

Wet Tropics (Consequential Amendments) Amendment Management Plan 2023

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, Leanne Linard, Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs, provide this human rights certificate with respect to the Wet Tropics (Consequential Amendments) Amendment Management Plan 2023 made under the *Wet Tropics World Heritage Protection and Management Act 1993*.

In my opinion, the *Wet Tropics (Consequential Amendments) Amendment Management Plan 2023*, 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 proposed amendments concern the Wet Tropics legislation, the *Wet Tropics World Heritage Protection and Management Act 1993* (Wet Tropics Act), and its subordinate legislation the Wet Tropics Management Plan 1998 (the Plan). The Wet Tropics legislation is made to protect and manage the Wet Tropics of Queensland World Heritage Area (the World Heritage Area) according to the commitment made by the Australian and Queensland governments.

The purpose of the *Wet Tropics (Consequential Amendments) Amendment Management Plan 2023* (Amendment Plan) is to incorporate consequential amendments resulting from changes to the Wet Tropics Act, which were approved in the following amendment acts, the *Nature Conservation and Other Legislation Amendment Act 2022* and the *Environmental Protection and Other Legislation Amendment Act 2023*. The Wet Tropics Act amendments will commence by Proclamation alongside the consequential changes to the subordinate legislation.

The Amendment Plan will:

1. Remove mining authorised under the *Mineral Resources Act 1989* from the section 27 ‘allowed activities’ in the Plan. This action completes a change to the Wet Tropics Act that previously allowed mining to be exempted from the prohibited uses in the World Heritage Area.
2. Transfer responsibilities of the obsolete Ministerial Council to the equivalent arrangement of the State Minister (for Environment) and Commonwealth Minister (for Environment), including relevant terminology updates. This change responds to the National Cabinet Reform process, which arose from the Conran Review, and aligns with the altered intergovernmental arrangements.

3. Clarify in the Plan where references to ‘agreement’ refer to the ‘Intergovernmental Agreement¹’.
4. Administrative updates respond to changed numbering or section references in the Wet Tropics Act, reference the new location of the Intergovernmental Agreement on the Authority’s website rather than in a schedule of the Act, clarify the definition of primary goal by identifying which part of the Intergovernmental Agreement it refers to, and replaces references to the *Public Service Act 2008* with the new *Public Sector Act 2022*.

Human Rights Issues

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

The only aspect of the proposed changes that engages human rights is the removal of mining under the *Mineral Resources Act 1989* from the section 27 ‘allowed activities’ in the Plan.

The two human rights engaged by this change are:

- Section 24 Property rights
- Section 28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples - (2)(e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

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

(a) the nature of the right

Section 24 Property rights relates to the right to act on a licence, permit or authority under the *Mineral Resources Act 1989*.

A recent decision of Parliament changed the Wet Tropics Act to remove an exemption in the Wet Tropics Act that allowed mining where a licence, permit or authority is held under the *Mineral Resources Act 1989* (a MRA mining authority). The consequential amendment to the Plan will remove the ‘allowed activity’ of mining under the *Mineral Resources Act 1989* consistent with this change.

This outcome removes the opportunity of a person or company to act on a MRA mining authority within the World Heritage Area. At the time of the Wet Tropics Act amendment decision by Parliament, there were no MRA mining authorities that allowed impact on the World Heritage Area, so no actual rights were removed. However, to remove any doubt about the existence of any legacy permissions and future intent to act on them, it is acknowledged that the right to property could technically be restricted by the removal of this opportunity.

¹ Management scheme intergovernmental agreement for the Wet Tropics of Queensland World Heritage Area, 2012

Despite the restriction on the potential to obtain, and act on a MRA mining authority, the actual impact is negligible due to the Department of Resources practice to condition any MRA mining authority to avoid impact on the World Heritage Area.

The relevant **Section 28 ‘Cultural rights’**—Aboriginal peoples and Torres Strait Islander peoples’ relates to 28(2)(e) right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

The proposed withdrawal of opportunity to mine in the World Heritage Area positively engages this right because it helps to avoid impact on the environment and productive capacity of Aboriginal lands.

Engagement with this right supports rather than limits the right. Further analysis is not required.

(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 proposal is to align the Plan with the change to the Wet Tropics Act, completing the process of removing the exemption under Wet Tropics legislation that enables a MRA mining authority to be enacted in the World Heritage Area. This outcome is sought to better protect the World Heritage Area from impacts on the Outstanding Universal Value of the area, for which it was listed. This objective is consistent with Australia’s obligation under the World Heritage Convention² to ensure the protection, conservation, presentation, rehabilitation, and transmission to future generations, of the natural heritage of the World Heritage Area. It is also consistent with the expectations of UNESCO³ and the global community.

The proposal to remove the opportunity to mine in the World Heritage Area was raised in the last review of the Wet Tropics Management Plan 1998, making clear to the public that the change could not be made until the Wet Tropics Act was first amended. The response to the proposal to remove mining was unanimously supported by the public, including Rainforest Aboriginal Peoples; and State Government during the Plan review; and this support continued through the select consultation on the Wet Tropics Act amendment considered in the passage of the *Environmental Protection and Other Legislation Amendment Act 2023* (EPOLA 2023). The audience for the consultation for EPOLA 2023 included Queensland Resources Council.

The positive response to the proposal to remove mining from the World Heritage Area is taken to be an acknowledgement that the limitation on possible future mining is considered reasonable in the World Heritage Area. The limitation is intended to protect natural and cultural values, and to support Section 28 Cultural Rights of Aboriginal Peoples and Torres Strait Islander peoples.

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

The limitation achieves its purpose by ensuring mining does not result in the destruction of forest product, a prohibited act under the Wet Tropics Act. Further, it removes the only

² Convention Concerning the Protection of the World Cultural and Natural Heritage, UNESCO, 16 November 1972

³ United Nations Educational, Scientific and Cultural Organization

remaining exemption to the Plan's prohibition on mining and mining exploration under 'Other prohibited activities' of the Plan, section 26(1)(d).

The limitation is consistent with the intent of the Wet Tropics legislation and the purpose of removing the right to mine under the *Mineral Resources Act 1989* within the World Heritage Area.

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

There is no other effective way to complete the objective to remove the opportunity to mine or undertake mineral exploration under the *Mineral Resources Act 1989* within the World Heritage Area. The consequential change to the subordinate legislation is the only approach to achieve this objective and to cause the Plan to be consistent with the recently approved change to the Act (proposed to commence by Proclamation at the same time as the Plan amendments).

(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 balance of considerations is the importance of protecting an irreplaceable World Heritage Area weighed against the potential limitation on future applications to mine within it.

The World Heritage Area meets all four criteria for world heritage listing of its natural heritage, it:

- exhibits exceptional natural beauty,
- contains one of the most complete and diverse living records of the major stages in the evolution of land plants,
- provides outstanding examples of significant ongoing ecological processes and biological evolution, and
- holds a largely intact flora and fauna with hundreds of endemic species restricted to the property, of which many are classified as threatened.

This World Heritage Area listing means that the area has an Outstanding Universal Value of natural significance which is so exceptional as to transcend national boundaries and is of common importance for present and future generations of all humanity.

In addition to the natural world heritage values, the property is included on the National Heritage List for its Indigenous heritage values. The Aboriginal Rainforest Peoples of the Wet Tropics of Queensland have lived continuously in the rainforest environment for at least 5000 years, and this is the only place in Australia where Aboriginal people have permanently inhabited a tropical rainforest environment.

Protecting the right of the global community and Rainforest Aboriginal Peoples to maintain an area of such extraordinary natural and cultural heritage value is considered more reasonable than protecting the potential future right to mine the World Heritage Area. The consultation on the proposed amendment confirms this.

(f) any other relevant factors

Nil

Conclusion

I consider that the *Wet Tropics (Consequential Amendments) Amendment Management Plan 2023* 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.

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