

EXPLANATORY STATEMENT

ISSUED BY AUTHORITY OF THE GREAT BARRIER REEF MARINE PARK
AUTHORITY

Great Barrier Reef Marine Park Act 1975

Cairns Area Plan of Management Amendment 2005 (No.1)

Subsection 39W of the *Great Barrier Reef Marine Park Act 1975* (the Act) provides that the Great Barrier Reef Marine Park Authority (the Authority) may, in writing, prepare plans of management for the Great Barrier Reef Marine Park (the Marine Park) in accordance with this Part (Part VB of the Act).

Subsection 39ZG(1) of the Act provides that the Authority may, in writing, prepare an amendment of a plan of management for the Marine Park in accordance with this section.

The Cairns Planning Area includes some of the most spectacular reefs in the world and abundant wildlife including dugong, whales, dolphins, turtles and seabirds. The *Cairns Area Plan of Management 1998* (the Principal Plan) came into effect on 22 June 1998 to provide strategies for protecting the values of the offshore areas of Cairns, Port Douglas, the Ribbon Reefs, Lizard Island, and the Frankland Islands. The Principal Plan was amended in 1999, 2002 and again in 2004.

The purpose of the *Cairns Area Plan of Management Amendment 2005 (No.1)* is to amend the Principal Plan by:

- removing the “2 in 7” restriction on the new Regional Tour Operation permissions (information regarding the “2 in 7” restriction is included at [Attachment A](#));
- clarifying the allocation mechanism for limited mooring permissions in the Planning Area; and
- making minor and technical amendments to ensure the Principal Plan is consistent with the *Great Barrier Reef Marine Park Zoning Plan 2003* (which came into effect on 1 July 2004).

Pursuant to subsections 39ZG(2) and (3) and section 39ZE of the Act, once the Authority has prepared an amendment to a plan of management, it must cause public notice to be given regarding the amendments and invite interested persons to make written submissions to the Authority in connection with the proposed amendments. The time period for interested persons to make written submissions cannot be less than one month.

The amendments to the Principal Plan were advertised in the *Gazette*, and notices were placed in both State and Local newspapers. In addition,

information was made available to interested persons on the Authority's Internet site, and interested persons were sent information informing them of the proposed amendments to the Principal Plan.

Details of the amendments are set out in Attachment B.

The *Cairns Area Plan of Management Amendment 2005 (No.1)* is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The *Cairns Area Plan of Management Amendment 2005 (No.1)* commences on the day after it is registered on the Federal Register of Legislative Instruments.

Removal of the "2 in 7" restriction

Regional Tourism Operations (RTOs) are those tourism operations that have 365-day access to the Cairns Planning Area. Permissions for RTOs were capped in 1998 in the *Cairns Area Plan of Management 1998* (the Principal Plan).

Subsequent amendments to the Principal Plan introduced an additional 20 RTO permissions that are available for allocation. These permissions allow operators to conduct a 365-day operation in the Cairns Planning Area but with no more than 50 days access to any one Location or all year access to a mooring or pontoon in specific Locations. These additional permissions also make provision for anchoring at Locations, but such anchoring is restricted to only 2 days in a 7 day period (the "2 in 7" provision).

The Great Barrier Reef Marine Park Authority's (the Authority) Tourism and Recreation Reef Advisory Committee's (TRRAC) advice is that the inclusion of the "2 in 7" restriction on the 20 new RTO permissions is not consistent with the equivalent base level RTO permissions as provided for elsewhere in the Principal Plan.

At the TRRAC meeting held in Townsville on the 13/14 July 2004, members expressed concern regarding the "2 in 7" restriction on the 20 new RTO permissions available for allocation. The TRRAC recommended that the "2 in 7" restriction be removed from these new RTO permissions prior to these permissions being advertised and allocated by the Authority.

Cairns Area Plan of Management Amendment 2005 (No.1)

Details of the amendments are as follows:

Clause 1 provides that the name of the amendment is the *Cairns Area Plan of Management Amendment 2005 (No.1)*.

Clause 2 provides that the amendment commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 provides that Schedule 1 amends the *Cairns Area Plan of Management 1998* (the Principal Plan).

Schedule 1 - Amendments

Item 1 is of a technical nature only. This item amends subclause 1.4(2) of the Principal Plan to replace the reference to the repealed *Cairns Section Zoning Plan* with the *Great Barrier Reef Marine Park Zoning Plan 2003* (the Zoning Plan). Paragraph 1.4(c) of the Zoning Plan, which commenced on 1 July 2004, revoked the *Cairns Section Zoning Plan*.

Item 2 is of a technical nature only. This item amends note 2 to subclause 1.4(5) of the Principal Plan to replace the reference to the Department of Environment to reflect the current name of the Queensland Environmental Protection Agency.

Item 3 is of a technical nature only. This item amends subclause 1.6(11) of the Principal Plan to ensure consistency with the Zoning Plan by providing for the take of coral in accordance with an accredited coral harvest fishery.

Item 4 is of a technical nature only. This item omits notes 1 and 2 to subclause 1.6(18) of the Principal Plan. These notes refer to the Australian Maritime Safety Authority undertaking surveys regarding the safety of specified anchorages. These notes are no longer required as these surveys have been completed.

Item 5 is of a technical nature only. This item amends paragraph 1.7(16)(a) of the Principal Plan to ensure that the provisions regarding the take of dugong in the Principal Plan are consistent with the Zoning Plan.

Item 6 is of a technical nature only. This item inserts a note after subclause 1.7(16), note 2 of the Principal Plan. The purpose of this note is to clarify that, for the purposes of the Principal Plan, *take* has the same meaning as in the Zoning Plan.

Item 7 is of a technical nature only. This item amends clause 1.10, table 1, item entitled 'Offshore Cairns', column 2 of the Principal Plan to replace the reference to the repealed *Cairns Section Zoning Plan* with a reference to the Planning Area (being the area covered by the Principal Plan).

Item 8 is of a technical nature only. This item amends the note to subclause 1.11(5) of the Principal Plan to reflect the heritage status of the Low Isles lighthouse under the *Australian Heritage Council Act 2003* and the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 9 is of a technical nature only. This item amends subparagraph 1.12(9)(c)(iii) to reflect how research is now defined under the Zoning Plan.

Item 10 is of a technical nature only. The purpose of this item is to amend subparagraphs 1.12(9)(d)(i) and (ii) to update the reference to fishing ensure consistency with the Zoning Plan (which refers to *fishing or collecting*). This item also includes a reference to 'trolling or bait netting for pelagic species in the Conservation Park Zone' in subparagraph 1.12(9)(d)(ii) to ensure consistency with other similar clauses of the Principal Plan.

Item 11 is of a technical nature only. This item amends paragraph 1.13(1)(a) of the Principal Plan to insert a reference to an additional research station located within the Cairns Planning Area.

Item 12 is of a technical nature only. This item amends paragraph 1.13(1)(b) of the Principal Plan to replace the references to *mariculture* and *aquarium trade collecting* with references to *aquaculture* and *harvest fishing* to ensure consistency with the Zoning Plan.

Items 13 and 14 are of a technical nature only. These items amend clause 1.15, table 6, item entitled 'Lizard Island Locality 1', column 2 and paragraph 1.15(4)(f) of the Principal Plan to replace the references to *fishing* with references to *fishing or collecting* to ensure consistency with the Zoning Plan. These items also add a reference to 'trolling or bait netting for pelagic species in the Conservation Park Zone' to ensure consistency with other similar clauses of the Principal Plan.

Item 15 substitutes subclauses 1.19(3A) and 1.19(3B) of the Principal Plan with new subclauses 1.19(3A) and 1.19(3B).

The effect of this item is to remove the restriction on the permissions mentioned in these subclauses; that Locations in the Planning Area cannot be visited for more than 2 visits in any 7 day period. These permissions are not in line with the equivalent base level Regional Tour Operation permission as outlined in the Principal Plan. The removal of this additional restriction will ensure consistent, fair and equitable treatment of all Regional Tour Operation permissions.

Items 16, 17 and 18 are of a technical nature only. These items amend subclauses 1.19(3C) and 1.19(3F) and clause 1.19 table 7, item entitled 'Regional Tour Operation', column 3 of the Principal Plan to reflect current legislative drafting styles.

Item 19 substitutes subclauses 1.21(4), 1.21(5) and 1.21(6), including the notes of the Principal Plan and replaces them with a new subclause 1.21(4). The purpose of this item is to clarify the allocation mechanism to be used for limited mooring permissions. The current preferential system used under the Principal Plan requires operators to surrender access to areas in order to obtain a mooring permission for which the number that the Great Barrier Reef Marine Park Authority (the Authority) can grant are limited. Changing the system for allocation of these types of permissions from the preferential system to an expression of interest process will enable the Authority to gain a better outcome for the Great Barrier Reef Marine Park by using selection criteria to select the best applicant for a mooring permission.

Item 20 substitutes subclauses 1.22(4A) and 1.22(4B) of the Principal Plan with new subclauses 1.22(4A) and 1.22(4B).

The effect of this item is to remove the restriction on the permissions mentioned in these subclauses; that Locations in the Planning Area cannot be visited for more than 2 visits in any 7 day period. These permissions are not in line with the equivalent base level Regional Tour Operation permission as outlined in the Principal Plan. The removal of this additional restriction will ensure consistent, fair and equitable treatment of all Regional Tour Operation permissions.

Item 21 is of a technical nature only. This item amends subclause 1.22(4C) of the Principal Plan to reflect current legislative drafting styles.

Item 22 is of a technical nature only. This item inserts new subclauses 1.22(4E) and (4F) into the Principal Plan.

The Principal Plan was amended on 2 December 2004 (see the *Cairns Area Plan of Management Amendment 2004 (No. 1)*) to introduce opportunities for five new Regional Tour Operation permissions to be reserved for persons undertaking tourism operations predominately from the Cooktown/Bloomfield area.

The purpose of this item is to insert a reference to these new permissions in clause 1.22 of the Principal Plan.

Item 23 is of a technical nature only. This item amends subclause 1.23(7) of the Principal Plan to replace the reference to 15 new permissions with a reference to 20 new permissions. This item is required to update this clause to reflect that the Authority has 20 new permissions to allocate.

Item 24 substitutes subclause 1.23(8) of the Principal Plan with new subclauses 1.23(8) and 1.23(8A).

The effect of this item is to remove the restriction on the permissions mentioned in this subclause; that Locations in the Planning Area cannot be visited for more than 2 visits in any 7 day period. These permissions are not in line with the equivalent base level Regional Tour Operation permission as outlined in the Principal Plan. The removal of this additional restriction will ensure consistent, fair and equitable treatment of all Regional Tour Operation permissions.

Item 25 is of a technical nature only. This item amends subclause 1.23(9) of the Principal Plan to reflect current legislative drafting styles.

Item 26 is of a technical nature only. This item inserts new subclauses 1.23(11) and 1.23(12) into the Principal Plan.

The Principal Plan was amended on 2 December 2004 (see the *Cairns Area Plan of Management Amendment 2004 (No. 1)*) to introduce opportunities for five new Regional Tour Operation permissions to be reserved for persons undertaking tourism operations predominately from the Cooktown/Bloomfield area.

The purpose of this item is to insert a reference to these new permissions in clause 1.23 of the Principal Plan.

Item 27 is of a technical nature only. This item amends subclause 1.24 (13) of the Principal Plan to insert a missing word.

Item 28 is of a technical nature only. This item substitutes the note to the heading of Part 2 of the Principal Plan with a revised note. The revised note sets out the offence provisions in the *Great Barrier Reef Marine Park Act 1975* that relate to zones.

Item 29 is of a technical nature only. This item replaces the reference to clause 19 in paragraph 2.3(1)(c) of the Principal Plan with a reference to Part 5. This item is required as the reference to clause 19 was a reference to clause 19 of the *Cairns Section Zoning Plan*, which was revoked on 1 July 2004.

Item 30 is of a technical nature only, and is required as a consequence of Item 29 above. This item substitutes the note to subclause 2.3(1) of the Principal Plan with a new note. The purpose of the new note is to explain the reference to Part 5 of the Zoning Plan in Item 29.

Item 31 is of a technical nature only. This item omits the reference to clause 20 in subclause 2.3(2) of the Principal Plan. This item is required as the reference to clause 20 is a reference to clause 20 of the *Cairns Section Zoning Plan*, which was revoked on 1 July 2004.

Item 32 is of a technical nature only, and is required as a consequence of Item 31 above. This item omits the note to subclause 2.3(2) of the Principal Plan as it refers to the *Cairns Section Zoning Plan*, which was revoked on 1 July 2004.

Item 33 is of a technical nature only. This item substitutes notes 1, 2 and 3 to subclause 2.5(1) of the Principal Plan with a new note. These notes referred to the Australian Maritime Safety Authority undertaking surveys regarding the safety of specified anchorages. These notes are no longer required as these surveys have been completed.

Item 34 is of a technical nature only. This item amends 2.10(6A) of the Principal Plan to replace the reference to “and (2A),” with “or (2A)”.

Item 35 is of a technical nature only. This item omits subclause 2.13 of the Principal Plan, and is required as the take of dugong is now regulated by the Zoning Plan.

Item 36 is of a technical nature only. This item amends 2.14(2)(a) of the Principal Plan to reflect that the term *collecting* is no longer used in the Zoning Plan.

Item 37 is of a technical nature only. This item inserts a subclause 2.14(2)(ab) into the Principal Plan. The purpose of this item is to ensure consistency with the Zoning Plan, which allows the take of coral in accordance with an accredited harvest fishery.

Item 38 is of a technical nature only. This item substitutes clause 2.16 of the Principal Plan with a new clause 2.16. The purpose of this item is to ensure consistency with other similar clauses of the Principal Plan by specifying that a person must not fish or collect (except trolling or bait netting for pelagic species in the Conservation Park Zone) inshore of the coastal 250 metre line of Lizard Island Locality 1.

Item 39 is of a technical nature only. This item amends subclause 2.17(3) of the Principal Plan to update the reference to the sewage regulations under the *Great Barrier Reef Marine Park Regulations 1983*.

Item 40 substitutes subclause 2.27(2) of the Principal Plan with new subclauses 2.27(2) and 2.27(2A).

The effect of this item is to remove the restriction on the permissions mentioned in these subclauses; that Locations in the Planning Area cannot be visited for more than 2 visits in any 7 day period. These permissions are not in line with the equivalent base level Regional Tour Operation permission as outlined in the Principal Plan. The removal of this additional restriction will ensure consistent, fair and equitable treatment of all Regional Tour Operation permissions.

Item 41 is of a technical nature only. This item substitutes Schedules 1, 2 and 3 of the Principal Plan with new Schedules 1, 2 and 3.

This item is required as the boundary descriptions contained within these Schedules refers to the boundary of the Cairns Section. On 1 July 2004, the *Great Barrier Reef (Declaration of Amalgamated Great Barrier Reef Section) Proclamation 2004* commenced. This Proclamation revoked the previous Proclamation declaring the Cairns Section, and proclaimed the one Amalgamated Great Barrier Reef Section.

In addition, these boundary descriptions also make reference to the *Cairns Section Zoning Plan*, which was revoked on 1 July 2004 by paragraph 1.4(c) of the Zoning Plan.

Item 42 is of a technical nature only. This item amends Schedule 4, clause 5, column 2 of the Principal Plan to replace the reference to "Pellowe Reef (16-070)" with a reference to "Pellowe Reef (16-070)".

Item 43 is of a technical nature only. This item replaces the heading to Schedule 5 of the Principal Plan with a new heading. The purpose of this item is to insert missing references to relevant provisions of the Principal Plan.

Item 44 is of a technical nature only. This item amends Schedule 5, item 9, column 3 of the Principal Plan to correct the reference to the minimum height at which aircraft may fly over Lizard Island Locality 1.

Items 45, 46 and 47 insert definitions of key terms used in the Principal Plan into Schedule 9 of the Principal Plan, including *accredited coral harvest fishery*, *accredited harvest fishery*, *Amalgamated Great Barrier Reef Section*, and *aquaculture operation*.

Item 48 is of a technical nature only. This item amends the definition of *authorisation* in Schedule 9 of the Principal Plan to replace the reference to "Division 2 of Part 4" with a reference to "Division 2.4 of Part 2".

Item 49 is of a technical nature only. This item omits the definitions of *Cairns Section*, *collecting*, and *external boundary* from Schedule 9 of the Principal Plan. This item is required to ensure consistency with the Zoning Plan, as these terms are no longer used.

Item 50 is of a technical nature only. This item substitutes the definition of *fishing* with the definition of *fishing or collecting* in Schedule 9 of the Principal Plan. It is required to ensure consistency with terms used in the Zoning Plan.

Item 51 is of a technical nature only. This item inserts a definition of *harvest fishery* into Schedule 9 of the Principal Plan.

Item 52 is of a technical nature only. This item omits the definition of *landward boundary* from Schedule 9 of the Principal Plan. This item is required as this term is no longer used.

Item 53 is of a technical nature only. This item replaces the definition of *Marine Park* in Schedule 9 of the Principal Plan with a new definition.

Item 54 is of a technical nature only. This item inserts a definition of *permanently moored facility* into Schedule 9 of the Principal Plan.

Item 55 is of a technical nature only. This item substitutes the definition of *personal watercraft* with a new definition. This item is required as the previous definition referred to the *Transport Operations (Marine Safety) Regulations 1995* of Queensland. These regulations were repealed on 16 August 2004 and were replaced with the *Transport Operations (Marine Safety) Regulations 2004* of Queensland.

Item 56 is of a technical nature only. This item replaces the reference to "mariculture" with "aquaculture" in the definition of *pontoon* in Schedule 9 of the Principal Plan to ensure consistency with terms used in the Zoning Plan.

Item 57 is of a technical nature only. This item replaces the definition of *Zoning Plan* in Schedule 9 of the Principal Plan with a new definition to reflect that a reference in the Principal Plan to the Zoning Plan is a reference to the *Great Barrier Reef Marine Park Zoning Plan 2003*.

Item 58 is of a technical nature only. This item omits the note to the definition of *5 kilometre line* in Schedule 9 of the Principal Plan. This item is required as the note refers to the Proclamation published in the Commonwealth Gazette on 13 September 1989. This Proclamation was revoked on 1 July 2004.

Item 59 is of a technical nature only. This item substitutes paragraph (a) of the definition of *500 metre line* in Schedule 9 of the Principal Plan with a new paragraph (a) to ensure consistency with the Zoning Plan.

Item 60 is of a technical nature only. This item substitutes the definition of *coastal 500 metre line* in Schedule 9 of the Principal Plan with a new definition. This item is required to ensure consistency with the Zoning Plan.