Balkanu
Cape York Development Corporation P/L
ABN 67 075 711 198
242 Sheridan Street (P.O. Box 7573) Cairns QLD 4870 Ph: (07) 4019 6200 Fax: (07) 4051 2270

The Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2602

Via email

31 March 2010

Dear Secretary

Inquiry into the Wild Rivers (Environmental Management) Bill 2010 [No 2]

Thank you for the opportunity to make submission to the Committee's inquiry into The Wild Rivers (Environmental Management) Bill 2010 [No 2].

On August 28 2008, a headline stated in the London-based *The Times Online*: (http://www.timesonline.co.uk/tol/news/environment/article4617832.ece)

> *"Half of Australia untouched by humans, says study by Pew Environment Group".*

The article went on:

> *"Nearly half of Australia is largely untouched by Man, making it one of the biggest wildernesses in the world, ranking alongside the Amazon rainforest and Antarctica, a new study has found".*

The sentiment was unfortunate and possibly unintentional by a major international conservation group - which happens to be a key backer of the Queensland government's Wild Rivers legislation. The headline characterised much that is fundamentally wrong with the Wild Rivers legislation and how it has been implemented – denying the existence of Australia's indigenous people and their rightful role in the management of their lands.

The use of the terms "wild" and "wilderness" have long been a contentious issue for indigenous people. Lyndon Schneiders, formerly of The Wilderness Society, observed in his paper *Is Wilderness Racist* (Chain Reaction magazine, #96, May 2006)

> *"These voices have consistently expressed very real concerns that the wilderness movement constitutes a continuation of an Australian colonial project that conveniently airbrushes away tens of thousands of years of Indigenous history, ownership and management of land in favour of a romanticised version of a pre colonial and untouched Eden. In short, that wilderness protection is an extension of*

> *the concept of 'terra nullius' in perpetuating a view that Australia before colonialism was effectively a land without people".*

Schneiders also stated:

> *However, it is also undeniable that the wilderness movement provides real challenges for Cape York traditional owners who politely but firmly point out that there is no word for wilderness in traditional languages and that labeling of land as 'wild' is an inadvertent insult to the land management skills and commitment of traditional owners with responsibility for managing and caring for the land.*

The Wilderness Society and the Queensland Conservation Council identified in their policy document *Indigenous Rights and Interests in the Proposed Wild Rivers Act* that "calling something a "wild river" may be inappropriate to an indigenous cultural perspective". It is pertinent that the Northern Territory Government has not used the term "wild river" but rather "living rivers".

The Wild Rivers Act has created the circumstances where indigenous people have been marginalized from the decision-making and management of their own lands. It has perpetrated a gross injustice on indigenous people and crystalised all of their fears about the practice of non-indigenous conservation groups tagging their country as "wild".

SOME HISTORY OF CONSERVATION ON CAPE YORK

The Wild Rivers Act and Declarations have not honoured agreements with Indigenous people. The 2004 Queensland ALP election commitment on Wild Rivers stated:

> *The Beattie Government will honour existing agreements, permits, lease conditions and undertakings".*

The Second Reading Speech to the *Wild Rivers Bill* 2005 (Qld) stated:

> *"The Wild Rivers Bill 2005 honours all commitments and undertakings given by the Queensland government, such as the Aurukun and Papua New Guinea pipeline projects"*; and:
>
> *"The Bill specifically provides for the continuance of existing rights and lawful activities, including rights under the special agreement acts".*

The Cape York Heads of Agreement (CYHOA) is an agreement designed to achieve coexistence between all stakeholders on Cape York Peninsula and joint protection of the environment. This landmark agreement was first signed by the Cattlemen's Union (CU), The Wilderness Society (TWS), the Australian Conservation Foundation (ACF), the Cape York Land Council (CYLC) and the Aboriginal and Torres Strait Islander Peninsula Regional Council (ATSIPRC) on 5 February 1996. It is an agreement designed to protect cultural

heritage and environmental values while also providing for greater certainty and more effective management of the pastoral industry.

In September 2001 the Queensland Government formally adopted the CYHOA and became a party to the agreement. A key principle in the agreement was stated at clause 5:

> *All parties are committed to work together to develop a management regime for ecologically, economically, socially and culturally sustainable land use on Cape York Peninsula, and to develop harmonious relationships amongst all interests in the area.*

Clause 13 of the CYHOA states:

> *The parties agree that areas of high conservation and cultural value shall be identified by a regional assessment process according to objective national and international criteria. There shall be an independent review acceptable to all parties in the case of dispute as to whether the values are consistent with the criteria. Where such areas are identified,* ***the landholder shall enter into appropriate agreements to protect the area under State or Commonwealth provisions*** *which may include World Heritage listing. As part of such agreements, funds shall be provided for management of the area, monitoring of agreements and equitable economic and social adjustment.* (emphasis added)

Clause 18 states, in part:

> *The management regime to apply to land purchased through the fund* ***shall be negotiated between the Commonwealth and State governments and traditional owners*** *and shall be based on culturally and ecologically sustainable use of the land's resources to achieve Aboriginal economic viability…*(emphasis added)

The Cape York Land Tenure reform process was borne out of the CYHOA.. It has the twin aims of delivering land justice to indigenous Traditional Owners and protection of Queensland's high conservation value lands, particularly in the Cape York Peninsula region. The process relies heavily on detailed Property Planning and landholder consultation which seeks to identify areas of land that are capable of supporting economic enterprise and land more suited to permanent protection.

In 2004 the Queensland Government established the Cape York Peninsula Tenure Resolution Implementation Group (CYTRIG) to support the initiative. Membership of CYTRIG comprised three Queensland Ministers, CYLC, Balkanu Cape York Development Corporation (Balkanu), ACF and TWS.

As part of this process the Queensland Government has invested in the voluntary purchase of lands on Cape York Peninsula. CYTRIG agreed to a process for acquired lands whereby the Queensland Government and CYLC and Balkanu facilitated voluntary and good faith negotiations with Traditional Owner groups to oversee the return of land to traditional

owners in the form of Aboriginal freehold grants and the creation of new protected areas. Voluntary agreements are reached through Indigenous Land Use Agreements between Traditional Owners and the Queensland Government under the *Native Title Act*, 1993 (Cth), with Traditional Owners providing their informed consent to new land use arrangements with the benefit of independent legal advice. All agreements are then registered through the National Native Title Tribunal.

Some magnificent conservation outcomes have been achieved through this agreement process, such as the KULLA National Park over the McIllwraith Range.

These solid conservation outcomes achieved through agreement, some of which are listed below, demonstrate how utterly unnecessary the non-consensual Wild Rivers laws are.

The key outcomes of the CYTRIG process to date, all achieved by agreement, have been:

- Marina Plains, August 2005: approx. 6800 hectares (950ha Aboriginal freehold land, 5900ha new national park)
- Kalpowar, December 2005: approx. 400,000 ha (200 000 ha Aboriginal freehold land; 200,000ha new national park)
- Archer Point, August 2006: 9,700 ha (1700 ha Aboriginal freehold with 570ha covered by conservation agreement, 8000 new National Park)
- Melsonby, November 2006: approx. 19,700 ha (10,710ha Aboriginal freehold with 3,610ha covered by conservation agreement; 8,990 ha new national park)
- Running Creek and Lilyvale, July 2008: approx. 110,500 ha (74,940 ha Aboriginal freehold land; 35,560 ha new national park - Lama Lama National Park Cape York Peninsula Aboriginal Land).
- McIllwraith & Mt Croll, August 2008: approx. 375,000ha (160,000ha new national park – Kulla (McIlwraith Range) National Park.

The Wild River declarations for the Archer, Stewart and Lockhart Basins of 2009 were in direct breach of the CYHOA. Clause 13 provides for the protection of areas of high conservation by agreement. No such agreements were entered into for these Wild Rivers declarations. These Wild Rivers were compulsorily declared over Indigenous lands.

The Lama Lama People are Traditional Owners of Running Creek station on Cape York Peninsula. This land was one of the CYTRIG properties dealt with by negotiation between the Queensland government and Traditional Owners, resulting in an indigenous Land Use Agreement (ILUA) providing for the return of land as Aboriginal freehold subject to a conservation agreement establishing a Nature Refuge under the *Nature Conservation Act* 1992 *(Qld)* in August 2008. The Running Creek ILUA with the State of Queensland in August 2008 was a result of the commitments of all parties to the Heads of Agreement. The ILUA provided for the return of homelands and the protection of significant natural and cultural resources as required by the Heads of Agreement.

Running Creek station was subsequently the subject of the Stewart River Wild River Declaration in April 2009 which unilaterally imposed further stringent environmental declaration despite the more than 10 years of good faith negotiation by the Lama Lama people with government to identify and agree natural values and an appropriate protection regime. The Wild River declaration was made without the consent of the Lama Lama people who were by that time (in addition to being the Traditional Owners of the land) the owners of the freehold title.

Similarly Traditional Owners of Mount Croll Station on Cape York Peninsula, the Kaanju People, entered into an ILUA in August 2008 which identified land for economic development returned as Aboriginal freehold and agreed to the creation of new National Park and the establishment of a Nature Refuge to protect areas of high natural and cultural significance.

Without their consent and in breach of the CYHOA and the ILUA, freehold lands owned by the Kaanju People and not previously subject to the agreed National Park and Nature Refuge were included in the Archer River Wild Rivers Declaration in April 2009.

SOME HISTORY OF THE WILD RIVERS ACT

The Wilderness Society Wild Rivers website at http://www.wildrivers.org.au/info/wild-rivers-campaign-history-1 sets out a brief history of the Wild Rivers Act from the perspective of the Wilderness Society:

> *"The Queensland Government agreed to allow no further increases in water extraction in the Paroo in 2003. Buoyed by the success of Paroo campaign, The Wilderness Society, alongside the Queensland Conservation Council and the Environment Defenders Office, launched an ambitious campaign for a stand-alone 'Wild Rivers Act' in Queensland to protect wild rivers from destructive economic activities like dam building and large-scale irrigation.*
>
> *In 2004, in the midst of an election campaign, the Beattie Government made the announcement that was to catapult Queensland as the leader in wild river protection in Australia – if re-elected, they would introduce a stand-alone Wild Rivers Act, protecting an initial 19 wild rivers, mostly in Far North Queensland".*

The Wilderness Society and other conservation groups promoted the Wild Rivers legislation on the fallacy that areas such as Cape York were under threat from activities like "dam building and large-scale irrigation". For example, The Wilderness Society claims on its web site at http://www.wildrivers.org.au/rivers/cape/archer_river that:

> *"The major Chinese mining corporation, Chalco, recently landed a major deal to begin feasibility studies to mine parts of the Archer River. However Wild Rivers will stop dam building on the Archer River."*

Contrary to the Wilderness Society's claims, Chalco has never proposed to build a dam on the Archer River.

The National Water initiative (NWI)

The second reading speech by then-Natural Resources and Mines Minister Stephen Robertson to the Wild Rivers Bill in 2005 stated:

> *"This bill honours part of the National Water Initiative agreement to identify and acknowledge surface and groundwater systems of high conservation value and manage these systems to protect and enhance those values".*

In *The Australian* of 15 January 2010, Minister Robertson claimed that the National Water Initiative:

> *"Required all states and territories to identify and protect high conservation water systems for the ecological values"*

and that Queensland's 2005 Wild Rivers Act:

> *"Gives expression to that requirement protecting the conservation and ecological value of some of Australia's last remaining pristine rivers".*

The section of the NWI in question, clause 25(x) did not make mention of "ecological values".

The National Water initiative (NWI) is an intergovernmental agreement between the Australian, state and territory governments to improve the management of the nation's water resources and provide greater certainty for future investment. The objective of the National Water Initiative agreement at paragraph 23 states:

> *"Full implementation of this Agreement will result in a nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes"*

The Wild Rivers Act has imposed a regulatory scheme well beyond that reasonably required to meet the NWI. Protection of such things as terrestrial wildlife corridors and prohibitions on aquaculture and small scale commercial horticulture were not part of the NWI.

In contrast to the NWI, the Wild Rivers Act focuses narrowly on environmental outcomes and does not seek to *"optimize economic, social and environmental outcomes".* Whilst the NWI recognized that *"settling the trade-offs between competing outcomes for water systems will involve judgments informed by best available science, socio-economic analysis and community input"*, the Wild Rivers Act does not involve the best available science and socio-economic analysis, and there is little community input.

2004 Election commitment - Labor deal with conservation groups and The Greens

The Labor Party policy on Wild Rivers in 2004, "Protecting Queensland's Natural Heritage: Wild Rivers", was the election commitment on which the Wild Rivers Act and subsequent declarations have been justified. That election commitment came at a time when the damming of rivers in South East Queensland for water supply was a considerable green issue for the Beattie Government. The Wild Rivers Policy highlighted: *"We will not allow dams to be built on Queensland's wild rivers. Our wild rivers will run free"*.

It is believed on Cape York that the 2004 Wild Rivers election commitment was primarily a trade-off to seek to appease conservation groups on the issue of dams in South East Queensland.. The green groups were given "wild rivers" on the Cape, sinking the economic aspirations of indigenous communities, to quell their anger over the possible building of dams in contentious areas of south-east Queensland.

The Wild Rivers Policy focused on major development activities such as excessive water extraction, building of dams and in-stream mining. The Wild Rivers Act and Wild River declarations have gone well beyond the intention of the election commitment to prohibit and over regulate a wide range of lower level activities such as aquaculture, small scale commercial horticulture and small scale ecotourism ventures and indigenous housing.

The Government and the Wilderness Society have in recent times claimed that the 2004 Election commitment was for the declaration of thirteen river "basins" on Cape York rather than the thirteen "rivers" identified in the election policy. This change from rivers to basins is dishonest. It continues to give the government cover to declare many more rivers as wild rivers than stated in their election policy. When Premier Bligh announced on 3 April 2009 that: *"the three rivers in Cape York Peninsula had been gazetted following approval by the Governor Penelope Wensley. The Archer, Lockhart and Stewart rivers have now been declared as wild river areas,"* she did not reveal that a further ten rivers had been approved as wild rivers at the same time - Gorge Creek, Balclutha Creek, Breakfast Creek, Massey Creek, Rocky River, Chester River, Claudie River, Nesbitt River, Love River and the Kirke River.

The declarations of the Stewart, Archer and Lockhart Basins in April 2009 involved the declaration of thirteen separate wild rivers rather than three. The 2004 election commitment did not refer to basins. The Wild Rivers Act does not refer to "basins". The Premier, ministers and conservation groups have on many occasions stated that the election commitment was for 19 Rivers – NOT basins.

If the Queensland Government proceeds with its intentions, the change from thirteen rivers to thirteen basins will result in the declaration of 80% of Cape York as "preservation area" under the Wild Rivers Act. There is enormous concern that strategically conservation groups are seeking to use this as a stepping stone to their ultimate aim to declare most of Cape York under World Heritage.

The experiences of indigenous people, and from material including that obtained through FOI, supports the conclusion that the Government proceeded to implement its 2004 Election commitment to conservation groups with such a single-minded purpose that Ministers and public servants were unable to administer the Wild Rivers Act in a fair, impartial and unbiased manner.

Consultation on the Wild Rivers Bill

In February 2005, the Queensland Government released a Wild Rivers Policy Consultation Paper which was quickly followed by the production of the Explanatory Material for the Consultation Draft Wild Rivers Bill in late March 2005. The Wild Rivers Bill was then introduced to the legislative assembly on the 24 May 2005. There was minimal consultation with the traditional owners of Cape York in relation to the Wild Rivers policy and the drafting of the Wild Rivers Bill. For legislation which stood to have such a major impact on the indigenous people of Cape York, there was little time allowed for consultation with Cape York people about the policy behind the Bill.

Conservation groups' position in relation to indigenous people and the Wild Rivers Act

To set out the position of conservation groups on Indigenous rights in relation what was then the proposed Wild Rivers Act, it is best to quote from their own document- *Caring for Queensland's Wild Rivers, Indigenous rights and interests in the proposed Wild Rivers Act, A Native Title and Protected Areas Discussion Paper* prepared by The Wilderness Society and Queensland Conservation Council. The quotes below from this policy document have been selected to highlight the failure of the Wild Rivers to even meet the policies promoted by conservation groups.

> *"The Government will need to actively facilitate the involvement of indigenous people who have rights and interests in a river system to be declared a 'wild river' under the Act. The State will need to provide public resources and undertake a process of cross-cultural dialogue and agreement making. It should engage in properly structured negotiations to seek the free and informed consent of Indigenous groups and communities as a critical component of achieving wild river protection consistent with Indigenous rights in the management regime".*
>
> *In developing a broad Wild Rivers conservation agenda, TWS-QCC-EDO[Environmental Defender's Office] have concluded that effective protection of high natural and cultural values must include recognition of Aboriginal title, cultural landscapes and significant sites, and enable the active participation of Traditional Owners and Indigenous communities in accord with their rights and interests.*
>
> *Rights and interests can be seen to fall into two broad but related categories – legal rights and moral rights. The existence or otherwise of native title does not solely determine the legitimacy of Indigenous peoples claims to be involved in decision-*

making and the protection of their cultural heritage, land and waters. The joining of legal and moral rights yields an argument for greater recognition and involvement.

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

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

The failure of the Scrutiny of Legislation Committee to consider indigenous lands

The Scrutiny of Legislation Committee operates under the provisions of the *Parliament of Queensland Act 2001*. Matters considered by the Scrutiny of Legislation Committee should include: whether legislation has sufficient regard to the rights and liberties of individuals; whether the legislation provides for the compulsory acquisition of property only with fair compensation, and whether the legislation has sufficient regard to Aboriginal tradition.

In the Alert Digest of the Scrutiny of Legislation Committee of June 2005, the Committee erroneously made the assumption that there would be little freehold land affected by Wild River declarations, completely overlooking the extensive indigenous freehold lands on Cape York. The committee stated:

"It appears to the committee that the only circumstance in which existing rights might potentially be adversely affected by a wild river declaration would be if a declaration affected freehold land"

The committee continued::

It is technically possible that freehold land could be included in a declared area. However the committee notes the Minister's statement in the Second Reading Speech that 'it is likely that many of the proposed wild rivers will be located in Cape York and the Gulf of Carpentaria'".

Not only did the committee fail to consider the large areas of indigenous freehold land, they failed to consider the implications of the Wild Rivers Act on native title and whether the legislation had regard for Aboriginal tradition.

The Staaten River Case Study

In December 2005, a notice of intent to declare the Staaten Wild River Area was published in newspapers. The notice also advertised the availability of the Staaten Wild River Declaration Proposal for public comment and formal submissions. The submission period closed on 24 April 2006. As this was the tropical wet season, it allowed minimal consultation with the traditional owners of the Staaten River.

Throughout 2006, Government undertook negotiations with some stakeholders, but not traditional owners of the Staaten River to resolve issues about the Act and the proposed declarations, resulting in Act amendments which received assent on 7 December 2006.

Following a letter from the Kokoberrin Tribal Aboriginal Corporation taking issue with the consultation process, then-Premier Peter Beattie wrote to the Corporation on 26 September 2006 stating:

> "As I stated publicly before the recent State election, the Staaten River will be declared along with the other five river systems currently nominated. The hold on future wild river nominations in Cape York applies to the other 13 potential wild rivers identified in the Australian Labor Party's 2004 State election commitment."

The Premier therefore made it clear that the election commitment was paramount. Neither the Minister nor Governor-in-Council was to exercise their discretion as required under legislation. The declaration of the Staaten River as a Wild River was a foregone conclusion due to an election commitment.

The notice of intention to declare was the subject of an application for review in the Supreme Court in November 2006 by one of the non-Indigenous landholding families on the Staaten River. The family claimed to have made solid efforts to negotiate with the Government on the declaration of the Staaten, but that it was ultimately ignored and so it proceeded with legal action in the Supreme Court. It is understood that one of the issues in the action was the failure of the Notice of Intent to state "the reasons for the proposed declaration" as required under s8(2) (a) of the Wild Rivers Act.

The Minister withdrew the Notice of Intent, and in December 2006 a fresh Notice of Intent to declare the Staaten Wild River Area was published in newspapers. The notice advertised the availability of an updated Staaten Wild River Declaration Proposal for public comment and formal submissions, with submissions closing on 28 February 2007. When new legal action was flagged by the landholder, the State promptly legislated to validate the declarations. This legislation removed the need to complete that second consultation process with indigenous groups, and removed the requirement for the Minister to prepare consultation reports.

The Minister for Natural Resources and Water declared the Staaten Wild River area on 30 January 2007, four weeks before public submissions closed, with the declaration taking effect on 28 February 2007. With the declarations having been validated by legislation, traditional owners were denied the opportunity to seek Judicial Review of the declarations and denied the opportunity to obtain information through the consultation report.

It was clear from the Staaten River process that the Premier was more concerned about meeting election commitments to conservation groups than considering the concerns of indigenous people.

THE CAPE YORK HERITAGE ACT

The objects of the *Cape York Peninsula Heritage Act 2007* include —

> *(c) To recognise the economic, social and cultural needs and aspirations of indigenous communities in relation to land use in the Cape York Peninsula Region*

In contrast to the Cape York Heritage Act, the Wild Rivers Act narrowly focuses on the preservation of the natural values of wild rivers. There is no requirement for the Minister to consider the economic, social and cultural aspirations of Indigenous communities.

Unfortunately, the broader objectives of the 2007 Cape York Peninsula Heritage Act are overridden by the 2005 Wild Rivers Act upon the declaration of a Wild River coming into effect. The State has flagged an intention to declare 80% of Cape York under the Wild Rivers Act negating much of the policy intent of the Cape York Heritage Act.

EXEMPTION OF MINING PROJECTS FROM THE WILD RIVERS ACT

The Wild Rivers Act specifically excludes the Aurukun Bauxite Project and mining projects which are in existence or had approvals immediately prior to the nomination of a river as a Wild River. In practice, the Wild Rivers Act has its greatest impact on small to medium enterprises rather than the larger mining projects. Until recently when the State amended the Wild Rivers Act to remove its ludicrous prohibition on private jetties on a Wild River, it was clear that it would be easier for a mining company to obtain approval for a large loading facility on a Wild River than it would for an indigenous person to build a small private jetty on a Wild River.

The imbalance in negotiating power between the mining industry and indigenous groups has been starkly highlighted through the State's engagement with Cape Alumina on the Wenlock River. Following the closure of public submissions on the Stewart, Lockhart and Archer River Areas, the State failed to engage in negotiations with Indigenous groups to resolve issues prior to the declaration of the rivers, despite several requests, including requests to the Premier.

On the other hand, the State has actively engaged with Cape Alumina on the Wenlock River after the closing of submissions and it is understood that the State has significantly softened its approach to High Preservation Areas to accommodate the needs of Cape Alumina.

THE WILD RIVERS ACT AND INTERNATIONAL AGREEMENTS

The Wild Rivers Act and Wild River declarations fail to meet the standards of the United Nations Declaration on the Rights of Indigenous People which was endorsed by the Federal Government on 3 April 2009, the very day on which the declaration of the Cape York wild rivers was announced by Premier Bligh. It is inconceivable that the Premier was unaware of the UN Declaration when the wild river declarations were fast- tracked to approval by the Queensland Governor-in-Council after the state election. The Wild Rivers Act and declarations are inconsistent with the following provisions of the UN Declaration:

> **Article 18**
> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
>
> **Article 19**
> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
>
> **Article 23**
> Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.
>
> **Article 28**
> Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
>
> **Article 32**
> Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources

Balkanu
Cape York Development Corporation P/L

The Secretary,
Senate Legal and Constitutional Affairs Committee

THE CONSULTATION PROCESS ON WILD RIVERS

Cape York indigenous people are severely disadvantaged compared to the broader community when considering participation in the decision-making processes of Government.

Firstly, Cape York is suffering from an education crisis. Literacy and numeracy levels are considerably below those enjoyed in the broader community and for many people English is a second language. The rate of illiteracy in Cape York is unknown, but it would be fair to say that an overwhelming majority of indigenous people in the region would have only a rudimentary English literacy, if anything.

This makes a public consultation process based on written submissions highly prejudicial to the majority of indigenous people in Cape York: they are highly disadvantaged in such a process, and are precluded from proper democratic participation sheerly because of the inadequate education they have received from the state over many decades.

Secondly, cultural differences mean different strategies for providing information are required. Informing Indigenous communities about the decision making processes of Government involves much greater challenges than would be the case for non-indigenous people in urban Queensland. It is often not until communities can see how particular legislation and policies will impact their lives in a real sense that it is possible to form a view and give meaningful input into decisions.

Such was the case with the proposal to declare wild rivers on Cape York. It was not until June 2008 when Cape York Indigenous communities were able for the first time to see which rivers were proposed and consider maps of the proposed declaration areas and the possible impact on their lives and futures. The proposed declaration areas were far more extensive and complex than contained in the Labor Government's 2004 and 2006 election policy commitments. Wild River Declaration Proposals are complicated legal documents.

Declarations impact on thirteen (13) other pieces of legislation. These documents are not readily understood. Demands by Government and The Wilderness Society that indigenous communities consider thirteen separate proposed Wild River Declarations, formulate a view on alien and very complex legal arrangements, and then provide informed input and submissions within a four month period were unreasonable and unjust.

For traditional owners to have their views properly considered by the Minister, they have two paths. They must raise their issues in meetings presented by State Government officers and have faith that these issues will be communicated accurately back to the Minister, or alternatively provide submissions on the Declaration proposals. State Government officers present set information but do not enter into discussions with traditional owners to seek to identify their particular issues and concerns.

Submissions on the other hand are required to be in writing to be considered "properly made". The written submissions must state the grounds, facts and circumstances relied upon. For many indigenous people literacy is an issue, English is a second language and they rarely have access to the materials required to assess, write and submit their views in relation to wild rivers. This is the reasons why thousands of submissions were lodged by non-indigenous, literate supporters of The Wilderness Society, and there were few submissions from indigenous people within Cape York Peninsula – other than those put forward through representative organizations.

To effectively provide submissions there is considerable time and support required, particularly where there are a large number of dispersed people. Although the Cape York Land Council and Balkanu were able to provide support to many traditional owners in preparing submissions on the Archer, Lockhart and Stewart River Basin proposals, the tragedy was that these submissions were largely ignored by the Minister. It is noted that on the most part Government denied the traditional owners of the Wenlock River the ability to obtain support to prepare submissions.

To submit their views in a form compliant with the *Wild Rivers Act*, indigenous and other groups are required to set out the "grounds, facts and circumstances" relied upon for their submission. Indigenous communities did not have the financial means to seek expert assistance to prepare responses to these complex proposals. Requests to Government for financial assistance to obtain independent scientific, legal and ecological advice on the wild river declarations were turned down.

Consider the example of the High Preservation Areas. Traditional owners objected to the declaration of High Preservation Areas to the maximum of 1km either side of a river. The riparian zone for many of these rivers and for great lengths of them is no more than 50 meters. The High Preservation Areas place unreasonable restrictions on activities traditional owners may wish to undertake within the area. There was no funding available for traditional owners to prepare a case for the reduction of the High Preservation Areas. Compare this to mining companies which have the resources to secure the scientific advice to put the case to government to reduce High Preservation Areas.

In their submissions to the Minister, many traditional owners pointed out that "there are no imminent development threats to the nominated wild river basins and there is no need to rush wild river declarations". Traditional owners submitted that "the State must put in place a suitable process to enable traditional owners and the State to resolve issues in relation to wild rivers" and that "We submit that there must be no compulsory declarations of wild rivers and that any declarations of wild rivers must be with the support of traditional owners".

The Minister ignored these requests by traditional owners and failed to put in place a suitable process to resolve issues. There was no further engagement by the State with traditional owners about their submissions between the closing of submissions on 22 November 2008 and the gazettal of the rivers on 3 April 2009.The Minister proceeded with the compulsory declaration of the wild rivers regardless of the views of the traditional owners.

In October 2008 traditional owners advised Balkanu that there was not sufficient time to consider the wild river nominations and they needed more time to consider the matters and prepare submissions. On 29 October a delegation of traditional owners from the Archer, Lockhart and Stewart River areas met with Minister Craig Wallace, the State Member for Cook, Jason O'Brien, and senior officers of the Department of Natural Resources and Water to request an extension of time. Incredibly, they were advised by Mr O'Brien and Minister Wallace to seek the support of The Wilderness Society before Government would give an extension.

A meeting was then arranged with The Wilderness Society in Cairns on 4 November. The Wilderness Society subsequently advised by letter dated 11 November signed by Anthony Esposito that:

> "We are sincerely of the view that to meet your concerns it is best that the Government maintain its current formal closing date for public submissions (which apply to other interests including ourselves)"

Mr Esposito went on to state:

> "We wish to see a meaningful dialogue and negotiation between the Traditional Owners and the Queensland Government regarding the declaration proposals for the Archer, Stewart and Lockhart River basins and we support ensuring this will take place at the earliest opportunity".

Traditional owners accepted The Wilderness Society's advice in good faith.

It is unconscionable that Minister Wallace delegated his authority and decision-making ministerial powers about a time extension to an unelected and unaccountable sectional interest group.

The Government subsequently refused traditional owners an extension of time to make submissions. On 27 November Michael Tandy, Senior Policy Adviser to Minister Wallace wrote to Mr Peter Kyle, a representative of the traditional owner reference group, and advised:

> "Consultation on the declaration proposals has been occurring since 23 July 2008, and in that time the Department of Natural Resources and Water has had over 100 meetings and met with over 300 different individuals. Balkanu Cape York Development Corporation was engaged to ensure that all Traditional Owners in the areas were contacted and given the chance to participate. The Minister has considered your request, but feels that given the time that was provided to enable all interested parties to make submissions, it is not appropriate to extend the submission date for these declaration proposals".

On 2 December, in response to a question without notice from Greens member for Indooroopilly, Mr Ronan Lee, the Premier told Parliament in relation to wild rivers:

> "The legislation that establishes the wild river declaration process is carefully crafted to get the balance right between graziers, industry, traditional owners and the environment. If it takes a little time to get it right, we will take that extra time. We are not about to ride roughshod, as appears to be proposed by the member for Indooroopilly, over the interests of the Aboriginal people of Cape York, or indeed any other part of Australia".

On 4 December Balkanu wrote to the Premier thanking her for the stand she took in Parliament on 2 December and stated:

> "I am sure that your government will give proper regard to these issues to achieve an outcome which protects the natural values of Cape York's rivers in a way which can be supported by the traditional owners of Cape York".

The Premier gave assurances in Parliament that she would not "ride roughshod" over the interests of the Aboriginal people of Cape York and therefore gave heart to Cape York Aboriginal people that their issues would be addressed and that there would be a process of further consultation and negotiation to resolve concerns about Wild Rivers.

Other than one meeting between then Director-General of the Department of Natural Resources and Water, Scott Spencer, and Balkanu officers and Peter Kyle, at which Balkanu asserted the need to properly engage with traditional owners before any declarations, there was no consultation and negotiation with traditional owners in relation to the wild river declarations.

On 27 January, when there had been no engagement between Government and traditional owners, Balkanu again wrote to the Premier stressing the need for further engagement with Traditional Owners, stating that:

> "We are most disappointed that the Department has become silent in relation to Traditional Owner concerns"

Balkanu also stated:

> "Throughout the pre-submission period, traditional owners continually highlighted their desire for these discussions. The Balkanu meeting in December with the Director- General, Scott Spencer, indicated that the department considered round table discussions with traditional owners (and the Wilderness Society) could be a solution".

The letter of 27 January also advised the Premier that:

> "The Wilderness Society also expressed their belief in correspondence to Traditional Owners that these direct dialogues would occur after the submission period had closed".

Despite the assurances of The Wilderness Society prior to the closing date of submissions and the statements of the Premier on 2 December, there was no further engagement by the State with traditional owners between the closing of submissions on 22 November and the gazettal of the rivers on 3 April. The Premier and the Minister proceeded with the compulsory declaration of the wild rivers, ignoring written and verbal requests for more constructive negotiations.

Furthermore while indigenous communities were refused an extension beyond the closing date for submissions of 22 November, the Archer Basin Consultation report states that an additional 792 submissions were received after closing and up to 31 December. Although deemed not "properly made submissions", the report states they were nevertheless considered for the final declaration of the Archer Basin, Stewart Basin and Lockhart Basin Wild Rivers. The majority of these late submissions were from supporters of The Wilderness Society.

The failure of the consultation process and the attempted deception by Government came to light through the FOI process. In a draft of a consultation report for one of the Wild River declarations, it is stated:

> *"The government has undertaken extensive consultations with affected Indigenous communities on Cape York Peninsula and is confident that it has addressed any concerns the Indigenous communities may have had. It was also noted from the consultation that there is significant support for the intent of the Wild Rivers program amongst Indigenous communities on Cape York Peninsula"*

The two government officers most closely involved in the consultation process on Cape York made the following handwritten comments to that statement:

> *"Ross and I strongly disagree with this paragraph. It is open to interpretation whether we did consult widely and extensively. What is consultation to one may not be consultation to another. I am not confident we have addressed concerns as we wouldn't be going back to Balkanu with the DG if this were the case. There was not significant support for wild rivers. It was a mixed viewpoint. Significant in differences."*

THE AURUKUN WETLANDS

When the Archer River Basin Wild River declaration was gazetted on 3April 2009, traditional owners were astounded to find that the High Preservation Areas identified in the consultation documents had been extended to include the Aurukun Wetlands. The Aurukun Wetlands are an extensive wetland of major cultural significance south of the Archer River. There had been no notification to traditional owners of the intention to declare the wetlands

as a High Preservation Area, nor to the Aurukun Shire Council as trustee of the land. The declaration of the wetlands occurred without discussion or consent.

FOI material provided to us has revealed that the wetlands were included based on submissions from the Wilderness Society. Government would not have such arrogant disregard for landholders' rights if the land belonged to a non-indigenous landholder.

INDIGENOUS GROUPS HAVE A RIGHT TO KNOW WHO TOOK THEIR RIGHTS AWAY, WHEN, BY WHAT PROCESS AND FOR WHAT REASONS

In April 2009 following the declarations of the Archer, Lockhart and Stewart Basin wild river areas, the Cape York Land Council requested from the Minister for Resource Management a statements of reasons under the *Judicial Review Act 1991* in respect of (a) the Governor-in-Council's approval of the Declarations; and (b) the decision of the Minister (or his predecessor) to make the declarations.

Minister Robertson responded by letter declining to give reasons on the basis that his decision to make the Declarations and the Governor-in-Council's decision to approve them were decisions of a legislative character rather than an administrative character and therefore were not decisions to which the *Judicial Review Act* applied. Legal advice to Balkanu confirms that there are virtually no opportunities for the review of decisions in relation to Wild River Declarations, the Wild Rivers Code and Property Development Plans.

Contrary to established practice, the Wild River Declarations gazetted on 3 April do not include a date on which the declarations were made, nor identify the Minister who made the declarations. Balkanu Cape York Development Corporation and Indigenous leadership have written to the Minister, the Premier and the Governor seeking to clarify which Minister made the Wild River declarations, the date that the declarations were made, and a copy of the instrument signed by the Minister by which the declarations were made. This is an important issue as there are serious concerns that a decision was made prior to the calling of the State election to put the declarations on hold until after the election, intentionally denying the voters of the seat of Cook, and particularly its indigenous voters, knowledge of the government's intentions about the highly contentious nature of the Declarations. The government made no mention of the Cape York wild rivers during the election period.

Repeated requests for a copy of the instrument by which the declarations were made have been consistently ignored. Correspondence from both the Acting Premier Paul Lucas, on 25 September 2009, and Minister Robertson, on 29 October 2009, claims that Minister Robertson made the decision to declare the Wild Rivers on 1 April 2009. Neither of these letters confirms that it was Minister Robertson who actually declared the wild rivers. Minister Robertson has on at least two occasions contradicted these letters and claimed that the decision to declare the wild rivers was made before the 2009 State election by the previous minister.

It is clear from the FOI material that a decision had been made to proceed to Governor-in-Council for approval of the declarations well before 1 April, the date advised by Minister Robertson that he made the decision to declare the Wild Rivers. The procedures for Governor-in-Council approval are set out in the Queensland Executive Council Handbook. If these procedures were indeed followed, Executive Council members at Cabinet recommended that Governor-in-Council approve declarations at a time when according to the Acting Premier and Minister Robertson, the declarations didn't exist.

On 14 April the Cape York Land Council lodged an FOI request specifically requesting "any document by which the Minister for Natural Resources and Water, or the Minister for Natural Resources, Mines and Energy declared the wild river areas". After a delay of more than five months, the Department of Environment and Resource Management released a large number of documents in batches over several months and has recently advised the Cape York Land Council that all FOI material has now been provided. There is no evidence in the FOI material of the existence of a document by which Minister Robertson declared the wild river areas.

As the declarations themselves don't identify which Minister made the Declarations, and the instrument by which Minister Robertson made the declarations has not emerged in FOI material nor through requests to the Premier, the Minister and the Governor, an obvious conclusion is that such an instrument does not exist. This then raises the critical question: what evidence that the Declarations had been properly made was before the Executive Councilors and the Governor Penelope Wensley when the Governor-in-Council approved the Wild River declarations?

LACK OF A SCIENTIFIC BASIS FOR THE DECLARATIONS

The Second Reading Speech by Minister Robertson to the *Wild Rivers Bill* on 24 May 2005 states: "The scope of this bill is limited to those rivers that have all, or almost all, of their natural biophysical values intact". Henry Palaszczuk, his successor as Minister for Natural Resources and Mines, stated on September 2005 that "Only rivers that meet the necessary criteria will be nominated for wild river status". According to material circulated by the Department of Environment and Resource Management, prior to nominating a river for declaration under the *Wild Rivers Act* the Minister: "Assesses the natural values of the river".

Of the thirteen rivers gazetted as wild rivers on Cape York on 3 April 2009, there was almost no supporting evidence provided by the Department of Environment and Resource Management for nine of them (Balclutha Creek, Running Creek, Breakfast Creek, Massey Creek, Rocky River, Chester River, Nesbitt River, Love River and Kirke River). There was a lack of consistency, transparency and scientific rigour in deciding which rivers fell under the scope of the *Wild Rivers Act*. Neither the assessment conducted by the Minister to determine whether a river qualified for nomination as a wild river nor the methodology used for this assessment has been made publicly available.

During the 1990's the Australian Heritage Commission commenced its Wild Rivers Project. The Heritage Commission carried out an inventory of the condition of Australia's rivers and produced 'Identified Natural River Maps'. The maps can be found at: http://www.environment.gov.au/heritage/publications/anlr/maps-id/qld-ins1-anno.html. It is important to note that in regard to those five rivers declared as Wild Rivers in the Stewart River Basin Declaration, most had not qualified as "Undisturbed Rivers" according to the Australian Heritage Commission. In fact the Australian Heritage Commission placed the Stewart River in the category of "Other rivers and creeks with undisturbed segments" and found that it was disturbed for 96.2% of its length and did not have sufficient of its length undisturbed to meet the State's minimum requirements of 5km undisturbed (see http://www.environment.gov.au/heritage/publications/anlr/idlists/qld_id_list.csv). The Stewart River which was declared a wild river by the State based on little scientific evidence was near the bottom of the Heritage Commission's list. For the Archer River, which was also declared a Wild River, the Australian Heritage Commission found that of its 261 km length, 6.2km or 2.3% of its length was undisturbed, a finding which was also accepted by the State. The Australian Heritage Commission mapping did not regard most of the Archer River as an undisturbed river.

In their paper "Wild Rivers in Australia", J.L. Stein, J.A.Stein and H.A.Nix identified the Jardine River as the only river basin on Cape York with greater than 80% of stream length undisturbed.

In their submission to the State in November 2008 on the Stewart Basin Wild River Declaration Proposal, traditional owners raised a number of issues about the scientific basis for the wild river declarations and the apparent attempts by the Department of Natural Resources and Water to talk up the natural values of the proposed wild river areas. For example, on page 15 of the Stewart Basin Overview Report the Department of Natural Resources and Water claimed that there is *"continuous, dense streamside and basin-wide vegetation"*. This statement was false. There is not continuous dense streamside and basin-wide vegetation on the rivers in the area, and large areas of vegetation in the basin had previously been cleared on the Silver Plains pastoral property.

In 2008 Balkanu sought expert scientific advice from Natural Resources Assessments (NRA), a Cairns-based environmental consulting company, on the validity of the comments in the Stewart Basin Proposed Wild River Area Overview Report that "the water quality in the area was found to be excellent" (Department of Natural Resources and Water (DNRW), 2008 pp 14). NRA undertook a desktop review of the Overview Report and associated water quality references, as well as additional desktop research. NRA concluded that the water quality data alone for the Stewart River *"does not allow a judgment to be made about the water quality in the Stewart River being "near natural" or "excellent" although the data may reflect near natural conditions"*.

With the exception of Breakfast Creek, the Minister declared High Preservation Areas to the maximum possible width of 1km either side of wild rivers. Despite some of the declared "wild rivers" such as Gorge Creek being barely 20 meters wide with a riparian vegetation

width of up to 50 meters either side, the Minister still declared the maximum buffer 1km either side of the waterways. The declaration of such extensive High Preservation Areas was without justification.

It is of a great concern that in nominating the Cape York wild rivers and their subsequent declaration there was no objective and transparent scientific assessment of the river condition. The Minister's decisions were apparently based on the often misleading, biased and at times false information provided by the Department resulting in the unjust removal of traditional owner rights. There was no attempt to engage with traditional owners, who hold valuable and importantly up-to-date information about the condition and use of the Cape York rivers,, and knowledge about the rivers' important cultural values.

THE WILD RIVERS ACT AND ECONOMIC DEVELOPMENT

Wild River declarations deem whole river catchments and much larger basins as "preservation areas". The intent of the State in declaring whole catchments as "preservation areas" was raised in the traditional owner submissions on the Wild River declarations. This terminology is used in the Commonwealth-managed Great Barrier Reef Marine Park to denote the "no go" areas, where a person cannot enter the Preservation Zone in the marine park unless they have written permission and extractive activities are strictly prohibited.

The response of the State on the question of "preservation areas" in the Consultation Reports issued by Minister Robertson was as follows (see p. 29 Stewart Basin Consultation Report):

> *"Furthermore, "preserve" is analogous with both maintain and protect, and its use is therefore appropriate, as it indicates these management areas are not only to be protected, but also to ensure their present condition is maintained. The use of the term preservation in naming the management areas is consistent with the objective of the Wild Rivers Act, to preserve the natural values of a river basin".*

The response by the Minister in the consultation report re-affirmed fears amongst Cape York indigenous communities that ultimately there is an intention under the Wild Rivers Act to preserve almost 80% of Cape York unchanged. It was never the intent of the Wild Rivers Act to preserve the natural values of a "river basin": the purpose of the Act was to preserve the natural values of "Wild Rivers".

Despite considerable work having been done by CSIRO on aquaculture, the Wild Rivers Act places an outright prohibition on aquaculture within a High Preservation Area (1km either side of the rivers). The Wild Rivers Act also prohibits small scale commercial horticulture within a High Preservation Area - the very areas likely to have the water supply and soil conditions suitable for horticulture.

Over the past twelve months. Balkanu Cape York Development Corporation has sought legal advice from a number of sources in relation to various activities within High Preservation Areas. It has become clear that due to the relationship between the Wild Rivers Act and the

Vegetation Management Act, activities such as the construction of tourist cabins and construction of indigenous housing and campground facilities within a High Preservation Area would either be prohibited or highly problematic.

The arrangements which apply to vegetation clearing within a High Preservation Area are complex. The Vegetation Management Act (VMA) constrains the nature of vegetation clearing applications which may be made under the Integrated Planning Act. Operational works (clearing) can be assessed and approved under the VMA if development is for a relevant purpose of that Act, defined in s22A(2). If a vegetation clearing application is not for a relevant purpose, it must be refused. The only purpose listed that could possibly include an outstation or ecotourism cabins is in s22A(2)(d), which states that clearing may be approved where development is:

> for establishing a necessary fence, firebreak, road or vehicular track, or **for constructing necessary built infrastructure**, if there is no suitable alternative site for the fence, firebreak, road, track or infrastructure.

This is a two-pronged test – it must be demonstrated that:

i) the infrastructure is 'necessary', and
ii) there is no suitable alternative site available.

It is unlikely that such things as outstations and tourism cabins would be considered "necessary" infrastructure by the remote city-based decision makers. Also it is difficult to determine whether a 'suitable alternative site' will only be considered to include sites outside a HPA.

A vegetation clearing application can be for a "relevant purpose" if under the Cape York Peninsula Heritage Act the Minister is satisfied the development applied for is for a "special indigenous purpose". The special indigenous purpose provisions do not apply within a High Preservation Area. Advice to Balkanu has been that the prospects of achieving a variation to a Declaration through a Property Development Plan are remote.

In 2009 Balkanu Cape York Development Corporation sought the advice of ACIL Tasman to undertake an economic reading of the Wild Rivers Act. The key message in the advice from ACIL Tasman was that:

> *"The Wild Rives Act 2005 (the Act) is designed to protect the Cape York environment. The way it does so has severe consequences for the Cape York economy and as a result increases the risk of perverse consequences for the environment. Specifically, the Act invokes the precautionary principle. In doing so the Act disassociates itself from the well established practice of Ecologically Sustainable Development (ESD) built up through the institutions of the United Nations (UN), World Conservation Union (IUCN), and Council of Australian Governments (COAG). …… ESD is founded on the three inseparable concepts of economic development, environmental*

> *conservation and intergenerational equity. ESD formulation is not one element is more important than another. Wild Rivers explicitly dismiss ESD. The purpose of the legislation is to narrowly preserve designated wild river natural values".*

Key points raised by ACIL Tasman were that:

- *Wild Rivers Act is tougher than ecologically sustainable development;*
- *Wild Rivers Act is injurious to property rights*
- *Wild Rivers Act unnecessarily restricts future development options*
- *Wild Rivers Act does not allow for assessment of non environmental values or the cost of options forgone*
- *Wild Rivers Act increases the risk of poor conservation outcomes".*

Additionally ACIL Tasman highlighted that the Act failed to acknowledge the Welfare Reform initiative on Cape York with its focus on individual responsibility, reciprocity and incentives designed to break widespread passive welfare dependence and boost individual economic independence. The Welfare Reform commitment includes specific encouragement to communities and individuals to develop businesses that will broaden the Cape's economic base.

ACIL Tasman referred to various sections of the Explanatory Notes for the 2005 Wild Rivers Bill, including the following statements which question the high level of restriction posed by wild rivers and the need for such restrictions..

> *" The level of preservation sought for wild rivers, which have all or almost all of their natural values intact, is higher than for ESD but below that generally provided in a national park.* (Wild Rivers Bill 2005: Explanatory Notes)

> *... the level of future development is not expected to be high. Wild rivers tend to be in regions of the State where little development has occurred and generally have limited development pressure*. (Wild Rivers Bill 2005: Explanatory Notes)

Further the Notes go on to acknowledge that these modest development pressures are 'further limited' by existing vegetation clearing laws:

> *...Also future development in such areas* ***is*** *further limited by existing restrictions on vegetation clearing...* (Wild Rivers Bill 2005: Explanatory Notes)

ACIL Tasman illustrated the difficulties with the Property Development Plan process by quoting Minister Wallace from the Queensland Hansard of 22 February 2007:

> *"A proposed plan would have to be submitted with a fee and assessed by an independent panel of scientists who are expert in hydrology, geomorphology, water quality, riparian function and wildlife movement. If I approve the plan, with or without conditions, I can then seek to amend the declaration through the current formal process, including public consultation and submission. Based on submissions,*

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> *I will then make a decision whether to amend the declaration. If the declaration is amended the landholder will then have to submit applications for each development and go through the normal assessment process under the Integrated Planning Act or other relevant act. This means that the developments will have to meet the wild rivers requirements. Also, all developments on the property over the next 10 years have to be in accordance with the plan. This is to prevent the landholder later choosing to capitalise on the amended declaration and apply to do something else".*

ACIL Tasman also noted:

> *"The Wild Rivers Act fails to recognise that Property owners have 'standing' and are not simply unrelated third parties to the legislation and its direct impacts. Third party voices are given equal treatment and the Act has no basis to establish or differentiate the voices. These two points have particular resonance when considering the practical impact of a well funded, highly mobilised and vocal green constituency resident in southern Australia (i.e. Brisbane), that are granted equal standing to poorly resourced Indigenous land owners resident in remote Cape York".*

Thank you for the opportunity to make this submission and for the opportunity for representatives of Cape York indigenous organisations and traditional owners to appear before the Committee at hearings in Cairns on April 13. At that time, we will present further information to better inform Senators about the injustice inflicted on the indigenous peoples of Cape York by the unilateral imposition by the Queensland Government of its Wild Rivers laws.

Yours sincerely

Gerhardt Pearson
Chief Executive Officer
Balkanu Cape York Development Corporation