



5 THE IMPORTANCE OF ECONOMIC DEVELOPMENT FOR REMOTE INDIGENOUS COMMUNITIES

Economic development has a range of meanings attached to it. At its most basic, it is defined as monetary (or national) income per capita. At the other end of the spectrum it is defined by Sen (2001) as the capability of people to lead the lives they desire.

This latter definition is adopted by the Cape York Institute (CYI), a leading body dealing with policy and leadership issues within Cape York, when they argue that:

"The end goal for the Cape York reform agenda is to ensure that Cape York people have the capabilities to choose a life they have reason to value."⁴⁴

Sen (2001) defines capabilities as "those attributes that give people the ability to pursue opportunities in their life" and as such include education, health, job status, income, security and so forth. Well-being of a community is then defined as the aggregate of the capabilities of its members.

A community is considered to be economically viable when its economy produces an acceptable level of well-being across a range of capabilities, with an acceptable level of outside support.⁴⁵ Of central importance is the particular context of the economy, because it "tells us what the costs and benefits of different activities might be in that economy."⁴⁶ For example, the remoteness of the location of the community imposes significant costs on a range of economic activities, and is therefore a crucial part of the context for Cape York communities. Policies of the State and Commonwealth governments towards income provisioning can also shape outcomes. Context can therefore inhibit development of a real economy. Only some factors affecting context are possible to change, with the communities' small size and remoteness constraints on economic viability.

In order to achieve acceptable levels of wellbeing, the following are considered to be important:

- People must enhance their capabilities and be mobile;
- Policies and attitudes must enable engagement with the real economy; and
- People must be engaged in both local and non-local employment.

This analysis focuses on the second of these, and seeks to address the impact of Wild Rivers on the ability of Cape York indigenous communities to engage with the real economy.

⁴⁴ Cape York Institute for Policy and Leadership, 2005 Report, *Can Cape York Communities be Economically Viable.* This was cited from a paper Freedom, Capabilities and the Cape York reform Agenda, CYI, *Viewpoint*, October 2005, <http://www.cyi.org.au>

⁴⁵ Community is defined as "a place considered together with its inhabitants. It includes a diaspora of people who maintain their connection with a place, even though they are resident elsewhere.

⁴⁶ Ibid, p 7.



5.1 ENGAGEMENT WITH THE REAL ECONOMY

The CYI study notes that proximity to a real economy is not enough. Some communities are very close to significant mainstream economic activity (eg. mining and tourism), yet there continues to be very little engagement with that real economy. This suggests that remoteness alone is not a sufficient explanation for capability deprivation in Cape York communities. Overall, CYI found that:

“...economically viable scenarios required policies and attitudes that actively promoted economic development. They included policies and attitudes encouraging outside parties to invest in the communities, thus creating employment opportunities. They also had a welfare system that actively encouraged people to take up these employment opportunities and move away from welfare dependency.”

Noel Pearson has argued on behalf of Indigenous people that, of all the public-domain factors that a government could influence by policy decision and by funding shifts, it was economic relations that would most effectively drive change.⁴⁷ The Wild Rivers Act as it currently stands impedes economic development by either prohibiting some forms of investment, especially those within High Preservation Areas or increasing the costs of investments, making some of the investment unviable or non-commercial.⁴⁸ In doing so the options for communities to engage in real economy are deliberately restricted by the legislation; this at a time when that engagement is being promoted to those communities as a necessary and positive step for an economically viable community future.

There may also be additional costs associated with legislation which encourages less diversity in the types of economic activity in which people engage. While the State is keen to encourage and highlight the possibilities for eco-tourism in these areas, there are inherent risks associated with exposure to fluctuations of a single industry or a limited number of industries. Generally, regional economic viability is at least in part a product of diversity in that regional economy. A homogenous, single industry economy; especially one built on tourism an industry characterised by high elasticity of demand, would normally be expected to be exposed to greater degrees of performance fluctuation over time than would a heterogeneous multi-industry economy. In addition, the net benefits associated with the promotion of say eco-tourism over other activities, may decline as successive regions engage in similar activities, depending on the level of demand for such services. It seems improbable that all of the communities affected by the Wild Rivers legislation could have a viable future in competing with each other for the Cape York eco-tourism dollar.

⁴⁷ Sutton, P (2009), with over 40 years experience in Indigenous communities, supports Pearson on this point. He further argues that deep-rather than superficial-cultural redevelopment is necessary if there is to be a radical improvement in people's chances of ending their suffering.

⁴⁸ For example, the Cape Alumina company is currently undertaking an EIS, with an ILUA being negotiated. If the declaration goes ahead, they will not be able to undertake underground mining, because the mineral is bauxite. Because it is not of state significance, they cannot mine within the High Preservation Area. They also cannot mine overground in nominated water ways (as these are significant contributors to the wild rivers). It is estimated that approximately 20-25% of the resource for this application falls within the HPA. The company is not in a position to push for compensation, because they do not yet have any authorisation to mine. An existing mine owned by RIO also has a situation where 15% of its estimated resource falls within a HPA. However, the resource is of such a magnitude that this is not enough to make it unviable.



The literature dealing with economic development for remote Indigenous communities emphasises the need to recognise the relative importance of customary activity, potentially enhanced by native title legal rights in resources. Altman (2004) puts forward a three-sector hybrid economy framework as an alternative to the usual two-sector private (or market) and public (or state) model to more accurately depict economic activity within the Indigenous economy. This customary or non-market sector is responsible for much activity both inside and outside the household, and involves individual or group rights to resources and associated obligation to share.⁴⁹ Altman states that:

"This different approach seeks to blend developed world and Indigenous perspectives on economic development, questioning what I perceive to be conventional notions of property and institutions which merely reflect the dominant power culture's focus on market and materialism."

Sutton (2009) also captures important differences in his reflections on 'development' or 'modernisation', which he argues only occurs when people seek cultural change for themselves and their own people. He notes that with past attempts at modernisation, "there seemed to be a wilful blindness" to:

- the role of past and present Indigenous egalitarian social organisation and the challenge this offered to performing according to the expectations of a modern society;
- the role of traditional power structures in setting some of the conditions for dependency;
- the ancient need to pursue family loyalties over essentially foreign ideologies such as the doctrine of 'the common good';
- the lingering background of an originally semi-nomadic economy, and its emphasis on demand sharing and its general rejection of accumulation;
- the complementary tradition that the order of things was meant to be, thus rendering notions of general social progress, or indeed any kind of change, deeply alien to those of a classical Aboriginal persuasion.

There is a good case to be made for the assertion of some that the Wild Rivers declarations are reducing the capacity for diversity in local economic activity and hence impact negatively on the prospects for economic viability in effected Cape York communities.

6 HAS THE WILD RIVERS ACT STRUCK THE CORRECT BALANCE?

Policy makers in government will highlight a number of arguments to support the legitimacy of the Wild Rivers legislation and its management since proclamation. These include:

- The river systems on the east coast of Australia are extremely rare. Costs of rehabilitating riverine systems are extremely high. The cumulative impacts of

⁴⁹ Using this approach, Altman estimates the customary activity generated by:

- harvesting wildlife;
- Indigenous fisheries;
- Indigenous arts;
- Indigenous natural resource management; and
- greenhouse gas abatement.



erosion run-off, fertilizer input and polluted water being returned to the system can be quite large to these sensitive river systems. Due to the fact that summer rains dominate (whereby a lot of rivers do not flow for 6 months of each year), large storages are necessary in order to have reliable sources of water.

- The Queensland government went to the polls with 19 rivers nominated for potential wild river declaration, due to their high degree of naturalness, this largely due to the fact that they were not developed. Six rivers (Mitchell, Normanby, Embly, Alice and Mission) were not declared wild rivers, due to the level of economic development and water resource development there (eg. dams and irrigation).

and

- A series of amendments were made to the Wild Rivers Act in 2006 aimed at addressing unintended consequences of the 2005 Act. In particular, 'agriculture' was better defined so that exclusion did not cut out small scale or low impact agriculture. These amendments ensure that only subsistence levels of agriculture are allowed, with the Act still aimed at preventing intensive agriculture in certain areas, thereby making such ventures less commercial.

Each of these arguments places amorphous environmental benefits ahead of economic engagement in Cape York Indigenous communities. This is questionable if only for the reason that the beneficiaries of the legislation remain distributed and anonymous while those incurring the penalty are visible and, through their spokespeople, making their views known.

The fact that existing authorisations are not impacted by the legislation may suggest some degree of balance between the needs of economic development and those of environmental protection. However, to suggest that this balance is sufficient implies an underlying view that the maintenance of the standard of living for the affected population, while protecting the environment, is sufficient. An implicit assumption is also made of the equitable distribution of existing authorisations across the population of Cape York.

Clearly, given the existing standard of living (or level of well-being) reflected by the following indicators:⁵⁰

- The gap between Indigenous and non-Indigenous life expectancy at birth was 12 years for males and 10 years for females;
- Median incomes of Indigenous households were 65% of those of non-Indigenous households in 2006;
- The level of disability and chronic disease among Indigenous people was twice that for non-Indigenous people in 2006;
- The rate of substantiated child abuse and neglect for Indigenous people was 6 times that for non-Indigenous people;
- Indigenous adults were 13 times more likely as non-Indigenous adults to be imprisoned in 2008; while Indigenous juveniles were 28 times as likely to be detained than non-Indigenous juveniles as at 30 June 2007;

there is a very strong case to argue that the correct balance has not been struck in this instance.

⁵⁰ Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators*, July 2009.



7 RECOMMENDATIONS FOR CHANGE

The forgoing analysis and observations suggest strongly that the Wild Rivers legislation is operating in a manner that is inequitable for effected Cape York indigenous communities and counter productive to a policy goal of promoting economic engagement in those communities. There is clearly scope for the Anglican Church to engage in action intended to assist in securing remediation of these undesirable outcomes of the legislation. Application of a principle of subsidiarity would dictate that dialogue is initiated with those effected communities to gain guidance on their preferences for remedial action before any significant public actions is taken by the Church.

Subject to discussion with affected indigenous community representatives, there are a number of incremental adjustments to the legislation that could be considered.

There are several alternatives which may address the imbalance embedded in the current legislation. Each would have varying economic and political ramifications. Firstly, the level of onerous restrictions could be reduced, especially those within the high preservation areas of the wild river areas. In addition, the number of wild rivers declared could be reduced. Alternatively, the State government could estimate the cost impact of the Wild Rivers Legislation on potential development proposals with a view to subsidizing activity where potential benefits from the proposed development can be clearly demonstrated.

In conclusion, strong property rights are important determinants of productivity. Restricting the type and scale of activities which can occur within wild river areas greatly impacts on the social benefit derived from such rights. While achieving positive environmental outcomes, which align with Indigenous values, the Wild Rivers Act does so at the cost of compromising greater levels of engagement with the real economy. This results in an inefficient allocation of resources and an inequitable burden of the associated costs on Indigenous Australians in remote areas. By denying communities access to the full potential of their land, the legislation also risks repeating effective dispossession of affected communities from their land. Given the existing relatively low levels of well-being for Indigenous Australians in remote areas, there is a clear case to show that the economic costs in this instance are greater than the environmental benefits. While there are clearly many economic, cultural and social obstacles which make such engagement with the real economy difficult, and in some instances, impossible, not to proceed down this path is to suffer both a loss of hope and certain policy failure, especially with respect to "closing the gap" between Indigenous and non-Indigenous populations on Cape York.



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APPENDIX A - LEGISLATIVE BASIS AND CONSEQUENCES OF THE WILD RIVERS ACT AND DECLARATIONS

Conics Town Planners
June 2009



Wild Rivers Act (WRA)

Instructions

To:

- Summarise the WRA, its intent and consequences (what is caught and what is excluded);
- High level case studies of possible development applications;
- A critique of the legislation and the resulting Wild River Declarations and Codes.

The Wenlock Proposed Wild River Declaration (the **Wenlock Declaration**) was chosen arbitrarily for the assessment. The discussion below assumes that it will be adopted in its publicised form.

This paper does not discuss the effect of the moratorium which applies during the currency of a proposed declaration (S 10).

Summary

- The purpose of the WRA is to preserve the natural values of rivers that have all or almost all of their natural values intact;
- This is to be achieved by:
 - Declaring an area to be a Wild River Area (WRA);
 - Categorising various parts of the WRA according to the values in those parts;
 - Prohibiting certain activities and regulating others according to how they are categorised and by application of provisions in:
 - The WRA;
 - A Wild Rivers Declaration (WR Declaration);
 - The Wild Rivers Code (WR Code);
 - IPA and various other statutes such as the Water Act and the Fisheries Act.
- Where it is not possible to obtain approval to a proposed development by virtue of prohibitions, there is a mechanism to apply to the Minister for a Property Management Plan which may result in a change to the WR Declaration;
- This remedy is unlikely to provide relief for most people because of the time, cost and uncertainty associated with its implementation;
- Broadly speaking, a WR Declaration will either prohibit development, or regulate it so as to make it more difficult to achieve than prior to the declaration;
- A number of forms of development, including agriculture and animal husbandry are prohibited in High Preservation Areas (HPA) which, in the Wenlock Wild River Area (Wenlock Area) constitutes a significant proportion of the total area;
- Development in Designated Urban Areas (Urban Areas) is less likely to be required to comply with the WR Code (see S 43(3) WRA) than in other areas;
- Regulated development is generally required to comply with the WR Code which specifies "required outcomes" and "probable solutions" including:
 - Setbacks of 200 meters;
 - Slope restrictions of between 1 and 10%;With obvious limiting effect on the location of any development
- The WRA, the Wenlock Declaration and the WR Code will make it very difficult if not impossible to develop in-stream fish farms or banana farms (and other forms of agriculture) in the HPA;
- The same instruments also have potential to make development of ecotourism difficult, but less so than the other examples.



Intent of WRA and its Consequences

Statutory Purpose

The stated purpose of the WRA is to preserve the natural values of rivers that have all, or almost all, of their natural values intact.

Broad Scheme of WRA

The broad scheme of WRA is:

- A river only becomes a Wild River by way of **ministerial declaration** after a formal process which includes public notification;
- There are 3 broad scenarios which can arise **after** a ministerial declaration is made:
 - **Certain types of development are prohibited entirely by WRA:**
 - No application can be made for a proposal to carry out the prohibited activity;
 - **Certain types of development (which are not prohibited by WRA) may be prohibited by the WR declaration, in which case:**
 - An application can be made to the Minister for a Property Development Plan (PDP) to remove the prohibitions in the declaration which are impeding the proposal;
 - If The Minister approves the application, then he/she may, after a formal process including public notification, amend the WR declaration to remove the prohibition;
 - The PDP is not an approval to carry out assessable activity under IPA, and must be followed by an amendment to the WR declaration (after public notification and a decision);
 - **Certain types of development will not be prohibited by the declaration, but will be regulated according to the WR declaration and the Wild Rivers Code (WR Code):**
 - Where development is assessable, approvals will be required under IPA;
 - Certain types of assessable development must “comply” with the applicable WR Code;
 - The WR code requirements generally increase the burden on applicants as compared to the situation where no WR Declaration has been made.
- The extent to which certain types of development may be prohibited or regulated by the WR Declaration or the WR Code may also vary according to the manner in which the area to be developed is categorised in the WR declaration:
 - There are two broad categories:
 - **High Preservation Area** which includes:
 - (a) the wild river;
 - (b) the major tributaries of the wild river;
 - (c) any special features in the wild river area;
 - (d) the area, stated in the wild river declaration for the wild river area, of up to 1km either side of the wild river, its major tributaries and any special features.
 - **Preservation area**- the balance of the area is preservation area;
 - There are three sub-categories which can be located in either High Preservation or Preservation areas:
 - **floodplain management area;**
 - **subartesian management area;**
 - **designated urban area**

Broadly speaking the prohibitions and regulations are less stringent in Preservation areas than in High Preservation areas, and less stringent again in designated urban



areas. There are no designated urban areas in the 7432 sq km area proposed in the Wenlock Proposed Declaration.

Broad Effects of the Wenlock Proposed Declaration under the Wild Rivers Act

The DERM website describes the effects of the proposed declaration as follows:

"Many activities will NOT be affected even if the area is declared a wild river area, including:

- *existing developments*
- *grazing*
- *recreational fishing*
- *boating or refueling*
- *traditional cultural activities*
- *native title*
- *land management such as clearing weeds*
- *traditional burning*
- *taking water for stock or domestic needs*
- *improving pasture (unless using risk species)*

Some high impact activities will be effectively prohibited in the proposed high preservation area, including:

- *instream dams and weirs*
- *animal husbandry (eg. feedlots, emu farms)*
- *aquaculture (eg. hatcheries, grow out ponds)*
- *environmentally relevant activities (except some that are essential for urban areas)*
- *surface mining (except for limited hand sampling instream and low-impact exploration off-stream)*
- *destruction of marine plants.*

Other activities in the proposed high preservation area and preservation area and certain activities in the proposed floodplain management area will be permitted providing they comply with specific codes. For example, aquaculture may be allowed in the preservation area if it complies with the relevant wild river code, and building roads and tracks will be permitted provided the requirements of the code are met."

Effects for Specific Proposals

In this section high level consideration is given to some of the activities potentially associated with in-stream fish farming, banana farming and an ecotourism development in the Wenlock Wild River area.

Fish Farm

Assessment

Fish farming is prohibited in HPA or nominated waterways if it interferes with water flow. This could make the establishment and conduct of in-stream aquaculture very difficult to achieve in a WR declared area.



Interference with Water Flow

If a fish farm will interfere with the flow of water it will be prohibited if it is for operational works:

- In a High Preservation Area (HPA); or
- In a nominated waterway in a preservation area but is not a dam or a weir.

An assessment manager cannot receive the application.

Waterway Barrier Works

An application for operational works for **waterway barrier works**:

- In a HPA is prohibited.
- In any other part of the Wild rivers area must comply with Part 8 of the Wild Rivers Code

waterway barrier works means a dam, weir or other barrier across a waterway if the barrier limits fish stock access and movement along a waterway.

Part 8 of the WR Code provides for “required outcomes” and “probable solutions” including:

- Not to impede fish passage;
- No release of pollutants during construction or operation.

Fish Habitat Areas

Operational works (building) in a fish habitat area under the Fisheries Act where it is not self assessable will be prohibited if any part of the application relates to development in a HPA.

All other applications in a fish habitat area must comply with Part 4 of the WR Code. The WR Code specifies “required outcomes” and “probable solutions” which include:

- Fish passage cannot be impeded;
- Fish habitat values cannot be impacted;
- Activities not to impound natural flow paths.

Private Road Access to River

See below for provisions relating to commercial and industrial development.

Land Based Aquaculture

Note also, an application for an MCU for **land based aquaculture** is prohibited if any part of the application is in a HPA. Any other aquaculture application under this section must comply with Part 2 of the WR Code, or Part 3 if an environmentally relevant activity (ERA).

Part 2 of the code provides for required outcomes and probable solutions which relate to preservation of corridor function and water quality.

Banana Farm

Banana farming for commercial purposes falls under the definition of agricultural activities (Planting, gathering or harvesting a ...food...crop.”). Some of the likely activities in establishing and conducting a banana farm are discussed below.

Assessment

Agriculture (and agribusiness) is prohibited in a HPA. In Preservation areas, other restrictions on taking or interfering with water and clearing vegetation could pose significant challenges to the establishment of new agriculture businesses.



Agriculture MCU or Operational Works

S 42 -Any application for an MCU or operational work approval for agriculture:

- Must not be received by the assessment manager if it relates to a high preservation area or a preservation area in relation to the production of high risk species (there are none specified for the Wenlock Wild river area);
- Otherwise, development must comply with Part 1 of the WR Code:

The code specifies setbacks and slope restrictions (schedule 3) same as above.

Taking of Water

The Wenlock Declaration seeks to regulate only unallocated water. Specific volumes are identified for Indigenous, Strategic and General reserves.

Volumetric limits for each are stipulated (500, 2000, and 1000 mega-litres).

The process will be confirmed in regulations under the Water Act, but the general requirements are in schedule 6 to the declaration. Schedule 6 provides that if demand exceeds supply a market based approach to allocation will be used, except where State purposes or indigenous social and economic aspirations are involved.

Otherwise the provisions of the Water Act apply.

Taking or Interfering with Overland Water Flow

Operational works for taking or interfering with overland water flow in a HPA or floodplain management area (FMA) which the declaration states to be assessable under IPA (here under schedule 8 part 1 table 4 item 3(c)(i) for taking, and part 2, table 4 item 1(b)(ii) for interference)) must comply with Part 6B of the WR Code.

Otherwise taking of over land water flow in a HPA is prohibited except for stock or domestic purposes, and interference with over land water flow in an HPA is prohibited.

Part 6B of the WR Code has "mandatory requirements", "required outcomes" and "probable solutions". These include:

- no works in a flood channel;
- natural flow paths are not significantly altered;
- riparian and wildlife corridors are preserved;
- No degradation of receiving waters.

Vegetation Clearance in HPA

Operational works for clearing assessable vegetation in an HPA is regulated by WR Code 12. Vegetation in a preservation area is not regulated by the Declaration.

Only applications for "relevant purposes" as defined in the Wenlock Declaration can be received by the assessment manager. The Wenlock Declaration defines "relevant purposes" more restrictively than VMA. The following are **not** relevant purposes for clearing in a HPA:

- a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26; or
- for fodder harvesting,
- for thinning,
- for an extractive industry;
- for clearing regrowth outside of an area shown as a registered area of agriculture.



Code 12 is very detailed and deals with 4 broad categories:

- Requirements for clearing encroachment;
- Requirements for clearing for public safety and infrastructure;
- Requirements for clearing regrowth;
- Requirements for clearing vegetation for weed or pest management.

The most relevant category for this enquiry relates to clearing "regrowth". Some key features in this category are:

- No clearing of endangered or of concern regional ecosystems;
- Clearing is limited to non remnant vegetation in an area shown as a registered area of agriculture;
- Set backs and slope restrictions apply;
- Minimum sizes of assessable vegetation to be retained for connectivity;
- Avoidance of clearing in discharge areas to avoid salinity;

Ecotourism

Assessment

The provisions of the WRA and associated instruments are potentially less onerous in relation to ecotourism than other commercial ventures.

Ecotourism Acknowledged in the WR Declaration

The WRA makes no specific reference to ecotourism, however the foreword to the proposed declaration claims that ecotourism is recognised and supported by the declaration.

The only obvious concessions to ecotourism in the proposed declaration are that:

- unallocated water from the Strategic Reserve can be made available for ecotourism;
- ecotourism is defined:
ecotourism, includes commercially based enterprise that encompasses a spectrum of nature-based activities that foster visitor appreciation and understanding of natural heritage that are managed to be ecologically, economically and socially sustainable.

Commercial Development

As a commercial activity ecotourism will fall under S 43 of the WRA which deals with applications for residential, commercial and industrial development in a Wild Rivers area.

Development applications for residential, commercial or industrial development which is assessable under:

- a Local Government Planning scheme;
- IPA as operational works for the reconfiguration of a lot;

must comply with the Wild Rivers Code (unless in a designated urban area).

The WR Code provides for "Required outcomes" and "Probable solutions"

The probable solutions are minimum setbacks of 200 meters and slope restrictions between 1% and 10% depending on soil stability (see below).



Such a venture might involve vegetation clearance, water taking and/or interference with overland water flows (see above).

Overview Conclusion

A WR Declaration will either prohibit development, or regulate development in a manner which is likely to make it more difficult to establish or conduct than it was prior to the declaration.

Notes from consultation with environment groups

The report titled *Wild Rivers Policy – Likely Impact on Indigenous Well-Being* canvasses the economic consequences of implementation of this legislation on Cape York. The following notes have been compiled through discussion of the wild rivers matter with national environment groups with offices in Queensland. In all, discussions were sought with three major environment groups. The identities of these groups are not shown in the notes as the consultation undertaken was an in-confidence process. Where requested, notes included here are a direct transcript of those provided by the relevant environment group. Brief comments on analysis of the positions reported by the environment groups spoken to are also included in these notes.

Consultation with environmental interest groups:

Upon consideration of the wild rivers matter in November 2009, Diocesan Council requested that additional consultation occur with environmental interest groups in order to enable more direct consideration of their views before finalisation of a position on this matter.

Direct consultation has occurred with [REDACTED] and the [REDACTED]. The following notes summarise the outcomes of these consultations and each groups stated position in regard to ongoing implementation of the Wild Rivers Act.

Council members should note that consultation opportunities were also sought with the [REDACTED] who declined on the basis that “they do not have the resources to engage in a [REDACTED] campaign”.

[REDACTED]: Lengthy and productive discussions were held with representatives of [REDACTED]. The following dot points have been supplied by [REDACTED] and are incorporated verbatim.

Viewpoint of [REDACTED] re Wild Rivers Legislation

- *The wild rivers of Cape York are ecologically important on a global scale. As such, their conservation values are immense in their own right, and their environmental significance extends well beyond the Cape York region. This is due to the intactness of the region and the rivers' exceptional health and lack of industrialisation, which has destroyed many river systems around the world, with serious long-term consequences for the environment, the economy and local communities.*
- *The Wild Rivers legislation translates “science into action”. Conservation science recognises the impacts that dams and excessive water extraction, and broadscale clearing in catchments have on river systems. The legislation regulates these types of impacts. There are both strong ecological and economic benefits of protecting river systems, not least because it provides a baseline for sustainable development, maintains the “ecosystems services” that support human existence, and avoids the enormous costs of environmental restoration (as per Murray-Darling Basin for example).*
- *Protection of river systems must be based on their ecological values and functions. If it's agreed that rivers are to be protected (and there is a broad consensus on this) then the issues turn on -*
 - *addressing any equity implications arising from such actions*
 - *achieving broad agreement with local communities*
- *The existing Wild Rivers consultation process lacks the sophistication to capture the diversity of traditional owner views across catchment areas and throughout Cape York. For example, currently too much emphasis has been placed on the regional institutions of Balkanu*

Development Corporation and the Cape York Land Council, in place of Traditional Owner involvement. The current approach neglects the diversity of views within different indigenous groups.

- There is a problem in ecological terms if groups are simply able to veto environmental protection measures of benefit to all - for e.g. those at the mouth of the river versus those upstream. An effective veto on environmental regulation in a part or all of a catchment will defeat such measures.
- [REDACTED] agrees broadly with the [REDACTED] position on Indigenous rights principles in relation to protecting wild rivers in Cape York Peninsula. However, [REDACTED] believes that the difficulty lies in the detail around how such high-level principals are addressed, particularly as a rights framework entails a number of competing interests for Indigenous people, as well as in the wider community; and of itself does not address the 'conservation imperative' in the early 21st century.
- [REDACTED] believes that on balance, Wild Rivers, together with other existing regulatory arrangements on Cape York, have achieved these principles – however, the State retains power to make final decisions.
- [REDACTED] believes that it is not equitable to give any one Traditional Owner group in a Wild River area the unfettered right to veto the protection measures or to exempt Aboriginal land from regulatory measures. This is because a group in the top of the catchment may want to undertake something that will adversely affect those downstream (i.e. by extracting water and polluting the river). Also, at a regional scale, a veto strongly favours destructive development, and denies other groups their right to a clean and healthy environment – the UN declaration also provides for a 'right to conservation', which is not reconciled.
- [REDACTED] believes that to the extent that there are inequities arising from the Wild Rivers scheme (and at this point [REDACTED] has seen no evidence to support this), then those matters should be addressed through social and economic policy, not at the expense of the environment. For example, Aboriginal businesses whose viability is affected by a wild river regulation may be compensated or have an offset provided, as the ability to develop economically in remote parts of Australia is subject to ongoing Government investment. However, they caution that such payments would need to be strongly linked to the impact of the Wild Rivers legislation on development costs, rather than be used as a form of social welfare payment or to subsidise otherwise unsustainable development ventures.

[REDACTED]: Lengthy and productive discussions were held with the [REDACTED]. The [REDACTED] personnel engaged in those discussions accepted that the following comments extracted from their web site constitute an accurate reflection of their views on the Wild Rivers legislation and process for implementation:

In recognition of the social, economic, cultural and environmental cost of repairing degraded river systems such as the Murray-Darling basin, ACF welcomes the Queensland Government's proactive approach that ensures the ecological integrity of river systems will be maintained for future generations.

ACF recognises the rights and interests of Indigenous peoples in decisions affecting their traditional homelands and the importance of free, prior and informed consent.

ACF recognises the need to enhance economic opportunities delivering improved socio-economic outcomes for the regions' Indigenous communities.

While a legislative framework providing for Indigenous economic development already exists within the Cape York Peninsula Heritage Act 2007, ACF would potentially support further legislative or regulatory provisions that:

- *Provide a consent mechanism whether through an Indigenous Land Use Agreement (ILUA) or other process.*
- *Provide for greater flexibility for Traditional Owners in establishing ecologically sustainable economic enterprises.*
- *Acknowledge the strong cultural association Traditional Owners have with river systems.*

While there are clear similarities and differences in the views of these environment groups, major distinctions that emerged in direct discussions is the view of each taken in regard to a prospective requirement for Wild Rivers declarations to be based on indigenous consent and the primacy or otherwise of environmental imperatives.

In regard to the first matter of consent, put simply, the [REDACTED] openly expressed the view that where properly constructed indigenous consent isn't obtained, declarations should not proceed. [REDACTED], while stating in-principle support for the idea of indigenous consent, expressed the view that the notion is many years away from being properly legally defined and hence is not implementable at this time, and in addition, should not be an absolute barrier to a Wild Rivers declaration where consent can not be achieved.

On the second matter of primacy of environmental imperatives, [REDACTED] are absolute in their view that protecting the environment takes precedence over all other concerns while the [REDACTED] takes the view that, in indigenous areas, achievement of environmental goals should be seen in the context of well developed plans for concurrent pursuit of acceptable social, economic and environmental outcomes.

... ... ends.