

**THE *REVIEW* OF
ABORIGINAL INVOLVEMENT IN
THE MANAGEMENT OF THE
WET TROPICS WORLD HERITAGE
AREA**

VOLUME 1 REPORT

Thematic presentation of the 14 Terms of Reference

**A report prepared for the Wet Tropics Board of
Management
by the *Review* Steering Committee**

January 1998

Disclaimer: Due to the nature of this report it does not purport to represent the complete views of all the participant parties both government agencies or all Aboriginal groups. While incorporating legislation obligation and opportunities it does not necessarily represent the official policy of any State or Commonwealth government agency.

Mr Vincent Mundraby
Steering Committee Chairperson
*Review of Aboriginal Involvement
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2 April, 1998

Professor Tor Hundloe
Board Chairperson
Wet Tropics Management Authority
PO Box 2050 Cairns
Qld. 4870

Dear Professor Hundloe,

Re: Final Report of the *Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area.*

It is in anticipation of a positive response, and a more cooperative working relationship between Rainforest Aboriginal people and the Wet Tropics World Heritage Area government land management agencies, that I would like to present to the Wet Tropics Board, on behalf of the Review Steering Committee, the final report of the *Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area.*

At this point in time the role of the *Review* Steering Committee comes to a close. It is time for the real work to begin. I hope that the Board and Ministerial Council endorse the *Review* recommendations and oversee the implementation of these proposed changes across all WTWHA tenures.

I would like to thank the Board and Ministerial Council for supporting the development of the *Review* to date. I trust that this spirit of cooperation and collaboration will flow on to the ensuing implementation phase. The cultural survival of Rainforest Aboriginal people and the best practice management of the WTWHA is dependent on all of us coming together within an environment of equitable and constructive negotiation.

Yours sincerely,



Mr Vincent Mundraby

Chairperson
Review Steering Committee

Acknowledgments

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- The Review Steering Committee for their role in directing and monitoring the project.
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- WTWHA management agencies, particularly DoE District staff for their input through interviews, questionnaires, and workshops.
- Denise, Tahnee and Jai for their patience and support.

Bruce Lawson
Review Coordinator
April 1998

Vision Statement

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.

The Steering Committee

The Review of Aboriginal Involvement in the Wet Tropics World Heritage Area.

The Review Steering Committee

Mr Vince Mundraby **Review Chairperson, (Interim Chair,
Bama Wabu)**

Mr Phil Rist **(Girringun Elders and Reference
Group Aboriginal Corporation)**

Ms Jenny Prior **(Chair, ATSIC Regional Council
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Ms Nerelle Nicol **(Chair, ATSIC Regional
Council Cairns)**

Mr Terry Murray **(Ngadjon Mitcha Jimmar-ma
Aboriginal Corporation)**

Terms of Reference and Expected Outcomes of the Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area, endorsed by Ministerial Council, March 1995.

TERMS OF REFERENCE

1. Document any existing mechanisms (statutory or otherwise) by which Aboriginal people are currently able to become involved in WHA management.
2. Make an assessment of the extent to which Aboriginal people and WTMA
 - are aware of available mechanisms
 - have made use of available mechanisms.
3. Outline the goals of Aboriginal involvement in World Heritage management from the point of view of the Authority and Aboriginal peoples. Document steps taken by the Authority and other relevant agencies to date to achieve these goals by involving Aboriginal people in WHA management. (This document would be provided to Aboriginal people to assist them in responding to the *Review*).
4. Make an assessment of the effectiveness of currently available mechanisms. Review the Authority's performance in responding to Aboriginal aspirations, and offer an analysis of the reasons why certain mechanisms are effective or ineffective. Make recommendations on retaining, amending, improving or deleting existing mechanisms.
5. Compile existing information from Aboriginal communities and organisations and other relevant bodies on:
 - the kind and degree of involvement in WHA management Aboriginal people want
 - what mechanisms they would prefer to achieve this involvement.
6. Identify and discuss any constraints and opportunities likely to affect the involvement of Aboriginal people in World Heritage management and the achievement of Aboriginal aspirations in this regard.
7. Make an assessment of which of these aspirations;
 - can be achieved by the Authority under current circumstances
 - can be achieved by other sectors of Government, with assistance from the Authority
 - are currently matters for other sectors of Government, or Government as a whole (ie. are not relevant to the Authority's operations, or are major matters of State - wide significance)
 - may be beyond the capacity of the Authority, or Government, to provide at the present time
 - and propose mechanisms allowing fragmented responsibilities to be better coordinated across Government sectors.

8. Make recommendations to the Authority's Board and the Ministerial Council concerning those matters which can be addressed by the Authority, or Ministerial Council portfolios with the Authority's assistance. Identify how these matters should be addressed (eg. by preparing policies and protocols, amending the Authority's liaison strategy, developing cooperative management agreements, etc). Identify the sort of Government policy changes that would be required to meet Aboriginal aspirations.
9. Assess the extent to which the draft Wet Tropics Management Plan meaningfully involves Aboriginal people and addresses native title issues in the management of the WHA.
10. Identify the roles and responsibilities of the Commonwealth and State Governments in managing the WHA, in relating to their responsibilities to Aboriginal peoples, and critically assess the extent to which both Governments have fulfilled these roles and responsibilities to Aboriginal peoples, including those outlined in the current Management Scheme intergovernmental agreement.
11. Assess the capacity of the Management Scheme intergovernmental agreement to recognise Aboriginal aspirations for land management and implement processes based on reconciliation.
12. Make an assessment of the potential social, economic and environmental impacts of implementing joint management on different types of land, and affording recognition to the range of Aboriginal interests and aspirations in the WHA.
13. Examine the extent to which the issues raised in the Sutherland report* (1992) have been addressed by the existing management arrangements, including in particular the native title issues.
14. Examine the implications of native title rights for current and future Wet Tropics management, and the potential impact of management decisions on native title rights.

* Sutherland, J. (1992) Aboriginal interests and Queensland Wet Tropics World Heritage Area management. *Unpublished report prepared for the Bidji Bidji Advancement Co-operative Society Ltd.*

Expected outcomes of the *Review*.

The outcomes of the *Review* conducted by the Authority may include recommendations to the Board on the following matters:

- Models and/or predictions for the expected nature and level of Aboriginal involvement in management in the next 5-10 years, to ensure that expectations of all parties are realistic; these models should incorporate reference to joint management.
- Policies for involvement of Aboriginal people in World Heritage management (recognising that the Authority has already adopted a comprehensive policy in joint management).
- Practical measures which can be taken involve Aboriginal peoples in management.
- Development of a draft protocol and code of ethics detailing culturally appropriate mechanisms for involving Aboriginal peoples in management.
- An agreed coordinated approach to Aboriginal involvement in World Heritage management across all relevant Government agencies, including WTMA, DoE, Department of Primary Industries, Department of Family Services and Aboriginal and Islander Affairs and Lands (and Local Government, where appropriate), and strategies for implementation.
- Suitable future Cooperative Management Agreements (CMAs) which could be pursued as examples of a process for achieving cooperative management of areas with high nature conservation value and/or a broader based (regional) agreement; along with a report on any trial CMAs undertaken to date, an assessment of the effectiveness of the approach used and plain English documentation of the process for distribution to Aboriginal communities.
- Appropriate mechanisms for proceeding towards a Memorandum of Understanding or regional Wet Tropics agreement as referred to in the Minister's letter of 14 January 1994.
- Mechanisms for ensuring Aboriginal representation within the management scheme of the WTWHA including creation of special committees or representations on existing committees, and/or other appropriate mechanisms for communication with the Wet Tropics Management Authority and its Board.

Where appropriate, the Board would then follow recommendations to the Ministerial Council. All recommendations arising from the *Review* would be accompanied by a draft action plan addressing the recommendations and implementing agreed outcomes, and identifying resource requirements and expected time frames.

Foreword

The nomination of the Wet Tropical Rainforests of North Eastern Australia in December 1987, for its natural values, was not without controversy and political intrigue. Rainforest Aboriginal groups were drawn into the debate at an early stage and they have continued to lobby for position and certainty with respect to their rights, interests and cultural integrity, with little gain.

The High Court recognition of common law native title rights and interests in the 1992 Mabo [No.2] case stimulated anticipation that government would recognise unextinguished native title throughout much of the World Heritage Area. General delays through obtuse bureaucratic and policy positions forced Rainforest Aboriginal people to call for a *Review* of the Federal/State Management Agreement for the World Heritage area, which was required every three years. General reticence regarding this *Review* led to negotiation of a (the current) *Review Into Aboriginal Involvement in Management of the Wet Tropics World Heritage Area* to placate Aboriginal agitation. Thus the genesis of implementation for this *Review* was contentious and reluctant. Fortunately attitudes changed and the atmosphere and cooperation in the conduct of the *Review* has been excellent.

While acknowledging the recent changes in the constitution of the Wet Tropics Management Authority Board the Committee would like to specifically thank the Board and the Ministerial Council for their continued recognition and assistance in progressing the *Review*.

The *Review* process was, at all times, conducted under the direction and control of the Steering Committee. The cooperation and professionalism exhibited by the coordinator and consultants in collating and presenting the aspirations of Rainforest Aboriginal peoples is appreciated. A special thank you is due also to the Aboriginal Land Councils and Regional Councils of the Aboriginal and Torres Strait Islander Commission, in the Wet Tropics Management Area for their assistance and support.

Sadly, this *Review* Report comes on the eve of national dispute over the issue of Aboriginal and Torres Strait Islanders rights and interests in land. My colleagues and myself on the Steering Committee hold the view that the constructive negotiations of properly resourced equitable agreements, between Aboriginal people and government land management agencies, provide a process that has the capacity to satisfy the major interests of all parties. Hopefully the nation will accept that the current difficulties are a matter for reconciliation on equitable terms where all parties are recognised as possessing established legal rights and interests according to existing customary as well as non-indigenous laws.

In presenting the *Review* the Steering Committee is well aware of the danger of embracing mechanisms which may have the consequence of retaining the rhetoric of equality, rather than advancing the recognition of Aboriginal peoples in their own right; embracing their differences and values within their status as citizens in “white Australia”. The Board’s role in effective implementation of the *Review* recommendations is integral to this process.

As argued by Duffy in 'Back to assimilation? What's new!' - Land Rights Queensland June-July 1996, "*It seems the only rights indigenous peoples in Australia have is the right to do what they want as long as it satisfies the non-indigenous way of doing things*".

Lyndon Murphey in an unpublished paper, Reconstructing the Indigenous Australian: the politics of non- recognition, asserts that "*..analyses of joint management committees reveals that the indigenous influence is restricted by the conflicting values and operational assumptions which drive these structures*".

This situation is evident in the impact themes raised by Government representatives in the TOR 12(B) report summarised under the following categories: (i) availability of resources; (ii) legislative constraints; (iii) government policy concerning joint management (iv) specific issues relating to reaching Interim and Final (Regional Wet Tropics) Agreement.

While conscious of the pitfalls, the Steering Committee is confident however, that the negotiation process outlined in the *Review* will lead to acceptable resolution of these issues - if approached in a spirit of goodwill. In this regard particular note is taken of the following recommendations of the House of Representatives Standing Committee on Environment Recreation and the Arts (HRSCERA) Report "**Managing Australia's World Heritage**" October 1996:

(8) That the Commonwealth Government seek the co-operation of the State and territory Governments in a comprehensive **review of all relevant State and Territory legislation** that is relied upon to provide regulatory and management provision for the protection and conservation of world heritage areas.

The review will **identify the need for amendments** that will lead to consistent and effective arrangements for all world heritage areas having regard for to Australia's international obligations.

(14) That the Commonwealth Government encourage managing agencies to review the involvement of indigenous people in the management of world heritage areas where they have continuing, traditional associations, with a view to:

a) identifying additional measures for their involvement; and

b) **implementing these measures.**

(Emphasis added)

There is some comfort in the fact that the HRSCERA Report supports some of the reform directions that have also emerged from this *Review*.

At Meeting Number 27 the Board endorsed the establishment of an Interim Negotiating Forum to :

(a) identify and define specific management areas for negotiation of formal agreements;

(b) appoint a joint funded co-ordinator to facilitate the process.

This represents a positive and practical initiative to commence the negotiation process.



Mr Vincent Mundraby

Chair, The Steering Committee

*The Review of Aboriginal Involvement in the Management of the
Wet Tropics World Heritage Area*



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Executive Summary

Background

The Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area presents a commentary on current approaches to Aboriginal involvement in the Wet Tropics World Heritage Area and provides a series of recommendations regarding ways of more effectively meeting the land management needs and aspirations of Rainforest Aboriginal people. It also provides mechanisms for Wet Tropics World Heritage Area government management agencies in particular, the Wet Tropics Management Authority (WTMA), Department of Environment (DoE) and the Department of Natural Resources (DNR), to meet their statutory obligations and responsibilities at the State level, and likewise, the Commonwealth Government, at the international level.

The *Review* recommendations are focused at two levels of operation and implementation. The first level relates to changes that can, (and in many cases) need to be, implemented straight away. They specifically relate to practical management issues, the day-to-day level of operation. The second level concentrates on fundamental issues associated with negotiated regional management agreements between Rainforest Aboriginal people and government agencies that require ongoing development. Some of these issues include cultural heritage protection, permit decision-making, employment and training, fire management, assessment of development proposals, and research, consultation and negotiation protocols.

The *Review* recommendations were overseen by an Aboriginal Steering Committee, and developed with the technical advice of specialist consultants with expertise in a wide range of disciplines. A Departmental Reference Group provided additional advice and commentary.

Meeting obligations

The material presented in the various *Review* consultancy reports demonstrate that the existing state of management involvement for Aboriginal people in the WTWHA is quite limited when considered against what could be attained if the variety of potential mechanisms of involvement were used to their fullest extent. In many cases the necessary mechanisms, policies and legislation to promote increased levels of meaningful Aboriginal involvement are already available. The end result is that in many cases WTWHA management agencies are not living up to their obligations under existing legislation, particularly in the context of consultation and the cooperative involvement of relevant Aboriginal groups, and in relation to protection of the cultural values of the region. Part of the problem relates to a lack of understanding, technical expertise and insufficient resources to carry out appropriate measures to meet these obligations. Thus, in many management decisions (such as the issue of commercial activity or scientific research permits), inadequate attention is given to involving Rainforest Aboriginal people, even where appropriate policy or legislation may in fact exist. In other cases, the problem runs deeper and, as argued by the Review Steering

Committee, would appear to centre on lack of commitment and political will to addressing Aboriginal issues at more than a superficial level.

The various *Review* recommendations focus on providing mechanisms whereby government agencies can implement strategies to more effectively meet their existing obligations to protect cultural values, preserve native title, and co-operatively involve Aboriginal people in management. They should not be seen as an additional set of demands placed on top of the complex array of requirements already facing under resourced government agencies. In contrast the various recommendations contained in this report have the potential to assist WTWHA managers to more efficiently and effectively meet their existing obligations, and in some cases, even avoid the added costs of uncertainty and ongoing legal challenges by Aboriginal interests. They also provide an opportunity for Rainforest Aboriginal people to work through, in a more coordinated and unified manner, many of the barriers that have to date impeded their attempts to meet their own traditional obligations under customary law.

The *Review* identified that Rainforest Aboriginal people are very passionate about meeting their land management and religious obligations as defined under traditional law and custom.

As Ngadjon Ji Elder Ernie Raymont states:

“certain areas like old burial grounds and bora grounds, we’ve gotta look after it we let Departments know that the people are still looking after the land and still keen about going back on the land”

(pers. comm. to WTMA 1997).

There is also a range of correspondence, consultancy reports, and formal meeting minutes to testify to the desire by Rainforest Aboriginal people to work equitably and collaboratively with WTWHA agencies in meeting management obligations and common concerns. There is a significant degree of overlap between the interests of Rainforest Aboriginal people and relevant government land management agencies in the Wet Tropics particularly in the area of habitat conservation and the protection of natural and cultural resources. This is a good focal point for a region wide negotiated settlement of management arrangements that aims to accommodate everybody’s interests.

Coordination and unity

The involvement of Aboriginal people in the management of the Wet Tropics World Heritage Area (WTWHA) needs to be dealt with in a ‘whole-of-government’¹ manner. The overall management approach to Aboriginal issues over the last few years has been unsystematic, arguably superficial and at times tokenistic. Consequently, there has been a lot of consultation and rhetoric but little in the way of tangible outcomes for Rainforest Aboriginal people.

¹ A uniform and coordinated inter-departmental and inter-governmental approach, with an across the board level of commitment backed up with an appropriate level of resourcing.

One of the principle shortcomings of the WTWHA management scheme² is that it fails to draw the various management agencies into a unified management framework. It also fails to define uniform policies or guidelines for dealing with Aboriginal or other interests within the WTWHA. Consequently there is no clear commitment from WTMA or the State agencies to deal with Aboriginal interests or concerns in any kind of systematic or consistent manner. The result is substantial confusion and frustration amongst Aboriginal people and the marginalisation of attempts by them to negotiate their involvement in the overall management of the WTWHA. It also causes perplexity amongst Aboriginal people about the specific role played by WTMA.

Rainforest Aboriginal people see WTMA as the lead agency, and therefore, the agency responsible for the management of the WTWHA. The reality is, however, that the majority of management and management decisions are the responsibility of state government agencies such as DoE and DNR. Nevertheless, WTMA arguably has a responsibility to facilitate and coordinate the meaningful response to Aboriginal issues across the range of WTWHA tenures and management regimes.

Government agencies need to build on their positive initiatives³ and commit to a negotiated and more coordinated approach to the settlement of the more difficult and controversial Rainforest Aboriginal issues. The costs of the social and economic impacts⁴ of the continued deferral of Aboriginal interests in land continue to have a detrimental effect on Rainforest Aboriginal culture. These costs may eventually be born by Government in the form of continued high levels of welfare support to Aboriginal communities. The range of negative impacts will also underpin the level of compensation eventually determined for the regulation of Bama interests by the Wet Tropics Plan and other relevant management regimes. Furthermore, these impacts may diminish the value of the Wet Tropics World Heritage Area as a tourist attraction of international biological and cultural significance.

Despite the obvious lack of tangible progress in improving the levels of Aboriginal management involvement since the listing of the region as a World Heritage Area in 1988 there is a commitment amongst many government agency officers to facilitate appropriate change.

It is also important that Rainforest Aboriginal people adopt a strategic and coordinated approach to the resolution of competing interests with government agencies. Historically, in many cases, division amongst Aboriginal people has hindered the consultation and negotiation process with government agencies unsure as who to be dealing with, and unable

² The term “WTWHA management scheme’ refers to the range of management regimes that collectively provide the management framework for the whole of the Wet Tropics World Heritage Area.

³ Examples include the presentation of a series of cross-cultural workshops by DoE , WTMA’s community liaison officer strategy, and DoE’s attempts to develop procedural MoUs with certain Rainforest Aboriginal groups.

⁴ These social and economic impacts take on a wide variety of forms ranging from the loss of the ability to meet culturally defined religious and land management obligations, through to the ability to protect and develop the economic potential (via the tourism market) of their own cultural property. See TOR 12A consultancy report for a more detailed analysis.

or unwilling to commit those extra resources required to work through the uncertainty. The result has been that all too frequently Aboriginal issues have been left unresolved by WTWHA managers.

Native title

It is not an unlikely possibility that the existence of native title in parts of the WTWHA will considerably constrain the management of this region. This will present a particular challenge for the relevant land management agencies. In the case of national parks the capacity for land managers to fully exercise their statutory management functions where native title rights exist may be significantly restricted. For example, native title holders of land in national parks benefit from s.69 of the *Nature Conservation Act 1992* (Qld) which means that their native title is only affected by a conservation agreement or covenant, or a regulation giving effect to a management plan for the area.

The Wet Tropics Plan provides inadequate attention to relevant Aboriginal issues, particularly in relation to the potentially significant implications of native title for WTWHA management. It is therefore questionable whether the Wet Tropics Plan and the underlying management systems are able to achieve the envisaged levels of protection for World Heritage values where native title exists.

The *Review* identified (particularly in the Terms of Reference 14 consultancy report) that for government agencies to wait for a formal determination of native title, before developing management agreements with traditional owners, is poor risk management. Given that native title rights and interests exist under common law prior to a determination (and continue to do so until proven otherwise) it would be prudent for WTWHA management agencies to be working more closely and proactively with traditional owners.

Even if agencies are not in a position because of current government policy to negotiate on native title issues prior to a formal determination, there is still room for management agreements to be struck in the context of meeting existing cultural heritage and consultation obligations. A better working relationship now will only serve to facilitate the resolution of potentially competing interests upon a formal determination of native title. It will also help to overcome the degree of uncertainty that is currently inhibiting a significant proportion of current management decision making.

Negotiating outcomes through Agreements

Given the significant and generally negative impact of the various management regimes on Aboriginal people, and conversely, the significant implications of native title for WTWHA management, it is crucial that there be the negotiation of a region wide settlement of Aboriginal grievances and non-Aboriginal management concerns. Such an agreement would establish a framework for resolving the worst of these impacts without prejudicing the specific rights that Aboriginal people can achieve by pursuing the processes available in law. In many cases, reaching an agreement between the Federal and State governments and Aboriginal people may save proceeding to litigation.

The first step towards utilising available mechanisms in order to increase the extent of management involvement for Aboriginal people and to resolve problem areas associated with the continuing existence of native title, is the establishment of meaningful and coordinated negotiation between government WTWHA land management agencies and Rainforest Aboriginal people with an interest in the region. These negotiations will not only serve as the basis for meeting the rights and interests of Aboriginal people, they will also (as previously mentioned) assist government agencies to fulfil their existing obligations to protect the region's cultural values and co-operatively involve Rainforest Aboriginal people in management.

To this effect the *Review* was undertaken in such a way as to provide a forum whereby both Government representatives and Rainforest Aboriginal people could identify their particular land management aspirations and potentially move towards the resolution of particular grievances and concerns within the context of fourteen specific terms of reference. A number of key problem areas, from all management perspectives, were identified that are in need of negotiation and resolution in order to arrive at a cooperative, equitable, and legally consistent approach to the management of the WTWHA. These key negotiating points are seen by the *Review* as forming the foundation for the development of an Interim Negotiating Forum and a Final (Regional Wet Tropics) Agreement by the year 2000.

These staged agreements are seen as a means of negotiating a way through current and potential future barriers to meaningful and efficient WTWHA management from both non-Aboriginal and Aboriginal perspectives. They are seen as a framework to implement the various recommendations arising from the fourteen terms of reference of the *Review*. They are also a way of providing certainty and resource efficiency for all management interests, both indigenous and non-indigenous. Finally, the Interim Negotiating Forum and Final Agreements are a means by which Rainforest Aboriginal people can secure their ongoing cultural survival. This is achieved through the development of a more coordinated and holistic approach to protecting cultural values that recognises and respects the WTWHA as a series of dynamic indigenous cultural landscapes.

Re-nomination of the WTWHA for its cultural values

In addition to the notion of a staged approach to the development of a Final or Regional Wet Tropics Management Agreement between Rainforest Aboriginal people and WTWHA government management agencies, the *Review* also strongly supports the proposal for a Commonwealth funded detailed assessment of the cultural values of the region. Such an assessment would serve as a precursor to the possible renomination of the WTWHA for its cultural values over and above its current status listing for its natural values only. Even on national parks where cultural resource protection is one of the cardinal principles of national park management, the protection of cultural values appears to be secondary to natural values protection within the WTWHA.

Cultural re-listing of the region would serve to even out this imbalance. It would also serve as an important catalyst for ongoing Rainforest Aboriginal cultural survival by providing the foundation and impetus necessary to develop an improved legislative and management

framework to better protect the region's cultural values, and to allow Rainforest Aboriginal people to access and manage sites. Without adequate protection of cultural places, significant objects, and intangible cultural property such as; traditional knowledge, stories and place names, the ability of Rainforest Aboriginal people to maintain the integrity of their unique culture and identity in the face of increasing pressures on the WTWHA is greatly diminished.

Furthermore, cultural re-listing has the potential to act as a stimulus for both Aboriginal and non-Aboriginal economic development through the promotion of the region as offering an internationally unique cultural experience.

Concluding remarks

Given the possibility of a period of uncertainty and lack of clear policy direction with respect to the government position on a staged agreement process, the *Review* recommends that WTMA, DNR and DoE continue to pursue specific strategic options that are already within their capacity at the local level of operation. Such options include the practical day-to-day issues referred to in this report, including the development of consultation and research protocols, guidelines for permit assessment, contractual outsourcing of consultation needs and the improved resourcing of advisory committees. It would be self-defeating for government agencies to wait for what may inevitably prove to be a long drawn out political decision on the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement. There are processes that can be implemented straight away in parallel to the agreement process that will serve to further inform and reinforce the agreement negotiations when the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement eventually become endorsed.

The *Review* is also seen as a mechanism for informing the development of a number of relevant policies and planning instruments. These included the finalisation and implementation of the Wet Tropics Plan, and the drafting of a particular Memorandum of Understanding (MoU) between Rainforest Aboriginal people and the DoE in relation to the assessment of permit applications under the *Nature Conservation Act 1992*. This draft MoU is seen as a potentially significant development in the advancement of Aboriginal interests in the WTWHA. Once finalised and ratified by all parties, it will provide a positive starting point for ongoing change.

In overall terms there is need for a more coordinated and proactive approach to Aboriginal issues in the WTWHA. The identified level of commitment for facilitating change in some areas at the agency level needs to be supported by a greater level of commitment from government as a whole. The *Review* recommendations provide a framework to aid development of the necessary change required to meet existing statutory obligations and to work a path through some of the practical difficulties associated with issues like cultural heritage protection and the recognition of specific Aboriginal rights and interests.

The advantage to government would also be the recognition of the WTWHA as an example of a truly equitable approach to the meeting of competing interests. International recognition of the Wet Tropics World Heritage Area as an area committed to maintaining and

transmitting cultural values blended with contemporary land management practices will reward Far North Queensland and Australia through economic development and sustainable tourism. This, in turn would bring benefits to all sectors of the community.

Summary of the key elements and findings of the *Review*:

- Native title (including common law native title rights) has specific implications for the management of the WTWHA (particularly on national parks) that warrants its consideration as a significant management issue.
- The need for a more proactive and anticipatory approach to native title across all management regimes, particularly given that native title determination applications could be accepted over approximately 80% of the WTWHA.
- A series of recommendations based on an evaluation of previous WTMA policy on Aboriginal issues with a particular focus on the effectiveness (or otherwise) of current mechanisms of involvement.
- The need for a more coordinated and uniform approach to Aboriginal issues between relevant government agencies and across all management regimes.
- The need for a full and proper assessment of the cultural values of the WTWHA as a precursor to possible renomination of the region for its cultural significance.
- That the State and Commonwealth governments fully support and resource any process towards possible renomination of the region for its cultural values.
- The need for a range of consultation and planning protocols for a variety of management and research activities (specific examples and recommendations are provided).
- That a number of obligations under existing legislation are arguably not being met by the relevant WTWHA agencies particularly in the context of consultation with Aboriginal interests and cultural heritage protection.
- That an Interim Negotiating Forum and Final Agreement between WTWHA management agencies and Rainforest Aboriginal people be developed as a means of structuring practical negotiated solutions to identified problem areas and for further reinforcing already successful strategies.

The Interim Negotiating Forum

- The rationale for the negotiation of an Interim Negotiating Forum is based on arriving at a coordinated, effective, and cost-efficient mechanism that attempts to meet the legislative obligations of the State and Commonwealth Governments to:
 - (a) protect indigenous cultural heritage values;
 - (b) liaise, cooperate and have regard to the traditions and interests of Aboriginal people;
 - (c) have regard to the rights and interests of Native Title holders.
- In practical terms, the purpose of the Interim Negotiating Forum is to:
 - (a) Identify and define specific management areas (eg. Protection of cultural values, fire management, permit regimes, development proposals, employment and training etc.) for which all parties are agreed to enter into ongoing negotiation to formalise a joint approach to management (the Final Agreement);
 - (b) Set a time frame and mechanism for the development of the formalised management arrangement (the Final Agreement);
 - (c) Establish interim management and improved cultural heritage protection measures to operate as the more formalised approach is being developed.

Editorial Comments

This Volume 1 *Review* Report and the attached Volume 2 consultancy compilation document were researched over a period of 20 months. A number of significant changes in policy and events have taken place during this time. As a consequence some issues or statements raised in the *Review* may require further qualification or comment to reflect the change in circumstances. The most important issues worth reflecting on are as follows:

- The Division 5 native title rights provision in the draft Wet Tropics Plan referred to in David Yarrow's TOR 9 consultancy report (see Volume 2) was rejected by Ministerial Council at its June 1997 meeting and invalidly removed from the Plan. The subsequent court action by the three relevant Native Title Representative Bodies later that year rendered the newly gazetted Plan invalid on the basis that removal of the provision by Ministerial Council without first going back to the Board was in breach of due process. As at February 1998 the impasse over the 'Division 5' issue had not been resolved, with the result that a Wet Tropics Plan is still not in operation.
- An apparent change in policy by DoE Central Office, Brisbane, towards certain management agreements with Aboriginal interests late in 1997 has put on hold some attempts by Far Northern Region staff to facilitate management agreements with a number of Rainforest Aboriginal groups. As a consequence any mention in the following text, for example, of the attempts by DoE to develop a Memorandum of Understanding with the relevant traditional owners for the management of Barron Gorge National Park and the development of a Memorandum of Understanding with Bama Wabu for permit assessment processes, needs now to be qualified with the fact that these agreements may not (at least for the moment) be endorsed by DoE⁵. Both the *Review* Steering Committee and Bama Wabu see this as an example of a lack of political will and commitment to negotiated agreements with Aboriginal people at the senior level of Government.
- As of February 1998 the final outcome of the Commonwealth Government's proposed amendments to the *Native Title Act 1993* (Cwlth) remained unresolved. Consequently, the full implications of native title for WTWHA management remain, in part, uncertain. Note that any changes eventually made to native title legislation do not undermine the proposal in this report to move towards a staged negotiated agreement. The rationale for the Interim and Final Agreement is founded in meeting existing cultural heritage and consultation obligations as much as it is a mechanism for reconciling native title and western management interests.

⁵ Bama Wabu provided the Review Steering Committee with a letter it received from DoE, (Far Northern Region) dated 15 December 1997, indicating that it was presently unable to continue working with Bama Wabu on the draft MoU because of uncertainty regarding the future of the *Native Title Act 1993* (Cwlth). Up until this point in time DoE staff had been in a position of being able to work with Bama Wabu (and others) to develop the draft MoU to a stage where it was awaiting final endorsement from DoE Central Office, Brisbane.

- Section 1.2 provides a profile of the WTWHA. It has proven a difficult task to present a perspective of the region that is not ethnocentrically biased or superficial in its portrayal of the land ownership arrangements and values of the region. What has been attempted is a means of showing that the WTWHA is a very complicated arrangement of land ownership patterns and management regimes that cuts across a number of world views and value priorities. An attempt is also made to make the point that the particular world views of Rainforest Aboriginal people do not necessarily fit into the various philosophical, legal and administrative frameworks usually preferred by western land managers (and that this has significant implications for WTWHA management). Any offence or devaluing of a particular cultural perspective by the author is regretted.
- In a number of places throughout the text the term 'Bama' is used as a synonym for 'Rainforest Aboriginal' people. It is acknowledged that this term is not used universally by all groups throughout the WTWHA. For consistency with its use in (a) several of the Volume 2 consultancy reports, (b) a number of the earlier documents used as source material, and in (c) a number of the direct quotations appearing throughout the text, the term 'Bama' has been retained. However, the point remains that not all groups within the region share a preference for the use of this term.

The WTMA Board, at meeting no 27 (February 1998), endorsed the establishment of an Interim Negotiating Forum as a preliminary recommendation from the *Review*. The Board preferred the terminology 'Interim Negotiating Forum' to 'Interim Agreement', the latter is the original term used by Dale *et al.* (1997) in the TOR 12 consultancies. In effect the two are based on the same processes with the same proposed outcomes. They are used interchangeably throughout this report. A draft transcript of the Board's decision is as follows:

'The Board

(a) endorsed the establishment of an Interim Negotiating Forum to:

- **identify and define the specific management areas (eg cultural heritage protection, fire management, consultation and research protocols, walking track development, permit regimes etc.) that need consideration in ongoing negotiation of formal cooperative approaches to management of the WTWHA and other issues**
- **establish interim management and cultural heritage protection arrangements to operate as the formal ongoing negotiations proceed;**

b) endorsed the appointment of a joint State-Commonwealth funded coordinator to:

- **assist each negotiating party to establish workable, representative, negotiating teams**

- **ensure that the negotiating teams have sound mechanisms for consulting with their constituencies**
- **formulate and structure the key points for negotiation**
- **facilitate these negotiations to a suitable endpoint during 1998**
- **negotiate joint funding arrangements'**

(Draft Board Minutes, Meeting no 27, Agenda Item 8.1)

Note that the coordinator position identified in part (b) is equivalent to the 'High Profile Facilitator' identified throughout this Volume 1 report and in the original TOR 12 consultancy reports (Volume 2).

In relation to cultural heritage or cultural values, the term *protection* is considered in the *Review* in a broad sense that covers not only the existence of relevant legislation and policy provisions but also the strategies and resources available to implement these provisions. The *Review* takes the position that the existence of legislation and policy does not automatically equate to adequate protection. Firstly any assessment of the protection of cultural values/cultural heritage needs to consider the adequacy of legislation and policy. Secondly, there is a need to consider whether WTWHA managers at the day to day level of management are meeting any statutory requirements or implementing relevant prescribed policy. Finally, any assessment of the relevant protection measures needs to be undertaken collaboratively with the traditional custodians of those particular cultural values.

The Volume 1 *Review* report and the Volume 2 consultancy report compilation contain complex and detailed legal and technical argument, making them, at times, difficult documents to work through. The author would encourage perseverance on the reader's behalf. Those preferring a more simplified overview of the *Review* findings should perhaps refer to the following sections before tackling the more in depth analyses contained in the main Volume 1 text and the original consultancy reports:

- The Executive Summary of the Volume 1 report.
- Section 1.5 (Volume 1) "Summary of constraints and opportunities affecting the involvement of Rainforest Aboriginal people in the management of the WTWHA".
- Part 5 (Volume 1) "Summary of Recommendations".
- The various executive summaries included in the individual Volume 2 consultancy reports.



Mr Bruce Lawson
Review Co-ordinator

Abbreviations, Acronyms and Specific Terminology

ALA	<i>Aboriginal Land Act 1991 (Qld)</i>
ANCA	Australian Nature Conservation Agency
ATSIC	Aboriginal and Torres Strait Islander Commission
Balkanu	Balkanu (Cape York) Development Corporation
Board	Wet Tropics Management Board
CAPs	Commercial Activity Permits
CMA	Cooperative Management Agreement
CRA	<i>Cultural Record (Landscape Queensland and Queensland Estate) Act 1987 (Qld)</i>
Cultural Records Act	As above
CYLC	Cape York Land Council
CMA	Cooperative Management Agreement
DEETYA	Commonwealth Department of Employment, Education, Training and Youth Affairs
DFSALA	Department of Family Services and Aboriginal and Islander Affairs
DNR	Queensland Department of Natural Resources
DPI	Queensland Department of Primary Industry
DoE	Queensland Department of Environment
DOGIT	Deed of Grant in Trust (form of Aboriginal and Torres Strait Islander land tenure)
dWTP	Draft Wet Tropics Plan (October 1995 version)
EIS	Environment Impact Statement
EIA	Environmental Impact Assessment
FA	<i>Forestry Act 1959 (Qld)</i>
GIS	Geographical Impact Assessment
IUCN	The International Union for the Conservation of Nature (the World Conservation Union)
LA	<i>Land Act 1994 (Qld)</i>
Land Council	Aboriginal Land Council used interchangeably with Native Title Representative Body
LPGA	<i>Local Government (Planning and Environment) Act 1990 (Qld)</i>
NCA	<i>Nature Conservation Act 1992 (Qld)</i>
RCIADIC <i>Review</i>	Royal Commission into Aboriginal Deaths in Custody The <i>Review</i> of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area
WHA	World Heritage Area
WTMA	The Wet Tropics Management Authority (The Authority)
WTP	The Wet Tropics Plan
WTWHA	Wet Tropics World Heritage Area
WTQWHACA	<i>Wet Tropics of Queensland World Heritage Area Conservation Act 1994 (Cwlth)</i>

WTWHPMA or Wet Tropics Act	<i>Wet Tropics World Heritage Protection and Management Act 1993 (Qld)</i> <i>Wet Tropics World Heritage Protection and Management Act 1993 (Qld)</i>
Bama	The name used by a large proportion of Aboriginal people (but not all: see ‘Editorial Comments’) within the WTWHA to describe themselves as Aboriginal people from the rainforests.
Country group.	The traditional estate (incorporating the bio-physical environment, and the associated cultural sites, objects, places, stories, law, knowledge and other intangible cultural property associated with that estate), recognised according to indigenous custom and tradition as belonging to a particular individual, family, or tribal group.
Grassroots	A term commonly used by Rainforest Aboriginal people to refer to individuals of the broader Aboriginal community rather than to the number of representative bodies that are often more directly involved in negotiations and political processes.
Land Council	Native Title Representative Body such as the Cape York, North Queensland, and Central Queensland Land Councils.
Meaningful Involvement	By way of a working definition (see also Yarrow 1996b). Involvement that is: <ul style="list-style-type: none"> • consistent with the aspirations of Aboriginal people, • based on all-inclusive processes focusing on equity in decision-making (as defined by agreements and protocols) • consistent with the obligations of government agencies to consult and cooperatively involve Aboriginal people consistent with any acknowledgment in legislation or policy as to the contribution that Aboriginal people can make to management, and • realistically able to be achieved within the current range of WTWHA management responsibilities.
Protocols upon.	Provide guidance in consultation and decision-making processes - they are the rules which have been agreed upon.

Whole of
Government
Approach

A uniform and coordinated inter-departmental and inter-governmental approach to management issues, with an across the board level of commitment backed up with an appropriate level of funding.

Part 1: Background

1.1 Introduction

1.1.1 Aims, objectives, and expected outcomes of the Review

The *Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area* (the *Review*) examines the procedures, policies, laws, and agreements that influence the involvement of Aboriginal people in the management of the World Heritage Area (WHA). As endorsed by the Wet Tropics Ministerial Council the *Review* considers the involvement of Rainforest Aboriginal people across all tenures and management regimes. It is not just a review of the Wet Tropics Management Authority (WTMA).

The *Review* attempts to assess which mechanisms of Aboriginal involvement have been effective, or otherwise, and identify particular opportunities or problem areas. It makes recommendations to Ministerial Council through the Board on the best ways to advance the involvement of Rainforest Aboriginal people in the management of the WHA. Particular attention is given to the protection of indigenous cultural heritage values and native title rights and interests. An investigation is made of the legal, political, technical, and financial realities that often constrain government agencies and affect Aboriginal interests.

Specific Terms of Reference (TOR) and a list of expected outcomes endorsed by Ministerial Council in March, 1995, help defined the overall aims and objectives of the *Review*.

A major objective has been identified as the development of **‘appropriate mechanisms for proceeding towards a memorandum of understanding or regional Wet Tropics agreement’** (Min Con 9 Agenda Item 3.3; see also Appendix 1). This agreement between Rainforest Aboriginal people and relevant WHA government agencies would be negotiated on the basis of the findings and recommendations arising from the fourteen TOR (in particular, TOR 12).

Finally, the *Review* of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area should not be seen as a ‘recipe book’ solution to all the issues and concerns currently facing both government agencies and Aboriginal groups alike. Those with that expectation are likely to be disappointed with this particular report. The issues are just too complex and the ground rules unclear and ever-changing for the *Review* to provide all the answers at this point in time. This is particularly true in the context of native title, where government policy is unclear and the future of native title legislation undecided.

The *Review* provides a set of short and long-term goals and directions that can be achieved by Rainforest Aboriginal people and WTWHA agencies provided commitment to negotiation and the addressing of resource inequities are met.

1.1.2 The Review Process

Background

In late 1993 the Rainforest Aboriginal Network (RAN), with the support of many Aboriginal people, urged the Wet Tropics Ministerial Council to undertake a major review of Aboriginal involvement in the Wet Tropics management scheme. The Ministerial Council agreed to the proposal and authorised the Wet Tropics Management Authority (WTMA) to develop relevant Terms of Reference. After consultation with Aboriginal people and Government departments the Board recommended 14 Terms of Reference (TOR) to Ministerial Council for final endorsement in March 1995. These TOR (and a list of expected outcomes) are presented in Appendix 1.

The WTMA provided most of the financial resources to undertake the *Review*. Significant funding was also provided by the Aboriginal and Torres Strait Island Commission (ATSIC) and the North Queensland Aboriginal Land Council for the TOR 12 and TOR 11 consultancies, respectively. Various government and non-government organisations and individuals provided extensive in-kind assistance.

Although the *Review* Coordinator was not appointed until the end of March 1996, certain aspects of the *Review* were in operation by November 1995. The *Review* was initially envisaged to take 18 months to complete (September 1997) but funding was identified by WTMA to continue operation until December 1997 in response to certain unforeseen delays.

Participation and Consultation

The *Review* process was overseen by a five member Aboriginal Steering Committee made up of representatives from various Aboriginal groups:

Steering Committee

Mr Vince Mundraby	<u>Review Chairperson</u>, (Interim Chair Bama Wabu)
Mr Phil Rist	(Girringun Elders and Reference Group)
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)

A **Departmental Reference Group (DRG)** was later established to provide policy advice and to comment on proposals arising from the *Review*. Nominated representatives were as follows:

- *Dr. Warren Nicholls (Commonwealth Department. of Environment, Science and Technology)**
- *Mr. Paul Travers (Queensland Department of Premier and Cabinet)**
- *Mr. Darryl Killin (Queensland Department. of Natural Resources; Forest Resources)**
- *Mr Allan Cattermole (Queensland Department. of Natural Resources; Forest Resources)**

- ***Mr. Geoff Meadows (Queensland Department of Environment)**
- ***Mr. Terry Piper (Queensland Department of Environment)**
- ***Mr Cameron Feltham (Far North Queensland Regional Organisation of Councils)**
- ***Brian Burkett (Queensland. Department of Family, Youth and Community Care)**

On occasions different departmental representatives to those listed above attended DRP meetings or provided advice and comment.

The Commonwealth Department of Industry, Science, and Tourism declined an offer to formally sit on the Departmental Reference Group, preferring instead to maintain a more informal relationship with the *Review*.

Input from government agencies was not just limited to these departmental nominees. The DRP served to provide a conduit for information flow between the *Review* (including the coordinator and the various consultants), the *Review* Steering Committee, and the various relevant Departments.

- The ***Review* Coordinator (Mr Bruce Lawson)** is an employee of the Wet Tropics Management Authority.
- Workshops and meetings were organised in conjunction with DNR, DoE, the three relevant Aboriginal Land Councils, and other Aboriginal representative groups (including ATSIC Regional Councils) to facilitate discussion and input from as wide a range of stakeholders as possible. Discussion papers and questionnaires were also used to generate feedback and comment.

Of the 14 Terms of Reference, five (TOR 1, 9, 11, 12, 13, 14) were undertaken by consultants due to their specialist expertise in the relevant area. The remaining eight TOR were researched and presented by the *Review* Coordinator. In many cases this research was based on a literature search of existing consultancy reports, policy documents, and briefing papers. Questionnaires, interview sessions, and workshops were also used to address the terms of reference.

The consultants contributing to the *Review* are as follows:

Lynn Baker	(TOR 12A, 12B)
Allan Dale	(TOR 12A, 12B)
Ross Johnston	(TOR 12A, 12B)
David Yarrow	(TOR 1, 9, 11, 12A, 13, 14)

Kylie Pursche as Editor, for research assistance and contributed to the development of Appendix 2a and 2b.

The WTMA funded Community Liaison Officers (CLO's) played an integral role in the overall *Review* process by providing direct comment and feedback on specific issues, facilitating

meetings and workshops, and acting as an essential information conduit to the wider Aboriginal community.

1.1.3 Structure of this document

This particular document is the first of two volumes to make up the entire *Review* report. Its purpose is to provide a thematic overview of the key themes, issues and recommendations arising from the fourteen terms of reference. The first volume also contains the recommendations relating to the step-wise development of a formal management agreement between Rainforest Aboriginal people and WTWHA managers. The development of an Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement is a key recommendation of the *Review*.

These agreements are seen as the framework on which to attach the findings of the fourteen TOR under investigation. The second volume is presented as a compilation of the consultancy reports, (plus some earlier reports pertinent to the 14 Terms of Reference), used to inform the *Review* investigation. In some cases they are a complete response to specific TOR, in others, a response to specific issues that cut across one or more TOR.

Essentially two main themes appear to link the fourteen TOR. These are based on firstly recognising Aboriginal peoples aspirations and, secondly, identifying ways of better meeting these aspirations through the evaluation of existing and potentially new mechanisms for involvement in the WTWHA. Shaping the nature of these two themes is a number of key underlying issues. As shown in Figure 1 (see page 6), these include areas of government responsibility, native title rights and interests, the draft Wet Tropics Plan, and the protection of World Heritage values. Figure 2 (see page 7) highlights the key issues in each term of reference and how they interrelate with each other.

As they appear on paper the various TOR are quite general and non-prescriptive. This has not been a problem for the *Review*. Most stakeholders, particularly Aboriginal people and their representative organisations, have a clear idea of the specific issues that need to be addressed. Consequently the *Review* process has tended to focus on issues rather than on individual TOR. This issue based approach enables the *Review* to concentrate on providing a set of tangible outcomes. The fourteen TOR still remain as the underlying framework for any recommendations and outcomes.

The *Review* is structured around the development of an Interim Negotiating Forum between Rainforest Aboriginal people and government agencies for the management of the WTWHA. This Interim Negotiating Forum will provide direction for the ongoing negotiation of the Final (Regional Wet Tropics) Agreement over the next few years. Thus the work completed from each of the terms of reference will assist in the development of this framework by indicating possible points for negotiation and areas in need of change.

TOR 14 provides guidelines to ensure that any agreement fully recognises the implications of native title rights. TOR 12 ensures that a full assessment of social, economic and environmental impacts of joint management aspirations has been undertaken from both an Aboriginal and government agency perspective. Thus the completed report focuses on linking the Terms of

Reference for the *Review* to the development of a Regional Wet Tropics Agreement (see Figure 1). Such an agreement was seen by Ministerial Council as one of the original expected outcomes of the *Review* (see Appendix 1) and was supported, in principle, by the Wet Tropics Management Authority Board of Directors (the Board) during its development in 1997.

The various TOR relating to each section throughout this report will be identified in brackets alongside each section heading.

Figure 1

Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area

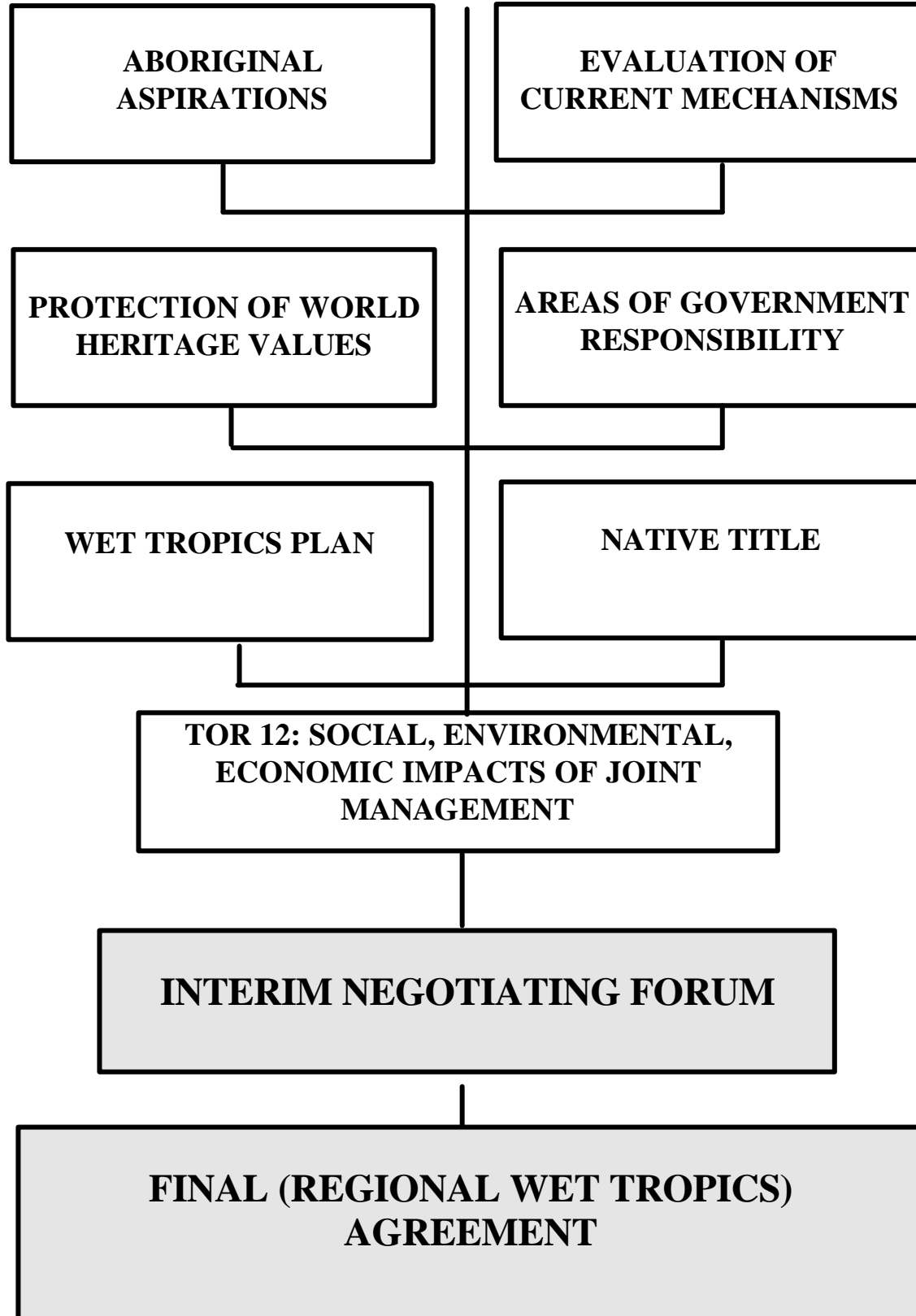
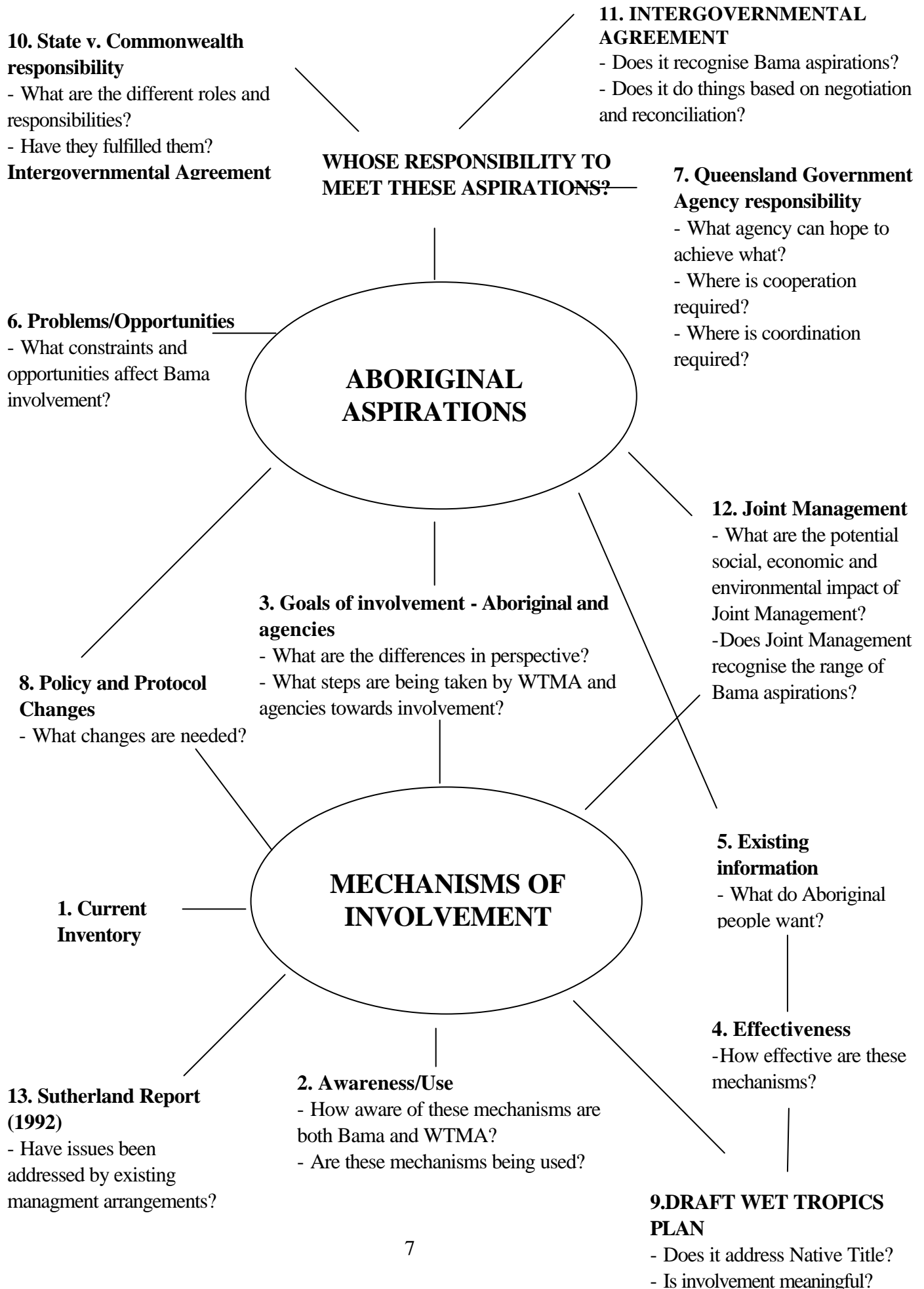


Figure 2

The 14 Terms of Reference: Key Issues and Interrelationships



14. NATIVE TITLE

1.1.4 Reviewing the literature: constraints on accurate interpretation and analysis

What is the impact of management decisions?

What does it mean for current and future

A number of research difficulties and underlying assumptions of WTWHA² have been identified before proceeding any further with this report. Discussion will focus on identifying possible shortcomings in any desktop analysis of Aboriginal aspirations and concerns, in an attempt to identify potential problem areas. In the case of this particular *Review* most concerns were able to be overcome via the 'ground-truthing' role of the *Review* Steering Committee, and from input provided by the Departmental Reference Group. However these concerns are still worth discussing in an attempt to facilitate the continued development of realistic studies in the future.

Firstly, it is important to consider the influence that culturally based differences in perspective have in shaping discussion. A significant proportion of the literature on Aboriginal involvement in protected area management is written by non-indigenous people. Thus there is the potential for analysis to be tainted by the particular social, cultural or political baggage that each author brings to the situation. Ideally there is a need for any conclusions or strategies to be 'reality-tested' by Aboriginal people themselves. This, in itself, can be problematic given the inherent difficulties of cross-cultural communication. Many problems, including a lack of support from Bama, could be overcome by collaborative studies or by Aboriginal people themselves directing the research through a project steering committee. The Kuku Yalanji fire study, coordinated by Rosemary Hill (James Cook University) and conducted during the period of this *Review*, should be seen as a benchmark for the type of collaborative research possible.

Secondly, there is a risk that any analysis of government policy may overlook the fact that protected area managers, sometimes even despite their best intentions, are frequently constrained by legislation, bureaucratic processes, and a lack of resources. Any attempts to provide 'quick-fix' recommendations to perceived shortcomings in current government policy that overlook the intricacies of the bureaucratic pathway risk being strategically unsound and destined to fail. Thus any consideration of problem areas needs to understand what is happening behind the scenes in order to develop realistic strategies that have the potential to facilitate change. In many cases significant changes to the levels and effectiveness of Aboriginal involvement in WTWHA management will require a turn around in both the current political climate and most bureaucratic cultures. This last point will be discussed further throughout the report.

The third issue to be aware of is the fact that with the enactment of the *Native Title Act 1993* (Cwlth), the more recent High Court *Wik* decision and the development of specific social justice programs and recommendations, the pace of land-use politics is at a level not seen before in Australian history (Guy 1996). Consequently there has often been insufficient time to work through and 'test case' the many and varied legal implications and subtleties of new statutes or agreements. This in turn means that it is often very difficult for both Aboriginal people and government land managers alike to develop a policy framework for strategies when the underlying statutory foundation is so unclear or contentious.

Finally, it is important to avoid generalisation when identifying Aboriginal aspirations for WTWHA management. Despite a commonly held perception by non-indigenous people, there is in fact no single pan-Aboriginal culture or uniform set of values common to all groups (Jones 1996). Consequently, it is incorrect to assume that management issues and solutions applicable to one situation will automatically be relevant to the range of separate traditional Aboriginal estates and historical associations to be found within the WTWHA.

In summary, it is recommended that any discussion of Aboriginal involvement in WTWHA management (including the one provided in this particular paper) needs to be considered in the context of the issues and concerns mentioned above. Not to do so would risk trivialising and underestimating what is essentially an extremely complex issue.

1.2 WTWHA Profile

1.2.1 Biophysical setting

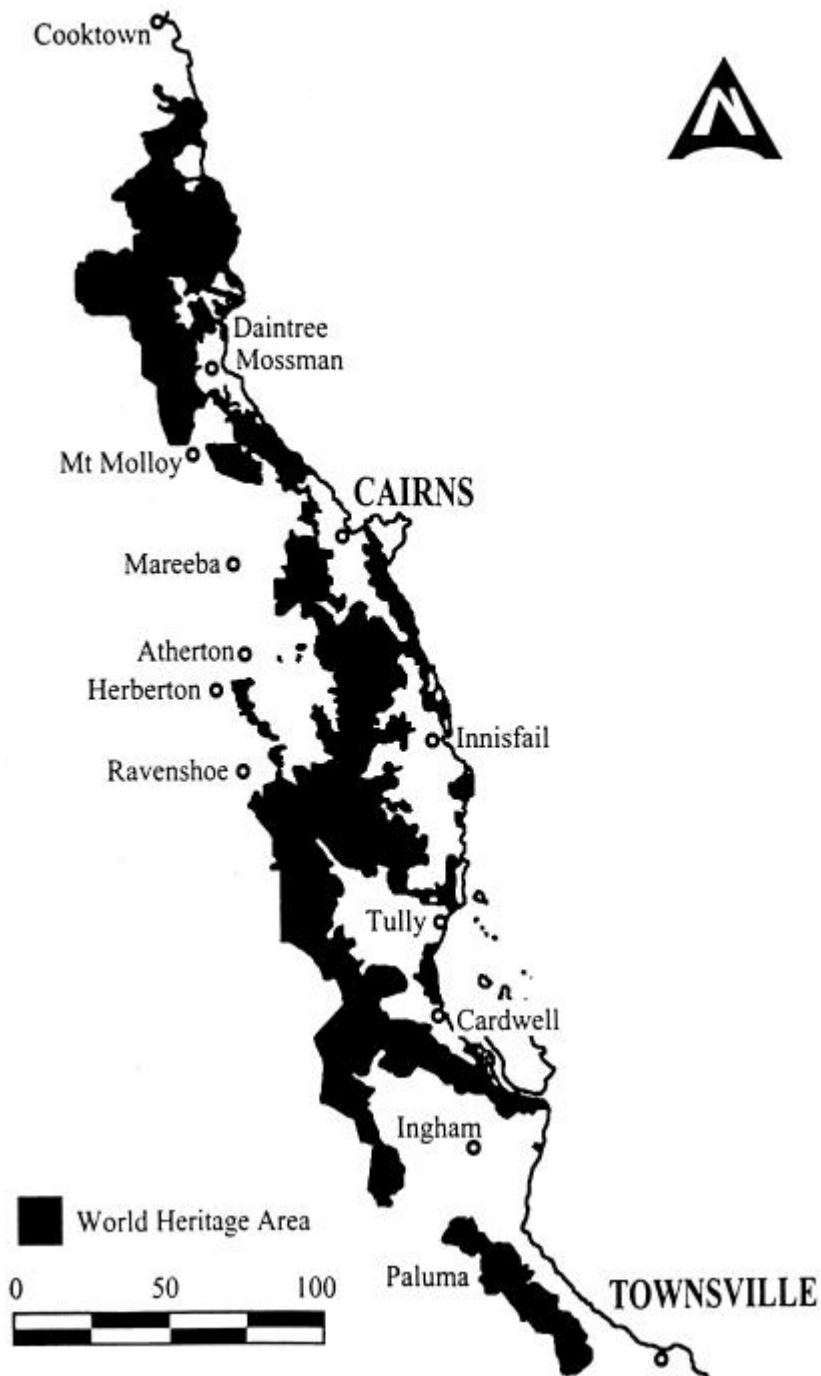
The wet tropical rainforests of northern Queensland are recognised by many western observers as amongst the most outstanding natural features on earth. The special significance of the region was formally recognised in 1988 when 900,000 hectares of tropical rainforest and associated habitats were placed on the World Heritage List. Known as the Wet Tropics World Heritage Area (WTWHA), this region of spectacular scenery and high biodiversity extends in a narrow band for approximately 450 km from Townsville to Cooktown (Wet Tropics Management Authority 1995) (Map 1).

This range of tropical forests contains one of the most diverse and complete living records of the major stages in the evolution of terrestrial plants. It also provides one of the most complete and living records of the history of the marsupials and the songbirds. The large number of endemic and relict species particularly amongst the plant community is extremely high (Wet Tropics Management Authority). For a more detailed account of the region's biological and evolutionary significance reference is best made elsewhere (Rainforest Conservation Society of Queensland 1986; Wet Tropics Management Authority 1995; Cairns and Far North Environment Centre 1995).

1.2.2 Socio-political setting

The complexity and diversity that is so characteristic of the region's natural environment is matched by the complexity of the contemporary and traditional land tenure systems and the associated management regimes that in part define the region's socio-political context. Historically, indigenous land ownership and management rights have tended to be overlooked or devalued by the more dominant non-indigenous system. The situation is further complicated by the fact that some Rainforest Aboriginal groups have been

Map 1: Wet Tropics World Heritage Area



dispersed and fragmented in the post-European settlement period making traditional ownership patterns, in some cases, not always as straightforward as government land managers would like. Not surprisingly, from a Bama perspective, the western land tenure and management system is perceived to be just as complex and convoluted.

1.2.2.1 The indigenous cultural landscape dimension

The WTWHA is part of a series of 'living' cultural landscapes belonging to Bama (Rainforest Aboriginal people) for whom the region has important social, economic, and spiritual significance (Horsfall, 1990; Webb, 1995). A separate set of Aboriginal environmental management regimes exists, in turn, to care for or promote the integrity of these cultural landscapes (Webb, 1995). There are, for example, up to 46 incorporated Aboriginal groups within the region (WTMA, 1993), including three land councils and peak representative bodies such as Bama Wabu, Giringun Elders and Reference Group Aboriginal Corporation, and the Kuku Yalanji Reference Group.

To Rainforest Aboriginal people the western tenure system is subordinate to the original cultural landscape system developed over many thousands of years. As such most Bama do not accept the legitimacy of the view that the western tenure system, and its associated statutory provisions, provide the framework and direction for WTWHA management.

1.2.2.2 The native title perspective

In addition, at least 80% of the WTWHA is also potentially claimable by a number of Aboriginal groups under the *Native Title Act (1993)* (Cwlth) (NTA) (Yarrow, 1996a). Although a number of claims have been lodged with the Native Title Tribunal (twelve for the region, as of July, 1997) none have yet reached the final determination stage. Outside of this essentially western approach to native title offered by the *NTA 1993*, Bama assert their prior ownership of the WTWHA under common law (as per the *Mabo* High Court decision). At this point in time the implications for land ownership and management within the WTWHA of both common law native title and the formal recognition of native title rights under the *NTA 1993*, have not been fully agreed upon. A complicating factor has been the lack of a formal response by both State and Commonwealth government departments to a number of the legal arguments presented in the TOR 14 consultancy by David Yarrow (Yarrow, 1996b). In addition not all of the arguments making up the native title debate have a purely managerial or legal basis. Discussion is often based on misinformation, mistrust, and the pursuance of personal agendas.

1.2.2.3 Western land tenure

From a western perspective, the WTWHA contains nearly 700 parcels of land, including private property, national parks, state forests and a range of leases. Approximately 95% of the region is controlled under various tenure arrangements by the State of Queensland, with the Department of Natural Resources and the Department of Environment sharing the main land management responsibilities.

Parts of 14 local government areas (including Aboriginal 'Deed of Grant in Trust' reserves) also lie within the World Heritage Area boundary. The Wet Tropics Management Authority was established in 1992 to coordinate the management of the region.

1.2.2.4 Cultural values

The Wet Tropics of Queensland are included on the World Heritage List for its natural heritage values only. This is not to suggest that the cultural values of the area are not highly significant. To Bama, this fact goes without saying.

Rainforest Aboriginal people (and, in fact, indigenous Australians generally) see the trend by western managers to manage a region's values according to two distinct categories (ie. natural and cultural values) as artificial and inadequate. Rainforest Aboriginal people adopt a holistic view of the landscape, asserting that a region's natural and cultural values are in fact inseparably interwoven within the social, cultural, economic, and legal framework of Bama custom and tradition. They are also concerned at the tendency, particularly at the day-to-day level of management, by western managers to treat cultural heritage considerations as secondary to those afforded to natural values.

Despite the hesitancy of many day-to-day WTWHA managers to implement a more balanced approach to values protection there is a growing international trend amongst protected area managers to recognise the merits of such an approach. For example, the IVth World Congress on National Parks and Protected Areas identified that:

'Increasingly, the resources which justify establishment of protected areas include cultural landscapes and adapted natural systems created by long-spirituality and subsistence practices, which frequently contribute to the maintenance of biological diversity. Protected areas are thus to be seen as making important contributions to conserving cultural as well as biological diversity.'

(IUCN 1993, p 7)

The cultural survival of contemporary Rainforest Aboriginal people is also seen to be inextricably linked to the integrity of the region's rich and varied cultural values (Fourmile, 1995).

Dale et al. (1997a, p 3) (TOR 12 consultancy part A) identified that:

'Bama are deeply concerned that their cultural identity is dying, and that newly found rights are being regulated before they are able to take advantage of the social and economic benefits they provide'.

There are at least 16 Aboriginal language groups whose estates include part of the WTWHA (WTMA, 1993). Each group has their own traditional links with particular areas, and a responsibility for its proper management defined by the groups particular set of customs and traditions. From a western scientific perspective Rainforest Aboriginal people are seen to maintain a unique and distinctive spiritual and economic association with the region (Horsfall and Fuary 1988; Horsfall, 1990). In turn the significance of this association has also been recognised by the massive north Queensland tourist industry, resulting in an ever increasing range of 'Aboriginal cultural experiences' on the market.

Despite this recognition of the significance of the region's cultural heritage the focus of management throughout the WTWHA is primarily the maintenance and protection of the natural values for which the region was originally recognised. This management focus falls within the guidelines of the World Heritage Convention, to which Australia became a signatory in 1974. This does not mean that the region's cultural values are ignored within the management scenario. Various pieces of both state and commonwealth legislation provide an obligation for the region's cultural heritage to be protected, as do a number of national and international agreements and conventions (including Article 4 of the World Heritage Convention). However, this obligation is not as critical as if the WTWHA was also listed for its cultural values.

In many cases Bama are unhappy with the level of protection afforded by current legislation and policy (see, for example Fourmile 1989, 1995; Sutherland 1993; Elders and Reference Group 1994; Nayutah 1994; Bama Wabu 1996). In some cases this concern relates more with the implementation of legislation than with the actual nature of the legislation itself. Obligations for cultural heritage protection under existing State and Commonwealth legislation are a major incentive for the ongoing negotiation of management agreements between Rainforest Aboriginal people and WTWHA managers (Dale et al. 1997a: TOR 12).

1.2.2.5 Dispossession

Certainly conflict is no stranger to the WTWHA. The forced dispossession of Aboriginal people from their traditional estates began about 130 years ago (Bottoms, 1992). As Horsfall and Fuary (1988, p 14) note:

“ Aboriginal people were assaulted on all fronts: they worked as forced labour or for rations in a number of industries, they were shot or poisoned as the demand for their labour increased, they suffered from a range of introduced diseases, became addicted to tobacco, alcohol and opium, and were in many cases removed from their land and placed in missions or on government reserves”

As early as the 1930's conflict between the newly established non-indigenous occupants developed over resource use in the region (Wet Tropics Management Authority, 1995). Since then growing awareness of the conservation values, the potential for real estate profits, and the tourism potential of the region has resulted in new dimensions to the controversy. This peaked with the proposal to list the region in the mid eighties.

Debates raged in the Queensland and Federal parliaments, and communities became divided over the issue (Wet Tropics Management Authority, 1995). The then state government opposed the listing, and a change of government was required before a shared management scheme between the Queensland and Commonwealth governments could finally be agreed upon (Webb, 1995).

Many rainforest Aboriginal people and representative organisations also objected strongly to the listing proposal. One particular account states:

“ No other non-government landowners surrendered so much land to World Heritage listing as did the rainforest Aboriginal peoples. Without serious discussion or negotiation, rainforest Aboriginal people were forced to contribute the most of all the landholders in order to bring greater benefit to the new ‘lifestylers’ and the hundreds of thousands of visitors and/or tourists now dominant in regional politics and commerce”

(Bama Wabu 1996, p 8).

1.2.2.6 Conclusion

Particularly when considering the interface between indigenous and non-indigenous aspirations, rights, and interests any analysis of controversy over land-use in the WTWHA needs to focus on this issue of power and equity. Furthermore, any meaningful examination of heritage legislation and management in the region needs to take into account management process bias, equity in decision-making, and levels of empowerment and control. Fundamental issues such as the recognition and accommodation of traditional land ownership rights and responsibilities and other obligations and interests under customary law cannot be excluded from any realistic attempt to reconcile and resolve outstanding conflict.

In summary any discussion of the involvement of Aboriginal people in the management of the WTWHA needs to consider the opportunities available for Bama to meet their traditional obligations and contemporary aspirations *on their terms and in their own way*. After all, the particular world views of Aboriginal groups within the WTWHA do not necessarily fit into the ideological, institutional, statutory and administrative frameworks preferred by western land managers.

1.3 National and International Obligations and Responsibilities

WTWHA legislation and management policy does not develop in isolation from events and attitudes nationally and internationally. There are a range of domestic and international laws, conventions, policies and recommendations that have the potential to influence the way Aboriginal issues are currently addressed in Far North Queensland. This section proposes to briefly examine these factors in terms of how these, in many cases, morally and legally, obligate relevant governments to facilitate Aboriginal participation in the management of the various tenures within the WTWHA. For a more detailed account reference is best made to Fourmile (1995), Archer (1996), Lawrence (1996).

1.3.1 The domestic situation

A number of ethical, administrative and legislative developments in Australia have recently furthered Aboriginal rights, making it inevitable that some form of joint management arrangement will be a standard component of natural resource and land management in northern Australia (Dale 1993). The enactment of the *Northern Territory Land Rights Act 1976* (Cwlth), (including amendments to enable already established national parks to be claimed), and the establishment of joint management arrangements at Uluru - Kata Tjuta, Kakadu, Gurig, and

Nitmiluk national parks set a precedent for protected area management in Australia that firmly linked indigenous involvement with the issue of land rights. This link established a new social context for protected area management that continues, to this day, to attract conflict as it challenges the well entrenched view of a national park needing to be uninhabited.

The developing connection between protected area management and Aboriginal self-determination and cultural survival has been bolstered in those states and territories lacking adequate land rights legislation by the Mabo and Wik decisions and the subsequent *Native Title Act 1993* (Cwlth) (NTA). The implications of native title as a management issue in the WTWHA will be considered in a later section.

A number of other government initiatives and strategies have also helped to focus greater attention to Aboriginal issues and, in some cases, precipitate change. In June 1992 all governments indicated support for most of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, including Recommendation 315, the Millstream Recommendation, and Recommendation 314⁶. In addition, governments have agreed to undertake a range of measures under the Ecologically Sustainable Development Strategy to **‘ensure full participation by Aboriginal and Torres Strait Islander peoples in community progress towards ESD’** (National Strategy for Ecologically Sustainable Development, p 47; after HRSCERA 1993).

The value of traditional skills and knowledge in protected area management is also recognised in the National Strategy for the Conservation of Australia’s Biodiversity.

This document highlights the importance of indigenous knowledge in enhancing the knowledge, understanding, and conservation of biological diversity (National Strategy for the Conservation of Australia’s Biodiversity, p 31; after HRSCERA 1993).

A recent review of World Heritage Area management in Australia by a House of Representatives Standing Committee on the Environment , Recreation and the Arts recommended that:

‘ the Commonwealth Government encourage managing agencies to review the involvement of indigenous people in the management of world heritage areas where they have continuing, traditional associations, with a view to:

a) identifying additional measures for their involvement; and

b) implementing these measures’

(HRSCERA 1996, p 69)

⁶ Recommendation 314 cites the need for adequate notification, consultation, and negotiation between government representatives and Aboriginal groups affected by a major proposal for a mining or **tourism** development.

Recommendation 315 provides a set of 10 principles aimed specifically at advancing the protection and preservation of the rights and interests of Aboriginal people with cultural, historical, and traditional association with national parks.

It is interesting to note that the Committee made a special point of stating that once identified these additional measures for involving indigenous people in WHA management need then to be actually implemented. It is suggested that this perhaps reflects a concern by the Committee to see that any relevant and appropriate recommendations do not get passed over without due consideration. Another significant comment from this particular review is that the Commonwealth Department of Environment Science and Technology (DEST) is obligated through its stated functions to ensure that cultural values are protected even though a WHA property isn't listed for cultural values (HRSCERA 1996, p 67). Given that the Minister responsible for DEST is also a member of the WTWHA Ministerial Council (the main decision-making body for the Wet Tropics), then this obligation has significant implications for the protection of Aboriginal cultural values within the WTWHA.

Finally, and again within the specific context of the WTWHA, Section 10 (5) of the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) (WTWHPMA) **compels the Wet Tropics Management Authority to, as far as practicable:**

(a) have regard to the Aboriginal tradition of Aboriginal people particularly concerned with the land in the Wet Tropics Area; and

(b) liaise, and cooperate with, Aboriginal people particularly concerned with land in the Wet Tropics Area.

Furthermore, in the Preamble to the WTWHPMA there is an acknowledgment by the Queensland parliament of the significant contribution that Bama can make to the future management of the region, particularly through joint management agreements. However, to date there have been no cooperative or joint management agreements developed between Aboriginal people, the WTMA, and/or relevant landholders within the region.

In addition, the "Protection Through Partnerships" document (WTMA, 1997) (companion volume to the statutory Wet Tropics Plan) outlines WTMA policies and actions on a range of Aboriginal issues, including the need for the Authority to develop a number of specific guidelines and protocols collaboratively with Rainforest Aboriginal people (see Appendix 4). It also proposes that the Authority will encourage and facilitate the development of management agreements between government agencies and Rainforest Aboriginal people subject to (a) the agreement being consistent with Australia's obligations under the World Heritage Convention, and (b) the involvement and support of the actual land manager or owner. The *Review* provides a range of mechanisms and an underlying framework to facilitate the development and implementation of these particular policy items and proposed actions.

There are also significant existing obligations for the recognition of Aboriginal interests and for the cooperative involvement of Aboriginal people under the *Nature Conservation Act 1992* (Qld) (NCA) which, in comparison to legislation in most other Australian state jurisdictions, reflect a relatively progressive approach to nature conservation and management. In particular there is a requirement under the *Nature Conservation Act 1992* (Qld) to:

(a) as far as practicable, administer the Act in consultation with, and having regard to the views and interests of Aboriginal people and Torres Strait Islanders (s.6); and,

(b) achieve the object of the Act (viz. the conservation of nature) recognising the interest of Aboriginal people and Torres Strait Islanders in protected areas and their cooperative involvement in the conservation of nature (s.5(f)).

However, despite this approach, the provisions of the NCA with respect to cooperative management with Aboriginal people have led to few finalised outcomes.

At the same time as the appearance of these statutory and policy changes, there has been a growing awareness amongst the scientific community of the influence that Aboriginal land management practices have had in shaping the Australian landscape. There has also been wider acceptance and greater use of the contribution that traditional knowledge can make to the maintenance of biodiversity (HRSCERA 1993; see also Baker *et al.* 1992). In contrast to this development, is the erratic history of the social justice and Aboriginal reconciliation debate. This debate (particularly as portrayed by the media) has proven to be a very fickle and unpredictable influence on the public acceptance of Aboriginal involvement in conservation. It appears to change constantly as 'mainstream' views on Aboriginal issues vary according to whether the media is currently constructing social images and attitudes based on its attention to the Cathy Freemans or the Pauline Hansons of Australian society.

1.3.2 International events and instruments

On the international scene there are a number of treaties and conventions of relevance to indigenous involvement in WTWHA management to which the Commonwealth Government is a party. By virtue of the Australian Constitution [Section 51 (xxxix)] the States are also bound (and in some cases legally) to these instruments. For the purposes of this particular paper the most important instruments include:

(a) 1975 IUCN Zaire Resolution on the Protection of Traditional Ways of Life

* IUCN member governments (including Australia) devise means by which lands of indigenous people could be brought into conservation areas without loss of use and tenure rights;

* Member governments to recognise rights of people to live on traditional lands;

* Protected areas to be established in consultation with traditional owners, and no indigenous people should be displaced by creation of a protected area

(after, Lawrence, 1996).

(b) Recommendation 6: People and Protected Areas. The IVth World Congress on National Parks and Protected Areas

- * Governments recognise the needs and aspirations of local communities in and around protected areas. Ensure the continuity and development of social and cultural values;
- * IUCN, governments and protected area managers incorporate customary and indigenous tenure and resource use and control systems as a means of enhancing biodiversity conservation;
- * governments ensure that the planning process for protected areas:
 - are integrated with programs for sustainable development of local cultures and local economies, and
 - use and enhance local knowledge and decision-making processes
- * governments and international bodies to recognise non-government and community based organisations as partners in protected area managers

(McNeely, 1992).

(c) Chapter 26 of Agenda 21: 1992 UN Conference on Environment and Development (Rio Earth Summit)

- * Emphasises role of indigenous communities in management of natural and cultural resources and their effective participation in the achievement of sustainable development
(after Lawrence, 1996).

(d) International Convention for the Conservation of Biological Diversity (ratified in Australia December 1993)

- * Article 8(j) - respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities and promote the application of the same (subject to approval of the holders of the knowledge) to conservation practice.
- * Article 10(c) - protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation and sustainable use requirements (after Fourmile, 1995).

(e) Various conventions and indigenous agreements that enshrine the cultural rights and rights to self-determination of indigenous people as fundamental human rights.

These include:

- * International Labour Organisation's 1989 Indigenous and Tribal People's Convention (No. 169)
- * UN International Covenant on Civil and Political Rights (1966)
- * UN Covenant on Economic, Social and Cultural Rights (after Fourmile 1995, Lawrence 1996).

In particular, **Article 27 of the International Covenant of Civil and Political Rights provides the recommendation that:**

‘In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the rights, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’

(cited in Yarrow 1996a, p 41)

At this point in the discussion it is worth digressing slightly to provide a concrete example of how Article 27 has implications for WTWHA management. Bama assert that the right to burn, access and traverse country and to utilise the natural resources of protected areas is fundamental to their religion and culture, and fundamental to the proper management of the landscape. Thus any restrictions on their ability to carry out these activities that exist under the current management regimes of the WTWHA⁷ are in contravention of Article 27 (Henrietta Fourmile pers. comm., September 1996).

Participation at international human rights forums and IUCN conferences, and ratification of and support for the various conventions and resolutions noted above means that Australia supports a strong moral and political commitment to respect the involvement of indigenous people in protected area management (Lawrence, 1996). Ensuing discussion will focus on how effectively this suggested commitment to ‘respect’ Aboriginal involvement is incorporated in the management of the WTWHA.

1.4 The Implications of Differences in World View for WTWHA Management

The notion of ‘the right way of doing something’ varies according to cultural background and a person’s or organisation’s collective set of values. Thus in the context of WTWHA management, the ‘right way’ of managing the Wet Tropics varies according to the values that one has for the region. This obviously has profound implications for any attempt to clearly identify issues and to develop management policies that are able to balance the resource management interests of both indigenous and non-indigenous people.

In turn this has a number of implications for the development of protected area policy that reflects the needs and aspirations of Aboriginal people in the WTWHA. These implications are addressed by way of the following suggested principles and guidelines:

Principles and Guidelines

(1) Different ways of interacting with and relating to the natural environment will lead to different ways of perceiving how it works, and accordingly, how it should be managed. Thus the issues

⁷ In many cases Aboriginal people are legally required to obtain a permit to carry out these activities. There is no guarantee that a permit will be provided, or that conditions on the permit not regulate Aboriginal interests. Burning in a rainforest is also prohibited within the WTWHA in accordance with the Wet Tropics Plan.

and priorities associated with WTWHA policy cannot be automatically assumed to be the same for Bama and non-indigenous peoples.

(2) Bama perspectives and attitudes must be seen to be legitimate in their own right even if they are totally incompatible or lack common ground with the view of the government land management agencies.

(3) Any attempt to develop policy that is amenable to different cultural perspectives should be made on the basis that no one value system is more correct than another. Compromise, mutual respect, and the seeking of 'common ground' is often the key to the equitable resolution of complex issues.

(4) If joint or cooperative approaches to WTWHA management are to succeed on an equitable basis adequate time and opportunity must be made available to Bama to define their own problems and issues. Indigenous methods of problem solving need to be accommodated if indigenous land management perspectives are to be respected and developed.

(5) Even within the indigenous population of the WTWHA the range of differences in traditions, interests, and degree of contact with 'western' values will often result in differences in perceptions of land use and management. There is no such thing as the one common Bama ethos (even though certain values and attitudes are common to many groups). Consequently, in many cases, there is no one common management solution across all traditional estates and land tenures.

(6) Bama customary law and traditions are at least as equally legitimate and binding as any form of western legislation. Thus the land ownership patterns and land management obligations dictated to Rainforest Aboriginal by traditional law need to be seen as no less significant than the statutory land management interests and responsibilities of western protected area managers. Any equitable resolution of competing interests will need to take both legal systems into consideration.

These factors make it a very difficult task to address all the issues of concern to both Bama and the western land managers. A positive starting point is for the dominant cultural group to avoid deciding upon the needs of the indigenous population from its own cultural perspective. Such an approach is biased and frequently doomed to failure. As Webb (1995, p 60) suggests;

'It is imperative that WTMA move away from planning *for* Aboriginal peoples' involvement in management, and towards planning *with* Aboriginal people for the maintenance and continuing reproduction of Aboriginal culture'.

Only Bama can legitimately identify their own set of values and priorities for a region. Then and only then can the resolution of competing interest between indigenous and non-indigenous people begin to be equitable. Similarly, any attempts to promote or develop the specific interests of Bama need to be founded on the understanding that those interests were first identified by the original inhabitants themselves.

Recommendations

- That Rainforest Aboriginal people be afforded the opportunity, in the spirit of self-determination, to define their own needs, aspirations, and priorities for WTWHA management.
- That in the spirit of reconciliation and in keeping with existing cultural heritage obligations, WTWHA managers recognise Bama perspectives and values as legitimate in their own right, and accommodate them equitably within the various management regimes.
- That WTWHA managers allow adequate time and resources to accommodate traditional and contemporary Rainforest Aboriginal decision-making and problem solving mechanisms.

Perhaps the biggest challenge comes from the fact that historically the western concept of a protected area⁸ has evolved from the basic premise that there is no room for people to be living in and harvesting⁹ the resources of a protected area. There is an expectation that a protected area needs to be pristine and free from human habitation. With this perspective historically driving management philosophy it is little wonder that Aboriginal people have found it difficult over the years to regain access and resource rights in conservation areas. Head (1990, 1992) and IUCN (1993) argue that such a management perspective is inherently flawed and that it is incongruous to prevent Aboriginal activity in protected areas given that it was such activity that gave protected areas their present valued shape in the first place. This is not to suggest that it is possible to turn back the clock to reinstate a pre-European management scenario. There are just too many contemporary social and environmental issues and concerns to make this a realistic proposition.

Many authors dismiss the concept of ‘wilderness’ especially where it is used to relay the values attributed to a protected area. Both Head (1992) and Langton (1996) argue that the concept of wilderness is based on an untenable scientific position and prefer to use terms such as ‘cultural landscape’ that more realistically reflect Aboriginal use and management of the environment. Just as the myth of ‘terra nullius’ was used to justify the dispossession of indigenous Australians so too were (and in many cases still are) the notions of ‘pristine’ and ‘wilderness’ used to justify excluding Aboriginal activity from what is deemed as acceptable and appropriate uses for a protected area. Despite storing at the back of their minds that vast areas of Australia have been the homes and property of Aboriginal Australians for many thousands of years the concept of an inhabited protected area or a protected area owned by Aboriginal people is still a contradiction in terms for many non-indigenous Australians (adapted from Head, 1992). Furthermore, mainstream Australian society has shown in recent years to object strongly to what it perceives

⁸ In this context the term protected areas is used in its more general sense to describe areas of land set aside to protect certain identified natural and cultural heritage values. In this sense it is not restricted to just those protected areas defined under the *Nature Conservation Act 1992* (Qld).

⁹ Note that in certain protected areas around Australia regulated fishing is seen as an appropriate activity, as is regulated seed collection. However, in general terms, resource extraction does not readily fit into the historical view of appropriate protected area activities.

to be the preferential treatment afforded to the indigenous community (see for example Ponte, 1996). This is the basis of much of the opposition to the concept of the Aboriginal ownership and management of protected areas.

Other concerns focus on the issues of Aboriginal hunting and fire management in protected areas and on the physical impacts of Aboriginal communities. In response Head (1990, p 45) suggests that **‘Although there is no shortage of anecdotal evidence on the favourability or otherwise of such impacts [Aboriginal activity within protected areas], there is a distinct lack of systematic monitoring.’** Given an absence of hard data it can’t be assumed that Aboriginal activity is automatically a negative aspect of Aboriginal involvement in protected areas just because such activity doesn’t fit into the socially constructed view of what is an acceptable use. It may be, as Head (1990) suggests, that the western historical notion of a pristine uninhabited protected area is in reality a somewhat unreasonable and unrealistic expectation. Nevertheless, much of the criticism by conservation interests, particularly over the issue of the use of modern hunting technology by Aboriginal people, remains unresolved. The conflict essentially arises from differences in value systems and cultural attitudes to such issues as the status of native and introduced species within the protected area scenario, and the meaning of the term ‘tradition’ (Lawrence 1996; Ponte 1996).

What is also frequently overlooked is the fact that Aboriginal people have, (both in the past and in the present), a very positive role to play in the maintenance of biodiversity. (See Dale et al. 1997: TOR 12B Report for specific examples of the value of Aboriginal scientific knowledge and land management techniques for WTWHA management).

Defining ‘country’, defining ‘land’

The rise of environmental awareness since the 1970s in Australia has not provided a means of linking Aboriginal and non-Aboriginal values and attitudes to land as might have been expected (Lawrence 1996). In fact values and perceptions of land and attitudes towards protected area management continue to divide the two cultural groups. For Aboriginal people ‘country’ is more than just an exploitable economic resource; it is also the basis of cultural identity and spiritual beliefs. For non-Aboriginal Australians land is either a commodity to be exploited for its economic value or set aside from use to preserve its conservation, recreation, and aesthetic value. Furthermore, when it comes to the management of a region’s values Aboriginal people tend to adopt a more integrated and holistic approach whereas non-Aboriginal regimes have a tendency to distinguish and divide their energies between natural and cultural heritage values.

It is not surprising that these differences in attitude towards land and associated differences in land management and land-use philosophies have resulted in different expectations of what joint or cooperative management arrangements should and do provide. In fact, it is this fundamental difference in the perceptions of the purposes of shared decision-making that forms much of the basis for disagreement between government agencies and traditional owners. This is particularly true for the WTWHA where there is the added dimension of more than the one government agency with land management responsibilities, and the fact that there is such a diverse range of aspirations and needs among the range of often quite separate and independent Aboriginal groups.

By way of generalisation, non-indigenous people view, such arrangements as joint management, as a means of balancing Aboriginal interests with western conservation needs. In contrast Aboriginal people tend to view joint management as a process that provides them with an opportunity for community development, land rights, self-determination, cultural survival, employment and skills acquisition (Lawrence 1996). This is the basis of much of the impasse that exists in negotiations between Aboriginal people and protected area managers outside of land that is not formally recognised as Aboriginal owned. The fact is that barriers to the acceptance and accommodation of many indigenous aspirations will only begin to be broken down through the formal acknowledgment of land ownership or traditional use rights.

Shared decision-making structures

Thus it is to be argued in this *Review* that the desired outcomes of shared decision-making should in fact be the establishment of management processes that empower Aboriginal participants. These processes, whatever their underlying framework, should focus on meaningful consultation, negotiation, and the recognition and respect of traditional rights. It is not sufficient to merely establish a set of formal structures and legal guarantees because these will, more than likely, be developed and implemented from within an institutional culture that is often far removed from the perspective and ‘world view’ of the Aboriginal minority.

The lesson for western WTWHA managers is that shared decision-making structures are a means to an end, and not just an end in themselves. To be successful in terms of facilitating real outcomes they need to be based on negotiation and equity, and be able to accommodate the Aboriginal way of doing things. If changes based on reconciliation and fair-mindedness are to occur then a greater and more consistent commitment to accommodating cultural differences at both the policy and implementation levels of management is required. This is no easy ask, and will require a great deal of additional resources, cooperation and compromise from both sides.

A good starting point is ongoing commitment by Rainforest Aboriginal people and government agencies to a process of negotiated and staged agreements based on (a) initially seeking interim measures, and (b) moving forward over time to establish a more detailed and culturally appropriate management model that can deliver realistic and workable outcomes.

Recommendation

- The notion of an Interim Negotiating Forum and Final Agreement (or Regional Wet Tropics Agreement) is the key recommendation of this Review. These agreements are seen as the framework on which to attach the findings of the fourteen TOR examined and the way forward to meet the needs of both Rainforest Aboriginal people and government WTWHA managers.

1.5 Summary of the constraints and opportunities affecting the involvement of Rainforest Aboriginal people in the management of the WTWHA

This section summarises the first four sections of this document and the Volume 2 TOR 12 consultancy reports so as to provide a broad overview of those constraints and opportunities seen to affect the involvement of Aboriginal people in WTWHA management. This is in keeping with Term of Reference 6 of the *Review*, stated as follows:

TOR 6: *Identify and discuss any constraints and opportunities likely to affect the involvement of Aboriginal people in World Heritage management and the achievement of Aboriginal aspirations in this regard.*

For a more detailed account of the particular constraints and opportunities listed, reference is best made back to the original text, and in particular, to the original TOR 12A and 12B consultancy reports.

1.5.1 Constraints

(a) Differences in world view

There are a number of significant philosophical and cultural differences in the way government and Bama land managers view the Wet Tropics bioregion. These differences relate firstly to the identification and significance afforded to what are seen as the region's values, and secondly, to the determination of how those values are to be managed. Given the often wide gap between the two culturally very different land management perspectives and in the limited level of opportunity currently afforded to Aboriginal management input, it becomes quite apparent that any attempts to accommodate Aboriginal interests have some very basic equity and philosophical issues to resolve. In simple terms, a major constraint to effecting an increased level of Aboriginal management involvement is the fact that 'the Bama way of looking and doing things' is in many ways so different to the more politically dominant and established western approach.

Key differences in perspective include:

- Historically the western approach to protected area management is based on the underlying concept of an essentially uninhabited area of land set aside to maximise wilderness values and to protect and maintain biodiversity. The western concept of wilderness simply doesn't recognise or accommodate the notion of a landscape shaped by thousands of years of sustainable Aboriginal use of its resources. In essence mainstream public opinion generally doesn't sit well with the idea of Rainforest Aboriginal people living on and utilising the resources of a World Heritage area.
- The dominant western approach to land ownership and land management is struggling to come to terms with the notion of a pre-existing and (in many cases) extant set of native title rights and interests over the landscape.

- Aboriginal people see themselves, in keeping with their status as the original inhabitants and traditional owners of the landscape, as landholders. They do not see themselves, as many of the relevant statutes and most government land management agencies do, as just another stakeholder with the same status as other interest groups such as bushwalking enthusiasts.
- Historically the western approach of dividing the values of a region into two distinct management categories of natural and cultural heritage (or resources) does not match the more holistic Bama management approach of recognising an indivisible nature/culture nexus.

(b) Management structures and process bias

Aboriginal people appear as unequal participants in the consultation, negotiation and management processes, even those established essentially to facilitate their particular management input. Meeting locations, procedures, and language genres often do not take into account the requirements of Aboriginal participants. Administrative and legislative time constraints on decision-making processes (eg. turn-around times for permit application assessment) do not readily accommodate traditional decision-making processes. Individual Aboriginal people and many 'grassroots' community organisations do not have the resources to participate equitably in negotiations with government agencies or with the private sector. In many cases, mechanisms established to facilitate Bama involvement have not produced the desired outcomes simply because Bama do not have the resources or, at times, the technical expertise to provide what is asked of them.

Furthermore, many Aboriginal groups do not have the political expertise or resources to effectively compete with other more vocal or organised lobby groups. This means that when government agency staff are already overtaxed (as they currently are) then it is the more vocal and experienced lobby groups that get most of the agency attention.

In the context of employment there is often a bias (reflected in many selection criteria) towards the appointment and promotion of agency staff well equipped with western educational qualifications, computer and report writing skills. Insufficient weighting appears to be given to those unique management and communication skills that Aboriginal people bring with them to the workplace.

(c) Legislation

In a number of cases government agencies are unable to meet the aspirations of Aboriginal people simply because the current legislation cannot accommodate the desired change. For example, under current legislation the joint management of national parks is restricted to those national parks that are successfully claimed under the provisions of the *Aboriginal Land Act 1991* (Qld). In the context of the WTWHA, this amounts to only one very small park within the traditional lands of the Kuku Yalanji people. Furthermore, cooperative management agreements and mechanisms providing for Aboriginal input in permit decision-making processes are, in most cases, unable to provide Aboriginal people with a major say in decision-making because of the absence of specific provisions in legislation, that allow for the fettering of the Minister's

discretion. In simple terms, most of the relevant legislation does not allow for Aboriginal people to exert an influence over a management decision above that level of influence that is also available to other interests.

In many cases significant changes to legislation are required over and above what might have originally thought to have been the need for much more readily achievable policy or administrative changes. Experience would suggest that it is far easier to create solutions through administrative change than through legislative change.

(d) World Heritage listing and cultural values

Although the obligation for adequate cultural heritage protection on protected areas is clearly spelt out under the NCA, much debate and uncertainty exists in the context of other tenures within the WTWHA. The result has been that indigenous cultural values, particularly those outside of protected areas, do not have a level of statutory protection deemed acceptable to their traditional custodians. However, the fact that the WHA was originally only listed for its natural values does not automatically relieve WTMA from an obligation to coordinate and facilitate the protection of cultural values across all tenures. It has been argued previously that there are considerable obligations on WTMA (although secondary to the protection of natural heritage values) to protect Aboriginal cultural values. The fact that the region has not been listed for its cultural values has ultimately constrained the level of emphasis afforded to cultural heritage protection

(e) Bias towards natural values protection

It appears that regardless of the underlying legislative framework that cultural heritage protection (in all its forms) plays second fiddle to the protection of natural values, especially in impact assessment processes, and permit decision-making. This means that Aboriginal aspirations for a more holistic approach to management (ie. one that doesn't differentiate between natural and cultural value protection) are struggling to be met when the overall institutional management culture appears to favour the protection of natural values. In some cases this natural values bias is supported by underlying legislation. However, as has been argued elsewhere, this is not always clearly the case. In many cases the emphasis on natural values protection would appear to be a reflection of the fact that, in some cases, agency staff lack the expertise, resources, and sometimes the commitment, to adequately address cultural heritage protection. Although not acceptable, this situation is in some ways understandable given that the values that rangers are asked to identify and protect originate from a culture and particular world view often totally different to that of their own.

(f) Differences in legal opinion

Rainforest Aboriginal people and government land management agencies are restricted in what they can achieve in terms of policy changes and strategy development because the ground rules, particularly in the context of native title, are uncertain, complex, subject to different interpretation, and are often likely to change. Where issues remain unclear or are subject to differing legal opinion the tendency has been for State and Commonwealth governments to put

the issue 'on hold' pending a possible and usually protracted result through the legal system. The result for Aboriginal people and for government field staff caught up in the argument has been one of inaction, confusion, despair and frustration. It would appear that private industry, particularly some mining and pipeline companies, as well as some local government organisations, are leading the way in overcoming the constraints imposed by legal uncertainty through the development of negotiated agreements.

Another constraining factor is that Aboriginal people have on occasions received contradictory legal opinion particularly in relation to the native title implications of entering into management agreements with government agencies. This has served to complicate and confuse any resolution of competing interests.

(g) Insufficient resources

The issue of finding the necessary resources to facilitate change remain a vexed question. Whether resources relate to the funding of Aboriginal permit referral agencies or negotiating teams, the funding of a detailed cultural heritage assessment, or the provision of additional government liaison and policy staff, it is clear that government sees the resourcing issue as a major constraint.

Government agencies feel that they haven't sufficient resources to manage existing operations. The problem with this argument is that, in many cases, what Aboriginal people are looking for, are not additional demands on government but existing (albeit sometimes unfulfilled) obligations under current cultural heritage legislation and international agreements. Even where levels of Aboriginal involvement are readily achievable under existing mechanisms a perceived lack of resources has the potential to undermine any positive outcomes simply because the mechanisms are not able to be implemented. WTWHA management agencies are thus constrained in what they are able to achieve. What is required is a review of management priorities and an injection of funds at both the State and Commonwealth level.

(h) Lack of coordination and unified policy

Confusion over who to be talking to, what the ground rules are, and the nature of a particular organisation's position on a certain issue are common problem areas experienced by both government agencies and Rainforest Aboriginal people alike. Both sides perceive a lack of coordination and unity as a major obstacle to understanding issues, seeking common ground and resolving differences. Specific problem areas include:

- Aboriginal people have difficulty coming to terms with the maze of policy, administrative, and legislative conditions across the different WHA tenures. In many cases this means that they aren't clearly aware of their current rights or what opportunities may already be available to them.
- Western management regimes don't usually coincide with the boundaries of traditional estates; with the result that a range of different 'government' rules and processes often apply to the same issue within the one traditional region.

- Aboriginal people are confused as to who to be talking to with respect to both a particular issue and a particular area of land. They often have difficulty in determining which agency has responsibility for a specific management issue.
- In turn, government agencies are confused as to who to be talking to with respect to both a particular issue and a particular area of land. They also have difficulty in determining which organisation has responsibility for a specific management issue, and are concerned about the legal repercussions of dealing with the wrong people (particularly where native title issues are concerned). Overlapping native title claims are particularly problematic. In many cases these identification problems can be overcome by working in consultation with the relevant native title representative body.
- Government agencies are sometimes hesitant to get involved in a particular management issue simply because they don't wish to be dragged into an argument between rival Aboriginal interests.
- Government agencies have difficulty resourcing and administering the requirement, as identified by Bama, to fine-tune negotiated agreements to the needs of each different tribal group in order to cater for specific local aspirations and conditions. Government would prefer from a practical point of view to enter into just the one arrangement that would have the same application across all traditional boundaries.

(i) Political will

Rainforest Aboriginal people assert that in many cases the Queensland government, (regardless of the particular party in office), has historically failed to recognise existing Bama rights and interests. Bama perceive a lack of political will from the State to facilitate beneficial change even using existing provisions; let alone the will to amend old or to introduce new policy or legislation.

In fact, Bama see a lack of political will and an absence of a spirit of cooperation within government as the most significant barrier preventing agencies from carrying out their existing obligations or implementing new initiatives, across a range of management issues of importance to them.

The current political climate amongst the mainstream voting North Queensland public appears to reflect an opposition to any recognition of Aboriginal rights and interests, above those rights already afforded to non-indigenous groups. This is likely to have a significant influence on current and future government policy.

The *Review* Steering Committee is concerned that an apparent lack of commitment by the present State government to negotiated agreements (eg. The Cape York Heads of Agreement) may prevent the support necessary from government for the establishment of the proposed Interim and Final Agreement. This is despite the fact, as the *Review* Steering Committee points out, that one of the Ministerial Council endorsed Expected Outcomes of the *Review* is the development of an MoU or Regional Wet Tropics Agreement. The Steering Committee's

concern is further reinforced by the fact that DoE Head Office appears hesitant to act on or endorse potential management agreements such as the draft Bama Wabu permit assessment Memorandum of Understanding and the Barron Gorge - Djabuguy Memorandum of Understanding for what they perceive to be native title implications¹⁰. Both the *Review* Steering Committee and Bama Wabu see this as an example of a lack of political will and commitment to negotiated agreements with Aboriginal people at the senior level of Government.

(j) Native title mediation

Particularly problematic to the resolution of land management issues in the context of native title is the fact that government agencies such as DoE and WTMA are unable to negotiate an interests based approach to management issues within the context of the mediation process. Rainforest Aboriginal people see this of particular concern, as they perceive the resolution of management issues as crucial to their ability to enjoy their common law native title rights and interests. The current position of the Queensland government appears to be to exclude the negotiation of land management issues between government agencies and native title claimants to outside of the native title mediation process. Some members of the Wet Tropics Board have also expressed concern about the inability of WTMA to be directly involved in the mediation process.

1.5.2 Opportunities

(a) Native Title Act 1993 (Cwlth)

The ability of the *Native Title Act* to act as a catalyst for change is the subject of much debate and will ultimately depend on what changes arise from the proposed amendments currently before federal parliament. Any compensation arising from changes to existing legislation and the subsequent removal of certain rights and interests may prove to be a powerful facilitator for change, particularly if Aboriginal groups negotiate for an increased role in management as part of their compensation package.

To date, the recognition of common law native title rights under the High Court *Mabo* and *Wik* decisions has not provided the results that Aboriginal people may have expected. This may change as more Aboriginal people move back onto country thus asserting their common law native title rights. Such a proactive and political move by Rainforest Aboriginal people may serve to speed up the negotiated settlement of interests currently bogged down in legal debate and what is often seen by Bama as conservative and obstructionist government policy.

(b) Growth of natural and cultural resource management agencies and representative bodies with a strong representative mandate.

A number of grassroots and umbrella Rainforest Aboriginal land management organisations are beginning to appear throughout the Wet Tropics Region. Organisations like Bama Wabu, Giringun Elders and Reference Group Aboriginal Corporation, and the Kuku Yalanji Native

¹⁰ See “Editorial Comments” for further discussion

Title Reference group serve to coordinate and facilitate Aboriginal interests, and provide an invaluable role in assisting government agencies with advice on policy, consultation and negotiation protocols. They also serve to raise the profile of Aboriginal interests in the overall WTWHA management stakes.

The three relevant native title representative bodies are also adopting a more proactive approach to land management and community development issues. This will also serve to assist government agencies in clarifying who they should be talking to and who will assist 'grassroots' organisations with appropriate resourcing and technical advice. Similarly the high profile and success of the Mossman Gorge Community Rangers, particularly in the context of: cultural heritage assessment; site clearance and; in the development of interpretive tours and displays at the Gorge, has been successful in focusing attention on the positive aspects of Aboriginal input into WTWHA management.

(c) Bama Wabu/Department of Environment Permit Memorandum of Understanding and related management arrangements

The ongoing development of the draft Department of Environment (DoE) and Bama Wabu permit Memorandum of Understanding (MoU) and the Djabugay DoE MoU for the cooperative management of Barron Gorge National Park are examples of positive approaches to the negotiation of management arrangements that better meet the needs of Rainforest Aboriginal people. These two initiatives (not yet finalised or formally endorsed) are likely to set the scene for continuing negotiations within the context of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement¹¹.

An indirect yet highly significant consequence of these negotiations has been the commitment from all parties to work through sensitive issues that previously appeared to be problematic. These agreements are thus seen as a positive starting point from which to build a more equitable and positive cooperative working arrangement between Bama and government agencies.

The finalisation of the DoE/Bama Wabu permit MoU will go a long way towards formalising consultation processes and overcoming the ad hoc mechanisms currently in place.

(d) The Review process: increasing awareness, and promoting coordination

It is anticipated that the various recommendations arising from the *Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area* will serve not only to increase an awareness of Aboriginal aspirations but also to promote Aboriginal interests in a tangible way through a 'whole of government' commitment to the development of an Interim Negotiating Forum and ultimately a Final (Regional Wet Tropics) Agreement.

(e) Internal Wet Tropics Management Authority processes

¹¹ See "Editorial Comments" for further discussion

The provision of a Bama Wabu voice at Board meetings, through official observer status, has resulted in an increased level of Aboriginal input in management decision making. The positive opportunities and good will arising from the creation of a dedicated Commonwealth Aboriginal representative to the Board needs to be carefully preserved by ensuring that adequate and appropriate Aboriginal consultation occurs in the selection of that representative. Given the general support of the broader Rainforest Aboriginal community, an Aboriginal Board member has the potential to influence WTMA policy and decision-making in such a way as to significantly promote Bama interests.

Ongoing support by WTMA for the provision of a team of Community Liaison Officers (including the DCPG liaison officer) has also provided a valuable opportunity to increase the awareness of, and attention provided to, Aboriginal issues within management.

(f) Preference for negotiated outcomes

There is no denying that there is a significant level of conflict between Rainforest Aboriginal people and government land management agencies over the management of the WTWHA, particularly in the context of native title rights and interests. However a window of opportunity currently exists for the resolution of management impasses in that the three relevant Aboriginal land councils have formally stated to the WTMA Board their preference for negotiation over litigation. The concept of an Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement proposed by the *Review* provides a vehicle for such negotiation. If the negotiated agreement approach is not adopted then government agencies run the risk of facing possible litigation in relation to a number of management decisions and processes.

Part 2: An Overview and Evaluation of Aboriginal Involvement to Date

2.1 Aboriginal Aspirations for WTWHA Management

The aim of this section is to provide an overview of what Aboriginal people are seeking in terms of involvement in the management of the WTWHA.

2.1.1 Source documents

There are a number of key reports on this topic published prior to the commencement of the *Review*. These are listed, as follows, as important source documents:

- Dale, A. (1993) *Joint Management in the Wet Tropics, a discussion paper prepared for the Wet Tropics Management Authority*. Commissioned by the WTMA, Cairns.
- Lane, M (1993) *Joint Management, Sharing the Wet Tropics - a discussion paper*. Commissioned by the Rainforest Aboriginal Network, Cairns.
- Sutherland, J. (1992) *Aboriginal Interests and Queensland World Heritage Area Management*. Report prepared for Bididi Bididi Advancement Cooperative Society Ltd, Atherton.
- Wet Tropics Management Authority (1993) *Wet Tropics Plan: Strategic Directions - Aboriginal Consultation Report*. WTMA, Cairns.
- Jumbun Ltd (1994). *Building Our Voice*. Elders and Reference Group, Jumbun Ltd., Hinchinbrook.
- Bama Wabu (1996) *Reasonable Expectations or Grand Delusions? Submission to the draft Wet Tropics Plan*. Cape York Land Council *et al.*, Cairns.

The main issues and recommendations identified in these six key reports are used by the TOR 12 consultants, (Dale et al. 1997a), to form the basis, [along with David Yarrow's consultancy reports (Yarrow 1996a, 1996b), for negotiating points that facilitate the development of the Interim Negotiating Forum. This agreement has been identified as one of the major recommendations of the overall *Review* process. The TOR 12 consultants also used their extensive experience in cooperative land management planning with native title claimant groups to verify the direction of the consultancy report.

Appendices A and B of the TOR 12A report (Dale et al. 1997a) provides a summary of the key points raised in the last three of the source reports listed above [ie. WTMA (1993); Jumbun (1994); Bama Wabu (1996)].

Despite obvious differences in emphasis between these reports. In essence, these differences are related to: date of publication; the different Aboriginal groups involved in the consultation; and the particular focus of each report. A number of shared core themes emerge. These are presented by way of summary in Table 1.

It must be noted that Table 1 provides a general account. For a more specific and detailed analysis of the management aspirations of Rainforest Aboriginal people reference is best made to the appendices of the TOR 12A report and to the original source documents themselves.

An additional point is warranted at this stage of discussion. Throughout consultation with government land managers, particularly those operating at the day-to-day level of management, concern was raised regarding the difficulty associated with determining exactly what Aboriginal people want, and identifying who the right people to talk for an area are. Ironically, Aboriginal people identified that they were tired of talking over and over again about their particular needs and aspirations, and that they too, were uncertain of what person in which agency to contact. It is suggested that a significant communication problem exists, at least in a significant number of regions within the WTWHA. (Section 2.2.1 will further examine the issue of communication and consultation.)

The fact remains on the basis of the reports cited above and the subsequent investigations under the umbrella of the *Review*, that Aboriginal people are very clear about what they want in terms of 'big picture' outcomes. What is perhaps unclear, and this would apply to both sides of the debate, is the exact nature of the processes leading up to the desired reforms. One problem is that some WTWHA management processes, particularly permit control regimes and fire management strategies, appear uncoordinated and confused both within and across tenures. This makes it very difficult for Bama to provide concrete recommendations for change, simply due to the inherent lack of clarity and accessibility to existing processes. As many Bama aspirations do not fit automatically into established management strategies or existing legislation, there is the risk that these aspirations could become readily discounted by government agencies as ill informed and unrealistic.

Uncertainty should not be seen as a stumbling block to begin dialogue and negotiation. In some ways uncertainty can be an opportunity, as evidenced by the series of DoE workshops on permits originally designed to clarify the current permit regimes under the *NCA* and the *Cultural Records Act*. These workshops have progressed to a point where a draft negotiated procedural MoU between Bama Wabu and DoE on permits administered under the *NCA* is being examined by DoE executive and Crown Law.

Rainforest Aboriginal people are clear on what they want in terms of overall outcomes. The processes to reach these points may at times be uncertain and complex, particularly at the early stages of dialogue. However, this is likely to be a feature not just restricted to negotiations with Aboriginal people, and needs to be recognised as such. Providing a spirit of commitment and good will and the appointment of appropriate negotiators on both sides (with adequate resourcing), it is suggested that a process of negotiation leading up to an Interim Negotiating Forum and, eventually, a Final (Regional Wet Tropics Agreement) will be able to accommodate this level of complexity and uncertainty.

Table 1: A general overview of the aspirations of Rainforest Aboriginal people with respect to the management of the WTWHA. (Issues not necessarily in order of priority)

<u>Category</u>	<u>Aspiration</u>
<u>Central Themes</u>	<p>(a) Establishment of joint management arrangements that provide significant control over decision-making processes at both the policy and day-to-day level of management [refer to Dale et al. (1997a) for details].</p> <p>(b) Preservation of native title rights and interests (including common law native title rights)</p> <p>(c) Security of traditional resource rights and control over resource utilisation within the WTWHA</p> <p>(d) Maintenance and restoration of cultural integrity as part of ongoing cultural survival and social well-being</p>
<u>Specific Issues</u>	<ul style="list-style-type: none"> ▪ Recognition of the existence of a series of ‘living’, occupied, and dynamic indigenous cultural landscapes within the WTWHA ▪ Control over the issue of permits, particularly commercial activity and scientific permits, and the setting of appropriate carrying capacities and conditions on tourism operators ▪ Protection of cultural sites, including sacred sites and sites of significance ▪ Protection of intellectual and cultural property rights, particularly with respect to the marketing of traditional knowledge as a commercial, industrial, or tourism product ▪ Relisting of the WTWHA for its cultural values ▪ Adequate funding for management of the WTWHA ▪ Appropriate employment and training of both indigenous and non-indigenous managers within the WTWHA ▪ The establishment of appropriately resourced community ranger/Bama land management agencies within the WTWHA ▪ Education and awareness within Rainforest Aboriginal communities of the positive and negative impacts of WHA Listing and relevant WTWHA management regimes ▪ Acceptance by the wider community of Aboriginal values and aspirations for the WTWHA

Specific Issues

- Control of commercial film and photography permits and general advertising particularly where the subject material is of cultural significance or where the portrayal of the landscape has the potential to denigrate, trivialise or commoditise cultural values
- Accurate and culturally appropriate interpretation of the cultural landscape. Control over interpretive material relating to Aboriginal cultural values
- Economic independence: gaining an income from visitor use
- Maintenance of biodiversity and habitat protection
- Effective and appropriate consultation
- Full participation (ie. From the beginning to the final draft stage) in the development and implementation of walking track, fire management, road access, ecotourism strategies etc.
- Adequate management of high-risk adventure recreation activities to ensure visitor safety while on traditional estates
- The ability to move back 'onto country' and to establish new living areas or expand existing ones
- Maintenance of privacy in living and resource collection areas
- Clarification of the roles of the various agencies responsible for the management of the WTWHA.
- The development of a coordinated approach from relevant agencies towards 'Aboriginal issues' within the WTWHA

2.1.2 Aboriginal perceptions and aspirations for 'Joint Management'

Exactly what the term 'joint management' means has been a controversial and confusing issue in the history of dialogue between government agencies and Rainforest Aboriginal people. The TOR 12A consultancy (Dale et al. 1997a; s.1.4 pp 8-11) attempts to clarify some of the different joint management possibilities across different tenures and legislative regimes. The TOR 1 consultancy report (Yarrow 1996a) reviewed mechanisms currently available to Aboriginal people in order to gain greater input into WTWHA management.

Despite a number of current legislative and policy constraints Bama would clearly like to see the possibility of new or amended legislation opening the way for joint management across all tenures, providing levels of Aboriginal control similar to that afforded by the so-named Northern Territory 'blueprint' models. Despite in many cases an apparent lack of understanding of the underlying complexities of 'joint management' processes (and this uncertainty is shared in on both sides) Bama maintain a strong commitment to the 'big picture' aspect of joint management viz. the provision of significant Aboriginal control over decision-making.

Dale et al. (1997a; p. 9) (TOR 12A consultancy) identified a number of core principles that underpin Aboriginal 'joint management' aspirations.

Aboriginal 'Joint Management' Aspirations

1. Protected areas granted to traditional Aboriginal owners as inalienable freehold land;
2. Where a lease back arrangement is a requirement of legislation then the land be leased back to the Government for a specific term as opposed to 'in perpetuity';
3. Management responsibilities are shared and an Aboriginal majority on any board of management with formal decision making roles;
4. Board decisions that are implemented unless there is a major difference of opinion between the joint management parties;
5. A range of negotiated issues, including rights of access, residence and rental;
6. Commitments to Aboriginal employment and training and other day to day management issues.

The complexity surrounding the determination of what constitutes 'joint management' (from both Aboriginal and non-Aboriginal perspectives) and the development of a model that is applicable across all tenures is in itself a major constraint to meeting Bama aspirations. Thus an appropriate joint management model can only ever hope to be effectively achieved through a staged negotiated agreement process, facilitated initially through an Interim Negotiating Forum as outlined in Part 4 of this report. This process would result in the identification of the legislative and policy changes needed to accommodate the interests of both Bama and western land managers.

Previous 'joint management' discussions between Aboriginal groups and WHA managers (particularly the Joint Management Working Group) proved to be of value in providing a forum for identifying aspirations and constraints, and for airing grievances and concerns. However they achieved very little in terms of progressing, in tangible terms, an equitable and cooperative approach to WTWHA management.

As suggested by a number of participants at those earlier discussions a significant problem was the inability of many parties to clearly communicate what they wanted, what is possible under existing legislation and government policy, and what they could, or, were in a position, to offer. To overcome these barriers, the TOR 12 consultancy has been broken into separate components in an attempt to analyse the positive and negative impacts of a joint and equitable approach to WTWHA management that derives its structure from an agreement negotiated over a realistic period of time. This is an attempt to meet what Bama see as the benefits of joint management through a process of staged negotiated agreements that frees all parties from the statutory and policy constraints attached to a more direct link to the notion of joint management as formally defined in current legislation.

Details of this negotiated agreement approach to the settlement of joint management aspirations are provided by way of an overview in Part 4 of this paper.

It is recommended that funding be identified to facilitate a Wet Tropics based workshop with input from traditional owners and government agency staff from jointly managed national parks around the country. The purpose of this workshop would be to identify firstly the range of shared-decision making and policy options available, and secondly; to investigate the implementation and development of specific management strategies relating to such issues as walking tracks, the interpretation of cultural heritage material, site management, and employment and training strategies. With appropriate facilitation, the workshop has the potential to provide an awareness of the range of different management structures and strategies available, and an insight into specific problems and solutions elsewhere. Such outcomes have the potential to facilitate informed participation in the ongoing negotiation of the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

Recommendation

- Funding be identified to facilitate a Wet Tropics based workshop with input from traditional owners and government agency staff from jointly managed national parks and other protected areas around the country. Such a workshop would provide an awareness of the range of different management structures, strategies available and an insight into specific problems and solutions elsewhere.

2.2 Currently Available Mechanisms of Involvement

2.2.1 Formal mechanisms of Aboriginal involvement

This particular section will focus on the more formal mechanisms of involvement in WTWHA management available to Rainforest Aboriginal people under current legislation across the various tenures. Discussion will be based on an overview of the TOR 1 consultancy report (Yarrow 1996a). For a more detailed analysis of these formal mechanisms of involvement reference is best made to the attached Yarrow report.

Yarrow (1996a) concludes that there are many existing statutory mechanisms by which Aboriginal people are currently able to become involved in the management of the WTWHA. However it is important to recognise that these mechanisms are **under utilised**, both through a lack of awareness of their availability by Aboriginal groups and government agencies, and through a lack of political momentum or resources to see them implemented.

A summary of Yarrow's findings are presented as follows:

Key

ALA	<i>Aboriginal Land Act 1991 (Qld)</i>
CRA	<i>Cultural Record (Landscape Queensland and Queensland Estate) Act 1987 (Qld)</i>
dWTP	<i>Draft Wet Tropics Plan</i>
FA	<i>Forestry Act 1959 (Qld)</i>
LA	<i>Land Act 1994 (Qld)</i>

LGPEA	<i>Local Government (Planning and Environment) Act 1990 (Qld)</i>
NCA	<i>Nature Conservation Act 1992 (Qld)</i>
WTP	The Wet Tropics Plan
WTQWHACA	<i>Wet Tropics of Queensland World Heritage Area Conservation Act 1994 (Cwlth)</i>
WTWHPMA	<i>Wet Tropics World Heritage Protection and Management Act 1993 (Qld)</i>

(1) Statutory mechanisms that provide Aboriginal people with a stake in management through control or ownership of land

Aboriginal Land Act 1991 (Qld)

- The grant of transferable land to trustees under the ALA.
- The grant of claimable land successfully claimed under the ALA. A joint management model similar to the Uluru model is available in the case of those national parks that are gazetted as potentially claimable.

Land Act 1994 (Qld)

- The provision (through sale) of freehold title or a lease over unallocated State land under the LA. Conditions would apply that provide for what is deemed as appropriate management of that land (possibly including the requirement for a conservation agreement under the NCA).
- The leasing of reserve land under the LA. Conditions would apply that provide for what is deemed as appropriate management of that land (possibly including the requirement for a conservation agreement under the NCA).
- Placing reserve land under the care and control of Aboriginal people as trustees under the LA.
- The provision (through sale) of freehold title or a lease over resource reserves, nature refuges, coordinated conservation areas, and wilderness reserves under the LA. Conditions would apply that provide for what is deemed as appropriate management of that land (possibly including the requirement for a conservation agreement under the NCA). Effectively these particular categories of protected areas are treated as unallocated state land and can be leased or converted to freehold accordingly under the LA.

Nature Conservation Act 1992 (Qld)

- The leasing of land in certain protected areas under the NCA subject to conditions that provide for the appropriate management of that land.
- Allowing Aboriginal people to manage a conservation park or a resources reserve (protected areas under the NCA) as trustees.

Forestry Act 1959 (Qld)

- The leasing of land in State forests or timber reserves under the FA subject to conditions that provide for the appropriate management of that land

Cultural Record (Landscape Queensland and Queensland Estate) Act 1987 (Qld)

- ‘Designated landscape areas’ can be declared to protect areas of particular cultural significance. However the consent of the occupier or owner of private land must first be obtained before any such declaration can take place

(2) Statutory mechanisms that provide Aboriginal people with a stake in management without providing specific control or ownership of land

- The capacity of the *LA* to impose conditions over a lease that provide for continued access by Aboriginal people
- The duty for the *WTMA* to have regard to Aboriginal tradition and to liaise, and cooperate with, Aboriginal people particularly concerned with the land.
- The requirement for the administration of the *NCA* to be undertaken in consultation with, and having regard to the views and interests of Aboriginal people.
- The capacity for the *WTMA* to delegate powers, including decision-making powers (eg permit decisions made under the *WTP*), to advisory committees such as an advisory committee about Aboriginal tradition.
- The capacity for the Minister for Environment to appoint Aboriginal people as authorised officers under the *WTWHPMA* and therefore affording them enforcement powers under the Act.
- The capacity for the Minister for Environment to appoint Aboriginal people as conservation officers or honorary protectors under the *NCA*.
- The rights of the public to object or appeal under the *LGPEA*.
- The provision of an Aboriginal person under the *WTQWHACA* as one of two Commonwealth representatives on the Board.
- The attendance of a representative of Bama Wabu at Board meetings, and an identified position for a representative of Aboriginal people on the community consultative and scientific advisory committees.
- Employment of Aboriginal people as contractors or in government positions. Note that there is no provision for the identification of dedicated Aboriginal positions; selection in the Queensland Public Service is on merit basis.

The absence of a unified policy between *WTWHA* management agencies with respect to Aboriginal involvement in management further complicates the meaningful use of these potentially available opportunities for Aboriginal people listed above. The obvious lack of coordination between *WTMA*, *DoE*, *DNR*, and in some cases, local government means that Aboriginal people become alienated from accessing such mechanisms. It becomes simply too difficult to untangle the subtleties and workings of these provisions, particularly where traditional estates cut across different tenures, and different legislative and management regimes. In turn, this complexity has also contributed to a high level of frustration within Government agencies in consulting with Bama over management arrangements (*TOR 12A* report). Obviously what is required is a well coordinated ‘whole of government approach’ to Aboriginal issues within the *WTWHA*. Rainforest Aboriginal people have also indicated that even where opportunities are more readily apparent and accessible in many cases there isn’t sufficient political will from government to provide the necessary momentum for change.

Many of the statutory mechanisms listed above are in fact dependent on the discretion of the relevant State Minister(s) for their application. This is identified by Aboriginal people as being of particular concern to them.

2.2.2 Interim Negotiating Forum

It is envisaged that the proposed Interim Negotiating Forum will be developed to provide the basic framework for a more coordinated and committed approach to the utilisation of currently available mechanisms for Aboriginal involvement in the Wet Tropics World Heritage Area.

As noted by Yarrow in his TOR 14 consultancy report (Yarrow 1996b) any of the management opportunities listed above (see also TOR 1 report, Yarrow 1996a; pp. 60-62) could be the subject of an agreement between the State and Rainforest Aboriginal people. The *Land Act 1994* (Qld) could be used as the basis for agreements between Aboriginal people and the State Government concerning the management of Unallocated State Land (USL). Thus, USL could be dedicated as a reserve for natural resource management with trustees nominated by both the State and representatives of Aboriginal people. The land could be leased to a corporation owned by Aboriginal people, with the conditions of the lease determining the relevant land management regimes, public access requirements and other relevant matters (refer to Yarrow 1996b; pp 42-44 for other relevant examples).

Recommendations

- That the relevant Local, State, and Commonwealth agencies develop and implement a 'whole of government' approach to Aboriginal issues within the framework of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.
- That the relevant Local, State, and Commonwealth agencies collectively nominate a negotiating team representative of their interests to participate in the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

2.2.3 Informal mechanisms for Aboriginal involvement

Yarrow (1996a; p 27) noted that while informal opportunities do exist for the involvement of Aboriginal people in the management of the WTWHA, they are largely ad hoc arrangements. He noted that it is difficult to ascertain the significance and extent of these arrangements given their inconsistent use.

Informal opportunities such as a degree of informal cooperation between officers of various agencies and Aboriginal people, although desirable, fall short of providing a transparent and accountable framework for the resolution of competing interests and other Bama concerns. Bama assert that these informal mechanisms are subject to the political will of the government of

the day and the level of commitment of relevant managers and bureaucrats (*Review Steering Committee, pers. Comm., November 1997*).

Furthermore there is only so much that can be achieved without the back-up of a more formal policy decision or legislative provision. Many positive examples of the increased levels of Aboriginal involvement between Aboriginal people and government agencies seen in the WTWHA to date have occurred only because of the personalities and supportive attitudes of certain agency staff. If those staff more attuned to and supportive of Aboriginal aspirations happen to move out of the region there is a risk that any positive communication and consultation procedures could also disappear. **Given the statutory obligations of DoE and WTMA to work in cooperation with Aboriginal interests, this is a far from satisfactory situation.**

2.3 The Awareness, Level of Use, and Effectiveness of Current Mechanisms

This section will discuss the awareness and level of use of those mechanisms identified in sections 2.2.1 and 2.2.2 by government agencies and Rainforest Aboriginal people (TOR 2).

It will also provide an evaluation of the effectiveness of current goals and mechanisms of involvement from both a government and an indigenous perspective (TOR 3 and 4).

In evaluating the effectiveness of mechanisms for Aboriginal involvement implemented by the relevant WTWHA managers it is important to recognise the political context in which decisions are made, and the legacy of recent historical events. For example, Lane, (1994; p 34), noted that the participation of Aboriginal people in WTMA planning is integrally connected with wider political issues that, to varying degrees, lie outside the control of WTMA. It is suggested that the same would apply to other state agencies such as DoE and DNR. For any progress to be achieved from the perspective of Rainforest Aboriginal people there is need for the 'big-picture' political barriers associated with the resolution of legislative and policy issues to be broken down.

It is unlikely that Aboriginal groups will be satisfied with their position within the management regime until core issues such as: land ownership, cultural re-listing, the protection of native title rights and interests, and equity in management decision-making are resolved. Any proposals or mechanisms that fall short of this level of involvement will likely be seen by Bama as inadequate. An evaluation of effectiveness is a subjective exercise. A lot depends on which side of the political, organisational, and historical fence you find yourself sitting on.

It would not be unrealistic to suggest that the goals of Rainforest Aboriginal people with respect to their involvement in WTWHA management do not match the goals of Aboriginal involvement from the perspective of the Authority and other agencies. Based on asserted rights and interests, Bama have focused on a more detailed and extensive level of involvement than has currently been made available to them or targeted for them to date.

2.3.1 Formal mechanisms: statutory and policy provisions

This section will provide an overview of the effectiveness of those mechanisms identified in section 2.2.1.

The statutes and policies relating to the provision of management involvement opportunities referred to above are administered by at least three State government departments and are often very different in nature from one tenure to the next. There is effectively no clear and coordinated policy position on issues relating to Aboriginal involvement. Even where similar issues exist, there is the potential for Aboriginal management issues to be dealt with in different ways by each agency (Yarrow 1996a; p 25). Aboriginal people, among other interest groups, have a great deal of difficulty determining what mechanism is potentially available and under what conditions, particularly where traditional estates fit across a range of government management regimes or where different management regimes overlap.

Mr Archie Tanna, then Chairperson of the North Queensland Land Council, likens the situation to ‘...having to unravel many strands of tangled up barb wire’ (pers comm.). These mechanisms have also, by and large, gone unrecognised and perhaps not been clearly understood by many government officers making it even more difficult for Aboriginal people to access them.

In conclusion, Yarrow’s TOR 1 consultancy report has the potential to set the path for future development in the area of the provision of greater control or ownership of land to Aboriginal people within the WTWHA. However, there is no guarantee, even though they exist and their potential value is recognised, that Aboriginal people or agency staff will be able to make full use of them. In a political climate where both the media and some public figures have helped shape the general public perception that Aboriginal people are already ‘getting too much’ it will be very difficult for Bama to get the political support necessary to access these mechanisms.

In some cases it is likely that an element of fear and uncertainty (ie. a fear and avoidance of change) underlies the fact that these mechanisms are not readily brought into operation. It is often easier to maintain the status quo than to bring into play a new management and land tenure arrangement, particularly where resources are already stretched.

2.3.2 Communication and consultation in the field

2.3.2.1 “Hands-on” land management agencies (DoE and DNR)

In general terms the degree and success of communication between grassroots Aboriginal people and organisations and government WTWHA managers varied from region to region. This variation was influenced by a number of factors:

- The personal commitment of on-site government staff to addressing ‘Aboriginal issues’.
- The level of cross-cultural negotiation and communication skills.
- The availability of resources (including time and staffing) for government agencies to undertake such consultation.

- The level of resources available for Aboriginal people to engage on an equal footing in consultation and negotiation processes.
- Difficulties associated with determining the right Aboriginal people to be talking for country.
- Difficulties associated with determining the right government agencies to be talking to for a particular region in the WTWHA.
- Whether the consultation/negotiation process was based on a commitment by either side in seeking common ground and a willingness to negotiate, or whether parties adopted a rigid 'position-based' approach to discussing issues.
- The level of frustration with previous consultation, particularly if there was a perception (from either side) of an inability to reach tangible outcomes.

This last dot point requires additional comment. Aboriginal people continually refer to frustration arising from a lack of perceived outcomes from consultation processes to date. They are obviously concerned with what appears to be a rhetoric roundabout of government consultation and unfulfilled promises. Particular mention is made of the way the cultural renomination-cultural heritage assessment debate has been circling around since the early 1990s.

The difficulty for government agency regional staff has been that they have been unable to meet many of their undertakings because of last minute changes in government policy and/or commitment (see comments in TOR 12A report; Dale et al. 1997a). On the other side of the equation government land management staff have also been frustrated by the consultation process. In some cases, a lack of coordination and unity between Aboriginal groups has significantly hindered meaningful discussions. It is envisaged that the increase in number and expertise of peak Aboriginal land management organisations such as Bama Wabu, Girringun Elders and Reference Group, and the Kuku Yalanji Reference Group will assist in rectifying this particular problem.

A questionnaire provided to five DoE District Rangers within the WTWHA provided some interesting insights. There was significant variation between officers as to the extent and depth of consultation with Aboriginal people. In some cases, the level of commitment towards consultation appeared questionable. A common problem identified was the difficulty associated with determining who are the correct spokespersons for a particular region and a particular issue. This is certainly a complex issue with no universal answers. Where a relatively well resourced Aboriginal representative group is in place, such as the Girringun Elders and Reference Group (Cardwell), the problem is less obvious. In the absence of such a local group district staff still have the option of contacting umbrella representative bodies such as Bama Wabu or the relevant Land Councils. Another very simple option is to make better use of DoE liaison staff or the staff of the Aboriginal Resource Management program within WTMA (particularly the three Community Liaison Officers). Nevertheless, the difficulty of determining the right people to 'talk for country' (particularly in certain parts of the WTWHA) is not one that can readily be discounted.

Another concerning problem identified from the questionnaire is the lack of time apparently available to District Staff to undertake consultation at the day-to-day level of management. Particularly problematic responses were as follows:

- **“Very little impact assessment is undertaken by my staff due to a lack of time”** [in reply to a question assessing Aboriginal involvement in impact assessment]
- **“Meeting dates are regularly ignored..... I don’t have the time to spare to fit into their time management structure”**.

Firstly, it would appear that inadequate staffing levels at the district level are preventing some DoE officers from meeting their consultation and liaison responsibilities under legislation¹². Secondly, some district staff may need to reexamine their work priorities with respect to consultation and negotiation, particularly in the context of cultural heritage impact assessment and native title issues where the legislative imperative to get things right is particularly strong.

It is not unrealistic to suggest that DoE should consider the appointment of an Aboriginal liaison officer to each district within the Wet Tropics to assist with fulfilling these very real legal obligations. DoE district staff are aware of these obligations but, in some cases, have indicated that they are too busy to meet what are sometimes perceived as extra demands placed on them. An extra staff member whose priority it is to work through some of the difficulties associated with information flow and negotiation would go a long way towards meeting resourcing concerns. This extra member of each district team could also assist, (within reason), with other aspects of day-to-day management. Each ‘liaison’ position needs to be created at a relatively high level within the hierarchy of field staff so as to facilitate his or her ability to operate effectively, and not be swamped by what are often perceived as other priorities. The role of this officer would not be to take over all the Aboriginal liaison and consultation duties but rather to facilitate a more coordinated, consistent and effective approach to Aboriginal involvement throughout the operational unit. It is recommended that a similar approach be adopted by DNR, particularly with respect to the management of State forests and timber reserves in the WTWHA.

Recommendation

- That the Department of Environment appoint a senior officer to each Wet Tropics district to assist in meeting their consultation and negotiation responsibilities particularly in the context of Aboriginal cultural heritage protection.

It also needs to be stated that a number of district staff already have, or are in the process of developing, a very positive and constructive working relationship with Aboriginal people with an interest in the management of their region. Although not without its problems, the working relationship between Djabugay people, (particularly the Community Rangers), and DoE field staff at Barron Gorge, is seen as a positive starting point that can be developed given continued positive support and open and honest dialogue between all players. The difficulty in the past for

¹² In particular the requirement under the Nature Conservation Act (192) Qld to (a) as far as practicable, administer the Act in consultation with, and having regard to the views and interests of Aboriginal people and Torres Strait Islanders (s.6); and, (b) achieve the object of the Act (viz. the conservation of nature) recognising the interest of Aboriginal people and Torres Strait Islanders in protected areas and their cooperative involvement in the conservation of nature (s.5(f)).

DoE has been that not all relevant traditional owners have felt that they have been adequately consulted. The proposed procedural MoU is seen as a positive attempt by both DoE and Djabuguy people to work through some of these concerns.

Despite many barriers to the increased involvement of Aboriginal people imposed 'from the outside' by legislative, policy, funding, and administrative constraints, a lot may be achieved at the day-to-day level of management through the development of regular and 'meaningful' two-way communication. The key to 'meaningful' communication is ensuring that dialogue is held with all key Aboriginal people, especially recognised traditional owners. It is particularly important that everyone's expectations are well presented and clearly understood by all parties.

From a different perspective, it needs to be reinforced that consultation and communication is a 'two-way' process. Implications for Aboriginal people involve the realisation that value may be gained in supporting the coordinating and 'first-point-of-contact' role of peak bodies like Giringun, Bama Wabu, and the Yalanji Native Title Reference Group, as well as other statutory bodies such as the Land Councils. Whether justified or not, division between Rainforest Aboriginal people is perceived by government agencies as a real barrier to effective consultation and negotiation. In turn, organisations like WTMA, DoE and DNR need to support, either financially and/or 'in-kind', these peak representative bodies.

Furthermore, there is an obligation on Aboriginal groups, given the reality of staffing constraints, to adhere to mutually agreed meeting arrangements. This is not to suggest that Aboriginal groups should be obligated to meet the particular time frames determined by government agencies. Flexibility and negotiation is required. Decision-making processes and timeframes differ markedly between groups, and this needs to be recognised by both sides. For instance, if government agencies require a quick turn around time for a particular decision or advice from Aboriginal groups, then appropriate resource assistance should be provided to the relevant referral body to meet these time constraints. Resourcing could come in the form of specific grants or assistance from departmental or contracted liaison staff. During the *Review* consultations some Aboriginal groups suggested that it was important for government agencies to clearly spell out why short timeframes were so necessary, particularly when, from a Bama perspective, they served to undermine the consultation process.

In summary there are a number of basic problems that need to be resolved with respect to the interaction between field staff and relevant Aboriginal people. These include the following:

- There is a need for a more formalised and consistent approach to consultation and liaison. The current approach appears to be ad hoc and, in some cases, more personality driven than a true reflection of legislative obligations and sound management practice.
- Field staff are inadequately resourced both with respect to staffing levels and training to equitably address many day-to-day Aboriginal issues. As a result these issues are sometimes given a lower priority than those issues that staff are more comfortable with.
- Particularly in the context of the management of state forests, timber and other reserves, and vacant crown land there appears to be inadequate attention, both in terms of policy development, program allocation, and internal staff training, to the interests of Rainforest Aboriginal people.

- Field staff need to ensure that when developing management strategies they are dealing specifically with the traditional owners of the region.
- Before Aboriginal people commit to participating in an ongoing management process there is need for resource implications to be fully identified and made aware to all participants to avoid setting up people for failure.

2.3.2.2 Wet Tropics Management Authority

The TOR 12A consultancy in its assessment of social and economic impacts of WTWHA management on Rainforest Aboriginal people noted that:

“Interactions between the Authority and Aboriginal people have now been occurring for a number of years. From the viewpoint of Aboriginal people, Bama still have no greater control over the management of their land than when these interactions first started. Many Aboriginal people consider that it is only the environment for negotiation that has improved, not actual outcomes on the ground in terms of JMAs [joint management arrangements] or CMAs [cooperative management arrangements] (eg. employment, etc.)”

(Dale et al. 1997a; p 15)

The perception amongst many Bama is that ongoing rounds of consultation have achieved little more in terms of tangible outcomes than to soak up valuable time and resources. Despite the apparent improvement of information flow and in the overall consultation and negotiation process¹³ what Aboriginal people are looking for is a series of beneficial results that can be seen and experienced by grassroots Aboriginal interests. Simply, the Authority’s relationship with Aboriginal people is at a plateau. What is required in order to move beyond this plateau is a major injection of specifically identified funds and a more consistent and committed approach to addressing Aboriginal issues across the range of WTMA Programs. A more strategic and coordinated approach to problem solving is required that moves beyond rhetoric to the use of clearly defined project tasks, timeframes and milestones.

A key area of concern is the fact that the Authority has in many cases, incorrectly been at the focus of discussion with respect to many of the issues relating to Aboriginal people and WTWHA management. Historically it would appear that much of this consultation and communication has not clearly spelt out the Authority’s role as a coordinator and facilitator. The confusion relates in part to the high profile held by the Authority in the local media. The perception exists amongst many Aboriginal organisations, even today, that the Authority is the lead agency when it comes to addressing Bama issues.

The Authority has not been in a position to provide many of the outcomes that many Aboriginal people are looking for. The result has been that Aboriginal attention has focused on the

¹³ This is largely due to the increased efficiency and resourcing of the Community Liaison Officers, the forging of a relatively effective communication link between Bama Wabu and the Authority, and Bama representation on the Board through an identified Board position and the official observer status of Bama Wabu.

Authority when it may have been better spent focusing on DoE and DNR (or the old DPI). It is crucial when consulting with Bama, particularly in the context of state forests, timber reserves and national parks, that WTMA officers or contracted liaison staff, do not raise false expectations or misdirect scarce Bama resources. It is essential that WTMA liaison staff come to terms with their facilitation and coordination role by ensuring that key players, such as the 'hands-on' state land managers or relevant land councils are brought into the discussion at an early stage.

On occasion there has been a tendency to run with issues on their own, leaving agencies with the real power to facilitate change, alienated from the process. Nevertheless, WTMA as the WTWHA coordination body has as its logical role the facilitation and arbitration of consultation and negotiation between relevant Aboriginal interests and State and local government land managers.

Another area of concern is that historically there appears to have been a lack of coordination and communication between WTMA Aboriginal liaison staff and other land management or scientific staff particularly in dealing with issues in the field. Some Community Liaison Officers interviewed felt that they should have been involved in land management issues (for example in the Goldsborough Valley) from the beginning instead of being asked to participate after problems with traditional owners has developed.

This problem has been alleviated to a certain extent in recent times. However the more efficient use of liaison staff and better communication between WTMA programs needs to be formalised with set protocols and guidelines rather than operating in the ad hoc fashion that currently exists.

Recommendation

- That the Authority formalise, within a set of protocols or guidelines, the development of an effective consultation and communication strategy between WTMA programs. This would include, among other issues, the more efficient and effective use of CLOs.
- That Aboriginal Resource Management program staff workshop current WTMA policy on joint management and related issues to provide other programs (particularly new staff) with an opportunity to become familiar with endorsed WTMA positions.

Liaison strategies

The use of liaison staff contracted through community organisations, the Community Liaison Officer system, has proved to be a valuable way of ensuring grassroots Bama participation in the consultation/liaison process particularly when the contracting bodies are well resourced and land issue focused. The CLO system is discussed further in a separate section (2.3.2.4).

Another effective liaison strategy adopted by WTMA was the funding and independent contracting of Bama Wabu, through the Cape York Land Council, to develop a Rainforest Aboriginal submission in response to the draft Wet Tropics Plan. The resultant document,

“Reasonable Expectations or Grand Delusions” (Cape York Land Council *et al.* 1996), was able to adequately and accurately reflect Bama concerns and aspirations. It proved to be an invaluable resource for the later development of the TOR 12 consultancy report.

From a Bama perspective, the benefits gained by the positive approach of the Authority to facilitating the Bama Wabu submission were negated by the lack of a proactive approach to native title issues in the final Wet Tropics Plan, in particular, the loss of the Division 5 Native Title Rights provision. Nevertheless the ‘community facilitator’ approach is seen as the preferred mechanism of consultation, particularly when a broad based response to management issues is required. Lane, (1994), in his review of public consultation processes also endorsed this approach, but with the qualification that the community-based facilitators require the necessary skills and understanding to be able to adjust the process, to suit different Aboriginal groups being consulted.

Lane identified the need for different consultative methods to recognise and cater for the differences between Aboriginal groups particularly between those with specific traditional custodial responsibilities and those with more general social, cultural, and political concerns. The implications are twofold. Firstly, there is no ‘quick-fix’ approach to effective consultation. The nature of the consultative process needs to reflect the nature and the interests of the target group. Secondly, the task facing WTMA (and indeed any other government agency) given the historical and political context of the region and the decentralised nature of Rainforest Aboriginal people is an onerous one (Lane 1994; p 33).

Resolution requires perseverance and appropriate resourcing. It may well be that government agencies can only aspire to maximise the effectiveness of their community consultation given that comprehensive representation across the wide range of groups, individuals and interests may be an unrealistic objective. It is worth noting that Aboriginal representative bodies, particularly the three relevant Land Councils and ATSIC, have also struggled with these issues with arguably mixed levels of success.

The WTMA has also utilised formal working groups as a means of facilitating communication and community input. The Joint Working Group was established as a means of progressing the development and implementation of policy arising from the 1993 Dale report on joint management. Similarly, the Joint Forum was convened in 1996 to provide a forum for dialogue between the Authority and Aboriginal groups on specific issues such as the ‘user pays’ system for national parks and specific planning issues such as walking tracks and road access strategies. Both fora were short lived, and in the case of the more recent Joint Forum, appeared to ‘die a natural death’ from lack of interest and real direction.

Despite some not so productive aspects these formal working groups were of an advantage in that, by specifically involving senior WTMA staff, they at least brought issues directly to the attention of the decision-makers within the Authority. Nevertheless, unless specific policy issues are negotiated and developed by way of a focused working group with defined outcomes, regular formal ‘general issues’ meetings are not seen as an efficient use of resources.

As it stands at the moment Aboriginal people already feel ‘meetinged-out’. There are not enough Aboriginal representatives available to attend all the current range of committees and meetings. There are, however, a couple of exceptions to the recommended avoidance of formal general issues meetings.

Firstly, Bama Wabu should be provided the opportunity to, on occasions, present specific discussion papers to WTMA Managers meetings. Secondly, it is suggested that Bama Wabu participate (at least on a trial basis) in the regular ‘Regional Managers’ meetings that occur between the senior management of a number of state agencies (including WTMA, DoE, and DNR) in Cairns. This will serve the purpose of highlighting the role of Bama Wabu and the concerns of Rainforest Aboriginal people to a wide range of decision-makers, and not just to the Authority. This is in keeping with a review paper by Webb, (1995; p 62), that emphasised the need for the Authority to facilitate regular meetings between major government land holders and Aboriginal peoples to ensure that discussions relating to management arrangements are relevant to all government lands within the WTWHA.

Recommendation

- That Bama Wabu (or its equivalent) look at raising its profile with government agencies through regular attendance at the Cairns Regional Managers forum and through presentations to relevant state agency and local government fora (eg management or program meetings).

It is also suggested that the Aboriginal Resource Management Program have lost a potentially valuable communication tool over the last 12 months by not continuing production of the original newsletter (eg. Bama Bulletin). It has become apparent that time and budgetary constraints have meant that the CLOs are unable to cover all the various Aboriginal organisations within the WTWHA. A well produced newsletter would help alleviate some of the gaps, keeping Aboriginal groups at least partly informed and directing people to sources of further information. It is recommended that any newsletter be produced and distributed in conjunction with Bama Wabu and relevant DoE and DNR staff. This is an attempt to facilitate a more coordinated approach to consultation and liaison, and to strengthen the relationship between key groups.

Recommendation

- WTMA produce a regular Aboriginal issues information sheet or newsletter to be produced and distributed in conjunction with DoE, DNR, and Bama Wabu (or its equivalent).

The issue of scientific research and/or monitoring activities on Aboriginal land within the WTWHA, particularly on DOGIT or Aboriginal reserve land is dealt with in the context of consultation protocols and research ethics elsewhere in this report (Part 4). However it is worth noting that any contracted scientist should be well informed early on in the contract negotiation stage as to possible consultation or site clearance requirements so that he or she can build an appropriate time and cost factor into their contract submission. In some cases there may be a need for the researcher to be accompanied by a paid observer to ensure that sites of significance

are respected. The CLOs cannot automatically fill this role, particularly if they are not the traditional custodians of the place in question.

It is unrealistic for WTMA staff to impose any necessary consultation requirements on a contractor who is not aware of the relevant issues well beforehand. Where WTMA fails to clearly identify the consultation requirements to the contractor it should be prepared to meet the necessary consultation costs.

Recommendation

- Where appropriate, all contractual arrangements undertaken between WTMA and scientific researchers or other consultants include appropriate protocol clauses, and a cost and time factor that takes into consideration any consultation or site clearance requirements.

2.3.2.3 Public consultation processes

Rainforest Aboriginal people, particularly those claiming traditional ownership or common law native title rights for a region, consistently assert that they should be involved in consultation and planning processes from the concept development phase. They see their status as above that of stakeholder, and consequently claim the right to be involved at a much earlier stage than the wider community and other sectoral groups.

Ironically, when included in the public consultation rounds for a particular management issue the majority of Aboriginal people interviewed identified that they generally felt disempowered and alienated from any effective decision-making. In some cases, even when adequately resourced and informed, Aboriginal representative groups express the concern that their involvement was at best tokenistic because at the end of the day the political will was not available to accommodate their interests in the face of any mainstream public opposition.

Public processes of consultation rely on members of the public or representatives of special interest or stakeholder groups being invited through public notices or meetings to make a submission to the relevant organisation. Such an approach is not necessarily appropriate for Rainforest Aboriginal people by virtue of the fact that:

- Generally indigenous groups do not have sufficient background information, including a clear understanding of current WTWHA management regimes and processes, in order to make an adequate response to a new management proposal or clearly understand what rights and options are currently available to them.
- Submission times can be inappropriate for community based decision-making processes which are often long and protracted leaving little time to compile and revise drafts and meet administrative deadlines.
- They often do not have the resources (including technical, legal and administrative expertise) to prepare adequate submissions.

- The political climate is such that any assertion of rights by Aboriginal people is not generally well supported by the broader north Queensland community, regardless of the nature of the assertion. Consequently the Aboriginal voice is often at a disadvantage even before specific issues are heard.¹⁴
- Aboriginal groups generally lack the political clout of many other lobby groups, particularly those that have a greater influence over the local economy.

A formal public submission phase on its own is therefore insufficient to achieve an equitable and appropriate mechanism for Aboriginal input into a planning process. WTMA made it part way to remedying this problem with respect to the public submission phase of the draft Wet Tropics Plan by resourcing Bama Wabu and the Cape York Land Council to facilitate a submission from Rainforest Aboriginal people. The emphasis should not just be on the provision of adequate resourcing of Aboriginal groups, this is only one aspect to be considered.

It is also important for WTWHA agencies to continue remedying some of the more basic communication problems that currently exist. These have been discussed within this report already. In essence, they relate to the responsibility of all agencies to be continually providing well presented information to Aboriginal communities and representative bodies on a range of management issues.

It is important in terms of both relationship building and meeting legal responsibilities for consulting Aboriginal interests to keep the information flowing at all times; not just when the government agencies identify a particular need or problem area. Workshops are not necessarily an appropriate forum given that many Aboriginal people are tired of attending meetings. Newsletters, information sheets, and even an informal phone call or meeting are some basic strategies that are both relatively cheap and reasonably effective ways of letting Aboriginal people know what is going on. A positive starting point would be for WTMA to resurrect its regular newsletter and encourage DNR (including all relevant sections) and DoE to contribute relevant articles. The newsletter could also be used to inform Rainforest Aboriginal people about how the Wet Tropics Board, the CCC and the SAC operate.

The use of the Internet and a specific Wet Tropics Aboriginal issues web Home Page would provide a fast and (in the long term) relatively inexpensive interactive vehicle for information flow. A particularly valuable outcome would be to create ongoing dialogue with respect to relevant management issues through the encouragement of written, electronic or verbal responses from community groups.

Recommendation

- WTMA utilise the Internet and develop a specific Wet Tropics Aboriginal issues web Home Page to provide a fast and relatively inexpensive interactive vehicle for information flow.

¹⁴ This comment is supported by research (PhD thesis) into non-Aboriginal attitudes and values towards the issue of Aboriginal hunting on national parks by social-scientist Fernando Ponte from James Cook University.

2.3.2.4 WTMA Community Liaison Officers (CLOs)

The appointment of three part-time WTMA CLOs has arguably been the most successful of all the WTMA consultation and communication strategies in terms of building bridges between the Authority and Rainforest Aboriginal people. The CLOs have also been relatively successful in raising the profile of Aboriginal issues and values with other WTMA staff. The basis of this success has been the fact that in most cases the particular individuals involved were able to better relate and empathise with client groups simply because of the inherent understanding of cultural protocols that only an Aboriginal person could bring to such a position. This is not to say that every CLO who worked for the Authority could be seen as a successful operator from all perspectives. However given adequate resourcing, appropriate levels of supervision, and the independence to work in a manner appropriate to the situation, most of the CLOs provided particularly good value for money.

The actual functions of the CLOs both current and future are considered under a range of separate headings throughout this report. This particular section will focus on ways of improving the effectiveness of the CLOs. Hence the following set of recommendations.

Recommendations

- All three CLOs be employed on a full-time basis (with appropriate employment conditions) in keeping with the expected increased work load arising from the *Review* recommendations and the implementation of the Wet Tropics Plan.
- All three CLOs be contracted through Aboriginal organisations (such as Giringun and Bama Wabu) with a broad representative mandate and a specific land management focus in an attempt to facilitate more equitable and relevant community input into the CLO work program.
- These contracting bodies develop, as appropriate, and on a cooperative basis with the Authority, greater input into the direction given to the CLOs, particularly in the context of work program development.
- CLO contracts be reviewed with respect to contract duration so as to provide client groups with continuity as to who they are dealing with, and to provide greater job security.
- Gender issues be adequately addressed in the selection of CLOs so as to provide a more balanced work team.
- ‘On-the-Job’ training particularly in the context of computer literacy and report writing be provided where such training will expressly improve the effectiveness and efficiency of the CLOs. As the desired outcome is more efficient communication, all reporting options (including video and still photography) should be explored.

Recommendations

- Any direction and supervision provided to the CLOs should not undermine the underlying rationale for their employment - providing a Bama perspective on issues and acting as an effective conduit for information flow.
- That adequate access to appropriate WTMA vehicles or vehicle hire be provided to CLOs to ensure that as the need arises field consultation is possible.

2.3.3 Aboriginal involvement in day-to-day management

2.3.3.1 Agency field staff perceptions

In general most agency field staff interviewed indicated that given adequate and secure funding and appropriate training, additional Aboriginal staff (either as full-time employees or contract staff) would be most beneficial in a whole range of management situations. A number of successful initiatives aimed at involving Aboriginal people in day-to-day management were identified. These mostly centred around basic 'hands-on' aspects of involvement such as building and maintaining walking tracks, or weed eradication programs. There appeared to be a scarcity of programs or formal mechanisms aimed at 'higher order' levels of involvement such as cultural site clearance, impact assessment, and policy development. DoE, in particular, is attempting to address this discrepancy at the policy level of management by looking at local management agreements and issues based memoranda of understanding. The fact that they have staff specifically allocated to addressing Aboriginal issues within protected areas is an advantage not shared by their DNR counterparts responsible for the 'hands-on' management of State Forests and Timber Reserves.

Some responses from field staff also indicate a significant degree of frustration with Aboriginal issues in general. Specific concerns focused on having to deal with what they saw as a number of politically motivated Aboriginal agendas, conflicting legal advice particularly with respect to native title, and a perceived lack of direction regarding 'Aboriginal issues' from regional and central offices. One particularly interesting point raised was the need for more time and funding to be placed at the 'grassroots' level of Aboriginal involvement instead of the major proportion of time and money apparently going into workshops and 'top-down' initiatives. This is a perception also shared by many Aboriginal people with an interest in management issues. One member of the Giringun Elders and Reference group expressed concern over the vast number of Aboriginal consultation reports and workshop proceedings that were apparently left to gather dust in office filing cabinets throughout the various agencies.

2.3.3.2 Resourcing constraints

One of the concerns continually emerging throughout the *Review* is that although formal mechanisms are sometimes available to facilitate Aboriginal input into WTWHA management there are just not enough Aboriginal people in paid positions who have the time or the skills to

participate in these fora; particularly meetings like the CCC and SAC, that have a strong bias towards western process. Given that both DoE and the Authority have a range of obligations under existing legislation and agreements to take into account Aboriginal interests, additional resources need to be allocated to translate these obligations into reality.

This is not to suggest that government agencies don't recognise the need to address equity issues and financially assist Aboriginal negotiators. For example, DoE have funded Djabuguy \$10,000 to cover legal advice as part of the Barron Gorge National Park procedural MoU negotiations. However, this is only a drop in the ocean in terms of the overall requirements of the whole of the WTWHA. Lakes Eacham and Barrine negotiations appear to be somewhat protracted in part due to the fact that the relevant Aboriginal groups do not have the resources to keep abreast with the negotiations. Given the recognised cultural significance of this region and the status of cultural resource protection as a cardinal national park management principle under the NCA, a reallocation of funding priorities is required.

Another possible solution to the problem of there not being enough Aboriginal people to meet the rapid rise in invitations from government agencies and tourism groups to sit on management and steering committees is for ATSIC and Land Councils to continue to take on a more active role. This could occur through the provision of policy development officers or the sub-contracting of grassroots Aboriginal organisations to participate in policy development. The latter option would particularly facilitate the empowerment of local Aboriginal community groups. For example, the Central Queensland Land Council already subcontracts Giringun Elders and Reference Group to take on specific policy development tasks and to attend relevant meetings related to specific native title issues (Bruce White; pers comm.).

Similarly, over the last few years ATSIC Townsville Regional Office has become particularly active in policy development negotiations relating to the Great Barrier Reef World Heritage Area. Increased levels of direct ATSIC involvement may not always be possible, particularly in the light of recent staffing cuts. Nevertheless further consideration of options and possibilities across the Council regions is worth pursuing. ATSIC regional councillors, by virtue of the ATSIC electoral process, have a representative mandate and a built-in accountability mechanism. The other benefit of the increased involvement of ATSIC councillors is that they would also have at their disposal the technical resources of the Commission. However, the reality is that even within the ATSIC bureaucracy resources are inadequate to meet the full extent of these consultation demands. Given that these requirements for consultation find their basis in State legislation, there would appear to be an obligation on the State to address any funding and other resourcing deficits.

2.3.3.3 Increasing awareness of Aboriginal rights and interests

- Given that between 80% and 90% of the WTWHA is potentially claimable under the NTA, WTMA and DNR staff (at all levels of management) should be involved in cross-cultural training programs of the same standard and format as those currently run for DoE (Far Northern) staff. These training programs should continue to ensure extensive input by local Rainforest Aboriginal people. They should also be expanded to include those government agency staff working in the southern Wet Tropics who have, to date, missed out on training

by virtue of being located within a different administrative region. The Girrigun Elders and Reference Group have expressed an interest in facilitating a southern Wet Tropics cross-cultural workshop.

- Likewise, cross-cultural training needs to be readily available to a range of Aboriginal groups throughout the WTWHA in an attempt to empower Aboriginal negotiators and to generally increase community awareness of the interests and constraints currently facing government land management agencies.
- The DNR would greatly benefit from the creation of a position dedicated to focusing on Aboriginal issues associated with the management of state forests and timber reserves. Similar positions already operate effectively within DoE. DNR representatives on the Departmental Reference group identified the absence of such a position as a distinct disadvantage for both Aboriginal interests and departmental officers. This position needs to be created in addition to those DNR staff addressing land transfer issues under the ALA.
- In WTMA there is a tendency for Aboriginal issues to be compartmentalised within the separate Aboriginal Resource Management Program (ARMP) when, in reality, they should be seen as core business by all sections. ARMP staff have often expressed a concern that they are perceived as the ‘poor cousins’ or an appendage within the organisation. There is a real need for greater communication and coordination within the organisation. Information flow needs to be formalised as a first step in addressing communication and coordination problems. Current mechanisms such as fortnightly managers meetings and monthly staff meetings have proved to be only partly effective for information flow and awareness raising.
- Information flow with respect to Aboriginal policy development, native title issues, and community concerns has also been identified as a problem within DoE, by both district and regional office staff. DoE are currently reviewing the situation across all business areas with a view to formalising communication mechanisms and breaking down internal coordination and communication barriers.

Recommendations

- All relevant WTMA, DNR, and DoE staff (particularly those dealing with on-the-ground management issues) be involved in cross-cultural training programs of the same standard and format as the series currently run for DoE (Far Northern) staff.
- That cross-cultural awareness programs be developed for WTWHA Aboriginal groups in an attempt to raise awareness of government interests and concerns, and to empower Aboriginal negotiators sitting on steering committees and working groups (ATSIC, Land Councils and WTMA to facilitate).
- That DNR create a specific Aboriginal liaison/policy unit specifically dedicated to policy development and the management of all tenures of land administered by DNR within the Wet Tropics World Heritage Area.

2.3.4 Aboriginal employment within government land management agencies in the WTWHA

2.3.4.1 Introduction

The issue of employment opportunities for Aboriginal people within implemented government protected areas is particularly problematic throughout Australia. Even the so-called 'Northern Territory blueprint models' for the joint-management of Aboriginal land have struggled to come up with the answers. Arriving at a successful employment model becomes even more difficult for the WTWHA where secure Aboriginal land tenure is not readily available, where native title rights and interests are unclear, where government funding for ranger positions is so limited, and where a range of underlying western management regimes currently exist.

Nevertheless, the issue of employment remains high on the list of Bama aspirations. Furthermore, the benefits of increasing levels of Aboriginal employment for the overall management of the WTWHA should not be underestimated. As Foster (1997; p.40) in the case of Gurig National Park (NT) suggests:

'The provision of employment for traditional owners is often quoted as one of the positive outcomes of a joint management arrangement. Employment in park management operations can provide the opportunity for them to be directly involved in the management of land that they own by spiritual and traditional right. It also improves the management of the park by ensuring the regular input of Aboriginal skills and knowledge. Moreover, it gives those employed the opportunity to develop new skills and to gain an income from their estate. Despite these potentially positive outcomes, the reality is problematic'.

Any resolution of employment and training concerns should avoid quick-fix solutions that could quickly flounder. Although there is an obvious need to get tangible employment results for Bama, there is also a need to avoid the inevitable failures associated with poorly resourced and ill-informed strategies. Early failures have proven in many places around Australia to serve to reinforce negative stereotypes regarding Aboriginal people in the workplace. In many cases it is the training program or the work place environment that is questionable, rather than the Aboriginal people themselves (see Lawson 1992).

2.3.4.2 The current WTWHA employment situation

Neither DoE, DNR, nor WTMA have an identifiable formal Aboriginal employment and training policy. DoE recently developed an 'ATSI Employment & Development Strategy' which does not appear to have moved beyond the draft stage.

Queensland Government policy with its emphasis on merit selection¹⁵ means that targeted positions for Aboriginal people within the public service are not readily available. Furthermore, agencies appear to be limited in their capacity to fund extra contractual positions which would otherwise serve to create additional Aboriginal employment opportunities as well as provide a particular service to the organisation; one that could often only best be met by Bama themselves.

Current levels of employment of Aboriginal staff within DoE, DNR, and WTMA vary at any one particular point of time according to the levels of available funding. A good proportion of positions held by Aboriginal people within the WTWHA management scenario are only temporary or contract positions. Whenever, funding cutbacks are required it is usually these temporary contract positions that are the first to go. The result is that in percentage terms Bama face a proportionally greater loss of representation in the overall day-to-day management stakes. There are currently no Aboriginal people occupying middle or senior management positions within the WTWHA, although DoE does have Aboriginal people employed at the relatively senior 'Ranger in Charge' designation and at the project officer level.

DoE staff interviewed were particularly keen to see more Aboriginal people employed permanently within their system, in recognition of the specialised management and liaison skills that Bama bring to the workplace. Despite the absence of a formal training strategy DoE considered that it does have some capacity to support training programs for Aboriginal people. DoE proposed that any approach to Aboriginal employment should focus on education and skill development and not on the development of designated Aboriginal positions. It was also suggested that much could be done to develop selection criteria that better recognise the skills and knowledge that Aboriginal people possess.

WTMA currently has no permanent or even temporary full-time Aboriginal employees. Generally WTMA has concentrated more on funding Aboriginal rangers or specialist contracting crews in other agencies (where funding permitted). It has, however, itself employed a significant number of Aboriginal people, on short term contract, in consultation and liaison work. Initial discussions with DEETYA to assist in the development of a WTMA Aboriginal employment strategy do not appear to have progressed very far (with the reasons behind the lack of progress remaining unclear). It would also appear that for some time Aboriginal people have been stressing the need for the Authority to develop an Aboriginal Employment Strategy with little in the way of tangible results. WTMA has, however, provided in-kind and financial assistance to what was originally known as the Cairns TAFE Community Ranger Course.

Note that Dale (1993) recommended that WTMA should firstly employ within its own organisation more Aboriginal people, and secondly, coordinate an Aboriginal Ranger Training and Employment Strategy involving the then Cairns TAFE, the DEH, and the DPI-Forest Service.

¹⁵ This does not suggest that Aboriginal people cannot attain employment on merit.. In some cases the selection process does not recognise particular skills and knowledge that Rainforest Aboriginal people can bring to the work place. This will be considered in more detail in section 2.3.4.4.

In general terms the approach adopted by government agencies to Aboriginal employment in WTWHA management appears to be rather disjointed. There appears to be strong in principle support for the employment of Bama, however the absence of a formal strategy, the constraints imposed by the 'merit selection' process and the lack of dedicated funding appears to have undermined a number of good intentions.

2.3.4.3 Ongoing considerations

Employment and training

It is envisaged that the issue of employment and training would feature significantly in any future negotiations between Aboriginal people and WTWHA management agencies in the context of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement, or perhaps as a component of a particular compensation package.

It would be preemptive and beyond the scope of the *Review* to provide any more than general principles and options in relation to employment and training at this point in time. The details of relevant strategies will be developed in the context of negotiations leading up to the establishment of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

The Bama Wabu submission to the draft Wet Tropics Plan (Bama Wabu, 1996) clearly identified that the Authority not only had a responsibility to employ Aboriginal people within its own organisational structure but that it also had a role in facilitating the establishment of Aboriginal enterprises (eg. Cultural tourism) within the greater Wet Tropics region. Neal (1995) identified that the declaration of native title over a national park would have significant implications for indigenous employment within that national park. He identified that the continued management of a national park by government interests could possibly become conditional, in part, on a certain percentage of park staff being the native title holders.

A particular 'window of opportunity' for increasing levels of Aboriginal employment comes from two sources. Firstly there is the availability within the WTWHA of a number of trained, and in some cases quite experienced, community ranger work crews. Secondly there is focus given to the development and upgrading of walking tracks and tourism infrastructure in the Wet Tropics by both the Commonwealth and the State.

One obvious approach, and this has already been adopted by DoE in the case of Barron Gorge National Park, is the employment of community rangers on walking track and infrastructure projects. This form of employment would not necessarily just focus on the provision of labourers. As stated elsewhere in this report any new walking tracks and infrastructure would require considerable consultation in relation to cultural heritage protection and native title issues, with obvious implications for Bama cultural values assessment crews and consultation facilitators.

Girringun, for example, is especially keen for its community rangers to be involved in walking track development associated with the proposed Koombaloomba ecotourism project. This could be a very cost effective arrangement for government, given that the development of a positive working relationship with Girringun (or other groups for that matter) could provide long

term benefits in a range of other management areas. Similarly Giringunja (Clump Point) community rangers have expressed an interest in contractual (as well as permanent) employment in the Innisfail-Mission Beach region.

The Clump Point Aboriginal Corporation already has a history of successful walking track development on its own land at Mission Beach. WTMA's Daintree Rescue Program has successfully utilised Mossman Gorge community rangers for site clearances and cultural heritage assessment both on and off national parks in the Mossman-Daintree region. Giringunja has also expressed a desire to be contracted to undertake local cross-cultural awareness and consultation workshops in the southern Wet Tropics region. This would be an invaluable service to those government land management agencies operating in the Mission Beach to Townsville region wishing to forge a better link with traditional owners, particularly in the context of cultural heritage protection or native title issues. Where appropriate all contractual arrangements should be made with Aboriginal organisations, avoiding the situation where individual service providers are paid directly by the government agency. Thus Aboriginal organisations become contracted to provide the required service as opposed to separate individuals. This has the benefit of firstly empowering local Aboriginal community groups, and secondly, providing a potentially larger work pool from which to draw the labour source.

Note: Government land management agencies should avoid relying on community rangers as the sole source of advice. This has been seen to be problematic in the past. At the end of the day it is the elders, traditional owners and native title claimants/holders that should be providing the final say for a particular issue.

Permits

Pilot projects are proposed by both WTMA and DoE in conjunction with Giringunja and Mossman Gorge Community, respectively, for the development of a permit advisory body to facilitate Aboriginal input into the permit decision making process. These projects are still only in their early stages but have the potential to provide a particular employment opportunity, the extent of which will ultimately depend on the number of permits required for consideration and the availability of resources. At the time of writing a consultancy looking at an appropriate mechanism, and the resource implications for the proposed trial Mossman Gorge permit referral body had not yet been completed.

WTMA should also consider contracting (through an Aboriginal organisation) an additional full-time CLO (or equivalent part-time contracts) to specifically cater for the Authority's Aboriginal consultation obligations under both the Act and the Plan with respect to the issue and monitoring of permits under the Plan. This person(s) would also be available to facilitate the consultation obligations of DNR and DoE as permit issuing entities under the Plan.

Yarrow (1997; p 54) identified the potential for the employment of a Bama cultural heritage interpreter or observer as a mandatory condition on the issue of a commercial activity permit under the NCA or Forestry Act¹⁶. This employment/cultural heritage protection measure would

¹⁶ This could also readily apply to the issue of scientific permits.

be particularly useful where tour operators were applying to visit culturally sensitive areas. DNR currently uses such a condition for tour operators visiting the Bare Hill art site.

Bama have also expressed concern at the loss of potential employment and entrepreneurial opportunities through the inability in some regions to gain commercial activity permits because of restrictions on the total numbers of permits available. They feel (as do other potential tour operators) that this ceiling is inequitable given that so many permitted operators are not making full use of their allocated numbers. Bama would like to see those unused allocations taken back and redistributed elsewhere to provide at least an opportunity for Bama to capitalise on the tourism potential of the WTWHA. It would also provide Bama with an opportunity to set a standard for the appropriate presentation of the cultural values of the region.

Funding

As a priority employment option each DNR and DoE management unit within the WTWHA should work towards having a funding pool available that can be used for short periods of work. This could be done as a day labour scheme with the government agency as the employer or more preferably via a contract through an Aboriginal organisation. Under a contract scheme there can be different rates of pay for different kinds of work, including consulting with elders and senior traditional owners. Parks Australia use both systems in Kakadu and Uluru - Kata Tjuta National Parks, paying workers on an hourly basis. These arrangements have offered great value in terms of providing employment for a wide number of potential employees, value for dollar spent and maximum flexibility to suit both the employer and employees (Wellings 1997). WTMA would be advised to adopt a similar day-labour or short term project employment mechanism in addition to its more long term CLO contracts. This would provide for the provision of a one-off or occasional service such as specialised consultation or advice (of perhaps just a couple of days work) not readily available through the regular CLO mechanism. Alternatively, community organisations such as Bama Wabu could be contracted to supply short-term consultants as well as one or more CLOs as part of a more all inclusive contractual arrangement.

Recommendations

- That where possible government land management agencies utilise local Community Rangers and other Aboriginal work crews to undertake approved walking track maintenance and development and other infrastructure development projects including the requirements for cultural heritage assessment and site clearance.
- That Community Rangers throughout the WTWHA be utilised on a contractual basis, where appropriate, for cultural heritage assessment work, cross-cultural awareness workshops, and as facilitators in a range of consultation/liaison exercises.
- That relevant State agencies adopt a coordinated approach to the development of a permit assessment and monitoring strategy with a view to (a) maximising the meaningful employment of Aboriginal people and (b) providing a mechanism for assisting government to meet its cultural heritage protection and Aboriginal consultation obligations.

Recommendation

- That WTMA, DoE, and DNR implement a casual employment scheme that can capitalise on the availability of Aboriginal people for short term projects, particularly where specialised local input is required. In the case of WTMA this would best be served by an all-inclusive contractual arrangement with an Aboriginal organisation(s) that already provides the services of a CLO.

2.3.4.4 Aboriginal Employment and Training Strategy

The development of a WTMA coordinated ‘whole of government’ WTWHA Aboriginal Employment and Training Strategy should focus on a number of issues that include:

- Assisting with the development of training modules that link TAFE training courses closer to the specific needs of government management agencies for the benefit of those Bama wishing to seek employment within DoE, WTMA, or DNR.
- The provision of volunteer work experience placements, scholarships, or cadetships to students in the latter stages of their formal training.
- Developing selection criteria that reflect a more balanced appreciation of Aboriginal knowledge and management skills¹⁷.
- Identifying a budget and administrative process for the casual employment of Aboriginal people for specific one-off short term projects.
- Investigating the merits of a mentor program aimed at providing local Aboriginal people with the opportunity to take up more senior management positions.
- Ensuring that all relevant staff (Aboriginal and non-Aboriginal) participate in cultural awareness programs and workshops.
- The establishment of a joint FNQ TAFE/DoE/WTMA/DNR Aboriginal employment facilitator whose role it is to identify and facilitate Aboriginal contractual and permanent employment opportunities on a ‘whole of government’ basis within the Wet Tropics.
- Creation of a healthy and supportive work environment that is flexible enough to accommodate, as far as practicable, the specific cultural needs of indigenous staff.
- Where high levels of consultation are required with traditional owners, the selection of non-indigenous staff to positions (using appropriate formal selection criteria) that have exhibited both a willingness and an ability to liaise and cooperate with indigenous interests.
- The development and implementation of strategies that allow for a greater number of Aboriginal people to attain the employment security offered by permanent as opposed to contract, casual or temporary positions.
- Greater attention to ‘outsourcing’ through the development of contractual employment strategies (in conjunction with DEETYA and ATSIC, where appropriate) that utilise

¹⁷ A precedent has already been set by DoE in the case of Lawn Hill and Iron Range National Parks. Generic ranger selection criteria were modified to better meet the needs of the local management situation which required a greater focus on addressing local indigenous issues.

Aboriginal service providers via contractual arrangements with relevant Rainforest Aboriginal organisations.

Such a strategy should be developed and resourced in conjunction with DEETYA, ATSIC and the relevant State land management agencies.

Recommendations

- That WTMA coordinate the development of an Aboriginal Employment and Training Strategy that provides a ‘whole of government’ approach to the employment of Bama in WTWHA management (see text for specific strategy components).
- That any Aboriginal Employment and Training Strategy become an integral part of the negotiation of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

2.3.4.5 Community Ranger (Indigenous Environment Officer) courses

Cribb (1995) recommended that WTMA play an active role in the activities of a proposed peak multi-sectoral body whose role it was, amongst other things, to coordinate the funding for community ranger education and training. It would not appear that this coordinating body has been particularly active, although WTMA has continued to participate (as has DoE) in TAFE advisory committees and community ranger workshops sponsored by the Commonwealth.

It is important that WTMA continues its link with community ranger trainees and training providers through its participation at workshops and on committees through the provision of guest lecturers and through helping to establish links between trainees, trainers and other government land management agencies. One tangible form of assistance would be for WTMA to assist training providers, in conjunction with the relevant land managers and specialised landcare tree planting organisations to involve trainees in ‘hands-on’ real-life rehabilitation projects within the Wet Tropics. Not only will this contribute to the meeting of the Primary Goal and the development of the students’ western land management and employment skills, but as Cribb suggests:

‘community rangers are vital to the philosophy and practice of Joint Management in the Wet Tropics and will be important in the implementation of Wet Tropics joint management programs’

(1995; p 51)

Recommendation

- The Wet Tropics Management Authority continue to develop a close link with community rangers, trainees, and training providers within the WTWHA through the provision of services, including where appropriate, technical and financial assistance.

2.3.5 Aboriginal involvement in WTMA Advisory Committees and in Board decision-making

2.3.5.1 Advisory Committees

The Management Scheme Intergovernmental Agreement (MSIA) provides for the establishment of a Community Consultative Committee (CCC), a Scientific Advisory Committee (SAC), and such other advisory committees as the Authority considers appropriate. The CCC and the SAC have been the only advisory committees in operation to date. The Rainforest Aboriginal Network rejected the offer by the Authority to establish an Aboriginal Advisory Committee on the grounds that such a move fell short of its aspirations for full and equitable joint management of the WTWHA and because of other difficulties associated with the issue of appropriate representation of relevant groups.

This section will focus on evaluating in practical terms the level and perceived effectiveness of Aboriginal involvement in the SAC and the CCC. A separate consultancy was undertaken to investigate the overall spirit and content of the MSIA (TOR 11) and will be discussed later in this report.

The current MSIA states (p 7) **“In particular, the Authority should ensure that Aboriginal interests are adequately represented on each of its mandatory Committees”**. The notion of adequacy is a very subjective one, and so any evaluation depends very much on the particular perspective of the commentator.

In general terms Aboriginal people across the WTWHA seem, particularly at the time the *Review* was undertaken, to be relatively unaware of the role of the two committees and of the potential opportunities afforded to them through this form of representation. It is suggested that the Aboriginal Resource Management Program (ARMP) actively advertise the role and activities of the two committees and facilitate grassroots Aboriginal input through nominated representatives.

The effectiveness of Aboriginal input was perhaps diminished by lack of continuity of the Aboriginal representatives on the SAC and CCC. It was argued by some non-Aboriginal representatives that a fairly regular turnover contributed to a significant loss of Aboriginal lobbying power. Nevertheless, those non-Aboriginal representatives interviewed strongly valued the potential of the two committees to be a useful forum for Rainforest Aboriginal people.

Ensuing discussion will focus specifically on the structure, role, and nature of the two committees in an attempt to identify and remedy any underlying problems.

<u>Recommendation</u>

- That the ARMP (particularly through the Community Liaison Officers) actively inform the broader Rainforest Aboriginal community as to the role and activities of the Wet Tropics Board and the SAC and CCC committees in an attempt to facilitate 'grassroots' input through relevant nominated representatives.

The Scientific Advisory Committee

Scientific Advisory Committee members are seen to be experts in a particular field rather than representatives of a particular organisation, region, or school of thought. The SAC is not seen as a broad based representative group but rather as a network of experts who are able to provide opinion and guidance rather than make decisions on specific issues. Discussions, are at times quite technical and couched in western academic jargon, potentially alienating those not familiar with this particular language genre.

It is suggested that if no Aboriginal person feels comfortable in this particular forum that Bama Wabu nominate an appropriate non-Aboriginal representative with a solid scientific background. Such a person could act as an information conduit, providing appropriate feedback, and identifying, for the SAC, potential problem areas that will require additional consultation and negotiation. This nominee would need to be formally accountable to Bama Wabu, and would need access to existing administrative and technical resources of, for example, one of the relevant land councils.

There are other obvious resourcing implications. The ARMP could be provided with additional resources to cover sitting fees and follow-up consultation needs for the nominee. The provision of sitting fees for advisory committees has not been acceptable to government in the past. However given the Authority's responsibility to ensure adequate Aboriginal representation on its mandatory committees then 'sitting or consultation' fees could be seen as a special affirmative action measure. The private sector, particularly mining and resource companies, have seen the value of paying 'sitting fees' or the equivalent in facilitating consultation with indigenous groups. At the very least, resources need to be made available by WTMA to ensure that whoever sits at the committee table has had the opportunity to consult as widely as possible with the broader Rainforest Aboriginal community both before and after meetings.

In response to the issue of poor Aboriginal attendance on this committee in the past some members of the SAC (and this was by no means a universal voice) expressed concern that where Aboriginal people wanted a voice at the table they should be prepared to turn up to meetings. It is suggested that the formality and content of the SAC meetings are not necessarily conducive to the participation of grassroots Aboriginal people. Those Bama that are able to feel comfortable with this particular forum are often the same people required at so many other similar meetings and committees. Basically there are just not enough Rainforest Aboriginal people comfortable with formal, bureaucratic, technical or academic fora to go around. It is not an issue of a lack of commitment to providing input; it relates more to an issue of equity, western process bias, and inadequate resourcing.

It is further suggested that if and when Bama wish to nominate a non-Aboriginal person to sit on the SAC as their representative, then the SAC should feel happy with that decision. Such a

move may be seen as a less than ideal by both Rainforest Aboriginal people and the scientific community. Nevertheless, it is a more positive approach towards ensuring consistent Aboriginal input than maintaining the current situation.

At this point in the discussion it is also worth revisiting a recommendation made by Dale (1993) in his consultancy report, “Joint Management in the Wet Tropics”, that has apparently been taken up in part by WTMA. Dale (p 13; s.2.2.2) recommended (in addition to someone with detailed traditional knowledge) the appointment to the SAC of members with social science and Aboriginal cultural heritage skills as a means to greater representational policy making. The recommendation was apparently noted by Ministerial Council but not formally adopted by the Board as one of the 27 items to constitute WTMA Joint Management policy.

This *Review* supports Dale’s original comments and recommends that such additional representation on the SAC, particularly a social scientist with experience in social impact assessment, should be implemented. It should be noted that there is now a place available on the SAC for an Aboriginal person, but that as previously mentioned it may not be possible to identify anyone willing or with the time available to sit on the committee.

It is also recommended that the SAC consider the cooperative development of a set of research and monitoring protocols aimed at meeting both the concerns of Rainforest Aboriginal people and the management needs of the WTWHA. These protocols should focus on identifying both appropriate consultation pathways as well as developing structures and mechanisms to ensure that Aboriginal people, where relevant, are an inherent component of the research activity. They would also serve to inform those scientists involved in field monitoring activities as to the appropriate methods of obtaining cultural site clearance for their work particularly on areas of Aboriginal land. Protocols should also be formally written into contracts. In effect these protocols would serve as a basis for a code of ethics for any person undertaking research in the Wet Tropics.

Some initial attempts to develop appropriate research protocols have already been undertaken by ATSIC, Cape York Land Council, and independent research steering committees (see examples in section 4.4 this report). These should be examined to avoid any unnecessary duplication and development time.

Recommendations

- That where no Aboriginal person is available to sit on the SAC that Bama Wabu nominate an appropriate non-Aboriginal representative with a solid scientific and Aboriginal liaison background.
- That sitting or consultation fees be made available to the identified SAC and CCC representatives as a special affirmative action measure to facilitate the need under the Wet Tropics Act to have adequate Aboriginal representation on the mandatory committees. At the very least, resources need to be made available to ensure that whoever sits at the committee table has had the opportunity to consult as widely as possible with the broader Rainforest Aboriginal community both before and after meetings.

- That in keeping with an earlier recommendation (Dale 1993), the Board identify a representative position on the SAC for a social scientist with experience in social impact assessment.

Recommendation

- That the SAC collaboratively develop a set of research and monitoring protocols aimed at meeting both the concerns of Rainforest Aboriginal people and the management needs of the WTWHA.

Community Consultative Committee

Previous Aboriginal representatives on the Community Consultative Committee have expressed concern as to their inability to adequately represent the range of Bama interests across the WTWHA. Others have also expressed concern at being the only indigenous person at the meeting, despite obvious attempts by other CCC members to facilitate their involvement.

One solution would be to allocate three Aboriginal positions to the CCC, in keeping with the strategy used by the ARMP that identifies, at the very least, the need for three Community Liaison Officers to cover the WHA. The precedent for multiple sectorial representation on the CCC already exists within local government. Additional representation would require additional resourcing, with the provision of travel expenses and sitting fees for those representatives not already in full-time employment with Land Councils or other representative organisations. The ARMP should be resourced to provide this additional cost either directly or through Bama Wabu. It is recommended that Bama Wabu (or an equivalent Aboriginal organisation) oversee the nomination of the three proposed representatives, given the Board accepts the proposal for increased representation.

If Bama Wabu is not adequately resourced for such a coordination role then other peak representative bodies should be approached. The apparent government opposition to paying sitting fees is seen as a major constraint (see previous SAC discussion).

The fact that Bama attendance at CCC has at times been inadequate, has more recently been less problematic because of the high profile and direct input afforded to Bama Wabu at WTMA Board meetings. However, this factor does not overcome the lost opportunity of raising awareness of Aboriginal issues amongst other CCC representatives drawn from a wide range of WTWHA stakeholder groups.

Recommendations

- That the Board consider the proposal for three Aboriginal representatives on the CCC as an initial measure to overcome the problem of inadequate regional representation.

- That Bama Wabu convene a meeting with the Chairperson of the CCC (and other members, as appropriate) to reconsider opportunities and options available (see *Review* report) to improve Aboriginal participation in the CCC.

Other potential advisory committees

Under the WTWHPMA (s. 40) the Authority has the power to establish other advisory committees as appropriate. The WTWHPMA cites by way of example the possibility of the establishment of an advisory committee providing advise to WTMA on matters relating to management issues and Aboriginal tradition [s. 40(4)(b)]. Such a committee could be delegated powers by the Board that would enable them to be actively involved in management of the WTWHA. Such powers could include, for example, the ability to make permit decisions under the Plan.

On more than one occasion in the past Rainforest Aboriginal people have formally rejected the notion of an Aboriginal Advisory Committee looking specifically at issues related to mechanisms of Aboriginal involvement. The concern appeared to be that such a committee would only be a token forum, and that it would continue to be rejected as a mechanism until Aboriginal interests became formally recognised in the management scheme. It is suggested that WTMA revisit the Aboriginal Advisory Committee concept with Rainforest Aboriginal people if Ministerial Council gives formal support to the notion of the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement as proposed by this *Review*.

Given a formal commitment by government towards these Agreements it may eventuate that Rainforest Aboriginal people are more supportive of a committee whose specific role it is to oversee the development of the Interim Negotiating Forum and Final Agreement.

Furthermore, within the context of these agreements such a committee may also be able to at long last provide the necessary impetus to at least get the issue of cultural re-listing finally and adequately considered. As stated previously, the issue of cultural relisting (despite support from the Board and from the Cultural Heritage Branch of DoE Far Northern) has had a long and protracted history of appearing to go nowhere.

2.3.5.2 Aboriginal Involvement in Board processes

Under Commonwealth legislation (WTQWHACA) at least one of the Commonwealth's two nominees must be an Aboriginal person. Rainforest Aboriginal people feel alienated from the nomination process and wish to be actively involved in deciding the Commonwealth's nominee. It is recommended that WTWHA Rainforest people be requested through a peak representative

body such as Bama Wabu to provide the Commonwealth with a nominee or set of nominees to take up the position¹⁸.

This mechanism needs to be transparent, open and accountable to Rainforest Aboriginal people. Bama have also expressed concern about the possibility of the appointment of an Aboriginal Board member without adequate traditional ties to the region. Lane (1997) identifies the appointment of an Aboriginal representative of national prominence to the Board as an example of the positive changes facilitated by WTMA during the second term of the Authority. It is important that what has been identified as a substantial commitment by WTMA to consulting with Aboriginal people in the WTWHA (Lane 1997; p 319) is not undermined by inadequate consultation with peak local Aboriginal representative groups with respect to the appointment of subsequent Aboriginal representatives to the Board by the Commonwealth.

During late 1997 the Commonwealth's delay in appointment of the Aboriginal Board member and the lack of a clear process for selection (and, in particular, the lack of direct consultation with Bama Wabu or other relevant Aboriginal groups or organisations) has further eroded any confidence held by Rainforest Aboriginal people in the intergovernmental management scheme.

Bama have also expressed (see TOR 12A consultancy report) that they wish to see a second Aboriginal representative on the Board. As identified in the 12B consultancy, the Departmental Reference Group suggested that it may be more realistic for all parties to work towards providing better assistance to the existing member rather than lobbying for the appointment of an additional member.

As previously mentioned Bama Wabu have been afforded a direct level of input into Board meetings through an invitation for a representative to participate as an official observer which includes the presentation of a separate Bama Wabu report. The Board has exhibited a willingness to date to at least address each recommendation presented in this report. The present Board has formally acknowledged the valued contribution made by Bama Wabu (Board Meeting 25; August 1997). Although this relatively high level of commitment to Bama Wabu is a positive indicator of the Board's commitment to Aboriginal involvement it is still early days. Bama have yet to see many real tangible outcomes out in the communities with respect to involvement in cooperative and joint management agreements.

Bama Wabu's involvement in the development of; walking track; ecotourism and fire management strategies has been supported, in principle, by the Board. This level of support needs to be reflected at the WTMA officer level and at the relevant state agency level in order to translate the Board's commitment into the desired tangible outcomes. In some areas there appears to be barriers between the policy development and the policy implementation stages of management.

¹⁸ Obviously Bama Wabu (or whatever peak representative body was involved) would have to ensure that it had adequately consulted with the wider Rainforest Aboriginal community before providing specific nominees.

There is a general lack of awareness amongst the broader Rainforest Aboriginal community as to the role and function of the Board. There is also a lack of awareness of Bama Wabu's role and input into Board decision-making. This lack of awareness needs to be rectified so as to provide a broader range of Aboriginal groups equitable access to the Board.

For its part it is recommended that Bama Wabu reviews the presentation of its report at Board meetings. It is proposed that instead of tabling a complex report on the day that has proven, on occasions, impossible for Board members, observers, and WTMA staff to adequately address that a couple of options be considered.

Firstly, and this comes down to a resourcing and organisational issue, that the Aboriginal Resource Management Program more effectively resource Bama Wabu to develop the report so that it can be ready for inclusion in the Board papers available for distribution prior to the meeting¹⁹. This is in keeping with the status of Bama Wabu as a semi-official Board advisory committee. A lack of resources currently means that Bama Wabu relies on the availability of volunteer workers to undertake the consultations and administration required to produce the report. Given WTMA's contribution to facilitating input to Board meetings by the CCC and the SAC, this is not seen as an unreasonable proposal. This assistance may simply be in the form of secretarial support or information dissemination via the CLOs. Another option is for the ARMP to facilitate dialogue between WTMA managers and Bama Wabu once the Board agenda becomes available (and thus specific issues for consideration identified). At the very least this would help clarify issues and generate discussion before the final Board papers are written.

Secondly, to avoid swamping the Board with issues better addressed at the day-to-day level of management there needs to be a more focused channel of communication between Bama Wabu and WTMA executive and managers. As previously mentioned, regular 'general issues' meetings have proved to be ineffective in the past. However, occasional presentations by Bama Wabu at WTMA managers' meetings (given adequate notice of issues to be discussed) may prove to be a positive starting point. Likewise, it would be beneficial for WTMA staff to provide presentations to Bama Wabu in a similar attempt to generate discussion on issues of government concern.

The Board has exhibited strong support for the issues raised by the *Review* to date. Some observers have commented that without such a mechanism as the Board, and in particular a dedicated 'Aboriginal' position, the *Review* may never have got off the ground in the first place. In some cases the Board has been held responsible for actions not ultimately its responsibility.

For instance it is not widely known by Aboriginal groups that Ministerial Council has the final decision-making role in many areas such as in the development of statutory management plans, budgetary considerations, and in endorsing the *Review* recommendations. Nor is it fully realised that, in many cases the Board has no real influence over certain decisions and management actions undertaken by DoE, DNR, and Local Government.

¹⁹ There is also a possible role for the North Queensland and Central Queensland Land Councils in providing extra assistance with the regular production of the Bama Wabu Board report. To date the Cape York Land Council has provided financial administration, office space and the use of office equipment.

Problems of coordination and jurisdiction are best overcome by adopting a ‘whole of government’ approach to all management issues within the WTWHA. Instead of attempting to bring together all the underlying management regimes in the off chance that the jigsaw pieces might form some coordinated and efficient regime, WTMA would better cater for the needs of Aboriginal people (and possibly a whole range of other interest and stakeholder groups) by facilitating a more focused ‘whole of government’ committee approach to management.

Recommendations

- That the Commonwealth government decision making process utilised in selecting the Aboriginal representative nominee for the Wet Tropics Board is transparent and accountable.
- That Bama Wabu (or an equivalent organisation) be requested to provide a set of nominees to the Commonwealth from which to choose the Aboriginal representative on the Board.
- That, in an attempt to facilitate adequate consideration of the Bama Wabu report, WTMA provide the appropriate secretarial assistance for Bama Wabu to provide a Board report available for distribution prior to the Board meeting.

2.3.5.3 Aboriginal involvement in the Daintree Coordination and Planning Group (DCPG) and the Daintree Rescue Program (DRP)

Although not a formal advisory committee established under the WTWHPMA the DCPG provides community, state and local government input into the management of the Daintree component of the WTWHA, and in particular, into the direction of the Daintree Rescue Program.

To date Kuku Yalanji people have been encouraged to participate at a number of levels in the DRP. These include:

- Membership on the DRP management group, the DCPG.
- Provision of Aboriginal community liaison services between the various Kuku Yalanji groups and DRP agencies (on a contractual basis).
- Provision of cultural heritage advice services to DRP in relation to works projects and local residents as a component of the land holder advisory service (on a contractual basis).
- Employment of individual Community members on DRP works and land protection projects.
- Planned cooperative management agreement on two freehold sites owned by the Community.

More recently, the DRP has proactively attempted to more effectively involve Kuku Yalanji in management decision-making. The current levels and areas of Bama involvement provide a good platform upon which to build further management arrangements that attempt to tackle the ‘harder’ issues. Such issues would include consent for infrastructure development, Bama involvement in the management of ‘buy-back’ land, and in the assessment of cultural heritage values and conditions over leasehold or freehold land subject to a possible CMA. The potential

for 'buy-back' land to create opportunities for the formal creation of an Aboriginal management regime (using leasing mechanisms identified previously in section 2.2.1 or through other means such as a CMA or MoU) have yet to be fully explored.

The Levers report²⁰ identified that Yalanji people generally felt alienated from the consultation processes particularly in the earlier days of development activities within the DRP region. Specific concerns identified that initially the consultation with Yalanji people was rushed and ad hoc, and did not provide sufficient time or process for Elders to participate. With the rise in profile and expertise of the Mossman Gorge Community Rangers and some positive initiatives undertaken by the DRP the level of Aboriginal involvement in 'Daintree' issues has increased to an extent where the Lever's report noted that although there is still room for improvement, Yalanji people are basically happy with the rate of progress.

The DCPG meetings themselves still appear to be somewhat problematic with inconsistent attendance by the nominated Aboriginal representatives and the inevitable western approach to meeting procedures. This point is reminiscent of the previous discussion of the effectiveness of the SAC and CCC as culturally appropriate advisory fora, and many of the same recommendations are relevant here.

A positive strategy undertaken by the DRP has been the employment of Mossman Gorge Community Ranger as an Aboriginal liaison officer to the DCPG. Although this may not have increased the input of the Aboriginal voice in actual DCPG meetings it has ensured that a greater flow of information is going out to relevant Aboriginal interests and a level of input is trickling back to the DCPG through more informal channels. It is essential that the liaison officer is not seen to be a representative of Yalanji people in decision-making processes within DCPG meetings. Although this may be desirable from a western perspective, it would in many cases be culturally inappropriate from a Bama perspective.

Recommendations

- That the DRP/ DCPG continue to support and fund the recently established Aboriginal liaison position
- That a separate 'Yalanji issues' report be formally tabled at every DCPG meeting as a process similar to the tabling of the Bama Wabu report at Board meetings
- That the 'Yalanji issues' report be presented to the meeting by a representative authorised by the Yalanji DCPG members; this person may or may not be Yalanji or a DCPG member
- That the 'Yalanji Issues' Report be developed on the basis of discussions and/or meetings involving the DCPG Yalanji members, the Aboriginal liaison officer, and other relevant interests prior to the actual DCPG meeting Note: There are obvious resourcing implications here that may need to be accommodated.

²⁰ An unpublished review of the DCPG and the DRP conducted by Sonny Levers, WTMA Community Liaison Officer.

- That on completion of the DRP appropriate funding arrangements are in place to support the continuation of this Aboriginal liaison position.

Recommendation

- That WTMA investigate the potential for DRP ‘buy-back’ land to provide formal land management control opportunities for Rainforest Aboriginal people.

2.3.6 Cooperative Management Agreements (CMAs)

2.3.6.1 CMAs under the WTWHPMMA and the Wet Tropics Plan

Cooperative Management Agreements are proposed under the management strategies outlined in the Wet Tropics Plan as a mechanism for facilitating the implementation of the primary goal by agreement. CMAs, under the statutory Wet Tropics Plan, may also allow for activities to be undertaken that would normally be prohibited. The Authority is also committed to the use of CMAs under the Act as a means of:

- involving the community, especially landholders, and including Aboriginal people, constructively in World Heritage management, and
- increasing the conservation output or effect in return for public monies spent;

Although not clearly defined or well understood²¹, CMAs are seen as a potential mechanism for involving Aboriginal people in management. The TOR 1 consultancy (Yarrow 1996a, pp 54-58) pays particular attention to the role of both CMAs and JMAs (joint management arrangements) and should be referred to for a more detailed and technical account.

Aboriginal people do not appear to have a clear understanding of the mechanisms and function of CMAs. This is not surprising given that many WTMA staff, including the Aboriginal Resource Management Program, appear to share that same level of uncertainty. By way of generalisation Bama appear to be fairly sceptical of the CMA provisions; in many cases seeing them as a superficial approach to real meaningful management involvement. With the removal of the ‘Division 5 Native Title Rights’ provision from the management plan and the uncertainty surrounding the proposed amendments to the NTA there would appear to be a lot less incentive for WTMA to negotiate CMAs with indigenous interest groups. Furthermore, despite the ability of CMAs to alter the operation of the Wet Tropics Plan through a specific provision, a CMA could not operate in this way for activities under the jurisdiction of the NCA or the FA. In particular, the aspirations of Aboriginal people about the regulation of visitor numbers and

²¹ CMAs may make provision for financial, scientific, technical, or other assistance in relation to the management of the WTWHMA. They are usually provide for some form of benefit to all parties to the agreement. Although they provide a way for Aboriginal people to become more involved in ‘day-to-day’ management, strictly speaking CMAs do not provide a mechanism for equitable involvement in management decision-making, as is potentially available under a formal joint management arrangement. For a more detailed account of CMAs reference is best made to “Protection Through Partnerships “ (WTMA 1997).

involvement in permit decision-making cannot be addressed under CMAs because of the absence of any specific legislative authority (Yarrow 1996a, p 56).

In short, CMAs (and for that matter joint management arrangements as defined under the WTWHMPMA) cannot affect the operation of statutory discretion, and accordingly, fall short of meeting the 'big-picture' decision-making goals of Rainforest Aboriginal people.

To date there have been no CMAs negotiated with Aboriginal people in the WTWHA. This is despite WTMA files indicating that a number of possible CMA sites and issues were identified as far back as 1994. In addition to a general lack of awareness and enthusiasm from potential Aboriginal parties, the development of CMAs has been problematic. Particular areas of difficulty include:

- To date DoE and DNR have been hesitant about WTMA entering into any formal arrangements with Bama on protected areas, state forests and timber reserves, respectively. This severely restricts the potential use of CMAs.
- Similarly, whereas a CMA has the potential to provide Bama with the ability to legally undertake a normally prohibited activity such as burning in a rainforest, such an agreement in no way frees Bama from regulation from underlying management regimes such as the NCA or FA.
- Before the identity of native title holders is formally determined by a court or a tribunal it is difficult for WTMA to determine whether the parties to a CMA actually represent native title holders. The WTMA is therefore concerned about entering into agreements based on any management action apart from low impact future acts. To do otherwise is seen to risk a future compensation claim.
- As previously mentioned, CMAs can only provide for limited management decision-making in that they are unable to require a statutory discretion to be exercised in a certain way. Without a specific legislative provision they do not provide a mechanism whereby Aboriginal people can exert influence on a decision over and above mechanisms available to other groups.
- The CMA budget allocation available to the Aboriginal Resource Management Program has for the last two financial years been quite restricted. For example, the allocation in the 1997-1998 budget sits at \$20,000 for the whole region.
- WTMA has to date been excluded from the native title claim mediation process, effectively negating any potential ability of CMAs to resolve competing land use interests.

Despite these restrictions a CMA still has the potential, for example, to provide for weed clearing, forest rehabilitation, recording of oral history, fencing, cultural heritage surveys, and other 'low-impact' activities.

In addition, by looking at either a three-way or facilitated two-way CMA between a landholder and an Aboriginal traditional owner, it may be possible to overcome an apparent lack of potential CMA locations brought on by an absence of relevant Aboriginal landholders under western law or because of complicated native title circumstances. Thus a CMA could potentially be undertaken on a freehold block that serves to meet the needs of all three parties, including appropriate cultural site access and protection, the provision of resources, and the preservation of World Heritage values.

Despite some real possibilities, it would appear that in general CMA's are effectively only a minor mechanism in terms of meeting the full range of Aboriginal management aspirations. They need to be seen as a starting point, not an end point in the overall scheme of management options to be recommended by this *Review*.

Recommendations

- That the development of CMAs with Aboriginal groups be recognised and funded as a mainstream activity and not marginalised within the domain of the ARMP.
- That the budget allocation currently available to the development of CMAs with Aboriginal interests be available for use to fund a broader range of project types that may include (among other things) specific assistance grants as a precursor to the establishment of a CMA, or the development of policy recommendations to facilitate a more appropriate approach to management arrangements.
- WTMA review its current CMA policy with a view to clarifying issues and constraints, particularly in the context of native title. A simple checklist or set of guidelines for the development of a CMA and for the prioritising of requests for assistance from Aboriginal groups should be developed for use by ARMP staff.
- That a separate review of CMAs be undertaken at the end of the 1998-1999 financial year to consider the future status of the scheme as a priority issue for the ARMP.
- That State policy be reviewed to allow WTMA to be involved in native title mediation at an early stage to make these mechanisms available where appropriate.
- That a more cooperative approach to management agreements be developed between DoE, DNR, WTMA, and local government to overcome problems relating to jurisdiction. For example it would be useful for WTMA to facilitate and fund agreements under s. 34 of the NCA between traditional owners and DoE for the protection and cooperative management of protected areas. A similar approach may be possible for areas of land administered by the various arms of DNR.
- Any CMA or agreement, binding or otherwise, undertaken with Aboriginal people should contain a disclaimer removing the possibility of the CMA (or agreement) impacting on any future determination of native title rights and interests.

- In keeping with original WTMA CMA policy, any draft legal agreement (either general or specific) proposed for use in a CMA involving Aboriginal people would need to be vetted by a lawyer with current expertise in Aboriginal issues, and preferably, chosen by Aboriginal people. WTMA may have to be prepared to pay for such advice. In any event, the Authority should always seek legal advice before finalising a CMA to ensure that it does not impact on native title rights.

Recommendations

- Subject to its obligation under s.10(5) of the WTWHMPMA, WTMA consult and liaise with relevant Aboriginal people before entering into a CMA with non-Aboriginal land holders. The need for a cultural heritage assessment should be considered in the case of infrastructure development or land clearance.
- The negotiation of any CMA should, wherever possible, involve the Community Liaison Officers to ensure that cultural differences in decision-making processes are recognised and respected.

With respect to the first recommendation relating to cultural heritage assessment Bama Wabu have already presented the Board with their preferred wording for such a mechanism (Board Meeting 25; Bama Wabu Report). Despite initial concerns by the Board that such a request for cultural heritage surveys and the development of site access protocols might discourage landholders from entering into a CMA it is felt that with appropriate education and public awareness such a mechanism may not prove to be as prohibitive as first thought. Once again, despite the fact that the WTWHHA is listed primarily for its natural values, there is still an obligation under s.10 (5) and 10 (6) of the WTWHMPMA and under Article 4 of the World Heritage Convention to take cultural heritage values into consideration. Current WTMA policy identifies cultural heritage values as important in assessing the worth of a CMA over a particular area of land.

2.3.6.2 Cooperative Management Agreements under other statutes

To date there have been no cooperative management agreements or conservation agreements with traditional owners under the NCA in the whole of Queensland. DoE are currently negotiating a cooperative management agreement with the Djabuguy Corporation over the management of Barron Gorge National Park. The process has been slow and frustrating for both sides, with uncertainty over the implications of any agreement for the Djabuguy native title claim at the forefront of concern. Legal advice has been in some cases contradictory, making it difficult to identify common ground. Nevertheless the agreement may prove to serve as a model for the ongoing negotiation of management arrangements in other protected areas throughout the WTWHHA.

At the time of writing this agreement had not been signed, nor was its content publicly available for scrutiny. The DoE approach of funding Djabuguy to acquire independent legal advice is seen as a positive move towards bridging inequity at the negotiating table.

DoE are also currently negotiating a Memorandum of Understanding with Bama Wabu on an agreed approach to developing a mechanism that will formalise the input of Rainforest Aboriginal people into permit decision-making processes administered by that department. Such a mechanism would provide Aboriginal people with an advisory role only. Nevertheless it is seen by all parties as a positive starting point. Currently there is no provision under relevant legislation to allow for decision-makers to legally favour Aboriginal interests above others.

2.3.6.3 Negotiation

The history of negotiations surrounding the proposed Djabugay-Barron Gorge National Park co-operative management agreement and the Bama Wabu/DoE permit MoU provides a useful case study to consider the climate for negotiation within the WTWHA. Both draft MoUs developed to date are essentially non-binding agreements to proceed with further management arrangements in line with a set of agreed protocols and procedures.

The fact that Aboriginal people feel that they need to establish a procedural mechanism before moving on to the negotiation of concrete management issues reflects a very deep-seated concern about the establishment of fair and equitable dealings with government agencies in the past. In effect, any consultation and negotiation undertaken today has the potential to be tainted by any bad experiences from the past. Patience is required on both sides of the negotiating table. Having said that, it also behoves the different parties to move beyond the atmosphere of mistrust between government agencies and Rainforest Aboriginal people generated from actions in the past and negotiate from a position of commitment and good will. Otherwise any future negotiations will prove to be a long and protracted game of cat and mouse that will inevitably lead to ongoing frustration and the draining of scarce resources. Unfortunately the removal of specific native title provisions from the final Wet Tropics Plan has only served to exacerbate the situation of mistrust.

Continuing this line of argument, Dale in his seminal report on joint management in the Wet Tropics (Dale 1993) identified 3 broad planning principles essential to the effective negotiation of shared management arrangements (and in particular joint management agreements) in the WTWHA. These principles are presented below as prerequisites for ongoing negotiations between Rainforest Aboriginal people and any government agency (or consortium of agencies). Reference is best made back to Dale's original report for a more detailed commentary (particularly s.1.5, pp 9-11; see Volume 2). Thus Dale proposed that each party to the [joint management]²² process brings to the table a set of particular rights and interests in addition to a responsibility to:

- Have a strong representative mandate from a clearly identifiable group of constituents who are able to fully and equitably participate in any policy development and accountability mechanisms.

²² Although Dale was specifically referring to joint management it is suggested that these principles apply to any negotiated agreement. They were originally derived from experiences of the Canadian Inuit in their negotiations for self-governing regions (Dale 1993; p 9).

- Ensure that it has its facts right before doing its own planning or before entering into negotiations. Each party should also be committed to data sharing where culturally appropriate and politically feasible to do so.
- Adopt a firm commitment to effective bargaining and negotiation. Dale describes a series of key requirements for effective bargaining and negotiation; with the initial requirement being the recognition and respect for the legitimacy of the rights and interests of the other parties.

2.3.7 Aboriginal involvement in the development of management plans.

2.3.7.1 The Wet Tropics Plan

Despite the fact that Bama Wabu received financial and in-kind support from WTMA to provide an extensive submission to the draft Wet Tropics Plan²³, and that several consultation meetings were held following the submission, Rainforest Aboriginal people generally felt alienated from achieving what they see as meaningful outcomes. Basically, the perception is that despite being afforded the ability to make significant input, when it came down to the reality of being able to make significant change, other groups ranging from bee keeping associations through to tourism groups and local government had much more influence on the final outcomes. The final reality of this became apparent as the draft Plan's response to the treatment of native title issues became a real stumbling block to getting the Plan approved.

The removal of the Division 5 Native Title Provision (refer to the **draft** Wet Tropics Plan s.43) at the Ministerial Council level is seen by Aboriginal people as the removal of the only proactive and positive aspect of the Authority's approach to native title. Mr Noel Pearson, Aboriginal representative on the Board, saw it as the removal of the incentive for government to negotiate with Rainforest Aboriginal people at a meaningful level of management. The overall perception of the process by Bama was that at the end of the day the political will wasn't there to proceed with anything but the soft options. Given the overriding powers of Ministerial Council, Bama are thus disillusioned with the ability of any Aboriginal representative on the Board to promote Aboriginal interests on issues that have any degree of political sensitivity.

It is recommended that at the very least a greater degree of direct communication and consultation occur between Board members and Ministerial Council before such significant decisions as the removal of Division 5 Native Title Rights are made.

Dale (1993) in s.2.3.6 of his report provided a number of basic principles that he recommended the Authority should adopt in its regional and strategic issues planning processes (refer to pp 15-17 of Dale's report for details). Following a recommendation by the Board that the recommendations be put on hold pending some additional rewording it would appear that Dale's basic principles for management planning were not given the official policy endorsement they required, and perhaps deserved. This *Review* recommends that Dale's s.2.3.6

²³ Bama Wabu (1996). *Reasonable Expectations or Grand Delusions? Submission to the draft Wet Tropics Plan*. Published by Cape York Land Council *et al.*.

recommendations be revisited and formally endorsed, not so much as a joint management policy but as a protocol for ongoing involvement of Aboriginal people in specific area management plans, and the monitoring and review of the newly gazetted Wet Tropics Plan. Such a protocol (based on expanding and updating Dale's original recommendations) is provided in section 4.4.2 of this report.

It is also suggested that an essential element in any management planning protocol is that Aboriginal people should be involved right from the very beginning and not brought into the development process only at the public consultation phase. It is worth looking at one of Dale's principles in more detail to see how it can be further expanded to incorporate more recent schools of thought; in particular, the recommendation that by way of a basic planning principle the Authority define 'planning boundaries on social as well as bio-physical boundaries' (Dale 1993: p 16).

This approach has also been considered by the Queensland Department of Family Youth and Community Care (DFYCC) in the development of its draft 'Indigenous Land Interest Model'. This model provides a set of principles for dealing with Aboriginal and Torres Strait Islander land, sea, and other social issues in the consideration of development applications and planning exercises (DFYCC 1997). Although not officially State government policy nor perhaps even a 'hands-on' management procedure, this particular model (albeit still in draft form) still offers the attraction of providing a philosophical **'approach to site clearance and social impact assessment which should maximise opportunities for staged agreement and rapid approval of work programs without compromising the legal and cultural integrity of indigenous communities'**.

The actual procedures and consultation protocols for the ILIM model have yet to be finalised. However, the underlying principles and philosophy of the ILIM model are still worthy of consideration as a basis for relevant impact assessment procedures within the WTWhA. They may have proved to have been invaluable in the resolution of such sensitive and controversial issues as the Wujal Wujal water supply. The underlying principles of the ILIM model should also be reexamined in the context of the assessment and impact protocols and guidelines proposed in the 'Protection Through Partnerships' document (WTMA 1997).

Recommendations

- The basic principles for regional and strategic planning (based on Dale 1993) presented in section 4.4.2 be considered by the WTMA Board as a component of WTMA's overall planning policy. By way of a summary these principles propose that:
 - (a) Rainforest Aboriginal people be treated as more than just a 'stakeholder' and therefore be involved from the initial stages of the planning process
 - (b) Planners deal with the right people for country, ensuring that any contentious issue has the full support, in writing, of native title claimants/title-holders

- (c) Rainforest Aboriginal people are involved in planning activities on an equitable and culturally appropriate basis
- WTMA incorporate the underlying principles of the Queensland Department of Family Youth and Community Care's draft Indigenous Land Interest Model into its WTWHA management and planning policy, particularly in the context of social and environmental impact assessment.

2.3.7.2 DoE Management Plans

Currently there have been no management plans gazetted for any Queensland National Parks under the NCA. According to DoE sources there is a strong level of commitment to involving Aboriginal people right at the early stages of management plan development. As mentioned previously this is in keeping with the desire of Rainforest Aboriginal people to be involved in planning activities right from the beginning.

There is unofficial policy within DoE Far Northern Region of not releasing any management plans to the public for consultation until Rainforest Aboriginal people are happy with the draft document. DoE staff are currently working through the drafting of a revised Crater Lakes management plan with relevant traditional owners prior to releasing the document as an official draft to the wider community. It has been suggested that the same approach will be adopted for the next set of parks under consideration; Barron Gorge, Daintree, and Wooroonooran. Such an approach to involving Bama in management planning is seen as a positive move. However, as with a number of examples of other proactive attempts to involve Aboriginal people in the WTWHA, there is a need to ensure that this approach is further refined by all parties and then endorsed as official policy to reinforce its value and to ensure its continued operation. Unofficial or informal mechanisms are subject to the influence of staffing changes, particular personalities, and the availability of good will.

2.3.7.3 DNR Management Plans

It would appear that up until the determination of native title over an area of land that DNR are not considering the involvement of Aboriginal traditional owners in the management planning any differently to how they would be dealing with other 'stakeholders'. As mentioned previously Rainforest Aboriginal people assert, in keeping with their common law native title rights, that they are more than just another 'stakeholder'. By virtue of its historical context the *Forestry Act 1959* (Qld) reflects very little in the way of an obligation to consult and liaise specifically with Aboriginal groups. In keeping with obligations under the NTA and the Cultural Records Act, and in keeping with the principles presented in the NCA and the WTWHPMA, it is suggested that any new legislation relating to the management of State Forests, timber, and other reserves reflect the need to, at the very least, liaise, cooperate and have regard to the rights and interests of Aboriginal people. Without such supporting legislation DNR staff interviewed see difficulty treating Aboriginal people as more than just one stakeholder amongst many. It would appear that the uncertainty surrounding the future of native title legislation has detracted from the

elevated status of traditional owners under the common law considerations of the Mabo and Wik decisions.

Specifically in the context of management plans it is recommended that DNR adopt the same (albeit as yet unofficial approach) taken by DoE ie. of involving Aboriginal people right from the very beginning, and not releasing a document for full public consultation prior to Aboriginal people being happy with the draft. Currently DNR staff, particularly those associated with the management of State forests and timber reserves, are actively seeking the involvement of Aboriginal people in management planning. Their task is made more difficult in the absence of identified Aboriginal liaison staff, and a lack of specific policy on Aboriginal issues, particularly in the context of permit decision-making processes.

DNR must also ensure that any planning consultative or steering committees are structured and resourced in a way that Rainforest Aboriginal people can equitably participate in the decision-making process. The issue of western process bias has already been discussed elsewhere. Consultation and negotiation protocols need to be developed between DNR planners and each relevant Rainforest Aboriginal group that they are working with.

Recommendation

- The Department of Environment, the Department of Natural Resources and the Wet Tropics Management Authority adopt as official policy the full participation of traditional owners and Rainforest Aboriginal people concerned with the land at the commencement of any relevant planning activity.

2.3.7.4 Management Plans for DOGIT communities and other forms of title (including leases) held by Aboriginal people

It is recommended that where full agreement is reached by all relevant parties (and this would include trustees, DOGIT community councils, and relevant native title claimants and/or holders) that state agencies (as appropriate) offer in-kind and financial support to requests for assistance in the development of community development and environmental management plans. This assistance would best occur under the direction of a steering committee representative of all relevant Aboriginal interests. It should focus on empowering local Rainforest Aboriginal groups through specific skill development particularly in relation to issues such as learning where and how to place community infrastructure so as to minimise environmental impacts.

At all times government agencies need to be conscious of any native title implications of their actions, proposed or otherwise. Before committing to any level of involvement, beyond a low impact future act, agencies should seek in writing consent from native title holders and claimants. This is also the current ATSIC policy with respect to the funding of infrastructure development on DOGIT communities and reserves.

Any disputes between Council, trustees, and native title holders or claimants should be left to the relevant Aboriginal people to sort out before providing assistance or entering into agreement.

Government agencies would best be advised to work in closely with ATSIC and the relevant Land Council for specific advice.

According to WTMA file notes the Mona Mona community was keen to develop a management plan in 1994. WTMA is working once again with people from Mona Mona, as well as Burungu (China Camp) with a view to assisting in community and environmental management planning. It is important that WTMA maintains a role in these negotiations, providing input as requested and liaising with peak groups but not actually facilitating the process. This should be left to the responsibility of other organisations such as Land Councils, ATSIC, and other relevant representative bodies or government agencies.

However, as Dale (1993; p 16) identified in his consultancy report, the Authority should explicitly link management plans (and these would likely include both specific area management plans and the statutory Wet Tropics Plan) to existing (and even future) community development plans developed (or currently being developed) by Aboriginal organisations. As identified in Bama Wabu (1996; pp 31-32) there is a specific need to ensure that any WTWHA planning regimes take into account Aboriginal community development needs. To this effect, appropriate mechanisms such as permits and/or cooperative management agreements need to be readily accessible to non-DOGIT communities like Mona Mona (which technically fall outside of the Schedule 1 local government re-zoning application provision) in order to ensure that community needs can be accommodated or are not unduly affected.

The management of other World Heritage Areas in Australia has shown that it is possible to successfully, through negotiation and cooperative planning, meet both Aboriginal community development needs and the obligations of western management regimes [eg. Mutitjulu Community located within the boundaries of Uluru - Kata Tjuta National Park; (see Uluru-Kata Tjuta Board of Management and ANPWS (1991) and De Lacy and Lawson, 1997).

Recommendation

- Where full agreement is reached by all relevant parties (and this must include native title claimants and/or holders), state agencies (where appropriate) offer in-kind and financial support to requests for assistance in the development of Rainforest Aboriginal community development and environmental management plans.

2.3.8 The Aboriginal Resource Management program (ARMP)

Much discussion has already been given to the effectiveness of WTMA's ARMP in the context of other areas of involvement. Before proceeding onto some additional specific recommendations, particularly in relation to the employment and resourcing of the Community Liaison Officers, a couple of more general comments are to be made.

The establishment of separate Aboriginal issues unit within WTMA was a direct request by the Rainforest Aboriginal Network (see Lane, 1993) but Dale (1993) despite providing in principle

support for the notion cautioned against a number of potential problems that would appear to have come to fruition. In particular Dale noted that:

‘The establishment of a completely separate management unit could lead to the marginalisation of joint management and Aboriginal issues within the Authority. It would be too easy for the Authority to hand responsibility over to a particular unit which would then have to continue to compete with other sections for political legitimacy’ (p 14).

The current situation within WTMA indicates that to a certain extent this marginalisation has occurred with Aboriginal issues treated as an appendage to mainstream core business by some other programs within the organisation. To a certain extent this reflects the fact that over the last two years since a separate Aboriginal issues program was established there has been at least five acting program managers and long periods of time with nobody in the position at all. Consequently there has been an inconsistent or spasmodic approach to ‘talking up’ and coordinating Aboriginal issues across programs. However, there still appears to be a perception among some programs that the role of the Aboriginal Resource Management Program is to deal with everything that has an ‘Aboriginal flavour’.

In contrast the ARMP should have the specific technical functions of facilitating the actual process of local Aboriginal input into management agreements, the two Board advisory committees, and into the legislative, policy and planning aspects of WTMA and other State and Commonwealth activities. It should not be seen by the other programs as a way of delegating responsibility away for what needs to be seen as core business management issues. Authority staff outside of the ARMP should have the same approach to issues, particularly the development of management agreements, as those inside the unit.

This marginalisation has also resulted in apparent lapses in communication and coordination between programs. In fact, ARMP have expressed concern that they often find out about relevant issues or meetings only by chance. (This has already been partially considered in a previous section). The issue of the water reserve at Mossman Gorge serves to illustrate this point. At various different meetings Kuku Yalanji people at the Gorge have met with a total of at least 6 different WTMA staff from 4 separate programs. It is not uncommon for different WTMA officers to be presenting specific program agendas at different meetings often without due consideration to those relevant issues addressed by other staff. Apart from the obvious issue of poor internal communication and policy coordination, such an approach presents a negative picture of the Authority’s role as an efficient coordinating body, and apart from anything else, leaves the Gorge Community confused as to who to be dealing with in order to obtain the full perspective on WTMA policy. Research into this issue of poor internal coordination has suggested that it is not the exclusive domain of Aboriginal issues. It would appear that there is a need for better internal communication across a whole range of management areas. The implication is that WTMA managers and executive should be looking at ways of better facilitating cooperation and communication between the separate programs. A good starting point would be for the ARMP to workshop current policy related to Aboriginal issues so as to at least provide other sections (particularly new staff) with an opportunity to become familiar with endorsed WTMA policy on Aboriginal issues.

It is also suggested that to alleviate this apparent marginalisation of the unit, ARMP staff need to avoid alienating themselves from other WTMA staff (and in fact, other government agencies) by focusing too much on the identification of barriers without attempting to devote adequate time to the facilitation of solutions. The identification of problem areas is important; but attempting to find or facilitate ways of overcoming concerns is the necessary next step.

Sections within DoE have also expressed concern, on occasions, about aspects of WTMA's involvement in issues relating to Aboriginal involvement in the management of protected areas. Once again it is suggested that this comes down to a coordination and communication issue. Attempts are already underway to clarify roles and responsibilities and to facilitate a more efficient and cooperative approach to management issues. It is worth considering an exchange of letters or an MoU between the two agencies in order to formalise any resolutions.

At the very least it is recommended that regular meetings be trialed between those WTMA, DNR, and DoE staff working specifically on Aboriginal issues (say every 2 months) as a way of facilitating better communication between management agencies.

It is suggested that the attendance of a nominee from Aboriginal groups for specific issues would facilitate open dialogue and information flow. Discussion of common issues and concerns, and the exchange of successful ideas and management strategies may prove a valuable catalyst for a more coordinated approach to 'Aboriginal issues'.

In terms of long term options the Authority should ensure that staff from all programs share a common commitment to establishing localised management agreements with Aboriginal people. Once (given endorsement by the Board and Ministerial Council) the proposed Interim Negotiating Forum has been finalised and signed, and the Regional Wet Tropics Agreement negotiation process is firmly established, the Authority should consider reviewing the status of the ARMP as a separate unit.

It may be that Aboriginal interests are better served by having the CLOs work more often within other programs in an attempt to reinforce the need for a more integrated and coordinated approach²⁴. It is also suggested that consideration be given to CLO's being contracted through peak Aboriginal land management groups with a broad representative mandate (as opposed to more narrowly focused groups without a specific land management organisational structure). This contractual arrangement should always allow for the CLOs to maintain their high profile within WTMA.

It is also recommended that the Authority consider the continued use of outsourced consultancies, jointly developed and supervised with relevant Aboriginal groups, to provide the research and policy advice necessary for WTMA to provide meaningful input into the ongoing negotiation of the proposed Regional Wet Tropics Agreement. Jointly run consultancies should

²⁴ Once a more integrated and coordinated approach to Aboriginal issues develops across all WTMA programs the role of the Manager ARMP may become redundant, and the resources allocated to this position may prove to be better utilised in providing specialist technical or legal advice.

also be used to inform the development of the proposed walking track and ecotourism strategy, and any ongoing revision of the Wet Tropics Plan.²⁵

Recommendations

- That DoE, DNR, WTMA, and Bama Wabu continue discussions aimed at clarifying and coordinating roles and responsibilities in an attempt to facilitate a more collaborative and cooperative approach to management issues of concern to Rainforest Aboriginal people.
- The Authority ensures that staff from all WTMA programs share a common commitment to establishing localised management agreements including Aboriginal interests in the WTWHA.
- WTMA continue the use of outsourced consultancies jointly developed and supervised with relevant Aboriginal groups to provide the research and policy advice necessary for WTMA to have meaningful input into planning activities, including the ongoing negotiation of the proposed Final (Regional Wet Tropics) Agreement.

2.3.9 Government Policy on Joint Management

Section 2.1.2 of this report proposed that to meet the management aspirations of Rainforest Aboriginal people there was a need to move away from the confusion attached to the term ‘joint management’ and look towards achieving the same outcomes through the negotiated agreement process. The greater acceptance of ‘joint management’ as a flexible generic term based on developing and implementing negotiated management arrangements would aid in meeting the aspirations and legal requirements of all parties. These arrangements could be varied (once again through negotiation) in response to changing circumstances.

This section will consider the history of the move towards joint management in the Wet Tropics with a view not so much to sort out the tangle of definitions but to provide strategic direction for ongoing development of the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement. However, attention will be given to a review of relevant WTWHA legislation and how it relates to the range of management options currently described as ‘joint management’.

2.3.9.1 Relevant Legislation

The capacity for achieving joint management agreements varies according to legislation and tenure. A different perspective on what constitutes joint management also varies according to legislation and policy across the WTWHA.

²⁵ Given current resourcing constraints, it may be that this research and policy coordination role becomes (at least initially) a specific task of the manager of the ARMP. Ultimately, the aim should be for each relevant program within WTMA to take on its own Aboriginal policy development in collaboration with relevant Aboriginal groups.

Protected Areas and the *Nature Conservation Act*

- For a more detailed account refer to Dale *et al.* (1997a; p 10) (TOR 12A report).
- Currently under the NCA joint management arrangements similar to the Uluru - Kata Tjuta and Kakadu models can potentially be achieved only where a park is gazetted as available for claim under the *Aboriginal Land Act 1991* (Qld).
- There is potential for exploring agreements (such as the ones proposed as an outcome of this *Review*) under s.34 of the NCA. Such agreements would need to be consistent with the management principles of a national park and could not fetter the statutory decision making responsibilities of decision makers under legislation.
- Nevertheless it may be practical to delegate some decision-making powers to Aboriginal people appointed as Conservation Officers (these would remain under the discretion of the Chief Executive).
- If the Queensland Government decides to pursue the policy direction of a Final (Regional Wet Tropics) Agreement then explicit provisions to reflect this policy should be included in the legislation.

The *Wet Tropics World Heritage Protection and Management Act* and the Wet Tropics Plan

- Section 10(1) (f) of the Act provides for the Authority to “enter into, and facilitate the entering into of, cooperative management agreements (including joint management agreements) with landholders, Aboriginal people particularly concerned with land in the Wet Tropics Area, and other persons.
- The Preamble of the Act says that it is the intention of 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”.
- The Act appears to provide plenty of scope for the development of negotiated agreements along the lines of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement. However an agreement cannot require a statutory discretion to be exercised in a certain way without legislative authority. Thus the aspiration of Aboriginal people to be able to regulate visitor numbers or control permit decision making is not possible under an agreement (except in an advisory capacity) without an appropriate change to the legislation. Nor could an agreement under the *Wet Tropics Act* operate in this way for lands managed under the *Nature Conservation Act* and the *Forestry Act*.
- The Wet Tropics Plan identifies joint management arrangements as a particular type of cooperative management agreement and states that the Authority will encourage the development of joint management agreements in accordance with the policy position of relevant landholders and the provisions available in relevant underlying legislation (eg: in the

case of national parks, DoE and the Nature Conservation Act; where the department sees joint management as an option where land is Aboriginal land or where native title rights exist).

The Forestry Act

- There is currently no specific provision under the Forestry Act for any form of joint management. Neither does it specifically deny opportunities for joint management or equivalent management options.

Commonwealth Native Title Act

- Possibilities exist for meeting Aboriginal joint management aspirations through the recognition of native title on protected areas not already claimed under the *Aboriginal Land Act 1991* (Qld). For example, s.21 of the *Native Title Act 1993* (Cwlth) could underpin a range of negotiated joint management options which would not necessarily result in the extinguishment of native title (Dale et al. 1997a; pp 10-11).
- As suggested above s.34 of the NCA may allow the Chief Executive of DoE to enter into agreements (and to grant licences, leases, permits, and other authorities) with native title holders over a protected area. This agreement could possibly include the contractual management of a protected area by native title holders in accordance with an agreed management plan; including the establishment of a board of management with total or majority Aboriginal membership to implement the plan (Dale *et al.* 1997a: p 11).
- David Yarrow's TOR 14 Native Title consultancy report considered that the real possibility exists that the dedication of national parks under the NCA may be invalid because of the operation of the Racial Discrimination Act 1975 (Cwlth) and provisions of the NTA (see Yarrow 1996b). If successfully tested in court, this could substantially favour Rainforest Aboriginal people with respect to the negotiation of meaningful joint management arrangements in WTWHA national parks.

2.3.9.2 Relevant policy

In 1993 the WTMA Board formally adopted 27 policies for joint management that were based on the recommendations arising from two discussion papers looking at joint management in the context of the Wet Tropics (see Dale 1993; Lane 1993) and from discussions held by the newly formed Joint Management Working Group.

These policies are listed in Appendix 1a along with an overview of the extent of their implementation. These policy statements fall far short of the so-called 'joint management' aspirations held by Bama as identified in section 2.1.2 (this report). In particular policy #36 identifies the need for 'joint management' in the Wet Tropics to revolve around the development

of 'legally binding and fair' CMAs amongst stakeholders. As previously mentioned (section 2.3.6.1), CMAs are really only a stepping stone towards meaningful Aboriginal involvement. In the absence of relevant supporting legislation, they do not provide for any real increase in management decision-making powers.

Appendix 1b (Table II) lists and comments on the remaining Dale (1993) recommendations that were rejected or put on hold by the WTMA Board. To date those Dale recommendations put 'on hold' have not been reconsidered by the Board.

A number of recommendations are also presented in Appendix 1c. These aim at providing a basis for the revision of those current WTMA policies on 'joint management' and other related Aboriginal issues that were developed from the Dale (1993) report.

The 27 WTMA policy statements listed in Appendix 1a are probably more accurately viewed as a contribution towards improving Aboriginal involvement rather than as providing the policy foundation for a specific form of across-the-board shared decision-making (Amanda Bigelow pers comm.). Appendix 1a also provides an overview of the implementation of these policies. It would appear that despite good intent these policies were generally implemented in an ad hoc manner. It is suggested that this reflects the fact that many of the policies were either too nonspecific for direct application (ie. many were in the form of generalised 'motherhood' statements) or were not particularly well understood or supported across the range of Authority interests.

The inference is that the Authority needs to take on a realistic view of Aboriginal management aspirations particularly given that native title rights and interests may well exist in substantial areas within the WTWHA. However, a more proactive and meaningful attempt at policy development relating to shared decision making with Aboriginal people needs to be undertaken jointly with land management agencies, particularly DoE and DNR. The 'go-it-alone' approach of WTMA towards 'joint management' policy development in the past has resulted in:

- (a) There being little support for these policies from those agencies with practical land management responsibilities;
- (b) A poor understanding as to how these policies fitted into a coordinated and equitable framework for shared decision-making processes across the WTWHA;
- (c) The development of an at times uncertain relationship between WTMA and DoE, and;
- (d) Approximately 90% of ensuing discussions taken up with defining the term 'joint management' instead of focusing efforts into more tangible outcomes.

Despite these less than inspiring outcomes, it needs to be recognised that the 1994 WTMA Board showed a substantial degree of commitment to the concept of 'joint management' albeit without a complete understanding of neither the technical aspects, the implications of their policy decisions for land management agencies, nor the full extent of Bama aspirations.

The way forward is through a coordinated approach from DNR, DoE and WTMA towards negotiating firstly an Interim Negotiating Forum and then eventually a Final (Regional Wet Tropics) Agreement with a peak Aboriginal representative body.

There is a need to move beyond the impasse arising from confusion over the term 'joint management'. To this effect, some members of the Departmental Reference Group are encouraging the use of more generic terminology such as 'joint management arrangements or options' and 'shared decision-making'. Semantics aside, Rainforest Aboriginal people generally remain clear in their resolve to seek the benefits of a model of joint management based on equity in decision-making. Once again, it is suggested that such an approach can be arrived at by firstly establishing a framework and some ground rules in the Interim Negotiating Forum and then moving towards filling in the details via the negotiations leading up to the Final (Regional Wet Tropics) Agreement.

Although concentrating, in the majority of cases, on improving the particular policy and management position of WTMA on Aboriginal issues it is crucial that any attempt to accommodate these recommendations is not undertaken by the Authority without the full cooperation of all the relevant land management agencies and Aboriginal people with an interest in the region. The need for increased levels of cooperation is a two-way process. The State agencies, in turn, have an obligation to work in closer cooperation with the Authority towards mutually identified goals and objectives.

The lack of coordinated approach to Aboriginal issues by government departments that has characterised WTWHA management must be remedied if meaningful outcomes are to be achieved by these agencies. By the same token the ability of the following recommendations to facilitate positive changes is also dependent on the ability of Rainforest Aboriginal people to operate from a more coordinated and better resourced position base.

By virtue of the fact that a more coordinated approach to management arrangements across the WTWHA is required the recommendations in Appendix 1c do not necessarily directly relate to action to be undertaken by WTMA. In some cases the desired action focuses on other State or Commonwealth agencies, or is implicit in that regard.

2.3.10 The Sutherland Report

This section is based on a summary of David Yarrow's TOR 13 consultancy report (Yarrow 1996a). Please refer to the full report for greater detail.

In many ways the Sutherland Report provided the first comprehensive review and commentary on Aboriginal involvement in the management of the WTWHA. As such it provides a benchmark from which to measure changes since 1992 - its original publication date in the way Aboriginal issues are addressed by the WHA management regimes.

2.3.10.1 Background

TOR 13: *Examine the extent to which the issues raised in the Sutherland report (1992) have been addressed by the existing management arrangements, including in particular the native title issues.*

The Sutherland Report was written in 1992 as a submission concerning the *Wet Tropics World Heritage Protection and Management Bill 1992* (Qld) (the 'Bill'). The report examines in detail the then new decision of the High Court in *Mabo [No. 2]* and its implications for the management of the WTWHA and the position of Aboriginal interests under the Bill. Given that the Sutherland Report was written prior to the passage of the *Native Title Act 1993* (Cwlth), many important recommendations of the report concern the relationship between the Bill and the *Racial Discrimination Act 1975* (Cwlth) as that Act protects native title from discriminatory impairment or extinguishment.

Many of the issues raised in the Sutherland report have been overtaken by the passage of the Wet Tropics Act, the *Native Title Act 1993* (Cwlth) and subsequent developments in the common law of native title. There are, however, issues of continuing significance raised by the report, including:

- The need for WTMA to perform its functions in a manner consistent with the protection of cultural heritage values as well as natural heritage values;
- The need for public enforcement provisions in the Wet Tropics Act to overcome the existing rules of legal standing; and
- The need for a consideration of Australia's international human rights obligations during the preparation of, amongst other things, the WTP.

2.3.10.2 The Sutherland report (1992) and existing management arrangements

It would be fair to suggest that over the last 2 years there has been a significant shift in the institutional culture of the Authority in relation to the protection of cultural heritage values. This shift has gone from a position whereby the Authority saw itself as having very little responsibility for cultural heritage protection through to the current position of recognising that there are in fact some significant obligations on the organisation to perform its functions in a manner that protects Aboriginal cultural values and related interests. This matter is considered further in a later section dealing specifically with cultural heritage protection (4.5). Note that this shift in approach, albeit important, has not occurred to the extent recommended by either Sutherland or Yarrow (1996a, 1996b, 1997) or required by grassroots Aboriginal people.

In addition, no provision of the *Wet Tropics World Heritage Protection and Management Act 1993* (Cwlth) or the Wet Tropics Plan addresses the recommendation made by Sutherland that management plans should be enforceable by the public without the need to satisfy a court or tribunal requirement for legal standing (Yarrow 1996a; pp 69-70).

According to Yarrow (1996a; p 71) '**one of the most significant aspects of the Sutherland report was the demonstration of the likelihood of native title surviving over possibly**

substantial tracts of the WTWHA and the need to shape management to accommodate this fact'. It would appear from the very minimalist approach to native title issues to be found in the WTP that the significance of the management implications of native title (see Yarrow 1996b) are not yet fully appreciated, or perhaps, understood. The fact that there has been so many changes to WTMA staff and the make-up of the Board in recent times has further complicated the matter.

Finally, it can be said that the international human rights obligations of Australia, and the consequent moral obligations of the Federal Government as identified by Sutherland, do not appear to have greatly influenced the level of involvement of Aboriginal people in WTWHA management. It would appear that these international obligations do not carry weight in the overall range of considerations influencing day-to-day management (see also Fourmile 1995). Part of the problem lies in the nonspecific nature of many of these international obligations. Furthermore, they are simply not high on the list of priorities for State land management agencies. In most cases there are apparently more pressing issues that cry out louder for attention.

2.4 Evaluation of the Wet Tropics of Queensland Management Scheme Intergovernmental Agreement (MSIA)

2.4.1 Introduction

In keeping with TOR 11 of the *Review* this section evaluates the Management Scheme Intergovernmental Agreement (MSIA) from the perspective of its current and potential use as a mechanism to facilitate Aboriginal involvement in the overall management of the WTWHA.

TOR 11: *Assess the capacity of the Management Scheme Intergovernmental Agreement to recognise Aboriginal aspirations for land management and implement processes based on reconciliation.*

A paper by David Yarrow (presented in full in the Volume 2 consultancy report compilation: see Yarrow 1998) focuses specifically on TOR 11 and forms the basis of the ensuing discussion.

It is now an opportune time to reflect on ways that the Agreement could more effectively meet the management aspirations of Rainforest Aboriginal people given that Ministerial Council may conduct reviews of the MSIA at three yearly intervals (Commonwealth of Australia and State of Queensland 1995; p 10) and that by the end of 1998 it will be three years since the last review.

2.4.2 Background

In conducting reviews, Ministerial Council is to have particular regard to (amongst other things) land tenure issues and those matters of concern to principal land-holders (Commonwealth of Australia and State of Queensland 1995; p 10). Given that at least 80% of the WTWHA is potentially claimable under the NTA, and that potentially Aboriginal people may become the

most significant land-holding group (Yarrow 1996a, 1996b), it would be pertinent for any new MSIA to reflect this potential shift in land interest.

The MSIA for the Wet Tropics of Queensland World Heritage Area provides the framework for the establishment of a management scheme (including the operations of the Wet Tropics Ministerial Council) that is in keeping with the identified Primary Goal²⁶ for WTWHA management. The basis of the Primary Goal is the meeting of Australia's international obligations under the World Heritage Convention.

There have been two agreements signed to date. The first agreement (signed in 1990) did not address Aboriginal land management aspirations to any significant degree (Yarrow, 1998). In fact, Yarrow noted that the first agreement's sole recognition of indigenous interests was coincidental to the fact that there is an obligation to protect cultural heritage under the World Heritage Convention.

The second and current agreement (signed December 1995) retained the original Primary Goal, and continued to provide for the operations of the Ministerial Council. However, in addition, it also formally recognised the provisions of the Wet Tropics Act, including the structure of WTMA and its two mandatory advisory committees.

2.4.3 Assessment of the current MSIA

Specifically in terms of Aboriginal interests, the second agreement :

- 'Reflects the requirement of s. 6 of the Commonwealth Act that one of the Commonwealth nominees for the board of WTMA be an Aboriginal person.
- Consistently with the Wet Tropics Act, the second agreement refers to the functions of WTMA as including entering into cooperative and joint management agreements with Aboriginal people amongst others.
- The second agreement requires WTMA, subject to the protection of natural heritage value, in performing its functions to have regard to Aboriginal tradition and to liaise and cooperate with Aboriginal people particularly concerned with the WTWHA.
- The Executive Director is said to be responsible for liaising with Aboriginal people particularly concerned with the WTWHA.
- WTMA is required to ensure that Aboriginal interests are adequately represented on the Community Consultative Committee and the Scientific Advisory Committee.

²⁶ Primary Goal: To provide for the implementation of Australia's international duty for the protection, conservation, presentation, rehabilitation and transmission to future generations of the Wet Tropics of Queensland World Heritage Area within the meaning of the World Heritage Convention (Commonwealth of Australia and State of Queensland 1995; p. 1).

- Like the Wet Tropics Act, the second agreement anticipates the possible formation of an advisory committee for management matters related to the Aboriginal tradition of Aboriginal people particularly concerned with the WTWHA.’

(from Yarrow, 1998)

Note that these particular features are limited in how much assistance they actually provide WTMA in tackling some of the crucial issues for WTWHA management. In particular the MSIA provides little in the way of direction or the provision of a comprehensive management framework to address the very real and significant implications of native title for WTWHA management. In effect tenure and management issues associated with native title are beyond the capacity of WTMA (and the other State agencies) to address within the legislative and policy provisions currently available to them. Thus the management of the WTWHA suffers from a lack of clear, strategic, and coordinated direction particularly with respect to the resolution of native title issues. There is a need for a more comprehensive and less ad hoc approach to the whole range of Aboriginal issues, particularly those that relate to tenure and land and resource use rights.

Furthermore, WTMA is restricted in its ability, (per the Wet Tropics Act and the second MSIA; dot points two and three above), to enter into cooperative and joint management agreements, to have regard to Aboriginal tradition and to liaise and cooperate with Aboriginal people simply because it is not the actual land manager for the majority of WTWHA tenures (ie. national parks, State forests, and timber reserves). For example, in the case of national parks, DoE is the lead management agency and assumes sole responsibility for management agreements on this particular tenure. The MSIA does not provide for a mechanism that draws together all the relevant management agencies to assist WTMA in meeting its obligations and undertaking its functions. In effect, the ability of WTMA to enter into cooperative and joint management agreements with Rainforest Aboriginal people is very limited. Thus the rhetoric contained in the MSIA and the Wet Tropics Act is not readily achievable across most tenures within the WTWHA without an appropriate provision that draws all management agencies into the same level of commitment to joint and cooperative management.

2.4.4 The potential of the MSIA to reflect Aboriginal management aspirations

Yarrow (1998) concludes that it is **‘entirely possible for the intergovernmental agreement to reflect land management aspirations of Aboriginal people in the WTWHA by creating particular management structures for this purpose’**.

The Commonwealth and the Queensland governments are in a position to agree on changes to the MSIA that will clearly specify policy in relation to native title and other Aboriginal issues and provide an appropriate and relevant management framework to implement that policy. This has the potential to facilitate WTMA, DoE, DNR, and Ministerial Council to resolve these complex issues at the operational level. Obviously a balance is required between:

- (a) Setting too rigid a policy and management direction that would restrain management flexibility within the agencies, and;

(b) Continuing with the status quo that would only serve to preserve the unsystematic and uncoordinated approach to issues related to Aboriginal interests and land management.

The findings and recommendations of the *Review* have the potential to inform the next review of the MSIA. Particular attention should be given to the dedication of a set proportion of all WTWHA funding (across all agencies) to Aboriginal issues, particularly those related to resolving the native title concerns of both Rainforest Aboriginal people and government agencies. The next MSIA should also clearly state support by the State and the Commonwealth of the recommendation to move towards the regional settlement of competing interests through the proposed Interim Negotiating Forum and the Final (Regional Wet Tropics) Agreement. For example, it is possible for the MSIA to identify a third mandatory committee (in addition to the CCC and SAC) to oversee the negotiation process leading up to the Final Agreement.

The first MSIA (November 1990) anticipated the creation of a WTWHA management body made up of State and Commonwealth representatives. It also foreshadowed the development of appropriate legislation to provide the statutory basis for management (Yarrow, 1998). It is therefore arguable that the next MSIA should anticipate appropriate legislative changes necessary to provide a statutory basis for the improved participation of Rainforest Aboriginal people in management decision-making across all management regimes.

In summary, the MSIA is a structural arrangement for the coordination of WTWHA management. To date, it has been unable to draw together the relevant State and Commonwealth WTWHA management agencies into any coordinated and systematic policy approach to Aboriginal issues. If these issues, particularly those relating to native title, continue to be only partially addressed within the WTWHA there is the possibility that significant management problems will develop (see Part 3; Yarrow 1996b). It is entirely possible for the MSIA to include structural arrangements to accommodate Aboriginal aspirations and thus potentially avoid these management problems (Yarrow 1998).

Recommendations

- That the Management Scheme Intergovernmental Agreement be reviewed by the end of 1998 in the interests of a more comprehensive and coordinated approach to Aboriginal issues in the WTWHA.
- To this effect, the implications and recommendations of the Review (particularly the emphasis placed on the need for a staged formal negotiated agreement) become an integral part of any such review of the Management Scheme Intergovernmental Agreement.
- That the Management Scheme Intergovernmental Agreement identify and dedicate a specific level of funding (as a percentage of overall WTWHA funding) to Aboriginal issues in keeping with:
 - (a) State and Commonwealth statutory obligations to liaise and cooperatively involve Aboriginal people and to protect the cultural values of the region, and;

(b) the significant rights and interests of Rainforest Aboriginal people, particularly arising from (but not restricted to) those rights and interests recognised by the High Court *Mabo* and *Wik* decisions.

2.5 Social and Economic Impacts of the Implementation of the Wet Tropics Plan on Indigenous Interests

2.5.1 Introduction

This section reproduces in part a summary document of the full TOR 12A consultancy report (Dale *et.al* 1997a) produced by the consultants for the benefit of the Departmental Reference Group.

Given the complexity of social and economic impacts and their assessment, reference is best made back to the original source document for a more detailed account. In particular, section 2.3 of the full TOR 12A report provides a ‘Table of Impacts’, which examines in some detail the positive and negative impacts on Aboriginal interests arising from implementation of the Plan.

The part of the summary included here provides an assessment of the positive and negative social and economic impacts of the implementation of the Wet Tropics Plan on Aboriginal people.

TOR 12A also identified the key points in need of negotiation that could lead up to the development of an Interim Negotiating Forum as a starting point in the eventual negotiation of a Final (Regional Wet Tropics) Agreement. The detailed discussion of the agreement process recommended by the *Review* is provided in a later section in this report (section 4.1). However, it is worth mentioning at this point in time that one of the aims of this agreement process is to minimise the negative social and economic impacts of WTWHA management on Bama interests and to maximise any positive benefits.

The consultants commenced work on the TOR 12A and 12B reports under the direction of the *Review* Steering Committee in March 1997. Consequently they were working with the October 1995 version of the draft Wet Tropics Plan. In working with the TOR 12A consultancy report allowance has to be made for differences between this draft and the final version of the Plan. One very obvious change is the name changes given to the 4 distinct management zones. Another relates to the ‘Division 5’ native title rights provision that appears in the 1995 version. At the time of writing the issue of how native title is dealt with by the final version of the Plan had not yet been resolved. The ill-fated November version had removed the controversial ‘Division 5’ provision.

2.5.2 Impacts Arising from Implementation of the Wet Tropics Plan

Under the Commonwealth *Native Title Act* 1993 and the Queensland *Aboriginal Land Act* 1991, rainforest Aboriginal people (*Bama*) potentially have a landowning interest in at least 80% of land in the Wet Tropics. Planning for the management of the Wet Tropics by government agencies, however, has not effectively recognised *Bama* as significant land owners. As a result, implementation of the Plan will have substantial negative impacts on *Bama*. Further, as *Bama* rights and interests remain poorly defined in law, they have to date been unable to enter into effective negotiations to minimise the impact of the Plan and its proposed regulations.

Impacts arising from implementation of the Plan on *Bama* fall into at least four broad impact themes. These incorporate impacts that: (i) have already occurred as a result of the development of the draft Plan and conservation legislation; and (ii) will occur if the draft Plan is gazetted in its current form. The four themes include impacts arising from:

1. **Uncertainty** experienced by Aboriginal people in pursuing their rights and interests in land;
2. **Direct regulation** of these rights and interests;
3. The **deferral of social and economic opportunities** because of uncertainty and regulation;
4. Impacts arising from Aboriginal **frustration with the planning process** to date.

For *Bama*, the impacts of most concern arise from the continued erosion of their cultural values relating to the land (and its management) over time. *Bama* believe that implementation of the Plan will contribute to this loss of culture. *Bama* are deeply concerned that their cultural identity is dying, and that newly found rights²⁷ are being regulated before they are able to take advantage of social and economic benefits they provide.

2.5.2.1 Uncertainty

A number of **uncertainty** concerns have consistently emerged from Aboriginal groups across the region with regard to the Plan and include:

- Concern that the lack of listing of the WTWHA for cultural values diminishes the perceived importance of the area to Aboriginal people;
- Fear that areas and sites of significance to Aboriginal people are not being appropriately managed and protected;
- Fear that the eventual ability of Aboriginal people to be able to demonstrate their connection to land will be diminished and marginalised by other land managers;
- Concern that other non-Aboriginal people are benefiting from the use and enjoyment of the land at the expense of Aboriginal traditional owners;
- Fear that the Plan diminishes Aboriginal interests and does not provide for appropriate compensation.

2.5.2.2 Regulation

²⁷ The TOR 12 consultants are referring to rights and interests arising from the *Mabo* [No.2] and *Wik* decisions and from specific statutes such as the ALA 1991, NTA 1993 and the RDA 1975.

Perhaps more tangible for Aboriginal people are the direct **impacts from regulation** proposed in the draft Wet Tropics Plan upon their currently undefined rights and interests in land. The TOR 12A report does not have the scope to fully evaluate the specific nature and cost of this regulatory impact. However, across the Wet Tropics area, proposed regulatory arrangements are likely to impact upon existing but undefined Aboriginal rights to:

- establish living areas and outstations;
- expand existing communities and infrastructure;
- use forest products and to hunt and fish for traditional purposes;
- use forest products and animal species for commercial purposes;
- access and manage areas of significance in accordance with tradition;
- establish appropriate commercial ventures within the Wet Tropics area;
- regulate other commercial users of Aboriginal land;
- manage access and use of Aboriginal land by non-Aboriginal people;
- other rights and interests which are currently undefined in law (eg., intellectual property).

2.5.2.3 Potential lost opportunities

There are a wide range of **potential lost opportunities** which will result from the implementation of the Plan, and the consequent impacts can be counted both in financial terms, as well as in cultural and psychological terms. Critical lost opportunities include:

- lost commercial opportunities;
- lost opportunities to renew and maintain physical and cultural affiliations to land;
- lost opportunities for passing traditional and cultural knowledge between generations;
- lost opportunities for the protection of areas of cultural significance;
- lost opportunities for the negotiation of direct roles in joint management;
- lost opportunities for decision making and employment in management at all levels.

Despite numerous promises and commitments to Aboriginal people by government agencies responsible for the WTWHA, to date there have been few examples of agreements being reached with regard to any particular management issues in the Wet Tropics. *Bama* do recognise that some positive steps forward have been taken (e.g., joint management negotiations²⁸ in the Barron Gorge National Park and the Memorandum of Understanding with DOE regarding the issue of permits). However, *Bama* consider that while the Authority and land managers continue to delay opportunities for negotiation on the presumption that rights do not exist until they are fully defined through the *Aboriginal Land Act* and *Native Title Act* processes, Aboriginal people will continue to suffer these lost opportunities. With the death of many community elders and people with strong traditional knowledge over time, many of these opportunities are lost forever.

²⁸ Technically speaking DoE would not refer to these negotiations as being in the bounds of formal joint management. The department more correctly sees them as a precursor to a more cooperative approach to management. DoE only regards joint management as an option where the land is Aboriginal land or where native title rights are shown to exist

This presumption of nonexistence of native title rights predetermination is at odds with a statement made in the Plan (WTMA 1995:47)²⁹ which offers Aboriginal people an assurance that:

“consistent with existing laws, where native title exists, native title holders will be able to exercise their rights, regardless of whether there has been a formal determination of native title”.

Despite this assurance, the Plan continues to differentiate between areas with determined or non-determined native title. It restricts Joint Management Agreements to determined native title or other forms of recognised tenure. Aboriginal people are not able to define their rights in full and the relevant land management agencies are uncertain about the degree to which their regulatory activities impact upon native title. As a result, there remains inaction in the negotiated development of joint management arrangements. This results in significant lost opportunities for Aboriginal people, even though those rights and interests may actually be proven to exist if the law was fully utilised.

2.5.2.4 Frustration with the Planning Process

Despite consultation occurring between the Authority and Aboriginal people over many years, *Bama* still have no greater control over the management of their land. Many people consider that it is only the environment for negotiation that has improved but that there have been few outcomes on the ground. Two levels of impact arise from this.

One is the absolute cost to individual Aboriginal people and to Aboriginal organisations with respect to the significant time, and in many cases, financial resources that they have had to put into progressing their rights through protracted negotiations. Negotiations over this time have, in the view of many organisations, soaked up resources that could more productively been used in carrying out priority projects on their country and in their communities. For individuals involved at the forefront of these interactions, the personal costs have often been very high, and often for little gain. These costs include time and constant travel, taking the brunt of **community frustration over lack of progress**, and the personal and family stresses that arise from their continued involvement.

The second level of impact accrues to the Aboriginal community more generally. On the whole Aboriginal people consider that despite the rights they thought they had won from both the *Aboriginal Land Act* and the *Native Title Act*, after all the negotiation, planning, and all the effort, they have achieved few lasting outcomes and projects on the ground. This causes continued resentment within the Aboriginal community towards Government and land

²⁹ This quote comes from a section on native title in the Protection Through Partnerships companion to the draft Wet Tropics Plan (October 1995 version).

management agencies and jeopardises potential future negotiations and joint management arrangements³⁰.

One of the principle shortcomings of the Plan is that it fails to draw the various management agencies into a unified management framework, nor does it define uniform policies or guidelines for dealing with Aboriginal or other interests within the WTWHA. As a result there is no clear commitment from WTMA or the state agencies in dealing with Aboriginal interests or concerns in any kind of uniform or consistent manner. This leads to substantial confusion and frustration on behalf of Aboriginal people and marginalises their attempts to negotiate their involvement in the overall management of the WTWHA. It also causes substantial confusion amongst Aboriginal people about the role played by WTMA. *Bama* see WTMA as the lead agency, and therefore, the agency responsible for the management of the WTWHA. The reality is, however, that the majority of management and management decisions are the responsibility of the state government agencies such as DoE and DNR. Development of appropriate agreements between all agencies and *Bama* could clarify this situation, especially if, as recommended in the report, a single representative body for the government agencies carries the negotiation of the agreements.

Given the significant and generally negative impact of the implementation of the Plan on Aboriginal people, in our view, it is crucial that there be a negotiation of a region wide settlement of Aboriginal grievances regarding management of the Wet Tropics. Such an agreement would establish a framework for resolving the worst of these impacts without prejudicing the specific rights that Aboriginal people will win by pursuing the processes available in law. In many cases, reaching an agreement between the Federal and State governments and Aboriginal people may save proceeding to a legal end point.

It is critical that Government build on some of its current positive initiatives and commit to a negotiated settlement. The costs of the social and economic impacts of the continued deferral of Aboriginal interests in land will eventually be born by Government. These costs will emerge in the form of continued high levels of welfare support to Aboriginal communities. These negative impacts will underpin the level of compensation eventually determined for regulation of *Bama* interests by the draft Plan. They will diminish the value of the Wet Tropics as a tourist attraction of international biological and cultural significance. They will provide the basis of future challenge to Government and development on a variety of legal fronts. They may result in more direct action being taken by *Bama* in seeking to occupy traditional estates. While these arguments provide an economic incentive to Government to reach agreement with *Bama*, they do not undermine the general moral obligation upon Government to mitigate the significant impacts of implementing the draft Plan upon an undisputedly marginalised section of the community.

2.5.3 Resolving Difficulties: The Interim Negotiating Forum and Final (Regional Wet Tropics) Agreements

³⁰ Since the writing of this extract from the TOR 12A consultancy report DoE have effectively put on hold their commitment to both the Barron Gorge - Djabuguy procedural MoU and the *Bama* Wabu - permit MoU. The result has been to further reinforce the high level of frustration that Rainforest Aboriginal people, and their representatives, have with the governments commitment to involving *Bama* in their planning processes. It is worth noting that those DoE Far Northern staff involved in these negotiations share a similar frustration with the Brisbane directive to go slow.

In the view of both the TOR 12 consultants and the *Review* Steering Committee, there is a need for a two stage negotiation process. A clear Interim Negotiating Forum needs to be reached to allow the parties to negotiate a fair and equitable way to reach a Final Agreement.

To make the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement negotiations work, a number of preconditions need to be met. First, there needs to be a clear understanding within Government of the difficulties Aboriginal communities face in relating to the complex management arrangements in the Wet Tropics area. On the other hand, the Aboriginal community needs to recognise that management agencies find it difficult to identify the appropriate Aboriginal agency with which to deal at the regional level, and they find it frustrating dealing with many groups while trying to ensure that all relevant people have been involved.

The most efficient mechanism to resolve these difficulties would be for each party to the Interim Negotiating Forum and Final Agreement to be represented by a single agency (with sufficient authority from the parties) throughout the negotiations. Government management agencies including WTMA, for example, could be represented by a negotiating body representing the Ministerial Council. This would ensure that there is consistent agreement among all State and Commonwealth management agencies and with the WTMA itself. Similarly, *Bama* and their multiple organisations could be represented by a single, authorised organisation or agency.

The *Bama* authorised agency involved in such negotiations will require adequate resources to represent its constituents and government agencies will need to contribute to providing these resources. Finally, the Interim and Final agreements must focus on Aboriginal involvement in managing land use in the Wet Tropics and be directed to reducing the impact of the final Plan on Aboriginal people as distinct from a general regional settlement of native title issues. This is not to say that Interim and Final Agreement processes could not address native title issues in the World Heritage area, nor that they could not establish the basis for a wider regional settlement.

Part 3 Native Title Implications and WTWHA Management

3.1 Introduction

‘Native title is a new debate for the Australian community - just five years old. It was only 30 years ago that Indigenous peoples were included in the national census. Significant changes in community attitudes are necessary to recognise Indigenous peoples now as full players in national debate, with legal rights. This inevitably will take time, and there are no “quick fix” solutions.’

Farley (1997; p 3)

The *Review*’s investigation of the relationship between native title and the management of the WTWHA has proven to be particularly problematic. The basis of the problems lie not so much in the difficulty of determining just what native title actually is; although this is not to be underestimated, as evidenced by the complexity of the arguments raised in the TOR 9 and 14 consultancy reports (Yarrow 1996a, 1996b). Rather the problems associated with the implications of native title for WTWHA management lie more in the ability of government land management agencies to implement clearly defined and meaningful policy in an acceptable political context. Native title is a sensitive and controversial issue embedded in a social setting where any assertion of Aboriginal rights and interests is constantly under scrutiny.

Furthermore, because native title is such a new, untested, and uncertain issue in the overall management stakes there has been a tendency for decision-makers to adopt a ‘wait-and-see’ attitude. Thus many issues are simply not being worked through and resolved.

The situation is further complicated by the fact that both WTWHA managers and Rainforest Aboriginal people are faced with a daunting array of native title considerations, opinions, and advice; much of which is contradictory, and not infrequently based on half truths, the pursuit of personal agendas, and (in some cases) blatant misinformation.

Unfortunately, native title has been afforded a type of ‘bogy-man’ status over and above its more deserved consideration as a new (albeit complex), yet essentially resolvable, management issue. The *Review* Steering Committee has clearly stated that it is particularly concerned that politics is driving native title/ management policy in the WTWHA rather than sound rational land management and social justice considerations. Such an approach can only undermine the potential for improved social and economic opportunities for Rainforest Aboriginal people and improved management of the WTWHA. It could also result in ongoing acrimony and litigation.

3.1.1 Towards an understanding of native title

It would be fair to say that the lack of a clear understanding of the nature and content of native title has led to much of the impasse in the meaningful consideration of native title as a management issue. There is a need for a greater understanding of native title at both the day-to-

day level of management and at the more senior level of decision-making before any real progress can be made.

In many cases WTWHA policy managers are making decisions without fully understanding or taking into consideration relevant native title issues. It behoves those in decision making situations to become better versed in these considerations. The consequence of not doing so could be a string of crippling court actions or compensation payouts. Native title is not just a social justice mechanism; it is also a significant management issue requiring full and proper consideration.

It is also necessary that all management staff develop a good understanding of native title issues. It is not sufficient to solely rely on specialised 'native title' units to provide a native title slant on management issues. These specialised units, although fulfilling a valuable role, are already overtaxed in terms of what they can realistically achieve. Native title needs to be considered as a core management issue very early on in the planning process, and not as a last minute hurdle to jump through. The all too frequent approach of taking native title considerations into account once a project is well into its development phase is arguably very poor risk management.

DoE should be commended for their attempts to build a better understanding at the lower and middle management levels through their 1997 cultural awareness workshops. Similarly, the current Wet Tropics Board have actively sort advice from Premiers and Cabinet, Crown Law, and a delegation from the Native Title representative bodies to work through native title issues associated with the Wet Tropics Plan. The Cape York Land Council has also indicated its interest in running a native title awareness workshop for government agencies early to mid 1998. These are good starting points in what needs to become a more cooperative and focused approach to native title.

In practical terms WTMA needs to develop a process for obtaining native title claimant/holder consent for all activities apart from low impact future acts. This process should aim to establish mechanisms based on procedural fairness, and should be developed in collaboration with the three relevant Land Councils. A good starting point would be to review strategies employed by other organisations. ATSIC, for example, (in keeping with 'procedural fairness' obligations under the Native Title Act) advertising in relevant newspapers seeking contact with native title claimants/holders wishing to object to any proposed ATSIC funded development project.

Despite the obvious need for a better understanding amongst WTWHA managers, actually defining native title is no straightforward matter. The definition in *The Native Title Act 1993* (Cwlth) provides little insight for the lay-person. At a recent meeting between government land management agencies and the Cape York Land Council the following ideas were used to provide a framework to help provide a working definition of native title.

- Native title rights and interests exist in the Common Law of Australia. They exist prior to a formal determination of native title under *The Native Title Act 1993* (Cwlth) and need to be treated accordingly, ie: as existing rights.

- From the government’s perspective, the difficulty associated with native title is recognising and clearly understanding what those rights and interests are prior to a formal determination by the court or tribunal system.
- Governments can deal with an area of land that is the subject of native title rights and interests prior to a formal determination as long as any management action can be classed as a ‘low impact future act’. That is, it is an activity that doesn’t involve mining, lease, sale, excavation, clearing, the construction of a building or fixture, or disposal of waste. By definition a ‘low impact future act’ will cease being ‘low impact’ and therefore valid upon an actual determination of native title.³¹
- Native title is a bundle of rights and interests defined according to the law and customs of individual traditional owner groups.
- As such, native title can vary from place to place, according to customary law differences between groups.
- Native title is not strictly a form of land tenure. Note however that a particular native title right may in fact be a right to the exclusive occupancy of a region.
- Although not strictly a form of tenure, native title holders have the same procedural rights as if they held freehold title to the land. This means that in the context of the WTWHA they have to be treated in terms of management decision-making as if they held ordinary title to the land in question.
- Native title rights and interests aren’t fixed in time, and can change as law and customs change.
- To properly understand native title in the context of a specific region one needs to talk to the relevant traditional owners.
- Native title is often articulated by traditional owners as a series of specific obligations to preserve country and culture.
- Native title does not just relate to activities such as hunting, fishing, and camping. It is better viewed in a more holistic way that relates to the range of custodial responsibilities, and the cultural and economic activities of traditional owners.

³¹ In some cases it is difficult to determine what does and does not actually constitute a low impact future act without turning to a court ruling. The classic case is whether a walking track constitutes a low impact future act. Some would argue, for example, that a walking track would require clearing and perhaps even some fixed infrastructure (eg. boardwalks etc), and would thus not pass as a low impact future act. If this is the case it would have significant implications for any proposed walking track strategy for the WTWHA.

- According to the *Mabo* decision native title exists until proven otherwise. In the context of deciding where native title exists the obligation is not on traditional owners to show that their native title is extant but on the legal system to prove that it has actually been extinguished.
- Where native title rights and interests are unclear, the agreement process, given commitment from all parties, is seen as a possible solution to the uncertainty, particularly in relation to the resolution of competing interests.

Ensuing discussion focuses on an overview of the original TOR 9 and TOR 14 consultancy reports produced by David Yarrow. For a more detailed and technical account reference is best made back to the original reports (see Volume 2 of the full *Review* documentation).

3.2 Native Title and the (Draft) Wet Tropics Plan

This section presents a plain-English version of David Yarrow’s TOR 9 consultancy report (Yarrow, 1996a)³².

Note that this report is based on the October 1995 version of the draft Wet Tropics Plan.

Produced originally in June 1996, Yarrow’s work (along with the Bama Wabu submission) was used to inform the development of the ill-fated final version of the Plan that was eventually declared invalid in November 1997. A number of the Yarrow and Bama Wabu recommendations were taken up in the final drafting process. For instance, the need for greater Aboriginal consideration in permit decision making lead to the development of s. 60 of the Plan, with its focus on cultural considerations in addition to the provision of attention to the interests of native title holders and other Aboriginal people particularly concerned with the land. Similarly the time frame for Division 5 was reduced from 3 - 5 years down to 1 - 3 years. Yarrow’s report also led to the Authority’s duty under s. 10 (5) of the Act to liaise, cooperate, and have regard to tradition being passed onto to decision makers acting under Part 6 of the Statutory Plan (issue of Permits by entities other than the Authority).

It was the action by Ministerial Council of removing the Division 5 provision without first referring the matter back to the Wet Tropics Board that lead to the declaration of the Plan’s invalidity rather than the actual removal of the Division 5 provision per se.

3.2.1 Introduction

TOR 9 *Assess the extent to which the draft Wet Tropics Management Plan meaningfully involves Aboriginal people and addresses native title issues in the management of the WHA.*

This TOR relates to the October 1995 draft Wet Tropics Management Plan (the ‘WTP’).

³² The plain-English versions of the TOR 9 and TOR 14 consultancy reports presented in section 3 have also been written by David Yarrow.

For the purpose of this TOR, a working definition of ‘meaningful involvement’ is involvement that:

- has meaning to the aspirations of Aboriginal people³³;
- is consistent with the obligations of WTMA to liaise and cooperate with Aboriginal people when performing its functions;
- is consistent with the acknowledgment of the contribution Aboriginal people can make to the management of the WTWHA contained in the preamble of the Wet Tropics Act; and
- is realistically able to be achieved through the Wet Tropics Management Plan.

The WTP is made of two parts - a policy section containing ‘Management Strategies’ and a statutory part containing a draft management plan (the ‘statutory plan’). The stated objective of the statutory plan is to ‘control activities in a way that does not cause native title holders for land in the area to be in a more disadvantageous position in law than they would be if they instead held [freehold] title to land’.

3.2.2 Native title and the statutory plan

Very few elements of the statutory plan specifically relate to native title. With one exception, all of the provisions in the statutory plan that concern native title are directed to the equal treatment of native title and freehold land. The one exception is the provision about ‘Division 5 native title rights’. This provision means that 3-5 years after a determination of native title in the National Native Title Tribunal or the Federal Court, native title rights will cease to be regulated under the statutory plan. It is not the intention of this provision to leave native title rights unregulated. Rather, it attempts to create a statutory time-frame within which negotiations between native title holders and the Queensland Government about the regulation of native title can occur. The Management Strategies show that if negotiations are unsuccessful, regulatory action will be considered.

The creation of the WTWHA, and its regulation under the Wet Tropics Act, is an ‘umbrella’ management arrangement. Underlying land management systems continue to operate subject to overriding WTWHA management. Consequently, national parks, State forests and timber reserves are still managed by appropriate land management agencies.

There is a very real possibility that native title will exist in some parts of the many national parks, State forests and timber reserves in the WTWHA. While it is impossible to estimate the extent of native title, it is relatively clear that the management of an area as national park, State forest or timber reserve has not extinguished native title in any substantial way. Rather, native title has been ‘merely regulated’ by past and present legislation applicable to those areas. The effect of past management under appropriate legislation is different from the effect of a grant of freehold in that same past. Such a grant would have extinguished native title.

³³ See Table 1 for a list of identified Aboriginal aspirations for WTWHA management

For national parks, State forests and timber reserves established before 31 October 1975 or after 1 January 1994, the 'low impact future act' test under the *Native Title Act 1993* (Cwlth) is significant. This test prohibits major disturbances to, or the sale of, land where native title survives before a court determines that native title exists on that land. The test may restrict the uses of certain national parks, State forests and timber reserves to activities which do not involve sale or leasing, excavation, clearing or the disposal of waste.

In any event, native title holders of land in national parks benefit from a provision of the NCA which protects private interests in the land of a national park (s 69). This provision means that private interests, including native title, in the land of a national park, can only be regulated by a 'regulation giving effect to a management plan'. Such a regulation would be made after the making of a management plan for a national park. Generally, the NCA requires that a management plan be prepared for every national park.

The 'low impact future act test' and the provision of the NCA which protects private interests may amount to significant limitations upon the management of national parks, State forests and timber reserves.

3.2.3 Owner's consent to applications

The statutory plan does not require the consent of an owner of land (eg: a native title holder) where an application concerning that land is made to WTMA. Other land use legislation such as the Planning Act frequently requires an owner's consent where applications relate to that owner's land. It is anomalous that the statutory plan does not require such consent and the requirement of land owner consent should be considered for the statutory plan.

There are clear difficulties with obtaining the consent of a native title holder where no court has determined who the native title holders of particular land are. It may be that consent should not be required where an application relates to a 'low impact future act'. Although this is discriminatory, it is authorised by the *Native Title Act 1993* (Cwlth). Alternatively, appeal rights should be available to land owners, including native title holders, for applications that relate to their land. Such appeal rights should be considered in light of the fact that some 66% of the WTWHA is not subject to planning control and consequently public rights of objection and appeal are not available.

3.2.4 Cooperative management agreements

The Wet Tropics Act refers to cooperative management agreements (CMAs) and joint management agreements (JMAs) with landholders and others in the WTWHA. While the Wet Tropics Act gives little detail about CMAs and JMAs, the WTP does provide that detail. The Management Strategies refer to CMAs and JMAs as one avenue for involving Aboriginal people in the goals of WTWHA management.

CMAs and JMAs are subject to important limitations. As with most contracts, CMAs and JMAs can't restrict the discretions of a decision maker under legislation. Neither can an agreement be made about how a discretion will be exercised in future.

The need to clarify the operation of CMAs and JMAs under the management strategies for the Wet Tropics Management Plan should be considered by the WTMA. To avoid any doubt, CMAs and JMAs should include a provision stating that if any provision of such an agreement would operate as a surrender of native title it does not have that operation (unless, of course, the surrender of native title was intended).

3.2.5 Cultural heritage values

The Wet Tropics Act requires WTMA to perform its functions in a way that is consistent with the protection of the natural heritage values of the WTWHA. This does not mean that WTMA has no duty to protect cultural heritage values. A duty to consider cultural heritage values, including Aboriginal cultural heritage, arises from the duty of WTMA:

- To have regard to Aboriginal tradition;
- To liaise and cooperate with Aboriginal people;
- To perform its functions consistently with the National Strategy for Ecologically Sustainable Development; and
- Arguably - because of the responsibility of WTMA to advise and make recommendations to the Ministerial Council and the Minister for Environment about Australia's obligations under the World Heritage Convention in respect of the WTWHA.

The obligation of WTMA to consider cultural heritage is probably secondary to the protection of natural heritage values.

To address the duty for WTMA to consider cultural heritage values, it would be appropriate to require some degree of consultation with Aboriginal people about permit applications under the statutory plan to enable an assessment of cultural impact and, in relation to the assessment of applications, there should be a requirement to consider the impact of a proposed activity on 'Aboriginal people particularly concerned with the relevant land' rather than merely native title holders of the relevant land.

3.2.6 Other matters

Given that the WTMA is obliged to liaise, cooperate and consider Aboriginal tradition when performing its functions, the same duty should be imposed on agencies with decision making power under the statutory plan to ensure consistency of decision making.

The time-frame provided for 'Division 5 native title rights' (ie. 3-5 years) is unduly long considering the 7 year review period for all WTWHA management plans and the probable length of time for native title claims to be made out. A period of 1-3 years may be more appropriate.

The availability of CMAs and JMAs or area specific management plans during the native title claim mediation process can only increase the prospects for settlement of such claims. WTMA

should be involved in native title claim mediation at an early stage to make these mechanisms available where they are appropriate.

3.2.7 Extent of meaningful involvement

Considering the position of Aboriginal people under the statutory plan and the management strategies, the extent of Aboriginal involvement in management under the Wet Tropics Management Plan is limited particularly in respect of Aboriginal people who are not native title holders. However, the extent to which such involvement can be provided under the Wet Tropics Management Plan is also limited because of external factors including legislative constraints. To the extent that the Wet Tropics Management Plan validly regulates native title, it addresses native title issues.

3.2.8 Conclusion

The Wet Tropics Plan, particularly with the likely removal of the 'Division 5' provision, provides only a very minimalist approach to the resolution of native title management issues. Furthermore, the Plan is limited in its ability to provide for adequate and flexible Aboriginal involvement in management generally (Yarrow, 1996a). In reality the involvement of Aboriginal people in the management of the WTWHA is a whole-of-government issue, and has to be considered in that context. As Yarrow states:

'The first step towards utilising available mechanisms to increase the extent of management involvement for Aboriginal people is meaningful negotiation between all government agencies in the WTWHA with responsibility for land management and Aboriginal people in the WTWHA' (Yarrow 1996a, p 72).

Once again the argument turns towards the need for a formal mechanism that brings all relevant parties to the negotiating table. **The proposed Interim Negotiating Forum and Final (Regional Wet Tropics Agreement) is recommended as the most appropriate mechanism for resolving competing land use responsibilities and interests across all tenures and for increasing the levels of Aboriginal involvement in WTWHA management generally.**

3.3 Native Title: Current and future management considerations

This section presents a plain-English version of David Yarrow's TOR 14 consultancy report (Yarrow 1996b).

3.3.1 Introduction

TOR 14 *Examine the implications of native title rights for current and future Wet Tropics management, and the potential impact of management decisions on native title rights.*

It can be assumed that native title will survive to some extent in the WTWHA. However, the precise extent of native title, and its content, is impossible to predict with any specificity. The restrictions under law that apply to interference with native title operate to limit the full ambit of Wet Tropics management activities where native title survives.

3.3.2 Implications for management

As noted above, natural resource management legislation of the past and present has not extinguished native title to any substantial degree. Rather, native title was ‘merely regulated’. Of course, other actions may have extinguished native title (eg. a grant of freehold). There is potential for native title to survive in national parks, State forests and timber reserve, and to other resources such as water.

In December 1994, the management of national parks under the *National Parks and Wildlife Act 1975* (Qld) ceased and the NCA became the legislation for national park management. The transition between the two was done by dedicating all national parks under the NCA. This transition may have significant consequences for national park management in the WTWHA.

The dedication of all national parks in Queensland under the NCA in December 1994 may not be validated by the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993* (Qld). This may mean that the dedication is invalid where it affects native title because of the *Racial Discrimination Act 1975* (Cwlth).

Separately, s. 69 of the NCA means that native title holders rights and interests within a national park are not regulated until such time as a regulation giving effect to a management plan for the park is made. A consequence of this provision may be that national park managers are not authorised to do any act affecting native title until such a regulation is made.

The operation of the ‘low impact future act test’ under the *Native Title Act 1993* (Cwlth) is also significant. The extent of its application in national parks, State forests and timber reserves is uncertain. However, where it did apply, activities involving substantial interference with native title, such as clearing, excavation or leasing, would not be authorised.

Section 211 of the *Native Title Act 1993* (Cwlth) exempts native title holders from permit requirements for the noncommercial exercise of certain native title rights. It does not relieve native title holders from the effect of a total prohibition. This provision means that land managers must decide between prohibition and the exercise of certain native title rights for noncommercial purposes rather than relying on the broad discretions to permit activities presently existing under much land management legislation.

The possible existence of native title represents particular challenges for land management within the WTWHA. The uncertainty of the location and existence of native title may make planning difficult in itself. Also, the obligation to pay native title holders compensation for the ongoing use of certain timber reserves and State forests where native title survives is an important management issue. In respect of national parks, the native title will either be unregulated under NCA s. 69 until regulations giving effect to a management plans for particular parks are made or, if national parks are invalid if they were dedicated where native title survives, the entire system of national parks administration will be invalid. In either event, the management of national parks where native title survives may be profoundly limited.

The existence of native title in parts of the WTWHA may constrain the management of the WTWHA. This is primarily because the management system of the WTWHA is not exhaustive and relies, to some extent, upon the detailed regulation by underlying management systems (eg: the NCA for national parks).

3.3.3 Other matters

A variety of legislation operates in the WTWHA for the protection of cultural heritage. Importantly, it may be that the exclusion of indigenous cultural heritage from coverage under the *Queensland Heritage Act 1992* (Qld) is invalid because it is contrary to the *Racial Discrimination Act 1975* (Qld). If this is the case, the public may nominate places of cultural heritage value under Aboriginal tradition within the WTWHA for inclusion on the heritage register.

International experiences are informative when considering the management of the WTWHA where native title survives. Particularly, the Temagami experience in the Canadian Province of Ontario is relevant. There, a dispute arose concerning the existence of indigenous title to the land of a number of timber reserves. To address the dispute, the government of the province entered into a joint management scheme without making any concessions concerning the ownership of the area.

3.3.4 Impact of management on native title

Under the WTP, the most extensive regulation of activities is in the core natural zone. For a variety of reasons, it is in that zone that prospects of native title are probably greater than in other zones. Merely because of the distribution of past and present tenures, and the balance of private and public land in the WTWHA, the capacity exists for the extent of regulation of native title under the WTP to be more extensive than for private land.

The WTP itself will validly regulate native title in the WTWHA. Although, as noted above, the WTP is not an exhaustive scheme of regulation for the WTWHA, native title holders may be substantially restricted in their enjoyment of native title by the WTP. Clearly, this is the goal of the WTP. However, the uncertain extent of native title has meant that the particular impact of regulation upon Aboriginal people in the WTWHA has yet to be measured.

3.3.5 Conclusion

Yarrow's TOR 14 report noted that the way the Wet Tropics Plan had been developed was, as a matter of principle, unsatisfactory, given that the full range of legitimate existing land uses, such as native title rights and interests, are unknown (and arguably go essentially unrecognised). For a number of political, legal, and institutional reasons, it has been inevitable that the preparation of the WTP has failed to directly address existing native title rights and interests. This is understandable given the uncertainty associated with the scope and location of native title rights. Rather, the Plan merely seeks to regulate these rights and interests wherever they may exist in the WTWHA (Yarrow, 1996b). The result has been a management scheme that may not adequately address the significant consequences of the existence of native title for WH values (particularly in national parks) and, at the very least, falls far short of responding to the specific needs and interests of Bama.

As Yarrow concludes **'it is not sufficient for the management process for the WTWHA [and here the author was referring to all management regimes, and not just to the WTP] to simply await determinations of native title and then respond. The possible existence of native title in the WTWHA has implications that demand proactive and anticipatory responses.'** (1996b, p 64).

Such a proactive and anticipatory response is once again provided by the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement. This particular approach to joint management provides for an equitable framework upon which to build negotiated solutions to the particular constraints imposed by the existence of native title on the management of certain areas within the WTWHA.

Note: At the time of finalising the *Review* discussions between the Wet Tropics Board, Bama Wabu, the three Land Councils, and relevant government departments were still continuing in an attempt to resolve the 'Division 5' Wet Tropics Plan issue. The basic approach was to get the Plan gazetted in such a form as to provide a workable solution to meeting both the rights and interests of Rainforest Aboriginal people in the WTWHA as well as the management responsibilities of the various government agencies. Although much common ground was seen to be shared by all parties it would appear that difficulties associated with how to recognise and respond to the specific common law rights of Bama (as embodied in the High Court Mabo No [2] and Wik decisions) would prove to be a particularly difficult issue to resolve. Despite the fact that the State of Queensland recognises that native title exists in common law, the State policy is not to formally recognise specific rights and interests prior to a formal determination of native title.

Part 4: Towards a Final (Regional Wet Tropics) Agreement: Recommendations for Future Directions

4.1 Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement

Part 4 provides a summary of those sections of the TOR 12A and 12B reports that help inform the development of the proposed Interim Negotiating Forum and Final Agreements. Because of the depth and complexity of this issue only a brief overview is to be provided here. **It is essential that for a full understanding of the notion of an Interim Negotiating Forum and Final Agreement that the full TOR 12A and 12B consultancy reports be considered.**

Note: The proposed Interim Negotiating Forum to be derived from TOR 12 has been named in several ways in various previous documents and meetings leading up to the finalisation of the two consultancy reports. There is the potential to confuse the term with the poorly defined concept of 'Regional Agreements' under s.21 of the *Native Title Act 1993* (Cwlth). Thus the TOR 12 consultants have proposed simplifying and standardising the language used in order to reduce confusion and to denote that they are referring to a specific purpose agreement with a focus on Aboriginal involvement in the management of the Wet Tropics World Heritage. As such, the terms 'Interim' and 'Final Agreement' have been used throughout the *Review* documents.

4.1.1 Introduction

A common theme running throughout this report has been the need for the development of a staged agreement process between government land management agencies and Rainforest Aboriginal people in relation to the management of the WTWHA.

This section provides an outline of the basic principles and requirements of such an agreement process. It focuses on the development of the proposed Interim Negotiating Forum as a means of setting the ground rules for the eventual negotiation of the more detailed and comprehensive Final (Regional Wet Tropics) Agreement by the end of the year 2000. The *Review* and, in particular, the TOR 12A and 12B consultancy reports, do not present the actual content of such agreements, but rather outline the issues concerning their possible form. The actual content would have to be negotiated between the Commonwealth, the State, and an authorised Aboriginal negotiating team. For the *Review* to 'fill in the gaps' would be to pre-empt the content of these negotiations. The function of the *Review* is more to provide the framework for the negotiations leading up to the development of the Interim Negotiating Forum during 1998.

While the TOR 12A consultancy report found that Aboriginal people overwhelmingly disapprove of the treatment of their interests to date by WTWHA government land management agencies, there is still firm Bama commitment to the notion of a Wet Tropics 'joint management' agreement between themselves, WTMA, DNR, and DoE. Because of the perceived constraints imposed by current legislation and the lack of a coordinated 'whole-of-government' approach to WTWHA management across all tenures an appropriate joint management model can only be

effectively achieved through ‘in good faith’ commitment by all parties to a staged agreement process.

4.1.2 Setting the Scene for Agreement:

The TOR 12B Report - *impacts of the TOR 12A recommendations on WTWHA management agencies*

4.1.2.1 Background

In very simple terms the TOR 12A report looked at (a) the social and economic impacts of the implementation of Wet Tropics management regimes on Aboriginal interests, and; (b) the Aboriginal aspirations for a management agreement to mitigate against these impacts. The role of TOR 12B was to then see how these Bama management aspirations impacted on WTWHA management agencies and on WTWHA values.

The key Bama agreement negotiating points from the 12A report were drawn together with the government agencies’ positions and possible environmental impacts identified in 12B in an attempt to find a suitable starting point for the development of an agreed set of negotiating points for the proposed Interim Negotiating Forum.

In effect the two components of TOR 12 provide a vehicle to bring together all the other terms of reference for the *Review* and integrate them into a framework for a management agreement that has the potential (given appropriate commitment) to facilitate real change. Thus TOR 12 is seen as the corner stone of the *Review* and the foundation on which to build the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

4.1.2.2 TOR 12B Method and Intent

The major intent of the consultants undertaking Part B of TOR 12 was to gain an understanding of the Government’s views, policies, difficulties and constraints in implementing a land-use and management agreement between Aboriginal traditional owners of the WTWHA and Government agencies responsible for its management. Having these views and constraints in mind the consultants have proposed a way forward to commence agreement negotiations as soon as possible.

Part B has been based on the response of the Departmental Reference Group (DRG) to a summary of the 12A Report. Members of the DRG were provided with a four page summary of the 12A Report and a series of questions based on the report findings. The *Review* Steering Committee (RSC) withheld the full report pending approval for its release by all members. A one day workshop with the WTMA Project Co-ordinator, consultants and the DRG examined the major issues identified by the 12A Report and issues identified by members of the DRG. The outcomes from the workshop, written responses by members of the DRG and a representative of the Far North Queensland Region of Council’s (FNQROC) were combined with views of the consultants on potential environmental and administrative impacts. The draft report was then

circulated to DRG members for comment to ensure that their views were accurately represented. Written responses from DRG members have been fully incorporated.

The TOR 12B report is based upon a desktop analysis of the possible impacts on government agencies and on the WTWHA environment of reaching long-term agreements. It then identifies negotiating points that might form a basis for the development of the Interim Negotiating Forum and Final Agreements. Although separate documents, 12B should be read in conjunction with 12A.

4.1.2.3 Impact of TOR 12A Bama Aspirations on Government Agencies

The most common impact themes raised by the DRG fell into the following four categories:

- availability of resources to meet Bama aspirations;
 - problems imposed by existing legislative constraints;
 - government policy concerning joint management;
 - specific issues relating to reaching an Interim Negotiating Forum and Final Agreement;
- (see Dale et al. 1997b; pp 11-22 for details)

Overall, while Government agencies were supportive of the concept of negotiating an agreement for the management of the WTWHA, they wanted to make everyone involved in the negotiations perfectly aware of the key constraints faced by the management agencies.

4.1.2.4 Environmental Impacts of an Interim Negotiating Forum/Final (Regional Wet Tropics) Agreement.

The TOR 12B consultants also broadly assessed the potential positive and negative environmental impacts of reaching Interim Negotiating Forum and Final Agreements as proposed in the 12A Report. The points raised in the 12B report are available to inform the negotiation of the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement process.

The most common impact themes identified fell into the following categories:

- impact on key fauna and flora communities and biological processes
 - impacts upon contemporary environmental threats
 - impacts arising from improved use of Aboriginal rangers
 - impacts from increased Aboriginal access to land
 - impacts arising from improved interpretive and education strategies
 - impacts arising from Aboriginal control of management decision-making
 - impacts upon current permit management processes
 - impacts arising from administration and funding coordination
- (see Dale et al. 1997b; pp 23-28 for details)

4.2 Negotiating an Interim Negotiating Forum

4.2.1 Critical Preconditions for an Interim Negotiating Forum

(see also section 4 TOR 12A report)

If progress towards an Interim Negotiating Forum is to be at all possible then the following critical preconditions need to be met:

- The need for each party to be represented by a single agency with a mandate to negotiate on their behalf throughout the Interim Negotiating Forum processes.
- The focus of the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement must be on land and resource use in the Wet Tropics and be directed to mitigating the impact of the final Plan on Aboriginal people as distinct from a general regional settlement of native title issues.
- The Interim Negotiating Forum should not be the forum for the settlement of Aboriginal interests beyond WTWHA management issues.
- Outcomes from these negotiations must remain consistent with the protection of World Heritage values of the WTWHA.
- Any Interim Negotiating Forum should not preclude the development of parallel agreements between Aboriginal people, local government and the tourism industry in the future.
- The Interim Negotiating Forum would establish the processes and preconditions for negotiation of a Final Agreement between the parties about WTWHA management.
- The Interim Negotiating Forum should commit the parties to a binding agreement.
- In the event of disputes arising during the negotiation, the Interim Negotiating Forum should commit the parties to undertaking appropriate dispute resolution. Appropriate resourcing of the Interim Negotiating Forum process.
- Preparation of a code of conduct for undertaking negotiations leading to the Interim Negotiating forum.

A summary of the main points that reflect the Government's likely position with respect to negotiating the Interim Negotiating Forum is presented in the full TOR 12B consultancy report (Dale *et al.* 1997b; pp 29-32).

4.2.2 Key Negotiating Points and Recommendations

The following is an extract from the original TOR 12B consultancy report (Dale *et al.* 1997b; pp 32-38).

Note that the following recommendations were presented as 'Actions' in the original TOR 12B consultancy report.

The key negotiating points from a *Bama* perspective presented in TOR 12A have been combined with the position of Government agencies to identify where there are areas of agreement and also to identify which points may require considerable negotiation to reach an agreed outcome. The eight broad points originally outlined in the 12A Report have been condensed to five key areas. It is intended that they provide an important starting point for the negotiation of the Interim Negotiating Forum.

Key Negotiating Points and Recommendations

1. Commitment to recognition of cultural values within WTWHA.

Aboriginal Aspirations

- Government commitment to re-list WTWHA to include cultural heritage values.
- Restated recognition by WTMA and relevant land management agencies of Aboriginal people as owners and managers of up to 80% of the land rather than merely being associated with the land, or identified as an interest group.
- Adoption of more affirmative language by WTMA and relevant Government agencies when officially referring to Aboriginal involvement and interests in the WTWHA.
- A commitment that the WTA Tourism Strategy ensure that only Aboriginal people should be interpreting Aboriginal sites and culture, unless otherwise agreed by Aboriginal people;

Government Position

The written response from the DoE Regional Office was positive in terms of the technical feasibility of re-listing the WTWHA for cultural values. At the one day workshop, however, the Commonwealth representative advised that Government commitment to achieve this at present was unlikely, particularly as there is currently insufficient material collated to present for consideration.

There was some qualified support from the Government agencies for improved arrangements for dealing with cultural heritage interpretation and for moving towards more appropriate language when referring to Aboriginal interests in the WTWHMA, but that there was a need for Government coordination on these points

Recommendation

- It is recommended that the Queensland government agree to a process that will move towards re-listing as a primary objective in the Interim Negotiating Forum. This process may

take some time but it is better to begin advocacy of this aspiration now as it is essential to the recognition of Aboriginal interests in land-use and management.

Recommendation

- The Interim Negotiating Forum seek agreement about appropriate language for agencies to officially represent Aboriginal interests in management. Some initial processes for resolving Aboriginal concerns about cultural heritage interpretation issues should also be explored.

2. Stronger commitment by WTMA and government agencies to not affect, diminish or extinguish native title in managing the WTWHA.

Bama Aspirations

- Removal from the draft Plan of the intention to use acquisition or regulatory action to constrain native title once it has been determined.
- A preface should be included in all Co-operative Management Agreements and Joint Management Agreements developed in the interim period that these agreements will not impact on native title.
- WTMA to revise the procedural arrangements implicit in its land acquisition policy for national parks to reduce direct competition with Aboriginal land claims.
- A timetabled commitment to the development of procedures (where appropriate) for accommodating the interests of traditional owners where native title has technically been extinguished.
- A timetabled commitment to the development of procedures (where appropriate) for accommodating the interests of people with an historical interest in the WTWHA.
- In the interim period, permits issued to Aboriginal people for activities lawfully carried out prior to the Plan. A person with a native title right or interest should include native title claimants as well as those with determined native title.
- WTMA and relevant government agency staff to undertake cross-cultural training in the interim period to assist them to understand the implications of native title on WTWHA management.
- As part of the Interim Negotiating Forum, parties to the negotiation to jointly develop an appropriate compensation process with realistic timeframes.

Government Position

At the one day workshop it was confirmed that Government would continue its commitment to protect native title from impairment and to the lawful recognition of native title rights and interests. As an example of this commitment, it was pointed out that forestry land earmarked a few years ago for conversion to national park did not go ahead because of native title rights and

interests. Government would still like to go ahead with forestry conversions when native title matters are settled. In general, it should be remembered that it remains unlikely that the Government will surrender its ability to compulsorily acquire native title.

It was strongly stated that the Government's policy is that native title and land management/joint management issues should be kept separate. The State considers that this approach has been accepted and adopted by a number of native title claimants in a number of claims. The Government works on the basis that native title and Aboriginal involvement in land management are separate matters they believe that all Aboriginal people, irrespective of whether they have native title, are eligible to participate in any land management initiatives on offer.

Government representatives also generally agreed that field positions would particularly benefit from receiving additional training in native title matters, both from the Premiers Department and from *Bama* organisations. In relation to compensation policy, Government representatives advised that *Bama* should seek legal advice without delay.

Recommendations

- There is a major difference of approach between Government and *Bama* in relation to native title matters. The Government does not wish to integrate native title and land-use and management, whereas *Bama* cannot see how these could possibly be separated. *Bama* believe their aspirations are legitimised by their native title rights and interests. This should be a major point of early negotiation in the agreement process.
- In relation to native title compensation arising from implementation of the *Wet Tropics Plan*, the Interim Negotiating Forum should allow *Bama* and Government to reach agreement about how compensation arrangements can be reached fairly and systematically (ie: rather than fighting on a case by case basis within a limited statutory timeframe). The outcome of such negotiations should become part of the Final (Regional Wet Tropics) Agreement.

3. Commitment to all management arrangements taking the form of meaningful joint management agreements

Aboriginal Aspirations

- The parties to the Final (Regional Wet Tropics) Agreement should commit to jointly developing a series of agreed models of joint management describing different levels of Aboriginal involvement in management relative to different tenure situations (e.g., national park, state forest, etc.), and the related processes to be used to reach JMAs;
- The WTMA and State agencies to agree with the appropriate Aboriginal agency to a schedule of negotiated joint management agreements and the allocation of funding to meet this schedule. This would have to be settled by the signing of the Final (Regional Wet Tropics) Agreement.

- Formal acknowledgment by WTMA and the relevant government agencies that native title may exist until proven otherwise or extinguished, and therefore all native title claimants should be able to enter in Joint Management Agreements;
- A commitment that all management plans within the WTWHA be jointly prepared by the relevant local Aboriginal agencies, WTMA and/or relevant government land management agencies, and that adequate funding be provided to Aboriginal agencies to facilitate this process.

Government Position

Government representatives confirmed that the only potential for proper joint management arrangements lay in the *Aboriginal Land Act* 1991 process for claims over national parks. However, they also confirmed that it was unlikely that any further national parks in Queensland will be gazetted for claim in the near future. Again Government representatives made it very clear that they will not discuss management arrangements with Aboriginal people where the discussions are based on native title rights and interests. They are, however, prepared to involve Aboriginal people in planning and management plans where cultural interests are identified. This has happened in the case of Crater Lakes National Park on the Atherton Tablelands.

Recommendation

- Positions of Government and counter positions of *Bama* on models of appropriate management arrangements need to be tabled early in the Interim Negotiating Forum negotiations. *Bama* see joint management arrangements as the centerpiece of the Final (Regional Wet Tropics) Agreement.

4. Commitment to Aboriginal involvement in all aspects of policy, planning and management

Aboriginal Aspirations

- Government commitment to the appointment of two Aboriginal representatives on the Authority Board and that these positions be chosen through community consultation.
- Government agencies to recognise the authority of elders and Aboriginal councils and establish an agreed code of practice and working protocols and ethics for working with Aboriginal people and organisations. This should be developed by mid-1998.
- Development of an appropriate structure for maximal involvement of Aboriginal representatives in the permit assessment and approval processes.

- WTMA and relevant State and Commonwealth agencies to agree to the application of an Indigenous Land Interest Model (ILIM)³⁴ for social and cultural impact assessment under s. 8.2 under *Local Government (Planning and Environment) Act 1990* (Qld), s. 29 of the *State Development and Public Works Organisation Act 1971* (Qld), the *Commonwealth Environment Protection (Impact of Proposals) Act* and Type 2 and 3 assessments under the *Mineral Resources Act 1989* (Qld).
- State and Commonwealth governments agree that the authorized Aboriginal agency' including DOGIT Councils where appropriate, undertake community based land and natural resource planning prior to the signing of the Final Agreement.
- WTMA and government agencies to agree to subcontracting, to appropriate Aboriginal organisations, the preparation of all interpretive and other material referring to Aboriginal culture.
- Agreement reached regarding the process required to systematically approach local governments in the WTWHA about establishing Schedule 3 triggers under the *Local Government (Planning and Environment) Act 1990*.
- Agreement on the transfer of existing State controlled information regarding Aboriginal cultural heritage in the WTWHA to the appropriate Aboriginal bodies along with the provision of the support needed to maintain this information.
- The State government commit to a review of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* (Qld) in conjunction with the appropriate Aboriginal agency as it relates to the Wet Tropics area.
- Government recognition of priority for Aboriginal groups to be involved in cultural tourism, including infrastructure development (e.g., walking track development).
- Government commitment to Aboriginal representation on any structures established to develop the Wet Tropics Eco-tourism Strategy.
- State and Commonwealth government to commit to the development of appropriate training and employment strategies for Aboriginal people within the agencies with responsibilities for management within the WTWHA. This should result in all State and Commonwealth agencies with roles in managing the Wet Tropics area establishing, in conjunction with the appropriate Aboriginal agency, consistent employment strategies before the signing of the Final (Regional Wet Tropics) Agreement.
- There should be formal involvement of *Bama* in preparation of the Visitor Management Strategy (particularly regarding access and use provisions).

³⁴ A system of impact assessment where Aboriginal organisations are contracted by development proponents to manage indigenous social and cultural impact assessment work, providing a stronger basis for negotiated resolution of possible development impacts.

Government Position

The two Commonwealth representatives on the Wet Tropics Board have to include at least one Aboriginal person, currently Noel Pearson. This is about to change as his term finishes. Again, at least one of the two Commonwealth representatives will be an Aboriginal person selected by the Commonwealth. It is unlikely that the Commonwealth would agree to both representatives being Aboriginal. It was suggested that it would be advisable to concentrate on getting the one Aboriginal representative better supported and informed by his/her community's needs.

While there is general support for increased Aboriginal involvement in all aspects of policy, planning and management, DoE believe that they are already making positive headway, but that Aboriginal people and organisations who support them have expectations that are too high for the Government to meet. In relation to most other initiatives discussed, it was clear that the Government has not dedicated resources for a higher level of participation. Any funding allocated to new initiatives would have to mean that existing management programs be reduced.

Recommendation

- It would seem that potential for increased Aboriginal involvement in policy and planning can be achieved within existing legislation and policy frameworks. This requires a commitment from Government to explore where innovative options exist and how new arrangements negotiated in the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement can be monitored.

The level of desired participation, however, requires careful negotiation. There are a variety of perceptions, misconceptions and understandings about what is an appropriate level of participation. It is also important that the Department of Local Government and Planning also be more directly involved in future negotiations towards the Interim Negotiating Forum.

5. Traditional resource use and ecological knowledge

Aboriginal Aspirations

- State Government commitment to conduct an integrated review of legislation regulating hunting, fishing and gathering as it relates to the WTWHA in conjunction with the authorized Aboriginal agency.
- Consistent commitment from management agencies to protect indigenous ecological knowledge and to include it in management planning. There should be arrangements for the retention of intellectual property by the owners of the knowledge and funding available for employment of Aboriginal people where appropriate. This should be put in place by December 1997.

Government Position

Government representatives believe they have, in part, addressed the problems of Aboriginal use of natural resources for cultural purposes within the current constraints of the legislation (particularly the *Nature Conservation Act 1992*). It is understood, however, that an authority to take wildlife under Aboriginal tradition does not adequately address the problems of Aboriginal use of natural resources for cultural purposes. It is also recognised by DoE that s 211 of the *Native Title Act 1993* (Cwlth) prevails over the *Nature Conservation Act 1992* to the extent of the inconsistency between the two Acts.

Recommendation

- Negotiations for an agreement should include the development of a more equitable system for managing Aboriginal use of natural and cultural resources.

4.2.3 High Profile Facilitator

The above sections indicate that there is scope to move forward into an Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement between Rainforest Aboriginal people and government WTWHA management agencies.

The number of constraints and the various differences in management perspective between the two potential negotiating parties (as also identified in the TOR 12A and 12B reports) should not be underestimated. However, there are enough areas of common ground with respect to management aspirations, obligations and responsibilities to provide a solid foundation for the ongoing negotiation of mutually acceptable outcomes.

The level of concerns raised by all parties in both TOR 12 reports and the general complexity of the issues requiring resolution underlies the need for a staged agreement process and the use of a high profile facilitator to progress the recommendations arising from the *Review* and to commence negotiations in an attempt to resolve these issues. In essence, the role of the high profile facilitator is to develop an appropriate framework and negotiating climate for the proposed Interim Negotiating Forum.

4.2.4 Resourcing implications

Initial cost estimates for the high profile facilitator position are approximately \$100 000 for the three months thought necessary to set the appropriate framework and negotiating climate for the Interim Negotiating Forum.

The State and Commonwealth governments and Rainforest Aboriginal people (through various representative organisations) will need to provide adequate resources for the proposed three year negotiation process leading up to the Final (Regional Wet Tropics) Agreement. In the Interim Negotiating Forum there needs to be a formal commitment from all parties to maintain these resources throughout the negotiations to the Final (Regional Wet Tropics) Agreement.

An indicative annual budget for resourcing the authorised Aboriginal agency throughout the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement processes is as follows-

4 Field Officers	\$80 000
Negotiation funds (including participation)	\$70 000
Administration and operation	\$65 000
Coordinator	\$50 000
Executive Operation	\$20 000
Specialist Expertise	\$50 000
Administrative Officer	<u>\$35 000</u>
Total	\$370 000

Establishment costs \$50 000 first year only

4.2.5 Coordinated negotiating teams

The TOR 12B consultancy report identifies that significant responsibility rests with both Rainforest Aboriginal people and government agencies to each establish some form of a negotiating team that would have an appropriate mandate for conducting those negotiations needed to take place within the framework of the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

This is no straightforward matter given the history of poor coordination and fragmentation on both sides. Bama Wabu, in an attempt to facilitate a more coordinated Rainforest Aboriginal voice, have proposed the development of an internal agreement that aims at identifying a set of agreed management principles that form the bottom-line for all negotiations with government agencies. The idea is that even if certain Bama groups do not wish to be represented within the negotiations by the specific Aboriginal negotiating team then at least there is a common set of bottom-line principles to work from that will not be undermined by groups outside of the formal process. It also behoves the various relevant WTWHA management agencies to bring a more coordinated and consistent approach to the agreement negotiating table.

4.2.6 Dispute resolution and renegotiation

As is the case with any agreement there needs to be an appropriate forum for the resolution of disputes that also takes into account any relative power imbalance between the relevant parties (see Dale *et al.* 1997a, p 32 for greater detail).

There also needs to be a renegotiation mechanism to accommodate changing circumstances outside of the perceived original scope of the Agreement and to review those parts of an agreement that are likely to require modification over time.

Both mechanisms can be defined within the framework of the Interim Negotiating Forum.

4.3 Towards an Agreement: Concluding remarks

Given that the TOR 12A and 12B consultancy reports clearly identified and placed on record the Aboriginal and government positions on the future of the WTWHA, the foundation is now in place for the establishment of the agreement process.

These reports also demonstrate a willingness on both sides to enter into negotiations for the Interim Negotiating Forum component of the overall process. This commitment, at least in the case of Rainforest Aboriginal people, was recently confirmed at the December 1997 Bama Wabu World Heritage summit held at Clump Point. However, despite continued commitment from DoE at the regional level, recent hitches in relation to the proposed Bama Wabu permit MoU, negotiations on infrastructure development in the Daintree National Park, and the development of a MoU with Djabugay people have fueled concern by the *Review* Steering Committee as to whether agreement negotiations can proceed with the required level of Government commitment.

The result of not proceeding with the agreement process could be costly for all involved. Litigation would potentially undermine management decision-making processes, and the loss of the opportunity to develop a more positive working relationship with native title holders could further handicap both government and Bama land management interests.

The TOR 12 consultants identified that the proposed agreement process will substantially improve the relations between Aboriginal interests and Government even though there were a number of significant differences between the Government and Bama positions and that there are genuine constraints facing WTWHA managers in meeting Aboriginal aspirations (especially in the context of native title issues). A better working relationship would enhance the protection and management of all natural and cultural values in the region. It will also assist government land management agencies to better meet their statutory cultural heritage protection and consultation obligations.

As part of a commitment to the Interim Negotiating Forum process both Bama and government representatives must each identify a negotiating team with a mandate for undertaking such negotiations. The TOR 12A and 12B reports also identified a range of other significant preconditions.

The appointment of a high profile facilitator for the negotiation of the Agreement is essential for beginning the process. This position has been given in principle support by the Board. It has also received in principle commitment for funding by DoE, DNR, WTMA, and Environment Australia (May 1997, Board Meeting). The high profile facilitator position will be responsible for ensuring that the essential preconditions for negotiations are in place, and that the Interim Negotiating Forum negotiations proceed in a positive and structured way. Critical to ensuring that any momentum built up during the *Review* is not lost will be the speedy appointment of the facilitator as soon as possible in 1998 (Dale *et al.* 1997b).

4.4 Protocols, Principles, and Guidelines for Communication, Consultation and Negotiation

4.4.1 Introduction

The process of negotiating both the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement is envisaged to be a lengthy and complicated process. If discussions are to be productive in terms of achieving meaningful outcomes then the negotiation needs to pay attention to the three basic principles outlined by Dale (1993), presented previously in section 2.3.6.3. Dale's principles are seen as crucial to the successful negotiation of agreements in the WTWHA.

The key feature is the need for both negotiating teams (viz. a separate consortium of representatives of Aboriginal groups and relevant government agencies) to have a strong representative mandate from their constituent groups and the adoption of a firm commitment to negotiation and bargaining. However these principles only provide guidelines to the overall 'climate' of the discussions, and provide little in the way of 'ground rules' for the negotiation of specific management arrangements.

Consultation and communication protocols

In order to arrive at some basic ground rules this section will provide some examples of consultation and communication protocols for specific management issues of relevance to Rainforest Aboriginal people. They are presented as a guide only. It is beyond the scope of this *Review* to provide a detailed set of protocols and negotiation principles for all areas of consultation and negotiation. Furthermore, as there is no pan-Aboriginal culture within the WTWHA these protocols are presented as a starting point only; each separate group may need to have certain aspects fine-tuned to meet their own specific needs and aspirations.

There is no magic 'quick-fix' when it comes to the right way to consult and liaise with Aboriginal people. Nevertheless, fundamental bottom line principles are readily identifiable. These include:

- The involvement of Aboriginal people right from the very beginning of a project.
- A firm commitment to negotiate on equal terms.
- The ability to follow through with agreed outcomes.
- Ensuring that you are working with the right people to be speaking for that country (by working through Land Councils and other Representative bodies).

Note:

1. A number of recommendations have already been presented in the evaluation of consultation and negotiation processes in the WTWHA to date. The following discussion relates to protocols and principles in a more specific context.
2. DoE and the Djabugay Tribal Aboriginal Corporation are currently in the process of developing a communication and consultation protocol as part of a broad range of management arrangements under consideration. At the time of writing this protocol was not available to the *Review*. Although specific to the needs of Djabugay people, this protocol may serve as a model for consideration by other Aboriginal groups within the Wet Tropics.
3. The protection of intellectual and cultural property rights (ICPR) is a common theme running throughout many of the following protocols and principles. It is one of the main areas of concern expressed by Rainforest Aboriginal people in reflecting on how their rights and interests have been negatively impacted on in many past dealings with researchers, tourist operators, and government organisations.
4. The reaction from many readers to the following protocols and principles may be of concern as to the degree of consultation and negotiation required to achieve the recommended outcomes. This concern is understandable given that government agencies are often constrained by administrative timeframes and budgetary limitations. However it is better to expend a comparatively small amount of time and money early on in project development in order to 'get things right' rather than face a possible judicial review, injunction or other legal action (with potentially a greater drain on resources) further on in time.

4.4.2 Basic Principles for Regional and Strategic Planning

These principles are based on recommendations in Dale (1993; p 16). They were originally designed to facilitate joint management and to ensure fair planning. Some modifications and additions have been made in keeping with the current emphasis on negotiated agreements as a means to achieving 'joint management-like' outcomes. The principles apply equally to DoE, DNR, and local government, as they do to WTMA.

In an attempt to ensure that Aboriginal interests and concerns are fully recognised and addressed any planning process in the WTWHA needs to:

- Involve Aboriginal people as more than just another 'stakeholder' group.
- Involve Aboriginal people at the beginning of the planning project or strategy development. Given common law native title implications and existing consultation and cultural heritage obligations (under a range of legislation) it is not sufficient to wait until the final public consultation phase before providing Aboriginal interests with a seat at the negotiation table.
- Ensure that planners deal with the right people for the right country. Make sure that, as a basic bottom-line principle, any contentious issue has the full support, in writing, of relevant native title claimants and/or native title holders.
- Where problems of identification exist, consult with relevant Land Councils, local community groups or peak Aboriginal groups such as Bama Wabu, Giringun Elders and Reference Group (southern Wet Tropics), Yalanji Native Title Reference Group (Northern Wet

Tropics). Alternatively, or in addition, contact relevant WTMA and DoE Aboriginal liaison staff.

- Ensure that community people are made fully aware of what planning is and how it will affect them.
- Provide Aboriginal people with the opportunity to suggest ways to structure their involvement in the planning process.
- Ensure that people have the opportunity to input directly into the visions, objectives and strategies of the plan. This should occur early on in the project's development.
- Give people a reasonable level of time to respond or participate.
- When determining planning boundaries take into account social and cultural considerations in addition to biophysical boundaries. Recognise that the Wet Tropics Bioregion has a unique living cultural landscape dimension in addition to its internationally recognised bio-physical values and recreational opportunities.
- Use culturally sensitive and appropriate methods for facilitating Aboriginal involvement. Move away from consultation processes that disempower Aboriginal input eg. where a written submission is required as a response to complex planning proposals Aboriginal community groups need to be adequately resourced to undertake a detailed consultation process through facilitated workshops.
- Use the planning process to work towards the facilitation of appropriate management agreements within the planning area.
- Where appropriate, resource Aboriginal communities to establish their own input and to develop and control their own technical information for future use.
- Facilitate Aboriginal involvement in the regular monitoring and review of plans.
- Maintain respect for the secrecy of particular forms of cultural heritage information.
- Endeavour to link management plans to existing community development plans prepared by Aboriginal organisations.

4.4.3 Protocol for involving Rainforest Aboriginal People in Interpretation and Public Information Projects

This section is based on a WTMA file note (author unknown) entitled "Draft Policy and Guidelines for Aboriginal Involvement in Information and Interpretation". This document was produced in response to concerns by Aboriginal people over the lack of policy guidelines for Aboriginal involvement in this area. The protocol is relevant to a range of government agencies as well as to contracted community organisations undertaking the development and management of visitor centres. Some additions and amendments have been made to the original protocol.

Step 1

- Identify the appropriate custodians to be involved in the project
- Provide all groups with plain English information on constraints of project. Constraints may include budgets, specific criteria, etc.
- Involve traditional custodians from the beginning to the end of the project, ie: in consultation, planning, implementation, monitoring, and review.
- Where possible contract Aboriginal journalists to collaboratively develop any written text with traditional owners.

- Where possible use Aboriginal people familiar with WTWHA visitor information and management issues as facilitators. This has resourcing implications, but may be undertaken by Community Rangers as part of course requirements for Cairns TAFE Community Ranger Program.
- Report progress to all parties, seek their approval.

Evaluate the above steps to ensure that they have been achieved to the satisfaction of all groups. Proceed if yes, consult further if no.

Step 2

- Groups involved meet to discuss, negotiate, and plan the involvement of each party, respecting the wishes of the traditional custodians. Depending on the nature and size of the project, group size may vary. Ensure that all relevant government agencies and Aboriginal groups are represented.
- Negotiate specific intellectual and cultural property rights issues including: the control and ownership of text, information, designs, music, and photographs. Where necessary formalise this in writing.
- Report progress to all parties, ask for comments.

Evaluate the above steps to ensure that they have been achieved to the satisfaction of all groups. Proceed if yes, consult further if no.

Step 3

- Implement plans according to decisions made in above steps.
- Report to all groups involved.

Evaluate the above steps to ensure that they have been achieved to the satisfaction of all groups. Proceed if yes, consult further if no.

Step 4

- Implement plans according to decisions made in above steps.
- Monitor project. Develop and implement a regular review mechanism that enables traditional custodians to provide ongoing feedback and advice.

Note

- Respect the wishes of traditional custodians if they do not wish to be involved in the project, either in its entirety or in certain parts.
- It is imperative that staff and contractors continue to feedback to the community on a stage by stage basis how the project is progressing.
- It is important for staff and contractors to be openly working on a collaborative basis with traditional custodians; accepting any veto over material if and when it arises. It is more important to respect and accept the decisions of custodians than to understand the basis for that decision.
- If community support is not guaranteed do not proceed with the project until you have a mandate to do so.

- Where problems exist identifying traditional custodians consult with relevant Land Councils, local community groups, or peak Aboriginal groups such as Bama Wabu, Giringun Elders and Reference Group (southern Wet Tropics), Yalanji Native Title Reference Group (Northern Wet Tropics). Alternatively, contact relevant WTMA and DoE Aboriginal liaison staff.
- If there is any doubt or confusion over a specific issue avoid that issue until it is clarified and a consensus is reached.
- Respect negotiated intellectual and cultural property right conditions established in step 2.

4.4.4 Principles for the Protection of the Oral Tradition

The following principles relate to the protection of oral or storytelling traditions of Rainforest Aboriginal people. It is particularly relevant as a follow-up to the previous section on involving Rainforest Aboriginal people in interpretation and public information projects. It is a useful procedural guideline to the protection of intangible cultural material particularly in the context of visitor interpretation and commercial marketing and advertising.

The principles were developed during the Intellectual Property Rights Conference held in the Daintree in 1994. They are presented in a 1995 consultancy report to the Authority on Rainforest Aboriginal Cultural Survival (see Morris, p 70 in Fourmile et al. (1995) (eds.)).

Principles

1. Local clan groups need to determine what their particular oral tradition encompasses.
2. Traditional owners must be recognised as having the authentic voice that determines custodial responsibilities.
3. These people must have access to frameworks from other Aboriginal groups and Indigenous Peoples, so that they can determine what embodies the most suitable protection for their clan's tradition.
4. To further recognise the rights and responsibilities of local clan groups to determine their future, they must be able to write and tell their own pre-colonial and post-colonial history.
5. They must be able to tell their own stories and have the right to stop any written, visual or sound recording.
6. It must be made perfectly clear that the oral version as heard at the moment is the correct version, as Aboriginal culture is dynamic not static.
7. Within the field of teaching, recording and defining of the meaning of traditional words (language) and incorporated English words, the clans interpretation must be perceived as the legitimate interpretation.

4.4.5 Principles for Ecotourism and Nature-based Recreation Management

The following principles are provided as the basis of any attempt to protect Aboriginal cultural values within the context of an ecotourism or nature-based recreation strategy for the WTWHA. These principles assume that the WTWHA is also characterised by a range of living Bama cultural landscapes in addition to the more readily recognised values pertaining to biophysical properties and recreational settings.

Principles

- Any guidelines for ecologically sustainable development of nature-based recreation and ecotourism activities should be based on appropriate recognition and response to any potential impacts on Bama socio-cultural values.
- These socio-cultural values and associated impacts are identified and their degree of significance evaluated by the relevant Rainforest Aboriginal people themselves.
- Any ecotourism and nature-based recreation management strategies provide adequate and appropriate cultural heritage protection.
- There is a need for recognition that the recreational setting is in fact a recent land-use overlay of a pre-existing and, in many cases, still surviving indigenous cultural landscape.
- That a conservative approach apply to the establishment of nature based recreation activities where only low level knowledge exists in relation to the nature and degree of potential impacts on indigenous cultural values.
- Any management agreements and decisions are agreed to and fully endorsed by the right traditional owners or native title holders (or claimants) for each region.
- That any management decisions take into account the common law native title rights of the traditional owners of a region.

4.4.6 The Kuku-Yalanji Fire Protocol

This particular fire management protocol relates to a specific group of Rainforest Aboriginal people and cannot be assumed to be relevant to all groups. These basic principles are seen to be a valuable guide to cooperative fire management with Aboriginal interests. The overall collaborative approach of the proposal is seen as essential to any equitable approach to policy development and the protection of intellectual and cultural property, material or otherwise. The bottom-line of this protocol is that Kuku-Yalanji retain control of cultural information and participate extensively throughout the research.

The Kuku-Yalanji Fire Protocol is provided courtesy of the Kuku-Yalanji Fire Project Reference Group and Rosemary Hill, the Project Coordinator. The input of Adelaide Baird and David Buchanan into the development of this protocol is particularly acknowledged.

1. **Identification of Appropriate People:** Custodial and ownership relationships with country being managed are established through a study, with funding assistance from the land managers, and controlled by Kuku-Yalanji.
2. **Establishment of Collaborative Team:** Following this study, a collaborative team comprising Kuku-Yalanji and the land managers is established to set policy on fire and to subsequently carry out fire management on the ground.
3. **Documentation of Cultural Values:** Documentation of the cultural landscape values (archaeological sites, story places etc.) of the place occurs under Kuku-Yalanji control.

- 4. Documentation of Natural Values:** Documentation of the natural landscape values (rare taxa, fire-dependent species etc.) of the place occurs under the control of the collaborative team.
- 5. Research Program:** Research needs for both natural and cultural heritage are identified and relevant research projects implemented.
- 6. Development of Fire Plan:** A fire plan is developed, based on a combination of Kuku-Yalanji and scientific knowledge, technologies, economic and social purposes which achieves maintenance of natural and cultural integrity.
- 7. Implementation of Fire Plan:** The collaborative team undertakes the on-the ground fire management utilising a joint approach to technologies; this means Kuku-Yalanji are physically involved in lighting fires.
- 8. Evaluation:** Ongoing assessment and discussion of the success of the plan and the process in maintaining natural and cultural integrity occurs.

Note:

Bama Wabu in a submission to the WTMA Board (meeting no. 25; August 1997) identified fire management as a particularly sensitive issue with Rainforest Aboriginal people and identified the need to develop a more appropriate mechanism for Aboriginal participation in fire management policy in keeping with the recognition of their native title rights and interests under common law and under s.211 of the NTA (which provides for unregulated use of traditional fire management practices). The Board endorsed the Bama Wabu request for the Authority to establish an appropriate fire management working group to explore and define fire management issues including protocols. It is recommended that the Kuku Yalanji fire protocol be used as a starting point for fire management protocol development.

The Giringun Elders and Reference Group have also identified the protection of cultural values (and in particular rock art and other archaeological sites) as a key feature of any fire management program. As a bottom-line principle Giringun have proposed that before any prescribed burning is undertaken by government agencies (regardless of underlying tenure) the relevant traditional owners should be consulted.

Secondly, in culturally sensitive regions, the participation of traditional owners should be encouraged on a paid basis³⁵.

Attempts to accommodate this collaborative approach to fire management in the WTWHA have not been without their problems. Trials in the Daintree National Park appear to have suffered from misunderstanding over certain issues by both Kuku Yalanji and QNPWS interests. Similar collaborative projects in the Northern Territory (both on and off national parks) have shown that

³⁵ A letter from the Chairperson of Executives of the Giringun Elders and Reference Group Aboriginal Corporation to the Minister for the Environment dated August 20 1997.

it is worth working through these inevitable ‘teething’ problems to achieve the mutually beneficial long-term gains (see also papers by Jones and Press in Bird Rose (ed.) (1995). Both DoE staff and Kuku Yalanji rangers should be commended for continuing to persevere in what is seen as a ‘cutting-edge’ management approach.

Recommendation

- The Kuku Yalanji Fire Protocol be used as a starting point for the development of an appropriate fire management protocol that meets the needs of both WTWHA managers and Rainforest Aboriginal people.

4.4.7 Guidelines for Biophysical Research

The following principles are based on research undertaken by Balkanu: Cape York Development Corporation (Pty/Ltd) regarding bio-physical research in the Aboriginal lands, islands and waters of Cape York Peninsula³⁶. The material is reproduced courtesy of Balkanu. It is a draft set of guidelines only. Once again the research was based on concerns and issues raised by a specific Aboriginal group, many of whom are outside of the WTWHA. Nevertheless the basic principles are still relevant, although they would need fine-tuning and ground-truthing for specific groups within the WTWHA.

Balkanu Draft Statement of Principles

Purpose

- To inform researchers of the rights of Aboriginal peoples.
- To assist researchers in effectively negotiating issues of benefit, information management, self determination and respect.

(a) Guidelines for Research

1. Topics to be discussed during the **negotiation process** include:
 - The nature of the research ie. focus, location
 - Methodology
 - Alternative sites outside of Aboriginal lands
 - Source of funding
 - Logistics ie. Accommodation, where the resources from the project will come from
 - Who is taking part in the project. Proposed timeframe for the project
 - Where the information from the project will be going ie. Possible publications etc.
 - Ownership of information
 - Intellectual property rights
 - Proposals for minimising environmental impact

³⁶ Greco, K. (1997) Ethics of Research on Aboriginal Country. Creating guidelines for researchers. Report prepared for Balkanu: Cape York Development Corporation (Pty/Ltd). Cape York Land Council.

- Possible problematic outcomes that could be derived from the handling of information after the close of the project
 - What effects the project may have on the social and cultural environment?:
 - How will researchers avoid detrimental effects, sacred sites and when appropriate, adhere to traditional law?
 - Are researchers willing to have traditional owners or representatives from the community accompany them on all or part of the research process should they request this?
 - What benefits are included for the traditional land holders?:
 - Research should aim to include employment opportunities, research training, or experiential work components in all projects.
 - Traditional owners should also be given the opportunity to help in determining the direction of the research.
1. It is the responsibility of the researcher to take the necessary steps to identify the appropriate traditional owners and other groups on whose country research is proposed. This may best be done through the Cape York Land Council/Balkanu.
 2. Cultural, environmental, social, and economic factors will be considered in coming to an agreement on research programs.
 3. Concealment and/or deception are unacceptable at all stages including initial negotiations, while conducting or proposing research, and use information after the research is complete.
 4. Aboriginal people may not be in a financial position to take full involvement in negotiations. In such cases the researcher will need to ensure that Aboriginal people have access to those resources necessary for the negotiations to be concluded. Researchers must also ensure that the community is reimbursed for any costs brought upon by the nature of the research ie. Communications, travel, professional advice.
 5. Information exchanged with the traditional owners must be presented in a form which can be clearly understood by all persons involved. Consent from traditional owners should appear in writing.
 6. Researchers should allow a sufficient amount of time for the community or their chosen representative/s to reply at any stage of negotiation.
 7. If the continuation of research is proving to be harmful to the rights and interests of traditional owners or communities then research must be stopped or modified.
 8. Any unauthorised collection or use of information is strictly prohibited.

(b) Statement of principles regarding the rights of traditional owners, Aboriginal groups and communities.

1. It is essential that traditional owners and communities are in a position to choose what information is collected, how it is collected and how it is used. Traditional owners must be given the opportunity to assess the present and future impacts of research on their lands.
2. In most circumstances researchers have specific information objectives for particular programs. Aboriginal people must be able to ensure that research which occurs on that country to fulfil these objectives, does not harm their country or community nor impair their ability to fulfil their own or their community's goals.
3. Arrangements entered into with Aboriginal people will establish the parameters for research. Any further alteration or expansion of these parameters will need to be renegotiated. The traditional owner/s, Aboriginal community, group, or representative/s have the right to continually assess the development and progress of the research project.
4. Aboriginal people have the right to be represented in any discussions by the individual or body of their choice.
5. Restrictions placed on the dissemination of information of a commercial or potentially commercial nature will need to remain in place for a period which will enable Aboriginal people to access this commercial benefit.
6. A copy of the research must be lodged with the traditional owner, community group, or representative body.
7. Aboriginal people are entitled to review all research findings before they are published so that the potential impact can be assessed. All researchers must have the consent of the traditional owner, community or representative group before research findings are published, released to the media or any outside party or person. Any individuals or traditional lands involved in research should be acknowledged as such in publications of research findings.
8. All of these guidelines and principles are subject to the approval of the individual traditional owners, Aboriginal groups, communities or representative bodies and are intended to be used as a basic guide in the negotiation process. They have been developed to ensure that culturally sensitive, commercial and other relevant information is not released to the general public. Aboriginal people have the right to participate in the decision making process in order for that research to take place on Aboriginal land and sea country where Aboriginal people have interests and/or claims.

General comments on Balkanu Principles

- The Balkanu document is a draft only. It is based on wide ranging consultation not only with Aboriginal communities but with a number of government agencies including ATSIC, GBRMPA, DoE, and WTMA and research organisations including CSIRO and JCU. Private consultants were also involved.

- It is recommended that these principles be considered by WTMA (and other relevant state agencies) as the underlying framework for contracts and research projects in the region. To this effect, the aim of these principles would be to address the concerns of Rainforest Aboriginal people with respect to the treatment of their rights and interests in intellectual property and the long term effects of the dissipation of cultural values on socioeconomic activities and, in fact, on cultural survival.
- The James Cook University/ Kuku-Yalanji collaborative Fire Research Project (with Rosemary Hill as coordinator) should be viewed as an example of how these basic principles can be implemented in a 'real' situation.
- Similarly, the scientific permit/cassowary research workshop facilitated by DoE early in 1997 provides another example of how government agencies, research organisations, and Aboriginal interests can work together on the issue of research protocols and methodologies. Many of the issues and concerns raised at this workshop by Aboriginal people are covered by the Balkanu proposal.
- The Balkanu principles are not just relevant to areas within the WTWHA that are existing areas of Aboriginal land or subject to potential or actual claim under native title or various forms of land title/land transfer legislation. As noted in the original Balkanu report, the Nature Conservation Act obliges researchers to consult with Aboriginal people to determine whether the proposed research content is of cultural significance. Permission is granted for educational and scientific permits under the condition that 'if the resource is of cultural significance to a community or group of Aboriginal people or Torres Strait Islanders particularly concerned with the land where the resource is to be taken - the proposed taking, use, keeping, or interference with the resource has appropriate regard to the wishes of the community group'.
- The Balkanu report makes specific mention of the Cape York Land Council as a facilitator in the identification of who to be talking to. With respect to the WTWHA other land councils and representative bodies may be a more relevant first point of contact.
- It is important that any contracts written for scientists involved in research or monitoring activities incorporate relevant Aboriginal consultation, negotiation and involvement protocols as part of the contract conditions. This would act to clearly spell out what was required of the contractor. It would also enable the contractor to build into his or her fee estimate any potential costs associated with site clearance or other forms of Bama involvement. It would also provide the contracting body with a set of enforceable conditions as a means of meeting any consultation obligations they may have under legislation.

4.4.8 Draft ASTEC Scientific Research Principles

The following is a preliminary set of principles by Stephan Schnierer on behalf of ASTEC (Australian Science, Technology and Engineering Council) (ASTEC 1998) to develop a specific ethical code of research practice relating to indigenous interests and the conduct of research in protected and other environmentally sensitive areas.

These principles are in draft form only and do not reflect consultation with Australian indigenous communities. However, they potentially serve as a useful starting point in the negotiation of research protocols for the WTWHA.

The key elements of these principles focus on:

- The protection of indigenous intellectual and cultural property rights.
- The empowerment of indigenous Australians through active participation in research, including the ability to share in the benefits of research.
- A recognition of the status of indigenous Australians in relation to the Australian environment with particular acknowledgment of the specific rights of indigenous people to the natural and cultural landscapes that make up that overall environment.

1. Principle of Acknowledgment

This principle recognises that Indigenous Australian peoples were the original owners of the Australian environment and that this special status affords particular rights.

2. Principle of Inalienability

This principle recognises the inalienable rights of Indigenous Australian peoples to their traditional environments (lands/seas), the natural resources therein and their knowledge (intellectual property).

3. Principle of Self Determination

This principle recognises the right of Indigenous Australians to self determination and that researchers should acknowledge, respect and assist Indigenous Australian peoples in the exercise of such right.

4. Principle of Empowerment

This principle recognises the right of Indigenous Australians to have access to the skills and knowledge required to assist them in the exercise of their right to self determination.

5. Principle of Respect

This principle recognises that researchers should seek to understand and respect the integrity of the Indigenous Australian peoples and their culture and to avoid the application of ethnocentric concepts and standards.

6. Principle of Understanding

This principle recognises that researchers need to understand the relationship between Indigenous Australian peoples and the environment, particularly their role in shaping the biodiversity.

7. Principle of Good Faith

This principle recognises that researchers and others having access to knowledge of Indigenous Australian peoples will, at all times, conduct themselves with the utmost good faith.

8. Principle of Prior Consent

This principle recognises that the informed consent of the relevant Indigenous Australians must be obtained for any research to begin and continue in protected areas.

9. Principle of Full Disclosure

This principle recognises the right of Indigenous Australians to have disclosed to them the objectives, methodology and results of research and the ultimate purpose for which such information is to be used and by whom it is to be used.

10. Principle of Negotiation and Consultation

This principle recognises the right of Indigenous Australian peoples to negotiate with researchers, agencies and governments on the management arrangements of protected areas on their land.

11. Principle of Active Participation

This principle recognises the right of Indigenous Australians to be active participants in all phases of research from inception to completion.

12. Principle of Compensation

This principle recognises the right of Indigenous Australian peoples to be fairly remunerated or compensated for access to and use of their knowledge (intellectual property).

13. Principle of Equitable Sharing

This principle recognises the right of Indigenous Australian peoples to share in any benefits gained from bioproducts publications resulting from the use of their knowledge and, the duty of researchers to equitably share these benefits with Indigenous Australian peoples.

14. Principle of Confidentiality

This principle recognises the right of Indigenous Australian peoples to exclude from publication and/or to be kept confidential any of their intellectual property and that such confidentiality will be observed by researchers and other potential users.

15. Principle of Active Protection

This principle recognises the importance of researchers taking active measures to protect and enhance the relationship of Indigenous Australian peoples with their environment in order to promote the maintenance of cultural and biological diversity.

16. Principle of Reciprocity

This principle recognises the value in gaining access to knowledge of Indigenous Australians for science and humanity and the desirability of reciprocating that contribution.

17. Principle of Minimum Impact

This principle recognises the duty of researchers to ensure that their research and activities have minimum impact on the Indigenous Australian peoples and their local communities.

18. Principle of Restitution

This principle recognises the right of Indigenous Australian peoples to restitution and compensation for any adverse consequences to them as a result of research by those responsible.

19. Principle of Obligation

This principle recognises the rights of Indigenous Australian peoples to receive the full protection of relevant international instruments.

4.4.9 Community Visitation Protocols

Each different Aboriginal community within or associated with the WTWHA is likely to have its own set of protocols outlining visitation procedures. In many cases these may not be in a written form (as is the one for Wujal Wujal presented here). The bottom line is that when protocols are not known, WTMA staff (and other relevant government agencies) should make contact with the relevant community group prior to arriving on site. Land Councils and other representative groups and the Wet Tropics Community Liaison Officers may be in a position to facilitate initial contact where communication difficulties arise.

Wujal Wujal Aboriginal Council, in response to difficulties in the past, have developed the following protocol for visits to the community. It is also important that the relevant WTMA CLO be involved early on in any visitation proposal.

Wujal Wujal Aboriginal Council Protocol for Visits

(as provided by Council Office, October 1997)

1. Those wishing to make a visit will contact the Council Clerk, currently Jon Oliver, by telephone or in writing stating the following:

- (a) purpose of the visit;
- (b) information hoped to be obtained by the visit;
- (c) benefit that is to be obtained by the Council in having the visit;

2. Contact with the Council Clerk will be at least one week prior to the proposed visit and will fit the timetable of the Council. The Council has set aside the first Monday in each month to receive visitors. It is recommended you arrange your visits to coincide with this timetable.

3. If the purpose of the Government Department's or Agent's visit is to acquire information relating to traditional knowledge and information etc. The Council will require that an agreement be entered into with the parties that that information remains the property of the Council or those traditional owners involved. The information supplied will be supplied in the strictest confidence and the copyright of that information will remain with the Council or the traditional owners.

4.5 Cultural Heritage Protection

“The various components of indigenous cultural heritage, such as land, language, cultural objects, ancestral remains, sites of significance, customary law, and so on are now owned, controlled or administered by a number of different federal and state government departments and agencies, making it impossible for indigenous communities to exercise any autonomy over or enjoy what for them was once an holistic and integrated facet of their lives and identity - their cultural heritage”

(Adrian Marrie, Julayinbul, 1993).

4.5.1 Background

The question of providing adequate protection for Aboriginal cultural heritage values within the WTWHA is at the core of the majority of concerns raised by Rainforest Aboriginal people. To this effect Bama identify a number of bottom-line principles that they see forming the basic underlying framework of any attempt to adequately protect cultural heritage values. These include, but are not restricted to, the following:

- That Rainforest Aboriginal people should be free to maintain their cultural landscapes within the WTWHA and not be inhibited in their ability to meet their cultural/spiritual obligations for traditional country by access restrictions or other regulation of traditional management activities imposed by government agencies.
- The adequate protection of cultural sites, including sacred sites, story places, archaeological and occupation sites, Bama walking tracks etc. is not negotiable.
- The WTWHA needs to be recognised and managed as a series of living indigenous cultural landscapes that incorporate not just an array of Aboriginal material property but a complex

range of economic, social and intangible cultural values that require particular management attention.

- That any development or permit application requires the formal consent of the relevant traditional owners, or custodians of the cultural resources to be affected (regardless of whether there has been a formal determination of native title). It is not sufficient to consult with other groups or individuals including liaison officers, DOGIT councils, trustees, or Land Council representatives.
- That the significance and identification of a particular value needs to be defined by the traditional custodians themselves, and not by a western academic or protected area manager.
- That any material culture belongs to the relevant traditional owners or custodians of the property; and not to the Crown as is stated in legislation³⁷.

These principles are presented as representative of those non-negotiable principles that have a common thread amongst the majority of traditional owners and custodians. However, each group may (and will likely) have its own set of local conditions, concerns, and aspirations which serve to build up a preferred cultural heritage management model upon the foundation already established by these generalised bottom-line principles.

Discussion of particular concerns and specific recommendations in relation to cultural heritage are an underlying theme to all the management issues discussed throughout this *Review* report. Consequently it is not necessary to focus on specific issues here, except where they have not been taken up by other sections.

4.5.2 Recognition of Cultural Values and Cultural Re-listing

In general many Rainforest Aboriginal people do not have faith in the ability of government conservation agencies to address their concerns for cultural heritage protection. This element of scepticism appears to be deep seated and tends to affect the working relationship between WTWHA managers and traditional owners. Even where there is a strong legislative mandate for cultural heritage protection, such as in the case of the management of protected areas under the NCA, Bama tend to be cautious about the ability of many managers to meet these obligations.

In the case of the *Nature Conservation Act 1992* (Qld) there is a specific duty under ss. 5(f), 6 and 17(1)(a) for DoE to involve Aboriginal people and to preserve cultural values in protected areas. A similar duty under s.10 (5) of the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) obligates WTMA to have due regard to Aboriginal tradition in relation to all of its functions. Note that failure to properly observe the duty to consider matters

³⁷ *Cultural Record (Landscape Queensland and Queensland Estate) Act 1987* (Qld) s. 33(1). The declaration of ownership by the State of Queensland does not apply to the burial remains of Aboriginal people. Similarly s.61 *Nature Conservation Act 1992* (Qld) declares that all of the cultural and natural resources of a national park (scientific), national park, conservation park or resources reserve are the property of the State.

that are relevant under a particular statutory scheme leave decisions open to judicial review (D. Yarrow, pers comm., October 1997). Therefore in order to avoid the possibility of liability both WTMA and DoE need to consider the risk associated with giving inadequate regard to Aboriginal cultural heritage matters when making decisions under legislation. This would be particularly relevant to the issuing of permits on protected areas and under the Wet Tropics Plan.

The concern that Bama hold over the ability of State agencies to cope with the impacts of tourism and associated infrastructure development on cultural values has been evidenced in the past by the lodging of separate heritage protection applications (both in 1994) under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth) over sections of Barron Gorge National Park (with particular emphasis placed on potential impacts of the Skyrail project) and over the Crater Lakes National Park.

It would appear from interviews and workshops undertaken as part of this *Review* that adequate cultural heritage protection, especially with respect to the meaningful involvement of Aboriginal groups in decision-making is subjective and ad hoc. There also appears to be a lack of coordination internally within agencies such as DoE and WTMA particularly between sections with specialist cultural heritage protection and Aboriginal consultation responsibilities and those officers responsible for on-site management decision making. Ultimately the degree of involvement of Aboriginal interests is dependent on the level of resourcing, individual personalities, individual values, and levels of appropriate professional training and expertise of staff. This is a far from satisfactory situation. The specifics of this have been dealt with previously. This is not to suggest that agencies are not attempting to rectify problem areas. Recent attempts by DoE to work more closely with Dulguburra and Ngadjon people in the Crater Lakes region, and with Djabugay people at Barron Gorge National Park would suggest otherwise³⁸. However the magnitude and complexity of the issue is such that these attempts could only be viewed as a starting point. In particular, a more resourced and coordinated approach to the protection and management of Aboriginal cultural heritage values needs to be undertaken over State Forests and Timber Reserves within the WTWHA.

A significant element of the concern by Aboriginal people, referred to above, stems from a number of factors that include among other issues:

- A range of negative, and often horrendous social, cultural and economic impacts arising from a number of Commonwealth and State government policies since original European settlement.

³⁸ Following mediation by Mr Fred Chaney under s. 13 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth) a number of outcomes have been achieved in the Crater Lakes region. These include the resolution of a number of on-site management concerns in addition to a greater level of involvement in the early stages of development of the revamped draft Crater Lakes National Park management plan. DoE have also moved towards meeting the concerns of Djabugay people through a number of initiatives including the development of a temporary employment and training package for the Djabugay rangers. The finalisation of the negotiated procedural MoU between the Djabugay Tribal Aboriginal Corporation and DoE will hopefully rectify some of the communication and consultation difficulties that appear to have inhibited (to various degrees according to the issue in question) a co-operative approach to management of the park.

- The original listing of the WTWHA for its natural values only (without appropriate consultation with Aboriginal groups) and the consequent perception that the region's indigenous cultural values have been afforded only secondary status in the overall management stakes.
- The priority that is given to the bio-physical, economic, and recreational values of the region over and above the attention given to impacts on Aboriginal cultural values.
- In many cases Aboriginal cultural values, particularly the more intangible cultural properties, are often not fully recognised by what is essentially a series of management regimes with an inherent bias towards western perspectives of value, and accordingly, how the region should be managed.

It is recommended that a number of strategies be employed in order to alleviate these particular problem areas. Firstly WTMA should continue to actively pursue, through Commonwealth funding, a full and proper cultural heritage assessment of the region to be undertaken during 1998. This would form the basis for an application to have the region re-listed for its cultural as well as natural values. Rainforest Aboriginal people believe that their cultural values will only be afforded appropriate protection through the increased pressure on government brought on by specific World Heritage listing. They do not have sufficient faith in the ability of the current range of legislation or planning instruments to provide adequate protection, or in some cases the ability of agencies to meet their cultural resources protection obligations even where (as in the case of the NCA with respect to protected areas) the legislation is more accommodating in this regard. Thus the notion of cultural re-listing, given continuing Bama endorsement, should be afforded the full support of all levels of government decision-making.

If a successful case for listing is made the benefits will not only flow onto Aboriginal people. It will also assist in the building of a better working relationship between Bama and WTWHA agencies; a valuable asset in a management climate where negotiation and agreements are seen as a positive approach in resolving uncertainty and competing interests. It will also contribute to the marketing value of the region as a tourist destination. Given an adequate and appropriate management response this could bring benefit to a whole range of different stakeholders, including indigenous tourism enterprises.

Note, as suggested by the Departmental Reference Group, that despite all the support possible at the State and Commonwealth level that re-listing is not an automatic process. Ultimately the decision rests with the IUCN. Nevertheless, funding of a collaborative study (ie. Bama and western researchers) to ascertain the cultural values of the WTWHA will be useful even if re-nomination is unsuccessful. It will provide the much needed balanced and comprehensive cultural heritage information necessary for more informed management.

The 'Titchen Report' (Titchen, 1995) does not appear to have been a successful catalyst in terms of progressing the issue of cultural re-listing. This is not meant as a criticism of this report. The point to be made is that despite some not insignificant level of resourcing over the years the whole issue of an adequate cultural heritage assessment and subsequent nomination proposal has

not progressed very far. This has been to the detriment of the region's cultural heritage values and to the meeting of Australia's obligations under Article 4 of the World Heritage Convention.

One particular problem in the past appears to have been a dispute between the Rainforest Aboriginal Network and the Authority over who should undertake and manage both the cultural heritage assessment project and its funds (Item 4.2 Wet Tropics Ministerial Council Meeting no 7, April 1994). The solution may lie in a collaborative approach to any cultural heritage assessment under the direction of a steering committee or working group with, at least an equal number of Bama representatives. The bottom-line is that the Authority has been promising Rainforest Aboriginal people to pursue the issue of cultural re-listing for approximately five years with very little in the way of outcomes from the perspective of traditional custodians. As a starting point, the apparent impasse over funding of the proposed cultural heritage assessment needs to be resolved in order for both State and Commonwealth agencies to more effectively meet their cultural heritage protection obligations.

It is essential that any future field cultural heritage assessments required to supplement a desktop survey of the region are undertaken in full cooperation and consultation with the relevant traditional owners and custodians of the region. This is an obvious and basic requirement. In addition full use should be made of the availability of locally based researchers such as the Kuku Yalanji cultural heritage assessment unit which now operates on a contractual basis both in and outside of the northern Wet Tropics region. Other such assessment units are operated by Ngadjon people and the Giringun Elders and Reference Group. The employment of such researchers has obvious resourcing implications that will need to be considered in any funding proposal for a cultural heritage assessment strategy.

Secondly, any cultural heritage assessment should be coordinated with the work of the various Native Title Representative Bodies with respect to native title claims in an attempt to corroborate findings, identify appropriate protocols, and to avoid any unnecessary duplication of effort.

Finally, it is suggested that a different view of the region is required from WTWHA managers if the interests of Rainforest Aboriginal people and obligations, with respect to cultural heritage protection and native title (under both common law and the NTA) are to be met. Most importantly the WTWHA needs to be recognised as a series of living Bama cultural landscapes and managed accordingly. As previously stated, Bama essentially have a more holistic view of the landscape and its values; one that doesn't support an artificial (as seen by Bama) distinction between natural and cultural components. The following quote from the Giringun Elders and Reference Group serves to illustrate the concern held by some Aboriginal people for a perceived lack of management recognition afforded to their cultural values. It also serves to support the notion that greater attention is currently given to the protection of natural values over cultural values. Although this quote focuses specifically on DoE, the particular issue in question does not solely relate to the management of protected areas but applies equally across most WTWHA tenures and management regimes.

“ The Qld Department of Environment spends copious amounts of funds on training of departmental staff, purchase of fire fighting equipment, and research, all for the protection and preservation of protected areas natural values. However, very little attention is devoted to the protection and preservation of the many cultural aspects within the National Park system when undertaking controlled burns. We believe [Girringun] there is evidence that the Qld Department of Environment prescribed burning strategies are having a very detrimental effect on our cultural sites even to the extent of completely destroying them”^{39 40}

The implication is that it is extremely difficult for agencies to meet their statutory or common law⁴¹ native title and/or cultural heritage protection obligations if they are unable to come to terms with the significance of indigenous cultural values and management styles. Rainforest Aboriginal people are looking to WTWHA management agencies to recognise and respect the interwoven relationship between the Aboriginal cultural and natural world in all aspects of management. This recognition and respect needs to take on tangible shape, with real and meaningful outcomes for Bama. For example, DoE have recently begun negotiations with Girringun with respect to overcoming their concerns in relation to the impacts of prescribed burning strategies on cultural sites (see quotation above). Although only in the early stages this cultural heritage protection project appears to have the potential to succeed simply because of good will and commitment to open negotiation and to the equitable involvement of all parties.

The DoE - Girringun working group has identified a holistic and collaborative approach to heritage protection based on appropriate site documentation and impact assessment, relevant technical and cultural awareness training, equitable Bama participation in land management activities (especially fire management), and appropriate data storage (investigating the use of Geographical Information Systems) (Paul Turpin, pers comm. December, 1997).

In addition, as argued in the TOR 12A report (Dale et al. 1997a) and in Fourmile et al. (1995), preserving the integrity of the cultural landscape is essential to the ongoing cultural survival and

³⁹ A letter from the Chairperson of Executives of the Girringun Elders and Reference Group to the Minister for the Environment dated August 20 1997.

⁴⁰ DoE are currently attempting to reconcile this particular issue with most attention being given to Kuku Yalanji involvement in fire management in the Daintree National Park. The issue appears to be far from resolved, given the complexity of the range of underlying concerns from both management perspectives.

⁴¹ Aboriginal fire practices enjoy significant legal protection as common law native title rights (Yarrow 1996a; TOR 9 report). See also Hughes (1995) and, in particular, *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 at 61 per Brennan J.

social well-being of Rainforest Aboriginal people. Thus adequate cultural heritage protection is not just an issue of legal responsibility. It is also an issue of social justice with implications for the well-being of the economic and social fabric of the whole of Australian society.

The answer to reconciling differences in world view and management approaches lies in the negotiation of agreed approaches to co-operative management. This is the basic rationale behind the proposal for the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement. In the case of cultural heritage protection the development of the Interim Negotiating Forum in 1998 will identify which cultural heritage issues need to be worked through and provide some ground rules for interim protection and the ongoing resolution of specific problem areas.

Recommendations

- The WTWHA be managed regardless of the particular underlying tenure and incidental to the particular World Heritage listing, consistent with Article 4 of the World Heritage Convention and in keeping with the recognition of the region as a series of living Bama cultural landscapes.
- As a basis for an application to have the WTWHA re-listed for its cultural as well as for its natural values that WTMA continue to actively pursue, through Commonwealth funding, a full and proper cultural heritage assessment in 1998.
- That the cultural heritage assessment occur on a collaborative basis; with Rainforest Aboriginal people maintaining control over the assessment process.

4.5.3 Opportunities provided by current legislation for Aboriginal people to become directly involved in cultural heritage protection

The TOR 14 consultancy report identified that Rainforest Aboriginal people have little opportunity for involvement in the management of cultural heritage within the WTWHA under contemporary Queensland legislation (Yarrow 1996b, p 42). Although certain obligations to consult with Aboriginal people exist under the NCA, and certain burial sites remain the property of the traditional owners, it would appear that the most extensive rights afforded to Aboriginal people with respect to directly managing their cultural heritage arise (albeit indirectly) from provisions within the *Native Title Act 1993* (Cwlth) (NTA) (as it now stands)⁴². Depending on the nature of the determination, native title holders will be afforded specific rights to those cultural resources already protected under the *Cultural Records (Landscapes Queensland & Queensland Estate) Act 1987* (Qld). With the freehold test under the NTA it is argued that

⁴² This is not to totally suggest that the NCA and the Cultural Records Act provide inadequate legal protection to Aboriginal cultural heritage. What is being said, however, is that these statutes provide little in the way for Aboriginal people to be directly involved in the management of their own cultural property, on their own terms and in their own way. It is also worth noting that a number of staff within DoE in particular are utilising informal mechanisms to more actively involve Aboriginal people in cultural heritage protection. However, as with other areas of involvement, these informal mechanisms are largely ad hoc, and very much dependent on the personality and motivation of the individual officer.

native title holders, for example, would be required to give their consent to the grant of a permit to explore or survey a designated landscape area (Yarrow, 1997).

It is worth noting comments made by the Central Queensland Cultural Heritage Planning Group (CQCHPG) in relation to the *Cultural Records Act*. This working group comprising representatives of four Queensland Government Departments⁴³ and an Aboriginal Land Council stated that:

“ It is a widely-held view that this Act is flawed in various ways. For instance, the extremely strict definition of what constitutes an ‘item of the Queensland Estate’ serves to exclude a wide range of places that are of considerable cultural heritage value to Aboriginal people from protection under the provisions of this Act In sum the Act might be considered as lacking the breadth necessary to protect the full range of Aboriginal cultural heritage values in a manner in keeping with contemporary views on cultural heritage management”.

(CQCHPG 1996, pp 4-5)

Furthermore, Yarrow (1996b, pp 42-46) argues that it may be that the exclusion of indigenous cultural heritage from coverage under the *Queensland Heritage Act 1992* (Qld) is invalid because it is contrary to the *Racial Discrimination Act 1975* (Cwlth). If this proves to be the case, places of cultural heritage significance under Aboriginal tradition may potentially be nominated for entry on the Heritage Register; providing a significant mechanism for protecting indigenous cultural heritage in the WTWHA.

The *Forestry Act 1959* (Qld) also provides little in the way of direct management opportunities for Aboriginal people. Until the newly proposed legislation comes into effect cultural heritage protection on State Forests and Timber Reserves falls under the umbrella of the Cultural Records Act.

Although the Wet Tropics Plan does not directly operate to protect Aboriginal cultural heritage there are considerable obligations (although these are secondary to the protection of natural heritage values) for WTMA to protect Aboriginal cultural heritage values within the WHA. These obligations arise through the duty:

- To have regard to Aboriginal tradition, and to liaise and cooperate with Aboriginal people.
- To perform its functions consistently with the National Strategy for Ecologically Sustainable Development.
- Arguably, under Article 4 of the World Heritage Convention, to ensure the ‘identification, protection, conservation, presentation and transmission to future generations of cultural and natural heritage’.
- Under the Native Title Act to recognise and protect native title rights and interests (which would particularly include rights and interests in material cultural property).

⁴³ viz. the Departments of Families, Youth and Community Care; Natural Resources; Local Government and Planning; Environment.

- Under s.60 of the Wet Tropics Plan, where the Authority has to take into account community considerations (and, in particular, the interests of native title holders and other Aboriginal people, and any community cultural concerns).

Note that the *Wet Tropics Act* and the Wet Tropics Plan do not expressly provide for the direct involvement of Aboriginal people in cultural heritage management. Such involvement may occur indirectly by way of a CMA which has as its primary function (and independent of any secondary cultural heritage benefits) the promotion of the Authority's 'primary goal'. There are also other existing mechanisms that can be utilised to partially meet Aboriginal needs for more direct cultural heritage management input.

For example, it is recommended that the Authority facilitates the involvement of relevant Aboriginal people with a particular interest in land in the development of generic guidelines and terms of reference for any environmental impact assessment of an activity proposed for that land. That where relevant, any terms of reference should particularly consider cultural and social impacts upon Aboriginal people. Note that the *Review Steering Committee* emphasised that these generic guidelines were useful as a starting point only. They were seen as providing the foundation for the development of more specific guidelines that were required to cater for the particular local community needs and interests of each particular EIA (or other form of assessment). Basically, generic guidelines need to be fine-tuned to cater for specific local needs and conditions.

Similarly, in keeping with its duty to have regard to the effects that a proposed decision on a permit application may have on any Aboriginal person particularly concerned with the land (WTP, s.60(a)(i)), which would also include social, economic and cultural effects (WTP s.60(d)), the Authority should commission Aboriginal people or their nominated representatives to assist in the development of appropriate guidelines or checklists to assist permit decision-makers in taking these community considerations into account. This is discussed in more detail in the following section related specifically to the issue and control of permits.

Recommendations

That revision of the *Cultural Records (Landscapes Queensland & Queensland Estate) Act 1987* (Qld) be undertaken to at least include:

- A formal mechanism such as the establishment of an advisory body to facilitate more equitable and accountable decision-making by the Minister.
- A more holistic approach to cultural heritage impact assessment that focuses on the living cultural values of places of significance in the landscape in addition to merely accommodating material manifestations of Aboriginal culture.
- That the validity of the exclusion of indigenous cultural heritage from coverage under the *Queensland Heritage Act 1992* (Qld) be further questioned with a view to establishing whether the provisions of this Act may in fact be available to provide additional protection to Bama places of significance.

That the Authority facilitate the involvement of appropriate Aboriginal people in the development of generic guidelines and terms of reference for any relevant EIA (or other form of assessment) required under the WTP.

Recommendations

- That the generic guidelines when applied to a specific situation be fine-tuned, in consultation with the relevant Aboriginal people, to cater for specific local needs and conditions.
- In addition to developing EIA (and other assessment) generic guidelines and terms of reference, that relevant Aboriginal people also provide input into the actual assessment and decision-making process.

4.5.4 Intellectual and Cultural Property Rights

The protection of intellectual and cultural property is high on the list of priorities for Rainforest Aboriginal people in relation to the better management of the WTWHA. Bama concerns and aspirations in this regard have been clearly stated on a number of occasions. Arguably the most comprehensive account can be found in the statements and declarations arising from the Julayinbul Conference on 'Aboriginal Intellectual and Cultural Property' held in November 1993. An overview of the issues raised at this conference are presented in Appendix 2a. Suffice to say that although conference delegates gave little attention to developing a working definition of intellectual and cultural property rights it was clear from the proceedings that they knew exactly what their specific concerns were. These ranged from issues of misappropriation and exploitation of cultural heritage knowledge by tourist operators and pharmaceutical companies through to the right to control the use of and access to the genetic make-up of rainforest biota, and onto the denial of rights to hunt and gather and to maintain spiritual and ceremonial practices. Obviously the issue of intellectual and cultural property rights (ICPR) is a complex one that cannot be quickly and readily resolved in the context of WTWHA management.

A good starting point is the raising of awareness of ICPR issues amongst non-Aboriginal management staff operating within the region. It is obvious from interviews and workshops that very few government field staff have anything but a basic understanding of Bama aspirations for the protection of indigenous intellectual and cultural property. This is understandable given the marked differences in cultural perspectives and the general lack of attention afforded to ICPR protection within management. By far and away the majority of western cultural heritage protection measures focus on tangible cultural material.

The ICPR issue has a broader legislative, political, and cultural setting than just the immediate Wet Tropics bioregion. Given the relatively focused and comparatively narrow areas of responsibility the best way for WTMA and other WTWHA managers to incorporate ICPR into their day to day operations would be through the adoption of a Code of Ethics for researchers,

tour operators and field staff. At the very least all WTWHA management staff need to be more aware of ICPR issues and concerns.

It is the responsibility of all management agencies to take ICPR into consideration particularly in the context of commercial activity and scientific research permits, and in relation to the recording and interpretation of cultural knowledge and values. Conversely, there is a need for an information kit for Aboriginal people outlining their rights and obligations, and the range of issues to be aware of when working with scientists, researchers, academics, anthropologists, archaeologists, and tour operators etc. An ICPR working group needs to be established to progress these two strategy options.

The notion of a ‘Code of Ethics’ was explored by Janke (1997) as a way of setting standards for what is deemed acceptable behaviour and appropriate codes for practitioners in any way associated with the use or potential misuse of indigenous intellectual property. The Janke report provides a working definition of ICPR, outlines the major ICPR concerns of indigenous Australians, and attempts to provide a range of possible reform options. This work is summarised in Appendix 2b.

Note that a number of specific ICPR protection issues have already been discussed in various locations throughout this report (see, for example, section 4.4 “Protocols, Principles, and Guidelines for Communication, Consultation and Negotiation”).

Recommendations

- That within the context of the proposed Ecotourism and Walking Track Strategy and with the cooperation of the CRC-TREM, that a collaborative working group be established to develop an *Intellectual and Cultural Property Rights* Code of Ethics for tour operators, researchers and WTWHA managers.
- That WTMA, in collaboration with relevant Aboriginal organisations and ATSIC, facilitate a ‘plain-English’ information kit for Aboriginal people outlining their rights and obligations and the range of issues to be aware of when working with scientists, researchers, academics, anthropologists, archaeologists, and tour operators etc.
- That all WTWHA management staff be more aware of Intellectual and Cultural Property Rights issues and concerns, especially in the context of the assessment of commercial activity and scientific research permit applications, and in relation to the recording and interpretation of cultural knowledge and values.

4.6 Permits and other Regulatory Mechanisms

Permits, particularly commercial activity and scientific permits, are seen to be at the centre of considerable concern from Aboriginal groups with respect to WTWHA management. In simple terms Bama seek to:

- (a) Maintain their cultural integrity through achieving greater control over the potential impacts of tourism operators on Bama values, and;
- (b) Gain an increase in control of scientific research methodology and the use of research data (including cultural property).

Until there is tangible increase in the involvement of Rainforest Aboriginal people in permit decision-making processes then the mistrust that currently exists with government agencies, scientific researchers, and tourism operators will continue. There is no denying that Rainforest Aboriginal people want to see changes at the 'big-picture' level of management processes through the negotiation of agreements. It is also essential that certain tangible mechanisms for involvement be developed and implemented in the short term. Aboriginal people want to see results right away. They are tired of travelling on what appears to be a consultation-rhetoric roundabout. There is great need for mechanisms that will provide Aboriginal people with a foot in the door with respect to permit management issues, and that will provide government agencies with a workable opportunity to meet their consultation, cooperation and cultural heritage obligations under existing legislation. Any short term improvement in levels of Aboriginal participation will facilitate the negotiation of longer term projects such as the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement by creating a starting point for more equitable and open negotiation.

4.6.1 Background

Bama feel disempowered from the range of WTWHA permit processes for a variety of different reasons, not the least of which is the fact that they do not clearly understand what is going on. However this lack of understanding is not peculiar to Aboriginal groups; many other community and industry groups share this significant degree of uncertainty and confusion. Furthermore, there are officers from different government agencies that do not have a thorough understanding of the range of permits and their requirements across their respective legislative responsibilities. It has also been suggested that some of the permit databases, particularly in DoE (Far Northern), are inadequate for the task in hand. This only serves to add to the confusion.

In the majority of cases Bama have a very poor understanding of the various permitting regimes across WTWHA tenures. Not only is there a great deal of uncertainty as to who is responsible for what in terms of the issue and control of permits, but also what permits are required for what activity, and how the administration processes actually work. In addition there is only a limited awareness of the processes involved in applying for permits. Consequently they are not in a position to be utilising processes currently available to them.

At the local agency level of operation WHA managers are keen to clear up this confusion and to accommodate, as far as is practicable under current legislation and government policy, indigenous aspirations. Whether this is possible given the variety of underlying legislation that defines permit regimes on different tenures, and the apparent lack of coordination with respect to the administration of permits (including the establishment and use of data bases) remains to be seen.

Bama see modifications to current permitting regimes as a major component of any attempts to improve the level of Aboriginal involvement in the WTWHA. The key underlying concerns are the protection of cultural heritage and intellectual property rights (see Bama Wabu 1996). Current permit processes, particularly those that serve to restrict Bama from utilising and accessing their traditional estates and resources, are seen as an invasion of the rights of Aboriginal people to freedom of religious expression and the right to cultural survival. Without freedom of access and use of natural resources, Bama maintain that their ability to meet cultural and spiritual obligations is undermined. They are particularly concerned about the notion of having to get a permit to carry out their cultural obligations on traditional land⁴⁴.

There is not a clear understanding amongst many people of the inability of current mechanisms such as cooperative management agreements, memoranda of understanding, and advisory committees to provide Aboriginal people with a right to veto a permit decision without an explicit statutory provision to do so. In the absence of clear statutory authority, it is not possible to make an enforceable agreement as to how a statutory decision maker exercises his or her power. The exception would be permits issued under the NCA where the consent of relevant native title holders would be required prior to the valid granting of a permit; or through the delegation by the WTMA Board of permit decision-making powers to an Aboriginal Advisory committee for permits issued under the Wet Tropics Plan.

4.6.2 An overview of Rainforest Aboriginal permit management aspirations

Four main areas where Bama wish to maximise their input:

- (a) Application decision-making phase.
- (b) Monitoring of impacts and adherence to conditions.
- (c) Renewal decision-making phase.
- (d) Revenue allocation.

In addition, Bama wish to see a more coordinated and transparent approach to permit decision-making across all tenures within the WTWHA. They would also like to see a clearer account of the different areas of government responsibility, particularly with the added dimension of the gazettal of the Wet Tropics Plan. **There is also significant western legal argument to support Rainforest Aboriginal peoples' assertion that as traditional owners they should have the right to regulate, through the various permit systems, the use of their traditional lands by tourist operators, scientific researchers, and the general public by virtue of their native title rights now recognised under common law by the *Mabo [No.2]* and *Wik* decisions.** Bama are also keen to see the establishment of potential 'special measures'

⁴⁴ The resolution of this concern is not simple. Government field staff, although not usually opposed in principle to allowing access to custodians to areas normally restricted, are concerned about the precedent being set for other groups. They fear that allowing traditional owners to camp in or access a particular region may open up a floodgate of pressure from other groups such as tourist operators or special interest groups. The answer may lie in affording traditional owners wishing to undertake cultural maintenance activities, a level of status, recognised in legislation, over and above that of other groups. This could be seen as a special measure consistent with s.8 of the *Racial Discrimination Act 1975* (Cwlth).

(again consistent with s.8 of the *Racial Discrimination Act 1975*) such as a ‘waiver of permits’ enabling indigenous people to exercise their native title rights in an unfettered manner.

4.6.2.1 Application decision-making

- Bama assert the right to be consulted regarding the acceptability of a particular permit application (particularly in the context of commercial activity and scientific permits).
- Consultation could take the form of the provision of advice, or consent, depending on the perceived status of the relevant traditional owners in the context of native title. Thus the consent of any native title holder should be required prior to the issue of a permit.
- Bama assert the right to be able to appeal against any permit issued to a third party.
- According to Bama consultation with relevant traditional owners should also include the establishment of any specific conditions to be placed on the permit.
- Bama are particularly interested in the following issues when it comes to permit decision-making:
 - That the carrying capacity of a location be determined in terms of cultural sustainability in addition to the more normal parameters of social and biophysical factors.
 - That adequate cultural heritage considerations have taken place.
 - That appropriate intellectual and cultural property right protection (including the interpretation and presentation of cultural property) be established as a condition of the permit.
 - That the protection of Aboriginal values in a region take precedence over commercial interests.
 - That relevant Aboriginal groups be resourced appropriately to ensure participation in any referral mechanism.
 - That culturally appropriate time-frames be negotiated to take into account Aboriginal decision-making processes.

Recommendations

- That the Bama Wabu/DoE MoU on the involvement of Aboriginal people in permit decision-making processes under the NCA continue to be developed and that the idea of a proposed trial, involving Bamanga Bubu Ngadimunku as a referral agency at Mossman Gorge be revisited. This trial could then be used to fine-tune or develop a referral mechanism similar to the one outlined later in this section.
- Government agencies pursue additional funding sources such as an increase in application fees that could be utilised to resource Aboriginal referral groups.

- That similar permit decision-making MoUs be developed between Rainforest Aboriginal people (through Bama Wabu or other representative groups) and DNR, WTMA, and relevant local government bodies. Again trial project areas should be identified and referral processes experimented with.

Recommendation

- That greater consideration be given to potential impacts on Aboriginal cultural values when considering the merits of a permit application. Although the notion of determining an area's carrying capacity is an inexact science a lot can be achieved through encouraging permit decision-makers and those considering and monitoring impacts to shift their emphasis on social and biophysical factors to also include a greater consideration of Aboriginal cultural values. Commonly used planning frameworks such as the 'Limits of Acceptable Change' system could be expanded to include consideration of what level of negative impacts on a region's Aboriginal cultural values (both material and intangible property) are seen to be acceptable by the traditional custodians of those values. Another approach is to utilise GIS technology and to develop a priority vulnerable cultural heritage overlay (similar to the one used for natural values in the Wet Tropics Plan) as a means of informing decision-makers as to the sensitivity of a region from an Aboriginal perspective.

4.6.2.2 Monitoring

- That adequate provisions and resources are available for the ongoing monitoring of permitted activities in relation to areas identified as particularly sensitive.
- Opportunities be developed for Aboriginal participation in the monitoring process. It does not seem extreme, given the object of the *Nature Conservation Act*, for the involvement of Aboriginal people for a permit related to a culturally sensitive area within a protected area, to require (by way of a condition) the employment of an Aboriginal person in a monitoring or tour guiding capacity. The *Forestry Act* would appear to provide no such window of opportunity. Nevertheless, tour operator commercial activity permits to the Bare Hill art site issued by DNR (Forestry) have as a condition the requirement to have a Djabugay person accompany the tour group during the visitation. The costs of the Djabugay guide are apparently met by the operator.
- The recent Eco-challenge special event demonstrated the effective use of Aboriginal community rangers in a monitoring and advisory capacity. This level of involvement should be seen as setting a precedent for other such events.

Recommendations

- For large scale special events but also for tours into particularly culturally sensitive regions Aboriginal people be contracted to monitor adherence to conditions and potential impacts. The cost of monitoring needs to be covered by the permit applicant and/or the permit-issuing entity.
- That DoE and DNR employ a greater number of Rainforest Aboriginal people as field staff either on a permanent or ongoing part-time contractual basis as a means of monitoring the impacts of commercial activity operators particularly in high visitation areas in addition to covering the more regular round of day-to-day management responsibilities.

4.6.2.3 Permit renewals

- Permit renewals are not an automatic process but subject to adequate and appropriate review.
- That as part of the renewal process new conditions are able to be imposed upon a permit in response to changing circumstances.

Recommendation

- That any permit referral mechanism trialed should include, where relevant, Aboriginal input into renewal applications that also includes the possibility of providing advice on a revision of the original permit conditions.

4.6.2.4 Revenue

The Bama Wabu submission on the dWTP makes specific reference to the need for funds generated from permits to be directed back to that area to resource Aboriginal land management and use of that area.

The issue of funding Aboriginal aspirations for involvement in permit decision-making processes is problematic and remains unresolved. Permit issuing entities particularly WTMA and DoE have a strong legislative obligation to consult and liaise with Aboriginal interests. This would suggest that it is the agency that has the obligation to find necessary resources.

It is acknowledged that the funding available for day-to-day management of the various parcels of land within the WTWHA is already stretched to a maximum, and that any demands upon resources to meet Aboriginal permit aspirations will require additional funds. However, **Aboriginal aspirations for involvement in permit processes are in many cases not extra demands above what is currently required by legislation. They therefore cannot be validly overlooked as optional extras.** What is required is a reprioritising of current budget allocations and/or additional State and Commonwealth funding dedicated to these issues.

Recommendations

- That the State and Commonwealth review its funding of the WTWHA with a view to identifying additional funds to ensure adequate and appropriate protection of Aboriginal cultural heritage values through the involvement of traditional custodians in permit decision-making processes.
- Aboriginal monitoring and referral groups should be funded directly so as to facilitate the type and level of input that Bama see as appropriate.

4.6.3 Specific Issues

It is accepted that the resolution of many of these issues will come from negotiation of the proposed Final (Regional Wet Tropics) Agreement. However there are a number of pressing issues that need to be resolved in the short term, ideally as part of the proposed Interim Negotiated Forum.

Pressing Issues

Increased education and awareness amongst both state agencies and Aboriginal interests is critical to any cooperative approach to permit management. Bama need to become aware of what mechanisms are in place and how they are administered. Further means of providing explanation of the various agency permitting requirements are warranted. State agency staff, particularly field staff providing comments and advice on permit applications, need to become more aware of both Aboriginal aspirations and their existing obligations under native title and cultural heritage legislation.

Recommendations

- Various agencies develop a concise ‘plain-English’ guide to their respective permit systems (perhaps in the form of a ‘fact sheet’) including an overview of what permits they are responsible for, how they are administered and relevant contact officers. WTMA should coordinate and compile the fact sheets into a newsletter for distribution. The project would need to be supported with personal contact by WTMA CLO’s and other agency liaison staff.
- This project provide a simple schematic overview of how the permit regime works. It should be developed as a general community-wide initiative and resourced accordingly ie. not funded exclusively from dedicated ‘Aboriginal issues’ funds.
- In-service training be provided to relevant DoE, WTMA, and DNR staff either by way of workshops, seminars, or agenda items at staff meetings highlighting Aboriginal concerns as well as the legislative obligations for consultation and Aboriginal involvement in permit decision-making processes.

WTMA should assume its coordinating and facilitating role to encourage a more coordinated and consistent approach amongst state agencies to the issue and control of permits, including the issue of those permits outside of the statutory Plan.

Recommendation

- As a mid to long term goal, a common approach to the administration and control of commercial activity and scientific permits be developed across all tenures. This will be of value to a whole range of stakeholders as well as Rainforest Aboriginal people.

Recommendation

- That State agencies, in consultation with peak Aboriginal representative groups, examine the prospect and relevant mechanisms for a single organisation to be responsible for the issue and control of WTWHA commercial activity, scientific, and cultural heritage permits. This may require some legislative changes.

Meeting obligations

In accordance with the Authority's obligations under section 10(5) of the WTWHPM Act, and under section 60 of the WTP (community considerations) the Authority should:

- Develop a set of guidelines, protocols or a checklist to define what is required of a permit issuing entity in terms of these obligations for the issue and monitoring of permits under the WT Plan.
- Incorporate these guidelines, protocols etc. into any formal MoU or other procedural arrangement with permit issuing entities.
- Where written consent is required from the Authority for the issue of a permit by a permit entity under the Plan, ensure that the WTMA officer responsible for providing this consent has fully taken into account whether the obligations to liaise and cooperate have been met by the relevant agency.
- Where WTMA officers are responsible for the issue and monitoring of permits under the WTP ensure that an appropriate set of guidelines and protocols are developed to guide the administration of the permit process.

Recommendations

- That appropriate guidelines, protocols, checklists are developed and implemented by the Authority in conjunction with peak Aboriginal representative groups to ensure that its

obligations to Aboriginal interests are met with respect to permits issued under the WTP, regardless of who is the permit issuing entity.

- That the Authority resource permit issuing entities to be able to effectively and appropriately meet the additional Aboriginal consultation and liaison obligations that accompany the issue of permits under the Wet Tropics Plan.
- That the Authority increase the contracted hours of the three Community Liaison Officers to a full time loading in order to accommodate the extra liaison demands associated with the issue of permits under the Wet Tropics Plan.
- That extra funding for increasing the Community Liaison Officer hours should be in addition to the 5% minimum budgetary allocation to 'Aboriginal issues', that is current WTMA policy.

Recommendations

- The Authority implement a monitoring system to ensure that its obligations under s.10(5) of the Act and s.60 of the Plan are being met by other permit entities issuing permits under the Plan.
- The Authority actively seek to ensure that these obligations are met by all Wet Tropics permit issuing entities.

The obligation under section 10 (5) is subject to the duty to protect the natural heritage values of the region. Adequate consideration of Aboriginal traditions will almost inevitably require the protection of sites of significance and cultural values.

Consultation with Aboriginal people would be necessary to determine the nature of Aboriginal tradition (Yarrow, 1997). Despite the emphasis on natural values, **any permit considerations under the WT Plan must also take into account cultural heritage protection.**

The question must be considered as to whether providing for DoE and DNR to continue issuing permits for commercial activities outside of the Plan, is WTMA meeting its obligations under the WTWHPM Act. One solution might be to encourage the development of appropriate MoUs either directly between state agencies and Bama (similar to the current DoE/Bama Wabu model) or for WTMA to develop an MoU or a set of protocols with DoE and DNR ensuring that WTMA's section 10(5) obligations are being met. There is already an obligation for effective cultural heritage protection on protected areas under the NCA with its emphasis on cultural values preservation. However, such an obligation is not as pressing with permits issued under the Forestry Act.

Note that Aboriginal representative bodies were generally sceptical of the ability of MoUs to be sufficiently binding thereby ensuring that the s.10(5) obligations of the WTWHPM Act and the s.60 obligations of the Wet Tropics Plan would always be met by the other permit issuing entities. Basically they questioned the ability of the Authority to enforce these provisions.

Potential problem areas could perhaps be overcome by further refining and clarifying appropriate consultation protocols and making them directly binding on all agencies through appropriate legislative change.

There is a need for a negotiated, whole-of-government approach in making sure that the consultation and permit decision-making issue is right in order to avoid the inevitable high cost of litigation as Aboriginal groups move to assert their rights through the legal system.

Recommendation

- Particularly in the context of commercial activity and scientific permits issued for the Wet Tropics under the Forestry Act that WTMA develop an MoU with DNR, as an interim measure, to ensure that WTMA's obligations for cultural heritage considerations (as discussed above) be met by all agencies operating with the region.

Recommendation

- As a long term goal, these obligations become an inherent part of all legislation relating to the management of the WTWHA.

In accordance with a decision from Board Meeting no. 24 (May, 1997) the Authority is to jointly develop a Memorandum of Understanding with Bama Wabu outlining the procedures for the issuing of permits under the WT Plan. A similar draft MoU between Bama Wabu and DoE is currently being examined by Crown Law for permits issued under the NCA. DNR (Forestry) have indicated a willingness to examine such a process for permits issued over State Forests and Timber Reserves.

Recommendations

- The proposed MoU between the Authority and Bama Wabu also include some broader based principles and agreements clarifying the roles and responsibilities of other permit issuing entities under the WTP.
- There will need to be a disclaimer in the MoU to the effect that nothing within the MoU will impact on the native title rights and interests of any Aboriginal group. The MoU will need to be reviewed on a declaration of native title by the courts or the Native Title Tribunal in keeping with any additional procedural rights afforded to native title holders.

It is arguable that, independent of the obligations arising from the listing of the WTWHA for its natural values, there is a broader obligation under Article 4 (in particular) of the World Heritage Convention in relation to cultural heritage protection. Independent of responsibilities relating to properties on the World Heritage List, State parties to the Convention recognise a duty to ensure the 'identification, protection, conservation, presentation and transmission to future generations of cultural and natural heritage'.

DoE has a similar obligation to ensure cultural heritage considerations are made in permit decision-making through its obligations under sections 6(f) and 17(1)(a) of the NCA. Anecdotal evidence and questionnaire responses would suggest that despite these obligations some District Rangers, for a variety of reasons, are only giving cursory attention to cultural impacts when asked to assess a commercial activity permit application. The implication is that a more formal and thorough approach to assessment is required. State officers are bound to uphold the State government's position and legislative obligations regardless of their personal views of the merits of the situation. The legal position in terms of a Judicial Review should be kept in mind.

Recommendation

A more coordinated and formal approach to the assessment of potential cultural heritage impacts of permit applications be undertaken by appropriately trained field staff across all WTWHA tenures and management regimes.

Recommendations

- Adequate resources be allocated for field staff undertaking assessment of potential cultural heritage impacts of permit applications and necessary consultations. This should include the allocation of one Aboriginal liaison ranger per management unit (ie. in the case of protected areas, at the District level of operation). This position could also fulfil other Aboriginal community consultation requirements as well as undertake other day-to-day management tasks.
- Where possible funding should be made direct to Aboriginal land management agencies on a contractual basis to assist in consultation and impact assessments.

The issue of determining the right Aboriginal people to consult with is a major concern for WHA managers. One of the incentives for developing appropriate referral mechanisms with peak Aboriginal groups (apart from helping to appropriately meet existing legislative obligations) is that such a mechanism takes responsibility away from agencies for this process of identification. However adequate resourcing needs to be available to referral bodies to carry out appropriate consultation on behalf of agencies.

Recommendations

- Any consideration or trials associated with permit referral mechanisms give due consideration to the issue of adequate and appropriate resourcing of Aboriginal referral bodies and WTMA Community Liaison Officers.
- That such resourcing does not come at the expense of other existing Wet Tropics projects. Additional funding is required on top of what is currently allocated to the management of WTWHA listed properties.

Interpretation of cultural material

Rainforest Aboriginal people are particularly concerned with the type of interpretive material and information being presented by commercial tour operators. In particular, they are concerned about the inappropriate use of cultural material and the presentation of misinformation and biased commentary. Bama would like to see greater control over the information provided to tour groups through a formal set of enforceable conditions on commercial activity permits that outline what is deemed as appropriate. The difficulty here is monitoring and enforcing adherence to these conditions. However, with the education of and support from peak tourism bodies, a lot can be achieved through the process of industry self-regulation.

Recommendation

- That Rainforest Aboriginal people, government tourism departments, and the relevant government land management agencies develop a range of mechanisms including a set of generic permit conditions (in consultation with peak local tourism bodies) that define the nature of Aboriginal cultural information or social commentary appropriate for use in a particular area.

The legal implications of native title and cultural heritage protection on permit decision making

The assertion of third party appeal rights by Bama against a permit decision is not accommodated by current permit systems within the WTWHA. Upon a formal determination of native title the situation changes with native title holders afforded the same common law entitlements as if they held ordinary title to the land. This, in many cases (and depending on the nature of the determination), would result in native title holders being required to give their consent to a permit application over their native title land. However, prior to a formal determination of native title, the rights of Rainforest Aboriginal people are subject to legal and policy debate; with most of this focusing on the native title rights of Aboriginal people under common law.

Even in the most conservative of approaches, the bottom line is that the capacity for the traditional owners of a region to seek judicial review of decisions relating to that place has long been established⁴⁵. The implication for WTWHA managers is that insufficient attention to Aboriginal interests including issues relating to cultural heritage protection in permit decision-making processes (particularly with respect to permits issued under the NCA or the WTP) may leave them liable to review under the *Judicial Review Act 1991* (Qld). Interviews and workshops to date would indicate that some government agency staff involved in permit application assessment do not fully appreciate their legal obligations or are inadequately resourced to meet these obligations.

Recommendations

- WTWHA managers when considering permit applications under the NCA and WTP should take into account those legislative provisions relating specifically to cultural heritage protection and other Aboriginal interests.
- That WTWHA managers when considering permit applications under the NCA and WTP are sufficiently resourced (with respect to technical expertise, staffing and financial support) to adequately take into account cultural heritage protection and other Aboriginal interests.

⁴⁵ see *Onus v Alcoa of Australia Ltd* (1982) 149 CLR 27 (after Yarrow, pers. comm., October 1997)

- ‘Awareness-Raising’ workshops be conducted (that include Aboriginal facilitators) for all WTWHA managers involved in permit assessment and processing.

The issue of native title rights afforded to Aboriginal people under common law (as opposed to a formal determination of native title) is a complex one that cannot be readily resolved by ignoring the implications of the *Mabo* and *Wik* decisions.

Brennan (1997, p11) argues that:

“ In light of *Mabo* and *Wik*, common law native title holders do not have to register a native title claim, even less do they have to receive a favourable determination, before exercising their common law rights. Those rights are already in existence and exercisable”.

This argument is at odds with the current position of the Queensland Government: to only recognise native title rights after a formal determination by the Court or by the Native Title Tribunal.

Although prior to a determination the extent of native title is uncertain it is arguably poor risk management for WTWHA managers to act as if native title rights do not exist and discount any concerns expressed by native title claimants with regard to a management action, including a decision on a permit application. Where a person has lodged a native title claim, it is difficult to assess their prospects of success. They may or may not have native title. However, the fact that a claim has been lodged means that they may seek interim relief from a court to stop an activity (and this may include a commercial tourism operation) that, if native title did exist, would in fact be unlawful (D. Yarrow pers.comm., October, 1997).

Recommendations

- That WTWHA managers, bearing in mind the current lack of statutory provisions to fetter the Minister’s discretion in any permit decision-making process, negotiate increased levels of Aboriginal involvement in the management of permits in keeping with the potential for increased rights potentially available under common law or the more formal recognition of native title under the NTA.
- That the Bama Wabu/DoE draft MoU be used as a benchmark for the development of any future agreements outlining the increased involvement of Rainforest Aboriginal people in WTWHA permit decision-making processes.

The fact that all legislation is binding on the Crown means that agents and employees of the Crown must comply with relevant permit processes. While it is true that the State is not liable to be prosecuted for an offence under the NCA, it is otherwise bound by the provisions of that Act (s.3) (D. Yarrow, pers.comm., October, 1997). A consequence of this would be, for example, that staff or contractors of DoE who construct walking tracks in a national park would require a permit to interfere with cultural or natural resources because an offence under s.62 of the NCA

may occur if they do not This has obvious implications for ensuring adequate cultural heritage assessment prior to development processes.

To not have an appropriate permit and the support of an Aboriginal referral body may leave DoE open to a negative finding by way of the Judicial Review process. This issue needs to be resolved as a matter of urgency in light of ongoing pressure for extra walking track development at Mossman Gorge and the proposal by WTMA to develop a walking track and ecotourism strategy for the whole region.

Recommendations

- An Aboriginal referral group or series of groups be utilised to comment on the appropriateness of any proposed walking track development as part of the proposed ecotourism and walking track strategy.
- State agencies ensure that all walking track proposals have met the appropriate permit requirements and have, in writing, clearance from traditional owners and or native title claimants and/or holders. There is likely to be a coordination role for WTMA.

In reference to section 60 of the WTP the question is raised as to how and to what extent the Authority or other permit entities issuing permits under the Plan ‘have regard to the effects:

- a)...on any native title holder and other Aboriginal person particularly concerned with the land’;
- b)...on any other relevant social, economic and cultural effects’.

Recommendations

These are possibilities as to how the obligations under s.60 of the WTP could be met:

- The establishment of an Aboriginal advisory committee under the WTWHPMA to act as a referral body (with or without decision-making powers) to advise on/give consent to relevant permit applications. Alternatively Bama Wabu (or equivalent) could act as a referral body as per the DoE MoU.
- The development of protocols in conjunction with Bama Wabu, providing criteria or guidelines to be taken into consideration during the permit assessment process.
- Where concern exists regarding a particular permit application there needs to be a mechanism whereby the application is referred onto grassroots Bama for the final authoritative say. Negotiated protocols and guidelines would determine when an application should be passed down the line to local Bama directly affected by the proposed permit.

Social Impact Assesment/Environmental Impact Assesment

Protocols for social impact/environmental impact assessment for development proposals regulated by the WTP need to incorporate those obligations on the Authority under section 10 (5) regardless of who was assessing the development application. Obviously these protocols once again need to be definitive and accountable. The Queensland Department of Family Youth and Community Care has developed a set of guiding principles for social, cultural and environmental impact assessment (The Indigenous Land Interest Model) which pays particular attention to indigenous land and sea interests (including the protection of native title rights and cultural sites).

Recommendation 314 of the Royal Commission into Aboriginal Deaths in Custody specifically focused on appropriate and effective notification, consultation and participation of Aboriginal people in any tourism (and mining) development proposal.

Recommendations

- That any EIA of a development proposal include the interests of Rainforest Aboriginal people in keeping with the underlying principles of the draft Indigenous Land Interest Model.
- Any relevant EIA also include the requirement that Rainforest Aboriginal people are involved in setting the terms of reference for the assessment process.
- That this process include the Queensland Department of Family Youth and Community Care in keeping with their role as lead agency in social impact assessment, in addition to the relevant Aboriginal representative body(s).
- WTMA adopt the consultation, negotiation, and notification principles outlined in Recommendation 314 of the Royal Commission into Aboriginal Deaths in Custody as a guiding principle within its proposed ecotourism strategy for the WTWHA.

Timetables for Permit decision-making

A major concern expressed by both potential permit applicants and government permit issuing agencies is the additional length of time that may be required and costs incurred to obtain input from Aboriginal people through a referral/advisory body. Yarrow (1997) provided an overview of permit processes in the WTWHA. In this paper the author suggested that most legislation (and this includes the NCA, FA, WTWHPMA, the Cultural Records Act) does not generally impose time limits upon the consideration of permits. However, where appeal rights exist, appeals must be made within prescribed time frames.

Yarrow suggests that any existing time frames for making primary decisions are administrative in nature and not legislative. The exception would be permit applications under the Wet Tropics Plan which have a 60 day turn around time, although there is the possibility for extension. The fact that many of the identified time constraints are in fact policy positions rather than legislative requirements allows for some degree of flexibility. This is not to ignore the fact that permit issuing entities will still be under a great deal of pressure from applicants for a quick decision. However,

if government agencies or applicants are looking for a 1-3 week turn around for a decision then they must be prepared to adequately resource referral bodies to attempt to meet these deadlines. It can be argued that there is a greater legal responsibility on government agencies to ensure full and proper consultation with relevant Aboriginal people than there is on meeting arbitrarily imposed deadlines.

The fact that funding within existing budget allocations is restricted or that political pressure is applied from industry lobby groups does not negate existing obligations for cultural heritage protection and the involvement of Aboriginal people (particularly native title holders, but also other Aboriginal people with an interest in the land). Although there are some limitations to direct comparison, Aboriginal permit referral mechanisms have successfully stood the test of time in other high visitation World Heritage Areas such as Uluru - Kata Tjuta and Kakadu National Parks.

Recommendations

- That adequate resources be provided to Aboriginal referral bodies if quick turnaround times are required for permit applications
- That government agencies recognise and respond to the fact that regardless of funding and time constraints they have a strong legal obligation to more effectively involve Aboriginal people in permit decision-making processes.

4.6.4 Aboriginal Permit Referral Bodies

Previous discussion identified the need for the trialing of the use of an Aboriginal referral body as a means of increasing the level and effectiveness of Aboriginal involvement in permit decision-making processes. These trials could then be used to fine-tune the ongoing development (including the identification and location of required resources) of the use of a referral body (bodies) as a matter of policy across all WTWHA tenures. Any negotiation of possible mechanisms would likely fall within the context of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

Most groundwork on the use of referral bodies in permit application assessment comes from discussions between Giringun Elders and Reference Group, the Central Queensland Land Council and various Shire Councils within the southern Wet Tropics Region. The work of these organisations is fully acknowledged as the source of most of the ensuing discussion. Another source of ideas was the permit working group organised by Bama Wabu and DoE. An overview of these discussions are provided as a basis for ongoing negotiation of relevant permit referral mechanisms.

4.6.4.1 General principles of a trial project

The aim of this section is to provide a draft model for a mechanism to increase Aboriginal involvement in the permit decision-making process in a negotiated trial area with a particular Aboriginal group acting as a referral body.

This draft model is presented as an interim measure that may require ongoing modification as other factors, such as changes in legislation or a possible native title determination, come into play.

Draft Model

Step 1

A Referral Group (RG) to look over a range of CAP applications to gain an insight into what CAPs are in operation over the trial region.

Step 2

From this survey the RG to identify and recommend a system whereby certain application types can be automatically handled by staff of the relevant government agency while others, outside of this class, trigger the need to refer to the RG for advice. It is understood that at this point in time the RG can only offer advice to the government agency. However, this may need to be reviewed in light of a successful native title determination.

Aspects of this advice may be to identify certain conditions that the RG would like to see imposed on the tour operator.

Step 3.

On a regular basis (timeframe to be discussed) RG will look over those permits handled directly by the government agency as part of the non-referral class of applications in order to determine whether those applications directly approved are meeting the pre-determined criteria.

Step 4.

The RG to provide government agency with a simple interpretive pamphlet for distribution with all CAP approvals. The aim of the pamphlet is to raise awareness of the Aboriginal values of the region to the broader community. It is seen as an important management tool to complement the proposed permit process outlined above.

Note: This is a draft model only. It is designed to stimulate further comment and discussion in the context of agreement negotiations. It is not intended as the final position of any Rainforest Aboriginal group.

4.6.4.2 Major elements of a proposed referral system:

(adapted from a discussion paper by Giringun Elders and Reference Group)

1. Policy Statement

(a) Recognition Statement

- Recognition of the significance of Aboriginal cultural heritage values of the WTWHA.
- Recognition of Aboriginal ownership and management control rights of these resources.
- Recognition of the agency's responsibility to promote, protect and manage cultural resources.
- Recognition that in order to meet traditional custodial responsibilities for their cultural heritage Aboriginal people require the Authority to monitor and influence permit decision-making processes.

(b) Commitment to negotiate with due commitment and to implement policy

- Refer to Bama Wabu/DoE MoU for an appropriate example.
- Statement of legal obligations to incorporate cultural heritage matters.

(c) Operational policy

- Sets out the basic guidelines for decision-making (an important part of this would be the 'referral trigger' or the classification system outlining those applications that need to be passed on to the relevant Aboriginal referral group).

2. Register of sites and localities of highest values/priorities

- This element of the referral system is particularly problematic because of the fact that it is often culturally inappropriate to clearly identify sites on a map. It is also such a huge task given the number and complexity of sites in some regions and the limited availability of resources.
- Nevertheless, Giringun identified the need to produce documentation of the areas/sites that were felt to be most in need of protection
- Characteristics of this database:
 - includes (where culturally appropriate) accurate mapping of location, description;
 - an evaluation of the management status of each site (ie. which sites are to be protected, kept secret, and/or require negotiation with traditional owners over use).

3. Register of Relevant Cultural Advisers and Representative Organisations

- A primary concern of any arrangement for Aboriginal involvement in permit processes is to ensure that the relevant people are involved
- To this effect each area should have a list of people/organisations to be contacted where a permit is likely to affect that area

4. Joint Monitoring Committee

- There is a need to have an overseeing body which reviews the system on an ongoing basis. This should include Aboriginal and agency representatives.

- There is a likely need for operational policy to define the role of this group

5. Designated permits and approvals

- This relates to earlier discussion about the need for a system whereby not all permits are referred onto an Aboriginal group; only those that fall into a class system relating to issues of concern to Aboriginal people are passed onto the referral body.
- This classification system (ie. the decision as to the type of applications to be referred on) is to be defined by the Aboriginal referral group.

6. Ongoing survey and documentation

- In order to obtain adequate knowledge of the cultural values of each region ongoing research will be essential. This process will inevitably take some time to complete.

7. Public understanding and support for indigenous cultural heritage

- The success of this referral system will partially depend on public and agency support for indigenous involvement.
- A general education program which addresses misunderstandings and fears within the wider community is needed.
- An appropriately written and designed interpretive sheet outlining the interests and concerns of Rainforest Aboriginal people, particularly with respect to cultural heritage protection, could be issued with each permit to the tour operator for ongoing distribution to each person on the tour package.

8. Ongoing Aboriginal training and the development of expertise

- Essential to the success of this system is also the requirement to have adequately trained Aboriginal people to run the referral and review process.

9. Guaranteed funding and support for Aboriginal involvement

- The involvement of Aboriginal people in a permit assessment system will require a long term guaranteed input of resources to cover costs and meet requirements.
- A key and often contested aspect of this is the notion of the applicant and/or the relevant government agency meeting the funding requirements.

10. Ongoing monitoring and review of the class system

- This is to ensure that the criteria for whether a permit application should be referred on is met through a regular review of those permits that are being directly approved by the agency.
- Changing circumstances or an increase in knowledge of the cultural resources of an area may also necessitate a change in the classification system.

Note: This particular referral system only provides Rainforest Aboriginal people with an advisory role. This is despite the assertion by Aboriginal people that under the common law recognition of native title (ie. the Mabo and Wik decisions) they are entitled to be treated as landholders, and therefore should be afforded greater procedural rights in decision-making. It can be argued that the States present position of waiting for a formal determination of native title through the courts or tribunal before affording native title holders greater decision-making powers and/or rights in relation to permit applications may lead State agencies open to court action with respect to any permit decisions contrary to the interests of common law native title holders (D. Yarrow pers. Comm., October, 1997).

To ignore the assertion of common law native title and associated rights with respect to permit application decision-making (and indeed other management issues within the WTWHA) is arguably poor risk management. The same principles would apply to permits issued by local government bodies.

4.6.4.3 Additional requirements for effective involvement of Aboriginal people in a permit referral system

This section considers the needs of an Aboriginal organisation in order to meet the requirements of a referral system.

1. Internal list of key contacts and cultural advisers

- It is necessary to have a very clear and comprehensive register of cultural advisers related to specific regions or sites.
- This may be the same as the register identified in point 3 (above).

1. Assessment Manual

- A step by step manual of how to deal with an application when it comes into the referral group.
- There may be a need for slightly different assessments and procedure for each of the different agencies.
- Relevant sections:
 - consultation procedures
 - native title interests
 - cultural heritage interests
 - legislative standards and obligations
 - evaluation standards and guidelines
 - relevance to Aboriginal strategies

1. Protocols for collating, storing and using information.
2. The development of a strategy for ongoing surveys and information gathering.
3. Ongoing review of staff and resources need.

Recommendation

- In keeping with the implications of both common law and a formal determination of native title, both Aboriginal groups and government agencies develop a referral system that provides relevant Rainforest Aboriginal people with more than an advisory role.

Recommendations

- That a trial referral system be established for a specific pilot region and a specific permit type for each of the three State permit issuing bodies.
- That these trials be seen as an interim measure only and that they be used to inform the ongoing development of formal arrangements between government agencies and Rainforest Aboriginal people.
- The proposed Aboriginal referral group be provided with the details of all permits (minus applicant's names, but including permit conditions) issued or current over the last 12 months. The referral group could then decide on the criteria for the class system used to define which applications need to be referred on.
- That adequate funding be provided by relevant government agencies to develop these trials, and to progress any arrangements for a more formal and comprehensive system that may also include additional permit types.
- Any permit trials and subsequent systematic processes be developed on a coordinated basis across management regimes and within the context of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement.

4.6.5 Kuku Yalanji-Mossman Gorge pilot permit assessment project

4.6.5.1 Introduction

A Mossman Gorge Community project, coordinated by anthropologist Roger Cribb and jointly funded by DoE and ATSIC, is currently investigating a mechanism to facilitate Kuku Yalanji input into the assessment of commercial activity and scientific research permits for the Gorge section of the Daintree National Park. The aim of the project is to develop an appropriate referral mechanism and then to eventually trial the process. The proposed mechanism is not yet completed. As such no trial is underway. The following provides an overview of the draft report findings to date.

4.6.5.2 Commercial Activity Permits (CAPs)

Cribb found that Kuku Yalanji elders are concerned that cultural information is either misrepresented or neglected by tourism operators. Elders believe that all Aboriginal cultural

information should be imparted by responsible Aboriginal people. Consequently any commercial activity permit assessment process needs to be tied in closely with the Gorge Community's own tourism enterprise aspirations. Non-Kuku Yalanji tour operations dealing with cultural material would need to undertake a locally run cross-cultural course, as part of an overall *Protocol for Cultural Interpretation*.

Cribb and the Gorge Community identified the need for assessing commercial activity permit applications according to a classification hierarchy; with a different management response depending on the particular category into which the application falls. Thus, for example, a Level 1 application would not need to come to the attention of the Kuku Yalanji Cultural Permits Assessment Officer, while a Level 5 application would require assessment, advice on acceptability with (or without) possible conditions, employment arrangements for Kuku Yalanji guides or observers, and appropriate scheduling arrangements.

4.6.5.3 Scientific Permits

In relation to scientific permits Cribb identified that the main concern of the Kuku Yalanji people was being made aware of what research is taking place and, wherever appropriate, the provision of some form of community involvement. Other Bama groups have also expressed concern about where scientific researchers may be going, particularly in relation to sites of cultural significance, and what the research may eventually be used for. Where traditional ecological knowledge is collected, the issue of intellectual and cultural property rights becomes a priority.

As for the CAPs Cribb and the Gorge Community identified the need for a variable management/assessment response according to the 'Level' of the particular permit application. However, the draft report suggested that all scientific permit applications would require the attention of the Kuku Yalanji Cultural Permits Assessment Officer.

Recommendations

- That DoE and ATSIC continue to support the Kuku Yalanji-Mossman Gorge pilot permit assessment project until its completion.
- That resources be made available to fund a trial assessment project for all commercial activity and scientific permit applications for the Mossman Gorge section of the Daintree National Park once the final consultancy report is available.
- The trial period be used as a mechanism to fine tune the permit assessment process.
- DoE, WTMA, and DNR investigate the applicability of the permit assessment process to other areas within the WTWHA.

4.7 Resourcing Issues

A common response from government agency staff to any recommendations for increased assistance or resourcing for Aboriginal issues is that there simply isn't sufficient funding available within existing budgets to meet the new demands. This is seen as a very real issue, with field staff already required to undertake more than resources would normally allow. However the point made by the *Review* is that these recommendations are not necessarily new demands that can be ignored even when funding is in short supply. In a number of cases there are already existing legal obligations that are not adequately addressed. Insufficient funding is no doubt a real problem however it is a problem that has to be managed, and not used as a reason to discount legal responsibility.

In many cases where State agencies feel that they are unable to resource specific requests or *Review* recommendations it is suggested that a number of options should be considered as a means of overcoming shortfalls:

- Reprioritising work programs and funding from within existing budgetary allocations in order to better meet cultural heritage protection and consultation obligations.
- Making a request for additional funding from Treasury for specific projects.
- Approaching the Commonwealth to assist with additional funding⁴⁶.
- Particularly in the context of the funding of permit referral bodies, management agencies might wish to consider an additional cost factor built into Commercial Activity Permit fees⁴⁷.

An additional proposal has been provided by the *Review* Steering Committee. They have suggested, particularly in high visitation areas, that a day use fee be established to cover a whole range of extra management costs (including the meeting of specific Aboriginal concerns) brought on by high visitor numbers. It is acknowledged that there are a number of difficulties associated with day use fees, particularly with respect to the possibility of a negative public reaction and added administrative costs. However, as is evidenced by experiences interstate, it is likely that these are not totally insurmountable. For example, in the case of Barron Gorge and Mossman Gorge National Parks, Kuranda and Mossman locals may be considered for an exemption to the paying of fees, or be provided with the opportunity to purchase an annual pass at reduced cost. It may also be that the respective Aboriginal communities, and in particular the community rangers, may be interested in collecting day use fees under a contractual arrangement.

The initial extra costs to be met by increasing the levels of Aboriginal involvement in resource assessment, monitoring, planning, and permit decision-making are likely to be offset against the costs of not doing so brought on by compensation claims, possible injunctions, judicial reviews and other related court action. It is seen as good risk management to be dealing meaningfully and

⁴⁶ Note the specific recommendation from the 1996 HRSCERA report on World Heritage Area management in Australia which suggested that the Commonwealth should encourage managing agencies to review indigenous involvement in the management of world heritage areas and to implement any additional measures and recommendations identified (HRSCERA 1996; p.69).

⁴⁷ This would obviously require a change to existing fee structures and/or regulations, and would likely have implications for other areas outside of the Wet Tropics region. It may be feasible to identify higher scheduled fees for high cost management areas (which would include those with significant cultural heritage concerns) solely within the WTWHA.

equitably with Aboriginal people early on in management exercises, regardless of any uncertainty over native title or other legal responsibilities.

There is also a role for the three relevant land councils to play a greater role in resourcing land management issues within the Wet Tropics region. The Cape York Land Council has been particularly proactive to date in this regard; the establishment of Balkanu just one particular example. Likewise, the Central Queensland Land Council has provided significant support to Giringun. However there is still room for greater assistance to be provided to peak Aboriginal lobby groups, particularly Bama Wabu, especially where tenure related issues exist.

The *Review* Steering Committee has raised concern (particularly in response to the findings of the TOR 12B consultancy where government agencies identified that a lack of resources was a major barrier to change) that the *Review* recommendations endorsed by Ministerial Council may not be adequately implemented because of financial constraints. The Steering Committee has also noted, as stated previously, the arguable responsibility of the Commonwealth to facilitate *Review* implementation given the HRSCERA (1996, p 69) proposal that any additional measures arising from a review of indigenous involvement in World Heritage properties be implemented by the relevant management agencies.

Recommendation

- A bi-partisan Commonwealth and Queensland Government approach be adopted to identify the funds necessary to implement *Review* recommendations and meet existing statutory cultural heritage and consultation obligations

Part 5 Summary of Recommendations

Note:

The following recommendations appear under distinct subheadings. Following the recommendations, in brackets, is the section where the recommendation appears in the main body of text.

General Principles

- That Rainforest Aboriginal people be afforded the opportunity, in the spirit of self-determination, to define their own needs, aspirations, and priorities for WTWHA management **(1.4)**.
- That WTWHA managers allow adequate time and resources to accommodate traditional and contemporary Rainforest Aboriginal decision-making and problem solving mechanisms **(1.4)**.

Key Recommendations

Interim Negotiating Forum

- The notion of an Interim Negotiating Forum and Final Agreement (or Regional Wet Tropics Agreement) is the key recommendation of this Review. These agreements are seen as the framework on which to attach the findings of the fourteen TOR examined and the way forward to meet the needs of both Rainforest Aboriginal people and government WTWHA managers **(1.4)**.
- That the Authority support the notion of a staged Interim Negotiating Forum and Final (Regional Wet Tropics) land management agreement between relevant government agencies and Rainforest Aboriginal people for the WTWHA as the basis for providing much of the shared decision-making outcomes that Rainforest Aboriginal people are looking for **(Recommendation, Appendix 1c)**.
- That the Authority play an integral role in developing and implementing these agreements, in full cooperation with relevant land management agencies and Aboriginal groups and their representative bodies **(Recommendation, Appendix 1c)**.
- To this effect the Authority should be sufficiently resourced by both State and Commonwealth governments, and have the full in principle support of all the relevant parties to the proposed agreements in order to undertake this coordination and facilitation role **(Recommendation, Appendix 1c)**.
- That the Aboriginal negotiating team also needs to be a coordinated and representative body (with the majority support of Rainforest Aboriginal people), sufficiently resourced to enable

full and equitable involvement in the agreement negotiation process (**Recommendation, Appendix 1c**).

- The Authority should, as part of its coordination and facilitation role, identify possible funding sources to sufficiently resource the ‘Aboriginal negotiating team’ (**Recommendation, Appendix 1c**).
- That the relevant State and Commonwealth Departments give urgent commitment to identifying funding for the Interim Negotiating Forum facilitator position (to be located as a contracted position within Bama Wabu) as given in principle support by the Wet Tropics Board at meetings 23 and 24 (**Recommendation, Appendix 1c**).
- Negotiations for an Agreement should include the development of a more equitable system for managing Aboriginal use of natural and cultural resources (**4.2.2**).
- That the relevant local, State, and Commonwealth agencies develop and implement a ‘whole of government’ approach to Aboriginal issues within the framework of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement (**2.2.2**).
- That the relevant Local, State, and Commonwealth agencies collectively nominate a negotiating team representative of their interests to participate in the Interim Negotiating Forum and the Final (Regional Wet Tropics) Agreement (**2.2.2**).
- That any negotiation of agreements across tenures within the WTWHA areas is undertaken in a coordinated manner through a negotiating team representative of all the relevant government land managers (**Recommendation, Appendix 1c**).
- It would seem that potential for increased Aboriginal involvement in policy and planning can be achieved within existing legislation and policy frameworks. This requires a commitment from Government to seriously explore where innovative options exist and how new arrangements negotiated in the Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement can be monitored.

The level of desired participation, however, requires careful negotiation. There are a variety of perceptions, misconceptions and understandings about what is an appropriate level of participation. It is also important that the Department of Local Government and Planning are directly involved in future negotiations towards the Interim Negotiating Forum (**4.2.2**).

- Positions of Government and counter positions of *Bama* on models of appropriate management arrangements need to be tabled early in the Interim Negotiating Forum negotiations. *Bama* see joint management arrangements as the centrepiece of the Final (Regional Wet Tropics) Agreement (**4.2.2**).

- The Interim Negotiating Forum seek agreement about appropriate language for agencies to officially represent Aboriginal interests in management. [Here ‘appropriate language’ refers to negotiating with Aboriginal people the actual words and phrases used to describe the nature of Bama interests in the WTWHA] Some initial processes for resolving Aboriginal concerns about cultural heritage interpretation issues should also be explored (4.2.2).
- Any permit trials and subsequent systematic processes be developed on a coordinated basis across management regimes and within the context of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement (4.6.4.3).
- That the Authority should review its minimum budgetary allocation to Aboriginal issues currently set at 5% to take into account the costs involved in the negotiation of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics Agreement) and any other additional management requirements (such as the need for CMA development or the funding of permit referral mechanisms) as native title holders or other Aboriginal people with an interest in the region gain greater leverage in the overall management stakes (Recommendation, Appendix 1c).
- That policies relating to budgetary processes be clarified and effectively communicated both within and outside of the Authority so as to improve the effectiveness of their implementation (Recommendation, Appendix 1c).

Specific Issues

Native Title

- There is a major difference of approach between Government and *Bama* in relation to native title matters. Government does not wish to integrate native title and land-use and management, whereas *Bama* cannot see how these could possibly be separated. *Bama* believe their aspirations are legitimised by their native title rights and interests. This should be a major point of early negotiation in the agreement process (4.2.2).
- In relation to native title compensation arising from implementation of the *Wet Tropics Plan*, the Interim Negotiating Forum should allow *Bama* and Government to reach agreement about how compensation arrangements can be reached fairly and systematically (ie. rather than fighting on a case by case basis within a limited statutory timeframe). The outcome of such negotiations should become part of the Final (Regional Wet Tropics) Agreement (4.2.2).

Recognition and Protection of Cultural Heritage Values

- That in the spirit of reconciliation, and in keeping with existing cultural heritage obligations, WTWHA managers recognise Bama perspectives and values as legitimate in their own right, and accommodate them equitably within the various management regimes (1.4).

- It is recommended that the Queensland government agree to a process that will move towards re-listing for the regions cultural values as a primary objective of the Interim Negotiating Forum. This process may take some time but it is better to begin advocacy of this aspiration as it is essential for the recognition of Aboriginal interests in land-use and management (4.2.2).
- That the WTWHA is managed, regardless of the particular underlying tenure and incidental to the particular World Heritage listing, consistent with Article 4 of the World Heritage Convention and in keeping with the recognition of the region as a series of living Bama cultural landscapes (4.5.2).
- As a basis for an application to have the WTWHA re-listed for its cultural as well as for its natural values that WTMA continue to actively pursue, through Commonwealth funding, a full and proper cultural heritage assessment in 1998 (4.5.2)
- That a cultural heritage assessment occur on a collaborative basis with Rainforest Aboriginal people maintaining control over the assessment process (4.5.2).
- That revision of the Cultural Records (Landscapes Queensland & Queensland Estate) Act 1987 (Qld) be undertaken to at least include:
 - a formal mechanism such as the establishment of an advisory body to facilitate more equitable and accountable decision-making by the Minister
 - a more holistic approach to cultural heritage impact assessment that focuses on the living cultural values of places of significance in the landscape in addition to merely accommodating material manifestations of Aboriginal culture (4.5.3).
- That the validity of the exclusion of indigenous cultural heritage from coverage under the *Queensland Heritage Act 1992* (Qld) be further questioned with a view to establishing whether the provisions of this Act may in fact be available to provide additional protection to Bama places of significance (4.5.3).

Intellectual and Cultural Property Rights

- That within the context of the proposed Ecotourism and Walking Track Strategy and with the cooperation of the CRC-TREM, that a collaborative working group be established to develop an *Intellectual and Cultural Property Rights* Code of Ethics for tour operators, researchers and WTWHA managers (4.5.4).
- That WTMA, in collaboration with relevant Aboriginal organisations and ATSIC, facilitate a 'plain-English' information kit for Aboriginal people outlining their rights and obligations, and the range of issues to be aware of when working with scientists, researchers, academics, anthropologists, archaeologists, and tour operators etc (4.5.4).

- That a formal agreement describing a clearly defined set of protocols and procedures for the collection and storage of cultural heritage information be jointly developed with relevant Aboriginal groups and relevant State agencies. The bottom-line principle of such an agreement remains Bama ownership of cultural information and Bama control over access and use of this material (**Recommendation, Appendix 1c**).
- The Authority negotiate an agreed approach with Rainforest Aboriginal people to the use, access rights, and storage of culturally sensitive material (**Recommendation, Appendix 1c**).
- That the Authority continue with the policy that culturally sensitive information belongs to the relevant Aboriginal community and that the Authority will not release or act upon such information without permission (**Recommendation, Appendix 1c**).

Permits

- That government agencies recognise and respond to the fact that regardless of funding and time constraints they have a strong legal obligation to effectively involve Aboriginal people in permit decision-making processes (**4.6.3**).
- That State agencies, in consultation with peak Aboriginal representative groups, examine the prospect and relevant mechanisms for a single organisation to be responsible for the issue and control of WTWHA commercial activity, scientific, and cultural heritage permits. (This may require some legislative changes) (**4.6.3**).
- As a mid to long term goal, a common approach to the administration and control of commercial activity and scientific permits be developed across all tenures. This will be of value to a whole range of stakeholders as well as Rainforest Aboriginal people (**4.6.3**).
- That WTWHA managers, bearing in mind the current lack of statutory provisions to fetter the Minister's discretion in any permit decision-making process, negotiate increased levels of Aboriginal involvement in the management of permits in keeping with the potential for increased rights potentially available under common law or the more formal recognition of native title under the NTA (**4.6.3**).
- The establishment of an Aboriginal Advisory Committee under the WTWHPM Act to act as a referral body (with or without decision-making powers) to advise on/give consent to relevant permit applications. Alternatively Bama Wabu (or equivalent) could act as a referral body as per the DoE MoU (**relative to obligations under s.60 of the WTP; 4.6.3**).
- That the Bama Wabu/DoE draft MoU be used as a benchmark for the development of any future agreements outlining the increased involvement of Rainforest Aboriginal people in WTWHA permit decision-making processes (**4.6.3**).

- That appropriate guidelines, protocols, checklists be developed and implemented by the Authority in conjunction with peak Aboriginal representative groups to ensure that its obligations to Aboriginal interests are met with respect to permits issued under the WTP, regardless of who is the permit issuing entity **(4.6.3)**.
- The development of protocols in conjunction with Bama Wabu providing criteria or guidelines to be taken into consideration during the permit assessment process **(relative to obligations under s.60 of the WTP; 4.6.3)**.
- That the relevant State agencies adopt a coordinated approach to the development of a permit assessment and monitoring strategy with a view to (a) maximising the meaningful employment of Aboriginal people and (b) providing a mechanism for assisting government to meet its cultural heritage protection and Aboriginal consultation obligations **(2.3.4.3)**
- That the Authority resource permit issuing entities to be able to effectively and appropriately meet the additional Aboriginal consultation and liaison obligations that accompany the issue of permits under the Wet Tropics Plan **(4.6.3)**.

Permits and Cultural Heritage

- That the State and Commonwealth review its funding of the WTWHA with a view to identifying additional funds to ensure adequate and appropriate protection of Aboriginal cultural heritage values through the involvement of traditional custodians in permit decision-making processes **(4.6.2.4)**.
- A more coordinated and formal approach to the assessment of potential cultural heritage impacts of permit applications be undertaken by appropriately trained field staff across all WTWHA tenures and management regimes **(4.6.3)**.
- Adequate resources be allocated for field staff undertaking assessment of potential cultural heritage impacts of permit applications and necessary consultations. This should include the allocation of one Aboriginal liaison ranger per management unit (ie. in the case of protected areas, at the District level of operation). This position could also fulfil other Aboriginal community consultation requirements as well as undertake other day-to-day management tasks **(4.6.3)**.
- WTWHA managers when considering permit applications under the NCA and WTP should fully take into account those legislative provisions relating specifically to cultural heritage protection and other Aboriginal interests **(4.6.3)**.
- That WTWHA managers when considering permit applications under the NCA and WTP are sufficiently resourced (with respect to technical expertise, staffing and financial support) to adequately take into account cultural heritage protection and other Aboriginal interests **(4.6.3)**.

- That Rainforest Aboriginal people, government tourism departments, and the relevant government land management agencies develop a range of mechanism including a set of generic permit conditions (in consultation with peak local tourism bodies) that define the nature of Aboriginal cultural information or social commentary appropriate for use in a particular area **(4.6.3)**.
- State agencies ensure that all walking track proposals have met the appropriate permit requirements and have in writing clearance from traditional owners and or native title claimants and/or holders. (There is likely to be a coordination role here for WTMA) **(4.6.3)**.
- That greater consideration is given to potential impacts on Aboriginal cultural values when considering the merits of a permit application. Although the notion of determining an area's carrying capacity is an inexact science much can still be achieved through encouraging permit decision-makers and those considering and monitoring impacts to shift their emphasis on social and biophysical factors to also include a greater consideration of Aboriginal cultural values. Commonly used planning frameworks such as the 'Limits of Acceptable Change' system could be expanded to also include a consideration of what level of negative impacts on a region's Aboriginal cultural values (both material and intangible property) are seen to be acceptable by the traditional custodians of those values. Another approach would be to utilise GIS technology and to develop a priority vulnerable cultural heritage overlay (similar to the one used for natural values in the Wet Tropics Plan) as a means of informing decision-makers as to the sensitivity of a region from an Aboriginal perspective **(4.6.2.1)**.

Permit Decision Making Structures and Referral Systems

- That the Bama Wabu/Department of Environment Memorandum of Understanding on the involvement of Aboriginal people in permit decision-making processes under the NCA continue to be developed and that the idea of a proposed trial, involving Bamanga Bubu Ngadimunku as a referral agency at Mossman Gorge be revisited. This trial could then be used to fine-tune or develop a possible referral mechanism similar to the one outlined later in this section **(4.6.2.1)**.
- That similar permit decision-making MoUs be developed between Rainforest Aboriginal people (through Bama Wabu or other representative groups) and DNR, WTMA, and relevant local government bodies. Again trial project areas should be identified and referral processes experimented with **(4.6.2.1)**.
- That the proposed MoU between the Authority and Bama Wabu include some broader based principles and agreements clarifying the roles and responsibilities of other permit issuing entities under the WTP **(4.6.3)**.
- There will need to be a disclaimer in the MoU to the effect that nothing within the MoU will impact on the native title rights and interests of any Aboriginal group. The MoU will need to be reviewed on a declaration of native title by the courts or the Native Title Tribunal in keeping with any additional procedural rights afforded to native title holders **(4.6.3)**.

- That any permit referral mechanism trialed should include, where relevant, Aboriginal input into permit renewal applications that also includes the possibility of providing advice on a revision of the original permit conditions **(4.6.2.3)**.
- Where concern exists regarding a particular permit application there needs to be a mechanism whereby the application is referred onto grass-roots Bama for their final authoritative say. Negotiated protocols and guidelines would determine when an application should be passed down the line to local Bama directly affected by the proposed permit **(relative to obligations under s.60 of the WTP; 4.6.3)**.
- Particularly in the context of commercial activity and scientific permits issued for the Wet Tropics under the Forestry Act that WTMA develop an MoU with DNR, as an interim measure, to ensure that WTMA's obligations for cultural heritage considerations (as discussed above) be met by all agencies operating within the region **(4.6.3)**.
- As a long term goal these obligations should become an inherent part of all legislation relating to the management of the WTWHA **(4.6.3)**.
- In keeping with the implications of both common law and a formal determination of native title, Aboriginal groups and government agencies develop a referral system that provides relevant Rainforest Aboriginal people with more than an advisory role **(4.6.4.3)**.
- That adequate resources be provided to Aboriginal referral bodies if quick turnaround times are required for permit applications **(4.6.3)**.
- Aboriginal monitoring and referral groups should be funded directly so as to facilitate the type and level of input that Bama see as appropriate **(4.6.2.4)**.

Trial Permit Referral System

- That a trial referral system be established for a specific pilot region and a specific permit type for each of the three State permit issuing bodies **(4.6.4.3)**.
- That these trials be seen as an interim measure only and that they be used to inform the ongoing development of formal arrangements between government agencies and Rainforest Aboriginal people **(4.6.4.3)**.
- The proposed Aboriginal referral group be provided with the details of all permits (minus applicant's names, but including permit conditions) issued or current over the last 12 months. The referral group could then decide on the criteria for the class system used to define which applications need to be referred on **(4.6.4.3)**.
- That adequate funding be provided by relevant government agencies to develop these trials, and to progress any arrangements for a more formal and comprehensive system that may also include additional permit types **(4.6.4.3)**.

- Any consideration or trials associated with permit referral mechanisms give due consideration to the issue of adequate and appropriate resourcing of Aboriginal referral bodies and WTMA Community Liaison Officers **(4.6.3)**.
- That such resourcing does not come at the expense of other existing Wet Tropics projects. Additional funding is required on top of what is currently allocated to the management of WTWHA listed properties **(4.6.3)**.

Permit Monitoring

- The Authority implement a monitoring system to ensure that its obligations under s.10 (5) of the Act and s.60 of the Plan are being met by other permit entities issuing permits under the Plan **(4.6.3)**.
- The Authority actively seek to ensure that these obligations are being met by all Wet Tropics permit issuing entities **(4.6.3)**.
- For large scale special events but also for tours into particularly culturally sensitive regions, Aboriginal people be contracted to monitor adherence to conditions and potential impacts. The cost of this monitoring needs to be covered by the permit applicant and/or the permit-issuing entity **(4.6.2.2)**.

Scientific Permits

- That DoE and ATSIC continue to support the Kuku Yalanji-Mossman Gorge pilot permit assessment project until its completion **(4.6.5.3)**.
- That resources be made available to fund a trial assessment project for all commercial activity and scientific permit applications for the Mossman Gorge section of the Daintree National Park once the final consultancy report is available **(4.6.5.3)**.
- The trial period be used as a mechanism to fine tune the permit assessment process **(4.6.5.3)**.
- DoE, WTMA, and DNR investigate the applicability of the permit assessment process to other areas within the WTWHA **(4.6.5.3)**.

Awareness Raising

- Various agencies develop a concise ‘plain-English’ guide to their respective permit systems (perhaps in the form of a ‘fact sheet’) including an overview of what permits they are responsible for, how they are administered and relevant contact officers. WTMA should coordinate and compile the fact sheets into a newsletter for distribution. The project would need to be supported with personal contact by WTMA CLO’s and other agency liaison staff **(4.6.3)**.

- This project provide a simple schematic overview of how the permit regime works. It should be developed as a general community-wide initiative and resourced accordingly ie. not funded exclusively from dedicated ‘Aboriginal issues’ funds (4.6.3).
- ‘Awareness-Raising’ workshops be conducted (that include Aboriginal facilitators) for all WTWHA managers involved in permit assessment and processing (4.6.3).
- That all WTWHA management staff be made aware of Intellectual and Cultural Property Rights issues and concerns, especially in the context of the assessment of commercial activity and scientific research permit applications, and in relation to the recording and interpretation of cultural knowledge and values (4.5.4).

Funding

- Where full agreement is reached by all relevant parties (and this must include native title claimants and/or holders), state agencies, where appropriate, offer in-kind and financial support to requests for assistance in the development of Rainforest Aboriginal community development and environmental management plans (2.3.7.4).
- A bi-partisan Commonwealth and Queensland Government approach be adopted to identify the funds necessary to implement *Review* recommendations and meet existing statutory cultural heritage and consultation obligations (4.7).
- Government agencies pursue additional funding sources (such as an increase in application fees) that could be utilised to resource Aboriginal (permit) referral groups (4.6.2.1).
- Where possible funding should be direct to Aboriginal land management agencies on a contractual basis to assist in consultation and impact assessment (4.6.3).

Aboriginal Aspirations for Involvement in the WTWHA

- DoE, DNR, WTMA, and Bama Wabu continue discussions aimed at clarifying and coordinating roles and responsibilities in an attempt to facilitate a more collaborative and cooperative approach to management issues of concern to Rainforest Aboriginal people (2.3.8).
- The Authority ensures that staff from all WTMA programs share a common commitment to establishing localised management agreements including Aboriginal interests in the WTWHA (2.3.8).

Management Scheme Intergovernmental Agreement (MSIA)

- That the Management Scheme Intergovernmental Agreement be reviewed by the end of 1998 in the interests of a more comprehensive and coordinated approach to Aboriginal issues in the WTWHA (2.4.4).

- To this effect, the implications and recommendations of the Review (particularly the emphasis placed on the need for a staged formal negotiated agreement) become an integral part of any such review of the Management Scheme Intergovernmental Agreement (2.4.4).
- That the Management Scheme Intergovernmental Agreement identify and dedicate a specific level of funding (as a percentage of overall WTWHA funding) to Aboriginal issues in keeping with:
 - (a) State and Commonwealth statutory obligations to liaise and cooperatively involve Aboriginal people and to protect the cultural values of the region, and;
 - (b) the significant rights and interests of Rainforest Aboriginal people, particularly arising from (but not restricted to) those rights and interests recognised by the High Court *Mabo* and *Wik* decisions (2.4.4).

Structural Change: WTMA Board and Advisory Committees

- That the Commonwealth government decision making process utilised in selecting the Aboriginal representative nominee for the Wet Tropics Board is transparent and accountable (2.3.5.2).
- That Bama Wabu (or an equivalent organisation) be requested to provide a list of possible Aboriginal representative nominees to the Commonwealth from which they can make a selection (2.3.5.2).
- In an attempt to facilitate adequate consideration of the Bama Wabu report, WTMA provide the appropriate secretarial assistance for Bama Wabu to provide a Board report available for distribution prior to the Board meeting (2.3.5.2).
- That the ARMP (particularly through the Community Liaison Officers) actively inform the broader Rainforest Aboriginal community as to the role and activities of the Wet Tropics Board, the Scientific Advisory Committee and the Community Consultative Committee in an attempt to facilitate grassroots input through relevant nominated representatives (2.3.5.1).
- Where no Aboriginal person is available to sit on the SAC that Bama Wabu nominate an appropriate non-Aboriginal representative with a solid scientific background and experience working on relevant Aboriginal issues (2.3.5.1).
- That sitting or consultation fees be made available to the identified SAC and CCC representatives as an affirmative action measure to facilitate the need under the Wet Tropics Act to have adequate Aboriginal representation on the mandatory committees. At the very least, resources need to be made available to ensure that whoever sits at the committee table has had the opportunity to consult as widely as possible with the broader Rainforest Aboriginal community both before and after meetings (2.3.5.1).

- In keeping with an earlier recommendation, (Dale 1993), the Board identify a representative position on the SAC for a social scientist with experience in social impact assessments **(2.3.5.1)**.
- That the SAC collaboratively develop a set of research and monitoring protocols aimed at meeting the concerns of Rainforest Aboriginal people and the management needs of the WTWHA **(2.3.5.1)**
- That the Board consider the proposal for three Aboriginal representatives on the CCC as an initial measure to overcome the problem of inadequate regional representation **(2.3.5.1)**
- That Bama Wabu convene a meeting with the Chairperson of the CCC and other members, as appropriate, to reconsider opportunities and options available (see *Review* report) to improve Aboriginal participation in the CCC **(2.3.5.1)**.

Cooperative Management Agreements (CMA's) under the Wet Tropics World Heritage Protection and Management Act and the Wet Tropics Plan

- That the development of CMAs with Aboriginal groups be recognised and funded as a mainstream activity and not marginalised specifically within the domain of the ARMP **(2.3.6.1)**.
- That the budget allocation currently available to the development of CMAs with Aboriginal interests be available for use to fund a broader range of project types that may include (among other things) specific assistance grants as a precursor to the establishment of a CMA, or the development of policy recommendations to facilitate a more appropriate approach to management arrangements **(2.3.6.1)**.
- WTMA review its current CMA policy with a view to clarifying issues and constraints, particularly in the context of native title. A simple checklist or set of guidelines for the development of a CMA and for the prioritising of requests for assistance from Aboriginal groups should be developed for use by ARMP staff **(2.3.6.1)**.
- That a separate review of CMAs be undertaken at the end of the 1998-1999 financial year to consider the future status of the scheme as a priority issue for the ARMP **(2.3.6.1)**.
- That State policy be reviewed to allow WTMA to be involved in native title mediation at an early stage to make these mechanisms available where appropriate **(2.3.6.1)**.
- That a more cooperative approach to management agreements be developed between DoE, DNR, WTMA, and local government to overcome problems relating to jurisdiction. For example it would be useful for WTMA to facilitate and fund agreements under s. 34 of the NCA between traditional owners and DoE for the protection and cooperative management of protected areas. A similar approach may be possible for areas of land administered by the various arms of DNR **(2.3.6.1)**.

- Any CMA or agreement, binding or otherwise, undertaken with Aboriginal people should contain a disclaimer removing the possibility of the CMA (or agreement) impacting on any future determination of native title rights and interests **(2.3.6.1)**.
- In keeping with original WTMA CMA policy, any draft legal agreement (either general or specific) proposed for use in a CMA involving Aboriginal people would need to be vetted by a lawyer with current expertise in Aboriginal issues, and preferably, chosen by Aboriginal people. WTMA may have to be prepared to pay for such advice. In any event, the Authority should always seek legal advice before finalising a CMA to ensure that it does not impact on native title rights **(2.3.6.1)**.
- That subject to its obligation under s.10(5) of the WTWHPMA, WTMA consult and liaise with relevant Aboriginal people before entering into a CMA with non-Aboriginal land holders. The need for a cultural heritage assessment should be considered in the case of infrastructure development or land clearance **(2.3.6.1)**.
- The negotiation of any CMA should, wherever possible, involve the Community Liaison Officers to ensure that cultural differences in decision-making processes are recognised and respected **(2.3.6)**.
- That clear guidelines be established for WTMA staff involved in; identifying potential CMA opportunities, responding to requests from Aboriginal groups wishing to enter into a CMA, or actually developing CMA proposals **(Recommendation, Appendix 1c)**.
- That these guidelines provide:
 - advice and direction on native title issues
 - a checklist of all issues to be considered and precautions to be taken
 - an overview of priority CMA areas from a WTMA perspective including an account of what WTMA would be looking to gain from a CMA

(Recommendation, Appendix 1c)
- Funding from WTMA to Aboriginal groups should not be restricted to formal CMA proposals but continue to in the form of grants to cover other relevant issues including:
 - policy development
 - workshop facilitation
 - community development planning
 - cultural heritage protection, interpretation, and assessment (in keeping with the possibility of listing on cultural grounds, and obligations under Article 4 of the World Heritage Convention)
 - assistance with community ranger training and community education and awareness programs **(Recommendation, Appendix 1c)**.
- That the Authority move beyond the previous policy endorsing CMAs as the underlying framework for ‘joint management’ towards a position of developing more substantial management arrangements with Rainforest Aboriginal people **(Recommendation, Appendix 1c)**.

Environmental Impact Assessment

- That the Authority facilitate the involvement of appropriate Aboriginal people in the development of generic guidelines and terms of reference for any relevant EIA (or other form of assessment) required under the WTP **(4.5.3)**.

That the generic guidelines when applied to a specific situation be fine-tuned, in consultation with the relevant Aboriginal people, to cater for specific local needs and conditions **(4.5.3)**.

- In addition to developing EIA (and other assessment) generic guidelines and terms of reference, that relevant Aboriginal people also provide input into the actual assessment and decision-making process **(4.5.3)**.
- That any EIA of a development proposal includes the interests of Rainforest Aboriginal people in keeping with the underlying principles of the draft Indigenous Land Interest Model **(4.6.3)**.
- Any relevant EIA also includes the requirement that Rainforest Aboriginal people are involved in setting the terms of reference for the assessment process **(4.6.3)**.
- That this process includes the Queensland Department of Family Youth and Community Care in keeping with their role as lead agency in social impact assessment, in addition to the relevant Aboriginal representative body(s) **(4.6.3)**.

Wet Tropics Management Authority Planning

- That the basic principles for regional and strategic planning (based on Dale 1993) presented in section 4.4.2 be considered by the WTMA Board as a component of WTMA's overall planning policy. By way of a summary these principles propose that:
 - (a) Rainforest Aboriginal people be treated as more than just a 'stakeholder' and therefore be involved from the initial stages of the planning process
 - (b) Planners deal with the right people for country, ensuring that any contentious issue has the full support, in writing, of native title claimants/title-holders
 - (c) Rainforest Aboriginal people are involved in planning activities on an equitable and culturally appropriate basis **(2.3.7.1)**.
- WTMA incorporate the underlying principles of the Queensland Department of Family Youth and Community Care's draft Indigenous Land Interest Model into its WTMA management and planning policy, particularly in the context of social and environmental impact assessment **(2.3.7.1)**.

- WTMA continue the use of outsourced consultancies, jointly developed and supervised with relevant Aboriginal groups, to provide the research and policy advice necessary for WTMA to provide meaningful input into planning activities, including the ongoing negotiation of the proposed Regional Wet Tropics Agreement **(2.3.8)**.
- An Aboriginal referral group or series of groups be used to comment on the appropriateness of any proposed walking track development as part of the proposed ecotourism and walking track strategy **(4.6.3)**.
- WTMA adopt the consultation, negotiation, and notification principles outlined in Recommendation 314 of the Royal Commission into Aboriginal Deaths in Custody as a guiding principle within its proposed ecotourism strategy for the WTWHA **(4.6.3)**.

Employment and Training

- That DNR create a specific Aboriginal liaison/policy unit specifically dedicated to policy development and the management of all tenures of land administered by DNR within the Wet Tropics World Heritage Area **(2.3.3.3)**.
- That WTMA coordinate the development of an Aboriginal Employment and Training Strategy that provides a ‘whole of government’ approach to the employment of Bama in WTWHA management (see text for specific strategy components) **(2.3.4.3)**.
- That any Aboriginal Employment and Training Strategy become an integral part of the negotiation of the proposed Interim Negotiating Forum and Final (Regional Wet Tropics) Agreement **(2.3.4.3)**.
- That the Department of Environment appoint a senior officer to each Wet Tropics District to assist in meeting their consultation and negotiation responsibilities particularly in the context of Aboriginal cultural heritage protection **(2.3.2.1)**.
- That wherever possible government land management agencies utilise local Community Rangers and other Aboriginal work crews to undertake approved walking track maintenance and development and other infrastructure development projects including the requirements for cultural heritage assessment and site clearance **(2.3.4.3)**.
- That Community Rangers throughout the WTWHA be utilised on a contractual basis, where appropriate, for cultural heritage assessment work, cross-cultural awareness workshops, and as facilitators in a range of consultation/liaison exercises **(2.3.4.3)**.
- That WTMA, DoE, and DNR implement a casual employment scheme that can capitalise on the availability of Aboriginal people for short term projects, particularly where specialised local input is required. In the case of WTMA this would best be served by an all-inclusive contractual arrangement with an Aboriginal organisation(s) that already provides the services of a CLO **(2.3.4.3)**.

- In-service training be provided to relevant DoE, WTMA, and DNR staff either by way of workshops, seminars, or agenda items at staff meetings highlighting Aboriginal concerns as well as the legislative obligations for consultation and Aboriginal involvement in permit decision-making processes **(4.6.3)**.
- That DoE and DNR employ a greater number of Rainforest Aboriginal people as field staff either on a permanent or on-going part-time contractual basis as a means of monitoring the impacts of commercial activity operators, particularly in high visitation areas, in addition to covering day-to-day management responsibilities **(4.6.2.2)**.

Community Liaison Officers

- That the Authority increase the contracted hours of the three Community Liaison Officers to full time loading in order to accommodate the extra liaison demands associated with the issue of permits under the Wet Tropics Plan **(4.6.3)**.
- All three Community Liaison Officers (CLO's) should be employed on a full-time basis (with appropriate employment conditions) in keeping with the expected increased work load arising from the *Review* recommendations and the implementation of the Wet Tropics Plan **(2.3.2.4)**.
- That extra funding for increasing the Community Liaison Officer hours should be in addition to the 5% minimum budgetary allocation to 'Aboriginal issues', that is current WTMA policy **(4.6.3)**.
- All three CLOs be contracted through Aboriginal organisations (such as Giringun and Bama Wabu) with a broad representative mandate and a specific land management focus in an attempt to facilitate more equitable and relevant community input into the CLO work program **(2.3.2.4)**.
- These contracting bodies develop, as appropriate, and on a cooperative basis with the Authority, greater input into the direction given to the CLOs, particularly in the context of work program development **(2.3.2.4)**.
- CLO contracts be reviewed with respect to contract duration so as to provide client groups with continuity as to who they are dealing with, and to provide greater job security **(2.3.2.4)**.
- Gender issues be adequately addressed in the selection of CLOs so as to provide a more balanced work team **(2.3.2.4)**.
- That 'on-the-job' training particularly in the context of computer literacy and report writing be provided where such training will expressly improve the effectiveness and efficiency of the CLOs. As the desired outcome is efficient communication, all reporting options (including video and still photography) should be explored **(2.3.2.4)**.

- Any direction and supervision provided to the CLOs should not undermine the underlying rationale for their employment - providing a Bama perspective on issues and acting as an effective conduit for information flow (2.3.2.4).
- That adequate access to appropriate WTMA vehicles or vehicle hire be provided to CLOs to ensure that as the need arises field consultation is possible (2.3.2.4).

Education

- That WTMA produce a regular Aboriginal issues newsletter or information sheet to be produced and distributed in conjunction with DoE, DNR, and Bama Wabu (or its equivalent) (2.3.2.2).
- That WTMA utilise the Internet and develop a specific Wet Tropics Aboriginal issues web Home Page to provide a fast and relatively inexpensive interactive vehicle for information flow (2.3.2.2).
- That Aboriginal Resource Management Program staff workshop current WTMA policy on joint management and related issues so as to provide other programs, (particularly new staff), with an opportunity to become familiar with endorsed WTMA positions (2.3.2.2).
- The Wet Tropics Management Authority continue to develop a close link with community rangers, trainees, and training providers within the WTWHA through the provision of services including, where appropriate, technical and financial assistance (2.3.4.5).
- That Bama Wabu (or its equivalent) look at raising its profile with government agencies through regular attendance at the Cairns Regional Managers forum and through presentations to relevant state agency and local government fora (eg. management or program meetings) (2.3.2.2).
- That more effective and worthwhile cross-cultural training be afforded to the WTMA advisory committees and Board members. That this training be undertaken in part through field trips and community visits on terms acceptable to host Aboriginal groups (**Recommendation, Appendix 1c**).
- That relevant WTMA staff, in addition to being afforded opportunities to attend formal cross-cultural training courses, also participate in collaborative field exercises/studies with host Aboriginal groups where a two-way exchange of knowledge takes place (**Recommendation, Appendix 1c**).
- That the Authority develop and distribute a ‘plain-English’ information kit explaining budget cycles, timelines, application procedures, priority funding areas (ie. what the Authority is looking to gain from any financial or ‘in-kind’ provision of service) etc. in relation to any sources of WTMA funding (including CMAs) to Aboriginal groups (**Recommendation, Appendix 1c**).

- That all relevant WTMA, DNR, and DoE staff (particularly those dealing with on-the-ground management issues) be involved in cross-cultural training programs of the same standard and format as the series currently run for DoE (Far Northern) staff **(2.3.3.3)**.
- That cross-cultural awareness programs be developed for WTWHA Aboriginal groups in an attempt to raise awareness of government interests and concerns, and to empower Aboriginal negotiators sitting on steering committees and working groups (ATSIC, Land Councils and WTMA to facilitate) **(2.3.3.3)**.

Workshop

- Funding be identified to facilitate a Wet Tropics based workshop with input from traditional owners and government agency staff from jointly managed national parks and other protected areas around the country. Such a workshop would provide an awareness of the range of different management structures and strategies available and an insight into specific problems and solutions elsewhere **(2.1.2)**.

Consultation, Protocols, Guidelines

- That DoE, DNR, and WTMA adopt as official policy the full participation of traditional owners (and Rainforest Aboriginal people particularly concerned with the land) at the commencement of any relevant planning activity **(2.3.7.3)**.
- That the Authority formalise, within a set of protocols or guidelines, the development of an effective consultation and communication strategy between WTMA programs. This would include, among other issues, the more efficient and effective use of CLOs **(2.3.2.2)**.
- Where appropriate, all contractual arrangements undertaken between WTMA and scientific researchers, or other consultants, include appropriate protocol clauses, and a cost and time factor that takes into consideration any consultation or site clearance requirements **(2.3.2.2)**.
- The Kuku Yalanji fire protocol be used as a starting point for the development of an appropriate fire management protocol that meets the needs of both WTWHA managers and Rainforest Aboriginal people **(4.4.6)**.
- That as a matter of priority WTMA implement the ‘Aboriginal issues’ policies identified in the ‘Protection Through Partnerships’ document **(Recommendation, Appendix 1c)**.

Aboriginal Involvement in the Daintree Coordination and Planning Group (DCPG) and the Daintree Rescue Program (DRP)

- That the DRP/ DCPG continue to support and fund the recently established Aboriginal liaison position **(2.3.5.3)**.
- That a separate ‘Yalanji Issues’ report be formally tabled at every DCPG meeting as a process similar to the tabling of the Bama Wabu report at Board meetings **(2.3.5.3)**.

- That the ‘Yalanji Issues’ report be presented to the meeting by a representative authorised by the Yalanji DCPG members; this person may or may not be Yalanji or a DCPG member (2.3.5.3).
- That the ‘Yalanji Issues’ Report be developed on the basis of discussions and/or meetings involving the DCPG Yalanji members, the Aboriginal liaison officer, and other relevant interests prior to the actual DCPG meeting. Note: There are obvious resourcing implications that may need to be accommodated (2.3.5.3).
- That on completion of the DRP appropriate funding arrangements are in place to support the continuation of the Aboriginal liaison position (2.3.5.3).
- That WTMA investigate the potential for DRP ‘buy-back’ land to provide formal land management control opportunities for Rainforest Aboriginal people (2.3.5.3).

Bama Wabu

- The Authority should continue its ongoing funding support for Bama Wabu given that this organisation is regarded as the most cost effective way of ensuring a coordinated and empowered Aboriginal voice in the management and negotiation stakes. Funding levels for Bama Wabu should be reviewed in line with any increasing demands on the organisation for greater involvement in WTWHA management processes (**Recommendation, Appendix 1c**).

CRC TREM

- That the CRC for Tropical Rainforest Ecology and Management, where appropriate, adopt a more proactive approach to the use of traditional ecological knowledge in its research, monitoring and advisory role (**Recommendation, Appendix 1c**).
- To this effect any flora and fauna surveys, or any ecological research should incorporate an indigenous knowledge component with discrete funding (**Recommendation, Appendix 1c**).
- That a CRC TREM research ethics committee implement appropriate research protocols based on the Balkanu principles (see section 4, this report) that include, among other things, intellectual and cultural property rights protection and appropriate Aboriginal communication and consultation principles (**Recommendation, Appendix 1c**).

Appendix 1a

Table I. A commentary on the 27 ‘joint management’ policies endorsed by the Wet Tropics Board in 1994 following recommendations arising from the Dale and Lane reports (both 1993).

Note

- The numbers appearing in the ‘POLICY’ column relate to a specific recommendation from Dale (1993) identified by that particular number. For further commentary (particularly from an Aboriginal perspective) on WTMA ‘joint management’ and other policy issues refer to Bama Wabu (1996).
- These recommendations were approved by the Board at Board Meetings 13 (19-20 Aug. 1993) and 14 (14-17 February 1994).

POLICY	COMMENTARY
<p>1. Definition of Joint Management: “ a cooperative approach to land management and planning that recognises both the responsibilities and interests of the Authority, primary landholders and recognised traditional custodians of land”</p>	<ul style="list-style-type: none"> • This definition falls far short of Bama perspectives of ‘joint management’. In particular there is no attention to Aboriginal tenure or equity in decision-making • It also does not reflect the DoE perception of what constitutes ‘joint management’
<p>2. Role of the Authority: The role of the Authority in joint management will be:</p> <ul style="list-style-type: none"> • to ensure World Heritage values are protected and conserved in order to meet the primary goal • to undertake responsible planning for ecologically sustainable land and resource use, within the constraints of the primary goal • to enter into and facilitate management agreements with (or between) key landholders and land users, in order to meet the primary goal 	<ul style="list-style-type: none"> • The Authority’s role is not clearly understood by Bama, who often see WTMA as the lead agency for ‘hands-on’ management issues • There are not many examples of successful management agreements out ‘on country’, particularly over the last few years regardless of the management regime or tenure. There have been no CMAs negotiated with Aboriginal people to date. Particular problems are identified in the relevant section on CMAs in the main report. However, basic difficulties revolve around the fact that WTMA does not have any status as a landowner, uncertainty with respect to the implications of native title, lack of certainty as to what constitutes a CMA and what is required in its development, and general funding cutbacks • There have been some successful agreements based on meeting Bama needs for assistance in policy development. The Authority has provided both in-kind and financial support to Bama Wabu in its ongoing organisational and policy development
<p>3. Social Justice Package</p> <ul style="list-style-type: none"> • RAN and WTMA to present a joint position to relevant government agencies for endorsement • package to advocates the value of joint management arrangements in addressing native title issues in WTWHA 	<ul style="list-style-type: none"> • Draft document produced by WTMA • Process of ongoing development of the draft appears stalled. The draft package was provided to RAN for their input.
<p>5. Listing of WHA on cultural grounds</p> <ul style="list-style-type: none"> • The Authority to collect information and support research re. Listing of the WTWHA for its cultural values 	<ul style="list-style-type: none"> • The process has continued on an ongoing and protracted basis since this policy was first endorsed but without much in the way of tangible results.

<ul style="list-style-type: none"> • The cultural information collected is to remain the property of the people it was collected from 	<ul style="list-style-type: none"> • The WTMA funded Titchen Report identified process and options for re-listing. However, this report can only be seen as a first step in the overall nomination process. • To date there is still no comprehensive assessment of the region’s cultural values. Funding by DEST is to be considered after the handing down of the <i>Review</i>. Ministerial Council will consider re-listing only after a full and comprehensive assessment is made. • Bama are still firmly committed to cultural re-listing.
<p>8. The Authority will convey to Ministerial Council, Aboriginal interests in seeking statutory protection of Aboriginal cultural heritage in the WTWHA.</p> <p>8. (a) In developing TOR for the <i>Review</i>, full and serious consideration will be given to the issues raised in Sutherland’s (1992) report.</p>	<ul style="list-style-type: none"> • Incomplete. • Completed see TOR 13 report in Yarrow (1996a).
<p>12. Effective Communication</p> <ul style="list-style-type: none"> • The Authority will examine and implement effective means of transferring knowledge about policy decisions to affected Aboriginal communities 	<ul style="list-style-type: none"> • The ARMP (in its various forms over the years) has developed, often in conjunction with Bama and other departments, a number of innovative and successful strategies. • However there is still a significant communication problem between programs within WTMA which means that not all relevant issues and policy decisions are readily being passed onto Aboriginal communities and representative groups (or passed onto relevant stakeholders within the Authority).
<p>13(a) Conflict Resolution</p> <ul style="list-style-type: none"> • Resolve conflicts over policy, planning, program and joint management issues constructively and fairly, within constraints set by Primary Goal. Authority may seek assistance of professional conflict resolution experts <p>13(b) Reconciliation: The Authority is committed to constructive involvement in any “reconciliation process” established by the Government</p>	<ul style="list-style-type: none"> • Mixed record of successes and failures to date. • However, the removal of the Division 5 native title provision from the Wet Tropics Plan by Ministerial Council and the perceived inability of the Plan to provide a proactive management response to cultural heritage and native title issues may prove to be a real test of the Authority’s commitment and ability to resolve conflict. • The Bama Wabu report (1996) cited this policy as not being implemented. • “Reconciliation” is a very subjective concept, making it difficult to evaluate. It could also be readily argued that the Authority is committed to current government policy on reconciliation. Suffice it to say that Bama are looking for a more proactive stance from WTMA, and in general terms, the perspective amongst relevant Aboriginal groups is that no where near enough is being done.
<p>15. The Sutherland Report The Authority will explicitly review the Sutherland (1992) recommendations within the process of</p>	<ul style="list-style-type: none"> • The recommendations of the Sutherland report are in many ways superseded by the passage of the Native Title Act and the ‘Wet Tropics’

<p>drafting the Wet Tropics Plan</p>	<p>Act.</p> <ul style="list-style-type: none"> • One of the most significant aspects of the Sutherland report was the demonstration of the likelihood of native title surviving over a large proportion of the WTWHA and the need to shape management to accommodate this fact. The drafting of the Wet Tropics Plan has seen it meet the 'freehold test' and thus it stands as a 'permissible future act' under the Native Title Act (see Yarrow 1996a; TOR 13 report). • However, the Plan appears not to have taken on the full significance of native title as an important management issue (see Yarrow 1996b; TOR 14 report).
<p>16. Selection Criteria In its recruitment practices, the Authority will recognise expertise in Aboriginal or related joint management issues as desirable for selected positions</p>	<ul style="list-style-type: none"> • Position descriptions and selection criteria are now being rewritten as new vacancies arise in relevant positions within the Authority to reflect the need to be able to work with Aboriginal people according to the duties of the particular position in question.
<p>17. Cross-cultural Training and Ongoing Contact: The Authority will make efforts, where possible, to encourage long term continuity of contact between Authority staff and various Aboriginal groups. It will make cross-cultural training available to relevant staff, Board and committee members.</p>	<ul style="list-style-type: none"> • The goal of long term continuity of contact has not been met because of inadequate resourcing and security of employment of part-time Community Liaison Officers. • Cross-cultural training has been made available to relevant staff. More could be done through field visits to appropriate Aboriginal communities and organisations to make similar opportunities available to Board and Committee members
<p>18. Aboriginal employment: The Authority will make every effort to employ local Aboriginal people</p>	<ul style="list-style-type: none"> • Again the success of the implementation of this policy is open to interpretation. Despite positive strategies within ARMP there are still no permanent or even full-time Aboriginal people employed within WTMA. The CLOs express concern about job security and the part-time nature of their contracts. • There is no adopted official employment and training strategy in WTMA, DoE, or DNR.
<p>19. Commitment to Localised Agreements: The Authority will foster within all relevant staff a commitment to establishing localised joint management agreements</p>	<ul style="list-style-type: none"> • Awareness of this policy, and a commitment to its intent is not always apparent across all WTMA programs. • Part of the problem has been that there is still a great deal of confusion and uncertainty about 'management agreements'. Secondly there is a significant communication and coordination problem between programs, and a tendency to isolate Aboriginal issues within the ARMP.
<p>20. 'Aboriginal Issues' Unit: The Authority will seek to establish some form of specialised Aboriginal Issues Unit. This Unit would have a specific function such as facilitating the actual process of local Aboriginal input into joint management agreements and into the legislative, policy and planning aspects of</p>	<ul style="list-style-type: none"> • Unit established. • A reappraisal of resourcing needs will be required if Authority and other relevant agencies act upon the Interim and Final Agreement proposal of this <i>Review</i>.

Authority and relevant Federal/State activities	
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<p>21. Budget Allocation: The Authority will aim to maximise the budget allocation to Aboriginal issues to a minimum of 5%</p>	<ul style="list-style-type: none"> • The figure is currently sitting at approximately 8% (source: Corporate Services) • A reappraisal of this figure will be required if Authority and other relevant agencies act upon the Interim and Final Agreement proposal of this <i>Review</i> and as native title holders possibly gain greater leverage in the management stakes.
<p>22. 5% Costing Component: The Authority will continue to encourage, where appropriate, all non-Aboriginal project funding recipients to build a 5% costing component into their proposals that address Aboriginal issues.</p>	<ul style="list-style-type: none"> • Implementation has been largely haphazard. • Once again awareness and a clear understanding of the policy has limited its implementation. • Both Policy 22 and 23 require communication and clarification (eg. through the development of guidelines and examples) particularly at budget formulation time
<p>23. Aboriginal Project Funds The Authority will establish a clear and well timetabled system of calling for submissions, assessing, and offering Aboriginal project funds. Aboriginal people will be invited to be involved in recommending funding priorities to the Authority.</p>	<ul style="list-style-type: none"> • Since its establishment, Bama Wabu have been involved in recommending budget priorities for the ARMP. • There is a need for a 'plain-English' information kit explaining budget cycles, timelines, application requests, selection criteria for identifying priority areas etc. This is particularly important if Aboriginal people are to get equity in access to grants and CMA dollars. • By the same token there needs to be a more transparent and accountable statement of how funding priorities are identified, which includes the development of these criteria.
<p>24. Communicating Funding Arrangements: The Authority will provide communities with information on:</p> <ul style="list-style-type: none"> • Types of projects that may be funded • Funding conditions • Budget/submission cycles 	<ul style="list-style-type: none"> • Implementation appears to have become much more ad hoc over last two years; although recent drastic budget cuts (1996-1997 financial year) meant that little funding was then available anyway. • All programs, not just the ARMP, need to improve their communication processes
<p>25. Adequate Project Acquittal: As in the case of all other Authority projects the Authority will check that Aboriginal organisations have sufficient support and monitoring systems in place to acquit their project funding before providing funds.</p>	<ul style="list-style-type: none"> • Significant changes have recently been made to CLO contracts to accommodate problem areas identified by auditor • Similar changes are being made to contracts in other project area as they come on board.
<p>26. Clear Contract Agreements: Similarly, when funding Aboriginal communities, the Authority will establish clear contract agreements and systems to monitor and enforce contract conditions</p>	<ul style="list-style-type: none"> • Ongoing (see above)
<p>27. Funding for Incorporated Community Organisations: The Authority will, where appropriate, direct funding for Aboriginal community projects to incorporated community organisations</p>	<ul style="list-style-type: none"> • In place

<p>28. Funding and Community Planning: The Authority will ensure that Aboriginal project funding is provided, where possible, within the context of clear community and project plans.</p>	<ul style="list-style-type: none"> • Slowly happening, but needs to be supported in a more coordinated manner across programs
<p>29. Strong Links as a Basis for CMAs The Authority will continue to develop direct links with individual Aboriginal social and interest groupings. These linkages will create a firm basis on which cooperative management agreements that focus on particular parcels of land or regions can be achieved</p>	<ul style="list-style-type: none"> • It has been shown that strong links are only able to be developed where time and resources permit. Basically, the CLOs are inadequately resourced in terms of employment hours to meet this policy requirement. Strong links have only been developed with a few Aboriginal groups within the WTWHA. • Some Aboriginal groups are not in a position to be able to develop strong links with the Authority (or other government agencies) simply because they do not have the time or the resources to do so. • Despite the good intentions of staff in some programs CMAs still remain an unknown and untested quantity with Rainforest Aboriginal people. They also remain an unknown quantity with ARMP staff, and this is a significant limiting factor.
<p>33. Specific Strategies and Policies: The Authority will continue to develop specific Aboriginal issues strategies and policies, in liaison with Aboriginal groups, and other relevant landholders. Written reports and similar material prepared in this process will be made available to Aboriginal people. Culturally sensitive material will be considered to be owned by the relevant Aboriginal community and the Authority will not release or act upon such information without permission.</p>	<ul style="list-style-type: none"> • Protection of culturally sensitive material partly in place; a more formal approach to storage and indexing is required • There needs to be greater identification of policy needs and an appropriate commitment of time and resources to negotiated policy development. • New policies or guidelines need to be better communicated across the range of WTWHA communities; at the moment attention is being concentrated on just a few groups. This has obvious resourcing implications
<p>34. Aboriginal Issues Strategies: Where appropriate, the Authority will support the development of Aboriginal Issues Strategies. In the short term, these may include: (a) a Cultural Heritage Strategy for the Wet Tropics (b) a Protocol or Code of Ethics for consulting and liaising with Aboriginal people in the Wet Tropics (c) an Aboriginal Ranger Training and Employment Strategy involving Cairns TAFE, DEH and DPI Forest Service <i>[now DNR]</i> (d) research concerning traditional ownership and management of lands in the Wet Tropics</p>	<ul style="list-style-type: none"> • In overall terms, any attempt at implementation has produced only minimal tangible outcomes <p>(a) Cultural Heritage strategy now the Cultural Re-listing or Renomination strategy. Possibility of a detailed cultural heritage assessment in 1998-1999 financial year, subject to DEST locating funding.</p> <p>(b) Strategy developed; but final document generally seen as too wordy and complicated ie. Not user-friendly. Strategy sits on the shelf.</p> <p>(c) No formal or coordinated strategy has been developed. DoE has produced a draft document that has not been endorsed or implemented</p> <p>(d) WTMA is continuing to access whatever material is available eg. Native title claim maps from DNR. However the role of researching traditional management of land may better lie with Land Councils, with WTMA being provided with any relevant and appropriate findings</p>
<p>35. Traditional Knowledge and the Scientific</p>	<ul style="list-style-type: none"> • Implementation only partial and haphazard

<p>Community: The Authority will establish a platform upon which improved linkages between Aboriginal traditional knowledge and the scientific community can evolve. This may include:</p> <p>(a) encouraging the setting up of an ethnobotanical research unit, perhaps in the TREM CRC</p> <p>(b) being responsible for bringing Aboriginal concerns to the attention of the CRC and facilitating Aboriginal involvement in future CRC conferences</p> <p>(c) supporting projects dealing with ethnobotanical issues, but ensuring that there is negotiated Aboriginal community support for the research</p>	<p>(a) Not established although there have been recent preliminary discussions</p> <p>(b) Only minimal contact with CRC in relation to Aboriginal concerns. Aboriginal presentations and workshops at 1996 'Tropical Forests' Conference.</p> <p>(c) Financial support of Kuku Yalanji Fire Study (Rosemary Hill). No other recent projects identified. In the early 1990s WTMA funded a number of anthropological, archaeological, and ethnobotanical projects.</p>
<p>36. CMAs as basis for Joint Management: The Authority agrees that joint management in the Wet Tropics should revolve around the development of legally binding and fair cooperative management agreements amongst stakeholders</p>	<ul style="list-style-type: none"> • It is important to note that this particular approach falls far short of Bama expectations for 'joint management'. CMAs do not provide Bama with the decision-making powers they so desire (especially in the context of permits). • Many Bama see CMAs as a 'beads and mirrors' approach (ie. tokenistic) to the negotiation of meaningful shared management arrangements. • There have not been any CMAs developed to date with Aboriginal interests.
<p>37. Coordinating and Facilitating CMAs: The Authority will seek to play an important role in coordinating and facilitating the negotiation of cooperative management agreements. The Authority will adopt a flexible approach for establishing cooperative management agreements, allowing agreements to reflect differing local circumstances.</p>	<ul style="list-style-type: none"> • No CMAs with Aboriginal people are currently in place for any tenure in the WTWHA. • DoE are currently developing an agreement for Barron Gorge National Park. WTMA has played only a very minor role in this project • This <i>Review</i> is recommending that WTMA plays an integral role in developing and implementing a staged Interim and Final land management Agreement for the WTWHA. This is not strictly speaking a CMA as provided by the Act and the Wet Tropics Plan. • The big issue is the need for WTMA to be able to broker a more coordinated, consistent, and effective approach to WTWHA management across all tenures in a bid to facilitate an improved and more meaningful approach to Aboriginal involvement.

Appendix 1b

Table II. A commentary on the ‘joint management’ policies not formally endorsed by the Wet Tropics Board in 1994 following recommendations arising from the Dale and Lane reports (both 1993).

Note

- The numbers appearing in the ‘POLICY’ column relate to a specific recommendation from Dale (1993) identified by that particular number. For further commentary (particularly from an Aboriginal perspective) on WTMA ‘joint management’ and other policy issues refer to Bama Wabu (1996).
- The following recommendations were rejected or put ‘on hold’ by the Board at Board Meetings 13 (19-20 Aug. 1993) and 14 (14-17 February 1994)

POLICY	REVIEW COMMENTARY
<p>4. Native Title and Wet Tropics Bill</p> <ul style="list-style-type: none"> • The Authority should ensure that the Wet Tropics Bill does not affect Native Title 	<ul style="list-style-type: none"> • Rejected by virtue of the fact that this was the responsibility of the Minister and not the Authority to make such an undertaking. • The Authority is bound by a ‘whole of government’ approach to native title issues, with the Qld Dept. of Premier and Cabinet being the lead agency. WTMA has not been in a position to independently determine its own policy and direction with respect to native title.
<p>6. Recommendation to Ministerial Council to:</p> <ul style="list-style-type: none"> • notify Aboriginal groups of any decision to appoint an Aboriginal person to the Board • seek advice from Aboriginal groups for a suitable person • select a person from the Wet Tropics Area 	<ul style="list-style-type: none"> • Recommendations made to WTMC and duly noted. • Urgency overtaken by appointment of Noel Pearson to the Board • However, the process of selection of any replacement Aboriginal Board member is far from transparent. There is a need to negotiate a clear and accountable process with Rainforest Aboriginal people.
<p>7. Review of Management Scheme:</p> <ul style="list-style-type: none"> • The Authority to relay to Ministerial Council the view of the Rainforest Aboriginal Network that Aboriginal people should make up 50% of the team for the review of the Management Scheme 	<ul style="list-style-type: none"> • Relayed to WTMC; but overtaken by events ie. The postponement of the <i>Review</i> • Instead a separate review of Aboriginal involvement in the management scheme was proposed (viz. The Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area). • The <i>Review</i> has an all Aboriginal steering committee
<p>9. Review of Management Scheme: The Authority to relay to Ministerial Council the need to:</p> <ul style="list-style-type: none"> • review Aboriginal representation on the Community Consultative Committee • include the Joint Working Group (or equivalent) as part of the new agreement 	<ul style="list-style-type: none"> • As above identified as TOR 11 of the <i>Review</i> • See recommendations this report

<p>10. Review of Management Scheme: The Authority to relay to Ministerial Council the need to:</p> <ul style="list-style-type: none"> • review Aboriginal representation on the Scientific Advisory Committee 	<ul style="list-style-type: none"> • As above
<p>11. Review of Management Scheme: The Authority to recommend to Ministerial Council the need for the steering committee to consult with Aboriginal people, landholders & interested groups in assessing effectiveness of the management scheme</p>	<ul style="list-style-type: none"> • As per commentary for recommendations 7, 9, 10
<p>14. Joint Management as Fundamental Principle of Wet Tropics Plan: The Authority should promote joint management as a fundamental principle within the Wet Tropics Plan and in any ongoing process of implementation, monitoring, and review of the plan</p>	<ul style="list-style-type: none"> • Proposal was originally placed ‘on hold’ pending further discussion with Joint Working Group. • In effect the Authority’s conservative view of ‘joint management’ ie. ‘ <i>a cooperative approach to land management and planning which recognises both the responsibilities and interests of the Authority, primary landholders and recognised traditional custodians of land</i>’ is a key feature in the Plan through the CMA mechanism. However, as previously suggested, CMAs are a far cry from what Bama are looking for as a joint management mechanism. • Thus the intent of recommendation 14 from Dale (1993) has clearly not been met. However, it must be remembered that it was never formally endorsed by the Board.
<p>30. Land and Natural Resource Management Office: The Authority should, if requested, assist the broader Aboriginal community to establish a credible community-based Land and Natural Resource Management Office that seeks to operate in accordance with the 3 broad joint management principles outlined in the discussion paper (ie. Dale 1993).</p>	<ul style="list-style-type: none"> • Originally placed ‘on hold’ pending further information and discussion with Joint Working Group. Does not appear to have been formally considered further. • The ‘3 broad joint management principles’ are essentially basic principles for equitable and meaningful negotiation (see section 2.3.6.3 this report) and should be formally adopted by WTMA as part of its approach to negotiation. This is particularly important given the main recommendation from the <i>Review</i> to proceed towards the negotiation of a Regional Wet Tropics Agreement. • Any support for a community-based Land and Natural Resource Management Office needs to be a coordinated effort from WTMA, DoE, and DNR, and local government.
<p>31. Planning Principles: The Authority should adopt a number of basic principles (see original Dale report) in its Regional and Strategic Issues planning</p>	<ul style="list-style-type: none"> • Originally placed ‘on hold’. There was general agreement by the Board on the basic thrust of the recommendations, but some rewording was deemed to be required. • A slightly redrafted version was produced but does not appear to have been formally reconsidered by the Board. • The Bama Wabu report (1996; pp. 49-50)

	<p>suggests that only 2 out of the 13 recommended planning principles have been effectively followed through with by the Authority)</p> <ul style="list-style-type: none"> • These principles, with some modifications, are revisited in this current report in the discussion on ‘Principles, Guidelines, and Protocols’ (section 4.4 this report).
<p>32. Empowerment: The Authority should play a role in ensuring that disempowered land use interests, such as Aborigines, are involved in non-Authority based environmental planning processes in the Wet Tropics (eg. Integrated Catchment management, Environmental and Social Impact Assessment, Local Authority Planning, Regional Planning etc.)</p>	<ul style="list-style-type: none"> • This recommendation was rejected in its present form; no apparent reworking occurred. • Realistically the Authority is already hard pressed (particularly with respect to resourcing) to fulfil its own obligations towards Aboriginal communities under existing legislation and within its own areas of responsibility. Other areas may more effectively be the responsibility of land councils, ATSIC, and other state governments such as the Dept. Family Youth and Community Care (in the case of environmental and social impact assessment).
<p>38. Joint Management Development Principles:</p> <ul style="list-style-type: none"> • The Authority should adopt a number of principles in relation to the development of joint management agreements: • As the likely facilitator of negotiations on matters relating to Aboriginal management needs, the Authority should take account of the interests of those Aboriginal groups who have been dispossessed, and who do not enjoy title to their traditional lands • Joint management strategies adopted by the Authority should be facilitated to ensure fair planning processes and outcomes • DEH and the Authority should cooperate in the development of agreed approaches and protocols for the development of joint management agreements • To respect Aboriginal social systems, the Authority should recognise the pre-eminence of elders and Aboriginal Councils in any negotiations concerning traditional lands • Communities should be empowered to understand the role of various agencies and players who are likely to play a role within the joint management process. 	<ul style="list-style-type: none"> • Originally placed ‘on hold’. A slightly redrafted version was produced but does not appear to have been formally reconsidered by the Board. There is no record of further discussions with the DG of DEH. • DoE maintain responsibility for the development of management agreements for protected areas. • It is essential that any negotiation of agreements across tenures within the WTWHA areas is undertaken in a coordinated manner through a negotiating team representative of all the relevant government landholders. The ‘Aboriginal’ negotiating team also needs to be a coordinated and representative body, sufficiently resourced to enable full and equitable involvement in the process. • The issue of dispossession needs to be considered further, particularly in the light of possible amendments to the Native Title Act, and the potential loss of certain rights and interests. Currently both the Wet Tropics Plan and the Act refer to the need to consider the interests of Aboriginal people apart from native title holders who have an interest in, or are particularly concerned with the land. • The majority of Aboriginal people do not have a clear understanding of the roles and responsibilities of the various state agencies with respect to both day-to-day and ‘bigger picture’ policy issues. It is essential that the ARMP within the Authority undertakes the need for clarification as one of its priority roles.

	Aboriginal groups need to be clear about some of the 'ground rules' and what the interests of the relevant parties are before they can equitably participate at the negotiation table.
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Appendix 1c

Recommendations for a Review of WTMA Policy on Aboriginal Issues

The following recommendations are drawn from the commentary in Tables I and II above.

They serve to provide a basis for the revision and ongoing development of WTMA policy on 'joint management' and other related Aboriginal issues.

The figures in brackets relate to both endorsed WTMA policy (Table I) and those original Dale (1993) recommendations formally rejected or put on hold by the WTMA Board (Table II).

CMA Policy (2/29)

- That clear guidelines be established for WTMA staff involved in identifying potential CMA opportunities, responding to requests from Aboriginal groups wishing to enter into a CMA, or actually developing CMA proposals.
- That these guidelines provide:
 - advice and direction on native title issues
 - a checklist of all issues to be considered and precautions to be taken
 - an overview of priority CMA areas from a WTMA perspective including an account of what WTMA would be looking to gain from a CMA.
- That funding from WTMA to Aboriginal groups not be restricted to formal CMA proposals but continue to also occur in the form of grants to cover other relevant issues including:
 - policy development
 - workshop facilitation
 - community development planning
 - cultural heritage protection, interpretation, and assessment (in keeping with the possibility of listing on cultural grounds, and obligations under Article 4 of the World Heritage Convention)
 - assistance with community ranger training and community education and awareness programs.

Cultural Heritage Assessment (5)

- That the Commonwealth Department of Environment Science and Technology (DEST) fund a comprehensive cultural heritage assessment of the WTWHA in the 1998-1999 financial year in keeping with the principles of the assessment proposal devised jointly by WTMA and DoE, as presented to Ministerial Council in June 1997, and in keeping with the recommendations from the Sarah Titchen renomination strategy report.

- That a formal agreement describing a clearly defined set of protocols and procedures for the collection and storage of cultural heritage information be jointly developed with relevant Aboriginal groups and relevant State agencies. The bottom-line principle of such an agreement remains Bama ownership of cultural information and Bama control over access and use of this material.

Management Agreements (2/13)

- In the spirit of reconciliation and as a means of meeting existing and future cultural heritage protection and native title obligations (as defined by common law and native title legislation) that the WTMA (as well as relevant state and local government agencies) fully commit to the negotiation of an Interim and then the Final (Regional Wet Tropics Agreement) as proposed by the Review.

Community Liaison Officers (17/18)

- That improved resourcing and employment security be provided to the WTMA Aboriginal Community Liaison Officers in order to meet the original policy goal of long-term continuity of contact between Authority staff and various Aboriginal groups.

Cross-cultural training (17)

- That more effective and worthwhile cross-cultural training be afforded to WTMA advisory committee and Board members. That this training be undertaken in part through field trips and community visits on terms acceptable to host Aboriginal groups.
- That relevant WTMA staff, in addition to being afforded opportunities to attend formal cross-cultural training courses, also participate in collaborative field exercises/studies with host Aboriginal groups where a two-way exchange of knowledge takes place.

Budget allocation (20/21/22/23/28)

- That the Authority should review its minimum budgetary allocation to Aboriginal issues currently set at 5% to take into account the costs involved in the negotiation of the proposed Interim and Final (Regional Wet Tropics Agreement) and any other additional management requirements (such as the need for CMA development or the funding of permit referral mechanisms) as native title holders or other Aboriginal people with an interest in the region gain greater leverage in the overall management stakes.
- That policies relating to budgetary processes be clarified and more effectively communicated both within and outside of the Authority so as to improve the effectiveness of their implementation.

- That the Authority should continue its ongoing funding support for Bama Wabu given that this organisation is regarded as the most cost effective way of ensuring a coordinated and empowered Aboriginal voice in the management and negotiation stakes. Funding levels for Bama Wabu should be reviewed in line with any increasing demands on the organisation for greater involvement in WTWHA management processes.
- That the Authority develop and distribute a ‘plain-English’ information kit explaining budget cycles, timelines, application procedures, priority funding areas (ie. what the Authority is looking to gain from any financial or ‘in-kind’ provision of service) etc. in relation to any sources of WTMA funding (including CMAs) to Aboriginal groups.

Bama Wabu (29)

- That the Authority continue to support Bama Wabu as a peak representative and coordinating body.

Protection of culturally sensitive material (33)

- That the Authority negotiate an agreed approach with Rainforest Aboriginal people to the use, access rights, and storage of culturally sensitive material.
- That the Authority continues with the policy that culturally sensitive information belongs to the relevant Aboriginal community and that the Authority will not release or act upon such information without permission.

CRC TREM (35)

- That the CRC for Tropical Rainforest Ecology and Management, where appropriate, adopt a more proactive approach to the use of traditional ecological knowledge in its research, monitoring and advisory role.
- To this effect any flora and fauna surveys, or any ecological research should incorporate an indigenous knowledge component with discrete funding.
- That a CRC TREM research ethics committee implement appropriate research protocols based on the Balkanu principles (see section 4, this report) that include, among other things, intellectual and cultural property rights protection and appropriate Aboriginal communication and consultation principles.

Interim and Final (Regional Wet Tropics) Agreements (36/37/38)

- That the Authority move beyond the previous policy endorsing CMAs as the underlying framework for ‘joint management’ towards a position of developing more substantial management arrangements with Rainforest Aboriginal people

- That the Authority support the notion of a staged Interim and Final (Regional Wet Tropics) land management agreement between relevant government agencies and Rainforest Aboriginal people for the WTWHA as the basis for providing much of the shared decision-making outcomes that Rainforest Aboriginal people are looking for.
- That the Authority play an integral role in developing and implementing these agreements, in full cooperation with relevant land management agencies and Aboriginal groups and their representative bodies.
- To this effect the Authority should be sufficiently resourced by both State and Commonwealth governments, and have the full in principle support of all the relevant parties to the proposed agreements in order to undertake this coordination and facilitation role.
- That any negotiation of agreements across tenures within the WTWHA areas is undertaken in a coordinated manner through a negotiating team representative of all the relevant government land managers.
- That the Aboriginal negotiating team also needs to be a coordinated and representative body (with the majority support of Rainforest Aboriginal people), sufficiently resourced to enable full and equitable involvement in the agreement negotiation process.
- To this effect the Authority should, as part of its coordination and facilitation role, identify possible funding sources to sufficiently resource the ‘Aboriginal negotiating team’.
- That the relevant State and Commonwealth Departments give urgent commitment to identifying funding for the Interim Negotiating Forum facilitator position (to be located as a contracted position within Bama Wabu) as given in principle support by the Wet Tropics Board at meetings 23 and 24.

Aboriginal Board Member (6)

- That the Commonwealth undertake a more transparent process for the selection of its Aboriginal Board member that is open to the scrutiny of Rainforest Aboriginal people.
- That Rainforest Aboriginal people through Bama Wabu (or its equivalent) be afforded the opportunity to provide a nomination(s) for the Board position.

‘Protection Through Partnerships’

- That as a matter of priority WTMA implement the ‘Aboriginal issues’ policies identified in the ‘Protection Through Partnerships’ document.

Appendix 2a

A summary of the Conference Proceedings “Aboriginal Intellectual and Cultural Property: Definitions, ownership, and strategies for protection” - The Julayinbul Conference.

Julayinbul Conference Proceedings

No official working definition.

Rainforest Aboriginal Network Delegates

The delegates mainly talked about the knowledge of their country, that cultural heritage sites need to be protected and that their rights to hunt and gather in forest areas are restricted by National Parks and Department of the Environment.

- The impact of tourism operations on cultural heritage was of concern. Exploitation, misappropriation and use of cultural heritage knowledge by tourism operators was an issue raised. This included the financial benefits that non-Aboriginal tourist operators make from telling stories and making and selling artefacts.
- Ownership of intellectual property - David Buchanan: ‘We do a talk with the tourists on bush tucker and bush medicine and some stories. We tell them what they shouldn’t take away from the Gorge’ (p 25).
- Issues of developments destroying and disturbing cultural heritage sites. Including infrastructure and essential service development (David Buchanan, p 25).
- ‘ We’re not here to define - just to provide a framework’ (p 29).

Julayinbul Statement on Indigenous Intellectual Property Rights

Key Points

- “ Indigenous people share a unique spiritual and cultural relationship with Mother Earth which recognises the interdependence of the total environment and is governed by the natural laws which determine our perceptions of intellectual property”.
- “ Inherent in these laws and integral to that relationship is the right of Indigenous Peoples and Nations to continue to live within and protect, care for and control the use of that environment and of their knowledge”.
- “ We are capable of managing our intellectual property ourselves, but are willing to share it with all humanity provided that our fundamental rights to define and control this property are recognised by the international community”.

- “ Aboriginal intellectual property is an inherent inalienable right which cannot be terminated, extinguished, or taken”.
- Unauthorised use of intellectual property is prohibited.

Declaration Reaffirming the Self Determination and Intellectual Property Rights of the Indigenous Nations and Peoples of the Wet Tropics Rainforest Area.

Most of this declaration discusses inherent rights in relation to cultural heritage in wet tropical forest areas, including rights of self determination, rights to hunt and gather and rights to maintain spiritual and ceremonial practices. Mentions joint-management agreements.

Key Point

- “ That the intellectual property of the Indigenous Nations and Peoples of the Wet Tropics region includes and has always included the ability to discover and make what they deem appropriate use of new knowledge derived from their total environment: such as the discovery of new genotypes and the right to control subsequent use of and access to the genetic make-up within the flora and fauna of the forests” (point 5).

Appendix 2b

Relevant issues from Janke T. (1997) “Our Culture, Our Future. Proposals for the recognition and protection of Indigenous cultural and intellectual property” Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

Working Definition of Indigenous Intellectual and Cultural Property Rights

“Indigenous Cultural and Intellectual Property” refers to Indigenous Peoples’ rights to their heritage. Heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its Territory. Heritage includes:

Literary, Performing and Artistic Works (including songs, music, dances, stories, ceremonies, symbols, languages and designs)

- Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna).
- All items of movable cultural property
- Human remains and tissues
- Immovable cultural property (including sacred and historically significant sites and burial grounds).
- Documentation of Indigenous Peoples’ heritage in archives, film, photographs, videotape or audiotape and all forms of media.

Janke, 1997, p 25, AIATSIS.

This working definition has been adopted for the purposes of research and consultations.

What are the major concerns for indigenous people outlined in the Janke Paper?

Appropriation of Indigenous Arts and Cultural Expression

- Appropriation of indigenous arts and certain forms of cultural expression: performing, musical and artistic works including indigenous works, designs, motifs, symbols, artworks, songs, stories and dances. This expression and imagery is absorbed and marketed as part of the Australian identity. There is concern that these artforms are used without the prior knowledge and consent of the indigenous artist or artist’s community (p 27-28).

- Appropriation of words or languages for use in non-indigenous businesses is considered by some as exploitation and false advertising ⁴⁸ (p 28).
- Use and reproduction of secret/sacred material for commercial purposes - shown to inappropriate/unauthorised people (p 28).

Appropriation of Indigenous Knowledge

- Traditional knowledge of plants, animals and the environment is ‘used and misused by scientists, medical researchers, nutritionists and pharmaceutical companies for commercial gain’. Once a plant and its properties has been identified a pharmaceutical company takes out a patent on that plant. This ignores input of traditional knowledge, (see example of Smokebush in W.A, p 28).
- Traditional knowledge is regarded as common heritage and not as a ‘commodity’ for commercial exploitation. It is also the knowledge of a particular individual or group within indigenous societies (p 28).
- Exploitation of information given to researchers concerning the nutritional value of bushfoods (p 29).

Appropriation of Cultural Objects

- Movable cultural property such as artefacts and carvings are held by museums, universities and galleries. Indigenous people feel that a lot of this material was taken without ‘free and informed consent’. Some people also feel that it is inappropriate for these institutions to hold these objects. The objects are seen as part of living culture and not as items to be preserved (p 29).
- A number of indigenous peoples remains are held by museums and other collecting institutions. Concerns are related to spiritual beliefs that a persons spirit will not rest until it is ‘returned to its ancestral home and given the last rites in accordance with tradition’ (p 29).
- Concerns also relate to these institutions failing to disclose information and documentation regarding their collections of remains (p 29).
- Concern about lack of control over the ‘use of genes and tissues in genetic testing and screening projects such as the Human Genome Diversity Project’ (p 30).

Access and Management to land and sites

- The ‘unauthorised and inappropriate use of traditional sites and land is a major issue for indigenous people’ together with the lack of consultation regarding access to these sites.

⁴⁸ Quandamooka Lands Council Aboriginal Corporation’s Submission to Stopping the Ripoffs.

'Lack of consultation in relation to the tourism industry, conservation, management and presentation of sites is another concern' (p 31).

Documentation of Indigenous Peoples' Cultures

- The main issue with documentation of cultural heritage by: non-indigenous film-makers, anthropologists, researchers, archaeologists, government officials is that it is not owned by indigenous people. A lot of this information is stored in archives, museums etc. This also brings up issues of control. Aboriginal people often do not have a say in how this material is 'represented, accessed, used and disseminated' (p31).

Recording of Oral Tradition on Film and Audiotape

- Persons responsible for transcribing oral stories, information or knowledge are granted copyright over that material. A person that records or audiotapes a story or dance is recognised as owning that film or tape. Problems occur when the story or information is used or released in inappropriate ways or methods (p 31).

Recording of Indigenous Music

- There are concerns regarding recordings of songs and traditional music where indigenous musicians are not paid royalties for their recordings (p 32).

Impact of New Technology

- The growth of new technologies like CD ROM, the Internet and other on-line services raises issues of protection. Indigenous people are concerned of use of indigenous material by non-indigenous people (p 32).

Creation of Databases

- Creation of databases of indigenous cultural material held by government departments, universities, museums and archives raises issues related to control over the 'collection, administration and distribution of databases...that must be addressed' (Australian Film Commission in Janke, 1997,p 33).

Use of Indigenous Designs and Styles by Non-Indigenous Artists

- Non-indigenous artists and graphic designers use indigenous designs and images in their artwork - selling it as authentic Aboriginal work. Raises issues of appropriation of Aboriginal imagery (p 33).

Use of Indigenous images by other Indigenous Artists

- Appropriation of indigenous art styles, stories and themes by other indigenous artists not associated with that area (p 34).

Misleading Labelling on Products

- Labels that claim that the product is ‘authentic’; of ‘Aboriginal style’ or that royalties are paid to artists who designed the products (p 34).

Imported Goods being Passed Off as Authentic

- Boomerangs and didgeridoos are manufactured in countries where there are no copyright laws and then sold as authentic items in Australia. As these items can be mass produced they can be sold at cheaper prices than work done by Aboriginal people. The buyer believes they are buying genuine work (p 34).

High Resale Value of Artworks

- If an artwork appreciates in value through resale the artist does not receive any benefit (p 34).

Fraudulent Representations of Artworks

Works that are sold by art and antique dealers that are not painted by indigenous artists or are not as old as alleged. Issues of origin and the illegal procurement of some artworks and artefacts are of concern (p 34).

Key Reform Options

The major reforms outlined in the Janke report are possible legislative amendments to appropriate Acts or Legislation. These include the Copyright Act, the Designs Act, the Patents Act, the Trade Marks Act, Cultural Heritage Legislation, Museums and other Cultural Institutions Legislation, Archives Legislation, the Native Title Act and Broadcasting Laws.

Common elements or problems with current legislation:

- * Focuses on individual rights as opposed to collective rights of ownership and control.
- * Focuses on commercial interests.
- * No financial benefits, compensation or royalties to indigenous people.

(see page 47 for a good comparison of differing notions of Intellectual Property)

The legislative responsibilities and scope of the Wet Tropics Management Authority does not enable direct influence or power over amendments to these Acts. The best possible way to incorporate Indigenous Intellectual and Cultural Property Rights into the day to day operation of the Wet Tropics Management Authority is the adoption of a Code of Ethics for researchers or field workers and an information kit for Aboriginal

people outlining their rights, obligations and the issues to be aware of when working with scientists, researchers, academics, anthropologists, archaeologists etc.

Other suggestions that Janke includes are:

- **Code of Ethics:** Ethical guidelines and codes of ethics may set standards for appropriate and acceptable behaviour for researchers and practitioners. Although not legally binding ‘may inspire voluntary compliance and foster equitable partnerships between indigenous communities and those using their intellectual and cultural property’ (p89).
- **Government Policy:** Government departments should adopt policies that recognise indigenous peoples’ ‘rights to own and control their cultural heritage’ (p87).
- **Biodiversity Contracts:** In regard to the aspirations of indigenous people, the goals of conservation and sustainable use of genetic resources Woodliffe believes that certain matters have to be subject to clearly defined deeds and regulations (1995 in Janke, p 79). Woodliffe highlights issues such as: ‘Who determines access to resources and on what terms?’; How would compensation be calculated for all those who have invested in the discovery, use and continued existence of genetic resources? (in Janke, p 79).
- In regards to ethno-botanical samples informed consent is of primary importance.
- **Keeping Places:** National Keeping Place (ATSIC suggestion) and a national network of keeping places. This idea is in line with the decentralisation of collections into community-based indigenous museums or keeping places (p 82).
- **Medical and Scientific Research Guidelines:** National Health and Medical Research Council have produced ethical guidelines for indigenous research. (See Balkanu Draft Statement of Principles) (p 89).

Appendix 3

Extract from “Protection Through Partnerships” outlining WTMA policy and proposed actions in relation to Aboriginal issues within the WTWHA (WTMA 1997; pp 26-28)

1.4 Aboriginal involvement in management

DESIRED OUTCOME...

The desired outcome is recognition and appreciation of rainforest Aboriginal culture and meaningful Aboriginal involvement in management of the Area.

Background information

There are about 16 Aboriginal language groups and associated communities in the Area. It is one of the most culturally diverse and densely populated areas of Aboriginal association with the landscape in Australia. These communities have a traditional duty for managing their cultural heritage, which includes the natural environment. Yarrabah and Wujal Wujal are two Deed of Grant in Trust (DOGIT) communities which have statutory land management rights and responsibilities under the *Community Services (Aborigines) Act 1984*. Many other Aboriginal communities also wish to be meaningfully involved in managing the Area.

Aboriginal peoples wish to have the Area recognised as a living cultural landscape. The Aboriginal world-view is that the natural values and cultural values cannot be separated. Cultural values include the living, continuous traditions of the Aboriginal peoples who are associated with the Area. For this reason, Aboriginal involvement in land management is considered essential to maintaining their culture. Many Aboriginal people want the Area to be renominated for World Heritage listing on cultural grounds, in addition to natural grounds.

There is growing support for increased Aboriginal involvement in managing the Area. This has been acknowledged by the Queensland Government. For example, The preamble of the *Wet Tropics World Heritage Protection and Management Act 1993* states:

“(8) 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”.

Mechanisms for achieving greater Aboriginal involvement in management are provided under legislation such as the *Aboriginal Land Act 1991*, the *Commonwealth Native Title Act 1993*, the *Native Title (Qld) Act 1993*, or where the land is owned by Aboriginal peoples (e.g. DOGIT, freehold, etc.). These can range from information sharing and consultation arrangements between Aboriginal peoples and management agencies through to joint decision-making power. The *Nature Conservation Act 1992* and the *Wet Tropics World Heritage Protection and Management Act 1993* require the Department of Environment and the Wet

Tropics Management Authority to perform their functions, as far as practicable, in consultation and co-operation with Aboriginal peoples.

The Authority has been undertaking a *Review* of Aboriginal Involvement in Management of the Area at the direction of the Ministerial Council. The *Review* involves some 14 Terms of Reference, based on two main themes:

- recognising Aboriginal people's aspirations; and
- identifying ways of better meeting these aspirations through the evaluation of existing and potentially new mechanisms of involvement.

Management agreements under the *Wet Tropics World Heritage Protection and Management Act 1993* provide one mechanism for negotiating increased Aboriginal involvement in management of the Area.

Consultation and negotiation are necessary to identify issues, resolve conflicts and move towards the desired level of Aboriginal involvement in management.

Policies and actions

Discussions will continue with Aboriginal peoples to identify opportunities and mechanisms for facilitating their meaningful involvement in management.

Where practical, opportunities will be provided for Aboriginal peoples to be involved in relevant decision-making and consultative processes.

The Authority will actively encourage consultation on all aspects of management that will impact on the rights, interests or traditions of rainforest Aboriginal peoples.

The Authority will aim to achieve Aboriginal involvement in planning and management of the Area and information sharing through the negotiation of co-operative management agreements under the *Wet Tropics World Heritage Protection and Management Act 1993*.

Processes for negotiating and consulting with Aboriginal peoples need to be culturally sensitive and recognise cultural differences.

In conjunction with relevant Aboriginal peoples and government agencies, the Authority will develop:

- a range of informal and formal information sharing and consultation arrangements between Aboriginal peoples and management agencies, which are sensitive to the particular needs of the Aboriginal community concerned;
- culturally appropriate and understandable formats for sharing management information with Aboriginal peoples;
- an agreed cultural protocol and code of ethics which addresses all facets of Aboriginal involvement in planning and management of the Area;

- a strategy for training and employing Aboriginal staff;
- educational and interpretive materials highlighting the contribution of Aboriginal peoples to planning and management of the Area;
- a cultural protocol and code of ethics for non-Aboriginal consultants and researchers; and
- a policy on intellectual property rights.

The Authority will facilitate research into Aboriginal traditional land management practices and the potential use of these practices in managing the Area.

The Authority will seek traditional Aboriginal knowledge of the distribution, status and conservation aspects of plants and animals and, where appropriate, use this information in management strategies.

The Authority will amend policies and actions in light of the results of the *Review of Aboriginal Involvement*.

The *Review* is expected to identify and develop:

- appropriate mechanisms for proceeding towards a memorandum of understanding or regional Wet Tropics agreement between government agencies and rainforest Aboriginal peoples;
- an agreed co-ordinated approach to Aboriginal involvement in World Heritage management; and
- a range of practical measures to involve Aboriginal peoples in all levels of management.

The *Review* deals with a range of policy areas beyond the scope of the Plan.

Joint management

The Authority will encourage development of joint management agreements.

Where land is national park, Aboriginal involvement in management will be negotiated between the Department of Environment and Aboriginal peoples in accordance with the provisions of the *Nature Conservation Act 1992*. Aboriginal involvement in national park management may include co-operative management arrangements or joint management arrangements. The Department sees joint management as an option where the land is Aboriginal land or where native title rights exist. Where agreed by all parties, the Authority may facilitate negotiations and become a party to management agreements. Where policies and activities of the Authority affect Aboriginal involvement in national parks, these will be developed and implemented in partnership with the Department of Environment.

The fundamental role of the Authority in negotiating or facilitating management agreements is to ensure achievement of the Primary Goal for the Area and ensure Australia's obligations under the World Heritage Convention are being met. The Authority will seek to do this while respecting Aboriginal culture, and liaising with Aboriginal peoples.

Under management agreements the Authority may provide for financial, scientific, technical and other assistance for Aboriginal peoples to contribute to achieving the Primary Goal for the Area.

Management agreements must include, and have the support of, the land manager or owner.

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