

# Nature Conservation (Protected Areas Management) (Great Sandy National Park) 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, Leanne Enoch, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, provide this human rights certificate with respect to the *Nature Conservation (Protected Areas Management) (Great Sandy National Park) Amendment Regulation 2020* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas Management) (Great Sandy National Park) 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 *Nature Conservation Act 1992* (the Act) provides instructions on how development applications to install, maintain or use infrastructure on national parks should be dealt with. The Act contains strict criteria, which must be satisfied before the Chief Executive can grant an authority for infrastructure.

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

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

1. Installation, operation and maintenance of a service facility (for a communications use) by Optus Mobile Pty Ltd in the Great Sandy National Park at the site described as Lot 100 in Lot 21 on NPW1150 on AP16995.

Before the Chief Executive may grant a Section 35 authority for the above activity, the use and the location in the relevant national park must be prescribed in Schedule 3 of the *Nature Conservation (Protected Areas Management) Regulation 2017*.

The *Nature Conservation (Protected Areas Management) (Great Sandy National Park) Amendment Regulation 2020* will prescribe the proposed use.

## Human Rights Issues

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

Section 28 of the *Human Rights Act 2019* addresses the cultural rights of Aboriginal and Torres Strait Islander peoples. The subordinate legislation has been considered in terms of this right to determine how the two interact and if the legislation will limit the right.

The effect of the subordinate legislation is to allow the Chief Executive, at their discretion, to approve an authority for Optus Mobile Pty Ltd (Optus) to install, operate and maintain a telecommunications facility at a site on Great Sandy National Park. Telstra Corporation Ltd (Telstra) have a pre-existing telecommunications facility at this site, consisting of a 40m steel lattice tower and associated equipment on a concrete slab, which is fenced off for safety purposes. Telstra has been authorised for use of this site under the former *National Parks and Wildlife Act 1975*. This authorisation remains current and valid under the Act and has not required a legislative amendment to prescribe the use. Optus has recently applied to co-locate on the Telstra site and install, operate and maintain two radio-communication dishes, three outdoor equipment cabinets, a solar array and ancillary equipment. All of Optus's equipment will be within the existing established site and is expected to have a practically negligible impact on the surrounding area.

In terms of cultural heritage protection, Optus has provided an Environmental Management Plan that considers how this portion of the human right might be impacted: -

1. **ABORIGINAL HERITAGE**

*Fraser Island is part of the 'Butchulla' Aboriginal Cultural Heritage area.*

*The site is located within a lot within a defined cleared developed area of the village. No waterways or water bodies, coastal dunes, caves, rock outcrops and overhangs exist*

*within the near vicinity it is noted that water courses are not located in the area. The ground has been disturbed by an existing telecommunications infrastructure installation and village development.*

*If Heritage places or objects are to be found during the construction of the facility, or are disrupted it must be immediately reported.*

The application from Optus for the proposed use has also been assessed under the Act and has been determined to be in the public interest, ecologically sustainable and that there is no reasonably practicable alternative.

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

Given that the nature of this legislation is administrative and its effect is limited to an established site, it is not anticipated that this legislation will affect the scope of the cultural rights of Aboriginal and Torres Strait Islander peoples.

**Conclusion**

I consider that the *Nature Conservation (Protected Areas Management) (Great Sandy National Park) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it raises a human rights issue but does not limit human rights.

**LEEANNE ENOCH**  
MINISTER FOR ENVIRONMENT AND THE GREAT BARRIER REEF  
MINISTER FOR SCIENCE AND MINISTER FOR THE ARTS

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