

Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 7

made under the

Nature Conservation Act 1992

General Outline

Short title

*Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve)
Amendment Regulation 2024*

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 Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024* (Amendment Regulation) is to correct the public record in the Queensland Land Titles Register, effectively recognising the Lawn Hill (Creek) Resources Reserve (LHCRR) as Departmental and Official (Natural Resources) Purposes Reserve (D&OP Reserve).

Once tenure of this land is returned to D&OP Reserve, the State is able to confidently progress delivery of commitments in the Waanyi Registered Native Title Body Corporate (RNTBC) registered Indigenous Land Use Agreement (QI2023/003).

Prior to dedication of the LHCRR in 1994 by applying the NC Act, the LHCRR was a 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 To qualify as “Crown Land” the D&OP Reserve tenure should have been revoked as a public purpose under the

former *Land Act 1962*. There is no evidence that this action was undertaken, therefore dedication of the LHCRR under the NC Act is invalid and beyond power.

In 2021, an amendment was made to the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) by the *Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021* (the 2021 Amendment Regulation) to omit the majority of these resources reserves. On 2 June 2023, the remaining parts of Heathlands Resources Reserve was omitted by the *Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023*. Heathlands and Jardine River Resources Reserves were purportedly dedicated under the same set of circumstances as LHCRR.

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 1994* (the Land Act) applies, so a decision of the Legislative Assembly is not required nor 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.

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

By achieving the policy objectives, the State is able to amend Schedule 3A of the Regulation by omitting the LHCRR described as Lot 9 on CP850717.

This enables the Department of Environment, Science and Innovation to proceed with future tenure actions knowing that the base tenure is correct. The main action will be to grant this land to the Waanyi people as Aboriginal freehold land under the *Aboriginal Land Act 1991*, as committed through a registered Indigenous Land Use Agreement (ILUA). The land will not be dedicated as a class of protected area under the NC Act.

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, 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, Science and Innovation 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 transfer to proceed.

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 cooperative management of lands between First Nations peoples and the Queensland Government.

In accordance with *The Queensland Better Regulation Policy*, an Impact Analysis Statement (IAS) was prepared in relation to the regulatory proposal identifying the amendment as 'minor and machinery in nature'. The proposal will not add to the burden of regulation and is unlikely to result in adverse impacts. No further regulatory impact analysis is required.

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

The State has consulted extensively with the Waanyi Native Title Aboriginal Corporation Registered Native Title Bodies Corporate (RNTBC) (Waanyi PBC) the Native Title Holders of this land as well as the company providing their independent legal advice.

The Waanyi PBC support progress of the Amendment Regulation as it is essential for the land to be transferred as Aboriginal freehold land in accordance with the Indigenous Land Use Agreement commitments.

A public notice was published on the Department of Environment, Science and Innovation's website on 14 November 2023 regarding consultation on the proposed amendment and seeking views in consideration of the *Human Rights Act 2019*, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights. One written response was received in the 28 day consultation period ending 12 December 2023. The response was outside of the scope of the consultation notice and no concerns were raised in consideration of the *Human Rights Act 2019*.

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