

Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 118

made under the

Aboriginal Land Act 1991

General Outline

Short title

Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018

Authorising law

Sections 10(1)(e), 28 and 294(1) of the *Aboriginal Land Act 1991*.

Policy objectives and the reasons for them

The *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* amends the *Aboriginal Land Regulation 2011* to declare areas of available State land as transferable land and to change the boundaries of a city for the purpose of the *Aboriginal Land Act 1991*.

The regulation to change the boundaries of a city will enable parcels of land within that city to be available State land for the purposes of the *Aboriginal Land Act 1991*, and therefore enable them to be declared by regulation as available State land that is transferable land for the purposes of the *Aboriginal Land Act 1991*.

The parcels proposed for regulation are outcomes of an Indigenous Land Use Agreement registered with the National Native Title Tribunal on 8 December 2011, to which the State is a party; and Government decisions.

These decisions provide for, amongst other things, that parcels of unallocated State land be transferred as inalienable freehold under the *Aboriginal Land Act 1991*. All parcels, except Lot 101 on SP299983, are also proposed to be declared Prescribed

Protected Areas/Indigenous Joint Management Areas in the North Stradbroke Island Region, under the *Nature Conservation Act 1992*.

The parcels, described as Lot 101 on AP23230, Lot 64 on AP23224, Lot 156 on AP23225, Lot 55 on AP23226, Lot 159 on AP23227, Lot 60 on AP23219, Lots 61 and 63 on SP228351, Lot 62 on AP23229 and Lot 101 on SP299983, are located on North Stradbroke Island, approximately 44 kilometres east of Brisbane, and have a total area of about 1719.05 hectares.

The parcels are within a city as is defined under section 28 of the *Aboriginal Land Act 1991*. As land within a city, it is not available State land in terms of section 24 of the *Aboriginal Land Act 1991* and therefore cannot be regulated as transferable land. However, section 28 of the *Aboriginal Land Act 1991* provides for the making of a regulation to change the boundaries of a city, enabling the land to be classed as available State land.

The local government for the parcels is Redland City Council (the Council). A regulation to change the boundaries of a city under the *Aboriginal Land Act 1991* has effect only as it relates to the operation of the *Aboriginal Land Act 1991*. The Council boundaries, as are identified under the *Local Government Act 2009*, are not changed by the regulation and there are no impacts upon Council's local government responsibilities in relation to the land.

To enable the parcels to be classed as available State land in accordance with the *Aboriginal Land Act 1991*, a change to the boundaries of a city, as is defined and provided for under the *Aboriginal Land Act 1991* is required. The regulation of the available State land as transferable land will allow for the eventual grant of inalienable freehold title to Aboriginal people under the *Aboriginal Land Act 1991*.

Achievement of policy objectives

The *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* will achieve its objective by enabling the subject land to be classed as available State land in accordance with the *Aboriginal Land Act 1991* and the declaration of the subject land as transferable land, which will allow for the grant of inalienable freehold title to Aboriginal people under the *Aboriginal Land Act 1991*.

Consistency with policy objectives of authorising law

The *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* is consistent with the policy objectives of the *Aboriginal Land Act 1991*, which provide for the grant of land as Aboriginal land.

Inconsistency with policy objectives of other legislation

The *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* is consistent with the policy objectives of other legislation. The *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* will enable the subsequent transfer of land as Aboriginal land under the *Aboriginal Land Act 1991* and the *Land Act 1994*.

Benefits and costs of implementation

The benefit of the *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* is that it will allow for the grant of land as Aboriginal land. Implementing the *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* will have negligible costs.

Consistency with fundamental legislative principles

The *Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018* is consistent with fundamental legislative principles. It complies with relevant requirements of section 4(5) of the *Legislative Standards Act 1992*, namely it:

- (a) is within the power that, under an Act or subordinate legislation (the authorising law), allows the subordinate legislation to be made; and
- (b) is consistent with the policy objectives of the authorising law; and
- (c) contains only matter appropriate to subordinate legislation; and
- (d) amends statutory instruments only.

Consultation

In respect to the identification of the parcels proposed for regulation as transferable land for possible dealing with under either the Indigenous Land Use Agreement or Government decisions, the Department of Natural Resources, Mines and Energy consulted with stakeholders, including traditional owners, an Indigenous Corporation, the local authority and State agencies.

This was in relation to, amongst other matters, the most appropriate use and tenure for the parcels in consideration that they might be made transferable land and transferred to Aboriginal people under the *Aboriginal Land Act 1991*; if, taking into consideration their most appropriate use and tenure, are the parcels appropriate for making transferable land; the proposed regulation process that is required to make the parcels transferable land; and the subsequent actions and approvals required for the Department of Natural Resources, Mines and Energy and the Minister to transfer the parcels should they be declared transferable land.

In determining if the parcels were appropriate for regulation as transferable land, any submissions received by the Department of Natural Resources, Mines and Energy were considered as a part of land evaluation processes undertaken by the Department of Natural Resources, Mines and Energy to determine their most appropriate use and tenure. Submissions made by parties regarding the parcels' proposed declaration as transferable land were taken into account in determining their most appropriate use and tenure.

All parties to the Indigenous Land Use Agreement accept the legislative processes required to declare the parcels transferable land and to transfer that land under the *Aboriginal Land Act 1991*.

A number of stakeholders' interests in certain parcels will be protected by easements, and along with an existing mining lease will continue in force should the parcels be transferred under the *Aboriginal Land Act 1991*.

A former interest holder in one of the parcels does not support the proposal for that particular parcel.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The Department of Natural Resources, Mines and Energy applied a self-assessable exclusion from undertaking further regulatory impact analysis (category (g) - Regulatory proposals that are of a machinery nature).