

Committee Secretary
Senate Legal & Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Dear Sir or Madam,

Submission to the inquiry regarding the Wild River Environmental Management Bill 2010.

The KULLA Land Trust is pleased to make this submission and does so with the strongest support of the Wild Rivers (Environment Management) Bill 2010. As the Traditional Owners and custodians of lands wholly within a gazetted Wild River Area, we believe that no decision without our consent contravenes our Native Title rights. At no time did the KULLA Land Trust ever agree to Wild Rivers being imposed on our Country and we formally registered our objection in meetings with the Queensland department of Natural Resources & Water as well as through formal Traditional Owner submissions in November 2008. All the concerns we raised were ignored.

Background

The KULLA Land Trust was formed in 2000 to hold traditional lands of Kaanju, Umpila, Lama Lama and the Ayapathu people. Our Land predominantly lies within the Stewart basin but also crosses into the Lockhart and Archer basins



In August 2008, more land was handed back in the form of the newly created KULLA National Park, located on Aboriginal Freehold, the second CYPAL National Park under the Cape York Peninsula Heritage Act (2007). This was a significant step forward for the relations between the State and the Indigenous People of Cape York. CYPAL National Parks require joint management decisions. We negotiated our case with the government, including where National Parks of Nature Refuges would lie, jointly protecting the most precious environments within our homelands. We also negotiated the areas that would be designated for our people's future - where we could live on Country, build our own sustainable enterprises and fulfil our social, cultural and economic aspirations.

At the time when this outcome was being formally recognised and celebrated, the very same government using an opposing process to nominate all our Country to be brought under the control of Wild Rivers Legislation. This time in vast contrast to the State Land dealings, it occurred without our input or our consent. We did not agree to it, we raised issues and we were largely ignored. In April 2009, seven of our waterways were gazetted Wild Rivers (Stewart River, Massey Creek, Breakfast Creek, Balclutha Creek, Rocky River, Nesbit River, Chester River) - six to the maximum level permitted under the legislation. Anyone who knows our Country knows that these seven waterways are different contrasting and require their own unique management plan – not one from off the shelf – some are small creeks, many are dry for much of the year, few have environmental threats that would benefit from the Wild River legislation.

Summary of our Support of the Wild Rivers (Environmental Management) Bill

The KULLA Land Trust wholeheartedly endorses the contents of the Bill as before the Senate at the moment. We pray that the Commonwealth utilises its powers to protect the rights of Indigenous Peoples and their land by requesting that such legislation requires our consent.

We support the Bill because it:

- Gives us a seat at the table when decisions are being made about our Country
- Recognises us as the rightful custodian and supports our Native Title rights
- Confirms our rights to our Traditional Lands to own use develop and control our land.
- Recognises our rights to balance our values whether they be of a social, cultural, environmental or economic nature.
- Ensures that our agreement through the State Lands resolution process, including the joint management of National parks is not diminished by imposed legislation
- Ensures that environmental concerns we have are addressed in a manner that is consistent with our cultural stewardship and knowledge.
- Ensures that Wild Rivers legislation affecting our homeland only occurs with our consent and that Traditional Owners of other Queensland rivers enjoy the same opportunity in future.
- Ensures that International Conventions Australia has endorsed (such as the Declaration of the rights of Indigenous People) is respected

For your information, we attach the list of issues Traditional Owners raised throughout the nomination process for the Archer, Stewart and Lockhart basin Wild Rivers.

Yours faithfully,

Allan Creek
Chairman, KULLA Land Trust
26th March 2010

ATTACHMENT A:

GENERAL ISSUES IN RELATION TO WILD RIVERS.

- **The term "Wild" is offensive to many traditional owners.**

'Wild' is a term which has particular meanings in current debates around environmental management. It carries connotations of 'wilderness', a "desolate, uncultivated or uninhabited region" (Collins English Dictionary). With its connotations of uninhabited wilderness, the term "Wild" denies our continuing occupation and use of our traditional lands, landscapes which continue to be imbued with the cultural values of us as the traditional owners. We submit that the name of the Act must be changed.

- **The Wild Rivers Act and nominations fail to recognise the important cultural values that exist along rivers and how these cultural values are to be managed.**

The Wild Rivers Act is entirely skewed to values from an environmental perspective and fails to recognise the importance of our cultural values. For us, the values of our country and rivers, whether it is of an environmental, economic, social or cultural nature cannot be separated. -.

The State in the Wild Rivers Act and the nomination documents has failed to recognise the existence of the traditional owners our cultural values and our rights to make decisions about our lands and rivers. The nominated Wild Rivers areas of Cape York flow overwhelmingly across Aboriginal freehold land and lands where native title continues and yet the nomination material does not recognise our inherent role. We note that traditional owners and culture were at least recognised in the Gulf Wild River nomination material.

It distresses our people, particularly our elders, that cultural values and our rights to make decisions in relation to our land are not recognised.

- **The State has assessed natural values at the basin scale.**

The State has assessed natural values at the basin scale. The Wild Rivers Act applies to wild rivers and their catchments, it does not mention basins. We submit that the State must set out the reasons for the nomination of each wild river individually rather than set out the reasons for the nomination of the basin as a whole.

- **The nominations are based on scant information**

It is apparent that most of the nominations of the wild rivers are based on insufficient information and little or no field work. In particular the State has not consulted traditional owners in preparing the material on the natural values of the areas and has not taken advantage of the knowledge of the natural values of the rivers held by traditional owners. Also the State has not been rigorous in presenting the evidence for wild river nominations and therefore the evidence is flawed in many respects. Of particular importance the State has chosen to give little or no regard to several relevant studies. These studies include:

- the Wild and Undisturbed Rivers data and mapping of the Commonwealth Department of Environment and Heritage;
http://www.environment.gov.au/heritage/publications/anlr/idlists/qld_id_list.csv.
- The Catchment Disturbance Index work of Mackey, Nix and Hitchcock in The Natural Heritage Significance of Cape York Peninsula.
http://www.epa.qld.gov.au/publications/p00582aj.pdf/The_natural_heritage_significance_of_Cape_York_Peninsula.pdf

- The BRS catchment condition online mapping system
<http://www.brs.gov.au/mapserv/catchment/>

In all three proposal documents the natural values of the basin have been applied in a broad brush and very imprecise manner to all river systems within the basin rather than assessing each river and its catchment separately. For the current round, there have been thirteen wild rivers nominated across the three basins. The assessment and the evidence supporting the State's nomination is materially sparse. Little or no supporting scientific evidence in relation to the condition of their natural values has been put forward for the Kirke, Love, Chester, Rocky Rivers and Massy, Balclutha, Breakfast and Gorge Creeks.

- **Traditional Owners have already provided our green outcome**

The traditional owners of the Stewart and Lockhart River basins believe that we have already given a green outcome with the Macillwraith Range National Park, the nature refuge over Running (Gorge) Creek and Lama Lama National Park. There is a strong feeling that Wild Rivers moves well beyond the tenure partitioning deal that we signed up to.

The negotiation on the issue of land tenure was on the premise that Aboriginal Land would provide balance for both economic and conservation aspirations of our people. In introducing the legislation that paved the way for joint management conservation arrangements", the Cape York Peninsula Heritage Act (2007), the (then) premier, Peter Beattie said *"This bill provides for the identification of the significant natural and cultural values of Cape York Peninsula and cooperative and ecologically sustainable management of Cape York Peninsula. The Beattie government—my government—has demonstrated a strong commitment over several terms of government to managing economic, social and environmental issues on Cape York Peninsula. While finding a balance between these issues is a challenging task, I am pleased that some significant successes have been achieved in recent years."* It is essential that the Government continue this commitment to co-operation rather than compulsion and finding a balance between economic, social and environmental issues.

- **The application of the wild rivers zoning scheme to national parks is unnecessary and will complicate Joint Management arrangements;**

Joint management of National Parks has been a negotiated outcome between the State Government and the Traditional Owners. This partnership enables issues of environmental concern, from both the State and traditional owners perspective, to be addressed whilst also ensuring that our cultural values are recognised. The agreements in relation to the declaration of National Parks were made without reference to Wild Rivers. The additional requirements introduced, particularly the High Preservation Area (HPA) zoning did not feature as part of the negotiation.

We submit that HPAs be removed from the National Parks in Cape York on the basis that they unnecessarily complicate the process, were not part of the initial negotiations of Joint Managed National Parks and do not add any significant environmental protection.

- **The inference of the term "preservation"**

The vast majority of a wild rivers area is to be declared as a "preservation area". This word infers that the area is to remain unchanged, with no development, i.e. that it is to be preserved. We strongly object to this terminology and request that the government amend the Act and abolish the use of the term "preservation area".

- **Lack of consideration for vegetation changes as a result of the removal of traditional management practices**

We are concerned that vegetation in many areas of the Wild River areas is not in its natural state because of the removal of our traditional management practices. For example, an Elder from Rokeby in the Mungkan Kaanju National Park talks about how historically the vegetation was clear down to the river, traditional owners from Silver Plains recall changes to their vegetation, around Port Stewart and at Lockhart there is also significant change. Many traditional owners speak of the "feral forests" that are in areas close to the Archer River. The vegetation has changed as traditional management practices have been removed.

We as traditional owners are concerned that the Wild River Act will prohibit our traditional vegetation management practices, particularly within HPA's.

- **Unclear and convoluted restrictions within a HPA**

Even though NRW have actively consulted with us throughout the nomination period, the arrangements for clearing of vegetation within the HPA remains unclear and we believe may prevent or place onerous restrictions on clearing for such purposes as tourism infrastructure, cultural purposes, outstations and other buildings.

Whether we are establishing cattle properties on our land, setting up eco-tourism businesses, or simply living on Country at our outstations, the remoteness severely hampers our ability to access resources and expertise to work through a multitude of terms conditions and legislative requirements. The additional Wild Rivers requirements adds to our concerns. Traditional owners require an undertaking from government that the Wild Rivers Act will not unjustifiably impede our ability to utilise our country for economic or social advancement and will not add to the financial burden of crafting economically sustainable livings from our Country.

- **The construction of Private Jetties and Boat Ramps**

We oppose the prohibition on us building private jetties and boat ramps on our homelands, particularly those of us who are traditional owners for the nominated Wild Rivers around Aurukun where it is sometimes necessary to access our homeland by water. While we understand that the construction of a public jetty is permissible, this is an unacceptable solution as the public should not be able to visit homelands without Traditional Owner permission.

- **Market Gardens within High Preservation Areas**

Throughout the consultation period, we have been informed that the intention of Wild Rivers legislation is to protect the rivers from the adverse impacts of significant commercial ventures that may harm the inherent natural values. While we understand that it is permissible for us to grow agricultural products for our own consumption, we have also been told that the growing of agriculture products in a HPA for sale in the local communities or regional stores would constitute a breach of the legislation.

In terms of environmental impact, we maintain that whether the gardens in a HPA operate for domestic purposes or for small-scale commercial ventures are irrelevant. We submit that the State needs to specifically define terms such as commercial within the Act and ensure that the legislation does not impede small-scale economic outcomes for Indigenous families.

- **Commercial harvesting of vegetation in a HPA for the use in traditional Art and Craft Activities.**

We oppose unnecessary limitations on our harvesting of vegetation such as reeds from the rivers to be used in our traditional Art and Craft activities, irrespective of whether the harvest is used for personal use or is used to produce goods for sale. The use of reeds in our art and craft are traditional activities and are therefore part of our Native Title privilege. The end use of the good produced is irrelevant to us exercising our Native Title rights.

- **The prohibition of Aquaculture in High Preservation Areas.**

We require that the State reviews the total ban of Aquaculture within HPA's given that potential economic opportunities for Indigenous people may be severely hampered. Under the Queensland Fisheries Act 1994, aquaculture is defined as "the cultivation of live fisheries resources for sale other than in circumstances prescribed under a regulation." And crustaceans (S.5(a) prawns, crayfish, rock lobsters and others) and molluscs (S.5(b) scallops, oysters, pearl oysters and other molluscs) fit under the definition of fish and therefore would be prohibited within a HPA. This hinders the potential economic opportunity for traditional owners, particularly those whose country includes the mouth of rivers and estuaries such as in the Lockhart River where this issue was first raised..

In addition, the outright prohibition of Aquaculture within HPA's disregards the environmental improvements in the treatment of waste products from fish farming and the likely advances in the future of this ever-growing industry. Traditional owners will not agree to the automatic signing away of potential economic benefits of a product that may have no adverse environmental impact. We submit that the State needs to review the total prohibition of Aquaculture in HPA's as it may hamper a potential and viable economic benefit to Indigenous people of Cape York

- **The arbitrary application of HPA's.**

We object to the State's automatic application of the maximum level permissible of HPA's to our rivers. There has been no regard for the characteristics of particular rivers or any ecological reasoning used. Even with a cautionary approach, it is unreasonable to think that a small creek of some 20 metres wide would require a High Preservation Area 1km each side of the creek.

Throughout consultation, we have been told that if we had a legitimate reason for having the boundary of HPA's altered than we could have this considered by lodging submissions. We protest to the notion that the onus falls on the traditional owners to prove our case rather than the State providing a sound scientific rationale for the need and width of High Preservation Areas. If environmental protection is to be put in place we maintain that it must have a direct link to the nature of the area that it is protecting. A buffer of 1 kilometre along a small ephemeral creek is ridiculous and displays no regard for the underlying objective of the Wild Rivers Act.

While the Act states that it will be precautionary in affording protection to the natural values of a wild river, the level of protection is inconsistent with the approach of other Queensland legislation on watercourse management. For example, in the Regional Vegetation Management Code (Western Bioregions) Performance Requirement PR Xb.4 maps out the minimum barriers on clearing and it is relative to the width of a watercourse. The most stringent is for watercourses that are greater than 30 metres wide (stream order 5) – the clearing restriction for these is 200 metres from the high bank; 100 metres for watercourses 5 – 30 metres wide (stream order 3 or 4) and 50 metres for watercourses less than 5 metres wide.

The State must recognise that unnecessary and unjustified regulation increases costs for traditional owners and must provide justification and correlate the High Preservation Zone appropriately to each waterway.

- **Catchment condition**

The Wild Rivers Act at s. 3.3(c) states that the purpose of the Act is to be achieved by among other things "treating a wild river and its catchment as a single entity, linking the condition of the river to the health of the catchment". The State has not considered the health of the catchments of each of the proposed wild rivers in assessing the condition of the rivers. The State should have included catchment condition as one of the relevant natural values along with riparian function, wildlife corridor function etc.

- **Managing our Rivers.**

Irrespective of the declaration of areas as Wild Rivers and irrespective of the natural values of a river, environments don't manage themselves. Invasive weeds are continually spreading and threatening flora and fauna, significant erosion, water quality issues and vegetation damage is caused by feral animals (horses, pigs and cattle) and by roaming cattle.

There has been continual discussions regarding Wild River rangers but no ranger has been appointed to a Cape York river that is currently under nomination.

If the government is serious in achieving environmental outcomes in Cape York then we require that they enter into discussions on management plans including the commitment to infrastructure, resources, Indigenous employment and incorporating the use of traditional management practices Without practical measures, the theory of protection outlined in an Act will remain just that – a theory and not reality.

We also request that the government provide resources for the preparation of Property Development Plans.

Additionally we seek that Government work with traditional owners and communities to address the issues of commercial fishing in rivers such as the Archer River

Therefore, we will not consent to any Wild River declaration without the government entering into negotiations on practical measures for the management of our waterways.