Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 45

made under the

Nature Conservation Act 1992

General Outline

Short title

Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023

Authorising law

Sections 33 and 175 of the *Nature Conservation Act 1992* (NC Act).

Policy objectives and the reasons for them

The objective of the *Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023* (Amendment Regulation) is to amend the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) by omitting the Heathlands Resources Reserve (HRR).

Prior to dedication of the HRR in 1994 by applying the NC Act, the HRR was Departmental and Official Purpose (D&OP) Reserve under the former *Land Act 1962*. According to the NC Act, before being dedicated as resources reserve, the land must first have been "Crown Land". To qualify as "Crown Land" the D&OP Reserve tenure should have been cancelled or revoked as a public purpose under the former *Land Act 1962*. There is no evidence that this action was undertaken, therefore dedication of the HRR under the NC Act is invalid and beyond power.

In 2021, an amendment was made to the Regulation by the *Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021* (the 2021 Amendment Regulation).

Under the 2021 Amendment Regulation, most of the HRR was omitted from Schedule 3A (Resources reserves) of the Regulation and was redescribed as lots 4 and 5 on SP296927. This was due to an assessment by the Department of Resources (Resources) that lots 4 and 5 were validly declared a resources reserve derived from unallocated State land east of a watershed on the land.

Early survey plans in the vicinity of lots 4 and 5 were based on a historical approximation of the location of the watershed. Recent survey work undertaken by Resources in conjunction with settlement of the Cape York United Number 1 Claim, has revealed that the watershed was inaccurately represented on the historical plans. For this reason, the current plan SP296927 is inaccurate.

Recent field survey work has confirmed that lots 4 and 5 did not exist east of the watershed and were actually located west of the watershed boundary, within the boundaries of lot 3 on JD8. Consequently, the dedication of this land as resources reserve is invalid.

Consistent with the omission of the majority of the HRR in the 2021 Amendment Regulation, lots 4 and 5 on SP296927 should correctly revert to D&OP Reserve.

The reason for the amendment is to correct the public record by amending the Regulation. Removing the HRR will enable the Queensland Government (the State) to commence actions to correct the Queensland Land Titles Register.

Once tenure of this land is returned to D&OP Reserve, the process to continue land tenure negotiations with First Nations peoples can occur, resulting in Aboriginal freehold land and national park (Cape York Peninsula Aboriginal land) outcomes as part of those negotiations. The latter is jointly managed by Aboriginal peoples and the State.

The State has made a commitment to resolve tenure of all national parks and certain other State lands in the Cape York Peninsula region. As part of this resolution the State will work with First Nations peoples to protect Cape York's iconic natural areas and to continue arrangements for joint management of protected areas in the region.

Generally, the removal of NC Act lands from the protected area estate requires a decision by the Legislative Assembly. In this case the authorising law (the NC Act) is invalid, and the Land Act applies, so a decision of the Legislative Assembly is not required or is appropriate as the Land Act still applies.

The decision to implement the Amendment Regulation relies on section 24AA of the *Acts Interpretation Act 1954* which provides the power to amend or repeal a decision made about a statutory instrument. In this case, the Governor in Council has this delegation.

The *Statutory Instrument Act 1992* (SI Act) also applies to this case in the absence of the NC Act. When the Regulation was made in 1994 Governor in Council did not have the jurisdictional power to include the HRR in the statutory instrument. This SI Act supports that the Amendment Regulation aligns the reading of the Regulation with the correct tenure status of the land.

Omitting the land from the Regulation requires the decision of the Governor in Council. From an overarching perspective, though the NC Act is not the correct authorising law, a mechanism must be applied to remove the land from the Regulation which derives its power from the NC Act. In this respect, the Amendment Regulation applies to:

- Section 33 of the NC Act which prescribes that the Governor in Council, by regulation, may change the class of a protected area by dedicating the area as another class of protected area, or, amalgamate protected areas of the same class, and assign a name to the amalgamated area.
- Section 175 of the NC Act prescribes that the Governor in Council may make regulations under this Act.

Achievement of policy objectives

To achieve its objective, the Amendment Regulation will amend Schedule 3A of the Regulation to omit "Heathlands Resources Reserve".

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the NC Act, namely:

- the dedication and declaration of areas representative of the biological diversity, natural features and wilderness of the State as protected areas;
- the recognition of the interest of Aboriginal peoples and Torres Strait Islander peoples in the protected areas, landscapes, native flora and wildlife; and
- the Governor in Council may make regulations under the NC Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation. It upholds the requirements of the *Land Act 1994* (the Land Act), both former and current, which delegate the Minister responsible for the Land Act the authority to revoke a reserve. Correcting the Regulation confirms that a reserve tenure under the Land Act is not land which can be dedicated as a protected area.

Alternative ways of achieving policy objectives

The Department of Environment and Science (DES) has considered alternative approaches to correcting the Land Titles Register. The option proposed for this correction is deemed the most suitable and will achieve the result within a timeframe which enables the land dealing to progress.

Benefits and costs of implementation

The benefits of the Amendment Regulation are that the Regulation will correctly reflect Queensland's protected area estate. Through future actions and agreements, this will enable joint management of land between First Nations peoples and the Queensland Government.

Consistency with fundamental legislative principles

The Amendment Regulation 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; and
e) allows the sub-delegation of a power delegated by an Act only—
   (i) in appropriate cases and to appropriate persons; and
   (ii) if authorised by an Act.

Consultation

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).

Since 2015 the State has consulted extensively with the Aboriginal people particularly concerned with this land. This has more broadly been to enable the transfer of land to Aboriginal ownership.

Balkanu Cape York Development Corporation (Balkanu) and the Cape York Land Council Aboriginal Corporation (CYLC) are supporting First Nations peoples who have an interest in the transfer of this land to Aboriginal ownership. Balkanu (with support from CYLC) support progress of the Amendment Regulation as it is essential for the land to be included in a future transfer process.

All parties consulted support the proposed amendments. No further changes to the Amendment Regulation were required as a result of the consultation.