

Sarah Partosh

From: Nicholas Lindsay
Sent: Friday, 20 February 2009 3:14 PM
To: Nicholas Lindsay
Subject: TRIM Incoming : DOC/09/11237 : Concerning Wild Rivers nominations
Attachments: Concerning Wild Rivers nominations.PDF

-----< TRIM Record Information >-----

Record Number : DOC/09/11237
Title : Concerning Wild Rivers nominations

RTI RELEASE

Balkanu

Cape York Development Corporation P/L

A.B.N. 67 075 711 198

27 January 2009

Hon Anna Bligh MP
Premier of Queensland
Premiers Office
PO Box 15185
City East, QLD 4002

Dear Premier

WILD RIVERS NOMINATION - LOCKHART, STEWART AND ARCHER BASIN AREAS

The Acting Premier's letter dated 6th January refers.

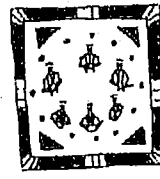
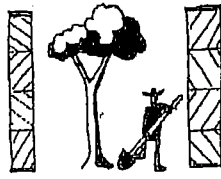
We are most concerned that your government indicates that the declaration of the first three Cape York wild rivers, the Archer, Lockhart and Stewart Wild River nominations is "on track for early 2009". This tone indicates that Wild River declarations are *fait accompli* and will proceed without further engagement with traditional owners and that traditional owner concerns will not be addressed prior to declaration. As clearly expressed in submissions, traditional owners will not give their consent for any wild river declaration without round-table discussions with Government on the issues that have been raised.

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 Wilderness Society also expressed their belief in correspondence to Traditional Owners that these direct dialogs would occur after the submission period closed as had happened in the Gulf declarations. We are most disappointed that the Department has become silent in relation to Traditional Owner concerns.

We urge the Government to remedy this situation by entering into direct discussions with traditional owners on the issues. The expectation of traditional owners of Balkanu is to reiterate their position 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". Traditional owners stressed that they would not consent to wild river declarations until the issues outlined in their submissions had been satisfactorily resolved. We stress that before any wild rivers are declared on Cape York there must be further meaningful engagement with traditional owners that satisfactorily addresses their concerns.

Yours sincerely,


Waubin Richard Aken
Chairman
Balkanu Aboriginal Corporation



152 Grafton St, P.O. Box 7573, Cairns Qld 4870 Ph: (07) 4019 6200 Fax: (07) 4051 2270
Website: www.balkanu.com.au

Pages 3 through 6 redacted for the following reasons:

Folios 3-6 are not in the public interest to release under Schedule 4(3)(2)

RTI RELEASE

Sarah Partosh

From: Liekens Ann [Ann.Liekens@nrw.qld.gov.au] on behalf of Crothers Tom
[Tom.Crothers@nrw.qld.gov.au]
Sent: Monday, 23 February 2009 2:00 PM
To: Nicholas Lindsay
Subject: FW: Dot points for DPC

Nick,

These are the three areas "Indigenous commitments" to the WR declarations progressing on the Cape that I raised in my discussions with Richie Ah Mat.

Regards,
Tom Crothers.

Tom Crothers
General Manager, Water Allocation and Planning
Department of Natural Resources and Water
Telephone: 07 3225 1586 Facsimile: 07 3224 8359 Mobile: Contrary to
Email: tom.crothers@nrw.qld.gov.au
www.nrw.qld.gov.au
Department of Natural Resources and Water
41 George Street Brisbane Q 4000
GPO Box 2454 Brisbane Q 4001

From: Boyle Terrence
Sent: Friday, 20 February 2009 4:12 PM
To: Crothers Tom
Cc: Buchanan Scott
Subject: Dot points for DPC

Points for DPC brief. Tom I have fleshed your points out. Cull as required and forward to Nick.

- In 2007, a key agreement between Mr Noel Pearson, representing the interests of Cape York Land Council, and the Government (with Mr Ross Rolfe) was that following the passage of the Cape York Peninsula Heritage Bill, there will be no further impediments to the implementation of Wild River legislation on Cape York Peninsula.

- In late 2007, further negotiations were held with Cape York Land Council and Balkanu within the Three Minister's Framework (Minister for Natural Resources and Water, Minister for Tourism, Regional Development and Industry, Minister for Sustainability, Climate Change and Innovation). CYLC indicated support for the wild rivers program proceeding and put forward a proposed timeline for consideration. An outcome of the Three Minister's Framework was that the wild rivers program be more closely aligned with the land tenure resolution negotiations. The Cape York Tenure Resolution Implementation Group (CYTRIG) was identified as an appropriate forum for determining the way forward for the wild rivers program.

- The Premier sent a letter on the 13 February 2007 to all members of the CYTRIG outlining the Government's position on progressing heritage, land and conservation matters on Cape York Peninsula over the next five years. The letter stated that CYTRIG "will resolve high level, strategic issues, including issues of principle relating to the implementation of the State Government's Wild Rivers election commitment." The letter also stated that - "the Queensland Government will honour the 2004 election commitment and will nominate 13 wild rivers in Cape York Peninsula. Nominations will be at the basin level. To ensure close alignment between wild rivers negotiations and other land tenure resolution processes, declarations will be completed by the end of 2010 as proposed in the "Three Ministers Framework". At least three nominations will be made in 2008". CYTRIG supported the program outlined by the Premier in her letter.

I think it is important, in light of Balkanu's letter to simply say that the Department has never committed itself to holding a round table meeting to negotiate on wild river declaration proposals. Also re-iterate the TWS views are not those of the government.

Cheers
Terry

Terry Boyle
Senior Policy Officer - Wild Rivers, Water Allocation and Planning
Telephone: (07) 323 93844 Facsimile: (07) 3224 8359
Email: terrence.boyle@nrw.qld.gov.au
www.nrw.qld.gov.au

Department of Natural Resources and Water
41 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001

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RTI RELEASE

Sarah Partosh

From: Crothers Tom [Tom.Crothers@nrw.qld.gov.au]
Sent: Tuesday, 24 February 2009 3:22 PM
To: Nicholas Lindsay
Cc: Buchanan Scott
Subject: RE: Letter from Balkanu

Nick,
Thanks and I initially thought that the letter would have to be put on hold until after the election. However I understand that in some cases the CEO's are replying to matters that are of an administrative matter.
However given the political sensitivity of the Wild Rivers program with the indigenous people it may be wise to delay a reply.

Regards,
Tom C.

-----Original Message-----

From: Nicholas Lindsay [mailto:Nicholas.Lindsay@premier.qld.gov.au]
Sent: Tuesday, 24 February 2009 9:28 AM
To: Crothers Tom
Subject: RE: Letter from Balkanu

Thanks for your assistance on this. I think this matter will now be on hold until post-election.

Nick

-----Original Message-----

From: Liekens Ann [mailto:Ann.Liekens@nrw.qld.gov.au] On Behalf Of Crothers Tom
Sent: Monday, 23 February 2009 1:52 PM
To: Nicholas Lindsay
Subject: RE: Letter from Balkanu

Nick,

I am of the view that you should include the information I have forwarded over to you today on the governments actions to secure the agreement of the Indigenous people to the Wild Rivers declarations proceeding (the 3 areas I raised with Richie Ah Mat). I also think you need to reiterate that the government has not agreed to a round table negotiation process on the Wild River declaration proposals nor has the government agreed to give the TO's the power of veto of a Wild River declaration progressing to finalisation.

You could also mention that NRW officers have attempted to arrange meetings with the TO's in the Archer, Lockhart and Stewart Basin wild river areas to discuss the issues raised in their submissions and NRW's position on these issues. We have been in contact with Balkanu but they have refused to cooperate with us or meet with us until they have some higher level dialogue with the Directors-General of DPC and NRW.

I also think that it is important to mention in your letter that NRW attended over 100 meetings and consulted with over 300 individuals/groups in the consultation program for the 3 wild river declaration proposals. This is the most extensive consultation process undertaken on the Cape.

Happy to discuss further.

Regards,
Tom Crothers.

Tom Crothers

General Manager, Water Allocation and Planning Department of Natural Resources and Water
Telephone: 07 3225 1586 Facsimile: 07 3224 8359 Mobile: Contrary to Pu
Email: tom.crothers@nrw.qld.gov.au
www.nrw.qld.gov.au
Department of Natural Resources and Water
41 George Street Brisbane Q 4000
GPO Box 2454 Brisbane Q 4001

-----Original Message-----

From: Nicholas Lindsay [<mailto:Nicholas.Lindsay@premiers.qld.gov.au>]
Sent: Friday, 20 February 2009 3:14 PM
To: Crothers Tom
Cc: Boyle Terrence
Subject: Letter from Balkanu

<<Concerning Wild Rivers nominations.PDF>>

Tom

As discussed, your thoughts on how this could be handled would be appreciated. Early next week would be great.

Nick

x56258

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RTI RELEASE



THE WILDERNESS SOCIETY

Noted
D 23/3.

23 March 2009

The Hon Anna Bligh MP
Premier of Queensland
PO Box 15185
CITY EAST QLD 4002

Dear Anna

On behalf of The Wilderness Society, I wish to express my congratulations to you on the decisive re-election of a Labor Government in Queensland and to you personally as Australia's first elected female Premier.

While jobs and the economy were obviously central issues, we were delighted that, during the 2009 election campaign, you acknowledged the importance of the environment, and committed Labor to a range of important policies on:

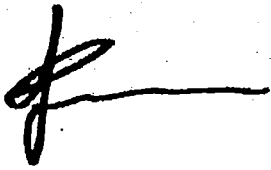
- finalising protection for all the identified wild rivers on Cape York by end of 2010;
- protecting under the Wild Rivers Act three major river systems in Western Queensland's channel country – Cooper Creek, and the Georgina and Diamantina Rivers – in the next term;
- recommitting to employ 100 Indigenous Wild River Rangers;
- advancing the process for world heritage nomination of Cape York, to the point where Queensland will have completed its side of the work within the new term, enabling the Commonwealth to ensure a nomination occurs before the end of the Commonwealth's next term;
- examining how land clearing laws can be extended to include endangered regrowth vegetation, and how carbon in trees can be linked into the CPRS; and
- an ongoing uranium mining ban in Queensland.

We are also still hopeful that additional funds can be found to support further voluntary property acquisitions on Cape York, augmented by more significant funding from the Commonwealth under the Caring for our Country program.

The Wilderness Society QLD Inc
Brisbane Campaign Centre
136 Boundary St, West End
PO Box 5427, West End, QLD, 4101
Ph: (07) 3846 1420 Fax: (07) 3846 1620
Email: brisbane@wilderness.org.au Internet: www.wilderness.org.au
(ABN 68 871 152 328)

The Wilderness Society has sought to work constructively and cooperatively with each of the Labor governments since 1998, and very much looks forward to working with you and the new Bligh Government team during the next three years to further protect our significant but fragile natural environment.

Best wishes



Dr Tim Seelig
State Campaign Manager
The Wilderness Society Queensland.

RTI RELEASE

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Ph: (07) 3846 1420 Fax: (07) 3846 1620
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(ABN 68 871 152 328)

Pages 13 through 15 redacted for the following reasons:

Folios 13-15 are Exempt under Schedule 3(3) Executive Council

RTI RELEASE

Sarah Partosh

From: Buchanan Scott [Scott.Buchanan@nrw.qld.gov.au]
Sent: Thursday, 2 April 2009 3:23 PM
To: Lazzarini Peter; Burton Peter (Minhouse); Vernon Chris; Vanderheijde Karin; Cranitch Mark (RSD North); Kelly Nigel; Douglas Jason; Ackfun Alex; Cordery Cyril; Eden Kate; warren.muller@epa.qld.gov.au; alan.feely@epa.qld.gov.au; buzz.symonds@epa.qld.gov.au; rob.lawrence@epa.qld.gov.au; clive.cook@epa.qld.gov.au; james.newman@epa.qld.gov.au; Abbey Fiona; Wood Deborah; Paine, Rebecca; colin.shelley@dpi.qld.gov.au; Renee Wanna-Jansen; Adrian Jeffreys; Barbara Jones; Lindsay Delzoppo; Nicholas Lindsay; Matthew Armstrong; Sherrie McLean; Georgianna.Fien@epa.qld.gov.au; Ward David; Jensen Judith; Barbel Leanne; O'Neill Leanne; Moss Joel
Cc: Moss Gordon
Subject: Declaration of Archer, Lockhart and Stewart Basins Wild River Areas

FYI

RE: Declaration of Archer, Lockhart and Stewart Basins Wild River Areas

The Archer Basin, Lockhart Basin, and Stewart Basin wild river area declarations were approved today by Governor in Council and expected to come into effect on Gazettal, tomorrow April 3 2009.

The applicable wild river moratoriums on Water, Vegetation and Mining cease to be in effect as of tomorrow.

The wild river declarations are available on the department's website at: www.nrw.qld.gov.au/wildrivers.

Spatial layers relating the wild river areas can be viewed at Department of Environment and Resource Management Offices:

If you have any queries please contact me through the details below.

Regards

Scott

Scott Buchanan
Team Leader (Wild Rivers)
Phone: (07) 322 51023 Fax: (07) 322 48359 Mobile: Contrary to
Email to: scott.buchanan@nrw.qld.gov.au
www.nrw.qld.gov.au

Department of Environment and Resource Management
41 George St, Brisbane Q 4000
GPO Box 2454 Brisbane Q 4000

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RTI RELEASE

Sarah Partosh

From: Buchanan Scott [Scott.Buchanan@nrw.qld.gov.au]
Sent: Monday, 6 April 2009 1:56 PM
To: Nicholas Lindsay
Subject: RE: Dot points response to Australian Article 4 April 2009.doc

Yes there will be more

From: Nicholas Lindsay [mailto:Nicholas.Lindsay@premiers.qld.gov.au]
Sent: Monday, 6 April 2009 1:55 PM
To: Buchanan Scott
Subject: RE: Dot points response to Australian Article 4 April 2009.doc

Thanks Scott.

Are you still sending me something in relation to the email I sent earlier. This more or less addresses the Government's response but I will still need more detail on the issues being raised by the CYLC/Balkanu.

Nick

From: Buchanan Scott [mailto:Scott.Buchanan@nrw.qld.gov.au]
Sent: Monday, 6 April 2009 1:45 PM
To: Adrian Jeffreys
Cc: Best Debbie; Hinrichsen Lyall; Nicholas Lindsay
Subject: Dot points response to Australian Article 4 April 2009.doc

Adrian,
As discussed here are some dot points to assist in the drafting of a letter in response to media comments.

Regards

Scott

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Dot points response to Australian Article 4 April 2009

- The 2004 Election Policy Document Wild Rivers named 19 river systems as identified river systems to be considered for wild river nomination;
- This included thirteen systems on the Cape York Peninsula;
- The government has continued to restate this position through the 2004, 2006 and 2009 election campaigns, as well as through information provided to Balkanu and Cape York Land Council;
- Changes have been made to the *Wild Rivers Act 2005* as a response to negotiations with Balkanu and Cape York Land Council on the *Cape York Peninsula Heritage Act 2007*; in particular section 44 of the Wild Rivers Act was amended to state beyond doubt that a wild river declaration would not directly or indirectly impact on Native Title rights;
- The *Cape York Peninsula Heritage Act 2007* also included a provision that a wild river declaration must reserve water for the purpose of assisting Indigenous communities to meet their social and economic aspirations;
- As a result of the passing of the Cape York Peninsula Heritage Act on the 17 October 2007, Noel Pearson agreed that there would be no further impediments to the wild rivers program on the Cape York Peninsula;
- On 23 July 2008, the then Minister for Natural Resources and Water formally nominated three river basins as proposed wild river areas;
- This followed extensive consultation on the Cape York Wild Rivers program with the Cape York Peninsula Tenure Resolution Implementation Group representatives including Balkanu and Cape York Land Council;
- On 30 June 2008, the Department signed a contract, worth \$63,500, with Balkanu to assist to identify the Traditional Owners in the three proposed declaration areas, and to assist with the consultation process;
- The Department then implemented an extensive consultation program to consult with all affected parties to provide opportunities to discuss the wild rivers program;
- In all there were over 100 meetings held with more than 300 people involved, this was recognised by Traditional Owners as a "commendable effort by the State to provide information to Traditional Owners"¹.

¹ Letter from Traditional Owners to TWSI to seek support for extension to the submission deadline.

Sarah Partosh

From: Buchanan Scott [Scott.Buchanan@nrw.qld.gov.au]
Sent: Monday, 6 April 2009 2:42 PM
To: Nicholas Lindsay
Cc: Boyle Terrence
Subject: FW: Info for Nick Lindsay RE: CYLC Objections to WRs
Attachments: tpl347016608.doc; tpl2086720477.pdf; CTS xxxx_09 attachment A Discussion Paper.doc

Nick,

See attached, plus some comments below. I know there is a lot of information, but hopefully it is of use. Tpl347016608.doc refers to the CYLC submission issue that due process has not been followed, and tpl2086720477.pdf responds to charge that there is insufficient data to support that these systems are in good enough condition to meet wild river status. The discussion paper describes how the declarations dealt with the submissions.

Regards

Scott

-----Original Message-----

From: Boyle Terrence
Sent: Monday, 6 April 2009 2:09 PM
To: Buchanan Scott
Subject: Info for Nick Lindsay RE: CYLC Objections to WRs

Scott you will need to attach the final BN about the CYLC legal issues, also the one about the scientific information, as well as discussion paper.

Some responses to CYLC comments:

"..failing to consider Indigenous cultural heritage."
"..failure to expressly protect cultural heritage.."

The recognition, protection and conservation of Indigenous cultural heritage occurs under the Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003. The two cultural heritage Acts have recently been reviewed and any concerns about cultural heritage issues should be directed to the appropriate persons involved in this review. The Wild Rivers Act 2005 deals specifically with natural values and any wild river declaration does not affect the operation of these Acts.

"The call by the Cape York Land Council for further engagement has come after concerns raised by Traditional Owners from the Stewart, Lockhart, Archer River basins were left unaddressed"

A number of issues raised by Traditional Owners during the consultation process were given consideration in finalising the declarations. Also, issues raised in Traditional Owner submissions made by Balkanu were also considered. As a result changes were incorporated into the Stewart Wild River Area along Breakfast Creek. A number of issues raised such as private boat ramps and jetties cannot be addressed by the declaration process but require legislative changes. Such amendments are likely to be progressed further.

A consultation report outlining how the issues raised in submissions and consultation were dealt with will be released within 30 business days of these declarations being approved. The department is happy to speak further with Traditional Owners to discuss ongoing issues they may have.

"..deny rights of Indigenous people to own, control, and manage their natural and cultural heritage as well as pursue economic development.."

The Wild Rivers Act does not impact on land tenure, land ownership, and control and management of natural and cultural heritage. Wild rivers does not affect day to day management activities such as weed and pest control and feeding of stock. It also does not affect traditional cultural activities, outstation development and land management practices such as traditional burning. Economic development can continue in wild river areas - see attached sheet.

" ..insufficient scientific evaluation of "natural values" of the declared river basins."

See attached brief and discussion paper for further info.

"The classification of 'Wild Rivers' has been criticised by Indigenous traditional owners as ignoring indigenous occupation, land management and custodianship of these vast areas of Cape York over many thousands of years"

In the context of declaring wild rivers, "wild river" means a river in its natural or near-natural condition, and is undisturbed by the impacts of development. It does not imply an area that is unoccupied or free from human habitation. Traditional land management practices have meant that these rivers are and remain in such a very good condition. The Wild Rivers Act is not concerned with issues of management and custodianship but rather is seeking to preserve natural values by regulating development along the rivers and in their catchments. With development pressures increasing and ideas of further development in the North being investigated, protection of these river systems is more important than ever before. Furthermore, traditional land management practices can continue in a wild river area as they are not impacted by a wild river declaration.

-----Original Message-----

From: Buchanan Scott
Sent: Monday, 6 April 2009 11:35 AM
To: Boyle Terrence
Subject: FW: CYLC Objections to WRS

-----Original Message-----

From: Nicholas Lindsay [mailto:Nicholas.Lindsay@premiers.qld.gov.au]
Sent: Monday, 6 April 2009 10:21 AM
To: Buchanan Scott
Subject: CYLC Objections to WRS

Scott

Tried to call you.

I am urgently needing some detail on the concerns raised by the CYLC in relation to the recent WR declarations. I am guessing this will be a mix of general concerns about WRS, as well as specific concerns about the latest round of declarations. I also need the Government's response to any concerns.

Also, just to confirm - the latest WRS went to GiC last Thursday - is that correct?

Perhaps you have something 'off-the-shelf' you can provide me? It would be great to have this ASAP (today) if possible.

Feel free to call me to discuss.

Nick

x56258

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RTI RELEASE

CTS 00591/09

Department of Natural Resources and Water
MINISTERIAL BRIEFING NOTE

TO: The Honourable Minister

THROUGH: Acting Director-General
Acting Deputy Director-General, Water and Catchment Division

FROM: General Manager, Water Allocation & Planning

SUBJECT: Possible challenges to Wild River Area Declaration Proposals for the Archer
Stewart, and Lockhart River Basins

Advisor	OK
Dated / /	
Approved/Not Approved/Noted	
Further information required	
Minister	
Dated / /	

RECOMMENDATION

It is recommended that the Minister **note**:

- the Cape York Land Council (CYLC) and the Balkanu Cape York Development Corporation (Balkanu) have threatened to legally challenge the Wild Rivers Declaration/Proposals
- Balkanu has requested that there be further engagement with the Traditional Owners before a decision is made on the Wild River Declarations.

BACKGROUND

Notices of Intent for the Wild River Area Declaration proposals for the Archer, Stewart and Lockhart Basins were released on 23 July 2008.

The Notices and the declaration proposals had been previously reviewed and commented on by the department's Legal Services Unit as well as Crown Law.

Submissions were invited on the declaration proposals. The CYLC provided a submission and Balkanu wrote three submissions, which were signed by Traditional Owners from the relevant basins.

The Traditional Owner submissions appear to reflect Balkanu's position more than the Traditional Owner positions as articulated at meetings during the consultation program.

The Minister met with the Traditional Owners from the areas covered by the declaration proposals on 29 October 2008 in Cairns.

A further meeting was arranged for the Director-General to meet with the Traditional Owners on 11 December 2008, but only one Traditional Owner attended with Balkanu representatives.

The department engaged Balkanu to assist in the identification and consultation with Traditional Owners from the three basins.

Representatives of the CYLC had previously made a commitment to the former Premier that following the passage of the *Cape York Peninsula Heritage Act 2007*, that there would be no impediments to the implementation of Wild River legislation on Cape York Peninsula (see CTS 08811/07 attached).

KEY ISSUES

- On 21 November 2008, the department received submissions from the CYLC asserting, amongst other things, that the Notices are invalid because they fail to give reasons for the proposed declarations. In particular, CYLC argue that the Notices fail to give reasons of the kind required by section 27B of the *Acts Interpretation Act 1954* (AIA), in that they do not set out the material findings of fact for the proposed declarations and the evidence on which those findings are based.
- On the 11 December 2008, two departmental officers met with Mr Terry Piper the CEO of Balkanu where Mr Piper inferred that Balkanu may seek advice from the CYLC to determine if a challenge should go ahead if it was perceived that Traditional Owners were disadvantaged by the Declarations.

- In a telephone conversation between Messrs Terry Piper and Scott Buchanan on 20 January 2009, Mr Piper stated that if the declarations were to proceed without Traditional Owner support, then the 'Traditional Owners' will be instructing CYLC to challenge the declarations.
- The department has sought advice on the applicability of section 27B of the Acts Interpretation Act to the Notices of Intent. The advice received was to the effect that a challenge on these grounds was unlikely to be successful.
- There is some doubt as to whether the threats of a challenge will be carried out, but it seems highly likely that Balkanu and the CYLC will publicly voice disapproval if the Declarations proceed.
- During the telephone conversation of 20 January, Mr Piper enquired as to whether there will be any further meetings with Traditional Owners of the Stewart, Lockhart and Archer Basins before the Minister makes a decision on the Declarations. Mr Piper was advised that the department was unaware of any plans for further engagement.
- Mr Piper was assured that the Minister would be advised that Balkanu suggests there is a requirement for further engagement before a decision is made.
- It was also explained that the Minister and officers of the department had met with the Traditional Owners and with Balkanu on a number of occasions and unless there is any new specific issues it would be unlikely that a further meeting would achieve much.
- It is the department's opinion, that if a further meeting or meetings were to occur, there could be benefits in trying to meet the Traditional Owners without Balkanu representatives being present.
- The Traditional Owners may request Balkanu attendance, which will not be denied if requested. However, the department feels that more progress can be made by direct talks with the Traditional Owners. Balkanu have held a consistent position of philosophical opposition to the wild rivers process despite previous assurances to the contrary.
- Further meetings with the Traditional Owners are unlikely to resolve new issues or mitigate CYLC's and Balkanu's reaction.
- Balkanu will be opposed to government or departmental officers meeting with Traditional Owners without Balkanu attendance and are likely to portray it as a divisive strategy.

RESOURCE/IMPLEMENTATION IMPLICATIONS

- If the department is requested to meet Traditional Owners then there will be a cost to cover travel and possibly accommodation expenses for the Traditional Owners.
- Further engagement will impact on the ability to meet expected timeframe to finalise the Declarations, which are scheduled to be lodged with the Governor in Council by the end of February 2009.

PROPOSED ACTION(S)

- The department intends to progress the finalisation of the declarations, and provide advice to the Minister on how the issues raised in the submissions and through the consultation process can be dealt with.

MINISTER'S COMMENTS

CTS 12488/08

Department of Natural Resources and Water
DIRECTOR-GENERAL BRIEFING NOTE

Approved/Not Approved/Noted
Further information required
DG
Dated

TO: Director-General

THROUGH: Deputy Director General, Water and Catchment Division

FROM: General Manager, Water Allocation and Planning

SUBJECT: Information provided in Traditional Owner submissions on the proposed Archer, Lockhart and Stewart wild river declarations

RECOMMENDATION

It is recommended that the Director-General:

- note the inconsistencies in the information provided by the Traditional Owners in their submission, relating to the Stewart, Lockhart and Archer Basin wild river declaration proposals.

BACKGROUND

- On 10 July 2008, the Minister formally proposed the Stewart, Lockhart and Archer River Basins to become wild river areas under the *Wild Rivers Act 2005*. Following a four month consultation process, public submissions closed on 21 November 2008.
- A number of submissions, facilitated by the Balkanu Cape York Development Corporation (Balkanu) were received from Traditional Owners in the proposed wild river areas. These submissions all contained relatively similar reasoning for objecting to the declaration proposals.
- Each submission asserted that the department had failed to take into account a number of factors and had also failed to undertake sufficient research or analysis in properly determining some of the natural values claimed in the nomination documents.
- Specifically, these submissions criticised the department for 'not being rigorous in presenting the evidence for wild river nominations and therefore the evidence is flawed in many respects.' The submissions also advised that the department 'has chosen to give little or no regard to several relevant studies', including that of the 2001 report 'The Natural Heritage Significance of Cape York Peninsula' by Mackey, Nix and Hitchcock (the Natural Heritage Report).
- Each submission included a number of maps, including one from the Natural Heritage Report. This map was titled 'Figure 6.5 Catchment disturbance index (CDI for Cape York Peninsula (SIC)).'
- The Traditional Owners asserted in the Stewart River Basin submission that 'the work of Mackey, Nix and Hitchcock in' the Natural Heritage Report 're Catchment Disturbance Index for Cape York Peninsula (Figure 6.5 on page 134)' 'indicates that most of the Stewart Basin has between moderate and high levels of disturbance' and hence the natural values are not intact.

KEY ISSUES

Traditional Owner submissions

- The submission on the proposed Stewart Wild River Area asserted that the Stewart River Basin was a highly modified area that was not worth protecting under the *Wild Rivers Act 2005* because it did not meet the natural values criteria and that the Natural Heritage Report has shown that this is the case.
- The department has reviewed the Natural Heritage report and formed the view that the analysis undertaken by Balkanu was simplistic and failed to take into account the limitations in the data from which the Catchment Disturbance Index map was created.
- The Catchment Disturbance Index (CDI) was partly derived from the 'Identification of Wild Rivers: Methodology and Database Development' study by Stein et al in 1999, which undertook an analysis of wild rivers in continental Australia by using a digital elevation model with a resolution of about 250 metres. It was also derived from the Cape York Peninsula Land Use Study (CYPLUS) Biophysical Naturalness data set (CYPLUS data set). This information with other information about catchment and in-stream disturbance characteristics was combined to produce the CDI.
- The Natural Heritage Report advised that the CYPLUS data set is intended to reflect the impact that human landuse activity has on landscapes, particularly in terms of habitat clearance, fragmentation,

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- and degradation. Its calculation is complicated by the need for detailed information which is often unavailable.
- The report further advised that, in the absence of unavailable information, the data set relies on a complex methodology based on a heuristically determined combination of indirect, modelled and surrogate variables that results in the information provided by the CYPLUS data set to be indicative only.
 - The use of this indicative data in calculating the CDI will result in the CDI also being indicative at best and not being a true reflection of the situation on the ground.
 - This position is supported by the Natural Heritage Report which also suggests that Cape York meets, not only the criteria for nomination as a World Heritage Area and the Register of the National Estate, but also additional criteria that were developed for the study. One of these included 'Natural Integrity' which refers to 'ecosystems and landscapes which exhibit outstanding ecological and geophysical integrity'.
 - The report indicates that the lands of Cape York exhibit outstanding natural integrity in a global, regional or continental context and this is one of the key overarching qualities that defines the character of the entire region. It also asserts that Cape York has a continuous cover of tropical, native vegetation systems that is globally significant and that possess a high degree of natural integrity.
 - The report also mentions that the key hydrological processes remain intact in Cape York and that the entire function of catchments is unimpeded from watershed ridges through to coastal wetlands and that the streams of Cape York have been minimally disturbed by the works of human activity.
 - This adds further weight to the department's view that the natural values of the rivers on Cape York are in a natural to near-natural state.

Department's mapping

- The department uses the best and most up to date information available from multiple sources in order to develop the mapping base for proposed wild river areas. The department also seeks out the most recent available information relevant for each proposed wild river area in determining the state of the natural values of the rivers and streams in each basin.
- Datasets and mapping tools are carefully analysed and interpreted so as to delineate the management areas for a proposed wild river declaration as accurately as possible. Attachment A outlines a range of datasets that the department uses in order to achieve this.
- The department acknowledges that detailed information about the natural values of the rivers on Cape York Peninsula is limited. The CYPLUS is the most recent suite of information that is available for use. This information is now over 10 years old.
- However, the use of this information along with the available datasets and mapping tools, and the collection of on-ground information and expert opinion provides a solid basis for the information supporting the wild river declaration proposals.

RESOURCE/IMPLEMENTATION IMPLICATIONS

- Regardless of the department's view, Balkanu are likely to continue to challenge the science underpinning the justification for the potential wild river declarations on Cape York Peninsula.

PROPOSED ACTION(S)

- The department will continue to consider all relevant information provided in submissions.
- The department will continue to meet the Minister's timeline for progressing the declaration proposals on Cape York Peninsula.

DIRECTOR-GENERAL'S COMMENTS

Pages 27 through 35 redacted for the following reasons:

Folios 27-35 are Exempt under Schedule 3(1).

RTI RELEASE