

Guideline

Infrastructure and equipment

Applying for an authority under sections 34, 35 or 35A of the *Nature Conservation Act 1992*

This guideline outlines the information required to support applications for authorities issued under sections 34, 35, or 35A of the Nature Conservation Act 1992.

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Applying for an authority under sections 34, 35 or 35A of the *Nature Conservation Act 1992*

Purpose

This document outlines how to prepare and lodge applications for a lease, licence, permit or other authority issued under sections 34, 35 or 35A of the *Nature Conservation Act 1992* (NCA). This document refers only to State managed protected areas, and not private protected areas including nature refuges and special wildlife reserves.

Applicants should refer to the information in this guideline before lodging an application.

Background

Queensland Parks and Wildlife Service and Partnerships (QPWS&P), within the Department of Environment and Science (DES), is responsible for managing protected areas established on State land in Queensland. For the purposes of this guideline, protected areas means national parks (scientific), national parks, conservation parks and resources reserves. These areas are set aside under the NCA to recognise and protect their natural and cultural values.

Protected areas are managed in accordance with the requirements of the NCA, which include management principles prescribed for each protected area type. There is also a statutory requirement to develop a management instrument (a management plan or management statement) for areas dedicated under the NCA, which provide strategic management direction about the management of key park values. The NCA also establishes an approvals framework to manage activities conducted on protected areas and ensure they do not adversely impact on an area's natural and cultural values.

In the case where the construction and operation of service facilities and other infrastructure is proposed in a protected area, it is only permitted in circumstances where specific statutory criteria have been met, and an authority has been granted, made, issued or given under sections 34, 35 or 35A of the NCA. A service facility is defined under the NCA as a communications facility, a navigational aid, a pipeline for oil or gas, a transmission grid or a water supply or sewerage facility.

This guideline also covers applications for ecotourism facilities on protected areas. Applicants should refer to *The Ecotourism Facilities on National Park Implementation Framework* and the *Best Practice Development Guidelines – Ecotourism facilities on national parks* on the DES website at www.des.qld.gov.au for more information.

Areas that either are, or contain, a Matter of National Environmental Significance require the development of a Protected Matters Report Environmental Impact Assessment, and possible referral under the *Environment Protection and Biodiversity Conservation Act 1999* for any activity that involves construction or activity that might impact on the values of the area. Further information can be found on the Commonwealth Department of Climate Change, Energy, the Environment and Water website. Additional requirements and approvals are required if the area is also a World Heritage Area.

Refer to the *Information Sheet – Authorities creating an interest in a protected area under the Nature Conservation Act 1992* for more information about these authority types.

Application process

Pre-lodgement

Before lodging an application, applicants should:

- Attend a pre-lodgement meeting with QPWS&P to discuss the proposed activities. Contact details for the relevant QPWS&P region can be obtained by emailing QPWS.estate@des.qld.gov.au. At this

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meeting, the appropriate authority is confirmed and the application package for that authority type is discussed with the applicant; and

- Familiarise themselves with the operational policy documents and guidance materials that form part of the application package (see Appendix A for a list of documents).

Lodging an application

Applications are lodged via DES Online Services, available on the DES website. For more information, please email QPWS&P at QPWS.estate@des.qld.gov.au. The application process is outlined below in table 1.

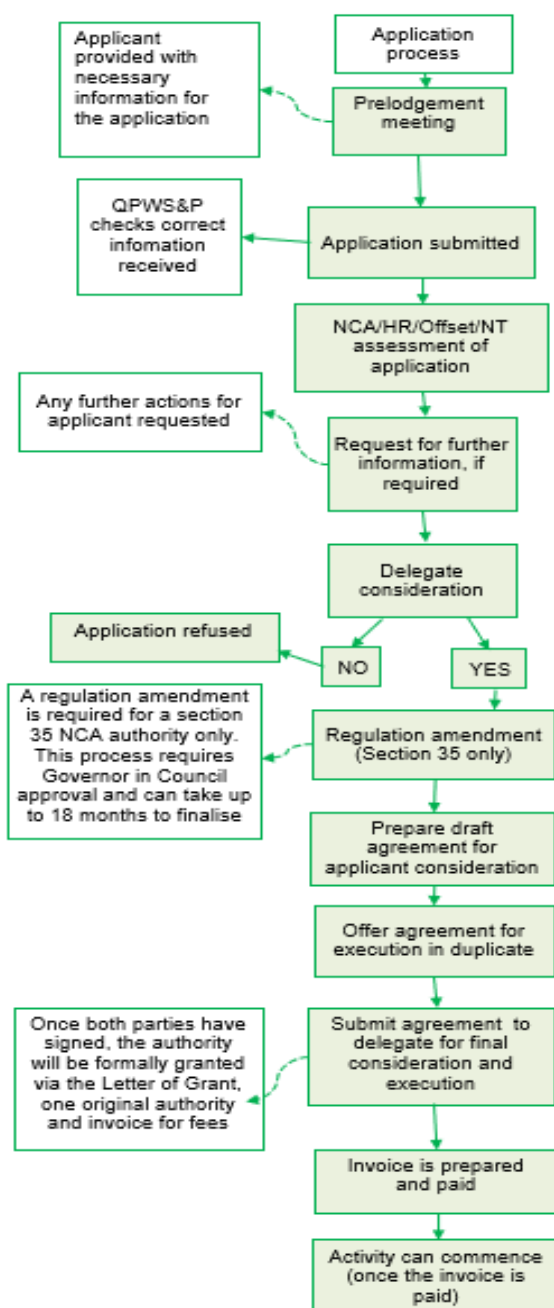


Table 1: Application process for NCA authorities

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Required information

Applicants must submit the following documents as part of their application:

Application Document	Purpose
Application Form	Captures applicant information and details of the proposed use or activity.
Submission Report	Outlines how the proposal meets the requirements of the NCA, and DES operational policies (Refer to Appendix A). The submission report forms part of the application and must be provided before an application can be considered. See <i>Application Form - Application for lease, agreement, licence, permit or other authority under sections 34, 35 or 35A of the Nature Conservation Act 1992</i> .
Environmental Management Plan	Outlines how the proposed use or activity impacts the relevant protected area and how the protected area's key natural, cultural, social and recreational values will be managed. See the <i>Guideline – Preparing Environmental Management Plans for Queensland Parks and Wildlife Service and Partnerships authorities</i> .
Environmental offset proposal	Outlines how environmental offsets will be addressed. See the Environmental Offsets section of this Guideline, and the DES 'Queensland Environmental Offsets Policy' on the DES website for more information.
Spatial data	Shows the location of the proposed use or activity within the protected area, and relevant geophysical characteristics. Applications must include: <ul style="list-style-type: none"> An Authority Plan showing the proposed authority area. Authority plans are used to define areas of land in circumstances where a cadastral survey is not required. See the <i>Guideline – Producing an Authority Plan for a lease, agreement, license, permit or other authority on Queensland Parks and Wildlife Service managed areas</i>. Digital spatial data, either in shapefile (.shp) or geodatabase (.gdb) format.

If further information is required

Applicants may be required to provide further information for a decision to be made. For example, the chief executive of DES may require an applicant to prepare or provide:

- An Environmental Impact Statement (EIS);
- An Environmental Impact Assessment (EIA); or
- Additional information may be necessary to assess the application, as determined by the chief executive of DES. The specific additional information required will depend on the type and location of the activity and/or use proposed.

If either an EIS or EIA are required, QPWS&P will provide specific instructions and information to an applicant on how to prepare those documents.

All costs associated with providing the additional information are the responsibility of the applicant.

When a decision is made

Where an application is not supported by the chief executive, the applicant will be notified in writing, including a statement of reasons as to why the application was not supported. The applicant will also be provided information on appeal and review processes.

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If the application is supported in-principle by the chief executive, QPWS&P will notify the applicant in writing of the decision. This is not the final approval for the application and does not indicate the application process is complete. A copy of the agreement terms and conditions can be provided upon request. QPWS&P will also provide information about the legislative and administrative steps required to finalise the authority, including native title obligations and any applicable regulatory amendment processes. For section 35 authorities, a legislative amendment is required to prescribe the use in Schedule 3 of the Nature Conservation Act (Protected Areas Management) Regulation 2017. Once the regulation amendment has been approved by Governor in Council, the authority may be granted and the legislative requirements of section 35(1)(d) of the NCA are met.

Once the legislative and administrative requirements are met, the authority (in duplicate) is provided to the applicant for review and signature. The documents (in duplicate) are then returned to QPWS&P for countersigning by the chief executive (the delegate). Once both parties have signed, the authority will be formally granted to the applicant via the provision of a Letter of Grant, one original authority and invoice for annual fees mailed to the applicant. Only at this stage can the activity commence (subject to payment of the required fees).

Assessment criteria

Applications for each type of authority are assessed against different legislative and policy requirements.

The NCA sets out the legislative criteria that must be satisfied before an authority can be granted, these and the policy requirements are outlined below. Information addressing these criteria must be provided in the Submission Report which is included as part of the application form.

Section 34 authority for structures, major works, and long-term activities

The following criteria must be satisfied before an authority under section 34 can be granted:

- The use is consistent with the management principles, or management plan (if approved), for the protected area¹;
- The use will be in the public interest;
- The use is ecologically sustainable²; and
- There is no reasonably practicable alternative.

Section 35 authority for a new service facility or ecotourism facility in a national park

The following criteria must be satisfied before an authority under section 35 for a new service facility can be granted:

- The cardinal principle for the management of national parks will be observed to the greatest possible extent³;
- The use will be in the public interest;
- The use is ecologically sustainable;
- There is no reasonably practicable alternative; and
- The use must be prescribed under a regulation.

¹ The management instrument for each protected area is available on the DES website at www.des.qld.gov.au.

² Refer to section 11 of the NCA for a definition.

³ Refer to section 17(1)(a) of the NCA for the cardinal principle.

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For an ecotourism facility, the following criteria must be satisfied:

- The use will be in the public interest;
- The use is ecologically sustainable;
- The use will provide, to the greatest possible extent, for the preservation of the land's natural condition and the protection of the land's cultural resources and values; and
- The use must be prescribed under a regulation.

Section 35A authority for an existing service facility

The following criteria must be satisfied before an authority under section 35A can be granted, the use:

- Is for an existing service facility (that was in existence and in use prior to the dedication of the land as national park under the NCA);
- Will not result in substantial improvements to the service facility infrastructure; and
- Is ecologically sustainable.

Additional requirements for a section 35A authority

Section 35A authorities allow the continuation of existing service facilities on national parks. The service facility must have been in existence on the land prior to the dedication of the land as national park under the NCA. Carrying out substantial or significant improvements to the existing service facility is not permitted.

Applicants must provide information in their application about any existing or previous lease, agreement, licence, permit or other authority for the activity area (for example, a water extraction licence). Information about the date of construction or installation and co-users, if applicable, must also be provided.

Additional requirements for co-location applications

Co-location occurs where one or more persons or entities install or operate infrastructure that is attached to, or is contained within, a host structure. This often occurs with communications facilities such as towers and/or buildings. QPWS&P generally encourages co-location as a way of reducing or minimising conservation, environmental and visual amenity impacts by locating multiple users on a single site in a protected area.

Where co-location occurs and is approved, one site user, often the original site user (the primary user or infrastructure provider), will hold a primary authority to use or occupy a site. Other persons or entities wishing to co-locate on that site (a secondary user) will need to apply for and obtain an authority for their activity or use, as well as the written agreement of the holder of the primary authority. The commercial arrangements between the primary and co-locating operators, or users, are to be resolved by those parties prior to lodging an application. A letter must be provided by the primary user supporting the application.

Co-location may require a regulation amendment (for section 35 authorities only) in some circumstances.

Additional requirements for primary user applications

If submitting an application for communications infrastructure as the primary user or infrastructure provider, a list of co-users who have a physical presence on site must be provided with the application form.

The primary user or infrastructure provider must also ensure that co-users will operate under the primary user or infrastructure provider's Environment Management Plan (EMP), where applicable and where an EMP exists, including any access or waste management requirements.

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Additional requirements for ecotourism facilities

Applicants for ecotourism facilities should consult the following documents and address them in their Submission Report:

- *Queensland Ecotourism Plan 2016-2020* which provides the framework for building the ecotourism industry and delivering new ecotourism experiences in Queensland.
- *Ecotourism Facilities on National Parks – Implementation Framework* which explains how ecotourism facility proposals will be assessed, the matters that will be considered, and the approval and commercial arrangements for successful proposals.
- *Best Practice Ecotourism Development Guideline* which assists applicants to develop ecotourism facilities and experiences on national parks that are in the public interest, are ecologically sustainable and ensure, to the greatest possible extent, the preservation of the land's natural condition and protection of its cultural values and resources.
- *Queensland Ecotourism Development Toolkit* which helps those interested in investing in new, appropriate ecotourism facilities on national parks to make informed decisions regarding the design and implementation of ecotourism products on different land tenures, including national park.

The applicant must also consult with the Ecotourism Unit of QPWS&P during pre-lodgement activities to determine whether the proposal may be considered under the department's ecotourism assessment framework.

These documents and further information on ecotourism within protected areas can be found on the DES website at www.des.qld.gov.au.

Application process for amending an existing authority

Any proposal to vary or amend an existing authority must be allowable under the conditions of the authority. This will generally require the agreement and written approval of the chief executive.

Minor amendments that do not extend the existing authority footprint may be dealt with under a Deed of Variation and/or an amendment to the EMP, but offsets will still need to be considered as part of the application. For example, minor amendments may include installing new infrastructure.

Proposals to significantly extend or upgrade infrastructure, to change the nature of the use or to expand the footprint or extent of use beyond that allowed by the existing authority and EMP, are regarded as new activity proposals. As a result, a new application will be required to be submitted, assessed and where appropriate approved by the chief executive, before any works to upgrade the infrastructure can occur.

Significant extensions or upgrades to infrastructure include proposals to:

- change the nature, size or intensity of an authorised use or activity in a manner that results in an additional impact to the protected area;
- extend the footprint or height of existing infrastructure;
- significantly upgrade existing infrastructure;
- clear or inundate an area beyond the existing footprint; or
- reduce natural or cultural values of the area.

New applications for significant extensions or upgrades to existing infrastructure and facilities, that expand the footprint and impacts beyond what is permitted by the original authority, will also require consideration of an environmental offset and require an offset proposal to be lodged as part of the application, as outlined in the

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Environmental Offsets section of this document. Any offset requirement for a proposed amendment is to be addressed by the proponent in the application form.

Environmental offsets

The Queensland Environmental Offsets framework comprises of the *Environmental Offsets Act 2014* (Qld) and *Environmental Offsets Regulation 2014*.

Activities authorised under section 34 and section 35 of the NCA are prescribed activities under the *Environmental Offsets Act 2014* (Qld). If the proposed activity is for a new facility, infrastructure or development, and it causes a significant residual impact to a prescribed environmental matter, such as a protected area or threatened species, an environmental offset may be required, and an offset condition(s) imposed upon the NCA authority.

A protected area offset is designed to compensate for:

- the important natural, cultural, economic and public benefit values of the area lost, including current and future values relating to the provision of ecological services (such as clean air, water and carbon storage), recreation and tourism opportunities, scenic amenity, and cultural and spiritual significance;
- the effort and the investment of the state for the maintenance and management of the area; and
- the loss to the QPWS&P protected area estate as a whole.

If the proposed activity triggers an environmental offset, applicants are required to submit an Environmental Offsets Proposal as part of their application. Applicants must outline how they will deliver the offsets component, either a financial settlement offset or a proponent-driven offset (either a land-based offset or undertaking approved actions under a Direct Benefit Management Plan) or a combination of both financial and proponent-driven. Offset proposals must be consistent with the DES 'Queensland Environmental Offsets Policy' and the *Environmental Offsets Act 2014* (Qld). If your proposal does not trigger an environmental offset, demonstrate why in your application.

Note that a Commonwealth offset or a local government offset may also be required in relation to any impacts to matters of national or local environmental significance. Applicants should indicate in their application if the activity will trigger a Commonwealth or local government offset, and if Commonwealth and/or local approvals have been granted, details of offset conditions and delivery in relation to those approvals. The Environmental Offset Proposal must also identify where State level offsets are proposed to be waived to avoid duplication of offsets between Commonwealth and State offset requirements (for example, where the Commonwealth approval has imposed offsets for a Commonwealth listed threatened species that is also a State listed threatened species). It should also be noted that environmental offsets may not be appropriate in a world heritage area because "Outstanding Universal Value" is irreplaceable.

Refer to the 'Queensland Environmental Offsets Policy' and the Significant Residual Impact Guideline on the DES website at www.des.qld.gov.au for information on how to calculate offset liability and offset delivery.

Prescribed environmental matters within protected areas

Prescribed environmental matters are matters of local, state or national environmental significance as defined in Schedule 2 of the *Environmental Offsets Regulation 2014*. Examples may include, but are not limited to, protected wildlife habitat, wetlands and watercourses or waterway for fish passage, which, commonly occur within protected areas, particularly in areas of high ecological value. Activities conducted under an applicable NCA authority may have a significant residual impact on each of these individual matters, and may result in

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additional offsets being required if located within the significant residual impact site. Offsets for each and every matter must be delivered in accordance with the Offsets Framework.

Other requirements

Native title

The *Native Title Act 1993* (Cth) and *Native Title Act 1993* (Qld) recognises that First Nations peoples have rights and interests to their traditional lands and waters deriving from their traditional laws and customs.

QPWS&P applies the Queensland Government Native Title Work Procedures (NTWP) when deciding NCA applications. The NTWP operate to ensure that State government dealings in relation to land or waters are valid with respect to native title. The NTWP ensures that impacts to the rights and interests of First Nations peoples is limited, and outlines the notification and compensation requirements. Where native title exists, the NTWP provides the steps to follow in order to carry out a land or resource dealing.

DES and QPWS&P recognises, respects and values First Nations peoples and cultures, and is committed to progressing self-determination by working with First Nations peoples to incorporate their priorities and perspectives in decision-making and operations.

In certain circumstances, an Indigenous Land Use Agreement (ILUA) may need to be negotiated with native title parties or claimants for an NCA application to be validly granted. When an authority expires and an applicant applies for a new authority, this may trigger the need for an ILUA that was not required for the initial authority.

Further information on native title assessments and the NTWP is available on the Department of Resources website at www.resources.qld.gov.au.

Aboriginal and Torres Strait Islander (First Nations) Cultural Heritage

First Nations cultural heritage refers to the knowledge and lore, practices and people, objects and places that are valued, culturally meaningful and connected to identity and to Country for First Nations peoples. QPWS&P managed land and waters are rich in cultural heritage, both tangible and intangible. Tangible cultural heritage refers to physical items and may include buildings, monuments, works of art or artifacts. Intangible cultural heritage is nonphysical and includes traditions, knowledge, oral history and practices.

QPWS&P is committed to working in partnership with First Nations peoples to protect and conserve First Nation's cultural heritage and values. This commitment is based on respect for Aboriginal and Torres Strait Islander knowledge, culture and traditional practices. The right to enjoy, maintain, control, protect and develop cultural heritage for First Nations people is recognised and protected under the *Human Rights Act 2019* (Qld).

The *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld) (the CH Acts) are the primary legislation that protect First Nations cultural heritage in Queensland. The CH Acts apply to all areas of Queensland, all land types and tenures, including protected areas, State forests, marine parks, and other tenures managed by QPWS&P. The CH Acts require anyone who carries out a land-use activity to exercise a duty of care to take all reasonable and practicable measures to ensure their activity does not harm First Nations cultural heritage. Prosecution or penalty provisions may apply where the cultural heritage duty of care has not been complied with, or where a person has harmed First Nations cultural heritage.

First Nations cultural values, both tangible and intangible, are part of the connection between Country and Queensland's First Nations peoples and are also protected alongside natural values under the NCA. QPWS&P considers engagement with traditional owners as the only way to appropriately understand potential impacts on cultural values.

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The cultural heritage duty of care can be met in various ways under the CH Acts, including in compliance with the cultural heritage Duty of Care Guidelines. The Guidelines are available from the Queensland Government website. Applicants for authorities under the NCA must outline how they propose to meet their cultural heritage duty of care in the draft EMP which is submitted with their application. Applicants are also required to consider intangible cultural heritage and propose how they will protect these or manage any impacts in their draft EMP. As part of the assessment for the proposed works, QPWS&P is required to ensure that consultation with the First Nations people has occurred to ensure that cultural heritage has been considered and has been properly addressed.

Records of some, but not all, significant sites and areas are kept in an online Aboriginal and Torres Strait Islander Cultural Heritage Database and Register, administered by Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP). Database and Register search request forms are also available from the DSDSATSIP website. However, the duty of care applies regardless of whether cultural heritage has been previously identified or recorded in any database or register.

Non-Indigenous Cultural Heritage

Non-Indigenous cultural heritage includes all objects or places that have cultural heritage significance unless solely through their association with Aboriginal or Torres Strait Islander Peoples' traditions or customs. Non-Indigenous cultural heritage is protected under *the Queensland Heritage Act 1992*. Non-Indigenous cultural heritage places include buildings, structures, cemeteries, archaeological sites and artefacts, gardens and parks, urban precincts and natural and landscape features.

Applicants for authorities under the NCA must outline how they propose to meet their cultural heritage duty of care in the draft Environmental Management Plan which is submitted with their application.

The Queensland Heritage Register is a list of places that have cultural heritage significance to the people of Queensland. A search of the Queensland Heritage Register provides information about those places entered in the register including their heritage significance and values, history, description and location. The Register can be found on the Queensland Government website at www.qld.gov.au. The Queensland Heritage Register does not include places of local heritage significance – these may be entered in a Local Heritage Register or identified in a local government planning scheme.

Costs and fees

Costs associated with preparing and lodging an application are the responsibility of the applicant. Where an application is approved and an authority is granted, authority holders are also required to pay any fees (including annual fees) required under the terms of the authority. Refer to the Business Queensland website for more information on the fees and charges at <https://www.business.qld.gov.au/> and searching for 'Online Services'.

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Human Rights Act 2019 compatibility

The department is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this Guideline, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

Disclaimer

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

Approved By

Ben Klaassen

Signature

14/02/2023

Date

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Appendix A – List of operational policy documents

The following QPWS&P operational policy documents listed below should be referred to and the requirements and obligations should be understood. These documents are provided as part of the application package. However if there are questions or if you did not receive a copy of these documents please contact QPWS.estate@des.qld.gov.au.

Operational Policy Document	Section 34	Section 35	Section 35A
Application form – Application for lease, agreement, licence, permit or other authority under sections 34, 35 or 35A of the <i>Nature Conservation Act 1992</i>	✓	✓	✓
Operational policy – Communications facilities on QPWS&P managed areas (where applicable)	✓	✓	✓
Operational policy – Artificial waters (where applicable)	✓	✓	✓
Operational policy – Insurance and indemnity requirements for QPWS authorities	✓	✓	✓
Operational policy – No reasonably practicable alternative – Section 35, Nature Conservation Act	✓	✓	✗
Information sheet – Authorities creating an interest in a protected area under the <i>Nature Conservation Act 1992</i>	✓	✓	✓
Guideline – Producing an Authority Plan for a lease, agreement, license, permit or other authority on Queensland Parks and Wildlife Service managed areas	✓	✓	✓
Guideline – Preparing Environmental Management Plans for Queensland Parks and Wildlife Service & Partnerships authorities	✓	✓	✓