

Cape York

Water Management Protocol

June 2019



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How to read this document

The scope of this Cape York Water Management Protocol is to:

- provide a breakdown of the volume of unallocated water set in the water plan into volumes held as general, strategic or Cape York Peninsula Heritage Area (CYPHA) reserve for each catchment
- detail the process for releasing unallocated water from a particular reserve, and the considerations which must be taken into account when releasing water from a reserve;
- specify permitted and prohibited water allocation change rules for water allocations in the Endeavour water management area to facilitate water trading
- specify the water sharing rules for water allocations in the Endeavour water management area
- specify water licence change rules to facilitate seasonal water assignments (across the plan area) and permanent relocations of water licences (specified zones in the Normanby, Endeavour and Jeannie catchments)
- specify a process for authorising the continued taking of overland flow water via existing works
- state chief executive monitoring and reporting requirements to assist the Minister in preparing reports about the effectiveness of the plan strategies in achieving its economic, social, environmental and cultural outcomes.

This protocol should be read in conjunction with the water plan to gain a full understanding of the water planning process.

Contents

How to read this document.....	iii
Chapter 1 Preliminary.....	1
1 Short title.....	1
2 Commencement of the water management protocol	1
3 Purpose of protocol.....	1
4 Interpretation of words used in this protocol.....	1
5 Area to which this protocol applies	1
6 Water to which this protocol applies	1
7 Information about areas and zones	1
Chapter 2 Unallocated water	3
8 Scope of chapter 2.....	3
9 Record of volume of unallocated water	3
Part 1 Unallocated water reserve types and volumes	3
10 Volumes of unallocated water held in reserve.....	3
Part 2 General requirements when granting unallocated water	3
11 Specification of unallocated water	3
12 Contents, terms and conditions for water licences granted.....	4
13 Special conditions for licences granted from the strategic reserve	4
14 Special conditions for licences granted from the CYPHA reserve for an eligible person.....	4
Part 3 Releasing unallocated water from the general reserve	5
15 Considerations for making unallocated water available from general reserve.....	5
16 Information about land suitability	5
17 Information about cultural heritage values	5
18 Information about the social and economic benefits to local communities	6
Part 4 Process for releasing unallocated water from the CYPHA reserve	6
19 Making an offer of a particular water licence to an eligible person	6
20 Elements of a water licence offered or granted to an eligible person	6
21 Granting a particular water licence to an eligible person.....	7
22 Future offers of a water licence to an eligible person.....	7
Part 5 Releasing unallocated water from the strategic reserve	7
Division 1 Making strategic reserve available for a state purpose	7
23 Consideration prior to making unallocated water available	7
24 Considerations for making unallocated water available from strategic reserve	7
Division 2 Making strategic reserve available to an eligible person	8
25 Process for releasing strategic reserve to an eligible person.....	8
26 Making an offer of a water licence to an eligible person from strategic reserve	9
27 Granting a water licence to eligible persons from strategic reserve.....	9

Chapter 3	Water allocations – Endeavour Water Management Area	10
28	Scope of chapter 3.....	10
29	Definitions for this chapter	10
Part 1	Water sharing rules	10
30	Maintaining flow to Waterholes.....	10
Part 2	Water allocation dealing rules	11
Division 1	Permitted water allocation dealings	11
31	Permitted subdivision and amalgamations.....	11
32	Permitted change to location	12
33	Permitted change to maximum rate.....	12
Division 2	Prohibited water allocation dealings	13
34	Prohibited changes	13
Part 3	Seasonal water assignment rules	13
35	Application of this part	13
36	Seasonal water assignment rules.....	13
37	Seasonal water assignment conditions	13
Chapter 4	Water licences	14
38	Scope of chapter 4.....	14
39	Definitions for this chapter	14
Part 1	Water licence relocation and seasonal water assignments	14
40	Application of this part	14
Division 1	Relocation and seasonal water assignment within a water licence zone	15
41	Rules for both relocation and seasonal water assignment.....	15
42	Rules for relocation only	15
43	Rules for seasonal water assignment only.....	15
44	Conditions for relocate or seasonal water assignment of a water licence	16
Division 2	Seasonal water assignment for water licences not within a water licence zone	16
45	Rules for seasonal water assignment.....	16
46	Conditions for a seasonal water assignment.....	17
Part 2	CYPHA water licence dealings	17
47	Application of this part	17
48	Definitions for this part.....	17
49	Rules for amending the purpose of a water licence to state CYPHA.....	17
50	Rules for amending a CYPHA water licence to include or remove conditions.....	18
51	Rules for amending a CYPHA water licence to authorise an assignment	19
52	Flow conditions for an amended CYPHA water licence	20
53	Rules for amending a CYPHA water licence to remove an assignment	21
54	Transfer of a CYPHA water licence.....	21
55	Permitted subdivision or amalgamation of a CYPHA water licence	22

Part 3	Regulating overland flow.....	22
56	Application of this part	22
57	Taking water from overland flow into existing works.....	22
58	Taking water from overland flow works notified on or before 31 July 2018	23
59	Granting a licence to take water from overland flow into existing works.....	24
Chapter 5	Monitoring and reporting	25
Part 1	Monitoring.....	25
60	Underground water level	25
61	Groundwater-dependent ecosystems and springs	25
62	Surface water flow	25
63	Waterholes and riffles	25
64	Natural ecosystems monitoring	25
65	Water entitlements and use.....	25
Part 2	Assessment and reporting	26
66	Assessment and reporting	26
67	Analysis of monitoring data	26
Attachment 1	Dictionary.....	27

Chapter 1 Preliminary

1 Short title

- (1) This water management protocol may be cited as the Cape York Water Management Protocol.
- (2) Reference in this document to ‘this protocol’ means the Cape York Water Management Protocol.

2 Commencement of the water management protocol

- (1) The following provisions commence on 1 July 2019–
 - (a) chapter 1, section 57, 58 and chapter 5.
- (2) The remaining provisions of this protocol commence –
 - (a) on the first business day after 14 sitting days have passed since the Water Plan (Cape York) 2019 was tabled in the Legislative Assembly; and
 - (b) if the effect of the Water Plan (Cape York) 2019 has not ceased due to the disallowance provisions stated in section 50 of the *Statutory Instruments Act 1992*.

3 Purpose of protocol

This protocol implements the Water Plan (Cape York) 2019 (the Water Plan).

4 Interpretation of words used in this protocol

Unless defined under the relevant provisions, the dictionary in attachment 1 defines particular words used in this protocol.

5 Area to which this protocol applies

This protocol applies to the plan area for the Water Plan (Cape York) 2019 as shown in schedule 1 of the Water Plan (Cape York) 2019.

6 Water to which this protocol applies

- (1) This protocol applies to the management of the following water in the plan area–
 - (a) water in a watercourse, lake or spring;
 - (b) overland flow water; and
 - (c) underground water.
- (2) Despite subsection (1), this protocol does not apply to water to which the Water Plan (Great Artesian Basin and Other Regional Aquifers) 2017 applies.

7 Information about areas and zones

- (1) The location of the boundaries of the plan area, catchments, water management areas are held in digital electronic form by the department.

- (2) The information held in digital electronic form can be reduced or enlarged to show the details of the boundaries¹.

¹ The boundaries held in digital electronic form may be inspected at any of the department's offices.

Chapter 2 Unallocated water

8 Scope of chapter 2

This chapter states the process for releasing unallocated water mentioned in Part 8 of the Water Plan.

9 Record of volume of unallocated water

The chief executive may keep a register of the volume of unallocated water available.

Part 1 Unallocated water reserve types and volumes

10 Volumes of unallocated water held in reserve

The volumes of unallocated water held in each reserve type and catchment is shown in Table 1.

Table 1: Unallocated water reserve volumes

Catchment	Volume (ML) by Reserve type		
	Strategic	CYPHA	General
Archer	25 000	89 000	1 000
Coleman		56 000	200
Ducie		46 000	1 000
Embley		8 000	600
Endeavour		16 000	800
Holroyd		68 500	250
Jacky Jacky		1 500	0
Jardine		49 000	0
Jeannie		0	0
Lockhart		6 300	200
Normanby		16 000	2 000
Olive-Pascoe		48 000	0
Stewart		5 000	0
Watson		0	0
Wenlock		76 000	0
TOTAL	25 000	485 300	6 050

Part 2 General requirements when granting unallocated water

11 Specification of unallocated water

If the chief executive decides to grant an entitlement from any unallocated water reserve, the entitlement must be a water licence.

12 Contents, terms and conditions for water licences granted

- (1) Contents, terms and conditions for a water licence granted from any unallocated water reserve—
- (a) must state— that water must not be taken under this authorisation unless a measuring device of a type approved by the chief executive to measure the volume of water taken is installed;
 - (b) must state— for taking water from a watercourse – *the taking of water under this authorisation is permitted only when the flow in the [watercourse] at [measuring point] exceeds [flow in megalitres per day]*;
 - (c) must state— for taking water into an overland flow storage - *water taken under this authorisation must only be stored on the land described as [Lot and Plan] using works with a maximum stored volume of not more than [megalitres]*.
 - (d) may state— *that the taking of water under this authorisation is only permitted in the period 1 January to 31 March provided:*
 - (i) *the flow in the [watercourse] at [measuring point] exceeds [flow in megalitres per day] is reached, taking water may only commence after the first peak flow passes the [measuring point]. Taking water may then continue until flows fall below [flow in megalitres per day] at the [measuring point]*.
- (2) Despite subsection (1) a water licence may be granted without a condition mentioned in subsection (1)(b) and (c) only if—
- (a) The licence states a purpose of ‘CYPHA’ and includes special conditions stated in section 14; or
 - (b) the chief executive is satisfied that taking water under the licence would not impact on downstream users and the environment; and
 - (c) the licence is granted for -
 - (i) a town water supply purpose as stated in section 32(4)(c) of the Water Plan; or
 - (ii) taking water from an underground water management area, other than from within Lakeland water licence zone 1 or Lakeland water licence zone 2 of the Cook underground water management area.

13 Special conditions for licences granted from the strategic reserve

Special conditions, in addition to those stated in section 12, for a water licence granted from the strategic reserve, other than for a town water supply purpose, must state that—

- (a) on conclusion of the project the volume of water granted under the entitlement must return to the strategic reserve; and
- (b) the licence must not be permanently transferred or relocated.

14 Special conditions for licences granted from the CYPHA reserve for an eligible person

Special conditions, in addition to those stated in section 12, for a water licence granted from the CYPHA reserve to an eligible person must state that—

- (a) the licence must not be permanently relocated or transferred, unless the transfer is provided for under the water management protocol; and
- (b) water must not be taken under the licence unless the licence is amended in accordance with section 50 to include a schedule or schedules of conditions for taking water; and

- (c) water must not be taken by any person other than the licensee, unless the licence is amended in accordance with section 51 to include a schedule or schedules of conditions to authorise an assignment for taking water by an assignee.

Part 3 Releasing unallocated water from the general reserve

15 Considerations for making unallocated water available from general reserve

- (1) Unallocated water must not be made available under part 2, division 2, subdivision 2 of the Water Regulation, for any purpose under section 32(3) of the Water Plan unless the chief executive is satisfied that an entitlement granted under section 21 could not be assigned under section 51 of this protocol for that stated purpose.
- (2) The process for releasing unallocated water from the general reserve must include the requirement for information about—
 - (a) land suitability; and
 - (b) cultural heritage values; and
 - (c) social and economic benefits to local communities.

16 Information about land suitability

- (1) The requirement for information about the suitability of the land where the water is proposed to be used under a process must include—
 - (a) the occurrence, extent and integrity of ecological and other high value environmental features such as wetlands, lagoons, waterholes, lakes and springs; and measures to protect these features;
 - (b) the availability of land where any required clearing of native vegetation is either exempt, accepted development, or is a relevant purpose for applying for an approval to clear under the *Vegetation Management Act 1999*, and clearing is allowable under other state, local and Australian government laws;
 - (c) topography and landform, such as drainage features and slope, and the appropriate erosion control measures and/or irrigation methods proposed to minimise impacts, including to downstream receiving waters of the Great Barrier Reef and Gulf of Carpentaria; and
 - (d) soil attributes such as erosivity, sodicity and salinity hazard, including measures to prevent, or if practical reverse the degradation of natural ecosystems caused by the taking of, interference, and use of water.

17 Information about cultural heritage values

The requirement for information about cultural heritage values under a process must include—

- (a) advice from Aboriginal people and Torres Strait Islanders as the Traditional Custodians and Owners of land regarding cultural sites and values within the area where the water is proposed to be taken or used; and
- (b) mitigation strategies planned to protect cultural sites or values that may be impacted by the proposed development.

18 Information about the social and economic benefits to local communities

The requirement for information about social and economic benefits to local communities must include advice about benefits provided by the proposed development.

- (a) The information may include—
 - (i) local employment or traineeships offered for the proposed development; or
 - (ii) contribution to local community infrastructure projects – for example assistance with construction of or funding for amenities; or
 - (iii) other financial incentives to local communities – for example youth scholarships or local business sponsorship.
- (b) subsection (a) does not limit the information the chief executive may consider.

Part 4 Process for releasing unallocated water from the CYPHA reserve

19 Making an offer of a particular water licence to an eligible person

- (1) Where multiple eligible persons have an interest in the same land in a catchment, the offer of a particular water licence must be made to the eligible person—
 - (a) as defined under section 32(6)(a) of the Water Plan; or
 - (b) another eligible person can only be made an offer in accordance with sections 22(1)(c) and 22(4).
- (2) For section 67(e) of the Act, for the purpose of implementing the water plan, the price for the release of unallocated water from the CYPHA reserve to an eligible person will be \$0/ML.

Note – See also section 40(4) of the Act in relation to the chief executive setting a price for unallocated water.

20 Elements of a water licence offered or granted to an eligible person

- (1) An offer to grant of a particular water licence made in accordance with section 19 of the protocol and section 33 of the Water Plan must state—
 - (a) the proposed water licence holder, who is the eligible person;
 - (b) the purpose to be stated on the proposed water licence is “CYPHA”;
 - (c) the catchment where water may be taken under the proposed water licence;
 - (d) the nominal entitlement for the proposed water licence;
 - (e) the contents, terms and conditions that will apply; and
 - (f) the expiry date - that is the date by which the eligible person must accept or decline the offer, otherwise the offer expires on this date.
- (2) For subsection (1)(d) the nominal entitlement must be determined using the following formula—
- (3) $(Q) \times (R) - (S)$, where—

Q is the total CYPHA reserve volume in megalitres available for the catchment;

R is the percentage calculated by the chief executive comparing the land area in hectares held by an eligible person to the total area of land in the catchment; and

S is existing entitlements to which this plan applies, held by the eligible person in the catchment.

21 Granting a particular water licence to an eligible person

The chief executive must grant a water licence under section 116 of the Water Act only if–

- (a) the offer of a water licence is formally accepted by the eligible person before the expiry date set for section 20(1)(f);
- (b) the licence is consistent with the attributes stated in the offer.

22 Future offers of a water licence to an eligible person

(1) The chief executive must not grant a water licence under section 21 if–

- (a) the expiry date set under section 20(1)(f) expires and the offer has not been accepted or declined before that date; or
- (b) the eligible person declines the offer before the expiry date; or
- (c) the eligible person under section 32(6) of the Water Plan is the landowner and accepts the offer; but nominates another eligible person (the nominee), who is the Native Title Holder under the Native Title Act 1993.

(2) An eligible person to which subsection (1)(a) or (b) applies may, at any time in the future, write to the chief executive seeking a new offer for a water licence from the CYPHA reserve.

(3) The chief executive may make a new offer to an eligible person for subsection (2) provided the offer is consistent with the provisions of this Part.

(4) For subsection (1)(c), the chief executive must make a new offer to an eligible person's nominee, provided the offer is the same as the original offer made.

Part 5 Releasing unallocated water from the strategic reserve

Division 1 Making strategic reserve available for a state purpose

23 Consideration prior to making unallocated water available

Unallocated water must not be made available under part 2, division 2, subdivision 2 of the Water Regulation, for a state purpose mentioned in section 32(4) of the Water Plan unless the chief executive is satisfied that an entitlement granted under section 21 could not be assigned under section 51 of this protocol for that stated purpose.

24 Considerations for making unallocated water available from strategic reserve

- (1) The process for releasing unallocated water from the strategic reserve must include the requirement for information about–
 - (a) the availability of water in the plan area for the proposed purpose; and
 - (b) the efficiency of existing and proposed water use practices; and

- (c) the impact the proposed taking of water may have on existing authorisations in the plan area; and
- (d) the availability of an alternative water supply for the purpose for which the water is required; and
- (e) the impact the proposed taking and use of water may have on natural ecosystems and the environmental outcomes of the plan; and
- (f) whether the land is suitable for the intended purpose, including measures to prevent, or if practical reverse the degradation of natural ecosystems.

Note – assessment of the suitability of the land where the water is proposed to be used may include consideration of the land available that may be developed under the Vegetation Management Act 1999, the topography, drainage, soil attributes (such as erosivity, sodicity and salinity hazard), effect on natural ecosystems (including to downstream receiving waters of the Great Barrier Reef and Gulf of Carpentaria), and any control methods

subsection (1) does not limit the matters the chief executive may consider.

Division 2 Making strategic reserve available to an eligible person

25 Process for releasing strategic reserve to an eligible person

- (1) Before deciding to make an offer to grant strategic reserve available to an eligible person under section 32(2)(b) and 33(4) of the Water Plan, the chief executive must consider–
 - (a) if there would be sufficient residual volume in the strategic reserve for future needs, if a licence were to be granted to an eligible person; and
 - (b) if the project would provide for the economic or social benefit of Aboriginal people or Torres Strait Islanders; and
 - (c) other State interests.
- (2) The chief executive may require an eligible person to provide additional information about their written request under section 33(4) of the Water Plan within the reasonable timeframe stated.
- (3) If an eligible person fails without reasonable excuse to provide the information requested under subsection (2) and within the stipulated time then the chief executive must not make strategic reserve available.
- (4) If, after considering subsections (1) to (3), the chief executive decides to make water available from the strategic reserve, a notice about the intention to make strategic reserve available for an offer of a water licence to the eligible person must be published, stating–
 - (a) the eligible person seeking an offer of a water licence;
 - (b) the maximum volume of strategic reserve made available for an offer;
 - (c) the purpose to be stated on the proposed water licence is “Any”;
 - (d) the catchment where an offer of a water licence is sought;
 - (e) the location or property description for the proposed project;
 - (f) the proposed water source for the project;
 - (g) the process for interested parties to comment on the intention to make strategic reserve available for an offer of a water licence; and
 - (h) the date by which comments must be received by the chief executive.

- (5) For subsection (4)(b) the chief executive must determine the maximum volume of strategic reserve to be made available, having regard for—
- (a) other eligible persons in the same catchment; and
 - (b) the unallocated water volume held in strategic reserve; and
 - (c) the area of land for which an eligible person has an interest in a catchment; and
 - (d) any information provided in the written request or under subsection (2); and
 - (e) any volume mentioned by the eligible person in the written request for an offer of a water licence made under section 33(4) of the Water Plan.

26 Making an offer of a water licence to an eligible person from strategic reserve

- (1) The chief executive must offer a water licence to an eligible person from the strategic reserve, only if—
 - (a) water has been made available in accordance with section 25;
 - (b) the chief executive has considered any comments made by interested parties;
 - (c) the chief executive assesses the request against the requirements stated in section 24;
 - (d) the chief executive is satisfied that if a water licence were to be granted, the licence would be consistent with the requirements stated in section 12 and section 13;
- (2) An offer of a water licence made under subsection (1) must state—
 - (a) the proposed water licence holder, who is the eligible person for section 25(4)(a);
 - (b) the purpose to be stated on the proposed water licence is “Any”
 - (c) the water source where water may be taken for the project provided it is within the catchment for section 25(4)(d);
 - (d) the authorised point of take being the location or property description
 - (e) the nominal entitlement for the proposed water licence, having regard to section 25(4)(b) and 25(5); and
 - (f) the contents, terms and conditions that will apply; and
 - (g) the expiry date - that is the date by which the eligible person must accept or decline the offer, otherwise the offer expires on this date.

27 Granting a water licence to eligible persons from strategic reserve

The chief executive must grant a water licence under section 116 of the Water Act only if—

- (a) the offer of a water licence is formally accepted by the eligible person before the expiry date set for section 26(2)(f); and
- (b) the licence is consistent with the attributes stated in the offer.

Chapter 3 Water allocations – Endeavour Water Management Area

28 Scope of chapter 3

This chapter contains water sharing rules, water allocation dealing rules and seasonal water assignment rules for water allocations in the Endeavour Water Management Area.

29 Definitions for this chapter

In this chapter—

total annual volumetric limit means the sum of the annual volumetric limits of all water allocations in a zone—

- (a) belonging to the same water allocation group; and
- (b) for which relevant valid change certificates have been issued under section 159 of the Water Act 2000.

Part 1 Water sharing rules

30 Maintaining flow to Waterholes

- (1) This section does not apply to water allocations or seasonal water assignments that are for the purpose of urban.
- (2) In this section, a reach is, for the purpose of maintaining flow for a waterhole or series of waterholes, the watercourses described within the reach area description in Table 2, Column 2.
- (3) Subsection (4) applies at any time within the period 1 July to 31 December in any water year.
- (4) Water allocation and seasonal water assignment notice holders, in water allocation group class 1 and class 2, in a zone mentioned in Table 2, Column 1 must—
 - (a) not cause the cessation of flow in the watercourse; and
 - (b) When there is flow into a waterhole, not cause the cessation of flow into or out of a waterhole within a reach mentioned in Table 2, Column 2; and
 - (c) cease taking water when:
 - (i) If an assessment point and flow trigger rate are specified, when the mean discharge in megalitres per day at the assessment point is at or below the trigger level mentioned in Table 2, Column 2; or
 - (ii) If no assessment point or flow trigger rate are specified, when the flow in the watercourse ceases.
- (5) When subsection 4(c) applies, water allocation and seasonal water assignment notice holders, may only commence taking water from the reach mentioned in Table 2, Column 2 if:
 - (i) for subsection (c)(i), the flow trigger rate has been exceeded for at least 3 consecutive days; or
 - (ii) for subsection (c)(ii), when there is daily flow in the watercourse for at least 3 consecutive days.

In this section –

Cessation of flow means the taking of water for consumptive purposes causing the natural flow in the watercourse or into or out of a waterhole to stop either temporarily or permanently as a direct result of the taking.

Table 2. Maintaining flow for waterholes

Column 1 - Zone	Column 2 – Reach				
	Reach	Watercourse/s included in Reach	Reach Area Description	Assessment Point	Flow Trigger Rate
Endeavour A	Entire water allocation zone				
Endeavour B	B1	Isabella Creek	Upstream of the confluence of Isabella Creek with Endeavour River North Branch	Gauging Station 107001B Endeavour River at Flagg	1 ML/day
	B2	Endeavour River North Branch, Endeavour River	At and upstream of Gauging Station 107001B Endeavour River at Flagg	Gauging Station 107001B Endeavour River at Flagg	1 ML/day
	B3	Endeavour River	Downstream of Gauging Station 107001B Endeavour River at Flagg to the end of zone.	Gauging Station 107001B Endeavour River at Flagg	1 ML/day
Endeavour C	C1	Annan River	Extent of Annan River within water allocation zone	Gauging Station 107003A Annan River at Beesbike	5 ML/day
	C2	Trevethan Creek, Lee Creek	Upstream of the confluence of Trevethan Creek with Annan River		
Endeavour D	D1	Annan River, Wallaby Creek Mungumby Creek Okeefe Creek Mackie Creek	At and upstream of Gauging Station 107003A Annan River at Beesbike	Gauging Station 107003A Annan River at Beesbike	5 ML/day
	D2	Annan River	Downstream of Gauging Station 107003A Annan River at Beesbike to the end of zone.	Gauging Station 107003A Annan River at Beesbike	5 ML/day
Endeavour E	Entire water allocation zone				

Part 2 Water allocation dealing rules

Division 1 Permitted water allocation dealings

31 Permitted subdivision and amalgamations

- (1) Subdivision of a water allocation is permitted only if-
 - (a) the total of the nominal volumes of the resulting water allocations is the same as the nominal volume of the water allocation being subdivided; and
 - (b) each attribute of the water allocation being subdivided is subdivided in proportion to the nominal volume of each resulting water allocation; and

- (c) the new water allocations state the same water allocation group, conditions and location as the water allocation that is being subdivided.
- (2) Amalgamation of water allocations is permitted only if—
- (a) the nominal volume, volumetric limit and maximum rate for the new water allocation is equal to the sum of the nominal volumes, volumetric limits and maximum rates of the water allocations being amalgamated, and
 - (b) the water allocations being amalgamated state the same water allocation group, conditions and location.

32 Permitted change to location

A change to the location of a water allocation is permitted only if —

- (a) The water allocation is measured using an approved method, as directed by the chief executive;
- (b) the purpose stated on the water allocation is “any”;
- (c) the change would not result in the total annual volumetric limit stated in Table 3 for the water allocation group in the zone being exceeded; and
- (d) the location is to be changed to a zone within the same water management area.

Table 3: Total annual volumetric limits (ML) for water allocations by location (zone) and water allocation group for the Endeavour water management area

Location (zone)	Total annual volumetric limit	
	Water allocation group Class 1	Water allocation group Class 2
Endeavour A	0	700
Endeavour B	0	1600
Endeavour C	100	400
Endeavour D	1710	0
Endeavour E	800	0

33 Permitted change to maximum rate

A change to the maximum rate is permitted only if the maximum rate does not result in a rate that is greater than the maximum rate specified in Schedule 8 of the Water Plan, having regard to the water taking capacity of the works associated with the water allocation at the day of commencement of the plan.

Division 2 Prohibited water allocation dealings

34 Prohibited changes

A change to a water allocation is prohibited unless explicitly permitted under Part 2 Division 1 of this chapter.

Part 3 Seasonal water assignment rules

35 Application of this part

This part applies to water allocations that are measured using an approved method, as directed by the chief executive.

36 Seasonal water assignment rules

The chief executive may approve a seasonal water assignment for all or part of a water allocation, with or without conditions only if—

- (a) the volume being assigned does not exceed the remaining volume of water that may be taken under the water allocation in the water year;
- (b) the volume being assigned would not result in the total annual volumetric limit for the water allocation group in the zone being exceeded as stated in Table 3; and
- (c) the maximum rate of take being assigned does not exceed the maximum rate for the water allocation.

37 Seasonal water assignment conditions

Water taken under the seasonal water assignment notice must be measured using an approved method, as directed by the chief executive.

Chapter 4 Water licences

38 Scope of chapter 4

- (1) This chapter provides for water licence dealings in accordance with Part 10 of the Water Plan.
- (2) For the purpose of this Chapter a water licence must be measured in accordance with section 21(1) of the Water Plan.

39 Definitions for this chapter

- (1) In this chapter a **water source** is—
 - (a) for an underground water licence – an aquifer within an underground water management area;
 - (b) for a surface water licence – a watercourse to which section 5 of the Water Act applies;
 - (c) for water taken into an overland flow storage - water, including floodwater, that is flowing over land, other than water in a watercourse or lake.
- (2) For the purpose of this chapter—
 - (a) **Original water licence** is the licence that is being relocated or seasonally assigned fully or in part;
 - (b) **Proposed water licence** is the licence that would be granted at the new location if the rules for relocate are satisfied;
 - (c) **Resulting water licences** are the products of a part relocate and include proposed water licences and the amended original water licence;
 - (d) **Seasonal water assignment** is the notice that would be issued allowing the use of water under an original water licence for a stated period, if the rules for seasonal water assignment are satisfied

Part 1 Water licence relocation and seasonal water assignments

40 Application of this part

- (1) This part applies to section 126 of the Water Act and section 47 of the Water Plan for relocating a water licence to other land.
- (2) This part also applies to section 127 of the Water Act and section 47 of the Water Plan for seasonal water assignment rules for both surface and underground water licences.
- (3) This part applies to water licences that are measured using an approved method, as directed by the chief executive.

Division 1 Relocation and seasonal water assignment within a water licence zone

41 Rules for both relocation and seasonal water assignment

The chief executive may approve an application to relocate or seasonally assign part or all of a surface or underground water licence only if the resulting water licences or seasonal water assignment notices would authorise the take of water—

- (a) from within the same water licence zone displayed in schedule 6 of the Water Plan as the zone for the original water licence; and
- (b) for surface water - not from within a waterhole, lake or spring; or
- (c) for underground water, not within—
 - (i) 200 metres of a watercourse, lake or spring; and
 - (ii) 200 metres of the property boundary unless written consent is obtained from the owner of the adjoining property; or
 - (iii) 400 metres of any authorised bore unless—
 - (A) the authorised bore is owned by the proposed licensee or assignee; or
 - (B) the owners of the authorised bore provide written consent to the proposed licensee or assignee.

42 Rules for relocation only

In addition to section 41 the chief executive may approve an application to relocate part or all of a water licence with or without conditions only if—

- (a) the sum of the nominal entitlements for the resulting water licences equals the nominal entitlement of the original water licence;
- (b) the purpose for the original water licence and resulting water licences is “any”;
- (c) for surface water - the maximum rate of take for the proposed water licence would not result in a rate greater than the maximum rate for the original water licence;
- (d) the original water licence does not state that—
 - (i) on conclusion of the project the nominal entitlement stated on the licence must return to the State; or
 - (ii) the licence must not be transferred.

43 Rules for seasonal water assignment only

In addition to section 41 the chief executive may approve an application to seasonally assign part or all of a water licence with or without conditions only if—

- (a) the volume that may be taken under the original water licence is reduced by the volume being seasonally assigned for the stated period;
- (b) the seasonal water assignment volume does not exceed the remaining volume of water that may be taken under the water licence in the water year;
- (c) for surface water - the maximum rate of take for the seasonal water assignment would not result in a rate greater than the maximum rate for the original water licence.

44 Conditions for relocate or seasonal water assignment of a water licence

- (1) For the resulting water licences or seasonal water assignment, the chief executive must impose–
 - (a) the same flow conditions that are specified for the original water licence, unless the original water licence does not state flow conditions; and
 - (b) for surface water - a condition for subsection 41(b); or
 - (c) for underground water– a condition for subsection 41(c).
- (2) For a resulting water licence, where water is to be taken from within a water licence zone into an overland flow storage - a condition must state that the volume stored is not greater than the nominal entitlement for the water licence, unless the overland flow works are consistent with section 28 of the Water Plan and has a capacity greater than the nominal entitlement of the water licence.
- (3) Water taken under the resulting water licences and seasonal water assignment notices must be measured using an approved method, as directed by the chief executive.
- (4) Subsections (1), (2) and (3) do not limit the conditions the chief executive may impose on resulting water licences or seasonal water assignments.

Division 2 Seasonal water assignment for water licences not within a water licence zone

45 Rules for seasonal water assignment

The chief executive may approve an application to seasonally assign part or all of a water licence with or without conditions only if–

- (a) the water licence and seasonal water assignment would authorise the take of water from the same type of water source that is not within a water licence zone; and
- (b) the water licence and the seasonal water assignment would authorise the take of water within the same catchment; and
- (c) for seasonal assignment of surface water - the chief executive is satisfied that water would not be taken from a waterhole, lake or spring;
- (d) for seasonal assignment of underground water, the chief executive is satisfied that water would not be taken from within–
 - (i) 200 metres of a watercourse, lake or spring; and
 - (ii) 200 metres of the property boundary unless written consent is obtained from the owner of the adjoining property; or
 - (iii) 400 metres of any authorised bore unless–
 - (A) the authorised bore is owned by the proposed assignee; or
 - (B) the owners of the authorised bore provide written consent to the proposed assignee.
- (e) the volume that may be taken under the original water licence is the nominal entitlement reduced by the volume being seasonally assigned for the stated period;
- (f) the seasonal water assignment volume does not exceed the remaining volume of water that may be taken under the water licence in the water year;

- (g) for surface water - the maximum rate of take for the seasonal water assignment is not greater than the maximum rate of take for the original water licence.

46 Conditions for a seasonal water assignment

- (1) For a seasonal water assignment notice, the chief executive must impose—
 - (a) the same flow conditions that are specified for the original water licence, unless the original water licence does not state flow conditions; and
 - (b) for surface water – a condition for subsection 45(c); or
 - (c) for underground water – a condition for subsection 45(d).
- (2) Water taken under the seasonal water assignment notice must be measured using an approved method, as directed by the chief executive.
- (3) Subsections (1) and (2) do not limit the conditions the chief executive may impose on a seasonal water assignment.

Part 2 CYPHA water licence dealings

47 Application of this part

This part applies to section 130 of the Water Act and applies to water licences granted to an eligible person in accordance with section 32(6) of the Water Plan for a “CYPHA” purpose.

48 Definitions for this part

In this part—

- (a) a **CYPHA water licence** is a water licence that is held by an eligible person and states the purpose “CYPHA”;
- (b) an **assignment** authorises the use of water by an assignee from a CYPHA water licence for a stated period, if the rules mentioned for section 51 are satisfied;
- (c) an **assignee** may enter into a commercial arrangement with an eligible person to take water under an assignment for a stated period from a CYPHA water licence, provided the chief executive amends the licence to include a schedule of conditions for taking water under the assignment.

49 Rules for amending the purpose of a water licence to state CYPHA

- (1) A licence holder may apply to amend a water licence to state a purpose of CYPHA only if—
 - (a) the licence holder is an eligible person for a CYPHA water licence as described in section 32(6) of the Water Plan; and
 - (b) the sum of the nominal entitlements for CYPHA licences held by the applicant and the water licence being amended would not result in the licensee's maximum share in megalitres in the catchment being exceeded;
- (2) for subsection (1)(b) the maximum share in megalitres in a catchment is calculated using the formula stated in section 20(3).
- (3) if the chief executive decides to amend a licence to which subsection (1) applies, the amended licence must state that—

- (a) water must not be taken under this authorisation unless a measuring device of a type approved by the chief executive to measure the volume of water taken is installed;
- (b) the licence must not be permanently relocated or transferred, unless the transfer is provided for under the water management protocol;
- (c) water must not be taken under the licence unless the licence is amended in accordance with section 50 to include a schedule or schedules of conditions for taking water; and
- (d) water must not be taken by any person other than the licensee, unless the licence is amended in accordance with section 51 to include a schedule or schedules of conditions to authorise an assignment for taking water by an assignee.

50 Rules for amending a CYPHA water licence to include or remove conditions

- (1) A licence holder must apply to amend a CYPHA water licence to include a schedule of conditions, before water may be taken by the licensee.
- (2) the application must be supported by information about:
 - (a) the availability of water in the plan area for the proposed purpose; and
 - (b) the impact the proposed taking of water may have on existing authorisations in the plan area; and
 - (c) the impact the proposed taking of water may have on natural ecosystems and the environmental outcomes of the plan; and
 - (d) whether the land is suitable for the intended purpose; and
 - (e) advice from Traditional Owners and Custodians, Cultural Heritage Bodies, and Queensland Government Cultural Heritage Registers regarding cultural sites and values within the development footprint; and
 - (f) mitigation strategies planned to protect cultural sites or values that may be impacted by the proposed development.

Note – assessment of the suitability of the land where the water is proposed to be used may include consideration of the land available that may be developed under the Vegetation Management Act 1999, the topography, drainage, soil attributes, effects on natural ecosystems, and any control methods

- (3) For subsection (1) and section 51(2) the chief executive may approve an application to amend a CYPHA water licence only if—
 - (a) for surface water from a watercourse-
 - (i) the chief executive is satisfied that water would not be taken from within a waterhole, lake or spring;
 - (ii) the maximum rate of take is not greater than the maximum rate specified in Schedule 8 of the Water Plan, having regard to the water taking capacity of works;
 - (b) for surface water from overland flow - the chief executive is satisfied that water would not be taken into a storage with a capacity greater than the nominal entitlement for the licence, and having regard for any volume assigned under the licence in accordance with section 51.
 - (c) for underground water, the chief executive is satisfied that water would not be taken from within—
 - (i) Lakeland water licence zone 1 or Lakeland water licence zone 2 of the Cook underground water management area;
 - (ii) 200 metres of a watercourse, lake or spring; and

- (iii) 200 metres of the property boundary unless written consent is obtained from the owner of the adjoining property; or
 - (iv) 400 metres of any authorised bore unless–
 - (A) the authorised bore is owned by the licensee; or
 - (B) the owners of the authorised bore provide written consent to the licensee.
- (4) In addition to subsection (3), the chief executive may approve an application to amend a CYPHA water licence only if the chief executive has considered the information provided in subsection (2) and is satisfied the applicant has addressed the relevant matters.
- (5) If the chief executive decides to amend the CYPHA water licence to include a schedule of conditions, the schedule must state–
- (a) the authorised activity – for taking water from a water source; which is adjacent to, on or under land described as a Lot on Plan;
 - (b) for surface water from a watercourse–
 - (i) the maximum rate for taking water in megalitres per day; and
 - (ii) flow conditions for taking water in accordance with section 52.
 - (c) for surface water from overland flow – the maximum volume taken to be stored on land described as a Lot on Plan;
 - (d) for underground water– the name of the aquifer and underground water management area from which water is to be taken.
- (6) Subsection (5) does not limit the conditions the chief executive may impose on a CYPHA water licence.
- (7) A licence holder may apply to amend a CYPHA water licence to remove a schedule of conditions granted under this section.

51 Rules for amending a CYPHA water licence to authorise an assignment

- (1) A licence holder may apply to amend a CYPHA water licence to include a schedule of conditions authorising water to be taken under an assignment.
- (2) For subsection (1) the chief executive may approve an application to amend a CYPHA water licence in accordance with section 50(2),(3) and (4), and provided the volume assigned–
 - (a) is within the same catchment as the CYPHA water licence;
 - (b) is equal to or less than the nominal entitlement for the CYPHA water licence; and
 - (c) is not greater than the volume calculated by subtracting, from the nominal entitlement, volumes for–
 - (i) any other approved assignment under the same CYPHA water licence; and
 - (ii) water taken under the authority of the CYPHA water licence by the licensee in the current water year.
 - (d) is available from the water source, having regard for–
 - (i) the proposed use of the water under assignment; and
 - (ii) whether the proposed taking is likely to have a direct adverse effect on existing authorised water users and the environment; and
 - (iii) the cumulative impact of taking water on surface water and underground water flows.

- (3) Despite subsection (2) the chief executive must not approve an application made under subsection (1) if water taken under an assignment would be used on land—
 - (a) that is declared to be an area of high nature conservation value or an area vulnerable to land degradation under the *Vegetation Management Act 1999* and in accordance with section 26 of the *Cape York Peninsula Heritage Act 2007*; and
 - (b) unless:
 - (i) Native Title has been extinguished over the land; or
 - (ii) it has been determined that Native Title does not exist; or
 - (iii) the assignee is a party to an Indigenous Land Use Agreement under the Commonwealth Native Title Act over the land that relates to the taking of water; or
 - (iv) written consent is obtained from the native title holder over the land; and
 - (c) unless:
 - (i) the CYPHA water licence holder is the owner of the land; or
 - (ii) the CYPHA water licence holder is the native title holder over the land; or
 - (iii) the owner of the land provides written consent to the assignment; or
 - (iv) the assignee is the owner of the land as defined in section 104 of the Water Act.
- (4) If the chief executive decides to amend the CYPHA water licence to include a schedule of conditions authorising an assignment, the schedule must state—
 - (a) the assignee – the person authorised to take water under an assignment;
 - (b) the assignment period – the commencement and end date for the assignment;
 - (c) the authorised activity –for taking water under assignment from a water source; which is adjacent to, on or under land described as a Lot on Plan;
 - (d) the nominal entitlement – the volume to be taken annually under assignment;
 - (e) for surface water from a watercourse—
 - (i) the maximum rate for taking water under an assignment in megalitres per day; and
 - (ii) flow conditions for taking water under an assignment in accordance with section 52;
 - (f) for surface water from overland flow – the maximum volume to be stored on land described as a Lot on Plan;
 - (g) for underground water– the name of the aquifer and underground water management area from which water is to be taken.

52 Flow conditions for an amended CYPHA water licence

- (1) For section 50(5)(b)(ii) and 51(4)(e)(ii) a flow condition for taking water –
 - (a) must be determined in accordance with section 26 of the Water Plan; and
 - (b) must state - *that the taking of water under this authorisation is permitted only when the flow in the [watercourse] at [measuring point] exceeds [flow in megalitres per day]*; and
 - (c) may state - *that the taking of water under this authorisation is only permitted in the period 1 January to 31 March provided:*
 - (i) *the flow in the [watercourse] at [measuring point] exceeds [flow in megalitres per day] is reached, taking water may only commence after*

the first peak flow passes the [measuring point]. Taking water may then continue until flows fall below [flow in megalitres per day] at the [measuring point].

- (2) In addition to subsection (1) surface water taken from a watercourse, into an overland flow storage, must state – *that water taken under this authorisation must only be stored on the land described as [Lot and Plan] using works with a maximum stored volume of not more than [megalitres]*.
- (3) The chief executive may impose a condition requiring the licensee, under section 50; or the assignee under section 51, to record the dates and volumes for water taken in accordance with a condition mentioned in subsection (1) and (2).

53 Rules for amending a CYPHA water licence to remove an assignment

- (1) A licence holder may apply to amend a CYPHA water licence to remove a schedule of conditions authorising water to be taken under an assignment.
- (2) For subsection (1) the chief executive may approve an application to remove a schedule of conditions provided–
 - (a) The chief executive is satisfied that there is sufficient evidence to proceed with the removal, having regard for –
 - (i) the expiry date in the schedule;
 - (ii) if the assignee has provided written consent to the application if it is prior to the expiry date;
 - (iii) any evidence provided with the application, including a termination clause in a contract, or other documentation to support removal of the schedule prior to the expiry date.

54 Transfer of a CYPHA water licence

- (1) A licence holder may apply to transfer a CYPHA water licence to–
 - (a) change or correct the name of the eligible person, provided it is still the same entity;
 - (b) another eligible person under the Water Plan (Cape York) 2019, if–
 - (i) the eligible person is the alternate eligible person that may be granted the CYPHA water licence under section 22; and
 - (ii) the sum of the nominal entitlements for CYPHA water licences held by the transferee and the water licence being transferred would not result in the transferee's maximum share in megalitres in the catchment being exceeded.
- (2) The chief executive may transfer a CYPHA water licence to change or correct the name of the eligible person, provided it is still the same entity.
- (3) The chief executive may transfer a CYPHA water licence to reflect changes in land ownership following the transfer of land under the Aboriginal Land Act 1991 –
 - (a) following identification of or notification of the transfer; and
 - (b) the sum of the nominal entitlements for CYPHA water licences held by the transferee would not result in the transferee's maximum share in megalitres in the catchment being exceeding
- (4) For subsection (1)(b)(ii) and (3)(b) the maximum share in megalitres in a catchment is calculated using the formula stated in section 20(3).
- (5) The chief executive must not approve a transfer of a CYPHA water licence unless provided for in this section.

- 55 **Permitted subdivision or amalgamation of a CYPHA water licence**
- (1) Subdivision of a CYPHA water licence is permitted only if –
- (a) the licence does not have a schedule or schedules of conditions authorising water to be taken under assignment; and
 - (b) the total of the nominal entitlement volumes of the resulting water licences is the same as the nominal entitlement volume of the water licence being subdivided; and
 - (c) each attribute of the water licence being subdivided is subdivided in proportion to the nominal entitlement volume of each resulting water licence; and
 - (d) the new water licences must have conditions consistent with section 12, 14 and section 52 as applicable.
- (2) Amalgamation of two or more CYPHA water licences is permitted only if –
- (a) The licences are owned by the same eligible person;
 - (b) the licences are all within the same catchment area; and
 - (c) the licences do not have a schedule or schedules of conditions authorising water to be taken under assignment; and
 - (d) the new water licence must have conditions consistent with section 12, 14 and section 52 as applicable; and
 - (e) the nominal entitlement volume of the resulting water licence is the same as the total of the nominal entitlement volumes of the water licences being amalgamated; and
 - (f) each attribute of the water licences being amalgamated are amalgamated.

Part 3 Regulating overland flow

56 Application of this part

This part states the arrangements and process under section 66(2)(g) of the Water Plan for authorising the continued taking of overland flow water.

57 Taking water from overland flow into existing works

- (1) Within one year of the plan commencing land owners with existing overland flow works to which sections 28(a)(b)(d) or (e) of the Water Plan do not apply must notify the chief executive of water taken from overland flow into existing works.
- (2) A notice mentioned in subsection (1) must state-
- (a) the authorised owner—the owner of land on which the existing works has been constructed;
 - (b) the authorised land—the land on which the water is taken into existing works;
 - (c) for one or more existing works on the same land – latitudinal and longitudinal coordinates for the storage and/or ancillary works;
 - (d) the estimated volume for each of the existing works having regard for information about—
 - (i) the estimated full capacity of the overland flow storage;
 - (ii) the surface area of the storage at full capacity;
 - (iii) the embankment height;

- (iv) operation of the existing overland flow storage;
 - (v) any other information the chief executive decides is relevant for estimating the volume for an overland flow storage.
 - (e) the purpose for taking water from overland flow into existing works;
 - (f) the catchment from which overland flow water is taken into existing works;
 - (g) the date of issue for the notice;
 - (h) the total volume of water taken annually based on the information above for the 10 year period immediately prior to 4 June 2018.
- (3) A land owner who provides a properly made notice in accordance with subsections (1) and (2) is authorised to continue taking water from overland flow using existing works in accordance with that notice.
- (4) A land owner who provides a properly made notice in accordance with subsections (1) and (2) must advise the chief executive as soon as practicable if the notified works have been decommissioned and overland flow water is not being taken.

58 Taking water from overland flow works notified on or before 31 July 2018

- (1) This section applies to works that take overland flow water to which section 28(d) of the Water Plan applies.
- (2) Within one year of the plan commencing, land owners with overland flow works to which section 28(d) of the Water Plan applies, where development approval is not required, must notify the chief executive of the water taken from overland flow into the works.
- (3) Within one year of receiving development approval, land owners with overland flow works to which section 28(d) of the Water Plan applies, where development approval is required, must notify the chief executive of water taken from overland flow into the works.
- (4) A notice mentioned in subsections (2) and (3) must state-
 - (a) the authorised owner—the owner of land on which the existing works has been constructed;
 - (b) the authorised land—the land on which the water is taken into existing works;
 - (c) for one or more existing works on the same land – latitudinal and longitudinal coordinates for the storage and/or ancillary works;
 - (d) the estimated volume for each of the existing works having regard for information about-
 - (i) the estimated full capacity of the overland flow storage;
 - (ii) the surface area of the storage at full capacity;
 - (iii) the embankment height;
 - (iv) operation of the existing overland flow storage;
 - (v) any other information the chief executive decides is relevant for estimating the volume for an overland flow storage.
 - (e) the purpose for taking water from overland flow into existing works;
 - (f) the catchment from which overland flow water is taken into existing works;
 - (g) the date of issue for the notice.
- (5) For subsection (2), (3) and (4), the information provided in the notice must not exceed the volumes or dimensions provided in a relevant notice given on or before 31 July 2018.

- (6) A land owner who provides a properly made notice in accordance with subsections (2), (3), (4) and (5) is authorised to continue taking water from overland flow using works in accordance with that notice.

59 **Granting a licence to take water from overland flow into existing works**

- (1) The chief executive may decide to grant a water licence to replace an authorisation under sections 57 or 58, provided—
- (a) overland flow works are not linked to a water licence with a condition stating that *water taken under this authorisation must only be stored on the land described as [Lot and Plan] using works with a maximum stored volume of not more than [megalitres]*.
 - (b) the decision to grant a water licence applies to all authorisations for a catchment, having regard for—
 - (i) the total volume stored in existing overland flow works for the catchment;
 - (ii) the cumulative impact of taking overland flow on surface water flows in the catchment;
 - (iii) the historical authorised take of overland flow water using the works provided under section 57 or 58.
- (2) If the chief executive decides to grant water licences for taking overland flow under subsection (1), a water entitlement notice must be issued in accordance with Chapter 2, Part 2, Division 6 of the Water Act.

Chapter 5 Monitoring and reporting

Part 1 Monitoring

60 Underground water level

The chief executive must monitor changes in underground water levels for subartesian bores not connected to the Great Artesian Basin in the department's Ambient Water Monitoring Network within the Cook and Cape York underground water management areas.

61 Groundwater-dependent ecosystems and springs

The chief executive must collect data and monitor flows to "at risk" groundwater-dependent ecosystems and springs within the Water Plan area.

62 Surface water flow

The chief executive must collect data and monitor flows at nodes shown in Schedule 1 of the Water Plan.

63 Waterholes and riffles

The chief executive must—

- (a) collect data and monitor persistence of waterholes and flows to in the Endeavour water management area and water licence zones for the Normanby and Jeannie catchments.
- (b) The chief executive must make publicly available, records and information about the implementation of water sharing rules for Chapter 3, Part 1 of this protocol.

64 Natural ecosystems monitoring

The chief executive must collect and keep publicly available, information on—

- (a) water quality monitoring;
- (b) ecological assets that are linked to the environmental outcomes of the Water Plan; and
- (c) the critical water requirements of ecological assets, including the provision of these requirements under the Water Plan.

65 Water entitlements and use

The chief executive must make publicly available, records and information about—

- (a) water taken under entitlements;
- (b) the number and volumetric limit of water entitlements traded or seasonally assigned;
- (c) the number and volumes authorised for CYPHA water licence assignments;
- (d) future consumptive demands for water; and
- (e) granting entitlements from unallocated water reserves.

Part 2 Assessment and reporting

66 Assessment and reporting

- (1) The chief executive must make ongoing assessments of whether the trends in the data measured, collected and recorded under Part 1 of this chapter indicate that outcomes specified in the Water Plan (Cape York) 2019 are being achieved.
- (2) In addition to section (1) in making assessments the chief executive should consider–
 - (a) any barriers in the plan to accessing water entitlements;
 - (b) information on the availability of water for social and cultural purposes;
 - (c) any information about the water requirements for social, spiritual and cultural uses by Aboriginal people and Torres Strait Islanders;
 - (d) any other matters the chief executive may wish to consider.

67 Analysis of monitoring data

The chief executive must, at least every five years, publish an analysis of–

- (a) any information considered under this Part; and
- (b) the monitoring data collected under Part 1 of this chapter.

Attachment 1 Dictionary

section 4

Term	Definition
assignee	The person or entity to whom an interest or right to water is being transferred (e.g. seasonally assigned).
assignment	An assignment is where the use of water under a CYPHA water licence is authorised to be taken by a third party (someone other than the licence holder) for a stated period, provided the rules in the protocol are met and the third party has entered into a formal agreement with the CYPHA licence holder for the use of that water.
assignor	The person or entity who transfers an interest or right in water to an assignee (e.g. a seasonal assignment).
CYPHA reserve	Cape York Peninsula Heritage Area (CYPHA) reserve. Unallocated water reserved to assist Aboriginal people and Torres Strait Islanders in Cape York to achieve their economic and social aspirations as required under section 27 of the <i>Cape York Peninsula Heritage Act 2007</i> .
location	For a water allocation, means— (a) the zone from which water under the water allocation can be taken; or (b) an AMTD within a zone, from which water under the water allocation can be taken. For a water licence, means the section of the watercourse, lake, spring or aquifer abutting or contained by the land described on the water licence at which water may be taken. For a water licence to take overland flow water, means land described on the water licence at which water may be taken.
megalitre (ML)	One million litres.