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# 1. Background

The Northern Territory Strategic Aboriginal Water Reserves Policy provides Aboriginal people with increased opportunity to access water resources for their economic development. Strategic Aboriginal Water Reserves (SWRs) are a reserved percentage of water from the consumptive pool within a Water Allocation Plan area exclusively accessible to eligible Aboriginal people to use, or trade.

In developing the policy framework, the Department of Environment and Natural Resources (DENR) undertook targeted stakeholder consultation. Feedback was sought on a Strategic Aboriginal Water Reserves - Stakeholder discussion paper from key stakeholder groups (land councils, industry representative bodies and other interest groups) and water advisory committees across the Northern Territory. Stakeholders provided feedback on key aspects of the SWR policy including: its purpose; its application within water allocation plan areas; the methodology for calculating the percentage of water from the consumptive pool for the reserve; and management of unused entitlements. In drafting the discussion paper the positions and views put forward by land councils and other interest groups through previous consultations were also considered.

The Strategic Aboriginal Water Reserve Policy provides the policy parameters necessary to allow an SWR or SWRs to be adopted in new and revised water allocation plans and in future water allocation plan areas of the Northern Territory.

# 2. Policy context

Subject to the *Water Act*, the property in and the rights to the use, flow and control of groundwater and surface water are vested in the Northern Territory and those rights are exercisable by the Minister for the Environment and Natural Resources. Water allocation plans and water extraction licences are the primary means through which the *Water Act* governs the use of groundwater and surface water.

As the first priority, a water allocation plan defines the non-consumptive pool needed to protect environmental and cultural assets. The remaining water is then available as the consumptive pool, which is allocated to a number of declared beneficial uses that are relevant to the water allocation planning area. Consumptive beneficial uses currently provided for under the *Water Act* are; cultural, agriculture, aquaculture, public water supply, industry (including mining and petroleum activities) and rural stock and domestic. Of the consumptive beneficial uses, public water supply and rural stock and domestic uses are prioritised (allocated) before other consumptive uses.

Extraction of groundwater or surface water, except for stock and domestic use or for mining and petroleum activities, is required to be licensed under the *Water Act*. In the future, it is expected that licensing under the *Water Act* will also be required for water use by mining and petroleum activities. Water extraction licences are granted on the basis that the licence holder has legal right of access to the land on which water will be taken. Within each water allocation planning area, licences are granted within the allocated limits set by the plan for each beneficial use. A 'water allocation plan area' refers to the area covered by a water allocation plan within a declared water control district.

Fundamentally, access to water resources is also determined and often constrained by characteristics of the ground or surface water system at a particular location. Ground water depth, transmissivity (flow rate), water quality (salinity), proximity to groundwater dependent ecosystems, and streamflow seasonality and reliability are among a range of factors that can constrain access.

# 3. SWR Policy Framework

# 3.1 Establishing Strategic Aboriginal Water Reserves

New and revised water allocation plans for applicable water plan areas will specify a portion of the consumptive pool as a Strategic Aboriginal Water Reserve that will be managed exclusively for future economic development by and for the benefit of eligible Aboriginal people. Some water allocation plans are exempt from the SWR requirement, as indicated in section 3.7.1.

Now that the Strategic Aboriginal Water Reserves policy framework has been approved by Government, the *Water Act* will be amended to ensure that Strategic Aboriginal Water Reserves are enduring requirements of Water Allocation Plans and provide certainty in the management of water resources.

# 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

#### 3.4 Administering access to Strategic Aboriginal Water Reserves

- 3.4.1 Access to a Strategic Aboriginal Water Reserve will be granted by the Controller of Water Resources through the granting of water extraction licences and will be administered by DENR.
- 3.4.2 Applicants seeking a licence to access water from a Strategic Aboriginal Water Reserve, or seeking to trade or ontrade water sourced from a Strategic Aboriginal Water Reserve, must demonstrate they have negotiated in good faith and provide evidence of consent from the eligible Aboriginal rights holders or their authorised representatives (see 3.2) before a licence or trade application from a Strategic Aboriginal Water Reserve will be considered.
- 3.4.3 DENR will undertake due diligence checks to assess that clause 3.4.2 has been satisfied, to the reasonable satisfaction of Controller of Water Resources. However, the applicant shall be responsible ensuring compliance with 3.4.2 and shall cover the costs of providing information or evidence required by the Controller of Water Resources to carry out due diligence checks.
- 3.4.4 All applications to extract water from a Strategic Aboriginal Water Reserve will be subject to the standard requirements of the *Water Act*. This includes the same licence application and approval processes (including public notifications of intent and decision, comment and right of review) required for standard water extraction licences.
- 3.4.5 All licences granted to extract water from a Strategic Aboriginal Water Reserve will be subject to the same standard conditions and licence security protocols that apply to all other water extraction licences in that water allocation plan area.
- 3.4.6 Water extraction licence applications assessed as eligible to access the SWR will be allocated from the SWR in the first instance, and if the SWR is fully allocated water may be allocated from the general consumptive pool, if available.
- 3.4.7 Any water extraction licence held by eligible Aboriginal rights holders prior to introduction of SWR policy will be deemed to be sourced from the general consumptive pool.

# 3.5 Risk assignment

- 3.5.1 Rights to extract and use water, whether under the *Water Act* (for example for stock and domestic purposes) or under a licence, are not, and cannot be, guaranteed by the Northern Territory Government.
- 3.5.2 Contracts between parties providing access to a Strategic Aboriginal Water Reserve are exclusively between those parties. The Northern Territory will not be a party to any such agreements and will not accept any rights or obligations in relation to them.
- 3.5.3 If the agreement or contract between parties providing access to a Strategic Aboriginal Water Reserve is terminated by consent or by an order of the Court, the Controller of Water Resources may revoke or refuse to renew an associated water extraction licence upon its expiry, subject to any applicable legal requirements.
- 3.5.4 Applicants seeking water from a Strategic Aboriginal Water Reserve bear the responsibility for ensuring they have negotiated in good faith and have obtained the consent from the eligible Aboriginal rights holders or their authorised representatives.



# 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.



