

Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Leanne Enoch, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, provide this human rights certificate with respect to the *Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Nature Conservation Act 1992* (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 that must be satisfied before the Chief Executive can grant an authority for infrastructure.

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.

The Chief Executive may not delegate the power under section 35 in accordance with section 141 of the Act.

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

- o operation, maintenance and upgrade of a service facility (for a communications use) by Ergon Energy Corporation Limited (Ergon) in Blackdown Tableland National Park at the site described as Authority Area Ergon Communications Tower Blackdown Tableland National Park in Lot 49 on NPW733 on QPWSAP000108.
- o operation and maintenance of a service facility (for a communications use) by Ergon Energy Corporation Limited (Ergon) in Mount Mackay National Park at the site described as Plan of Mt Mackay Communications Site Mount Mackay National Park in Lot 171 on NPW902 on MM1.
- o construction, operation and maintenance of a service facility (for a water supply use) by Cassowary Coast Regional Council (CCRC) in Girringun National Park at the site described as Authority Areas A and B over parts of Lot 18 and Lot 1 on AP22472 on QPWSAP0000113.

Before the Chief Executive may grant a Section 35 authority for the above activity, the use and the location in the relevant national park must be prescribed in Schedule 3 of the *Nature Conservation (Protected Areas Management) Regulation 2017*.

The *Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020* will prescribe the proposed uses.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 28 of the *Human Rights Act 2019* addresses the cultural rights of Aboriginal and Torres Strait Islander peoples. The subordinate legislation has been considered in terms of this right, to determine how the two interact and if the legislation will limit the right.

The effect of the subordinate legislation is to allow the Chief Executive, at his discretion, to approve an authority for –

1. Ergon to operate, maintain and upgrade an existing communications facility at a site in Blackdown Tableland National Park. Queensland Electricity Transmission Corporation (Powerlink) established the site in 1989, which includes a steel mast, equipment shelter and solar panels to power the facility. Ergon has since purchased the facility from Powerlink; however, Ergon is now seeking to upgrade the facility with a new equipment shelter, battery

cabinet and new elevated solar array, as the existing solar panels have reached the end of their useful life. The upgrade works do not require any additional clearing, as the area was cleared when the facility was initially constructed; however, the facility will extend beyond what was originally authorised.

2. Ergon to operate and maintain an existing communications facility at a site in Mount Mackay National Park. The facility was established on State Forest, prior to the dedication of the Mackay National Park and is only accessible via helicopter. The facility has been authorised since 1994 and consists of a communications pole, three outdoor cabinets, solar array and dual DC generators. The re-authorisation of the facility is required due to upgrades to the helipad and installation of a wind sock to meet Civil Aviation Authority Safety requirements and to capture all infrastructure on site.
3. CCRC to construct, operate and maintain a water supply facility in Girringun National Park. A review of the Cardwell Water Supply Scheme has identified a need to improve the quality, reliability and capacity of the water supply to the township of Cardwell and to surrounding communities. The site was deemed suitable due to the proximity to the water source at Meunga Creek and is accessible to an existing water intake weir and water pipeline and has the geographical elevation to provide reticulation network head pressure.

In terms of cultural heritage protection, all of the proponents have provided an application under the Act to address how the activity will meet the management principles of a National Park, address public interest and to ensure that no practicable alternatives exist. An Environmental Management Plan is submitted to address the potential impacts of the activity on natural and cultural values of the National Park and outlines management measures proposed to mitigate against these impacts.

The applications under the Act address and consider how this human right might be impacted.

1. **BLACKDOWN TABLELAND NATIONAL PARK**
The Gaangalu Nation People (GNP) are the traditional owners of Aboriginal Cultural Heritage area in this locality. GNP were consulted about the project and have requested that a GNP representative be present prior to accessing the site to undertake the proposed works. Ergon has been made aware of this requirement and have addressed this matter under its environmental management plan.
Additionally, Ergon has implemented a Cultural Heritage Management System that comprises assessment processes, staff training and support resources to ensure the management of cultural heritage is integrated into Ergon's activities.
2. **MOUNT MACKAY NATIONAL PARK**
The Gulngay People (GP) are the traditional owners of Aboriginal Cultural Heritage area in this locality. The GP were provided with details of the proposal, however, did not respond. As the site is pre-existing and only accessible via helicopter, the cultural values at this site were disturbed at the time the site was established. However, Ergon has implemented a Cultural Heritage Management System that comprises assessment processes, staff training and support resources to ensure the management of cultural heritage is integrated into Ergon's activities on this site.

3. GIRRINGUN NATIONAL PARK

The Girramay People #2 are the traditional owners of Aboriginal Cultural Heritage in this locality. The Girramay People #2 were consulted and are supportive of this project and based upon a preliminary inspection of the site, concluded that no known cultural heritage issues were attributed to this site.

The applications from Ergon and CCRC for the proposed uses has also been assessed under the Act and has been determined to be in the public interest, ecologically sustainable and that there is no reasonably practicable alternative.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Given that the nature of this legislation is administrative and its effect is limited to two established communications sites and a site which has been assessed by the relevant body to be absent of any cultural heritage issues, it is not anticipated that this legislation will affect the scope of the cultural rights of Aboriginal and Torres Strait Islander peoples.

Conclusion

I consider that the *Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it raises a human rights issue but does not limit human rights.

LEEANNE ENOCH
MINISTER FOR ENVIRONMENT AND THE GREAT BARRIER REEF
MINISTER FOR SCIENCE AND MINISTER FOR THE ARTS

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