



## Assessment and Decision

(Revision 1) Effective from 20 December 2018

### Objective

To provide general guidance about the application and interpretation of legislation and policy related to assessing and deciding Marine Park applications to use or enter the Marine Park.

### Target audience

Primary: Great Barrier Reef Marine Park Authority staff.

Secondary: Applicants, permission holders and the general public – particularly those who are considering undertaking activities in the Great Barrier Reef Marine Park which may require permission.

### Purpose

1. Decisions within the permission system are fair, transparent, and consistent and contribute to achieving the objects of the *Great Barrier Reef Marine Park Act 1975*.

### Related legislation / standards / policy

2. Refer to the [Permission System Policy](#) for a full list of related legislation, standards and policy.
3. These guidelines apply to the Commonwealth Great Barrier Reef Marine Park (the Marine Park) which is governed by the following key legislation:
  - a. [Great Barrier Reef Marine Park Act 1975](#) (the Act).
  - b. [Great Barrier Reef Marine Park Regulations 1983](#) (the Regulations).
  - c. [Great Barrier Reef Marine Park Zoning Plan 2003](#) (the Zoning Plan).

### Context

4. The Great Barrier Reef Marine Park Authority (the Authority) is the Commonwealth statutory body that is directly responsible for managing the Marine Park and its permission system.
5. These guidelines complement the Authority's Permission System Policy. They provide more detailed guidance to assessors and decision makers about how to apply the Regulations and policy in specific situations. These guidelines explain the Authority's general approach and expectations about assessing proposals and making decisions within the permission system.
6. Once a permit application received by the Authority and is accepted as a properly made application (refer to [Application Guidelines](#)), the proposal is assessed and a decision is made on whether permission will be granted.
7. The assessment and decision phases described in these guidelines are governed by legislation, particularly the Regulations.
8. Most assessments are conducted jointly with the State of Queensland. Refer to the Permission System Policy for more information.
9. Some assessments are conducted jointly with the Commonwealth Department of the Environment and Energy or the Queensland Coordinator-General under processes established in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the Regulations. Refer to the [EPBC referral deemed application information sheet](#).

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Superseded

## General principles

### Natural justice

10. Applicants are afforded natural justice throughout the application and assessment process. Application forms provide clear details about the minimum information requirements that need to be submitted with the application to commence assessment.
11. During the assessment process, the applicant is advised of any further information which may be required to support the application. The applicant will be given reasonable opportunity to respond to any potentially adverse matters before a decision is made.
12. After a decision is made, a range of review rights may be available to applicants or other people who believe they may be affected by the decision.

### Assessment timeframes

13. The Regulations require the Authority to make a decision on a permit application, and to notify the applicant of this decision, within a reasonable period after receipt of the application (unless it is an EPBC referral deemed application in which case statutory timeframes apply).
14. In general, the Authority prioritises applications based on the order in which they are received. Applicants should apply well in advance of any planned start date to allow for appropriate consideration of the application prior to proposed commencement. Following a severe environmental incident it may be necessary to prioritise assessments for applications made under the Authority's [Marine Tourism Contingency Plan](#) or to deal with other businesses in the affected area.
15. Assessment timeframes are largely influenced by the quality of information provided by the applicant at the time of application, and the time it takes the applicant to respond to any requests for further information. To minimise the amount of time for a decision, applicants should carefully read the Application Guidelines and the relevant [information checklist](#).
16. The Permission System Client Service Charter outlines the Authority's service level standards for processing new applications involving routine assessment or tailored assessment approaches. Service level standards serve two key purposes:
  - a. to provide staff with performance targets
  - b. to inform applicants what to expect with a normal application process.
17. These service level standards are not statutory however the Authority's intention is to strive to meet these standards and to report on performance against the standards. Reporting on the achievement of service level standards will help the Authority determine what level of resourcing and efficiencies are required.

### Further information requests (FINFO)

18. The Regulations require applicants to provide detailed and accurate information at the time of application. In most cases, if an application is not accompanied by the required minimum information the Authority will not accept it as a properly made application (see the Application Guidelines and relevant information checklist). However in order to ensure a complete assessment, the Authority may generally request more information at any time before a decision is made. This includes requesting further information to determine if an application has been properly made.
19. The Authority may make an informal request for information by telephone or email. It is in the applicant's best interest to respond to such requests to allow the assessment to proceed in a timely manner.
20. A formal written request may be made pursuant to the Regulations if there is no response to an informal request, or where otherwise necessary, detailing what information is required. This is called a further information request (or FINFO) and can be done by email or letter.
  - a. Under the Regulations, the Authority cannot issue a FINFO under a routine assessment approach.
21. The preference is for a FINFO to be made as soon as possible following receipt of a properly made application.
  - a. Prior to a FINFO being issued, the Authority may request a meeting with the applicant to discuss the information requirements, including proposed methods and contractors; or to identify community groups, Traditional Owners and key stakeholders whose interests may be affected by the proposed activity or who may have local knowledge.

22. Where a FINFO has been issued, the applicant will be given 20 business days to submit the information to the Authority (regulation 88E(3)). A longer period of time may be granted by the Authority if it is clear that the information may take some time to provide or if the applicant seeks an extension prior to the end of this period.
23. It should be noted that:
  - a. An extension will only be granted if progress is being made on the collection of information or if unforeseen circumstances have prevented the collection of information.
  - b. If the information specified in the request is not provided within the designated timeframe, the application is automatically taken to have been withdrawn under regulation 88E(3).

#### **Example**

The Authority's delegate (the decision maker) may provide more than 20 business days for the applicant to respond to a FINFO where:

- a. the applicant may need to engage an external contractor to collect the information
  - b. the information needs to take account of seasonal or temporal changes
  - c. there is a large amount of information needed
  - d. the information is complex or difficult to find
  - e. weather conditions (such as cyclone season or strong winds) may delay field visits
  - f. the applicant is not available for a period of time due to travel, health or other reasons.
24. The material provided in response to a FINFO will be reviewed by the assessment officer to determine whether all the information has been provided and is adequate for assessment. The assessment officer may consider whether:
    - a. The methods used to collect the information were appropriate, particularly where professional or national standards exist.
    - b. The person(s) who collected, analysed and/or presented the information were appropriately qualified or experienced.
    - c. The information provided addresses the information needs of the assessment.
  25. If the applicant's response to a FINFO is not adequate, the Authority may provide the applicant an opportunity to address any deficiencies:
    - a. If the applicant fails to respond to the FINFO within the allocated timeframe the application is taken to have been withdrawn (regulation 88E (3)).
    - b. If the applicant's response is not adequate to address the deficiencies and there is not enough information to continue an assessment, the application will be taken to have been withdrawn (regulation 88E (3)).
    - c. If the applicant's response fails to address the deficiencies but there is enough information to continue an assessment, the Authority may continue the assessment as a higher risk application based on the information provided, and proportionate with the potential consequences under analysis.
    - d. If the applicant provides an explanation of why the requested information is not relevant or required to make a decision on the application, and there is not enough existing information for the delegate to make a decision (as a higher risk application), then the application will be taken to be withdrawn (regulation 88E).

### **Native Title Notification**

26. Native title notification refers to the process used by the Authority, to comply with future act notice requirements under Division 3 of Part 2 of the *Native Title Act 1993*.
27. The purpose of native title notification is to ensure that the possible impact of the grant of the permission on native title rights is not overlooked by the decision maker.
28. The granting of Marine Park permission is considered a future act under the *Native Title Act 1993*.
  - a. A 'future act' is an act that 'affects' native title rights and interests, which is only the case if the act 'extinguishes native title rights and interests or if it is otherwise wholly or partially inconsistent with their continued existence, enjoyment or exercise'.
  - b. It is not intended that any permissions granted would extinguish Native Title.

29. Under subsection 24HA(7) of the *Native Title Act*, the Authority is required to notify any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants (Native Title bodies) in relation to the land or waters that will be affected by any proposed permission. Relevant Native Title bodies are notified and given opportunity to comment via a native title notification.
30. The Authority considers that accreditation of an educational institution, research institution, or Traditional Use of Marine Resource Agreement may constitute a future act and therefore gives notice of the proposed accreditation in accordance with subsection 24HA(7).
31. The Authority conducts two types of native title notifications:
  - a. Individual notification is made for an individual permit application at the time the application is received.
  - b. Class notification may occur where the Authority is aware that it will receive numerous similar applications during a certain period. The Authority notifies the relevant bodies that a class of future acts may be permitted, instead of a single notification for each individual permit application.

#### **Example**

The Authority may issue a class notification for granting up to 250 permits per year for five years for tourist programs. Class notifications reduce the burden on Native Title bodies to respond to multiple identical proposals, by rolling these together into a single class notification with a single response.

32. Native Title bodies are invited to comment on the possible grant of Marine Park permission. Those with the right to comment may:
  - a. explain why they believe permission should not be granted
  - b. explain why permission should be granted subject to certain conditions
  - c. draw the attention of the decision maker to information which they possess and which they consider the decision maker should be aware of before making a decision.
33. It may be necessary to re-notify if the application changes significantly or if an extensive period of time has elapsed between the application being received and an assessment report being submitted to the decision maker. This is because new Native Title bodies may have formed in areas where the activity is proposed and may need a chance to provide comment.
34. If comments are received, they are kept as a government record. The assessment should also note if comments were not received.
35. In the case of [Harris v Great Barrier Reef Marine Park Authority \(2000\) 98 FCR 60](#), in 2000 the Full Federal Court found, among other things, that under the Native Title Act the Authority is required to have regard to comments made, but is not under an obligation to involve the Native Title body in the decision making process. On that basis, the Authority generally does not provide any response to the Native Title body on comments received.
36. Under the Regulations the potential impacts of the activity on Traditional Owner heritage values are considered. For more information, refer to the section [Assessment Criteria – Consideration G: Relevant Impacts](#) and the [Traditional Owner heritage assessment guidelines](#).
37. Information or views obtained via the native title notification process should be used throughout the assessment. The future act notice under the Native Title Act, and the text of the notification sent by the Authority, clearly intend that comments are used in evaluating how the proposal may impact on Traditional Owner heritage values and whether any specific conditions should be placed on the proposal.
38. If permit conditions are recommended to address native title concerns, the assessment should explain how the conditions would mitigate potential impacts.

#### **Example**

A Traditional Owner group raised concerns about potential impacts on humpback whales, their totem. In response, the Authority included a condition prohibiting extractive research (such as taking tissue samples or tagging whales) within that geographical area.

39. Comments received after the due date may still be considered as part of the assessment process if the assessment report has not been completed and submitted to the decision maker. However, there is no guarantee that late comments will be included.

## Public comment

40. The opportunity for public comment is required for any application for an activity that may restrict the public's reasonable use of part of the Marine Park or have a significant impact on the values of the Marine Park. Refer to the Permission System Policy and Application Guidelines for more information on deciding whether public comment is required.
41. Public comment is a component of public information package (PIP), public environment report (PER) and environmental impact statement (EIS) assessment approaches. The process of seeking public comments is slightly different for each:
- a. PIP – Terms of Reference must be issued by the Authority which will outline how public comments are to be invited, collected and considered (regulations 88PE and 88PF). In general, the minimum public comment approach will involve:
    - (i) The applicant prepares an information package explaining the proposal, possible impacts and measures to avoid, mitigate or offset these impacts. This package must be approved by the Authority and published on the applicant's website.
    - (ii) The applicant publishes a notice in the local newspaper (a weekly or daily newspaper which circulates nearest to the site of the proposed activity).
    - (iii) The Authority will also publish a notice on its website, linking to the applicant's advertisement and website.
  - b. PER and EIS (regulations 88PI, 88PJ, 88PM and 88PN) – The Terms of Reference will outline how public comments are invited, collected and considered. In general the minimum public comment approach will involve:
    - (i) A draft PER or EIS being published for public comment, with advertising and targeted consultation requirements specified in the Terms of Reference.
    - (ii) Where the application is an EPBC referral deemed application, regulations 88PK and 88PO provide for the PER or EIS guidelines prepared under the EPBC Act to be used for the GBRMP assessment (instead of having separate terms of reference for the GBRMP Assessment) if the Authority decides that this is appropriate.
    - (iii) The [EPBC referral deemed application information sheet](#) provides further information specifically related to assessments conducted under the EPBC process.
  - c. For all three processes (PIP, PER and EIS), where the Authority receives the public comments made pursuant to the formal public consultation process, these or a summary of the comments will be provided to the applicant. It will often be necessary for the Authority to remove personal information and other information from the comments before providing them to the applicant. The Authority will ask the applicant, through a FINFO, to respond to the new information or specific issues raised.
    - (i) The applicant will then be required to publicise a document, generally a final report, which will demonstrate how comments have been considered and addressed. This ensures that respondents can identify how their comments have been addressed.
    - (ii) If the applicant decides not to consider certain issues raised by the public, the applicant will be required to demonstrate why these issues were not deemed relevant to the assessment of the proposal.
42. Depending on the situation, another approach might be more appropriate. For example:
- a. Where timelines are tight and only a few issues were raised during the public comment period, the Authority might decide not to provide a summary to the applicant of all comments. The Authority might simply issue a FINFO asking the applicant to reply to a few specific issues.
  - b. Where a very large number of comments are made, the Authority might pass on all submissions *verbatim* to the applicant (but without names or contact details of the submitters) and require the applicant to provide a report summarising the submissions and responding to issues raised. The Authority expects the applicant's response to be publicly available, so that people who commented can see how their comments were considered.
  - c. The Authority may seek to have comments submitted directly to the applicant, particularly if the application is an EPBC deemed application under a public environment report or environmental impact statement assessment, to be consistent with the EPBC assessment approach. The applicant then provides a copy of all comments to the Authority with their response. The Authority can then determine if any other response to issues raised in submissions is required.

## Assessment criteria

43. When deciding whether to grant or refuse permission, the Authority must consider matters specified in the regulation 88Q – *Mandatory considerations in deciding whether to grant permission*. The Authority may seek expert advice to assist in reviewing information relevant to the application.
44. All criteria must be considered. The decision maker weighs up the considerations and makes an overall decision on the application. For more information, refer to the section [Making a decision](#).
45. A separate assessment is carried out for each permission, even when an applicant has requested multiple permissions. See the section [Making a decision](#) for more information.
46. Specific regulations may apply to certain activities or locations. See [Other assessment considerations](#).
47. Complementary criteria for joint assessments are outlined in the [Queensland Marine Parks Regulation 2017](#).
48. An assessment report will be prepared which will assess the application under both sets of criteria set out in the State and GBRMP Regulations.

### Consideration A: Objects of the zone

*88Q(a) If the proposed conduct will take place in a zone – the objectives (if any) of the zoning plan for the zone*

49. The [Zoning Plan](#) identifies the types of activities that may occur in each Marine Park zone. In assessing the application, the Authority must consider which zone(s) the proposed activity will take place in and the objectives of the Zoning Plan for the relevant zone(s).
  - a. In carrying out the assessment the Authority will consider whether there is a clearly defined area of operations proposed within the application and explain how the area of operation is delineated (for example a map, GPS coordinates).

The activity may be proposed to occur in a number of different zones or locations within zones. If this is the case, each zone and location will need separate consideration to identify whether the activity is consistent with the objective of the relevant zone(s) as identified in the Zoning Plan (



- b. [Table 1](#)).
  - c. Zones such as the Preservation Zone and Marine National Park Zone are highly protected and have strict limitations on the activities which may be permitted.
  - d. The Authority will consider whether the activity includes the Remote Natural Area (Part 3 of the Zoning Plan) and any restrictions on proposed activities as a result. Notably, most facilities are prohibited within the Remote Natural Area.
50. For each zone:
- a. Activities which are not listed as being allowed with or without permission in a zone have a greater likelihood of being inconsistent with the objectives of that zone. In carrying out the assessment the Authority is required to determine whether the activity can be conducted in a manner which is consistent with the objectives of the relevant zone(s). Applicants are encouraged to consider which zones are most appropriate for the proposed activity.

Superseded

51. [Table 1](#) provides a summary of activities which are generally consistent with the objectives of each zone, allowed without permission and allowed with permission. See the Zoning Plan for further details.

Superseded

**Table 1:** Summary of activities which are generally consistent and possibly consistent with the objective of each zone.

Zone name (colour on zoning maps)	Activities allowed without permission	Activities allowed with permission
<b>General Use</b> (Light Blue)	<ul style="list-style-type: none"> <li>Fishing or collecting involving trawling, trolling, line fishing, limited spearfishing, netting (including bait netting), trapping, taking in accordance with an accredited harvest fishery, or limited collecting</li> <li>Limited impact research under accreditation</li> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Aquaculture</li> <li>Carrying out works including dredging, spoil dumping, reclamation, beach protection works or harbour works</li> <li>Collecting</li> <li>Fishing - Developmental fishery program</li> <li>Fishing - Harvest fishery that is not accredited</li> <li>Fishing industry service vessel</li> <li>Navigating a managed vessel or aircraft</li> <li>Operating a facility</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Research</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>
<b>Habitat Protection</b> (Dark Blue)	<ul style="list-style-type: none"> <li>Fishing or collecting involving trolling, line fishing, limited spearfishing, netting (including bait netting), trapping, taking in accordance with an accredited harvest fishery, or limited collecting</li> <li>Limited impact research under accreditation</li> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Aquaculture that does not involve the addition of feed</li> <li>Carrying out works including dredging, spoil dumping, reclamation, beach protection works or harbour works</li> <li>Collecting</li> <li>Educational program</li> <li>Fishing - Developmental fishery program</li> <li>Fishing - Harvest fishery that is not accredited</li> <li>Fishing - Leader prawn broodstock in Mission Beach</li> <li>Fishing industry service vessel</li> <li>Navigating a ship, managed vessel or managed aircraft</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Operating a facility</li> <li>Research</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>
<b>Conservation Park</b> (Yellow)	<ul style="list-style-type: none"> <li>Fishing or collecting involving trolling, limited line fishing, limited spearfishing, bait netting, limited trapping, or limited collecting</li> <li>Fishing involving taking in accordance with an accredited harvest fishery for aquarium fish, coral or worm (beachworm)</li> <li>Limited impact research under accreditation</li> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Aquaculture that does not involve the addition of feed</li> <li>Carrying out works for a purpose that is consistent with the zone objective</li> <li>Educational program</li> <li>Fishing involving taking in accordance with a non-accredited harvest fishery for aquarium fish, coral or worm (beachworm)</li> <li>Fishing industry service vessel</li> <li>Navigating a ship, managed vessel or managed aircraft</li> <li>Operating a facility</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Research</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>

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Zone name (colour on zoning maps)	Activities allowed without permission	Activities allowed with permission
<b>Buffer</b> (Olive)	<ul style="list-style-type: none"> <li>Fishing involving taking pelagic species by trolling</li> <li>Limited impact non-extractive research under accreditation</li> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Carrying out works for a purpose that is consistent with the zone objective</li> <li>Educational program</li> <li>Navigating a ship, managed vessel or managed aircraft</li> <li>Operating a facility</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Research that is relevant to, and a priority for the management of the Marine Park; or cannot reasonably be conducted elsewhere</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>
<b>Scientific Research</b> (Orange)	<ul style="list-style-type: none"> <li>Limited impact research under accreditation</li> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Carrying out works for a purpose that is consistent with the zone objective</li> <li>Educational program</li> <li>Fishing industry service vessel</li> <li>Navigating a ship, managed vessel or managed aircraft</li> <li>Operating a facility</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Research</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>
<b>Marine National Park</b> (Green)	<ul style="list-style-type: none"> <li>Limited impact non-extractive research under accreditation</li> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Carrying out works for a purpose that is consistent with the zone objective</li> <li>Educational program</li> <li>Fishing industry service vessel</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Navigating a ship, managed vessel or managed aircraft</li> <li>Operating a facility</li> <li>Research that is relevant to, and a priority for the management of the Marine Park; or cannot reasonably be conducted elsewhere</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>
<b>Preservation</b> (Pink)	<ul style="list-style-type: none"> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft) for access to areas that form part of Queensland</li> <li>Operating an aircraft at an altitude not less than 500 feet above the surface</li> </ul>	<ul style="list-style-type: none"> <li>Research that is relevant to, and a priority for the management of the Marine Park; and cannot reasonably be conducted elsewhere</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>
<b>Commonwealth Islands</b> (may not be indicated on zoning maps)	<ul style="list-style-type: none"> <li>Limited educational program under accreditation</li> <li>Low impact activities</li> <li>Navigating a vessel or aircraft (other than a managed vessel or aircraft)</li> <li>Photography, filming or sound recording that is low impact</li> </ul>	<ul style="list-style-type: none"> <li>Camping</li> <li>Carrying out works for a purpose that is consistent with the zone objective</li> <li>Educational program</li> <li>Operating a vessel or aircraft in 1 vicinity</li> <li>Navigating a managed vessel or managed aircraft</li> <li>Operating a facility – except for a mooring facility for vessels</li> </ul>

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Zone name (colour on zoning maps)	Activities allowed without permission	Activities allowed with permission
	<ul style="list-style-type: none"> <li>Traditional use of marine resources in accordance with a TUMRA</li> </ul>	<ul style="list-style-type: none"> <li>Research</li> <li>Take of plants or animals that pose a threat</li> <li>Tourist program</li> <li>Traditional use of marine resources not under a TUMRA</li> <li>Vessel or aircraft charter</li> <li>Any other purpose that is consistent with the zone objective</li> </ul>

52. Table 2 summarises the objectives of each zone and the principles on which areas were selected for inclusion in that zone.

**Table 2:** Summary of the objectives of each zone and the selection principles

Zone name (colour on zoning maps)	Objective	Principles for selecting which locations are in this zone (source: <a href="#">Report on the Great Barrier Reef Marine Park Zoning Plan 2003</a> )
<b>General Use</b> (Light Blue)	Provide for the conservation of areas of the Marine Park, while providing opportunities for reasonable use.	<ul style="list-style-type: none"> <li>Areas important for trawling or shipping which were not within 500m of a reef or island</li> </ul>
<b>Habitat Protection</b> (Dark Blue)	(1) Provide for the conservation of areas of the Marine Park through the protection and management of sensitive habitats, generally free from potentially damaging activities; and (2) subject to objective (1), provide opportunities for reasonable use.	<ul style="list-style-type: none"> <li>A buffer around all islands and reefs to ensure that trawling would not occur any closer than 500m from all reefs and islands</li> <li>Four reefs within the Marine Park which were part of the Effects of Line Fishing Experiment</li> <li>Areas closed to trawling by QLD or Commonwealth legislation</li> <li>Historic shipwrecks, aircraft wrecks and war graves</li> <li>Special and unique areas where inclusion in Marine National Park Zone or Conservation Park Zone was not possible</li> <li>Dugong or turtle habitats where inclusion in Marine National Park Zone or Conservation Park Zone was not possible</li> </ul>
<b>Conservation Park</b> (Yellow)	(1) Provide for the conservation of areas of the Marine Park; and (2) subject to objective (1), provide opportunities for reasonable use and enjoyment, including limited extractive use.	<p>Areas with significant social and/or biological values, based on a combination of the different values described below:</p> <ul style="list-style-type: none"> <li>waters adjacent to nationally/internationally important wetlands, National Parks or areas listed on the Register of the National Estate</li> <li>special and unique areas where inclusion in Marine National Park Zone was not possible or necessary</li> <li>dugong or turtle habitats where inclusion in Marine National Park Zone was not considered possible</li> <li>areas which submissions indicated were important areas to be considered as Conservation Park Zone</li> <li>places of public access and areas of high recreational use (including fishing)</li> <li>waters adjacent to Deed of Grant in Trust (DOGIT) lands and identified Aboriginal and Torres Strait Islander communities.</li> </ul>
<b>Buffer</b> (Olive)	(1) Provide for the protection of the natural integrity and values of areas of the Marine Park, generally free from extractive activities; and (2) subject to objective (1), provide opportunities for: (a) certain activities, including the presentation of the values of the Marine Park, to be undertaken in relatively undisturbed areas; and (b) trolling for pelagic species.	<ul style="list-style-type: none"> <li>Areas important for trolling for pelagic species, where surrounding reefs or waters were Marine National Park Zone or Preservation Zone</li> <li>Areas where there were few human activities at the time of zoning</li> </ul>

Zone name (colour on zoning maps)	Objective	Principles for selecting which locations are in this zone (source: <a href="#">Report on the Great Barrier Reef Marine Park Zoning Plan 2003</a> )
<b>Scientific Research</b> (Orange)	(1) Provide for the protection of the natural integrity and values of areas of the Marine Park, generally free from extractive activities; and (2) subject to objective (1), provide opportunities for scientific research to be undertaken in relatively undisturbed areas.	<ul style="list-style-type: none"> <li>• Areas previously zoned as Scientific Research Zones</li> <li>• The waters adjacent to the six major research institutions in the Marine Park - resulting in four new Scientific Research Zones</li> </ul>
<b>Marine National Park</b> (Green)	(1) Provide for the protection of the natural integrity and values of areas of the Marine Park, generally free from extractive activities; and (2) subject to objective (1), provide opportunities for certain activities, including the presentation of the values of the Marine Park, to be undertaken in relatively undisturbed areas.	<ul style="list-style-type: none"> <li>• No-take areas each having a minimum size of at least 20 kilometres along the smallest dimension (except for coastal bioregions)</li> <li>• Larger (versus smaller) no-take areas</li> <li>• Sufficient no-take areas to ensure against negative impacts on some parts of a bioregion</li> <li>• Where a reef is incorporated into a no-take area, the whole reef should be included</li> <li>• Represent at least 3 reefs and 20% of reef area and 20% of reef perimeter in each reef bioregion in no-take areas</li> <li>• Represent at least 20% of each non-reef bioregion in no-take areas</li> <li>• Represent cross-shelf and latitudinal diversity in the network of no-take areas</li> <li>• Represent a minimum amount of each community type and physical environment type in the overall network, taking into account principle 7</li> <li>• Biophysically special or unique places</li> <li>• Consideration of sea and adjacent land uses in determining no-take areas</li> </ul>
<b>Preservation</b> (Pink)	Provide for the preservation of the natural integrity and values of areas of the Marine Park, generally undisturbed by human activities.	<ul style="list-style-type: none"> <li>• Biologically significant populations of <i>protected species</i> -- helps conserve and support significant populations of <i>protected species</i>, usually by conserving significant breeding habitat; and/or</li> <li>• Representative examples of specific habitat types -- meets one of the requirements of the Act to preserve some areas in its natural state undisturbed by humans except for the purposes of scientific research</li> </ul>
<b>Commonwealth Islands</b> (None – may not be indicated on maps)	(1) Provide for the conservation of areas of the Marine Park above the low water mark; and (2) provide for use of the zone by the Commonwealth; and (3) subject to objective (1), provide for facilities and uses consistent with the values of the area.	<ul style="list-style-type: none"> <li>➢ All Commonwealth islands (or parts thereof) within the Marine Park, noting that not all may be illustrated on zoning maps due to lack of detailed information</li> </ul>

53. 'Conservation' is defined in the Zoning Plan as meaning '*the protection and maintenance of nature while allowing for its ecologically sustainable use*'. Where the objective of a zone refers to '**the conservation of areas of the Marine Park**', this is generally interpreted by the Authority as meaning to protect and maintain the nature in the area while allowing for its ecologically sustainable use. Potential impacts to nature should be avoided, mitigated or offset to achieve a risk level as low as possible (see [Risk Assessment Procedure](#)).
54. Where the objective of the zone refers to '**providing opportunities for reasonable use**,' this is generally interpreted by the Authority as meaning allowing ecologically sustainable human activities (see also section [Assessment Considerations – Consideration H: Avoid, mitigate, offset](#) for a discussion of ecologically sustainable use).
55. Where the objective of the zone refers to '**sensitive habitats**,' these are habitats that are considered to have significant conservation and/or cultural heritage values. These are also called 'sensitive environments' in some of the Authority's policy documents, such as the [Dredging and Spoil Disposal Policy](#) and [Dredging coral reef habitats policy](#).

### Example

- dugong protection areas
- fish spawning aggregation sites
- major seagrass meadows
- significant breeding areas, especially for rare or vulnerable species
- diverse, rare or very old coral assemblages.

56. Where the objective of the zone refers to **'potentially damaging activities'** in relation to sensitive habitats, this is generally interpreted by the Authority as meaning an activity which has a medium, high or very high risk of negatively impacting on sensitive habitats, once all avoidance, mitigation and offset measures are considered.
57. Where the objective of the zone refers to **'natural integrity'** of a place or ecosystem, this is defined in the Zoning Plan as meaning *'the degree to which the place or ecosystem retains its natural biodiversity and geodiversity and other natural processes and characteristics'*. The [Australian Natural Heritage Charter](#) and its companion document [Protecting Natural Heritage](#) provide further guidance.
58. Where the objective of the zone refers to **'extractive use/activities,'** this is interpreted by the Authority as meaning activities that take plants, animals or materials from where they are naturally located within the Marine Park. This includes activities that shift or relocate plants, animals or materials from one location to another.

### Example

Extractive uses include fishing, coral collecting, programs to take animals or plants that pose a threat, dredging, seabed levelling, beach nourishment and research that involves taking samples of plants, animals, sediment or water.

59. Where the objective of the zone refers to **'generally free from,'** this is interpreted by the Authority as meaning that the impacts from a specified activity should be avoided. The term 'generally' is recognition that some existing uses may pre-date the creation of the Marine Park in 1975, or the zoning of that area (possibly as late as 2003). The term 'generally free from' also allows for some limited extractive uses – for example, removing crown-of-thorns starfish from a snorkelling site or marine stingers from a swimming beach. Subject to an assessment:
- a. Pre-existing uses may be considered for a continuation application.
  - b. A proposal to substantially increase the scale of pre-existing uses is unlikely to be approved.
  - c. Any new uses such as the types specified in the example are unlikely to be approved, except as needed to protect the environment or human safety.
60. 'Presentation' of a place is defined in the Zoning plan as meaning *'creating awareness and understanding of the natural significance of the place'*. Where the objective of the zone refers to **'presentation of the values of the Marine Park,'** this generally interpreted by the Authority as referring to tourism or educational activities in which visitors receive interpretation from a knowledgeable person about the values in that area. Examples might be guided tours, study tours or school trips. It may also include facilities such as underwater observatories, scenic viewing platforms or interpretive signage associated with self-guided snorkel or kayak trails.
61. Where the objective of the zone refers to **'generally/relatively undisturbed,'** this is interpreted by the Authority as meaning areas where natural vistas and ecological processes are preserved and dominant, both above and below water. Zones which are to be 'generally undisturbed' are expected to be mostly free from human activities; while zones which are to be 'relatively undisturbed' may have some evidence of human activities but still retain an overall natural appearance and healthy ecological processes.

### Example

Activities which might be incompatible with such zones include:

- large numbers of moorings or boats anchored in the area, leading to a 'cluttered' or 'crowded' appearance which interrupts the natural scenic vista above the waterline
- large amounts of underwater facilities in the area, such as signs, sub-surface buoys, pipes, cables or research equipment which interrupts the natural scenic vista below the waterline
- significant discharge of wastes that impacts on water visibility or ecological processes;
- major earthworks (such as seawalls, breakwaters or dredged channels) that impact on the natural appearance of the area or alter hydrodynamic processes
- facilities which are clearly visible and detract from the natural appearance of the area
- removal of large amounts of plants, animals or sediment (including for research purposes), so that the natural appearance of the area is degraded or ecological processes are impacted.

62. It is often useful to consult the [Report on the Great Barrier Reef Marine Park Zoning Plan 2003](#). This document gives further detail on the unique aspects of particular locations and why they were selected for a certain zoning category in the current Zoning Plan.

### Example

The Report on the Great Barrier Reef Marine Park Zoning Plan 2003 provides these descriptions (selection only):

1. Kurrimine Beach – This Marine National Park Zone includes 2 bioregions (NA3 and RE3) and protects coastal fringing reef. The zone complements the adjacent nationally significant Kurrimine Area Wetland and Maria Creek National Park by providing some connectivity between protected land habitats and fringing coral reef habitats. The configuration of the zone minimises the potential impact on the net fishery.
2. Orpheus (Goolboddi) Island Reef south-west – This Conservation Park Zone builds on the western margin of a pre-existing CPZ to simplify the boundary to assist in compliance. The zone includes fringing reef and shallow seagrass habitat. The zone complements the conservation and heritage values of the adjacent Orpheus Island National Park and allow for limited fishing. The zone recognises the importance of line fishing from the adjacent Orpheus Island Resort and Yank's Jetty campground, as well as by fishers travelling to this area from adjacent coastal communities. A Public Appreciation SMA restricts spearfishing, marine aquarium fish and coral collecting, and aquaculture in the zone.
3. Eshelby Island Reef – This Preservation Zone is a pre-existing PZ and includes 2 bioregions (NB6 and RE4). The zone protects substantial fringing coral reefs, and is adjacent to significant breeding and roosting sites for a number of seabirds, including bridled and crested terns. The zone is one of a few inshore PZs and thereby provides a valuable baseline for comparison with other inshore reefs. Additional restrictions apply to the area under the Whitsundays Plan of Management (WPOM).

### Consideration B: Other legislative instruments

*88Q(b): if the proposed conduct will take place in a specific area of the Marine Park to which a legislative instrument under the Act (whether these Regulations or another instrument), or a provision of such a legislative instrument, applies—that instrument or provision*

63. Some examples of legislative instruments under the Act other than these Regulations are a zoning plan and a plan of management. Some examples of provisions are special management provisions of these Regulations for Special Management Areas (such as regulations 47 and 88V) and regulation 117JB (about protection of whales in whale protection areas).
64. If the activity is proposed to take place in a Planning Area, consider any requirements under the relevant [Plan of Management](#). This may include group size limits, access restrictions and whether there is a cap on the number and type of the proposed activity. In general, new permissions cannot be granted for daily access to a Planning Area, or for exceptions to the Plan, however there are some exceptions to this general rule such as the granting of special tourism permissions in certain circumstances (see [Consideration O: Policies and guidelines](#) for more information about consideration of 'special tourism permissions').
65. Special Management Areas in various locations of the Marine Park have certain statutory requirements that need to be considered in an assessment. Special Management Areas may be declared for a range

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of reasons including specific conservation purposes, public appreciation or public safety (Part 4 of the Zoning Plan). Refer to the [Location-specific assessment guidelines](#) for a complete list. Keep in mind that Emergency Special Management Areas may also be designated from time to time, as notified on the Authority's website.

### **Consideration C: Suitable person criteria**

88Q(c): *whether the applicant for the permission is a suitable person to hold a permission for the proposed conduct, having regard to:*

- (i) *the applicant's capacity to engage in and manage the proposed conduct to the satisfaction of the Authority; and*
- (ii) *the applicant's history in relation to environmental matters; and*
- (iii) *if the applicant is a body corporate – the history of its executive officers in relation to environmental matters; and*
- (iv) *if the applicant is a subsidiary of a holding company – the history of the holding company and its executive officers in relation to environmental matters; and*
- (v) *whether the applicant owes any fee or other amount payable under the Act or these Regulations; and*
- (vi) *any other relevant matter.*

### **General guidance**

66. The application form includes a declaration addressing the basic elements of the suitable person criteria. The Authority's assessment may confirm these details by conducting a search of government records, checking with other government departments, or following up directly with the applicant for more information. Any such enquiries are conducted in accordance with the *Privacy Act 1988*.
67. The Commonwealth Department of the Environment and Energy's [Policy statement: Consideration of a person's environmental history when making decisions under the EPBC Act](#) provides further information that may be considered by the decision maker when assessing an applicant's suitability to hold permission.
68. During the assessment process, the applicant is given reasonable opportunity to respond to any adverse material or produce information that contradicts the adverse material (see section on *Natural Justice*).
69. In carrying out the assessment the Authority considers whether permission conditions or a deed of agreement/bond could further mitigate any risks posed by the applicant.

### **Example**

Permission conditions may require a particular permit holder to report more regularly on their activities, to avoid specific locations or to install a vessel tracking device for monitoring purposes.

70. In making a final decision about the applicant's suitability, the decision maker considers information about the applicant's suitability in a fair, reasonable and open manner. They consider:
  - a. the information obtained relevant to an applicant's suitability in the context of the current application
  - b. any response provided by the applicant resulting from their consideration of adverse information and further information requests
  - c. any options for mitigating the risks posed by the applicant through permit conditions.

### **Capacity to engage in and manage the proposed conduct (i)**

71. Larger scale projects, such as the installation and operation of a facility, have the potential to significantly impact the values of the Marine Park. The key considerations are described in this section.
72. A decision needs to be made for each application on the weight that should be given to this consideration, but in general, the following principles would apply:
  - a. routine assessment – the standardised permit includes relevant conditions to mitigate the low risk posed by routine tourism and charter programs therefore this criterion would generally not be given heavy consideration
  - b. tailored assessment – likely to be of high relevance only for facilities or carrying out works
  - c. public information package assessment – likely to be highly relevant
  - d. public environment report and environmental impact statement assessments – almost certainly relevant.
73. Consider whether the applicant has adequate project management or environmental management expertise to develop and manage the project. This could be evidenced by:

- a. a robust project plan or business plan
  - b. evidence of capacity to carry out similar projects in marine environments to a satisfactory standard
  - c. staff who have demonstrated experience in the successful delivery of similar projects, including adherence with environmental management conditions
  - d. the engagement of experienced and qualified consultants to manage the project or its environmental management.
74. Consider whether the applicant has sufficient financial capability to install, maintain, operate, and ultimately decommission or remove a facility, including contingency reserves. Considerations may include:
- a. applicant's credit rating of BBB (or higher), or demonstrated equity sufficient to deliver the project
  - b. demonstrated success in securing finance to deliver a project of this scale
  - c. financial due diligence conducted by the Authority or other regulators (such as the Queensland Government).
75. Consider whether the applicant is under administration or in receivership, if the applicant has been bankrupt or has other credit issues.
- a. Such matters do not automatically render the applicant unsuitable. However, the Authority will generally request further information related to the applicant's financial situation.
  - b. Where applicants have a history of financial management issues, the Authority may consider using a deed or bond to further mitigate risks to the public and the Marine Park.
76. Where the applicant is lacking their own capacity, it may be appropriate to consider any commercial or philanthropic arrangements in place which would mitigate these concerns.
- a. This may include considering the formality and certainty of the arrangement – Is it legally binding? What are the exclusion clauses? Is the arrangement likely to persist if the applicant fails to deliver the project or becomes insolvent?
  - b. If an applicant is unable to demonstrate their own capacity to manage the activity, it may be more appropriate for the person contracting or funding the activity to lodge the application in their own name.

#### ***Applicant's history in relation to environmental matters (ii)***

77. Under the *Great Barrier Reef Marine Park Act 1975* 'environment' is defined in subsection 3(1A) as having the same meaning as in the EPBC Act. This definition is broad and encompasses ecosystems, and social, cultural and heritage values of a place. In conducting the assessment the Authority may consider the applicant's history in Queensland, in other parts of Australia and internationally.
78. In conducting the assessment, the Authority considers whether the applicant has, in the past ten (10) years, had any convictions, non-compliance, incidents or other intelligence recorded which is relevant to this application. This may include offences or allegations under the Authority's legislation as well as:
- a. the *Nature Conservation Act 1992 (QLD)*
  - b. the *Environment Protection and Biodiversity Conservation Act 1999 (C'th)*
  - c. the *Marine Parks Act 2004 (QLD)*
  - d. the *Recreational Areas Management Act 2006 (QLD)*
  - e. the *Fisheries Act 1994 (QLD)*
  - f. the *Environmental Protection Act 1994 (QLD)*
  - g. the *Maritime Safety Queensland Act 2002 (QLD)*
  - h. any other act or legislation in another state or country.
79. The assessment considers details of previous and current permits held and the level of compliance with those permit conditions, which may also include whether the applicant has had a previous permit revoked or a previous permit application refused. In both cases, the decision maker considers relevant information and reasons that led to the revocation or refusal.

- a. The existence of a previous revocation or refusal does not automatically deem an applicant unsuitable. The decision maker should consider whether any of the matters leading to a revocation or refusal are relevant to the current permission being applied for.
  - b. Compliance with permit conditions includes consideration of whether bond(s) were lodged on time and whether insurances were maintained.
80. The assessment also considers any positive environmental history of the applicant. Evidence of good environmental performance will usually provide a broad indication of a person's general approach to environmental management. This might include considerations such as the applicant's environmental policies and corporate plans; record of compliance; and receipt of environmental awards or honours.
81. If there are any matters potentially of concern, the assessment considers the nature and scale of the incident, how long ago it occurred and the final outcome.

**Example**

- a. Is the past matter relevant to the permission now being sought?
- b. Was the applicant directly or indirectly implicated in the problem?
- c. Did they give any reasons or extenuating circumstances for their non-compliance?
- d. What steps did they take to fix the problem and prevent it from happening again?
- e. If the matters occurred some time ago, have there been any further issues in recent years? Has the applicant shown an improvement in compliance, or are issues still being reported or investigated?
- f. If the matter proceeded to court and resulted in a criminal conviction, what reasons were given for recording or not recording the conviction?

82. The assessment considers the relevance of these matters to the current application. Information relevant to the person's environmental history is that which will indicate whether a person is likely to comply with the conditions of a permit.

**Example**

- a. A decision maker might decide that an applicant is not suitable to hold a high-risk permission (such as for a major facility) but may be suitable to hold a low-risk permission (such as for routine tourism).
- b. A decision maker might decide that because a particular incident occurred a long time ago and the applicant has not had any infringements since that time, limited weight should be placed on the past incident.

***History of executive officers in relation to environmental matters (iii)(iv)***

83. The decision maker may consider not only the environmental history of the applicant specifically, but also (where relevant) the environmental history of certain related entities and of the executive officers in assessing whether the applicant is a suitable person to hold a permit:
- a. If the applicant is a body corporate, then its executive officers can be examined.
  - b. If the applicant is a subsidiary of another company (the holding company), then the holding company and its executive officers can be examined.
84. The term body corporate is not defined in the Act, the Regulations, or the EPBC Act. However, the term ordinarily means any artificial person which has a separate legal identity and is identified by a particular name. Bodies corporate can apply for permits under the Act.
85. An executive officer of a body corporate is defined under section 3 of the Act as "a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body". In some cases, a person not formally identified as an officer of the group may in fact be assessed as an executive officer if there is reasonable evidence to demonstrate that the person is concerned in, or taking part in, the management of the group. The assessment considers whether the environmental history of executive officers or parent bodies is relevant, given the nature of the permission being applied for. Generally, this would only be considered:
- a. For public information package, public environment report or environmental impact statement assessments.
  - b. If there are concerns or a lack of information about the applicant's suitability, suggesting a closer look at the executive officers or parent body may be prudent. Examples of such cases may include:

- (i) a standard body corporate check (done to confirm that the person signing the application is an authorised person for the body corporate) shows that:
  - the body corporate has recently been created
  - one or more executive officers are known to the Managing Agencies due to past allegations, incidents, investigations or convictions
  - the body corporate is under external administration, in default, or subject to judgements, writs or petitions.
- (ii) The applicant has some matters of concern under other aspects of the 'suitable person' criterion.

86. Considerations about executive officers and parent bodies are limited only to environmental history and do not extend to other aspects of the suitable person criterion (such as outstanding fees).
87. See the previous section on [Applicant's history in relation to environmental matters](#) for guidance on assessing an applicant's history in relation to environmental matters. The same principles are applied to assessing executive officers or parent bodies.
88. Under this criterion, the assessment cannot consider other companies or body corporates which are not parent bodies. For example, the following cases cannot be assessed under this criterion:
- a. Commercially related companies that are not the applicant's parent body – such as another company that is owned by the same parent company as the applicant
  - b. Agreements or contracts between the applicant and other parties – such as an applicant who is carrying out works or constructing facilities on behalf of (under contract to) another company
  - c. Another community group that has broken away from the applicant group over some difference of opinion.

#### Example

A port has lodged an application to construct a new jetty. The port will own the infrastructure, but construction and ongoing maintenance will be funded through a commercial agreement with a sugar mill. The port would not be building the jetty if the sugar mill had not signed a long-term contract for its exclusive use.

- The port is the applicant. The sugar mill's environmental history cannot be considered under this criterion.

A community fishing club owns several moorings which are available for use by its members. A dive club has an unofficial agreement which allows them to also use the moorings. The moorings are under a continuation application.

- The fishing club is the applicant. The dive club's environmental history cannot be considered under this criterion.

89. In the above cases, there may be limited scope to consider such matters under:
- a. *Consideration C(i) – capacity to develop and manage the project.* For example, if the applicant does not have adequate credit or funds to deliver the project on their own and relies financially on some contractual or philanthropic arrangement, this can be considered. In such cases, the Authority may request further information from the applicant about such arrangements.
  - b. *Consideration P– Any other matters relevant.* For example, the environmental history of related companies or groups that will use a facility may be relevant to the current decision.

#### **Fees and amounts payable (v)**

90. The assessment considers whether the applicant owes payments or returns to the Commonwealth of Australia that are payable under the Act or Regulations. This includes a check of Environmental Management Charges (EMC) obligations, unpaid fines or civil penalties infringements in relation to a contravention of the Act or Regulations.
91. More specifically, the assessment may consider:
- a. outstanding EMC payments or outstanding late payment penalties
  - b. any permit application and assessment fees outstanding
  - c. any fines or civil penalties owing under the GBRMP Act or Regulations.

92. Outstanding or late bonds that are required to be paid pursuant to a permission condition are not considered under this sub-criterion, however they may be considered under the sub-criteria for the applicant's history in relation to environmental matters (iii) and (iv).
93. Generally, the Authority's expectation is that all fees and other amounts payable will be fully paid before making a decision on the application. Where fees and other amounts payable remain outstanding, and no reasonable explanations are provided, the Authority is unlikely to grant a new permission or a continuation of an existing permission.

#### **Other relevant matters (vi)**

94. The assessment also considers any additional matters that the decision maker considers to be relevant to the circumstances and nature of the application. These may include, but are not limited to:
  - a. The applicant's likelihood of being able to comply with reasonable conditions that might be placed on the permission – for example, the applicant's experience or qualifications.
  - b. Findings from the coroner's office or an inquiry relating to the applicant.
  - c. Advice from other management agencies and regulators, for matters not already covered under other criteria which are directly relevant to the application under consideration – for example, advice from Maritime Safety Queensland relating to the applicant's boating safety practices.
  - d. Whether the applicant is a suitable person to hold a permission for the proposed conduct, having regard to the environmental history of the applicant's related bodies corporate and their executive officers.

#### **Consideration D: Reasonable steps**

88Q(d) the requirement in section 37AA of the Act for users of the Marine Park to take all reasonable steps to prevent or minimise harm to the environment in the Marine Park that might or will be caused by the user's use or entry.

95. Subsection 37AA(2) of the Act defines harm for the purposes of section 37AA to include '*any adverse effect; direct or indirect harm; [or] harm to which the person's use or entry has contributed, to any extent (whether or not other matters have contributed to the harm)*'.
96. When determining whether all reasonable steps have been taken by the applicant to minimise harm from the proposed activity, subregulation 37AA(3) of the Act requires consideration of the following:
  - a. the nature of the harm to the environment that might or will result from the person's use or entry;
  - b. the risk of harm from the person's use or entry;
  - c. the sensitivity of the environment that might or will be affected by the person's use or entry;
  - d. if the person is using or entering a zone—any objectives specified for the zone in its zoning plan;
  - e. the practicalities, including cost, of steps that will prevent or minimise the harm;
  - f. whether or not the person's use or entry complies with the laws applying in the Marine Park in relation to the environment or natural resources;
  - g. whether or not the person's use or entry complies with any relevant code of practice, standard or guideline;
  - h. whether or not the person's use or entry is in accordance with any conditions of a permission granted under the regulations for the purposes of a zoning plan or a provision of this Act.

#### **Consideration E: Feasible and prudent alternative**

88Q(e) whether there are feasible and prudent alternatives to the proposed conduct.

97. Evaluating feasible and prudent alternatives to the proposal is an important early step in the application and assessment process. This is considered at a whole-of-project or proposal level.
98. In general the option that would have the least impact to the values of the Marine Park and would also deliver the outcomes required by the proponent should be pursued.
99. Prudent and feasible alternatives should be considered commensurate with risk. For example:
  - a. Routine assessment – No information is needed from the applicant to enable the Authority to conduct an assessment of alternatives.
  - b. Tailored assessment – A few sentences from the applicant may suffice to explain why they need to conduct the activity in the Marine Park. Applicants should clearly demonstrate that alternatives

have been evaluated. They should be able to clearly explain and justify why a particular option has or has not been chosen.

### Example

A tourism operator may apply to conduct a vessel-based tourist program at a particular reef location on a daily basis. The applicant could support their application with the following justifications:

- Justification for location – We want to offer a quiet, natural experience for small groups of visitors. Because of this, we do not want to visit the usual reefs, where there are often other tourism boats or local visitors on any given day. This reef is rarely visited so provides the sort of experience our guests are looking for.
- Justification for daily access – Because we only have a small boat and small group size, for business viability we need to run at least 4 trips each week. Having daily access gives us flexibility based on bookings and the weather. We considered spreading our use around 2 or 3 reefs, but the range and speed of our boat means this is the only low-visitation reef that meets our needs.
- Justification for anchoring – Because this reef is rarely visited, there is no public or private mooring available that we could use. We considered applying for permission to install a mooring, but there is a large sandy lagoon on the sheltered/lee side of the reef which provides low-impact anchoring opportunities. Our boat is small, and the skipper stays on the boat to ensure the anchor does not drag. We would not be visiting the reef unless weather conditions allowed for safe anchoring, as in bad weather conditions our guests would not have a good experience.

- c. Public information package – Terms of Reference will specify what is required. The general expectation is as for tailored assessment, but with a more detailed comparison of the biodiversity, social, economic and heritage impacts of options included in the application.
- d. Public environment report – Terms of Reference will specify what is required. The general expectation is as for public information package, but with some quantitative analysis of short-listed options.
- e. Environmental Impact Statement – Terms of Reference will specify what is required. The general expectation is for a robust cost-benefit analysis or feasibility study of options to be conducted which incorporates ecosystem services.

100. Feasible alternatives may be available that would avoid or mitigate impacts. Important elements when considering alternatives include:

- a. Could the proposed activity be conducted at a different location that supports fewer values, including a location outside the Marine Park?
- b. Could the applicant conduct a different type of activity or install a different type of facility?
- c. What are the comparative risks or impact to the values of the Marine Park of the alternatives?
- d. What are the costs and benefits of the alternatives?

101. The applicant must provide justification if the preferred option has higher risks than other alternatives.

102. Consider whether the activity or facility has been designed to be fit for the intended purpose and the nominal design life of the facility or duration of the activity. For example:

- a. Constructing a breakwater that does not meet its stated objective, either in terms of wave protection or the size of vessels it can accommodate, may not be justifiable.
- b. A proposal to install a jetty to accommodate one daily tourist vessel may not be justifiable if a mooring would be better suited to the location.

103. In determining whether an alternative is feasible, consider the costs (to the applicant and the community) and practicalities of these alternatives commensurate with the risk of the proposed activity. For example:

- a. Is the reduction in risk significant enough to justify the increased cost of an alternative? Applicants of larger scale or higher risk projects may be required to undertake a cost/benefit analysis of alternatives to assist in this process.
- b. Are alternative materials, equipment, methods or professional services available in Australia? Are they tested and proven in tropical marine environments?

## **Consideration F: Written comment received**

88Q(f) any written comments received under Division 2A.3A in connection with the application.

104. As outlined in the Permission System Policy, the Authority considers:
- a. The issues raised in public comments and any targeted consultation required, such as with Traditional Owners or other governmental agencies.
  - b. New information provided in such comments and consultation particularly around potential impacts/methods of conducting the activity.
  - c. The relevance of the issues raised to the permission being applied for.
105. Often people comment on matters which are not directly within the Authority's jurisdiction. Some of these comments may still be considered.

### **Example**

Comments may be received about how an applicant for a facility has failed to successfully deliver a similar project in a different state. Whilst the other project is outside of the Marine Park, the comments may be considered under [Consideration C: Suitable person](#)

106. In cases where an application is contentious, it may attract campaign style responses, where hundreds (sometimes thousands) of copies of the same text are submitted, each by a different person. The assessment will identify that a campaign email/letter was submitted, the quantity received, the issues raised and how they have been addressed by the applicant.
107. The assessment does not consider public comments as a vote or opinion poll. The numbers of submissions received which are in favour of, and opposed to, the proposal are not taken to accurately reflect public sentiment. However, a large number of public comments may indicate significant community interest in the proposal. The [Social value assessment guidelines](#) provide more guidance on how an assessment considers public perceptions and sentiment.
108. The assessment considers the applicant's response to the issues raised during consultation and whether any issues remain outstanding. The results from consultation are used throughout the assessment. For example:
- a. locals may provide new information on species that nest or feed in the area
  - b. the community (even the international community) may raise concerns about how the proposal may impact on other businesses or people's appreciation of the area
  - c. Traditional Owners may identify impacts to their sacred sites or intangible values such as stories or songlines. See [Woppabura heritage assessment guidelines](#) and [Traditional Owner heritage assessment guidelines](#) for guidance.
109. Typically the assessment report contains a table summarising issues raised or information provided, but addresses these in detail as they relate to other assessment criteria.
110. Comments received outside the formal consultation period may still be considered in the assessment under this consideration or [Consideration P: Any other matters](#) if they present new information that is critical to the decision.
111. Campaign-style responses that are received outside the formal public comment period are generally not considered as they are unlikely to be critical to the decision.

## **Consideration G: Relevant Impacts**

88Q(g) the relevant impacts of the proposed conduct

### **Assessing impacts using the Risk Assessment Procedure**

112. The Authority adopts a risk-based approach in its management and decision making. Undertaking a risk assessment using the [Risk Assessment Procedure](#) should be conducted as a first step during the assessment to identify the type and severity of the risk posed by the proposed conduct. The results of the risk assessment will inform the rest of the assessment report.
113. The Authority's environmental management program is focused on the highest risk impacts, without ignoring medium risks. In some cases the lower risks are already well understood and can be easily mitigated through standard permit conditions and assessment reports.

114. When assessing impacts of the proposed conduct, consideration should be given to the whole-of-project-life, including: construction (where applicable), operation, decommissioning and removal (where applicable). In the case of some facilities it may be necessary for the applicant to provide a full plan for the decommissioning and removal stage, to allow for the assessment of potential risks from this phase of the proposed activity. Refer to the Facilities activity assessment guidelines and the Pontoon assessment guidelines for details relevant to specific types of facilities.
115. The Authority often seeks the advice of internal and external experts, including for second opinions of information submitted by applicants.
116. For significantly complex applications, the Authority may conduct the risk assessment in conjunction with QPWS and/or the applicant to ensure a comprehensive and more transparent process of informing the decision maker of risks.

#### ***Using the risk assessment to inform the assessment report***

117. Where risks have been identified as medium, high or very high, the impacts associated with these risks will need detailed consideration in the assessment.
118. The assessment identifies the Marine Park values that may be present in the locations where the conduct is proposed to occur and describes their significance. The assessment considers whether there are particularly sensitive or unique examples of any values. Supporting information may be available to assist in evaluating impacts, including:
  - a. the Authority's range of value and activity assessment guidelines.
  - b. the Authority's [Vulnerability assessments](#)
  - c. the Authority's [Report on Zoning](#)
  - d. scientific reports and journal articles
  - e. technical reports
  - f. local and Traditional Owner knowledge
  - g. historical records
  - h. expert advice (internal or external to the Authority)
  - i. information from other government agencies such as the Department of Environment and Energy.
119. The assessment describes the findings of any site inspections that may have been conducted recently (in the past 12 months or less), including routine field inspections by the Authority or surveys conducted through Eye on the Reef, Reef Health and Impact Surveys or any other routine monitoring which may be implemented as part of a nearby project. The [Reef Integrated Monitoring and Reporting Program](#) may provide details of any data available for the location.
120. The assessment considers whether the proposed area of operation has recently been impacted by a severe environmental incident and if so, the extent of damage and whether granting a permission is likely to contribute to further negative impacts to Marine Park values at that location. Permissions for an activity may be granted in an impacted area if the activity is not likely to further degrade the values of the Marine Park. In these circumstances, any permission granted may be limited for a certain period of time to ensure the values can recover.

#### ***Types of impacts***

121. The assessment considers the potential for direct, indirect, flow-on, cumulative and consequential impacts. It also considers the risk and extent of impacts to the public's reasonable use of part of the Marine Park.
122. **Direct impacts** occur when the proposed activity directly interacts with the values of the Marine Park at that location. For example, lethal sampling of fish species for the purpose of research or removal of seagrass meadow for the construction of a marina.
123. **Indirect impacts** are those which are not a direct result of the project, often occurring away from the site of the activity, but which would otherwise not have occurred.
  - a. The Authority considers indirect impacts on matters of national environment significance within the Marine Park.
  - b. [Guidance material](#) from the Commonwealth Department of the Environment and Energy provides the primary reference for Authority officers when assessing indirect impacts.



- c. The most common type of indirect impacts in the Marine Park are '**downstream impacts**' and '**consequential impacts**.'
  - (i) Downstream impacts arise when the proposal creates impacts at another location due to the by-products or waste caused by its operation. For example:
    - Chemicals discharged into the ocean near land may disperse widely throughout the reef.
    - Rubbish generated by construction may be barged to the mainland, creating an increase in vessel traffic.
  - (ii) Consequential impacts arise when the proposal requires, makes possible or makes easier other activities (including by third parties). For example:
    - Building a new jetty leads to an increase in recreational use which may create new or more serious impacts on the environment.

124. **Flow-on impacts** can result from direct or indirect impacts and occur when an impact on one value creates another impact on a different value. For example, removing seagrass will have flow-on impacts on species that feed on seagrass, such as turtles and dugong.

125. **Cumulative impacts** arise when the impacts from a proposal combine or interact with other impacts, including those from past, present and reasonably foreseeable future pressures.

### **Consideration H: Avoid, mitigate, offset**

#### 88Q(h) options for avoiding, mitigating and offsetting those relevant impacts.

- 126. Identify how proposed avoidance, mitigation or offset measures may reduce the potential impacts of the proposed conduct. If an impact cannot be avoided, the permission should include conditions to mitigate the impact.
  - a. The risk must be managed to bring it down to an acceptable level that allows for ecologically sustainable use. If measures cannot be implemented to reduce the risk, then the proposed activity may be refused.

#### **Ecologically sustainable use**

- 127. Section 3AB provides that for the purposes of the Act, the following are principles of ecologically sustainable use:
  - a. Decision-making processes should effectively integrate both long-term and short-term environmental, economic, social and equitable considerations.
    - (i) In practice, this means considering not merely the direct and immediately observable impacts of an activity, but also the indirect impacts.

#### **Example**

It is not enough to consider how many fish would be directly killed by the activity; you must also consider the 'sub-lethal' effects, such as fish becoming more prone to disease or unable to reproduce. Such effects may not become noticeable for many years after the original impact or activity.

- b. **Precautionary principle:** The precautionary principle is defined in subsection 3(1) of the Act as meaning "*the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.*" Within the permission system, this means that if there is a high degree of uncertainty about the ability to manage impacts, and the consequence might be severe, the Authority's decision maker should be convinced that the risk can be managed, otherwise the proposal may be refused. Examples might include where:
  - (i) background or baseline conditions are not well documented
  - (ii) likely impacts of particular activities or materials are not well understood
  - (iii) techniques for monitoring a particular value, or a particular location, are not well-tested or commercially feasible.

- c. **The Principle of Inter-generational equity:** The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (i) A real risk is shifting baselines, where the condition of the Marine Park gradually degrades over several generations. Each generation believes that the condition is only a little worse and can be corrected when, in fact, a significant change may have occurred over decades. If a tipping point has been passed, the Marine Park may never recover to its previous condition.
  - (ii) Background conditions are those that currently exist or recently existed, whereas baseline condition refers to the long-term (usually more than 20 years) condition and trend of a Marine Park value.
  - (iii) Proposals to conduct activities in the Marine Park must do more than just avoid changes to background conditions. The most important consideration is whether the proposal contributes to maintaining values and does not compromise their long-term resilience and health.
  - (iv) Options should be favoured which promote the maintenance of values which are in good condition and the recovery of values which are in poor condition. This requires a longer term perspective than is commonly applied in project assessments.
  - (v) For public environment report or environmental impact statement assessments the Terms of Reference may require detailed consideration of inter-generational equity. A range of tools and theories are available to undertake such an assessment.
- d. The conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making.
- (i) Protecting and conserving heritage values, such as Traditional Owner values and their intrinsic community benefits, relies upon a healthy, resilient ecosystem.
- e. Improved valuation, pricing and incentive mechanisms should be promoted.
- (i) Historically, the value provided to humans by natural processes (i.e., ecosystem services) has not been well captured in traditional economics. Natural resources like clean air or water are not usually traded on markets, and so it is difficult to place a value on them.
  - (ii) Environmental valuation looks at quantifying the value of these natural resources and processes, so that they can be included in traditional cost-benefit analysis or other economic techniques.
  - (iii) Applicants are encouraged to utilise accepted international methodologies for more accurately calculating costs and benefits from an ecosystem perspective.

### Avoid

128. Avoiding impacts is the first priority when assessing an application. Avoidance measures should be explored and exhausted before considering mitigation or offset measures.
129. As explained in the Risk Assessment Procedure, avoidance measures are aimed at avoiding a risk event from occurring. This usually means that the original proposal is modified to remove a certain method or material that might expose a Marine Park value to risk.
130. It is important to differentiate between avoidance measures and the consideration of feasible and prudent alternatives. Generally, feasible and prudent alternatives are considered at a whole-of-project or proposal level; whereas avoidance measures look in detail at individual methods or materials within a proposal.

### Example – Building a jetty

- **Feasible and prudent alternatives** – Is a jetty needed? The proponent would need to explain the problem they are trying to solve or the outcome they are seeking to achieve (such as safely delivering goods and people to an island) and justify why other options could not deliver the same outcome with fewer impacts. Alternatives might include beach landings, a barge ramp or a helipad.
- **Avoidance measures** – If a jetty has been determined to be the most feasible and prudent alternative for delivering goods and people to the island, the risk assessment considers options for avoiding potential risks of building and operating a jetty. The initial concept plan for the jetty proposes to have a fuel storage shed on the jetty. The risk assessment identifies a risk of fuel leakage. To avoid this potential risk, the proponent revises the proposal so that the jetty does not include a fuel storage shed.

## Mitigate

131. Mitigation measures either reduce the consequence of an impact, or alternately reduce the likelihood of that impact occurring. The Risk Assessment Procedure identifies in which situations further steps are needed to reduce risks.

### Example

Mitigation measures might include:

1. Supervising participants so they don't touch wildlife.
2. Using silt curtains to prevent sediment from spreading during construction.
3. Treating effluent before discharging it.
4. Having a whale spotter during construction and stopping work if a whale comes too close.
5. Providing displays or information sheets to interpret the heritage of the site.

132. More mitigation ideas can be found in the specific activity and value assessment guidelines.
133. Monitoring is not a mitigation measure. Monitoring provides valuable information about impacts but does not actually reduce the consequence of an impact or the likelihood of impacts – monitoring merely tracks the impact and can trigger further action. See [Consideration I – monitoring and managing impacts](#) for more information.

## Offset

134. The [Australian Government's offset policy](#) states, "avoidance and mitigation measures are the primary strategies for managing the potential significant impact of a proposed action. They directly reduce the scale and intensity of the potential impacts of a proposed action. Offsets do not reduce the likely impacts of a proposed action, but instead compensate for any residual significant impact."
135. Offsetting of impacts is the third step in the mitigation hierarchy. Determining the need for offsets is based on a rigorous impact assessment process that maximises avoidance and mitigation measures, and is governed by legislation. Offsets do not mean proposals with unacceptable impacts will be approved. They simply provide an additional tool that can be used during the environmental impact assessment process.
136. Guidelines are being developed to explain how offsets will be applied more specifically for the Great Barrier Reef Marine Park.

## Consideration I: Monitoring and managing

### 88Q(i) options for monitoring and managing those relevant impacts

137. If permission were granted the assessment considers whether there are adequate mechanisms to monitor and manage the proposed activity, including:
- a. any risk management measures proposed by the applicant, and
  - b. any permit conditions that are being considered.
138. Monitoring refers to observing or checking the progress of something over time. Managing refers to taking actions, based upon the results of monitoring, to address emerging risks or deal with actual incidents.
139. Options for monitoring and managing relevant impacts are considered commensurate with risk and are implemented through permit conditions and deeds of agreement.
- a. For routine assessments and many tailored assessments there may already be effective monitoring and management programs in place, and there may be no need for any tailored permit conditions. The assessment report may simply refer to these existing programs and explain why they are adequate to cover the risks of the application.
  - b. Additional monitoring or management programs may be required for applications which have some medium or high risks.

### Example

If new methods, materials or equipment are proposed, a monitoring program can record whether any changes to background conditions or baseline condition are occurring. Further analysis can indicate whether the permitted activity may be contributing to or causing these changes, and whether the changes pose a risk to Marine Park values.

140. Where additional monitoring or management is required (beyond existing, funded programs), the permission holder is expected to meet these additional costs.
- The Authority usually requires the permission holder to conduct monitoring and report the findings.
  - The Authority may monitor the permitted activity, including potentially engaging independent auditors, to ensure the permission holder's monitoring is rigorous and reporting is accurate. Permit conditions (including a deed of agreement) may require the permission holder to reimburse the Authority for the costs of such monitoring.
  - Management actions may be conducted by the permission holder, the Authority or other partner agencies. Permit conditions may require the permission holder to reimburse the Authority for the costs of any monitoring or management activities.
141. Types of monitoring may include:
- Background monitoring to compare the condition of Marine Park values before, during and/or after the permitted activity.
  - Works or operational monitoring to check that no unexpected impacts are occurring during permitted activities and to apply any agreed thresholds, triggers or adaptive management responses.
  - Long-term monitoring to identify any longer-term or broader-scale effects, indirect impacts or flow-on impacts. This may include monitoring that extends for many months beyond the conclusion of works or the expiry of permission (in that latter case, this is achieved through a deed of agreement).

#### Examples

- conducting a regular water quality monitoring program in accordance with relevant [guidelines](#)
- conducting reactive, issues-based monitoring following an incident or a severe weather event
- participating in larger-scale activities associated with the Authority's [Reef Integrated Monitoring and Reporting Program](#) or [Eye on the Reef](#) program
- engaging an independent auditor to check compliance with monitoring requirements.

142. Monitoring programs should be designed specifically for the risks identified to Marine Park values. Monitoring protocols are being developed through the [Reef 2050 Integrated Monitoring and Reporting Program](#) (RIMREP) to monitor and assess values of the Marine Park. Monitoring programs proposed by applicants should align with RIMREP monitoring protocols as they become available.
143. It is important to consider in the permit assessment whether the proposed monitoring program:
- can reasonably be conducted at the location
  - is likely to be sensitive enough to detect impacts
  - is likely to provide enough advance warning of changes to allow for adaptive management responses.
144. Where significant monitoring and management is required to mitigate risks, excessive permit conditions may be avoided by including a permit condition requiring the permission holder to submit for approval a detailed Environmental Management Plan (EMP) which includes sections on monitoring and management (see section - [Management Plans](#)).

#### **Consideration J: Laws of the Commonwealth or Queensland**

88Q (j) a law of the Commonwealth or of Queensland as in force from time to time, or a relevant plan (as in force from time to time) made under such a law, that:

- relates to the management of the environment or to an area in the Marine Park; and
- is relevant to the proposed conduct;

except so far as that law or plan is covered by consideration 88Q(b);

145. There are a range of other Commonwealth and Queensland laws relating the management of the environment which may be relevant to considering impacts of the proposed conduct. The nature of the conduct and its proposed location will help determine other legislation which may need to be considered.

146. Other government organisations may have primary responsibility for certain activities that are known to occur in the Marine Park such as: Queensland Fisheries (for commercial fishery operations); Australian Maritime Safety Authority (AMSA) and Maritime Safety Queensland (MSQ) (for vessel safety, certification, registration and licencing requirements); the Civil Aviation Safety Authority (for aircraft safety, registration and licencing requirements); Australian Customs and Border Protection (for import and export requirements).
147. [Table 3](#) lists some activities and associated Commonwealth and Queensland laws that may apply under this consideration. This is not exhaustive but refers to known permitted activities within the Marine Parks:

**Table 3:** Examples of some Commonwealth and Queensland legislation that may need to be considered for the assessment of certain activities.

Commonwealth Legislation	Types of activities
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	<ul style="list-style-type: none"> <li>• Operation of a facility (see also Consideration K EPBC approvals)</li> <li>• Research, other than limited impact research (extractive) or limited impact research (non-extractive)</li> <li>• Carrying out works (e.g. dredging, dredge spoil disposal)</li> <li>• A program to take animals or plants that pose a threat.</li> </ul>
<i>Environment Protection (Sea Dumping) Act 1981</i>	<ul style="list-style-type: none"> <li>• Operation of a facility - if that facility included discharging waste from the facility</li> <li>• carrying out works (dredge spoil disposal).</li> </ul>
<i>Historic Shipwrecks Act 1976</i>  See also the <a href="#">WWII features and sites, and voyages and shipwrecks assessment guidelines</a>	<ul style="list-style-type: none"> <li>• Operation of a facility - if the facility was proposed in an area of a known historic shipwreck</li> <li>• Research, other than limited impact research (extractive) or limited impact research (non-extractive) – If that research was specifically related to improving the historic heritage understanding of a known shipwreck</li> <li>• Carrying out works e.g. dredging, dredge spoil disposal – if the proposed conduct was taking place in close proximity to a known shipwreck.</li> <li>• Conduct of a tourist program – if the proposed conduct requested access to a historic shipwreck as a dive site.</li> </ul>
<i>Sea Installations Act 1981</i>	Operation of a facility
Queensland Legislation	Types of activities
<i>Planning Act 2016</i> <i>Fisheries Act 1994</i>	<ul style="list-style-type: none"> <li>• Research, other than limited impact research (extractive) or limited impact research (non-extractive)</li> <li>• Any activity that involves the taking of marine plants, or certain algae, as defined in the <i>Fisheries Act 1994</i> – Generally research</li> </ul>
<i>Nature Conservation Act 1992</i>	Any activity which proposes to access island National Parks as part of the permission.

148. Consider, where relevant, any other statutory instrument of the Commonwealth or of Queensland that has not already been included elsewhere in the assessment.

#### Example

- Statutory regional plans under Queensland legislation express State interests at the regional scale. If relevant, consider whether the proposal is consistent with the statutory regional plan. GBRMPA should seek the views of the local council and the Queensland planning department if considering these regional plans.
- The Mackay Isaac Whitsunday Regional Plan 2012 states that any changes to the existing approval (pre-2012) for Keswick Island should not result in increased scale of activity or further residential development.
- The Far North Queensland Regional Plan 2009 states that to increase resilience to climate change, intact fish habitats should be protected, and large scale buffers and corridors should be identified and enhanced.

### **Consideration K: EPBC approvals and permits**

88Q(k) if the proposed conduct also requires an approval or permit under the Environment Protection and Biodiversity Conservation Act 1999:

- (i) whether the approval or permit has been, or is likely to be, granted and, if granted, the terms and conditions of it being granted; and
  - (ii) any relevant assessment documentation (within the meaning given by subsection 133(8) of that Act) in relation to the approval or permit.
149. The Commonwealth Department of the Environment and Energy and GBRMPA have a [Memorandum of Understanding](#) in relation to referrals made under the EPBC Act which may also require a Marine Parks permit to proceed. Refer to the separate [EPBC referral deemed application information sheet](#).
150. Generally, any conditions issued on an EPBC approval should be complemented (and as a minimum, not contradicted) on any Marine Park permission granted.

### **Consideration L: Queensland approvals**

88Q(l) if the proposed conduct also requires an approval or permission (however described) under a law of Queensland — whether the approval or permission has been, or is likely to be, granted and, if granted, the terms and conditions of it being granted

151. If relevant approvals or permits have not been granted by other authorities, consideration should be given to whether the proposed activity could, or should, proceed.
152. To avoid being overly speculative, the Authority will generally only consider that a required Queensland approval is unlikely to be granted if the Queensland delegate provides correspondence indicating this.
153. It is important to understand the reason why Queensland is unlikely to grant approval, in order to decide what weight it should be given. For example:
  - a. If the proposal is prohibited under legislation – Significant weight may be placed on this consideration. However consider whether the legislation has been recently introduced or is under review.
  - b. If the proposal is inconsistent with public Government policy position – Some weight may be placed on this consideration.
154. In all cases, if the Authority is considering refusing on the basis that the proposal is unlikely to secure the required Queensland approvals, under the principles of natural justice the applicant should be given opportunity to respond and explain why they believe they can secure Queensland approvals.
155. In most cases, the Authority's approval is not conditional on securing other approvals. The applicant should be afforded liberty to determine the most logical sequence of obtaining approvals, based on their own circumstances.
156. The one exception is the ability of the applicant to gain Queensland Marine Park approval. If approval from the Authority would have no purpose or utility in the absence of permission for the Queensland Marine Park, then the Authority may refuse on this basis. This is because the Authority operates a joint permitting system with Queensland. However, in some cases even if Queensland Marine Park permission is refused, the Authority's permission may still be of use. In such cases, the Authority may make a different decision to the Queensland Marine Park decision.

#### **Example**

Queensland may refuse permission for jet skiing in the Hinchinbrook Channel (which is not part of the Commonwealth Marine Park), but the Authority may still decide to grant approval for jet skiing in the Hinchinbrook area outside the Hinchinbrook Channel.

### **Consideration M: Recovery plans and conservation advices**

88Q(m) any recovery plan, wildlife conservation plan, threat abatement plan or approved conservation advice, that is relevant to the proposed conduct

157. The Commonwealth Department of the Environment and Energy publishes a range of statutory [recovery plans](#), [conservation advices](#), [wildlife conservation plans](#) and [threat abatement plans](#) to address [key threatening process](#) under the EPBC Act. Consider whether the proposal is consistent with these. Search for these by region or species on the [Species Profile and Threats](#) (SPRAT) database.

158. The Great Barrier Reef Region Strategic Assessment Report 2014 provided a list of listed threatened species and listed migratory species relevant to the Great Barrier Reef Region (refer Table 4.7, page 4-33 and Table 4.4, page 4-25 respectively), which may assist with determining if there are relevant plans under the EPBC Act that pertain to those species.
159. Note however, that such listings can change over time so the Commonwealth Department of the Environment and Energy's [website](#) should always be checked to ensure any additional listings are considered.
160. The value assessment guidelines provide more details for certain species and habitats.

### **Consideration N: Conventions and agreements**

88Q(n) any international agreement to which Australia is a party, or any agreement between the Commonwealth and a State or Territory, that is relevant to the proposed conduct

161. The [Great Barrier Reef Intergovernmental Agreement](#) aims to ensure an integrated and collaborative approach is taken by the Australian and Queensland governments to manage marine and land environments within the Great Barrier Reef World Heritage Area. In doing so, the agreement provides for the joint permitting process for activities in the Marine Parks.
162. The Commonwealth Government Department of Foreign Affairs and Trade maintains a current list of international [treaties](#) to which Australia is a signatory. Of the 107 treaties currently in force related to environmental matters, the following are the most relevant to the permission system:
- a. [Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment](#)
  - b. [Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds](#)
  - c. [Convention for the Protection of the Natural Resources and Environment of the South Pacific Region](#)
  - d. [Convention for the Protection of the World Cultural and Natural Heritage](#)
  - e. [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#)
  - f. [Convention on Biological Diversity](#)
  - g. [Convention on Conservation of Nature in the South Pacific](#)
  - h. [Convention on the Conservation of Migratory Species of Wild Animals](#)
  - i. [Convention on the International Trade in Endangered Species](#)
  - j. [International Convention on the Control of Harmful Anti-fouling Systems on Ships](#)
  - k. [International Convention for the Prevention of Pollution from Ships](#)
  - l. [International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter](#)
  - m. [Japan-Australia Migratory Bird Agreement](#)
  - n. [United Nations Framework Convention on Climate Change.](#)

In most cases, the Authority's legislation ensures that the requirements of the above treaties, conventions and agreements are met. This is accomplished either through procedural fairness built into the permission system process or a focus on ecologically sustainable use in the Marine Park.

### **Consideration O: Policies and guidelines**

88Q(o) any policies that are relevant to the proposed conduct and the management of the Marine Park or of its environment, biodiversity or heritage values and are:

- (i) *published by the Authority under paragraph 7(4)(a) of the GBRMP Act; or*
  - (ii) *adopted by the Department administered by the Minister administering the EPBC Act;*
163. The Authority's policy documents include any document published by the Authority under paragraph 7(4)(a), subsection 4 of the GBRMP Act about the way in which the Authority intends to manage the Marine Park or perform its other functions. These include strategies, policies, guidelines, position statements and site management arrangements. Refer to the Authority's [policies and position statements](#) webpage for published policy documents.

164. The assessment considers any policy that is relevant to the proposed activity and whether granting a permit would be consistent with such policy. Proposals should generally comply with the Authority's policies and guidelines.

#### Example

- a. An application to continue permission for a mooring in the Marine Park requires an inspection or maintenance certificate in accordance with the [Policy on Moorings in the Great Barrier Reef](#). If this is not provided, then application is unlikely to be accepted.
- b. Special tourism permissions may be granted for activities capped in number, or otherwise limited, by a [Plan of Management](#) (PoM) or the Regulations. When applying to continue a special tourism permission, the permission holder must demonstrate reasonable use in accordance with the Authority's policy on [Managing Tourism Permissions to Operate in the Great Barrier Reef Marine Park \(including Allocation, Latency & Tenure\)](#).
- c. Research proposals should explain how they align with the Authority's [Science Strategy and Information Needs 2014-2019](#), which sets out the Authority's future scientific information needs. It aims to ensure scientific activities are relevant, targeted to address critical management issues, and that scientific outputs are easily accessible.

165. If a proposal does not comply with a policy that is relevant to the proposed activity, the decision maker will need to consider whether there are compelling reasons to deviate from the stated intent of the policy in a particular case.

#### Relevance of policy documents

166. Written policy documents may not keep pace with changing situations. Some policy documents may be out of date and overdue for a formal review. Because of this, the assessment considers:
- a. Is the policy relevant to this specific situation?
  - b. Does the policy accurately reflect the Authority's current position?
  - c. Is the policy under review?

#### Commonwealth policy documents

167. Commonwealth Department of the Environment and Energy policies which may be relevant include:
- a. [Industry guidelines on the interaction between offshore seismic exploration and whales](#)
  - b. [Engage early – guidance for proponents on best practice Indigenous engagement for environmental assessments under the Environment Protection and Biodiversity Conservation Act 1999 \(EPBC Act\) - 2016](#)
  - c. [EPBC Act Condition-setting policy - 2016](#)
  - d. [EPBC Act environmental offsets policy - 2012](#)
  - e. [EPBC Act assessment and approval process policies - July 2013](#)
  - f. [EPBC Act Policy Statement 3.21 - Industry Guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species](#)
  - g. [EPBC Act referral guidelines for the Outstanding Universal Value of the Great Barrier Reef World Heritage Area - May 2014](#)
  - h. [EPBC Act Policy Statement: Change of person proposing to take an action; Change of proponent; Transfer of approvals: Sections 78\(5\), 145B and 156F of the EPBC Act - June 2013](#)
  - i. [Outcomes-based conditions policy and guidance - 2016](#)
  - j. [Policy statement: Advanced environmental offsets under the EPBC Act – 2016.](#)



## **Consideration P: Any other matters**

88Q(p) any other matters relevant to the proposed conduct and either:

- (i) *achievement of the objects of the Act; or*
- (ii) *orderly and proper management of the Marine Park.*

168. This criterion is generally open to the consideration of other matters that may influence whether permission should be granted for a particular application. For example:

- a. Consider any goals of the Authority, Commonwealth, Queensland or Local Government that have not already been considered elsewhere.
  - (i) QPWS has a range of [policies](#) relating to the management of the coastal Marine Park, adjacent islands and National Parks.
- b. Consider whether granting permission for the proposed activity would set a precedent in relation to that type of activity, or the activity at a particular location. If this is likely, the assessment should consider any adverse effects from setting such a precedent.
- c. Consider whether there are any limitations on potential sites within an area where the proposed activity could take place, including whether there is a voluntary moratorium on certain activities.
- d. Consider whether granting permission would significantly increase the demand on management resources and if so, whether there are opportunities for cost recovery or how this demand could otherwise be met.
- e. Consider whether granting permission for the proposed activity may result in other benefits to the Marine Park or contribute to management of the Marine Park. These opportunities should be explored in the assessment. If the application is for a research program, consider whether there are any benefits to research priorities resulting from the latest Great Barrier Reef Outlook Report and how these may be incorporated into management activities.
- f. Consider any indirect or flow-on liability or safety issues that may be created by the permission.

### **Example**

- a. Consider whether the local council trying to encourage tourism in this particular location, and if so how might the permit decision affect this?
- b. The proposal may include contributions to the [Reef Integrated Monitoring and Reporting program](#) in areas where data is otherwise scarce.
- c. The installation of a private mooring at a shipwreck may encourage recreational divers to access the wreck, possibly without adequate training or knowledge. This might pose a risk not only to the safety of recreational divers and any emergency personnel who are required to assist them, but may also pose a risk to any historic heritage values of the wreck.

## **Other assessment considerations**

### **Limitations on granting permissions**

169. The following Regulations place limits on certain activities:

#### **88RA – Dumping**

170. Regulation 88RA establishes that permission cannot be granted for certain types of dumping.

171. More information can be found in the Authority's [Dredging and Spoil Disposal Policy](#).

#### **88S – Protected species**

172. Subregulation 88S(1) relates to the take of protected species. It prohibits the Authority from granting a permission that relates to, or involves, the taking of protected species unless the decision maker is satisfied that:

- a. the conduct is not inconsistent with any relevant recovery plan, wildlife conservation plan, threat abatement plan or approved conservation advice, under the EPBC Act; and
- b. one or more of the following apply:
  - (i) To the extent that the conduct relates to an area or areas outside the Marine Park—the conduct is permitted by or under the EPBC Act.
  - (ii) The conduct is of particular significance to the traditions of traditional owners and will not adversely affect the survival or recovery in nature of the protected species.
  - (iii) The conduct will contribute to the conservation of the protected species.
  - (iv) The taking of the protected species is not the main purpose of the conduct but is merely incidental to the conduct and will not adversely affect the conservation status of the species.

173. Subregulation 88S(2) specifically relates to research, photography, filming or sound recording involving cetaceans or tourist programs involving whale watching or swimming with whales. It requires GBRMPA to consider whether the conduct will adversely affect:
- an individual cetacean
  - the conservation status of a species of cetacean
  - a population of a species of cetacean.
174. In assessing these matters, the primary references, in addition to those listed above, are:
- [Operational Policy on Whale and Dolphin Conservation in the Great Barrier Reef Marine Park.](#)
  - The Authority's [Policy on Managing Activities That Include the Direct Take of a Protected Species from the Great Barrier Reef Marine Park.](#)
  - The Authority's [Whale-based tourism activity assessment guidelines.](#)

**88T – Mission Beach leader prawn broodstock**

175. Regulation 88T places limits on who can be granted a new permission for this activity. It does not apply to continuation applications. Refer to the Regulations for details.

**88U – Swimming with dwarf minke whales as part of a tourist program in part of Cairns Planning Area**

176. Regulation 88U caps the total number of permissions that can be in force for this activity in the Ribbon Reefs Sector and Offshore Port Douglas Sector at any one time to nine (9) permissions. This cap applies only to a swimming-with-whales activity involving dwarf minke whales as part of a tourist program. Applications can only be considered for continuations of existing permits or those successful in an expression of interest process for any of these special permissions that become available.

**88V – Princess Charlotte Bay Special Management Area**

177. Regulation 88V places limits on who can be granted a new permission for netting (other than bait netting) in this area. It does not apply to continuation applications or to other types of activities. Refer to the Regulations for details.

**88VA – Maritime Cultural Heritage Protection Special Management Areas**

178. Refer to the [Maritime Cultural Heritage Protection SMA assessment guidelines.](#)

**88W – Camping on Commonwealth islands**

179. Regulation 88W establishes that the only relevant consideration for this type of assessment is “the reasonable requirements for the orderly and proper management of the Marine Park and the camping site.” No other assessment criteria apply.

**89F – Assessment of applications for accreditation of Traditional use of Marine Resources Agreement**

180. Regulation 89F describes the considerations that the Authority must have regard to when assessing an application for accreditation of a Traditional Use of Marine Resources Agreement (TUMRA).

**Making a Decision**

181. The Marine Park Authority Board may delegate to staff within the Authority the ability to make decisions relating to different aspects of the permission system.
182. When determining the most appropriate decision maker, the following matters are considered:
- Who is available and has adequate time to give due consideration to the decision – the assessment officer may need to consult with their supervisor to identify possibilities.
  - The complexity of the application and how contentious a decision will be. Generally, a more complex and contentious decision will require consideration by a higher level decision maker.
    - In some cases, low risk permits may be decided by a project manager.
    - In general, most applications are decided by a manager.
    - For high risk or particularly contentious projects, the responsibility may be given to the section director or the branch general manager.
    - It is very rare for the Chairperson of the Authority to be the decision maker, because if the applicant requests a reconsideration there is no one of equal or higher level within the Authority to reconsider the decision, which is the Authority's policy.
    - It is generally preferable for the decision maker to have some knowledge of, and experience with, the proposed activity and/or proposed location. A detailed assessment

report will assist in providing this information; however, the decision maker may also wish to undertake a site visit to the proposed location to gain first-hand understanding of the issues and context.

- (vi) While it is preferable for the decision maker to be familiar with the proposal, there should not be an actual conflict of interest or if there may be a perceived bias it should be managed appropriately. More information relating to conflicts of interest is available from the [Australian Public Service Commission](#). If there is any reason to believe a conflict of interest exists, it is best to seek direction from a supervisor or choose a different decision maker.

183. Generally, the assessing officer will liaise with the applicant and prepare an assessment report for the decision maker. For high risk applications, there may be a small team of officers working together to prepare the assessment report. The assessment report summarises the proposal, then addresses each assessment criteria. The assessment report will usually include recommendations to the decision maker. Occasionally it may include a range of options for the decision maker's consideration.

#### **Example**

If the recommendation is to refuse permission, the assessment report would provide reasonable grounds for the refusal.

If the recommendation is to grant permission, the assessment report may identify potential conditions to mitigate impacts of the activity.

184. The decision maker will generally make a decision based on the information provided in the assessment report. Where additional information is required to make an informed decision, and the information would be available or able to be provided, the decision maker may request that additional information is sought from the applicant or from internal or external experts and incorporated into an updated assessment report. In some cases the information will not be available or able to be provided and the decision maker may use the precautionary principle in making a decision.
185. The decision maker may accept, modify or reject the recommendations made in the assessment report.
186. Where an applicant has requested more than one type of permission, a separate decision is made on each type of permission. In most cases, a single assessment report is prepared to cover all the permissions sought.

#### **Example**

A person has applied for two different permissions: (1) permission to install and operate a facility, being a mooring; and (2) permission to conduct a tourist program. A single assessment report is prepared which clearly describes the potential risks associated with each permission type. After considering the relevant matters, the decision maker refuses permission for the mooring and grants permission for the tourist program. This is sometimes called a 'partial refusal.'

187. When the decision maker makes the decision they must notify the applicant in writing. The decision maker will sign either a permit or refusal notice and the permit or refusal notice will be sent to the applicant. Applicants will be informed of the decision in writing as soon as practicable after the decision is made.

## **Permits**

188. A permit is a written document issued by the Authority which clearly explains the permission(s) granted. Refer to the Application Guidelines for more information.
189. Permits are issued with conditions which include regulating how the activities can be conducted in order to minimise potential impacts to the Marine Park's values. Permit holders are required to comply with all conditions set out in the permit.
190. For non-standard research applications, public information package, public environment report and environmental impact statement assessments, the Authority will generally provide proposed permit conditions to the applicant for consideration before a decision is made. This promotes compliance by ensuring that conditions (if the permit is granted) are practical, reasonable and understood by the applicant.

## **Core matters**

191. The permit should clearly specify which aspects of permission are core matters that cannot be modified. Any change to core matters requires a new application for permission, or in the case of a permit holder's identity, a transfer or change in beneficial ownership (see [Permission Transfer](#) or [Change in Beneficial Ownership](#)).
192. In deciding whether an aspect of permission is a core matter, the Authority considers whether changing that aspect of permission would be likely to:
- Change the decision on whether permission should be granted.
  - Change Traditional Owners' views on potential impacts to Native Title rights or interests; whether permission should be granted; or what conditions should be placed on the permission (potentially requiring new Native Title notification).
  - Change the public's view on the acceptability of the proposal or what conditions should be placed on the permission (potentially requiring new opportunity for public comment).
  - Require significant staff time to assess impacts or mitigation measures (essentially equivalent to a new assessment and decision).
193. Generally, the following aspects of permission are considered to be core matters for all permits:
- Identity of the permission holder** - In making the original decision, the Authority considered whether the applicant would be a suitable person to hold the permission. As a result, any change in the identity of the permission holder (new person, business or association) generally requires an assessment of the new permission holder's suitability.
    - Change in identity is not the same as change of name. A person could change their name legally, or change a company's name legally, and still have the same identity. In such cases, it is possible to administratively re-issue the permit in the new name.
    - As a general rule, if a company's Australian Company Number (ACN) changes then the Authority considers this to be a change in identity.
    - Refer also to [Permission Transfer](#) or [Change in Beneficial Ownership](#) or the *Death of a permission holder* section within the Application Guidelines for information relating to changes to permission holder identity under certain circumstances.

#### Example

Adriana Cook holds a permit. She legally changes her name to Adriana de Costa and seeks to update her permit to reflect this.

- This is not a change in identity. This change can be made as an administrative process by re-issuing the permit in the new name. A new assessment is not required, but the permission holder should provide evidence that her name has legally been changed.

University professor Dr Lee holds permission to conduct research. Dr Lee wants to change the permit so that her research assistant is the permission holder instead.

- The research assistant has not yet been assessed as suitable to hold permission therefore this would require an application to transfer permission.
- Dr Lee could also choose keep her permit and the research assistant could apply for her own, separate permission.

- Start date and expiry date (permit term)** – The original permit decision considered the risk posed by granting a longer permit term. The length of the permit forms an essential risk management tool and therefore cannot be modified. This requires a new permit application and assessment, regardless of whether the desire is to shorten or lengthen the permit term.
- Permission type** – The Zoning Plan indicates which permission types are generally consistent with zone objectives. For this reason, the permission type is always a core matter.
- Zones** – In making a decision on whether to grant permission, the managing agencies must determine whether the proposed conduct is consistent with the objectives of the zone. For this reason, the zones and/or designated areas which can be entered or used are always core matters.
- Passenger capacity** – If the fee paid is dependent on the number of passengers or participants, then this is always a core matter.

### Example

A local council holds permission to carry out works to dredge a boat ramp. The permit expires in September. The works have been delayed, and council is seeking an extension of time until December.

- the Authority does not grant extensions to permit terms. The council could apply for continuation of the permit – see the section *Permit expiry and continuation* within the Application Guidelines.

A tour company already holds permission until 2018 to conduct a tourist program. They have now also been granted new permission for a mooring until 2025. The company wishes to combine the two permissions onto a single permit.

- Because the expiry date of the existing permission cannot be extended, if they wish for the two permissions to be contained in a single permit document the expiry date must be 2018. Alternatively, they may prefer to submit an early application to continue their tourist program and request that the new permission (if granted) expire in 2025 to align with their mooring permission.

194. The following aspects of permission may or may not be core matters. A case-by-case decision is made considering the principles in 192 above. However, the higher the risk of the conduct, the more likely these aspects are to be considered core matters:

- a. Specific locations or areas – The original permit decision considered specific location(s). A different location may have different considerations.
- b. Specific facilities, vessels or activities – The original permit decision considered specific activities, vessels or facilities. Significant changes to the scale of the activity or the types of vessels or facilities may require a new permit application and assessment.

### Permit conditions

195. Subregulation 88ZE(1) specifies that a permission may be granted subject to any conditions which are appropriate to the attainment of the objects of the Act. Without limiting subregulation 88ZE(1), subregulation 88ZE(2) lists specific types of conditions which a permission may be subject to. Some examples of common types of permission conditions are:

- a. submission of a plan for the Authority's approval (see section on [Management plans](#) and section on [Decommissioning and Removal](#) within the [Guidelines on fixed facilities](#)).
- b. agreements and undertakings with the Authority (see section on [Deeds](#))
- c. security such as a bond (see section on [Bonds](#))
- d. indemnities and insurances (see section on [Indemnities and insurances](#))
- e. specified monitoring and auditing activities
- f. cost recovery for Managing Agency inspections and supervision
- g. financial contributions (such as monetary offsets) to assist with protecting or rehabilitating the Marine Park. Financial contributions may arise from commitments made by the permission holder through an expression of interest process for a special permission.

196. Permit conditions should be designed and tailored to reflect the project risk and proposed activities. Permit conditions are usually placed on the permission if the assessment has identified a residual risk that needs further mitigation, management or monitoring.

197. Where possible, permit conditions should not duplicate a requirement that is already in legislation, unless it is required to provide complementary management, such as where QPWS has no equivalent legislation.

198. Each permit condition typically has four elements:

- a. what action must be taken (or not taken)
- b. by whom
- c. at what time, and
- d. to what standard.

199. To the greatest extent possible, the Authority's conditions seek to harmonise with conditions set by other regulatory agencies, such as Queensland agencies or the Commonwealth Department of the Environment and Energy. This does not mean that the Authority's conditions will be identical, but rather that the Authority will avoid conflicts where possible and use similar language, timelines and indicators where appropriate. This is achieved by engaging with other agencies throughout the assessment process. This also ensures proper and orderly management of the Marine Park.

### Example

An EPBC approval requires the following: “A Marine Environmental Management Plan must be submitted by 30 June 2020, detailing mitigation measures for whales and dolphins.” The Authority may adopt the term ‘Marine Environmental Management Plan’ and the due date, so that the permission holder can prepare one plan which meets both agencies’ requirements. However, the Authority may wish to not merely receive the plan but also approve it. The Authority may also be concerned about sea snakes. So, the final Authority’s condition may say: “A Marine Environmental Management Plan must be submitted by 30 June 2020 for approval by the Authority, detailing mitigation measures for whales, dolphins and sea snakes.”

200. Permit conditions are generally one of two types:
- a. **Prescriptive conditions** specify exact details of methods or materials.
    - (i) **Benefits:** Appropriate where the Authority has a firm view on the best method or material, or to explicitly prohibit certain methods or materials. It is generally clear what the Authority expects from the permission holder.
    - (ii) **Drawbacks:** May stifle innovation and continuous improvement, particularly for permits that extend beyond five (5) years. New methods or materials cannot be adopted without the Authority changing the permit conditions.
  - b. **Outcomes-based conditions** specify the outcome that must be achieved, or the performance indicator that must be met. The Authority’s primary reference when using outcomes-based conditions is the Australian Department of the Environment and Energy’s [Outcomes-based conditions policy and guidance](#).
    - (i) **Benefits:** The permission holder has flexibility in how they achieve the outcome, and the ability to adopt new technology as it becomes available.
    - (ii) **Drawbacks:** Tends to transfer the Authority’s workload from the assessment stage to the compliance stage. It can become more difficult for the Authority to determine whether the permission holder has complied with their permit conditions (whether they have achieved the outcome). If progress indicators are not set, there is a risk of failure – that is, by the time it becomes apparent that the outcome cannot be achieved, it may be too late for the Authority to intervene or for the permission holder to fix the problem.

### Example

**Prescriptive condition:** Sewage must be treated using ultraviolet light and a three-stage sand filter prior to discharge into the Marine Park.

**Outcomes-based condition:** Sewage discharged into the Marine Park must not exceed 10 mg/L of Total Nitrogen at any time.

201. The Permission System Policy outlines general principles for setting permit conditions. Further guidance and examples are provided below:
- a. **Supportive** – Permit conditions should support the management of the proposal, but cannot fundamentally change the proposal. If the proposal is not acceptable without significant changes, and the applicant is unwilling to make these changes, then the decision maker may refuse permission. The applicant may also choose to change their proposal (and in some circumstances this may mean they need to withdraw their application and submit a new application) in response to concerns raised by the Authority, in order to avoid possible refusal.

### Example

1. If an applicant proposed to discharge untreated sewage, the Authority should not grant a permit with a condition requiring sewage to be treated.
2. If an applicant proposes to install a mooring and includes certified design drawings at the time of application, the Authority should not grant a permit with a condition requiring a different type of mooring to be installed.

In both cases, the changes from the proposal are significant enough that they would amount to a different proposal entirely.

- b. **Reasonable and relevant** – Conditions are to be directly related to the activity and linked to achieving the objects of the Act. Conditions are to be achievable, reasonable to comply with and in proportion to the impacts likely to be caused by the activity. They should not seek to enforce matters that are outside the Authority’s jurisdiction.

### Example

1. The Authority should not condition a facility to be constructed using materials sourced from the local area in order to contribute to local jobs. This is beyond the Authority's role and outside the objects of the Act.
2. The Authority should not require monitoring and reporting on whales if the activity is unlikely to cause any impacts on whales. Such a condition would not be relevant to the activity.

c. **Clear** – Conditions are to be easy to understand. An average person should be able to understand what has (and has not) been permitted.

- (i) The legal condition is what is actually written in the permit, not the intention the decision maker had when writing that condition. For this reason, it is critical that the permit clearly states any and all limitations that the decision maker wishes to impose. For facilities, the permit should clearly indicate approved drawings (whether concept drawings, design drawings or as-built final record drawings) and GPS coordinates.

### Example

If a permission is granted for the construction of 'a jetty at Blue Island,' then the permission holder could potentially build any size or type of jetty, from any material, at any site within the location called Blue Island. If the decision maker intends to only approve a certain size, type, design or site for the jetty, then these details should be specified in the permit.

d. **Enforceable** – Conditions should be designed to allow practical compliance monitoring by the Managing Agencies. There are several elements to this consideration, including:

- (i) The matters must be within the Authority's power to enforce. Enforceable conditions allow the opportunity to gather sufficient evidence to sustain allegations of non-compliance and take associated compliance action.
- (ii) A condition should not require onerous supervision by the managing agencies.

e. **Certain and final** – The decision needs to be certain and final. This means that conditions cannot be used to defer or delay consideration of matters that would be material to the decision maker's view on whether permission should be granted or on what conditions should be placed on the approval.

- (i) While permit conditions can require the submission of a plan or other details in the future, this is only intended to clarify and give greater certainty to some detail of the permitted activity.
- (ii) It is important to remember that the Authority's decisions on such post-permit plans are not open to internal or external reconsideration. This is another reason why any material conditions should be clearly specified in the permit, rather than in a plan submitted after a permit is granted.

### Example

1. A permit for a facility could be granted based on concept drawings, with a condition for final drawings to be provided and approved prior to construction. Concept drawings illustrate the scale and location of the facility, which are sufficiently detailed for both the public and the Authority's decision maker to form a view on the proposal.

It would not generally be appropriate to issue a permit which did not specify at least a general location and general design (size or scale) for a facility.

2. A permit for dredging could be granted on the basis of a preliminary Dredge Management Strategy provided with the application, including details such as amount and depth to be dredged, type of equipment to be used, sediment testing results and dredge plume modelling. Conditions could require a comprehensive and final Dredge Management Strategy to be submitted before dredging actually starts, with further details such as exact dates, sub-contractors and thresholds for ceasing works.

- (iii) A permit condition can provide a choice to the permission holder about how to achieve the outcome, but still meet the 'certain and final' test.

### Example

1. The condition could state “The permission holder must construct the facility in accordance with Australian Standard 1210 or Australian Standard 1240.” It is acceptable to provide the permission holder a choice or selection of standards that meet the Authority’s requirements.
2. The condition could be outcomes-based.

202. **Authority conditions** - A permit may also have an authority condition which allows the permit holder to authorise another person to carry out any activity under their permit. This is not granted automatically and should be considered on a case-by-case basis. The permission holder remains responsible for all activities conducted under the permit.

### Management plans

203. Management plans, schedules of works and notifications are commonly included as permit conditions to manage risks associated with permitted activities. Table 4 summarises the situations in which these tools are most commonly used.

**Table 4:** Summary of when permit conditions requiring management plans, schedules of works or notifications are usually applied

	Management plan	Schedule of works	Notifications
<b>Complex, higher risk activities</b>	✓	✓ (for one-off, incidental works not covered in approved EMP)	✓
<b>Medium risk activities</b>	Not usually	✓	✓
<b>Low risk activities</b>	Not usually	Not usually	✓

### Role of an Environmental Management Plan (EMP)

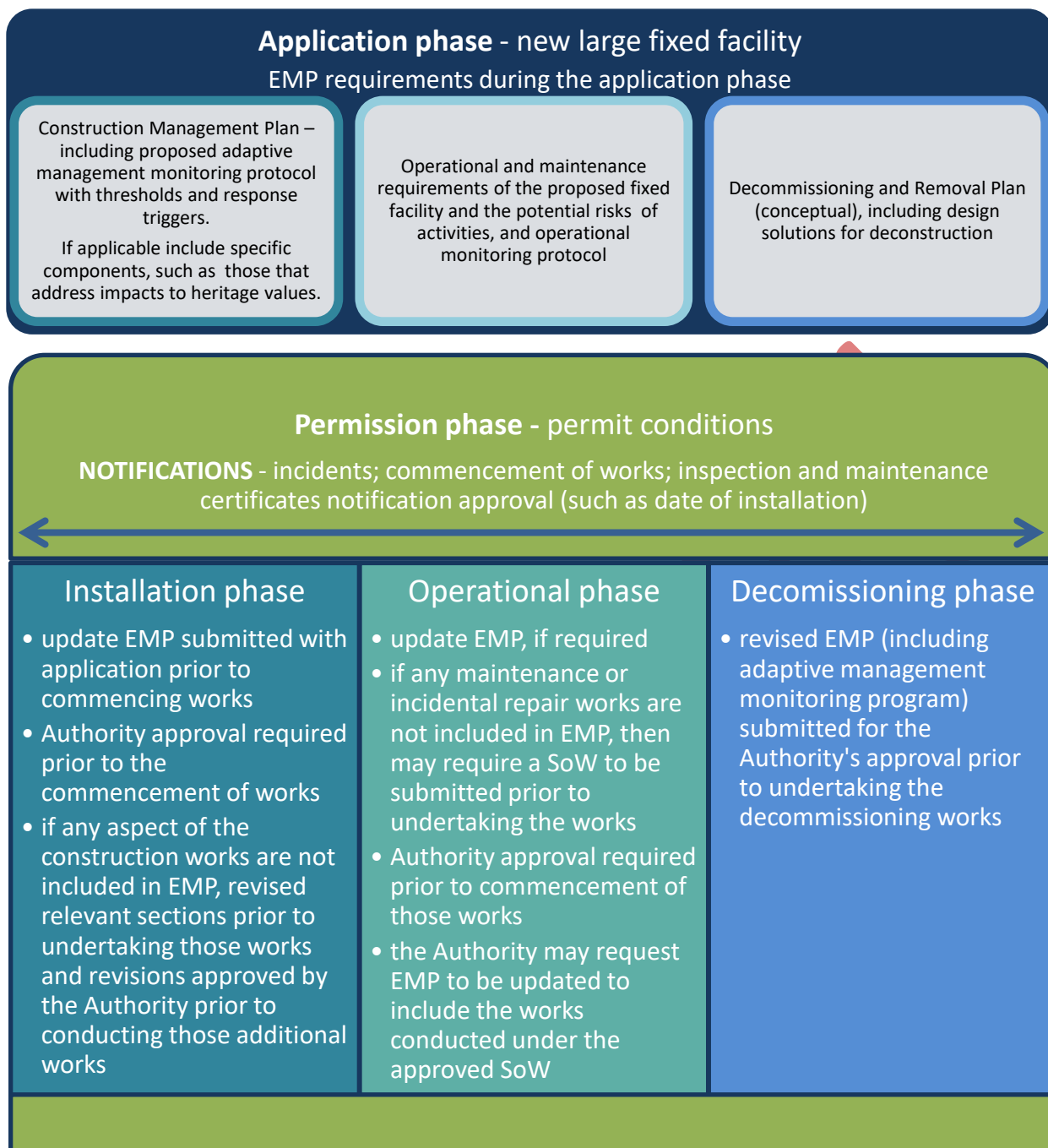
204. Paragraph 88ZE(2)(b) of the Regulations establishes that the Authority may require a management plan as a condition of permission.
205. An EMP is a common tool used worldwide to describe how an activity might impact on the values of an area and to set out clear commitments from the person undertaking the activity on how those impacts will be avoided, mitigated, offset, monitored and adaptively managed.
206. An EMP contains details of comprehensive monitoring protocols designed to detect spatial and temporal changes (including long-term monitoring requirements of permitted activities) along with adaptive management response triggers and thresholds (refer to section – [Consideration 1: Monitoring and managing](#)).
207. The EMP gives flexibility for permission holders to continuously improve and adopt best practice methods and technology over time, without the need for the Authority to modify permit conditions. An EMP is considered to be a living document and is adhered to for the duration of the permission.

### When an EMP is required

208. Generally permit applications requiring a routine or tailored approach do not require an EMP; and applications requiring a public information package, public environment report or environmental impact statement approach may require an EMP. These proposals are more complex and higher risk, with the potential for impacts to Marine Park values.
209. A pre-application meeting with the Authority will establish if an EMP is required to support the assessment. This is determined on a case-by-case basis (refer to *Application for Joint Permissions Guidelines*). If it is determined an EMP is required, the Authority’s preference is for a draft EMP to be submitted at the time of application, rather than later in the assessment process. A decision on the application is unlikely to be made until a draft EMP has been received.
210. An EMP may be required for various phases of a permitted activity, such as:
- a. construction phase only
  - b. construction, operational and maintenance phases
  - c. operational or maintenance phase only
  - d. decommissioning phase only.







**Figure 2:** Example of a new large fixed facility requiring an EMP

**Content of an EMP**

215. The EMP should be developed by applying the policies, principles and guidelines developed by the Authority. Impacts should be identified by using the Risk Assessment Procedure and relevant guidelines.
216. The EMP should clearly describe:
- which values of the Marine Park may be impacted by the proposal
  - how these values may be impacted
  - risk level for these impacts ('initial risk')
  - proposed avoidance measures
  - proposed mitigation measures
  - risk level after avoidance and mitigation is applied ('residual risk')
  - proposed offset measures to compensate for any residual risk identified

- h. proposed monitoring protocols including triggers and thresholds for adaptive management responses
  - i. proposed notifications to the Authority before specific works or activities are conducted, or after certain incidents
  - j. at which times other agencies and/or the public will be notified before specific works or activities are conducted.
217. Depending on the activity, an EMP may include other more specific components, such as:
- a. Historic Heritage Management Plan
  - b. Traditional Owner Heritage Management Plan
  - c. Social Management Plan
  - d. Dredge and Disposal Management Plan
  - e. Construction Management Plan
  - f. Pest Management Plan
  - g. Fuel Spill Response Management Plan
  - h. Decommissioning and Removal Plan (see the *Guidelines on fixed facilities* for more information).
218. During the assessment, if something is identified as being critical to a decision on whether to grant the permission, it should be included as a permit condition. The EMP should only contain further non-critical details related to how the permission holder will manage and monitor the permitted activity.

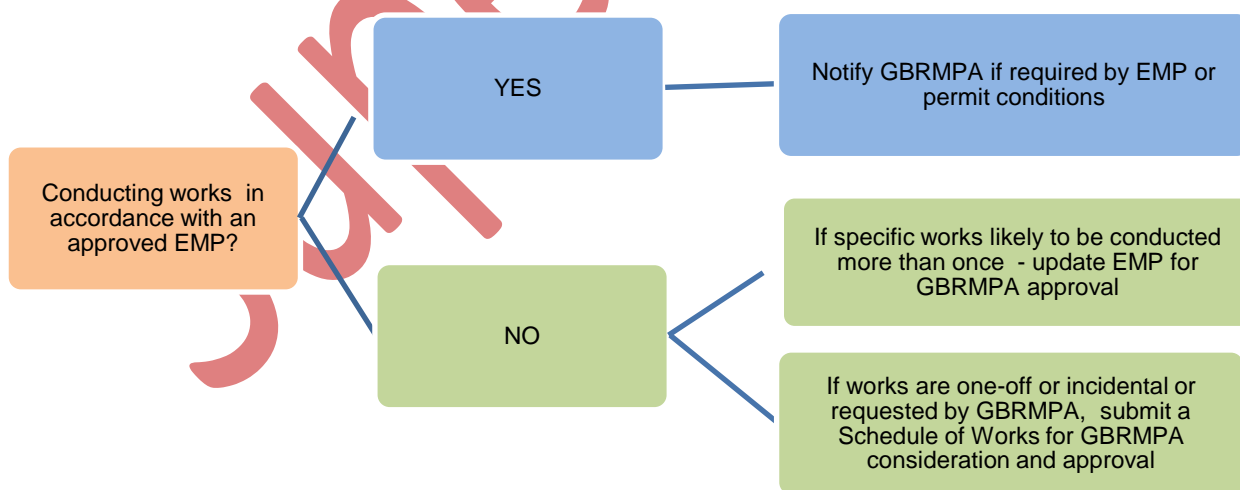
### **Assessing an EMP**

219. The Authority's legislation does not mandate criteria for assessing an EMP, processes for making a decision or requirements for notifying an applicant/permission holder of the Authority's decision. In general:
- a. Where the EMP is being assessed as part of a permit application:
    - (i) further information requests are used to seek more information or to advise the applicant of matters that have not been adequately addressed in the submitted EMP.
    - (ii) if permission is granted, the conditions of the permit may indicate additional requirements that are to be incorporated into a final EMP.
  - b. Where the EMP is being assessed after a permit is granted (that is, as a condition of the permit):
    - (i) to assist in project planning and to avoid any contractual issues, permission holders should allow approximately 40 business days after submission of the EMP until the Authority's decision. If the Authority requires changes to the EMP, this timeframe may be longer. This timeframe may be reduced if the project is less complex. In our experience, this amount of time is needed to allow for review by the Authority and for permission holders to respond to the Authority's comments.
    - (ii) permission holders can assist the Authority by ensuring that their EMP follows an agreed template and addresses all required topics clearly and comprehensively.
220. The Authority evaluates the EMP for its effectiveness in identifying the potential impacts on the values of the Marine Park and specifying appropriate mitigation measures. Some questions that guide this evaluation include:
- a. Does the EMP use the Authority's Risk Assessment Procedure to appropriately identify potential impacts and assign a risk level?
  - b. Are all values considered (not just biodiversity values)? If Traditional Owner values are identified, has there been adequate consultation with Traditional Owners (consistent with the guidelines [Ask First: a guide to respecting Indigenous heritage places and values](#) and for site specific proposal in the Keppels area - [Woppaburra heritage assessment guidelines](#))?
  - c. Are direct, indirect, consequential, flow-on and cumulative impacts identified?
  - d. Have avoidance options been fully exhausted before considering mitigation measures?
  - e. Do proposed mitigation measures use best available technology and proven methods?
  - f. Are the proposed mitigation measures likely to be successful in reducing risk to low?
  - g. If residual impacts remain, have feasible offsets been proposed?
  - h. Are the proposed notifications to the Authority acceptable?
  - i. Does the EMP conform to relevant policies, guidelines and standards?

221. The Authority notifies the permission holder in writing when the EMP is approved, clearly specifying the approved version. The approval will state that only the sections of the EMP that are relevant to the Authority's jurisdiction are being approved. The Authority does not accept any responsibility for matters beyond the the Authority's jurisdiction.
222. The Authority is not obliged to approve an EMP.

**When an EMP needs to be updated**

223. An EMP may need to be updated at various times during the term of a permit, including:
- a. when new methods and/or materials are proposed to be used more than once
  - b. if permit conditions change
  - c. for unconstructed facilities, when construction planning progresses to provide more detailed construction specifications
  - d. before decommissioning the facility, to update the Decommissioning and Removal Plan (see the *Guidelines on fixed facilities*), and/or
  - e. if an internal review or external / independent audit has identified deficiencies in the EMP
  - f. according to a review/update schedule included in the EMP or as a permit condition.
224. If a permission holder wishes to conduct works or use a material or method that is not detailed in the approved EMP, there are two options:
- a. Submit a schedule of works for approval – recommended if the works/materials/methods are a 'one-off' and unlikely to be needed again in the future (see section on [Schedule of works](#)) or as requested by the Authority.
  - b. Update the relevant sections of the EMP to include the proposed details and seek the Authority's approval – recommended if the works/materials/methods are likely to be needed more than once. However, depending on risk associated with the proposed additional works/materials/methods, The Authority may request that the works/method/material is trialled first (through approving a schedule of works) before including the additional works in the EMP (see [Figure 3](#)).
225. If through a review process, the works conducted under a schedule of works are deemed to be more effective at mitigating impacts, the Authority may request in writing for the EMP to be revised and updated to include those works/materials/methods (see [Figure 3](#)).
226. For public transparency, the latest version of the approved EMP should be made publically available on the permission holder's website. This is generally required as a permit condition.



**Figure 3:** Decision tree for conducting works (showing how EMP, schedule of works, and notification conditions may interact).

## Schedule of works

227. A schedule of works is a static document with a start date and an expiry date. Similar to an EMP, it describes proposed works, risks and risk management measures. Unlike an EMP, a schedule of works does not generally include long-term monitoring requirements.
228. A schedule of works is generally included as a permit condition for:
- medium risk activities where the risks are not sufficiently high to require an EMP; or
  - activities with an EMP, to allow for infrequent maintenance or one-off repairs that are not covered by an approved EMP.
229. For permits without an EMP – generally, these permits include a standard condition requiring that the Authority approves a schedule of works before any works take place (although some permits may allow specific works to be undertaken without a schedule of works). A schedule of works is generally a permit condition for:
- carrying out works involving beach protection and harbour works (other than dredging and disposal activities)
  - operating a small fixed facility such as jetty, boat or barge ramp, saltwater intake pipe.
230. For permits with an EMP – a schedule of works is used in conjunction with an EMP condition to manage when the permission holder intends to conduct one-off, discrete activities that involve works/methods/materials that have not already been approved in the EMP. Generally applies to permissions to operate large fixed facilities, such as pontoons, jetties, pipelines and marinas.
231. The permit condition specifies the minimum timeframe for submitting a schedule of works for approval by the Authority, generally expressed as the number of days before works are planned to start. This is typically at least 20 business days but may be up to 40 business days for more significant works. The schedule of works must be approved by the Authority before the permission holder can conduct the works. In certain circumstances, such as emergency repairs to a facility following a significant event the assessment may be faster.
232. While the Authority understands that precise details of works may need to be changed or confirmed at short notice (such as start date based on weather conditions and vessel availability), the submitted schedule of works should provide the planned details and highlight any details that are not yet confirmed or are likely to change.

### **Content of a schedule of works**

233. A schedule of works should specify the following:
- details of the works to be undertaken including the planned timeframe, methods, materials, equipment, vessels, contractors and subcontractors
  - any details that are not yet confirmed or are likely to change
  - contact details of the works supervisor
  - An environmental risk assessment and risk management plan, including:
    - potential risks to Marine Park values
    - proposed risk avoidance and mitigation measures, and
    - final risk level after measures are applied.
  - any proposed reporting and monitoring protocols including triggers and thresholds for adaptive management responses
  - a communication plan including when the Authority, other agencies and/or the public will be informed of certain activities or situations.

### **Assessing a schedule of works**

234. A schedule of works is assessed and decided in the same manner as an EMP. See section on [Management Plans](#).

## Notification to the Authority

235. Permit conditions may specify when the Authority is to be notified before, during or after a specific occurrence. Some notifications before an occurrence may also require an approval from the Authority. For permits with an EMP, the EMP should also clearly specify when the Authority will be notified of specific activities or incidents.
236. Notifications that do not require approval from the Managing Agencies are usually for the purposes of monitoring compliance, allowing the Authority to conduct Environmental Site Supervision (ESS), or alerting the Authority of any activity that may generate public enquiries. Permit conditions should specify how the notification is to be made and what information must be provided.

### Example

- a. Incident notification - an incident causing or threatening to cause harm to the environment, such as a boat hitting a turtle or a cyclone damaging a mooring.
  - b. Works notification - the commencement (or in some cases, the completion) of permitted works, where the Managing Agencies have determined that notification is required.
  - c. Any other notifications the Authority deems necessary on a case-by-case basis, such as beginning field work on a research program that involves Preservation Zones, protected species, culturally sensitive species or handling artefacts.
237. Notifications that require approval from the Managing Agency assist with compliance by linking specific vessels, aircraft or equipment to a specific permit. Once the Authority has approved the notification, these are referred to as Notification Approvals. Examples include Facility Notification Approvals, Moorings Notification Approvals, Vessel Notification Approvals, and Equipment Notification Approvals.
238. The Authority may require notifications and approvals for other specific actions, such as when a permission holder grants authority to another person to operate under their permission.
239. [Figure 1](#) and [Figure 2](#) provide examples of the notifications that may apply to permissions for conducting dredging and disposal works, or operating a new large fixed facility, respectively.

## Indemnities and insurances

240. Paragraphs 88ZE(2)(g) and 88ZE(2)(h) of the Regulations establish that the Authority may require the permission holder to indemnify the Authority from any costs that may be incurred due to the permission holder's conduct and/or to insure against certain liabilities of the permission holder to the Authority, related to the Authority's activities to repair and mitigate damage caused by the permission holder's conduct or a contravention of the Act or Regulations.
241. The role of indemnities and insurances is to protect the Authority (and by extension, the Australian taxpayer) from costs or other liabilities associated with a permission holder's activities.
242. Typically, permissions granted under routine and some tailored assessments will contain permission conditions requiring indemnity and insurance. Permissions granted for other assessment approaches will usually contain a permission condition requiring a deed of agreement (see section on *Deeds*) which contains indemnity and insurance requirements.
243. The Authority may require, by condition of permission, the permission holder to provide a certificate of currency or other evidence for any insurance held which relates to the permitted activity.
244. Permission holders should consider whether the insurance policy they hold provides appropriate coverage and whether there are any common exclusions.
245. In addition to the Authority's minimum requirements, other types of insurance may be available to permission holders, such as Environmental Rehabilitation or Business Continuity Insurance, which may provide additional protection for permission holders or their businesses.

## Deeds

246. Paragraph 88ZE(2)(d) of the Regulations establishes that the Authority may require the permission holder to “*enter into an agreement with the Commonwealth providing undertakings appropriate to the attainment of the objects of the Act.*”
247. The Authority’s usual approach is to require a standard deed of agreement for:
- All facilities except moorings
  - All permissions granted under a public information package, public environment report or environmental impact statement assessment approach.
248. The deed legally binds the permission holder to certain obligations to protect Marine Park values, above and beyond what the permission conditions require. The deed exists separate and additional to the permit, so that even if the permit expires, the deed may continue to be in force and to provide protection to the Marine Park. The deed can be enforced through civil court action.
249. The standard deed serves four main purposes:
- to commit the permission holder to repairing, rehabilitating, inspecting, or removing a facility; and/or taking other preventive or corrective actions to protect the Marine Park
  - to indemnify the Authority from any adverse impacts resulting from the project, including any costs incurred by the Authority to remedy those adverse impacts
  - to require the permission holder to take out and maintain appropriate level of insurance, including for public liability, removal and clean up
  - to provide financial security (such as a bond – see section on *Bonds*) in most cases.
250. An example of a standard deed is available on the Authority’s website.

## Bonds

251. Paragraph 88ZE(2)(e) of the Regulations establishes that the Authority may impose a permission condition that requires the permission holder to provide “*a security by way of a bond, guarantee or cash deposit.*”
252. A bond is a sum of money lodged by the permission holder with the Authority (under the terms of the deed) in the form of cash, a bank guarantee or an undertaking. [Table 5](#) explains what type of bond is required for specific types of permission holders.

**Table 5:** Type of bond is required for specific types of permission holder

Type of permission holder	Type of bond required
Private company	Bank guarantee (preferred) or cash
Private individual(s)	Bank guarantee (preferred) or cash
Incorporated association (club, non-profit group)	Bank guarantee (preferred) or cash
Government agency (Commonwealth, State or Local)	Undertaking may be accepted in lieu of a bank guarantee or cash
Government owned corporation (GOC) or government based enterprise (GBE)	Undertaking may be accepted in lieu of a bank guarantee or cash
Joint permission holders	If any of the permission holders would require a bank guarantee or cash on their own, then the joint permission holders require a bank guarantee or cash. For example, if a public-private partnership results in permission being held jointly by a State agency and a private company, then a bank guarantee or cash is required.

253. Bonds are financial security which allows the Authority ready access to funds to prevent, minimise or rehabilitate environmental harm caused by the activity. The bond minimises risk to the Australian taxpayer so that public monies are not used to cover these costs, should they occur.

254. Bonds are required in addition to insurance, because bonds persist even if a company or individual becomes insolvent or bankrupt or if the permit holder has failed to maintain appropriate levels of insurance. Bonds also provide funds that are more readily available to the Authority. For example, after an incident it may take many months to resolve an insurance pay-out; whereas a bond is immediately available for use by the Authority subject to the terms of the deed.
255. Bonds are generally required for:
- installation and/or operation of a facility, except for moorings
  - carrying out works
  - any other purpose -- transport or transfer of bulk fuel or bulk hazardous materials
  - any situation where the Authority requires additional security – such as in cases where the applicant has a history of permission breaches or lacks evidence of financial capacity.

### **Determining a bond amount**

256. The amount of the bond should be adequate to respond to an incident and/or remove a facility and rehabilitate the site to pre-facility condition. Consideration should be given to the costs of accessing the site (for example, remote or offshore sites will be more expensive) and the disposal of any materials.
257. For long-distance pipes or cables (generally greater than 5km in length), the Authority may decide to accept a bond which does not cover the costs of fully removing and rehabilitating the entire length of pipe or cable. This is only done where the Authority determines that there is a low risk of:
- the entire facility being damaged by a single incident, or by multiple incidents in a two-year period; and
  - the entire facility requiring removal at the end of its life.
258. Bond amounts are determined at the time a permission decision is made and using a combination of approaches, including:
- salvage quotes sourced by the applicant or the Authority
  - comparison bond amounts for other similar facilities/activities in recent years
  - standard or guideline amounts that may be developed by the Authority.
259. The Authority may establish standing offer arrangements with suitably experienced persons (such as salvage operators and environmental rehabilitation experts) to advise the Authority on appropriate bond amounts on a case-by-case, as-needed basis. Over time, this may lead to the Authority publishing indicative or default bond amounts for certain types of facilities or activities, if a pattern becomes apparent.
260. For permit terms less than 10 years, the Authority calculates inflation due to projected Consumer Price Index increase over the life of the permit and incorporates this into the bond amount. The amount is rounded to the nearest \$10.

### **Example**

If the removal and rehabilitation estimate is \$50,000, and CPI is 2% a year, then an 8 year permit would require a bond of \$58,580.

261. For longer term permits (10 years or more), the initial financial burden may be reduced by incorporating periodic bond reviews into the term of the deed, rather than requiring the full amount up-front. Such reviews are generally conducted every 5 years, and may result in the bond amount being increased or decreased. Periodic bond reviews will consider:
- Consumer Price Index adjustments
  - updated salvage quotes, valuations or other estimates of the likely cost to rehabilitate following an incident
  - any additional risks posed by the facility, the activity or the permission holder which have emerged.
262. For new facilities or activities, the deed may defer the lodging of a bond until the facility/activity in the Marine Parks is prepared to commence. This allows permission holders time to source financing. In most cases, the deed will still establish the bond amount that will be required.
- If the planning phase is likely to take several years, the deed may incorporate a review prior to works to determine or confirm the bond amount. This allows a more precise bond amount to be determined based on final (rather than conceptual) plans.



### Calling upon a bond

263. In general, cases in which a bond may be used by the Authority (subject to terms of the actual deed of agreement) include:
- Following an incident, if the permission holder's insurance company contests a claim, leading to a delay in the permission holder's ability to undertake inspections, repairs or rehabilitation works; or if the permittee is otherwise financially unable to adequately respond to the incident.
  - At any time during a facility's life, if the permission holder is no longer able to maintain the facility for any reason or if the Authority directs the permission holder to remove the facility and the permission holder fails to do so.
  - At any time, if the Authority directs the permission holder to undertake specific actions to prevent, minimise or rehabilitate environmental harm and the permission holder does not comply.
  - At the end of a facility's life, if the permission holder is financially unable to decommission the facility, remove the facility, or rehabilitate the area to the Authority's satisfaction.
  - At any time, to clean up and rehabilitate the area, if the operation results in pollution or environmental harm and the permission holder fails to remedy that pollution or harm.

### Permission terms

264. The Permission System Policy establishes that the Authority seeks to grant the longest permit term that is acceptable, based on risk. It is the decision maker's discretion to determine the most appropriate permit term, considering a number of factors. While it is possible to grant short term permits the Authority typically grants permit terms of up to eight (8) years, and no more than 20 years depending on the activity.
265. In the absence of risk factors, the following permission terms are commonly used:
- Research** – may be granted a permit for up to six (6) years, with some longer-term research programs being granted permission for up to 10 years.
  - Tourism (new and continuation)** – may be granted a permit for up to eight (8) years.
  - High Standard Tourism Operators (new and continuation)** – may be granted a permit for 20 years.
  - New fixed facilities** – may be granted a permit for the design life of the facility (up to 20 years), but only if end-of-life requirements (rehabilitation, replacement, decommissioning or removal) were considered as part of the assessment.
  - Continuation for fixed facilities** – may be granted a permit for the remaining design life (up to 20 years), but only if end-of-life requirements (rehabilitation, replacement, decommissioning or removal) were considered as part of the continuation assessment.
  - Carrying out works** – typically granted a permit to cover the proposed timeframes of the works plus an extra 6-12 months as a contingency buffer. For ongoing, repetitive work programs (like scheduled maintenance dredging), permit may be granted for up to 10 years.
  - Other purposes** – depends on the nature of the proposal, but generally may be granted a permit for up to 10 years.
266. The following risk factors may result in a shorter permit term being issued. In all cases, the precautionary principle applies -- that is, even a short term permit should not be granted if there is significant uncertainty about the impacts and the risk is considered sufficiently high.
- Concerns about the applicant's suitability** – Where there are some matters of concern, but not so much as to lead to refusal of permission, a shorter term allows the permission holder to demonstrate their ability to conduct the activity appropriately. One (1) to two (2) years is typically used, depending on the type of activity.
  - New or untested methods, materials or equipment** – A shorter term is matched with monitoring and reporting conditions; evaluation can then be made of the level of impact and effectiveness of mitigation measures. Three (3) months to one (1) year is typically used, depending on the type of activity. Up to two (2) years may be used if the permission holder needs time to establish business operations or conduct additional design work, or if the Authority wants to monitor the impacts over several seasons.

## Modifying Permit Conditions

267. As explained in the Application Guidelines, the Authority's legislation does not contemplate permission holders approaching the Authority to seek changes to permit conditions. Such concerns should be discussed with the Authority before a permit is issued or during the reconsideration period. However, the Authority may modify the conditions of permit in certain circumstances (see the Application Guidelines for details).
268. When considering whether to change a permit condition, the Authority's primary consideration is whether the change is required to better achieve the objects of the Act.
269. Some situations where the Authority might need to modify permit conditions include:
- A Plan of Management is amended and as a result existing permits need to be updated with new exclusion or access arrangements.
  - Monitoring demonstrates that unexpected impacts are occurring or a permit condition is not proving effective.
  - New information becomes available suggesting that a permitted method or material poses a high or very high risk to the Marine Park.
  - A prescriptive condition no longer reflects best practice of the most effective technology.

### Example

- At the time of assessment, it was thought that the noise up to 50 decibels would not bother turtles feeding in the area. However, monitoring shows that turtles leave the area or stop feeding whenever the noise reaches 20 decibels. The Authority may need to introduce a new permit condition to limit the activity's noise level to 20 decibels.
- A scientific committee reporting to the Australian Government recommends banning a substance that is commonly used in marine facilities. The Authority may need to add a new condition into existing permits to prohibit use of the substance and/or to require remediation of existing facilities.
- An older permit has a prescriptive condition requiring "The permission holder must only use a cutter suction dredge." Other dredging equipment is now available and well tested which has lower environmental risk. The Authority may need to update the permit condition either to be outcomes-based or to prescribe the new equipment instead.

270. When determining what precise change to make to the permit condition, the Authority considers:
- the matters previously addressed under the section on *Permit conditions* and the section on assessment considerations relating to the relevant impacts and how to avoid, mitigate, offset, monitor and manage those impacts.
  - the reasons given in the original assessment for setting those permit conditions.
271. Before changing permit conditions, the Authority discusses the proposed change with:
- the permission holder:
    - Most commonly, the Authority seeks the permission holder's consent to modify the permit (see paragraph 88ZP(2)(a) of the Regulations). In such cases, the Authority contacts the permission holder and discusses the proposed change.

The permission holder often brings valuable, practical ideas to the discussion. The permission holder is provided with the proposed changes in writing and is asked to sign a consent form.
    - In certain cases, the Authority can modify the permit without the consent of the permission holder (see paragraph 88ZP(2)(b) of the Regulations). In such cases, subregulations 88ZP(3) and (4) explain the process that must be followed.
  - other regulatory agencies – to avoid conflicting conditions and maximise harmonisation of regulatory requirements.
272. Note that other mechanisms are available to GBRMPA which may be more effective at managing risks than modifying permit conditions. These include emergency special management areas, Part 5.4 management actions and emergency directions. Such mechanisms also capture those activities not requiring a permit (such as recreational boating).

### Example

A severe cyclone strikes a reef, damaging most of the coral. The Authority determines that access to the area should be limited for the next 3 months to improve coral recovery rates. Instead of modifying multiple individual permits, the Authority may instead declare an Emergency Special Management Area.

## Permission Transfer

273. Refer to Application Guidelines for information on how to request a permission transfer.
274. The considerations for the transfer of a permission set out in regulation 88ZH of the Regulations are similar to the general assessment considerations in the [Assessment Criteria](#) section. The Authority must consider the following in deciding whether to approve the transfer of a permission:
- a. whether the proposed transferee is a suitable person to hold the permission, having regard to the following (which are similar requirements to [Assessment Criteria - Consideration C](#)):
    - (i) the proposed transferee's capacity to engage in and manage, to the Authority's satisfaction, the conduct permitted by the permission; and
    - (ii) the proposed transferee's history in relation to environmental matters; and
    - (iii) if the proposed transferee is a body corporate — the history of its executive officers in relation to environmental matters; and
    - (iv) if the proposed transferee is a subsidiary of a holding company — the history of the holding company and its executive officers in relation to environmental matters; and
    - (v) whether the proposed transferee owes any fee or other amount payable under the Act or these Regulations; and
    - (vi) any other relevant matter;
  - b. whether the transferor owes any fee or other amount payable under the Act or these Regulations; and
  - c. any other matters relevant to the proposed transfer and either:
    - (i) achievement of the objects of the Act; or
    - (ii) orderly and proper management of the Marine Park.
275. Additional information may be required pursuant to regulation 88ZI to assess whether the transfer should be approved. For example, in the case of facilities and moorings the Authority may request the transferor to provide current compliance certificate(s) and design drawing(s) to ensure the facility has been maintained in good working order and remains compliant with permit conditions. For guidance, see the section on [Further information requests](#).
276. If the permission under transfer application is also subject to approval under the EPBC Act, the Authority cannot grant a transfer unless the Minister has consented to the transfer of the EPBC Act approval. See regulation 88ZJ and the EPBC referral deemed applications information sheet for more information.
277. If the permission being transferred is subject to a deed of agreement or a bond, then these will usually also require transfer or update. A bond should not be returned to the transferor until the transferee has lodged a new bond in replacement.
- a. The Authority may require a deed to be signed by the transferee prior to the transfer date, so that the decision maker can execute the deed at the time the permit transfer takes effect.

## Change in Beneficial Ownership

278. Refer to Application Guidelines for information on how the requirements to notify the Authority pursuant to regulation 88ZM of the Regulations where the permission holder is a company and there has been a change in beneficial ownership of the company.
279. The Authority may seek further information in relation to the change in beneficial ownership pursuant to regulation 88ZN of the Regulations to determine whether the permission should remain in force or whether there are grounds for modification, suspension, or revocation.
280. Under regulation 88ZO the Authority has discretion to decide that, due to the change in ownership, the permission should be modified, suspended or revoked on the ground that the changed company is not a suitable person to hold the permission. In making this decision, the Authority is required to consider six (6) criteria. These criteria are assessed in a similar way as for a new permission assessment (see [Assessment Criteria - Consideration C](#)) are as follows:
- a. the changed company's capacity to engage in and manage, to the Authority's satisfaction, the conduct permitted by the permission; and
  - b. the company's history in relation to environmental matters; and
  - c. the history of the changed company's executive officers in relation to environmental matters; and

- d. if the changed company is a subsidiary of a holding company — the history of the holding company and its executive officers in relation to environmental matters; and
- e. whether the changed company, or an executive officer of the changed company, owes any fee or other amount payable under the Act or these Regulations; and
- f. any other relevant matter.

281. If the Authority intends to suspend or revoke as a result of a change in beneficial ownership, subregulations 88ZN(3) and (4) establish a process to ensure permittee is notified of the Authority's intentions, the permittee has an opportunity to provide reasons why the permission should not be suspended or revoked, and the Authority considers any such reasons provided.

### Accreditations – research and education

282. The Authority will assess each application for accreditation of a research or educational institution on a case by case basis in accordance with the requirements under the Regulations.

### Implementation

283. These guidelines will be reviewed and updated if required at least every three (3) years.

284. The Permission System Policy and other guidelines are available which provide further detail on how the Authority assesses, decides and manages specific aspects of the permission system and the application process.

285. For actions that are wholly or partially outside the Marine Parks and that require an approval under the EPBC Act, the Authority will continue to liaise with the Commonwealth Department responsible for the EPBC Act. Where a bilateral agreement exists between the Australian Government and the Queensland Government, depending on the terms of the agreement the Commonwealth Department's role may be delivered by the Queensland Government. The Authority will work with both levels of government according to agreed procedures, such as a Memorandum of Understanding, to provide advice on matters that may affect the Great Barrier Reef.

### Definitions

Refer to the [Permission system policy](#) for a list of general definitions relating to the permission system.

#### Background monitoring

Background monitoring is conducted for a number of purposes including, providing background conditions of values (including biodiversity, social and other heritage values) that may be impacted by the proposed activity, a baseline prior to the commencement of a specific permitted activity and allow for comparison during and after the permitted activity. Background monitoring may be used to calibrate and validate predictive models and to establish thresholds and triggers for adaptive management responses.

#### Bond

A form of financial security (cash, bank guarantee or undertaking) provided by the permission holder to the Authority, as required under the terms of a deed of agreement, executed by the permission holder and the Authority.

#### Decision notice

Written notification from the Authority stating the decision that has been made on an application or request

#### Deed of agreement

A binding agreement between the Authority and a permission holder, entered into pursuant to the conditions of a permission, which details obligations of the permission holder, indemnities and any requirement for insurance or a bond.

#### EPBC referral deemed application

means a referral under the *Environment Protection and Biodiversity Conservation Act 1999* of a proposal to take an action that, under section 37AB of the *Great Barrier Reef Marine Park Act 1975*, is taken to be an application for a permission

#### Limited educational program

Has the meaning given by the Great Barrier Reef Marine Park Zoning Plan 2003 and the Marine Parks Regulation

### Long term monitoring

Long term monitoring designed to detect health and diversity shifts in receiving ecosystems of the permitted activity over the long term and provides for a mechanism to evaluate the effectiveness of the avoidance and mitigations measures. As well as long term monitoring of biodiversity values, long term monitoring may also be required to detect shifts in social, Traditional Owner and historic heritage values.

### Notification acknowledgment

Written acknowledgment given by the Authority confirming that a person or group has appropriately notified the Authority under Part 5.2 of the Great Barrier Reef Marine Park Zoning Plan 2003 of their intention to enter or use the Marine Park, and that the Authority has no further directions with which they must comply.

### Notification direction

Written direction given by the Authority relating to the requirements for entering or using a Zone without permission, following notification, under Part 5.2 of the Great Barrier Reef Marine Park Zoning Plan 2003.

### Operational monitoring

Monitoring protocol designed to be conducted routinely to monitor impacts from operational activities (for example monitoring of discharge volumes, water quality, contaminants from desalination plants, sewage facilities, marinas, pontoons). Operational monitoring protocol includes thresholds that if reached and/or exceeded trigger adaptive management responses to prevent impacts to values of the Marine Park.

### Part 5 notification

Notice given to the Authority, by a person, of the intention to use or enter the Marine Park without permission in accordance with section 5.2 of the Great Barrier Reef Marine Park Zoning Plan 2003.

### Traditional Use of Marine Resource Agreement (TUMRA)

Has the meaning given by the Great Barrier Reef Marine Park Zoning Plan 2003.

### Works monitoring

Monitoring protocol designed to be conducted during specific works which includes thresholds that if reached and/or exceeded, trigger adaptive management responses to prevent impacts to values of the Marine Park.

## Supporting information

1. Hyperlinks to supporting information are provided throughout the document.

## Further information

Director - Environmental Assessment and Protection

### Great Barrier Reef Marine Park Authority

280 Flinders Street  
PO Box 1379  
Townsville Qld 4810  
Australia  
Phone + 61 7 4750 0700

[www.gbrmpa.gov.au](http://www.gbrmpa.gov.au)

#### Document control information

Approved by:	Chief Executive Officer, Great Barrier Reef Marine Park Authority	Approved date:	4-Oct-17
Last reviewed:	4-Oct-17		
Next review:	4-Oct-20		
Created:	4-Oct-17		
Document custodian:	Director, Environmental Assessment and Protection		
Replaces:	New		