



**Cape York Land Council**

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**Balkanu**  
Cape York Development Corporation P/L

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Mr Martin Moynihan  
Chairperson and CEO  
Crime and Misconduct Commission  
GPO Box 3123  
Brisbane Qld 4001.

CRIME AND MISCONDUCT
RECEIVED
15 MAR 2010
COMMISSION

*m. Legaz*

Dear Mr Moynihan

Attached is a submission to the Crime and Misconduct Commission on the issue of interaction between ministers, ministerial staff and public servants.

As per the telephone conversation between Chief Operating Officer of Balkanu Corporation, Terry Piper, and Narelle George from the CMC, on 1 March 2010, we understand you are prepared to consider our late submission.

We note that the functions of the CMC include to:

- Raise standards of integrity and conduct in the public sector;
- Ensure that any complaint about misconduct in the public sector is dealt with appropriately; and
- Help prevent crime and misconduct.

In our submission we raise serious matters pertinent to the three main terms of reference/questions, revolving around the State Government's declaration in April 2009 of three Wild Rivers on Cape York. To assist the Commission's deliberations and to provide context to the terms of reference, we have detailed examples under each of the three main headings where we believe there are issues relevant to your inquiry.

Some issues in this submission have been raised with the government through various forums, but were treated with scant regard and response. We attach for your information a submission to the Integrity and Accountability Review, and a letter to Her Excellency Penelope Wensley.

The issues outlined in this submission point to the need for a thorough examination of the relationships between ministers, ministerial staff and public servants; and the need for more effective checks and safeguards to ensure that proper standards of integrity, accountability, ethics and honesty are maintained across government and the public service.

All examples raised in this submission cover whole of government actions and responses, and need to be considered in their totality.

Premier Anna Bligh said in her Forward to the Queensland Government's November 2009 *Response to Integrity and Accountability in Queensland*:

*ALD 16/3/10*



to: Mr Martin Moynihan  
Chairperson and CEO, Crime and Misconduct Commission

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"Over the next 12 months the Queensland Government will implement the most comprehensive suite of integrity and accountability reforms in the past 20 years. These reforms will shape the Queensland of tomorrow. They will give Queenslanders greater access to their government. They will drive a culture of the highest ethical standards harder. They will shine the bright light of scrutiny across more areas of public office. They will ensure expectations are clearer. They will make certain the options to deal with those who don't meet their ethical obligations are stronger. And they will ensure Queensland continues to lead the nation in delivering open and accountable government".

In the spirit of the Premier's drive to lift the standards of her government and the officers that serve it, and thus the people of Queensland, we attach a submission for your serious consideration, and request an opportunity for officers of our organizations to meet with the Crime and Misconduct Commission as soon as mutually convenient to discuss the matters raised in this submission and provide evidence and documents to further support this submission.

We request that the Crime and Misconduct Commission not make this submission public until such time as our organizations have met with the CMC to discuss the matters in the submission and the publication is authorized by ourselves.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Noel Pearson".

Noel Pearson

A handwritten signature in black ink, appearing to read "Gerhardt Pearson".

Gerhardt Pearson

A handwritten signature in black ink, appearing to read "Richie Ahmat".

Richie Ahmat

Dated March 15<sup>th</sup>, 2010

QUESTION ONE

**WHAT** protocols, procedures or constraints should be in place to guide ethical and mutually respectful interactions between a minister's office and public servants?

**EXAMPLE:** why protocols, procedures and constraints are needed to ensure public servants are not forced to engage in behaviour which may be unethical.

On Monday 6 April on ABC radio AM Noel Pearson asserted that:

*"We now have very strong grounds to believe that an executive council decision was made prior to the election, and that decision was put into the drawer during the course of the four week election campaign".*

Natural Resources Minister Stephen Robertson responded on AM that:

*"Well, what would have happened Tony.....what would have happened is that simply the caretaker conventions that all governments should abide by during election periods - not to make decisions during that period that would bind a future government - would have been enacted. So the executive council minute would probably have been delayed until after the election, and that is appropriate",*

On ABC Australia Talks on 15 December Minister Robertson stated:

*"Why it wasn't declared, was that we had this thing called an election. And when an election is declared we go into a thing called caretaker mode. So that decision during the course of the election period by the previous minister could not be finalised. That is it, that is the whole story."*

On the evidence of material released under Freedom of Information and considering processes that must be followed according to the Executive Council Handbook, the Minister's claims that the declarations were stalled due to the caretaker conventions are questionable. This evidence points to a Minute being endorsed by Executive Council members at a Cabinet meeting prior to the calling of the 2009 State Election on the 23<sup>rd</sup> of February and that there was sufficient time for the declarations to have been finalized before the caretaker mode. It is apparent from the evidence that a decision was made to put the declarations on hold until after the election, 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 Premier's office appears to have sought to cover this lack of disclosure by purporting that the Premier made a media release, dated 15 March 2009, titled "Wild Rivers Program Heads for the West" which referred to the intention to complete the gazettal of the Cape York wild rivers. However, there is no evidence that the media statement in this form was ever released and the media statement "Wild Rivers Program Heads for the West" which appears on the Qld Labor Election 2009 Policies and Media Releases website makes no mention of Cape York Wild Rivers. Such an action if it was done by a public official may be a breach of the Public Sector Ethics Act 2004. It is important to note that the Premier is responsible for any conduct of her adviser.

There are also serious questions about the conduct of Government bureaucrats from the Department of Natural Resources and Water in relation to the purpose of a "consultation meeting" about wild rivers between the department and traditional owners proposed by the State for 23-25 February 2009. In particular, comments revealed through FOI between senior officers of the Department of Natural Resources and Water that *"they will smell a rat"* indicates that the State was trying to hide from indigenous groups the real purpose of the meeting.

**RECOMMENDATION:**

- If there is to be an ethical culture within Government it is essential that leaders such as the Premier, Ministers and the Governor set and enforce the standards and themselves follow the procedures that they have set;
- The doctrine of Cabinet and Executive Council Confidentiality must not be used as a way of avoiding public scrutiny when it comes to matters of integrity, accountability and ethical behavior
- It is suggested that there is a need to amend the fundamental legislative principles under the Legislative Standards Act to ensure that legislation itself is conducive to achieving high standards of integrity and accountability.
- There is a need to ensure that State legislation is consistent with fundamental legislative principles and other standards including that it not deny fair processes for the appeal and review of decisions and is subject to proper regulatory impact assessments.

**QUESTION TWO**

**HOW can public servants be empowered to challenge or question a request or direction from the minister's office that they consider to be inappropriate?**

**EXAMPLE: why public servants should be protected to ensure they are not drawn into dishonest, misleading or political actions.**

The Executive Council Handbook sets out the processes by which Executive Council approval occurs. Under the Handbook there are two parts to the Governor-in-Council approval process.

"Following receipt of Minutes each Tuesday the Executive Council Secretariat prepares a proposed Schedule of Minutes for consideration by Executive Councillors. Copies of the Schedule are provided to the Cabinet Secretariat and these are distributed to each Executive Councillor and each Departmental Chief Executive prior to the Cabinet meeting. No Minutes can be added to the Schedule once it is distributed with the Cabinet bag. If Executive Councillors agree that the matters incorporated in the Schedule should proceed to the Governor in Council, the original Schedule, which is endorsed 'Executive Councillors recommend to Her Excellency the Governor that the Minutes detailed in the accompanying Schedule be approved', is initialled by each Executive Councillor at the regular Cabinet meeting.

The second part of the approval process is the submission of the Minutes to the Governor in Council for approval. Each Minute is signed by the Governor at a meeting of the Executive Council the following Thursday"

The Handbook requires a 10 day process from the lodging of the Minute with the Secretariat to its approval by Governor-in-Council. According to the Gazette notices, Governor-in-Council approved the wild river declarations on Thursday 2 April.

There can be one of only two explanations: an Executive Council Minute was lodged with the Secretariat on Tuesday 24 March – which is impossible, as the election was only held on March 21 and the new ministry was not sworn in until March 26; or the Minute was lodged before the election.

There is only one of two possible scenarios in relation to the Minute approved on April 2. Either the Minute was endorsed by the new members of Executive Council at Cabinet on 30 March – in a rushed action just four days after the swearing-in of the new ministry, bypassing proper procedure -

or the Minute was endorsed by Executive Council members at the Cabinet meeting on 16 February when Craig Wallace was the Natural Resources Minister.

An email from Departmental officer Adam Reece to fellow officer Scott Buchanan, at 4.47pm on 30 March, demonstrates how it is highly improbable Minister Robertson took the Executive Council Minute to the Cabinet Meeting of 30 March. The email states:

*"Also Scott, Kerry Waters has asked that I make sure the Minister's office has been made aware of the fact they are proceeding to GIC"*

This email supports evidence that the Minute was endorsed by Executive Councillors at the 16 February cabinet meeting; the Minister's office would not have needed to be made aware if the Minute was approved at the Cabinet meeting of the 30 March.

Contrary to established practice, the Wild River Declarations gazetted on 3 April did not include a date on which the declarations were made, nor identify the Minister who made the declarations. On ABC TV's Q and A program on Thursday 30 July, Premier Anna Bligh stated that "the wild rivers were not declared until after the election". The Stewart Basin Wild River declaration consultation report states:

*"The Stewart Basin Wild River Area was declared on 3 April 2009".*

Paul Lucas as Acting Premier advised on 25 September 2009 that

*"The decision to declare the Archer, Lockhart and Stewart Wild River Area was made by the Honourable Stephen Robertson MP, Minister for Natural Resources, Mines and Energy and Minister for Trade on 1 April 2009. These declarations were subsequently approved by the Governor in Council and gazetted on the 3 April 2009".*

Minister Robertson has advised by letter of the 29 October 2009:

*"The declaration of a wild river area does not take effect until the Governor-in Council's approval of the declaration is notified in the government gazette (see section 16(2) of the WRA). Accordingly, although I decided on 1 April 2009 to declare the Archer Basin wild river area (pursuant to section 15(1)(a) of the WRA) the wild river was not formally declared until notice of the Governor-in Council's approval was published in the Government Gazette on 3 April 2009".*

Neither Acting Premier Lucas nor Minister Robertson clearly state that Minister Robertson declared the wild river areas. Both of these responses are obfuscatory.

Minister Robertson has on at least two occasions contradicted the letters above and claimed that the decision to declare the wild rivers was made before the election and therefore by the previous minister. At a meeting on 25 August in Cairns, Minister Robertson stated:

*"Yes, the decision was made before the election but it couldn't go to the Governor in Council because of the election".*

On ABC Australia Talks on 15 December Minister Robertson stated:

*"So that decision during the course of the election period by the previous minister could not be finalised. That is it, that is the whole story. After the election a new Minister is sworn in and I did the appropriate thing in terms of considering the process and the submissions and came to a view which subsequently resulted in the declarations being made."*

Balkanu Cape York Development Corporation and Indigenous leadership wrote 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. The Premier and the Minister responded that Minister Robertson made the decision to declare on 1 April, and the Governor's Official Secretary responded referring to the letter from the Acting Premier of 25 September.

Repeated requests for a copy of the instrument by which the declarations were made have been consistently ignored.

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 wild river areas for the Archer Basin, Lockhart Basin or Stewart Basin under Wild Rivers Act 2005 (Qld) s.7 and the documents relating to wild rivers considered by the relevant Minister at the same time as, or within 7 days prior to the time, the relevant Minister declared each of those 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. Although there is evidence within the FOI material that there was a document to be signed by Minister Wallace approving the declarations, which went unsigned, 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 instrument by which Minister Robertson made the declarations has not emerged in FOI material or through repeated requests to the Premier, the Minister and the Governor, our conclusion is that an instrument by which Minister Robertson made the declarations under s.7 and s.15 of the Wild Rivers Act does not exist; and that Minister Robertson could not have properly fulfilled his obligations under s.13 and s.15 of the Act.

The consultation reports for the Archer, Lockhart and Stewart River basins claim that the wild river areas were declared on 3 April, which is incorrect. Also, the process for making the declarations as set out in the Consultation Reports leaves out the critical step pertaining to the Minister making the declarations. The question must be asked: whether officers of the Department of Environment and Resource Management, and the Minister, intentionally inserted into the Consultation Reports an incorrect date of declaration or a misleading declaration process in order to disguise flaws in the declaration process.

If an instrument evidencing the making of the declarations by Minister Robertson does not exist then it raises the issue of what evidence of the declarations having been properly made was before the Executive Councilors and the Governor when the Governor-in-Council approved the Wild River declarations.

Section 15 of The Wild Rivers Act provides that after considering the matters mentioned in section 13 and any other matters the Minister considers appropriate, the Minister may (a) declare the area to be a wild river area or (b) decide not to proceed with declaration of the wild river area. If the Minister declares the area to be a wild river area then s.16 states:

*"The Governor-in-Council may, by gazette notice, approve the declaration of a wild river area"*

It is noted that on 6 July 2005, Minister Robertson, then Minister responsible for the Wild Rivers Bill responded to the Scrutiny of Legislation Committee that *"it was considered appropriate to have wild river declarations effected by a statutory instrument"* because in part *"the approval of the Minister for Natural Resources and Mines and the Governor-in-Council is required before a declaration comes into effect or is changed"*. It is clear that wild river declarations required two stages of approval, firstly by the Minister and then by Governor-in-Council, and that this two stage process was intended to give sufficient protection for the wild river declarations to be effected by a statutory instrument.

It is apparent that the Governor-in-Council has a discretion as to whether to approve the declaration or not. Considering the Wild Rivers Act and the Executive Council Handbook, the proper process for wild river declarations would require that the Minister first "declare" the area to be a wild river area in accordance with s.7 and s.15 of the Wild Rivers Act before lodging the Executive Council minute, and particularly before the Executive Council members at Cabinet recommend the approval of the declarations by Governor-in-Council. Otherwise the Executive Council members at Cabinet are recommending that Governor-in-Council approve a declaration which didn't exist at the time of the Cabinet meeting!

It is clear from the FOI material that a decision had been made to proceed to Governor-in-Council approval well before Minister Robertson supposedly made the decision to declare the Wild River areas on 1 April. Given the timetable and dates laid out above, it is apparent that the Executive Council endorsed a Minute which recommended that the Governor-in-Council approve declarations when those declarations did not exist at the time of the Cabinet meeting. It appears that Governor-in-Council was acting on advice about something which had not occurred at the time the advice was prepared, or as the evidence suggests, may not have occurred at all.

In addition, according to the FOI material there were changes to the declarations made by departmental officers between 30 March and 1 April. So those declarations which the Executive Council recommended be approved were different to the ones approved by Governor-in-Council. This is a serious matter, as it means that ministerial staff and departmental officers can alter documents already sanctioned by Executive Councillors for approval before they reach Governor-in-Council. This is very disturbing. Even more disturbing is that the FOIs reveal that there was at least one minor change to the declarations made by departmental officers after they had been approved by Governor in Council. This begs the question whether there were any other changes.

On 9 November, Cape York leadership wrote to the Governor raising a number of issues in relation to the Wild River declarations. Upon receiving the letter it was hoped that the Governor would seek senior independent legal advice in relation to the matters raised in the letter and in particular, whether the declarations which she approved with Executive Council had in fact been validly made. The Governor's Official Secretary, Mr Mark Gower, briefly responded on 14 December 2009.

On Thursday 17 December, the Premier was reported on ABC news, in response to media about the letter to the Governor:

*"I am satisfied that the Minister made this decision in relation to Wild Rivers in accordance with the legislation that governs the matter," she said.*

*"Ultimately the Governor will consider any matters that are brought to her, as she should.*

*"If she has any concerns, then I'd be more than happy to hear from her."*

It is unknown whether the Governor sought legal advice or raised any matters with the Premier.

**RECOMMENDATION:**

- New arrangements need to be implemented to ensure that public servants are not reluctant to address and report dishonesty, unethical behavior or maladministration. This may require a stronger process by which complaints can be made by public servants anonymously and subsequently investigated.

**QUESTION THREE**

**WHAT** needs to be done to ensure that public servants at all levels understand their obligation to provide independent, apolitical and impartial advice and to maintain the freedom to do so?

**EXAMPLE:** where public servants may have been compromised

On 5 August Indigenous woman Tania Major called on the Queensland Government to release its correspondence with the Wilderness Society prior to the 2009 election, including a "secret" letter to the Wilderness Society regarding Cape York environmental legislation. On Thursday 9 September an adviser to the Premier advised that the letter at issue could be found on the Wilderness Society web site. On investigation, the document was on the website carrying the notation "updated March 17 2009", inferring that the documents were on the web site prior to the March 21 election.

Subsequent investigation has indicated that the documents were not on the web site prior to the election, and had been inserted some time after Ms Major raised the issue. The date of update had also been adjusted. It would be of extreme concern if the Premier's adviser had conspired with the Wilderness Society to amend the website to falsely purport that a letter from the Premier was on the public record prior to the election, when it had not.

There are important concerns in relation to the relationship between the Labor Government and the Wilderness Society, some of which were set out in the submission to the Integrity and Accountability review. These include:

- When traditional owners sought an extension of time for lodging submissions, the Minister advised traditional owners to seek the support of the Wilderness Society. The Minister was effectively delegating his responsibility to make this decision to the Wilderness Society;
- The FOI material supports the conclusion that the Government was driven by a timeframe to make the wild river declarations by the end of February 2009 due to commitments made to the Wilderness Society. These commitments in effect fettered the Ministers discretion in relation to the declarations;
- The Government's interpretation of its 2004 election commitment changed over time, which was due to evidenced pressure from the Wilderness Society. It can be demonstrated that the Government was dishonest about its election commitment, which changed from the more restrictive definition of "rivers" to the more radical and far-reaching "river basins"
- The FOI material shows that Government advisors and bureaucrats showed maps and discussed matters with the Wilderness Society before providing that opportunity to other groups, particularly indigenous groups;
- There is evidence that the Government reached an agreement with the Wilderness Society and the Queensland Resources Council about setbacks from rivers, which applied to Aboriginal lands without involving indigenous people;



- The State declared the Aurukun Wetlands as a High Preservation Area at the behest of the Wilderness Society without informing or consulting indigenous landholders;
- In order to give comfort to the Wilderness Society on the progress of the wild river declarations, it is believed that the Government gave The Wilderness Society information about the Wild River declarations in the time leading up to the 2009 State election which was not available to the broader public;
- Material within the FOI documents indicates a high level of pressure on public servants from the Premier as a result of pressure from the Wilderness Society. Following a letter to the Minister and the Premier from the Wilderness Society, a senior member of the Wild Rivers team commented in an email on 14 March 2008 :

*"we are wanting to get the message across to the Premier that NRW are only doing their job".*

The Director General, Department of Premier and Cabinet appears to admonish the Director General of the Department of Natural Resources and Water on Friday 5 December:

*"Nonetheless the Premier is concerned to finalise the determinations on the 3 nominated rivers as a matter of priority. Scott.... I will talk to you again about how we can expedite."*

- The overview reports were not impartial and were intentionally misleading and biased in relation to the natural values of the nominated wild rivers in order to achieve Government commitments to the Wilderness Society.
- Departmental officers and Minister Robertson did not reduce the extent of High Preservation Areas although there was strong evidence to do so due to a bias toward the Wilderness Society's concerns. Supporting evidence includes a consultants' report recommending a 500m rather than 1km buffer on the Archer River
- We believe that officers of the State intentionally released incorrect information to the Wilderness Society in relation the 23-25 February meeting, in order to discredit Balkanu.

All evidence and available material supports the conclusion that the Government had a relationship with the Wilderness Society such that Ministers and public servants were unable to administer the Wild Rivers Act in a fair, impartial and unbiased manner.

The Cape York Land Council submitted an FOI application to the Department of Environment and Resource Management on 14 April 2009. The first material was not received until October with the last material received at the end of January 2010. We believe that the Department was tardy in relation to this FOI application in order to frustrate endeavors by indigenous organizations to address contentious issues relating to the Wild River declarations.

There was a tendency, particularly when Craig Wallace was Minister for Natural Resources and Water, for responses to Ministerial correspondence to be made by Michael Tandy as his Senior Policy Adviser. For example when traditional owners sought an extension of time for submissions from the Minister, the response was made by Michael Tandy on behalf of the Minister. It was a Ministerial discretion to extend the time for making submissions and it is thought to be inappropriate that the response not come from the Minister on such a matter.

#### RECOMMENDATION:

- There is a need to improve training of public servants in relation to Departmental codes of conduct and ensure that codes of conduct are current and readily available.

## RESPONSE TO CMC QUESTIONS

attachment page 8

- Ministerial staff must be subject to similar codes of conduct and integrity as are included in the *Public Sector Ethics Act*.
- There needs to be clearer definition of the roles and responsibilities of Ministerial Advisers, including when it is proper for ministerial advisers to respond to ministerial correspondence relating to decisions which are the minister's responsibility.
- There is a need to ensure greater transparency, honesty and integrity in the political process and in particular the nature of election commitments. It is recommended that there be an accountability standard in relation to election commitments, particularly so that there is clarity for both the public and those government officers who are expected to implement the commitments.



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9th November 2009

By Courier

Her Excellency Ms Penelope Wensley AO  
Governor of Queensland  
Government House  
168 Fernberg Road  
Paddington Qld 4064

Your Excellency,

#### **WILD RIVERS ACT 2005**

We seek your urgent response to questions raised in this letter about the validity of declarations under the *Wild Rivers Act 2005 (Qld)* ("the Act") which you approved when sitting in Council on 2 April 2009:

Those are:

1. Archer Basin Wild River Declaration 2009
2. Stewart Basin Wild River Declaration 2009
3. Lockhart Basin Wild River Declaration 2009

Despite the announcement of the declarations by Queensland Premier, Hon. Anna Bligh MLA on 3 April 2009, we have been unable to obtain documentary evidence of who made the declarations under sections 7 and 15 of the Act, and when they were made. We understand from the Government Gazette of 3 April 2009 that you approved the declarations in Council under section 16 of the Act on 2 April 2009.

There are two required steps in the declaration process under the Act.

Section 7 provides the plenary power to the Minister to make declarations as follows:

**Minister may declare wild river areas**

The Minister may declare a part of the State to be a wild river area.

*Note—*

See section 16 for when a declaration has effect.

Section 15 refers to how the Minister may exercise this power:

**Deciding whether to make declaration**

- (1) After considering the matters mentioned in section 13 and any other matters the Minister considers appropriate, the Minister may—

- (a) declare the area to be a wild river area; or
  - (b) decide not to proceed with declaration of the wild river area.
- (2) If the Minister decides not to proceed with the declaration, the Minister must publish a notice advising the decision and the reasons for the decision.

Section 16 sets out the approval process for declarations made by the Minister as follows:

**Approval of wild river declaration**

- (1) The Governor in Council may, by gazette notice, approve the declaration of a wild river area.
- (2) The declaration has effect when—
  - (a) the declaration is approved by the Governor in Council; and
  - (b) the approval is notified in the gazette.
- (3) The Minister must table a copy of the declaration in the Legislative Assembly within 14 sitting days after the declaration is approved.

Our question concerns the declarations made by the relevant Minister pursuant to sections 7 and 15 of the Act. Neither the Government Gazette of 3 April 2009 nor the declarations reveal who exercised the power under sections 7 and 15 of the Act and when this power was exercised.

In contrast, the Gregory Wild River Declaration 2007 states (inside its front cover) that “the Minister for Natural Resources and Water made this document on 30 January 2007”. Further, the Department of Environment and Resource Management website advises that this declaration took effect on 28 February 2007. The absence of this information in the Archer, Lockhart and Stewart Basin Wild River declarations and the Government Gazette is a matter of concern as it questions the transparency and integrity of basic procedures concerning the conduct of the Governor-in-Council.

In response to a letter from Blake Dawson seeking clarification of matters pertaining to the Declarations, the present Minister for Natural Resources, Mines and Energy, Hon. Stephen Robertson MLA, stated on 26 May 2009:

I wish to clarify that my decision to make the Declarations was made under section 15, and not section 7, of the WRA. Section 7 concerns the power to declare Wild River areas, whereas section 15 concerns the making of the decision to declare Wild River areas.

and further:

In particular, I consider my decision to make the Declarations and the Governor-in-Council’s decision to approve the Declarations are decisions of a legislative, rather than administrative character.

Minister Robertson also stated:

Having regard to the results of the community consultation and written submissions, as well as other matters, I decided to proceed to make the Declarations although with certain changes in order to address issues raised through consultation and in submissions. The Declarations were therefore submitted to the Governor-in-Council for approval and subsequently approved.

Please see copy of the Minister's letter at attachment A.

However, at a meeting held in Cairns on 25 August 2009,<sup>1</sup> Minister Robertson stated that his predecessor, Hon. Craig Wallace MLA, had made the decision to make these declarations under the Act. Minister Robertson stated that "the decision was made before the election but it couldn't go to the Governor -in -Council because of the election".

Minister Robertson also stated in the *National Indigenous Times* on 16 April 2009 that, "the declaration of wild rivers was ready to go before the election but with the calling of the election known as the 'caretaker period' it couldn't occur".

Documents released under the *Freedom of Information Act (1992) (Qld)* to Cape York Land Council received on 29 October 2009 indicate that the declarations had not been finalised on 30 March 2009 - which was after the election. Email circulation between departmental officers reveals that amendments were still being made to the declarations up to and including 30 March.

In a letter to Balkanu Cape York Development Corporation on 29 October 2009, Minister Robertson stated he had "decided" on 1 April 2009 to declare the Archer Basin Wild River area.

Due to the conflicting accounts from Minister Robertson, we still do not have confirmation as to who made the declarations under sections 7 and 15 of the Act and when. This is despite a letter of request for this information to the Premier on 10 September 2009 - see attachment B.

Amongst other things, we sought from the Premier in that letter a copy of the instrument signed by Minister Robertson declaring the three Wild Rivers referred to herein. As we have received no response to that letter, could you please provide a copy of the instrument which you relied upon to approve the declaration.

Under the *Freedom of Information Act 1992 (Qld)* - six months after seeking information - we have only now been provided with a copy of an email exchange between senior officers of the (then called) Department of Natural Resources and Water in relation to these declarations: please see attachment C.

Debbie Best, Deputy Director-General of the Water and Catchment Division, wrote to Tom Crothers and Scott Buchanan (General Manager Water Allocation & Planning Unit, and Team Leader Wild Rivers Unit of Dept Environment & Resources) on 30 March 2009 as follows:

Can we have a Min brief re wild rivers decs - the three for Thursday just so Min and staff have an overview and can answer questions? Can we attach a draft media release plus Questions and answers to assist them?

Thank you

debbie

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<sup>1</sup> Meeting attendees were Minister Robertson, the Minister for Sustainability and Climate Change, Hon. Kate Jones MLA, the Member for Cook, Hon. Jason O'Brien MLA, the Director-General of the Department of Natural Resources, Mines and Energy, John Bradley, and Noel Pearson, Gerhardt Pearson and Neville Pootchemunka, Allan Creek, Richie Ahmat and Prue Gusmerini

On the same day Scott Buchanan responded at 4.59 pm as follows:

Debbie

Can do. What is the current state of play in terms of approval, do we need to get an approval by the Minister, as it appears the previous Minister did not sign CTS 01188/09, to approve the declarations proceeding to GIC.

If this is the case, I propose that I will renew this CTS for the Minister's information and approval. Is that OK?

Regards

Scott

This communication took place three days before you approved these declarations in Council. We have no means of knowing whether Scott Buchanan was correct in his suggestion that "the previous Minister did not sign CTS01188/09, to approve the declarations proceeding to GIC". We also have no means of knowing what "CTS01188/09" refers to. If it refers to the relevant instrument evidencing the Minister's exercise of power under sections 7 and 15 of the Act, then you will appreciate our grave concern for the following reason:

It is the Minister who makes the declaration under sections 7 and 15 who must fulfil the obligations under sections 13 and 15. The present Minister could not have exercised powers under sections 7 and 15 on the basis that his predecessor may have fulfilled the requirements of sections 13 and 15.

If the previous Minister, Hon. Craig Wallace MLA, had not made the declarations under sections 7 and 15 of the Act, then the present Minister, Hon. Stephen Robertson, could not proceed to complete his predecessor's duties under the Act. It was incumbent upon the new minister to himself fulfil the obligations under sections 7 and 15, which must be exercised in accordance with section 13 of the Act. That section provides as follows:

**Matters Minister must consider**

- (1) In preparing a wild river declaration, the matters the Minister must consider include—
  - (a) the results of community consultation on the declaration proposal; and
  - (b) all properly made submissions about the declaration proposal; and
  - (c) any water resource plan or resource operations plan that applies to all or part of the proposed wild river area.

Our submission to you concerns the basis upon which you accepted the recommendation in Council to approve the Archer Basin Wild River Declaration 2009, the Stewart Basin Wild River Declaration 2009 and the Lockhart Basin Wild River Declaration 2009.

1. What was the date of each of these declarations and which Minister made them under sections 7 and 15 of the Act?
2. What evidence of the declarations having been properly executed was before you when you gave your approval under section 16 of the Act?

We are writing to you and seeking your response to questions strictly in respect to the process in which you were involved, in approving these declarations under section 16 of the Act.

Given the questions we have about what occurred with these declarations, the conflicting, misleading and opaque advices from the State Government, and our inability to discover on the public record answers to basic questions we have about procedures undertaken pursuant to an Act of Parliament, we seek your advice on whether the approvals that you gave in Council on 2 April 2009 under section 16 of the *Wild Rivers Act 2005 (Qld)* were legally valid. If, as it appears prima facie, they are not, for reason that the declarations under sections 7 and 15 of the Act were not duly made by either the former Minister Craig Wallace MLA or the present Minister Stephen Robertson, then we respectfully submit that it is incumbent upon you to take the necessary steps to quash these declarations.

As Wild River declarations are a matter of immense concern to the Aboriginal people of Cape York, and given the serious matters raised in this letter about legislative process and government procedure, we seek your assurance that no further Wild River declarations will be approved by you until such time as you respond to this letter.

We would appreciate prompt consideration of and response to the matters raised herein.

Yours sincerely,



.....  
Noel Pearson  
Director  
Cape York Institute



.....  
Michael Ross  
Chairman  
Cape York Land Council

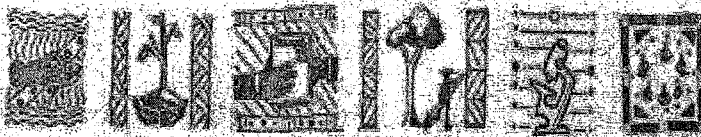


.....  
Gerhardt Pearson  
Executive Director  
Balkanu Cape York  
Development Corporation

*Attached: attachments A, B, C*

# Balkanu

Cape York Development Corporation P/L  
ABN 67 075 711 198



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16 September 2009

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Dear Sir/Madam

Balkanu Cape York Development Corporation ("Balkanu") was recently invited to attend the Integrity and Accountability forum in Cairns on 28 August 2009 chaired by the Hon. Cameron Dick, Attorney-General and Minister for Industrial Relations. This forum discussed how Queensland's integrity and accountability framework can be improved, and in particular issues of accountability and transparency. Consequently Balkanu has prepared this submission to the Integrity and Accountability review focusing particularly on the experiences of indigenous communities, traditional owners and representative organizations in Cape York Peninsula in relation to the *Wild Rivers Act 2005*.

Indigenous people on Cape York have objected strongly to the declaration of their lands as Wild River areas under this legislation. These objections have stemmed particularly from the fact that the Queensland Government failed to engage with indigenous groups to seek to resolve their issues raised in their submissions, and rushed the gazettal of the wild river declarations within two weeks of the March 21 state election. We submit that fundamental flaws in the *Wild Rivers Act* have resulted in a lack of basic accountability checks and balances and therefore provided the circumstances where government, under pressure from powerful lobby group The Wilderness Society, has overridden the rights and interests of indigenous people.

We note that the review materials seek feedback on a number of review questions. This submission focuses entirely on the issue of transparency – particularly *Question 23. Is information about the decision making processes of Government sufficiently available?* – and the issue of transparency in the administration of the *Wild Rivers Act*.

This submission sets out a number of issues in relation to the transparency of government decision-making where there has been a major injustice perpetrated on the indigenous people of Cape York.



## TRANSPARENCY

We submit that there are fundamental flaws in the transparency of the decision-making processes of the Queensland Government in relation to the *Wild Rivers Act* and its implementation, particularly from the perspective of Cape York's indigenous people. These fundamental flaws include:

### I. Inadequate consultation period

*Issue: a four month consultation period denied Cape York Indigenous people sufficient time to consider and respond to the wild river declaration proposals.*

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 high, and 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. The proposed declaration areas were far more extensive and complex than contained in the Labor Government's 2004 and 2006 election policy commitments. It was not until June 2008 that Indigenous communities were able to start to contemplate the possible impacts that wild river declarations would have on their lives and their futures. Wild River Declaration Proposals are complex legal documents. Declarations impact on thirteen (13) other pieces of legislation. These documents are not readily understood. Government and The Wilderness Society demands that indigenous communities consider thirteen separate wild river proposals, form a view on alien and very complex legal arrangements and 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 the choice of two paths. They must either 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 virtually no 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*, the Act requires indigenous and other groups 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.

## II. Late submissions

*Issue: The Minister denied traditional owners an extension of time to lodge submissions on the advice of The Wilderness Society but considered late submissions from others, including submissions solicited by The Wilderness Society.*

In October 2008 traditional owners advised Balkanu that four months was not sufficient time to consider the wild river nominations and that they needed more time to consider the matters and

prepare submissions. A delegation of traditional owners from the Archer, Lockhart and Stewart River areas met with Minister Wallace and the Member for Cook Jason O'Brien and senior officers of the Department of Natural Resources and Water on 29 October, and requested 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 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.

Why did Minister Wallace and the State Government delegate the decision in relation to time extension to The Wilderness Society? It was a ministerial power, so why did the Minister tell the Cape York delegation that they needed to get the okay from The Wilderness Society before he was prepared to grant the extension?

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".

Balkanu Cape York Development Corporation (Balkanu) was contracted by the State to aid and facilitate consultation with Traditional Owners on wild river declaration proposals. The State Government, through the Department of Natural Resources and Water (NRW), was responsible for the consultation with the Traditional Owners.

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 indeed be a process of further consultation and negotiation to resolve issues in relation to Wild Rivers. Other than one meeting between the Director General of the Department of Natural Resources and Water, Balkanu officers and Mr Peter Kyle at which Balkanu asserted the need to properly engage with traditional owners before any declarations, there was no further 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"

And 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 dialogs 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 the right to make submissions after the closing date of 22 November, the Archer Basin Consultation report states that an additional 792 submissions were received between 22 November and 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 by supporters of The Wilderness Society.

### **III. Transparency in relation to the declaration of High Preservation Areas**

*Issue: The State declared large additional areas of land as high preservation areas without informing indigenous landholders during the consultation process. This denied Indigenous people natural justice by denying them the right to make submissions.*

The maps included in the Declaration Proposal and Overview Report documents which were shown to indigenous landholders by the State during the consultation phase did not include large High Preservation Areas which were subsequently included in the declarations. The Minister declared more than 20,000 hectares of High Preservation Area south of Aurukun without revealing prior intent to indigenous landholders.

Despite these High Preservation Areas covering much of the traditional lands of some groups, these groups were denied the opportunity to consider and make submissions on these extended High Preservation Areas.

Non-indigenous freehold title holders would not be treated in this manner.

### **IV. No disclosure as to which Minister made the declarations and when**

*Issue: The Wild River declarations do not state which Minister made the declarations nor the date of the declarations.*

Unlike the previous Wild River declarations in other parts of Queensland, none of the Archer Basin, Stewart Basin or Lockhart Basin wild river declarations include a statement as to which Minister made the declarations, nor the date of the declarations. Similarly the gazette notices do not state which Minister made the declarations or date of the declarations. This information would normally and should be on the public record. It is essential that the public record show the Minister who made the declarations in accordance with s.7 and s.15 of the *Wild Rivers Act* and the correct date on which the declarations were made.

On the Q and A program on ABC television on Thursday 30 July the Premier stated that "the wild rivers were not declared until after the election".

At a meeting between Minister Robertson, Environment Minister Kate Jones and their advisers, with Noel Pearson, Gerhardt Pearson, Neville Pootchemunka, Allan Creek and Richie Ahmat on 25 August 2009 in Cairns, Minister Robertson stated that his predecessor, Minister Craig Wallace, had made the decision to declare the Cape York Wild Rivers. "Yes, the decision was made before the election but it couldn't go to the Governor in Council because of the election", Mr Robertson said.

Yet in a letter to solicitors representing the Cape York Land Council dated 26 May 2009, Minister Robertson stated that it was his decision to make the declarations of the Archer, Stewart and Lockhart River basins under s.15 of the *Wild Rivers Act*.

To clarify this matter on 10 September 2009 Balkanu wrote to the Premier to seek advice on the following matters by COB 14 September. The Premier was requested to provide:

- (a) your advice on which Minister made the wild river declarations in accordance with s.7 and s.15 of the Wild Rivers Act
- (b) your advice on the date on which the declarations were made by the Minister in accordance with s.7 and s.15 of the Wild Rivers Act, and
- (c) a copy of the instrument executed by the Minister by which the declarations were made.

The Premier has yet to respond.

As is obvious, it has not even been possible to get clear answers on basic questions such as when wild river declarations were made and by whom. This is information that should be on the public record and should be provided without obfuscation or delay. And yet five months later Cape York indigenous people are still waiting for straight responses.

## **V. Transparency in relation to election commitments**

*Issue: There has been a serious misrepresentation by Government of its election policy commitments*

The State has continually asserted that the declaration of the wild rivers on Cape York was a result of the 2004 Wild Rivers election commitment. The 2004 Wild Rivers election commitment named 19 rivers as examples of Queensland's rivers which could be designated as Wild Rivers. The Premier has stated that "19 rivers were identified six years ago" (ABC Television Q&A program, 30 August 2009) and that "we went to the 2006 election committing to the names of the rivers, the 19 rivers that we would put through the process" (National Press Club, 4 September 2009).

On 3 April 2009 thirteen separate rivers and creeks were gazetted as Wild Rivers on Cape York, ten of which were not named in the election commitment. The Wild Rivers which were gazetted on 3 April which were not named in the election commitment were: Love River, Kirke River, Claudio River, Nesbit River, Chester River, Rocky River, Massy Creek, Breakfast Creek, Balclutha Creek and Gorge Creek.

Many traditional owners feel the Government has been deceptive and dishonest in relation to the number of rivers it has and is intending to declare on Cape York under the *Wild Rivers Act*.

## **VI. Transparency during the election period**

*Issue: The Government was not transparent about its intentions in relation to Cape York wild rivers during the election period.*

Minister Robertson in the National Indigenous Times on 16 April 2009 stated:

"The declaration of wild rivers was ready to go before the election but with the calling of the election (known as the 'caretaker period') it couldn't occur."

Minister Robertson has now also stated that it was Minister Wallace's decision to make the declarations prior to the election. The content of the declarations and their implications for indigenous people were concealed from Cape York indigenous people and the electorate until after the election.



We do not know on what date the declarations were made by Minister Wallace, but this should be readily discoverable by the Integrity Commissioner. The Premier has failed to provide the evidence that there was no opportunity for the declarations made by Minister Wallace to be taken to the Governor in Council prior to the March 21 election in accordance with normal procedures prescribed in the Executive Council handbook. To ascertain whether the submission of the Executive Council Minute to Governor in Council was delayed for political reasons, we ask the Integrity Commissioner to request the Government provide an explanation as to these circumstances; and if the declarations did not proceed to Governor in Council in accordance with normal procedures, who was responsible.

## **VII. Transparency in relation to the Minister's assessment of wild rivers and the criteria used in the assessment**

*Issue: The material on which the Minister based his decision that the declared wild rivers fall under the scope of the Wild Rivers Act is not publicly available.*

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 there was virtually 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 is a lack of consistency, transparency and scientific rigour in deciding which rivers fall under the scope of the *Wild Rivers Act*. Neither the assessment conducted by the Minister to determine whether a river qualifies for nomination as a wild river nor the methodology used for this assessment has been made publicly available. This material has been sought under FOI but after five months DERM has failed to release material.

## **VIII. Transparency in the reasons for nominating a river**

*Issue: The published statement of reasons for the proposed declaration in the Notices of Intent were grossly inadequate in assisting the transparency of the decision making process.*

When the Minister publishes a Notice of Intent, the notice must state 'the reasons for the proposed declaration' (WRA s.8(1)(a)). By necessity, the notice must be given in written form (see WRA schedule, definition of 'publish'). Consequently, the requirements of *Acts Interpretation Act 1954* (Qld) s.27B should apply and the instrument giving the reasons should also—

- (a) set out the findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.

The reasons for the declarations, set out by the Minister, merely list the relevant natural values to be protected and do not state the facts that are considered material nor the evidence or other material on which the Minister decided that the nominated wild rivers fall under the scope of the *Wild Rivers Act*.

**IX. Errors, misleading and inaccurate information in the declaration overview reports and consultation reports**

*Issue: The State has been misleading about the nature of the natural values of the Wild River areas and the impacts and implications of Wild River declarations.*

In conjunction with a Wild River Declaration Proposals the Department of Natural Resources and Water issued *Proposed Wild River Area Overview Reports*. Also, in accordance with s.38 of the *Wild Rivers Act* the Minister released Consultation Reports. The overview reports and the consultation reports for the Archer, Lockhart and Stewart River Wild River Areas are misleading.

Examples of misleading statements in the overview reports and consultation reports include:

- Statements in the Overview Reports that there is "continuous, dense stream-wide and basin-wide vegetation" (see Stewart Basin Overview Report p.15). This statement is incorrect, there is not continuous dense stream-wide and basin wide vegetation on the Stewart, Archer and Lockhart Basins.
- The Stewart Basin overview report (p.15) purports to quote Herbert et al 1995 and states: "thick rainforest and in the drier areas, woodland species, paperbarks and bottlebrushes extend down to the bed for much of the Stewart River". Herbert made no mention of "thick rainforest"
- from page 25 of the Archer Basin consultation report: "A Wild River declaration does not affect existing vegetation clearing laws associated with the building of residences and any reasonably associated building or structure. Vegetation clearing requirements for construction of houses are the same in and outside of the wild river area". Balkanu's legal advice is that this statement is incorrect, a wild river declaration does affect vegetation clearing laws associated with the building of residences.
- from p.28 of the Archer Basin consultation report: "Vegetation clearing for tourism infrastructure and outstations can continue to occur throughout the wild river area and may require a permit." This statement is misleading, vegetation clearing, particularly for tourism infrastructure is virtually prohibited in High Preservation Areas.
- from page 35 of the Archer Basin consultation report: "Residential, commercial and industrial development is able to occur in a high preservation area and is managed by local governments." This statement is misleading, there are very few circumstances where commercial and industrial development is able to occur in a high preservation area.

The provision of misleading or inaccurate information is contrary to the DNRW code of conduct under the *Public Sector Ethics Act 1994* (Qld) (DNRW 2007: 34).

**X. Lack of appeal and review arrangements within the Wild Rivers Act**

*Issue: Cape York indigenous people are denied natural justice as there are no review and appeal arrangements under the Wild Rivers Act.*



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 statements of reasons under the *Judicial Review Act 1991* in respect of (a) the Governor in Council's approval of the Archer, Lockhart and Stewart declarations and (b) the decision of the Minister (or his predecessor) to make the declarations.

Minister Robertson responded by letter advising that it was he who made the declarations and 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 are not decisions to which the *Judicial Review Act* applies. Legal advice to Balkanu states there are virtually no opportunities for the review of decisions in relation to Wild River Declarations, the Wild Rivers Code and Property Development Plans.

As the Wild River Declarations and Code are statutory instruments they are also not subject to parliamentary debate or disallowance. In Parliament on 2 February 2007 in relation to the *Wild Rivers Act Amendment Bill*, Mr Cripps (Hinchinbrook NPA) stated:

"There will be no provision for an appeal to be lodged against a wild river declaration. This is a fundamental legislative principle. The minister will be the only person who nominates and declares a wild river. No debate about the merits or otherwise of individual declarations will take place here in the Queensland Parliament, nor will the declaration be subject to a disallowance motion. This is a blatant and arrogant subjugation of the parliament".

## **XI. There have been no FOI documents released by DERM after five months**

*Issue: The Department of Environment and Resource Management has withheld information under FOI.*

On 14 April 2009 the Cape York Land Council submitted FOI applications to the Department of Environment and Resource Management seeking documents relating to the Wild River Declarations for the Archer River, Lockhart River and Stewart River Wild River Areas. After almost five months the Department of Environment and Resource Management has not released one document.

## **XII. No regulatory impact statements**

*Issue: As Wild River declarations are statutory instruments there is no requirement for a regulatory impact statement which would have identified economic and social impacts of the declarations.*

Wild River Declarations and the Wild Rivers Code are statutory instruments rather than subordinate legislation. As statutory instruments there is no requirement to conduct a Regulatory Impact Assessment. The objectives of the regulatory impact assessment process are to ensure:

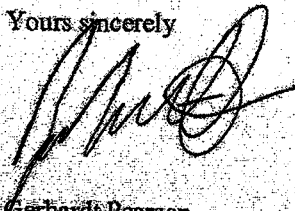
- that the costs and benefits associated with the making of subordinate legislation and alternatives to regulation are fully assessed;
- that regulatory proposals are adequately detailed to relevant stakeholders
- that only those regulations which present the most effective response to a policy problem are adopted.

As Regulatory Impact Statements are not required there is no transparent assessment of the economic and social impacts of Wild River declarations.

**CONCLUSION**

Based on the evidence and material contained in this submission, the Queensland Government should revoke the declarations of the Archer, Lockhart and Stewart Basin Wild River areas and start again.

Yours sincerely



Gerhardt Pearson  
Executive Director