

Reconfiguring a lot under the Wet Tropics Management Plan 1998

Introduction

Reconfiguring a lot located within the Wet Tropics of Queensland World Heritage Area (the Area) is now managed under the Wet Tropics Management Plan 1998 (the Plan). The primary purpose of introducing provisions into the Plan for reconfiguring a lot in the Area is to manage the impacts of proposed activities on the World Heritage values and integrity of the Area. In deciding whether to permit the reconfiguring of a lot, the Wet Tropics Management Authority (the Authority) will consider the extent to which a proposal impacts on the Area and whether there are prudent and feasible alternatives.

Key points

- Reconfiguring a lot located in the Area is now regulated under the Management Plan.¹ The new 'lot reconfiguration provisions' in the Plan commence on 11 September 2020. They apply only within the Area.
- A permit for reconfiguring a lot under the Plan will operate in the same way as other permits under the Plan.
- The Plan and its permits do not fall under the Planning Act 2016 integrated approval processes. Separate applications to the Authority (for a permit for reconfiguring a lot under the Plan) and to an assessment manager (for development approval for reconfiguring a lot under the Planning Act 2016) are required.
- The Plan prevails over a planning scheme to the extent of any inconsistency.²
- Local government may not make a development decision that is inconsistent with the Plan.³
- The Area boundary can be found in the zoning map on the Authority's website <https://www.wettropics.gov.au/ManagementPlan> or Queensland Globe in the planning cadastre layer <https://qldglobe.information.qld.gov.au/>.

Background

The Plan is a regulation under the *Wet Tropics World Heritage Protection and Management Act 1993* (the Act). The Plan has recently been the subject of a review, which identified that freehold land within the Area had increased since the Plan was originally made and that the provisions in force at the time of the review did not give the Authority the power to effectively manage the potential impact of subdivision, and its resultant land uses, within the Area. (The Authority is obliged to approve a house on

¹ The Wet Tropics Management Plan 1998 can be found in the Queensland Legislation Page, In force legislation - subordinate legislation <https://www.legislation.qld.gov.au/>

² *Wet Tropics World Heritage Protection and Management Act 1993*, s 49.

³ *Wet Tropics World Heritage Protection and Management Act 1993*, s 50.

every allotment within the Area however, before these new lot reconfiguration provisions commenced, did not have the opportunity to control the number of allotments created.)

It is important to the Authority that the aspirations of Rainforest Aboriginal Peoples and others can be properly considered in balance with protection of the Area. Section 90 of the Operational Guideline for the Implementation of the World Heritage Convention forms part of the discussion of ‘integrity’, meaning the integrity for which the Area was listed. It recognised that no Area is pristine and that human activities often occur in natural areas, both of traditional societies and local communities. It goes on to identify that these activities may be consistent with the Outstanding Universal Value of the Area where they are ecologically sustainable.

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How are activities regulated under the Wet Tropics Management Plan 1998?

The Plan operates by prohibiting activities (Plan, s 26) and then ‘relaxing’ the prohibitions in certain circumstances by:

- identifying some prohibited activities as ‘allowed’ activities in particular circumstances (Plan, s 27)
- identifying some prohibited activities as ‘allowed’ activities if the activity causes no more than minor and inconsequential destruction of a forest product or interference with earth or a watercourse and has no more than a minor and inconsequential adverse impact on the Area’s integrity (Plan, s 28)
- providing for some other prohibited activities to be carried out under permits granted by the Authority (Plan, s33).

Section 26 of the Plan now includes ‘reconfiguring a lot, if the reconfiguration would be assessable development for which a local government would be the assessment manager’ as a prohibited activity. This activity is not included in the list of ‘allowed activities’ in s 27 of the Plan and it is not authorised under s 28 of the Plan as a minor and inconsequential activity.

Reconfiguring a lot can be undertaken in the Area only if it is:

- authorised by a permit granted by the Authority (Plan, s 33)
- or
- agreed as part of a cooperative management agreement (Plan, s 40).

How can I apply for a permit for reconfiguring a lot?

Application is made to the Authority for a permit under s45 of the Plan. There is a mandatory application form, which is available on the Authority website. There is currently no application fee.

How long does it take for the Authority to decide an application for a permit for reconfiguring a lot?

The assessment timeframe is a maximum of 60 days unless the Authority asks the applicant for more information ('information request') under s 47 of the Plan.

An information request may include a request for an environmental impact assessment (Plan, s 47(5)). The Authority may ask the applicant for an environmental impact assessment under this section only if it considers:

- (a) the proposed activity might have an impact on the World Heritage values and integrity of the Area that is unacceptable under this plan
- and
- (b) having regard to the significance of the proposed activity, it would be reasonable to ask for the assessment.

What does the Authority consider in deciding an application for a permit for reconfiguring a lot?

Considerations the Authority applies in assessing permit applications generally include:

- the potential impact of the proposed activity on World Heritage values and integrity of the Area (Plan, s 56(1)) (the most important consideration)
- how the potential impact of an activity can be minimised (Plan, s 56(2))
- the management purpose of the zone in which the activity is proposed to be carried out (Plan, s 56(3)(a))
- the extent to which the proposed activity is consistent with the statement of Outstanding Universal Value (Plan, s 56(3)(b))
- the potential impact of the proposed activity on threatened wildlife and near threatened wildlife and their habitat under the *Nature Conservation Act 1992* (Plan, s 56(3)(c)(i))
- the potential impact of the proposed activity on natural ecological processes (Plan, s 59(3)(c)(ii))
- the potential impact of the proposed activity on the scenic amenity and the degree of visual dominance of the proposed activity (Plan, s 56(3)(iii))
- the ecological sustainability of the proposed activity (Plan, s 56(3)(d))

- the potential cumulative impact of the proposed activity and other activities carried out in the Area (Plan, s 56(3)(e))
- any action that could be taken to avoid, minimise, mitigate or monitor any adverse impact of the proposed activity on the Area's world heritage values and integrity (Plan, s 56(4)(a))
- any action that could be taken to rehabilitate the Area while carrying out the activity or after it has ended (Plan, s 56(4)(b))
- any action that could be taken to contribute to achieving the primary goal (Plan, s 56(4)(c))
- the principle (precautionary principle) that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (Plan, s 57)
- whether there is any prudent and feasible alternative to the proposed activity (Plan, s 58)
- the effects a proposed decision on the application may have on the Aboriginal tradition of Aboriginal people particularly concerned with land in the Area (Plan, s 59)
- the effects a proposed decision on the application may have on particular members of the community (including Aboriginal peoples particularly concerned with the land) (Plan, s 60)
- the effect of the proposed activity on the carrying capacity of land in the Area (Plan s 61).

What happens if the applicant is dissatisfied with the Authority's decision on the application?

An applicant may request a review of decision under s 68 of the Plan. Appeal rights for review decisions are available under s71 of the Plan.

What happens if other activities are proposed in conjunction with reconfiguring a lot?

A permit application under the Plan for reconfiguring a lot within the Area may also be accompanied by a permit application for other activities proposed to be carried out in the Area such as community services infrastructure (road) for a domestic activity (house).

However, if there are multiple aspirations or multiple lots proposed, whether at once, or over time, it may be possible to deal with reconfiguring lots in the Area under a cooperative management agreement rather than through permits. Under s 56(3)(e) of the Plan, the Authority is required to consider the cumulative impacts of the activity for which a permit is sought and other activities in the Area. If the Authority agrees to enter into a cooperative management agreement, this agreement allows all activities in the agreement area to be considered and managed consistently and harmoniously, and avoids the risk that the Authority may refuse an application for a permit to reconfigure a lot because of the potential impacts of the reconfiguration and other activities affecting the land. The Authority may only agree to enter into a cooperative management agreement if the proposal achieves the primary goal.

What do the new lot reconfiguration provisions mean for local government?

The Plan prevails over the planning scheme to the extent of inconsistency.

Q: Does this mean only in the making of a planning scheme or also in the assessment of applications under the planning scheme?

A: It means both in the making of a planning scheme and any application considered, and decision made under it. (Act, ss 49 and 50).

Local authorities' decisions must be consistent with management plans.

Q: What does this mean?

A: A local authority must not issue or give any approval, consent, permit or other authority, in relation to a development on land in the Area, that is inconsistent with the Plan. (Act, s 50).

Referral agency causes local government to apply an inconsistent condition/decision.

Q: What happens when a referral agency causes a local government to give an approval or other decision that is inconsistent with the Plan?

A: Local government is obliged to apply the inconsistent condition of the referral agency or the inconsistent decision, and the referral agency condition or decision is not deemed to be the local government's decision. The applicant for the development approval has a right after receiving the decision notice about the development application to either make change representations about the development approval under chapter 3, part 5, division 2 of the *Planning Act 2016* or appeal the decision about the development application to the Planning and Environment Court.

As a practical matter, where the inconsistency between a condition required to be imposed on a development approval by a referral agency and the Plan are apparent, the local government may wish to bring the inconsistency to the attention of the referral agency before a decision notice for the development application is issued.

Which application comes first?

Q: Is the approval of the Authority required before a development application is made to local government?

A: No. The two processes are separate and can run concurrently or consecutively.

It is strongly recommended that a proponent speaks first to the Authority before committing costs to prepare a development application.

It is also recommended that local and state governments include the Authority in preliminary considerations for any development in the Area.

Q: What are the implications of undertaking **reconfiguring a lot without an approval**?

A: Penalties apply.

Q: What happens if the applicant **clears prior to applying to reconfigure a lot**?

A: Destroying forest products is an offence under s56 of the Act. The maximum penalty under this section is 3000 penalty units, imprisonment for 2 years, or both. The definition of destroying forest product is included at the end of this document.

Q: How does this permit for reconfiguring a lot **differ from other local or state government assessments?**

A: Assessment is based on the potential impact of a proposal on World Heritage values and integrity, which aims to maintain internationally recognised landscapes, ecosystems and threatened plant and animal species.

Q: What is ‘reconfiguring a lot, if the reconfiguration would be assessable development **for which a local government would be the assessment manager**’?

A: The term ‘reconfiguring a lot’ is defined in the *Planning Act 2016*. In broad terms, it includes creating lots by subdividing another lot and rearranging the boundaries of a lot by registering a plan of subdivision. Assessable development is development either prescribed in a local government’s planning scheme or the Planning Regulation 2017 as development which requires a development approval. The assessment manager for a development application is prescribed in schedule 8 of the Planning Regulation 2017.

This means an application for reconfiguring a lot which is also triggered under the Planning Regulation 2017 or the relevant local government’s planning scheme (generally undertaken under the *Land Title Act 1994*) and for which local government is identified as the assessment manager in Schedule 8 of *Planning Regulation 2017*.

Q: In what **zone** can you apply for reconfiguring a lot?

A: All zones, but whether an approval is granted will depend on the potential impact on the particular values of that part of the Area.

Q: Are **minimum lot sizes** prescribed?

A: No. The matters about which a permit is considered are summarised above.

Q: Is there a **development code** that applies for reconfiguring a lot in the Area?

A: For the purposes of assessing the application for a permit under the Plan, no, assessment is undertaken directly under the Plan.

Q: Are the **timeframes** for assessment consistent with the development assessment timeframes under *Planning Act 2016*?

A: No—timeframes differ. See section above: ‘How long does it take for the Authority to decide an application for a permit for reconfiguring a lot?’.

Q: Is there a **fee**?

A: Not at the current time. A fee may be applied in the future.

Q: Is there a **pre-lodgement process**?

A: The Authority strongly recommends that all proposals are raised prior to lodgement, but there is no formal pre-lodgement process. Please contact the Authority—contact details can be found at the end of this document.

Q: What does a **prudent and feasible alternative** mean?

A: Section 58 of the Plan outlines the consideration of prudent and feasible alternative which include the consideration of whether there is an alternative site outside the Area, an alternative way of carrying out an activity, or the alternative of not carrying out the activity.

Q: Do **transitional provisions** apply?

A: Yes, if an application for reconfiguring a lot was made to local government and a development approval was issued before the 11 September 2020 commencement day, the new lot reconfiguration provisions under the Plan will not apply.

Titles

All new allotments for which a permit for reconfiguring a lot is issued under the Plan must contain an **annotation on title** under section 66 of the Act to alert landholders that:

- destroying forest products is prohibited under section 56 of the Act
- and
- the land is subject to the Plan.

Relevant terms and definitions

Aboriginal people particularly concerned with land

For the purposes of this Act, Aboriginal people are particularly concerned with land if:

- (a) they are members of a group that has a particular connection with the land under Aboriginal tradition; or
- (b) they live on or use the land or neighbouring land. (Act, s 5)

destroying, in relation to a forest product, means removing, clearing, killing, cutting down, felling, digging up, pushing over, pulling over, poisoning, ringbarking, topping, lopping, burning or damaging the forest product. (Act, Sch 3)

ecological sustainability in a World Heritage management context, is taken to be as outlined in *Environment Protection and Biodiversity Conservation Act 1999* and Australia's National Strategy for Ecologically Sustainable Development (1992). A more tailored approach to the matter will be developed for the direct circumstances of the Plan in the next round of policy development of the Authority.

integrity, of the area or of land in the area, integrity within the meaning of the operational guidelines and as described in the statement of outstanding universal value for the area. (Plan, Sch 3)

Outstanding Universal Value means 'cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole'. (Operational Guidelines for the Implementation of the World Heritage Convention—UNESCO)

primary goal is 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. (Act, Sch 1)

reconfiguring a lot

The Act, schedule 3 provides that, 'reconfiguring a lot' has the following meaning given under the *Planning Act 2016*:

reconfiguring a lot means—

- (a) creating lots by subdividing another lot; or
- (b) amalgamating 2 or more lots; or
- (c) rearranging the boundaries of a lot by registering a plan of subdivision under the Land Act (*Land Act 1994*) or Land Title Act (*Land Title Act 1994*); or
- (d) dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—
 - (i) a lease for a term, including renewal options, not exceeding 10 years; or
 - (ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the Body Corporate and Community Management Act 1997; or
- (e) creating an easement giving access to a lot from a constructed road.

World Heritage values, of the area or land in the area, means the natural heritage described in the statement of outstanding universal value for the area and contained in the area or land. (Plan, Sch 3)

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