

Operational policy

Community and other relations

Indigenous partnerships in management of protected areas

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of National Parks, Sport and Racing. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Purpose

The Queensland Parks and Wildlife Service (QPWS) has a range of partnership arrangements with traditional owners across Queensland. This policy is designed to give guidance to QPWS operations in selecting the best form of partnership arrangements to meaningfully involve traditional owners in management of national parks.

Background

Both the *Nature Conservation Act 1992* (NCA) (sections 5 and 6) and the Master Plan for Queensland's Park System (principle 4) set out requirements to form active partnerships with traditional owners and co-operatively involve traditional owners in management of protected areas and the conservation of nature. In addition, the *Commonwealth Native Title Act 1993* (NTA) provides a legislative framework for recognising and protecting native title rights and interests. Where native title rights and interests exist, the State must deal with them in accordance with the NTA. High Court decisions made in 2002, specifically *Yorta Yorta* and *Ward*, have clarified the meaning of native title rights and interests, some of which may have survived on protected areas.

Day-to-day protected area operations requires close liaison with traditional owners in order to consider existing rights and interests as well as to build strong working relationships that will benefit protected area management.

Issues where liaison with traditional owners may need to occur include:

- National park management planning
- Transfer of forest areas and other tenures to protected areas
- Planning and management of capital works
- Dedication of proposed new protected areas
- Arrangements for traditional owner involvement in natural resource management
- Development of commercial nature-based tourism ventures in protected areas
- Settlement of a native title claim over a protected area
- Management of cultural heritage places on protected areas.

There is general recognition that partnerships with traditional owners can achieve conservation outcomes that benefit the parks system. QPWS seeks to establish partnership arrangements with traditional owners in a mutually appropriate and agreeable form.

Additionally, some traditional owners have demonstrated a wish to initiate the development of partnership arrangements to enhance estate management and meet their aspirations.

The process of developing meaningful and workable arrangements for the involvement of traditional owners in protected area management will be dynamic, and different approaches will be required depending on the individual circumstances of each case. QPWS will seek to establish robust Indigenous partnership arrangements that are mutually appropriate to each circumstance.

Policy context

Policy statements are shown within text in bold type.

1. Native Title

Native title is founded on the traditional laws and customs of an Indigenous community that existed at the time of European settlement. Native title rights and interests may be exclusive (to the exclusion of all others) or non-exclusive (where the rights of others co-exist). For native title to survive, traditional laws and customs must have been acknowledged and observed since European settlement without substantial interruption. In the High Court decision in *Mabo and others v State of Queensland (No.2)* (1992), Justice Brennan said “..when the tide of history has washed away any real acknowledgement of traditional law and any real observance of traditional customs, the foundation of native title has disappeared”.

Native title may exist over QPWS managed areas. QPWS will manage protected areas assuming native title rights and interests exist until a determination of native title is made by the Federal Court or alternatively, extinguishment of native title is established. QPWS managed areas in Queensland where the Federal Court has made a determination of native title include Barron Gorge National Park (Djabugay), Grey Peaks National Park and Malbon Thompson Forest Reserve (Mandingalbay Yidinji), Wooroonooran National Park (part) and Topaz Road National Park (Ngadjon Jii), proposed additions to Daintree National Park and Cedar Bay National Park (Eastern Kuku Yalanji), Piper, Quoin and Forbes Islands National Parks (Kuuku Y’au), Girramay National Park (Girramay) and Wooroonooran National Park (part), the Gadgarra Forest Reserve and Gillies Highway Forest Reserve (Dulabed/Malanbarra Yidinji). In each case of a determination of native title over a national park, an Indigenous Land Use Agreement (ILUA) has been negotiated to regulate how native title rights and interests will be exercised on the park.

An application to the Federal Court for a determination of native title must pass a registration test. A determination of native title may be made by consent if negotiation has worked and all the parties agree. If the parties have not been able to agree, then a determination may be made by the court as a litigated determination. All the determinations of native title over protected areas in Queensland have been consent determinations. **QPWS will endeavour to settle native title claims over protected areas through mediation and by consent.**

Under the NTA section 211, native title holders are exempt from obtaining a permit to exercise their native title rights if a permit is ordinarily required. Some traditional owners may assert that native title rights and interests exist on a protected area before there has been a determination by the Federal Court. In these circumstances, the NTA section 211 may not be a defence if it is subsequently found that native title does not exist.

Native title work procedures set out the classes of activity that require native title notification. Formal notification procedures should be followed regardless of any specific discussions with native title claimants relating to protected area management. Discussions with native title parties may provide opportunities to discuss issues that trigger notifications, but cannot replace formal notification requirements.

ILUAs are legal contracts that validate certain actions affecting native title. Once an ILUA is registered, any future acts that are subject to the ILUA are valid (under the NTA, section 24EB(2)). An ILUA binds not only the signatories to the agreement, but also all native title holders who are not already parties to the agreement.

QPWS negotiated an ILUA with Ma:Mu people for the construction of the Mamu Canopy Walk in Wooroonooran National Park, and with Erubam Le and Wuthathi people for the dedication of Raine Island National Park (Scientific). QPWS also negotiated ILUAs for the establishment of new national parks in Cape York Peninsula including Melsonby (Gaaraay) National Park, Annan River (Yuku Baja-Muliku) National Park, and Jack River National Park. **Beginning negotiations of an ILUA should not start without prior approval of the Assistant Director-General QPWS.**

Where native title is not affected, robust partnerships can be achieved through other types of agreements such as a Memorandum of Understanding or an agreement under s.34 of the NCA.

2. Aboriginal Cultural Heritage Places

Aboriginal cultural heritage places on protected areas are protected by both the *Aboriginal Cultural Heritage Act 2003* and *Nature Conservation Act 1992* (section 17). **A cultural heritage assessment should be undertaken as part of capital works planning for any new capital works projects on protected areas.** The cultural heritage assessment may give rise to the need for a cultural heritage management plan under the *Aboriginal Cultural Heritage Act 2003*, part 7.

Native title rights and interests are separate and distinct from traditional owners' knowledge and responsibilities about cultural heritage places. Generally even where native title rights and interests have been extinguished, the rights and responsibilities of traditional owners as custodians of cultural heritage places continue. The *Aboriginal Cultural Heritage Act 2003*, sections 34 and 35, make a connection between a native title party (which includes a registered native title claimant) and an Aboriginal party for the purposes of defining an Aboriginal party. **QPWS will seek to protect Aboriginal cultural heritage places on protected areas in accordance with the operational policy and procedural guide Management of Cultural Heritage Places on Protected Areas.**

3. Claimable National Parks Under the *Aboriginal Land Act 1991*

The *Aboriginal Land Act 1991* (ALA) section 24 provides for national parks to be available State land that may be declared by regulation to be claimable land. Outside of Cape York Peninsula only three national parks have been declared by regulation to be claimable land - Cedar Bay National Park, Boodjamulla (Lawn Hill) National Park and Simpson Desert National Park.

A claim over a national park under the ALA is referred to the Land Tribunal and is considered on either the grounds of traditional affiliation, historical association or economic or cultural viability. If the claim is established, the Land Tribunal must recommend to the Minister (administering the ALA) that the land is granted. The Minister administering the ALA must appoint trustees for the benefit of the grantees (the Aboriginal people concerned). If the grantees of the land and the Minister (administering the NCA) agree on a proposal for the lease of the land to the State for the purposes of being managed as a national park, a management plan must be prepared. The dedication of a national park (Aboriginal land) cannot be made until a management plan has been approved by Governor in Council. To date no dedications of national park (Aboriginal land) have been made, despite the successful establishment of claims before the Land Tribunal, because claimants have not agreed with leaseback arrangements. **While leaseback arrangements are unacceptable to claimants, national parks declared to be claimable land will be managed under the management principles of the NCA, section 17 (not section 18).**

4. National Parks (Cape York Peninsula Aboriginal land)

The *Cape York Peninsula Heritage Act 2007* introduced measures to protect the natural and cultural values of the Cape York Peninsula Region, provide economic opportunities for Indigenous communities, and ensure future development is sustainable. It contains specific provisions plus amendments to a number of existing Acts, in particular the NCA and the ALA.

The Act provides for an innovative model for tenure resolution by creating a new class of protected area under the NCA called national park (Cape York Peninsula Aboriginal Land) - national parks (CYPAL). National parks (CYPAL) may be created over an existing national park, Aboriginal land, and unallocated State land (USL) in the Cape York Peninsula region (which is defined by reference to a map held by DERM).

Traditional owners (represented by a land trust) are formally recognised as the owners of the land through granting of Aboriginal freehold title, provided they agree to the area being managed as a national park (CYPAL) in perpetuity under the NCA. Thus national parks can co-exist with Aboriginal freehold land, without the need for a leaseback arrangement.

Joint management arrangements for national parks (CYPAL), between the land trust and QPWS, will be established through the development of an Indigenous Management Agreement (IMA). The IMA will provide the framework that establishes the ongoing relationship between the parties for the management of the national park (CYPAL) and describes their respective roles and responsibilities and strategic management directions. An IMA is attached as a schedule to an Indigenous Land Use Agreement (ILUA) so that the ILUA provides consent to the provisions on the IMA that may affect any native title rights and interests. Five national parks (CYPAL) have been declared (Alwal, Errk Oygangand, KULLA (McIlwraith Range), Lama Lama and Marpa).

5. Protocols for Consultation and Negotiation with Aboriginal People

Two general protocols for all Queensland Government officers exist and should be used as a general guide when consulting and negotiating with Aboriginal people

The Department of Premier and Cabinet promulgated a protocol for all Queensland Government officials in December 2005 for the Acknowledgement of Traditional Owners. This protocol makes the distinction between acknowledgment of traditional owners, which should be done by all Queensland Government officials, and a Welcome to Country, which is performed by traditional owners to open a significant event or formal function.

Protocols for Consultation and Negotiation with Aboriginal People was promulgated in May 1998 as a guide to Queensland Government officers who at some time need to consult with Indigenous groups, individuals and communities. This protocol articulates a definition of Aboriginality as a person of Aboriginal descent, who identifies as an Aboriginal person, and who is accepted as such in the community in which they live. **QPWS officers should use these protocols for the acknowledgement of traditional owners for a definition of Aboriginality.**

6. Ministerial Advisory Committees

The provision under the NCA section 132 to establish a Ministerial Advisory Committee offers a workable alternative to informal working groups, providing a statutory acknowledgement of the role of traditional owners in managing protected areas. Currently there is one Ministerial Advisory Committee for Boodjamulla (Lawn Hill) National Park. **Negotiation of establishment of a Ministerial Advisory Committee should not be started without first obtaining prior approval of the Assistant Director-General QPWS.**

7. Indigenous Protected Areas

The Australian Government has, in recognition of the significance of the natural and cultural values of land held by Indigenous people, introduced a system whereby Indigenous landholders can enter into a voluntary agreement with the Commonwealth to manage the land for conservation. These Indigenous Protected Areas (IPAs) thus add to the overall national conservation estate, although they are not protected by law and are dependent on self declaration by the Indigenous landholders. In this sense, IPAs do not fulfil the National Reserve System definition of a protected area as formally protected by law and managed in perpetuity for conservation. The Australian Government provides funds for IPAs for the development of a management plan and ongoing implementation.

IPAs are most effective where a tripartite agreement is established between the Indigenous land holders, the relevant State agency and the Australian Government. A Conservation Agreement under the NCA section 45 over an Indigenous Protected Area would establish a nature refuge and provide for its formal protection. **QPWS prefers tripartite agreements with IPAs between the Australian Government, the State Government and the Indigenous land holders to ensure the land is formally protected by law and managed for conservation in perpetuity.** Indigenous rangers funded under the IPA program, and employed by Indigenous organisations, may be appointed as Conservation Officers under the NCA following successful completion of appropriate investigation officer training. A separate Procedural Guide Defining the role of QPWS ranger staff employed in Indigenous specified and identified roles should be used regarding the role of Indigenous rangers employed by QPWS.

8. Traditional Use of Marine Resources Agreements

Marine park zoning plans under the *Marine Parks Act 2004* provide for Traditional Use of Marine Resources Agreements (TUMRAs). A TUMRA is defined in the zoning plans as an agreement that:

- is prepared by a traditional owner group
- provides for traditional use of marine resources in part of the marine park
- includes the prescribed matters for a Traditional Use of Marine Resources Agreement

The zoning plan provides for the chief executive to accredit a Traditional Use of Marine Resources Agreement.

If native title rights and interests have not been determined for the marine park, QPWS officers should not negotiate a TUMRA that is inconsistent with the provisions of the NCA.

Policy Statement

Partnerships with Traditional Owners on Protected Areas

While each protected area will differ, the following components cover the range of initiatives that QPWS may discuss with traditional owners in structured negotiation of partnerships. Note that these are presented as a range of partnership options and are not absolute requirements for every situation.

1. Working groups may be established to address specific management outcomes over a defined timeframe. These working groups may negotiate protocols for issues such as fire management, pest plant and animal management, visitor and commercial activities, and cultural heritage management.
2. A management plan working group may be established to specifically address the development of a national park management plan.
3. Employment opportunities may be explored using Indigenous identified and specified positions, casual positions and permanent appointments. Additionally, there may be a commitment to explore commercial opportunities for traditional owners through their involvement in management and presentation of the protected area's natural and cultural resources.
4. Living areas and hunting on protected areas may be considered, but will require considerable discussion and negotiation on scope and procedures, depending on the area's size and location and the extent of visitor use of the area.
5. Park names and names of sites within protected areas may be drawn from Indigenous languages to recognise traditional owner's connection to land.

These components can be used singly or in combinations. They can be used to initiate new arrangements or to build on existing ones, depending upon the particular circumstances existing on the protected area, the collective capacity to resource them, and the aspirations and capacity of traditional owners to engage in them.

The approval of the Assistant Director-General QPWS is required prior to negotiating initiatives outside of these partnership components. Joint management of national parks in Queensland is a term that is confined to the area covered by the *Cape York Peninsula Heritage Act 2007*. For other areas in Queensland outside of Cape York Peninsula, the term co-operative involvement in management of national parks is consistent with legislative and policy settings.

Reference materials

Queensland Government Native Title Work Procedures
Guidelines for Negotiation of an Indigenous Land Use Agreement (2006)
Australia's Strategy for the National Reserve System 2008-2030
Master Plan for Queensland's Parks System (2001)
Protocols for Consultation and Negotiation with Aboriginal People (1998)
Acknowledgement of Traditional Owners (2005)
Procedural guide – Indigenous partnership arrangements

Authorities

Nature Conservation Act 1992
Aboriginal Land Act 1991
Native Title Act 1993 (Cth)
Cape York Peninsula Heritage Act 2007
Marine Park (Great Barrier Reef Coast) Zoning Plan 2004
Aboriginal Cultural Heritage Act 2003

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of National Parks, Sport and Racing should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

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Signature

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Date

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