

**Queensland Government response to Questions on Notice provided by the Standing Committee on Economics Inquiry into Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010**

At the hearings in Cairns, the House of Representatives Economics Committee was provided with a copy of the MECS document which relates to CTS 02637/09. This MECS document sets out critical dates and times in relation to the progress of CTS 02637/09 but is not a complete record.

**Question 1** – On what date and at what time did Debbie Best as Acting Director General sign CTS 02637/09?

**Question 2** – On what date and at what time did Debbie Best forward CTS 02637/09 with her signature to the Minister?

**Question 3** – On what date and at what time did the Minister receive CTS 02637/09 once it was signed by Debbie Best?

**Question 4** – On what date and at what time did the Minister sign CTS 02637/09?

CTS 02637/09 states “Subject to the Ministers approval, the department will progress the abovementioned documents to the Governor in Council for approval”.

**Question 5** – On what date and at what time did the Department receive CTS 02637/09 signed by the Minister approving the progress of documents to Governor in Council?

CTS 02637/09 states “The following documents have been provided to Executive Council Team to progress through to Governor in Approval” and that “the other documents will be provided to the Governor in Council for approval after receiving the Ministers approval”.

**Question 6** – On what date and at what time did the Executive Council Team receive CTS 02637/09 signed by the Minister, approving the progress of documents to Governor in Council?

CTS 02637/09 refers to a number of documents several of which, including most of the attachments, the Executive Council Minute and the Gazette Notice, were previously provided to the Senate Inquiry. The following documents referred to were not released to the Senate Inquiry:

- Explanatory Memorandum
- Executive Council Minute Additional Information Memo
- Attachment E (a list of all submissions and the outcomes of the consultation meetings)

**Question 7** - Can you please provide copies of these documents?

**Question 8** - Did the Governor in Council approve a wild river declaration notice declaring the Archer Basin, Lockhart Basin and Stewart Basin wild river areas on or before the 23<sup>rd</sup> February 2009?

**Question 9** - On what date and at what time did the Minister read and consider the submissions from the traditional owners of each of the Stewart Basin, the Archer Basin and the Lockhart Basin areas?

**Question 10** - On what date and at what time did the Minister consider the extent of the High Preservation Areas in each of the Wild River declarations?

**Question 11** - After being sworn in as Minister on 26 March 2009, did the Minister make any changes to the draft Wild River declarations as a result of considering the public submissions? Please provide details.

**Question 12** - On what date and at what time did the Minister consider and approve the content of the Wild River declarations which were subsequently approved by Governor in Council?

It is noted that these questions are outside of the terms of reference for the Inquiry; however, the Queensland Government proposes to outline the decision-making process to declare the Archer, Lockhart and Stewart wild river areas, to assist the House of Representatives Standing Committee on Economics (the Committee). It should also be noted that these responses were provided to the Senate Inquiry. The documents provided to that Inquiry provide supporting information required for these questions.

The *Wild Rivers Act 2005* provides authority for the "Minister" to consider submissions and make a final decision for Governor in Council approval. That authority resides with the Ministerial position, and not with the individual.

The fundamental requirements of the Wild Rivers Act in relation to consultation are:

1. A public notice of the Minister's intent to declare a part of the State a wild river area. This notice must include a moratorium period.
2. A declaration proposal notice must be published and the declaration proposal released for public comment and submissions (this is able to be published with the notice of intent to declare).
3. General community consultation is carried out.
4. The results of community consultation and properly made submissions on the declaration proposal are considered (as well as any relevant water resource plan or resource operations plan in place over all or part of the area).

The Minister then makes a decision on whether to seek Governor in Council approval to declare that part of the State a wild river area or otherwise. This decision is made after consideration of the submissions and results of consultation and that Governor in Council approves the declaration under section 16 of the Act.

The sequence of events in the decision-making process for the Lockhart, Archer and Stewart wild river areas can be summarised as follows.

In relation to section 7 of the Wild Rivers Act, this is a general overarching provision that gives the Minister a head of power to declare a part of the State to be a wild river area. If the Minister intends to declare a part of the State a wild river area, then this decision is demonstrated through the relevant public notifications made under section 8 of the Act. The Minister responsible for the Wild Rivers Act, at that time, the Honourable Craig Wallace MP, commenced this process when he published Notices of Intent to declare the three basins as wild river areas on 23 July 2008. It is not an uncommon occurrence for more than one Minister to be involved in a statutory process which takes a considerable amount of time, given governments and Ministers will change from time to time.

All relevant material was provided to the Honourable Craig Wallace MP on 18 February 2009. These materials were again submitted to Honourable Stephen Robertson MP on being sworn into office and taking responsibility for the administration of the *Wild Rivers Act 2005*.

All this material was considered in preparing the wild river declarations.

The Honourable Stephen Robertson MP was sworn in as Minister for Natural Resources, Mines and Energy and Minister for Trade on 26 March 2009. Upon taking up office, the Minister was in receipt of the submissions made on the Archer, Stewart and Lockhart declaration proposals, the results of community consultation on the three declaration proposals as well as the proposed final declarations. As there is no water resource plan or resource operations plan covering part or all of the areas, there was no need to consider those matters listed in section 13(2) of the Act.

These items were provided to the Minister by departmental officers on taking up office and the Minister began actively considering these matters, and was briefed by departmental officers, upon taking up office.

On 31 March 2009, the Minister advised the Premier of the following in writing 'As required under section 13 of the Act, in preparing these wild river declarations, I have considered the results of community consultation and all properly made submissions about the declaration proposals.'

In this letter the Minister sought the Premier's permission to submit the declarations for approval by Governor in Council at the next Executive Council meeting to be held on 2 April 2009. This permission was sought given the short timeframes involved.

On 1 April 2009, the Minister signed the final decision to seek approval by Governor in Council to declare the Archer, Stewart and Lockhart Basins as wild river areas. This decision was made pursuant to section 15 of the Wild Rivers Act.

Prior to making this decision, the Minister considered the results of community consultation on the declarations proposal and all properly made submissions on the declaration proposal. The final declarations submitted to Governor in

Council for approval had changes from the declaration proposals that were released for public consultation. Both the declaration proposals and the final declarations are publicly available documents.

In relation to the timing of actual events, exact times are not available but, CTS 02637/09 was signed on 1 April 2009 by the Ms Debbie Best. This CTS was a replica of the brief provided originally to Minister Wallace, rewritten for Minister Robertson's signature. CTS 02637/09 was forwarded to the Minister's office on 1 April 2009 by the Deputy Director General. Exact times are not available but, CTS 02637/09 was signed by the Minister's office on 1 April 2009. This was provided to the Executive Council Team on 1 April 2009.

The declarations were explicitly considered and approved by Governor in Council on 2 April 2009 and were gazetted on 3 April 2009.

As can be seen from the above, Governor in Council approval of the wild river declarations on 2 April 2009 followed consideration by the Minister of all matters required under the Wild Rivers Act.

**Question 13** - What notification were indigenous landholders given of the Minister's intention to declare the Aurukun Wetlands area between the Kirke and Love Rivers as a High Preservation Area?

**Question 14** - What consultation occurred with the indigenous landholders of the Aurukun Wetlands prior to the declaration of this area as a High Preservation Area?

During consultation and in submissions on the Archer Basin Wild River Declaration Proposal it was suggested to officers of the Department that the area between the Love and Kirke rivers and the lower reaches of the Archer River were hydrologically connected and that the existing special features should be expanded to cover all of this area. The possibility of an extension to the High Preservation Area in this area was raised with Indigenous people in Aurukun as early as September 2008. These discussions were held with representatives of Cape York Land Council and Balkanu Cape York Development Corporation in attendance. The Department raised this and specifically asked for feedback on the proposal.

Following further analysis, including reviewing the Directory of Important Wetlands of Australia (DIWA) wetland mapping, State agency wetland mapping, digital elevation modelling and satellite imagery as well as other data, the high preservation area was extended to include connected areas between the Kirke and Love rivers. These were incorporated into a single special feature covering this area.

Its is important to note that part of the Aurukun Wetlands, including areas around the Love and Kirke Rivers were included in the proposed high preservation area in the Archer Basin Wild River Declaration Proposal.

**Question 15** - Were the rights of indigenous landholders considered when making the decision to include the Aurukun Wetlands into a High Preservation Area?

A wild river declaration does not impact on the rights of Indigenous landholders – traditional, cultural heritage or native title rights. The results of consultation and the information contained in submissions are what are considered when finalising a declaration. As a number of the submissions talked about Indigenous rights, then this was part of the consideration of the Minister's decision.

In attachment B to Briefing Note CTS 02637/09 tabled at the Senate Inquiry, the following issues raised in public consultation are identified as "beyond the scope of the wild river declarations":

- Undue restrictions on small scale agriculture
- Outstation development activities restricted/prohibited
- Restrictions on aquaculture in HPA
- Highly restrictive for outstations and potential ecotourism
- Permit requirements in a HPA/PA unclear and convoluted
- Commercial harvest of vegetation for TOs (production of artifacts for sale)
- Thinning in HPA
- Local Government access to quarry material
- Need to demonstrate there is no suitable alternative outside the HPA
- Impacts on Human Rights, access, use, occupancy, management, conservation, cultural and development rights
- Issues with property development plans
- Inclusive post submission engagement/consultation

**Question 16** - Why did the Department dismiss these matters as "Beyond the Scope of the wild river declarations" in its advice to the Minister, given that the mechanism of adjusting the High Preservation Areas was available to partly address these issues?

The context of the issues as raised were broad in nature, and therefore not aimed at specific areas, but at the legislation as a whole. Therefore a simple shift in the high preservation area would not address the nature of these issues. For the matters for which the extent of high preservation area may be relevant, the department and the Minister fully explored these, as can be demonstrated by the response to the area around Silver Plains on Breakfast Creek (Stewart Basin Wild River Area). The following excerpt from the Stewart Basin Wild River Area Consultation Report elaborates on this:

**"4. Natural values of Breakfast Creek**

**Issue:** *Previous clearing around the Silver Plains area will have impacted on the natural values of Breakfast Creek and therefore it should not be considered a wild river.*

**Response:**

Further analyses of Breakfast Creek found that the stream as whole retains almost all of its natural values particularly hydrology, the primary driver of riverine systems. Also, suggestions that the width of the high preservation area

should be relative to the size of the stream ignore the potential for developments such as mining or agriculture to have greater relative impacts on the waterways. In light of this Breakfast Creek remains a wild river for the Stewart Basin.

However, it was determined to reduce the high preservation area width to 500 metres each side of Breakfast Creek. This reduction reflects:

- that the existing riparian vegetation has been reduced in some areas as a result of historical grazing activities on Silver Plains (though this is not expected to have reduced the natural values over the whole system)
- that given the nature of stated proposed development aspirations on Silver Plains, plus the natural structure of the river and its environment, a risk based approach acknowledges that a 500-metre buffer (high preservation area) still has a high chance of preserving the integrity of the natural values of Breakfast Creek
- a stated desire to progress property development on Silver Plains involving an intensification of grazing activities, ecotourism and horticulture, which aligns with Government commitment to advance Indigenous economic development.

#### **Final declaration**

The final declaration was changed to reduce the width of the high preservation area along either side of Breakfast Creek from 1 kilometre to 500 metres.”

Some of the issues identified above were beyond scope as there were the result of misunderstandings, e.g. restrictions on outstations and eco-tourism, and impacts on human rights. Also some matters could not be dealt with by simply changing the declaration as they were requirements under existing primary legislation, including some on which the wild rivers legislation has no bearing, e.g. the commercial harvest of native vegetation under the Nature Conservation Act.

Importantly, legislative changes made in late 2010 addressed a number of these issues including thinning in a high preservation area and improving local government access to quarry material. This demonstrates that the Department and the Queensland Government continues to respond to issues raised in wild rivers consultation and therefore it strongly rejects the notion that such issues have been “dismissed”.