



Queensland

Aboriginal Land Amendment Regulation (No. 6) 2011

Explanatory Notes for SL 2011 No. 282

made under the
Aboriginal Land Act 1991

General outline

Short title

Aboriginal Land Amendment Regulation (No. 6) 2011.

Authorising law

The Aboriginal Land Amendment Regulation amends the *Aboriginal Land Regulation 2011* to declare an area of tidal land as available State land and areas of available State land as transferable land.

Section 294(1) of the *Aboriginal Land Act 1991* (Act) states that - "The Governor in Council may make regulations under this Act".

Section 27(1) of the Act provides for tidal land to be declared by regulation to be available State land.

Section 10(1)(e) of the Act provides for available State land to be declared by regulation to be transferable land.

Policy objectives and the reasons for them

Karumba

The State is a party to the Century Zinc Limited Right to Negotiate Agreement (the Agreement) executed on 13 February 1997. The Agreement, amongst other things, provided for a freehold grant of land over Lot 3 on SP154460 to the Gkuthaarn and Kukatj People, the native title holders.

As Lot 3 is mostly tidally affected, "ordinary" freehold title could not issue over the whole parcel under the *Land Act 1994*. Under the Act, tidal land is able to be granted (transferred) as inalienable freehold as long as it is declared available State land in the first instance. As such, tidal land within Lot 3 was declared available State land and Lot 3 was declared transferable land and the parcel was transferred in October 2007, thereby establishing the Barlawink and Warmitch Land Trust (the Land Trust).

The Land Trust still desired part of the parcel to be granted as "ordinary" freehold under the *Land Act 1994*. To this end, it surrendered that part of Lot 3 above high water mark to the State, reverting it to unallocated State land to allow an "ordinary" freehold grant to be issued under the *Land Act 1994*.

Survey undertaken to subdivide Lot 3 into Lots 31 (the area to become "ordinary" freehold) and 32 (the remainder including tidal land) on SP189950 triggered the then *Integrated Planning Act 1997*, now the *Sustainable Planning Act 2009* (SPA), which forced the Department of Environment and Resource Management to apply to the Carpentaria Shire Council (the Council) for the re-configuration of a Lot and a development permit. The Council required certain conditions to be met which proved unreasonable to the department and an alternative strategy was negotiated with the Land Trust. The Land Trust was asked to surrender all of its inalienable freehold (obtained under the Act) back to the State because subdividing unallocated State land does not trigger SPA.

On 18 May 2011, the area above high water mark, Lot 31 on SP189950, issued to the Land Trust as "ordinary" freehold under the *Land Act 1994*. As the original regulation made under the Act was cancelled upon surrender of the land, Lot 32 requires declaration as transferable land again so that it can be transferred.

The regulation of the available State land as transferable land will allow for the grant of inalienable freehold title to the Land Trust under the Act. As

Lot 32 contains tidal land, it must be first declared available State land prior to being declared transferable land.

Magnetic Island

On 22 December 2010, the State entered into an Indigenous Land Use Agreement (ILUA) with Arthur Johnson, Michael Johnson and Shirley Walker on their own behalf and on behalf of the Wulgurukaba people. The ILUA provided, amongst other things, for the transfer of a parcel of unallocated State land located on Magnetic Island to the Wulgurukaba People under the Act. The subject parcel of land is described as Lot 1 on SP241428, has an area of 6.282 hectares and is located approximately 14 kilometres north of Townsville.

The regulation of the available State land as transferable land will allow for the eventual grant of freehold title to Aboriginal people under the Act.

St Lawrence

On 9 September 2009, the Department of Environment and Resource Management received an expression of interest under the Act over Lot 1 on SP143248. The subject parcel is unallocated State land consisting of 21.85 hectares and located at St Lawrence approximately 150km north-west of Rockhampton.

In accordance with Part 3 of the Act, Aboriginal people may formally express an interest in having particular land to be made transferable land.

The regulation of the available State land as transferable land will allow for the eventual grant of freehold title to Aboriginal people under the Act.

Achievement of policy objectives

The Subordinate legislation will achieve the policy objective by the regulation of the subject lands as transferable to allow for the grant of freehold to Aboriginal people under the Act.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the Act, which provide for the grant of land as Aboriginal land. The regulation will enable

subsequent transfer to Aboriginal freehold land under the Act and the *Land Act 1994*.

Inconsistency with policy objectives of other legislation

There are no inconsistencies associated with the proposed regulation.

Benefits and costs of implementation

The benefits of the regulation are that it will allow for the grant of land to Aboriginal people.

Implementing the regulation will have negligible costs.

Consistency with fundamental legislative principles

The 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.

Consultation

Karumba - The Government consulted extensively with the Barlawink and Warrmitch Land Trust, the Carpentaria Shire Council and Department of Local Government and Planning in relation to the regulation and the subsequent actions. All parties support the proposed actions.

Magnetic Island - Consultation has been commenced under ILUA negotiations with the Wulgurukaba people. However, no grantee was nominated under the ILUA to hold the land and as such, the department will need to consult with Aboriginal people particularly concerned with the land.

St Lawrence - The Government consulted with Local, State and Federal Government agencies as well as Indigenous Groups being the North Queensland Land Council and the Qld South Native Title Services. The views of local community groups and surrounding land holders were also sought in relation to the regulation and the subsequent actions.

All parties mentioned above support the proposed actions.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Resource Management.

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