

# Marine Parks (Great Sandy) Zoning Plan 2024

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Leanne Linard, Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation provide this human rights certificate with respect to the *Marine Parks (Great Sandy) Zoning Plan 2024* made under the *Marine Parks Act 2004*.

In my opinion, the *Marine Parks (Great Sandy) Zoning Plan 2024* as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The *Marine Parks (Great Sandy) Zoning Plan 2024* (the zoning plan) is subordinate legislation to the *Marine Parks Act 2004* and assists in the delivery of the primary purpose of the Act, which is to provide for conservation of the marine environment.

Zoning plans detail the park specific management of each state marine park. They establish and define the location of a network of spatially defined zones which provide for different levels of protection and use, detail special management arrangements for particular values or uses at specific locations e.g. via designated area provisions, and apply offence provisions and penalties for non-compliance with zoning plan requirements. Entry or use provisions for each zone and designated area state activities that are either as of right, require permission or are prohibited.

This zoning plan is the outcome of the first comprehensive review of the management of the Great Sandy Marine Park (the marine park) since it was established in 2006 and replaces the *Marine Parks (Great Sandy) Zoning Plan 2017*. A number of policy reforms have been integrated into the zoning plan, informed by feedback received from First Nations peoples, key stakeholder and user groups, scientists, local government and the community. These reforms will improve conservation outcomes within the marine park while allowing sustainable recreational, economic and social uses of the marine park to continue. A commitment to respect, protect and promote human rights is reflected in the zoning plan, and in particular relation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Compared to the *Marine Parks (Great Sandy) Zoning Plan 2017*, the zoning plan increases the proportion of the marine park within highly protected, Marine National Park (MNP) zones (where all forms of fishing are prohibited), removes some forms of commercial net fishing in certain areas; enhances threatened species protection and improves protection of cultural values, including management of threats to the long-term conservation of wildlife and their habitats, such as climate change, population growth and increasing use.

Implementation of the zoning plan requires supporting amendments to the *Marine Parks Regulation 2017*, the *Marine Parks (Declaration) Regulation 2006*, the *Fisheries (General) Regulation 2019* and the *State Penalties Enforcement Regulation 2014*. I refer to my opinion and basis for this opinion, in a separate Human Rights Certificate for the *Marine Parks and Other Legislation Amendment Regulation 2024*, that the supporting amendments are compatible with the human rights protected by the *Human Rights Act 2019* (HR Act).

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are engaged by the *Marine Parks (Great Sandy) Zoning Plan 2024* (the zoning plan), if enacted, are:

- Recognition and equality before the law (HR Act section 15);
- Freedom of movement (HR Act section 19);
- Property rights (HR Act section 24); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act section 28).

The specific sections of the zoning plan that are relevant to these rights are:

- Part 2 Zones, Divisions 2-5 – entry or use with or without permission relating to Traditional Use of Marine Resources
- Part 3 Designated areas
  - Division 3 Ex-HMAS Tobruk area
  - Division 4 Fish Trap Area
  - Division 5, Subdivision 2 Go Slow Area for natural and cultural resources
  - Division 5, Subdivision 3 Go Slow Area for turtles and dugongs
  - Division 6 Grey Nurse Shark Area
  - Division 7 Mon Repos Area
  - Division 8 No-Anchoring Area
  - Division 9 No-Motorised Vessel Area
  - Division 10 Platypus Bay Area
  - Division 11 Seasonal Shorebird Closure Area
  - Division 12 Turtle Protection Area
- Part 6, Section 102 Taking protected species
- Part 6, Section 104 Disturbing shorebirds

In addition, the making of the zoning plan results in an expanded Marine National Park (MNP) zone network, with a total area of 28.6% of the marine park in highly protected zones (MNP and Conservation Park zones). Beam trawling, blood worming and commercial large mesh gill netting and ring netting are prohibited in specific areas of the marine park where they were previously allowed under special management provisions in the *Marine Parks (Great Sandy) Zoning Plan 2017*. Zoning plan impacts on commercial fishing activities in parts of the marine park are also relevant in the consideration of human rights issues.

## **Protection of cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act)**

The HR Act specifies that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. The Act says that Aboriginal and Torres Strait Islander peoples must not be denied this right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

Section 28 of the HR Act is based on two international instruments. One is article 27 of the International Covenant on Civil and Political Rights, which Australia ratified in 1980. The other is articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Australia announced support for this declaration in 2009.

The preamble to the HR Act recognises:

“Although human rights belong to all individuals, human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland, as Australia's first people, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Ailan Kastom. Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is the right to self-determination”.

### Marine Parks (Great Sandy) Zoning Plan 2024

The zoning plan engages and positively promotes the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected under section 28 of the HR Act. In particular, the right to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings (28 (2)(a)); the right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom (28 (2)(d)); and the right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (28 (2)(e)), are engaged and promoted because the zoning plan provides for the improved conservation of natural and cultural values, informed by extensive engagement with First Nations peoples.

There are six groups of First Nations peoples with a connection to the waters identified as the Great Sandy Marine Park (GSMP) – the Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda peoples (represented by the Port Curtis Coral Coast Trust), the Butchulla people and the Kabi Kabi people.

First Nations peoples have an enduring sacred connection to the waters identified as the GSMP that spans tens of thousands of years. Inherent to this connection, is the responsibility of First Nations peoples to Care for Country. Engagement with all First Nations peoples' representative bodies has occurred in development of the zoning plan, to understand and incorporate cultural knowledge, priorities and perspectives. Engagement will continue as the zoning plan is implemented, with a view to cooperative management with the traditional custodians of the tidal lands and waters that are incorporated in the marine park. This recognises the cultural right to conserve and protect (28 (2)(e)) and aligns with the right to self-determination for Queensland's Aboriginal peoples and Torres Strait Islander peoples, as referred to in the HR

Act preamble. Working in partnership for the continued improvement and protection of the marine park contributes to ensuring the continued enjoyment and maintenance of cultural heritage including traditional knowledge and distinct spiritual practices (28(2)(a)) and maintenance of spiritual, material and economic relationship with waters and resources (28(2)(d)).

Overall, the zoning plan provisions reflect improved protection and conservation of habitats and threatened species, including species that are closely related to cultural and spiritual beliefs and practices, such as turtles and dugong. This aligns broadly with the cultural rights of Aboriginal peoples and Torres Strait Islanders, including those expressed in subsection 28(2)(e), to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. Changes that improve protection of natural resources also protect cultural values, with a healthier, more biodiverse marine environment, improving protection of cultural identity, health, well-being and connection to Country.

Several specific zoning plan provisions, developed through engagement with First Nations peoples' representative bodies, during the review of the *Marine Parks (Great Sandy) Zoning Plan 2017* deliver on aspirations, priorities and perspectives and recognise the specific cultural values at particular locations in the marine park, e.g. Go Slow Areas for natural and cultural values in Carland Creek and Wathumba Creek, No Motorised Vessel Areas in Searys and Cooloola Creeks, and No Anchoring Areas that protect sensitive cultural values. Management of these areas, along with the pre-existing Fish Trap Area at Booral, includes restricting marine park activities to guard culturally significant sites from physical disturbance and destruction, and to help mitigate the effects of climate change and preserve access to culturally significant sites that may be lost with rising sea level. The special management provisions in the zoning plan that provide for management of the marine park's designated areas also achieve protection of cultural resources, including species that have cultural significance. Some pre-existing designated areas have expanded in size or the length of time for which provisions are in effect has increased (e.g. Go Slow Area for turtles and dugongs, the Grey Nurse Shark Area, Mon Repos Area, Turtle Protection Area) and several new designated areas have been established (e.g. Platypus Bay Area, Seasonal Shorebird Closure Area). The zoning plan thereby recognises subsection 28(2)(a) and the right to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings and also recognises the right to maintain spiritual, material and economic relationship with waters and resources (28(2)(d)). The zoning plan provides for Traditional Owners with a connection to the land and sea Country in Searys and Cooloola Creeks to be able to use motorised vessels in these areas, further recognising subsection 28(2)(a) of the HR Act.

As an outcome of engagement with Butchulla Native Title Aboriginal Corporation, tidal sections (up to the limit of Highest Astronomical Tide) of lots within their Determination Area where exclusive native title has been recognised, have been included and conserved within the marine park by assigning the zoning immediately adjacent to these lots, which in most cases is the highly protected Conservation Park (CP) zone. Ongoing engagement with traditional custodians and working towards cooperative management of these areas will support the cultural right of Aboriginal and Torres Strait Islander peoples to maintain and strengthen their distinctive spiritual, material, and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition or Island custom (subsection 28(2)(d))

and also engages the right to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings (28(2)(a)).

## **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

### **Recognition and equality before the law (section 15 of the HR Act)**

Section 15 of the HR Act provides that every person has the right to equal and effective protection against discrimination.

#### **(a) the nature of the right**

This right is based on Articles 16 and 26 of the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980. Section 15 of the HR Act encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right provides that persons are equal before the law and are entitled to equal protection of the law without discrimination.

#### **Division 9, Section 58 No-Motorised Vessel Area**

Section 58 of the zoning plan prohibits access to two small areas of the marine park (total area 4.27km<sup>2</sup> or 0.07%) with the use of a motorised vessel. It allows access with the use of non-motorised vessels. This section has the potential to limit this right by disproportionately impacting on people who have a disability that renders them incapable of operating, or being a passenger in, a non-motorised vessel.

#### **Maximum penalties for offences**

The zoning plan prescribes maximum penalty amounts for various offences in the zoning plan, some of which are new and some of which have increased, compared to the repealed zoning plan. Implementing maximum penalties for offences may limit the right to recognition and equality before the law by adversely and disproportionately impacting sectors of the community such as vulnerable groups or persons of a lower socio-economic status, who may have more difficulty paying a monetary sum in the event that they are found guilty in a court of law of committing an offence against the zoning plan.

#### **(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

#### **Division 9, Section 58 No-Motorised Vessel Area**

The purpose of the designated No-Motorised Vessel Area is to protect the natural and cultural resources of the area and to minimise disturbance from vessels. Establishment of the Area in Searys and Cooloola Creeks was informed by engagement with First Nations peoples who have an interest in the land and sea Country of Tin Can Inlet where these waterways are located. These creeks are important for the conduct of cultural activities that require a level of privacy to undertake, without disturbance by vessel noise and traffic. Culturally significant sites, including shell middens, are located within the intertidal and shallow subtidal areas throughout the Inlet and its creeks, and are at risk of erosion from sea level rise associated with climate

change which is exacerbated by wash from motorised vessels. In establishing this Area, the zoning plan recognises the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

### **Maximum penalties for offences**

The maximum penalty amount that can be prescribed for a zoning plan offence under the Marine Parks Act is 165 penalty units. A maximum penalty is the highest penalty that can be imposed on a person in a court of law if they are found guilty of committing an offence against a zoning plan provision and they are used as a basis for setting the value of Penalty Infringement Notices (prescribed in the *State Penalties Enforcement Regulation 2014*).

Fourteen maximum penalty amounts prescribed in the *Marine Parks (Great Sandy) Zoning Plan 2017* that have carried over to the *Marine Parks (Great Sandy) Zoning Plan 2024* did not reflect the impact that a person committing the offence may cause on the natural or cultural values of the marine park and were inconsistent with the Queensland Statute Book by being low in comparison with penalty amounts for similar offences under other legislation administered by the Department of Environment, Science and Innovation (the department).

The increase in the value of the maximum penalty better reflects the potential detrimental impacts on the marine park resulting from non-compliance. These changes bring the value of these penalties, in line with penalties for similar offences established under other Queensland environmental legislation.

Imposing penalties for offences is a widely accepted and common way of achieving compliance with legislation and deterring unwanted behaviours. Setting maximum penalties for zoning plan offences contributes to the protection of the environment, which is consistent with a free and democratic society.

### **(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose**

#### **Division 9, Section 58 No-Motorised Vessel Area**

Prohibiting motorised vessels will reduce the risk of noise disturbing cultural practices in the Area and also reduce the impacts of vessel wash on culturally significant sites, e.g. middens in the shallow-water estuaries where the provisions apply. While this is a new type of designated area in Queensland's marine parks, the concept of restricting activities to reduce the risk of impacts from threats is an approach widely implemented in marine protected area management. For example, Go Slow Areas are a well known valuable and balanced marine park management tool that protect threatened species (turtles and dugong) from boat strike by placing a speed restriction on vessels moving through shallow areas that are known high use habitats for these species.

### **Maximum penalties for offences**

Imposing maximum penalties for offences underpins the objective of deterring non-compliance with the zoning plan (which is related to behaviour that negatively impacts on the marine park's natural and cultural values), thereby improving conservation of the marine park's values, including the long-term survival of threatened species.

Penalties provide an indication to the community and the judicial system of the serious nature of committing the offence in terms of its potential detrimental impacts on the natural and cultural values of the marine park. The increased deterrent to committing an offence and hence subsequent compliance with management provisions is expected to contribute to an improvement in the status of local populations of various threatened species and the integrity of cultural resources of importance to First Nations peoples.

Sustaining the natural environment for the future is in the public benefit, with the components of the environment providing a vast array of functions and ecosystem services including those that benefit the community and contribute to the survival of the human population.

#### **(d) whether there are any less restrictive and reasonably available ways to achieve the purpose**

#### **Division 9, Section 58 No-Motorised Vessel Area**

An alternative option to prohibiting motorised vessels in Searys and Cooloola Creeks is to rely on the underlying Marine National Park zone in these creeks, which generally reduces the likelihood of motorised vessels, that would otherwise access the area to fish, from entering the area. However, under this option, it would still be possible for motorised vessels to enter the area for other reasons and therefore the risks of disturbance of cultural practices and erosion of culturally significant sites from boat wash would remain. Another less restrictive option would be community education to raise awareness of the cultural significance of the area, and encouraging an individual to choose not to enter the area with their motorised vessel. However, alone, this would be unlikely to be as effective in achieving conservation outcomes, without a regulatory basis to drive behavioural change.

### **Maximum penalties for offences**

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified.

Setting new and amended penalty amounts is the most effective way to:-

- provide an indication to the courts and potential offenders of the serious nature of each offence and the consequences that the offences are likely to have on the long-term survival of several species, many of which are listed as threatened under state and/or Commonwealth legislation.
- ensure consistency of approach with other offences involving threatened species administered by the department.
- ensure consistency of approach with similar environmental offences in the Queensland Statute book.

Ongoing enforcement efforts and associated public education to create awareness of the new penalty amounts is expected to assist with a reduction in negatively impacting behaviours in the marine park.

There are protections built into the sentencing system under the *Penalties and Sentences Act 1992* for a person undergoing court proceedings to determine the appropriate penalty for an offence, such that a person who cannot afford to pay the whole fine may pay the fine by instalments or order the offender be allowed time to pay the fine.

**(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation**

**Division 9, Section 58 No-Motorised Vessel Area**

First Nations peoples have a deep connection with the sea Country of the marine park, central to their identity, spirituality, culture and well-being. Significant cultural resources exist over and within the landscape of the marine park, including places and objects that have spiritual value. Several culturally significant areas have been identified via engagement with First Nations peoples with an interest in these waters and protection of these recognises the priorities and perspectives of First Nations peoples in management of the marine park.

The designated areas are small in size, collectively occupying 4.27km<sup>2</sup> or 0.07% of the total area of the marine park. The remainder of the park is open to access by motorised vessels, including areas and creek systems nearby within Tin Can Inlet with similar natural values that would offer a similar experience for marine park users unable to access the No-Motorised Vessel Areas. A specific exemption from the designated area provisions is included in this section, providing for First Nations peoples with a connection or interest in these waters to enter the No-Motorised Vessel Areas with a motorised vessel.

Establishing these Areas is enabling with respect to s28 of the HR Act that protects the distinct cultural rights of Aboriginal and Torres Strait Islander peoples.

It is therefore considered that any limitation on human rights under section 15 of the HR Act is reasonable and demonstrably justifiable.

**Maximum penalties for offences**

A maximum penalty reflects the intended seriousness of the offence. The low maximum penalty amounts in the *Great Sandy (Marine Parks) Zoning Plan 2017* may have increased the risk of persons committing an offence in the marine park by providing an insufficient deterrent, compromising the ability of the zoning plan to effectively conserve the marine environment (the primary purpose of the *Marine Parks Act 2004*).

Changes to low maximum penalty for offences in the *Great Sandy (Marine Parks) Zoning Plan 2017* that have carried over to the *Great Sandy (Marine Parks) Zoning Plan 2024* and the creation of new maximum penalties aligns penalties for similar offences under other subordinate legislation administered by the department. This meets the objective of deterring zoning plan offences and improves the consistency in the regulatory frameworks for addressing particular offences and is considered to provide a proportionate response to encourage appropriate behaviour and respect for natural and cultural values in a uniform way. A person



can pay a fine in instalments or be given time to pay. While penalties have the potential to disproportionately impact offenders from vulnerable and low socio-economic groups, the sentencing court is guided by a number of sentencing principles to aid in the awarding of a fair and appropriate penalty. It is considered that the importance of maintaining the deterrent effect of penalties for the offences outweighs the impact on this human right.

**(f) any other relevant factors**

N/A.

**Freedom of movement (section 19 of the HR Act)**

Section 19 provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

**(a) the nature of the right**

This right is based on Article 12 of the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980. The right to freedom of movement (section 19 of the HR Act) protects the right of every person lawfully within Queensland to move freely within Queensland and to enter and leave it and choose where they will live.

Section 31 of the zoning plan restricts public access to the ex-HMAS Tobruk area, unless the person has a permission to enter for diving and snorkelling, particular research or another purpose that is for the benefit of the marine park's natural and cultural resources. Under section 49 of the zoning plan, the chief executive may make a prohibited area notice that prohibits entry into a grey nurse shark area or part of the grey nurse shark area, in order for urgent action, needed to deal with a threat to a grey nurse shark in the prohibited area, to be undertaken. Under section 54 of the zoning plan, special management provisions in the designated Mon Repos Area in place between 15 October and 31 May, include that between 6pm and 6am, a person cannot enter the area without permission. Section 62 relates to Seasonal Shorebird Closure Areas, which prohibits public access, without permission, from 1 September to 31 October and between 1 March to 30 April.

These provisions limit freedom of movement by preventing people from moving freely within the relevant areas in the marine park. The limitation is considered in relation to each of the sections below.

**(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

**Division 3, Section 31 Ex-HMAS Tobruk Area**

This designated area limits access to the dive site of the ex-HMAS Tobruk. The purpose of the area includes to manage and maintain the wreck while providing for safe opportunities to appreciate, understand and enjoy the area and minimise harm or distress to living organisms in the area. Restricting access to the area ensures that use of the ex-HMAS Tobruk area is limited to certain activities in keeping with the objects of the area, ensuring the long-term conservation of the natural and cultural values of the designated area as well as its recreational value as a popular dive location within the marine park.

### **Division 6, Section 49 Prohibited Area Notice – Grey Nurse Shark Area**

The Grey Nurse Shark Area is a designated area that provides protection to the critically endangered grey nurse shark and mitigates both the impacts of disturbance by divers on their natural behaviour and habitat degradation through regulation of diver activities within the area. This location (at Wolf Rock, near Double Island Point) is one of only four key aggregation sites for grey nurse sharks, the only known site in the Great Sandy Marine Park (GSMP), and the only known gestation site on the east coast of Australia for pregnant female grey nurse sharks. There are times when prohibiting access to the designated area, or part of it, may be required to undertake urgent action to deal with a threat to a grey nurse shark in the area. Removal of any risk of human interference maximises the success of an urgent action being undertaken to support the survival of this critically endangered species.

### **Division 7, Section 54 Mon Repos Area**

There is only one genetic stock of loggerhead turtles in the South Pacific Ocean with much of the nesting occurring on beaches of GSMP, especially along the Woongarra coastline. Mon Repos is an internationally significant turtle rookery, with the beach at Mon Repos supporting the largest number of nesting loggerhead turtles on the eastern Australian mainland. It is also one of the two largest rookeries for this species in the South Pacific Ocean. Successful breeding here is critical for the survival of this endangered marine turtle. Nesting turtles, hatchlings, and fragile nesting sites are at risk of disturbance and interference from members of the public who are seeking out their own turtle experience, which can negatively impact on turtle survival. The Mon Repos Area therefore prohibits nightly access to the Area for the general public during the turtle nesting season, unless a person holds a permission to enter the designated area.

### **Division 11, Section 62 Seasonal Shorebird Closure Area**

The purpose of the Seasonal Shorebird Closure Area is to prevent anthropogenic disturbance of shorebirds, particularly migratory shorebirds at the marine park's most significant shorebird roost sites. Many shorebird species are endangered or critically endangered and all migratory shorebirds are Matters of National Environmental Significance. The Closure Area provisions prohibit public access from 1 September to 31 October (when birds arrive in the marine park depleted in energy from their migration) and between 1 March to 30 April (when birds need to gain weight for their return journey to the northern hemisphere). In removing the risk of disturbance during these critical times, the Closure Area is intended to help reduce further declines of threatened shorebird species, through maximising their chance of successful migrations for breeding.

### **(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose**

#### **Division 3, Section 31 Ex-HMAS Tobruk Area**

Restricting public access to the designated ex-HMAS Tobruk area conserves the natural, cultural and subsequently the recreational value of this popular diving location in the marine park. Restrictions aim to minimise conflicting uses of the area and impacts to the area and ensure it's natural, cultural and recreational values endure for the long-term. Restricting access safeguards the area from over-use and conflicting use at any given time and provides for diving to be undertaken in the area in a way that supports the primary purpose of the area to be

maintained as a dive site. The allowance for permissions to be granted for diving and snorkelling and research that is relevant to, and a priority for, the management of the designated area and cannot be reasonably conducted elsewhere plus other activities that the chief executive considers 'would benefit the natural and cultural resources of the marine park', provides for activities to be undertaken that promote the objects that are to be achieved for the area and assist in the management of the area.

#### **Division 6, Section 49 Prohibited Area Notice – Grey Nurse Shark Area**

Preventing public access within the designated Grey Nurse Shark Area during times when urgent action is required to deal with a threat to a grey nurse shark via the use of a prohibited area notice protects the safety and survival of grey nurse sharks in the area. Closure of certain areas to protect natural and cultural values, including threatened species, is consistent with the management approach for marine protected areas and is consistent with the zoning plan provisions in place to protect grey nurse sharks in Moreton Bay Marine Park.

#### **Division 7, Section 54 Mon Repos Area**

General public access to the Mon Repos Area is prohibited between 6pm and 6am during the turtle nesting season unless a person has permission to enter the Area, recognising the importance of the Area to nesting turtles and hatchlings and QPWS ranger-led tours in educating the public about turtle conservation. The zoning plan provisions for the Area, enable the department to regulate the total number of people on Mon Repos beach and manage their movement around turtles and nests. This contributes to the protection of turtles at critical stages of their life cycle by reducing the risk of disturbance, interference and stress for each nesting turtle and emerging hatchlings, as well as improving research capacity and enhancing visitor experience and educational opportunities for those participating in QPWS ranger-led tours.

#### **Division 11, Section 62 Seasonal Shorebird Closure Areas**

Evidence shows that shorebirds take flight when disturbed and that repeated disturbance depletes critical energy reserves and can prevent individuals from gaining the necessary weight to successfully complete their migration. The populations of a number of migratory shorebird species is declining within the marine park, some by more than 10% per year. Preventing public access to the four most significant roost sites within the marine park at these critical times removes the risk of disturbance (which has been recorded at each of the 4 sites) and contributes to reducing further population declines of these threatened shorebird species.

Closure of areas to protect natural and cultural values, including threatened species, is consistent with the management approach used in the Great Barrier Reef Coast Marine Park, which seasonally restricts access to significant seabird sites. This site-based management approach is consistent with that already implemented for other threatened species and associated threatening activities in the GSMP and Moreton Bay Marine Park, such as designated Go Slow Areas where speed restrictions are implemented to reduce the risk of boat strike for turtle and dugong.

#### **(d) whether there are any less restrictive and reasonably available ways to achieve the purpose**

A less restrictive option includes community education to raise awareness of the impacts of humans and behaviour on threatened species and areas requiring special management in the

marine park. Research has demonstrated a link between broad community support for marine protected areas, such as marine parks, and successful conservation outcomes through community education. However, the public is often more receptive to some messages about environmental issues than others, for a wide variety of reasons, which reduces the efficacy of education initiatives, irrespective of the amount of resources applied. For instance, shorebirds are not typically as charismatic and obvious as some other marine species that occur in the marine park such as whales and dolphins, and it can be challenging to evoke a sense of empathy and understanding at a level that will result in a change in behaviour to reduce shorebird disturbance, without a regulatory basis to drive behavioural change. Given the current conservation status of these threatened species, waiting for behavioural change to occur as a result of implementing a community education program could have irreversible negative impacts on their populations.

### **Division 3, Section 31 Ex-HMAS Tobruk Area**

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified. A level of access to the designated area is being maintained that is consistent with the purpose of the area and in particular to manage the area as a recreational dive site.

### **Division 6, Section 49 Prohibited Area Notice – Grey Nurse Shark Area**

The restriction would be a temporary restriction if implemented and will only occur if the chief executive makes a decision that urgent action is required. Such a decision would be informed by expert, scientific advice and is unlikely to be required very often.

The prohibited area notice can only be applied to the Grey Nurse Shark area or a part of it and must define the boundaries of the prohibited area, hence the access restriction would only apply to a confined part of the marine park. In addition, the notice cannot be in place for longer than 180 days (which includes one extension of 90 days).

### **Division 7, Section 54 Mon Repos Area**

At Mon Repos, large numbers of people present on the beach risks disturbance to turtles. The only way to mitigate this is to regulate access to limit the number of people on the beach. The access restriction has been tailored to the turtle nesting season, e.g. between 15 October and 31 May, and during the times of day, i.e. between 6pm and 6am, that are most critical for nesting turtles and hatchlings and therefore most at risk from the impacts of disturbance. Throughout the remainder of the year outside of turtle nesting season, there are no beach access restrictions in place under the zoning plan.

### **Division 11, Section 62 Seasonal Shorebird Closure Areas**

Public access is prohibited at these sites during the most critical times for shorebirds (ie. upon arrival when birds are weakened from their journey 1 Sep-31 Oct and when they are replenishing energy resources for departure 1 Mar-30 Apr) to minimise disturbance with the aim of maximising their chances of survival and completing their migration.

Limitations on freedom of movement only apply in these distinct, defined and relatively small areas of the marine park.

**(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation**

**Division 3, Section 31 Ex-HMAS Tobruk Area**

A level of access to the ex-HMAS Tobruk area for certain purposes is provided for by the zoning plan provisions. Allowing access for marine park users to enter the area with a permission only for particular purposes, provides for the long-term protection of the natural, cultural and recreational values of the ex-HMAS Tobruk area. Restricting access by other marine park users, e.g. who may be in recreational boats, separates this activity from diving which aids in management of the area from a safety and utility perspective.

It is considered that any limitation on human rights under section 19 of the HR Act is reasonable and demonstrably justifiable.

**Division 6, Section 49 Prohibited Area Notice - Grey Nurse Shark Area**

The benefit gained from the provision enabling the prohibited area notice is to enhance the protection of a critically endangered species if the need arises.

The area within which the prohibited area notice would apply, is the only known gestation site for pregnant female grey nurse sharks on the east coast of Australia with approximately half of the mature female sharks, that comprise the total east coast population of approximately 2000 individuals, being recorded at Wolf Rock. In the unlikely event of a situation where urgent action is necessary, the provision to enable restriction of public access is considered to contribute to the protection, and long-term survival, of the critically endangered grey nurse shark. Improved protection and conservation of the grey nurse shark is necessary to meet national and international threatened species protection obligations and to support the continued unique experience to dive with this threatened, iconic species, adding to the marine park's growing national and international reputation as a nature-based tourism destination.

It is considered that any limitation on human rights under section 19 of the HR Act is reasonable and demonstrably justifiable.

**Division 7, Section 54 Mon Repos Area**

A level of access to the beach overnight between 6pm and 6am remains for those people who are part of ranger-led tours. Although the restrictions prevent other members of the public using the beach between 6pm and 6am (e.g. for walking) during the months of October to May, there are many other beaches and foreshore areas in the vicinity where access is not constrained during these times. These access restriction measures also complement the long-held management measures in place through the Conditions of Entry at the Mon Repos Turtle Centre. Being able to view turtles during the nesting season at Mon Repos is one of the marine park's key attractions and the turtle encounter tours at Mon Repos are a major tourism drawcard for the region, which rely on the health, abundance and distribution of these species improving over time.

The zoning plan is expected to benefit threatened species and the experiences of researchers with permission to enter and visitors on tours and it is therefore considered that any limitation on human rights under section 19 of the HR Act is reasonable and demonstrably justifiable.

## **Division 11, Section 62 Seasonal Shorebird Closure Areas**

The unique opportunity to view internationally significant shorebirds throughout the marine park is one of the marine park's key attractions and drawcard for the region. Improved protection and conservation of these and other threatened species that reside in or migrate to the marine park adds to the marine park's growing national and international reputation as a nature-based tourism destination.

The relatively minor imposition on a small number of local residents and visitors to the park in 4 small locations is outweighed by the broader benefits to threatened species and potential tourism opportunities.

It is therefore considered that any limitation on human rights under section 19 of the HR Act is reasonable and demonstrably justifiable.

### **(f) any other relevant factors**

Not applicable.

## **Property rights (section 24 of the HR Act)**

Section 24 of the HR Act provides for property rights.

### **(a) the nature of the right**

This right is modelled on article 17 of the Universal Declaration of Human Rights. The right essentially protects a person from having their property unlawfully removed. Subsection (1) provides that all persons have the right to own property alone or with others. Subsection (2) provides that a person must not be arbitrarily deprived of their property.

## **Zoning plan effects on commercial fishing activities**

The Department of Agriculture and Fisheries (DAF), through its administration of the *Fisheries Act 1994*, is responsible for the management of Queensland's fisheries. All fishing in the marine park is subject to fisheries legislation, which utilises a range of input controls (e.g. spatial closures, gear restrictions) and output controls (e.g. bag limits, total allowable catch limits, quota allocation) to manage the recreational and commercial catch. Commercial fishers are also required to hold a licence under the fisheries legislation and associated symbols to operate in each commercial fishery.

Recent reforms to Queensland's fisheries management, through the implementation of the Queensland Sustainable Fisheries Strategy 2017-2027, have resulted in the introduction of a quota-based management system for the key species caught in the commercial net, pot and line fisheries. This has modernised the management of these commercial fisheries and brings their management in-line with the similar, market-based effort unit system that has applied to the management of the commercial trawl fishery for a number of years.

Quota-managed commercial fisheries define a maximum total weight (or quantity) for each of the key fisheries that can be caught in a year (termed the total allowable commercial catch (TACC)). Individuals then hold quota units that entitle the holder to take a proportion of the TACC for the relevant fishery. Similarly, effort units in the trawl fishery entitle the holder to fish at a particular level of exertion. Quota and effort units have property-like characteristics

and can be sold or leased. Property rights may be limited when the amount and value of quota is reduced or when the use of effort units is restricted or prevented.

While DAF is the primary agency responsible for fisheries management, zoning plan provisions that restrict or prevent the operation of commercial fishing activities in particular areas of the marine park, can interact with these property-like rights by affecting the extent to which an individual holder can use their quota and effort units. Additionally, zoning plan provisions that significantly affect the overall area available to fish, may lead to decisions by DAF to alter the TACC and/or individual transferable quota (ITQ) or effort units, which in turn limit property rights.

The zoning plan includes a range of measures (e.g. Marine National Park and Conservation Park zones, designated areas and non-conforming use provisions) to enhance the conservation of the natural and cultural values within the park while balancing use. The overall area of the marine park that is available for the various commercial fisheries to operate is reduced in comparison to the Marine Parks (Great Sandy) Zoning Plan 2017. The scale of impact on the individual fisheries from this change is variable. Many of the commercial fisheries that operate within the marine park, are also entitled to operate in areas outside the boundary of the marine park, for example the 'fishery area' prescribed for some of these fisheries includes the entire Queensland East Coast. Therefore, the scale of impact of the zoning plan on commercial fishing related property rights is considered in the context of impact on the overall area of Queensland waters that each of the impacted fisheries are lawfully entitled to operate.

For the otter trawl, line, crab and harvest fisheries, the zoning plan has been assessed to result in minor to moderate impacts to the fishing grounds for these fisheries within the marine park. When the zoning plan is further considered in relation to the overall area (within and outside of the marine park) that each of these fisheries can lawfully operate, the significance of the zoning plan impacts to each of these fisheries are further reduced. As such, there will be no requirement to adjust TACC and ITQ / Effort units for these fisheries in response to the zoning plan and therefore the property rights of fishers operating in these fisheries will not be limited.

While property rights may not be limited, it is recognised that the zoning plan may result in some fishers operating in these fisheries in the marine park needing to modify their fishing operations, move to alternative fishing locations to remain economically viable or choose to exit the industry. These localised impacts on individual fishers have been recognised with an impact mitigation package to support fishers directly affected by the zoning plan. This package includes ex-gratia payments to address the equivalent of 3 years of lost probable catch as a direct result of the zoning plan, fishing licence and symbol buybacks and support for retraining.

Two commercial fisheries undertaken within the marine park are more significantly impacted by the zoning plan and these impacts are of a scale that will interact with property rights. These fisheries are the large mesh gill net and ring net fishery (operating under the N1 and N2 fisheries symbols), and the beam trawl fishery (operating under the T6 fisheries symbol).

The zoning plan significantly impacts many of the most productive gill net and ring net fishing grounds within the marine park. In comparison to the Marine Parks (Great Sandy) Zoning Plan 2017, this form of fishing is prohibited from the Great Sandy Strait, Tin Can Inlet, Burrum River, Elliot River and Baffle Creek as a result of the removal of the designated Great Sandy Area and in various other locations across the park as a result of new or expanded Conservation

Park (CP) and Marine National Park (MNP) zones. The zoning plan includes 8 new and 12 expanded MNP zones, which when combined with new and expanded CP zones results in a total area of 28.6% of the marine park in highly protected zones, where fishing with large mesh gill nets and ring nets is prohibited. The zoning plan is expected to reduce the overall net fishing harvest within the marine park by 67% (by weight).

Under fisheries legislation the large mesh gill net and ring net fishery that operates within the marine park is managed as part of the net fishery management region 5 that extends from the northern limit of the marine park, south to the Queensland/New South Wales border. Specific TACC limits and ITQs for the key net fishery species are applied within this management region. When considered in the context of this larger fishery management region, the impact of the zoning plan is sufficient to require buyback of ITQ and adjustment of the TACC for some species within this management region, to ensure the continued sustainability of net fishing in the remaining areas of the management region. The requirement for this adjustment demonstrates that the zoning plan is limiting with respect to the property rights of the commercial fishers operating in the large mesh gill net and ring net fishery.

More broadly, the net fishery along the Queensland East Coast has also been impacted by an initiative of the Queensland and Australian Governments to reduce the use of commercial large mesh gill nets within the Great Barrier Reef World Heritage Area (GBRWHA) by the end of 2023 and to completely phase out the use of these nets by June 2027. This management initiative addresses local and international concern with the high risk that these large mesh gill nets present to threatened species (e.g. turtle and dugong).

The combined effects of the zoning plan and the phase out of gill netting in the GBRWHA requires the Queensland government to implement a major restructure of the entire Queensland East Coast gill net fishery. This restructure involves the compulsory removal of all existing east coast large mesh gill net licence symbols, compulsory and voluntary buyback of ITQ, and adjustment of TACC for some species. A limited number of new, temporary and highly conditioned licence symbols will be offered to allow a level of large mesh gill netting to continue within the GBRWHA through to June 2027 and a new licence symbol will also be offered to enable large mesh gill net fishing to continue in State waters south of the GBRWHA (i.e within the area between Baffle Creek and the Queensland/New South Wales Border, including the Great Sandy Marine Park). To ensure the sustainability of the fishery in this southern area, the quantity of ITQ that will be bought back and the reduction in the TACC for specific species in this area will consider the reduction in fishing grounds resulting from the zoning plan.

In addition to the buyback of gill net fishing ITQ, licences and symbols at a fair market value, the package will provide further support for net fishers impacted by the combined changes including, an offer to buy back their entire fishing licence packages if an impacted individual wishes to exit the industry, ex-gratia payments to address the equivalent of 3 years of lost probable catch from the areas of the marine park in which their operations will be impacted by the zoning plan, and buyback of fishing gear and support for retraining.

The T6 beam trawl fishery operates almost entirely within the marine park, within a fishery area prescribed under fisheries legislation that extends over the southern half of the marine park, from Double Island Point to the Burrum River. While this fishery area is relatively large,



since 2006 beam trawling has only occurred within a very small part of this area, due to the zoning arrangements in the *Marine Parks (Great Sandy) Zoning Plan 2017*, and the fact that much of this area is unsuitable for this form of commercial fishing.

The key location within the T6 fishery area where beam trawling has occurred is within the lower reaches of the Mary River. Under the *Marine Parks (Great Sandy) Zoning Plan 2017* a non-conforming use provision allowed for a small number of beam trawl fishers who had used this area prior to the marine park being declared in 2006 to continue operating in the Conservation Park zone, that would normally prohibit beam trawling. The number of beam trawl fishers who met the conditions of the non-conforming use provision has reduced over time to the point that only two beam trawl fishers still operated in the area prior to the new zoning plan commencing. These two fishers have recorded minimal catch from the area in recent years. The zoning plan no longer includes the non-conforming use provision and therefore prohibits the two remaining fishers from using this area.

The zoning plan limits property rights for the two beam trawl fishers by removing an area that was previously available for beam trawling. There will be limited opportunity for the two affected fishers to relocate their fishing effort. Similar to the net fishery, the affected fishers will be eligible for impact mitigation that will include an offer to purchase their T6 beam trawl symbols at a fair market value, ex-gratia payments to address the equivalent of 3 years of lost probable catch recorded from within the non-conforming use area described in the *Marine Parks (Great Sandy) Zoning Plan 2017* and support for retraining.

### **Maximum penalties for offences**

The zoning plan prescribes maximum penalty amounts for associated offences in the zoning plan, some of which are new and some of which have increased, compared to the *Marine Parks (Great Sandy) Zoning Plan 2017*. Setting maximum penalties for offences limits property rights to the extent that it requires the payment of a monetary sum in the event that a magistrate determines a person to be found guilty in a court of law of non-compliance against a zoning plan provision. A maximum penalty represents the maximum financial cost on a person found guilty of an offence against a zoning plan provision.

### **(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

#### **Zoning plan effects on commercial fishing activities**

#### ***Prohibition of commercial large mesh gill nets and ring nets from Baffle Creek, Elliott River, Burrum River system, Great Sandy Strait and Tin Can Inlet and new and expanded Marine National Park and Conservation Park zones***

Baffle Creek, Elliott River, the Burrum River system, Great Sandy Strait and Tin Can Inlet are all waterways that are universally accepted by researchers, land and water managers and the community as containing high ecological values. For example, the Great Sandy Strait is an internationally important wetland under the Ramsar Convention, it includes part of the K'gari (Fraser Island) World Heritage Area (WHA) and is currently on the tentative list as an extension of the existing K'gari (Fraser Island) World Heritage Area. The Burrum River, Great Sandy Strait and part of Tin Can Inlet form part of a Dugong Protection Area, declared in 1998

under fisheries and nature conservation legislation, in recognition of the habitat values that these waterways provide to this threatened species.

When the first zoning plan for the marine park was developed in 2006, the designated Great Sandy Area overlaid the Conservation Park zones in these waterways, to allow commercial net fishing to occur where, except for bait netting, it would normally be prohibited by this zone type. The designated Great Sandy Area has been highly contentious since the first zoning plan was created, with conservation-based concerns regarding the risks that commercial fishing nets posed to threatened species in these waterways being one of a number of issues driving contention.

The designated Great Sandy Area is not included in the zoning plan hence the use of large mesh gill nets and ring nets is prohibited, eliminating the risk of fishing net entanglement and mortality for threatened species, such as dugong, turtles and dolphins, from these nets within these waterways which is expected to contribute to their recovery and long-term survival, and address the long-term conflict regarding net fishing in these waterways that eroded community confidence in the marine park management.

Similarly, Conservation Park zones and Marine National Park (MNP) zones, both highly protected marine park zones, provide high conservation benefits for the marine park in their provision of greater protection to habitats and species, by restricting extractive and impacting activities (e.g. physical disturbance). Protection of biodiversity by ensuring representative areas of all habitat types within marine protected areas (including within MNP zones), is a well-established approach to implementation of the United Nations Convention on Biological Diversity (CBD) targets for protection of biodiversity and marine conservation.

### ***Prohibition of beam trawling from the lower reaches of the Mary River***

Beam trawling, like other forms of bottom trawling, is a commercial fishing activity that involves significant interaction with, and disturbance of, seafloor habitats. The fishery is contentious in the community due to its physical interaction with benthic habitat and its capture of non-target species (by-catch). Given its physical habitat interaction, beam trawling (along with all other forms of trawling), is normally only allowed within General Use (GU) zones of the GSMP and other marine parks in Queensland. However, the *Marine Parks (Great Sandy) Zoning Plan 2017* included a non-conforming use provision to allow beam trawling to also be conducted within the CP zone within the lower reaches of the Mary River and within an area extending one kilometre from the Mary River mouth, by persons who had continuously held a licence to operate in the beam trawl fishery in this area since the start of 31 August 2006.

The prohibition of beam trawling from the lower reaches of the Mary River in the zoning plan provides conservation benefits by immediately removing habitat impacts associated with beam trawling, an activity that is not in keeping with the objects of this highly protected zone of the marine park. This aligns with, but brings forward, the management intention of the *Marine Parks (Great Sandy) Zoning Plan 2017* provisions, to ultimately discontinue the activity from this area of the marine park.

### **Maximum penalties for offences**

The maximum penalty amount that can be prescribed for a zoning plan offence under the Marine Parks Act is 165 penalty units. A maximum penalty is the highest penalty that can be

imposed on a person in a court of law if they are found guilty of committing an offence against a zoning plan provision and they are used as a basis for setting the value of Penalty Infringement Notices, which are prescribed in the *State Penalties Enforcement Regulation 2014*.

Fourteen maximum penalty amounts for offence provisions prescribed in the *Marine Parks (Great Sandy) Zoning Plan 2017*, that are included in the *Marine Parks (Great Sandy) Zoning Plan 2024*, did not reflect the impact that a person committing the offence may cause on the natural or cultural values of the marine park and were inconsistent with the Queensland Statute Book by being low in comparison with penalty amounts for similar offences under other environmental legislation.

The increase in the value of the maximum penalty in the zoning plan better reflects the potential detrimental impacts on the marine park resulting from non-compliance. The increase brings the value of these penalties, in line with penalties for similar offences established under other Queensland environmental legislation.

Imposing penalties for offences is a widely accepted and common way of implementing compliance with legislation and deterring unwanted behaviours. Imposing new and increased maximum penalties for zoning plan offences contributes to protection of the environment, which is consistent within a free and democratic society.

**(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose**

**Zoning plan effects on commercial fishing activities**

***Prohibition of commercial large mesh gill nets and ring nets from Baffle Creek, Elliott River, Burrum River system, Great Sandy Strait and Tin Can Inlet and new and expanded Marine National Park and Conservation Park zones***

For some time, conservation stakeholders have been concerned that by allowing commercial net fishing to occur in the waterways of Baffle Creek, Elliott River, the Burrum River system, Great Sandy Strait and Tin Can Inlet, the GSMP was not delivering its threatened species protection obligations at a state, Commonwealth and international level.

These concerns are supported by a level 2 ecological risk assessment of the large mesh net component (gill nets and ring nets) of the East Coast Inshore Fin Fish Fishery, conducted by DAF in 2021 (ECIF Large Mesh SOCC Level 2 ERA), that concluded that large mesh gill nets and ring nets present a higher risk of entanglement and mortality to a range of the threatened species (due to drowning for air breathing species that interact with nets) that utilise these waterways, compared to other netting apparatus (e.g. bait nets, tunnel nets, set pocket nets). The prohibition of commercial large mesh gill nets and ring nets from these waterways in the zoning plan significantly reduces the risk of fishing net entanglement and mortality for threatened species by removing the commercial net fishing methods that present the greatest risk of entanglement and mortality.

The prohibition aligns with the broader Queensland Government initiative to phase out the use of large mesh gill nets from the Great Barrier Reef World Heritage Area. This initiative also

recognises the risk to threatened species and aims to address local and international conservation concerns regarding the impacts of these nets on threatened species.

The increased MNP and CP zone network in the zoning plan integrates best management principles for habitat and biodiversity protection, marine planning principles and CBD targets for improved conservation of the marine environment. There are examples from the Moreton Bay and Great Barrier Reef Coast marine parks that demonstrate greater resilience and biodiversity of habitats and species resulting from improved zoning protection.

### ***Prohibition of beam trawling from the lower reaches of the Mary River***

Removal of beam trawling will deliver an immediate conservation benefit to this section of the CP zone through the elimination of the existing and potential habitat disturbance caused by beam trawling.

### **Maximum penalties for offences**

Imposing maximum penalties for offences in the zoning plan supports the objective of deterring negative behaviours that put the natural and cultural values of the marine park at risk, thereby improving conservation of the marine park values, including the long-term survival of threatened species.

Maximum penalties signal to the community and the judicial system the serious nature of committing the offence in terms of its potential detrimental impacts on the natural and cultural values of the marine park. Imposing an appropriate deterrent to committing an offence and hence subsequent compliance with management provisions is expected to improve the status of local populations of various threatened species and the integrity of cultural resources of importance to First Nations peoples. Sustaining the natural environment for the future is in the public benefit, with the components of the environment providing a vast array of functions and ecosystem services including those that benefit the community and contribute to the survival of the human population.

### **(d) whether there are any less restrictive and reasonably available ways to achieve the purpose**

#### **Zoning plan effects on commercial fishing activities**

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified. Alternative options to removing the designated Great Sandy Area, involving phasing out of licenses over a longer period of time were explored in order to allow fishers to continue to benefit economically from the activity for a period of time to allow restructuring their business to minimise economic loss. However, the risk to threatened species and habitats within a highly protected zone of the marine park would continue under these options and therefore they were not considered to be reasonable alternatives.

Similarly, alternative zoning options were considered that involved lesser areas of marine park habitats protected in MNP and CP zones, however these options did not meet Convention on Biological Diversity (CBD) international conservation targets or Scientific Reference Group (SRG) representation targets. Other options did not provide a representative, comprehensive and integrated zoning plan framework in accordance with best practice management principles and resulted in minimal conservation gains.

### **Maximum penalties for offences**

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified.

Without a regulatory basis to drive behavioural change, public education regarding acceptable behaviour to protect the marine park's natural and cultural values is unlikely to be effective in achieving conservation outcomes. The department will continue to undertake compliance activities and associated public education to create awareness of offences and associated fines which is expected to assist with reducing negative behaviours in the marine park.

As outlined in this Human Rights Certificate for section 15 of the HR Act, there are protections built into the sentencing system under the *Penalties and Sentences Act 1992* for a person undergoing court proceedings to determine the appropriate penalty for an offence, such that a person who cannot afford to pay the whole fine may pay the fine by instalments or the offender may be allowed time to pay the fine.

### **(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation**

### **Zoning plan effects on commercial fishing activities**

The Great Sandy Marine Park is recognised as containing high ecological value. The Great Sandy Strait is an internationally important wetland under the Ramsar Convention, it includes part of the K'gari (Fraser Island) World Heritage Area and is currently on the tentative list as an extension of the existing K'gari (Fraser Island) World Heritage Area. The Great Sandy Area waterways of Burrum River, Great Sandy Strait and part of Tin Can Inlet form part of a Dugong Protection Area, declared in 1998 under fisheries and nature conservation legislation, in recognition of the habitat values that these waterways provide to this threatened species. The marine park incorporates extensive networks of declared Fish Habitat Areas.

Removal of the Great Sandy Area, expansion of highly protected zones, and prohibition of beam trawling are expected to provide a net benefit to Queensland and deliver long-term benefits for the community, in protecting biodiversity, sustaining habitats and species and increasing productivity of ecosystems, leading to increased opportunities for cultural, recreational and commercial activities. The current high value of nature-based tourism and recreational fishing to the region relative to commercial net fishing, is expected to increase and subsequently enhance the regional economy. Changes to the net fishery align with a broader Queensland Government initiative to phase out the use of large mesh gill nets from the Great Barrier Reef World Heritage Area. Prohibition of beam trawling recognises the importance of habitat protection in these areas.

These zoning plan provisions were informed by an extensive planning process involving engagement with First Nations peoples and consultation with the community and other stakeholders, to deliver a zoning plan that effectively balances conservation and sustainable use.

Overall impacts to the trawl, crab, line and harvest fishing sectors are predicted to be low to moderate and will primarily result from reduced access to fishing grounds from the expansion

of the Marine National Park zone network and changes to other zones under the zoning plan compared to the *Marine Parks (Great Sandy) Zoning Plan 2017*.

While the prohibition of large mesh gill nets and ring nets has significant impacts on the commercial net fishery, several commercial net fishing methods that present a lower risk to threatened species, are being retained (i.e. set pocket, tunnel netting) to allow for some local fish and prawns to be sourced from these waterways for purchase by the public for consumption or use as bait.

Impacts of the zoning plan on affected commercial fishers and post-harvest seafood businesses are being addressed through an impact mitigation package.

### **Maximum penalties for offences**

The maximum penalties in the zoning plan are a proportionate response to the disparity that exists between penalties under different legislation for committing a similar nature of offence. The more consistent regulatory framework provided by the zoning plan will assist to encourage improved marine park user behaviour, with the aim of ultimately improving protection of the marine park's natural and cultural values. Any deprivation of property in the form of money as a result of imposing maximum penalties, including increased penalties compared to the Marine Parks (Great Sandy) Zoning Plan 2017, is considered to be proportionate and not arbitrary.

The sentencing court is guided by a number of sentencing principles to aid in the awarding of a fair and appropriate sentence. A person who is issued with a penalty may pay the fine by instalments or is allowed time to pay the fine. Any limitation on property rights is justified considering the importance the deterrent effect of penalties for offences and the benefit to the community by better protection and conservation of the marine environment into the future.

#### **(f) any other relevant factors**

Commercial fishers affected by the zoning plan are eligible to apply for financial mitigation as part of the commercial fisheries impact mitigation package implemented as an outcome of the *Marine Parks (Great Sandy) Zoning Plan 2017* review.

The Queensland Government initiative involves a broadscale fisheries licence buyout and structural adjustment package for net and other fisheries.

### **Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).**

#### **(a) the nature of the right**

The HR Act specifies that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. The Act says that Aboriginal and Torres Strait Islander peoples must not be denied this right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

Section 28 of the HR Act is based on two international instruments. One is article 27 of the International Covenant on Civil and Political Rights, which Australia ratified in 1980. The other is articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Australia announced support for this declaration in 2009.

In the zoning plan, Part 2, Divisions 2-5 consist of provisions relating to the entry or use of zones with or without permission including in relation to the traditional use of marine resources. Section 102 of the zoning plan relates to entry or use and for taking protected species (which include turtles and dugong). Both Part 2 and section 102 engage the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

### **Traditional use of marine resources and taking protected species**

The zoning plan defines ‘traditional use of marine resources’ as meaning “the undertaking of activities in an area of the marine park, in accordance with Aboriginal tradition or Island custom, to satisfy the personal, domestic or communal needs of a traditional owner for the area.” A Traditional Use of Marine Resources Agreement (TUMRA) is a voluntary agreement that can be prepared by a traditional owner group for an area of the marine park, that provides for the traditional use of marine resources in the area. The chief executive may accredit a TUMRA under Part 5 of the zoning plan.

In Part 2 of the zoning plan, entry and use provisions refer to the traditional use of marine resources that can be undertaken with or without permission. Without permission, traditional use of marine resources can be carried out if it involves an activity that can usually occur without permission within a particular zone, or if it is carried out under an accredited TUMRA.

In all other circumstances, e.g. if involving an activity that cannot usually be undertaken in a particular zone without permission (e.g. fishing in a Marine National Park zone), or traditional use that is not carried out under an existing TUMRA (noting that for most of the sea Country in the marine park, TUMRAs do not exist), the entry or use provisions provide that a marine park permission is required (under the *Marine Parks Regulation 2017* Part 3; a person may apply to the Chief Executive for the grant of permission for a marine park or a part of a marine park).

Under section 102 of the zoning plan, if a person wishes to enter or use an area in the marine park to take an animal (or plant) of a protected species, this must be done in accordance with a TUMRA, if one exists, otherwise a marine park permission (under the *Marine Parks Regulation 2017* Part 3) is required.

In the marine park, only one TUMRA currently exists over the Port Curtis Coral Coast (PCCC) Sea Country within the northern part of the marine park. While no TUMRAs have been developed in other areas of the marine park, Butchulla Country is recognised via a native title determination over part of Hervey Bay, the waters of the Great Sandy Strait and south to Double Island Point, and the Kabi Kabi peoples have a connection to and interest in the waters at the southern extent of the marine park (a native title claim is in progress but is yet to be determined for this area).

The effect of the zone entry or use provisions and section 102 in the absence of a TUMRA (i.e. throughout the majority of the marine park) or not in accordance with an existing TUMRA (i.e. applicable in PCCC Country), is that a marine park permission is required to carry out traditional use of marine resources within the marine park (outside what may usually occur as of right in a particular zone) and to take protected species.

The requirement for a marine park permission to enter or use zones to carry out traditional use of marine resources or take protected species in the circumstances described above, is a limitation on cultural rights, in particular the right:

- (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
- (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom.

### **Zoning plan effects on commercial fishing activities**

As discussed above in consideration of limitations on property rights, the zoning plan includes a range of conservation measures that will impact on commercial activities in the marine park. Most significantly, the prohibition of commercial large mesh gill nets and ring nets from Baffle Creek, Elliott River, the Burrum River system, Great Sandy Strait and Tin Can Inlet, new and expanded Marine National Park and Conservation Park zones and the prohibition of beam trawling from the lower reaches of the Mary River, will result in the discontinuation of a number of commercial fishing operations with some commercial fishers likely to exit the industry. In a similar way that these changes limit property rights, they interact with Aboriginal and Torres Strait Islander peoples' ability to maintain and strengthen their distinctive spiritual, material and economic relationships with waters and coastal seas with which they have a connection under Aboriginal and Torres Strait Islander tradition (subsection 28(2)(d), in the circumstance that there are Aboriginal and Torres Strait Islanders who are commercial fishers in the marine park.

### **(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

#### **Traditional use of marine resources and taking protected species**

In considering any limitation on cultural rights by the zoning plan, it is important to refer to section 211 of the Commonwealth *Native Title Act 1993* (NTA) that provides for the 'Preservation of certain native title rights and interests' and the exercise and enjoyment of native title rights and interests that include hunting, fishing and gathering or a cultural or spiritual activity that would normally be restricted by State legislation (in accordance with a license, permit), if it is for the purpose of satisfying their personal, domestic or non-commercial communal needs in exercise or enjoyment of native title rights.

The effect of section 211 of the NTA is that native title holders<sup>1</sup> may undertake traditional hunting, gathering and fishing activities throughout the marine park, if the requirements of section 211 are satisfied, including that the activity is done for the purpose of satisfying the native title holder's personal, domestic or non-commercial communal needs. The zoning plan therefore does not prohibit or restrict native title holders from exercising native title rights under section 211, and any requirement for a marine park permission to carry out traditional use of marine resources that are being carried out in accordance with section 211, is of no effect. This applies to native title holders exercising their rights and interests throughout the

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<sup>1</sup> A native title holder is someone who holds native title, s224 Commonwealth Native Title Act 1993



marine park (i.e. in PCCC Country where there is an existing TUMRA and throughout the majority of the marine park where TUMRAs have not to date been developed).

A TUMRA for the marine park, is a way to reflect native title rights by capturing traditional lore and vision relating to traditional fishing and hunting in the marine park.

A TUMRA may include information on:

- the name, or other identification, of each person covered by the agreement
- a detailed description of the area and traditional use of marine resources covered by the agreement, including a description of the activities proposed to be carried out at stated locations in the area
- the animal species proposed to be harvested and, if the species include 1 or more protected species, how many animals of each protected species are proposed to be harvested

In documenting the traditional laws and customs that apply to the area, a TUMRA recognises and acknowledges native title rights and interests as referred to in section 223 of the NTA:

*Common law rights and interests*

- (1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
  - (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
  - (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
  - (c) the rights and interests are recognised by the common law of Australia.

Requiring a person who wishes to carry out traditional use of marine resources that is not encompassed within an existing TUMRA to hold a marine park permission if it involves an activity not normally permitted within a particular zone (for example, fishing in an MNP zone or take of turtle and dugongs), provides recognition within the zoning plan of TUMRAs that have been accredited by the chief executive under Part 5 of the zoning plan; and provides for the consideration of the traditional use in light of the native title rights and interests of the First Nations peoples who have a connection and interest in the area of sea Country.

The intention of the TUMRA framework is to assist Traditional Owners in the management of sustainable traditional use of their sea country. The TUMRA captures traditional lore and aspirations for traditional fishing and hunting in the marine park and supports native title rights. A TUMRA reinforces the traditional decision-making system of Traditional Owners and involves management of contemporary sea Country issues.

For the majority of the marine park, where no TUMRA has been developed, native title holders may undertake traditional hunting, gathering and fishing activities throughout the marine park, in accordance with section 211 of the NTA, without permission. To note, native title rights are

also recognised in areas where TUMRAs have been developed. It is acknowledged that the cultural rights of Aboriginal and Torres Strait Islander peoples are broader than native title rights and that the zoning plan may limit to an extent, the cultural rights of the broader group of Aboriginal and Torres Strait Islander peoples who are not native title holders, in relation to traditional use of marine resources within the marine park. The zoning plan recognises section 211 of the NTA and the Traditional Owners that have a connection to and interest in the land and sea Country of the marine park. It is the Traditional Owners of the areas of the marine park that have an enduring, sacred connection to land and sea Country and a right to have their responsibility to Care for Country recognised.

The requirement for marine park permissions to undertake traditional use of marine resources or take protected species, which would only come into effect if an Aboriginal or Torres Strait Islander person wishes to act outside an existing TUMRA (in PCCC Country), or in the remainder of the park if it is not in accordance with the native title rights and interests in section 211 of the NTA, enables the cultural rights of these First Nations peoples under section 28 of the HR Act. It provides the opportunity for assessment of the possible effects of the proposed traditional use of marine resources on natural and cultural resources, contributing to the conservation of the marine park and threatened species and also recognises the cultural right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (s28(e) of the HR Act).

Historically, traditional hunting of turtle and dugong has been undertaken by Aboriginal and Torres Strait Islanders. However, as a result of multiple factors, populations of turtles and dugong have declined to the extent that they are listed as threatened species in State and Commonwealth legislation and one benefit of measures that conserve these species is that traditional hunting can be sustainable, providing opportunities for this activity to remain into the future.

Any limitation on cultural rights arising from marine park provisions requiring that traditional use of marine resources be undertaken in accordance with an existing TUMRA or requiring marine park permissions in other circumstances, is therefore consistent with a free and democratic society based on human dignity, equality and freedom.

### **Zoning plan effects on commercial fishing activities**

Zoning plan changes that affect commercial fishing activities, such as prohibiting commercial large mesh gill nets and ring nets from Baffle Creek, Elliott River, the Burrum River system, Great Sandy Strait and Tin Can Inlet, and increasing the MNP and CP zone network, provide and enhance conservation benefits of the marine park through greater protection of habitats and threatened species. These changes are informed by contemporary science and contribute to addressing Australia's obligations under international threatened species agreements and reflect international commitments for biodiversity protection targets.

It is unclear whether there are Aboriginal or Torres Strait Islanders undertaking commercial fishing in the marine park and therefore difficult to ascertain the extent of any impact on an economic relationship with the land and waters held by Aboriginal or Torres Strait Islanders. However, this was not identified or raised as an issue during engagement with First Nations peoples or stakeholders, including commercial fishers, during review of the zoning plan.

The purpose of the limitation, to ensure the long-term recovery of threatened species and conservation of biodiversity, is a relevant consideration in modern society. The limitations on this right are, therefore, consistent with a free and democratic society based on human dignity, equality and freedom.

**(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose**

**Traditional use of marine resources and taking protected species**

The provisions in Part 2 and section 102 of the zoning plan that require a person to act in accordance with an existing TUMRA or otherwise obtain a marine park permission, achieve the purpose of recognising native title rights and interests that are captured within a TUMRA and provide a mechanism in the marine park to support Traditional Owners in the enforcement and compliance associated with the TUMRA. The provisions currently achieve this in relation to implementation of the PCCC TUMRA, in place over PCCC sea Country in the northern part of the marine park. The provisions also seek to conserve the natural and cultural resources of the marine park, including threatened species such as turtle and dugong that are species of cultural significance and have been traditionally hunted.

Throughout the remainder of the marine park, where no TUMRAs have to date been developed, these provisions provide for the consideration of the traditional use in light of the First Nations peoples with a connection to the marine park's sea Country, supporting recognition and awareness in the community of their native title rights and interests and more broadly, cultural rights under section 28. In providing opportunity for assessment of the possible effects of the proposed traditional use of marine resources on natural and cultural resources, the provisions contribute to the conservation of the marine park and threatened species such as turtle and dugong. This in turn supports sustainability of species and traditional hunting for future generations.

In accrediting a TUMRA, the Chief Executive considers, among other things:

- the conservation of the natural resources of the marine park, including—
  - (i) the need for conserving protected species in the marine park; and
  - (ii) the capability of the relevant population of a protected species to sustain harvesting
- the need to protect the cultural resources held in relation to the marine park by traditional owners and other people
- the possible effects of the proposed traditional use of marine resources on the environment and the adequacy of safeguards for the environment and the likely effects of that use on the areas adjoining or adjacent to each relevant zone

To note, a native title holder acting in accordance with s211 of the NTA, would not require a permission to enter and use the particular zone to carry out traditional use of marine resources in the exercise and enjoyment of native title rights. Traditional hunting that is not provided for in the NTA or an existing TUMRA, i.e. that would trigger the need for a marine park permission, is not common.

Although only one TUMRA currently exists in the marine park, additional TUMRAs may be developed and accredited in future, if requested by the First Nations peoples with a connection to the sea Country of the marine park (to note, some members of the community have previously indicated an interest in developing a TUMRA). Should this occur, the zoning plan entry and use provisions would support these First Nations peoples in the implementation of their TUMRA, contribute to the effective enforcement and compliance of the TUMRA and aid in recognition of their native title rights.

### **Zoning plan effects on commercial fishing activities**

The prohibition of commercial large mesh gill nets and ring significantly reduces the risk of fishing net entanglement and mortality for threatened species by removing the commercial net fishing methods that present the greatest risk of entanglement and mortality. The increased MNP and CP zone network in the zoning plan will lead to greater conservation of the marine environment, with improved zoning protection demonstrably leading to greater resilience and biodiversity of habitats, for example in Moreton Bay and the Great Barrier Reef Coast marine parks.

Any limitation on the right of Aboriginal and Torres Strait Islander peoples to hold an economic relationship with the land and waters of the marine park, is part of the broad impact of these changes across the commercial fishing industry in the marine park. Aboriginal and Torres Strait Islander peoples will still be able to maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom through traditional fishing methods. Removal of commercial fishing from these areas potentially serves to preserve the distinctive spiritual, material and economic relationship with the land and waters, by increasing the availability of fisheries resources for cultural take.

#### **(d) whether there are any less restrictive and reasonably available ways to achieve the purpose**

No less restrictive and reasonably available ways to achieve the purpose have been identified.

#### **(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation**

### **Traditional use of marine resources and taking protected species**

The TUMRA framework originated in the management of the Commonwealth Great Barrier Reef Marine Park. It was developed after discussions with Traditional Owners, Native Title Representative Bodies, the Native Title Unit at the Commonwealth Office of the Attorney General and others, and was considered the most practical and acceptable way forward to assist Traditional Owners in the management of sustainable traditional use of sea Country.

The TUMRA framework is implemented with great success in the Great Barrier Reef Marine Park, supporting and complementing the efforts of Traditional Owners in developing and managing their own community-based plans for the sustainable use, including traditional fishing and hunting, of marine resources. Integration of TUMRAs within the marine park framework, including via TUMRA accreditation and recognising its role in the regulation of traditional use of marine resources via zone entry or use provisions, provides a mechanism to

enforce the TUMRA management framework. By integrating TUMRAs, which document traditional lore, including voluntary limits on take of species etc., in the zoning plan provisions, recognition is provided to the native title rights of the First Nations peoples with a connection to the sea Country of the marine park.

Requiring a person who wishes to carry out traditional use of marine resources that is not encompassed within an existing TUMRA to hold a marine park permission, provides for the consideration of the traditional use in light of the native title rights and interests of the First Nations peoples who have a connection and interest in the area of sea Country. This situation would only arise if an Aboriginal or Torres Strait Islander person wished to act outside an existing TUMRA (in PCCC Country), or in relation to the remainder of the park (where no TUMRA exists), in the case they are not undertaking an activity in accordance with the native title rights and interests in section 211 of the NTA. The effect of section 211 of the Commonwealth *Native Title Act 1993* is that native title holders<sup>2</sup> may undertake traditional hunting, gathering and fishing activities throughout the marine park with no requirement for a marine park permission, if the requirements of section 211 are satisfied, including that the activity is done for the purpose of satisfying the native title holder's personal, domestic or non-commercial communal needs.

The zoning plan entry or use provisions (and the TUMRA accreditation provisions) mirror those in both the State Great Barrier Reef Coast and Commonwealth Great Barrier Reef Marine Parks, and the Moreton Bay Marine Park.

In protecting native title rights of the First Nations peoples for the area and supporting conservation of the marine environment and threatened species, these entry or use provisions and section 102 of the zoning plan enable the cultural right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (28 (2)(e)).

### **Zoning plan effects on commercial fishing activities**

Provisions in the zoning plan that affect commercial fishing do not affect traditional fishing. Aboriginal and Torres Strait Islander peoples will be able to maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom through traditional fishing methods. The removal of some forms of commercial fishing from these areas in comparison to the *Marine Parks (Great Sandy) Zoning Plan 2017* potentially serves to preserve the distinctive spiritual, material and economic relationship with the land and waters, by increasing the availability of fisheries resources for cultural take.

The zoning plan provisions are for the improved conservation of threatened species and biodiversity and contribute to the delivery of the primary purpose of the *Marine Parks Act 2004*, which is to provide for conservation of the marine environment. In the absence of these provisions that may limit cultural rights, the zoning plan would remain inadequate in addressing conservation concerns, placing biodiversity at risk and would not meet community expectations for a well-managed marine park.

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<sup>2</sup> A native title holder is someone who holds native title, s224 Commonwealth Native Title Act 1993

**(f) any other relevant factors**

Not applicable.

## **Conclusion**

I consider that the *Marine Parks (Great Sandy) Zoning Plan 2024* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**LEANNE LINARD MP**  
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF  
MINISTER FOR SCIENCE AND INNOVATION

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