

Wenlock Basin Wild River Declaration Consultation Report

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Water Allocation and Planning
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Foreword

The Wenlock Basin Wild River Declaration 2010 represents a very important step in preserving an internationally recognised natural asset of Queensland. The natural values of these rivers are largely untouched by development and this declaration will preserve those values for current and future generations.

The Wenlock River Basin is home to rare and threatened plants, birds and an incredible range of marine and estuarine species, including endangered spear-tooth sharks, dugongs, Australian snubfin dolphins and estuarine crocodiles.

The Wenlock has the highest number of freshwater fish species in any Australian river, including the whiptail ray, freshwater sole and the endangered sawfish.

The rainforests of the Wenlock provide crucial habitat for the palm cockatoo, spotted cuscus, the magnificent riflebird and the amethystine python and other rare animal species.

The wild river area has largely unmodified stream and sediment flows within its watercourses and the extensive native riverside vegetation is predominately intact. A wild river declaration will preserve these natural values by managing future development in the wild river area.

A declaration also provides a framework that balances the preservation of these rivers and their natural assets with the needs of the many stakeholders who share an interest in them.

This report summarises how issues raised during the community consultations on the proposal to declare the Wenlock Basin a wild river area were assessed and dealt with.

While the declaration process will provide a robust safeguard for the unspoilt character of the area, economic development can continue. Existing developments and activities will not be affected by the declaration, and most new activity can continue.

Native title and traditional activities—such as camping, hunting, fishing, use of fish traps, collecting bush foods and medicines, conducting ceremonial activities, the production of traditional artefacts and traditional fire management—will not be affected by the declaration.

Moreover, the process ensures that special reserves of water are set aside to support the economic and social aspirations of Indigenous communities in the declared area.

Activities such as grazing, fishing, tourism, mining, outstation development and Indigenous cultural activities can proceed. The published declaration explains how and where these can progress.

Within the wild river's high preservation area, which immediately adjoins main watercourses, high impact developments—such as intensive agriculture, animal husbandry, in-stream dams and weirs, open cut-mining and aquaculture—will not be allowed.

I would like to thank all of the groups and individuals who participated in the consultation process. The feedback received on the declaration proposal played a critical part in finalising the provisions.

Through this wild river declaration, the Queensland Government is ensuring that this near pristine area of Queensland will be preserved for all to enjoy, now and for generations to come.

Stephen Robertson
Minister for Natural Resources, Mines and Energy
and Minister for Trade

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1. Introduction

The *Wild Rivers Act 2005* (the Act) was enacted to preserve, through declaration, rivers that are in a natural or near natural condition. This occurs through a wild river declaration which ensures that new development activities and the way natural resources are accessed and taken are appropriately managed.

The Wenlock River Basin Wild River Area was declared on 4 June 2010.

This report provides information on the consultation program, and summarises the issues that were raised during community consultations and in formal submissions on the Wenlock Basin Wild River Declaration Proposal. It also explains how the issues that were raised were considered by the Minister for Natural Resources, Mines and Energy and Minister for Trade prior to finalisation of the declaration process.

The report covers several issues that were raised in the consultation process that are not specific to the Wenlock Basin. These have been included, along with responses to them, to provide a broader perspective of the wild rivers declaration process and to foster a more comprehensive understanding of the wild rivers program.

1.1 Intent of the declaration

Under the Act, the Minister can propose any part of Queensland for consideration as a wild river area. A wild river area includes the wild river or rivers as well as their catchments.

A wild river area is declared through approval of a wild river declaration. A wild river declaration is a statutory instrument that describes:

- the wild river area
- any wild river requirements
- in what circumstances parts of the Wild Rivers Code or other development assessment codes apply.

The Wild Rivers Code is a development planning document that specifies the outcomes development must meet if it is to be approved. These required outcomes minimise impacts on the wild rivers that could otherwise result from development activities in the catchment.

Under the Wild Rivers Act, authorisations in place at the time of a wild river declaration are not subject to any wild river requirements. The declaration continues to allow for development to occur in wild river areas with few additional impediments to essential and low impact developments that are unlikely to adversely affect on the natural values of the wild river.

1.2 The declaration process

The process of declaring a river basin as a wild river area includes considerable consultation with stakeholders and communities. The components of this process are described below:

- An assessment of the natural values in the Wenlock Basin was undertaken and preliminary consultation on the draft declaration management areas commenced in mid-2008.
- The Minister published a combined notice of intent to declare, and declaration proposal notice in state-wide and local papers on 10 December 2008. Consultation on the declaration proposal formally commenced and submissions were invited on the proposal. An overview report was released at the same time to provide stakeholders and the public with more background information on the proposed declaration.
- A moratorium applicable to mining, clearing of native vegetation and water-related development took effect for the proposed wild river area on 10 December 2008.
- The submission period closed on 29 May 2009 with 3926 submissions received by the department.
- Based on the issues raised in submissions, additional investigations were undertaken by the department. These investigations involved engaging an independent groundwater and environmental consultant to assess the technical data provided in submissions relating to the proposed Coolibah Springs special feature.
- The submissions were analysed and an Issues Report was released to the public in December 2009.
- The Minister considered the submissions received, results of consultation, science and other relevant information, including the recommendations of the independent consultant, in preparing a draft declaration and deciding whether to declare the Wenlock Basin a wild river area.
- Governor-in-Council approval was given on 3 June 2010 and the final declaration was released.

1.3 Consultation program

Community consultation is central to the wild rivers declaration process and to reflect this, extensive consultation occurred on the proposal to declare the Wenlock Basin a wild river area. Before the Minister's intention to declare a wild river was announced, an assessment of the Wenlock Basin and its natural values was undertaken and preliminary consultations with stakeholders about the intent were held.

The Minister announced his intention to declare the wild river area and released the declaration proposal for public comment on 10 December 2010. An Overview Report

providing background information on the Wenlock Basin area was released in conjunction with the declaration proposal. To promote an understanding among affected stakeholders and the broader community, the Overview Report provided details about the natural values of the Wenlock River and the regulatory requirements that would apply in the event of the declaration being finalised.

The consultation program used a range of communication strategies and continued past the closing date for submissions (29 May 2009). The Act specifies a minimum period of 20 business days for people to make submissions on the declaration proposal. A period of more than five months was allowed for people to make written submissions. A total of 3926 submissions were received on the Wenlock Basin Wild River Declaration Proposal. The importance of this feedback was recognised by the release of the Wenlock Basin Wild River Declaration Proposal Issues Report¹ in December 2009, setting out the matters that had been raised in submissions. Appendix 2 details how the content of this Consultation Report corresponds to those issues listed in the Issues Report.

Consultations with stakeholders, including meetings held on-country, occurred both before and after release of the declaration proposal. Representative stakeholders included Traditional Owners, land trusts, local governments, graziers, mining companies, tourism operators, conservation and environmental groups, commercial business operators and community organisations.

Land trusts, the Cape York Land Council (as a native title representative body), relevant peak bodies, landholders, local councils and mining companies were all provided with information packs at the release of the declaration proposal. The information packs contained copies of the declaration proposal, the overview report, relevant background information and maps showing the proposed wild river management areas in relation to property interests.

The communities visited on Cape York Peninsula during the consultation process included Cairns, the Weipa area (including Weipa, Mapoon and Napranum), the Northern Peninsula Area (covering Bamaga, New Mapoon and Injinoo), Aurukun, and the Lockhart River. A number of station properties were also visited and these included: Batavia Downs, Chuula, Bramwell, Merluna, Orchid Creek, Wolverton York Downs, Bertiehaugh and the Moreton Telegraph Station. In many cases, follow-up visits were made to clarify issues and ensure that stakeholder feedback was adequate and representative.

1.4 Issues raised by stakeholders

Sections 2 to 5 of this report summarises the issues raised during community consultation and within the formal submissions received on the declaration proposal. All issues were recorded and have been categorised in this report to reflect whether; they were directly relevant to the Wenlock Basin declaration (section 2), were

¹ A copy of the report can be found on the Department of Environment and Resource Management website <www.derm.qld.gov.au/wildrivers/pdf/wenlock_issues_report.pdf>.

considered to be related to the broad application to the wild rivers legislative regime (section 3) or other matters (section 4).

Under each section, a number of key issues are outlined, including the general comments received, followed by the government's response and how the final declaration was affected.

2. Declaration proposal: issues

This section sets out in general terms issues that were raised as part of consultations and in written submissions that relate directly to the Wenlock Basin Wild River Declaration.

2.1 Consultation

Some submissions raised concerns about the consultation process as it related to the declaration proposal and finalisation of the Wenlock Basin Wild River Declaration. These ranged from the impact of the wet season on consultation to the way that Traditional Owners were engaged in the process.

Response

The consultation process

Indigenous interests, through Traditional Owners and their associated communities, along with other interest groups, peak bodies and stakeholders were all actively engaged and consulted about the proposed declaration. Local authorities including the Lockhart River Aboriginal Shire Council, Mapoon Aboriginal Shire Council, Aurukun Shire Council and Cook Shire Council were also extensively involved in the consultation process.

A range of supporting information was provided to help all groups and individuals understand the declaration process and how they would be affected by declaration of the Wenlock Basin Wild River Area.

This information was disseminated through public notices; correspondence with individual landholders and representative bodies; written and pictorial material; on country presentations; meetings with peak body representatives; public meetings with communities and community members—including individuals, families and people with business interests in the area. The issues and comments raised at meetings and through other channels were all recorded and considered prior to finalisation of the declaration.

The consultation program and submission period accounted for wet season disruptions. The Act specifies a minimum of 20 business days for making a written submission on the declaration proposal. However, for the Wenlock Basin, the period within which people could make a submission continued for five months, with submissions allowed until closure on 29 May 2009. Preliminary consultations preceded the Minister's announcement on 10 December 2008 and continued until early May 2010. Consultation after the close of submissions included a number of meetings to ensure that the consultation needs of all stakeholders were adequately considered.

Traditional Owner and Indigenous community consultation

The consultation program focused on effective engagement with Traditional Owners and Indigenous Communities. This included departmental officers consulting with local Indigenous people, Traditional Owners and Indigenous organisations to determine who could best speak for country and what forms of engagement were appropriate.

The consultation process was inclusive of those Traditional Owners who were able to speak for country, as well as other Indigenous people who had an interest in the area. The consultation process was not applied on the basis of whether, or not, a native title determination had been made. An integral part of the process was to ensure that sufficient information was provided to support effective involvement of Traditional Owners and Indigenous communities to enable feedback on the wild river declaration process.

The Queensland Government remains committed to engagement of Indigenous people in this process and is continually seeking to improve its consultation processes.

2.2 Nomination and supporting material

Some submission indicated a lack of satisfaction with the scope of scientific assessment undertaken and the level of information presented in the overview report prepared to inform discussion about the proposed declaration. The issues raised included concerns that there was not enough information about the natural values, that more should have been stated about the special agreement acts and the Water Regulation 2002, and that some terms were not appropriately defined.

Response

Wild river nomination and natural values

While some submitters were not satisfied with the scope of the scientific assessment conducted and information presented in the overview report for the Wenlock declaration, the department accesses and uses a wide range of data in determining the natural values of a wild river.

While the 'State of the Rivers Assessment' is a useful tool for determining the physical condition of a stream or reach of river at a point in time, it does not address key values of water quality or hydrology, which are necessary for determining the degree of 'naturalness' of a river system proposed for declaration.

In general, specific information about individual rivers and their catchments in Cape York is limited. This has been acknowledged by the department in earlier wild river declaration consultation reports. While detailed and definitive science may be limited, the nomination of the Wenlock River as a wild river was supported by established and consistent methodologies. Information compiled for the nomination of the Wenlock River as a wild river was substantiated by the scientific data and internal and external reports available at the time.

The information and data supporting the intent to declare the Wenlock River included: existing volumes of water extraction; presence, or absence, of artificial in-stream barriers; gross changes in catchment vegetation type; stream gauging station data; the status of native vegetation (provided by the Queensland Herbarium remnant ecosystem mapping); relevant peer-reviewed scientific reports including the Cape York Peninsula Land Use Study (CYPLUS) and the National Land and Water Resources Audit 2002. The methodology applied by the department involved supplementing the data available with an assessment of factors and activities (known developments) that can have impacts on riverine systems and relied on collation and interpretation of multiple sources of information.

Assessment of known development activities can provide information about potential environmental changes. Through this, a relationship between levels of development and the degree of naturalness of a river system can be inferred.

As part of the process the department reviewed the factors that were most likely to have resulted in changes to the natural values of the Wenlock wild river. These factors included impacts from weeds and feral animals, stock grazing, native vegetation burning and locally confined historical gold mining. The scale of impacts to natural values resulting from these activities was not considered sufficient to preclude the Wenlock River from being proposed.

A summary of the natural values of the Wenlock River and the assessment outcomes were outlined in the overview report that was released for public comment at the same time as the declaration proposal.

The 2001 work of Stein, Stein and Nix, *Wild Rivers in Australia* was given as an example of work that did not support the wild river nomination and was not presented in the overview report. The project upon which the report *Wild Rivers in Australia* was based utilised a complex model that enabled the rapid production of an Australia-wide assessment of river disturbance. The model incorporated a catchment disturbance index, which factored in the intensity of land use in the catchment of a river system. The report utilised 1996 land tenure mapping data as a measure of development to determine land use intensity.

The approach taken by Stein, Stein and Nix to identify catchment disturbance was similar to that taken by the department. However the department's approach involved a detailed basin-by-basin and catchment-by-catchment desktop study rather than reliance on tenure mapping. The difference in approach has resulted in some discrepancies between the department's findings and those produced by the model used for *Wild Rivers in Australia*.

The approach of Stein and Stein is useful at a national scale. However the use of land tenure mapping as the sole indicator of development activity scale can result in an overestimation of catchment disturbance. In contrast the analysis of impacts, in the Queensland wild rivers program, is at a finer (basin, rather than national) scale and allows the incorporation of any available on-ground scientific and technical data.

Additionally by collating existing and historical authorised development within the basin, consideration of impacts on a case by case basis can be considered as part of the final natural values assessment.

The department contacted Ms Janet Stein who completed the *Wild Rivers in Australia* research paper to discuss her work. Ms Stein agreed that although extremely useful, this early work was indicative only and its application was undergoing constant revision.

A number of submissions emphasised that volumetric flows of the Wenlock River should have been included in the overview report so that the proposed unallocated water reserve could be calculated as a percentage of the mean annual flows of the Wenlock River basin. This information will be included in future overview reports.

One submitter stated that not including aquatic biota as a natural value was unacceptable. However, relevant natural values described in the declaration proposal are not exclusive. Often aquatic biota are used as an indicator of aquatic health. The use of processes rather than ecosystem components was determined appropriate for wild river assessments in Queensland. Generally if the riverine processes of a catchment are largely unaltered, there will be a healthy natural biotic environment.

Special agreements acts

Wild river declaration proposals outline the requirements that will apply to new activities including how natural resources are taken in the event that a wild river area is declared.

The Wenlock Basin wild river declaration proposal does not apply to an authorisation in place immediately before a wild river declaration takes effect. Section 17 of the Wild Rivers Act identifies those authorisations that are existing, and includes the taking of water under special agreement Acts. As the special agreement Acts are existing authorisations which are set out in legislation, and therefore publicly available, additional information on these Acts was not included in the declaration proposal. However, information about negotiations about Rio Tinto Alcan's water rights was included in the Overview Report for general information purposes. The outcomes of these negotiations are discussed in Section 3.11.

Water Regulation 2002

When the declaration proposal was released in December 2010, the process for granting unallocated water had not yet been included in the Water Regulation 2002. However, the process for granting unallocated water was described in Schedule 6 of the declaration proposal to facilitate stakeholder consideration and comment. The Water Regulation has now been amended to include details of the process for granting unallocated water and Schedule 6 has been removed from the final declaration.

Omitted definitions

Definitions of 'state significance' and 'regional significance' in relation to the strategic water reserve have been provided in the final declaration document.

2.3 Determination of wild river area boundary

Some submissions included concerns that the wild river boundary had not been accurately mapped and these touched on the use of a 'basin approach' and how some areas were mapped.

Response

The Wild Rivers Act states that a wild river area should include relevant catchments. The Act also states that the declaration proposal may relate to more than one river in a proposed wild river area. Consequently, a wild river area may comprise several rivers and their catchments.

A wild river declaration proposal sets out the extent of the proposed wild river area. Boundaries are defined from the existing national register of river basins and state water resource planning boundaries.

In this instance, the Wenlock River is the sole wild river and the catchment of the river corresponds almost exactly to the Wenlock Basin boundary, with the sole exception of parts near the mouth of the river, where small coastal drainage areas discharge either to the western coastline or to the receiving waters of Port Musgrave. These areas were excluded from the wild river area because they do not drain into the Wenlock River.

In addressing the last issue raised above, a detailed review of the topographical drainage characteristics in the York Downs area indicated that the proposed boundary correctly represents the watershed between the Wenlock and Embley basins. Accordingly, no changes were made to the boundaries of the Wenlock Basin wild river area.

2.4 Extent of the high preservation area

Views expressed during the consultation process were both supportive of and opposed to the extent of the high preservation area. Areas of concern were the high preservation areas proposed for the Coolibah Springs Complex, the Embley Range, the Port Musgrave Wetland Complex and Lydia Creek. Concern was also expressed over the High Preservation Area relevant to the Wenlock Goldfields.

The issues raised included:

High preservation area

- The level of protection was inconsistent with other Queensland legislation for watercourse management.
- There was no scientific basis for protecting high biodiversity ecosystems through the high preservation area.

- The high preservation area should be wider, and/or should be extended to the headwaters.
- The entire catchment area should be classed as a high preservation area.

Special features

- Special features should have a minimum one kilometre buffer.
- The high preservation area for the Coolibah Springs should be reduced/increased.
- The high preservation area at Coolibah Springs should be extended to include the entire bauxite plateau.
- High preservation area boundaries for special features should be maintained.
- The high preservation area that covers the Embley Range was excessive.

Specific areas

- The Wenlock Goldfields should be excluded from the high preservation area.

Response

High preservation area

The Wild Rivers Act was enacted to 'preserve the natural values of rivers that have all, or almost all, of their natural values intact' (s3 *Wild Rivers Act 2005*). This is underpinned by a precautionary approach that aims to minimise 'adverse effects on known natural values and reduce the possibility of adversely affecting poorly understood ecological functions'.

Prior to 2005, Queensland legislation did not provide for the holistic preservation of the natural values essential to maintaining the health of river systems from the effects of development. There was no express recognition of the linkages between the health of a river system and the broader catchment area. With the exception of the *Nature Conservation Act 1992*, other Acts operate on the principle that there may be an acceptable level of environmental impact when balanced with other societal priorities and pressures. The Wild Rivers Act proactively preserves the existing, near-natural values of rivers to avoid situations where rehabilitation is required for river systems that have already been affected by development.

Under the Wild Rivers Act, the high preservation area can extend for up to one kilometre on both sides of a river, its major tributaries and special features (s41 *Wild Rivers Act 2005*). It is in these areas that high impact developments pose the highest risk to natural values of a river system. The extent of the high preservation area provides certainty that critical values will be preserved from the effects of any proposed activities.

The high preservation area for the wild river area, allows for the preservation of the natural values described above, ensuring activities in adjacent areas do not impact on the wild river's natural values.

The intent of the Wild Rivers Act is to preserve the natural values of a wild river, these being hydrological processes, water quality, geomorphologic processes, wildlife corridor function and riparian function. To determine an appropriate high

preservation area width, a buffer methodology framework based on national and international practices was developed. This methodology framework includes consideration of closely associated subartesian aquifers, floodplains, drainage lines, nearby waterholes, overland flow paths, riparian function characteristics and wildlife corridor requirements. By including these closely linked features and allowing for the natural movement of the watercourse over time within the high preservation area, the natural riverine processes and functions of the wild river are preserved.

High preservation area for the entire catchment

Nominating the entire catchment as a high preservation area was suggested by some submitters. This would be inconsistent with the Act and its aims. Declaration of a wild river area is intended to provide a framework which allows for development to still occur in a planned manner, while preserving the natural values of the wild river. The Wild Rivers Act reflects this intent and provides discretion for the Minister to determine a high preservation area that includes an area of up to one kilometre on either side of the wild river, its major tributaries and any special features.

A high preservation area is generally the area where the greatest impact from development activities is likely (that is, the area directly adjacent to the wild river). A high preservation area extends upstream to where the risk to natural values from development is unlikely and will also encompass any special features that support the natural values. These factors were considered in establishing the Wenlock Basin Wild River management areas, including the high preservation area and special features. The declaration of these areas will ensure that the relevant natural values are preserved from any impacts of new development activities.

Special Features

The Port Musgrave Wetland Complex has strong riparian values and has close connectivity with the Wenlock River. The department reviewed the Port Musgrave Wetland Complex special feature, and determined that the high preservation area width proposed for this area will adequately preserve the function of extensive riparian communities, as well as small fresh-water wetlands in close proximity to the largely estuarine areas.

The Embley Range Aggregation is hydrologically connected to the Wenlock River. Some submitters were of the view that the proposed special feature was too extensive. Using higher resolution satellite imagery, which provided more detailed information, the department reduced the extent of the special feature to only include the plateau and the major connecting waterways. The high preservation area extends one kilometre around the plateau and 500 metres on both sides of the connecting waterways. In effect, this reduced the extent of the high preservation area. The high preservation area as defined in the finalised declaration will still ensure that the hydrologic connectivity to the Wenlock River is preserved.

Lydia Creek is a major tributary between the Embley Range and the Wenlock River. Some submitters argued that the natural values of Lydia Creek had been reduced as

a result of nearby historical clearing, improved pastures and a declared weed infestation. Additionally, Traditional Owners of this area have expressed a desire to undertake a range of development activities in this part of the Wenlock Basin.

Using satellite imagery of greater resolution than that available when the declaration proposal was made, the department has refined the extent of the major tributary to 500 metres each side of the watercourse. This area is considered sufficient to ensure that important hydrologic features and connectivity to the Wenlock River are preserved.

The final extent of the high preservation area boundary around the Embley Range Special Feature and Lydia Creek is based on the high preservation area buffer methodology and is consistent with the preservation of the natural values.

Several submissions were received on the importance of the Coolibah Springs Special Feature to the natural values of the Wenlock River; the hydrologic function of the spring system; the extent of the high preservation area around the springs heads and associated drainage that connects the springs to the Wenlock River. The environmental values of the springs themselves were also a point of conflict. Some submitters argued that the hydrologic integrity of the springs was dependent on an extensive high preservation area which included the adjacent bauxite plateau. Other submitters argued that the 500 metres lateral extent of the proposed high preservation area could be substantially reduced without compromising the hydrologic integrity of the springs, which was not dependent on the preservation of the adjacent bauxite plateau.

In response to the concerns raised in the submissions, the department commissioned an independent Groundwater and Environmental consultant to conduct field investigations of the Coolibah Springs Complex hydrology, and to assess the technical information provided in submissions by stakeholders. The consultancy report, *Review of Submissions Relating to the Hydrology and Ecosystem Functions of Bauxite Springs on and in the Vicinity of Bertiehaugh Station, Cape York Peninsula*, concluded that the flows to the springs are maintained by a sand-gravel aquifer below the bauxite layer of the adjacent plateau. The report also concluded that the aquifer is most likely recharged from both the vertical infiltration of water through the bauxite layer to the underlying sand-gravel aquifer, and from large sinkholes on the plateau not associated with the bauxite deposits, with water being likely to pass quickly through the bauxite layer into the sand-gravel layer. This conclusion does not support the view that the bauxite layer retains water, which in turn feeds the springs.

Recommendations in the report stated that the high preservation area may not be required to moderate impacts from bauxite mining on spring water and groundwater interactions. However, the report did suggest that other important natural values associated with the Springs Complex had to be considered in determining the extent of the high preservation area. These values included water quality and riparian zone and wildlife corridor function.

The final extent of the high preservation area boundary was determined through application of the high preservation area buffer methodology framework, and consideration of spatial datasets, site specific investigations, data supplied in submissions and the findings of the independent groundwater and environmental consultant.

The Minister determined that a high preservation area extending 500 metres laterally from the special feature would adequately retain those functions of the Springs Complex that contribute to the integrity and natural values of the Wenlock River.

The changes from the proposed high preservation areas to the final wild river area high preservation areas are shown on the map in Appendix 1.

Specific areas

The department reviewed information relating to the Wenlock Goldfield area and conducted site inspections. As highlighted throughout the consultation program and in submissions, the area has suffered historical site disturbance, including through native vegetation clearing and the degradation of local drainage lines, which has resulted in gully erosion. Despite this, there is evidence of natural rehabilitation occurring. These historical site disturbances have not diminished the natural values of the river system to the extent that they should not be protected. The extent of the high preservation area in the Goldfields area has not been reduced.

2.5 High preservation areas and national parks

Some stakeholders believed the declaration of a wild river area in a national park is unnecessary due to their understanding that this was an uncoordinated and overlapping approach to conservation involving various layers of management regulation and restrictions to affected areas.

Response

The aims of the *Nature Conservation Act 1992* and the *Wild Rivers Act* differ markedly. The key difference is that under the *Wild Rivers Act* preservation is based on a whole-of-catchment approach, while the *Nature Conservation Act* only protects specific areas such as those designated as national parks.

The primary objective of the *Nature Conservation Act* is the conservation of nature through a broad state-wide focus, which includes the declaration and management of protected areas, protection of native wildlife and habitats and sustainable use of protected wildlife. Activities in any national park managed under the *Nature Conservation Act* must be consistent with the purpose and intent of that Act. The *Wild Rivers Act* is concerned with preserving natural values of rivers that have all, or almost all, of their natural values intact. Natural values to be preserved include hydrology, geomorphology, water quality, riparian vegetation and wildlife corridor function.

In relation to joint management arrangements for national parks on Cape York Peninsula, Indigenous Management Agreements (IMA) must state that land will be managed as National Park (Cape York Peninsula Aboriginal Land) in perpetuity. An IMA is issued under the *Aboriginal Land Act 1991* and must be consistent with the purpose of the Nature Conservation Act. Furthermore, under the Nature Conservation Act, a national park management plan must be consistent with a wild river declaration. This means that it is highly unlikely any conflict would arise between a wild river declaration and an IMA.

To achieve the 'whole-of-catchment approach' required under the Wild Rivers Act, a wild river declaration applies equally across all tenures in a wild river area, including national parks. Dealing with tenures differently would potentially create 'loopholes' that could be vulnerable to special interests and this could impose a risk to the natural values. A wild river declaration will regulate development in a national park that may be approved under the Nature Conservation Act, or through the Integrated Development Assessment System (IDAS). However while declaration will not alter a park manager's powers in regard to park management it will ensure that wild river natural values are preserved.

2.6 Extent of subartesian management area

Concerns were raised in submissions over the extent of the subartesian management area proposed under the process. Some stakeholders believed the whole wild river area should be a subartesian management area, while others believed the proposed area should be reduced.

Response

Water moving freely between streams and aquifers is important in maintaining the base flows of streams, thereby supporting ecosystems dependent on subartesian water and preserving wild river natural values. Base flows can also be important in maintaining wildlife movement, riparian function and water quality, particularly during the dry season.

While other parts of the wild river area may contain subartesian water, the aquifer areas closest to the streams are those that have the strongest hydrologic connection to the wild river and major tributaries of the basin. Therefore the subartesian management area is coincident with the high preservation area.

As a result of the reduction of the high preservation area around the Embley Range Aggregation and Lydia Creek there has been a reduction in the subartesian management area between the Arthur and Necktie Creeks, and in the mid to upper reaches of Lydia Creek.

Groundwater in the Wenlock wild river area will continue to be regulated through the Water Regulation 2002 and the Great Artesian Basin Water Resource Plan.

2.7 Additional special features

Some stakeholders requested that additional areas should be nominated as special features, for example:

- the lagoons on the eastern side of the Bamaga Road between Batavia Downs and Rocky Creek
- the extensive wetlands, lagoons and waterholes in the floodplain management area between the Wenlock River and Nimrod Creek
- the mountain/spring-fed lagoons of the upper Wenlock River
- the springs at the top of Schramm Creek
- other important waterholes.

Response

Special features must have strong hydrologic connections with a wild river and its major tributaries, and be important contributors to the natural values of the wild river. The department reviewed the information provided in submissions with regards to the features suggested.

Many of the lagoons, waterholes and small wetland areas nominated by stakeholders, although important features in the local landscape, are independent of the main river and its major tributaries. For this reason, they were not determined to be special features. Irrespective of this, the review confirmed that a number of these features are already located in the high preservation area and therefore any proposed development will have an associated higher level of regulation.

Some of these lagoons and waterholes are also located in a floodplain management area between the Wenlock River and Nimrod Creek. The declaration provides for the regulation of activities in the floodplain management area so that proposed activities do not affect overland flows. This will provide ongoing protection for the lagoons and waterholes across this floodplain area. The requirements of the Wild Rivers Code will also assist in managing any potential impacts on the preservation area arising from development.

2.8 Major tributaries

Some stakeholders believed additional streams, Ling Creek and Sandfly Creek, should be listed as major tributaries.

Response

Major tributaries are selected on the basis that they are larger streams (in terms of their flow volume and catchment area) connected to the wild river, and/or are tributaries that contribute significant flows or significant aquatic habitat. Where information indicates that watercourses have specific importance to the functioning of a river system these are identified as major tributaries (for example, where a stream is known to provide perennial flows to a largely ephemeral system).

In terms of their respective flow volume and catchment area, Ling Creek and Sandfly Creek are not large streams in the Wenlock River basin. However, both creeks form part of the hydrologic connection that exists between the Coolibah Springs Complex and the Wenlock River, contributing riparian vegetation which provides unique habitats for wildlife endemic to the area, and to the network of habitats that are part of wildlife corridors. For these reasons both Ling and Sandfly Creeks have been included in the Coolibah Springs Complex Special Feature which forms part of the High Preservation Area.

2.9 Designated urban area

One submission mentioned that a future urban area could be proposed at Batavia Outstation.

Response

Designated urban areas are towns or communities that are identified in a local government planning scheme. Where there is no planning scheme, the declaration sets aside an area large enough to capture any existing town or community as well as allowing for possible future expansion of that town or community. These areas are subject to detailed planning and development regulations through local government controls. For these reasons, it is not appropriate for an outstation to form part of a designated urban area. The final declaration does not include any designated urban areas as there are no towns or villages within the wild river area.

2.10 Water licence conditions

Several concerns were raised about licensing provisions that would apply to the release of any unallocated water made available in the declared wild river area and comments were made that land and water management plans should be required for all new water licences.

Response

Specific licensing provisions 'similar to those detailed in the Water Resource (Gulf) Plan 2007' should apply in a wild river area.

The purpose of a wild river declaration is to preserve the natural values of the declared wild river. The process for granting a water licence and for placing conditions on it must reflect this intent. Accordingly, the declaration proposal specified, that in assessing a water licence application in the wild river area, the chief executive must consider the impact the proposed taking of water might have on the relevant natural values of the wild river area. The relevant natural values include:

- hydrologic processes including the natural flow of water in the wild river catchments and river systems. These processes include hydrologic

connectivity between the river system, aquifers, off-stream water bodies, adjacent floodplains and estuaries.

- geomorphic processes including the natural erosion, transport and deposition of sediments by water throughout the catchments of the wild rivers and along the river systems to their respective estuaries. These natural geomorphic processes contribute to the physical integrity of the river system, including bed and bank stability as well as channel alignment.
- riparian function including a range of processes that occur in, or as a result of, the vegetation growing adjacent to the streams, estuaries, lakes, floodplains and wetlands. This function maintains the physical integrity of bed and banks, provides aquatic habitat, pollution control, food sources for native aquatic and terrestrial animals and maintains links between in-stream and land-based ecosystems.
- wildlife corridor function including areas of natural habitat within and along the river systems to allow native aquatic and terrestrial fauna to safely migrate within their natural ranges.
- water quality including the physical, chemical and biological attributes of water in the wild rivers that supports and maintains natural aquatic and terrestrial ecosystems.

Any conditions placed on a water licence for the wild river area will reflect the intent to preserve these values. Together with other regulatory mechanisms, this provides additional protection of important hydrologic processes.

Land and water management plans

Requiring the preparation of a land and water management plan where new water licences are granted in a wild river area would require an amendment to the *Water Act 2000*. Land and water management plans are intended to ensure that irrigation water-use practices are ecologically sustainable, both on and off-farm. Given the limited development pressures of this type, and the small volumes of unallocated water that are being made available under the declaration, the requirement for a land and water management plan is considered unnecessary. Accordingly no changes have been made to the declaration.

2.11 Overland flow

Several stakeholders expressed the view that water captured and stored in off-stream storages should be part of the unallocated water reserves, rather than allowed under separate provisions.

Response

The taking of overland flow water is managed by regulating the size and location of works, thereby restricting the volume of overland flow water that is taken and minimising any effects on overland flow paths and patterns.

There is currently little or no take and storage of overland flow water in the Wenlock Basin Wild River Area, and no major demand for the resource was identified through the consultation program. The probability of diversions of this resource impacting on connectivity of overland flow and the hydrology of Wenlock River is low. Therefore, the inclusion of licensing provisions and conditions on the allowable take of overland flow within the unallocated water reserves is considered unnecessary.

Where mining is concerned, Environmental Authorities are issued under the *Environmental Protection Act (EPA)* to regulate activities. Under a wild rivers declaration, works which take overland flow water for the purposes of meeting the requirements of an Environmental Authority are assessable development and must meet the requirements of the Wild Rivers Code.

As an additional safeguard, overland flow related developments will be monitored throughout the declared area to determine whether additional management provisions are required in future.

2.12 Indigenous water reserve

A key issue raised by some submitters regarded the volume of the Indigenous unallocated water reserve identified in the declaration proposal and that declarations should be informed by principles supported by the Australian Government on the provision of Indigenous people's cultural values in water.

Response

The declaration provides for an Indigenous reserve of water to support the economic development and social aspirations of Traditional Owners and Indigenous communities in general. This is a unique provision and a first for water management in Australia. Other state and federal water management jurisdictions are referring to the Queensland model in determining their own processes for providing water for Indigenous people.

The volume of the reserve is generous given the existing levels of water entitlements in the area, and will allow for economic and social benefits to be pursued. In determining the reserve, data from the Cape York Peninsula Land Use Study report and other sources was considered. The department also took into account any

issues raised about the reserve in submissions and general consultation. The department continues to actively work with organisations, such as the North Australian Indigenous Land and Sea Management Alliance, Tropical Rivers and Coastal Knowledge, and the National Water Commission, in progressing Indigenous water policy.

3. The *Wild Rivers Act 2005* and other associated legislation: issues

As part of the consultation process on the declaration proposal, general comments were received about the Wild Rivers Act. This section summarises the issues that were raised in relation to the Wild Rivers Act and the governments' responses to those issues.

3.1 Wild rivers terminology

Concern was expressed about the use of the terms 'wild' and 'preservation area' under the Wild Rivers legislation. Some stakeholders said this was offensive to many Traditional Owners.

Response

The intent of the use of the term 'wild', as originally drafted in the Wild Rivers Act signified that the rivers remain in a natural or relatively undisturbed condition.

The Queensland Government recognises that Indigenous people have historically lived and will continue to live and move throughout wild river areas and that there is a continued cultural, spiritual and physical connection to country.

The Queensland Government also recognises that Indigenous management of these areas has been, and will continue to be, integral to retaining the natural values of the wild rivers. Recognition of unspoilt river systems, and the relationship between Indigenous people and the natural values of the river systems is reflected in the Government's ongoing commitment to the Wild River Rangers program.

The terminology established under the Act is now integral to the legislation and would require extensive amendments to be altered. The Government will continue to work with Indigenous people throughout Cape York Peninsula on wild river matters with Indigenous and non-Indigenous people having a shared understanding of what the term 'wild' means for each other.

The Queensland Government can declare a wild river area under the *Wild Rivers Act 2005* in order to preserve the natural values of a wild river. The management areas within the wild river area are thus termed 'High Preservation Area' and 'Preservation Area' (among others). The term 'preservation area' indicates the presence of important natural values that can be protected with a lower level of regulation than in the 'high preservation area', where there is a higher risk to the natural values of the wild river.

To ensure that the provisions are consistent with requirements and specifications set out in Wild Rivers Act the terminology has not been changed.

3.2 Land tenure resolution

The view was expressed that the Land Tenure Resolution process should be recognised by the Wild Rivers Act, and that development of the declarations should align with the conservation outcomes of the Cape York Heads of Agreement.

Response

The ongoing Cape York Peninsula Tenure Resolution Program is a separate Department of Environment and Resource Management program. The department remains committed to undertaking the land tenure negotiations in accordance with the Cape York Heads of Agreement.

The department also appreciates how important it is for Traditional Owners to be able to properly consider the implications of wild river declarations for their country, along with many other government initiatives, including land tenure dealings. This is reflected by wild rivers being included as part of high-level Cape York Tenure Resolution Implementation Group discussions. Wild rivers officers attend land dealing meetings to provide information, answer questions and gather feedback on wild river matters from Traditional Owners.

The department will continue to engage with stakeholders and provide them with relevant information to enable them to make properly considered submissions on declaration proposals.

3.3 Native title

Several submissions indicated concern that native title rights would be affected by a wild rivers declaration and the Wild Rivers Code.

Response

Section 44 of the *Wild Rivers Act* expressly states that a wild rivers declaration and the Wild Rivers Code cannot directly or indirectly have the effect of limiting a person's right to the exercise or enjoyment of native title. In other words, there is no impact on native title rights by the declaration of a wild river area.

Native title is dealt with under the Native Title Act. The Queensland Government's position is that the Wild Rivers Act and its declarations are not future acts for the purposes of the Native Title Act.

3.4 Protecting Aboriginal cultural values

Some stakeholders expressed the view that the *Aboriginal Cultural Heritage Act 2003* is too narrow in its interpretation of Indigenous cultural values and it inadequately protects Indigenous cultural values associated with rivers.

Response

While the intent of the Wild Rivers Act is to preserve the natural values of wild rivers, the Queensland Government recognises the spiritual connections Aboriginal people enjoy with 'traditional country' and the cultural values either directly or indirectly associated with rivers and water bodies. For this reason, significant effort has been, and continues to be made during consultation processes, to ensure that Indigenous people are included, that cultural values are recognised and that connections to country remain paramount in that process.

In Queensland, Aboriginal cultural heritage, being significant areas, objects or evidence of occupation, is primarily recognised and afforded protection under the *Aboriginal Cultural Heritage Act 2003*. This is the primary mechanism for affording protection to Aboriginal cultural heritage.

While not the primary mechanism for protecting Aboriginal cultural heritage, the declaration can indirectly provide additional protection to Aboriginal cultural places and values connected to the river and other water bodies (e.g. swamps and billabongs in floodplain management areas).

3.5 Indigenous human rights and land use

Concerns were raised over the impact of wild rivers declarations on Indigenous rights and land use. It was suggested that because these interests were already protected under other Acts, and were therefore existing rights, they need not be subject to the requirements of the declaration.

Response

A wild river declaration can be viewed as a planning tool that ensures the natural values of a wild river are not degraded. The declaration provides a framework for the regulation of future development activities and the access to resources from within a declared wild river area.

As previously outlined, a wild rivers declaration does not impact on native title rights or cultural heritage rights, nor does it impact on the day-to-day traditional activities. Activities such as; camping, hunting, fishing, use of traditional fish traps, collecting bush foods and medicines, conducting ceremonial activities, the manufacture of traditional artefacts, and traditional fire management practices can continue in a declared wild river area.

The declaration of a wild river area does not prevent the collection of live or fallen (dead) timber, other plant material, ochre, clay and stone for an Aboriginal traditional cultural activity. Collection of these materials for the conduct of a traditional Aboriginal cultural activity, other than a commercial activity, is termed a 'specified activity' under the *Sustainable Planning Act 2009* and is exempt from requiring a clearing permit under provisions of the *Vegetation Management Act 1999*.

The Wild Rivers Act and subsequent wild river declarations do not affect occupancy rights and are also not tenure specific. They apply to all land within a declared wild river area whether it is freehold, Indigenous freehold, leasehold land, national park or unallocated state land. The Act applies equally to all people.

3.6 Indigenous Natural and Cultural Heritage Resource Management Plan

Another concern was that the department should have coordinated development of an Indigenous Natural and Cultural Heritage Resource Management Plan (INCRMP) with the release of a wild river declaration.

Response

The development of an Indigenous Natural and Cultural Heritage Resource Management Plan falls outside the scope of the wild rivers program. However, the department is working with Cape York stakeholders to establish a natural resource management body for Cape York Peninsula.

This could lead to the development of a natural resource management plan for the whole of Cape York Peninsula. Such a plan could complement wild river declarations in the region. A natural resource management body would be appropriate for progressing this initiative. The department will continue to assist stakeholders and promote the involvement of wild river rangers as well as land and sea centres and other local bodies in the development and implementation of the natural resource management plan for Cape York.

3.7 Consent of Indigenous people

The view was expressed that full, free, prior and informed Indigenous consent must be sought from Traditional Owners before any declaration is made.

Response

The government recognises that Traditional Owners and Indigenous people are important stakeholders in the Wenlock Basin Wild River Area. The Queensland Government has consulted widely and actively engaged with Indigenous individuals and groups, interest groups and peak bodies about the wild river declaration proposal.

The minister sought advice from the Human Rights Equal Opportunity Commission on engaging Indigenous people. The Commission referred the department to the *Engaging the Marginalized: Partnerships Between Indigenous Peoples, Governments and Civil Society* paper. As such, the consultation program focused on ensuring that the appropriate level of Indigenous engagement was conducted, as follows:

- Departmental staff actively sought and followed advice from local Indigenous people, Traditional Owners and Indigenous organisations in regards to who to speak with, and what forms of engagement were appropriate.
- Wild rivers consultation activities have complied with all local advice, often specific to individual communities, about engaging with Indigenous stakeholders.
- The process recognised that individuals and communities can differ either subtly or markedly in their traditional and historical ties to land, their aspirations and visions for social, economic and environmental futures, their language groups and customs. This is reflected in the way they wish to be engaged.
- Throughout the consultation process, customary protocols have been respected and acknowledged.
- The department has provided accurate and accessible information in a variety of formats.
- At initial meetings with Indigenous communities and individuals, departmental staff sought input on the process through which the communities would prefer to be consulted, and whether they prefer to be consulted through representative bodies, or not.

Departmental officers conducted numerous meetings on country with Traditional Owners and Indigenous communities. Traditional Owners, people within Indigenous communities, clan groups, interest groups and peak bodies were all engaged, and consulted about the wild river declaration process. Follow-up meetings were also held after the close of the formal submissions period to ensure that the consultation with Traditional Owners and other stakeholders was comprehensive and effective.

All submissions and feedback gathered through the consultation program were considered by the Minister before the declaration was finalised.

3.8 Increased red tape

Concerns were expressed that the wild rivers process would add more complexity to existing environmental legislation and disadvantage Indigenous people in remote areas who did not have access to professional advice on development authorisation processes.

Response

Most types of development in Queensland are managed under the *Sustainable Planning Act 2009* through the Integrated Development Assessment System (IDAS), a single integrated administrative system. Declaration of a wild river does not change this. Moreover, to ensure that there is no additional 'red tape', wild river requirements are integrated with IDAS and other relevant legislative requirements. Under the wild rivers legislation, development proposals are regulated under the legislation relevant to the activity—for example, the *Vegetation Management Act 1999*, for clearing of

native vegetation, or the *Environmental Protection Act 1994* for environmentally relevant activities such as mining.

A wild river declaration is akin to a 'planning tool', and similar to a local government planning scheme. A declaration sets out a framework that regulates future development activities and how and where natural resources are taken within a wild river area. When a development application is made, it is assessed by the agency administering the relevant legislation, and for compliance with requirements of any local government planning scheme.

Generally, no additional paperwork is required. However, approvals are required in a wild river area for intensive 'animal husbandry' (feedlot), or new agricultural development activity. This does not include normal grazing activities—or the cultivation of crops by land occupants, as set out in the Wild Rivers Act. Essentially, the applicant's role has not changed and neither has the role of the assessing agency.

The government is considering options to assist remote Indigenous communities prepare and assess development applications.

3.9 Development opportunities

Several stakeholders were concerned about the impact of a wild river declaration on future development opportunities, and called for those people that may be negatively affected to be compensated. There were specific concerns about the establishment of outstations, economic opportunities for Indigenous communities, the capacity for Indigenous communities to articulate their economic aspirations, tourism venture opportunities, agriculture and aquaculture opportunities. Some concerns were raised on the potential impact on property values, and that support should be provided to develop property development plans.

Response

Outstations

Outstations and other dwellings can be built in wild river areas, including within high preservation areas. In Queensland, a development permit is required for dwellings unless built by, or on behalf of, the state, a public sector entity or a local government. A wild river declaration does not prevent or hinder development applications being made or dealt with.

In cases where building an outstation would be an assessable development, the declaration states that any such proposal must comply with Part 5 of the Wild Rivers Code. A wild rivers declaration does not affect existing vegetation clearing laws associated with residential building and any reasonably associated buildings or structures. Departmental officers are available to discuss future outstation development aspirations with stakeholders.

Engagement with Traditional Owners

The consultation program focused on effective engagement with Traditional Owners and Indigenous communities. This included departmental officers consulting with local Indigenous people, Traditional Owners and Indigenous organisations to determine who could best speak for country and what forms of engagement were appropriate.

The government is looking at options to improve its engagement of Traditional Owners for future wild river consultation programs.

Future business and economic development

As noted throughout this report, a wild river declaration does not prevent economic development from occurring, but provides for the regulation of activities that may adversely affect the natural values of the riverine environment. Subject to normal development assessment processes, activities such as mining, aquaculture, animal husbandry, grazing, fishing, tourism and outstation development can still occur.

The department has not identified any negative impacts on property values arising from a wild river declaration. On the contrary, preservation of the river systems natural values can be expected to add to the value and sustainability of regional communities and support the advent of new economic opportunities, for example by facilitating the establishment of tourism ventures. In addition, several government programs and initiatives will support the development of businesses appropriate to Cape York in line with the Queensland Government's commitment to Indigenous economic development and employment.

These programs and initiatives include:

- the Looking after Country Together framework and Wild Rivers Ranger Program.
- opportunities under the *Cape York Peninsula Heritage Act 2007* and land tenure reforms
- development of the Cape York and Torres Strait Tourism Development Action Plan
- the Indigenous Arts Program and Indigenous Business Development Program
- setting aside reserves of water for Indigenous purposes.

The Remote Indigenous Land and Infrastructure Program Office—the most recent program—aims to provide better housing and development opportunities for Indigenous communities across Cape York Peninsula. The department will continue to consult with Traditional Owners and communities on economic development opportunities.

Tourism

Tourism enterprises can be established in both the high preservation area and the preservation area. Existing tourism enterprises can continue and expand in the high preservation area, subject to some wild river considerations. Again, the application and assessment processes for this type of development are the same as those that apply in other parts of Queensland.

Preservation of the riverine environment is expected to support any existing and proposed tourism ventures. In addition to this, water can be made available from the strategic reserve and from the general reserve for other commercial developments. Traditional Owners will be able to access water to support their initiatives from either the general reserve, the strategic reserve (for eco-tourism developments), and the Indigenous reserve.

To encourage Traditional Owner groups and all entrepreneurs to establish businesses appropriate for the region, the Queensland Government has developed a range of supportive programs within the Department of Employment, Economic Development and Innovation (DEEDI). Specific details can be obtained from DEEDI at www.business.qld.gov.au.

For further information, please contact 1300 363 711.

Agriculture

New agricultural development is allowed in parts of the wild river area, subject to proposals complying with requirements of the code and any other relevant legislation. Development regulations are most stringent in the high preservation area where natural values are most important. For this reason, new agricultural development activities (as defined in the Wild Rivers Act) will not be allowed in high preservation areas.

Landholders can cultivate a specified area within the high preservation area, but only to grow crops for their own consumption and subject to specifications set out in the Act. The provisions will support aspirations for outstations by enabling residents to grow their own produce. Production on a larger scale will be prohibited in the high preservation area, and assessable in the preservation area under Part 1 of the code.

However, where activities proposed for a wild rivers area would be prohibited under the declaration, the proponent may submit a property development plan for the Minister's approval. The property development plan process is set out in the Wild Rivers Act. In the event of a property development plan is approved, the wild river declaration would, if necessary, be amended to allow for the development. However, any amendment of this nature would not alter the compliance requirements relating to other developments.

Aquaculture

Aquaculture is allowed in the preservation area and in-stream in nominated waterways and other watercourses located in the preservation area. Water to support off-stream aquaculture production may be obtained from the general reserve of unallocated water provided for under the declaration or, if in support of the aspirations of Indigenous people, from the Indigenous Reserve.

Matters relating to the definition of aquaculture under the *Fisheries Act 1994* are beyond the scope of the Wild Rivers Act. Nevertheless, as a result of submissions

the department is considering whether legislative amendment is appropriate to allow for small scale/low impact aquaculture development to occur in the high preservation area.

Compensation

The declaration of a wild river area does not affect or diminish pre-existing rights and entitlements and therefore the Act does not contain compensation provisions; nor is compensation legally available in instances where a 'loss of opportunity' is perceived because an activity is prohibited or has additional requirements to be met.

However, where activities proposed for a wild rivers area would be prohibited under the declaration, the proponent may submit a property development plan for the Minister's approval. The property development plan process is set out in the Wild Rivers Act.

In the event of a property development plan being approved, the wild river declaration would, if necessary, be amended to allow for the development. However, any amendment of this nature would not alter the compliance requirements relating to other developments.

3.10 Regulation on mining

The belief was expressed by some submitters, that mining activities should not be allowed in a wild river area because of its negative environmental impacts.

Response

The Wild Rivers Act does not prevent mining development, but establishes a regulatory framework for development activities that is intended to preserve a river's natural values.

The most stringent regulations apply to activities, including mining, that are proposed for a high preservation area, with less stringent requirements applicable to preservation areas. In the preservation area, new mining activities must be set back from nominated waterways

Restrictions on mining tenements in declared wild river areas help preserve the wild river's natural values. In high preservation areas, surface mining is not permitted, exploration outside of watercourses or lakes can only involve low impact activities and exploration in-stream can only be conducted using limited hand-sampling techniques.

Further restrictions on the granting of mineral development licences, mining claims and prospecting permits in the high preservation area and in nominated waterways also contributes to the preservation of the river's natural values. Where mining operations can continue, conditions on mining tenements such as setbacks from nominated waterways apply and additional environmental impact statements and environmental management plans may be required under the Environmental

Protection Act. Development of these statements or plans must take into consideration any wild river declaration in place.

The declaration does not grant any exemptions in the Wenlock Basin Wild River Area. The declaration is not retrospective and for this reason, does not affect existing authorised activities such as authorisations under special agreement Acts.

3.11 Rio Tinto Alcan and special agreement Acts

Concerns were expressed about the potential for Rio Tinto Alcan to source large volumes of water under existing special agreement Acts such as the *Commonwealth Aluminium Corporation Pty Ltd Agreement Act 1957* and the *Alcan Queensland Pty Ltd Agreement Act 1965*.

Response

Rio Tinto Alcan's rights are set out in the *Commonwealth Aluminium Corporation Pty Ltd Agreement Act 1957* and the *Alcan Queensland Pty Ltd Agreement Act 1965* which are available for public consideration.

These special agreement Acts are not exempt from wild river requirements but rather, are recognised under Section 17 of the Wild Rivers Act as existing authorisations. As existing authorisations, Rio Tinto Alcan's existing water rights and its use of them are not affected by the declaration of the Wenlock Basin Wild River Area. It is for this reason that no detail on the rights contained in these Acts was included in the overview report

Despite this, in addressing stakeholder concerns, the department held discussions with Rio Tinto Alcan to negotiate the volume of water available for take from the Wenlock River. Rio Tinto Alcan agreed to reduce their existing entitlement to water to 90,000 megalitres. This volume represents the company's maximum annual requirement for its long-term plans. This volume of water plus the reserves of unallocated water represent 2.65 per cent of the average annual flow in the Wenlock Basin.

The government's position on the allocation of water in a wild river area is that—to ensure the protection of wetlands, waterholes and floodplains—no more than 1 per cent of water will be allowed to be drawn annually from wild rivers,. However, where existing water entitlements already exceed 1 per cent of mean annual flow, the proposed cap on water entitlements within the wild river area will be determined as close to 1 per cent of the mean annual flow as possible. The cap should include existing entitlements and, if feasible, a reserve of unallocated water to meet future strategic, general or legislative (e.g. *Cape York Peninsula Heritage Act 2007*) requirements.

The outcome of the discussions with Rio Tinto Alcan is therefore consistent with existing policy and, while supporting industry and the benefits that will flow from it, the figure represents a volume that is likely to have minimal impact on flows in the system or the overall health of the river.

3.12 Need for the Wild Rivers Act

The view was expressed that the Wild Rivers Act was unnecessary because protection of rivers and their natural values was provided by many other Acts.

Response

Prior to 2005, Queensland legislation did not provide for the holistic preservation of the natural values essential to maintaining the health of river systems from the effects of development. There was no express recognition of the linkages between the health of a river system and the broader catchment area. With the exception of the Nature Conservation Act, other Acts operate on the principle that there may be an acceptable level of environmental impact when balanced with other societal priorities and pressures. The Wild Rivers Act proactively preserves the existing near-natural values of rivers, rather than reactively attempting to rehabilitate river systems that have already been affected by development.

The *Wild Rivers Act* operates in conjunction with other legislation to ensure that wild river natural values are holistically considered as part of development assessment and resource allocation processes.

The Queensland Government continues to support and fund a range of complementary programs which include the Wild River Rangers program, weed and feral animal eradication programs, Q2 Coasts and Country, Blueprint for the Bush and the implementation of the Cape York Peninsula Heritage Act.

3.13 Specified works

There was a call in some submissions for seaports to be included in the definition for specified works set out under the Act.

Response

Where associated with mining activity, the construction of ports and other related infrastructure is dealt with through a process that requires an environmental authority. The process for assessing an application for an environmental authority will take into consideration any wild river requirements outlined in the Wenlock Basin Wild River Declaration.

The construction of ports and other related infrastructure which were not part of a mining activity, or not dealt with by a relevant environmental authority, can be considered on a case-by-case basis. Section 48 of the Wild Rivers Act provides a definition of infrastructure that may be assessed in this way. Specific amendments can be made to the Wild Rivers Regulation in instances where developments of this nature were to proceed.

3.14 Vegetation clearing for residences and infrastructure such as tourism

Submissions have raised concerns about provisions for vegetation clearing as they related to the Wild Rivers Code. This included a request for greater detail about the existing vegetation clearing laws associated with the building of residences.

Response

Existing vegetation clearing laws associated with residential construction and any reasonably associated buildings or structures are not altered or affected by the declaration of a wild river area. That is, the existing requirements continue to apply across the state including within a declared wild river area.

Section 22A (2) of the *Vegetation Management Act 1999* identifies the relevant purposes for which applications to clear native vegetation may be made. Section 22A (2A) then identifies which of these are not relevant purposes for clearing applications for a high preservation area.

Under the *Vegetation Management Act*, any of the following are relevant purposes for which an application to clear native vegetation may be made for a high preservation area:

- necessary to control non-native plants or declared pests
- to ensure public safety
- for establishing a necessary fence, firebreak, road or vehicular track, or for constructing necessary built infrastructure, and the clearing for the relevant infrastructure can not reasonably be avoided or minimised
- a natural and ordinary consequence of other assessable development for which a development approval was given under the repealed *Integrated Planning Act 1997*, or a development application was made under that Act, before 16 May 2003
- for clearing of encroachment
- for clearing regrowth vegetation on freehold land, indigenous land or leases issued under the *Land Act 1994* for agriculture or grazing purposes, in an area shown as a registered area of agriculture on a registered area of agriculture map in a wild river high preservation area.

Vegetation clearing for residences and infrastructure such as tourism can continue throughout the wild river area. If such a development were to involve the construction of buildings; for example accommodation buildings, then such a development would come under the *Vegetation Management Act* as a relevant purpose. This continues to be a relevant purpose for clearing in a high preservation area. An application for such clearing would need to meet the requirements of Part 12 of the Wild Rivers Code.

Clearing for establishing a new agricultural development is not a relevant purpose under the *Vegetation Management Act* whether in a wild river area or not.

These requirements are necessary to protect the natural values of the river system, and provide appropriate safeguards for the level types of development involved.

3.15 Effect of the wild rivers code on weed and pest management

Some stakeholders believed their ability to appropriately manage weed and pests would be limited because of the declaration.

Response

A wild river declaration and the Wild Rivers Code do not limit the control of declared, non-native weeds and pests in a wild river area. When clearing native vegetation for weed management in a high preservation area, the wild rivers code requirements are consistent with existing vegetation management codes. Applications for vegetation clearing permits and riverine protection permits can be made where clearing native vegetation is necessary for weed control.

3.16 In-stream dams and weirs on nominated waterways

One submitter believed nominated waterways should be protected by not allowing dams and weirs to be built in-stream.

Response

Throughout the state, the construction of in-stream barriers such as dams or weirs requires a development permit under Queensland's *Sustainable Planning Act 2009*. Additionally, if such works are proposed in a non tidal area, a licence to interfere under the *Water Act 2000* is also required. All such works would be required to comply with requirements of the Water Act as well as the requirements for waterway barrier works under the Fisheries Act.

For a declared wild river area, licences to interfere with water in the high preservation area will not be approved under the Water Act and applications to construct waterway barriers works will be refused under the Fisheries Act. In the preservation area and nominated waterways, these applications can be dealt with and assessed, and can proceed once a development permit is granted under the Sustainable Planning Act. A nominated waterway may also be, in part or in whole, a tidal waterway. Works for constructing a barrage or other in-stream barrier in tidal areas or coastal management districts will not be allowed.

In all areas other than in non-tidal areas, a licence to interfere with water will be required and this occurs under the process set out in the Water Act. Works must also comply with requirements for waterway barrier works dealt with under the Fisheries Act.

Existing prohibitions on in-stream barriers within wild rivers and major tributaries are considered sufficient to preserve the natural values of the wild rivers.

3.17 Levee bank size

Some stakeholders believed levee banks should be code assessable developments when they were 50 metres or more in length.

Response

The Wild Rivers Code regulatory requirements for construction of levee banks within the floodplain management area takes into account the size, volume and extent of flooding and the likely impacts of floodplain levee banks on overland flow paths. The code sets specifications for these type of works (including their length) to mitigate or moderate impacts on flood flows connected to the river, its major tributaries, and any special feature or nominated waterways. The following table summarises specifications for assessable and self-assessable levee banks in a floodplain management area.

Table 1. Assessable and self-assessable development in a floodplain management area

Levee banks	Length in metres	Self-assessable	Code-assessable
Associated with works that take overland flow	200	Yes	
	200+		Yes
Interfere with overland flow and associated with commercial, industrial developments or agricultural buildings	500	Yes	
	500+		Yes
<u>Not</u> associated with commercial, industrial developments or agricultural buildings	500+		Yes

At this stage, given there is limited development of works within the Wenlock Basin that would interfere with overland flood flows the department considers the existing provisions and code requirements to be adequate. The department will continue to monitor the extent of overland flow development on floodplains within the wild river area and will consider amending the Wild Rivers Code should this become necessary.

3.18 Private jetties and boat ramps

Stakeholders were concerned that the prohibition on building private jetties and boat ramps in a wild river area would unreasonably limit their ability to effect property improvements.

Response

Indigenous communities across the Cape York Peninsula are concerned that the prohibition on building private jetties and boat ramps would impact on plans to

improve access to existing outstations or to establish access for new outstations or tourism developments.

The department consulted extensively with communities to resolve the issue and subsequently amended the Wild Rivers Regulation 2007 to define boat ramps, jetties and pontoons used to access to Indigenous lands as specified works. Applications for this type of development can now be made.

3.19 Commercial Fishing

Concerns were raised about the impacts of commercial fishing on fisheries.

Response

The development and implementation of a commercial fishing plan is beyond the scope of the wild rivers program. However, in deciding an application for a commercial fishing licence, the chief executive responsible for the Fisheries Act must consider the relevant natural values of the Wenlock Basin Wild River. Concerns raised on this issue have been forwarded to the Department of Employment, Economic Development and Innovation as the relevant agency.

4. Other issues

4.1 Management of wild river areas

Additional issues raised by stakeholders concerned the Wild Rivers Rangers Program and its funding requirements, the powers held by rangers to deal with compliance activities and other land management programs.

Response

The Wild River Rangers program

The Queensland Government's Wild River Rangers program was developed to support the preservation of the natural values of Queensland's wild rivers. These rangers play a key role in ensuring this occurs by managing feral animals and weeds, managing fire, gathering scientific data and information on local species, recording traditional stories and managing visitor activity. Presently, 27 Aboriginal wild river rangers are based at various locations throughout the Gulf of Carpentaria and Cape York Peninsula, and a further three positions are being established.

The government is committed to employing up to 100 wild river rangers and is aware of potential concerns over rangers 'crossing' clan boundaries. To date, there have been no concerns formally raised, or examples given, where boundary issues have caused problems. If this were to occur, the matter would be dealt with through normal staffing rosters and operations managed by the relevant ranger coordinators.

Resourcing for land management

A wild river declaration does not deal with specific land management issues at the day-to-day operational level. However, a range of government and non-government organisations provide support and focus to resource management bodies and land and sea centres involved in weed and pest management programs. State agencies and local governments also undertake various land management activities, such as feral animal and weed control and revegetation programs. In addition, numerous state and federal government initiatives support community-based natural resource management programs.

In addition, the Wild River Rangers program provides employment and training opportunities for Indigenous people, enabling them to play a key role in ensuring that goals of the wild rivers program are achieved. The department will continue to work with other state agencies to ensure that programs continue to support the aspirations of Indigenous communities.

4.2 Environmentally relevant activities

Amendments to the *Environmental Protection Act 1994* and the new Environmental Protection Regulation 2008 came into effect on 1 January 2009. The amendments included changes to section 73AA of the Environmental Protection Act which deals

with environmentally relevant activities (ERAs) in wild river areas. The amendments introduced new terminology and definitions to describe ERAs in the Environmental Protection Regulation. These changes are reflected in the final declaration. The overall regulatory effect of the amendments is no different to the arrangements that previously applied.

4.3 *Sustainable Planning Act 2009*

The declaration proposal referred to the *Integrated Planning Act 1997* as the primary Act dealing with development in Queensland. This Act replaced the *Integrated Planning Act 1997* on 10 December 2009. The overall effect on development applications and activities is no different to the arrangements that were previously in force.

5. Conclusion

The Wenlock Basin is one of several river basins on Cape York Peninsula that has strong hydrological integrity with relatively little disturbance to both water flows and vegetation. The Wenlock Basin Wild River Declaration will play an important part in preserving the health and value of this unique river system, which has been largely untouched by development.

The declaration provides a framework for regulating new development activities in a way that will ensure that the natural values of the river basin will be preserved. It is also consistent with goals of the Queensland Government's *Toward Q2* program which promotes protection of the state's natural assets for current and future generations.

This report reflects the key role that the consultation process and subsequent submissions have had in the wild river declaration process and highlights the breadth of issues that were raised through the consultation process and how those issues have been addressed in finalising the Wenlock Basin Wild River Declaration.

Appendix 1: Map of Wild Rivers Management Area Extent

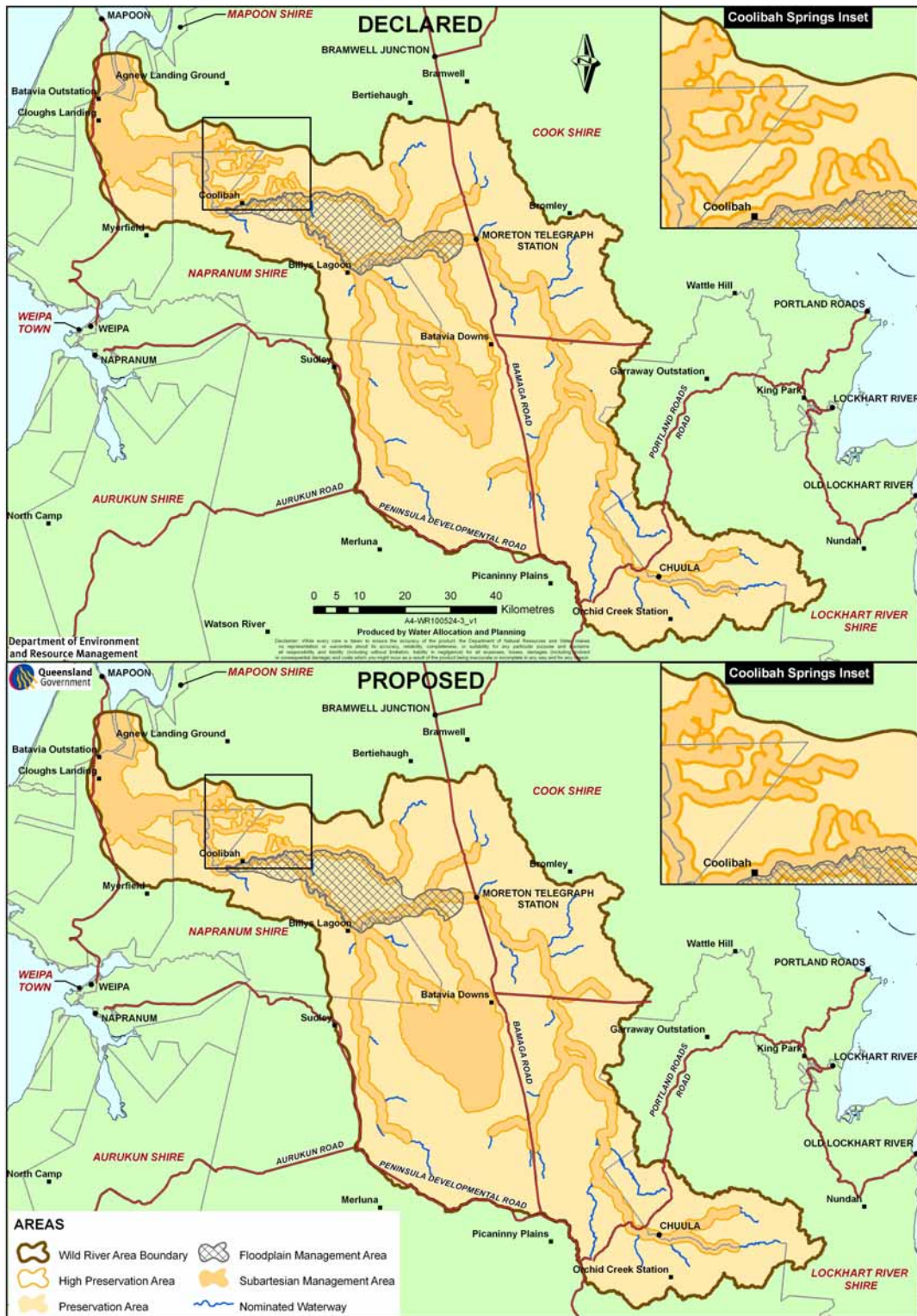


Figure 1 – Extent of management areas as declared and as originally proposed.

Appendix 2: Reference of issues as raised this report and in the issues report

Table 2. Issues addressed in this consultation report, and the corresponding sections of the Wenlock Basin Wild River Declaration Proposal Issues Report

Description of issue	Consultation report section	Issues report section
The basis for the volume of the Indigenous reserve of unallocated water	2.11	2.1
Rio Tinto Alcan and special agreements Acts	3.12	2.2
Overland flow	2.11	2.3
Water licence conditions	2.10	2.4
Extent of high preservation area	2.4	2.5
Extent of subartesian management area	2.6	2.6
Additional special features	2.7	2.7
Designated urban area	2.9	2.8
Determination of wild river area boundary	2.3	2.9
Major tributaries	2.8	2.10
High preservation areas and national parks	2.5	2.11
Levee bank size	3.18	2.13
Determination of wild river area boundary	2.3	2.14
In-stream dams and weirs on nominated waterways	3.17	2.15
Increased red tape	3.9	2.16 & 2.17
Protecting Aboriginal cultural values	3.5	2.18
Land tenure resolution	3.3	2.19
Commercial fishing	3.19	2.20
Indigenous Natural and Cultural Heritage Resource Management Plan (INCRMP)	3.7	2.21
Wild rivers terminology	3.1	2.22
Native title	3.4	2.23
Indigenous human rights and land use	3.6	2.24
Consent of Indigenous people	3.8	2.25
Rio Tinto Alcan and special agreements Acts	3.12	2.26
Regulation on mining	3.11	2.27
Vegetation clearing for residences and infrastructure such as tourism	3.15	2.28 & 2.29
Management of wild river areas	4.1	2.30
Development opportunities	3.10	2.31
Nomination and supporting material	2.2	2.32
Consultation	2.1	2.33
Additional issues included in consultation report		
Specified works	3.14	
Private jetties and boat ramps	3.19	
Environmentally relevant activities	4.2	
<i>Sustainable Planning Act 2009</i>	4.3	