

Aboriginal Land (Endeavour River Resources Reserve) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 12

made under the

Aboriginal Land Act 1991

General Outline

Short title

Aboriginal Land (Endeavour River Resources Reserve) Amendment Regulation 2024

Authorising law

Sections 173 and 294 of the *Aboriginal Land Act 1991* (the AL Act).

Policy objectives and the reasons for them

The objective of the *Aboriginal Land (Endeavour River Resources Reserve) Amendment Regulation 2024* (Amendment Regulation) is to amend the *Aboriginal Land Regulation 2011* (the Regulation) by omitting Olkola (Kurrumbila) Resources Reserve 1 and inserting part of the Endeavour River Resources Reserve to recognise part of the land as a prescribed protected area under the AL Act.

Section 173 of the AL Act enables the grant of park land in the Cape York Peninsula Region as national park (Cape York Peninsula Aboriginal land). One condition is that the park land is recognised as a prescribed protected area and is transferable land. A prescribed protected area is a national park in the Cape York Peninsula Region or a resources reserve under the *Nature Conservation Act 1992* prescribed by regulation. Schedule 1 of the Regulation lists land which has been agreed by Governor in Council to be a prescribed protected area.

In May 2018, an amendment was made to the Regulation by the *Aboriginal Land (Olkola) Amendment Regulation 2018* to recognise Olkola (Kurrumbila) Resources Reserve 1, described as Lot 20 on SP241432, containing an area of 103,600 hectares as a prescribed protected area. Following the relinquishment or exclusion of mining interests over this land and in accordance with the Olkola Land Transfer Indigenous Land Use Agreement (ILUA) (QI2014/085), this land was dedicated as Olkola National Park (Cape York Peninsula Aboriginal Land) in the *Nature Conservation (Protected Areas) Regulation 1994* on 29 June 2018. As land recognised as a prescribed protected area is transitional in nature, it is no

longer appropriate that the Olkola (Kurrumbila) Resources Reserve 1 remains in the Regulation.

The Department of Environment, Science and Innovation (DESI) has been negotiating with Waymbuurr-warra, Gamaay people and Nguymbaarr-Nguymbaarr people (the Native Title parties) about the grant of land in the Cooktown area. This includes the Endeavour River Resources Reserve described as part of Lot 2 on CP867124 and Lot 3 on CP867124 containing an area of 37.689 hectares. The Native Title parties have agreed for part of the Endeavour River Resources Reserve, described as part of Lot 2 on CP867124 shown as lot 2 on SP344601 and Lot 3 on CP867124, to be converted to national park (Cape York Peninsula Aboriginal land) under the *Nature Conservation Act 1992*.

Prior to these tenure actions, that part of the Endeavour River Resources Reserve proposed to become national park (Cape York Peninsula Aboriginal land) is to be prescribed by regulation as a prescribed protected area. In November 2023, the then Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs endorsed the Cooktown Area Land Dealing and Endeavour River Resources Reserve tenure actions to progress.

Omitting Olkola (Kurrumbila) Resources Reserve 1 from the Regulation and inserting part of the Endeavour River Resources Reserve as a prescribed protected area requires the decision of the Governor in Council.

In this respect, the Amendment Regulation applies to:

- Section 173 of the AL Act as this enables the grant of park land in the Cape York Peninsula Region as national park (Cape York Peninsula Aboriginal land), if the land is recognised as a prescribed protected area and is transferable land; and that a prescribed protected area is a national park or resources reserve prescribed by regulation.
- Section 294 of the AL Act as this enables the Governor in Council to make regulations under the AL Act; this Amendment Regulation seeks Governor in Council to omit and insert lands in Schedule 1 of the Regulation.

Achievement of policy objectives

By achieving the policy objectives, Schedule 1 of the Regulation will be corrected to remove reference to an area which no longer exists. This is because the protected area classification of the land was changed to national park (Cape York Peninsula Aboriginal land). In recognising part of the Endeavour River Resources Reserve as a prescribed protected area, this means that this portion of land is transferrable land and is available to be dedicated as national park (Cape York Peninsula Aboriginal land) in the future.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the AL Act, which provides for the grant of land as Aboriginal land. The Amendment Regulation will enable subsequent transfer of the land under the AL Act and the *Land Act 1994*, and dedication of part of the Endeavour River Resources Reserve as national park (Cape York Peninsula Aboriginal land).

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

DESI has considered alternative approaches to making part of the Endeavour River Resources Reserve transferrable land under the AL Act. As resources reserves are not deemed to be transferrable land under the AL Act until after the land has been proclaimed as a prescribed protected area. The only other option available is to seek revocation of the entire Endeavour River Resources Reserve from Queensland's Protected Area Estate. Upon successful revocation, the land formerly known as Endeavour River Resources Reserve would then become unallocated State land. Once the land becomes unallocated State land the Minister has the power to declare the land as transferrable in accordance with section 10(1)(c) of the AL Act. This option was not considered appropriate due to:

- the extended timeframes and the increased costs incurred as a result of the required revocation actions;
- the reduction of 37.689 hectares from Queensland's Protected Area Estate;
- the temporary removal of land from Queensland's Protected Area Estate and the associated protection this provides, as well as ongoing land management concerns;
- the automatic transfer of land with significant conservation values to the ownership of the Department of Resources upon the revocation and tenure conversion to unallocated State land; and
- the intent to return the majority of the land back into Queensland's Protected Area Estate upon its grant as Aboriginal freehold land and dedication as national park (Cape York Peninsula Aboriginal land) as a commitment under the Proposed Cooktown Area Land Transfer ILUA.

The option proposed to prescribe part of the Endeavour River Resources Reserve as a prescribed protected area is deemed most suitable and will achieve the result within a timeframe which enables the land transfer and subsequent dedication as national park (Cape York Peninsula Aboriginal land) to proceed.

Benefits and costs of implementation

The benefit of the Amendment Regulation is that it allows for the grant of part of the Endeavour River Resources Reserve as Aboriginal land and its subsequent dedication as national park (Cape York Peninsula Aboriginal land). Through future actions and agreements, this will enable joint management of land between First Nations peoples and the Queensland Government. Implementing the Amendment Regulation will have negligible costs. Removing Olkola (Kurrumbila) Resources Reserve 1 from the Regulation corrects the public record.

In accordance with *The Queensland Government Better Regulation Policy*, an Impact Analysis Statement 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 significant 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;
- b) is consistent with the policy objectives of the authorising law;
- c) contains only matter appropriate to subordinate legislation;
- 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 Native Title parties as part of the Olkola Land Transfer ILUA and the proposed Cooktown Area Land Transfer ILUA. Native Title parties for both land dealings were provided independent facilitation support and legal advice in their decision making, and/or were empowered to make their own decisions in consideration of the Corporation's governance.

The Native Title parties support progress of the Amendment Regulation as it is essential to enable the land to be transferred as Aboriginal freehold land in accordance with the AL Act and Cooktown Area Land Transfer ILUA commitments. This consultation is recorded in meeting summaries associated with the Cooktown area land dealing.

No objection was raised in relation to the Olkola amendment.

A notice was published on the DESI website on 22 December 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 46-day consultation period ending 6 February 2024. The response was outside of the scope of the consultation notice and no concerns were raised in consideration of the *Human Rights Act 2019*, and DESI progressed the proposal accordingly.

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