

Nature Conservation (Protected Areas Management) Amendment Regulation 2025

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, Andrew Powell MP, Minister for the Environment and Tourism and Minister for Science and Innovation provide this human rights certificate with respect to the *Nature Conservation (Protected Areas Management) Amendment Regulation 2025* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas Management) Amendment Regulation 2025*, 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* (NC Act) provides instructions on how applications to install, maintain or use service facility infrastructure on national parks should be assessed and dealt with. The NC Act contains strict criteria that must be satisfied before the chief executive can grant an authority for a service facility.

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

The following proposed uses have been assessed and meet the requirements under section 35(1)(b) of the NC Act:

1. Tasmania Lobster Hatchery Pty Ltd (TLH) water pipeline service facility: as identified on the administrative plan QPWSAP000292 within Paluma Range National Park, lot 59 on plan NPW935.
2. Energy Queensland (EnergyQ) electricity supply facilities:
 - a. new transmission lines and underground cabling as identified on administrative plan MINP1 within Magnetic Island National Park lot 456 on plan AP22485; and
 - b. new transmission lines and underground cabling as identified on administrative plan QPWSAP000065 Conway National Park, lot 43 on plan NPW1144.
3. Townsville City Council (the Council) extension of water pipeline service facility as identified on administrative plan QPWSAP000251 within Magnetic Island National Park, lot 456 on plan AP22485.

Before the chief executive may grant an authority under section 35 for the above activities, the use and the relevant national park must be prescribed under Schedule 3 of the *Nature Conservation (Protected Areas Management) Regulation 2024* (the Regulation).

The *Nature Conservation (Protected Areas Management) Amendment Regulation 2025* (the Amendment Regulation) will prescribe the proposed uses in the Schedule 3 of the Regulation.

It is important to note that the Amendment Regulation is not the point of decision with regard to the proposed uses, it is required in accordance with section 35(1)(d) of the NC Act to provide the pathway for the chief executive to make a decision on whether to grant an authorisation or not.

The effect of the subordinate legislation is to allow the chief executive, at their discretion, to approve an authority for -

1. TLH to install, operate and maintain a water pipeline service facility within Paluma Range National Park, to support the rock lobster aquaculture facility located on freehold land adjoining the National Park.
2. EnergyQ to install, remove, operate and maintain an electricity supply facility within Magnetic Island National Park to support the growth in residential and tourism population.
3. EnergyQ to install, operate and maintain an electricity supply facility within Conway National Park, to support the growth in residential and tourism populations.
4. The Council to install, operate and maintain a water pipeline service facility within Magnetic Island National Park, to cater for increases in the local population.

The proposed service facilities have been assessed in accordance with the criteria set out under section 35(1)(b) which includes that the use will be in the public interest. The applicants have provided evidence of community consultation related to their proposal to install service facility infrastructure.

Human Rights Issues

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

Consideration has been given as to whether the Amendment Regulation engages human rights under the Human Rights Act (HR Act). While the Amendment Regulation itself does not limit Human Rights it does provide a pathway that enables the chief executive to consider grant of an authority under section 35 of the NC Act.

The grant of a section 35 NC Act authority, in my opinion, engages with:

- Freedom of movement (section 19); and
- Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The temporary closure of the proposed authority areas is required to safely install the proposed service facilities, this will prevent Aboriginal and Torres Strait Islander peoples as well as the general public from having access to the authority area.

The proposed authority areas selected have all been previously disturbed and were selected to minimise the risks of limiting Aboriginal and Torres Strait Islander peoples' cultural rights.

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

Freedom of movement (section 19 of the HR Act)

(a) the nature of the right

The human right identified in section 19 recognises that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where they live. The right means that a person cannot be arbitrarily denied access to areas that are open to the public, such as national parks.

- (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 overarching purpose is to provide a pathway that enables the chief executive, at their discretion, to authorise the installation, operation, maintenance and removal of service facilities within the protected area estate. This includes the authorisation to temporarily limit access to the authority areas while construction works are undertaken. By temporarily limiting access to the proposed authority areas the applicants (and their contractors) are protecting public safety during the construction works.

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

In considering the safety of all members of the public during construction works, it is essential that only the applicants and their authorised contractors have access to the area for the installation and maintenance of the infrastructure and to only use the land for the permitted use once all construction works are complete. The amendment of the regulation will allow an authorisation under section 35 of the NC Act for service facilities that are considered to be in the public interest to be constructed; the temporary limitation is to ensure public safety during construction. Therefore, the temporary limitations are considered reasonable, lawful and justifiable.

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

The proposed authority areas are small in comparison to the size of the protected areas and are not near any primary public recreation sites to minimise any restrictions to public use of the protected areas. There is no less restrictive or reasonably available way to safely complete construction works other than by temporarily closing the authority areas to safely construct the service facilities in accordance with the plans that have been approved by the Department of the Environment, Tourism, Science and Innovation.

- (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 temporary limitation on the freedom of movement is balanced by the protection of public safety during construction works and that the proposed service facilities have been assessed as being in the public interest.

Cultural Rights – Aboriginal peoples and Torres Strait Islander Peoples (section 28 of the HR Act)

- (a) the nature of the right

Section 28 of the HR Act provides for the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy and maintain control, protect and develop their identity and cultural heritage; to maintain and use Indigenous languages; to maintain kinship ties; to teach cultural practices;

and the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs. Subsection (2) establishes that Aboriginal peoples and Torres Strait Islander peoples must not be denied these rights as individuals or with other members of their community.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the HR Act, which provides that the Act does not affect native title rights and interests.

(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 overarching purpose is to provide a pathway that enables the chief executive, at their discretion, to authorise the installation, operation, maintenance and removal of service facilities within the protected area estate. In doing so, this will temporarily limit access to the public, including First Nations peoples to the authority area while construction works are being undertaken. It is relevant to note that the assessment process undertaken by the Department of the Environment, Tourism, Science and Innovation includes undertaking a native title work procedures assessment in accordance with the Queensland Government native title work procedures, and ensuring, where relevant, that Indigenous Land Use Agreements are in place, as well as ensuring that the applicants have an approved cultural heritage management plan prior to construction commencing.

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

This temporary limitation of access to the authority area will limit First Nations peoples' right to conduct cultural practices in the authority area. This temporary limitation of First Nations peoples' access to the authority area is considered reasonable, lawful and justifiable considering that it achieves the purpose of protecting public safety during construction works.

To further manage the limitation on First Nations peoples' cultural rights during construction of the service facility in Paluma Range National Park, the Toomulla Beach Aquaculture Facility Indigenous Land Use Agreement (ILUA) - Schedule 4 clause 3 provides a process in relation to Cultural Heritage in which prior to any high impact activities occurring the TLH will engage the Native Title Party to develop a Cultural Heritage Management Agreement (CHMA) and ensure that the corporation and native title party has executed such CHMA; or engaged a minimum of two cultural heritage monitors who are based in Townsville or other agreed place; and at the request of the native title party and where agreed by the corporation, a technical advisor with appropriate qualification in archaeology or anthropology, nominated by the native title party and engaged through a service provider nominated by the native title party, to be on site and provide cultural heritage monitoring and assistance during any high impact activities. The corporation must pay to the service provider all costs associated with the engagement of cultural heritage monitors and technical advisor in accordance with the rates set out in Schedule 5 of the Toomulla Beach Aquaculture Facility ILUA.

To further manage the limitation on First Nations peoples' cultural rights during construction of the service facilities in Magnetic Island and Conway National Park, EnergyQ has conducted internal cultural heritage field assessments following the Duty of Care guidelines from the Department of Women, Aboriginal and Torres Strait Island Partnerships and Multiculturalism to evaluate the risk to cultural heritage along the proposed line route. While cultural heritage risk is deemed very low, EnergyQ commits to stopping works and consulting with the Aboriginal Party should any indigenous cultural heritage be discovered during works—as required under the *Aboriginal Cultural Heritage Act 2003* and in accordance with EnergyQ Cultural Heritage Discovery Process (ES000906r100 – Find, Stop, Notify, Manage).

In regard to the Council's construction in Magnetic Island National Park, the Council will comply with the *Aboriginal Cultural Heritage Act 2003* Duty of Care Guidelines and other legislative requirements. When performing works on its water pipeline, the Council will take precautionary measures to prevent any adverse impact to any culturally significant heritage findings. These measures are highlighted in the operation and maintenance Environmental Management Plan provided with the Council's application.

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

There is no less restrictive or reasonably available ways to complete construction works than by temporarily closing the authority areas. While the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are temporarily limited during the construction works, this is to protect the public safety, and cultural connections to the lands will be able to continue following completion of the construction works.

(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.

On balance, any temporary limitation on cultural rights of Aboriginal peoples and Torres Strait Islanders peoples are reasonable and justified to protect the public from risks to safety.

Conclusion

I consider that the *Nature Conservation (Protected Areas Management) Amendment Regulation 2025* is compatible with the *Human Rights Act 2019* because it does not directly limit human rights, and in the instances where human rights may be limited, through the subsequent grant of an authority under section 35 of the NC Act, any limitation is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

ANDREW POWELL MP
MINISTER FOR THE ENVIRONMENT AND TOURISM
MINISTER FOR SCIENCE AND INNOVATION

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