

Guidelines for the development of marine zone proposals

These guidelines were endorsed in March 2006 by Captain John Watkinson, former General Manager, Maritime Safety Queensland and Mr Greg Hallam, Chief Executive Officer, Local Government Association of Queensland Ltd (LGAQ).

Introduction

In 2004, the State Government undertook an extensive review into the operation of personal watercraft (PWC), more commonly referred to as jet skis, on Queensland waterways.

The review identified options for the most appropriate way to regulate the use of jet skis, taking into account the issues and interests of waterway and land users, environmental impacts, safety, general amenity, as well as the enforceability of regulations.

As a result, the ability to create zones within a waterway, where certain types of ships, including jet skis, or specific activities may be restricted or prohibited was identified as a means to improve amenity for residents of waterside communities. These areas are known as 'marine zones'.

The guidelines have been developed in support of the *Transport Operations (Marine Safety) Regulation 2016* (the Regulation) and to outline the arrangements for establishing a marine zone in Queensland waters.

Maritime Safety Queensland has compiled the guidelines in partnership with Local Government Authorities, the Department of Environment and Heritage Protection and the Department of Infrastructure, Local Government and Planning.

The purpose of the guidelines is to provide a reference for Maritime Safety Queensland and other government entities, to establish a 'marine zone' in Queensland waters. The guidelines identify each entity's requirements under the Regulation.

Background

During 2004, the Queensland Government reviewed the operation of personal watercraft (PWC), commonly referred to as jet skis. Extensive consultation was undertaken as part of this review, with the release of a discussion paper in November 2003 and a Jet Ski Management Plan for public comment in December 2004.

As a result of comments received, the government formalised the Jet Ski Management Plan through the introduction of new provisions in the Regulation which came into effect on 1 July 2005.

For local government and other government entities, the key issue is Maritime Safety Queensland's ability to establish marine zones where certain types of ships, or specific activities may be restricted, or prohibited in certain waterways. These provisions were introduced in response to growing concerns, expressed by some local government authorities and community groups, over the impact of personal watercraft use on waterside residents and other waterway users, and requests to ban or restrict these ships from certain areas.

Marine Zone Legislation

Chapter 8 of the Regulation enables Maritime Safety Queensland to create marine zones at the request of other government entities, for reasons other than marine safety. The Regulation is available on the Office of Parliamentary Counsel's website:

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/T/TranstOpMSR16.pdf>

Preliminary Matters

Who can propose a marine zone

Under section 179 of the Regulation, a government entity or a local government (the proposing entity) may make a proposal to create a marine zone.

It is important to note, the proposing entity has the onus of demonstrating whether a marine zone will provide the best outcome for the area. There may be other more suitable options available to manage waterway use. Therefore, it is the responsibility of the proponent to explore these options.

Liaison with Maritime Safety Queensland

Proposing entities are encouraged to liaise with Maritime Safety Queensland through the office of the relevant Regional Harbour Master when considering the creation of a marine zone. In particular, proposing entities are requested to identify their intentions and seek feedback from Maritime Safety Queensland on the proposed marine zone, prior to formal consultation with the public.

At this stage proposing entities may request Maritime Safety Queensland's information on ship activities in the area.

Formal consultation by proposing entity

Under section 180 of the Regulation, before a proposing entity submits a marine zone proposal to the General Manager, Maritime Safety Queensland **all** of the following must occur:

- Consultation about the proposal with:
 - The relevant Regional Harbour Master for the proposed area;
 - Each person carrying on an established business in the proposed area; and
 - The local government for the proposed area (if the proponent is a government entity).
- Publish, at least once in a newspaper circulating generally in the proposed area, a notice stating:
 - A description of the proposed area, including details of the boundaries of the area and a map or chart showing its locality;
 - The requirements to be placed on the operation of ships in the proposed area;
 - Why the proposed area should be a marine zone;
 - Any person may make a written submission about the proposal;
 - The timeframe for making submissions about the proposal;
 - The requirements for properly making submissions; and

- A contact telephone number for information about the proposal or making submissions.

Note: The consultation period must be for at least 28 days after the notice is first published.

Below is an example of the content for a published notice required under section 180 for advertising a proposal to create a marine zone for public comment:

Public notice of proposal to create a marine zone for public comment

Pursuant to section 180 of the *Transport Operations (Marine Safety) Regulation 2016*, [NAME OF PROPOSING ENTITY] has prepared a discussion paper and is now inviting submissions from public authorities, industry, interested groups and persons, and the public.

A copy of the discussion paper may be obtained by [CONTACT DETAILS]
The discussion paper may be viewed online at the [PROPOSING ENTITY'S] website at [WEB ADDRESS] or at Maritime Safety Queensland's website at www.msq.qld.gov.au. Written submissions on the discussion paper may be made to [CONTACT DETAILS].

The closing date for receipt of written submissions is [DATE].

The following references will assist with completing the consultation phase:

- Regulatory Impact Statement System Guidelines
<http://www.treasury.qld.gov.au/office/knowledge/docs/ris-system-guidelines/ris-system-guidelines.pdf>
- Engaging Queenslanders: An Introduction to Community Engagement
<http://www.qld.gov.au/web/community-engagement/community-engagement-qld/>
- Community Consultation Guide; Local Government Association of Queensland
 - Community Engagement Policy Development Guide March 2010
http://www.lgaq.asn.au/c/document_library/get_file?uuid=8c43313712ba8f085696b3d3cf0be173&groupId=10136
 - LGAQ Community Plan Development Guide March 2010

[http://www.lgaq.asn.au/c/document_library/get_file?uuid=e623a713c06b59f34df3918153835c67 &groupId=10136](http://www.lgaq.asn.au/c/document_library/get_file?uuid=e623a713c06b59f34df3918153835c67&groupId=10136)

Proposal Stage

Any government entity or local government authority may make a proposal to create a marine zone under section 179 of the Regulation.

How to make a proposal

To make a proposal to create a marine zone, the proposing entity must make the submission in writing and should submit it to Maritime Safety Queensland through the office of the relevant Regional Harbour Master.

The proposal must:

- be in the approved form contained in Appendix 1;
- include supporting information to address the marine zone assessment criteria detailed in Appendix 2; and
- satisfy the requirements of section 180 of the Regulation regarding public consultation.

Maritime Safety Queensland will be available to assist proposing entities in developing marine zone proposals. Proposing entities should contact the relevant Regional Harbour Master and/or Maritime Safety Queensland's Maritime Services Unit on (07) 3066 3924 for assistance.

Assessment Stage

Who is responsible for assessing proposals?

The proposal is to be sent to the office of the relevant Regional Harbour Master for consideration. Maritime Safety Queensland will assess the proposal using the marine zone assessment criteria detailed in Appendix 2.

Information request

At any stage during the proposal's assessment, Maritime Safety Queensland may request the proposing entity to provide additional information to support the proposal, or to clarify issues associated with the proposal.

Any requests for information and responses from the proposing entity are to be made in writing. Requests for additional information may increase the timeframe for assessing the proposal.

Timeframe

Maritime Safety Queensland may take up to 30 days after receiving all of the required information to assess the application, based on the marine zone assessment criteria. The assessment period will commence when the application and all necessary information has been received by Maritime Safety Queensland.

Successful marine zone proposals

Should Maritime Safety Queensland make a decision to support a marine zone proposal, a recommendation will be made to the Minister for Transport and Main Roads to endorse the proposal.

Maritime Safety Queensland will advise the proposing entity, in writing, when it endorses the proposal, and when the Minister for Transport and Main Roads has endorsed the proposal.

Unsuccessful marine zone proposals

Maritime Safety Queensland may not support a proposal for a marine zone for **any** of the following reasons:

- If the proposal:
 - affects the safety of ships using the area;
 - will significantly limit access to other unrestricted areas; or
 - is too restrictive on the use of waterway.
- If the proposing entity has not:
 - conducted adequate public consultation;
 - obtained sufficient support for the proposal; or
 - proposed an adequate education & enforcement plan.
- The impact on commercial operators has not been adequately mitigated.

Maritime Safety Queensland will respond to the proposing entity, in writing, detailing the reasons for the proposal being unsuccessful. The proponent may re-address the issues and re-submit the proposal for a marine zone. In these circumstances, the proponent is not required to undertake the public consultation phase again, unless there is a significant change to the proposal.

Appeal/conflict resolution process

The proposing entity may appeal to the General Manager, Maritime Safety Queensland to review a decision, under Part 5 of the *Transport Planning and Coordination Act 1994*.

The proposing entity may apply for a review of an original decision, within 28 days after notice of the original decision has been given to the proposing entity. The application must be in writing and state in detail the grounds on which the proposing entity requests the original decision to be reviewed.

A review of an original decision will be made within 28 days after the application is made. Maritime Safety Queensland will give the applicant written notice of the outcome of the review.

An appeal against the review decision may be made within 28 days of the review decision being received. The appeal must be started by filing a written notice of appeal with the appeal court and serving a copy of the notice to Maritime Safety Queensland.

Legislation Amendment Stage

Upon the Minister for Transport and Main Roads endorsing the proposal, Maritime Safety Queensland will take steps to amend Schedule 5 of the Regulation to include the details of the new marine zone.

Maritime Safety Queensland will prepare a Drafting Instruction (see Appendix 3) and lodge as appropriate, to have the Office of Queensland Parliamentary Counsel (OQPC) draft the amendment to the Regulation.

Once OQPC have drafted the amendment to the Regulation, Maritime Safety Queensland will prepare an Executive Council Minute and an Explanatory Memorandum and lodge with the Department of Transport and Main Roads,

Human Resources and Governance Branch as required, for signature by the Governor.

TMR's Cabinet Legislation and Liaison office will assist with the amendment of the Regulation. The process of amending legislation generally takes approximately 8 weeks, depending on OQPC's commitments.

Notification Stage

Upon the Regulation being amended, Maritime Safety Queensland will notify the Queensland Boating and Fisheries Patrol and the Queensland Water Police, then the proposing entity may commence the education and compliance campaigns. Proposing entities will need to provide vigorous education and enforcement strategies to support a marine zone proposal.

Education strategy for marine zone area

All proposing entities will need to inform the general public of the changes to the use of the waterways, before enforcement can take place. Proposing entities should consider some of the following suggestions for inclusion in their education strategy:

- Implement signage to identify restrictions on waterway usage;
- Prepare information on proposing entity's website detailing marine zone restrictions;
- Link to Maritime Safety Queensland website detailing marine zone restrictions;
- Disseminate educational material through mail, advertisements, radio, information sessions, upgrade of information at boat ramps; and
- Seek support from Queensland Boating and Fisheries Patrol, the Queensland Water Police, and the Department of Environment and Heritage Protection to assist with dissemination of education material.

Compliance strategy for marine zone area

Where a marine zone is established, the proposing entity will need to commit to an ongoing role in the enforcement and educational activities related to that zone.

Maritime Safety Queensland will notify the Queensland Boating and Fisheries Patrol, Queensland Water Police and stakeholders of the creation of the marine zone. While Maritime Safety Queensland and its enforcement partners will not specifically allocate resources to enforce marine zones, they will conduct enforcement activities whilst in the area.

The proposing entity does not necessarily have to conduct enforcement activities itself (although this could be the case). They should factor in enforcement issues into their proposal and devise a plan as to how these activities will be delivered. The proposing entity may consider liaising with Queensland Boating Fisheries Patrol and Queensland Water Police to develop a joint plan to enforce marine zones.

Ability to enforce marine zones

Maritime Safety Queensland may authorise officers of the proposing entity as Shipping Inspectors, under the *Transport Operations (Marine Safety) Act 1994*, with powers limited to enforcing the relevant marine zone/s. Proposing entities will only be required to undertake land based enforcement.

Maritime Safety Queensland and its enforcement partners will be responsible for the issuing of Marine Infringement Notices (MINs) on behalf of proposing entities. Therefore, the enforcement of marine zones could be as simple as taking photos of non-compliant activities from the land, making a brief statement of facts and forwarding this to Maritime Safety Queensland to action.

Review, revoke and amend a marine zone

Review a marine zone

It is the responsibility of the proposing entity to review the effectiveness of a marine zone. The review should assess the effectiveness of the marine zone by considering the following questions:

- Does the marine zone achieve its purpose?
- Are there any changes that impact on the marine zone?
- Does the marine zone meet the needs of stakeholders?

- Is the marine zone being complied with?

At the conclusion of the review, the proposing entity may wish to revoke or amend the marine zone. If so, the proposing entity should contact Maritime Safety Queensland, in writing, as outlined in sections 8.2 and 8.3 of this document.

Revoke a marine zone

The proposing entity may apply to the Minister for Transport and Main Roads, through Maritime Safety Queensland to revoke a marine zone at any time. The proposing entity must clearly outline the reasons for revoking the marine zone, in writing.

While the proposing entity is not required to undertake formal consultation, such as outlined in this document, support from stakeholders and other government agencies for the revocation of the marine zone will enable the Minister to make an informed decision.

It is recommended that agencies consult with the relevant Regional Harbour Master on the appropriate level of consultation.

Amend a marine zone

The proposing entity may apply to the Minister for Transport and Main Roads, through Maritime Safety Queensland, to amend a marine zone at any time. The proposing entity must submit another full marine zone proposal to Maritime Safety Queensland for assessment and must undertake the formal consultation process, as outlined in this document.

Appendix 1 – Marine Zone Proposal form

Under Section 179(2) of *Transport Operations (Marine Safety) Regulation 2016*, the proposal for an area to be a marine zone must be in the approved form.

This form should be completed in conjunction with Appendix 2 - Marine Zone Assessment Guidelines

INTRODUCTION

Part A - A description of the proposed area including details of the boundaries of the proposed area and a map or chart showing its locality

Part B – Summary of the requirements to be placed on the operation of a ship in the proposed area

Part C – Summary of why the proposed marine area should be a marine zone.

Part D - Summary of who the proposing entity has consulted, the nature of the consultation and the results of the consultation.

Appendix 2 - Marine zone assessment guidelines

These assessment guidelines are linked to the 'approved form' at Appendix 1. Proposing entities should consider the issues listed below when preparing a marine zone proposal.

PART A – Area Description

Principal activities occurring on the water:

- Identify whether recreational, personal water craft, commercial and fishing activities are occurring in the area.

Type of ships found in the area and extent of use:

- Identify the number of ship registrations (available from MSQ) in South-East Queensland & relevant local government areas.
- Identify the usage of boat ramps (eg. photos of usage, weekdays compared to weekends, conflicting activities).

Current marine speed limits in the area:

- Identify both existing and proposed marine speed limits including a description/map of the area.

PART B – Requirements to be placed on the marine zone

Enforcement of Marine Zone:

- Provide an enforcement plan (eg. supply of jet ski to police).
- Identify the proposing entity's ability to enforce compliance with proposed restricted areas.
- Identify the availability of the proposing entity to provide shore-based enforcement.
- Identify the proposing entity's ability to clearly define and easily communicate allowable or restricted areas of vessel operation (signage).

PART C – Why the proposed area should be a marine zone

Extent of complaints regarding vessel use in the area:

- Provide an indication of significant complaints received regarding vessel noise and behaviour that warrant an action (frequency, nature of complaints).
- Proposing entities should refer to Part 3 of the *Environmental Protection Regulation 2008*, regarding noise offences and/or the relevant local government authority's by-laws regarding noise (for example, noise arising from power boat sports (including jet skis) in waterways).
- Where have the complaints arisen from (community groups, residents, waterway users)?

Suitability of multiple uses within the area:

- Can the area cater for the needs of multiple users without adverse impact on any one user?

Suitability & accessibility of area to provide transient access:

- Can ships access be given through restricted areas to more suitable areas?
- Include a description/map of access to infrastructure, in particular boat ramps in the proposed restricted area and other local non restricted areas.

Environmental Guidelines

Identification of environmentally sensitive areas:

- Include a description/map of sensitive areas such as environmental, fishing and protection zones (RAMSAR Convention, Marine Parks, turtle nesting areas etc.).

Allowable distances from environmentally sensitive areas:

- Consider operational constraints that will be applied to minimise any potentially adverse impacts on environmentally sensitive areas, including residential areas.
- Note that operational constraints will vary according to the nature, type and extent of the environmentally sensitive area and may need to be varied or reviewed over time.

Identify any wash and bank erosion issues:

- The Australian Maritime College has undertaken studies into the effects of vessel wash which may be of assistance. Refer to the AMC website at www.amc.edu.au for further information.
- Must be attributable to vessel use in the area.

Identify any affects on water quality:

- Must be attributable to vessel use in the area.

Amenity Guidelines

Noise resulting in nuisance complaints (detail complaints, characterise noise issues – not decibels):

- Proposing entities should refer to Part 3 of the *Environmental Protection Regulation 2008*, regarding noise offences and/or the relevant local government authority’s by-laws regarding noise (for example, noise arising from power boat sports (including jet skis) in waterways).

Specific geographical considerations affecting noise levels:

- Identify the impact of (on-water) traffic density in the area of the proposed marine zone.
- Issues with parking at boat ramps can be included in the proposal, but will not be considered a primary issue.

Hours of ship operation:

- Consider the restriction of ship use during the week and on weekends at particular times.

Maximum number of ships operating in one area:

- Consider the restriction of the number of ships using an area at a particular time.

Proximity to residential and neighbouring communities:

- Include a description/map of residential density and proximity of popular infrastructure.

PART D – Results of consultation

Preparation of a discussion paper on the proposed changes, including:

- A statement of the objectives of the proposed zoning;
- A statement of why this is the best way to achieve the objectives;
- A statement (if appropriate) of any reasonable alternative way of achieving the objectives and why this alternative was rejected; and
- An assessment of the benefits and costs of implementing the zoning (the implementation of a marine zone will have cost implications for the proposing entity and people using the waterway. Without providing a formalised analysis, agencies need to demonstrate that they are prepared to allocate the costs of implementing a marine zone. The type of information required would include: cost of implementing and enforcing the marine zone, beneficial effects of the marine zone, costs of alternative options, costs associated with reviewing the effectiveness of the marine zone, some idea of the costs of not doing the intervention).

Appropriate dissemination of a draft proposal for consultation:

- Disseminated in a media likely to be read by people affected by the proposed changes and in a format that will enable them to understand the purpose and content of the notice.
- The notice must allow at least 28 days from publication of the notice for the making of comments.

Inclusion of public comment in the final application to Maritime Safety Queensland:

- Report on the number of responses for and against the proposed marine zone (as obtained through the consultation process).
- Identify the major issues raised during consultation.
- How have you dealt with the issues raised during consultation?

Impact on commercial operators mitigated:

- Commercial operators that are operating in the area need to be managed to ensure that all potential impacts are appropriately mitigated so that the final proposal is satisfactory to them.

- Particular attention needs to be given to commercial operators that have invested in infrastructure in the proposed area and are impacted by the proposal.

Findings of community consultation:

- Who, how many responses, nature of responses, majority for or against?

The final application must be reviewed by the following entities:

- Department of Environment and Heritage Protection;
- Queensland Boating and Fisheries Patrol;
- Queensland Water Police;
- Tourism Queensland;
- Adjacent Local Governments;
- Relevant Local Government, if not the proposing entity; and
- Relevant Water Management Authority/s (if applicable).

Appendix 3 – List of tasks and responsibilities for the creation of a marine zone

	Task	Responsibility	Check
1	Determine need for marine zone	Relevant proposing entity	
2	Liaise with Maritime Safety Queensland regarding the marine zone proposal	Relevant proposing entity	
3	Formal consultation	Relevant proposing entity	
4	Prepare & submit proposal for the creation of a marine zone	Relevant proposing entity	
5	Assessment of marine zone proposal. Proposing entities may be requested to provide further information to assist with the assessment of the proposal.	Maritime Safety Queensland	
6	Endorsement of marine zone proposal	Minister for Transport and Main Roads, through Maritime Safety Queensland	
7	Formal notification of whether marine zone proposal is un/successful	Maritime Safety Queensland	
8	Lodge an appeal against the decision	Relevant proposing entity	
9	Manage and resolve the appeal	Maritime Safety Queensland, under the	

		<i>Transport Planning & Coordination Act 1994</i>	
10	Amend the legislation, to include the new marine zone in schedule 5 of the <i>Transport Operations (Marine Safety) Regulation 2016</i>	Maritime Safety Queensland	
11	Notify enforcement partners Queensland Boating and Fisheries Patrol and Queensland Water Police	Maritime Safety Queensland	
12	Maritime Safety Queensland	Relevant proposing entity	
13	Conduct training to appoint officers of the proposing entity with limited powers as a Shipping Inspector under the <i>Transport Operations (Marine Safety) Act 1994</i>	Maritime Safety Queensland	