

Chuulangun Aboriginal Corporation

Submission to

**House of Representatives
Standing Committee on
Economics - Inquiry into
Indigenous economic
development in Queensland and
review of the Wild Rivers
(Environmental Management)
Bill 2010**

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SUMMARY

The Wenlock Basin Wild River Area took effect on 4 June 2010 and the Pascoe River has been targeted for nomination under the Queensland Wild Rivers Act. In May 2009 the Chuulangun Aboriginal Corporation presented a submission to the Queensland government supporting the Wenlock Basin declaration and we will also support a wild river declaration for the Pascoe Basin. As outlined in our submission to the Queensland government, and our submission to last year's Senate Inquiry into the Wild Rivers (Environmental Management) Bill, wild river areas on our homelands are consistent with our economic development, homelands development and land management aspirations. The Wild Rivers Act in no way diminishes our right or ability to live and work on, undertake sustainable economic development, and control the management of our traditional lands and waters.



Upper Wenlock River near Chuulangun (Photo: N.Michail)

PART A – SUBMISSION CONTEXT

1. Background to the Chuulangun Aboriginal Corporation

Particular Northern Kaanju families are Traditional Custodians¹ for a large part of the upper Wenlock and Pascoe Rivers. The traditional lands of these families encompass 840,000 hectares covering much of the Pascoe, Wenlock, Archer and Olive River catchments – stretching through the Lockhart Valley, westward from the headwaters of the Wenlock and Pascoe Rivers, across the Peninsula to and including Embley Range and south to the Archer River. The Kuuku I'yu (Northern Kaanju) Ngaachi continues north along the Wenlock River to Schramm Creek then down to the southern bank of the upper Olive River (see map in Attachment A).

Kuuku I'yu Northern Kaanju governance

Importantly, the Kuuku I'yu Northern Kaanju worldview, particularly governance and cosmology, underlie all aspects of Northern Kaanju relationships with Ngaachi² including land tenure and ownership, land management practices and regimes, and our rights and obligations in regard to the management of Ngaachi. To Kuuku I'yu Northern Kaanju people living on homelands 'governance' refers to the system of territoriality found in the region's Aboriginal law. Our use of governance refers to the division of country into different 'named Ngaachi' (or estates), each with their associated bloodline or family. Thus bloodline ties people to particular country, language and resources, and to the species whose 'Stories' lie in their Ngaachi³. A number of these named Ngaachi include Chuulangun, Malandaji, Pa'un, Muula, Puul'u, Kathu Pathu, Nhanthanji and Iipajiko. Each estate and its associated bloodline(s) is associated with a particular Story, for example, Malandaji is the Story for 'Lightening and thunder, coming of wet season' and Chuulangun for the frilled-neck lizard. Pianamu (Rainbow) is the overarching Creator Being along with Iwa'I (Crocodile).

Thus particular families or bloodlines 'come from' or are connected to one or more particular clan estates. Kaanichi⁴ people determine their connection to particular country by way of their patrilineal descent from particular Kuuku I'yu Northern Kaanju ancestors. Thus according to Kuuku I'yu Northern Kaanju governance a person traces their bloodline through their father. It is understood by many local families that while someone may be Northern Kaanju due to their descent from a particular Northern Kaanju ancestor connected to a particular clan estate, they do not necessarily have the right to 'speak for' the whole of the Kuuku I'yu Northern Kaanju homelands. Rather they have connection to a particular clan estate (or estates) within Kuuku I'yu Northern Kaanju homelands, and depending on their position (which is determined by the nature of their descent from a Northern Kaanju ancestor and that particular ancestor's position) they may have a right to speak for that particular clan estate (or estates). At the same time it is recognised that there are particular families,

¹ A Traditional Custodian is an Indigenous person who is a direct descendant through their ancestral bloodline and according to the Indigenous governance of that certain area to the ancestors and Stories belonging to the certain area of lands and waters in question.

² Ngaachi refers to traditional country or homelands.

³ See Smith, B. and D. Claudie 2003. 'Developing a land and resource management framework for Kaanju homelands, central Cape York', *CAEPR Discussion Paper No. 256*, Centre for Aboriginal and Economic Policy Research, The Australian National University, Canberra: available at: http://dspace.anu.edu.au/bitstream/1885/39953/2/2003_DP256.pdf and Claudie, D 2007. 'We're tired from talking': The native title process from the perspective of Kaanju people living on homelands, Wenlock and Pascoe Rivers, Cape York Peninsula, Chapter 5 in Smith, B and F. Morphy (Eds). *The Social Effects of Native Title. Recognition, Translation, Coexistence. Research Monograph No. 27*, Centre for Aboriginal and Economic Policy Research, The Australian National University, Canberra, available at: http://epress.anu.edu.au/caepr_series/no_27/pdf/ch05.pdf

⁴ Kaanichi refers to 'inland' – the highlands, mountains and plateaus.

and importantly, certain individuals within these families who, due to their descent from focal male Kuuku I'yu Northern Kaanju ancestors with authority, have greater authority and standing in terms of their right and obligation to speak for country and particularly to speak for the whole of Kuuku I'yu Northern Kaanju homelands. Essentially, there is a hierarchy of authority and connection to country that is determined by the nature of a person's descent and from whom they are descended. Thus a person descended from a focal male ancestor through the male line would have greater authority to speak for country and a greater area of country over which that authority is held. Despite a significant period of disruption by colonialism, forced removals from homelands, and decades of centralisation in missions, reserves and later townships and communities, Kuuku I'yu Northern Kaanju people living at Chuulangun assert that this system of governance is as relevant today as in the pre-colonial past.

The Chuulangun Aboriginal Corporation (Chuulangun AC) based on the upper Wenlock River represents the interests of the proper Traditional Custodians, being the descendants of George Moreton Snr, for the Kuuku I'yu Northern Kaanju Ngaachi. Chuulangun AC is the peak body for protection of the environment and sustainable homelands and economic development for the Kuuku I'yu Ngaachi. It is providing an effective model of independent Traditional Custodian driven economic development within a land management framework and is supporting collaboration between Indigenous and non-Indigenous land owners and managers committed to living and working on country. The upper Wenlock and Pascoe Rivers are not only home for our families, other Traditional Custodians and our neighbours, but are also integral to our economic, social, spiritual and cultural well-being.



Freshwater turtle, *Elseyia latisternum* (Photo: R. Lloyd)

Governance arrangements and objectives

Chuulangun Aboriginal Corporation was formed in 2002 under the Aboriginal Councils and Associations Act (Commonwealth). In 2009 we transferred to the Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act 2006. The structure of our corporation is an extension of Indigenous governance – we have a small membership (six members, four of whom are directors) which is based on the family/clan-based group and Indigenous bloodline. Our Rule Book (or Constitution)⁵ clearly sets out the eligibility requirements for membership of our corporation⁶. A recent examination of the affairs of our corporation by the Office of the Registrar of Indigenous Corporations reported that “the standard of corporate governance at the corporation is quite sound and that the corporation is being satisfactorily managed”.

Our objectives are far reaching and include:

- Setting up and operating homelands-based community businesses that incorporate sustainable land management principles,
- Developing homelands-based projects, education and training that will build the self esteem of our members and our people,
- Promoting improvements in the health, and the economic and social well-being of our members as well as that of the wider Aboriginal community,
- Encouraging our own people as well as the wider Aboriginal community to return to their homelands and become more self-determining and self-reliant,
- Promoting the principle that one must live on their particular homeland in order to have a say in its management,
- Working in collaboration with neighbouring land managers to support sustainable land management, biodiversity protection and sustainable livelihoods on country,
- Managing the Kuuku I'yu (northern Kaanju) Ngaachi (Homelands) sustainably for the protection of biocultural diversity, and
- Having greater access and control over the funds and resources available to help meet the above-mentioned objectives.

Foremost, our incorporation was fuelled by our frustration at the inability of regional and sub-regional Aboriginal bodies (particularly our Native Title Representative Body) to help us meet our land and resource management, homelands development and economic development aspirations. Incorporation was seen as a strategy for the wider recognition of Kuuku I'yu Northern Kaanju governance and assertion of the primacy of Indigenous land tenure and our authority as Traditional Custodians and land and resource managers.

Our business is land management. We are living and working on our traditional lands – we are speaking from our homelands. We aim to support Traditional Custodians who have similar objectives and have also made the commitment to live and work on their homelands that they have affiliation with under Indigenous governance and bloodline. For example, we support and provide advice to the

⁵ Available at: <http://www.oric.gov.au/Document.aspx?documentID=186962&concernID=104024>

⁶ An individual who is eligible to apply for membership must be:

- (a) at least 18 years of age and an Aboriginal and Torres Strait Islander person, and
- (b) permanently resident at Chuulangun or on Kuuku I'yu Ngaachi or has made a commitment to the principles of living permanently at Chuulangun or on Kuuku I'yu Ngaachi, or
- (c) at least 18 years of age and is a non-Indigenous partner of a member and meets the eligibility requirement at rule (b).

Angkum Aboriginal Corporation on the east coast of Cape York (south of Lockhart River) in regard to the establishment of an Indigenous Protected Area (IPA) and other projects on their homelands, and we are currently auspicing the Nyacha Kumopinta Aboriginal Corporation based on upper Peach Creek (Archer River Basin) in relation to a Queensland government funded Green Army project.

2. Chuulangun - Indigenous economic development on homelands

Our ancestors were forcibly removed from homelands during the Protection and Assimilation eras of government and were centralised at Lockhart River mission (later Lockhart community), Coen and more distant locations including Cowal creek (Injinoo) on the tip of Cape York and Palm Island. Despite severe policies which restricted the movement of Aboriginal people a number of our Old People including my grandfather and father maintained a presence on homelands during their work in the pastoral industry. In the late 1980s a permanent community was reestablished at Chuulangun on the upper Wenlock River. This was made possible by the commitment of a number of our Old People to reoccupy their homelands, resume land management regimes such as fire management and protection of important cultural sites, encourage younger generations to reconnect with their country and culture, and live a healthier life on homelands. In 2001 a large part of our homelands (some 240,000 ha) became Aboriginal Freehold under the Mangkuma Land Trust (Queensland Aboriginal Land Act). I am a member of the Mangkuma Land Trust and my name is listed as one of the Trustees on the Deed of Trust and representative for the Northern Kaanju-Kaanichi people. A further 235,000 ha of Northern Kaanju Ngaachi is under Native Title claim and tenure resolution processes with the Queensland government, and some 365,000 ha is held under various other tenures including pastoral lease and homestead lease.

In 2009 the Kaanju Ngaachi Wenlock and Pascoe Rivers Indigenous Protected Area was declared over 197,500 ha of our traditional country. The IPA is managed by the Chuulangun Aboriginal Corporation on behalf of the proper Traditional Custodians. The funding we have received under the IPA program has been used to undertake a range of land management activities in the IPA including weed and feral animal control, protection of significant sites, management of third parties and biodiversity surveys. Funding for the IPA has resulted in benefits not only for local Indigenous and non-Indigenous people but also for all Australians in terms of appropriate management of a bioculturally diverse part of the Australian landscape.

In 2007 Chuulangun AC submitted an application to the Working on Country program which was successful. From 2007-12 we have funding for the employment of three rangers under this program. We also have funding under the Wild River Rangers Program for wages and operating costs for a further three rangers for the management of the IPA and the wider upper Wenlock and Pascoe catchments. In 2008-09 we received funding under the Skilling Queenslanders for Work (SQW) program to employ 15 Indigenous people for 26 weeks. The participants undertook land management based work on homelands and received accredited training in Conservation and Land Management (CALM). At least five of these participants have been employed in ranger positions since the project. We hosted a second SQW project in 2009-10 where we employed three Indigenous and three non-Indigenous local people over 26 weeks under the Green Army program. The participants undertook accredited training in CALM and two of the participants are now employed as full-time rangers with the Chuulangun Aboriginal Corporation. This year we are undertaking another Green Army project involving ten Indigenous participants, and we are also auspicing a project for another Indigenous organisation (noted above).



Chuulangun Rangers, Green Army participants and ICV volunteer undertaking a training module at Chuulangun
(Photo: Chuulangun Aboriginal Corporation)

It is our aim, with the support of the various government programs and local Indigenous people and organisations, to help train and capacity-build people to take up permanent full-time positions in the environmental services industry. Importantly, land management and conservation is increasingly being seen as a viable and sustainable industry in Australia's remote regions, with support from such programs as Working on Country and Indigenous Protected Areas under the Commonwealth government, and Wild Rivers under the Queensland government.

The Wild Rivers Act is consistent with our homelands and economic development aspirations and in no way impedes our current or future plans for economic activities on our traditional lands. We say this with authority as we are one of the very few Traditional Custodian groups and organisations that are actually living and working, and based on their traditional lands. We have a plan in place for the economic and homelands development of our homelands. Importantly our plan is for sustainable development. Large-scale developments such as mining, large-scale clearing, and construction of dams is clearly not sustainable and is definitely not consistent with our principles and protocols as Indigenous land managers. We have no plans for large-scale development because unsustainable practices are not allowed under the Indigenous governance and land management principles set down by our ancestors.

3. Our involvement with the Wild Rivers program

Our involvement with the Wild Rivers program began in 2006. It was my decision then as it is with many issues that affect my homelands and people that I should be proactive and find out about the legislation including what it would mean in terms of recognition of proper Indigenous governance and land management. There was the potential that the Wenlock and Pascoe Rivers would be declared under the legislation and I needed to see where we as Traditional Custodians could best benefit. From the start of the wild rivers initiative I discussed the issue with Traditional Custodians in the region to keep them informed about the potential for their Ngaachi to be declared as wild river areas under the legislation. I also liaised with the Queensland government to keep informed about the legislation and the wild river rangers program and was also involved in advising the government on the development of the Indigenous guide to wild rivers. I recognised that the wild rivers program was consistent with our homelands development, economic development and land management aspirations for our Ngaachi.

The Queensland government saw my commitment and that of other Traditional Custodians based at Chuulangun and recognised that our commitment was well grounded in Indigenous governance and land management. They also recognised the legitimacy of the Chuulangun AC as a viable and accountable organisation in which to invest funds from the new wild rivers program.

Importantly, Indigenous people will more likely accommodate and embrace government measures where they are consistent with their rights and interests. For Traditional Custodians to agree with and benefit from government policies there has to be reform in the way Indigenous rights are recognised (including under legislation), and in the relationship between government, Indigenous representative bodies and Traditional Custodians.



Chuulangun Ranger Farren Port spraying Sicklepod (Photo: S. Claudie)

4. Senate Inquiry into the Wild Rivers (Environmental Management) Bill 2010

In our 30 March 2010 submission to the Senate Legal and Constitutional Committee Inquiry into the Wild Rivers (Environmental Management) Bill 2010 [No. 2] we supported the Wild Rivers Act 2005 and opposed the Wild Rivers (Environmental Management) Bill 2010⁷.

I appeared as a witness before the Senate Committee in Cairns on 13 April 2010 where I gave evidence supporting the wild rivers legislation. Senator Heffernan asked questions about the Chuulangun AC and our involvement with The Wilderness Society. This was followed by Questions on Notice from Senator Heffernan arising from the Committee's hearing on 13 April 2010 (Attachment B). The questions surrounded membership of the Chuulangun Aboriginal Corporation, the funding we had received from 2006 to 2009 and the possible links of the increase in funding with the wild river declarations, and our involvement with The Wilderness Society. We responded with a letter noting that the questions were not relevant to the Inquiry into the Wild River legislation and it would be unhelpful to the Inquiry to reply with answers⁸. There seems to be an ongoing campaign from the anti-Wild Rivers agenda to attempt to undermine the activities and the reputation of the Chuulangun AC and myself. This has been further fuelled during the Cairns hearing for this House Inquiry as discussed at 6 below.

5. North Queensland Canberra Delegation

I was a member of a delegation of seven Traditional Custodians from Cape York Peninsula and the Gulf of Carpentaria who in late September 2010 visited Canberra to speak with anyone who would meet with us about Tony Abbott's anti-Wild Rivers bill and the native title issues surrounding it. One of the main points we wanted to make was that there are alternative and supportive views of wild rivers. Often the only perspective that is heard in the media is the view of Noel Pearson and his supporters.

During our visit to Canberra we made the following points:

- Our support for sustainable development and the creation of employment opportunities for Aboriginal people.
- Mr Abbott's legislation of itself will do nothing to create employment, support improved livelihoods for people, or protect Heritage.
- We call on Parliament to reject Tony Abbott's anti-Wild Rivers Bill and move to a proper recognition of the principles of the UN Declaration on the Rights of Indigenous Peoples
- Noel Pearson is not our representative and we can speak for ourselves.

One of the outcomes of our meetings with the Hon Jenny Macklin MP was a draft Terms of Reference for this House of Representatives Economics Committee Inquiry. It should be noted that the original media release included a further dot point which has been omitted from this Inquiry, being,

- The Committee should also make all efforts to ensure a broad range of views are communicated to the Committee, especially those of Indigenous people. In seeking these

⁷ Our submission (No. 10) is available for download from the Australian Parliament House website at <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=e2526ee4-b5b9-4814-8d9e-721a7bee598e>.

⁸ This letter is available at: <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=2bb527b7-6f0f-4aa2-9f12-4809d675d952>

views, the committee should have regard to the practical issues which Indigenous people may have in putting those views before the Committee.

Members of the North Queensland Delegation sent a letter to the House of Representatives Committee Secretary noting this omission and requesting for the need to extend the time available for submissions to the Inquiry. Extensions have been made on the timeframe for submissions to the Inquiry but there are questions about the transparency of the process particularly the ability of the Committee to ensure a wide range of views are communicated. In regard to the omitted dot point it should be noted that not all Indigenous people have the time, skills or resources to prepare a submission to an Inquiry such as this one. Often people have other priorities and are too tied up with day-to-day living (which can be very difficult in remote communities) to speak up about issues that they have an opinion on, are concerned about, or do not fully understand. Organisations such as the Balkanu Cape York Development Corporation and its affiliates the Cape York Land Council and Cape York Partnerships take advantage of this by spreading misinformation and rallying support in remote communities to fuel the anti-wild rivers agenda.

6. Public Hearings

It is important to respond to some of the comments made at the recent hearings held in Cairns and elsewhere in regard to this and last year's Senate Inquiry. At the Cairns hearing for this Inquiry held on Monday, 29 December 2010, Mr Gerhardt Pearson of Balkanu Cape York Development Corporation made reference to me and my corporation, the Chuulangun AC⁹. Mr Ciobo broached the subject of the full-page advertisement the Queensland government placed about the success of wild rivers. He noted that based on Mr Pearson's testimony "it would appear that much of that [the success of wild rivers] is conjecture" (page 10). Mr Ciobo asked Mr Pearson if he could highlight for the committee some of the differences between his views and the views of other groups that have different views to his, and the reasons behind those differences (page 10). In response Mr Pearson talked about three of the people from Cape York who appeared on the advertisement including me. Instead of answering the question put to him, Mr Pearson made negative statements about Chuulangun AC in regard to the funding we have received from government and the beneficiaries of funding, our corporation's membership, our involvement with The Wilderness Society, and my traditional connections to country.

Chuulangun AC has received funding from both government and non-government sources since its incorporation in 2002. An increase in income from \$20,000 in 2003 to \$1M in 2010 is a significant achievement of which we are proud. The funding has seen a range of economic, social, cultural and environmental benefits for Chuulangun and the wider Kuuku I'yu Northern Kaanju Ngaachi. It has also seen benefits for neighbouring communities including training, employment and capacity-building for local people. It is stated clearly in our Rules that in order to benefit directly from the activities of the Chuulangun AC one has to be *on country* and be committed to living and working on country. To achieve real improved livelihoods and to achieve autonomy Indigenous people must move away from centralised communities and reestablish themselves on their traditional country. Wherever possible we have contracted local businesses to undertake various land management activities on the IPA (e.g. feral cattle musters) thereby supporting the local economy. Further, through

⁹ Transcript available at: <http://www.aph.gov.au/hansard/reps/committee/R13379.pdf>

management of the IPA we are providing benefit for all Australians by protecting bioculturally diversity for future generations.

In response to Gerhardt Pearson's comments about our corporation's members, our current membership and directorship complies with our Rules and the CATSI Act and is not the subject of this Inquiry. Similarly, he and others' comments about my traditional connections with country are completely groundless and are an affront to my identity as a Kuuku I'yu Northern Kaanju Traditional Custodian. Gerhardt Pearson has made these jibes at me and the Chuulangun AC in an attempt to somehow support his anti-wild rivers argument. One would have to question his motives when he is using a Commonwealth government Inquiry as a forum to vent his opposition to me and the Chuulangun AC.

Our involvement with The Wilderness Society (TWS) has also been referred to by anti-Wild Rivers supporters, including Gerhardt Pearson at the Cairns hearing and Noel Pearson in various media reports¹⁰ following my visit to Canberra in September 2010 with the North Queensland delegation. Chuulangun AC and TWS have a Cooperation Agreement¹¹ which was ratified in June 2005. In the Agreement TWS recognise the Traditional Owners for the Northern Kaanju Ngaachi, and we accept that we share a responsibility to preserve, protect and manage the environment for the benefit of future generations. TWS walks behind us (not in front of us) in support of our aspirations and the protection of the natural and cultural values of Kaanju Ngaachi. TWS helped cover travel and accommodation costs and provided logistical support for the delegation on our trip to Canberra in the spirit of our Cooperation Agreement.



Blue tongue lizard, Chuulangun (Photo: N. Michail)

¹⁰ See for example <http://www.abc.net.au/news/stories/2010/10/01/3026814.htm>

¹¹ Available at: http://www.indig-enviro.asn.au/CooperationAgreement-TWS_Chuulangun.pdf

PART B – EXISTING ENVIRONMENTAL REGULATION, LEGISLATION IN RELATION TO MINING AND OTHER RELEVANT LEGISLATION INCLUDING THE *WILD RIVERS ACT (QLD) 2005* AND THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

There are a multitude of existing environmental regulation, legislation in relation to mining and other relevant legislation that impact on the lives and lands of Indigenous people. The Wild Rivers Act (Qld) 2005 is one that does *not* act to the detriment of Indigenous people's rights and interests, indeed, it recognises and supports Indigenous people both in terms of custodianship of country and provides resources and employment security for the management of country. Other submissions to this Inquiry including from the Queensland government and The Wilderness Society address the various other regulations and legislations in depth. Our submission will concentrate mainly on the Native Title Act. The North Queensland Delegation that visited Canberra in late September 2010 went with the message that it is the Commonwealth Native Title Act that needs serious reform, not the Queensland Wild Rivers Act.

7. Native Title and ongoing law reform

The legal framework for Traditional Custodians to realise their land rights includes Native Title law and other statutory land rights, such as the Queensland Aboriginal Land Act. Both are limited in their scope and in need of review. Both the Commonwealth and State governments need to embrace and advocate the need for reform and raise the bar on Aboriginal land rights and interests with better procedures, and guaranteed rights to negotiate at the outset of policy development.

The Native Title Act (NTA) seriously limits the right of Traditional Custodians to use and develop their land and associated resources economically in order to sustain their people and land into the future. As noted in the 2009 Native Title Report from the Australian Human Rights Commission the recognition of commercial rights is not clearly provided for in the NTA despite statements by government that Indigenous communities should be using their native title rights to support economic development¹².

There is also need for better legal structures for Aboriginal land ownership. While principles such as 'inalienable title' are important reflections of Aboriginal relationships to homelands, the land trust model under the Aboriginal Land Act (ALA) does not build traditional custodianship and clan estates into the governance arrangements, and it can work against autonomy for people on country. There is a need to hasten reform of the ALA to address this. In addition, the duplication and inconsistency between land trusts and PBCs (Prescribed Bodies Corporate) under Native Title should be addressed and a better fit achieved between the requirements of traditional and contemporary governance.

Very little legislation, especially regarding land and natural and cultural resource management, is shaped with input from Traditional Custodians, and it rarely reflects their rights and interests or their autonomy and Indigenous social structures. There is a need to engage Traditional Custodians and their

¹² Aboriginal and Torres Strait Islander Social Justice Commissioner. 2009. Native Title Report. Australian Human Rights Commission: 108.

chosen representatives in review of legislation to better reflect Traditional Custodians rights and interests in social, economic and environmental matters.

8. Other relevant acts

Other relevant acts that need reform are mining acts and special agreements acts. In regard to the Wenlock Basin Wild River Area, special water allocation rights have been given to mining companies, namely Rio Tinto Alcan at Weipa on the west coast of Cape York Peninsula. Such Special Agreement Acts are inconsistent with the wild river declarations, and should be rescinded. There is a need to reform the Minerals Act to recognise Traditional Custodians rights to and management of country. Ideally, the recognition of Indigenous rights and interests in land, water and resources should be incorporated into all Acts of government. Hopefully, the decision of the Gillard government to work towards the formal recognition of Indigenous people in the Constitution will be the first step towards ensuring this happens.



Mountain spring-fed lagoon, upper Wenlock River (Photo: Chuulangun Aboriginal Corporation)

PART C – THE IMPACT WHICH LEGISLATION IN THE FORM OF THE WILD RIVERS (ENVIRONMENTAL MANAGEMENT) BILL 2010 WOULD HAVE IF PASSED

The current Wild Rivers (Environmental Management) Bill 2011(the Bill) is not unlike the Wild Rivers (Environmental Management) Bill 2010 that the Senate referred to the Senate Legal and Constitutional Committee Inquiry in February 2010. The Chuulangun AC opposed the Bill and was supportive of the Wild Rivers legislation as discussed in our submission to last year’s Senate Inquiry. Our opposition to the anti-wild rivers agenda as discussed in that submission still stands, but there are a number of concerns that need to be stressed. Primarily these concern the Bill being totally unworkable and a threat to the viability of the Wild Rivers program.

9. Consent, agreement, owner?

The Bill makes allowance for declaration of a wild river only with the consent or ‘agreement’ of ‘owners’. Further, the Bill states: ‘The development or use of Aboriginal land in a wild river area cannot be regulated under the relevant Queensland legislation unless the owner agrees in writing.’ There is no clarity in the Bill about what is meant by the concepts ‘consent’, ‘agreement’ and ‘owner’? Consent and agreement are not properly defined, and the Bill provides eight different definitions of ‘owner’. Further it does not indicate that the lack of consensus among owners is acceptable. Therefore if one owner did not want a wild river declaration and the majority did want a declaration, the dissenting owner would have the power of veto over the majority, rendering consent unworkable and a wild river declaration impossible.

The timeframe of six months provided for in the Bill for a new declaration to be made with the agreement of the owner of the Aboriginal land is unworkable. If an agreement is not made in six months, the declaration will lapse. The Bill notes that agreement be made by way of the ILUA process under the NTA and the National Native Title Tribunal states a six month ‘cooling off’ period after an ILUA application is submitted, so the Wild River declaration proposal would lapse before the agreement making process ever began.

In a number of river catchments there are as many Traditional Custodian groups, leaseholders and interests in land, as there are types of land tenure. For example, for the Wenlock River there is Aboriginal Freehold land, homestead lease and pastoral lease in the upper reaches of the river and native title claim land, private land, more pastoral lease, mining lease and Deed of Grant in Trust land downstream. On top of this layer of government tenure there is Indigenous land tenure – Northern Kaanju Ngaachi in the upper Wenlock, then Atambaya, Thanakwithi and Teapathiggi downstream, as well as non-Indigenous owners and leaseholders. Further, there are a range of ‘owners’ according to the Bill’s definition, with trustees under the Mangkuma Land Trust and native title holders under the native title claim land. It would be impossible to get ‘agreement’ amongst all these interests, whatever ‘agreement’ might mean, within the six month timeframe specified.

Accordingly, already declared Wild River areas would be revoked thereby removing their protection and undermining the reason the Wild Rivers legislation was introduced – to protect intact river systems and their associated social, cultural, ecological and heritage values.

At the Canberra hearing of the Senate Legal and Constitutional Committee Inquiry into the Wild Rivers (Environmental Management) Bill Noel Pearson responded to a question from the chair about

seeking agreement from diverse groups of traditional owners in regard to a wild river declaration¹³. Mr Pearson responded by quoting the Gas Pipeline project Indigenous Land use Agreement (ILUA) as a good example of groups voluntarily getting together and making common land use agreements sensibly and cooperatively. This statement is unsubstantiated given that not all groups or individuals on the ground consented to the ILUA arrangements. The proposed gas pipeline runs through Northern Kaanju Ngaachi of which I am a Traditional Custodian. A number of Traditional Custodians including myself did not sign the Agreement. The process of decision-making and agreement-making was based on the flawed processes of the NTA which empower Native Title Representative Bodies (in this case the Cape York Land Council). Agreement was made according to the Land Council, however the native title claim group for the Northern Kaanju part of the proposed gas pipeline contains people who under Indigenous law would not have the standing to speak on behalf of country and do not have entitlements under that law.

At the Cairns hearing of this Inquiry held on Monday, 29 November 2010, Mr Ciobo asked Gerhardt Pearson what proportion of areas that have been declared Wild Rivers do Balkanu Cape York Development Corporation and Cape York Partnerships represent¹⁴. Mr Pearson replied “All of it”. Mr Ciobo then rephrased his question by asking “Of the Indigenous population throughout Cape York, approximately what percentage would you say the Cape York Partnerships speaks for?” Mr Pearson replied “Our charter is that we are a trust and the beneficiaries of the trust are all traditional owners of Cape York” (page 9). Mr Pearson’s assertion that Balkanu and Cape York Partnerships represent “all” traditional owners of Cape York is tenuous. The Cape York Land Council, the sister organisation of Balkanu and CY Partnerships, has some 1180 members, which is only about 15% of the Indigenous population of Cape York of 9000. Where is the agreement from Cape York Traditional Custodians for Balkanu and Cape York Partnerships to claim to represent them on land management issues, including Wild Rivers, regardless of whether or not they are members of the Cape York Land Council? However, Mr Pearson does acknowledge, when prompted by Mr Ciobo, that there are other representative groups in Cape York, and that they do not represent exclusively.

There is a poor fit between Government administration and Indigenous peoples’ needs regarding consultation and negotiation processes. There is also the problem that some Indigenous advocates and political operators are receiving funding to manage the government’s engagement with Traditional Custodians and Indigenous communities. Traditional Custodians are disadvantaged while high profile people and their affiliated organisations have access to government, media and financial donors, and shape the Indigenous development agenda without a substantive mandate or the ‘consent’ of people on the ground. Further, the power structures and the ‘authority’ of the Land Council and its affiliated organisations are legitimised by the NTA and also by government which continues to support them. Additionally, the complexity of obtaining ‘consent’ across a range of clans and groups must be addressed, with clear and fair rules laid out and accepted for the implementation of government policy in future.

There is a live debate arising with Australia’s signing up to the UN Declaration on the Rights of Indigenous People. The fit with democratic rights is not reconciled and there is consequently confusion regarding Government’s decision-making role in respect of the right to ‘free, prior, informed consent’. There is a need to clarify the power relations between government and Indigenous

¹³ Transcript available at: <http://www.aph.gov.au/hansard/senate/commttee/S12918.pdf> : page 20.

¹⁴ Transcript available at: <http://www.aph.gov.au/hansard/reps/commttee/R13379.pdf>

people and develop new tools for agreement making. In respect of the right to free, prior, informed consent, consultation and negotiation processes must be tailored to achieving ‘the agreement’, of relevant Traditional Custodians – i.e. those who hold the right to ‘speak for country’ according to bloodline and the particular Indigenous governance regime for the land and waters in question.



Senior Chuulangun Rangers Robert Nelson and David Claudie stripping paperbark to be used in fire ignition
(Photo: Chuulangun Aboriginal Corporation)

PART D – OPTIONS FOR FACILITATING ECONOMIC DEVELOPMENT FOR THE BENEFIT OF INDIGENOUS PEOPLE AND THE PROTECTION OF THE ENVIRONMENTAL VALUES OF UNDISTURBED RIVER SYSTEMS

10. Environmental protection, homelands development, and the conservation economy

Wild rivers legislation in its current form supports Traditional Custodians to take opportunities to develop their preferred sustainable livelihoods on homelands, and to participate in the conservation economy and sustainable development. However, there is a lack of coordinated strategies and investment in remote area development – e.g. tourism, the carbon market, natural resource management, and alternatives to mining – and this is holding back the ability for economic potentials to develop in remote homelands and communities. There is a direct role for government to facilitate an investment strategy in a remote area ‘conservation economy’ and in capacity building for Indigenous landholders and entrepreneurs.

There is also an issue of equity. Historically, Indigenous people have been denied the benefits of economic development taking place on their homelands, and this continues in many forms today. A social justice approach to the issue would result in a range of compensatory and advancement measures, as of right. Traditional Custodians need more funds at the grass roots level, and better structural arrangements and investment strategies, to enable them to benefit economically from their rights and interests in land.

Contemporary environmental approaches are integrating Traditional Custodian rights and responsibilities to look after country. Unfortunately, centralisation of effort under land and sea centres controlled by local councils and regional city and town-based bodies is diverting resources, frustrating or limiting efforts on homelands, and failing to deliver and secure conservation outcomes.

While programs such as Wild River Rangers are working in new and better directions, there is still a need for government agencies to recognise, support and work with locally originated, owned, operated and controlled Indigenous organisations on country.

Studies show that people living and working on their homelands benefit from a range of social, cultural, economic and health outcomes, as well as improved employment, training and capacity-building opportunities. Despite this, there is inadequate recognition and limited support of (and even hostility towards) the value of a homelands approach to development in remote areas. This is combined with a restrictive and collectivised approach to Indigenous development issues under narrow frameworks of welfare reform and dependency (such as those espoused by the Pearson’s and their organisations). This is compounded by an unofficial Assimilation policy whereby both State and Commonwealth governments concentrate programs and service delivery into centralised communities and ‘growth’ towns further exacerbating the problems associated with centralised living which are demonstrated in the poor health, social, economic and employment indicators for Indigenous people.

Homeland development strategies that combine a range of environment protection measures are driving significant opportunities for job creation, training, and enterprise. There is an enormous potential to develop a regional economic structure in environmental services that address climate

change, river and water management, biodiversity conservation, carbon sequestration, fire control, quarantine etc, as well as eco-tourism.

It is well documented that the active engagement of Indigenous people on their traditional homelands enhances self esteem and confidence; reduces social alienation; and acts to promote and preserve health and well-being. Sustainable Indigenous management of land and resources includes a broad range of employment, economic development, training, community and cultural activities in the areas of:

- natural and cultural resource management including biodiversity conservation;
- monitoring of land and resources and reporting illegal activities including poaching and illegal fishing;
- active participation in the sustainable economic use of land and resources in industry sectors such as tourism, wildlife utilization, sustainable use of plant products and the commercial provision of environmental services; and
- practical maintenance of Indigenous knowledge, culture, language and heritage.

Well coordinated and effective government and other sector investment in this area will strengthen environmental, cultural and heritage values, including those of national significance. It will also ensure the practical maintenance of Indigenous knowledge and cultures alongside, where appropriate, western scientific approaches to land and resource management. The Queensland government through its Wild Rivers legislation and the Wild River Rangers program has recognised the importance of such an investment. Queensland Premier Anna Bligh has also recently announced further Wild River ranger positions and security of employment for Wild River rangers¹⁵ which is demonstrative of her government's long-term commitment to the program and to improvements in Indigenous health, social, cultural and economic wellbeing.

A community approach needs to be taken into consideration with government policies and programs through a better coordinated whole of government approach. There should be less separation of Indigenous from mainstream programs. For example, Wild River Rangers should be open to both Indigenous and non-Indigenous people and organisations.



Chuulangun airstrip (Photo: Chuulangun AC)

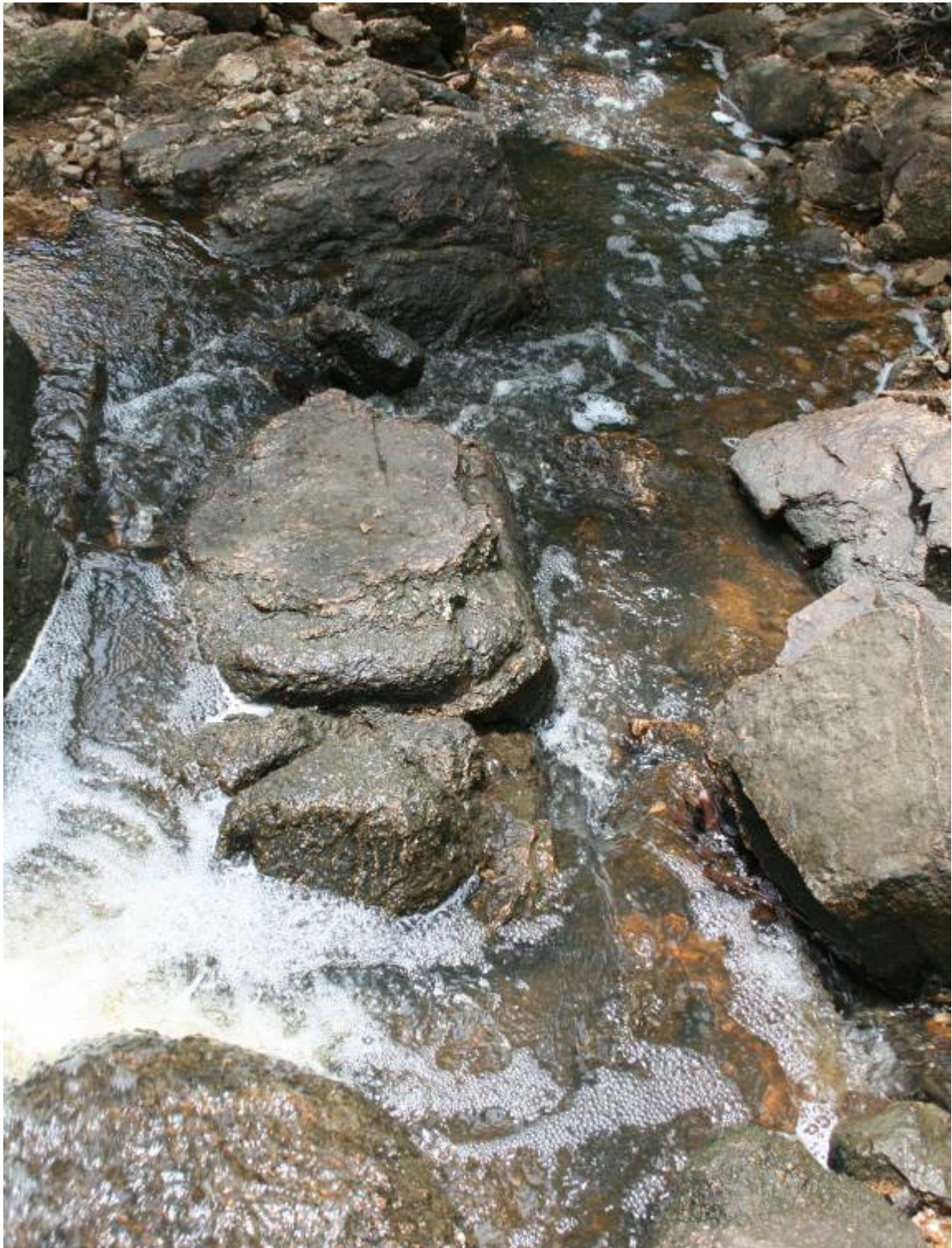
¹⁵ See: <http://www.terrain.org.au/news-for-members/431-deal-gives-tenure-to-indigenous-rangers.html>

PART E: RECOMMENDATIONS

We ask the House of Representatives Standing Committee on Economics to note the following:

1. The Wild Rivers (Environmental Management) Bill should be rejected on the grounds that it is unworkable and, if enacted, will stifle Indigenous economic development, result in the loss of jobs for Indigenous people, loss of autonomy for local Indigenous organisations and Traditional Custodians, and open the way for unsustainable developments in otherwise undisturbed river systems.
2. The Commonwealth government should initiate and implement significant native title reform in order to address inherent problems and deficiencies in the Native Title Act which does not recognise proper Indigenous governance, stifles Indigenous economic development and does not deliver on basic individual and civil rights for Indigenous people including those enshrined in the United Nations Declaration on the Rights of Indigenous People.
3. An Inquiry into homelands development be initiated to assertion its effectiveness in ‘closing the gap’ in health, social, economic and cultural outcomes for Indigenous Australians including generating opportunities for economic development and employment in the environmental services industry. The Inquiry would reexamine the key recommendations of the 1987 inquiry into the homelands movement and taking particular note of the following recommendations:
 8. *State and Territory governments provide funding to homeland centres for the 'essential' facilities and services which they are obliged to provide to all their citizens. These 'essential facilities and services include water supply and reticulation, roads and airstrips, other infrastructure items such as housing and shelter and education and health services. The level of this funding should be increased in response to the growth of the homelands movement and the increasing needs of homeland dwellers.*
 9. *Commonwealth and State and Northern Territory governments consult about detailed arrangements for the sharing of funding responsibility for homeland centres.*
4. The homelands policy should be revisited and programs established which support homelands development – importantly this must be undertaken by proper consultation with Traditional Custodians committed to living and working on their homelands.
5. Government must take a strategic shift away from regional organisations and Native Title Representative Bodies, and recognise, support and work with locally originated, owned, operated and controlled Indigenous organisations committed to country.
6. Government must recognise the integral link between the active engagement of Indigenous people on their traditional lands (homelands development) and improvements in their health, social, cultural and economic well-being.
7. Strategic, well coordinated and effective government and other sector investment in the environmental services industry will strengthen environmental, cultural and heritage values, including those of national significance, as well as lead to improvements in Indigenous health, social, cultural and economic well-being.
8. The Wild Rivers Act 2005 and associated Wild River Area declarations be supported as a legitimate and valuable framework for the protection of the environmental values of

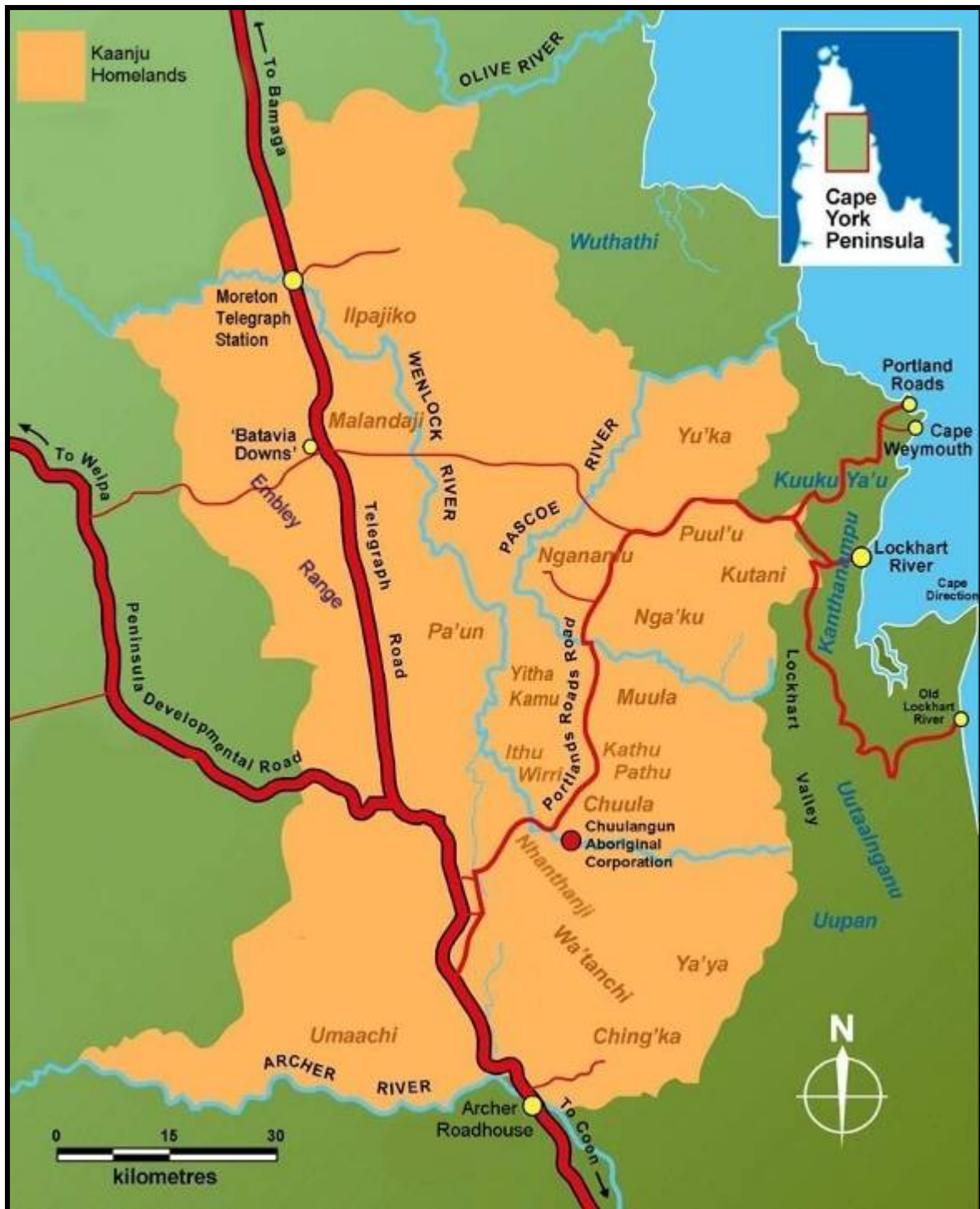
undisturbed river systems and as an opportunity for sustainable Indigenous economic development and engagement in full-time sustainable employment.



Upper Wenlock River cascades (Photo: Chuulangun AC)

Attachments

B. Map of Kuuku I'yu Northern Kaanju Ngaachi showing clan estates



Legal & Con. Committee: Questions on Notice
Inquiry into Wild River Legislation
Hearing in Cairns, 13 April 2010

QON No.	Department/ Agency	Senator	Question
1	Chuulangun Aboriginal Corporation – Mr David Claudie, CEO	Heffernan	<p>Questions to Mr Claudie, chairman and chief executive officer of Chuulangun Aboriginal Corporation.</p> <ol style="list-style-type: none"> 1. How many members belong to your organisation, I understand there are only six members and two of the three directors are Claudie and his wife – please list all members. <p>This Corporation receives funding from both the federal and state governments for the Wild Rivers rangers campaign and other government programs. Figures from the Office of the Registrar of Indigenous Corporations shows these funding figures:</p> <p>2006 \$187,000 2007 \$454,000 2008 \$620,000 2009 \$887,000</p> <ol style="list-style-type: none"> 1. Can you explain the huge leap in funding from 2006 to 2009, does this coincide with the declaration of the three Cape York wild rivers. 2. Could I have a breakdown/outline of costs and expenses for each of the above years? 3. I understand your Corporation supports for the Wild River legislation, I believe the interests of indigenous owners are affected adversely by this legislation, how do taxpayers know they are getting value for money? Could I have a copy of your charter and

			<p>governance rules.</p> <p>4. How often do you meet, can I have copies of agendas and minutes for last 5 years?</p> <p>5. Does your Corporation receives any money from The Wilderness Society or any other conservation group, if so, how much? Please list the conservation groups who have provided financial support and please itemise the total income from each group for the last 5 years.</p>
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