

SECTION 62 PERMIT ASSESSMENT

Guideline 3

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

1. Purpose

This document has been adopted by the Wet Tropics Management Authority Board as a 'Guideline' under Section 62 of the *Wet Tropics Management Plan 1998* (the Plan). Its purpose is to ensure that the Authority complies with s.10(5) of the *Wet Tropics World Heritage Protection and Management Act 1993* (the Act), s.60 of the Plan and the Wet Tropics Regional Agreement (the Regional Agreement) protocols.

2. Application of this Guideline

This guideline applies to the assessment of permit applications undertaken by the Wet Tropics Management Authority (the Authority), a permit entity under the Plan or an Authority delegate. Reference to the Authority in this guideline is also a reference to a permit entity under the Plan or an Authority delegate under the Act.

This guideline is broader than the requirement of s.24 of the *Native Title Act 1993* (Cwlth) for decision makers to notify Native Title holders, claimants, and their representative bodies of specific permit applications. The latter is a separate arrangement described in the Queensland Government Native Title Work Procedures, which is administered by the Queensland Department of Natural Resources and Water. However, should any consultation be required as a part of the Queensland Government's native title notification process, it would be appropriate for consultation in accordance with this guideline to be utilised.

This guideline assists the Authority to meet its obligations to 'Aboriginal people particularly concerned with the land' (relevant Aboriginal people) and in particular to discharge its duties within the spirit of the Preamble s.(8) and s.10(5) of the Act. This guideline has been prepared in accordance with s.62 of the Plan to assist the Authority with the application of principles and criteria for deciding permit applications, specifically the requirement for the Authority to regard to the effects of a proposed activity on:

- 'any native title land holder and any other Aboriginal people particularly concerned with the land' (s.60(a)(i)); and
- 'any other relevant social, economic and cultural effects' (s.60(d)).

This guideline is based on protocols agreed under the Wet Tropics Regional Agreement to achieve more effective and meaningful participation of Rainforest Aboriginal people in

management of the WTWHA. Accordingly, it should be revised in accordance with agreed outcomes of any formal review of the Regional Agreement.

3. Permit Application Referral Process

The purpose of consultation is to ensure that relevant Aboriginal people are provided with sufficient information about a proposed activity so that they can advise the Authority of potential cultural, environmental, social or economic impacts, and to provide the opportunity for Aboriginal involvement in the proposed activity if appropriate. The information provided by both the applicant and relevant Aboriginal people will be used by the Authority to make decisions on permit applications to ensure that adverse impacts on World Heritage, social, cultural and economic values are minimised and positive impacts maximised.

- The Authority's role is to inform WTWHA permit holders and applicants of the revised consultation requirements and to ensure that Authority permitting officers are fully informed of these requirements.
- The applicant's role in the consultation process is to provide details of the proposal to the relevant Aboriginal people to the extent required by the Authority (this will vary from case to case) and to consult with the relevant Aboriginal people in accordance with this guideline.
- The role of the Aboriginal Rainforest Council (the ARC) is to advise the applicant on who the relevant Aboriginal people are, what consultation process the relevant Aboriginal people would prefer, and the ARC's desired level of involvement.
- The role of the relevant Aboriginal people is to provide their views on the proposal including any potential impacts on natural and cultural values.

As 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.

4. Permit Application Consultation Process

4.1 Minor and Inconsequential Activities

Section 28 of the Plan provides that activities that are minor and inconsequential are not regulated (i.e. they are "allowed" activities and not subject to permit assessment). Section 28 sets out a broad definition of minor and inconsequential activities.

In any assessment of a permit application the Authority must consider whether the proposed activity will have no more than minor and inconsequential impacts on native vegetation, watercourses, earth or scenic values. The Authority's Board has approved a guideline (Guideline 1) to assist permit staff in considering this issue. This guideline requires the Authority to consider whether an activity could have any adverse effects on relevant Aboriginal people, damage or desecrate the integrity of any cultural heritage site or adversely affect other sites, areas or items of cultural or historical significance.

Activities with no more than minor and inconsequential impact will not be referred to relevant Aboriginal people under this guideline.

4.2 Activity Types

Permit applications are for either a new activity or an ongoing activity. In relation to consultation with relevant Aboriginal people, the Authority will take the following actions when a permit application is received:

4.2.1 Applications for Ongoing Activities

a) These would include either:

- an application to permit the continuation of an activity a person was lawfully carrying out immediately before the commencement day of the Plan (s.33(a)); or
- applications made by infrastructure agencies, local government authorities and others for maintenance of existing infrastructure and facilities. Existing activity maintenance permits are issued for 1 to 5 years to cover all infrastructure and facilities under the jurisdiction of the relevant organisation. Permitted activities in this category include those listed in Section 33 (c), (d), and (f) of the Plan.

b) The Authority will take all practical steps to involve the relevant Aboriginal people in a manner consistent with Clause 4.2.2 Applications for New and Proposed Activities below, recognising that some steps may not be relevant. The Authority will:

- i. Summarise and explain the purpose, rationale and methods for undertaking the existing activity to the ARC and relevant Aboriginal people; and
- ii. Ensure that the following objectives are met:
 - Identify and discuss opportunities for consultation, participation in, and review of the existing activity.
 - Outline any resources available to facilitate Rainforest Aboriginal involvement in the activity.

4.2.2 Applications for New Activities

a) Generally, any proposed activity that is a new activity would be subject to consultation under this guideline.

Activities allowed under permit include:

- 33(f) - for new or upgraded walking tracks only;
- 33(g) - building a firebreak;
- 33(k) - in cases where low flying is to occur on a regular basis;
- 34(a), (b), (d), (e); - building a structure, road, excavating, or interfering with a watercourse;
- 36 - activities to avoid injurious affection to a land holders interest;
- 37 – for activities where a person holds a licence or authority under another Act; application of this Guideline only required if consultation has not occurred prior to the initial activity authorisation; and
- 38 - activities in zone B that may reduce impacts on the area.

b) The following actions will be undertaken to involve the relevant Aboriginal people in the assessment of applications for new activities. The Authority will:

- i. Where possible, advise prospective permit applicants of the requirement to consult with relevant Aboriginal people about the proposed activity, in accordance with the procedure set out below, **prior to** lodgement of their permit application.
- ii. Require the permit applicant to notify the ARC in writing to identify the relevant Aboriginal people; ascertain what level of consultation may be required; mutually agree on the

- timeframe for a response from the ARC (the Authority considers 28 days is reasonable); and forward the application and any supporting information, plus any further information specified by the Authority. The Authority under s.47 of the Plan will consider the applicant's notification as part of a request for further information.
- iii. Facilitate the interaction between the applicant, the ARC and the relevant Aboriginal people.
 - iv. Provide support to the ARC in consulting with the relevant Aboriginal people to establish the level of consultation required.
- c) The Authority understands that, in accordance with the Regional Agreement, the ARC will:**
- i. Contact relevant Native Title Representative Body(s) or following a determination, the relevant Native Title Prescribed Body Corporate to:
 - seek formal advice, including contact details and protocols, on native title holders, native title claimants and/or other known relevant Aboriginal people, or other parties, with rights or interests in the area; and
 - seek permission to share contact information with applicant(s).
 - ii. Contact identified relevant Aboriginal people to establish the level of consultation required.
 - iii. Advise the permit applicant and the Authority of the identified relevant Aboriginal people to contact, who and how to contact them and the consultation required. If no consultation is required this should be documented and attached to the permit application.
- d) The Authority will require the permit applicant to:**
- i. Contact the ARC, as outlined above, and establish a process to monitor and provide feedback on the progress and effectiveness of consultation.
 - ii. If required, contact the identified relevant Aboriginal people 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 Aboriginal participation required during the life of the proposed activity.
 - detail any financial or technical resources which may be available for relevant 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 Aboriginal people and other parties affected where requested by any of the parties.
 - exchange contact details for both relevant Aboriginal people and the permit applicant.
 - advise the relevant Aboriginal people that they may organise assistance from the ARC and/or the Authority, if required.
 - advise the relevant Aboriginal people they have up to 28 days from the meeting day to provide any further advice to the applicant.

- e) The Authority will require that the permit applicant:**
- i. Be prepared to accept advice from the relevant Aboriginal people and negotiate alterations to the proposal.
 - ii. Involve relevant Aboriginal people as agreed during consultation.
 - iii. Provide the Authority, ARC and relevant Aboriginal people with a consultation report, including evidence of consultation with relevant Aboriginal people.
- f) The Authority will:**
- i. Where it believes that insufficient information or insufficient opportunity has been provided to relevant Aboriginal interests by the applicant, require the applicant to rectify the situation.
 - ii. Advise the applicant, relevant Aboriginal people and the ARC of the outcome of the application by providing a copy of the permit.
 - iii. Advise the ARC and the relevant Aboriginal people of any appeals by the applicant.

4.2.3 *Environmental Impact Assessment*

- a)** Activities that have the potential to disturb vegetation, earth, water or scenic amenity are regulated under the Act or the Plan. These activities require a permit unless the activity is deemed 'allowed' under s.27 (eg for the protection of life), or as having only 'minor and inconsequential' impact under s.28 of the Plan.
- b)** If the permit application is for the development of substantial infrastructure the Authority may ask the applicant to prepare an Environmental Impact Assessment (EIA). If an EIA is required, the Authority will establish the Terms of Reference (ToR) for the EIA in consultation with the ARC and the applicant. The EIA is required to address environmental, social, cultural and economic factors. The ToR for an EIA would require the applicant to consult with relevant Aboriginal people, the general public and specific stakeholder groups. Any documentation should be in plain English.
- c)** The following actions will be undertaken to involve the relevant Aboriginal people in the preparation of an EIA. The Authority will:
- i. Assess the potential level of impact of the proposed activity consistent with the Australian and New Zealand Environmental and Conservation Council (ANZECC) Guidelines for Environmental Impact Assessment and request, in writing, the applicant to provide more information, if required.
 - ii. Consult with the ARC on the intent to undertake an EIA, including details of the proposed activity and the proposed level of EIA required, and establish their desired level of involvement.
 - iii. Establish a process with the ARC to monitor and provide feedback on the progress and effectiveness of consultation.
 - iv. Agree with the ARC on a timeframe for a response from the ARC. The Authority considers that generally, up to 28 days is a reasonable time for a response from the ARC.
- d)** The Authority understands that, in accordance with the Regional Agreement, the ARC will:
- i. Contact the relevant Native Title Representative Body(s), or following a determination, the relevant Native Title Prescribed Body Corporate.
 - ii. Seek formal advice, including contact details and protocols, on Native Title holders, Native Title claimants and/or other known relevant Aboriginal people, or other parties, with rights or interests in the area.

- iii. Seek permission to share contact information with the applicant and the Authority.
 - iv. Respond to the Authority and the applicant within the agreed timeframe outlining the relevant Aboriginal people to be consulted and a process for contacting them.
- e) The Authority will:
- i. Request the permit applicant to forward relevant Aboriginal people a copy of the application and any supporting information, including any further information that has been requested by the Authority.
 - ii. Negotiate ToR for the EIA with the applicant involving relevant Aboriginal people and/or the ARC.
- f) The Authority will require the applicant to:
- i. Prepare the EIA, including consultation with the relevant Rainforest Aboriginal people in accordance with the ToR.
 - ii. Arrange a meeting (refer to Meeting Guidelines – attached to 6.1(1)) with the relevant Rainforest Aboriginal people and ensure the following objectives are met:
 - Define and outline clearly the proposed activity and the purpose and nature of the need for consultation.
 - Discuss and clarify what kind of community, group and individual participation is sought.
 - Identify clearly what participation may involve for participants, being particularly aware of the need to accommodate cultural obligations.
 - Identify, clarify and mutually agree on issues and positions, negotiation methods and decision-making processes.
 - Identify and clarify any substantially opposing points of view, documenting any which cannot be resolved.
 - Mutually agree on documentation of consultation outcomes, regular review, feedback and discussion procedures.
 - 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, informed consent for its use.
 - Mutually agree on the way to conduct the activity, including any statutory timing and phasing of the project.
 - Discuss any relevant cultural, political and legislative circumstances and issues, both local and broad ranging.
 - Identify and share contact details for Rainforest Aboriginal people, ARC members and responsible Authority staff, including a key contact for each.
 - Provide a comprehensive assessment of the risks and potential adverse impacts of the activity.
 - Identify and explain the potential benefits of the activity, including those that may apply to the broader Indigenous community and the general public.
 - Discuss financial, technical and human resources available for the activity.
 - Mutually agree on time requirements for the discussion and consideration of proposals.
 - Develop collaboratively the scope, aims and methods for the activity prior to undertaking the activity.
 - iii. Forward a copy of the EIA to the relevant Aboriginal people and the ARC.

- g)** The Authority will:
 - i.** Advise relevant Aboriginal people and the ARC regarding the outcome of the application and if approved, provide a copy of the permit.

- h)** The Authority understands that, in accordance with the Regional Agreement, the ARC will:
 - i.** Document, on completion of the activity, the outcomes of the consultation process, including recommendations for improvement.
 - ii.** Forward documentation to the Authority, and the relevant Aboriginal people for feedback.

5. Approval

Wet Tropics Board Meeting

No: 65

Date: 19 June 2006