



**EDO-NQ
FACTSHEET SERIES**

**WET TROPICS
WORLD HERITAGE AREA**

THE WET TROPICS WORLD HERITAGE AREA

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

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THE WET TROPICS WORLD HERITAGE AREA

This factsheet is intended as a plain English guide to a particular area of law. It is not legal advice and is not intended as a comprehensive examination of the legislation. Whilst all care has been taken in its preparation, it is not a substitute for legal advice in particular situations. If you have a specific problem you should seek legal advice.

INTRODUCTION

The Wet Tropics World Heritage Area ('the Area') is a 900,000 hectare protected area comprising lowland and mountain rainforest extending between Cooktown and Townsville in North Queensland.

The Area consists of more than 600 individual land parcels of diverse tenure including national parks, state forests, vacant and leasehold Crown lands (all of which are potentially subject to native title claims), as well as freehold properties¹.

Maps of the Area and its four management zones (outlined below) are available from the Wet Tropics Management Authority.

The Area was given World Heritage listing under the Convention Concerning the Protection of the World Cultural and Natural Heritage ('the World Heritage Convention'), on 9 December 1988. This listing was given in recognition of the World Heritage Values of the Area, namely that the Area:

1. *Represents (8) major stages of the Earth's evolutionary history.* In particular the rainforests of the Area are internationally recognised as being very significant in the origin, evolution and dispersal of flowering plants (angiosperms).
2. *Provides outstanding examples of ongoing geological and biological processes.*
3. *Contains superlative natural phenomena and areas of natural beauty.* The Area's major landforms include steep to undulating plateaus lying between 600m and 900m, mountain peaks rising to 1622m (Mt Bartle Frere), and coastal lowlands

¹ An overview of land tenure for the Area can be found on the Wet Tropic Management Authority's website www.wettropics.gov.au/ under Site Map/Rules and Regulations/Land Tenure.

linking to the higher country through steep escarpments, ranges and foothills. The escarpments are characterised by deeply incised valleys and streams.

4. *Contains the most important natural habitats for the conservation of biological diversity.* Vegetation within the Area is mainly rainforest, but also includes species rich mangrove forests, wet sclerophyll forests and tall open forests. The Area is home to more than 3000 plant species, and at least 25 species of vertebrate animals in the Area are regarded as very rare, found only in small areas or in danger of extinction.²

In 1993 the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) ("the Act") was passed by Queensland Parliament, to provide for the implementation of Australia's international obligations set out in the World Heritage Convention. Commonwealth legislation has also been passed, essentially for constitutional reasons. This legislation has very little impact on the day to day management of the Area.

1. WHICH AGENCIES ADMINISTER THE AREA?

The Management Scheme for the Area³ provides for the establishment of the Ministerial Council, the Wet Tropics Management Authority, the Community Consultative Committee and the Scientific Advisory Committee.

1.1 The Ministerial Council ("the Council")

The Council consists of four members, with two members nominated by each of the Queensland and Commonwealth Governments and chaired by the Queensland Minister for Environment ('the Minister').

The function of the Council is to coordinate policy and funding for the Area between the State and the Commonwealth at a Ministerial level. The Ministerial Council also approves management plans and appoints the Wet Tropics Board.

² Extracted from pp.3-4 of 'Protection Through Partnerships - Policies for implementation of the Wet Tropics Plan' produced by the Wet Tropics Management Authority (August 1997). More Information on the Area and its World Heritage Values is contained in 'The Wet Tropics in Profile', also produced and available from the Authority.

³ The Management Scheme is set out in Schedule 1 of the Act.

1.2 The Wet Tropics Board ("the Board")

The Board is made up of six directors and reports to the Ministerial Council. It is responsible for the way the Wet Tropics Management Authority ("the Authority") performs its functions and exercises its powers. The Board meets several times a year to discuss and prioritise the Authority's objectives, strategies and policies. The Executive Director of the Wet Tropics Management Authority is a non-voting member of the Board.

1.3 The Wet Tropics Management Authority ('the Authority')

The Authority is the principal agency for managing the Area. The functions of the Authority include:

- the development and implementation of policies, programs and management plans for the Area;
- entering into cooperative management agreements with the Area's land-holders, including its Aboriginal people;
- arranging rehabilitation and restoration works for damaged land in the Area;
- instigating research and distributing information about the Area;
- developing community education programs about the Area;
- monitoring the state of the Area.

The Authority must perform its functions:

- consistent with the protection of the natural heritage values of the Area;
- having regard to the traditions of Aboriginal people and in cooperation with them;
- consistent with the objectives and principles of the National Strategy for Ecologically Sustainable Development.

The Authority has about 30 staff members.

1.4 The Community Consultative Committee ('the CCC')

The function of the CCC is to advise and report to the Authority on views of the community relating to the Area, including the Authority's policies and programs.

The CCC includes representatives from local government, the scientific community, conservation, industrial unions, education, recreation, the Aboriginal community, tourism, mining, primary production and those with outstanding local knowledge of the Area. The CCC is required to meet at least twice yearly, and its members have a duty to consult with the community they represent.

1.5 The Scientific Advisory Committee ('the SAC')

The function of the SAC is to advise the Authority about:

- scientific research that will contribute to the protection and conservation of the Area; and
- scientific developments relevant to the protection and conservation of the Area.

The five core SAC members are drawn from a range of disciplines relevant to the management of the Area including the physical, biological and social sciences.

1.6 The roles of State Government Departments and Local Government

The Department of Natural Resources and Mines ('DNRM') is responsible for land management in the Area.

The Forestry Management Group of the Queensland Parks and Wildlife Service ("QPWS") is now responsible for resource and custodial management for all Queensland land tenures under the *Forestry*. For example QPWS is responsible for the management of State Forests and Timber Reserves. Before the 1999 State election, the Forestry Management Group was part of the old Department of Natural Resources. However, after the election, as a result of the Machinery of Government Changes, the Forestry Management Group was moved from the Department of Natural Resources to the QPWS.

QPWS is also responsible for managing protected areas (which include national parks) and protected wildlife declared under the *Nature Conservation Act 1992*

(Qld). There are significant numbers of protected wildlife and areas within the Wet Tropics World Heritage Area.

The Queensland Department of Main Roads is responsible for managing State-controlled roads within the Area. This includes transport planning, road construction and maintenance, which are functions intended to be carried out according to agreed codes of practice developed between the Authority and the Department.

The Queensland Department of Primary Industries is responsible for the management of agricultural practices (including fisheries) and commercial forestry operations (that is, the sale of forest products) throughout Queensland⁴.

The Area also contains a number of local government districts, within which each local government is responsible for land use planning and development assessment under Queensland's *Integrated Planning Act 1997* ('IPA').

The Management Plan for the Area provides for the regulation of all activities conducted within the Area that have a capacity to adversely impact on World Heritage values or the enjoyment of those values, in which case a Wet Tropics permit may be required (as outlined below).

The Authority has established integrated permitting arrangements with DNR and QPWS whereby those agencies can assess Wet Tropics permit applications in accordance with the Management Plan (outlined below), concurrently with the assessment of permit applications made under other Queensland legislation for which they are responsible (eg Forestry Act, NCA, Land Act).

In contrast development applications for activities within the Area requiring assessment under the Integrated Development Assessment System ('IDAS') of IPA are separately assessed by the Authority under the Management Plan, and by the relevant local government under IPA (outlined below).

2. THE WET TROPICS MANAGEMENT PLAN

2.1 The Significance of the Wet Tropics Management Plan (the 'Management Plan')

⁴ Timber harvesting is prohibited under the Management Plan.

The purpose of the Management Plan is to protect the Area's World Heritage values.

The Management Plan commenced operation on 1 September 1998.

In summary the Management Plan⁵:

- establishes four types of management zones for the Area (see 2.2 below);
- provides for the regulation of activities within the Area ie. Sets out whether certain activities are prohibited, or allowed with or without a permit;
- provides for the Authority to enter into cooperative management agreements with the Area's land-holders, including its Aboriginal people;
- establishes a permit application process for the Authority to make permit decisions;
- provides for the review and appeal of permit decisions;
- provides for agencies other than the Authority (eg. DNRM & QPWS) to make permit decisions;
- establishes an application process for land use rezoning within the Area by local government; and
- lists Undesirable Plants and Animals for the Area.

2.2 The Management Zones

The Plan divides the Area into four management zones which are set out in the zoning map.⁶ The type of regulation for an activity depends upon the zone in which

⁵ An overview of the Plan can be found on the Authority's website www.wettropics.gov.au/. Go to Site Map/Rules and Regulations/Wet Tropics Plan.

⁶ For further information, see 'Policies for Implementation of the Wet Tropics Plan' produced by the Authority (August 1997) at page 33. An outline of the various zones can also be found on the Authority's website www.wettropics.gov.au/. Go to Site Map/Rules and Regulations/Zones.

the activity is proposed. In general, more stringent restrictions apply in zone A followed by zone B (new infrastructure is generally prohibited in zones A and B), followed by zone C, followed by zone D (to which the least stringent restrictions apply).

Zone A: remote natural areas

Zone A is comprised of land that is of high integrity, remote from disturbance and where there is no obvious management presence.

The management purpose⁷ of zone A is to the greatest possible extent:

- to protect the integrity of the land in the zone; and
- if the land is disturbed - to restore the land to its natural state.

Zone B: semi-remote natural areas

Zone B is comprised of land that is mostly of high integrity but not necessarily remote from disturbance, with any management presence limited to activities required for the recovery or maintenance or rehabilitation of the area.

The management purpose of zone B is to the greatest possible extent:

- to protect the integrity of the land in the zone; and
- if the land is disturbed:
 - to restore land in the zone to its natural state; and
 - to include the land in zone A once it is sufficiently recovered or rehabilitated.

Zone C: community service infrastructure⁸

Zone C is comprised of land on which or adjacent to which there is disturbance associated with community services infrastructure, where management presence may be obvious.

The management purpose of zone C is:

- to accommodate community services infrastructure, other community facilities and visitor facilities; but
- to the greatest possible extent:
 - minimise any adverse impacts of activities carried out in the zone;

⁷ The intended physical and social setting and management purpose for each of the zones are set out in Part 2 of the Plan.

⁸ "Community services infrastructure" is defined in Schedule 3 of the Plan to mean infrastructure for community services such as transport services, electricity supply, water supply and telecommunications services.

- and
- otherwise protect and enhance the integrity of the land in the zone.

Zone D: visitor facility nodes

Zone D is comprised of land on which there can be developed facilities to enable visitors to appreciate and enjoy the Area. There will be an obvious management presence on such land.

The management purpose of zone D is:

- to accommodate facilities for:
 - presenting the area to visitors; and
 - enabling visitors to enjoy land in the zone and in nearby parts of the Area; but
- to the greatest possible extent:
 - minimise any adverse impacts of activities carried out in the zone; and
 - otherwise protect and enhance the integrity of the land in the zone.

2.3 Types of activities regulated under the Act and Plan

Prohibited Activities under the Act:

Section 56 of the Act provides that a person must not do or attempt to do a 'prohibited act' within the Area unless a person is the holder of a licence, permit or other authority. The maximum penalty for engaging in a prohibited act without authority is \$228,000 (300 penalty units), or imprisonment for 2 years or both.

It should be noted that section 56(2) provides that "to remove any doubt, subsection (1) does not affect any rights that Aboriginal people have in relation to forest products under another law."

Section 56 prohibits certain commercial forestry issues and the destruction of forest products (ie native plants).

Section 56 of the Act also provides exemptions to the prohibition on the destruction of forest products where such destruction is carried out as part of an allowed act under Part 3 Division 3 of the Act or a permit under Part 3 Division 4 of the Plan or by virtue of an agreement entered into under section 41 or 42 of the Plan.

The provisions of the Plan that regulate activities in the Area:

Section 22 of the Plan provides the framework for control of activities carried out in the area by:

- prohibiting certain activities;
- allowing certain activities which would otherwise be prohibited to be carried out (either under a permit or without a permit); and
- providing exemptions for certain activities that destroy forest products, the effect of which is that a person does not commit an offence against section 56 of the Act when carrying out those exempted activities.

Prohibited Activities and the Permitting Process

Part 3 Division 2 of the Plan sets out prohibited activities. It also provides exceptions where the activity is lawfully carried out under Part 3 Division 3 (allowed activities in all zones without a permit) or Part 3 Division 4 (activities allowed with a permit) or an agreement entered into under section 41 of the Plan (cooperative management agreements) or section 42 of the Plan (other agreements varying plan controls).

Application to Native Title Holders

Section 32(3)(b) explains how the permitting provisions of section 33 and 32 apply to native title holders. Specifically section 32(3)(b) provides that if a person has a native title right or interest then the permitting provisions apply subject to section 211 of the Native Title Act 1993 (Cth). Section 211 limits the operation of laws that would otherwise prohibit or restrict native title holders from exercising certain native title rights (like hunting and fishing) other than under a licence, permit or other instrument.

Section 35 provides that permits can be granted to ordinary title holders and native title holders to carry out domestic activities. These are listed as

- (a) building a residence on the land; or
- (b) clearing or building a pedestrian or vehicular access to a residence on the land;
- (c) establishing a house garden or orchard on the land other than for commercial purposes; or
- (d) extracting water for domestic use.

* For further details regarding the regulation of activities in the Area by the Act and Plan, contact EDO-NQ.*

2.4 Permit Application Process⁹

Where a person proposes to engage in an activity requiring a Wet Tropics Permit the decision-making process comprises four stages:

1. Making the application: which includes provision for the permitting authority to request further information.
2. Assessing the application: the permitting authority has 60 days after the application is made to decide upon the application in accordance with specified assessment criteria.
3. Notification of decision: the permit decision is placed in the register of permit decisions which may be inspected by members of the public.
4. Review of decision: review of the permit decision can be requested by the permit applicant only.

1. Making the Application

The person proposing to engage in the activity requiring a permit is required to complete and submit an application form to the Authority or to the relevant State government department where there are integrated permitting arrangements in place or where a license/permit or other authority is required under another piece of State Government legislation in addition to under the Wet Tropics Act. Part 6 of the Plan deals with the issue of permits by entities other than the Authority.

The State Government departments with which there are currently integrated permitting arrangements are:

- The DNRM in the case of landholders with leases (eg. pastoral leases) or permits (eg. stock grazing permits) over public lands within the Area such as State Forests or Timber Reserves;

⁹ An outline of the permit system can be found on the Authority's website www.wettropics.gov.au/ under Site Map/Rules and Regulations/Permit System.

- The QPWS in the case of protected areas (which include national parks) and protected wildlife declared under Queensland's *Nature Conservation Act 1992*.

If the activity for which the permit is sought is to be carried out in a protected area as defined under the NCA but does not require a permit under the NCA, then the Authority is responsible for the issuing of the Wet Tropics Permit and must do so only if satisfied the activity would be consistent with the management principles prescribed for the protected area under the NCA.

Section 80 provides that a State Government department/agency must not issue a Wet Tropics Permit without first obtaining approval from the Authority.

Activities requiring development approval under the Integrated Planning Act (IPA) are separately assessed by the Authority under the Plan and by the relevant local government under IPA. Similarly, activities which require the approval of other State government departments such as the Queensland Department of Main Roads (State-controlled roads), and the Queensland Department of Primary Industries (agricultural practices including fisheries) may require a permit from the Authority under the Plan in addition to a permit from the relevant State government department.

The permitting authority may by written notice require the applicant to provide more information or documents relevant to deciding the application, including an environmental impact assessment for the proposed activity meeting standard terms of reference¹⁰.

2. Assessing the Application

The permitting authority has 60 days in which to decide upon the application by issuing the permit (with or without conditions) or refusing it.

¹⁰ Section 47 of the Plan provides for the Authority to require more information from the applicant, including an environmental impact assessment (EIA). However section 47(5) qualifies that an EIA may only be sought if the Authority considers:

- a) the proposed activity might have an impact on the Area's integrity that is unacceptable under the Plan; and
- b) it would be reasonable to ask for the assessment having regard to the significance of the proposed activity.

Permit Assessment Considerations

The permitting authorities **MUST** consider the following principles and criteria in deciding permit applications and imposing any conditions.¹¹

- 1) **Area integrity:** The most important consideration for deciding the application is the likely impact on the Area's integrity, in particular the characteristics of the zone in which the activity is proposed to be carried out and any nearby zone that may be affected.
- 2) **The precautionary principle:** The precautionary principle, namely the principle that 'if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation', must be taken into account when deciding the permit application.
- 3) **Prudent and feasible alternatives:** Prudent or feasible alternatives, which may reduce impacts, including any alternative locations or ways of carrying out the activity, must also be taken into account.
- 4) **World Heritage Values:** The Authority must decide the application in a way that minimises the likely impact of the proposed activity on the area's world heritage values. In doing so the Authority must have regard to:
 - wildlife prescribed under the NCA as presumed extinct, endangered, vulnerable or rare and their habitats;
 - other threatened plant and animal communities and natural ecological processes; and
 - cultural values, potential cumulative impacts on the area's integrity and the scenic amenity of the area.
- 5) **Community considerations:** In particular, the proposed activity's potential impact on:
 - a landholder, including native title holder or any other Aboriginal people concerned with the land;
 - the amenity of the area;
 - the community need for and involvement in the proposed activity; and

¹¹ The principles and criteria for deciding permit applications are set out in part 4 Div 2 (sections 55 - 61) of the Plan.

- any other relevant social, economic and cultural effects must be taken into account.

6) **Carrying capacity:** of the land in terms of the impact of an activity on the integrity of its World Heritage Values and the quality of the experience enjoyed by visitors, must be considered.

Permit conditions and financial assurances

The Authority can issue a permit subject to conditions it considers appropriate¹², including those necessary to:

- (a) prevent, minimise or monitor any adverse impact the proposed activity may have on the Area's integrity; or
- (b) rehabilitate the Area while carrying out the activity or after the activity has ended.

The Authority can also impose conditions that the applicant comply with a code of practice for the activity¹³, and that the applicant pay a reasonable amount¹⁴ as security or a performance bond for compliance with other conditions of the permit.

Section 80 of the Plan provides for approval, approval with conditions or refusal by the Authority of decisions of other permitting authorities¹⁵.

3. Notification of Decision

As soon as practicable after deciding the application the Authority must record the decision in the register of permit decisions (including any conditions applying to the permit and the reasons for decision) and give the applicant written notice of the decision¹⁶.

After notice is given, an applicant has 60 days to ask the Authority to review its decision.

¹² Section 51 of the Plan sets out the type of permit conditions the Authority can impose.

¹³ Section 51(3) of the Plan.

¹⁴ Section 52(2) of the Plan sets out the criteria which the Authority must consider in deciding the amount of a financial assurance.

¹⁵ Section 80 of the Plan

¹⁶ Section 54 of the Plan provides for the keeping of a register of permit decisions by the Authority.

Public rights to obtain information about permit applications and decisions

While interested members of the public have rights to inspect the register of permit decisions, there is no express provision for:

- public notification of permit applications;
- public rights to inspect or obtain the permit application and accompanying documents;
- the making of submissions about permit applications and their consideration by the Authority;
- public notification of decisions;
- public rights to review or appeal decisions.

If the permitting authority fails to provide documents relating to the permit application or decision in accordance with your written request, you should consider making a freedom of information (FOI) request.

4. Rights to review and appeal permit decisions

Within 60 days after notice of decision is given, the applicant for a permit has a right to ask the Authority to review its decision¹⁷. The review decision must also be recorded in the decision register. After notice of the review decision the applicant has 60 days to appeal to the Planning and Environment Court against the decision¹⁸.

Interested members of the public are not entitled under this Act:

- to seek a review decision or obtain written reasons for decision additional to those contained on the decision register; or
- appeal a review decision to the Planning and Environment Court.

If you are dissatisfied about a decision and believe you are 'adversely affected' by it you may be able to request a statement of reasons under section 32 of the *Judicial Review Act 1991*, and potentially seek judicial review of the legal merits of the decision in the Supreme Court. However because of your potential liability for costs EDO-NQ recommends you seek legal advice before bringing any Supreme Court action.

¹⁷ Section 68 of the Plan provides for applicants to request the Authority to review a permit decision.

¹⁸ Sections 70-75 of the Plan outline applicants' appeal rights to the Planning and Environment Court, and the hearing procedures and powers of the court in such appeals.

2.5 Land-holders and Native Title holders under the Plan

Subject to rights existing under the native title legislation the Plan can apply to native title holders in the Area to the same extent as ordinary title holders¹⁹.

The Plan provides that land-holders (ie. ordinary and native title holders) and persons acting with their permission, may carry out certain 'allowed activities' without a permit including²⁰:

- any activities which can be characterised as promoting the world heritage values of the land;
- driving on a lawful access road for the land;
- disposing of waste on the land, but only if:
 - there is no regular waste removal service;
 - the land is at least 20km by road from the nearest general waste disposal facility; and
 - the waste is disposed of in a way that causes the least adverse impact on the land's integrity.

The Plan also provides that certain other 'domestic activities' may only be carried out by land-holders and persons acting with their permission in accordance with a Wet Tropics permit, including²¹:

- building a residence on the land;
- clearing or building a pedestrian or vehicular access to a residence;
- establishing a housegarden or orchard other than for commercial purposes;
- extracting water for domestic use.

Land-holder activities which can be characterised as causing no more than minor

¹⁹ Section 23 of the Plan provides that subject to native title rights under the Native Title Act 1993 (Cwlth) and the Native Title (Queensland) Act 1993, the Plan can apply to native title holders to the same extent as ordinary title holders.

²⁰ Section 29 of the Plan sets out certain 'allowable activities' by land-holders (including native title holders).

²¹ Section 35 of the Plan sets out the 'domestic activities' for which a land-holders requires a Wet Tropic Permit. Note: that Information Sheet No.5 entitled 'Freehold Land in the World Heritage Area' produced by the Authority asserts that 'the Plan guarantees a permit for domestic activities'. Section 35 of the Plan contains no such guarantee, in which case the Authority is still required to consider a permit application against the mandatory assessment criteria set out in section 55-61 of the Plan.

and inconsequential impacts²² do not require a permit.

Section 40 of the Plan provides that when a person with or claiming rights to land within the World Heritage Area seeks to negotiate with the authority as to the exercise of rights, the Authority must negotiate.

2.6 Cooperative Management Agreements ('CMAs')

CMAs provide a mechanism to allow the Authority to negotiate with people about their activities within the Area, provided any resulting agreement is consistent with achieving the primary goal of promoting the World Heritage Values of the Area²³.

Typically these CMAs are made with land-holders who receive some kind of financial, scientific or technical assistance from the Authority in return for agreeing to:

- not carry out an activity otherwise lawful under the Plan eg. grazing animals; or
- promote the World Heritage Values of their land, for example controlling weeds and restoring native vegetation.

If you would like information about negotiating a CMA then you should contact the Authority.

3. INTEGRATION WITH OTHER LEGAL AND PLANNING PROCESSES

3.1 Local Government Planning Schemes and development approvals

If there is any inconsistency between the Wet Tropics Management Plan (or other management plan) and a Local Government Planning Scheme, then the Plan prevails

²² Section 28 of the Plan sets out activities with minor and inconsequential impacts. Examples are maintaining a residence, bushwalking or camping in the area and taking water from a water course for personal consumption.

²³ Section 41 of the Plan provides for the making of cooperative management agreements (CMAs). An overview of CMAs can be found on the Authority's website www.wettropics.gov.au/ under Site Map/Partnerships/CMAs.

over the planning scheme to the extent of the inconsistency²⁴.

Similarly local authorities such as a local government must not give approval for any development on land in the Area that is inconsistent with the Plan (or other management plan)²⁵.

Initially development proposals under IPA within the Area will be assessed separately by the Authority under the Plan and by the relevant local government under IPA. However it is intended that activities requiring a development approval under IPA will eventually be assessed under the IPA *Integrated Development Assessment System* (IDAS), whereby the Authority acts as a 'concurrence agency'²⁶ under the IDAS process. This integration of the Wet Tropics Permit system into the IDAS process requires legislation to be passed.

Local government can apply to the Authority to alter the zoning of land from Zone B (semi-remote natural area) to Zone C (community service infrastructure) where it wishes to carry out 'essential community services infrastructure'²⁷. In assessing such an application the Authority must require the local government to conduct an environmental impact assessment and give public notice of the application. The Authority must consider all properly made submissions from the public in its decision-making.

The Authority can only grant the rezoning application if satisfied the activity is necessary to provide essential community services infrastructure and meets the mandatory assessment criteria (outlined above)²⁸ required to be considered for a permit application for an activity within Zone C. Only the relevant local government can seek a review of the Authority's decision and appeal to the Planning and Environment Court.

²⁴ Section 49 of the Act provides that Plans prevail over planning schemes.

²⁵ Section 50 of the Act provides that local authorities' decisions are to be consistent with management plans.

²⁶ As a concurrence agency the Authority can make an information request under the Information and Referral stage of IDAS, and upon a proper assessment can decide the development application should not proceed or can only proceed subject to conditions.

²⁷ "Community services infrastructure" is defined in Schedule 3 of the Plan to mean infrastructure for community services such as transport services, electricity supply, water supply and telecommunications services. The requirements for Rezoning Applications By Local Government are set out in Schedule 1 of the Plan.

²⁸ The principles and criteria for deciding permit applications are set out in sections 55-61 of the Plan.

3.2 Role of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) ('EPBC Act')

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* ("EPBC Act") came into force on 16 July 2000. The EPBC Act provides an overarching Federal system of environmental assessment and approval of specified matters of "national environmental significance", which sits on top of the state and local government environmental legal system.

The world heritage protection provisions of the EPBC Act replace the *World Heritage (Properties Conservation) Act 1983* (Cth) and therefore it is now the EPBC Act that is primarily responsible for ensuring the Australian government's management of its World Heritage Areas, including the Wet Tropics World Heritage Area.

The EPBC Act operates in addition to and separately from the Wet Tropics Act and Management Plan and is designed to provide an overarching protection. The EPBC Act assessment and approval provisions will be triggered when an action taken in or outside the Wet Tropics World Heritage Area, is having will have or is likely to have a significant impact on a matter of national environmental significance. This will be the case even if the activity has been allowed to take place under the Wet Tropics Act/Wet Tropics Management Plan.

The EPBC Act is divided into two parts. The first part creates processes for the assessment and approval of actions which have, will have or are likely to have a significant impact on one of a number of listed matters of national environmental significance (including the World Heritage values of a declared World Heritage property) and creates fundamental duties not to take actions which have, will have or are likely to have a significant impact on one or more of the matters of national environmental significance.

The second part of the EPBC Act attempts to establish a consolidated regime for the identification, management and protection of biodiversity in Australia.

EPBC Act Part 1 - Assessment and Approvals

The following provisions of Part 1 of the EPBC Act are relevant to the Wet Tropics World Heritage Area.

Section 12 provides that a person must not take an action that has, will have or is likely to have a significant impact on the world heritage values of a declared World Heritage Area, unless certain circumstances, most notably the granting of an approval by the Minister for the Environment, apply. By virtue of section 12 then, a person is prohibited from taking an action that has, will have or is likely to have a significant impact on the World Heritage values of the Wet Tropics Area (these values are set out at the commencement of this fact sheet) without approval.

Section 18 provides that a person must not take an action that has, will have or is likely to have a significant impact on a listed threatened species or endangered community. This section also provides protection to the Wet Tropics World Heritage Area as any action impacting significantly on a threatened species located in the Wet Tropics World Heritage Area will be prohibited without approval from the Federal Government.

The onus of making a referral to the Minister for the Environment for a decision as to whether an action will have or is likely to have a significant impact on the World Heritage values of the Wet Tropics World Heritage Area is on the person proposing to take the action and there are significant civil and criminal penalties for failing to do so. There are also provisions under the EPBC Act for obtaining injunctions to prevent the taking of an action that is having, will have or is likely to have a significant impact on, inter alia, the World Heritage values of the Wet Tropics World Heritage area. Further, a third party can judicially review a decision of the Minister to declare, or not to declare an action a controlled action, under the *Administrative Decisions (Judicial Review) Act (Cth) 1977*. Because of the difficulty with this type of action however and the fact that costs can be awarded this type of action should not be undertaken without first seeking legal advice.

The utility or otherwise of the EPBC Act in protecting world heritage values of the Wet Tropics World Heritage Area and in fact any matters of national environmental significance, will depend to a large extent on the meaning of

"significant impact". Whilst the term is not defined by the EPBC Act, the federal government has published Administrative Guidelines to assist proponents, government agencies and the community in deciding whether a proposed action is having, will have or is likely to have a significant impact.

With respect to section 12 of the EPBC Act, the Administrative Guidelines provide that the impact of an action upon the World Heritage Values of a World Heritage property will be significant if one or more of the World Heritage values is lost or degraded or damaged. The Administrative Guidelines also provide that in deciding whether an action is likely to have a significant impact it is necessary to take into account the nature and magnitude of the potential impacts including:

- all on site and off site impacts
- all direct and indirect impacts
- the frequency and duration of the action
- the total impact which can be attributed to the action over the entire geographic area affected and over time.

It is therefore possible for an action to take place outside the Wet Tropics World Heritage Area and still to be deemed a controlled action. In this sense the EPBC Act is more powerful than the Wet Tropics Act/Management Plan which only regulates activities which occur inside the boundaries of the Wet Tropics World Heritage Area. Further clarification of the meaning of the term "significant impact" can now also be obtained from the Federal Court decision of Booth v Bosworth.

EPBC Act Part 2 - Identification, Protection and Management of Biodiversity

The following provisions of Part 2 of the EPBC Act are relevant to the Wet Tropics World Heritage Area.

Section 321 provides for preparation and implementation by the Commonwealth in cooperation with the relevant state, of management plans for all World Heritage Areas. Section 322 provides that the Plan is to be "not inconsistent" with Australia's obligations under the Convention or any plan that has been passed for managing the World Heritage property on question. Therefore, any management plan developed under the EPBC Act would be overridden by the Wet Tropics Management Plan 1998 if there were any inconsistencies. It is possible that the Wet Tropics Management Plan 1998 will be accredited by the Commonwealth. A note to section 321 specifically provides for a bilateral agreement between the

Commonwealth and the State adopting a management plan and providing for its implementation.

It should be noted that where the EPBC Act assessment and approval provisions are not triggered by an action taken in the Wet Tropics World Heritage Area (ie it is not found that the action is having, will have or is likely to have a significant impact on a matter of national environmental significance) that action will still be regulated by the Wet Tropics Management Plan. This is by virtue of section 10 of the EPBC Act, which provides that the Act is not intended to exclude or limit the concurrent operation of State law, except in so far as the contrary intention appears.

3.3 Controls under other Legislation

3.3.1 Nature Conservation Act 1992 (Qld) ("NCA")

The NCA is integral to the management of protected species in the Wet Tropics Area. The purpose of the NCA is stated simply to be "the conservation of nature".

This is attempted by:

- Dedicating and declaring protected areas;
- Identifying and listing protected wildlife (plants and animals) and establishing a licensing system for the taking, keeping or using of such wildlife;
- Managing protected, prohibited and international wildlife in accordance with management principles set out in the NCA;
- The preparation of conservation plans by the Minister under Part 7 of the NCA;
- The preparation of recovery plans for endangered or vulnerable wildlife, which is provided for by regulation;
- The identification of critical habitat and declaration of Nature Refuges over such areas by the Minister;
- The availability of Interim Conservation Orders under Part 5 of the NCA, for the conservation, protection or management of wildlife and its habitat, where the Minister is of the opinion that the threatening process is likely to have a significant detrimental effect on rare or threatened wildlife, a protected wildlife habitat that is critical habitat, an area of major interest or a protected area; and
- Entering into conservation agreements with land holders.

The NCA affords significant protection to the Wet Tropics World Heritage Area.

Located within the Wet Tropics World Heritage Area are a number of National Parks and other protected areas established under the *Nature Conservation (Protected Areas) Regulation 1994*, which are afforded protection by the NCA and are managed by QPWS. Further, the Wet Tropics houses a variety of plants and animals protected by the NCA. These plants and animals are deemed by the NCA to be the property of the State and are protected whether or not they are on freehold property²⁹.

Recovery and Conservation plans under the NCA have been implemented on various occasions in the Wet Tropics World Heritage Area (eg Mahogany Glider Recovery Plan). Further, the Minister can prevent, through the use of conservation orders, a land holder using his/her land so as to threaten wildlife or wildlife habitat. This power is exercisable in the Wet Tropics World Heritage Area. Conservation agreements can be entered into between land owners and QPWS. These conservation agreements are separate from cooperative management agreements entered into between land holders and the Wet Tropics Management Authority and have a more narrow function as they are directed specifically towards a particular species conservation. The NCA can also be used in the Wet Tropics World Heritage Area to unilaterally declare a nature refuge over critical habitat, irrespective of whether or not the land is privately owned.

It should be noted that if in relation to an area within the Wet Tropics World Heritage Area, a conservation plan under the NCA is inconsistent with the Wet Tropics Management Plan the Minister for the Environment must determine, by written notice, which plan is to prevail.³⁰ The Minister must consider the protection of the area's heritage, the protection of the biological diversity of the area's native wildlife and its habitat and any other aspects of the public interest that the Minister considers relevant (including financial considerations).³¹ The Minister may also have regard to other factors.³² The rights of Aboriginal people to native wildlife under another Act are not to be impacted upon.³³

3.3.2 The Land Act 1994 (Qld) ("Land Act")

The *Land Act* regulates non-freehold property in Queensland. Under the *Land Act* public purpose reserves may be declared for beach protection and coastal

²⁹ s 83 and 84 NCA

³⁰ s. 51(1) Wet Tropics Act

³¹ s. 51(2) Wet Tropics Act

³² s. 51(3) Wet Tropics Act

³³ s. 51(5) Wet Tropics Act

management, environmental purposes, natural resource management, open space and buffer zones, parks and gardens, scientific purposes and strategic management. A number of such reserves have been declared in the Wet Tropics World Heritage Area.

The *Land Act* also regulates tree clearing on state owned land, with the permit process being administered by DNRM. It should be noted with respect to this last function, that the Management Plan, which prohibits logging in the Wet Tropics World Heritage Area, overrides the *Land Act* provisions with respect to tree clearing.

3.3.3 Natural Resources and Other Legislation Amendment Act 2000 (Qld) ("NROLA")

The NROLA came into force on 8 March 2000. The NROLA amends the Land Title Act 1994 (Qld) with respect to freehold land and the Land Act 1994 (Qld) with respect to non-freehold land held under lease, to allow registration of binding covenants in relation to the use of land or buildings or the conservation of physical or natural features. As this is a relatively new piece of legislation, the potential of these covenants and the use to which they may be able to be put in the Wet Tropics World Heritage Area is not yet clear.

3.3.4 Vegetation Management Act 1999 (Qld) ("VMA")

The VMA regulates to a relatively limited extent the clearing of native vegetation on freehold land. This is achieved through amendments to schedule 8 of the Integrated Planning Act 1997 (Qld) ("IPA"), which makes clearing of native vegetation on freehold land assessable in some circumstances. There is some freehold land within the Wet Tropics World Heritage Area, however, the Wet Tropics Management Act/Plan provisions which prohibit forestry operations on land within the Wet Tropics World Heritage Area would prevail over any approval to undertake clearing that might in ordinary circumstances be given under the VMA.

4. INVESTIGATION AND ENFORCEMENT POWERS

4.1 Powers of authorised officers

The powers of authorised officers³⁴ include the power to:

- Stop and search vehicles, including a boat or aircraft;
- Enter and search a place with the consent of the owner or in accordance with a monitoring warrant, for the purposes of finding out whether the Act is being complied with;
- Require a name and address;
- Require the provision of answers to questions relevant to enforcement of the Act.

It is an offence to obstruct an authorised officer, or provide false or misleading information and documents (maximum penalty of \$7,600 - 100 penalty units).

4.2 Offences for prohibited activities

Section 56 of the Act provides that a person cannot do or attempt a 'prohibited act' within the Area unless a person is the holder of a licence, permit or other authority. The maximum penalty for engaging in a prohibited act is \$228,000 (300 penalty units), or imprisonment for 2 years or both. The maximum penalty for engaging in activities prohibited under the Plan is \$12,540 (165 penalty units).

4.3 Legal proceedings under the Act

Proceedings for offences against the Act should be brought by the Authority, but where the Authority refuses or fails to prosecute for an offence, it remains possible for incorporated community groups or members of the public to bring a private prosecution³⁵. However because of the difficulties in bringing a private

³⁴ Authorised officers are appointed under the Act ie. officers of the Authority. Their powers are set out under Part 6 - Investigation and Enforcement.

³⁵ Section 82 of the Act provides that offences against section 56 (prohibited acts) may be brought summarily (ie. in a Magistrates Court) or on indictment (judge and jury) in a District Court, at the election of the prosecution. While section 42 of the *Acts Interpretation Act 1994* provides that any person may enforce a penalty under an Act, section 686 of the Queensland Criminal Code

prosecution (ie.obtaining evidence which will stand up in court and court costs), they should only be brought in exceptional circumstances and upon obtaining legal advice.

5. COMPENSATION

Land-holders whose interests are injuriously affected by a prohibition under section 56 may be entitled to compensation from the Authority, as agreed with the Authority or failing agreement as determined by the Land Court³⁶.

provides that any person wishing to prosecute for an indictable offence under Queensland law must first obtain leave from the Supreme Court of Queensland. Section 82 of the Act provides that all of the activities otherwise prohibited under section 26 of the Plan are summary offences.

³⁶ Section 57 of the Act sets out the circumstances in which land-holders may be entitled to compensation.

USEFUL SOURCES OF INFORMATION/PUBLICATIONS

- The Authority's website www.wettropics.gov.au/
- The set of 17 Information Sheets produced by the Authority and available on its website under Site Map/Rules and Regulations/Permit System.
- 'Protection Through Partnerships - Policies for implementation of the Wet Tropics Plan' produced by the Authority.
- 'The Wet Tropics in Profile' - A Reference Guide to the Wet Tropics of Queensland World Heritage Area, produced by the Wet Tropics Management Authority (1996).
- 'Aboriginal Rainforest News' - Publication of the Wet Tropics Aboriginal Resource Management Program
- Schedule 1 of the Act - Wet Tropics World Heritage Area Management Scheme.
- Schedule 2 of the Act - World Heritage Convention.
- Schedule 1 of the Plan - Rezoning Applications By Local Government.
- Schedule 2 of the Plan - Undesirable Plants and Animals.

- Queensland legislation can be accessed at www.legislation.qld.gov.au/Legislation.htm
- Commonwealth legislation can be accessed at www.austlii.edu.au or at <http://scaleplus.gov.au>

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