

# Marine Parks (Moreton Bay) Zoning Plan 2019

Explanatory notes for SL 2019 No. 175

made under the

*Marine Parks Act 2004*

## General Outline

### Short title

*Marine Parks (Moreton Bay) Zoning Plan 2019.*

### Authorising law

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

### Policy objectives and the reasons for them

The key policy objective of the *Marine Parks (Moreton Bay) Zoning Plan 2019* (Zoning Plan) is to remake the existing *Marine Parks (Moreton Bay) Zoning Plan 2008* with minor amendments to ensure the continuity of existing rules while a more comprehensive review process is being implemented.

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; and
- accreditation of agreements with Traditional Owners on the use of marine resources.

The Zoning Plan is being remade as part of a two-phase strategy. Phase one involves the statutory remake of the *Marine Parks (Moreton Bay) Zoning Plan 2008* provisions to ensure these do not expire and the conservation and use values of the marine park are not placed at risk. The Zoning Plan is the key deliverable in Phase one.

The Zoning Plan will commence on 1 September 2019.

Phase two will commence on the finalisation of the review of the *Marine Parks (Great Sandy) Zoning Plan 2017*. This phase will involve a thorough review of the Zoning Plan that includes seeking stakeholder and community input into zone boundaries, designated areas, values and use of the marine park. Stakeholder and community feedback will inform the development of a revised draft Zoning Plan for further public comment, which will guide future management directions for the marine park.

The two-phase review strategy is required to balance the need for maintaining the existing management arrangements beyond the expiry of the *Marine Parks (Moreton Bay) Zoning Plan 2008* on 1 September 2019, until a comprehensive review of the Zoning Plan is undertaken.

## **Achievement of policy objectives**

The policy objective is achieved by making the Zoning Plan in substantially the same form as the *Marine Parks (Moreton Bay) Zoning Plan 2008* with minor amendments before its scheduled expiry under the *Statutory Instruments Act 1992* on 1 September 2019.

Minor amendments in the Zoning Plan clarify some provisions and correct any errors in the *Marine Parks (Moreton Bay) Zoning Plan 2008*, and necessary updates to reflect contemporary drafting standards have been included. No changes have been made to zones or designated areas.

The maps showing the marine park zones and the designated areas described in the Zoning Plan are available on the Department of Environment and Science (DES) website. This allows the maps to be accessible to stakeholders in a high resolution, easy to read format, supporting enhanced useability and compliance.

The only change of note in the Zoning Plan is the removal of the need for a gazette notice to be published as part of the accreditation process for a traditional use of marine resources agreement (TUMRA). Instead, notification is now by publication on the DES website. This change makes all notification processes for TUMRAs consistent – whether it be granting of accreditation, approval of an amendment, suspension or cancellation.

Most transitional provisions in the repealed plan have been removed from the Zoning Plan. Provisions related to the continuing effect of particular permissions and relevant fishery permissions, applications for permissions in progress at the time of commencement, and previously authorised conduct were in place to cater for the change in zoning arrangements at the commencement of the *Marine Parks (Moreton Bay) Zoning Plan 2008* and are no longer required. The transitional provision that exempted the entity operating the public ferry service to Moreton Bay's southern islands from provisions restricting vessel speed in designated go

slow areas for turtles and dugong, has been incorporated into the relevant designated areas provisions. The transitional provision for existing moorings was integrated into the provisions for designated mooring areas.

Transitional provisions are not required for marine park permissions as there have been no changes to zoning arrangements and permissions are granted under the *Marine Parks Regulation 2017*. Commencement of the Zoning Plan does not invalidate existing permissions or applications for permission.

Transitional provisions for accredited TUMRAs have been added as the Zoning Plan provides the framework to accredit TUMRAs; therefore, transitional provisions are essential to ensure the continuation of any accreditations, applications, and other procedures. There is also the addition of a transitional provision to ensure the continuation of any procedures underway for amending or suspending accreditation of educational or research institutions are continued under the Zoning Plan.

Remaking the *Marine Parks (Moreton Bay) Zoning Plan 2008* substantially in its current form recognises the necessity to continue the current rules to support the integrity of the existing marine park regime until Phase two of the review and consultation process is undertaken.

## **Consistency with policy objectives of authorising law**

The Zoning Plan 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.

## **Inconsistency with policy objectives of other legislation**

The Zoning Plan is not inconsistent with any other legislation.

## **Alternative ways of achieving policy objectives**

Allowing the *Marine Parks (Moreton Bay) Zoning Plan 2008* 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 Moreton Bay Marine Park, as well as the use of the marine park, at an unacceptable risk.

It is essential the Zoning Plan is made in order to support the continuation of conservation and management of the marine environment in the Moreton Bay Marine Park.

There are no alternative ways of achieving the policy objective.

## Benefits and costs of implementation

The Zoning Plan will not result in the need for additional government resources. Remaking the Zoning Plan substantially in its current form will ensure that the natural, cultural and use values of the marine park are protected beyond its statutory expiry on 1 September 2019 until Phase two of the zoning plan review process is undertaken. The minor administrative 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.

Continuity of the marine park's zoning plan provides many benefits for the conservation of the marine environment, including:

- 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.

## Consistency with fundamental legislative principles

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

The Zoning Plan describes the zones and designated areas for Moreton Bay Marine Park, with no change from the *Marine Parks (Moreton Bay) Zoning Plan 2008*. Maps showing these zones and designated areas are available to view, print and download on the DES website, and through other mapping data sources such as the Queensland Government's online mapping application Queensland Globe. This approach ensures that information is accessible and user-friendly.

The Zoning Plan continues to include some offences that exceed a maximum of 20 penalty units (Clause 37). 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 Zoning Plan include the following:

- touching, feeding, trapping or attempting to trap a grey nurse shark or using mechanical / electro-acoustic apparatus in a grey nurse shark area;
- interfering with a grey nurse shark's natural behaviour in a grey nurse shark area; 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 Zoning Plan was undertaken. The public notice was in place for 28 days commencing on 30 May 2019 and concluding 27 June 2019.

Targeted notification of the public notice was given to Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC), Queensland South Native Title Services (QSNTS), and key stakeholders including representatives from the recreational and commercial fishing sectors, tourism, and conservation groups. The notification outlined the duration of the public notification period and invited comment on the draft Zoning Plan.

QYAC requested the *Marine Parks (Moreton Bay) Zoning Plan 2019* be validated in the Quandamooka People #2 Indigenous Land Use Agreement as a Future Act under the *Native Title Act 1993 (Cwlth)*. DES has satisfied itself that for immediate purposes, the remake of the Zoning Plan is valid.

No responses were received from First Nations People represented by QSNTS.

Twenty-one submissions were received from stakeholders (including organisations and individual members of the public), representing recreational fishing and boating, commercial fishing, tourism and conservation interests in response to the public notice of the draft Zoning Plan. All respondents either supported, or did not object to, the remake proposal (i.e. the two-phase remake and review process). However, there were mixed views on what future management rules should apply following the remake. The key discussion points relevant to Phase one of the remake and review process include:

- (i) clarifying the provision (section 107) that prohibits navigating a vessel or aircraft for more than 120 days in one year in the marine park; and
- (ii) an amendment to the common name for crabs classified in family Xanthidae. Amending 'reef' crabs to 'rock' crabs in this family ensures that species excluded from the list of restricted species described in Schedule 4 are taxonomically correct.

These issues do not require a change in policy and have been addressed in the Zoning Plan. Amendment to section 107 has clarified its intent especially in its application to anchoring and mooring vessels in the marine park. This section aims to prevent people from establishing themselves permanently in the marine park as a place of residence. The amendment also negates the necessity to exclude a person navigating a vessel, ferry or water taxi service that transfers passengers or vehicles, from the application of this provision.

Other points raised in response to the public notice will be further examined as part of the Phase two consultation and review process. These include objections to the inclusion of recreational hovercraft in the definition of ‘managed vessel’, fisheries-related issues, suggested changes to marine park zones, and the southward extension of the southern boundary of the marine park.

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 DES to undertake a further comprehensive review of the Zoning Plan, it supports DES’s approach and further assessment under the Guidelines is not required at this time. Further assessment will be undertaken as part of Phase two.

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