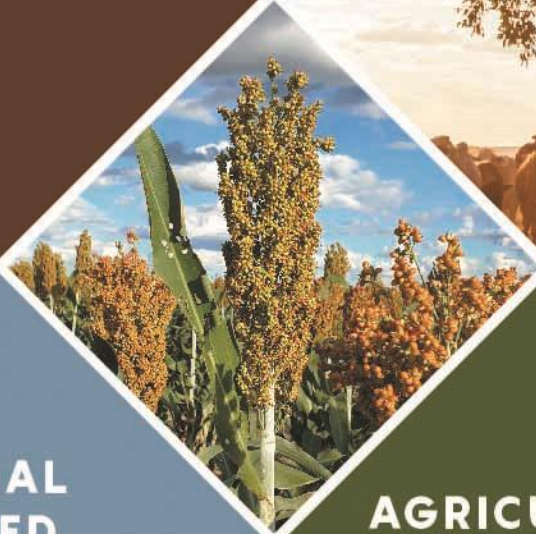


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**Activating Indigenous Peoples' Water  
Rights Under the Water Plan (Cape York)  
2019**

Situation Analysis Report





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## Acknowledgements

We acknowledge the Traditional Owners of all Country covered by the Water Plan (Cape York) 2019. We recognise that this Country includes important places for Indigenous peoples and has ongoing cultural and social significance. We pay our respects to Elders past, present and emerging

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## Acronyms

|        |  |
|--------|--|
| AC     | Aboriginal Corporation   |
| ACHA   | Aboriginal Cultural Heritage Act 2003 (Qld)                            |
| ACHB   | Aboriginal Cultural Heritage Body                                      |
| AIGI   | Australian Indigenous Governance Institute                             |
| ALA    | Aboriginal Land Act 1991 (Qld)   |
| ANEM   | Australian National Electricity Market                                 |
| CATSIA | Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)    |
| CHMP   | Cultural Heritage Management Plan                                      |
| CYPHA  | Cape York Peninsula Heritage Act 2007 (Qld)                            |
| CYPLUS | Cape York Peninsula Land Use Strategy                                  |
| DRDMW  | Queensland Department of Regional Development, Manufacturing and Water |
| EIS    | Environmental Impact Statement   |
| EPBC   | Environment Protection and Biodiversity Conservation Act 1999 (Cth)    |
| FNCC   | First Nation Country Corporation                                       |
| FPIC   | Free, Prior and Informed Consent                                       |
| Ha     | Hectares   |
| HRA    | Human Rights Act 2019 (Qld)  |
| ICN    | Indigenous Corporation Number  |
| ICUA   | Indigenous Community Use Area  |
| ICUN   | International Union for Conservation of Nature                         |
| ILUA   | Indigenous Land Use Agreement  |
| IPA    | Indigenous Protected Areas   |
| LT     | Land Trust   |
| LRF    | Land Restoration Fund  |
| ML     | Megalitre  |
| NCA    | Nature Conservation Act 1992 (Qld)                                     |
| NCFNG  | National Centre for First Nations Governance                           |
| NPARC  | Northern Peninsula Area Regional Council                               |
| NTA    | Native Title Act 1993 (Cth)  |
| NWI    | National Water Initiative  |
| PDR    | Peninsula Development Road   |



- RNTBC Registered Native Title Body Corporate
- SDPWOA State Development and Public Works Organisation Act 1971 (Qld)
- SEA Strategic Environmental Area
- TAF Trustee of Aboriginal Freehold land
- TCICA Torres and Cape Indigenous Council Alliance
- UNDRIP United Nations Declaration of the Rights of Indigenous Peoples
- VMA Vegetation Management Act 1999 (Qld)

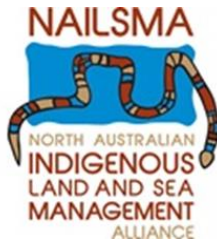


## Project Participants

Preparation of this Report was led by the Development in the Tropics team from The Cairns Institute, James Cook University, with support from the *Water Plan (Cape York) 2019* Working Group.

Members of the Working Group included representatives from:

- The Cairns Institute, James Cook University;
- the North Australian Indigenous Land and Sea Management Alliance;
- the Cape York Land Council;
- the Queensland Department of Regional Development, Manufacturing and Water;
- the Queensland Department of Agriculture and Fisheries;
- Watertrust Australia;
- Balkanu Cape York Development Corporation; and
- the Cooperative Research Centre for Developing Northern Australia.



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## Executive Summary

This Situation Analysis Report details the current situation facing Cape York Aboriginal people seeking to understand and activate their water rights provided through Queensland's statutory water planning process. The Water Plan (Cape York) 2019 and its Cape York Peninsula Heritage Act (CYPHA) reserve make 485,300ML of water available across 15 Cape York river catchments for Aboriginal corporations that perform Registered Native Title Body Corporate and/or Trustee of Aboriginal Freehold land functions. Under the Water Plan, where native title and Aboriginal freehold land rights and interests coincide in the same area of land, corporations that are the Trustee of Aboriginal Freehold land have priority for a water licence over Registered Native Title Bodies Corporate for the coincident area.

A water licence nominating a volume of water and its conditions of use will be granted to eligible Aboriginal corporations upon application, where the water licence volume is calculated according to the volume of water available in the catchment and the percentage of the catchment area where the corporation holds an interest in land. An eligible Aboriginal corporation applying for and being granted a water licence is the first step in the process to activate the CYPHA water reserve. However, before water may be taken and used, the licence holder must apply to the Department of Regional Development, Manufacturing and Water (DRDMW) Chief Executive to amend their water licence. If approved by the Chief Executive, the licence will be amended to include a schedule of conditions regarding the taking and using of water. These conditions ensure issues such as environmental impacts and native title are considered prior to water being extracted from a watercourse and used for a land-based project. The licence holder may also apply to assign water to a third party, and if approved, this would enable water to be leased for a set period of time but not permanently traded.

A desk top analysis to consider opportunities to activate CYPHA water for agriculture, aquaculture, energy production, mining, ecosystem services or municipal supply was undertaken, but few opportunities were identified. Cape York has relatively small areas of fertile soils, limited infrastructure and skilled labour and is remote from markets. Of the water use opportunities reviewed, mining and ecosystem services appear to be most prospective, although an ecosystems services market will need to be created before this opportunity could be meaningfully realised.

Statutory restrictions on land uses for economic purposes across Cape York are extensive and include restrictions associated with the protection and management of environmental and cultural heritage values, land use planning and development assessment requirements. Given the region's significant environment and cultural values there is a need for statutory restrictions, however, in areas with development potential there is a need for more detailed planning to support sustainable development and to manage impacts. Statutory land tenure arrangements are also extremely complex often with coincident Aboriginal freehold and native title rights held by different corporations, with limited capacity having to deal with the incongruent statutory governance requirements. Cadastral tenure boundaries often do not align with First Nation tribal and clan boundaries adding to the complexity as Aboriginal corporation structures and processes are not aligned with tribal and clan decision making structures and processes. These statutory and governance constraints severely limit development on Cape York, including the activation of CYPHA water licences.

If best practice is to be followed then the activation of a CYPHA water licence should be done with the Free, Prior and Informed Consent (FPIC) of the Aboriginal people whose Country would be affected by the activation. The Aboriginal corporation holding the licence should be responsible for running the FPIC process and demonstrating due process and consent before government approves a licence activation. Currently most Aboriginal Corporations on Cape York have limited



capacity to established rules and processes that resemble best-practice FPIC decision-making. There is therefore a need for statutory governance reforms and capacity building of eligible Aboriginal corporations if CYPHA water licences are to be activated.

This report identifies reforms that could be undertaken to address statutory and governance constraints. A longer-term solution to the existing incongruent and conflictual governance arrangements is to establish a First Nation self-determined process to transition existing Aboriginal corporations to new, effective governance arrangements that consolidate and reconcile Aboriginal rights and interests in land and establish best-practice FPIC decision-making processes between the corporations and the Aboriginal people they hold and manage rights on behalf of.

The proposed reforms towards new, effective governance arrangements draws on the work of the Australian Indigenous Governance Institute and the Canadian-based National Centre for First Nations Governance. The development of a self-determined approach to First Nation rebuilding would ultimately see a traditional geographic area and the people connected to this Country develop contemporary governance arrangements and a First Nation corporation where decision making about land and water rights operates respecting Aboriginal lores and customs. This corporation would hold land and water rights in trust on behalf of its First Nation membership facilitating engagement in mainstream and traditional processes to manage land and water. As part of this process the Commonwealth and Queensland governments should work with First Nation peoples to reconcile incongruent aspects of the *Native Title Act 1993* (Cth) and the *Aboriginal Land Act 1991* (Qld).

Other statutory reforms identified to support sustainable development and the activation of CYPHA water include the Queensland Government putting in place structures and processes to enable the declaration of Indigenous Community Use Areas as provided for in the CYPHA, amendment of local government planning scheme zones, the negotiation of Indigenous Land Use Agreements for prospective activity areas, and a requirement for the demonstration of FPIC for proposed activities. The establishment of an ecosystem services market by the Commonwealth Government that includes a market for services performed by water retained in watercourses would provide a significant opportunity to activate CYPHA water licences and provide benefits to Cape York Aboriginal people.





## Introduction

The Water Plan (Cape York) 2019 (the Water Plan) and its Cape York Peninsula Heritage Act water reserve (CYPHA reserve) represent a significant step forward in recognising water rights for Cape York Aboriginal people. Activating the use of CYPHA reserve water should provide an opportunity to achieve economic, cultural, social, and environmental benefits for Cape York Aboriginal people, and to develop and apply best practice governance processes that satisfy traditional Aboriginal governance principles as well as Queensland and Australian statutory requirements and international commitments. New best practice governance processes for consent-based water use will also be more broadly applicable to other processes related to the use and management of land.

This situation analysis report (this Report) considers matters relevant to the activation of the CYPHA reserve, including opportunities for and constraints on activation, and how to overcome the constraints through reforms and improvements to the broader governance environment and the specifics of Aboriginal corporate governance. At the centre of best practice governance will be the Aboriginal corporations that hold CYPHA reserve water licences, and as such they will be responsible to enable cooperative and constructive engagement between traditional Aboriginal and modern Western values and governance practices in ways that enable activation of the CYPHA reserve.

The Water Plan defines Indigenous corporations eligible to hold a CYPHA water licence and the CYPHA reserve identifies unallocated water volumes available for CYPHA water licences. CYPHA water licence holders may use the water themselves for commercial or other purposes or assign water to other parties under a commercial agreement.

However, significant obstacles to the activation of the CYPHA reserves will be experienced if mainstream water governance processes fail to support effective Indigenous self-determination and decision making about activation of their water rights, and if governance processes do not link traditional decision making into mainstream processes (Langton, 2006; Jackson, et. al., 2023). Australia ratified the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) in 2009, and pursuant to UNDRIP, the Queensland Government has committed to Indigenous self-determination including through the *Human Rights Act 2019* (Qld) (HRA). Consistent with these commitments, obtaining Indigenous people's Free, Prior and Informed Consent (FPIC) is considered best practice in supporting the self-determination of Indigenous peoples, including for the activation of the CYPHA reserve.

Government administrators and Indigenous corporations eligible to hold a CYPHA water licence therefore have a responsibility to obtain the FPIC of relevant Indigenous peoples when making decisions about activating the CYPHA reserve, in particular through the amendment of a CYPHA water licence to authorise the use or assignment of water. Under traditional Aboriginal lore<sup>1</sup> only particular people have cultural authority to speak for Country and are therefore the appropriate people to make key FPIC decisions about management of land and water resources.

This Report quantifies CYPHA reserve volumes nominally available to eligible Cape York Aboriginal corporations under a CYPHA water licence and best practice governance for both Aboriginal corporations and the Queensland Government to activate use of water under a CYPHA

---

<sup>1</sup> Many Aboriginal people in Cape York Peninsula spell traditional Indigenous law as L-O-R-E or lore distinguishing it from western legal systems underpinning Australian, State, Territory and local government laws.



water licence. This Report also identifies the land use constraints and corporate governance issues that constrain the activation of CYPHA reserve water, and the statutory and governance improvements and reforms required to fully enable best practice governance.

Amongst other things, recommended governance best practice reforms identify that decision making about the activation of CYPHA water licences should rely on obtaining the FPIC of Aboriginal people with the cultural knowledge and authority to make these decisions, and that the rebuilding of Cape York First Nations is ultimately required to fully enable best practice governance.



## 2.0 Recognition of Indigenous peoples' interests in water

In 2004, the National Water Initiative (NWI) became the first instance of Indigenous rights to water being formally recognised in national water policy (Commonwealth of Australia, 2004). The June 2004 Intergovernmental Agreement on A National Water Initiative was developed to facilitate implementation of the NWI and included commitments relevant to recognising Indigenous rights to water. The Parties to the Intergovernmental Agreement, including the Queensland Government, agreed that:

- Their water access entitlements and planning frameworks will recognise Indigenous needs in relation to water access and management;
- They will modify their existing legislation and administrative regimes where necessary to ensure that their water access entitlement and planning frameworks incorporate Indigenous representation in Water Planning wherever possible;
- Water Plans will incorporate Indigenous social, spiritual, and customary objectives and strategies for achieving these objectives wherever they can be developed;
- Water Planning processes will take account of the possible existence of native title rights to water in the catchment or aquifer area, and
- Water allocated to native title holders for traditional cultural purposes will be accounted for.

In 2009, the Australian government committed to Indigenous peoples' self-determination when it formally endorsed the UNDRIP. The UNDRIP establishes a universal framework of minimum standards to safeguard and support the survival, dignity, and well-being of Indigenous peoples around the world. UNDRIP elaborates on existing human rights standards and fundamental freedoms as these apply to the specific situation of Indigenous peoples. Amongst other things, UNDRIP acknowledges Indigenous peoples' rights related to water, including:

- The right to maintain their distinctive spiritual connection to water;
- The right to access the resources required to maintain cultural heritage and undertake traditional practices;
- The right to determine priorities and strategies for the development or use of their resources;
- The right to conserve and protect the environment and the productive capacity of their lands; and
- The right to improve their economic and social conditions.

Significantly, UNDRIP also upholds the key principle of FPIC. The FPIC principle asserts that when making policies or laws or undertaking activities that affect Indigenous peoples, governments and others should negotiate with affected Indigenous people about those proposals with the aim of obtaining their consent. The FPIC principle therefore enables Indigenous people to exercise more power in negotiations and decisions about proposals that directly affect them, such as water planning and activation of the CYPHA reserve.

Australia's commitments to UNDRIP principles, including self-determination and FPIC, and previously the International Covenant on Civil and Political Rights which Australia ratified in 1980, have been given some legal effect in Queensland through the HRA. The HRA specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people, and that they must not be denied this right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture. Examples of practicing culture include:



- To maintain and use Indigenous languages;
- To maintain kinship ties;
- Freedom to teach cultural practices and education to children; and
- The right to maintain distinctive spiritual, material, and economic relationships with land, water, and other resources that there is a connection with under traditional laws and customs.

The HRA recognises that Aboriginal peoples and Torres Strait Islanders have rights:

- Not to be subjected to forced assimilation or destruction of their culture;
- To maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas;
- To conserve and protect the environment and the productive capacity of their lands, territories, and waters; and
- To maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expression.

Queensland's Water Act 2000 (Qld) (the Water Act) now includes provision for the take or inference with water for Aboriginal peoples or Torres Strait Islander traditional activities and cultural purposes, such as hunting, fishing, gathering, or camping, performing rites or other ceremonies, or visiting sites of significance. The Water Act also now provides more substantial Aboriginal peoples or Torres Strait Islander rights to water, including to take water for commercial purposes. Significantly, from October 2018, new or reviewed and replaced Queensland Water Plans must explicitly recognise the importance of water resources for Aboriginal peoples and Torres Strait Islander peoples.

Because the preparation and implementation of Water Plans deal with matters that significantly affect the rights and interest of the Aboriginal peoples or Torres Strait Islander Traditional Owners of a Water Plan area, then Water Plan preparation or implementation, such as activation of the CYPHA reserve, should be subject to the FPIC of relevant Aboriginal people. However, it must be noted that FPIC does generally not provide Aboriginal peoples or Torres Strait Islander decision makers with an absolute right to determine how land and waters are used and managed, or power to veto proposals. Government and other interest groups also have rights and influence over final decisions about Water Plans and how water is used.

On Cape York Indigenous people's interests in water were first recognised by the Wild Rivers Act 2005 (Qld) which provided that a wild river declaration may include a process for granting, reserving or otherwise dealing with unallocated water in a wild river area, and wild river declaration proposals included proposed strategic, general and Indigenous reserves of unallocated water. For example, the Wenlock Basin Wild River Declaration 2010 included an unallocated water Indigenous reserve of 5000ML. The purpose of this Indigenous reserve was to help Indigenous communities in the wild river area achieve their economic and social aspirations. Twelve wild rivers were declared on Cape York. The Wild Rivers Act 2005 was revoked in 2014 and there are now no declared wild rivers.

The Cape York Peninsula Heritage Act 2007 (Qld) provides that if a water plan was made under the Water Act for Cape York it must provide a reserve of water in the area to which the plan relates for the purpose of helping Indigenous communities in the area achieve their economic and social aspirations. This requirement was enacted through preparation of the Water Plan (Cape York) 2019.



### 3.0 Queensland's water planning system

The Water Act establishes Queensland's regulatory framework for the management of water resources, which includes provision for catchment-based Water Planning and other water management methods to sustainably manage and allocate the State's water resources. The Queensland Department of Regional Development, Manufacturing and Water (DRDMW) currently administers and has primary responsibility for water management through implementation of the Water Act. As part of this role, DRDMW is responsible for the preparation and implementation of Water Plans, including the Water Plan (Cape York) 2019 and its CYPHA reserve.

Queensland is divided into 22 Water Plan areas based on river catchments, and one Water Plan relating to artesian water. See Figure 1 showing Queensland Water Plan areas. At a catchment scale, Water Plans are tailored for each plan area to balance the needs of:

- Consumptive use (e.g., towns, agriculture and other industries, Indigenous purposes); and
- Non-consumptive use (e.g., social, cultural, and environmental purposes).

Through a Water Planning process involving technical assessments, stakeholder consultations, plan drafting, and submissions consideration a final Water Plan is developed. The Water Plan identifies:

- The total volume of water that must be left in the river or other water source to support environmental, social, and cultural values; and
- The total volume of water available for extraction from the river or other water source that may be used for a variety of consumptive purposes (such as agriculture, mining, town water supply or Indigenous purpose).

The volume of existing water allocations is subtracted from the total volume of water available for allocation, and the remaining volume is known as unallocated water. Unallocated water volumes are then allocated to reserves, such as general, strategic, and Indigenous reserves, for future allocation to water licences and use for particular purposes.





Figure 1 Queensland Water Plan areas



### 3.1 Water Plan (Cape York) 2019

The Water Plan (Cape York) 2019 covers an area 106,805.4 km<sup>2</sup> and includes the fifteen catchments of the Archer River, Coleman River, Ducie River, Embley River, Endeavour River, Holroyd River, Jacky Jacky Creek, Jardine River, Jeannie River, Lockhart River, Normanby River, Olive-Pascoe River, Stewart River, Watson River, and Wenlock River. See Figure 2 showing the Water Plan (Cape York) 2019 area and its fifteen catchment areas. The Water Plan applies to all surface water, including water in a watercourse or lake, water in springs, overland flow water and underground water. The Water Plan (Cape York) 2019 however, does not apply to underground water or water in springs managed under the Water Plan (Great Artesian Basin and Other Regional Aquifers) 2017.

The Water Plan has been prepared so that total volume of surface water available for extraction amounts to 2.5% of the total median annual flow volume of water in each of the Water Plan's catchments. 2.5% is a conservative water volume extraction compared to water extraction from most other Queensland river systems, and is designed to ensure environmental, social, and cultural values associated with waters are preserved in Cape York. The Water Plan also deals with other matters such as the time of year when water can be extracted and in what quantities considering the variable flow rates in river systems.

The total volume of surface water made available under the Water Plan is 516,350ML. At the time of writing 506,870ML remained unallocated and available for allocation and use across the water plan area. Remaining available water volumes vary between catchments depending upon the volume of water initially made available under the Water Plan, and that volume that has been allocated since the Water Plan's commencement.

### 3.2 Cape York Water Management Protocol 2019

The Water Plan includes a Water Management Protocol (the Protocol) which implements and operates in conjunction with the Water Plan. Amongst other things, the scope of the Protocol includes to:

- Provide a breakdown of unallocated water in the Water Plan into volumes held as general, strategic or Cape York Peninsula Heritage Area (CYPHA) reserve for each catchment; and
- 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.

#### 3.2.1 Unallocated reserve water accessible for Indigenous purposes

The Protocol allocates the 516,350ML of unallocated water in the Water Plan area across a strategic reserve, a general reserve, and an Indigenous reserve known as the CYPHA reserve.

Reserve volumes are:

|                      |                  |
|----------------------|------------------|
| Strategic reserve    | 25,000ML         |
| General reserve      | 6,050ML          |
| <u>CYPHA reserve</u> | <u>485,300ML</u> |
| <u>Total</u>         | <u>516,350ML</u> |

Strategic reserve water may be allocated and granted for a State purpose, or to an eligible person for a project for the economic or social benefit of Aboriginal people or Torres Strait Islanders. A





State purpose could include a coordinated project, a project of regional significance, or a town water supply purpose.

General reserve water may be allocated and granted for any purpose, including an Indigenous purpose.



Figure 2 Water Plan (Cape York) 2019 area and its fifteen catchment areas



### 3.3 CYPHA water licences

A CYPHA water licence may be granted to an eligible person to help an Aboriginal or Torres Strait Islander community in the Cape York Peninsula Region achieve its economic and social aspirations. An eligible person can request their share of CYPHA reserve water at any time by requesting a water licence, at no cost. An eligible person will be eligible for a CYPHA water licence in each catchment where it holds an interest in land. To request its share of the CYPHA reserve an eligible person can at any time write to DRDMW who will review the request and decide whether to offer a water licence.

The CYPHA reserve volume of 485,300ML is a far more substantial than Indigenous reserves in other Queensland Water Plans, with the next largest Indigenous reserve being 30,550ML in the Water Plan (Gulf) 2007, and most water plans have an Indigenous reserve of between 5,000ML and 0ML. The CYPHA reserve is divided across the fifteen Water Plan catchments.

The volume of the CYPHA reserve for each catchment is shown in Table 1. Although CYPHA reserve volumes vary significantly between different catchments the volumes were calculated using a consistent methodology. The CYPHA methodology is based upon 2.5% of the total median annual flow volume minus water allocated to strategic and general reserves and the water licence volumes granted in each catchment prior to commencement of the Water Plan. In the Jeannie and Watson catchments all available water had been allocated to water licences, mainly for mining projects, prior to commencement of the Water Plan, resulting in a CYPHA reserve volume of zero for these catchments. When the mining projects cease operations their water allocations could be reallocated as part of a Water Plan review, possibly to the CYPHA reserve. In the meantime, eligible persons in the Jeannie and Watson catchments can seek a water licence from the Water Plan strategic reserve.

As CYPHA water licences are granted over time the remaining volume of the CYPHA reserve will reduce, so the volume of available water in future may be less than that shown in Table 1. However, CYPHA water licence volume calculations and eligibility criteria ensure that a water entitlement will remain available for an eligible person.



Table 1 CYPHA reserve volume per catchment within the Water Plan (Cape York) 2019

| Catchment    | Volume of CYPHA reserve (ML) |
|--------------|------------------------------|
| Archer       | 89,000                       |
| Coleman      | 56,000                       |
| Ducie        | 46,000                       |
| Embley       | 8,000                        |
| Endeavour    | 16,000                       |
| Holroyd      | 68,500                       |
| Jacky Jacky  | 1,500                        |
| Jardine      | 49,000                       |
| Jeannie      | 0                            |
| Lockhart     | 6,300                        |
| Normanby     | 16,000                       |
| Olive–Pascoe | 48,000                       |
| Stewart      | 5,000                        |
| Watson       | 0                            |
| Wenlock      | 76,000                       |
| <b>Total</b> | <b>485,300</b>               |

### 3.3.1 CYPHA water licence eligibility

A CYPHA water licence eligible person is defined under s32(6) of the Water Plan (Cape York) 2019 as:

- a) An entity that holds land under the Aboriginal Land Act 1991 (Qld) or Torres Strait Islander Land Act 1991 (Qld); or
- b) A native title holder under the Native Title Act 1993 (Cth).

An entity that holds land under the Aboriginal Land Act 1991 (Qld) is a Trustee of Aboriginal Freehold land (TAF). A TAF may be either:

- A corporation registered under the Aboriginal Land Act 1991 (Qld) (ALA) as a land trust; or





- A corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSIA) and holds Aboriginal freehold land as a Trustee.

Currently, no entities hold land under the Torres Strait Islander Land Act 1991 (Qld) within the Water Plan area so only Aboriginal entities are further referred to in this Report. However, if land is transferred to Torres Strait Islander freehold tenure in the future the same issues discussed in this Report that apply to Aboriginal freehold land and corporate entities will also apply to Torres Strait Islander freehold land and corporate entities.

Legal advice is required to clarify whether holding a CYPHA water licence, where licence eligibility and volume is based on holding Aboriginal freehold land rights, requires that the water rights are managed as if they were Aboriginal freehold rights. This matter will be investigated further in later stages of this project.

Native title is held either by a Trustee Registered Native Title Body Corporate (RNTBC) or by native title holders. A Trustee RNTBC holds native title and is entitled 'to manage the native title rights and interests of the common law holders of those rights and interests' (s 6(1)(a) PBC Regulations). Where native title is held by the native title holders themselves an Agent RNTBC is established but is only entitled 'to manage the rights and interests of the common law holders as authorised by the common law holders' (s 7(1)(b) PBC Regulations). All RNTBCs are corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth).

If an RNTBC is a Trustee RNTBC it will be eligible to hold and manage a CYPHA water licence. If an RNTBC is an Agent RNTBC, DRDMW's position is that only the native title holders associated with the Agent RNTBC will be eligible for a CYPHA water licence, but the Agent RNTBC itself is not eligible to hold a licence. This contrasts with management of native title rights where Agent RNTBCs manage native title rights as authorised by the native title common law holders. Regardless of whether an RNTBC acts as Trustee or Agent the volume of a CYPHA water licence will be calculated according to the area of native title within an RNTBC's area of jurisdiction.

Legal advice is required to clarify whether holding a CYPHA water licence, where licence eligibility and volume is based on holding native title rights, requires that the water rights are managed as if they were native title rights. Legal advice is also required about how CYPHA water entitlements could be held and activated where the RNTBC is an Agent RNTBC. These legal matters will be investigated further in later stages of this project.

However, for the purposes of this Report, CYPHA water licence eligible persons are referred to as:

- a) A Trustee of Aboriginal Freehold land (TAF); or
- b) A Registered Native Title Body Corporate (RNTBC).

See Table 2 for TAFs and RNTBCs eligible to hold a CYPHA water licence, their incorporating legislation, and core statutory functions, including Aboriginal Cultural Heritage Body (ACHB) functions, and whether an RNTBC acts as an Agent or Trustee. Also see Figure 3 and Figure 4 for the areas where TAFs and RNTBCs have interests in land. Where TAFs and RNTBCs hold interests in the same areas of land the TAF has priority over the RNTBC for a CYPHA water licence. Section 3.3.2 discusses this issue in greater detail.

Table 2 Cape York Aboriginal Corporations eligible for a CYPHA water licence and their core functions



| Eligible persons   | Incorporating legislation | RNTBC function           | TAF function | ACHB function |
|--|---------------------------|--------------------------|--------------|---------------|
| Abm Elgoring Ambung Aboriginal Corporation RNTBC (ICN 7163)  | CATSIA                    | Yes (Agent) <sup>1</sup> | Yes          | Yes           |
| Agayrra-Timara Land Trust                                    | ALA                       | No                       | Yes          | No            |
| Alka Bawar (Kalpowar) Aboriginal Corporation (ICN 8206)      | CATSIA                    | No                       | Yes          | No            |
| Ang-Gnarra Aboriginal Corporation of Laura (ICN 308)         | CATSIA                    | No                       | Yes          | No            |
| Apudthama Land Trust   | ALA                       | No                       | Yes          | No            |
| Atambaya Aboriginal Corporation (ICN 8699)                   | CATSIA                    | No                       | Yes          | No            |
| Atambaya Aboriginal Corporation RNTBC (ICN 9839)             | CATSIA                    | Yes (Trustee)            | No           | No            |
| Aurukun Shire Council  |                           | No                       | Yes          | No            |
| Awu-Laya Indigenous Corporation (ICN 10045)                  | CATSIA                    | Yes (Trustee)            | No           | No            |
| Ayapathu Aboriginal Corporation (ICN 9757)                   | CATSIA                    | Yes (Trustee)            | No           | No            |
| Balnggarrawarra (Gaarraay) Land Trust                        | ALA                       | No                       | Yes          | No            |
| Balnggarrawarra Aboriginal Corporation (ICN 8403)            | CATSIA                    | No                       | Yes          | No            |
| Batavia Traditional Owners Aboriginal Corporation (ICN 7538) | CATSIA                    | No                       | Yes          | No            |
| Binthi Land Holding Group Aboriginal Corporation (ICN 3394)  | CATSIA                    | No                       | Yes          | No            |
| Bromley Aboriginal Corporation RNTBC (ICN 8374)              | CATSIA                    | Yes (Trustee)            | Yes          | Yes           |
| Burrgirrku Land Trust  | ALA                       | No                       | Yes          | No            |
| Buubu Gujin Aboriginal Corporation (ICN 7852)                | CATSIA                    | No                       | Yes          | No            |
| Cape Melville, Flinders & Howick Islands AC (ICN 7847)       | CATSIA                    | No                       | Yes          | No            |
| Darrba Land Trust  | ALA                       | No                       | Yes          | No            |
| Dhubbi Warra Aboriginal Corporation RNTBC (ICN 2833)         | CATSIA                    | Yes (Agent)              | No           | No            |
| Gudang/Yadhaykenu Aboriginal Corporation RNTBC (ICN 9801)    | CATSIA                    | Yes (Trustee)            | Yes          | No            |
| Hope Vale Aboriginal Shire Council                           |                           | No                       | Yes          | No            |
| Hope Vale Congress Aboriginal Corporation RNTBC (ICN 3135)   | CATSIA                    | Yes (Agent)              | Yes          | No            |
| Imjim Land Trust   | ALA                       | No                       | Yes          | No            |



|   |        |               |     |     |
|---|--------|---------------|-----|-----|
| Ipima Ikaya Aboriginal Corporation RNTBC (ICN 8114)           | CATSIA | Yes (Trustee) | Yes | Yes |
| Jabalbina Yalanji Aboriginal Corporation RNTBC (ICN 7002)     | CATSIA | Yes (Trustee) | Yes | Yes |
| Jabalbina Yalanji Land Trust                                  | ALA    | No            | Yes | No  |
| Juunjuwarra Aboriginal Corporation (ICN 7480)                 | CATSIA | No            | Yes | No  |
| Kaapay Kuuyun Aboriginal Corporation (ICN 9607)               | CATSIA | Yes (Trustee) | No  | No  |
| Kalpowar Aboriginal Land Trust                                | ALA    | No            | Yes | No  |
| Kuku-Warra Aboriginal Corporation RNTBC (ICN 10063)           | CATSIA | Yes (Trustee) | No  | No  |
| Kulla Land Trust  | ALA    | No            | Yes | No  |
| Kuuku Ya'u Aboriginal Corporation RNTBC (ICN 7193)            | CATSIA | Yes (Trustee) | No  | Yes |
| Kyerrwanhdha Thingalkal Land Trust                            | ALA    | No            | Yes | No  |
| Lama Lama Aboriginal Corporation RNTBC (ICN 9758)             | CATSIA | Yes (Trustee) | No  | Yes |
| Lama Lama Land Trust  | ALA    | No            | Yes | No  |
| Mangkuma Land Trust   | ALA    | No            | Yes | No  |
| Mokwiri Aboriginal Corporation RNTBC (ICN 7972)               | CATSIA | Yes (Trustee) | Yes | Yes |
| Ngan Aak-Kunch Aboriginal Corporation RNTBC (ICN 4097)        | CATSIA | Yes (Agent)   | Yes | Yes |
| Ngulun Land Trust   | ALA    | No            | Yes | No  |
| Northern Cape and Torres Strait United Indigenous Corporation | CATSIA | Yes (Agent)   | No  | No  |
| Northern Kaanju Aboriginal Corporation RNTBC (ICN 9756)       | CATSIA | Yes (Trustee) | No  | Yes |
| Northern Kuuku Ya'u Kanthanampu AC RNTBC Land Trust           | CATSIA | No            | Yes | No  |
| Northern Peninsula Area Regional Aboriginal Council           |        | No            | Yes | No  |
| Old Mapoon Aboriginal Corporation (ICN 7792)                  | CATSIA | No            | Yes | No  |
| Olkola Aboriginal Corporation (ICN 1720)                      | CATSIA | No            | Yes | Yes |
| Oyala Thumotang Land Trust                                    | ALA    | No            | Yes | No  |
| Peppan Land Trust   | ALA    | No            | Yes | No  |
| Possum Aboriginal Corporation RNTBC (ICN 10048)               | CATSIA | Yes (Trustee) | No  | No  |
| Pul Pul Land Trust  | ALA    | No            | Yes | No  |



|  |        |               |     |     |
|--|--------|---------------|-----|-----|
| Rinyirru (Lakefield) Land Trust                                    | ALA    | No            | Yes | No  |
| Seven Rivers Aboriginal Corporation RNTBC (ICN 8522)               | CATSIA | Yes (Trustee) | No  | Yes |
| Southern Kaantju Aboriginal Corporation (ICN 9755)                 | CATSIA | Yes (Trustee) | No  | No  |
| Thaa-Nguigarr Strathgordon Aboriginal Corporation RNTBC (ICN 4732) | CATSIA | Yes (Agent)   | No  | No  |
| Toolka Land Trust  | ALA    | No            | Yes | No  |
| Umpila Aboriginal Corporation (ICN 9982)                           | CATSIA | Yes (Trustee) | No  | No  |
| Ut-Alkar Aboriginal Corporation (ICN 10231)                        | CATSIA | Yes (Trustee) | No  | No  |
| Uutaalnganu Aboriginal Corporation (ICN 9606)                      | CATSIA | Yes (Trustee) | No  | No  |
| Waarntuur-iin Aboriginal Corporation (ICN 8303)                    | CATSIA | No            | Yes | No  |
| Wakooka Land Trust   | ALA    | No            | Yes | No  |

Notes:

1. Who could hold a CYPHA water licence and how its volume could be calculated in areas where an Agent RNTBC is established, and Aboriginal freehold does not exist, is to be further investigated.



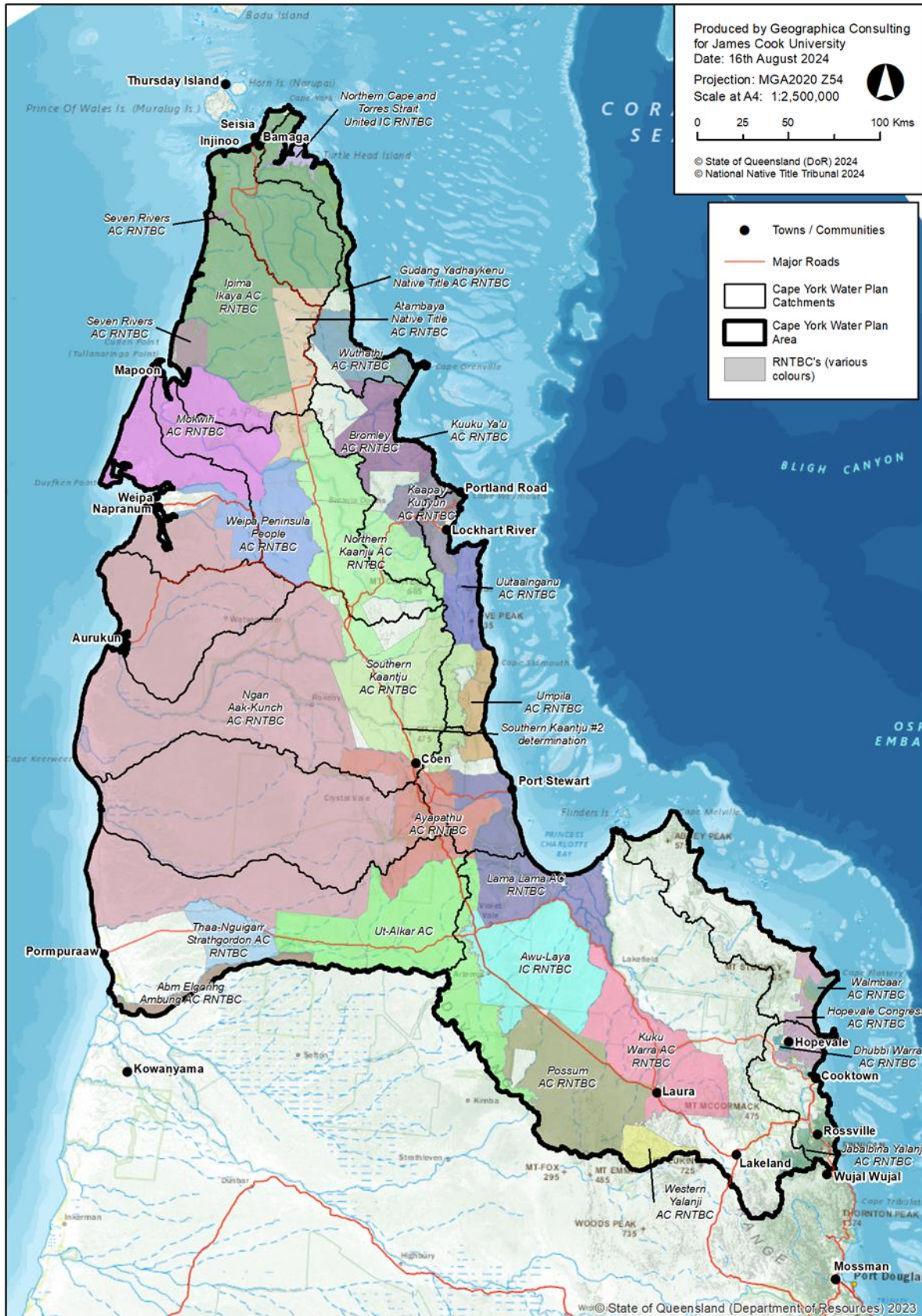


Figure 3 Cape York Registered Native Title Bodies Corporate (RNTBCs)



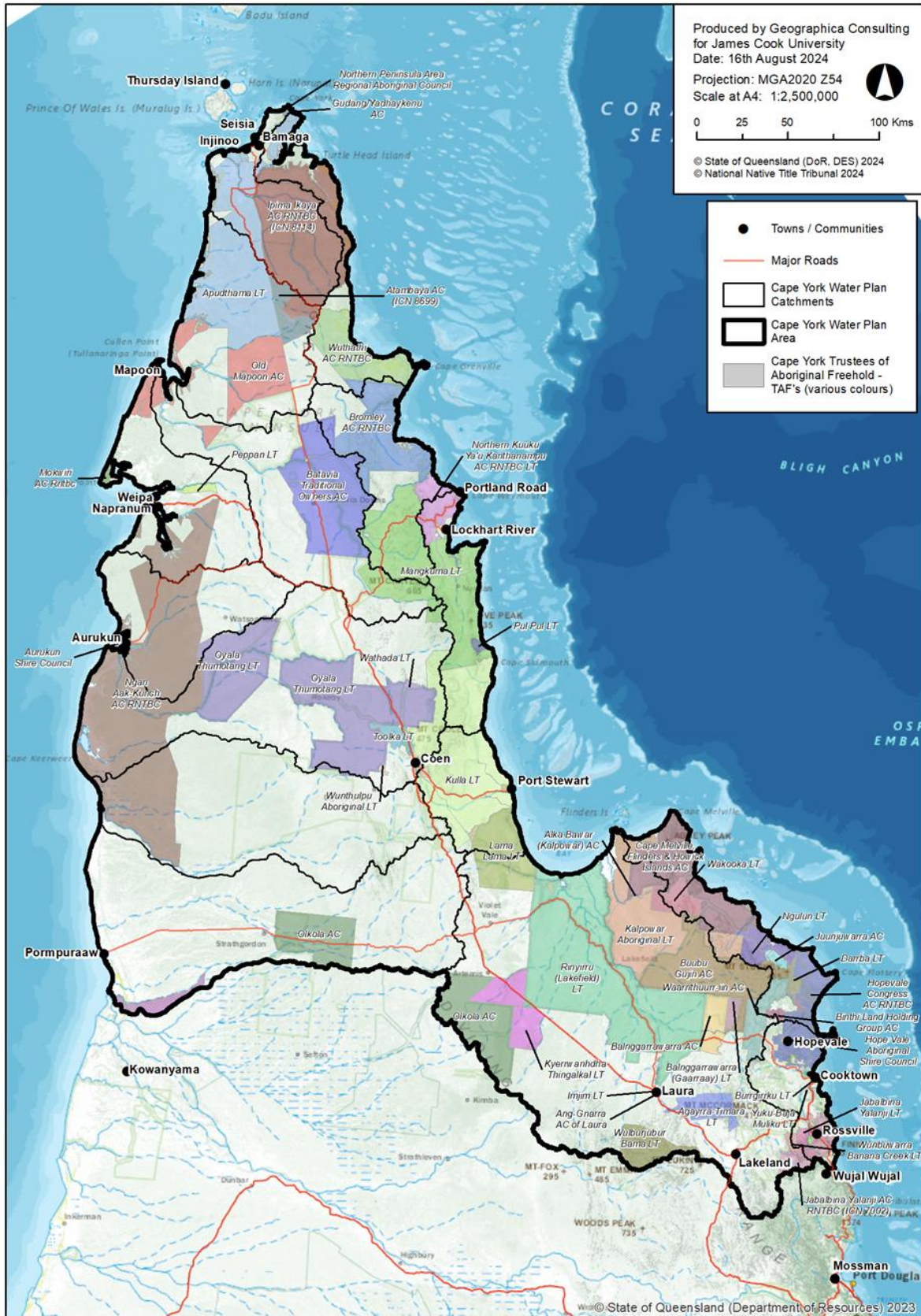


Figure 4 Cape York Trustees of Aboriginal Freehold land (TAFs)



### 3.3.2 CYPHA water licence nominal volumes

The CYPHA reserve volume for each catchment can be nominally allocated as water licence volumes for RNTBCs and TAFs based on the proportion of land interests that each RNTBC or TAF holds in that catchment.

These nominal water licence volumes are calculated using the formula provided in the Protocol s(20)(3) of  $(Q) \times (R) - (S)$ , 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.

For approximately 40 per cent of the Water Plan area, native title and Aboriginal freehold rights and interests, and therefore RNTBCs and TAFs, are coincident for the same areas of land. Because they are CATSIA corporations, RNTBCs may also be TAFs, and there are several examples of where a single CATSIA corporation performs the functions of both an RNTBC and a TAF for an area within the Water Plan area. However, this is not the case everywhere within the Water Plan area, and there are also many examples of where one corporation performs the functions of an RNTBC and a different corporation performs the functions of a TAF for the same area of land. To illustrate this issue, see Table 4, Figure 5, Figure 6 and Figure 7.

In those areas where CYPHA water licence eligible persons are coincident for the same area of land, section 19(1)(a) of the Protocol provides that the TAF interest in land has priority over the RNTBC interest for the calculation of nominal licence volumes. However, s22(1)(c) of the Protocol also provides that a TAF can choose to accept a licence offer but nominate the relevant native title holder to hold the water licence. In this event the DRDMW Chief Executive must make a new water licence offer to the native title holder.

Using the Protocol's  $(Q) \times (R) - (S)$  formula and the priority for TAFs where there are coincident interests and corporations, nominal CYPHA water licence volumes have been calculated for each RNTBC and TAF for each catchment in the Water Plan area. See Table 3 for a summary of nominal water licence allocations to RNTBCs and TAFs per catchment and actual CYPHA water licence grant volumes, and Appendix 2 for an expanded version of Table 3 showing (Q), (R), (S) and other factors used in the calculation of nominal water licence volumes.



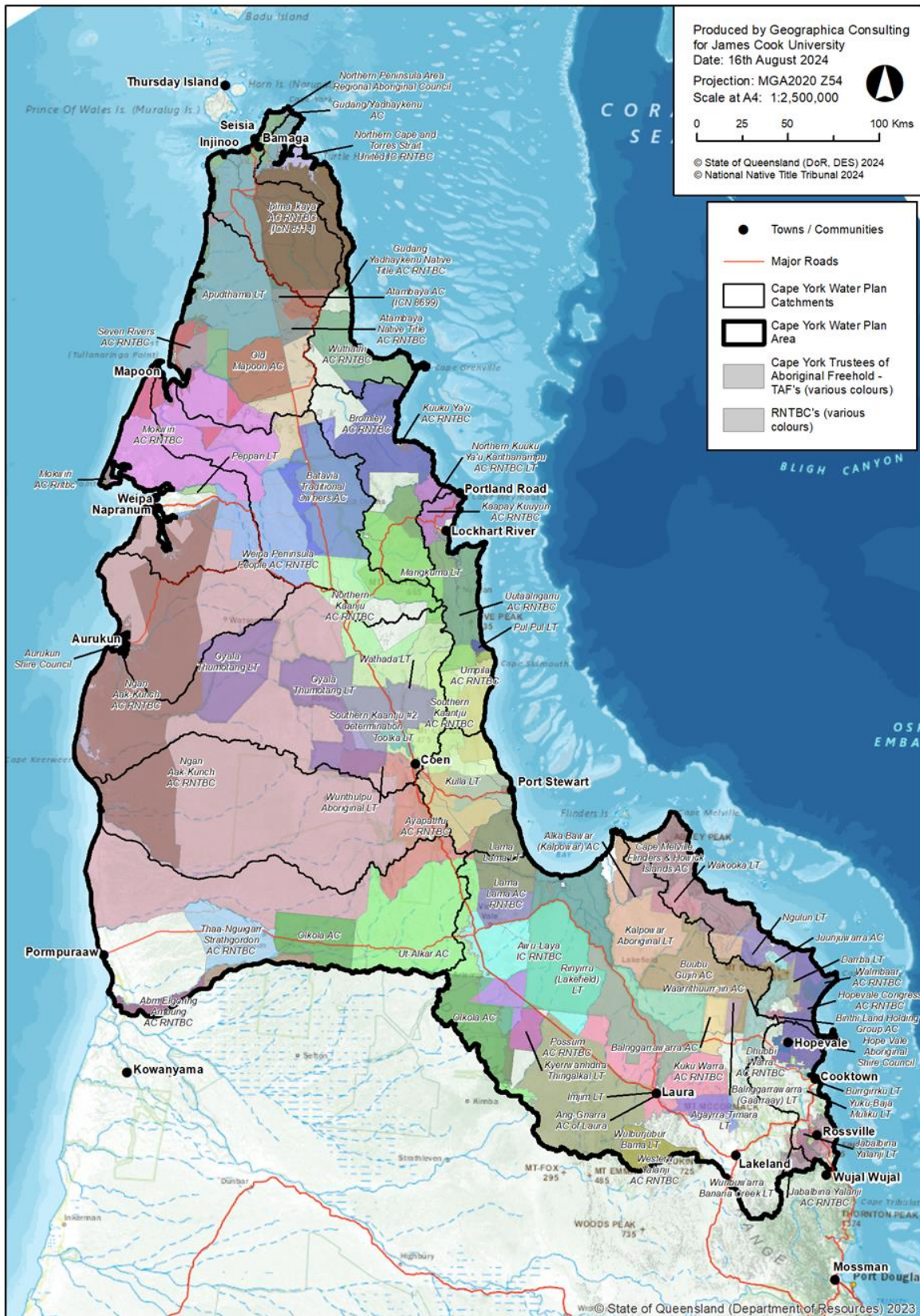


Figure 5 Cape York RNTBCs and TAFs overlaid



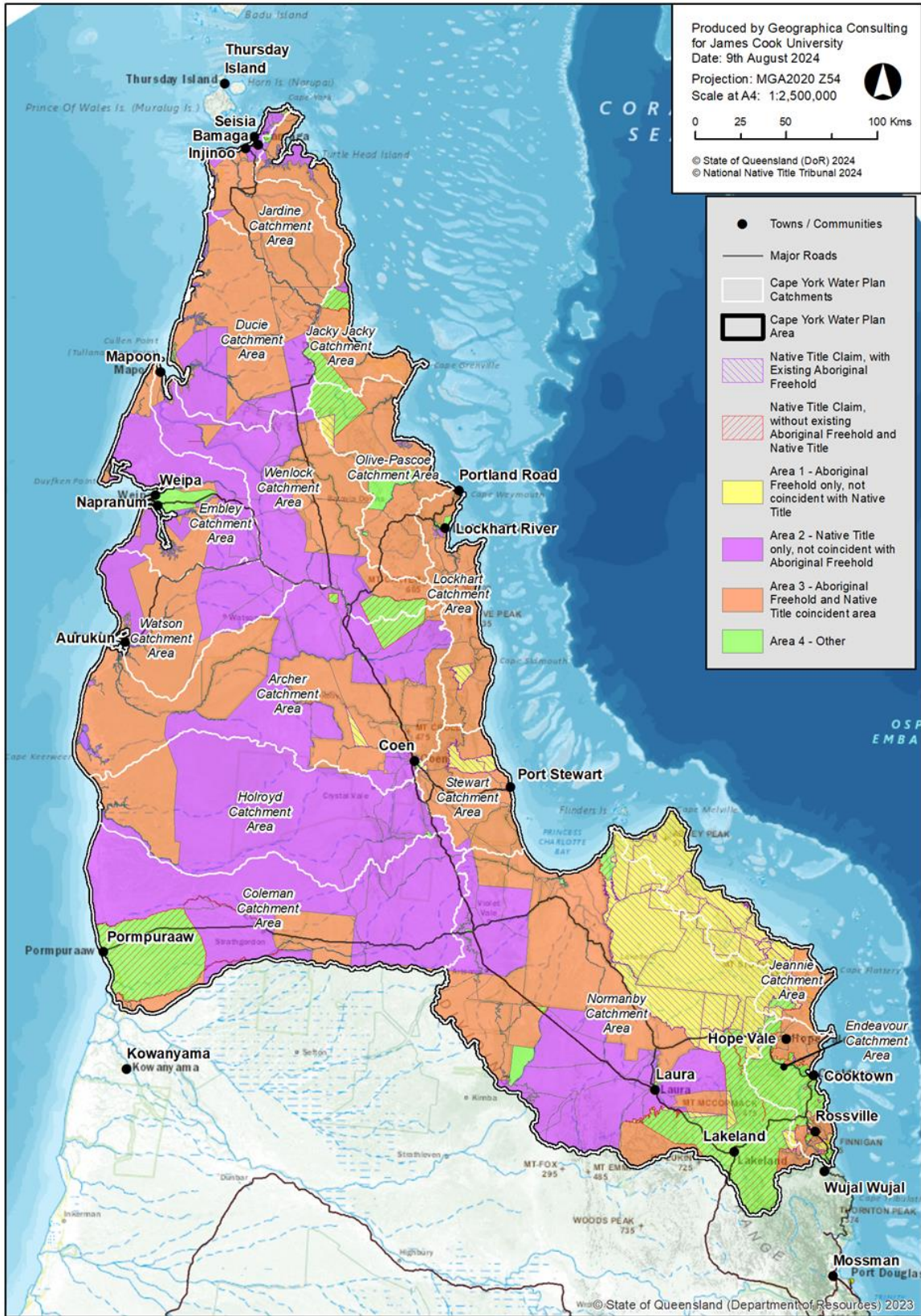


Figure 6 Cape York RNTBCs and TAFs showing areas of coincident land interests



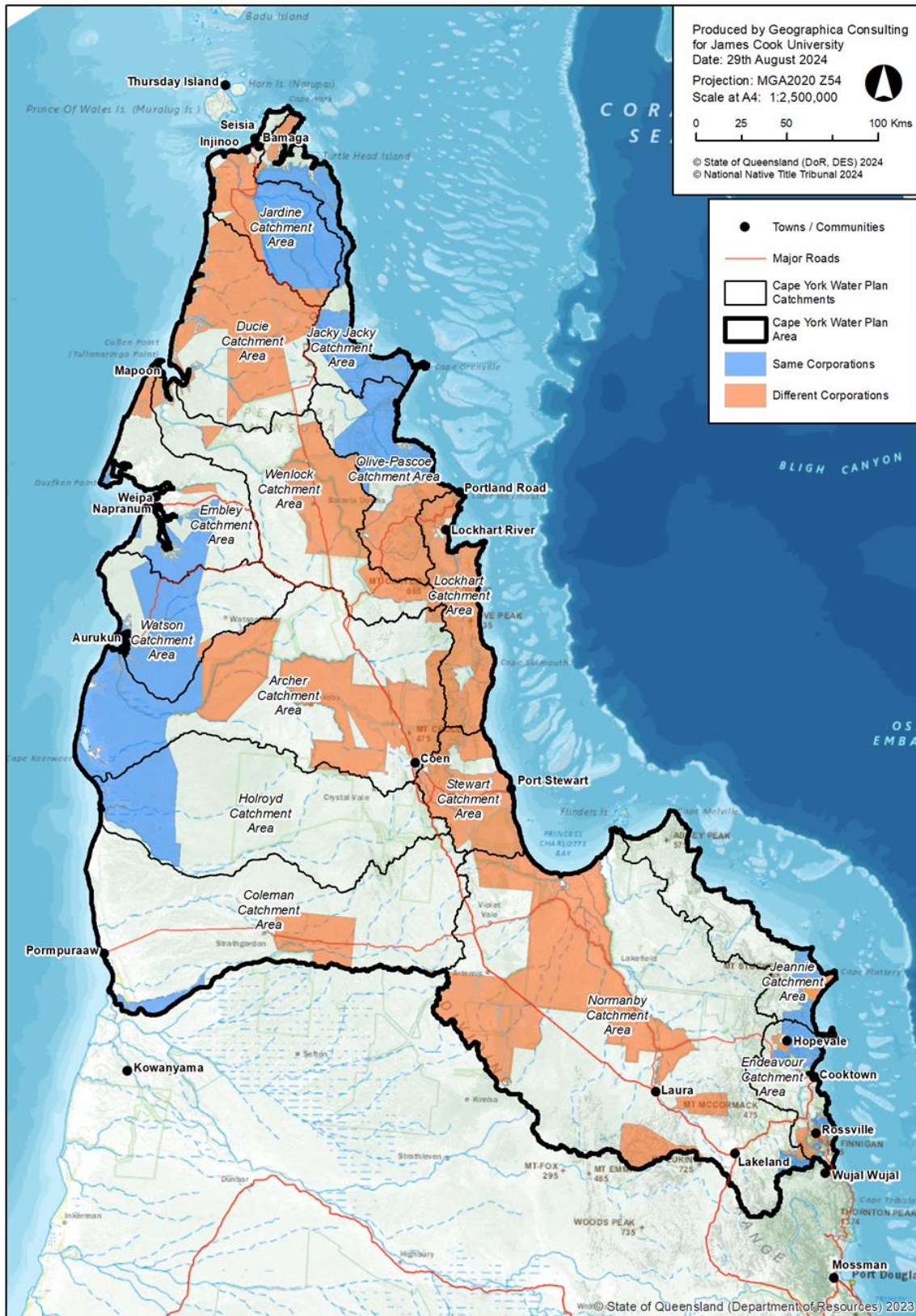


Figure 7 Areas where native title and Aboriginal freehold are coincident, and whether the RNTBC and TAF are the same or different corporations



Table 3 Nominal water licence allocations per eligible person per catchment

| Eligible person - Trustees of Aboriginal Freehold (TAFs) | Eligible person - Native Title Holders (RNTBCs) | CYPHA water licence volume held by eligible person in catchment (ML) | Nominal CYPHA volume entitlement (ML) <sup>1,2</sup> |
|--|---|--|--|
| <b>Archer</b>  |   |  |  |
| Kulla LT   |   |  | 3800   |
| Mangkuma LT  |   |  | 515  |
| Ngan Aak-Kunch AC RNTBC                                  |   |  | 16680  |
| Oyala Thumotang LT                                       |   |  | 28710  |
| Toolka LT  |   |  | 1172   |
| Wathada LT   |   |  | 155  |
| Wunthulpu Aboriginal LT                                  |   |  | 116  |
|  | Ayapathu AC RNTBC                               |  | 1507   |
|  | Ngan Aak-Kunch AC RNTBC                         |  | 23462  |
|  | Northern Kaanju AC RNTBC                        |  | 4212   |
|  | Southern Kaantju AC RNTBC                       |  | 6105   |
|  | Weipa Peninsula People AC RNTBC                 |  | 0  |
| <i>No Eligible Person<sup>3</sup></i>                    | <i>No Eligible Person</i>                       |  | 2570   |
| Unallocated CYPHA volume                                 |   |  | 89003  |
| <b>Coleman</b>   |   |  |  |
| ABM Elgoring Ambung AC RNTBC                             |   |  | 1241   |
| Kulla LT   |   |  | 4  |
| Olkola AC  |   | 4803   | 4  |
|  | Abm Elgoring Ambung AC RNTBC                    |  | 1123   |



|                                 |   |  |       |
|---------------------------------|---|--|-------|
|                                 | Ayapathu AC RNTBC                               |  | 2682  |
|                                 | Ngan Aak-Kunch AC RNTBC                         |  | 18337 |
|                                 | Thaa-Nguigarr Strathgordon AC RNTBC             |  | 5156  |
|                                 | Ut-Alkar AC                                     |  | 12741 |
| <i>No Eligible Person</i>       | <i>No Eligible Person</i>                       |  | 9907  |
| Unallocated CYPHA volume        |   |  | 51197 |
| <b>Ducie</b>                    |   |  |       |
| Apudthama LT                    |   |  | 16072 |
| Atambaya AC (ICN 8699)          |   |  | 2593  |
| Ipima Ikaya AC RNTBC (ICN 8114) |   |  | 1290  |
| Old Mapoon AC                   |   |  | 9610  |
|                                 | Atambaya Native Title AC RNTBC                  |  | 5266  |
|                                 | Ipima Ikaya AC RNTBC                            |  | 2838  |
|                                 | Mokwiri AC RNTBC                                |  | 5965  |
|                                 | Northern Cape and Torres Strait United IC RNTBC |  | 7     |
|                                 | Seven Rivers AC RNTBC                           |  | 2111  |
|                                 | Wuthathi AC RNTBC                               |  | 7     |
| <i>No Eligible Person</i>       | <i>No Eligible Person</i>                       |  | 238   |
| Unallocated CYPHA volume        |   |  | 45998 |
| <b>Embley</b>                   |   |  |       |
| Mokwiri AC RNTBC                |   |  | 69    |
| Ngan Aak-Kunch AC RNTBC         |   |  | 1529  |
| Old Mapoon AC                   |   |  | 352   |



|                                       |                                 |      |       |
|---------------------------------------|---------------------------------|------|-------|
| Peppan LT                             |                                 |      | 145   |
|                                       | Mokwiri AC RNTBC                |      | 2797  |
|                                       | Ngan Aak-Kunch AC RNTBC         |      | 1359  |
|                                       | Weipa Peninsula People AC RNTBC |      | 1183  |
| <i>No Eligible Person</i>             | <i>No Eligible Person</i>       |      | 566   |
| Unallocated CYPHA volume              |                                 |      | 8000  |
| <b>Endeavour</b>                      |                                 |      |       |
| Binthi Land Holding Group AC          |                                 |      | 7     |
| Hope Vale Aboriginal Shire Council    |                                 |      | 15    |
| Hopevale Congress AC RNTBC            |                                 | 3748 | -3    |
| Jabalbina Yalanji AC RNTBC (ICN 7002) |                                 |      | 1395  |
| Jabalbina Yalanji LT                  |                                 |      | 1322  |
| Waarntuur-iin AC                      |                                 |      | 66    |
| Wunbuwarra Banana Creek LT            |                                 |      | 190   |
| Yuku-Baja-Muliku LT                   |                                 |      | 29    |
|                                       | Dhubbi Warra AC RNTBC           |      | 0     |
|                                       | Hopevale Congress AC RNTBC      |      | 0     |
|                                       | Jabalbina Yalanji AC RNTBC      |      | 37    |
| <i>No Eligible Person</i>             | <i>No Eligible Person</i>       |      | 9192  |
| Unallocated CYPHA volume              |                                 |      | 12249 |
| <b>Holroyd</b>                        |                                 |      |       |
| Kulla LT                              |                                 |      | 13    |
| Ngan Aak-Kunch AC RNTBC               |                                 |      | 11702 |





|                                 |   |  |       |
|---------------------------------|---|--|-------|
| Oyala Thumotang LT              |   |  | 293   |
|                                 | Ayapathu AC RNTBC                               |  | 4309  |
|                                 | Ngan Aak-Kunch AC RNTBC                         |  | 52037 |
|                                 | Ut-Alkar AC                                     |  | 0     |
| <i>No Eligible Person</i>       | <i>No Eligible Person</i>                       |  | 147   |
| Unallocated CYPHA volume        |   |  | 68501 |
| <b>Jacky Jacky</b>              |   |  |       |
| Apudthama LT                    |   |  | 110   |
| Bromley AC RNTBC                |   |  | 35    |
| Gudang/Yadhaykenu AC            |   |  | 0     |
| Ipima Ikaya AC RNTBC (ICN 8114) |   |  | 417   |
| Wuthathi AC RNTBC               |   |  | 574   |
| Wuthathi LT                     |   |  | 0     |
|                                 | Atambaya Native Title AC RNTBC                  |  | 2     |
|                                 | Gudang Yadhaykenu Native Title AC RNTBC         |  | 10    |
|                                 | Ipima Ikaya AC RNTBC                            |  | 30    |
|                                 | Northern Cape and Torres Strait United IC RNTBC |  | 108   |
|                                 | Wuthathi AC RNTBC                               |  | 1     |
| <i>No Eligible Person</i>       | <i>No Eligible Person</i>                       |  | 215   |
| Unallocated CYPHA volume        |   |  | 1500  |
| <b>Jardine</b>                  |   |  |       |
| Apudthama LT                    |   |  | 13515 |
| Atambaya AC (ICN 8699)          |   |  | 14    |



|   |   |  |       |
|---|---|--|-------|
| Gudang/Yadhaykenu AC                                |   |  | 163   |
| Ipima Ikaya AC RNTBC (ICN 8114)                     |   |  | 30552 |
| Northern Peninsula Area Regional Aboriginal Council |   |  | 27    |
|   | Atambaya Native Title AC RNTBC                  |  | 27    |
|   | Ipima Ikaya AC RNTBC                            |  | 3848  |
|   | Northern Cape and Torres Strait United IC RNTBC |  | 41    |
|   | Seven Rivers AC RNTBC                           |  | 408   |
| <i>No Eligible Person</i>                           | <i>No Eligible Person</i>                       |  | 422   |
| Unallocated CYPHA volume                            |   |  | 49017 |
| <b>Jeannie</b>                                      |   |  |       |
| Binthi Land Holding Group AC                        |   |  | 0     |
| Buubu Gujin AC                                      |   |  | 0     |
| Cape Melville, Flinders & Howick Islands AC         |   |  | 0     |
| Darrba LT   |   |  | 0     |
| Hopevale Congress AC RNTBC                          |   |  | 0     |
| Juunjuwarra AC                                      |   |  | 0     |
| Kalpovar Aboriginal LT                              |   |  | 0     |
| Ngulun LT   |   |  | 0     |
| Waarntuur-iin AC                                    |   |  | 0     |
| Wakooka LT  |   |  | 0     |
|   | Hopevale Congress AC RNTBC                      |  | 0     |
| <i>No Eligible Person</i>                           | <i>No Eligible Person</i>                       |  | 0     |
| Unallocated CYPHA volume                            |   |  | 0     |



|  |                           |  |      |
|--|---------------------------|--|------|
| <b>Lockhart</b>                                |                           |  |      |
| Kulla LT                                       |                           |  | 1877 |
| Mangkuma LT                                    |                           |  | 3268 |
| Northern Kuuku Ya'u<br>Kanthanampu AC RNTBC LT |                           |  | 832  |
| Pul Pul LT                                     |                           |  | 105  |
|  | Kaapay Kuuyun AC RNTBC    |  | 59   |
|  | Kuuku Ya'u AC RNTBC       |  | 7    |
|  | Southern Kaantju AC RNTBC |  | 2    |
|  | Umpila AC RNTBC           |  | 13   |
|  | Uutaalnganu AC RNTBC      |  | 11   |
| <i>No Eligible Person</i>                      | <i>No Eligible Person</i> |  | 129  |
| Unallocated CYPHA volume                       |                           |  | 6303 |
| <b>Normanby</b>                                |                           |  |      |
| Agayrra-Timara LT                              |                           |  | 275  |
| Alka Bawar (Kalpowar) AC                       |                           |  | 0    |
| Ang-Gnarra AC of Laura                         |                           |  | 1    |
| Balnggarrawarra (Gaarraay) LT                  |                           |  | 70   |
| Balnggarrawarra AC                             |                           |  | 241  |
| Binthi Land Holding Group AC                   |                           |  | 5    |
| Buubu Gujin AC                                 |                           |  | 1105 |
| Cape Melville, Flinders &<br>Howick Islands AC |                           |  | 200  |
| Imjim LT                                       |                           |  | 0    |
| Jabalbina Yalanji AC RNTBC<br>(ICN 7002)       |                           |  | 91   |



|                               |                            |     |       |
|-------------------------------|----------------------------|-----|-------|
| Jabalbina Yalanji LT          |                            |     | 25    |
| Kalpowar Aboriginal LT        |                            |     | 1050  |
| Kyerrwanhdha Thingalkal LT    |                            |     | 492   |
| Lama Lama LT                  |                            |     | 393   |
| Ngulun LT                     |                            |     | 0     |
| Olkola AC                     |                            | 928 | -2    |
| Rinyirru (Lakefield) LT       |                            |     | 3567  |
| Waarnthuurr-iin AC            |                            |     | 186   |
| Wakooka LT                    |                            |     | 67    |
| Wulburjubur Bama LT           |                            |     | 383   |
| Wunbuwarra Banana Creek LT    |                            |     | 22    |
|                               | Awu-Laya IC RNTBC          |     | 710   |
|                               | Ayapathu AC RNTBC          |     | 9     |
|                               | Jabalbina Yalanji AC RNTBC |     | 1     |
|                               | Kuku Warra AC RNTBC        |     | 963   |
|                               | Kunjen Olkol AC            |     | 0     |
|                               | Lama Lama AC RNTBC         |     | 340   |
|                               | Possum AC RNTBC            |     | 2171  |
|                               | Ut-Alkar AC                |     | 400   |
|                               | Western Yalanji AC RNTBC   |     | 3     |
| <i>No Eligible Person</i>     | <i>No Eligible Person</i>  |     | 2305  |
| Unallocated CYPHA volume      |                            |     | 15071 |
| <b>Olive-Pascoe</b>           |                            |     |       |
| Batavia Traditional Owners AC |                            |     | 1286  |
| Bromley AC RNTBC              |                            |     | 17589 |





|  |                                   |  |       |
|--|-----------------------------------|--|-------|
| Mangkuma LT                                    |                                   |  | 15913 |
| Northern Kuuku Ya'u<br>Kanthanampu AC RNTBC LT |                                   |  | 2124  |
| Wuthathi AC RNTBC                              |                                   |  | 379   |
|  | Atambaya Native Title AC<br>RNTBC |  | 23    |
|  | Bromley AC RNTBC                  |  | 218   |
|  | Kaapay Kuuyun AC RNTBC            |  | 46    |
|  | Kuuku Ya'u AC RNTBC               |  | 241   |
|  | Northern Kaanju AC RNTBC          |  | 0     |
| <i>No Eligible Person</i>                      | <i>No Eligible Person</i>         |  | 10195 |
| Unallocated CYPHA volume                       |                                   |  | 48015 |
| <b>Stewart</b>                                 |                                   |  |       |
| Kulla LT                                       |                                   |  | 3772  |
| Lama Lama LT                                   |                                   |  | 978   |
| Wunthulpu Aboriginal LT                        |                                   |  | 80    |
|  | Ayapathu AC RNTBC                 |  | 76    |
|  | Lama Lama AC RNTBC                |  | 42    |
|  | Southern Kaantju AC RNTBC         |  | 2     |
|  | Umpila AC RNTBC                   |  | 4     |
| <i>No Eligible Person</i>                      | <i>No Eligible Person</i>         |  | 47    |
| Unallocated CYPHA volume                       |                                   |  | 5001  |
| <b>Watson</b>                                  |                                   |  |       |
| Aurukun Shire Council                          |                                   |  | 0     |
| Ngan Aak-Kunch AC RNTBC                        |                                   |  | 0     |
| Oyala Thumotang LT                             |                                   |  | 0     |



|                               |                                 |  |       |
|-------------------------------|---------------------------------|--|-------|
|                               | Ngan Aak-Kunch AC RNTBC         |  | 0     |
|                               | Weipa Peninsula People AC RNTBC |  | 0     |
| <i>No Eligible Person</i>     | <i>No Eligible Person</i>       |  | 0     |
| Unallocated CYPHA volume      |                                 |  | 0     |
| <b>Wenlock</b>                |                                 |  |       |
| Batavia Traditional Owners AC |                                 |  | 23246 |
| Bromley AC RNTBC              |                                 |  | 61    |
| Mangkuma LT                   |                                 |  | 5168  |
| Old Mapoon AC                 |                                 |  | 2180  |
|                               | Atambaya Native Title AC RNTBC  |  | 3563  |
|                               | Bromley AC RNTBC                |  | 0     |
|                               | Mokwiri AC RNTBC                |  | 16786 |
|                               | Ngan Aak-Kunch AC RNTBC         |  | 101   |
|                               | Northern Kaanju AC RNTBC        |  | 7268  |
|                               | Weipa Peninsula People AC RNTBC |  | 13788 |
| <i>No Eligible Person</i>     | <i>No Eligible Person</i>       |  | 3846  |
| Unallocated CYPHA volume      |                                 |  | 76007 |

**Notes:**

1 – *CYPHA licence volume calculations* - Corporations' land interests held in a catchment have been rounded to the nearest 100 hectares. This was necessary because different data sets have been used to define catchment boundaries and corporation boundaries, so corporations which are intended to be bounded by a catchment boundary were often shown as having marginal land interests of a few hectares in adjoining catchments. Rounding to the nearest 100 hectares helped to minimise these unintended incursions into adjoining catchments and should have minimal effect on the calculation of CYPHA water licence volume calculations.

2 – *Agent RNTBCs* – The licence volumes shown for Agent RNTBCs may need to be further divided following investigation into who could hold a CYPHA water licence and how



its volume could be calculated in areas where an Agent RNTBC is established but does not hold native title, and Aboriginal freehold does not exist.

3 - *No Eligible Person* – Refers to an area of land in a catchment for which there is no person eligible for a CYPHA water licence. There may be no eligible person for the area of land at this point in time because native title is yet to be determined, native title has been extinguished (for example by public works like a road or by fee simple freehold tenure), or native title does not exist, or the land is transferable to Aboriginal freehold tenure but has not yet been transferred. After all native title determinations and land transfers have been completed for a catchment, and therefore all possible eligible persons established for that catchment, any remaining land for which there is no eligible person and the corresponding unallocated CYPHA reserve should be calculated. It is recommended that unallocated CYPHA reserve then be distributed to eligible persons according to the proportion of the catchment held by each eligible person.

### **3.3.3 CYPHA water licence conditions**

If an RNTBC or TAF applies for and is granted a CYPHA water licence, the licence will include terms and conditions regarding use of the allocated water.

Key conditions of CYPHA water licences will include that:

- CYPHA reserve water may only be taken and used in the same catchment;
- Before water may be taken and used by a licence holder, the licence holder must apply to the DRDMW Chief Executive to amend their water licence to include a schedule of conditions about the taking and using of water. See Appendix 1a for section 50 of the Protocol for more details about this provision;
- A licence holder may assign (that is, lease) water under the licence to another party for a fixed period of time and receive payment from the other party for the assigned water. Before water may be assigned, the licence holder must apply to the DRDMW Chief Executive to amend their licence to include a schedule of conditions authorising water to be taken under an assignment. See Appendix 1b for section 51 of the Protocol for more details about this provision.

Separate approval is required for any works that would interfere with the flow of water. For example, a water licence to authorise a weir, dam or diversion of flow.

Importantly, a proposal to amend a CYPHA water licence to authorise the taking or assignment of water is the critical point where best practice water licence governance requires the application of FPIC principles and processes by DRDMW and CYPHA water licence holders. A proposal to amend a CYPHA water licence is the critical FPIC trigger point because it is the point at which decisions are made to approve or not on-ground and in-water activities that may affect the rights and interests (including the CYPHA water rights) of the Aboriginal people of an area, so their consent for such activities is required. FPIC principles and practices, and their application to a CYPHA water licence amendment process are discussed further in section 5.2.2 of this Report.

### **3.3.4 CYPHA water licence amendment to assign water**

A CYPHA water licence holder may assign all or some of the water held under their licence to another party for a fixed period of time under a commercial arrangement if the DRDMW Chief Executive agrees to amend the water licence to authorise the assignment. An assignment of water is a form of water trading and a similar concept to the lease of land. In other words, a CYPHA water licence holder can make a deal with another party, such as a farmer, miner or local government, where the other party can use CYPHA reserve water for their own purposes for an agreed price and period of time. However, the DRDMW Chief Executive must assess the proposed



assignment before it may be authorised and amend the conditions of the CYPHA water licence to record the water assignment.

Importantly, before it may decide to make an assignment application to the Chief Executive, a CYPHA water licence holder will also have to satisfy its own statutory requirements and corporate rules. Amongst other things, this should require the CYPHA water licence holder to receive the FPIC of relevant Aboriginal people for the proposed water assignment and distribution of benefits arising from the assignment. For more information about this process see section 5.2.3 of this Report.

The assignment of water from an RNTBC or TAF to another party may be a good option for the activation and use of CYPHA reserve water because it presents limited risk and provides agreed benefits for the licence holder. Although CYPHA reserve water can potentially be assigned to another party for use anywhere in the same CYPHA catchment, benefits (and risks) to the RNTBC or TAF may be greatest from using water on land where the RNTBC or TAF also holds an Aboriginal freehold or native title interest.

To maximise opportunities for water assignment under a CYPHA water licence, an RNTBC or TAF could promote its water, and other assets such as suitable land or workforce and infrastructure capabilities, to potentially interested parties. Chapter 4 of this Report identifies agriculture, aquaculture, energy, mining, ecosystem services and other water use opportunities suitable for land where RNTBCs and TAFs hold interests. RNTBCs and TAFs could promote water assignment opportunities through direct contact with potential water users, advertising in newspapers or the internet, and through listing their water with a water broker who could assist with locating interested parties.

#### *Benefits of water assignments*

Benefits to RNTBCs and TAFs from CYPHA water licence water assignments could take many forms, although most commonly it would be payment for the water from the party receiving the assignment. However, benefits could also be employment, a joint venture or shares in the water use activity, or any other benefit negotiated between the licence holder and the other party to the assignment.

If the CYPHA water licence holder is a TAF and chooses to lease its Aboriginal freehold land and assign CYPHA water to another party, benefits to the TAF will be from land lease rent and water assignment payments, and any other benefit that can be negotiated.

If the CYPHA water licence holder is an RNTBC holding native title not coincident with Aboriginal freehold the RNTBC could identify to the party holding the land tenure, such as a pastoral lease holder, that the land has been identified as suitable for a particular water-dependent use and that water is available under the RNTBC's CYPHA water licence to activate the land use. If the landholder is interested in activating the land use, the RNTBC and landholder could make a deal to assign water under the CYPHA water licence. Under this arrangement benefits to the RNTBC will likely be from the water assignment payment, and from the conditions of an Indigenous Land Use Agreement (ILUA), if required.

If an activity is proposed for land for which there is no CYPHA water licence eligible person, a CYPHA water licence holder from another part of that catchment can assign water to another party to use on that land. In this case, benefits to the CYPHA water licence holder will be water assignment payments, or any other benefit that can be negotiated.

#### *Water assignment rules*

Protocol clause 51 sets out Rules for amending a CYPHA water licence to authorise an assignment. Clause 51 identifies the matters that the DRDMW Chief Executive must consider if a CYPHA water licence holder applies to have a water assignment authorised. See Appendix 1b for a copy of Clause 51 to assist CYPHA water licence holders' awareness of the rules associated with the authorisation of a water assignment.





The Chief Executive must assess the proposed water assignment and, if the assignment is authorised by the Chief Executive, the water licence will be amended to record the assignment and additional conditions to ensure water is managed sustainably and Water Plan outcomes will be met. Additional conditions could include matters such as the volume of water that may be taken from a particular location, and the river flow conditions and time of year when water may be taken.

*Setting a price for a water assignment*

If a CYPHA water licence holder is negotiating a deal to assign water to another party then benefits to the licence holder for the assignment will be a subject of negotiation. Water assignment negotiations will also include the volume of water in megalitres, and the period of time of the assignment, probably as a number of years. Benefits for the volume of water per year under the assignment will probably include financial payment from the assignee to the water licence holder, although another form of benefit could also be considered.

There is no fixed rate for the price of water so the payment agreed will be a negotiated price. A CYPHA water licence holder should consider seeking support from an experienced water broker to assist in negotiating a fair price for a water assignment and have a contract lawyer assist with recording the deal between the licence holder and the assignee.

Factors influencing water price negotiations could include:

- The supply of and demand for CYPHA water in the catchment. If the CYPHA reserve volume for a catchment is high, and CYPHA water licence holders compete to make water available through an assignment under their licence, then water supply may exceed demand and prices will likely be lower. However, if the CYPHA reserve volume is low, CYPHA water licence holders are not competing to make water available, but water demand from potential users is high, then water supply may not meet demand and prices may be higher;
- The value of the proposed activity, and the value of water to the proposed activity. If the water is a critical input for a high value activity, then a higher price for the water could be negotiated;
- Value-adding that the CYPHA licence holder can also bring to the proposed activity, such as the provision of land, workers or specialised skills or knowledge; and
- Any cultural or social information relating to the proposal.

Water market information is also available at [business.qld.gov.au](http://business.qld.gov.au).



## 4.0 Opportunities for the activation of CYPHA reserve water

Upon grant of a CYPHA water licence, an RNTBC or TAF may commence seeking to activate water use for suitable purposes, in compliance with the conditions of their licence. Water-dependent land uses include irrigated agriculture, aquaculture, energy production and mining, and other activation opportunities include using water for ecosystem services or municipal water supply.

The greatest benefits to Cape York Aboriginal people may be achieved where CYPHA water and Aboriginal freehold land are actively combined for a suitable project that is operated by a TAF which is also an RNTBC. In such cases all economic and social benefits from the project will flow directly to members of the TAF corporation, although the TAF corporation will also be directly exposed to project risks.

Use of CYPHA water for projects on land tenures that are not Aboriginal freehold, including land where native title exists and land where native title does not exist, could also provide significant benefit to CYPHA water licence holders through the negotiation of water assignment to another party such as a miner or a farmer. Where native title exists and a project's proposed land use constitutes a future act that attracts the right to negotiate, this may also bring additional benefit to Cape York Aboriginal people through the negotiation of an Indigenous Land Use Agreement (ILUA).

High level analysis of land use suitability in the Water Plan for potential opportunities to activate CYPHA water area was conducted by Balkanu Cape York Development Corporation for agriculture, aquaculture, energy production and mining and is summarised in sections 4.1 to 4.2. The full Balkanu report can be reviewed see Attachment 1.

### 4.1 Water use for agriculture / food production

#### 4.1.1 Water use for irrigated agriculture

This section identifies those areas of Aboriginal freehold and native title land within the Water Plan area which have potential for irrigated agriculture in the short to long term, and produces information relevant to each land holding entity which identifies possible irrigated agriculture opportunities.

Cape York is characterised by a tropical wet and dry season with high evaporation rates during the dry season. In much of Cape York, particularly the western side, little rain falls between June and December. Extracting water from watercourses from July onward is generally not feasible. (CSIRO, 2009). Therefore, for irrigated agriculture and depending upon the crop and cultivation practices, 10-12 ML of water per hectare is required to be stored for the dry season period (for comparison 23.2 megalitres per hectare (not including rainfall) is applied over a 12 month period on bananas in the Ord River area. Obtaining, pumping and storing this quantity of surface water from a watercourse will be challenging in most areas of Cape York due to a lack of infrastructure and financial and legislative constraints discussed in more detail in the next section.

Currently horticulture in the Water Plan area occurs in the south eastern corner of Cape York, in the Lakeland Downs (along the Laura River) and Cooktown/Hope Vale areas. This is close to water access (for irrigation during the dry season), labour requirements and road access (for transport of supplies and produce).

In the past most Indigenous communities had community gardens and a significant community garden operated in Napranum until recently, and Hope Vale grew bananas. In the past more intensive agriculture has been proposed on a small scale in areas such as Starcke, Springvale, Battlecamp and Kalinga.



Previous studies on Cape York have identified that the likely areas for expansion of horticulture are around Cooktown and Weipa (Environment and Science NQ, 1995). Barnett et. al. (2022) undertook a base line study of the agriculture capacity of the Indigenous estate and identified the Aboriginal lands within the Cape York Water Planning area as being marginal for irrigated cropping. The Queensland Agricultural Land Audit Cape York (2013) found that while extensive areas of land have potential for development, the region has wide ranging constraints (such as climatic extremes, biosecurity risks and limited infrastructure) that limit its development. As a result, there is little land in the region that can be used for large scale agricultural development (p71). There is opportunity to expand horticulture in south-eastern areas of the region (p79).

The Torres and Cape Indigenous Council Alliance Food Production Study has identified Hope Vale, Weipa and Napranum as priority pilot sites for food production considering the existing infrastructure in place, access to labour force, community and council readiness, current limitations to access of fresh food and viability of a locally appropriate food production typology (ARUP, 2021, p66).

The Cape York Peninsula Land Use Study (CYPLUS) identifies a number of constraints to irrigated agriculture on Cape York. These include lack of infrastructure, low soil fertility, soil erosion, high cost of production, land clearing laws, lack of capital investment, climate (high temperatures, cyclones, flooding), quarantine issues, and feral and native animals (Environment and Science NQ, 1995, p44).

As all-weather access through Cape York improves it can be expected that the viability of agriculture will improve. It is important to note that there are two Water Plan catchments where the CYPHA reserve volume is zero (Watson River Basin and Jeannie River Basin) because available water has been fully allocated mostly to mining companies. The lack of a CYPHA reserve volume for the Jeannie and Watson River catchments effectively prevents any irrigated agriculture in some of the most prospective areas of Cape York.

The Queensland Agricultural Land Audit classifies land into several classes. For the purposes of this study, we have focussed on Class A and Class B lands. Class A is cropping land that is suitable for a wide range of current and potential crops with nil to moderate limitations to production. Class B land is limited crop land that is suitable for a narrow range of current and potential crops due to severe limitations but is highly suited for pastures. Class B land may be suitable for cropping with engineering and agronomic improvements. See Figure 8 for areas of Cape York Class A and Class B agricultural land, and Appendix 2 for the areas of Class A and Class B land per corporation per catchment. Proponents should seek advice from suitably qualified agricultural experts to assist with planning projects.



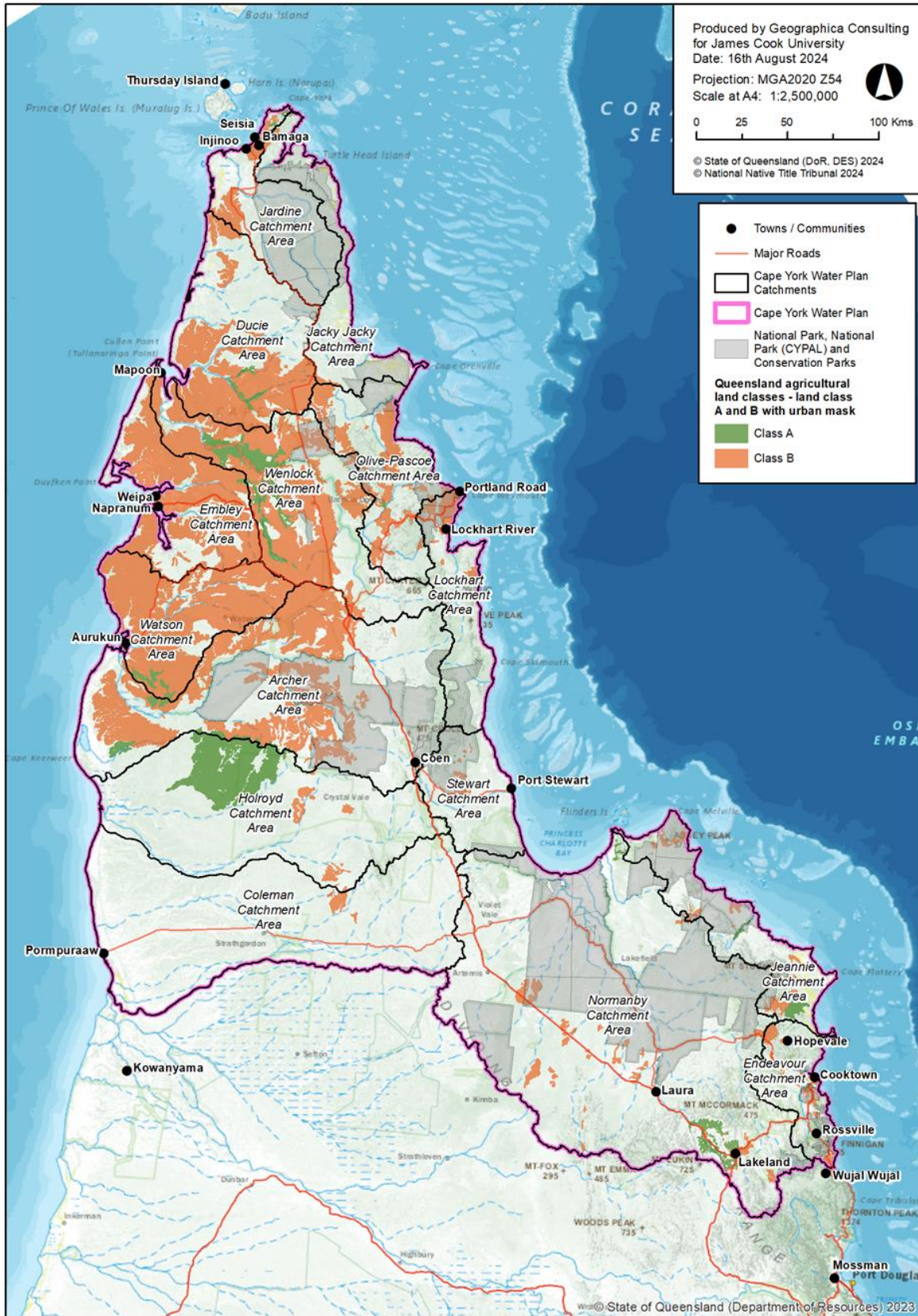


Figure 8 Cape York areas of Class A and Class B agricultural land





### 4.1.2 Water use for protected cropping

Protected cropping is the production of crops within structures such as greenhouses to provide modified growing conditions. The aim of protected cropping is to maximise crop production and quality, extend or target supply periods and provide protection from pests, diseases and adverse weather. Crops include high value vegetables, berries, nursery plants, flowers, herbs and fruit trees.

High tech greenhouses can provide a level of control and certainty. However, the expense of such structures is not justified by returns for many vegetable crops, which can be relatively low value. Protected cropping therefore can be established on land with poor soils but involves a high capital investment and can be impacted by cyclones, flooding and high temperatures (Rogers, 2018).

Protected cropping is expanding in many parts of Australia, and overseas. There may be opportunities on Cape York however it would require research into suitable and viable crops and markets. Given the high cost of protected cropping and the distance to markets it is unlikely that it will be commercially viable on Cape York other than potentially in the Lakeland Downs and Cooktown areas.

### 4.2 Water use for aquaculture

Aquaculture has high water and energy requirements and high operating costs. The primary potential freshwater aquaculture species relevant to Cape York are barramundi, red-claw crayfish and longfin eel (*Anguilla reinhardtii*). There are currently no freshwater aquaculture projects on Cape York. In the past freshwater aquaculture has been attempted without success on Kings Plains.

Arup in a study for the Torres and Cape Indigenous Council Alliance also identified algae farming involving cultivation of microalgae in ponds which can be used for energy and food as a potential industry (ARUP, 2021).

Waste water from fish farms can be used to irrigate crops or for hydroponics, and irrigated local crops can be used as feedstock for aquaculture, so it may be desirable to co-locate aquaculture with agriculture.

Possible sites for freshwater aquaculture within the Cape York Water Plan area would currently be limited to close proximity to the Peninsula Development Road (PDR), a reliable clean water supply, and close to population centres with local agriculture such as Cooktown, Hope Vale, Lakeland Downs and Weipa.

Indigenous held properties that are close to the PDR and may ultimately be suitable for aquaculture, include Crocodile and Welcome Stations, Kalinga and Mary Valley but they would almost certainly rely on ground water rather than surface water to ensure a reliable year-round water supply and therefore not utilise CYPHA reserve water.

### 4.3 Water use for energy production

There are very limited circumstances in which it is conceivable that energy generation on Cape York could require surface water. These circumstances, although highly unlikely, include the following:

- Pumped hydro associated with renewable energy;
- Production of hydrogen;
- Coal fired power generation;



- Gas fired power generation; and
- Biofuels.

Electricity generation for Cape York communities, including Weipa, is unlikely to be of the scale to require a significant water allocation. For supply of electricity into the national grid, Lakeland Downs in the very south of the Water Plan area currently has the only connection to the Australian National Electricity Market (ANEM). There are no other connections to the ANEM on Cape York. Any connection to the ANEM would need to ensure that there is sufficient capacity in the Lakeland connection and then establish the necessary infrastructure to connect to Lakeland, which could involve a high capital cost.

Pumped hydro requires a head greater than 200 metres in elevation. Most of Cape York does not have sufficient elevation. The easterly flowing rivers on Cape York are more likely to have a year-round flow and are deeply incised to make weir structures cost effective. Many of the areas that have sufficient elevation are now within National Parks (Cape York Peninsula Aboriginal Land) which would prevent the construction of dams. However, there are some areas that may be suitable such as around the Bamboo Range, but this is more than 200km from a connection to the electricity market at Lakeland Downs.

Hydrogen produced via electrolysis of water using renewable energy sources (referred to as “green hydrogen”) is poised to become the main method of hydrogen production (Lester et. al., 2022). In practice, water requirements for hydrogen production will vary depending on several factors. These factors include (i) the particular production method and technology chosen for the process, (ii) the purity of the input water supply, and (iii) the need for additional water for indirect production requirements such as cooling. (COAG Energy Council 2019). Should hydrogen production become viable at a community scale, it may not have a significant demand for surface water. Any hydrogen production at a large scale would likely be limited to Weipa from where it could be exported and may be dependent on Rio Tinto surrendering some of its water entitlement.

Although coal has been found in several areas on Cape York including the Pascoe River, Olive River, Little Kennedy, Normanby and Laura Basin areas, none of this coal has been commercially viable and given the transition away from fossil fuels and the environmental values of Cape York it is not conceivable that these areas will be mined. Potentially viable deposits of coking coal have been found near Bathurst Head, but this would not be used for power generation.

In the 1990s and 2000s there was a proposal to pipe natural gas from Papua New Guinea to Queensland markets. This project has now lapsed. If at some stage in the future natural gas was available on Cape York for power generation for a market with sufficient size, water may be required. This situation is now unlikely in the foreseeable future.

Consulting company Aurecon was engaged by the Department of State Development and Infrastructure to evaluate potential biofuel production for the Weipa mine sites. The key findings were that biofuel production is technically complex, involves considerable challenges, and likely to require substantial upfront investment (greater than \$100 million).

#### **4.4 Water use for mining**

The mining industry is a large user of water. The industry uses water for a variety of purposes, including mineral processing, dust suppression, washing equipment, slurry transport and storage, extraction and separation processes, and site storage, drinking and domestic use. Water is favoured in mineral processing because it is a low cost and low energy way of transporting materials between processes and it is an essential ingredient for some chemical processes. It is also a most convenient medium for gravitational and centrifugal separation of minerals from host rock.



Based on a desk top literature review including the CYPLUS Minerals Assessment of Cape York Peninsula 1995 (Denaro & Ewers, 1995) and Queensland Globe, the following areas have been identified as having potential for mining in the Cape York water plan area:

1. The Coen Inlier area from around the Archer River roadhouse, though Yarraden, Glen Garland to Imooya (lithium, gold)
2. The coastal area north of Hope Vale (mainly silica).
3. The Kendall River Station area (kaolin)
4. The west coast of Cape York from Aurukun to Vrilya Point (bauxite and kaolin)
5. Areas south and west of Laura (mainly gold)
6. Bathurst Head area for coal

Queensland Globe mapping shows that historically there has been very little exploration interest in some areas such as between the Kendall River and the Coleman River, and the Heathlands and Bramwell Richardson area. This likely reflects a lack of prospectivity in this area. There are also large areas of conservation tenure which are closed to mining.

Given the length and general reliability of the wet season it is likely that less surface water would be required for mining on Cape York than in drier areas. It could be extrapolated that a medium sized mine on Cape York would require between 300 and 800 megalitres per year of water, (gold mining for example can be very water intensive), some of which could be sourced from underground water reserves. Required surface water volumes would fall within the CYPHA water licence volumes of some eligible persons. Additionally, the economics of mining would likely support the piping of water over longer distances than would be the case with agriculture and therefore be conducive to some water trading.

In the Watson River catchment and Jeanie River catchment mining companies have already taken up most or all of the water allocations limiting opportunities for other types of development. In these catchments, because of the absence of a CYPHA reserve, an eligible person may seek a release of strategic reserve water for a project. However, if an Aboriginal corporation was successful in an application for strategic reserve water, it couldn't lease or transfer this entitlement to another person or entity.



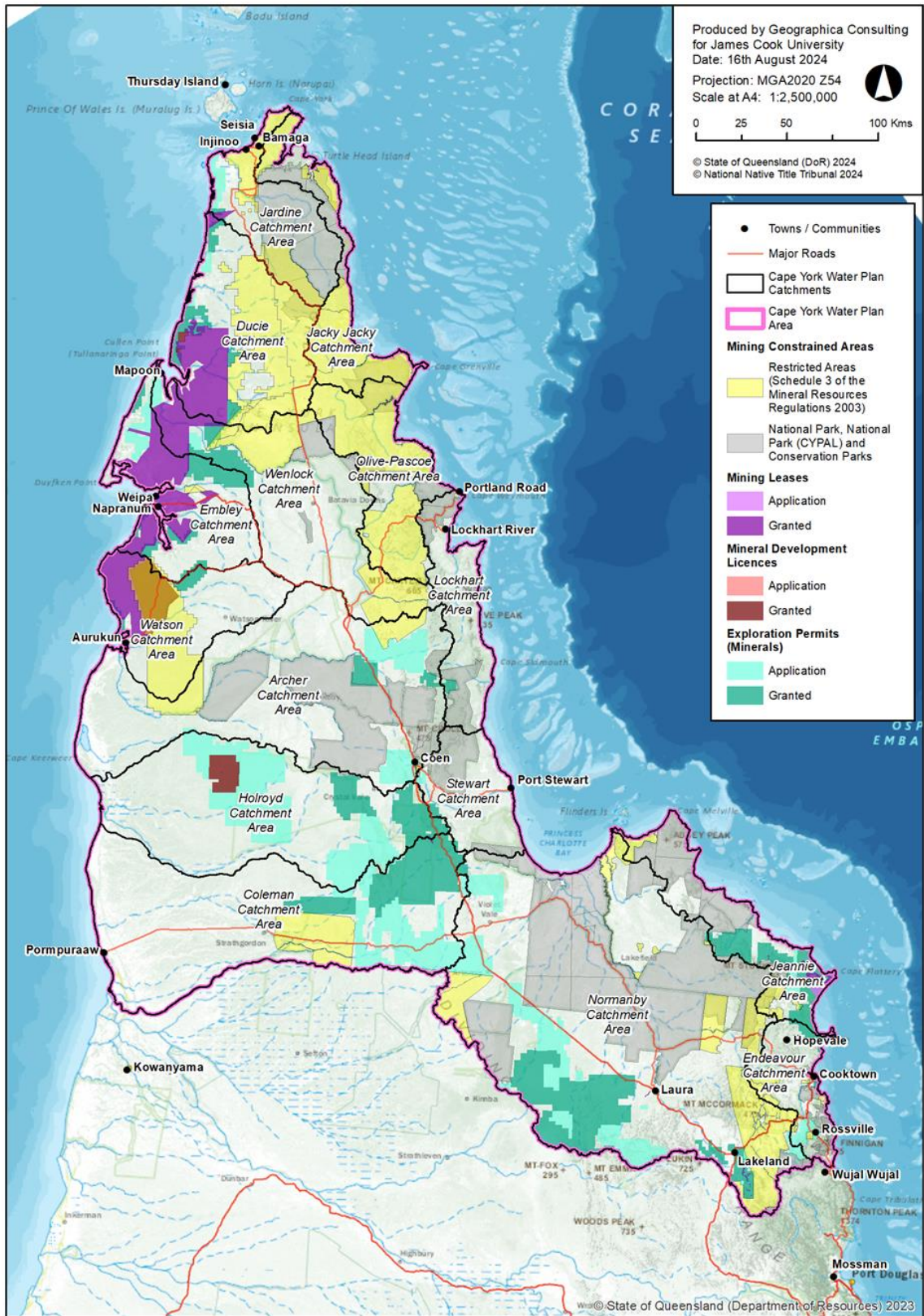


Figure 9 Cape York active and constrained mining areas





## **4.5 Water use for ecosystem services**

Over the past twenty-five years, there has been increasing recognition of the diversity of critical benefits that ecosystems provide human society, as well as growing alarm at the rapid pace of decline and loss of ecosystems worldwide. This has driven the development of mechanisms that incentivise land managers to protect, restore and enhance ecosystems services. Watertrust Australia conducted a review of the mechanisms that might apply to Cape York, specifically in relation to management of water allocations under the CYPHA reserve. The full review (see Attachment 2) focuses specifically on market mechanisms relevant to (i) First Nations water-holders who make decisions and take actions that directly deliver water-related ecosystems services and (ii) First Nations land managers who make decisions and take actions that indirectly deliver water-related ecosystems services.

The review identified three broad market mechanisms that may apply in Cape York.

### **4.5.1 Carbon-based ecosystems services schemes**

These are the most well-established mechanisms in Australia, with the key opportunity for CYPHA water allocations being three established methods under Australia's Carbon Farming Initiative. Of these, two (the Blue Carbon Method and Environmental Planting Method) are likely to have limited practical application to water-related ecosystems services in the Cape York region. The third (the Organic Soil Carbon method) may have application with an example being perennial plant systems that can be verified to significantly increase soil carbon sequestration and that also require water provisioned under the CYPHA reserve to establish and maintain these systems. The intensity of management and high initial investment required for these perennial systems, however, means they will need high market payoff.

International carbon markets are underpinned by a number of generally not-for-profit bodies and associated methods and standards, some of which may be relevant to water dependent ecosystems services in Cape York (in particular to wetland restoration).

### **4.5.2 Nature-based ecosystems services schemes**

These schemes enable projects that earn environmental credits and/or offsets using approved methods that directly protect or enhance biodiversity. Five mechanisms were reviewed: three legislative mechanisms (the Nature Repair Act 2023 (Cth), the Environmental Offsets Act 2014 (Qld) and Water Quality offsets enabled under the Environmental Protection Act 1994 (Qld)) and two local voluntary environmental credit schemes (Reef Credits and NaturePlus™ Credits).

Several of these are promising, emerging mechanisms in Australia. There are, however, substantial and sometimes complex preconditions that need to be met before these mechanisms can become robust options for First Nations people in Cape York. There will, for example, be significant lead time needed for methods to be established under the Nature Repair Act and potentially complex challenges associated with consent processes for all but exclusive native title / freehold land. It remains unclear what the market may be willing to pay for different kinds of biodiversity certificates. There is also uncertainty regarding demand for these certificates. As a result, the ability to use water allocations under the CYPHA reserve in projects under these schemes remains a future potential rather than an immediate opportunity.

One potential future opportunity, albeit speculative, is the creation of artificial wetlands on cleared / degraded agricultural and grazing land (noting that artificial wetlands are recognised as a category of wetland under the Ramsar Convention on Wetlands). This approach is particularly relevant where an artificial wetland could create habitat for one or more species that are listed under state and/or federal environmental laws.



### **4.5.3 Nature-based carbon projects**

These are projects that earn both carbon credits (using approved methods to sequester carbon) and environmental credits (using approved methods that deliver environmental co-benefits) OR earn premium value carbon credits because of high-integrity environmental co-benefits.

In Australia, interest in nature-based carbon projects and associated credits/offsets is expanding rapidly from groups that have compliance obligations under the Safeguard Mechanism; local and foreign businesses that have voluntarily set net-zero targets; investors; and governments. An important example of government driven demand in Queensland, relevant to First Nations people in Cape York is the Queensland Government's Land Restoration Fund (LRF), which is a \$500 million fund established to support nature-based carbon projects with verified environmental, social and cultural co-benefits. The LRF focuses on (i) land restoration to improve the health of wetlands and coastal ecosystems, including the Great Barrier Reef, (ii) land restoration for threatened species and biodiversity and (iii) restoration for social and economic sustainability. Notably co-benefits under the LRF explicitly include First Nations benefits. There are possibilities in Cape York that fall into these three priority areas of the LRF however specific opportunities associated with CYPHA water allocations are unclear and would need to be assessed on a case-by-case basis.

A separate theoretical opportunity for generating income from water allocations under the CYPHA reserve is 'seasonal assignment' of water for the purposes of generating a particular environmental outcome (as set out in the in the Water Act 2000 (Qld), Water Regulation 2016 (Qld) and Cape York Water Management Protocol and Water Plan (Cape York) (2019)). It is unclear how this could be enabled given the highly season nature of the CYPHA water allocations and general lack of water storages and connectivity across the Cape York region, but it may be possible on a case-by-case basis.

Overall, the review concludes that the current opportunities to tap into ecosystems services markets using water provisioned under the CYPHA reserve are very limited. The opportunities lie largely in the way that land is managed to deliver water-related ecosystems services rather than the way water is managed.

### **4.6 Water use for municipal purposes**

There are ten local governments and the Weipa Town Authority in the Cape York Water Plan area that could potentially require a water licence from CYPHA reserves including Cook Shire Council, Hope Vale Aboriginal Shire Council, Lockhart River Aboriginal Shire Council, Torres Shire Council, Northern Peninsula Area Regional Council, Mapoon Aboriginal Shire Council, Weipa Town Authority, Napranum Aboriginal Shire Council, Aurukun Aboriginal Shire Council, Pormpuraaw Aboriginal Shire Council, and Kowanyama Aboriginal Shire Council. Under the Water Act 2000 local governments need a water licence for taking or interfering with surface water or underground water, or for taking overland flow water. Typical uses could be for community water supplies and industrial purposes like road maintenance. Town water supply may also be granted from the strategic reserve volume, however alternative water supply, including investigating a CYPHA water assignment, must be considered first.

Advice from the Torres and Cape Indigenous Council Alliance (TCICA) whose members include all local governments in the Water Plan area, however, is that all Cape York councils except for the Northern Peninsula Area Regional Council (NPARC) obtain their municipal water supplies from bores rather surface water. The NPARC has a water licence from the Jardine River. There may therefore be an opportunity to lease water to NPARC in the future if they need to expand or renew this water licence. Efforts are currently underway to increase community water use efficiency and reduce demand. Therefore, at present there appear to be limited opportunities to assign water from CYPHA water licences to local governments within the Water Plan area.



## 5.0 Constraints on the activation of CYPHA reserve water

Despite the range of potential opportunities identified in Chapter 4 that could activate use of CYPHA reserve water, these opportunities are often subject to multiple constraints that will significantly limit the activation and use of water.

Constraints are mostly associated with:

- Legislative and regulatory constraints on land uses that could activate use of CYPHA reserve water,
- The corporate governance complexity RNTBCs and TAFs experience to secure and manage a CYPHA water licence, and
- The limited capacity and resources provided to RNTBCs and TAFs to manage a CYPHA water licence.

If CYPHA water rights are to be meaningfully activated then legislative constraints where they unreasonably restrict development will need to be addressed, as will the governance complexity and organisational capacity constraints RNTBCs and TAF currently experience. There is therefore a need to develop best practice governance processes that are effectively resourced.

### 5.1 Legislative constraints

Legislative provisions significantly constrain the use of land that is suitable for CYPHA water use opportunities. Land use is constrained by a range of Queensland and Australian legislation, including legislation relating to environmental management, land use planning and development assessment, land tenure, native title, cultural heritage, and water.

Many land use constraints are necessary, such as those for the protection of social, cultural, and environmental values, but for many areas the constraints indiscriminately place blanket restrictions on land use because of a lack of investment in understanding the finer detail of social, cultural, and environmental values on Cape York.

These statutory constraints are well known and have been recognised in many reports and investigations into the causes of Aboriginal social and economic issues on Cape York and other parts of Australia. These reports and investigations include:

- The Queensland Parliamentary Inquiry into the Future and Continued Relevance of Government Land Tenure Arrangements in Queensland (2013);
- The Council Of Australian Governments' Investigation into Indigenous Land Administration and Use (2015);
- Commonwealth of Australia Our North, Our Future: White Paper on Developing Northern Australia (2015);
- The Queensland Productivity Commission Inquiry into Service Delivery in Remote and Discrete Aboriginal and Torres Strait Islander Communities (2017);
- The Joint Standing Committee Northern Australia Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia (2022);
- The Australian Productivity Commission Review of the National Agreement on Closing the Gap (2024); and
- The current Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into economic self-determination and opportunities for First Nations Australians.



The main statutory constraints are described below.

### **5.1.1 Environmental management constraints**

#### *Vegetation Management Act 1999 (Qld)*

The Vegetation Management Act 1999 (Qld) (VMA) establishes management regulations for various vegetation categories. Category A refers to a declared area, an offset area, an exchange area, an area that has been subject to unlawful clearing or an enforcement notice, or an area subject to clearing as a result of a clearing offence. Category B refers to an area which is remnant vegetation. Category C refers to an area which is high-value regrowth vegetation. Category R refers to an area which is a regrowth watercourse and drainage feature area located within 50 metres of a watercourse located in the Burdekin, Burnett–Mary, Eastern Cape York, Fitzroy, Mackay– Whitsunday or Wet Tropics catchments. Category X refers to all areas other than Category A, B, C and R areas.

The VMA prohibits the clearing of Category B remnant vegetation in Queensland for high value agriculture and irrigated high value agriculture unless the remnant vegetation is in a grassland regional ecosystem. The VMA also regulates the clearing of Category C high value regrowth vegetation and Category R regrowth vegetation along watercourses in all reef catchments, which is where better agricultural soils can also be anticipated to exist. Almost all of Cape York is covered in Category B remnant vegetation which is not in a grassland regional ecosystem, and vegetation cover is even higher on land within Aboriginal Shires where limited development and land clearing has occurred. See Figure 10 for Cape York regulated vegetation management areas, and note the extent of Category B remnant vegetation.

Section 4.1.1 identifies potential irrigated agriculture opportunities on Aboriginal freehold or native title land based on land suitability and water availability criteria. However, because irrigated agriculture generally requires cleared land and virtually all land suitable for irrigated agriculture is covered in remnant vegetation not in a grassland regional ecosystem, the VMA's prohibition on vegetation clearing severely restricts irrigated agriculture on Cape York, and therefore the activation of CYPHA reserve water for this purpose. Small cleared areas of Class A agricultural land where CYPHA water is available may exist and provide small scale opportunities for irrigated agriculture, however these small, cleared areas do not show up on a map of this scale.

VMA restrictions on vegetation clearing for other land uses, such as for protected cropping, aquaculture or energy production, although not prohibitive will also constrain the realisation of these opportunities and the activation of CYPHA reserve water.



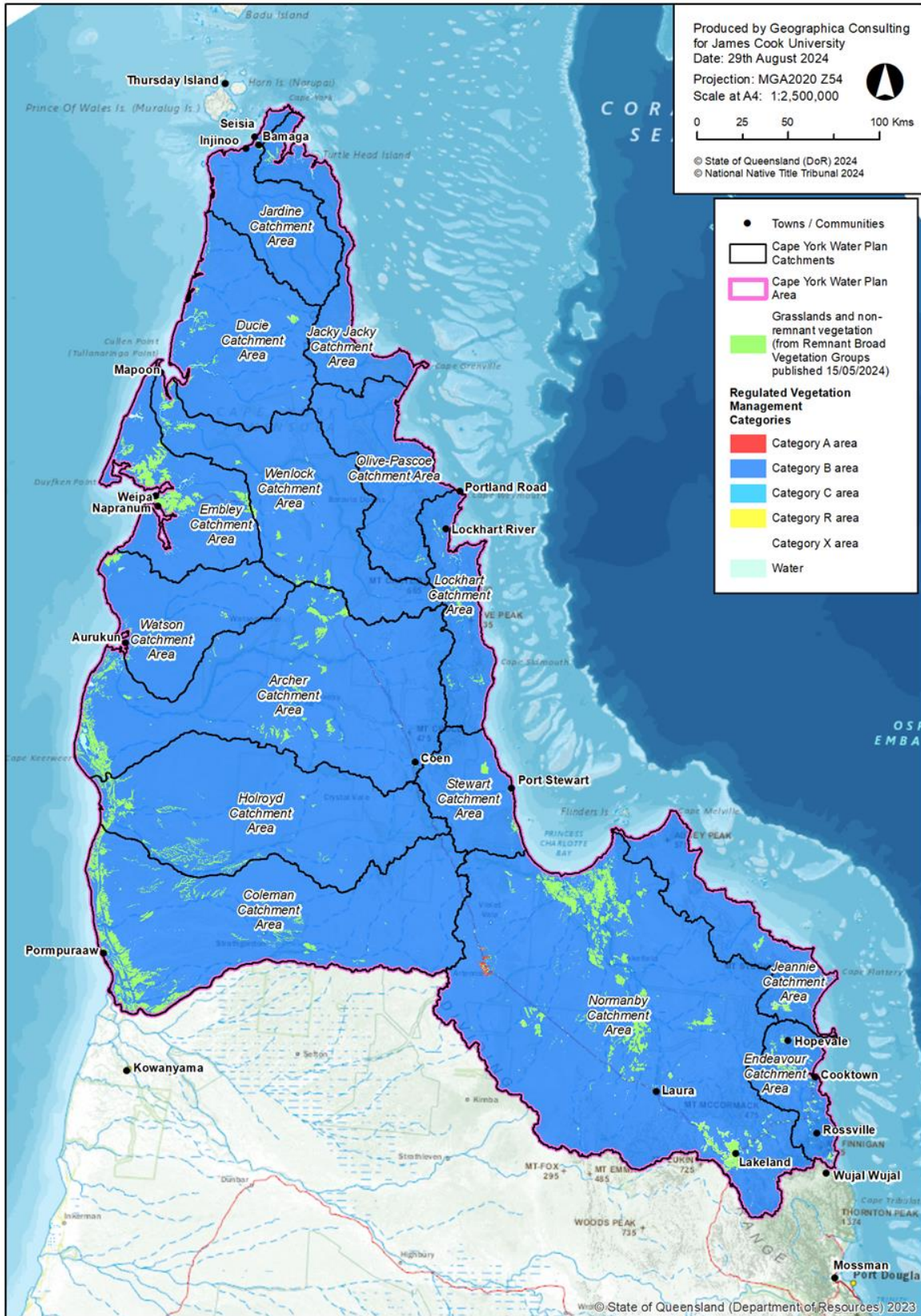


Figure 10 Cape York regulated vegetation management



*Cape York Peninsula Heritage Act 2007 (Qld)*

The Cape York Peninsula Heritage Act 2007 (Qld) (CYPH Act) recognises that Cape York Aboriginal peoples' development aspirations, such as for irrigated agriculture, will be constrained by the VMA, so the CYPH Act provides for vegetation clearing for a special Indigenous purpose within an Indigenous Community Use Area (ICUA) declared on Aboriginal freehold land. Land uses within an ICUA may include agriculture, animal husbandry, aquaculture, or grazing activities.

The declaration of an ICUA may be made by the Governor in Council after an ICUA application by a TAF. Amongst other things, an application for an ICUA declaration requires that the vegetation management Minister considers:

- Evidence that there is no suitable alternative site for the development;
- Evidence that the development cannot be carried out without the proposed clearing;
- Details about how adverse impacts of the proposed clearing will be minimised or mitigated;
- Details about how vegetation will be rehabilitated on the land the subject of the application if the development does not happen or ends;
- The nature and extent of any other thing done or proposed to be done in addition to the development that has had, or may have, a beneficial impact on the natural values of the indigenous community use area or land in its vicinity; and
- Details of a business plan, for activities related to the development, showing information about the viability of the activities.

The environment Minister and the vegetation management Minister must also establish a Cape York Peninsula Regional Advisory Committee and a Cape York Peninsula Region Scientific and Cultural Advisory Committee to advise the Ministers about the international conservation significance and the natural and cultural values of the land proposed to be declared as an ICUA.

Given that these Advisory Committees are not operational and the onerous requirements for application and declaration of an ICUA, no ICUAs have been declared so provisions of the VMA continue to apply across Cape York. Activation of CYPHA reserve water will remain constrained because of the absence of and difficulties in declaring ICUAs.

*State Development and Public Works Organisation Act 1971 (Qld)*

The proponent of a project that could potentially use CYPHA reserve water may apply to have it declared a 'coordinated project' under the State Development and Public Works Organisation Act 1971 (Qld) (SDPWOA) if the project has one or more of the following characteristics:

- Complex approval requirements, involving local, state, and federal governments;
- Significant environmental effects;
- Strategic significance to the locality, region, or state, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide; or
- Significant infrastructure requirements.

If the project is declared a coordinated project then it will be assessed under the SDPWOA, and if the project is approved, the approval could provide exemptions from prohibitions on clearing remnant vegetation and other constraints of the VMA. Only a few major projects such as large mines are usually declared coordinated projects, so VMA constraints will continue to apply to the vast majority of projects on Cape York.

*Nature Conservation Act 1992 (Qld)*



The object of the Nature Conservation Act 1992 (Qld) (NCA) is the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom. This object is achieved, amongst other things, through the dedication and declaration of areas representative of the biological diversity, natural features, and wilderness as protected areas. Classes of protected areas are national parks (scientific); national parks; national parks (Aboriginal land); national parks (Torres Strait Islander land); national parks (Cape York Peninsula Aboriginal land); conservation parks; resources reserves; special wildlife reserves; nature refuges; and coordinated conservation areas. See Figure 11 for Cape York protected areas.

Protected areas are declared over biodiverse and biologically productive areas which are also likely to be areas where land uses that could activate CYPHA water could be undertaken, such as irrigated agriculture, so the declaration of a protected area will exclude most land uses that could activate use of CYPHA water in that area. However, a likely exception would be using protected areas for the delivery of ecosystem services because this use of CYPHA reserve water may be unlikely to affect the natural values of the protected area.



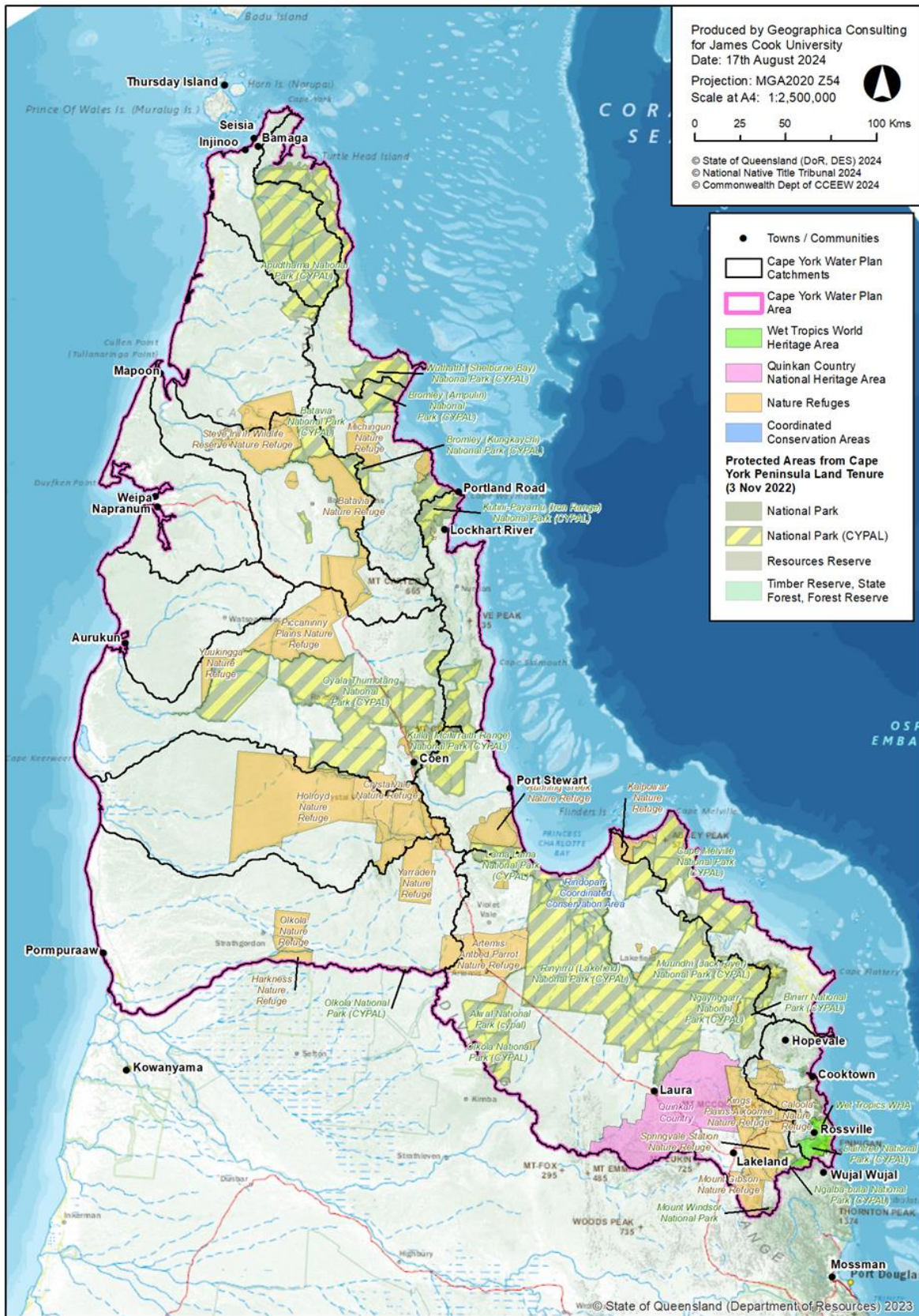


Figure 11 Cape York protected areas





*Biosecurity Act 2014 (Qld)*

The Biosecurity Act 2014 (Qld) provides protection for Queensland from biosecurity threats. One mechanism in the Biosecurity Act 2014 is the declaration of biosecurity zones which establish restrictions to limit the spread of pests and diseases. Parts of Cape York are subject to sugar cane biosecurity zone 1, the northern banana biosecurity zone, and the far northern biosecurity zones 1 and 2 which restrict the growing and movement of bananas. The biosecurity zones will constrain the use of CYPHA water by constraining banana and sugar cane cropping and movement in these zones. See Figure 12 for Cape York biosecurity zones.

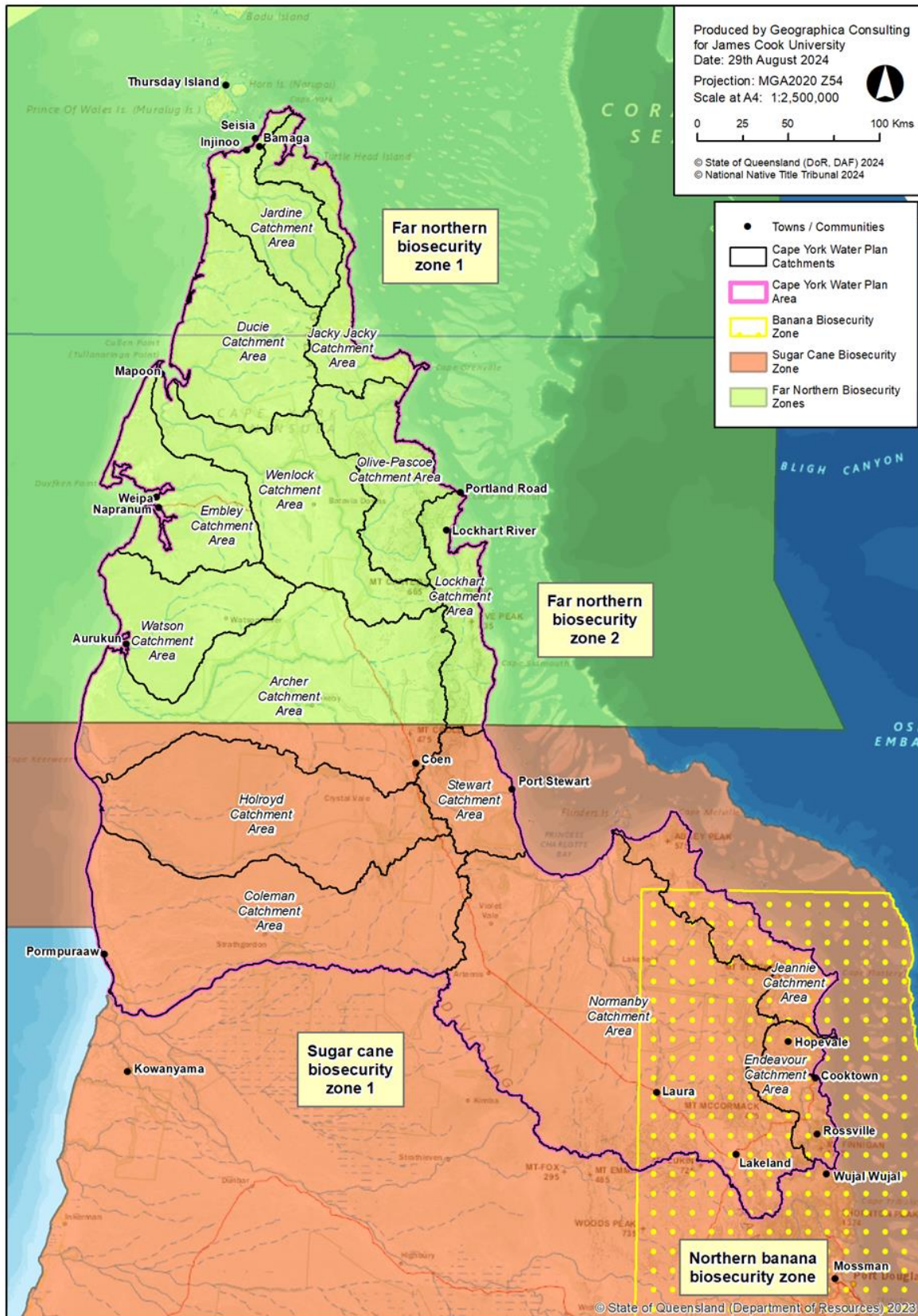


Figure 12 Cape York biosecurity zones



*Environmental Protection and Biodiversity Conservation Act 1999 (Cth)*

The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act) is the Australian Government's main piece of biodiversity conservation legislation. A project that could use CYPHA reserve water may need assessment and approval under the EPBC Act if the project could potentially affect a Matter of National Environmental Significance (MNES). The nine MNES listed by the EPBC are world heritage areas; national heritage places; wetlands of international importance (listed under the Ramsar Convention); listed threatened species and ecological communities; listed migratory species (protected under international agreements); Commonwealth marine areas; Great Barrier Reef Marine Park; nuclear actions (including uranium mines); and water resources (that relate to coal seam gas development and large coal mining development).

Projects that could potentially use CYPHA reserve water could also potentially affect MNES present on Cape York, so EPBC Act assessment and approval processes could be triggered and may result in constraints on project development and use of CYPHA reserve water.

*Indigenous Protected Areas*

Indigenous Protected Areas (IPAs) are areas of land and sea that Traditional Owners have agreed to manage for biodiversity conservation. Indigenous peoples voluntarily dedicate IPAs under one of six International Union for Conservation of Nature (IUCN) categories as protected areas. The IUCN defines a protected area as a clearly defined geographical space, recognised, dedicated, and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values. An area dedicated as an IPA will limit development for industrial purposes including irrigated agriculture. IPAs represent more than 50% of Australia's National Reserve System. There are currently five dedicated IPAs within the Water Plan area and one under consultation. See Figure 13 for Cape York IPAs.



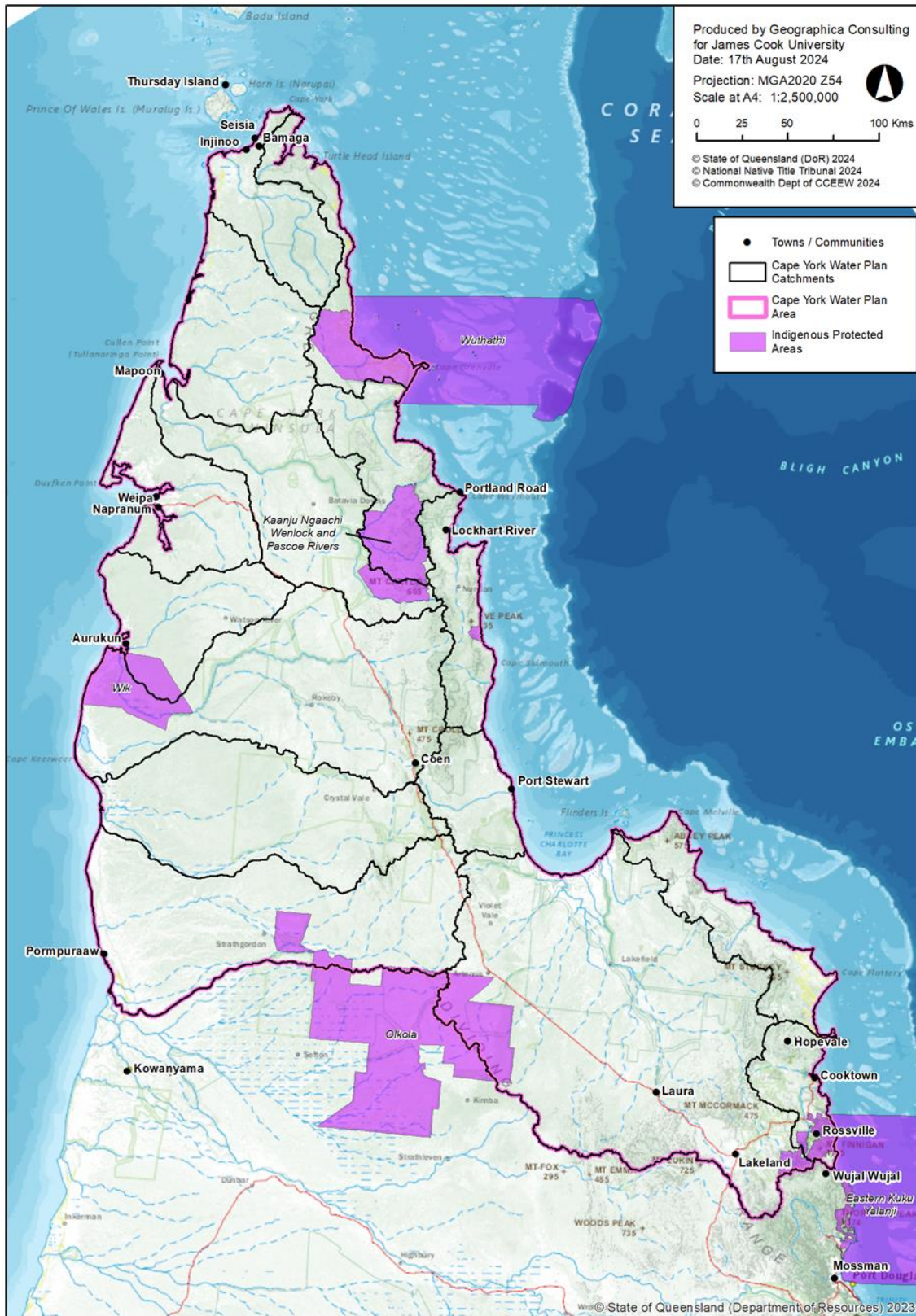


Figure 13 Cape York Indigenous Protected Areas





### **5.1.2 Land use planning and development assessment constraints**

#### *Planning Act 2016 (Qld)*

The purpose of the Planning Act 2016 (Qld) is to establish a system of land use planning and development assessment that facilitates the achievement of ecological sustainability. Land use planning instruments include regional plans that identify matters of State interest in a region, and local government planning schemes that integrate State, regional and local planning and development assessment policies for all of a local government area. The development assessment system makes decisions about development applications by assessing applications with regard to the relevant planning instruments.

#### *Regional Planning*

The Cape York Regional Plan identifies matters of State interest in Cape York and has allocated a large Strategic Environmental Area (SEA) contiguous across most of the Archer, Wenlock, Stewart and Lockhart river catchments, and a small area of the Ducie river catchment, based on the regionally significant values for biodiversity, cultural values, water catchments and/or ecological function in this area. Further, within the Cape York SEA are designated precincts of significant biodiversity value and/or areas of high cultural heritage significance which are afforded the highest level of protection in the SEA, including the Steve Irwin Wildlife Reserve and the rivers and streams of the Wenlock, Archer, Stewart, and Lockhart catchments. See Figure 14 for Cape York Strategic Environmental Area and designated precincts.

Development in the SEA will be supported only where it can be demonstrated that the development outcome does not present risk of irreversible or widespread impacts to the environmental attributes of the SEA. Within the SEA's designated precincts, mining resource activities, broadacre cropping and water storage (dams) are unacceptable uses, giving the highest level of protection to the precinct's natural and cultural features. The Cape York Regional Plan with its SEA and designated precincts will constrain land use and the use of CYPHA reserve water for many purposes in these areas.

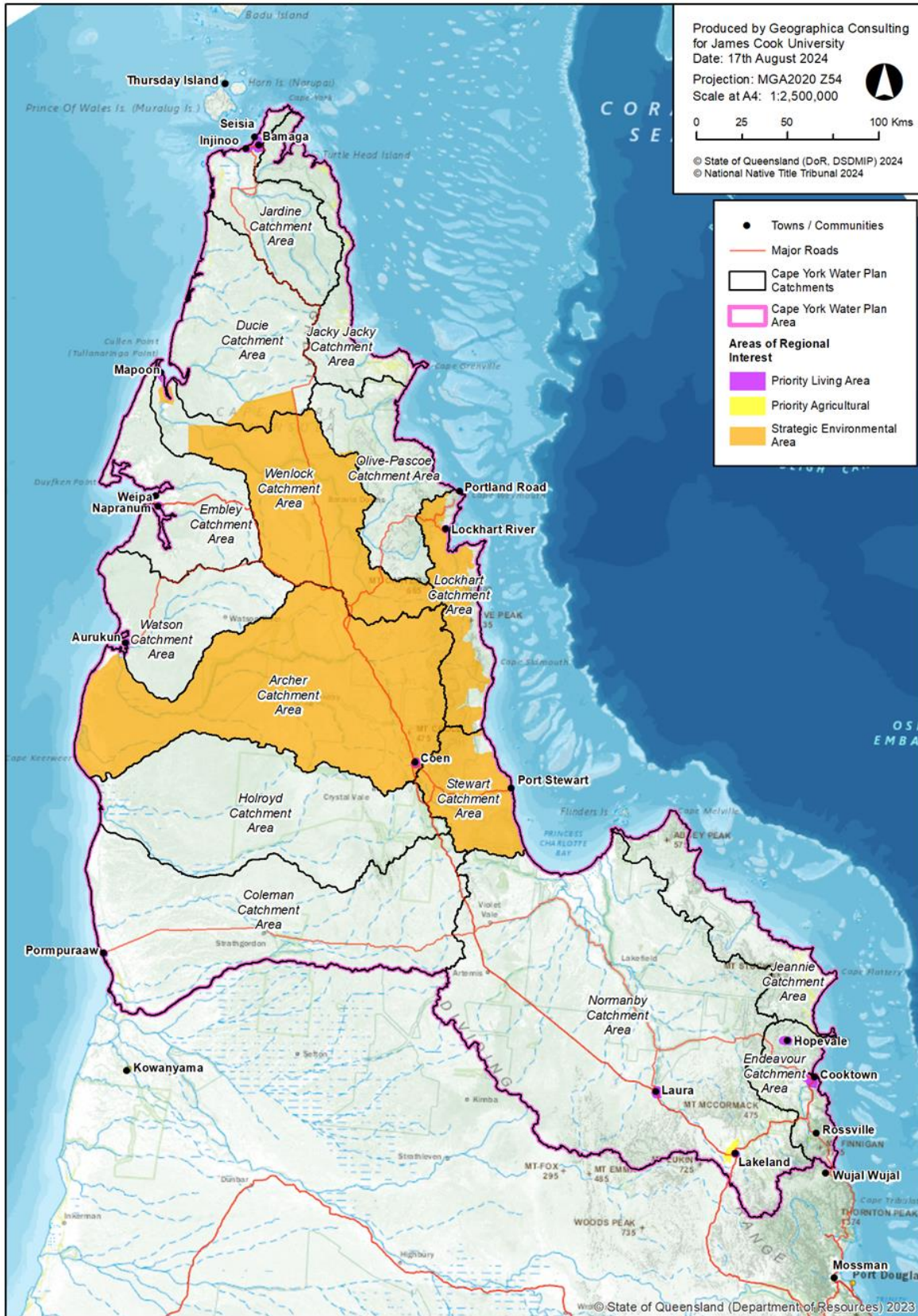


Figure 14 Cape York Strategic Environmental Area and other areas of regional planning interest



### *Local Government Planning Schemes*

The Water Plan area includes the local government areas of Cook Shire (most of), Hope Vale Aboriginal Shire, Lockhart River Aboriginal Shire, Northern Peninsula Area Regional Council, Mapoon Aboriginal Shire, Napranum Aboriginal Shire, Aurukun Aboriginal Shire, Pormpuraaw Aboriginal Shire, Kowanyama Aboriginal Shire (part of), Torres Shire (part of), and the Weipa Town Authority Area. The Council for each local government area has produced a planning scheme as a framework for managing development in a way that advances the purpose of the Planning Act 2016, including to integrate relevant provisions of the Cape York Regional Plan.

Planning schemes for the Aboriginal Shires are first generation planning schemes, having been produced for the first time around 2014. The focus of these planning schemes is on managing development in town areas, with less focus on the balance of the local government area. The focus on town areas is the outcome of using limited resources to invest in planning for areas where most development is anticipated. However, the limited investment in identifying social, cultural, environmental, and economic values and potential land uses outside of town has resulted in a precautionary approach to development planning in the balance of Aboriginal local government areas. This has resulted in the zoning of land outside the Township Zones as an Environmental Management and Conservation Zone or as a Rural Zone. See Figures 15, 16, 17, 18 and 19 for example Aboriginal shire planning scheme zones.

Aboriginal Shire land zoned for Environmental Management and Conservation will significantly limit uses of this land and the use of CYPHA reserve water. Land zoned as Rural will provide more opportunity for land uses that could use CYPHA reserve water but will still constrain some land use opportunities which are not compatible with the zoning or other planning scheme issues, such as requirements for large minimum lot sizes.

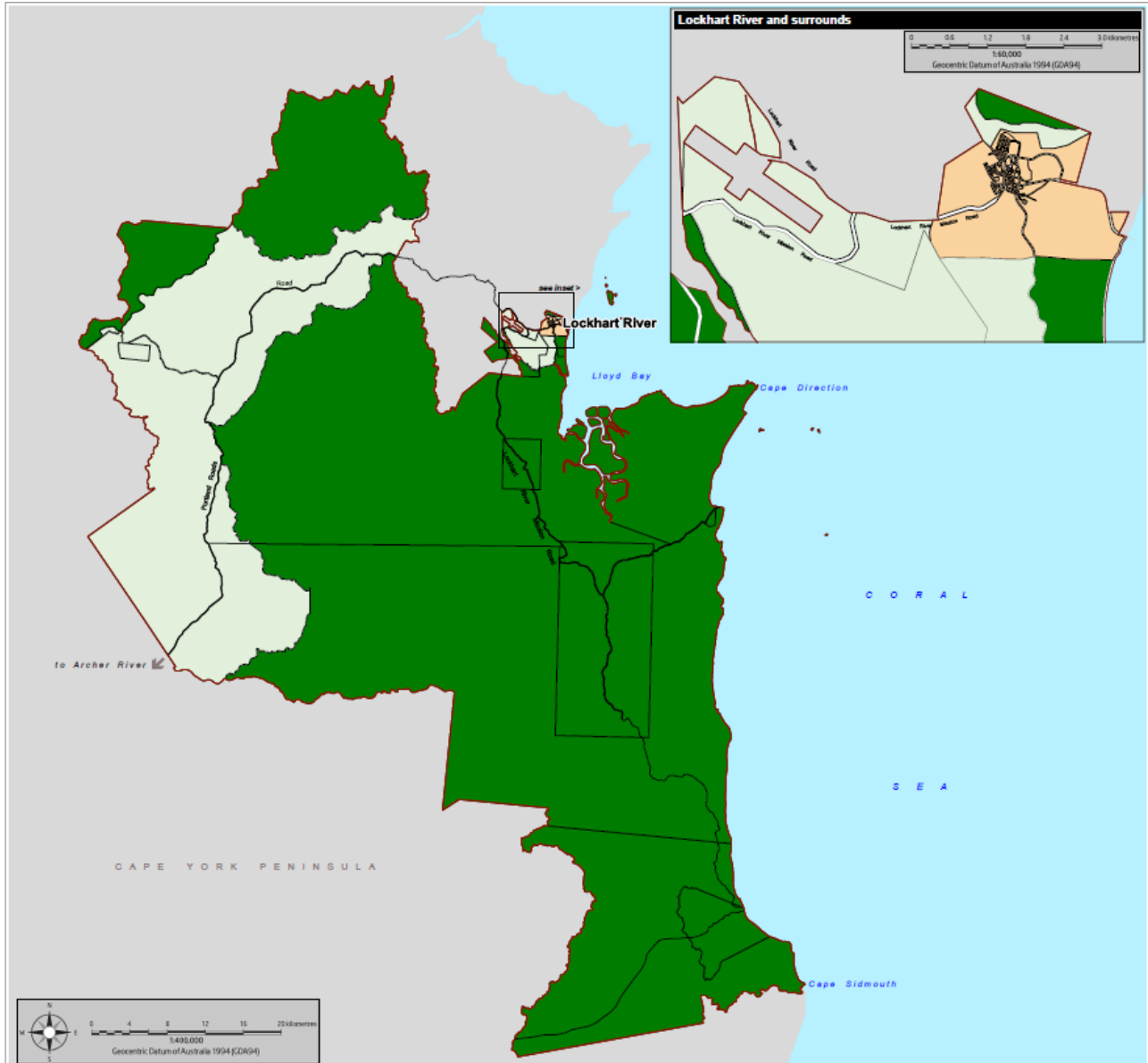
Scheduled reviews of Aboriginal local government planning schemes will provide opportunities to invest in identifying potential land uses outside of town areas, and rezoning of areas with different use potentials, which may provide more opportunity for use of CYPHA reserve water in the future.

### *Development Assessment*

Proposed land use activities that involve carrying out building work, plumbing or drainage work, operational work, reconfiguring a lot, or making a material change of use of premises, are defined as development and will require assessment and approval before the activity may be undertaken. Proposed projects that could use CYPHA reserve water will often trigger the development definition and require assessment by the relevant local government against its planning scheme, and a decision to approve the proposal or not. For example, development assessment would often be triggered by proposed activities associated with the use of CYPHA reserve water, such as the reconfiguration (subdivision) of a lot to allow for the lease of an area for the project, or materially changing the use of land from uncleared land to cleared land used for aquaculture, or from pastoral land to irrigated cropping land. The project proposal may also be referred to the State government for assessment of matters of State interest.

Development assessment processes for land use proposals that could activate CYPHA reserve water uses may often conclude the proposal is inconsistent with the regional plan and/or local government planning scheme land use zoning and therefore not be approved, will be a significant constraint on the activation of CYPHA reserve water.





**Information**  
 Whilst every care is taken to ensure the accuracy of this product, neither the Lockhart River Aboriginal Shire Council or the State of Queensland make any representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs that may occur as a result of the product being inaccurate or incomplete in any way or for any reason.  
 CADASTRAL DATA: State of Queensland (Department of Natural Resources and Mines) 2014;  
 Cadastral Data: Fortnightly Extract Lockhart River Local Government Area;  
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- Legend**
- Zoning Category**
- Township
  - Environmental Management and Conservation
  - Rural
- Other**
- Cadastre
  - Road Network
  - Lockhart River Aboriginal Shire Council Boundary
  - Waterbody
  - Cook Shire Council



**Zone Map**  
ZM-001

Figure 15 Lockhart River Aboriginal Shire planning scheme zone map

Source: Lockhart River Planning Scheme 2015p.g 198





**Hope Vale Aboriginal Shire Council**  
planning scheme



**SC2.3 Zone maps**

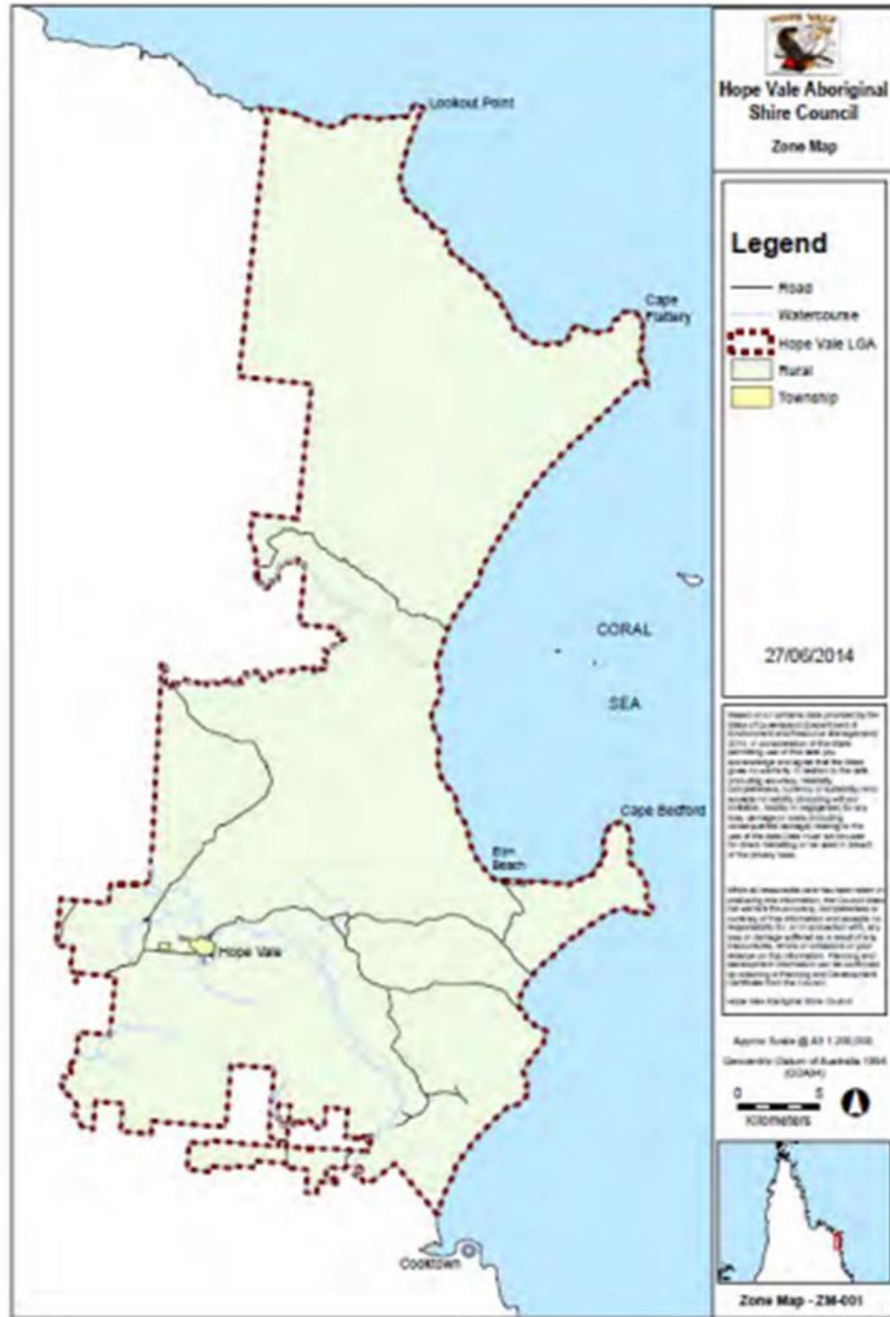


Figure 16 Hope Vale Aboriginal Shire planning scheme zone map

Source: Hope Vale Aboriginal Shire Council Planning scheme QPP version 3109. P.g 118

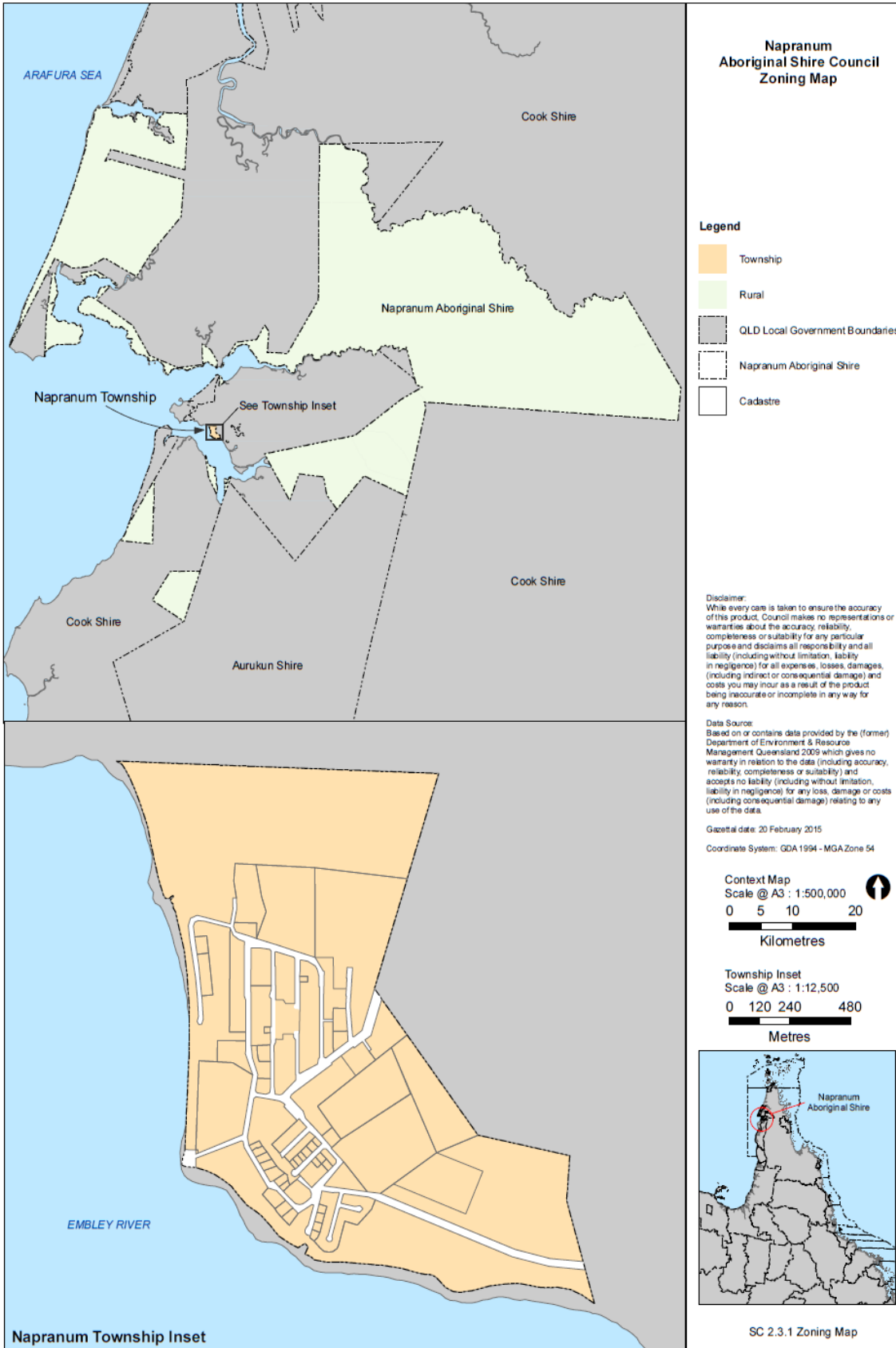


Figure 17 Napranum Aboriginal Shire planning scheme zone map

Source: Napranum Aboriginal Shire Planning Scheme. Pg 131

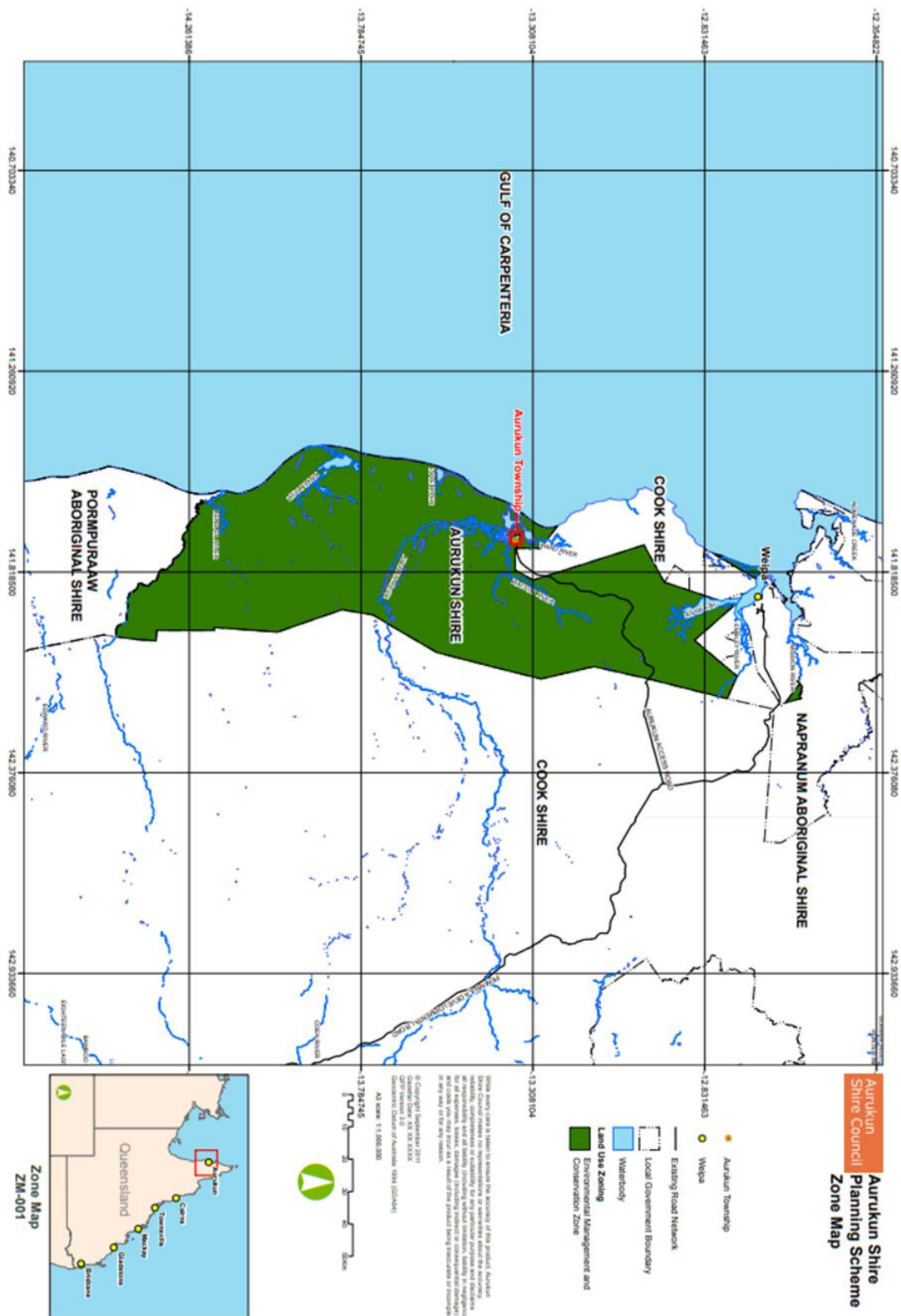


Figure 18 Aurukun Aboriginal Shire planning scheme zone map

Source: Aurukun Shire Council

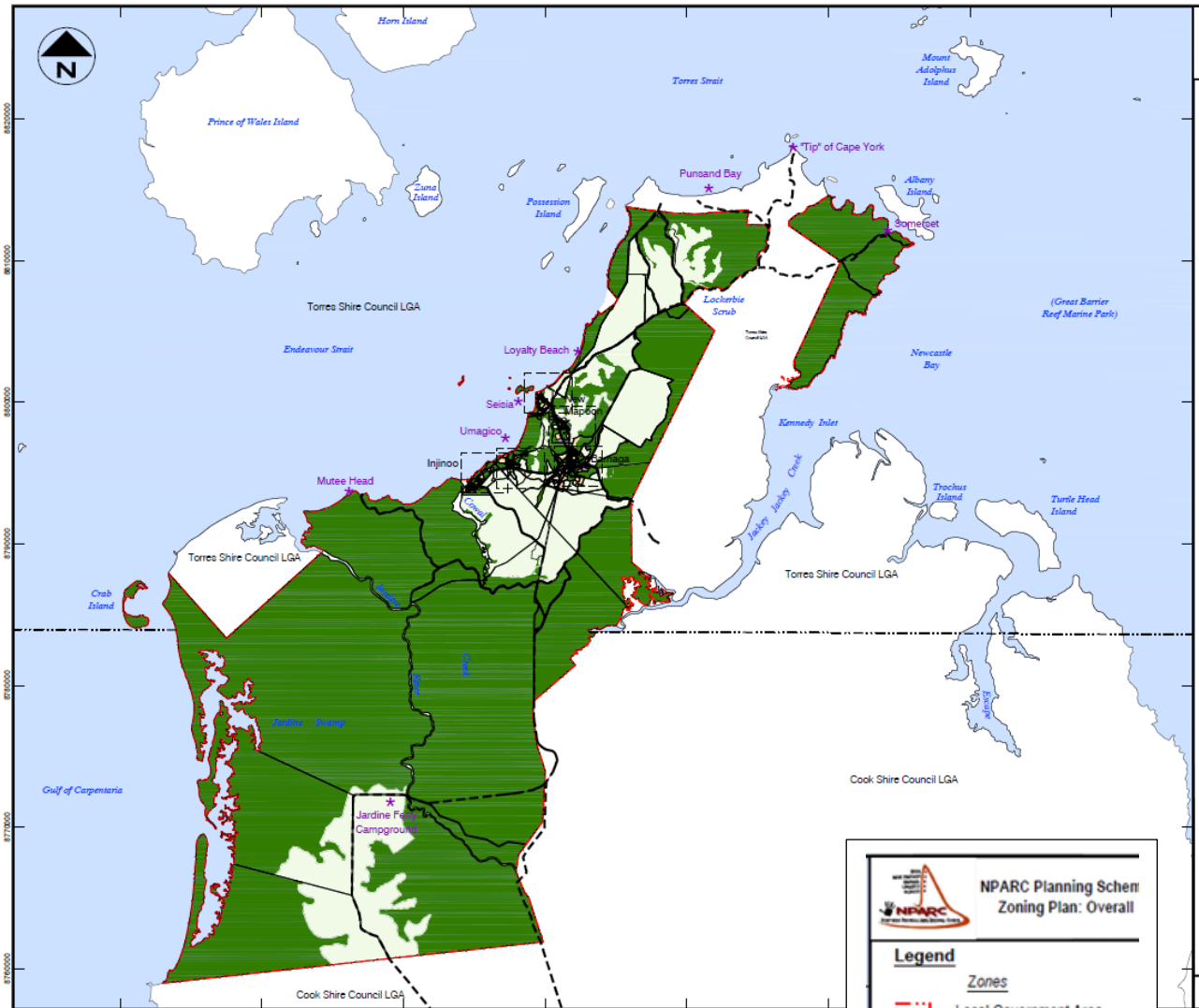


Figure 19 NPARC planning scheme zone map  
Source: Northern Peninsula Area Regional Council Planning Scheme. P.g 169

**IMPORTANT NOTE**  
This plan was prepared as a planning tool only and accuracy of all aspects of the plan have not been verified. No reliance should be placed on the plan and PPS Australia East Pty Ltd accepts no responsibility for any loss or damage suffered however arising to any person who may use or rely on this plan.

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Geometric Datum of Australia (GDA96) 7,500 10,000 12,500  
metres

SCALE 1:250 000 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

SHEET 101E0

**NPARC Planning Scheme Zoning Plan: Overall**

**Legend**

**Zones**

- Local Government Area
- Township
- Industry
- Rural
- Emerging Community
- Environmental Management & Conservation

**Precincts**

- Business
- Residential
- Industry - Low Impact
- Industry - Medium Impact
- Industry - High Impact
- Open Space/Recreation
- Special Purpose
- Tourism





### 5.1.3 Land tenure constraints

#### *Aboriginal Land Act 1991 (Qld)*

An Aboriginal corporation that is a Trustee of Aboriginal freehold land transferred under the ALA is an eligible person to be granted a CYPHA water licence. Where Aboriginal freehold is coincident with land where an RNTBC holds native title the TAF interest has priority for the calculation and allocation of a nominal water licence volume. Given this priority, TAFs are eligible to hold licences for most CYPHA reserve water, with a total of 241,002 ML nominally allocated to 49 Trustee corporations across Cape York, with 9,479 ML of this volume already allocated to three water licences. See Figure 4 for Cape York Aboriginal freehold land and TAFs.

TAFs are empowered to deal with Aboriginal freehold land in ways such as granting a lease or an easement, consenting to the creation of a mining interest, or entering into a conservation agreement under the NCA. As a Trustee the corporation is obliged under the ALA to exercise its powers to manage the land in the interests of the Aboriginal people particularly concerned with the land. The Aboriginal people particularly concerned with the land are the members of a group that has a particular connection with the land under Aboriginal tradition, known as Traditional Owners, or if they live on or use the land or neighbouring land, known as “historical” Aboriginal people.

Use of CYPHA reserve water on Aboriginal freehold land will also usually require the TAF to be involved in a dealing to create an interest in the land, for example, to grant and register a lease over an area of Aboriginal freehold land for an irrigated agriculture project. This dealing will be necessary to create a legally recognised interest in the land for the project proponent, even if the proponent is the Aboriginal corporation itself or a Traditional Owner of the land. How the TAF conducts a process to comply with its obligation to manage the land in the interests of the Aboriginal people particularly concerned with the land will depend upon the requirements of the TAF’s constitution.

Given Australia’s commitment to UNDRIP and Queensland’s HRA, the process outlined in the TAF’s constitution should be consistent with the principles of FPIC which would usually involve consultation by the TAF with particularly concerned Aboriginal people, and a decision being made by these people about whether they consent to the interest in land being created and on what conditions. The governance and operational capacity and resource requirements of this consultation and decision-making process will present challenges for both the TAF and the Aboriginal people particularly concerned with the land. It can be anticipated that the governance, operational and resource challenges of the consultation and decision-making process, rather than the actual merits of the proposed dealing, may result in consent not being given for the land use and associated land dealing. This in turn will constrain the activation of CYPHA reserve water.

As the holder of a CYPHA water licence with eligibility and volume based upon being a TAF, this Report assumes a TAF is obliged to also manage its CYPHA water licence in the interests of the Aboriginal people particularly concerned with the land. A CYPHA water licence dealing could involve a proposal to amend the licence to allow the TAF to use the water on the Aboriginal freehold land it holds, or to assign water to another party. However, consistent with FPIC principles, before a TAF submits a proposal to amend its CYPHA water licence to the DRDMW Chief Executive, the corporation should consult with particularly concerned Aboriginal people and gain their consent for the proposal following the water licence dealing process outlined in the TAF’s constitution. If these people do not consent to the proposal then the TAF should not proceed any further with the proposal.

Similar to a land dealing, the governance and operational capacity and resource requirements of this water dealing consultation and consent process will present challenges for both the TAF and the Aboriginal people particularly concerned with the land. It can be anticipated that these governance, operational and resource challenges of the decision-making process, rather than the actual merits of the proposed dealing, may result in consent not being given for the water dealing. This will constrain activation of CYPHA reserve water.



The governance, operational and resource challenges for CYPHA water licence holders to appropriately administer the licence and activate CYPHA reserve water are discussed in further detail in section 5.2.

#### **5.1.4 Native title constraints**

##### *Native Title Act 1993 (Cth)*

When a determination recognising native title is made by the Federal Court, the Native Title Act 1993 (Cth) (NTA) requires traditional owners to establish an RNTBC to represent them and their interests. RNTBCs are either a Trustee or Agent RNTBC and, as discussed in section 3.3.1, legal advice is required regarding Agent RNTBCs and the holding of CYPHA water licences. RNTBCs are eligible to hold licences for a large portion of the CYPHA reserve water with a total of 204,562 ML nominally allocated to 29 RNTBCs across Cape York (these figures include Agent RNTBCs). See Figure 3 for Cape York native title determinations and RNTBCs.

An RNTBC has prescribed functions under the NTA to:

- hold, protect and manage determined native title in accordance with the objectives of the native title holding group, and
- ensure certainty for governments and other parties interested in accessing or regulating native title land and waters by providing a legal entity to manage and conduct the affairs of the native title holders.

Native title has been determined to exist in most of the Water Plan area, and most of the remaining undetermined area is under a native title claim. The NTA provides that the proposed grant of a water licence, including a CYPHA water licence, is a future act that requires notification from the Queensland Government (as licence granter) to affected RNTBCs and registered native title claimants, that these native title parties have opportunity to comment on the proposed act, and that these comments should be considered. The future act notification and comment process for the grant of a CYPHA water licence is unlikely to affect the licence grant, although where the proposed licence grant is to a TAF, the RNTBC or registered native title claimants may comment that the licence grant should be to them instead.

Use of CYPHA reserve water on Aboriginal freehold land or another land tenure may also involve a dealing to create an interest in the land, for example, to lease an area of Aboriginal freehold land for an irrigated agriculture project, or to consent to the grant of a mining lease. Use of CYPHA reserve water may also involve the construction of infrastructure as part of the project. The NTA provides that where native title exists or may exist, the creation of an interest in land or the construction of infrastructure are future acts that attract the right to negotiate and register an Indigenous Land Use Agreement (ILUA) under which the native title holding group consent to the doing of the proposed future act. The negotiation of an ILUA can be a complex, time consuming and expensive exercise that presents governance, operational and resource challenges for native title parties and may not result in agreement being reached. The difficulty and uncertainty of ILUA negotiations and associated governance, operational and resource challenges, may constrain the creation of an interest in land and therefore the activation of CYPHA reserve water.

As the holder of a CYPHA water licence with eligibility and volume based upon it being a native title holder, this Report assumes an RNTBC is also obliged to manage its CYPHA water licence as if it were managing native title rights and interests in accordance with the objectives of the native title holding group. A dealing with a CYPHA water licence could involve a proposal to amend the licence to allow the RNTBC to assign water to another party. However, before an RNTBC makes an application to amend its CYPHA water licence to the DRDMW Chief Executive, the RNTBC should consult with its native title holding group following the native title dealing process (or water licence dealing process if it has one) outlined in the RNTBC's constitution to gain the group's consent for the proposal. If these people do not consent to the proposal then the RNTBC should not proceed any further with the proposed licence amendment.



Similar to a native title land rights and interests dealing, the governance and operational capacity and resource requirements of this water dealing consultation and consent process will present challenges for both the RNTBC and its native title holding group. This may result in consent not being given for the CYPHA reserve licence amendment because of the governance, operational and resource challenges of the decision-making process, rather than the actual merits of the proposed water dealing. This in turn will constrain the activation of CYPHA reserve water.

The governance, operational and resource challenges for CYPHA water licence holders to appropriately administer the licence and activate CYPHA reserve water are discussed in further detail in section 5.2.

### **5.1.5 Cultural heritage constraints**

#### *Aboriginal Cultural Heritage Act 2003 (Qld)*

The Aboriginal Cultural Heritage Act 2003 (Qld) (ACHA) establishes a duty of care for parties undertaking activities that may harm Aboriginal cultural heritage. Duty of care guidelines gazetted under the ACHA identify risks to cultural heritage and reasonable and practical measures for ensuring that activities are managed to avoid or minimise harm to Aboriginal cultural heritage.

Under the guidelines, activities that cause surface disturbance are higher risk and likely require the carrying out of a cultural heritage survey and the development of a Cultural Heritage Management Plan (CHMP) with the Aboriginal party to meet the duty of care under the ACHA. For example, projects that require an Environmental Impact Statement (EIS) must prepare a CHMP in consultation with the Aboriginal party. For lower impact activities that do not disturb the surface or where cultural heritage may no longer exist a self-assessment duty of care applies.

Many land use activities that could activate use of CYPHA reserve water could potentially have an impact on Aboriginal cultural heritage so the duty of care will always apply, and perhaps a CHMP will be required that would constrain land use. The ACHA and its cultural heritage protection requirements could constrain the activation of CYPHA reserve water.

### **5.1.6 Water management constraints**

#### *Water Act 2000 (Qld)*

The Water Plan was prepared pursuant to the Water Act to help advance the sustainable management of Queensland's water. The Protocol implements the Water Plan and provides CYPHA reserve water volumes for each of the Water Plan area's fifteen catchments. The fifteen CYPHA reserve water volumes, shown in Table 1, are calculated as the available unallocated water volumes and are based on 2.5% of the median annual flow volume of a catchment's watercourses, minus water already allocated under existing water licences and water allocated to general and strategic reserves.

This calculation has resulted in various CYPHA reserve volumes for the fifteen catchments, including volumes of zero ML for the Watson and Jeannie catchments. Existing water licences, particularly for mining projects but also for agricultural projects, in the Watson and Jeannie catchments have already taken up all available water.

Ironically, the Watson and Jeannie catchments include some of the most prospective land on Cape York for water use, including for irrigated agriculture. If a CYPHA reserve volume was available in these catchments there would almost certainly be a demand from eligible parties to take up a CYPHA water licence and activate CYPHA water. However, in the absence of a CYPHA reserve, eligible persons in the Watson and Jeannie catchments can seek a water licence from the Water Plan's strategic reserve.

## **5.2 Corporate governance complexity**





The grant of a CYPHA water licence to an RNTBC or TAF creates a responsibility for that Aboriginal corporation to manage the licence in compliance with licence conditions and the Water Act more generally, and in compliance with the corporation's statutory functions, its constitution and the aspirations and direction of its members. These Aboriginal corporations also have a responsibility to satisfy UNDRIP commitments, including FPIC principles, and the HRA. These responsibilities create a significant governance burden for a corporation. This burden is made significantly greater by the complexity and incongruent elements of the statutory governance environment that Cape York Aboriginal corporations are required to operate within and the ongoing impacts of colonisation which continue to negatively affect the governance capacity of Aboriginal groups.

Corporate governance complexity and capacity issues discussed below are another major constraint on the activation and use of CYPHA reserve water that must be addressed if the Water Plan is to be effectively implemented. Some issues could be addressed reasonably easily in the short term, other issues will require more fundamental reforms and will therefore take more time to achieve. Importantly, this Report provides a basis for identifying governance reforms needed to enable more effective activation of the CYPHA water reserve. Proposed reforms will be workshopped with the First Nation Reference Group and developed through the catchment case studies. These reforms will also significantly enhance governance capacity for managing Aboriginal interests in land and other responsibilities. In turn, improved governance of Aboriginal interests in land and water will improve social, economic, cultural, and environmental outcomes on Cape York and help to achieve the aspirations of Aboriginal people and the objectives of many government programs. Investment in governance reforms therefore must be a whole of government activity in close partnership with Cape York Aboriginal corporations and Aboriginal people.

### ***5.2.1 Complexity and incongruence between ALA and NTA governance***

Cape York is almost unique in Australia in that the Queensland Government's ALA and the Australian Government's NTA, in combination with the CATSIA, create coincident native title and Aboriginal freehold rights and interests and coexisting Aboriginal corporations in the same areas of land. These coincident rights and associated governance functions create a complex and incongruent governance system. There are examples of this arrangement elsewhere, but nothing comes close to the spatial extent that exists on Cape York Peninsula.

Native title is likely to exist in almost all of Cape York and therefore almost all of the Water Plan area. To date within the Water Plan area native title has been determined to exist in 8,806,109 ha of land, with remaining areas under a native title claim and scheduled to be determined in the next few years. Aboriginal freehold tenure exists in 5,447,000 ha of land and additional areas of transferrable land are anticipated to be transferred to Aboriginal freehold. Native title and Aboriginal freehold rights and interests are coincident in 4,540,100 ha of land, and parts of all 29 RNTBC areas and parts of 47 TAF areas coexist in these coincident areas.

In some cases the coincident RNTBC and TAF are the same Aboriginal corporation with dual statutory functions, but in many cases they are different corporations. As discussed above, where native title and Aboriginal freehold rights and interests are coincident, the Aboriginal Freehold Trustee corporation has priority for a CYPHA water licence volume for that area. In areas of coincident rights and interests, the volume of CYPHA water licence granted to an RNTBC would be calculated using the area of native title held by the RNTBC minus the area of native title that is coincident with Aboriginal freehold.

See Figure 5, Figure 6, Figure 7 and Table 4 for a presentation of coincident rights, interests and corporations.



Table 4 Areas of native title and coincident Aboriginal freehold and coincident corporations

| Water Plan Catchment | Eligible person - Native Title Holders (RNTBCs) | Eligible person - Trustees of Aboriginal Freehold (TAFs) - holding AF area coincident with NT | Coincident Area (Ha) |
|----------------------|---|---|----------------------|
| <b>Archer</b>        |   |   |                      |
| Archer               | Ayapathu AC RNTBC                               | Kulla LT  | 200                  |
| Archer               | Ayapathu AC RNTBC                               | Oyala Thumotang LT  | 32,300               |
| Archer               | Ayapathu AC RNTBC                               | Wunthulpu Aboriginal LT   | 1,700                |
| Archer               | Ayapathu AC RNTBC                               | <i>Nil</i>  | 23,400               |
| Archer               | Ngan Aak-Kunch AC RNTBC                         | Ngan Aak-Kunch AC RNTBC   | 259,000              |
| Archer               | Ngan Aak-Kunch AC RNTBC                         | Oyala Thumotang LT  | 269,500              |
| Archer               | Ngan Aak-Kunch AC RNTBC                         | <i>Nil</i>  | 364,300              |
| Archer               | Northern Kaanju AC RNTBC                        | Mangkuma LT   | 4,700                |
| Archer               | Northern Kaanju AC RNTBC                        | <i>Nil</i>  | 65,400               |
| Archer               | Southern Kaantju AC RNTBC                       | Kulla LT  | 58,500               |
| Archer               | Southern Kaantju AC RNTBC                       | Mangkuma LT   | 2,500                |
| Archer               | Southern Kaantju AC RNTBC                       | Oyala Thumotang LT  | 135,900              |
| Archer               | Southern Kaantju AC RNTBC                       | Toolka LT   | 18,200               |
| Archer               | Southern Kaantju AC RNTBC                       | Wathada LT  | 2,400                |
| Archer               | Southern Kaantju AC RNTBC                       | <i>Nil</i>  | 94,800               |



|                 |                                     |                              |           |
|-----------------|-------------------------------------|------------------------------|-----------|
| Archer          | Uutaalnganu AC RNTBC                | Mangkuma LT                  | 800       |
| Archer          | <i>Nil</i>                          | Kulla LT                     | 300       |
| Archer          | <i>Nil</i>                          | Oyala Thumotang LT           | 8,100     |
| Archer          | <i>No Eligible Person</i>           | <i>No Eligible Person</i>    | 39,900    |
| Catchment total |                                     |                              | 1,381,900 |
| <b>Coleman</b>  |                                     |                              |           |
| Coleman         | Abm Elgoring Ambung AC RNTBC        | ABM Elgoring Ambung AC RNTBC | 28,500    |
| Coleman         | Abm Elgoring Ambung AC RNTBC        | <i>Nil</i>                   | 25,800    |
| Coleman         | Ayapathu AC RNTBC                   | Kulla LT                     | 100       |
| Coleman         | Ayapathu AC RNTBC                   | <i>Nil</i>                   | 61,600    |
| Coleman         | Ngan Aak-Kunch AC RNTBC             | <i>Nil</i>                   | 421,100   |
| Coleman         | Thaa-Nguigarr Strathgordon AC RNTBC | <i>Nil</i>                   | 118,400   |
| Coleman         | Ut-Alkar AC                         | Olkola AC                    | 110,400   |
| Coleman         | Ut-Alkar AC                         | <i>Nil</i>                   | 292,600   |
| Coleman         | <i>No Eligible Person</i>           | <i>No Eligible Person</i>    | 227,500   |
| Catchment total |                                     |                              | 1,286,000 |





| <b>Ducie</b>    |   |                                 |         |
|-----------------|---|---------------------------------|---------|
| Ducie           | Atambaya Native Title AC RNTBC                  | Atambaya AC (ICN 8699)          | 32,000  |
| Ducie           | Atambaya Native Title AC RNTBC                  | Ipima Ikaya AC RNTBC (ICN 8114) | 17,800  |
| Ducie           | Atambaya Native Title AC RNTBC                  | <i>Nil</i>                      | 73,100  |
| Ducie           | Ipima Ikaya AC RNTBC                            | Apudthama LT                    | 223,100 |
| Ducie           | Ipima Ikaya AC RNTBC                            | Atambaya AC (ICN 8699)          | 4,000   |
| Ducie           | Ipima Ikaya AC RNTBC                            | Ipima Ikaya AC RNTBC (ICN 8114) | 100     |
| Ducie           | Ipima Ikaya AC RNTBC                            | Old Mapoon AC                   | 96,500  |
| Ducie           | Ipima Ikaya AC RNTBC                            | <i>Nil</i>                      | 39,400  |
| Ducie           | Mokwiri AC RNTBC                                | Old Mapoon AC                   | 14,500  |
| Ducie           | Mokwiri AC RNTBC                                | <i>Nil</i>                      | 82,800  |
| Ducie           | Northern Cape and Torres Strait United IC RNTBC | <i>Nil</i>                      | 100     |
| Ducie           | Seven Rivers AC RNTBC                           | Old Mapoon AC                   | 22,500  |
| Ducie           | Seven Rivers AC RNTBC                           | <i>Nil</i>                      | 29,300  |
| Ducie           | Wuthathi AC RNTBC                               | <i>Nil</i>                      | 100     |
| Ducie           | <i>No Eligible Person</i>                       | <i>No Eligible Person</i>       | 3,300   |
| Catchment total |   |                                 | 638,600 |



| <b>Embley</b>    |                                 |                                       |         |
|------------------|---------------------------------|---------------------------------------|---------|
| Embley           | Mokwiri AC RNTBC                | Mokwiri AC RNTBC                      | 4,000   |
| Embley           | Mokwiri AC RNTBC                | Old Mapoon AC                         | 20,300  |
| Embley           | Mokwiri AC RNTBC                | <i>Nil</i>                            | 161,500 |
|                  |                                 |                                       |         |
| Embley           | Ngan Aak-Kunch AC RNTBC         | Ngan Aak-Kunch AC RNTBC               | 88,300  |
| Embley           | Ngan Aak-Kunch AC RNTBC         | <i>Nil</i>                            | 78,500  |
|                  |                                 |                                       |         |
| Embley           | Weipa Peninsula People AC RNTBC | Peppan LT                             | 8,400   |
| Embley           | Weipa Peninsula People AC RNTBC | <i>Nil</i>                            | 68,300  |
|                  |                                 |                                       |         |
| Embley           | <i>Nil</i>                      | Ngan Aak-Kunch AC RNTBC               | 100     |
|                  |                                 |                                       |         |
| Embley           | <i>No Eligible Person</i>       | <i>No Eligible Person</i>             | 32,700  |
| Catchment total  |                                 |                                       | 462,100 |
|                  |                                 |                                       |         |
| <b>Endeavour</b> |                                 |                                       |         |
| Endeavour        | Dhubbi Warra AC RNTBC           | Hopevale Congress AC RNTBC            | 4,800   |
| Endeavour        | Dhubbi Warra AC RNTBC           | <i>Nil</i>                            | -       |
|                  |                                 |                                       |         |
| Endeavour        | Hopevale Congress AC RNTBC      | Hopevale Congress AC RNTBC            | 4,900   |
| Endeavour        | Hopevale Congress AC RNTBC      | <i>Nil</i>                            | -       |
|                  |                                 |                                       |         |
| Endeavour        | Jabalbina Yalanji AC RNTBC      | Jabalbina Yalanji AC RNTBC (ICN 7002) | 11,900  |



|                 |                            |                                       |         |
|-----------------|----------------------------|---------------------------------------|---------|
| Endeavour       | Jabalbina Yalanji AC RNTBC | Jabalbina Yalanji LT                  | 16,600  |
| Endeavour       | Jabalbina Yalanji AC RNTBC | <i>Nil</i>                            | 500     |
| Endeavour       | <i>Nil</i>                 | Binthi Land Holding Group AC          | 100     |
| Endeavour       | <i>Nil</i>                 | Hope Vale Aboriginal Shire Council    | 200     |
| Endeavour       | <i>Nil</i>                 | Hopevale Congress AC RNTBC            | 1,600   |
| Endeavour       | <i>Nil</i>                 | Jabalbina Yalanji AC RNTBC (ICN 7002) | 7,200   |
| Endeavour       | <i>Nil</i>                 | Jabalbina Yalanji LT                  | 1,400   |
| Endeavour       | <i>Nil</i>                 | Waarntuur-iin AC                      | 900     |
| Endeavour       | <i>Nil</i>                 | Wunbuwarra Banana Creek LT            | 2,600   |
| Endeavour       | <i>Nil</i>                 | Yuku-Baja-Muliku LT                   | 400     |
| Endeavour       | <i>No Eligible Person</i>  | <i>No Eligible Person</i>             | 125,900 |
| Catchment total |                            |                                       | 219,000 |
| <b>Holroyd</b>  |                            |                                       |         |
| Holroyd         | Ayapathu AC RNTBC          | Kulla LT                              | 200     |
| Holroyd         | Ayapathu AC RNTBC          | Oyala Thumotang LT                    | 1,500   |
| Holroyd         | Ayapathu AC RNTBC          | <i>Nil</i>                            | 64,700  |
| Holroyd         | Ngan Aak-Kunch AC RNTBC    | Ngan Aak-Kunch AC RNTBC               | 175,700 |
| Holroyd         | Ngan Aak-Kunch AC RNTBC    | Oyala Thumotang LT                    | 2,900   |





|                    |   |                                 |           |
|--------------------|---|---------------------------------|-----------|
| Holroyd            | Ngan Aak-Kunch AC RNTBC                         | <i>Nil</i>                      | 781,300   |
| Holroyd            | <i>No Eligible Person</i>                       | <i>No Eligible Person</i>       | 2,200     |
| Catchment total    |   |                                 | 1,028,500 |
| <b>Jacky Jacky</b> |   |                                 |           |
| Jacky Jacky        | Atambaya Native Title AC RNTBC                  | Ipima Ikaya AC RNTBC (ICN 8114) | 100       |
| Jacky Jacky        | Atambaya Native Title AC RNTBC                  | <i>Nil</i>                      | 300       |
| Jacky Jacky        | Bromley AC RNTBC                                | Bromley AC RNTBC                | 6,900     |
| Jacky Jacky        | Gudang Yadhaykenu Native Title AC RNTBC         | Ipima Ikaya AC RNTBC (ICN 8114) | 100       |
| Jacky Jacky        | Gudang Yadhaykenu Native Title AC RNTBC         | <i>Nil</i>                      | 1,900     |
| Jacky Jacky        | Ipima Ikaya AC RNTBC                            | Apudthama LT                    | 21,900    |
| Jacky Jacky        | Ipima Ikaya AC RNTBC                            | Ipima Ikaya AC RNTBC (ICN 8114) | 82,900    |
| Jacky Jacky        | Ipima Ikaya AC RNTBC                            | <i>Nil</i>                      | 5,900     |
| Jacky Jacky        | Northern Cape and Torres Strait United IC RNTBC | <i>Nil</i>                      | 21,600    |
| Jacky Jacky        | Wuthathi AC RNTBC                               | Wuthathi AC RNTBC               | 114,400   |
| Jacky Jacky        | Wuthathi AC RNTBC                               | <i>Nil</i>                      | 200       |
| Jacky Jacky        | <i>Nil</i>                                      | Ipima Ikaya AC RNTBC (ICN 8114) | 200       |
| Jacky Jacky        | <i>Nil</i>                                      | Wuthathi AC RNTBC               | 200       |



|                 |   |   |         |
|-----------------|---|---|---------|
| Jacky Jacky     | <i>No Eligible Person</i>                       | <i>No Eligible Person</i>                           | 43,000  |
| Catchment total |   |   | 299,600 |
| <b>Jardine</b>  |   |   |         |
| Jardine         | Atambaya Native Title AC RNTBC                  | Ipima Ikaya AC RNTBC (ICN 8114)                     | 14,200  |
| Jardine         | Atambaya Native Title AC RNTBC                  | <i>Nil</i>  | 200     |
| Jardine         | Ipima Ikaya AC RNTBC                            | Apudthama LT  | 99,400  |
| Jardine         | Ipima Ikaya AC RNTBC                            | Atambaya AC (ICN 8699)                              | 100     |
| Jardine         | Ipima Ikaya AC RNTBC                            | Ipima Ikaya AC RNTBC (ICN 8114)                     | 210,500 |
| Jardine         | Ipima Ikaya AC RNTBC                            | <i>Nil</i>  | 28,300  |
| Jardine         | Northern Cape and Torres Strait United IC RNTBC | <i>Nil</i>  | 300     |
| Jardine         | Seven Rivers AC RNTBC                           | Apudthama LT  | -       |
| Jardine         | Seven Rivers AC RNTBC                           | <i>Nil</i>  | 3,000   |
| Jardine         | <i>Nil</i>                                      | Gudang/Yadhaykenu AC                                | 1,200   |
| Jardine         | <i>Nil</i>                                      | Northern Peninsula Area Regional Aboriginal Council | 200     |
| Jardine         | <i>No Eligible Person</i>                       | <i>No Eligible Person</i>                           | 3,100   |
| Catchment total |   |   | 360,500 |



| <b>Jeannie</b>  |                            |   |         |
|-----------------|----------------------------|---|---------|
| Jeannie         | Hopevale Congress AC RNTBC | Hopevale Congress AC RNTBC                  | 49,300  |
| Jeannie         | Hopevale Congress AC RNTBC | <i>Nil</i>                                  | -       |
| Jeannie         | Walmbaar AC RNTBC          | Hopevale Congress AC RNTBC                  | 15,900  |
| Jeannie         | <i>Nil</i>                 | Binthi Land Holding Group AC                | 6,500   |
| Jeannie         | <i>Nil</i>                 | Buubu Gujin AC                              | 13,500  |
| Jeannie         | <i>Nil</i>                 | Cape Melville, Flinders & Howick Islands AC | 139,900 |
| Jeannie         | <i>Nil</i>                 | Darrba LT                                   | 9,300   |
| Jeannie         | <i>Nil</i>                 | Juunjuwarra AC                              | 6,700   |
| Jeannie         | <i>Nil</i>                 | Kalpowar Aboriginal LT                      | 32,600  |
| Jeannie         | <i>Nil</i>                 | Ngulun LT                                   | 39,600  |
| Jeannie         | <i>Nil</i>                 | Waarntuur-iin AC                            | 18,000  |
| Jeannie         | <i>Nil</i>                 | Wakooka LT                                  | 25,100  |
| Jeannie         | <i>No Eligible Person</i>  | <i>No Eligible Person</i>                   | 14,900  |
| Catchment total |                            |   | 371,300 |
| <b>Lockhart</b> |                            |   |         |
| Lockhart        | Kaapay Kuuyun AC RNTBC     | Mangkuma LT                                 | 22,900  |
| Lockhart        | Kaapay Kuuyun AC RNTBC     | Northern Kuuku Ya'u Kanthanampu AC RNTBC LT | 37,100  |
| Lockhart        | Kaapay Kuuyun AC RNTBC     | <i>Nil</i>                                  | 2,700   |



|                 |                           |  |         |
|-----------------|---------------------------|--|---------|
| Lockhart        | Kuuku Ya'u AC RNTBC       | Northern Kuuku Ya'u<br>Kanthanampu AC RNTBC LT | 800     |
| Lockhart        | Kuuku Ya'u AC RNTBC       | <i>Nil</i>                                     | 300     |
| Lockhart        | Northern Kaanju AC RNTBC  | Mangkuma LT                                    | 10,300  |
| Lockhart        | Northern Kaanju AC RNTBC  | Northern Kuuku Ya'u<br>Kanthanampu AC RNTBC LT | 200     |
| Lockhart        | Southern Kaantju AC RNTBC | Kulla LT                                       | 28,700  |
| Lockhart        | Southern Kaantju AC RNTBC | Mangkuma LT                                    | 19,500  |
| Lockhart        | Southern Kaantju AC RNTBC | <i>Nil</i>                                     | 100     |
| Lockhart        | Umpila AC RNTBC           | Kulla LT                                       | 48,300  |
| Lockhart        | Umpila AC RNTBC           | Mangkuma LT                                    | 4,500   |
| Lockhart        | Umpila AC RNTBC           | Pul Pul LT                                     | 700     |
| Lockhart        | Umpila AC RNTBC           | <i>Nil</i>                                     | 600     |
| Lockhart        | Uutaalnganu AC RNTBC      | Mangkuma LT                                    | 92,400  |
| Lockhart        | Uutaalnganu AC RNTBC      | Pul Pul LT                                     | 4,100   |
| Lockhart        | Uutaalnganu AC RNTBC      | <i>Nil</i>                                     | 500     |
| Lockhart        | <i>Nil</i>                | Kulla LT                                       | 9,000   |
| Lockhart        | <i>No Eligible Person</i> | <i>No Eligible Person</i>                      | 5,900   |
| Catchment total |                           |  | 288,600 |





| <b>Normanby</b> |                            |                                       |         |
|-----------------|----------------------------|---------------------------------------|---------|
| Normanby        | Awu-Laya IC RNTBC          | Kyerrwanhdha Thingalkal LT            | 40,900  |
| Normanby        | Awu-Laya IC RNTBC          | Olkola AC                             | 15,400  |
| Normanby        | Awu-Laya IC RNTBC          | Rinyirru (Lakefield) LT               | 196,000 |
| Normanby        | Awu-Laya IC RNTBC          | <i>Nil</i>                            | 108,500 |
| Normanby        | Ayapathu AC RNTBC          | <i>Nil</i>                            | 1,300   |
| Normanby        | Jabalbina Yalanji AC RNTBC | Jabalbina Yalanji AC RNTBC (ICN 7002) | 13,900  |
| Normanby        | Jabalbina Yalanji AC RNTBC | Jabalbina Yalanji LT                  | 3,800   |
| Normanby        | Jabalbina Yalanji AC RNTBC | <i>Nil</i>                            | 100     |
| Normanby        | Kuku Warra AC RNTBC        | Agayrra-Timara LT                     | 31,000  |
| Normanby        | Kuku Warra AC RNTBC        | Ang-Gnarra AC of Laura                | 100     |
| Normanby        | Kuku Warra AC RNTBC        | Rinyirru (Lakefield) LT               | 153,100 |
| Normanby        | Kuku Warra AC RNTBC        | <i>Nil</i>                            | 147,100 |
| Normanby        | Lama Lama AC RNTBC         | Lama Lama LT                          | 60,000  |
| Normanby        | Lama Lama AC RNTBC         | Rinyirru (Lakefield) LT               | 109,300 |
| Normanby        | Lama Lama AC RNTBC         | <i>Nil</i>                            | 51,900  |
| Normanby        | Poosum AC RNTBC            | Kyerrwanhdha Thingalkal LT            | 32,500  |



|          |                          |   |         |
|----------|--------------------------|---|---------|
| Normanby | Possum AC RNTBC          | Olkola AC                                   | 10,000  |
| Normanby | Possum AC RNTBC          | Rinyirru (Lakefield) LT                     | 1,400   |
| Normanby | Possum AC RNTBC          | <i>Nil</i>                                  | 331,800 |
| Normanby | Ut-Alkar AC              | Kyerrwanhdha Thingalkal LT                  | 1,800   |
| Normanby | Ut-Alkar AC              | Olkola AC                                   | 116,200 |
| Normanby | Ut-Alkar AC              | <i>Nil</i>                                  | 61,100  |
| Normanby | Western Yalanji AC RNTBC | Wulburjubur Bama LT                         | 58,600  |
| Normanby | Western Yalanji AC RNTBC | <i>Nil</i>                                  | 500     |
| Normanby | <i>Nil</i>               | Agayrra-Timara LT                           | 11,000  |
| Normanby | <i>Nil</i>               | Balnggarawarra (Gaarraay) LT                | 10,700  |
| Normanby | <i>Nil</i>               | Balnggarawarra AC                           | 36,800  |
| Normanby | <i>Nil</i>               | Binthi Land Holding Group AC                | 800     |
| Normanby | <i>Nil</i>               | Buubu Gujin AC                              | 168,900 |
| Normanby | <i>Nil</i>               | Cape Melville, Flinders & Howick Islands AC | 30,500  |
| Normanby | <i>Nil</i>               | Kalpovar Aboriginal LT                      | 160,400 |
| Normanby | <i>Nil</i>               | Rinyirru (Lakefield) LT                     | 85,200  |
| Normanby | <i>Nil</i>               | Waarntuur-iin AC                            | 28,400  |
| Normanby | <i>Nil</i>               | Wakooka LT                                  | 10,300  |



|                     |                                |   |           |
|---------------------|--------------------------------|---|-----------|
| Normanby            | <i>Nil</i>                     | Wunbuwarra Banana Creek LT                  | 3,400     |
| Normanby            | <i>No Eligible Person</i>      | <i>No Eligible Person</i>                   | 352,200   |
| Catchment total     |                                |   | 2,444,900 |
| <b>Olive-Pascoe</b> |                                |   |           |
| Olive-Pascoe        | Atambaya Native Title AC RNTBC | <i>Nil</i>                                  | 200       |
| Olive-Pascoe        | Bromley AC RNTBC               | Bromley AC RNTBC                            | 153,200   |
| Olive-Pascoe        | Bromley AC RNTBC               | <i>Nil</i>                                  | 1,900     |
| Olive-Pascoe        | Kaapay Kuuyun AC RNTBC         | Mangkuma LT                                 | 38,400    |
| Olive-Pascoe        | Kaapay Kuuyun AC RNTBC         | Northern Kuuku Ya'u Kanthanampu AC RNTBC LT | 18,500    |
| Olive-Pascoe        | Kaapay Kuuyun AC RNTBC         | <i>Nil</i>                                  | 400       |
| Olive-Pascoe        | Kuuku Ya'u AC RNTBC            | <i>Nil</i>                                  | 2,100     |
| Olive-Pascoe        | Northern Kaanju AC RNTBC       | Batavia Traditional Owners AC               | 600       |
| Olive-Pascoe        | Northern Kaanju AC RNTBC       | Mangkuma LT                                 | 100,200   |
| Olive-Pascoe        | Wuthathi AC RNTBC              | Wuthathi AC RNTBC                           | 3,300     |
| Olive-Pascoe        | <i>Nil</i>                     | Batavia Traditional Owners AC               | 10,600    |
| Olive-Pascoe        | <i>No Eligible Person</i>      | <i>No Eligible Person</i>                   | 88,800    |



|                 |                           |                           |         |
|-----------------|---------------------------|---------------------------|---------|
| Catchment total |                           |                           | 418,200 |
| <b>Stewart</b>  |                           |                           |         |
| Stewart         | Ayapathu AC RNTBC         | Kulla LT                  | 81,900  |
| Stewart         | Ayapathu AC RNTBC         | Wunthulpu Aboriginal LT   | 3,400   |
| Stewart         | Ayapathu AC RNTBC         | <i>Nil</i>                | 4,200   |
| Stewart         | Lama Lama AC RNTBC        | Kulla LT                  | 50,700  |
| Stewart         | Lama Lama AC RNTBC        | Lama Lama LT              | 53,700  |
| Stewart         | Lama Lama AC RNTBC        | <i>Nil</i>                | 2,300   |
| Stewart         | Southern Kaantju AC RNTBC | Kulla LT                  | 27,200  |
| Stewart         | Southern Kaantju AC RNTBC | <i>Nil</i>                | 100     |
| Stewart         | Umpila AC RNTBC           | Kulla LT                  | 23,300  |
| Stewart         | Umpila AC RNTBC           | <i>Nil</i>                | 200     |
| Stewart         | <i>Nil</i>                | Kulla LT                  | 24,000  |
| Stewart         | <i>Nil</i>                | Wunthulpu Aboriginal LT   | 1,000   |
| Stewart         | <i>No Eligible Person</i> | <i>No Eligible Person</i> | 2,600   |
| Catchment total |                           |                           | 274,600 |
| <b>Watson</b>   |                           |                           |         |





|                 |                                 |                               |         |
|-----------------|---------------------------------|-------------------------------|---------|
| Watson          | Ngan Aak-Kunch AC RNTBC         | Aurukun Shire Council         | 300     |
| Watson          | Ngan Aak-Kunch AC RNTBC         | Ngan Aak-Kunch AC RNTBC       | 231,600 |
| Watson          | Ngan Aak-Kunch AC RNTBC         | Oyala Thumotang LT            | 6,200   |
| Watson          | Ngan Aak-Kunch AC RNTBC         | <i>Nil</i>                    | 228,300 |
| Watson          | Weipa Peninsula People AC RNTBC | <i>Nil</i>                    | 100     |
| Watson          | <i>No Eligible Person</i>       | <i>No Eligible Person</i>     | 1,200   |
| Catchment total |                                 |                               | 467,700 |
| <b>Wenlock</b>  |                                 |                               |         |
| Wenlock         | Atambaya Native Title AC RNTBC  | Batavia Traditional Owners AC | 4,300   |
| Wenlock         | Atambaya Native Title AC RNTBC  | <i>Nil</i>                    | 35,300  |
| Wenlock         | Bromley AC RNTBC                | Bromley AC RNTBC              | 600     |
| Wenlock         | Mokwiri AC RNTBC                | Old Mapoon AC                 | 21,600  |
| Wenlock         | Mokwiri AC RNTBC                |                               | 166,300 |
| Wenlock         | Ngan Aak-Kunch AC RNTBC         | <i>Nil</i>                    | 1,000   |
| Wenlock         | Northern Kaanju AC RNTBC        | Batavia Traditional Owners AC | 194,200 |
| Wenlock         | Northern Kaanju AC RNTBC        | Mangkuma LT                   | 51,200  |
| Wenlock         | Northern Kaanju AC RNTBC        | <i>Nil</i>                    | 72,000  |



|                 |                                 |                               |         |
|-----------------|---------------------------------|-------------------------------|---------|
| Wenlock         | Weipa Peninsula People AC RNTBC | Batavia Traditional Owners AC | 31,600  |
| Wenlock         | Weipa Peninsula People AC RNTBC | <i>Nil</i>                    | 136,600 |
| Wenlock         | <i>Nil</i>                      | Batavia Traditional Owners AC | 200     |
| Wenlock         | <i>No Eligible Person</i>       | <i>No Eligible Person</i>     | 38,100  |
| Catchment total |                                 |                               | 753,000 |

As discussed in s 3.3.1, CYPHA water licence eligible persons are RNTBCs and TAFs. All RNTBCs are incorporated under CATSIA, and TAFs may be incorporated under the ALA or CATSIA. This Report assumes that as the holder of a CYPHA water licence with eligibility based upon it being the Trustee of Aboriginal freehold land, a TAF is also obliged to manage its CYPHA water licence in the same way as it manages Aboriginal freehold land, that is, in the interests of the Aboriginal people particularly concerned with the land, which includes Traditional Owners and historical people. Similarly, where CYPHA water licence eligibility is based upon the corporation being a native title holder, an RNTBC is also obliged to manage its CYPHA water licence as if it were managing native title rights and interests in accordance with the objectives of the native title holding group.

Regardless of whether an RNTBC is an Trustee or Agent RNTBC one of the its key roles in performing its native title functions will be to consult with, and act in accordance with the directions of, the native title common law holders. Common law holders are the descendants of apical ancestors connected to the area of land the subject of a native title determination.

As CATSIA corporations, Cape York RNTBCs may also perform the additional function of being the Trustee of Aboriginal freehold land. In performing this Aboriginal freehold trustee function a corporation's key role will be to consult with, and act in accordance with the directions of, Aboriginal people particularly concerned with the land, which includes Traditional Owners, including native title common law holders, and historical Aboriginal people who have interest in the land, for example they may live on or near the land. The areas of native title and Aboriginal freehold held by the corporation usually overlap to a large degree but are not usually exactly the same area.

However, as shown in Table 4, there are also extensive areas of Cape York where native title and Aboriginal freehold rights and interests are coincident in the same area of land but two different Aboriginal corporations hold the Aboriginal freehold and native title rights. In these cases, one corporation, incorporated either under the CATSIA or the ALA, is performing the functions of a TAF, and the other corporation is performing the functions of an RNTBC.

Both these scenarios, whether one or two Aboriginal corporations hold coincident Aboriginal freehold and native title right and interests, create corporate governance complexity issues which will constrain, amongst many other things, the activation of the CYPHA reserve. The scenario of one or two corporations holding coincident rights and interests in an area of land is shown in Figures 6 and 7.



In the first scenario, where one Aboriginal corporation is an RNTBC and also a TAF (see Table 2 and blue area of Figure 7), the corporation will initially be eligible to hold a CYPHA water licence of a nominal volume based on its function as a TAF and the area of Aboriginal freehold it holds as a proportion of a CYPHA catchment. All or most of the area of Aboriginal freehold will be coincident with native title or a native title claim, but the area of Aboriginal freehold and its holder takes priority for a CYPHA water licence. As a TAF, the corporation's management of this CYPHA water licence will require it to act in accordance with the directions of the Aboriginal people particularly concerned with the land, not the native title holders per se, even though native title holders will also be many if not all, of the people particularly concerned with the land. Secondly however, the corporation will also be eligible for a CYPHA water licence of a nominal volume based on its function as an RNTBC and the area of native title it holds which is not coincident with Aboriginal freehold (see purple area of Figure 6) as a proportion of a CYPHA catchment. As an RNTBC, the corporation's management of this CYPHA water licence will require it to act in accordance with the directions of the native title common law holders. See Table 4 and Figure 5 for examples of this scenario.

A corporation's different interests in land would result in the issue of two licences, one based on the Aboriginal freehold area and the other based on the native title area. The ways the corporation must therefore manage CYPHA water in accordance with the direction of different groups of people will create a complex and incongruent intra-corporate governance situation for the corporation and its members which can be anticipated to lead to conflicts similar to those that currently arise in relation to land. Traditional Owners/native title holders will question why Aboriginal freehold and people who are not necessarily Traditional Owners/native title holders have priority to make decisions about the management of water rights in some parts of a corporation's area, whilst in other areas management of water rights will be at the sole direction of Traditional Owners/native title holders.

In its role as a TAF the corporation can accept the offer of a CYPHA water licence but then nominate itself as the RNTBC (that is, the native title holder) to hold the licence instead. In this event the DRDMW Chief Executive must then make the water licence offer to the native title holder. However, for a TAF corporation to nominate itself in its RNTBC capacity to hold the CYPHA water licence would require the agreement of Aboriginal people particularly concerned with the Aboriginal freehold land, and this agreement may not be forthcoming because it would require historical Aboriginal people to decline their water rights decision making powers and benefits in favour of native title holders. If a corporation's membership does not include any historical people then this step could be easier.

The second scenario, where one Aboriginal corporation is the RNTBC and a different Aboriginal corporation is the TAF for the same area of land (see orange area in Figure 7), creates even greater complexity and incongruent inter-corporation governance issues. The memberships of both corporations will have large overlaps with many (but probably not all) native title holder members in common, but also differences in membership with historical Aboriginal people also being members of the TAF.

Under this scenario the TAF will have priority for the grant of a CYPHA water licence and will be expected to manage the licence and water in the interests of Aboriginal people particularly concerned with the land, which will include Traditional Owners, who may also be native title holders, and historical Aboriginal people. In such situations the RNTBC may not support that the TAF has priority for a water licence, may be resistant to the TAF's actions to manage the water, and may not provide native title consent for future acts associated with water use such as the grant of a lease over Aboriginal freehold for a water related project. Once again, this situation can be anticipated to lead to conflict between two already competing corporations similar to those that currently arise in relation to land. The conflict between incongruent governance requirements and corporations will constrain activation of CYPHA water.



To further complicate land and water governance, RNTBC and TAF geographic boundaries often do not follow traditional Aboriginal governance boundaries associated with language group, clan and extended family estates. Instead RNTBC and TAF boundaries often follow surveyed boundary lines established since colonisation under Queensland's land tenure cadastral system, such as for freehold and leasehold lots or roads. RNTBC and TAF boundaries and areas of jurisdiction therefore often cut across traditional Aboriginal boundaries and result in RNTBCs and TAFs having jurisdiction over several traditional Aboriginal governance areas and the Aboriginal groups connected to these areas, and traditional Aboriginal governance areas being spread across several RNTBC and/or TAF areas. This creates a complex and confusing governance arrangement for the Aboriginal people connected to traditional Aboriginal governance areas with them having to be members of and participate in the governance processes of several RNTBCs and/or TAFs.

To complicate land and water governance even further, RNTBC and TAF boundaries often do not align with each other although there are large areas of overlap, so an RNTBC's native title area may coincide with the Aboriginal freehold area of several TAFs, and a TAF's Aboriginal freehold area may coincide with the native title area of several RNTBCs. See Table 4 and Figure 5 for examples of this scenario.

This is a significant issue in Queensland, particularly Cape York, as the NTA and ALA effectively set up Aboriginal corporations and people to compete with each other. Where native title and Aboriginal freehold rights and interests and RNTBCs and TAFs have been established for the same areas of Cape York land (see Figure 7), the sheer complexity of land rights governance creates enormous confusion, conflict, lateral violence, and trauma within communities and between members of RNTBCs and TAFs. These issues can be anticipated to also be experienced in attempts to activate the CYPHA water reserve. So these dichotomised and incongruent governance arrangements are leading to an enormous waste of time, effort, and resources by the many Aboriginal and non-Indigenous people and organisations engaged in this system, that consequently and perversely, is also contributing to the ongoing failure to close Australia's gap in Indigenous disadvantage (Productivity Commission, 2024).

There is therefore an urgent need for governance system reforms to address the coincident and incongruent decision-making processes and competing interests that the NTA and ALA have created on Cape York through the establishment of RNTBCs and TAFs and their governance roles and responsibilities. The Australian and Queensland governments have an interest in reforming the governance system because their funding, policy and legislation has created the current system. Cape York Aboriginal people and their corporations should be actively supported to participate in this governance reform process so they can meaningfully govern, manage and create livelihoods from their land and water rights in ways that satisfy statutory objectives and also sustains their traditional knowledge, lore, customs, and practices, as is their human right, and as codified in UNDRIP and the HRA. The catchment case studies planned for the second year of this project provide an opportunity to consider these issues in a local place working with RNTBCs and TAFs and the First Nation Reference Group.

### **5.2.2 FPIC and compliance with CYPHA water licence conditions**

Key CYPHA water licences conditions will include that before water may be taken and used by a licence holder, or before a licence holder may assign water to another party, the licence holder must apply to the DRDMW Chief Executive to authorise an amendment of their water licence to include a schedule of conditions about the taking and using of water, or authorising water to be taken under an assignment. As identified in section 3.3.3, a proposal to amend a CYPHA water licence to authorise the taking or assignment of water is the critical point where best practice water licence governance requires the application of FPIC principles and processes. Although not a statutory requirement, best practice identifies that FPIC should be required for a licence amendment because it is the point at which decisions are made to approve or not on-ground and





in-water activities that may affect the rights and interests (including the CYPHA water rights) of the Aboriginal people for an area, so their consent for the proposal is required.

Satisfying functions under the ALA or NTA to manage a CYPHA water licence in the interests of people particularly concerned with the land and/or native title holders, in combination with compliance with UNDRIP and the HRA, creates a non-statutory obligation on the licence holder and the DRDMW Chief Executive to ensure that best practice FPIC principles are satisfied in the process to amend a water licence. A CYPHA water licence amendment process that satisfies best practice FPIC principles and practices will also best satisfy the interests of Aboriginal people particularly concerned with the land and/or native title holders.

Cape York Aboriginal corporations, whether incorporated under the ALA or CATSIA, have a constitution (also known as a rule book) which set out the objectives and functions of the corporation and the rules about corporate governance, corporate activities, and the rights and obligations of its members in relation to corporate objectives and functions, including the management of native title and Aboriginal freehold rights. The constitution is a legally binding agreement between the corporation and its members, so both parties to the agreement – the corporation and its members – are required to abide by these rules when involved in conducting the corporation’s business. Constitutional rules include how the corporation administers the rights it holds, including how members are involved in decision making processes about management of rights. However, Aboriginal corporations eligible to hold a CYPHA water licence have likely not established rules and processes in their constitutions about managing a water licence, including how they will engage with Aboriginal people particularly concerned with the land and/or native title holders to obtain their FPIC for a water licence dealing.

Aboriginal corporation constitutions currently generally do include rules about dealings with native title and/or Aboriginal freehold rights and interests in land and processes for obtaining consent for these dealings. However, these rules and decision-making processes do not require a best practice FPIC process. The development and inclusion of a best practice FPIC process for CYPHA water licence dealings in an Aboriginal corporation’s constitution presents an opportunity to set a clear benchmark for best practice decision making process within Aboriginal corporations.

Similarly, DRDMW has not established rules and processes to ensure that CYPHA water licence amendment proposals satisfy FPIC, as is evidenced by the absence of an FPIC requirement under Protocol clause 50 – Rules for amending a CYPHA water licence to include or remove conditions, and clause 51 – Rules for amending a CYPHA water licence to authorise an assignment (see Appendix 1a and 1b). By amending the Protocol, or through the development of a separate policy or procedural document, to require a CYPHA water licence holder to provide DRDMW with evidence of FPIC for a proposed water licence amendment, obtained following the process described in the Aboriginal corporation’s constitution, and making this FPIC evidence a requirement before the Chief Executive may authorise a licence amendment, DRDMW would also set a benchmark in best practice governance and demonstrate the satisfaction of FPIC requirements under UNDRIP and the HRA.

How Aboriginal corporations could update their constitutions, and how DRDMW could update the Protocol or develop a separate policy or procedural document, to include CYPHA water licence amendment processes that achieve best practice FPIC outcomes will be considered further by the First Nation Reference Group and the catchment case studies.

### ***5.2.3 FPIC process fundamentals***

This section sets out the steps that need to be established to ensure FPIC is achieved in CYPHA water licence amendment processes.

The first CYPHA water licence amendment FPIC step will involve a governance and decision-making process internal to the RNTBC or TAF that holds the CYPHA water licence, and this first



FPIC step must be successfully completed by the RNTBC or TAF with consent before it may commence the second step to apply to DRDMW to amend the licence.

This first step will recognise that there are two Aboriginal governance parties involved in a CYPHA water licence amendment decision making process. One party is the Aboriginal corporation holding the CYPHA water licence, and the second party is the group of Aboriginal people recognised as having the cultural authority to “speak for” (that is, make decisions about) the area of Country (which includes land and water) that would be affected by the proposed water licence amendment.

Recognition of the two Aboriginal governance parties is essential to an appropriate FPIC process because it recognises and incorporates traditional decision-making into the FPIC process. Traditional decision-making is more deliberative and centred around connection to Country and knowledge of traditional law/lore, customs, practices, and Elders (Behrendt, 2009), and accepted by Aboriginal people as the more appropriate and legitimate way to make decisions about Country, rather than making decisions through a Western style corporate decision-making process. Traditional laws and customs continue to guide Aboriginal life particularly in remote and very remote communities in Cape York which are made up almost entirely of Aboriginal people.

Particular Aboriginal people will hold cultural authority because they are knowledgeable, experienced and dedicated practitioners of Aboriginal lore for an area of Country and therefore recognised as responsible for decision-making about the management of land and water in the area they are connected to. These people are generally the Traditional Owners/native title holders for a particular area, but people historically connected with the area may also be recognised. People with cultural authority for an area of Country could be identified as a particular clan, family group, Elders, an individual, or another group depending upon the particulars of a proposed CYPHA water licence amendment and the area of Country affected by the proposal. They are often, but not necessarily, members of the RNTBC or TAF for the area.

The empowerment of people with cultural authority with decision making authority is consistent not only with traditional Aboriginal governance, it is also consistent with the modern principle of subsidiarity, which requires that decisions are made by the people most affected by an issue. It also best satisfies and upholds responsibilities regarding FPIC and self-determination required under UNDRIP and the HRA which confirm Aboriginal people are entitled to ongoing processes of self-determination to choose how they meet their social, cultural, and economic needs, including through management of their traditional Country.

CYPHA water licence holding corporations are therefore central to ensuring best practice FPIC processes in relation to land and water use because they are the point of engagement and coordination between proponents of CYPHA water use, required CYPHA water licence amendments, and the people with cultural authority to speak for the Country affected by the proposal. However, the role of the CYPHA water licence holding corporation in this first FPIC step is not to be the decision maker about a licence amendment proposal, but rather to facilitate a process to engage, empower and enable the people with cultural authority to make that decision.

This will require the corporation to:

- firstly, identify the people who have the cultural authority to speak for the area of Country that would be affected by a proposed water licence amendment; and
- secondly, support the people identified with cultural authority with sufficient time, information and freedom to consider the proposed licence amendment so that these people can make a decision to consent, not consent or conditionally consent to the proposal using their own decision-making process. This may involve the corporation facilitating direct negotiations between the people with cultural authority and the project proponent seeking to use CYPHA water to make a deal about the use of the water.



The colonisation of Cape York has resulted in Aboriginal people being disconnected from their traditional Country so there can be conflicting views about who now has cultural authority to speak for an area. The CYPHA water licence holding corporation's constitution therefore should identify the process the corporation will use to identify the people with cultural authority to engage in decision making about amendment of a CYPHA water licence. This process may vary from corporation to corporation and could involve methods such as the use of anthropological records, advice from Elders, clan area maps or other methods appropriate to a corporation. Some Cape York corporations already have such processes described in their constitutions which provide examples that other corporations could draw from.

The corporation's constitution, however, should not detail the process the people with cultural authority will use to consider and make their decision about the proposal because their process will involve traditional Aboriginal lore and custom decision-making methods, or a contemporary process of their choosing. The corporation may support the people with cultural authority to develop and agree upon the process they will use, and then support the implementation of the chosen process through activities such as organising, facilitating and resourcing meetings.

If the RNTBC or TAF's internal first step FPIC process results in consent being provided by people with cultural authority for a proposed CYPHA water licence amendment, the RNTBC or TAF may then progress the licence amendment application to DRDMW for the second FPIC step.

As described above, DRDMW's FPIC role in the second FPIC step should be to require evidence that the RNTBC or TAF applying to amend its CYPHA water licence to use or assign water has received the FPIC of the people with the cultural authority to speak for the Country affected by the proposed amendment using the identification and support processes described in the corporation's constitution. If this evidence is not provided DRDMW should not approve the proposed licence amendment.

#### **5.2.4 Water Plan and Protocol limitations**

The Water Plan and Protocol are unclear about whether a CYPHA water licence entitlement based on an Aboriginal corporation holding an interest in land under the ALA or NTA creates an obligation for the corporation to manage the CYPHA water licence in the interests of ALA or NTA land rights holders using rules that apply to the management of ALA or NTA land rights. To clarify that a CYPHA water licence based on an interest in land under the ALA or NTA does create a responsibility to manage a water licence in the interests of ALA or NTA land rights holders, s32(6) of the Water Plan (or another appropriate section) could be amended to confirm that a CYPHA water licence holder does have this responsibility.

The Water Plan and Protocol also do not require that FPIC is demonstrated by an RNTBC or TAF in its governance of CYPHA water licence dealings, particularly a proposed water licence amendment. Despite UNDRIP and the HRA, if the Water Plan and Protocol do not establish a responsibility for a CYPHA water licence holder to demonstrate FPIC there is little compulsion, except maybe commitment to best practice, for an Aboriginal corporation to amend its constitution to describe an FPIC process to be followed when administering its CYPHA water licence. Similarly, DRDMW will have no requirement to be satisfied that FPIC has been achieved in its management of CYPHA water licences.

As discussed above, to require evidence that an Aboriginal corporation's application for a CYPHA water licence amendment has been endorsed by Aboriginal people with cultural authority through an FPIC process, following the best practice FPIC process described in the corporation's constitution, s50 and s51 of the Protocol could be amended to require this evidence. If evidence of the corporation's FPIC process and consent is not provided then the DRDMW Chief Executive should not approve the water licence amendment.

Requiring this evidence to support a CYPHA water licence amendment application will drive RNTBCs and TAFs to amend their constitution to describe their CYPHA water licence objectives



and include best practice FPIC processes, and to follow these processes for CYPHA water licence dealings. This in turn provides confidence for the Chief Executive and a project proponent that use of CYPHA water would occur with the consent of the Aboriginal people who have the cultural authority to provide this consent.

### **5.2.5 Aboriginal corporation operational resources and capacity to perform statutory functions**

The holding and activation of a CYPHA water licence by an Aboriginal corporation potentially delivers benefits to the corporation and its members, but best practice governance of a water licence requires operational skills and resources to conduct FPIC decision making processes and to satisfy other aspects of managing the licence. Currently, no resources or operational support are available for CYPHA water licence holders to assist them to manage the licence, so becoming a CYPHA water licence holder could actually create a governance liability for an Aboriginal corporation. The lack of support for corporations to manage a CYPHA water licence will constrain the activation of the CYPHA reserve.

Currently RNTBCs can receive limited funding from the Australian Government through their Native Title Representative Body (NTRB) to fulfil their NTA statutory functions, such as administering future act notifications and supporting the negotiation of ILUAs (Woods et. al., 2021). Cape York Land Council performs the NTRB role for Cape York. However, this NTA funding is not provided for the RNTBC to fulfil a Queensland Government Water Plan role of being a CYPHA water licence holder, so an RNTBC's operational capacity to administer a water licence is limited.

Similarly, but worse, TAFs receive no funding from the Australian or Queensland Governments to fulfil their role as the holder and manager of Aboriginal freehold land, so their operational capacity is usually very limited unless they have managed to secure funding from another source. As a result, TAFs are frequently non-compliant with basic corporate governance requirements of their incorporating legislation such as holding an AGM, let alone having capacity to operate FPIC processes associated with the management of a CYPHA water licence. For example, of Cape York's 29 ALA incorporated TAFs only two of these were compliant with corporate governance requirements in 2023 according to the Queensland Department of Resources. TAFs therefore generally have very limited operational capacity to fulfil the role of CYPHA water licence holder.

Corporations that are non-compliant with corporate governance requirements, such as maintaining membership records and annual reporting, may also not be properly fulfilling their core functions associated with managing land and water rights. Because ALA incorporated TAFs in particular have a poor compliance record, and TAFs have priority for a nominal CYPHA water licence volume, there is a risk that CYPHA reserve water will be nominally allocated to eligible persons who, due to governance non-compliance, may never take up a licence, or if they do take up a licence, do not have the capacity and processes to manage it in a best practice way. This means that a significant proportion of the CYPHA reserve could be inactivated by non-compliant corporations because they will not be in a position to effectively manage and activate a CYPHA water licence. The risk of non-compliance and not fulfilling core functions is also possible with CATSIA corporations, including TAFs, but CATSIA corporations receive more support, especially if the corporation is also an RNTBC, so the risk of non-compliance should be lower.

To ensure that RNTBCs and TAFs as CYPHA water licence holders have the operational resources and capacity to manage their water licence effectively and appropriately, there is a need for additional support for these Aboriginal corporations. In addition to core operational funding, an RNTBC or TAF's processes to consider and decide on a specific proposal to amend a water licence through an FPIC process could be funded by the proposal's proponent. Without appropriate resourcing and support the ability of a TAF or RNTBC to operate effective processes to activate their CYPHA water rights will be constrained.





### 5.3 Addressing Constraints

Provision of the CYPHA reserve and opportunities to use this water for a range of land uses and other suitable purposes present an opportunity for Cape York Aboriginal people to generate social, cultural, economic, and environmental benefits. This report identifies that although opportunities to use water on Cape York are limited by biophysical constraints they do exist in some areas, however the range of statutory land use constraints, corporate governance complexity constraints, and corporate capacity and resources constraints described above effectively stifle these limited opportunities to activate CYPHA water. Before the CYPHA reserve can be meaningfully activated these statutory constraints will need to be addressed. While many of these constraints could be addressed in the short term, meaningful reforms that would enable more efficient activation of CYPHA reserves will require longer term actions and whole of government reforms.

In the short term, to enable land uses that could activate CYPHA water uses, actions such as:

- Declaration of ICUAs for suitable land uses on suitable areas of Aboriginal freehold land;
- Amendment of local government planning schemes to zone useable land more appropriately, including zoning ICUA areas for suitable land uses; and
- Negotiation of ILUAs to provide native title consent for suitable land uses.

This would create a regulatory environment where land uses that require CYPHA water could more easily be enabled.

Also in the short term, to improve corporate governance processes to activate CYPHA water uses, actions such as:

- Support for RNTBCs and TAFs to build their governance capacity to apply for and manage a CYPHA water licence;
- Support for RNTBCs and TAFs to identify groups of people connected to particular areas within their area of jurisdiction and build the structure and capacity of these groups so they can be identified and exercise their cultural authority through their own decision-making processes as part of an FPIC process;
- Support for RNTBC and TAFs to undertake strategic country-based planning to identify areas of land suitable for development;
- Amendment of RNTBC and TAF constitutions to include an objective to be the holder of a CYPHA water licence, and to describe the best practice FPIC process the RNTBC or TAF will follow to engage with relevant groups for decision making about proposed CYPHA water licence dealings;
- Amendment of the Protocol to require that, as part of an RNTBC or TAFs application to amend a CYPHA water licence to provide for the taking or assignment of water, an RNTBC or TAF provides evidence of consent for the licence amendment from the group with cultural authority, and evidence that the consent was received following the FPIC process described in the corporation's constitution;
- Amendment of the Protocol to require that the DRDMW Chief Executive not authorise a CYPHA water licence amendment application if the RNTBC or TAF does not provide evidence of consent from the relevant group for the proposed water dealing, or does not provide evidence that the constitutional FPIC process was followed for the consent; and
- Resourcing from the Queensland Government or elsewhere to RNTBCs and TAFs for core CYPHA water licence administration functions, and a requirement for resourcing from project proponents to facilitate RNTBC or TAF FPIC processes for a water licence amendment.



This would create satisfactory corporate governance capacity and processes suitable for the activation of CYPHA water.

If such short-term actions were taken the CYPHA water reserve could be activated in a reasonable manner within the current broad framework of land and water rights, and Aboriginal corporation and State Government corporate governance arrangements.

However, to achieve best practice activation of the CYPHA reserve, reforms to enable the rebuilding of First Nations governance on Cape York will need to be implemented.



## 6.0 Rebuilding



**Boundaries often follow colonial cadastral tenure boundaries);**

- Lateral violence between Aboriginal people created by Aboriginal corporation memberships, decision making processes, geographic areas of jurisdiction and ongoing conflict over who is connected to Country, who should make decisions about Country, and the exclusion of traditional knowledge and those with cultural authority from decision making processes;
- Intergenerational trauma for Aboriginal people created by colonial dispossession and exclusion from their traditional Country and ongoing governance arrangements that perpetuate this dispossession, disempowerment and trauma; and
- Lack of resources available to RNTBCs and TAFs to meet their statutory responsibilities.

## **6.1 Governance**

Consideration of governance concepts is useful to provide context and rationale to the need for good governance as a foundation to the successful rebuilding and ongoing operation of First Nations.

The Australian Indigenous Governance Institute (AIGI) notes that every society has different ways of governing and their own words to describe how they govern. The meaning of the English word “governance” can be traced back to the ancient Greeks who defined it as the “art of steering boats”.

The AIGI provides the following descriptions to capture key aspects of governance.

*“It is useful to think of governance as being about how people choose to collectively organise themselves to manage their own affairs, share power and responsibilities, decide for themselves what kind of society they want for their future, and implement those decisions.*

*To do that they need to have processes, structures, traditions and rules in place so they can:*

- *Determine who is a member of their group,*
- *Decide who has power, and over what,*
- *Ensure that power is exercised properly,*
- *Make and enforce their decisions,*
- *Hold their decision-makers accountable,*
- *Negotiate with others regarding their rights and interests, and*
- *Establish the most effective and legitimate arrangements for getting those things done.*

*Governance gives a nation, group, community or organisation the ways and means to achieve the things that matter to them.*

*Governance is not the same thing as ‘government’, ‘management’, ‘corporate organisations’, ‘administration’ or ‘service delivery’. It’s also more than just ‘leadership’.*

*Without governance, you won’t achieve the things that really matter to you as a group. Governance helps ensure:*

- *The welfare and human rights of citizens are protected,*
- *Resources (money, people, natural, cultural) are managed,*
- *Rules, policies and laws are created and enforced,*





- *Essential programs and services are prioritised and delivered,*
- *Goals are set and achieved, and*
- *Relationships with external parties are negotiated.*

*Having effective and legitimate governance benefits families, communities and nations. It is a powerful predictor of success in economic and community development and in maximising self-determination for Aboriginal and Torres Strait Islander peoples.*

*For all these reasons, the importance of having a strong governance foundation is gaining ground. Rebuilding your governance is self-determination in action.” (AIGI, n.d.)*

Similarly, the Canadian-based National Centre for First Nations Governance (NCFNG) defines that Governance is the traditions (norms, values, culture, language) and institutions (formal structures, organisation, practices) that a community uses to make decisions and accomplish its goals. At the heart of the concept of governance is the creation of effective, accountable and legitimate systems and processes where citizens articulate their interests, exercise their rights and responsibilities and reconcile their differences (NCFNG, 2009 p. vii).

The NCFNG models effective First Nations governance on five important pillars. They are:

- The People
- The Land
- Laws & Jurisdiction
- Governing Systems
- Resources

## **6.2 First Nation Foundations**

These definitions of First Nation governance provide foundations for First Nation rebuilding which refers to the processes by which a Native [Indigenous] nation enhances its own foundational capacity for effective self-governance and for self-determined community and economic development (Jorgensen, 2007). Nation rebuilding is really about how Indigenous peoples can pull together the tools they need to build the futures that they want—and put them into place. By tools, we mean the rules, processes, checks and balances, and structures of governance (AIGI, n.d.).

Prior to colonisation there were hundreds of different Aboriginal groups in Australia who spoke different languages and identified with different geographies in the way that contemporarily we would conceive a nation state (Blackburn, 2002). On Cape York Peninsula, Aboriginal groups functioned within traditional First Nation governance systems including lores and customs that determined which Aboriginal group was connected to an area of land, and who within the group had the cultural knowledge and authority to make decisions about that Country (Turnour, 2022).

Despite colonisation, contemporary Cape York Aboriginal groups continue their connection to Country and often identify themselves by their group’s language name and the cultural geography of their traditional Country. These self-determined groups of Aboriginal people provide the basis for rebuilding contemporary First Nations to support the ongoing maintenance of Aboriginal governance and knowledge systems (Turnour, 2022). Maintaining these systems is of value to all Australians because traditional governance and knowledge resulted in healthier and more biodiverse Country, and reconnecting Aboriginal people to their Country and culture has been shown to have a range of social and economic benefits (Chambers et al., 2018; Dale, 2014; Russell-Smith et al., 2018). The need for structural reforms that empower First Nations peoples is



demonstrated in many reports including the recent review of the EPBC and Closing the Gap reports (DCCEEW, 2022; Productivity Commission, 2024).

The project will seek to support the rebuilding of contemporary First Nations through investigating how CYPHA water rights could be better governed at a First Nation scale. For the purposes of this Report, a First Nations is defined as a group of Cape York Aboriginal people who self-identify as a group through their connections to Country, language, culture, customs, history, and traditional lore. An effective First Nation group would establish contemporary governance structures and operational capacities with jurisdiction over its traditional Country to manage and maintain the group's traditional and contemporary values, rights and interests in effective and appropriate ways. First Nation functions would include holding and managing rights in land and water in trust for the group and using governance structures and FPIC processes to ensure that the group's people with cultural knowledge and authority inform decisions about the management of Country. They would also inform how any resulting costs and benefits are managed and distributed. Through effective First Nation governance the group would manage competing interests while keeping its traditional knowledge and associated lores and customs alive.

Currently, there is no strategic investment in rebuilding governance at a First Nation scale on Cape York despite its importance in FPIC decision making about land and water rights. There are, however, strong aspirations among Cape York Aboriginal groups to rebuild their First Nations in line with the above definition, and some existing Aboriginal corporations have already progressed towards such governance arrangements and provide very good foundations which could be built upon in their transition to contemporary First Nations.

### **6.2.1 First Nation jurisdiction over its Country**

In contemporary Cape York there are a numerous language groups and related Aboriginal nations that continue to seek to maintain their traditional laws, customs and languages. The approximate traditional areas of Country associated with language, social or nation groups has been mapped for all of Australia, including Cape York, by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). See the Map of Indigenous Australia at <https://aiatsis.gov.au/explore/map-indigenous-australia> .

This Report does not necessarily endorse the detail of the AIATSIS map for Cape York, but this Report does recognise that the AIATSIS map reflects the concept of Aboriginal language groups connected to areas of Country defined by cultural geography boundaries, and that this arrangement provided a basis for traditional governance of Country. A future map of rebuilt Cape York First Nations could somewhat resemble the AIATSIS map, and to support this there are similarities between the AIATSIS map and RNTBC and TAF maps, and some boundaries that align. This indicates that some appropriate cultural geography boundaries have already been recognised in the jurisdiction areas of RNTBCs and TAFs.

It is important to recognise that native title held by an RNTBC does not codify Aboriginal law and custom, it simply identifies those people who are the descendants of the first peoples of a geographic location and prescribes their rights and interests under Commonwealth law. Similarly, Aboriginal freehold land granted to a TAF provides inalienable freehold rights under Queensland law to a group of Aboriginal people identified as having interest in a particular piece of land. Surveyed colonial cadastral boundaries are often used to precisely describe the land areas where native title and Aboriginal freehold exist, but these boundaries are not often in alignment with the traditional boundaries of First Nations. To rebuild contemporary First Nations along traditional lines would require that colonial cadastral boundaries are not used to define areas, unless agreed between groups, and traditional boundaries are described instead using modern technology.

A Cape York First Nation's geographic area could align with the cultural geography boundary of its language group. This is because Cape York Aboriginal people often consider their language group and the Country their language is connected to as the key identifier of the Country and people they



are broadly connected to. While a language group maybe the basis for a self-identified First Nation it is important that Indigenous peoples are provided the opportunity for self-determination in line with UNDRIP, so a First Nation group could also self-identify in a different way.

The AIGI (n.d.) identifies that cultural geography is about the way peoples' collective identities are based on their deep ties and attachments to particular areas of land (country) and their rights and responsibilities to look after that country.

Aboriginal and Torres Strait Islander people often regard the 'cultural boundaries' associated with these geographies (e.g. land-owning groups, ceremonial and gender networks, leadership hierarchies, extended family networks) as the more reasonable basis for their governance arrangements. These 'boundaries' are often different from non-Indigenous administrative, town and state boundaries.

Using cultural geographies as a basis for rebuilding governance structures helps give greater legitimacy to new governance arrangements, especially those involving land issues. It means that some groups of people will 'fit together', make decisions together and work together better than others (AIGI, n.d.).

In remote discrete communities where, Aboriginal people make up the majority of the population these cultural connections to Country and associated First Nation kinship groups continue to influence how these communities are governed. Rebuilding First Nations can therefore have a positive influence on broader community governance.

### **6.3 Transition from Aboriginal Corporations to First Nations**

The complex governance arrangements for Aboriginal land and water rights in Cape York Peninsula mean that many Aboriginal groups will need assistance to undertake the actions necessary to rebuild their First Nations. This is particularly the case where the Country of multiple First Nations is under the jurisdiction of a single RNTBC or TAF, or where the Country of a First Nation is under the jurisdiction of multiple RNTBCs and/or TAFs, or where there are coincident corporate entities for the same area of land.

As the AIGI highlights, First Nation rebuilding is self-determination in action. Cornerstone actions identified through this Report to support the rebuilding of contemporary First Nations include that Cape York Aboriginal groups are supported to conduct their own situation analysis to:

- Define their First Nation's cultural geography area and therefore the boundaries of their Country, and the people who have connection to this Country.
- Review current formal and informal governance structures and processes operating within the First Nation Country boundary, including the Aboriginal corporations and the land and water rights and interests they hold, their memberships, roles and responsibilities, and assess how efficiently and effectively these structures are performing their corporate responsibilities, including to ensure FPIC when managing a CYPHA water licence, or other rights and interests in land.
- Review national and international First Nation governance models, and intersections with other processes including Queensland Tracks to Treaty, to identify governance arrangement options to rebuild their First Nation.
- Report the findings of the situation analysis back to the First Nation group and their existing corporate structures and recommend options to reform current governance arrangements and steps to achieve the reforms.



- Based on feedback from the group about their First Nation's situation analysis report, prepare a final report which outlines the group's aspirations for First Nation governance arrangements, and their preferred model for future governance arrangements.

If support was provided to First Nation groups to conduct a situation analysis of the governance arrangements for their Country, as described above, next steps could include developing an implementation plan to build their preferred future governance arrangements. The implementation plan would identify actions to establish partnerships with government, business and non-government organisations to support First Nation rebuilding. The implementation plan would determine how future governance arrangements would be agreed by members of the First Nation, and how these arrangements would be established and sustained.

By building a contemporary governance structure with operational capacities and jurisdiction over its traditional Country, and managing rights and interests in land and water using best practice FPIC processes, a Cape York group could transition from a complex governance arrangement characterised by several incongruous and possibly non-compliant Aboriginal corporations to a contemporary First Nation arrangement where land and water rights are effectively activated with cultural authority whilst keeping traditional knowledge, lore and customs alive.

### **6.3.1 Consolidation of First Nation rights and interests in land and water**

Some Cape York groups' governance arrangements are based on a single Aboriginal corporation holding and managing all of the First Nation's land and water rights and interests, and it is likely that other groups also aspire to similar consolidated governance arrangements. For these aspiring groups it would make sense to manage all of a First Nation group's rights and interests within clearly defined First Nation constitutional and corporate arrangements. Importantly, the consolidation of rights into a single, well-functioning corporation will not diminish, change or redistribute rights, it will however improve the way the rights are managed, including to activate and benefit from them if desired.

Where a Cape York Aboriginal group aspires for a single corporate entity to hold and manage its rights and interests in land and water, a First Nation Country Corporation could be established by:

- Drafting a First Nation Country Corporation constitution that, amongst other things, outlines the corporation's objectives, the land and water rights and interests in Country it holds in trust for its group, and how it will manage these rights and interests to ensure FPIC processes and cultural authority-based decision-making; and
- Restoring the First Nation Country Corporation's governance jurisdiction over the Country associated with its traditional cultural geography.

Summary content of an example First Nation Country Corporation constitution and some of its key features regarding a First Nation, its people, its Country, its functions and how it will perform them are presented in section 6.3.2.

This Report has identified the multitude of Cape York Aboriginal corporations and their overlapping jurisdictions, the rights they hold and functions performed, and the need for consolidation of these rights into effective and compliant corporations to achieve better management of rights. For example,

- Sixty-nine Cape York Aboriginal corporations are identified as eligible to hold a CYPHA water licence in Table 2, and the corporations' native title and Aboriginal freehold areas of interest are shown in Figure 3 and Figure 4. Table 4, Figure 5, Figure 6 and Figure 7 identify where these corporations hold coincident rights in the same area of land.
- Table 2 also shows each corporation's incorporating legislation and the core functions it performs, including as an RNTBC, and/or a TAF, and/or an ACHB. Table 2 shows that the corporations variously perform one, two or three of these core functions.





- Anecdotal evidence indicates that many corporations are non-compliant with core statutory governance requirements, for example only two of the twenty-nine ALA incorporated TAFs, known as Land Trusts, were compliant with corporate governance requirements in 2023 according to the Queensland Department of Resources.
- Section 5.2 discusses the governance complexity and incongruities that coincident land rights and corporations create, the ensuing difficulties in land rights management, and anticipated similar difficulties in managing CYPHA reserve water. The splitting of functions across corporations also splits limited human and operational resources to administer the functions and reduces governance capacity.

Consolidating rights and functions into a single corporation would help to provide economies of scale, a pooling of skills and resources, and a critical mass of ongoing business which will contribute to building and maintaining the capacity of a First Nation Country Corporation.

Table 2 also identifies that several Cape York Aboriginal corporations already perform the functions of an RNTBC, a TAF and an ACHB. Anecdotal evidence suggests that some of these corporations are amongst the better governed corporations on Cape York, their consolidated functions provide good foundations for ongoing transition to First Nation, and they provide examples that other Cape York corporations could learn from. They demonstrate that entirely new corporations are not required and existing corporations, their people and rights and interests can transition to a single consolidated governance arrangement. If the geographic jurisdiction of these corporations was fully aligned with the cultural geography area of its First Nation group then these corporation would be close to satisfying the definition of a contemporary First Nation.

### **6.3.2 First Nation constitutions**

A First Nation Country Corporation's (FNCC) Constitution would be a First Nation's founding document. However, a First Nation corporation and its constitution could be built on existing corporate structures in many instances. Critically, the constitution would outline the rules about the relationship between the corporation, its members and other relevant people, including rules about how the corporation must operate to satisfy FPIC principles when managing the land and water rights and interests it holds in trust.

Key elements of a FNCC constitution would include:

- FNCC incorporating act – A FNCC would be incorporated under CATSIA;
- FNCC people – the group of Aboriginal people traditionally associated with the First Nation cultural geography area, and also in some cases historical Aboriginal people. FNCC people may choose to become members of the First Nation corporation and participate in its governance, but the corporation's responsibilities will be to all FNCC people not only its members;
- FNCC area of jurisdiction - the cultural geography area that the FNCC people are connected to;
- FNCC functions - Trustee of land and water rights and interests and performance of associated statutory functions including that of:
  - o RNTBC
  - o TAF
  - o ACHB
  - o CYPHA water licence holder
  - o EPBC referral body (if such a thing were to be created)



- o and others
- and performing other land and water management functions such as:
- o Ranger program
  - o IPA management
  - o and others.
- FNCC performance of functions – how the corporation will engage with its members when statutory function decisions are required. In particular, detail of processes the corporation will facilitate to satisfy FPIC principles, noting that these processes and principles are relevant to the management of all rights and interests including native title, Aboriginal freehold, water, and cultural heritage:
    - o How it will identify the “right people” to be involved in the FPIC process – the people whose Country would be affected by a proposal, including the people with cultural knowledge and authority to speak for and make decisions about that Country; and
    - o How it will ensure that the process will satisfy FPIC principles including that the process is free from pressure or other influences, commences well in advance of when a decision is required to be made and any on-ground activity, and provides all information necessary for an informed decision by the people with cultural authority, including through direct engagement with project proponents if required;
    - o How it will support the affected group of people with their own governance processes, such as the logistics of their meetings and making decisions through agreed processes; and
    - o How it will distribute benefits.

## 6.4 Statutory Reform

This Report discusses that the consolidation and holding of all land and water rights and interests by a single well-functioning corporation is considered a best practice governance arrangement for aspiring First Nations, but section 5.2.1 of this Report discusses that corporations already arranged this way can still experience intra-corporation conflict because of incongruence between statutory provisions of the NTA and ALA in particular. This issue is almost exclusive to Cape York because there are few other regions where Aboriginal freehold and native title rights and interests coincide to such an extent.

Therefore, despite Cape York Aboriginal groups setting up best practice First Nation corporations to manage their rights and interests, including a CYPHA water licence, activation of these rights will remain constrained by governance issues unless the Australian Government and the Queensland Government act bilaterally to amend the NTA and ALA so that where native title and Aboriginal freehold rights coincide they interact in a synergistic rather than antagonistic way. Examples of incongruence between the ALA and NTA include difference between the classes of people identified as beneficiaries of native title and Aboriginal freehold rights and interests, and the need for complex native title consent processes for future acts on Aboriginal freehold land. These issues also flow through to the management of a CYPHA water licence.



## 7.0 Conclusion

This Report has identified that the Water Plan has made available significant CYPHA water reserves for Cape York Aboriginal people. The substantial CYPHA reserve volume and restriction of eligibility for a CYPHA water licence to RNTBCs and TAFs, means that many Cape York Aboriginal corporations now have significant water volumes available to use on land where they hold interests, or to assign to other parties under a commercial agreement. CYPHA water could contribute to achieving social, cultural, economic and environmental outcomes sought by Cape York Aboriginal people, and management of CYPHA water rights provides an opportunity to develop and apply best practice management processes including to incorporate FPIC into decision making processes.

Analysis of CYPHA water-based land use options, however, reveal that limited agriculture, aquaculture, mining, and energy generation opportunities exist on Cape York, and there are often multiple statutory constraints on land use that further limit opportunities for use of CYPHA water for these purposes. Analysis further reveals that there is not expected to be high demand for water for municipal supply, and there are few ecosystem service options that could make use of CYPHA water. Under current arrangements therefore, opportunities for activation of CYPHA water are limited.

Despite statutory constraints on land use, and therefore water use, this Report also concludes that some unreasonable land use constraints could be overcome, and opportunities enabled, through actions such as the declaration of ICUAs in prospective areas, amendment of planning restrictions, and the pre-emptive negotiation of ILUAs to provide consent for particular land use activities in ICUAs and other areas. Emerging markets for ecosystem services may also create new opportunities to activate CYPHA water. Importantly, ecosystem services could likely activate use of CYPHA water in areas where statutory and biophysical land use constraints would prevent many other land uses, and ecosystem services may be more consistent with Cape York Aboriginal people's aspirations for use of land and water. However, until ecosystem services markets are actually established and operational it is unknown how CYPHA water may be activated by this option.

In addition to statutory land use constraints, the governance environment for Aboriginal corporations on Cape York creates a level of complexity which further constrains activation of the CYPHA water reserve. Cape York is almost unique in Australia in that the NTA and ALA create extensive and often coincident Aboriginal land rights and interests, and Aboriginal corporations to hold and manage the Aboriginal freehold and native title rights and interests, often coexisting in the same areas of land. These RNTBCs and TAFs are the eligible persons to hold a CYPHA water licence but many corporate governance issues constrain their effective activation of the licence. These issues include:

- Uncertainty about whether the grant of a CYPHA water licence where eligibility is based on being the holder of native title or Aboriginal freehold rights creates an obligation to manage the water rights as if they were native title or Aboriginal freehold rights;
- Incongruency between native title and Aboriginal freehold rights and interests and the ways they are required to be managed especially where they are coincident, and the conflict this can sometimes generate between Aboriginal people;
- The potential conflicts created by coincident rights in land are exacerbated where different corporations hold the coincident rights;
- RNTBC and TAF geographic boundaries generally do not follow traditional Aboriginal governance boundaries and may result in splitting Aboriginal groups between different corporations;



- RNTBC and TAF geographic boundaries are often not the same and result in further splitting of Aboriginal groups;
- RNTBCs and TAFs have not established rules and processes in their constitutions about how they will manage a CYPHA water licence, including the FPIC process they will use for water licence decision making;
- RNTBCs and TAFs are not effectively resourced, including for management of a CYPHA water licence, so decision making processes for water licence dealings will be difficult to administer in a way that supports FPIC decision making by the Aboriginal eligible party;
- Queensland Government CYPHA water licence amendment decision making processes do not require RNTBCs and TAFs to provide evidence of FPIC from Aboriginal people with cultural authority; and
- RNTBCs and TAFs have mostly not undertaken strategic country-based planning so decision making about appropriate land and water uses is more difficult.

This Report further identifies that many corporate governance issues could be improved by rebuilding First Nations. This will involve reforming and transitioning Aboriginal corporations to First Nation arrangements that could rationalise and reconcile rights and interests in land and water. However, statutory rationalisation and reconciliation between the ALA and NTA will also be required to ensure First Nation arrangements could work cooperatively and effectively. These issues will be further investigated through case studies during the second year of the project.





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## 9.0 Appendices





**Appendix 1a – Cape York Water Management Protocol section 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.

**Appendix 1b – Cape York Water Management Protocol 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.

## Appendix 2 - Calculation of nominal water licence volumes and agricultural land class areas per eligible person per catchment

| Water Plan Catchment | Catchment Area (Ha) | (Q) - Catchment total CYPHA reserve volume (ML) | Eligible person - Trustees of Aboriginal Freehold (TAFs) | Eligible person - Native Title Holders (RNTBCs) | Area of eligible land interest held in catchment (Ha) <sup>1</sup><br>(i) Aboriginal freehold area, or (ii) native title area not coincident with Aboriginal freehold | (R) - Area of eligible land interest as percentage of catchment area (%) | (S) - Existing CYPHA entitlements held by eligible person in catchment (ML) | Nominal CYPHA volume entitlement (ML) | Agricultural Land Class A (Ha)<br>(not including land in protected areas) | Agricultural Land Class B (Ha)<br>(not including land in protected areas) |
|----------------------|---------------------|---|--|---|---|--|---|---------------------------------------|---|---|
| <b>Archer</b>        |                     |   |  |   |   |  |   |                                       |   |   |
| Archer               | 1,381,946           | 89,000  | Kulla LT   |   | 59,000  | 4.3  |   | 3800                                  | -   | -   |
| Archer               | 1,381,946           | 89,000  | Mangkuma LT  |   | 8,000   | 0.6  |   | 515                                   | -   | -   |
| Archer               | 1,381,946           | 89,000  | Ngan Aak-Kunch AC RNTBC                                  |   | 259,000   | 18.7   |   | 16680                                 | 8,200   | 98,900  |
| Archer               | 1,381,946           | 89,000  | Oyala Thumotang LT                                       |   | 445,800   | 32.3   |   | 28710                                 | -   | 37,300  |
| Archer               | 1,381,946           | 89,000  | Toolka LT  |   | 18,200  | 1.3  |   | 1172                                  | -   | -   |



|                |           |        |                                       |                                    |         |      |       |       |       |         |
|----------------|-----------|--------|---------------------------------------|------------------------------------|---------|------|-------|-------|-------|---------|
| Archer         | 1,381,946 | 89,000 | Wathada LT                            |                                    | 2,400   | 0.2  |       | 155   | -     | -       |
| Archer         | 1,381,946 | 89,000 | Wunthulpu<br>Aboriginal LT            |                                    | 1,800   | 0.1  |       | 116   | -     | -       |
| Archer         | 1,381,946 | 89,000 |                                       | Ayapathu AC<br>RNTBC               | 23,400  | 1.7  |       | 1507  | -     | -       |
| Archer         | 1,381,946 | 89,000 |                                       | Ngan Aak-<br>Kunch AC<br>RNTBC     | 364,300 | 26.4 |       | 23462 | 6,500 | 183,200 |
| Archer         | 1,381,946 | 89,000 |                                       | Northern<br>Kaanju AC<br>RNTBC     | 65,400  | 4.7  |       | 4212  | -     | 16,000  |
| Archer         | 1,381,946 | 89,000 |                                       | Southern<br>Kaanju AC<br>RNTBC     | 94,800  | 6.9  |       | 6105  | -     | 100     |
| Archer         | 1,381,946 | 89,000 | <i>No Eligible Person<sup>2</sup></i> | <i>No Eligible<br/>Person</i>      | 39,900  | 2.9  |       | 2570  | -     | 3,100   |
| <b>Coleman</b> |           |        |                                       |                                    |         |      |       |       |       |         |
| Coleman        | 1,286,011 | 56,000 | ABM Elgoring<br>Ambung AC RNTBC       |                                    | 28,500  | 2.2  |       | 1241  | -     | -       |
| Coleman        | 1,286,011 | 56,000 | Kulla LT                              |                                    | 100     | 0.0  |       | 4     | -     | -       |
| Coleman        | 1,286,011 | 56,000 | Olkola AC                             |                                    | 110,400 | 8.6  | 4,803 | 4     | -     | 200     |
| Coleman        | 1,286,011 | 56,000 |                                       | Abm Elgoring<br>Ambung AC<br>RNTBC | 25,800  | 2.0  |       | 1123  | -     | -       |

|              |           |        |                                 |                                     |         |      |  |       |       |        |
|--------------|-----------|--------|---------------------------------|-------------------------------------|---------|------|--|-------|-------|--------|
| Coleman      | 1,286,011 | 56,000 |                                 | Ayapathu AC RNTBC                   | 61,600  | 4.8  |  | 2682  | -     | -      |
| Coleman      | 1,286,011 | 56,000 |                                 | Ngan Aak-Kunch AC RNTBC             | 421,100 | 32.7 |  | 18337 | -     | 8,000  |
| Coleman      | 1,286,011 | 56,000 |                                 | Thaa-Nguigarr Strathgordon AC RNTBC | 118,400 | 9.2  |  | 5156  | -     | -      |
| Coleman      | 1,286,011 | 56,000 |                                 | Ut-Alkar AC                         | 292,600 | 22.8 |  | 12741 | -     | 100    |
| Coleman      | 1,286,011 | 56,000 | <i>No Eligible Person</i>       | <i>No Eligible Person</i>           | 227,500 | 17.7 |  | 9907  | -     | -      |
| <b>Ducie</b> |           |        |                                 |                                     |         |      |  |       |       |        |
| Ducie        | 638,529   | 46,000 | Apudthama LT                    |                                     | 223,100 | 34.9 |  | 16072 | -     | 28,900 |
| Ducie        | 638,529   | 46,000 | Atambaya AC (ICN 8699)          |                                     | 36,000  | 5.6  |  | 2593  | -     | -      |
| Ducie        | 638,529   | 46,000 | Ipima Ikaya AC RNTBC (ICN 8114) |                                     | 17,900  | 2.8  |  | 1290  | -     | -      |
| Ducie        | 638,529   | 46,000 | Old Mapoon AC                   |                                     | 133,400 | 20.9 |  | 9610  | 7,600 | 77,900 |
| Ducie        | 638,529   | 46,000 |                                 | Atambaya Native Title AC RNTBC      | 73,100  | 11.4 |  | 5266  | 600   | 46,900 |
| Ducie        | 638,529   | 46,000 |                                 | Ipima Ikaya AC RNTBC                | 39,400  | 6.2  |  | 2838  | 100   | 16,900 |

|               |         |        |                           |   |         |      |  |      |       |         |
|---------------|---------|--------|---------------------------|---|---------|------|--|------|-------|---------|
| Ducie         | 638,529 | 46,000 |                           | Mokwiri AC RNTBC                                | 82,800  | 13.0 |  | 5965 | 1,000 | 71,200  |
| Ducie         | 638,529 | 46,000 |                           | Northern Cape and Torres Strait United IC RNTBC | 100     | 0.0  |  | 7    | -     | -       |
| Ducie         | 638,529 | 46,000 |                           | Seven Rivers AC RNTBC                           | 29,300  | 4.6  |  | 2111 | -     | 24,100  |
| Ducie         | 638,529 | 46,000 |                           | Wuthathi AC RNTBC                               | 100     | 0.0  |  | 7    | -     | -       |
| Ducie         | 638,529 | 46,000 | <i>No Eligible Person</i> | <i>No Eligible Person</i>                       | 3,300   | 0.5  |  | 238  | -     | 500     |
|               |         |        |                           |   |         |      |  |      |       |         |
| <b>Embley</b> |         |        |                           |   |         |      |  |      |       |         |
| Embley        | 461,983 | 8,000  |                           | Mokwiri AC Rntbc                                | 4,000   | 0.9  |  | 69   | -     | 200     |
| Embley        | 461,983 | 8,000  |                           | Ngan Aak-Kunch AC RNTBC                         | 88,300  | 19.1 |  | 1529 | -     | 22,300  |
| Embley        | 461,983 | 8,000  |                           | Old Mapoon AC                                   | 20,300  | 4.4  |  | 352  | -     | 8,500   |
| Embley        | 461,983 | 8,000  |                           | Peppan LT                                       | 8,400   | 1.8  |  | 145  | -     | 6,100   |
| Embley        | 461,983 | 8,000  |                           | Mokwiri AC RNTBC                                | 161,500 | 35.0 |  | 2797 | 1,500 | 118,300 |
| Embley        | 461,983 | 8,000  |                           | Ngan Aak-Kunch AC RNTBC                         | 78,500  | 17.0 |  | 1359 | -     | 55,700  |

|                  |         |        |                                       |                                 |        |      |       |      |     |        |
|------------------|---------|--------|---------------------------------------|---------------------------------|--------|------|-------|------|-----|--------|
| Embley           | 461,983 | 8,000  |                                       | Weipa Peninsula People AC RNTBC | 68,300 | 14.8 |       | 1183 | 100 | 55,200 |
| Embley           | 461,983 | 8,000  | <i>No Eligible Person</i>             | <i>No Eligible Person</i>       | 32,700 | 7.1  |       | 566  | -   | 29,200 |
| <b>Endeavour</b> |         |        |                                       |                                 |        |      |       |      |     |        |
| Endeavour        | 219,144 | 16,000 | Binthi Land Holding Group AC          |                                 | 100    | 0.0  |       | 7    | -   | -      |
| Endeavour        | 219,144 | 16,000 | Hope Vale Aboriginal Shire Council    |                                 | 200    | 0.1  |       | 15   | -   | 100    |
| Endeavour        | 219,144 | 16,000 | Hopevale Congress AC RNTBC            |                                 | 51,300 | 23.4 | 3,748 | -3   | -   | 1,100  |
| Endeavour        | 219,144 | 16,000 | Jabalbina Yalanji AC RNTBC (ICN 7002) |                                 | 19,100 | 8.7  |       | 1395 | -   | -      |
| Endeavour        | 219,144 | 16,000 | Jabalbina Yalanji LT                  |                                 | 18,100 | 8.3  |       | 1322 | -   | 300    |
| Endeavour        | 219,144 | 16,000 | Waarntuur-iin AC                      |                                 | 900    | 0.4  |       | 66   | -   | -      |
| Endeavour        | 219,144 | 16,000 | Wunbuwarra Banana Creek LT            |                                 | 2,600  | 1.2  |       | 190  | -   | -      |
| Endeavour        | 219,144 | 16,000 | Yuku-Baja-Muliku LT                   |                                 | 400    | 0.2  |       | 29   | -   | 200    |
| Endeavour        | 219,144 | 16,000 |                                       | Dhubbi Warra AC RNTBC           | -      | 0.0  |       | 0    | -   | -      |



|                    |           |        |                           |                            |         |      |       |         |        |
|--------------------|-----------|--------|---------------------------|----------------------------|---------|------|-------|---------|--------|
| Endeavour          | 219,144   | 16,000 |                           | Hopevale Congress AC RNTBC | -       | 0.0  | 0     | -       | -      |
| Endeavour          | 219,144   | 16,000 |                           | Jabalbina Yalanji AC RNTBC | 500     | 0.2  | 37    | -       | -      |
| Endeavour          | 219,144   | 16,000 | <i>No Eligible Person</i> | <i>No Eligible Person</i>  | 125,900 | 57.5 | 9192  | 400     | 14,600 |
| <b>Holroyd</b>     |           |        |                           |                            |         |      |       |         |        |
| Holroyd            | 1,028,479 | 68,500 | Kulla LT                  |                            | 200     | 0.0  | 13    | -       | -      |
| Holroyd            | 1,028,479 | 68,500 | Ngan Aak-Kunch AC RNTBC   |                            | 175,700 | 17.1 | 11702 | 1,100   | -      |
| Holroyd            | 1,028,479 | 68,500 | Oyala Thumotang LT        |                            | 4,400   | 0.4  | 293   | -       | -      |
| Holroyd            | 1,028,479 | 68,500 |                           | Ayapathu AC RNTBC          | 64,700  | 6.3  | 4309  | -       | -      |
| Holroyd            | 1,028,479 | 68,500 |                           | Ngan Aak-Kunch AC RNTBC    | 781,300 | 76.0 | 52037 | 132,300 | 18,200 |
| Holroyd            | 1,028,479 | 68,500 |                           | Ut-Alkar AC                | -       | 0.0  | 0     | -       | -      |
| Holroyd            | 1,028,479 | 68,500 | <i>No Eligible Person</i> | <i>No Eligible Person</i>  | 2,200   | 0.2  | 147   | -       | -      |
| <b>Jacky Jacky</b> |           |        |                           |                            |         |      |       |         |        |

|                |         |        |                                 |   |         |      |  |       |     |        |
|----------------|---------|--------|---------------------------------|---|---------|------|--|-------|-----|--------|
| Jacky Jacky    | 299,567 | 1,500  | Apudthama LT                    |   | 21,900  | 7.3  |  | 110   | 100 | 300    |
| Jacky Jacky    | 299,567 | 1,500  | Bromley AC RNTBC                |   | 6,900   | 2.3  |  | 35    | -   | -      |
| Jacky Jacky    | 299,567 | 1,500  | Ipima Ikaya AC RNTBC (ICN 8114) |   | 83,300  | 27.8 |  | 417   | -   | -      |
| Jacky Jacky    | 299,567 | 1,500  | Wuthathi AC RNTBC               |   | 114,600 | 38.3 |  | 574   | -   | -      |
| Jacky Jacky    | 299,567 | 1,500  |                                 | Atambaya Native Title AC RNTBC                  | 300     | 0.1  |  | 2     | -   | 100    |
| Jacky Jacky    | 299,567 | 1,500  |                                 | Gudang Yadhaykenu Native Title AC RNTBC         | 1,900   | 0.6  |  | 10    | -   | -      |
| Jacky Jacky    | 299,567 | 1,500  |                                 | Ipima Ikaya AC RNTBC                            | 5,900   | 2.0  |  | 30    | -   | 1,200  |
| Jacky Jacky    | 299,567 | 1,500  |                                 | Northern Cape and Torres Strait United IC RNTBC | 21,600  | 7.2  |  | 108   | -   | -      |
| Jacky Jacky    | 299,567 | 1,500  |                                 | Wuthathi AC RNTBC                               | 200     | 0.1  |  | 1     | -   | -      |
| Jacky Jacky    | 299,567 | 1,500  | <i>No Eligible Person</i>       | <i>No Eligible Person</i>                       | 43,000  | 14.4 |  | 215   | -   | 3,600  |
| <b>Jardine</b> |         |        |                                 |   |         |      |  |       |     |        |
| Jardine        | 360,377 | 49,000 | Apudthama LT                    |   | 99,400  | 27.6 |  | 13515 | 200 | 17,700 |

|                |         |        |   |   |         |      |  |       |       |        |
|----------------|---------|--------|---|---|---------|------|--|-------|-------|--------|
| Jardine        | 360,377 | 49,000 | Atambaya AC (ICN 8699)                              |   | 100     | 0.0  |  | 14    | -     | -      |
| Jardine        | 360,377 | 49,000 | Gudang/Yadhaykenu AC                                |   | 1,200   | 0.3  |  | 163   | 500   | -      |
| Jardine        | 360,377 | 49,000 | Ipima Ikaya AC RNTBC (ICN 8114)                     |   | 224,700 | 62.4 |  | 30552 | -     | -      |
| Jardine        | 360,377 | 49,000 | Northern Peninsula Area Regional Aboriginal Council |   | 200     | 0.1  |  | 27    | -     | -      |
| Jardine        | 360,377 | 49,000 |   | Atambaya Native Title AC RNTBC                  | 200     | 0.1  |  | 27    | -     | -      |
| Jardine        | 360,377 | 49,000 |   | Ipima Ikaya AC RNTBC                            | 28,300  | 7.9  |  | 3848  | 1,000 | 10,100 |
| Jardine        | 360,377 | 49,000 |   | Northern Cape and Torres Strait United IC RNTBC | 300     | 0.1  |  | 41    | -     | -      |
| Jardine        | 360,377 | 49,000 |   | Seven Rivers AC RNTBC                           | 3,000   | 0.8  |  | 408   | -     | 2,500  |
| Jardine        | 360,377 | 49,000 | <i>No Eligible Person</i>                           | <i>No Eligible Person</i>                       | 3,100   | 0.9  |  | 422   | 100   | 600    |
| <b>Jeannie</b> |         |        |   |   |         |      |  |       |       |        |
| Jeannie        | 364,992 | 0      | Binthi Land Holding Group AC                        |   | 6,500   | 1.8  |  | 0     | 1,800 | 1,100  |
| Jeannie        | 364,992 | 0      | Buubu Gujin AC                                      |   | 13,500  | 3.7  |  | 0     | -     | -      |

|                 |         |       |   |                               |         |      |  |      |       |       |
|-----------------|---------|-------|---|-------------------------------|---------|------|--|------|-------|-------|
| Jeannie         | 364,992 | 0     | Cape Melville,<br>Flinders & Howick<br>Islands AC |                               | 139,900 | 38.3 |  | 0    | -     | -     |
| Jeannie         | 364,992 | 0     | Darrba LT   |                               | 9,300   | 2.5  |  | 0    | 300   | 1,200 |
| Jeannie         | 364,992 | 0     | Hopevale Congress<br>AC RNTBC                     |                               | 58,900  | 16.1 |  | 0    | 3,700 | 1,500 |
| Jeannie         | 364,992 | 0     | Juunjuwarra AC                                    |                               | 6,700   | 1.8  |  | 0    | -     | -     |
| Jeannie         | 364,992 | 0     | Kalpowa Aboriginal<br>LT                          |                               | 32,600  | 8.9  |  | 0    | 400   | 200   |
| Jeannie         | 364,992 | 0     | Ngulun LT   |                               | 39,600  | 10.8 |  | 0    | 600   | 700   |
| Jeannie         | 364,992 | 0     | Waarntuur-iin AC                                  |                               | 18,000  | 4.9  |  | 0    | -     | 300   |
| Jeannie         | 364,992 | 0     | Wakooka LT  |                               | 25,100  | 6.9  |  | 0    | -     | 900   |
| Jeannie         | 364,992 |       | <i>No Eligible Person</i>                         | <i>No Eligible<br/>Person</i> | 14,900  | 4.1  |  | 0    | 2,500 | 5,200 |
| <b>Lockhart</b> |         |       |   |                               |         |      |  |      |       |       |
| Lockhart        | 288,585 | 6,300 | Kulla LT  |                               | 86,000  | 29.8 |  | 1877 | -     | -     |
| Lockhart        | 288,585 | 6,300 | Mangkuma LT                                       |                               | 149,700 | 51.9 |  | 3268 | -     | 4,900 |



|                 |           |        |   |                                 |        |      |  |     |   |       |
|-----------------|-----------|--------|---|---------------------------------|--------|------|--|-----|---|-------|
| Lockhart        | 288,585   | 6,300  | Northern Kuuku Ya'u<br>Kanthanampu AC<br>RNTBC LT |                                 | 38,100 | 13.2 |  | 832 | - | 1,400 |
| Lockhart        | 288,585   | 6,300  | Pul Pul LT  |                                 | 4,800  | 1.7  |  | 105 | - | -     |
| Lockhart        | 288,585   | 6,300  |   | Kaapay<br>Kuuyun AC<br>RNTBC    | 2,700  | 0.9  |  | 59  | - | 800   |
| Lockhart        | 288,585   | 6,300  |   | Kuuku Ya'u<br>AC RNTBC          | 300    | 0.1  |  | 7   | - | 100   |
| Lockhart        | 288,585   | 6,300  |   | Southern<br>Kaantju AC<br>RNTBC | 100    | 0.0  |  | 2   | - | -     |
| Lockhart        | 288,585   | 6,300  |   | Umpila AC<br>RNTBC              | 600    | 0.2  |  | 13  | - | -     |
| Lockhart        | 288,585   | 6,300  |   | Uutaalnganu<br>AC RNTBC         | 500    | 0.2  |  | 11  | - | -     |
| Lockhart        | 288,585   | 6,300  | <i>No Eligible Person</i>                         | <i>No Eligible<br/>Person</i>   | 5,900  | 2.0  |  | 129 | - | 3,100 |
| <b>Normanby</b> |           |        |   |                                 |        |      |  |     |   |       |
| Normanby        | 2,444,978 | 16,000 | Agayrra-Timara LT                                 |                                 | 42,000 | 1.7  |  | 275 | - | -     |
| Normanby        | 2,444,978 | 16,000 | Ang-Gnarra AC of<br>Laura                         |                                 | 100    | 0.0  |  | 1   | - | -     |
| Normanby        | 2,444,978 | 16,000 | Balnggarrawarra<br>(Gaarraay) LT                  |                                 | 10,700 | 0.4  |  | 70  | - | -     |

|          |           |        |   |  |         |      |     |      |       |       |
|----------|-----------|--------|---|--|---------|------|-----|------|-------|-------|
| Normanby | 2,444,978 | 16,000 | Balnggarwarra AC                            |  | 36,800  | 1.5  |     | 241  | -     | -     |
| Normanby | 2,444,978 | 16,000 | Binthi Land Holding Group AC                |  | 800     | 0.0  |     | 5    | -     | -     |
| Normanby | 2,444,978 | 16,000 | Buubu Gujin AC                              |  | 168,900 | 6.9  |     | 1105 | -     | -     |
| Normanby | 2,444,978 | 16,000 | Cape Melville, Flinders & Howick Islands AC |  | 30,500  | 1.2  |     | 200  | -     | -     |
| Normanby | 2,444,978 | 16,000 | Jabalbina Yalanji AC RNTBC (ICN 7002)       |  | 13,900  | 0.6  |     | 91   | -     | -     |
| Normanby | 2,444,978 | 16,000 | Jabalbina Yalanji LT                        |  | 3,800   | 0.2  |     | 25   | -     | -     |
| Normanby | 2,444,978 | 16,000 | Kalpowa Aboriginal LT                       |  | 160,400 | 6.6  |     | 1050 | 1,300 | 500   |
| Normanby | 2,444,978 | 16,000 | Kyerrwanhdha Thingalkal LT                  |  | 75,200  | 3.1  |     | 492  | -     | 3,600 |
| Normanby | 2,444,978 | 16,000 | Lama Lama LT                                |  | 60,000  | 2.5  |     | 393  | -     | -     |
| Normanby | 2,444,978 | 16,000 | Olkola AC                                   |  | 141,500 | 5.8  | 928 | -2   | -     | -     |
| Normanby | 2,444,978 | 16,000 | Rinyirru (Lakefield) LT                     |  | 545,100 | 22.3 |     | 3567 | -     | -     |
| Normanby | 2,444,978 | 16,000 | Waarntuur-iin AC                            |  | 28,400  | 1.2  |     | 186  | -     | 900   |
| Normanby | 2,444,978 | 16,000 | Wakooka LT                                  |  | 10,300  | 0.4  |     | 67   | -     | -     |

|                     |           |        |                            |                            |         |      |  |      |        |        |
|---------------------|-----------|--------|----------------------------|----------------------------|---------|------|--|------|--------|--------|
| Normanby            | 2,444,978 | 16,000 | Wulburjubur Bama LT        |                            | 58,600  | 2.4  |  | 383  | -      | -      |
| Normanby            | 2,444,978 | 16,000 | Wunbuwarra Banana Creek LT |                            | 3,400   | 0.1  |  | 22   | -      | -      |
| Normanby            | 2,444,978 | 16,000 |                            | Awu-Laya IC RNTBC          | 108,500 | 4.4  |  | 710  | -      | 1,000  |
| Normanby            | 2,444,978 | 16,000 |                            | Ayapathu AC RNTBC          | 1,300   | 0.1  |  | 9    | -      | -      |
| Normanby            | 2,444,978 | 16,000 |                            | Jabalbina Yalanji AC RNTBC | 100     | 0.0  |  | 1    | -      | -      |
| Normanby            | 2,444,978 | 16,000 |                            | Kuku Warra AC RNTBC        | 147,100 | 6.0  |  | 963  | -      | 5,000  |
| Normanby            | 2,444,978 | 16,000 |                            | Lama Lama AC RNTBC         | 51,900  | 2.1  |  | 340  | -      | -      |
| Normanby            | 2,444,978 | 16,000 |                            | Possum AC RNTBC            | 331,800 | 13.6 |  | 2171 | -      | 12,300 |
| Normanby            | 2,444,978 | 16,000 |                            | Ut-Alkar AC                | 61,100  | 2.5  |  | 400  | -      | -      |
| Normanby            | 2,444,978 | 16,000 |                            | Western Yalanji AC RNTBC   | 500     | 0.0  |  | 3    | -      | -      |
| Normanby            | 2,444,978 | 16,000 | <i>No Eligible Person</i>  | <i>No Eligible Person</i>  | 352,200 | 14.4 |  | 2305 | 16,300 | 10,000 |
| <b>Olive-Pascoe</b> |           |        |                            |                            |         |      |  |      |        |        |

|                |         |        |   |                                |         |      |  |       |     |        |
|----------------|---------|--------|---|--------------------------------|---------|------|--|-------|-----|--------|
| Olive-Pascoe   | 418,071 | 48,000 | Batavia Traditional Owners AC               |                                | 11,200  | 2.7  |  | 1286  | -   | -      |
| Olive-Pascoe   | 418,071 | 48,000 | Bromley AC RNTBC                            |                                | 153,200 | 36.6 |  | 17589 | -   | 36,300 |
| Olive-Pascoe   | 418,071 | 48,000 | Mangkuma LT                                 |                                | 138,600 | 33.2 |  | 15913 | -   | 21,100 |
| Olive-Pascoe   | 418,071 | 48,000 | Northern Kuuku Ya'u Kanthanampu AC RNTBC LT |                                | 18,500  | 4.4  |  | 2124  | -   | 300    |
| Olive-Pascoe   | 418,071 | 48,000 | Wuthathi AC RNTBC                           |                                | 3,300   | 0.8  |  | 379   | -   | -      |
| Olive-Pascoe   | 418,071 | 48,000 |   | Atambaya Native Title AC RNTBC | 200     | 0.0  |  | 23    | -   | -      |
| Olive-Pascoe   | 418,071 | 48,000 |   | Bromley AC RNTBC               | 1,900   | 0.5  |  | 218   | -   | -      |
| Olive-Pascoe   | 418,071 | 48,000 |   | Kaapay Kuuyun AC RNTBC         | 400     | 0.1  |  | 46    | -   | -      |
| Olive-Pascoe   | 418,071 | 48,000 |   | Kuuku Ya'u AC RNTBC            | 2,100   | 0.5  |  | 241   | -   | 200    |
| Olive-Pascoe   | 418,071 | 48,000 | <i>No Eligible Person</i>                   | <i>No Eligible Person</i>      | 88,800  | 21.2 |  | 10195 | 500 | 24,900 |
| <b>Stewart</b> |         |        |   |                                |         |      |  |       |     |        |
| Stewart        | 274,549 | 5,000  | Kulla LT                                    |                                | 207,100 | 75.4 |  | 3772  | 200 | 2,800  |



|               |         |       |                           |                           |         |      |  |     |       |         |
|---------------|---------|-------|---------------------------|---------------------------|---------|------|--|-----|-------|---------|
| Stewart       | 274,549 | 5,000 | Lama Lama LT              |                           | 53,700  | 19.6 |  | 978 | -     | -       |
| Stewart       | 274,549 | 5,000 | Wunthulpu Aboriginal LT   |                           | 4,400   | 1.6  |  | 80  | -     | -       |
| Stewart       | 274,549 | 5,000 |                           | Ayapathu AC RNTBC         | 4,200   | 1.5  |  | 76  | -     | -       |
| Stewart       | 274,549 | 5,000 |                           | Lama Lama AC RNTBC        | 2,300   | 0.8  |  | 42  | -     | -       |
| Stewart       | 274,549 | 5,000 |                           | Southern Kaantju AC RNTBC | 100     | 0.0  |  | 2   | -     | -       |
| Stewart       | 274,549 | 5,000 |                           | Umpila AC RNTBC           | 200     | 0.1  |  | 4   | -     | -       |
| Stewart       | 274,549 | 5,000 | <i>No Eligible Person</i> | <i>No Eligible Person</i> | 2,600   | 0.9  |  | 47  | -     | -       |
| <b>Watson</b> |         |       |                           |                           |         |      |  |     |       |         |
| Watson        | 467,698 | 0     | Aurukun Shire Council     |                           | 300     | 0.1  |  | 0   | -     | 300     |
| Watson        | 467,698 | 0     | Ngan Aak-Kunch AC RNTBC   |                           | 231,600 | 49.5 |  | 0   | 6,800 | 186,200 |
| Watson        | 467,698 | 0     | Oyala Thumotang LT        |                           | 6,200   | 1.3  |  | 0   | -     | 900     |
| Watson        | 467,698 | 0     |                           | Ngan Aak-Kunch AC RNTBC   | 228,300 | 48.8 |  | 0   | -     | 194,400 |

|                |         |        |                               |                                 |         |      |  |       |        |         |
|----------------|---------|--------|-------------------------------|---------------------------------|---------|------|--|-------|--------|---------|
| Watson         | 467,698 | 0      |                               | Weipa Peninsula People AC RNTBC | 100     | 0.0  |  | 0     | -      | 100     |
| Watson         | 467,698 | 0      | <i>No Eligible Person</i>     | <i>No Eligible Person</i>       | 1,200   | 0.3  |  | 0     | -      | 1,000   |
| <b>Wenlock</b> |         |        |                               |                                 |         |      |  |       |        |         |
| Wenlock        | 752,926 | 76,000 | Batavia Traditional Owners AC |                                 | 230,300 | 30.6 |  | 23246 | -      | 84,200  |
| Wenlock        | 752,926 | 76,000 | Bromley AC RNTBC              |                                 | 600     | 0.1  |  | 61    | -      | 200     |
| Wenlock        | 752,926 | 76,000 | Mangkuma LT                   |                                 | 51,200  | 6.8  |  | 5168  | -      | -       |
| Wenlock        | 752,926 | 76,000 | Old Mapoon AC                 |                                 | 21,600  | 2.9  |  | 2180  | 2,400  | 12,500  |
| Wenlock        | 752,926 | 76,000 |                               | Atambaya Native Title AC RNTBC  | 35,300  | 4.7  |  | 3563  | 2,000  | 18,500  |
| Wenlock        | 752,926 | 76,000 |                               | Mokwiri AC RNTBC                | 166,300 | 22.1 |  | 16786 | 29,500 | 105,500 |
| Wenlock        | 752,926 | 76,000 |                               | Ngan Aak-Kunch AC RNTBC         | 1,000   | 0.1  |  | 101   | -      | 1,000   |
| Wenlock        | 752,926 | 76,000 |                               | Northern Kaanju AC RNTBC        | 72,000  | 9.6  |  | 7268  | -      | 30,300  |

|         |         |        |                           |                                 |         |      |  |       |        |        |
|---------|---------|--------|---------------------------|---------------------------------|---------|------|--|-------|--------|--------|
| Wenlock | 752,926 | 76,000 |                           | Weipa Peninsula People AC RNTBC | 136,600 | 18.1 |  | 13788 | 20,200 | 82,800 |
| Wenlock | 752,926 | 76,000 | <i>No Eligible Person</i> | <i>No Eligible Person</i>       | 38,100  | 5.1  |  | 3846  | 100    | 1,500  |



**Notes:**

1 - Area of eligible land interest held in catchment (Ha) – Corporations' land interests held in a catchment have been rounded to the nearest 100 hectares. This was necessary because different data sets have been used to define catchment boundaries and corporation boundaries, so corporations which are intended to be bounded by a catchment boundary were often shown as having marginal land interests of a few hectares in adjoining catchments. Rounding to the nearest 100 hectares helped to minimise these unintended incursions into adjoining catchments, and should have minimal effect on the calculation of CYPHA water licence volume calculations.

2 - No Eligible Person – refers to an area of land in a catchment for which there is no person eligible for a CYPHA water licence. There may be no eligible person for the area of land at this point in time because native title is yet to be determined, native title has been extinguished (for example by public works like a road or by fee simple freehold tenure), or native title does not exist, or the land is transferable to Aboriginal freehold tenure but has not yet been transferred. After all native title determinations and land transfers have been completed for a catchment, and therefore all possible eligible persons established for that catchment, any remaining land for which there is no eligible person and the corresponding unallocated CYPHA reserve should be calculated. It is recommended that unallocated CYPHA reserve then be distributed to eligible persons according to the proportion of the catchment held by each eligible person.





## **Appendix 2: Water Trust Australia -Water and ecosystems services in Cape York**



**Appendix 3: Balkanu Cape York Development Corporation -  
Situation Analysis Water use for agriculture, aquaculture,  
energy and mining**