

# Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023

## 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 Linard, Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs provide this human rights certificate with respect to the *Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023*, 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 NC Act) provides instructions on how development applications to install, maintain or use infrastructure on national parks should be dealt with. The NC Act contains strict criteria that must be satisfied before the chief executive can grant an authority for infrastructure.

Section 35(1) of the NC 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 sections 35 of the NC Act, in accordance with section 141 of the NC Act.

The following proposed use has been assessed and meets the requirements under section 35(1)(b) of the NC Act:

- installation, operation and maintenance of a service facility (for a communication use) by Optus Fixed Infrastructure Pty Ltd within Girringun National Park over part of Lot 18 on AP22472 on administrative plan QPWSAP000182.

Before the chief executive may grant an authority under section 35 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).

The *Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023* will prescribe the proposed uses in Schedule 3 of the Regulation.

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

1. Optus Fixed Infrastructure Pty Ltd (Optus) to install, operate and maintain communications equipment in Girringun National Park. Optus has applied to install underground fibre optic telecommunications cable to the site of an existing Telstra communications tower and install associated telecommunications equipment of the tower as a co-user. The total distance of underground cable to be installed is 716 metres, with approximately 130 metres of new construction required and the remainder involving hauling through existing conduit. The cable will follow an alignment at the edge of an existing track and requires a minimal amount of construction. The associated telecommunications equipment will be attached to the existing Telstra tower and will require no new ground disturbance.

The proponent has provided an application under the NC 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 has been 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 application under the NC Act is detailed below:

#### 1. GIRRINGUN NATIONAL PARK

The proposed dealing is covered by the Girramay People#2 determination QCD2018/003 which states that native title exists over the proposed dealing area.

The proposal involves the installation of new infrastructure within Girringun National Park. Feedback was sought from relevant traditional owners as to whether the decision to issue Optus with an authority under the *Nature Conservation (Protected Areas Management) Act 2017* raises any human rights issues, particularly cultural rights.

DES sent a notification by email to Girramay People Aboriginal Corporation Registered Native Title Body Corporation on the 3 January 2023. Following 28 business days the Department of Environment and Science (DES) followed up seeking a response to the email. DES did not receive a response from the Native Title Body Corporate or any other relevant First Nations people relating to any potential cultural rights in the area.

## **Human Rights Issues**

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

Consideration has been given as to whether the Amendment Regulation engages human rights under the *Human Rights Act 2019* (HR Act). The Amendment Regulation engages section 19 (Freedom of movement) and section 28 (Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples) of the *Human Rights Act 2019*. The temporary closure of the authority area to install underground fibre optic cable will prevent the general public as well as Aboriginal and Torres Strait Islander peoples from having access to the authority area. Optus has selected a site that has been previously disturbed by an access track to minimise the risk of limiting Aboriginal and Torres Strait Islander peoples cultural rights.

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

#### **Freedom of movement (section 19 of the HR Act)**

##### **(a) the nature of the right**

The human right identified in section 19 recognises that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where they live. The right means that a person cannot be arbitrarily denied access to areas that are open to the public, such as national parks.

##### **(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

The nature of the limitation is to authorise Optus to install, maintain and operate the infrastructure on the protected area estate. This includes the authorisation to temporarily limit access to the authority area while construction works are undertaken. By temporarily limiting access to the authority area, Optus (and its contractors) are protecting public safety during construction works.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose.

In considering the safety of all members of the public during construction works, it is essential to authorise only Optus and its authorised contractors access to the authorised area for the installation and maintenance of the infrastructure and to only use the land for the permitted use once all construction works are complete. The section 35 authority achieves the purpose of restricting the right of all persons to enter the area, to ensure the safe construction of the underground fibre optic cable.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive or reasonably available way to complete construction works than by temporarily closing the authority area to safely construct the underground cable in accordance with the plans that have been approved by the department.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The temporary limitation on the freedom of movement is balanced by the protection of public safety during construction works.

### **Cultural Rights – Aboriginal peoples and Torres Strait Islander Peoples (section 28 of the HR Act)**

(a) the nature of the right

Section 28 of the HR Act provides for the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy and maintain control, protect and develop their identity and cultural heritage; to maintain and use Indigenous languages; to maintain kinship ties; a freedom to teach cultural practices and educations to their children; the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs. Subsection (2) establishes that Aboriginal peoples and Torres Strait Islander peoples must not be denied these rights as individuals or with other members of their community.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the *Human Rights Act 2019*, which provides that the Act does not affect native title rights and interests.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The nature of the limitation is to authorise Optus to install, maintain and operate the infrastructure on the protected area estate and in doing so, give the effect that they are authorised to temporarily limit access to First Nations peoples to the authority area while construction works are undertaken.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

This temporary limitation of access to the authority area will limit First Nations peoples' right to conduct cultural practices in the authority area. By temporarily limiting First Nations peoples' access to the authority area, Optus (and their contractors) are protecting public safety during construction works.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive or reasonably available way to complete construction works than by temporarily closing the authority area. While the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are temporarily limited during the construction works, this is to protect the public safety, and cultural connections to the lands will be able to continue following completion of the construction works.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, any temporary limitation on cultural rights of Aboriginal peoples and Torres Strait Islanders peoples are reasonable and justified to protect the public from risks to safety.

### **Conclusion**

In my opinion, the *Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023* is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

**LEANNE LINARD MP**  
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF  
MINISTER FOR SCIENCE AND MINISTER FOR MULTICULTURAL AFFAIRS

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