Legislative changes in Queensland that aim to protect its ‘wild’ rivers will have important impacts on the planning and approval process in that jurisdiction.

Inside:

Queensland wild rivers legislation

A framework for the protection of wild rivers will be established under new legislation introduced in Queensland. Senior Associate Philip Murray looks at how the proposed regime will operate and identifies some impacts on existing and future development and resource allocation.

The legislation’s beginnings

The Queensland Government has introduced the Wild Rivers Bill 2005 to implement a 2004 Queensland State election commitment to protect Queensland’s wild rivers.

The Wild Rivers Bill does not itself identify or designate any wild rivers. Its purpose is to set up a framework for declaring rivers to be wild rivers. Declared wild rivers are to be given a level of protection which is less than in a National Park but higher than that achieved by applying the principles of ecologically sustainable development.

What is a wild river?

The structure of the framework means there is an unfortunate degree of uncertainty about where and when the impacts of the Bill may be felt.

The Bill does not define what is a wild river. However, the purpose of the Bill is to preserve rivers which have all, or almost all, of their natural values intact.

According to the explanatory notes to the Bill, the degree of naturalness will be the primary criterion and a high degree of naturalness and largely unmodified natural values such as water quality, riparian and wildlife corridor functions and natural water and sediment flow throughout the river system will increase the likelihood of a nomination for wild river status.

The extent of the rivers which ought to be protected by the Bill has already generated some lively debate.
The original policy identified 17 potential wild rivers in Cape York and the Gulf of Carpentaria.

Conservation groups have called for 60 rivers throughout most of Queensland to be considered for declaration as wild rivers.

Ultimately, it will be a political decision as to which rivers are nominated and when.

**Wild river areas**

Parties with interests within a catchment and not just those in or close to the river itself may be affected by a wild river declaration and will need to actively monitor whether a river has been nominated and the extent of the proposed wild river area.

Wild river status is conferred on a wild river area which can be in any part of the state and will include the river and all or part of its catchment.

All wild river areas will be divided into two basic units, the preservation area and the high preservation area.

The high preservation area will be closest to the river and most closely connected to its natural values.

The high preservation area will be comprised of:

- the wild river, its major tributaries and a surrounding buffer of up to 1km on either side; and
- any special features such as wetlands or connecting land surrounding a gorge which are off stream but connected to the river network and play a significant role in maintaining its natural values.

The preservation area is the balance of the overall wild river area other than the high preservation area.

Identification of these different areas will be important because most prohibitions on activities are likely to occur within the high preservation area.

Some wild river areas may also be overlaid with either a flood plain management area or a sub-artesian management area. These provide separate mechanisms for regulation of activities that may impact on relevant natural values of a particular flood plain or aquifer eg providing ground water discharge for base flows of the river.

**How is a wild river declared?**

The process for declaring a wild river area involves:

- publication of a notice of intent to declare a wild river area;
- preparation and public notification of a proposal for the wild river area setting out all components of the area and details of how activity in it is to be controlled;
- a community consultation process;
- public submissions on the proposal;
- a decision by the Minister whether or not to make the declaration; and
- notification in the Government Gazette of the Governor-in-Council approved declaration.

Only the Minister can start the process and there are no rights for members of the public to nominate a river for consideration as a wild river area.

**Effects**

**Moratorium effect**

To maintain the status quo whilst the natural values and suitability of a proposed wild river area are being considered, the notice of intent acts as a moratorium which (subject to limited exceptions) freezes all existing applications and prevents any new applications:

- for water entitlements or works in watercourses in the wild river area;
- to clear native vegetation in the proposed high preservation area;
- for most mining tenements within the proposed high preservation area or within a water course or lake anywhere within the proposed wild rivers area.

**Effect on existing activities, approvals and applications**

Activities or the taking of natural resources which, before the wild river declaration takes effect, were either lawful or authorised can continue or start as if the declaration had not been made.

Once the wild river declaration takes effect, applications frozen by the moratorium must be decided as if the declaration had not been made.

**Effect on future activities, approvals and applications**

The effect of a wild river declaration varies depending on the location and nature of future activities proposed after the declaration is in force.

**Effect of wild river declaration on mining**

Once a wild river declaration takes effect, new mining will be prohibited in the high preservation area and
in stream mining will be effectively prohibited in the balance of the wild river area.

In other areas, ie dry land outside the high preservation area, the wild river declaration is made relevant in the application and assessment process for environmental authorities for mining activities:

• applications for exploration, mineral development and mining lease tenements must include an environmental management plan which must state the ways in which it is proposed to minimise any adverse effect in the wild rivers area having regard to the wild rivers declaration; and

• decision makers (the Environmental Protection Agency, the Land and Resources Tribunal and the Minister) must consider the wild river declaration in making their decisions and imposing conditions on environmental authorities for mining activities.

Effect of declaration on petroleum activities

Petroleum activities have not been automatically prohibited in a wild river area. However, they can be regulated by the terms of the final wild river declaration.

As for mining, interaction with the wild river area will be assessed during the application process for environmental authorities for petroleum activities. The wild river declaration may set mandatory conditions for these authorities and must be considered when deciding whether or not to grant an environmental authority for a petroleum activity.

Effect on non-mineral resource allocation

Resource allocations for non-mineral quarry material within lakes and watercourses in a wild river area are prohibited.

Effect on water allocation and entitlements

The Bill itself does not place a limit on the amount of water which may be extracted from a wild river however, the declaration must set threshold limits for the taking of natural resources in the wild river area including of course water.

According to a press release by the Minister for Natural Resources and Mines, it is proposed to limit to one percent the amount of water which will be allowed to be drawn annually from wild rivers.

Whilst a wild river declaration will not affect existing water entitlements, it will prevail over any existing water planning instruments (water resource plans and resource operations plans) to the extent of any inconsistency about granting, reserving or dealing with unallocated water or regulating overland flow water or sub-artesian water.

A wild river declaration will also be able to regulate any works necessary for taking or interfering with relevant overland flow water or sub-artesian water.

New dams will be prohibited on a wild river, its major tributaries and elsewhere in the high preservation area.

Effect of wild river declaration on agricultural activity

For the first time in Queensland, agricultural and animal husbandry activities will be regulated and in some instances prohibited.

New or materially intensified agricultural or animal husbandry activities will need a development permit under the Integrated Planning Act 1997 as will any works for those activities which a wild river declaration makes assessable development.

The Bill however makes it impossible to lodge a valid application for these activities in a high preservation area which effectively prohibits them.

Where the activities are not prohibited, in order to be approved, they must comply with the requirements of codes included in the wild river declaration.

Effect on other development under the Integrated Planning Act

A development permit under the Integrated Planning Act is necessary for a development which is made assessable under a planning scheme or schedule 8 of the Integrated Planning Act. Any new assessable urban, commercial or industrial development in a wild river area will also need to be assessed and approved against the wild river declaration and must comply with any applicable codes identified in the wild river declaration.

Many other aspects of non-mining development will have new requirements for approval and assessment under the Integrated Planning Act if they impact upon a wild river area.

How the various aspects of development are treated depends on the type of development involved and where it occurs within the wild river area.
More development is prohibited in the high preservation area, while development in the preservation area is more likely to be regulated rather than prohibited.

The regulation will often be by a code identified in the wild river declaration. However, if the requirements of the code cannot be complied with, the activity is effectively prohibited anyway because there is no scope for decision makers to justify an approval despite a conflict with the provisions of the relevant wild river code.

Effect of Wild River declaration on significant projects

The Wild Rivers Bill will also affect the assessment of significant projects under the State Development and Public Works Organisation Act 1971.

Such projects of State significance undergo a co-ordinated environmental assessment process which removes the need for the normal stages of the integrated development assessment process under the Integrated Planning Act relating to information request and referral to referral agencies.

However, where an application for development approval for a significant project is made after a wild river declaration takes effect, the information and referral stages will apply to permit consideration of impact on the wild river area and to allow for the imposition of conditions relating to the wild river.

The agency considering wild river matters can impose conditions which will override conditions required by the Co-ordinator General’s report prepared as part of the overall environmental assessment.

Exceptions

There are only two specific general exemptions from the legislation. They are for the Aurukun Mining Project and the Papua New Guinea Pipeline Project. According to the explanatory notes, these projects were exempted because of their importance to government and their potential to attract large investment interests.

There are limited exceptions to the prohibitions or approval requirements under the Integrated Planning Act for ‘specified works’ namely:

- infrastructure and works necessary for disaster management;
- the minimum necessary de-snagging for safe navigation; and
- road, railway, electricity, pipeline or cable infrastructure and works.

There are also some very limited exemptions for ancillary works to other permitted development.

What’s next

The Bill has been read once and will, according to the Minister’s press release, be debated ‘later in the year’. It has already generated substantial interest. Environmental groups have responded to the Bill calling for immediate changes to prohibit the construction of dams and weirs outside the main channel of major tributaries ie outside high preservation areas.

We will continue to monitor the legislation’s progress but if you have any queries about this or any other environment and planning issue please feel free to call.

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