

Wet Tropics (Review) Amendment Management Plan 2020

Explanatory notes for SL 2020 No. 176

made under the

Wet Tropics World Heritage Protection and Management Act 1993

General Outline

Short title

Wet Tropics (Review) Amendment Management Plan 2020

Authorising law

Sections 41 to 47, 52, 53 and 85 of the *Wet Tropic World Heritage Protection and Management Act 1993* (the Act)

Policy objectives and the reasons for them

Policy objectives of the Wet Tropics (Review) Amendment Management Plan 2020 (Amendment Management Plan) are described below.

1. To improve the operation of the Wet Tropics Management Plan 1998 (Management Plan), ensuring the Management Plan reflects contemporary land management practices consistent with the Authority's functions under the Act.
2. To improve and simplify the operation of the Management Plan zoning system.
3. To better reflect Aboriginal Tradition, ensuring Aboriginal tradition and Rainforest Aboriginal Peoples' culture is better recognised in decision making and to increase their involvement in management of the Wet Tropics of Queensland World Heritage Area (the Area).
4. To enable the provision of appropriate visitor infrastructure within the Area into the future, ensuring there is sufficient flexibility for the location of visitor infrastructure and that world heritage values and integrity of the Area are adequately protected.
5. To introduce uniformity of scrutiny in the assessment of applications for new community services infrastructure so all infrastructure is assessed consistently.
6. To implement a simpler system for managing the operation of motor vehicles on roads in the Area to remove duplication in the management of some roads between government entities.
7. To update and refine regulations pertaining to domestic activities within the Area; including the introduction of a practical approach to regulate reconfiguration of a lot consistent with the Authority's functions under the Act. This will allow the potential impacts of domestic activities to be properly managed, including on new freehold lands within the Area.

8. To improve operational aspects of the Management Plan by updating schedules of listed undesirable plants and animals; introducing efficiency measures to keep lists up-to-date; and regulating the translocation of fish and crustaceans into the Area's waterways.

Achievement of policy objectives

1. Improving the operation of the Management Plan: The Amendment Management Plan will achieve its policy objective of improving the operation of the Management Plan through the amendments that will come into effect with the commencement of the operation of the Amendment Management Plan. This is appropriate given section 53(1) of the Act requires a review of the operation of the Management Plan every 10 years.
2. Zoning system: The Management Plan zoning system has been improved and simplified through a reduction in the number of zones; a simplified set of rules for generation of zones; allowing State agencies to seek a rezoning of land from zone B to zone C under Schedule 1; and identification of more land for potential new visitor infrastructure into the future. Details are as follows:
 - a. Reducing the number of zones from four zones (A, B, C and D) to three zones (A, B and C);
 - b. Reclassifying large tracts of zone B land recovered from past land disturbance (e.g. past forestry operations) to zone A (52% to 92.5%);
 - c. Reinforcing the primary consideration within each zone, to protect the world heritage values and integrity, and ensuring this objective is delivered into all considerations under the plan;
 - d. Clarifying the provisions applying to zone A lands which allow for limited visitor infrastructure to enable visitors to better appreciate and enjoy these areas;
 - e. Amending the management purpose of zone B to create a buffer between zone A and C;
 - f. Simplifying the rules for defining Zone B areas i.e. zone B lands will lie between 50 metres–500 metres on either side of the centre-line of linear infrastructure such as roads, power lines and railways;
 - g. Allowing Queensland Government entities (not just local governments as is currently the case) to now apply for rezoning from zone B to zone C to provide for essential community services infrastructure;
 - h. Zone D lands – which previously designated land with existing developed visitor sites or potential visitor sites – has now been incorporated within zone C lands.
 - i. The management purpose of zone C land has been:
 - i. extended to provide greater flexibility to accommodate new visitor infrastructure into the future to enhance presentation of the Area; and
 - ii. clarified to ensure visitor infrastructure is ecologically sustainable, sensitively integrated into the surrounding landscape, and enhances visitors' understanding and appreciation of the natural and cultural heritage of the Area.
 - j. The rules for generation of zone C land have been simplified and will contain lands:
 - i. within 50m of the centre-line of the footprint of linear infrastructure such as roads, power lines and railways
 - ii. within a 50m radius of more significant infrastructure sites

- iii. within 50m from the edge of dams (100% capacity level)
 - iv. which have been cleared and identified as being associated with particular existing use rights
 - v. which have existing visitor sites; and
- k. special zoning rule exceptions have been made for key State-controlled range roads and railways which are prone to land slips. The Amendment Management Plan zoning map will have a 100m zone C buffer (rather than the standard 50m buffer) on one, or both sides, to allow for land slip stabilisation works.
3. Aboriginal tradition and Rainforest Aboriginal Peoples' involvement in management: The Amendment Management Plan will achieve the objective to improve processes, and to better recognise, Aboriginal Tradition and Rainforest Aboriginal Peoples' culture and their involvement in management of the Area. It will achieve this through:
- a. specifically requiring the Authority to have regard to the effect a proposed permit decision may have on Aboriginal tradition;
 - b. allowing for the preparation of guidelines about matters the Authority may consider for entering into a cooperative management agreement with Rainforest Aboriginal Peoples. A final guideline is under preparation which is designed to assist Rainforest Aboriginal Peoples in undertaking their land use planning exercises; and
 - c. depicting lands covered by such cooperative management agreements as overlays on the amended zoning map.
4. New visitor infrastructure: The Amendment Management Plan will enable the provision of appropriate visitor infrastructure within the Area into the future through:
- a. Designation of all zone C areas as potentially available for visitor infrastructure of an appropriate scale type and location. 'Developed visitor infrastructure' is infrastructure designed and constructed mainly for:
 - i. presents the Area to visitors or informing visitors about the Area (e.g. information shelters and lookouts);
 - ii. assists with visitor hygiene, safety or shelter (e.g. toilets and waste disposal facilities);
 - iii. allows visitors to enjoy and stay temporarily in the area; (e.g. campground, tourist accommodation consistent with the management purpose of zone C);
 - iv. enhances visitor experiences (e.g. camping areas, picnic facilities and nature-based tourist accommodation); and
 - v. or otherwise for the use of visitors in the area (e.g. barbecue facility, picnic facility).

Note: zone C areas typically lie adjacent to roads which provide motor vehicular access

- b. The Amendment Management Plan introduces the term 'limited visitor infrastructure' (e.g. walking or cycling tracks, small-scale toilet facilities, visitor shelters or camping platforms) which may now be allowed under permit in any zone, provided it does not impact on World Heritage values and integrity.
5. New community services infrastructure: The Authority recognises the need for new community services infrastructure in the Area. The Authority also recognises the need for consistency in how community service infrastructure is assessed. Previously section 65 just applied to the construction and maintenance of roads; the Amendment Management Plan will now require that any applications received for the construction of any new community services infrastructure will be subject to the same level of scrutiny in the permit assessment process. With this amendment, under section 65 of the Management Plan, the Authority may

issue a permit for building new community services infrastructure only if the activity would not have a net adverse impact on the integrity of the Area OR there is no prudent or feasible alternative.

Infrastructure agencies already have permits for maintenance of their community infrastructure and these activities will be exempt from the new provision under section 65. While section 65 currently applies to the maintenance of roads, it will no longer apply in this instance.

6. Operation of motor vehicles: The Management Plan currently regulates the operation of motor vehicles on roads in the Area. This involves a number of provisions relating to the classification of the road on the zoning map (e.g. management road, presentation restricted road), or whether the road is a lawful access road and can be used by a landholder or native title holder. A number of these roads were in forestry tenures, which are now converted to protected area tenures. Queensland Parks and Wildlife Service manages the operation of motor vehicle on these roads. Other roads open to motor vehicles operated by the public are generally managed by the Department of Transport and Main Roads or local governments.

With the commencement of the operation of the Amendment Management Plan, the Authority will no longer regulate operation of motor vehicle on roads in the Area, other than roads that are primarily used for the maintenance of community services infrastructure. Under the Amendment Management Plan, the Queensland Parks and Wildlife Service will now be responsible for the operation of motor vehicles on the protected area estate and state forests.

The above amendments will greatly simplify the management of motor vehicles in the Area.

7. Domestic activities and reconfiguration of a lot: Under section 35 of the Management Plan, a permit may be issued to a land-holder holding ordinary title to land in the Area, or a native title holder for land in the Area, to carry out a domestic activity. A 'domestic activity' for land means –
 - a. Building an authorised residence on the land; or
 - b. Clearing or building a pedestrian or vehicular access to a residence on the land; or
 - c. Establishing a housegarden or orchard on the land other than for commercial purposes; or
 - d. Extracting water for domestic use.

Under section 63 of the Management Plan, the Authority must issue a permit for a domestic activity, however, the permit may include conditions.

The Amendment Management Plan:

- now allows the installation of a domestic electricity supply and telecommunication equipment;
- clarifies that the Authority must issue a permit for the construction of one residence per allotment, but may issue a permit for additional residences; and
- provides the ability for the Authority to issue a permit for a building ancillary to the main residence e.g. garden shed.

As well as the above, the Amendment Management Plan introduces a practical approach to regulate reconfiguration of a lot. Currently, the reconfiguration of a lot is regulated under the *Planning Act 2016* and determined by local governments.

Reconfiguring a lot can result in an increase in the intensity and number of domestic activities on the land in question. This has the potential to result in increased disturbance to wildlife, negative human-wildlife interactions, impacts on wildlife movement, excessive clearance of vegetation, and the introduction of undesirable plants and animals.

The Amendment Management Plan will ensure that reconfiguring of a lot will be assessed by the Authority to manage any impacts on world heritage values and integrity. The amendments will maintain flexibility to consider complex reconfiguring a lot proposals such as community development on Aboriginal land. In these circumstances the Authority may also consider approvals through a cooperative management agreement process.

The above amendments will achieve the policy objective to update and refine regulations pertaining to domestic activities, including the introduction of a practical approach to regulate reconfiguration of a lot within the Area.

8. Undesirable plants and animals, under the Management Plan, are those which can threaten World Heritage values, particularly if they invade native forests or waterways, disrupt ecosystems or threaten native wildlife in the Area. Undesirable plants and animals are listed at schedules to the Management Plan.

Currently, undesirable animals may be kept in the Area, other than rainforest, on private land or land in relation to which native title exists, and animals such as cattle, goats and deer can be grazed on land, other than rainforest. The Amendment Management Plan prohibits the keeping of undesirable animals anywhere within the Area, except for dogs, cats, honey bees and cattle. Dogs and cats must now be kept in a way that minimises the risk of these animals threatening native animals; and the keeping of bees will be subject to conditions that minimise the risk of the bees swarming.

The undesirable plants list has been updated by only listing those introduced species with invasive potential that have not also been listed under the *Biosecurity Act 2014*. This is to avoid unnecessary regulatory duplication.

Both the undesirable animals list and undesirable plants list will now be able to be updated without the need to implement the full suite of procedures required under section 52 of the Act.

While translocation of crustaceans and fish is currently regulated under the *Fisheries Act 1994*, the permit assessment processes do not adequately consider the potential impacts these activities may have on the World Heritage values of the Area. Translocation of crustaceans and fish will now be regulated under the Management Plan as well as the Fisheries Act. This is required to ensure that any proposed translocations (including fish stocking activities) in the Area will be assessed against the Management Plan's principles and criteria for deciding permit applications, including potential impacts on world heritage values and integrity. The Authority is working with the Department of Agriculture and Fisheries to ensure that permit procedures are properly aligned and to minimise any duplication of effort or regulatory burden.

Consistency with policy objectives of authorising law

The Management Plan (along with section 56 of the Act which defines certain prohibited activities) is the principle tool for the Authority to meet its statutory obligations for the protection of the Area. The Amendment Management Plan is consistent with the objectives of the Act and associated policy objectives. In particular, the Amendment Management Plan is consistent with section 10(4) of the Act being that the Authority must perform its functions in a way that is consistent with the protection of the natural heritage values of the Area.

The Act was developed in close cooperation with the Commonwealth Government. Schedule 1 of the Act provides a Management Scheme Inter-Governmental Agreement between the Commonwealth and the Queensland Governments. The Act also establishes a Ministerial Council. One of the functions of the Ministerial Council is to co-ordinate policy for the Wet

Tropics of Queensland between the Australian and Queensland Governments. Approval of the Amendment Management Plan by Governor in Council requires the prior recommendation of the Wet Tropics Ministerial Council.

The Amendment Management Plan and associated zoning map are consistent with, and support, the management principles for protected areas under Queensland's *Nature Conservation Act 1992*.

The Amendment Management Plan supports the purpose of the *Planning Act 2016* to achieve ecologically sustainable development. It is also consistent with the State Planning Policy and State Interest Statement that matters of environmental significance are valued and protected, and the health and resilience of biodiversity is maintained or enhanced to support ecological processes.

The provisions in the Amendment Management Plan that give special consideration to Aboriginal people particularly concerned with land in the Area are consistent with Queensland's policy objectives in relation to the:

- *Aboriginal Land Act 1991* (e.g. provisions for the adequate and appropriate recognition of the interests and responsibilities of Aboriginal people in relation to land); and
- *Human Rights Act 2019* (e.g. to not deny the right of Aboriginal people to enjoy, maintain, control, protect and develop their identity and cultural heritage; and to maintain and strengthen their distinctive spiritual, material and economic relationship with the land with which they have a connection under Aboriginal tradition).

Inconsistency with policy objectives of other legislation

No inconsistencies with policy objectives of other legislation are evident.

Alternative ways of achieving policy objectives

Given the statutory requirements under Part 3 of the Act for the preparation of a management plan and a review of a management plan every 10 years, there are not considered to be any alternative ways of achieving policy objectives in relation to the regulatory protection of the Area's world heritage values.

With respect to other policy objectives under the Act and the World Heritage Convention such as the conservation, rehabilitation and presentation of the Area's world heritage values, the Authority has adopted non-legislative tools and strategies, including a new Wet Tropics Strategic Plan 2020–2030.

Benefits and costs of implementation

1. Benefits: The Management Plan will benefit from the amendments which will take place on the commencement of the Amendment Management Plan. The effectiveness of the Management Plan will be improved through the introduction of improved protection measures for the Area's integrity and through the delivery of the range of policy objectives as described earlier.
2. Training of staff to implement new provisions under the Amendment Management Plan: There will be some training required for the Authority's staff responsible for the

administration of the Amendment Management Plan, as well as training for officers and Board directors responsible for deciding on more complex or significant permit applications. However, one of the benefits of the Amendment Management Plan is that it simplifies a number of aspects of the Management Plan, including the zoning system. This should result in improved administrative efficiencies.

Queensland Parks and Wildlife Service staff may carry out activities regulated under the Management Plan in a protected area subject to section 30 of the Management Plan i.e. a permit from the Authority is not required. Section 30 requires Queensland Parks and Wildlife Service to consider and decide the proposed activity according to the same principles and criteria that apply to the Authority deciding a permit application. The staff responsible for deciding such proposed activities will also require training with respect to the provisions contained in the Amendment Management Plan.

3. Inspection and compliance costs: Compliance costs are expected to be reduced on the protected area estate, especially with the amendments regarding the regulation of operation of motor vehicles. The administrative burden of administering a permit system for this activity on both the Authority and the State will be diminished as a result.

It is not anticipated that there will be any significant increase in inspection or compliance costs incurred by the Authority as a result of the Management Plan amendments. The introduction of web-based inter-active digital zoning maps (including real-time access in field locations) will also result in significant time savings in administration.

4. Advertising and notifying changes in land use as a result of regulation changes: The Authority will be notifying key stakeholders in relation to relevant changes in land use controls as a result of the Amendment Management Plan. In particular, those stakeholders who made submissions during the Management Plan review process and community services infrastructure providers that operate in the Area. Community services infrastructure providers will welcome the simplified zoning system that has been introduced under the Amendment Management Plan.
5. Coordinated assessment and approval processes: The introduction of a provision to manage any crustacean or fish translocations will require a coordinated approach between the Department of Agriculture and Fisheries and the Authority. Discussions on these matters have already taken place during the Management Plan review process about how to best achieve this coordination. Similarly, the introduction of a provision to manage any proposal for reconfiguring a lot in the Area will benefit from coordination with the State and local governments. The Authority has consulted with State and local governments to coordinate approval processes and to minimise duplication of regulation. These discussions and processes will be refined with the commencement of the operation of the Amendment Management Plan.
6. Minor amendment to zoning map: Efficiencies in procedures for making minor amendment to zoning maps have been introduced thereby reducing any unnecessary regulatory burden on the Authority and the Queensland Government in terms of cabinet approval processes.

Consistency with fundamental legislative principles

The Office of Queensland Parliamentary Counsel (OQPC) has provided advice with respect to the Amendment Management Plan and its consistency with fundamental legislative principles. The Authority is satisfied that the Amendment Management Plan is generally consistent with fundamental legislative principles (FLP). There are two FLP issues that should be raised however.

Cooperative management agreements: The first matter is in relation to replacement of section 43 'Effect of cooperative management agreement on plan'. While this section has not substantially changed, the fact that it is being replaced technically raises an FLP consideration.

Section 43 applies if the Authority and a person enter into a cooperative management agreement under section 41. Sub-section 43(2) states 'This plan applies to the person or group of persons subject to the cooperative management agreement.' The FLP under consideration is the subdelegation of a power delegated by an Act. In this circumstance the power in question is the power to vary the controls of the Management Plan, which under the Act is generally reserved by the Authority and Governor in Council and only upon recommendation by the Ministerial Council. To some extent, section 43 subdelegates plan-amendment authority to the parties of a cooperative management agreement.

The Authority considers that continued operation of this subdelegation is justified for the reason it was originally enacted and that cooperative management agreements are contemplated under the Act. Section 43, together with the associated provisions under Part 3 Division 5 provide the opportunity for entering into a mutually beneficial agreement that recognises the rights of persons who have interests concerning land in the Area; as well being consistent with achieving the primary goal under Schedule 1 of the Act i.e.

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.

Section 41 'Entering into a cooperative management agreement' establishes the basis on which the Authority and a person may enter into an agreement. The person must agree to contribute in some way to achieving the primary goal and the Authority must agree to give a stated consideration to the person (or group) or allow the person to carry out an activity the person could not otherwise lawfully carry out under the Management Plan.

The new section 42 'Matters for consideration for proposed cooperative management agreement' improves the clarity and rigor of CMA consideration by nominating the matters to which the Authority must have regard in deciding whether to enter into an agreement. These matters include *inter alia* world heritage values and integrity of the Area; ecological sustainability of any activities; and Aboriginal tradition.

Cooperative management agreements can only be negotiated on a case by case basis. However, the provisions contained within the Amendment Management Plan ensure a safe and satisfactory nature to the delegation to the Authority.

New offence for contravening a condition of a permit: The second FLP matter is the introduction of a new offence for contravening a condition of a permit, section 51(4). This calls up fundamental legislative principles at the broadest level, that legislation should have regard to the rights and liberties of individuals which includes justifying the imposition of new liabilities. The offence is consistent with the policy intent of the Management Plan and is similar to offences in broadly similar legislation. For example, the failure to comply with a stop work notice under the *Vegetation Management Act 1999* section 54A(5), which contains a maximum penalty of 1665 penalty units. Section 165 of the *Planning Act 2016* assigns a maximum penalty of 4,500 penalty units where a person contravenes a development approval.

The maximum penalty of 165 penalty units is high but permissible under the regulation-making power of the Act. By way of comparison, equal penalties exist for section 26 - Other prohibited

activities, for offences about matters such as undesirable plants, mining, excavating or quarrying, interfering with a watercourse, building or maintaining a structure or a road, operating certain waste facilities.

Consultation

As required under the Act, two formal phases of public notification and consultation were undertaken in the preparation of the Amendment Management Plan.

Consultation – Phase 1

The first phase involved giving public notice in relevant newspapers that the Authority was commencing a review of the Management Plan. As required under the Act, the notice invited submissions from government departments, public authorities, land-holders, local authorities Aboriginal people particularly concerned with land in the Area, interest groups and persons and members of the public. The notice provided contact details for obtaining further information about the types of amendments to the Management Plan that were under consideration by the Authority.

As part of this first phase of public consultation, the Authority prepared a 16-page public consultation booklet explaining the review process and key changes under consideration. The Authority's website also provided access to the booklet, the draft zoning map and additional information on key issues. As a result of the public notices, meetings and presentations to interest groups, 91 submissions were received in Phase 1. A report on outcomes of the consultation during Phase 1 of the review process is publicly available on the Authority's website:

<https://www.wettropics.gov.au/site/user-assets/docs/2018%20Report%20on%20Wet%20Tropics%20Management%20Plan%20Review%20Phase%201%20Consultation20180301085530.pdf>

Consultation – Phase 2

The Authority considered all submissions properly made and feedback received during the Phase 1 consultation period in preparing the Wet Tropics (Review) Amendment Management Plan 2019 – Consultation Draft.

The Amendment Management Plan – Consultation Draft was released for public comment during March and April 2019. The notification and consultation process adopted for Phase 2 was similar to that applied in the Phase 1 consultation. As part of the consultation process, the Authority prepared a public consultation booklet that explained the key changes included in the Amendment Management Plan – Consultation Draft and the rationale for such proposed changes.

A total of 49 submissions were received in response to Phase 2 consultation. A report on the submissions properly made to the Authority in relation to the Amendment Management Plan – will be made available on the Authority's website (www.wettropics.gov.au) once the subordinate legislation is made publicly available. The report provides a review of stakeholder submissions including the Authority's response.

As a result of the comprehensive consultation, most concerns raised during the review have been addressed to the satisfaction of relevant stakeholders.

Regulatory Impact Assessment: In accordance with the *Queensland Government Guide to Better Regulation*, the Queensland Productivity Commission (the Commission) was consulted and noted that the Plan (with its permit and zoning system) is required to ensure continued protection of the

Area under the Act. Some stakeholder concerns regarding potential impacts of the amendments were also considered.

The Commission considered whether the review provided decision-makers and the community with sufficient information on the impacts of the proposals, and opportunity to refine existing options, identify new options and comment on their impacts. The Commission noted the Authority:

- has conducted consultation commensurate with the complexity and significance of the potential impacts;
- amended and developed proposals in response to stakeholder concerns; and
- sent a draft response to all stakeholders who raised significant concerns during the two phases of consultation. The Authority then met with the stakeholders to gain a more in depth understanding of their concerns, to explain the Authority's position and attempt to resolve any issues where possible.

The Commission notes there has been limited assessment of the costs and benefits of the amendments; however, further regulatory impact analysis in the form of a regulatory impact statement (RIS) is unlikely to generate substantive new evidence or analysis of the impacts beyond that generated during the review process. Given these points, the Commission considers the proposal would not benefit from the preparation of a RIS provided that:

- the Authority provides decision-makers with all the evidence of the impacts of the proposals, including evidence gained through the public consultations and the subsequent stakeholder meetings; and
- for the purposes of transparency, the Phase 2 consultation report is publicly released.

The necessary evidence is provided to relevant decision-makers, and the Phase 2 Consultation Report will be released to the public.