Cape York Peninsula Heritage Bill 2007

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable the Premier

Title of the Bill

Cape York Peninsula Heritage Bill 2007

Objectives of the Amendments

The amendments are to be moved during consideration in detail of the *Cape York Peninsula Heritage Bill 2007* (the Bill) introduced into the Legislative Assembly on 7 June 2007.

The amendments will make a number of minor amendments to ensure the effective operation of the Bill.

Achievement of the Objectives

The proposed amendments:

- clarify the effect of an approved property development plan under the *Wild Rivers Act 2005* on a high preservation area declared under that Act;
- clarify who can apply for a property development plan under the *Wild Rivers Act 2005*;
- clarify the matters the Minister may consider in determining if a development is for a special indigenous purpose;
- enable the Minister to take into account the considerations under sections 18 (Development - generally) and 19 (Development in indigenous community use area) of the Bill when making a special clearing code under the *Vegetation Management Act 1999*;

- clarify that a vegetation clearing application for a special indigenous purpose will not be considered a relevant purpose if it is for an activity within a high preservation area under the *Wild Rivers Act 2005*;
- align terminology used in the Bill with that used in the *Aboriginal Land Act 1991*;
- provide that the environment Minister must consent to an indigenous management agreement before it can be entered into;
- enable an existing land trust for adjoining land to enter into an indigenous management agreement about the proposed management of a national park (Cape York Peninsula Aboriginal land);
- provide that all national parks other than those that are claimable land in the Cape York Peninsula Region are taken to be transferable land for the purpose of this Act;
- clarify that an indigenous management agreement must be entered into **prior** to dedication as a national park (Cape York Peninsula Aboriginal land);
- ensure existing leases, agreements, permits and authorities that have been issued for national parks at the time of transfer to national park (Cape York Peninsula Aboriginal land) continue for their existing terms and under the existing conditions, despite any other Act;
- provide that when transferable lands in Cape York Peninsula are granted as Aboriginal lands under the *Aboriginal Land Act 1991*, these lands are simultaneously declared as national park (Cape York Peninsula Aboriginal land) to ensure the management framework of the *Nature Conservation Act 1992* is in place;
- provide that section 62 of the *Nature Conservation Act 1992* also applies to national park (Cape York Peninsula Aboriginal land). In particular, restrictions on taking, using, keeping or interfering with a cultural or natural resource of a protected area will not apply to a person authorised by and acting in accordance with an indigenous management agreement;
- amend the schedule of the *Nature Conservation Act 1992* to include 'national park (Cape York Peninsula Aboriginal land)', as is the case for other classes of national park;

- provide that before granting a scientific purposes permit, the chief executive of the department in which the *Nature Conservation Act 1992* is administered must be satisfied that the ecological sustainability of the estuarine crocodile population in the defined study area will not be adversely affected by the grant of the permit; and
- make several other minor technical amendments to ensure the effective operation of the Act.

Alternative Ways of Achieving Policy Objectives

There are no other ways by which the policy objectives of these amendments can be achieved.

The proposed amendments are considered necessary for the effective operation of the Bill.

Estimated Cost for Government Implementation

The passage of these amendments will not have any financial impacts.

Consistency with Fundamental Legislative Principles

The amendments are consistent with standards required under the *Legislative Standards Act 1992*.

Consultation

The Cape York Land Council, the Balkanu Cape York Development Corporation, the Australian Conservation Foundation, The Wilderness Society, the Environmental Protection Agency, the Department of Natural Resources and Water and the Office of the Queensland Parliamentary Counsel have been consulted.

Notes on Provisions

Amendment 1 **amends** clause 19 (Development in indigenous community use area) of the *Cape York Peninsula Heritage Bill 2007* (the Bill) to:

- enable the Minister to consider beneficial impacts on the natural values not only on indigenous community use areas but other areas in close proximity or associated with indigenous community use areas. The Cape York Land Council has provided an example where an applicant offers part of a lease as national park in exchange for broader development rights; and
- clarify the clause relates to things that have been done within a reasonable timeframe that have provided benefits to natural values, not only things proposed to be done.

Amendment 2 amends clause 19 (Development in indigenous community use area) of the Bill to **clarify** that the Minister will have regard to matters mentioned in section 19(b)(iv) (evidence that the development cannot occur without the proposed clearing) and 19(b)(vii) (the nature and extent of any other thing proposed to be done in addition to the development that would result in a beneficial impact on the natural values of the indigenous community use area) when considering whether a development is for a special indigenous purpose. The amendment is required to ensure that the Minister can adequately consider issues in section 19(b)(vii). Unless the area is included in section 19(d) the consideration arguably does not hold the same weight as considerations in 19(d).

Amendment 3 **amends** clause 24 (Special provision about particular scientific purposes permit) of the Bill to redefine the entity and the area to which the scientific purposes permit applies. The amendment provides that section 24 applies to a scientific purposes permit granted to the State or to a tertiary institution or other institution administered by the State or Commonwealth, for the conduct of research to assess the ecological sustainability of the wild harvest of estuarine crocodile eggs in a study area defined in the amendment.

Amendment 4 **amends** clause 24 (Special provision about particular scientific purposes permit) of the Bill to provide that, before granting the scientific purposes permit, the chief executive of the department in which the *Nature Conservation Act 1992* is administered must be satisfied that the ecological sustainability of the estuarine crocodile population in the defined study area will not be adversely affected by the grant of the permit.

The chief executive must have regard to relevant information, including research findings and other information, given by an expert panel, as provided by the amendment. The research findings include the distribution, migration, genetics, number, age and size of the estuarine crocodiles in the study area and the distribution and number of nests, nesting success and survival rate to maturity of estuarine crocodiles in the

study area. Other information can include, for example, details of nest sites and the maximum number of eggs proposed to be taken in the study area.

Data collection must occur for a minimum of two years unless the expert panel advises that an alternative period of time is sufficient to determine whether the ecological sustainability of the estuarine crocodile population in the study area will be adversely impacted by the collection of eggs under a scientific purposes permit. For example, if after examining two years of data the expert panel advise that there is insufficient data to determine the impact, then the chief executive can request further research be undertaken.

The expert panel that advises the chief executive will include persons with experience in management and research on estuarine crocodiles in the wild in Australia. Where possible these persons will have experience in management and research on estuarine crocodiles in the wild in Queensland.

The chief executive must also be satisfied that the proposed research under the permit will be appropriate to decide whether the harvest of estuarine crocodile eggs in the study area would impede the recovery of the estuarine crocodile population, and that the holder of the permit will have an appropriate monitoring program in place to monitor the impact of the research.

In addition, the holder of the scientific purposes permit must ensure that any commercial benefit derived from dealing with the crocodile eggs under the permit is used to support the economic development of indigenous communities in the study area.

The amendments also define the study area in western Cape York Peninsula. The designation of this study area does not automatically grant access to areas within it. The permit holder will be responsible for obtaining the consent of relevant landholders to undertake activities on their land.

Amendment 5 inserts a new clause 34 into the Bill which amends section 39 of the *Aboriginal Land Act 1991* that deals with the ability of the grantees to create new interests in transferred land. This section makes it clear that the grantee of transferred land that is National Park (Cape York Peninsula Aboriginal land) can not otherwise deal in that land unless permitted under section 42AD or 42AE of the *Nature Conservation Act 1992*. The inclusion of new sub section 10 reinforces that the above restriction applies, despite any other Act and supports the paramountcy of the *Nature Conservation Act 1992* in limiting the ability of the grantees of the

National Park (Cape York Peninsula Aboriginal land) to otherwise deal in the land.

Amendment 6 inserts a new clause 36 into the Bill which amends section 76 of the *Aboriginal Land Act 1991* that deals with the ability of the grantees to create new interests in granted land. This section makes it clear that the grantee of granted land that is National Park (Cape York Peninsula Aboriginal land) can not otherwise deal in that land unless permitted under section 42AD or 42AE of the *Nature Conservation Act 1992*. The inclusion of new sub section 10 reinforces that the above restriction applies, despite any other Act and supports the paramountcy of the *Nature Conservation Act 1992* in limiting the ability of the grantees of the National Park (Cape York Peninsula Aboriginal land) to otherwise deal in the land.

Amendment 7 amends clause 38 (Insertion of new pts 5A-5C) of the Bill to amend reference in clauses 83A (4) from 'group of Aboriginal people particularly concerned' to 'group of Aboriginal people concerned' to reflect terms used in the *Aboriginal Land Act 1991*.

Amendment 8 **amends** clause 38 (Insertion of new pts 5A–5C) of the Bill to amend reference in clauses 83A (5) from 'Aboriginal tradition relevant to the land'. The reference is being amended to refer to 'Aboriginal tradition applicable to the land' to reflect terms used in the *Aboriginal Land Act 1991.*

Amendment 9 **amends** clause 38 (Insertion of new pts 5A–5C) of the Bill to amend reference in clauses 83A (6) from 'Aboriginal tradition relevant to the land'. The references are being amended to refer to 'Aboriginal tradition applicable to the land' to reflect terms used in the *Aboriginal Land Act 1991.*

Amendment 10 **amends clause 38 (Insertion of new parts 5A–5C) of the Bill to amend clause 83E to enable an existing land trust for adjoining land to enter into an indigenous management agreement about the proposed management of a national park (Cape York Peninsula Aboriginal land). Currently the Bill would not allow this to occur but would require the creation of a new land trust. It is reasonable that a land trust adjoining a parcel of transferable land be contemplated as the potential recipient of proposed national park (Cape York Peninsula Aboriginal land).**

Amendment 11 **amends clause 38 (Insertion of new parts 5A–5C) of the Bill to amend clause 83G to** provide that the environment Minister must consent to an indigenous management agreement before it can be entered into.

Amendment 12 **amends** clause 38 (Insertion of new pts 5A–5C) of the Bill to amend clause 83J to clarify that the grant of land as national park is dependant on an indigenous management agreement having already been entered into.

Clause 83J is being amended to be consistent with provision 83E(2), which provides that the land trust must enter into an indigenous management agreement with the State about the proposed management of the land, or part of the land, that is to become a national park **before** the land is granted.

Amendment 13 **amends** clause 38 (Insertion of new pts 5A–5C) of the Bill to replace clause 83K(1) with a provision that states that all national parks in the Cape York Peninsula region, other than those that are claimable land, are taken to be transferable land for the purpose of this Act. This provision does not apply to national parks that are claimable land on the basis that these national parks are made transferable under provision 83L.

The combined effect of provisions 83K and 83L provide that all national parks in the Cape York Peninsula Region, other than those that are transferable under 83J, are taken to be transferable for the purpose of the *Aboriginal Land Act 1991*.

Amendment 14 **amends** clause 49 (Insertion of new pt4, div3, sdiv2) of the Bill to amend clause 42AA(1)(b) to clarify that an indigenous management agreement must be entered into **prior** to dedication as a national park (Cape York Peninsula Aboriginal land).

Amendment to clause 42AA(1)(b) is required for consistency with provisions 42AB(1)(a) and 42AC(1)(a)(ii), with respect to the requirement for having entered into an indigenous management agreement prior to dedication as a national park (Cape York Peninsula Aboriginal land).

Amendment 15 **amends** clause 49 (Insertion of new pt 4, div 3, sdiv 2) of the Bill to amend clause 42AA to ensure that there is not a period of time where the land exists as Aboriginal land under the *Aboriginal Land Act 1991*, without being subject to the national park (Cape York Aboriginal land) provisions of the *Nature Conservation Act 1992*.

It is essential that when transferable lands in Cape York Peninsula are granted as Aboriginal lands under the *Aboriginal Land Act 1991*, these lands are simultaneously declared as national park (Cape York Peninsula Aboriginal land) to ensure the management framework of the *Nature Conservation Act 1992* is in place.

Amendment 16 **amends** clause 49 (Insertion of new pt 4, div 3, sdiv 2) of the Bill to amend clause 42AC **to enable an existing land trust for adjoining land to enter into an indigenous management agreement about the proposed management of a national park (Cape York Peninsula Aboriginal land).**

Amendment 17 amends section 62 of the *Nature Conservation Act 1992* to ensure this section now applies to national park (Cape York Peninsula Aboriginal land). In particular, restrictions on taking, using, keeping or interfering with a cultural or natural resource of a protected area will not apply to a person authorised by and acting in accordance with an indigenous management agreement.

Amendment 18 amends the schedule (Dictionary) of the *Nature Conservation Act 1992* to include 'national park (Cape York Peninsula Aboriginal land)', as is the case for other classes of national park.

Amendment 19 amends the proposed section 19N of the *Vegetation Management Act 1999*, being inserted by clause 57 of the Bill (Insertion of new pt 2, div 4A) to provide the Minister with an express power to make a code consistent with other code-making provisions under the Act. Previously the new section 19N only referred to the 'preparation of the code'.

The amendment also allows the Minister to take into account the matters under clauses 18 and 19 of the Bill. Currently the considerations which the Minister must take into account under clauses 18 and 19 of the Bill are not reflected under the VMA and are therefore arguably matters which cannot then be included in the Code. However some of the matters the Minister takes into account in determining whether an application is for a special indigenous purpose, such as evidence of how adverse impacts of the proposed clearing, will be minimised or mitigated (subparagraph 19(b)(v)) need to be assessed against relevant codes under the *Vegetation Management Act 1999*.

Amendment 20 amends clause 60 of the Bill by renumbering the existing clause 60 as subsection (1). This reflects the fact that amendment 19 adds a new subsection (2) to section 60.

Amendment 21 **amends** clause 60 (Amendment of s 22A (Particular vegetation clearing applications may be assessed)) of the Bill. Section 22A(1) of the *Vegetation Management Act 1999* specifies that despite the *Integrated Planning Act 1997*, a vegetation clearing application (triggered as assessable clearing by schedule 8, part 1) cannot be accepted and must

be refused to be received by the assessment manager unless it is for one of the ongoing purposes (a 'relevant purpose') outlined in section 22A(2).

The amendment provides that a vegetation clearing application for a special indigenous purpose will not be considered a relevant purpose under section 22A if it is for an activity within a high preservation area.

The amendment also provides that a vegetation clearing application for a special indigenous purpose should not be considered a relevant purpose under section 22A if it is for an activity within a declared area under division 4, subdivision 2 (Declarations by Chief Executive). Declarations that can be made under division 4, subdivision 2, are that an area is an area of high nature conservation or an area vulnerable to land degradation.

Amendment 22 **inserts new clauses 62A and 62B** after clause 62 (Act amended in div 5) of the Bill that amend section 31A and insert a new section 31FA into the *Wild Rivers Act 2005*. New section 31FA clarifies the scope of an amendment made to a high preservation area as a result of the approval of a PDP under that Act. The amendment expressly enables the Minister to provisionally convert a high preservation area to a preservation area in order to accommodate the activities under the approved PDP whilst leaving the high preservation area designation to operate against all activities outside of an approved PDP.

This amendment will ensure that approval of a PDP such as an indigenous PDP does not inadvertently lift the high preservation area over a property completely.

Since some Acts, such as section 22A of the *Vegetation Management Act 1999*, prohibit certain activities in a high preservation area, the amendment provides that for the purposes of such provisions the activities are taken to have occurred in a preservation area rather than a high preservation area.

The amendment also amends section 31A of the Act consequent to the new definition of 'owner' being inserted by clause 22 of these amendments.

Amendment 23 **amends** clause 63 (Amendment of s44(Relationship with other Acts)) of the Bill to correct a typographical error. The amendment changes 'affect' to 'effect'.

Amendment 24 **inserts a new clause 65** (Amendment of schedule (Dictionary)) to confirm the complementary nature of the Bill and the *Wild Rivers Act 2005* PDP schemes by clarifying the scope of the meaning of 'owner' for the purposes of the PDP and thereby ensuring that holders of mining tenements cannot effectively override an indigenous PDP under the *Wild Rivers Act 2005*.

The definition of 'owner' in the *Wild Rivers Act 2005* goes beyond the scope of the original policy intent whereby PDPs generally were meant to be limited to landholders excluding holders of mining tenements. The definition of "owner" could enable holders of a mining tenement to gain a PDP over Cape York indigenous land thereby effectively overriding a PDP under the Cape York Peninsula Heritage Act.

The *Mineral Resources Act 1989* (MRA) specifically states that a mining tenement does not create an interest in land. The intent of the scheme is that the applicant hold an interest in the land either by being the occupier, registered proprietor, the lessee or licensee or the person/body of persons who have the lawful control of the land on trust or otherwise.

Since a mining tenement entitles the holder to exclude persons from entering the land covered by the tenement, the holder could effectively override an indigenous PDP under the Bill.