:

Recovery of Unused Licensed Water Entitlements

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For acronyms and terms used in this Procedure refer to the [Recovery of Unused Licensed Water Entitlements Policy](#).

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1 Purpose

This document provides operational guidance, transparency and consistency to the approach used by the department to identify, assess and calculate unused licensed water entitlements.

Calculating unused licenced water entitlements enables the department to identify which water licences may not require the water they are entitled to and therefore may be suitable for a recommendation to have their licence amended to have their maximum water entitlement reduced.

Reducing the maximum water entitlement of a licence, where that water is not being used, allows that water to be returned to the non-consumptive and consumptive pools of the resource. This is integral to the effective management and allocation of water resources and is particularly important in areas where a resource is over-allocated.

2 Scope

This procedure has the same scope as, and should be read in conjunction with, the *Recovery of Unused Licensed Water Entitlements Policy*.

3 Commencement

This updated procedure takes effect from 10 August 2023.

4 Background

All water licences require licence holder's to report their water use (i.e. how much water they have extracted). The reporting obligations are outlined in the licence conditions and reports are usually required on a monthly or quarterly basis.

Each licence's reported water use is recorded in the department's licensing database and the data is audited on a quarterly basis and verified during regular inspections. The reported water use is the **actual extraction volume**.

It is also a condition of all water licences, that the licence holder use a minimum percentage of their maximum entitlement. Generally that is 90% of their maximum licenced entitlement, however the figure is outlined in the licence's conditions. This amount is the **minimum extraction required**.

Where a licence holder is regularly (for three consecutive periods) extracting less than the **minimum extraction required** (i.e. the **actual extraction volume** is less than their **minimum extraction required**), they can be subject to a recommendation from the department to the Controller of Water Resources (the Controller) to make a decision to reduce the licence's maximum entitlement.

5 Process

The department will identify water licences based on **actual extraction volume** compared to **minimum extraction required** that meet the criteria for a recommendation to reduce their maximum annual entitlement.

The Controller may also trigger a review and identification of unused licensed entitlements by asking the department to review licences in a particular area and/or licences accessing a particular water resource.

When the process for recovery of unused licensed entitlements commences, the following steps will be taken:

5.1 Step 1: Identifying unused licensed entitlements

The department identifies water licences that have used less than their **minimum extraction required** for three consecutive periods, and therefore meet the criteria for a recommendation to reduce their maximum entitlement.

Which licences are prioritised is determined by:

- the volume of the licence's unused entitlement, and
- the availability of water in the resource.

Licences that are using substantially less than their **minimum extraction required** and are licensed to take water from an over-allocated resource are prioritised. However, any licence that meets the criteria may be subject to a decision by the Controller.

5.2 Step 2: Calculating the unused licensed entitlements

If a licence's **actual extraction volume** is less than the **minimum extraction required** for three consecutive periods, the difference between the **minimum extraction required** and the **actual extraction volume** will be calculated for each period in the three most recent consecutive periods.

The **unused licensed entitlement** is the average difference between the **minimum extraction required** and the **actual extraction volume** for the three most recent consecutive periods.

Examples of how an unused licensed entitlement is calculated appear at Appendix 1.

5.3 Step 3: Notice of unused licensed entitlement

Where a licence meets the criteria identified in Step 1 and Step 2 the department will write to the licence holder advising that they have been identified as having an unused licensed entitlement and that a recommendation may be made to the Controller to amend their licence to reduce their maximum annual entitlement. The letter will explain why the process is being commenced, how the process works, where the licence holder can obtain more information and invite them to respond and provide information that may be relevant to the decision.

The department's written notice to a licence holder will state:

- the unused water entitlement and how the amount was calculated
- the action the department is considering taking (i.e. making a recommendation to the Controller to reduce the maximum annual entitlement)
- what information the Controller will consider when deciding on the action to take
- how a licence holder can respond to the written notice
- when the licence holder needs to respond by.

5.4 Step 4: Responding to a notice

The licence holder will be given 20 business days to provide a written response to a notice. A licence holder may ask for more time to respond, but must make the request for extra time and the reasons for requiring it, before the response date in the notice.

The response from the licence holder is an opportunity for the licence holder to provide reasons as to why their maximum licenced entitlement should not be reduced. However, if a licence holder agrees with the department's proposed recommendation, the response should make a statement to that effect.

If a licence holder disagrees with the proposed recommendation the response may include the licence holder's opinion on whether they have unused licensed entitlements; an explanation of why there were unused licensed entitlements; how the licence holder proposes to use the unused licensed entitlement in the future; and any other matters the licence holder wants the Controller to consider.

Relevant information that a licence holder may raise for the department's consideration could include:

1. Reasons for the unused licensed entitlement, including whether this is an ongoing issue, or a one-off exceptional circumstance.
2. Updated property development plans, business plans, water use plans or any other plans that set out projected annual water use for the remaining term of the licence.
3. Steps being undertaken or recently completed to use the licensed water entitlement. This may include:
 - application for, or granting of, complementary permits or licences to undertake proposed activities to enable the taking of water for production
 - paid orders for infrastructure, or other evidence that there is a financial capacity and intention to invest in the infrastructure required
 - progress against development plans
 - results of completed trials or pilots of water-dependent development activities that were carried out in accordance with a development plan.

As far as possible, the licence holder should provide documentary and other evidence to support their response.

If the licence holder does not respond to the notice, the department will make a recommendation to the Controller with the information available.

5.5 Step 5: The Controller's decision

If following the licence holder's response period, the department recommends that there is an unused licensed entitlement that should be recovered, the Controller will consider the information provided and make a decision.

The Controller will review all of the information, including any response from the licence holder, and consider the relevant factors in section 90(1) of the *Water Act 1992* (the Act). The Controller will then make a decision regarding the unused licensed entitlement.

The Controller may decide to amend the licence to recover all, or part of, the average unused licensed entitlement or may decide not to recover unused licensed entitlements. The Controller may also accept a licence holder's submission that there are no unused licensed entitlements and determine no action is required in relation to the unused licensed entitlement.

The Controller will write to the licence holder advising on the decision made. The Controller will provide the licence holder with:

- a written Notice of Decision
- a Notice of Amendment (if the Controller decides to amend the licence) and an amended licence
- and a Statement of Reasons for the Decision

The licence holder will also be advised of their right to seek a review of the decision.

6 Returned water

An unused licensed entitlement returned as an outcome of the application of this procedure and the *Recovery of Unused Licensed Water Entitlements Policy* will be returned to the water resource.

6.1 Hierarchy of return

If the non-consumptive thresholds outlined in the [NT Water Allocation Planning Framework](#) or in a relevant [water allocation plan](#) are not fully provisioned, the water will be returned to non-consumptive uses to support environmental and cultural values.

If the non-consumptive beneficial uses are fully provisioned, the volume of water will be reallocated to the consumptive pool.

An unused licensed entitlement that was licensed/traded from an Aboriginal Water Reserve will be returned to that Aboriginal Water Reserve.

7 Related documents and legislation

[Water Act 1992](#)

[Water Regulations 1992](#)

[Trading Licensed Water Entitlements Policy](#) (NT Government policy)

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

Appendix 1. Calculating an unused licensed entitlement

Example 1: Unused licensed entitlement in all periods

Joe Smith has a groundwater extraction licence with an annual entitlement (AE) of 500 ML. The licence requires him to use a minimum of 90% of his annual entitlement, in at least one period in every three consecutive periods.

In each of the three consecutive periods 2017/18, 2018/19, and 2019/20, Joe's annual entitlement was 500 ML for each period. Therefore, the **minimum extraction required** for each period was 450 ML (90% of 500 ML).

In 2017/18, Joe reported an **actual extraction volume** (extraction) of 300 ML. In 2018/19, Joe reported extraction of 400 ML. In 2019/20, Joe reported extraction of 400 ML.

Joe has not extracted the **minimum extraction required** in any of the three consecutive periods.

Therefore Joe has a difference between the **minimum extraction requirement** and **actual extraction volume** totalling 250 ML over the three consecutive periods. This averages to 83 ML of unused licensed entitlement, as calculated below:

Period	Minimum extraction required (90% of AE) (ML)	Actual extraction volume (ML)	Unused entitlement Difference (ML)	Total unused volume	Consecutive periods	Unused licensed entitlement (ML)
2017/18	450	300	150	250	/3	83
2018/19	450	400	50			
2019/20	450	400	50			

Formula:

$AE \text{ (annual entitlement)} \times UP \text{ (usage percent)} = MER \text{ (Minimum extraction required)}$

$MER - AEV \text{ (actual extraction volume)} = UED \text{ (Unused Entitlement difference) per year}$

$UED \text{ yr1} + UED \text{ yr2} + UED \text{ yr 3} = TUV \text{ (Total Unused volume)}$

$TUV / 3 = ULE \text{ (Unused licensed entitlement)}$

Example 2: Unused licensed entitlement in all periods and the licence holder makes a trade as seller, one year in three

Joe Smith, the grower from example 1, trades 90 ML from his groundwater extraction licence (as a seller) for the 2019/20 period. Therefore, for the 2019/20 period, Joe's annual entitlement (AE) is 410 ML.

Joe's licence requires him to use a minimum of 90% of his annual entitlement, in at least one period in every three consecutive periods.

Therefore in 2017/18 and 2018/19, Joe's annual entitlement was 500 ML and in 2019/20, Joe's annual entitlement was 360 ML.

Therefore, the **minimum extraction required** for 2017/18 and 2018/19 was 450 ML and the **minimum extraction required** for 2019/20 was 369 ML.

In 2017/18, Joe reported an **actual extraction volume** of 300 ML. In 2018/19, Joe reported extraction of 400 ML. In 2019/20, Joe reported extraction of 300 ML.

Despite the trade in 2019/20, Joe has not extracted the **minimum extraction required** for each of the three consecutive periods.

Joe's unused licensed entitlement is 89 ML (89.66 ML), as calculated below:

Period	Minimum use required (90% of AE) (ML)	Actual Use (ML)	Difference (ML)	Total unused volume	Consecutive periods	Unused licensed entitlement (ML)
2017/18	450	300	150	269	/3	89
2018/19	450	400	50			
2019/20	369	300	69			

Example 3: Unused licensed entitlement and the licence holder makes a trade as a buyer

Jim's Nutrifoods Pty Ltd has his licence issued in 2016/17 with an annual entitlement (AE) of 300ML. The licence requires Jim's Nutrifoods to use a minimum of 90% of the annual entitlement (AE), in at least one period in every three consecutive periods.

Jim's Nutrifoods needs more water to take advantage of an increase in his crop production in 2017/18. He trades (buys) 500 ML of water from a licence holder down the road for three years.

The Controller issues an amended licence with the following annual entitlements:

Year	Period	Annual Entitlement
Year 1	2016/17	300 ML
Year 2	2017/18	800 ML (300 ML + 500 ML traded)
Year 3	2018/19	800 ML (300 ML + 500 ML traded)
Year 4	2019/20	800 ML (300 ML + 500 ML traded)

In 2016/17 Jim's Nutrifood's annual entitlement was 300 ML, therefore his **minimum extraction required** for the period was 270 ML. In 2017/18, 2018/19 and 2019/20, Jim's Nutrifood's annual entitlement was 800 ML. Therefore, his **minimum extraction required** for the periods was 720 ML (90% of 800 ML).

In 2016/17 Jim's Nutrifoods reported **actual extraction volumes** of 270 ML. In 2017/18, 2018/19 and 2019/20, Jim's Nutrifoods reported **actual extraction volumes** of 270 ML, 500 ML and 700 ML, respectively.

Jim's Nutrifoods Pty Ltd has extracted less than the **minimum extraction required** (90%) in each of the three consecutive periods and there is unused licensed entitlement of 230 ML. Because Jim's Nutrifoods annual entitlement included a traded portion as a buyer for a period of three years, the amount of unused licence entitlement will be returned to the consumptive pool and not to the seller. Jim's Nutrifoods will maintain the annual entitlement of 300 ML and will need to make alternative trades for any additional entitlements.

Period	Minimum use required (90% of AE) (ML)	Actual Use (ML)	Difference (ML)	Total unused volume	Consecutive periods	Unused licensed entitlement (ML)		
2016/17	270	270	0	0	/3	230		
2017/18	720	270	450	690				
2018/19	720	500	220					
2019/20	720	700	20					