



Government of **Western Australia**
Department of **Water and Environmental Regulation**

Summary of submissions

Managing Water in the Fitzroy River Catchment
Discussion paper for stakeholder consultation (2020)

October 2023

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Acknowledgement of Country

The Department of Water and Environmental Regulation acknowledges the Traditional Owners and Custodians in the Fitzroy water planning area and their deep and continuing connection to the land and waters of the region.

We pay our respects to Elders past and present, and to all members of the Aboriginal communities in the area and their cultures. We acknowledge the Traditional Owners have been Custodians of Country for countless generations and that water is integral to life.

We recognise that Aboriginal people and their culture across the Fitzroy water planning area are diverse and that continued custodianship of the land and water is fundamental to their health, spirit, culture and community.

We embrace the spirit of reconciliation, and we seek to listen, learn and build strong partnerships with genuine opportunities for Aboriginal people throughout our business.

The Fitzroy River and its tributaries is known by several names across its many nations, including the Martuwarra. To respect these differences in language we have not used dual naming in this summary of submissions.

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What we heard: a summary

The state government is working collaboratively to deliver its commitments to protect the Fitzroy River and its dependent values. This includes a future management plan to provide the basis for sustainable economic development, while ensuring the health of the Fitzroy River.

During 2018 and 2019 the government engaged with stakeholders and Traditional Owners to hear their views and aspirations for the river and surrounding areas. These discussions, summarised in the *Fitzroy communique*, focused on how a management plan could support critical economic opportunities while protecting the river and its values.

The *Fitzroy communique* and various technical studies informed *Managing water in the Fitzroy River catchment: discussion paper for stakeholder consultation* (the discussion paper; Government of Western Australia 2020). The technical studies included groundwater investigations by the department, surface water modelling by the CSIRO and cultural water research by the Northern Australia Environmental Resources Hub. Released in November 2020, the discussion paper sought feedback on the use of surface water and groundwater, and the management measures needed to protect the river.

Below are the main responses to the discussion paper, by group:

Traditional Owners and organisations representing Aboriginal people

want their deep connection to Country and customary obligations reflected in water law and policy. They seek decision-making roles at all levels in the planning, managing and monitoring of water resources on Country. For them, development is contingent on first achieving these goals and aligning water use with cultural heritage and environmental values.

The **agriculture and mining** sectors support water being made available. They want to see fewer regulatory burdens and deterrents to investment. All acknowledge that Traditional Owners need a role in the development of the Fitzroy River catchment. There was general support for the adaptive management approach.

The **environment sector** wants the cultural and heritage values of the Fitzroy River catchment protected. The sector were not confident that the approaches set out in the discussion paper would achieve this and question the adequacy of the supporting scientific evidence.

The **public** values the Fitzroy as a unique wild river that should be protected. Members of the public want Traditional Owners to have a greater say in what happens on Country. They are concerned about the ability and intent of government to manage water resources for the benefit of the community.

Fisheries and heritage submissions oppose irrigation development because of a perceived low chance of economic success and high risk to the river's health and fishing experiences.

The **government** sector supports the planning, management and regulatory approach proposed in the paper but seeks further information. This sector also recognises that Traditional Owners need to be involved in planning and management.

Educational institutions, based on their research, caution the government to apply the precautionary principle and not allow the take of surface water. They say the effects of climate change combined with abstraction could have significant consequences and present evidence to show the risk that water extraction poses to vulnerable species.

Introduction

This report summarises the submissions received on *Managing water in the Fitzroy River catchment: discussion paper for stakeholder consultation* (discussion paper; Government of Western Australia 2020). The comments received during the consultation process has informed water planning for the Fitzroy water planning area.

Consultation

The state government is working collaboratively to deliver its election commitments to:

- create the Fitzroy River National Park, which will extend the Dangu Geikie Gorge National Park along the Fitzroy River to the north and along the Margaret River
- develop a management plan for the Fitzroy River to ensure the health of the river and provide a basis for sustainable economic development
- not allow the Fitzroy River or its tributaries to be dammed.

In March 2018 the Fitzroy Ministerial Council, being the Ministers for Environment; Agriculture and Food; Regional Development; Water; and Aboriginal Affairs, hosted a public forum with regional stakeholders at Fitzroy Crossing. At this meeting, the government initiated the community consultation process to discuss and seek input on its Fitzroy River commitments.

From 2018, the government engaged with the community in the Fitzroy River catchment including two important groups: the Martuwarra Fitzroy River Council, which represented Traditional Owners across the catchment, and the Fitzroy Valley stakeholders reference group, which represented a cross-section of the catchment's stakeholders.

In August 2019, a stakeholder forum was held at Fitzroy Crossing, which produced the *Fitzroy communique*. This formed the basis of the discussion paper released in November 2020. The consultation period was open for an extended period to allow the Department of Water and Environmental Regulation (DWER) and Department of Primary Industries and Regional Development (DPIRD) to meet with the prescribed bodies corporate across the Fitzroy River catchment. The consultation period closed on 31 August 2021.

During the comment period DWER and DPIRD organised more than 90 activities with 11 organisations representing Traditional Owners. These included multi-day workshops, presentations at board and community meetings, and discussions with senior representatives. The intent of this work was to discuss the options presented in the discussion paper with Traditional Owners and support them to make a submission if they wished to do so.

We also held meetings and briefings with industry representatives, government departments, pastoral station owners and environment groups during the public consultation period for the discussion paper. These meetings focused on the content

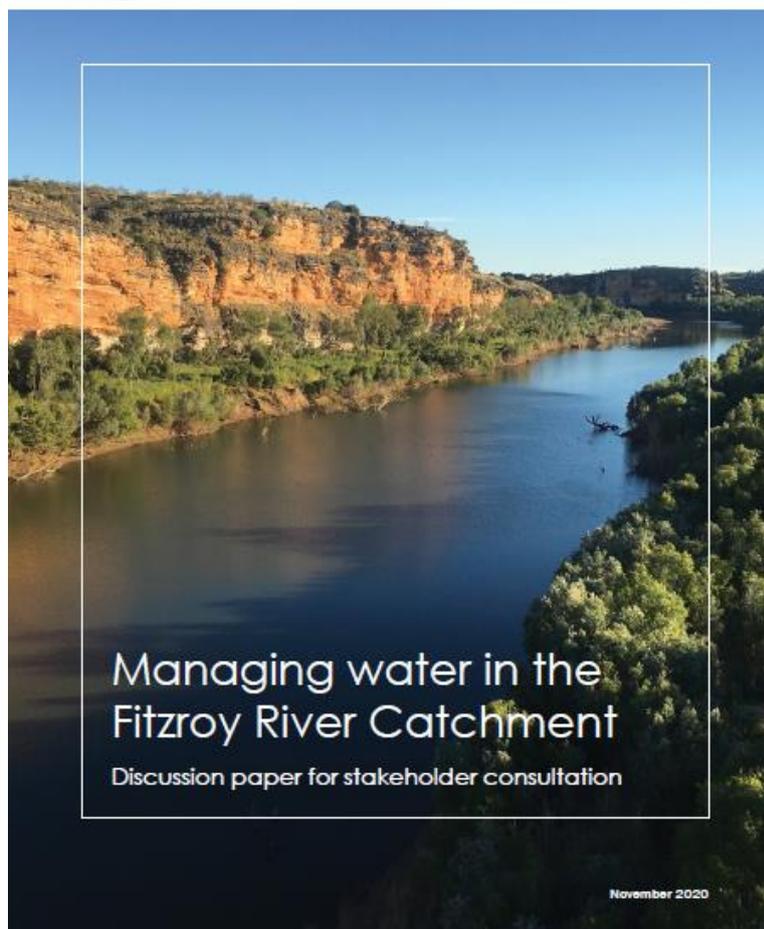
of the discussion paper and hearing the participants' initial responses to the proposed approaches.

Submissions

The discussion paper generated 43,093 unique submissions from Traditional Owners representing registered native title bodies corporate, organisations representing Aboriginal people, water users, industry, pastoralists, community groups, conservation groups, education institutions and public campaigns.

DWER and DPIRD reviewed the responses on behalf of government. This report outlines what we heard.

We thank everyone for their comprehensive submissions and comments. These are vital to water planning in the Fitzroy River catchment.



Discussion paper topics for feedback

We released the discussion paper to seek feedback on various topics related to protecting the Fitzroy River while managing the use of water to support sustainable economic development in the catchment.

Topics for feedback through the public submissions

Adaptive management approach to protect the health of the Fitzroy River

1. Establish a Fitzroy advisory group.
2. Monitoring of water resources, environmental and cultural value will be required.
3. Future investigations and work will be identified.

Not allowing the Fitzroy River or its tributaries to be dammed

4. Infrastructure that spans the width of the Fitzroy River and its tributaries will not be allowed.
5. Off-stream water storage infrastructure may be supported.

Taking groundwater

6. Up to 108.5 GL/year of groundwater could be available for allocation.
7. Restrict abstraction from the alluvial aquifer.
8. Restrict abstraction from the Devonian reef aquifer.

Taking surface water from the Fitzroy River

9. Stage the allocation of surface water resources.
10. Individual projects could be required to stage water development.
11. Rules could control when surface water harvesting could occur.

Providing opportunities for Aboriginal economic development

12. Establish a Fitzroy Aboriginal Water Reserve for native title holders to use for economic development on their native title lands when they are ready to do so.
13. A water licence would be required to access the Fitzroy Aboriginal Water Reserve.

Regulatory requirements for protecting cultural and environmental values

14. Best-practice engagement with Traditional Owners will be required as part of the regulatory approvals processes.
15. Development should avoid areas with environmental and cultural values including those already listed under existing legislation.
16. Water licensing requirements will be aligned with requirements of other Commonwealth and State environmental and heritage regulatory approvals.

Options for consideration

Option 1: up to 108.5 GL per year of groundwater would be available for use and development.

Option 2: up to 108.5 GL per year of groundwater and up to 300 GL per year of surface water to be made available for use and development.

Submissions received

Number of submissions received

We received 43,093 unique submissions during the consultation period (Table 1). These originated from multiple sources and local, regional, state and interstate locations.

Table 1 Submission grouping and number of submissions

Submission group	Number of submissions
Heritage	1
Fisheries	1
Organisations representing Aboriginal peoples	3
Government (state or federal)	3
Traditional Owners that represent registered Native Title bodies corporate	5
Agriculture and mining	5
Educational institutions	5
Conservation and environment	6
Individuals	1,092
Public campaigns – template response	41,972
Total	43,093

Public campaigns

The public campaigns run by The Kimberley Like Nowhere Else, Environs Kimberley, and Save Our Marine Life generated 41,972 standard responses from the campaign template. Individuals who modified their submission using the template, or submitted a unique response via the online portal are included in Table 1 under ‘Individuals’.

DWER commissioned an external consultancy to collate and analyse the submissions received through the public campaigns.

Seventy-three per cent of campaign submitters provided their location. They were from across Australia: 32 per cent from Western Australia, 24 per cent from New South Wales, 22 per cent from Victoria and the remaining from the other states (Figure 1). Of all submitters in Western Australia, about 10 per cent (978) were from the Kimberley region.

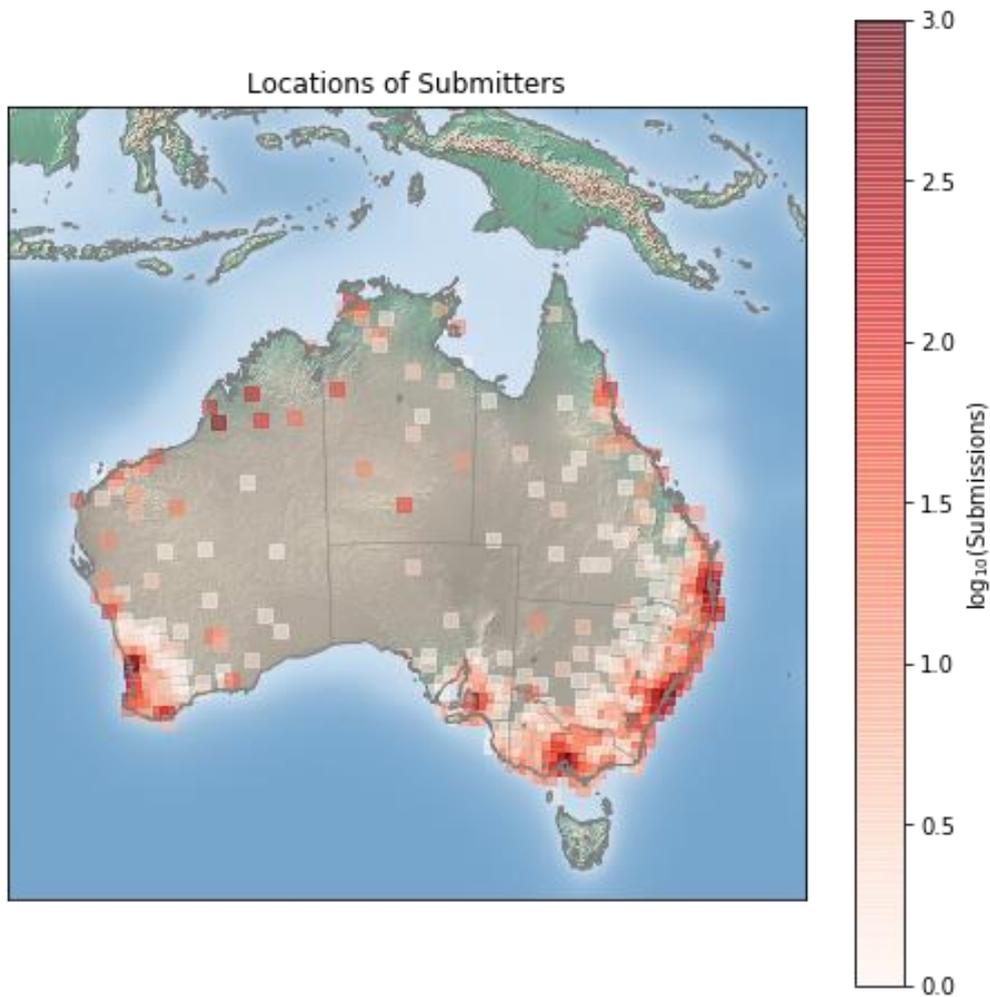


Figure 1 Location of submitters received via public campaigns
(Source: WSP 2021)

The public campaign submissions asked the government to:

- take responsibility for protecting the environment
- learn from the mistakes made in the Murray-Darling Basin
- fully consider the environmental impact of any development
- respect the wishes of the Indigenous custodians of the land and their way of life
- preserve the natural environment for future generations
- think carefully about the impact on Country.

Capturing the voice of Traditional Owners

In December 2021 DWER engaged IPS Management Consultants, a majority Aboriginal owned company, to thoroughly review all of the submissions and associated documentation from Traditional Owners, and the organisations representing them. This review sought to determine whether our summary of these was true and accurate and captured their voice.

In general, IPS found that DWER's summary was an accurate representation of feedback from Traditional Owners. It provided some amendments to improve clarity, which we adopted.

Key messages from each sector

DWER read, collated and summarised the responses from each sector to identify the consistent key messages. These are shown below. The key messages from Traditional Owners, and the organisations representing them, were part of the review described above.

Traditional Owners represented by their registered Native Title bodies corporate:

- say it is critical to protect the river and Country
- request further information to provide an informed view, with many being against the options proposed at present
- seek protection of rights and interests in water
- want to be meaningfully involved in policy development, planning, monitoring and management and have a primary decision-maker role (with the authority to say no to development impacting on cultural sites)
- want to be involved in an advisory group and seek co-design with government
- seek free, prior and informed consent to water developments (some groups)
- want to be engaged in water developments to ensure Country is protected
- want a sustainable economic future and jobs for young people through initiatives that have their full involvement and participation in decision-making
- had mixed views on the value of Aboriginal Water Reserves and want a wider discussion on the concept (the government needs to provide clarity)
- seek equitable access to water (some groups)
- do not believe they should be restricted from water or need a licence to take water (some groups)
- seek support and resourcing for economic development opportunities
- say that water must be managed to meet their needs, as a priority.

Organisations representing Aboriginal people (peak bodies and organisations):

- propose a statutory catchment authority in place of an advisory group
- say that Native Title parties seek rights to water equivalent to rights to land under the federal *Native Title Act 1993* (Cth.)
- do not support the options presented because the proposed allocation limit is too high or see potential for cultural heritage, rights and interests to be impacted
- say current regulatory practices are inadequate to protect cultural heritage
- seek free, prior and informed consent from Traditional Owners during development of any Aboriginal Water Reserve policy
- want the 'no dams' policy to extend to all infrastructure that captures water on the floodplain and any tributaries of the river catchment
- suggest the integration of Traditional Owners' ecological knowledge into planning and management
- say transparent data and sound compliance and enforcement mechanisms are needed
- want a moratorium on water licences until abstraction impacts are understood and a co-design process with the Traditional Owners is complete
- say a water allocation plan is an incomplete tool for protecting the Fitzroy River catchment and its heritage
- recommend a precautionary approach to water allocation based on greater levels of scientific knowledge with certainty of outcomes
- express concern that climate change introduces uncertainties and that these are not adequately addressed.

Heritage advocates:

- support protection of the river and oppose irrigation development because of a low chance of economic success and high risk to the river's health
- want a legally enforceable buffer zone to stop water extraction and dams beyond those needed for stock and communities
- believe the cultural values of the river depend on the relationship between Traditional Owners and water
- say the risk to the iconic recreational barramundi fishery and its value to the region is not reflected in the paper
- say the health of the river is essential to survival of the Freshwater Sawfish; that is, the extreme risk to this and other threatened species from abstraction and pollution is not reflected in paper
- believe the discussion paper does not capture the input of scientists, Traditional Owners and the broader community

- say that without attention to the immense cultural significance of the river, water planning is an incomplete tool to deliver the government's commitments to protect it.

Agriculture and mining (companies and representatives):

- support Option 2, surface and groundwater, as a minimum
- want policy for Aboriginal Water Reserves to have a separate and properly resourced consultation process
- say allocation volumes are too conservative
- want decisions to be transparent and science based
- support the proposed adaptive management approach
- say the individual staging approach is too restrictive
- feel concerned about the surface water management rules and require more information
- do not support measures that hinder investment opportunities
- believe there is adequate science, knowledge and regulatory tools to manage water take and protect the river
- support Traditional Owners being engaged as part of development opportunities
- say prescribed bodies corporate are not adequately resourced to effectively contribute to the water licensing process
- support the establishment of an advisory group subject to equal representation of all stakeholders.

Fisheries:

- want a river management plan to be developed before a plan to extract water
- support the 'no dam' policy but want it to extend to all tributaries, creeks and capture of overland or floodplain flow
- say the paper does not adequately address or discuss the effects of climate change and its impact on the river
- cannot consider the consequence of peak flow capture on barramundi recruitment because of insufficient information
- want other land management issues to be addressed before water is taken.

Government (state and federal) agencies:

- have differing focus areas depending on whether the agency is development or regulatory focused
- generally support the planning, management and regulatory approach proposed in the paper, but seek further information

- support in principle the monitoring framework but suggest consideration of cumulative impacts, measurement of impact, and publicly available environmental data
- say that proposals likely to have a significant impact on a listed place will need to be referred to the Environmental Protection Authority for assessment
- point to a need for Traditional Owner consultation with best-practice engagement
- support Option 2, surface and groundwater, as the best opportunity for economic and social development for the region and its people.

Education institutions (universities and research hubs):

Education institutions submitted information based on their research which provides evidence that:

- the role of a Fitzroy Advisory Group to align with Traditional Owner co-governance rather than just advice
- support a decision-making role for Traditional Owners in approving water licences
- support Traditional Owners to be involved in monitoring and management
- say the baseline data is not sufficient for effective adaptive management
- say the catchment requires a water monitoring plan that is publicly transparent, independently evaluated and supported with good compliance and enforcement
- seek further information about the science and modelling that underpins the approaches presented
- say climate change will result in increased temperatures that could exacerbate water use impacts
- point to surface water flows being required for ecological needs and say 300 GL in a medium wet season would have a significant impact
- support Traditional Owners to be involved in setting rules for the take of surface water
- say Traditional Owners desire a better understanding of the impact of groundwater abstraction
- say Traditional Owners are interested in existing economic opportunities and nature/culture-based opportunities
- predict that applicants will need to provide substantial resources to enable best-practice engagement with Traditional Owners
- say there is a clear message from the community against large developments, as these have a higher risk of local impacts and questionable potential to deliver benefits across the Fitzroy community
- support considering small-scale development
- say Aboriginal cultural values are more than water in the landscape

- support the ‘no dams’ policy but say it should extend to all tributaries and floodplain harvesting (and want more information on how this policy applies to inverted weirs)
- say land management impacts need to be considered in water licensing.

Environment and conservation organisations:

- say the State Government should co-design a governance model for the Fitzroy River Traditional Owners, including the Martuwarra Fitzroy River Council
- want a culturally appropriate river management plan to be developed with an irrigation impact assessment – before a water allocation plan
- suggest that impacts from land clearing, pollution and livestock be assessed cumulatively and factored into a water allocation plan
- say a water allocation plan is not adequate for the protection and sustainable development of the Fitzroy River
- want cultural and heritage values to be a priority consideration in water licence decisions
- say there are cumulative impacts of land use that establishment of an irrigation industry would exacerbate
- believe adaptive management is inappropriate due to the difficulty in reducing a licensee’s water entitlements
- query the department’s capacity to evaluate and adaptively manage impacts
- want baseline data to be established, and benchmarks set for effective adaptive management
- say there is a lack of baseline data for other aquatic species besides Freshwater Sawfish
- point out that the Fitzroy River is globally important as habitat for Freshwater Sawfish
- say the impact of extracting peak flows on Freshwater Sawfish recruitment is uncertain and could be detrimental, and is therefore unacceptable
- suggest water harvesting during high flow periods may adversely affect the relationship between the body condition of Freshwater Sawfish, and energy and temperature
- believe current modelling is insufficient in temporal and spatial scale to give high confidence in predictions of impact, particularly in years of low flows
- say dry season pool permanence depends on the intrusion of cold groundwater
- believe an irrigation industry, once established, will incrementally demand more water over time and a ‘no dams’ policy may be reversed by future governments
- say water pollution is a likely consequence of large-scale cropping, particularly on the floodplain

- believe irrigated agriculture will result in large-scale clearing for cropping and water storage
- say the government's consultation process and options presented in the paper suggest that irrigated agriculture is a predetermined outcome
- feel there is no social licence for an irrigation industry and economic viability is marginal
- believe irrigated agriculture will not address unemployment and socio-economic disadvantage among Aboriginal people
- say a strategic Aboriginal Water Reserve is unlikely to have economic value for Aboriginal people and is contrary to their cultural priorities and aspirations
- want economic opportunities for Aboriginal people to be sustainable and culturally aligned, as well as investigated in partnership with Traditional Owners
- suggest the engagement process for water allocation planning is at the low end of the spectrum of options for engaging with Traditional Owners and not best practice
- point to climate change being one of the greatest risks to the Fitzroy River system and ask that it be given greater consideration, especially in the context of water extraction
- want Traditional Owners to be part of the planning process and resourced to contribute
- want Traditional Owners to be involved in monitoring programs and ongoing management
- say the discussion paper does not provide free, prior and informed consent
- say the proposed allocation of 108.5 GL/yr groundwater is too high (except one submitter who says it could be sustainable if dry season refuges are protected)
- want further information about the values of Grant Poole and groundwater-dependent ecosystems
- say the proposed surface water allocation of 300 GL is not sustainable and cannot be adequately managed by the department
- believe surface water abstraction is incompatible with the cultural values for which the river has been listed and suggest establishment of a floodplain buffer
- want the 'no dam' policy to be extended to floodplain harvesting, with the passage of fish at Camballin Barrage to be improved through removal, or installation of a fishway.

Public campaigns:

- emphasise that the Traditional Owners consider the Fitzroy River a living, sacred, ancestral being
- say the discussion paper does not provide native title holders with the full consultation, consent and ongoing role in management that they have called for

- point to the Fitzroy River being of outstanding value to Western Australia and the nation (the river is the state's largest listed Aboriginal Heritage site with numerous listed sites along the river and on the floodplains, and it supports biodiversity found nowhere else on earth)
- believe the approach outlined in the discussion paper does not provide a mechanism for adequately protecting the National Heritage-listed Fitzroy River or its critically endangered species, such as the Freshwater Sawfish
- say the National Heritage-listed cultural values of the river depend on the relationship between Traditional Owners and water, and suggest this relationship be incorporated into protection and management frameworks
- say the health of the river is essential to the survival of the critically endangered Freshwater Sawfish and a recreational barramundi fishery that is of significant social and economic value to the region and the state
- suggest that the State Government's election promises to protect the Fitzroy River can only be effectively realised by developing a sustainable and culturally sensitive management plan, well in advance of any planning to allocate living water to irrigated agriculture
- want a legally enforceable buffer zone to prevent water extraction and dam construction beyond those needed for stock and communities
- say the paper does not capture the input of scientists, Traditional Owners and the broader community during the past four years
- support the protection of the river and oppose irrigation development on the grounds of a low chance of economic success and high risk to the river's health
- say pollution from agricultural development would be a significant likely risk, especially to dry-season pools
- urge the State Government to recommit to a co-design process with Traditional Owners as the driver of protection of the Fitzroy Rivers' values
- want the State government to put in place the necessary plans and resources to ensure the relationship of all people with the Fitzroy River is one that respects, benefits and honours duties and obligations.

Individual submissions

- express strong and emotive concern about the proposed options in the discussion paper (many submissions)
- caution the government not to make the same mistakes in the Fitzroy River catchment as those seen in the Murray-Darling Basin (many submissions)
- see development as inconsistent with the cultural and heritage values of the area
- want Traditional Owners to be duly recognised, have their rights respected and be involved in decision making
- say the proposed environmental protections are inadequate
- suggest there isn't enough ecological knowledge to allow risks to be managed

- want the values of the Fitzroy as a wild river to be protected
- believe the community, not individuals, should benefit from a state-owned resource
- say the economic and employment opportunities are overstated
- want climate change to be properly considered in any decisions made
- oppose the take of surface water (more than 99 per cent of individual submissions)
- oppose the take of groundwater (very few supported).

Next steps

The Government has released the 'Water allocation planning in the Fitzroy – Policy position paper'. This directly considers the information we have received through the Discussion paper submissions, and the discussions held across the catchment.

The Position paper details the policies we will use to develop the draft Fitzroy plan. A draft Fitzroy plan for public comment, will describe the approach to managing water resources in the Fitzroy River catchment, detail our policy positions on water availability and licensing, and guide applicants and Traditional Owners on the water licensing process.

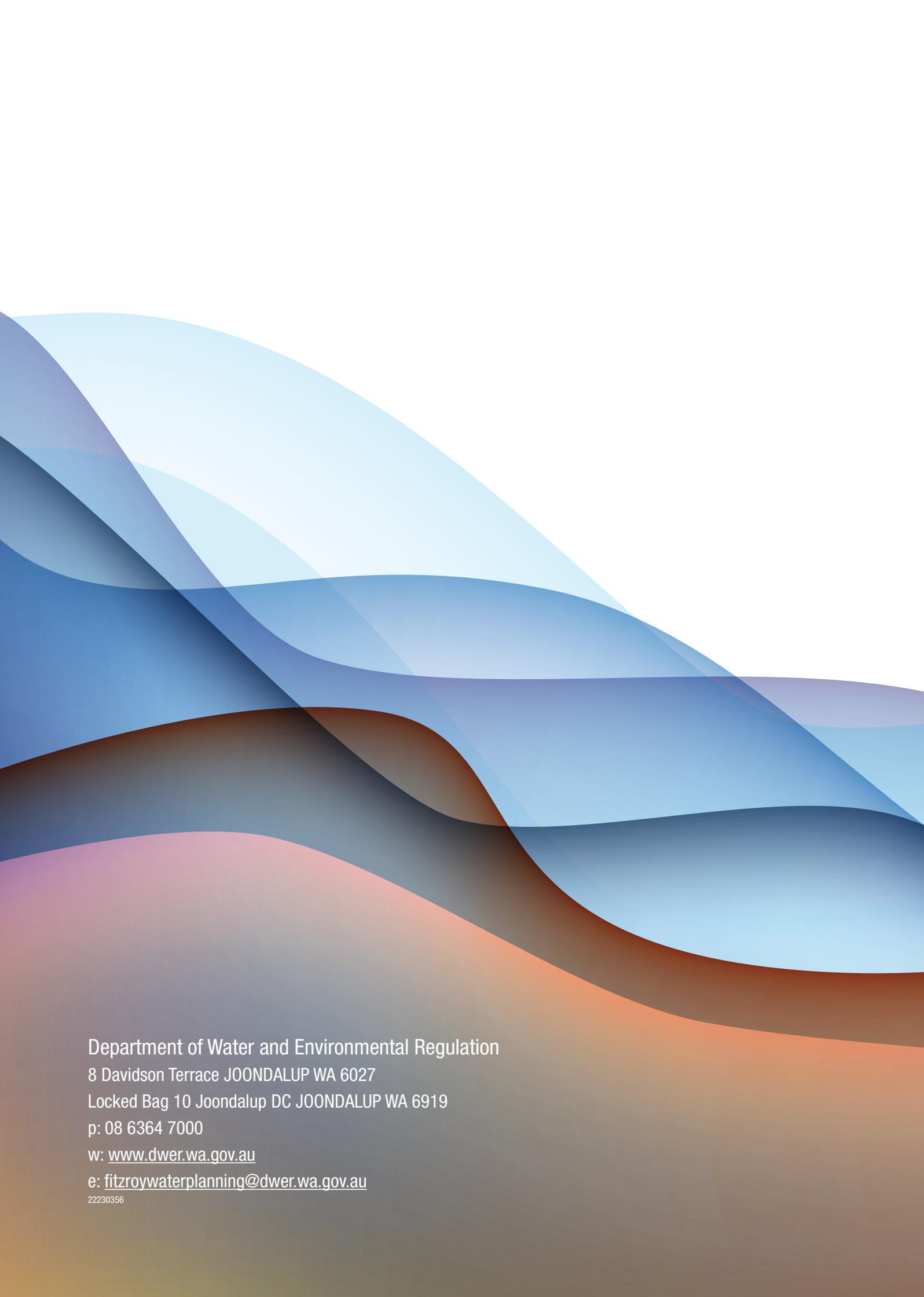
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