

# **Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021**

Explanatory notes for SL 2021 No. 189

made under the

*Nature Conservation Act 1992*

## **General Outline**

### **Short title**

*Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021*

### **Authorising law**

Sections 35, 37 and 175 of the *Nature Conservation Act 1992* (the Act).

### **Policy objectives and the reasons for them**

The Act provides instructions on how development applications to install, maintain or use infrastructure on national parks should be dealt with. The Act contains strict criteria which must be satisfied before the grant of an authority for such infrastructure can be made by the chief executive.

Section 35(1) of the Act states that:

- (1) The chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, land in a national park if:
  - (a) the use under the authority is only for a service facility or an ecotourism facility; and
  - (b) if the use under the authority is for a service facility, the chief executive is satisfied-
    - (i) the cardinal principle for the management of national parks will be observed to the greatest possible extent; and

- (ii) the use will be in the public interest; and
  - (iii) the use is ecologically sustainable; and
  - (iv) there is no reasonably practicable alternative to the use; and
- (c) if the use under the authority is for an ecotourism facility, the chief executive is satisfied-
- (i) the use will be in the public interest; and
  - (ii) the use is ecologically sustainable; and
  - (iii) 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
- (d) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.

Section 37(1) of the Act states that:

- (1) In this section authority means a lease, agreement, permit or other authority (other than an authority permitting stock grazing or the location of beehives) -
- (a) granted, made, issued or given under the former Act or the *Land Act 1962* over, or in relation to, a national park under the former Act; and
  - (b) in force immediately before the repeal of the former Act; and
  - (c) continued in force under this Act.
- former Act means the *National Parks and Wildlife Act 1975*.
- (2) The chief executive may renew, or consent to the renewal of, an authority for the national park if the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.
- (3) The authority may only be renewed for –
- (a) if no management plan is in force for the area when the renewal is granted – not longer than 10 years; or
  - (b) if a management plan is in force for the area when the renewal is granted – the term authorised under the plan.
- (4) The authority may be renewed subject to the conditions the chief executive considers appropriate.

The chief executive may not delegate the power under sections 35 or 37 of the Act, in accordance with section 141 of the Act.

The following proposed uses have been assessed and have met the requirements under section 35(1)(b) of the Act:

1. Operation and maintenance of an existing service facility (for communications use) by BAI Communications Pty Ltd in Pioneer Peaks National Park, identified as 'Authority Area A' within Lot 150 on NPW854 on QPWSAP000058, containing an area of 1.38 hectares. The site includes three antenna support towers, four equipment shelters, four

ground mounted satellite dishes, two water tanks, a fuel tank and associated communications equipment. The facility is used for transmission of national and commercial television and radio services over a large area which includes Mackay and Proserpine.

2. Installation, operation and maintenance of a service facility (for communications use) by Optus Fixed Infrastructure Pty Ltd in Magnetic Island National Park, identified as 'Authority Area' covering part of Lot 456 on AP22485 on QPWSAP000177, containing an area of 620.2 square metres. The site includes underground fibre optic cabling in Magnetic Island National Park from Arcadia Bay to Horseshoe Bay, to assist in providing more effective and reliable telecommunications services to the local area. Most of the installation will involve hauling fibre optic cabling through existing Telstra conduit which lies outside Magnetic Island National Park. A section of 128 metres will be installed in Magnetic Island National Park, as the existing Telstra ducting is blocked. The proposed works will be conducted within a walking track which has been previously disturbed and is considered the most environmentally sensitive option.
3. Operation and maintenance of an existing service facility (for communications and electricity distribution use) by BAI Communications Pty Ltd in Wooroonooran National Park, identified as 'Authority Area A' to 'Authority Area P' over parts of Lot 19 on NPW970 on QPWSAP000149, containing a total area of 19.82 hectares. The site includes a base station with two offices, a shed and structures to support a cable-car which is connected to a communications facility, located at the summit of Mount Bellenden Ker. The communication facility includes a communications tower, equipment shelters, three helipads (at various sites), associated communications equipment and electricity infrastructure to provide power for the cable car and the communications facility. Mount Bellenden Ker is used for transmission of national and commercial television and radio services over a large area which includes Cairns, Palm Cove, Innisfail and Atherton.

Before the chief executive may grant an authority under section 35 of the Act for the above activities, the use and the relevant national park must be prescribed under Schedule 3 of the *Nature Conservation (Protected Areas Management) Regulation 2017* (the Regulation).

Due to the expiry of the section 37 authority under the Act granted to BAI Communications Pty Ltd for the existing service facility in Pioneer Peaks National Park and subsequent re-authorisation under section 35 of the Act, the use and the relevant national park should be removed from Schedule 4 of the Regulation.

The objective of the *Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021* (Amendment Regulation) is to amend Schedule 3 of the Regulation to prescribe the proposed inclusion of the proposed service facilities (communications and electrical distribution facilities) as permitted uses in the relevant national parks and to amend Schedule 4 of the Regulation to remove communications use as the permitted use in Pioneer Peaks National Park.

## **Achievement of policy objectives**

To achieve its objectives, the Amendment Regulation amends:

1. Schedule 3 of the Regulation to permit the following proposed uses:
  - BAI Communications Pty Ltd - communications use in Pioneer Peaks National Park;
  - Optus Fixed Infrastructure Pty Ltd - communications use in Magnetic Island National Park; and
  - BAI Communications Pty Ltd - communications and electricity distribution use in Wooroonooran National Park.
2. amends Schedule 4 of the Regulation to remove communications use as a permitted use in Pioneer Peaks National Park.

This approach is reasonable and appropriate because:

- assessments have been carried out at an earlier date that meets the requirements of section 35(1)(b) of the Act; and
- receiving approval from the Governor in Council will meet the requirement of section 35(1)(d) of the Act.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the objectives of the Act.

## **Inconsistency with policy objectives of other legislation**

This Amendment Regulation is not inconsistent with any other legislation.

## **Benefits and costs of implementation**

The Amendment Regulation is an administrative process to provide for the authorisation of infrastructure on the protected areas in compliance with sections 35 and 37 of the Act.

There is no net cost in implementing the Amendment Regulation, as this area of work is already considered in the department's annual budget and workload for managing protected areas.

When the chief executive grants authorities for the service facilities, the authorities will be subject to annual fees in line with departmental policy. The revenue generated in fees will cover the cost of implementation.

A non-monetary benefit is derived by the general public from each service facility, and this is ensured when assessing each proposal against the principle of 'public interest' as required by the Act. Implementation provides further benefits to protected area management through the assessment process and in the terms and conditions agreed by both parties.

## Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles, as defined in the *Legislative Standards Act 1992*.

## Consultation

The Department of Environment and Science (DES) has consulted with and will continue to consult with the following parties –

- the applicants (BAI Communications Pty Ltd and Optus Fixed Infrastructure Pty Ltd); and
- the Wulgurukaba People for Magnetic Island National Park, regarding native title rights and interests and cultural heritage matters.

All parties consulted support the proposal.

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. DES applied a self-assessable exclusion from undertaking further regulatory impact analysis (category g – regulatory proposals that are of a machinery nature).

No changes to the Amendment Regulation were required as a result of consultation.

©The State of Queensland 2021