

NATURE CONSERVATION AND OTHER LEGISLATION (INDIGENOUS JOINT MANAGEMENT—MORETON ISLAND) AMENDMENT BILL 2020

State Development and Regional Industries Committee

Department of Environment and Science Response to Written Submissions

List of submitters

Submission No.	Submitter
1	Mark FitzGerald
2	Koorinal Landholder Association
3	Sunrover Tours
4	Moreton Island Protection Committee
5	Confidential
6	Four Wheel Drive Queensland
7	Healthy Land and Water
8	Greg Curtis
9	Moreton Island Adventures
10	Quandamooka Yoolooburrabee Aboriginal Corporation
11	Moreton Island Tourist Services and Moreton Island Wilderness Camp
12	Confidential

Acronyms

ALA	<i>Aboriginal Land Act 1991</i>
DES	Department of Environment and Science
IJMA	Indigenous Joint Management Area
ILUA	Indigenous Land Use Agreement
IMA	Indigenous Management Agreement
NCA	<i>Nature Conservation Act 1992</i>
QPWS	Queensland Parks and Wildlife Service
QYAC	Quandamooka Yoolooburrabee Aboriginal Corporation
RAMA	<i>Recreation Areas Management Act 2006</i>

Topic: Joint Management

Submission No.	Summary of key point in submission	Department's response
7	The submitter believes that Indigenous Joint Management as proposed through the Bill will result in the improved effective management of the natural, cultural, social and economic assets of Mulgumpin while appropriately recognising the rights and interests of the Quandamooka People as the Island's Traditional Owners and submits that the Bill should be recommended to be passed.	DES acknowledges support for the Bill.
2	The submitter suggests that at a recent landholder meeting a representative from QPWS advised the long-term plan for the Island would be to eventually facilitate a full hand over of the management of the Island to QYAC. If this is correct it is very concerning to the submitter. It is submitted there should be continuing input by QPWS into the management of the Island due to the level of expertise of such officers and the resources within QPWS. Further, the submitter seeks reassurance through the Bill that the Island will not be solely managed by QYAC without the continued involvement of officers from QPWS.	QPWS acknowledges that First Nations people may have aspirations for the sole management of their traditional lands. However, the Bill provides for the joint management of prescribed protected areas on Moreton Island and QPWS staff will work collaboratively with QYAC staff to implement joint management on Moreton island.
4	New QPWS/QYAC Joint Management arrangements should ensure that nature conservation remains the "cardinal principle" of management of the Island.	The cardinal principle is defined in section 17 of the NCA and requires a national park to be managed to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values. This principle continues to apply to jointly managed national parks and the Bill makes no changes to section 17 of the NCA.
6	The submitters note that four QPWS Landcruisers have been written off on Moreton Island recently The submitters believe any new arrangements for Moreton Island must be	QPWS is not aware of any QPWS Landcruisers being written off on Moreton Island recently. Irrespective of any incidents, this is an operational issue and not considered relevant to the Bill.

	subject to very clearly defined governance provisions. Included in these are: what reviews of effectiveness will be conducted and how often; how will financial transactions be audited and what degree of transparency will apply? The submitters would like some information on who bulldozed native trees on Stradbroke Island. Submitter is concerned about the land, bush, animals and heritage is not currently being well looked after by QYAC and raises concerns as to their future care and any controls in place to ensure this occurs properly and within budget. The submitter raises concern that the land, bush, animals and heritage of these islands are not currently being well looked after by QYAC and expresses reservations about their future care and wants controls in place to ensure this occurs properly and within budget.	The vegetation clearing that occurred on Stradbroke Island is outside of the protected area estate. This matter is not relevant to the provisions Bill, which relates to prescribed protected areas on Moreton Island. Joint management arrangements between the State and QYAC are governed through a number of instruments. A service agreement is in place with QYAC for the management of camping and vehicle access permits and facilities. The IMA also set out requirements relevant to each party. Joint management arrangements have specific reporting protocols in place to ensure that any money provided for joint management is accounted for. This includes a senior officer working group, an operational working group and day-to-day joint management operations. Joint management funds are subject to DES's corporate governance and internal control mechanisms which include compliance with the Queensland Government Financial Management Practice Manual; Queensland Audit Office review as part of annual financial audits; and Audit and Risk Committee oversight.
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Topic: Grant of Aboriginal land

Submission No.	Summary of key point in submission	Department's response
4, 8	Submitters provide that: (4) and (8) QYAC will be granted freehold land for their exclusive use (4) no land should be removed from the National Park.	Clause 3 of the Bill amends section 10 of the ALA to provide for a further category of land that is transferable land under the ALA. The category is a prescribed protected area on Moreton Island as identified under new section 175A of the ALA. This amendment is necessary as land must be transferable land under the ALA before it can be granted as Aboriginal land. Once the land is transferable land, the Minister responsible for administering the ALA may then give direction to prepare Deeds of Grant and appoint QYAC as grantee of the land. Upon grant, the land is held in trust for the Quandamooka People and, as agreed between the State and QYAC as part of the resolution of the

		native title claim over Moreton Island, will continue to be managed as protected area. The land is not granted to QYAC for exclusive use. No land is removed from the national park through this process or any clause of the Bill. Additional State lands on Moreton Island are proposed to be added to the national park (but will be subject to the requirements of the NCA) before being granted as Aboriginal land. Notwithstanding the above, the ILUA may apply to other State lands (such as USL) on Moreton Island that are not protected area; however, these lands are not relevant to the provisions of the Bill.
4	The submitter provides that no commercial leases be granted inside the Park.	The Bill includes a number of amendments to clarify that sections 35, 42AE, 42AO and 43G of the NCA operate independently from sections 34, 42AD, 42AN and 43F respectively. These sections relate to the grant of leases, agreements, licences, permits or other authorities in protected areas; however, the amendment is being made to resolve past uncertainty regarding the independent operation of the sections to remove the risk that permissions granted under these sections could be found to be invalid by an interpretation contrary to the intent of the provisions. Clause 18 of the Bill amends section 42AO, which applies to Aboriginal land within an IJMA. The amendments in the Bill neither facilitate nor limit the ability to issue leases under these sections of the NCA and future leases will be considered on a case-by-case basis under existing legislation as they are currently.

Topic: Indigenous Management Agreement

Submission No.	Summary of key point in submission	Department's response
2	Clause 6 of the Bill proposes amendments to section 169 of the ALA to provide that land management decisions between QYAC and the State must occur pursuant to an IMA entered into between the State and QYAC about the management of the land as an IJMA. The submitter understands once the legislation is passed, the chief executive and QYAC will be entitled to grant certain leases, agreements, licences, permits and authorities over land the subject of an IMA with each other's consent.	Clause 6 of the Bill requires an IMA to be entered into about the management of land. While the IMA is confidential, the joint management arrangements will be similar to those on Minjerribah (North Stradbroke Island) where camping and vehicle access permits are granted by QYAC and other leases, agreements, licences, permits and authorities under the relevant legislation are granted by DES in consultation with QYAC and in accordance with existing legislation. If the Bill is passed, the consultation requirement being inserted into the RAMA in clause 23 of the Bill will also apply to DES when considering applications for permits under the RAMA.
2	The secretive nature of the ILUA, the IJMA, the decision making and the future decision making between QYAC and the Queensland Government for the use of the Island has been and remains very concerning to many.	This Bill is primarily related to delivering on the agreement between the State and QYAC to seek to enter into joint management arrangements as part of the settlement of the Quandamooka native title claim through a consent determination process.
4	- Confidential agreements such as ILUAs and the IMA are of public interest and should be available for public comment - as is the Moreton Island Management Plan. - Without knowing the purpose of ILUAs and the content of the IMA, adequate comment and submissions to the Bill cannot be made.	The ILUA and IMA were negotiated and finalised between QYAC and the State as part of the settlement of the native title claim, which occurred on 27 November 2019. As with most ILUAs registered in Australia under the Commonwealth <i>Native Title Act 1993</i>, the contents of these agreements are confidential between the parties because discussions usually occur on a confidential and without-prejudice basis as part of native title claim negotiations. It is standard practice for the parties to agree on a confidentiality clause to be included in an ILUA.
6	The Bill is not supported because details of the agreement with QPWS and QYAC must be made public so the public can ascertain whether the Bill is acceptable or not.	
8	Will confidentiality issues of the IMA and ILUAs be addressed so that Committees advising on this Bill, and the public, have all the information before legislation?	While the IMA is confidential, elements of the agreed joint management arrangements will ultimately be reflected in a new management plan for protected areas on Moreton Island (see further comments under the topic of 'management statement and management plan' below). Community

	- Will the confidential IMA and ILUAs be made public before transfer of freehold land? - Will it be possible to comment on the IMA before the next Moreton Island Management Plan?	consultation will occur as part of the process to develop these management instruments. As advised at the public briefing, a meeting is also proposed with commercial tour operators in the near future to discuss the transition and implementation of new permit conditions (see further comments under the topic of 'consultation with commercial tourism operators and others' below).
9, 11	Further consultation should occur between the State, QYAC and interested stakeholders on Moreton Island prior to the passing of the Bill given the significant impact that the proposals may have on commercial operators, the Moreton Island community and the general public's access to Moreton Island.	
2	The ability to have continued unfettered access to all areas of the Island as they have historically been able to do is very important to the submitter. If any section of the Island is to be excluded, there should be wide consultation with the general public including any of the landholder associations and businesses operating on the island before that occurs.	The Bill does not contain any provisions to restrict public access or close parts of Moreton Island. There are existing provisions under the NCA and RAMA, that enable the Chief Executive to respond to emerging management requirements through the use of regulatory notices and the declaration of restricted access areas. These tools are already utilised by DES on protected areas if public access restrictions are considered necessary for circumstances such as health and safety; land rehabilitation; infrastructure installation and maintenance; disaster recovery; pest and fire management operations; and protection of significant natural and cultural sites. For example, restrictions were imposed on the Cooloola and Bribie Island Recreation Areas for a period of time to limit visitor numbers in response to COVID-19.
4	Has concerns about restrictions of public access, particularly on Cape Moreton.	
6	Are there intentions or plans to close parts of Moreton Island due to them having aboriginal cultural significance? The submitter seeks assurance and a plan outlining how access to all parts of Moreton Island will be maintained as least as freely as it is now?	
9, 11	The submitters raise concerns about: The potential for access restrictions being imposed on the locations of current commercial operations including Cape Moreton and other locations enjoyed by the general public.	While the IMA is confidential, elements of the agreed joint management arrangements will ultimately be reflected in a new management plan for protected areas on Moreton Island (see further comments under the topic of 'management statement and management plan' below).

	• (11) We have heard many times that Cape Moreton will be closed to the general public unless escorted by QYAC. • A lack of visibility about the terms of the IMA that has already been reached between QYAC and the State about how the land is proposed to be managed, and, in particular, those areas where general public access may be restricted. •	Consultation will occur in relation to future management of the Island in accordance with the requirements of existing legislation (refer to the 'management plan' topic below).
10	QYAC is providing the Committee with information about: • the history of Native Title and confidentiality of ILUAs; • the process that was available to people to appear as a Respondent party as part of the Federal Court process; • the process of Native Title not being well understood; • there being statutory consultation mechanisms in relation to issuing commercial activity permits and preparing new management plans under the NCA; and • the importance of respecting and upholding existing Federal and State statutory processes.	DES administers the statutory consultation mechanisms in relation to issuing commercial activity permits and preparing new management plans under the NCA. Information about these matters is provided elsewhere in this document under the topics of 'Management Plan' and 'Requirement to consult and seek comment or consent from QYAC on certain permit applications'. DES has no comment in relation to the other information provided to the committee by QYAC, because it relates to participation by parties in the Federal Court claims process.

Topic: Management Plan

Submission No.	Summary of key point in submission	Department's response
2	The submitter reiterates its position that the Minister should provide an opportunity for it, and other landholders, to provide written submissions in response to any draft management plan associated with the IJMA before the management plan is issued in final.	Sections 111 and 112 of the NCA provide that either a management statement or a management plan be prepared for protected areas and Part 7, Division 3 of the NCA outlines the requirements for preparing, approving and implementing management plans. The requirements of the NCA include publishing a public notice about the draft plan and ensure it is available for inspection and inviting

8	Will members of the Moreton Island community be made aware of, and have the opportunity to participate in future decision making processes? Will Joint Management plans for Cape Moreton be of benefit to my close and continuing association of the Cape?	submissions to be made on the draft plan, as well as requiring the consideration of all submissions made about the draft plan. These existing requirements will continue to apply and ensure the public will be provided with an opportunity to provide submissions on the draft plan, well before a final plan is developed. Until a new plan is developed, the current management plan will continue to apply to Moreton Island National Park, Cape Moreton Conservation Park and the Moreton Island Recreation Area.
9, 11	As the terms of the ILUA and IMA are confidential, the submitters are concerned that there has been no consultation about the proposed plans for the ongoing use and they do not have any visibility in relation to the future land management of Moreton Island. The Minister should provide an opportunity for them, and other landholders and stakeholders, to provide written submissions in response to any draft management plan associated with the IJMA before the management plan is issued in final.	The new plan will be developed as soon as practicable in partnership with QYAC and in consultation with the community. This will be done in a similar manner to the development of the new Minjerribah (North Stradbroke Island) draft Naree Budjong Djara National Park Management Plan that was jointly developed and released for public consultation in July 2020. The new plan for Moreton Island will be produced using a values-based planning framework, that is a contemporary approach based on international standards.

Topic: Requirement to consult and seek comment or consent from QYAC on certain permit applications

Submission No.	Summary of key point in submission	Department's response
2, 11	The submitters raise concerns about: • (2), (11) how the permitting regime will work in practice in circumstances where QYAC refuses to provide consent to the granting or renewal of a permit and suggests that the relevant provisions in the Bill should be amended to make it clear that consent will not be unreasonably refused by QYAC; and • (2) that there should be safeguards included in the Bill to ensure there is a fair process, including a right of appeal should QYAC refuse to grant a permit.	Clause 23 of the Bill inserts a new section 35A into the RAMA to provide that the chief executive may only issue a permit for a recreation area situated in an IJMA if all requirements relating to issuing the permit under the IMA for the area have been satisfied. Examples of these requirements include consulting with the indigenous landholder and obtaining the prior written consent of the indigenous landholder for the issuing of a permit. These arrangements are currently in place with QYAC for protected areas under the NCA on Minjerribah (North Stradbroke Island) and other jointly managed protected areas in the Cape York Peninsula Region. These arrangements ensure the requirements of the relevant IMAs or ILUAs that govern specified types of procedural activities (requiring

9	• The Bill does not set out any framework within which QYAC will make decisions regarding all commercial activity permits covering tour operators' activities on Moreton Island and Micat landing on Moreton Island. Accordingly, QYAC may make an arbitrary decision not to renew our commercial activity permit, and Moreton Island Adventures will not have any recourse. Unlike the current application and renewal process, QYAC is not subject to the scrutiny of government, does not have a process for objection and review of decisions, or other governing body ensuring the freedom of information. We submit that QYAC should be consulted regarding commercial activity permits, but should not have the right of veto due to the clear conflict of interest. • Provisions should be amended to make it clear that consent cannot be refused by QYAC and that DES should be able to make permit decisions under the RAMA, even in circumstances where the consultation requirements of the IMA have not been satisfied.	comment) or significant activities (requiring consent) on land that has been returned to the First Nations people. For Moreton Island, this outcome is consistent with the native title consent determination that was progressed through the Federal Court. The NCA already includes provisions requiring that the consultation requirements of an ILUA or IMA are complied with before certain permit applications are granted. These provisions already apply for permit applications made for activities within the protected areas on Moreton Island. The amendments in the Bill will insert similar requirements into the RAMA to provide consistent requirements across the legislation. Moreton Island includes both protected areas under the NCA and recreation area under the RAMA and the amendments will allow the consultation requirements of the IMA to be met irrespective of whether an applicant applies for a permit under the NCA or RAMA. It is not anticipated that permitting consent would be unreasonably refused; however, as per existing administrative processes and procedural rights, where a permit applicant is dissatisfied with the outcome of a permit decision, they may seek an internal review in the first instance or if still dissatisfied, seek an external review.
11	How is QYAC able to unbiasedly make decisions to provide consent about a permit when in the near future they will potentially be our business competition in tourism, we see this as a conflict of interest. The submitter requires a commercial activity permit and commercial activity agreement in order to operate its tourism operations on Moreton Island. If QYAC decided to refuse our permit which we have had since Moreton Island was declared a National Park, we would be	

	unable to operate any of our services on Moreton Island, putting generations of family and locals out of business. We are deeply concerned about this possibility.	
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Topic: Consultation with commercial tourism operators and others

Submission No.	Summary of key point in submission	Department's response
3	The submitter indicates that: • they have received no invitation of any kind, no discussion or accessibility to information about ILUA; • tour operators received assurance that permits for Moreton Island would be extended before the end of the year and this has not occurred - nor have discussions about small business permits on the Island - except apparently Tangalooma Resort; • the former Attorney General Yvette D'Ath and former Environment Minister Steven Miles agreed that a longer permit (renewable every ten years - as on Fraser Island) provided greater access to finance and investment, particularly for small operators and; • the small tour operators deserve a meeting to assist with the process of change required with QYAC and the RAMA on permit renewal and small business sustainability.	DES wrote to commercial operators on 22 November 2019 to provide an update regarding the Federal Court process and to advise there would be no immediate impact on their current commercial activity permit following the native title determination on 27 November 2019. However, the letter stated there would be changes to permit terms over the longer term. While specific details could not be provided, operators were informed that DES intended to issue new permits with contemporary conditions consistent with the Quandamooka Peoples' rights and interests following the consent determination and that DES was proposing to meet with all commercial operators and QYAC to discuss the transition in the near future. The transition and implementation of the new permit and conditions is subject to ongoing consultation with QYAC. As advised at the public briefing, a meeting is also proposed with commercial tour operators in the near future to discuss the transition and implementation of new permit conditions.
9, 11	As the terms of the ILUA are confidential, the submitters do not have any visibility in relation to the proposed terms and additional clauses for commercial activity permits to be granted in the future. The submitters require access to these additional clauses to determine whether their	These processes and requirements are subject to the ILUA and related to outcomes negotiated for the native title consent determination, not the Bill, which is primarily related to delivery of joint management of the prescribed protected areas on Moreton Island.

	businesses will be commercially viable in the future.	Issues raised by submitter (3) in relation to extending permits and longer permit terms are outside the scope of the Bill. The maximum term of a commercial activity permit is three years and the Bill does not contain any amendments in relation to these matters.
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Topic: Matters considered out of scope of the Bill

Submission No.	Summary of key point in submission	Department's response
1	The submission raises a number of historical and personal views: Part 1 (missing evidence of history); and Part 2 (joint management bill descriptor omissions).	DES is unable to determine relevance to specific provisions of the Bill.
2	As had occurred on North Stradbroke Island, the submitter is very concerned the Queensland Government will re-zone land use for future development by QYAC without proper consultation. Such development including for commercial and residential purposes. They are also concerned about land clearing that occurred on North Stradbroke without consultation with the local community. The submitter calls for safeguards to be included in the Bill to ensure that there is transparent and inclusive consultation before decisions are made about any rezoning on the island.	The issues are not relevant to the Bill. The land clearing and land rezoning issues are not related to protected areas or relevant to joint management on either North Stradbroke Island or Moreton Island.
6	Are there intentions or plans in place to insist that aboriginal guides accompany visitors to various areas and that these guides will need to be paid for?	The issue is not relevant to the Bill. The transition and implementation of new commercial activity permits and conditions is subject to ongoing consultation with QYAC. As advised at the public briefing, a meeting is also proposed with commercial tour operators in the near future to discuss the transition and implementation of new permit conditions (see further comments under

		the topic of 'consultation with commercial tourism operators and others').
11	The submitter states that you can't run a business on a 2 year outlook.	The issue is not relevant to the Bill. The maximum term a commercial activity permit can be issued for is three years and the Bill does not contain any amendments to change the term of a commercial activity permit.
11	Currently if road maintenance or tree pruning etc is done by QPWS, they work around the general public and everything stays open, but we have noticed on Stradbroke Island QYAC actually close down areas for days or weeks at a time to do this work. Is this going to happen on Moreton and restrict our access to locations or access routes	The issue of road maintenance and tree pruning raised in this submission is an operational issue and not relevant to the Bill.