



Submission No. 10
11.1.24
14 August 2014

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State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000
sdiic@parliament.qld.gov.au

Dear Committee

Re Review of Regional Planning Interest Regulation 2014

I write on behalf of the Wilderness Society regarding the above Inquiry, and wish the following to be accepted as a formal submission to the Committee.

The Wilderness Society is one of Australia's leading community-based conservation and environmental advocacy organisations with a long history of engagement, campaigning and focus on river protection. In Queensland, the organisation has been a longstanding and consistent advocate for the protection of the state's wild rivers, and has sought to work with governments, local communities and Traditional Owners on preserving natural and cultural values associated with a number of river systems across the state. We have close collaborations and a range of long term associations with a number of Indigenous Traditional Owners, and have campaigned with Traditional Owners to stop damaging development and achieve conservation outcomes.

Over the last year or so, the Wilderness Society has provided to the Committee substantial analysis and critique of the Newman Government's approach to regional planning and its dramatic removal of vital environmental protections such as the repeal of the Wild Rivers Act, and the rollback of vegetation management controls which have already been followed by larger scale land clearing in Queensland. We see the anti-environment, pro-development-at-all-costs agenda which is being pursued by the Newman Government in this state, and the summary dismissal of objections and real concerns about this, and its impacts on nature.

With specific reference to the Regional Planning Interests legislative regime, including the Regional Planning Interest Regulation, apparently only now under public consideration, the Wilderness Society wishes to reiterate the range of issues raised and comments made in its previous submissions on these subjects. Copies of the relevant submissions are attached to this one, and form part of the current submission.

In addition to those previous issues and comments, we also seek to highlight the following:

1. Poor legislative and policy processes

At the time the Regional Planning Interests legislation was being inquired into, the Regulation it relied on to give effect to various processes did not even exist, apparently. It certainly was not made available to either the State Development Committee nor to the individuals and organisations which made submissions on the Bill. This was a major deficiency with the Inquiry process and was one raised by almost all submitting parties, uniting conservationists with planners, lawyers, Indigenous bodies, and the farming and mining lobbies. Notwithstanding the fact that good, transparent and accountable process demanded that the Regulation be made available prior to knowing what exactly was being proposed under subordinate legislation and statutory instruments under the Regional Planning Interests Act, the Committee nevertheless recommended passing of the legislation.

The Regional Planning Interest Regulation was then ‘released’ as an exposure draft, but there was no formal process for its review. It was only after the Regulation came into effect on 13 June 2014 that the State Development Committee then announced it was going to review it! The terms of that review are unclear, given this is not a legislative Inquiry as such, directed by Parliament, but rather is a self-appointed process which presumably the government can simply ignore if it chooses to. But a critical question now remains – is it possible that the Regulation could be amended, in which case why review now and not prior to its commencement? Or is it the case that in fact the Regulation will remain as is, in which case why review it. Other legislation, particularly the ironically-named *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014*, has seemingly been justified, inquired into, and passed on the basis of the Regulation as it stands.

The Wilderness Society believes this entire exercise has represented a fundamentally bad process of legislation and policy making, and there is a risk that Parliament has been misled on the processes of the Regional Planning Interests legislation and other legislation, particularly the repeal of the *Wild Rivers Act*.

2. Complexity and poor transparency of the new regime

The *Regional Planning Interests Regulation 2014* Explanatory Notes includes the claim,

“To achieve its purposes the *Regional Planning Interests Act 2014* provides for a transparent and accountable process for the impact of proposed resource activities and regulated activities on area of regional interest to be assessed and managed. The *Regional Planning Interests Regulation 2014* supports this outcome by establishing key elements of the assessment process such as criteria, assessing agencies, and notification requirements.” (p.2)

It remains the contention of the Wilderness Society that far from providing transparent and accountable processes, the *Regional Planning Interests Regulation* actually compounds the complexity of processes for rivers protection and the protection of important natural values in various parts of Queensland, and has made departmental and ministerial processes much less transparent and accountable. The mapping issues and notification issues discussed below are but two examples of this.

3. Deficiencies with the ‘current’ mapping of Strategic Environmental Areas (SEAs)

It has been experience of the Wilderness Society that there continues to be almost universal ignorance of the maps that accompany the SEAs and the Regional Planning Interests regime. We have spoken with scientists, Traditional Owners, other community groups and others, all of whom are oblivious to where to find the relevant maps on the DSDIP website. This is anathema to transparency.

Further, it remains unclear how the current mapping of SEAs was conducted. What processes and criteria for inclusion/exclusion were applied? The Wilderness Society for example provided a detailed values analysis pertaining to the Cape York region, indicating the extensive areas that should be declared SEAs on the basis of publicly-available scientific data. A copy of this map is included in our submission on the draft Cape York Regional Plan which is attached to this submission. There is no obvious equivalent analysis from the Department of State Development, Infrastructure and Planning (DSDIP); the only rationale appears to be an attempt to replicate (unsuccessfully in the case of the Wenlock River and the Channel Country rivers) the Wild River Basin maps, and High Preservation Area zones.

Mr James Coutts from DSDIP has stated,

“These strategic environmental areas are the mechanism to carry forward the land use planning component of the wild rivers declarations that were in place upon commencement of the act in preparation for the repeal of the Wild Rivers Act.” (Evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014, 3 July 2014).

and

“...the intention was to carry over the policy effect of those existing wild river declarations into the Regional Planning Interests Act framework and the consultation was undertaken on the declarations when they were done, there was seen to be no reason to take over the declaration—any further consultation on those areas at this point” (Evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014, 3 July 2014.)

Apart from the fact that the Regional Planning Interests regime is weaker than Wild Rivers, and disaggregates water allocation, ecological values, riparian management and Indigenous river management from a single framework to a myriad of processes,

and the fact that there was no specific consultation on the present SEA boundaries, there is no reference to how the SEAs have been set. In the case of some of the previous Cape York, Gulf Country, and Hinchinbrook/Fraser Island Wild River Areas, boundaries have effectively been copied, but with a lack of precision about buffer zones and special features. In the case of the Wenlock and Cooper Basins, there are major differences between Wild River areas and SEA.

The only SEA that has been created that was not a former Wild River area is the Steve Irwin Wildlife Reserve, although it transpires that not even here has been included completely. What was the science behind that?

The concerns the Wilderness has in relation to Cape York are well documented, including in the attached submissions. In the case of the Channel Country, there is the *de facto* opening up of roughly five million hectares to high impact conventional and unconventional gas projects. This is in opposition to the views of local Agforce representatives, Aboriginal people, the local MP and many local graziers. Of the roughly five million hectares that comprises the Native Title application claim area of the Mithaka People, 1.7 million hectares have petroleum exploration leases granted or applied for overlying it. This is why the Channel Country is treated differently from Cape York and Fraser Island in not banning all resource extraction activities in SEAs. The rollback of protections for these rivers and associated landscapes is clearly about development over environmental regulation, and is hardly a transfer of protections from Wild Rivers to SEAs. The only beneficiaries of the removal of the *Wild Rivers Act* are petroleum companies.

In addition, the omission of ‘geomorphology’ for the Channel Country SEA attributes in the Regulation is an error with profound risk. What policy intent is there in setting lower Environmental Attributes for the Channel Country in comparison to Cape York and Fraser Island? Removal of geomorphological attributes from the Wild Rivers protection regime is particularly relevant in the Channel Country, given the large flood events and potential for key waterholes to be filled sediment, resulting in less refugia habitat during dry periods. The risk here is significantly higher than for Cape York and Fraser Island.

The Wilderness Society is not saying that the former Wild River Areas nor the Steve Irwin Wildlife Reserve should not be protected into the future, now the *Wild Rivers Act* has been repealed. On the contrary, we believe that many of Queensland rivers and the state’s environmentally sensitive and ecologically important areas need the strongest protection. But we do not believe that the SEAs and the Regional Planning Interests regime provide the mechanisms for achieving that.

4. Deficiencies with the process of making amendments to maps

The Wilderness Society maintains that there are major issues with the way that the maps that graphically represent SEAs can be amended. This seems to be another case of ‘trust us, it’s a policy process’ which is far too loose and lacking in precision in terms of steps, decision-makers, and reporting. The system needs clarity on how and by whom maps can be amended.

One of the major concerns held by the Wilderness Society during the repeal of the *Wild Rivers Act* was the way that government and officials could point to the current maps as broad cover for the fact that existing protections were being stripped away, and yet the ease with which they could change the maps (and thus SEA areas) afterwards. This concerns has been heightened by statements by Mr James Coutts from DSDIP:

“The inclusion of the Cape York strategic environmental area in the regulation is an interim approach and this strategic environmental area is to be transitioned to the Cape York Regional Plan when that plan is, in fact, made”, Evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014, 3 July 2014.

and

“Everything the state maps is obviously subject to change over time...” Mr James Coutts, Evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014, 3 July 2014.

But as to how such changes can and will occur, the situation appears murky. Pages 10-12 of the evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014 on 3 July 2014, indicates that there is no policy for how changes to maps will be dealt with, and officials were having to outline what they imagined the process would be, including a presumption of Ministerial decision-making, when in fact none of this is prescribed formally and there is nothing preventing the whole process being conducted behind closed doors. The claim in the Explanatory Notes about ‘transparency and accountability’ cannot be substantiated - at best is wishful thinking, and at worst it is simply misleading.

5. Notification issues

The Wilderness Society has concerns about two notification processes.

The first concerns the absence of any guaranteed process to ensure the public will know anything about the amendments to SEA mapping. During the evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014 on 3 July 2014, there was a telling set of exchanges about this:

CHAIR: If I can come to the regulation, if there was a change in the mapping for a strategic environment area, if I understand what you have said, and let us say it is a minor tweak, something has been identified and we missed a road boundary and we need to move it 50 metres to get to that boundary, that change could be made quite easily but people would be advised of that through an e-alert?

Mr Coutts: Yes.

.....

Mrs MILLER: On an e-alert can you just actually say that the maps have been changed, but there is no reason given as to why?

Mr Coutts: That is correct.

It is unclear who manages and monitors this apparent 'e-alert' system, but it does not seem to have any formal policy or legislative basis, so could be dropped in the future. It is a poor substitute to a Minister being the decision-maker, and the Minister reporting to Parliament, not just on the substance of the changes, but the reasons for them. That is what a 'transparent and accountable' process would look like.

It is also unclear why only notifications associated with the assessment and approval of a Priority Living Area (PLA) should be required under the Regulation (Clause 13), and not other assessments and approvals, including those for development in SEAs. This restriction to PLAs would appear to be a backdoor restriction on public awareness and community participation, and yet another example of the opposite of a 'transparent and accountable' process.

6. Deficiencies with process for stopping specific development in SEAs

The Wilderness Society remains unconvinced by the claims of the Premier and Deputy Premier, as well as DSDIP officials that the Regional Planning Interests regime can provide guaranteed prevention of certain development in SEAs, including the Steve Irwin Wildlife Reserve and the Wenlock River. There is a level of arbitrariness of how Schedule 2 Part 5, Clause 15 (1) and (2) operate.

During the evidence presented by DSDIP officials to Inquiry into the Regional Planning Interests Regulation 2014 on 3 July 2014, there was an exchanges about this:

CHAIR:With regards to the activities such as open-cut mining, water storage dams and broadacre cropping, if I understand the regulation correctly, they are not considered as acceptable activities in strategic environmental areas, designated precincts; is that correct?

Ms Nottingham: That is correct.

CHAIR: Is there any intention to review that, or is there any flexibility in that, or is it a hard and fast rule that they are not acceptable, and that is the case until the act changes?

Ms Nottingham: That concept of an unacceptable use is given effect through the criteria, particularly under section 15, part 1(b)(i). So that is one aspect of those criteria, and it is very clear-cut. It is a yes or no answer. If a proposal were to be considered in that area and it was for one of those uses, as soon as you got to that part of the criteria that said if the activity is being carried out in a designated precinct in the strategic environmental area, is it or is it not unacceptable? So in that sense it is very clear-cut that, as soon as you came to do this assessment, it would not pass that part of the criteria.

We believe there may be other interpretations of the Regulation. While the drafting appears to suggest that there is a means of preventing specific activities in Clause 15 (2), we are concerned that if a developer claims consistency with Clause 15 (1)(a) – that is that the

activity “will not, and is not likely to, have a direct or indirect impact on an environmental attribute of the strategic environmental area” – and the assessing agency agrees, then the matters laid on in Clause 15 (1)(b) will not apply. In other words, it is our reading of Schedule 2 Part 5, Clause 15 that (2) does not operate independently of (1)(a), and there may be cases where (1) (b) does not apply, rendering (2) inapplicable. There is a possible way around the capacity to stop certain activities, which requires legal analysis and policy consideration.

Yours sincerely



Dr Tim Seelig
Queensland Campaigns Manager
On behalf of the Wilderness Society

Attachment 1: copy of Submission to the Inquiry into the Regional Planning Interests Bill 2013

Attachment 2: copy of Submission to the Inquiry into the ‘Red Tape Reduction’ Bill 2014

Attachment 2: copy of Submission to the draft Cape York Regional Plan, March 2014



26 June 2014

The Research Director
State Development, Infrastructure and Industry Committee
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Dear Sir/Madam

Re State Development, Infrastructure and Industry Committee consideration of the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014

I write on behalf of the Wilderness Society regarding the above Inquiry, and wish the following to be accepted as a formal submission to the Committee. The issues in this submission relate to Chapter 4 of the Bill ('Repeal of the Wild Rivers Act 2005 and amendments for the repeal'), and the core argument in the Explanatory Notes for the Bill in this regard, where it is claimed (page 9), "The *Wild Rivers Act 2005* (Wild Rivers Act) can be repealed because its policy objectives can be more effectively implemented through Queensland's existing land use planning and development assessment framework and the new *Regional Planning Interests Act 2014* (RPI Act)."

The Wilderness Society is aware that the Queensland Environmental Defender's Office is also intending to make a submission on the Bill, with respect to other aspects and issues, and we wish to offer our support for those arguments.

Background

The Wilderness Society is one of Australia's leading community-based conservation and environmental advocacy organisations with a long history of engagement, campaigning and focus on river protection. In Queensland, the organisation has been a longstanding and consistent advocate for the protection of the state's wild rivers, and has sought to work with governments, local communities and Traditional Owners on preserving natural and cultural values associated with a number of river systems across the state. We have close collaborations and a range of long term associations with a number of Indigenous Traditional Owners, and have campaigned with Traditional Owners to stop damaging development and achieve conservation outcomes.

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The Wilderness Society is committed to seeking conservation outcomes that are consistent with Aboriginal rights, as recognised under Australian Law. We consider that law reform with respect to recognition of Indigenous rights is, and should be, ongoing through the political process. In the backdrop of very public attacks on Wild Rivers on Cape York, the Wilderness Society has continued to work closely with Traditional Owners on the ground on Cape York and elsewhere.

Basic position of this submission

The Wilderness Society opposes the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (the Bill) at least to the extent that it seeks to repeal the *Wild Rivers Act 2005*. The Bill will in our view lead to the removal of vital river protections that have been in place in Queensland for the past ten years, even though the case for such removal has not been successfully made, and the alternatives currently proposed are weak, complex and lack transparency.

The rationale for the government moving to repeal the *Wild Rivers Act* is obscure. Repeal of the *Wild Rivers Act 2005* was never spoken about in the lead up to, during, nor post the 2012 Queensland State election by the LNP. Nor has this action been mooted in any public policy discussions. It would appear that this is a politically and ideologically-motivated action, and a rushed and ill-conceived one at that. Late in 2013, the government initiated the process for revoking some of the Wild Rivers (those on Cape York and in the Channel Country), but this process – which was strongly opposed by a range of conservation interests and by some Traditional Owners – was seemingly never completed or reported on. It remains unclear what has happened to that process, and why the Act is now instead being repealed.

The Wilderness Society is concerned that the Bill being considered by the Committee has been prepared under a cloak of secrecy (it did not appear on the Daily Parliamentary Notice Paper for 3 June 2014), and was introduced just prior the State Budget being delivered when most media and policy attention was focused on the budget. Initially, the Bill was then referred to the Committee with a reporting deadline of early December 2014 (as recorded in Hansard and the Daily Parliamentary Notice Paper for 6 June 2014), but this was quietly changed by the government to 28 July, with a subsequent compression of public submission period to just a few days.

This altered approach makes it very hard for interested parties, especially Traditional Owners from remote regions, to participate and engage. It also suggests a culture of legislation, policy development, and administrative processes being developed, implemented and subsequently amended on the run¹. We would encourage members of the Committee to acknowledge the

¹ This paragraph was written on 25 June 2014. To prove this very point, on the morning of 26 June 2014 (the same day this submission must be tendered by), the Committee Chair has announced a review of the Regional Planning Interests Regulation, even though it is now in force, and is being relied upon in processes as discussed in this submission.

poor processes at play with this Bill, and to seek more time and more transparency to allow greater input to the Bill's consideration.

Fundamentally, the Wilderness Society does not accept that any compelling case has been made about repealing the Wild Rivers Act, based on either that there is a suitable alternative, or that Wild Rivers represents 'red tape' which will be alleviated by its removal.

The government's shifting approach to wild rivers protection

The LNP's intended response to Wild Rivers has changed substantially over time and in its focus. Prior to and during the 2012 State Election, the LNP spoke of replacing Wild River Declarations on Cape York through a focus on preserving the region's waterways, under the auspices of a Bioregional Management Plan for Cape York. Wild Rivers in Western Queensland were seemingly to be retained, although there were some contradictory statements at the time about whether they would be considered at some point. The Gulf Country and Islands Wild River areas were not spoken about at all. No reference to repealing the *Wild Rivers Act* in its entirety was ever made.

Once elected in March 2012, the Newman Government shifted tack on Cape York rivers, and started proposing a statutory plan approach under which the fate of the rivers was unclear. Wild River Declarations in Western Queensland were amended at the behest of Santos, to wind back restrictions on gas exploration and extraction in the Cooper Basin. By late 2013, the Cape York Regional Planning process had reached the point of being released in draft form, but the exact processes for river protections remained unclear. The Wilderness Society raised a range of concerns in this regard in its submission to the government on the draft plan. Meanwhile, in December 2013, the Environment Minister released formal proposals for the revocation of Wild River declarations on Cape York and in Western Queensland. There was still no mention of Gulf Country or Islands rivers, and no reference to the Act itself.

By May 2014, no outcome from the proposed Wild River declarations revocation process had been announced, but the Department of State Development, Infrastructure and Planning (DSDIP) once again refined its proposed approach to Cape York planning, and subsequently seems to have created (process unclear) Strategic Environmental Areas for all the Wild River areas in Queensland, including mapping the High Preservation Areas as 'Designated Precincts'.

And in early June 2014, the government suddenly announced its intention to repeal the *Wild Rivers Act 2005*. Accordingly, it is now claimed by the Newman government that the *Wild Rivers Act's* intent and outcomes can be "better achieved" through a combination of the Sustainable Planning Act, the State Planning Policy, and the *Regional Planning Interests Act* and Regulation. However, no clear statement that guarantees that the strong rivers protection framework established under the *Wild Rivers Act* will be replicated has been provided, and other statements from the government make it obvious that the policy intent here is to remove environmental protections and weaken environmental regulations as far as the state's wild rivers are concerned.

In particular, it is quite clear that in Western Queensland's Channel Country, the intent is to remove current restrictions on unconventional gas extraction in sensitive river and floodplain areas under Wild Rivers, and only promise regulation of 'open cut' mining which is not the major threat. Similarly, in the Gulf Country, there is no clear regulation of other mining activities other than 'open cut' mining.

In all of the current (and past) Wild River areas – now apparently established as Strategic Environmental Areas, including those on Cape York – it is the policy intent to remove straightforward and openly stated prohibition of mining and other destructive activities and replace this with a more complicated but weaker set of processes which may still result in destructive activities to occur.

Clause 14 of Regional Planning Interest Regulation 2014 identifies that the ss 41(2)(b) (assessment of applications) and 49(1)(b) (Decisions on the applications) of the Regional Planning Interest Act 2014 are now to refer to Schedule 2 of Regional Planning Interest Regulation 2014. This seems to suggest that there are unacceptable activities in Designated Precincts which will be in addition to the assessment of the 'irreversible or widespread damage' tests under *Regional Planning Interest Act 2014*.

The Wilderness Society remains unconvinced about the strength of these restrictions, and questions whether the *Regional Planning Interest Act* and Regulation 2014 have sufficient legislative head of power to restrict activities under the *Mineral Resources Act 1989* around Strategic Environmental Areas (SEA) and regional plans. Without this, the processes and restrictions will have no force.

The other problem is that clause 4 of the Regional Planning Interest Regulation 2014 refers vaguely to a map on the DSDIP website, which turns out to be the one here, apparently: <http://www.dsdip.qld.gov.au/about-planning/da-mapping-system.html> (NB where it is necessary to select 'Regional Interests' and then select SEAs and zoom in to inspect the relevant areas). This mapping has already undergone modification over the last few days, suggesting it is at best a work in progress. Concerns with the arbitrariness and lack of transparency of the mapping process – which we believe are critically important issues for the Committee to examine – are raised later in this submission.

This new approach to rivers protection also disaggregates policy issues such as water entitlements and riparian land management which directly affect rivers, from development issues. Unlike Wild Rivers which sought to view river issues from a whole of system level, and brought together a range of regulations concerning vegetation management, water entitlements, access and use, as well as prohibiting or regulating specific activities, the government's alternative scatters these considerations across legislation and portfolios, ensuring that no one process or agency will comprehensively assess all issues relevant to river health. This will also result in multiple processes and decision points, likely to result in more not less red tape and inconsistent approaches to ecological protection.

To understand why this alternative approach is both ill-conceived and poorly designed, and thus why the *Wild Rivers Act* should not be repealed, it is important to properly appreciate where the Wild Rivers initiative came from, and why and how it has been implemented in Queensland.

The origins and development of the Wild Rivers Act and associated processes

Freshwater ecosystems are under increasing ecological threat at both global and national scales. Many of Australia's river systems are seriously degraded due to over-extraction, pollution, catchment modification and lack of effective river regulation, the most severe and prominent example being the Murray-Darling Basin. Science and logic tell us that we need to deal with rivers protection at the catchment/basin level rather than dealing with it partially or incrementally. Although Australia has experienced a number of social, economic and environmental disasters when it comes to management and protection of its rivers, Queensland is blessed to retain some of the last remaining, pristine or near pristine waterways left of the planet.

The need for strong state legislation protecting wild rivers in Queensland was broadly recognised and accepted more than a decade ago. The *Wild Rivers Act 2005*, and its associated Wild River Declarations, have sought to protect the ecological values of some these last remaining, pristine or near pristine waterways left of the planet.

The *Wild Rivers Act 2005* was passed with full support of the Queensland Parliament. With minor amendments moved by now Deputy Premier Jeff Seeney, the Wild Rivers Act received endorsement by the Nationals and the Queensland Liberals as well as from Labor and the Independents. Comments made by then Liberal Party Leader Bruce Flegg in Parliament included:

“The Liberal Party supports the preservation of genuine wild river areas and is cognisant of the fact that this legislation will introduce a ban on activities such as mining, agriculture, animal husbandry, vegetation clearing, riverine disturbance, and dams and weirs ... the Liberal Party understands that in a state with rapid development and a great deal of environmental impact from development the goal of preserving our relatively untouched river systems is a worthy goal, and we support the intent of a bill to that effect” (Queensland Parliament Hansard 2005)

Prior to the legislation being passed, the Wilderness Society, Queensland Conservation Council and the Queensland Environmental Defender's Office released a policy position on the proposed Wild Rivers Act. Conservation groups' recommendations included:

- Multiple tiers of river protections with varying degrees of management goals.
- The establishment of a “Technical Advisory Panel” to provide expert advice to the Minister in the implementation of the initiative.

- A \$60 million Wild Rivers implementation fund, including a structural adjustment package to be part of the initiative.
- Formal recognition of Native Title and Traditional Ownership and management, protection of Indigenous cultural heritage and ensuring consultation rights for Indigenous people.

The Wilderness Society and the Queensland Conservation Council developed a discussion paper specifically addressing Indigenous issues – *Caring for Queensland's Wild Rivers: Indigenous Rights and Interests in the proposed Wild Rivers Act*. These two key policy documents were mailed out to environment groups, fishing groups, recreational user groups, local government, state government, and over 150 Native Title representative bodies and Indigenous organisations throughout Queensland. Follow up calls and meetings occurred, including between The Wilderness Society and the Cape York Land Council and Balkanu Cape York Development Corporation and with other sectoral interests. The Wilderness Society also undertook a campaign of community awareness raising.

The then government's *Wild Rivers Bill 2005* did not meet all the policy goals of the conservation groups, it did not a Technical Advisory Panel, nor a management fund, and there was no explicit recognition of Indigenous rights, cultural heritage or Traditional Ownership. Nevertheless, despite its shortcomings, the Act was a highly significant step, and signalled a major breakthrough in proactive protection of Queensland's free flowing rivers. It was the first legislation of its specific type in the world, and Queensland had taken an international lead in river conservation.

Three months after the passage of the *Wild Rivers Act 2005*, the first six wild river basins were nominated for protection: Settlement Creek, Gregory River, Morning Inlet, Staaten River (these four being in the Gulf of Carpentaria), Hinchinbrook Island and Fraser Island.

The response from many Traditional Owners in the Gulf of Carpentaria and the islands was overall positive, although concerns about the lack of recognition of cultural values, and the consultation process were raised. However, the Carpentaria Land Council supported the declarations, and in fact noted that the protection measures did not go far enough. A statement from Indigenous leader Murandoo Yanner in a joint media release at the time with the Wilderness Society captures the flavour of the support for the protection of the Gulf rivers:

“Healthy rivers are the lifeblood of our people — everything depends on that. Water for drinking, fish for eating — we have to protect this for our children's children. We've talked with the Government and we thought we were on the same page — we want the Settlement and Gregory Rivers declared — the Government shouldn't cave in to the scare-mongering of those mining and agriculture mobs.” (The Wilderness Society and Carpentaria Land Council 2006)

As indicated in Mr Yanner's comments above, there was fierce opposition from AgForce, the Queensland Resources Council, and from the Cape York Land Council. These bodies remain unreconciled with the need to protect our last free flowing pristine river systems, and have campaigned against Wild Rivers for both commercial and political reasons. Their endeavours saw various amendments to the *Wild Rivers Act* which weakened aspects of the legislation, but the core principles and effects of the model survived – namely to ensure the ecological values of the rivers remained intact. The conservation outcomes were still very significant. The Wild River declarations in the Gulf for example, were the first major conservation initiative in that region since the creation of the Lawn Hill (Boodjamulla) National Park in 1985, and included the protection of vast areas of coastal wetlands of international significance.

The move to protect river basins of Cape York was characterised by greater controversy, delay and obfuscation, fuelled largely by a concerted and ongoing campaign of fear and misinformation by those opposed to Wild Rivers. In June 2008, the Queensland Government formally nominated the Archer, Stewart and Lockhart River Basins under the Wild Rivers legislation, with public submissions set to close in November 2008. The Balkanu Development Corporation was contracted by the Queensland Government to help conduct the formal consultation process for the first phase of nominations.

An extensive community consultation exercise ensued, with over one hundred meetings and briefings with Traditional Owners in relevant parts of Cape York. During the consultation phase, the Wilderness Society met with a group of Traditional Owners who had remaining concerns about the impacts of Wild Rivers. We also sought a commitment from the Government that there would be a process of dialogue and negotiation to enable agreement to be reached on the Wild River declarations. The Wilderness Society understands that several attempts were in fact made to undertake such negotiations (in late December 2008, and in February 2009), but that these were frustrated by Balkanu.

The re-elected Labor Government, which had run in part of a clear platform of completing Wild River processes and nominating new rivers during the March 2009 state election, moved to declare the Archer, Stewart and Lockhart Rivers as Wild Rivers in March/April 2009². Meanwhile, the Queensland Government also nominated the Wenlock River Basin for Wild River protection in late 2008. This was completed in mid-2010.

Since the proclamation of the *Wild Rivers Act 2005*, and in particular since Cape York rivers were nominated, there has been a great deal of misinformation and misreporting about how the initiative operates, and a range of critiques have been levelled at Wild Rivers³. These have included claims that Wild Rivers prevents all development, stops cultural activities, is akin to a National Park, “locks up” the land, that it impinges on Native Title or broader property rights, and that it is generally unnecessary. These accusations have been ill-informed and

² A ruling from the Federal Court last week has found them to be invalid because the precise process of considering submissions and making the decision did not comply with the prescribed process.

³ There have also been a number of untrue allegations levelled at The Wilderness Society in relation to our support for Wild Rivers.

unsubstantiated. Nevertheless, it is worth Committee members acquainting or reminding themselves with how Wild Rivers protections have operated in practice.

Wild River declarations support sustainable development and sustainable economic opportunities (such as eco-tourism, grazing, fishing, building infrastructure for tourism), they protect traditional activities and cultural practices, they do not interfere with recreational uses or river access, and allocate specific Indigenous water reserves (a first in Australia). As well as evidently not getting in the way of a wide range of sustainable and lower level commercial activities (often Indigenous-owned enterprises), Wild River declarations have operated in a tenure-blind way, and the *Wild Rivers Act* explicitly states that Native Title rights are fully protected under declarations (Section 44, 2).

Each of the Wild River Declarations in Queensland has only occurred following extensive consultation with communities, particularly Indigenous Traditional Owners and Land Councils, and other stakeholders. A number of attempts in the Federal Parliament to overturn the Queensland legislation via the *Wild Rivers (Environmental Management) Bill 2010* on the basis of the Wild Rivers consultation process were unsuccessful.

In the midst of the debate about protecting the wild rivers of Cape York, the Queensland Government moved to protect the spectacular Channel Country rivers under the Wild Rivers legislation. This was in response to ongoing threats from unconventional gas extraction and previous plans by the cotton industry to divert large quantities of the Cooper's Creek's water to grow cotton in Queensland's western desert. An alliance between graziers, Traditional Owners and conservationists called for permanent river protection of the Channel Country, and three Western Queensland rivers were declared Wild Rivers in late 2011.

Until last week, there were thirteen declared Wild Rivers in Queensland – the Gregory River, Settlement Creek, Staaten River, Morning Inlet, Hinchinbrook Island, Fraser Island, Wenlock River, Cooper Creek, Georgina and Diamantina Rivers, and the Archer River, Stewart River, Lockhart River. A Federal Court ruling on Wednesday 18 June, 2014 has resulted in the Wild River Declarations on the last three of these rivers has been pronounced invalid, for reasons of incorrect administrative procedure and non-compliance with necessary steps in the legislation by the Minister at the time.

In response to advocacy from The Wilderness Society, it was announced during the 2006 State election that Labor would commit to creating a program of Indigenous Wild River Ranger jobs. This was a highly significant announcement, as it directly recognised the skills and knowledge of local Indigenous people, as well as providing much needed jobs in remote areas. It is understood that some 50-60 Wild River Rangers were employed in total, and the program remains today but under a different name.

The benefits of Wild Rivers

Australians have learnt the hard way that failing to protect the continent's rivers and waterways has dire consequences for the environment and for the people and communities who depend on rivers for social and economic imperatives. At the same time, Queenslanders have been reminded in recent times, through significant flooding and through drought, of the benefits of free-flowing river systems in northern and western parts of their state.

Rivers are the lifeblood of our landscapes and communities, and Wild Rivers has been a ground-breaking approach to protecting pristine and sensitive river systems, which have largely been well-cared for but which increasingly face serious threats from large scale and destructive development activities. Regardless of historical custodianship and good intentions, without Wild Rivers, it will only be a matter of time before the state's last remaining rivers succumb to damming, mining, excessive water usage, and degradation or pollution.

The pressures to make 'productive use' of these rivers and adjacent landscapes are significant, and it is in this context that Wild Rivers has offered a sensible mechanism to support sustainable activities and smaller scale economic uses under a regulatory framework, whilst ensuring a strict protection regime against undesirable development and activities in the most sensitive parts of the river systems.

The Mechanics of the Wild Rivers Act and associated Declarations

Queensland's Wild Rivers Act is a tenure-blind, planning and management approach to conservation. It operates in tandem with many other pieces of Queensland legislation and is designed to protect the natural values of wild rivers by regulating new development activities through whole-of-catchment management. This approach supports the scientific concept of 'Hydro-ecology'.

The Wild Rivers Act is operationalised through individual Wild River area declarations and the *Wild Rivers Code*. A declared Wild River includes a number of different management areas which have varying rules to guide development activities. These areas include:

- High Preservation Area
- Preservation Area
- Floodplain Management Area
- Subartesian Management Area
- Designated Urban Area
- Nominated Waterways

The *Wild Rivers Act* is best described as enabling legislation which delivers a planning and management approach to conservation. It operates in tandem with Queensland's *Sustainable Planning Act 2009*, *Water Act 2000* and other relevant Queensland legislation to regulate new developments in declared "Wild River areas", setting a baseline for ecologically sustainable development that protects wild river values. But critically, each Declaration is very detailed and specific in its application and is a single document for landholders and others to refer to.

The following excerpt from the *Wild Rivers Code*, which is used to assess development in a Wild River area, is a good explanation of how Wild Rivers operates.

“The Queensland Government can declare a wild river area under the Wild Rivers Act in order to preserve the natural values of that river system. Once a wild river area is declared, certain types of new development and other activities within the river, its major tributaries and catchment area will be prohibited, while other types must be assessed against this code. Each wild river declaration will identify these developments and other activities. Also proposed developments and activities assessed against this code must comply with its requirements.

The natural values to be preserved through a wild river declaration are:

- *hydrological processes ...*
- *geomorphic processes ...*
- *water quality ...*
- *riparian function;... and*
- *wildlife corridors ...*

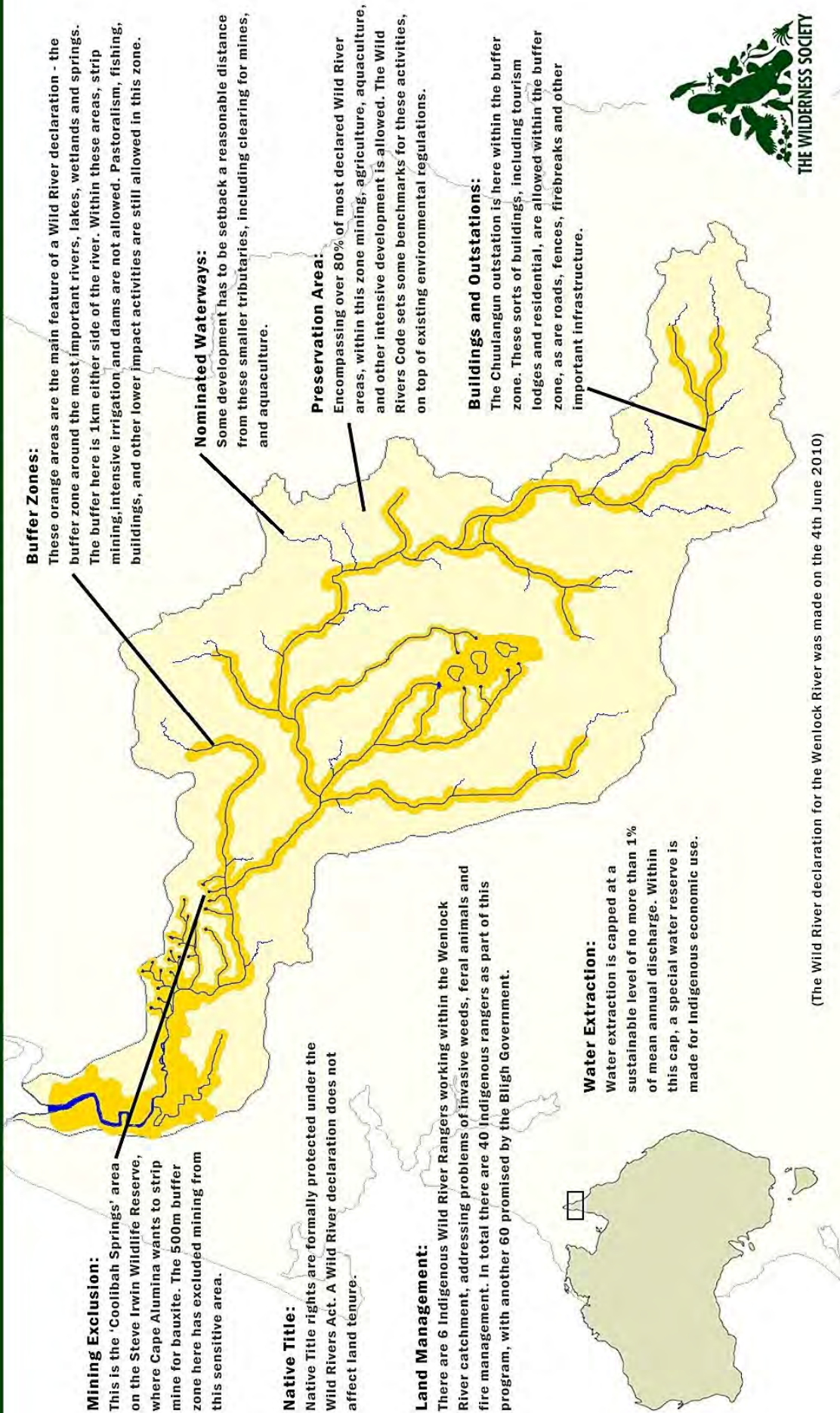
Proposed development activities are assessed for their potential impact on these natural values.”

In order to give more definition for this assessment process, a declared Wild River area (defined by a river basin) is spatially mapped into different management areas, which have varying rules to guide development activities in the *Wild Rivers Code*. These management areas are shown in the map on following page and summarised below.

The management areas are as follows:

- **High Preservation Area:** the buffer zone around the main watercourses and wetlands (the orange areas on the above map) where ecologically destructive development like dams, irrigated agriculture and strip mining is prohibited. Lower-impact activities, such as grazing, infrastructure such as houses, and fishing are allowed.
- **Preservation Area:** the remainder of the basin, where most development activity can occur as long as it meets requirements that minimise the impacts on the river system.
- **Floodplain Management Area:** important floodplain areas in the basin (shown in cross-hatch above), where the construction of levees and other flow-impeding development is regulated to protect the connectivity between this area and the main river channels.
- **Subartesian Management Area:** areas where there is an underlying aquifer that is strongly connected to the river system. Water extraction from this area needs to be considered in the overall water allocation for the basin.
- **Designated Urban Area:** areas where there is a town or village, so certain types of development are exempt from the *Wild Rivers Code* (shown in pink in the above map).
- **Nominated Waterways:** secondary tributaries or streams in the Preservation Area where certain development set-backs apply.

How does Wild Rivers work? - The Wenlock River example



(The Wild River declaration for the Wenlock River was made on the 4th June 2010)



For better or worse, Wild Rivers has left in place pre-existing mining entitlements, but along with other environmental and planning instruments, it has regulated future mining activity and has clearly had the necessary legislative head of power to constrain the *Mineral Resources Act 1989*, and subsequently, the *Petroleum and Gas (Production and Safety) Act 2004*.

A Wild River declaration cannot occur without extensive community consultation, including a public submission phase. The formal consultation process has been triggered when the Government released a draft declaration proposal (a 'nomination'). This included releasing a draft map showing proposed management areas, followed by months of face-to-face meetings between the Government and communities, sectoral groups, and industry organisations, as well as a chance for people to lodge submissions with the Government.

There was also the opportunity for parties to seek to negotiate directly with the Government following the close of submissions, including for the Archer, Stewart and Lockhart Rivers. It is understood that this occurred in the case of most Wild River declarations, and was strongly promoted and supported by the Wilderness Society in every case.

The complexity of the government's alternative approach to the Wild Rivers Act

For the Committee to assess the claim in the Explanatory Notes regarding there being a suitable alternative to the *Wild Rivers Act*, and thus to consider the impacts of its repeal, it must have due regard to the government's alternative approach to Wild Rivers protection.

As stated earlier, the *Wild Rivers Act 2005*, and its associated Wild River Declarations, have ensured that new destructive development such as mining, dams and intensive irrigated agriculture has been prohibited in the most sensitive parts of the respective river systems, while allowing a wide range of economic, cultural, social and recreational activities and uses are unaffected. Rights under the Commonwealth *Native Title Act* were protected, and a number of commercial enterprises, including Indigenous-run ones, have operated in Wild River areas unhindered.

The alternative 'Strategic Environmental Area' approach to rivers protection in Queensland being put forward by the government is in our view far too weak in its approach to restricting mining and other destructive development in sensitive river areas, and loses the capacity under Wild Rivers to ensure comprehensive management of whole river systems. The status of SEAs and regional planning processes *vis-à-vis* Native Title is unclear and unstated, but their establishment has certainly not been Traditional Owner consent-based.

The proposed SEA alternatives to Wild Rivers, and the processes detailing allowable and restricted activities, are also embedded in a complex web of legislation and administrative systems and processes. In researching how this system is intended to operate, where precisely it applies, and how decisions will be made, it appears to be a far more complex and disaggregated process than Wild Rivers has ever been, requiring examination of multiple pieces of legislation, multiple government website pages across several departments, yet-to-be-completed policy such as forthcoming iterations of the Cape York Regional Plan, and mapping processes.

The provisions which apply to what sort of development may occur in an SEA are spread across the Regional Planning Interests Act, the Regional Planning Interests Regulation⁴, the Sustainable Planning Act, and the State Planning Policy, as well as in a Regional Plan in some but not all instances, and also in online maps providing information on 'Areas of Regional Interest' which are part of the government's Development Application mapping system, under its State Assessment and Referral Agency.

This is the opposite of increasing transparency and ease of navigation for landholders and others, and by comparison the *Wild Rivers Act* and processes are far easier to follow and involve far less 'red tape'. Wild River Declarations have had a high level of transparency and precision in relation to where and how they operate, with detailed mapping and descriptions which are tabled in Parliament. Specific boundaries around the High Preservation Areas, Special Features, and Floodplain Management Zones have each been made clear, including the extent of buffer zones around main water courses, tributaries and features.

The government's proposed model will prove difficult for many people to follow, especially Traditional Owners who will rightly expect to be able to understand how the new planning regime interacts with their traditional country and in some cases their own properties. It is paradoxical that the presently proposed SEAs and Designated Precincts⁵ (as of 4pm, 26 June 2014) appear to essentially rely on the current Wild River boundary mapping, including High Preservation Area, Special Feature, and Floodplain Management Zone buffers within Wild River Declarations. But should the Wild Rivers Act be repealed, these geo-data will no longer be relevant and there will be no obvious ongoing basis for the mapped areas of SEAs or Designated Precincts.

Most ominously of all, however, is the concern that SEAs appear open to arbitrary and secretive amendment. It appears easy for the government to alter the boundaries of mapped SEAs and thus affect which parts of relevant rivers or other areas are subject to Designated Precinct provisions, which relate to general SEA provisions, and which are outside of SEAs. The Wilderness Society cannot locate any legislative or prescribed policy processes for making the maps, nor changing them. This is a highly discretionary process which lacks any transparency, and it compounds the proposed SEA approach lacking precision that Wild River

⁴ STOP PRESS – as noted earlier, it now turns out that the Regional Planning Interests Regulation is now being reviewed and thus may change! This makes it virtually impossible right now to make any definitive comments on how SEAs will really operate, and even where geographically will be captured.

⁵ The only exceptions to this are some minor variations in the Channel Country mapped areas, the excision of a section of the lower Wenlock River, and the inclusion of the Steve Irwin Wildlife Reserve.

Declarations have provided in terms of geographic boundaries, by setting up the prospect of amendments to mapped areas without proper scrutiny. Considering how often the government has changed its approach to Cape York planning and conservation, not to mention elsewhere, such changes to boundaries should be anticipated. Who will be scrutinising this, what will the criteria for change be, and how will the public know about it?

The Wilderness Society believes this mapping arbitrariness and lack of accountable process is quite irresponsible, and represents a breach of Fundamental Legislative Principles, which could render associated decisions invalid. The Committee has an obligation to satisfy itself that there are sufficiently clear and accountable processes for mapping SEAs for example, to ensure all stakeholders and indeed government itself can rely on the accuracy and consistency they will need to plan, make investment or conservation decisions, and ensure they act lawfully in land use terms. Parliament should retain the capacity to scrutinise Ministerially-endorsed mapped areas purporting to protect rivers, as it can under Wild Rivers.

Summary

The *Wild Rivers Act* and associated declarations prevent destructive developments like mega-dams, intensive irrigation, and mining occurring in sensitive riverine and wetlands environments, while supporting sustainable economic and other uses. Without Wild Rivers protection, sensitive rivers and wetlands will be at risk of these and other damaging activities.

Queensland's wild rivers are too ecologically, culturally and socially important to be used as a political football by the Newman Government. Governments have a general duty of care towards the environment including wild rivers, and are bound to seek its protection.

We urge the Committee to recommend against the proposed repeal of the *Wild Rivers Act*, as proposed in the Bill under examination. We also advise that we think it is imperative for the Committee to hold public hearings about the Bill, and the Wilderness Society will ensure it is available to present upon invitation.

Yours sincerely



Dr Tim Seelig
Queensland Campaigns Manager
On behalf of the Wilderness Society



**Draft Cape York Regional Plan:
A submission to the
Deputy Premier, Minister for State
Development, Infrastructure and Planning
March 2014**



Draft Cape York Regional Plan Submission

Documents tendered by the Wilderness Society to:

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1. Executive summary and key points

Cape York is a very special place that needs the strongest protection from destructive practices. The region needs a sustainable and prosperous economic future, one based around maximising its competitive natural/cultural values advantages. The current draft Cape York Regional Plan will not deliver this.

The draft Cape York Regional Plan is a flawed process which is only designed to maximise development – mining, agriculture, forestry – at any cost, despite the short term, often marginal benefits for local communities, and the permanent damage to their heritage. The draft Plan is a poorly constructed document which inadequately maps clear natural values and existing protected areas.

The draft Regional Plan is also misleading in that it gives the impression of providing environmental protection when in fact it does not. The proposed Strategic Environment Areas are virtually meaningless as they stand, as neither the draft Plan nor the Regional Planning Interests Act 2014 can provide the legal head of power to rule out mining. Recognised ecological values need legally enforceable prohibitions from mining and other destructive development, and restrictions on additional inappropriate land uses.

This submission provides a robust and defensible alternative approach for mapping the values of Cape York, and establishing a comprehensive and sensible framework for ensuring natural values are properly protected from mining and other destructive development.

The draft Cape York Regional Plan process has also failed to adequately inform and consult the diverse communities of Cape York about the proposed plan. A number of Traditional Owners have advised the Wilderness Society that they have received no briefing on it and have not been involved in any engagement exercises around it. There does not seem to have been any attempt at undertaking structured and systematic on-ground consultation with Traditional Owners.

The draft Cape York Regional Plan needs to either be radically overhauled to better map natural values, provide areas of ecological value with guaranteed protection from mining and other destructive development, or simply taken back to the drawing board.

In the meantime, the Queensland Government should leave existing protections such as Wild Rivers Declarations on Cape York rivers in place, and should also be taking a lead role in getting a World Heritage nomination for Cape York back on the agenda, one based on credible, independent scientific analysis and Traditional Owner consent.

2. Introduction and background

The Wilderness Society is pleased to take this opportunity to respond to the draft Cape York Regional Plan (CY RP), and to highlight why the Cape York Peninsula region (‘Cape York’) needs the strongest level of environmental protection to ensure its natural and cultural values are properly safeguarded, and its future is prosperous, sustainable, and enduring.

The Wilderness Society is one of Australia’s leading conservation organisations with a long history of engagement, campaigning and focus on Cape York. We have been working on Cape York related matters for several decades, including close collaborations and a range of long term associations with Indigenous Traditional Owners, engagement with regional organisations and other stakeholders, support for research and development, securing direct protection of landscapes and rivers, and campaigning with Traditional Owners to stop damaging development.



We have been involved in direct negotiation with government, Cape York Indigenous organisations and stakeholders over legislation for Cape York heritage, have worked to return lands to Traditional Owners, assisting with policy advice on tenure transfers / resolution of land and the creation of new national parks, supporting and promoting the establishment of Indigenous Protected Areas, and supporting consultation and community engagement work around World Heritage listing.

The Wilderness Society was one of the original signatories to the Cape York Heads of Agreement, a member of the Cape York Tenure Resolution Implementation Group, and a recognised key stakeholder in numerous other state and federal government and parliamentary processes connected to Cape York issues. Through our campaign centres in Cairns and in Brisbane, our past and present campaigners in Queensland are very familiar with the most of the places and many of the people of Cape York, directly or indirectly.

Cape York is therefore a region of great historical and contemporary importance to TWS, and we believe we have a valuable, authentic and legitimate perspective on its future.

This submission considers several critical aspects of the draft Cape York Regional Plan, including the proper recognition of Cape York’s environmental significance and the proper protection of natural and cultural values, the legitimacy of the CYRP consultation process, the prioritisation given to destructive development, the validity of the mapping and the categorisation of land uses, the opportunities to secure sustainable economic pathways, and the need to return to the drawing board or at the very least, radically overhaul the approach. Mapping more rigorous than that included in the CYRP is provided to demonstrate the inadequacy of what has been proposed, along with a more robust framework for recognising and protecting the highest ecological values, and other high ecological values.



Press conference at tabling of the *Cape York Peninsula Heritage Bill*, 7th June, 2007. Next to then Premier Peter Beattie are Noel Pearson (left) and Lyndon Schneiders from The Wilderness Society (right). Also present are several Queensland Government Ministers and MPs, Gerhardt Pearson (Balkanu), Richie Ah Mat (Cape York Land Council), the Director-General of the Department of Premiers and Cabinet, Anthony Esposito (The Wilderness Society) and representatives of the Queensland Resources Council and AgForce.

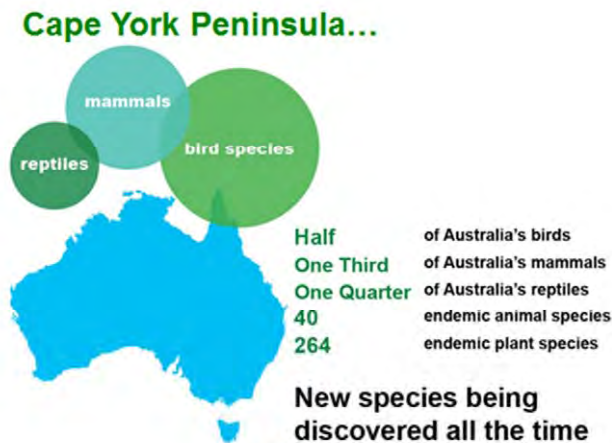
Given recent confirmation of Cape York’s World Heritage standard values through leading scientific analysis, it is incumbent on the Queensland to resume a lead role in getting a World Heritage nomination back on the agenda, based on credible, independent scientific analysis and Traditional Owner consent.



3. The widespread and globally significant natural and cultural values of Cape York

Cape York Peninsula in Far North Queensland is one of the last great wild places left on Earth, with superlative and undeniable natural and cultural heritage values. Cape York is special in many ways, not least because it presents a rare opportunity to protect ecological processes at the whole-of-landscape level, which will support a sustainable future for the environment and its people.

One of the few remaining vast wilderness areas remaining on the planet, Cape York Peninsula covers 137,000 km², and is a land of nature and culture in abundance. Encompassing the largest expanse of tropical rainforest in Australia (one-fifth of Australia's remaining tropical rainforests are found on Cape York Peninsula), it is also a landscape of savannahs, pristine wild rivers, rainforests, wetlands, white sand country, and coastlines. Cape York contains some of the planet's last remaining, pristine and free flowing rivers, and the wetlands alone on the Cape equate to about 45% of the land area of Tasmania. Almost all of the 748,000 hectares of Cape York's rainforests are old growth forests, meaning they have never been cleared or commercially logged.



Cape York is home to half of Australia's bird species including the palm cockatoo and the rare Golden-Shouldered Parrot, one third of our mammal species including the cuscus, a quarter of our frog and reptile species, and more than 3,000 plant species. The Cape's rainforests contain a greater variety of orchids and butterflies than almost anywhere else in the world. At least 264 plant species and 40 animal species occur only on Cape York, and many other plants and animals that also live in

the jungles of Papua New Guinea (to which the Cape was joined as little as 10,000 years ago), are found nowhere else in Australia. Parts of this tropical paradise are so remote and ecologically rich that new species are still being discovered and many species remain undocumented. Less than one percent of Cape York's vegetation has ever been cleared and its extraordinary conservation values are intact and widespread.

Cape York is also one of the world's great cultural landscapes. Following millennia of Indigenous occupation, Traditional Owners' connection to their Country is active and strong, with vast Aboriginal land holdings and Native Title claims across the region. However, while its natural and cultural values are of global significance, they remain largely unprotected from the threat of destructive development such as strip mining for bauxite, sand mining, and now coal extraction and transportation, intensive irrigation, the building of dams and other environmentally damaging activities, and inadequate management of invasive species.

The preservation of Cape York's environment is a matter of global importance, comparable to that of protecting places such as the Amazon, the Congo and the Serengeti, and it has long been recognised as for its World Heritage potential. The region's long term protection and management is an issue of great importance to the people of Cape York, to environment groups, scientists, Governments and to national and global communities. But, safeguarding

this extraordinary region will not be easy and a balance must be found that protects its remarkable heritage values whilst supporting sustainable development and employment opportunities for the local community. Many Indigenous communities on Cape York experience serious economic and social disadvantage, and the clear challenge is to join up large-scale nature conservation and the economy, and secure Indigenous employment and income generation in remote areas without the need for destructive industry.

Cape York has long been recognised as a region worthy of high level environmental protection, and capable of qualifying for World Heritage listing. In 1982, to mark ten years of the operation of the World Heritage Convention, the International Union for the Conservation of Nature produced a seminal list of the 219 natural sites worldwide that should be included on the World Heritage list (IUCN 1982). In total, thirteen potential World Heritage Areas were identified in Australia. As of 2007, only three of these have not be added to the World heritage list. These are the Channel Country, South-western WA and Cape York Peninsula.

In the mid-1990s, a key report from the Cape York Peninsula Land Use Study/Strategy (CYPLUS) highlighted the high conservation values on Cape York (see Abrahams, Mulvaney, Glasco, and Bugg (eds) *Areas of Conservation Significance on Cape York Peninsula*. CYPLUS, Australian Heritage Commission 1995). A study from 2001 by Brendan Mackey, Henry Nix and Peter Hitchcock also documented ‘The Natural Heritage Significance of Cape York Peninsula’.

Subsequently, the report ‘Compiling a Case for World Heritage on Cape York Peninsula, A Final Report for Queensland Parks and Wildlife Service’ by Peter Valentine (Associate Professor JCU), published through James Cook Uni, June 2006, both outlined in detail the scientific case for a Cape York World Heritage nomination, and the options for what this might look like in practice. The 2006 Valentine report also contains a significant review of past scientific and other literature on Cape York’s natural and cultural values, and includes an extensive bibliography of relevant reports and papers.

Other reports published since this have further highlighted the case. These include compilations of existing research and information, such as the reports prepared for two advisory committees established in Queensland under the Cape York Peninsula Heritage Act 2007:

- [The Geological Story of Cape York Peninsula by Warwick Willmott \(2009\)](#) (PDF, 1.8M)
- [A framework for the development of ethno-ecological heritage stories on Cape York Peninsula by Mark Ziembicki, ANU Enterprise Pty Ltd \(2010\)](#) (PDF, 489K)
- [Cape York Peninsula Indigenous Cultural Story by Peter Sutton \(2011\)](#) (PDF, 1.1M)
- [Cape York Peninsula Cultural Story, Non-Indigenous and Shared History by Dr Nicky Horsfall and Dr Michael Morrison \(2010\)](#) (PDF, 1.0M)
- [The Story of Plants on Cape York Peninsula by Dr Bruce Wannan \(2010\)](#) (PDF, 545K)
- [The Hydroecological Natural Heritage Story of Cape York Peninsula by Ben Cook, Mark Kennard, Doug Ward and Brad Pusey](#) (PDF, 2.1M)

Beyond formal research and scientific study, Cape York has received plenty of policy attention, including through significant legislation directly focused on or substantially involving the region, as well as task forces on northern development, Parliamentary Inquiries, schemes to develop or industrialise, a range of government programs and initiatives on conservation, land justice, education, welfare reform and Indigenous economic policy.

Different parts of Cape York have also received political attention over the years. From the intervention of the Bjelke-Peterson government to prevent John Koowarta from legally owning his own traditional country, the Wik Native Title case, previous plans for large scale conservation such as the East Coast Wilderness Zone, Indigenous Welfare Reform trials, through to Wild Rivers, World Heritage, and Indigenous Conservation, Cape York Peninsula has been the locus for significant and often national debates and events on conservation, landscape management, land rights and Native Title, and social and economic models for remote Indigenous communities.

The latest piece of leading scientific research on Cape York's natural values, 'The natural attributes for World Heritage nomination of Cape York Peninsula, Australia (2013)' edited by Valentine, Mackey and Hitchcock¹ has confirmed, not that there was really any doubt, that the values of Cape York are of World Heritage quality, and that they would meet the necessary criteria used by the International Union for the Conservation of Nature to assess World Heritage nominations.

In summary, the landscapes, rivers, flora and fauna of the Cape York region have been extensively researched and are unquestionably widespread and of global significance. That these natural values have not been nominated already for World Heritage listing is astounding and has been noted internationally. The cultural values of Cape York are less well-documented but are of no less significance, and similarly demand protection.



¹ Authors of the full report are Hitchcock, P., Kennard, M., Leaver, B., Mackey, B., Stanton, P., Valentine, P., Vanderduys, E., Wannan, B., Willmott, W. and Woinarski, J; report available at <http://www.environment.gov.au/system/files/resources/5ab50983-6bb4-4d87-8298-f1bcf1ab652a/files/sciencepanelreport.pdf>

4. Previous work on the development of a World Heritage nomination for Cape York

As the latest piece of formal research in 2013 has confirmed, we know that Cape York's extensive World Heritage-standard values are present in the Cape York region, and that those values are capable and worthy of World Heritage protection.

One of the principles for advancing a World Heritage nomination for Cape York – accepted and supported by conservation groups, governments and Indigenous communities - was that this process needed to be built around both consent from Traditional Owners as well as meeting the necessary criteria for listing. In fact, if achieved, this would be the first full nomination anywhere which was based around Traditional Owner consent.

Another accepted principle for conservationists was that a 'whole of Cape York region' nomination (sometimes referred to as a 'blanket listing') was not the intention; that values needed to be identified and confirmed, and that consent needed to be given. It was acknowledged that there would be some parts of Cape York that might not qualify or be supported for listing.

The proposition of nominating Cape York for World Heritage listing has been discussed by Traditional Owners, conservationists, scientists, governments, and others for many decades, but it is really only in the last few years that this has been seriously and actively considered. From 2009, the previous Queensland and Federal Governments committed to working together to identify and protect Cape York's World Heritage values. A 'road map' for conducting community consultation, Indigenous engagement and achieving Traditional Owner consent was produced, and two committees were formed under the Cape York Peninsula Heritage Act 2007 to advise the Queensland Government. Along with policy commitments came State and Federal funding (approx \$6.5 million in total) to complete state level work and then conclude a World Heritage nomination.



Substantial work was undertaken between 2009 and 2013 on a Cape York nomination, including significant on-country consultation and engagement. One of the major achievements of this process was the establishment of a 'Country-based Planning' process, through which specialist Indigenous facilitators and others respected by communities commenced and enabled dialogue within Indigenous communities across the Cape York region about their

aspirations, their natural and cultural heritage, and their level of support for a World Heritage nomination and other options for heritage protection. The Wilderness Society has followed many of these dialogues and processes, including conducting its own significant engagements on country, and is aware that there was strong and growing support for a World Heritage outcome in a number of parts of Cape York.

Despite the level of work to date, it is of regret that the past and present Federal governments have not made at least a Tentative Nomination for Cape York, and that the current Queensland Government has effectively abandoned the Country-based Planning program as well as any World Heritage process. The very strong and robust case for a World Heritage outcome in a number of parts of Cape York remains, and the level of community interest in this continues to be expressed. It is also evident that a sustainable and prosperous economic future for Cape York needs to be built around its conservation and showcasing of its landscapes, rivers and culture. It is governments' duty to see this process through, and not allow short term mining activities and longer term industrial and agricultural development to destroy the World Heritage-standard landscapes of Cape York before they can be properly protected.



5. Draft Cape York Regional Plan framework and approach

The Wilderness Society believes there are some fundamental flaws in the framework and approach for the CY RP, regarding what it is trying to achieve, how it apparently delivers (or not) on identified outcomes, and how it has been discussed and developed.

The CYRP, and the related legislation including the just passed Regional Planning Interests Act, appear to be premised on several principles including the notion of “coexistence” between activities such as mining and environmental protection of natural values². This in turn is advocated in the context of maximising economic land uses, particularly mining and agriculture, and is promoted under the banner of “balancing conservation and economic growth”. For example, in the draft CYRP the Department of State Development, Infrastructure and Planning (DSDIP) states:

“The broad objective of preparing the plan is to deliver land use certainty by balancing appropriate economic development with the protection of Cape York’s natural areas and areas of high conservation value. The preparation of a statutory regional plan for Cape York provides communities with certainty for the future and facilitates development in the region to take advantage of emerging economic opportunities, particularly resource, agriculture and tourism activities. Cape York is recognised as unique in Queensland in the way that cultural matters influence almost all land use decisions that occur within the region. Consequently, the plan acknowledges this as a defining aspect of the region for which the plan has been prepared, rather than a separate matter to be addressed.”

It goes on to identify that,

“The key drivers for preparing the plan are the Queensland Government’s intentions to:

- improve the region’s economic development and diversity
- balance economic development with the protection of areas with significant environmental values
- replace the land use aspects of the Wenlock Basin, Archer Basin, Stewart Basin, and Lockhart Basin Wild River Area declarations
- reduce potential land use conflict and improve land use certainty for landholders and investors
- attract and secure resource sector development and investment
- facilitate tourism pursuits across the region
- provide investment certainty for towns and regional communities
- identify regional infrastructure outcomes that will support economic and community growth
- avoid the introduction of additional, unnecessary regulation
- recognise and respect the role of local government to plan for their local area.”

The draft CY RP acknowledges in several places that “The region has outstanding natural areas of high conservation value, a diverse and rich Indigenous heritage”, but it is also highlighted that a key priority of the Queensland Government is “Enabling sustainable economic development opportunities in the region balanced with the protection of the Cape’s unique environmental areas”.

² See TWS submission on the Regional Planning Interests Bill

These competing objectives and drivers do not necessarily sit well together and in some cases are incompatible, particularly mining and proper protection of the environment and conservation of landscapes, and the claim that mining is somehow sustainable is absurd. There are two main forms of mining currently present on Cape York: bauxite strip mining and open cut sand mining. Strip mining involves the clearing (bulldozing) of forest and woodland, the burning of vegetation, the removal of top soil, and the scraping out (stripping) of bauxite several metres down. This can cause changes in the hydro-ecology on the surface and underground, and even when reparations are attempted to the surface in the form of fill in and revegetation, there are very significant changes to the flora and fauna, the permanent loss of the Cape's tallest eucalypt forests (*E. tetradonta*), and an altered biodiversity. This can hardly be regarded as ecologically sustainable, and given the relatively low numbers of jobs which flow from this activity and the relative short term nature of them, it is also hardly socially sustainable either. Sand mining equally causes significant and irreparable damage to coastal landscapes and cultural heritage, while providing a low economic yield and few jobs.

The draft CY RP asserts that the Cape York 'Regional aspiration' involves ensuring "the region's unique and diverse environmental values are protected and enhanced" and that "sustainable economic development, protection of environmental areas and enhancement of the cultural values of Indigenous people culminate in Cape York's distinctive regional identity." This is in a context of "people...industry and government" working collaboratively to support jobs, services and "sustainable economic development". If this is so, and there is no reason to think otherwise notwithstanding little recent consultation and engagement with Indigenous communities to arrive at these statements, then the draft CY RP as it stands is surely destined for failure.

In its current form, the CYRP is a process designed to maximise large scale development – mining, agriculture, forestry and so on – at any cost, despite the short term, often marginal benefits for local communities, and the permanent damage to their natural and cultural heritage. The rhetorical references to acknowledging the extensive natural values of Cape York, and the hollow allusions to their protection, are exposed when the mechanics of the CY RP, and the Regional Planning Interests Act sitting behind it, are looked at in detail. Indeed, it could be argued that the CY RP is actually a fraudulent process which gives the impression of delivering environmental protection when in fact it does not. The proposed 'Strategic Environment Areas' (SEAs) are virtually meaningless as they stand because they inadequately identify where high ecological values are on Cape York (see next section) and where they are mapped, fail to offer guaranteed protection from mining.

The 'Region Land Use Guide – Cape York' on p.21 of the CY RP, which accompanies the map of proposed land use zones on p.20, has already been referred to by DSDIP officials in response to questions about what is/not allowed in any given zone. Accordingly, for example, the table suggests that 'strip/open mining' will not be allowed in an SEA. This has been used as evidence that this is both government's intent and plan to enforce. In the case of the Steve Irwin Wildlife Reserve and Wenlock River, it has been used to explain how the government will act to protect these areas.

Currently, the Wenlock Basin Wild River Declaration (2010) is the only instrument that is preventing mining on the SIWR close to the Coolibah Springs complex connected with the Wenlock River. The Newman Government is going through the process of revoking this Wild River Declaration which would then expose the area to mining threats again.

The Premier, Deputy Premier and Environment Minister stated in a joint media statement on 20 November 2013 that:

*“This will be the first of many ecologically-sensitive areas across Queensland declared a strategic environmental area. When finalised, this declaration will protect these unique areas from open cut and strip mining, and other activities that risk widespread impacts to their ecological integrity.... By protecting the Steve Irwin Wildlife Reserve **in perpetuity**, this government recognises the value of protecting this exceptional piece of biodiversity for Queensland for future generations.” (my emphasis).*

The key question is how, exactly, can these intended outcomes be secured “in perpetuity” when the Regional Planning Interests legislation does not clearly allow for the prohibition of certain destructive activities, only time-specific decisions in response to applications?



There is a tell-tale ‘Editor’s note’ above the table on p.21 of the draft CY RP, which stresses that “The following is provided as an indicative guide only”. In other words, the apparent intent to ensure no strip/open cut mining occurs in an SEA is qualified to the extent that it is there as an indication only. It has no formal or legal status, and certainly won’t be binding on any assessment process for mining activities in any given area.

Accordingly, when for example the draft Cape York Regional Plan states:

“Strategic Environmental Areas (SEAs) are those areas that contain regionally significant values for biodiversity, water catchments and ecological function. Development in SEAs will be supported where it can be demonstrated that the development outcome does not present risk of irreversible or widespread impacts to the ecological integrity of the areas in supporting the region’s significant biodiversity. Activities that risk such impacts will not be allowed.” (page 4 draft CYRP);

and,

SEAs allow for development where the proposed uses can co-exist and do not risk irreversible or widespread impacts to the continuation of the area’s ecological integrity. Activities that risk irreversible or widespread impacts to the ecological integrity of the attributes detailed in Schedule 1 will not be allowed.” (page 18 draft CYRP),

in practice, this means that being declared a Strategic Environmental Area does not preclude mining or other development. Such activities have to be assessed by the assessing agency as ones that ‘risk irreversible or widespread impacts to the ecological integrity’ or nominated values, which will be a subjective process, and even then the final decision is made by the CEO of DSDIP who can essentially make whatever call they want.

With a strongly pro-development government, which seeks to remove as many restrictions on mining and major industrial and large scale agricultural projects as possible, this will inevitably lead to development being allowed in areas where ecological values get destroyed. The Wilderness Society therefore would argue the test for whether to allow mining in SEAs is too vague and too weak. The Queensland Government needs to ensure it has the capacity to properly protect areas identified as those having important ecological significance, not starting with an assumption that mining and high ecological values can somehow co-exist.

Rather than apply “a philosophy of co-existence” between mining and environmentally important areas, the proposed legislation should be using a prohibitive approach to ruling out destructive development in ecologically sensitive areas, and the Precautionary Principle to remove further risks from unforeseen impacts damaging ecological values. Given, for example, the fact that under the government’s proposals, roughly half of Cape York is proposed as ‘General Use Areas’ in the draft CY RP, which automatically allow for any development, it would have been reasonable to assume that ensuring high levels of protection within SEAs should be uncontroversial. But it seems that, with specific exceptions, this was indeed a bridge too far for the Newman government.



The intent of the Newman Government in the case of the Wenlock River and the Steve Irwin Wildlife Reserve may be positive from a conservation perspective, but it also highlights the arbitrary and top-down politicised decision making that will necessarily be a feature of future planning decisions under this legislation. It would be far better, and provide far greater certainty, to

fully map ecological values, including wild river areas and world heritage standard landscapes on Cape York, and rule them out of bounds to mining and other destructive development.

More disturbingly, The Wilderness Society submits that the Queensland Government does not have the necessary head of powers to achieve what it wants to in the case of the Wenlock River and the Steve Irwin Wildlife Reserve, or indeed in any other SEA which it deems worthy of high level protection. The draft Cape York Regional Plan lacks the necessary legal force to override legislation such as the *Mineral Resources Act 1989*. This was an issue

raised with the Minister for Environment and Heritage Protection by the Wilderness Society some considerable time ago in the context of reining in the power of mining companies should current Wild River Declarations on Cape York be removed.

In theory, the attempt to establish additional mechanisms to prevent mining in sensitive ecological areas in the same way that the *Wild Rivers Act 2005* operated, would represent a breakthrough. However, despite some recent public statements from the Premier and Deputy Premier about ruling out mining on the Steve Irwin Wildlife Reserve and the Wenlock River³, it appears that in fact the capacity to do so is arbitrary and open to subsequent change or reversal. There is nothing that presently guarantees the stated outcome of ruling out mining in these areas other than Ministerial or Premierial whim.

On top of these practical issues, the Wilderness Society also submits that the CY RP process has failed to adequately inform and consult the diverse community of Cape York about the CYRP, with many having received no briefing. Unlike under Wild Rivers declaration nominations, and the Country-based Planning processes associated with a World Heritage nomination, both of which involved substantial on-ground community consultations and dialogue with Traditional Owners, the CY RP process has effectively relied on an advisory committee, the Mayors of Cape York, and attendance at an LNP MP's meeting with pastoralists. The broader lack of engagement and governance associated with the process will have undermined any legitimacy this CY RP may have laid claim to.



³ 'Newman Government protects Steve Irwin Reserve on Cape York' Joint Media Statement, November 20, 2013. See also 'No open slather for mining companies' Media Statement December 3, 2013

6. Critique of draft CY RP mapping and proposed zonal areas

The draft CY RP proposes several land use zones, including three major ones:

1. National Parks – “recognised for their protection of the region’s natural and cultural resources. However, they are also not considered ‘closed’ to appropriate economic opportunities. Development and activities in National Parks will be facilitated where they are nature-based and ecologically sustainable.”
2. Strategic Environmental Areas – “areas that support or are likely to support high ecological values through the co-location of multiple biodiversity features such as matters of state environmental significance, in conjunction with the landscape’s topographical and hydrological features. SEAs allow for development where the proposed uses can co-exist and do not risk irreversible or widespread impacts to the continuation of the area’s ecological integrity. Activities that risk irreversible or widespread impacts to the ecological integrity of the attributes detailed in Schedule 1 of the draft Cape York Regional Plan will not be allowed.”
3. General Use Areas - “areas where the state has prioritised the consideration of state interests that will facilitate economic growth over biodiversity planning and development assessment requirements.”

National Parks on Cape York are now owned and managed under arrangements where the land is owned by Traditional Owners, and the parks (now referred to as National Parks (Cape York Peninsula Aboriginal Land)) are jointly managed by the relevant Indigenous Land Trust and the Queensland Parks and Wildlife Service. Creating opportunities for local Indigenous communities to benefit from nature-based and ecologically sustainable tourism and other economic activities in Cape National Parks should be promoted, and the Wilderness Society has had a long standing position of supporting these.



This is quite different, however, to the allowing of grazing in national parks on Cape York (as elsewhere), which is neither nature-based nor ecologically sustainable, and in breach of the National Reserve System and other funding conditions used to establish the parks. More broadly, the mapping of national parks has adopted a minimalist approach, where other higher level natural values and related protections currently exist or should do.

Similarly, the SEAs are the product of minimalist thinking and selective values assessment and data analysis. The Queensland Department of Environment and Heritage Protection undertook a process to identify 'Regional Nature Conservation Values' on Cape York, but adopted a very conservative approach which has downplayed the extent of natural values which are either of a high or very high standard. The work of EHP also failed to fully map existing protected areas outside of the National Park estate.

With those deficiencies in mind, it was incumbent on the DSDIP planners to take that mapping and place it into the draft CY RP. However, through a process described by DSDIP officials as "blending" and "planning processes", the RNCVs were then incorporated into a broader map with the effect of reducing the scale of the SEAs. The effects of this can be seen by comparing the EHP map of Regional Nature Conservation Values with the draft CY RP map of proposed land use zones. There are a number of differences and discrepancies which illustrate how the government's own natural values mapping has been compromised. This is not to suggest any endorsement of either of these maps – as will be presented later in this submission, the EHP map has omitted a range of values and approaches to their mapping. A comprehensive map of both Very High Ecological Values requiring full protection, and other areas of High Ecological Values also requiring protection, developed using publicly available data, is provided and will be recommended for adoption.

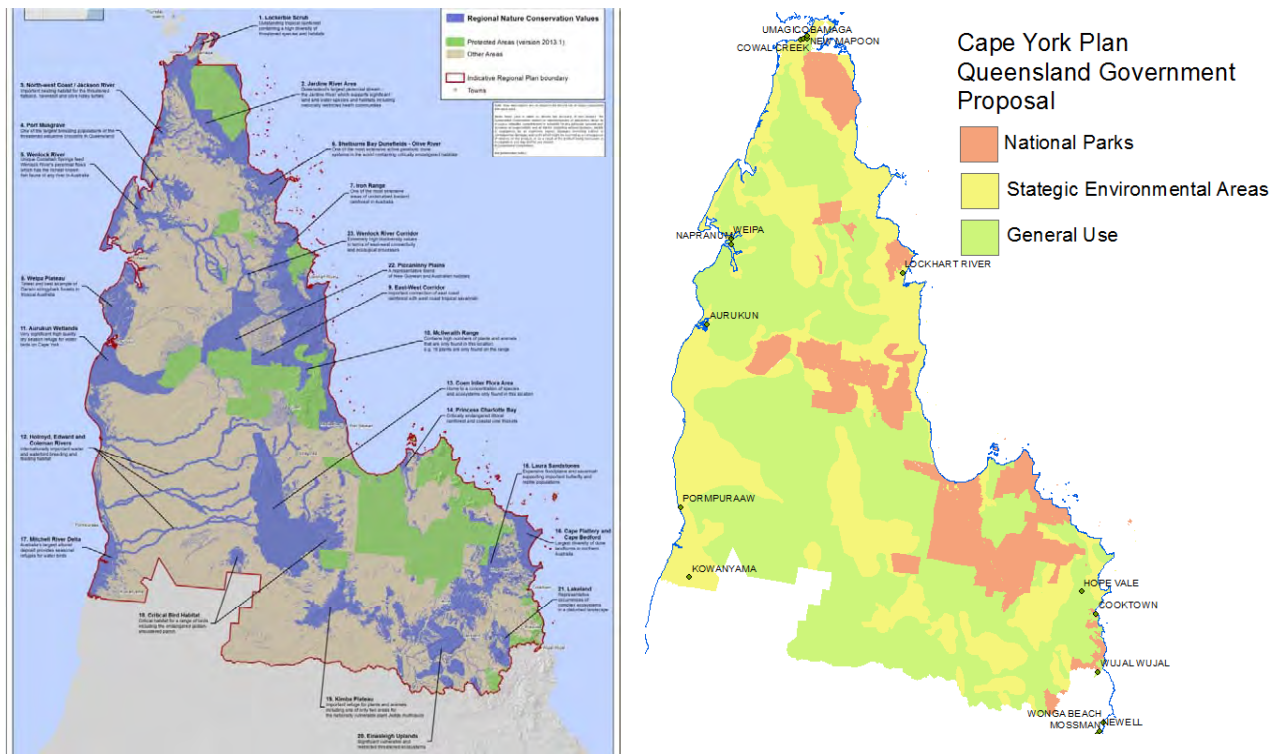
The current spread of General Use Areas (more than half of Cape York), where it is intended there be all manner of development, including mining, irrigated agriculture, dams and grazing, effectively with minimal approval process if any, flies in the face of all the research and scientific analysis about the widespread natural values on Cape York, and the logic of protecting those values.

In reality, mining can only occur where there are sought minerals, so there is a physical constraint on where mining can happen. However, exploration projects for minerals in the Laura area illustrates the risk to significant cultural heritage (rock art), and the Wongai coal mine proposal raises a wide range of issues about transporting coal through a nature refuge, building a port on a pristine coastline and shipping it out through the most pristine part of the Great Barrier Reef (GBR), or alternatively barging the coal into the GBR lagoon and transferring it to a larger container ship (transshipment) before moving it through the GBR.

Figure 1: Comparison of DEHP mapping of values with DSDIP mapping of SEAs.

EHP mapping of 'RNCVs' (blue)

SDIP mapping of SEAs (amber).



Sources: 'Identification of Regional Nature Conservation Values in Cape York', Department of Environment and Heritage Protection, 2013; draft CY RP.

Similarly, there is abundant evidence about the paucity of good soils for agriculture on Cape York, not to mention the highly variable rainfall, river flows and evaporation rates of dammed water. This is before attention is turned to the ethics and practicality of damming or over-extracting from some of the last free-flowing, pristine river systems left on the planet. While a few ill-informed proponents will always be willing to have a go, the fact is – as the last Northern Australia Development Taskforce identified – that Cape York is just not suited to large scale agricultural development. The risk to the globally-significant landscapes and rivers of Cape York is that attempts are made at this, and substantial ecological damage occurs in the process.

6. TWS recommended approach to environmental protection

Cape York Peninsula is one of the last great wild places on Earth. Its myriad landscapes, rivers and coastlines incorporate rainforest, savannah, woodlands, white sand country, wetlands and plains. On a damaged planet it is remarkable that the interconnecting ecosystems of this vast Peninsula remain largely healthy and intact across the whole regional landscape. Such a special place needs strong environmental protection, but the Wilderness Society recognises that it would be impractical and not always appropriate to view national parks as the only form of nature conservation that should exist on Cape York. For that reason, we have supported a range of approaches to ecological protection, and these should be recognised and safeguarded where they currently exist, and be pursued and adopted where they have yet to be established.

The National Park estate on Cape York incorporates some, but far from all of Cape York's iconic places. Current national parks are found in the Iron Range rainforest near Lockhart River (Kutini-Payamu NP (CYPAL)), the wetlands and lands of Rinyirru (Lakefield) NP, the rainforests, mountains and rivers of the KULLA (McIlwraith Range) NP (CYPAL), the Oyala Thumotang NP (CYPAL) (formally Mungkun Kandju) hugging parts of the Archer and Coen Rivers, Errk Oykangand NP (CYPAL) in the southwest, the Jardine NP in the northern Peninsula area, the savannah and woodlands of Alwal NP (CYPAL), and the rainforest, dunes and boulder country of Cape Melville (Cape Melville NP (CYPAL)). There are also national parks over sections of the Jardine River and Annan River, and in central eastern Cape York at Lama Lama National Park (CYPAL) and Marpa National Park (CYPAL).⁴

The more recent national park acquisitions, tenure conversions and renamings have come through a program and process of land tenure resolution which the Wilderness Society was involved in. The Cape York Peninsula landscape comprises a complex array of tenures. A regional tenure reform process emerged from the Cape York Heads of Agreement (1996), whereby Queensland Government funds were allocated to the voluntary acquisition of properties, and also to amend tenures on other State owned properties. The key aims of this process were the protection of conservation values in new protected areas (in the form of Aboriginal owned and jointly managed National Parks) and the continued return of homelands (as Aboriginal Freehold) to Traditional Owners as the basis for an economic future. Nature Refuges on areas of high conservation value land within the Aboriginal freehold land are also declared voluntarily by the Traditional Owners and supported by the State Government.

The Cape York Peninsula Tenure Resolution Implementation Group (CYTRIG) was created in 2004 to oversee this process. CYTRIG was made up of three Queensland Government Ministers, Cape York Land Council, Balkanu Cape York Development Corporation, the Wilderness Society and the Australian Conservation Foundation. Properties were voluntarily acquired by the State, and Traditional Owner consultations and Indigenous Land Use Agreements under the *Native Title Act 1993* were used to convert the tenure of the land, using a formula of approx. 50% Aboriginal Freehold and 50% Aboriginal owned and jointly managed National Parks (CYPAL). Land Trusts were established and Indigenous Management Agreements entered into to assist with decision-making and management. This

⁴ There are also a number of island national parks in the region - Lizard Island NP, Claremont Isles NP, Ma'alpiku Island NP (CYPAL), Denham Group NP, Flinders Group NP, Mitirinchi Island NP (CYPAL), Piper Islands NP (CYPAL), Possession Island NP, Raine Island NP (Scientific), Three Islands Group NP, Turtle Group NP, Wuthara Island NP (CYPAL).

model was also being applied to all existing National Parks on Cape York, with the intention of creating a vast, Aboriginal-owned protected estate.

The CYTRIG program had been highly successful and is unparalleled anywhere in Australia. Nowhere has there been such a significant and successful program of land return to Traditional Owners to support sustainable Indigenous development and land justice and land use reform, combined with conservation outcomes. The Wilderness Society estimates that since 1994, up to 2 million hectares were acquired for conservation and cultural outcomes, with 575,000 hectares of new National Parks created, and 617,000 hectares converted to Aboriginal tenure (including 90,000 hectares subject to Nature Refuge agreements) through the CYTRIG process. These outcomes are significant in themselves, encompass large areas of international conservation significance, such as the iconic Shelburne Bay dunefields and the McIlwraith Range rainforests. Up to 2011, the previous Queensland Governments invested approximately \$30 million in CYTRIG, and the previous Federal Government contributed a further \$20 million in 2012.

In addition to more traditional forms of protected areas (national parks, nature refuges and reserves, Indigenous Protected Areas, and private conservation areas), Cape York has also been one of the locations for wild river regulation, given it is a region that contains some of the last free-flowing pristine river systems on Earth. The purpose of the *Wild Rivers Act 2005* is to protect rivers that have most or all of their natural values intact. The Act was introduced by the Beattie Government following a 2004 election commitment, and was passed at the time with the support of the Queensland Liberal Party. The Nationals did not vote against it.

Following extensive consultations, thirteen wild river areas have now been declared in Queensland, including four in the Gulf region, three river basins in Western Queensland, one each on Hinchinbrook and Fraser Islands, and four on Cape York. The most recently protected river system on Cape York Peninsula was the Wenlock River (June 2010). The declaration ensured protection of critical parts of the Steve Irwin Wildlife Reserve from a damaging bauxite mine proposal.

Wild River declarations operate as a planning and management approach to conservation, regulating new developments in declared “wild river areas”, and setting a baseline for ecologically sustainable development that is sensitive to maintaining the river’s values. While there has been much misinformation about Wild Rivers, the declarations continue to deliver important ecological outcomes, and support sustainable Indigenous cultural and economic activities. A diagram on how a wild river declaration works in practice is attached to this submission. It is important to note that Wild Rivers was designed to be distinct from a national park approach, particularly around the exercising of smaller scale economic activities in addition to recreational and cultural uses in the High Preservation Areas, while ensuring that destructive development (mining, dams, irrigated agriculture) was prohibited in those HPAs.

The Wild Rivers Act has been amended a number of times, following various negotiations and consultations. Most of the amendments have favoured development interests, reducing some of the protections originally envisaged. This includes substantial negotiations and input from the Cape York Land Council and Balkanu, including the *Cape York Peninsula Heritage Act 2007*. The Heritage Act negotiations included amendments to the Wild Rivers Act, as well as tree clearing exemptions for Indigenous communities on ICUAs (Indigenous community use areas) following a prescribed process under the Vegetation Management Act). More

recently, the Wild Rivers Act was amended to establish “Indigenous Reference Committees” intended to have direct access to the Environment Minister regarding the shape of wild river declarations. This represented a positive step in empowering local Traditional Owners to speak for their own country and reinforce their important role in the engagement process for wild river declarations and subsequent management. There is no evidence the current Queensland Government has made use of any of these provisions.

In tandem with the declaration of wild river areas, and at the behest of the Wilderness Society, the previous Queensland Government developed an Indigenous Wild River Ranger program, with some 60 rangers employed, and more committed. The rangers were employed through Indigenous organisations and performed critical environmental services on public and private lands. The program was an overwhelming success, with clear social, economic and environmental benefits. Since coming to power, the current Queensland Government has made these positions more generic and no longer badged as wild rivers related roles.

While there are undoubtedly a number of opportunities to add to the protected area estate on Cape York, and these should be pursued where possible in close consultation with the relevant Traditional Owners, there is also a need to establish an overarching approach to landscape conservation in the region and a compelling natural and cultural heritage story about Cape York. This is what a World Heritage nomination for Cape York would offer.

Cape York has long been recognised as a region worthy and capable of qualifying for World Heritage listing. There are already a number of important conservation initiatives on Cape York to provide new protected areas, river basin protection, land justice and to support Indigenous conservation and management. A World Heritage listing would augment the existing conservation and sustainable activities on Cape York, and provide enormous social and economic opportunity around tourism and sustainable development. It would also bring a coherent management framework to this vast region of international conservation significance.

A World Heritage listing would not address all of the issues confronting the region’s natural and cultural heritage, nor of its people’s needs for a sustainable economic future, but it could take them a long way forward, and is a logical and compelling missing piece of the jigsaw for Cape York.

With these different but complementary approaches to conservation and sustainable land use in mind, the Wilderness Society with assistance from Dr Martin Taylor at WWF, has considered the Queensland Government’s proposed land use zones, and has conducted an alternative analysis which seeks to identify the true extent of areas that are of high ecological value, and which demand levels of protection ranging from comprehensive to strong but more selective. This is outlined in the following section of this submission.

7. Recommended new mapping of ecological values and concurrent levels of environmental protection

The Wilderness Society regards the proposed land use mapping in the draft CY RP as deficient and methodologically flawed. Cape York contains many threatened species and ecosystems, which are protected under the Environmental Protection and Biodiversity Conservation Act 1999. Despite this, the draft CY RP fails to recognise Matters of National Environmental Significance (MNES), which is anomalous, and rather ironic given the Abbott Government's decision to devolve to the Queensland Government the assessment and approval of development activities, which will necessarily include impacts on MNES. Under the proposed One Stop Shop for environmental processes, the Queensland Government will have to consider MNES, so their omission in its draft CY RP is a fundamental flaw.

Using publicly available state and national data on various protected areas status, biodiversity values, and other nationally or internationally recognised approaches to nature conservation, the Wilderness Society proposes a set of different values-based zones and alternative nomenclature to better capture what is known of Cape York, and what forms of development and activity should be permitted.

Table 1: Land use zoning criteria proposed by the Wilderness Society.

General use zone	High Value – Protected	Very High Value – Fully protected
Other than in other zones	<ol style="list-style-type: none"> 1. Other Protected Areas IUCN V-VI (CAPAD 2012) 2. Regional Nature Conservation Values (EHP) 3. EPBCA likely to occur (for species with >10% of range in CYP) 4. GBRMPA blue zones: Priority protection 5. Biodiversity Planning Assessment: <ul style="list-style-type: none"> • A Habitat for threatened species = High • B1 Bioregional ecosystem value = High • B2 Sub-bioregional ecosystem value = High- V High • H essential habitat for priority taxa = High- V High • I Special biodiversity values = State significance • J Wildlife corridors = State significance 	<ol style="list-style-type: none"> 1. Highly Protected Areas IUCN I-IV (CAPAD 2012) 2. Wild Rivers HPAs 3. EPBCA endangered species known to occur (DoE) 4. GBRMPA blue zones: Critical protection 5. Biodiversity Planning Assessment: <ul style="list-style-type: none"> • A Habitat for threatened species = V. High • B1 Bioregional ecosystem value = V. High

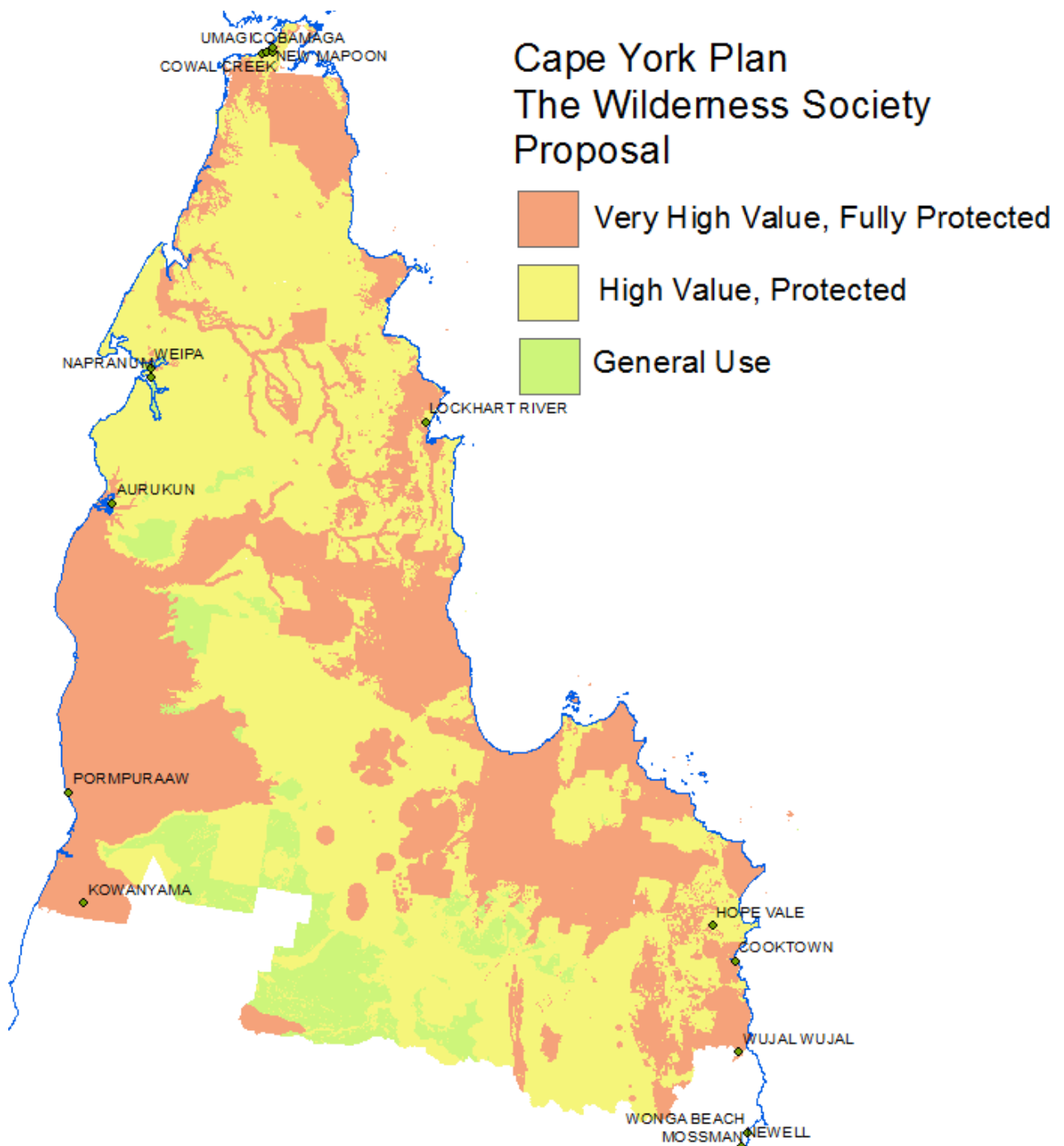
What this model indicates is that many of the proposed General Use Areas (green zones in the draft CY RP) are in fact areas of recognised High Ecological Values, which ought to be afforded much stronger protection than is proposed. This includes areas in the northern peninsula area, areas around the bauxite provinces on the west coast, areas in central, lower east coast and southern Cape York, and the lower Stewart River basin. Indeed some of these areas are recognised as being Very High Ecological Value. Meanwhile, there are sections of what are proposed as SEAs in the draft CY RP which should be included in a Very High Ecological Value, and accordingly need to be provided with full protection. These include many of the rivers, wetlands and aggregations on the west and east coasts, additional areas

around national parks, central Cape, and icons such as Shelburne, areas around Port Musgrave, Olkola country, and parts of the Laura basin.

A graphical indication of what this analysis concludes is provided in Figure 2 below, and the associated levels of protection and permissible activities is then laid out in Table 1. Separated layers for how this map was created are also provided in Figure 3.

This analysis is not able to account for the cultural heritage values which are known to exist in many of these locations and elsewhere, so it is accepted that this remains a conservative and incomplete picture of the comprehensive array of values in the landscapes of Cape York.

Figure 2: Wilderness Society map of proposed land use zones for the final CY RP

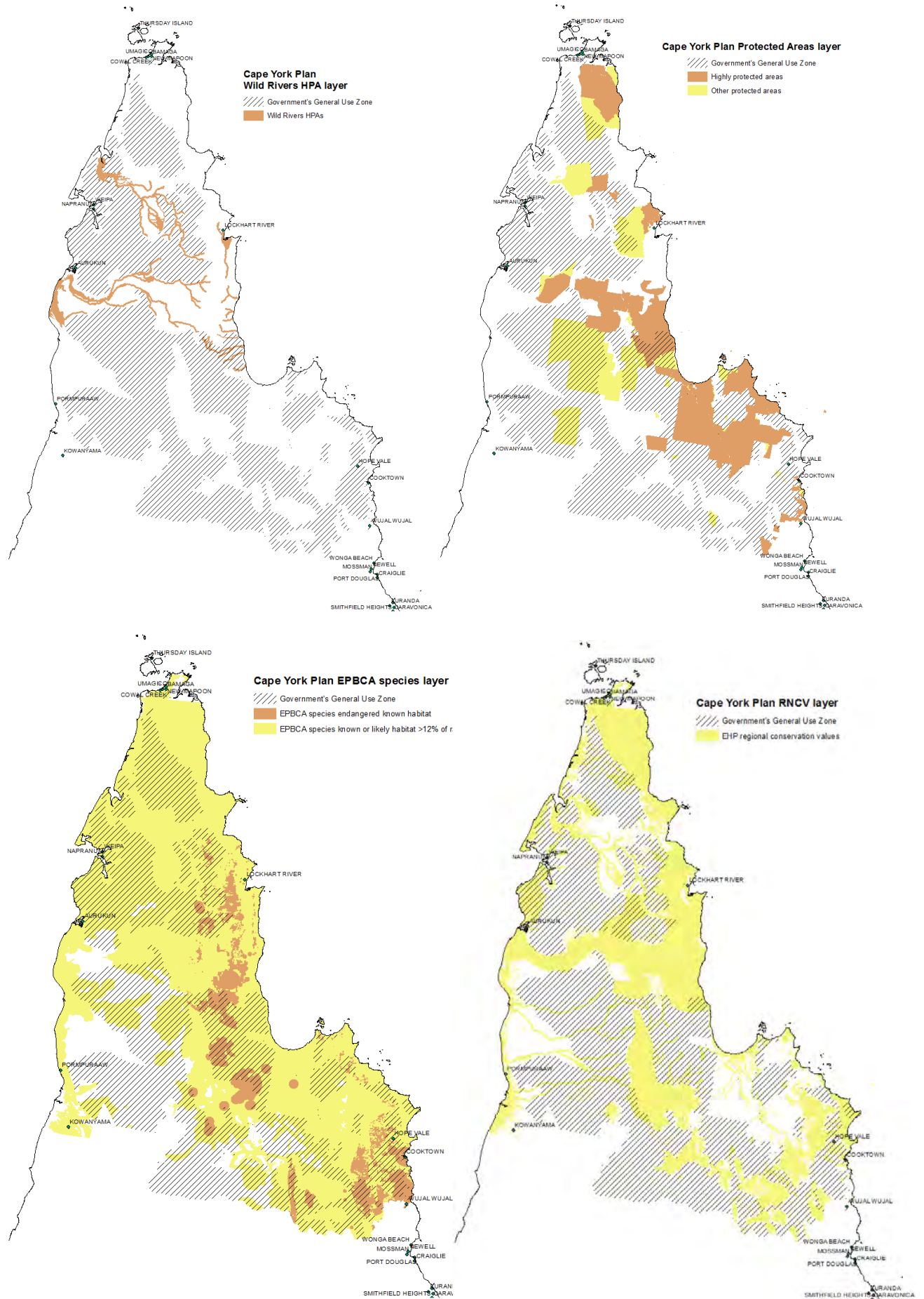


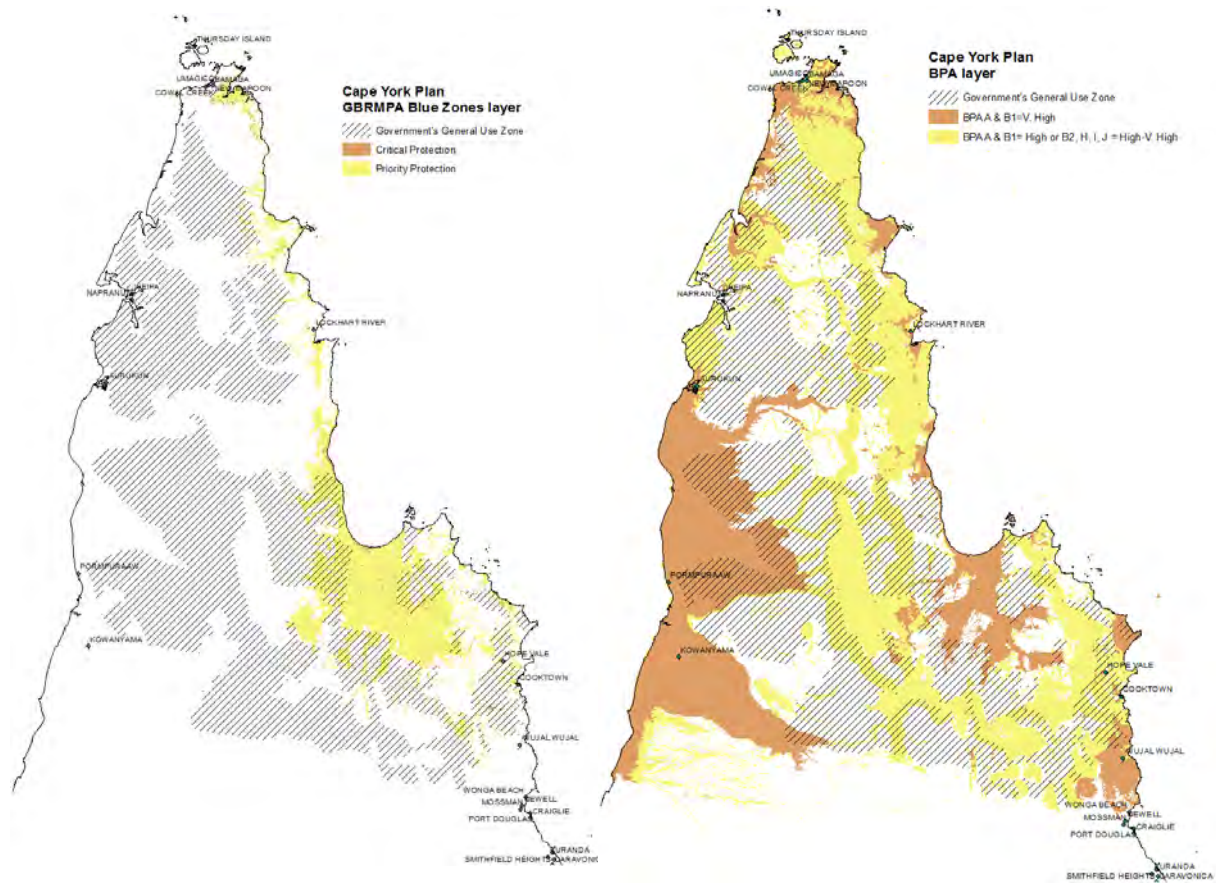
TWS map developed with assistance from Dr Martin Taylor.

Table 2. Development prohibitions and restrictions proposed by the Wilderness Society.

	General use zone	High Value – Protected	Very High Value – Fully protected
RESOURCES			
Mining open cut/ strip	Allowable, subject to EIS	Prohibited	Prohibited
Mining other/small quarry/ oil/ gas	Allowable, subject to EIS	Prohibited	Prohibited
Native forest logging	Selective only, subject to code	Selective only, subject to code	Prohibited
AGRICULTURE			
Grazing	Must maintain good land condition	Must maintain high biodiversity condition	Prohibited
Crops- dryland/ Plantations	Must conserve soil	Prohibited	Prohibited
Irrigated and intensive farming	Must conserve soil, water, minimise effluent	Prohibited	Prohibited
TOURISM/RECREATION			
Campsites, eco- lodges (<10 beds)/low impact non motorised recreation, no livestock	Allowable, subject to code	Allowable, subject to EIS	Allowable, subject to EIS
Medium scale accommodation (>10 beds), motorized recreation or horses	Allowable, subject to code	Allowable, subject to EIS	Prohibited
Large developments (>30 beds)	Allowable, subject to code	Prohibited	Prohibited
TOWNS			
Residential	Allowable, subject to code	Allowable, subject to code	Only for conservation purposes, subject to EIS
Commercial	Allowable, subject to code	Allowable, subject to code	Prohibited
Industrial	Allowable, subject to code	Prohibited	Prohibited
Community	Allowable, subject to code	Allowable, subject to code	Only for conservation purposes, subject to EIS
WATERWORKS			
Farm dams/ small off stream/ bores	Allowable, subject to code	Allowable, subject to code	Prohibited
In stream weirs, diversions, dams, channels	Allowable, subject to code	Prohibited	Prohibited
INFRASTRUCTURE			
Minor roads	Allowable, subject to code	Allowable, subject to code	Allowable, subject to code
Major roads	Allowable, subject to code	Allowable, subject to EIS	New structures prohibited
Power/pipelines/towers	Allowable, subject to code	Allowable, subject to code	New structures prohibited

Figure 3: Component layers of the TWS proposal for the Cape York Plan





TWS maps and layers developed with assistance from Dr Martin Taylor.

11

Conservation economy

World Heritage provides the foundation for conservation economies on Cape York Peninsula, eg:

- World Heritage Centre and Indigenous eco-tourism hubs
- World Heritage Area management
- Carbon farming, biodiversity and land/rivers management
- Further investment in the Indigenous Conservation Estate

8. Recommended conservation economy approach for Cape York

While the focus of this submission has largely been on conservation issues and relevant land uses and development restrictions, there is a strong connection between environmental protection and economic futures.

Cape York is a region of outstanding natural beauty and cultural heritage, and at the same time one where significant social and economic disadvantage remains high among its remote Indigenous communities. It is also a place where Indigenous peoples' connection to their Country and cultural heritage remains active and strong, where Traditional Owners are linking Indigenous environmental and cultural protection to homelands development, and seeking out new sustainable development opportunities at the local and regional level.

While the current Queensland Government would have it that environmental protections are a constraint on a sustainable economic future for the region, under the mantras of 'conservation=locking up the land' and 'slashing unnecessary green tape', huge opportunities are being missed where Cape York's single most powerful, long term natural competitive advantages –its iconic and globally-significant landscapes, rivers and cultural heritage – should be safeguarded and utilised to create employment and incomes which are truly sustainable.

Some of the most disadvantaged Indigenous communities on Cape York Peninsula are located close to mining areas, yet the benefits to those communities of having a mine nearby is limited. Fifty years of intense resource extraction appears to have delivered little to this community in socio-economic terms compared with other communities located far away from mining activities, and has had enormous impact on natural and cultural values and the homelands of those directly affected. New and sustainable Indigenous economic development outcomes must be a component of supporting the region's future.

Significant opportunities would immediately arise from governments taking an integrated approach to achieving a World Heritage listing for Cape York, with Traditional Owner consent. This approach needs engagement with Indigenous Traditional Owners based on homelands development, Indigenous tourism and sustainable enterprise support, environmental and cultural protection, and coordinated economic and social strategies.

The Queensland and Federal Governments also need to commit to actively and practically supporting sustainable Indigenous development, and assisting the establishment and expansion of a 'conservation economy' on Cape York.

The Wilderness Society has raised many of these issues and ideas before, and offers one of its previous papers tendered to the House of Representatives Inquiry into Wild Rivers and Cape York Economic Development as an attachment to this submission.

9. Future planning approaches for Cape York

As this submission has demonstrated, Cape York is a very special place that needs the strongest protection from destructive practices. Current proposals under the draft Cape York Regional Plan are completely deficient in terms of properly mapping and acknowledging the widespread natural values of the region, and in providing the environmental values that are recognised with real enforceable protection.

The Wilderness Society believes the draft Regional Plan needs to be taken back to the drawing board both conceptually and analytically. At the very least, the current draft plan requires some radical overhaul to better map natural values, provide recognised areas of high ecological value with guaranteed protection from mining and other destructive development, and provide the foundation for a sustainable and prosperous future for Cape York that does not involve destroying its globally significant landscapes and rivers.

The recommended values mapping and protection framework developed by the Wilderness Society and laid out in this submission should form the basis of such a radical overhaul. Without this, we do not believe it will be possible to achieve a sustainable economic future for Cape York, one based on maximising its competitive natural/cultural values advantages.

In addition to ensuring planning processes take proper account of Cape York's natural and cultural values, ensuring they are protected from mining and other destructive development, and building a conservation economy for the future, the Queensland Government should be taking a lead role in getting a World Heritage nomination back on the agenda, based on credible, independent scientific analysis and Traditional Owner consent. This will need to be more than a minimalist "protecting the best of the best" approach; it will need to take a broad view of where the Cape's natural and cultural heritage lies, how a World Heritage listing can deliver clear and long term outcomes for Traditional Owners, and how their consent can be secured and acknowledged.

In the meantime, and given the genuine doubts about the government's legal capacity to provide specific landscapes and rivers outside of national parks with protection from mining, it is incumbent on the Queensland Government to leave in place the current Wild River Declarations on the Archer, Stewart, Lockhart and Wenlock Rivers. It is clear from the draft CY RP that the government does in fact intend to offer some level of protection for most of these High Preservation Areas (with the exception of the lower Stewart basin area), but its alternative to the current Wild River scheme is weak and unenforceable.

Revoking the current Declarations without a strong and enforceable system will simply expose those rivers to a range of development threats and risks over time. That would be an act of gross irresponsibility, driven by ideology and political imperatives, to be deplored by future generations.

END.

Attachments:

1. 'How Wild Rivers works' (TWS Fact Sheet with Wenlock Declaration as example)
2. Cape York labour force and economic assessment report (part of TWS submission to House of Representatives Parliamentary Inquiry)

Submission signed off 25 March, 2014:



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1. TWS consulting with Archer River Traditional Owners; 2. CYPH Act ceremony; 3. Cape York savannah woodlands; 4. Quinkan rock art, Laura; 5. Cape leaders taking World Heritage issues up with Fed Environment Minister in 2013; 6. Aurukun Wetlands; 7. Clearing for bauxite mining; 8. Wenlock River; 9. Endangered Golden-shouldered Parrot; 10. McIlwraith Range rainforest; 11. Thomas George Snr at Quinkan rock art; 12. Termite Mound, Lakefield NP.

