THE WILDERNESS SOCIETY

The Wilderness Society's Submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry:

Wild Rivers (Environmental Management) Bill 2010

Massey Creek in the declared Stewart Basin Wild River Area. Photo: Glenn Walker

April 2010

Executive Summary

Freshwater ecosystems are under increasing ecological threat at both global and national scales. Many of Australia's river systems are seriously degraded due to over-extraction, pollution, catchment modification and lack of effective river regulation, the most severe and prominent example being the Murray-Darling Basin. Science and logic tell us that we need to deal with rivers protection at the catchment/basin level rather than dealing with it partially or incrementally.

The Queensland *Wild Rivers Act* was passed in 2005. It has been promoted and endorsed in three consecutive state elections, and has been through three sets of amendments, each involving Mr Noel Pearson and/or Cape York indigenous organisations including the Cape York Land Council and Balkanu Development Corporation, along with conservation groups, other Indigenous interests, and industry groups. These were designed to reach settlement on issues such as making development controls more flexible, and guarantees on Native Title rights explicit. Clear agreements were made by all parties consulted. This Bill seeks to undermine those processes.

Queensland retains some of Australia's last remaining free flowing rivers, located in five broad geographical regions. Queensland's Wild Rivers initiative originates from the compelling need to preserve and protect these river systems. Wild River declarations prevent destructive developments like mega-dams, intensive irrigation, and mining occurring in sensitive riverine and wetlands environments. Without Wild Rivers protection, sensitive rivers and wetlands will be at risk of these and other damaging activities Considerable scientific and technical analysis is undertaken to inform the initial nomination process, and extensive consultations are required ahead of any final Wild River declaration..

Wild River declarations support sustainable development and sustainable economic opportunities (such as grazing, fishing, building infrastructure for tourism), they protect traditional activities and cultural practices, and allocate specific Indigenous water reserves (a first in Australia).

A range of critiques have been leveled at Wild Rivers, including that it impinges on Native Title or broader property rights, that its processes fail to require Traditional Owner agreements for declarations, or is generally unnecessary. In general, these accusations are largely ill-informed and unsubstantiated, and do not stand up to serious and rigorous questioning. In some cases, the claims are correct but the need for change fails the test of reason or legal/policy consistency.

Since the proclamation of the *Wild Rivers Act 2005*, there has been a great deal of misinformation and misreporting about how the initiative operates. There have also been a number of allegations leveled at The Wilderness Society in relation to our support for Wild Rivers. The claims that Wild Rivers prevents all development, stops cultural activities, is akin to a National Park, and "locks up" the land are all fallacious. Wild River declarations operate in a tenure-blind way, and the Wild Rivers Act explicitly states that Native Title rights are fully protected under declarations (Section 44, 2).

It is necessary to highlight and address some of the alleged problems with Wild Rivers, which is what this Submission from The Wilderness Society seeks to do. Section 5 of this submission for example deals with the more substantive alleged problems with Wild Rivers, such as concerns about Native Title, Indigenous rights, and the United Nations Declaration on the Rights of Indigenous People. Other parts of this Submission examine the origins and need for the Wild Rivers initiative, how it operates in practice, and the range of issues and allegations made about it, as well as providing a serious critique of the *Wild Rivers (Environmental Management) Bill 2010*.

The vast majority of the claims against Wild Rivers have been made by Noel Pearson and his associated organisations, including the Balkanu Development Corporation and the Cape York Land Council. For this reason, many of the claims refer to Cape York. However, it must be remembered that Wild Rivers is not exclusively focused on Cape York or on Indigenous communities, it operates Statewide.

Regrettably, little serious legal or policy analysis appears to have been conducted to substantiate claims about Wild Rivers, limiting the capacity to have informed and considered debate about some of the more substantive issues. Instead, Wild Rivers has been largely been discussed through polemic and hyperbole, and in the media rather than in public forums.

Nevertheless, it is important for the Senate Committee and the broader community to understand the claims, and the false and misleading foundations on which they are based, as they provide the political and campaign context for the introduction of the *Wild Rivers (Environmental Management) Bill 2010*. Despite the claims that all the Bill does is give the right to Indigenous people to say no to Wild Rivers declarations, it is clear the intention of the Bill's backers is to overturn the Wild Rivers Act. This leaves serious questions for Traditional Owners who want their rivers protected, as well as for the broader community who support environmental protection for rivers and associated landscapes and the State Government, which has a responsibility to protect the environment.

The Wilderness Society believes that the Bill is ill-conceived, poorly constructed, politically motivated, and a threat to environmental protections and states' rights. It seeks to provide a superficial and selective response to a complex set of issues associated with conservation outcomes and Indigenous rights, both of which deserve comprehensive policy analysis, considerable public debate, and serious legislative effort. Restricting the Wild Rivers Act has specific outcomes but it would also set a bad precedent for undermining progressive Indigenous conservation. There's also the danger of incremental, unchecked and unregulated development which can occur in the absence of proper planning controls.

If this Bill were to be legislated, Traditional Owners of one part of a river would have their support for river protection undermined or rendered pointless if other Indigenous groups upstream support destructive development can veto protection measures. Such a situation would cause serious harm to the river but damage the health and livelihoods of the Traditional Owners downstream. Effectively, it could lead to destructive development occurring in highly sensitive riverine environments, such as the Aurukun wetlands, which would once again be exposed to sand and bauxite mining threats if the Archer River Basin declaration.

In conclusion, through the detailed content of this Submission, the Wilderness Society wishes to highlight the following key points:

1. The Wild Rivers Act enables a State environmental regulatory scheme.

2. The Wild Rivers Act and its Code are not contrary to the Native Title Act.

3. A Wild Rivers Act declaration has not been found to be contrary to the Native Title Act.

4. In either 2 or 3, if they were contrary, the matter could be tested in the courts, and in any event the Native Title Act would prevail, at least to the extent of any inconsistency.

5. Despite five years of operation of the Wild Rivers Act, it appears that Native Title is not infringed - indeed Wild Rivers is welcomed by some Traditional Owners.

6. Having failed to demonstrate a substantive or potential impact on Indigenous interests, the Bill seeks to encode a further 'right' in land and water ascribed to Traditional Owners, extending what is presently supported under Native Title law.

7. It does so on the basis of the Commonwealth's 'race' powers and with vague reference to the UN Declaration on the Rights of Indigenous Peoples.

8. Its effect is a special measure designed to exempt Traditional Owners from environment regulation.

9. The Bill fails to define the Indigenous rights and interests it is seeking to protect.

10. The Bill fails completely to address the purpose of environmental regulation, despite this being in the title, and would result in the fragmentation of the wild rivers scheme and defeat its environmental purpose.

11. The Bill fails to analyse and reconcile the diverse rights and interests, both Indigenous and non-Indigenous, involved in the issues surrounding the Wild Rivers initiative..

12. The Bill presupposes that a measure taken to protect and manage a Wild River can only be taken in the final decision by the Traditional Owners of country or their representatives, and therefore if agreement is not forthcoming the dec;aration is put aside.

13. By extension, this principle would apply to any environmental protection measure and could be further extended to apply to any Government policy of general application.

14. The Bill is manifestly deficient and unworkable, undemocratic, silent on the actual Indigenous rights and interests it purports to protect, and does not draw on any supporting material from either domestic or international law. There is a complete absence of explanatory notes.

Anthony Esposito, Tim Seelig, Glenn Walker – The Wilderness Society, April 2010.

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Map of Declared and Proposed Wild River Areas in Queensland

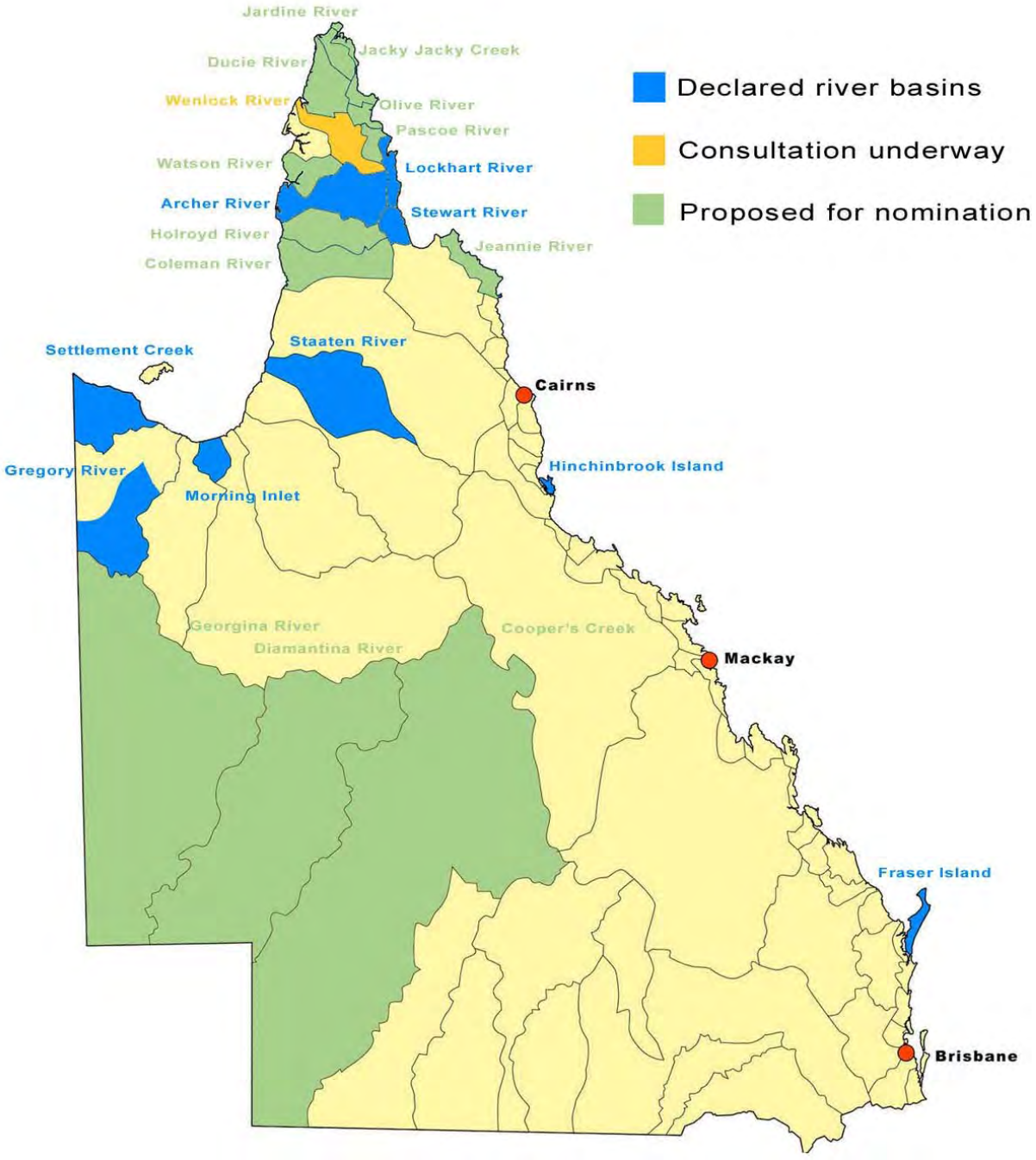

Figure 1: Queensland river basins, showing the 22 Queensland river basins promised for protection under the *Wild Rivers Act 2005* at varying stages of the consultation/protection process.

1 Introduction to Submission

This document and its attachments are a submission made in response to the Senate Inquiry being conducted by the Legal and Constitutional Affairs Legislation Committee into the Wild Rivers (Environmental Management) Bill 2010 ("the Bill").

The Bill was introduced by Senator Scullion as a private member's bill, and was referred to the Senate Legal and Constitutional Legislation Committee for enquiry on the 25th February 2010. An identical bill was introduced earlier into the House of Representatives by Opposition Leader Tony Abbott on the 8th of February 2010. The political purpose of the Senate Bill is aimed at undermining Queensland's *Wild Rivers Act 2005* by use of Commonwealth Constitutional powers.

In 2005, the Queensland Parliament passed the *Wild Rivers Act 2005 (Qld)* ("Wild Rivers Act") to "provide for the preservation of the natural values of wild rivers, and for related purposes". The legislation aims to preserve the natural values of wild rivers by regulating a range of future development activities in specified zones within declared wild rivers and their catchment areas. Assessment of development activities in a wild river area is against the Wild Rivers Code 2007, or another code specified in the relevant declaration.

The Bill before the Senate seeks to make "agreement" by relevant Traditional Owners necessary before a Wild River regulatory instrument ("declaration"), under the Wild Rivers Act 2005 (Qld) can be made (or retained in the case of existing declarations) to "regulate development or use of native title land". "Agreement" in the Bill is undefined, and it is unclear what would be required to satisfy the test of agreement having been reached: is it at community level, or each and every individual concerned? It is also unclear how the legislation would work in terms of effect on non-Native title land covered by the same Wild Rivers declarations and whether a declaration could be set aside in part but not whole.

Since the passing of the Wild Rivers Act, the Queensland Government has declared nine river basins as Wild Rivers under the Act. These include the Fraser, Gregory, Hinchinbrook, Morning Inlet, Settlement and Staaten Wild River declarations, which took affect on 28 February 2007. The traditional owners and the Carpentaria Land Council advocated for, and supported, the declaration of the four rivers in the Gulf of Carpentaria region, notwithstanding some concerns regarding cultural heritage identification and protection, and other matters.

The most recent declarations are in Cape York – the Archer, Stewart and Lockhart Rivers. The declaration was effective on 3 April 2009. (To note, the Staaten River, which borders Cape York's south-west area, has some Traditional Owners covered by the Cape York Land Council's representative area boundary). The Wenlock River in Cape York is the subject of a current Wild Rivers nomination. A further nine rivers in Cape York, and a further three rivers in the Channel Country of Western Queensland, are to be nominated in line with Government policy commitments.

In 2007, the Queensland Government also passed the *Cape York Peninsula Heritage Act 2007*. This occurred after negotiations with the Cape York Land Council, Balkanu Cape York Development Corporation, the Wilderness Society, the Australian Conservation Foundation, mining and pastoral interests, which were intended to resolve a range of matters including the protection of Native Title rights under the Wild Rivers Act.

The Cape York Land Council and others have made public claims that 'Wild River declarations' made under the Wild Rivers Act in Cape York infringe upon the 'Indigenous rights' of Native

Title holders. The matters they raise have been elevated to the level of national political debate, with the private members Bill recently submitted to the Commonwealth Parliament the subject of this Senate inquiry. The intent of the proponents of the Bill is to override the State Scheme.

The Wilderness Society regards the Wild Rivers Act 2005 (Qld) as an essential, groundbreaking form of environmental regulation, and has taken this opportunity to provide a detailed submission because it appears that the Wild Rivers legislation, associated declarations, and related matters are poorly understood and regularly misrepresented. The highly politicised and polarising environment in which this Bill has been developed and proposed has added to the imperative to provide substantial analysis of the issues.

This substantial submission:

- outlines the need for the Wild Rivers initiative;
- highlights problems with the Bill
- discusses in some detail the intersection of Indigenous rights and interests in Wild Rivers;
- describes how the Wild Rivers legislation and processes operate;
- explore Wild Rivers history and its implementation
- considers alternative models to protecting Wild Rivers (and why these are untenable);
- addresses the many erroneous claims about Wild Rivers; and
- outlines the potential consequences of winding back Wild Rivers.

Several appendices are included, providing supplementary correspondence and information, including a detailed timeline of the Wild Rivers initiative and an examination of media coverage by *The Australian* of Wild Rivers issues.

This Submission has been produced by TWS Queensland Campaign Team in conjunction with the TWS National Indigenous Conservation Program. For more information, contact the principal authors[1]:

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[1] The assistance and other contributors from TWS Queensland and the TWS National Indigenous Conservation Program is acknowledged.

2 Organisation Making the Submission

The Wilderness Society (TWS) is a community-based environmental advocacy organisation whose mission is protecting, promoting and restoring wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth. The largest Australian conservation organisation, TWS has been a longstanding and consistent advocate for the protection of Queensland's wild rivers.

TWS's policy is to seek conservation outcomes that are consistent with Aboriginal rights, as recognised under Australian Law. We consider that law reform with respect to recognition of Indigenous rights is, and should be, ongoing through the political process.

TWS works with Indigenous Traditional Owners and landholders to achieve conservation outcomes based on respect for Indigenous rights. TWS has a national commitment to support Traditional Owners as the primary conservation managers of their homelands and as major contributors to regional and national conservation strategies.

In the backdrop of very public attacks on Wild Rivers on Cape York, the Wilderness Society has continued to work with Traditional Owners on the ground in Cape York, including the signing and development of cooperation agreements with Indigenous groups (for example with the Chuulangun Aboriginal Corporation and Wik Projects). This has including many meetings and discussions about Wild Rivers since 2005 (and several field trips a year to the region). One of the claims by the Pearson campaign is that the "green/black alliance" has been shattered over the Wild Rivers debate. The fact is, the Wilderness Society and Indigenous people are still working closely together in alliance.

We acknowledge the responsibility of State and Commonwealth Governments to ensure all land use and development (whether on Aboriginal land or other tenures) is subject to relevant environmental regulations and planning processes, as appropriate. We assert our right to advocate through democratic means for the protection of the environment. We consider that these three aspects can be brought into proper alignment, and through this give clear expression to the rights of Indigenous people and others to conservation and development. We do not support measures that would deliberately, or inadvertently, contribute to a contravention of Aboriginal rights under law.

3 Overview and assessment of the Bill

3.1 Introduction

Conservation practices in contemporary Australia have been shaped largely by the values and approaches of 'the settler society' and in response to the environmental impacts wrought from colonial times to the present.

Popular assumption has it that conservation and environmentalism offer closer parallels to Indigenous traditional land and natural resource management than other land uses which have developed across the country since 'the Crown' acquired radical title and asserted sovereignty. This assumption is not necessarily correct, although there are certainly strong correlations. There is a significant body of thought and practice developing on the common ground between contemporary conservation advocacy and work (based on the adaptive learning principles of the environmental sciences) and Indigenous ecological knowledge and management, both traditional and evolving.

Over the last ten to twenty years, a number of developments have meant conservation practice is now at the leading edge in addressing Indigenous cultural and property rights, homeland development and economics, Indigenous conservation, and ecological knowledge and customary tenure. This area of research and application offers a rich knowledge base for the protection and sustainable use of the environment, and support for Indigenous people in managing and protecting their lands and using them as a basis for sustainable economic development.

The challenge that has been facing all of us for some time now is how to resolve the tenure and property rights issues highlighted by land rights and native title claims, find the appropriate legislative and practical models of environmental protection and management, and drive forward the necessary reforms.

Contemporary conservation strategies need to be demonstrably respectful of Indigenous people, their property, rights and interests, and provide underpinnings for sustainable economic development. Critically, they also need to guarantee a high level of environmental integrity, across the full suite of natural values and ecological processes, in face of the increasing range and scale of destructive threats and degrading processes. To fail to address both simultaneously is to fail in one of our great contemporary challenges.

Seen in this light, the Wild Rivers initiative - with its landscape-scale approach to conservation and application to all tenures; its attempt to address both preservation and development of natural resources; its guarantees on native title; its legislated allocation of water for Indigenous purposes; and its support for Traditional Owner management of rivers - is a promising and important development.

3.2 The limitations of the Wild Rivers (Environmental Management) Bill 2010

The *Wild Rivers (Environmental Management) Bill 2010* is singular and narrow in its focus. It seeks to establish the agreement of traditional owners as a prerequisite of a Wild River declaration, primarily in response to concerns raised by Cape York Indigenous advocates and some regional organisations.

The BIll purports to redress an infringement of Indigenous rights caused by the declaration of Wild River areas. It uses the 'race powers' of the Australian Constitution. It operates on the assumption that the Wild Rivers Act and the *Native Title Act 1993 (Cwth)* ("Native Title Act") are deficient in

enabling and protecting those claimed rights. Some Indigenous opponents of the wild rivers scheme have labeled it discriminatory and 'racist', and they argue federal political intervention is needed to address their concerns.

In proposing the Bill, the intent of the Leader of the Opposition, Mr Abbott, is made clear from his remarks in his second reading speech[2]. Mr Abbott states: "This bill is an opportunity to overturn the Queensland Wild Rivers Act at least in respect of the rivers of Cape York. That Queensland Wild Rivers Act amounts to a smash-and-grab raid on the land rights of the Aboriginal people of Cape York".

This approach of course ignores the fact the Wild Rivers initiative operates broadly at a State-level and that it is of legitimate interest to Indigenous people in other regions, as well as non-Indigenous landholders and the wider community. It also requires us to suspend disbelief and accept that the Leader of the Liberal-National Coalition, which when in Government wound back Native Title gains through its '10 point plan' amendments to the Native Title Act, is now a party *for* 'Aboriginal land rights'.

The Leader of the Opposition has not, as yet, made any substantive arguments in the public arena as to how the Wild Rivers Act is a "smash and grab raid" on the rights of Indigenous people in land and seems instead to have accepted at face value all the arguments made by the opponents of Wild Rivers. This ignores the fact the Queensland Government made the first declarations under the Wild Rivers Act in the Gulf of Carpentaria with the active support of the relevant Traditional Owners and the Carpentaria Land Council at the time.

The Bill relies on the 'race powers' of the Australian Constitution to provide its legal basis.[3] It attempts to set up a threshold of 'agreement'[4], which in effect would give certain "traditional owners of the land" a veto over the State's role in environmental regulation as applies under the Wild Rivers Act. However, the means by which '"the agreement of Aboriginal traditional owners" of a Wild River area is to be gained or refused, is deferred to some future and unspecified regulation. The complex issues of traditional ownership and Indigenous decision-making and representation, alongside the principles of river ecology that underpin the Wild Rivers environmental regulations, remain almost entirely unaddressed.

The reasons as to why current legal provisions of both the Wild Rivers Act and Native Title Act are inadequate to address any perceived impact on native title and property rights are not given.

3.3 The first principles of the Bill

Despite the title of the Bill referring to 'wild rivers' and 'environmental management', it does nothing to address the issue. It leaves the question of managing wild rivers to the Wild Rivers Act and seeks simply to give traditional owners veto over declarations. The stated purpose of the Bill is "to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas. It does this by requiring the agreement of traditional owners to the development or use of native title land in wild river areas regulated by the Wild Rivers Act 2005 (Qld)". Of course, it is not made clear what 'interests' are to be protected, and from what.

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[2] Information on the inquiry including links to the second reading speeches are at - http://www.aph.gov.au/Senate/committee/legcon_ctte/wildrivers/index.htm

[3] Section 51(xxvi) of the Australian Constitution provides that the 8 Parliament has power to make laws with respect to "the people of any race for whom it is deemed necessary to make special laws".

[4] *WRERB* S5- 'Agreement of traditional owners required'

The Bill itself purports to be especially concerned with protecting "the rights of traditional owners of native title land within wild river areas to own, use, develop and control that land." It says; "the development or use of native title land in a wild river area cannot be regulated under the relevant Queensland legislation unless the Aboriginal traditional owners of the land agree." In effect, the Bill seeks to give traditional owners the power of veto over environmental regulation – in this instance, the Wild Rivers scheme. In the case of existing declared areas, it seeks to give the power to traditional owners to overturn those regulations

By using the Commonwealth 'race powers', the Bill seeks to establish a principle that an environmental regulation can be removed or modified, or its effectiveness greatly reduced or defeated, if it involves "a special measure for the advancement and protection of Australia's indigenous people". This opens a serious and fraught area of public debate and policy – one contested with respect to other Australians as well. For example, the issue of regulating broadscale land clearing across all tenures; the power of the State to do so; the entitlements of landholders (Indigenous or non-Indigenous); and the question of compensable interests; are all politically live. Noel Pearson has gone so far as to say there is a constitutional deficiency with respect to the rights of property holders, and that there is a gradual process of compulsory acquisition by regulatory stealth going on.

By joining a supposed special measure for Indigenous peoples to an argument about sovereign property rights, the Bill attempts to create a precedent for the removal of a State's regulatory powers and responsibilities with respect to land tenure and environmental management.

3.4 Bill based on Indigenous 'interests'

The Bill refers to Indigenous 'interests' as distinct from 'rights', though in general the line between the two is not always clear. For example, the Australian community does not generally sanction an 'interest' in a criminal activity as a right. Conversely, our rights to civil liberties, or property, or any of the other elements under international human rights law and conventions, are accorded protection by the community against sectional interests (including majority interests – noting that this is to the advantage of minority Indigenous groups, and such an approach underpins the UN Declaration on the Rights of Indigenous Peoples).

In Australia, our constitutional system of law and democratic government is the medium in which fundamental rights are articulated and enacted and in turn shape and define the legitimacy of interests. This is a dynamic, iterative and evolving process.

There are both rights and interests in play in the debate around Wild Rivers and this Bill, and we believe it is important that the inquiry clearly identify and delineate these.

The public record speaks abundantly to the fact that the Bill seeks to legislate in favour of those interests represented by the Cape York regional organisations and their figurehead, Mr Noel Pearson, who are mounting a fierce argument in advance of 'rights' and against the Wild Rivers scheme. Before and after the Cape York declarations, there has been a sustained campaign of opposition to Wild Rivers from the Cape York Land Council and Balkanu Cape York Development Corporation, and related organisations such as Cape York Institute and the 'Indigenous Environment Foundation'.

They present their public opposition as a response to adverse effects on 'the Indigenous rights' of Traditional Owners. There are two distinct reference points in these rights arguments used by these groups – one is the claimed effects on recognised Native Title rights, the other is the failure of

Government and others to act in accord with the rights of Cape York's Indigenous people as expressed in the *United Nations Declaration On the Rights of Indigenous Peoples*.

The established regional Indigenous organizations on Cape York, now operating under the collective banner of a campaign called *Give us A Go* (GAG) are driving the opposition to Wild River declarations on Cape York. While opposition is not uniform, or universal, amongst Traditional Owners, it does include public statements against the legitimacy of the Wild Rivers Act, its Code and Declarations by the formal Native Title Representative Body (NTRB) for the region, the Cape York Land Council (CYLC).

Last year, GAG campaign leaders declared they can and will take legal action if the issues are not resolved. The campaign organisers claimed to have engaged Barrister Greg McIntyre regarding preparation of a legal challenge, apparently on instruction from a Wik native title-holder from the Archer River basin. In answer to a question on the legal action, McIntyre stated on 16 October that the "Cape York Land Council is organising a solicitor in Brisbane to be the solicitor on the record and to prepare the paperwork". At the time of writing, a legal challenge has not actually been mounted, and focus has been diverted to a new front opened in the campaign through the support of the Federal Leader of the Opposition, and his private members Bill - the same content as the Scullion Bill under present Senate inquiry).

3.5 The conceptual deficiencies of the Bill

If we take the intent of the Bill and the interests that it represents as a guide, it appears that when it comes to environmental management of river basins, Parliament and the Australian community are being asked to adopt a piecemeal approach – and to leave the effects of this to chance. At the same time, we are told this special measure is necessary to preserve Indigenous development rights and guarantee the effective sovereignty of Aboriginal traditional owners with respect to their land titles and against the wild rivers regulation.

The Indigenous interests loudly proclaiming their right to development and their sovereignty are also exponents of land development as the path out of welfare and disadvantage. Of course, there is some merit to this argument in terms of economic enfranchisement for Indigenous Australians and it is receiving an unprecedented level of attention from Governments around the country. That there is also a genuine desire by many Traditional Owners to control development on their land and effect proper 'caring for country' is beyond doubt.

What this means is that there is a far more complicated and often contradictory set of issues than are presently being considered in the context of the Bill. In this debate, environment protection and management; economic development rights; and welfare reform and social equity issues, are crudely bundled together and coloured in with political protest.

The logic of the Bill suggests that social justice concerns in relation to remote area Indigenous people can be addressed by simply removing environmental regulations, and that development by Indigenous people should be an unfettered right because of social disadvantage, but that the environment will be somehow protected none-the-less.

The Bill does nothing to resolve the inherent tension between 'a right to conservation' and 'a right to development' – both being rights contained in the UN Declaration on the Rights of Indigenous Peoples and shared more broadly across the community. Nor does the introduction of the Bill acknowledge the issue of sovereignty embedded in its limited provisions. It extends the concept of Native Title and Aboriginal land to the idea of decision making entirely independent of Government, and with a power of veto over public policy and environmental regulation as it

applies to Indigenous property. It is little wonder that fringe property rights groups support this Bill wholeheartedly.

This issue becomes bigger than Indigenous people's land - it is about where we draw the line between regulations for the common good, and respect for the equal rights and interests of individuals and groups, especially in land and water. **Public opinion has been decisively in favour of environmental regulation taking precedence over unfettered property rights, especially where these entitlements may lead to the cumulative destruction of the environment.**

To secure the health of the environment it is necessary to establish public policy frameworks on ecologically sensible grounds, and with a view to conservation as a model of viable land use and economics. Ideally, this will be done through achieving a broad consensus, and agreement on specific measures. Policy makers should address both the social and economic costs and benefits of such measures. And any issues of equity and perverse outcomes that arise must be acted on – potentially in the form of compensation, structural adjustment, social and economic support, or other fair and equitable responses if required.

To seek conservation outcomes without regard to this could certainly result in adverse outcomes for some people. To seek to address the development needs and aspirations of various people without regard to the consequences for our common heritage, our natural environment, could be senselessly destructive. While its backers may try to argue that the Bill seeks to balance these various considerations, the absence of any supporting arguments to this effect, the stated intentions of its proponents, and its insubstantial content, make that proposition hard to support. And the question remains: if agreement can't be reached, in the final analysis whose decision is it whether an environmental regulation proceeds or not?

The Bill also fails to consider the effects of disagreement amongst Indigenous people; the questions surrounding traditional versus contemporary authority; or the role of representative bodies. Nor does it establish a basis on which to obtain Traditional Owner agreement – what is it and when do you know you have it? The default position on these matters would appear to be in Native Title procedures, but the Bill intends regulations to prescribe procedures for seeking the agreement of Aboriginal traditional owners; for negotiating the terms of the agreement; and for giving and evidencing the agreement. Whether this is to be different from, or supplementary to, a Native Title procedure such as an Indigenous Land Use Agreement (ILUA), is not clear.

The Wilderness Society affirms its view that there is a conservation ethic embedded in Aboriginal custom and law; and that Indigenous conservation will be the answer to many environmental challenges across the country, and presents many important opportunities for homelands development. However, from an environmental perspective, it is not possible to accept that Traditional Owner agreement should *alone* be the basis for the community determining whether a conservation measure is desirable or achievable. It is not enough to say the community must trust in individual landholders because they are 'the true conservationists' not 'bogus greens'. Nor is it reasonable to expect that the long history of Aboriginal ownership and land management automatically confers an ability on traditional owners to deal with all contemporary environmental issues, or ones that transcend their 'right to speak for country' - especially when they operate at a national or global scale (for example carbon pollution, global warming and its impacts).

In principle, this Bill asserts a form of sovereignty in respect to landholding Native Title groups. The Bill is opaque as to what this 'property rights sovereignty' may be. Is this self-determination within the laws and democratic procedures of the community, or is it self-determination to the exclusion of these? The *laws and practice* with respect to Native Title, and indeed the UN

Declaration on the rights of Indigenous Peoples, suggest the former. The *language* of Native Title, a title held '*as against the whole world''* and underpinning communal forms of self-government, suggests the later.

This issue is one of significant and unresolved controversy. It goes to the heart of the sovereignty and radical title held by the Crown. The High Court addressed both these in the foundation Native Title case brought by Eddie Koiki Mabo, but left those aspects of the modern Australian Nation-State intact. This of course does not cancel out the need to go further in addressing Indigenous rights and interests, as a matter of both substantive justice and overcoming historical disadvantage and discrimination; but this is a complex issue with far reaching implications.

We are not adopting a final view here on whether Indigenous sovereignty should take one form or another. We simply note that there is some settled law on the subject and that this Bill does not come even close to addressing the real debate surrounding this, that alone moving it forward and resolving it.

The question of Aboriginal 'sovereignty' in the 'Nation State' has received far less attention in Australia than in other common law jurisdictions. The extent and limits of self-determination and self-government are a matter for further consideration and should not be, *de facto,* slipped unnoticed into a piece of anti-environmental legislation. A mature debate in the Australian community is required before the issues surrounding 'sovereignty and self-determination' could be understood, supported and achieved through law reform and possible constitutional change.

4 Retaining Wild Rivers

4.1 Summary of the case for retaining Wild Rivers

The Queensland Wild Rivers Act was passed in 2005. It has been promoted and endorsed in three consecutive state elections, and has been through three sets of extensive amendments, each involving Mr Noel Pearson and/or Cape York Indigenous organisations including the Cape York Land Council and Balkanu Development Corporation along with conservation groups, other Indigenous interests, and industry groups. These were designed to reach settlement on issues such as making development controls more flexible, and guarantees on Native Title rights explicit. Clear agreements were made by all parties consulted. This Bill seeks to undermine those processes.

Wild River declarations prevent destructive developments like mega-dams, intensive irrigation, and mining occurring in sensitive riverine and wetlands environments. Without 'Wild Rivers' protection, sensitive rivers and wetlands will be at risk of these and other damaging activities.

Wild River declarations support sustainable development and sustainable economic opportunities (such as grazing, fishing, building infrastructure for tourism), they protect traditional activities and cultural practices, and allocate specific Indigenous water reserves (a first in Australia).

The claims that Wild Rivers prevents all development, stops cultural activities, is akin to a National Park, and "locks up" the land are all fallacious.

Considerable scientific and technical analysis is undertaken to inform the initial nomination process, and extensive consultations are required ahead of any final Wild River declaration,

Wild Rivers is not exclusively focused on Cape York or on Indigenous communities, it operates State wide, and Wild River declarations operate in a tenure-blind way. The Wild Rivers Act explicitly states that Native Title rights are fully protected under declarations (Section 44, 2).

4.2 The benefits of Wild Rivers

Australians have learnt the hard way that failing to protect the continent's rivers and waterways has dire consequences for the environment and for the people and communities who depend on rivers for social and economic imperatives. At the same time, Queenslanders have recently been reminded, through significant flooding, of the benefits of free-flowing river systems in northern and western parts of their state.

Rivers are the lifeblood of our landscapes and communities, and Wild Rivers is a groundbreaking approach to protecting pristine and sensitive river systems, which have largely been well-cared for but which increasingly face serious threats from large scale and destructive development activities.

Regardless of historical custodianship and good intentions, without Wild Rivers, it is only a matter of time before these last remaining rivers succumb to damming, mining, excessive water usage, and degradation or pollution. The pressures to make "productive use" of these rivers and adjacent landscapes are significant, and it is in this context that Wild Rivers offers a sensible mechanism to support sustainable activities and smaller scale economic uses under a regulatory framework, whilst ensuring a strict protection regime against undesirable development and activities in the most sensitive parts of the river systems.

4.3 The responsibility of governments to protect the environment

Governments have a general duty of care towards the environment, and are bound to seek its protection. This responsibility operates at a moral, policy, and political level, the latter spanning local, state, national and global spheres. While much attention during the 'debates' about Wild Rivers have focused on the UN Declaration on the Rights of Indigenous People, there are other forms of international processes through which governments are required to exercise responsibility towards protection of the environment.

The United Nations 'Rio Declaration on Environment and Development' for example, makes specific references to governments:

- conserving, protecting and restoring the health and integrity of the Earth's ecosystem (clause 7)
- enacting effective environmental legislation (clause 11)
- widely applying the precautionary approach to protect the environment (clause 15)
- Enabling Indigenous people and their communities and other local communities to play a vital role in environmental management and development (clause 22)

The Wilderness Society recognises the rights of Traditional Owners to the use and enjoyment of their lands and to negotiate on developments occurring on them. We also recognise the responsibility of State and Commonwealth Governments to ensure all land use and development (whether on Aboriginal land or other tenures) is subject to relevant environmental regulations and planning processes, as appropriate.

Governments also clearly have responsibilities towards the welfare of their citizens and communities. However, environmental protection such as the Wild Rivers Act is fundamentally about ecological considerations. Indigenous disadvantage in places like Cape York Peninsula is clearly a serious issue to be addressed, but it is ultimately is a matter of social and economic policy and justice; winding back Wild Rivers is not the way to address it.

5 Issues and arguments raised against Wild Rivers

A range of critiques have been leveled at Wild Rivers, including that it impinges on Native Title or broader property rights, that its processes fail to require Traditional Owner agreements for declarations, or is generally unnecessary. In fact, these accusations are largely ill-informed and unsubstantiated, and do not stand up to serious and rigorous questioning. In some cases, the claims are correct but fail the test of reason or legal/policy consistency.

Regrettably, little serious legal or policy analysis appears to have been conducted to substantiate such claims, limiting the capacity to have informed and considered debate. Instead, Wild Rivers has been largely been discussed through polemic and hyperbole, and in the media rather than in public forums. Nevertheless, it is necessary to highlight and address some of the alleged problems with Wild Rivers.

This following summary of arguments by Indigenous proponents against Wild Rivers is based on those 'interests' previously identified and expressed by Noel Pearson, Greg McIntyre, the Cape York Land Council and others.

5.1 A legal case against Wild Rivers?

On behalf of these interests, McIntyre has put his legal analysis on the public record. In summary, his principal claim appears to be this: Using the Wik and Wik Way determinations as a basis for a case, a declaration of a wild river "operates as a compulsory acquisition of the native title right to decide how the land can be used, and that this is invalid unless done in accordance with the Native Title Act".

According to McIntyre, the Wild Rivers Act Section 44 protections of Native Title rights reflects the common law position that some Native Title rights may co-exist with the declaration of a Wild River, but it does not prevent the taking away of 'the right to speak for country', which occurs upon the declaration of a Wild River being made. The argument is that the Wild Rivers Act gives this right, being "the right to make decisions about what will or will not happen on that land", to the relevant Queensland Minister upon the declaration of a Wild River.

McIntyre also claims that a Wild River declaration extinguishes an "exclusive Native Title right to control access" and an "exclusive right of possession and occupation", based on the view that a declaration of a Wild River area is similar to that of a 'reserve'. His argument appears to be that a Wild River declaration is inconsistent with exclusive possession Native Title. He refers to the High Court in the Native Title case of *Western Australia v Ward*, which said that the affect of the designation of land as a reserve for a public purpose is that it is "inconsistent with any continued exercise of a power by Native Title holders to decide how the land could or could not be used".

Following from his argument that a Wild River declaration equates with the declaration of a reserve, and is a compulsory acquisition of the right to speak for country, McIntyre states that the Queensland Government should provide a Future Act notice to Native Title holders / claimants under the Native Title Act notice provisions, *before* the minister makes a declaration under the Wild Rivers Act. He says consultations under the Wild Rivers Act are not sufficient to satisfy the procedural rights afforded Native Title holders under the Native Title Act, and a decision is 'invalid' unless the Native Title Act process is followed.

According to McIntyre, a Future Act notice would activate a six-month right to negotiate period, which tests if there is consent to the Future Act following negotiations. If there is no agreement,

then there is an arbitral process under the Native Title Act and the native Title Tribunal makes a decision.

McIntyre further argues that the Wild Rivers Act is inconsistent with federal legislation with respect to Native Title, therefore s109 of the Australian Constitution applies – i.e. the Native Title Act prevails. If this argument is valid, relief is already available under the Native Title Act and through the courts. These matters could also be credibly proposed in terms and conditions to the State with respect to ILUAs.

5.2 Other rights issues argued by Cape York Land Council et al

There are also a range of other published comments and articles by legal and policy officers from the Cape York Land Council, apparently informed by a Senior Counsel opinion, which we refer to here. These confirm the "Cape York Land Council strongly opposes the Act and its associated regulations".[5]

The principle reference is the Cape York Land Council's submission on the draft Wild Rivers Code of April 2006, prepared by Glen D. Archer, its principal legal officer at the time. The submission is on the public record as a part of a Senate submission[6] by Cape York Land Council. . It employs similar arguments to those of McIntyre, but ranges more widely than Native Title Act legal issues into a broader realm of generic and implied Indigenous rights. In summary, the argument appears to be:

- That the Wild Rivers Code, and all subsequent declarations are Future Acts under S24MD of the Native Title Act and will significantly interfere with native title rights and interests in the Cape York Peninsula. Unless S17 of the Wild Rivers Act is amended "to protect authorisations exercised pursuant to a Native Title right and interest", it is incumbent upon the Government to enter into an Indigenous Land Use Agreement (ILUA) to obtain the consent of affected Native Title holders.
- The Cape York Land Council considers it a failure by the Government to act in good faith if it 'interferes with the status of Native Title rights' without first gaining the consent of the affected Native Title holders. As the Wild Rivers Act S17 protects other interests but not Native Title, they argue the Wild Rivers Act is racially discriminatory.
- The Cape York Land Council also claims the Wild Rivers Act is discriminatory due to an alleged 'disproportionate impact' on Indigenous people, and because the PNG Gas Pipeline and the Aurukun Bauxite Project are 'exempted' under the Wild Rivers Act, notwithstanding the Indigenous proprietary and development interests in the gas pipeline included in an ILUA[7].
- Cape York Land Council extends this rights argument to a violation of international law[8]. That is, "the Code and the Declaration are contrary to a plethora of human rights instruments that provide Indigenous people with an entitlement to have their rights and interests recognised and protected, even in the absence of any formal recognition of Native Title". These rights include development rights, and it is argued that the "wild rivers scheme will effectively undermine Indigenous communities' right to economic development".

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[5] Indigenous Law Bulletin Oct 06 – "The Wild Rivers Act 2005 (Qld)". Prue Gusmerini

[6] Senate Inquiry into Australia's national parks, conservation reserves and marine protected areas - *[Cape York Land Council (PDF 611KB); Attachment 1 (PDF 115KB); Attachment 2 (PDF 53KB); Attachment 3 (PDF 37KB); Attachment 4 (PDF 39KB)]*

[7] QLD - Registered ILUA summary - PNG Gas Pipeline ILUA - Cape York Region *[http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Pages/Registered_ILUA_summary-PNG_Gas_Pipeline_ILUA-Cape_York_Region.aspx]*

[8] Concerns have been raised with the Human Rights Commission which has made a submission to the Queensland Government *[http://www.hreoc.gov.au/legal/submissions/2008/200811_wild_rivers.html]*

- They argue that because the Wild Rivers Act Code prohibits and regulates developments, it will deny economic benefits and entitlements to Indigenous people from projects and agreements that would otherwise utilise the land and resources, and consequently there should be exemptions and compensation provided. Linking economic development to overcoming the causes and effects of Indigenous disadvantage generates an apparent conflict with conservation.
- In addition, the Wild Rivers Act is supposedly also a breach of broad cultural rights and "no environmental legislation applying to Cape York can be legitimate unless it properly addresses Indigenous lore and custom."[9]

Some of the rights arguments are in the area of matters articulated in international law and declarations. They may have no support in Australian domestic law or the tenure system, or are already rights and entitlements enjoyed in common with other Australians, or are the subject of other special measures and laws such as welfare reform, compensation, ILUAs, anti racial discrimination legislation, *Closing the Gap* and so on.

If, as is the case with the anti-wild rivers exponents, a view is taken that conservation of itself shuts down economic development, then linking economic development to overcoming the causes and effects of Indigenous disadvantage necessarily generates an apparent conflict between Indigenous people and environmentalists – and nonsensical claims of the breakdown of the 'black-green' alliance..

5.3 An alternative analysis and appraisal of these issues

The alternative assessment of the Native Title issues, informed by other legal analysis, is that the Wild Rivers Act and Wild Rivers Code are valid acts, and a declaration of a Wild River does not affect Native Title and other Indigenous rights. To confirm that there is not intention to extinguish or acquire native title, the Queensland Government amended the Wild Rivers Act to include S44(2). The section gives affect to agreements reached during the consultations and negotiations with Cape York Land Council, the Wilderness Society et al, on the *Cape York Peninsula Heritage Act 2007 (Qld)* ("Cape York Heritage Act").

In addition, resulting from these negotiations, Wild River declarations also make provision for Indigenous water allocations for community and economic purposes, and in combination with the potential to declare an Indigenous Community Use Area on Aboriginal freehold land under the Cape York Heritage Act, help to codify Indigenous economic development rights in Cape York alongside State environmental regulations.

Based on current practice and the position of the Queensland Government, the Wild Rivers Act, or a declaration, does not adversely affect Native Title rights, compulsorily acquire rights, or trigger a right to negotiate process. Nor does it create another class of rights that are inconsistent with the Native Title holders continuing to hold their rights and interests. Applying the 'freehold test'[10] to areas of exclusive possession Native Title or Aboriginal freehold does not prevent the Government

[9] Indigenous Law Bulletin Jul-Aug 09 - "Wild rivers, conservation and indigenous rights: An impossible balance?" Meg McLoughlin and Melissa Sinclair

[10] According to the Native Title Tribunal, the freehold test requires that, when certain future acts are proposed, native title holders must be given the same procedural rights as those who hold 'ordinary title'. In everywhere but the Australian Capital Territory and the Jervis Bay Territory, 'ordinary title' means freehold (s. 253, Subdivision M of Part 2 Division 3 Native Title Act)

from regulating to manage water and protect rivers. In addition, Aboriginal property rights do not afford an exclusive right in relation to water[11] to Traditional Owners or Native Title holders.

Further, S 24HA of the Native Title Act confirms that "the making, amendment or repeal of legislation in relation to the management or regulation of… subterranean and surface water… and aquatic resources..." is a "valid act". Unless the act involves "the grant of a lease, licence, permit or authority..." then notification other than under the provisions of the Wild Rivers Act is not required. The "non-extinguishment principle applies to the act".

The declaration of a High Preservation Area (HPA) or Preservation Area (PA) does not change the tenure or title of the land, and does not create a 'reserve'. The High Court has noted that regulating particular aspects of a native title right "does not sever the connection of the Aboriginal peoples concerned with the land... It is sufficient to say that *regulating* the way in which rights and interests may be exercised is not inconsistent with their continued existence". Indeed, "…the regulation presupposes that the right exists. No doubt, of course, regulation may shade into prohibition and the line between the two may be difficult to discern"[12].

The Government's regulatory powers extend to making Wild River declarations. These declarations are a regulation or planning instrument with clear discernable lines. Wild river declarations may extend across various tenures and to Indigenous and non-Indigenous landholders. A declaration may be, and is, acceptable to some Native Title holders and not others - but opposition or lack of agreement of itself would not invalidate a declaration. Should a declaration impair native title rights in particular instances (whether proprietary or use rights), the Native Title holders concerned may be entitled to compensation or other special measures. This may also apply to holders of 'ordinary title'. Of itself, this may not be sufficient to render a declaration invalid.

To move beyond this requires a new point of departure. It is timely that Parliaments look at the consequence of Australia being a signatory to the UN Declaration on Indigenous people's rights, remembering of course that the previous Federal Coalition Government opposed this declaration. The declaration, along with other international law on environmental protection and Indigenous rights, provide standards by which to measure our progress. A more comprehensive debate on how these international principles are adopted in Australian law, public administration and policy is welcome, and the Bill has perhaps at least aided in potentially helping to bring some of these issues into broader public debate.

5.4 The UN Declaration on the Rights of Indigenous Peoples

There is no doubt that Australia becoming a signatory to the UN Declaration on the Rights of Indigenous People has the potential to open a whole new round of national debate on the rights of Aboriginal Australians, and challenge the ways in which Governments operate in respect of them. This is to be welcomed, and if the present period of contention and public dispute over Wild Rivers adds to this debate, then much will have been gained. However, the Bill raises more questions than it answers with respect to a number of specific clauses of the UN Declaration.

For example, Article 19 states: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their

[11] In the Native Title Act *"waters"* includes: (a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters; or (b) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paragraph (a)); or (c) the shore, or subsoil under or airspace over the shore, between high water and low water.

[12] Yanner v Eaton. High Court of Australia (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ)

free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Will the Australian Parliament begin consultation and seek such consent with respect to the Bill itself? Who would it be with? How and why would that differ in respect to the lack of 'consent' given for the Emergency Intervention in the Northern Territory? And how will agreement be established, and with whom?

Two other articles of importance are Article 29 and 32. Article 29 states: "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination."

Article 32 states: "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

Bearing in mind that these Articles derive primarily from the fact that Indigenous peoples' lands and natural resources have been appropriated and destroyed against their will, these Articles highlight that rights can potentially extend to both conservation and development, to enabling or to blocking them.

Will the principles of the Bill therefore extend to a veto over mineral projects as well as conservation land use, or weight in favour of one over the other? Where do these rights sit within the tenure system? Is native title law sufficient to give expression to these rights? What is a model of land use that as reconciled conservation and development goals and offers an unmitigated sustainable future? These are all present and urgent issues in the current debate.

Where Indigenous rights sit within the broader human rights framework and in relation to the civil and political rights of others also needs elaboration. Article 46 of the UN Declaration on the Rights of Indigenous People states: "In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected." At the same time, "the exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society".

The UN Declaration on the Rights of Indigenous People is clear that it is up to the members of a 'sovereign and independent State' to *interpret* these provisions of the declaration "in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith."

In historical terms, these are intended as a special measure to overcome the denial of the full suite of human rights to Indigenous people. They do not create a separate class of rights.

The declaration does not provide a guide for action, nor of itself resolve many of the real issues of concern to Indigenous and other Australians. Until the Australian community has an informed national debate on these matters, and begins to define them in public administration and codify

them in law, there will be uncertainty and political contest over rights and interests. The now long-running dispute over Queensland's Wild Rivers is merely a taste of what is to come if Australian Governments and the Australian community do not make a more conscientious effort to reconcile the various rights and interests embodied in our shared history.

In our view, there is a clear imperative for Governments to take a lead in raising awareness about the UN Declaration on the Rights of Indigenous People - and with particular relevance to environmental concerns, to aim for legal reform in the area of Indigenous land title and correlated rights and interests. Public policy must go further then presently arranged to deliver genuine equity and resolution in the longstanding issue of Indigenous land justice. And meet the challenge of protecting our environment so that we all can benefit.

The Bill, however, does not meet the reasonable tests of informed debate and comprehensive analysis. Nor does it provide a statement of principle or intent. It does not provide an objective response to a clearly identified problem. It is therefore hard to conclude the Bill is anything more than boxing at an issue for political advantage.

5.5 Indigenous rights, the environment and natural resource management

Indigenous peoples in Queensland, as elsewhere, continue to seek recognition and protection of their customary tenure systems as the basis for retaining or restoring traditional relationships and for contemporary cultural, community and economic development. This has been a central element of the politics of land rights.

While there have been limits placed on these rights and interests by the statutory Native Title regime and through the political process, the Native Title Act and other land rights legislation provides scope for the exercise and expression of rights. Indigenous advocates on all sides of the Wild Rivers debate continue to assert their legal and moral rights over the development and implementation of the Wild Rivers Act.

The rights to self-determination and the preservation of distinctive Aboriginal cultural identities are relevant to questions of land and natural resource management. Traditional Owners hold particular interest in the governance structures that manage land and waters and in the right to harvest and husband the natural resources of their country. Government should recognise it has a positive responsibility in natural resource management to protect Indigenous property and use rights, and incorporate these into the priorities for management.

A considerable number of Wild Rivers are located in areas of the State where Indigenous people represent a significant proportion of the local population, and are significant landholders in their own right. In addition, most of the rivers are in areas with strong Native Title claims. Considering the many defensible title claims, use rights and cultural heritage interests, it is unsurprising that many Traditional Owner groups have a direct interest in the provisions and consequences of the Act. Traditional Owners of course have their own interest in the protection of rivers – i.e. in what the Wild Rivers Act (and related legislation) will and won't allow or prevent. To address them adequately, legislation needs to embody a consistent set of principles for environmental protection and Indigenous rights

In a 2004 discussion paper, Morgan, Strelein and Weir noted that Canadian Courts have dealt with similar issues. In that jurisdiction, "it is recognised that Indigenous non-commercial rights are prioritised above all non-Indigenous interests but are subject to legitimate environmental and conservation measures. It has been held that conservation measures could be justified to take priority over Aboriginal rights because they are inherently consistent with the protection of the

environment for future generations and the maintenance of the underlying connection that sustains the distinct cultural identity of the group." [13]

Importantly, the Canadian Courts "placed an emphasis on Indigenous peoples' direct involvement in conservation management. The Courts have held that a legitimate legislative objective of conservation overriding Indigenous interests is only met where Indigenous people had been consulted (and not just informed) and, moreover, were unable or unwilling to implement appropriate measures themselves… The Aboriginal right takes precedence over the rights of others and should be occasioned as little interference as possible to achieve the regulatory objectives".[14]

It is important for government policy to be conceptually clear about how to achieve regulatory outcomes that are within the power of the State, as well as ensuring respect for and the enjoyment of Indigenous peoples' rights. "In natural resource management and cultural heritage decision making, it is appropriate that agencies pay most attention to effective involvement of Traditional Owners because only they can speak for Country. Efforts must focus on negotiating and building strong partnerships with the Traditional Owners".[15]

These partnerships will recognise that Traditional Owners and their communities can be anticipated to have a broad set of interests aligned to, but also at times in conflict with, the conservation agenda. As landholders, land and river managers, and natural resource users in particular catchments, they will be directly concerned with the declaration of particular 'wild rivers' and how this might restrict or enhance their economic, cultural and other interests.

There is no doubt that the Queensland Government needs to actively facilitate the involvement of Indigenous people who have rights and interests in a river system to be declared a 'wild river' under the Act. There is an obligation on the State to ensure public resources are available to assist Traditional Owners in being active participants in the further development of the scheme, and to support dialogue and broad agreement making.
However, the Queensland Government should be given some credit for its progress to date in this regard. The Wild Rivers Act and the Cape York Heritage Act are in fact groundbreaking policy initiatives. When combined with the work of the Cape York Peninsula Tenure Resolution Group process in delivering on the twinned goals of conservation and land justice, the Aboriginal land rights and conservation agendas have advanced ahead of any other part of the country.

5.6 Native Title – legal and moral rights

Rights and interests can be seen to fall into two broad but related categories – legal rights and moral rights. The existence or otherwise of Native Title does not solely determine the legitimacy of Indigenous people's claims to be involved in decision-making and the protection of their cultural heritage, land and waters. The joining of legal and moral rights yields an argument for greater recognition and involvement.

Indigenous representatives argue for involvement that goes beyond mere consultation and seek inclusion in policy and decision-making, as well as direct involvement in environmental management. "Effective political participation is a central element of self-determination at international law" and political participation is essential to non-discrimination. "The requirement for states to engage with Indigenous peoples at this level should not be dependent upon formal

[13] Monica Morgan, Lisa Strelein and Jessica Weir citing R v Sparrow - p50, Research Discussion Paper No.14, *Indigenous Rights to Water in the Murray Darling Basin: In support of the Indigenous final report to the Living Murray Initiative* - Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2004
[14] Ibid
[15] Ibid

structures for legal recognition such as native title, but extend to all policy decisions that impact upon Indigenous peoples access to and use of traditional territories".[16]

It is clear in relation to developments concerning rivers and waterways that the Commonwealth government moved to define the procedural rights available to native title-holders under the Act. Native Title Act Section 24HA provides that a future act in relation to the management or regulation of water is a valid act, including legislation, regulations, management plans or licenses granted. Native title claimants and holders are entitled to notification and given an opportunity to comment. Where native title interests are affected, the native title-holders may receive compensation.

There is evidently a significant and unsatisfactory gap between rights won and rights still argued for – a gap that must be closed through substantial effort by Government, the broad community, Indigenous leaders, and Traditional Owners and Aboriginal communities. This points to the need for a comprehensive review of the foundation principles of the Native Title Act; a genuine debate about the nature of treaties and agreement making and their application to modern Australia; and the development of robust Indigenous governance and representational systems at the national level. Without this, it is likely that progress across the board will be dragged back by endless disputes and a lack of clear, national goals.

The debate around the Wild Rivers (Environmental Management) Bill 2010 cannot possibly act as a surrogate for this agenda. Nor does it of itself do justice to the complex issues at the intersection of environmental protection and Indigenous peoples rights when it comes to river management in Australia.

5.7 Indigenous Water Policy Group's 'Indigenous Water Policy Statement (2010)'

Recently, the *Indigenous Water Policy Group* of the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) released its *Indigenous Water Policy Statement* (2010)[17] which seeks to enhance Indigenous water policy outcomes in Northern Australia. The group, made up of Indigenous representatives from land councils and natural resource management groups, makes four key recommendations for Indigenous water policy. It is useful to measure the Wild Rivers initiative against these recommendations.

1. *Indigenous peoples' traditional ownership must be fully recognised in Australian law.*

   In the policy statement, this recommendation relates to improving the Commonwealth Government's *Native Title Act 1993*. However applying this specifically to the *Wild Rivers Act 2005*, there is no formal recognition of traditional ownership. The Wilderness Society and Indigenous groups have advocated for a specific clause in the Act to recognises traditional ownership and connection to river systems.

2. *Water legislation and government policies must allocate Cultural Flows owned by Indigenous peoples to ensure equity and Indigenous cultural rights.*

   There are no provisions for specific cultural flows in the *Wild Rivers Act 2005*. However it is important to note that this concept was originally developed primarily in reference to the over-allocated river systems of the Murray-Darling Basin (MLDRIN 2008 Euchuca Statement), where there is an urgent need to reduce water extraction in a highly contested and competitive

[16] Ibid
[17] See http://www.nailsma.org.au/projects/water_policy.html

space for water. In the context of the free-flowing river systems covered by the *Wild Rivers Act 2005*, the very fact that the legislation aims to maintain the natural river flows by default protects cultural flows. In other words, this concept is more useful in over-allocated systems than intact ones.

3. *The Consumptive Pool in all water plans must include an equitable Indigenous allocation for commercial purposes.*

   The *Wild Rivers Act 2005* is the first water planning tool in Australia to provide water reserves specifically for Indigenous economic and social aspirations.

4. *Governments and water agencies must join with Indigenous traditional owners and native title groups to develop water plans and management.*

   The *Wild Rivers Act 2005* requires that the Queensland Government consults with Indigenous communities to develop Wild River declarations. This could be further strengthened through enhancing the consultation process and better incorporating input from Traditional Owner groups as The Wilderness Society has argued for to the Queensland Government In addition, the Indigenous Wild River Ranger Program is a direct mechanism for Indigenous people to lead in the management of their river systems and implementation of Wild River declarations.

It is clear from this the Wild Rivers initiative goes a long way to meeting the recommendations put forward by the NAILSMA *Indigenous Water Policy Group*, but could be improved in some parts.

6 Imperilled Rivers: The Need for a Protection Framework

Freshwater ecosystems are under increasing ecological threat at both global and national scales.

Many of Australia's river systems are seriously degraded due to over-extraction, pollution, catchment modification and river regulation, the most severe and prominent example being the Murray-Darling Basin.

Science and logic tell us that we need to deal with rivers protection at the catchment/basin level rather than dealing partially or incrementally

Queensland retains some of Australia's last remaining free flowing rivers, located in five broad geographical regions. Queensland's Wild Rivers initiative originates from the compelling need to preserve and protect these river systems.

6.1 The global freshwater ecosystem crisis

Freshwater is crucial to life, as are the rivers, lakes, wetlands, aquifers and waterholes that bear this fundamental resource. The sum total of the interconnected wildlife, plants and human communities that have adapted to the natural flows of freshwater in these environments, combined with other local conditions such as climate and soils, is referred to by scientists as "freshwater ecosystems". These ecosystems provide us with drinking water, food, recreation, pollution filtration, and many other services critical to all human societies. All the species within freshwater ecosystems also have intrinsic values beyond direct human use or economic value.

There is a disproportionate diversity of life associated with freshwater ecosystems. Freshwater habitats contain just 0.01% of all water on the planet, and cover just 0.8% of the Earth's surface, yet about one third of all vertebrate species are only found in these environments (Dudgeon et al 2005: p.165).

Unfortunately, there are also strongly disproportionate threats to freshwater ecosystems. Many scientists agree that they are the most endangered ecosystems in the world – the loss of biodiversity in them is far greater than in most affected terrestrial ecosystems (see Sala et al 2000, Dudgeon et al 2005, Abell et al 2009). For example, the World Conservation Union (IUCN) Red List highlights that freshwater species have endured some of the sharpest declines, including 56% of freshwater fish species in the Mediterranean threatened with extinction, one in four freshwater fish species in East Africa also threatened, and worldwide about 43% of amphibian species populations in decline (Abell et al 2009: p.249). The following chart demonstrates this dramatic crisis:

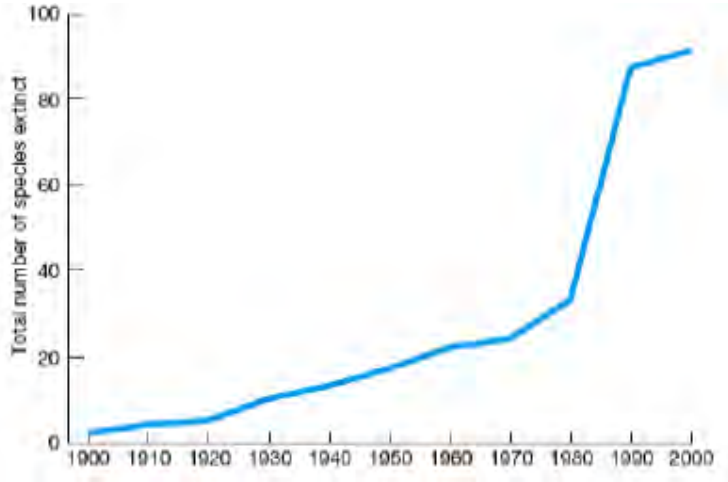

Figure 2: Known 20th century freshwater fish extinctions. Source: WWF Living Planet Report 2004

This is occurring primarily because rivers, lakes, wetlands and groundwater are so intensely used by humans. This includes damming rivers to extract water for consumptive uses, irrigation for crops, transportation, waste disposal, mining, fishing and urbanisation. Combined with a rapidly changing climate, these are enormous pressures that are driving the global destruction of freshwater ecosystems and the very life-support systems that sustain human societies all over the world.

Leading freshwater ecologists have grouped these human-caused threats into five major, interacting categories (there are a number of variations of these categories in the scientific literature, but for the sake of simplicity, the model developed by Dudgeon et al 2005 is used here). These are:

1. **Water pollution**: this includes agricultural runoff, and toxic chemicals or heavy metals from mining and urban areas.
2. **Habitat destruction and degradation**: freshwater ecosystems drain water from the surrounding landscape, so the clearing of land and destruction of natural forests, woodlands or grasslands directly impacts on their health.
3. **Flow modification**: this includes the impoundment of water in dams and weirs and complete alteration of the timing of natural flows down a river system, as well as the amount of water and its chemistry (there are about 45 000 large dams worldwide, and millions of small ones – Abell et al 2009: p.255).
4. **Species invasion**: invasive weeds and other feral animals quickly capitalize in modified environments, further exacerbating native species decline.
5. **Overexploitation**: this includes over-fishing and uncontrolled exploitation of freshwater species.

All of these factors are further compounded by climate change, which affects water availability and the timing of flow events. Protecting and restoring freshwater ecosystems, and arresting the alarming global decline, requires addressing all of these threats simultaneously.

But despite the importance and values of freshwater ecosystems, combined with very clear threats and the steady decline of freshwater species, the efforts to protect these environmental assets have been fragmented and seriously inadequate (Dudgeon et al 2005, Abell et al 2009). This is doubtless because effective protection of these ecosystems requires good land and water management and effective regulation for an entire river catchment area – a very challenging task given the competing interests often at play and the long-term planning that is required. The

environmental, social and economic crisis facing the Murray Darling Basin is a pertinent example of these challenges and complexities.

While the efforts to protect freshwater ecosystems across many nations and their various jurisdictions (including states) vary greatly, there *have* been attempts to improve the global efforts through international agreements. Chiefly, the *United Nations Convention on Biological Diversity* is a major international treaty that compels all signatory governments to protect and sustainably manage natural ecosystems, including rivers and freshwater ecosystems, in support of maintaining biological diversity. Another is the *Ramsar Convention on Wetlands of International Importance* which encourages governments to list important wetlands for protection.

In the end, however, overarching international treaties such as these can only provide general frameworks within which nations much act. They have little "grunt" to actually force nations to do something positive above and beyond the baseline that determines their "duty of care". Australia is no different. And to improve our efforts, we need to understand our own situation, and take immediate action within the context of the global freshwater ecosystem crisis that we all confront.

6.2 The Australian situation

Australia is a continent with a great variety of environments and climates, and its river systems are equally diverse. From the great monsoonal rivers of northern Australia, to the extremely variable "boom and bust" inland-flowing rivers of central Australia, to the temperate rivers of southern Australia, river systems underpin regional economies, embody rich Indigenous and non-Indigenous cultural and heritage values, and support unique and diverse wildlife and plants. They are the arteries of the Australian landscape, bringing freshwater and food to all.

One of the defining characteristics of Australian river systems (including other freshwater ecosystems), is the high variability of flows. Rather than a constant stream of water in a confined channel, as is typical on other continents, Australian rivers tend to swing between times of floods and times of drought, with varying periods and severity, depending on where the rivers are and any prevalent climatic patterns.

These swings from dry to abundant water emphasise the special role that floodplains, waterholes, lakes, wetlands, groundwater systems and estuaries play in Australian freshwater ecology. This is because in floods many of these features are connected by huge sheets of water, allowing species to move between them. In drier times, water and the species that depend on them are confined to smaller refuges, where populations begin to drop until the next big rains return and cycle begins once again. Native species, from algae, to the tiniest beetle, to towering Coolibah trees and migrating Pelicans, have all adapted to these sorts of variable conditions that are common in so many Australian river systems.

Over the past 60,000 years or so, native species have also adapted, or co-evolved with, Australia's Indigenous peoples. Freshwater features such as rivers, lakes, springs, and waterholes were, and still are, vitally important to Indigenous culture and social and economic life. The way that these natural features are firmly embedded into Indigenous cosmology, often as ancestors or important spirits, is testament to strong links between the people and the rivers.

Another telling way to demonstrate this link is to look at the *Australian Institute of Aboriginal and Torres Strait Islander Studies' Map of Aboriginal Australia* (AIATSIS 2010). The red lines show broad language groups across the country. This corresponds very distinctly with Australia's major drainage basins (in which are a number of clan groups as shown below).

Figure 3: Aboriginal language map of Australia. The map clearly shows how language groups follow the boundaries of major drainage basins. For example the Murray-Darling Basin and Gulf of Carpentaria drainage divisions are almost identical to the "Riverine" and "Gulf" language groups.

The clan and language groups are effectively the traditional ecological management units of pre-European Australia. Although the boundaries were unlikely to have been stagnant or clear-cut, the nuanced traditions and customs across the different groups meant that the patterns of fire management, migration and management and use of natural resources are likely to have differed, in turn affecting the evolutionary path of native plants and animals. Overall, this long process of development has meant that traditional management and cultural practices are strongly connected with the ongoing health of river systems.

Many of these tight connections were damaged when the British settlers arrived, bringing with them European ideals of a verdant, wet, agricultural landscape, largely devoid of natural ecosystems. Because of this, they struggled to come to terms with the reality of Australia's variable climate and river systems. Rather than learn to adapt and work with the unique new environment, they set about "improving" and "taming" the land and rivers, with axes and dams, in the process displacing its Indigenous people and their traditional ecological land management, and colonising their land (see Lines 1991).

One interesting historical fact must be pointed out here. In Australia's very first colonial settlement by the Cadigal stream in modern-day Sydney, the colonists quickly realised that their impact on

the stream, from which so much of their everyday life depended, was quickly being polluted and degraded. Governor Phillip responded by "*proclaiming a fifteen-metre green belt along either bank, where settlers were forbidden to cut down trees, keep animals or erect buildings*" (Cathcart 2009). While the growth of the colony ultimately degraded the Cadigal, and Phillip's proclamation was forgotten, it is remarkable that over 220 years later, a very similar concept of buffer zones is being applied in the Wild Rivers initiative (see Section 8 of this Submission).

History shows that many of Australia's river systems received a ravaging during the process of colonisation and the development of modern Australia. Most of our river systems are now severely degraded due to over-extraction, pollution, catchment modification and river regulation (see Dunn 2000, Arthington and Pussey 2003, Kingsford et al 2005). The most severe and prominent of degraded river systems in Australia is the Murray-Darling Basin (Ball et al 2001). Only the Paroo and Warrego remain relatively unregulated in the MDB, and this represents just 3% of the entire basin (Norris et al 2001).

A major study conducted by the Commonwealth Government in 2000 showed that 26% of river basins in Australia were either close to, or overused, and 30% of Australia's groundwater management areas are either close to, or overused (National Land and Water Resources Audit 2000). Similarly, a follow-up study in 2002 showed that of the 14 000 river reaches assessed, 85% were classified as "significantly modified", nutrient and sediment loads were higher than normal in 90% and one third of aquatic plants and animals were "impaired" (National Land and Water Resources Audit 2002). These studies show, unequivocally, that we have pushed many of our river systems to the brink, jeopardising the survival of many native species, as well as our own life support systems.

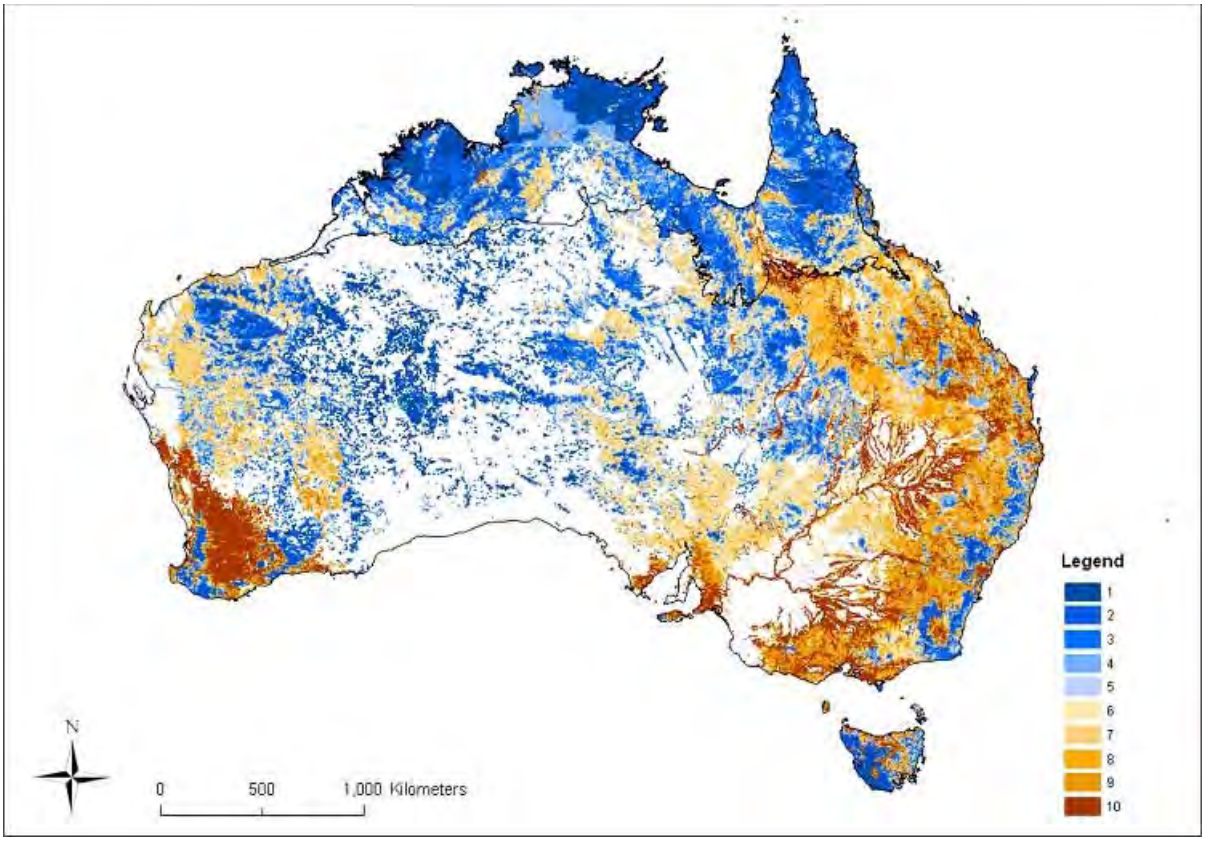

Figure 4: One of the best ways to demonstrate our impact on river systems is graphically. This is the "River Disturbance Index" development by Janet Stein initially for the Commonwealth Government's *Wild Rivers Project* (see Section 6). The red value of 10 shows the most disturbed river catchments and reaches, the blue value of 1 the least disturbed.

Much of the damage to river systems has been concentrated on the eastern and southern coasts, the Murray-Darling Basin, and the Western Australian "wheat-belt". The rivers of central and northern Australia, and south-west Tasmania remain relatively intact in comparison. But this does not mean they are safe from the same development pressures that have so fundamentally destroyed other river systems. For instance, in northern Australia, there has been a push to transform the region into the "food bowl of Asia". This is despite a recent taskforce and major CSIRO study demonstrating the serious natural constraints to this sort of development in the north, as well as the likely significant ecological impacts (Northern Australia Land and Water Taskforce 2009; CSIRO 2009).

With little proactive action from Australian governments to protect the best of Australia's rivers, and restore the rest, many Australians have taken action into their own hands. The Franklin River campaign of the late 1970s and early 1980s, led by The Tasmanian Wilderness Society, was a pivotal moment in Australia's history. Facing powerful vested interests, an unstoppable grassroots movement saw this mighty Tasmanian river spared from a huge new dam. Ever since, Australians have been more adept at demanding of their political leaders greater controls on development in and near our remaining free-flowing river systems. The Wild Rivers campaign in Queensland is a good example of the continuation of this movement, as is the *National Water Initiative.*

Despite these gains and reforms, scientists continue to stress that there is still not enough focus on the conservation of freshwater ecosystems in Australia, particularly compared with terrestrial ecosystems (Kingsford et al 2005). It is clear that we are not doing enough to prevent further river degradation and destruction of freshwater ecosystems in Australia, and we must continue to demand more of our political leaders.

6.3 Queensland's healthy river systems

Queensland is privileged to retain some of Australia's – and indeed the world's – last free flowing rivers. Given the Australian Constitution vests core responsibilities for the management of land and water in the States, the Queensland Government has a crucial responsibility to protect these river systems for the benefit of all Australians.

Below is a quick snap-shot of where the remaining wild rivers are in Queensland, all of which have been identified on a national Wild and Natural Rivers database as part of a study undertaken by the Commonwealth Government in the 1990s (Department of the Environment and Heritage, Australia. 1998a and 1998b)

1. **Cape York Peninsula**: Cape York Peninsula is one of the last great wild places remaining on Earth, with some of the healthiest and most spectacular river systems on the planet (Mackey et al 2001). This includes rivers travelling through dense rainforest and flowing into the Great Barrier Reef, and others, fringed by gallery forests, weaving through hundreds of kilometres of savannah woodlands and forming huge wetlands before flowing into the Gulf of Carpentaria.
2. **Gulf Country**: Driven by the monsoonal wet-dry weather patterns of Northern Australia, the remote rivers of the Gulf Country traverse vast grasslands and savannah plains. In a big wet season, all of these rivers are connected at their mouths through the massive Southern Gulf Aggregation wetland system.
3. **Coastal rivers**: The vast majority of Queensland's eastern coastal river systems have been seriously degraded by agricultural, industrial and urban development. There are, however, a handful of rivers still free-flowing and relatively healthy: the Noosa River and Baffle River in South-East Queensland, and Sandy Creek and Daintree River in Far North

Queensland. The streams and lakes of the World Heritage Fraser and Hinchinbrook islands are also still in a relatively pristine state.

4. **Channel Country**: These arid-zone rivers flow thousands of kilometres inland towards Australia's iconic outback lakes such as Lake Eyre. The rare major flooding events of these rivers about once a decade triggers a spectacular burst of life, particularly for migratory birds who travel thousand of kilometres to meet the floods. As the flood waters spread out across the outback landscape, they also bring life to grazing, fisheries and tourism industries.
5. **Murray-Darling Basin**: The Paroo River is the last wild river in the whole of the Murray-Darling Basin. Free of dams and weirs and polluting irrigation schemes, this arid-zone river is known for its spectacular and healthy Ramsar-listed wetlands, which means their ecological importance is internationally recognised.

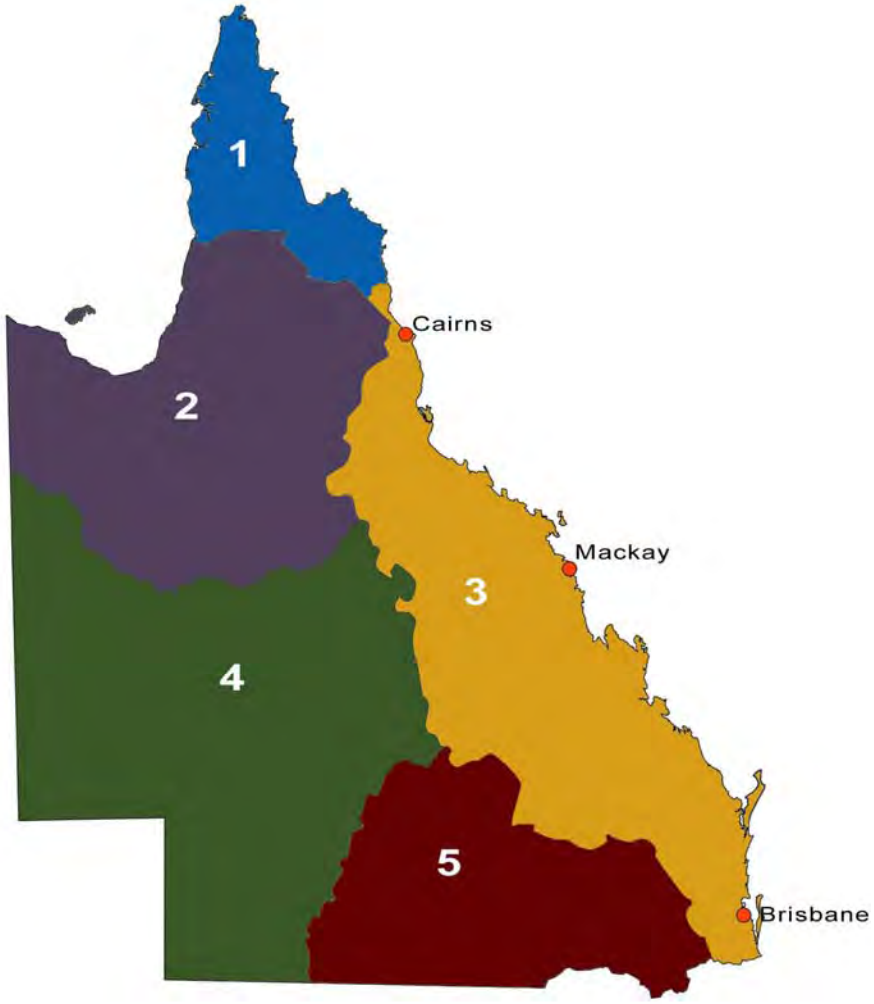

Figure 5: Queensland's regions according to major river basins. 1 – Cape York Peninsula, 2 – Gulf of Carpentaria, 3 – Coastal rivers, 4 – Channel Country and 5 – Murray-Darling Basin.

7 The Development of the Wild Rivers Initiative in Queensland

Wild Rivers in Queensland has an important pedigree, but has been designed to improve on other models for rivers protection. As government policy and state legislation, it has been widely promoted and discussed, and endorsed in three state elections. The Wild Rivers Act has already been amended three times, the last one involving specific clarification on Native Title issues. These facts have not prevented it from being considered 'controversial',

Following a submission process, the Queensland Government undertook successful negotiations with Traditional Owners and conservationists for the first wild river systems protected in 2007. This included strong support for declarations from the Carpentaria Land Council and Traditional Owners in the Gulf of Carpentaria.

After it conducted extensive consultations for the first three Wild River declarations on Cape York, meetings set up in late 2008/early 2009 between the Queensland Government and Traditional Owners which should have led to consideration of Traditional Owner's concerns were cancelled by Balkanu.

The Wild Rivers consultation processes has been attacked since the first river declarations were made on Cape York, even through Balkanu Development Corporation (headed by Gerhardt Pearson) took $70 000 of public funding to help run the first set of consultations.

TWS has consistently argued that ideally there should be a submission period and consultations, followed by a process of addressing issues and negotiating outcomes, to maximise agreement on Wild Rivers declarations. It continues to advocate for clearer government processes in this regard.

The following summary outlines the history of the Wild Rivers initiative, right through to the recent debate centred on Cape York and the expansion of the initiative to Western Queensland – a more detailed timeline is in Appendix D of this Submission.

7.1 The U.S. Wild and Scenic Rivers Act

The United States' *Wild and Scenic Rivers Act 1968* could be considered the early precursor and inspiration for Queensland's Wild Rivers initiative. The U.S. Congress created the Act in response to escalating public concern about the pollution of waterways across the country and the alarming impacts of dams and water diversions. Section 1(b) of the Act provides an excellent summary of the idea behind the Act:

> *"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."*

The scheme works by Congress or the "Secretary of the Interior" listing a river system, which then requires the development of a comprehensive management plan that restricts the federal government from introducing dams, mining, irrigation, and other development projects that adversely impact on the river system. There are no mandatory requirements on private land or for state water projects, and this has proved a major flaw in the Act.

Importantly though, the scheme was designed to be distinct from a National Park, in that the level of protection was not as high, with highly destructive development targeted instead. That is, it was not designed to stop development, but encourage use compatible with the maintenance of natural and scenic values.

In March 2009, President Barack Obama signed a package for the designation of 86 news rivers, greatly increasing the number of rivers protected under the Wild and Scenic Rivers scheme to a total of 252 (American Rivers 2009).

Canada also established the *Canadian Heritage River System* in 1984 to protect and sustainably manage river systems. The key difference between this system and the U.S. model is that it is entirely voluntary and there are no legislative obligations for developers or Canadian governments to adhere to the management framework.

7.2 Water reform and the Wild Rivers Project

The degradation of Australia's river systems has been just as severe as in the U.S., but we have taken much longer to develop effective stand-alone legislation to protect river systems. And it has taken ecological disasters of significant proportions to trigger action.

Through much of the later half of the Twentieth Century, Australians gradually began to understand the growing environmental problems with our river systems, and governments gradually began to change the way they manage rivers and water.

But it wasn't until the early 1990s that public awareness spiked and governments were compelled to do something drastically different. This was due largely to the very graphic images of a the disastrous algal bloom of the Darling River in 1991 – the biggest in the world spanning over 1000 kilometers – that so effectively communicated a problem, combined with acknowledgement of equally pressing issues with salinity and decline of aquatic species in the Murray-Darling Basin and other stressed systems.

There were two key responses to these problems that set the course for Queensland's Wild Rivers initiative: firstly, an agreed water reform process by all Australian governments; and secondly, as part of a move to ensure the protection of healthy rivers in particular, the Commonwealth Government's *Wild Rivers Project*.

Prime Minister Paul Keating's *Statement on the Environment* in December 1992 outlined a commitment to identify Australian rivers in near-pristine condition and to encourage their protection and proper management. Inspired by the U.S. Wild and Scenic Rivers Act, the Australian Heritage Commission was tasked with this role, and established the *Wild Rivers Project* (initially called the *Near-pristine Rivers Project*). The role of the Wild Rivers Project was to:

1. Identify Australia's wild rivers;
2. Develop a voluntary code of conservation management guidelines for wild rivers; and
3. Promote awareness of the values of wild rivers.

Overseeing the project was the *Wild Rivers Committee*, which included representatives from the Commonwealth, State and Territory governments, local government, landowners (including the National Farmers Federation), conservation groups, Indigenous people and the scientific community.

The Australian Heritage Commission completed the *Wild Rivers Project* in 1998, which culminated in the reports *The Identification of Wild Rivers* and *Conservation Guidelines for the Management of Wild River Values (*Department of the Environment and Heritage, Australia. 1998a and 1998b*)*. These reports later formed the basis for the Queensland *Wild Rivers Act 2005.*

Around the time that the *Wild Rivers Project* commenced in early 1993, the Council of Australian Governments (COAG) commissioned Sir Eric Neal to outline a new strategic framework for the efficient and sustainable reform of the Australian water industry. His recommendations were endorsed and adopted at a COAG meeting in 1994, which included pricing reform of water, allocation of water for the environment, the adoption of water trading arrangements, institutional reform (including water plans for basin areas), and a greater emphasis on public consultation and participation (see COAG Communiqué 1994). This agreement was a dramatic shift in national water policy and led to several states reforming their water management legislation, including Queensland.

In 2003, COAG agreed to refresh the water reform agenda by signing the *National Water Initiative* and establishing the *National Water Commission* to monitor the implementation of the Initiative. The Initiative reaffirmed and expanded on the reform agenda, and importantly, it also explicitly outlined the need to protect and manage high conservation value aquatic ecosystems (section 25(x)). This provided further impetus for a stand alone legislative framework to protect healthy rivers.

7.3 A campaign for better river protection in Queensland

Ironically, the commencement of the water reform period in the 1990s coincided with a dramatic acceleration in water resource extraction and development. In Queensland, this occurred primarily in the Darling River Basin, and included the surging growth of the infamous and gigantic Cubbie Station cotton farm. Cubbie was built without an Environmental Impact Assessment and in its early days paid the exceedingly small amount of $3700 per year for its 51 water harvesting licenses. Conservationists and scientists were outraged that such development could still occur, despite the national water reform process.

At about the same time, new cotton development proposals were proposed for the Cooper Creek catchment in western Queensland, including a call from the Queensland Cotton Industry to extract 20% of the Cooper's flows for large cotton farms. Most of the local community reacted forcefully, and the development proposals were successfully fended off by an alliance of graziers, conservationists and scientists.

Likewise in the Paroo River system, the last free-flowing river of the Murray-Darling Basin, graziers, scientists and conservationists including The Wilderness Society united to fend off development proposals for irrigated agriculture. The campaign culminated in the *Paroo River Agreement* signed between the Queensland and New South Wales governments, which sought to ensure the protection of the river system. However, recent construction of huge levee banks alongside the Paroo River demonstrates the fragility of this non-binding agreement (UNSW 2008).

The conservative Borbidge Government of Queensland released the *Water Infrastructure Task Force* report in 1997, which directly conflicted with the water reform agenda by identifying and prioritising 80 new dam sites across Queensland. This was on the back of a 1995 election commitment for a $1 billion water infrastructure package to kick-start the massive expansion of irrigated agriculture across the state. This report continues to be a reference point for the pro-dam lobby in Queensland.

In 2001, the Australian Cotton Cooperative Research Centre released a report which identified 21 priority areas for cotton development in Northern Australia (Australian Cotton CRC 2001). This included proposals on healthy and undeveloped rivers, including the Kendal, Holroyd, Edward, Archer, Colman and Watson rivers on Cape York, as well as the Mitchell and Gregory rivers in the Gulf of Carpentaria.

All of these escalating pressures convinced The Wilderness Society and other conservationists that the national water reform process on its own was simply not enough to prevent the irreversible destruction of our river systems. There were too many ad hoc, highly destructive water development proposals being pushed throughout the State, and it was becoming increasingly difficult to ensure the protection of Queensland's rivers. Hence the need for holistic, sensible regulation in the form of specific river protection legislation.

As the Beattie Government sought to reform water management in Queensland by passing the *Water Act 2000,* conservation groups strongly advocated for parallel discrete legislation to protect the conservation values of rivers, including free flowing rivers. This was in recognition that the Water Act focused on water allocation and use but did not specifically address environmental protection issues, nor provide a sensible and effective regulatory framework to protect Queensland's remaining free flowing rivers.

Building on the Australian Heritage Commission's earlier work and combined with alarming evidence of further decline of river systems in Queensland's *State of the Environment Report 1999*, a Queensland inter-departmental taskforce, led by the Environmental Protection Agency and including the Department for Primary Industries and Department for Natural Resources, began in 2000 to develop a framework for a *State Rivers Policy*. This included an assessment of Queensland's wild rivers at the basin level, drawing on information produced by the *Wild Rivers Project*, and a recommendation to develop a regulatory framework to protect river systems according to three "categories" of river health.

In the early 2000s, The Wilderness Society and the Queensland Conservation Council commenced a public campaign to protect Queensland's remaining Wild Rivers. The aim was straightforward – to convince the Queensland Government to introduce stand alone legislation to protect the conservation and heritage (social and cultural) values of rivers, including free flowing rivers. The ideas for river management and protection for the campaign were based on the work done by the Commonwealth through the *Wild Rivers Project*, and drew on the aspects of the *US Wild and Scenic Rivers Act* and *Canadian Heritage River System*.

7.4 The introduction of a Wild Rivers framework

In the midst of the 2004 State election campaign, the ALP publicly announced a commitment to introduce legislation to protect wild rivers. The commitment included a list of 19 river basins identified for protection, and its central statement was:

> *"A re-elected Beattie Government will identify and protect our wild rivers for generations to come. We will not allow dams to be built on Queensland's wild rivers. Our wild rivers will run free …*
>
> *A re-elected Beattie Government will introduce stand alone legislation to ensure our wild rivers are protected via:*
>
> - *Allowing limited agricultural, urban and industrial development, eg small scale "eco-friendly" tourism development would be encouraged*

- *Strictly limited and regulated water allocations or water extractions from wild rivers*
- *No new dams or weirs permitted on a wild river or its main tributaries.*
- *Flow control activities such as stream alignment, desnagging (other than for safety reasons) and levee banks will not be permitted*
- *Further developments on floodplains must not restrict floodplain flows*
- *Protection of associated wetlands*
- *No stocking of wild rivers with non-endemic species*
- *No use of exotic plant species in ponded pastures*
- *New off-stream storages to be limited in capacity, for example for stock and domestic purposes*
- *No new in-stream mining activities. Any out-of-stream mining in the region will be subject to Environmental Impact Assessments*

The Beattie Government will honour existing agreements, permits, lease conditions and undertakings" (ALP Wild River Policy, January 2004).

Eight months after the re-election of the Beattie Government, The Wilderness Society, Queensland Conservation Council and the Queensland Environmental Defender's Office released an initial policy position on the proposed Wild Rivers Act, which the Government was developing on the back of their election commitment. The key aspects of the recommendations for the new Act were as follows:

- A three-tier system of river classification (according to their ecological health and value to local communities), with varying degrees of management goals. This included *Wild and Natural Rivers*, *Rivers of Regional Significance* and *Heritage Rivers*.
- A list of 60 river systems that would fall into the above categories.
- A mechanism for public nomination of additional river systems.
- The establishment of a "Technical Advisory Panel" to provide expert advice to the Minister in the implementation of the initiative.
- A $60 million Wild Rivers implementation fund, including a structural adjustment package to be part of the initiative.
- On Indigenous rights: formal recognition of Native Title and Traditional Ownership and management, protection of Indigenous cultural heritage and ensuring consultation rights for Indigenous people.
- Enforcement and legislative review provisions.
- Honouring the election commitment to control the listed forms of destructive development.

The Wilderness Society and the Queensland Conservation Council also developed a discussion paper specifically addressing Indigenous issues – *Caring for Queensland's Wild Rivers: Indigenous Rights and Interests in the proposed Wild Rivers Act*. These two key policy documents were mailed out to environment groups, fishing groups, recreational user groups, local government, state government, and over 150 Native Title representative bodies and Indigenous organisations throughout Queensland. Follow up calls and meetings occurred, including between The Wilderness Society and the Cape York Land Council and Balkanu Cape York Development Corporation and with other sectoral interests. The Wilderness Society also undertook a campaign of community awareness raising.

The Queensland Government undertook consultation on the policy, and in May 2005, introduced the *Wild Rivers Bill 2005* into the Queensland Parliament for debate. The Bill did not meet all the policy goals of the conservation groups - it provided only one category of river for protection,

there was no public nomination mechanism, no provision for a Technical Advisory Panel, no management fund, and no explicit recognition of Indigenous rights, cultural heritage or Traditional Ownership.

In September 2005, the Queensland Parliament passed the *Wild Rivers Act*, with the support of the Labor Government and the Queensland Liberal Party and the abstention of the National Party. Comments made by then Liberal Party Leader Bruce Flegg in Parliament included:

> *"The Liberal Party supports the preservation of genuine wild river areas and is cognisant of the fact that this legislation will introduce a ban on activities such as mining, agriculture, animal husbandry, vegetation clearing, riverine disturbance, and dams and weirs … the Liberal Party understands that in a state with rapid development and a great deal of environmental impact from development the goal of preserving our relatively untouched river systems is a worthy goal, and we support the intent of a bill to that effect*" (Queensland Parliament Hansard 2005)

This was in contrast to various National Party MPs who described Wild Rivers as "disgusting" "anticlean", "draconian", "deceitful", "stupid" and "a con" (Queensland Parliament Hansard 2005).

Despite the shortcomings of the Act in its initial form, it was a highly significant step, and signaled a major breakthrough in proactive protection of Queensland's free flowing rivers. Given the Act regulated both state *and* private development and was not based on a voluntary scheme, contrasting with the flaws of the US and Canadian schemes, it was the first legislation of its type in the world. Queensland had taken an international lead in river conservation.

7.5 The first round of Wild Rivers protection

Three months after the passage of the *Wild Rivers Act 2005*, the first six wild river basins were nominated for protection: Settlement Creek, Gregory River, Morning Inlet, Staaten River (these four being in the Gulf of Carpentaria), Hinchinbrook Island and Fraser Island.

The response from many Traditional Owners in the Gulf of Carpentaria was overall positive, although concerns about the lack of recognition of cultural values, and the consultation process were raised.

The Carpentaria Land Council produced its own information to consult with the Native Title groups which it represented, assisted the four relevant Traditional Owner groups to develop their a submissions. The Carpentaria Land Council also made an overarching submission.. The submission noted how the protection of the rivers was tied to the protection of their economic assets, as they saw a strong future for a culture-based economy. They also saw threats to the health of their river systems from mining development. The Carpentaria Land Council supported the declarations, and in fact noted that the protection measures did not go far enough.

A statement from Indigenous leader Murandoo Yanner in a joint media release at the time with The Wilderness Society captures the flavour of the support for the protection of the Gulf rivers:

> *"Healthy rivers are the lifeblood of our people — everything depends on that. Water for drinking, fish for eating — we have to protect this for our children's children. We've talked with the Government and we thought we were on the same page — we want the Settlement and Gregory Rivers declared — the Government shouldn't cave in to the scare-mongering*

> *of those mining and agriculture mobs."* (The Wilderness Society and Carpentaria Land Council 2006)

As indicated in Mr Yanner's comments above, there was fierce opposition from AgForce, Queensland's peak agricultural lobby group, and the Queensland Resources Council, the State's chief mining industry lobby group, and the Cape York Land Council. This coincided with further pressure from the National Party of Queensland and a move by Noel Pearson to strongly oppose Wild Rivers (covered in the next section). Premier Beattie subsequently convened a high-level meeting with key stakeholders, including himself and Minister Palaszczuk, senior government advisors and public servants, The Wilderness Society, the Carpentaria Land Council, Noel Pearson, the Queensland Resources Council and AgForce. Stakeholders were asked to negotiate a workable way forward to enable Wild Rivers to proceed.

In July 2006 Premier Beattie announced that Wild River protection for the first six basins would go ahead, alongside a number of negotiated amendments to the *Wild Rivers Act 2005* and accompanying *Wild Rivers Code*. The amendments allowed the following activities in a wild river area, which were previously prohibited:

- **Fodder crops**: greater flexibility for establishing "pasture improvement" in High Preservation Area, and a new assessment process for new cropping areas in the Preservation Area (relating to the invasive risk of the species).
- **Mineral exploration**: hand sampling and drilling in High Preservation Areas, but not within 100m of a waterway.
- **Mining in High Preservation Areas**: mining allowed *under* this zone provided there is no impact on groundwater or any surface disturbance.
- **Mining in nominated waterways**: mapping approach changed so the smallest streams were not included, thereby allowing greater areas for exploitation by the mining companies, as well as projects of "state significance" given ability to mine in a nominated waterway.
- **Urban infrastructure**: greater flexibility for "Environmentally Relevant Activities" in urban areas, as well as allowing sewage and water treatment plants in a High Preservation Area if no alternative location can be found.
- **Communal gardens**: communal gardens allowed in a High Preservation Area.
- **Quarrying**: off-stream quarry pits allowed in a High Preservation Area and Floodplain Area for residential needs of specified works, subject to assessment.

While some of these changes were reasonable, the concessions to the mining industry, in particular, meant a watering down of the environmental protections in the wild rivers initiative. But it was still a major step forward and given the protection of rivers and wetlands from dams, irrigation and strip mining, combined with the cap on water extraction, The Wilderness Society publicly supported the negotiated outcomes.

In the end, the alliance of The Wilderness Society and the Carpentaria Land Council strengthened to ensure that the declarations went ahead. A statement from Indigenous leader Murandoo Yanner in a joint media release at the time from the two organisations captures the flavour of the push to protect the Gulf's rivers:

> *"Healthy rivers are the lifeblood of our people — everything depends on that. Water for drinking, fish for eating — we have to protect this for our children's children. We've talked with the Government and we thought we were on the same page — we want the Settlement and Gregory Rivers declared — the Government shouldn't cave in to the scare-mongering*

> *of those mining and agriculture mobs."* (The Wilderness Society and Carpentaria Land Council 2006)

However, the 2006 State election was called before the Queensland Government was able to make the relevant amendments and formally declare the first six rivers. Premier Beattie re-committed to protecting the original 19 river basins identified in the ALP's 2004 election policy, and in response to advocacy from The Wilderness Society, then Deputy Premier Anna Bligh also announced an election commitment to create a program of creating up to 100 Indigenous Wild River Ranger jobs. This was a highly significant announcement, as it directly recognised the skills and knowledge of local people, as well as providing much needed jobs in remote areas.

The re-elected Beattie Government passed the negotiated amendments, and following additional consultation, the first six river basins were finally declared in February 2007. This included an expansion of the High Preservation Area in the Gregory River Basin, which saw further areas protected from dams, irrigation and strip-mining.

As the declarations were tabled in Parliament, yet another amendment to the *Wild Rivers Act 2005* was negotiated. *Property development plans* were introduced into the Act, giving agricultural development proponents an opportunity to request changes to a High Preservation Area if they could prove that environmental impact from a proposed activity would be negligible (via a strict test from an independent science panel) and that the proposed activity would be viable.

While the operation of the Wild Rivers initiative had been weakened in the process of implementation, the conservation outcome was still very significant. The Wild River declarations in the Gulf were the first major conservation initiative in that region since the creation of the Lawn Hill (Boodjamulla) National Park in 1985, and included the protection of vast areas of coastal wetlands of international significance.

7.6 Protection of the first three Wild Rivers on Cape York

The move to protect the 13 river basins of Cape York has been characterised by controversy, delay and obfuscation, fueled largely by a concerted and ongoing campaign of fear and misinformation by those opposed to Wild Rivers. Well before the Queensland Government moved to nominate the river basins on Cape York and commence the formal community consultation process, Noel Pearson kick-started his anti Wild Rivers campaign during a speech at an Agforce meeting at Musgrave Station in central Cape York in June 2006, claiming that:

> *"The way this policy* [Wild Rivers] *will work out is that indigenous people will die on welfare. No prospect for development, no prospect of jobs, no prospect of even developing the lands that they already have … So we have got to have a full frontal attack on this legislation …."* (Noel Pearson 2006).

The speech was as much about Queensland's vegetation management laws, designed to control land clearing, as it was about Wild Rivers – it was a manifesto targeted at environmental regulation as a whole and has became the bedrock ideology of Mr Pearson's campaign against Wild Rivers, and in turn against the Wilderness Society, despite a long history of working together under the Cape York Heads of Agreement.

Shortly after the Musgrave meeting, Warren Entsch, former Liberal MP for Leichardt (including Cape York), helped establish a "historic alliance" to oppose Wild Rivers, which included the Cape York Land Council, Balkanu Development Corporation, AgForce, and the Cook Shire Council. The groups called for a moratorium on all Wild River declarations for 12 months, which was

granted by Premier Beattie who was already involved in negotiations over the future of the first round of rivers. While Noel Pearson took part in the initial discussions to amend the Wild Rivers legislation during this time, he and his associated organisations (the Cape York Land Council and Balkanu Development Corporation) sought to continue and intensify their campaign to overturn Wild Rivers. This included the setting up of the *Indigenous Environment Foundation* to "*run a guerrilla campaign against The Wilderness Society*" (John van Tiggelen, 2007).

A war of words and claims was subsequently waged, with *The Australian* newspaper providing uncritical support for the anti Wild Rivers campaign (see Section 9 and Appendix E of this Submission), in an attempt to place further pressure on the Queensland Government.

In response, Premier Beattie brought key stakeholders back to the negotiating table to seek brokerage of a new resolution. In recognition of a range of outstanding land management, conservation and economic development issues on Cape York, the Beattie Government moved to develop a special Act of Parliament specifically for the region (in part at the behest of Noel Pearson). The negotiation process, led by of the Premier's Department Director-General Ross Rolfe, included The Wilderness Society, the Australian Conservation Foundation, the Cape York Land Council, the Balkanu Development Corporation, the Cook Shire Council, AgForce and the Queensland Resources Council. The process culminated in the *Cape York Peninsula Heritage Act 2007*, which covered a broad range of issues, including:

- Creating a tree clearing exemption for Indigenous communities under the *Vegetation Management Act 1999*, by way of designating "Indigenous Community Use Areas" within Aboriginal lands that are suitable for development for the likes of; aquaculture, agriculture or grazing purposes
- Creating a new class of Aboriginal national park for Cape York that enables national parks to be created over Aboriginal land without the need for lease-back arrangements, as well as joint management arrangements with Traditional Owners
- Providing a pathway and process for the World Heritage listing of Cape York, including the setting up of two committees (one a community committee, the other a science and culture committee)
- Supporting the ability of lessees to access rural lease terms of up to 75 years if they take action to protect World Heritage values and enter into an Indigenous Land Use Agreement concerning use and access rights for traditional owners;
- A requirement that the Minister responsible for Natural Resources and Water considers the impact on the Cape York grazing industry of any decision to transfer a lease or to convert the lease to another tenure in the interests of ensuring that a viable grazing industry remains part of the Cape York future economy.
- explicitly protecting Native Title rights in the *Wild Rivers Act 2005* via amendment to that Act, and provision of an Indigenous water reserve in any Wild River declaration

The *Cape York Peninsula Heritage Act 2007* was designed to provide a breakthrough to the Cape York debate, and facilitate a way forward on Wild Rivers. Upon the announcement of the agreement, all parties welcomed it and agreed to policy, including Wild Rivers, to proceed ("Queensland Government introduces legislation on Cape York", ABC PM, 07/06/2007). The Cape York Heritage Act was subsequently passed in the Queensland Parliament in October 2007 with just one opposing vote – from One Nation Party MP Rosa Lee Long.

Unfortunately, the apparent agreement lasted just one month. In the heat of the Federal Election, Noel Pearson and the Cape York Land Council accused the Queensland Government, Kevin Rudd, The Wilderness Society and the Greens of secretly including bigger areas in the Wild Rivers scheme on Cape York through a "preference deal" (Tony Koch 2007).

There was no basis at all to these claims, the mapping and scale of areas to be protected had not changed one bit. However, in an ongoing and ever-hopeful attempt to find a lasting solution around Wild Rivers, the Queensland Government convened a meeting between Balkanu Development Corporation, the Cape York Land Council, the Wilderness Society, and the Australian Conservation Foundation, and the three Queensland Ministers responsible for the Environment, Natural Resources and Water, and Indigenous policy respectively. Following this negotiation process and several additional discussions between the various interests in a related forum (Cape York Tenure Resolution Implementation Group), the Queensland Minister for Water, Craig Wallace, wrote to all in April 2008 outlining the timeline for the roll out of Wild River nominations. This included four phases:

1. The Archer, Stewart and Lockhart River (and possibly Jacky Jacky Creek) Basins immediately;
2. Wenlock River Basin before the end of 2008;
3. Ducie, Watson, Olive and Pascoe River Basins in 2009; and
4. Jardine, Holroyd, Coleman and Jeannie River Basins in 2010.

Two months later, the Queensland Government formally nominated the Archer, Stewart and Lockhart River Basins under the Wild Rivers legislation, with public submissions set to close in November 2008. The Balkanu Development Corporation was contracted by the Queensland Government to help conduct the formal consultation process for the first phase of nominations.

An extensive community consultation exercise ensued, with over one hundred meetings and briefings with Traditional Owners in relevant parts of Cape York. During the consultation phase, the Wilderness Society met with a group of Traditional Owners who had remaining concerns about the impacts of Wild Rivers, and who also sought some additional time in formulating their submissions. The Wilderness Society discussed the range of issues raised, and in fact concurred with a number of them, and in response wrote to the Queensland Government to indicate support for a limited amount of additional time for submissions from those Traditional Owners. Perhaps more significantly, we also sought a commitment from the Government that there would be a process of dialogue and negotiation to enable agreement to be reached on the Wild River declarations. A copy of the correspondence (one letter back to the Traditional Owners, and the letter to the Government) is attached to this submission. The Wilderness Society understands that several attempts were in fact made to undertake such negotiations (in late December 2008, and in February 2009), but that these were frustrated by Balkanu.

Meanwhile, the Queensland Government also nominated the Wenlock River Basin for Wild River protection in late 2008. The Wilderness Society, Australia Zoo, and Traditional Owners have supported the proposed declaration as a means of preventing the highly destructive Cape Alumina bauxite mine near the Wenlock River and on the Steve Irwin Wildlife Reserve. Following a long consultation process and the gathering and assessment of scientific data relating to rainforest springs on the Steve Irwin Wildlife Reserve, The Queensland Government is expected to make a final decision on the declaration in April or May 2010.

Before the process for the first three Wild River basins on Cape York were finalized and declarations made, an early Queensland State election was called (late February 2009). Once again, conservation groups publicly promoted the need for strong environmental protections and commitments, and sought indications from all major political parties regarding their environmental policies, including their position on protecting Queensland's Wild Rivers. Labor and the Greens responded with statements on their policies, but the Liberal-National Party ignored our repeated requests for information and provided no response.

Given its existing policy, it was no surprise that Premier Anna Bligh very explicitly and clearly announced at the launch of the Labor Party campaign that the Wild Rivers initiative would continue and indeed that an additional three river basins in Western Queensland would be added to the list. It was obvious that this meant the first three Wild Rivers would be declared at some stage soon after the election, given the timetable the Premier had indicated for the Wild Rivers initiative as a whole. The Bligh Government was re-elected in March 2009.

Two weeks after the election, the government completed the process for the first three Wild River basins on Cape York, and declared the Archer, Stewart and Lockhart River Basins as Wild Rivers. Noel Pearson responded immediately with a ferocious personal attack on the Premier, declaring that she had "*urinated on the rights of Aboriginal people*" and cut off all economic opportunities for Indigenous people ("Noel Pearson slams Anna Bligh on river 'deal'", The Australian, 06/04/2009). Two days later in an apparent media stunt, Pearson announced his resignation from the Cape York Institute to "in order fight Wild Rivers" (although in fact, he never did actually step down from his role, instead taking temporary and partial leave).

For the past twelve months, Noel Pearson and his close allies have waged a furious media campaign attacking Wild Rivers and the Wilderness Society, making all sorts of extraordinary and highly inaccurate claims along the way (see Section 9 and Appendix E of this Submission). This has been greatly aided by strong support from *The Australian* newspaper, and other conservative media commentators such as Andrew Bolt, Piers Akerman, Janet Albrechtsen and Alan Jones. A number of Coalition politicians such have also given support to the anti Wild Rivers campaign, most notably and publicly the Opposition Leader Tony Abbott.

Concurrently, the *Indigenous Environment Foundation* morphed into *Give us A Go* ('GAG') in an attempt at providing a slicker front for the campaign. GAG has established a website and has been involved in spreading blatant misinformation about Wild Rivers in parts of Cape York. This so-called "grass roots" campaign actually involves a very small number of people, some of whom have since departed, has led to a great deal of confusion and fear on Cape York. Many Traditional Owners that The Wilderness Society has met in the region comment that they are worried they won't be able to camp near or visit the river, or that Wild Rivers means the compulsory acquisition of land and removal of ownership and Native Title rights of Indigenous people, thanks to the GAG. For example, one flyer distributed by *Give Us a Go* claims the following:

> "*Wild Rivers is a SLIPPERY SLOPE – Once you go down you can't get back up. First comes WILD RIVER NATIONAL PARKS. Then comes BLANKET WORLD HERITAGE LISTING. Then comes a BAN ON TRADITIONAL HUNTING AND TRADITIONAL FISHING ON CAPE YORK."* (see Appendix B of this Submission).

There is no way to describe this tactic other than to call it dishonest.

The recruitment of Opposition Leader Tony Abbott and other Federal conservative politicians and Liberal Party candidates to overturn the Queensland legislation via the *Wild Rivers (Environmental Management) Bill 2010*, is merely the latest and perhaps highest profile part of the Pearson campaign to stop Wild Rivers environmental protections taking place on Cape York. Sadly, it would appear that a number of Coalition politicians have uncritically 'bought' the lines from the anti-Wild Rivers campaign, repeating and worn out incorrect statements for example about Wild Rivers being national parks.

7.7 Protection of the Channel Country Rivers

In the midst of the debate about protecting the wild rivers of Cape York, the Queensland Government is also moving to protect the spectacular Channel Country rivers under the Wild Rivers legislation. Thanks to a strong set of community leaders in the region, and a cordial and solutions-oriented approach to debate, collaboration of different stakeholder groups and strong community input is helping to shape Wild Rivers to best suit the region.

The context of the commitment to protect the Channel Country rivers is embedded in the recent history of region. In the mid 1990s there was a concerted push by the Queensland Government and the cotton industry to divert large quantities of the Cooper's Creek's water to grow cotton in Queensland's western desert. Fortunately for the river, a coalition of scientists, graziers and conservationists saw off this push. This move against cotton growing and water extraction was enshrined in a ten year water plan for the region however the plan came up for renewal last year with a renewed push for irrigated agriculture.

This and emerging threats from the mining industry saw the alliance between graziers and conservationists reform, calling for permanent river protection of the Channel Country (officially launched in early March 2009). The alliance – known as the *Western Rivers Alliance* - includes the Australian Floodplain Association, the Cooper's Creek Protection Group, the Pew Environment Group and The Wilderness Society.

The Bligh Government responded rapidly to formation of the alliance by announcing the expansion of the Wild Rivers initiative into the Channel Country rivers, as part of the election commitment in March 2009. Many in the communities of Western Queensland understand that permanent and sensible river protection is good for the environment and the local grazing and tourism industries. The Queensland Government is expected to release the draft Cooper Creek Basin Wild River declaration in mid 2010.

7.8 Protection of the rivers on the east coast of Queensland

While the World Heritage islands of Hinchinbrook and Fraser now have an additional layer of protection through Wild River declarations, there are other rivers on the east coast of Queensland, such as the Upper Noosa River, Sandy Creek, and Baffle River that warrant future Wild River protection. For these river systems, there has been a long-standing request from many in the local communities to ensure Wild Rivers encompasses these important free-flowing river systems. For example, many in the community of Baffle Creek, faced with the prospect of a dam on their free-flowing river system, have joined with The Wilderness Society in calling for Wild River protection.

8 The Mechanics of Wild Rivers

Queensland's Wild Rivers Act is a tenure blind, planning and management approach to conservation. It operates in tandem with many other pieces of Queensland legislation and is designed to protect the natural values of wild rivers by regulating new development activities through whole-of-catchment management. This approach supports the scientific concept of 'Hydro-ecology'.

The Wild Rivers Act is operationalised through individual Wild River area declarations and the *Wild Rivers Code*. A declared Wild River includes a number of different management areas which have varying rules to guide development activities. These areas include:

- High Preservation Area
- Preservation Area
- Floodplain Management Area
- Subartesian Management Area
- Designated Urban Area
- Nominated Waterways

The Wild Rivers Act recognises Native Title rights, and, for the first time in Australia, Wild River declarations identify a water allocation specifically for Indigenous people.

Consultation for a proposed wild river area is triggered when the Queensland Government releases a draft declaration proposal. It includes months of face-to-face meetings between the Government and individuals, communities, sectoral groups, and industry organisations, as well as a submission period. There is also the opportunity for parties to seek to negotiate directly with the Government following the close of submissions.

The final decisions on a declaration are made at the discretion of the Queensland Minister responsible for Natural Resources and Water (and officially by the Queensland Cabinet, signed off by the Governor of Queensland and tabled in Parliament).

8.1 How the Wild Rivers legislation works

The Wild Rivers Act is enabling legislation best described as a planning and management approach to conservation. It operates in tandem with Queensland's *Sustainable Planning Act 2009*, *Water Act 2000* and other relevant Queensland legislation to regulate new developments in declared "Wild River areas", setting a baseline for ecologically sustainable development that protects wild river values.

The following excerpt from the *Wild Rivers Code*, which is used to assess development in a Wild River area, is a good explanation of how Wild Rivers operates.

> *"The Queensland Government can declare a wild river area under the Wild Rivers Act in order to preserve the natural values of that river system. Once a wild river area is declared, certain types of new development and other activities within the river, its major tributaries and catchment area will be prohibited, while other types must be assessed against this code. Each wild river declaration will identify these developments and other activities. Also proposed developments and activities assessed against this code must comply with its requirements.*

The natural values to be preserved through a wild river declaration are:

- *hydrological processes …*
- *geomorphic processes …*
- *water quality …*
- *riparian function;… and*
- *wildlife corridors …*

Proposed development activities are assessed for their potential impact on these natural values."

In order to give more definition for this assessment process, a declared Wild River area (defined by a river basin) is spatially mapped into different management areas, which have varying rules to guide development activities in the *Wild Rivers Code*. These management areas are shown in the map below and summarised beneath the map.

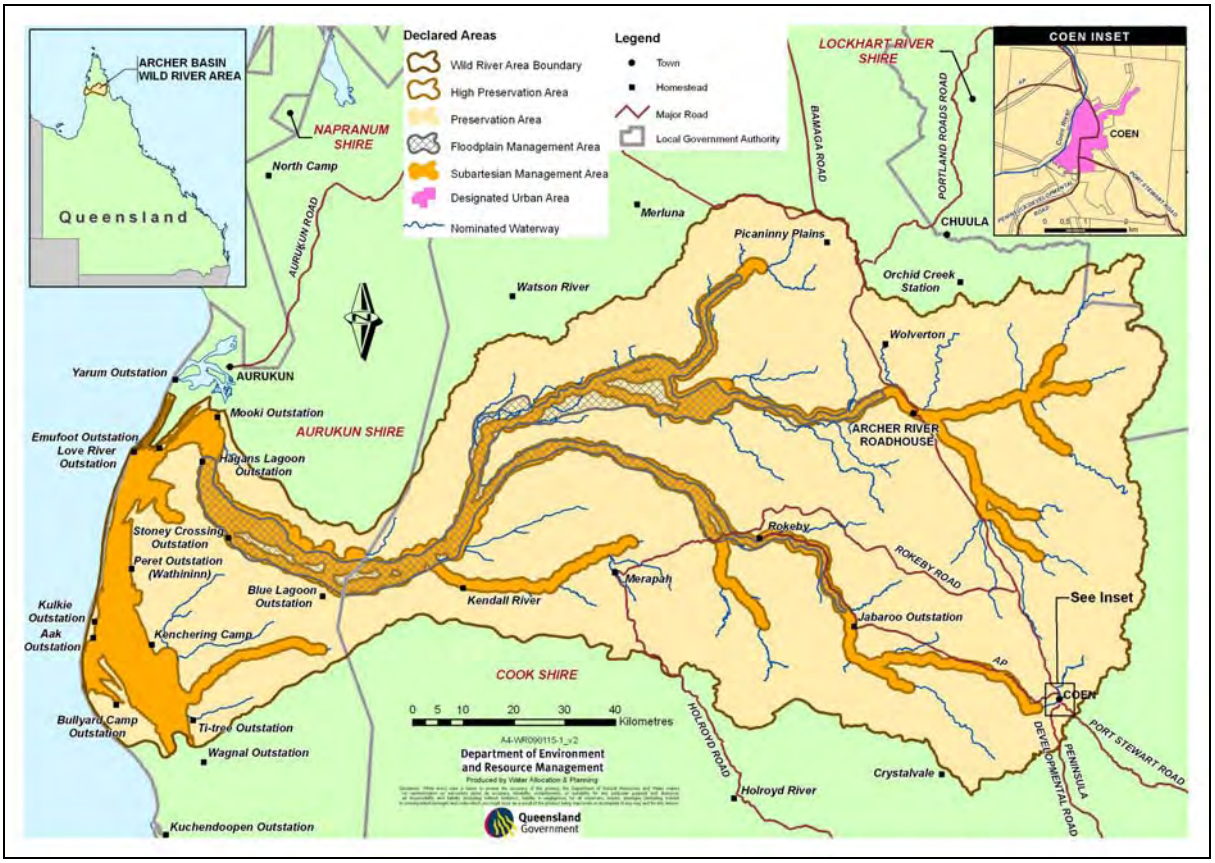

Figure 6: The Archer River Wild River area on Cape York Peninsula, declared in April 2009.
Source: Queensland Department of Environment and Resource Management.

The management areas:

- **High Preservation Area**: the buffer zone around the main watercourses and wetlands (the orange areas on the above map) where ecologically destructive development like dams, irrigated agriculture and strip mining is prohibited. Lower-impact activities, such as grazing, infrastructure such as houses, and fishing are allowed.
- **Preservation Area**: the remainder of the basin, where most development activity can occur as long as it meets requirements that minimise the impacts on the river system.

- **Floodplain Management Area**: important floodplain areas in the basin (shown in cross-hatch above), where the construction of levees and other flow-impeding development is regulated to protect the connectivity between this area and the main river channels.
- **Subartesian Management Area**: areas where there is an underlying aquifer that is strongly connected to the river system. Water extraction from this area needs to be considered in the overall water allocation for the basin.
- **Designated Urban Area**: areas where there is a town or village, so certain types of development are exempt from the *Wild Rivers Code* (shown in pink in the above map).
- **Nominated Waterways**: secondary tributaries or streams in the Preservation Area where certain development set-backs apply.

In practice this means that destructive developments like large dams, intensive irrigation, and mining cannot occur in sensitive riverine and wetland environments (in the High Preservation Area), while a range of other developments have to meet sensible requirements outlined by the *Wild Rivers Code*. Water extraction is capped at no more than 1% of mean annual flows from the river systems.

Additionally, Wild Rivers declarations support the continuation of existing activities, including grazing and fishing, as well as the establishment of smaller scale commercial uses, eco-tourism, new outstation and remote community developments, and other sustainable activities (in terms of the global threats to freshwater ecosystems outlined in Section 6 of this Submission , this means direct control of all key threats except over-fishing). It leaves in place existing mining entitlements, but along with other environmental and planning instruments, regulates future mining activity.

The Wild Rivers Act (s.44(2)) and the Acts Interpretation Act (Qld) put beyond doubt that a wild river declaration cannot limit a person's right to the exercise or enjoyment of Native Title. By default, if a declaration was found to be inconsistent with a right under the *Native Title Act 1993*, the Native Title right would likely prevail.

It is important to note that for the first time in Australia, Wild River declarations identify a special water reserve specifically for Indigenous people (within the 1% cap).

A Wild River declaration cannot occur without extensive community consultation, including a public submission phase. The formal consultation process is triggered when the Government releases a draft declaration proposal (termed a "nomination"). This includes releasing a draft map showing proposed management areas, and is followed by months of face-to-face meetings between the Government and communities, sectoral groups, and industry organisations, as well as a chance for people to lodge submissions with the Government.

There is also the opportunity for parties to seek to negotiate directly with the Government following the close of submissions. This was applied in the Gulf of Carpentaria, where a number of stakeholder groups worked with the Government to develop a final outcome for the declarations, after the submission period had closed.

The final decisions on a declaration are then made at the discretion of the relevant Queensland Minister endorsed by Queensland Cabinet, signed off by the Queensland Governor and tabled in State Parliament).

To date, there has also been a lot of negotiation and consultation outside of this formal process. For instance, the three rivers declared on the Cape in April 2009 involved more than three years of ongoing consultation by the Queensland Government with conservation groups, regional

Indigenous organisations, resulting in amendments to the Wild Rivers legislation and development of the *Cape York Peninsula Heritage Act 2007*.

8.2 A landscape-scale approach to conservation

The work of The Wilderness Society is guided by its "WildCountry" vision. Under *WildCountry* we have developed scientific and advocacy programs aimed at preventing environmental problems before they occur, and restoring the ecological processes and environmental flows which sustain the long-term health of nature where these are broken down or fragmenting. It is a move beyond saving nature one species and one wild place at a time, towards big-picture and long-term solutions. This work is developed on new, cutting-edge analysis of large-scale ecological connectivity processes, allowing nature to continue to survive and evolve, and for people to sustain themselves in perpetuity.

In a seminal journal paper, Soulé at al (2005) identify seven key ecological processes operating at the continental scale in Australia: hydro-ecology; disturbance regimes; long-distance biological movements; strong interspecies interactions; climate change and variability; land-sea connections; and evolutionary processes. They describe how conservation planning must incorporate such underlying principles that shape landscapes and their constituent ecosystems.

"Hydro-ecology" relates to the protection of freshwater ecosystems and whole-of-catchment management (reference). It essentially refers to the way water moves and cycles within a landscape, and the freshwater ecosystems and species that have adapted to these conditions. Along with the other landscape-scale processes, it is a useful concept to help understand that the health of a freshwater ecosystem and the wildlife and communities that depend on them can be heavily affected by actions a long distance away.

In policy terms, this means that simply relying on highly protected areas like National Parks as a central conservation tool is simply not good enough to protect nature. Focusing on this alone would leave islands of intact ecosystems in a sea of intense human disturbance. And in the case of a river system, protecting the wetlands at the mouth of the river in a National Park (or equivalent), but not protecting the flows that sustain the wetland, is a very poor approach that would not achieve a conservation outcome.

The best and bleakest example of this in Australia is the Coorong National Park at the mouth of the Murray River. The park is designed to protect this (once) stunning wetland system, but with of the impoundment of natural flows from Victoria and NSW and right up into Queensland, primarily for irrigation purposes, the ongoing survival of the wetlands is in very serious jeopardy. The National Park approach simply does not work in this case. The whole of the Murray-Darling Basin and the natural flows – the hydro-ecology – must be protected to protect the Coorong wetlands.

This means that Government's have a responsibility to underpin core protected areas with sensible conservation strategies across the entire landscape and across all land tenures. This approach presupposes that sound ecological principles should guide regional planning, and set a baseline "duty of care" for landholders through sensible regulation and collaborative management. This is exactly what the Wild Rivers legislation sets out to achieve.

9 Addressing the Misinformation Campaign Against Wild Rivers

9.1 Summary of misinformation campaign against Wild Rivers

Since the proclamation of the *Wild Rivers Act 2005*, there has been a great deal of misinformation and misreporting about how the initiative operates. There have also been a number of allegations leveled at The Wilderness Society in relation to our support for Wild Rivers.

It is important for the Senate Committee and the broader community to understand these claims and the false and misleading foundations on which they are based, as it provides the political context for the introduction of the *Wild Rivers (Environmental Management) Bill 2010*.

Section 5 of this submission dealt with more substantive alleged problems with Wild Rivers, such as concerns about Native Title Indigenous rights, and the United Nations Declaration on the Rights of Indigenous People. Below we address other common claims made and references are indicated under each claim (as well as in final Reference section of this report) to provide clarity on the source of the claims. In many cases, these claims relate to potentially serious issues, but have in practice been used in anti-Wild Rivers propaganda and rhetoric, and are simply without foundation.

The vast majority of these claims have been made by Noel Pearson and his associated organisations, including the Balkanu Development Corporation and the Cape York Land Council. For this reason, many of the claims refer to Cape York (it must be remembered that Wild Rivers is a state-wide initiative). We have also added a section that deals specifically with the reporting from *The Australian* newspaper, which has greatly fuelled misinformation about Wild Rivers.

9.2 Addressing erroneous claims about Wild Rivers

9.2.1 Wild Rivers stops the building of tourism and fishing lodges

Reference: Noel Pearson in "Noel Pearson slams Anna Bligh on river 'deal'", Tony Koch, The Australian, 06/04/2009

Wild Rivers does not stop the construction of lodges or other buildings. Within the High Preservation Area, there is a requirement that such construction does not cause adverse erosion, effect water quality, or destroy wildlife corridors along the river. Typically this means building 200m or so away from the high banks of the river, but there is flexibility to allow construction closer if the applicant can show the impacts on the river will be negligible.

9.2.2 Wild Rivers will lead to the banning of traditional hunting and fishing

Reference: "Give Us a Go" campaign flyer distributed on Cape York (Appendix B)

This is a highly misleading and deliberate statement designed to inject fear into Indigenous communities. All Native Title rights are confirmed in the Wild Rivers Act, including the traditional rights to hunt and fish. What's more, preventing dams, industrial irrigation and mining in the rivers ensures there continues to be plenty of fish and crabs in the first place.

9.2.3 There has been no consultation with Indigenous people

Reference: Richie Ah Mat in "Cape leaders out of loop on rivers deal", Evan Schwarten, Cairns Post, 25/02/2010

Since 2004 there has been ongoing consultation by the Queensland Government with communities and Indigenous organisations about Wild Rivers, including close negotiations with relevant Land Council's and local Traditional Owner groups. In the Gulf of Carpentaria, this lead to strong support from the Carpentaria Land Council and many Traditional Owner groups for Wild Rivers.

As for Cape York, there have been many negotiation and consultation meetings over many years with regional Indigenous organisations and Traditional Owners on the ground (and three rounds of legislative amendments to the *Wild Rivers Act 2005*). The Balkanu Development Corporation, led by Gerhardt Pearson, received $70,000 in mid 2008 from the Queensland Government to partner with them to help run Indigenous consultations for the first three Wild Rivers on Cape York.

The Wilderness Society believes there is still room for significant improvements to the consultation process, and has consistently argued that ideally there should be a submission period and consultations, followed by a process of addressing issues and negotiating outcomes, to maximise agreement on Wild Rivers declarations. TWS continues to advocate for clearer government processes in this regard. But to say there has been no consultation or negotiation opportunity is simply untrue.

9.2.4 Wild Rivers is the same as a National Park

Reference: "Give Us a Go" campaign flyer distributed on Cape York (Appendix B)

This claim is again designed to strike fear into Indigenous communities, who have legitimate concerns with National Parks, thanks to the famous case of Queensland Premier Joh Bjelke-Petersen using the declaration of a National Park in the 1970s to stop John Koowarta and his people from purchasing back their traditional homelands.

In practice, Wild Rivers operates in the same was a planning scheme does in terms of applying to all land tenures, but not changing the tenure or ownership of the land. Wild Rivers provides a regulatory framework for approving what sorts of development and water uses can occur and where they may occur. There is no actual or effective "acquisition" of any property involved,

Also, unlike a National Park, activities such as grazing, fishing, sustainable enterprise and building private infrastructure occur under Wild River declaration.

9.2.5 There are no threats to Cape York's rivers

Reference: Noel Pearson in an interview with Leigh Sales on ABC's Lateline, 05/07/2009

Strip mining for bauxite and sand is a major threat to the health of Cape York's rivers. On the west coast of the Cape, there are wall-to-wall exploration permits and mining leases for these types of mining activities, but very little in the way of strong regulatory tools to prevent destruction of ecosystems and wildlife.

There is also an ongoing push for large-scale irrigation schemes across Northern Australia and including Cape York. On top of this, invasive weeds, feral animals, changed fire regimes and climate change are major threats.

While Northern Australia has recently been shown to be unsuitable for large scale agricultural development (potentially involving damming and mass irrigation), this does not stop advocates of such farming, including Senator Bill Heffernan, from arguing the case and seeking opportunities to establish those practices.

9.2.6 Mining is exempt from Wild Rivers

Reference: Noel Pearson in an interview with Leigh Sales on ABC's Lateline, 05/07/2009

In a declared Wild River area, strip mining is not allowed in or near rivers and wetlands (in the High Preservation Area). An example where this protection has been effective is the Aurukun wetlands in the Archer River Wild River area, which has been targeted by sand mining companies. In addition, The Wilderness Society and Australia Zoo have strongly advocated for the proposed Wenlock River Wild River area to significantly protect rainforest springs from bauxite mining (which is well within the scope of the Wild Rivers legislation).

Unfortunately there is a future bauxite mine exempt from Wild Rivers (the proposed Chalco mine near Aurukun) – a problem that The Wilderness Society and Traditional Owners are seeking to fix. This particular mine, given it is proposed away from any major watercourse, would likely not be affected by Wild Rivers even if it weren't exempt, however it is important that Queensland Government does not offer any special conditions or exemptions for the mining industry.

9.2.7 Wild Rivers ignores Indigenous people's environmental stewardship

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

The Wilderness Society has always strongly advocated that the *Wild Rivers Act 2005* should formally recognise and seek to protect cultural values associated with river systems. This is a positive improvement that could be made to the legislation.

In identifying many of the rivers it has for protection (Cape York, Gulf of Carpentaria) the Queensland Government is actually acknowledging the historical environmental stewardship of Indigenous Traditional Owners in those areas. However, significant threats and pressures to undertake large scale destructive development exist today, and Wild Rivers is a necessary regulatory process to support ongoing environmental stewardship by local Indigenous people.

The Indigenous Wild River Ranger program is a direct recognition of the wealth of skills and knowledge held by local Indigenous people, who are now exercising their stewardship back on country, with huge benefits for the land, themselves and their families.

9.2.8 Wild Rivers is silent on weeds and feral animals

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

Wild Rivers prevents high risk weed species being planted in a High Preservation Area. It is a fact that land clearing and intensive development (and the land disturbance as a result) greatly encourages the proliferation of invasive species, so the development controls in the Wild Rivers legislation is another barrier to the spreading of these pests. In addition, the Indigenous Wild River Rangers are already removing highly invasive weeds and feral animals, such as feral pigs, rubbervine and sicklepod.

9.2.9 Government has declared wild river areas at basin rather than single river scale

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

This claim is based on the argument that the original commitment to protect Wild Rivers by the Queensland Government referred only to single watercourses, and not its tributaries, catchment or basin area. Noel Pearson and others have claimed that the assessment of Wild Rivers at the basin level was part of an election "deal". In fact, the initial policy commitment for Wild Rivers in 2004 showed a map with 19 river basins highlighted, as the basin is the standard for regional water policy in Australia, and is embedded in the *National Water Initiative* (2003). The policy has never changed, and nor should it, given the health of a river is intimately linked with its catchment area.

9.2.10 Wild Rivers stops passionfruit farms and other similar small-scale development

Reference: Noel Pearson in an interview with Leigh Sales on ABC's Lateline, 05/07/2009 (repeated in Senate Hearing on the Bill, 30/3/10)

This type of development isn't necessarily stopped in a declared Wild River area, but it is *regulated*. Clearing land and building a new irrigation farm close to a main watercourse is not permitted in a Wild River area (unless it is at a prescribed scale for community consumption), but may be outside of the buffer zones (High Preservation Areas).

Noel Pearson has pointed to a passionfruit farm in Hopevale as an example of development that would be stopped under Wild Rivers. However, Hopevale is nowhere near any declared Wild River, and nor are there any proposals to include the Hopevale community in a Wild River area. Even if this area was included in a Wild River declaration, the passionfruit farm would not be affected, as it is well away from a major watercourse.

There is a water reserve made in a Wild River declaration specifically for Indigenous communities for this sort of small-scale development, and provisions under the *Cape York Peninsula Heritage Act 2007* for an exemption of clearing laws for Indigenous communities for small-scale ventures.

9.2.11 Wild Rivers stops Indigenous cattle enterprises

Reference: "Wild Rivers Act drains Aboriginal hopes", Tony Koch, The Australian, 14/10/09

Wild Rivers does not stop cattle enterprises. Water is still available for cattle, small cattle dams can still be built away from rivers and cattle can still access rivers and waterholes. Wild Rivers *does* prevent building and operating feedlots near rivers and wetlands, because of their high pollution risks, however there are no feedlots on Cape York, nor any known plans to build this sort of industry.

There is in fact a strong argument that Wild Rivers is positive for the grazing industry, as it ensures clean water and nutrients to important flood plains. In the Channel Country of Queensland, The Wilderness Society has formed an alliance with some graziers (known as the *Western Rivers Alliance*), with the recognition that strong river protection is good for the environment as well as the cattle industry.

9.2.12 Wild Rivers stops the aquaculture industry

Reference: Noel Pearson in an interview with Leigh Sales on ABC's Lateline, 05/07/2009

Wild Rivers prevents aquaculture in the middle of a watercourse of wetland because of the high risk of pollution and contamination from this activity, but it is permitted outside of the High Preservation Area (typically 1km either side of the main channel of a river). In addition, the primary aquaculture "hot-spots" on Cape York as identified by the CSIRO are in coastal areas on the west coast, where Wild River declarations do not apply (although there are actually no proposed aquaculture ventures, as acknowledged by Noel Pearson).

9.2.13 Wild Rivers means more onerous "red tape"

Reference: Richie Ah Mat in "Getting wild where the rivers run", Natasha Bita, The Australian, 09/03/2010

Development in a Wild River area has to follow the normal planning process. That is, lodge a development application and await approval. This doesn't mean extra paper-work for the applicant – it means that local government, or the assessment manager, has to ensure that the application meets any Wild River requirements, along with other relevant state-wide building codes or planning regulations. In other words, the applicant needs to ensure they meet wild river requirements, but it is the assessment manager that does the bulk of the paper work and ensures the application is assessed by relevant Government agencies, before coming back to the assessment manager.

There is a legitimate argument, however, that Traditional Owners should be provided with additional support to navigate through the Queensland planning approvals system. The Wilderness Society has whole-heartedly supported such elevated support and resources, and has repeatedly advocated such a position to the Queensland Government.

9.2.14 "Preservation areas" in a wild river area will lead to further restrictions

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

There is no basis to this claim. It is used to strike fear into communities about "hidden agendas" from the Government. There has been no indication from the Queensland Government that any such changes would occur, nor any desire from The Wilderness Society and others to unnecessarily tighten regulation in these areas.

9.2.15 80% of Cape York will be covered in restrictive Wild Rivers

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

While it is true that about 80% of Cape York is due to come to under the Wild Rivers legislation, this claim is designed to infer that Wild Rivers has "locked up" 80% of the Cape. To begin, the highest level of protection surrounds the main river channels and wetlands, and even there not all development is stopped. The rest of the basin area has straight-forward and sensible environmental requirements for development. This is not dissimilar to the Commonwealth Government's *Environmental Protection and Biodiversity Conservation Act 1999*, which applies to "100%" of Australia. The Act doesn't stop all development, but is a tool to help ensure future development doesn't damage important environmental values or wipe out endangered species.

9.2.16 Wild Rivers breaches the Cape York Heads of Agreement

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

The *Cape York Heads of Agreement* was signed by conservation, Indigenous and pastoral interests, and later the Queensland Government, to resolve ongoing tensions over the future of land management and development on Cape York. It included recognition of the rights of Indigenous people, development opportunities as well as the need for conservation and the Queensland Government to fulfil its responsibilities to protect the environment. The Wild Rivers legislation

does nothing to breach this agreement. In addition, the core tenets of the *Cape York Heads of Agreement* are now enshrined in the *Cape York Peninsula Heritage Act 2007*.

9.2.17 Wild Rivers will leave the rivers unmanaged and will further degrade

Reference: "Bligh's callous land grab", Marcia Langton, The Australian, 11/04/2009

The very purpose of Wild Rivers is to ensure the long-term health of river systems, by preventing destructive development and also empowering local Indigenous communities to look after their rivers through the Indigenous Wild River Ranger Program. The risk of further degradation of the rivers is greatly increased if the Wild Rivers initiative is discarded.

9.2.18 Wild Rivers treats the land as if it is terra nullius

Reference: Cape York Land Council and Balkanu Development Corporation in "Why they're wild about wild rivers", Cairnsblog.net, 27/04/2009

There is no basis for this claim at all, as Wild Rivers does not exclude people from an area, nor affect Native Title or ownership of the land. In addition, the Indigenous Wild River Ranger Program is providing the resources and support for communities to strengthen their connection with Country and re-people the landscape with skilled land managers.

9.2.19 Wild Rivers has slowed down housing approvals in Hopevale

Reference: Noel Pearson on Radio National Breakfast 31/3/10, originally stated in Senate Hearing on the Bill, 30/3/10)

Wild Rivers laws have been blamed for slowing down the process of housing approvals in Hopevale on Cape York. In fact, Hopevale is nowhere near any declared Wild River, and nor are there any proposals to include the Hopevale community in a Wild River area. There is no basis for this claim at all. Wild Rivers simply has nothing to do with housing in Hopevale.

9.3 Addressing erroneous claims about The Wilderness Society and Wild Rivers

9.3.1 The Wilderness Society blocked consultation with Traditional Owners

Reference: "Wild Rivers deal bypassed Cape York traditional owners", Tony Koch, The Australian, 11/04/09

This falsehood has been repeated by the Balkanu Development Corporation (Balkanu 2009: p.4) and is based on either a denial or a serious misrepresentation of correspondence from The Wilderness Society to a group of Traditional Owners sent in November 2008, and subsequent correspondence to the Queensland Government.

Balkanu argue that The Wilderness Society flatly refused to support an extension of submissions for Traditional Owners, when in fact we supported an extension specifically for Indigenous people, plus a rigorous engagement process beyond the closing of submissions (see Appendix E for a copy of this correspondence).

9.3.2 Wild River declarations on Cape York are a result of deal between The Wilderness Society and the mining industry

Reference: Richie Ah Mat in "Cape leaders out of loop on rivers deal", Cairns Post, 25/02/2010

There was no secret deal as Mr Ah Mat suggests and claims to have uncovered in documents under Queensland's *Right to Information Act 2009*. As the Wild River timeline attests (Appendix B), a

public agreement was reached between a number of stakeholders in 2006 for amendments to the Wild Rivers legislation, which including conservation, agricultural, mining and Indigenous interests. It is simply ludicrous to suggest that The Wilderness Society would negotiate any secret deals with an industry of which we are so critical of when it comes to environmental practices.

9.3.3 The Wilderness Society made a secret deal with Premier Beattie and bauxite company Chalco to not include the mine in the Wild Rivers scheme

Reference: Noel Pearson in "Labor connives with green alliance to control indigenous growth", The Australian, 16/01/2010

As part of this accusation, Pearson also accuses The Wilderness Society of being "silent" about the Chalco mine. This is completely untrue. The Wilderness Society has strongly opposed the Chalco mine, both publicly and in meetings with the Queensland Government. We have consistently advocated that the Chalco mine *should* have to adhere to the Wild Rivers (although our analysis shows this particular measure would offer little protection given the mine is proposed well away from major watercourses). When the Watson River Basin is nominated as a Wild River, the attention on Chalco and their impacts on the river system will come into as sharp a focus for The Wilderness Society, as have Cape Alumina in the Wenlock River Basin.

9.3.4 Wild Rivers is a result of a "grubby election deal"

Reference: Noel Pearson in "Noel Pearson slams Anna Bligh on river 'deal'", The Australian, 06/04/2009

As the Wild Rivers history in Section 6 demonstrates, the development of, and advocacy for the Wild Rivers framework has been very public and has in fact involved Noel Pearson and others in key steps along the way. The Wilderness Society has openly called for Wild River protection at the last three Queensland State elections, and we have assessed all political parties prior to polling day on their commitments and policy positions. There is nothing "secret", "grubby", or "dirty" about that – it is democracy in practice.

9.4 *The Australian* newspaper's war on Wild Rivers

The reporting on the Wild Rivers initiative by *The Australian* newspaper deserves specific mention because it has been so fundamentally unbalanced and has greatly fuelled the political atmosphere in which Mr Abbott's Bill has been introduced.

All up there have been 71 articles in *The Australian* (since 2006) where Wild Rivers has been the central topic or major component of the piece. Overall, there is an extremely clear pattern of bias in *The Australian's* reporting on this issue. The analysis of these articles demonstrates that:

1. 18 have been opinion pieces/editorials. Just one of these has presented the pro Wild Rivers viewpoint (from Queensland Minister Stephen Robertson).
2. Only in 6 of the 52 non-opinion/editorial articles did The Wilderness Society have a voice via a spokesperson, despite many including serious allegations about our organisation.
3. Tony Koch has written 22 of these articles, but has not once given The Wilderness Society the right of reply. Mr Koch has been contacted by The Wilderness Society by email (in 2007) and by phone (in 2009) requesting correction of errors and an opportunity for The Wilderness Society to respond to allegations against us in future articles, but he has not done either. His correspondence with The Wilderness Society and opinion pieces suggest he has taken very little interest in approaching this issue in a balanced way.
4. 14 of the articles have very clear factual errors about how the Wild Rivers legislation operates, for example claiming that no buildings are allowed close to rivers in a Wild River area. These are not quotes from people, but are presented as facts by the author. This

excludes the use of the polemic phrases "*locking up rivers*" or "*severely restricting"*, which is frequently used in the articles analysed to exaggerate the effect of Wild Rivers.

5. *The Australian* has refused to publish opinion pieces about the Wild Rivers issue from The Wilderness Society, and only sporadically publishes letters to the editor in response to their articles.
6. There has been rare moments of balance reporting, most of all from journalist Greg Roberts (who since taken a severance package and no longer works for the newspaper).

A free, open and robust public debate about Wild Rivers can only happen when media outlets like *The Australian* choose to report all components of this complex and multi-faceted debate with open and honest intentions. So far their behaviour and approach to this issue has been highly questionable and unethical.

10 Implications of supporting this bill

The Wilderness Society believes that the Scullion Bill (as with the Abbott version) is ill-conceived, poorly constructed, politically motivated, and a threat to environmental protections and states' rights.

Restricting the Wild Rivers Act has specific outcomes but it would also set a bad precedent for undermining progressive Indigenous conservation. It seeks to provide a superficial and selective response to a complex set of issues associated with conservation outcomes and Indigenous rights, both of which deserve comprehensive policy analysis, considerable public debate, and serious legislative effort.

Despite the claims that all the Bill does is give the right to Indigenous people to say no to Wild Rivers declarations, it is clear the intention of the Bill's backers is to overturn the Wild Rivers Act. This leaves serious questions for Traditional Owners who want their rivers protected, as well as for the broader community who support environmental protection for rivers and associated landscapes and the State Government, which has a responsibility to protect the environment.

10.1 Reiteration of the threats and risks

Arguments that there are no threats to the rivers of Cape York or elsewhere are naive and risky. The threats are real: plans to expand bauxite mining on the Cape are well-known. Whilst the science does not stack up when it comes to turning Northern Australia into "the food bowl of Asia", this has not stopped the likes of Senator Bill Heffernan and some northern landholders arguing furiously for it, regardless of its sustainability.

There's also the danger of incremental, unchecked and unregulated development which can occur in the absence of proper planning controls.

If this Bill were to be legislated, Traditional Owners of one part of a river would have their support for river protection undermined or rendered pointless if other Indigenous groups upstream support destructive development can veto protection measures. Such a situation would cause serious harm to the river but damage the health and livelihoods of the Traditional Owners downstream. Effectively, it could lead to destructive development occurring in highly sensitive riverine environments, such as the Aurukun wetlands, which would once again be exposed to sand and bauxite mining threats if the Archer River Basin declaration.

10.2 Alternative models to Wild Rivers are ineffective

Some other Australian State's have adopted a form of river protection legislation beyond the standard water planning instruments. It is therefore useful to understand how these operate and whether they would be a viable alternative to the *Wild Rivers Act 2005* should it be repealed or overturned. In addition, some scientists have advocated for the adoption of the *Canadian Heritage River System* in Australia, which is also considered below.

10.2.1 River protection legislation in Australian states outside of Queensland

No other Australian state has a river protection framework as comprehensive and effective as Queensland. However the approach from Victoria and New South Wales are worth mentioning by way of contrast.

To begin, Victoria does a stand-alone river protection framework – the *Heritage Rivers Act* – enacted in 1992. The Act allows the Victorian Government to prohibit dams and weirs on free-flowing rivers, as well as regulate land use activity close to such watercourses. But this is only on public, not private land. This is a very serious weakness given rivers do not abide to the human-devised land tenure system. The health of a river is linked the to the health of a catchment, so if, for example, part of the river system included private lands in the top of the catchment area but public land in the bottom of the catchment, the intensive development of the private land could still dramatically impact on riverine health. In addition, as Neville et al (2004) note, there has been very poor implementation and follow through to develop management plans for these areas.

New South Wales also has a "wild rivers" framework, though this is even more restricted and ineffective as the Victorian model. Imbedded in the *National Parks and Wildlife Act 1974*, wild rivers in New South Wales can only be declared in existing National Parks. Given National Parks already offer a high level of protection, this is redundant and fragmented approach to river conservation.

These two examples are the closest existing in Australia to Queensland's Wild Rivers legislation, but are clearly far behind in their effectiveness. They are not viable alternative models if we are serious about protecting the river systems as a whole.

10.2.2 The Australian Heritage Rivers Model

Some prominent river scientists have called for a national "*Australian Heritage Rivers*" framework (see Cullen 2002, Kingsford et al 2005, Kingsford 2007). They argue that Australia needs a national approach to river conservation – one based on the *Canadian Heritage River System*. Under this framework, river communities would develop a management plan for the catchment that the Commonwealth Government supports and endorses. The Commonwealth would also provide coordination of existing programs to ensure well targeted funding for implementation of the plans, as well as a national dataset with information on aquatic ecosystems to assist communities develop their plans. The scientists advocating this model make the important point that because some Australian rivers cross state borders, there is a need for an integrated national approach of this type.

While ownership of the process by local communities may well be enhanced through this process, the effectiveness is highly questionable given it would be an entirely voluntary scheme. That is, only communities wishing to protect their free-flowing river systems would be part of the framework. If a community wishes to pursue destructive development, say for a new cotton irrigation scheme or a new mega-dam, then the river system cannot be included in the protection scheme. By default, then, only rivers that are *not* truly threatened at all fall under this system.

In other words, while the *Australian Heritage Rivers* system may sound like an ideal, "bottom-up", community driven approach where rivers are protected and everyone is happy, it does not really reflect the reality of the challenges at hand. The fact is that many communities (and companies), over many decades in Australia, have chosen river destruction over river protection. The voluntary model simply does not work, and the current state of our river systems is the most clear and harsh evidence of this fact. It is the classic case of the "tragedy of the commons" (see Hardin 1968) – the *Australian Heritage Rivers* model, because it is voluntary, is simply not a viable alternative to Wild Rivers.

It is always going to be a challenge to balance the desires and needs of local communities, with the wishes of the broader Australian community and the imperative to protect river systems. The best way to do this, we believe, is through a sensible regulatory framework that gives as much scope

for a community-driven approach (and community agreement) as possible, and is targeted only at the most destructive forms of development. Queensland's Wild Rivers initiative comes very close to meeting this requirement for effectiveness, particularly if improvements are made to the community engagement process.

This is not to say that a national model doesn't have a place. In fact, the *Australian Heritage River* system or equivalent would be an excellent complimentary measure to a state-based legislation like Wild Rivers. This way, a Wild Rivers declaration could be developed in collaboration with the Commonwealth Government, another State if the river system crosses a border, and local communities, thereby harnessing additional river management resources.

10.3 Reliance on landholders' good will is insufficient

The Wilderness Society believes that all landholders, be they Native Title holders, Traditional Owners of freehold land or non-Indigenous land owners, should not be exempt from environmental laws and planning regulations, including controls on land clearing and sensible river protection. Balancing environmental protection with Indigenous economic development is a very important issue, but the suggestion that any landholder should have unfettered rights to develop, regardless of environmental considerations, is a troubling and dangerous position,

The Wilderness Society recognises the rights of Traditional Owners to the use and enjoyment of their lands and to negotiate on developments occurring on them. However, we believe that all landholders, Indigenous and non-Indigenous alike, need to accept sensible safeguards for the environment on their land for the benefit of all Australians. This doesn't mean stopping all development, but it does mean carefully regulating some of it, and preventing large scale destructive development in sensitive areas.

10.4 Traditional Owners' capacity alone to prevent destructive development pressures is limited

Many remote Indigenous communities on Cape York experience serious economic and social disadvantage. This has led to a focus on reforming welfare reliance and improving educational outcomes, but it also highlights urgent challenges around creating employment and income opportunities. Governments and businesses have largely failed to find mechanisms for sustainable jobs, investment, and support in remote communities, which has allowed proponents of unrestricted development to argue that this is the only practical solution.

Mineral and energy resource exploitation companies in particular exercise immense power over governments and can be 'highly persuasive' when it comes to negotiating with Indigenous and other communities. The pressures this leads to are playing out across Northern Australia – Cape York, the Kimberley, various parts of the Northern Territory, and so on.

The vast majority of Traditional Owners on Cape York are not seeking to damage their country, but there are home-grown and overseas developers who would like to aggressively exploit places like Cape York, and a small number of Indigenous identities who seemingly regard that as sustainable progress. The argument by Noel Pearson on ABC radio this year that we don't need regulation of activities in and adjacent to ecologically sensitive waterways because of past custodianship is to deny present and future threats and pressures to develop. It is also rather disingenuous coming from someone who has at other times argued the case for larger scale development and potentially damaging practices.

A 2005 report to the Federal and Queensland Governments on a Cape York Indigenous Employment Strategy[18] found that more jobs could be created in tourism in Cape York than in all other industries in the region combined. In other parts of Australia, World Heritage areas alone contribute $12 billion to the economy annually, and employ 140,000 people. The Cape's potential here is obvious, but we need to get away from the 'dig it up, knock it down, dam it' mentality, and replace this forward thinking about environmental protection, generating remote Indigenous opportunities and using our resources sustainably.

Environmental protection such the Wild Rivers Act is fundamentally about ecological considerations, Indigenous disadvantage is no less important, but is a matter of social policy and justice. To expect environmental law to deliver social policy outcomes is unrealistic, and to restrict environmental protections on this basis is unworkable.

10.5 Repercussions for other conservation initiatives in Australia if the Wild Rivers Act was overturned or undermined

The use of the Commonwealth's legislative powers under paragraph 52 (xxvi) of the Constitution to effectively remove a planning and conservation regime sets a dangerous precedent for the rest of Australia. It essentially means that Indigenous people may be given rights across the country to open up conservation areas, such as National Parks, to uncontrolled development.

As Constitutional lawyer and academic Professor George Williams has previously argued:

> *"This is a bit of a reverse Franklin Dam scenario. In 1983, the newly elected Hawke Government used its constitutional powers to override State legislation to protect the environment. This would be the converse where the Commonwealth would be seeking to use its powers to lessen the environmental protection of State legislation and to empower developer's perhaps just indigenous developers to use that land … a general Commonwealth law that provided for indigenous development could apply not just in that area but any area where State laws stymie the capacity for indigenous economic development."* ("Queensland's controversial wild rivers legislation", ABC 7:30 Report, 13/01/2010)
>
> *"Once you set that precedent, it may be hard to argue against giving Aboriginal people the same rights across the country, including any national parks"* ("National Parks warning on Wild Rivers reversal", Sarah Elks and Natasha Bita, The Australian, 13/01/2010).

The Constitutional issues and implications for the ability of the States and the Commonwealth Government to protect environmental assets for the whole community have clearly been ignored here in the rush to find a way of overturning Wild Rivers. This is a highly irresponsible and cavalier approach to addressing complex issues of Indigenous rights, development and conservation, and is surely the pinnacle of "policy on the run".

[18] Kleinhardt-FGI Pty Ltd/Business Mapping Solutions Pty Ltd

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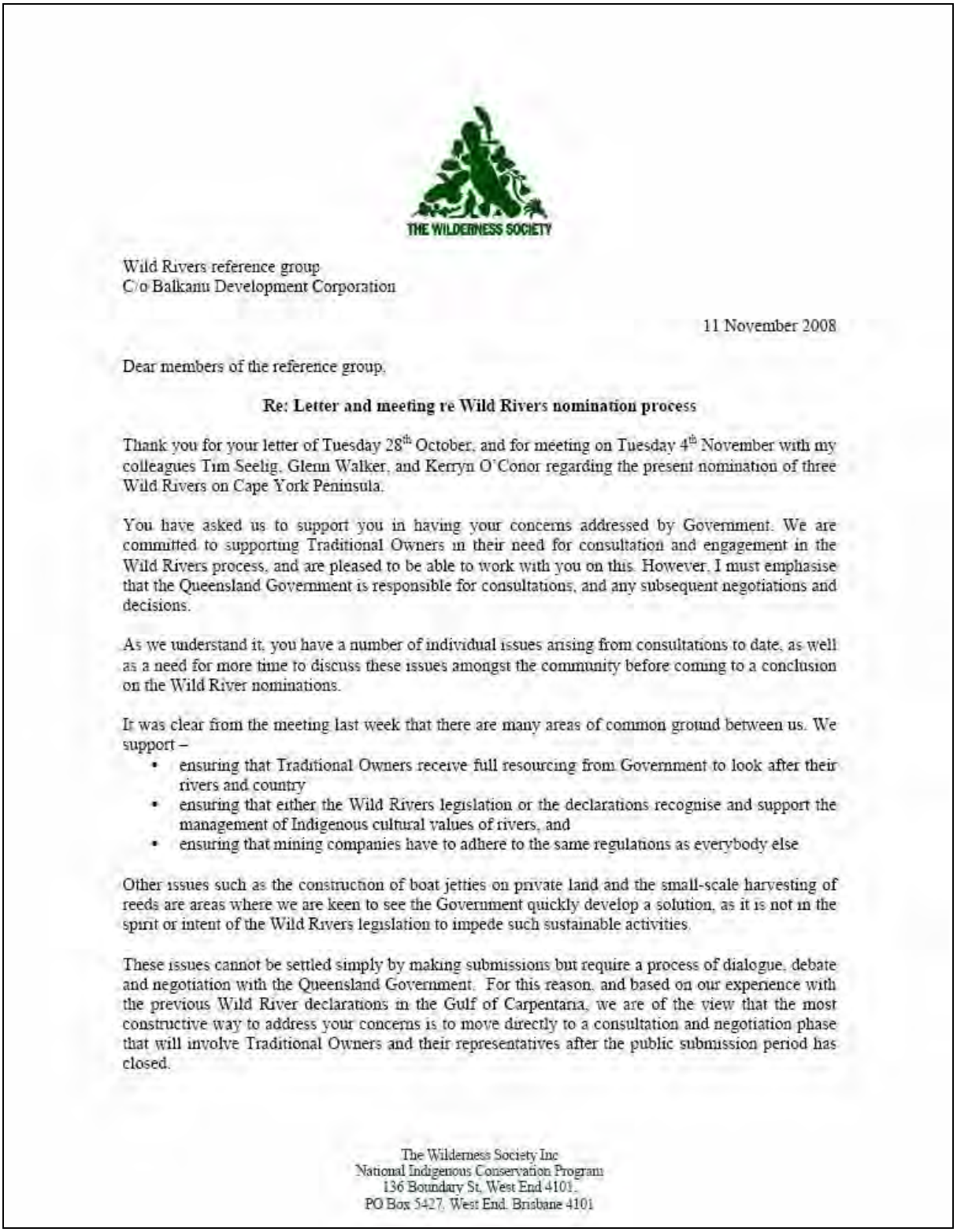
Appendices

Appendix A – TWS letters to Traditional Owners and Qld Government

The following letters put to bed the unfounded claim that The Wilderness Society truncated consultation with Traditional Owners. The letters demonstrate that we a) called for negotiation process beyond submissions and b) supported a specific extension of submissions for Traditional Owners if required.



THE WILDERNESS SOCIETY

Wild Rivers reference group
C/o Balkanu Development Corporation

11 November 2008

Dear members of the reference group,

Re: Letter and meeting re Wild Rivers nomination process

Thank you for your letter of Tuesday 28th October, and for meeting on Tuesday 4th November with my colleagues Tim Seelig, Glenn Walker, and Kerryn O'Conor regarding the present nomination of three Wild Rivers on Cape York Peninsula.

You have asked us to support you in having your concerns addressed by Government. We are committed to supporting Traditional Owners in their need for consultation and engagement in the Wild Rivers process, and are pleased to be able to work with you on this. However, I must emphasise that the Queensland Government is responsible for consultations, and any subsequent negotiations and decisions.

As we understand it, you have a number of individual issues arising from consultations to date, as well as a need for more time to discuss these issues amongst the community before coming to a conclusion on the Wild River nominations.

It was clear from the meeting last week that there are many areas of common ground between us. We support –

- ensuring that Traditional Owners receive full resourcing from Government to look after their rivers and country
- ensuring that either the Wild Rivers legislation or the declarations recognise and support the management of Indigenous cultural values of rivers, and
- ensuring that mining companies have to adhere to the same regulations as everybody else

Other issues such as the construction of boat jetties on private land and the small-scale harvesting of reeds are areas where we are keen to see the Government quickly develop a solution, as it is not in the spirit or intent of the Wild Rivers legislation to impede such sustainable activities.

These issues cannot be settled simply by making submissions but require a process of dialogue, debate and negotiation with the Queensland Government. For this reason, and based on our experience with the previous Wild River declarations in the Gulf of Carpentaria, we are of the view that the most constructive way to address your concerns is to move directly to a consultation and negotiation phase that will involve Traditional Owners and their representatives after the public submission period has closed.

The Wilderness Society Inc
National Indigenous Conservation Program
136 Boundary St, West End 4101.
PO Box 5427, West End, Brisbane 4101

We are sincerely of the view that to meet your concerns it is best that the Government maintain its current formal closing date for public submissions (which apply to other interests including ourselves). However, in support of Traditional Owners, the Wilderness Society will write to the Queensland Government seeking commitments for a dialogue similar to the Gulf of Carpentaria negotiations.
We will also ask the Government to ensure that you have further opportunities to communicate your issues to them, once the high-level negotiations and a decision process has commenced. We will be in contact again once we have received a response.

The Wilderness Society wishes to ensure that views and concerns of Traditional Owners at a community level receive proper attention. If it were also necessary for supplementary submissions to the Government from Traditional Owners beyond the formal closing date, we would support extending this supplementary submission process to 24 December 2008.

We wish to see a meaningful dialogue and negotiation between the Traditional Owners and the Queensland Government regarding the declaration proposals for the Archer, Stewart and Lockhart River basins and we support ensuring this will take place at the earliest opportunity. Of course, in the end, the Government must make a decision on a way forward for all Traditional Owners, as well as for other stakeholders involved and the wider community.

We also welcome any opportunity to hold further discussions with Traditional Owners on these matters, so feel welcome to contact us to arrange additional meetings. We are happy to meet on Country if that will help to ensure a broader base of participation in the discussions.

We respectfully request that the entire group listed in the letter of the Tuesday 28th of October receive this letter, consider our proposed solution, and reply to us in writing.

We hope this addresses your concerns and look forward to your response.

Yours Sincerely,

Anthony Esposito
National Manager – Indigenous Conservation Program
The Wilderness Society, Australia

Cc
The Premier, Anna Bligh
Minister for Natural Resources and Water, Craig Wallace
The Chairman, Cape York Land Council, Michael Ross

The Wilderness Society Inc
National Indigenous Conservation Program
136 Boundary St, West End 4101
PO Box 5427, West End, Brisbane 4101

18 November 2008

The Hon Craig Wallace MP
Minister for Natural Resources and Water
PO Box 15456,
CITY EAST QLD 4002

Dear Minister

Re Archer, Stewart and Lockhart Wild Rivers negotiation and declaration process

As you may be aware, The Wilderness Society recently met with a group of Traditional Owners regarding the nominations of the Archer, Stewart and Lockhart Rivers on Cape York, as Wild Rivers under the *Wild Rivers Act 2005*. This meeting was facilitated by representatives from the Balkanu Cape York Development Corporation and followed earlier correspondence from a 'Wild Rivers Reference Group' of Traditional Owners, where we were asked about supporting an extension to the public submission process, which closes on 21 November 2008. I understand that these Traditional Owners made similar representations to you in Cairns around the same time.

The Wilderness Society has responded to the Wild Rivers Reference Group of Traditional Owners in a letter, a copy of which you should have received. In our response, we noted that the issues they have raised with us really require a process of dialogue, debate and negotiation with the Queensland Government. We indicated our view, based on our experience with the previous Wild River declarations in the Gulf of Carpentaria, that the most constructive way to address many of the concerns Traditional Owners have raised is to move directly to a consultation and negotiation phase after the public submission period has closed. We also indicated our support on a number of their concerns.

We have therefore conveyed our belief that it is best for the Government to maintain its current formal closing date for public submissions, which applies to other interests including ourselves. This will also ensure that all submissions can be assessed and the important phase of negotiation, immediately following the closing date for submissions, will not be delayed.

The Wilderness Society (Queensland) Inc.
PO Box 5427, West End, Qld 4101
Ph: 07 3846 1420; Fax: 07 3846 1620
www.wilderness.org.au

To facilitate this process, the Wilderness Society is seeking a commitment from the Queensland Government that a phase of dialogue and negotiation, similar to the Gulf of Carpentaria Wild Rivers negotiations process, will take place commencing immediately after the closing date for public submissions. As part of this process, we also seek assurance that Traditional Owners at a community level will continue to be able to communicate their views and concerns to the Queensland Government.

While we recognise that substantial consultation work has been undertaken by your department with Traditional Owners to date, we are now also aware that some Traditional Owners feel they may still need some additional time to prepare their responses. For your information, we have indicated to the group that we would support a supplementary submission process if it was deemed necessary, for Traditional Owners at a community level to make formal written or oral representations as submissions up until Christmas.

I look forward to hearing your positive responses to the proposal that a process of dialogue and negotiation commence after 21 November, as described. Please do not hesitate to contact me on 3846 1420 or tim.seelig@wilderness.org.au should you require any additional information or wish to discuss the issues raised above.

Yours sincerely

Dr Tim Seelig
State Campaign Manager
The Wilderness Society (Qld)

The Wilderness Society (Queensland) Inc.
PO Box 5427, West End, Qld 4101
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Appendix B – Evidence of Misinformation Campaign

Indigenous Environment Foundation

Please do not support The Wilderness Society attack on OUR Land Rights on Cape York Peninsula

Do not be part of a new wave of dispossession of Australia's Indigenous People.

Above: Part of a flyer distributed by the Indigenous Environment Foundation

Above: A flyer distributed by the "Give Us a Go" campaign on Cape York

Above: A flyer distributed by the "Give Us a Go" campaign on Cape York

Appendix C - Some Indigenous voices in support of Wild Rivers:

Gina Castelain, Director of Wik Projects, Wik-Waya Traditional Owner:
"From our point of view, we don't see any way in which wild rivers is going to cost any jobs, and we actually see ways in which it can create jobs" *~ The Australian, 9 Jun 2009*

Murrandoo Yanner, Gangalidda Traditional Owner.
[Wild Rivers is the] best legislation in decades for Aboriginal People and that's proven on the ground here in the lower Gulf. We have been able to block a lot of nasty developments that would have wrecked the sustainability of our rivers since the introduction of this legislation"
~ Living Black, SBS 8 March 2010

Terry O'Shane, Northern Queensland Land Council Chairman.
"I don't agree with Noel. I think it's very important that we protect these ecosystems."
~ The Australian, 17 Nov 2007

Greg McLean, Mayor of Hopevale.
"Wild Rivers legislation won't affect communities unless they are planning major developments like refineries."
~ WIN TV News Cairns, 17 Jul 2009

Elders of Uniting Church Congregation of Aurukun:
"It is of great comfort to us that there are people within the Queensland Government who care deeply about the preservation of our beautiful rivers and wetlands and who also want to listen to indigenous voices speaking out about important issues that effect our indigenous life so profoundly." *~ Letter to Qld Minister regarding the Archer Basin Wild River declaration proposal, 17 Nov 2008*

David Claudie, Chairman of Chuulangun Aboriginal Corporation, Northern Kaanju Traditional Owner.
"The whole Wenlock River and its tributaries have enormous cultural significance as the Creator of all of Kuuku I'yuNgaachi under the umbrella of Pianamu (Rainbow Serpent). We are obliged under Kaanju law and custom to 'look after' our Ngaachi in a sustainable manner. In return our Stories, which are the land, will look after us physically, culturally and spiritually."
~ Submission into Wenlock Basin Wild River declaration proposal, 28 May 2009

Gavin Bassani, Lama Lama Traditional Owner.
"The legislation is not there to block you from doing stuff, it's there to initially protect the environment, rather than us going out willy-nilly and chopping up the whole environment."
~ Bush TV - "Wild Rivers", Jul 2008

Richard Barkley, Tanquith Traditional Owner.
"As well as better protection for the environment [with Wild Rivers legislation], there will also be more jobs" *~ Western Cape Bulletin, 18 Jul 2007*

William Busch, Mapoon Traditional Owner.
"The miners and the Government have to work together to see how they could do something to not try and damage the rivers, and even our people ourselves have to do it."
~ Bush TV - "Wild Rivers", Jul 2008

Other Indigenous voices against Wild Rivers:

"…we have got to have a full frontal attack on this legislation ….**"**
Noel Pearson in 2006 referring to the Wild Rivers Act 2005 (Qld)

"…we set up the Indigenous Environment Foundation and decided to run a guerilla campaign against the Wilderness Society…**"**
Gerhardt Pearson (Balkanu Development Corporation) in Good Weekend in 2007referring to the establishment of an anti-Wild Rivers campaign

"Indigenous Environment Foundation Wants the WILDERNESS SOCIETY TO F__K OFF and stop imposing their big ideas in our country CAPE YORK**"** (sic)
IEF anti-Wild Rivers website (run by Tania Major) headline in 2008

Appendix D – Timeline of the Wild River Initiative

(Note: This timeline attempts to capture major events in the history of Queensland's Wild Rivers initiative. It does not include the many meetings between The Wilderness Society and other stakeholders outside of Government processes, which includes engagement with Traditional Owner groups.)

1992 (Dec) Prime Minister Paul Keating's *Statement on the Environment* includes a commitment to identify Australian rivers in near-pristine condition and to encourage their protection and proper management. The Australian Heritage Commission is tasked with this role, and establishes the *Wild Rivers Project* (initially called the *Near-pristine Rivers Project*).

1994 (Feb) The Council of Australian Governments meets and agrees on a national agenda for water reform. This is triggered by escalating and severe problems with river health. A significant component of the reform agenda involves legal recognition and protection of natural ecosystems.

1996 (Oct) Graziers, conservationists, and scientists unite to reject plans for new cotton development in the free-flowing Cooper Creek catchment. The campaign includes a call for the long-term protection of the river system at a special conference in Windorah.

1997 (Feb) Queensland's National Party Government releases the *Water Infrastructure Task Force* report, which identifies and priorities over 80 dam proposals throughout Queensland. This combined with the rapid expansion of the Cubbie Station cotton farm in South-West Queensland seriously alarms conservationists. Environment groups are increasingly focusing on improving water resource management and ensuring the protection of Queensland's river systems.

1998 (June) The Australian Heritage Commission's *Wild Rivers Project* is completed, culminating in the reports *The Identification of Wild Rivers* and *Conservation Guidelines for the Management of Wild River Values*. These reports later form the basis for the development of Queensland *Wild Rivers Act 2005*.

2000 (Feb) The Cooper Creek Water Resource Plan is released by the Queensland Government – it includes a moratorium on future water allocation licenses, which effectively stops cotton and other development for the life of the plan (ie 10 years).

2000 (Oct) Queensland Parliament passes the *Water Act 2000* (replacing the *Water Resources Act 1989*), which seeks to reform water management in the state. Conservation groups strongly advocate for parallel, stand alone legislation to protect the conservation values of rivers, including free flowing rivers. This was in recognition that the Water Act focussed on water allocation and use but did not specifically address conservation issues nor provide a sensible and effective regulatory framework to protect Queensland's remaining free flowing rivers.

Early 2000s The Wilderness Society and the Queensland Conservation Council begin publicly advocating for stand-alone legislation to protect Queensland's remaining free-flowing rivers. The ideas for river management and protection for the campaign were based on some of the Australian Heritage Commission's work and

management ideas through the *Wild Rivers Project*, and drew on the aspects of the *US Wild and Scenic Rivers Act* and *Canadian Heritage River System*. The primary focus of the campaign begins with the Paroo River – the last free-flowing river of the Murray-Darling Basin.

2000 (mid) Queensland Environmental Protection Agency and other Queensland Government departments commence the development of a framework for a *State Rivers Policy*, which includes an assessment of Queensland's wild rivers at the basin level, drawing on information produced by the Australian Heritage Commission's *Wild Rivers Project*, and a recommendation to develop a regulatory framework to protect river systems according to three "categories" of river health.

2001 (Aug) The Cotton Cooperative Research Centre releases a report which identifies 21 priority areas for cotton development in Northern Australia. This includes proposals on healthy and undeveloped rivers, including the Kendal, Holroyd, Edward, Archer, Wenlock, Colman and Watson rivers on Cape York, as well as the Mitchell and Gregory rivers in the Gulf of Carpentaria. Conservation groups across Northern Australia, including The Wilderness Society, campaign to oppose the expansion of cotton development, which includes a central call for legislative protection of free-flowing rivers.

2003 (July) On the back of a public campaign by a coalition of scientists, landholders and conservation groups, including The Wilderness Society, The New South Wales and Queensland Government's sign the *Intergovernment Agreement for the Paroo River*, to ensure the sustainable ecological management of the last free flowing river system in the Murray Darling Basin, including a moratorium on new water licenses. Many of the principles in the agreement are later incorporated in the *Wild Rivers Act 2005* (though the Paroo is not covered yet protected by the legislation).

2003 (Aug) Queensland signs the *National Water Initiative*, which refreshes the 1994 Council of Australian Governments water reform agenda by compelling Australian governments to improve water and river management, and to protect high conservation value aquatic ecosystems. This provides further strong impetus for Queensland to go beyond the *Water Act 2000* and adopt the Wild Rivers framework.

2004 (Jan) Queensland ALP makes an election commitment to create stand-alone Wild Rivers legislation and proposes an initial 19 river basins across Queensland for [protection. The policy commitment states, among other things, that: "*We will not allow dams to be built on Queensland's wild rivers. Our wild rivers will run free*".

2004 (Feb) Beattie Government is re-elected in Queensland.

2004 (Aug) The Wilderness Society embarks on a community engagement tour in the Gulf of Carpentaria with Cooper Creek grazier Bob Morrish, championing the protection of wild rivers and the risks of cotton and other irrigated development on free-flowing rivers.

2004 (Oct) The Wilderness Society, the Queensland Conservation Council and the Environmental Defender's Office produce an initial policy position on the proposed *Wild Rivers Act*. The paper includes a call for a "three tier" system of river classification; a significant funding package for ongoing management of rivers and

employment of local people; and the formal protection of Native Title rights and Traditional Ownership and management, protection of Indigenous cultural heritage and ensuring consultation rights for Indigenous people.

2004 (Dec) The Wilderness Society and the Queensland Conservation Council produce a discussion paper *Caring for Queensland's Wild Rivers – Indigenous rights and interests in the proposed Wild Rivers Act*. The discussion paper is aimed at ensuring Indigenous rights are recognised in the new Act. It is mailed out to over 150 Native Title representative bodies and Indigenous organisations throughout the State, and followed up by a series of meetings, including between The Wilderness Society and the Cape York Land Council, and Balkanu Cape York Development Corporation.

2005 (March) Queensland Government releases the *draft Wild Rivers Bill 2005* for consultation with stakeholders ahead of its introduction into Parliament. The Bill adopts key aspects of the Commonwealth Government's *Wild Rivers Project*.

2005 (April) A coalition of Queensland conservation groups (including The Wilderness Society) submit a response to the draft Bill. The submission emphasises the need for Wild Rivers to include a funding package for river management, the option for public nomination of rivers, and the formal protection of Native Title rights.

2005 (May) Queensland Government introduces the *Wild Rivers Bill 2005* into Parliament for debate. The Wilderness Society and other conservation groups welcome the Bill but criticise the Queensland Government for failing to provide adequate funding to actively manage the rivers (conservation groups advocated for a $60 million management fund).

2005 (June) The Northern Territory Government follows the lead of Queensland, and commits to introducing their own *Living Rivers* program, which would include stand alone legislation (the Government has since been incredibly slow to deliver on this commitment and have not yet finalised the policy and legislation).

2005 (Sept) *Wild Rivers Act 2005* passes in the Queensland Parliament, with the votes and support of the Queensland Liberal Party.

2005 (Dec) First six wild river basins nominated for protection under the *Wild Rivers Act 2005*: Settlement Creek, Gregory River, Morning Inlet, Staaten River, Hinchinbrook Island and Fraser Island. Formal community consultation begins. Public submission period is open until mid-late February 2006.

2005 (Jan) Queensland Government extends submission period for nominated wild river areas in the Gulf Country and the *draft* Wild Rivers Code until late April 2006, following concerns that the consultation period was inadequate.

2006 (April) Public submission period closes for the four proposed Wild River declarations in the Gulf Country.

2006 (May) Staff from The Wilderness Society receive a phone call from a close ally and friend of Noel Pearson who declares: "it's war". The phone call and Musgrave speech (below) signals the commencement of a forceful public campaign by Noel Pearson, the Cape York Land Council and Balkanu Cape York Development Corporation, against Wild Rivers and The Wilderness Society.

2006 (June) Noel Pearson addresses an AgForce meeting at Musgrave Station in central Cape York, strongly denouncing Queensland's land clearing laws that and the Wild Rivers legislation. Shortly following the meeting, Liberal MP for Leichhardt, Mr Warren Entsch, facilitates a new alliance to oppose Wild Rivers, including the Cape York Land Council, Balkanu Cape York Development Corporation, AgForce, and the Cook Shire Council.

2006 (June) Following extreme pressure from the peak mining body the Queensland Resources Council, AgForce, and Noel Pearson, Queensland Minister for Water. the Hon Henry Palaszczuk, signals a back down on Wild Rivers. The Wilderness Society responds with protests outside the Minister's office, and thousands of emails from supporters to Premier Peter Beattie demanding no government back down. The Carpentaria Land Council and The Wilderness Society issue a joint media statement to the same effect.

2006 (June) Premier Peter Beattie responds to the debate over Wild Rivers by calling a high-level meeting with key stakeholders. The meeting includes the Premier, Minister Palaszczuk, senior government advisors and public servants, The Wilderness Society, the Carpentaria Land Council, Noel Pearson, the Queensland Resources Council and AgForce. The Premier promises to forge ahead with Wild Rivers, but asks the stakeholders to negotiate a workable way forward.

2006 (July) Premier Peter Beattie announces a raft of negotiated amendments to the *Wild Rivers Act 2005* and accompanying *Wild Rivers Code*, which reflects negotiations of the parties in the June 2006 meeting with the Premier. The Premier also announces that the nomination of river basin on Cape York Peninsula will be deferred to allow for greater consultation with Indigenous interests beforehand.

2006 (Sept) The Beattie Government makes the election commitment to create up to 100 Indigenous Wild River Ranger jobs, following advocacy from The Wilderness Society. The initial commitment to protect 19 river basins is Queensland is also reconfirmed in the context of the election. The Government also commits to facilitating a 100 day negotiation period post the election to try and resolve a range of land management issues on Cape York, including Wild Rivers.

2006 (Sept) Beattie Government is re-elected and are therefore compelled to honour the Wild Rivers commitment, including the Indigenous Rangers.

2006 (Oct) Queensland Government introduces the *Wild Rivers and Other Legislation Amendment Bill 2006*, which reflects the announcement made by Premier Beattie in July 2006 around a negotiated way forward for Wild Rivers.

2006 (Dec) Queensland re-releases the nomination for the four Gulf Country rivers, on the back of the new legislative amendments to the *Wild Rivers Act* 2005. The submission period for comment is set to close in February 2007. Queensland Government also releases a revised *Wild Rivers Code* for public comment, submissions closing in February 2007.

2007 (Jan) Prime Minister John Howard announces the new *Northern Australia Land and Water Taskforce* to further Senator Bill Heffernan's agenda of transforming Northern Australia into the "food bowl of Asia". As part of the advocacy for the

Taskforce, Senator Heffernan heavily criticizes Wild Rivers, and appoints Noel Pearson and Lachlan Murdoch as star recruits to the Taskforce. Warren Entsch, MP for Leichardt, is also made a member of the taskforce.

2007 (Feb) First six wild river areas finally declared after 14 months of consultation and negotiation. This is made effective by the tabling of the *Wild Rivers and Other Legislation Amendment Bill 2007*, and its passing as an Act two weeks later. The Act also includes further concessions to the agricultural industry, by introducing the concept of *property development plans* into the *Wild Rivers Act 2005*. This gives agricultural development proponents an opportunity to request changes to a High Preservation Area, if they can prove project viability and that the environmental impact will be negligible.

2007 (April) Noel and Gerhardt Pearson set up the *Indigenous Environment Foundation* to "*run a guerrilla campaign against The Wilderness Society*", specifically focused on the Wild Rivers issue ("*War in the Wilderness*", *Good Weekend*, John van Tiggelen, 22/09/2007). The Foundation holds protests at a number of Wilderness Society events, and hands out materials slandering The Wilderness Society and denouncing Wild Rivers.

2007 (June) Premier Peter Beattie tables the *Cape York Peninsula Heritage Bill 2007* in parliament, announcing that an agreement has been reached between the Queensland Government, The Wilderness Society, the Australian Conservation Foundation, the Cape York Land Council, the Balkanu Development Corporation, the Cook Shire Council, AgForce and the Queensland Resources Council on the future land management of Cape York Peninsula. The agreement follows several months of negotiation and includes a way forward for World Heritage listing on Cape York, a new form of Aboriginal National Parks, relaxing of land clearing restrictions for Indigenous communities, and amendments to the *Wild Rivers Act 2005* to explicitly protect Native Title rights, and to ensure Indigenous water reserves in Wild River declarations. Noel Pearson endorses the Heritage Act and declares that the Cape native title crusade had been won and the Cape York Land Council's heralds the Bill as a victory.

2007 (Sept) Premier Peter Beattie steps down and Anna Bligh becomes Premier of Queensland.

2007 (Oct) Queensland Parliament passes the *Cape York Peninsula Heritage Act 2007* with bi-partisan support. Only Australia's last remaining One Nation MP – Rosa Lee Long – opposes the Act. Premier Bligh hails the passage of the Act as "*one of the most significant land management initiatives in the State's history*".

2007 (Nov) In the heat of the Federal Election, Noel Pearson and the Cape York Land Council renege on the Cape York Peninsula Heritage Act agreement and incorrectly accuse the Queensland Government, Kevin Rudd, The Wilderness Society and the Greens of secretly including bigger areas in the Wild Rivers scheme on Cape York through a "preference deal". The Wilderness Society issues a media statement expressing strong disappointment that the agreement was so quickly dropped by Pearson and others.

2007 (Nov) In response to the fresh accusations from Pearson and the Cape York Land Council, the Queensland Government convenes a meeting between The Wilderness Society, the Australian Conservation Foundation, Balkanu Cape York Development

Corporation and the Cape York Land Council. Three Queensland Ministers are present at the meeting, and discussions commence once again for a way forward on Wild Rivers.

2007 (Dec) The same parties from the November 2007 meeting meet again to discuss Wild Rivers and other land tenure issues on Cape York.

2008 (Feb) Premier Anna Bligh writes to the November 2007 meeting parties, once again, regarding Wild Rivers and other land management issues on Cape York. The Premier reaffirms her commitment to Wild Rivers, and extensive consultation with Traditional Owners before making final declarations.

2008 (Feb) On the back of the Premier's letter, the Queensland Government convenes another meeting between the November 2007 parties. Among other land tenure issues on Cape York, discussions continue for a way forward on Wild Rivers, including working towards an agreed timeline for the roll out Wild River nominations on Cape York.

2008 (April) Following negotiations, Queensland Minister for Water, Craig Wallace, writes to the Cape York Tenure Resolution Implementation Group members outlining the agreed timeline for the roll out of Wild River nominations. This includes four phases: 1) The Archer, Stewart and Lockhart River (and possibly Jackey Jackey Creek) Basins immediately 2) Wenlock River Basin before the end of 2008 3) Ducie, Watson, Olive and Pascoe River Basins in 2009 and 4) Jardine, Holroyd, Coleman and Jeannie River Basins in 2010.

2008 (July) Queensland Government announces that the first 20 Indigenous Wild River Rangers have now been employed.

2008 (July) Queensland Government formally nominates the Archer, Stewart and Lockhart River Basins under the *Wild Rivers Act 2005*. Public submission period set to close in late November 2008. Gerhardt Pearson's Balkanu Cape York Development Corporation is contracted by the Queensland Government to help facilitate the consultation process.

2008 (Nov) Public submission period closes for the proposed Wild Rivers declarations for the Archer, Stewart and Lockhart River Basins.

2008 (Dec) Queensland Government nominates the Wenlock River Basin for Wild River protection. Public submission period set to close at the end of May 2009.

2009 (March) Conservation groups (including The Wilderness Society) and grazier groups (collectively known as the *Western Rivers Alliance)* launch a campaign to ensure the long-term protection of the rivers of Queensland's Channel Country.

2009 (March) Bligh Government responds rapidly to the *Western Rivers Alliance*, promising to extend the Wild Rivers initiative to the Georgina, Diamantina and Cooper Creek Basins. Premier Anna Bligh also re-commits to protecting the identified river basins on Cape York, as well as following through with the Indigenous Wild River Ranger program.

2009 (March) Discussions take place between TWS, Balkanu and Australian Conservation Foundation regarding a joint World Heritage policy position and advocacy to Queensland Government. Subsequent discussions between Tim Seelig and Gerhardt Pearson on Wild Rivers seemed to hold some promise of Balkanu and other Cape York regional organisations better managing Wild Rivers issues into the future, but such hopes were to be dashed.

2009 (March) Bligh Government is re-elected having recommitted to the Wild Rivers initiative, including the Indigenous Rangers.

2009 (April) Ten months after their nomination, Premier Anna Bligh announces the formal declaration of the Archer, Stewart and Lockhart River Basins. The Wilderness Society applauds the move, while Noel Pearson declares that Premier Bligh had "*urinated on the rights"* of Indigenous people, and commences a sustained anti-Wild Rivers campaign in the media. TWS then receives an abuse phone call, which declares 'war' against it over Wild Rivers.

2009 (July) Queensland Government announces expansion of the Indigenous Wild River Ranger program, with another 10 positions provided for.

2009 (Oct) Indigenous Wild River Ranger Program receives Premier's Award, in recognition of the overwhelming success of the program.

2009 (Dec) Queensland Government announces that a decision on the proposed Wild River declaration for the Wenlock will be further delayed, as additional science is compiled and considered concerning the Coolibah Springs Complex. The Wilderness Society and Australia Zoo express clear expectations that the declaration should protect parts of the Steve Irwin Wildlife Reserve from the proposed Cape Alumina mine.

2010 (Jan) Federal Opposition Leader Tony Abbott announces his intentions to overturn the *Wild Rivers Act 2005*.

2010 (Feb) The *Northern Australia Land and Water Taskforce*, with a renewed membership following the election of the Rudd Government, releases their report into the future of Northern Australia. The CSIRO also releases a series of science report considering the future of the North. Both point to the very serious constraints of irrigated agriculture and dams in the region, and highlight the need to protect and manage river systems in their entirety.

2010 (Feb) Tony Abbott introduces the *Wild Rivers (Environmental Management) Bill 2010* into the House of Representatives. An identical Bill is later introduced into the Senate, and referred to the *Senate Legal and Constitutional Affairs Legislation Committee*..

Appendix E – Analysis of Wild Rivers reporting by *The Australian*

Media coverage of Wild Rivers has been a mixed bag. There has certainly been some insightful and serious journalism on the issues from time to time, where objective analysis has taken place and where the arguments from all sides have been appropriately scrutinized.

However, while several other media outlets, including in particular ABC Radio in Far North Queensland and the Cairns Post, have also run regular and rather one-sided coverage of Wild Rivers issues, and others have been regularly active (such as ABC News Online), *The Australian* newspaper has been conducting what can only be described as an active campaign on Wild Rivers, and against The Wilderness Society.

All up there have been some seventy six (76) articles in *The Australian* since 2006 where Wild Rivers has been the central topic or major component of the piece. The last twelve months has seen the pinnacle of this focus. Overall, there appears to be an clear pattern of bias in *The Australian's* reporting on the issues. The analysis below of these articles demonstrates that:

- 20-odd have been opinion pieces/editorials. Just one of these has presented the pro Wild Rivers viewpoint (from Queensland Minister Stephen Robertson).
- Only in 7 of the 55 non-opinion/editorial articles did The Wilderness Society have a voice via a spokesperson, despite many including serious allegations about our organisation.
- Tony Koch has written a large number of these articles, but has not once given The Wilderness Society the right of reply, nor sought comment or clarification from us. Mr Koch has been contacted by The Wilderness Society, most recently in October 2009, requesting correction of errors and an opportunity for The Wilderness Society to respond to allegations against us in future articles, but he has not done either. His correspondence with The Wilderness Society and the opinion pieces he has supported suggest he has taken very little interest in approaching this issue in a balanced way.
- Many of the articles have very clear factual errors about how the Wild Rivers legislation operates, for example claiming that no buildings are allowed close to rivers in a Wild River area. These are not quotes from people, but are presented as facts by the author. This excludes the use of the polemic phrases "*locking up rivers*" or "*severely restricting*", which is frequently used in the articles analysed to exaggerate the effect of Wild Rivers.
- *The Australian* has refused to publish serious opinion pieces about the Wild Rivers issue from The Wilderness Society, and only rarely publishes letters to the editor in response to their articles.
- There has been occasional moments of balanced reporting, most of all from journalist Greg Roberts (who since taken a severance package and no longer works for the newspaper) but these have been the exception.

While The Wilderness Society strongly supports the principles of free speech, this campaign has effectively prevented alternative viewpoints, including those of a number of Traditional Owners, from being heard, not to mention allowed incorrect statements and claims to be left unchallenged.

This Appendix documents the reporting from *The Australian* on the Wild Rivers issues chronologically, with comments on the key factual errors or when the journalist did not contact The Wilderness Society to check their facts or allow us to respond to claims.

1. **Graziers, Aborigines unite to fight development ban**, Tony Koch and Ian Gerard, 05/06/06

- Koch and Gerard report on Premier Beattie's supposed move to "*ban development on remote river systems*" and "*prevent any development or use of river systems away from the state's large population centres*". This is a gross exaggeration of the regulatory framework of Wild Rivers, which does not prevent all development, but rather regulates destructive development close to rivers and wetlands.

2. **Government in deep water on wild rivers**, Tony Koch, 06-07/05/06

- Koch claimed that the Wild Rivers Act and Wild Rivers Code have "*emerged without any consultation with the traditional indigenous landowners*". This was not true at all. Noel Pearson for one had been involved in high-level negotiations with the Government over the Act and Code. Also, around this time The Wilderness Society and the Carpentaria Land Council were working together on a campaign to protect rivers in the Gulf of Carpentaria as Wild Rivers. This shows that Indigenous groups were not excluded at all and in the case of the Gulf, supported the river protection regime.

3. **Protestors swoop on Premier over river bill**, Tony Koch, 08/02/07

- Koch reports on a planned protest against wild rivers in Atherton.

4. **Aboriginal unity on Cape crusade**, Andrew Fraser, 24-25/03/07

- Fraser writes the wild river legislation aims to '*keep four rivers on Cape York and others on Fraser Island and Hinchinbrook Island in as pristine a condition as possible.´*. At this stage, six rivers had been protected under the *Wild Rivers Act* – four in the Gulf of Carpentaria and on the two islands he mentions. None had yet been declared on Cape York, though thirteen were *proposed* for future protection in the region.

- Fraser reports indigenous protester Shaun Edwards as saying wild rivers "*stops us hunting, fishing or visiting sacred sites*" – a factual error not contested by the journalist.

5. **Rough passage**, Tony Koch, 03/04/07 (full page feature article)

- Koch erroneously refers to The Wilderness Society's 30th birthday celebration as an event to congratulate the Beattie Government on wild rivers. He also follows Fraser's clear error of highlighting that *"four remote rivers in Cape York"* would be declared protected when none had yet even been nominated for protection.

- Koch's article publishes a flyer handed out at the Gala Dinner event, which includes the deliberate misrepresentation of a comment about consultation from former Wilderness Society Queensland Campaign Manager, Lyndon Schneiders – comments made in an interview for an academic article about the Queensland Government's consultation process on the land clearing debate in 2005, with no reference at all to Indigenous consultation.

- Koch did not contact The Wilderness Society at all about this article, despite the significant size of the piece. A request for a correction of these serious errors directly to Koch (via email) was not answered.

6. **We won't stop, warn wild river protestors,** Sean Parnell, 03/04/07

- Parnell claims that Wild Rivers "*locks up rivers from development*" and wrongly reports that the Wild Rivers legislation has passed earlier that year (it passed in 2005).

7. **Cape York leaders take on wild rivers legislation**, Padraic Murphy, 20/04/07

- "*Furious community leaders from Cape York will meet on Monday in a bold attempt to take on Queensland's powerful conservation lobby over plans to lock up tracts of land under controversial wild rivers legislation*" Murphy begins, again perpetuating the falsehood that The Wilderness Society is seeking to "*lock up*" land from Indigenous people. The Wilderness Society did have a response in this article, though it was a short paraphrase at the end.

8. **Aborigines losing responsibility for the land**, Patricia Karvelas, 23/04/07

- Karvelas repeats the incorrect reporting of the number and location of Wild Rivers declared in Queensland. A request for a correction was made via email, which included Tony Koch. There was no correction made, however Tony Koch did respond via email which expressed his strong distaste for The Wilderness Society and clear impartiality to the subject on which he was reporting, eg:

  "…why should the Wilderness Society have sway with what happens with their (Traditional Owners') rivers - which, incidentally, are as pristine today as they were 500 years ago - with teh [sic] current management people. The local Aboriginal people and pastoralists actually go to this region, live there, and use the rivers - as distinct from somebody who puts out a colour brochure telling Aboriginal people what is best for them. When you convince the indigenous traditional owners that you know what is best for them, then perhaps I for one will believe you have a point. You have not done that at this stage."

9. **Beyond sorry** Editorial, 30/05/07

- The Australian gets its facts on Wild Rivers seriously wrong, insisting that the wild rivers legislation had passed earlier that year, and that it was "*denying Aborigines employment on the Cape York peninsula by preventing mining, farming and tourism on their land"*. A letter to the editor in response from The Wilderness Society was not published.

10. **Cape native title crusade 'won'**, Tony Koch, 08/06/07

- Koch reports on the *Cape York Peninsula Heritage Bill* deal designed to break the dead-lock over wild rivers and other land use issues on Cape York.

- Koch claims that the Wild Rivers Act has been "*watered down"*, when the changes were a) recognition and protection of native title rights b) a new clause to ensure a special allocation of water for Indigenous people in wild river declarations.

- Despite the celebrations from Pearson and others, and the recognition from Koch here that development will continue on the Cape, just at a level that ensures it is ecologically sustainable, he quickly ignores this fact in all future articles.

11. **Labor accused of selling Cape down the river**, Tony Koch, 14/11/07

- Koch reports the falsehood by Noel Pearson and Michael Ross from the Cape York Land Council that The Wilderness Society had done a deal with the Greens and Federal Labor to

"lock up" the rivers of Cape York during the 2007 Federal election campaign. Koch writes this despite his extensive reporting on the issue previously, knowing that the rivers had long been slated for protection.

- Pearson makes a number of blatantly false accusations, including that The Wilderness Society accompanied the Government with consultations on the Cape. Koch did not contact The Wilderness Society for comment or to check these serious claims. A letter to the editor sent from The Wilderness Society was not published.

12. **Poll deal creates a black divide**, Greg Roberts, 19/11/07

- Roberts actually contacted alternative voices about the allegations from Noel Pearson, including comments of support from Indigenous people for Wild Rivers.

13. **Cape's future is progress**, Gerhardt Pearson, 06/07/08 (opinion)

- An opinion piece by Gerhardt Pearson attacking The Wilderness Society and severely misrepresenting our approach to Indigenous issues, including Wild Rivers. A letter to the editor in response from The Wilderness Society was not published.

14. **Pearson slams Bligh on river 'deal'**, Tony Koch, 04/04/09

- Koch reports a remarkable outburst by Noel Pearson over the Queensland Government's gazettal of three rivers systems on Cape York.. Pearson makes allegations about The Wilderness Society, chiefly that the move was part of election deal. Again, this is despite almost three years of reporting on the issue by Koch – that is, he clearly knew that this decision was not sudden.

- Pearson makes the incorrect statement that fishing and tourism lodges would now no longer be allowed but Koch does not question this or report on the facts of the Wild Rivers legislation.

- Koch remarks that "*Under the Wild Rivers Act, no construction is allowed within one kilometer of a declared wild river or any of its tributaries or catchments"*. This is simply wrong and shows that Koch has not properly researched the legislation.

15. **Pearson's last stand: the rivers run dry**, Tony Koch, 07/04/09

- Koch reports that Pearson had threatened to abandon his welfare reform campaign to fight the wild rivers legislation. He again distorts the facts of wild rivers by claiming that wild rivers "locks up" Aboriginal land. Pearson attacks The Wilderness Society but we are not given any right of reply.

16. **Pearson quits institute to fight wild rivers battle**, Tony Koch and Sarah Elks, 08/04/09

- Koch reports that Pearson has quit from the Cape York Institute to fight the wild rivers legislation, when in fact he only took 3 months temporary leave. Again, Koch uses the polemic of "*severe restrictions on future developments*" to perpetuate the myth that wild rivers stops development.

17. **Empty green symbols**, Editorial, 08/04/09

- The Australian gets the facts wrong by writing that Wild Rivers stops the construction of fishing and tourism lodges and prevent construction within 1km of a wild river.

18. **Aboriginal threat to blockade Cape**, Padraic Murphy, 09/04/09

- Murphy reports on a threat by anti Wild Rivers campaigners to blockade the Cape. He adds a degree of balance to the reporting by quoting traditional owner Gina Castelain, a Wik woman supportive of Wild Rivers

19. **Wild rivers deal bypassed Aborigines**, Tony Koch, 11/04/09

- Koch reports incorrectly that The Wilderness Society somehow truncated the consultation process with Traditional Owners. This was a serious allegation easily proven wrong, however Koch again refused to contact The Wilderness Society at all to seek comment or clarification on the matter.

- Koch supposedly had seen these letters anyway, and as they demonstrate (see Appendix A of this Submission for copies) the Wilderness Society in fact supported a comprehensive engagement process with Traditional Owners.

20. **Bligh's callous land grab**, Marcia Langton, 11/04/09 (opinion)

- With a sub-heading of "*The Wilderness Society members are playing with thousand of people's lives by remote control*", Langton focuses on the supposed dealings of The Wilderness Society and the Government over this "*sudden announcement*". Again, Langton's claim of The Wilderness Society truncating the consultation is absolutely false.

- As a result of this poor and biased reporting, Tim Seelig from The Wilderness Society contacted Nick Cater, Editor for The Weekend Australian. A formal right of reply by way of response feature was denied, Mr Cater promised to "speak to Tony Koch" about his coverage and lack of contact with The Wilderness Society.

21. **Aboriginal leaders divided on wild rivers as Wilderness Society denies veto**, Greg Roberts, 13/04/09

- Roberts once again brings an element of balance to the story by contacting The Wilderness Society and seeking comment on the consultation process and reporting alternative Indigenous voices.

22. **Bligh act 'violates indigenous rights'**, Tony Koch, 18/04/09

- Koch reports on comments from Tom Calma and the Cape York Land Council that Wild Rivers *may* violate indigenous rights, though specifics are not given.

- Above article appears on same day that a Letter to the Editor re Marcia Langton's opinion piece is finally published.

23. **Pearson to sue on wild rivers threat to jobs**, Pia Akerman, 07/05/09

- Akerman writes that Noel Pearson will launch legal action against Wild Rivers (the legal action has never eventuated).

24. **Wet and dry on wild idea**, Greg Roberts, 16/05/09 (feature piece)

- Roberts offers a good, balanced piece on Wild Rivers, with comments from a range of sources, including a diversity of Indigenous voice, and scientists.

25. **Cape splits over wild rivers**, Greg Roberts, 13/05/09

- A report that accompanies the above balanced story, showing a diversity of views on Wild Rivers.

26. **Indigenous-green alliance cracks**, Paul Toohey, 16/05/09

- Toohey reports that Indigenous and conservation groups are at odds of development in Northern Australia. Wild Rivers and Noel Pearson's campaign is used as a prime example, and says rivers have been "*locked up*" from development.

27. **Aboriginal groups attack 'green oppressors'**, Patricia Karvelas, 20/05/09

- Karvelas reports that Warren Mundine's new conservation Indigenous organisation will campaign against the conservation movement, including on Wild Rivers.

28. **Garrett urged to bar heritage push**, Patricia Karvelas, 22/05/09

- Karvelas reports that Noel Pearson says Minister Peter Garrett should reject a push to see parts of Cape York World Heritage listed. Pearson refers to Wild Rivers again as economic disaster for indigenous people.

29. **Pearson at odds with city greenies**, Tony Koch, 23/05/09 (opinion)

- Koch launches another extraordinary personal attack on The Wilderness Society, concocting a story about Wilderness Society fundraisers shaking the donation tin and offering views from the "*al fresco tables in Brisbane's West End"*. Koch makes the wrong claim that the recent Wild River declarations were part of "*cosy*" election deal and continues with uncritical praise of Noel Pearson, and an inability to objectively approach the Wild Rivers issue.

30. **Wilderness body welcomes rivers' nomination for 'protection'**, Caroline Overington, 23/05/09

- Overington writes a malicious piece about Lyndon Schneiders from The Wilderness Society, relating his urban living to want to protect Cape York. She says: "*By protection, he means not just from mining but, more controversially, from even the indigenous people who live there, who desire to improve their lot and develop their ancient homeland in a way that does it no damage at all. Mr Schneiders said their views cannot be allowed to prevail*". This is a complete distortion of what Schneiders said.

31. **World Heritage listing plan fires anger on Cape York**, Patricia Karvelas, 23/05/09

- Karvelas writes that a proposed World Heritage listing for Cape York "*has opened a deep rift between traditional owners and the Rudd Government"*, though only quotes Noel Pearson as the person angry with the Government for beginning to move forward on consultation for the listing. Karvelas refers to the Wild Rivers debate and Pearson's comments that Minister Peter

Garrett has turned his back on Indigenous people by not listening to Pearson about Wild Rivers.

- Karvelas again perpetuates the falsehood that Wild Rivers equates to a "*ban on development within 1km of a river or creek"*.

32. **Pearson brothers face off over Cape**, Greg Roberts, 25/5/09

- Roberts reports on the fact that Gerhardt Pearson had been working with TWS and ACF on a common position on Cape York World Heritage processes and budgets to take to the Queensland Government.

33. **Cape York plantation plan divides Aboriginal elders**, Greg Roberts, 28/5/09

- Roberts reports on a controversial proposal to bulldoze 16,000ha of tropical woodlands for plantations to make biodiesel near Lockhart River (one of the recently declared Wild Rivers).
- Comment from The Wilderness Society is included.

34. **Businesses condemn wild rivers plan for Cape York**, Tony Koch, 06/06/09

- Koch reports that the owners of a roadhouse on Cape York apparently think Wild Rivers declarations make their future business unviable. Koch had clearly not consulted the legislation to check the accuracy of the claim by the roadhouse owners.

35. **East and west at odds as cape confronts wild rivers reform**, Andrew Fraser, 09/06/09

- In another rare moment of reporting balance Fraser contacts The Wilderness Society to report on Traditional Owner support for Wild Rivers in some areas on the Cape.

36. **Peter Garrett snubbed by Cape leaders**, Michael McKenna, 11/06/09

- McKenna reports that Gerhardt Pearson refused to meet with Minister Peter Garrett about World Heritage listing and Wild Rivers on Cape York.

37. **Noel Pearson ups ante on Wild Rivers**, Tony Barrass, 16/07/09

- Barrass reports on Noel Pearson's "*all out assault"* on Wild Rivers on ABC's Lateline the previous night. Barrass wrongly claims that wild rivers "*bans Aboriginal people from building within a kilometer of any declared river, their tributaries or catchments"*. This is no small error given this would mean no building across much of Cape York, and the article.

38. **Activists storm green dinner**, Lex Hall, 29/07/09

- Hall reports that Noel Pearson protégé Tania Major (and friends) had grate-crashed a Wilderness Society event in Sydney. Hall repeats Barrass' glaring error, that Wild Rivers "*bans Aborigines from building within a kilometer of any declared river or its tributaries or catchments*".

39. **Rivers hijacked by 'green fascists'**, Sara Hudson, 06/08/09 (opinion)

- In an extraordinary attack on Wild Rivers, Hudson compares The Wilderness Society to fascists, basing her entire piece on a comment from a Wilderness Society supporter at the

event gate-crashed by Tania Major (and wrongly refers to the supporter as a "spokesperson", who said environmental sustainability should come before people).

- A letter to the Editor by Tim Seelig is published the following day in response.

40. **Wik lawyer takes on rivers battle**, Tony Koch, 17/09/09

- Koch reports that Greg McIntyre QC is preparing a case on behalf of Wik people to fight Wild Rivers, and that Balkanu Development Corporation has lodged submission to the Queensland Integrity Commissioner with complaints about Wild Rivers. The Wik case has never eventuated.

41. **Peter Holmes a Court and sons on a wild river trip**, Tony Koch, 13/10/09

- In the first of a series of stories by *The Australian*, Koch (apparently himself on tour on Cape York) reports on Holmes a Court visiting Cape York to help his friend Noel Pearson in his anti Wild Rivers crusade. Koch falsely reports that *"almost all waterways on Cape York are declared wild rivers or catchment, and are controlled by state legislation restricting development or building proposals, including those by traditional owners"*. For someone who had by this stage spent three years reporting on the issue, this is an extraordinarily statement: building proposals are barely restricted by Wild Rivers, and only three river basins on the Cape had been declared, which is about 1/5 of all river basins.

42. **Wild Rivers Act drains Aboriginal hopes**, Tony Koch, 14/10/09

- As part of the Peter Holmes a Court road-show, Koch reports on his visit to Alan Creek, a well known ally of Noel Pearson and anti Wild Rivers campaigner. Yet again, Koch completely fails to grasp how the Wild Rivers legislation works, and claims that it will stop Alan Creek's cattle enterprise. Koch also makes the unsubstantiated claim that *"Locals are furious, saying the Wild Rivers Act stops them developing any enterprise on the rivers and in tens of thousands of square kilometers of catchment areas"*. This is of course completely untrue.

43. **Cape Wild Rivers Act 'unjust'**, Tony Koch and Jamie Walker, 17/10/09

- Koch and Walker claim that Wild Rivers threatens to *"scuttle a breakthrough biofuel project that would free indigenous communities from welfare dependency"*. Yet the scheme is only in very early pilot schemes, and there is much scope within the Wild Rivers framework for the bigger project to proceed. It is also a gross exaggeration to suggest this one unproven project would be the breakthrough on welfare that it is made out to be.

44. **Red tape adds insult to injury**, Peter Holmes a Court, 17/10/09 (opinion)

- Holmes a Court offers a treatise on why, in his opinion, Wild Rivers is so bad in the form of a letter to an Indigenous lady from Mapoon.

45. **Aboriginal jobs 'stifled' by legislation**, Tony Koch, 19/10/09

- Koch reports on the meeting of Noel Pearson and Peter Holmes A Court, following Peter's anti Wild Rivers tour of Cape York.

46. **Green injustice** Editorial, 19/10/09

- The Australian proclaims that "*green extremists have completely lost touch with reality"* by supporting Wild Rivers and therefore supposedly stopping a biofuels project (as above, a highly exaggerated claim).

47. **Our Obama beats theirs**, Janet Albrechtsen, 21/10/09 (opinion)

- Albretchsen praises Noel Pearson, including for his opposition to Wild Rivers.

48. **Attorney-General urges talks on Cape York river dispute**, Tony Koch, 23/10/09

- Koch reports on comments from Attorney-General Rob McClelland, claiming that on Wild Rivers he has called on all parties to negotiate a "*native title-style settlement*".

49. **Wild rivers plan extension accepted without trouble so far**, Sean Parnell, 09/01/10

- Parnell writes that the plan to extend Wild Rivers to Queensland's Channel Country has so far not sparked the same uproar as in Cape York.

50. **Abbott vows to turn back Wild Rivers**, Jaime Walker, 12/01/10

- The Australian is given the "exclusive" that Tony Abbott will announce he will move to overturn the Wild Rivers legislation by introducing legislation into Federal Parliament.

- Walker claims that Wild Rivers bans "*most economic activity*" on the river systems, which is a gross and misleading exaggeration of how Wild Rivers works. Pearson is quoted with his usual comments and Walker wrongly reports that Pearson had quit the Cape York Institute to fight Wild Rivers (he took 3 months leave and was back in this position many months before the story was published).

51. **Abbott shows the way after a grubby deal**, Tony Koch, 12/01/10 (opinion)

- Koch offers an opinion piece based on false claims. He claims that Wild Rivers was the result of a "*shabby"* election deal between The Wilderness Society and the Labor Party and claims it is the worse case of corruption in Queensland since the Fitzgerald inquiry. As the timeline in Appendix D of this Submission shows, Wild Rivers has a long historical trajectory, which has included a very public and transparent campaign from conservation groups.

- Koch did not seek any comment ot clarification from The Wilderness Society before making these claims.

52. **What right to develop their land?**, Senator George Brandis, 12/01/10 (opinion)

- Brandis writes in support of overturning Wild Rivers, citing "*extreme Green activists*" as a root cause of Indigenous problems, and perpetuates the myth of some sort of "backroom" deal over Wild Rivers.

53. **Memo to Mr Rudd: Mr Abbott has a point:** Editorial 13/01/10

- The Australian attacks Wild Rivers and praises Tony Abbott, calling on Kevin Rudd to back Abbott's move to quash Wild Rivers. The Editorial claims that Wild Rivers harms "*indigenous hopes of economic independence and development"*, and attempts to use the

example of a biofuels project – which is only in pilot stage, well away from the protected zone – as proof of this claim.

54. **Warning on Wild Rivers reversal:** Sarah Elks and Natasha Bita, 13/01/10

- Elks and Bita report that law Professor George Williams says Tony Abbott's anti Wild Rivers Bill, if it passed, could set a precedent to ultimately open on National Parks to development.

55. **Green group backs river review**, Natasha Bita and Sarah Elks, 14/01/10

- Bita and Elks report that the Australian Conservation Foundation backs a review of Wild Rivers (though their comments don't match the title at all). They also report that Wild Rivers has *"already shut down one Aboriginal enterprise near the Lockhart River"*. The example they give is from Toby Accoom, a well known anti Wild Rivers advocate, who claims that his quarry has been shut down in 2007 due to Wild Rivers. This is completely untrue – any quick check with the Government would have proved Mr Accoom's claim ius wrong, but the journalists stated in their own words that his claim was fact.

56. **Long way to go to close the gap**, Editioral 15/01/10

- The Australian uses Wild Rivers as case in point for the apparent lack of action from the Rudd Government in Indigenous affairs.

57. **Vision behind Wild Rivers Act**, Minister Stephen Robertson, 15/01/10 (opinion)

- Queensland Minister Stephen Robertson is allowed to pen the first pro Wild Rivers piece published in The Australia following four years of reporting on the issue.

58. **Bend ahead in Wild Rivers rules**, Natasha Bita, 15/01/10

- Bita reports that the Queensland Government is considering following the request of bauxite mining company Cape Alumina to reduce protective buffer zones proposed by Wild Rivers in the Wenlock River Basin. Pearson claims this is hypocritical.

59. **Labor connives with green alliance to control indigenous growth**, Noel Pearson, 16/01/10 (opinion)

- Pearson writes with venom about The Wilderness Society and Wild Rivers, most of his claims being gross distortions of the truth.

- The Wilderness Society sought a right of reply via an opinion piece in The Australian. Following initial indications from the Opinions Editor of The Weekend Australian that the paper would finally accept a piece by Tim Seelig, an opinion article was submitted. This was 'reviewed' and it was suggested that the piece should more directly address some claims by Noel Pearson. However, after making appropriate edits and receiving confirmation the final piece would indeed be published, the piece never went to print. The final reason given was that it "too directly focused on Noel Pearson"!

60. **Getting wild where the rivers run**, Natasha Bita, Sarah Elks and Andrew Fraser, 16/01/10 (feature piece)

- A feature piece to finish the week of attacks on Wild Rivers and The Wilderness Society. The authors wrongly state that Wild Rivers *"barely caused a ripple*" until the declaration of the Cape rivers. There was in fact a very public stoush over the declaration of Gulf rivers, where Indigenous groups and The Wilderness Society united to see the rivers protection – something The Australian has never reported.

61. **Miners up in arms over Wild Rivers laws**, Natasha Bita, 16/01/10

- Bita reports that miners have accused the Bligh Government of *"locking away vast mineral resources"* through Wild Rivers.

62. **Locals wild at river development curbs**, Natasha Bita, 18/01/10

- Bita reports that Wild Rivers will hinder local business plans on Cape York. She gives the example of Greg Omeenyo, who "*wanted to start a tourism business to take sightseers to local World War II sites until Queensland's Wild Rivers Act came into force*". This is a ludicrous proposition, given Wild Rivers does not restrict access for tourists or any buildings for tourism infrastructure, and the World War II sites in the area are not even in a declared Wild River area. Any cursory research would have quickly discovered this.

63. **We have a right to draw incomes from our land**, Galarrwuy Yununpingu, 30/01/10 (opinion)

- Yunupingu strongly criticizes environmentalists for advocating for conservation measures on Aboriginal land, and attacks the Wild Rivers legislation. Yununpingu says: "*And if the traditional owners want to cut down every tree so their children can have a future, then that is their decision. Why not? That is where the wealth of this country came from and still does"*.

64. **Abbott calls PMs bluff on wild rivers**, Brendan Nicholson, 09/02/10

- Nicholson writes of Tony Abbott introducing his anti Wild Rivers Bill into the House of Representatives. Nicholson claims that Wild Rivers is "*opposed by most indigenous people and cattle producers"* which "*imposed severe restrictions on future development on land near the rivers or catchment areas"*. Once again, this is a significant exaggeration of the effects of Wild Rivers.

65. **Abbott's bid to overturn Wild Rivers historic, says Pearson**, Tony Koch, 10/02/10

- Koch reports on Noel Pearson's praise the Abbott anti Wild Rivers Bill, who says the Bill will build a bridge between the federal Coalition and Indigenous people.

66. **Rudd should defend his legacy not Blighs law**, Noel Pearson, 11/02/10 (opinion)

- Pearson praises the Abbott anti Wild Rivers Bill.

67. **Rudd attacked for policy failings**, Matthew Franklin and Sid Maher, 12/02/10

- Franklin and Maher report on Tony Abbott's bid to overturn Wild Rivers, and spray at Kevin Rudd for not delivering in Indigenous affairs.

68. **Rudd invited to see wild rivers for himself**, Tony Koch, 13/02/10

- Koch writes that "*severe restrictions*" have been placed on Cape York rivers and writes how business man Peter Holmes A Court "*would be more than happy*" to take Kevin Rudd to Cape York to see the situation.

69. **Powerful nations call the shots in age of animal imperialism**, Brendan O'Neill 13/02/10

- The Australian publishes an opinion piece on seal hunting in Canada by UK 'anti-environmentalist' Brendan O'Neill, which towards the end unexpectedly and inexplicably launches an attack on Wild Rivers and The Wilderness Society: *"In Australia, the Aboriginal landowners of Cape York have fallen victim to the same people-hating environmental crusade. The Queensland government has bowed to pressure from the Wilderness Society to pass the Wild Rivers legislation, which prevents indigenous people making productive use of their own lands. It is significant that the Queensland legislation was championed by an organisation with a name that portrays its dystopian ambition to rid sections of the planet of humans altogether. Like the campaigners threatening the livelihoods of indigenous Canadian seal-hunters, they pursue their morally arrogant objectives from the comfort of the inner-city suburbs."*

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- As well as being wrong on Wild Rivers, this is a complete misrepresentation of The Wilderness Society's positions. No invitation to respond or correct was offered..

70. **Environmentalists eat meat**, Editorial 20/03/10

- The Australian inexplicably repeats the extraordinary thrust of the Brendan O'Neill article comments on Wild Rivers in its Editorial, likening the opposition to the clubbing of seals in Canada to Wild Rivers and that environmentalists assume "*that people are a plague on the planet…"*. The editorual says that through Wild Rivers Premier Bligh has *"…forbidden people building within a kilometre of them or their catchments. This is a cheap and easy way for Premier Anna Bligh to establish her green credentials with urban environmentalists, but it is an insult to the indigenous people of Cape York, who want to develop sustainable fishing and tourism enterprises on the Cape"*. This is pure nonsense, with no basis in fact whatsoever. Buildings aren't banned in Wild River areas, and fishing and tourism industries are encouraged and enhanced by the initiative.

71. **Support for plan to turn back wild rivers**, Ross Fitzgerald, 27/03/10 (opinion)

- Fitzgerald opines that Wild Rivers and vegetation clearing laws are an affront on property rights for Indigenous and non-Indigenous people. Fitzgerald makes the allegation that there was no consultation over including the Aurukun wetlands in the Archer Basin declaration. Although this may be claimed by Noel Pearson, it is not true. The Government did consult with local people over this inclusion, as the area is under real threat from sand mining.

72. **Support for plan to turn back wild rivers**, Sid Maher, 30/03/10

- Maher reports on Professor George Williams' submission into the Wild Rivers Senate Inquiry, where he argues that the Bill would be constitutionally valid. The title of the piece is misleading given the Professor's submission is restricted to commenting on the constitutionality of the Bill, rather than commenting on its broader political merits. In addition, Maher adopts the familiar rhetoric that Wild Rivers is "*imposing severe restrictions on development of land near the river or catchment areas*" but offers no explanation as to why he believes this is the case or a clear explanation of the Wild Rivers Act actually does.

73. **Coalition leads the way on land rights, says Pearson**, Patricia Karvelas, 31/03/10

- Karvelas reports Noel Pearson in the first Senate Inquiry hearing into Tony Abbott's anti Wild Rivers Bill. Pearson refers to the Wild Rivers Act as "racist".

74. **Bogus greens should back off** Editorial, 31/03/10

- The Australian lashes out at The Wilderness Society for supporting the Wild Rivers initiative and siding with local Traditional Owners in the Kimberley who oppose the LNG gas hub.

75. **Hopevale homes clear red tape,** Patricia Karvelas, 1/04/10

- Noel Pearson is caught out incorrectly claiming that housing approvals in Hopevale are being slowed or stymied by Wild Rivers.

- It is a rare moment of The Australian both highlighting that Pearson's claims are wrong, and including comment from The Wilderness Society.

76. Abbott's bill would reverse the injustice of Wild Rivers laws, Noel Pearson, 2/4/10 (opinion)

- Pearson is given yet another opportunity – unrestrained - to repeat incorrect and worn out claims about Wild Rivers and make accusations about the Wilderness Society.

Appendix F – Summary critique of Select Submissions to the Senate Inquiry

The following is a brief critique of select submissions received by for the Senate Inquiry.

Submission 1: Prof George Williams (Centre of Public Law, UNSW)

- The statement that "*The* Wild Rivers Act 2005 *(Qld) diminishes the decision-making power of Aboriginal native title holders over their land as would be conferred by the Bill*" (p.3) appears to be a broad statement about the impacts of Wild Rivers in Native Title, but offers no legal explanation as to why this is believed to be the case (despite explicit protections for Native Title in the *Wild Rivers Act 2005*).

Submission 3: Advance Cairns

- The submission claims that thirteen Wild River declarations have been made on Cape York. This is wrong, there have been three.

- The submission argues that there should be a "Cape York solution" under the *Cape York Peninsula Heritage Act 2007*. The irony of this comment is that this piece of legislation does exactly that and was developed on the back of an agreement with many stakeholder groups, including World Heritage, Wild Rivers, vegetation clearing, etc. Noel Pearson and others have since walked away from the agreement.

- The statement that "enormous tracts of Cape York are already under conservation and preservation" is not backed up with any statistics or evidence. Similarly, the claim that there has been little consultation, and that there are no threats to Cape York rivers, that Wild Rivers equates to "severely" restricting economic activity, that Wild rivers denies land rights, etc, etc, are very broad statements made with no backing of evidence (there is very little substance in this submission).

Submission 4: P&E Law

(*Note: the lawyer who prepared the Executive Summary for this submission was a previous employee of the Cape York Land Council campaigning against Wild Rivers*)

- The submission incorrectly states that safari tent ecotourism venture would have to be setback 200m from a nominated waterway or wild river [10]. The setback is provided in the declaration as a "probable solution" to maintaining wild river values in Part 5 of the *Wild Rivers Code*. The development proponent can build closer to the stream if they can show that impact on the river system will be minimal – this is made abundantly clear in the Code. This error is repeated in [17] and [22].

- The submission makes the claim that because the high preservation area is not defined by cadastre that this would stop tourism development in this area [11], [18], [23]. There is absolutely no evidence that this is the case and such developed would be constrained.

- The submission argues that the "preserve" in the *Wild Rivers Act 2005* denotes no change in management (as opposed to "conserve"), therefore commercial development if unlikely to be accepted in a high preservation area [85], [97]. This is an unhelpful semantic argument with no bearing on the facts of how Wild Rivers operates whatsoever, as it does allow development.

- The submission offers the highly subjective opinion that permanent residential or commercial development, caravan park, tourist accommodation or tourist facility, would not be approved in a high preservation area [98]. There is absolutely no evidence to support this highly spurious claim – it is very clear in the *Wild Rivers Code* that such development is permitted.

Submission 5: Cummings Economics

- The submission claims that 26% of Australia's water run off occurs on the Cape, implying that the potential is significant for agriculture.

- The submission uses MODIS satellite data (which shows net primary production) to argue that plant growth equates with suitability for agriculture. This is a very long bow to draw, as soil suitability, climate and rainfall variability, and suitable dam sites (etc) are a very significant constraint to large-scale agricultural development on Cape York. These major natural constraints are not recognised at all the submission. Instead it is claimed that the constraints to development are agricultural technology, crops and lack of infrastructure. This is a common misperception for those that champion Northern Australia as the "food bowl of Asia".

- The submission argues that only agricultural, mining and fishing development will provide a baseline economy for Cape York. This is in fact already the case, only the agriculture is based on pastoralism rather than irrigation. Mr Cummings is advocating a far more intensive approach to destructive development on Cape York. His derision of tourism and land management opportunities is unfounded, given studies have shown that these are the most promising industries in the region..

Submission 6: Lockhart River Shire Council (P&E Law)

(Note: the same law firm as Submission 4 wrote this submission)

- The submission claims (p.4) that there is significant level of disturbance in the Lockhart River catchment, sighting a national "river disturbance index" as evidence showing the river system as "moderately" disturbed. Given the river catchment has seen very little land clearing, and there are no stream impoundments or industrial development in the area, it is very difficult to see how one could not consider the river system to have most of its natural values intact, therefore fitting the criteria for a "wild river". It is possible that there anomalies within the "river disturbance index" given it's coarse assessment approach, for instance natural grassland areas are sometimes measured as cleared land in this index.

- The submission quotes (p.6) a comment from the Queensland Government about the Indigenous Wild River Ranger program and does not offer guaruntees for positions in the Lockhart River Catchment. The Wilderness Society agrees this comment by Government is completely inappropriate and unfair – immediate action should be taken to ensure jobs are secured in declared river areas.

- The Wilderness Society agrees there should be adequate support for navigating Queensland's planning laws (p.7).

- The letter attached to the submission Jim Turnour MP does not match the tone or recommendations in the submission. There is a very distinct change in position from "*Overall, the Lockhart River Aboriginal Shire Council would like to express its support for the Wild Rivers framework*" (p.2), to "*We the Traditional Owners of the Lockhart River region are opposed to the unjust Wild Rivers legislation imposed without negotiation or consent across*

our homelands". The letter has been sent recently, following the campaign from Noel Pearson and Tony Abbott.

Submission 7: Noel Pearson (Cape York Institute)

- The submission accuses The Wilderness Society of making deals with the Queensland Resources Council about the high preservation areas in the three declared wild rivers on Cape York, prior to their formal nomination, citing one short quote from a Government document to support the claim (p.4). There is no truth in this accusation. No deal was made at all. What the reference to "original agreement" most likely refers to is a raft of amendments to the *Wild Rivers Act 2005* passed in 2006, which followed an agreement between conservation, mining, agricultural, and Indigenous interests. Without seeing the full document it is difficult to tell.

- The submission falsely claims that The Wilderness Society truncated consultation with Indigenous communities (p.7). This is an offensive claim that completely and deliberately distorts our position and the reality of events (this highly erroneous claim is addressed in our submission proper).

- The submission refers to a "farcical" consultation process (p.7). While views on the consultation process are subjective, Mr Pearson and his organisations have been involved in many consultations and negotiations over the *Wild Rivers Act 2005*, including being paid to partner in running the consultation process (this is documented in our submission proper).

- The submission claims that Wild Rivers derails the Cape York welfare reform agenda and more or less prevents any future development in the region (p.7). These are very broad and exaggerated claims, given Wild Rivers is confined to regulating development near river systems. Development is not stopped, and the welfare reform agenda is continuing.

- The submission provides a synopsis from a report about Wild Rivers by ACIL Tasman, a firm well know for providing substantial advice and support for the fossil fuel industry in developing their arguments against action on climate change. Unsurprisingly, the synopsis provided is extreme in its anti-conservation rhetoric. Reference to jobs not in sectors that require environmental destruction as "green welfare" show the flavour of this strongly pro-industry firm.

- Comments in relation to Native Title, property rights, the UN Declaration on the Rights of Indigenous Peoples are addressed in our submission proper.

Submission 8: Greg McIntyre QC

- The submission claims that the declaration of a Wild River area is akin to the creation of a reserve [9]. This is questionable, given the legislation expressly operates as a planning scheme rather than a protected area. For example, Wild Rivers does not affect ownership of land, and permits grazing and private infrastructure, unlike National Parks. Given this is the basis for the rest of Mr McIntyre's argument regarding the impact on Native Title, the fact that he has not provided evidence to support this claim significantly weakens the argument. In addition, the *Wild Rivers Act 2005* explicitly protects Native Title rights (Section 44, 2).

Submission 9: Ms Phyllis Yunkaporta

- The submission claims that Ms Yunkaporta represents the Aurukun community in general given she has lived there for a long time. With the greatest respect for Ms Yunkaporta, this is a

difficult assertion to agree with, given that there is a diversity of views within the community, including a number of Wild Rivers supporters.

Submission 12: KULLA Land Trust

(Note: The Wilderness Society understands that the Attachment to this submission has been generated by the Balkanu Development Corporation, led by Gerhardt Pearson and well known anti Wild Rivers advocates)

- The submission claims that Wild Rivers will complicate "Joint Management" arrangements for the KULLA National Park. However given Wild Rivers offers a far lesser degree of protection than a National Park, it is difficult to see how this can and will create major complications, as the stronger protective measures will always prevail in this case.

- The submission criticises the use of the terms "preservation" and "wild" in the Wild River legislation. The Wilderness Society recognises the sensitivities around certain terms, however it is not a correct reading of the legislation to assume that this means that no development will be allowed in these areas.

- The submission makes the valid point that private jetties should be allowed in a Wild River area. This has now been fixed by the Queensland Government.

- The submission does not identify any real development projects which will actually be prevented in any way by Wild Rivers.

- The Wilderness Society strongly agrees with the submission that Indigenous Wild River Rangers should be appointed in declared river basins, and communities supported to development their management plans for country.

Submission 13: Anonymous Traditional Owners

- The submission claims highlights a concern that Wild Rivers takes away the responsibility of Traditional Owners to manage their country. It is difficult to see exactly how Wild Rivers does this, as it effectively only regulates destructive development and does not affect ownership of land, and enhances conservation opportunities. In addition, the Indigenous Wild River Ranger programs is building support, resources and capacity for Traditional Owners to manage their rivers and land – so direct responsibility is enhanced through this means.

Submission 23: Lama Lama Land Trust

- With all due respect to the Lama Lama Traditional Owners, the attachment to the submission is the same document prepared by the Balkanu Development Corporation in Submission 12.

Submission 24: Harold Ludwick

- The submission refers to petition from Mr Ludwick in Lockhart River. There is footage on the SBS program *Living Black* ("Murky waters") of Mr Ludwick handing out the flyers in Appendix D on behalf of the "Give Us a Go" campaign. Given the flyer tells people that Wild Rivers will stop traditional hunting and fishing, it is no surprise if a number of people were willing to sign. This is part of the misinformation campaign on Cape York.

- The submission claims that The Wilderness Society negotiated a deal to exclude bauxite mining from Wild Rivers. This is a ludicrous claim, particularly given our strong criticism of bauxite mines in the public realm, and call for Wild Rivers to control this form of destructive development.

- The submission claims that The Wilderness Society has employed "unethical" tactics. Given the information Mr Ludwick is distributing around Cape York, this is quite an ironic statement.

Other Submissions

The Wilderness Society has not been able, in the time since their posting, to properly analyse several other Submissions, including those from some Cape York Traditional Owners, Jon Altman (Submission sighted and regarded of interest) and the Queensland Government (Submission unsighted but presumed to have been submitted).