

Marine Parks (Great Sandy) Zoning Plan 2017

Explanatory notes for SL 2017 No. 155

made under the

Marine Parks Act 2004

State Penalties Enforcement Act 1999

General Outline

Short title

Marine Parks (Great Sandy) Zoning Plan 2017

Authorising law

Sections 21, 22, 23 and 24 of the *Marine Parks Act 2004*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The key policy objective of the *Marine Parks (Great Sandy) Zoning Plan 2017* is to remake the existing *Marine Parks (Great Sandy) Zoning Plan 2006* in substantially the same form with minor amendments to ensure the continuity of existing rules while a more comprehensive review process is being implemented.

The Great Sandy Marine Park Zoning Plan (the Zoning Plan) plays a key role in the protection of the natural, cultural and use values of the marine park. The Zoning Plan is subordinate legislation to support the *Marine Parks Act 2004* and prescribes the entry and use provisions of each zone and designated area type in the marine park and other management arrangements. Without the Zoning Plan in place, provisions relating to the following matters would not be able to be implemented creating an unacceptable risk:-

- protection of threatened species such as grey nurse sharks, dugong, turtles and shorebirds;
- management of the entry and use of the marine park including coastal development, tourism, charter, research, and education programs;
- the number and type of species that can be collected and possessed;
- restrictions pertaining to activities such as bait netting, crabbing and fishing and collecting in certain zones and designated areas;
- accreditation of agreements with Traditional Owners on the use of marine resources; and
- protection of designated Indigenous fish trap areas.

The *Marine Parks (Great Sandy) Zoning Plan 2006* is being remade as part of a two-phase strategy. Phase one involves the statutory remake of the *Marine Parks (Great Sandy) Zoning Plan 2006* provisions to ensure these do not expire and the conservation and use values of the Great Sandy Marine Park are not placed at risk. The *Marine Parks (Great Sandy) Zoning Plan 2017* is the key deliverable in Phase one.

The *Marine Parks (Great Sandy) Zoning Plan 2017* will commence on 1 September 2017.

Phase two is running concurrently with Phase one and involves a thorough review of the Zoning Plan, including seeking community input on zone boundaries, designated areas, values and use of the marine park. Community feedback will inform the development of a revised draft zoning plan for further public comment.

The two-phase renewal strategy is required to balance the need for maintaining the existing management arrangements beyond the expiry of the *Marine Parks (Great Sandy) Zoning Plan 2006* on 31 August 2017, while a comprehensive review of the Zoning Plan involving stakeholder and community engagement and input on future management directions is undertaken.

Achievement of policy objectives

The policy objective is achieved by making the *Marine Parks (Great Sandy) Zoning Plan 2017* in substantially the same form as the *Marine Parks (Great Sandy) Zoning Plan 2006* with minor amendments before its scheduled expiry under the *Statutory Instruments Act 1992* on 31 August 2017.

Minor amendments have been included in the *Marine Parks (Great Sandy) Zoning Plan 2017* to clarify some provisions and correct any errors in the *Marine Parks (Great Sandy) Zoning Plan 2006* and make any necessary updates to reflect contemporary drafting standards.

The plans showing the marine parks zones (plan MP2) and the designated areas (plan MP3) are not included in the *Marine Parks (Great Sandy) Zoning Plan 2017* and instead being made available on the Department of National Parks, Sport and Racing website. This allows the official plans to be made available to stakeholders in a higher resolution, easier to read format, supporting enhanced useability and compliance. No changes have been made to zones or designated areas.

The other change of note in the *Marine Parks (Great Sandy) Zoning Plan 2017* is the removal of the need for a gazette notice to be published giving effect to go slow designated areas. These go slow areas are identified in Schedule 2 of the Zoning Plan and do not require a secondary means of notification of their location.

Remaking the *Marine Parks (Great Sandy) Zoning Plan 2006* recognises the necessity to continue the current rules to support the integrity of the existing marine park regime while Phase two of the review and consultation process is being undertaken.

Consistency with policy objectives of authorising law

The *Marine Parks (Great Sandy) Zoning Plan 2017* is consistent with the main objective of the *Marine Parks Act 2004* which is to provide for the conservation of the marine environment. This purpose is achieved by giving effect to the *Marine Parks Act 2004* and maintaining legislation, as far as practicable, in line with other Queensland state marine park zoning plans and the Commonwealth's marine park legislation for the Great Barrier Reef.

The *Marine Parks (Great Sandy) Zoning Plan 2017* is also consistent with section 165 of the *State Penalties Enforcement Act 1999* which allows for a regulation to prescribe an offence to be an infringement notice offence and to provide for an infringement notice fine.

Inconsistency with policy objectives of other legislation

There are no inconsistencies with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative to achieving the policy objective. It is essential the *Marine Parks (Great Sandy) Zoning Plan 2017* is made in order to support the continuation of conservation and management of the marine environment in the Great Sandy Marine Park.

Allowing the *Marine Parks (Great Sandy) Zoning Plan 2006* to expire without replacement is an unacceptable option. The absence of a regulatory framework for management, permitting and compliance would place the natural and cultural values of the Great Sandy Marine Park, as well as the use of the marine park, at an unacceptable risk.

Benefits and costs of implementation

The continuation of the Great Sandy Marine Park Zoning Plan provides many benefits in the conservation of the marine environment which include:

- providing for and managing a range of commercial, recreational, cultural, educational and scientific uses in the marine park;
- providing the tools necessary for the management of the marine park including entry and use provisions for the various zone types and designated areas;
- accreditation of traditional use of marine resource agreements recognising cultural values of the marine park; and
- prescribing restrictions for certain activities in the marine park.

The *Marine Parks (Great Sandy) Zoning Plan 2017* will not result in the need for additional government resources. Remaking the Zoning Plan in its current form will ensure that the natural, cultural and use values are protected beyond its statutory expiry on 31 August 2017 while Phase two of the zoning plan review process is being undertaken. The changes impose no cost to the Government or the community. The benefit of the two-phase process ensures opportunity exists for community input on the future directions for the marine park.

Consistency with fundamental legislative principles

The *Marine Parks (Great Sandy) Zoning Plan 2017* is consistent with the fundamental legislative principles prescribed in section 4 of the *Legislative Standards Act 1992*. The remade legislation aims to ensure the *Marine Parks (Great Sandy) Zoning Plan 2017* is unambiguous and drafted in a sufficiently clear way so as to provide clarity to government, members of the public and other parties.

The *Marine Parks (Great Sandy) Zoning Plan 2017* makes reference to the plans showing the Great Sandy Marine Park zones (plan MP2) and designated areas (MP3), which are available to view, print and download on the Department of National Parks, Sport and Racing website. The official plans available on the website are of a higher resolution and clarity than can be achieved in legislation. This approach avoids providing ambiguous information that is difficult to read. Uploading the plans on the department's website ensures that marine park zoning and designated areas information is accessible and user friendly. Any changes to zone and designated boundaries are subject to the Zoning Plan amendment provisions rules under the *Marine Parks Act 2004*, including public notice and Governor in Council consideration.

The *Marine Parks (Great Sandy) Zoning Plan 2017* continues to include some offences that exceed a maximum of 20 penalty units. The continuation of penalties at this level may be seen to conflict with the fundamental legislative principle of having regard to the institution of Parliament by placing a penalty of greater than 20 penalty units in subordinate legislation. This interpretation is based on the former Scrutiny of Legislation Committee's Policy in which the Committee indicated that maximum penalties in subordinate legislation should be limited generally to 20 penalty units (See pages 6–7 of Alert Digest No. 4 of 1996 at: <http://www.parliament.qld.gov.au/documents/committees/SLC/1996/adno4-96.pdf>).

However, the Legislative Assembly has previously endorsed an approach for including penalty units greater than 20 through acceptance of section 24(2) of the *Marine Parks Act 2004* which states a zoning plan may provide for a maximum penalty of not more than 165 penalty units for a contravention of the plan.

The inclusion of higher penalty units recognises that for several serious marine park offences, 20 penalty units is too low to serve as an appropriate deterrent. Having a higher penalty helps emphasise the importance of marine conservation and supports compliance and education initiatives. Examples of higher penalty offences in the *Marine Parks (Great Sandy) Zoning Plan 2017* include the following:

- failing to comply with any direction given for the protection and management of turtles;
- trawling in a turtle protection area within prescribed times;
- interfering with grey nurse shark or using mechanical / electro-acoustic apparatus in a grey nurse shark area;
- entering or using the Great Sandy designated area for a prescribed activity without a lawful authority; and
- failing to comply with a prohibited area notice.

Consultation

In accordance with section 22 of the *Marine Parks Act 2004*, public notice on the draft *Marine Parks (Great Sandy) Zoning Plan 2017* was undertaken. The public notice was in place for 32 days commencing on 5 May 2017 and finishing on 5 June 2017. Twenty-one submissions from both individuals and several organisations were received in response to the public notice. All respondents were supportive of the two-phase review process. However, there were mixed views on what future management rules should apply following the remake.

The key discussion point relates to the designated Great Sandy Area. This designated area overlays the Conservation Park Zone and allows for the continuation of commercial netting. Without this designated area commercial netting would be prohibited. Concerns about the Great Sandy Area and other matters raised during the public notice period will be further explored as part of the Phase two consultative and Zoning Plan review process.

The Office of Best Practice Regulation (OBPR) was consulted regarding the requirement for further analysis or assessment in accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines). OBPR advised that given the commitments made by the Department of National Parks, Sport and Racing to undertake a further comprehensive review of the *Marine Parks (Great Sandy) Zoning Plan 2017*, it is supportive of the department's approach and further assessment under the Guidelines is not required at this time. Further assessment will be undertaken as part of Phase two.