

Lestar Manning - Partner  
Michael Neal - Partner  
Mark Baker-Jones - Solicitor  
Madonna Griffin - Solicitor  
Stuart Watson - Solicitor  
Tracey White - Solicitor  
Andrew Williams - Solicitor  
Marlies Hobbs - Solicitor



# Submission on behalf of the Lockhart River Aboriginal Shire Council to the Minister and Department for Natural Resources and Water on the proposal to declare the Lockhart Basin Wild River Area.

Submitted by p&e Law on 21 November 2008  
via email to [wild.rivers@nrw.qld.gov.au](mailto:wild.rivers@nrw.qld.gov.au)

## Contents of Lockhart River Aboriginal Shire Council's Submission

1	Summary of issues raised in Lockhart River Aboriginal Shire Council's submission on the proposed Wild River Declaration for Lockhart.....	2
1.1	Executive Summary.....	2
1.2	Definitions and acronyms used in this submission:.....	3
2	Waterways in Lockhart Basin have different integrity of natural values and levels of disturbance.....	3
3	Land Management Outcomes.....	5
4	Resourcing for Development Assessment and Land-use Planning.....	7
5	Resourcing for Property Development Plans.....	7
6	Access to Quarry materials.....	8
7	Other issues.....	8
7.1	Consistency with other Government Policy: 'Looking After Country Together' .....	8
7.2	Jetties, pontoons and landings on declared Wild Rivers .....	9
8	Conclusions – collation of LRASC's submissions.....	10

Submission\_LRASC\_Nov08 with Map



calrns po box 2337 calrns qld 4870 > suite 3, 204-206 mcleod street calrns qld 4870 > e 4041 7622 > f 4041 7633 > e calrnsreception@paelaw.com  
townsville po box 5652 townsville qld 4810 > suite 3, 559 finders street west townsville qld 4810 > e 4720 8400 > f 4720 8411 > e townsvillereception@paelaw.com  
sunshine coast po box 2015 sunshine plaza qld 4558 > 1 the esplanade cotton tree qld 4558 > e 5479 0155 > f 5479 5070 > e reception@paelaw.com

www.paelaw.com > ABN 23 975 003 841

# 1 Summary of issues raised in Lockhart River Aboriginal Shire Council's submission on the proposed Wild River Declaration for Lockhart

## 1.1 Executive Summary

Overall, the Lockhart River Aboriginal Shire Council would like to express its support for the Wild Rivers framework, however, it holds deep reservations in relation to the resourcing associated with the present proposal to declare the Lockhart Basin Wild River Area. It seems that the Queensland Government is moving away from its earlier commitments to provide resourcing for Indigenous Rangers as part of the implementation of the Wild Rivers legislative regime – a position on which many stakeholders' support for the wild river area declaration proposals were based.

The Wild Rivers legislative framework fails to acknowledge the successful custodianship role that traditional owners and indigenous people generally have taken with respect to natural resources and river systems for millennia, and that the adverse impacts to natural values of these river systems have occurred since colonisation. Similarly, it does not recognise the culturally important areas for traditional owners and Indigenous communities.

Nevertheless, the Wild Rivers regime imposes duties and other burdens on aboriginal local governments like Lockhart River Aboriginal Shire Council, as well as restricting economic development opportunities for communities that are widely recognised as being under-resourced and facing significant social and economic challenges.

This Submission summarises the Lockhart River Aboriginal Shire Council's concerns with a number of aspects of the proposal to declare the Lockhart Basin Wild River Area.

The table below summarises the issues raised in this Submission, and directs the reader to the further discussion of those issues within this Submission.

<b>Proposal to declare LBWRA submission issue</b>	<b>Further discussion at:</b>
Different levels of disturbance of waterways' natural values	Section 2
Land management outcomes	Section 3
Resourcing for Development Assessment and Planning	Section 4
Resourcing for Property Development Plans	Section 5
Access to Quarry materials	Section 6
Other issues – consistency with Government policy	Section 7
Conclusion – collated recommendations	Section 8



1.2 Definitions and acronyms used in this Submission:

'the Act' - *Wild Rivers Act 2005* (Qld).

'the Department' – Queensland Department of Natural Resources and Water.

'LRASC' – Lockhart River Aboriginal Shire Council.

'LBWRA' - Lockhart Basin Wild River Area.

**2 Waterways in Lockhart Basin have different integrity of natural values and levels of disturbance**

The purpose of the *Wild Rivers Act 2005* ('the Act') is set out at s.3(1) as:

*'The purpose of this Act is to preserve the natural values of rivers that have all, or almost all, of their natural values intact.'*

A key consideration explicitly stated in the Act's purpose is that the Act seeks to preserve natural values of rivers that have all, or almost all of their natural values intact.

The LRASC is concerned at how the proposed declaration of the LBWRA does not accurately reflect the differing extent to which waterways and their floodplains have been modified by current and past land uses with the associated loss of natural values that has already taken place.

Similarly, the declaration proposal groups the biodiversity values of the waterways at a broad scale when there are significant differences between localities. For example, bird biodiversity is highest on the waterways draining from the McIlwraith Range, while there is a lower diversity of birdlife associated with the Lockhart Basin waterways that emanate from catchments that are located to the south of the McIlwraith Ranges – yet the declaration proposal treats these areas as homogenous units with similar natural values. This approach is not consistent with the Act's purpose.

In the 1990s, the Australian Heritage Commission carried out an assessment of the levels of disturbance of river basins. Academic review of the Commission's data in Stein *et al* (2001) confirms that the Lockhart River basin is contrasted with other catchments with more natural values intact, and is classified as being moderately disturbed.<sup>1</sup>

---

<sup>1</sup> Stein, J.L, Stein J.A. and Nix, H. (2001) *International Journal of Wilderness* Vol 7(1), pp:20 -24. Refer to Figure at p.24 for comparative disturbance of Australian river basins.

---

In their assessment report titled *The Natural Heritage Significance of Cape York Peninsula*, the academics Mackey, Nix and Hitchcock have included a colour chart showing the comparative levels of disturbance of river systems on Cape York<sup>2</sup>, and we have included a copy of that chart, with the Lockhart River basin circled in red at the end of this Submission. It is clear that there is a significant level of disturbance in the Lockhart River basin.<sup>3</sup>

In our view, in order to comply with the requirements of the *Wild Rivers Act 2005*, the Department must set out the scientific assessment of the natural values for each nominated wild river rather than seeking to agglomerate these on a basin scale. Accordingly, for the Lockhart Basin, the assessment of the natural values and levels of disturbance for the Lockhart, Claudie, Nesbit, Chester and Rocky Rivers should have been addressed separately rather than rolling them into one coarse basin-wide assessment.

To comply with the Act, the Department must demonstrate that each proposed wild river does in fact have "all or almost all of its natural values intact" within the meaning of s.391) of the Act. In these circumstances, the Department must issue supplementary material to the public setting out the detailed assessment for each proposed wild river individually before the Department can proceed to declare a wild river.

In the Lockhart area, the Nesbit, Chester and Rocky are most likely to have all or almost all of their natural values intact. The situation however, is not so clear for the Lockhart and Claudie Rivers themselves (refer references cited above).

Relevantly, s.8(2)(a) of the *Wild Rivers Act 2005* requires that the Statement of Intent set out reasons for the proposed declaration of a Wild River. Accordingly, s.27(B) of the *Acts Interpretation Act 1954* will apply, and it requires that in giving reasons the Department must (a) set out the findings on material questions of fact and (b) refer to the evidence or other material on which those findings were based.

It is LRASC's submission that the Department's nomination documents do not meet this statutory requirement, and those reasons should be provided to the public prior to any decision by the Minister or his delegates to declare the proposed Lockhart Basin Wild River Area.

As presently drafted, the nomination documents fail the tests of rigor and objectivity and will need to be re-issued to ensure they provide sufficient evidence of the assessment of whether the waterways in the proposed LBWRA do indeed have all or almost all of their natural values intact.

---

<sup>2</sup> Mackey, B., Nix, H. and Hitchcock, P. (2001). *The Natural Heritage Significance of Cape York Peninsula*. Report produced for the Queensland Environmental Protection Agency.

<sup>3</sup> Refer to Figure 1 included with this Submission.



---

It is the LRASC's submission that better resolution and finer scale assessment and mapping of natural values is required to support the LBWRA so that the proposal is consistent with the purpose statement of the *Wild Rivers Act 2005*.

### 3 Land Management Outcomes

As extracted at Section 2 of this Submission above, the purpose of the Act is to preserve '*..natural values of rivers..*'.

A major impact on natural values of rivers in the Cape York region is the impacts arising from pest animals and weeds. Following the Australian Wildlife Conservancy's recent acquisition of Piccaninny Plains Station on the Archer River, the Conservancy's Executive Director has been reported as observing that:

*"What we need on Cape York is effective feral animal control, effective fire control, effective weed control.*

*You need to judge any proposal including Wild Rivers legislation on whether its going to deliver those things."*<sup>4</sup>

Consistent with this view, the Minister for Natural Resources and Water, issued a media statement dated 13 February 2008 which drew the link between the wild rivers program and funding for the appointment of indigenous rangers to protect the natural values of the wild rivers:

*Minister for Natural Resources and Water Craig Wallace today announced that 20 new indigenous rangers will be appointed to manage pristine and near pristine wild rivers in the Gulf of Carpentaria and Cape York. ....*

*Minister Wallace said the Bligh Government was employing the Wild River Rangers to work with landholders, communities and traditional owners to protect and promote the State's new wild river systems.*

*The program not only provides protection for the world-class natural values of the area but also creates much-needed full time jobs in remote Aboriginal communities, he said.*

*"These locally employed rangers will work with elders to preserve wetlands and ecosystems of high biodiversity or cultural significance....."*<sup>5</sup>

---

<sup>4</sup> Atticus Fleming, 18/11/08, ABC News: <http://www.abc.net.au/rural/qld/content/2007/s2423102.htm>

<sup>5</sup> Ministerial statement: <http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=56508>

---

The Minister again identified the link between resourcing for Indigenous Rangers to support the wild river declarations in his press release of 21 July 2008 as part of the proposal to declare the LBWRA.<sup>6</sup>

Similarly the Wilderness Society's campaign of support for the proposal to declare the LBWRA has been predicated on the assumption that resources for the appointment of Indigenous Rangers would be made concurrently with the declaration of the LBWRA:

*.... Mr Walker said if declared as Wild Rivers by the state government following the extensive community consultation period that will now occur, this would lead to many new jobs as well.*

*"Significant employment opportunities are attached [to] this initiative. Already 20 Indigenous Wild River Rangers have been employed across the Gulf of Carpentaria and Cape York Peninsula to look after these rivers, harnessing the great ecological knowledge among the local people.*

*"The Government has promised up to 80 more ranger jobs will become available in the future."*

The LRASC has approached the Department seeking to have resources allocated for the establishment of a Wild Rivers Ranger Program at the Lockhart River community as part of the present proposal to declare the LBWRA.

While attempting to be helpful, the Department's response has been that:

*Wild rivers rangers is certainly one opportunity to address land management. However it would not be appropriate for the Government to use the Rangers as a 'bribe' to garner support for wild rivers (for the same reason the Government can not threaten that they will not gain wild river ranger support if they actively oppose wild rivers).<sup>8</sup>*

The LRASC is extremely concerned that there seems to have not been any funding allocated for resourcing Indigenous Rangers at Lockhart River in conjunction with the

---

<sup>6</sup> Statement of Minister for Natural Resources and Water and Minister Assisting the Premier in North Queensland The Honourable Craig Wallace dated 21 July 2008 titled:- '20 indigenous rangers now protecting Queensland's wild rivers.' available at website:- <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=59312>

<sup>7</sup> The Wilderness Society Wild Rivers Campaign press release 'Protection for Cape York rivers a win-win for jobs and environment dated 23/08/08, available at: <http://wildrivers.org.au/media/protection-for-cape-york-rivers-a-win-win-for-jobs-and-environment-23-08-08/>

<sup>8</sup> Email advice dated 30 September 2008 from Kathleen Taylor Coordinator, Wild Rivers, Water Planning, Department of Natural Resources and Water.



---

proposal to declare the LBWRA, despite the expressed support of many of the stakeholders for the Wild Rivers declarations, including the Wilderness Society, being predicated on resourcing for Indigenous Rangers. It now appears that the State Government is seeking to move away from this position.

In this context, it is difficult for the LRASC to express support for the proposed LBWRA where additional obligations are imposed on LRASC, yet there are no associated tangible outcomes for improving land management to protect natural values of the river systems.

It is LRASC's submission that provision of resources for land management activities including the management of fires, pest animals and weeds, is integral to managing and protecting the natural values of rivers that are sought to be protected under the *Wild Rivers Act 2005*.

#### **4 Resourcing for Development Assessment and Land-use Planning.**

LRASC wants to have effective land use planning in its local government area. However, to date the achievement of this objective has been severely hampered by the lack of LRASC's capacity to undertake planning and development assessment functions.

LRASC is concerned that the LBWRA will have the effect of imposing additional development assessment obligations on the Council in its role as the local government in circumstances where it currently does not have the capacity to implement the existing requirements of the Integrated Development Assessment System ('IDAS') established by the *Integrated Planning Act 1997*.

It is understood that the Department is maintaining the position that the declaration of a wild river area does not impose additional permitting requirements and minimises increased paperwork for local governments, however, LRASC disagrees.

This is exacerbated in circumstances where LRASC is already under-resourced in terms of being able to implement the existing layers of the IDAS.

The LRASC submits that substantial resources including additional personnel and training must be made available to it for the purposes of development assessment and land use planning as part of any decision to declare the LBWRA.

#### **5 Resourcing for Property Development Plans**

The framework of the Act provides a mechanism for applicants to obtain approval of activities that would otherwise be caught by the prohibitions and regulatory constraints of the declared Wild River Area in the form of Property Development Plans (PDPs). PDPs must be prepared in accordance with prescribed requirements and submitted to the Minister for approval prior to being implemented.

---

Presently, LRASC lacks the capacity to develop and prepare PDPs, and as a result would likely need to engage consultants to do so at further cost.

The approval process for PDPs can be convoluted and in some instances, an approval of a PDP may warrant amendment of the Wild River Declaration, with its accompanying public notice. The LRASC is concerned that the PDP process will further delay economic development initiatives in its local government area.

As well as the LRASC's lack of capacity to develop PDPs, it is noted that the Department has imposed a fee for processing an application to approve a PDP.

As part of the proposal to declare the LRBWRA, provision should be made by the Department for:

1. assisting LRASC to develop PDPs as may be required to support future economic development activities in the area; and
2. financial assistance to cover PDP assessment fees (or waiver of fees).

## **6 Access to Quarry materials**

The LRASC has for sometime been involved in the management and repair of the road network in its jurisdiction.

It appears that the LRASC has yet to be granted the necessary permissions to support existing quarrying operations. This is unsurprising given its remote location and the lack of resources that have been allocated by successive governments to address regulatory compliance given the broader social and economic problems facing remote Cape York communities.

In the event that the LRBWRA is declared as proposed, it is likely that the LRASC will have difficulty in sourcing appropriate quarry materials from existing pits for the purposes of construction and cement-making for community purposes.

As part of the proposal to declare the LRBWRA, the Department should assist the LRASC to obtain access to local quarry materials, at nominated sites, for general construction activities and local government works.

## **7 Other issues**

### **7.1 Consistency with other Government Policy: 'Looking After Country Together'**

The following information about the 'Looking After Country Together' strategic policy has been extracted from the Department's website:



---

*Looking After Country Together is a whole-of-government strategic policy framework aimed at improving Indigenous participation in caring for country. The framework's vision is: 'by 2011 Aboriginal and Torres Strait Islander Queenslanders will have more opportunities to access and manage their traditional land and sea country, in partnership with governments and other stakeholders'.*

*The Department of Natural Resources and Water (NRW) is the lead agency and is responsible for implementing the strategy with other government agencies and stakeholders.*

*Looking After Country Together has three objectives:*

- *increased Aboriginal and Torres Strait Islander access to traditional land and sea country*
- *stronger Aboriginal and Torres Strait Islander involvement in the management of traditional land and sea country*
- *stronger Aboriginal and Torres Strait Islander involvement in and influence on broader natural resource planning and policy development.*

*The strategy recognises that past dislocation from land and sea country has contributed to Indigenous social, economic and cultural disadvantage. It is expected that greater access to, and management of, traditional land and sea country will improve the overall wellbeing of Indigenous Queenslanders, and achieve better natural resource management outcomes.<sup>9</sup>*

The Wild Rivers legislative regime fails to recognise cultural important areas for traditional owners and Indigenous people generally, and such areas should be recognised as part of any proposal to declare a wild river area.

It is LRASC's submission that the lack of resourcing associated with the additional obligations that will be placed on LRASC as a result of the Declaration of the Lockhart River Basin Wild River Area is not consistent with the 'Looking After Country Together' strategic policy that is also administered by the Department. The declaration of Wild River Areas on the Cape needs to be implemented consistently with the 'Looking After Country Together' strategic policy. The Wild River declaration needs to recognise traditional owner cultural values and important cultural areas.

## 7.2 Jetties, pontoons and landings on declared Wild Rivers

---

<sup>9</sup> Website: <http://www.nrw.qld.gov.au/indigenous/country/index.html>

---

The Wild Rivers regime does not make adequate provision for access to outstations and potential ecotourism sites.

The prohibition on private jetties and boat ramps is highly restrictive on the social and economic development opportunities for remote communities on Cape York, and some provision needs to be made to allow necessary access infrastructure to be installed.

The LRASC appreciates that the motivation behind such a prohibition might be to avoid the establishment of Gold Coast canal-style private pontoons, however the effect of the blanket prohibition is to prevent establishment of landing accesses for outstations and National Parks/ ecotourism areas from declared wild rivers.

The LRASC submits that the prohibition on jetties and landings should be modified so that these can be permitted or are allowable in certain circumstances. Failure to do so will have impacts on safety in high-risk crocodile areas, as well as restrict economic development activities.

## **8 Conclusions – collation of LRASC's submissions**

It is the LRASC's submission that better resolution and finer scale assessment and mapping of natural values is required to support the LBWRA so that the proposal is consistent with the purpose statement of the *Wild Rivers Act 2005*.

The LRASC submits that substantial resources including additional personnel and training must be made available to it for the purposes of development assessment and land use planning as part of any decision to declare the LBWRA.

As part of the proposal to declare the LRBWRA, provision should be made by the Department for:

1. assisting LRASC to develop PDPs as may be required to support future economic development activities in the area; and
2. financial assistance to cover PDP assessment fees (or waiver of fees).

As part of the proposal to declare the LRBWRA, the Department should assist the LRASC to obtain access to local quarry materials, at nominated sites, for general construction activities and local government works.

It is LRASC's submission that the lack of resourcing associated with the additional obligations that will be placed on LRASC as a result of the Declaration of the Lockhart River Basin Wild River Area is not consistent with the 'Looking After Country Together' strategic policy that is also administered by the Department. The declaration of Wild River Areas on the Cape needs to be implemented consistently with the 'Looking After



---

Country Together' strategic policy. The Wild River declaration needs to recognise traditional owner cultural values and important cultural areas.

The LRASC submits that the prohibition on jetties and landings should be modified so that these can be permitted or are allowable in certain circumstances. Failure to do so will have impacts on safety in high-risk crocodile areas, as well as restrict economic development activities.

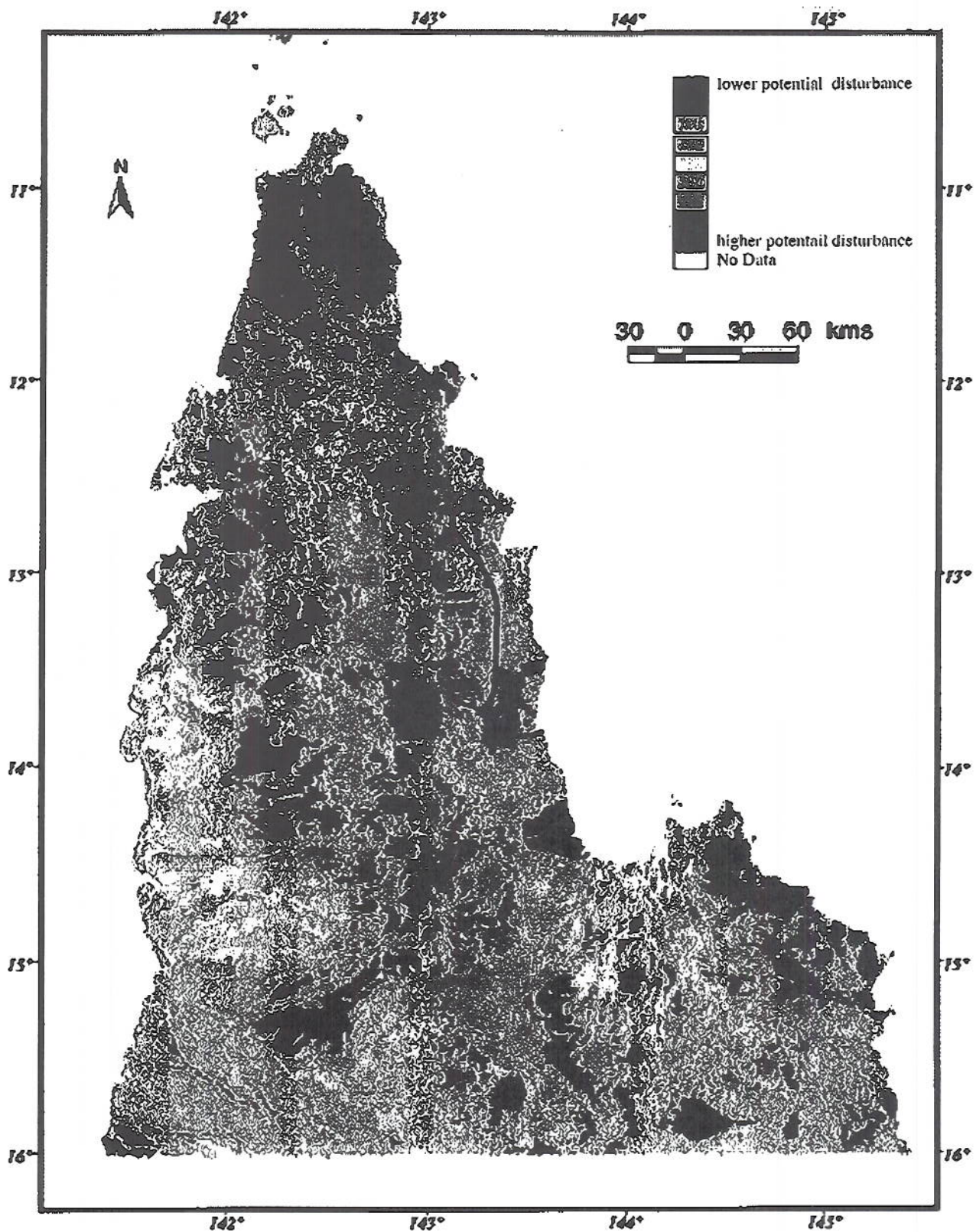


Figure 1 showing comparative disturbance of Cape York river systems with Lockhart River Basin circled in Red. Sourced from Mackey, B., Nix, H. and Hitchcock, P. (2001). *The Natural Heritage Significance of Cape York Peninsula*. Report produced for the Queensland Environmental Protection Agency.