

SECTION 62 PERMIT ASSESSMENT

Guideline 3

GUIDELINES FOR CONSULTING RAINFOREST ABORIGINAL PEOPLE PARTICULARLY CONCERNED WITH LAND IN THE WET TROPICS AREA

1. Purpose

This document is a 'Guideline' under Section 62 of the *Wet Tropics Management Plan 1998* (the Management Plan). Its purpose is to ensure that the Wet Tropics Management Authority (the Authority) complies with s.10 (5) of the *Wet Tropics World Heritage Protection and Management Act 1993* (the Act), s.59 and s.60 of the Management Plan and the intent of the Wet Tropics Regional Agreement (currently under review). Accordingly, it should be revised in accordance with agreed outcomes of any formal review of the Regional Agreement.

2. Scope

In scope – The Authority regulates activities within the Wet Tropics World Heritage Area that may impact on its natural values e.g. community service infrastructure (CSI) or other activities that disturb vegetation, earth, watercourses or scenic amenity. This guideline is consistent with agreed protocols under the Wet Tropics Regional Agreement to achieve more effective and meaningful participation of Rainforest Aboriginal people in management of the Wet Tropics World Heritage Area (the Area).

Out of scope – Queensland Parks and Wildlife Service regulate activities that may impact wildlife and protected plants including commercial and scientific research permits under the *Nature Conservation Act 1994*. This guideline does not purport to address requirements relevant to application of the Aboriginal Cultural Heritage Act 2003 Duty of Care Guidelines or the *Native Title Act 1993* (Cwlth) and Queensland Government Native Title Work Procedures, which are additional processes to this guideline.

3. Application of this Guideline

This guideline applies to the assessment of permit applications undertaken by the Authority. Reference to the Authority in this guideline is also a reference to a permit entity under the Management Plan (as per s.77 of the Management Plan) or an Authority delegate under the Act (s.35)

This guideline assists the Authority to meet the Preamble (paragraph 8), s.5 and s.10(5) under the Act. This guideline has also been prepared in accordance with s.62 of the Management Plan to assist the Authority with the application of principles and criteria for deciding permit applications.

In particular the Authority must have regard to:

- The effects a proposed decision may have on the Aboriginal traditionⁱ of Aboriginal people particularly concerned with land in the area (s.59(1)).
- The likely effect on any native title land holder and any other Aboriginal people particularly concerned with the land (s.60(a)(i)).
- Any other relevant social, economic and cultural effects (s.60(d)).

4. Free Prior and Informed Consent

The right to Free, Prior and Informed Consent (FPIC) has long been recognised by native title, the UN Declaration on the Rights of Indigenous People and the World Heritage Convention as a collective right of Indigenous people to give or withhold their consent at key decision making points during a proposed activity affecting their traditional land, or rights in general.

FPIC is a mechanism whereby Indigenous people and their communities are able to conduct their own independent collective decision making on legislative or administrative matters affecting them, their lands, culture and future well-being. The FPIC process requires that Indigenous people are:

- Provided with accurate and complete information regarding the proposed policy, program or project that may affect them, in a language and manner that they understand.
- Consulted in accordance with their customary decision-making processes.
- Given the freedom, time and space to conduct their internal and collective decision-making process without interference.
- Indigenous peoples' collective decision to give or withhold consent, and set conditions for consent, is recognised and respected with proper and accurate documentation of decisions.

Recognition of the rights of Rainforest Aboriginal people and implementation of FPIC processes are necessary for meaningful and effective participation in the Wet Tropics World Heritage Area.

The Authority will encourage permit applicants to follow the FPIC process to ensure that Rainforest Aboriginal People are meaningfully and effectively involved and that any impacts on Aboriginal tradition are appropriately considered in the assessment process.

To avoid any doubt, permit applicants will need to demonstrate to the Authority that they have reasonably followed the FPIC process to obtain the consent of Rainforest Aboriginal people when applying for new permits. Prospective permit applicants are not required to undertake the FPIC process for minor and inconsequential activities, maintenance activities or renewing existing permits.

5. Permit Application Referral Process and Responsibilities

The information provided by both the permit applicant and relevant Rainforest Aboriginal People will be used by the Authority to make decisions on permit applications to ensure that adverse impacts on World Heritage values and Aboriginal tradition are minimised, and relevant social, cultural and

economic values are maximised. The Authority will consider favourably, any opportunities for Rainforest Aboriginal involvement in the proposed activity, if appropriate.

Responsibilities under this Guideline include:

- The Authority will inform prospective permit applicants of the revised consultation requirements and ensure that permitting officers are fully informed of these requirements.
- The prospective permit applicant will provide details of the proposal to the relevant Rainforest Aboriginal People to the extent required by the Authority (this may vary from case to case); and to consult with the relevant Rainforest Aboriginal People in accordance with this guideline.
- The role of the relevant Rainforest Aboriginal People is to provide their views on the proposal, including any potential impacts on natural and cultural values and the Aboriginal Tradition of Aboriginal people particularly concerned with the land.

The Authority is required to assess permits within a 60-day period. All parties are required to cooperate in good faith throughout the consultation process to avoid any unnecessary delays.

6. Permit Application Consultation Process for Each Activity Type

6.1 Minor and Inconsequential Activities

Permits are not required for minor and inconsequential activities according to s.28 of the Management Plan. This means that they are 'allowed' activities.

S.28 sets out a broad definition of minor and inconsequential activities and includes those activities which cause no more than minor and inconsequential adverse impacts on forest products or the Area's integrity (including scenic amenity), or interference with earth or watercourses.

The Authority has developed a guideline to assist in the interpretation of activities with minor and inconsequential impact. The guideline requires the Authority to consider whether an activity could also have any adverse effects on relevant Rainforest Aboriginal People, Aboriginal tradition, or damage or desecrate the integrity of any cultural values, or adversely affect other sites, areas or items of cultural or historical significance.

Activities assessed as causing no more than minor and inconsequential impact will not be referred to relevant Rainforest Aboriginal People under this guideline.

6.2 Maintenance Activities

Permit applications are required for maintenance activities.

Maintenance activities are conducted at the sites of existing CSI (e.g. water intakes, roads and power transmission lines) on a periodic basis. The maintenance activities are regular, necessary activities to maintain the operability of the infrastructure such as trimming vegetation, clearing drainage structures and weed management. All works are confined to the existing disturbed footprint of the site. The

majority of impacts associated with such activities occurred during the original establishment of the infrastructure.

This guideline recognises that it is unlikely that Aboriginal tradition or Rainforest Aboriginal People's cultural, environmental or social interests will be adversely impacted where:

- The current or proposed activity is on an area previously subject to significant ground disturbance and the activity will impact only on the area subject to the previous disturbance.
- The impact of the current or proposed activity is unlikely to cause any additional harm other than that which has already occurred.

Independent of requirements under this Guideline, prospective permit applicants may also need to consider duty of care requirements under the *Aboriginal Cultural Heritage Act 2003*.

Permitted activities in this category include those listed in Section 33 (c)-(l) of the Management Plan. Periodic applications made by infrastructure agencies, local government authorities and others for maintenance of existing infrastructure and facilities will not be referred to the relevant Rainforest Aboriginal People.

Permit renewals for existing maintenance activities will be issued periodically (i.e. every 1 to 6 years depending on the nature of the activity) to cover all infrastructure and facilities under the jurisdiction of the relevant organisation. These activities are subject to Codes of Practice (such as the Electricity Industry Code). The Authority will undertake community consultation, including with relevant Rainforest Aboriginal People, during the development or review of such codes.

In addition, the Authority will develop and maintain a public record of all maintenance activities in the Wet Tropics World Heritage Area, subject to permit conditions and the nature of the community services infrastructure in these locations. This record will be available on the Authority's website for the information of relevant Rainforest Aboriginal People particularly concerned with land in the Area.

6.3 New Activities

Permit applications are required for new activities. A new activity is any activity other than maintenance activity. Generally, any proposed activity that is a new activity will be referred to Rainforest Aboriginal People for consent under this guideline.

New activities allowed under permit include:

- S.33(e) building limited visitor infrastructure.
- S.33(f) for new or upgraded roads or structures only.
- S.33(g) building a firebreak.
- S.33(h) an activity for protecting the life of, or preventing injury to, a person, other than a activity carried out in an emergency (e.g clearing vegetation to make a space that can be used as landing place for a rescue helicopter).
- S.33(i) an activity for the protection, other than the urgent protection, of property; (e.g. removing a decaying tree that may in the future pose a risk of damaging a nearby residence if it is not removed).
- S.33(k) in cases where low flying is to occur on a regular basis.
- S.34(a) (b) (d) (e) building a structure, road, excavating, or interfering with a watercourse.
- S.36 activities to avoid injurious affection to a land holders interest.

- S.37 for activities where a person holds a licence or authority under another Act. Note: application of this Guideline only required if consultation has not occurred prior to the initial activity authorisation.
- S.38 activities in zone B that may reduce impacts on the area.

Independent of requirements under this Guideline, prospective permit applicants may also need to consider the Queensland Government Native Title Work Procedures and/or future act notification processes under the *Native Title Act 1993* (Cwlth).

7. Advice to prospective permit applicants about involving relevant Rainforest Aboriginal people

The following advice will assist prospective permit applicants to involve the relevant Rainforest Aboriginal People in new activities:

- The Authority will advise prospective permit applicants of the requirement to consult with relevant Rainforest Aboriginal People about the proposed activity, in accordance with the procedure set out below, prior to lodgement of their permit application.
- This [online mapping tool](#) may assist prospective permit applicants in identifying the relevant Rainforest Aboriginal contacts. If there are no contacts for the area they are interested in or if there is an issue with contact details available, prospective permit applicants can contact the Wet Tropics Management Authority on 07 4241 0500, or North Queensland Land Council on 07 4042 7000, or Terrain NRM on 07 4043 8000 for further advice.

The prospective permit applicants will contact the relevant Rainforest Aboriginal People as soon as practicable to address the following matters:

- Define and outline clearly the proposed activity, including a confirmed clear understanding of the location, nature and extent of the proposed activity, and the purpose and nature of the need for consultation.
- Identify the person(s) who will be carrying out the activity.
- Provide a description of expected outcomes and benefits.
- Explain comprehensively and mutually agree to methods of information collection, storage, access and presentation.
- Obtain written consent for the use of any culturally sensitive information.
- Ask whether anyone has registered any intellectual cultural property that should be protected and obtain prior and informed consent for its use.
- Discuss and mutually agree on the kind and level of relevant Rainforest Aboriginal participation required during the life of the proposed activity.

- Detail any financial or technical resources that may be available for relevant Rainforest Aboriginal people to participate in the proposed activity.
- Mutually agree on a process for reporting results of the permitted activity.
- Provide an offer to meet if requested, including arranging joint site inspections involving the applicant, relevant Rainforest Aboriginal People and other parties affected where requested by any of the parties.
- Exchange contact details for both relevant Rainforest Aboriginal People and the permit applicant.
- Advise the relevant Rainforest Aboriginal People they have up to 28 days from the meeting day to provide any further advice to the applicant.
- If no consultation or participation is required by the relevant Rainforest Aboriginal People this should be documented and attached to the permit application.

The Authority will require that the prospective permit applicant:

- Be prepared to seek and genuinely consider reasonable advice from the relevant Rainforest Aboriginal People particularly concerned with the land, and to negotiate appropriate alterations to the proposal to ensure adverse impacts are minimised and positive impacts maximised.
- Involve relevant Rainforest Aboriginal People as agreed during consultation.
- Provide the Authority and relevant Rainforest Aboriginal People with a consultation report, including evidence of consultation with relevant Rainforest Aboriginal People.

The Authority will:

- Seek confirmation from the relevant Rainforest Aboriginal People that they are satisfied with the outcomes of any consultation undertaken by the prospective permit applicant.
- Require the prospective permit applicant to rectify the situation where the Authority believes that insufficient information, or insufficient opportunity, has been provided to relevant Rainforest Aboriginal People.
- Advise the prospective permit applicant and relevant Rainforest Aboriginal people of the outcome of the application by providing a copy of the permit.
- Advise the relevant Rainforest Aboriginal People of any appeals by the prospective permit applicant.
- Require approved permit applicants to work collaboratively with the relevant Rainforest Aboriginal People to resolve any disputes before undertaking a formal dispute resolution process.

- Require that the approved permit applicant take all reasonable and practicable measures to ensure the activity does not adversely affect the cultural values or Aboriginal tradition of Rainforest Aboriginal People particularly concerned with the land.

8. Approval

Wet Tropics Board Meeting

No:

Date:

ⁱ Aboriginal tradition has the meaning under the *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions). Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

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