



**EDO-NQ
FACTSHEET SERIES**

**WET TROPICS
WORLD HERITAGE AREA**

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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 as 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.

1. INTRODUCTION

The Wet Tropics World Heritage Area (“WTWHA”) lies between Townsville and Cooktown in North Queensland. It has 894,420 hectares of protected lowland and mountain rainforest and more than 730 tenured land parcels. These are broken up into national parks and state forests, freehold properties and vacant and leasehold Crown lands potentially subject to native title claims ¹.

Surveys were carried out from 2001 to 2003 of over 2,500 visitors at 10 key visitor sites and 788 residents living in 70 regional towns and suburbs within or bordering the WHA ². Although most of the residents surveyed thought they knew about the World Heritage Area, many of them did not know where its boundaries were or how the Area was managed. This showed that the The Wet Tropics Management Authority (“WTMA”) and other land management agencies on its fringes need to educate the public on:

- WHA boundaries and their changes
- the roles of the WTMA and other land management agencies and
- Aboriginal co-management ³.

¹ An overview of land tenure for the WTWHA can be found on the WTMA’s website at:
http://www.wettropics.gov.au/mwha/mwha_pdf/Strategies/Protection%20through%20Partnerships.pdf

² http://www.wettropics.gov.au/media/media_pdf/community_publications/community_survey.pdf

³ While 58% of residents were supportive, 42% were opposed.

The Wet Tropics Management Authority (“WTMA”) has maps of the WTWHA and its four management zones (outlined below).

The WTWHA 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 recognised World Heritage Values of the WTWHA and that it:

1. *Represents (8) major stages of the Earth’s evolutionary history.* WTWHA rainforests are internationally recognised as where flowering plants (angiosperms) originated, evolved and dispersed.
2. *Has outstanding examples of ongoing geological and biological processes.*
3. *Is an outstanding area of natural beauty.* The WTWHA has steep to undulating plateaus of between 600m and 900m and steep escarpment country with deeply incised valleys and streams. It has mountain peaks like Mt Bartle Frere of 1622m and coastal lowlands that are linked by foothills, ranges and escarpments.
4. *Has the most important natural habitats to conserve biological diversity.* Along with the mainly rainforest vegetation of the WTWHA there are species-rich mangrove forests, wet sclerophyll forests and tall open forests. As home to more than 3000 plant species, at least 25 species of vertebrate animals in the WTWHA are very rare, found only in small areas or in danger of extinction.⁴

In 1993 the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) (“the WTWHPM Act”) was passed by Queensland Parliament to carry out Queensland’s regional role of international obligations as set out in the World Heritage Convention. Commonwealth legislation also applies as part of national (therefore constitutional) WHC obligations but does not affect day to day management of the WTWHA.

2. WHICH AGENCIES ADMINISTER THE WTWHA?

The Management Scheme for the WTWHA⁵ establishes the Ministerial Council, the Wet Tropics’ Board, WTMA, the Community Consultative Committee and the Scientific Advisory Committee.

2.1 The Ministerial Council (“the Council”)

The Council has four members, with two members nominated by each of the Queensland and

⁴ 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.

⁵ The Management Scheme is set out in Schedule 1 of the WTWHPM Act.

Commonwealth Governments and chaired by the Queensland Minister for Sustainability (“the State Minister”).

The Council coordinates policy and funding for the WTWHA between the State and the Commonwealth at a Ministerial level. The Ministerial Council also approves management plans and appoints the Wet Tropics Board.

2.2 The Wet Tropics Board (“the Board”)

The Board has six directors and reports to the Ministerial Council. It meets several times a year to discuss and prioritise WTMA’s objectives, strategies and policies. The Executive Director of the WTMA is a non-voting member of the Board.

2.3 The Wet Tropics Management Authority (“WTMA”)

While day-to-day management is carried out by the QPWS, the WTMA ensures that the WHA has on-the-ground protection by:

- developing and carrying out WTWHA policies, programs and management plans;
- cooperative management agreements with the WTWHA’s land-holders, including its Aboriginal people;
- arranging rehabilitation and restoration works for damaged land in the WTWHA;
- instigating research and distributing information about the WTWHA;
- developing community education programs on the WTWHA;
- monitoring the state of the WTWHA.

With a staff of about 30 people, its duties are:

- to protect natural heritage values of the WTWHA;
- to recognise traditions of and cooperate with Aboriginal people;
- to follow objectives and principles of the National Strategy for Ecologically Sustainable Development.

2.4 The Community Consultative Committee (“the CCC”)

The CCC advises and reports to the WTMA on community interaction with the WTWHA and WTMA policies and programs.

Members of the committee come from a broad range of backgrounds including conservation, education, tourism, rural, scientific, recreation and local government. They are appointed by the Board for three years and meet at least four times a year to discuss the latest WHA issues, policies and activities.

2.5 The Scientific Advisory Committee (‘the SAC’)

Members of the scientific community nominate for the SAC and are appointed by the Board every three years. The SAC meets several times a year to advise the Board of research needs in all areas of science including the social, biological and physical sciences. It looks at development proposals and perceived threats to the World Heritage Area.

2.6 The roles of State Government Departments and Local Government

The Queensland Parks and Wildlife Service (“QPWS”) is part of the Environmental Protection Agency (“EPA”) and manages about 80 per cent of the World Heritage Area which is either National Park, Forest Reserve, Timber Reserve or State Forest.

The Queensland Department of Main Roads (“DMR”) is responsible for managing State-controlled roads within the WTWHA. Its duties include transport planning, road construction and maintenance - by agreed codes of practice developed between WTMA and DMR.

The Queensland Department of Primary Industries (“DPI”) manages agricultural practices (including fisheries) and commercial forestry operations (that is, the sale of forest products)⁶.

The Department of Infrastructure and Planning (“DIP”) is responsible for land use planning under Queensland’s *Integrated Planning Act 1997* (“IPA”).

The WTWHA has several local government districts. The [FNQ Regional Plan](#) was the work of the former Department of Local Government, Planning, Sport and Recreation – now the Department of Local Government, Sport and Recreation (“DLGSR”) This Plan will guide how the region is to be developed and managed over the next 20 years or so.

The Authority works cooperatively with local councils to try and ensure that development in the region does not adversely affect the integrity of the World Heritage Area.

The Wet Tropics Management Plan 1998 (“the Management Plan) for the WTWHA regulates all activities within the WTWHA that may 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 WTMA has arrangements with DNRW and QPWS to assess Wet Tropics permit applications under the Management Plan (outlined below), along with those made under their other Queensland legislation (eg *Forestry Act 1959*, *Nature Conservation Act 1992*, *Land Act 1994*).

WTWHA development application assessment under the Integrated Development Assessment System (“IDAS”) of IPA, however, is made separately (outlined below).

⁶ Timber harvesting is prohibited under the Management Plan.

3. THE WET TROPICS MANAGEMENT PLAN

3.1 The Significance of the Wet Tropics Management Plan 1998 (“the Management Plan”)

The Management Plan has operated from 1 September 1998 to protect the WTWHA’s World Heritage values.

The Management Plan⁷:

- establishes four types of management zones for the WTWHA (see 2.2 below);
- regulates activities within the WTWHA ie. sets out when a permit is needed for certain activities and when no permit is needed;
- establishes a permit application process for the Authority to make permit decisions;
- makes decisions on permit review and appeal;
- allows other relevant agencies to make permit decisions;
- allows the Authority to enter into cooperative management agreements with the WTWHA’s land-holders, including its Aboriginal people;
- establishes a local government application process for land use rezoning within the WTWHA; and
- lists Undesirable Plants and Animals for the WTWHA.

3.2 The Management Zones

The Plan divides the WTWHA into four management zones which are set out in the zoning map.⁸ How an activity is regulated depends upon its proposed zone. Generally, Zone A has tougher restrictions while Zone B is less so - with new infrastructure usually not allowed in both zones. This is followed by Zones C and D with fewer restrictions.

⁷ An overview of the Plan can be found on the Authority’s website www.wettropics.gov.au/mwha/mwha_laws.html

⁸ 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 WTMA’s website http://www.wettropics.gov.au/mwha/mwha_zones.html .

Zoning looks at integrity, remoteness from disturbance, intended physical and social setting and whether managing different parts would protect undisturbed areas and restore disturbed areas.

Zone A has remote natural areas with the highest integrity, remote from disturbance and management is to retain and protect this. Zone B is less remote but areas that can be restored to their natural state would revert to Zone A.

Zone C is closer to community services and useful for infrastructure that otherwise protects and enhances the integrity of the land.

Zone D may allow visitor facilities and other tourist activities than in the less disturbed zones but still recognises the importance of protecting the land.

3.3 Types of activities regulated under the Act and Plan

Prohibited Activities under the Act:

Under **Section 56 of the WTWHPM Act**, a person must not do or attempt to do a 'prohibited act' within the WTWHA unless holding a licence, permit or other authority.

This section 'does not affect any rights that Aboriginal people have in relation to forest products under another law' but generally prohibits commercial forestry and any destruction of forest products (ie native plants).

Carrying out a prohibited act without authority has a maximum fine of \$225,000, imprisonment for 2 years or both.

Regulating activities in the WTWHA:

Section 22 of the Management Plan controls activities carried out in the area by:

- prohibiting some;
- being discretionary with others (either under a permit or without a permit); and
 - exempting certain activities capable of destroying forest products but not quite offending against section 56 of the Act .

Prohibited Activities and the Permitting Process

Part 3 of the Management Plan sets out prohibited activities and details exceptions where the activity is lawfully carried out.

How it Applies to Native Title Holders

Section 211 of the *Native Title Act* 1993 (Cth), states that native title holders are not restricted by any other law from carrying out native title rights like hunting and fishing in their country. Sections 32 and 33 of the Management Plan point out that section 211 of the *NTA* applies to

native title holders within the WHA. This means that they do not need permits or licences to carry out their native title rights and interests within the WHA.

3.4 Permit Application Process⁹

There are four stages:

1. Making the application: the permitting authority can also ask for more information.
2. Assessing the application: the permitting authority has 60 days to decide whether the application meets specified assessment criteria
3. Notification of decision: the permit decision is registered and may be inspected by members of the public.
4. Review of decision: only the permit applicant can ask for the decision to be reviewed.

1. Making the Application

Anyone wanting to carry out certain activities¹⁰ within the WHA needs a permit and must apply to the WTMA for this. When filling out and submitting an application form to WTMA or to the relevant State government department, applicants must follow integrated permitting arrangements. Where a license/permit or other authority is needed under another piece of State Government legislation as well as the Wet Tropics Act ("Permitting Authority"), Part 6 of the Plan comes into play.

Other State Government departments with integrated permitting arrangements are:

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

Although an activity in an *NCA*-defined protected area may not need an *NCA* permit, a Wet Tropics Permit may apply if such an activity meets prescribed management principles. However, under section 80, State Government departments or agencies cannot issue a Wet Tropics Permit without Authority approval.

The Authority assesses development issues under the Plan and local governments under the

⁹ An outline of the permit application system can be found on WTMA's website http://www.wettropics.gov.au/mwha/mwha_pdf/Info%20sheets/InfoSheet02_Permit_Assessment.pdf

¹⁰ All activities which disturb vegetation, soil, water or scenic values in the World Heritage Area.

Integrated Planning Act (IPA). Similarly, the DMR (State-controlled roads), and the DPI (agricultural practices including fisheries) may require a permit for certain activities under their legislations as well as one from the WTMA under the Plan .

The Permitting Authority may write to the applicant for more relevant information or documents to help towards a decision. This often includes an environmental impact assessment for the proposed activity meeting standard terms of reference¹¹.

2. Assessing the Application

The Permitting Authority has 60 days to decide whether the applicant is to be given a permit (with or without conditions) or refused one.

Permit Assessment Considerations

Permitting authorities **MUST** consider the following principles and criteria in deciding permit applications and imposing any conditions.¹²

- a) **WTWHA integrity:** The most important thing is to work out if the proposal is likely to impact on this and whether it will seriously affect immediate zone and nearby zone characteristics.
- b) **The precautionary principle:** The permit application decision must err on the side of caution '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'¹³.
- c) **Prudent and feasible alternatives:** Practical, commonsense alternatives can reduce impacts. The Permitting Authority and the applicant must examine whether there are any other places or ways to carry out the activity.
- d) **World Heritage Values:** In its decision, the Permitting Authority must look at how the proposal will cause the least damage to the area's world heritage values.

The Permitting Authority must also consider:

¹¹ Section 47 of the Plan provides for WTMA 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 WTMA 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.

¹² The principles and criteria for deciding permit applications are set out in part 4 Div 2 (sections 55 – 61) of the Plan.

¹³ Section 10(4) of the *WTWHPMA* 1993 adopts the definition used in the National Strategy for Ecologically-Sustainable Development and *EPBCA*.

- 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.
- e) **Community considerations:** There should be no serious impact from the proposal on:
- landholders, including native title holders 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
 - any other relevant social, economic and cultural matters.
- f) **Carrying capacity:** Whether the land can support the activity without serious impact on integrity of its World Heritage Values and quality of experience enjoyed by visitors, must be considered.

Permit conditions and financial assurances

The Permitting Authority can issue a permit - subject to conditions it considers appropriate¹⁴, including those necessary to:

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

The WTMA can also bind the applicant to a code of practice for the activity¹⁵. The applicant then pays a reasonable amount¹⁶ as security or enters a performance bond enforcing other conditions of the permit.

The WTMA can approve or refuse decisions of other permitting authorities¹⁷.

3. Notification of Decision

As soon as possible after deciding the application the Permitting Authority must record the decision in the register of permit decisions. This must include any conditions applying to the permit and the reasons for the decision. The applicant is also sent written notice of the decision¹⁸.

¹⁴ Section 51 of the Plan sets out the type of permit conditions WTMA can impose.

¹⁵ Section 51(3) of the Plan.

¹⁶ Section 52(2) of the Plan sets out the criteria which WTMA must consider in deciding the amount of a financial assurance.

¹⁷ Section 80 of the Plan

¹⁸ Section 54 of the Plan provides for the keeping of a register of permit decisions by WTMA.

After this, an applicant has 60 days to ask the Permitting Authority to review its decision.

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 decision¹⁹. 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 decision²⁰.

Public rights to obtain information about permit applications and decisions

While interested members of the public have rights to inspect the permit decision register, the Plan does not include public rights to:

- be notified of permit applications;
- to inspect or obtain the permit application and accompanying documents;
- to submit comments/objections on permit applications and WTMA considerations;
- be notified of decisions;
- to review or appeal decisions or seek written reasons for any WTMA decision apart from those on the decision register.

If you have written to the Permitting Authority asking for permit application documents and reasons for the decision and it has not given you any, you should consider making a freedom of information (Fol) request.

Interested members of the public are also not entitled under this Plan to appeal a WTMA 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*. This potentially seeks 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.

3.5 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 WTWHA to the same extent as ordinary title holders²¹.

The Plan provides that land-holders (ie. ordinary and native title holders) and persons acting

¹⁹ Section 68 of the Plan provides for applicants to request WTMA to review a permit decision.

²⁰ 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.

²¹ 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.

with their permission, may carry out certain 'allowed activities' without a permit including²²:

- activities promoting the world heritage values of the land;
- driving on a lawful access road for the land;
- waste disposal 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 permits certain other 'domestic activities' by native title and other land holders and persons acting on their behalf, including²³:

- 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 causing no more than minor and inconsequential impacts²⁴ do not need a permit.

3.6 Cooperative Management Agreements ('CMAs')

Under section 40 of the Plan, the Authority must negotiate with eligible persons wanting to carry out landholding activities within the WTWHA.

CMAs allow this, provided any resulting agreement is consistent with achieving the primary goal of promoting the World Heritage Values of the WTWHA²⁵.

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.

²² Section 29 of the Plan sets out certain 'allowable activities' by land-holders (including native title holders).

²³ Section 35 of the Plan sets out the 'domestic activities' for which a land-holders requires a Wet Tropic Permit. WTMA is still required to consider a permit application against the mandatory assessment criteria set out in section 55-61 of the Plan.

²⁴ 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.

²⁵ Section 41 of the Plan provides for the making of cooperative management agreements (CMAs). An overview of CMAs can be found on WTMA's website www.wettropics.gov.au/ under Site Map/Partnerships/CMAs.

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

The Authority also has a 'Good Neighbour' policy to ensure a more cooperative land management regime around its boundaries²⁶.

The Authority believes informed and supportive neighbours add greatly to World Heritage Area management. The Authority's statutory control does not go beyond the World Heritage Area boundary, so a cooperative partnership with neighbours is vital²⁷.

4. INTEGRATION WITH OTHER LEGAL AND PLANNING PROCESSES

4.1 Local Government Planning Schemes and development approvals

As the Wet Tropics Management Plan overrides other laws that go against its provisions²⁸, local governments must not give approval for any development on land in the WTWHA that is inconsistent with the Plan (or other management plan)²⁹.

Within the WTWHA, development approval under the *Integrated Planning Act* is assessed using the IPA *Integrated Development Assessment System* ("IDAS"), with the Authority acting as a 'concurrence agency'³⁰.

Local government can apply to WTMA to alter land zoning from Zone B (semi-remote natural area) to Zone C (community service infrastructure) to carry out 'essential community services infrastructure'³¹. Given this, the WTMA must direct the local government towards environmental impact assessment and public notice of the application. It must also consider all properly made submissions from the public in its decision-making.

WTMA can only grant the rezoning application if the activity provides essential community services infrastructure and meets mandatory permit assessment criteria (outlined above)³² for an activity within Zone C.

²⁶ This is outlined in a joint publication between the Johnstone Shire Council and the WTWHMA: 'The Householder's Handbook, Johnstone Shire: Living with world Heritage'

http://www.wettropics.gov.au/media/media_pdf/community_publications/jsc_living_with_wh.pdf

(A similar publication for the whole of the WTWHA has been promised by the WTWHMA soon).

²⁷ Also see http://www.wettropics.gov.au/wwc/wwc_neighbours.html

²⁸ Section 49 of the Act provides that Plans prevail over planning schemes.

²⁹ Section 50 of the Act provides that local authorities' decisions are to be consistent with management plans.

³⁰ As a concurrence agency WTMA can ask for information 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: http://www.ipa.qld.gov.au/docs/Forms/IDAS/Guides/Guide2/Guide2v4_2.pdf

³¹ "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. Local Government Rezoning Application guidelines are in Schedule 1 of the Plan.

³² The principles and criteria for deciding permit applications are set out in sections 55-61 of the Plan.

Only the relevant local government can seek a review of the WTMA's decision and appeal to the Planning and Environment Court.

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

The Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* ("EPBC Act") provides an overarching Federal system of environmental assessment and approval of specified matters of "national environmental significance". On such issues, it overrides state and local government environmental laws.

World heritage protection under the EPBC Act helps Australia look after our World Heritage Areas as promised under our international obligations. This includes the WTWHA.

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 WTWHA, 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 WTWHA.

Section 12 of the EPBC Act 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 of the EPBC Act 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 of the EPBC Act 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 WTWHA as any action impacting significantly on a threatened species located in the WTWHA will be prohibited without approval from the Federal Government.

The onus of making a referral to the Minister for the Environment and Water Resources 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 WTWHA 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 WTWHA. 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 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 WTWHA 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 WTWHA 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 WTWHA. 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 WTWHA.

Section 321 of the EPBC Act provides for preparation and implementation by the

Commonwealth in cooperation with the relevant state, of management plans for all World Heritage Areas. Section 322 of the EPBC Act 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 in 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 WTWHA (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.

4.3 Controls under other Legislation

4.3.1 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 WTWHA. Located within the WTWHA 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 property³³.

Recovery and Conservation plans under the NCA have been implemented on various occasions in the WTWHA (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 WTWHA. 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 WTMA and have a more narrow function as they are directed specifically towards a particular species conservation. The NCA can also be used in the WTWHA 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 WTWHA, a conservation plan under the NCA is inconsistent with the Wet Tropics Management Plan the Minister for the Environment and Water Resources must determine, by written notice, which plan is to prevail.³⁴ 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).³⁵ The Minister may also have regard to other factors.³⁶ The rights of Aboriginal people to native wildlife under another Act are not to be impacted upon.³⁷

4.3.2 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 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 WTWHA.

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

4.3.3 *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)*

³³ s 83 and 84 NCA

³⁴ s. 51(1) Wet Tropics Act

³⁵ s. 51(2) Wet Tropics Act

³⁶ s. 51(3) Wet Tropics Act

³⁷ s. 51(5) Wet Tropics Act

with respect to freehold land and the Land Act 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 WTWHA is not yet clear.

4.3.4 *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 IPA, which makes clearing of native vegetation on freehold land assessable in some circumstances. There is some freehold land within the WTWHA, however, the Wet Tropics Management Act/Plan provisions which prohibit forestry operations on land within the WTWHA would prevail over any approval to undertake clearing that might in ordinary circumstances be given under the VMA.

5. INVESTIGATION AND ENFORCEMENT POWERS

5.1 Powers of authorised officers

The powers of authorised officers³⁸ 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).

5.2 Offences for prohibited activities

Section 56 of the Act provides that a person cannot do or attempt a ‘prohibited act’ within the WTWHA 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 (3000 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).

5.3 Legal proceedings under the Act

Proceedings for offences against the Act should be brought by WTMA, but where WTMA refuses or fails to prosecute for an offence, it remains possible for incorporated community groups or members of the public to bring a private prosecution³⁹. However because of the difficulties in bringing a private 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.

6. COMPENSATION

³⁸ Authorised officers are appointed under the Act ie. officers of WTMA. Their powers are set out under Part 6 – Investigation and Enforcement.

³⁹ 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 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.

Land-holders whose interests are injuriously affected by a prohibition under section 56 may be entitled to compensation from WTMA, as agreed with WTMA or failing agreement as determined by the Land Court⁴⁰.

⁴⁰ Section 57 of the Act sets out the circumstances in which land-holders may be entitled to compensation.

7. FURTHER INFORMATION

- The WTMA website www.wettropics.gov.au/
- The set of 17 Information Sheets produced by WTMA 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>

8. USEFUL CONTACTS

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