



**CENTRAL  
LAND  
COUNCIL**

**Submission to the Productivity Commission**

**National Water Reform 2020**

**March 2021**

## 1. About the Central Land Council

The Central Land Council (**CLC**) is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA)*. It is also a native title representative body under the *Native Title Act 1993 (Cth) (NTA)*. It is led by a representative body of 90 Aboriginal people elected from communities in the southern half of the Northern Territory, which covers almost 777,000 square kilometres and has an Aboriginal population of more than 24,000.

The CLC has statutory responsibilities to ascertain, represent, and protect the rights and interests of Aboriginal people living in the CLC region. It also has specific statutory functions with respect to Aboriginal land and native title land. One of the CLC's central roles is to protect the interests of Aboriginal people with an interest in Aboriginal land, by assisting constituents to make land claims, negotiate agreements with third parties, protect sacred sites, and utilise land and other financial resources for the benefit of their communities. Many Indigenous communities and outstations are located upon Aboriginal land owned under the ALRA, and thus the CLC had a direct interest in, and responsibility for, the administration of land in those communities and outstations.

In addition to these functions, the CLC administers a range of programs for the benefit of constituents in relation to environmental management, community development, governance, cultural heritage, and customary practices. The CLC also plays a strong role in advocating for the interests of our constituents, the majority of which reside in remote communities.

## 1. Introduction

The CLC welcomes the opportunity to provide a final submission to the Draft Report of the Productivity Commission's National Water Reform Inquiry released on 11 February 2021.

As outlined in our August 2020 submission:

“Water is essential for the viability, self-determination, and sustainability of Indigenous communities across the NT. As outlined in our first submission the value of water to Aboriginal people has five main components:

- **Cultural:** connection to country (including water) is core to Indigenous peoples' identity and culture. Detrimental impacts on country negatively impact Indigenous identities and the continuity of culture.
- **Health:** water is key to human health, life, and the viability of all communities. The significance of water to culture means the denigration of country also has negative impacts on the physical and mental health of people.

- **Social:** a key priority for the CLC’s constituents is living and maintaining connection to country. Limited water resources and poor infrastructure pose major barriers to sustainable living.
- **Environmental:** maintaining healthy water sources and related ecosystems is a key component of sustainable resource management.
- **Economic:** as the Strategic Aboriginal Water Reserves Policy recognises, access to water is critical to Aboriginal-led economic development activities in the region.”

Despite these recognised values, water security remains a significant issue for Aboriginal people in the NT. Risks to water security include:

1. NT Indigenous communities are experiencing significant and ongoing challenges in relation to the supply of adequate and safe drinking water. These challenges variously concern water supply, water quality, and drinking water infrastructure. In summary these risks include:
  - At least 21 remote communities at extreme or very high risk with respect to water quality and availability. Communities at extreme risk are not able to develop new housing or other infrastructure that included new water fixtures.
  - Ageing and poor quality water infrastructure affecting both water supply and sewerage in remote communities.
  - A total allocation of \$7 million annually to maintain existing water infrastructure with no additional NT Government resources allocated for new remote water infrastructure.
2. Water insecurity is likely to be exacerbated by the impacts of climate change in the NT. This will significantly impact the water resources of the Northern Territory, including from increased droughts, erratic rainfall (and recharge of aquifers) and extreme temperatures.<sup>1</sup> Climate change is also likely to exacerbate existing inequalities in health, infrastructure provision, lack of educational and employment opportunities, and income in Indigenous communities in northern Australia, raising questions about the viability of human habitation in these places without radical changes.<sup>2</sup>
3. The NT is also under renewed pressure to develop water-intensive industries, including via the recommendations of the Territory Economic Reconstruction Commission Final Report.

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<sup>1</sup> W. Nikolakis, A. Nygaard, and R. Quentin Grafton, *Adapting to climate change for water resource management: issues for northern Australia*, Research Report No 108, Environmental Economics Research Hub Research Reports, Australian National University (Canberra, 2011).

<sup>2</sup> D. Green, S. Jackson and J. Morrison, *Risks from climate change to Indigenous communities in the tropical north of Australia*, Department of Climate Change and Energy Efficiency (Canberra, 2009).

The primary focus of the CLC's detailed submission to the National Water Reform Inquiry Issues paper in August 2020 related to point 1. (above) and the need for greater legislative and regulatory protection of drinking water with respect to both access and quality in remote Aboriginal communities, the majority of which lie outside existing water control districts and are not covered by Water Allocation Plans. In addition to drinking water protections our submission also recognised that the very viability of remote Indigenous communities is under threat in the NT from government neglect, renewed calls for water-intensive development in northern Australia, and climate change. Our first submission explores the extent to which drinking water supply is unprotected, unregulated, and unaccountable in the vast majority of remote Indigenous communities in the NT and argues for specific reforms and improved performance by the Northern Territory Government in relation to the performance against the 2004 National Water Initiative (**2004 NWI**).

In this brief submission **we endorse each of the 21 recommendations made by the Northern Land Council (NLC) in their submission to the National Water Reform Inquiry Draft Report** including their call for an assessment and recommendations regarding the NT Government's failure to make adequate progress against the 2004 NWI. We agree that these shortcomings need to be identified and remedied as part of the process of renewing the NWI rather than being replaced by an entirely new National Water Initiative. In endorsing the NLC's submission we are keen to draw the Productivity Commission's attention to serious shortcomings in the way water license decisions are made in the NT including but not limited to:

- The poor coverage of Water Allocation Plans (**WAP**) for areas subject to water license applications and decisions. In the NT just 28% of areas subject to water extraction licenses are covered by a WAP. The NLC submission provides a number of specific examples of licenses above 7,000 ML per year being issued which are not subject to a WAP or issued prior to WAP being declared where cultural and environmental considerations are poorly regulated.
- The lack of functioning water planning committees (**Water Committees**). Where Water Control Districts have been established, it is critical that functioning and representative Water Committees are established and maintained. As the NLC submission indicates, since 2017 the number of Water Committees has dropped from seven to just one. Aboriginal representation on Water Committees must be a requirement with representation at least proportional to Aboriginal land interests in the relevant WAP area. Resourcing of accessible planning information and use of interpreters must be factored into all processes and meaningfully applied. Rather than disbanding committees once a WAP is finalised they should be maintained and consulted as management plans are implemented and 5 year reviews of WAPs conducted.
- The potential impact of water license decisions outside WAP whereby Traditional Owners and Native Title Holders are excluded from involvement in planning and

decision making about water licenses with potential for deleterious impacts on environmental and cultural values. Without a WAP in place there is also no access to potential allocations for future economic development through the establishment of Strategic Aboriginal Water Reserves.

- In the case of the Western Davenport Water District, the creation of guideline by the Chief Executive Officer of the NT Department of Environment, Parks and Water Security, who is also Water Controller that is inconsistent with the Western Davenport WAP. Under section 90 of the NT Water Act, the Water Controller is required to make water license decisions which take into account that district's WAP. Section 22B(4) of the NT Water Act also specifies that water resource management in a water control district is to be in accordance with the WAP declared in respect to that district. The Singleton Water License Case Study below details a situation where the requirement to manage water resources in accordance with the Western Davenport WAP is circumvented by the Water Controller's creation of guidelines allowing for a deeper draw down on the aquifer (from 15m to 50 m) and up to 30% destruction of Groundwater Dependent Ecosystems (**GDEs**). (See Singleton Water License Case Study below).
- Where water competition is under the threshold for establishment of a Water Control District and WAP, we support the NLC's call for the application of best available science and consultation with Traditional Owners and Native Title Holders over protection of cultural values with application of a precautionary approach to all water license decisions.
- Recognition by the NT Government that water license applications constitute 'Future Acts' which require the NT Government to comply with the procedures under S24HA of the NTA. We support the NLC's position in their submission regarding the NT Government complying with formal procedures under the NTA for notifying and consulting native title holders of proposed water extraction license decisions. As submitted by NLC, the water licences are future acts giving rise to right to compensation for impacts on native title. Degradation of sacred sites and cultural landscapes through water licence decisions will foreseeably negatively impact upon the exercise of native title rights and interests causing compensable loss payable by the NT Government.
- The CLC concurs with the NLC's conclusion that while the provision of water for Strategic Aboriginal economic development through Strategic Aboriginal Water Reserves (**SAWR**) is a long awaited and positive initiative in theory, there is a high risk that it may never be adequately realised. In the majority of cases where the SAWRs should be available, the water resources have been fully or over-allocated and there is no water available for SAWR. In the Western Davenport WAP, the SAWR has been allocated but the required legislation to enable issuing of water extraction licenses to eligible Aboriginal rights holders is still not fully in place, despite the primary legislation being passed by the NT

Legislative Assembly in October 2019. If the Singleton Station Water License application is approved at 40,000 ML per year it may render an Aboriginal Economic Development Project on the neighboring Ileyarne Aboriginal Land Trust unviable because of proximity before the project proponent has an opportunity to apply for an SAWR water license. If that site is not viable, there are limited if any options for alternative economic development proposal locations.

### **Case Study: Singleton Station Water License Application (40,000 ML per year over 30 years)**

In September 2020, Fortune Agribusiness Funds Management Pty Ltd (**Fortune Agribusiness**) applied for a groundwater water extraction license. The application volume is 39,800 ML per year for agricultural purposes and 200 ML per year for public water supply purposes, a total volume of 40,000 ML/year. Singleton Station is situated within the Central Plains management zone of the Western Davenport Water Allocation Plan (WDWAP) for the period of 2018 to 2021. The WDWAP covers the Western Davenport Water Control District.

The CLC has consulted with affected native title holders for Singleton Station, affected community members in Alekarenge community, nearby outstation residents and traditional owners of neighboring land trusts. Their concerns can be summarised as follows:

1. The size of the water license applied for – 40,000 ML/year for 30 years – is significantly larger than any other licenses issued in the region and the largest ever applied for in the NT. The total quantity of water that currently may be taken from the Western Davenport District is 10,479 ML/year.
2. The scientific modelling included in the WDWAP that would guide the Water Controller's decision to grant the water license has a number of issues including its estimation of sustainable yield of groundwater. The WDWAP asserts a single storage figure with an estimated sustainable yield of 168,000 ML per year yet also includes numerous statements that that figure is based on limited information and further research is recommended, particularly in regard to accessibility of groundwater stored in the regolith and the location and individual requirements of GDEs. The work still required to be done under the WDWAP are set out in section 8.4.1 (Framework setting out WDWAP implementation activities) and section 9.1 (Table of risk management treatments). The WDWAP also identified nine of those risks in Table 15 as 'extreme' risks. We have asked the Water Controller to provide an update on such work as without adequate data the uncertainty around estimated sustainable yield remains high. The assertion of an estimated sustainable yield 168,000 ML per year as a fact rather than just one of a range of possible groundwater modelling values is problematic. To enable the full range of likely impacts to be assessed it would be preferable to present a best, worst and probable estimates of storage.

3. The impact that the scale of the drawdown from the water license may have on the exercise of their traditional rights, including hunting and collecting of bush tucker, and cultural and sacred sites. The projected drawdown could have adverse effects on the availability of soakages and flood outs and the health of important GDEs. The WDWAP pays scant attention to these most vulnerable aquatic GDEs yet independent hydrogeological advice provided to the CLC indicates the high likelihood of the presence of aquatic GDE's along creek lines in the Central Plains management zone. These are most likely to be impacted quickly and permanently if groundwater levels drop more or more quickly than anticipated.

### **Establishment of Guidelines outside of the Water Allocation Plan**

In providing its comments to the Water Controller about Fortune Agribusiness's water licence application, the CLC notes that section 22B(4) of the NT Water Act states that "*water resource management in a water control district is to be in accordance with the water allocation plan declared in respect of the district.*"

On 13 February 2020 the NT Government published a guideline, "*Limits of acceptable change of groundwater dependent vegetation in the Western Davenport Water Control District*" (**Guideline**) without any public consultation. CLC is deeply concerned about the Guideline for the following reasons:

1. The Guideline states that it is '*intended to be read subject to the Western Davenport Water Allocation Plan 2018-2021*'.
2. The Guideline has been created just for the Western Davenport Water Control District.
3. The Guideline states that Department of Environment and Natural Resources has determined that 70% of the current extent of GDEs in the Western Davenport Water Control District should be protected from negative impact. The 30% threshold is inconsistent with the WDWAP, which does not have such a threshold. The WDWAP refers to the NT Water Allocation Planning Framework which specifies that GDEs must be protected from deleterious impacts when considering water extraction license applications in the arid zone. The CLC submits that the Water Controller should only have regard to the WDWAP in their decision and not the Guideline. This includes the limits to the changes in groundwater conditions at GDEs as set out in the WDWAP.
4. The Guideline fails to set out the basis for this position even noting in the Guideline that "*there is limited scientific evidence to confidently set this threshold for Australian arid-zone GDEs specifically*". The Guideline refers to recent studies and "*research in a broad range of environmental and department contexts nationally*" but none of these studies have been cited.