



CENTRAL LAND COUNCIL

National Water Reform 2024

**Central Land Council Submission to the Productivity
Commission**

15 Feb 2024

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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) (**Land Rights Act**). The CLC has statutory responsibilities for approximately 780,000 square kilometres of land in the southern half of the Northern Territory (**NT**). Our functions include:

- a) ascertaining and expressing the wishes and opinion of Aboriginal people living in the area of the CLC as to the management of Aboriginal land in the area;
- b) protecting the interests of traditional Aboriginal owners of Aboriginal land;
- c) assisting Aboriginal people to take measures likely to assist in the protection of sacred sites on land (whether or not Aboriginal land); and
- d) consulting with traditional Aboriginal owners of Aboriginal land about any proposals relating to the use of that land.¹

CLC also administers a range of programs for the benefit of its constituents in relation to environmental management, community development, governance, economic participation, cultural heritage, and customary practices.

CLC is also a native title representative body under the *Native Title Act 1993* (Cth) (**Native Title Act**) for the southern half of the NT. We prepare native title applications, respond to proposals with the potential to impact on native title rights and interests ('future acts'), negotiate indigenous land use agreements and support many corporations representing native title holders known as prescribed bodies corporate.

¹ See generally Land Rights Act s 23.

Introduction

Central Land Council (CLC) welcomes the opportunity to provide input to the Productivity Commission's (the Commission) Inquiry into National Water Reform 2024 (The Inquiry). This submission provides an updated assessment and case studies of the NT Government's ongoing failures to comply with specific principles, objectives and outcomes of the NWI since the Commission's 2020 Inquiry Report into National Water Reform (2020 Inquiry). It focuses on the elements of the NWI that are of particular relevance to the rights and interests of Aboriginal people in the CLC region.

Overall, NT water governance is characterised by a lack of transparency and enforceable planning, as well as a disregard for Aboriginal peoples' perspectives, Aboriginal cultural values, environmental health and evidence-based decision making. CLC is deeply concerned by the lack of meaningful engagement with traditional owners and the failure of the NT Government to adequately take into consideration ecological and cultural impacts before approving high-impact developments and associated licences.

Water law and governance in the NT has fallen far behind all other Australian jurisdictions. We assert that the NT Government is failing to comply with the current NWI on multiple grounds. This has been thoroughly documented, both in and since the Commission's 2020 Inquiry.²

The NT Government's failures to comply with the NWI highlighted in this submission relate to:

1. Statutory water planning
2. Providing security of environmental outcomes and Aboriginal cultural values
3. Lack of adequate baseline data to inform decision-making
4. Weakening protections for the environment
5. Allowing unsustainable levels of extraction
6. Failing to provide for Aboriginal interests in water planning
7. Erosion of meaningful stakeholder engagement and community trust
8. The governance and provision of drinking water services

To demonstrate concerns with water planning, this submission provides the case studies of:

- a) the Singleton Station water licence and water planning in the Western Davenport planning area; and
- b) updated data on drinking water for remote communities.

The national water reform agenda comes at a critical time for the NT where CLC is seeking urgent and bold reform at the jurisdictional level. This necessary in order to address ongoing and significant issues with water planning and governance.

Water is life-sustaining and provides spiritual sustenance for the Aboriginal people of central Australia, who have in turn been its stewards and caretakers for millennia. However, in the NT, that the water regulation framework is inadequate for supporting the long-term health, well-being and

²O'Donnell, E., Jackson, S., Langton, M. and Godden, L., 2022. [Racialized water governance: the 'hydrological frontier' in the Northern Territory](#), Australia. *Australasian Journal of Water Resources*, 26(1), pp.59-71; Productivity Commission, 2021, *National Water Reform 2020: Productivity Commission Inquiry Report*, No. 96, 28 May 2021; Central Land Council, 2020; [Submission to Productivity Commission: National Water Reform](#), 21 August; Hart, B., E. O'Donnell, and A. Horne. 2020. "Sustainable Water Resources Development in Northern Australia: The Need for Coordination, Integration and Representation." *International Journal of Water Resources Development* 36 (5): 777–799; Productivity Commission, 2017. *National Water Reform. Productivity Commission Inquiry Report* no. 87. Canberra: Productivity Commission

aspirations of Territorians. Crucially, it does not formally empower traditional owners³ to continue their stewardship.

In a jurisdiction where water security and quality are a critical and growing concern, and where drinking water supply is 90% groundwater dependent, the NT requires water plans that are in line with national standards and best-practice water management.

Water governance in the NT has undermined community trust in the NT Government. It follows that CLC is deeply concerned with the NT Government's capacity to comply with a renewed NWI. Not only does this threaten to undermine the Commonwealth's important reform agenda and the outcomes and objectives of the NWI, but it has significant implications for the health and wellbeing of Aboriginal people and environmental and cultural outcomes in the NT.

CLC is concerned that unless a refreshed NWI considers and addresses the underlying reasons behind ongoing non-jurisdictional compliance, any future reform agenda will encounter the same challenges. The NWI is a critical tool for best-practice water management: as such, this submission provides recommendations for a renewed NWI that focuses on stronger jurisdictional compliance.

This submission is to be read in conjunction with CLC's *Submission to the Productivity Commission on National Water Reform 2020 (Appendix 1)* which contains recommendations for the renewed NWI that remain highly relevant to the Inquiry and national water reform process. A summary of the key findings is included in this submission at (8).

CLC also supports and is participating in the concurrent process that the Commonwealth Department of Climate Change, Environment, Energy and Water (**the Department**) is undertaking to review and reform the Intergovernmental Agreement on the National Water Initiative (**NWI**). We expect this submission to contribute to the Department's process.

³ The term 'traditional owners' as it appears in this submission includes traditional Aboriginal owners under the Land Rights Act and native title holders under the Native Title Act.

Recommendations

Recommendation 1: The Commission reiterate its recommendation for the continued inclusion of the specific objective ii) for transparent, statutory water planning in the refreshed NWI.⁴

Recommendation 2: The Commission review and consider the implications of the Singleton water licence decision for NT Government's capacity to meet the requirements of the 2004 NWI or a refreshed NWI and provide recommendations accordingly.

Recommendation 3: The Commission review the Water Allocation Planning framework against the elements of the NWI and best practice water governance and provide recommendations accordingly.

Recommendation 4: The Commission consider and make recommendations to address the underlying barriers to the NT Government's development of statutory water plans, and ensure that water licensing decisions are being made in accordance with water plans which meet the requirement of the NWI and best practice principles.

Recommendation 5: The Commission reiterates its recommendation that new water resource management objectives should 'extend statutory provisions for the environment',⁵ ensuring environmental outcomes are secure as against consumptive uses.

Recommendation 6: The Commission includes clear principles for the application of adaptive management according to best-practice and considering groundwater contexts and recommends that the renewed NWI provides for jurisdictions to legislate for substantive objectives and standards for adaptive management.

Recommendation 7: The Commission reiterates its NWI renewal advice 8.1 for best-practice environmental objectives and outcomes for a refreshed NWI, adding that water-dependent ecosystems should also be considered a high priority if they are identified as such by the relevant traditional owners and/or expert advice.

Recommendation 8: The Commission recommends that a refreshed NWI emphasise the urgent need for jurisdictions to rely, in the absence of thorough water plans, on:

1. expert consideration of the best available science
2. direct consultation with traditional owners in relation to applications; and
3. the precautionary principle where a water resource is poorly modelled to date.

Recommendation 9: The Commission recommends a refreshed NWI include an updated definition of a 'sustainable level of extraction' as: 'the amount of water that can be sustainably harvested' (i.e. harvested *and replaced* by complete recharge). That estimate must be:

1. based on rigorous science that is independently peer reviewed; and
2. conservative, to reflect changing rainfall patterns associated with climate change.

Recommendation 10: The Commission reviews whether the NT Government's draft Western Davenport Water Allocation Planning documents⁶ are in line with the NWI.

⁴ Productivity Commission, 2021, p. 45

⁵ Productivity Commission 2021, p. 45

⁶ NT Government, Draft Western Davenport Water Allocation Plan 2022-2032 documents: <https://haveyoursay.nt.gov.au/water-management/widgets/386961/documents>

Recommendation 11: The Commission reiterate its recommendation for new water resource management objectives to ‘enable strengthened and enduring standing and influence for Aboriginal and Torres Strait Islander people in water planning.’⁷

Recommendation 12: The Commission reiterate renewal advice 9.1 for an objective and new element dedicated to Aboriginal peoples’ access to water and involvement in water management in a refreshed NWI. However:

1. this advice should be explicit that this must be a separate objective (not incorporated into an objective for public benefit objective more broadly, for example); and
2. developing the new element should be informed by broader consultation with Aboriginal peoples and their representative organisations beyond CAWI.

Recommendation 13: The Commission reiterate Australian government and jurisdictions’ commitments under the National Agreement on Closing the Gap and recommends that a refreshed NWI must explicitly align with these commitments.

Recommendation 14: The Commission recommend that a refreshed NWI requires that water plans explicitly *protect* Aboriginal cultural values, and that each jurisdictional action plan must clearly set out the mechanism to protect cultural values. This mechanism must involve assessments of Aboriginal cultural values with are led by the affected Aboriginal people for each licence *before* it is granted.

Recommendation 15: The Commission recommend the inclusion of the UN Declaration on the Rights of Indigenous Peoples in the refreshed NWI and each jurisdictional action plan.

Recommendation 16: The Commission recommend that a renewed NWI commit to the principles of self-determination and free prior and informed consent, as per national and international requirements.

Recommendation 17: the Commission recommends that the renewed NWI emphasises the need for jurisdictions to recognise native title rights and comply with the Native Title Act, and reference the Future Acts provisions as part of the advice.

Recommendation 18: The Commission reviews CLC’s and NLC’s submissions to the NT Parliament Economic Scrutiny Committee in relation to the eligibility criteria for the AWR⁸ and consider whether it meets the NWI requirement to account for native title rights, and update advice in a refreshed NWI accordingly.

Recommendation 19: the Commission to reiterate its recommendations that all governments must ‘recommit to best-practice, cost-effective engagement with their communities on all water matters’ in a renewed NWI. The community engagement framework should ensure that:

1. governments are clear about the purpose of their engagement and the role of communities in decision making;
2. all stakeholders have the opportunity to meaningfully input to the engagement process, and are proactively encouraged to do so; and

⁷ Productivity Commission 2021, p45

⁸ Submissions to the Economic Scrutiny Committee are available at:
https://parliament.nt.gov.au/_data/assets/pdf_file/0009/729711/Submission-2-Central-Land-Council.pdf and
https://parliament.nt.gov.au/_data/assets/pdf_file/0006/729717/Submission-8-Northern-Land-Council.pdf;

3. the effectiveness of community engagement is enhanced through improved water information accessibility and comprehensibility and community water literacy.

Recommendation 20: The Commission recommend Commonwealth review of each jurisdiction's mechanisms for community engagement in consultation with stakeholders, to provide tailored advice on how to strengthen these mechanisms to facilitate improved stakeholder engagement. This should include review, update and monitoring of the 2017 Council of Australian Governments module to the NWI: *Engaging Indigenous Peoples in Water Planning and Management* (2017).⁹

Recommendation 21: The Commission reiterate its advice 12.4 for a renewed NWI to ensure a basic level of service for all Australians and that where subsidies are needed, they should be provided as transparent community service obligation payments. Individual remote communities must be actively involved in determining their required level of service and hence requirements for water service provision.

Recommendation 22: the Commission reiterate and update its findings regarding transparent use of CSOs and specifically examine why the NT Government has not made satisfactory progress towards a transparent system. The requirement for transparency and accompanying principles to be embedded in a refreshed NWI.

Recommendation 23: the Commission should investigate the reforms required for Indigenous Essential Services to satisfy the expectations of the NWI

Recommendation 24: The Commission reiterate its renewal advice 12.6 for monitoring on regional and remote service quality, however adding that:

- a) this reporting should include reporting on drinking water security, and
- b) be made publicly available.

Recommendation 25: A renewed NWI provides the required process for the development of jurisdictional action plans, including:

- a) expectations for direct and meaningful engagement with Aboriginal people and their representative organisations and evidence of how this engagement has influenced the action plan;
- b) jurisdictional progress against previous NWI elements with clear and measurable targets where non-compliant;
- c) a process for Commonwealth support and review expertise to support plan development
- d) opportunities for community feedback; and
- e) a process of Commonwealth review of each jurisdictional plan against renewed NWI commitments.

Recommendation 26: the appointment of Commonwealth reviewers to measure annual progress against jurisdictional action plans and produce publicly available reports

Recommendation 27: an online database that maps current compliance against renewed NWI objectives to measure progress in each jurisdiction.

Recommendation 28: development of Commonwealth fund to provide conditional funding support to jurisdictions with reform efforts and projects that bring water management in line with the NWI.

⁹ Council of Australian Governments 2017, Module to the National Water Initiative (NWI) Policy Guidelines For Water Planning And Management: [Engaging Indigenous Peoples In Water Planning And Management](#)

NT Government progress in jurisdictional adoption of the National Water Initiative

CLC acknowledges the NT Government's commitment to progressing some principles, objectives and outcomes of the NWI since the Commission's 2020 Inquiry. These include:

- a) The Territory Water Plan, published in 2023, in which the NT Government commits to:¹⁰
 - a. Introducing Safe drinking water legislation to the Legislative Assembly in 2024
 - b. Improving water security for remote communities through holding community information forums
 - c. Developing a water charging framework
 - d. Enhancing Aboriginal Participation in water management through establishing an Aboriginal Water Advisory Council
 - e. Improving water planning (by reviewing the Water Allocation Planning Framework and strengthening water allocation plans)
 - f. Reforming the Water Act by 2026

- b) In May 2023 the NT Government announced the appointment of a new independent NT Controller of Water Resources. As also highlighted by the Commission's 2020 Inquiry, the previous Water Controller also held the role of CEO of DEPWS and was a board member of NT Land Corporation. The CLC and others engaged in sustained advocacy for the NT Government to amend this clear conflict of interest and lack of regulatory separation, which went against best practice governance as per the NWI.¹¹ This resulted in a welcome but overdue amendment and demonstrates the importance of the Commission and other Federal agencies holding jurisdictions accountable to their commitments under the NWI.

However, given the nature and scale of the deficiencies in NT water planning, CLC questions how the NT Government will deliver on the commitments at (a) above. The Territory Water Plan lacks rigour and detail as to how it will be implemented and progress measured and monitored. We are yet to receive a detailed implementation plan from the NT Government that demonstrates how these commitments will be met and how they will align with the NWI.

CLC also acknowledges that in July 2023 the NT Government commissioned consultants at Badu Advisory to assess the NT Government's Implementation of the NWI.¹² The report concluded that 'the NT's water planning processes are consistent with the provisions of the NWI and subsequent guideline documents'.¹³ CLC finds this conclusion deeply flawed because:

1. The report does not explicitly consider the content of any water allocation plans in its review. Water allocation plans are the primary tool for managing water in the NT and the central organising device through which the national standards set by the NWI are delivered.¹⁴ It is illogical to claim that the NT Government is meeting the standards of the NWI without considering the content of water allocation plans; and

¹⁰ NT Government, Territory Water Plan 2023

¹¹ NWI 2004: 74, p. 15.

¹² Badu Advisory, 2023, Northern Territory Department of Environment, Parks and Water Security: *Review of the NT's implementation of the National Water Initiative in relation to water planning*, 23 July 2023.

¹³ Badu Advisory 2023 p. 2.

¹⁴ NWI 2004: 36, p. 7

2. The review did not consult beyond the NT DEPWS water planning team except when specifically suggested by DEPWS. Consequently, the report can only be taken to reflect the views of DEPWS.

Key issues with respect to implementation of the NWI in the NT

1. Statutory water planning

As referred to above, statutory water plans are the central organising device for delivery of NWI standards.

- a) Objective ii) of the NWI is ‘transparent, statutory-based planning’.¹⁵
- b) The Parties agreed under the NWI that:
 - i. ‘water planning frameworks will’ ‘provide a statutory basis for environmental and other public benefit outcomes in surface and groundwater systems to protect water sources and their dependent ecosystems’;¹⁶ and
 - ii. ‘Regulatory approvals enabling water use at a particular site’ will ‘be consistent with relevant water plans’.¹⁷

In the NT, water planning is undertaken in accordance with s 22B of the *Water Act 1993* (NT) (**Water Act**). The Department of Environment, Parks and Water Security (**DEPWS**) can develop water allocation plans (**WAPs**) for endorsement by the Minister for Environment within declared Water Control Districts.¹⁸ WAPs are the key statutory document for water management in the NT. Under s 90 of the *Water Act*, the NT Controller of Water Resources (**Water Controller**) must consider any relevant WAP when making water licensing and other management decisions, along with a range of other factors.¹⁹

The NT Government’s management of water resources in the NT undermines its agreements to statutory planning under the NWI. The Singleton Water licence demonstrates our concerns with statutory planning in stark terms.

Case study: the Singleton Station Water Licence

On the 15 November 2021, the then Minister for Territory, Families and Urban Housing decided to grant a water licence to Fortune Agribusiness Funds Management Pty Ltd to take up to 40,000ML of groundwater per annum from aquifers at Singleton Station.

The groundwater licence is the largest water licence granted in NT history and likely Australia. Native title holders are extremely concerned about the size of the groundwater licence and the impact that it is modelled to have on cultural values, in particular a large number of sacred sites which are dependent on the presence of shallow groundwater. Expert analysis commissioned by CLC indicates that:

1. the project is likely to have a significant impact on groundwater resources, sandplain habitat and the availability of animal species, culturally-significant Groundwater Dependent Ecosystems and other sacred sites and values; and

¹⁵ NWI 2004: 23.ii

¹⁶ NWI 2004: 25.ii, p 4

¹⁷ NWI 2004: Schedule D: 1.ii p. 34

¹⁸ See *Water Act* s 22B(1).

¹⁹ *Water Act* 1992 (NT) s90

2. is unlikely to deliver the economic benefits stated by the proponent.²⁰

The licence was initially granted despite strong opposition from native title holders and affected community members (and many other community stakeholders²¹). CLC, the Arid Lands Environment Centre (ALEC) and other stakeholders sought Ministerial review of the Water Controller's decision, but the Minister re-granted the licence in November 2021.

On 28 January 2022, CLC assisted Mpwerempwer Aboriginal Corporation (the native title prescribed body corporate for Singleton Station) to commence proceedings in the Supreme Court of the Northern Territory challenging the validity of the Minister's decision to grant the licence. ALEC also challenged the decision, arguing (among other grounds) that it was not made in accordance with the declared Water Allocation Plan for the area: the Western Davenport WAP (**WDWAP**).

On 31 January 2024, Barr J dismissed all legal challenges by Mpwerempwer Aboriginal Corporation and ALEC. Critically, Barr J concluded 'although the Minister had a statutory obligation under s 90(1)(ab) of the Act to take into account the WDWAP, *the Minister did not have a statutory obligation to "comply with" the WDWAP*' (emphasis added).²²

The Supreme Court's decision makes it clear that **water allocation plans are not binding on decision-makers when making a water licensing decision**. This aspect of the decision throws into question the role of water allocation plans under the Water Act. It is clearly inconsistent with the NWI commitments for statutory water planning.

The Water Allocation Planning Framework

Notwithstanding the deeply concerning implications of the non-binding-nature of water allocation plans in the NT as described above, the water allocation plans that are in place cover only 5% of the NT. Further, the Water Act does not require the Minister to declare a water control district, or to create a water plan once a district is declared.²³ Outside of these areas, the Water Controller relies on the Water Allocation Planning Framework (**WAPF**).²⁴

As CLC has consistently submitted to the NT Government,²⁵ the WAPF is a severely deficient planning document and is not in line with the Parties' agreements under the NWI for statutory-based water planning:²⁶

- a) the WAPF is severely outdated, having been published over 23 years ago. It has not been substantively updated since publication. As such, it does not reflect any of the significant developments in water planning and science that have been made over the last 23 years;

²⁰ Central Land Council, 2023, Submission to the NT EPA: Singleton Station referral for Environmental Impact Statement

²¹ CLC, 2021, Council Passes Resolution to Appeal Singleton Station Water Licence, [Media Release](#) April 22; See further submissions on CLC [website](#); see [the Water Justice Project](#); from 2020-21, 23,326 community stakeholders signed a [petition](#) opposing the development.

²² *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor and Arid Lands Environment Centre Inc v Minister for Environment & Anor* [2024] NT Supreme Court 4 [59].

²³ See generally the non-mandatory language contained in the Water Act ss 22 and 22B.

²⁴ See the NT [Water Allocation Planning Framework](#)

²⁵ For example Central Land Council, 2023, Letter to Water Controller RE Notice of Intent to Make a Water Licence Decision – Dalmore Downs Bronco Yards Pty. Ltd., dated 31 May; Central Land Council 2023, Letter to Water Controller RE Notice of Intent to Make a Water Licence Decision – Nobles Nob Tennant Creek Mining Consolidated, dated 21 July 2023 both available through the [Water Licensing Portal](#)

²⁶ NWI 2004: (23).ii; NWI 2004: 25.ii, p 4; NWI 2004: Schedule D: (1).ii p. 34

- b) the WAPF is not sufficient to inform water licencing decisions or meet any of the NWI's guidelines for water plans and planning processes:²⁷ It is a two page document which, among other issues:
- a. allows for licences to be issued in the arid zone on the basis that 80% of water to a depth of 150 metres is available for extraction. This threshold has no scientific basis. It also allows for water mining, which occurs when extraction exceeds recharge rates;
 - b. makes no mention of and does not require any stakeholder engagement;
 - c. makes no mention of and does not provide for Aboriginal water interests or cultural values (there is currently no requirement for government to consider the protection of cultural values outside of plan areas, and therefore in the majority of water extraction licencing decisions, including all major extractions to date, cultural values have not been considered);and
 - d. does not define or require consideration of an Estimated Sustainable Yield (**ESY**) for application to the water licence area in question. The ESY for the licence area in question is a crucial piece of information that must be considered in the effective management of water resources under NT legislation.²⁸ An enforceable ESY is also critical to meet the primary objective of the NWI, being to ensure that allocations are consistent with 'environmentally sustainable levels of extraction'.²⁹
- c) The WAPF has no foundation in the Water Act or other NT legislation. Consequently, the WAPF undermines the NWI as it:
- a. does not provide a statutory basis for environmental outcomes or other benefit outcomes; and
 - b. allows unsustainable extraction without statutory protections for environmental, cultural and other values.

As noted above, the WAPF covers approximately 95% of the NT's landmass. Consequently, water planning for the majority of the NT's landmass is guided by a critically deficient and non-statutory policy document. CLC's view is that that this is not acceptable for a region which contains significant cultural values, geographic diversity and water security challenges.

For example, a licence application was made in April 2023 for an area subject to the Georgina Wiso WAP area, after the expiry of the previous WAP and during the development of the new WAP for the area. While the Minister had not yet declared the new WAP, the NT Government had clearly identified that this area is of significant importance to the sustainable management of the NT's water resources so as to require a WAP. The CLC asked for the decision to be delayed until the new WAP was declared, but this was denied and the water license was approved.³⁰

In its 2020 Inquiry of the NWI, the Commission found that 'most jurisdictions have more than 80 percent of water use managed under water plans'.³¹ At only 5%, the NT abjectly fails to meet this

²⁷ NWI 2004: Schedule E

²⁸ See, e.g., Water Act ss 22B(5)(a), 71B(3)(d)(iii).

²⁹ NWI 2004: (5), p1.

³⁰ Central Land Council, 2023, Letter to Water Controller RE Notice of Intent to Make a Water Licence Decision – Dalmore Downs Bronco Yards Pty. Ltd., dated 31 May; documents available through the [Water Licensing Portal](#)

³¹ Productivity Commission, 2021, p. 27

bar. This is compounded by the concerns regarding the role of water allocation plans in water licence decisions, as highlighted by the Singleton Water licence decision. NT water planning remains completely out of step with national standards.

Recommendation 1: The Commission reiterate its recommendation for the continued inclusion of the specific objective ii) for transparent, statutory water planning in the refreshed NWI.³²

Recommendation 2: The Commission review and consider the implications of the Singleton water licence decision for NT Government's capacity to meet the requirements of the 2004 NWI or a refreshed NWI and provide recommendations accordingly.

Recommendation 3: The Commission review the Water Allocation Planning framework against the elements of the NWI and best practice water governance and provide recommendations accordingly.

Recommendation 4: The Commission consider and make recommendations to address the underlying barriers to the NT Government's development of statutory water plans, and ensure that water licensing decisions are being made in accordance with water plans which meet the requirement of the NWI and best practice principles.

2. Providing security of environmental outcomes and Aboriginal cultural values

The weakness of water planning underpinning water extraction licence decisions undermines the NWI and is of particular concern to the CLC's constituents in protecting environmental and cultural values.

Water allocation plans are the only process for identifying and providing for water requirements to sustain environmental and cultural assets in the NT. This includes allowing for engagement with and traditional owners for their advice, but also by providing a description of the water source and determination of the ESY, which as per the NWI should be based on 'best scientific and socio-economic assessment'.³³

The weakness of water plans, where they exist in the NT, and the use of the WAPF across the rest of the Territory means these key functions as per the NWI are not being carried out sufficiently (nor are they required to be) *before* extraction can occur. This puts environmental outcomes and cultural values at significant risk.

3. Lack of adequate baseline data to inform decision-making

Traditional owners in CLC's region are deeply concerned that the NT Government is fast-tracking water access for industry without adequate baseline research to inform decision-making. As acknowledged in the NT Government's Strategic Water Plan Directions Paper and other NT government documents such as the previous Western Davenport Water Allocation Plan,³⁴ the NT regulatory regime operates without adequate scientific knowledge and resources. There is insufficient scientific knowledge to support government decision making. If the NT government doesn't understand the hydrology, the nature and extent of the resource and how it is replenished, it cannot guard against over-allocation.

³² Productivity Commission, 2021, p. 45

³³ NWI 2004, Schedule B(i), p30.

³⁴ [NT Strategic Water Plan - Directions Paper | Have Your Say Northern Territory](#); NT Government, [Western Davenport WAP 2018 -2021](#)

As evidenced by the Singleton case study, rather than relying on agreed levels and standards of scientific knowledge to make licence decisions the NT government has been committing large allocations of water in the face of great uncertainty. In that context, it seeks to address future issues and knowledge gaps through staged licensing and adaptive management. Adaptive management plans and a monitoring framework are being developed *after* a licence has been granted. These processes are not rigorous nor do they reflect best practice.

Adaptive management should not be used to compensate for significant scientific knowledge gaps. This is because:

1. Adaptive management only works when there is adequate knowledge of the water resource to form a proper baseline.
2. Adaptive management plans require enforceable, clear objectives and measurable performance indicators and should be developed *prior* to the grant of a licence.
3. The time-lag and irreversibility of impacts to groundwater makes it extremely difficult to assess the impacts of management actions during the project before critical thresholds are crossed.
4. Adaptive management plans are vulnerable to political interference to reduce impacts on significant investments.³⁵

Case study: The Western Davenport Water Allocation Plan and the Singleton licence

The Western Davenport Water Allocation Plan (**WDWAP**) demonstrates these concerns. The WDWAP covers 24,500km² of country and is home to seven Aboriginal language groups with indelible connections to its waterways and many groundwater-dependent sacred sites. The CLC's submission to DEPWS regarding the Western Davenport WAP is attached at **Appendix 2**.

Expert analysis of the 2018-2021 WDWAP commissioned by the CLC, and reports by other stakeholders, found that baseline data for the area was undermined by extremely limited knowledge about groundwater sources and insufficient hydrological modelling and incomplete studies of groundwater dependent ecosystems in the area.³⁶ This was the relevant WAP at the time the Singleton water licence was applied for and granted.

The application for the licence did not provide new information that would rectify the deficiencies and limitations in baseline data and monitoring identified in the WDWAP.³⁷ Despite these uncertainties, no environmental impact assessment was required or undertaken prior to granting the licence. Instead, in CLC's view, the Water Controller relied on the concept of adaptive management to defer unacceptable uncertainty over key matters that should have been subject to rigorous environmental impact assessment *prior* to the grant of the licence.

Since this assessment the NT Government has not provided any substantive or satisfactory updates from previous modelling deficiencies for the Western Davenport District. In the absence of significant, additional monitoring of groundwater resources in the WDWAP area (over a minimum of five years), any replacement modelling will not rectify the underlying deficiencies identified by the CLC and its experts.³⁸

³⁵ Lee, J., 2014. Theory to practice Adaptive management of the groundwater impacts of Australian mining projects. *Environ. Plan. Law J.* 31, 251–287. P. 251; Thomann, J.A., Werner, A.D., Irvine, D.J. and Currell, M.J., 2020. Adaptive management in groundwater planning and development: A review of theory and applications. *Journal of Hydrology*, 586.

³⁶ Western Davenport Plan, Associated Documents and Groundwater Model Review, 16.07.21.

³⁷ CLC Submission to the NT EPA (42)

³⁸ See Appendix 2, CLC Submission Western Davenport WAP, p18.

The decision to grant the licence was also made without adequate consideration of relevant Aboriginal cultural values, nor how the licence was expected to impact them.³⁹ CLC's commissioned expert review identified many cultural values and sacred sites around Singleton that would be significantly impacted by the licence.⁴⁰

In March 2023, at the urging of the CLC and native title holders and other concerned groups through various submissions, the NT Environment Protection Authority (**NTEPA**) agreed that the Singleton Horticulture Project required a Tier 3 Environmental Impact Statement. This is the most rigorous form of environmental assessment in the NT.⁴¹ While this was a welcome decision, the weaknesses of NT water planning forced the CLC to resort to legal action and years of advocacy on behalf of traditional owners in order to secure an environmental impact assessment that would be expected in other jurisdictions for a project of this scale.

4. Weakening environmental protections

Under the NWI, parties also agreed that water provided 'to meet agreed environmental and other public benefit outcomes as defined within relevant water plans is to' 'have *at least the same degree of security* as water access entitlements for consumptive use and be fully accounted for'.⁴² This has not been the case in recent water allocation plans in the NT. Indeed, CLC have seen weakening environmental protections.

For example, in developing the new draft Western Davenport Water Allocation Plan for 2023-2033 (**the draft Plan**), the NT Government has substantively weakened the environmental protections from the previous plan:

- a) The 2018 Plan's environmental objective was to 'meet the environmental water requirements of water dependent ecosystems'.⁴³ In contrast, the only objective regarding environmental values in the new Draft Plan now reads: 'Balancing the retention and preservation of key environmental values dependent on water with the overall benefits provided by the water resources'.⁴⁴
- b) The new Draft Plan now contains no specific protections for ecosystem health or groundwater dependent ecosystems.
- c) The new Draft Plan has been divided into three different components that severely limits the matters which the Water Controller must consider in making a decision. The documents are:
 1. The Draft Western Davenport Water Allocation Plan 2023-2033,
 2. The Draft Western Davenport Background Report 2023-2033 (**the draft Background Report**) and
 3. The Draft Western Davenport Water Implementation Actions 2023-2033 (**Implementation Actions**).

When making a water licence decision under the Water Act, the Water Controller does not have to consider all of the documents, only the Draft Plan (1 above). The Background Report (2) and Implementation Actions (3) have no statutory grounding in the Water Act, and as

³⁹ CLC Submission to the NT EPA (42)

⁴⁰ Addendum: Aboriginal Cultural Values Impact Assessment prepared by Susan Dale Donaldson, 07.02.2023.

⁴¹ See generally *Environment Protection Act 2019* (NT) ss 57–59.

⁴² NWI 2004, (35)

⁴³ NT Government, 2018 WDWAP, p.6.

⁴⁴ NT Government, Draft [Western Davenport WAP](#) 2023-2033, p.9.

such the Water Controller can completely disregard them when making a water licence decision. In its current form, the Draft Plan does not require the Water Controller to ensure the protection of cultural values, environmental values or groundwater dependent ecosystems when making decisions. Furthermore, critical details are not included in the draft plan, including:

- a) implementation activities;
- b) monitoring and evaluation components; and
- c) risk assessments.

This is a significant and deeply concerning departure from previous water allocation plans in the NT. It is inconsistent with NWI principles guiding the preparation of water plans. With such sparse information, the Draft Plan cannot effectively be used to manage water resources in the Western Davenport District; key matters for decision-making are left to the licensing assessment procedures, and there is insufficient provision for monitoring and reporting on plan performance.

In light of these concerns, CLC strongly supports the Commission's recommendations for a refreshed NWI that improves environmental protections, however recommends caution regarding commitments to adaptive management.⁴⁵

Recommendation 5: The Commission reiterates its recommendation that new water resource management objectives should 'extend statutory provisions for the environment',⁴⁶ ensuring environmental outcomes are secure as against consumptive uses.

Recommendation 6: The Commission includes clear principles for the application of adaptive management according to best-practice and considering groundwater contexts and recommends that the renewed NWI provides for jurisdictions to legislate for substantive objectives and standards for adaptive management.

Recommendation 7: The Commission reiterates its NWI renewal advice 8.1 for best-practice environmental objectives and outcomes for a refreshed NWI, adding that water-dependent ecosystems should also be considered a high priority if they are identified as such by the relevant traditional owners and/or expert advice.

5. Allowing unsustainable levels of extraction

Furthermore, an overarching objective of the NWI is for water planning to ensure allocations are consistent with 'environmentally sustainable levels of extraction'⁴⁷. In the NT, the primary mechanism to ensure this is by identifying an ESY.

However the ESY contained in the Draft Plan for the Western Davenport District is inherently unsustainable:

- a) The ESY for the largest management zone in the plan (the Central Plains water management zone) is based on twice the annual net recharge of the aquifer. Abstraction proposed at almost twice net recharge is not sustainable – it is managed depletion of the aquifer that will not ensure water is available for future generations. It will lead to widespread declining

⁴⁵ Productivity Commission, 2021, p.120

⁴⁶ Productivity Commission 2021, p. 45

⁴⁷ NWI 2004, (1) (23)iv

groundwater levels. Any drop in this water table risks the health of groundwater dependent ecosystems.

- b) Expert hydrogeologist Ryan Vogwill recommended that a standard precautionary approach to water resource management in other jurisdictions was to allocate 70% of annual net recharge.⁴⁸

These issues for NT water planning not only represent an unacceptable risk to the protection of groundwater-dependant ecosystems and cultural values for CLC's constituents: the NT Government's present methodology also exposes them to expensive future water buybacks and creates doubt and uncertainty for investors in the NT. This undermines the overarching aim of the NWI to both 'secure ecological outcomes', and 'resource security outcomes'.⁴⁹

Recommendation 8: The Commission recommends that a refreshed NWI emphasise the urgent need for jurisdictions to rely, in the absence of thorough water plans, on:

- 4. expert consideration of the best available science
- 5. direct consultation with traditional owners in relation to applications; and
- 6. the precautionary principle where a water resource is poorly modelled to date.

Recommendation 9: The Commission recommends a refreshed NWI include an updated definition of a 'sustainable level of extraction' as: 'the amount of water that can be sustainably harvested' (i.e. harvested *and replaced* by complete recharge). That estimate must be:

- 3. based on rigorous science that is independently peer reviewed; and
- 4. conservative, to reflect changing rainfall patterns associated with climate change.

Recommendation 10: The Commission reviews whether the NT Government's draft Western Davenport Water Allocation Planning documents⁵⁰ are in line with the NWI.

6. Providing for Indigenous interests and shared decision-making in water planning

Parties agreed under the NWI to 'provide for indigenous access to water resources, in accordance with relevant Commonwealth, State and Territory legislation, through planning processes that ensure:

- i) inclusion of indigenous representation in water planning wherever possible; and
- ii) water plans will incorporate indigenous social, spiritual and customary objectives and strategies for achieving these objectives wherever they can be developed.⁵¹

The Commission's 2020 Assessment report to support the 2020 Inquiry states 'In the Northern Territory, recent water allocation plans have identified Aboriginal cultural values and their water requirements.'⁵² CLC submits that when published this statement was questionable, and it is now wholly incorrect.

⁴⁸ Central Land Council, 2023, CLC Submission on the Western Davenport Water Allocation Planning Documents p. 17

⁴⁹ NWI 2004, (37)

⁵⁰ NT Government, Draft Western Davenport Water Allocation Plan 2022-2032 documents: <https://haveyoursay.nt.gov.au/water-management/widgets/386961/documents>

⁵¹ NWI 2004, (52)

⁵² Productivity Commission 2020, Assessment Report, p. 39

The NT Government has consistently failed to meet its commitments to incorporate Aboriginal interests, values and strategies in water planning. Aboriginal people in the NT continue to experience the impacts of water dispossession. CLC is deeply concerned by:

1. the lack of meaningful engagement with traditional owners in relation to water-related decisions; and
2. not fully taking into consideration ecological and cultural impacts before approving high-impact developments and associated licences.

The Singleton Station water licence matter is the most recent example of this sort of decision-making, as is the Western Davenport Water Allocation Planning process described in the case study below.

Case study: developing the new WDWAP 2022-2033

The NT Government's Division of Water Resources (**the Division**) is in the process of developing a new WAP for the Western Davenport district to replace the previous plan for the area. The process has demonstrated the NT Government's failure to consult effectively with traditional owners, to ensure 'inclusion of indigenous representation in water planning wherever possible'⁵³ and to ensure water plans incorporate Aboriginal interests.

The Division curtailed Indigenous participation by presenting information that is highly likely to mislead, and by disregarding traditional owners' perspectives. In September 2022 CLC facilitated a meeting with the Division and a large group of traditional owners of the Western Davenport District. During that meeting traditional owners expressed the critical importance of protecting Aboriginal cultural values. For example, Derek Walker, a resident of Alekarenge, made it clear that 'This is for everyone to say. Everyone has to agree. Need to check with us every time. Every time. When it comes to water, when it comes to land. We got to keep our cultural values for our homeland for our future generations.'

During these consultations, the Division stated that one of the objectives of the new plan will be to '*protect regional Aboriginal and other cultural values associated with water*'.

The Division's statements at that meeting were highly misleading. Instead of listening to traditional owners like Mr Walker, the Division removed the objective of protecting Aboriginal cultural values from the new Draft Plan. The previous 2018 Plan for the district recognised that Aboriginal people from the Western Davenport District have a strong connection to country, and one of its central objectives was to '*protect Aboriginal cultural values associated with water and provide access to water resources to support local Aboriginal economic development*'.⁵⁴ In contrast, the new Draft Plan states that the Water Controller, in issuing water licences in the plan area, now only needs to '*consider Aboriginal and other cultural values dependent on water*'.⁵⁵

The new Draft Plan does not protect Aboriginal cultural values at all. Aboriginal objectives, as traditional owners made clear to the NTG in September 2022, prioritise protection of cultural values and sacred sites. Traditional owners were deeply angry about this disingenuous consultation and change to the plan. They expressed their anger and disappointment during a meeting held in late April 2023:

⁵³ NWI 2004, (52)

⁵⁴ 2018 WDWAP, p. 6.

⁵⁵ Draft WDWAP 2023-2033, p 9.

Mr Beasley stated: 'They have already taken everything already. What more do they want? ... They have already taken everything away from us.'

Alekarenge resident Mr Corbett, said: 'government mob aren't listening... they replaced our input with their input... like taking our power, putting their power in... why can't the Minister listen to us, she's changing our plan... The government doesn't understand our values.'

Kelantyerrang woman Ms Morrison, said: 'Traditional owners of the country will get sick. They are destroying something important.'

Arrawajin man Mr Wilson said: 'they want to steal our culture.'

Aboriginal people need to be formally empowered through Aboriginal designed and led structures to continue their stewardship of water resources and to ensure that impacts on culture and the environment are adequately considered in all water allocation decisions.

To this end, CLC strongly supports the Commission's focus on securing Aboriginal and Torres Strait Islander people's interests in water in the 2021 Inquiry Report the associated renewal advice.⁵⁶ However we submit the recommendations could be strengthened for a refreshed NWI.

Recommendation 11: The Commission reiterate its recommendation for new water resource management objectives to 'enable strengthened and enduring standing and influence for Aboriginal and Torres Strait Islander people in water planning.'⁵⁷

Recommendation 12: The Commission reiterate renewal advice 9.1 for an objective and new element dedicated to Aboriginal peoples' access to water and involvement in water management in a refreshed NWI. However:

3. this advice should be explicit that this must be a separate objective (not incorporated into an objective for public benefit objective more broadly, for example); and
4. developing the new element should be informed by broader consultation with Aboriginal peoples and their representative organisations beyond CAWI.

Recommendation 13: The Commission reiterate Australian government and jurisdictions' commitments under the National Agreement on Closing the Gap and recommends that a refreshed NWI must explicitly align with these commitments.

Recommendation 14: The Commission recommend that a refreshed NWI requires that water plans explicitly *protect* Aboriginal cultural values, and that each jurisdictional action plan must clearly set out the mechanism to protect cultural values. This mechanism must involve assessments of Aboriginal cultural values with are led by the affected Aboriginal people for each licence *before* it is granted.

Recommendation 15: The Commission recommend the inclusion of the UN Declaration on the Rights of Indigenous Peoples in the refreshed NWI and each jurisdictional action plan.

Recommendation 16: The Commission recommend that a renewed NWI commit to the principles of self-determination and free prior and informed consent, as per national and international requirements.

⁵⁶ Productivity Commission 2021, Ch.9

⁵⁷ Productivity Commission 2021, p45

Joint Land Council resolution, Barunga 7 June 2023:

The Central Land Council and Northern Land Council recognise water, land and Aboriginal people are deeply connected. Aboriginal people have responsibilities to protect their country, its environments and their families for future generations and demand recognition of their rights to traditional waters to allow them to fulfil these responsibilities. Aboriginal people have been the stewards of our waterways for millennia. Aboriginal people have a right to good drinking water so that we can live well in our communities and homelands.

We have been asking for too long and waiting for too long for stronger water laws that respect the knowledge, rights and responsibilities of Aboriginal people.

We welcome bold and strong water reform, but it must be developed in consultation with Aboriginal people from the start, and protect and promote our rights and interests to water. Water is for all of us.

We call for [water laws] that make sure:

- a) The process of reform is transparent and Aboriginal people have a central role from the start, with the support of Land Councils
- b) Country and cultural values are properly protected, based on direction and assessments by traditional custodians with support of Land Councils
- c) All decisions and projects that may impact Aboriginal lands and waters require free prior and informed consent
- d) Aboriginal people's rights to access and use water for cultural practices and economic development are protected
- e) There is power to specifically reserve water for future drinking water supply above other beneficial uses

Accounting for native title rights

Parties agreed under the NWI that 'Water planning processes will take account of the possible existence of native title rights to water in the catchment or aquifer area. The Parties note that plans may need to allocate water to native title holders following the recognition of native title rights in water under the *Commonwealth Native Title Act (Native Title Act) 1993*.'⁵⁸

The Commission's 2020 Inquiry stated that 'The NWI requires signatories to take account of native title rights, and to account for water allocated to native title holders.'⁵⁹

CLC submits that in the NT DEPWS has consistently failed to comply with the relevant provisions of the Native Title Act in relation to groundwater extraction licences.

The Native Title Act states that an act 'affects' native title if it extinguishes native title rights and interests or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.⁶⁰

⁵⁸ NWI 2004, (53)

⁵⁹ Productivity Commission, 2021, [Assessment of National Water Initiative implementation progress \(2017–2020\)](#) - Productivity Commission National Water Reform 2020 Inquiry Report, No. 96, 28 May 2021 p. 39

⁶⁰ Native Title Act s 227.

The Native Title Act is clear that water extraction permits or licences constitute 'Future Acts' under S24HA. Section 24HA (7) of the Native Title Act operates such that, before a groundwater extraction licence is granted, the NT Government must first notify any registered native title claimants or determined native title holders of the land or waters that will be affected. The native title representative body must also be notified. In each case, notification must comply with the *Native Title (Notices) Determination 2011 (No. 1)* (Cth). The NT Government must give the above-mentioned native title parties an opportunity to comment on the proposed act before it is done.

Moreover, under section 24HA(5)-(6), native title holders are entitled to compensation, payable by the NT Government, for any deleterious effect of the act on their native title.

However, the Central Land Council has no record of receiving a notice under section 24HA(7). This is despite public records showing over 60 groundwater and surface water extraction licences in the CLC region. This ongoing failure to comply with the Native Title Act:

- a) denies Aboriginal people the ability to realise their basic rights under the Commonwealth statute;
- b) withholds any reasonable opportunity from native title holders to know in advance about significant water extraction activities that are planned for their country
- c) Risks degradation of sacred sites and cultural landscapes through the over-allocation of water that will impact upon native title causing compensable cultural loss. The NT Government are accruing compensation liabilities each time they grant a water licence.

CLC urges the NT Government to acknowledge that water licences are future acts and give procedural rights accordingly.

CLC is concerned that the Commission's 2020 Inquiry makes no mention of native title rights to water except for quoting the submission by Murray Lower Darling Rivers Indigenous Nations (MLDRIN).⁶¹

Recommendation 17: the Commission recommends that the renewed NWI emphasises the need for jurisdictions to recognise native title rights and comply with the Native Title Act, and reference the Future Acts provisions as part of the advice.

Limitations of Aboriginal Water Reserves

The Commission's 2020 Inquiry also states that 'In addition to accounting for native title rights in water planning processes, some States and Territories are creating alternative ways for Traditional Owners to access water based on recognised native title rights'.⁶² It states that this is occurring in the NT as the 'Strategic Aboriginal Water Reserve Policy sets aside a percentage of water in the water allocation plan for eligible Aboriginal rights holders.'⁶³

The Aboriginal Water Reserve Policy Framework was introduced by the NT Government in 2017 as a mechanism for Aboriginal economic empowerment. While the intent of the policy framework has had broad support of Land Councils, we have key concerns. In summary, Aboriginal Water Reserves:

- a) Are only available in areas where the Minister has declared a water allocation plan (5% of the NT). The NT Government develops water allocation plan areas without any consideration of the desires of Aboriginal people to access or use water (as explored above).

⁶¹ Productivity Commission, 2021, p.127

⁶² Productivity Commission, 2021 Assessment report, p. 40.

⁶³ Productivity Commission, 2021 Assessment report. p.41.

- b) Are only available to Aboriginal people with rights to land under ALRA and Exclusive Possession Native Title. They are not available to those with non-exclusive native title rights. Eligibility should be broadened to encompass Aboriginal people and communities who have neither land rights nor exclusive native title. There have been very few determinations of exclusive native title in the NT, with the majority of native title being non-exclusive.
- c) Are not available where the government has already over allocated water systems. When estimated sustainable yields are downgraded, the Aboriginal Water Reserves will be partially or completely lost.
- d) Only allow for licenses for the purpose of extraction for economic use. Leaving water in the ground for environmental and cultural uses for example is not supported. This does not allow for the spectrum of Aboriginal interests in water.⁶⁴

Recommendation 18: The Commission reviews CLC’s and NLC’s submissions to the NT Parliament Economic Scrutiny Committee in relation to the eligibility criteria for the AWR⁶⁵ and consider whether it meets the NWI requirement to account for native title rights, and update advice in a refreshed NWI accordingly.

7. Erosion of meaningful stakeholder engagement and community trust

NT Government water planning processes have consistently eroded stakeholder engagement and community trust.

The Commissions’ 2020 assessment found there has been a decline in the ability for community and stakeholders to be involved in water management.⁶⁶ It also found that ‘community concern around the level of water extraction and the lack of community engagement is increasing’.⁶⁷ CLC submit that this remains the case in the NT, where the NT Government continues to curtail opportunities for meaningful stakeholder engagement and erode community trust.

Under s 23 of the Water Act, the Minister *may* establish and appoint members to a water advisory committee for the NT, part of the NT or a water allocation planning area. Water Advisory Committees are the only formal mechanism for stakeholder engagement in the water allocation process. The only other avenue is the public comment process. The Water Act does not:

1. require for Advisory Committees to be appointed;
2. provide for any specific composition requirements; or
3. specify that Aboriginal people must be part of water advisory committees.⁶⁸

The NT Government’s engagement with advisory committees is increasingly concerning. For example, in 2023: the Georgina Wiso Water Allocation Plan (**GWWAP**) was developed and gazetted without creating a Water Advisory Committee at all.⁶⁹ In Developing the GWWAP, the NT Government also, among other issues:

⁶⁴ Jackson, S., O'Donnell, E., Godden, L. and Langton, M., 2023. Ontological Collisions in the Northern Territory's Aboriginal Water Rights Policy. *Oceania*, 93(3), pp.259-281.

⁶⁵ Submissions to the Economic Scrutiny Committee are available at: https://parliament.nt.gov.au/_data/assets/pdf_file/0009/729711/Submission-2-Central-Land-Council.pdf and https://parliament.nt.gov.au/_data/assets/pdf_file/0006/729717/Submission-8-Northern-Land-Council.pdf;

⁶⁶ Productivity Commission, 2021, Assessment report, p 37.

⁶⁷ Productivity Commission, 2021, Assessment report, p 37.

⁶⁸ Water Act (s23)

⁶⁹ NT Government, 2023, [Georgina Wiso Water Allocation planning documents](#); Central Land Council, 2022 CLC Submission to the NT Government: Georgina Wiso Water Allocation planning documents.

- a) failed to engage with traditional owners and native title holders in the CLC region at all or communicate with CLC, despite 20% of the plan sitting within the CLC region
- b) Removed the objective for protecting environmental and cultural values
- c) Followed the same three-part structure as the draft WDWAP, which removed the following from the statutory WAP:
 - a. considerations of risk and uncertainty
 - b. implementation and monitoring plans (including performance monitoring)
 - c. the adaptive management framework

The below case study of the Western Davenport Water Advisory Committee reveals similar flaws.

[Case study: The Western Davenport Water Advisory Committee](#)

In the development of the new plan for the Western Davenport District, the NT Government has disregarded and misrepresented the views of the Western Davenport Water Allocation Committee (**the Advisory Committee**).

When the first draft of the new Plan was shown to the Advisory Committee, CLC joined a majority of the Committee members in rejecting it due to concerns with its development, and its failure to protect cultural and environmental values. Much of this had been removed from the previous iteration of the WAP.

When the second draft was shown to the Committee, the CLC and majority of members explicitly stated they could not endorse the Draft Plan due to concerns their feedback had been inadequately addressed. A majority of the Committee:

- a) noted that the Draft Plan demonstrates a significant departure from the comprehensive 2018 Plan to one of limited effect;
- b) expressed a significant level of frustration with the NT Government’s consultation process; and
- c) stated that the ESY contained in the Draft Plan is unsustainable and far too high.⁷⁰

Consequently, the NTG released the Draft Plan for public comment because it could not reach an agreement with the Advisory Committee as to its content and structure.

This was then misrepresented in the Draft Water Allocation Documents⁷¹ in that:

1. the Documents do not refer to the Advisory Committee’s difficult decision to refuse to approve the plan.
2. The Draft Background Report asserted that the Draft Plan had been developed with input from the Advisory Committee, which is highly likely to mislead the public.⁷²
3. The Media Release that accompanied the plan’s release also did not accurately reflect the views of the Advisory Committee. For example it stated:
 - a. ‘the draft plan was informed by robust debate and comments through the Western Davenport and Ti Tree Water Advisory Committee’; and that
 - b. ‘...other key comments and concerns raised through the Committee have been addressed in the draft plan. The objectives of water sharing have been strengthened’.⁷³

⁷⁰ Western Davenport Water Advisory Committee, [Meeting 7 Minutes](#) 24 January 2023

⁷¹ NT Government, [Draft Western Davenport Water Allocation Plan 2022-2032 documents](#)

⁷² Draft WDWAP Background Report, p.7.

⁷³ DEWPS, Media Release: *Have Your Say on the new draft Ten-Year Western Davenport Water Allocation Plan*, 24 March 2023.

Finally, when public submissions were due for the draft plan, the NT Government had still not published the minutes of the final Advisory Committee meeting on 24 January 2023. This served to curtail stakeholder engagement and limit the information available to the public.

CLC supports the Commission's finding that effective, thorough and well-informed community engagement is a prerequisite of good water governance.⁷⁴

Recommendation 19: the Commission to reiterate its recommendations that all governments must 'recommit to best-practice, cost-effective engagement with their communities on all water matters' in a renewed NWI. The community engagement framework should ensure that:

4. governments are clear about the purpose of their engagement and the role of communities in decision making;
5. all stakeholders have the opportunity to meaningfully input to the engagement process, and are proactively encouraged to do so; and
6. the effectiveness of community engagement is enhanced through improved water information accessibility and comprehensibility and community water literacy.

Recommendation 20: The Commission recommend Commonwealth review of each jurisdiction's mechanisms for community engagement in consultation with stakeholders, to provide tailored advice on how to strengthen these mechanisms to facilitate improved stakeholder engagement. This should include review, update and monitoring of the 2017 Council of Australian Governments module to the NWI: *Engaging Indigenous Peoples in Water Planning and Management* (2017).⁷⁵

8. Drinking water services for remote Aboriginal communities and homelands

The Commission's 2020 Inquiry identifies that drinking water quality remains a significant issue in some remote communities. This is certainly the case for many remote Aboriginal communities and homelands across the NT.

Drinking water quality and security is essential for the viability, self-determination, and sustainability of Aboriginal communities across the NT. Yet remote Indigenous communities face increasing challenges arising from threats to water resources in the NT and experiencing ongoing and significant challenges in relation to the supply of adequate and safe drinking water.

As CLC has consistently submitted and reiterates here, successive NT Governments have failed to deliver healthy, safe, and reliable water supplies uniformly across the NT in accordance with the requirements of the NWI or principles of transparent and equitable governance.⁷⁶ This is particularly evident in remote Aboriginal communities and homelands.

According to the most recent publicly available data from 2022, 63 out of the 72 remote communities in the NT supplied with reticulated water by the government-owned Power and Water Corporation, received water that does not meet the standards of the Australian Drinking Water

⁷⁴ Productivity Commission, 2021, p.205

⁷⁵ Council of Australian Governments 2017, Module to the National Water Initiative (NWI) Policy Guidelines For Water Planning And Management: [Engaging Indigenous Peoples In Water Planning And Management](#)

⁷⁶ Central Land Council, 2020, Central Land Council Submission to Productivity Commission on National Water Reform, 21 August 2020; CLC Submission on the Draft Territory Water Plan (25 November 2022); CLC Submission to the Northern Territory Government: Northern Territory Strategic Water Plan Directions Paper (3 February 2022) all available on CLC [website](#)

Guidelines in the last reporting year.⁷⁷ In 2020 all but one remote community in the CLC region were classified as having a high, very high or extreme risk rating in relation to drinking water security.

It is important to note that CLC has not been privy to updated results on water security since 2020⁷⁸ as data on water security (supply) is no longer made publicly available in the NT.

Drinking water exceeds aesthetic parameters (for taste, smell, appearance) in a majority of remote communities across the NT and in 100% of the communities in the CLC region.⁷⁹ This has significant social, health and infrastructural implications, including in relation to:

1. hygiene;
2. not drinking enough water;
3. buying bottled water;
4. adding sweeteners to unpalatable water;
5. drinking soft drink instead of water;
6. infrastructural corrosion; and
7. scaling.

Unacceptable drinking water is inconsistent with the human right of everyone to 'sufficient, safe, acceptable and physically accessible, and affordable water'.⁸⁰

In homelands on Aboriginal land, public water supply is privately managed and unregulated, and there is no water quality or security data at all.

CLC's submission to the Productivity Commission on National Water Reform 2020 (at **Appendix 1**) provided a comprehensive analysis of the implementation of the NWI with regards to drinking water quality and security in the NT. Appendix 1 is to be read as part of this submission, as its findings and recommendations remain highly relevant for the current review. It articulates how the current legislative regime for water service provision is fragmented and unequal, detracting from its capacity to meet the requirements of the NWI.

Key findings from the submission include the following.

[There are significant limits and gaps in the regulatory regime for drinking water in the NT](#)

The NT drinking water system privileges certain (urban, predominantly non-Indigenous) populations over others (remote, predominantly Indigenous). In sum:

- a) There is no general power to reserve water for drinking water supply against other uses in the Water Act.
- b) There are no mandated minimum standards set for drinking water quality across the NT. Instead, authorities use an unenforceable Memorandum of Understanding to guide testing, monitoring, and management regimes.
- c) Different legal regimes govern how drinking water is supplied depending on the context in the NT. Specifically, the key legislation regulating the supply of drinking water, the *Water Supply and Sewerage Services Act* (NT) (**WSSS Act**), which requires water supply to be licensed (to Power and Water Corporation) and regulated by the Utilities Commission, only

⁷⁷ Power and Water Corporation 2022, [Drinking Water Quality Report](#)

⁷⁸ CLC 2020 Submission on National Water Reform.

⁷⁹ Power and Water [Drinking Water Quality Report 2022](#)

⁸⁰ United Nations Committee on Economic Social and Cultural Rights. 2002. General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights).

applies in the NT's 18 gazetted towns (including the major centres of Darwin, Katherine, Tennant Creek, and Alice Springs). In the 72 major Indigenous communities and some larger outstations, a private subsidiary of Power and Water Corporation (Indigenous Essential Services) provides water services with no legislative or regulatory oversight. This has resulted in a fragmented and racialised 'archipelago' of water governance in the NT, in which different standards apply to various jurisdictional 'islands'.

There has been inadequate implementation of the requirements of the NWI with respect to urban/regional water supply.

As of February 2024, these failings continue to include the following.

There is no regulator of safe drinking water across the NT

The NWI requires differentiation between water resource management, standard setting, and regulatory enforcement functions. This requirement presupposes the existence of regulatory frameworks for water provision. However, in the NT, there is no regulator of water supply outside the 18 towns (where the Utilities Commission provides limited oversight). There is no regulator of drinking water safety across the NT (the Department of Health instead oversees drinking water safety pursuant to an unenforceable Memorandum of Understanding with Power and Water Corporation). This does not meet the requirements of the NWI.

This was reported by the Commission's 2020 review,⁸¹ however has not yet been addressed as of February 2024. Under the Territory Water Plan the NT Government has committed to developing a Safe Drinking Water Act by 2025.⁸² The CLC has long advocated for safe drinking water legislation as a key priority of its constituents and welcomes the NT Government's commitment to developing and legislating a Safe Drinking Water Act, which intends to guarantee safe drinking water and regulate suppliers across the NT.

However, the legislation is not yet introduced and CLC remains concerned with its development and the fact that the legislation will not be finalised until after the August NT election. We will ultimately need a suite of legislative reforms to ensure whole of Government service delivery and an overall and consolidated strategy that shows how this Act will fit with other legislation, policies, programs and funding streams to provide good drinking water for all Aboriginal communities across the NT.

Joint Land Council Resolution, Barunga 7 June 2023:

We call for Safe Drinking Water Legislation that:

- a) Ensures a right to a secure supply of safe and acceptable water for drinking and development
- b) Is developed with input from remote communities at all stages, as advised by Land Councils
- c) Makes sure service providers are transparent and accountable to remote communities, and properly monitored by an independent regulator
- d) Is accompanied by sufficient funding and training opportunities to fix and maintain remote water infrastructure, including for supporting homelands

All funding and programs for drinking water supplies in remote communities must be driven by the priorities and input of remote communities and Land Councils. All programs must cover ongoing maintenance and should invest in local training and job opportunities.

⁸¹ Productivity Commission, 2021, Assessment Report, p.89

⁸² NT Government, 2023, Territory Water Plan

CLC strongly supports and welcomes the Commission’s recognition of the ongoing water service provision issues in remote communities. We support the recommendation for a renewed NWI that emphasises water service provision in remote communities through modernised overarching objectives to ensure equitable provision of water services in a changing climate.⁸³

Recommendation 21: The Commission reiterate its advice 12.4 for a renewed NWI to ensure a basic level of service for all Australians and that where subsidies are needed, they should be provided as transparent community service obligation payments. Individual remote communities must be actively involved in determining their required level of service and hence requirements for water service provision.

Funding for essential services in the NT is not transparent

The NT has failed to implement the requirements in the NWI for water subsidies to be transparent, including with respect to the payment of Community Service Obligations (CSOs) where full cost recovery is not achievable. Funding of water services in remote communities instead occurs via opaque recurrent grants from the NT Department of Territory Families, Housing and Communities to Indigenous Essential Services.

CLC welcomes the Commission’s analysis of state government funding of high-cost urban water systems in its 2020 Inquiry. The Assessment Report also found that the NT Government’s use of CSOs and grants is not transparent or consistent with the NWI.⁸⁴ This remains unaddressed by the NT Government.

Recommendation 22: the Commission reiterate and update its findings regarding transparent use of CSOs and specifically examine why the NT Government has not made satisfactory progress towards a transparent system. The requirement for transparency and accompanying principles to be embedded in a refreshed NWI.

Indigenous Essential Services is largely unaccountable

The policy of mainstreaming service provision involved the assumption of essential service provision by the state. However, the present arrangements do not meet the reforms required by the NWI or by good governance more generally. Numerous issues related to Indigenous Essential Services require further investigation and potential reform, related to: limited reporting; absent oversight; opaque funding arrangements; unclear service arrangements; opacity in infrastructure funding allocation; public accountability; and public transparency.

CLC strongly supports the Commission’s recommendations to improve monitoring and reporting in remote communities. For places where water quality is not monitored, for example in homelands in the NT, water quality issues are ‘invisible’ and these data gaps should be prioritised for resolution.⁸⁵

CLC support the development of a national drinking water quality database, ensuring that decision-making processes and data practices are consistent with Indigenous Data Sovereignty and Governance. This national drinking water quality database would be enhanced by the inclusion of acceptability and reliability. Furthermore, the integration and public reporting water quality and security monitoring results would improve transparency of government agencies.

⁸³ Productivity Commission 2021, p. 19

⁸⁴ Productivity Commission 2021 Assessment Report, p.88

⁸⁵ Wyrwoll et al. 2022

Recommendation 23: the Commission should investigate the reforms required for Indigenous Essential Services to satisfy the expectations of the NWI

Recommendation 24: The Commission reiterate its renewal advice 12.6 for monitoring on regional and remote service quality, however adding that:

- c) this reporting should include reporting on drinking water security, and
- d) be made publicly available.

Further feedback on the Commission’s NWI Renewal Advice

CLC strongly support the Commission’s renewal advice 3.3 for the NWI to include modernised overarching objectives regarding adaptation to climate change, recognition of the importance of water in the lives of Aboriginal and Torres Strait Islander people, and greater emphasis on water service provision. We encourage the Commission to strengthen and reiterate its advice as per our recommendations above.

CLC strongly supports the Commission’s conclusion that ‘Reforms to water access entitlements and planning should be maintained and enhanced’ and that a key area for further attention in a renewed NWI is:

‘ensuring that water planning adopts best-practice principles, including that it is fit for purpose, recognises the needs of Aboriginal and Torres Strait Islander people, clearly specifies environmental objectives and outcomes, is based on an assessment of the trade-offs between environmental, social and economic outcomes, involves appropriate engagement with stakeholders and communities, and is independently reviewed.’⁸⁶

Given our concerns regarding the NT Government’s non-compliance with the NWI, as articulated throughout this submission, our further recommendations for a renewed NWI focus on governance to facilitate better compliance.

Recommendation 25: A renewed NWI provides the required process for the development of jurisdictional action plans, including:

- f) expectations for direct and meaningful engagement with Aboriginal people and their representative organisations and evidence of how this engagement has influenced the action plan;
- g) jurisdictional progress against previous NWI elements with clear and measurable targets where non-compliant;
- h) a process for Commonwealth support and review expertise to support plan development
- i) opportunities for community feedback; and
- j) a process of Commonwealth review of each jurisdictional plan against renewed NWI commitments.

Recommendation 26: the appointment of Commonwealth reviewers to measure annual progress against jurisdictional action plans and produce publicly available reports

Recommendation 27: an online database that maps current compliance against renewed NWI objectives to measure progress in each jurisdiction.

⁸⁶ Productivity Commission 2021, p.73

Recommendation 28: development of Commonwealth fund to provide conditional funding support to jurisdictions with reform efforts and projects that bring water management in line with the NWI.

Appendix 1: CLC Submission to Productivity Commission on National Water Reform 2020

See full submission [here](#) and at attachment Appendix 1.

Appendix 2: CLC Submission on Draft Western Davenport Water Allocation Plan 2023-2033

CLC's key concerns and positions on the Draft Plan below. Full submission [here](#) and at attachment Appendix 1.

CLC's key concerns and positions on the Draft Western Davenport Water Allocation Documents

The current structure of Draft Water Allocation Documents, including the limited contents of the Draft Plan, is highly problematic. In its current form, the Draft Water Allocation Documents will likely result in the substantial diminishment of a public resource and the destruction of Aboriginal cultural values and GDEs. The NT Government must amend the structure and content of the Draft Water Allocation Documents to reflect the advice and recommendations of the Water Advisory Committee and address CLC's and traditional owners' concerns. The Committee must approve any water allocation plan for the Western Davenport District prior to its release. Until such a plan is gazetted, there must be a moratorium to the grant of the water licences in the Western Davenport District. The CLC strongly opposes any reliance by the NT Government on the Northern Territory Water Allocation Planning Framework in relation to the water allocation in the Western Davenport District. The framework is more than 20 years old (it was published on 6 May 2020). Reliance on that framework would result in the destruction of GDEs and cultural values.

- 1. CLC strongly objects to the minimisation of the contents of the Draft Plan, including the newly proposed structure of the Water Allocation Documents.**

CLC's position: The water allocation plan for the Western Davenport District, which is currently limited to the Draft Plan, must include all of the Draft Water Allocation Documents. The NTG must rectify the content of the Draft Water Allocation Documents to match best-practice water planning under the NWI and in other jurisdictions. The Draft Water Allocation Documents fall far short of these standards.

- 2. The NTG appears to have minimised the information in the Draft Plan to protect its own interests with no regard for the negative impact this would have on the quality of decision making about water allocation in the Western Davenport District.**
- 3. In developing the Draft Water Allocation Documents, the NTG disregarded the views of traditional owners, CLC and the Western Davenports Water Allocation Committee (WDWAC).**

CLC's position: The NTG must re-write and release the Draft Plan for public comment in a form endorsed by the WDWAC. The NTG must release the minutes of the final WDWAC meeting on 24 January 2023.

- 4. The Draft Plan fails to protect Aboriginal sacred sites and other cultural values.**

CLC's position: Any proposed water allocation plan must clearly state that one of its objectives is the *protection* of Aboriginal cultural values. The type of cultural values to be identified and managed for protection should not be in any way limited or diminished by qualifiers such as 'key' or 'significant'. All sacred sites require protection in accordance with NT law.

- 5. Establishing an Aboriginal Reference Group will not result in the protection of Aboriginal cultural values.**

CLC's position: Any water allocation plan must clearly set out the mechanism for the protection of cultural values. This must involve assessments of Aboriginal cultural values with CLC and traditional

owners for the drawdown area of each licence before licence approval. The Water Controller must take into account such assessments before making a Water Licence Decision.

- 6. Traditional owners do not want to form a separate, non-statutory Aboriginal Reference Group. The NTG must establish a water advisory committee (WAC) for the entire term of the Plan. Traditional owners must make up the majority of members of the WAC.**

CLC's position: The WAC must continue for the entire term of the Plan. The WAC should be made up of majority traditional owners. These must be male and female representatives from all estate groups in the Western Davenport District, chosen by traditional owners in consultation with CLC. Traditional owners do not want to form a separate, non-statutory Aboriginal Reference Group.

- 7. The Draft Plan fails to protect the environment.**

CLC's position: We do not accept that the preservation of environmental values needs to be balanced with economic and social benefits. The NTG must protect Groundwater Dependent Ecosystems (GDEs) and environmental values in their own right. All detrimental impacts to water dependent ecosystems as a consequence of consumptive water use must be avoided as far as possible. Any water allocation plan for the Western Davenport District must cover all water resources in the Western Davenport District including the Hanson River paleovalley aquifer.

- 8. The Estimated Sustainable Yield (ESY) contained in the Draft Water Allocation Documents is inherently unsustainable.**

CLC's position: The NTG must recalculate the ESY for the Central Plains water management zone by adopting a precautionary approach to a sustainable figure within *net* recharge of the aquifer.

- 9. The NTG has not provided any substantive or satisfactory updates from previous modelling deficiencies for the Western Davenport District and has limited baseline data for a reliable groundwater model.**

CLC's position: The deficiencies in the groundwater model underpinning the Draft Water Allocation Documents identified by CLC must be addressed. This includes NTG undertaking the necessary action identified in this submission.

- 10. The NTG has failed to provide, or not provided in a timely manner critical information requested from CLC.**

CLC's position: The NTG must make critical documents underpinning the Draft Plan available to the public for review and assessment. These documents include the Tickell and Zaar Report and Groves Note.

- 11. CLC rejects the Draft Plan's inclusion of the Guideline in the Draft Plan.**

CLC's Position: CLC rejects the use of the Guideline to manage the impacts of GDEs. The Draft Plan must clearly set out the applicable limits of acceptable change to GDEs, and drawdown criteria (environmental water requirements) for GDEs, which have been considered and approved by WDWAC.

- 12. The Draft Plan must classify the risk of irreversible damage to sacred sites and fragile ecosystems as high.**

CLC's position: The Draft Plan must include the risk assessment element. This must reflect a realistic and evidence-based assessment of risks, rather than an assessment which seeks to minimise risk levels. Some of the risks should be assessed as 'high' to 'extreme' due to: a) the lack of knowledge underpinning the Draft Plan, and b) the importance of ecological and cultural values.

13. The Draft Implementation Actions are deficient. These deficiencies will not mitigate risks to the environment, GDEs, cultural values and groundwater resources.

CLC's position: The Draft Implementation Actions need to be part of any water allocation plan for the Western Davenport District. The Draft Implementation Actions need to be carefully reviewed to ensure deficiencies are addressed.

14. The Draft Plan does not comply with national standards set by the NWI.

CLC's position: In light of the NTG's stated commitments to comply with the NWI, the Draft Plan must be re-drafted to comply with NWI.