

# Wet Tropics (Review) Amendment Management Plan 2020

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Leeanne Enoch, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts provide this human rights certificate with respect to the Wet Tropics (Review) Amendment Management Plan 2020, made under the *Wet Tropics World Heritage Protection and Management Act 1993* (the Act).

In my opinion, the Wet Tropics (Review) Amendment Management Plan 2020 (Amendment Management Plan), as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The Wet Tropics Management Plan 1998 (Management Plan) and the proposed amendments, manage the world heritage values and integrity of the Wet Tropics of Queensland World Heritage Area (the Area) consistent with the Primary Goal – *to provide for the implementation of Australia’s international duty for the protection, conservation, presentation, rehabilitation and transmission to future generations of the Wet Tropics of Queensland World Heritage Area within the meaning of the World Heritage Convention.*

The Area is considered significant in the global context, being ranked by a team of international scientists as the second most irreplaceable natural world heritage site in the world.

The general purpose of the Act is to provide for the protection and management of the Area. The Act recognises the significant contribution that Aboriginal people can make to the management of cultural and natural heritage of the Area.

The Management Plan protects the Area by regulating activities, and their potential impacts, through a zoning and permit system and through cooperative management agreements. It regulates activities which may have an impact on world heritage values and integrity. These activities are primarily those which may affect ecosystems, vegetation, soils, waterways and scenic values.

The Amendment Management Plan has been prepared in response to a 10-yearly review and significant consultation with Rainforest Aboriginal Peoples, government, stakeholders and the community. The main amendments resulting from the review include:

- reducing the number of zones from four to three to reduce complexity and to more accurately reflect the management purpose, nature and use for each zone;
- introducing a new section requiring the Authority to have regard to the effects a proposed decision may have on the Aboriginal tradition of Aboriginal Peoples particularly concerned with the land;
- providing clearer parameters for the Authority’s assessment of cooperative management agreements and the opportunity to produce a statutory guideline;

- enabling state government agencies (in addition to local councils) to seek rezoning under Schedule 1 of the plan for essential community services infrastructure;
- a consistent approach to assessing the construction of road infrastructure and other community services infrastructure, to ensure that the construction will not have a net adverse impact, or if it does, that there are no prudent and feasible alternatives;
- simplifying road classifications and adopting terminology recognised by local and state government agencies;
- removing requirement for permits to operate motor vehicles on presentation (restricted) and management roads; and
- regulating reconfiguration of a lot within the Area but limited to certain types of subdivision.

## Human Rights Issues

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The Amendment Management Plan affects or engages the rights identified and discussed below. The remaining rights are not the subject of this plan and remain unaffected by it.

#### Your right to privacy and reputation (section 25)

While it may appear that the right to privacy and reputation is limited by the Amendment Management Plan in the requirement to publish a register of cooperative management agreements, the protection included in the plan, such as the removal of personal information from that register, ensures that the right is not actually limited.

#### Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

To some extent the cultural rights of Aboriginal peoples may be limited by the Management Plan, where, for example, the plan restricts the destruction of forest products (vegetation) or limits the circumstances where the forest may be cleared to build a structure, road or trail. The Amendment Management Plan may affect the exercise of the cultural rights of Aboriginal Peoples but only to the extent that:

- a. The activity impacts on the world heritage values and integrity of the Area; and
- b. That the activity is not a native title right already protected under the Native Title Act (Cth) section 211.

After consideration of a) and b) above, the degree to which the right to Aboriginal cultural heritage is potentially affected is hard to determine because neither the exact cultural practices nor the considerations and processes that would be followed in practice are not completely known in advance.

The following sections of the Amendment Management Plan may limit the cultural rights of Aboriginal people because they regulate certain uses that potentially impact the world heritage values and integrity of the Area:

- s17 - rezoning for essential community services infrastructure (and associated Schedule 1);
- s25 - destroying forest products;
- s26 - prohibited activities;
- s32 to 38 - activities for which permits are required;
- s40-43B - agreements including cooperative management agreements (CMAs);
- s59 - consideration of Aboriginal tradition in assessing all permits, rezoning and CMAs; and
- s60(d) - consideration of cultural effects of an activity.

## **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

### Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

#### (a) the nature of the right

The HR Act recognises the special importance of human rights for Aboriginal peoples and Torres Strait Islander peoples, and explicitly protects their distinct cultural rights as Australia's first people. The core value underpinning the various cultural rights protected under section 28 of the HR Act is recognition and respect for the identity of Aboriginal peoples and Torres Strait Islander peoples, both as individuals and in common with their communities.

The right recognises that spiritual, economic and material connection with traditional lands and waters are an essential component of that identity and are inextricably connected to Aboriginal peoples' and Torres Strait Islander peoples' cultural heritage, language and kinship ties. They must not be denied the right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practise their culture.

Much of the Amendment Management Plan is designed to support the cultural rights of Aboriginal peoples by protecting the landscapes and natural attributes associated with those rights and ensuring all assessment and decisions consider Aboriginal Tradition.

The cultural rights of Aboriginal peoples may be affected in some ways by the Amendment Management Plan. For example, the plan allows the keeping of domestic animals but determines the way in which they are kept, it controls reconfiguring a lot which may result in changes to where clearing may occur or structures built but only to an extent that the clearing or building was not already assessable under the existing Management Plan.

#### (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to protect an irreplaceable natural world heritage area, which Queensland is committed to under state legislation and also under the auspices of national and international conventions and agreements. The Area was World Heritage listed for:

- a) its exceptional natural beauty;
- b) because it contains one of the most complete and diverse living records of the major stages in the evolution of land plants, and the most important living records of the history of marsupials and songbirds;
- c) the outstanding examples of significant ongoing ecological processes and biological evolution; and
- d) largely intact flora and fauna with hundreds of endemic species restricted to the property, of which many are classified as threatened.

The public interest being protected by the limitation on Aboriginal cultural heritage is a global public interest and is therefore a proper purpose for limiting rights.

Further, some limitations under the Amendment Management Plan which cause all activity to be judged against the protection of world heritage values and integrity also help promote the right in 28(2)(e) of the HR Act which states that Aboriginal people must not be denied the right, with other members of their community to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. The plan does this by placing a level of protection over the whole of the Area to protect land and water, animal and plant communities on which Aboriginal cultural rights rely.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitations are essential and achieve their purpose described in the sections above, however they are carefully crafted to cause the least impact possible on Aboriginal cultural rights. For example, the limitation requiring a permit for reconfiguring a lot, achieves the purpose of protecting the Area by reducing the potential impact of development on areas of irreplaceable value. The Authority is obliged to issue a permit for a house on any allotment within the Area. The introduction of permit requirement for subdivision allows the Authority to manage the scale, location and number of houses the Authority is obliged to allow.

The Amendment Management Plan proactively promotes the consideration of Aboriginal tradition for all approvals sought in the Area, and despite the general provisions of the plan, cooperative management agreements may be considered to enable the aspirations of Aboriginal peoples provided those aspirations meeting the Primary Goal.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The limitations on Aboriginal cultural rights are closely confined by the Amendment Management Plan and apply only to the extent necessary to protect the values of the Area, and to meet the expectations of the global community. While some limitations exist, the Amendment Management Plan also protects Aboriginal cultural heritage and promotes the interests of Aboriginal peoples particularly concerned with the land.

No less restrictive and reasonably available ways of achieving the purpose have been identified. The Amendment Management Plan confirms that native title rights are not impacted by the plan. Future act notices were sent to confirm this intention. No submissions were received identifying an impact on native title.

Significant consultation was undertaken with the recognised Native Title Representative Body, the North Queensland Land Council (in the consultation they also represented Cape York Land Council). Extensive funded consultation was undertaken with Rainforest Aboriginal Peoples during first phase of consultation, and in the second phase consultation included, future act notices, workshops, consultation through a Traditional Owners Leadership Group and other meetings specific to various Aboriginal groups.

Furthermore, there are mechanisms under the Amendment Plan that help support and strengthen the consideration of Aboriginal traditions and cultural rights under section 28, including:

- a) Cooperative management agreements provide maximum flexibility for a negotiated outcome that finds a balance between the exercise of rights and interests of Aboriginal peoples to protect the unique and irreplaceable values of the world heritage area.
- b) New section 59 – Aboriginal tradition. This section was developed in response to consultation and applies to the consideration of all permits, rezoning and cooperative management agreement negotiations:

s59 - Aboriginal tradition

*In considering any permit application the authority must have regard to the effects a proposed decision may have on the Aboriginal tradition of Aboriginal people particularly concerned with land in the area.*

The definition of Aboriginal Tradition is consistent with the Schedule 1 of the *Acts Interpretation Act 1954 - Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.*

‘Particularly concerned with the land’ does not limit the interest only to traditional owners, it allows consideration of Aboriginal Peoples historically associated with the land.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The benefits of protecting the values of the Area are considered to outweigh the limited extent to which Aboriginal cultural rights might be affected or limited by the Amendment Management Plan. Any limitation is expected to be minor and the outcome for the global community very significant, particularly the protection of the evolutionary history represented in the area. These values are irreplaceable and one of the best examples in the world.

- (f) any other relevant factors

Nil

## Conclusion

I consider that the Wet Tropics (Review) Amendment Management Plan 2020 is compatible with the *Human Rights Act 2019* because it limits rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

**LEEANNE ENOCH**  
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MINISTER FOR SCIENCE AND MINISTER FOR THE ARTS

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