



**THE CAIRNS  
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# **‘Which Way Australia’s Rainforest Culture’: Relisting the Cultural Values for World Heritage**

Discussion paper about realising the national and international recognition of the Rainforest Aboriginal cultural values of the Wet Tropics region and World Heritage Area

Compiled by Ro Hill, Ellie Bock and Petina Pert with and on behalf of the Rainforest Aboriginal Peoples and the Cultural Values Project Steering Committee

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The Cultural Values Project Steering Committee managed the project and this research inquiry comprised core partners: the Rainforest Aboriginal Peoples' Alliance represented through key organisations and core leadership, The Cairns Institute and James Cook University, and CSIRO. Enquiries should be addressed to [WetTropicsBama@gmail.com](mailto:WetTropicsBama@gmail.com)

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## Abbreviations Used in This Report

ACF	Australian Conservation Foundation (1964-)
ACHA	<i>Aboriginal Cultural Heritage Act, 2003 (Queensland)</i>
AHC	Australian Heritage Council
ANEDO	Australian Network of Environmental Defenders' Offices
ANT	Aboriginal Negotiating Team (2001-2005)
ARC	Aboriginal Rainforest Council (2005-2008), preceded by the Interim Negotiating Team (2001-2005)
ATSIC	Aboriginal and Torres Strait Islander Commission (1990-2005)
AWHIGA	Australian World Heritage Intergovernmental Agreement
AWHAC	Australian World Heritage Advisory Committee (2008-)
AWHIN	Australian World Heritage Indigenous Network (2008-)
CAFNEC	Cairns and Far North Environment Centre (1981-)
CCC	Community Consultative Committee, established under the <i>Wet Tropics World Heritage Protection and Management Act, 1993</i>
CHB	Cultural Heritage Bodies, formally recognised under the <i>Queensland Aboriginal Cultural Heritage Act, 2003</i>
CQLC	Central Queensland Land Council (1990-2012)
CSIRO	Commonwealth Scientific and Industrial Research Organisation
CYLC	Cape York Land Council (1990-)
DoE	Australian Government Department of Environment
DOGIT	Deed of Grant in Trust
EHP	Queensland Department of Environment and Heritage Protection
EPBC	<i>Environment Protection and Biodiversity Conservation Act, 1999 (Commonwealth)</i>
FPIC	Free, prior and informed consent
GBR WHA	Great Barrier Reef World Heritage Area
GDP	Gross Domestic Product

ICOMOS	International Council on Monuments and Sites (1965-)
ILUA	Indigenous Land Use Agreement
IPA	Indigenous Protected Area
IUCN	International Union for the Conservation of Nature (1948-)
KLC	Kimberley Land Council (1978-)
MNES	Matters of National Environmental Significance
NH	National Heritage
NHL	National Heritage Listing
NPSR	Queensland Department of National Parks, Sports and Racing
NQLC	North Queensland Land Council Native Title Representative Body Aboriginal Corporation (1994-)
NRM	Natural Resource Management
NTRB	Native Title Representative Bodies, formally recognised under the <i>Native Title Act, 1993</i>
OUV	Outstanding Universal Value
PBC	Prescribed Body Corporate (also see RNTBC below)
PM&C	Australian Government Department of the Prime Minister and Cabinet
RAAC	Rainforest Aboriginal Advisory Committee (2005-2008) to the Wet Tropics Management Authority, succeeded by the Rainforest Aboriginal Peoples' Alliance
RAN	Rainforest Aboriginal Network (1992-94), succeeded by Bama Wabu (1995-2001)
RAP	Rainforest Aboriginal Peoples
RAPA	Rainforest Aboriginal Peoples' Alliance (2009-2015)
RBA	Rights-based approaches
RCSQ	Rainforest Conservation Society of Queensland (1982-), now known as the Australian Rainforest Conservation Society Inc
RNTBC	Registered Native Title Body Corporate, sometimes known as PBCs, Prescribed Body Corporates formally recognised under the <i>Native Title Act, 1993</i>

SAC	Scientific Advisory Committee, established under the <i>Wet Tropics World Heritage Protection and Management Act, 1993</i>
SEWPAC	Australian Government Department of Sustainability, Environment, Water, Population and Communities (2013-2016)
TO	Traditional Owner
TOAC	Traditional Owner Advisory Committee (2005-2008) to Terrain NRM, succeeded by the Rainforest Aboriginal Peoples' Alliance
TOR	Terms of Reference
TUMRA	Traditional Use of Marine Resources Agreement
UNDHR	United Nations Declaration on Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WH	World Heritage
WHA	World Heritage Area
WTAPPT	Wet Tropics Aboriginal Plan Project Team (2002-2005), succeeded by the Aboriginal Rainforest Council
WTMA	Wet Tropics Management Authority
WTQWHA	Wet Tropics of Queensland World Heritage Area
WTRA	Wet Tropics Regional Agreement, 2005

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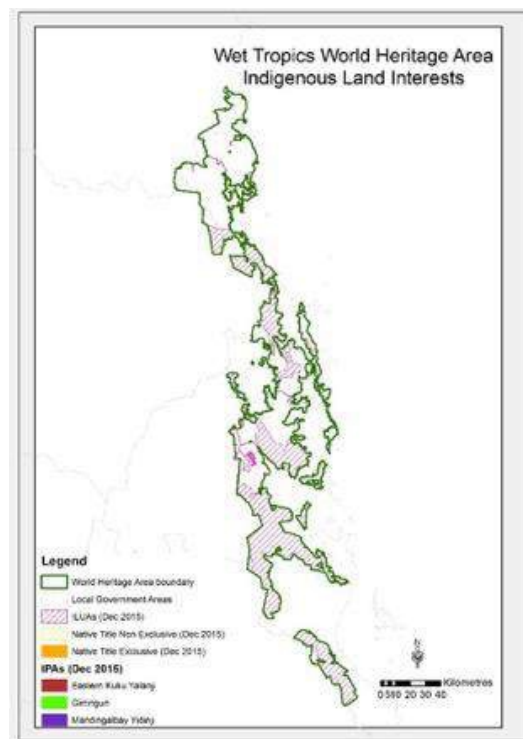
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## 1. Seven Key Messages about Realising the National and International Recognition of the Rainforest Aboriginal Cultural Values of the Wet Tropics Region and World Heritage Area

- i. **Rainforest Aboriginal peoples have dedicated decades of engagement to achieving recognition and protection of their cultural values and rights through the processes of nomination, listing, and establishment of institutions for conserving and managing the Wet Tropics of Queensland World Heritage Area (WTQWHA).** Self-determined Rainforest Aboriginal organisations at the tribal, sub-regional and regional scale have advocated, negotiated and partnered, through multiple Indigenous-driven initiatives. Key examples include the Review of Aboriginal Involvement (1998); the Aboriginal Negotiating Team for the Wet Tropics Regional Agreement (1999-2005); the nomination and subsequent listing of the Aboriginal cultural values as of national significance (2006-2012) and the establishment of the Towards 2020 project for sustainable livelihoods through kin, culture and country (2010-2020).
- ii. **Rainforest Aboriginal peoples' cultural values and rights are now recognised formally over 100% of the WTQWHA through the National Heritage Listing of Aboriginal cultural values; over 87.5% of the WTQWHA through native title (determined and scheduled) and Indigenous Land Use Agreements (ILUAS), and over 29.2% of the WTQWHA (and around half of the wider Wet Tropics bio-region) through Indigenous Protected Areas (IPAs) (Figure 1).**



**Figure 1. Wet Tropics World Heritage Area Indigenous land interests**

Source: Petina Pert, 2016

- iii. **Many Aboriginal organisations now exist with diverse responsibilities for cultural values including 18 Registered Native Title Body Corporates with formal responsibilities under the *Native Title Act 1993 (Commonwealth)*, five registered cultural heritage bodies with formal responsibilities under the *Queensland Aboriginal Cultural Heritage Act, 2003*, two sub-regional level organisations and a network of Rainforest Aboriginal peoples’ organisations operating at regional scale.**
- iv. **Current WTQWHA institutions have not yet accommodated this formal recognition of Aboriginal cultural values and rights—transformation of governance to place Rainforest Aboriginal peoples’ cultural values and roles centrally is required.** While progress has been made, for example through 2 dedicated Indigenous positions on the Wet Tropics Management Authority (WTMA) Board, WTMA staff dedicated to supporting Indigenous partnerships, and support for the role of Aboriginal rangers and projects involving on-ground management, the WTQWHA is essentially run by a focus on its natural values alone. For example, fire management practices under traditional law, a key listed cultural value, are proscribed rather than being supported by existing ILUAs and national parks’ practices. The proposed National Heritage Listing Action Plan needs to establish a strategy and steps to change this to a focus on cultural as well as natural values, through collaboration driven by Rainforest Aboriginal peoples in partnership with WTMA and engaging the government and non-government managers, communities and industries at multiple levels from local through to regional and national.
- v. **A network of “National Heritage” Indigenous Protected Areas (IPAs) and Ranger groups across the Wet Tropics has the potential to provide a pathway to transformation in governance, which would require expanding the current 29.2% coverage of IPAs to 100% of the Wet Tropics region.** IPAs offer significant advantages over mechanisms such as ILUAs, as they are led by Traditional Owners through their visions and plans, bring partners around the table to collaborate rather than as adversaries, recognise Indigenous knowledge, are flexible and adaptive. The individual IPAs could focus on protection of listed values, and the network on generating multiple benefits through forging linkages between Aboriginal businesses, native title corporations, family groups, IPA and Ranger managers, research organisations, natural resource management (NRM) and heritage managers to learn and share, for example, through dialogue, workshops, websites and social media. Biocultural conservation and rights-based approaches are also highly relevant to protecting cultural values and rights. Additional and ongoing resources from government and non-government investors are required to support such initiatives.
- vi. **The unique adaptations for rainforest occupation, including toxic tree nut processing, fire practices and associated living traditional law with depths in antiquity, are likely to be globally significant as well as nationally significant, and therefore qualify for world heritage listing.** Rainforest Aboriginal peoples’ toxic nut processing and fire technologies appear as highly elaborate examples of a cultural adaptation with roots of great antiquity in other places, notably Borneo 46,000-34,000 years ago. The living traditional law that provides the framework to enable these technologies and practices to continue,

and to evolve, adapt, be reproduced and maintained to the present appears likely to be of profound significance and of outstanding universal value to humanity.

**World heritage listing of the Aboriginal cultural values presents potential benefits and also risks for Rainforest Aboriginal peoples' goals of recognition and protection of their cultural values and rights.** Potential benefits relate to the Australian Government's responsibility and, therefore, a stronger case for funding and supporting Indigenous-driven management; growth in influence and power for Rainforest Aboriginal peoples in governance and management; enhanced opportunities in the key nature-based, heritage-based and knowledge-based economies that underpin the region; and potential lifting of restrictions, for example, on fire-management practices. Risks include the fact that the Australian Government is responsible for nomination and protection, not Rainforest Aboriginal peoples; substantial resources and commitment are required by Rainforest Aboriginal peoples to pursue this goal; and substantial work required to make sure new institutions are Indigenous-driven and based on customary law. An in-depth conversation that enables Rainforest Aboriginal communities to make informed decisions that balance both benefits and risks in pursuing world heritage is required.

- vii. **Successful world heritage listing will only occur if the Australian Government is able to demonstrate to the World Heritage Committee that effective management of the outstanding universal cultural values is in place.** The development and implementation of the proposed National Heritage Listing Action Plan (hereafter "the Plan") is therefore the key priority for advancing World Heritage listing. The Plan needs to chart a way forward to establish effective management for the listed cultural values that delivers real benefit to Rainforest Aboriginal peoples.

## 2. Rainforest Aboriginal Peoples' Institutions for Realising Recognition of the Cultural Values

First, about this project. The Rainforest Aboriginal Peoples' Alliance (RAPA), established in 2009 to support Traditional Owners in the Wet Tropics, was successful in achieving \$250,000 funding from the Australian Government, Indigenous Heritage Program for the 3-year (2012-2015) Cultural Values Project, titled '*Which Way Australia's Rainforest Aboriginal Culture: Indigenous Heritage Program?*'. The overall aim of the project is to confirm, maintain and promote the Wet Tropics region's nationally-recognised, outstanding and significant cultural heritage values and to explore relisting of the Wet Tropics region for these values. To achieve this aim, RAPA worked in collaboration with The Cairns Institute (James Cook University), the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and other significant regional partners. A Project Steering Committee, established at the beginning of the project, guided and oversaw the work (Figure 2). Three closely linked working groups were also established at the beginning of the project. Both the Project Steering Committee and the working groups consisted of members from RAPA, The Cairns Institute (JCU) and the CSIRO.

This paper focusses on the efforts of the Committee's "Relisting the Values for World Heritage Working Group", and progresses RAP interests with respect to leading and realising benefits to Rainforest Aboriginal people (RAP) by securing the National Heritage Listing Action Plan as next step after 2012 recognition of the region's significance for cultural values, and in considering when best to launch for World Heritage relisting.

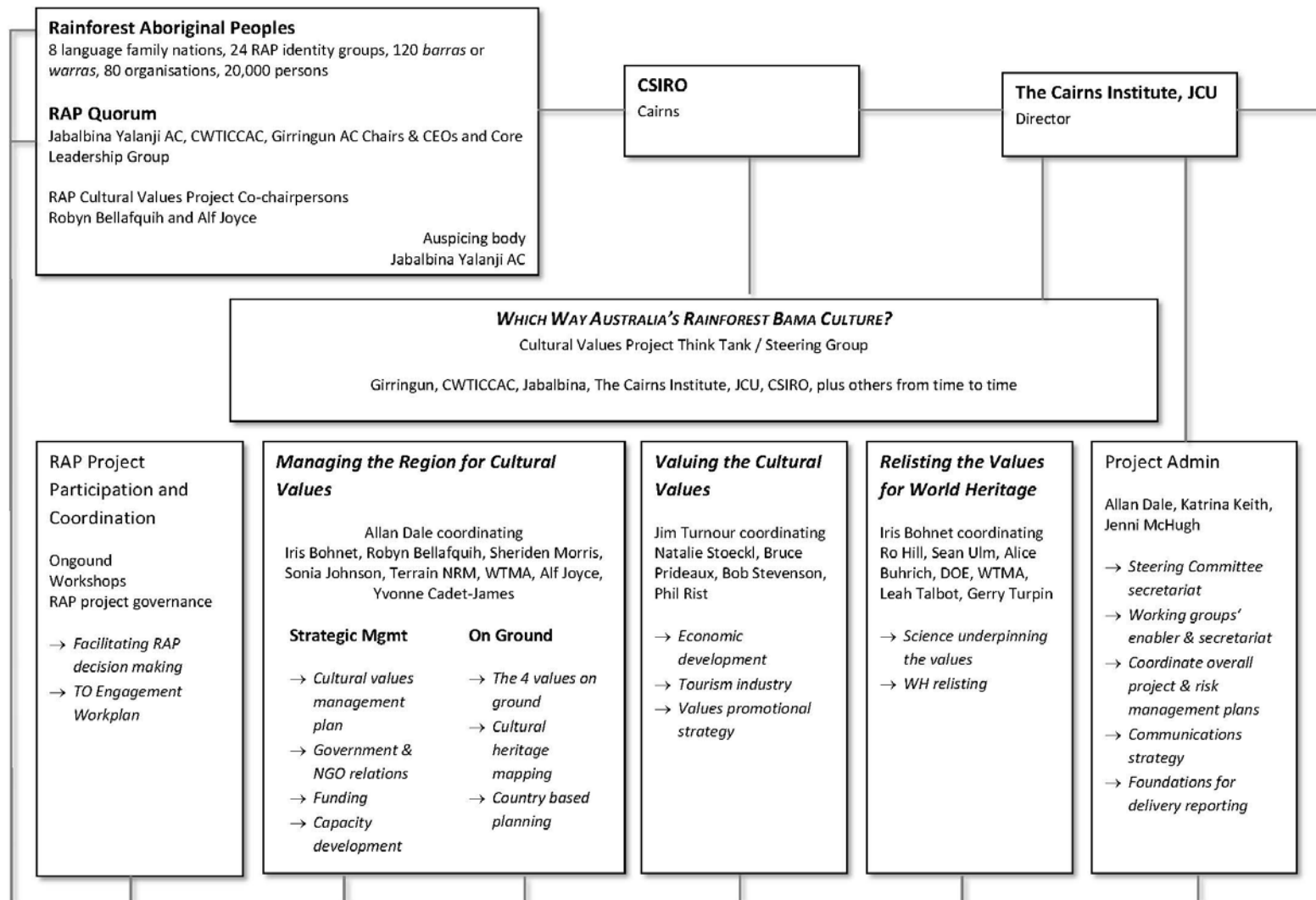


Figure 2. “Which Way Australia’s Rainforest Culture” Project Governance and Implementation Framework

## 2.1 Background to the WTQWHA as Living Rainforest Aboriginal Cultural Landscapes

The Wet Tropics of Queensland World Heritage Area spans the Ancestral homelands of some eight distinct language family groups encompassing some 20 distinct Traditional Owner (TO) groups, who today number about 20,000 Rainforest Aboriginal peoples (RAP) (Rainforest Aboriginal Peoples' Alliance (RAPA), 2010). These Traditional Owner (or tribal) groups include approximately 120 clans comprising about 600 distinct family groups (Schmider, 2014b).

The Australian Government's 1986 assessment of significance of the values of the WTQWHA as a potential world heritage site:

The Wet Tropics of North-east Australia preserves the only recognised extant Aboriginal rainforest culture and is therefore a major component of the cultural record of an Aboriginal society which has a long continuous history in the nominated area for at least 40,000 years (Rainforest Conservation Society of Queensland, 1986).

This recognition responded to the World Heritage Operational Guidelines at the time which included, as part of the criteria for natural heritage significance, superlative examples of "man's interaction with nature" (Rainforest Conservation Society of Queensland, 1986).

However, it is evident from the historical record that the traditional Aboriginal custodians of the tribal estates within the Wet Tropics region were excluded from any meaningful involvement in defining either the nominated area or the content of the original nomination itself (Disko & Tugendhat, 2014; Marrie & Marrie in Bama Wabu, 1996). The focus of the 1988 nomination was exclusively on the outstanding 'natural' values of the region. The property was listed for all four of the natural World Heritage criteria in place at the time<sup>1</sup>, including that related to "man's interaction with nature"<sup>2</sup>.

Rainforest Aboriginal peoples' contemporary rights and obligations to respective Ancestral territories, including to the WTQWHA, are founded in their occupation as Indigenous societies with their own *sui generis* law systems developed over millennia (Pannell, 2008a, 2008b). In Australia, Indigenous peoples maintain distinct forms of governance despite their location in a postcolonial frame in which the nation-state has overarching sovereign power. Distinctive features include an emphasis on networks, nodal modes of leadership within these networks, and dispersed distribution of powers among self-defined social groups (Hill et al., 2012; Smith & Hunt, 2008).

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### Footnotes:

1 1) to be outstanding examples representing the major stages of the earth's evolutionary history; or 2) to be outstanding examples representing significant ongoing geological processes, biological evolution and man's interaction with his natural environment; or 3) to contain superlative natural phenomena, formations or features or areas of exceptional natural beauty; or 4) to contain the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value from the point of science or conservation still survive. (Rainforest Conservation Society of Queensland, 1986, p. 77)

2 The Operation Guidelines that establish the criteria for listing have since changed and now include these previous concepts of "man's interaction with nature" more appropriately in the criteria associated with recognition of cultural landscapes (see <http://whc.unesco.org/en/criteria/>)

Across the Wet Tropics region today, there are about 80 legal entities representing or progressing Rainforest Aboriginal peoples' interests (Figure 3). These include at least 18 registered native title body corporates (RNTBCs, operating pursuant to the *Native Title Act, 1993 (Commonwealth)*), five cultural heritage bodies (operating pursuant to the *Queensland Aboriginal Cultural Heritage Act 2003*) and 18 registered Land Trusts (operating pursuant to the *Queensland Aboriginal Land Act 1991*). The region also features several long established community-based Rainforest Aboriginal Traditional Owner organisations, and falls into the operational areas of two Native Title Representative Bodies (NTRBs), the North Queensland Land Council and the Cape York Land Council (Schmider, 2014b)

These legal entities and corporations increasingly constitute multi-tiered Indigenous governance at the intersection between Indigenous knowledge and more localised 'country-based' governance systems, and the Australian nation-state's statutory and legal systems developed to recognise Indigenous territorial rights and other claims.



**Figure 3. Rainforest Aboriginal peoples' organisations**

Source: Schmider, 2014b



## 2.2 History of Engagement by Rainforest Aboriginal Peoples in Processes for World Heritage Listing of the Wet Tropics

The ‘background’ describes rainforest Aboriginal history (since 1874) as a relentless dispossession of land and forest. ...not only does the [1996 draft Wet Tropics Management Plan] work to steal away Aboriginal opportunity to tell their story, the Plan actually interprets intentional obligations under the World Heritage Convention in a way that challenges the High Court’s decision on native title... The overall impression...is that the plan is desperately unsuited to Aboriginal best interests. (Bama Wabu, 1996).

Rainforest Aboriginal people assert their Ancestors have lived in their respective territories since time immemorial - “... in the creative epoch - [known across the region variously as] the *Buluru*, *Ngujakurra* and *Jujab*” and that “The Law/Lore originating from the ancestral beings at this time is imbued in the wet tropics landscape and provides our [Rainforest Aboriginal] plan of life, and our responsibility to maintain the interconnectedness of life, time and space” (Aboriginal Rainforest Council, 2007). These origins remain imbued in the continuing authority of recognised rainforest Aboriginal Elders. Aboriginal occupation of the present area listed as the WTQWHA as analysed in the relevant archaeological, historical and linguistic literature indicates a continuous Aboriginal presence over millennia (Cosgrove, Field, & Ferrier, 2007; Dixon, 1972; Marrie & Marrie, 2014).

The instigation of the WTQWHA listing in the late 1980s; the nature and content of the listing itself; the development of post-listing enabling legislation; and development of the Wet Tropics Management Plan all took place during and shortly following the Mabo native title litigation, the eventual judgement for which confirmed native title rights for Australia’s Indigenous peoples by the High Court in mid-1992. Governmental responses took some time to formulate and legislate. There was a great deal of wider community angst, misinformation, speculation and contention. The WTQWHA listing also took place within the context of changing Aboriginal land rights statutes across Australia, and within Queensland. Repression of Aboriginal peoples, their ongoing dispossession and relegation to church and government administered enclaves as legacies of fluctuating government policies was increasingly challenged by Aboriginal people themselves, and by the more progressive elements of Australia’s political leadership during the 1970s and 1980s (see Appendix 1: Chronology).

In the late 1980s, lands reserved by the State for the benefit of Aboriginal people in Queensland were being divested into community ownership as Deed of Grant in Trust (DOGIT) lands pursuant to the *Queensland Community Services (Aborigines) Act, 1984*. Limited legal recognition, entailed in native title rights and interests, was on the horizon as the Mabo case continued during the latter part of the 1980s. The Queensland Government of the day used their legal powers to gazette National Parks as a restraint on communal Aboriginal land ownership aspirations, but also declined to accept the common interest in all matters environmental (Maclean, Hill, & Pert, 2015).

A long and controversial conservation debate also preceded the Australian Government decision to support World Heritage listing for the Wet Tropics. This debate and associated community campaigns at times saw collaboration between Rainforest Aboriginal peoples and conservationists, and at other times confrontation between these interests. In 1980 rainforest Aboriginal people worked with conservationists to establish the Cairns and Far North Environment Centre (CAFNEC) during the *Development without Destruction* conference held in opposition to the World Wilderness

Congress in Cairns. The North Queensland Land Council was a founding member of the Management Committee of CAFNEC. Also in 1980, the Aboriginal Development Commission and Cairns Aboriginal leader Mick Miller led legal action against construction of the Bloomfield/Wujal Wujal to Cape Tribulation (“Daintree”) Road, achieving a small delay in proceedings to obtain the proper permits (Valentine & Hill, 2008). However, the Queensland Government at the time also strategically engaged rainforest Aboriginal interests in its efforts to undermine the proposed listing, seeing a stalling of further engagement between Aboriginal people and the environment movement after the Chairman of the Wujal Wujal Community Council subsequently announced his support for the road. The Daintree Road issue promoted the protection of the Wet Tropics onto the national policy agenda in 1983-84.

After deciding to support World Heritage listing for the Wet Tropics in 1987, the Australian Government commissioned a study of the values and perspectives of the region’s Aboriginal people on the World Heritage listing (Horsfall & Fuary, 1988). Amongst other findings, this study found that Aboriginal people were divided between those who supported the listing as a way of ensuring protection of the rainforests that provided the foundation of their culture, and those who opposed it as an infringement on their rights (Horsfall & Fuary, 1988). The study identified several important aspects of the cultural foundation of the rainforest for the Aboriginal peoples, reflected in ongoing uses for: tribal burials; collection of berries, fruits and bush medicines; visits to many important places; collection of scrub hen eggs, witchetty grubs and other resources; tourism use related to picnics at beauty spots, walking tracks and artefact production; hunting and fishing; ceremonies to protect people when swimming; use of forest foods and rainforest resources; dance and music as an expression of rainforest identity; archaeological sites, plants and their uses; traditional camping sites; battlegrounds; rock art sites; burial grounds; massacre sites; walking tracks and story places.

The political position adopted by Traditional Owners regarding the listing at the time gave precedence to opposition on the basis of infringement of rights. The Queensland Government Minister for Aboriginal Affairs in 1987 informed participants at a meeting of the Aboriginal Coordinating Council that unless they opposed the World Heritage listing, their recently gained land rights through Deed of Grant in Trust at Yarrabah and Wujal Wujal were at risk. The Queensland Government funded Aboriginal delegates to attend the World Heritage Committee meeting in Paris in 1988 to lobby against the listing as members of their anti-heritage delegation. Later, Bama Wabu, North Queensland Land Council and Yarrabah Community Council (amongst others) argued that to list these significant Aboriginal spiritual and cultural landscapes on the basis of exclusively ‘natural’ outstanding universal values was just ‘another act of dispossession’. Recognition of ‘natural’ values was interpreted by some as a direct challenge to the emerging Common Law around native title in Australia which was ‘seen to threaten the *‘pristine natural state’* of the Authority’s wet tropical forests’, where ‘there has always been an Aboriginal voice struggling to defend Aboriginal interests within the wet tropical forests’ (Bama Wabu, 1996, original emphasis retained).

Overwhelmingly, the mainstream of Australian community’s concerns about the protection of high value ecosystems and landscapes in the 1970s and 80s was focused through an exclusively ‘natural’ lens. There is now arguably more acceptance of the unique value of ‘classic’ Aboriginal cultures, their material and more ‘intangible’ aspects and their contemporary expressions through dance, creative or visual arts. However, the acceptance of Indigenous equity in protected area governance or management is not extended to the same degree (Ross et al., 2009).

Distinctions between ‘cultural’ and ‘natural’ appear ingrained in post-industrial Anglo culture, but were not made in Australian legal jurisprudence in relation to Aboriginal interests until such time as the Commonwealth used its powers under the 1975 *Racial Discrimination Act* to instigate the sunset-clause limited *Aboriginal and Torres Strait Islander (Interim Protection) Act 1984*, in direct response to local Aboriginal assertions about protecting sites of significance potentially impacted by the highly contentious Daintree Road, a focal point of non-Indigenous action to initiate the WTQWHA.

### 2.3 History of Rainforest Aboriginal Peoples’ Involvement with WTQWHA Institutions 1988-2014

We are strong, we still have a lot of our culture, cultural values; our traditional way. For example, kinship, we are always looking after our families. That's a thing that's been passed through many tribal groups; that we look after each other (Participant quote: *Warrama Summit*, November 2013).

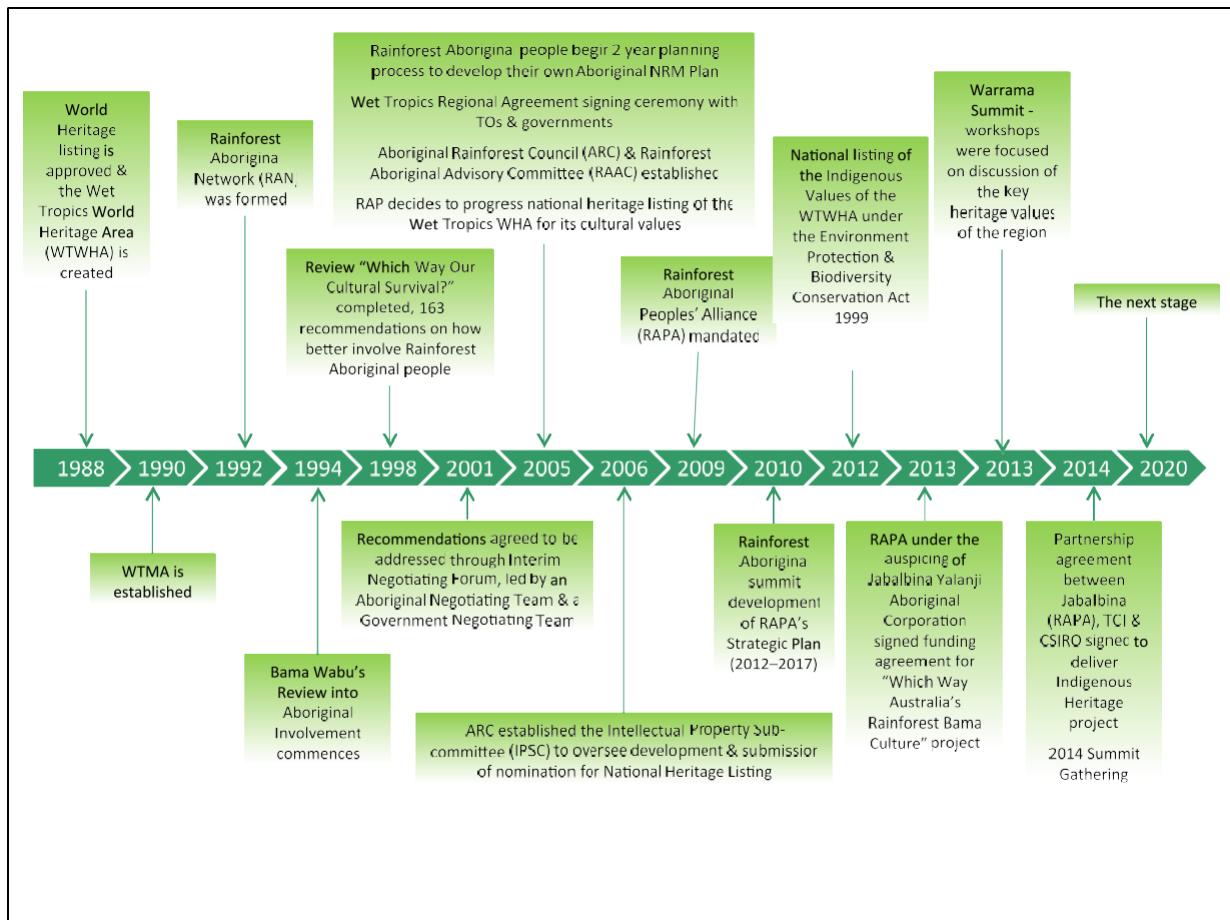
Over the past 20 years I have seen the World Heritage listing raise the wider community’s appreciation of our country to that which it deserves. The listing seemed to formalise what we, as Traditional Owners, already felt toward the land and we are now working hard to have our land formally recognised for its cultural values (Phil Rist, in *Wet Tropics Management Authority*, 2010).

Over time, rainforest Aboriginal peoples have acted at regional scale on WTQWHA matters via diverse forums, including: the Rainforest Aboriginal Network (RAN, 1992-1994); the Bama Wabu (1995-2001); the Aboriginal Negotiating Team (ANT, 2001-2005) as part of the Interim Negotiating Forum for the Wet Tropics Regional Agreement; the Rainforest Aboriginal Advisory Committee (RAAC, 2005-2008) to the Board of the Wet Tropics Management Authority (WTMA), the Traditional Owner Advisory Committee (TOAC, 2005-2008) to Terrain NRM, the Aboriginal Rainforest Council (ARC, 2005-2008); and its Intellectual Property Sub-committee which collated the 2007 nomination of Rainforest Aboriginal cultural values, and more recently the Rainforest Aboriginal Peoples’ Alliance (2009-2015), which secured the 2012 National Heritage Listing for cultural values (RAPA, 2010; Hill, Cullen-Unsworth, Talbot, & McIntyre, 2011; Marrie & Marrie, 2014).

The Rainforest Aboriginal Network formed in the early 1990s to support RAP decision-making roles regarding all aspects of the land, the sea, the water, resources and identity stems from the core their enduring individual connections within their Ancestors’ custodial territories (and associated resources), as maintained and passed on via family, clan, tribal and/or (Aboriginal) national inheritances. External validation of an individual’s enduring connection is generated by way of Aboriginal community acknowledgement. Rainforest Aboriginal people further have the right to determine those validation processes most appropriate to them.

Rainforest Aboriginal peoples’ engagement in WTQWHA governance can only be understood in the context of their own governance systems and structures. The critical foundation of proper governance and decision-making in relation to territory is the right under Aboriginal law and custom to speak for your Country, a right which is the core of an individual’s enduring connections to their Ancestors’ custodial territories (and associated resources), as maintained and passed on via family, clan and tribal groupings. The strict corollary—the explicit prohibition against making assertions about someone else’s Country—endures strongly amongst Rainforest Aboriginal peoples.

Through their ongoing self-organisation to engage from their respective family/clan/tribal Indigenous governance systems into pan-regional priorities, rainforest Aboriginal peoples' impressive expertise, tenacity and commitment to determine and act upon, their own strategic priorities in caring for their Ancestral lands, seas and waters within the Wet Tropics region is increasingly evident. RAP organisation, advocacy and representation of their rights and interests intensified once the Wet Tropics of Queensland had been listed as a World Heritage site (Appendix 1: Chronology). There has been a regional Wet Tropics Rainforest Aboriginal peoples' network in place since the early 1990s (Figure 4).



**Figure 4. Key events in Rainforest Aboriginal peoples' engagement with WTQWHA 1988-2014**

These networks have engaged with the institutions for the WTQWHA throughout their formation, including advocacy which resulted in recognition of joint management in the preamble to the *Wet Tropics of Queensland Protection and Management Act 1993 (Queensland)* which stated:

It is also the intention of the Parliament to acknowledge the significant contribution that Aboriginal people can make to the future management of cultural and natural heritage within the area, particularly through joint management agreements (item 8).

In 1996, Bama Wabu's analysis of the draft Wet Tropics Plan identified that this intention had not resulted in any action (Bama Wabu, 1996). They successfully lobbied governments to undertake a collaborative review of Aboriginal involvement in the WTQWHA, resulting in a report setting out 163 recommendations (Review Steering Committee, 1998b). Governments subsequently agreed for these recommendations to be addressed through negotiation, establishing and funding an Aboriginal Negotiating Team and a Government Negotiating Team. The Wet Tropics Regional Agreement (WTRA) signed in 2005 was the major outcome of this negotiation, which was widely welcomed by all parties, although clearly limited by its formulation as not legally binding (WTMA, 2005). In 2002, establishment by the Australian Government of a regional approach to guide natural resource management (NRM) provided another opportunity for rainforest Aboriginal peoples to assert their roles and responsibilities (Pannell, 2008c). The resulting Aboriginal NRM Plan also known as the Bama Plan provided a comprehensive basis for significant enhancement of opportunities for RAP to contribute to management of cultural and natural heritage (WTAPPT, 2005). Subsequent government investment in IPAs, ranger groups, weed and feral pest management, and a range of other activities has enabled realisation of some of these opportunities (Hill & Williams, 2009; Pert et al., 2015).

One of the outcomes of the WTRA was the establishment of a Rainforest Aboriginal Advisory Committee (RAAC) (pursuant to s40(1b) and s40(4b) to the *Wet Tropics of Queensland World Heritage Area Protection and Management Act 1993*). Another outcome was (limited) government funding for establishment of the Aboriginal Rainforest Council (ARC) to enable a number of responses to the WTRA. The ARC took responsibility for initiating steps to put in place the agreed nomination of the Aboriginal cultural values of the WTQWHA, establishing an Intellectual Property Sub-committee to guide the process (Hill, Cullen-Unsworth, et al., 2011).

The RAAC operated for a number of years. However, TOs perceived that the WTMA and NRM RAP advisory committees had a very narrow prescriptive focus of 'representation' underpinning in part their advice in light of the demise of the ARC (2005-2008), to disband these committees and recognise self-determined arrangements including the contracting of consultative services. The WTMA Board responded to this advice and in 2008 agreed to disband the RAAC and focus instead on supporting RAP's preferred self-determined structure. A Memorandum of Agreement to formalise this arrangement was being discussed in 2010/11, and WTMA has to a small extent to 2015 upheld commitment to support empowerment through contracting arrangements. However, since the demise of the ARC the relationship between WTMA with RAP leadership and regional governance matters has not been formalised or developed to the extent negotiated by parties to the Wet Tropics Regional Agreement.

## 2.4 Cultural Assurance and Aboriginal Self-determined Organisations

The self-determined organisations established by RAP since the early 1970s have held culturally assured *delegation* as the core of RAP individual's roles in WTQWHA fora, rather than *representation*. The distinct Aboriginal-European cultural difference between a 'representative' and a 'delegate' is subtle but telling: *a representative is a person chosen or authorised to speak for another or others; whereas a delegate is a person sent or authorised to represent others*.

Misunderstandings about the nuanced but critically important difference between these two lies at the core of past and present contentions surrounding an effective regional RAP advisory function for the WTQWHA. Aboriginal people engage in proper (rigorous) self-authorisation of *delegation* by the distinct TO groups of the area which is at times misunderstood as '*representation*'. These distinctions go to the heart of cultural assurance in terms of the primary right for an individual to assert Aboriginality, or for that matter, any other traditional customary connection.

RAP self-determined organisations exist at family, tribal, subregional and regional levels across the Wet Tropics region (RAPA, 2010; Schmider, 2014b), and it could be argued that the Indigenous WTMA Board Directors have state and national roles. RAPA has been active since 2009 as a self-determined core leadership regional network to support the onground work of TO groups, and has initiated several regionally significant summits and strategic workshops. At its inaugural 2010 summit, RAPA was 'affirmed as the regional collaboration to take up the reins from the historical evolution of RAN, Bama Wabu, the ANT and the ARC' (RAPA, 2010). At the 2012 summit, TOs established an endorsed regional 5+3 strategic agenda focusing on 1) Culture and Heritage; 2) Land and Protected Area Management; 3) Waters; 4) Planning; and 5) Economic Development, enabled through 1) Traditional Owner Participation; 2) Knowledge Management; and 3) Coordinated Investment Partnerships (RAPA, 2013a). This agenda has since evolved into a focus on three strategies as enablers: strong organisations; knowledge management; and jobs/businesses (RAPA, 2015).

In pursuing the region-wide 5+3 agenda, the RAP gathering known as the *Warrama* Summit was held in 2013 at Yungaburra to celebrate the 2012 National Heritage Listing of the WTQWHA for its Aboriginal cultural values including discussing cultural authority. *Warrama* included a focus on empowering relationships with scientific researchers. Data collected at this summit indicate that RAP perceptions of existing WTQWHA joint-management regimes required much more work but that processes to keep their engagement strong overall were more positive (RAPA, 2015).

A further gathering known as the *Booran* was held at Holloways Beach in 2014 to discuss and resolve actions relating to RAP research capacity, interests and participation; to present and seek feedback on the new regional NRM Plan and draft RAP Strategy 2020; and to identify potential gains from the 2012 National Heritage relisting of the WTQWHA for its cultural values (RAPA, 2014). Ways to empower local groups and strategic regional collaborations were also discussed. The *Booran* was a key event in the 2014-15 RAPA project progressing the regional 5+3 agenda towards the Year 2020. It was preceded by a focused exercise drawing together recorded RAP aspirations set out in diverse documentation since RAN 1992, and onground TO engagement across the north, central and south of the Wet Tropics region. Pathways forward for Project 2020, managing the Wet Tropics cultural values and RAP being in the driving seat for research activity were recorded. One outcome from the



*Booran* was prioritisation of collecting oral histories of Aboriginal people involved at the time of the 1988 WTQWHA listing (RAPA, 2015).

Promoting strong governance and organisational representation was identified as a key issue during the onground engagement with RAP. Tribal identity has been the focus for the establishment of local organisations most usually under the Office of the Registrar of Indigenous Corporations. Ensuring effective governance and operational capacity for these organisations is critical to giving voice, position and power to Traditional Owners—but many currently struggle to deliver. Key issues to address to improve governance at this level identified by RAP through the *Booran* summit include:

- Internal transparency within groups/families
- Better communication within families/groups and externally
- Clear and strong stable structure internally of policy and process
- Identify and acknowledge “who” speaks for which Country/area
- Disallow family control
- Greater inclusion of all community people.

Factors constraining these local organisations, and thus RAP ability to act collectively and sustain engagement include:

- An on-going lack of consistent, adequate coordination resources
- Socio-economic disadvantage and associated lack of personal resources, time or capacity
- Competing external processes, all of which are either critical or key to the health and wellbeing of RAP and their Ancestral lands, waters and seas (e.g., native title, cultural heritage, environmental law, policy changes, statutory reviews, international rights developments).

The regional-level RAP plan for taking the past into the future with the agreed Year 2020 watershed highlights stronger organisations, knowledge sharing, and jobs/business as the three critical enablers advancing for Rainforest Aboriginal peoples aspirations, as noted above (RAPA, 2015). The *Booran* Gathering also identified:

... general support for an ongoing regional approach to support progression of the wider agenda, but that this need to stay conditional on (1) focussing efforts towards supporting local-scale groups; and (2) needing to revisit and redevelop a strong governance framework for the regional level effort, even if it means stepping back to regroup effort (RAPA, 2015).

Informed consent was noted as a critical principle, and attention to strong governance at all levels. People were interested to consider some different models. One model of linking the multiple levels of governance and organisations is through a knowledge network to provide flexible and diverse ways to build capability by linking Aboriginal businesses, native title corporations, family groups, IPA and ranger managers, research organisation, NRM and heritage managers to learn and share, for example through dialogues, workshops, websites and social media (Hill et al., 2014).

### 3. WTQWHA and its Institutions for Realising Recognition of the Cultural Values

#### 3.1 Current Context Overview

The WTQWHA has benefited from arrangements for governance and management established in the 1990s that are tailored to the specific context of protection of its listed 'natural' Outstanding Universal Values (OUVs). The listed property extends across 730 separate parcels of privately or publicly held land. Along its eastern extent the Wet Tropics region directly abuts the Great Barrier Reef World Heritage Area (GBR WHA). Contemporary WTQWHA boundaries neither reflect Ancestral Aboriginal territories nor post-invasion Aboriginal landholdings. While the governance and management engage Aboriginal people as partners to some extent, they do not currently address protection of the WTQWHA (Indigenous Cultural Values) that were listed as nationally significant in December 2012. An overview of the historical context for the 1988 listing is provided in Appendix 2.

The WTQWHA is among 78 sites (comprising 137 protected areas in 34 countries) identified as exceptionally irreplaceable globally, ranked as the second-most irreplaceable World Heritage Area (WHA) globally for its biodiversity values (Le Saout et al., 2013). The WTQWHA has also recently been placed the second highest category of risk primarily due to the impacts of climate change and invasive species (Osipova et al., 2014). WTQWHA biodiversity, soils, waters, animals and plants all remain integral aspects of rainforest Aboriginal peoples' identity (WTAPPT, 2005).

The *Wet Tropics World Heritage Area Protection and Management Act 1993* (Qld) (the WTQWHA Act 1993) and the *Wet Tropics Management Plan 1998* (the WT Management Plan) inform the statutory and regulatory functions, roles and responsibilities of WTMA and its specialist advisory committees. These two statutory documents provide primary guidance for the unique governance and management of this WHA. At the Australian Government level, the WTQWHA is listed under the *Environment Protection and Biodiversity Conservation Act (1999)* as a Matter of National Environmental Significance.

#### 3.2 Current WTQWHA Governance Arrangements

Governance concerns the making of decisions about what needs to be done, who can authoritatively make such decisions and how such decisions are to be implemented (Borrini-Feyerabend & Hill, 2015). Governance of the WTQWHA has been coordinated and facilitated through the WTMA since its establishment in 1991 under a formal, resourced partnership arrangement between the Australian and Queensland governments. Commonwealth and State Ministers have overseen this partnership through a designated Ministerial Council. WTQWHA governance is presently in significant disarray having been without an effective management board since mid-2013 as the terms of members serially lapsed; all positions are currently vacant although the appointment of a Chair was announced on 28<sup>th</sup> September 2015.

The WTQWHA's role essentially provides for the governance of nature conservation; dimensions of quality, diversity and vitality have been found to contribute to effective governance in this domain (Borrini-Feyerabend & Hill, 2015). Governance quality requires legitimacy and voice; direction; performance; accountability; fairness and rights. Governance diversity encompasses governments; shared governance; Indigenous peoples' governance; community governance and private



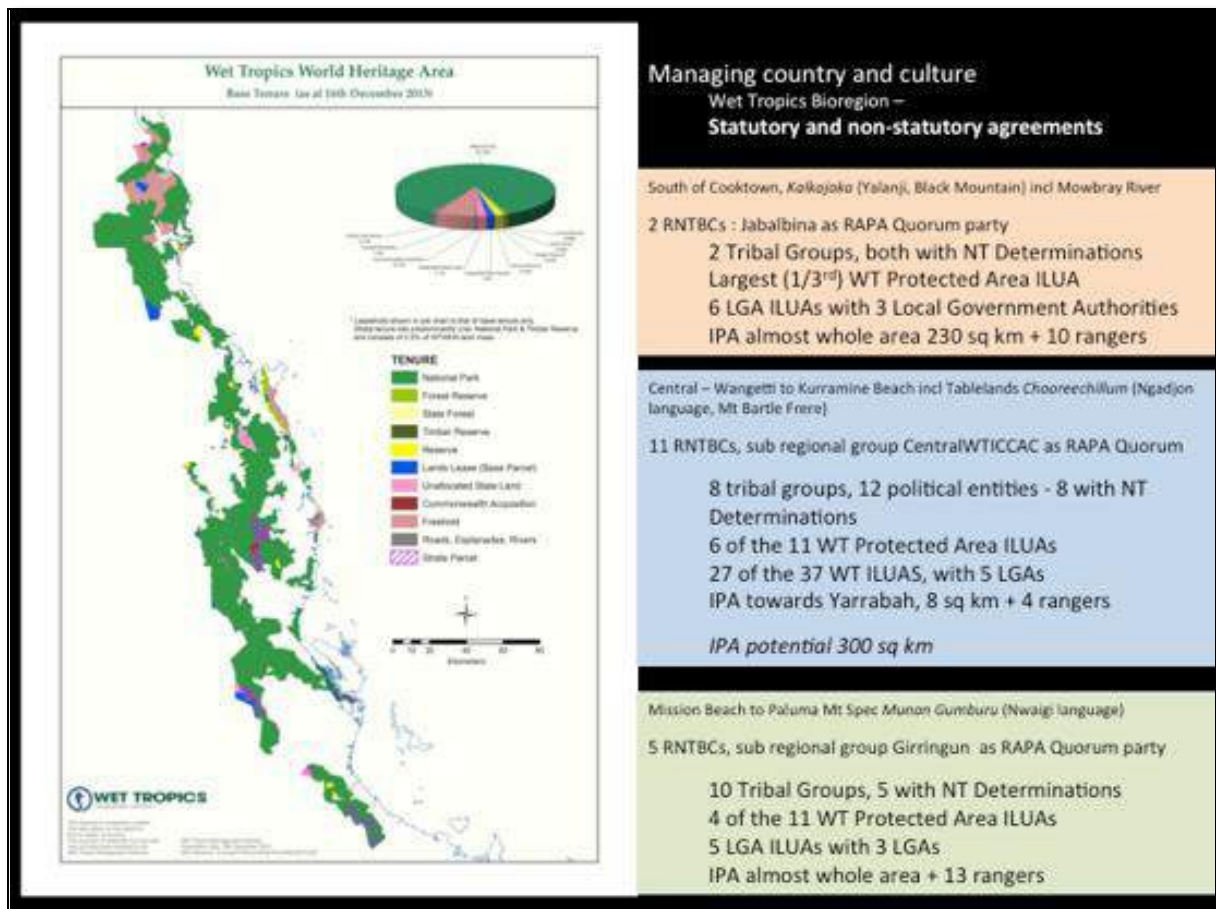
governance. Governance vitality is characterised by well-integrated and functionally connected actors who are wise, empowered, adaptive and innovative.

Provisions for WTQWHA engagement and partnership with Rainforest Aboriginal peoples include:

- Requirements that two of the six non-executive Board Directors are Rainforest Aboriginal persons
- Opportunities for a person from a Rainforest Aboriginal Advisory Committee or similar advisory structure to be present in Board meetings
- Roles for Rainforest Aboriginal people in the statutory Scientific Advisory Committee and the Community Consultative Committee
- The Wet Tropics Regional Agreement includes a number of protocols and procedures for engagement (WTMA, 2005)
- One of seven strategic goals for WTMA 2013-18 being that “Rainforest Aboriginal People are supported in expressing their knowledge, culture and management practices on country”(WTMA, 2014)
- Staff dedicated to supporting engagement and partnerships with Rainforest Aboriginal people, for example through a small grants program.

The Australian and Queensland governments are formal signatories to the 2005 Regional Agreement, negotiated through the shared leadership of RAP via the Aboriginal Negotiation Team. However, it is clear in relation to the performance of successive governments at both levels that no effective, meaningful or sustained resourcing has been effected, implemented or delivered through the Agreement by them to date. As noted above, the Rainforest Aboriginal Advisory Committee (RAAC) was (voluntarily) disbanded in 2008 and replaced by the Rainforest Aboriginal Peoples’ Alliance (RAPA). This voluntary leadership group arose out of the demise of the Aboriginal Rainforest Council in 2008, and was supported through arrangements for a northern, central and southern Aboriginal legal entity to work in coalition on addressing regional level issues, supporting the work of local groups. The 2010 RAP summit endorsing RAPA recognised that formalisation of regional structure needs some time to crystallise and gain trust and full support of Traditional Owner groups across the Wet Tropics region, and an integrated local, sub-regional and regional structure concept was endorsed by participants in the 2014 summit (RAPA, 2015).

Formalised Rainforest Aboriginal governance has become increasingly empowered through legislatively based registered native title bodies corporate (RNTBCs), complementing some well mandated Rainforest Aboriginal community organisations (Hill et al., 2014; Schmider, 2014b) (Figure 5). These entities are active at sub-regional areas, and, for RNTBCs, increasingly active in localised areas across the region. Cultural Heritage Bodies (CHBs) are slowly increasing in number as RAP grow in knowledge about the potential of tenure blind cultural heritage legislation with development across the region.



**Figure 5. Rainforest Aboriginal Peoples' Tribal Groups and formalised Rainforest Aboriginal organisations and agreements**

Source: Schmider, 2014b

(Map above left courtesy Wet Tropics Management Authority

<http://www.wettropics.gov.au/site/user-assets/docs/tenurestatsdec2013-web.pdf>)

### 3.3 Current WTQWHA Management Arrangements

Management is about what is done to implement an agreed governance decision (Borrini-Feyerabend & Hill, 2015). Effectiveness of management is endangered where governance arrangements are not clear, lack appropriate representation or are not transparent (Leverington, Costa, Pavese, Lisle, & Hockings, 2010). Authoritative management oversight is diluted when independent governance arrangements are diluted or disempowered. Governance can be weakened by failure to take account of diversity, such as through maintaining internalised bureaucratic agencies within government instead of recognising extant community governance. Independent advice and expertise underpins good governance for the WTQWHA<sup>3</sup>.

<sup>3</sup> Submissions to 2008 Queensland Government Review of Statutory Bodies by Prof. P. Gadek and Mr John Grey AC

<http://www.premiers.qld.gov.au/publications/categories/reviews/boards-committees/terms-of-reference-subs/paul-gadek.aspx>,

<http://www.premiers.qld.gov.au/publications/categories/reviews/boards-committees/terms-of-reference-subs/john-grey.aspx>

Since establishment of the management arrangements in 1990, the day-to-day (on-ground) management responsibilities for the WTQWHA have been delegated to the Queensland Government's Parks Service, currently within the Department of National Parks, Sports and Racing (NPSR). However, the WTMA staff, funded by the Australian Government, are located within a separate government agency, the Queensland Department of Environment and Heritage Protection (EHP). Since late 2013 the corresponding Commonwealth agency for environment and heritage is the Department of the Environment (DoE). Previous relatively integrated approaches to protected areas, environmental stewardship, heritage protection and natural resource management as pursued by earlier Commonwealth and State administrations no longer apply.

The Queensland Government in 2014, after conducting an internal review, developed intentions to replace the State's current WHA management arrangements with:

- A Queensland Government Ministerial State-wide Heritage Council (ministerially appointed members only)
- Committee structures for each of the Queensland properties
- Some Traditional Owner committee structure for each property.

While this will leave the management arrangements essentially at status quo for many properties with the addition of a State-wide Council, it appears likely to diminish protection for the WTQWHA, as implementation of these arrangements may require amendment or repeal of the specific legislation that protects the WTQWHA:

- *Wet Tropics World Heritage Area Protection and Management Act 1993* (Qld)
- *Wet Tropics Management Plan 1998* (Queensland Government, 2009).

Amendment or repeal of these regulatory provisions could occur concurrently with devolution of environmental impact assessment procedures under the *Environment Protection Biodiversity Conservation Act 1999* (Cwlth) to a weak Queensland system established in 1972.

Proposals that WTMA has previously refused include a major dam for hydroelectricity generation affecting streams inside the WTQWHA. This is particularly concerning given that the Queensland State Coordinator-General's role in facilitating and promoting development in Queensland is in conflict with protection for Matters of National Environmental Significance (MNES) under the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*. This conflict is explored in detail by McGrath (2014) who states that "it is clear the policy will weaken the existing system without significant gains in efficiency" (p. 189).

Logan (2013) outlines Australia's recent international and domestic positioning on World Heritage, noting the need for more consistent rights-based approaches to Indigenous issues. The Australian Network of Environmental Defender's Offices (ANEDO) raised significant concerns about how the proposed changes will impact adversely on the meeting of *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) standards, Australia's international obligations regarding World Heritage in particular and the necessity of the Commonwealth to retain flexible call-in powers

regarding assessment of development proposals and approvals for related EPBC or MNES impacts (ANEDO, 2014, pp., pp. 3-4)<sup>4</sup>.

In media statements (November 2014) RAP expressed their objection to any move to alter the WTMA and its associated legislative and management arrangements, highlighting that (once again) they had not been consulted in the process. This is a familiar pattern for Rainforest Aboriginal people: perpetuating cycles of disenfranchisement and denied rights. A new Queensland Government elected in early 2015 announced that the outcomes of the review will be subject to further community consultation.

### 3.4 Cultural Heritage Protection and the Wet Tropics Region

Aboriginal cultural heritage is influenced by both State and Commonwealth agencies and legislation across the Wet Tropics region, in addition to the governance and management of the WTQWHA. The *Aboriginal Cultural Heritage Act 2003* (Queensland) (ACHA) provides for the recognition, protection and conservation of Aboriginal cultural heritage which includes areas, sites and objects<sup>5</sup>. This ACHA recognises native title parties as people (including recognised holders and registered and previously registered native title claimants) who should be involved in assessment and management of cultural heritage. Where there is no native title party, the Act recognises the need to involve people who are recognised by Aboriginal custom as being responsible for or associated with the heritage. Cultural heritage bodies may be registered by the Minister with the sole function of identifying the Aboriginal parties for an area and serving as the first point of contact for cultural heritage matters.

The ACHA and the cultural heritage bodies have the potential to provide useful tools for the protection and management by RAP of their heritage. For example, a stop order (Section 32) can be issued to persons undertaking an activity that may harm heritage. TOs may also make agreements with land-holders about heritage sites on their properties which can be approved as Cultural Heritage Management Plans under the legislation. The Department of Aboriginal and Torres Strait Islander Partnerships is responsible for administering the cultural heritage register, which is not publicly available, and the Chief Executive of the Department is responsible for adding information to the database and register. (See Aboriginal and Torres Strait Islander Cultural Heritage Database and Register <https://culturalheritage.datsip.qld.gov.au/achris/public/home>). Registered Aboriginal Parties or Registered Users of the database can add information online.

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<sup>4</sup> From the Executive Summary of the ANEDO Submission to Draft Approval Bilateral Agreement between the Queensland and Australian Governments, dated 13 June 2014. <http://www.edong.org.au/documents/Submissions/ANEDO/20140613-Submission-on-QLD-Commonwealth-Approval-Bilateral-Agreement.pdf> "Actions in World Heritage Areas be excluded... Queensland's project assessment legislation proposed to be accredited does not meet the standards necessary for Commonwealth accreditation. For practical legal enforceability the various Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) decision-making criteria and duties, such as to comply with international treaties such as the World Heritage Convention, need to be required to be each separately and specifically written into the Queensland legislation... The Qld State Government is not resourced to adequately administer Commonwealth laws and its poor record of enforcement has been exposed in 2014 by the Queensland Audit Office... The Commonwealth needs power to exercise call-in powers to decide an application not merely before a decision is made by Queensland but within a period after Queensland makes a delegated decision. This flexibility is important to ensure Commonwealth oversight".

<sup>5</sup> Aboriginal and Torres Strait Islander cultural heritage, <https://www.datsip.qld.gov.au/people-communities/aboriginal-and-torres-strait-islander-cultural-heritage>

Cultural heritage bodies in the Wet Tropics are few (five registered for 20 tribal groups covering 24 identity groups) (Schmider, 2014a, 2014b). Strengthening the number and capacity of cultural heritage bodies is important for RAP as cultural heritage provides opportunities for both economic development and for control of inappropriate developments and their impacts. For example, the *Booran* Gathering drew attention to the need for cultural heritage identification, mapping, protection, enhancement, and management, for cultural heritage clearance and keeping place services related to externally-driven development, and for interpretation, education and cultural transmission (RAPA, 2015).

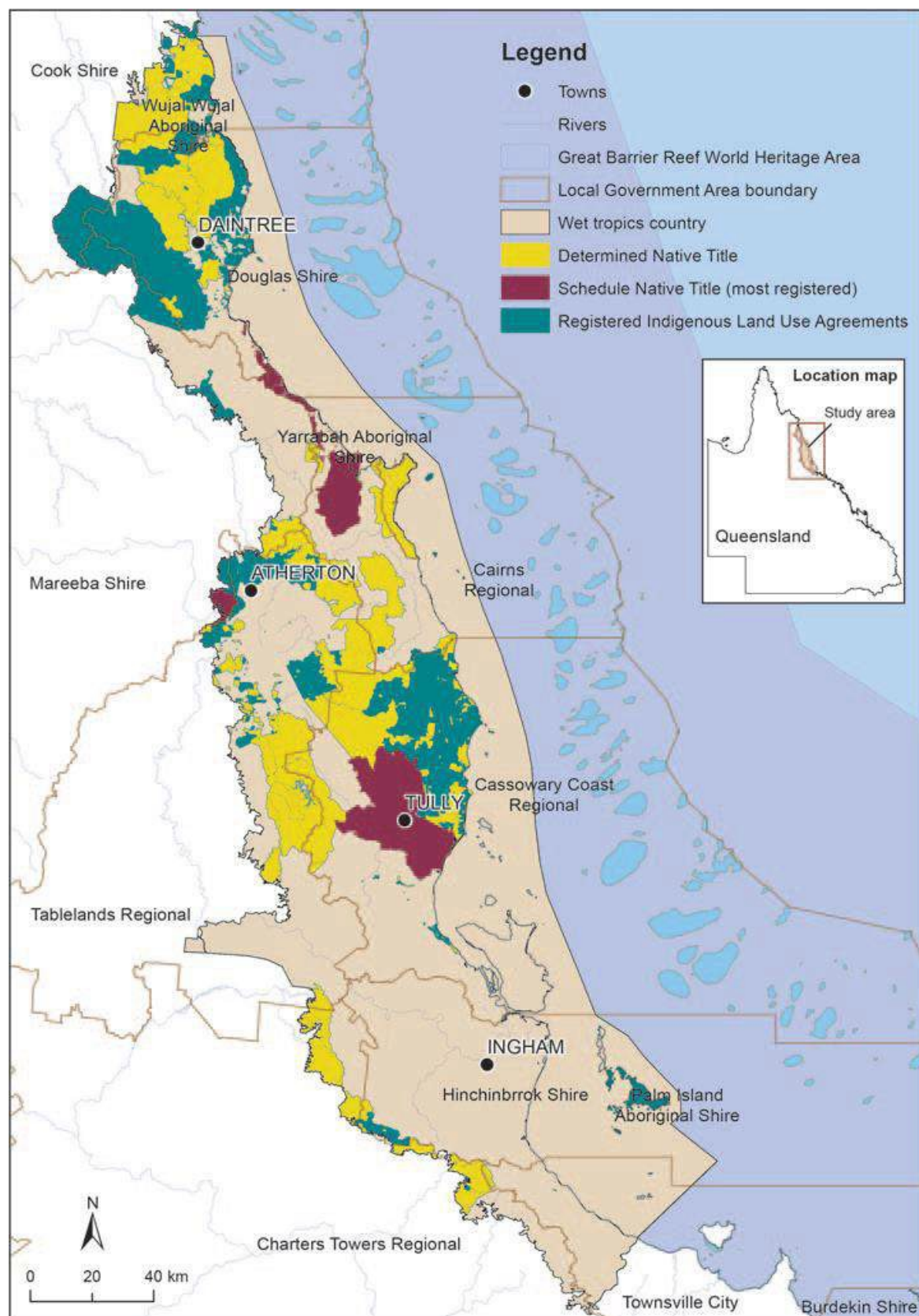
The Australian Governments' *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (EPBC Act) provides for the management and protection of Indigenous heritage places that are nationally or internationally significant, or that are situated on land that is owned or managed by the Commonwealth. In addition, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* provides for assistance in the preservation and protection of areas and objects that are of particular significance to Aboriginal people in accordance with Aboriginal traditions (DoE, 2014). The Minister who is responsible for the Act is able to make declarations to protect such areas and objects from specific threats of injury or desecration for defined periods of time. However, the legislation is recognised by DoE (1984) as not having been very effective; fewer than 5% of applications have resulted in declarations and an independent review has recognised many problems with the legislation. The Australian Government currently focuses greater attention on the role of the *EPBC Act 1999*.

### 3.5 Native Title and the Wet Tropics Region and WTQWHA

Bama Wabu (1996) identified that: "Native title (including common law native title rights) has specific implications for WTQWHA management (particularly on national parks) that warrants its consideration as a significant management issue", and "The need for a more proactive and anticipatory approach to native title across all management regimes, particularly given native title determination applications could be accepted over approximately 80% of the WTQWHA".

Over 20 determinations of native title cover tenures within or immediately adjacent to the WTQWHA: Djabugay People, Mandingalbay Yidinji, Eastern Kuku Yalanji, Ngadjon-Jii, Girramay People, Dulabed and Malanbarra Yidinji (combined), Jirrbal People (#1,#2,#3), Wanyurr Majay People, Djiru People (#2,#3), Gunggandji (combined), Gugu Badhun People (#2), Mandingalbay Yidinji and Gunggandji (combined), Tableland Yidinji People (incl. #3), Warrungnu [Warrungu] People (#2) and Mamu People.





**Figure 6. Scheduled and determined Native Title and Indigenous Land Use Agreements in the Wet Tropics region, October 2014**

Map source: National Environmental Research Program, 2014a

Related determined rights may be held exclusively or non-exclusively on behalf of the native title holders. For the WTQWHA, native title outcomes are in large part non-exclusive as protected area declarations routinely preceded determinations of native title across the region. Related agreements based on the legal recognition of asserted native title rights or interests are prescriptive or formulaic, legalistic, severely under-resourced and time de-limited, generally for a maximum 10 year period:

Even with the land that was supposed to be given back to us, soon as we get the land, it's put in a place where we can't touch it. We've got our native title but we can't use it for what we want... No leverage, does that make sense, we got nothing... We got some blocks that were non-exclusive, that meant everybody used them, and we got some that are exclusive possession to us, but they have turned them back into national parks before we got the exclusive possession of them. They get you both sides. They went through and done all the tenures on them, turned them back into national parks, and then they give them over as exclusive possession, so that takes our rights away from us anyway, once you sign an ILUA. (Participant quote: *Warrama* Summit, November 2013).

The complexity of local native title holding and land holding arrangements has generated additional challenges for RAP in asserting recognised governance and management roles within the WTQWHA. Although the Wet Tropics Management Plan provides a mechanism for 'cooperative management agreements' to be negotiated, RAP interests in the WTQWHA can only be legally secured where native title determined rights and interests are negotiated between native title holders (the Traditional Owners) and statutory management agencies by way of Protected Area Indigenous Land Use Agreements (ILUAs) for specific National Parks within the WTQWHA. In general, separate ILUAs are agreed with WTMA and those State agencies concerned with protected area and protected species management under Queensland law. Multiple Protected Area ILUAs encompass some 22% of the WTQWHA (Schmider, 2014b) including those negotiated with Mandingalbay Yidinji, Eastern Kuku Yalanji, Ngadjon-Jii, Jirrbal, Wanyurr Majay Yidinji, Wadjanbarra Yidinji, Yarrabah and Mamu Traditional Owners.

Native title is limited, it's sick, it's very sick. Government say a lot of things. Say they'll do this and that. But come down the track where they get in writing, it doesn't go to the implementation, doesn't go there. It's a hard thing. I don't know what, they acknowledge it, seem to like "ok we'll do it" and then they brush it aside. It's got me baffled. People go and say something, yes we'll do that. And then don't. (Participant quote: RAP regional workshop, November 2013).

The view within the Aboriginal community is that their bona fide interests are constrained to government-defined legal outcomes (i.e., ILUAs) hammered out in an adversarial native title process directed by the State (Hill et al., 2014). Any concession by the State is tenuous at best, has no longer-term resourcing commitments attached and remains fundamentally unequitable in the generation of adaptive, innovative and fully shared WTQWHA governance and management rights.

Once you get native title, even then it's just a right to negotiate. Under the threat of compulsory acquisition. If industry wants the land for something, if you can't come out with some sort of agreement, ILUA, whatever, their legal people threaten if you don't agree we'll

ask the State for a compulsory acquisition. So it puts us on the back foot, right is given and taken away at the same time. Any industry can actually do that, it goes back to the institutionalised racism in the system (Participant quote: *Warrama* Summit, November 2013).

Implementation, that is the proper on-ground articulation of determined customary rights and interests, through such ILUAs is considered by the State to be the primary responsibility of the native title holding entity: i.e., the RNTBC (registered native title body corporate, sometimes also referred to as a prescribed body corporate or PBC) established as a mandatory requirement of any individual native title claim.

You know, these new corporate laws. It's not a tribal law. It's a Western... whether you're from there or not, the old people got the balance right. They believe in common ground. They get the balance right. But today because there's a lot of displaced people... before the corporate came in, no matter where you were, if you were Aboriginal we'd look after you anyway. We'd take you in... Now, it's sort of our own people are segregating out, it's happening everywhere, every mob. It divides family and kin and people. (Participant quote: RAP regional workshop, November 2013).

Prescribed Body Corporates need to develop the capacity to ensure delivery of the Indigenous Land Use Agreements, and to work with the Aboriginal Corporations and Land Trusts according to cultural protocols. (Participant quote: Girringun sub-regional workshop, November 2013).

These bodies receive no public resources for ILUA implementation, other than a minimal annual allocation for basic statutory compliance and corporate administrative purposes. They are compelled to generate their own operational capacity and corporate incomes in an environment where the ability to generate sustained fee-for-service contracts for land, sea, cultural/natural resource management and Aboriginal heritage expertise remains severely limited.

If PBC aren't operating or have the resources to manage their affairs, they effectively can get taken back by the government... It doesn't give the [Traditional Owners] the confidence, says you're going to lose everything anyway – looks like they are setting you up to fail, it doesn't allow for that flexibility, that fluid movement of moving forward. The system says yes, the mob is going to fail anyway, we'll give them half a chance, but the system has already made that decision. (Participant quote: RAP regional workshop, November 2013).

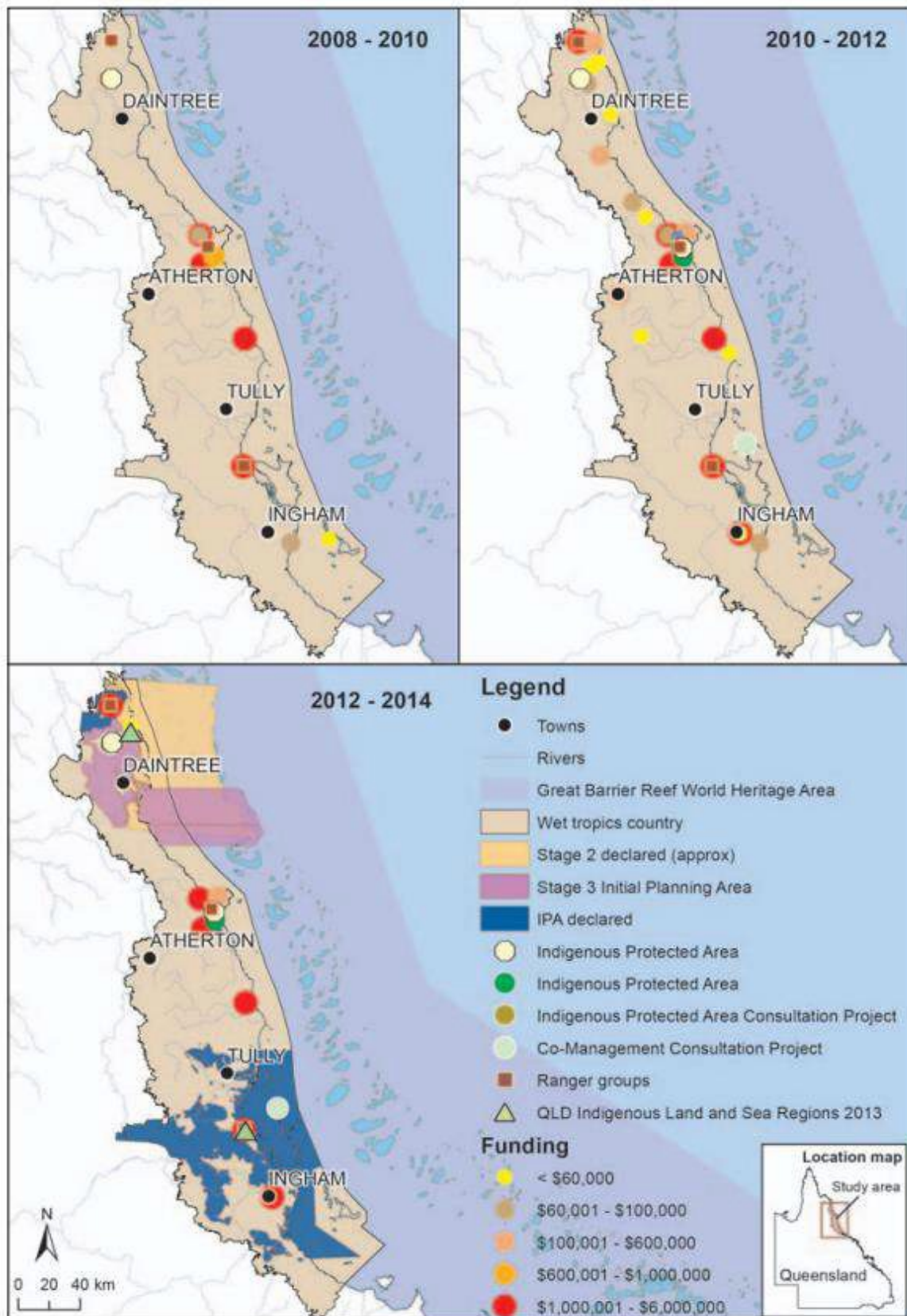
The economics of native title appear to only work where TOs are willing to trade determined rights and interests with development interests seeking to access lands or resources subject to native title. Within the WTQWHA this extends to the activities of permitted (and unpermitted) tourism operations, recreational uses, scientific research and the value-added use of rainforest Aboriginal cultural resources, e.g., collection of cultural materials for unauthenticated 'Indigenous' products, use of totemic plants and animals for pharmaceutical development and/or and bio-prospecting.



### 3.6 Indigenous Protected Areas and the Wet Tropics Region and WTQWHA

An Indigenous Protected Area (IPA) is declared through an agreement between Indigenous Australians and the Australian Government to manage an area for conservation and community benefits, based on a management plan. The Australian Government funds IPA planning and management, including ranger groups to work on the ground. The IPA's on-ground management extent encompasses returned lands and parts of the WTQWHA and GBR WHA defined by negotiated ILUAs.

Three IPAs with 4 ranger groups are currently operational across the Wet Tropics region (Girringun, Jabalbina and Mandingalbay Yidinji), and another 2 ranger groups are supported by the Queensland Government (Yirriganydji and Gunggandji). There has been a substantial increase in support for rangers and Aboriginal NRM projects across the region from 2008-2014 (Figure 7), however, just 29.2% of the WTQWHA's overall area of 900,000 ha is classified as an Indigenous Protected Area including ranger program funding.



**Figure 7. The growth in Indigenous Protected Areas, rangers and funded Aboriginal NRM projects in parts of the WTQWHA, 2008 through to 2014**

Map source: National Environmental Research Program, 2014b

The northern WTQWHA now has the first two stages of the Eastern Kuku Yalanji IPA (Jalunjiwarra and Kuku Nyungkal) declared 2013, with the third and final stage (Yalanjiwarra) scheduled for dedication in 2017. In 2009 Eastern Yalanji TOs agreed on the staged IPA across Eastern Yalanji Country, to “Put Country back together” through multi-tenure planning and management, to promote TO driven planning and management and to get resources to manage Country. The IPA was developed in three clan-based stages – Kuku Nyungkal Country, Jalunjiwarra land and sea Country and Yalanjiwarra land and sea Country. When fully dedicated, the Eastern Yalanji IPA will cover approximately 691,753 ha, of which 211,252 ha is land and 480,501 ha is sea Country. Approximately 192,552 ha of the IPA land area is inside the WTQWHA including Aboriginal freehold, co-managed lands in national parks and several types of reserves. On-ground management for the northern IPA is delivered by Eastern Kuku Yalanji through Jabalbina Yalanji Aboriginal Corporation RNTBC, with three geographically based ranger groups and statutory management partners.

The southern WTQWHA is ‘collaboratively’ managed under the 2013 Girringun Region IPA which convenes through the Girringun Aboriginal Corporation, four established RNTBCs, three emergent RNTBCs and one non-native title TO group in the co-management of 1,205,200 ha of land and sea Country with 201,977 ha inside the WTQWHA. The regional governance framework for this IPA is an ongoing collaboration by Girringun and eight of its affiliated Traditional Owner groups. Six of these affiliated TO groups manage sea country by way of the Girringun Region Traditional Use of Marine Resources Agreement (TUMRA), first negotiated in 2005. On-ground management for this IPA is delivered through the Girringun Aboriginal Rangers and statutory management partners.

The Mandingalbay Yidinji IPA, declared in 2011 and covering 9,700 ha, manages a range of tenures encompassing returned lands, State and Commonwealth protected areas, including 7,019 ha inside of the WTQWHA. The local governance framework for this IPA is delivered by the Mandingalbay Yidinji Aboriginal Corporation RNTBC through their land and sea country management agency, Djunbunji Ltd, with on-ground management of the IPA through Djunbunji Aboriginal Rangers and statutory management partners.

Traditional Owners in the wider central area have consistently raised the need for further IPAs and ranger groups for the central section which amounts to approximately one half of the WTQWHA. This central section is not provided with IPA or a Ranger program, and repeated voluntary and intense work by RAP and partners to address this including through federal funding applications for several years has not yet resulted in change. This is a priority agreed to by Jabalbina from the northern third and Girringun from the southern third.

Indigenous Protected Areas are particularly effective at enhancing governance vitality because they:

- Are led by Traditional Owners through their vision and plans (empowered)
- Bring partners around the table often for the first time (connected)
- Recognise Indigenous knowledge (wise)
- Flexible to respond to changing community contexts (adaptive)
- Are based on new multi-tenure arrangements in the Wet Tropics (innovative).

RAPA (2013a) has noted “IPAs may provide a means to integrate:

- Rights recognition (through ILUA and native title)
- Cultural-values recognition (through heritage listing)
- Engagement in management (through NRM arrangements) as an effective platform for co-management”.

IPAs, and the ranger programs that do the on-ground work create direct employment, social justice and wellbeing outcomes in addition to providing proven Aboriginal career pathways in constrained regional economies. The economic cost-benefit of protected area management through IPAs and local Indigenous communities is also clearly positive in terms of flow-on and offsets (The Allen Consulting Group, 2011; Urbis Pty Ltd, 2012). However, IPAs are (and remain) chronically under-funded in comparison with public protected areas (Auditor-General, 2011).

The strategic management outcomes (fire, weeds, ferals, marine debris, surveillance, compliance etc.) delivered through these IPAs are further clearly desirable in maintaining nationally listed values, RAP cultural values and the WTQWHA’s OUVs as presently listed.

Currently our regimes include IPA, Land Trusts, tenure. We’d like to look at things in the Cape, re-evaluate those arrangements. Maybe some tenure changes would be good. We’re looking at new structures, if Parks starting to look at de-gazetting some parks, they could come over to us. (Participant quote: Giringun sub-regional workshop, November 2013).

From the RAP perspective, the contemporary Australian (legal as opposed to voluntary) protected area governance and management framework clearly perpetuates the legacy of colonisation and an imposed dichotomy between the ‘natural’ and the ‘cultural’. It is the voluntary agreement-making driven by RAP themselves over the past decade that has laid the platform for innovative and progressive approaches to bridge this imposed dichotomy through brokerage of collaborative or ‘joint’ management across the WTQWHA, and indeed also within parts of the adjacent GBRWHA. These locally endorsed, regionally coordinated Rainforest Aboriginal governance direction and on-ground management efforts directly benefit the Australian Government as State Party to the World Heritage Convention and the Queensland Government as the WTQWHA day to day statutory manager.

## 4. The International Level—Whose Heritage and How to Define it?

### 4.1 Indigenous Efforts to Re-define the WHC

The World Heritage Convention was initiated in 1972 and Australia became a State Party to the Convention in 1974. In the early 1970s, the global profile and recognition afforded Indigenous peoples was very limited. There was no international compulsion for post-colonial State Parties to develop progressive policies securing the rights or interests of their Indigenous populations. The fullest exploitation of resources across the world was seen as an absolute requirement of ‘development’, of growing national wealth (gross domestic product (GDP)) and of expanding the frontiers of less developed, often still Indigenous-held or occupied lands. World Heritage was instigated as a non-Indigenous mechanism.

Attempts have been made over the past decade at the international level to address this legacy, with calls for the World Heritage Committee to “...review its current procedures and Operational Guidelines to ensure the implementation of the World Heritage Convention is consistent with the *UN Declaration on the Rights of Indigenous Peoples*” (Gilbert, 2014, p. 63).

The separation of the World Heritage list into natural sites, cultural sites and mixed sites is a significant concern to many Indigenous peoples who do not perceive nature and culture to be separate. While the concept of cultural landscapes is helping to better meet Indigenous perceptions, Disko and Tugendhat’s (2014) assemblage of case studies of Indigenous peoples’ rights and World Heritage makes it clear that there is a lot more work to be done to achieve the sort of holistic approaches and institutions needed (Table 1). A recent IUCN publication (Finke, 2013, p. 1) clearly shows that there are:

- “significant conceptual connections between World Heritage cultural landscapes and the IUCN protected areas categories system [rather than with Indigenous conceptions of country],
- clear spatial overlaps, with roughly two thirds of all World Heritage cultural landscapes coinciding with protected areas in one or more of the IUCN management categories,
- substantial management and governance relations between World Heritage cultural landscapes and protected areas [again rather than with Indigenous governance systems].”

From time to time such efforts have been mirrored by successive governments in Australia (Logan, 2013). In this respect, attempts have also been made to better engage rainforest Aboriginal people in the management of the WTQWHA’s protected areas, at on-ground (*in situ* management) and representational (governance) levels, albeit on a limited, piecemeal and regionally uncoordinated basis.

In Australia, interpretation of the World Heritage Convention has always occurred through the prism of statutory (colonially imposed but rarely reconciled) land ownership and (Euro-centric) land management regimes, even where World Heritage properties have been listed for their Aboriginal ‘cultural’ and ‘natural’ OUVs. Colonial constitutions mean that States retain critical land use and ownership powers (Hill, 2006). Imposed ideological divides, introduced economies and radically different modes of production transcend the essentially Indigenous worldview of conscious



integration—where humans, their intellect and their geophysical environment/s of existence are all considered to be aspects of the greater web (or network) of life on Earth.

**Table 1. The International Realities of the World Heritage Convention’s Natural and Cultural Divide**

People	Property/Place	WH Status	OUV Criteria	Further Work Required
Anishinaabe First Nations Nomination was developed in partnership with Canadian provincial governments	Pimachiowin Aki Canadian Boreal Based on First Nations community land use plans, and extensive research and mapping related to traditional indigenous land use and occupancy	World Heritage Committee Decision 37 COM 8B.19, Phnom Penh, Cambodia 2013 <sup>6</sup>		World Heritage Committee Decision 37 COM 8B.19, Phnom Penh, Cambodia 2013 <sup>i</sup>
		Recognises that this mixed nomination and the associated IUCN and ICOMOS evaluations have raised fundamental questions in terms of how the indissoluble bonds that exist in some places between culture and nature can be recognised on the World Heritage List, in particular the fact that the cultural and natural values of one property are currently evaluated separately and that the present wording of the criteria may be one contributor to this difficulty	Mixed criterion (v) An outstanding example of traditional land-use and criterion (ix) outstanding example representing ongoing ecological and biological processes	Consider options, in collaboration with the First Nations and the partners in the nomination, to refine and strengthen the boundaries of the nominated property to meet integrity requirements in relation to the operation of ecological processes within the property and surrounding areas
		Further recognises that maintaining entirely separate evaluation processes for mixed nominations does not facilitate a shared decision-making process between the Advisory Bodies	Nomination submitted January 2012	Explore whether there is a way that the relationship with nature that has persisted for generations between the Anishinaabe First Nations and Pimachiowin Aki, might be seen to have the potential to satisfy one or more of the cultural criteria and allow a fuller understanding of the inter-relationship between culture and nature within Pimachiowin Aki and how this could be related to the World Heritage Convention
				Recommends that the State Party invite a “joint ICOMOS and IUCN Advisory Mission [under the principles of the Upstream Processes] in order to address the above mentioned issues (Jones, 2014, p. 476)
Ngāti Tūhāretoa and Ngāti Ranga	Tongariro cultural landscape Tongariro National Park New Zealand	Listed 1990 for natural OUVs on basis of criteria		
		(vii) to contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance; (viii) to be outstanding examples representing major stages of earth’s history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features; Re-listed 1993 for cultural values under criterion (vi) “to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance”; Formally recognised at that time by UNESCO as a continuing and associative cultural landscape on that basis		The Tongariro Management Plan purports to integrate Indigenous and non-Indigenous worldviews into WHA governance via formally recognised Indigenous rights and WHA management via later shared statutory obligations The Plan was developed without direct input by iwi (tribe/s) for that WHA From their perspective “very little substantive progress has been achieved in recognising, understanding and protecting the Park’s cultural and spiritual values” (Asher, 2014, p. 378).

6 Decision: 37 COM 8B.19. Pimachiowin Aki (Canada) <http://whc.unesco.org/en/decisions/5134>

People	Property/Place	WH Status	OUV Criteria	Further Work Required
Sami People	Laponian Area World Heritage Area Sweden	Listed 1996 for natural OUVs on basis of criteria <i>(vii) to contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;</i> <i>(viii) to be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features; and</i> <i>(ix) outstanding example representing ongoing ecological and biological processes</i>		No requirement for Management Plan to be in place at the time of nomination or listing. National park policies considered sufficient by World Heritage Committee at the time, however management planning was to be developed following WH listing  Management planning proved challenging, with no resulting agreement given clear polarization between Sami (Indigenous) and non-Indigenous actors
		Simultaneously listed for cultural OUVs on basis of criteria <i>(iii) to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; and</i> <i>(ix) An outstanding example of traditional land-use</i>		"The Laponian case shows that local and Indigenous people's involvement in environmental protection schemes is, above all, a political issue that ultimately leads to reassessed and restructured relations with the state authorities" (Green, 2014, p. 86)

Internationally, the rights of Indigenous peoples are enshrined in the United Nations *Declaration on the Rights of Indigenous Peoples (UNDRIP)* (United Nations, 2008) adopted by the UN General Assembly in 2007. Australia gave its formal support to the UNDRIP in April 2009. The United Nations *Declaration on Human Rights (UNDHR)* (United Nations, 1948), which Australian delegates assisted in drafting, was adopted in 1948. State Parties to the World Heritage Convention have been engaged in a protracted debate around the recognition of Indigenous rights in relation to heritage, its governance and management and review of intersections between outstanding 'natural' and 'cultural' values, and the definition of parameters for the 'cultural landscape' category (Finke, 2013; Logan, 2013). Consideration of the relevance of rights-based approaches identified several means of strengthening of global practices in World Heritage including:

1. Ensur[ing] that any 'expert group' to advise the World Heritage Committee consists of Indigenous people and not 'experts' who are non-Indigenous people who might have worked extensively in this space. Indigenous people are very capable of representing themselves about their cultural values.
2. WHAs to assess their approach to recognising traditional knowledge systems and practices as being equal to or even elevated above western science and that appropriate membership of Traditional Owners are appointed to the Scientific Advisory Committee for the WH properties.
3. Indigenous people must be provided with the opportunity to be actively engaged in representation at those levels where decisions are made about the management of the cultural OUVs of a WHA.
4. The Advisory Bodies to the World Heritage Committee to further develop appropriate guidelines and tools to assist State Parties to the World Heritage Convention to take a consistent line to a rights-based approach for Indigenous Peoples in the World Heritage systems (Grant, 2014).

WTMA is now engaging more flexibly in Rainforest Aboriginal partnerships<sup>7</sup> as a result of growing establishment by RAP of structures focused at multiple scales, including for example the Mandingalbay Yidinji Aboriginal Corporation (family/clan scale), the Nywaigi Aboriginal Land Corporation (tribal scale), the Giringun Aboriginal Corporation (sub-regional scale). Nevertheless, the current institutional arrangements for the WTQWHA do not yet meet these standards for adhering to a rights-based approach. WTMA and Rainforest Aboriginal peoples may find rights-based approaches useful for achieving better recognition of Aboriginal cultural values.

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<sup>7</sup> Rainforest Aboriginal Partnerships <http://www.wet tropics.gov.au/rainforest-aboriginal-partnerships>



## 5. National Heritage and its Transformative Potential

### 5.1 2007 National Heritage Nomination and Listing

The Wet Tropics Regional Agreement in 2005 (WTMA, 2005) committed governments and the region's rainforest Aboriginal peoples to work together for recognition of the Aboriginal cultural heritage associated with these forests. Governments subsequently provided funding for RAP to pursue a heritage nomination process that empowered community efforts (Hill, Cullen-Unsworth, et al., 2011). Rainforest Aboriginal peoples' governance of the process was assured through the TO delegates to the Aboriginal Rainforest Council and Girringun Aboriginal Corporation. Multiple partners in the 2007 nomination provided technical, financial and other support to the process including Terrain NRM, the Marine and Tropical Science Research Facility, WTMA, CSIRO, James Cook University and the Australian Government's Department of Sustainability, Environment, Water, Population and Communities (SEWPAC).

RAP used the opportunity to shape the heritage discourse to incorporate biocultural diversity; and controlled their interaction with their knowledge systems to identify the links that have created the region's biocultural diversity. The resultant nomination document submitted by the ARC in December 2007 argued for the recognition of four sets of cultural values as meeting the criteria for national significance. They argued that the nominated place, the Wet Tropics of Queensland World Heritage Area, is of outstanding cultural heritage significance to Australia because:

- i. "Our Rainforest Aboriginal People's culture is unique in Australia in enabling us to occupy rainforest on a permanent basis prior to European colonisation, whereas other rainforest regions in Australia were only occupied on a semi-permanent, seasonal basis (agreed).
- ii. Our Rainforest culture that enabled this occupation is based on a continuing and living cultural heritage of Traditional Ecological and Management Knowledge and sustainable land use and cultural practices of great significance to Rainforest Aboriginal People today (did not meet threshold test, see below).
- iii. Our technological innovations that enabled our occupation, including our fire management practices, and our food gathering and processing techniques are unique in Australia in their diversity and complexity (agreed).
- iv. Our intangible living cultural heritage of stories associated with the creative activities of our Ancestors gave us the knowledge to live in the rainforest in a manner that we find profoundly meaningful. This knowledge is encoded in our landscapes, in our stories, in our songs and our dance and provides us with the basis of the way we understand the world and the environment in which we live (agreed in part)." (Aboriginal Rainforest Council, 2007) (question 5).

Once a nomination is received, its assessment is the responsibility of the Australian Heritage Council (AHC), supported by staff in the Federal Department of Environment. Given the limited resources, many more nominations are received than are able to be assessed. However, this nomination was given priority and assessed in the AHC 2008-2010 Work Plan. The assessment process is undertaken through systematic comparative evaluation, with the object of determining whether the place is *essential* to the heritage of the Australian nation, which generally means unique with nothing like it anywhere else in Australia. After strong advocacy by the Rainforest Aboriginal Peoples' Alliance, the

assessment was completed in 2011, and agreed with arguments (i), (iii) and (iv). While (ii) was recognised, it was not able to meet the threshold for national significance as the traditional ecological and management knowledge and sustainable land use and cultural practices were found to exist in many Aboriginal cultures, including Aboriginal rainforest cultures, around Australia. In relation to number, (iv), the listing focused on those stories, song, dance, relevant to long-term occupation, and to the technological innovations.

The AHC made its assessment and in 2011 sought comment from Rainforest Aboriginal peoples about the proposed listing (RAPA, 2013b). RAPA responded positively, urging the Council to agree the Aboriginal cultural values of the WTQWHA be added to the national heritage list. RAPA continued liaison with the AHC and Minister during 2011 in support of the listing (RAPA, 2013b). The AHC recommended the listing to the Minister, who accepted the recommendation. Minister Bourke made the decision to sign the recommendation together with RAP on Country on 9<sup>th</sup> November 2012, to honour their traditions and roles as decision makers (RAPA, 2013b) (Figure 8). The official values passed through the Government Gazette in December 2012<sup>8</sup>.



**Figure 8. Declaration of inclusion in the national heritage list of additional values, signed by Minister Bourke together with Rainforest Aboriginal peoples on their country 9th November 2012**

<sup>8</sup> Wet Tropics World Heritage Area (Indigenous Values), Cairns, QLD, Australia [http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place\\_detail;search=place\\_name%3DWet%2520tropics%3Bstate%3DQLD%3Bkeyword\\_PD%3Don%3Bkeyword\\_SS%3Don%3Bkeyword\\_PH%3Don%3Blatitude\\_1dir%3DS%3Blongitude\\_1dir%3DE%3Blongitude\\_2dir%3DE%3Blatitude\\_2dir%3DS%3Bin\\_region%3Dpart;place\\_id=106008](http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;search=place_name%3DWet%2520tropics%3Bstate%3DQLD%3Bkeyword_PD%3Don%3Bkeyword_SS%3Don%3Bkeyword_PH%3Don%3Blatitude_1dir%3DS%3Blongitude_1dir%3DE%3Blongitude_2dir%3DE%3Blatitude_2dir%3DS%3Bin_region%3Dpart;place_id=106008)

The WTQWHA property was originally listed on the NHL in May 2007 for its ‘outstanding natural heritage value to the nation’, defined by application of the original National Heritage (NH) criteria (b), (c), (d) and (e)<sup>9</sup> paralleling the World Heritage listing achieved in 1988 for its outstanding universal ‘natural’ values. In 2012, by way of Gazettal Notice S168 12/12/2012, the Commonwealth Environment Minister amended the original NH 2007 listing to include the additional NH criterion:

(a) the place has outstanding heritage value to the nation because of the place’s importance in the course, or pattern, of Australia’s natural or cultural history<sup>10</sup> [the only permanently inhabited rainforests in Australia].

Subsequent Gazettal Notice S169 12/12/2012 formalised recognition of two (2) further additional NH criteria:

(f) the place has outstanding heritage value to the nation because of the place’s importance in demonstrating a high degree of creative or technical achievement at a particular period<sup>11</sup> [the use of toxic plants; special and specific uses of fire] and

(i) the place has outstanding heritage value to the nation because of the place’s importance as part of Indigenous tradition<sup>12</sup> [instructions from creation beings regarding use and processing of toxic Rainforest foods].

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<sup>9</sup> The original criteria used to list the WT WHA on the National Heritage List in 2007 included:

- (b) the place has outstanding heritage value to the nation because of the place’s possession of uncommon, rare or endangered aspects of Australia’s natural or cultural history;
- (c) the place has outstanding heritage value to the nation because of the place’s potential to yield information that will contribute to an understanding of Australia’s natural or cultural history;
- (d) the place has outstanding heritage value to the nation because of the place’s importance in demonstrating the principal characteristics of:
  - (i) a class of Australia’s natural or cultural places; or
  - (ii) a class of Australia’s natural or cultural environments;
- (e) the place has outstanding heritage value to the nation because of the place’s importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;

<sup>10</sup> (a): The Wet Tropics is the only place in Australia where Aboriginal people permanently inhabited a rainforest prior to European arrival and is of outstanding heritage value to the nation for its importance in the course of Australia’s cultural history. The Wet Tropics contains camping places and archaeological sites that demonstrate year-round occupation of the rainforest by Aboriginal people. Aboriginal traditions linked to the volcanic events at Lake Eacham provide indirect evidence for the antiquity of Aboriginal occupation of the area.

<sup>11</sup> NH criteria (f) and (i): The technical achievements that allowed rainforest Aboriginal people to utilise toxic plants are of outstanding heritage value to the nation. They used at least 14 toxic plants as foods, an unusually large number in the Australian context. While most of these plants are distributed throughout the rainforest, each tribal group used toxic plants found within their own country. Evidence of the diverse and complex range of techniques used to process these plants remain, including ground ovens to soften toxic nuts and certain streams to leach out the toxins. These technical achievements were based on a unique material culture that made it possible to live year round in the rainforest of the Wet Tropics. Rainforest Aboriginal people developed a specialised and unique material culture to process toxic and other plants including bicornual baskets made from lawyer vine, grooved grinding slabs, crushing stones, anvils pitted with small hollows, hammerstones and polished waisted stone axes called ooyurkas. They also developed specific uses of fire to manage and alter their rainforest home, including the purposeful use of fire to alter vegetation communities and plant-specific techniques to control the lawyer vine. These cultural practices are the expression of the technical achievements that made it possible for Aboriginal people to live year-round in the rainforest of the Wet Tropics. See <http://www.environment.gov.au/system/files/pages/afd62f21-3393-48e8-8b99-999dbc05c9a1/files/s169.pdf>

<sup>12</sup> Traditions established by creation beings about the toxicity of plants and the techniques used to process toxic plants are unusual in an Australian context and are of outstanding heritage value to the nation. There are a number of traditions that describe how creation beings created and instructed rainforest Aboriginal people about the foods found in the rainforest and how to make them edible. These

In providing evidence to support all of the proposed NH criteria at the time, the 2007 nomination text provides oral and documented evidence outlining the uniqueness, authenticity, integrity and specialisation of Rainforest Aboriginal culture across these unique cultural landscapes (Aboriginal Rainforest Council, 2007)<sup>13</sup>.

**Box 1. Official Indigenous Cultural Values of the WTQWHA recognised by the National Heritage Listing**

**Criterion A Events, Processes**

The Wet Tropics is the only place in Australia where Aboriginal people permanently inhabited a rainforest prior to European arrival and is of outstanding heritage value to the nation for its importance in the course of Australia's cultural history. The Wet Tropics contains camping places and archaeological sites that demonstrate year-round occupation of the rainforest by Aboriginal people.

Aboriginal traditions linked to the volcanic events at Lake Eacham provide indirect evidence for the antiquity of Aboriginal occupation of the area.

**Criterion F Creative or technical achievement**

The technical achievements that allowed rainforest Aboriginal people to utilise toxic plants are of outstanding heritage value to the nation. They used at least 14 toxic plants as foods, an unusually large number in the Australian context. While most of these plants are distributed throughout the rainforest, each tribal group used toxic plants found within their own country. Evidence of the diverse and complex range of techniques used to process these plants remain, including ground ovens to soften toxic nuts and certain streams to leach out the toxins.

These technical achievements were based on a unique material culture that made it possible to live year round in the rainforest of the Wet Tropics. Rainforest Aboriginal people developed a specialised and unique material culture to process toxic and other plants including bi-corneal baskets made from lawyer vine, grooved grinding slabs, crushing stones, anvils pitted with small hollows, hammer-stones and polished waisted stone axes called *ooyurkas*. They also developed specific uses of fire to manage and alter their rainforest home, including the purposeful use of fire to alter vegetation communities and plant-specific techniques to control the lawyer vine. These cultural practices are the expression of the technical achievements that made it possible for Aboriginal people to live year-round in the rainforest of the Wet Tropics.

traditions are inscribed in the landscape at particular named places. These places and traditional law provide the conceptual framework that underpins the rainforest Aboriginal people's technical achievement in processing toxic plants. See

<http://www.environment.gov.au/system/files/pages/afd62f21-3393-48e8-8b99-999dbc05c9a1/files/s169.pdf>

<sup>13</sup> The nominated place, the Wet Tropics of Queensland World Heritage Area, is of outstanding cultural heritage significance to Australia because:

- (a) Our Rainforest Aboriginal People's culture is unique in Australia in enabling us to occupy rainforest on a permanent basis prior to European colonisation, whereas other rainforest regions in Australia were only occupied on a semi-permanent, seasonal basis.
- (b) Our Rainforest culture that enabled this occupation is based on a continuing and living cultural heritage of Traditional Ecological and Management Knowledge and sustainable land use and cultural practices of great significance to Rainforest Aboriginal People today.
- (c) Our technological innovations that enabled our occupation, including our fire management practices, and our food gathering and processing techniques are unique in Australia in their diversity and complexity.
- (d) Our intangible living cultural heritage of stories associated with the creative activities of our Ancestors gave us the knowledge to live in the rainforest in a manner that we find profoundly meaningful. This knowledge is encoded in our landscapes, in our stories, in our songs and our dance and provides us with the basis of the way we understand the world and the environment in which we live.

**Criterion I Indigenous tradition**

Traditions established by creation beings about the toxicity of plants and the techniques used to process toxic plants are unusual in an Australian context and are of outstanding heritage value to the nation. There are a number of traditions that describe how creation beings created and instructed rainforest Aboriginal people about the foods found in the rainforest and how to make them edible. These traditions are inscribed in the landscape at particular named places. These places and traditional law provide the conceptual framework that underpins the rainforest Aboriginal people's technical achievement in processing toxic plants.

National Heritage listing facilitates the nomination, assessment and potential recognition of a place (or site) for its outstanding Indigenous, natural or historic value to the nation (Commonwealth of Australia, 2012). Nine NH criteria currently exist under the Commonwealth *Environment Protection Biodiversity Conservation Act 1999* which are selectively applied to describe the national significance of a nominated site for its outstanding heritage value to the nation. Following assessment, confirmation and acceptance by the delegated Federal Minister, the nominated place is registered on the NH List by way of a formal Commonwealth of Australia Gazettal Notice.

## 5.2 Consequences of the 2012 National Heritage Listing of Aboriginal Cultural Values of the WTQWHA

Listing of the Aboriginal cultural values of the WTQWHA essentially triggers two major changes to institutional arrangements. First, the listed cultural values now become “Matters of National Environmental Significance” (MNES) under the *Environmental Protection and Biodiversity Conservation Act 1999*. Actions that have, or are likely to have, a significant impact<sup>14</sup> on a MNES require approval from the Australian Government Minister for the Environment (the Minister). The Minister will decide whether assessment and approval is required under the EPBC Act. However, these assessment processes may become subject to a process of delegation to the Queensland Government under a draft new Queensland bi-lateral agreement that appears to significantly weaken assessment and opportunities for public input (McGrath, 2014).

Second, the Australian Government must use its best endeavours to encourage relevant authorities to develop and implement management plans in accordance with the National Heritage Management Principles. The Australian Government has limited powers over land management, as the States retained these powers when the Australian Constitution was formulated at federation in 1901. The Australian Government has no powers to require a management plan, and therefore has limited responsibility and accountability.

The Australian Government Minister for Environment identified in correspondence in May 2014 that he saw a “National Heritage Listing Action Plan” as an appropriate way forward, requiring initiative from the WTMA and Rainforest Aboriginal peoples through cooperation (Box 2).

<sup>14</sup> See definition of “significant impact” at <http://www.environment.gov.au/epbc/about/glossary>

**Box 2. Minister Hunt's letter regarding National Heritage Listing Action Plan, May 2014**

With regard to a National Heritage Listing Action Plan, the National Heritage Management Principles promote the active participation of Indigenous people in the management of their heritage. The initiative will lie with the Wet Tropics Management Authority and the Rainforest Aboriginal people to develop and agree on ways to cooperate effectively in the future management of these values. The role of the Australian Government is to use its best endeavours to encourage cooperative arrangements between Rainforest Aboriginal people and the Wet Tropics Management Authority to develop and implement management plans in accordance with the National Heritage management principles.

The formal National Heritage management principles (Australian Government, 2007) are:

1. The objective in managing National Heritage places is to identify, protect, conserve, present and transmit, to all generations, their National Heritage values.
2. The management of National Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their National Heritage values.
3. The management of National Heritage places should respect all heritage values and seek to integrate, where appropriate, any Commonwealth, state, territory and local government responsibilities for those places.
4. The management of National Heritage places should ensure that their use and presentation is consistent with the conservation of their National Heritage values.
5. The management of National Heritage places should make timely and appropriate provision for community involvement, especially by people who:
  - (a) have a particular interest in, or associations with, the place, and
  - (b) may be affected by the management of the place.
6. Indigenous people are the primary source of information on the value of their heritage and the active participation of Indigenous people in identification, assessment and management is integral to the effective protection of Indigenous heritage values.
7. The management of National Heritage places should provide for regular monitoring, review and reporting on the conservation of National Heritage values.

Traditional Owners of the WTQWHA are particularly concerned that the proposed National Heritage Listing (NHL) Action Plan, suggested as a pathway by senior Australian Government representatives for progressing the management of nationally-listed Rainforest Aboriginal cultural values, has not been further progressed by any government to date. It appears as though progression of a NHL Action Plan might be seen at the highest levels of the Australian and Queensland governments as the sole prerogative and responsibility of Rainforest Aboriginal people, somehow to be resourced independently by the nation's most disadvantaged constituency and lobbied for from a position wholly external to government. This makes a continuing mockery of the undertakings of both tiers of government as articulated within, and as formally entered into by way of, the Wet Tropics Regional Agreement. From the perspective of RAP interests, existing heritage frameworks needing urgent re-assessment to enable the adoption and delivery of meaningful cultural assurance include WHA governance arrangements and bilateral relationships (under active review), management planning

and increased public investment for all aspects of WTQWHA stewardship. This is particularly urgent in light of the recent elevation of the WTQWHA to the level of Significant Concern in terms of its conservation status (Osipova et al., 2014). Climate change and invasive species are the key threats identified.

### 5.3 Barriers and Opportunities for Realising Protection of the Listed Aboriginal Cultural Values of the WTQWHA

The WTQWHA is currently taken to represent best practice, and this *Recognition of Best Practice* occurred through the World Heritage Capacity Building Strategy, adopted by the WH Committee in 2011. The Wet Tropics is:

- Listed as one of 28 best-practice examples of World Heritage Management globally on the UNESCO web-site (see <http://whc.unesco.org/en/recognition-of-best-practices/>); following its selection by the Australian Government to a UNESCO invitation to provide one example
- Highlighted as one of six Best Practice examples globally in the World Heritage Magazine No. 67 April 2013 (see <http://unesdoc.unesco.org/images/0022/002209/220955e.pdf>).

Nevertheless, Australia:

...still has a long way to go, to provide its Indigenous Peoples with more appropriate resourcing, support, involvement and recognition of their role in protecting and managing Australia's natural and cultural resources. Australia is unfortunately not exceptional, inadequate engagement of the Indigenous Peoples and little recognition for Indigenous cultural knowledge and local Indigenous organisations are common issues among many of the Worlds' Indigenous peoples whose traditional country lies within a World Heritage area (Talbot, 2013, p. 137).

According to Logan (2013) "heritage protection has always been about resource management and resource allocation and, therefore, has always had a powerful political dimension and a governance context" (p. 158), and "... that World Heritage conservation, being concerned with the use of scarce resources, will always be part of a political process that plays out at and across international, national and local levels" (p. 171). These realities are reflected in the history of the WTQWHA and in its contemporary situation. Contemporary Australian jurisprudence and legislation places the legal ownership of land by Aboriginal into the public or private titling system founded in British law as incorporated into Australian jurisprudence today. Past communal land-holding by Aboriginal communities or institutions has transitioned to the private ownership of returned lands by incorporated Aboriginal entities operating under native title laws. This native title system sits at the intersection of the Australian and Indigenous jurisprudence and law.

Protected Area tenures including WHAs are gazetted, identified and mapped as discrete parcels of lands owned by Australia's diverse States or Territories, and managed under bilateral arrangements described under Commonwealth statute. Related bilateral agreements, institutional governance arrangements and environmental impact assessment and approval mechanisms presently remain under review. This is embedded in the direct linkage of WTMA's obligations to '*have regard to [under s10(5)(a)] or to liaise and cooperate with Rainforest Aboriginal peoples [under s10(5)(b)]*',



with s10(4) whereby it must “perform its functions in a way that is consistent with the protection of the [Wet Tropics WHA’s] natural heritage”.

An exclusive focus on ‘natural’ values at the time of WH listing has led to the instigation and implementation of governance and management framework adjusted to an exclusively Australian jurisprudence, through State-embedded mainstream management agencies.

Talbot (2013, p. 137) further identified a number of key recommendations to overcome these barriers, support and achieve better engagement of Indigenous people and communities with respect to World Heritage declarations and or nominations, including:

- Real and strategic involvement in the protection of cultural and natural values
- Real and strategic involvement in the management and decision making of the area
- Support and recognition for and of self-determined processes and protocols that enhance cultural governance arrangements
- True partnership arrangements that reflect joint approaches for seeking and administrating resources and assistance with financial management.

Rainforest Aboriginal peoples emphasised the important of better support for protecting Aboriginal cultural heritage in discussions at the 2014 *Booran* Gathering and associated consultations (RAPA, 2015). RAP have expressed interest in investing in *knowledge networks* as potentially useful way of building capability (Hill et al., 2014) to provide flexible and diverse ways to increase equity by enabling Aboriginal businesses, native title corporations, family groups, IPA and ranger managers, research organisations, NRM and heritage managers to learn and share, for example through dialogues, workshops, websites and social media. Key barriers identified include the lack of recognition of Indigenous sovereignty, the risks of development, the lack of ongoing secure funding, and the fragmentation of Aboriginal interests. RAP identify the key strategic issues as: keeping culture strong through stories, language and keeping places; being on country as central to promoting culture; having access to country; protecting cultural sites; promoting strong governance and organisational representation for culture and heritage; ensuring culture and heritage maintenance and language teaching; cultural infrastructure and culture sharing; cultural learning – language maintenance; working with education; facilitating local Traditional Owner culture and heritage responsibilities; and relisting the Wet Tropics World Heritage Area for its Aboriginal cultural values. RAP (RAPA, 2015) identify the following priorities in pursuing this agenda:

- Stronger Traditional Owner/cultural heritage groups
- Two-way cultural education
- Transferring culture to our younger people
- Fixing Government dysfunction and funding arrangements
- Stopping division
- Build strong local and sub-regional keeping places.

The resources necessary to deliver these priorities are substantial. For example, providing the foundations for management of cultural values would require an initial investment of \$20m, including \$10m for establishment of cultural mapping and knowledge data-bases right for the 20 tribal groups in the region at \$0.5m each, and a further \$10m for the knowledge network of

organisations and knowledge brokers to develop the network to provide flexible and diverse ways to build capability by linking Aboriginal businesses, native title corporations, family groups, IPA and ranger managers, research organisation, NRM and heritage managers to learn and share, for example through dialogues, workshops, websites and social media (RAPA, 2015).

Finding an appropriate mechanism to deliver these priorities is the challenge for the National Heritage Listing Action Plan. The approach to management of the listed Aboriginal cultural values of the WTQWHA could draw on the experiences in the Kimberley. Aboriginal people in this region are promoting governance and management through the “Healthy Country Plans” developed at the tribal scale within both IPA and ranger contexts to manage their nationally listed values (Commonwealth of Australia, 2011). Significant levels of funding from the Australian Government has enabled these plans and the rangers to implement them. The Kimberley Land Council (KLC) has proposed a framework that links these across the region to provide long term, coordinated management from the grass roots (Ari Gorrington, Head KLC Land and Sea Management Unit. Pers. Comm. November 2014).

“World/National Heritage Indigenous Protected Areas” is a concept of a value-added IPA being discussed informally among Traditional Owners, government and non-government actors, and stimulating some interest. A World/National Heritage IPA is one where:

- Management would ensure focus on protection of the listed values, both natural and cultural, by the IPA
- A network of IPAs would be linked through brokers that also link Aboriginal businesses, native title corporations, family groups, IPA and Ranger managers, research organisation, NRM and heritage managers to learn and share, for example through dialogues, workshops, websites and social media
- Additional resources from the Australian Government would be available to enable and support this increased level of attention and networking
- Resources from Australian Government would be allocated on an ongoing basis, in recognition of the ongoing responsibility for heritage protection of matters of national significance
- The full set of duties associated with heritage management, including protection, conservation, management, transmission to future generations, and ensuring a role in the life of the community, could be accepted over time together with growth in the resource available to the IPA managers.

## 6. World Heritage and its Transformative Potential

### 6.1 Differences Between National and World Heritage Listing Processes and Outcomes in Australia

The opportunities presented by the 2012 National Heritage Listing of the WTQWHA for its Rainforest Aboriginal values include the further recognition and protection of these values through a re-listing of the WHA for its ‘natural’ and Aboriginal ‘cultural’ values as dual values of outstanding universal value, and possible future recognition of the WTQWHA as a cultural landscape of outstanding universal value. However, there are important differences between national and world heritage listing processes and outcomes (Table 2).

**Table 2. Differences between national and world heritage listing processes and outcomes in Australia**

	National Heritage	World Heritage
Who nominates	Anyone	Only “State Parties” (nation-states) to the Convention i.e., the Australian Government
Who prepares the nomination	Anyone	Delegated to the Queensland Government under the World Heritage Bilateral Agreement
How prioritised for assessment	Through the Australian Heritage Council Work Plan	Usually required to be on the “Tentative List” for world heritage, which is “an inventory of those properties which each State Party intends to consider for nomination” <sup>15</sup> . However, this may not be required for re-listing
Criteria	Nine joint natural/cultural criteria	Four natural and six cultural criteria
Who assesses	Australian Heritage Council supported by Federal Department of Environment	ICOMOS (International Council on Monuments and Sites) for cultural heritage, IUCN for natural heritage, may be both for a joint listing
Thresholds to meet the criteria	Whether the place is essential to Australia’s heritage, which generally means unique nationally	Whether the place has outstanding universal value (OUV) to the whole of humanity, which generally means unique globally Must also demonstrate integrity and effective management
How is it assessed	Systematic comparative evaluation nationally	Systematic comparative evaluation globally
Who decides to list	Australian Minister for the Environment	World Heritage Committee
Australian Government obligations	Use its best endeavours to ensure effective management Protect against developments that have a significant impact on listed values	Required to ensure effective management through its obligations under the World Heritage Convention. Failure to meet obligations can result in World Heritage In Danger listing
Boundary	Determined by the nominee	Needs to enable integrity, so encouragement to include all the place with the values

<sup>15</sup> <http://whc.unesco.org/en/tentativelists/>

## 6.2 Are the Rainforest Aboriginal Cultural Values of World Heritage Significance?

The Aboriginal cultural values of the WTQWHA were found to be of national significance due to a number of unique features, related particularly to the technologies of toxic tree nut processing and specialised fire practices that enable occupation of rainforests, the antiquity and continuity of this occupation, and the traditional law that provides the framework to enable these technologies and practices to evolve and be reproduced<sup>16</sup>.

Two key concepts underpin heritage listing:

- Criteria – which tells us what we need to know about a place, e.g., “the place has outstanding heritage value to the nation because of the place’s importance in the course, or pattern, of Australia’s natural or cultural history”<sup>17</sup>
- Threshold — which requires that place to be essential, to bring something different to any other site. Thresholds of significance for national listing require a place to show aspects that are nationally unique and essential to our understanding; and for world heritage listing to show aspects that are globally unique and essential to our understanding.

Systematic comparative evaluation is the process by which the uniqueness of a place is assessed—essentially comparing this place to see if other places are similar. For example, as noted above, the original nomination for the National Heritage Listing (ARC, 2007) argued four reasons that the Rainforest Aboriginal cultural values are unique. One of these, “Rainforest culture that enabled this occupation is based on a continuing and living cultural heritage of Traditional Ecological and Management Knowledge and sustainable land use and cultural practices of great significance to Rainforest Aboriginal People today”, did not meet the threshold of significance as many other Aboriginal cultures also base their occupation on such knowledge and practices.

The case for world heritage listing relies on being able to establish that the technologies and practices that enable occupation of rainforests, the antiquity and continuity of this occupation, and the traditional law that provides the framework to enable these technologies and practices to evolve and be reproduced, is unique globally as well as nationally.

Rainforest peoples the world over have specialist techniques for utilising carbohydrate (Headland & Bailey, 1991). The ARC (2007) nomination noted that in the global context, archaeological evidence for human occupation of rainforests extends back to 35,000 years ago in Melanesia (Pavlidis & Gosden, 1994), and has recently been shown at 38,000 years ago in Sri Lanka (Roberts, Boivin, & Petraglia, 2015). Nevertheless, the ARC (2007) argued that Rainforest Aboriginal peoples’ history of occupation is of outstanding significance globally because no other human society is known to have overcome the carbohydrate limitations of rainforest, recognised world-wide as an important challenge to permanent human rainforest occupation, through the use of toxic nuts (Bahuchet, McKay, & de Garine, 1991; Brosius, 1991; Headland & Bailey, 1991; Hill & Baird, 2003). A more

<sup>16</sup> See Wet Tropics World Heritage Area (Indigenous Values), Cairns, QLD, Australia [http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place\\_detail;search=place\\_name%3DWet%2520tropics%3Bstate%3DQLD%3Bkeyword\\_PD%3Don%3Bkeyword\\_SS%3Don%3Bkeyword\\_PH%3Don%3Blatitude\\_1dir%3DS%3Blongitude\\_1dir%3DE%3Blongitude\\_2dir%3DE%3Blatitude\\_2dir%3DS%3Bin\\_region%3Dpart;place\\_id=106008](http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;search=place_name%3DWet%2520tropics%3Bstate%3DQLD%3Bkeyword_PD%3Don%3Bkeyword_SS%3Don%3Bkeyword_PH%3Don%3Blatitude_1dir%3DS%3Blongitude_1dir%3DE%3Blongitude_2dir%3DE%3Blatitude_2dir%3DS%3Bin_region%3Dpart;place_id=106008)

<sup>17</sup> National Heritage Listing criteria <http://www.environment.gov.au/heritage/about/national/national-heritage-list-criteria>

complex picture has emerged over the last few years. Archaeological studies of Niah Cave in Borneo have demonstrated that modern humans lived in rainforest dating from 46,000-34,000 years ago and were involved in the processing of toxic nuts from the tree *Pangium edule* and may have been involved in using fire at forest edges (Barker et al., 2007). *Pangium edule* is widely eaten in southeast Asia today, following various processing techniques including boiling, soaking and burying (Andarwulan, Fardiaz, Wattimena, & Shetty, 1999). The nuts have antibacterial and antioxidant properties (Chye & Sim, 2009). Denham's (2008) investigation of tree nut use in New Guinea and Australia led him to conclude that the biggest difference related to edibility; cultivation in New Guinea has bred out toxins and made larger kernels and fruits, whereas processing techniques in Australia had expanded into a wide array of toxic tree nuts. Direct evidence for human reliance on rainforest resources exists from 20,000 years ago in Sri Lanka, with ongoing interaction between domestication, cultivation and wild plant utilisation and foraging-farming transitions in rainforest resource management strategies over millennia (Barker & Richards, 2013; Denham, 2011; Roberts, Perera, et al., 2015).

A fascinating picture is emerging whereby RAP technologies of toxic tree nut processing and specialised fire practices that enable occupation of rainforests appear as highly elaborated example of a cultural adaptation with roots of great antiquity in other places, notably Borneo, 46,000-34,000 years ago. The living traditional law that provides the framework to enable these technologies and practices to continue, perhaps being brought to Australia from elsewhere, and to evolve, adapt and be reproduced and maintained to the present is of profound significance to humanity.

### 6.3 Potential Benefits, Opportunities and Risks of World Heritage Listing

The potential benefits and opportunities from World Heritage listing include:

- Australian Government responsibility therefore stronger case for funding of Indigenous-driven management
- International networks can grow the power and influence of Rainforest Aboriginal peoples
- Recognition globally can increase Rainforest Aboriginal peoples' influence over and share of tourism
- Outside of agriculture, economies in the Wet Tropics are largely nature-based, heritage based and knowledge based
- Could/should lift current restrictions on Aboriginal occupation and use that supports the listed values
- If boundary includes areas outside of the current WTQWHA, can provide for a much stronger role in cultural heritage protection
- If boundary included seamless rainforest to reef, as suggested by Titchen (1995), it could lead to a stronger role for TOs across their traditional land and sea country, and mirror their IPAs.

The risks include:

- Australian Government has ultimate responsibility for World Heritage as the signatory to the World Heritage Convention, not rainforest Aboriginal peoples—both a benefit (therefore support funding etc.) and a risk
- Requires substantial investment of time and resources from RAP—drawing attention away from other matters
- New governance and management institutions—will require work to make sure these are Indigenous-driven
- World heritage processes internationally are based largely on a separation between cultural and natural values and also need institutional reform.

Experiences in Australia to build on in negotiating these potential benefits, opportunities and risks include:

- World Heritage consent through country-based planning in CYP (Logan, 2013)
- Networked IPA-Ranger group approach to managing national heritage emerging in the Kimberley
- Linking country-based planning for World Heritage and for National Heritage governance and management
- Our Country, Our Way Guidelines – show how to link governance and management (Hill, Walsh, Davies, & Sandford, 2011)
- Ideas about value-added processes for IPAs and ILUAs from Rainforest Aboriginal peoples (Hill et al., 2014)
- Ideas about knowledge network proposal to share learnings and enable more equitable bottom-up process
- Establishing processes to show how TOs are managing for both natural and cultural Outstanding Universal Values (OUVs).

A number of key technical questions need to be addressed by rainforest Aboriginal peoples in making decisions about how to progress future world heritage:

- What mechanisms for managing our cultural values as world heritage will ensure that the benefits outweigh the risks?
- Could these mechanisms be tested through the arrangements for managing our cultural values as national heritage? How?
- Should there be a seamless nomination across land and sea, similar to IPAs?
- Should the boundaries be the same or different to the WTQWHA?
- How can we build the knowledge for our communities to make informed decisions that balance benefits and risk?
- What is the time-frame and processes for this?

In addition to the technical discussion and issues, there is a need for an ongoing discussion about the political and policy issues and risks at hand. The key discussions at the policy level could consider issues such as the relative merits of pursuing world heritage listing vis-à-vis other opportunities to advance Aboriginal cultural rights and development.

## 6.4 What Aspects of WTQWHA Governance and Management Require Transformation?

The Australian World Heritage Intergovernmental Agreement (AWHIGA) agreed between the Australian Government and the governments of all Australian states and territories in November 2009 through the Environment Protection and Heritage Ministerial Council that all parties to the agreement:

- ACKNOWLEDGE the important roles of the Commonwealth and the States in relation to Australia's cultural and natural heritage and the contribution each can make in the development of national and international policies, for which the Commonwealth has lead responsibility
- RECOGNISE that "outstanding universal value" as defined by the World Heritage Convention can transcend physical and political boundaries
- ACKNOWLEDGE that policy development, program delivery and decision-making should be the responsibility of the level of government best placed to deliver agreed outcomes
- ACKNOWLEDGE that the efficiency and effectiveness of administrative and political processes and systems for the management and protection of Australia's World Heritage properties will be a direct function of the extent to which:
  - roles and responsibilities of the different levels of government are clearly and unambiguously defined
  - duplication of functions between different levels of government are avoided
  - the total benefits and costs of decisions to the community are explicit and transparent
  - the different levels of governments cooperate on World Heritage issues.

The AWHIGA also states that:

Jurisdictions with responsibility for managing a World Heritage property must have a World Heritage management system or management plan in place. This system or plan must ensure that the integrity and authenticity of the property at the time of inscription are maintained or enhanced.

The AWHIGA contains specific funding principles (section 7.1 to 7.3) which:

- require governments at both levels to provide funding for maintaining OUVs, including long-term funding commitments;
- apply regardless of the amount of funding available so ensuring that funding can be directed to priority areas; and
- provides, regardless of the source or level funding, for priority World Heritage activities or projects<sup>18</sup>

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<sup>18</sup> 7.3 Regardless of the source or level, funding will be provided for those priority World Heritage activities or projects which:

- a) *identify* outstanding universal value;
- b) improve the *conservation, protection* and management of Australia's World Heritage properties, including monitoring and reporting on the status of outstanding universal value;
- c) involve the preparation of World Heritage management systems or management plans which meets world's best-practice;



Under the AWHIGA a particular World Heritage management system or management plan “may vary according to cultural and other jurisdictional and cross-jurisdictional factors”, but that “an effective World Heritage management system or management plan will [amongst other matters]”:

- Identify the outstanding universal value and potential threats to the property
- Document the legal, scientific, technical, administrative, and financial and visitor strategies which will be adopted and implemented to protect, conserve, and present the property for current and future generations
- Identify the community, stakeholders and other partners, including Traditional Custodians, and how they will participate in property management and decision-making
- Document what research is required to better understand the values and threats to the property and the effectiveness of management actions
- Use a risk management approach to prioritise strategies within the management system or management plan
- Develop an implementation plan and allocate resources in accordance with the identified strategic priorities
- Document a cycle of planning, review, monitoring, evaluation and reporting of the management system or plan
- Assess the impact of proposed strategies on the outstanding universal value to ensure the strategies are acceptable and sustainable.

These general principles are valuable, and could help underpin a renewed effort to plan for the Aboriginal cultural values. Specific to the WTQWHA, Grant (2014) recommends in summary, amongst other matters, that the Australian and Queensland governments:

- Ensure that agencies and other parties align with best practice or existing protocols when consulting with Traditional Owners.
- Ensure that procedures and strategies to be rightfully engaged in the WH processes align with legislative frameworks, policies, management and action plans to reflect the recognition of Aboriginal cultural values in the WHAs.
- All communications must be improved upon all round for both Indigenous communities in the WTQWHA..., management agencies, and all levels of governments internally and externally to ensure that there is a clear understanding about processes, timing and responsibilities.
- The Australian Government to consider full financial and secretariat support and re- institute the AWHIN<sup>19</sup> to fulfil its role regarding Indigenous peoples and World Heritage.

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- d) improve the resilience of World Heritage properties to existing and potential threats;
  - e) establish and maintain appropriate arrangements for the involvement of Traditional Custodians, the broader community and other key stakeholders in planning and management of World Heritage properties;
  - f) *present* outstanding universal value to enable community and visitor understanding, appreciation and enjoyment of World Heritage properties; and
  - g) assist World Heritage properties to generate income, become more financially self-sufficient and be able to ensure transmission to future generations in as good as or better condition than at present.

<sup>19</sup> AWHIN is the Australian World Heritage Indigenous Network, comprising Aboriginal delegates representative of each Australian WH property. AWHIN and the Australian World Heritage Advisory Committee (AWHAC) are presently funded on an ad hoc basis only, with their respective functions and roles currently under review by the Australian Government.

- Federal, State and Territory governments to develop a strategy to implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples through best practice standards when working with Indigenous Australians.
- All governments to work with communities where their cultural values are listed on the National Heritage and World Heritage Lists to develop one Management plan in accordance with the National Heritage Management Principles.
- All governments to take a leadership role in applying and registering traditional Aboriginal names across the landscapes through a dual naming process.

Reviewing existing institutional heritage frameworks as a matter of priority to enable and facilitate global best practice will assist in the consolidation of assured cross-cultural governance and shared management of the WTQWHA as a dually nationally listed National Heritage place. This is a clear imperative in the lead up to a re-listing of the property for its outstanding universal 'cultural' values.

Grant (2014), as noted earlier, considered how rights-based approaches may be useful in world heritage management, and recommended that:

- (a regional governance structure, e.g.,) RAPA be resourced as a partner and undertake consultation and negotiations with WTMA to provide advice and have input in the development of policies and programs that will benefit the community, the OUVs in the WHA, the environment, and the broader community and future generations.
- The Australia Government must recognise Aboriginal people's cultural values in Australia's World Heritage Areas and they must be appropriately resourced to manage those cultural values.

The essential transformation required has previously been characterised as moving from valuing the Wet Tropics as a natural landscape of global significance, governed by the Australian nation-state in partnership with communities; to valuing it as a biocultural landscape, jointly governed by RAP and the Australian nation-state, in partnership with communities (Hill, Cullen-Unsworth, et al., 2011).

Considerable progress has been made since representation was formulated in 2011; nevertheless much more work needs to be done to address remaining issues (Table 3).

**Table 3. Potential mechanisms to address key governance issues that need transformation**

<i>Issue/s</i>	<i>Mechanism</i>	<i>Alternatives</i>	<i>Comment</i>
Comparing for uniqueness	WH 'cultural' criteria (i) to (vi)	Not relying on superiority/exclusivity Describing difference as positive WHA asset	
Defining WTQWHA Rainforest Aboriginal 'cultural' OUVs	WH cultural criteria Mixed re-listing UNESCO <i>cultural landscapes</i> category		
WH Re-listing	Free, prior and informed consent (FPIC)	Instigating and formalising rigorous cultural assurance for a future WH re-listing	Original listing progressed without FPIC, re-listed NH 'cultural' values benefited from tailored FPIC process
WTQWHA Board	WHA Board structure with resourced RAP roles & responsibilities	Shared governance Holistic and equitable WTQWHA, and GBR, governance	18 PBCs with interests in WTQWHA, ~7 PBCs directing regional IPA management
Ad hoc joint management arrangements	WHA Management Plan integrated with IPA Management Plans	Shared management Holistic and equitable on-ground delivery	3 Aboriginal Ranger groups delivering management of WTQWHA OUVs on-ground
Robust national level oversight and policy coordination	Ministerial Council and national advisory committees	AWHIN and AWHAC fully resourced and functional	AWHIN and AWHAC hold ad hoc meetings, poorly resourced since inception
False dichotomies	Legislative reform, realigned property rights, evolving ideologies/worldviews, global climate change	Integrating cross-cultural governance, full legal/resource equity in WHA management	Generation of efficiencies of scale, changing regional or local economic drivers, adoption of holistic WHA management principles

Management of fire in the WTQWHA provides a useful example of the sorts of barriers that still exist and the changes that need to be made. Fire management practices are specifically listed as a cultural value of national heritage significance. Yet the current ILUA and National Parks arrangements do not prevent rather than support Aboriginal practices under traditional laws.

We have sections in the Wet Tropics area or in the rain forest that we've been burning off for thousands of years and when we want to go back and practice our traditional burning, National Parks always put a red tape around us burning...how can we sort of negotiate with National Parks to keep traditional knowledge going? (Working Group comment, *Warrama Summit*, November 2013).

We're getting nothing out of native title. They started discussing with 500 blocks with us. Now we've got 185 with exclusive possession, only 19 freehold, but they turned around and put national parks with ILUA over it. *And that ILUA stops us doing our traditional burning, burning only for weeds* (Girringun sub-regional workshop, November 2013).

There's a clash between scientist and TO burning ... we are not yet at the point of running fire management according to our customary law. It's not at that point yet, it's more a

“watered-down version” because we are doing it in partnership ... (Girringun sub-regional workshop, November 2013).

## 6.5 Potential Transformative Pathways Through IPAs, Biocultural Conservation and Rights Based Approaches

As noted above, “World/National Heritage Indigenous Protected Areas” is a concept of a value-added IPA being discussed informally among TOs, government and non-government actors, and stimulating some interest as a potential transformative pathway. Biocultural conservation and rights-based approaches are also worthy of attention. Biocultural approaches to conservation are an emerging field of endeavour building on practice and scholarship in “biocultural diversity and heritage, social– ecological systems theory, and different models of people-centered conservation” (Gavin et al., 2015, p. 140). Biocultural conservation is closely linked to endogenous development; that is development based on peoples’ own understanding of the world, their priorities, their goals and their historical and cultural contexts (Rist, 2007). Endogenous development recognises that biocultural actors live and link with both local and global contexts, and thus removes the focus on community-based versus top-down, and replaces it with multi-scalar collaborative practices that connect and find empowerment in both (Hill, Cullen-Unsworth, et al., 2011). Integrated conservation and development projects, co-management and community-based conservation are examples of methods to facilitate biocultural conservation.

Gavin et al (2015) present a set of principles for biocultural approaches to conservation. They present the evidence behind the need to adopt biocultural approaches as twofold: first that numerous international and national human-rights institutions require such approaches; and second that biocultural approaches build capacity for conservation by bringing more actors who are applying more options, with greater likelihood of long term success.

### Box 3. Principles of biocultural approaches to conservation

Source: Gavin et al., 2015, p. 141

1. Acknowledge that conservation can have multiple objectives and stakeholders.
2. Recognise the importance of intergenerational planning and institutions for long-term adaptive governance
3. Recognise that culture is dynamic, and this dynamism shapes resource use and conservation
4. Tailor interventions to the social-ecological context
5. Devise and draw upon novel, diverse and nested institutional arrangements
6. Prioritize the importance of partnership and relation building for conservation outcomes
7. Incorporate the distinct rights and responsibilities of all parties
8. Respect and incorporate different world views and knowledge systems into conservation planning

Rights-based approaches (RBAs) are founded on respecting human rights institutions, and integrating human rights norms, standards, and principles in policy, planning, implementation, and evaluation to help ensure that conservation practice respects rights in all cases, and support their further realisation where possible. RBAs are much in common with biocultural and endogenous approaches, but greater emphasis is given to global and national human rights frameworks and standards (Campese, Sunderland, Greiber, & Oviedo, 2009). The United Nations adopted a *Statement on Common Understanding of on Human Rights-Based Approaches to Development*

*Cooperation and Programming* in 2003 (United Nations, 2003), and this statement includes recognition that people are key actors in their own development, and that development processes need to be locally owned, in common with principles for endogenous development.

RBAs in part respond to recognition that fortress conservation approaches have resulted in numerous human rights abuses, through eviction of people from their traditional lands without compensation or fair processes, and through disruption and denial of access to resources essential for their cultural practices and human well-being (Colchester, 2004). RBAs have been identified as capable of enabling actors to understand the situation of marginalised communities in a systemic manner and to address the underlying factors of vulnerability, poverty and powerlessness. They can also help attain long-term conservation while supporting local people to live in dignity (Oviedo & Puschkarsky, 2012). RBAs can involve a range of different mechanisms, many of which are discussed above as part of biocultural approaches. Three aspects of rights-based approaches are particularly important in the heritage context: Free prior and informed consent for conservation, development and knowledge-exchange projects; securing tenure over traditional lands; and strengthening governance over traditional lands.

## 7. Concluding Remarks

Rainforest Aboriginal peoples have long sought recognition of the significance of their cultural values, and the rights to govern and manage their country to protect these values, across the Wet Tropics region. The history detailed here demonstrates dedicated actions by RAP to simultaneously keep their culture, language, practices and knowledge of their country strong and transmitted to their children, and advocate, negotiate and partner with numerous community, government and business organisations to overcome barriers. Much has been achieved over the last twenty years, including substantial ownership, recognition of native title rights, of a Wet Tropics Regional Agreement, a Cultural and Natural Resource Management Plan, declarations of Indigenous Protected Areas, support for ranger groups, and the creation by Rainforest Aboriginal peoples of many self-determined organisations to further their rights and interests.

Yet the current arrangements fall short of Rainforest Aboriginal peoples' goals to govern and manage the cultural values of their traditional country. Consultation with Aboriginal people reveal a high degree of concern that their roles are marginal, not central, to the governance and management of the WTWWHA (Rainforest Aboriginal Peoples, 2015).

Listing of the "Wet Tropics World Heritage Area (Indigenous Cultural Values)" as National Heritage under the *EPBC Act (1999)* is a significant milestone, and an opportunity to make a step-change in enabling Aboriginal governance and management of these cultural values. While the case for these cultural values to be found to be of outstanding universal value to humanity, and therefore eligible for inclusion on the World Heritage list appears strong, nomination for World Heritage listing under the current Operational Guidelines also requires demonstration that effective management of the outstanding universal values is in place. World Heritage nomination and listing will require substantial investment by Rainforest Aboriginal peoples' of energy, resources, and compromises with internationally-mandated processes and institutions. We have identified both potential benefits and risks for Rainforest Aboriginal peoples in pursuing world heritage. Establishing effective management to realise the potential benefits from national listing will help identify the pathways that maximise benefits and minimise risks from future World Heritage listing. Listing processes for Aboriginal cultural values involve highly technical process and understanding, and also require an ongoing political and policy conversation within RAP networks and with stakeholders across government, industry and the public. Effective management needs to support both—the technical skills, and the ongoing policy conversation.

The development and implementation of the proposed National Heritage Listing Action Plan is therefore the key priority for advancing world heritage listing. The Plan needs to chart a way forward to establish effective management for the listed cultural values that delivers real benefit to Rainforest Aboriginal peoples. Biocultural conservation and rights-based approaches may provide a useful starting point for consideration in developing the Action Plan.

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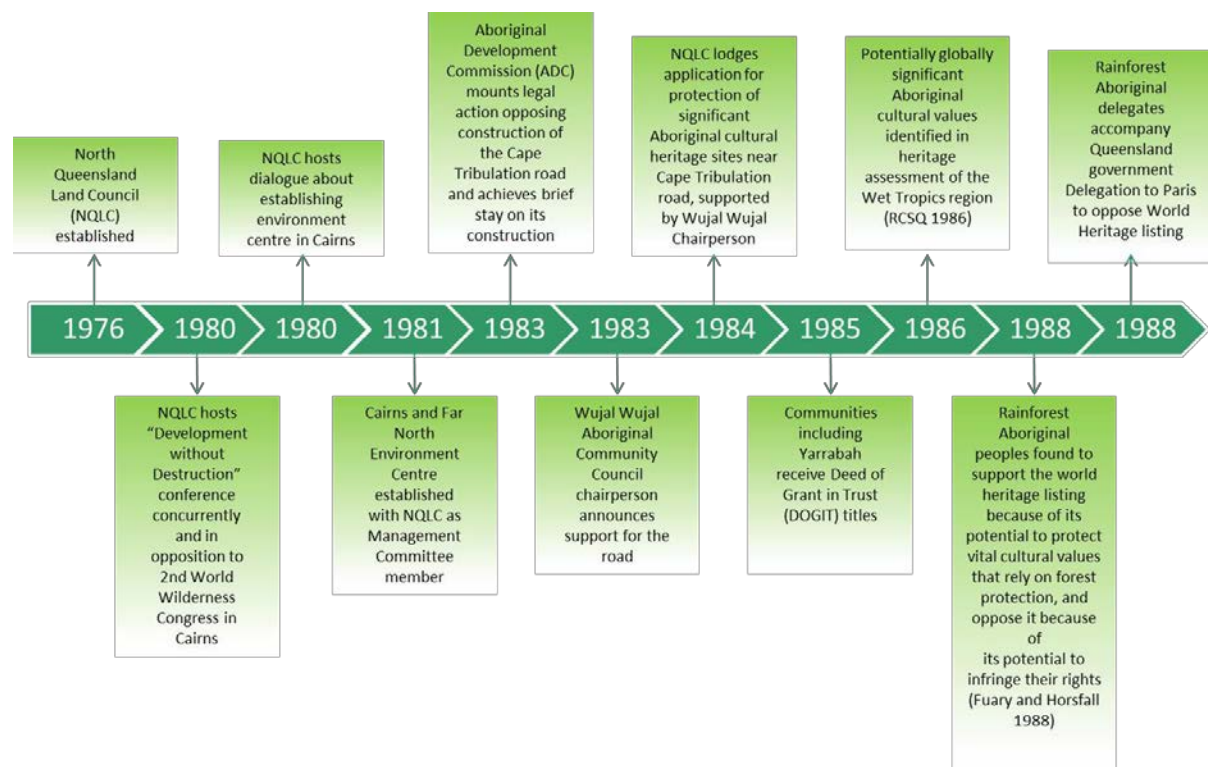
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## Appendix 1: Chronology 1975-1998

Three chronologies to complement Figure 3 in the text.

### A. Abbreviated timeline of major activities of Rainforest Aboriginal peoples from 1975-1988





## B. Abbreviated timeline of major activities of Rainforest Aboriginal peoples from 1975-1988

Detailed chronology of rainforest Aboriginal peoples and WTQWHA listing and management activities until gazettal of the first Wet Tropics Plan in 1998.

YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
1975		<i>Racial Discrimination Act 1975</i>	
	Nov	North Queensland Land Rights Committee established	Centring on Cairns and Yarrabah
1976	Sep	North Queensland Land Council (NQLC) established	
1977	Jan	64 Rainforest Aboriginal people attend 1 <sup>st</sup> NQLC meeting	
1978	Apr 10	<i>Aboriginal and Torres Strait Islander Queensland Reserves and Communities Self-Management Act 1978</i> proclaimed	New Commonwealth Indigenous land rights laws
	Oct 20	NQLC newsletter reports on Mossman community's self-management application to Commonwealth Government	
1979	Jan 30	Yarrabah Aboriginal Council Chairperson Percy Neal presents majority petition under the legislation to Federal Minister for Aboriginal Affairs for self-management of lands and timber rights	Requests the Federal Minister "...to try to negotiate with the Queensland Government on behalf of the Yarrabah Council for a form of land tenures... similar to that legislated for Aboriginal communities in the Northern Territory with the addition of timber rights."
	Feb 18	Queensland Premier Bjelke-Peterson rejects the Commonwealth legislation's premise of inalienable freehold	As a self-managed Aboriginal tenure
1980		Second World Wilderness Congress hosted in Cairns by Cape York Conservation Council with local groups including the Cape Tribulation Community Council	500 people attend, opened by PM Malcolm Fraser. Congress calls on both State and Commonwealth governments to protect all remaining Australian rainforests as World Heritage
		Development without Destruction Conference held at the same time by North Queensland Land Council, in opposition to the "wilderness" concept and the funding by mining companies.	First meeting between environment and Aboriginal groups discussed formation of an environment centre
		Premier Bjelke-Petersen announces Cape Tribulation National Park at the World Wilderness Congress	No consent from Traditional Owners for the national park creation
	May 15	Bjelke-Peterson resists application of Commonwealth self-management legislation	
1981	Mar	Cairns and Far North Environment Centre forms with NQLC as member and on the Management Committee	First formal alliance between Aboriginal and conservation interests
	Jul	Rescue the Rainforest campaign launched by Australian Conservation Foundation and Queensland Conservation Council	
	Nov 11	Mt Windsor Tablelands blockade starts	Conservationists initial confrontation with loggers in the Wet Tropics region
		Cairns and Far North Environment Centre supports blockade	

YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
1982	early	Yarrabah Aboriginal Council Chairperson Percy Neal protests State Court sentence in High Court and succeeds in repealing State decision	State sentence imposed following non-Indigenous/Aboriginal confrontations in Yarrabah
	Mar 31	Qld Government passes Deed of Grant in Trust (DOGIT) regulations as additions to Qld <i>Land Act</i>	State legislation enabling elected Aboriginal Councils to hold title to reserve lands
	Apr 1	Bjelke-Peterson issues ministerial statement confirming deliberate insecurity of Deeds of Grant in Trust DOGIT tenure and its enactment	<i>"... a precaution against 'radical' Aboriginal land rights movement"</i>
	May	Rainforest Conservation Society of Queensland established in Brisbane, independent branches also founded in Townsville and Cairns	
	July 7	64 Aboriginal and Torres Strait Islander representatives from across Queensland meet voting to reject DOGIT approach to Aboriginal land rights and self-management	
1983	Jul	Douglas Shire Council (DSC) announces intention to open up northern Shire to roads	Start of plan to build Cape Tribulation to Wujal road
	Jul 1	Franklin Dam decision by High Court	Commonwealth asserts constitutional powers to intervene in State development matters
	Aug	After Franklin decision, a statement is made by Federal Minister for Aboriginal Affairs Clyde Holding announcing national land rights legislation	<i>"...human rights of Aboriginal and Islander Australians must take precedence over 'State rights' "</i>
	Nov 30	70 people blockade proposed route of the Cape Tribulation to Wujal road	
	Dec	Douglas Shire Council starts road works from both ends of the proposed route	Road works halted by start of wet season soon after they start
	Dec	Aboriginal Development Commission, led by Commissioner Mick Miller, launches legal action as road had been constructed without proper permission	Action upheld and small delay in construction occurred until proper permits are obtained. First joint Aboriginal conservation legal action
	Dec	Aboriginal Chairman of Wujal Wujal Council and Traditional Owner Bob Yerrie announces support for road	ADC drops further legal action
	Dec 8	Commonwealth Government flags new Aboriginal and Torres Strait Islander land holding laws	
1984	Feb	Queensland Government passes amendments to strengthen DOGIT tenures	
	Feb 2	Commonwealth Government hosts conservation conference in Cairns	50 + rainforest conservation groups attend
	Mar 28	Bjelke-Peterson agrees to \$250,000 special assistance package for the Cape Tribulation - Wujal road and excision of the 'road reserve' from the Daintree National Park	

YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
	Apr	Daintree Shire Wilderness Action Group and others blockade road route during extended protest	
	Jun	Australian Heritage Commission Report on Wet Tropics natural values	
	Jun 25	Commonwealth Government enacts Aboriginal & Torres Strait Islander Heritage (Interim Protection) Act	New Commonwealth Indigenous heritage laws
	Aug	Working Group on Rainforest Conservation established by Federal Minister	Task is to develop national rainforest conservation policy
	Aug 2	NQLC representatives announce significant Aboriginal sites exist in vicinity of road route and should be protected under new Federal heritage protection laws	
	Aug 3	NQLC Chairperson lodges emergency protection application under new Federal Indigenous heritage laws for 7 nominated sites	
	Aug 8	Department of Aboriginal Affairs staff undertake on-site survey with Bobby Yerri	B Yerri acting as 'primary custodian'
	Aug 15	Federal Minister decides not to act on NQLC application	
	Nov	Australian Heritage Commission recommends World Heritage listing of the Wet Tropics	
1985		Downey Creek anti-logging protests	
	Mar	First Aboriginal Councils elected	
	Sep 18	Working Group on Rainforest Conservation reports to Federal Minister	Noting (on Aboriginal issues) "Aboriginals of north-eastern Queensland have developed the only recognised Australian Aboriginal rainforest culture, which is therefore a significant component of the cultural record of the world. The oral prehistory of this surviving Aboriginal rainforest culture appears to be the oldest known for any non-literate indigenous people, dating back 10,000 to 15,000 years... the continual clearing of lowland rainforest is diminishing the ability of those Aboriginal people to practice their traditional culture."
	Oct	Bjelke-Peterson rejects joint Commonwealth-State World Heritage approach	Making explicit reference to non-acceptance of reduced State timber yields
	Oct 31	Six (6) communities receive DOGIT title including Yarrabah and Palm Island. Roy Greyon behalf of Yarrabah Council states:	"We have always belonged to this land. From today we own this land, even in the eyes of our colonisers... From today our council makes the real decisions affecting and shaping the future of our community. Today is the end of a long struggle, a struggle for survival, a struggle for recognition, a struggle for dignity."
1987	Jun 5	PM Hawke and Federal Environment Minister announce intention to pursue World Heritage listing despite Qld Government objections	
	Dec	Qld Government reworks heritage protection laws	Basically homogenises/mixes together Indigenous and non-Indigenous heritages

YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
	Dec 25	Qld Government challenge to Commonwealth to prevent lodgement of World Heritage nomination fails in High Court	
	Dec 31	Commonwealth submits nomination to World Heritage Committee	
1988	Jan	Qld Government delegation to IUCN in Costa Rica	Seeks sole State management or rejection of the Commonwealth listing nomination
	Mar	Qld Government delegation to World Heritage Committee in Paris	Seeking a rejection of the Commonwealth listing nomination
1988	Apr 16	Commonwealth offers Qld \$75M compensation package to mitigate listing impacts	
	Jun 19	Two (2) Aboriginal representatives accompany Qld Government representatives on visit to World Heritage Bureau in Paris	
	Jun	World Heritage Bureau requests further information from Commonwealth Government	Specific request regarding potential impacts on Aboriginal interests of the proposed listing
	Jun 28	Yarrabah Aboriginal Council Chairperson Peter Noble writes to Federal Minister Richardson	<i>"There is no way we could ever approve the inclusion of any of our land unless we were to receive satisfactory answers to our outstanding queries... This potential interference with our rights to self-management and self-determination could not receive our agreement if there were no tangible benefits to be received by the community. If there be no tangible benefits and such interference with our land rights, we would have no option but to continue strenuous apposition to our lands being included in the listing."</i>
	Oct 1	Revised mapping of proposed World Heritage Area submitted by Commonwealth Government to World Heritage Committee	<i>"The Government has indicated that, for Aboriginal communities which have land within the nominated area, there is absolutely no intention of restricting traditional activities. The proposed management arrangements are designed to ensure that Aboriginal communities play an important role in management of the whole area."</i>
	Oct 18	World Heritage listing announced as a 'done deal' to Yarrabah Aboriginal Council at a meeting with Federal Minister Richardson	
	Nov	Yarrabah Aboriginal Council Chairperson again writes to Federal Minister Richardson	<i>"Basically you have offered us noting but the assurance that we will still be able to use our land as we do presently, if all goes well. The cost to us will be the uncertainty and time involved in gaining approval from outside bodies for our land use including outstation development... We thought you would do more to consult with us. We thought you would have more regard to our land rights and self-management.... There is nothing in your proposal to help us. The interference in our local affairs will not be taken away by allowing one Aboriginal representative on the Consultative Committee... we oppose the listing of our land. If listed, it will be without our consent."</i>

YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
1988	Dec 8	Qld Government delegation to World Heritage Committee in Brasilia which is considering the final revised Commonwealth Government World Heritage listing submission	Instead recommends 'Man + Biosphere' reserve rather than "Commonwealth controlled control and management"
	Dec 9	World Heritage listing of the Wet Tropics of Queensland	Qld Government commences High Court challenge against the listing
	Dec 15	WTQWHA proclaimed as protected under <i>World Heritage Properties Conservation Act 1983</i> with regulations passed prohibiting logging and road construction inside the WHA	Commonwealth law enacted in 1983
1989	Feb 5	Yarrabah Aboriginal Council Chairperson again writes to Federal Minister Richardson	Re-iterating Aboriginal opposition to WH listing given its unilateralism
	Jun	High Court of Australia dismisses Qld Government challenge to World Heritage listing	High Court finds it is not able to review World Heritage Committee decisions
1989	Aug 8	Richardson visits Yarrabah offering compensation for World Heritage listing	
	Dec	Goss government elected, Bjelke-Peterson government ends	
1990		Cape York Land Council established, Executive Director Noel Pearson	
	Nov	Inter-governmental agreement signed establishing Wet Tropics Management Authority	WTMA establishment includes appointment of Board of Management, Scientific Advisory Committee and Community Consultative Committee
1991	Feb 19	Qld Government announces new land rights legislation	Noel Pearson engaged as advisor
	Apr	Royal Commission into Aboriginal Deaths in Custody Final Report released	
	Apr 24	WTMA Directors (5) and Executive Director appointed, first meeting of WTMA Board	Terry O'Shane and Wayne Guivarra attend as Aboriginal delegates – <i>"Fair, resourced and appropriate mechanisms will need to be established in order to begin properly involving and recognising the Aborigines whose cultural heritage, pride and community status are tied up in World Heritage areas."</i>
	Apr 24	Cairns Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Council document released <i>"Achieving Aboriginal Recognition in North Queensland's Wet Tropics World Heritage Area"</i> – recommends new management legislation for WTQWHA could create i) an Aboriginal Land and Management Agency to control and manage traditional Aboriginal lands and cultural heritage within World Heritage Areas, ii) delegate enforcement and ranger powers to an Aboriginal ranger service to protect, conserve and manage World Heritage Areas, and iii) outline a cooperative land management procedure that flexibly encompasses the special needs and concerns of Aboriginal people..."	Written by Wayne Guivarra Chairperson ATSIC Regional Council Cairns and Shireen Mallamoo ATSIC Commissioner Qld
	May 28	Large Aboriginal and Torres Strait Islander rally in Brisbane protests proposed land rights legislation	Gates of Parliament House pushed over during the rally
	May 30	Qld Government passes Aboriginal Land Act 1991	

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1992	Jan 28	Rainforest Aboriginal Network (RAN) document released <i>"An Aboriginal Approach to Wet Tropics World Heritage Management: a compilation of papers emerging from a workshop on Aboriginal involvement in Wet Tropics World Heritage management"</i>	
		8 Rainforest Aboriginal delegates address meeting of WTMA Board, focusing their request on a concrete proposal "The Project" to be completed by 1993 the International Year for the World's Indigenous Peoples. Written submission purporting to represent views from Ingham, Murray Upper, Tully, Mission Beach, Innisfail, Yarrabah, Cairns, Mossman, Atherton and Malanda Aboriginal communities presented to WTMA Board.	<i>"The Authority assist improve [sic] the role and status of rainforest Aborigines in the management of Wold Heritage rainforest areas... the Authority should introduce an Aboriginal theme into all aspects of Wet Tropics World Heritage management."</i>
	May	Chjowai Housing Co-operative and RAN develop "Aboriginal Tourism Strategy for the Wet Tropics Area" submitted to WTMA	Proposes establishment of a Wet Tropics Aboriginal Standing Task Force or similar to interface with WTMA
	Jun 3	Mabo vs. Qld Government decision in High Court validates 'native title'	Initiates national and State native title laws enacted 1993
	Oct 24	Resolutions passed at a meeting of Rainforest Aboriginal groups including Yidinji, Gunggandji, Ngadjon-ji, Yirrganydji, Kuku Yalanji and Mamu representatives	Object to inclusion of further Crown lands into WTQWHA, assert joint-management aspirations and identify 8 immediate Aboriginal initiatives including Aboriginal advisory body
	Oct 29	RAN Chairperson writes to Chairperson of Wet Tropics Ministerial Council making a number of requests for urgent and immediate consideration	Makes direct reference to Aboriginal human rights under the exclusively 'natural' listing and native title matters impacting the World Heritage Area
1992	Oct 30	Biddi Biddi Aboriginal Community Advancement Cooperative Ltd (Atherton) and J. Sutherland prepare report 'Aboriginal Interests and Queensland Wet Tropics World Heritage Area Management'	Important Aboriginal response to the public release of the Wet Tropics Strategic Directions document
1993	Feb 8	RAN writes to Chairperson of Wet Tropics Ministerial Council (Molly Robinson), Federal Minister for Environment (Ros Kelly) and Qld Minister for Aboriginal & Islander Affairs (Ann Warner) seeking support for a working group which could be coordinated externally to WTMA and '...which need <u>not</u> be a representative body'.  Proposed tasks for the working group could include... '...[to] develop and formulate independent options for Aboriginal management of Wet Tropics World Heritage values, ...[and] act as a support service available to rainforest Aborigines, giving independent advice, assistance and expertise... [initiate an agreed] program of negotiated management agreement.'	<i>"...rainforest Aboriginal groups meeting in Atherton on Saturday, January 16 1993, and in Cairns on Saturday, January 23 1993 have voted to:</i>  <i>1) object to the Wet Tropics plans unless negotiated and agreed upon by all Aboriginal groups affected; 2) refuse the establishment of an Aboriginal Advisory Committee; 3) explore the political and legal avenues available for redress and reform; 4) set up an independent rainforest Aboriginal working group as a formal vehicle to better explore and promote joint-management options."</i>
	Feb	Camu Ltd report to WTMA Board regarding Aboriginal peoples' relationships with WTMA, recommending (amongst other matters) development of protocols and code of ethics, functioning and properly resourced facilitators network and funding	<i>"The deliberate step taken at the workshop not to form an Advisory Committee should be taken as a warning to the Authority that there is considerable discontent within the Aboriginal communities of the region."</i>
1993	Mar 17	First meeting between WTMA – Aboriginal Joint-Management Working Group  Joint-Management Working Group set up by WTMA as response to public protests and an Aboriginal initiative to constitute a Working Group	<i>Fundamental Working Group Principles</i> document tabled
International Year of the World's Indigenous People	Mar 26	RAN Chairperson writes to Chair of Wet Tropics Ministerial Council requests that 7 delegates be given opportunity to address the Ministerial Council	

YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
	May 14	Wet Tropics Ministerial Council addressed by 7 Aboriginal delegates, with key speech by Gerald Appo	<i>Joint Management: Sharing the Wet Tropics</i> document tabled
	Jun 30	RAN writes paper ' <i>Working Together for Joint-Management: Developing a Joint-Working Group Approach</i> '	tabled at 3 <sup>rd</sup> meeting of WTMA – Aboriginal Joint-Management Working Group
	Jul 12	Aboriginal delegates deliver letter to Queensland Premier Goss, Ministers Warner, Robson and other Cabinet members	<i>"...We are putting up yet another bid for reconciliation by asking that Aboriginal native title issues, land claims, and joint-management proposals be seriously considered and reviewed across the entire 900,000 hectares of Wet Tropics World Heritage, as part of an urgent, fair and independent review of the Wet Tropics World Heritage Area Management Scheme: it is a simple call for natural justice."</i>
	Aug	Aboriginal Petition concerning the WTQWHA presented by Member for Barron River (Dr Lesley Clark) to Queensland Legislative Assembly	1,200 signatures
	Sep 3	Aboriginal and Torres Strait Islander Land Issues Conference held in Cairns passes specific resolutions about Aboriginal joint-management and the WTQWHA	Resolution 37: the conference supports the Rainforest Aboriginal Network
	Sep 15	Wet Tropics: Strategic Directions Aboriginal Consultation Report compiled for WTMA	
1994	Jan 1	Native Title Act 1993 Commonwealth and Native Title Act 1993 Qld brought into effect	Legislative response to Mabo decision
	Jun 16	RAN obtains legal opinion on effect of draft Wet Tropics Plan on native title rights and interests	Advice provided by RAN to WTMA
	Jul 21	Cape York Land Council sponsored Regional Agreements workshop generates a letter to Chairperson of Wet Tropics Ministerial Council, signatories include Marcia Langton, Darryl Pearce, Nugget Coombs and Phillip Toyne (then Australian Conservation Foundation Chairperson). Noel Pearson is the Chairperson of Cape York land Council (CYLC) at this time.	<p><i>"It would seem that the context and opportunity is right for Federal and State Governments to work towards a socially just regional agreement in an internationally significant World Heritage Area."</i></p> <p><i>Our concern is that any Ministerial Council approval for a statutory plan what is being prepared in isolation from the proposed Aboriginal review:</i></p> <ol style="list-style-type: none"> <li>1. <i>may not be a sign of goodwill;</i></li> <li>2. <i>could be seriously flawed as a planning process; and</i></li> <li>3. <i>may work to hinder and prevent any sincere and effective attempt to reach a regional Wet Tropics agreement as proposed.</i></li> </ol>
1995	Feb 8	WTMA forum arranged to decide Aboriginal input into WTMA Committees	15 resolutions arise from the forum
	Mar	Wet Tropics Ministerial Council endorses Terms of Reference (TOR) and Expected Outcomes of the 'Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area'	14 TOR including examination of 1992 Bididi/Sutherland report
	Jun	Centre for Aboriginal and Torres Strait Islander Participation, Research and Development (James Cook University) prepares the document ' <i>An Identification of Problems and Potential for Future Aboriginal Cultural Survival and Self-Determination in the Wet Tropics</i> ' for WTMA	
1996	May	Bama Wabu ("custodians of the rainforests") compile the document ' <i>Reasonable Expectations or Grand Delusions? Submission to the draft Wet Tropics Plan</i> '	Assisted by CYLC, ATSIC Cairns & Townsville, NQLC, Central Queensland Land Council (CQLC), WTMA, Wet Tropics Community Liaison Officers
	Dec 23	Wik vs. State of Queensland native title determination	

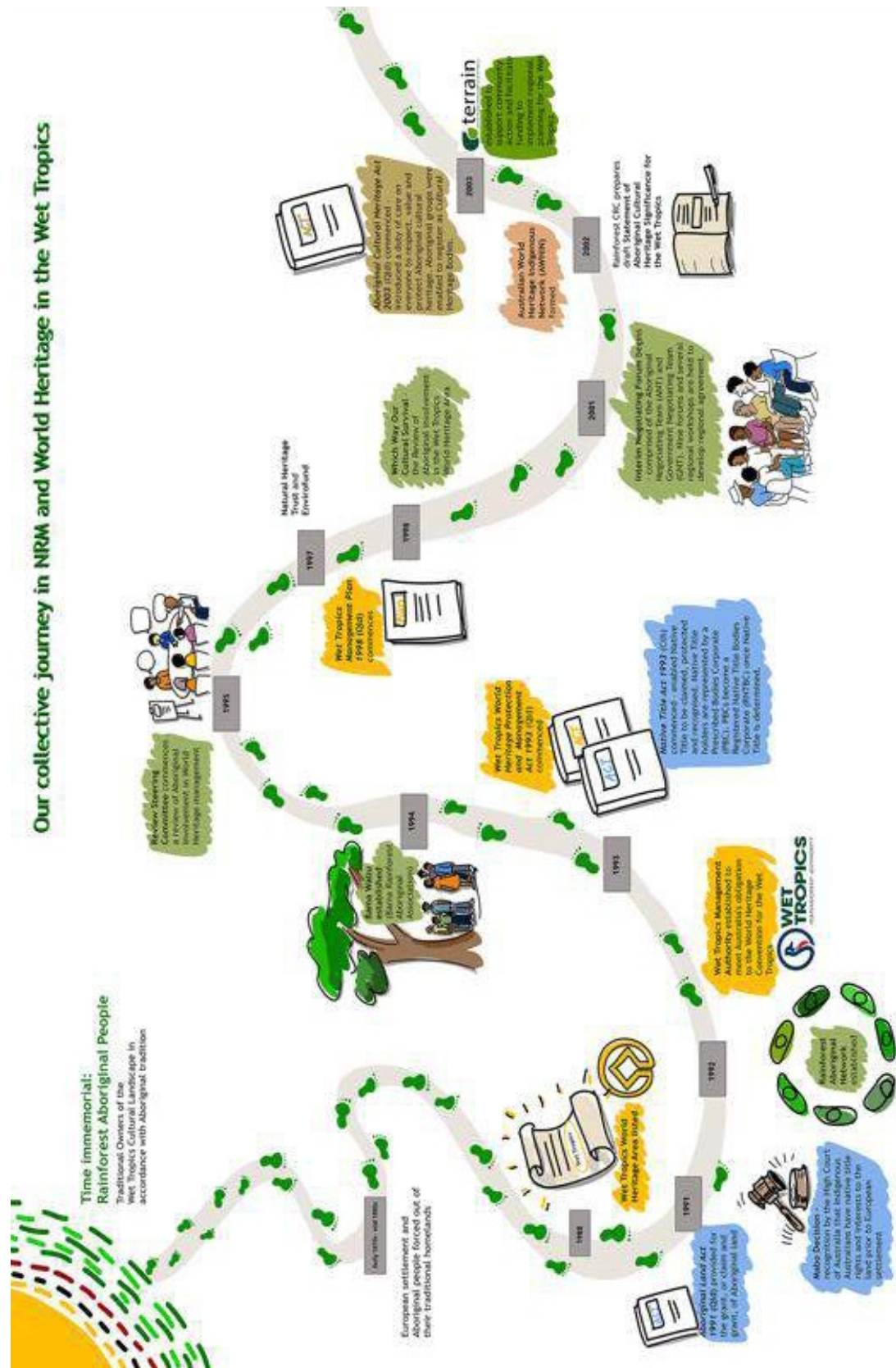


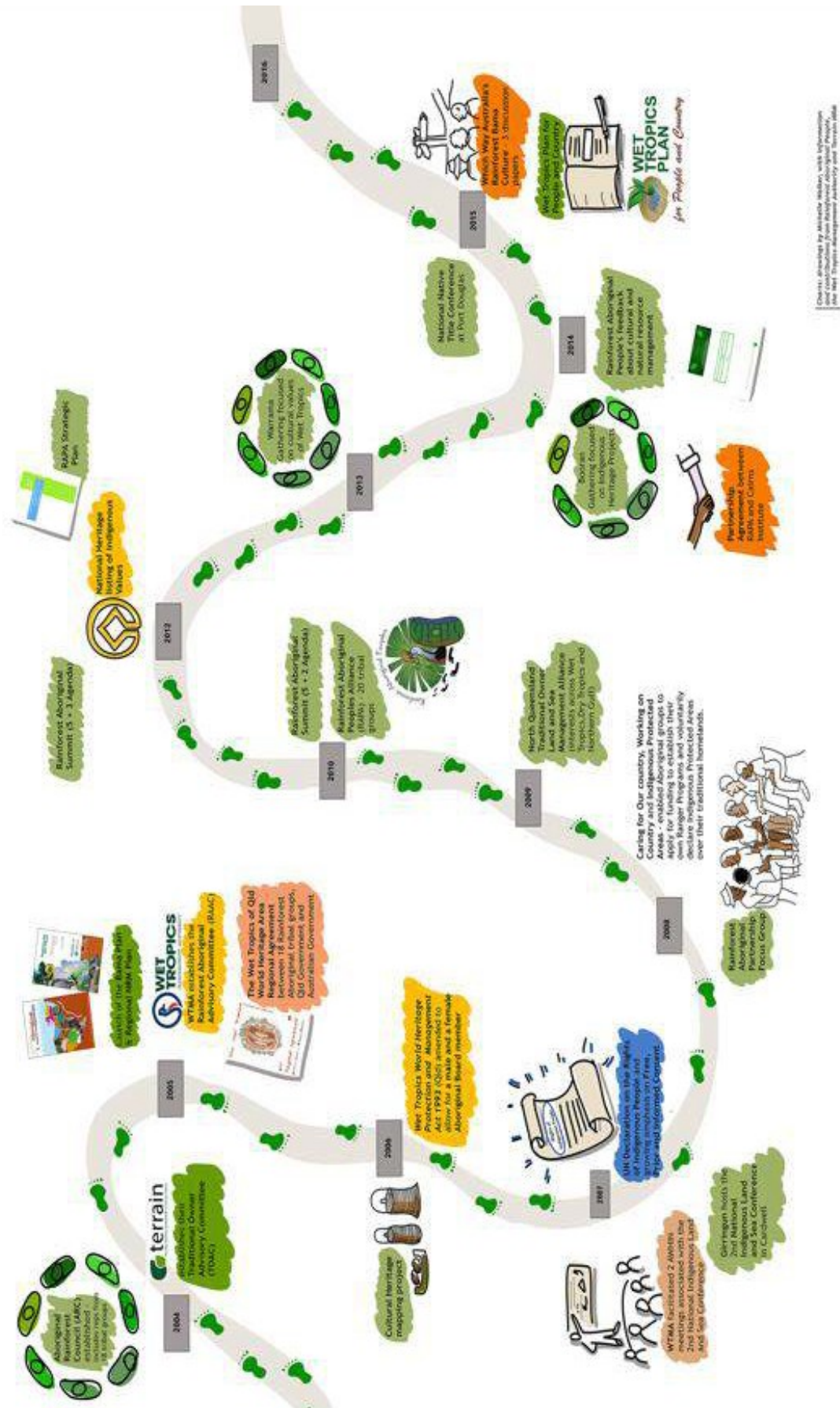


YEAR	MONTH/ DATE	KEY PEOPLE/ORGANISATIONS	ADDITIONAL REFERENCES
1997	early	PM Howard proposes Wik 10 Point Plan as response	Senate rejects proposed amendments
	early	WTMA Board endorses revised Wet Tropics Plan	Noel Pearson is a WTMA Director
	Jun 14	Wet Tropics Ministerial Council makes unilateral amendments re native title to the endorsed Plan	Division 5 removed
	Aug 7	State and Commonwealth move to have modified Wet Tropics Plan enacted without WTMA Board approval	
1997	Nov 4	Queensland Supreme Court decision on judicial review of WTM Plan demanded by NQLC, CQLC and CYLC	Court finds decision of Governor in Council (Cabinet) to approve the modified Plan is “unlawful and invalid”
1998	Apr	The Review Steering Committee releases the report <i>‘Which Way Our Cultural Survival? The Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area’</i> Review Steering Committee: Mr Vince Mundraby – interim Chair Bama Wabu (Review Chair), Mr Phil Rist – Girringun, Ms Jenny Prior – Chair ATSIC Regional Council Townsville, Ms Nerelle Nicol – Chair ATSIC Regional Council Cairns, Mr Terry Murray – Ngadjon Mitcha Jimmar-ma Aboriginal Corporation	Prepared for the WTMA Board of Management  Part 5 provides a Summary of Recommendations
	May	New Wet Tropics Plan approved by Ministerial Council and Governor in Council (Cabinet)	
	Sep 1	New Wet Tropics Plan commences	

## C. Visual timeline of major RAP-related NRM and World Heritage activities to 2016

Source: RAP, WTMA and Terrain NRM, 2016





Charts, drawings by Michelle Widdow, with information and consultation from Indigenous Aboriginal People and Wet Tropics Management Committee and WET Tropics

## Appendix 2: Historical Context

### Establishment of a World Heritage Area

Selected rainforest areas within the eventual WTQWHA were listed on the Registrar of the National Estate (forerunner to the National Heritage List) by the Australian Heritage Commission in October 1980, with mainstream community efforts to seek legal protection for remnant high ecological value wet tropical rainforests ongoing during the 1970s and 80s. The Wet Tropics' unique ecological values were formally documented in 1984 in efforts to gain international recognition of associated OUVs, with the IUCN General Assembly recognising these by the mid-1980s (Rainforest Conservation Society of Queensland, 1986).

### 1988 World Heritage Listing for the Wet Tropics of Queensland

The WTQWHA was inscribed on the World Heritage List for its outstanding universal 'natural' values in 1988, in a unilateral action by the Australian Government, without the support of the then Queensland Government, which on the same day announced a High Court challenge to the listing that was ultimately dismissed (Bama Wabu, 1996). The listing marked the culmination of a decade's worth of hard fought politics between both governments, fuelled by road development and resource-use change, galvanising many Australians to conservation action (Valentine & Hill, 2008).

As detailed in the main Discussion Paper above, the traditional Aboriginal custodians of the 20 tribal estates within the Wet Tropics were excluded from any meaningful involvement in defining either the nominated area or the content of the original nomination itself (Bama Wabu, 1996; Marrie & Marrie, 2014). The focus of the 1988 nomination was exclusively on the outstanding 'natural' values of the region. The property was listed for all four of the natural World Heritage criteria in place at the time<sup>ii</sup>, which have since been consolidated and re-ratified as 'natural' criteria (viii), (ix) and (x).

It took a further two years post-listing and State government change to instigate a joint Commonwealth – Queensland statutory governance and management framework under WTMA, leading to the development of the WTQWHA Act 1993 and the 1998 WT Management Plan.

Under the WTQWHA Act there is a statutory requirement for WTMA to establish a scientific advisory committee (SAC) (s40(2)) and a community consultative committee (CCC) charged by WTMA to provide advice on "matters generally relating to the management of the Wet Tropics area, including its management having regard to the Aboriginal tradition of Aboriginal people particularly concerned with land in the area" (s40(4)(b)). In effect, the WTQWHA Act relegates Rainforest Aboriginal governance/management interests in the WTQWHA to that of CCC 'stakeholders'.

In 1998 the *Review of Aboriginal Involvement in the Management of the WTQWHA* final report was formally provided to the WTMA Board, making clear recommendations for improved WHA governance and the progressing of 'joint management' arrangements, and "That an agreement for management of the Wet Tropics World Heritage Area is negotiated that places the traditional carers for their country in a position to assert their legitimate



(including customary-law) rights and interests, for the protection and preservation of cultural survival for the present and future generations” (Review Steering Committee, 1998, p. IV).

Part 5 of the report outlines two (2) general principles in achieving that vision and the report’s 163 recommendations:

- a. That Rainforest Aboriginal people be afforded the opportunity, in the spirit of self-determination, to define their own needs, aspirations, and priorities for WTQWHA management; and
- b. That WTQWHA managers allow adequate time and resources to accommodate traditional and contemporary Rainforest Aboriginal decision-making and problem solving mechanisms (p. 21).

