

Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2021

Explanatory notes for SL 2021 No. 150

made under the

Nature Conservation Act 1992

General Outline

Short title

Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2021

Authorising law

Sections 32, 33, 42AA, 42AC, 64 and 175 of the *Nature Conservation Act 1992* (NC Act).

Policy objectives and the reasons for them

The objectives of the *Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2021* (Amendment Regulation) are to:

- dedicate part of Daintree National Park, as Daintree National Park (Cape York Peninsula Aboriginal Land);
- dedicate the entirety of the existing Hope Islands National Park, as Hope Islands National Park (Cape York Peninsula Aboriginal Land);
- dedicate part of Black Mountain National Park, as Kalkajaka National Park (Cape York Peninsula Aboriginal Land);
- dedicate part of Ngalba Bulal National Park, as Ngalba-bulal National Park (Cape York Peninsula Aboriginal Land); and
- effect a revocation approved by the Legislative Assembly on 13 May 2021.

Some lots in the existing Daintree National Park remain national park and have not been transferred to national park (Cape York Peninsula Aboriginal land) as:

- there are structures built by the adjacent freehold landowner encroaching into the national park. The State wish to resolve encroachments on these lots with adjacent landowners

before the whole or part of that land is granted as Aboriginal land and dedicated as national park (Cape York Peninsula Aboriginal land) at a later date;

- the bank of the Daintree River has eroded to such an extent that four parcels of Daintree National Park wholly exist within the navigable channel. The State will seek to revoke the lands from the national park and remove them from the Land Title register;
- a lot is proposed for future revocation to support the aspiration of the Aboriginal corporation to continue a plant nursery business on the site; and
- this will enable future road actions to be undertaken including finalising a revocation of land where there is an existing road.

Two lots in the existing Ngalba Bulal National Park remain national park and have not been transferred to national park (Cape York Peninsula Aboriginal land) as:

- additional tenure actions are required before the land can be transferred; and
- future road actions are to be undertaken including revocation.

One lot in the existing Black Mountain National Park remains national park and has not been transferred to national park (Cape York Peninsula Aboriginal land) to enable future road actions to be undertaken including revocation.

The Queensland Government has made a commitment to resolve tenure of all national parks and identified State lands in the Cape York Peninsula region. As part of this resolution the Government will work with Cape York people to protect Cape York's iconic natural areas and to continue arrangements for joint management of protected areas in the region with Aboriginal Traditional Owners.

Achievement of policy objectives

To achieve its objective, the amendment regulation amends:

1. **Schedule 2: National parks of the Nature Conservation (Protected Areas) Regulation 1994 to:**

- a. redescribe the Black Mountain National Park as lot 1 on SP309118, an area of 2.977 hectares, as the remainder of land is dedicated as another class of protected area - national park (Cape York Peninsula Aboriginal land).
- b. redescribe the Daintree National Park as lot 406 on SP296955, lot 8 on SP296956, lot 10 on SP296958, lots 21, 155, 198, 220 and 900 on SP296959, lot 14 on SP296960, lot 17 on SP309100, lot 82 on SP309103, lot 95 on SP309104, lots 24 and 44 on SP309105, and lots 91 to 95 on W3451, an area of 30.6129 hectares. Remaining land is dedicated as another class of protected area - national park (Cape York Peninsula Aboriginal land) or is part of a revocation approved by the Legislative Assembly on 13 May 2021, to remove of 0.2532 hectares, formerly described as lot 1 on AP19304, now lot 166 on SP296959, to enable gazettal of an existing road.
- c. redescribe the Ngalba Bulal National Park as lots 4 and 21 on SP154458 and lot 11 on SP320133, an area of 8.1479 hectares. The remainder of the land is dedicated as another class of protected area - national park (Cape York Peninsula Aboriginal land).
- d. change the class of the entirety of the Hope Islands National Park as it is redescribed and dedicated as another class of protected area - national park (Cape York Peninsula Aboriginal land).

2. Schedule 4: National parks (Cape York Peninsula Aboriginal land) of the Nature Conservation (Protected Areas) Regulation 1994 to:

- a. change the class and name of the majority of the existing Daintree National Park to Daintree National Park (Cape York Peninsula Aboriginal Land), described as lot 107 on RP737399, lot 4 on SP288855, lots 1 to 4 on SP296954, lots 4 to 6 on SP296955, lot 7 on SP296956, lots 8 and 9 on SP296958, lots 20 and 96 on SP296959, lots 10 to 13 and 15 on SP296960, lot 16 on SP296966, lot 1 on SP304069, lots 2 and 3 on SP304070, lots 15, 16 and 18 to 20 on SP309100, lots 52 to 55 on SP309102, lot 81 on SP309103, lots 92 to 94 on SP309104, lot 18 on SP309105, lots 24 and 25 on SP309114, and lot 48 on SP309121, an area of 116,613.151 hectares.

In considering the area remaining Daintree National Park, the area of Daintree National Park (Cape York Peninsula Aboriginal Land), application of contemporary survey and mapping technology to better define the area of historic 'Deposited Plans' and adding a parcel of unallocated State land, there is a change in the total protected area estate from about 116,350.4138 hectares to 116,643.7639 hectares. This represents a nett increase in area of 293.3501 hectares.

- b. change the class and name of the entirety of the existing Hope Islands National Park to Hope Islands National Park (Cape York Peninsula Aboriginal Land), described as lot 41 on SP309122, lot 8 on SP309123, and lots 17 and 18 on SP309124, an area of 61.707 hectares.

In considering that the entirety of Hope Islands National Park is subject to a change of class to Hope Islands National Parks (Cape York Peninsula Aboriginal Land) and the application of contemporary survey and mapping technology to better define the area of historic 'Deposited Plans', there is a change in the total protected area estate from about 84.3 hectares to 61.707 hectares. This represents a nett decrease in area of 22.593 hectares.

- c. change the class and name of the majority of the existing Black Mountain National Park to Kalkajaka National Park (Cape York Peninsula Aboriginal Land), described as lot 166 on SP309118, an area of 894.9 hectares.

In considering the area remaining Black Mountain National Park, the area of Kalkajaka National Park (Cape York Peninsula Aboriginal Land), application of contemporary survey and mapping technology to better define the area of historic 'Deposited Plans', there is a change in the total protected area estate from about 903 hectares to 897.877 hectares. This represents a nett decrease in area of 5.123 hectares.

- d. change the class and name of the majority of the existing Ngalba Bulal National Park to Ngalba-bulal National Park (Cape York Peninsula Aboriginal Land), described as lots 1 to 3, 22 and 212 on SP154458, an area of 42,538.4719 hectares.

In considering the area remaining Ngalba Bulal National Park, the area of Ngalba-bulal National Park (Cape York Peninsula Aboriginal Land), application of contemporary survey and mapping technology to better define the area of historic 'Deposited Plans', there is a change in the total protected area estate from about 42,469.9 hectares to 42,546.6198 hectares. This represents a nett increase in area of 76.7198 hectares.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the NC Act, namely:

- the dedication and declaration of areas representative of the biological diversity, natural features and wilderness of the State as protected areas;
- the recognition of the interest of Aboriginal People and Torres Strait Islanders in the protected areas, landscapes, native flora and wildlife;
- to ensure the conservation of nature while allowing for Indigenous involvement, community use and appropriate commercial use of protected areas; and
- the Governor in Council may make regulations under the NC Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation.

Benefits and costs of implementation

The benefits of the Amendment Regulation are that the areas will enable joint management of the national parks between the Aboriginal Traditional Owners and Aboriginal people particularly concerned with the land and the Queensland Government. The action facilitates an opportunity for Traditional Owners to explore economic sustainability through expansion of local commercial recreation and ecotourism ventures. The revocation of part of the Daintree National Park has community benefits as this will allow for the gazettal of an existing road in the upper Daintree Valley, and which is essential for property access.

Implementing the Amendment Regulation will result in some additional costs to the Queensland Government. The dedication of the national parks (Cape York Peninsula Aboriginal land) will increase protected area management costs. Funding for this purpose has been allocated by the Queensland Government to the Department of Environment and Science (DES).

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; 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; 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

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. DES applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category g – regulatory proposals that are of a machinery nature).

The Queensland Government has discussed the proposal with the First Nations peoples particularly concerned with this land as well as the native title holders. The Traditional Owners understand and support that this amendment action is needed to rename and redescribe the land.

The Daintree National Park revocation proposal was tabled in the Legislative Assembly of Queensland on 24 March 2021 in accordance with section 32 of the NC Act, with the Legislative Assembly subsequently passing a Resolution on 13 May 2021 requesting the Governor in Council revoke the area. The proposal was advertised within 10 days after the notice of motion for the revocation being given in the Cairns Post and The Courier-Mail on 31 March 2021, in accordance with section 173Q of the NC Act.

Cook Shire Council, Douglas Shire Council, Cape York Land Council Aboriginal Corporation, North Queensland Land Council Native Title Representative Body Aboriginal Corporation and the National Native Title Tribunal were also consulted.

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