Regulatory requirements for land and water development in the Northern Territory and Queensland

A technical report from the CSIRO Victoria and Southern Gulf Water Resource Assessments for the National Water Grid

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Aspects of the Assessments have been undertaken in conjunction with the Northern Territory and Queensland governments.

The Assessments were guided by three committees:

i. The Governance Committee: CRC for Northern Australia/James Cook University; CSIRO; National Water Grid (Department of Climate Change, Energy, the Environment and Water); Northern Land Council; NT Department of Environment, Parks and Water Security; NT Department of Industry, Tourism and Trade; Office of Northern Australia; Queensland Department of Agriculture and Fisheries; Queensland Department of Regional Development, Manufacturing and Water

ii. The joint Roper and Victoria River catchments Steering Committee: Amateur Fishermen's Association of the NT; Austrade; Centrefarm; CSIRO; National Water Grid (Department of Climate Change, Energy, the Environment and Water); Northern Land Council; NT Cattlemen's Association; NT Department of Environment, Parks and Water Security; NT Department of Industry, Tourism and Trade; NT Farmers; NT Seafood Council; Office of Northern Australia; Parks Australia; Regional Development Australia; Roper Gulf Regional Council Shire; Watertrust

iii. The Southern Gulf catchments Steering Committee: Amateur Fishermen's Association of the NT; Austral Fisheries; Burketown Shire; Carpentaria Land Council Aboriginal Corporation; Health and Wellbeing Queensland; National Water Grid (Department of Climate Change, Energy, the Environment and Water); Northern Prawn Fisheries; Queensland Department of Agriculture and Fisheries; NT Department of Environment, Parks and Water Security; NT Department of Industry, Tourism and Trade; Office of Northern Australia; Queensland Department of Regional Development, Manufacturing and Water; Southern Gulf NRM

Responsibility for the Assessments' content lies with CSIRO. The Assessments' committees did not have an opportunity to review the Assessments' results or outputs prior to their release.

This report was reviewed by Dr Ian Watson (CSIRO), Dr Cuan Petheram (CSIRO) and Seonaid Philip (CSIRO).

Acknowledgement of Country

CSIRO acknowledges the Traditional Owners of the lands, seas and waters of the area that we live and work on across Australia. We acknowledge their continuing connection to their culture and pay our respects to their Elders past and present.

Photo

Quaid's Dam, Queensland. Source: CSIRO – Nathan Dyer

Director's foreword

Sustainable development and regional economic prosperity are priorities for the Australian, Queensland and Northern Territory (NT) governments. However, more comprehensive information on land and water resources across northern Australia is required to complement local information held by Indigenous Peoples and other landholders.

Knowledge of the scale, nature, location and distribution of likely environmental, social, cultural and economic opportunities and the risks of any proposed developments is critical to sustainable development. Especially where resource use is contested, this knowledge informs the consultation and planning that underpin the resource security required to unlock investment, while at the same time protecting the environment and cultural values.

In 2021, the Australian Government commissioned CSIRO to complete the Victoria River Water Resource Assessment and the Southern Gulf Water Resource Assessment. In response, CSIRO accessed expertise and collaborations from across Australia to generate data and provide insight to support consideration of the use of land and water resources in the Victoria and Southern Gulf catchments. The Assessments focus mainly on the potential for agricultural development, and the opportunities and constraints that development could experience. They also consider climate change impacts and a range of future development pathways without being prescriptive of what they might be. The detailed information provided on land and water resources, their potential uses and the consequences of those uses are carefully designed to be relevant to a wide range of regional-scale planning considerations by Indigenous Peoples, landholders, citizens, investors, local government, and the Australian, Queensland and NT governments. By fostering shared understanding of the opportunities and the risks among this wide array of stakeholders and decision makers, better informed conversations about future options will be possible.

Importantly, the Assessments do not recommend one development over another, nor assume any particular development pathway, nor even assume that water resource development will occur. They provide a range of possibilities and the information required to interpret them (including risks that may attend any opportunities), consistent with regional values and aspirations.

All data and reports produced by the Assessments will be publicly available.

Chris Chilcott

Project Director

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Shortened forms

SHORT FORM	FULL FORM
AAPA	Aboriginal Areas Protection Authority (NT)
ACH Act	*Aboriginal Cultural Heritage Act 2003* (Queensland)
ALR Act	*Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
AMP	area management plan
ATSIHP Act	*Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)
CHMP	cultural heritage management plan
Cth	Commonwealth
EIS	environmental impact statement
Environmental Protection Regulations	Environmental Protection Regulations 2019 (Queensland)
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999* (Cth)
ERA	Environmentally relevant activity
IAR	impact assessment report
ILUA	Indigenous land use agreement
Land Act	*Land Act 1994* (Queensland)
Native Title Act	*Native Title Act 1993* (Cth)
n.d.	no date
NT	Northern Territory
NT EPA	Northern Territory Environment Protection Authority
NT Planning Act	*Planning Act 1999* (NT)
NT Water Act	*Water Act 1992* (NT)
Pastoral Land Act	*Pastoral Land Act 1992* (NT)
PMCH Act	*Protection of Movable Cultural Heritage Act 1986* (Cth)
Qld	Queensland
Queensland EP Act	*Environmental Protection Act 1994* (Queensland)
Queensland Planning Act	*Planning Act 2016* (Queensland)
Queensland Regional Act	*Regional Planning Interests Act 2014* (Queensland)
Queensland Water Act	*Water Act 2000* (Queensland)
TSICH Act	*Torres Strait Islander Cultural Heritage Act 2003* (Queensland)
Vegetation Management Act	*Vegetation Management Act 1999* (Queensland)

Units

UNIT	DESCRIPTION
GL	gigalitre
ha	hectare
m	metre
ML	megalitre

Preface

Sustainable development and regional economic prosperity are priorities for the Australian, NT and Queensland governments. In the Queensland Water Strategy, for example, the Queensland Government (2023) looks to enable regional economic prosperity through a vision which states 'Sustainable and secure water resources are central to Queensland's economic transformation and the legacy we pass on to future generations.' Acknowledging the need for continued research, the NT Government (2023) announced a Territory Water Plan priority action to accelerate the existing water science program 'to support best practice water resource management and sustainable development.'

Governments are actively seeking to diversify regional economies, considering a range of factors, including Australia's energy transformation. The Queensland Government's economic diversification strategy for north west Queensland (Department of State Development, Manufacturing, Infrastructure and Planning, 2019) includes mining and mineral processing; beef cattle production, cropping and commercial fishing; tourism with an outback focus; and small business, supply chains and emerging industry sectors. In its 2024–25 Budget, the Australian Government announced large investment in renewable hydrogen, low-carbon liquid fuels, critical minerals processing and clean energy processing (Budget Strategy and Outlook, 2024). This includes investing in regions that have 'traditionally powered Australia' – as the North West Minerals Province, situated mostly within the Southern Gulf catchments, has done.

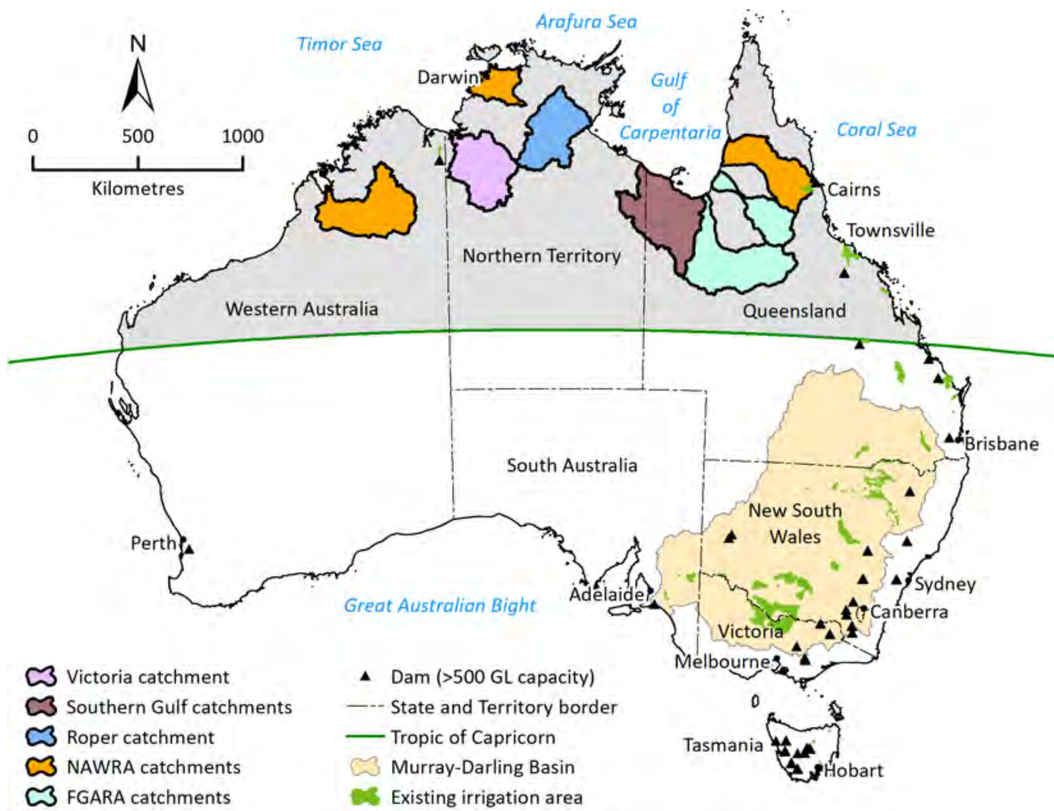
For very remote areas like the Victoria and Southern Gulf catchments, the land (Preface Figure 1-1), water and other environmental resources or assets will be key in determining how sustainable regional development might occur. Primary questions in any consideration of sustainable regional development relate to the nature and the scale of opportunities, and their risks.

How people perceive those risks is critical, especially in the context of areas such as the Victoria and Southern Gulf catchments, where approximately 75% and 27% of the population (respectively) is Indigenous (compared to 3.2% for Australia as a whole) and where many Indigenous Peoples still live on the same lands they have inhabited for tens of thousands of years. About 31% of the Victoria catchment and 12% of the Southern Gulf catchments are owned by Indigenous Peoples as inalienable freehold.

Access to reliable information about resources enables informed discussion and good decision making. Such information includes the amount and type of a resource or asset, where it is found (including in relation to complementary resources), what commercial uses it might have, how the resource changes within a year and across years, the underlying socio-economic context and the possible impacts of development.

Most of northern Australia's land and water resources have not been mapped in sufficient detail to provide the level of information required for reliable resource allocation, to mitigate investment or environmental risks, or to build policy settings that can support good judgments. The Victoria and Southern Gulf Water Resource Assessments aim to partly address this gap by

providing data to better inform decisions on private investment and government expenditure, to account for intersections between existing and potential resource users, and to ensure that net development benefits are maximised.



Preface Figure 1-1 Map of Australia showing Assessment areas (Victoria and Southern Gulf catchments) and other recent CSIRO Assessments

FGARA = Flinders and Gilbert Agricultural Resource Assessment; NAWRA = Northern Australia Water Resource Assessment.

The Assessments differ somewhat from many resource assessments in that they consider a wide range of resources or assets, rather than being single mapping exercises of, say, soils. They provide a lot of contextual information about the socio-economic profile of the catchments, and the economic possibilities and environmental impacts of development. Further, they consider many of the different resource and asset types in an integrated way, rather than separately.

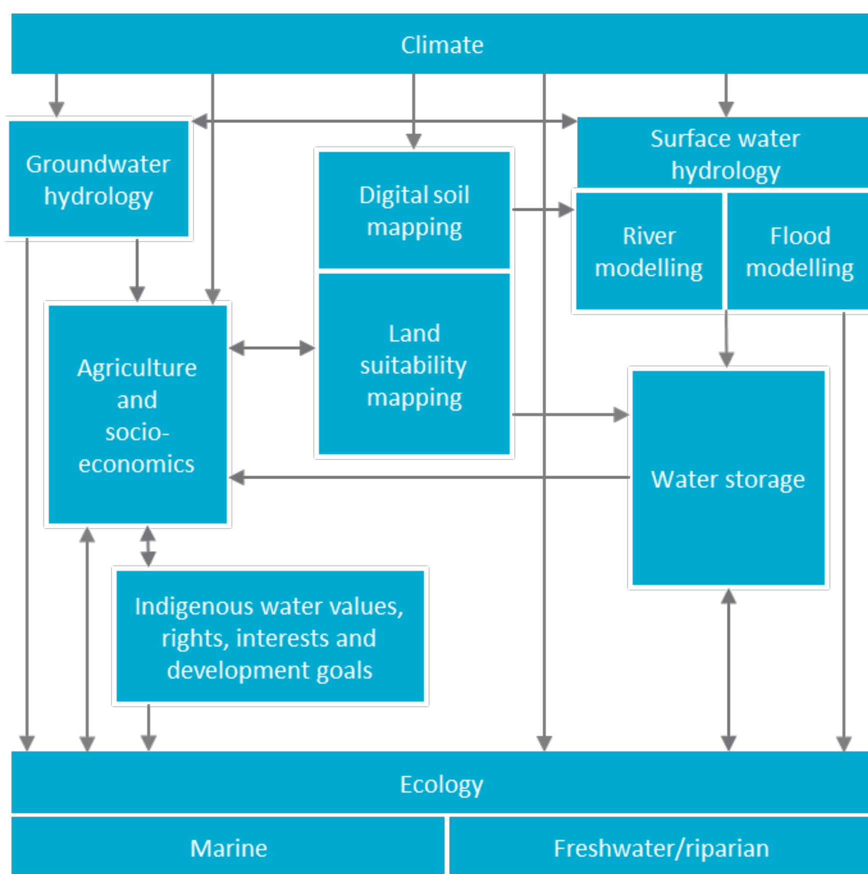
The Assessments have agricultural developments as their primary focus, but they also consider opportunities for and intersections between other types of water-dependent development. For example, the Assessments explore the nature, scale, location and impacts of developments relating to industrial, urban and aquaculture development, in relevant locations. The outcome of no change in land use or water resource development is also valid.

The Assessments were designed to inform consideration of development, not to enable any particular development to occur. As such, the Assessments inform – but do not seek to replace – existing planning, regulatory or approval processes. Importantly, the Assessments do not assume a given policy or regulatory environment. Policy and regulations can change, so this flexibility enables the results to be applied to the widest range of uses for the longest possible time frame.

It was not the intention of – and nor was it possible for – the Assessments to generate new information on all topics related to water and irrigation development in northern Australia. Topics not directly examined in the Assessments are discussed with reference to and in the context of the existing literature.

CSIRO has strong organisational commitments to Indigenous reconciliation and to conducting ethical research with the free, prior and informed consent of human participants. The Assessments allocated significant time to consulting with Indigenous representative organisations and Traditional Owner groups from the catchments to aid their understanding and potential engagement with their requirements. The Assessments did not conduct significant fieldwork without the consent of Traditional Owners.

Functionally, the Assessments adopted an activities-based approach (reflected in the content and structure of the outputs and products), comprising activity groups, each contributing its part to create a cohesive picture of regional development opportunities, costs and benefits, but also risks. Preface Figure 1-2 illustrates the high-level links between the activities and the general flow of information in the Assessments.



Preface Figure 1-2 Schematic of the high-level linkages between the eight activity groups and the general flow of information in the Assessments

Assessment reporting structure

Development opportunities and their impacts are frequently highly interdependent and, consequently, so is the research undertaken through these Assessments. While each report may be read as a stand-alone document, the suite of reports for each Assessment most reliably informs discussion and decisions concerning regional development when read as a whole.

The Assessments have produced a series of cascading reports and information products:

- Technical reports present scientific work with sufficient detail for technical and scientific experts to reproduce the work. Each of the activities (Preface Figure 1-2) has one or more corresponding technical reports.
- Catchment reports, one for each of the Victoria and Southern Gulf catchments, synthesise key material from the technical reports, providing well-informed (but not necessarily scientifically trained) users with the information required to inform decisions about the opportunities, costs and benefits associated with irrigated agriculture and other development options.
- Summary reports, one for each of the Victoria and Southern Gulf catchments, provide a shorter summary and narrative for a general public audience in plain English.
- Summary fact sheets, one for each of the Victoria and Southern Gulf catchments, provide key findings for a general public audience in the shortest possible format.

The Assessments have also developed online information products to enable users to better access information that is not readily available in print format. All of these reports, information tools and data products are available online at https://www.csiro.au/victoriariver and https://www.csiro.au/southerngulf. The webpages give users access to a communications suite including fact sheets, multimedia content, FAQs, reports and links to related sites, particularly about other research in northern Australia.

Executive summary

The report provides an overview of the regulatory regime and approvals that are required for land and water development in the Northern Territory (NT) and Queensland.

To undertake a land and water development, a proponent will need to:

- secure the appropriate land tenure
- secure the necessary authorisation to take water
- obtain necessary approvals to allow construction and operation of the development to proceed.

A summary of the key issues and considerations related to these matters is set out in Executive summary Table 1-1.

Executive summary Table 1-1 Key issues and considerations

ISSUE	DESCRIPTION	LEGAL AND REGULATORY CONSIDERATIONS
Land tenure	Development will need to secure appropriate tenure over the development site	Cth: native title requirements will apply in most cases where the land is not freehold. This is likely to require negotiation with the relevant Indigenous Peoples for the area, prior to undertaking development activities. NT: development on Aboriginal freehold land (45% of the NT) will require the consent of the Traditional Owners and approval from the Land Council. Development on pastoral lease land (43% of the NT) will require approval from the Pastoral Land Board for non-pastoral uses. Queensland: development on state land (including leasehold land) is subject to the requirements of the Queensland Land Act.
Water rights	Development will need to secure appropriate entitlement to take water	An entitlement to take water ('water access entitlement') will likely be in the form of a water licence (NT) or water entitlement (Queensland). Water access entitlements may, in specific circumstances, be traded from an existing entitlement holder, subject to meeting the requirements related to water trading as per the relevant water allocation plan (NT) or water plan (Queensland). Water access entitlements may be granted for a beneficial use identified in a water allocation plan (NT) or a water plan (Queensland). Water use will need to align with the purpose for the water as identified in the plan.
Planning requirements	Development will need to be consistent with local and state or territory planning requirements	NT: a single planning scheme applies across the NT. Proposed developments may be (i) permitted, (ii) merit assessable, (iii) impact assessable or (iv) prohibited. A development permit is required for (ii) and (iii). The NT Planning Commission may prepare a significant development report to support the assessment where developments are over a certain investment threshold. Queensland: a development permit is required for any activities that are 'assessable development' under a planning scheme or planning instrument. The development assessment process is coordinated in the case of matters of state interest, including vegetation clearing and the granting of environmental authorities. The activity has the potential to obtain an 'infrastructure designation' under the Queensland Planning Act, which would remove the need for a development permit for some activities. Regional interests development approval is required for broadacre cropping or water storage within a strategic environmental area.
Environmental approvals	Approvals for activities that have potential environmental impact, including for any building or	Cth: federal environmental approvals may be required if the development has the potential to affect Matters of National Environmental Significance. Environmental impact assessment requirements under federal law can be met using state and territory assessment processes, but the decision remains with the Australian Minister for the Environment and Water.

ISSUE	DESCRIPTION	LEGAL AND REGULATORY CONSIDERATIONS
	construction activities	NT: In addition to commonwealth requirements, the NT has the environmental impact assessment and approvals scheme under the Environment protection Act 2019. Assessment and approvals apply to activities with the potential to have a significant impact on the environment. Queensland: environmental approvals are required for 'environmentally relevant activities'. They may require an EIS. The application process is under the Queensland Planning Act development Assessment framework. Specific approvals required for activities in a national park.
Cultural heritage	Development may have an impact on cultural heritage, including Indigenous cultural heritage sites and/or objects	Developer will need to identify potential cultural heritage sites and/or objects. Searches of the NT Heritage register, the NT Aboriginal Areas Protection Authority (AAPA) register of sacred sites, the Queensland Heritage Register and the Queensland Cultural Heritage Register will be required. National heritage values will need to be considered through any EIS process under the EPBC Act. A cultural heritage management plan (CHMP) may be required, but regardless is likely to be advisable, for significant developments.
Works in a watercourse	Development may involve activities within a watercourse	NT: authorisation is required for interference with a watercourse (e.g. extraction of materials, construction within a waterway, or diversion of a watercourse). Queensland: a permit is required for interference with a watercourse, including for the construction of a barrier or for the removal of vegetation or quarry material.
Farming activities	Farming the land, including growing crops and/or trees, irrigation, and applying fertiliser and/or pesticides	Various obligations apply with respect to weed management, pesticide use, soil conservation, etc. Specific approvals are required for agricultural activities in the Great Barrier Reef catchments. New developments must demonstrate no net impact on key water quality parameters.
Clearing vegetation	Clearing of vegetation to allow for construction, or farming or other agricultural activities	Clearing of native vegetation is controlled and generally requires an authority, except for routine maintenance and day-to day management operations. NT: restrictions apply to both freehold land (including Aboriginal freehold land) and pastoral leases. A permit is required prior to clearing, save for limited exemptions. Queensland: clearing of vegetation is generally captured as assessable development under the Queensland Planning Act, in which case a development permit is required. Exemptions apply for routine maintenance and day-to-day management activities.

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1 Introduction

1.1 Background and purpose

This report is part of a body of work being undertaken on behalf of the National Water Grid Fund to assess the potential availability of land and water resources in northern Australia to support regional development, and in particular irrigated agricultural development. This report contributes to that work by identifying the legal and regulatory requirements that could apply to such development.

The report provides an overview of the regulatory regime and approvals that are required for land and water development in the Northern Territory (NT) and Queensland. The report describes regulatory arrangements related to water allocation and licensing, land tenure, cultural heritage, planning, land clearing, and broader environmental considerations.

The report is intended to provide a summary for an audience, including potential developers or investors, who are unfamiliar with the Australian, NT and Queensland legal and regulatory systems. The description of the legal and regulatory requirements is necessarily high-level and general in nature. Specific legal advice should be obtained prior to making any decision related to investing in or undertaking any development activity.

1.2 Assumptions and exclusions

The report assumes the development of land and water resources would involve some or all of the following:

- the taking and/or storage of water
- making the land suitable for farming and/or irrigation (for example, through clearing vegetation)
- farming activities, such as the irrigation and growing of crops.

The report excludes any consideration of fracking or mining activity. It also does not consider the specific regulatory regime that applies to water resources in the Murray–Darling Basin, part of which is located in southern Queensland, but which sits outside the focal area for the Southern Gulf Water Resource Assessment (Figure 1-1).

The report is focused on requirements related to planning, development and environmental approvals. There are various requirements that are not addressed in the report, such as regulatory requirements associated with on-farm practices (e.g. related to pest and weed management, and soil conservation). Similarly, ancillary legal requirements and considerations that may also be relevant to such a development which are not covered include:

- those related to the federal regulation of foreign investment under the Commonwealth's *Foreign Acquisitions and Takeovers Act 1975*
- the registration of foreign interests in agricultural land under the Commonwealth's *Register of Foreign Ownership of Water or Agricultural Land Act 2015*

- Commonwealth laws related to corporate governance, project structuring, and the raising of capital
- taxation matters
- state or territory laws related to payment of duties or tax on land or other dealings.

This report does not address these types of requirements. As noted above, specific legal advice should be obtained prior to making any decision related to investing in or undertaking any development activity.

1.3 Report overview

The report consists of the following chapters:

- Chapter 2 describes the overarching legal framework in Australia. It also includes a description of the key issues and considerations relevant to land and water development in the NT and Queensland.
- Chapter 3 relates to land tenure.
- Chapter 4 describes issues related to access to water.
- Chapter 5 describes relevant Commonwealth laws, notably those related to environmental and heritage protection. These laws generally apply in both the NT and Queensland.
- Chapters 6 and 7 describe relevant NT and Queensland laws related to land use planning, water resources management, environmental protection, and cultural heritage protection.

It also includes (as Appendix A) a table summarising the key issues, the related legal and regulatory considerations, the approvals process, and links to relevant guidelines or other resources.

2 Legal and institutional context

2.1 Overview

This section provides a high-level description of the legislative arrangements in Australia (including Queensland and the NT) and an overview of the types of legal and regulatory considerations that could apply to the development of land and water.

2.2 Constitutional arrangements and legislative powers

Australia is a federal constitutional monarchy that consists of six states (including Queensland) and two territories (including the NT).

There are three levels of government:

- the Australian Government
- state and territory governments
- local governments/councils.

Powers and responsibilities are shared between the Australian Government and the state and territory governments.

The decision-making body of the Australian Government is the Australian Parliament. The legislative power of the Australian Parliament is limited to specific heads of power identified in the Australian Constitution. State parliaments have broader legislative powers, in that they are responsible for those matters not listed in the Australian Constitution. The NT, as an administrative territory established by the Australian Parliament (and not a state), has been given similar powers to the states; however, the Australian Parliament retains a right of veto over all NT law.

Generally, the states and territories have primary responsibility for land, water and environmental policy and laws. However, the Australian Parliament has powers and has made laws related to:

- Matters of National Environmental Significance as per the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), including those arising from the World Heritage Convention, the Ramsar Convention on Wetlands of International Importance, and the Convention on Biological Diversity
- the native title rights of Indigenous Peoples as per the *Native Title Act 1993* (Cth) (Native Title Act).

Local governments are established within the states and territories, and in most Australian jurisdictions, including in Queensland, they have responsibility for land use planning. This involves establishing local planning schemes that regulate land use and development. This is not the case in the NT, where the planning system is administered by the NT Government (see Section 6.1). The decision-making body of a local government is usually a council.

Laws made by the Australian Parliament will generally apply to activities in both the NT and Queensland. Laws made by the Queensland and NT parliaments, or local laws passed by a local council, will only be applicable within their jurisdiction.

2.3 Undertaking a land and water development

A land and water development in Australia will, regardless of its size, require access to and authority to use both land and water for the purpose of the development. The size, the underlying land tenure (including any mining or petroleum interests), any existing use or infrastructure, and the environmental and cultural impact of the development will all affect the scope of the legal and regulatory processes. At the outset of any development proposal, as part of due diligence, a comprehensive review of the current land use, land tenure, existing infrastructure, and water resources in the development footprint will be required in order to establish the legal and regulatory approvals and considerations required.

To set the context, this chapter summarises the matters that a proponent of a major land and water development in the NT or Queensland will need to consider. More detailed information regarding the legislative and regulatory approvals is set out in subsequent chapters and is summarised in Appendix A .

The hypothetical development assumes:

- development of water resources through construction of (i) infrastructure (such as a pump) to take water from a watercourse, (ii) a water bore to access groundwater, and/or (iii) a water storage to capture and/or store water
- construction of water distribution infrastructure, such as pipelines or channels, to distribute the water
- works to make the land suitable for agriculture, such as through the clearing of vegetation and/or preparation for irrigation (e.g. laser levelling of the land)
- the undertaking of farming activities, such as the growing and irrigation of crops and the use of fertilisers and pesticides.

To undertake such a development, a proponent will need to:

- secure the appropriate land tenure
- secure the necessary authorisation to take water
- obtain the necessary approvals to allow construction and operation of the development to proceed.

The key considerations are set out in the checklist in Table 2-1.

Table 2-1 Development checklist

ISSUE	QUESTION	FURTHER CONSIDERATIONS
Land	What is the existing tenure of the development site?	• Is the existing land tenure suitable for the proposed development? • Are there any restrictions on the use of the land, based on its current tenure, that might have an impact on the development? • Can land tenure be granted or transferred to the developer, and are there any approvals required, beyond the agreement of the current owner/lessee of the land? • If necessary, can the existing land tenure be converted to a different (more suitable) form of tenure?
Native title	Is there native title over the land?	• Has native title been extinguished (e.g. is the land freehold?)? • Has a native title determination been made, or is one underway, for the land? • Is the proposed development inconsistent with the rights of native title holders? • Is an agreement with native title holders required in order to undertake the development? If so, who are the relevant parties?
Water	Is there sufficient and suitable water available for the development?	• Is it possible to purchase water access entitlements from existing water users? Can that water be transferred to the development site? • Alternatively, is there water available that can be accessed for the development? • Is the available water suitable for the development – in terms of quantity, quality, reliability of supply, particular types of use, and the location at which the water may be taken?
Planning	Is the proposed development able to be undertaken on the development site?	• What are the planning arrangements that apply to the development site? • Is the proposed land use consistent with the planning requirements? • Are there additional planning-related approvals required for the proposed activities?
Environment	Will the development have an impact on the environment?	• How might the development have an impact on the environment? • Is an environmental approval required? • Is some form of environmental impact assessment required in order to obtain an environmental approval?
Heritage	Will the development have an impact on cultural heritage?	• Will the development have an impact on a site or object of cultural heritage significance? • Has a search been undertaken of all relevant cultural heritage registers? • Is a cultural heritage management plan required or desirable?

2.4 Securing appropriate land tenure

A developer will require some form of tenure over the land where the development is to be undertaken. In determining a site for the development, land that may not be available for the development or may present significant challenges for approvals should be identified. Land in this category can include, for example, national parks or significant cultural sites (e.g. historical monuments or sacred Indigenous sites).

Once the land has been identified, securing appropriate tenure for the proposed use is required. This may involve purchasing the land from the existing owner (e.g. purchasing a freehold title) and/or securing the right to access and use the land (e.g. through a lease or licence).

In assessing the suitability of a potential site, a developer will need to consider:

- the level of security of tenure required. Different tenure may be appropriate or necessary for different parts of a development. For example, a developer may consider that an easement is sufficient tenure for an access road or a water pipeline, but require freehold title or a long-term lease over the site of a proposed new water storage or irrigation development
- the duration of tenure required. Land and water developments typically require long time cycles to obtain a return on the investment. Some interests in land are granted in perpetuity (e.g. freehold title, perpetual leases), while others will be for a fixed term
- the extent to which the type of tenure may restrict particular uses. For example, pastoral leases in the NT limit the activities that may be undertaken on the land without departmental approval
- the implications of any other interests under the land title. Where a developer does not hold the freehold title, the interest granted may be subject to other rights and interests, such as those retained by the lessor, or the owner of infrastructure located on the land (e.g. in the case of electricity assets)
- native title. Where native title has not been extinguished, any proposed development will be subject to the procedural requirements of the Commonwealth's Native Title Act (see Section 3.2), and a developer may need to enter into an agreement with the relevant Indigenous Peoples for the land and/or pay compensation prior to undertaking the development.

These considerations will apply equally to a development in the NT or Queensland. The difference between the two jurisdictions relate primarily to:

- the different dominant tenure types in each region. In Queensland the majority of land is either freehold (40%) or some form of state leasehold (although the overwhelming majority of land in northern Queensland is leasehold), whereas in the NT most land is either Aboriginal freehold (45%) or pastoral lease (43%) (Figure 3-1)
- specific laws that apply to dealing with land (e.g. the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALR Act), the *Pastoral Land Act 1992* (NT) (Pastoral Land Act) or the *Land Act 1994* (Queensland) (Land Act)).

In some instances, it may be possible to convert an existing interest in land (e.g. a lease) to a more suitable form of tenure (e.g. freehold title). The procedural requirements for doing so are typically set out in legislation (e.g. the Queensland *Land Act 1994*). Any changes to tenure will also require that native title matters are first addressed (see Section 3.2).

In most instances, obtaining an interest in land will require negotiation with the existing landholder. This may be a private landholder (in the case of freehold land), an Aboriginal Land Trust (in the case of Aboriginal freehold land in the NT), a lessee (in the case of leasehold land) or the relevant government (in the case of roads or unallocated state and territory land).

State and territory governments have compulsory acquisition powers that allow them to acquire land. While these laws are primarily used in undertaking state-led developments, in exceptional and limited circumstances government may use them to support private developments of state and/or national significance.

2.5 Securing the necessary water access

The taking of surface and groundwater resources is strictly regulated across Australian jurisdictions, and in most instances an authorisation is required in order to take water from a watercourse or groundwater aquifer.

Any significant land and water development will then be likely to require some form of authorisation under the applicable state or territory regulatory regime.

In the first instance, a developer will need to establish the volume of water and nature of water required, having regard to the climate, hydrology, and water sharing rules that apply to water access entitlements in the development area.

To obtain a water access entitlement, a developer will need to (i) purchase an existing entitlement applicable to the development area, in accordance with the prescribed water trading rules and/or (ii) apply to the state or territory for a new entitlement to be created.

To purchase an existing water access entitlement, a developer will need to:

- determine whether there is sufficient existing water access entitlement in the development area to meet the development requirements
- ensure the water access entitlement is suitable for the development's purpose (i.e. in terms of volume available, access, anticipated availability and reliability of water, any restrictions on where and how the water may be used, etc.)
- ensure that the rules related to water trading will allow them to purchase the water and (if required) change the conditions related to the location from which water may be taken, under the entitlement
- negotiate with the water access entitlement holder/s and reach a commercial agreement for the purchase or leasing of the entitlement.

To apply for a new water access entitlement, a developer will need to:

- determine the water control district (NT) / water plan area (Queensland) for the water source
- determine whether there is water available in the control district / plan area. In the NT, this will require a reconciliation of the sustainable yield (as per the relevant water allocation plan) against the water licences already granted under the plan, to determine whether there is scope for further licences to be issued. In Queensland, this will be in the form of an unallocated water reserve specifically identified in the relevant water plan
- determine whether water can be used for the proposed purpose. In the NT, water allocation plans will prescribe the allowable beneficial uses. Water plans in Queensland may reserve unallocated water for a particular use
- apply for a water access entitlement. In the NT, this will typically involve an application for a water licence. Release of unallocated water under a Queensland water plan may be via a public auction, tender, fixed price sale, or grant for a particular purpose.

2.6 Obtaining necessary approvals

A land and water development will likely require government approvals related to:

- Land use. This is to ensure the development type is authorised or consistent with relevant planning instruments. A development permit is likely to be required for most major developments, including building and construction activities.
- Environmental approvals. An 'environmental authority' will likely be required under the NT or Queensland environmental protection legislation. In the case of high-risk activities, this will require some form of environmental impact assessment, which involves public consultation. Additional requirements apply for developments located in the Great Barrier Reef catchments (noting that the Southern Gulf catchments do not form part of the Great Barrier Reef catchments). Federal approval is required if a proposed development is assessed as a 'controlled action' (Section 5.2.1) that may have an impact on a matter of national environmental significance. The requirements of the federal environmental impact assessment process can be met via the state or territory planning and environment assessment process.
- Clearing of vegetation. A permit is required in most circumstances for the clearing of vegetation in both the NT and Queensland. In some instances, the clearing of vegetation may require the developer to establish an environmental offset area.
- Works in a watercourse. A permit is required for interference with the flow, dredging, or construction of a barrier in a watercourse in both the NT and Queensland.
- Cultural heritage approvals. A developer will need to determine whether there are any federal, state or local cultural heritage values, objects or places, as per the federal, state and territory laws and applicable registers. Any development that could damage Indigenous cultural heritage will need to undergo a process to identify any cultural heritage in the development area and obtain a permit and/or enter into a cultural heritage management plan (CHMP) prior to commencing work.

Depending on the nature of the proposed development, a developer may be able to secure major project status (NT) or coordinated project status (Queensland) under the relevant federal, state and/or territory arrangements. This will provide for a more coordinated approach to the approvals process.

2.7 Additional resources

In addition to the more detailed description of requirements set out in the following sections, Macintosh et al. (2018) provides a comprehensive overview of the legal, regulatory and policy environment for the development of water resources in northern Australia.

The Indigenous sub-project of CSIRO's Northern Australia Water Resource Assessments highlights local Indigenous relationships to water, and key conceptual issues and principles for understanding and engaging with Indigenous Peoples to generate a representative set of Indigenous water values, rights and interests. It contributes significant additional material to the relatively small amount that currently exists about Indigenous perspectives on agricultural development.

3 Land tenure

3.1 Overview

Ownership and interests in land are primarily managed by the state and territory governments. There are two broad categories of tenure in Australia: freehold land and non-freehold land.

Freehold land is the definitive tenure available for land alienation in Australia. However, ownership is not absolute, as the state or territory typically retains certain rights, such as those to any minerals or petroleum. Land use is also subject to various regulatory restrictions, such as planning restrictions on development, and environmental protection legislation (including laws regulating the clearing of vegetation).

Non-freehold land is land owned by the state or territory and may be: subject to a lease, licence or permit; reserved for a community purpose; dedicated as a road; or subject to no tenure at all. The duration and conditions of a lease or other tenure arrangements will vary with the circumstances and are typically subject to legislation that deals with the management of state/territory land.

In addition, non-freehold land may be subject to native title or a native title claim (see Section 3.2).

3.1.1 NT land tenure

In the NT, around 45% of land is held by Aboriginal Land Trusts as Aboriginal freehold land; 43.7% is under pastoral leasehold; 5% is in national parks; and 3.3% is vacant state land. Only 0.8% of the NT is held as freehold land, primarily urban land (Centre for Conservation Geography, 2020).

Aboriginal freehold land is a specific type of freehold land within the NT. Aboriginal freehold land came into being in 1976, when former Aboriginal reserves were converted into permanent Aboriginal freehold tenure by the ALR Act.

The ALR Act establishes the governance arrangements related to Aboriginal freehold land. The regime involves:

- **Land Councils**. Land Councils represent the interests of Aboriginal people living in the area of the Land Council with respect to land management. This includes a responsibility to consult with the Traditional Owners of the area.
- **Aboriginal Land Trusts**. Land Trusts are established by the relevant Australian Minister and hold title to land in the NT for the benefit of Aboriginal people entitled by Aboriginal tradition to the use or occupation of the land concerned.[1] A Land Trust must only act in accordance with a direction from the Land Council for the area in which the land is situated.

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[1] *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), sections 4 and 5

Aboriginal freehold land is inalienable freehold title, meaning it cannot be sold, and title may only be held by an Aboriginal Land Trust. The ALR Act sets out the process for granting a lease or licence over Aboriginal freehold land.[2] An Aboriginal Land Trust may grant an interest (such as a lease or licence) in the whole or any part of the land vested in it to any person[3] and for any purpose.[4] Land Councils are responsible for negotiating with any person wishing to obtain an estate or interest in land in the area of the Land Council, and an Aboriginal Land Trust may only grant an interest at the direction of the Land Council. Where an interest, such as a lease, is for a period of more than 40 years, then the consent of the Australian Minister responsible for the ALR Act is also required.

A Land Council must not agree to the grant of an interest in Aboriginal land unless (i) the Traditional Owners understand the proposed grant and consent to it, (ii) any Aboriginal community or group affected by the grant has been consulted, and (iii) the terms of the grant are reasonable.[5]

Establishing an agreement to lease or license Aboriginal land can be time consuming. The Northern Land Council, which is responsible for Aboriginal land in the northern part of the NT, states that the assessment of an expression of interest and subsequent consultation with Traditional Owners takes a minimum of 6 months (NLC, n.d.).

A **pastoral lease** is a title issued under the Pastoral Land Act to a person or company to lease Crown land for pastoral purposes. ‘Pastoral purposes’ refers to the commercial pasturing of stock, but also extends to related uses such as the production of agricultural produce to feed stock, carbon farming, and agri-tourism.[6]

Pastoral leases are granted for a specific term (which may include in perpetuity) and are subject to a range of conditions including:

- a reservation of a right of entry and inspection (by the relevant minister or their representative)
- a reservation of all minerals on or in the land
- a requirement to obtain consent to take any timber trees, stone, sand or gravel on the land.

Leases also include a reservation in favour of the Indigenous inhabitants of the NT. This provision entitles Indigenous persons who, by tradition, are entitled to use or occupy the leased land, to enter the land and to take and use water from natural waters and springs, to take or kill wild animals and to take plants, for food or for ceremonial purposes.[7]

[2] *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), Section 19

[3] ‘person’ includes a legal entity, such as a company

[4] *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), Section 19(4A)

[5] *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), Section 19(5)

[6] *Pastoral Land Act 1992* (NT), Section 3

[7] *Pastoral Land Act 1992* (NT), Section 38

3.1.2 Queensland land tenure

In Queensland, nearly 40% of the state is held under freehold title, with most of this land located in the state's south-east (Figure 3-1). The balance is owned by the state and regulated under the Land Act (Queensland Government, 2022). The majority of state-owned land is held under some form of lease. The Land Act establishes five types of leasehold tenures for various agricultural, commercial and other interests:

• term lease – granted for between 1 and 100 years

• perpetual lease – held by the leaseholder in perpetuity

• freeholding lease – where freehold title has been approved but the leaseholder is paying off the purchase price by annual instalments

• road licence – when a road has been temporarily closed, this tenure allows the licensee to use the land until such time as the licence is surrendered or cancelled

• permit to occupy – for short-term occupation of state-controlled land. This tenure cannot be sold, sublet or mortgaged.[8]

The Land Act makes specific provision for the granting of a lease for 'significant development', which relates to development that will have a significant impact on the environment or the economic and social development of a locality, region or the state, and will involve a high level of investment.[9]

The Land Act outlines the processes to be undertaken when dealing with state land, which includes any restrictions that may apply to an occupier of such land. The development of state land follows a sequence of allocation, regulation and management, as follows:

1. The state allocates land to a potential user for specified uses.

2. State departments, local government, or some other public authority regulate activities in accordance with their own specific powers (e.g. the power to grant development approvals).

3. The landholder manages the allocated land in accordance with the conditions of the lease (DNRM, 2013).

The Land Act contains a number of provisions that apply to all leases. The landholder:

- may not sell, sublease, subdivide or amalgamate a lease without the prior consent of the chief executive of the department responsible for administering the Land Act
- must pay an annual rent to the department
- must obtain a tree-clearing permit before destroying trees on lease land, unless the clearing is for the routine management purposes (Section 7.3)
- may apply to convert the lease to freehold, unless the lease is over a reserve or the conditions of the lease do not allow an application to be made.

[8] *Land Act 1994* (Queensland), Chapter 2, Part 1

[9] *Land Act 1994* (Queensland), Section 129

Requirements related to native title, as set out in the Commonwealth Native Title Act and the *Native Title (Queensland) Act 1993* (Queensland), must be satisfied before any dealings under the Land Act can be undertaken in relation to non-freehold land.[10]

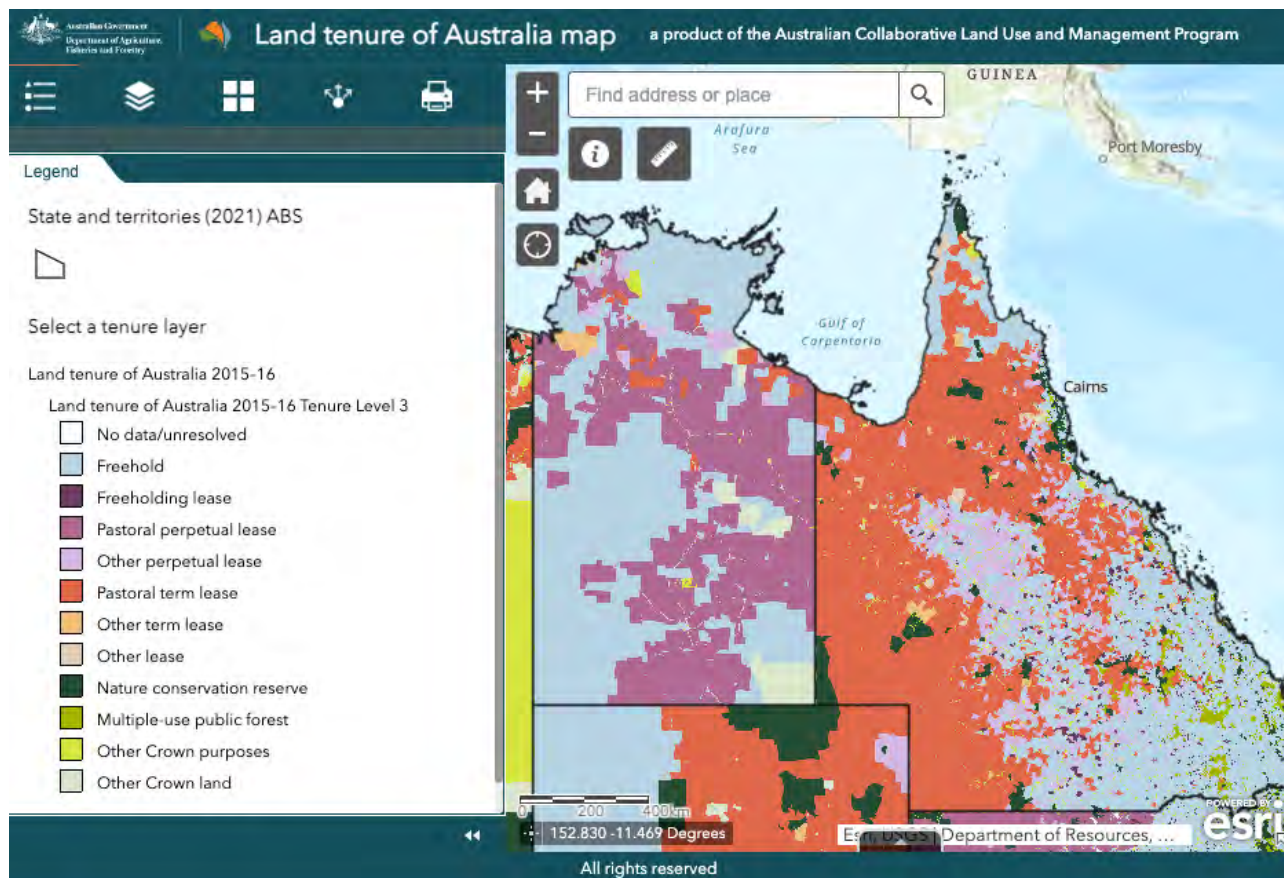

Figure 3-1 Distribution of tenure types in Queensland and the NT

Source: DAFF, n.d.

3.2 Native title

Native title refers to the recognition by Australian law of the ongoing rights and interests of Indigenous Peoples in land and waters based on their traditional laws and customs, and it applies across Australia.

Native title is recognised in the Native Title Act and under common law in Australia as communal, group or individual rights and interests of Indigenous Peoples in relation to land or water that are possessed under traditional law and customs, and for which there is an ongoing connection by Indigenous Peoples to that place.

The Native Title Act recognises and protects native title and provides that native title cannot be extinguished other than as permitted under the Native Title Act. The Native Title Act provides the framework for determining whether native title exists, for managing native title rights and interests, and for compensation for acts that affect native title.

[10] *Land Act 1994* (Queensland), Chapter 2, Part 3

Where land and waters exist within the development area that are or may be subject to native title, there are procedural requirements under the Native Title Act that will apply. This is likely to involve negotiation with the native title holders or claimants (where a claim has been made but not determined).

Where native title is established for an area, Indigenous Peoples have certain rights. The source of native title rights and interests is the traditional laws and customs of the native title holders, which means that the nature of native title rights and interests varies from community to community. Native title rights may include, for example, the right to live and camp in an area, to hunt and fish, and to collect food. Native title may involve exclusive possession (with rights including the right to control access to exclude all others) or non-exclusive possession.

Native title is extinguished where rights over the land and waters have been granted that are incompatible with the native title rights. Notably, native title generally does not exist over freehold title.

Native title determinations are made by the Federal Court. Since the introduction of the Native Title Act, native title has been recognised over more than 32% of the Australian continent (AIATSIS, n.d.). The National Native Title Tribunal maintains a register of all native title determinations and claims (NNTT, n.d.).

Native title holders are entitled to compensation for acts that affect their native title, including acts that extinguish native title. Compensation can be payable for government actions, including passing legislation, granting property rights, or issuing an approval, where the action extinguishes or is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights.[11]

Most relevant for potential land and water developments is the regime that relates to 'future acts', under which facilitating actions of a government (such as the granting of property rights or development approvals) could be found invalid by virtue of the Native Title Act, or could trigger compensation. There are a range of steps that must be taken to ensure that a 'future act' is valid.

Native title holders and registered native title claimants have procedural rights over development proposals that may affect their native title. These procedural rights can include the right to be notified and consulted, the right to have an objection heard, and the right to negotiate. If the right to negotiate applies, the government, the proponent and the native title parties must negotiate in good faith, with a view to obtaining an agreement about the proposed development. If an agreement can't be reached in 6 months, any party can ask the National Native Title Tribunal to arbitrate and determine whether the proposed development can proceed and, if so, on what conditions.[12]

The Native Title Act provides for the establishment of Indigenous land use agreements (ILUAs). An ILUA is a voluntary agreement between native title parties and other people or entities about the use and management of areas of land and/or waters. An ILUA can be made over an area where native title has been determined to exist, where a native title claim has been made, or where no

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[11] *Native Title Act 1992* (Cth), Section 226

[12] *Native Title Act 1992* (Cth), Part 6

native title claim has been made. While registered, ILUAs bind all native title holders to the terms of the agreement and operate as a contract between the parties. An ILUA can be about any native title matter agreed upon by the parties, including: settlement or exercise of native title rights and interests; surrender of native title to governments; land management; future development; mining; cultural heritage; coexistence of native title rights with other rights; access to an area; and compensation for loss or impairment of native title. As at December 2023, there were 132 ILUAs in the NT and 898 in Queensland that had been registered by the National Native Title Tribunal (NNTT, n.d.).

4 Water rights

4.1 Overview

Water rights are a matter for state or territory law. In both the NT and Queensland, all rights to the use, flow and control of water are vested in the state or territory by legislation.[13] This applies to water in a watercourse, groundwater, and (in the case of Queensland) water flowing across the land (i.e. overland flow).

Legislation provides the primary framework for the allocation and management of water resources in all Australian jurisdictions. This typically involves:

- a water planning system, including the establishment of water plans for different catchments and/or groundwater aquifers. These plans typically define management objectives, including environmental objectives, and determine the volumes of water available for consumptive use, the conditions related to the use of that water, and how individual water users can access the available water[14]
- a water access entitlements regime, which is the basis for authorising individual water users to take water, such as by pumping it from a watercourse or groundwater system. The conditions attached to a water access entitlement, such as a water licence, can vary greatly, and may include some or all of (i) a maximum volume of water that can be taken in a year or other period, (ii) a maximum rate at which water can be taken, (iii) the location from which the water can be taken (e.g. a particular section of a watercourse or a defined aquifer) and (iv) other conditions that must be met before water can be taken
- a water trading regime, whereby water access entitlements can be transferred between water users and (subject to restrictions) between locations
- establishing certain statutory rights to take water, such as the right of a riparian landholder to take water for particular purposes (e.g. for domestic use or for watering livestock)
- water-related works approvals, to regulate the construction of works that take or interfere with water, such as the construction of a dam or weir within a watercourse, or a pump to take water from a watercourse or aquifer.

The specifics of the water management systems in the NT and Queensland are described in more detail below.

4.2 NT water resources management

Water resources in the NT are primarily regulated via the *Water Act 1992* (NT) (NT Water Act). The Water Act allows for the NT Minister for Water Resources to declare 'water control districts' and for the declaration of 'beneficial uses' of the water in a water control district. Beneficial uses

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[13] *Water Act 2000* (Queensland), Section 26; *Water Act 1992* (NT), Section 8

[14] Note that terminology relating to the allocation of water differs between NT and Queensland. For example, Queensland water plans refer to "unallocated water" which is not a term used in NT water allocation plans.

describe how a water resource benefits the community. Beneficial uses include agriculture, aquaculture, public water supply, the environment, industry, and Aboriginal economic development. Beneficial uses have been set for major aquifers and river catchments. These are then used to set water quality targets to ensure the water resource is suitable for its intended use.

The minister may establish a water allocation plan for a water control district.[15] Water allocation plans establish:

- the purpose and objectives of sharing water
- the 'estimated sustainable yield' of each water resource in the district
- the allocation of the estimated sustainable yield between different beneficial uses
- a benchmark for acceptable change to the environment
- water licence requirements.

Water allocation plans may allow for water licences to be traded in accordance with the NT's Trading Licensed Water Entitlements Policy.

Water allocation plans may be required to establish an 'Aboriginal water reserve', which is water set aside under the plan for Aboriginal economic development in respect of land designated under the plan.

The coverage and status of water allocation plans in the NT (excluding those outside the Victoria and Southern Gulf study catchments) is shown in Figure 4-1.

As noted above, the rights to the use, control and flow of all water in waterways or groundwater is vested in the NT, and it is an offence to interfere with a waterway or to take water without an authorisation. The Water Act includes a statutory right to take water for domestic purposes and for watering stock. However, the primary mechanism for regulating the take of water is via water licences. Licences to take water and permits to interfere with a waterway are granted by the 'Controller of Water Resources'.[16] Water licences are generally granted for a maximum of 10 years. The amount of water taken under a licence may vary due to seasonal conditions and is based on an annual 'announced allocation' process.

Where a water allocation plan applies to a water source, licence decisions must take into account the sustainable yield for the relevant water resource and the volumes associated with different beneficial uses. In the absence of a water allocation plan, the Northern Territory Water Allocation Planning Framework provides general rules for allocation of the available water. This framework establishes 'contingent allocation rules' that require a minimum amount of flow be set aside for environmental and other public purposes. Different flow requirements are set for the Top End (the northern one-third of the Territory) and the Arid Zone (the southern two-thirds of the Territory) (DENR, 2020).

The NT Water Act makes it an offence to cause serious environmental harm by causing waste to come into contact with or pollute water.[17] Specific offences also relate to hydraulic fracturing.

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[15] *Water Act 1992* (NT), Section 22B

[16] *Water Act 1992* (NT), sections 41, 45 and 60

[17] *Water Act 1992* (NT), Section 16

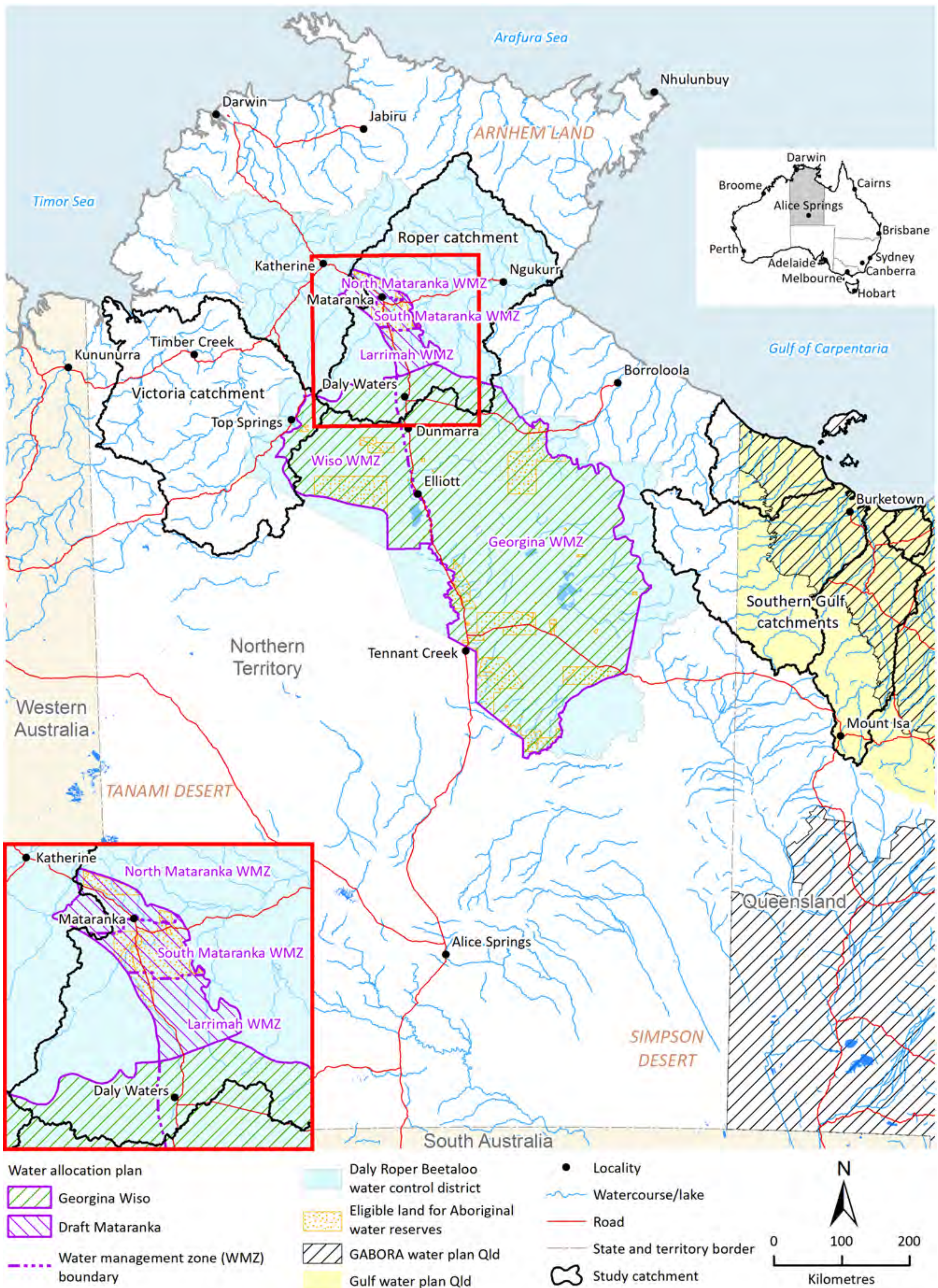

Figure 4-1 Location of study catchment assessment areas relative to key management boundaries

4.3 Queensland water resources management

Water resources in Queensland are regulated under the *Water Act 2000* (Queensland) (Queensland Water Act), which establishes a system for the sustainable planning, allocation and use of water. This includes a process for creating ‘water plans’, which apply to a defined geographic region and may apply to water in a watercourse (rivers, lakes and springs), overland flow, and/or groundwater. Water plans establish objectives for the plan area and balance the needs of water users and the environment.[18] Water plans are in place for the vast majority of Queensland.

In most cases, a person wanting to take water from a watercourse or groundwater system must hold a water entitlement to take the water. Water plans may also regulate the take of overland flow water in the plan area.

There are two types of water entitlement: water allocations and water licences. Water licences are attached to land and may only be used on the land to which they are attached. Water licences have a defined term and must be renewed, or they will lapse.

Water allocations are an entitlement to a share of the available water resource. Water allocations are not attached to land, and the entitlement may be transferred (i.e. sold to another person) independent of land. Water allocations are recorded on the Water Register, a registration system equivalent to the land titles system. Water allocations do not expire.[19]

Water allocations may be supplemented (supplied from a water supply scheme, such as a major reservoir) or unsupplemented (e.g. water taken as ‘run of the river’). In the case of supplemented water, the Queensland Water Act requires there to be a water supply contract between the holder of the water allocation and the water supply scheme owner/operator. The owner/operator of a water supply scheme is also required to hold a ‘resource operations licence’, which entitles them to take or interfere with the flow of water to distribute the water under water allocations.

Water entitlements (both licences and allocations) use a range of terms to define the amount of water that can be taken. This can include some combination of the following:

- a nominal volume, which indicates the amount of water that is typically available under the entitlement (i.e. the mean annual volume of water)
- the water to which the entitlement relates (e.g. surface water or groundwater)
- the location from which the water may be taken (e.g. a defined aquifer, or a section of a river)
- a limit on the maximum amount that can be taken over a period of time (e.g. an annual limit, or a maximum instantaneous rate).

Water allocations may be traded in accordance with water trading rules specific in the applicable water plan. The trading of water involves changing the location from which the water under a water allocation may be taken, which is distinct from a transfer of ownership.

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[18] *Water Act 2000* (Queensland), Chapter 2, Part 2

[19] *Water Act 2000* (Queensland), Chapter 2, Part 3

The actual amount of water that may be taken under a water entitlement at any given time or in any given year will depend on the terms of the entitlement, the seasonal conditions (e.g. how much it has rained, and hence the amount of water in the watercourse), and the provisions of the relevant water plan and associated regulatory instruments.

Water plans identify the water that can be taken from the system without compromising the security of existing users, or the environment. This includes identifying any unallocated water that may be granted for future use. The process for granting unallocated water is set out in the Water Regulation 2016 (Queensland),[20] which provides for unallocated water to be released via a public auction, tender, fixed price sale, or grant for a particular purpose.

Under the *Water Supply (Safety and Reliability) Act 2008* (Queensland) the owner of water infrastructure is required to register as a service provider to operate a water service for which a charge is intended to be levied.[21] The Water Supply Act gives registered service providers certain powers and protections.

[20] Part 2, Division 2, Subdivision 2

[21] *Water Supply (Safety and Reliability) Act 2008* (Queensland), Section 20

5 Federal regulatory requirements

5.1 Overview of relevant federal laws

As discussed in Section 2.2, the Australian Parliament has limited powers to make laws relating to land and water. The key federal laws of relevance to land and water development are:

- the EPBC Act which is the principal national environmental legislation (Section 5.2)
- the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (ATSIHP Act) and the *Protection of Movable Cultural Heritage Act 1986* (Cth) (PMCH Act) which relate to the protection of national heritage (Section 5.3) and
- the Native Title Act, which is the primary legislation with respect to native title (Section 3.2).

These laws apply across all Australian jurisdictions.

In the NT, the Australian Government is also responsible for overseeing the system of Aboriginal freehold land created under the ALR Act (see Section 3.1.1).

5.2 Environment Protection and Biodiversity Conservation Act

The EPBC Act is the Australian Government's key environmental legislation. The EPBC Act includes two main regimes:

- the environmental assessment regime
- the biodiversity conservation regime.

5.2.1 Environmental assessment regime

Under the EPBC Act, a person must not take an action that has, will have or is likely to have a significant impact on a matter of national environmental significance unless the federal Minister for the Environment and Water has granted an approval for the action, or determined that an approval is not required.

Part 3 of the EPBC Act sets out the Matters of National Environmental Significance that include:

- world heritage
- national heritage
- wetlands of international importance
- listed threatened species and communities
- listed migratory species
- protection of the environment from nuclear actions
- marine environment
- Great Barrier Reef Marine Park

- protection of water resources from unconventional gas development and large coal mining development.

The Act sets out the assessment and approvals process. This involves:

1. the proponent undertaking a self-assessment and booking a pre-referral meeting to help decide whether to submit a referral to the federal Minister for the Environment and Water. If it is decided that referral is required, then the proponent must prepare supporting documentation that will assist the federal Minister to determine whether the proposed action is a 'controlled action' and will require formal assessment and approval[22].
2. In the case of a controlled action, an assessment is required. The federal Minister for the Environment and Water determines the assessment method, for example an environmental impact assessment. Alternatively, the action may be assessed under an accredited state or territory process in accordance with a bilateral agreement.[23] These agreements are designed to reduce duplication in the assessment process in cases where an action requires approval under both Australian and state or territory laws. For example, an assessment bilateral agreement is in place for Queensland that enables the *State Development and Public Works Organisation Act 1971* (Queensland), the *Planning Act 2016* (Queensland) or the *Environmental Protection Act 1994* (Queensland) (Queensland EP Act) to be assessed alongside the Australian Government laws under a single assessment process. Similarly, an assessment bilateral agreement allows for the Commonwealth minister to use the NT's assessment process under the *Environment Protection Act 2019* to inform an assessment of the impacts of any eligible action. Regardless of the assessment approach, the federal Minister for the Environment and Water ultimately makes the final decision as to whether to approve the action under the EPBC Act.

The Act also allows for 'strategic assessments', which assess the likely impact of a range of actions taken under a government policy, plan or program. A strategic assessment allows the federal Minister for the Environment and Water to approve all classes of development that have been assessed under the process.

5.2.2 Biodiversity conservation framework

The EPBC Act provisions related to biodiversity conservation include provisions related to:

- the listing of nationally threatened species and ecological communities and the preparation of conservation advices or recovery plans
- the listing of key threatening processes and the preparation of threat abatement plans
- the listing, protection and management of World Heritage properties, National and Commonwealth Heritage places, Ramsar wetlands, and Commonwealth reserves.

[22] See https://www.dcceew.gov.au/environment/epbc/approvals#submit-a-referral

[23] The *EPBC Act 1999* (Cth), Section 45

5.2.3 The EPBC Act

The first major independent review of the EPBC Act was finalised in 2020 (Samuel, 2020). The review found significant failings with the EPBC Act and recommended fundamental reform of how it operates. The Australian Government issued its response to the review in December 2022 (DCCEEW, 2022). That response foreshadows significant changes to the legislation, including developing national environmental standards to improve protections and guide decision making, and establishing a national Environmental Protection Agency. These reforms remain under discussion.

5.3 Federal heritage laws

There are three key federal laws that relate to heritage protection:

- the EPBC Act
- the ATSIHP Act and
- the PMCH Act.

The EPBC Act provides protection for heritage values through the environmental impact assessment process (see Section 5.2.1, which regulates activities that are likely to have a significant impact on world, national, or commonwealth heritage values. In addition, the EPBC Act prohibits Australian Government agencies from taking actions that will have an impact on certain heritage places or values unless 'there is no feasible and prudent alternative to taking the action'.[24]

The Commonwealth Heritage List, established under the EPBC Act, comprises natural, Indigenous and historic heritage places on Commonwealth lands and waters or under Australian Government control. Commonwealth Heritage listed places identified by the federal Minister for the Environment and Water have Commonwealth heritage values.

The ATSIHP Act provides a mechanism for Indigenous Peoples to apply to protect places and objects from injury or desecration. The application must relate to places or objects of particular significance in accordance with Indigenous tradition. In response to an application, the federal Minister for the Environment and Water can make a declaration to protect an area or object for a specified period of time.[25] Such a declaration can have an impact on a development that has otherwise received the necessary approvals under Australian, state or territory laws. It is an offence to breach a declaration. [26]

The PMCH Act is designed to ensure that objects that have cultural significance remain in Australia. The definition of movable cultural heritage includes 'objects relating to members of the Aboriginal race of Australia and descendants of the indigenous inhabitants of the Torres Strait

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[24] The *EPBC Act 1999* (Cth), Section 41ZC

[25] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), Part II, Division 1

[26] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), Section 22

Islands' and 'objects of ethnographic art or ethnography'.[27] Objects that are included on the National Cultural Heritage Control List must not be exported without a permit or exemption. The List includes sacred and secret ritual objects, human remains, rock art, and dendroglyphs. [28]

5.4 Major project status

The Australian Government has established a process for strategically significant developments to obtain extra support in navigating regulatory approvals, including for approvals under the EPBC Act.

To be eligible to apply for major project status, a development must:

- be of strategic significance to Australia, including contributing to strategic priorities of the government and contributing significantly to economic growth and employment. Developments must have a minimum investment of $50 million
- be facing complex regulatory approvals challenges with Australian Government approvals and
- have sufficient financial resources and be commercially viable.

Where a development is granted major project status, this will provide the development with:

- a single-entry point for Australian Government approvals
- development support and coordination
- help with engaging state and territory facilitation agencies to navigate state and territory regulatory approvals.

Most developments granted major project status receive the status for 3 years.

Support in relation to major projects, including more detail on which approvals and processes may be applicable, is available from the Major Projects Facilitation Agency, within the Australian Department of Industry, Science and Resources[29].

[27] *Protection of Movable Cultural Heritage Act 1986* (Cth), Section 7

[28] *Protection of Movable Cultural Heritage Regulations 2018* (Cth), schedule 1

[29] See https://business.gov.au/expertise-and-advice/major-projects-facilitation-agency

6 NT regulatory requirements

6.1 Planning requirements

Land use planning and development in the NT are regulated by the *Planning Act 1999* (NT) (NT Planning Act), together with the Planning Regulations and the Northern Territory Planning Scheme. The *Planning Act 1999* and regulations regulate how land in the NT can be developed and used. They also establish planning schemes and the Northern Territory Planning Commission.

The Northern Territory Planning Scheme applies across the NT (except for the town of Jabiru, which has its own town plan) and guides what can be built where. The scheme:

- describes how land use may change to meet future needs
- identifies factors and risks that could affect land use (e.g. flooding)
- sets controls that allow, prohibit or put conditions on land use
- provides guidance to help authorities responsible for making planning decisions ('consent authorities') to make decisions.

The scheme consists of four key parts:

- strategic framework – policies and plans that guide changes to land use
- overlays – that identify and give special rules for factors that could affect land use
- zones – that control the types of use and development allowed in an area
- development and subdivision requirements – provide direction on how a use or development should look or operate.

There are four assessment categories that apply to a proposed development.

1. Permitted uses. No development permit is required if the use is permitted for the relevant zone, the development meets the standard development subdivision and consolidation requirements, and there is no overlay that applies to the land or proposed development.
2. Merit assessable. A development permit is required if the proposed use is merit assessable in the zone. A merit-assessable development that meets all requirements is likely to be approved.
3. Impact assessable. A land use that is normally merit assessable becomes impact assessable if an overlay applies to the land and the proposal. An impact-assessable development may not be approved, even if it meets all the requirements. Applications related to merit-assessable and impact-assessable development are assessed against development, subdivision and overlay requirements, the purpose and outcomes for the relevant zone, any guidance in an area plan or the strategic framework, and other relevant matters under the NT Planning Act 1999.
4. Prohibited. The development is not allowed, except for some limited exceptions. A proponent can apply for an 'exceptional development permit' to allow for a use or development that is prohibited by a planning scheme.

An application for a development permit must be made either to the NT Minister for Lands, Planning and Environment or the Development Consent Authority, depending on the type and location of the development.

Where a development is a ‘significant development proposal’, the minister may ask the Northern Territory Planning Commission to prepare a significant development report, which is used to inform the decision on whether to grant a development permit.

In addition to restrictions that apply to land uses under the NT Planning Act, there are additional requirements that apply to pastoral land under the Pastoral Land Act. Notably, a permit is required from the Pastoral Land Board to use pastoral land for a purpose other than pastoral purposes.[30]

6.2 Environmental protection and conservation

The *Environment Protection Act 2019* (NT) establishes the primary regime for assessing and regulating developments that could have a significant impact on the environment.

A proponent of a development is required to hold an ‘environmental approval’ for proposed actions that will have a significant impact on the environment or require assessment under a ‘referral trigger’. The Environment Protection Act provides for the establishing of activity-based or location-based triggers that require actions to be referred for assessment.[31] It is the responsibility of the proponent to refer the proposed action to the NT EPA if it has the potential to have a significant impact on the environment or if it meets a referral trigger.

The NT EPA conducts an environmental impact assessment for all proposed actions that are likely to cause a significant impact. The NT EPA is responsible for:

- determining whether a proposed action requires environmental impact assessment (and the assessment methods)
- directing a proponent on the information required to assess their action
- undertaking the environmental impact assessment of an action
- providing advice (in the form of an assessment report) to the NT Minister for Water Resources.[32]

There is a range of possible assessment pathways available to the NT EPA:

- assessment on referral information
- supplementary environmental report
- environmental impact statement (EIS)
- a proponent-initiated EIS assessment (i.e. a voluntary EIS assessment)
- public inquiry.

[30] *Pastoral Land Act 1992* (NT). Section 85A

[31] *Environment Protection Act 2019* (NT), Section 30

[32] *Environment Protection Act 2019* (NT), Part 5, Division 2

The NT Minister for the Water Resources is responsible for deciding whether a proposed action is to be granted an environmental approval and the conditions of the approval.[33] The Environment Protection Act allows for a broad range of conditions to be imposed on the environmental approval, including through the establishment of an environmental offset framework under the Environment Protection Act, and the ability to impose conditions requiring the provision of environment protection bonds and levies.

A proposed development that has the potential for significant impact on the environment is to be planned, assessed, and carried out, taking into account, among other things, the principles of ecologically sustainable development, ecosystem-based management, and the impacts of changing climate.[34]

The Act allows for a bilateral agreement to be entered into between the NT Minister and a Minister of the Commonwealth, a State or another Territory to enable the application of a single assessment process for an action or strategic proposal that affects another jurisdiction.[35]

6.3 Vegetation management

Landholders wanting to clear native vegetation on their property must lodge a development application and receive a permit before clearing. Native vegetation refers to terrestrial and intertidal flora indigenous to the NT, including grasses, shrubs and mangroves. The requirement applies to both freehold (including Aboriginal Freehold) and pastoral land, although different application processes apply to the different tenures. There are exemptions from the requirement for a permit, for example, where the total area to be cleared is less than 1 ha (in the case of freehold land) or for certain day-to-day management operations, including bailing of fodder and clearing necessary to build or maintain buildings, vehicle tracks, or fences (NT Government, 2022).

The Land Clearing Guidelines establish standards for the management (clearing and retention) of native vegetation. The guidelines are referenced under both the Northern Territory Planning Scheme and the Northern Territory Pastoral Land Clearing Guidelines and apply to applications 'to clear native vegetation' under the NT Planning Act and 'to clear pastoral land' under the Pastoral Land Act.

The guidelines provide:

- recommendations regarding best-practice clearing of native vegetation for developers
- a standardised suite of environmental parameters to be considered by those responsible for assessing clearing applications when providing advice to developers and the decision maker ('the consent authority'), and
- advice to guide decision making by the authorities responsible for determining whether to approve a clearing application (DEPWS, 2021).

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[33] *Environment Protection Act 2019* (NT), Section 69

[34] *Environment Protection Act 2019* (NT), Section 42

[35] *Environment Protection Act 2019* (NT), Section 45

6.4 Cultural heritage

The *Heritage Act 2011* (NT) establishes a regime for the conservation of the NT's cultural and natural heritage. The Heritage Act provides for the declaration of places and objects of heritage significance. All Indigenous and Macassan archaeological places and objects are automatically protected under the Heritage Act (including places and objects not previously recorded). The Heritage Act also provides a mechanism for declaring protected classes of places and objects of heritage significance. The Heritage Council, NT, is responsible for maintaining a register of heritage places and objects.[36] A person may apply for a permit to carry out work on a heritage place or object. Applications are decided by the Heritage Council or, in the case of major works, by the relevant Minister. Large-scale or complex developments may be required to put in place a cultural heritage management plan, setting out how Indigenous cultural heritage will be managed over the life of the development.

The *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) protects all sacred sites in the NT from unauthorised entry or damage. It also establishes the Aboriginal Areas Protection Authority (AAPA) to oversee the protection of sacred sites. The role of the AAPA includes maintaining records of identified sacred sites, providing information to the public, and issuing 'authority certificates', which set out the conditions by which work can proceed in and around sacred sites.[37] For most land uses, authority certificates are voluntary, but they provide developers with clear guidance on where sacred sites are and how to work alongside them. In addition, authority certificates provide a defence against prosecution for entry onto, or work on, a sacred site.[38]

6.5 Major projects

The NT does not have a dedicated legislative framework to facilitate the approval processes for major projects. However, the NT Government can award 'major project status' to developments that meet specific major project status criteria. Criteria relate to development significance (typically capital expenditure of $100 million+ in Darwin, with lower thresholds in the regions), strategic impact, complexity, feasibility, and the proponent's capacity to deliver (CMC, n.d.).

The granting of major project status does not remove the need for a development proponent to comply with all other relevant legislative requirements and obtain all necessary authorisations, licences and permits. Rather, for development proponents, the benefits of major project status include the identification and outlining of development-related government approvals, whole-of-government coordination and facilitation of the development and development-related government approvals, the opportunity to use NT Government investment attraction activities, and a dedicated development case manager appointed as the single point of contact till project delivery (CMC, n.d.).

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[36] *Heritage Act 2011* (NT), Section 139

[37] *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), Section 10

[38] *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), Section 36

7 Queensland regulatory requirements

7.1 Planning requirements

The *Planning Act 2016* (Queensland) (Queensland Planning Act) is the primary legislation for regulating planning and development in Queensland. The Planning Act creates a framework for local planning schemes (prepared by local governments) and regional and state planning instruments (prepared by the state government).

Planning schemes allocate land to different uses. They also identify different categories of development and the assessment required for those categories. There are three types of development under the Queensland Planning Act:

- prohibited development
- assessable development, which requires a development permit before the development can proceed
- accepted development, which can proceed without a development permit being obtained.

State and regional planning documents sit above local planning schemes and override them to the extent of any inconsistency. There is currently a single state planning policy (State Planning Policy, July 2017), which sets out state interests in land use planning and development.

Applications for development approval are made through the development assessment process. The process is primarily managed by local governments, but integrates state and local government approval processes. State government agencies become involved when a development application affects a state interest, such as state heritage places, state transport corridors, interference with a watercourse, or the clearing of certain vegetation. The State Assessment and Referral Agency is responsible for carrying out this function. In the case of a state interest, an application will be considered by the relevant ‘referral agency’, which is typically the Queensland Government department with responsibility for the relevant state interest.

The development assessment process involves:

- an application, by the applicant/proponent
- an information request, where the assessing agency or any referral agency can request further information
- a referral, in the case of an application that triggers referral to and potentially assessment by, a referral agency
- public notification, in the case of an application that requires impact assessment
- a decision (and potentially appeal).

The Queensland Planning Act allows for the Planning Minister or a local government to make a 'designation' with respect to certain infrastructure.[39] If a designation of the infrastructure is made, then 'development in relation to the infrastructure' will be 'accepted development' for the purpose of the Planning Act, and no development application will be required. However, a development permit for any components of the development that involve 'building work' under the *Building Act 1975* (Queensland) will still be required.

A ministerial infrastructure designation has significant benefits for developments, and the Planning Regulation lists 'water cycle management infrastructure' as infrastructure to which these designations may be made.

In the case of a land and water development, when an infrastructure designation is not achieved, development permits may be required for activities such the following:

- reconfiguration of lots, for example to establish new land titles that align with the location for key development activities (e.g. water storage and infrastructure areas, new agricultural lots, roads, water distribution infrastructure)
- possible material change of use
- clearing of vegetation
- construction of a water storage, such as a dam
- removal of quarry material from a watercourse or lake
- 'operational work' that involves taking or interfering with water.

In addition to the above requirements, the *Regional Planning Interests Act 2014* (Queensland) regulates certain development activities within areas of 'regional interest'. For the purposes of a land and water development, the only relevant regional interest is 'strategic environmental areas'. Within these areas, a 'regional planning interests approval'[40] is required for broadacre cropping, and the use of a dam to store water (other than for stock or domestic purposes).[41] Strategic environmental areas are identified spatially and can be viewed online on an interactive map as part of the development assessment mapping system (Queensland Government, n.d. (a)).

7.2 Environmental protection and conservation

7.2.1 Environmental Protection Act

The Queensland EP Act is Queensland's primary legislation for protection of the environment. The Environmental Protection Act makes it an offence to cause material or serious environmental harm and requires an 'environmental authority' to carry out an 'environmentally relevant activity' (ERA).

[39] *Planning Act 2016* (Queensland), Section 35

[40] *Regional Planning Interests Act 2014* (Queensland), Section 16

[41] *Regional Planning Interests Regulation 2014* (Queensland), Section 11

Most ERAs are listed in the Environmental Protection Regulations 2019 (Queensland) (Environmental Protection Regulation), and include aquaculture, intensive animal feedlots, waste and water treatment services, extractive activities (e.g. dredging and quarrying), and electricity generation. An application for an environmental authority is made under the Queensland Planning Act and is assessed under the Queensland EP Act as part of the development assessment process.

Applications for environmental authorities involve a four-step process: application, information, notification and decision. The information stage may involve requests for further information by the administering authority. This can involve a request for an EIS in the case of a high-risk activity. The notification stage involves public notification of the application and the opportunity for public submissions. For water-related developments in Queensland, the administering authority for the purposes of granting an environmental authority is likely to be the chief executive of the Department of Environment, Science and Innovation, or the chief executive of the Department of Agriculture and Fisheries.

The Environmental Protection Regulation includes specific provisions that apply to activities within the catchments that drain to the Great Barrier Reef (Reef Catchments; see Figure 7-1). Given their application solely to the Reef Catchments, these provisions do not apply to the Southern Gulf catchments, which are the primary focus of this report. Nonetheless these requirements are noted here, given their application to parts of northern Queensland. These provisions create a separate set of agricultural ERAs and are intended to protect the health of the reef by maintaining and improving the quality of water flowing to the reef.

To achieve this objective, the regulations:

- prescribe minimum practice agricultural standards that apply to sugarcane growers, beef cattle graziers, and banana growers. These standards include commodity-specific practices to ensure farmers do not use high-risk farming practices that are likely to contribute excess nutrient and sediment runoff from the Reef Catchments.
- require growers to obtain an environmental authority before starting or expanding commercial cropping and horticulture in a Reef Catchment if the activity will be on 5 ha or more of land that does not have a cropping history. If approved, the activity will be conditioned to meet farm design standards to ensure that there is ‘no net decline’ in water quality.
- provide mechanisms to address additional nutrient and sediment releases from a new development, or intensifications of use by prescribed ERAs and resource activities in the Reef Catchments. New ERAs (e.g. sewage treatment, waste disposal, certain mining activities, and land-based aquaculture) are required to meet a ‘no residual impact’ requirement for dissolved inorganic nitrogen and fine sediment in the Reef Catchments. Where activities cannot avoid or mitigate their water quality impacts, they will be able to meet this ‘no residual impact’ requirement through an offset condition.

Great Barrier Reef catchment and river basins

Reef Regions and River Basins

Burdekin Region
117. Black
118. Ross
119. Haughton
120. Burdekin
121. Don

Fitzroy Region
127. Styx
128. Shoalwater
129. Waterpark
130. Fitzroy
132. Calliope
133. Boyne

Burnett Mary Region
134. Baffle
135. Kolan
136. Burnett
137. Burrum
138. Mary

Mackay Whitsunday Region
122. Proserpine
124. O'Connell
125. Pioneer
126. Plane

Cape York Region
101. Jacky Jacky
102. Olive-Pascoe
103. Lockhart
104. Stewart
105. Normanby
106. Jeannie
107. Endeavour

Wet Tropics Region
108. Daintree
109. Mossman
110. Barron
111. Mulgrave-Russell
112. Johnstone
113. Tully
114. Murray
116. Herbert

Cape York · Wet Tropics · Burdekin · Mackay Whitsunday · Fitzroy · Burnett Mary

The map shows legislative boundaries defined by the river basin boundaries shown in the Queensland Drainage Basins mapping 1998, DNRM. The boundaries and names of the Queensland drainage basins are as defined by the Australian Water Resources Management Committee (WRMC). Information includes the name and number of each drainage basin.

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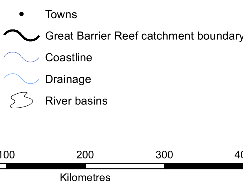

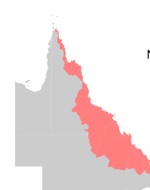

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Figure 7-1 Great Barrier Reef catchments

7.2.2 Nature Conservation Act

The *Nature Conservation Act 1992* (Queensland) provides for the conservation of nature through the establishment and management of protected areas (such as national parks) and the protection of native wildlife and habitat. Regulations under the Nature Conservation Act establish the rules for regulating activities within protected areas. Around 10,000,000 ha, or 5.5% of Queensland, is protected by national parks. National parks are owned by the state government and managed for nature conservation.

The Act places significant restrictions on activities within national parks. Subject to approval, certain infrastructure can be developed within a protected area, provided the use meets the following criteria:

- the cardinal principle for the management of national parks will be observed to the greatest extent possible (the cardinal principle is to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values)
- the use will be in the public interest
- the use is ecologically sustainable
- there is no reasonable alternative to the use.[42]

Infrastructure that may be authorised on a protected area includes electricity transmission lines and facilities, communication towers and facilities, and water supply or sewerage facilities.

7.2.3 Queensland Water Act

In addition to regulating the taking of water (Section 4.3), the Queensland Water Act allows for the creation of 'water use plans'. Water use plans are statutory plans that apply to a defined geographic area and that regulate water use where there is a risk of land and water degradation, such as due to rising groundwater levels, salinisation, or deteriorating water quality. In theory, water use plans can prescribe standards for water use, such as those that would apply to irrigation practices. In practice, no water use plans have been established in Queensland in the more than 20 years since the Queensland Water Act came into force.

The Queensland Water Act also regulates activities within a watercourse. It is an offence to destroy vegetation, excavate, or place fill in a watercourse without an appropriate permit or exemption. The Water Act provides for the granting of riverine protection permits to authorise such acts.[43]

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[42] *Nature Conservation Act 1992* (Queensland), Section 35

[43] *Water Act 2000* (Queensland), Section 218

7.3 Vegetation management

Clearing of vegetation in Queensland is regulated by the vegetation management framework, which is designed, among other things, to conserve remnant vegetation, prevent the loss of biodiversity, maintain ecological processes, and reduce greenhouse gas emissions.[44] The framework applies to most land tenures, including freehold land, Indigenous land, leasehold land and occupational licences under the Land Act 1994. The framework consists of the *Vegetation Management Act 1999* (Queensland) (Vegetation Management Act), the Queensland Planning Act, and associated regulations, policies and codes, including the State Policy for Vegetation Management.

The requirements regulate the clearing of native vegetation. Clearing includes removing, cutting down, or pushing over. Native vegetation is a native tree or plant other than a grass, non-wood herbage, or mangrove.[45]

A wide range of activities related to clearing of native vegetation is classed either as 'prohibited development' or 'assessable development' under the Queensland Planning Act and regulations.[46] The framework allows the clearing of remnant vegetation and regulated regrowth vegetation where clearing is:

- for low-risk, exempt purposes
- carried out under accepted development vegetation clearing codes
- for relevant purposes listed in the Vegetation Management Act.

Assessment categories under the Queensland Planning Act for clearing of native vegetation are shown in Table 7-1.

Table 7-1 Assessment categories for vegetation clearing in Queensland

ASSESSMENT CATEGORY	DESCRIPTION	REQUIREMENT
Exempt clearing work	A range of routine property management activities, such as clearing for fire breaks, to establish roads or fences, or for maintaining existing infrastructure.	There is no requirement to notify or apply for approval.
Accepted development vegetation clearing codes	Codes apply to a range of low-risk clearing activities, such as fodder harvesting and weed control.	The proponent is required to notify the department before starting to clear, then follow the requirements listed in the code.
Area management plans (AMPs)	AMPs are generally used to manage issues not addressed by an accepted development vegetation clearing code. They can also provide for a coordinated regional approach to a clearing activity (e.g. weed control), rather than a property-by-property approach.	The proponent is required to notify the department before starting to clear, then follow the requirements listed in the AMP.

[44] *Vegetation Management Act 1999* (Queensland), Section 3

[45] *Vegetation Management Act 1999* (Queensland), Section 8

[46] *Planning Regulation 2017* (Queensland), Schedule 10, Part 37

ASSESSMENT CATEGORY	DESCRIPTION	REQUIREMENT
Development approvals	If other assessment categories aren't suitable, a proponent might be able to apply for a development approval.	The framework only allows development applications to be made for certain purposes. A proponent can seek a development approval by lodging a development application.

Source: Queensland Government, n.d.(b)

The vegetation management framework is supported by a number of maps that show vegetation categories and the boundaries of these categories on properties. These maps allow a landholder to identify the areas on their property where vegetation potentially can or cannot be cleared. (Queensland Government, n.d.(c))

In addition to requirements under the vegetation management framework, a clearing permit may be required before clearing protected native plants under the *Nature Conservation Act 1992* (Queensland).

7.4 Cultural heritage

In Queensland, cultural heritage is protected under:

- the *Queensland Heritage Act 1992* (Queensland)
- the *Aboriginal Cultural Heritage Act 2003* (Queensland) (ACH Act).
- the *Torres Strait Islander Cultural Heritage Act 2003* (Queensland) (TSICH Act)

7.4.1 Non-Indigenous cultural heritage

The *Queensland Heritage Act 1992* (Queensland) establishes the Queensland Heritage Register to record places of state non-Indigenous cultural heritage significance. This includes places, trees, natural formations, and buildings of cultural significance. It is an offence to carry out development affecting a place on the register without approval. Development that involves a place listed in the register is assessable development and generally requires approval under the Queensland Planning Act.

Local governments are required to identify and record places of local heritage significance, either through local heritage registers or their local planning schemes. Development that involves these places may require approval from the local government under the Planning Act.

7.4.2 Indigenous cultural heritage

The ACH Act and TSICH Act establish a general duty of care on a person to take all reasonable and practicable measures to ensure they do not harm Indigenous cultural heritage, and include a prohibition in relation to the excavation, relocation or taking away of Indigenous cultural heritage (cultural heritage duty of care).

The acts create offences including:

- making it unlawful for a person to harm Indigenous cultural heritage
- prohibition on excavating, relocating or taking away Indigenous cultural heritage

- prohibition on possessing an object that is Indigenous cultural heritage.

The cultural heritage duty of care is taken to be complied with if the person carrying out an activity is acting:

- under an approved CHMP
- under a native title agreement or another agreement with an Indigenous party, or
- in compliance with cultural heritage guidelines.

Where an EIS is required for a development, additional provisions apply and an approved CHMP is required before any excavation, construction or other activity can occur.

7.5 Referable dam requirements

The *Water Supply (Safety and Reliability) Act 2008* (Queensland) regulates dams whose failure would threaten the safety of individuals. A dam whose failure would put two or more people at risk is a 'referable dam' under the Water Supply (Safety and Reliability) Act, and subject to regulation. Notably, this includes a requirement to undertake a failure impact assessment. This is required where a proposed dam is more than 10 m high and has a storage capacity of more than 1500 ML, or more than 10 m high and has a storage capacity of more than 750 ML and a catchment area that is more than three times its maximum surface area at full supply level.[47]

7.6 Coordinated project

A development can be declared a 'coordinated project' by the Queensland Coordinator-General under the *State Development and Public Works Organisation Act 1971* (Queensland) if one or more of the following apply:

- complex approval requirements have been imposed by local, state or Australian government
- strategic significance to a locality, region or state, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide
- significant environmental effects
- significant infrastructure requirements.[48]

If declared a coordinated project, there may be a requirement for:

- an EIS
- an impact assessment report (IAR).

The IAR process is generally a simpler process than the EIS process, and would only apply where the Coordinator-General is satisfied the environmental effects of the development do not require assessment through the EIS process.

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[47] *Water Supply (Safety and Reliability) Act 2008* (Queensland), Section 343

[48] *SDPWO Act 1971* (Queensland), Section 27(2)(b)

In considering whether to declare a development a coordinated project, the Coordinator-General must have regard to:

- detailed information about the development given by the proponent
- relevant planning schemes or policy frameworks of the local, state or Australian government
- relevant state policies and government priorities
- a pre-feasibility assessment of the development, including how it satisfies an identified need or demand
- the capacity of the proponent to undertake and complete the EIS or IAR for the development
- any other matter considered relevant.

A coordinated project declaration does not imply government approval of or support for a development. Rather, it means the development requires a rigorous impact assessment involving whole-of-government coordination. The declaration does not exempt the development proponent from the need to obtain the necessary development approvals or comply with relevant planning and environment laws and planning instruments (SDILGP, n.d.).

Note that, separate to the process for declaring a coordinated project, in which a state interest applies, the State Assessment and Referral Agency will be involved in assessing the development application, which provides for a coordinated response from relevant state government agencies. This will apply, for example, when a development affects a state heritage place or involves the clearing of certain vegetation (see Section 7.1).

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Appendix A Summary of issues and considerations

Apx Table A-1 summarises the key issues and legal and regulatory considerations that apply across the relevant jurisdictions.

Apx Table A-1 Summary of key issues and considerations

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
Land tenure	Development will need to secure appropriate tenure over the development site	Cth	Native title requirements will apply in most cases where the land is not freehold. This is likely to require negotiation with the relevant Indigenous Peoples for the area, prior to undertaking development activities and entering an Indigenous land use agreement (ILUA).	*Native Title Act 1992* (Cth)	Entering an ILUA is a voluntary process, so there are no statutory time frames. Typically, it will take 12–18 months to negotiate and a further 6 months to register an agreement with the National Native Title Tribunal (NNTT).	Queensland Government / Business Queensland private Indigenous land use agreements, n.d. https://www.business.Queensland.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/native-title/agreements/private
		NT	Development on Aboriginal freehold land (45% of the NT) will require consent of the Traditional Owners and approval from the Northern Land Council of a Section 19 Land Use Agreement. Development on pastoral lease land (43% of the NT) will require approval from the Pastoral Land Board for non-pastoral uses.	*Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) *Pastoral Land Act 1992* (NT)	Obtaining consent from Traditional Owners involves submission of a Section 19 Land Use Agreement expression of interest to the Northern Land Council. The Land Council then consults with Traditional Owners. The applicant is expected to meet reasonable costs of the Land Council. Obtaining approval from the Land Council is likely to be time-consuming – a minimum of 6 months, but likely more for complex developments. Applications for a permit for a non-pastoral use is through the Development Applications Online website. Permits attach to the land and are registrable on title.	Northern Land Council Section 19 Land Use Agreements https://www.nlc.org.au/our-land-sea/aboriginal-land-legislation Non-pastoral use of land https://nt.gov.au/industry/agriculture/farm-management/non-pastoral-use-of-pastoral-land https://nt.gov.au/__data/assets/pdf_file/0005/261950/non-pastoral-use-guidelines.pdf

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
					Assessing a non-pastoral use application takes approximately 6 months.	
		Queensland	Development on state land (including leasehold land) is subject to requirements of the Queensland Land Act.	*Land Act 1994* (Queensland)	The process is set by the Queensland Land Act. There are different requirements for applying for unallocated leasehold, transferring leasehold land, obtaining a permit to occupy, and conversion of leasehold to freehold.	State land applications https://www.Queensland.gov.au/environment/land/state/application/forms
Water entitlement	Development will need to secure appropriate entitlement to allow it to take water from a watercourse or aquifer	NT	A water licence may, in certain situations, be traded from an existing water licence holder, subject to meeting the requirements related to water trade and/or transfer, as per the relevant water allocation plan. A water licence may be granted for a beneficial use identified in a water allocation plan. Water use will need to align with the available volume and purpose for the water, as identified in the plan.	*Water Act 1992* (NT)	Potential sellers of water can be identified through the public register of water licences. Most trades are processed by the Water Department within 2 weeks. Application for a water licence is to the Controller of Water Resources. Details of applications must be published and provided to neighbouring landowners. The application process is likely to take 3–6 months minimum. The applicant has the right to appeal to the Minister for Water Resources.	Applying for a water extraction licence https://nt.gov.au/environment/water/licensing/water-extraction-licence/apply-for-a-water-extraction-licence Trading a water licence https://nt.gov.au/environment/water/licensing/water-extraction-licence/water-trading
		Queensland	Water entitlement may be purchased from an existing water entitlement holder, subject to meeting the requirements related to water trading, as per the relevant water plan. Water entitlement may be granted for unallocated water identified in a water plan. Water use will need to align with the purpose for the water, as identified in the plan.	*Water Act 2000* (Queensland)	Transferring ownership of a water entitlement is a purely administrative process, requiring only lodgement of the relevant paperwork. A 'change' to a water allocation, such as changing the purpose or location, requires approval and will be assessed by the Water Department against the requirements of the relevant water plan.	Water allocation dealings https://www.business.Queensland.gov.au/industries/mining-energy-water/water/water-markets/allocation-dealings Unallocated water https://www.business.Queensland.gov.au/industries/mining-energy-water/water/catchments-planning/unallocated-water

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
					To be granted a new water entitlement, a developer needs to first identify whether there is any unallocated water available in the relevant water plan area. The approach to releasing unallocated water is determined by the Water Department on a case-by-case basis, but usually involves a public, competitive process.	
Planning requirements	Development will need to be consistent with local and state or territory planning requirements	NT	A single planning scheme applies across the NT. Proposed developments may be (i) permitted, (ii) merit assessable, (iii) impact assessable or (iv) prohibited. A development permit is required for (ii) and (iii), and may apply to a new building, changing land use, or subdivision. The Planning Commission may prepare a significant development report to support assessment, where developments are over a certain investment threshold.	*Planning Act 1999* (NT) Northern Territory Planning Scheme 2020	Applications are submitted via the Development Applications Online website. Initial processing of applications usually takes 8 weeks. Public advertising and a submissions process may be required. Decisions are made by either the Development Consent Authority or the Planning Minister. Applicants have the right to request a review of a decision about a development permit to the Northern Territory Civil and Administrative Tribunal.	Applying for a development permit https://nt.gov.au/property/land-planning-and-development/planning-applications-and-processes/development-applications
		Queensland	*A development permit is required for any activities that are 'assessable development' under a planning scheme or planning instrument. The development assessment process is coordinated in the case of matters of state interest, including vegetation clearing and environmental authorities.* *There is the potential to obtain an 'infrastructure designation' under the Queensland Planning Act, which would remove the need for a*	*Planning Act 2016* (Queensland) *Regional Planning Interests Act 2014* (Queensland) Queensland State Planning Policy 2017	Application for a development permit is usually made to the relevant local government. Statutory time frames apply, but vary significantly depending on the nature of the application: up to 80 business days for an impact-assessable development. Applicants can request a pre-lodgement meeting with the Department of State Development and Infrastructure when a state development assessment is required.	Development assessment https://planning.statedevelopment.Queensland.gov.au/planning-framework/development-assessment/what-is-development-assessment Areas of regional interest mapping https://planning.statedevelopment.Queensland.gov.au/planning-framework/mapping Carrying out resource activities and regulated activities in a Strategic Environmental Area

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
			development permit for some activities. *Regional interests development approval is required for broadacre cropping or water storage within a strategic environmental area.*		Applications for regional interests development approval are made to chief executive of the Queensland Treasury. For a strategic environmental area, the application must include a report assessing the impact on the area.	https://dsdmipprd.blob.core.windows.net/general/rpi-guideline-05-14-carrying-out-activities-in-sea.pdf
Environmental approvals	Approvals for activities that have potential environmental impact, including any building or construction activities	Cth	Federal environmental approvals may be required if the development has the potential to have an impact on Matters of National Environmental Significance. Environmental impact assessment requirements under federal law can be met using state and territory assessment processes, but the decision remains with Australian Minister for the Environment and Water.	*Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)	There is an initial assessment by the developer to determine whether referral under the EPBC Act is required. Substantial information is required to support a referral. Pre-referral discussions with the Department of Climate Change, Energy, the Environment and Water are recommended. Where the development is determined to be a 'controlled action', the developer undertakes and submits the necessary assessment, including publishing the draft assessment and responding to public comments. Where a bilateral assessment has been undertaken, the relevant state or territory government provides the assessment report. The decision is made by the federal Minister for the Environment and Water. The process is time-consuming and likely to take a minimum of 2–3 years.	Referrals and environmental assessments under the EPBC Act https://www.dcceew.gov.au/environment/epbc/approvals#submit-a-referral
		NT	Environmental approval is required for actions that will have significant impact on the environment, or where activities are captured under the 'referral trigger'. The NT Environment Protection Authority (EPA) prepares environmental	*Environment Protection Act 2019* (NT) Environment Protection Regulations 2020 (NT)	The developer must refer the development to the NT EPA if it may have a significant impact on the environment. A pre-referral screening tool is available for proponents to assess potential impact. The Minister for Lands,	NT Environmental Impact Assessment https://ntepa.nt.gov.au/your-business/environment-impact-assessment

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
			impact statements (EISs), where required.		Planning and Environment determines whether the proposal will have a significant impact and, if so, the assessment method to be undertaken. Depending on the assessment method, public consultation may be required. The Minister makes the decision on whether to grant an environmental approval.	
		Queensland	Environmental approvals are required for 'environmentally relevant activities'. An EIS may be required. The application process is under the Queensland Planning Act development assessment framework. Specific approvals are required for activities in a national park.	*Environmental Protection Act 1994* (Queensland) *Nature Conservation Act 1992* (Queensland) *Planning Act 2016* (Queensland) *Vegetation Management Act 1999* (Queensland) *Environmental Offsets Act 2014* (Queensland) *Fisheries Act 1994* (Queensland)	The application process, assessment requirements, and time frames for an environmental approval vary with the activity. Detailed guidelines are available. Administrative responsibility for the approving environmental authorities varies depending on the activity (e.g. it may be the environment department, agriculture department, or local government). Pre-lodgement meetings are available with the State Assessment and Referral Agency for environmentally relevant activities (ERAs) administered by the state.	Approval processes for environmental authorities https://www.des.Queensland.gov.au/policies?a=272936:policy_registry/era-gl-environmental-authority-approval-process.pdf Application for pre-lodgement services https://www.Queensland.gov.au/environment/management/licences-permits/application-for-pre-lodgement-services
Cultural heritage	Development may have an impact on cultural heritage, including Indigenous cultural	Cth	National heritage values will need to be considered through any EIS process under the EPBC Act.	*Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (ATSIHP Act)	See the above requirements for the EPBC Act There is no application process for developers under the ATSIHP Act and the PMCH Act; rather, there is the requirement to ensure compliance with these Acts.	ATSIHP Act https://www.dcceew.gov.au/parks-heritage/heritage/publications/atsihp-act-guide-and-application-form Movable cultural heritage https://www.arts.gov.au/what-we-do/cultural-heritage/movable-cultural-heritage

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
	heritage sites and/or objects			*Protection of Movable Cultural Heritage Act 1986* (Cth) (PMCH)		
		NT	The developer will need to identify potential cultural heritage sites and/or objects. Searches of the NT Heritage Council register and the NT AAPA register of sacred sites will be required. A permit may be required in order to carry out work on a heritage place or object. A cultural heritage management plan (CHMP) may be required but, regardless, it is likely to be advisable for significant developments.	*Northern Territory Aboriginal Sacred Sites Act 1989* (NT) *Heritage Act 2011* (NT)	Application for a permit to carry out work on a heritage place is made to the Heritage Council. The application must include a heritage impact statement. The developer may apply to AAPA for an authority certificate, setting out conditions on which work can be undertaken around sacred sites. Certificates are voluntary but provide a legal defence.	Application to carry out work on heritage place or object https://nt.gov.au/__data/assets/pdf_file/0009/200115/application-to-carry-out-work-on-a-heritage-place-or-object.pdf Authority certificates https://www.aapant.org.au/services/authority-certificates
		Queensland	The developer will need to identify potential cultural heritage sites and/or objects. Searches of the Queensland Heritage Register and the Queensland Cultural Heritage Register will be required. A development permit is generally required for a development that involves a place listed in the register. A CHMP may be required but, regardless, it is likely to be advisable for significant developments.	*Queensland Heritage Act 1992* (Queensland) *Aboriginal Cultural Heritage Act 2003* (Queensland) *Torres Strait Islander Cultural Heritage Act 2003* (Queensland)	See above under Queensland planning requirements regarding application for a development permit. The statutory process for developing a CHMP includes a 1-month notification period of intention to develop a plan, followed by a maximum 3-month negotiation/consultation with the Indigenous party. Where agreement cannot be reached, the proposed plan can be referred to the Land Court.	Queensland Heritage Register https://apps.des.Queensland.gov.au/heritage-register/ Cultural heritage laws and duty of care guidelines https://www.Queensland.gov.au/firstnations/environment-land-use-native-title/cultural-heritage/queensland-legislation Cultural heritage management plan https://www.Queensland.gov.au/firstnations/environment-land-use-native-title/cultural-heritage/cultural-heritage-management-plans
Works in a watercourse	Development may involve activities within a watercourse,	NT	Authorisation is required to interfere with a watercourse (e.g. extraction of materials, construction within a waterway, or diversion of a watercourse).	*Water Act 1992* (NT)	Application for a permit to interfere with a waterway is to the Controller of Water Resources.	Interference with a waterway https://nt.gov.au/__data/assets/pdf_file/0007/1348189/interference-with-a-waterway-guideline.pdf

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
	such as constructing a barrier (weir or dam), removing vegetation, quarrying	Queensland	A permit is required for interference with a watercourse, including for the construction of a barrier or for removal of vegetation or quarry material. Some exemptions apply. Separate approval for vegetation clearing may be required (see below).	*Water Act 2000* (Queensland)	Application for a riverine protection permit is to the Water Department.	Riverine protection permits https://www.business.Queensland.gov.au/industries/mining-energy-water/water/authorisations/riverine-protection Riverine protection permit exemption requirements https://www.rdmw.Queensland.gov.au/?a=109113:policy_registry/riverine-protection-permit-exemption-requirements.pdf
Farming activities	Farming the land, including growing crops and/or trees, irrigation, and applying fertiliser and/or pesticides	NT	Various obligations apply with respect to weed management, pesticide use, soil conservation, etc.	*Weed Management Act 2001* *Soil Conservation and Land Utilisation Act 1969*		Weed Management Act compliance policy https://nt.gov.au/__data/assets/pdf_file/0011/668387/weeds-management-act-compliance-policy.pdf
		Queensland	Various obligations apply with respect to weed management, pesticide use, soil conservation, etc. Specific approvals are required for agricultural activities in the Great Barrier Reef catchments. New developments must demonstrate no net impact on key water quality parameters.	*Environmental Protection Act 1994* (Queensland) Environmental Protection Regulations 2019 (Queensland) *Soil Conservation Act 1986* (Queensland)	See the application process for ERAs above under 'Environmental approvals'.	Reef protection regulations https://www.Queensland.gov.au/environment/agriculture/sustainable-farming/reef/reef-regulations
Clearing vegetation	Clearing of vegetation to allow for construction or farming and/or other agricultural activities	NT	Clearing of native vegetation is controlled and generally requires an authority, except for routine maintenance and/or day-to day management operations. Restrictions apply to both freehold land (including Aboriginal freehold) and pastoral leases. A permit is	*Pastoral Land Act 1992* (NT) Land Clearing Guidelines (NT) Northern Territory Pastoral Land Clearing Guidelines	Application for a permit is via the Development Applications Online website. Applications are typically processed within 6 months, which includes public notification and exhibition requirements.	Land clearing guidelines https://nt.gov.au/__data/assets/pdf_file/0007/236815/land-clearing-guidelines.pdf Pastoral land clearing guidelines https://nt.gov.au/__data/assets/pdf_file/0003/902289/northern-

ISSUE	DESCRIPTION	JURISDICTION	LEGAL AND REGULATORY CONSIDERATIONS	KEY LEGISLATION	APPLICATION PROCESS AND TIME FRAMES	GUIDELINES/FURTHER INFORMATION
			required prior to clearing, save for limited exemptions. Permits can be registered and attach to the land title.			territory-pastoral-land-clearing-guidelines.pdf
		Queensland	Clearing of native vegetation is controlled and generally requires an authority, except for routine maintenance and/or day-to day management operations. This is generally captured as assessable development under the Queensland Planning Act, in which case a development permit is required	*Planning Act 2016* (Queensland) *Vegetation Management Act 1999* (Queensland)	See above under Queensland planning requirements re: application for a development permit.	Vegetation clearing codes and approvals https://www.Queensland.gov.au/environment/land/management/vegetation/clearing-approvals

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