

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 2008 (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, 2004 and 2005.

The purpose of the *Cairns Area Plan of Management Amendment 2008 (No.1)* is to amend the Principal Plan by:

- providing for up to 20 additional moorings (and a heli-pontoon at the Ribbon Reefs) (Attachment A);
- providing for additional moorings that can be used in northerly weather conditions (Attachment B);
- providing increased flexibility for regional tour operations conducting single day fishing charters (Attachment C);
- increasing the maximum group size at Flynn Reef and Pellowe Reef (Attachment D);
- exempting children under the age of four from group size limits (Attachment E);
- rewriting Part 1 to update or remove out-of-date information and improve readability (Attachment F);
- making minor technical and grammatical amendments (Attachment G).

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 all permittees and interested persons were sent information informing them of the proposed amendments to the Principal Plan.

Details of the amendment are set out in Attachment H.

The *Cairns Area Plan of Management Amendment 2008 (No.1)* is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Sections 1, 2 and 3 of the *Cairns Area Plan of Management Amendment 2008 (No.1)* commence on the day after it is registered on the Federal Register of Legislative Instruments. Schedules 1 and 2 to the *Cairns Area Plan of Management Amendment 2008 (No.1)* commence on the day that regulations declare that the enforcement provisions in Schedule 2 to the *Cairns Area Plan of Management Amendment 2008 (No.1)* take effect.

The *Cairns Area Plan of Management Amendment 2008 (No.1)* will be registered on the Federal Register of Legislative Instruments once the amendment to the regulations required to give effect to the enforcement provisions has been prepared. This will ensure that the separate parts of the *Cairns Area Plan of Management 2008 (No.1)* will commence at the same time.

Providing for an additional 20 moorings and a heli-pontoon

The Principal Plan provides that no additional moorings can be installed in the Cairns Planning Area. There may be instances where it is appropriate to consider the installation of limited numbers of additional moorings to protect coral from anchor damage, without unnecessarily limiting anchoring access to the Cairns Planning Area. The Plan has, therefore, been amended to provide for up to 20 additional moorings in the Planning Area.

The Principal Plan also limits the number of permanently moored facilities at each Location. At the request of vessel operators the Plan has been amended to allow for the installation of a heli-pontoon at the Ribbon Reefs to enable helicopter support for vessels operating in the area.

Provisions for northerly moorings

The Principal Plan provides that no additional moorings can be installed in the Cairns Planning Area. Typically the moorings that have been installed have been placed to be used in the prevailing south-easterly weather conditions. The Plan has been amended to provide that operators that currently have a mooring in the Cairns Planning Area may be granted an additional mooring in an adjacent area that can be used in northerly weather conditions where there is a demonstrated need. These northerly moorings are in addition to the 20 additional moorings described at Attachment A.

Increased flexibility for single-day fishing charters

The Principal Plan allows for regional tour operations to have daily access to the Cairns Planning Area, with a limit of 50 days anchoring access per year to each Location. A combination of recent management changes and the 50 day anchoring restriction in the Principal Plan have led to decreased opportunities for single-day fishing charters. The Plan has been amended to provide for regional tour operators who primarily conduct single-day fishing charters to apply for daily access to the General Use (light blue) Zones, Habitat Protection (dark blue) Zones and Conservation Park (yellow) Zones (other than that part of the Conservation Park Zone that is included in a Public Appreciation Special Management Area).

Attachment D*Increased group size to Flynn Reef and Pellowe Reef*

The Principal Plan assigns each Location to an Intensive, Moderate, or Low use setting. The Principal Plan generally prohibits vessels accessing a Moderate use Location from carrying more than 60 people on board, however, vessels accessing specified Moderate use Locations are able to carry up to 100 people on board if they are operating to a mooring. The Plan has been amended to include Flynn Reef and Pellowe Reef in the list of Locations that vessels can access with up to 100 people on board if operating to a mooring.

Attachment E*Exempting children under the age of four from group size limits*

The Principal Plan established group size limits throughout the Planning Area, which include all people on board a vessel, including crew. Children under the age of four are not subject to the Authority's Environmental Management Charge, which tourism operators are required to collect on behalf of the Authority. At the request of the Tourism Industry, the Plan has been amended to exclude children under the age of four from group size limits to simplify administration.

Rewriting of Part 1

Part 1 of the Plan outlines the values, issues and management strategies for the Planning Area. Part 1 has been rewritten to better explain the intent of the Plan. Out-of-date information has been updated, or where no longer relevant, removed. The changes to Part 1 of the Plan do not alter the original intent and do not affect the enforcement provisions, which are contained in Part 2 of the Plan.

Minor technical and grammatical amendments

A number of minor technical and grammatical amendments have been made to the Principal Plan. These do not alter the existing intent of the Plan.

1. Cruise ship anchorages listed in the Principal Plan have been relocated to the *Great Barrier Reef Marine Park Regulations 1983*.
2. Enforcement provisions from Part 2 of the Plan relating to whales have been removed from the Plan. Because protection of whales is not confined to the Planning Area these provisions have been relocated into the *Great Barrier Reef Marine Park Regulations 1983*.
3. Clause 2.19 prevents the Authority from granting a permit that is inconsistent with the Plan. Provisions relating to the Authority's ability to grant and convert permits are not enforcement provisions and are better placed in Part 1 of the Plan.
4. References to 'traditional inhabitant' and 'traditional affiliation' have been changed to 'traditional owner' and 'traditional owner group' to be consistent with the *Great Barrier Reef Marine Park Zoning Plan 2003*.
5. Clause 2.16 of the Principal Plan refers to collecting and fishing at Lizard Island Locality 1. This has been removed from the Plan as it is now addressed as a Special Management Area under the *Great Barrier Reef Marine Park Regulations 1983*.
6. East Hope Island has been listed as Group A Sensitive Location. East Hope Island was previously amended to be a Group B Sensitive Location to address transitional permitting arrangements. These have now been completed and East Hope Island has been returned to a Group A Sensitive Location.
7. The datum of all geographic co-ordinates has been updated from AGD66 to GDA94 to comply with Australian Government requirements and geographic boundaries have been updated to account for improved spatial data. Where this has caused a significant change to a boundary, the description of that boundary has been adjusted to maintain the original intent.
8. The map of the Planning Area has been updated and moved to the Schedule to the Plan.
9. Chinaman Reef has been inserted into Schedule 4 as a Moderate Use Location in the Offshore Port Douglas Sector. This change was inadvertently omitted in a previous amendment to the Plan.
10. Some definitions are contained in the Plan as well as other legislative instruments eg. *The Great Barrier Reef Marine Park Act 1975*. These definitions have been amended in the Plan to refer directly to the definition in the parent instrument to ensure consistency across the Marine Park.
11. Definitions in Schedule 9 to the Plan have been updated to complement the rewriting of Part 1 of the Plan and the datum conversion.

Cairns Area Plan of Management Amendment 2008 (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 2008 (No.1)*.

Clause 2 provides that:

- Sections 1, 2 and 3 of the amendment commence on the day after it is registered on the Federal Register of Legislative Instruments
- Schedules 1 and 2 to this amendment commence on the day that the regulations declare that the enforcement provisions in Schedule 2 take effect.

Clause 3 provides that Schedules 1 and 2 amend the *Cairns Area Plan of Management 1998* (the Principal Plan).

Schedule 1 – Amendments commencing upon the commencement of Schedule 2 to the Plan of Management amendment

Item 1 is of a technical nature only. This item substitutes the Foreword of the Principal Plan to improve consistency with other Plans and to link review of the Plan to the preparation of an *Outlook Report*, which the Authority is now required to prepare on a 5-yearly basis.

Item 2 is of a technical nature only. This item omits the map from the Principal Plan and relocates it to Schedule 1 to the Plan as described at Item 20 of Schedule 2 to this Explanatory Statement.

Item 3 is of a technical nature only. This item substitutes Part 1 of the Principal Plan to better clarify the intent of the Plan, and update or remove out-of-date information.

Item 4 is of a technical nature only. This item omits redundant numbering from Schedule 9 to the Principal Plan.

Item 5 is of a technical nature only. This item relocates the definitions in the Principal Plan for *1 kilometre line*, *5 kilometre line*, *100 metre line* and *500 metre line* and improves their consistency with the same definitions in other Plans prepared by the Authority under Part VB of the Act.

Item 6 is of a technical nature only. This item substitutes the definition of *aircraft* in the Principal Plan to conform to contemporary drafting style.

Item 7 is of a technical nature only. This item omits the definition of *Amalgamated Great Barrier Reef Section* from the Principal Plan, as this term is no longer used in the Plan and a definition is not, therefore, required.

Item 8 is of a technical nature only. This item:

- omits the definition of *authorisation* from the Principal Plan, as this term is no longer used in the Plan and a definition is not, therefore, required;
- substitutes the definition of *Authority* in the Principal Plan to conform to contemporary drafting style.

Item 9 is of a technical nature only. This item provides a definition of *Cairns Planning Area* in the Principal Plan, consistent with the way Planning Areas are defined in other Plans of Management prepared by the Authority under Part VB of Act.

Item 10 is of a technical nature only. This item provides definitions of *coastal 250 metre line*, *coastal 500 metre line* and *coastal 1 500 metre line* in the Principal Plan consistent with similar definitions in other Plans of Management prepared by the Authority under Part VB of the Act.

Item 11 is of a technical nature only. This item substitutes the definition of *craftless operation* in the Principal Plan to complement the updated information regarding craftless operations in Part 1 of the Plan. The updating of Part 1 of the Plan is described at Attachment F to this Explanatory Statement.

Item 12 is of a technical nature only. This item substitutes the definition of *cruise ship operation* in the Principal Plan to complement the updated information regarding cruise ship operations in Part 1 of the Plan. The updating of Part 1 of the Plan is described at Attachment F to this Explanatory Statement.

Item 13 is of a technical nature only. This item substitutes the definition of *hire craft* in the Principal Plan to conform to contemporary drafting style.

Item 14 is of a technical nature only. This item substitutes the definition of *hire operation* in the Principal Plan to complement the updated information regarding hire operations in Part 1 of the Plan. The updating of Part 1 of the Plan is described at Attachment F to this Explanatory Statement.

Item 15 is of a technical nature only. This item substitutes the definition of *long range roving operation* in the Principal Plan to complement the updated information regarding long range roving operations in Part 1 of the Plan. The updating of Part 1 of the Plan is described at Attachment F to this Explanatory Statement.

Item 16 is of a technical nature only. This item provides a definition for *Marine Park boundary* in the Principal Plan.

Item 17 is of a technical nature only. This item substitutes the definition of *motorised water sport* to refer to the definition of *motorised water sport* in the *Great Barrier Reef Marine Park Regulations 1983*.

Item 18 is of a technical nature only. This item substitutes the definition of *new permission* in the Principal Plan to conform to contemporary drafting style.

Item 19 is of a technical nature only. This item substitutes the definition of *non-motorised craft operation* in the Principal Plan to complement the updated

information regarding non-motorised craft operations in Part 1 of the Plan. The updating of Part 1 of the Plan is described at Attachment F to this Explanatory Statement.

Item 20 is of a technical nature only. This item substitutes the definition of ***overall length of a vessel*** in the Principal Plan to refer to the definition of ***overall length*** in the Act.

Item 21 is of a technical nature only. This item substitutes the definition of ***permitted mooring*** in the Principal Plan to refer to the definition of ***permitted mooring*** in the *Great Barrier Reef Marine Park Regulations 1983*.

Item 22 is of a technical nature only. This item:

- omits the definition of ***permitted tourist program*** from the Principal Plan as this term is no longer used and a definition is not, therefore, required;
- substitutes the definition of ***personal watercraft*** in the Principal Plan to refer to the definition of ***permitted watercraft*** in the *Great Barrier Reef Marine Park Regulations 1983*;
- substitutes the definition of ***Planning Area*** to refer to the definition of ***Cairns Planning Area*** described at Item 9 of this Explanatory Statement.

Item 23 is of a technical nature only. This item alters the definition of ***pontoon*** by replacing the term *aircraft* with *helicopter* to reflect the fact that the only type of aircraft physically capable of landing on a pontoon is a helicopter.

Item 24 is of a technical nature only. This item substitutes the definition of ***regional tour operation*** in the Principal Plan to complement updated information regarding regional tour operations in Part 1 of the Plan, described at Attachment F to this Explanatory Statement.

Item 25 is of a technical nature only. This item substitutes the definition of ***ship*** to be consistent with the definition of ***ship*** in other Plans of Management prepared by the Authority under Part VB of the Act.

Item 26 is of a technical nature only. This item substitutes the definition of ***standard tour operation*** in the Principal Plan to complement the updated information regarding standard tour operations in Part 1 of the Plan. The updating of Part 1 is described at Attachment F to this Explanatory Statement.

Item 27 is of a technical nature only. This item substitutes the definition of ***support service operation*** in the Principal Plan to complement the updated information regarding support service operations in Part 1 of the Plan. The updating of Part 1 is described at Attachment F to this Explanatory Statement.

Item 28 is of a technical nature only. This item omits the definition of ***swimming-with-whales activity*** from the Principal Plan as this term is no longer used and a definition is not, therefore, required.

Item 29 is of a technical nature only. This item substitutes the definition of *tourist program* from the Principal Plan to more accurately reflect how the definition of *tourist program* in the *Great Barrier Reef Marine Park Act 1975* applies to the Plan.

Item 30 is of a technical nature only. This item omits the definitions of *traditional affiliation* and *traditional inhabitant* from the Principal Plan as these terms are no longer used in the Plan and a definition is not, therefore, required. These terms have been replaced by the terms *traditional owner* and *traditional owner group* and this item includes definitions for these terms that refer to the definitions for *traditional owner* and *traditional owner group* in the *Great Barrier Reef Marine Park Zoning Plan 2003*.

Item 31 is of a technical nature only. This item substitutes the definition of *vessel* in the Principal Plan to conform to contemporary drafting style.

Item 32 is of a technical nature only. This item omits the definition of *whale watching activity* from the Principal Plan as this term is no longer used and a definition is not, therefore, required.

Item 33 is of a technical nature only. This item omits redundant numbering from Schedule 9 of the Principal Plan and relocates definitions in the Principal Plan as described at Items 5 and 10 of this Explanatory Statement.

Schedule 2 – Amendments commencing on a day declared by regulations

Item 1 substitutes Clause 2.1 of the Principal Plan to exclude children under the age of four from group size limits as described at Attachment E to this Explanatory Statement.

Item 2 is of a technical nature only. This item omits Clause 2.2 of the Principal Plan, which provides that for Part 2 of the Plan, a reference to ‘the length of a vessel is its overall length’. This is no longer required as all references to vessel length in the Plan have been changed to ‘overall length’ and ‘overall length’ is now defined in Schedule 9 of the Plan.

Item 3 is of a technical nature only. This item substitutes the note of subclause 2.3(1) of the Principal Plan to add ‘...or for the purposes of management’ to more accurately reflect the provision of Part 5 of the Zoning Plan.

Item 4 is of a technical nature only. This item relocates the previous subclause 2.19 of the Principal Plan to subclause 2.3A.

Item 5 is of a technical nature only. This item omits clause 2.4A from the Principal Plan, as it did not constitute an enforcement provision. The information in clause 2.4A has been relocated to Part 1 of the Plan where it is more properly placed as part of the updating of Part 1 as described in Attachment F to this Explanatory Statement.

Item 6 is of a technical nature only. This item substitutes clause 2.5 in the Principal Plan to refer to the cruise ship anchorages listed in the *Great Barrier Reef Marine Park Regulations 1983*.

Item 7 is of a technical nature only. This item clarifies the wording of the Principal Plan by using the term *overall length* which is a defined term in the Act.

Item 8 is of a technical nature only. This item omits clause 2.8A from the Principal Plan, as it did not constitute an enforcement provision. The information in clause 2.8A has been relocated to Part 1 of the Plan where it is more properly placed as part of the updating of Part 1 as described in Attachment F to this Explanatory Statement.

Item 9 is of a technical nature only. This item omits *East Hope Island Reef (15-065) Location* from subclause 2.9(3) of the Principal Plan to reflect the fact that East Hope Island Reef (15-065) Location has been assigned as a Group A Sensitive Location as described at Items 24 and 25 of Schedule 2 to this Explanatory Statement.

Item 10 is of a technical nature only. This item substitutes the explanation of *operating to a permitted mooring or permitted pontoon* in the Principal Plan to conform to contemporary drafting style.

Item 11 is of a technical nature only. This item substitutes subclauses 2.9(5) to (7) of the Principal Plan to conform to contemporary drafting style and to clarify the application of subclause 2.9(2) with respect to cruise ship operations that are permitted to operate in the Planning Area 365 days per year.

Item 12 is of a technical nature only. This item substitutes subclauses 2.10(3) to (10) of the Principal Plan to conform to contemporary drafting style and to clarify the application of subclause 2.10(2) with respect to persons operating to the Cairns Professional Game Fishing Association's mooring at Michaelmas Cay.

Item 13 is of a technical nature only. This item substitutes subclause 2.11(4)(c) of the Principal Plan to conform to contemporary drafting style.

Item 14 is of a technical nature only. This item substitutes subclauses 2.11(6) to (8) of the Principal Plan to conform to contemporary drafting style and reflect the fact that the Plan no longer contains references to *authorisations*.

Item 15 is of a technical nature only. This item omits clause 2.16 from the Principal Plan as the matters covered by the clause 2.16 are now addressed in *Great Barrier Reef Marine Park Regulations 1983*. Clause 2.16 is, therefore, no longer required.

Item 16 is of a technical nature only. This item substitutes subclause 2.17(2) of the Principal Plan to clarify the application of subclause 2.17(2) to permitted research activities and educational programs on Low Island.

Item 17 is of a technical nature only. This item combines subclause 2.17(4) and 2.17(5) of the Principal Plan to conform to contemporary drafting style and to clarify the application of clause 2.17 to a person cleaning a vessel hull in Low Island Locality.

Item 18 is of a technical nature only. This item omits subclause 2.17(5) of the Principal Plan, as 2.17(5) has been combined with 2.17(4) of the Plan as described at Item 17 of this Explanatory Statement.

Item 19 is of a technical nature only. This item omits Division 5 of Part 2 of the Principal Plan, as the provisions of Division 5 did not constitute enforcement provisions. The information in Division 5 has been relocated to Part 1 of the Plan where it is more properly placed as part of the updating of Part 1 as described in Attachment F to this Explanatory Statement.

Item 20 is of a technical nature only. This item updates the geographic description of the Planning Area in Schedule 1 of the Principal Plan, relocates the map of the Planning Area in the Principal Plan, updates the geographic descriptions of Sectors in Schedule 2 of the Principal Plan and the geographic descriptions of Localities in Schedule 3 of the Principal Plan to account for improvements in the available spatial data and converts the datum of the geographic co-ordinates to the Geocentric Datum of Australia 1994 (GDA94) to conform to Commonwealth standards.

Item 21 is of a technical nature only. This item substitutes the heading of Schedule 4 of the Principal Plan to include cross-references to the relevant enforcement provisions in the Plan.

Item 22 is of a technical nature only. This item includes Chinaman Reef (16-024) as a moderate use Location in Schedule 4 of the Principal Plan. This corrects the inadvertent omission of Chinaman Reef as a moderate use Location from Schedule 4 during a previous amendment to the Plan.

Item 23 is of a technical nature only. This item substitutes the heading of Schedule 5 of the Principal Plan to update the cross-references to other provisions of the Plan

Item 24 is of a technical nature only. This item inserts East Hope Island as a Group A Sensitive Location in Schedule 5 of the Principal Plan. East Hope Island was temporarily reassigned as a Group B Sensitive Location in a previous amendment to the Principal Plan to address transitional permitting arrangements. These transitional arrangements have now been completed and East Hope Island has been restored as a Group A Sensitive Location.

Item 25 is of a technical nature only. This item omits East Hope Island from the list of Group B Sensitive Locations in Schedule 5 of the Principal Plan. East Hope Island has been moved to the list of Group A Sensitive Locations as described at Item 24 of this Explanatory Statement.

Item 26 is of a technical nature only. This item substitutes the heading of Schedule 6 of the Principal Plan to more accurately describe the purpose of Schedule 6 and to update the cross-references to other provisions of the Plan.

Item 27 is of a technical nature only. This item substitutes the heading of column 2 of the table in Schedule 6 of the Principal Plan to more accurately reflect the content of the table.

Item 28 is of a technical nature only. This item substitutes the heading of Schedule 6A of the Principal Plan to more accurately describe the purpose of Schedule 6A and to update the cross-references to other provisions of the Plan.

Item 29 inserts Flynn Reef into Schedule 6A of the Principal Plan to reflect that a group size of 100 people applies, as described at Attachment D to this Explanatory Statement.

Item 30 inserts Pellowe Reef into Schedule 6A of the Principal Plan to reflect that a group size of 100 people applies, as described at Attachment D to this Explanatory Statement.

Item 31 is of a technical nature only. This item substitutes the heading of Schedule 6B to the Principal Plan to more accurately reflect the purpose of Schedule 6B and to update the cross-references to other provisions of the Plan.

Item 32 is of a technical nature only. This item substitutes the heading of Schedule 6C to the Principal Plan to update the cross-references to other provisions of the Plan.

Item 33 is of a technical nature only. This item substitutes the heading of Schedule 7 to the Principal Plan to update the cross-references to other provisions of the Plan.

Item 34 is of a technical nature only. This item updates the geographic description of Reef Anchorages in Schedule 8 to the Principal Plan to account for improvements in the available spatial data and converts the datum of the geographic co-ordinates to the Geocentric Datum of Australia 1994 (GDA94) to conform to Commonwealth standards.