REPORT

Policy and Statutory Reforms Emerging from Activating Indigenous Peoples' Water Rights under the Cape York Water Plan project

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Activating First Nation Water Rights under the Cape York Water Plan

Authors: Dr Jim Turnour and 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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Acronyms

ALA	Aboriginal Land Act 1991 (Qld)
ALT	Aboriginal Land Trust
CATSI Act	Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)
CATSIWI	Committee on Aboriginal and Torres Strait Islander Water Interests
CRCNA	Cooperative Research Centre for Developing Northern Australia
CYLC	Cape York Land Council
CYPHA	Cape York Peninsula Heritage Area
CYPHA Act	Cape York Peninsula Heritage Act 2007 (Qld)
DCCEEW	Department of Climate Change, Energy, Environment and Water (Cth)
DLGWV	Department of Local Government, Water and Volunteers
DOGIT	Deed of Grant in Trust
DPI	Department of Primary Industries
DWATSIPM	Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism
FPIC	Free, Prior and Informed Consent
ICUA	Indigenous Community Use Area
ML	Megalitre
NAILSMSA	Northern Australia Indigenous Land and Sea Alliance
NWA	National Water Agreement
NWI	National Water Initiative
PBC	Prescribed Body Corporate
RILIPO	Remote Indigenous Land and Infrastructure Program Office
RNTBC	Registered Native Title Body Corporate
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
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 (WPCY) represents one of Australia's most significant statutory commitments to First Nations access to water licences to date. It reserved 516,350 ML of unallocated water, of which 485,300 ML, approximately 94 per cent, was placed in the Cape York Peninsula Heritage Area (CYPHA) reserve to support Indigenous economic and social development.

The Activating Indigenous Peoples' Water Rights under the Cape York Water Plan Project examined how this statutory commitment could be activated to produce practical benefits. The Cooperative Research Centre for Developing Northern Australia (CRCNA) funded project, led by James Cook University, combined policy and statutory analysis with regional workshops, interviews, a First Nations reference group and case studies. It produced a regional Situation Analysis, a User Manual, a Jardine River Catchment Case Study, an Indigenous Enterprise Case Study and a Compendium of associated maps as well as this report.

This report positions the WPCY within an evolving national and Queensland policy framework. Nationally, this includes the 2004 National Water Initiative (NWI), the United Nations Declaration on the Rights of Indigenous Peoples, the National Agreement on Closing the Gap and the new National Water Agreement (NWA). Within Queensland, the relevant framework includes the *Water Act 2000*, the *Cape York Peninsula Heritage Act 2007*, the WPCY and the Cape York Water Management Protocol. Together, these instruments, provide the policy and statutory context for assessing whether the CYPHA reserve is delivering substantive First Nations access to, authority over and benefits from water.

The report first examines this national and Queensland context and the evidence produced through the Cape York Water Project. It then identifies the interrelated governance, statutory, infrastructure, market and commercial barriers to the activation of CYPHA water. Drawing on these findings, it separates the functions required to govern and develop water, assesses three governance reform options, proposes targeted amendments to the WPCY and Protocol, and considers the broader implications for the design of Indigenous water reserves across northern Australia.

The project increased awareness and uptake of CYPHA water licences. Prior to the project commencing only three CYPHA water licences had been granted equating to 9,479ML or two percent of the CYPHA reserve. As a result of the project 16 additional licences have been granted and a further 50 licence offers made to eligible Aboriginal Land Trusts (ALTs) and Registered Native Title Body Corporates (RNTBCs). If all offers are taken up this will equate to 286,003ML of CYPHA water or 59% of the total CYPHA reserve issued to eligible Aboriginal parties.

This is a significant achievement, however, issuing water licences does not equate to projects being developed. At the time of reporting no CYPHA water had been activated through assignment to a project. This distinction is important because reserving water and issuing licences recognise rights, but benefits arise only when culturally authorised and commercially viable projects can proceed.

The principal barriers to activation relate to the structural design of the CYPHA water reserve, licensing and assignment processes. The WPCY links eligibility to interests in land and relies on ALT and RNTBCs to apply for and hold licences. These bodies provide an identifiable statutory rights holder, but many lack the staff, funding and specialist support required to organise culturally authorised decisions, meet corporate governance responsibilities, assess projects, negotiate agreements, benefit sharing and to coordinate development approvals.

Many ALTs and RNTBCs are based on land tenure boundaries that do not reflect First Nation boundaries making governance and decision-making challenging, particularly where boundaries between groups can be disputed. First Nation governance capacity constraints are compounded by fragmented tenure, native title, cultural heritage, planning, environmental and water statutory processes; high infrastructure costs; and limited business readiness. Differing aspirations for development or underdeveloped water markets can also make agreeing an assignment or price between eligible Aboriginal water licence holders and project proponents difficult. These barriers are cumulative.

The report distinguishes six functions required for activation:

1. cultural authority and consent;
2. legal rights holding;
3. statutory regulation;
4. development planning and coordination;
5. commercial development facilitation and ongoing management;
6. and benefit governance.

These functions are connected but need not be performed by one organisation. Proposed reforms identify the need to determine who performs each function, the source of its authority, its accountability and how its decisions connect with the other functions.

Three options are considered.

Option 1 Status Quo retains the existing framework provides limited opportunities for reform within existing water plan review processes.

Option 2 Improve Development Coordination retains existing licence holders but establishes dedicated institutional structures and processes to coordinate development.

Option 3 First Nation Rebuilding combines development coordination with longer term First Nations governance rebuilding and structural separation of functions.

The preferred approach combines Options 2 and 3: immediate coordination and project support alongside sustained investment in culturally legitimate governance and eventual Water Plan reform.

The report also identifies opportunities for targeted amendments to the WPCY including:

- to broaden Indigenous access pathways without diminishing existing rights;
- improved guidance under section 51 of the Protocol;
- the review of groundwater provisions using risk-based evidence;
- further guidance on access pathways to the Strategic and General reserves;
- the strengthening of public reporting that measures activation and outcomes rather than licences alone; and
- reforms to support the development of environmental markets.

The broader lesson is that setting water aside as a standalone water planning activity is necessary but insufficient. Indigenous reserves should combine First Nation cultural authority for Country with coordinated entitlement administration and specialist support at catchment, subregional or regional scales. Regional and catchment arrangements for water planning must operate through mandates from participating First Nations and must not displace cultural authority over Country.

The NWI remains the applicable national water policy framework in Queensland unless and until the state signs the new NWA. Its commitments to transparent water planning, statutory water access and recognition of Indigenous interests provide an existing foundation for reform. The recommendations in this report show how those commitments can be implemented more effectively in Cape York Peninsula by connecting statutory water rights with

- institutional capacity,
- culturally legitimate decision making,
- coordinated development pathways
- and the reporting of measurable benefits.

They would also position Queensland to implement the stronger NWA commitments to First Nations participation in water management, shared decision making, enduring access to and ownership of water, and protection of cultural values should Queensland become a party to that agreement.

Recommendations:

1. The Queensland and Australian Governments should adopt a staged combination of governance reform options identified through the research including Options 2 Improved Development Coordination and Option 3 First Nation Rebuilding. Immediate development coordination and project support should proceed alongside sustained investment in First Nation governance rebuilding and longer-term reform of the Water Plan (Cape York) 2019 and Cape York Water Management Protocol.

Five sub recommendations are detailed below that if implemented would support this staged approach.

1.1 Build on the Queensland Government Strategic Land Use and Infrastructure (SLUI) Program within the Queensland Department of Women, Aboriginal and Torres Strait Island Partnerships and Multiculturalism (DWASTIPM). The SLUI is already coordinating projects in remote discrete Indigenous communities undertaking the functions of the previous Remote Indigenous Land and Infrastructure Program Office (RILIPO). Its remit could be expanded to coordinate priority projects outside of discrete communities where there are significant opportunities for social and economic outcomes while a standalone shared service facility with strong First Nations ownership is developed.

1.2 The Queensland and Australian governments should partner with Indigenous Local Governments, First Nation corporations (ALT and RNTBCs) to codesign a dedicated, First Nations governed facility or facilities to rebuild First Nations and coordinate projects through statutory water, land tenure, native title, cultural heritage, planning, environmental, infrastructure, commercial and investment processes.

1.3 Invest Long Term in First Nation Rebuilding through sustained funding that enables First Nations to define their cultural geographies and identify who holds cultural authority for particular Country. This provides a basis for self-determination in relation to the development of land and water resources and the roles and responsibilities of First Nation institutions including ALTs, RNTBCs, First Nation businesses and local governments supporting the establishment of agreed decision making, representation and dispute resolution processes. Rebuilding First Nations would create an enduring institutional asset, strategic plans, knowledge and capabilities that can support multiple projects and policy areas rather than the current system requiring multiple individual decisions for each project.

1.4 The reforms to governance arrangements should clearly distinguish between cultural authority and consent, legal rights holding, statutory regulation, development planning and coordination, commercial development and benefit governance. F Build or each function, enhanced arrangements should identify the responsible decision maker, source of authority, accountability requirements and process through which decisions are translated into legally effective actions.

1.5 Embed cultural authority and FPIC in corporate processes by supporting ALTs and RNTBCs to adopt culturally authorised land and water decision making policies, agreements, committees or rule book provisions consistent with free, prior and informed consent. These arrangements should ensure that decisions about the use of water and Country are made by the relevant culturally authorised people and then given legal effect by the responsible

statutory entity. Any institutional amalgamation or boundary realignment should occur only where affected First Nations choose it through an FPIC process.

2. Broaden Indigenous CYPHA reserve eligibility criteria to enable appropriately governed Indigenous local governments, community controlled corporations and Indigenous businesses to access water where they can demonstrate Indigenous community economic or social benefit.
3. Strengthen guidance and reduce duplication for water assignments under section 51 of the Cape York Water Management Protocol including unnecessary duplication between water assignment requirements and native title, cultural heritage, environmental, tenure and planning approval processes.4. Review technical provisions including ground water setbacks
4. Review technical provisions with the WPCY and Protocol including groundwater setbacks to determine whether risk based, site specific assessment can improve access while protecting environmental and cultural values.
5. The Queensland Government should publish clear guidance on the eligibility, assessment criteria and processes for Indigenous projects seeking access to the General and Strategic reserves.
6. Strengthen monitoring and reporting of the CYPHA rese**rve** and its activation. Information generated through governance reforms, planning and project assessment should be managed under agreements covering ownership, access, confidentiality, culturally restricted information, permitted reuse and benefit. Annual public reporting should distinguish licence applications, offers, issued licences, assignments and water actually used, and where possible measure First Nations defined cultural, social, economic and environmental outcomes rather than licence volumes alone.
7. Ensure CYPHA reserve water can be assigned for environmental purposes including payment for water left in the river to add to cultural and environmental flows.
8. Review existing water licenses in the Jeanie and Watson Catchments to assess whether existing licenses are being used and reallocate unused water to CYPHA and General Reserves in these catchments.
9. Review the Cape York Peninsula Heritage Act 2007 (Qld) and reform it in a way that enables First Nations to utilize the Indigenous Community Use provisions to support sustainable community development.
10. That a Northern Australian First Nations Water Forum or similar network be established to facilitate knowledge sharing, collaboration and policy development across jurisdictions.
11. That further research, co-designed with participating First Nations, evaluate the economic costs and benefits of the three governance reform options identified by this research: maintaining the status quo, improving development coordination, and combining development coordination with long-term investment in First Nation rebuilding.

Glossary of Terms

Aboriginal Land Trust (ALT): A statutory land holding entity that holds and manages Aboriginal land as trustee for the benefit of the Aboriginal people particularly concerned with that land under the *Aboriginal Land Act 1991* (Qld). Their responsibilities may include managing the land, consulting beneficiaries and making decisions about leases and other dealings. An ALT's beneficiaries and statutory boundaries do not necessarily correspond with a single First Nation, clan or native title group.

Activation in relation to water: Means Cape York Peninsula Heritage Area Reserve water being licenced and used by an Aboriginal Land Trust or Registered Native Title Body Corporate or assigned to a third party for a culturally authorised and viable project not merely reserved, offered or licenced.

Country: The interconnected lands, waters, skies, living beings, ancestral places, cultural knowledge, laws, kinship relationships and responsibilities with which a First Nation or culturally authorised group has an enduring relationship. Country is understood as living and relational, rather than merely a geographic area, property parcel or statutory tenure. Authority to speak for and make decisions about Country derives from the traditional laws, customs and culturally legitimate decision-making processes of the relevant First Nation. Country boundaries and relationships may differ from native title determination areas and the statutory boundaries of Aboriginal Land Trusts and Registered Native Title Bodies Corporate[1] [2].

Cultural authority: The authority recognised under a First Nation's traditional laws, customs and decision making processes to speak for, make decisions about and exercise responsibilities toward particular Country, people, cultural knowledge or matters. Cultural authority may be held by particular Elders, Traditional Owners, families, clans or other culturally authorised people and may vary according to place, subject, kinship, gender, seniority or cultural responsibility. It is determined through the First Nation's own processes and is not automatically conferred by residence, land ownership, organisational membership, directorship or a statutory position within an Aboriginal Land Trust or Registered Native Title Body Corporate.

Cultural geography: Cultural geography refers to the wider sociological and culturally based foundations of First Nations. The concept is used in order to widen the focus beyond the limited geographic boundaries of colonial tenures to include the more enduring land owning and collective identities of First Nation groups. These culturally negotiated 'boundaries' are often regarded by First peoples as forming the more legitimate basis for the 'self' in their self governance, and the more appropriate basis for their governance boundaries and units. Cultural geography can be taken into account when formulating jurisdictional boundaries, policy frameworks or service delivery arrangements[3].

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[1] Department of Climate Change, Energy, the Environment and Water. (2021). *Country and connections*. *Australia state of the environment 2021*.
[2] Rose, D. B. (1996). *Nourishing terrains: Australian Aboriginal views of landscape and wilderness*. Australian Heritage Commission.
[3] Hunt, J., & Smith, D. E. (2007). Indigenous Community Governance Project: year two research findings. Centre for Aboriginal Economic Policy Research, ANU.

First Nation (Rebuilding): Aboriginal and Torres Strait Islander peoples who self-identify as a group through shared cultural geographies, connections to Country, language, culture and history. First Nations have their own cultural identity, traditional laws (or lore) and customs which they seek to maintain and expect to be respected. First nation development is therefore dependent on good governance (cultural and corporate) given that Indigenous peoples rights and interests are held collectively within First Nation institutions. Strong institutional structures and processes are required to support self-determination and the Free, Prior and Informed Consent (FPIC) of a First Nation group in decisions when planning and implementing projects. First Nation rebuilding involves the reestablishment and strengthening of contemporary First Nations institutions and related governance structures and processes.

Indigenous community: A place-based community in which Aboriginal and/or Torres Strait Islander people live and maintain social, cultural, family, economic or service relationships. An Indigenous community may include Traditional Owners of the surrounding Country and Aboriginal or Torres Strait Islander residents from other First Nations. It is therefore not necessarily equivalent to a First Nation, clan, native title group or culturally authorised decision-making group. In this report, the term commonly refers to Cape York's predominantly Aboriginal remote and discrete settlements and their residents.

Registered Native Title Body Corporate (RNTBC): An organization established under Australian law to manage native title rights and interests on behalf of Aboriginal and Torres Strait Islander peoples after a native title determination. Specifically, once the Federal Court of Australia determines that native title exists, the native title holders are required to nominate a Prescribed Body Corporate (PBC) to represent them. This PBC is then registered with the National Native Title Tribunal (NNTT) and becomes a Registered Native Title Body Corporate (RNTBC) under the Native Title Act 1993 (Cth).

Introduction

Since colonisation, the Aboriginal and Torres Strait Islander peoples of Australia have fought to maintain connections to Country so as to continue governing their lands and waters in accordance with their traditional laws and customs. These systems of governance remain particularly important in Cape York Peninsula's remote and discrete communities, where Aboriginal and Torres Strait Islander peoples constitute most of the population and maintain enduring cultural, spiritual and economic relationships with land and water. Approximately 62 per cent of Cape York's population identifies as Aboriginal or Torres Strait Islander. Outside Cook Shire, Aboriginal and Torres Strait Islander peoples comprise approximately 78 per cent to more than 90 per cent of the population across Cape York communities.[4]

Decades of advocacy, negotiation and legal action have secured significant recognition of First Nations land rights within Australian law. Major reforms include the Aboriginal Land Act 1991 (Qld) and the Native Title Act 1993 (Cth). Together with subsequent native title determinations and land transfers, these laws have provided Traditional Owners in Cape York Peninsula with stronger rights and interests in land, creating opportunities to pursue their cultural, social, environmental and economic aspirations and exercise greater self-determination.

Recognition of First Nations water rights has developed more slowly. The 2004 National Water Initiative (NWI), agreed between the Commonwealth, state and territory governments, established an important national framework but provided limited recognition of Indigenous water rights. In Queensland, amendments to the Water Act 2000 (Qld) in 2018 strengthened recognition of Aboriginal and Torres Strait Islander interests within the purpose and operation of the Act. Water planning must now consider cultural values and the interests of Aboriginal peoples and Torres Strait Islander peoples.

Cape York Peninsula Aboriginal people have been at the forefront of advocacy for First Nation land and water rights in Queensland with native title now determined over almost the entire region and more than 60 percent of land held as Aboriginal freehold. The Cape York Peninsula Heritage Act 2007 (Qld) has provided the statutory framework for the purchase of land recognising First Nation social and economic interests in land and water. These policies and legislation provide the broader context within which the WPCY and the CYPHA reserve were established.

Aboriginal people having fought to reestablish authority and ownership over Country want to protect it while also leveraging it for economic and social benefits. This research examines how water available under the WPCY, particularly through the CYPHA reserve, can be activated to generate social and economic benefits for the Aboriginal peoples of Cape York Peninsula.

Australian water policy has also been influenced by international recognition of Indigenous peoples' rights. Australia endorsed UNDRIP in 2009. Although UNDRIP has not been comprehensively incorporated into Australian legislation, its principles including self-determination and free, prior and informed consent in decision making, have increasingly influenced Commonwealth, state and territory policy.

[4] Queensland Government Statistician's Office, Queensland Treasury, Queensland Regional Profiles: Resident Profile for Custom region.

UNDRIP informed the stronger recognition of First Nations interests in the 2026 National Water Agreement (NWA)[5], which places greater emphasis on First Nations participation, decision making, access to water and protection of cultural values. The Australian Government has signed the NWA and is working with state and territory governments to secure their participation. Once a jurisdiction signs the NWA, it replaces the NWI in that jurisdiction. Participating jurisdictions then have two years to develop an implementation plan, which is to be reviewed every five years.

Although policies such as the NWA increasingly recognise self-determination and free, prior and informed consent (FPIC), implementation remains constrained by a governance system that is complex, fragmented and inadequately resourced. ALTs and RNTBCs may legally hold land, water or native title interests, but they often lack the resources and specialist capacity required to assess proposals, undertake culturally appropriate consultation, obtain authorised decisions, apply for licences and negotiate commercial arrangements. Their statutory boundaries and membership may also differ from the First Nation, clan or estate boundaries based on cultural geographies through which cultural authority is exercised.

In short, limited CYPHA activation is not simply the result of an absence of proposals or failure to complete a licence application. Activation requires agreement about who has cultural authority for the affected Country, a legally authorised decision by the relevant ALT or RNTBC, and capacity to coordinate water, land, native title, cultural heritage, planning and commercial processes. Where authority is often contested, responsibilities overlap and organisations lack resources, decisions are delayed or cannot be completed.

The central challenge is therefore no longer simply securing legal recognition of land and water rights and interests. It is establishing the governance arrangements, institutional capacity and development pathways required to convert statutory rights into measurable benefits for the Aboriginal peoples of Cape York Peninsula. This challenge is shared across Northern Australia.

The research consistently indicated that the primary decision makers on whether a development or even a water licence should proceed should be the Aboriginal people who possess cultural authority for the Country on which it is proposed. These people may be distinct from the broader native title group recognised under the Native Title Act or the “Aboriginal people particularly concerned with the land” who hold interests under the Aboriginal Land Act.

Cultural authority may itself be contested, and people with cultural authority do not necessarily need to develop or operate a project. Nor are they necessarily the only people who should benefit. Activation therefore requires clearer separation of cultural decision making, statutory rights holding, regulatory approval, project development and benefit sharing functions.

[5] Australian Government, Department of Climate Change, Energy, the Environment and Water (DCCEEW), ‘National Water Agreement’, updated 21 August 2026, accessed 3 September 2026

Research Approach and Evidence Base

The project used an action research approach combining policy and statutory analysis with regional engagement and practical case studies. It sought to understand how water rights operate in practice rather than treating the WPCY only as a legislative instrument.

The evidence base included interviews and workshops with Aboriginal peoples and organisations across Cape York Peninsula; a First Nations reference group comprising Traditional Owners with experience as directors of ALTs and RNTBCs; engagement with government, industry and prospective water users; a regional situation analysis; the Cape York Water Manual; the Jardine River catchment case study; and an Indigenous Enterprise case study. A project working group comprising representatives from Queensland government agencies, peak Indigenous stakeholder organisations and researchers also met quarterly to discuss results and inform the project.

The project contributed to increased awareness and licence uptake. Prior to the project commencing only three CYPHA water licences had been granted equating to 9,479ML or two percent of the CYPHA reserve. As a result of the project 16 additional licences have been granted and a further 50 licence offers made to eligible ALTs and RNTBCs. If all offers are taken up this will equate to 286,003ML of CYPHA water or 59% of the total CYPHA reserve issued to eligible Aboriginal parties.

Generative AI was used to assist with drafting and summarising some material during the preparation of this report. Its use did not replace the authors' analysis or judgement, and the findings, interpretations and conclusions presented in the report remain those of the authors.

Scope and limitations

The findings reflect the organisations, communities and projects engaged through the research. Governance arrangements vary between First Nations, Indigenous communities, catchments and corporations, and no single institutional model will be appropriate across Cape York Peninsula. The proposed reforms identified through this research should be implemented wherever practical through codesign processes with First Nations and Indigenous communities.

The Commonwealth and Northern Australia Water Policy and Statutory Context

The Commonwealth Water Policy Context

In identifying reforms to improve social and economic outcomes for the Aboriginal people from the Water Plan (Cape York) 2019 (WPCY) this section considers the current national policy context.

The Australian Government has made a renewed effort to strengthen Aboriginal and Torres Strait Islander water rights over the past decade. In 2020 it established the Committee on Aboriginal and Torres Strait Islander Water Interests (CATSIWI) to advise governments on First Nations water policy[6]. In August 2026 it released a new National Water Agreement (NWA) to replace the 2004 Intergovernmental Agreement on a National Water Initiative (NWI). The NWI remains the applicable national agreement in Queensland until the new agreement is signed. Assuming Queensland signs the NWA, it will have two years to develop an implementation action plan which will then be updated at least every five years.

The NWA is significant because it moves national policy beyond Indigenous participation in planning and recognition of native title interests. It establishes a broader policy direction towards enduring Aboriginal and Torres Strait Islander access to, management of and ownership of water; shared decision making; self-determination; recognition of cultural water rights and customary responsibilities; and the removal of barriers that prevent Indigenous peoples from controlling and using water. These principles provide an important benchmark for reviewing whether the WPCY and its Water Management Protocol convert the reserve's formal allocation into accessible, secure and usable rights.

The 2004 NWI was the first national water reform agreement to expressly address Indigenous access. Paragraphs 52-54 of the NWI required Indigenous representation in water planning wherever possible, incorporation of Indigenous social, spiritual and customary objectives where these could be developed, and consideration of native title rights to water. These provisions helped establish a policy basis for Indigenous specific water planning measures, including reserves such as the CYPHA reserve. However, they were largely procedural and did not establish a clear national commitment to increase Indigenous water ownership or decision making authority.

The NWA retains the NWI's foundations but gives Aboriginal and Torres Strait Islander water interests a dedicated, cross cutting Objective 3: Water management that recognises and protects Aboriginal and Torres Strait Islander water interests and values. This Objective is to be achieved by delivering against six outcomes with underpinning principles. These encompass cultural, spiritual, social, economic and environmental water interests and values. The outcomes and principles call for enduring partnerships, greater Indigenous leadership, safe community water services, stronger cultural water protections, and increased access to, management of and ownership of inland waters.

[6] Committee on Aboriginal and Torres Strait Islander Water Interests. (2023). Pathways to enduring recognition of Aboriginal and Torres Strait Islander Peoples' water interests in national water reform initiatives.

Table 1 Changes in policy between the National Water Initiative (NWI) and National Water Agreement (NWA)

Policy issue	2004 NWI	2026 NWA
Status of Indigenous peoples	Participants in planning and potential native title holders.	Custodians, knowledge holders and rights holders with cultural water interests and values.
Decision making	Indigenous representation wherever possible.	Genuine partnerships, shared decision making, self-determination and opportunities for Indigenous led processes.
Scope of interests	Social, spiritual and customary objectives and recognised native title rights.	Cultural, spiritual, social, economic and environmental interests, customary law and cultural responsibilities.
Access and ownership	No general commitment to increase Indigenous ownership.	Good faith efforts to increase enduring access, management and ownership and remove barriers.
Unallocated water	No specific Indigenous allocation principle.	Consideration of unallocated water and new water rights for Aboriginal and Torres Strait Islander peoples.
Use and control	Limited guidance on Indigenous control of water use.	Indigenous peoples should be able to decide how water they access, manage or own is used, wherever possible.

Closing the Gap and UNDRIP

The NWA particularly Objective 3 and its outcomes align the NWA with the National Agreement on Closing the Gap and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Closing the Gap is structured around four Priority Reforms, supported by 15 Targets and Outcomes and measurable targets[7]. The four Priority Reforms are:

Reform 1: Formal partnerships and shared decision making.

Reform 2: Building the community controlled sector.

[7] Coalition of Aboriginal and Torres Strait Islander Peak Organisations, & Australian Governments. (2020). *National Agreement on Closing the Gap*.

Reform 3: Transforming government organisations.

Reform 4: Shared access to data and information at a regional level.

The NWA reflects these reforms through commitments to partnership and shared decision making, increased Indigenous inland water interests, and stronger participation in monitoring and accountability. Objective 1 Principle 1.3 calls for all efforts to ensure that people in regional, rural and remote communities have fair and reasonable access to water services, consistently with Closing the Gap. Within, Objective 3, Outcome 3D requires enduring access to safe water of acceptable quality and quantity, determined in partnership with communities. Principles 3.7-3.8 further link water and wastewater services to Closing the Gap health and wellbeing targets and require service levels to be determined collaboratively. These provisions are particularly relevant to Closing the Gap Target 9b on essential services for Aboriginal and Torres Strait Islander households in discrete communities and in or near towns.

Outcome 3E of the NWA provides that Aboriginal and Torres Strait Islander peoples' access to, management of and/or ownership of inland waters is to increase in line with Closing the Gap. Principles 3.9-3.12 give this outcome practical direction by calling for:

- good faith efforts to increase custodianship through enduring and sustainable water rights and enabling reforms, including water market participation and water purchase;
- removal of barriers in water management frameworks that impede Indigenous access, management or ownership;
- Indigenous control over how water is used, wherever possible and consistently with self-determination; and
- consideration of unallocated water, or new rights created through water resource development, for Aboriginal and Torres Strait Islander peoples.

Outcome 3F further supports Indigenous participation and leadership in water planning, measurement, monitoring, evaluation, reporting and climate adaptation. The NWA therefore provides a policy foundation for strengthening Closing the Gap targets around Indigenous water rights. For jurisdictions that sign the NWA, action plans that must be developed within two years provide the main mechanism for turning these commitments into measurable reforms.

Lessons from the Murray Darling Basin

States and territories have the primary responsibility for policy and legislation in relation to the management of water resources. In Australia's largest river system, the Murray Darling Basin, however, the commonwealth has played an important role over recent decades due to the need to address historical overallocations of water and associated negative environmental and community impacts. There has also been an historical lack of recognition of First Nation water rights which is currently being addressed. It therefore provides a useful basis for contemporary learnings.

For example, the Australian Government's Murray Darling Basin Aboriginal Water Entitlements Program provides an important national precedent for restoring First Nations water ownership. The program commits $100 million to purchase an estimated 25,000ML of water entitlements for cultural, environmental, social and economic purposes. Consultations with Basin First Nations during 2023 and 2024 shaped a strategic purchasing framework based on "connectivity underpinned by wealth generation". This approach favours a diversified portfolio of transferable and commercially valuable

entitlements, with investment and benefits distributed equitably between the northern and southern Basin.

Interim First Nations governance arrangements were established to enable purchases to commence while an enduring water holding model was developed. Further Nation based consultation and co-design during 2025 and 2026 involved more than 350 participants from 39 First Nations. This process identified strong support for an independent, First Nations controlled charitable trust to hold the purchased water and remaining funds for intergenerational benefit. The proposed framework separates the legal holding and commercial management of the collective portfolio from decisions about cultural priorities and the use of water on Country. Basin wide governance would protect and manage the asset, while regional, catchment and First Nation arrangements would inform allocation, water delivery and benefit distribution[8]. The model demonstrates that restoring water ownership requires both an enduring legal holder and properly resourced, culturally legitimate decision making structures. This is a distinctly different structure to that established in relation to the WPCY.

Queensland Government policy and legislative context

The Cape York Peninsula Heritage Area (CYPHA) water reserves operate within a unique Queensland legislative framework. Unlike most Indigenous water reserves in Queensland, the CYPHA reserve is not simply an administrative allocation created through a water plan. Its existence is required by the Cape York Peninsula Heritage Act 2007 (Qld). It is implemented through the Water Act 2000 (Qld), the Water Plan (Cape York) 2019 and the Cape York Water Management Protocol 2019.

Together, these instruments establish a substantial statutory reserve of unallocated water for Indigenous economic and social development. They do not, however, provide an unrestricted or immediately usable water asset. Access depends on eligibility linked to land or native title interests, while actual use remains subject to water licence conditions, infrastructure requirements and Queensland's wider environmental, planning, land tenure and cultural heritage laws.

It is also important to acknowledge that a water plan only allocates water for consumptive economic and social purposes after providing for cultural and environmental flows within a catchment. It does not create any additional water or create a resource that needs to be used. There are a range of cultural and environmental values as well as physical, economic and commercial reasons why there have not been significant water resource developments in Cape York Peninsula to date.

Legislative origins of the CYPHA reserve

Indigenous specific water reserves were first introduced in Cape York through declarations made under the former Wild Rivers Act 2005 (Qld). Those declarations could reserve unallocated water to help Indigenous communities pursue economic and social aspirations. For example, the Wenlock Basin Wild River Declaration 2010 included a 5,000 ML Indigenous reserve. Although the Wild Rivers Act was repealed in 2014, the concept of a Cape York Indigenous development reserve was preserved and strengthened through the Cape York Peninsula Heritage Act 2007.

The Cape York Peninsula Heritage Act has broader objects concerned with protecting Cape York's natural and cultural values, supporting cooperative management and enabling ecologically

[8] Water Governance Codesign Team on behalf of Department of Climate Change, Energy, the Environment and Water. (2026). Facilitating the Co-design of the Murray-Darling Basin First Nations Enduring Water Holding Arrangements, Appendix B: Final Consultations Outcomes Report.

sustainable development of the region. Within that framework, section 27 requires any water plan made for an area within the Cape York Peninsula region to provide a reserve of water to help Indigenous communities achieve their economic and social aspirations giving the CYPHA reserve a continuing legislative foundation.

The Water Act 2000

The Water Act 2000 (Qld) establishes Queensland's principal framework for planning, allocating and managing water. Its concept of sustainable management combines environmental protection with the allocation and use of water for Queensland's economic, physical and social wellbeing. It also requires recognition of the interests of Aboriginal people and Torres Strait Islanders and their connection with water resources, fair and orderly allocation processes, confidence in water entitlements and active community participation in water planning.

Under Chapter 2 of the Water Act, a water plan determines how water will be sustainably managed; environmental flow and water allocation security objectives; the volume available for consumptive use; the volume held as unallocated water; the purposes for which reserves may be released; and matters to be addressed in a water management protocol.

The CYPHA reserve is therefore unallocated water held by the State for a prescribed Indigenous development purpose. It becomes an individual statutory entitlement only when water is released and a water licence is granted. The existence of a catchment reserve does not, by itself, authorise a person to take, store or use water. There are three broad types of water in a water plan:

1. **Reserved water -** water remains unallocated and under State administration.
2. **Licensed water -** water has been granted to an eligible entity as a statutory water entitlement.
3. **Activated water -** water may be physically taken or assigned for an approved use, subject to licence conditions, infrastructure and other regulatory approvals.

Water Plan (Cape York) 2019

The Water Plan (Cape York) 2019 gives statutory effect to the Cape York Peninsula Heritage Act requirement. It applies across 15 catchments and covers surface water, overland flow water and groundwater and spring water not managed under the Great Artesian Basin water plan.

The plan reserved 516,350 ML of unallocated water across three reserves. The CYPHA reserve represented approximately 94 per cent of all unallocated water reserved under the plan. The reserve is distributed across the 15 catchments, although the Jeannie and Watson catchments were assigned no CYPHA reserve because available water had already been allocated when the plan commenced. The plan's outcomes extend beyond economic development: they include supporting Indigenous social and economic aspirations, maintaining cultural values and connections to water, engaging Aboriginal peoples as Traditional Custodians in water management, and integrating Aboriginal tradition and science into decision making.

Table 2. Water Plan (Cape York) 2019 Reserves Volumes and Purposes

Reserve	Initial volume	Statutory purpose
CYPHA reserve	485,300 ML	Indigenous economic and social aspirations
Strategic reserve	25,000 ML	State purposes or eligible Indigenous development projects
General reserve	6,050 ML	Any purpose
Total	**516,350 ML**	

Source: Water Plan (Cape York) 2019 and Cape York Water Management Protocol 2019.

Eligibility and the connection between land and water

Section 32 of the WPCY restricts access to an 'eligible person': an entity holding land under the Aboriginal Land Act 1991 (Qld) or Torres Strait Islander Land Act 1991 (Qld), or a native title holder under the Native Title Act 1993 (Cth). The eligible person must hold an interest in land in the relevant catchment. The chief executive must then offer the eligible person a licence to take water released from the CYPHA reserve for the statutory purpose. Where a catchment contains no CYPHA reserve or general reserve an eligible person may seek water from the strategic reserve for a qualifying project.

The entitlement is calculated through a land water nexus. Queensland Government guidance states that an eligible person's share is based on the area of land in which it holds an interest relative to the total relevant land area in the catchment. That share is protected from allocation to another eligible person and remains in the reserve until requested.

This structure means the reserve is not held collectively by all Traditional Owners in a catchment but by the statutory entity holding Aboriginal freehold or native title. Indigenous businesses, community controlled organisations and local governments cannot apply in their own right unless they fall within the definition. Indigenous beneficiaries therefore depend on an ALT or RNTBC to apply for, govern, activate or assign water on their behalf.

The Cape York Water Project situation analysis identifies this arrangement as a source of governance complexity. Aboriginal land trusts and RNTBCs are established under different legislative regimes, may represent different beneficiary groups and often have limited resources to perform the technical, commercial and fiduciary work required to manage a water entitlement.

The Water Management Protocol and practical control

The Cape York Water Management Protocol 2019 operates beneath the water plan. It specifies reserve volumes by catchment, processes for releasing water, calculation of eligible shares, licence conditions and rules governing amendment, relocation and assignment.

Queensland Government guidance indicates that a CYPHA licence may be held for future use; left unused so water remains in rivers and creeks; activated for an approved project supporting the

community; or assigned, in whole or part, to another person within the same catchment for a financial or other benefit. Assignments must be time limited and assessed for environmental and third party impacts. A licence holder seeking to activate water must apply to amend the licence, and conditions may be imposed to protect environmental values and other water users.

The legislation therefore provides potentially valuable flexibility, but beneficial control remains qualified. An eligible entity may secure a licence without an immediate project, yet physical use depends on later regulatory approval before water can be activated.

The Northern Territory and Western Australia Context

The Northern Territory and Western Australia provide further examples of efforts to translate Indigenous water reserves into economic opportunities, alongside continuing questions about eligibility, cultural authority and decision-making.

Northern Territory

The principal legislation governing water allocation in the Northern Territory (NT) is the Water Act 1992. The Act provides for water control districts, water allocation plans, water extraction licences and the allocation of water among competing uses. The NT has progressively introduced Strategic Aboriginal Water Reserves to support Aboriginal economic development. The policy originated in 2017 and was subsequently given statutory recognition through amendments to the Water Act in 2019. Aboriginal water reserves allocate a specified proportion of water within water allocation plans for eligible Aboriginal interests.

Like the WPCY the size of the reserve is linked to the size of the available water resource and relevant Aboriginal land interests. The reserves are intended to provide Aboriginal people with access to water for economic development, rather than solely recognising cultural and environmental water values. Also, like Cape York Indigenous economic water rights are reserved within the statutory water allocation system, but their exercise depends on subsequent licensing and governance arrangements.[9]

The new Northern Territory government made further amendments to the Water Act in 2025. The amended framework included changes to consent processes removing Land Councils from the statutory consent process and giving powers to the Controller of Water Resources to grant a licence to an eligible Aboriginal person or an applicant with an agreement with eligible Aboriginal people. The Government presents these changes as removing barriers to Aboriginal economic development.[10] However, the Northern and Central Land Councils opposed the changes, arguing that they weaken collective decision-making and safeguards for informed consent by scrapping an informed consent process with Traditional Owners developed with the previous government. In a joint statement the land councils argued the reforms prioritised industry development and would lead to community conflict, legal battles and increased the risk of corruption.[11]

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[9] Northern Territory Department of Lands, Planning and Environment, Aboriginal Water Reserves FAQ. (2026). Retrieved from https://nt.gov.au/__data/assets/pdf_file/0006/1553730/aboriginal-water-reserves-guide.pdf

[10] Northern Territory Department of Lands, Planning and Environment. (2025). Changes to Aboriginal Water Reserve 2025, Information Paper. Retrieved from https://nt.gov.au/_media/docs/environment/water/water-management/water-act/changes-to-aboriginal-water-reserve-2025-information-paper.pdf?utm_source=chatgpt.com

[11] Dechlan, B. (2025). NT Government moving closer to "anti-democratic regime," Land councils warn. National Indigenous Times. Retrieved from https://nit.com.au/01-04-2025/17145/nt-government-moving-closer-to-anti-democratic-regime-land-councils-warn?utm_source=chatgpt.com

Despite debates over consent processes Aboriginal reserve provisions continue to be incorporated into Northern Territory water plans. The Katherine Water Allocation Plan 2026–2036 sets aside 3,220 ML annually for an Aboriginal water reserve, while the Alice Springs Water Allocation Plan 2026–2036 introduces a reserve for eligible Aboriginal landholders for the first time. These developments demonstrate continuing provision for Indigenous economic access, although reserving water does not itself establish that licences have been activated or benefits realised through appropriate governance processes.

Western Australia

Western Australia's principal water allocation legislation is the Rights in Water and Irrigation Act 1914 (WA), supported by the Water Agencies (Powers) Act 1984 and other legislation. This enables the state to regulate access to water through licensing and regional water allocation planning. Unlike Queensland and the NT, WA does not operate under a single statewide statutory framework expressly establishing Indigenous economic water reserves across all water allocation plans.

Instead, Indigenous water access has developed through a combination of water allocation policies, negotiated native title settlements and regional planning initiatives. A proposed consolidation of WA water resources legislation was discontinued in 2023. Consequently, the existing legislative framework remains central to water licensing and planning.

As a result, WA is pursuing Aboriginal reserves through negotiated native title agreements and regional water planning. The Yamatji Nation native title determination is an example of where a broad settlement included a strategic groundwater reserve of 25,000ML that can be used to support First Nation rebuilding.[12]

The Fitzroy River catchment and Derby Peninsula provides a second Western Australia example, relevant to Cape York because of the interaction between multiple Traditional Owner groups, cultural and environmental water values, and competing development interests. In October 2023, the WA Government released its Water allocation planning in the Fitzroy policy. The policy committed to establishing a Fitzroy Aboriginal Water Reserve while protecting the Fitzroy River from damming and limiting additional surface water extraction. In 2026 the State subsequently developed a combined Fitzroy–Derby water planning framework. The draft Water Resource Management Plan proposes a Fitzroy–Derby Aboriginal Water Holding of approximately 25,000ML designated for native title holders or people developing projects in partnership with them. The decision-making framework for water licencing would involve consultation with the Kimberley Land Council and relevant native title holders. Public consultations on the plan are closed with the government's response yet to be released.[13]

Policy Implications

The national and northern Australian policy context demonstrates growing recognition of Indigenous interests in water through the National Water Agreement (NWA) and the establishment of Indigenous water reserves across northern Australia over the past decade. While jurisdictions have adopted different legislative and policy approaches, a common challenge is emerging: how to translate water

[12] Yamatji Nation Indigenous Land Use Agreement. (2021). Retrieved from https://www.wa.gov.au/organisation/department-of-the-premier-and-cabinet/yamatji-nation-indigenous-land-use-agreement

[13] Department of Water and Environmental Regulation. (2026). Consultation draft Fitzroy-Derby water resources management plan Policy and guidance. Western Australia Government. Retrieved from https://www.wa.gov.au/system/files/2026-04/draft-fitzroy-derby-water-plan-policy-and-guidance-april-2026_0.pdf?utm_source=chatgpt.com

reserved for Indigenous economic and social purposes into accessible entitlements and development opportunities while maintaining Indigenous authority over decisions concerning Country and water.

The CYPHA reserve is particularly significant in this context. At 485,300 ML, representing approximately 94 per cent of the unallocated water reserved under the WPCY, it is substantially larger than the other Indigenous reserves identified through this research. Its establishment represents a major statutory achievement for the Aboriginal peoples of Cape York Peninsula. However, the scale of the reserve also increases the importance of ensuring that its governance arrangements can deliver the economic and social outcomes for which it was established.

Recent Northern Territory reforms illustrate the potential tensions between facilitating development and protecting Indigenous decision-making authority. In 2025, the NT Government amended the Water Act 1992 to simplify access to Aboriginal water reserves by removing statutory consent provisions. The Northern and Central Land Councils opposed these changes, arguing that they transferred important decision-making powers to the Controller of Water Resources and weakened Traditional Owner involvement in water licensing. While the NT Government presented the reforms as necessary to overcome barriers to development, the dispute demonstrates the risks that can arise when statutory arrangements for Indigenous water reserves are not supported by agreed and effective governance processes.

In Queensland, the new Liberal and Nation Party Government is similarly examining statutory water planning arrangements to increase water availability for development. Given the substantial volume held in the CYPHA reserve, difficulties licensing and activating water could generate pressure for similar reforms that prioritise development access over Indigenous decision-making. Effective governance of the reserve must therefore demonstrate not only that water can be licensed and assigned, but that Aboriginal peoples can exercise self-determination over whether and how their water rights are used to achieve their economic and social aspirations. This is particularly important given research demonstrating that Indigenous peoples may hold different aspirations for the development of their Country from mainstream development proponents.[14]

At present the Queensland statutory framework establishes a substantial Indigenous reserve and licensing mechanisms, however, it does not provide a comprehensive development and governance system co-designed with the Aboriginal peoples of Cape York Peninsula. Eligibility is linked to specified statutory land interests that do not necessarily align with cultural authority or provide the institutional arrangements required for coordinated development, investment and benefit sharing. Interviews, workshops and engagement with the project's First Nation Reference Group consistently emphasised the importance of recognising Traditional Owners' cultural authority in decisions concerning water and Country. This also raises questions about the WPCY and Protocol's references to Torres Strait Islanders and Island custom in eligibility and decision-making provisions, given that the Traditional Owners of Cape York Peninsula are Aboriginal peoples.

The Commonwealth's Murray–Darling Basin Aboriginal Water Entitlements Program and emerging Western Australian arrangements demonstrate that alternative approaches to Indigenous water governance are being considered. These include collective entitlement holding, culturally informed decision-making and integration of water rights with broader economic development arrangements.

[14] Smith DE and Field J (2022) CAEPR discussion paper: People, place and partnerships: A native title model for reframing the self-determined governance of development, Centre for Aboriginal Economic Policy Research, ANU College of Arts and Social Sciences.

Constraints to CYPHA Reserve Activation.

Introduction

The WPCY established the CYPHA reserve to support Aboriginal and Torres Strait Islander peoples' economic, social and cultural aspirations. This project has contributed to increased awareness and uptake of CYPHA water licences by eligible ALTs and RNTBCs. However, at the time of reporting, no CYPHA water had been activated through assignment to a development project, despite the research identifying potential demand from mining, agriculture, aquaculture and Indigenous enterprises.

This demonstrates an important distinction between reserving water, issuing licences and activating water for economic and social benefit. While the first two establish statutory access, realising the objectives of the WPCY requires culturally authorised decisions, viable development opportunities and the capacity to navigate the associated statutory, commercial and investment processes.

The research identified several interconnected constraints to activation, including governance complexity and institutional capacity, fragmented development approvals, infrastructure costs, immature water markets, unresolved benefit-sharing arrangements and limited business readiness. These constraints are discussed below to establish the evidence base for the government policy and statutory reforms proposed in the following section.

Governance structures authority and capacity

The WPCY links eligibility for CYPHA water licences to interests in Aboriginal freehold land and native title, with ALTs and RNTBCs providing the principal legal entities through which water licences are obtained and held. These organisations have important statutory responsibilities but were established primarily to administer land and native title interests rather than undertake water resource management or commercial development.

A central finding of the Cape York Water Project is that the boundaries and membership of ALTs and RNTBCs do not necessarily align with First Nation, clan or estate cultural geographies. An individual corporation may represent several culturally distinct groups, while a single First Nation may have interests administered through multiple corporations. Consequently, the legal authority to hold a water licence does not necessarily confer cultural authority to determine how water associated with particular Country should be used.

These differences create practical challenges for decision-making. Activating water may require agreement between the licence holder, relevant Traditional Owners, cultural knowledge holders and other affected parties. Decisions must respect applicable statutory obligations and culturally legitimate processes, including the principles of free, prior and informed consent (FPIC). Where the relationship between statutory and cultural authority is unclear, decisions may be delayed, contested or unable to proceed.

These difficulties are compounded by limited organisational capacity of ALT and RNTBCs. Many ALTs have little or no recurrent operational funding, staff or specialist expertise. RNTBCs also face significant capacity constraints and competing responsibilities. Both may lack the legal, technical, commercial and administrative resources required to assess proposals, facilitate appropriate consultation, negotiate agreements, manage licences and oversee benefits.

The Situation Analysis, Jardine River Catchment Case Study, Indigenous Enterprise Case Study and First Nations Reference Group identified these governance and capacity constraints as significant barriers to water activation. They increase transaction costs, create uncertainty for proponents and may discourage corporations from making decisions that expose them to financial, legal or community risks.

The underlying issue is therefore not simply whether an eligible corporation can obtain a water licence, but whether appropriate governance arrangements and institutional support exist to enable culturally authorised, legally effective and commercially informed decisions. The structural implications of these findings are examined in the following section on government policy and statutory reforms.

Complex and fragmented development approval processes

There is significant evidence from the regional situation analysis report, workshops, interviews and case studies that a major constraint to activating Indigenous water rights in Cape York Peninsula is not the availability of water but the complexity of the statutory development system. The water licensing and assignment process through ALTs and RNTBCs is only one part of this approval process.

Depending on the nature and location of a project, approvals and agreements may be required under:

- Water Act 2000, Water Plan and Cape York Water Management Protocol;
- Aboriginal Land Act 1991;
- Native Title Act 1993, including future act procedures or an Indigenous Land Use Agreement;
- Aboriginal Cultural Heritage Act 2003;
- Planning Act 2016 and the relevant local planning scheme;
- Queensland land clearing and environmental protection legislation;
- Commonwealth Environment Protection and Biodiversity Conservation Act 1999;
- mining, agriculture, aquaculture or energy legislation; and
- local government building, infrastructure and service requirements.

Current arrangements therefore require proponents to navigate multiple complex independent legislative processes that were developed separately and are administered by different agencies. Many may require consultations or consent from Indigenous parties duplicating statutory processes and adding to administrative complexity, confusion and consultation fatigue within Aboriginal corporations. Lack of capacity and understanding can also increase the potential for conflict or deepened existing conflicts. This fragmentation increases development costs, delays investment and creates uncertainty for Indigenous and non-Indigenous organisations seeking to establish enterprises based on CYPHA water reserves.

Infrastructure costs and physical constraints

Cape York's remoteness and limited infrastructure substantially increase development costs. Depending on the project, activation could require pumps, pipelines, storage, bores, dams, power supply, road access and monitoring equipment. A Parliamentary inquiry into workforce development in Northern Australia found that infrastructure development costs are substantially affected by remoteness and freight. In Cape York, freight alone can add an estimated 50–60% to building costs, while nationally, construction costs in very remote communities can be around twice those of capital cities[15].

[15] Australian Parliament, Joint Standing Committee on Northern Australia, Workforce Development in Northern Australia: First Report (2023), ch 4, paras 4.16–4.18.

A nominal water volume may consequently have little practical value unless the organisation can finance the infrastructure required to take, store and deliver it. Distance between the water source and the proposed use further reduces feasibility.

Commercial Value and Market Development

Unlike mature water markets, Cape York has relatively few comparable transactions from which to determine a fair value for CYPHA water. A number of Eligible ALT and RNTBCs sort guidance from the project about how they could value their water licences. Purchases of water interviewed also identified the Strategic and General reserves as sources of water if they could not secure CYPHA water or agree on a price for a CYPHA assignment. Local Aboriginal Corporations developing projects for community benefit also questioned why they should be paying commercial rates for CYPHA water when they were meeting the objectives of the WPCY. Barriers to assignments can therefore include:

- uncertain pricing;
- limited competition between prospective users;
- unequal access to commercial information;
- high negotiation costs; and
- a risk of long term arrangements that provide inadequate benefits.

The research has identified the need for independent valuation, commercial advice and safeguards when negotiating with external proponents.

Unresolved benefit sharing arrangements

A key issue that activation raises when income is generated is who should receive and control benefit:

- the licence holding corporation;
- the entire First Nation group/s connected to the water;
- the First Nation clan group with cultural authority for the land on which the development is occurring;
- the affected community;
- individual beneficiaries; or
- a wider group within the catchment.

As discussed in the first constraint the eligible ALT and RNTBC who hold the water licences do not necessarily represent all these different interests and often have limited governance capacity to address these questions. This can contribute to trustee corporations' reluctance to make decision and proceed with an assignment particularly in the context of potential or existing conflict between Indigenous organisations or beneficiary groups. The current framework provides little support or guidance in resolving these questions.

Business readiness of Indigenous land and water resources

ALT and RNTBCs who hold water licences do not have assets including land and water that are business ready. The land and water they own is collectively held in trust and they will need to proceed through consent processes and the statutory development barriers discussed in 1 and 2 before land and waters are available for business development. These organisations currently lack capacity to

navigate these processes, and the complexity and costs prevent private investment outside of industries like mining or the government. The inalienable nature of land and water assets also limits opportunities for capital to be raised to develop projects.

Cumulative effect

The constraints identified through the project are cumulative and mutually reinforcing. Uncertainty about decision-making authority can delay project planning; limited organisational capacity constrains technical assessment and negotiations; fragmented approvals increase costs and uncertainty; and the absence of an investable project makes it difficult to secure finance for infrastructure and development.

Consequently, the availability of CYPHA water and the granting of a licence do not, by themselves, establish a viable development opportunity. Activation requires coordinated responses to governance, statutory approvals, infrastructure, commercial development and investment constraints. These findings provide the basis for considering the structural governance and targeted statutory reforms outlined in the following section.

Government Policy and Statutory Reforms.

Structural Reforms to the Governance System

The barriers identified through this project demonstrate that activating CYPHA water requires more than improvements to licensing procedures or individual development approvals. It requires governance arrangements that can reconcile First Nations cultural authority with the legal, administrative and commercial requirements of Australia's statutory development system.

The central reform challenge arises from the intersection of two systems of governance. First Nations' authority to make decisions about Country is grounded in customary law, cultural knowledge, kinship, clan and estate relationships and responsibilities to future generations. Australia's statutory system, by contrast, assigns rights and obligations to legally recognised entities, including ALTs and RNTBCs, which operate through legislation, corporate rules and formal decision-making processes.

These systems are not necessarily incompatible, but they perform different functions and do not always align. The project identified circumstances in which the corporation legally entitled to hold a CYPHA water licence was not necessarily the institution through which the relevant First Nation or clan group exercised cultural authority. Existing arrangements also provide limited institutional support to coordinate these decisions or translate them into development outcomes.

The scale of this challenge is illustrated by the Situation Analysis, which identified 69 Aboriginal corporations potentially eligible for CYPHA licences and 4.54 million hectares where Aboriginal freehold and native title interests coincide. The Jardine River Catchment Case Study further demonstrated the difficulties arising where statutory corporate boundaries, cultural geography and decision-making responsibilities do not align. These findings highlight the limitations of relying exclusively on existing statutory corporations to perform all the governance functions associated with water development.

A more effective system would distinguish between the authority to decide whether and how water and Country may be used, the legal responsibility to hold and administer water rights, the government's regulatory responsibilities, and the commercial functions required to develop and operate projects. It would also establish arrangements for coordinating development processes and governing the distribution of benefits.

These functions need not be performed by separate organisations. An ALT or RNTBC may undertake several functions where it has the appropriate authority and capacity. Equally, First Nations may choose to establish or strengthen Country-based, catchment or wider First Nation institutions to support culturally legitimate decisions and coordinate development. The appropriate arrangements will vary according to local cultural geography, existing institutions and the aspirations of the relevant First Nations.

Importantly, strengthening First Nations governance should not displace the statutory responsibilities of government agencies, legal rights holders or commercial proponents. Rather, reform should clarify their respective roles, improve coordination and ensure that culturally authorised decisions can be translated into legally effective and economically viable outcomes.

The project identified six functions that must be addressed to activate CYPHA water, as summarised in Table 3.

Table 3. Functions needed to activate CYPHA water

Function	Nature of the function
Cultural authority decision making	Within a First Nation determining whether and under what conditions water and Country may be used
Legal rights holding	Holding the water licence, Aboriginal freehold, native title or other statutory interest
Statutory regulation	Assessing applications and enforcing legislation
Development planning and coordination	Sequencing tenure, water, planning, environmental and infrastructure processes
Commercial development	Preparing the business case, securing finance, constructing and operating the project
Benefit governance	Receiving, allocating, investing and monitoring financial and non-financial benefits

The identification of these functions provides a framework for assessing alternative governance arrangements. The objective is not to prescribe a uniform institutional model across Cape York Peninsula, but to enable First Nations to determine how cultural authority, legal rights holding, development coordination, commercial activity and benefit governance should operate together.

This approach is consistent with the broader emphasis on Indigenous self-determination reflected in the National Agreement on Closing the Gap, the National Water Agreement and research on Indigenous governance and nation rebuilding. Australian and Queensland Productivity Commissions have all concluded reforms that strengthen self-determination are critical to improving outcomes for Aboriginal and Torres Strait Islander peoples.[16] It also recognises that effective reform will require sustained institutional investment and changes to mainstream government systems, rather than placing responsibility for overcoming structural barriers solely on under-resourced Indigenous corporations.

The following section considers three governance reform options, ranging from retaining existing arrangements to improved development coordination and longer-term First Nation rebuilding.

[16] Australian Productivity Commission. (2024). Review of the National Agreement on Closing the Gap. Australian Government. Canberra.
Queensland Productivity Commission. (2017). *Service Delivery in remote and discrete Aboriginal and Torres Strait Islander communities.* Queensland Government. Brisbane.

Governance Reform Options

The research identified three options for addressing the governance and capacity barriers to activating CYPHA water. These options represent progressively greater levels of reform.

Option 1: Status Quo retains the current institutional framework and provides limited project specific assistance.

Option 2: Improve Development Coordination retains the existing legal framework but establishes a facility to support ALTs and RNTBCs governance and coordinate development.

Option 3 First Nations Rebuilding invests in long term placed-based self-determined reforms of institutional arrangements.

The options are not entirely mutually exclusive. Option 2 could be implemented immediately and provide the institutional foundation from which Option 3 develops. The principal difference is that Option 2 helps existing organisations operate more effectively within the current system, while Option 3 enables First Nations to progressively reshape that system around their own self-determined governance structures and processes to inform planning and development on Country.

Option 1: Status Quo

Under the status quo, the current Water Plan eligibility and licensing framework would continue without substantial institutional reform. ALT and RNTBC would apply for and manage CYPHA water licences. Proponents would negotiate separately with the relevant tenure holders, native title parties, cultural heritage bodies, councils and regulatory agencies.

Government could continue to provide information, technical assistance or project specific grants, but there would be no systematic separation between cultural authority, corporate decision making and licence administration.

The status quo is unlikely to produce substantial activation of the CYPHA reserve across Cape York peninsula. It may enable a small number of projects where local governance circumstances are favourable, but it does not address the structural barriers identified by this research.

It is likely to perpetuate uneven activation: capable and well-resourced corporations may progress projects, while water associated with areas of complex tenure or under resourced governance remains inactive. Project decisions will continue to depend heavily on personalities, relationships and external consultants rather than durable institutional structures and processes.

This leaves Indigenous directors and their trustee corporations carrying cultural, statutory and commercial responsibilities that are not clearly separated and for which they are generally not effectively resourced to undertake. This increases personal and organisational risk and may encourage boards to defer decisions. It can also lead to decisions that are not aligned to FPIC principles contributing to conflict and lateral violence within communities.

The status quo has the lowest visible reform cost because it does not require government to establish a new program or fund First Nation institutional rebuilding. This apparent saving is misleading. Costs continue to be incurred through:

- repeated consultation and meetings;
- legal advice to multiple corporations;
- separate tenure, native title and cultural heritage negotiations;
- consultant travel and remote mobilisation;

- delays between sequential approvals;
- director and trustee workload; and
- government programs that do not result in meaningful social or economic outcomes.

These direct costs are dispersed between departments, proponents, Aboriginal corporations and funding programs and are therefore not readily visible in a single budget. The status quo also carries substantial opportunity costs in delayed or forgone economic and social development for which the CYPHA reserve was established.

Option 2: Improved Development Coordination

Under this option, existing ALT and RNTBC licence eligibility rules would remain in place, but a project coordination facilitation service would assist them to identify all required project approvals at the outset. Eligible corporations could be supported to amend their rule books or adopt water decision making policies based on cultural authority and FPIC. A standard project pathway could streamline tenure and native title decision making, integrate statutory planning and a documented final consent process. This option would improve the administration of the existing system without fundamentally rebuilding First Nation governance through establishing self-determined institutional structures and processes.

The Queensland Government's Remote Indigenous Land and Infrastructure Program Office (RILIPO) is an example of an institutional model that could be applied to coordinating the activation of CYPHA water. Established by the Queensland Government in 2009, RILIPO has provided a longstanding precedent for coordinating the interdependent land, native title, planning, infrastructure and investment processes required to enable development in remote discrete Indigenous communities. This would expand the role of a RILIPO like function beyond discrete Indigenous communities to the broader First Nation estate within Cape York Peninsula.

RILIPO functions are now part of a Strategic Land Use and Infrastructure Program (SLUIP) within the Queensland Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism (DWATSIPM).[17] The program does not replace the statutory responsibilities of government agencies, local governments, ALT, RNTBCs or Traditional Owners. Instead, it provides a central coordination point through which native title, tenure, cadastral surveying, town planning, infrastructure planning, investment and development approvals can be progressed as an integrated program. Its role recognises that development in remote discrete Indigenous communities is often delayed not by one approval, but by the interaction of multiple agencies, statutory processes and unresolved land and infrastructure issues. Its work to date has been restricted to development within the town boundaries of remote discrete Indigenous communities rather than considering development within the context of broader First Nation land estates aligned to cultural geographies.

This option improves coordination but does not fundamentally address the complex First Nation governance system including ALT and RNTBCs rule books and boundaries that do not necessarily align with First Nation cultural geographies or culturally authorised decision-making process.

FPIC procedures could help boards identify and consult the correct people, but the corporation would still carry responsibility for convening and interpreting cultural authority and decision making. Where several RNTBCs, ALTs or First Nation groups are involved, a project coordinator may be able to

[17] Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism (2026). Strategic Land Use and Infrastructure. Queensland Government. Retrieved from https://www.dwatsipm.qld.gov.au/our-work/aboriginal-torres-strait-islander-partnerships/discrete-remote-communities/strategic-land-use-and-infrastructure

organise the process but cannot create the cultural legitimacy required to resolve contested authority.

There is also a risk that improved coordination would make the Western statutory system more efficient without changing who sets development priorities. Projects would likely be driven by government funding or external proponents rather than emerging from self-determined First Nation institutions and Country based strategic planning.

This option would likely increase activation of CYPHA water, particularly for projects that are already reasonably well defined but are being delayed by complex approvals or limited technical capacity. It could produce earlier gains in agriculture, municipal supply, small scale enterprise and assignments to established third party projects like mines.

Its outcomes would remain uneven in areas with significant governance fragmentation or unresolved cultural authority issues. It would improve how projects move through the system but would not fully address who makes the underlying First Nation culturally authorised decision.

Option 3: First Nation Rebuilding

The barriers to development identified through this research are significant and cumulative and demonstrate how the mainstream statutory governance system has again failed Indigenous peoples because it disempowers them. This is because the existing statutory institutional structures and processes often do not align with First Nation understandings of Country or development. There is a need for long term institutional reform to achieve development outcomes that are meaningful to Indigenous peoples.

First Nation rebuilding is a strengths base approach to tackling these challenges. It has been developing nationally and internationally over recent decades and refers to an Indigenous-led, ongoing and intergenerational process through which First Nations renew and strengthen their collective identity, relationships, cultural authority and institutions to govern their affairs and achieve a shared vision for their future. It builds on existing laws, customs, knowledge and strengths while responding to the disruption caused by colonisation and imposed governance arrangements. It includes strengthening accountable leadership, participation, trust, dispute resolution and the practical capability to make and implement collective decisions.[18]

First Nation rebuilding means supporting First Nations to develop culturally legitimate and practically effective arrangements for decisions about Country including water and related development and benefit sharing. These arrangements should reflect the cultural authority of relevant First Nation clan groups, with agreed mechanisms for coordinating shared matters across First Nation groups and catchments. They should clarify how culturally authorised decisions are given legal effect through corporations such as ALT and RNTBCs holding water licences. An effective First Nation rebuilding process creates enduring institutions capable of supporting successive decisions and opportunities beyond an individual project. Its form, terminology and scale are determined by the people concerned; it extends beyond corporate compliance and does not necessarily require amalgamation into a single corporation.

Through First Nation rebuilding principes such as cultural geography and subsidiarity are applied so that substantive decisions about Country are better aligned with First Nations' boundaries and decision-making processes. Cultural geographies reflect the broader social and cultural foundations of communities, including relationships between people, Country, kinship, law and lore, and

[18] The Australian Indigenous Governance Institute and the Australian Indigenous Governance Development project provides a range of tools and publications on First Nation rebuilding see https://aigi.org.au/about-us/what-we-do/research-and-initiatives/indigenous-governance-of-development-project

collective identity. Considering land and water through this lens moves beyond the limited boundaries of discrete Indigenous settlements, RNTBCs and ALTs to recognise the more enduring landholding and collective identities of First Nations. These culturally negotiated boundaries are often regarded by First Nations peoples as a more legitimate basis for community governance, institutional arrangements and decisions about land, water and related resources.[19]

Subsidiarity is a governance principle that places decision making and responsibility at the most local level of authority capable of addressing it effectively. In Indigenous governance, it recognises the authority of Country and clan groups within their cultural responsibilities, alongside agreed arrangements for addressing shared matters at First Nation, catchment or regional scales. Wider bodies support local groups and undertake functions requiring collective action, with adequate resources and capability provided at each level.[20] For decision about water subsidiarity means respecting cultural authority over particular places while coordinating decisions concerning shared water resources, cumulative impacts and benefit sharing. These arrangements connect culturally authorised decisions with the legal responsibilities of land and water entitlement holders and statutory regulators.

Supporting Indigenous communities and corporations to apply cultural geography and subsidiarity principles to determine appropriate group boundaries and scales of responsibilities for decision making provides a foundation for rebuilding their governance arrangements. Each Indigenous community and First Nation must, however, lead the process of determining how its governance should operate. Cultural boundaries and authority may overlap or be contested, and First Nations have experienced different governance histories of removal, mission settlement, land transfer and native title determination. First Nation rebuilding must therefore accommodate these different governance histories rather than impose a single institutional model.

The Jardine case study demonstrates why this approach is required. In the Jardine catchment, the land and water interests of four Aboriginal clan groups, Angkamuthi, Gudang, Yadhaykenu and Atambaya are distributed across eight ALTs and RNTBCs whose boundaries do not align with clan and estate boundaries. These arrangements complicate decisions about who has cultural authority for particular areas of Country and how culturally authorised decisions should be implemented by the relevant statutory corporations.[21]

Drawing on the Jardine case study, governance rebuilding could involve a staged approach. First, long term, place-based capacity building would support First Nations clan groups, ALTs and RNTBCs to understand their governance relationships, identify cultural and statutory responsibilities and establish agreed decision making and dispute resolution processes. This would replace the current reliance on short-term consultation undertaken separately for each proposed development.

Once governance relationships and functions are better understood, First Nations could consider wider governance reforms. The Jardine case study identified several possible pathways. These included amalgamating organisations or realigning ALT and RNTBC boundaries to better reflect First Nations' cultural geographies. Where a single ALT or RNTBC represents multiple First Nations,

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[19] Hunt, J., & Smith, D. E. (2007). Indigenous Community Governance Project: year two research findings. Centre for Aboriginal Economic Policy Research, ANU

[20] Bauman, T. & Smith, D. (2024), Indigenous self-governance and 'nation' building: Considerations for a strategic self-analysis tool, Discussion Paper No. 2024, Centre for Indigenous Policy Research, Australian National University. Retrieved from https://dx.doi.org/10.25911/B7TN-0Y84

[21] Turnour, J., Yalu, A., Reuben, R., & McHugh J. (2026). Jardine Catchment Case Study Report, A report for the Cooperative Research Centre for Developing Northern Australia (CRCNA), James Cook University. Retrieved from https://crcna.com.au/resources/publications/case-study-report-jardine-catchment/

culturally agreed decision-making protocols could instead clarify who holds cultural authority for particular areas of Country and how those decisions are to be implemented by the corporation. This could include Country based Elders or clan committees, delegated decision making, agreements between corporations or shared administrative arrangements.

Amalgamation or boundary realignment would not be compulsory. Larger organisations may have greater administrative capacity but may not support culturally legitimate decision making at the scale of Country. Smaller clan based First Nation organisations may more closely reflect cultural authority but lack the capacity to hold and commercially manage significant land or water assets. The preferred arrangement may therefore be to retain existing ALTs and RNTBCs as legal rights holders while establishing culturally agreed decision-making agreements or protocols that operate within, across or between their corporate boundaries.

The model would establish a structured relationship between:

1. the Country, clan or estate group exercising cultural authority;
2. the institution coordinating First Nation collective strategy and Country planning which may or may not be the ALT or RNTBC holding the relevant legal rights;
3. the legal rights holding entity;
4. the proponent developing and operating the project;
5. the development coordination facility supporting decisions and managing the approval pathway; and
6. government agencies exercising statutory regulatory powers.

The Queensland Government would remain responsible for statutory assessment. The coordination facility established under Option 2 could support and coordinate statutory decision-making process which involve a range of agencies including water, land tenure, native title, cultural heritage, planning, environment, infrastructure and commercial processes required to activate CYPHA water. Over time, more of these coordination and advisory functions could be performed by First Nations controlled institutions including through shared service arrangements.

A major benefit of Option 3 is that investment in governance rebuilding would create a reusable institutional asset rather than support only a single project decision. Once established, the same culturally authoritative institutions, plans, and decision-making processes could support decisions about water, housing, infrastructure, tourism, agriculture, aquaculture, mining, conservation and government services.

This enduring capacity could:

- reduce transaction costs across a portfolio of projects;
- enable earlier and more authoritative decisions, reducing the risk of later objections or challenges;
- reduce duplication between native title, ALA landholding and cultural heritage processes;
- improve the sequencing and bundling of infrastructure;
- strengthen the capacity to negotiate and administer commercial agreements;
- increase local procurement and employment;
- retain a greater proportion of project benefits within First Nations and Indigenous communities; and
- improve the monitoring of agreements and enforcement of conditions.

Governance rebuilding would also improve project selection. As part of First Nation rebuilding subregional or catchment based strategic planning could enable First Nations to identify where

development is culturally and environmentally appropriate, the kinds of development they wish to pursue and the areas that require protection before individual proposals arise. This would shift First Nations from responding to externally designed projects towards initiating and negotiating development based on their own strategies and aspirations.

The Jardine case study found that water development is also constrained by land tenure, native title, environmental protection, infrastructure and planning requirements. Integrated strategic planning could identify existing cleared land, suitable development areas and infrastructure requirement.

First Nation rebuilding would also produce important social and cultural benefits. It would strengthen cultural authority, collective identity, intergenerational knowledge transfer and confidence in decision making. It would provide structured participation for Elders, families, women, younger people and people living away from Country, while establishing accepted processes for resolving disagreement. These outcomes have intrinsic value and may also reduce conflict, director and trustee stress, consultation fatigue, litigation and the deterioration of relationships between corporations and families.

The model would not guarantee that more development proposals are approved. A culturally authoritative process may reject a project or impose conditions that increase its cost. This would not constitute policy failure. The purpose of the model is to enable legitimate and informed First Nations decisions about Country and water, not to maximise water extraction. It would be aligned to Indigenous peoples understanding of development that incorporates not only economic outcomes but ensures cultural, social and environmental outcomes are not inadvertently traded away.

Option 3 would require greater investment and time than Options 1 and 2. Its initial activation rate may be slower than under a narrowly focused coordination model because relationships must be rebuilt, culturally legitimate processes agreed, strategic subregional or catchment based plans prepared and institutional capacity developed. Once established, however, it should provide a more stable foundation for a continuing pipeline of culturally supported projects.

A stage approach would see Option 3 implemented progressively alongside Option 2. The coordination facility should support immediate and project ready opportunities under existing arrangements while longer term First Nation rebuilding proceeds. Institutional consolidation or realignment should occur only where the affected First Nations choose this through an FPIC process. Cultural authority can also be recognised through agreements, protocols, committees and corporate rule book provisions without transferring all statutory rights to one First Nation organisation.

Option 3 has the greatest potential to activate CYPHA water and associated Aboriginal lands over the medium too long term because it addresses both statutory coordination problems and the deeper question of cultural authority. Its benefits would extend beyond the volume of water licensed or used to include stronger First Nations institutions, improved land and water planning, better agreements, increased Indigenous control of development, stronger cultural and environmental protection and a greater proportion of economic benefits retained locally.

Recommended policy direction

The three options should not be treated as entirely separate. Improved development coordination can provide immediate support while First Nation rebuilding proceeds over a longer period. The preferred approach is therefore a staged combination of Options 2 and 3.

In the short term, a Cape York development coordination facility should be established to support eligible corporations to adopt FPIC and cultural authority procedures and create an integrated pathway covering water, tenure, native title, cultural heritage, planning and environmental approvals.

Expanding the functions of the Strategic Land Use and Infrastructure Program within DWATSIPM could possibly achieve this in the short-term. The development of a standalone shared service

provider separate from government, even if it means building on existing institutions, however, would create a greater sense of ownership by Indigenous communities and First Nation organisations and could attract investment from the Commonwealth and Queensland governments, non-government organisations and businesses. A standalone entity with strong First Nation lead governance and support could provide nation rebuilding services and coordinate strategic planning and projects prioritised by First Nations and remote discrete Indigenous communities.

The status quo has the lowest explicit budget requirement but has significant hidden costs transferred to First Nations and proponents and is unlikely to achieve the objectives of the CYPHA reserve. Improved coordination would make the existing system more efficient and could activate projects in the short term, but it would not fully resolve the intersection between corporate and cultural authority. First Nation rebuilding requires the greatest investment and takes longer, but it provides the strongest foundation for legitimate decisions, coordinated approvals and sustained activation of CYPHA water and associated Aboriginal lands.

Recommendation 1: The Queensland and Australian Governments should adopt a staged combination of governance reform options identified through the research including Options 2 Improved Development Coordination and Option 3 First Nation Rebuilding. Immediate development coordination and project support should proceed alongside sustained investment in First Nation governance rebuilding and longer-term reform of the Water Plan (Cape York) 2019 and Cape York Water Management Protocol.

Five sub recommendations are detailed below that if implemented would support this staged approach.

The approach could initially build on the original Remote Indigenous Land and Infrastructure Program Office (RILIPO) function within the Queensland Department of Women, Aboriginal and Torres Strait Island Partnerships and Multiculturalism (DWATSIPM) while a standalone or shared service model with strong First Nations ownership is developed.

The SLUI is already coordinating projects in remote discrete Indigenous communities undertaking the functions of the previous Remote Indigenous Land and Infrastructure Program Office (RILIPO). Its remit could be expanded to coordinate priority projects outside of discrete communities where there are significant opportunities for social and economic outcomes while a standalone shared service facility with strong First Nations ownership is developed.

Recommendation: 1.1. Build on the Queensland Government Strategic Land Use and Infrastructure (SLUI) Program within the Queensland Department of Women, Aboriginal and Torres Strait Island Partnerships and Multiculturalism (DWASTIPM).

Recommendation 1.2: The Queensland and Australian governments should partner with Indigenous Local Governments, First Nation corporations (ALT and RNTBCs) to codesign a dedicated, First Nations governed facility or facilities to rebuild First Nations and coordinate projects through statutory water, land tenure, native title, cultural heritage, planning, environmental, infrastructure, commercial and investment processes. Recommendation 3: Invest Long Term in First Nation Rebuilding.

Recommendation 1.3: Invest Long Term in First Nation Rebuilding through sustained funding that enables First Nations to define their cultural geographies and identify who holds cultural authority for particular Country. This provides a basis for self-determination in relation to the development of land and water resources and the roles and responsibilities of First Nation

institutions including ALTs, RNTBCs, First Nation businesses and local governments supporting the establishment of agreed decision making, representation and dispute resolution processes. Rebuilding First Nations would create an enduring institutional asset, strategic plans, knowledge and capabilities that can support multiple projects and policy areas rather than the current system requiring multiple individual decisions for each project.

Recommendation 1.4: The reforms to governance arrangements should clearly distinguish between cultural authority and consent, legal rights holding, statutory regulation, development planning and coordination, commercial development and benefit governance. For each function, enhanced arrangements should identify the responsible decision maker, source of authority, accountability requirements and process through which decisions are translated into legally effective actions.

Recommendation 1.5: Embed cultural authority and FPIC in corporate processes by supporting ALTs and RNTBCs to adopt culturally authorised land and water decision making policies, agreements, committees or rule book provisions consistent with free, prior and informed consent. These arrangements should ensure that decisions about the use of water and Country are made by the relevant culturally authorised people and then given legal effect by the responsible statutory entity. Any institutional amalgamation or boundary realignment should occur only where affected First Nations choose it through an FPIC process.

Other Reforms to the Water Plan and Cape York Water Management Protocol

While the structural governance systems reforms discussed in the previous section are foundational to long term activation of CYPHA reserves the project also identified a range of other reforms to the WPCY and Protocol that could assist in activating CYPHA water. These could be progressed as part of a WPCY review due in 2029 if not before.

Broaden Indigenous Eligibility and Access Pathways

The current framework limits direct access to CYPHA water licences to ALT and RNTBCs. The project identified that providing alternate pathways to other Indigenous controlled organisations including Indigenous local governments, community controlled corporations and approved Indigenous businesses would improve access to WPCY licences and activate water. These Indigenous organisations should demonstrate an Indigenous community economic and social benefit as an outcome of the project.

This could be achieved through changes to the CYPHA reserve eligibility criteria. If water was licenced to an alternative entity, then the total CYPHA volume remaining available in that catchment would be reduced by the volume of existing licences when calculating future ALT and RNTBC licence volumes under section 20 of the Cape York Water Management Protocol. This is effectively what occurred when calculating the original CYPHA catchment volumes.

Recommendation 2:

Broaden Indigenous CYPHA reserve eligibility criteria to enable appropriately governed Indigenous local governments, community controlled corporations and Indigenous businesses to access water where they can demonstrate Indigenous community economic or social benefit. Improved Guidance on Water Assignment Arrangements

Improve Guidance on Water Assignment Processes

The Cape York Water Management Protocol section 51 sets out rules for amending a CYPHA water licence to authorise an assignment. There is limited information, however, on the level of detail required to address the protocol or standardise templates to support applications. Through the case studies the project engaged legal advice to develop a template agreement to assign water recognising this limitation. Further work in this area developing standard agreements, templates and assessment criteria would reduce transaction costs, improve consistency and provide greater confidence for Indigenous organisations, investors and government agencies.

The protocol is also an example of the duplication of the information needed to be supplied to government agencies through the statutory development approval processes. For example, addressing section 51 requires providing information on native title consent, environmental and cultural heritage protections which are requirements of other statutory processes before a development can be approved. Removing duplication where possible and clarifying the level of information required to address CYPHA assignment rules would streamline the assignment process and support activation of CYPHA water.

Recommendation 3:

Strengthen guidance and reduce duplication for water assignments under section 51 of the Cape York Water Management Protocol including unnecessary duplication between water assignment requirements and native title, cultural heritage, environmental, tenure and planning approval processes.

Review Technical Provisions within the Water Plan and Protocol

Several Aboriginal Corporations engaged through the research identified that groundwater setback requirements and other technical provisions within the Water Plan and Protocol may unnecessarily constrain development in some locations. This included the requirement for a bore to be 200 metres from the high bank of a water course where the high bank could be a long way from the centre of the river in seasonal systems. The limitations on overland flow capture in the Normanby Catchment were also raised through the project. A review should consider adopting a risk-based, site specific assessment approach where investigations demonstrate that environmental values can be protected while improving access to groundwater or providing for overland flow capture.

Recommendation 4:

Review technical provisions with the WPCY and Protocol including groundwater setbacks to determine whether risk based, site specific assessment can improve access while protecting environmental and cultural values.

Clarify Access to General and Strategic Reserves

Several Indigenous corporations identified uncertainty regarding the circumstances under which water from the General Reserve and Strategic Reserve may be released for Indigenous development. Clear policy guidance on eligibility, assessment criteria and release processes would improve transparency and provide additional development pathways where CYPHA water is unavailable or unsuitable.

Recommendation 5:

The Queensland Government should publish clear guidance on the eligibility, assessment criteria and processes for Indigenous projects seeking access to the General and Strategic reserves.

Strengthening Monitoring and Reporting including First Nation Knowledge and Data Governance

Future reviews of the Water Plan would benefit from improved reporting on the activation and use of the CYPHA reserve. Annual reporting could include licences issued, water volumes activated, assignments completed, project types and economic, social and environmental outcomes. This would improve transparency and provide an evidence base for adaptive management and future policy reform.

Governance reform and project assessment, however, will generate cultural, hydrological, commercial and community information. First Nations should determine the conditions under which their knowledge is collected, recorded, stored, accessed, interpreted and reused. Agreements should specify ownership and control, consent, confidentiality, culturally restricted information, permitted uses, retention, publication and benefit from future use. Public reporting should use agreed indicators and protect confidential cultural and commercial information. These arrangements support self-determination and the NWA and Closing the Gap commitments to shared access to data and information.

Recommendation 6:

Strengthen monitoring and reporting of the CYPHA reserve and its activation. Information generated through governance reforms, planning and project assessment should be managed under agreements covering ownership, access, confidentiality, culturally restricted information, permitted reuse and benefit. Annual public reporting should distinguish licence applications, offers, issued licences, assignments and water actually used, and where possible measure First Nations defined cultural, social, economic and environmental outcomes rather than licence volumes alone.

Environmental Market Development

The situation analysis, interviews and workshops identified environmental markets as a potential pathway for activating the CYPHA water reserve while maintaining the environmental and cultural values of Cape York Peninsula. This could involve the use of water for environmental projects or assigning water to third parties that is left in the river for which an ALT or RNTBC is paid to improve environmental protection. While there is no requirement for an ALT or RNTBC to activate a licence it is not currently clear whether CYPHA water could be assigned to a third party who paid to have the water left in the river.

Markets are a tool for allocating scares resources based on a preparedness to pay for that resource. The Strategic, General and CYPHA water reserves are consumptive water allocations after environmental and cultural flows have been accounted for. The market therefore has effectively put no value on these flows to date as they are legislatively required to be left in the river. Markets rely on government policy and legislation to operate and if cultural heritage and environmental organisations wish to add consumptive water allocations to environmental and cultural flows, they should be able to participate in water markets and this need to be clarified.

Markets for carbon, biodiversity, environmental offsets and other ecosystem services are creating new opportunities to generate income from the sustainable management of land and water. Although Australia's carbon market is relatively well established and Indigenous corporations are already earning income through savanna burning projects, markets for nature positive outcomes and broader ecosystem services remain at an earlier stage of development.

Further development of these markets would reduce the need for Indigenous corporations to rely solely on agriculture, mining and other resource intensive industries to generate income from their land and water assets. This is particularly important in Cape York Peninsula with significant First Nation interests and different priorities for development given the regions significant cultural and environmental values. The reality is there is limited opportunity for the development of traditional water intensive industries like agriculture outside of areas such as Lakeland Downs due to factors including the regions poor soils, variable climate, distance from markets and infrastructure constraints.

The Jardine catchment case study illustrates Cape York's competitive advantage in attracting nature based investment. Its extensive Aboriginal freehold estate, largely intact river systems and wetlands, and nationally significant biodiversity provide a strong foundation for high integrity environmental projects. Water could contribute to these projects by sustaining wetlands, river health, fisheries, biodiversity and cultural values. From this perspective, the CYPHA reserve should be recognised not only as a source of consumptive water for agriculture, mining and other industries, but also as a strategic asset capable of supporting environmental services and associated income streams.

Realising this potential will require deliberate market development. Priorities include establishing scientifically and culturally credible methods for valuing water related environmental and cultural outcomes; clarifying how CYPHA water entitlements can support non-consumptive projects; developing appropriate governance and benefit sharing arrangements; and attracting long-term public, philanthropic and private investment. Indigenous corporations will also require technical, legal and commercial support to design projects, demonstrate outcomes, negotiate agreements and participate in these markets on equitable terms.

Recommendation 7.

Ensure CYPHA reserve water can be assigned for environmental purposes including payment for water left in the river to add to cultural and environmental flows.

Review Existing Licenses in the Jeanie and Watson Catchments

The Jeanie and Watson catchments within the WPCY had no CYPHA or General reserve allocations as all water had already been allocated prior to establishment of the water plan. Aboriginal corporations seeking water for development in the Jeanie and Watson catchment therefore were unable to apply for a water licence unless they had a project that was of regional significance and therefore could access water from the Strategic Reserve.

Within the Jeanie catchment there is suitably cleared agricultural land and Aboriginal corporations with smaller community-based projects that could be developed if a CYPHA water license was

available. It is recommended that existing water licenses be reviewed to claw back water that is not being used so that it could be reallocated into CYPHA and general reserves to facilitate smaller projects.

Recommendation 8.

Review existing water licenses in the Jeanie and Watson Catchments to assess whether existing licenses are being used and reallocate unused water to CYPHA and General Reserves in these catchments.

Activate sustainable development provisions within the Cape York Peninsula Heritage Act 2007 (Qld) to facilitate First Nation and Indigenous community development.

The Cape York Peninsula Heritage Act recognised the statutory complexity of development in Cape York Peninsula for Indigenous peoples given the region's significant environmental and cultural values that needed to be protected. It did this by establishing Indigenous Community Use Areas (ICUA) within the legislation that were to streamline development approval process for Indigenous communities where they identified sustainable development opportunities. These provisions are still complex and the advisory committees to the Minister that were to consider ICUA applications are no longer in existence. The Situation Analysis report discusses this issue in more detail but effectively the sustainable development provisions within the Cape York Peninsula Heritage Act were never operationalised[22].

There is a need to review this act as it came out of a period of extended conflict between traditional industries like agriculture, the environment sector and the Aboriginal Traditional Owners of the region. To date the main focus of governments has been the purchase of land through the Cape York Peninsula Tenure Resolution Program. This has significantly expanded the protected areas estate on Cape York Peninsula. First Nation's people have supported this work and now hold significant areas of Aboriginal Freehold Land as a result through ALT and RNTBC corporations. They, however, are increasingly wanting to return to live and work on their country and there is a need for the ICUA provisions to be reviewed and operationalised.

Recommendation 9:

Review the Cape York Peninsula Heritage Act 2007 (Qld) and reform it in a way that enables First Nations to utilize the Indigenous Community Use Area provisions to support sustainable community development.

[22] Burns, S (Ed) & Turnour, J (Ed). (2024). *Activating Indigenous Peoples Water Rights' Under the Water Plan (Cape York) 2019: Situation Analysis Report,* A report for the Cooperative Research Centre for Northern Australia (CRCNA), James Cook University. Retrieved from https://crcna.com.au/resources/publications/activating-indigenous-peoples-water-rights-under-the-water-plan-cape-york-2019/

Lessons for Northern Australia Water Policy

The Cape York Water Project provides important lessons for the design and implementation of Indigenous water reserves across northern Australia. Its central finding is that statutory recognition and allocation of water rights, while essential, are insufficient to achieve Indigenous economic and social aspirations without effective governance arrangements and the institutional capacity to activate those rights. These findings are particularly relevant as governments review water plans and consider reforms to implement the new NWA.

The NWA provides a strengthened national policy framework for increasing Aboriginal and Torres Strait Islander peoples' access to, management of and ownership of water. As water plans are reviewed, governments should establish or strengthen Indigenous water reserves where unallocated water remains available. In fully or overallocated systems, voluntary entitlement purchases and other market-based mechanisms should be considered to restore Indigenous water ownership. The Australian Government's $100 million Murray–Darling Basin Aboriginal Water Entitlements Program provides an important precedent, demonstrating how governments can purchase existing water entitlements for First Nations while longer-term governance arrangements are developed.

However, the experience of Cape York and other northern Australian jurisdictions demonstrates that the design of the governance arrangements is as important as the establishment of the reserve itself. The Northern Territory's 2025 reforms illustrate the potential conflict between simplifying licensing processes to facilitate development and maintaining Traditional Owner authority over decisions about water. Western Australia's Yamatji Nation settlement demonstrates how water rights can be incorporated into broader First Nation governance and economic development arrangements, while the proposed Fitzroy–Derby Aboriginal Water Holding is considering alternative approaches to entitlement management and development support. The Commonwealth's Murray–Darling Basin consultations have similarly identified the need to distinguish collective water holding and portfolio management from culturally legitimate decisions about water use and benefits.

The Cape York Water Project identified six connected but distinct governance functions required to activate Indigenous water rights:

1. Exercising cultural authority and customary decision-making concerning Country and water;
2. Holding water entitlements through an appropriate legal entity or trustee;
3. Undertaking statutory planning, licensing, compliance and regulation;
4. Development planning and coordination sequencing strategic planning, tenure, environmental and infrastructure processes;
5. Preparing the business case, securing finance, constructing and operating the project; and
6. Benefit governance including receiving, allocating, investing and monitoring financial and non-financial benefits.

These functions should not automatically be assigned to a single organisation. Cultural authority derives from the laws, customs and decision-making processes of the relevant First Nation, while statutory regulatory authority remains with government. Legal entitlement holding, development coordination, commercial management and benefit governance require different institutional capabilities and accountability arrangements. Separating these functions provides opportunities to strengthen Indigenous control while improving the efficiency and effectiveness of water development.

The limitations of the current Cape York framework demonstrate the consequences of failing to make these distinctions. Eligibility for CYPHA water is linked to ALTs and RNTBCs, with nominal entitlements calculated according to their associated land and native title interests. While this

provides an administratively identifiable basis for allocating water, these entities do not necessarily correspond with the First Nations or Country groups holding cultural authority, nor are they necessarily established or resourced to undertake development coordination and commercial management. Consequently, the framework has contributed to fragmented entitlements, overlapping responsibilities and uncertainty about how water rights can be activated for collective benefit.

The three governance reform options developed through this research project provide a framework for addressing these challenges across northern Australia. Maintaining existing arrangements may preserve established statutory responsibilities but is unlikely to overcome the institutional barriers identified through the research. Improved development coordination could reduce transaction costs and support the licensing, assignment and development of water resources without substantial changes to existing rights-holding structures. Combining development coordination with long-term investment in First Nation rebuilding offers a more comprehensive approach by strengthening culturally authoritative institutions and creating enduring capacity to govern water and other development decisions.

The third option is particularly relevant to the design of collective water-holding arrangements. First Nations could retain cultural authority and decision-making at the Country scale while voluntarily establishing or participating in institutions that coordinate entitlement management, development and agreed commercial activities at catchment, subregional or regional scales. Such arrangements could improve the management of water as a strategic Indigenous asset, support coordinated investment and benefit sharing, and create institutional capabilities that can be applied across land, water and other economic development opportunities.

Importantly, catchment or regional coordination must not displace cultural authority or enable collective institutions to make decisions about Country without the consent of the relevant First Nations. These institutions should derive their authority from participating First Nations through clearly defined mandates, decision-making protocols and accountability arrangements. Decisions concerning whether water associated with particular Country may be used, the purposes for which it may be used and the cultural conditions applying to its use must remain with those holding the relevant cultural authority. There is a need, however, to rebuild First Nations so that they have the governance capacity to support Aboriginal and Torres Strait Islander peoples to make culturally authoritative decisions about country.

The broader lesson for northern Australia is therefore that Indigenous water reserve reform should move beyond the allocation of water to the development of governance systems capable of supporting Indigenous self-determination and sustainable economic development. Statutory water rights should be accompanied by culturally legitimate decision-making arrangements, appropriately constituted entitlement-holding institutions, coordinated development services and long-term investment in First Nation governance rebuilding. These arrangements should be co-designed with the relevant First Nations rather than prescribed through a uniform regional model.

The different jurisdictions in northern Australia are all grappling with the same challenge of not simply allocating water to an Indigenous reserve but how to support meaningful governance and management of those reserves so that Indigenous peoples can benefit economically and socially. This project was focused on the WPCY and how to activate the CYPHA reserve with limited capacity beyond a desk top assessment to learn from and share information across jurisdictions. There is a need to share learnings between First Nations across jurisdictions which could be facilitated through a northern Australia water forum or the development of similar networking opportunities.

A First Nation-led forum could facilitate the exchange of knowledge between First Nations, land councils, researchers and government water planning agencies. Experiences from Cape York and emerging governance arrangements, including those established through the Fitzroy-Derby and

Yamatji Nation settlement in Western Australia, could inform the development of more effective Indigenous water reserves and support implementation of the National Water Agreement (NWA).

Recommendation 10: That a Northern Australian First Nations Water Forum or similar network be established to facilitate knowledge sharing, collaboration and policy development across jurisdictions.

The forum could also help identify priorities and opportunities for further comparative research into Indigenous water governance across northern Australia. There is a need for a comparative economic evaluation to assess the relative costs and benefits of the three proposed governance reform options including how costs and benefits are currently distributed among First Nations, governments and other stakeholders.

The analysis should account for the opportunity costs of maintaining existing arrangements, including development delays, duplicated approval processes and forgone opportunities. It should assess whether investment in First Nation rebuilding creating stronger First Nation institutions generates enduring benefits beyond water governance, including improved land management, economic development and decision-making concerning Country.

Recommendation 11: That further research, co-designed with participating First Nations, evaluate the economic costs and benefits of the three governance reform options identified by this research: maintaining the status quo, improving development coordination, and combining development coordination with long-term investment in First Nation rebuilding.

Conclusion

The Cape York Peninsula Heritage Area (CYPHA) reserve is a nationally significant statutory recognition of Aboriginal peoples' economic and social interests in water. By setting aside 485,300 ML approximately 94 per cent of the unallocated water reserved under the Water Plan (Cape York) 2019 within a CYPHA reserve the Plan created a substantial opportunity to support First Nations aspirations. The project has helped translate this commitment into increased awareness, additional licence applications and a substantial prospective increase in the volume of water held under CYPHA licences. These are important achievements. They do not, however, amount to activation. At the time of reporting, no CYPHA water had been assigned to and used by a development project.

The central conclusion of this report is therefore that reserving water and issuing licences are necessary but only partial or insufficient measures of success. The meaningful realisation of First Nations water rights depends on whether water can support culturally authorised, environmentally responsible and commercially viable outcomes. It also requires recognition that a legitimate First Nations decision may be to defer, condition or decline a proposed development. Activation should consequently be assessed by the quality of First Nations authority and consent, the capability of rights-holding institutions, the progress of viable projects and the distribution of benefits, not simply by the number or nominal volume of licences issued.

The principal impediment is a wider structural one rather than merely procedural. The present framework relies on ALT and RNTBC to hold licences, but these statutory entities do not necessarily correspond with the First Nations, clans or estates that possess cultural authority for the affected Country. Licence holding also does not itself provide the development coordination, commercial expertise, regulatory navigation, infrastructure planning or benefit-governance capability needed to move a project from an entitlement to operation. Effective activation therefore requires six connected but distinguishable functions: cultural authority and consent; legal rights-holding; statutory regulation; development coordination; commercial development; and benefit governance. Clear allocation and separation of these functions would reduce uncertainty, strengthen accountability and allow each organisation to perform the role for which it is authorised and equipped.

The preferred reform pathway combines immediate action with longer-term institutional development. In the near term, an expanded coordination function should provide First Nations and licence holders with access to culturally capable governance, legal, technical, commercial and regulatory support. The Strategic Land Use and Infrastructure Program (SLUIP) within the DWATSIPM may be positioned to facilitate this work initially, provided it is adequately resourced and operates through mandates from the relevant First Nations. Over time, this function should transition towards a dedicated First Nations-governed facility that can aggregate specialist capability at catchment or regional scale without displacing cultural authority over Country. This should occur alongside sustained investment in First Nation rebuilding, organisational capability, project preparation, infrastructure planning and the governance of agreements and benefits.

Institutional support should be complemented by targeted statutory and administrative reform. Priority measures include broadening Indigenous-controlled access pathways without diminishing existing rights; improving and standardising the assignment process under section 51 of the Cape York Water Management Protocol; clarifying access to the Strategic and General reserves; reviewing groundwater provisions using risk-based evidence; introducing public reporting that distinguishes licences issued from water assigned, projects developed and benefits realized; and reviewing water licenses in the Jeanie and Watson catchments to reallocate water to the CYPHA and General reserves in these catchments. These measures would make the system more transparent and navigable while retaining the environmental safeguards and local decision-making required for sustainable water management.

The implications extend beyond Cape York. Indigenous water reserves across northern Australia will not achieve their intended purpose if policy assumes that setting aside water will itself produce development. A functioning reserve requires culturally legitimate authority to make decisions about Country, coordinated entitlement and development support at catchment or regional scale, and durable institutions capable of connecting First Nations decisions with statutory, technical and commercial processes. Regional arrangements must derive their mandates from participating First Nations and remain accountable to them. The challenges being faced in Cape York Peninsula to the activation of the CYPHA water reserve are shared across other jurisdictions in Northern Australia and the project identified opportunities to share learnings.

The National Water Initiative remains the applicable national water-policy framework in Queensland unless and until the Queensland Government signs the National Water Agreement. Its commitments to secure water access entitlements, transparent statutory water planning, environmentally sustainable allocation, Indigenous representation and the incorporation of Indigenous social, spiritual and customary objectives provide an existing foundation for reform. The National Water Agreement builds on and substantially strengthens that foundation. In particular, it calls for enduring and respectful partnerships underpinned by shared decision-making, self-determination and FPIC decision making; increased Aboriginal and Torres Strait Islander access to, management of and ownership of water; the removal of barriers within water-management frameworks; consideration of unallocated water for Aboriginal and Torres Strait Islander peoples; and participation in monitoring, evaluation and reporting. The reforms recommended in this report would therefore improve the practical implementation of Queensland's existing NWI commitments while positioning the state to give effect to the stronger direction established by the NWA if it becomes a party. By aligning culturally authoritative decision-making with effective rights-holding, development coordination and benefit governance, the CYPHA reserve can become an enduring foundation for First Nations led development, cultural responsibility and self-determination.