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For reply please quote: 141205/MP17/ERP

28 AUG 2007

Ms Carryn Sullivan MP  
Chair  
Scrutiny of Legislation Committee  
Parliament House  
George Street  
BRISBANE Q 4000

Dear Carryn

Thank you for your letter of 6 August 2007 concerning the Cape York Peninsula Heritage Bill 2007 (the Bill).

I have noted the comments provided by the Scrutiny of Legislation Committee (the Committee) in relation to the Bill, and am pleased to provide the following response to the four matters raised in your letter.

I note the Committee considers the Bill has regard to Aboriginal tradition and Island custom but has sought further information on three matters. These three matters are: consultation with Torres Strait Islanders; provision of Indigenous advice on cultural heritage matters through the Cape York Peninsula Region Scientific and Cultural Advisory Committee; and potential interests affected by the provisions converting claimable land in Cape York Peninsula to transferable land.

**SIGNED BY  
PREMIER**

The Honourable the Minister for Natural Resources and Water.

By direction. For your information.  
Copy of Inwards correspondence is attached.

**ORIGINAL SIGNED BY  
CHIEF OF STAFF**

Rob Whiddon  
Chief of Staff

### **Consultation**

Cape York Land Council is the recognised native title representative body for the Cooktown (Cape York Peninsula) area and is responsible for representing the interests of the native title holders throughout this area. The Cooktown (Cape York Peninsula) area is similar in area to the Cape York Peninsula Region as provided for within the Bill. The exceptions are the Island Community Council areas of Bamaga and Selsia, which are located on the mainland, as well as some parts of the Torres Strait. While detailed consultation was held with Cape York Land Council including consultation on the boundaries for the region, it is acknowledged that consultation with Torres Strait Islanders did not occur during the drafting of the Bill.

However, it is considered that the Bill provides beneficial opportunities rather than negative constraints on affected Indigenous communities within the Torres Strait. For example, the Bill provides for the continued return of homelands to traditional owners as well as opportunities to develop a sustainable economic, cultural and social future. Even so, declaration of an Indigenous Community Use Area, which will allow development to occur on Aboriginal land, may only occur after a request from the landholder – that is, the declaration is a voluntary process and communities are provided with the opportunity to participate.

### **Indigenous advice on cultural heritage matters**

Section 23(b) of the Bill states that the Cape York Peninsula Region Scientific and Cultural Advisory Committee must include at least one person with 'relevant experience or expertise in matters relating to cultural heritage'. This provision does not exclude the appointment of an Indigenous person or more than one member with relevant experience in cultural heritage. This matter will be further considered by the relevant Ministers during the appointment process for the Scientific and Cultural Advisory Committee.

### **Converting claimable land in Cape York Peninsula to transferable land**

In relation to the provisions converting claimable land in Cape York Peninsula to transferable land (the new Part 5C of the *Aboriginal Land Act 1991*), it is my understanding that no interests will be duly affected by these provisions. Both the claimable process and the transferable process will lead to a grant of freehold title over the area concerned. The Minister will make the decision on whom the land should be transferred/granted to, rather than the Land Tribunal.

In explanation, under the claimable process for claims of national park land, the Land Tribunal is required, amongst other things, to consult with and consider the views of the persons recognised under Aboriginal tradition as the elders of the group of Aboriginal people. Under the transferable process, the Minister for Natural Resources and Water must consult with, and consider the views of, Aboriginal people particularly concerned with the land and, as far as practicable, act in a way that is consistent with any Aboriginal tradition applicable to the land. This consultation will include the claimants,

the elders and any other person identified through anthropological work and the advertising process undertaken by the Department of Natural Resources and Water as claiming to be an Aboriginal person particularly concerned with the land.

**Substantial majority**

The Committee has also sought further information about an additional matter - the definition of 'substantial majority' under Clause 38 of the Bill (section 83A(4)(c)). 'Substantial majority' has not been defined within the Bill as in practice it will differ for each individual case. The practice adopted by the Department of Natural Resources and Water for establishing a land trust involves a consultation process to address issues raised by any dissenting party.

I am advised that a recommendation will not be made to the Minister for Natural Resources and Water for the creation of a land trust unless the Department is satisfied that any issues raised are addressed. Consequently, a 'substantial majority' will, in most cases, be a unanimous decision. Where dissent does occur, the Aboriginal parties will be given the opportunity to address the issues internally and further action towards the creation of the land trust will be dependent upon the circumstances.

In addition, a further consultation process is undertaken that will ultimately lead to the signing of an Indigenous Land Use Agreement (ILUA). The rigour applied to the negotiation of the ILUA requires that all reasonable efforts have been made to ensure that all persons who hold, or may hold, native title in relation to land or waters in the area have been identified, and all of the persons identified have authorised the making of the agreement.

I trust that this information is of assistance.

Yours sincerely

PETER BEATTIE MP  
PREMIER AND MINISTER FOR TRADE

P9880



# Scrutiny of Legislation Committee

## SCRUTINY OF LEGISLATION COMMITTEE

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The Honourable Peter Beattie MP  
Premier and Minister for Trade  
PO Box 15185  
City East Qld 4002

Dear Premier *Peter*

Re: Cape York Peninsula Heritage Bill 2007

Please find attached the relevant pages of the committee's Alert Digest No. 7 of 2007 that relate to the abovementioned bill, for which you are responsible.

The committee would be pleased to receive any response which you may care to make. If such response is received by the end of Tuesday, 14 August, it will be published in the committee's next Alert Digest.

If you have any queries or wish to discuss any matter please do not hesitate to contact me.

It would greatly assist the committee if, when forwarding your response, you could also arrange for that response to be emailed (preferably in Word 97 format) to the committee secretariat (email address: [scrutiny@parliament.qld.gov.au](mailto:scrutiny@parliament.qld.gov.au)).

Thanking you for your continuing cooperation which assists the committee to better serve the Parliament.

Yours sincerely

Carryn Sullivan MP  
Chair

Att

### 3. CAPE YORK PENINSULA HERITAGE BILL 2007

#### Background

1. The Honourable P D Beattie MP, Premier and Minister for Trade, introduced this bill into the Legislative Assembly on 7 June 2007.
2. The objects of the bill are set out in s.3. As restated in the Explanatory Notes, these are:

*to identify significant natural and cultural values of Cape York Peninsula, to provide for cooperative management, protection and ecologically sustainable use of land, including pastoral land, in Cape York Peninsula, to recognise the economic, social and cultural needs and aspirations of indigenous communities on Cape York Peninsula in relation to land use, and to recognise the contribution of the pastoral industry in the Cape York Peninsula to the economy and land management.*

#### ◆ Overview of the Bill

3. The Explanatory Notes state that, as it has outstanding natural and cultural values and Indigenous communities in the region have an ongoing, strong attachment to their land and culture, the bill only applies to Cape York Peninsula.
4. The bill achieves the objectives identified in the Explanatory Notes by providing for the:
  - declaration of areas of international conservation significance;
  - cooperative involvement of landholders in the management of the natural and cultural values of Cape York Peninsula;
  - continuance of an environmentally sustainable pastoral industry as a form of land use in Cape York Peninsula;
  - declaration of indigenous community use areas in which indigenous communities may undertake appropriate economic activities; and
  - establishment of committees to provide advice on the implementation of the *Cape York Peninsula Heritage Act*.

#### Does the legislation have sufficient regard to Aboriginal tradition and Island custom?

5. Section 4(3)(j) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation has sufficient regard to Aboriginal tradition and Island custom.
6. This bill is expressly directed to identifying significant natural and cultural values of the Cape York Peninsula (s3(a)) and recognising the economic, social and cultural needs and aspirations of Indigenous communities in relation to land use in the Cape York Peninsula Region (s3(c)).
7. In his Second Reading Speech on the bill, the Honourable Peter Beattie MP, Premier and Minister for Trade, referred to a need to:

Peninsula Region' (s.21(3)). The committee raises for consideration these differing requirements. While the committee considers that, in its present form, s.23(2)(b) does have regard to Aboriginal custom and Island tradition, an additional requirement in s.23 in the same terms as s.21(3) would allow for Indigenous advice on cultural heritage matters.

13. Fourth, s.38 of the bill would insert new parts 5A-5C in the *Aboriginal Land Act 1991*, the new part 5C of the *Aboriginal Land Act 1991* would convert 'claimable land' in the Cape York Peninsula Region to 'transferable land' and would extinguish any proceedings before the Land Tribunal regarding 'claimable land'. These terms and their operation are defined and established by the *Aboriginal Land Act 1991*. However, the Explanatory Notes do not clearly identify the interests which would be affected, or the nature of any effects on those interests, by the enactment of the bill and, in particular, s.38.
14. The committee considers that, generally, the provisions of the bill significantly enhance Aboriginal custom and Island tradition. It is noted that its provisions should ensure protection of Indigenous cultural values and allow Indigenous peoples in the Cape York Peninsula Region to maintain their cultural attachment to land by way of active involvement in conservation and land management programs. However, the committee seeks information from the Minister regarding a number of matters in respect of which it is possible greater regard might be had to Aboriginal tradition and Island custom.

15. The committee considers that the bill has regard to Aboriginal tradition and Island custom, but seeks further information from the Minister regarding three respects in which the regard had to Aboriginal tradition and Island custom is uncertain.

**Is the legislation unambiguous and drafted in a sufficiently clear and precise way?**

16. Section 4(3)(k) of the *Legislative Standards Act 1992* requires that legislation be unambiguous and drafted in a sufficiently clear and precise manner.
17. Section 38 of the bill would insert new parts 5A-5C in the *Aboriginal Land Act 1991*. The new s.83A(4)(c) of that Act would require that, before establishing a 'land trust' under the new part 5A, the Minister must be satisfied 'a substantial majority' of Aboriginal people 'consulted' support the establishment of a land trust. The term 'substantial majority' is not defined and, in practice, the effect of the requirement could be unclear.

18. The committee draws to the attention of Parliament the undefined and uncertain nature of the requirement that 'a substantial majority' of Aboriginal people 'consulted' support the establishment of a land trust.
19. The committee seeks further information from the Minister.

## Premier's briefing note

### Policy

Title: Status of Wild River declarations

Date: 28 September 2007

#### 1. Recommendation

- That you note the information on implementation of wild river declarations.

#### 2. Issues

- The Department of Natural Resources and Water (NRW) is planning to release declaration proposals for 6 wild rivers areas on Eastern Cape York by late November 2007. The Cape York Land Council (CYLC) has been advised by letter of this along with an offer of \$100,000 for CYLC to assist in consultation (see attachment 1).
- A further 7 declaration proposals on Western Cape York are planned for release in June 2008.
- There is currently misinformation circulating in Cape York communities regarding the impact of wild river declarations on matters such as:
  - Native title impacts of the *Wild Rivers Act 2005*.
  - Economic development being prevented
  - Grazing interests being affected
- Key concerns were addressed through the *Cape York Peninsula Heritage Bill 2007* introduced into Parliament in June. In particular, the Bill amends the *Wild Rivers Act 2005*, to make it clear that neither a wild rivers declaration nor a wild rivers code (for vegetation management in a wild rivers area) limits native title rights.
- The Cape York Heritage Bill also provides for:
  - the lifting of a "high preservation area" designation made under the *Wild Rivers Act 2005* to accommodate activities which would otherwise be prevented by that designation, provided those activities are conducted under an approved property development plan, and
  - Specific water allocations to be made as part of a wild rivers declaration to support future use by indigenous communities for sustainable development.
- NRW have been conducting awareness and information sessions throughout Cape York to assist in clarifying that a Wild River declaration does not prevent the continued enjoyment of native title rights and other matters as outlined above.

#### 3. Is this in accordance with Government election commitments?

- Yes – the Government has committed to all 13 Wild River declarations being finalised by the end of 2008.

#### 4. Background

- Planned wild rivers declarations are proposed to proceed after the commencement of the *Cape York Peninsula Heritage Bill 2007*.

#### 5. Consultation

- Department of Natural Resources and Water

Ken Smith  
Director-General

Action Officer: Todd Kelly  
Area: ERP  
Telephone: 3235 4879

ED:

DDG:



Queensland  
Government

Premier of Queensland  
and Minister for Trade

Ref: CTS 08811/07

Mr Michael Ross  
Chairman  
Cape York Land Council  
PO Box 2496  
CAIRNS QLD 4870

Mr Gerhardt Pearson  
Chief Executive Officer  
Balkanu Cape York Development Corporation  
PO Box 7573  
CAIRNS QLD 4870

Dear Mr Ross and Mr Pearson

I acknowledge the support and contribution of the Cape York Land Council and Balkanu Cape York Development Corporation in helping to frame a blueprint for the future of Cape York Peninsula through the Cape York Peninsula Heritage Bill 2007. The Queensland Government and the Department of Natural Resources and Water (NRW) are committed to continuing to work with all parties including the Cape York Land Council and the Balkanu Cape York Development Corporation, to achieve a sustainable future for the Cape.

The objects of the Bill reflect common ground between Indigenous and non Indigenous people, and between conservation and development interests to ensure ecologically sustainable development in the region. The Government views the implementation of wild river declarations as an important aspect of this initiative on Cape York Peninsula.

At your request, changes were made to the *Wild River Act 2005*, to resolve concerns regarding the recognition of Native Title rights. As well as this, the Bill has a provision that ensures a wild river declaration will provide for a reserve of water to be made for Indigenous communities.

Earlier changes to the wild rivers legislation allowed for a relaxation of prohibitions of certain activities in a wild river area, where it could be demonstrated that the activity would not adversely impact on the natural values of the wild river, and an approved plan was in place to ensure environmental benefits to the wild river area.

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We understand the Corporation is now also requesting that this occur within the moratorium process during the nomination of the wild rivers. We cannot support this change, as it is during the nomination phase that the community and stakeholders are asked for comment and input to the proposed management rules and boundaries. The intent of the moratorium is to allow these discussions to occur whilst development pressures in the proposed wild river area are not fluctuating. This process is no different to that applied in many other natural resource planning processes in the State, such as water resource planning.

We understand you have raised concerns about whether a wild rivers area refers to a particular river and its catchment as to a drainage basin as detailed in the Australian drainage basin mapping and nomenclature. It has always been the Government's position that the wild rivers are considered on a 'basin basis' and the existing examples of the Settlement Creek and Morning Inlet Wild River Areas, are evidence of wild river areas that have a number of main stem streams.

Our belief in bringing forward the Cape York Peninsula Heritage Bill is that there will be no further impediments to the implementation of Wild River legislation and election commitment on Cape York Peninsula.

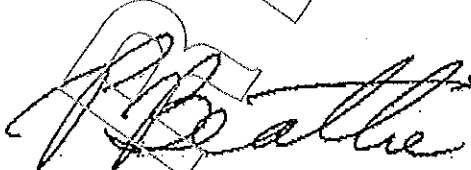
The department of NRW proposes to nominate the six East Cape River basins later this year, with a view to having these declarations finalised by April 2008. The remainder of the proposed Basins will be nominated in mid 2008, with the declarations finalised by late 2008.

We can assure you that any declarations will not occur without appropriate consultation, and we will endeavour to engage communities in the process. The department of NRW has developed a strategy for engaging stakeholders and communities on Cape York Peninsula about wild river issues. The Government recognises the important role that the Cape York Land Council and the Balkanu Cape York Development Corporation will play in this process, but is also cognisant that these organisations are two of the many stakeholder groups in the area, and officers of the department of NRW will continue to seek the views of other stakeholder groups.

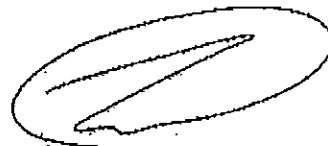
The Cape York Land Council and the Balkanu Cape York Development Corporation will be informed of any relevant upcoming meetings. The department of NRW is prepared to enter into a \$100 000 contract with the Balkanu Cape York Development Corporation to provide assistance with the Indigenous consultation process. It is important that the services of Balkanu in this arrangement are directed to support the successful implementation of the wild river initiative.

Should you have any further enquiries, please do not hesitate to contact Mr Scott Buchanan Acting Director, Wild Rivers of the department of NRW on telephone 3225 1023.

Yours sincerely



PETER BEATTIE MP  
PREMIER AND MINISTER FOR TRADE



CRAIG WALLACE MP  
MINISTER FOR NATURAL RESOURCES  
AND WATER AND MINISTER ASSISTING  
THE PREMIER IN NORTH QUEENSLAND