

To: Department of Water and Environmental Regulation

Re: Derby Groundwater Allocation Plan

30 June 2021

Introduction

AMEC appreciates the opportunity to provide a submission to the Department of Water and Environmental Regulation (DWER) consultation on the Derby groundwater allocation plan (the plan). As an active participant of the Department's Water Resources Reform Reference Group, AMEC requests continued consultation as the recommendations from the plan are further discussed and gradually implemented, to ensure there are no unintended consequences for Industry.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 375 member companies across Australia, with the majority having project interests in Western Australia. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people, and in 2018/19 collectively paid over \$39 billion in royalties and taxation. In 2019/20 resources companies invested \$35 billion in new capital and generated more than \$176 billion in mineral exports. \$2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year.

Derby Groundwater Allocation Plan

General feedback

Effective water management that permits sustainable development without disadvantaging any commercial or residential groups, is an important balance State and Commonwealth Governments are trying to manage. The development of mining projects is contingent on reliable, affordable and secure access to water. Measures that introduce elements of prescription and increased costs, do not support the ambitious growth and recovery intentions of the Government, and should be avoided.

Adaptive management practices which have well-consulted and carefully implemented governance models, which are regularly reviewed for efficacy, are the recommended avenue for water management across the State. In order to continue attracting investment so minerals projects can continue delivering long-term benefits to the community, the State's water access arrangements need to align with Commonwealth requirements, to prevent excessive prescription and duplication, that will inevitably result in higher costs to Industry, and unnecessary delays to project approvals.

Industry Feedback

Industry is already heavily regulated, against State and Commonwealth legislation. The cost to operate in Western Australia is comparatively high. However, our excellent mineral prospectivity and proven successful history of mining, makes us an attractive investment destination.

AMEC provided a submission to the Department's *Managing Water in the Fitzroy River Catchment* consultation process in December 2020. Our comments remain similar and relevant to this discussion, in that water management is a contentious issue, requiring effective policy to manage the balance between competition for its use, particularly as demand increases.

The proposed Derby Water Allocation Plan, intended to replace the *Derby Groundwater Management Plan* (WAWA 1992), for water management in the Wallal Sandstone and Erskine Sandstone aquifers, is anticipated to set a precedent for further water reforms in the State. As such, it is important the policy framework is robust and will not result in unintended consequences.

Aboriginal Water Reserves

The proposed creation of the Derby Aboriginal Water Reserve (AWR), extension of the existing water plan boundary, and the creation of management zones and reserves of additional water are measures intended to provide economic development opportunities to Derby native title holders on native title lands when ready to do so. AMEC agrees that no group should be disadvantaged by limiting access to water. However, as previously expressed, as demand for groundwater increases, noting in some regions within Derby, water for general consumption is already fully or over-allocated, the efforts to promote economic development opportunities could have an inverse effect. Industry does not want to see changes to the water framework result in reduced investment attractiveness, reflective of water access issues experienced in other areas of the nation.

Nationally, the only other jurisdiction to have explored wide-scale implementation is the Northern Territory, an introduction intended to encourage eligible Aboriginal rights holders to negotiate with third parties to provide access to part of the Strategic Aboriginal Water Reserve. The rights holder could then derive an economic benefit from their right. A discussion paper was issued in 2017 defining 'Strategic Aboriginal Water Reserves' as "a reserved percentage of water from the consumptive pool within a Water Allocation Plan area exclusively accessible to eligible Aboriginal people to use, or trade"¹. In 2018 the *Water Legislation Amendment Bill 2018* then passed parliament, providing for the allocation of Strategic Aboriginal Water Reserves in the Northern Territory.

Strategic Aboriginal Water Reserves are considered an untested policy tool. AMEC is aware of only three Water Allocation Plans that have provision for Strategic Aboriginal Water Reserves (Ti Tree, Western Davenport and Katherine). Since introduction of this provision, no applications have currently been made for a Strategic Aboriginal Water Reserve in the Territory. This allows the "rights holder" to derive an economic benefit from their right. This provision does not exist in Western Australia. If it were to be introduced, again, it should be consulted upon more widely.

¹ https://denr.nt.gov.au/__data/assets/pdf_file/0011/457553/SWRC-Policy-Framework_A4_V1.pdf

Planning for future water use

The Fitzroy was the first allocation plan beyond a Native Title Settlement Agreement to stipulate Native Title Water allocations. Our concerns outlined in the Fitzroy paper, about the potential apportionment of a large amount of natural water resources for the sole use of one group setting a precedent in other areas, have not yet been addressed. These areas which may not have the same availability of water to competing users, would likely result in higher access costs to businesses.

Although the draft plan states “the AWR’s establishment is not an undertaking to grant a water licence, nor does it confer a water right to any person”, the allocation limit on page 11 of the document outlines the AWR’s intended limits. This allocation is expected to be available once the rules for sharing and administering the reserve have been finalised.

The planned reduction in the allocation limits of both the Unconfined Peninsula (from 4.87 to 1 gigalitre / year) and Lower Erskine (from 2.01 to 0.57 gigalitres per year) is significant, and a further concern arising from this draft plan. Industry questions the reason behind such a drastic decrease, and again, is concerned this initiative will be replicated in other areas which could result in unintended consequences that have not been fully considered in planning arrangements.

National Water Initiative (NWI)

AMEC continues to communicate to Governments that the NWI does not give appropriate acknowledgement to Western Australia’s unique environment and biosphere, as it is too Eastern-state focussed, and based on the Murray-Darling Basin (MDB). In areas such as the MDB, where water access is limited and highly sought after, access to water needs its own specific management approach. However, to introduce these across the nation, with little regard to operational realities, goes against risk-based and outcome-focussed regulation, which has been identified as best practice by multiple bodies.

In areas such as Derby, where access to water is typically not constrained by limited capacity, the adaptive management practices employed by the Department should allow for flexibility in access arrangements, whereby policies support a balance between varying commercial land users and their water allocations.

Industry considers that prescriptive requirements are generally not best placed to address environmental concerns, and given the size of the State, the conditions and environment in which each project is located will vary significantly. Industry in Western Australia is dispersed across different regions, with each region having its own unique ecological and geographical variances, requiring consideration of different environmental factors. It is important that projects are able to factor in the distinct environmental circumstance for each project, into environmental approvals processes, and can create plans that demonstrate consideration of these particular circumstances. The ability to do this requires flexibility, which can be hampered by prescriptive and statutory obligations.

Final comment

AMEC continues to welcome opportunities to engage with the Department as regulatory reforms are undertaken.

Water is an important and critical aspect of our Industry's ability to make viable discoveries that can be developed into producing mines. Producing mines have wide-ranging and long-lasting benefits for both the local and broader Australian community.

As access for water continues to be reviewed across Western Australia and the nation, AMEC requests continued engagement with the Department to ensure Industry can continue to operate and attract much-needed investment, contingent on affordable access to water.

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