CASE STUDY REPORT

Activating Cape York Water Plan reserves, a case study of an Aboriginal enterprise.

CRCNA project no: AT.4.2223010

Activating First Nation Water Rights under the Cape York Water Plan

Authors: Dr Jim Turnour, Dr Abner Yalu and Ms Jennifer McHugh

June 2026

Research for **sustainable** and **inclusive** development in **Northern Australia**.









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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.

We also wish to acknowledge the contribution to the project by the First Nations Reference Group members, Fanny Soloman, Johnson Chippendale, Conrad Yeatman and Cameron Hudson.

This research is funded by the Cooperative Research Centre for Developing Northern Australia (CRCNA) which is supported by the Cooperative Research Centres Program, an Australian Government initiative. The CRCNA also acknowledges the support of its investment partners: the Western Australian, Northern Territory and Queensland Governments.

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The authors confirm that this document has been provided to CRCNA and Project Representatives for review.

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Acronyms

ALA – Aboriginal Land Act 1991 (Qld)

CRCNA – Cooperative Research Centre for Northern Australia

CYPHA – Cape York Peninsula Heritage Area

CYLC – Cape York Land Council

CYWMP- Cape York Water Management Protocol

DLGWV – Department of Local Government, Water and Volunteers

FPIC – Free, Prior, and Informed Consent

ML – Megalitre

RNTBC – Registered Native Title Body Corporate

Aboriginal Land Trust – Trustee of Aboriginal Freehold

WPCY – Water Plan (Cape York) 2019

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.
- Department of Local Government, Water and Volunteers.
- The Queensland Department of Primary Industries.
- Watertrust Australia.
- Balkanu Cape York Development Corporation.
- The Cooperative Research Centre for Developing Northern Australia.

Executive Summary

The Water Plan (Cape York) 2019 established one of the largest Indigenous specific water reserves in Australia through the creation of the Cape York Peninsula Heritage Area (CYPHA) reserve. The reserve is intended to support Aboriginal and Torres Strait Islander peoples to achieve economic and social development aspirations by providing access to consumptive water for economic and community development.

This case study examines the experience of a de-identified party that doesn't hold a CYPHA reserve, hereafter referred to as the XX Aboriginal Corporation. The case study discussed their experiences in seeking to secure water resources to support the development of an agriculture and aquaculture enterprises on Cape York Peninsula. Many Indigenous corporations seek to empower their community by strengthening social wellbeing, economic participation, cultural connection, and local leadership for a sustainable future. Similar to other organisations the XX Aboriginal Corporation operates as a community led not-for-profit with a strong social enterprise approach, combining economic and community development outcomes to create employment, build local capacity and support sustainable development on Country. These aspirations are shared by other Aboriginal corporations and enterprises on Cape York Peninsula.

To create employment and food security opportunities the XX Aboriginal Corporation identified a requirement of approximately 25 ML of water. This case study found that, despite the availability of significant volumes of water within the relevant catchment, securing access to water remains challenging for Indigenous enterprises. A key barrier is that Indigenous organisations such as XX are not eligible to hold a CYPHA water licence directly. Under the current framework, only Trustees of Aboriginal Freehold (TAF) commonly referred to as Aboriginal Land Trusts and Registered Native Title Bodies Corporates (RNTBCs) are eligible to hold CYPHA licences. Indigenous corporations such as XX Aboriginal Corporation must therefore negotiate an assignment of water from an eligible licence holder or pursue alternative water sources.

The corporation considered four pathways to secure water:

- Negotiating an assignment of CYPHA water from an eligible Aboriginal Land Trust or RNTBC,
- Purchase an existing water licence,
- Seek release of unallocated General Reserve water,
- Construct a 50 ML off-stream dam to capture overland flow.

While each option was technically feasible, all presented practical challenges for the enterprise including navigating Indigenous governance and regulatory complexity, agreeing a price and infrastructure costs. One other option to access water was partnering with another entity that may have an existing water licence although this was not considered by XX Aboriginal Corporation.

A key finding of the case study is that Indigenous governance and regulatory complexity around land tenure and water licencing can be as significant as physical water availability and infrastructure costs. Although representatives of eligible Aboriginal Land Trust and RNTBC organisations expressed a willingness to consider assigning water, the XX Aboriginal Corporation identified risks associated with long term reliance on another organisation to hold the underlying licence. XX Aboriginal Corporation's previous experiences with changing governance arrangements, leadership transitions and organisational instability influenced perceptions of water security and investment risk. This affected the perceived value of the water licence and willingness of parties to agree on a price. It is understandably difficult to determine a fair value where no water market exists, and the members of the XX Aboriginal Corporation are also beneficiaries of related RNTBCs and Aboriginal Land Trusts who hold water licences.

The case study identified these practical challenges within the broader water management framework. Therefore, while unallocated CYPHA water exists within the catchment, pathways to access that water remain uncertain or slow due to regulatory complexity, Indigenous governance and the capacity of eligible Aboriginal Land Trust and RNTBC water licence holders to agree a price. There are also existing licence holders with available water; however, there is currently no active water market in Cape York Peninsula and no planned release process for unallocated General Reserve water. Groundwater development options may also be constrained by regulatory setback requirements (see recommendation 3), which can increase the cost and complexity of development. In the case of the XX Aboriginal Corporation their existing bore was within this required setback from the high bank of the river and therefore a new bore would need to be drilled to access a CYPHA water licence.

When all of these issues were considered the preferred option became the construction of a 50ML off-stream dam that would provide water security without requiring access to a CYPHA licence or a cost for the water beyond the infrastructure construction costs. While this represents a practical solution for the corporation, it also demonstrates that Indigenous enterprises may seek alternative water supply options rather than utilise the CYPHA reserve specifically established to support Indigenous economic and social development.

The XX Aboriginal Corporation case study highlights the gap that can exist between recognition of Indigenous water rights and the practical activation of those rights for enterprise development. It demonstrates that water availability alone is insufficient to support Indigenous economic development. Governance arrangements, institutional capacity, regulatory settings, tenure security and access pathways all influence whether Indigenous water rights can be effectively translated into economic and social outcomes.

The findings provide important insights for future reviews of the Water Plan (Cape York) 2019 and the Cape York Water Management Protocol and contribute to a broader understanding of the opportunities and challenges associated with activating Indigenous water rights in Cape York Peninsula from the perspective of an Indigenous enterprise. The case study identifies three priority areas for reform and investment.

Recommendation 1: Invest in long-term institutional capacity building for Aboriginal Land Trusts and RNTBCs.

The State and Commonwealth governments should provide long term governance, administrative and technical support to Aboriginal Land Trusts and RNTBCs responsible for holding Indigenous land and water rights. Strengthening institutional capacity would improve the ability of these organisations to manage water resources, support enterprise development and make informed decisions based on FPIC processes with their beneficiaries. Investing in the governance and management capacity of Aboriginal Land Trusts and RNTBCs will give these organisations greater capacity to work with their beneficiaries and organisations seeking access to land and water for community and economic development.

Recommendation 2: Broaden access pathways for Indigenous-controlled enterprises to CYPHA water.

The Queensland Government should consider creating a pathway for Indigenous corporations and local governments to access CYPHA water where they can demonstrate that a project will deliver economic or social benefits for Aboriginal and Torres Strait Islander peoples. This would better align access arrangements with the diverse range of Indigenous enterprise models now operating across Cape York Peninsula.

Recommendation 3: Review groundwater setback requirements where they constrain practical Indigenous development.

The Cape York Water Management Protocol sets minimum separation distances (setbacks) for new groundwater bores associated with water licences and the relocation or seasonal assignment of underground water licences. The XX Aboriginal Corporation had an existing bore within this setback which meant it could not be used if it secured an additional CYPHA water licence. Greater flexibility through exemptions, risk-based assessments or site-specific hydrogeological investigations may improve access to water while maintaining environmental protections.

Collectively, these reforms would improve the practical activation of Indigenous water rights and increase the likelihood that water reserved for Indigenous economic and social development delivers tangible benefits for Aboriginal and Torres Strait Islander communities.



Figure 1. Water Plan (Cape York) 2019 area and its fifteen catchment area

1. Background

Aboriginal and Torres Strait Islander peoples are increasingly strengthening and securing their rights and interests in land and water across Australia. Through state and territory land rights legislation, native title legislation and the National Water Initiative, Aboriginal and Torres Strait Islander rights are now being recognised in land tenure, water planning policy and emerging water markets (Barnet, 2024; Burns and Turnour, 2024).

In Queensland, the Water Plan (Cape York) 2019 marked a significant recognition of Indigenous water rights. It allocated 485,300ML, or 94% of water available under the plan, to Indigenous peoples for economic, social and cultural development through the Cape York Peninsula Heritage Area (CYPHA) Reserve (Queensland Government, 2019). This was the largest allocation of consumptive water to Indigenous peoples within a statutory water plan in Queensland.

The CYPHA reserve builds on the Cape York Peninsula Heritage Act 2007 (Qld), which enables land in Cape York to be purchased for Aboriginal peoples for conservation and community development purposes, while also supporting established industries such as pastoralism (Queensland Government, 2007). More than 60% of land on Cape York Peninsula is now held in trust as Aboriginal freehold under the Aboriginal Land Act 1991 (Qld). The CYPHA reserve complements this land rights framework by recognising that land rights alone may not enable economic or social development without access to water.

The reserve connects water rights to land rights by prioritising allocations to Aboriginal Land Trusts according to the area of Aboriginal freehold land they hold within a catchment. Where Aboriginal freehold does not exist, but native title has been determined, CYPHA water is allocated to native title holders on the same catchment-area basis. Despite this growing recognition of Indigenous land and water rights, Cape York communities continue to experience high levels of socio-economic disadvantage. As Aboriginal people in Cape York often observe, they are “land rich but dirt poor”.

The Activating Indigenous Peoples Water Rights Under the Cape York Water Plan project was established to support Aboriginal and Torres Strait Islander organisations in Cape York to understand, access, activate and benefit from water rights reserved under the Water Plan (Cape York) 2019. The project examines how Indigenous peoples can benefit from combining water rights with land-based enterprises or by leasing water to third parties. When the project commenced in 2023, only three CYPHA water licences had been issued to eligible Aboriginal organisations across Cape York Peninsula. The project therefore seeks to identify the factors limiting uptake and develop practical pathways to activate Indigenous water rights for the benefit of Indigenous communities and enterprises across the region.

An earlier Situation Analysis report provides detailed background on the National Water Planning Initiative, Queensland water planning legislation, the Water Plan (Cape York) 2019 and the Cape York Water Management Protocol (Burns and Turnour, 2024). A related case study considered opportunities and constraints to activating CYPHA reserve water at the catchment scale (Turnour, Yalu and McHugh, 2026). This case study focuses on the enterprise scale.

2. Introduction/context

Building on previous work, the present case study examines Indigenous water activation at the enterprise scale. It details the challenges experienced by the XX Aboriginal Corporation as it sought to secure water within the relevant Water Plan (Cape York) 2019 River Catchment to support agricultural and aquaculture enterprises aimed at creating employment, improving food security and generating economic opportunities for the community.

While Indigenous land and water rights under Queensland and Australian government law in Cape York Peninsula is vested in Aboriginal Land Trusts and RNTBCs community and economic development is increasingly being pursued by Indigenous businesses, corporations and local governments that do not hold the underlying land or water rights. This creates a dual governance arrangement in which the legal holders of land and water rights can be institutionally distinct from the entities seeking to use those resources for development purposes. However, the Indigenous people who own, govern, or benefit from these businesses, corporations, and local governments are often members of the same beneficiary groups represented by the Aboriginal Land Trusts and RNTBCs. The XX Aboriginal Corporation provides an example of such an entity, and this case study explores the opportunities and challenges it faced in seeking to secure water to support enterprise development.

3. Case Study Approach

The XX Corporation has been de-identified to maintain confidentiality and stakeholders consented to participation in this case study in line with ethical approvals. Ethical approval for this research was obtained from the Human Research Ethics Committee at James Cook University, ID Number H9307.

The case study was largely a desktop focus, involving reviewing reports and plans from the XX Aboriginal Corporation including strategic business plans, and eight targeted interviews with Directors and staff as well as representatives of eligible CYPHA water licence holders in the relevant catchment. Learning from discussions and insights shared by the Project Working Group made up of project partners and a First Nation Reference group also informed this case study report.

The XX Aboriginal Corporations aspirations are not unlike those of other Indigenous corporations in Cape York Peninsula. The challenges they faced in securing water for enterprise development therefore provide useful learnings for other Indigenous businesses seeking to access water from catchments within the Water Plan (Cape York) 2019.

The case study details the following:

- the aspirations of the XX Aboriginal Corporation for its land including the quantities of water it needs to develop enterprises,
- who is eligible to hold a CYPHA water licence,
- the options considered by the XX Aboriginal Corporation to secure a water licence are discussed including advantages and constraints in determining the preferred option.
- the report then considers the learning from the XX Aboriginal Corporation case study, makes some conclusions and recommendations to improve the operation of the Water Plan (Cape York) 2019 when it is being reviewed.

4. About the XX Aboriginal Corporation

The XX Aboriginal Corporations Strategic Business Plan outlines a vision to improve the quality of life of Aboriginal people in parts of the Cape York Peninsula through culturally grounded, community-led development. The corporation aims to strengthen cultural identity, create economic opportunities, engage young people, improve wellbeing, and promote sustainable innovation. Central to the strategy is the development of agricultural land as a flagship enterprise and training hub that combines traditional knowledge with modern agriculture, aquaculture, and business practices.

The business model focuses on generating employment and economic independence through First Nations led enterprises. Key opportunities identified include aquaculture, native foods, horticulture, hydroponics, cultural tourism, training programs, and circular economy initiatives such as tyre recycling. Agricultural land is intended to serve as a centre for training, research, food production, cultural learning, and commercial development.

The strategic plan identifies five strategic priorities:

- Cultural preservation.
- Economic empowerment.
- Youth engagement.
- Health and wellbeing.
- Sustainable innovation.

Like many Indigenous businesses it measures success based on a broader range of community benefits not simply the enterprises profitability, although this needs to be secured. To achieve this the business plan emphasises strong partnerships with Indigenous organisations, universities, government agencies, industry, and philanthropic groups to support enterprise growth and community outcomes. Overall, the strategy represents a transition from a traditional community service organisation to a community owned economic development platform. By leveraging culture, innovation, partnerships, and enterprise, the corporation seeks to create jobs, improve food security, strengthen cultural connections, and build long term prosperity for local Aboriginal people.

An integrated farming system which includes the development of aquaculture, tree crops and horticulture which could recycle nutrient rich water from the aquaculture. Through business planning the corporation determined that they require a 25 ML water allocation from a secure source of water to develop their land and associated enterprises. This is critically important in achieving the corporations economic, cultural and social goals

5. Available Water in the River Catchment

To secure a 25 ML allocation of water the XX Aboriginal Corporation will need to access water from the Water Plan (Cape York) 2019 or by constructing a dam to capture overland flow. The Water Plan (Cape York) 2019 is divided into three reserves:

(i) The strategic reserve contains 25,000ML, which can be released for state purposes such as town water supply or projects of regional significance, or for a project for the economic or social benefit of Aboriginal people or Torres Strait Islanders.

(ii) The general reserve contains 6,050ML, which is open for allocation to any purpose, including Indigenous projects.

(iii) The Cape York Peninsula Heritage Area (CYPHA) reserve of 485,300ML, which is specifically designated to support Aboriginal and Torres Strait Islander communities in achieving their economic and social aspirations (WPCY, 2019).

To hold a Strategic or CYPHA reserve under the Water Plan (Cape York) 2019 Aboriginal and Torres Strait Islander corporations also need to be an eligible person which include:

(a) Trustees of Aboriginal Freehold Land (Aboriginal Land Trusts), which may be land trusts or corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSIA) holding land as trustees. These are commonly referred to as Aboriginal Land Trusts although Local Governments can also be trustees of land under the Aboriginal Land Act 1991

(b) Registered Native Title Bodies Corporate (RNTBCs), holding native title rights and interests on trust, which manage native title under the Native Title Act 1993 (Cth), (Queensland Government, 2019).

Water from the CYPHA reserve can be granted to these eligible persons to support the social and economic development of Aboriginal and Torres Strait Islander communities in Cape York. Requests may be made at any time by writing to the Department of Local Government, Water and Volunteers (DLGWV), provided the applicant is eligible. There is no cost to apply, and the Department will assess requests before deciding whether to issue a licence. Burns and Turnour (2024) provide a more detailed outline of the Water Plan (Cape York) 2019 and its operation in a situation analysis report.

The XX Aboriginal Corporation is not an Aboriginal Land Trust or an RNTBC and therefore cannot hold a Strategic reserve or a CYPHA reserve licence directly. They could be assigned part of a CYPHA water licence through a sublicence agreement with an eligible Aboriginal Land Trust or RNTBC. A summary of available CYPHA reserves in the Cape York Water Plan area by eligible entity by catchment is provided in Table 1.

Within the catchment where the XX Aboriginal Corporation is seeking to develop an enterprise, CYPHA water reserves could be held by up to eight eligible Aboriginal Land Trusts and three RNTBCs (Burns and Turnour, 2024). Collectively, these entities hold approximately 8,252 ML of CYPHA water.

There is also approximately 800ML of General Reserve water within the XX Aboriginal Corporation's river catchment that is yet to be allocated. If there was a release of General Reserve water, then XX Aboriginal Corporation could apply for this water.

Table 1 CYPHA Water Licences and Nominal Allocations

Catchment Area	LGAs	RNTBC	Aboriginal Land Trust	Eligible party to be determined	Total Catchment ML
Archer		35,540	51,062	2,398	89,000
Coleman		40,042	6,048	9,910	56,000
Ducie		16,194	29,567	238	46,000
Embley		5,337	2,095	566	8000.0
Endeavour	15	1,513	6,748	7,747	16,000
Holroyd		56,341	12,012	146	68,500
Jacky Jacky		225	1,136	141	1,500
Jardine	27	4,324	44,230	421	49000
Jeannie		0	0	0	0
Lockhart		92	6,080	129	6,300
Normanby		4,878	9,102	2,022	16,000
Olive-Pascoe		528	37,289	10,183	48,000
Stewart		125	4,828	47.4	5,000
Watson		0	0	0	0
Wenlock		41,508	30,656	3836	76,000
Total Catchment ML	**42**	**206,647**	**240,853**	**37,784**	**485,300**

Table 2 Total CYPHA reserves

Organisation	Total Nominal_allocation_ML
Council	42
RNTBC	206,647
Aboriginal Land Trust	240,853
Unallocated	37,784,
Grand Total	**485,300,**

6. Water security options

The XX Aboriginal Corporation considered a range of options to secure the 25 ML of water needed for its food security enterprises within the Catchment which are identified in this section including their advantages and constraints. These are then discussed in more detail in the next section.

6.1 CYPHA Water Assignment from an eligible Aboriginal Land Trust or RNTBC

Negotiate an assignment of CYPHA water from an eligible Aboriginal Land Trust or RNTBCs within the Catchment. The XX Aboriginal Corporation is not an Aboriginal Land Trust or RNTBC so they are not eligible to hold a CYPHA water licence directly. They could, however, negotiate an assignment through a sublicence agreement of 25 ML of water from an eligible Aboriginal Land Trust or RNTBC.

Advantages

- Makes use of water that has already been allocated which benefits both parties.
- Consistent with the purpose of the CYPHA reserve.
- Provides access to much larger volumes of water than existing licences.
- Creates a precedent for Indigenous water trading in Cape York Peninsula.

Constraints

- Requires agreement from an eligible Aboriginal Land Trust or RNTBC where there can be a lack of trust between related parties and a financial cost.
- Requires licence amendment approval under the Cape York Water Management Protocol.
- Costs of legal and technical advice required to finalise assignment and sublicence agreement with Aboriginal Land Trust or RNTBC.

6.2 Trade Existing Surface Water Licences

There is existing water licences issued prior to the establishment of the Water Plan (Cape York) 2019 that could be traded. An option therefore is to acquire a water licence from an existing holder in the catchment through a permanent transfer, temporary transfer, or assignment arrangement.

Advantages

- Existing regulatory pathway.
- Able to permanently acquire an allocation where CYPHA licences can only be temporarily assigned.
- Commercial dealing avoiding Indigenous community and corporation negotiations that can get caught up in community politics.

Constraints

- Requires a willing seller with sufficient quantities of water willing to trade.
- Water trading is market-based and may be more expensive.
- There is no functioning water market in Cape York Peninsula.

6.3 Apply for Release of General Reserve Water

Approximately 800 ML of unallocated General Reserve water remains available in the catchment. The XX Aboriginal Corporation submitted an expression of interest for General Reserve water for any future reserve release process administered by the Queensland Government.

Advantages

- Largest immediately identified unallocated volume of water.
- Could support a substantial agricultural or aquaculture project.

Constraints

- Any new reserve releases are subject to demand and there is currently unallocated water in other reserves available including the CYPHA reserve.
- There is therefore currently no release process or timetable.

6.4 Construct a 50 ML Off-Stream Dam to Capture Overland Flow

Depending on location, design and purpose, a dam of up to 50 ML could be developed under Queensland's overland flow provisions, subject to compliance with accepted development approval requirements, storage capacity limits, property boundaries, and any applicable Water Plan provisions.

Advantages

- There is no need for a water licence and there is no cost for the water after infrastructure costs.
- In this example technically feasible based on initial assessments of the land.
- Provides for a larger volume than the 25 ML required.
- Avoids Indigenous community and corporation negotiations that can get caught up in complex community politics.

Constraints

- Reliant on a wet season to fill the dam.
- Has separate approvals processes.
- Cost of construction and maintenance may be greater than developing a bore for Water Plan (Cape York) 2019 licence.
- Not all corporations will have land with suitable drainage features.

7. Discussion of options

Secure a CYPHA Water assignment from an eligible Aboriginal Land Trust or RNTBC. During interviews the XX Aboriginal Corporation indicated that they had written to an eligible Aboriginal Land Trust with an existing water licence whose representative also during interviews indicated a willingness to sublicence water to XX Aboriginal Corporation. This seemed like the best pathway as the XX Aboriginal Corporation Directors are also beneficiaries of the Aboriginal Land Trust and it aligned with the Indigenous social and economic purposes of the CYPHA reserve. To support these negotiations the project as part of this case study secured legal advice on the assignment process and provided a draft sublicence agreement for the XX Aboriginal Corporation and Aboriginal Land Trust to assist in progressing activation of a CYPHA water licence. However, despite the provision of this agreement and the apparent willingness expressed during interviews to assign water between parties no agreement was reached during the life of the project.

A key concern raised by XX Aboriginal Corporation Directors and their farm management was that relationships between Aboriginal corporations, Traditional Owners and community members can change over time, potentially affecting long term access to water. Directors were concerned that governance disputes, changes in leadership, or breakdowns in relationships between Indigenous organisations could create uncertainty regarding the ongoing security of an assigned water licence. They had previously leased land where they had experienced these issues when the Indigenous leadership of the landowner changed.

Having dual and multiple governance responsibilities is very common in Cape York. The Directors of XX Aboriginal Corporation are Traditional Owners of the region and are therefore members or beneficiaries of several Aboriginal Land Trusts and RNTBCs that are eligible to hold CYPHA water licences. They, however, expressed concerns about the governance of these Aboriginal Land Trusts and RNTBCs and community confidence in institutional decision-making. Other representatives of Aboriginal Land Trusts and RNTBCs interviewed similarly expressed concerns about the governance of some organisations and the impacts of ongoing disputes on relationships. This creates an environment of limited trust between individuals and organisations when trying to negotiate an assignment of a CYPHA water licence.

This highlighted that while Aboriginal Land Trusts and RNTBCs perform an important role in holding land, water and native title rights on behalf of Indigenous people many operate with limited financial and administrative resources to manage complex statutory, legal and regulatory obligations. These challenges are compounded by the fact that membership and beneficiary groups often comprise multiple clans and family groups with diverse interests and perspectives. In addition, the corporate governance frameworks under which Aboriginal Land Trusts and RNTBCs operate are largely based on western legal and administrative systems, which do not always align with traditional land estates and associated laws, customs and cultural decision-making processes. The ongoing impacts of colonisation, intergenerational trauma and lateral violence can further affect organisational stability and community cohesion. This creates a complex and challenging governance environment for Indigenous people and organisations to negotiate agreements between organisations. Because of these governance risks and a failure to agree on a price the XX Aboriginal Corporation explored other options of securing a water licence directly, rather than relying on an assignment of CYPHA water.

Purchase an existing non CYPHA water licence or allocation. The second option considered was purchasing a licence on the open market from an Indigenous or non-Indigenous owner of an existing licence. A general reserve water licences can be permanently traded providing the XX Aboriginal Corporation with ownership of their own licence if one could be secured. The DLGWV

publishes data on existing water licence on a Business Queensland Portal with a number of licence holders listed in the relevant catchment.

It is difficult, however, to determine the commercial value of a 25ML entitlement in the river catchment as no transparent water trading market exists and significant volumes of unallocated water exists in other reserves including 800ML in the General Reserve.

In north Queensland, water value is often determined by the value it creates rather than active trading market. A review of water pricing information, including regulated irrigation systems and land use assessment valuations for agriculture uses range from less than $100 through to more than $3000 ML for higher value uses such as aquaculture Table 2. Therefore, although this option would be a more permanent solution as CYPHA licenses can only be assigned temporarily it may be a more expensive option and there was no guarantee of finding an existing licence for sale.

Table 3. Value of water licence

Agriculture Use	Indicative Water Value
Grazing / stock water	<$100/ML
Low-value irrigation	$100–$500/ML
Horticulture	$500–$2,000/ML
Aquaculture	$500–$3,000+/ML

Secure a General Reserve allocation. The XX Aboriginal Corporation therefore explored the availability of a general reserve allocation. The DLGWV indicated that there was 800ML in the General Reserve within the relevant catchment that had not been allocated. There were no environmental, hydrological, legal or native title constraints preventing its release identified. A government reserve release process, however, normally entails a technical assessment, public notification, an allocation methodology and licence administration costs. Given that there is existing available water in the CYPHA reserve and other licences with limited additional demand, the DLGWV would not normally prioritise a General Reserve release. There were therefore no plans for a General Reserve release.

Construct a 50 ML dam to capture over land flow. The development of a 50ML farm dam would avoid the need for a water licence and other costs associated with drilling a new bore. Whether the XX Aboriginal Corporation secured an assignment of a CYPHA licence or purchased a water licence they would need to drill a new bore to activate this water licence. The DLGWV advised that the existing farm bore cannot be used for a groundwater licence because it is located within 200 metres of the riverbank. Under the Cape York Water Management Protocol, a groundwater proposal can only be approved if water is not taken from within:

- 200 metres of a watercourse, lake or spring;
- 200 metres of a property boundary, unless written consent is obtained from the adjoining landowner; and
- 400 metres of an authorised bore, unless the bore is owned by the licence holder or written consent is obtained from the bore owner.

The cost of a new bore based on a local quote is between $20,000 to $30,000 before any pumps, power supply, storage tanks, reticulation infrastructure or ongoing operating costs are considered. These costs combined with the costs of purchasing a water licence and the governance risks identified with a CYPHA assignment encouraged the XX Aboriginal Corporation to consider the option of constructing a 50 ML off stream dam to capture overland flow. Under the Water Regulation 2016 (Qld), works to take overland flow water with a storage capacity of up to 50 ML are identified as accepted development within the Water Plan (Cape York) 2019 area (other than the Normanby catchment). Subject to compliance with other applicable development approvals a 50ML off-stream overland flow storage may therefore be developed without the need for a development permit under Queensland's water legislation.

An initial assessment by the XX Aboriginal Corporation land manager found a dam could potentially capture and store wet season overland flow, allowing water to be used during the dry season when demand is highest and surface water availability is reduced. Detailed planning and costs estimates were yet to be completed but this is currently the preferred option avoiding the need to secure a CYPHA licence or purchase a licence.

8. Conclusion and Recommendations

The XX Aboriginal Corporation case study demonstrates that the Water Plan (Cape York) 2019 and Cape York Water Management Protocol have created a significant Indigenous water entitlement framework, but that this framework may need reform to support Indigenous economic and social development at the enterprise level.

The intent of the CYPHA reserve is to support Aboriginal and Torres Strait Islander communities to achieve economic, cultural and social aspirations. However, the current eligibility and activation arrangements mean that only Aboriginal Land Trusts and RNTBCs can hold a CYPHA water licence directly. Indigenous corporations such as XX Aboriginal Corporation, which may have enterprise capability, business plans, partnerships, land access arrangements and a clear need for water, cannot access CYPHA water unless they negotiate an assignment from an eligible licence holder.

This creates a gap between the policy intent of Indigenous economic and social development and the practical operation of the Water Plan. The case study shows that Indigenous enterprises may be ready to develop agriculture, aquaculture and employment pathways, but still be unable to secure water because they are not the statutory licence holder. They must instead rely on negotiations with Aboriginal Land Trusts or RNTBCs that may have limited administrative capacity, contested governance, changing leadership or internal community politics.

The XX Aboriginal Corporation considered a CYPHA water assignment, purchasing an existing licence, seeking release of General Reserve water and constructing a dam. The preferred option has become a 50 ML off-stream overland flow dam because it provides greater water security and avoids the uncertainty associated with licence assignment, bore regulation, general reserve release and inter-corporation negotiation and agreement on a price. This is a practical response to the current system.

The case study highlights how the Water Plan (Cape York) 2019 framework that links water rights for Indigenous economic development to landholding or native title holding trustee corporations is not currently achieving its desired outcomes. In practice economic and social development is being led by a range of Indigenous controlled corporations and local governments that may not be Aboriginal Land Trusts or RNTBCs. The current framework does not support Aboriginal Land Trusts or RNTBCs to effectively govern their land and water rights to work with this range of corporations. It also does not adequately recognise the diversity of Indigenous enterprises seeking to access water and develop land-based enterprises.

Reform is therefore required to ensure that the Water Plan and Protocol move beyond recognition of Indigenous water rights toward practical activation of those rights. Without reform, significant volumes of CYPHA water may remain unused while Indigenous corporations with viable projects are forced to pursue alternative water strategies outside the CYPHA framework.

Recommendation 1: Invest in long-term institutional capacity building for First Nation institutions including Aboriginal Land Trusts and RNTBCs.

The State and Commonwealth governments should provide long term governance, administrative and technical support to Land Trusts and RNTBCs responsible for holding Indigenous land and water rights. Strengthening institutional capacity would improve the ability of these organisations to manage water resources, support enterprise development and make informed decisions based on FPIC processes with their beneficiaries. Investing in the governance and management capacity of Land Trusts and RNTBCs will give these organisations greater capacity to work with their beneficiaries and organisations seeking access to land and water for community and economic development.

Recommendation 2: Broaden access pathways for Indigenous-controlled enterprises to CYPHA water.

The Queensland Government when reviewing the Water Plan and Protocol should create a pathway for Indigenous controlled corporations and local governments to access CYPHA water where they can demonstrate that a project will deliver broader economic or social benefits for Aboriginal and Torres Strait Islander people in the relevant catchment.

This could be achieved by creating an Indigenous enterprise access pathway within each catchment. Indigenous businesses, corporations and local governments would be able to access water to develop enterprises but not assign water to third parties. Any expanded access pathway should still include cultural heritage and environmental protections.

This may slightly reduce allocations to Aboriginal Land Trusts and RNTBCs who have yet to request a water licence but would significantly reduce the risks and complexity for other Indigenous peoples wishing to access water in a catchment. There are significant unallocated volumes of CYPHA water within catchments which could be used for this purpose Table 1.

Recommendation 3: Review groundwater setback rules where they prevent practical Indigenous development.

The Cape York Water Management Protocol sets minimum separation distances (setbacks) for new groundwater bores associated with water licences and the relocation or seasonal assignment of underground water licences. The XX Aboriginal Corporation had an existing bore within this setback which meant it could not be used if it secured an additional CYPHA water licence. Greater flexibility through exemptions, risk-based assessments or site-specific hydrogeological investigations may improve access to water while maintaining environmental protections.

Collectively, these reforms would improve the practical activation of Indigenous water rights and increase the likelihood that water reserved for Indigenous economic and social development delivers tangible benefits for Aboriginal and Torres Strait Islander communities.

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