

Health and Environment Committee

Report No. 6, 57th Parliament

Subordinate legislation tabled on 26 November 2020

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled on 26 November 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),³ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁴

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
190	Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020	26 November 2020	20 April 2021
195	Forestry and Other Legislation Amendment Regulation 2020	26 November 2020	20 April 2021
199	Health Transparency (Postponement) Regulation 2020	26 November 2020	20 April 2021
200	Proclamation No. 1— <i>Health Legislation Amendment Act 2020</i> (commencing certain provisions)	26 November 2020	20 April 2021

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ LSA, part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁴ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (HRA, s 41(1)-(3)).

Subordinate legislation tabled on 26 November 2020

201	Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020	26 November 2020	20 April 2021
210	Proclamation— <i>Biodiscovery and Other Legislation Amendment Act 2020</i> (commencing remaining provisions)	26 November 2020	20 April 2021
224	Environmental Protection Amendment Regulation (No. 1) 2020	26 November 2020	20 April 2021
225	Environmental Protection (Transshipping Activities) Amendment Regulation 2020	26 November 2020	20 April 2021
226	Nature Conservation and Other Legislation (COVID-19—Extension of Fee Waiver) Amendment Regulation 2020	26 November 2020	20 April 2021
227	Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020	26 November 2020	20 April 2021
243	Environmental Protection (Water and Wetland Biodiversity) Amendment Policy (No. 1) 2020	26 November 2020	20 April 2021
248	Hospital Foundations (Central Queensland Hospital Foundation) Amendment Regulation 2020	26 November 2020	20 April 2021
249	Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 5) 2020	26 November 2020	20 April 2021

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

The committee held a public briefing with the Department of Environment and Science on 8 March 2021 in relation to:

- SL No. 195: Forestry and Other Legislation Amendment Regulation 2020
- SL No. 225: Environmental Protection (Transshipping Activities) Amendment Regulation 2020
- SL No. 243: Environmental Protection (Water and Wetland Biodiversity) Amendment Policy (No. 1) 2020.

The transcript from the public briefing is available on the inquiry web page at <https://www.parliament.qld.gov.au/work-of-committees/committees/HEC/inquiries/current-inquiries/Subleg>.

The committee greatly appreciated the briefing provided by the Department of Environment and Science and thanks all the officers involved.

3 SL No. 190: Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020

The Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020 amends the Hospital and Health Boards Regulation 2012. It prescribes an agreement between the Parole Board Queensland (PBQ) and Queensland Health to enable the sharing of confidential prisoner health information. This forms part of broader reforms to the Queensland parole system, as recommended by the Queensland Parole System Review Final Report November 2019.⁵

According to the explanatory notes, a person's health treatment needs and health history may be highly relevant to PBQ considerations about the suitability of a person's release from custody, or the suitability of a person remaining in the community on parole.⁶ Currently, information is able to be provided to PBQ only with a person's consent, and this may result in relevant health information not being available to PBQ.⁷ Examples include:

- where a person has not consented to disclosure
- where consent is not able to be sought for disclosure because the person is not a current patient of a health service.⁸

The *Hospital and Health Boards Act 2011* and the Hospital and Health Boards Regulation 2012 establish Queensland's health services and include a framework for sharing confidential health information. The Act provides that an individual's confidential health information may be disclosed to an entity of the state under an agreement prescribed by regulation.⁹ Existing prescribed agreements include those between Queensland Health and the Queensland Police Service, Queensland Corrective Services and Queensland Government Insurance Fund.¹⁰ This regulation prescribes the agreement between Queensland Health and PBQ, allowing Queensland Health to disclose to PBQ confidential information of prisoners who are receiving, or have received, health care from Queensland Health services.

3.1 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

3.1.1 *Legislative Standards Act 1992*, section 4(2)(a) – privacy and confidentiality

The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

The agreement allows Queensland Health to disclose to PBQ, upon request, confidential information of prisoners who are receiving, or have received, health care from Queensland Health.

The duty of confidentiality by health professionals towards their patients has long been recognised at common law.¹¹ The ability of Queensland Health to provide an individual's health information to another state entity, without the need for the individual's consent, infringes on that individual's right to privacy.

⁵ Recommendations 49, 50 and 57.

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 2.

⁸ Explanatory notes, p 2.

⁹ *Hospital and Health Boards Act 2011*, s 151(1)(b)(i)(B).

¹⁰ Hospital and Health Boards Regulation 2012, sch 3.

¹¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 114.

The explanatory notes state that this information will assist PBQ in making parole decisions. Specifically, they provide:

A person's health treatment needs and health history may be highly relevant to PBQ considerations about the suitability of a person's release from custody, or the suitability of a person remaining in the community on parole.¹²

Whilst acknowledging the regulation raises privacy concerns, the explanatory notes state that the agreement between Queensland Health and PBQ contains appropriate safeguards to protect the confidential nature of health information and that audits will be undertaken to monitor disclosures made pursuant to the agreement.¹³ Further, Queensland Health and PBQ are obliged to collect, store, use and disclose the information in accordance with the relevant privacy principles and privacy legislation (including the *Information Privacy Act 2009*). The agreement:

- provides that confidential information must be used for the purpose of facilitating PBQ's statutory functions, and
- prohibits the disclosure of confidential information by PBQ unless expressly allowed by the agreement, consented to by the relevant person, or authorised in writing by the relevant chief executive.¹⁴

Committee comment

The committee notes the safeguards in place to protect an individual's privacy and considers that sufficient regard has been given to the rights and liberties of individuals, such that the breach of fundamental legislative principle is justified.

3.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

3.3 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation.

3.3.1 Human rights issues in the amendment regulation

In the human rights certificate accompanying the amendment regulation, the Minister stated that in his opinion the amendment regulation:

... is compatible with the Human Rights Act 2019 because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.¹⁵

The committee's consideration of these issues is set out below.

3.3.2 Section 25 Human Rights Act 2019 – right to privacy and reputation

Under section 25 of the HRA, every person in Queensland has the right not to have their privacy unlawfully or arbitrarily interfered with.

This regulation limits the right to privacy by allowing Queensland Health, when requested by the PBQ, to disclose confidential health information of prisoners who are receiving, or have received, health care from Queensland Health services. This information can be provided without the consent of the individual.

¹² Explanatory notes, p 2.

¹³ Note that the agreement is not publicly available, rather it is incorporated into the legislative framework by this regulation and s 151(1)(b)(i)(B) of the *Hospital and Health Boards Act 2011*, which allows for agreements of this nature to be considered as lawful mechanisms for the disclosure of confidential information.

¹⁴ Explanatory notes, p 3.

¹⁵ Human Rights Certificate, p 3.

The Minister stated:

The purpose of the limitation is to allow PBQ access to healthcare information when it is relevant to its consideration of risks attached to a person residing, or continuing to reside, in the community under parole.¹⁶

In assessing the balance between the limitation and the right to privacy, the Minister noted that information will be disclosed only in accordance with the scope and terms of the agreement between Queensland Health and PBQ and that both entities are subject to privacy principles and legislation, including the *Information Privacy Act 2009* and the disclosure requirements in the *Hospital and Health Boards Act 2011*. The Minister also noted that the disclosure of confidential information under the agreement will be subject to regular audits by Queensland Health.

The Minister concluded:

Given the important role PBQ plays in ensuring that parole decisions are consistent with the safety of the community, and the safeguards prescribed in the agreement, it is considered that the benefits gained by prescribing the agreement outweigh any adverse impacts on the right to privacy and reputation.¹⁷

Committee comment

Given the importance of parole decisions in keeping the community safe and that both PBQ and Queensland Health are subject to privacy principles and legislation, the committee is satisfied that the limitation of human rights is reasonable and demonstrably justified.

3.4 Human rights certificate

As required by section 41 of the HRA, a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

4 SL No. 195: Forestry and Other Legislation Amendment Regulation 2020

The Forestry and Other Legislation Amendment Regulation 2020:

- increases the area of the state forest estate to allow for the reservation of the land for producing timber and associated products
- increases the area of the protected area estate to allow for the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom
- allows for the revocation of parts of the forest and protected area estate to allow for essential uses that are inconsistent with protected area and forestry tenure, such as road infrastructure
- redescribes several protected area and forest boundaries due to the completion of new plans using updated spatial technology; and, also corrects an error in the Forestry (State Forests) Regulation 1987.¹⁸

Maps of these proposed changes are provided in Appendix A.

The explanatory notes outline the benefits of implementation as follows:

- Adding areas of State land which have been assessed as having considerable timber or quarry production value to State forests and timber reserves, allows for this land to be utilised for timber production and other forest product purposes for use in construction and other industries.

¹⁶ Human rights certificate, p 2.

¹⁷ Human rights certificate, p 3.

¹⁸ Explanatory notes, p 1.

- Protected areas provide conservation and ecosystem services which have indirect economic value and positive benefits to society. Protected areas also provide special places for recreation and tourism activities and are often places of important cultural and spiritual significance for Traditional Owners. Adding areas of State land which have been assessed as having a land use most consistent with conservation to protected areas, allows for this land to be preserved in perpetuity for the benefit of the community.
- The revocation of part of Monkhouse Timber Reserve and dedication of it as part of Nglaba Bulal National Park will allow for the recognition of the rights and interests of Traditional Owners and contributes towards the involvement of Aboriginal people in the management of protected areas.
- The revoked area of Kondalilla National Park is in the public interest and does not have any significant impacts on the conservation values of the protected area estate.
- The revoked area of Duggan Conservation Park is in the public interest as it services the increasing demand of road users for the city of Hervey Bay.
- The revocation of Pullen Pullen Nature Refuge will allow for the first declaration of Pullen Pullen Special Wildlife Reserve.¹⁹

According to the explanatory notes, stakeholders that currently have, or are likely to have, an interest in the proposal area were consulted (Winton Shire Council, Queensland Rail Limited, Energy Queensland and Powerlink Queensland).²⁰ The explanatory notes also state that ‘feedback from stakeholders consulted about the Amendment Regulation was generally positive’.²¹

The committee held a public briefing on 8 March 2021 into the Forestry and Other Legislation Amendment Regulation 2020. The committee heard that the addition of Pullen Pullen Special Wildlife Reserve was Queensland’s and Australia’s first Special Wildlife Reserve. The reserve is a new form of tenure being a national park on privately owned land, and therefore protected from mining, grazing and forestry interests. Pullen Pullen is managed by Bush Heritage Australia as habitat for the protection of the endangered Night Parrot.²²

The department explained:

Most people will never see a night parrot. They were thought to be extinct many years ago. They were discovered about five to seven years ago out in the Channel Country out near Diamantina National Park and Pullen Pullen. This protection ensures that that habitat is safe and secure for night parrots moving forward.²³

4.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation’s consistency with fundamental legislative principle or its lawfulness.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.3 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation.

4.3.1 Human rights issues in the amendment regulation

In the human rights certificate accompanying the amendment regulation, the Minister stated that in her opinion the amendment regulation:

¹⁹ Explanatory notes, p 7.

²⁰ Explanatory notes, p 7.

²¹ Explanatory notes, p 7.

²² Department of Environment and Science, public briefing transcript, 8 March 2021, p 2.

²³ Department of Environment and Science, public briefing transcript, 8 March 2021, p 2.

... is compatible with is the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.²⁴

The committee's consideration of these issues is set out below.

4.3.2 Human Rights Act 1992, section 19 – freedom of movement

According to section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

The regulation prescribes the addition of land to several State forests, national parks and conservation parks. These tenures of land may limit a person's freedom of movement by restricting the use of vehicles and other modes of transport on the land, or requiring people to only use designated tracks or walk ways.

The Minister advised:

The limitation on the right to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by the relevant person complying with simple requirements, such as using an existing track, alternative path, or less damaging mode of movement (e.g. walking rather than driving) to traverse land and only applies to the land that is being added to the forestry or public protected area estate. As the limitation has a very limited scope, and persons subject to it have the ability to move freely throughout Queensland by complying with simple requirement, the limitation provides for an appropriate balance between the purpose of the limitation and the impact on an affected person and is therefore justified.²⁵

Committee Comment

Given the scope of the limitation, the committee is satisfied the impact on a person's right to freedom of movement is reasonable and justified.

4.3.3 Human Rights Act 1992, section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples

Section 28 of the HRA recognises the distinct cultural rights of Aboriginal and Torres Strait Islander peoples.

The prescribing of additional land to several state forests, national parks and conservation parks may limit the rights of Aboriginal and Torres Strait Islander peoples through restrictions on the ways in which the land may be accessed and used.

The Minister provided the following justification:

Restrictions on the ways that the land may be used and accessed as a result of becoming forestry or protected area tenure may limit the ability for Aboriginal peoples and Torres Strait Islander peoples, that have a connection to the land under Aboriginal peoples and Torres Strait Islander peoples, that have a connection to the land under Aboriginal tradition or Island custom, to maintain and strengthen their distinctive spiritual, material and economic relationship with land in certain circumstances. However, these restrictions help ensure public safety and protect and promote the section 28 cultural rights, through the preservation of land in perpetuity, which helps ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to maintain and strengthen their distinctive relationship with the land in the long-term.²⁶

Committee comment

The committee is satisfied that any impact on the cultural rights of Aboriginal and Torres Strait Islander peoples is reasonable and justified.

²⁴ Human rights certificate, p 7.

²⁵ Human rights certificate, p 5.

²⁶ Human rights certificate, p 7.

4.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

5 SL No. 199: Health Transparency (Postponement) Regulation 2020

The Health Transparency (Postponement) Regulation 2020 postpones the automatic commencement of the uncommenced provisions of the *Health Transparency Act 2019* for one year.²⁷

The purpose of the *Health Transparency Act 2019* is to:

- establish a legislative framework for collecting and publishing information about public and private hospitals and residential aged cared facilities (RACF)
- amend the *Hospital and Health Boards Act 2011* to introduce a minimum nurse and support worker skill mix ratio and minimum average daily resident care hours in public RACFs
- amend the *Health Ombudsman Act 2013* to implement recommendations of the Health, Communities, Disability Services and Domestic and Family Violence Committee's *Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013*.²⁸

On 1 March 2020, the majority of the Act's provisions commenced by proclamation. The remaining provisions will introduce a joint consideration process between the Office of the Health Ombudsman (OHO) and the Australian Health Practitioner Regulation Agency (Ahpra) for complaints about registered health practitioners. The explanatory notes state:

The Health Ombudsman will be required to notify Ahpra of a complaint about a registered practitioner, including full details to allow Ahpra to consider the complaint. Ahpra will have five business days to provide its initial view to the Health Ombudsman about how the complaint should be dealt with, such as whether it believes the matter should be referred to Ahpra or retained by the Health Ombudsman.²⁹

According to the explanatory notes, work on finalising the joint consideration process has been put on hold by OHO and Ahpra as COVID-19 significantly impacted on the availability of staff to work on the project.³⁰

This regulation will postpone commencement of these provisions until 6 December 2021 to allow Ahpra and OHO sufficient time to finalise the process.

5.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

²⁷ Section 15DA(2) of the *Acts Interpretation Act 1954* provides that if a law has not commenced within one year of its Assent, it automatically commences on the next day. However, a regulation may extend the automatic commencement date for up to two years after the Assent date (s 15DA(3)).

²⁸ Explanatory notes, p 1.

²⁹ Explanatory notes, p 2.

³⁰ Explanatory notes, p 2.

5.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

6 SL No. 200: Proclamation No. 1—Health Legislation Amendment Act 2020 (commencing certain provisions)

The Proclamation No. 1—Health Legislation Amendment Act 2020 (commencing certain provisions) fixes a commencement date of 25 September 2020 for sections 11(3) and (4), 12 and 18 of the *Health Legislation Amendment Act 2020*. Those provisions amend the *Hospital and Health Boards Act 2011* to require each Hospital and Health Board to have one or more Aboriginal persons or Torres Strait Islander persons as members.

6.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

6.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

6.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

7 SL No. 201: Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020

The Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020 extends access to Queensland Health's prescribed information system, called 'The Viewer', to additional types of 'prescribed health practitioners'.³¹ The Viewer is Queensland Health's read-only web-based application that displays a consolidated view of patients' clinical and demographic information from a variety of Queensland Health clinical and administrative systems.³²

Currently, only medical practitioners, nurses, midwives and paramedics registered under the Health Practitioner Regulation National Law can access The Viewer.³³

This regulation amends Schedule 2C of the Hospital and Health Boards Regulation 2012 to include the following as 'prescribed health practitioners', giving them access to The Viewer:

- Aboriginal and Torres Strait Islander health practice
- dental (including the professions of dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist)
- medical radiation practice
- occupational therapy

³¹ Explanatory notes, p 1.

³² Explanatory notes, p 1.

³³ Explanatory notes, p 2.

- optometry
- pharmacy
- physiotherapy
- podiatry
- psychology.³⁴

According to the explanatory notes, The Viewer will remove the need for health practitioners to manually seek information from Queensland Health. Therefore, the amendment is expected to 'reduce delays in the provision of clinical information and streamline processes for both Queensland Health and for these practitioners'.³⁵

7.1 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

7.1.1 *Legislative Standards Act 1992*, section 4(2)(a) – privacy and confidentiality

The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

The duty of confidentiality by health professionals towards their patients has long been recognised at common law.³⁶ The ability of a wider class of health practitioners to access an individual's confidential health information through The Viewer, without the need for the individual's consent, infringes on that individual's right to privacy.

The explanatory notes state that the purpose is to avoid delays in the transfer of health information and prevent the duplication of testing when patient care is transferred.

The explanatory notes state:

Extending access to The Viewer to allow additional registered health practitioners regardless of the type of facility or organisation they work for will ensure that these practitioners have timely access to important clinical information that could impact advice and treatment of a patient's clinical condition, such as, radiology and pathology results, emergency department discharge summaries, medications, alerts, outpatient appointment details, and instructions for follow up treatment, and may reduce unnecessary duplication of tests and procedures.³⁷

The explanatory notes set out safeguards in place to protect an individual's confidential health information:

- Health practitioners must complete a stringent registration process to access The Viewer.
- Automated checking of a health practitioner's professional credentials is performed each time they log in.
- Health practitioners must agree to terms and conditions that detail their legal and professional obligations when they apply to access The Viewer.
- Health practitioners are not able to perform general searches for patients and can only access details of patients for whom they have unique identifying information, such as a Medicare card number.

³⁴ Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020, cl 3.

³⁵ Explanatory notes, p 3.

³⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 114.

³⁷ Explanatory notes, p 2.

- All access and activity is recorded in audit files, and regular audits and usage reports are conducted.
- The Viewer can be configured to display or withhold information as deemed appropriate for the practitioner's clinical role and work context, and different levels of access can be configured for different categories of health practitioners.³⁸

It is an offence for a prescribed health practitioner to disclose confidential information unless authorised.³⁹ Further, health practitioners can be disciplined for unprofessional conduct under the *Health Ombudsman Act 2013* and under the Health Practitioner Regulation National Law.

The explanatory notes summarise the position this way:

Given the benefits of sharing information with practitioners who work outside Queensland Health, it is considered the privacy of individuals is sufficiently protected by the safeguards built into the arrangements for access to The Viewer.⁴⁰

Committee comment

The committee is satisfied that the breach of a person's privacy is justified, given the overall benefits of information sharing to assist patients, and noting the safeguards in place.

7.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.3 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation.

7.3.1 Human rights issues in the amendment regulation

In the human rights certificate accompanying the amendment regulation, the Minister stated that in his opinion the amendment regulation:

... is compatible with the *Human Rights Act 2019* because it does limit a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.⁴¹

The committee's consideration of these issues is set out below.

7.3.2 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, every person in Queensland has the right not to have their privacy unlawfully or arbitrarily interfered with.

In providing access to The Viewer to additional categories of 'prescribed health practitioners', this regulation could be seen as limiting the right to privacy, as an individual's confidential health information is made available to a wide range of practitioners. These practitioners will be able to access private information about a person's health and the services provided to them in public health settings.

The Minister stated:

The purpose of providing this access is to improve healthcare, specifically where care is being transferred from public health care to other health care providers, including allied health practitioners, community services and aged care facilities. The improved access to health services is consistent with a free and

³⁸ Explanatory notes, p 4.

³⁹ Hospital and Health Boards Act, s 142A. The maximum penalty is 600 penalty units.

⁴⁰ Explanatory notes, p 4.

⁴¹ Human rights certificate, p 4.

democratic society and the right to access health services without discrimination is also protected by the Human Rights Act.⁴²

In assessing the relationship between the limitation on the right to privacy and its purpose, the Minister stated:

The purpose of the Amendment Regulation is to ensure that the additional practitioners have timely access to important clinical information that could impact advice and ultimately treatment of a patient. The Amendment Regulation may potentially limit the right to privacy, as it expands the types of registered health practitioner that are able to be provided confidential information by being given access to The Viewer.

However, there are safeguards in place to protect confidential information, for example, health practitioners must complete a stringent registration process to access The Viewer and all access and activity is recorded in audit files, and regular audits and usage reports are undertaken. There are also appropriate penalties and enforcement mechanisms to deter potential misuse of confidential information.

Overall, the limitations on human rights are reasonable and demonstrably justifiable as the privacy of individuals is sufficiently protected by the safeguards built into the arrangements for access to The Viewer.⁴³

Committee comment

Given that access to the clinical information in The Viewer would benefit the treatment of the patient, and noting the safeguards in place to protect confidential information, the committee is satisfied that the limitation on the right to privacy is reasonably and demonstrably justified.

7.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

8 SL No. 210: Proclamation—Biodiscovery and Other Legislation Amendment Act 2020 (commencing remaining provisions)

The Proclamation—Biodiscovery and Other Legislation Amendment Act 2020 (commencing remaining provisions) fixes a commencement date of 30 September 2020 for the remaining provisions of the *Biodiscovery and Other Legislation Amendment Act 2020*.

According to the explanatory notes, the provisions in the Amendment Act will:

- recognise and protect traditional knowledge used for biodiscovery by including provisions for consent to be provided, and benefit sharing on mutually agreed terms to be negotiated, with traditional knowledge custodians prior to commencing biodiscovery activities;
- simplify approvals under the Act by removing the requirement for a biodiscovery entity to apply for and obtain an approved biodiscovery plan; and
- clarify the relationship between the Act and relevant international protocols, including the Nagoya Protocol.⁴⁴

8.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

⁴² Human rights certificate, p 2.

⁴³ Human rights certificate, p 4.

⁴⁴ Explanatory notes, p 1.

8.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

8.4 Human rights certificate

A human rights certificate was not tabled with the subordinate legislation. Under section 41(4A) of the HRA, where a proclamation fixes a date for commencement of all the provisions of an Act that are not in force, a human rights certificate is not required to be prepared.

9 SL No. 224: Environmental Protection Amendment Regulation (No. 1) 2020

The Environmental Protection Amendment Regulation (No. 1) amends the Environmental Protection Regulation 2019 to:

- prescribe an annual return date of 1 April for particular environmental authority holders
- correct a drafting error to ensure regulated wastes are included as prescribed water contaminants, and
- prescribe the fee for an application for a decision about whether an environmental impact statement may be required for a project.⁴⁵

9.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

9.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.3 Human rights considerations

The committee identified no potential human rights issues relating to the subordinate legislation.

9.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

10 SL No. 225: Environmental Protection (Transshipping Activities) Amendment Regulation 2020

The Environmental Protection (Transshipping Activities) Amendment Regulation 2020:

- gives effect to the transshipping policy
- clarifies and improves existing provisions related to the regulation of mineral and bulk material handling in the Environmental Protection Regulation 2019.⁴⁶

The Queensland Government's transshipping policy aims to prevent transshipping operations from damaging the Great Barrier Reef and to minimise impacts of transshipping on the environmental values of Queensland's marine environment.⁴⁷ A copy of the Transshipping Policy is provided in Appendix B.

⁴⁵ Explanatory notes, p 1.

⁴⁶ Explanatory notes, p 2.

⁴⁷ Explanatory notes, p 1.

The explanatory notes outline the transshipping policy:

... transshipping that occurs partly or wholly within the Great Barrier Reef Marine Park will not be permitted. The Queensland Government has also announced that in areas that are outside the Great Barrier Reef Marine Park, but within the Great Barrier Reef World Heritage Area, transshipping will be prohibited unless it is carried out within port boundaries. This will assist to protect the marine environments of the Great Barrier Reef by focusing transshipping activities in the region to existing ports.

The transshipping policy also provides that transshipping will be regulated as an environmentally relevant activity (ERA) under the Environmental Protection Act 1994. This means that those that carry out transshipping activities will be required to have an environmental authority.⁴⁸

While all new proposals for transshipping will be captured by the policy, existing transshipping activities will be required to transition to the new policy arrangements within 12 months of the commencement of this regulation.⁴⁹

The explanatory notes advise the policy does not apply to:

- activities for the supply of essential services to remote communities
- refuelling activities
- marine emergency response activities
- transshipping while docked at a port.⁵⁰

The committee held a public briefing on 8 March 2021 with the Department of Environment and Science to examine SL No. 225: Environmental Protection (Transshipping Activities) Amendment Regulation 2020. The committee is satisfied with the information provided at the public briefing.

10.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

10.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

10.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

10.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

11 SL No. 226: Nature Conservation and Other Legislation (COVID-19—Extension of Fee Waiver) Amendment Regulation 2020

The Nature Conservation and Other Legislation (COVID-19: Fee Waiver) Amendment Regulation 2020 (SL 71 of 2020) provided a waiver for the daily activity/passenger fees paid by commercial tour operators using protected areas, recreation areas and State forests. This was to assist tour operators who are affected by the reduction in the tourist numbers as a result of the COVID-19 travel bans. That fee relief applied until 31 July 2020. Provision was made for the Minister to extend the fee waiver

⁴⁸ Explanatory notes, pp 1-2.

⁴⁹ Explanatory notes, p 2.

⁵⁰ Explanatory notes, p 2.

beyond that date, by gazette notice. The Minister published a gazette notice on 10 July 2020 extending the fee waiver until 30 September 2020.⁵¹

Extension of this fee relief beyond 30 September 2020 requires amendment of the relevant regulations. The amendment regulation enables the Department of Environment and Science to extend the existing waiver from 1 October 2020 to 31 March 2021, through amendment of the Forestry Regulation 2015, the Nature Conservation (Protected Areas Management) Regulation 2017, and the Recreation Areas Management Regulation 2017.⁵²

11.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

11.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

11.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

11.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

12 SL No. 227: Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020

The objective of the Nature Conservation (Protected Areas Management) (Communications and Water Supply Facilities) Amendment Regulation 2020 is to permit the:

- operation, maintenance and upgrade of an existing service facility (for a communications use) by Ergon Energy Corporation Limited in Blackdown Tableland National Park
- operation and maintenance of an existing service facility (for a communications use) by Ergon Energy Corporation Limited in Mount Mackay National Park
- construction, operation and maintenance of a new service facility (for a water supply use) by Cassowary Coast Regional Council in Girringun National Park.⁵³

The *Nature Conservation Act 1992* specifies how development applications to install, maintain or use infrastructure in national parks are to be dealt with. Under section 35(1)(b) of that Act, the chief executive may issue a permit or other authority over, or in relation to, land in a national park for a service facility if the chief executive is satisfied:

- the cardinal principle for the management of national parks will be observed to the greatest possible extent
- the use will be in the public interest
- the use is ecologically sustainable, and
- there is no reasonably practicable alternative to the use.

⁵¹ Explanatory notes, pp 1-2.

⁵² Explanatory notes, p 2.

⁵³ Explanatory notes, p 2.

The explanatory notes state the proposed use has been assessed and has met the requirements in section 35(1)(b).⁵⁴

12.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

12.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

12.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

12.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

13 SL No. 243: Environmental Protection (Water and Wetland Biodiversity) Amendment Policy (No. 1) 2020

The Environmental Protection (Water and Wetland Biodiversity) Amendment Policy (No. 1) 2020 amends the Environmental Protection (Water and Wetland Biodiversity) Policy 2019 to establish environmental values and water quality objectives for:

- the surface waters of the Eastern Cape York basins and adjacent coastal waters
- Mitchell and Walsh Rivers upper catchments
- the surface waters and groundwaters of the Queensland Murray-Darling and the Bulloo basins.⁵⁵

The amendment to the policy also updates 'the environmental values and water quality objectives for the Wet Tropics coastal waters and minor amendments to Wet Tropics basins'.⁵⁶

The explanatory notes state:

The Amendment Policy ensures that locally relevant environmental values and water quality objectives inform regulatory decisions made under the Environmental Protection Regulation 2019 and other statutory instruments. Regulatory decisions based on local water quality information ... will deliver better environmental, social and economic outcomes than the alternative application of national water quality objectives, that are blanket in nature and not based on any testing of local waters.

The environmental values for waters under the Water and Wetland EPP also inform whether environmental harm under section 493A of the EP Act has been caused.⁵⁷

The committee held a public briefing on 8 March 2021 with the Department of Environment and Science to examine SL No. 243: Environmental Protection (Water and Wetland Biodiversity) Amendment Policy (No. 1) 2020.

The department provided context around the implementation of the amendment policy:

In terms of the benefits and costs of the implementation of this policy, it is important to bear in mind it provides policy direction and not regulatory prescription. It informs regulatory assessment and decision-making approvals under the Environmental Protection Act and other statutory instruments. These

⁵⁴ Explanatory notes, p 2.

⁵⁵ Explanatory notes, p 1.

⁵⁶ Explanatory notes, p 1.

⁵⁷ Explanatory notes, p 1.

regulatory decisions assist the government to achieve the objective of the Environmental Protection Act with respect to Queensland waters and allow for ecologically sustainable development.⁵⁸

The committee is satisfied with the information provided at the public briefing.

13.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

13.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

13.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

13.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

14 SL No. 248: Hospital Foundations (Central Queensland Hospital Foundation) Amendment Regulation 2020

The Hospital Foundations (Central Queensland Hospital Foundation) Amendment Regulation 2020 establishes the Central Queensland Hospital Foundation by amending the Hospital Foundations Regulation 2018.

The *Hospital Foundations Act 2018* provides for the establishment, incorporation and administration of bodies corporate known as hospital foundations. The Act provides that foundations can be established by regulation.⁵⁹

A hospital foundation helps its Hospital and Health Service and supports the Queensland public health system by raising funds to improve facilities, supporting educational and training opportunities for staff, funding research, and supporting and promoting the health and wellbeing of communities.⁶⁰

According to the explanatory notes, the Chair of the Central Queensland Hospital and Health Board applied to the Deputy Premier and former Minister for Health and Minister for Ambulance Services (the Deputy Premier) for approval to establish a foundation in accordance with the Act. The Deputy Premier considered the application and was satisfied the Central Queensland Hospital Foundation is likely to support or improve public health and it is in the public interest to establish the foundation.⁶¹

The Deputy Premier subsequently recommended the Governor in Council make the Regulation to establish the foundation.⁶²

14.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

14.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

⁵⁸ Department of Environment and Science, public hearing transcript, p 8.

⁵⁹ *Hospital Foundations Act 2018*, s 12.

⁶⁰ Explanatory notes, p 1.

⁶¹ Explanatory notes, p 1.

⁶² Explanatory notes, p 1.

14.3 Human rights considerations

The committee identified no human rights issues relating to the subordinate legislation.

14.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

15 SL No. 249: Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 5) 2020

The Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 5) 2020 extends the period of a declared public health emergency to allow for emergency powers to be used to reduce the risk of COVID-19 spreading.⁶³ The regulation extends the declared public health emergency for a further period of 90 days (until the end of 31 December 2020).⁶⁴

The declaration of the public health emergency was made by the Minister on 29 January 2020, and notified in the gazette on 31 January 2020. It has previously been extended on a number of occasions. (See SL 7, SL 8, SL 13, SL 75 and SL 154).⁶⁵

According to the explanatory notes, extending the duration of the declared public health emergency until 31 December 2020 is considered essential to limiting, and responding to, the potential spread of COVID-19 in Queensland.⁶⁶

Committee comment

The committee appreciates the importance of the extension of this regulation in protecting the health of all Queenslanders by limiting, and responding to, the potential spread of COVID-19 in Queensland.

15.1 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The further extension regulation raises the same issues, regarding impacts on the rights and liberties of individuals, as previous extension regulations. The committee's consideration of these issues is set out below.

15.2 *Legislative Standards Act 1992*, section 4(2)(a) – rights and liberties of individuals and section 4(3)(e) – power to enter premises

The effect of declaring (and also of extending) a public health emergency is that a number of powers in the *Public Health Act 2005* (Public Health Act) are vested in an 'emergency officer' who is responding to the declared public health emergency. These powers include the power to require a person to:

- not enter or not to remain within a place
- stop using a place for a stated purpose
- go to or stay in a stated place
- answer questions.⁶⁷

⁶³ Explanatory notes, p 1.

⁶⁴ Explanatory notes, p 3.

⁶⁵ Explanatory notes, p 2.

⁶⁶ Explanatory notes, p 4.

⁶⁷ Public Health Act, s 345.

An emergency officer also has the power to enter a place to save a human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Reasonable force is permitted to be used to enter a place.⁶⁸

The emergency officer must make a reasonable attempt to seek consent for entry, but need not do so if the officer believes on reasonable grounds that immediate entry is required.⁶⁹

Legislation should not, without sufficient justification, unduly restrict ordinary activities. The right to personal liberty is the most elemental and important of all common law rights.⁷⁰

Entry without consent into any place where a person lives requires the highest justification.⁷¹

An individual would normally expect to be able to enjoy freedom of movement and any removal of this right must be fully justified and should be only done with the authority of the court.⁷²

The explanatory notes provide the following advice regarding protections to limit the exercise of the powers of emergency officers:

The powers of emergency officers are discretionary and are only expected to be exercised if there are significant risks to public health. Additionally, the Public Health Act includes protections to limit the exercise of emergency officers' powers. For example:

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier's consent to the entry (section 344);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2));
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353); and
- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4)).⁷³

The explanatory notes offer the following justification:

The exercise of emergency powers by the Chief Health Officer and emergency officers is likely to impact on the rights and liberties of individuals. However, it is considered that any potential impact the Regulation has on the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the potential spread of COVID-19.⁷⁴

It should be noted that the powers described above are already contained within the Public Health Act, and are triggered by the declaration (and any extension) of a public health emergency, in this case due to the outbreak of COVID-19.

Committee comment

Given the overall public health imperative to prevent the spread of COVID-19 in Queensland, the committee is satisfied that any potential breach of FLPs is sufficiently justified.

⁶⁸ Public Health Act, s 343.

⁶⁹ Public Health Act, s 344.

⁷⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

⁷¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

⁷² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 99.

⁷³ Explanatory notes, p 4.

⁷⁴ Explanatory notes, p 5.

15.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

15.4 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation.

15.4.1 Human rights issues in the amendment regulation

In the human rights certificate accompanying the amendment regulation, the Minister states his opinion that the amendment regulation:

is compatible with the Human Rights Act 2019 because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.⁷⁵

The committee's consideration of these issues is set out below.

15.4.2 Human Rights Act 2019, section 19 – freedom of movement

Under section 19 of the HRA, every person has the right to move freely within Queensland and to enter and leave it.

Under the regulation, emergency officers have the power to do the following:

- require a person to not enter or not remain within a place
- stay in a stated place, and
- stop using a place for a stated purpose.

This will impact on a person's right to freedom of movement.

15.4.3 Human Rights Act 2019, section 20 – freedom of thought, conscience, religion and belief

Under section 20 of the HRA, every person has the right to freedom of thought, conscience, religion and belief.

The regulation provides emergency officers the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs.

15.4.4 Human Rights Act 2019, section 21 – freedom of expression

Under section 21 of the HRA, every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds.

A person's movements may be restricted under this regulation, which may limit the ways in which people can express their opinions and ideas.

15.4.5 Human Rights Act 2019, section 22 – peaceful assembly and freedom of association

Under section 22 of the HRA, every person has the right to peaceful assembly.

The restriction on a person's movements may limit their ability to assemble peacefully.

15.4.6 Human Rights Act 2019, section 27 – cultural rights – generally, and section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples

Persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture and to practise their religion.

The HRA recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.

⁷⁵ Human rights certificate, p11.

The restrictions on a person's movement could limit a person's cultural rights to engage with community and their traditionally owned or otherwise occupied lands and waters.

15.4.7 Human Rights Act 2019, section 23 – taking part in public life

Under section 23 of the HRA, every person has the right to participate in the conduct of public affairs.

The restrictions on a person's movement or ability to interact with other persons may impact on a person's right to take part in public life.

15.4.8 Human Rights Act 2019, section 24 – property rights

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

Emergency officers have the power to:

- demolish structures or other property
- remove an animal, substance or thing from a place
- dispose of an animal, substance or thing at a place
- destroy animals at a place or remove animals for destruction at another place, and
- take action in relation to property

All these actions will impact on a person's property rights and will deprive them of their property.

15.4.9 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Being compelled to provide a name and address and to answer questions limits a person's human right to privacy.

15.4.10 Human Rights Act 2019, section 26 – protection of families and children

Under section 26 of the HRA, every child has the right to protection that is in their best interests as a child.

The power to restrict a person's movement may impact children through restriction of movement, contact with other people or restricting access to facilities and events.

15.4.11 Human Rights Act 2019, section 29 – right to liberty and security of person

Under section 29 of the HRA, a person must not be subject to arbitrary arrest or detention.

The regulation provides powers to emergency officers to restrict people's movements, including requiring a person to self-isolate at home or another premises. This may limit the right to liberty and security because preventing people from leaving their homes or other premises may constitute detention.

15.4.12 Human Rights Act 2019, section 30 – humane treatment when deprived of liberty

Under section 30 of the HRA, a person deprived of liberty must be treated with humanity and respect.

Emergency officers (medical) have the power to order the detention of a person if that person has or may have a serious disease or illness.

15.4.13 Human Rights Act 2019, section 36 – right to education

Under section 36 of the HRA, a child has the right to access primary and secondary education appropriate to their needs.

A child's educational activities may be limited due to restrictions on movement.

The Minister provided the following collective justification for all these limitations on human rights:

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.⁷⁶

The Minister further stated:

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Although the Regulation potentially limits many rights, these limitations are minor in nature and the need to protect the right to life for all Queenslanders substantially outweighs any limitation on human rights.⁷⁷

The Minister also noted these safeguards:

The Public Health Act states that the Regulation can only extend the declared public health emergency and related powers of emergency officers for a period of no more than 90 days. This requirement is an important safeguard as it places an obligation on the Queensland Government to continually assess the need for the declared public health emergency to continue based on the current threat of COVID-19 in Queensland.⁷⁸

Committee comment

The committee is satisfied that the regulation is compatible with human rights. Any limitation to human rights in the regulation is reasonable and justifiable.

15.5 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

16 Recommendation

The committee recommends that the House notes this report.



Mr Aaron Harper MP

Chair

March 2021

Health and Environment Committee

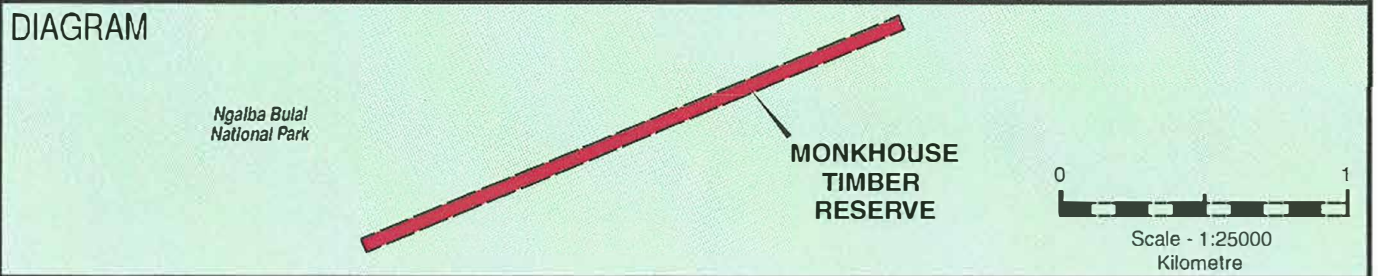
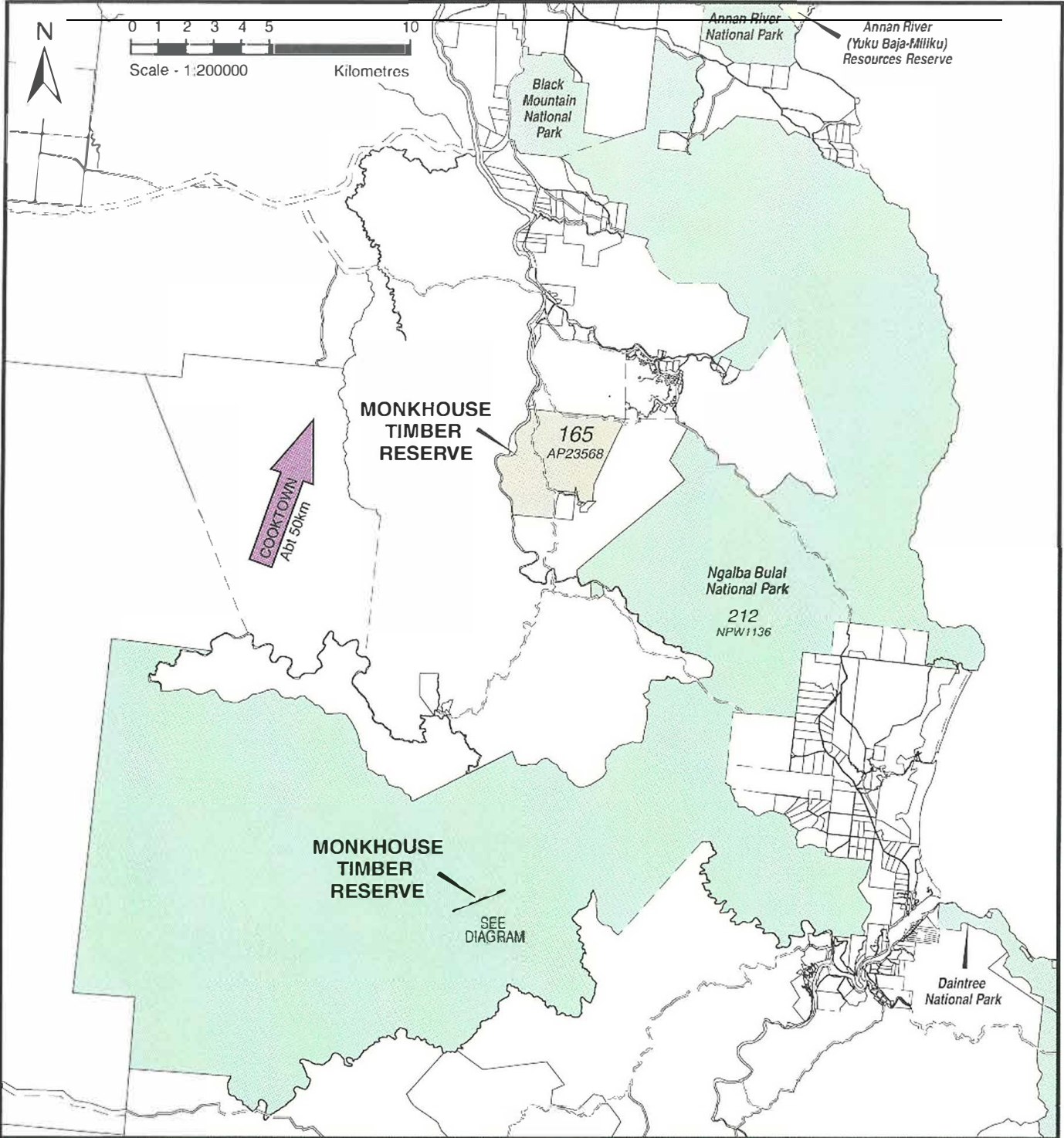
Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Robert (Rob) Molhoek MP, Member for Southport
Members	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Ms Joan Pease MP, Member for Lytton
	Dr Mark Robinson MP, Member for Oodgeroo

⁷⁶ Human rights certificate, p 10.

⁷⁷ Human rights certificate, p 10.

⁷⁸ Human rights certificate, p 11.

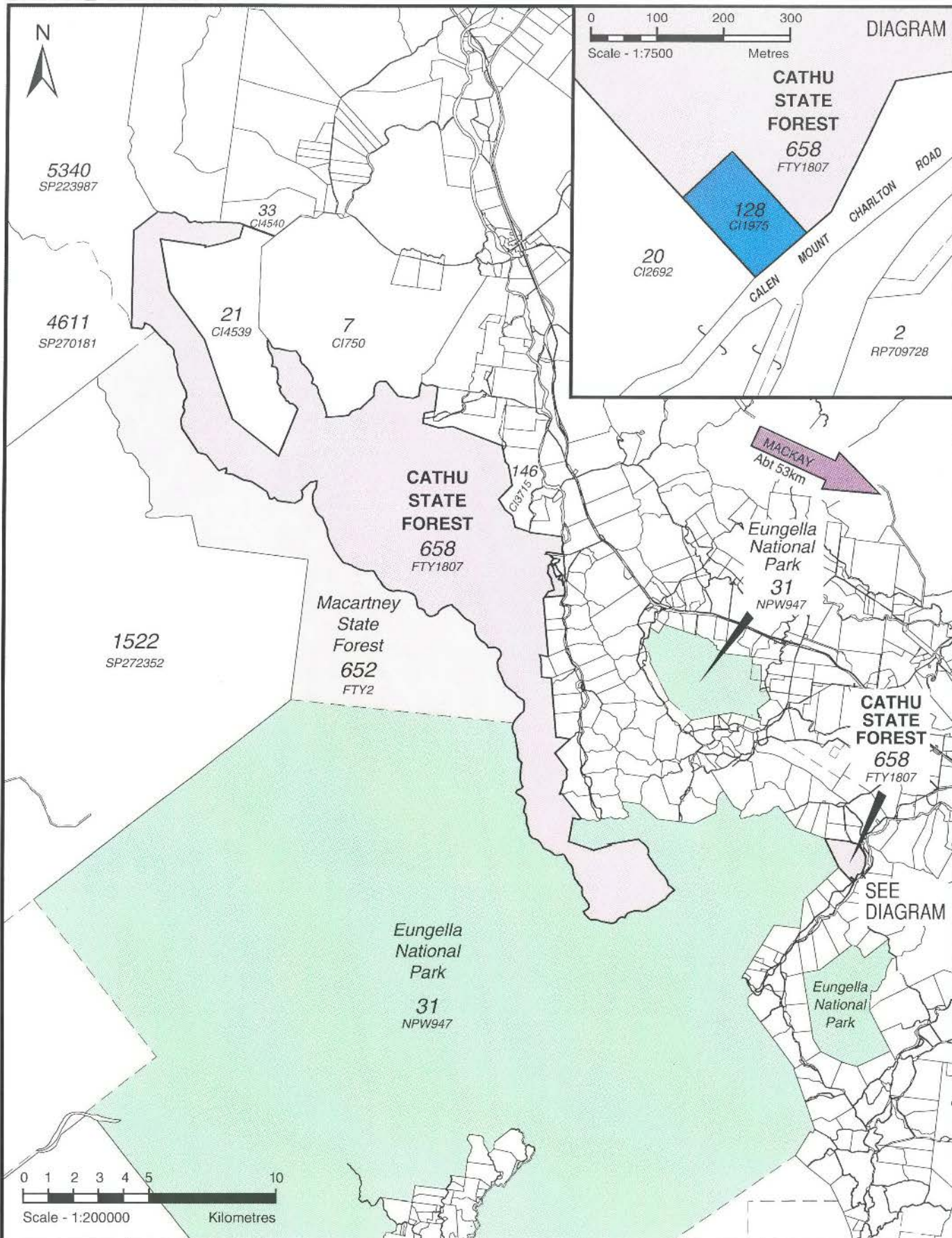
Monkhouse Timber Reserve revocation: sketch A



- PROPOSED REVOCATION FROM MONKHOUSE TIMBER RESERVE (Part of lot 165 on FTY1722, to be described as lot 1 on AP23568 - Abt 9.9 ha) proposed for addition to Ngalba Bulal National Park) SHOWN.....
- MONKHOUSE TIMBER RESERVE (Abt 1095.4 ha following revocation, redescribed as lot 165 on AP23568) SHOWN.....
- NGALBA BULAL NATIONAL PARK SHOWN.....
- OTHER NATIONAL PARKS SHOWN.....
- ANNAN RIVER (YUKU BAJA-MILIKU) RESOURCES RESERVE SHOWN.....

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Cathu SF addition Sketch



PROPOSED ADDITION TO CATHU STATE FOREST (Lot 128 on CI1975 - Abt 1.6187 ha) SHOWN.....

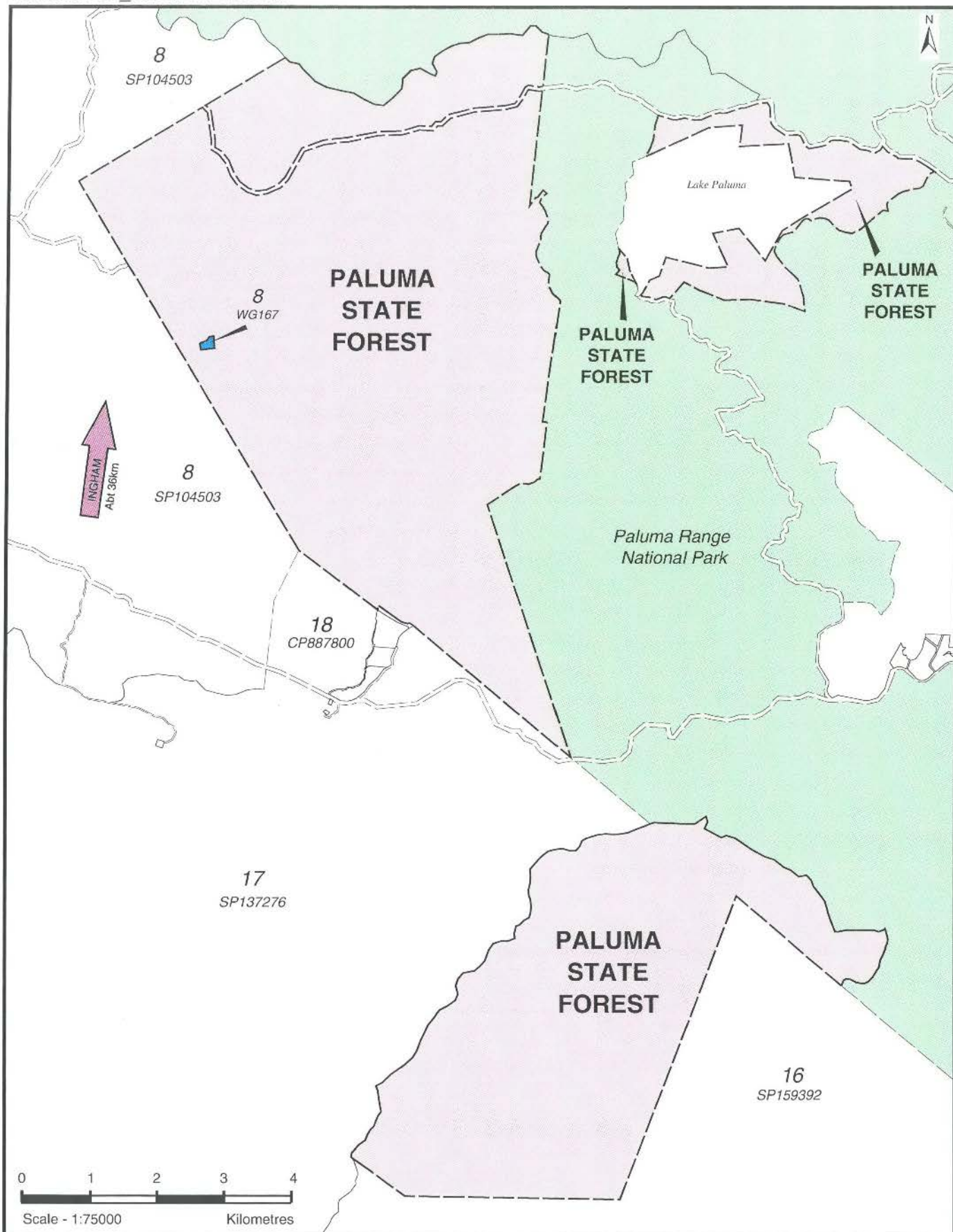
CATHU STATE FOREST (Totalling Abt 11367.9187 ha following addition) SHOWN.....

MACARTNEY STATE FOREST SHOWN.....

EUNGELLA NATIONAL PARK SHOWN.....

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Paluma SF_addition sketch



PROPOSED ADDITION TO PALUMA STATE FOREST (Lot 8 on WG167 - 3.1667 ha) SHOWN.....

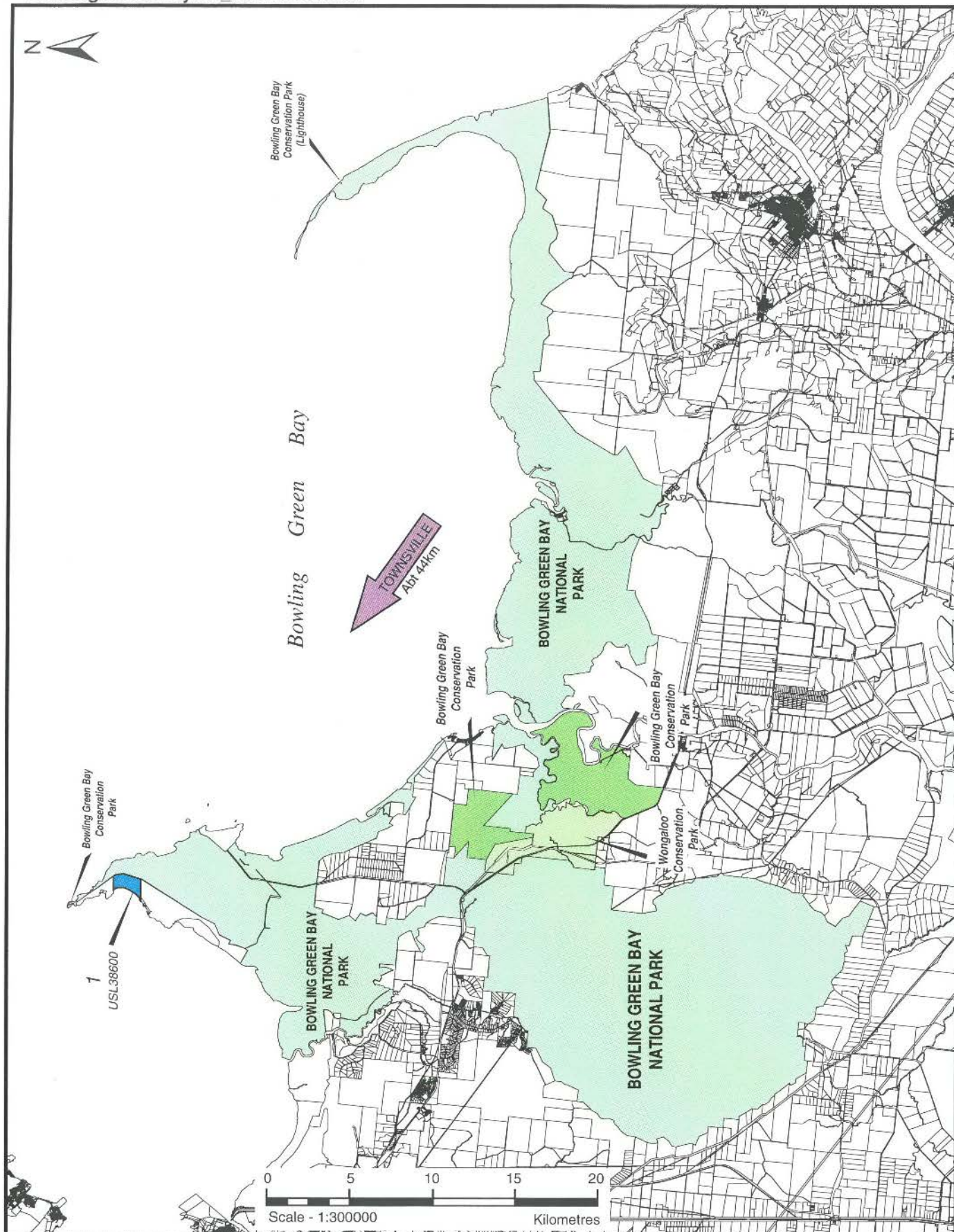
PALUMA STATE FOREST (SF 268 on plan FTY1271 excluding lot 268 on AP6371-Totalling Abt 8115.1667 ha after addition) SHOWN.....

PALUMA RANGE NATIONAL PARK SHOWN.....

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Bowling Green Bay NP_addition Sketch



PROPOSED ADDITION TO BOWLING GREEN BAY NATIONAL PARK (Lot 1 on USL38600 - Abt 145 ha) SHOWN.....

BOWLING GREEN BAY NATIONAL PARK (Lots 1-5 on AP9205 - Totalling Abt 57378.072 ha after addition) SHOWN.....

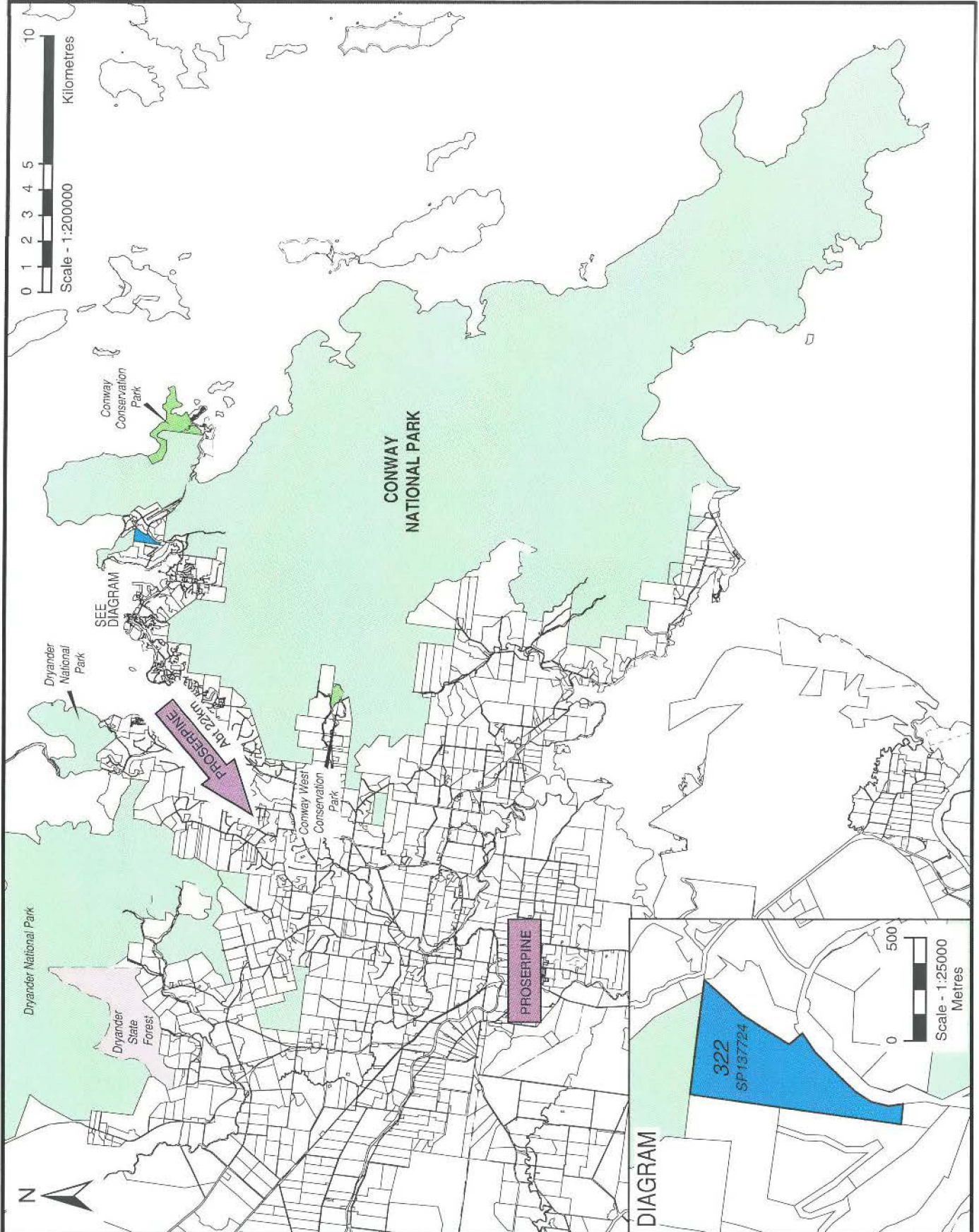
BOWLING GREEN BAY CONSERVATION PARK SHOWN.....

WONGALOO CONSERVATION PARK SHOWN.....

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Conway NP_addition sketch



Queensland
Government

PROPOSED ADDITION TO CONWAY NATIONAL PARK (Lot 322 on SP137724 - 30.57 ha) SHOWN.....

CONWAY NATIONAL PARK (Totalling Abt 32726.57 ha ex rds following addition) SHOWN.....

OTHER NATIONAL PARKS SHOWN

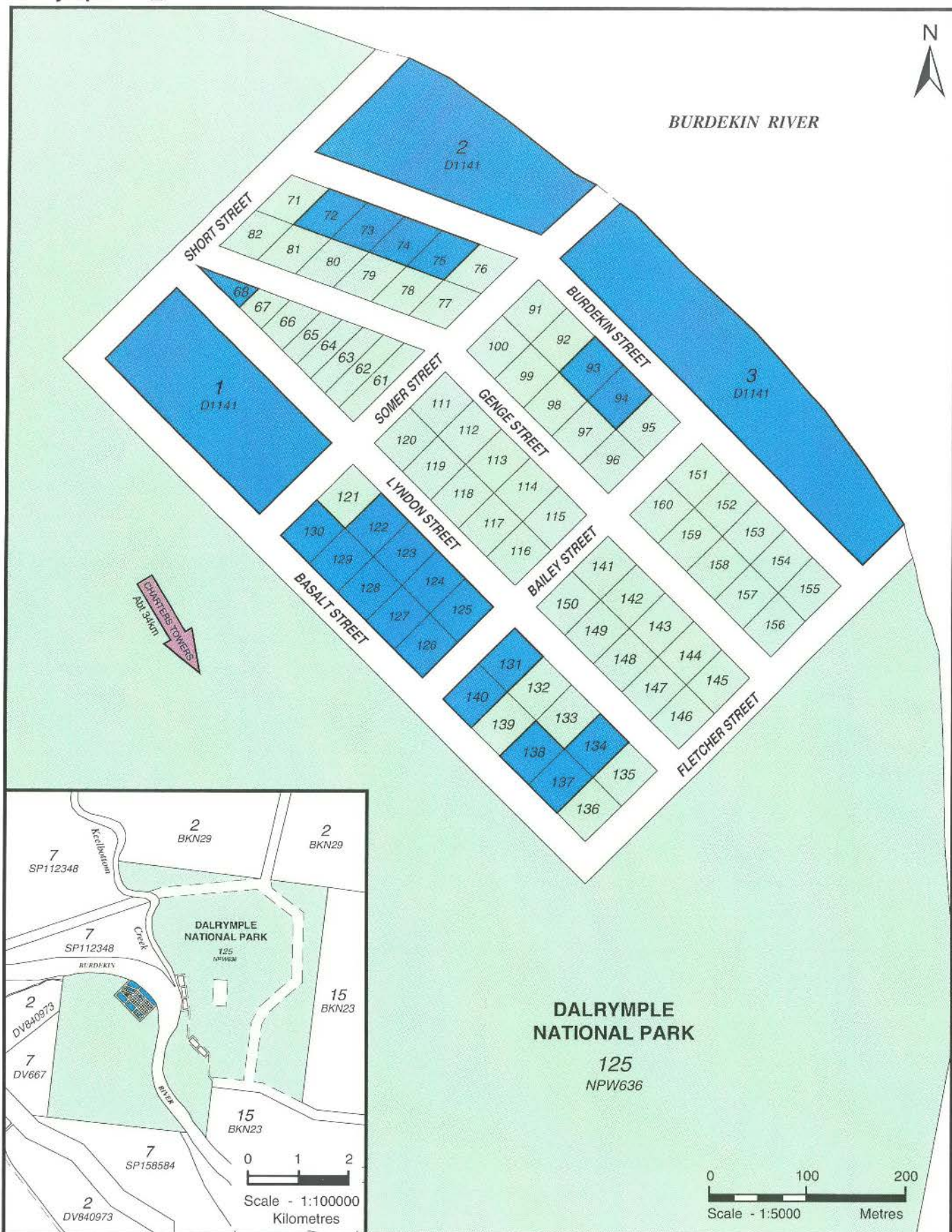
CONSERVATION PARKS SHOWN.....

STATE FORESTS SHOWN.....

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Dalrymple NP_addition sketch



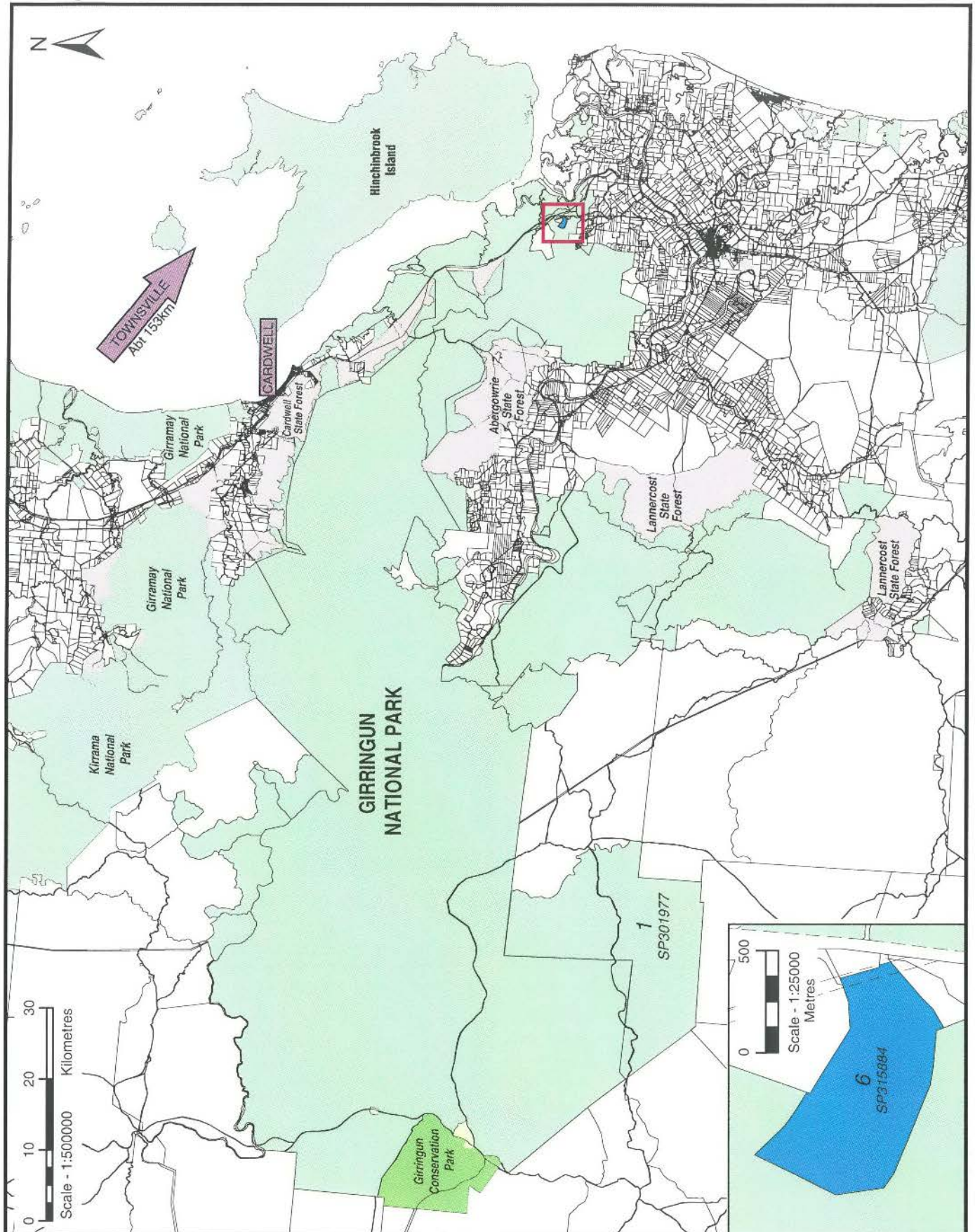
PROPOSED ADDITION TO DALRYMPLE NATIONAL PARK -

(Lots 1-3, 68, 72-75, 93, 94, 122-131, 134, 137, 138 & 140 on plan D1141 - Totalling 12.9314 ha) SHOWN.....

DALRYMPLE NATIONAL PARK (Totalling Abt 1684.3021 ha following addition) SHOWN.....

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PROPOSED ADDITIONS TO GIRRINGUN NATIONAL PARK (lot 6 on SP315884 - 56.49 ha) SHOWN.....

GIRRINGUN NATIONAL PARK (lots 1, 11, 18 - 21, 43 & 78 on AP22472, Lot 3 on SP126731, Lot 9 on USL38632 and Lot 1 on SP301977 - Totalling Abt 3007002.68 ha following addition) SHOWN.....

OTHER NATIONAL PARKS SHOWN.....

STATE FORESTS SHOWN.....

CONSERVATION PARKS SHOWN.....

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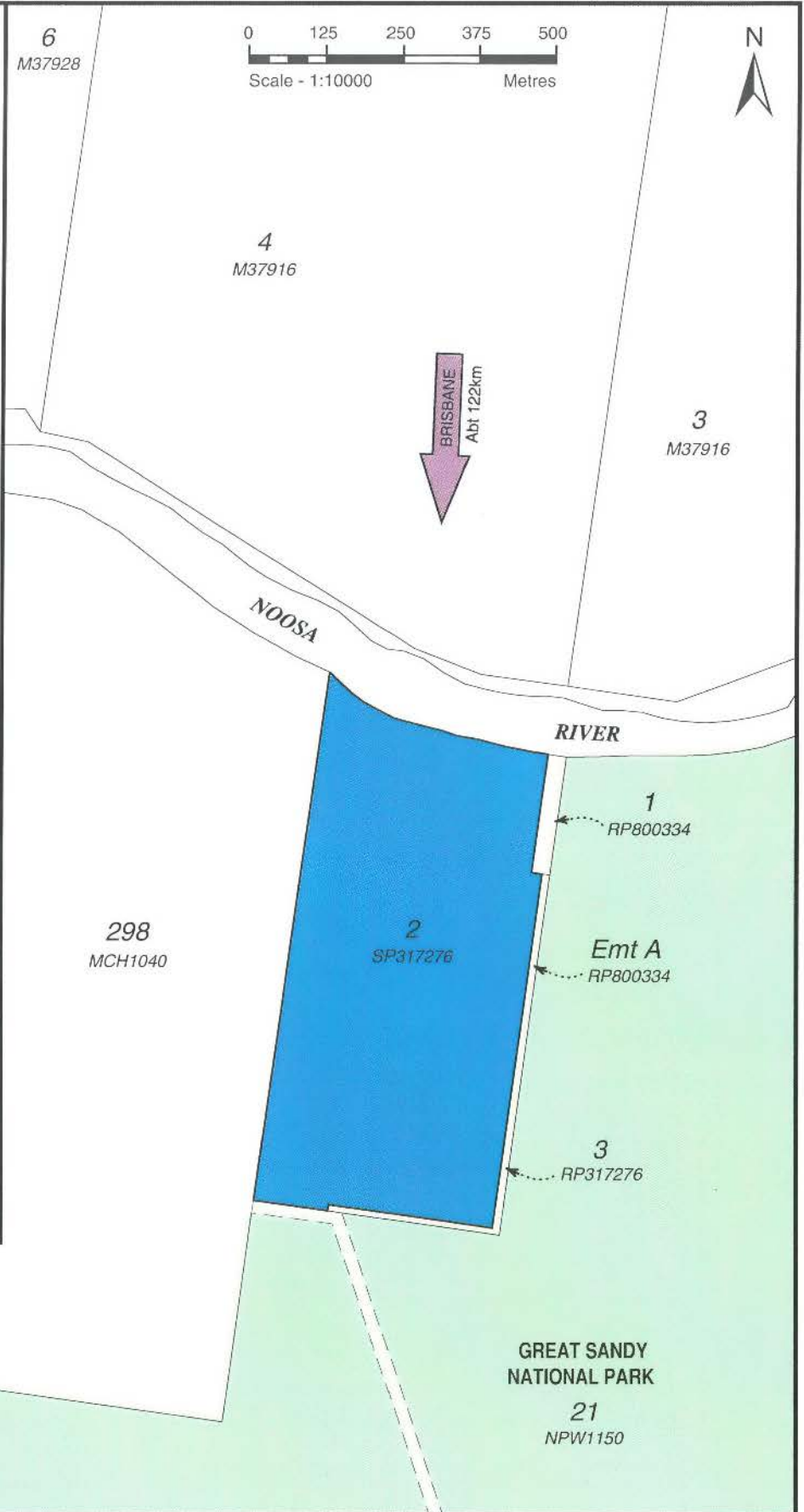
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HERVEY BAY

GREAT SANDY NATIONAL PARK

CORAL SEA

GREAT SANDY NATIONAL PARK

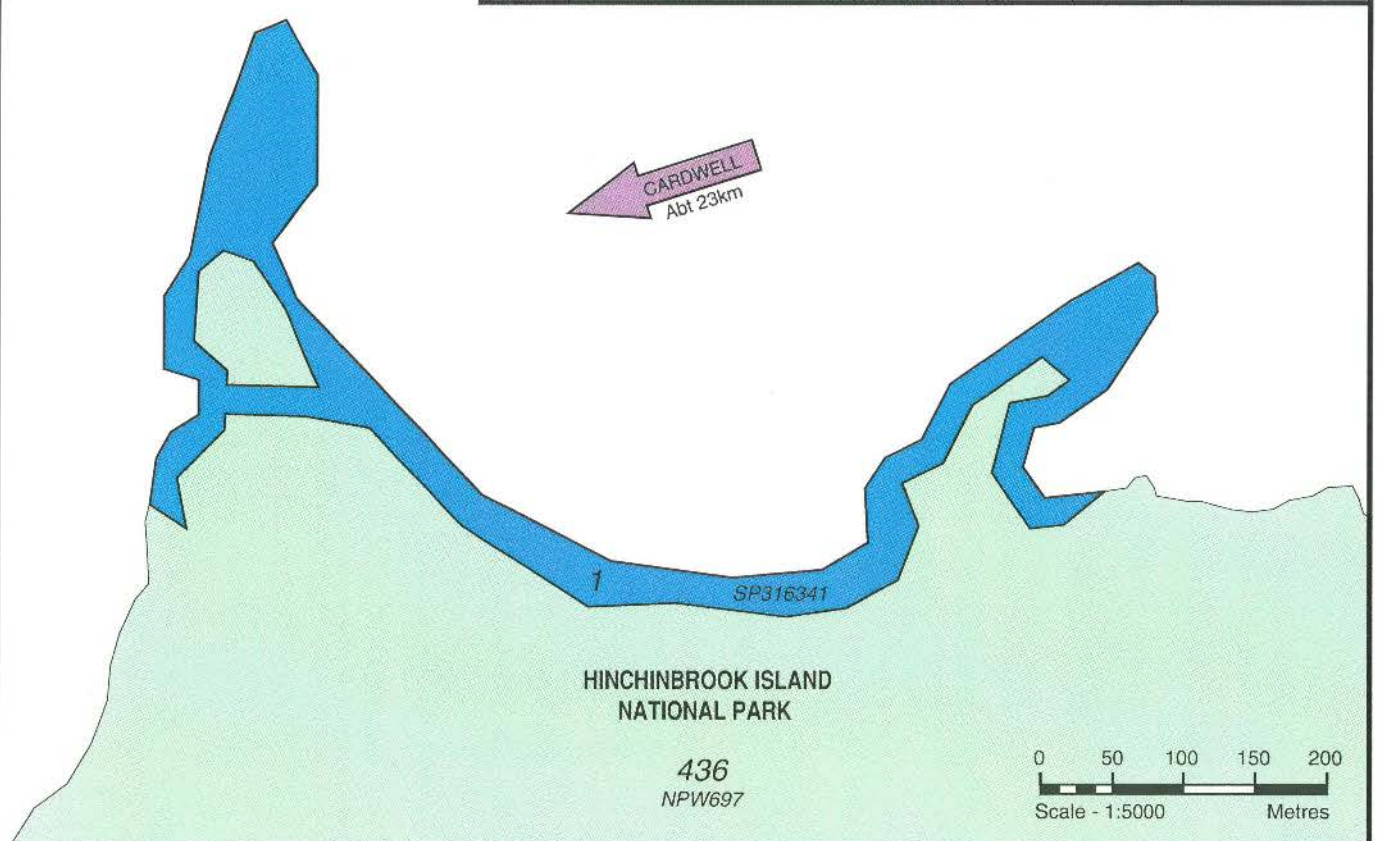
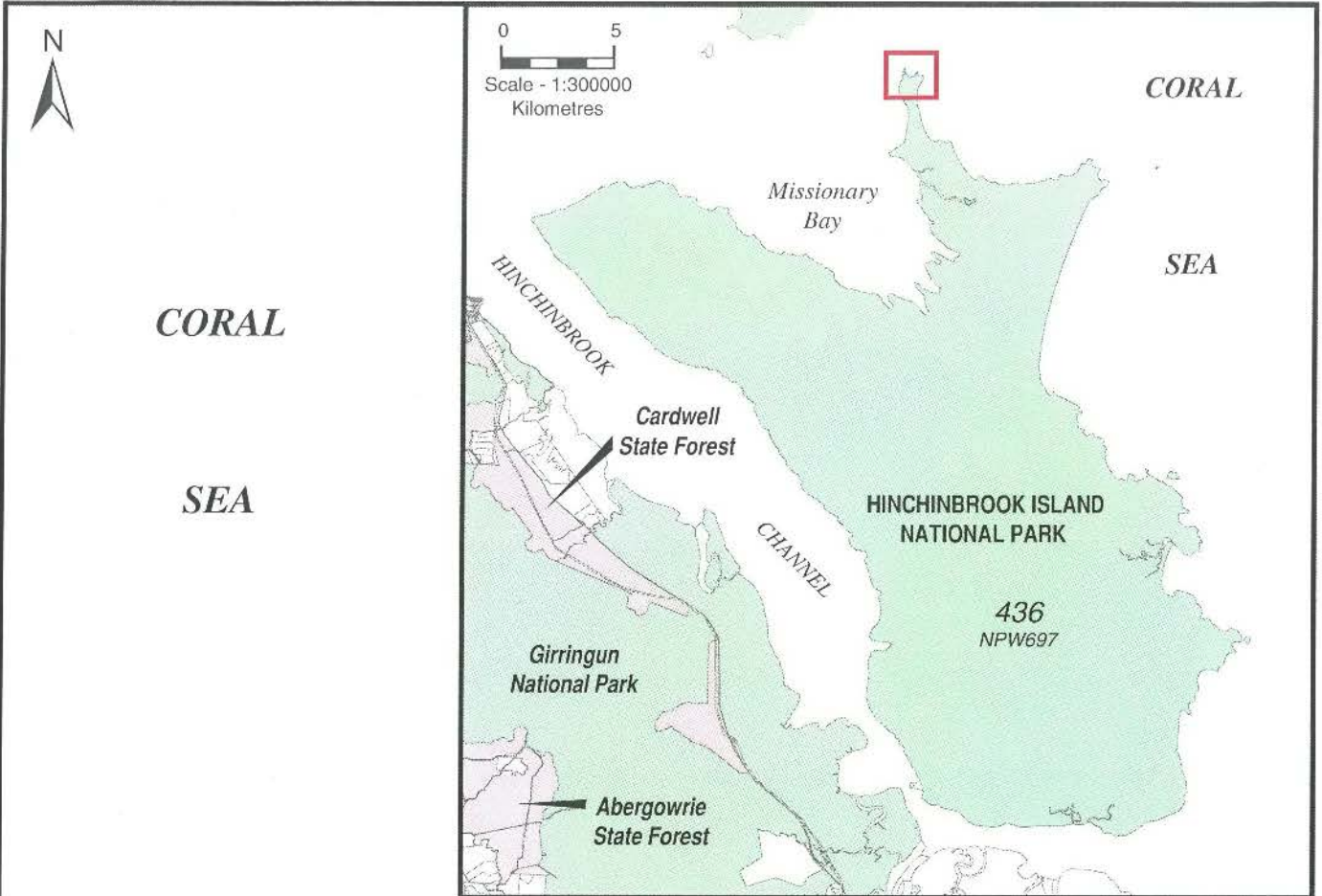



**Queensland
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Hinchinbrook Island National Park_addition Sketch






Queensland Government

PROPOSED ADDITION TO HINCHINBROOK ISLAND NATIONAL PARK (Lot 1 on SP316341 - Abt 4.16 ha) SHOWN.....

HINCHINBROOK ISLAND NATIONAL PARK (Lot 436 on NPW697 - Abt 40404.16 ha following addition) SHOWN.....

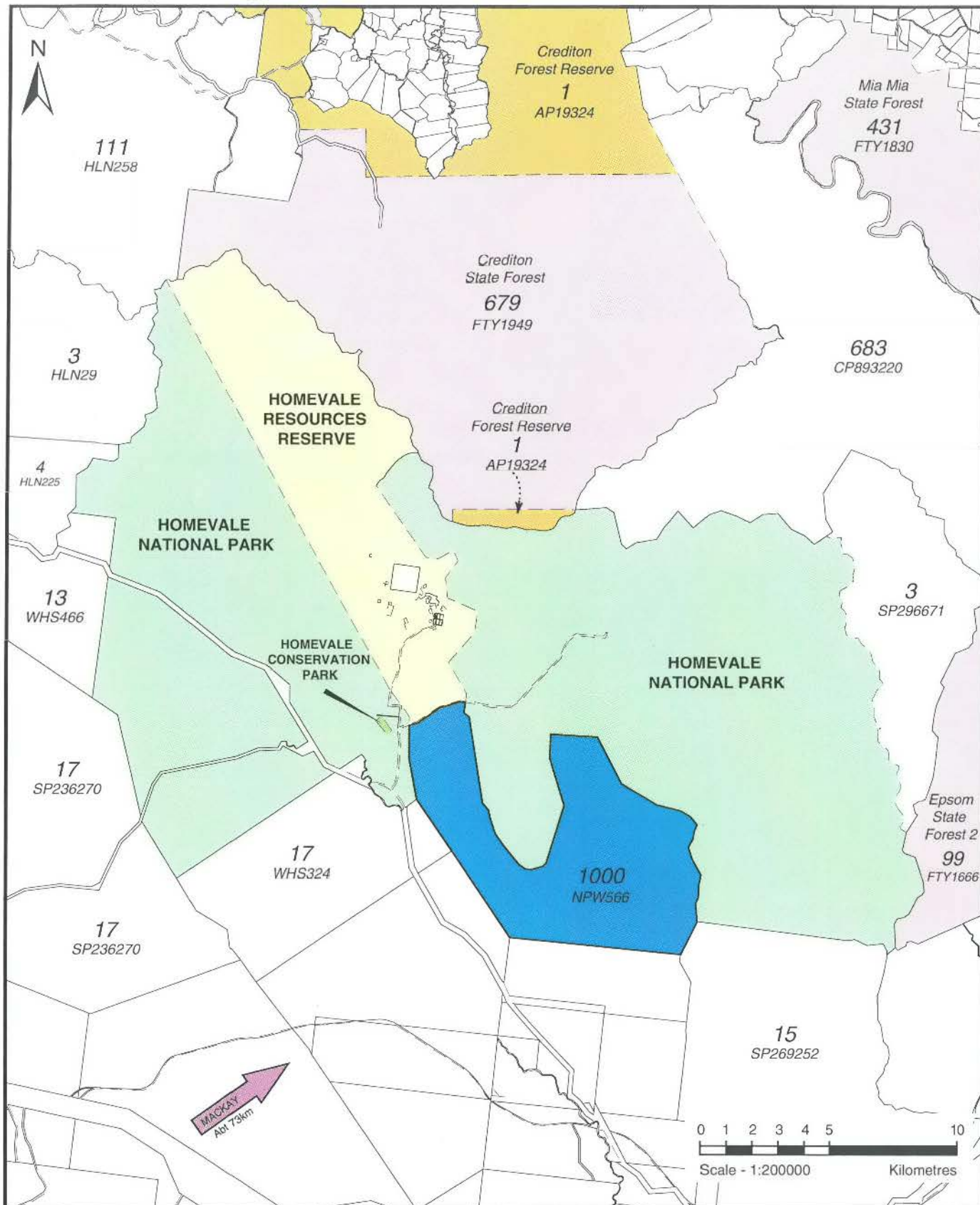
OTHER NATIONAL PARKS SHOWN.....

STATE FORESTS SHOWN.....



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Homevale NP, CP & RR_amendment sketch



PROPOSED ADDITION TO HOMEVALE NATIONAL PARK -

(part of Lot 1000 on NPW566; formerly part of Homevale Resources Reserve - Abt 5821.64 ha) SHOWN.....

HOMEVALE NATIONAL PARK

(redescribed as lot 1 on AP23633 - Totalling Abt 42039.396 ha following addition) SHOWN.....

HOMEVALE RESOURCES RESERVE

(redescribed as lot 2 on AP23633 - Totalling Abt 7629.393 ha following amendment) SHOWN.....

HOMEVALE CONSERVATION PARK

(redescribed as lot 3 on AP23633 - Totalling Abt 18.019 ha following amendment) SHOWN.....

CREDITON FOREST RESERVE SHOWN.....

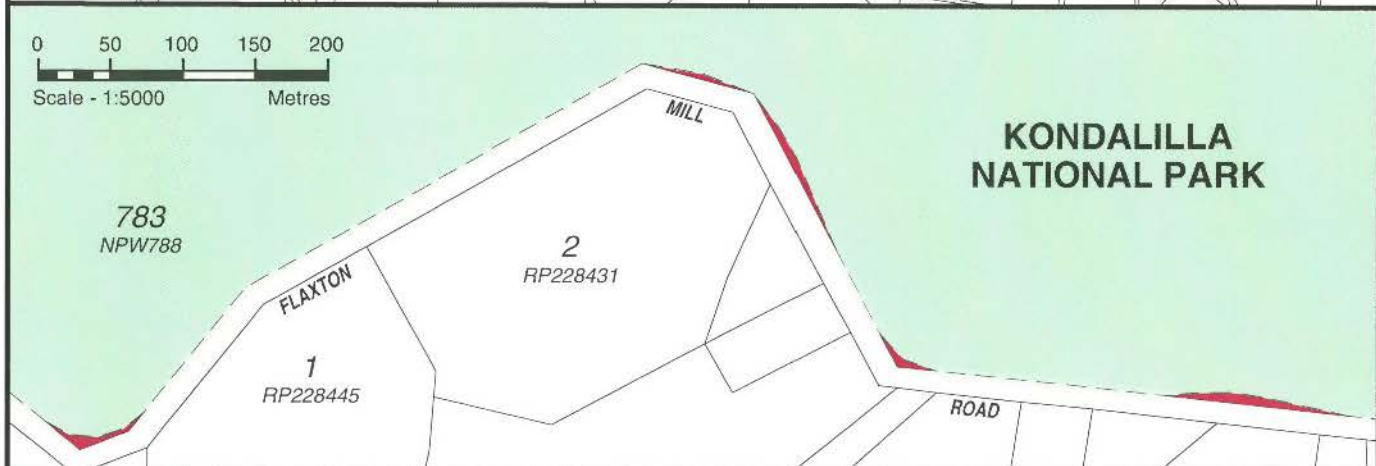
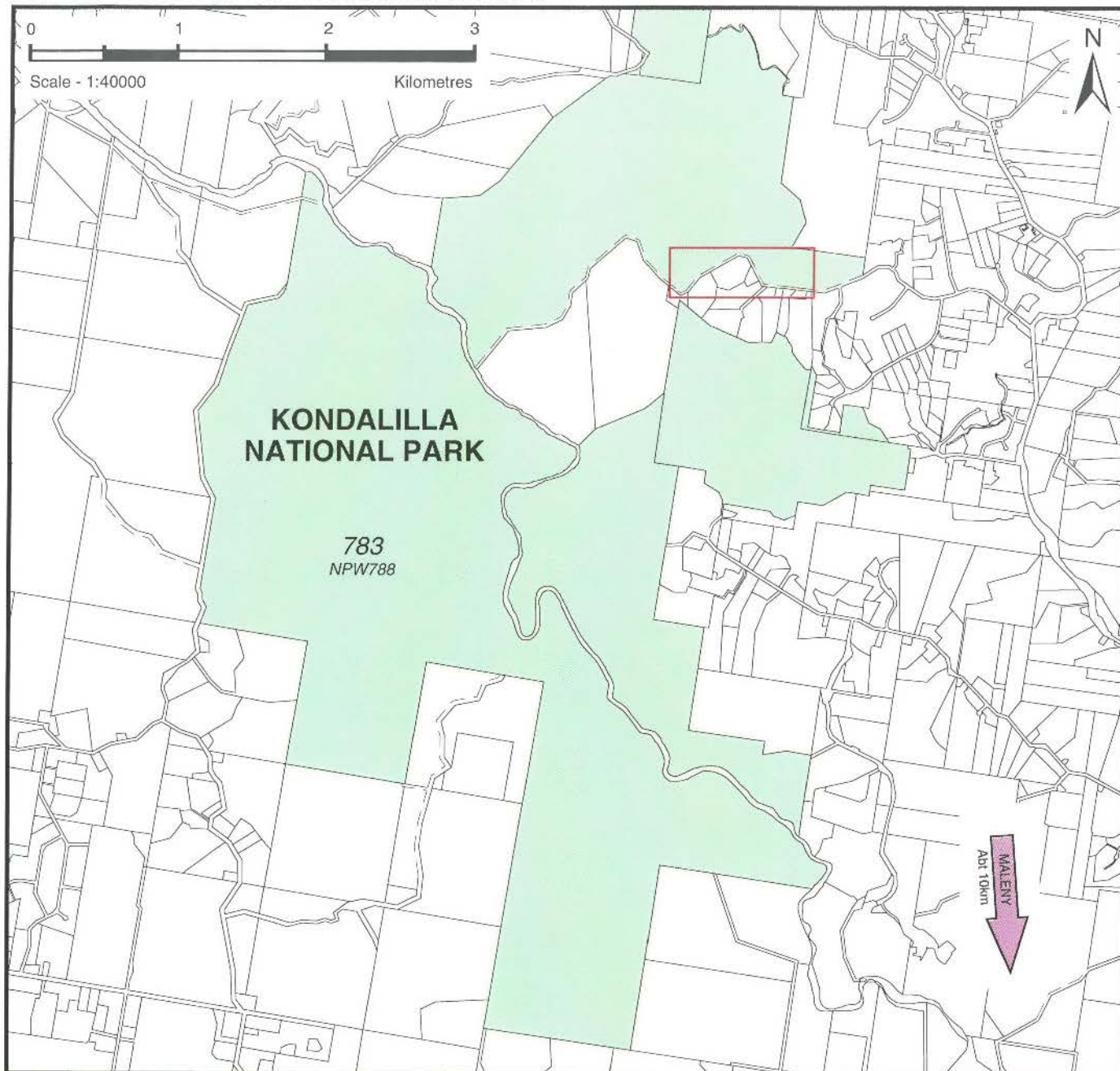
STATE FORESTS SHOWN.....

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Kondalilla National Park revocation: sketch B



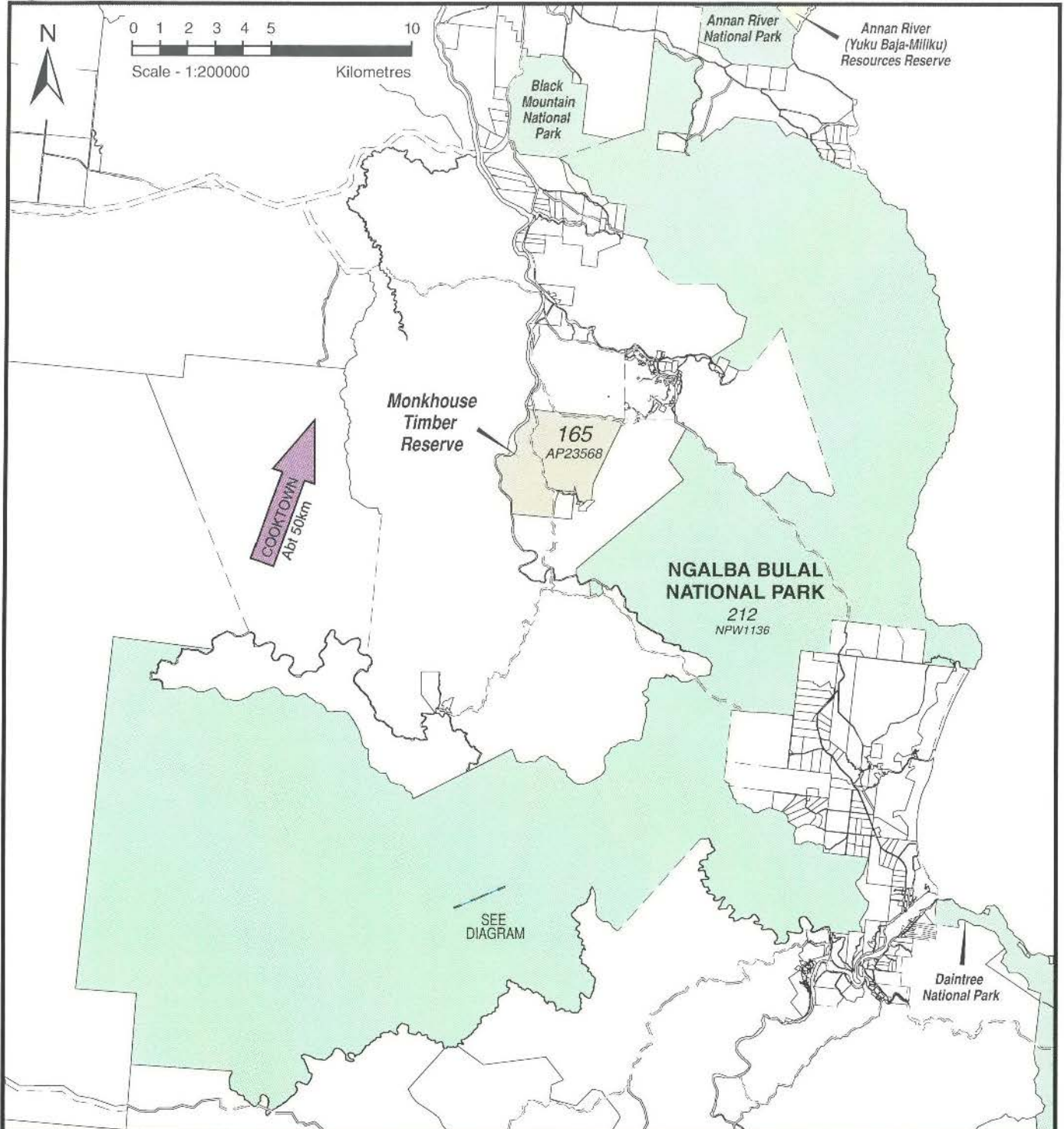
PROPOSED REVOCATION FROM KONDALILLA NATIONAL PARK (Part of Lot 783 on NPW788, to be described as lots 1 to 5 on SP305105 - 0.1529 ha) SHOWN.....

KONDALILLA NATIONAL PARK SHOWN.....

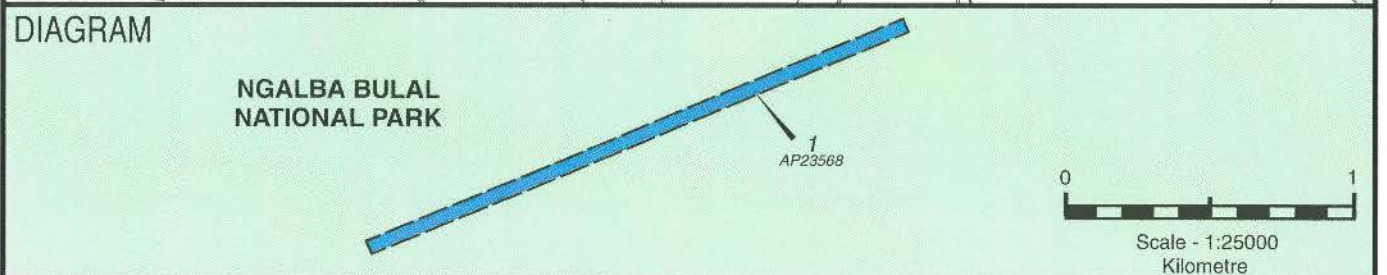
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Ngalba Bulal National Park addition: sketch C



DIAGRAM



PROPOSED ADDITION TO NGALBA BULAL NATIONAL PARK
(Part of lot 165 on FTY1722, to be described as lot 1 on AP23568 - Abt 9.9 ha) SHOWN.....

NGALBA BULAL NATIONAL PARK SHOWN.....

MONKHOUSE TIMBER RESERVE SHOWN.....

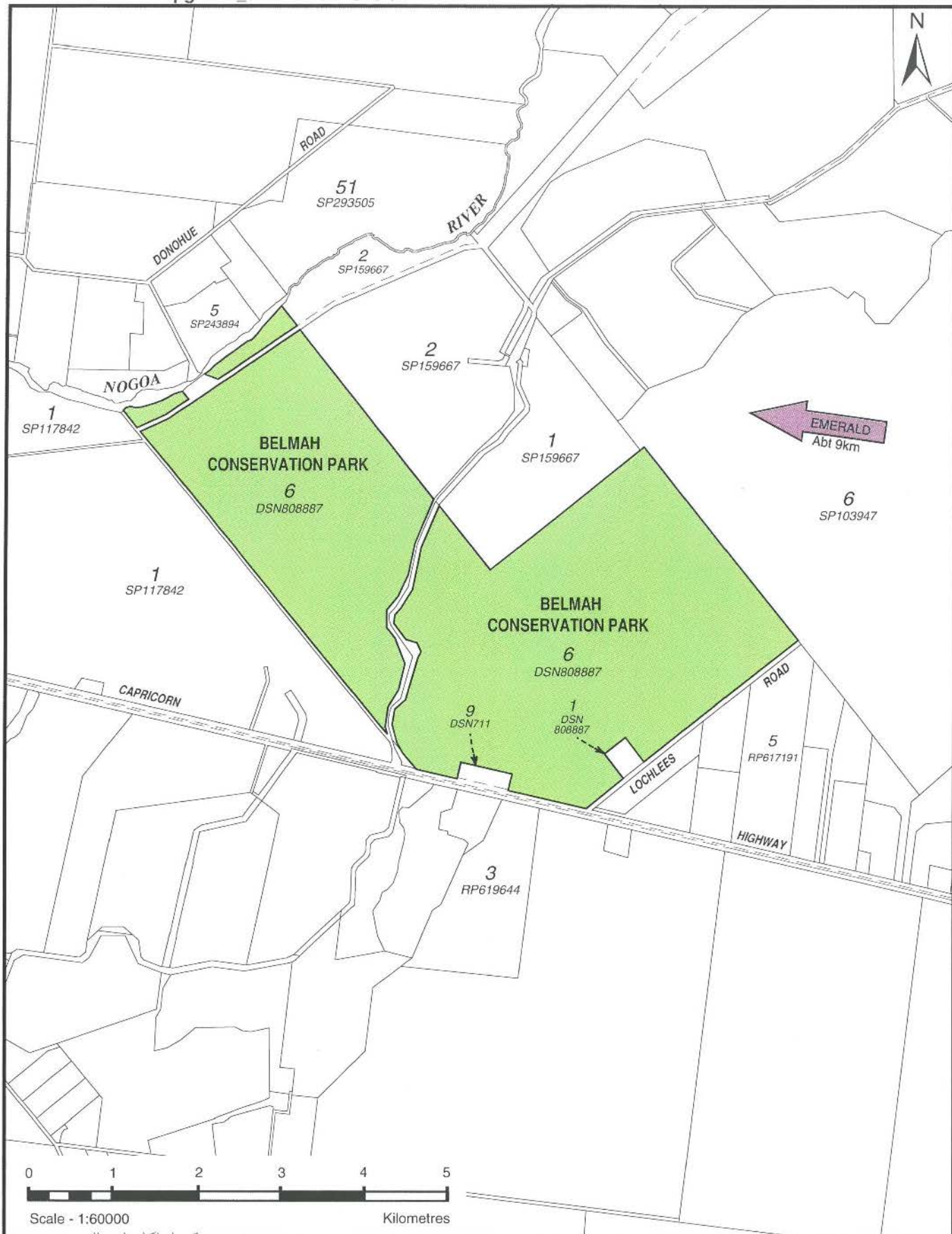
OTHER NATIONAL PARKS SHOWN.....

ANNAN RIVER (YUKU BAJA-MILIKU) RESOURCES RESERVE SHOWN.....

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Belmah RR to CP upgrade _amendment Sketch



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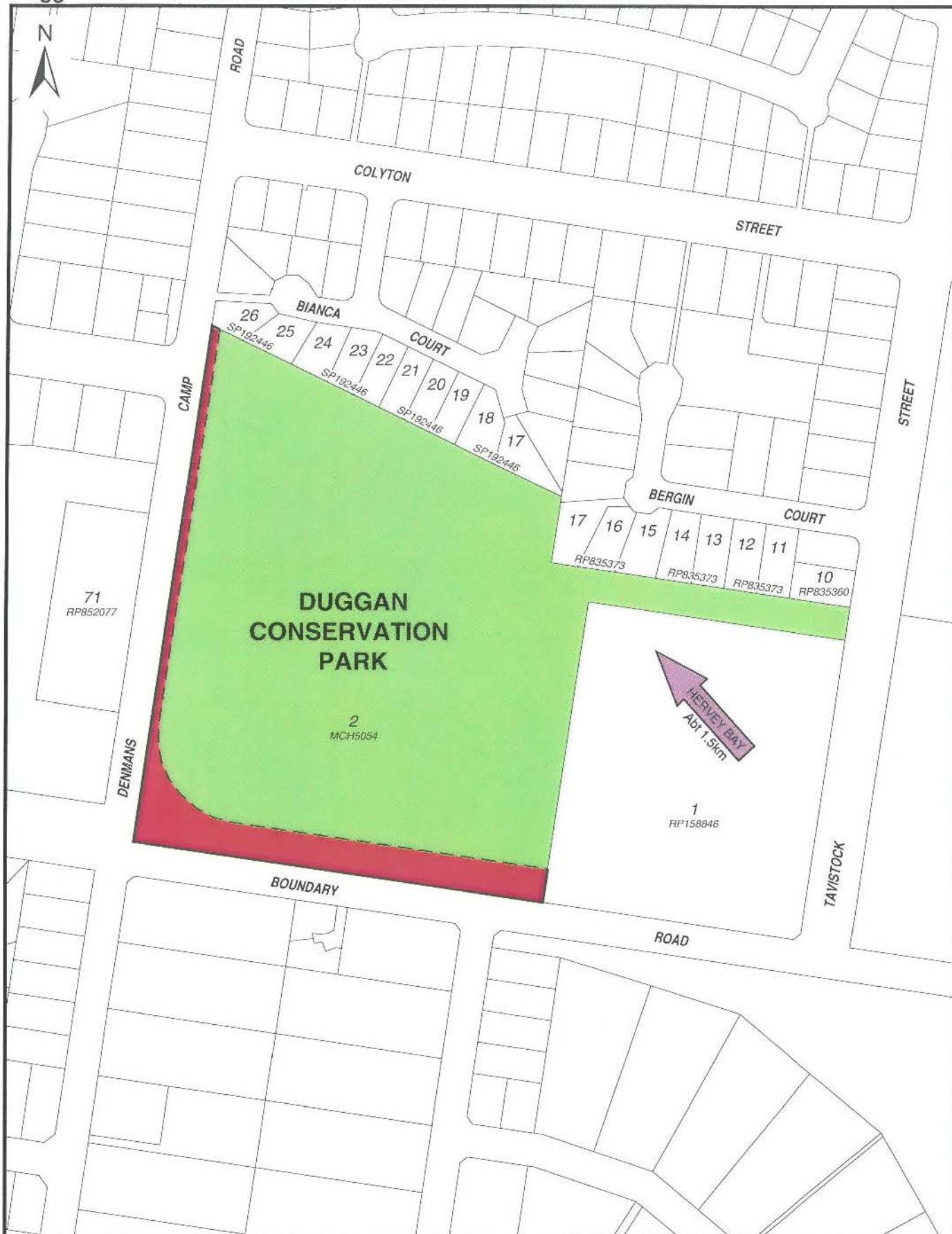
PROPOSED BELMAH CONSERVATION PARK
(Lot 6 on DSN808887; formerly known as Belmah Resources Reserve - Totalling Abt 2046.007 ha) SHOWN.....



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Duggan Conservation Park revocation: sketch D



PROPOSED REVOCATION FROM DUGGAN CONSERVATION PARK (Part of Lot 2 on MCH5054, to be described as lot 1 on SP314659 - 0.6849 ha) SHOWN.....

DUGGAN CONSERVATION PARK SHOWN.....

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Transshipping Policy

The Queensland Government's transshipping policy forms one part of a package of measures being implemented by the government to protect the outstanding international value of the Great Barrier Reef World Heritage Area.

The Queensland Government is committed to ensuring that transshipping operations do not damage the Great Barrier Reef or the environmental values of the state's marine environment.

The environmental risks of transshipping are relevant to all marine environments, however, the Great Barrier Reef region ecosystems have particular values which are already experiencing multiple pressures from climate change, catchment water quality and existing port and shipping activities.

Transshipping of bulk materials will be regulated as an environmentally relevant activity (ERA) under the *Environmental Protection Act 1994* but transshipping that occurs partly or wholly within the waters of the Great Barrier Reef Marine Park will not be permitted.

Transshipping covered by this policy involves vessel to vessel transfers of bulk materials at a rate of more than 100 tonnes per day and any associated land-based operations.

The policy does not apply to activities for the supply of essential services to remote communities or to:

- refuelling activities, which are subject to existing regulation
- marine emergency response activities managed by Maritime Safety Queensland or the Australian Maritime Safety Authority
- movement of cargo from one vessel to another while docked in a port.

Bulk materials are those materials, other than water, that when loaded on a vessel conform to the shape of the compartment of the vessel and do not include packaged or containerised materials.

The assessment of the transshipping ERA will be through a site-specific application process in accordance with the *Environmental Protection Act 1994*.

Existing activities will be provided a 12 month period from commencement of the ERA to transition to the new policy arrangements.

The approval of an ERA for a transshipping activity does not relieve the operator from needing to obtain all other necessary approvals under state or commonwealth legislation.