EXPLANATORY STATEMENT

Select Legislative Instrument 2017 No. ____

Issued by the Authority of the Great Barrier Reef Marine Park Authority

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017

Authority

The *Great Barrier Reef Marine Park Act 1975* (the Act) establishes the Great Barrier Reef Marine Park Authority (the Authority) and makes provision for and in relation to the establishment, control, care and development of a Marine Park in the Great Barrier Reef Region.

Subsection 39W(1) of the Act provides that the Authority may, in writing, prepare plans of management for the Marine Park in accordance with Part VB of the Act. A plan of management may be for one or more areas of the Marine Park, one or more species within the Marine Park or one or more ecological communities within the Marine Park.[1] The *Whitsundays Plan of Management 1998* (the Plan) is a plan of management prepared pursuant to subsection 39W(1) and Part VB of the Act, which applies to a defined area of the Marine Park, being the Whitsunday Planning Area (the Planning Area).

The objects of plans of management, and consequently the objects of the Plan, are set out in section 39Y of the Act and include: ensuring proposals are developed to reduce or eliminate threats to the values of the Marine Park, ensuring management for the recovery and continued protection and conservation of species and ecological communities, ensuring activities within areas of the Marine Park are managed on the basis of ecological use, providing a basis for managing use of a particular area of the Marine Park that may conflict with other uses of the area or values of the area, providing for management in conjunction with community groups that have a special interest in an area of the Marine Park, and enabling people using the Marine Park to participate in a range of recreational activities.

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

Purpose and Operation

Effective management of the Planning Area is achieved through periodic review of the Plan in response to new information and changing uses. The Plan has been reviewed and amended in 1999, 2002, 2005 and 2008. More recently, a review carried out between December 2014 and June 2017 highlighted the need for further amendments to the Plan. The *Great Barrier Reef Marine Park Amendment (Whitsunday Plan of Management) Instrument 2017* (the Instrument) is intended to assist in achieving the objects of the Plan by making the amendments identified as

[1] See section 39X of the *Great Barrier Reef Marine Park Act 1975.*

being needed during the 2016-17 review. The likely impact and effect of the Instrument is to:

- update the provisions in Part 1 of the Plan to better align with current strategic management;
- increase opportunities for user groups to access the Planning Area, particularly for superyacht and motorised water sport users, while maintaining the values of the Planning Area and a range of experiences for all visitors;
- expand the boundaries of regular aircraft landing areas to address practical concerns for take-off and landings;
- increase opportunities for Traditional Owners to conduct regional tour operations and to obtain permissions for private moorings;
- update the description of boundaries of setting areas, Locations, designated motorised water sports areas, significant bird sites and regular aircraft landing areas to refer to specific co-ordinates, rather than buffer style descriptions that follow the coastline, to provide better certainty of boundaries and to achieve consistency with the approach used to describe zones in the Zoning Plan;
- increase opportunities for daily scenic flights to be conducted as part of regional tour operations; and
- cease reef walking as a permitted activity.

Documents incorporated by reference

Item 7 of Schedule 1 of the Instrument incorporates the following documents by reference:

- the map titled *MPZ10—Whitsundays*, published by the Authority in April 2011; and
- the map titled *Special Edition—Whitsunday Group*, published by the Authority in September 2011.[2]

The incorporation of these documents by reference is consistent with section 14 of the *Legislation Act 2003*, as they were published before commencement of Schedule 1 of the Instrument.

Consultation

[2] Copies of these maps are available at www.gbrmpa.gov.au.

Targeted consultation with stakeholders, including Traditional Owners, recreational users, the Authority's advisory committees and the tourism industry was carried out between December 2014 and June 2017 and shaped the drafting of the Instrument.

On 6 March 2017 an exposure draft of the Instrument was published on the Authority's website and public notice was given in accordance with subsection 39ZE of the Act inviting the public to make comments in connection with the proposed amendment of the Plan. The public notice was published in the Commonwealth Government Notices Gazette, Courier Mail, Whitsunday Times, Mackay Daily Mercury, Bowen Independent and on the Authority's website.

Upon publication of the exposure draft of the Instrument the Authority carried out a comprehensive consultation process to raise community awareness and understanding of the proposed amendments. Emails were sent to permission holders; public information sessions were held in Airlie Beach; meetings were held with Traditional Owners, industry, conservation groups and the Authority's advisory committees; information brochures were distributed to local Whitsundays businesses and posted in public access points (such as the local library); statements were released to the media, and posts published by the Authority in social media.

A total of 52 comments were received by the Authority in response to the release of the exposure draft. These submissions were received through online surveys, emails and by post. 61% of the submissions received were from organisations or representative bodies and 38% of the submissions were from individuals.

The comments received raised arguments both for and against:

- increasing access to user groups in the Planning Area, such as by increasing access to motorised water sports areas, access for high-speed vessels, boundaries of regular aircraft landing areas, opportunities for scenic flights, access for large ships and superyachts, and opportunities for new private moorings and tourist facilities;
- proposed changes to booking requirements;
- changes proposed to the cap on permissions for regional tour operations;
- ceasing reef walking as a permitted activity;
- proposed changes to setting areas; and
- increased protection of significant bird sites.

Comments were received in support of increased flexibility for the Authority to grant permissions for low impact activities. Some of the submissions received suggested alternative approaches to achieve some of the objectives of the proposed amendments.

The Authority took into account all comments made in accordance with the public notice that was given in accordance with subsection 39ZE of the Act. In response to

these comments, the Authority decided to make a number of alterations to the amendment of the Plan, including:

- minor technical amendments;
- narrowing of the proposal to increase access for high-speed vessels, to only apply to personal watercraft such as jet skis;
- increasing business opportunities for Traditional Owners as part of the changes proposed to the cap on permissions for regional tour operations and the proposed new cap on permissions for private moorings;
- narrowing of the scope of the proposal to increase opportunities for scenic flights, to the new opportunities are for fixed-wing aircraft only;
- inclusion of a new clause to allow greater flexibility for the Authority to grant permissions for activities which have a low, or no, adverse impact on the values of the Planning Area; and
- changes to the proposed requirements for anchoring of vessels in designated anchorages and superyacht anchorages.

Regulatory Assessment

The Authority undertook preliminary regulatory assessment. Advice was received from the Office of Best Practice Regulation confirming that a regulation impact statement was not required (reference no. 19334).

Details of the Instrument are set out in Attachment A.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority: Subsection 39ZG(1) of the *Great Barrier Reef Marine Park Act 1975*

ATTACHMENT A

Details of the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017*

Section 1 – Name

This section provides that the title of the Instrument is the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017*.

Section 2 – Commencement

This section contains a table which sets out the timetable for the commencement of the provisions of the Instrument. Sections 1 to 4 of the Instrument and anything else in the Instrument not covered elsewhere commences on the day after it is registered.

The provisions of Schedule 1 will commence at the same time as the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017* commence. However, Schedule 1 does not commence at all if those Regulations do not commence. The Regulations are complementary to the provisions in Schedule 1 therefore it is appropriate to align the commencement dates. It is intended that the Regulations be made and registered shortly after the Instrument has been made and registered, and that the Regulations will commence the day after registration.

The provisions of Schedule 2 and Schedule 3 will each commence on a single day to be fixed by the Chairperson of the Authority. Delayed commencement of these schedules is necessary to allow the Authority time to review permissions that are currently in place which may require amendment in order to be consistent with the provisions contained in these Schedules. If these Schedules are not fixed to commence within 18 months of registration of the Instrument then they will commence the day after the end of that period.

The provisions of Schedule 4 will commence on the first 1 January after the commencement of the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017*. The provisions of this Schedule relate to the definition of 'each year' and commencement of these provisions at the start of a calendar year will assist with a smooth transition to the new definition.

Section 3 – Authority

This section provides that the Instrument is made under Part VB of the *Great Barrier Reef Marine Park Act 1975.*

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Instrument has effect according to its terms.

Schedule 1 – Amendments commencing first

Part 1—Amendments of provisions other than enforcement provisions and boundary descriptions

Item [1] Foreword

Item 1 repeals and substitutes the Foreword in the Plan. The Foreword was updated to include contemporary information, and provide further context including acknowledging the Traditional Custodians of the Great Barrier Reef. The Foreword continues to recognise the Great Barrier Reef as a World Heritage Area which possesses matters of national environmental significance. The legislative and planning framework protecting the significant values of the Planning Area is described including the reason for preparing the Plan of Management. The Planning Area and its unique values are described in more detail geographically, environmentally and culturally, to provide more context. Cotemporary social and economic figures are also noted. The Foreword recognises the increasing pressures on the Great Barrier Reef Marine Park and the intention of the Plan to reduce or eliminate threats to the values of the Marine Park. Contemporary matters and key considerations informing the most recent amendments made by the Instrument are highlighted. The Foreword continues to acknowledge that successful management requires ongoing partnerships and cooperative working arrangements.

Item [2] Clause 1.2

Item 2 repeals and substitutes clause 1.2 of the Plan. The amendments made by this item do not change the current operation of the clause however they make it clearer that the previous reference to the ‘Marine Park’ is a reference to the ‘Great Barrier Reef Marine Park’, and the previous reference to the ‘Planning Area’ is a reference to the ‘Whitsunday Planning Area’.

Item [3] Subclause 1.3(1)

Item 3 repeals and substitutes subclause 1.3(1) of the Plan. The amendments made by this item will include a new reference to the precautionary principle so as to ensure that the intent of the plan is to have regard to the precautionary principle while allowing for reasonable opportunities to access and use the Planning Area. The new reference to the precautionary principle in subclause 1.3(1) is important because of the repeal of subclause 1.3(3) through item 6.

The amendments insert Note 1 and Note 2 at the end of the subclause in order to clarify the definitions of ‘world heritage values’ and ‘precautionary principle’.

Item [4] Paragraph 1.3(2)(a)

The amendment made by item 4 corrects a minor typographical error by inserting a comma after the existing reference to ‘scientific values’.

Item [5] paragraph 1.3(2)(f)

The amendment made by item 5 omits an unnecessary use of the term ‘wide’.

Item [6] Subclause 1.3(3)

Item 6 repeals subclause 1.3(3) as that subclause refers to a section of the Act that has been repealed. Repealing the subclause will result in removing a reference to the precautionary principle however the importance of this principle is now captured in subclause 1.3(1) due to item 3.

Item [7] Subclauses 1.4(2), (3) and (4)

Item 7 repeals subclauses 1.4(2), (3) and (4) and substitutes these with new subclauses 1.4(2) and (3). New subclause 1.4(2) contains a more relevant example for the purposes of that subclause. New paragraphs 1.4(2)(a) and (b) replace an out-of-date reference to a 2006 map, which has been superseded by the two maps referred to in those paragraphs. New subclause 1.4(3) clarifies that boundaries of locations are set out in Schedule 3. The previous subclause 1.4(3) is no longer needed because it dealt with circumstances where boundaries of locations may overlap, which is no longer a possibility because the description of boundaries is now based on specific co-ordinates rather than a buffer style that follows the coastline. The previous subclause 1.4(4) is also no longer needed due to all areas now being described using co-ordinates based descriptions.

Item [8] Clause 1.4 (notes 1, 2 and 3)

Item 8 repeals notes 1 – 3 in clause 1.4 and substitutes these with new notes 1 and 2. The previous Note 1 is no longer needed because of the move to co-ordinate based descriptions of areas. The previous Note 2 is replaced by the new Note 1, with the only change being replacement of an outdated reference to the 'Queensland Environmental Protection Agency'. Management of intertidal areas of most islands is now carried out by the Queensland Department of National Parks, Sport and Racing. The new Note 1 will instead refer to the 'Queensland Government', which is a term more likely to remain contemporaneous as the name of the government agencies is likely to change in the future as a result of machinery of government changes.

Item [9] Divisions 2 and 3 of Part 1

Item 9 repeals Divisions 2 and 3 of Part 1 and substitutes these with new Divisions 2, 2A, 2B, 2C and 3. The intent of substituting these Divisions is to capture additional identified values of the Planning Area, include contemporary information, as well as to provide consistency with other legislation, plans and policies. For each value of the Planning Area corresponding strategies have been included to work in partnership with Traditional Owners. Additionally the cultural, spiritual and social importance, especially to Traditional Owners, is now expressed for each of the values.

Nature Conservation elements have been expanded to include water quality values, issues and strategies. Further information has been included relating to water quality guidelines, ballast water exchange, biofouling, dredging and the management of marine pests. Values, issues and strategies for seagrass meadows have been included, as well as references to responsible reef practices and public moorings. International agreements relating to migratory birds are now formally recognised.

Cultural heritage values have been expanded overall to detail further Traditional Owner cultural heritage, historic heritage, World and National Heritage as well as scenic amenity and aesthetic values.

Community values have been included describing the importance of the region to Traditional Owners, and to the wellbeing of the community though employment, scientific research and appreciation of the region. Issues and strategies that relate to community values have also been included.

Division 3 has been amended to refer to monitoring the effectiveness of the management of the Planning Area including referring to the Authority's contemporary monitoring and reporting program strategy and the intention of the effectiveness of the Plan to be captured as part of this program.

Item [10] Subparagraph 1.22(k)(ii)

Item 10 repeals and substitutes paragraph 1.22(k)(ii). Subclause 1.22(k) cites management of the impacts of tourism use on other users of the Planning Area as being important to the way in which the Authority manages use of the Planning Area. Paragraphs 1.22(k)(i) and (ii) specify the reasons why this is important. The previous paragraph 1.22(k)(ii) stated that impacts reported at many sites suggest that levels of use are already approaching the limits of environmentally sustainable use. As environmentally sustainable use limits have not been established for the Planning Area, the new paragraph 1.22(k)(ii) states more accurately that tourism use in the Planning Area is growing and reports have been received about congestion at certain sites.

Item [11] At the end of subclause 1.23(1)

Item 11 adds new paragraphs (d) and (e) at the end of subclause 1.23(1). Paragraph (d) acknowledges that the development of site plans for sensitive or heavily used sites is a strategy utilised by the Authority for managing the Planning Area. This is further explained in the discussion of item 30 below. Paragraph (e) has been included to acknowledge that another strategy utilised by the Authority for managing the Planning Area is application of the policy *Managing Tourism Permissions to Operate in the Great Barrier Reef Marine Park (including Allocation, Latency and Tenure)* to guide the management of tourism permissions.

Items [12] Subclause 1.23(2)

Item 12 amends the opening sentence of subclause 1.23(2) to clarify that increasing levels of visitation to the Planning Area do not automatically mean there is environmental damage and an increase in competing activities. Rather, there is an increased risk of environmental damage and competing activities.

Items [13], [14], [16] – [18], [20] and [21] Subclause 1.23(2)

Items 13, 14, 16, 17, 18, 20 and 21 change the vessel length requirements in setting areas. Previously in Table 1 of subclause 1.23(2) a reference to a vessel length in metres meant that the length of a vessel could be up to and including a vessel of the length specified. The amendments made will mean that a reference to a vessel

length in metres will now only include vessels ‘less than’ the relevant length and will not include a vessel which is exactly the length specified.

For example, in setting 1 the relevant vessel length was previously a maximum overall length of 70 metres. The new vessel length for setting 1 is less than 70 metres. The effect of this is that a vessel which is exactly 70 metres no longer meets the vessel length requirement for setting 1.

The reason for the amendments to vessel length requirements is to align with the amendments made by item 89 to the definition of ‘large ship’ in Schedule 9, which is discussed below in relation to that item.

Items [15] and [19] References to setting 1 and setting 4 areas

Items 15 and 19 will omit all references to ‘setting 1 (developed)’ and ‘setting 4 (natural)’ and will substitute with ‘setting 1 (intensive)’ and ‘setting 4 (low use)’. The reason for changing the names of settings 1 and 4 is to improve consistency in terminology used across the current plans of management and to improve ease of interpretation.

In making these amendments, consideration was also given to changing ‘setting 5 (protected)’ to ‘setting 5 (sensitive)’, which would have also improved consistency across the current plans of management. It was decided that this change would not be appropriate because it could cause confusion between references to ‘setting 5’ and references to ‘sensitive sites’ which appear in Subdivision 2.

Items [22], [24], [27], [31] and [47] References to setting areas

Items 22, 24, 27, 31 and 47 omit references to setting areas throughout the Plan and substitute these with references to the relevant setting area followed by the name of the setting area in brackets. For example, a previous reference to ‘setting 5’ is now a reference to ‘setting 5 (protected)’. The reason for this change is to improve readability, and is needed as a consequence of items 109 and 110 which are discussed below.

Item [23] Subclause 1.24 (1)

Item 23 repeals and substitutes subclause 1.24(1). The text at the start of subclause 1.24(1) has been slightly reworded to improve readability. In Table 2 the names of some setting 5 (protected) areas have been changed to reflect corresponding changes made to Part 5 of Schedule 2 by item 157, which more accurately reflect the names of the places where these setting areas are located. The descriptions of the significant values of the various setting 5 (protected) areas have also been updated to be more accurate.

A note has been included at the end of the subclause to clarify that the significant values of each setting 5 (protected) area described in Table 2 are not intended to be an exhaustive list of values. Rather, they indicate the significance of each area. These areas are likely to possess other important values not listed in the Table.

Item [24] Subclause 1.24(2)

Item 24 makes an amendment to subclause 1.24(2) to clarify that the subclause is not intended to prevent the Authority from granting new permissions for cultural tours pursuant to subclause 1.24(3).

Item [25] Subclause 1.24(2) (note)

Item 25 repeals the note at the end of subclause 1.24(2). The reason for repealing this note is because the reference to the Authority's policy *Managing Tourism Permissions to Operate in the Great Barrier Reef Marine Park (including Allocation, Latency and Tenure)* is not directly relevant to subclause 1.24(2).

Item [26] Subclause 1.24(3)

Item 26 omits the reference to 'give' and substitutes with 'grant' in subclause 1.24(3). The amendment made by this item improves consistency throughout the Plan and across other legislation administered by the Authority, which refer to the Authority 'granting' permission rather than 'giving permission'.

Items [28] and [29] References to 'traditional owner'

Amendments are made by items 28 and 29 to omit all references to 'traditional owner' and substitute with references to 'Traditional Owner' throughout the Plan. These amendments will bring the Plan into line with the Authority's current practice of capitalising this term.

Item [30] Clause 1.25

Item 30 repeals and substitutes clause 1.25. New subclause 1.25(1) is identical to the previous subclause 1.25(1) except that a note is included at the end of the subclause which provides examples of sensitive sites which may be identified for site planning.

New subclause 1.25(2) is identical to the previous subclause 1.25(2) except that the previous reference to development of a 'management strategy' for a sensitive site has been omitted and substituted with a reference to a 'site plan' for a sensitive site. The previous reference to a 'management strategy' was inconsistent with subclause 1.25(1) and has been changed so that consistent terminology is used throughout clause 1.25.

New subclause 1.25(3) has been included to provide guidance on the types of matters the Authority may have regard to in preparing site plans.

Item [32] At the end of subclause 1.26(3)

Item 32 inserts a note at the end of subclause 1.26(3) to clarify that there are provisions in the Regulations about applying for, and deciding whether to grant or refuse, permissions to install a mooring, pontoon or tourist facility or to operate a tourist program.

Item [33] Subclause 1.26(5)

Item 33 repeals subclause 1.26(5), which has been superseded by the note inserted at the end of subclause 1.26(3) by item 32.

Item [34] Subclause 1.26(6) (note)

Item 34 omits a reference to the superseded 'Temporary Relocation Application form' and substitutes it with a reference to the new form, being the 'Marine Tourism Contingency Plan Application Form'.

Item [35] At the end of clause 1.26

Item 35 adds a new subclause 1.26(7) at the end of clause 1.26 in order to clarify that a tourist program or facility in a place that is severely damaged by a severe environmental incident will not be allowed to relocate to a setting 5 (protected) area if the program or facility was not already located in that area before the damage occurred. This is necessary to protect the values at setting 5 areas from potential congestion impacts and give effect to the intent that only 'like-for-like' access should be allowed under the Authority's *Marine Tourism Contingency Plan for the Great Barrier Reef Marine Park*.

For example, if a tourist operator has a permission to carry out a tourist program at the Deloraine Island setting 5 (protected) area and the Deloraine Island setting 5 (protected) area is severely damaged by a severe environmental incident, the Authority will not grant a permission for the program to be temporarily relocated to a different setting 5 (protected) area, such as the Hill Inlet, Whitsunday Island setting 5 (protected) area.

Item [36] Clauses 1.27 and 1.28

Item 36 repeals and substitutes clauses 1.27 and 1.28.

Clause 1.27

Clause 1.27 previously provided that the Authority would not grant a new permission for a mooring to be installed in the Planning Area except in a setting 1 (intensive) area, in the Location described as Hardy Reef or as part of a temporary relocation of a mooring under subclause 1.26(6). The new clause 1.27 maintains these exceptions and provides for additional exceptions to the 'no new permissions' rule in subclauses 1.27(3), (4) and (5).

New subclause 1.27(3) allows the Authority to grant new permissions for a total of not more than three private moorings to be installed in the Woodwark Bay South Location (which is currently a setting 3 (moderate use) area) if the Authority has prepared a site plan for each site where one of those moorings is to be installed. Woodwark Bay is a quiet bay which receives low levels of tourism and is visited by recreational sailing vessels. There is a small private resort adjacent to the southern end of the Bay, which is currently accessed from the Bay by tourism operators travelling from Pioneer Bay. Woodwark Bay is the only bay in the Planning Area which is adjacent to a resort but not a setting 1 (intensive) area. This restricts the facilities that can be installed, and activities that can be conducted, in Woodwark Bay.

The Authority considers it appropriate to allow some reasonable use of Woodwark Bay without compromising the values of that area and will do this by potentially allowing for the installation of up to three private moorings provided that site planning takes place before any such moorings are installed.

New subclause 1.27(4) allows the Authority to grant new permissions for a total of not more than 20 private moorings in other areas for which the Authority has prepared site plans. This new provision is intended to address recommendations made in 2016 by the Tourism Reef Advisory Committee that the Plan be amended to give the Authority greater flexibility to address crowding issues which may arise from time to time. Greater flexibility will be achieved by allowing up to 20 new private moorings. This flexibility has been balanced against the need to protect the marine environment by requiring site planning before any new moorings can be installed. In response to comments received from stakeholders during consultation on the proposed amendments, five of these 20 potential new moorings have been set aside for Traditional Owners pursuant to paragraph 1.27(4)(a).

A note has been included after subclause 1.27(4) to clarify that under the Regulations an expression of interest process applies for the grant of a new permission for a private mooring under subclauses 1.27(3) or (4). This is a reference to the process set out in Division 2A.3 of Part 2A of the Regulations however this Division has not been explicitly referred to so that the note does not become outdated in circumstances where the Regulations are amended, or repealed and remade. The *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017* amends Division 2A.3 of Part 2A of the Regulations to ensure that the expression of interest process applies to the grant of a new permission for a private mooring under subclauses 1.27(3) or (4) of the Plan.

New subclause 1.27(5) has been inserted to clarify that once a permission for a private mooring to be installed expires, is revoked or is surrendered, the private mooring that was permitted to be installed under that permission is no longer counted toward the ‘quotas’ mentioned in subclauses 1.27(3) and (4) and thus, upon expiry, revocation or surrender of a permission the Authority will have the ability to grant a new permission for a private mooring.

New subclause 1.27(6) ensures that the conditions of a permission granted pursuant to either subclause 1.27(3) or (4), or under subclause (5), will require the mooring to be designed, placed and installed in a way that helps maintain the surrounding habitat and its ecological processes. The intention of this provision is to ensure moorings are sensitive to their surrounding habitats and potential environmental impacts are mitigated.

New subclause 1.27(7) clarifies the preference to install public moorings in heavily used areas rather than private moorings.

Clause 1.28

Clause 1.28 previously provided that the Authority would not grant a new permission for a tourist facility to be installed in the Planning Area except in a setting 1 (intensive) area, in the Location described as Hardy Reef or as part of a temporary relocation under subclause 1.26(6). The new clause 1.28 adds a new exception for

the installation of a tourist facility in the Woodwark Bay South Location. The justification for this new exception is similar to the justification discussed above in relation to private moorings at Woodwark Bay (i.e. it is the only bay in the Planning Area which has a resort located adjacent to it but which is not a setting 1 (intensive) area) and the Authority considers some reasonable use of Woodwark Bay is appropriate. This is achieved by ensuring there are appropriate protections in place pursuant to new subparagraphs 1.28(1)(c)(i) and (ii).

Subparagraph 1.28(1)(c)(i) will ensure that any new facilities will not have a noticeable or lasting impact on the values of the Marine Park or on the public's enjoyment of the Marine Park. Subparagraph 1.28(1)(c)(ii) prevents the Authority from granting a permission for a new facility in circumstances where the application for the facility requires advertisement under the Regulations. Advertising is generally required where the granting of a permission is likely to have a significant impact on the values of the Marine Park. The granting of such a new permission at Woodwark Bay would not be appropriate in such circumstances.

New subclause 1.28(2) and the note at the end of that subclause have been inserted to clarify that subclause 1.28(1) is not intended to apply to private moorings, which are dealt with separately under clause 1.27.

Item [37] Clauses 1.29

Item 37 repeals and substitutes clauses 1.29 and 1.30.

Previous subclauses 1.29(1) and (2), and the first sentence in previous subclause 1.29(3), paraphrased restrictions on aerobatics, motorised water sports and the use of high speed vessels in Part 2 of the Plan. These subclauses have been replaced with new subclause 1.29(1), which will alert readers to the fact that there are limits on aerobatics, motorised water sports and the use of high speed vessels in clauses 2.7 and 2.8 of the Plan.

The second sentence in previous subclause 1.29(3) has been retained as new subclause 1.29(2).

Item [37] Fishing or collecting as part of a tourist program in the Langford/Black Islands Area

Previous clauses 1.30, 2.13 and Schedule 8 provided that fishing or collecting as part of a tourist program was not allowed in the Langford/Black Islands Area. Most of the area referred to previously in Schedule 8 is already a marine national park zone (green zone) and therefore fishing and collecting in that area is not allowed in any event pursuant to the provisions of the *Great Barrier Reef Marine Park Zoning Plan 2003*. The small area not already covered by the marine national park zone (green zone) is a conservation park zone (yellow zone) adjacent to Langford/Black Island area.

Previous clauses 1.30, 2.13 and Schedule 8 have been removed by items 37, 150 and 158 to simplify the arrangements for tourism operators who are able to fish in the conservation park zone within the Planning Area. The ability to fish as part of a tourism program in a conservation park zone is capped under the plan (see clause 1.37(1)), with only 20 operators having this provision through historical permissions.

Given the small size of the area affected and the small number of operators who will now be able to carry out fishing or collecting as part of a tourism program in the area, the amendment is unlikely to have adverse environmental impacts.

Items [37] and [66] Reef walking

Item 37 repeals the previous clause 1.30 (which related to fishing and collecting as part of a tourism program) and substitutes it with a new clause 1.30, which is about reef walking. The activity of reef walking is not encouraged within the Marine Park as it contributes to declining coral cover. The new clause 1.30 is intended to increase protection to coral in the Planning Area by providing that the Authority will not grant a permission for reef walking in the Planning Area.

Item 66 repeals the previous clause 1.38, which provided that a relevant permission for a tourist program must not include the activity of reef walking except at Hardy Reef and Black Island Reef. It is necessary to repeal this clause as it has effectively been replaced by clause 1.30, which will prevent the granting of permissions for reef walking in all parts of the Planning Area, including Hardy Reef and Black Island Reef.

Items [38], [67] and [68] References to Comlaw

Items 38, 67 and 68 makes a minor amendments throughout the Plan to omit references to the 'ComLaw website at http://comlaw.gov.au' and substitute with references to the 'Federal Register of Legislation website at https://www.legislation.gov.au'. The ComLaw website no longer exists and has been superseded by the Federal Register of Legislation website.

Item [39] Subclause 1.32(2)

Item 39 amends subclause 1.32(2) to omit a reference to subclause 2.5(3) as the substance of this provision has been repealed.

Item [40] Paragraph 1.32(3)(d)

Item 40 repeals the reference to a 'cruise ship operation' in paragraph 1.32(3)(d) and substitutes with references to a 'large ship operation' in light of the amendment made by item 89, which is discussed below.

Item [41] Subclause 1.32(7)

Item 41 repeals and substitutes subclause 1.32(7). The previous subclause set out the access rights and requirements for a cruise ship operation. This has been replaced with a subclause setting out the access rights and requirements for a large ship operation. See explanation of the change in terminology at the discussion on item 89 below. The effect of the change is that subclause 1.32(7) now effectively sets out the access rights and requirements for all large ships that are operated as part of a tourist program (including cruise ships and large ships other than cruise ships, such as superyachts with an overall length of at least 70 metres that are operated as part of a tourist program).

The access rights of a large ship operation under new subclause 1.32(7) are generally the same as those which applied previously to a cruise ship operation however a number of minor changes have been made.

Under paragraph 1.32(7)(a) the ability to access the Planning Area up to 50 days with a booking has been retained however some amendments have been made to clarify that this is 50 days 'each year'. Amendments have also been made to ensure the 50 day limitation applies not only to a cruise ship being used in the operation, but to tenders and aircraft that are used as part of the operation.

New paragraph 1.32(7)(b) is substantially the same as the previous paragraph 1.32(7)(b).

Under paragraph 1.32(7)(c) access to designated anchorages (previously referred to as 'cruise ship anchorages') is still generally limited to one ship at a time. Amendments have however been made to this paragraph to clarify that more than one vessel that has an overall length of less than 70 metres (and consequently is not a large ship) can access a designated anchorage, and that the limitation that generally applies is that only one 'large' ship can access a designated anchorage at a time (i.e. a ship with an overall length of at least 70 metres).

The exception to the general rule of one large ship per designated anchorage will continue to apply at the Turtle Bay designated anchorage where no more than 2 large ships may anchor at a time at that designated anchorage. Additionally, an exception has been included to allow up to 2 large ships to anchor at a time at the Funnel Bay designated anchorage in order to allow for commercial growth in the region.

New paragraph 1.32(7)(d) is substantially the same as the previous paragraph 1.32(7)(d).

New paragraph 1.32(7)(e) retains the previous restriction on the use of cruise ship tenders however some amendments have been made. The words 'for a large ship operation using a cruise ship' have been inserted to prevent the restriction being extended to large ship operations that do not use cruise ships. It is not necessary to restrict the use of tenders by large ship operations that do not use cruise ships as such operations will generally have significantly lower passenger numbers and less tenders, and the use of these tenders is therefore not expected to significantly impact the values of the planning area.

The previous reference to transferring passengers by the most and direct and reasonable route has been omitted and substituted with a reference to transiting. While it is not intended that this change will have any practical effect, the term 'transiting' more appropriately describes the intended activity. The definition of transiting in Schedule 9 captures a requirement for the transit to be 'by the most direct and reasonable route' therefore there is no need to expressly state this in the paragraph.

Items [42] Paragraph 1.32(8)(b)

Item 42 repeals and substitutes paragraph 1.32(8)(b). Previous subclause 1.32(8)(b) limited hire operations so that they could not be conducted outside of a setting 1

(intensive) area. This limitations have been retained in the new paragraph 1.32(8)(b) however an exception to this has been created for the Woodwark Bay South Location. The justification for this exception is similar to the justifications provided above in the discussion of item 36 on other changes relating to Woodwark Bay (i.e. it is the only bay in the Planning Area which has a resort located adjacent to it but which is not a setting 1 (intensive) area) and the Authority considers it appropriate to allow some reasonable use of Woodwark Bay without compromising the marine environment. This is achieved by allowing for the hire of non-motorised craft at Woodwark bay under paragraph 1.32(8)(b).

Item [43] Paragraph 1.32(9)(a)

Item 43 amends paragraph 1.32(9)(a) to omit the reference to 'access to the Planning Area each year' and substitutes with a reference to 'access each year to the Planning Area'. This amendment is intended to rectify a minor grammatical issue.

Items [44], [48], [51] and [144] References to '7 day period' and 'per week'

Items 44, 48, 51 and 144 omit references to a '7 day period' and 'per week' and substitute with references to '7 consecutive days' throughout the Plan. These amendments are intended to clarify that where the Plan imposes a restriction on the number of visits that may occur to a particular area in any 7 day period, this refers to a period of 7 consecutive days. For example, paragraph 1.32(9)(b) imposes a restriction of '2 visits per Location in any 7 consecutive days'. If visits to a Location occurred on Thursday and Saturday in one week, and then a third visit occurred on Wednesday in the following week, this would not meet paragraph 1.32(9)(b) as there will have been more than 2 visits in a period of 7 consecutive days. Alternatively, if the third visit did not occur until the Thursday in the second week then the requirement would be met.

Items [45], [69] and [70] References to 'per year'

Items 45, 69 and 70 omit references throughout the Plan to 'per year' and substitute with 'each year'. The reason for this change is explained below in detail in the discussion of items 1 and 2 of Schedule 4 of the instrument (Amendments commencing 1 January after the commencement of Schedule 1).

Item [46] Subclause 1.32(10)

Item 46 repeals and substitutes subclause 1.32(10), which specifies the access rights of a non-motorised operation. The new subclause 1.32(10) is essentially the same as the previous subclause and makes only minor grammatical amendments to improve consistency with the other provisions of clause 1.32.

Item [49] Subparagraph 1.32(13)(a)(iii)

Item 49 repeals and substitutes subparagraph 1.32(13)(a)(iii), which relates to the access rights for a regional tour operation (aircraft). The new subparagraph 1.32(13)(a)(iii) is essentially the same as the previous subclause and makes only minor grammatical amendments.

Item [50] Paragraph 1.32(15)(a)

Item 50 omits the word 'both' and substitutes the word 'all' at the start of paragraph 1.32(15)(a) to reflect that fact that there are now more than 2 subparagraphs in that item as a result of the amendment made by item 53.

Item [52] Subparagraph 1.32(15)(a)(iii)

Item 52 omits the word 'or' at the end of subparagraph 1.32(15)(a) as a consequence of an additional subparagraph being inserted after this subparagraph pursuant to item 53.

Item [53] At the end of paragraph 1.32(15)(a)

Item 53 inserts a new subparagraph (iii) at the end of paragraph 1.32(15)(a). The new subparagraph inserts a requirement for a standard tour operation (aircraft) not to conduct as part of a tourist program scenic flights in the Planning Area below 1,000 feet (above ground or water). This requirement mirrors an existing requirement that has always applied to a regional tour operation (aircraft).

Item [54] Subclause 1.33(1)

Item 54 inserts wording into subclause 1.33(1) to clarify when access to the Planning Area, or part of the Planning Area, is not permitted without a booking, and when use of an anchorage is not permitted without a booking. This amendment alerts readers to the fact that a booking to the planning area may not be the only booking that is required in circumstances where use of an anchorage is also proposed.

Item [55] At the end of subclause 1.33(1)

Item 55 inserts a note at the end of subclause 1.33(1). The note directs readers' attention to clauses 2.4 and 2.5 of the Plan, which set out the relevant booking requirements referred to in subclause 1.33(1).

Item [56] Subclause 1.33(3)

Subclause 1.33(3) previously provided that the total number of bookings for cruise ships to operate in the Planning Area is three per day. As a consequence of the amendment made by item 83 (which subsumes cruise ship operations into the new broader category of large ship operations) it is necessary to now refer to 'large ship operations using a cruise ship'. Item 56 omits the reference in subclause 1.33(3) to 'cruise ships' and substitutes this accordingly.

Item [57] Subclause 1.35(1)

Item 57 makes amendments so that the previous reference to clause 1.36 refers more specifically to the individual provisions within clause 1.36 under which a new permission for a person to conduct a regional tour operation may be granted.

Item [58] After subclause 1.35(4) (before the note)

Item 58 inserts a new subclause (5) at the end of subclause 1.35. The purpose of this new subclause is to clarify that the relevant caps on the granting of tourism permissions set out in clause 1.35 are not intended to prevent the granting of a temporary relocation of a tourist program pursuant to subclause 1.26(6). For example, if there are a total number of 10 Bowen operations in force the Authority is not prevented by subclause 1.35(4) from granting an additional permission for a Bowen operation if this is necessary in order to temporarily relocate one of the existing 10 Bowen operations because the existing operation is located in a place in the Planning Area that has been severely damaged by a severe environmental incident.

Item [59] Subclauses 1.36(1) and (2)

Item 59 repeals subclauses 1.36(1) and (2) and substitutes these with new subclauses 1.36(1), (1A) and (2). Clause 1.36(1) previously provided that the Authority will grant up to 15 new permissions for persons to conduct regional tour operations. Clause 1.36(2) previously provided that five of these permissions may only be granted to traditional owners.

A permission to conduct a regional tour operation is a special tourism permission pursuant to regulation 3 of the Regulations and is a special permission pursuant to regulation 88G. As a result, the process for seeking expressions of interest in Division 2A.3 of Part 2A of the Regulations must be followed before the Authority may grant such a permission. Under clause 1.32, the access rights that may be provided under a permission to conduct a regional tour operation are greater than that which may be provided for under a permission to conduct a standard tour operation.

No new permissions have been granted under previous subclauses 1.36(1) and (2) to allow persons to conduct regional tour operations in the Planning Area. To address concerns raised in 2016 by the Tourism Reef Advisory Committee regarding crowding issues in the Whitsundays, there is a need to narrow the circumstances under which permissions may be granted pursuant to subclause 1.36. However, in response to submissions made by stakeholders, the Authority considers this should be balanced against the need to allow potential business opportunities for Traditional Owners, and the demand for more scenic flights to be allowed to be conducted in the Planning Area. The new subclauses 1.36(1) and (1A) do this by providing that the Authority may grant up to 10 new permissions to Traditional Owners to conduct regional tour operations in the Planning Area, and may grant up to five new permissions to conduct regional tour operations in the Planning Area using seaplanes for scenic flights which do not land in the Planning Area.

The purpose of the new subclause 1.36(2) is to clarify that the restrictions on the granting of new permissions to conduct regional tour operations set out in subclauses 1.36(1) and (1A) are not intended to prevent the granting of a temporary relocation of a tourist program pursuant to subclause 1.26(6). For example, if there is already a permission in force to conduct a regional tour operation which does not meet the requirements of subclauses 1.36(1) and (1A), the Authority is not prevented by those subclauses from granting a new permission for a regional tour operation in order to

temporarily relocate the existing operation because the existing operation is located in a place in the Planning Area that has been severely damaged by a severe environmental incident.

Item [60] Subclauses 1.36(3) and (4)

Item 61 makes minor amendments to existing subclauses 1.36(3) and (4) which are necessary as a consequence of the amendments made by item 59. The amendment to subclause 1.36(3) is intended to clarify that a permission granted under subclause 1.36(1) or (1A) may permit a regional tour operation to have daily access to the Planning Area without a booking. This reflects the type of access contemplated for a regional tour operation in clause 1.32. The amendment to subclause 1.36(4) confirms that the Authority will seek stakeholder input when determining the timing of the release of any new permissions under subclauses 1.36(1) or (1A).

Items [61], [62] and [63] Clause 1.36

Item 61 omits the last sentence in subclause 1.36(4). Item 63 largely replaces this sentence with new subclause 1.36(5). New subclause 1.36(5) more clearly achieves the intent of the text omitted from subclause 1.36(4), which is intended to clarify that once a new permission for a regional tour operation expires, is revoked or is surrendered, that permission is no longer counted toward the 'quotas' mentioned in subclauses 1.36(1) and (1A).

Item 63 inserts Note 1 at the end of clause 1.36. This note replaces the reference to the expression of interest process in the text omitted from subclause 1.36(4) by item 61 by clarifying that an expression of interest process must be applied for under the Regulations prior to the granting of a permission for a regional tour operation. This is intended to be a reference to the process set out in Division 2A.3 of Part 2A of the Regulations however an explicit reference to this Division has not been made so that the Note does not become outdated in circumstances where the Regulations are amended, or repealed and remade.

Item 63 also inserts Note 2 at the end of clause 1.36, which replaces the previous note repealed by Item 62. The previous note referred to the policy document *Managing Tourism Permissions to Operate in the Great Barrier Reef Marine Park (Including Allocation, Latency and Tenure).* New Note 2 refers more generally to information on the Authority's website, as the Policy that was previously referred to is not the only relevant information about the way tourism permissions are managed by the Authority.

Item [64] Clause 1.37

Item 64 inserts a (1) at the start of previous clause 1.37 so that it becomes a subclause. This amendment is necessary as a consequence of item 65, which inserts a new subclause 1.37(2).

Item [65] At the end of clause 1.37

Subclause 1.37(1) provides that the Authority will not grant any new permissions for tourist programs that involve fishing or collecting in the Planning Area outside of the General Use Zone and Habitat Protection Zone. Item 65 inserts a new subclause

1.37(2) to clarify that subclause 1.37(1) is not intended to prevent the granting of a temporary relocation of a tourist program pursuant to subclause 1.26(6). For example, if there is already a permission in force for conduct of a tourist program that involves fishing or collecting outside of the General Use Zone and Habitat Protection Zone, the Authority is not prevented by subclause 1.37(1) from granting a new permission for conduct of a tourist program that involves fishing or collecting outside of the General Use Zone and Habitat Protection Zone in order to temporarily relocate the existing operation because the existing operation is located in a place in the Planning Area that has been severely damaged by a severe environmental incident.

Item [71] At the end of Subdivision 5 of Division 4 of Part 1

Item 71 adds a new clause 1.44. The purpose of this clause is to declare that certain relevant permissions are special tourism permissions for the purposes of the Regulations. The *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017* makes a complementary amendment to the definition of a special tourism permission, so that permissions declared for this purpose under the Plan fall within the definition. The effect of this is that the expression of interest process set out in Division 2A.3 of Part 2A of the Regulations must be applied prior to the granting of a relevant permission listed in the new clause 1.44. It has always been intended that the relevant permissions listed in the new clause 1.44 are special permissions. These amendments are intended to remove any uncertainty surrounding the status of these types of permissions and ensure the original intent of the Plan is achieved.

The note at the end of the new clause 1.44 clarifies that the Regulations provide that only certain persons may apply for special permissions. This is intended to be a reference to the process set out in Division 2A.3 of Part 2A of the Regulations however an explicit reference to this Division has not been made so that the note does not become outdated in circumstances where the Regulations are amended, or repealed and remade. Under regulation 88H a person who holds a special permission may apply for a replacement permission of the same kind before the existing permission expires (this is the intention of the reference to a ‘past holder’ of the permission in the note at the end of at the end of clause 1.44). Otherwise, the expression of interest process set out in Division 2A.3 of Part 2A of the Regulations must be followed before the Authority can grant a special permission.

Item [72] Part 1 of Schedule 1

Item 72 amends the geographic description of the Planning Area in Part 1 of Schedule 1, so that the Planning Area extends 3,000 feet above the ground or water surface, rather than 915 metres above the ground or water surface. It is normal practice to refer to ‘feet’ rather than metres when referring to height. 915 metres converts to approximately 3,000 feet therefore this change does not have any significant impact on the geographic description of the Planning Area.

Item [73] Schedule 9 (note to heading)

Item 73 repeals and substitutes the note to the heading of Schedule 9 (Definitions). There are 2 main reasons for the change. Firstly, the previous note contained a reference to the *Legislative Instruments Act 2003* which is now out of date. Secondly,

there is no point having the reference (which pursuant to section 10 of the *Acts Interpretation Act 1901* would be translated to a reference to the *Legislation Act 2003*) if, as asserted in the second sentence of the previous note, each term used in the Plan that is defined in the Act also has a definition in Schedule 9 giving the term the same meaning as it has in the Act, as that makes it unnecessary to rely on subsection 13(1) of the *Legislation Act 2003.*

The new note simply refers the reader to subclause 1.4(1) of the Plan, which states that unless the contrary intention appears, a term defined in Schedule 9 has the meaning given by that Schedule. The replacement note reflects the current drafting practice of ensuring that each Schedule has a note referring to the provision that gives the Schedule effect.

Item [74] Schedule 9

Item 74 repeals the definitions of '100 metre line', '500 metre line' and '1 500 metre line' from Schedule 9. It is no longer necessary for Schedule 9 to contain these definitions as all areas relevant to the Plan are now described by coordinates and therefore do not need to rely on these definitions.

Item [75] Schedule 9

Item 75 inserts a new definition into Schedule 9 for the verb 'anchor' and a note at the end of this new definition. The definition only applies to circumstances where it is necessary to determine whether a vessel is anchored. It does not apply to the noun 'anchor' used in the Plan typically to describe an object used to moor a vessel to the sea floor. The purpose of the definition is to clarify that there is more than one way to anchor a vessel. Traditionally, a physical anchor is dropped in the water (which falls within subclause (a) of the definition) however this is not necessarily the way that all vessels anchor. Some vessels are equipped with dynamic positioning systems, which can keep a vessel stationary at a particular place so that it is effectively 'anchored' without the need to drop an anchor in the traditional sense (this would fall within subclause (c) of the definition).

Subclause (b) of the definition has been included to clarify that once a vessel is at anchor, it can be said to be 'anchored'.

Item [76] Schedule 9 (note at the end of the definition of *aquaculture operation*)

Item 76 repeals the note at the end of the definition of 'aquaculture operation' in Schedule 9. The note stated that 'aquaculture' has a corresponding meaning to that of 'aquaculture operation' and cited section 18A of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of the *Legislative Instruments Act 2003* as the basis for this.

The note has been repealed for several reasons. First, the term 'aquaculture' is not used in the Plan except in the phrase 'aquaculture operation'. Secondly, the note was not correct in its description of section 18A of the *Acts Interpretation Act 1901*. Thirdly, the reference to the *Legislative Instruments Act 2003* was out of date.

Item [77] Schedule 9 (at the end of paragraph (c) of the definition of *Bowen operation*)

Item 77 adds text to the end of the definition of 'Bowen Operation' in Schedule 9 to clarify that the primary vessel used for a Bowen Operation must have an overall length of less than 70 metres. The amendment made by this item will ensure there is no ambiguity surrounding the size of vessels that can be used to conduct a Bowen Operation, and will ensure consistency with the definitions for 'regional tour operation' and 'standard tour operation'.

Items [78], [92], [98], [105], [114] and [117] References to vessel identification numbers

Items 78, 92, 98, 105, 114 and 117 repeal notes throughout the Plan which refer to vessel identification numbers (VINs). The use of VINs are intended to be phased out in the future therefore these references are no longer appropriate.

Item [79] Schedule 9

Item 79 inserts a definition for 'CAMBA' to clarify that it has the meaning given by clause 1.11A. Under that clause, CAMBA means the China-Australia Migratory Bird Agreement.

Item [80] Schedule 9

Item 80 repeals a number of definitions from Schedule 9 which were previously necessary to interpret the descriptions of the setting areas in Schedules 2, 7 and 8. It is no longer necessary for Schedule 9 to contain these definitions as all areas relevant to the Plan are now described by coordinates and therefore do not need to rely on these definitions.

Item [81] Schedule 9 (definition of *crewed vessel operation*)

Item 81 omits the reference in the definition of 'crewed vessel operation' to a 'ship' and substitutes with a reference to a 'large ship'. This amendments is necessary as a consequence of items 89 and 111, which essentially result in the definition of 'large ship' having the meaning that was previously given to the definition of 'ship'. Refer to the discussion of these items below.

Item [82] Schedule 9

Item 82 inserts a new definition for 'cruise ship' to clarify that it means a large ship (that is, a ship that has an overall length of at least 70 metres) that is a cruise ship (within the ordinary meaning of the phrase). The Authority considers that, apart from needing to clarify the requirements for the overall length of the ship, giving the term 'cruise ship' its ordinary plain English meaning is appropriate as this is a well-understood term which does not require a more specific definition.

Item [83] Schedule 9

Item 83 repeals the definitions of 'cruise ship anchorage' and 'cruise ship operation'.

It is necessary to repeal the definition of ‘cruise ship anchorage’ as a consequence of item 85, which essentially renames ‘cruise ship anchorages’ to ‘designated anchorages’. The new name is more reflective of the fact that these anchorages can be accessed by vessels other than cruise ships.

It is necessary to repeal the definition of ‘cruise ship operation’ as a consequence of item 89, which (in combination with items 41) essentially renames ‘cruise ship operation’ to ‘large ship operation’, and expands the definition of the operation to include large ships other than cruise ships. The new name is more reflective of the fact that the operation has been expanded to cover other types of ships. The reason for this expansion is explained in more detail in the discussion of item 89 below.

Item [84] Schedule 9 (note at the end of the definition of *daily access*)

Item 84 repeals the note at the end of the definition of ‘daily access’ in Schedule 9. The note previously was included to clarify that the reference to a ‘year’ in that definition is defined. The definition of a ‘year’ is being repealed and replaced with a definition of ‘each year’ by items 1 and 2 of Schedule 4 of the Instrument (amendments commencing 1 January after the commencement of Schedule 1) therefore the note is no longer appropriate. In any event, it is considered that the definition of ‘daily access’ is sufficiently clear without the need for a definition for a ‘year’.

Item [85] Schedule 9

Item 85 inserts new definitions of ‘designated anchorage’ and ‘designated motorised water sports area’ from Schedule 9.

Item 85 essentially renames ‘cruise ship anchorages’ to ‘designated anchorages’. The new name is more reflective of the fact that these anchorages can be accessed by vessels other than cruise ships.

The new definition of ‘designated motorised water sports area’ is essentially the same as the previous definition of ‘designated water sports area’, which is repealed by item 86. Previous references to the old terminology have been omitted and substituted throughout the Plan. The new title for this area is more reflective of the fact that the area is designated for ‘motorised’ water sports

Item [86] Schedule 9

Item 86 repeals the definitions of ‘designated water sports area’ and ‘discharge’ from Schedule 9. The reason for repealing the definition of ‘designated water sports area’ is discussed above in relation to item 85. The definition of ‘discharge’ is no longer needed because it refers to a provision of the Act that has been repealed. Also, the term will is used only in descriptive material (subclause 1.7B(6), referring to discharge of treated sewage as a potential source of pollution from river catchments) in a manner that does not necessitate the need for a definition.

Item [87] Schedule 9

Item 87 inserts a definition for 'JAMBA' to clarify that it has the meaning given by clause 1.11A. Under that clause, JAMBA means the Japan-Australia Migratory Bird Agreement.

Item [88] Schedule 9 (definition of *Langford/Black Islands Area*)

Item 88 repeals the definition of 'Langford/Black Islands Area' from Schedule 9. This definition is no longer needed due to the repeal and substitution of clause 1.30 by item 37 and clause 2.13 by item 150.

Item [89] Schedule 9

Item 89 inserts new definitions for 'large ship' and 'large ship operation' into Schedule 9.

The new definition for 'large ship' is essentially the same as the previous definition of 'ship', with the only change being that the new definition now refers to an overall length of 'at least' 70 metres instead of an over length of 'more than' 70 metres. The reason for this change in overall length is to improve consistency with the Regulations, which contain pilotage requirements for vessels that are 70 metres or more in overall length.

The reason for the previous definition of 'ship' essentially becoming the definition of 'large ship' is to avoid confusion with the definition of 'ship' that exists in the Regulations for the purposes of the Zoning Plan. Item 111 amends the definition of 'ship' to reflect the definition in the Zoning Plan.

The reason for the new definition of 'large ship operation', which effectively replaces the repealed definition of 'cruise ship operation' is to acknowledge that in addition to cruise ships, there are other large ships which may be operated as part of a tourist program. For example, a superyacht with an overall length of 70 metres that is operated as part of a tourist program falls into this category. Previously this presented an anomaly in the Plan as these other types of operations technically fell within the definition of a 'cruise ship operation' however the access rights previously contained in clause 1.32(7) were not drafted with such operations in mind. It is therefore necessary to create a new type of operation that is intended to apply to both cruise ships and other large ships operated as part of a tourist program.

Item [90] Schedule 9 (definition of *large vessel*)

Item 90 amends the definition of 'large vessel' in Schedule 9 to omit the words 'not more' and substitute with 'less'. The effect of this is that a large vessel means a vessel with an overall length of more than 35 metres, but 'less' than 70 metres. This amendment is needed as a consequence of the amendment made to the definition of 'large ship' by item 89, so that the two definitions do not overlap.

Item [91] Schedule 9 (definition of *Location*)

Item 91 repeals and substitutes the definition of 'Location' in Schedule 9. The previous definition referred to '500 metre line' and 'coastal 500 metre line', and the

definitions now have been repealed by items 74 and 80. It is no longer necessary define 'Location' by reference to these lines, as all areas for Locations are now described by coordinates in Schedule 3. The new definition of Location reflects this.

Item [93] Schedule 9 (definition of *Marine Park*)

Item 93 repeals and substitutes the definition of 'Marine Park' in Schedule 9. The previous definition stated that 'Marine Park' has the meaning given by subsection 3(1) of the Act. The new definition refers the reader to the definition given in clause 1.2. This amendment is not intended to have any substantive effect. Rather, it is intended to make the definition more explicit by having it located at the start of the Plan.

Item [94] Schedule 9 (definition of *new permission*)

Item 94 amends the definition of 'new permission' in Schedule 9. Previously the definition contained a reference to 'the commencement date of Schedule 1 to the *Whitsundays Plan of Management Amendment 2008 (No. 1)*'. The amendment to the definition clarifies that the actual commencement date of the 2008 amendment is 18 December 2008. The amendment is not intended to have any substantive effect. Rather, it is intended to make the definition self-contained and save the reader the having to refer to a separate legislative instrument in order to determine the commencement date.

Items [95] and [96] Schedule 9 (definition of *no anchoring area*)

Items 95 and 96 repeal the definition of 'no anchoring area' in Schedule 9 and substitute with a new definition of 'no-anchoring area'. The new definition contains a hyphen, which is grammatically correct. This change is not intended to have any substantive effect.

The previous definition referred the reader to Schedule 5 of the Plan, which contained a list of the specific areas which were no-anchoring areas. The new definition states that 'no-anchoring area' has the meaning given by the Regulations. Complementary amendments made by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017* define a no-anchoring area as an area described in Schedule 1B of the Regulations. Essentially the areas described in Schedule 1B of the Regulations are the same as the areas that were previously described in Schedule 5 of the Plan, except that minor changes have been made to reflect the current locations of the reef protection markers used in the Marine Park to identify these areas. Over time, the reef protection markers used in the Marine Park to identify these areas have been moved due to a number of reasons including to rectify Global Positioning System errors and movement or failure of the markers attachment to the seafloor. As a result, the areas that were previously described in Schedule 5 are no longer accurate. An additional two no-anchoring areas have been included in Schedule 1B of the Regulations at Black Island and Dumbell Island.

The Authority requires flexibility to add, remove and amend the locations of no-anchoring areas without the need for amendments to the Plan. Relocation of the descriptions of no-anchoring areas from the Plan into the Regulations will allow no-

anchoring areas to be more easily updated from time to time through regulation amendments.

Item [97] Schedule 9 (paragraph (c) of the definition of *non-motorised operation*)

Items 97 amends the definition of 'non-motorised operation' in Schedule 9 to clarify that a rescue vessel which is supporting a non-motorised operation for safety purposes has equivalent access to the Planning Area as is provided to a non-motorised operation under that clause.

Item [99] Schedule 9

Item 99 repeals the definitions of 'per week' and 'per year' from Schedule 9. As discussed above in relation to items [44], [48], [51] and [144], references to 'per week' which appear throughout the plan have been updated with references to '7 consecutive days. The reason for this change and an example of how this change is intended to apply is provided in the discussion above of items [44], [48], [51] and [144]. The term 'per week' is no longer used because even with the previous definition of 'any period of 7 consecutive days' (which was considered to be appropriate), readers who do not look up the definition in Schedule 9 may be inclined to assume that 'per week' means a calendar week (which it does not). It is therefore appropriate to explicitly state '7 consecutive days' in the parts of the Plan where reference was previously made to 'per week'.

Item [100] Schedule 9 (definition of *Planning Area*)

Item 100 repeals and substitutes the definition of 'Planning Area' in Schedule 9. The previous definition stated that 'Planning Area' means the 'Whitsunday Planning Area', which has a separate definition in Schedule 9, which has the meaning given by subsection 3(1) of the Act. The new definition of Planning Area refers the reader to the definition given in clause 1.2. This amendment is not intended to have any substantive effect. Rather, it is intended to make the definition more explicit by having it located at the start of the Plan.

Item [101] Schedule 9

Item 101 inserts definitions for 'private mooring' and 'public mooring' into Schedule 9.

A definition is necessary for 'private mooring' as this term is now used in clauses 1.27 and 1.28. The definition is linked to the meaning given in the Regulations, which pursuant to complementary amendments made by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017,* is 'a mooring other than a public mooring'. The reason for this definition being located in the Regulations is to ensure consistent use of terminology across Marine Park legislation. Additionally, the Authority requires flexibility to amend the definition in the future through Regulation amendments.

The term 'private mooring' is used throughout the Plan but has not previously been defined. Like the definition for 'private mooring' the definition for public mooring is linked to the meaning given in the Regulations for similar reasons to those given above in relation to the definition of 'private mooring'.

Item [102] Schedule 9

Item 102 inserts a definition for 'Reef 2050 Plan' to clarify that it has the meaning given by subclause 1.5(4). Under that clause, Reef 2050 Plan means the *Reef 2050 Long Term Sustainability Plan*.

Item [103] Schedule 9 (paragraph (d) of the definition of *regional tour operation*)

Item 103 amends paragraph (d) of the definition of 'regional tour operation' in Schedule 9 to omit the words 'not more' and substitute with 'less'. The effect of this is that if a regional tour operation uses a vessel, the vessel must be 'less' than 70 metres. In other words, the operation must not use a large ship. This amendment is needed as a consequence of the amendment made to the definition of 'large ship' by item 89.

Item [104] Schedule 9 (after paragraph (d) of the definition of *regional tour operation*)

Item 104 amends the definition of 'regional tour operation' in Schedule 9 to clarify that type of operation is different from a standard tour operation in that a regional tour operation may have daily access to the Planning Area without a booking.

There are no permissions for standard tour operations which allow daily access to the Planning Area. However, a specific reference to daily 'anchoring' access has been included in relation to vessels because it is intended that this definition should be in a format that can be adopted for other plans of management (in order to ensure consistent use of terminology across Marine Park legislation). In drafting a definition that could be used more widely, it was necessary to acknowledge the fact that under the *Cairns Area Plan of Management 1998* some permissions for standard tour operations in the Cairns Planning Area allow daily access to moorings.

Item [106] Schedule 9 (definition of *Regulations*)

Item 106 repeals and substitutes the definition of 'Regulations' in Schedule 9. Under the previous definition, 'Regulations' meant the *Great Barrier Reef Marine Park Regulations 1983*. In order to ensure the definition does not become outdated, it has been replaced with a reference to 'regulations made under the Act'. This will ensure that if the Regulations are repealed and remade in the future, the definition in the Plan will not need to be updated.

Item [107] Schedule 9 (note at the end of the definition of *relevant permission*)

Item 107 repeals the note at the end of the definition of 'relevant permission' in Schedule 9. The definition of relevant permission has the same meaning as in the Regulations. The note at the end of that definition refers readers specifically to subregulation 3(1) of the Regulations, which is where the definition is currently located. It is not necessary to refer specifically to the provision of the Regulations in which this definition is located. The note has been repealed in order to ensure the Plan does not become outdated if the Regulations are repealed and remade and, as a result, specific provisions such as subregulation 3(1) are renumbered.

Item [108] Schedule 9

Item 108 inserts a definition for 'ROKAMBA' to clarify that it has the meaning given by clause 1.11A. Under that clause, ROKAMBA means the Republic of Korea—Australia Migratory Bird Agreement .

Item [109] Schedule 9

Item 109 repeals the various definitions of setting areas in Schedule 9. These definitions are no longer needed as a consequence of the new definitions inserted by item 110, which is explained below.

Item [110] Schedule 9

Item 110 inserts a new format for describing setting areas, as well as new definitions for setting areas. The new format used to describe setting areas is to refer to the relevant setting area followed by the name of the setting area in brackets. For example, a previous reference to 'setting 5' is now a reference to 'setting 5 (protected)'. The reason for these changes is to improve readability, and consequential changes have been made throughout the Plan by items [15] and [19].

This item also reflects the intention to refer to 'setting 1' as 'intensive' and 'setting 4 as 'low use', instead of referring to 'setting 1' as 'developed' and 'setting 4' as 'natural'. As explained in relation to items [15] and [19], the reason for changing the names of settings 1 and 4 is to improve consistency in terminology used across the current plans of management and to improve ease of interpretation.

The definitions for the various setting areas remain relatively unchanged. They continue to refer to the descriptions in Schedule 2 however an explicit reference has been included for each setting area to the airspace up to 3,000 feet vertically above each point on the ground or the water surface of the area. This inclusion is effectively a relocation of an equivalent reference that was previously included at the start of Schedule 2, as it was considered more appropriate for the definitions themselves to contain the airspace reference. In relocating this, the previous reference to '915 metres above the ground or water surface' was changed to '3,000 feet vertically above the ground or water surface'. It is normal practice to refer to 'feet' rather than metres when referring to height. 915 metres converts to approximately 3,000 feet therefore this change does not have any significant impact on the geographic descriptions of setting areas.

Item [111] Schedule 9 (definition of *Ship*)

Item 111 repeals and substitutes the definition of 'ship' in Schedule 9. Previously the definition referred to a vessel that has an overall length of more than 70 metres. For the reasons given above in relation to item 89, this definition has effectively been replaced by the definition of 'large ship'.

A new definition of 'ship' has been provided, which adopts the definition contained in the regulation 31 of the Regulations that is given for the purposes of the Zoning Plan. This new definition is relevant in new subclauses 2.4(7) which is discussed in relation to item 140 below. It is important to note the distinction between 'large ship' and a

'ship' as these terms have different meanings and are used for different purposes in the Plan.

Item [112] Schedule 9 (paragraph (d) of the definition of *standard tour operation*)

Item 112 amends paragraph (d) of the definition of 'standard tour operation' in Schedule 9 to omit the words 'not more' and substitute with 'less'. The effect of this is that if a standard tour operation uses a vessel, the vessel must be 'less' than 70 metres. In other words, the operation must not use a large ship. This amendment is needed as a consequence of the amendment made to the definition of 'large ship' by item 89.

Item [113] Schedule 9 (after paragraph (d) of the definition of *standard tour operation*)

Item 113 amends the definition of 'standard tour operation' in Schedule 9 to clarify that type of operation is different from a regional tour operation in that a standard tour operation may have up to 50 days access to the Planning Area each year with a booking. There are no permissions for standard tour operations that allow access the Planning Area for more than 50 days each year.

Item [115] Schedule 9

Item 115 inserts new definitions into Schedule 9 for 'superyacht' and 'superyacht anchorage'. The new definitions adopt the meaning of these terms given by the Regulations, which are inserted into the Regulations through complementary amendments made by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017*.

The definition of a superyacht is located in the Regulations to achieve consistent use of terminology across Marine Park legislation.

The specific locations of superyacht anchorages are listed in the Regulations because the Authority requires flexibility to add, remove and amend the locations of these anchorages as new information about the appropriateness of such anchorages becomes available, without the need for amendments to the Plan. Listing the superyacht anchorages in the Regulations allows them to be more effectively updated from time to time through Regulation amendments.

Item [116] Schedule 9 (note 1 at the end of the definition of *support service operation*)

Item 116 changes 'Note 1' to 'Note' as a consequence of 'Note 2' being repealed by item 117, which is discussed above.

Items [118] and [119] Schedule 9 (definition of *tourism operation*)

Items 118 and 119 collectively amend the definition of 'tourism operation' in Schedule 9 to remove the reference in subclause (d) of the definition to 'a cruise ship operation' and to insert a new subclause (ea) into the definition to refer to 'a large ship operation'. As discussed above in relation to items 83 and 89, cruise ship operations

have been subsumed into a larger category of operations, being 'large ship operations' in order to cater for other types of large ships which may be operated as part of a tourist program.

Items [120] and [121] Schedule 9 (definition of *traditional owner*)

Item 120 repeals the definition of 'traditional owner' from Schedule 9 and item 121 inserts a new definition of 'Traditional Owner', which reflects the current style of capitalising this term. The repealed definition previously adopted a modified version of the definition contained in regulation 33 of the Regulations. The new definition refers to the definition in the Act, which (when read in conjunction with the definition of 'Indigenous person' in the Act) is substantially the same as the definition contained in the Regulations. The primary reason for this change is to avoid reference to specific provision in the Regulations, so that the definition does not become outdated in circumstances where the Regulations are amended, or repealed and remade. Reference to the definition in the Act is also simpler to understand, as it does not need to be read in a modified way, and assists to ensure consistent use of terminology across Marine Park legislation.

Items [122] and [123] Schedule 9 (definition of *traditional owner group*)

Item 122 repeals the definition of 'traditional owner group' from Schedule 9 and item 123 inserts a new definition of 'Traditional Owner group' which reflects the current style of capitalising this term 'Traditional Owner'. The repealed definition previously adopted a modified version of the definition contained in regulation 33 of the Regulations. The new definition is essentially unchanged, except that the wording of regulation 33 of the Regulations is now mirrored in the Plan itself, eliminating the need for a cross reference to a specific provision in the Regulations. This change will ensure the reference does not become outdated in circumstances where the Regulations are amended, or repealed and remade. The new definition is also simpler to understand, as it does not need to be read in a modified way.

Item [124] (definition of *transiting*)

This item repeals and substitutes the definition of 'transiting' in Schedule 9. The previous definition stated that transiting means in transit, by the most direct and reasonable route, to a place outside the area concerned. The new definition adopts the meaning given in the Regulations, which is inserted into the Regulations through complimentary amendments made by the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017*. Adopting the definition in the Regulations will assist to ensure consistent use of terminology across Marine Park legislation.

Item [125] Schedule 9 (at the end of the definition of *Zoning Plan*)

This item adds the words 'as in force at the commencement of Schedule 1 to the Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017' to the end of the definition of 'Zoning Plan' in Schedule 9. These words have been added because section 14 of the *Legislation Act 2003* does not allow a plan of management to apply, adopt or incorporate the Zoning Plan as in

force from time to time (as the Zoning Plan is not a disallowable legislative instrument as defined in that Act).

Schedule 1 – Amendments commencing first

Part 2—Amendments of enforcement provisions

Item [126] Part 2 (note 2 to heading)

This item repeals and substitutes Note 2 to the heading for Part 2. The previous Note 2 provided a non-exhaustive list of offence provisions in the Act relating to zones. It is necessary to repeal this note because the list of sections of the Act is no longer accurate. The new Note 2 states that the Act contains a number of offence provisions relating to zones, but does not go on to list any such provisions. This will assist to ensure the note does not become outdated in the future if the offence provisions in the Act are amended.

Items [127] and [128] Clause 2.1

Clause 2.1 states that a calculation of the number of people that a vessel is carrying on board for the purposes of a provision in Part 2 must include each person on board the vessel who is aged 4 years or older. Items 127 and 128 insert text at the end of clause 2.1 and in the note to clarify that the clause only applies to a provision unless the provision states otherwise. For example, in clause 2.4(9A)(a)(ii), reference is made to a vessel that is a superyacht that is carrying not more than 12 people other than master and crew. The amendment made by item 127 to clause 2.1 clarifies that for the purposes of clause 2.4(9)(a)(ii) the number of people that the vessel is carrying on board must include each person who is aged 4 years or older, other than master and crew.

Item [129] Clause 2.3A

Item 129 amends clause 2.3A to become subclause 2.3A(1), as a consequence of item 130, which adds subclauses 2.3A(2) – (5) after subclause 2.3A.

Item [130] At the end of clause 2.3A

Item 130 adds subclauses 2.3A(2) – (5), a note after new subclause 2.3A(2) and a note after new subclause 2.3A(5).

Subclause 2.3A(1) states that the Authority must not grant a relevant permission to use or enter the Planning Area that is inconsistent with the Plan. The purpose of item 130 is to clarify the circumstances where the grant of a permission to use or enter or use the Planning Area is consistent with the Plan. This clarification is provided in subclauses 2.3A(3), (4) and (5).

Pursuant to subclause 2.3A(2), the reader is to proceed as if subclause 2.4(8) does not exist. Subclause 2.4(8) effectively allows the Authority to grant a permission that overrides the setting limits in clause 2.4. A note is included to explain this. The reason for the need to ignore subclause 2.4(8) is because subclause 2.4(8) should not be able to be relied upon by the Authority to grant a permission that overrides the setting limits in clause 2.4. Instead, the Authority should only be able to grant a permission that overrides the setting limits in clause 2.4 in the specific circumstances set out in the new provisions of clause 2.3A.

New subclause 2.3A(3) provides that the Authority can grant a permission to override the setting limits in clause 2.4 in order to temporarily relocate a tourist program or tourist facility pursuant to subclause 1.26(6).

New subclauses 2.3A(4) and (5) cover all other circumstances where the Authority may grant a permission that overrides the setting limits set out in clause 2.4, or exceeds other restrictions in the Plan about frequency of access and booking requirements, while avoiding the granting of the permission amounting to an inconsistency with the Plan under subclause 2.3A(1).

The first requirement under subclause 2.3A(4) is that:

- there must already be a permission in force and the permission holder must have made an application for a replacement permission of the same kind; or

- there need not be a permission of the same kind already in force if the applicant has satisfied any requirements prescribed by the Regulations to be allowed to make an application for a replacement permission (one example where this may occur is under paragraph 88ZC(1)(ii) of the Regulations).

If the requirements of subclause 2.3A(4) are met, one of the scenarios described in paragraphs 2.3A(5)(a), (b) or (c) must also be satisfied to avoid offending subclause 2.3A(1).

Subparagraphs 2.3A(5)(a)(i) and (ii) are essentially 'grandfathering' provisions for permissions that arise out of historical permissions where the original permission that was granted exceeded the setting limits now contained in clause 2.4, or exceeded other restrictions in the Plan relating to frequency of access and booking requirements, following assessment of an application against certain eligibility criteria that existed in the version of the Plan as in force immediately before 18 December 2008 (the Superseded Plan). If the application for the replacement permission directly or indirectly arises out of such a permission, paragraph 2.3A(5)(a) applies.

To demonstrate the operation of paragraph 2.3A(5)(a), consider the following example: a crewed vessel operation was previously assessed by the Authority under subclause 1.13(3) of the Superseded Plan as meeting the eligibility criteria mentioned in that subclause. In order words, the Authority previously made an assessment that the relevant permission for the operation allowed 50 days operation above the group size setting limit for a particular setting area, the permission was in force on 22 June 1998, and the operation accessed the setting area on at least 1 day during the period from 1 January 1996 to 30 June 1997. On the basis that the permission holder had demonstrated a history of use of the Planning Area, the Authority granted a permission that was in accordance with clause 1.13(2) of the Superseded Plan. This permission meets the description in new subparagraph 2.3A(5)(a)(i) of the Plan. Consequently, a permission that directly or indirectly arises out of this permission will meet the requirements of subclause 2.3A(5).

Subparagraph 2.3A(5)(b)(i) is intended to ensure that historical permissions granted pursuant to the Superseded Plan go into a 'bank' of permissions when they expire, are revoked or are surrendered and are able to be re-allocated if the Authority considers this appropriate.

Subparagraph 2.3A(5)(b)(ii) is intended to ensure that permissions which arise directly or indirectly out of historical permissions granted pursuant to the Superseded Plan also go into the 'bank' of permissions when they expire, are revoked or are surrendered and are able to be re-allocated if the Authority considers this appropriate.

Paragraph 2.3A(5)(c) is intended to ensure that a permission arising out of a historical permission for a bareboat operation or long range roving operation can be granted by the Authority. Under clause 2.21 of the Superseded Plan a cap was imposed on the number of permissions that could be granted by the Authority for bareboat operations. Pursuant to paragraph 1.10(19BA) of the Superseded Plan the Authority was also able to grant a number of historical permissions for long range roving operations provided certain circumstances were met. It is the intention that the Authority should not be prevented under the Plan from granting permissions for bareboat operations and long range roving operations which arise out of these historical permissions that were granted pursuant to the Superseded Plan.

Item [131] At the end of Division 1 of Part 2

Item 131 inserts a new clause 2.3B at the end of Division 1 of Part 2. The intent of this new clause is to allow some flexibility to grant a permission which would otherwise be inconsistent with the Plan, provided that certain conditions set out in the new clause are met. For example:

- advances in technology may mean that an activity that has been prohibited under the Plan may in the future be able to be carried out in a more ecologically sustainable manner than it was able to be at the time of being prohibited under the Plan;
- advances in science and or technology may mean that the impacts of a particular activity may become more well understood than they were at the time of the activity being prohibited under the Plan; or
- unforeseen circumstances arise which may mean that it is reasonable to allow a particular activity to be carried out in a particular manner.

Subclause 2.3B(1) has the effect that the clause applies only in circumstances where a relevant permission is applied for on or after 1 January 2018. This is to allow the Authority sufficient lead-in time to update its procedures and policies in order to effectively manage new applications which fall within clause 2.3B.

Under paragraph 2.3B(1)(a), there is a requirement that in dealing under the Regulations with the application, the Authority must have assessed the risks of the conduct proposed to be permitted and be satisfied that the conduct is likely to either have no adverse impact, or a low adverse impact, on the values of the Planning Area. Additionally, under paragraph 2.3B(b) the conduct permitted by the permission must accord with the intent of the Plan, and objects, mentioned in clause 1.3. It is acknowledged that on the face of it, it may be difficult to reconcile a situation where the conduct proposed to be permitted has an adverse impact on the values of the

Planning Area (albeit that the impact is low) with the requirement that the conduct accords with the intent and objects of the Plan. One way that the Authority envisages this might occur is where the conduct proposed to be permitted by the permission is likely to have both a low adverse impact on the values of the Planning Area, and one or more benefits to the values of the Planning Area. Having regard to all of the likely impacts of the conduct proposed to be permitted, it may be that the benefits outweigh the adverse impact, which may mean that granting the permission will accord with the intent and objects of the Plan.

The note included at the end of subclause 2.3B(1) is intended to alert the reader to the fact that satisfaction of the requirements of clause 2.3B(1) does not compel the Authority to grant a permission. The Authority will always have discretion to decide whether to grant a permission having regard to all relevant considerations under the Regulations.

Items [132] and [133] References to 'ship'

Items 132 and 133 omit certain references throughout Part 2 of the Plan to a 'ship' and substitute with a reference to a 'large ship'. These amendments are necessary as a consequence of items 89 and 111, which essentially result in the definition of 'large ship' having the meaning that was previously given to the definition of 'ship'. Refer to the discussion of these items above.

Items [134], [137], [138], [139], [151], [152] and [153] References to setting areas

Items 134, 137, 138, 139, 151, 152 and 153 omit references to setting areas throughout Part 2 of the Plan and substitute these with references to the relevant setting area followed by the name of the setting area in brackets. For example, a previous reference to 'setting 2' is now a reference to 'setting 2 (high use)'. The reason for this change is to improve readability, and is needed as a consequence of items 109 and 110 which are discussed above.

Item [135] Subclause 2.4(3)

Item 135 amends subclause 2.4(3) to omit the words 'not more' and substitute with 'less'. The effect of this is that a person may operate a vessel that has an overall length that is 'less' than 70 metres in Hardy Reef. Previously the requirement in subclause 2.4(3) was for a vessel 'not more' than 70 metres. This amendment is needed as a consequence of the amendment made to the definition of 'large ship' by item 89.

Item [136] Subclause 2.4(3)

Item 136 makes an amendment to subclause 2.4(3) that is necessary as a consequence of a change to the location of the description of Hardy Reef in Schedule 2.

Item [140] Subclause 2.4(7)

Item 140 repeals and substitutes subclause 2.4(7).

New paragraph 2.4(7)(a) effectively mirrors previous paragraph 2.4(7)(d), except that it makes one important change. Under previous paragraph 2.4(7)(d) any vessel could transit through a setting area, including a ship. The policy intent is that a person should only be able to operate a large ship in a setting area to transit to or from a designated anchorage. To reflect this intent, new paragraph 2.4(7)(a) provides that a person can operate a vessel 'other than a ship' to transit through a setting area. It is intentional that this new paragraph applies to a ship as opposed to a large ship. New paragraph 2.4(7)(b) then goes on to provide that a person may operate a large ship to transit to or from a designated anchorage. The difference between a large ship and a ship is that a large ship is a vessel that has an overall length of at least 70 metres whereas a ship is generally at least 50 metres in overall length. In some circumstances, a vessel less than 50 metres in overall length is classed as a ship (for example, an oil tanker, chemical carrier or liquefied gas carrier is classed as a ship regardless of its length).

New paragraph 2.4(7)(c) replaces previous paragraphs 2.4(7)(a) and (b). Under the previous paragraphs, a ship with a booking to a cruise ship anchorage (now renamed 'designated anchorage' as a consequence of items 83 and 85) could anchor at such an anchorage despite it being in a setting area, and a large vessel could anchor at a cruise ship anchorage (without a booking) even if the anchorage was in a setting area that the large vessel would not otherwise be allowed in. New paragraph 2.4(7)(c) largely maintains this position, but makes some changes:

- The new provision applies to a large ship (as opposed to a ship) as a consequence of items 89 and 111 (explained above).

- Under subparagraph 2.4(7)(c)(i) there is now a requirement for a large vessel to book to anchor at a designated anchorage. This requirement is expected to benefit both users of designated anchorages and the Authority. It will allow the Authority to monitor the use of each designated anchorage and will allow other users to see if a booking has been made to a designated anchorage, which will assist with planning itineraries.

- Pursuant to subparagraph 2.4(7)(c)(ii) if the large ship or large vessel is anchored by an anchor and chain, the anchor and chain must remain within the anchorage. This change is intended to clarify what constitutes being anchoring 'at a designated anchorage'.

- Pursuant to subparagraph 2.4(7)(c)(iii) If the large ship or large vessel is anchored without the use of an anchor (for example, by using a dynamic positioning system), the large ship or large vessel must be anchored centrally within the designated anchorage. Again, this change is intended to clarify the Authority's expectations as to what constitutes being anchoring 'at a designated anchorage'.

New subparagraph 2.4(7)(d)(i) is intended to have the same effect as previous paragraph 2.4(7)(c), so that a vessel may be operated in a setting area to transfer passengers to or from another vessel at a designated anchorage in the setting area.

New subparagraph 2.4(7)(d)(ii) allows a vessel to be operated in a setting area to transfer passengers to or from a superyacht at a superyacht anchorage in the setting area.

New subparagraph 2.4(7)(e) has been included to resolve a potential conflict in situations where setting areas overlap with a Shipping Area. Ships generally should not enter setting areas unless the ship falls within the definition of a large ship and meets one of the exceptions described above in relation to (b) or (c). However, the Authority acknowledges that where a setting area overlaps with a Shipping Area, it may not always be possible for a ship to navigate through the Shipping Area without crossing into the parts of setting areas which overlap with the Shipping Area. The setting areas between Pine Island and Dent Island which overlap with the Shipping Area that passes between those islands provides a good example of a spot where navigation of ships could be impeded, as there is only an opening of approximately 750m that is not overlapping with the setting 3 and setting 4 areas. To resolve this issue, subparagraph 2.4(7)(d) provides that a person may navigate a ship in a setting area within a Shipping Area if keeping the ship outside the setting area would unreasonably affect navigation of the ship through the shipping area.

New subclause 2.4(7A) has been included for the purpose of allowing a person to anchor a superyacht at a superyacht anchorage, even where this will mean exceeding the vessel length limits for settings mentioned in subclause (2) and paragraphs 2.3A(4)(a) and (5)(a). In order words, a person may anchor a superyacht more than 35 metres in overall length at a superyacht anchorage in setting 2 (high use) areas, setting 3 (moderate use) areas and setting 4 (low use) areas. It is considered appropriate to allow the vessel length limits to be overridden in these circumstances because of the requirement for the passenger numbers on board these vessels to be low. However, this exception comes with strict conditions. Under paragraphs 2.4(7A)(a) – (c) there must be a booking in place for the superyacht to anchor at the superyacht anchorage, the superyacht must be less than 70 metres in overall length and the superyacht must not be carrying more than 12 people other than master and crew.

Item [141] Subclause 2.4(9)

Item 141 repeals and substitutes subclause 2.4(9), and inserts new subclause (9A) and (9B).

Previously subclause 2.4(9) stated that, except in the Turtle Bay cruise ship anchorage, a person must not anchor a ship at a cruise ship anchorage at which another ship is already anchored. New subclause 2.4(9) generally maintains this requirement. References to ‘cruise ship anchorage’ have been changed to ‘designated anchorage’ as a consequence of items 83 and 85 (discussed above), and references to ‘ship’ have been changed to ‘large ship’ as a consequence of items 89 and 111 (also discussed above). Additionally, an exception has been included to allow up to two large ships to anchor at a time at the Funnel Bay designated anchorage in light of this anchorage now being larger in size to allow for commercial

growth in the region. The wording has also been revised to specify that the maximum number of ships that can be anchored at the Turtle Bay anchorage is 2.

New subclause 2.4(9A) is similar to new subclause 2.4(7A) however it serves a different purpose. Subclause 2.4(7A) allows setting area limits to be overridden whereas subclause 2.4(9A) creates a prohibition against anchoring at a superyacht anchorage where the conditions listed in subclause 2.4(7A) (which are repeated in subclause 9A) are not met. Additionally, subclause 2.4(9A) clarifies that only a superyacht can anchor in a superyacht anchorage.

New subclauses (9) and (9A) do not force a vessel already anchored at a relevant anchorage to leave the anchorage if another vessel comes in and anchors there. This follows from the use of the word 'already', despite the fact that 'anchor' is defined to include remaining at anchor and remaining stationary.

New subclause 2.4(9B) serves a similar purpose to subclause 2.9(9), except that it applies to superyacht anchorages instead of to designated anchorages. Subclause 2.4(9B) clarifies that a person must not anchor a superyacht at a superyacht anchorage if a vessel is already anchored at the superyacht anchorage, unless the capacity of the anchorage is more than 1 superyacht. This requirement is intended to apply irrespective of whether the vessel already anchored at the superyacht anchorage is a superyacht, and irrespective of whether that vessel has a booking to anchor there.

Item [142] Clause 2.5

Item 142 repeals and substitutes clause 2.5. The previous clause 2.5 was ambiguous and did not provide an exhaustive list of the various restrictions on tourism operations in the Planning Area. The new clause 2.5 is intended to resolve this, without changing the intent of the Plan.

New subclause 2.5(1) clarifies the previous reference to 'a particular tourism operation' in repealed subclause 2.5(1). This should be a reference to a large ship operation or a standard tour operation, so that it is clear those 2 types of operations must not be conducted in the Planning Area on more than 50 days each year.

New subclause 2.5(2) clarifies that only a large ship operation or a standard tour operation must not be conducted in the Planning Area without a booking.

The repealed subclause 2.5(2) was silent on the requirements for long range roving operations. New subclause 2.5(3) clarifies this.

Given that an exhaustive list of restrictions on tourism operations is now contained in subclauses 2.5(1) – (3), repealed subclause 2.5(3) is no longer necessary. This subclause previously allowed a relevant permission to override the restrictions in subclauses 2.5(1) and (2), which defeated the purpose of having the restrictions in the first place. There are no longer be any permissions in force which are inconsistent with the new subclauses 2.5(1) – (3).

Items [143] Before subclause 2.7(1)

Item 143 inserts the heading 'Limits on operating in Locations' before subclause 2.7(1), which is intended to describe the topic covered by subclauses 2.7(1) and (1A).

Item [144] Subclause 2.7(1)

Item 144 omits the reference in subclause 2.7(1) to 'per week' and substitutes 'in any 7 consecutive days'. For the reasons mentioned in relation to items [44], [48], [51], [99], and [144], the definition of per week has been repealed from Schedule 9 and it is necessary for all references to 'per week' which appear throughout the Plan to be updated with references to '7 consecutive days'.

Item [145] Paragraph 2.7(1)(b)

Item 145 repeals and substitutes paragraph 2.7(1)(b). It is not intended that the practical effect of paragraph 2.7(1)(b) change in any way. Rather, the provision has been reworded for clarity.

Item [146] Before subclause 2.7(2)

Item 146 inserts the heading 'Minimum height for scenic flights' before subclause 2.7(2), which is intended to describe the topic covered by subclause 2.7(2).

Item [147] At the end of clause 2.7

Item 147 adds a new heading at the end of clause 2.7 '*Limit on aerobatics in setting areas*' and a new subclause 2.7(3). The new subclause states that a person must not operate an aircraft for aerobatics in a setting area, except in a setting 1 (intensive) area. This restriction has been relocated from repealed subclause 2.15, as clause 2.7 is a more appropriate location for the restriction.

Item [148] Clause 2.8

Item 148 repeals and substitutes clause 2.8. New subclause 2.8(1) is substantially the same as repealed subclause 2.8(1), containing a general prohibition on the operation of high-speed vessels outside of setting 1 (intensive) areas and designated motorised water sports areas.

Subclause 2.8(2) contains a new exception to the general rule in subclause 2.8(1). Personal watercraft may now be operated to transit a setting area as part of a tourist program provided that during the transit the personal watercraft is not operated for motorised water sport and the transit is between the places described in the table in subclause 2.8(2). A requirement has been included in paragraph 2.8(2)(b) to ensure the transiting route does not pass the eastern coast of either North Molle island or South Molle Island, so that persons are not able to rely on the transiting provisions to circumnavigate the islands. The purpose of the transiting provisions is to respond to the changed needs of jet ski tour operators. When the Plan was made in 1998, most jet-ski tour companies were island-based. However, over time some jet-ski tour operators have become based on the mainland. For example, there are currently jet-ski tours operating out of Airlie Beach (specifically, Abell Point and Port of Airlie), and a further operation being proposed at Shute Harbour. Prior to the commencement of

new subclause 2.8(2), these mainland-based operations were required to make a detour around the inshore setting 3 (moderate use) area and setting 4 (low use) area in order to travel to the designated motorised water sports area and to setting 1 (intensive) areas.

New subclause 2.8(3) has been relocated from repealed subclause 2.15(3), as clause 2.8 is a more appropriate location for the provision. It is substantially the same as the repealed subclause however it has been modified to clarify that it only applies in circumstances where a high-speed vessel is not being operated as part of a tourist program.

New subclause 2.8(4) has also been relocated from repealed subclause 2.15(2) for the same reason given above.

New subclause 2.8(5) is effectively the same as repealed subclause 2.8(2), except that it now refers to a 'large ship' instead of to a 'ship', as a consequence of items 89 and 111 (also discussed above), and 'designated anchorage' instead of a 'cruise ship anchorage' as a consequence of items 83 and 85 (discussed above).

New subclause 2.8(6) is similar to repealed subclause 2.8(3) however it now expressly applies only to a cruise ship's tender (rather than a ship's tender) in light of the corresponding requirement paragraph clause 1.32(7)(e) having been made to only apply to cruise ship tenders. Reference to the requirement to take 'the most direct and reasonable route' has been removed in light of this now being captured within the definition of transiting itself.

Item [149] Subclauses 2.12(3) and (4)

Item 149 repeals and substitutes subclauses 2.12(3) and (4) (including the notes). The repealed subclause 2.12(3) stated that a person must anchor a vessel, an aircraft or any other facility in a no-anchoring area. In light of the new definition of 'anchor' in Schedule 9 (discussed above in relation to item 75), repealed subclause 2.12(3) is no longer appropriate. A vessel may be anchored in a no anchoring area if it does not drop a physical anchor. For example, where a vessel is equipped with a dynamic positioning system it is able to anchor in a no-anchoring area without dropping an anchor and without damaging coral. Thus, the new subclause 2.12(3) states that a person must not 'drop' an anchor for a vessel, an aircraft, or any other facility in a no-anchoring area and Note 2 has been included to alert the reader to the fact that the provision does not prevent a vessel, aircraft or other facility to become or remain stationary in a no-anchoring area without the dropping of an anchor.

Note 1 replaces the previous note at the end of the provision, in acknowledgement of the fact that no-anchoring areas are now listed in the Regulations instead of in Schedule 5 of the Plan (this is explained in more detail in the discussion of items 95 and 96 above).

Subclause 2.12(4) has been repealed to remove an unnecessary duplication of provisions in the Plan. The repealed provision previously stated that a person must not anchor a ship in a setting area, except at a cruise ship anchorage and with a booking. This is already dealt with in clause 2.4.

Item [150] Clause 2.13

This item repeals clause 2.13, which prohibited a person from fishing or collecting as part of a tourist program in the Langford/Black Islands Area. The reason for removal of this clause is explained above in the discussion of item 37.

Item [154] subclause 2.14(4)

Item 154 makes a minor typographical amendment to subclause 2.14(4) which is not intended to impact on the interpretation of the provision.

Item [155] At the end of clause 2.14

Item 155 inserts a new subclause 2.14(5) at the end of clause 2.14. The new subclause provides that the restrictions on carrying on retail operations, selling of services and hire operations outside of a setting 1 (intensive) area in subclauses 2.14(1) – (3) do not prevent a person from conducting in the Woodwark Bay South Location either a hire operation using hire equipment or a non-motorised operation. The justification for this new exception is similar to the justifications discussed above for item 36 in relation to private moorings at Woodkwark Bay and tourist facilities at Woodwark Bay. Given that Woodwark Bay is the only bay in the Planning Area which has a resort located adjacent to it but which is not a setting 1 (intensive) area, the Authority considers it appropriate to allow some reasonable use of Woodwark Bay without compromising the marine environment. This is achieved by allowing potential for hire operations using hire equipment and non-motorised operations at Woodwark Bay.

Item [156] Clause 2.15

Item 156 repeals clause 2.15. All provisions of clause 2.15 have been relocated to more appropriate places in the Plan as explained in the discussions of items147 and 148.

Schedule 1 – Amendments commencing first

Part 3—Amendments affecting boundary descriptions

Item [157] Schedules 2, 3, 4 and 5

This item repeals and substitutes Schedules 2, 3, 4 and 5 with new schedules 2, 3 and 4.

Schedule 2 – Setting areas

Schedule 2 contains the boundary descriptions for all of the setting areas in the Planning Area. The repealed Schedule 2 described setting areas using a buffer style method which followed the coastline. The new Schedule 2 contains boundary descriptions which are based on specific coordinates to provide better certainty of boundaries and to achieve consistency with the approach used to describe zones in the Zoning Plan. The change in the method used for boundary descriptions has not resulted in any significant changes to the boundaries of setting areas.

Schedules 2 has generally received minor amendments due to a range of updated data and information becoming available to the Authority, including improved imagery (satellite and aerial), information obtained though the carrying out of site assessments and associated survey data collection, and new tidal information that more clearly delineates high and low water marks. As an example, using improved imagery has allowed the Authority to more accurately identify physical landmarks that make lines and boundaries more easily identifiable for people referring to the boundaries while in the field. For example, the Authority has in some cases chosen a prominent rock on a head land as a setting boundary to make it easier for people on the water to know whether they are inside or outside certain areas.

A change of significance has been made to the setting 2 (high use) area at Cid Harbour, Whitsunday Island. This area is adjacent to a campground located on Nari's Beach. Under the Queensland Government's Whitsunday and Mackay Islands Visitor Management Strategy, the campground is identified as a Natural (low use) Setting with capacity for 6 campers per night. It is not logical for the area directly adjacent to the Nari's Beach campgrounds to be a Setting 2 in light of the fact that the campgrounds are 'low use'. The boundary of the Setting 2 (high use) area has therefore been shifted slightly, so as to reduce the overall size of the Setting 2 (high use) area and extend the size of the Setting 3 (moderate use) area, resulting in the area next to the campgrounds becoming a Setting 3 (moderate use) area. For ease of interpretation, the new boundary of the Setting 2 (high use) and setting 3 (moderate use) areas at Whitsunday Island also align with the new boundary for the Regular Aircraft Landing Area discussed below in relation item 158.

Additionally, a change has been made to expand the boundary of the setting 1 (intensive) area at Lindeman Island, in the southern end of the Whitsundays. The setting 1 (intensive) area is located adjacent to an old resort and includes the current jetty. Historically the area has been used intensively through tourism operations however such use has ceased following the closure of the resort. Underwater surveys within the setting 1 (intensive) area have identified that this site possesses high coral cover. While it is still appropriate for this area to remain a setting 1

(intensive) area, the Authority's view is that it is appropriate to expand the boundaries of the area to provide flexibility for other uses (such as motorised water sports) and to reduce the potential for use becoming concentrated to a small area in the event that the old resort is re-established. The new boundaries of the setting 1 (intensive) area will also align with the boundaries of the regular aircraft area for ease of interpretation.

Schedule 3 – Locations

Schedule 3 contains the boundary descriptions for all Locations in the Planning Area. Similarly to Schedule 2, the repealed Schedule 3 described Locations using a buffer style method which followed the coastline and the new Schedules 3 contains boundary descriptions which are based on specific coordinates for the same reasons given above in relation to Schedule 2. The change in the method used for boundary descriptions has not resulted in any significant changes to the boundaries of Locations. Schedule 3 has also received minor amendments in light of the updated data and information discussed above in relation to Schedule 2.

Schedule 4 – Designated motorised water sports areas

Schedule 4 contains the boundary descriptions of designated motorised water sports areas. Similarly to Schedules 2 and 3, the repealed Schedule 4 used the buffer style method which followed the coastline to describe designated motorised water sports areas. The new Schedule 4 contains boundary descriptions based on specific co-ordinates for the same reasoning given above in the discussion of Schedules 2 and 3. The change in the method used for boundary descriptions has not resulted in any significant changes to the boundaries of designated motorised water sports areas. Schedule 4 has also received minor amendments in light of the updated data and information discussed above in relation to Schedule 2.

Additionally, two new designated water sports areas have been created adjacent to existing Setting 1 (intensive) areas (where motorised water sports is already allowed) at Hamilton Island and Hayman Island in response to requests from resort operators at those locations for an increased ability to offer resort guests access to larger areas to conduct motorised water sports.

Schedule 5 – No-anchoring areas

Repealed Schedule 5 contained the boundary descriptions of the no-anchoring areas located in the Planning Area. For the reasons given in the discussion of items 95 and 96 above, these have been relocated into the Regulations.

Item [158] Schedules 7 and 8

Item 158 repeals and substitutes Schedules 7, and repeals Schedule 8.

Schedule 7 – Regular aircraft landing areas

Schedule 7 contains the boundary descriptions of the regular aircraft landing areas. Similarly to Schedules 2, 3 and 4, the repealed Schedule 7 used the buffer style method which followed the coastline to describe designated motorised water sports areas. The new Schedule 7 contains boundary descriptions based on specific co-

ordinates for the same reasoning given above in the discussion of Schedules 2, 3 and 4. The change in the method used for boundary descriptions has not resulted in any significant changes to the boundaries of designated motorised water sports areas. Schedule 4 has also received minor amendments in light of the updated data and information discussed above in relation to Schedule 2.

Additionally, changes have been made to the boundaries of 5 of the 11 existing regular aircraft landing areas, as the previous boundaries of some regular aircraft landing areas were proving to be insufficient for aircraft to safely land within:

- Item (f): Cid Harbour, Sawmill Bay, Hunt Channel and Dugong Inlet –changes have been made to achieve a small north-westerly expansion in the boundary of the existing regular aircraft landing area in a seaward direction. There has also been a reduction in the southern coastal boundary to avoid Naris Beach campground and an expansion in the northern coastal boundary to include Dugong Beach campground.

- Item (g): Whitehaven Beach –changes have been made to extend the current boundary of the regular aircraft landing area east by 500 metres.

- Item (h): Chance Bay and Moon Island –changes have been made to extend the current boundary of the regular aircraft landing area south by 500 metres.

- Item (i) Happy Bay and Fish/Palm Bays (Long Island) –changes have been made to extend the current boundary of the regular aircraft landing area to the west. In addition, the changes will also square-off the boundary to reduce complexity.

- Item (k): Lindeman Island extending to Seaforth Island –changes have been made to increase the size of the motorised water sports and regular aircraft area at Lindeman Island by extending the southern boundary by 1,250 metres to just south of Seaforth Island running along the meridian, extending the western boundary to encompass Seaforth Island (while extending no further north than the southernmost point of Lindeman Island) and extending the eastern boundary toward Plantation Bay, creating a total width of 2,180 metres. To reduce complexity, the new boundaries of the regular aircraft landing area align with the new boundary of the Setting 1 (intensive) area.

Schedule 8 – Langford/Black Islands Area

Repealed Schedule 8 contained the boundary description for the Langford/Black Islands Area. This description is no longer required due to the repeal of subclauses 1.30 and 2.13 by items 37 and 150. The reason for repeal of these subclauses is discussed above in relation to item 37.

Schedule 2 – Amendments relating to significant bird sites

Part 1—Amendments of provisions other than enforcement provisions and boundary descriptions

Item [1] After clause 1.24

Item 1 inserts a new clause 1.24A after clause 1.24. Clause 1.24A contains a table which summarises the limits that apply to the use of vessels and aircraft at significant bird sites pursuant to clause 2.11 of the Plan and pursuant to the Zoning Plan. It is intended that the table will assist readers to more easily understand the requirements that apply to significant bird sites, as clause 2.11 can be difficult to interpret.

Notes 1 and 2 have been included after the table to explain some of the more complicated requirements. In particular, for East Rock and Edwin Rock the table shows that a 6 knot speed limit applies to vessels at these sites all year round. However, the table also shows that vessels are not to access the sites between 1 October and 31 March each year. Note 1 clarifies that the effect of this is that the speed limit of 6 knots applies from 1 April to 30 September each year, because vessels are not allowed to access the sites outside of that time period.

Note 2 clarifies that because Eshelby Islands are located within a Preservation (pink) Zone under the Zoning Plan, these areas generally cannot be accessed by vessels except under the limited circumstances provided for in the Zoning Plan.

Item [2] Schedule 9 (definition of *restriction period*)

Item 2 repeals the definition of 'restriction period' in Schedule 9. The repealed definition previously provided that a restriction period for a significant bird site was either 1 year for a site mentioned in Part 1 of the table in repealed Schedule 6, or from 1 October to 31 March each year for a site mentioned in Part 2 of the table in repealed Schedule 6. Schedule 6 has been repealed and substituted by item 5. The restriction periods referred to in the repealed definition in Schedule 9 are no longer applicable as the new Schedule 6 only sets out the boundary descriptions of significant bird sites, and not the restriction periods. The restriction periods have been relocated to clause 2.11, which is intended to improve ease of interpretation by saving readers the task of having to cross reference between clause 2.11 and Schedule 6.

Item [3] Schedule 9 (definition of *significant bird site*)

Item 3 repeals and substitutes the definition of significant bird site in Schedule 9. The new definition refers to an area described in the new Schedule 6, rather than to an island, islet, rock, inlet or bay mentioned in the table in repealed Schedule 6. The new Schedule 6 describes the boundaries of significant bird sites using coordinates, rather than by reference to an island, islet, rock, inlet or bay.

Schedule 2 – Amendments relating to significant bird sites

Part 2—Amendments of enforcement provisions

Item [4] Clause 2.11

Item 4 repeals and substitutes clause 2.11. Previously clause 2.11 set out the various restrictions on the operation of aircraft and vessels at significant bird sites, which had to be read in conjunction with the restriction periods set out in repealed Schedule 6. The restriction periods from repealed Schedule 6 have been relocated to new clause 2.11, which is intended to improve ease of interpretation by saving readers the task of having to cross reference between clause 2.11 and Schedule 6.

New subclauses 2.11(1) and (2) effectively maintain the restrictions that previously applied to aircraft under repealed subclause 2.11(1) when read in conjunction with repealed Schedule 6.

New subclause 2.11(3) maintains the seasonal ban on East Rock, Edwin Rock and Olden Rock that applied under repealed subclause 2.11(3), except the time period for the ban has been expanded to be between 1 October and the next 31 March (instead of 1 October to 31 December each year. The reason for this change is that recent data available to the Authority shows the birds are nesting during the expanded period. This also aligns with the timeframe for the closure period referred to in new subclause 2.11(2).

New subclause 2.11(4) maintains the permanent ban on operating a vessel at a speed greater than 6 knots at the Bird Island significant bird site, which previously applied under repealed subclause 2.11(2) when read in conjunction with repealed Schedule 6. It is no longer necessary for the ban to apply ‘within 200 metres’ of the significant bird site as the boundary of the site is now clearly described in new Schedule 6 by coordinates, so it is appropriate for the ban to now instead apply within the site.

New subclause 2.11(4) does not maintain the permanent ban on operating a vessel at a speed greater than 6 knots at the Eshelby Islands, which previously applied under repealed subclause 2.11(2) when read in conjunction with repealed Schedule 6. The reason for not maintaining this ban is because the Eshelby Islands are located within a Preservation (pink) Zone under the Zoning Plan, which means these areas generally cannot be accessed by vessels except under the limited circumstances provided for in the Zoning Plan. Thus, effective protections already apply to the Eshelby Islands under the Zoning Plan and it is unnecessary to supplicate this in the Plan.

New subclause 2.11(4) does not maintain the permanent ban on operating a vessel at a speed greater than 6 knots at East Rock and Edwin Rock, which previously applied under repealed subclause 2.11(2) when read in conjunction with repealed Schedule 6. Instead, new subclause 2.11(6) imposes a 6 knot speed limit only between 1 April and the next 30 September at these sites. The reason for reducing the ban is because under clause 2.11(3) East Rock and Edwin Rock are no-go areas between 1 October and the next 31 March, therefore it does not make sense that a speed limit be imposed during a time where vessels should not be in the sites in any event.

New subclause 2.11(5) maintains the seasonal ban on operating a vessel at a speed greater than 6 knots at certain sites between 1 October and the next 31 March, which

previously applied under repealed subclause 2.11(2) when read in conjunction with repealed Schedule 6. It is no longer necessary for the ban to apply 'within 200 metres' of the relevant sites as the boundary of these sites is now clearly described in new Schedule 6 by coordinates, so it is appropriate for the ban to now instead apply within the sites.

New subclause 2.11(5) does not maintain the seasonal ban on operating a vessel at a speed greater than 6 knots at Olden Rock between 1 October and the next 31 March, which previously applied under repealed subclause 2.11(2) when read in conjunction with repealed Schedule 6. The reason this ban had not been maintained is because Olden Rock is a no-go area between 1 October and the next 31 March under subclause 2.11(3), therefore it does not make sense that a speed limit be imposed during a time where vessels should not be at Olden Rock in any event.

Schedule 2 – Amendments relating to significant bird sites

Part 3—Amendments affecting boundary descriptions

Item [5] Schedule 6

Item 5 repeals and substitutes Schedule 6.

Schedule 6 previously listed significant bird sites by reference to an island, islet, rock, inlet or bay, and set out the relevant restriction periods which applied to these sites. The restrictions that applied to the sites during the restriction periods were previously set out in repealed clause 2.11.

The restriction periods from repealed Schedule 6 have been relocated to new clause 2.11, which is intended to improve ease of interpretation by saving readers the task of having to cross reference between clause 2.11 and Schedule 6.

The new Schedule 6 describes the boundaries of significant bird sites using coordinates, rather than by reference to an island, islet, rock, inlet or bay. The boundaries of the sites determined by the coordinates generally extend 200 metres seaward. As a result, the speed limit imposed on vessels at some of these sites under subclauses 2.11(4), (5) and (6) no longer needs to be 'within 200 metres' of the relevant site and can instead apply within the site.

The Authority is aware that a number of permissions currently in force contain conditions which mirror the requirements previously contained in repealed clause 2.11 and repealed Schedule 6. To ensure permission conditions are consistent with the amendments relating to significant bird sites, the commencement provisions in section 2 ensure the amendments will commence on a single day to be fixed by the Chairperson of the Authority. Delayed commencement of these provisions is necessary to allow the Authority time to review permissions that are currently in place which may require amendment in order to be consistent with the new provisions relating to significant bird sites.

Schedule 3 – Amendments relating to aircraft taxiing near Whitehaven Beach

Part 1—Amendments of provisions other than enforcement provisions

Item [1] Subparagraphs 1.32(13)(a)(ii) and (15)(a)(ii)

This item makes a consequential amendment as a result of item 2 below, to include a reference to new subclause 2.7(1A) in subclauses 1.32(13)(a)(ii) and (15)(a)(ii).

Schedule 3 – Amendments relating to aircraft taxiing near Whitehaven Beach

Part 2—Amendments of enforcement provisions

Item [2] After subclause 2.7(1)

This item inserts a new subclause 2.7(1A) after subclause 2.7(1).

Subclause 2.7(1) provides that a person must not operate an aircraft in a Location more than twice in any 7 consecutive days, except to land at, or take off from certain airports and airstrips or a regular aircraft landing area within the location. This means that at the Whitehaven Beach, Whitsunday Island Location a person may operate an aircraft to land at, or take off from, the regular aircraft landing area within the Whitehaven Beach, Whitsunday Island Location on a daily basis. However, in the adjacent parts of the Location that are outside of the regular aircraft landing area a person could previously only operate an aircraft twice per week.

Seaplane operators are required to obtain permissions from the Authority (pursuant to the Regulations) and Queensland Parks and Wildlife Service (pursuant to the *Marine Parks Regulation 2006* (Qld)) to conduct operations such as tourist programs. These permissions are generally assessed and granted by both agencies in a 'joint permit' document. Conditions are generally attached to the permissions which (among other things) prohibit seaplane operators from operating in intertidal areas, which fall within State jurisdiction, except in the course of landing, taking off or taxiing an aircraft at certain airstrips or at the intertidal area adjacent to a regular aircraft landing area.

During poor weather conditions, it is not always possible for seaplane operators who land in the regular aircraft landing area within the Whitehaven Beach, Whitsunday Island Location to safely taxi passengers to and from the beach through the intertidal area adjacent to the regular aircraft landing area. To address this issue, new subclause 2.7(1A) allows a person to taxi an aircraft by the most direct and reasonable route (in either direction) between the regular aircraft landing area within the Whitehaven Brach, Whitsunday Island Location and the landward edge of that Location south-east of that regular aircraft landing area.

To give effect to these amendments the Authority and the Queensland Parks and Wildlife Service will need to modify relevant joint permission conditions to allow intertidal taxiing in the intertidal area adjacent to the southern part of the Whitehaven Brach, Whitsunday Island Location. Pursuant to the commencement provisions in section 2, the provisions relating to aircraft taxiing near Whitehaven beach will each commence on a single day to be fixed by the Chairperson of the Authority. Delayed commencement of these provisions is necessary to allow the Authority time to review permissions that are currently in place which may require amendment of joint permission conditions to allow intertidal taxiing in the intertidal area adjacent to the southern part of the Whitehaven Brach, Whitsunday Island Location.

Schedule 4 – Amendments commencing 1 January after the commencement of Schedule 1

Items [1] and [2] Schedule 9

These items repeal the definition of a 'year' and inserts a new definition for 'each year'. The repealed definition defines a year as meaning a period of 365 consecutive days. The term 'each year' is defined as meaning each calendar year.

Based on the repealed definition, bookings to the Planning Area are calculated on a rolling annual calendar which commences for each permittee on the date of their first booking. Where a permission allows 50 days access to the planning area per year, the total number of bookings on any given day must not exceed 50 bookings in the previous 365 days. The rolling 365 days makes it very hard for both the Authority and permittees to track when additional days will become available. By making the 'year' start in January and finish in December the available days will be easier to track.

To ensure a smooth transition to the new definition, the new provisions will not commence until 1 January after the commencement of Schedule 1 to the Instrument (which is expected to work out to be 1 January 2018). This will allow sufficient time for permittees to take the opportunity to use any remaining days left in the rolling year prior to 31 December, before starting with a clean slate on 1 January. It will also allow the Authority to make updates to its online booking system which will be necessary to accommodate the new definition.

It should be noted that other amendments made throughout the plan to repeal references to 'per year' and substitute with references to 'each year' do not have a delayed commencement date. The soon-to-be repealed definition of a 'year' will apply to the new references to 'each year' so that the rolling 365 days will continue until 1 January after the commencement of Schedule 1 to the Instrument.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017

The Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

Effective management of the Whitsunday Planning Area (the Planning Area) is achieved through periodic review of the *Whitsundays Plan of Management 1998* (the Plan) in response to new information and changing uses. The Plan has been reviewed and amended in 1999, 2002, 2005 and 2008. More recently, a review carried out in 2016-17 highlighted the need for further amendments to the Plan. The *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Instrument 2017* (the Instrument) is intended to assist in achieving the objects of the Plan by making the amendments identified as being needed during the 2016-17 review. The likely impact and effect of the Instrument is to:

- update the provisions in Part 1 of the Plan to better align with current strategic management;
- increase flexibility of access for user groups, particularly superyachts and motorised water sport users, while maintaining a range of experiences for all visitors;
- expand the boundaries of regular aircraft landing areas to address practicality concerns for take-off and landings;
- increase opportunities for Traditional Owners to conduct regional tour operations and to obtain permissions for private moorings;
- increase opportunities for daily scenic flights to be conducted as part of regional tour operations; and
- cease reef walking as a permitted activity.

Where a person (other than the Great Barrier Reef Marine Park Authority (the Authority) acting in accordance with its functions and powers) contravenes a provision of Part 2 of the Plan, the criminal offence provision in subregulation 178(1) of the *Great Barrier Reef Marine Park Regulations 1983* (the Regulations) applies.

The Instrument effectively extends the scope of this criminal offence provision by creating the following new circumstances in which it applies:

- Operation of a ship to transit a setting area in a manner contrary to that allowed under Part 2 of the Plan;
- Anchoring a vessel at a designated anchorage or a superyacht anchorage where the requirements of Part 2 of the Plan are not met;
- Conducting certain tourism operations in the Planning Area without a booking or on more than a certain number of days per year; and
- Operating vessels and aircraft at significant bird sites in a manner contrary to Part 2 of the Plan.

Subregulation 178(2) provides that strict liability applies to the offence under subregulation 178(1) (except in the case of a contravention of subclause 2.12(1) of the Plan, which states that a person must not damage coral). The penalty for the offence is 50 penalty units.

Sections 1 – 4 of the Instrument (and anything in the instrument not elsewhere covered by the table in section 2 of the Instrument) commence the day after the instrument is registered. Schedule 1 of the Instrument commences at the same time as the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017* commence (however, Schedule 1 does not commence if those Regulations do not commence). Schedules 2 and 3 of the Instrument commence on a single day to be fixed by the Chairperson of the Authority by notifiable instrument (however if Schedules 2 and 3 do not commence within the period of 18 months beginning on the day after the Instrument is registered, they commence on the day after the end of that period). Schedule 4 of the Instrument commences on the first 1 January after commencement of the *Great Barrier Reef Marine Park Amendment (Whitsundays Plan of Management) Regulations 2017*. The instrument will not have any retrospective application.

Human rights implications

The following rights are engaged by the Instrument:

- The presumption of innocence (*International Covenant on Civil and Political Rights* ('ICCPR'), article 14(2));
- The right to self-determination (*International Covenant on Economic, Social and Cultural Rights* (ICCPR), article 1 and ICESCR, article 1);
- The right to equality and non-discrimination (ICCPR, article 2);
- The right to freedom of movement (ICCPR, article 12); and
- The right to health (ICESCR, article 12).

The presumption of innocence

The Instrument engages the presumption of innocence in Article 14 of the ICCPR. Article 14(2) provides that '*everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law*'. The United Nations Human Rights Committee has stated in General Comment 32 that this imposes the burden of proving the charge on the prosecution. The imposition of strict liability in subregulation 178(1) of the Regulations engages the right to be presumed innocent in that it allows for the imposition of criminal liability without the need to prove fault.

Strict liability offences will not be inconsistent with the presumption of innocence provided that they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim. The restriction the Instrument places on the presumption of innocence is necessary, reasonable and proportionate in the circumstances for the reasons set out below.

Necessity

The punishment of conduct that contravenes subregulation 178(1) of the Regulations without the need to prove fault is likely to significantly enhance the effectiveness and efficiency of the Authority's enforcement regime by deterring persons from contravening Part 2 of the Plan. The presence of the strict liability offence provision appears to have already been successful in deterring contraventions of the Part 2 of the Plan to date, and expanding the scope of the provision to cover new types of conduct is expected to do the same.

Strict liability is necessary because the person who is alleged to have committed the strict liability offence is in the best position to identify their intention, and it will be difficult for the Authority to prove that a person knew (or was reckless as to the fact that) they had contravened a provision of Part 2 of the Plan.

Reasonableness

It is intended that announcements will be made and information placed on the Authority's website to notify users of the Planning Area about the new requirements. It is reasonable to expect persons who voluntarily enter an area such as the Planning Area accept that their conduct will be subject to regulation and be required to demonstrate why they are not at fault where their conduct contravenes such regulations.

Despite the imposition of the strict liability offence provision, an accused person's right to a defence is maintained. Subregulation 178(3) expressly provides a defence to prosecution under subregulation 178(1) if the person is acting in accordance with a permission. In addition, a person would have access to defences under the *Criminal Code Act 1995* such as the defence of sudden or extraordinary emergency, or the defence of mistake or ignorance of fact. It will not be impossible or impracticable for the defendant to make out a valid defence based on facts within the defendant's own knowledge or to which they have ready access.

Proportionality

Contravention of the strict liability offence provision in subregulation 178(1) of the Regulations is only punishable by a fine of 50 penalty units, which is proportionate with the restriction on the presumption of innocence.

The right to self-determination

The Instrument engages and promotes the right to self-determination. Article 1(1) of the ICCPR provides that '*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*' Article 1(3) provides that the parties to the Covenant '*shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations*'.

Across the Planning Area, Traditional Owners maintain their connection to land and sea country including the coast on the adjacent mainland, island areas, the Great Barrier Reef and its natural resources. Prior to making the Instrument, the Authority consulted with Traditional Owner groups with an interest in the Planning Area to ensure that these groups would have a reasonable opportunity to participate in the development of the Instrument and be able to exercise meaningful control over their affairs.

The Plan contains a limited number of opportunities for persons to conduct regional tour operations in the Planning Area. In developing the Instrument the Authority's intention was to further limit these opportunities. As a result of consultation with Traditional Owners, the Authority decided that while it would be appropriate to further limit opportunities to the general public, it is not appropriate to do the same for Traditional Owners. Instead, the Instrument increases the number of permissions that may be granted to Traditional Owners to conduct regional tour operations from 5 to 10.

The Plan restricts the installation of private moorings in certain parts of the Planning Area. In developing the Instrument the Authority's intention was to create 20 new opportunities for private moorings to be installed in the Planning Area. As a result of consultation with Traditional Owners, the Authority decided it would be appropriate to reserve 5 of these opportunities for Traditional Owners.

By reserving these opportunities for regional tour operations and private moorings for Traditional Owners, the Instrument provides more freedom for them to pursue their economic, social and cultural development, consistent with the right to self-determination.

The right to equality and non-discrimination

The instrument engages and promotes the right to equality and non-discrimination. Article 2(1) of the ICCPR states that each party to the Covenant '*undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as*

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

In the case of Traditional Owner groups who have an interest in the Planning Area, the Authority considers that it is necessary to treat these groups differently in order to achieve equality. This is because it may be difficult for Traditional Owner groups to enjoy their right to maintain a connection with their traditional lands and sea country in the Planning Area without additional support. It is intended that by reserving the opportunities discussed above for Traditional Owners to conduct regional tour operations and install private moorings in the Planning Area, the Instrument will protect and advance the fulfilment and enjoyment of the rights to equality and non-discrimination for Traditional Owners.

The right to freedom of movement

The Instrument engages the right to freedom of movement in article 12 of the ICCPR. Article 12(1) of the Covenant relevantly provides that 'everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement…'.

The main ways that the Instrument restricts this right is by restricting the ability for a person to operate a ship to transit through a setting area, so that only a certain type of ship (a large ship) may be operated to transit a setting area for the purpose of proceeding to or from a designated anchorage. This restriction on the right to freedom of movement is necessary to protect the environment. It is not appropriate that ships be allowed to unconditionally transit setting areas due to the risk of harm to the marine environment. To ensure the restriction is proportionate to the need for environmental protection and is imposed by the least intrusive means, an exception has been created so that ships may transit parts of setting areas that overlap with shipping areas to the extent that navigation through the shipping area would be unreasonably affected.

The Instrument restricts the right to freedom of movement in other minor ways. In particular:

- A person operating a large vessel must now make a booking to anchor the large vessel at designated anchorages in the Planning Area, when previously there was no requirement for this.

- A person operating a vessel that is not a superyacht is not allowed to anchor that vessel at any of the 21 new superyacht anchorages in the Planning Area, except to transfer passengers between the vessel and the superyacht.

- A person operating a large ship cannot anchor the ship at a designated anchorage if there is already a large ship anchored there.

- A person operating a superyacht cannot anchor the superyacht at superyacht anchorage if there is already another vessel anchored there.

The above restrictions in the Instrument on the right to freedom of movement are proportionate to the need to protect public safety and the environment. The restrictions are the least intrusive means of achieving protection because they will still

allow for persons to operate vessels in designated anchorages and superyacht anchorages, subject to reasonable conditions to facilitate orderly use of designated anchorages.

Right to Health

Article 12(1) of the ICESCR provides for the right to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Human Rights Committee has stated in General Comment 14 that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, including a healthy environment. The Instrument promotes the right to a healthy environment by increasing the protection and conservation of the Planning Area.

Conclusion

The Instrument is compatible with human rights in that, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate.