CASE STUDY REPORT

Jardine Catchment

CRCNA project no: AT.4.2223010

Activating First Nation Water Rights under the Cape York Water Plan

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

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









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The authors confirm that this document has been provided to CRCNA and Project Representatives for review. It has also been independently reviewed by Dr Marcus Barber, Principal Research Scientist, CSIRO.

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Table of contents

Acknowledgements 2
Disclaimer 2
Peer Review Statement 2
Table of contents 3
List of Tables 5
List of Figures 6
Acronyms 7
Project Participants 8
Executive Summary 9
1. Background 11
2. Introduction 12
3. Description of the Jardine River Catchment area 13
4. Nominal water allocations in the Jardine Catchment 14
5. Economic opportunities 19
5.1 Agriculture 19
5.1.1. Types of land 19
5.1.2 Food security opportunity 20
5.2 Mining 21
5.3 Ecosystem services 22
7. Constraints to activating Water and Land Rights 24
8. Case study workshop and interviews: 25
8.1. Workshop and interview methodology 25
8.2. Workshop and interview themes 26
9. Options to activate Indigenous Water Rights 33
9.1 FPIC Decision making by TAFs and RNTBCs 33
9.1.1 Option 1. Invest long term in a place-based capacity building for RNTBCs,TAFs & Clans 34
9.1.2 Option 2. Establish and resource an FPIC decision making protocol for Land and Water Rights 34
9.1.3 Option 3. Rationalisation of eligible TAFs & RNTBCs through amalgamation 34
9.1.4 Option 4. Rationalisation of eligible TAFs & RNTBCs through alignment with Clan boundaries . 35
9.2 Statutory Governance systems reforms to activate water rights 35
9.2.1 Operationalise the economic development mechanisms 35
9.2.2 Statutory development assessment and planning reforms. 36
10. Opportunities for activation of CYPHA reserves 38
11. Conclusion 39
References 40

List of Tables

Table 1. Jardine catchment - CYPHA reserve volume – 49,000ML 17
Table 2. Existing Water Licences from the Jardine Catchment 22
Table 3. Jardine Catchment Workshop Participants 24
Table 4. Interview Informants Organisational, Clan and Stakeholder Interests 25
Table 5. Workshop and Interview Themes 26
Table 6. DCCEEW FPIC Guidelines 2025 30

List of Figures

Figure 1. The Jardine River Catchment is one of the 15 catchments in the Cape York Water Plan 2019 12
Figure 2. Trustees of Aboriginal Freehold Jardine Catchment 14
Figure 3. RNTBCs Jardine Catchment 15
Figure 4. TAFs and RNTBCs overlayed in Jardine Catchment 16
Figure 5. Arable Class A and B Land 19
Figure 6. Mining and Exploration Licences and Restricted Areas 20
Figure 7. Active Mining Exploration Permits in West Coast Cape York 21

Acronyms

AC – Aboriginal Corporation

ALA – Aboriginal Land Act 1991 (Qld)

CEQ – Community Enterprise Queensland

CRCNA – Cooperative Research Centre for Northern Australia

CYPHA – Cape York Peninsula Heritage Area

CYLC – Cape York Land Council

CYWMP- Cape York Water Management Protocol

DCCEEW – Department of Climate Change, Energy, the Environment and Water

DLGWV – Department of Local Government, Water and Volunteers

DOGIT – Deed of Grant in Trust

EPM – Exploration Permit for Minerals

EPBC Act – Environment Protection and Biodiversity Conservation Act 1999

FPIC – Free, Prior, and Informed Consent

ICN – Indigenous Corporation Number

ICUA – Indigenous Community Use Area

ML – Megalitre

NPA – Northern Peninsula Area

NPARC – Northern Peninsula Area Regional Council

NRM – Natural Resource Management

RNTBC – Registered Native Title Body Corporate

TAF – Trustee of Aboriginal Freehold

TSRA – Torres Strait Regional Authority

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples

VMA – Vegetation Management Act 1999 (Qld)

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

This Jardine Catchment case study informs a research project investigating how Indigenous people can activate their water rights within the *Water Plan (Cape York) 2019* (WPCY). The WPCY is a landmark achievement, allocating 485,300 megalitres (ML) of water for Indigenous economic and social development through a Cape York Peninsula Heritage Area (CYPHA) reserve. However, despite this significant allocation of consumptive water it is yet to be activated and used. This Jardine Catchment case study report discusses governance complexity, statutory restrictions, and limited institutional capacity among Indigenous corporations as reason why water rights have not to date delivered benefits to communities. Combined with a Situation Analysis Report (Burns & Turnour, 2024) and another case study being undertaken in the Endeavour Catchment it will inform the development of a Cape York Water Plan Manual and Statutory Reforms report to support the activation of Indigenous water rights.

The Jardine River catchment is located at the northernmost tip of Cape York Peninsula in Far North Queensland, covering approximately 3,282 km². The catchment was chosen as a case study as it contains a mix of land uses and opportunities that could be progressed to activate CYPHA reserves including agriculture, mining, ecosystem service and municipal uses. The Jardine catchment CYPHA reserve of 49,000 ML is nominally allocated to eight eligible parties holding water on behalf of Indigenous peoples, either as Trustees of Aboriginal Freehold (TAF) land or Registered Native Title Body Corporates (RNTBCs). Opportunities and constraints to activating Indigenous water rights were identified through a desk top analysis, a targeted workshop, and interviews with representatives of these eligible TAFs and RNTBCs as well as stakeholders who may want to access CYPHA water. The workshop and interviews were thematically analysed to inform the case study.

Opportunities and Constraints to Activating Indigenous Water Rights

The desk top analysis identified a range of potential opportunities for using CYPHA water including agriculture, mining, municipal and ecosystem service markets. The workshop and interviews, however, identified a lack of understanding of the WPCY, the complex governance arrangements and the limited capacity of eligible TAFs and RNTBCs as key barriers to activating water rights and development in the Jardine catchment. There are four Aboriginal clan groups Angkamuthi, Gudang, Yadhaykenu and Atambaya in the region, with land and water rights as well as a significant Torres Strait Islander population. These rights are split across eight entities. The boundaries of these entities do not align with clan boundaries, which are also disputed. This makes decision making about land and water rights difficult, particularly given the often project by project based approach and the transactional nature of development, as well as the lack of governance capacity within eligible TAFs and RNTBCs.

Opportunities to use consumptive water is also limited by statutory planning, land tenure, and environmental and cultural heritage protections. This means that only major projects such as mines or development supported by government investments would be possible outside of the existing town plan footprints. Mining interests in the region also indicated that they would require more water than existed in the CYPHA reserve and that there were a range of other infrastructure constraints to development. Indigenous workshop and interview informants identify small-scale agriculture for food security, aquaculture and water bottling for retail markets as possible opportunities that could be

developed in the short term. In the longer term the development of ecosystem services markets for water were identified as a possible opportunity.

Options to Activate Indigenous Water Rights

Options to support activation of Indigenous water rights were identified to address governance complexity and statutory barriers to development. These included the need for a long-term investment in a place-based capacity building facility for RNTBCs, TAFs and Clans; the development of a Free, Prior, and Informed Consent (FPIC) decision making protocol for land and water rights; and through this work the eventual rationalisation of eligible TAFs and RNTBCs through amalgamation and alignment with clan governance boundaries. These options to address governance complexity were identified and discussed by RNTBC and TAF representatives through the research and could be implemented progressively.

To address statutory barriers to development, there is a need for community and regional planning to identify areas suitable for development. An investment in these planning process building on investments in governance capacity are therefore also required to support Indigenous led development and the activation of CYPHA water. The implementation of these plans could be supported by the *Cape York Peninsula Heritage Act 2007 (Qld),* which has provisions within it for the development of Indigenous Community Use Areas (ICUA) that overcome statutory restrictions to development. Such opportunities are yet to be operationalised.

Ultimately, the activation of Indigenous water rights in the Jardine Catchment is not solely a technical or economic challenge, but a governance, policy, institutional, capacity and cultural one. Success depends on strengthening the institutions that enable Traditional Owners to make and implement their own decisions about land and water, ensuring that economic opportunities contribute to community wellbeing, cultural continuity, and environmental integrity. This case study makes five recommendations to support the activation of Indigenous water rights in the Jardine Catchment that are discussed in further detail.

Recommendation 1: There is a need for a significant long-term investment in First Nation institutional capacity building to support clan groups work through the governance complexity within the Jardine catchment and support FPIC decision making about water rights.

Recommendation 2: That the government review provisions within the *Cape York Peninsula Heritage Act* 2007 (Qld) to gazette ICUAs, enabling the community to consider how they can be operationalised to facilitate First Nation lead development.

Recommendation 3: That a significant investment in community-led sub-regional planning be undertaken in the Northern Peninsula Area, building on recommendation 1 and 2 to ensure that aspirations for development are balanced with cultural heritage and environmental protections.

Recommendation 4. That in the short-term immediate opportunities to activate Indigenous water rights to create new enterprises should be supported (e.g. food security, bottling of water).

Recommendation 5. That the state government actively support, in cooperation with the Commonwealth, community led processes to explore the potential development of a strong ecosystem service market that would provide potential income for CYPHA licence holders.

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 and native title legislation, Aboriginal and Torres Strait Islander peoples have secured rights and recognition of their land interests. Likewise, under the National Water Initiative, Aboriginal and Torres Strait Islander water rights are being embedded within national, state and territory water planning policy and emerging markets (Barnet, 2024; Burns and Turnour 2024).

In the Queensland context, the Water Plan (Cape York) 2019 (WPCY) was a significant achievement in terms of the recognition of Indigenous[1] water rights. It allocated 485,300ML or 94% of water available within the plan for economic and social development purposes to Indigenous peoples in the Cape York Peninsula through a Cape York Peninsula Heritage Area (CYPHA) Reserve (Queensland Government, 2019). Never had so much consumptive water within a statutory water plan been allocated to Indigenous peoples in Queensland. The CYPHA water reserve built on an historic piece of legislation that provides for the purchase of land in Cape York for Aboriginal peoples for conservation and community development purposes and for the continuation of established industries like the pastoral industry (Queensland Government, 2007). As a result, more than 60% of land on Cape York Peninsula is now held in trust as Aboriginal freehold by Indigenous people under the Aboriginal Land Act 1991 (Qld).

However, despite Indigenous peoples' increasing rights and interest in land and water in places like Cape York Peninsula, high levels of socio-economic disadvantage are still experienced. A common reframe amongst the Aboriginal peoples of Cape York Peninsula is that we are 'land rich but dirt poor'. This project is therefore to investigate how Indigenous peoples can benefits from combining their water rights with their land or leasing water to third parties. When this project began in 2023 only three water licences had been issued to eligible Aboriginal parties in Cape York Peninsula. This project seeks to understand why Indigenous water rights in Cape York are not being taken up and how they can be activated to benefit the Indigenous peoples of the region.

An earlier Situation Analysis report provides more detail background information on the National Water Planning Initiative, Queensland water planning legislation and the operation of the WPCY and the Cape York Water Management Protocol (CYWMP) (Burns & Turnour, 2024). This report will focus on the CYPYHA provisions under the WPCY and CYWMP within a discrete catchment and investigate the opportunities and barriers to Indigenous peoples realising benefits from their water rights.

[1] Indigenous in the report is used as a collective term for 'Aboriginal and Torres Strait Islander people particularly concerned with the land' who have been allocated water rights as Trustees of Aboriginal Freehold under the Aboriginal Land Act 1991 (Qld).

2. Introduction

The Jardine Catchment is one of fifteen catchments within the WPCY with each having unique opportunities to activate CYPHA reserves. It was selected as the first of two case studies in consultation with project partners through a Working Group and a First Nation Reference Group. It contains a significant CYPHA reserve of 49,000 ML, a mix of land uses and potential opportunities to activate CYPHA reserves including agriculture, mining, ecosystem service and municipal uses. Statutory land tenure had been determined that had created a complex array of eligible parties holding water rights reflecting governance issues in other parts of Cape York Peninsula. Initial consultations with Indigenous corporations holding water rights were supportive of the project. Therefore, while no catchment is identical it was determined that learnings from the Jardine Catchment case study could be generalised more broadly to inform how Indigenous water rights could be activated in other parts of Cape York Peninsula.

The WPCY, is one of the 23 water plans made under Queensland's Water Act 2000 and will be active until September 2029, when it is due for review. It provides the statutory basis for sustainable water allocation and management across Cape York's surface water, groundwater, and overland flow resources (Water Plan Cape York ,2019. P.6). It regulates water entitlements, environmental flows, and allocation priorities while embedding provisions to recognise and support the economic, social, cultural, and spiritual values of Aboriginal and Torres Strait Islander peoples. The plan enables Indigenous participation in water planning, decision-making, and governance by outlining nominal water volumes per catchment and who can apply for licences.

This case study therefore investigates within the Jardine catchment, how Indigenous Water rights can be activated to support social, cultural, environmental and economic benefits within the local context. The case study involves considering existing water uses and opportunities for eligible Indigenous peoples to use CYPHA reserves including the potential for leasing water rights to third parties for activities such as agriculture, aquaculture, mining, ecosystem services and municipal purposes. This involves understanding the associated environment and heritage constraints, ownership structures and decision-making processes of eligible Indigenous peoples who hold water rights. The case study involved desk top analysis, a workshop and both face-face, online and phone interviews with representatives of Indigenous water rights holders as well as potential end users.





Jardine River Ferry Crossing

3. Description of the Jardine River Catchment area

The Jardine River catchment is located at the northernmost tip of Cape York Peninsula in Far North Queensland, covering approximately 3,282 km² (Figure 1). It experiences a tropical monsoonal climate with distinct wet and dry seasons, receiving high annual rainfall concentrated between November and April, which feeds the region's perennial river systems and extensive wetland networks (Duvert et al., 2022). The catchment includes a mix of land uses, with significant areas under conservation within the Apudthama National Park (formerly Jardine River National Park), Indigenous-owned lands managed for cultural and environmental values, and limited grazing activity (Hinchliffe, 2022). Ecologically, the catchment is of high significance, supporting unique and intact freshwater ecosystems, diverse flora and fauna, and extensive wetlands listed in the Directory of Important Wetlands in Australia (Department of Climate Change, Energy, the Environment and Water, 2025). Culturally, it holds profound importance, with numerous sacred sites, story places, and long-standing customary connections to land and water.



Figure 1. The Jardine River Catchment is one of the 15 catchments in the Cape York Water Plan 2019

4. Nominal water allocations in the Jardine Catchment

Consumptive water is divided into three main reserves under the WPCY (Queensland Government, 2019) and its CYWMP (Water Policy, Department of Natural Resources, Mines and Energy, 2019). These are:

(i) The strategic reserve, which can be released for state purposes such as town water supply or projects of regional significance (25,000 ML), or for a project for the economic or social benefit of Aboriginal people or Torres Strait Islanders (s32(2) of the WPCY).

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

(iii) The Cape York Peninsula Heritage Area (CYPHA) reserve, which is specifically designated to support Aboriginal and Torres Strait Islander communities in achieving their economic and social aspirations (485,300 ML) (Burns & Turnour, 2024).

Within the Jardine catchment, the CYPHA reserve provides a significant allocation of 49,000 ML to support the economic and social aspirations of Aboriginal and Torres Strait Islander communities. Water from the CYPHA reserve can be granted to 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 & Turnour, 2024). Under the WPCY, eligible persons include:

(a) Trustees of Aboriginal Freehold Land (TAFs), which may be land trusts or corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSIA) holding land as trustees (Figure, 2), and

(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) (Figure 3), (Queensland Government, 2019).

The RNTBCs needs to be a trustee RNTBC not an agent RNTBC. Trustee RNTBCs can hold a CYPHA licence directly because they act as trustees of native title under the Native Title Act 1993 (Cwlth). In the case of agent RNTBCs the native title right is held by the Traditional Owners with the corporation acting as their agent. RNTBC holding native title in trust are therefore eligible persons, however an RNTBC acting as an agent does not meet the eligible person definition because it does not satisfy the definition of a native title holder under section 224 of the Native Title Act 1993 (Cwlth).

Licence volumes are calculated according to the proportion of eligible landholdings in a catchment. Where TAF and RNTBC interests overlap, section 19(1)(a) of the Protocol provides that TAFs have priority in the water rights (Water Policy, Department of Natural Resources, Mines and Energy, 2019) (Figure 4). Within the Jardine Catchment, the 49,000 ML of water is nominally allocated to eight entities with the majority of water held by Ipima Ikaya Aboriginal Corporation and Apudthama Land Trust in their roles as TAFs. Ipima Ikaya is eligible to hold water as a TAF and RNTBC (Table 1).

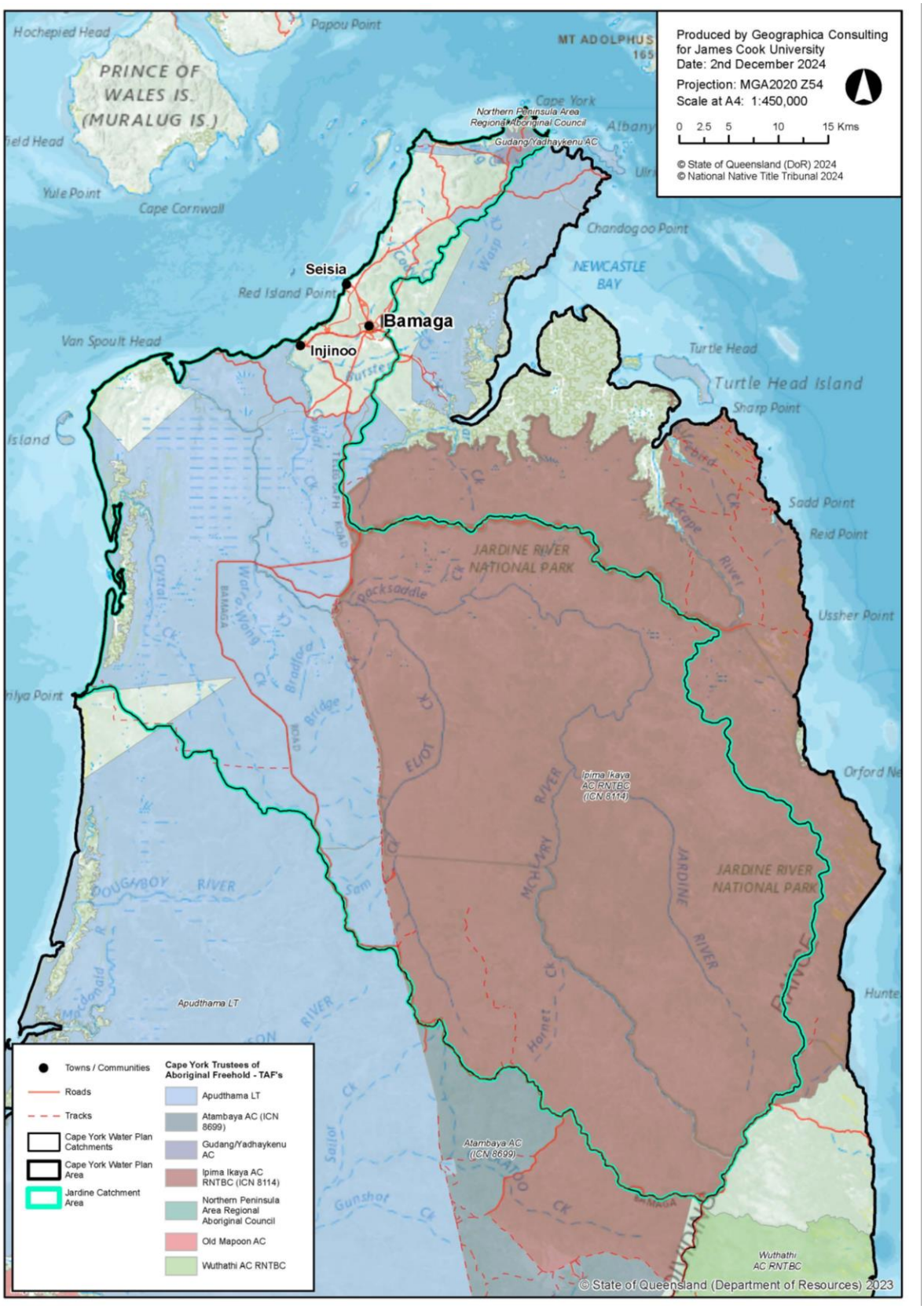


Figure 2. Trustees of Aboriginal Freehold Jardine Catchment

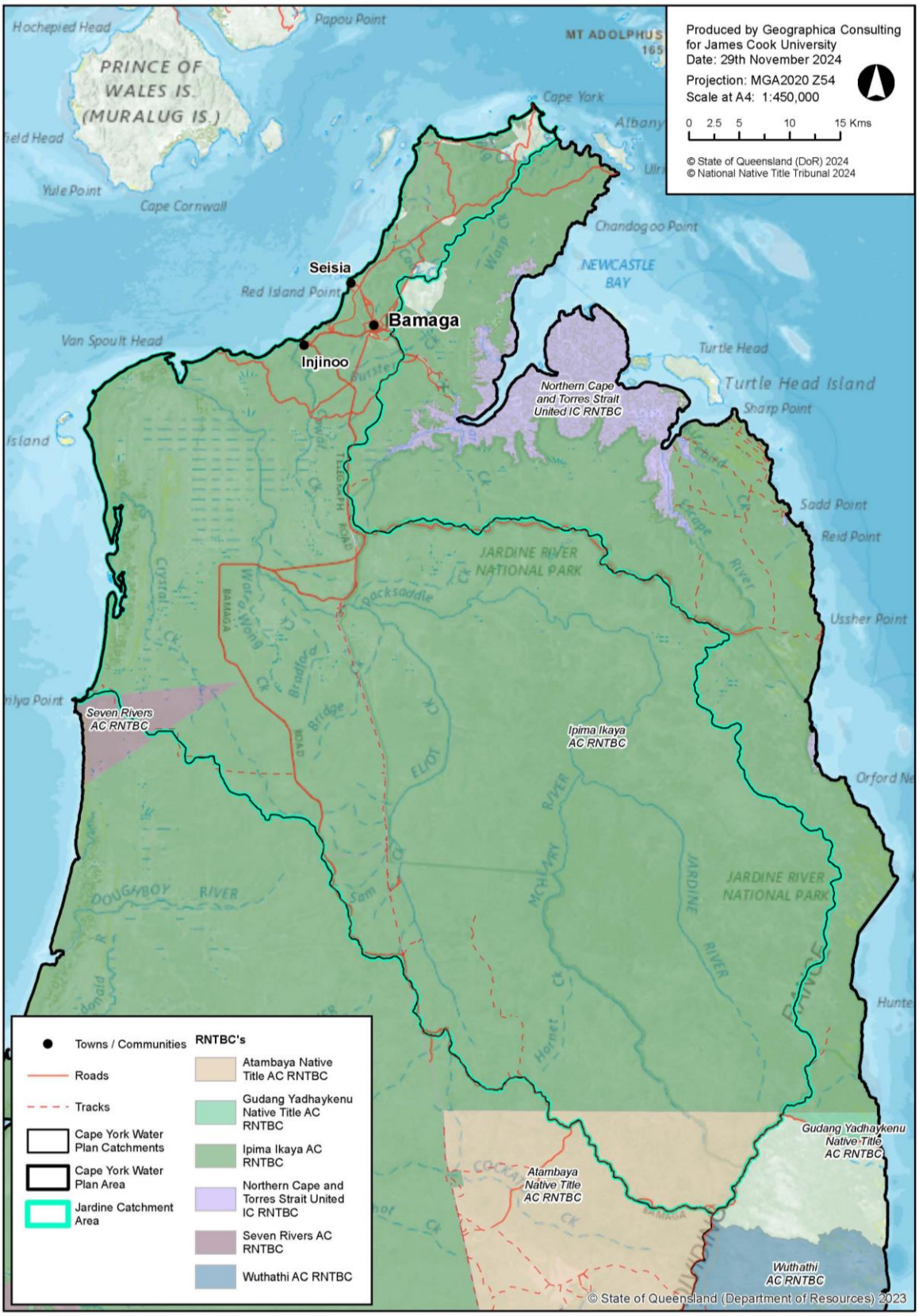


Figure 3. RNTBCs Jardine Catchment

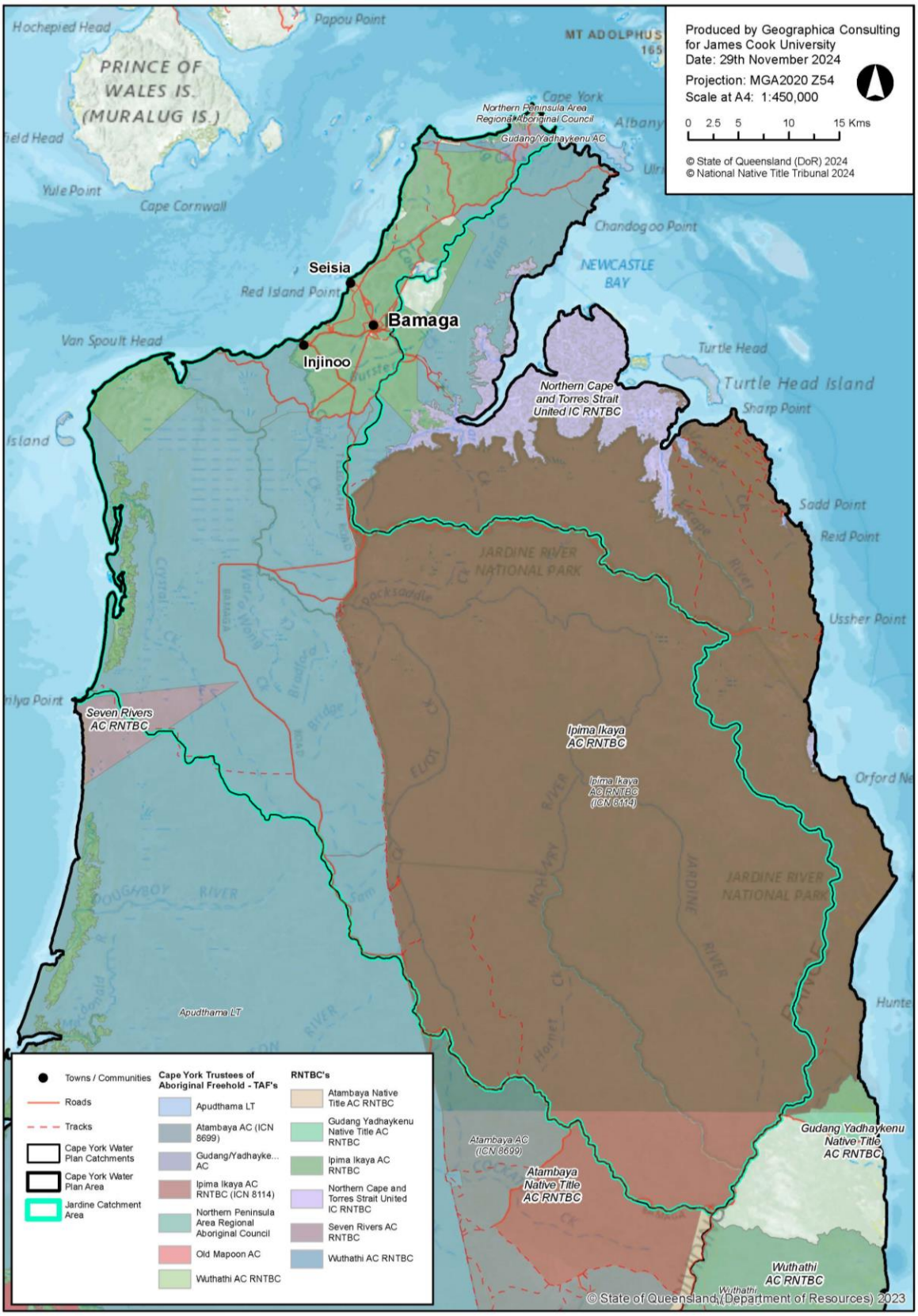


Figure 4. TAFs and RNTBCs overlayed in Jardine Catchment

Table 1. Jardine catchment - CYPHA reserve volume – 49,000ML

Jardine – Eligible person nominal CYPHA license volume			
Eligible person - Trustees of Aboriginal Freehold (TAFs)	**Eligible person - Native Title Holders (RNTBCs)**	**CYPHA water license volume held by eligible person in catchment (ML)**	**Nominal CYPHA volume entitlement (ML)[1,2]**
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
Yet to allocate to Eligible Person	*Yet to allocate to Eligible Person*		422



Fruit Bat Falls, Apudthama National Park

5. Economic opportunities

The Jardine catchment has cultural, environmental and economic values, that need to be balanced when considering opportunities for activating CYPHA water. There are also significant capacity and statutory constraints to realising opportunities (Burns and Turnour, 2025). Large scale irrigated agriculture is constrained by statutory restrictions, including the *Vegetation Management Act 1999* (VMA) (*Qld*), the availability of suitable soils, remoteness limiting access to markets and the need to protect the regions cultural and environmental values. The region has the potential to become a source of food and increase food security to the Northern Peninsula Area, Western Cape and Torres Strait through the development of smaller areas that are more intensely farmed including protected cropping. The catchment's reliable freshwater flows make it one of the few areas in Cape York suitable for aquaculture. Species that could be grown include barramundi (NSW Government, 2025), red-claw crayfish, and longfin eel (Business Queensland, 2025), with scope to integrate with agricultural food systems. Mining opportunities are limited to the Western parts of the catchment where there are exploration permits for silica mining. There may also be opportunities for new municipal water licences, as the community is growing and at times has experienced water restrictions. The Jardine Catchments intact ecosystems also provide potential for ecosystem service markets, including carbon farming, biodiversity projects, and wetland restoration, which could deliver benefits without intensive land clearing (Watertrust Australia, 2024).

5.1 Agriculture

Agriculture in the Jardine catchment began with cattle grazing in the 1860s. The regions low quality pastures and poor soils, distance from markets and lack of enabling infrastructure has seen this industry continue to decline in the Cape York Peninsula. There have been attempts to establish agriculture enterprises in Bamaga. The Bamaga farm has operated in the past to supply local retail outlets and communities with fresh produce. There have also been investigations into agroforestry including sandalwood on Cape York Peninsula (McGrath, 2010; TSRA, 2014).

5.1.1. Types of land

Australian land classification systems identify two main categories of agricultural land:

- Class A agricultural land – high-quality areas suitable for intensive and irrigated farming, such as vegetables and fruit orchards.
- Class B agricultural land – larger areas of moderate-quality land that could support grazing, orchards, agroforestry, and longer-term mixed farming ventures.

Previous high level land use planning investigations on Cape York Peninsula have mapped these classes of agriculture land in the Jardine Catchment (Figure 5). This mapping only provides an indication of potential opportunities for agriculture development with further investigations including more detailed soils mapping required prior to any proposed agriculture development could proceed.

There is 1,800 ha of Class A agriculture land and 30,300 ha of Class B agriculture land, held by the following Traditional Owner groups in the Jardine Catchment:

- Class A (1,800 ha):
  - Apudthama LT – 200 ha
  - Gudang/Yadhaykenu AC – 500 ha
  - Ipima Ikaya AC RNTBC – 1,000 ha

- Class B (30,300 ha):
  - Apudthama LT – 17,700 ha
  - Ipima Ikaya AC RNTBC – 10,100 ha
  - Seven Rivers AC RNTBC – 2,500 ha

Class A land located near Northern Peninsula Area (NPA) communities could be further investigated for opportunities for small-scale cropping close to communities.

5.1.2 Food security opportunity

The main opportunity for agriculture development in the Jardine Catchment is as a supplier of fresh food for the NPA, Torres Strait and Western Cape. The region has sufficient CYPHA reserves to support intensive farming and protected cropping. The Bamaga Farm which previously was run by Northern Peninsula Area Regional Council (NPARC) is now leased to a local Indigenous person who is seeking to develop it as an enterprise growing staple crops for example cassava, taro, sweet potato, yams, pumpkin, watermelon and papaya. These have previously successfully been grown in the region and are easier to grow than leafy greens (Interview informant, 2025).

There have been numerous attempts to establish farms in communities in the past usually as part of Community Development Employment programs. These have not been effectively integrated with local stores and have failed when government funding and support ended. If new agriculture enterprises are to be established to supply local produce to stores in the region, then new sustainable enterprise models need to be developed. The governance and statutory barriers to development as well as other capacity issues will also have to be addressed.

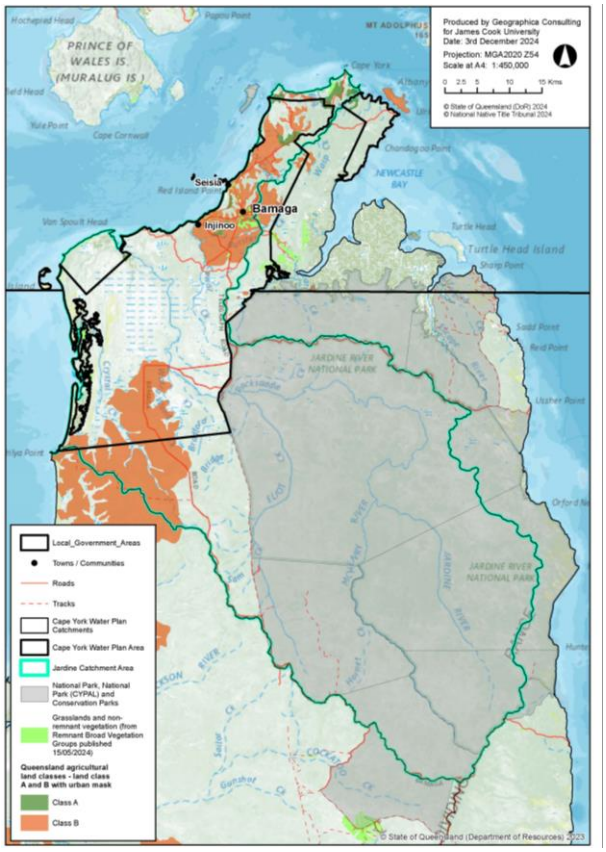


Figure 5. Arable Class A and B Land

5.2 Mining

Most of the Jardine catchment, except for the western coastal area, is highly constrained for mining, either as a Restricted Area under Schedule 3 of the *Mineral Resource Act 1989 (Qld)* or as a National Park. However, some mining lease and exploration permits and applications exists on the west coast, with some prospectivity for bauxite and silica. Overall, the mining potential of the Jardine catchment, and use of CYPHA water for this purpose is moderate to low (Figure 6).

According to Business Queensland (2025), there are two active Exploration Permit for Minerals (EPM) in the Jardine Catchment. EPM 28074 is held by Silica Australia Pty Ltd in the Northern Cape York region and EPM 27786 is held by Latsod Pty Ltd (Figure 7). Consultation meetings are currently underway with Native Title Holders whose traditional lands and waters are directly affected (CYLC, 2025). Any future mines will require water to operate and there may be opportunities for TAFs and RNTBCs to lease water to mining companies in the future.

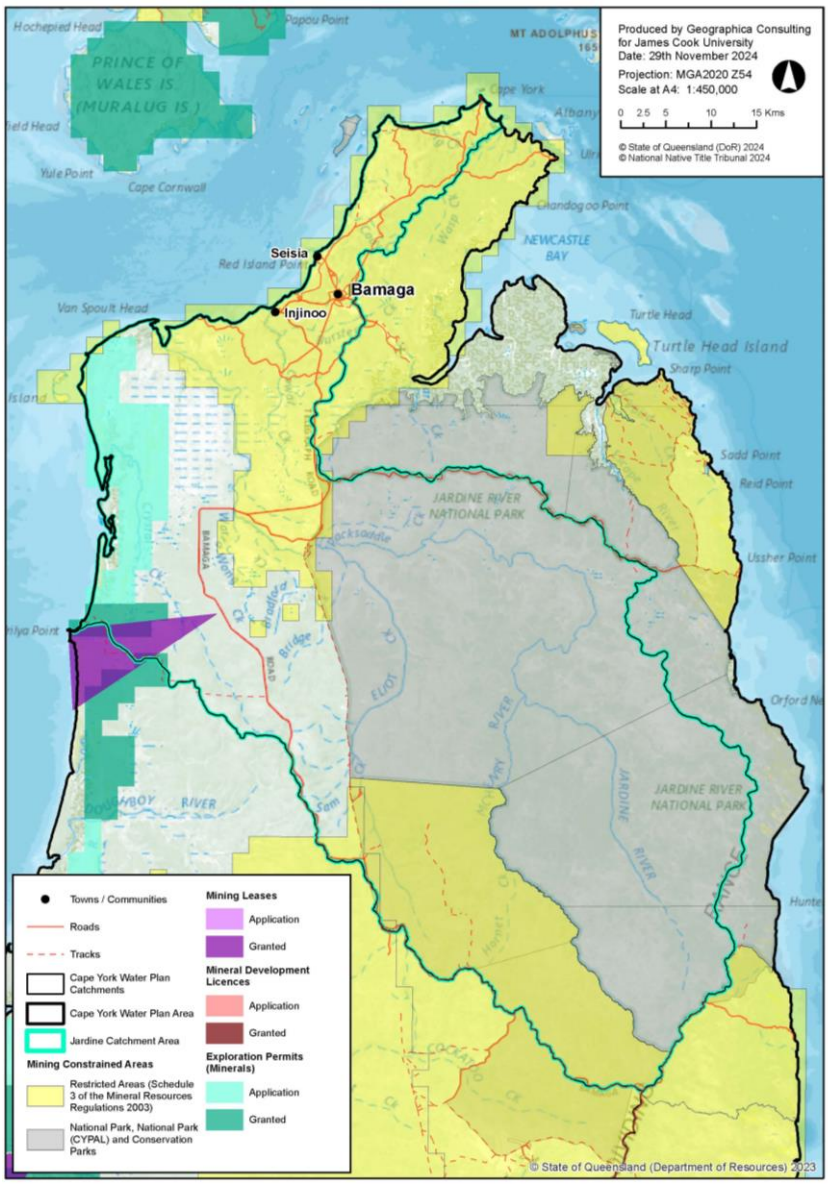


Figure 6. Mining and Exploration Licences and Restricted Areas

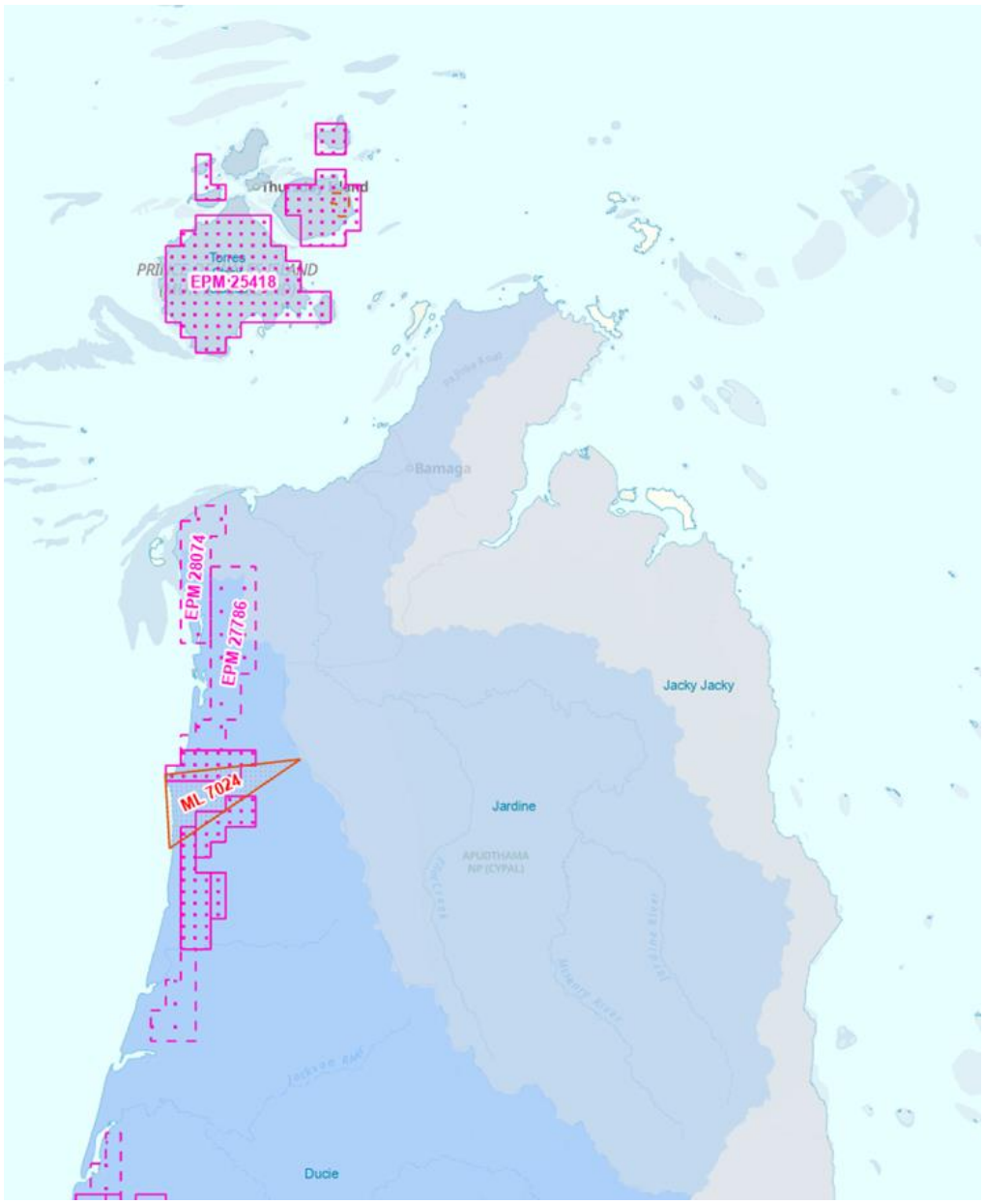


Figure 7. Active Mining Exploration Permits in West Coast Cape York

5.3 Ecosystem services

The Jardine Catchment has significant cultural and environmental values and while markets currently do not exist for ecosystem services payments for CYPHA water there maybe opportunities in the future. For example, the permanent and high-yielding flows of the Jardine River could allow for trial seasonal assignments of water allocations to enhance wetland and riparian health downstream, particularly in culturally significant fishing grounds near the mouth of the Jardine (Queensland Government, 2019). The CYWMP, in conjunction with the Water Regulation 2016, provides a framework that could enable ecosystem services to create new markets for CYPHA water. This approach would allow sustainable income generation for eligible TAFs and RNTBCs, if such mechanisms are developed.

6. Existing water licences and uses

The Northern Peninsular Area Regional Council holds the largest water licence in the Jardine for municipal purposes of 1,500 ML/year (Table 2). The NPARC licence municipal supplies drinking water and domestic needs for Bamaga, Seisia, New Mapoon, Injinoo, and Umagico. As well as water for council operations, schools, health and some business activities.

Gudang/Yadhaykenu Aboriginal Corporation (as Trustee) has a small-scale allocation tied to Williams Spring. It reflects First Nations direct access to freshwater sources within their country. The water licence also allows the construction of small scale water infrastructure (such as a dam or wall) to store spring water. It supports security of supply but must comply with environmental and cultural site protections. It also has a separate licence to divert water. This licence provides rights to alter or redirect natural flow from Williams Spring via channels. This can enable irrigation or channelling water to storage areas, though environmental safeguards apply.

Since the project began, the Seven Rivers Aboriginal Corporation RNTBC has applied for and been issued with a CYPHA water licence of 412 ML. This water licence can potentially be used for economic, cultural, and social purposes by the corporation and its members or leased to third parties. While the licence has been issued, under the plan water cannot be taken or leased until the corporation applies to the DLGWV Chief Executive to amend the licence to include a schedule of conditions to ensure that cultural heritage is protected, and take is sustainable and does not impact environmental values.

Table 2. Existing Water Licences from the Jardine Catchment

Client	Licence	Purpose	Issued Date	Expire Date	Catchment	Water Sources	Nominal Entitlement Per Water Year
Northern Peninsula Area Regional Council	Licence to take water	Urban	9/09/2020	30/06/2111	Jardine Catchment	Jardine River	1500.00 ML
Gudang/Yadhaykenu Aboriginal Corporation as Trustee	Licence to take water	Any	8/01/2020	30/06/2111	Jardine Catchment	Williams Spring	6.50 ML
Seven Rivers Aboriginal Corporation RNTBC	Licence to take water	CYPHA	27/02/2025	30/06/2111	Jardine Cape York Peninsula Heritage Area	Jardine Catchment - Watercourses, Overland Flow, Underground water	412.36 ML

Source: Queensland Government DLGWV Open Portal (2025)

7. Constraints to activating Water and Land Rights

Whilst The Jardine catchment has abundant wet season flows, land clearing restrictions, fragile soils, cost of production and distance from markets, governance complexity, and seasonal flow variability are major barriers to development and the activation of CYPHA water reserves discussed in this section (Burns & Turnour, 2024). The region is remote and lacks enabling infrastructure, which drives up transport, storage, and market access costs and limits economic viability for agriculture industries. Many areas also have poor soil fertility or are highly prone to erosion, requiring costly agronomic improvements (Burns & Turnour, 2024). Climatic extremes such as wet season flooding, cyclones, and prolonged dry season droughts further constrain reliable cropping. Biosecurity restrictions limit certain crops, such as bananas and sugarcane, while feral and native animals present additional threats to crops, wetlands, and infrastructure.

Legislative and regulatory constraints also limit development in the Jardine catchment, with the VMA classifying nearly all of Cape York as Category B remnant vegetation, restricting land clearing. The *Cape York Peninsula Heritage Act 2007 (Qld)* permits clearing only within ICUA, though none have been declared to date. Protected areas and Indigenous Protected Areas further exclude broadacre agriculture and large-scale water storage, while the *Planning Act 2016 (Qld)* and associated regional plans designate Strategic Environmental Areas that prohibit intensive agriculture in sensitive zones. In addition, the *Environment Protection and Biodiversity Conservation Act (EPBC) 1999 (Cth)* requires federal approvals for projects likely to impact Matters of National Environmental Significance, adding another layer of regulation (Burns & Turnour, 2024). In the Jardine Catchment there are a number of threatened species and ecological communities including the southern cassowary (Casuarius casuarius johnsonii), Cape York silkworm (Anomalopus pluto) and the endangered little tern (Sternula albifrons). Additionally, there are wetland of international importance including for migratory birds and the potential for World Heritage listing of the region's values (DNPRSR, 2013).

Governance and institutional factors also constrain development in the Jardine catchment, where overlapping responsibilities between TAFs and RNTBCs create complex land and water governance arrangements. It is best practice to obtain the Free, Prior and Informed Consent (FPIC) from Traditional Owners when making decisions about water rights. Most Aboriginal corporations, however, have limited organisational and technical capacity to ensure the FPIC of Traditional Owners, or to manage water licences, compliance, and project implementation, further restricting their ability to activate available water rights (Burns & Turnour, 2024).

Water specific constraints in the Jardine catchment include limited allocations, with only 2.5% of median flows available under the WPCY in order to preserve cultural and ecological values. Although the Jardine River flows year round, most other watercourses in the region dry out, restricting opportunities for extraction during the dry season (Burns & Turnour, 2024). Storage is also a major challenge, with the absence of dams, high evaporation rates, and the high cost of engineering works making it difficult to secure reliable water supplies for dry season use.

The implications of these constraints are that large scale agriculture is unlikely in the Jardine catchment due to regulatory barriers and biophysical limitations, while small scale, community led projects such as irrigated horticulture are more feasible if capacity is built, and local markets established. Indigenous rights to water under the CYPHA reserve provide an important strategic foundation, but governance complexity and limited capacity must be addressed to realise any opportunities. Unlocking the region's potential will require policy reforms and targeted investment in culturally appropriate approaches, water storage solutions, and Indigenous capacity-building initiatives.

8. Case study workshop and interviews:

To further inform the case study a workshop was held in the NPA with Indigenous representatives of RNTBCs and TAFs eligible to hold water licences in the Jardine Catchment. Following this further semi structured interviews were undertaken with Indigenous representatives and end user stakeholders including mining and agriculture. The workshop and interviews were thematically analysed to identify key themes.

8.1. Workshop and interview methodology

The project employed an Indigenous Engagement Consultant to support engagement and to manage logistics for the workshop and interviews. He corresponded and spoke with eligible TAFs and RNTBCs with water rights in the Jardine catchment inviting them to participate in the project. The project leader also travelled to the NPA twice prior to the workshop to meet with and discuss the project with First Nation representatives from the region.

Despite the efforts of the Indigenous Engagement Consultant and visits to the NPA the workshop was impacted by a number of issues and other commitments in the community including ongoing sorry business, resulting in the workshops being poorly attended with only four participants (Table 3). Although it was also difficult to secure interviews with organisation and clan group representatives, a total of eleven interviews were conducted (Table 4). A key issue identified through the engagement process and interviews is the number of meetings that RNTBCs, TAFs and local Indigenous community leaders are asked to engage in by external parties including researchers. It was difficult to schedule a date for the workshop because of this and when the date was set another major community meeting was subsequently organised on the same day by a mining trust that attracted more participants.

Table 3. Jardine Catchment Workshop Participants

Number	Organisation Affiliation	Clan affiliation
Participant 1	Ipima Ikaya AC RNTBC	Angkamuthi
Participant 2	GYAC / Apudthama LT	Gudang / Yadhaykenu
Participant 3	Ipima Ikaya AC RNTBC	Angamuthu
Participant 4	Seven Rivers AC RNTBC	Angkamuthi

Table 4. Interview Informants Organisational, Clan and Stakeholder Interests

Number	Organisation	Clan	Stakeholder Interest
Informant 1	Apudthama Land Trust / Atambaya AC RNTBC	Atambaya	Contracting business and community services
Informant 2	Ipima Ikaya / Apudthama	Atambaya	Cultural Land and Sea Management
Informant 3	Apudthama Land Trust	Gudang / Yadhaykenu	Cultural Land and Sea Management
Informant 4	Ipima Ikaya AC RNTBC	Angkamuthi	Native Title Administration
Informant 5	Apudthama Land Trust	Nil	Land and Sea Management
Informant 6	Ipima Ikaya	Nil	RNTBC
Informant 7	Seven Rivers AC RNTBC	Nil	RNTBC
Informant 8	NPAC	Nil	Local Government
Informant 9	NPAC	Nil	Local Government
Informant 10	Business Owner	Nil	Agriculture
Informant 11	Mine	Nil	Mining

Despite the difficulty in securing strong workshop participation and interviews fifteen representatives from a range of RNTBC, Land Trust, Business, Minning and Local Government were consulted and the responses from informants at both the workshop and interviews were consistent. These also reflected discussions in the First Nation Reference Group and issues identified in the earlier desk top analysis undertaken for the situation analysis report. The triangulation of data from these three sources gives the research team high confidence in the accuracy of the themes identified and discuss.

8.2. Workshop and interview themes

Detailed notes from the workshop and interviews were thematically analysed. Themes are listed and discussed (Table 5) and whether the theme was discussed at the workshop or as part of an interview is identified. Workshop and interview participants identified similar opportunities and challenges to activating Indigenous water rights as well as the proposed solutions to the challenges.

Table 5. Workshop and Interview Themes

Themes	Description	Discussed in Workshop	Number of Informants who discussed out of 11
1. Lack of understanding of the Cape York Water Plan 2019	Workshop and interview participants all had limited understanding of the Cape York Water Plan and how it operates.	Yes	10
2. Governance complexity inhibits development	Workshop and interview participants identified the complex governance arrangements as a barrier to activating Indigenous water rights under the CYWP. Issues discussed included: over lapping RNTBCs and TAF boundaries; disputes between clan groups over boundaries; and tribal boundaries not aligning with corporation boundaries making decision making complex and difficult.	Yes	11
3. Lack of governance capacity of Aboriginal corporations	RNTBCS and TAFs lack corporate governance capacity to managed native title, land, and water rights. They did not have the resources to effectively consult with their members and Traditional Owners to make decisions about land and water rights; They lacked core corporate governance policies and procedures to guide management and decision making.	Yes	9
4. Importance of cultural authority in decision making	Workshop and interview participants emphasized the importance of cultural authority and culturally informed decision making in relation to water rights. It was generally agreed that decisions about water rights should be made by the clan group of the land on which the water was going to be used. Water for a project should therefore be sourced from a CYPHA allocation approved by the clan group with interests in the land on which it is used. It is important therefore that RNTBCs and TAFs have the capacity to consult with clan groups about land and water rights and respect cultural decision-making processes.	Yes	9
5. FPIC Decision Making	Participants emphasised that Free, Prior and Informed Consent (FPIC) is essential for inclusive decision-making and for upholding cultural protocols. However, they noted that many corporations currently lack the capacity and understanding needed to implement FPIC effectively, or to recognise how it is becoming an integral part of government policy.	Yes	9
6. Opportunities for Economic Development	Workshop and interview participants identified agriculture, mining, drinking water (bottled for tourist) and ecosystem services as opportunities for the use of CYPHA water reserves.	Yes	11
7. Protection and	The workshop and interviews highlighted that Country holds deep cultural and environmental significance for Traditional Owners, and that its protection and	Yes	7

management of country	management must be central considerations in any development activities.		
8. Consultation and meeting overload	Interview participants discussed the considerable number of meetings and consultations that RNTBCs and TAFs were expected to be involved in with limited capacity. This was given as a reason for poor attendance at the workshop.	Yes	11
9. Planning	Interview informants discussed the importance of planning. Some identified the need for planning to be holistic rather than the current piece meal approach to development 'block by block' 'clan by clan.' There was an emphasis on the need for cultural governance to inform planning. The need for several types of planning was discussed by different interview informants including: a master plan for the towns, community development plans for clans, strategic plans for RNTBCs and TAFs and business plans for enterprises. Interviews discussed how taking a comprehensive approach to planning would require a sustained effort over many years to develop and then implement but this would produce better outcomes than the current piece meal approach.	Yes	10
10. Protocols for decision making	The development of decision-making protocols that respected cultural governance and balanced this with western corporate governance and planning was identified as important to enable decisions to be made about land and water rights. One interviewee said that these protocols should be incorporated into rule books.	Yes	11
11. Benefit sharing	Water and land resources need to be equitably distributed, with profits and compensation for resource use shared transparently.	Yes	9
12. Regional development	Emphasis should be placed on regional development outcomes from activating water for example infrastructure development and employment outcomes.	Yes	1
13. Water security	End users emphasized the need for water security to support investments in development projects while Indigenous community representatives at the workshop and interviews discussed water security in terms of available supplies and quality for municipal purposes.	Yes, municipal supply	3
14. Reliance on voluntarism	The over reliance on voluntary directors and community participation was identified as a barrier to development. Directors of TAFs and RNTBCs are generally not paid but take on significant responsibilities and time commitments if they are to do their role effectively. Remunerating directors would recognise this and attracted people with greater capacity.	No	1

8.3. Discussion

There is a general lack of understanding by Indigenous peoples in the NPA of their water rights and related opportunities and constraints. No workshop participants or interview informants had a good understanding of how the WPCY worked. Non Indigenous corporate end user stakeholders had greater understanding but were using professional advice to navigate the plan. The water plan and protocol are therefore not easy to understand and navigate by those who hold the water rights or end users. While the end users were focused on access and certainty for commercial purposes Indigenous rights holders were more concerned with cultural recognition in decision making about water rights and for equitable and transparent sharing of benefits from water rights.

Complex governance and capacity are a barrier. Indigenous representatives of TAFs and RNTBCs who hold water rights and end user stakeholders all identified governance complexity and the capacity of corporations as a barrier to the activation of water rights for development. The situation in relation to water was similar to the difficulties faced in making decisions about land. RNTBCs and TAFs were struggling to manage and align western corporate governance with authoritative cultural decision making processes. Despite the foundational owners of land and water rights being identified as members of the four clan groups Angkamuthi, Gudang, Yadhaykenu and Atambaya, most land and water rights are held collectively in Apudthama Land Trust and Ipima Ikaya RNTBC. The boards of these corporations are made up of representatives of these clan groups. Under Aboriginal Law people cannot speak for other people's country and there are disputes between tribal groups about boundaries. It is difficult therefore for Indigenous people to make decisions within western corporate RNTBC and TAF structures where Directors traditionally act independently and work together in the broader interests of the corporation. Directors within Apudthama and Ipima Ikaya are firstly representatives of their tribal groups, and these corporations lack capacity and protocols or policies or procedures to support decision making about land or water rights. One informant also emphasised that directors of these corporations were volunteers and that there was an over reliance on voluntarism within RNTBCs and TAFs given the level of responsibility, complexity and time commitments required to do the role effectively.

A need to agree boundaries and protocols at the clan level. There was widespread recognition of the issues of governance complexity and a general agreement within Indigenous informants that they needed to agree boundaries between clans and establish protocols to make decisions for development to occur. However, while all Indigenous informants discussed the issues around boundary disputes and how these were preventing progress there were differing opinions in relation to how these should be resolved. There was no clear agreement in relation to whether land and water rights should be split into different clan based corporations or continue to be collectively held within a corporation with decision making protocols established. Most informants, however, expressed the view that once boundaries were resolved land and water rights should be transferred into separate clan based entities to be managed. The view, however, was also expressed by at least one Indigenous informant that when they 'grew up in the NPA' that everyone belonged to one community. They felt that disputes over land and water resources related to money and that clans were losing a focus on maintaining their culture as a result. The informant said that maintaining clan identity was important and decisions about land and water use should be made by the clan on which a project is proposed but that rights should be collectively held and benefit the community broadly.

Indigenous property rights without corporate and cultural governance including agreed decision-making protocols leads to disputes preventing sustainable development and impacting cultural continuity. The case study demonstrates that a lack of corporate and cultural governance capacity and related decision making protocols limits the opportunity to generate an income from Indigenous land and water property rights can lead to conflict between Indigenous

peoples undermining Aboriginal and Torres Strait Islander culture. This occurs because there remains boundary disputes between clans over land and water interests. Where land and water rights are collectively held by all clans in a corporation it can disrupt the functioning of the corporation where decisions need to be made about disputed areas. There is also the potential for a project to seek to source water from a CYPHA eligible party that does not represent the clan on which the development is proposed or where there are disputed interests. Workshop participants and interview informants all agreed the importance of cultural authority in decision making about land and water rights creating a further source of conflict where this to arise. These are complex interfamily, clan and cultural disputes arising as a result of colonisation. They will require external facilitation and governance support to resolve.

The transactional nature of development and consultations undermines local capacity to resolve disputes. Informants said that the ability for Traditional Owners to focus on and resolve these disputes is undermined by the number of meetings and consultations they are asked to be engaged in including this project. Most investment in the region is by governments who are requiring First Nation consultation and engagement in projects. While the intention to consult is a positive one, this is being done in a siloed transactional project-by-project basis without an understanding of the governance complexity or a consideration of broader community and regional priorities.

Regional and sub regional priorities need to be identified. Informants discussed the need for community development plans and a master plan for communities which identified regional priorities. The need for business plans at the enterprise scale was also discussed. A strategic investment in governance capacity to support decision making and community, business and regional planning is critical to support sustainable development including the activation of water rights. The current governance and planning system in discrete Indigenous communities in Queensland has been described previously as a 'bureaucratic maze' (Queensland Productivity Commission, 2018).

FPIC is best practice. Although not a statutory obligation under the WPCY ensuring the FPIC of the clan group who are the Traditional Owners of the land on which a proposed development is to take place is considered best practice (DCCEEW, 2025; HRA, 2019). Indigenous workshop participants and interview informants strongly supported the use of FPIC in decision making about water rights. FPIC is a principle under international human rights law that gives Indigenous Peoples the right to give or withhold consent to projects that may affect their lands, territories, resources, cultural heritage, or livelihoods (UNDRIP, 2007). It is increasingly recognized as an ethical obligation in consultations with Indigenous peoples regarding development projects and cultural heritage (DCCEEW, 2025). In practice, FPIC is both a process (ensuring inclusive, respectful engagement) and a safeguard (protecting Indigenous self-determination). Its role and enforcement can vary depending on the context, the jurisdiction, and evolving legislation. If properly applied FPIC is a mechanism that can empower Indigenous peoples to make decisions about their water rights. Table 6 sets out FPIC principles and how they should be applied to engagement with Indigenous peoples (DCCEEW, 2025).

Table 6. DCCEEW FPIC Guidelines 2025

Principle	Definition	Principle applies to engagement
Free	Decisions free from force, intimidation, manipulation or coercion.	Always
Prior	No decisions expected before sufficient time has been had for consideration.	Always
Informed	Decisions informed by accessible and comprehensible information.	Always
Consent	Decisions – made by those affected by an action through customary decision-making processes. Where consent is given, it reflects an agreement to participate or proceed.	Subject to legislative context

Source: DCCEEW

In the context of collectively held rights like land and water investments in good governance and planning is a prerequisite to achieving FPIC. The need for a holistic approach to resolve governance issues and for community development and master plans for development to occur were identified by workshop participants and Indigenous and non-Indigenous interview informants. Addressing these underlying governance issues and supporting the development of community development plans by clan groups and corporations and a master plan for the region would take longer to achieve. It was identified however, as a much more effective and in the longer-term efficient approach to development including the activation of Indigenous water rights than the current siloed piece meal project by project approach to development.

Agriculture for food security and bottling of water for retail sale were currently the main opportunities identified. The old Bamaga farm is now leased by NPARC to a local Indigenous man who aspires to develop it and grow staple crops to supply the community. These staples had been successfully grown previously including sweet potato, cassava, taro, pumpkin, pawpaw and watermelon. Leafy greens were identified as more difficult to grow and not staples of the community (McGrath, 2010; TSRA, 2014).

The bottling and sale of CYPHA water was identified as a potential opportunity during the workshop. The workshop informants discussed the fact that water restrictions were at times in place and that there had been a need to boil water in NPA communities. This could have been due to high water use by the population and or aging infrastructure that was failing to maintain drinking water quality standards and leaking pipes. Old asbestos pipes were in the process of being replaced connecting two communities. There were therefore concerns raised in the workshop about municipal water quality and the need to at times purchase bottled water. There was also discussion about the high number of tourists visiting the region during the dry season and the potential opportunity to bottle and sell water to these visitors and through local retail stores for communities. The promotion and use of local bottled water emerged as an opportunity worth further investigation. It would be important to recycle and manage any additional plastic waste produced.

Ecosystem services were identified as a community development opportunity including from Indigenous water rights. Informants discussed the importance of country to culture and the need to protect and manage sacred sites and the environment. Examples were given of significant numbers of threatened species in the region and that important river systems and wetlands needed to be maintained. This was seen as the responsibility of each tribal group on their country and supported by ranger groups. An Indigenous ranger program funded by the Australian Government

was currently operating out of the NPARC. Planning had been undertaken to transition this to Apudthama Land Trust. Ipima Ikaya was also managing rangers funded by the Queensland Parks and Wildlife Service and the Angkamuthi Tribal Aboriginal Corporation had recently received Australian Government funding to establish a ranger group. Indigenous land and sea ranger funding is to support cultural and environmental management and is therefore intrinsically linked to the management of country including water by clan groups. Like other government programmatic investments, however, there seemed to be no strategic consideration of how these Indigenous ranger program investments supported or hindered clan governance and decision making about country. Federal and state ranger programs were being run in isolation from each other often through competitive programmatic funding models.

Water not sufficient for mining. Mining informants wanted to secure new water licences for beneficiation of ore. There is an existing bauxite lease and an approved and applications for EPM for silica resources in the Jardine Catchment that would require water reserves if they were to be approved for development. Mining stakeholders said that current CYPHA water volumes would not be sufficient for mining operations that required gigalitres of water. They expressed concerns about the difficulty of engagement with CYPHA water holders due to the complexity of the governance environment and capacity of the corporations eligible to hold CYPHA licences. This made securing water difficult, and they needed certainty to attract investors. They had hoped to access the strategic reserve but were being directed back to the CYPHA reserve providing an opportunity for eligible RNTBCs and TAFs to lease water where they supported mining developments. The informant, however, said that they had been trying for two years to engage with eligible RNTBCs and TAFs about their water licences without any success.

Benefits need to be shared equitably and transparently. There was general agreement that Traditional Owners of the country on which development was to occur needed to be the beneficiaries of that development including from water rights and that benefits needed to be shared equitably and transparently. Achieving this is obviously a significant challenge given the governance complexity and capacity issues discussed earlier. Therefore, unless there is a long term strategic investment by governments in working with Indigenous leaders and their corporations to resolve these governance issues and better planning, TAFs and RNTBCs will struggle to make decisions about their CYPHA reserves. This is preventing their beneficiaries from using these resources or leasing them to third parties. Addressing these governance and planning issues is critical to activating CYPHA water reserves or development more generally in the Jardine Catchment and the NPA region. Similar issues were identified in other parts of Cape York Peninsula in the situation analysis report and a region wide approach to community and economic development is need by all levels of government working with Indigenous communities and First Nation tribal groups and their land and water holding corporations.



Jardine River, Lakefield National Park

9. Options to activate Indigenous Water Rights

This section further summarises the corporate and clan governance complexity issues prior to discussing a series of options for reform to address this complexity. It then considers other statutory reforms that could be undertaken to enable the activation of Indigenous water rights. While the workshop and interviews emphasised the importance of governance reforms to activating water rights, even if this is achieved other statutory reforms are needed for CYPHA water to become available and used. Recommendations are therefore made to address First Nation governance capacity and statutory reforms needed to activate Indigenous water rights within the WPCY.

9.1 FPIC Decision making by TAFs and RNTBCs

The workshop and interviews with Indigenous peoples in the Jardine Catchment identified the catchment as the traditional lands of four main clan groups the Angkamuthi, Atambaya, Gudang and Yadhaykenu peoples. There are significant challenges, however, in achieving FPIC decision making in the Jardine Catchment as the governance context for decision making is complex and contested. The RNTBCs and TAFs have limited resources to support engagement with clans and their members to ensure FPIC decision making about water rights. The boundaries of TAFs and RNTBCs do not align with clan boundaries with most of the land and water rights in the Jardine catchment held collectively by the four clans within the Ipima Ikaya Aboriginal Corporation RNTBC and Apudthama Land Trust. As discussed, there are unresolved disputes between, and within, clans over clan boundaries and no protocols within these corporations to assist in making decisions and resolving disputes. This creates challenges for Directors who represent the different clans on the boards of these corporations.

These eligible RNTBCs and TAFs are governed in line with Australian and Queensland government corporation law where Directors make decisions collectively as a board. Under Aboriginal law a person cannot speak for another person's country. There is also a significant population of Torres Strait Islander peoples living in the catchment who as 'aboriginal people particularly concerned with the land' pursuant to s. 3 of the *Aboriginal Land Act 1991* (Qld) have statutory water rights as members of the Apudthama Land Trust. Under an FPIC customary decision making processes, they would not be considered to have authority to make decision in relation to customary water rights as they are not traditional owners of the country. This adds a further layer to the significant governance complexity when seeking to make decisions about water rights under the WPCY as Directors are required to consider their interests under the Aboriginal Land Act 1991 (Qld).

There are effectively two laws guiding decision making about Indigenous water rights when following an FPIC process. The customary decision-making processes within clan groups who hold water rights and the statutory decision-making processes of Aboriginal corporations as trustees of water rights under the WPCY. There is therefore a requirement for a two stage process under the WPCY to achieve best practice FPIC decision making about Indigenous water rights through a customary decision making process and to ensure Directors can meet statutory decision making responsibilities.

Firstly, there is a need to gain the consent of the affected clan group/s to activate a water right and then for the eligible party which is the TAF or RNTBCs to collectively agree and implement that decision. Assuming that revenue is generated through the activation of the water right then there would also need to be an agreement about the use or the sharing of any benefits. There is a need for governance reforms to facilitate this two stage process of decision making and four options are discussed in relation to this in the Jardine catchment drawn from the workshop and interview discussions. Option 1 and 2 would assist in facilitating Option 3 and 4 which would require more time

and investment to be achieved. These options could be adopted progressively leading to more informed and streamlined decision making. Water and land rights are intrinsically linked so these reforms provide broader benefits in relation to community and economic development.

9.1.1 Option 1. Invest long term in a place-based capacity building facility for RNTBCs, TAFs and Clans

Governance complexity and capacity is a key issue that Indigenous and non-Indigenous stakeholders identified as holding back community and economic development in the region. These governance issues are complex and there is a need for a long term investment in a capacity building facility for RNTBCs, TAFs and clans including to manage country and resolve disputes enabling community and economic development in the region. An investment in a place base capacity building facility would provide a range of services and facilitate access to services from government and non-government providers to support:

- Corporation and clan governance and management capacity building.
- Facilitation and dispute resolution for corporations and clans.
- Planning services for community development, country-based plans, master and business planning.
- Infrastructure including offices, ranger sheds and other plant and equipment needed to support on country land and water management.

State and federal government investment would be needed to establish and maintain governance and planning capacity building services over at least a five-to-ten-year period. Indigenous local governments are also foundational institutions and their capacity to engage with these First Nation institutions will also be critical for planning and development and needs to be considered in the design of the facility. Building corporation, clan and community leaders' capacity would facilitate decision making about options 2, 3 and 4.

9.1.2 Option 2. Establish and resource an FPIC decision making protocol for Land and Water Rights

The development of a protocol for FPIC decision making by eligible TAFs and RNTBCs would involve agreeing clear boundaries between clan group estates and where areas remained disputed or were considered shared areas. Individual clans would then agree their customary decision making process in relation to their estates and how any benefits would need to be shared. There would also need to be a protocol for resolving disputes and benefit sharing over shared or disputed areas. These protocols would be incorporated into TAFs and RNTBCs rule books and organisational policy and procedures to ensure Directors and the corporations administrations follow an FPIC decision making process. This would effectively establish the two stage decision making process discussed earlier where a clan group on which a development was to take place would follow their agreed decision making processes. These decisions would then be actioned by the relevant RNTBC and TAF who hold the statutory right in trust. If an FPIC decision making process was established and resourced water licence and leasing applications could be assessed against whether this agreed protocol had been followed by the eligible corporation.

9.1.3 Option 3. Rationalisation of eligible TAFs and RNTBCs through amalgamation

Most of the CYPHA reserve water in the Jardine Catchment is held by two Aboriginal Corporations Apudthama Land Trust and Ipima Ikaya RNTBC who as TAFs under the Aboriginal Land Act have responsibilities to the same people. Ipima Ikaya RNTBC also has responsibilities to Traditional Owners as trustee of their native title rights which overlays Apudthama Land Trust Aboriginal

Freehold. This means any development on Apudthama Aboriginal freehold will need to be considered by the Ipima Ikaya RNTBC. There is currently a lack of capacity within either corporation to run an effective FPIC process to make decisions about country. Rationalising these corporations into one entity and using the FPIC decision making protocols detailed in option 2 could streamline decision making about land and native title rights in relation to development. The four clan groups would still be represented on an amalgamated entity with a streamlined administration. The economies of scale created by amalgamating into a single entity would provide more resources for the governance and administration of the organisations corporate and customary decision-making processes.

9.1.4 Option 4. Rationalisation of eligible TAFs and RNTBCs through alignment with Clan boundaries

If clan group boundaries could be agreed or determined, then the fourth option would be to split land and water rights up into distinct clan based Aboriginal Corporations who would have responsibility for managing each clan groups statutory land and native title rights and ensuring FPIC decision making in relation to their country. While this could be the most difficult to achieve requiring all clan groups to agree boundaries and to split country up into three or possibly four entities it would streamline decision making and make for more cohesive planning and development. Individual corporations would still need FPIC protocols incorporating customary decision making but this would only be for their own clan's country.

Within each option there is the issue of the recognition of the interests of historical Indigenous peoples who have moved to the area because of colonisation. These people are described under the Aboriginal Land Act (ALA) as 'aboriginal people particularly concerned with the land' and would include the Torres Strait population that has been living in the NPA for several generations. Under the ALA they have water rights although there seems to be a recognition by Indigenous people in the workshop and interviews that it should be Traditional Owners within clans who should be the main decision makers and beneficiaries in relation to water rights.

Recommendation 1: There is a need for a significant long-term investment in First Nation institutional capacity building to support clan groups work through the governance complexity within the Jardine Catchment and support FPIC decision making about water rights.

9.2 Statutory Governance systems reforms to activate water rights

There are also significant statutory barriers within the Jardine catchment that would currently prevent development even if governance complexity was reduced and capacity built to make decisions about water rights. These include federal and state laws designed to protect the environment and statutory planning laws. There is therefore a need for reforms to address these statutory barriers to development.

9.2.1 Operationalise the economic development mechanisms in the Cape York Peninsula Heritage Act (2007) including Indigenous Community Use Areas (ICUA).

The *Cape York Peninsula Heritage Act 2007 (Qld)* was introduced to protect the outstanding natural and cultural heritage of Cape York Peninsula while supporting sustainable economic development. It provides a framework to identify and conserve areas of international, national, and state significance, particularly recognising Indigenous cultural values.

- The Act establishes processes for joint management of national parks with Traditional Owners, enabling return of ownership of certain lands to Aboriginal people while ensuring conservation outcomes.

- It was also designed to support land use planning, regional development, and conservation agreements so that cultural heritage protection is balanced with opportunities for industries such as tourism, grazing, and mining.

However, to date only the conservation purposes of the Act have been implemented with statutory processes to support Indigenous community development not operationalised. The Act for example recognises that Indigenous people's aspirations for development are constrained due to the VMA 1999 (Qld). The *Cape York Peninsula Heritage Act* 2007 (Qld) therefore included provisions for the establishment of ICUA where vegetation clearing and development could occur. An ICUA is a designation under the Act that allows land on Cape York Peninsula to be set aside specifically for Aboriginal community purposes. These areas can support housing, infrastructure, services, and other activities that meet the social and economic needs of Aboriginal communities. The ICUA is supposed to recognise that while large parts of the Cape are protected for conservation and cultural heritage, communities also need secure land for day-to-day living and development.

There is yet to be an ICUA declared in Cape York Peninsula as the statutory mechanisms to establish an ICUA are not in place. The declaration of an ICUA may be made by the Government 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.
- 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 Vegetation Management Act 1989 (Qld) (VMA) continue to apply across Cape York.

It is almost 20 years since the CYPHA was gazetted and a review of the Act and provisions to balance development with conservation outcomes including to enable ICUA to be established could help facilitate development and the activation of CYPHA reserves by RNTBCs and TAFs.

Recommendation 2: That the government review provisions within the Cape York Peninsula Heritage Act to gazette Indigenous Community Use Areas to consider how they can be operationalised to facilitate First Nation lead development.

9.2.2 Statutory development assessment and planning reforms.

There are currently multiple development assessment and statutory planning processes that are failing to protect the environment or facilitate sustainable economic development. Any major development in the Jardine Catchment would require assessment under the Environment Protection

Biodiversity Conservation Act (EPBC) 1999 (Cwth) as there are several species or ecosystems in the catchment of national environmental significance. The Samuel's review of the EPBC Act (Samuel, 2020) identified the need for reforms including regional planning to better protect the environment. Local government land use plans also currently zone areas outside of the community urban footprints for environmental protection limiting development. The VMA as discussed previously and state planning policies under the Planning Act 2016 (Qld) will similarly require detail planning and assessments as part of any proposed development. These environmental protections therefore limit development in the region and the activation of CYPHA water rights. Secure land tenure is also required for development which generally requires an Indigenous Land Use Agreement to be negotiated with Traditional Owners and a lease established. Given the Indigenous governance complexity discussed earlier this is an extremely expensive and time-consuming exercise for individual Indigenous and non-Indigenous enterprises.

These development and assessment process are costly to undertake and TAFs and RNTBCs already have limited capacity to undertake their core statutory functions let alone support Indigenous aspirations for development of their land and water rights. This means that outside of the urban footprint only large mining projects could afford to undertake the statutory development approval process. For Indigenous community development to occur government investment and support is required.

Workshop and interview informants identified the importance of the region's cultural and environmental values and the need for community and regional planning to identify areas suitable for development. An investment in these planning process building on investments in governance capacity discussed earlier are therefore also required to support Indigenous lead development and the activation of CYPHA water reserves.

Recommendation 3: That a significant investment in subregional planning be undertaken in the NPA building on recommendation 1 and 2 to ensure that aspirations for development are balanced with cultural heritage and environmental protections.



Northern Peninsula Area

10. Opportunities for activation of CYPHA reserves

Statutory barriers to development discussed above mean that there is likely to be no ability to activate CYPHA water for projects outside of existing cleared areas or the community urban footprint unless it is for a high value mining project. Immediate opportunities to use CYPHA water identified during the workshop and consultations that could be further investigated therefore include the production of high value food crops for example through the reestablishment of the Bamaga Farm and the bottling of water for retail sale to the community and tourists. These enterprises would produce a range of economic, social, health and environmental benefits including:

- Local business development and employment.
- Reduced costs of living from local supply of food and bottled water.
- Health and wellbeing through fresh food and improved water quality.
- Environmental outcomes through circular economies and reduced food miles.

Both opportunities could be developed within the existing community urban footprint if appropriate expertise, infrastructure and supply chains could be built. The Bamaga Farm site has an existing lease and therefore tenure has been resolved and the bottling of water for retail sale could also be undertaken within the local community. A partnership with Community Enterprise Queensland (CEQ) which owns and runs stores in the NPA, Torres Strait and Western Cape York Peninsula should be investigated as part of the development of these enterprises. Detailed business planning would need to be undertaken to support any investment decisions. This planning should include an assessment of not only financial returns but the broader social, health and wellbeing as well as environmental benefits of these projects. Governments are already making significant direct siloed programmatic investments in food freight subsidies, health and wellbeing services and to reduce carbon emissions. A more integrated placed based approach to regional development by governments would see these investments likely decline overtime as local capacity grows and communities become more socially, environmentally and economically resilient and self-reliant.

Recommendation 4. That in the short-term immediate opportunities to activate Indigenous water rights to create new enterprises should be supported (e.g. food security, bottling of water).

In the longer term through investments in governance capacity building and regional planning clan groups may identify other areas for sustainable development outside of existing community urban footprints and already cleared areas. These could then be developed through the gazetting of ICUAs providing further opportunities for the activation CYPHA reserve allocations.

Another opportunity in the longer term is the development of environmental markets for CYPHA reserves given the significant environmental values in the region. This requires the development of market mechanisms that value additional environmental flows, for example to enhance wetland and riparian health downstream, particularly in culturally significant fishing grounds near the mouth of the Jardine River (Queensland Government, 2019). The CYWMP, in conjunction with the Water Regulation 2016, provides a framework that could create ecosystem services markets for CYPHA water. This could generate new income for eligible TAFs and RNTBCs particularly given the environmental limitations on other development opportunities in Cape York Peninsula (Watertrust Australia, 2024).

Recommendation 5: That the state government actively support, in cooperation with the Commonwealth, community led processes to explore the potential development of a strong ecosystem service market that would provide potential income for CYPHA licence holders.

11. Conclusion

The Jardine Catchment case study demonstrates that while significant Indigenous water rights have been secured under the WPCY through the CYPHA reserve, the activation of these rights remains constrained by a combination of governance, statutory, and biophysical factors. The catchment possesses abundant water and strong cultural and environmental values, yet these same values, along with remoteness, high regulatory environmental protections, and limited infrastructure restrict development.

The workshop and interviews highlighted that Indigenous water rights holders face systemic challenges, including overlapping and contested governance within and between clan groups and related TAFs and RNTBCs structures which have limited capacity (corporate and technical), and the absence of clear cultural governance protocols. These constraints hinder decision making, the application of FPIC principles, and equitable benefit sharing. Opportunities to activate water were identified in agriculture, mining, bottling for retail sale, ecosystem services, and for municipal water supply. The workshop and interviews highlighted that Country holds deep cultural and environmental significance for Traditional Owners, and that its protection and management must be a central considerations in any development activities. However, without systemic governance, planning and regulatory reform any opportunities are difficult if not impossible to realised.

Addressing these issues requires coordinated and sustained investment in governance capacity building, planning, and institutional reform. The case study proposes a staged process for governance systems reform first involving institutional capacity building, establishing FPIC decision-making protocols, prior to considering the rationalising of corporate structures. Complementary statutory reforms, particularly operationalising the Cape York Peninsula Heritage Act 2007 to allow ICUAs could unlock opportunities currently blocked by vegetation and planning laws.

Immediate opportunities such as revitalising the Bamaga Farm and small scale water bottling could be pursued within existing community footprints, offering social, economic, and health benefits while demonstrating pathways for sustainable Indigenous led enterprise. In the longer term, a holistic, region wide approach integrating community development, master planning, and environmental stewardship is essential for realising the full potential of CYPHA water allocations.

Ultimately, the activation of Indigenous water rights in the Jardine Catchment is not solely a technical or economic challenge, it is a governance and cultural one. Success depends on strengthening the institutions that enable Traditional Owners to make and implement their own decisions about land and water, ensuring that economic opportunities contribute to community wellbeing, cultural continuity, and environmental integrity. This case study makes five recommendations to support the activation of Indigenous water rights in the Jardine Catchment. It will inform a broader report and recommendations for reform as part of the Cape York Water Project.

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