

# State Development and Public Works Organisation (State Development Areas) (Cairns South) 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, Cameron Dick, Minister for State Development, Manufacturing, Infrastructure and Planning, provide this human rights certificate with respect to the *State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020* (amendment regulation) made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

In my opinion, the *State Development and Public Works Organisation (State Development Areas) (Cairns South) 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 principal objective of the amendment regulation is to vary the existing Cairns South State Development Area (SDA) in accordance with the SDPWO Act. The variation of the Cairns South SDA is in the public interest and general welfare of persons resident in the state as it supports economic and industrial development of national, state and regional significance and provides significant employment opportunities for residents in the Far North Queensland region.

This objective is achieved by amending Schedule 1 of the *State Development and Public Works Organisation (State Development Areas) Regulation 2019*, to update the plan reference number for the declared Cairns South SDA from CSSDA\_001\_001 to CSSDA\_002 to reflect a variation to the boundary of the Cairns South SDA.

In accordance with section 77 (1) 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 (GiC) is satisfied that the public interest or general welfare of persons resident in any part of the State requires it. Section 77 (1) (a) also includes the power to vary an SDA by excluding or including additional land.

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

## Human Rights Issues

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

In my opinion, the human rights that are relevant to the subordinate legislation are:

- Property rights (section 24).

#### *Property rights*

The clauses of the subordinate legislation that are relevant to this right are:

- Schedule 1, reference to the Cairns South SDA (column 2, Plan)

The effect of the clause is to reference a plan which spatially identifies the extent of the Cairns South SDA. The amendment regulation gives effect to a variation to the boundary of the Cairns South SDA to include additional land. Land within an SDA is subject to compulsory acquisition powers in accordance with section 82 of the SDPWO Act. The inclusion of land within an SDA has the potential to impinge on property rights which are a fundamental human right.

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

#### (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. Within the modern parliamentary context, many laws have been made which interfere with property rights. The exposure of property rights to impingement is limited to the effect of the statute which impacts those rights. The potential to compulsorily acquire land in an SDA arising from the inclusion of land in the varied SDA is enacted by section 82 of the SDPWO Act and the *Acquisition of Land Act 1967* (ALA). A person's property rights are only limited to the lawful application of the SDWPO Act and ALA.

#### (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 ability to impinge on someone's property rights arising from the varied SDA is a lawful provision that helps facilitate the purpose of an SDA's declaration. In this instance the potential to compulsorily acquire land in an SDA would be in the public interest by facilitating economic development through the creation of jobs, infrastructure and tax income. The impact on a person's property rights is limited to the application of the SDPWO Act and the process for compensation under the ALA. 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 potential limitation of property rights is only to the extent in which the SDPWO Act allows. The potential limitation of the right allows the Coordinator-General to facilitate 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

Compulsory acquisition powers can be used to facilitate the timely establishment of significant projects which are of economic benefit to the state and its residents. While it may be considered a blunt instrument, these powers provide for timely and efficient implementation without the delays of the ordinary acquisition process. The process and compensation provisions are outlined within the SDPWO Act and ALA and provide a framework for the implementation of compulsory acquisition. The compulsory acquisition powers are therefore limited by the statutes' provisions, which provides a safeguard to the limit of impacts on a person's human rights.

(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

There are significant economic benefits to the community in the facilitation of large projects which provide not only jobs, but a more stable and diversified economy. The positive impact to the broader community must be viewed against the backdrop of both the social and economic impacts to landholders who may be potentially displaced by the exercise of the ability to compulsorily acquire land. It is considered that the implementation of the variation to the boundary of the SDA would provide a greater good in that it:

- supports the MSF ongoing viability of the Mulgrave Mill (which has been established for over 100 years)
- creates a diversified income stream for the Mulgrave Mill
- provides jobs
- provides additional tax revenue
- supports a more robust and diversified regional economy.

It is considered that enacting the variation to the SDA boundary to include land that would not have previously been captured by the ability to compulsorily acquire land strikes a fair balance between impacting people's property rights and supporting economic growth for the region. People's property rights are only impacted in so far as what is lawful, and safeguards are in place to ensure these impacts are limited and adequate financial compensation is received.

(f) any other relevant factors

n/a

## Conclusion

I consider that the *State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it may limit, restrict or interfere with a human right by enabling powers to compulsorily acquire land, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**Cameron Dick MP**  
Minister for State Development, Manufacturing, Infrastructure and Planning

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