



Queensland

Marine Parks Act 1982

Marine Parks (Hervey Bay) Zoning Plan 1989

Reprinted as in force on 18 February 2005

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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NOT FURTHER AMENDED
LAST REPRINT BEFORE REPEAL
See 2006 SL No. 229 s 89(a)

Information about this reprint

This plan is reprinted as at 18 February 2005. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- reorder provisions consistent with current drafting practice (s 30A)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.



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[as amended by all amendments that commenced on or before 18 February 2005]

Part one Preliminary

1 Short title

This zoning plan may be cited as the *Marine Parks (Hervey Bay) Zoning Plan 1989*.

1A Application of zoning plan

- (1) This zoning plan applies to the Harvey Bay Marine Park.
- (2) The area of the marine park is described in schedule 1.

2 Effect of zoning plan

2.1 General

This zoning plan:

- (a) provides that the tidal land and tidal waters of Queensland within the boundaries of the Hervey Bay Marine Park shall consist of a single zone and assigns a name to such zone;
- (b) makes provision with respect to the purposes for which such zone is to be, or may be used or entered;
- (c) designates an area set aside for special management; and
- (d) makes provisions with respect to the special management conditions that are to be, or may be applied within such designated area.

2.2 Zones

This zoning plan defines a single zone, and assigns the following name to such zone—

- general use zone

The boundaries of the zone are described in schedule 2 to this zoning plan. The approximate locations of the boundaries of the zone are shown on the zoning and designated area map that forms part of this zoning plan.

2.3 Designated area

The zoning plan assigns the following name to the designated area—

- whale management and monitoring area

The boundaries of the whale management and monitoring area are described in schedule 3 to this zoning plan. The approximate locations of the boundaries of the whale management and monitoring area are shown on the zoning and designated area map that forms part of this zoning plan.

3 Application of Queensland, Commonwealth and international law

Nothing in the zoning plan shall—

- (a) be construed as permitting any activity otherwise prohibited under the laws of Queensland or the Commonwealth;
- (b) have any effect contrary to the obligations of the Commonwealth Government under international law;
- (c) be construed as permitting the taking of any animal or plant protected under Queensland or Commonwealth legislation; and
- (d) be construed as regulating, restricting, restraining or prohibiting the construction or display of signs or notices required by law.

4 Interpretation

In this zoning plan unless contrary intention appears—

Act means the *Marine Parks Act 1982-1988*.

aircraft means a machine or device that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include a hovercraft.

alienated land means land alienated from the Crown and held in fee simple immediately prior to gazettal of the Hervey Bay Marine Park.

animal means any member, alive or dead, of the animal kingdom (other than man) and includes—

- (a) spat, spawn, eggs and parts of eggs; and
- (b) the skin, feathers, shell or other part of an animal.

bait gathering means taking of yabbies, eugaries (pippies), bait worms or crabs when taken by hand or by hand-held implement in accordance with provisions contained in the *Fisheries Act 1976-1984* and regulations made under that Act.

bait netting means fishing using a cast net, scoop or dip net, amateur bait net or a commercial bait net described in, and used in accordance with the conditions of use contained in, the fifth and sixth schedules of the *Fisheries Regulations 1977*.

bait worms means worms belonging to the Class Polychaeta and which are taken for use as bait.

collecting means the taking of any declared animal, plant or marine product.

commercial netting means fishing using any net described in, and used in accordance with the conditions of use contained in, the fifth schedule of the *Fisheries Regulations 1977*, but does not include trawling.

commercial oyster gathering means the taking of oysters from an oyster ground in accordance with provisions contained in the *Fisheries Act 1976-1984* and regulations made under that Act.

crabbing means the taking of crabs by the apparatus described in, and used in accordance with the conditions of use

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contained in, the fifth and sixth schedules of the *Fisheries Regulations 1977*.

crabs means crustacea of the Section Brachyura.

declared means any animal, plant or marine product listed in schedule 4 of this zoning plan.

drop purse seine netting means fishing using a purse seine net of length less than 200 metres in accordance with the conditions of use contained in the fifth schedule of the *Fisheries Regulation 1977*.

eugarie means a mollusc belonging to the species *Plebidonax deltoides*.

fishing means the taking of fish, crustaceans or molluscs but does not include the taking of declared animals.

high water means the mean height of the higher tide at spring tides.

highest astronomical tide means the highest level of the tides that can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions.

hook means a single hook or a group of hooks linked (ganged) together.

hovercraft means any air-cushion vehicle.

limited collecting means the taking of not more than 5 specimens of any one species of fish, shells or invertebrates (other than corals—Class Anthozoa) within any 28 day period, by means of a hand-held implement or by hand only.

limited oyster gathering means the gathering of oysters (oyster gathering) for their immediate consumption.

manipulative research means any research which by the nature of its activities will result in significant damage, degradation or disruption to the physical environment or living resources of the marine park and includes taking of specimens by fishing or collecting.

marine park means any marine park set apart and declared under the Act.

marine plant means a plant that grows below high water and includes eel-grass and dugong-grass.

marine products, includes oyster, pearl oyster, trochus, green snail, coral, coral limestone, shell-grit and star sand; and

- (a) all forms of indigenous plants and animals.
- (b) Aboriginal remains, artifacts or handcraft or traces thereof.
- (c) wrecks, relics or traces thereof; and
- (d) all other material comprising tidal land within an area set apart and declared as a marine park.

Minister means the Minister of the Crown who at the material time is charged with the administration of the Act and includes a Minister of the Crown who is temporarily performing the duties of the Minister.

oyster means a mollusc of the Family Ostreidae and includes an oyster without its shell.

photography and filming means the use of still, video or cine camera equipment for the recording of images or sound.

plants includes fungi, seed and parts of plants.

power-head means a device by means of which fish may be taken, being a device that may be attached to a spear and that consists of or contains an explosive charge.

public notice means a notice published—

- (a) in the gazette; and
- (b) in a newspaper that circulates throughout Queensland.

regulations means regulations made under the Act.

schedule means a schedule to this zoning plan.

ship means a vessel with a gross tonnage in excess of 1500 tonnes.

stowed or secured means equipment rendered inoperative and, in relation to trawl equipment, rendered inoperative at least to the extent of having nets out of water and hung on board with cod ends open.

take means in relation to marine products, remove, gather, catch, capture, kill, destroy, dredge for, raise, carry away, bring ashore, land from a vessel or otherwise to remove from a natural environment and attempt or permit any such act.

trawling means fishing using any trawl described in and used in accordance with the conditions of use contained in, the fifth schedule of the *Fisheries Regulations 1977*.

vessel means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water, and includes a hovercraft.

yabbies means crustacea of the Genus *Callinassa* of the Family Callinassidae.

Part two Zoning provisions

5 General use zone

5.1 Objective

To provide opportunities for reasonable general-use consistent with the conservation of the marine park.

5.2 Use and entry

Subject to part three (Designated areas) and part four (Additional uses and exemptions) this clause sets out the only purposes for which the general use zone may be used or entered—

- (a) unless otherwise stated in paragraph (b)—
 - (i) trolling;
 - (ii) line fishing;
 - (iii) spearfishing subject to the following conditions—
 - not for sale or trade;

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- not with underwater breathing apparatus (other than a snorkel);
 - not with a power-head;
 - in accordance with the seventh schedule of the *Fisheries Regulations 1977*;
- (iv) limited collecting;
 - (v) limited oyster gathering;
 - (vi) crabbing;
 - (vii) bait gathering;
 - (viii) bait netting;
 - (ix) commercial netting;
 - (x) trawling;
 - (xi) commercial pole and line tuna fishing, including catching bait by drop purse seine netting;
 - (xii) recreational or educational activities that do not involve the taking of plants, animals, or marine products;
 - (xiii) photography and filming;
 - (xiv) non-manipulative research;
 - (xv) navigation and operation of vessels, other than hovercraft;
 - (xvi) operation of tourist programs and any associated use of vessels;
 - (xvii) the operation of aircraft at an altitude of not less than 500 feet above ground or water;
- (b) with the written permission of the chief executive—
 - (i) manipulative research;
 - (ii) commercial oyster gathering;
 - (iii) collecting;
 - (iv) the conduct of a developmental fishery program;

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- (v) the farming of marine resources including the operation, construction, maintenance, demolition or removal of any associated facility;
- (vi) the construction, operation, maintenance, demolition or removal of any facility associated with a tourist program;
- (vii) the construction or conduct of mooring facilities for vessels;
- (viii) the operation of a structure including the conduct of operations in or upon, the discharge of wastes from, or the building, assembling, fixing in position, maintenance or demolition of, that structure;
- (ix) the operation of aircraft other than as specified in paragraph (a);
- (x) the navigation and operation of a hovercraft;
- (xi) the dumping of spoil or the carrying out of reclamation works beach protection works, extractive industries, harbour works, road building works or any other works;
- (xii) programs for the taking of animals or plants which pose a threat to human life or safety, marine ecosystems which are part of the marine park or the use and amenity of an area or of adjacent areas;
- (xiii)
 - exploration for petroleum by the holder of an authority to prospect issued pursuant to the *Petroleum Act 1923–1986*;
 - extraction of petroleum by the holder of a lease or licence issued pursuant to the *Petroleum Act 1923–1986*;
 - exploration for minerals by the holder of an authority to prospect issued pursuant to the *Mining Act 1968–1986*;
 - mining for minerals by the holder of a mining lease issued pursuant to the *Mining Act 1968–1986*;

- (xiv) any purpose not listed in the clause, consistent with the objective of the zone.

5.3 Prohibited use

This clause sets out those uses which are prohibited in the general use zone—

- (a) any purpose not listed in clause 5.2 that is not consistent with the objectives of the zone.

Part three Designated areas

6 Whale management and monitoring area

6.1 Designation

The boundary of the whale management and monitoring area is described in schedule 3 to the zoning plan and is indicated on the zoning and designated area map.

6.2 Objective

To manage human activities in the vicinity of humpback whales (*Megaptera novaeangliae*) and monitor the effects of such activities to ensure the protection of the whales.

6.3 Use and entry

Notwithstanding the provisions of part two (Zoning provisions) and subject to part four (Additional uses and exemptions), from 1 August each year to 30 November of the same year, or as designated by public notice by the chief executive, the following conditions shall apply—

- (a) the permission in writing of the chief executive is required for—

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- (i) conduct of a tourist program based on humpback whales, and associated vessel use; and
 - (ii) conduct of a research program, and any associated vessel or aircraft use, or associated activities; and
 - (iii) commercial photography, film making or video making.
- (b) (i) The owner or any person in charge of a vessel shall not cause or permit that vessel—
- to approach within 100 metres of any humpback whale;
 - to approach within 300 metres of any humpback whale, when two or more other vessels are within 300 metres of that whale;
 - to approach a humpback whale head on;
 - to herd, chase or otherwise prevent the free movement of humpback whales; or
 - to separate a group of humpback whales or to come between a mother and calf.
- (ii) A person in charge of a vessel which is within 300 metres of any humpback whale shall—
- when moving, manoeuvre the vessel at a constant speed of not more than 4 knots;
 - avoid sudden changes of direction;
 - when stopping, allow motors to idle for one minute prior to turning off, and raise outboard motors;
 - when departing from the area, idle motors for a short time prior to moving off at not more than 4 knots until the vessel is 300 metres distant from any humpback whale; and
 - manoeuvre the vessel to abandon contact with a humpback whale at any sign of a humpback whale becoming disturbed or alarmed.

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- (iii) A person shall not feed humpback whales or discard rubbish into the water in the vicinity of humpback whales;
 - (iv) A person who is within 300 metres of any humpback whale shall not make loud noises which are likely to disturb that whale;
 - (v) A person who is swimming or diving in the vicinity of a humpback whale shall not approach within 30 metres of that whale;
 - (vi) A person in charge of an aircraft shall not manoeuvre that aircraft lower than 300 metres above an area within 300 metres of any humpback whale PROVIDED THAT helicopter shall not be used for whale watching purposes;
- except where expressly permitted by the chief executive for the purposes of bona fide research or commercial photography under (a)(ii) and (a)(iii) above.
- (c) In determining the policies to apply to the issue of permits for the conduct of tourist programs based on humpback whales, the chief executive shall consult with an advisory committee comprising representatives of the following—
 - (i) persons experienced in the conduct of tourist programs based on whales;
 - (ii) persons having expertise in the conservation and management of whales;
 - (iii) persons having scientific knowledge of the conservation status and biology of whales and of whale behaviour, and
 - (iv) the Hervey Bay City Council.
 - (d) The chief executive shall publicise measures necessary from time to time for the protection of humpback whales within the whale management and monitoring area and shall make available guidelines for persons involved in whale watching activities.

6.4 Monitoring requirements

The chief executive shall monitor humpback whale populations in the whale management and monitoring area and the effects of human activities on whale populations and behaviour.

Part four Additional uses and exemptions

7 Access in special circumstances

In addition to the purposes specified in part two and part three of this zoning plan, a zone or designated area may be used or entered for the purpose of—

- (a) saving human life or avoiding the risk of injury to a human being;
- (b) locating or securing the safety of an aircraft, vessel or structure which is, or may be, endangered by stress of weather or by navigational or operational hazards;
- (c) government reconnaissance, surveillance, or law enforcement (including enforcement of the Act and regulations);
- (d) monitoring of the marine park by, or with the approval of, the chief executive;
- (e) dealing with an emergency involving a serious threat to the environment;
- (f) after notification to the chief executive and subject to any directions the chief executive may impose as are reasonably necessary for the conservation, protection and preservation of the marine park and property and things in the marine park.
 - (i) the removal of a vessel that is wrecked, stranded, sunk or abandoned (but does not apply to a wreck protected under the *Historic Shipwrecks Act 1976* of the Commonwealth or to a wreck located within

a special management area which has been designated for the purpose of special management of that wreck);

- (ii) defence operations, including the use of ships and aircraft;
- (iii) government geodetic surveys, government bathometric surveys or similar government surveys;
- (iv) the conduct and servicing of authorized navigational aids and their ancillary buildings and works, including the operation of vessels and aircraft for these purposes.

Part five Marine Park Advisory Committee

8 Marine Park Advisory Committee

8.1 Establishment of committee

The Minister shall establish a Hervey Bay Marine Park Advisory Committee.

8.2 Functions of committee

The functions of the Committee are to furnish advice to the Minister and the chief executive in respect of matters of policy relating to the Hervey Bay Marine Park either of its own motion or at the request of the Minister or chief executive.

8.3 Membership of committee

The committee shall comprise a chairman nominated by the Minister, and members appointed by the Minister upon the recommendation of the chief executive, who have specific

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knowledge of Hervey Bay and represent the following interests—

- (i) commercial fishing;
- (ii) recreational fishing;
- (iii) local government;
- (iv) tourism;
- (v) conservation;
- (vi) scientific research.

Members of the committee shall hold office for such period as the Minister may approve. A member may resign his office by written notification to the Minister.

Schedule 1 Boundary of Hervey Bay Marine Park

This zoning plan applies to tidal land and tidal waters of Queensland within the outer boundary described in this schedule, but does not include—

- any areas of national park set apart and declared under the *National Parks and Wildlife Act 1975-1984*;
- any area of environmental park reserved and set apart under the *Land Act 1962-1985*; and
- any areas of alienated tidal land.

The outer boundary of the Hervey Bay Marine Park—

- (a) commences at the point of intersection of the parallel of Latitude 25°13.6' south by the western coastline of Fraser Island at highest astronomical tide, in the vicinity of Moon Point;
- (b) runs thence west along that parallel to its intersection by the meridian of longitude passing through the easternmost point of Point Vernon at highest astronomical tide;
- (c) thence north along that meridian to its intersection by the parallel of latitude passing through the northernmost point of Fraser Island at highest astronomical tide; and
- (d) thence generally south-westerly, south-easterly, southerly and south-westerly along the coastline of Fraser Island at highest astronomical tide to the point of commencement.

Schedule 2 Zone boundary

Zone

general use zone

Boundary

tidal land and tidal waters of
Queensland within the boundary
described in schedule 1 to this zoning
plan

Schedule 3 Designated area boundary

Area Name

whale management and
monitoring area

Boundary

tidal land and tidal waters of
Queensland within the boundary
described in schedule 1 to this zoning
plan

Schedule 4 Declared animals, plants and marine products

Part I Animals

Fish

All species of each of the following—

Family Acanthuridae	(Surgeonfish, Moorish Idols, Unicornfish)
Family Antennariidae	(Angelfish)
Family Apogonidae	(Cardinalfish, Soldierfish)
Family Aulostomidae	(Trumpetfish)
Family Blennidae	(Combtooth Blennies)
Family Chaetodontidae	(Butterflyfish, Coralfish, Angelfish)
Family Clinidae	
Family Fistulariidae	(Flutemouths)
Family Gobiidae	(Gobies, Mud-hoppers, Gudgeons)
Family Holocentridae	(Squirrel-fish, Soldierfish)
Family Ostraciontidae	(Boxfish, Cowfish, Turretfish)
Family Pegasidae	(Dragonfish)
Family Pomacentridae	(Damsel-fish, Pullers, Sergeant-Majors, Anemonefish)
Family Synanceidae	(Stonefish)
Family Syngnathidae	(Sea-horses, Pipefish)
Genus Anamapses	(Scribbled Wrasse)
Genus Cirrhitichthys	(Hawkfish)
Genus Dendrochirus	(Dwarf Lionfish)
Genus Epibulus	(Sling-Jaw or Telescopefish)
Genus Gomphosus	(Bird Wrasse)
Genus Labroides	(Cleaner Wrasse)

Schedule 4 (continued)

Fish**All species of each of the following—**

Genus <i>Lo</i>	(Fox-face)
Genus <i>Macropharyngodon</i>	(Red-flecked Wrasse)
Genus <i>Paracirrhites</i>	
Genus <i>Pterois</i>	(Butterfly Cod, Red Firefish or Lionfish)
Genus <i>Pteropterus</i>	
Genus <i>Stethojulis</i>	(Rainbowfish)
Genus <i>Thalassoma</i>	(Moon Wrasses, Jansen's Wrasse)
Species <i>Choerodon fasciatus</i>	(Harlequin Tuskfish)
Species <i>Epinephelus lanceolatus</i>	(Groper)

Invertebrates**All species of each of the following—**

Class Bivalvia (except Family Amusidae)	
Class Crustacea (except Family Panuliridae, Family Panaeidae, Family Scytalaridae, species <i>Portunus sanguinolentus</i> , males of the species <i>Portunus pelagicus</i> or <i>Scylla serrata</i>)	
Class Foraminifera	
Class Gastropoda	
Family Nautilidae	
Phylum Bryozoa	
Phylum Coelenterata	(Hydroids, Jellyfish and Corals)
Phylum Echinodermata (except species <i>Acanthaster planci</i>)	(Starfish, Sea Cucumbers, Sea Urchins, Brittlestars and Featherstars)
Phylum Porifera	(Sponges)

Schedule 4 (continued)**Reptiles****All species of each of the following—**

Family Cheloniidae	(Marine Turtles)
Family Dermochelyidae	(Marine Turtles)
Family Hydrophiidae	(Sea Snakes)
Family Laticaudidae	(Sea Snakes)

Mammals**All species of each of the following—**

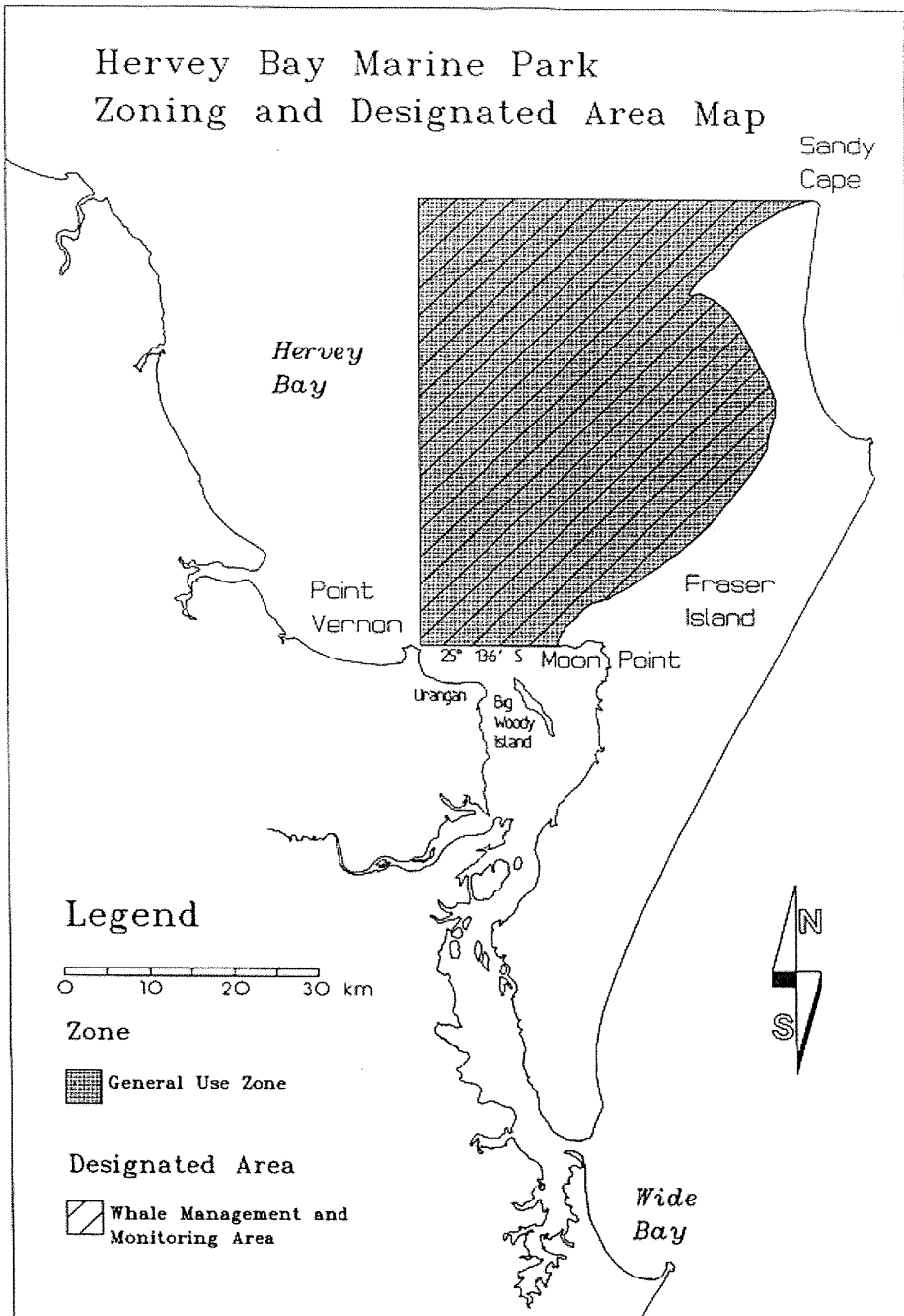
Order Cetacea	(Whales and Dolphins)
Order Sirenia	(Dugong)

Part II Plants

all species of plants

Part III Marine products

coral limestone
 sea shells
 shell-grit
 star sand



Endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 18 February 2005. Future amendments of the Marine Parks (Hervey Bay) Zoning Plan 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	2005 SL No. 12	18 February 2005	

5 List of legislation

Marine Parks (Hervey Bay) Zoning Plan 1989

(prov zoning plan for Hervey Bay Marine Park approved in the instrument made as an order in council)

pubd gaz 16 September 1989 p 544

exp 31 August 2006 (see SIA s 56A(2) and SIR s 5 sch 3)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

Marine Parks Zoning Plans Amendment Zoning Plan (No. 1) 2005 SL No. 12 pts 1, 3

notfd gaz 18 February 2005 pp 596–7

commenced on date of notification

6 List of annotations

Short title

s 1 sub 2005 SL No. 12 s 16

Application of zoning plan

s 1A ins 2005 SL No. 12 s 16

Interpretation

s 4 def “**Director**” om 2005 SL No. 12 s 17

Use and entry

s 5.2 amd 2005 SL No. 12 s 18

Use and entry

s 6.3 amd 2005 SL No. 12 s 19

Monitoring requirements

s 6.4 amd 2005 SL No. 12 s 20

Access in special circumstances

s 7 amd 2005 SL No. 12 s 21

Functions of committee

s 8.2 amd 2005 SL No. 12 s 22

Membership of committee

s 8.3 amd 2005 SL No. 12 s 23