

Direction Notice Section 363B Environmental Protection Act 1994

Under the provisions of the *Environmental Protection Act 1994* a Direction Notice is issued:

To: Cruise Whitsundays Pty Ltd (ACN 105 420 737)

Of: 24 The Cove Road
Port of Airlie
AIRLIE BEACH QLD 4802

By post to: Level 4
233 North Terrace
ADELAIDE SA 5000

TAKE NOTICE that under the provisions of the *Environmental Protection Act 1994*, a Direction Notice is issued to Cruise Whitsundays Pty Ltd (**Cruise Whitsundays**) by me as an authorised person of the administering authority, Whitsunday Regional Council.

This Direction Notice is issued in respect of the noise, vibration and odour emitted from the maintenance, repair and servicing activities carried out on Cruise Whitsundays' vessels moored at Port of Airlie, on the pontoon located in part of Lot 120 on SP218220, Airlie Beach (**Port of Airlie**). I am satisfied on reasonable grounds that audible vessel maintenance, repair and servicing activities occurring at the Port of Airlie between the hours of 7.00pm and 7.00am on Mondays to Saturdays and between the hours of 7.00pm and 8.00am on Sundays constitutes an environmental nuisance in contravention of section 440 of the *Environmental Protection Act 1994*.

Further, I am satisfied on reasonable grounds that the contravention described above can be remedied and that it is appropriate to give Cruise Whitsundays an opportunity to remedy the matter.

This Direction Notice requires Cruise Whitsundays to remedy the contravention.

A. Grounds

This Direction Notice is issued on the following grounds:

1. That Cruise Whitsundays Pty Ltd is contravening a prescribed provision, being section 440 of the *Environmental Protection Act 1994*.
2. That Cruise Whitsundays Pty Ltd is unlawfully causing an environmental nuisance in contravention with section 440(2) of the *Environmental Protection Act 1994*.

The facts and circumstances forming the basis of these grounds are:

1. I have considered the general emission criteria in section 363C(3) of the *Environmental Protection Act 1994* and the noise emission criteria in section 363C(4)

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of the *Environmental Protection Act 1994* and, having regard to those criteria, consider that it is appropriate to issue this Direction Notice;

2. I am satisfied on reasonable grounds that sensitive receptors, being buildings occupied by residents, are located within 40m of the location where vessels are moored and maintenance, repair and servicing activities are carried out;
3. I am also satisfied on reasonable grounds that:
 - a. Maintenance, repair and servicing of Cruise Whitsundays' vessels is occurring at the Port of Airlie, infrequently between the hours of 7.00pm and 7.00am on Mondays to Saturdays and between the hours of 7.00pm and 8.00am on Sundays;
 - b. Noise emissions, associated with the vessel maintenance, repair and servicing activities, include the use of grinders, sanders, hammers and engine noise from vessel diesel engines idling and the revving of diesel engines following servicing;
 - c. Vessel diesel engines idling or revving following servicing is resulting in vibration emission; and
 - d. Vessel diesel engines idling or revving following servicing is resulting in exhaust odour emissions,
and that these matters are giving rise to unacceptable and unnecessary impacts on the above sensitive receptors.
4. Further, I am satisfied on reasonable grounds that:
 - a. it is appropriate to impose the restrictions in this Decision Notice on Cruise Whitsundays' maintenance, repair and servicing activities in the Port of Airlie to mitigate the above impacts; and
 - b. it is appropriate that measures are put in place to inform residents in The Cove and Harbour Cove about the restrictions and to implement arrangements to manage complaints and deal with emergency repair circumstances as set out in this Direction Notice.

B. Requirements

Pursuant to this Direction Notice you are required to take the following action to remedy the issue.

Item No.	Action	Compliance Timeframe
1.	Subject to Items 2 to 11, any maintenance, repair or servicing of vessels in berths in Port of Airlie ¹ which results in audible noise ² , including from: <ol style="list-style-type: none"> a) use of regulated devices³; b) hammers; c) engine test running associated with scheduled servicing; will only be conducted: <ol style="list-style-type: none"> d) between 7.00am and 7.00pm Monday through Saturday; e) between 8.00am to 7.00pm Sundays. 	Immediately
2.	Sea Flight is to be moored in berth 4 only.	Immediately
3.	Sea Quest is to be moored in berth 5 only.	Immediately

¹ The berths referred to in these Items are depicted in the Site Aerial attached.

² See section 440L of the *Environmental Protection Act 1994* (Qld).

³ See section 440S of the *Environmental Protection Act 1994* (Qld).

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4.	In addition to the times under Item 1, engine test running associated with scheduled servicing of Camira (or a similar vessel) in Berth 2 which results in audible noise is permitted from 7.00pm until 8.30pm Monday through Friday.	Immediately
5.	In addition to the times under Item 1, engine test running associated with scheduled servicing of vessels in Berth 3, 4 and 5 which results in audible noise is permitted from 7.00pm until 8.30pm Monday through Friday, subject to Items 6 to 8 below, as applicable.	Immediately
6.	Engine test running associated with scheduled servicing which results in audible noise after 7.00pm is not to exceed a total of 30 minutes total run time from all berths (i.e. equivalent to 15 minutes run time for one engine only on 2 berths or 15 minutes run time for two engines on 1 berth).	Immediately
7.	Engine test running associated with scheduled servicing of Sea Flight in berth 4 which results in audible noise is only permitted from 7.00am until 8.00pm Monday through Friday and, from 7.00pm until 8.00pm, not at the same time as engine test running for any vessels in other berths.	Immediately
8.	Engine test running associated with scheduled servicing of Sea Quest in berth 5 which results in audible noise is only permitted from 7.00am until 8.00pm Monday through Friday and, from 7.00pm until 8.00pm, not at the same time as engine test running for any vessels in other berths.	Immediately
9.	Item 1 does not apply to Emergency Repairs which result in audible noise. Emergency Repairs are unexpected repairs that require immediate action to be taken to repair a vessel to ensure it is seaworthy and safe for operation on the morning of the day following the day when the need for such repair is first identified, and do not include maintenance, repairs or servicing that it would be reasonable to anticipate and schedule. Emergency Repairs which are likely to result in audible noise will not be undertaken: <ul style="list-style-type: none"> a) unless Cruise Whitsundays Pty Ltd has taken all reasonable and practicable measures to notify by SMS in advance all of the residents of the Cove and Harbour Cove who have indicated in writing to Cruise Whitsundays Pty Ltd that they wish to be notified for this purpose and in this manner and supplied a contact number for that purpose; and b) after 10.00pm unless Council has approved such works in writing prior to that time. Council will act reasonably in considering any request by Cruise Whitsundays Pty Ltd for approval to undertake Emergency Repairs after 10.00pm. 	Immediately
10.	For the purpose of Item 9(b), Council will provide and monitor a contact number between 5.00pm and 10.00pm to ensure that the contemplated approval can be secured within 60 minutes.	Provided by Council, as updated from time to time
11.	Vessels that require Emergency Repairs, other than Sea Flight, Sea Quest, and Camira, are to be moored in Berth 3.	Immediately

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12.	At least one representative of Cruise Whitsundays Pty Ltd is to attend and participate in each meeting of a community reference group to be established by Council, comprised of owners or permanent residents of lots within the Cove and Harbour Cove and Council representatives as determined by Council. Meetings are intended, at least initially, to be held once every 2 calendar months, at a time and location to be determined by Council.	Immediately upon establishment of the community reference group by Council
13.	The terms on which maintenance, repair or servicing of vessels in berths in Port of Airlie which results in audible noise can be undertaken: a) is to be displayed in a location proximate to the entry to the terminal and clearly visible from the exterior of the terminal; b) is to be made available and maintained on a page to like effect on Cruise Whitsundays Pty Ltd's website.	By 5.00pm, Friday 30 November 2018 By 5.00pm, Friday 23 November 2018
14.	A contact number for noise and air quality complaints by which it is alleged maintenance, repair or servicing of vessels in berths in Port of Airlie has resulted in audible noise in circumstances contrary to Items 1 to 11 is to be: a) provided to members of the community reference group; and b) is to be clearly displayed with the notification required by Item 13. The contact number is to be monitored by a representative of Cruise Whitsundays Pty Ltd at all times when maintenance, repair or servicing of vessels is being undertaken in berths in Port of Airlie. Any complaints are to be dealt with by Cruise Whitsundays Pty Ltd in accordance with a complaints response procedure prepared by Cruise Whitsundays Pty Ltd to the reasonable satisfaction of Council.	In accordance with the timeframe specified in Item 12 In accordance with the timeframes specified in Item 13 Immediately upon the earlier of the timeframes specified in Item 12 or Item 13

C. Penalty

The maximum penalty for failure to comply with a Direction Notice without reasonable excuse is 600 penalty units (\$78,330 for an individual or \$391,650 for a corporation). On the spot fines may also be issued, 15 penalty units for an individual (\$1,958) or 75 penalty units (\$9,791) for a corporation.

If the offence is committed wilfully, the maximum penalty is 1,665 penalty units (\$217,365.75 for an individual or \$1,086,828.75 for a corporation).

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Also **TAKE NOTICE** that:

1. The requirements of this Direction Notice take effect immediately upon service of the Notice.
2. Failure to comply with this Direction Notice, without reasonable excuse, is an offence under section 363E of the *Environmental Protection Act 1994*.
3. This Direction Notice remains in force until further notice from an authorised person of the administering authority.
4. You may apply for a review of or appeal against the decision to issue the Direction Notice within 10 days of the service of the notice. Information regarding the reviews and appeals are attached to this notice.

 Adam Folkers Manager Health and Environment	Date: 16 November 2018
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Whitsunday Regional Council
Delegate of Administering Authority and Authorised Person
(*Environmental Protection Act 1994*)

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NOTES

- (1) **Notice of Other Duties**
Please note that in addition to this Direction Notice, you may have obligations at law under the Environmental Protection Act and other obligations at law created by the Federal, State and Local Governments.
- (2) **Environmental Duties under the Environmental Protection Act**
The Environmental Duties under the Environmental Protection Act are as follows:
- Section 319(1) provides that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the "general environmental duty").
 - Division 2, Part 1, Chapter 7 requires that a person, who becomes aware that serious or material environmental harm is caused or threatened by an activity they are involved in, has a duty to report that harm. Employees have a duty to report the harm to their employer who then assumes the duty to notify the administering authority. Where an employer cannot be contacted the person must notify the administering authority. People are exempt from this requirement if the harm is occurring under an environmental protection policy, a transitional environmental program, an environmental protection order, an environmental authority or a direction from an authorised person in an emergency.

EXTRACTS FROM THE ACT REGARDING REVIEWS AND APPEALS

5521 Procedure for review

- (1) A dissatisfied person may apply for a review of an original decision.
- (2) The application must:
 - (a) be made in the approved form to the administering authority within –
 - (i) 10 business days after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the "review date"); or
 - (ii) The longer period the authority in special circumstances allows; and
 - (b) be supported by enough information to enable the authority to decide the application.
- (3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision –
 - (a) notice of the application (the "review notice") and;
 - (b) a copy of the application and supporting documents.
- (4) The review notice must inform the recipient that submission on the application may be made to the administering authority within 5 business days (the "submission period") after the application is made to the authority.
- (5) If the administering authority is satisfied the applicant has complied with subsection (2) and (3) the authority must within the decision period –
 - (a) review the original decision; and
 - (b) consider any submissions properly made by a recipient of the review notice; and
 - (c) make a decision (the "review decision") to –
 - (i) confirm or revoke the original decision; or
 - (ii) vary the original decision in a way the administering authority considers appropriate.
- (6) The application does not stay the original decision.
- (7) The application must not be dealt with by –
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision.
- (8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.
- (9) The notice must –
 - (a) include the reasons for the review decision; and
 - (b) inform the person of their right of appeal against the decision.
- (10) If the administering authority does not comply with subsection (5) or (8) the authority is taken to have made a decision confirming the original decision.
- (11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.
- (12) This section does not apply to an original decision made by –
 - (a) for a matter, the administration and enforcement of which has been developed to a local government – the local government itself or the chief executive officer of the local government personally; or
 - (b) for another matter – the chief executive personally.
- (13) Also, this section does not apply to an original decision to issue a clean-up notice.
- (14) In this section –
decision period means –
 - (a) if a submission is received within the submission period – 15 business days after the administering authority receives the application; or
 - (b) if no submissions are received within the submission period – 10 business days after the administering authority receives the application.

5531 Who may appeal

- (1) A dissatisfied person who is dissatisfied with a review decision may appeal against the decision to the Court.
- (2) However, the following review decisions can not be appealed against to the Court –
 - (a) a review decision to which subdivision 1 applies;
 - (b) a review decision that relates to an original decision mentioned in schedule 2, part 3.
- (3) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.
- (4) A dissatisfied person who is dissatisfied with an original decision to which section 521 does not apply may appeal against the decision to the Court.

Attachment - Site Aerial

