

# State Development and Public Works Organisation (State Development Areas) (Mackay) Amendment Regulation 2024

## 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* (HR Act), I, Grace Grace, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing provide this human rights certificate with respect to the State Development and Public Works Organisation (State Development Areas) (Mackay) Amendment Regulation 2024 (the Amendment Regulation) made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

### Background

The Regulation amends the State Development and Public Works Organisation (State Development Areas) Regulation 2019 by declaring the Mackay State Development Area (SDA).

In accordance with section 77 of the SDPWO Act, a regulation may declare any part of the State or any area over which the State claims jurisdiction to be an SDA, if the Governor in Council is satisfied that the public interest or general welfare of persons resident in any part of the State requires it.

Section 173(1) of the SDPWO Act provides for the Governor in Council to make regulations not inconsistent with the Act in respect of a range of matters, including the declaration of an SDA.

### Purpose

The purpose of the declaration of the Mackay SDA is to allow the Coordinator-General to regulate the establishment of emerging industries including biomanufacturing and bioenergy. The Mackay SDA will provide investment opportunities in emerging industries that support and further diversify Mackay's sugar industry. An SDA can provide certainty for proponents in emerging industries and affords the long-term protection of land by preventing encroachment from incompatible land uses and enabling effective infrastructure coordination.

## Human Rights Issues

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

Declaration of the Mackay SDA will establish clearly defined areas of land for which development will be regulated by the Coordinator-General to promote economic development in Queensland. Development will be regulated by a development scheme made under the SDPWO Act and, to the extent development is regulated by the development scheme, the *Planning Act 2016* will not apply. In addition, declaration will mean the compulsory acquisition powers in section 82 of the SDPWO Act will apply to the land.

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- Section 15 – Recognition and equality before the law
- Section 19 – Freedom of movement
- Section 21 – Freedom of expression
- Section 24 – Property rights
- Section 28 – Cultural rights – Aboriginal peoples and Torres Strait Islander peoples
- Section 31 – Fair hearing.

Of the human rights identified as being relevant, only the following three have been assessed as being potentially limited under the proposed Amendment Regulation: section 21 – Freedom of expression; section 24 – Property rights; and section 31 – Fair hearing.

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

#### *Section 15 - Recognition and equality before the law*

The right to recognition and equality before the law contains several human rights related to non-discrimination and equality before the law.

Section 15 of the HR Act will be relevant because the Amendment Regulation will identify particular land to be regulated as an SDA under the SDPWO Act to the exclusion of other land. This will lead to different rules applying to different land. However, the difference in rules is being applied because of planning considerations only and does not involve any discrimination based on human characteristics. Following the declaration, a development scheme will be developed. As part of that process, the Coordinator-General will undertake further precinct planning to inform the rules and regulations of the Mackay SDA.

Therefore, it is considered that this right is not limited by the decision.

#### *Section 19 – Freedom of movement*

The right to freedom of movement includes the freedom to choose where to live. The declaration of the Mackay SDA has planning and land use implications that engage and potentially impact on the ability of individuals to choose where to live. The right to choose where to live is already limited by the existing *Planning Act 2016* framework afforded by the Mackay Isaac Whitsunday Regional Plan 2012 (Regional Plan) and Mackay Region Planning Scheme 2017 (Planning Scheme).

In this instance, provisions contained in the Planning Scheme already limit the location of dwellings and other land uses in the proposed Mackay SDA. Notwithstanding, an SDA does not impact on existing lawful use rights.

The declaration of the Mackay SDA would not further limit a person's freedom of movement.

*Section 21 – Freedom of expression*

(a) the nature of the right

Every person has the right to hold and express an opinion, through speech, art, and writing (or other forms of expression) and to seek out and receive the expression of others' opinions.

(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

A person's right to freedom of expression may be limited by the Amendment Regulation because there are limited rights to review and appeal decisions about SDA applications.

The underlying purpose for making the SDA is to provide a streamlined land use planning and development assessment framework led by the Coordinator-General to regulate emerging industries. The making of the SDA is in accordance with the relevant considerations under the SDPWO Act including the public interest or general welfare of persons resident in any part of the State. The purpose of the limitation is consistent with a free and democratic society in which individuals and corporations are subject to planning and development frameworks including under the SDPWO Act.

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

Declaration of the Mackay SDA allows the Coordinator-General to implement a streamlined land use planning and development assessment framework to regulate the establishment of emerging industries, including biomanufacturing and bioenergy, that may provide significant investment opportunities and support and diversify Mackay's sugar industry.

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

There are no less restrictive and reasonably available ways to achieve the purpose. The SDPWO Act provides for the declaration of SDAs to provide a planning and development framework for development in areas when it is regarded as in the public interest or the general welfare of persons resident in any part of the State requires it. The Amendment Regulation provides the most appropriate mechanism for emerging industries to be regulated by the Coordinator-General.

(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 SDPWO Act provides for an SDA to be declared where the public interest or general welfare of persons resident in any part of the State requires it.

As part of the development scheme preparation, precinct planning will be undertaken to inform the rules and regulations around development assessment provisions for development applications. Public consultation will also be undertaken which provides opportunities for the general public and stakeholders to provide feedback in relation to the development scheme and how the regulatory framework will apply to them.

(f) any other relevant factors

Not applicable.

Accordingly, it is considered that any limit on a person's freedom of expression is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

*Section 24 – Property rights*

(a) the nature of the right

Property rights are one of the fundamental human rights and a key pillar of a free and democratic society. All persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property.

The right includes protection from the deprivation of property. Deprivation includes the substantial restriction on a person's use or enjoyment of their property including under planning laws.

(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 declaration of the SDA provides for a streamlined land use planning and development assessment framework that is regulated by the Coordinator-General. This is consistent with a free and democratic society in which individuals and corporations are subject to planning and development control. Declaration of the Mackay SDA is consistent with the provisions of the SDPWO Act and allows the Coordinator-General to regulate emerging industries.

The declaration of an SDA enlivens compulsory acquisition powers afforded by section 82 of the SDPWO Act. The Coordinator-General may take land in an SDA for purposes including providing for the establishment of industry or essential services or the establishment of an infrastructure corridor. The compulsory acquisition powers enable the Coordinator-General to secure implementation of the approved development scheme. The process under the *Acquisition of Land Act 1967* (ALA) applies including the payment of compensation. The compulsory acquisition of land is not an arbitrary process but an established framework with compensation provisions to facilitate certain lawful objectives.

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

The limitation of property rights is only to the extent to which the SDPWO Act allows. The potential limitation of the right allows the Coordinator-General to regulate significant economic and infrastructure projects to benefit both the region, State and residents within.

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

There are no less restrictive and reasonably available ways to achieve the purpose. The SDPWO Act provides for a planning framework that can be used to allow the Coordinator-General to regulate the establishment of emerging industries which are of economic benefit to the State and its residents. The compulsory acquisition powers are available if necessary to provide for implementation of an approved development scheme.

(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 SDPWO Act provides for an SDA to be declared where the public interest or general welfare of persons resident in any part of the State requires it. Declaration of the Mackay SDA supports the establishment of new and emerging industry which generates economic development in the Mackay region and supports the diversification of the sugar industry in Mackay which is one of the largest sugar producers in Queensland. There are significant economic benefits to the community.

It is considered that a fair balance is struck between limiting a person's property rights and supporting economic growth for the region. Any potential limitation on a person's property rights occurs within the scope of the SDWPO Act and any compulsory acquisition follows the process in the ALA and includes the payment of compensation. Therefore, any potential deprivation is not arbitrary.

(f) any other relevant factors

Not applicable.

Accordingly, it is considered that any limit on a person's right to a fair hearing is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

*Section 28 Cultural Rights – Aboriginal and Torres Strait Islander Peoples*

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. They must not be denied the right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

Currently, there are no native title claims or determinations subject to the areas within the proposed Mackay SDA.

Declaration of the SDA will not limit an Aboriginal or Torres Strait Islander person's cultural rights. Declaration merely introduces a new planning regime to provide for the implementation of a streamlined land use planning and development assessment framework to apply over the area. It replaces the existing planning framework under the *Planning Act 2016*.

*Section 31 – Fair hearing*

(a) the nature of the right

Section 31 is directed at the procedure for civil proceedings. It protects the right to a fair and public hearing by an impartial decision maker.

(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 SDPWO Act does not provide for merits appeal rights in relation to SDA development applications. However, the *Judicial Review Act 1991* (JR Act) still applies.

The underlying purpose for making the SDA is to provide a streamlined land use planning and development assessment framework led by the Coordinator-General to regulate emerging industries. The making of the SDA is in accordance with the relevant considerations under the SDPWO Act including the public interest or general welfare of persons resident in any part of the State.

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

Declaration of the Mackay SDA allows the Coordinator-General to implement a streamlined land use planning and development assessment framework to regulate the establishment of emerging industries, including biomanufacturing and bioenergy, that may provide significant investment opportunities and support and diversify Mackay's sugar industry.

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

There are no less restrictive and reasonably available ways to achieve the purpose. The SDPWO Act provides for the declaration of SDAs to provide a planning and development framework for development in areas when it is regarded as in the public interest or the general welfare of persons resident in any part of the State requires it. The Amendment Regulation provides the most appropriate mechanism for emerging industries to be regulated by the Coordinator-General.

(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.

Following the declaration of the Mackay SDA, a development scheme will be developed. As part of the process the Coordinator-General will undertake further precinct planning to inform the rules and regulations of the Mackay SDA, with feedback being sought from the general public and stakeholders to guide the development scheme provisions. In making a decision about a development application in an SDA, the Coordinator-General is to consider the contents of a development scheme.

The development scheme may require public consultation to take place in relation to SDA development applications and, if so, the Coordinator-General must consider any submissions made during the application process.

Although merits review is not available, the JR Act still applies.

(f) any other relevant factors

Not applicable.

Accordingly, it is considered that any limit on a person's right to a fair hearing is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

## Conclusion

I consider that the *State Development and Public Works Organisation (State Development Areas) (Mackay) Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**GRACE GRACE MP**  
Minister for State Development and Infrastructure,  
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