

# Wet Tropics (Rainforest Area) Amendment Management Plan 2022

## 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, Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs provide this human rights certificate with respect to the *Wet Tropics (Rainforest Area) Amendment Management Plan 2022* made under the *Wet Tropics World Heritage Protection and Management Act 1993*.

In my opinion, the *Wet Tropics (Rainforest Area) Amendment Management Plan 2022*, 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* (the Plan) is subordinate legislation under the *Wet Tropics World Heritage Protection and Management Act 1993* (the Wet Tropics Act). Its primary purpose is to protect and manage the world heritage values and integrity of the Wet Tropics of Queensland World Heritage Area (the Area). It does this through the regulation of activities and impacts on the Area.

A recent 10-year review of the Plan included a new definition for ‘rainforest area’. This definition aimed to clarify policy that had existed in the Plan since its inception. An error was made in the new definition. That error results in the current failure of the definition to protect vulnerable rainforest areas from burning, cattle grazing and the impacts of cats, dogs and honey bees. An amendment is proposed to correct the error.

The ‘rainforest area’ definition aimed to use the Regional Ecosystem Map kept by the Queensland Herbarium to identify the spatial distribution of rainforest regional ecosystem types/numbers. The relevant rainforest regional ecosystem numbers are identified in a list in Schedule 2B of the Plan.

The error is the identification of the incorrect reference map, a Property Map of Assessable Vegetation (PMAV), instead of the Regional Ecosystem Map. The proposed change will replace the PMAV with the Regional Ecosystem Map and will continue to recognise a PMAV but only for its ability to ground truth the spatial distribution of rainforest regional ecosystem types if an error is found in the Regional Ecosystem Map.

## Human Rights Issues

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

The amendment engages section 28 Cultural rights of Aboriginal peoples and Torres Strait Islander Peoples. The engagement arises as the definition of ‘rainforest area’ results in restrictions on burning and the way dogs must be kept. Burning is a cultural activity and keeping of dogs is a cultural activity held by some First Nations peoples.

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

The limitation on burning in a rainforest and the requirement to keep dogs in an enclosure within a rainforest is considered reasonable to protect fragile rainforest. The limitations in place since 1998 meant that burning and the keeping of dogs on private land and native title lands within a rainforest area was not allowed at all by the Plan. Amendments were made in 2020 (11 September 2020) to relieve these limitations by allowing burning under permit and for the keeping of dogs if kept in an enclosure. Unfortunately, the error has created an exemption to these limitations over a large proportion of native rainforest country.

Some of the reasons for the limitation is that rainforest trees do not recover from hot fires and burning in a rainforest may cause permanent damage to these sensitive rainforest ecosystems. Unrestrained dogs threaten already vulnerable or endangered rainforest fauna.

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

The *Human Rights Act 2019* 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 *Human Rights Act 2019* 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.

#### (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:

- 1) its exceptional natural beauty;
- 2) 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;
- 3) the outstanding examples of significant ongoing ecological processes and biological evolution; and

- 4) 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.

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

The limitations are essential to achieve the protection of the World Heritage listed Area, and although cultural burning and keeping of dogs will be limited, this limitation will also contribute to the conservation and protection of the environment which positively engages section 28(2)(e) of the Act.

The right to burn in a rainforest and keep unrestrained dogs in a rainforest limits Aboriginal cultural rights to manage country but only to the extent that the activity is not a native title right. Anecdotal evidence from one group in the Area suggests that the limitation is largely compatible with traditional burning practices because rainforest areas were not traditionally burnt. The exception to this is reported to be select burning under individual native fruit trees. Little information is available about traditional practice of keeping of dogs in the Area. The Plan limits these right by restricting the right to burn except where a permit is obtained because the burning has a demonstrated conservation outcome. Keeping of dogs is restricted to an enclosure.

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

There is no less restrictive alternative to burning in a rainforest because it threatens the protection of the world heritage area and the unique and irreplaceable species within it. The alternative for the keeping of dogs is to return to the former prohibition which is more restrictive. Before the 2020 amendment, dogs could not be kept on private land or native title lands within a rainforest area.

- (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. 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.

## Conclusion

I consider that the *Wet Tropics (Rainforest Area) Amendment Management Plan 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**MEAGHAN SCANLON**  
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF AND  
MINISTER FOR SCIENCE AND YOUTH AFFAIRS

© The State of Queensland 2022