

Planning (Protected Matters) Declaration Revocation 2026

Disallowable instrument DI2026-57

made under the

Planning Act 2023, s 221 (Meaning of *protected matter*)

EXPLANATORY STATEMENT

Overview

This explanatory statement relates to the *Planning (Protected Matters) Declaration Revocation 2026* (the **revocation instrument**) as presented to the Legislative Assembly. It has been prepared to assist the reader of the revocation instrument, It does not form part of the revocation instrument and has not been endorsed by the Assembly.

Section 221 (1) of the *Planning Act 2023* (the **Act**) defines **protected matter** for the purposes of environmental offsets as:

- (a) matter protected by the Commonwealth; or
- (b) a native species or ecological community protected under the *Nature Conservation Act 2014*; or
- (c) a declared protected matter.

Section 221 (2) of the Act provides that the Minister may declare a matter to be a protected matter.

The *Planning (Protected Matters) Declaration 2023* (DI2023-268) (the **2023 declaration**) declares certain matters to be protected matters for the purposes of section 221 of the Act.

Revocation instrument

Section 46 (1) of the *Legislation Act 2001* provides that the power to make a statutory instrument includes power to amend or repeal the instrument. Section 46 (2) of the *Legislation Act* provides that the power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument.

This revocation instrument revokes the 2023 declaration. All matters declared as protected matters in the 2023 declaration have now been declared as either protected native species under the *Nature Conservation Act 2014*, or are protected by the

Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), and thus fall within the definition of protected matter in section 221 (1) (a) and (b) of the Act. Duplicating protected matter under section 221 (1) (a) or (b) and the 2023 declaration serves no purpose, and the revocation instrument therefore revokes the 2023 declaration to tidy the statute book.

As the power to declare a matter to be a protected matter is a disallowable instrument, the revocation of the 2023 declaration is also by disallowable instrument.

Regulatory impact statement

Section 34 of the Legislation Act generally requires a regulatory impact statement (a *RIS*) be prepared for disallowable instruments, subject to specified exceptions.

In this case, a RIS is not required because the determination does not impose any appreciable costs on the community or part of the community (Legislation Act, section 34 (1)). The revocation instrument merely revokes an obsolete instrument to avoid duplication in the law.

Human Rights

There are no human rights engaged as a result of this revocation instrument.