

Inquiry: Environment Protection and Biodiversity Conservation
Amendment (Great Barrier Reef) Bill 2013.

SUBMISSION BY

**SAVE OUR FORESHORE INC.
WHITSUNDAY REGION**

TO SUPPORT MORATORIUM ON PORT PROJECTS

**NEW STATE SIGNIFICANT MARINA RESORT
PROPOSAL WITHIN SHUTE HARBOUR MARINE
DEVELOPMENT AREA, WORLD HERITAGE AREA &
GBR COASTAL MARINE PARK**



Save Our Foreshore is an association registered under the Incorporated Association Act. It is a community organisation created by citizens of the community of Whitsunday having a particular interest in ensuring that public access to the coast and amenity of coastal public lands are preserved and enhanced for the long term benefit of their ecological, scenic and recreational values as enjoyed by the Whitsunday community and visitors to the area



SHUTE HARBOUR MARINE DEVELOPMENT AREA

This amendment is supported by SOF’s members and supporters because of urgency to address ongoing failures by State Governments to identify the connectivity between ongoing coastal losses, declining water quality and impacts to the GBRWHA and to recognize and protect the outstanding universal values of the GBRWHA.

SOF’s concern for the Whitsunday region of the Great Barrier Reef Marine Park relates to designated Marine Development Areas (MDA’s) and specifically the MDA within Shute Harbour’s World Heritage area, Fish Habitat protected area, Coastal Marine

park and the loss of yet more seagrass beds, coral reefs, mangrove forests and benthic marine life.

This MDA includes the long established passenger and commercial barge terminals servicing the Whitsunday Islands but importantly, the largest part of the MDA is a pristine undeveloped area currently undergoing assessment for a 1980’s proposal incorporating a marina, residential and commercial development on dredged and reclaimed seabed.

Unabated coastal development in areas of high rainfall, cyclonic activity, unstable hillsides and

foreshore developments in the levels and increased severe weather events is resulting in cumulative harmful impacts to

face of rising sea water quality, inshore corals and the GBR lagoon.

Save Our Foreshore believes that a marine **development over approximately 10 hectares of seagrass, coral, macro algae and benthic communities, proposed for Shute Harbour** will have adverse economic, social and environmental effects both locally and, in a broader context, on the World Heritage values of the Great Barrier Reef Marine Park.

It is being currently undergoing an EIS process which commenced in December 2008.

SUMMARY OF MARINE DEVELOPMENT PROPOSAL;

The proposal is for:

- 109 suite resort
- 70 apartment retirement resort,
- 52 suburban lots on a reclaimed isthmus plus
- 395 berth marina.

The proposal in one form or another has been in existence since 1982. The project, if approved, would be built largely over reclaimed World Heritage seabed.

If ever completed, it would be located within the waters of Shute Harbour. It is in a World Heritage area, a National Heritage area, A Great Barrier Reef Coastal Marine Park, a Habitat Protection Zone and an Area of State Significance. It is enclosed by the Conway Range wilderness, Mt Rooper National Park and the waters and islands of the Great Barrier Reef Marine Park.

It would require initial dredging to:

- create access channels
- the marina basin and
- reclaim land for construction along the intertidal zone & within bay

Maintenance dredging in our experience is generally understated by all developers in the area. Existing marinas are all unable to meet depth requirements of boats wishing to enter, maintain the access

Dredge spoil would be stored on site, in “geotubes” which appear to be successful applications in the heavy mining industry.

There have been no attempts to assess the cumulative impact of this proposal and others along the GBR and no comprehensive attempt to understand the resultant hydrological effects of the proposal on the wider area of Shute Bay.

It would mean the destruction of significant areas of seagrass, mangroves and benthic communities and would seriously threaten water quality, inshore coral reefs, fish breeding nurseries, dugong and turtle grazing areas and cetacean populations.

The proponent has dismissed all the outstanding natural values of the area in one short sweeping statement choosing to negatively describe three selected constructed items in the vicinity which are all outside of their lease. Namely a public boat ramp, a small salvage/barge business and a motel. None of these impact on the values of the area and all, which visually unattractive easy to “tidy up”.

HISTORY OF ASSESSMENT PROCESS

In 2003 the proposal was submitted to the Queensland Coordinator General as a 'significant project' requiring an Environmental Impact Statement (EIS) under Section 26(1)(a) of the State Development and Public Works Organisation Act 1971 (Qld).

Since 2006 the term lease over the site, plus a now discontinued temporary Permit to Occupy over an additional area, was extended seven times.

An EIS was produced in 2004 but rejected because of its poor quality.

In 2008 a second EIS was delivered to the Queensland coordinator general by the current proponent. There were over 300 submissions made by interested parties within a

six week response period. The coordinator general subsequently requested that a Supplementary EIS (SEIS) be prepared by May 2009.

The SEIS was delivered February 2013, some 4 years late.

The SEIS was finally made available for public comment on March 16th 2013.

It is clear from this that the proponents have no intention of actually constructing this facility.

HISTORY OF LEASE

A lease over the area has been in existence we understand since the early 1980's. Numerous proponents have bought and sold the lease over this time. It was also the subject of a legal dispute in which the Queensland Government was required to pay compensation to the owner of the lease at the time

The lease expired in 1999. However, it was revived 3 years later in 2003, re-issued and backdated to 1999 (so as to be “continuous?”)

After some 6 renewal of the lease since 1999/2003. the Queensland Government finally refused to renew on February 24th 2013

But immediately on February 26th issued a Permit to Occupy for ‘exploratory purposes.’ Given the proponent has had ten years to do exploratory work, it begs the question why the department felt inclined to give them another twelve months.

The state government’s recently released Queensland Coastal Plan has included the SHMD site as a Designated Maritime Development Area (MDA).

While these MDAs may be protected from ‘*non coastal development*’ they appear to have been created to facilitate and expedite any so called ‘*coastal dependent development.*’ It appears that once an area is designated MDA many of the

LEGISLATION:

The major driver of the project is real estate sales. (E3 Planning Report)

The project is designated a project of State Significance.

The project has been determined to be a controlled action pursuant to the Federal Environment Protection and Biodiversity Conservation Act.

environmental protections included in the Coastal Plan are simply stripped away.

WHAT THE PROJECT PROMISES?

The SEIS list of **Project Objectives** includes:

*“To provide a world class **integrated** marina and tourism facility...’*

*“to provide a balanced, **master planned** marina resort environment.”*

Closer examination of the document confirms that this proposal would **not** be ‘integrated’ or ‘master-planned’ by the proponent, as implied, but, **after reclamation of the World Heritage seabed, would be on-sold to several unspecified, third party developers, as freehold blocks of land, to use more or less as they see fit.**

The Shute Harbour lease has existed for some thirty years and yet proponents have never been able to fulfil the requirements of their Terms of Reference and establish there is ‘demand’ for the facility – berths and built form. This is because there *is* no demand in this region currently. Not for berths. Not for expensive apartments. Berths sit empty in

several of the regional marinas and unsold, high-end apartments are still plentiful in Airlie Beach. And so they plan to on-sell the newly created land and make it somebody else’s responsibility.

The Whitsunday community does not need to be exposed to yet another costly, disruptive and destructive exercise so that a private developer can indulge in a waterfront, land grab at irreplaceable Shute Harbour.

Following is compelling evidence to support this contention:

- UNESCO in their recent ‘state of the Reef’ report referred by name to the issues at Shute Harbour and have expressed their concerns about the ongoing dredging, destruction of mangroves, seagrasses, corals etc and declining water quality.
- Professor Jon Nott of JCU Cairns warns that, as a result of Climate Change, Queensland will become subject to more frequent and more violent cyclones. At a

- time when governments and councils globally are making a strategic withdrawal from low lying coastal development and its liability and insurance issues, our government appears to be actively supporting this development on reclaimed seabed!
- The Shute Harbour project is symptomatic of the tendency of successive Queensland governments to favour short term commercial interests over the long term survival of the Great Barrier Reef. Over the years, as science has learnt more and more about the fragility of this unique ecosystem, there have been many opportunities to terminate this project. It is a grave failure of vision from governments at all levels that this has not yet been done.
 - The Whitsunday Regional Council has voted six to one against the SHMD proposal going ahead. They, more than anyone and through bitter experience, are acutely aware of the cost to the community of these commercially impractical and inappropriate schemes.
 - Several residential/marina complexes have gone into receivership in Queensland over the past few years. There are two in our Whitsunday mainland area alone. The debacle at Port of Airlie cost our council and therefore our community many thousands of dollars.
 - Ten years ago the Port of Airlie developer promised the community, among other things, a major resort in exchange for the loss of their precious Coconut Grove environment. Ten years later the developer, Meridien, is in receivership, the project has cost our council and therefore our community many thousands of dollars, the area is a vast, unsightly, unused

- paddock and the community is still waiting with no resolution in sight.
- The nearby Abel Point marina, which Meridien bought for \$75million, was sold recently for some \$28million. And yet the Shute Harbour proponent would have us believe their unfunded \$252 million project is viable!
 - A major \$500million “integrated resort” and residential development over 25 hectares was commenced around 2007 at Funnel Bay between Airlie Beach and Shute Harbour. In 2009 the developer went into administration, leaving yet another unsightly, unfinished, unoccupied precinct. The frequently used public access of the past, to the public beach and foreshore, has for several years been rendered virtually impossible. Although the land has finally been on-
- sold (having been on the market for over three years), it remains desolate and there appears to be no sign of anything happening in the location any time soon.
- Laguna Quays was another vast ‘master-planned’ precinct with plans for houses, shops and all sorts of other ‘public infrastructure’. In spite of the best efforts of major Melbourne developer David Marriner, the dream was never fully realised and today the resort and marina lie deserted, crumbling and overgrown.
 - Since Cyclone Yasi devastated Port Hinchinbrook and its marina and left many boats destroyed or damaged the place has been in a state of collapse and now the private owners are demanding that the state government bail them out.

- Surely a better option is not to risk these potentially disastrous developments in the first place.
- Insurance and legal liabilities relating to climate events and storm surge – particularly in these cyclone prone, waterfront areas – become more complex and perilous by the day. Strata title insurance in North Queensland seems, even now, to be virtually impossible to achieve and appears to have a deeply troubled future.
- The coastal devastation wrought by Hurricane Sandy on the US East Coast, including the destruction of several marinas, is just one more example of the ill advised nature of the SHMD proposal.
- A petition against the SHMD tabled by SOF at Airlie market over no more than four or five Saturday mornings collected around 2700 signatures opposed to the proposal.

While the project's proposed footprint is a little smaller than that of 2008, the change is essentially cosmetic and all the principal economic, social and environmental objections to its approval remain in place.

We therefore URGE the Australian parliament to vote for this bill.

SAVE OUR FORESHORE Inc

Community group **Save Our Foreshore's (SOF)** SUPPORTS the moratorium on port development which in turn will highlight **reckless and inappropriate marine, dredging & reclamation** on the GBR coast **and its cumulative and harmful impacts** on the Whitsunday Great Barrier Reef coast which is a major hub for marine tourism, recreational boating, island resorts, sugarcane farming and some commercial fishing. The region is currently seeing population growth derived from inland mining (coal) developments.

Save Our Foreshore formed in 2004 to keep a particular piece of public foreshore from being sold to private commercial development



This campaign was successful in 2007 but the door was still open for future development. This second attempt occurred in 2011 and the community has recently again won a hard-fought campaign (February 2012) to retain the public foreshore. As an indication of how little consideration the Queensland Government has for protection of GBR in favour of mineral development, in 2008 SOF was forced into another major confrontation with the Government to stop a USA mining company developing an **open pit shale oil mine and experimental processing plant on the Whitsunday coast including the significant Goorganga wetlands.**

SOF won a hard-fought 20 year moratorium on the industry in the Whitsundays BUT THE NEWMAN GOVERNMENT HAS RECENTLY OVERTURNED THE MORATORIUM IN GLADSTONE.

In the Whitsundays, the oil shale mining lease extends into inshore coastal waters including the GBRMPWHA in Repulse Bay.

. **Greenpeace** campaigned with ship Esperanza to Airlie Beach for an SOF in the final stages, bringing the on-the-water rally.

This proposal should never have been considered given the known disastrous and deadly pollution from the first failed plant near Gladstone.



SOF & Greenpeace Public Meeting 2008, with mobile campaign billboard. Slogan "Beautiful One Day Bugged The Next" is a registered trademark



Greenpeace in the Whitsundays to protest proposed Shale Oil Mining & Processing Plant

This group, therefore, has recommended the following actions to UNESCO, which INCLUDE a moratorium on port developments

- 1. Legislative Reform (eg IPA, Land Act 1994, Queensland Coastal Plan, EPBC, Projects of State Significance)**
- 2. Identification of and legislative protection for areas identified as no-go for development**
- 3. Moratorium on major projects**
- 4. Carrying capacity of the coast (population, economic)**
- 5. Increase the role of community groups in coastal monitoring programmes**

Environmental legislation in Australia is about MINIMISING and so-called MANAGEMENT of harmful impacts not PROTECTING. This is where the change needs to start.

There is compelling evidence, both scientific and anecdotal, that the coast and GBR are in worse condition today than they were when the Integrated Planning Act 1997 (IPA) was introduced.

The IPA was to replace some 30 separate pieces of legislation and 60 regulatory development approval processes with a fundamental objective of achieving ecological sustainability.

But the reality is that despite reviews of the Act, the IPA has failed in its fundamental objective as coastal landscapes, water quality, inshore reefs, seagrass beds and mangrove forests have all continued to deteriorate, disappear, die or be removed with development approvals owing to increased and inappropriate coastal development and development in the catchments. In particular, the legislation relating to State Significant Projects is one that we believe is highly problematical and needs review.

The Whitsundays have four State Significant projects ¹ of which two are financial failures ² and incomplete (1980's developments) and one is still in process ³. These fall under the loophole classification of Integrated Resort Developments, with marina residential developments. A third (3rd) marina development is also in receivership in Airlie Beach (not State Significant).

Reclamation of and development on the sea bed for so-called "resort" components of integrated tourism developments under State Significant project protection loopholes is an unsustainable way to provide housing and to develop for the future.

The Integrated Planning Act effectively allows any coastal development anywhere and must be replaced with new legislation that takes into account cumulative impacts, current knowledge and science and is based on protection of the coast (and its inhabitants) and to help protect GBR WHA values.

Queensland Coastal Plan:

Coastal Plans are needed that recognize the needs of the different sections of a 7000km coastline instead of the current "one size fits all" plan.

Clearly, the facts would support that the state of the coast and Great Barrier Reef is not better off today than it was at the beginning of either the previous State Coastal Management Plan and the current Queensland Coastal Plan. Current legislation is not effective in dealing with the pressures and impacts of today's pressures, both man-made and natural. If these plans were to be subject to measured outcomes in accordance with its stated aim, it has failed. So what can be done?

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1. Laguna Quays; Port of Airlie; Dent island Golf Course; Shute Harbour Marina proposal
 2. Port of Airlie
 3. Shute Harbour Marina proposal

2. Identification of and legislative protection for areas identified as no-go for development

The IPA virtually allows any development to happen anywhere. Old and outdated leases exist for development proposals that with today's knowledge are not considered to be appropriate eg Shute Harbour Marina.

It is a pattern of Governments that community wishes and the environment are routinely ignored. It becomes the role of communities and volunteer groups to fight for protection of the social and environmental qualities that are important to them. Not all have the strength or resources to take on these fights.

- Legislation needs to take into account that the GBR is impacted by what happens in the catchment. For example: mining in the western areas of the Galilee Basin catchment has seen flooding in extreme

rainfall events and downstream pollution to the GBR. It would appear that mines can behave with impunity and pollute, they are not "on the reef". Yet what they do impacts on the WHA.

- Nationally listed coastal wetlands should be free of coastal developments and port developments.

A review should be conducted of wetlands as significant areas such as the **Caley Valley Wetlands** are not protected and are adjacent to the coal port of Abbot Point with plans that include an **Alumina refinery on the wetlands**.

We believe that Government is not sufficiently skeptical about a proposal's claims and consultant's reports are biased towards outcomes desirable by the developer.

Relevant legislation is failing to protect the environment in favour of (private) short term financial gain justified by "jobs".



Caley Valley Wetlands, Abbot Pt, site adjacent to proposed Alumina Refinery. Caustic “red mud’ is a by-product and a disaster such as occurred in Hungary when a red mud dam broke are a potential risk here too, on the wetlands and adjacent to the GBRWHA.



Abbot Pt expansion briefing (SOF photo)

3. Moratorium on major projects

- Is investment running way ahead of demand?
- Can there be a concept of a limit to growth on the coast?
- Increased shipping, accident risk, anchor damage
- Water quality impacts
- Dredge impacts

Fabricated and groundless

claims of “demand” and “need” are frequently made by proponents (as evidenced in the Shute Harbour Marina proposal for example), which in turn are assessed by bureaucrats who are not sufficiently skeptical or knowledgeable about the matter. We see political interference, intimidation and pressure by proponents who are in it for short term private commercial benefit only, not in the public interest or the greater long term good for the MNES.

- Limit of growth concept:
Present ports are operating near to capacity given the size of inland mining development. Is it not better to have existing ports functioning to capacity as opposed to open-ended expansion given the risky state of the world’s economies?

Are the WH values of the GBR expendable?

Profits are not just dependent on growth. For example, the Whitsunday Charterboat industry drove the concept of capping commercial vessels numbers operating in the GBRMP, a move which was criticised at the time as an obstacle to growth saying it would result in the demise of the industry. Instead, the industry strengthened, the asset was maintained ie the environment and it gave value to those businesses working under permits in the GBRMP.

- Increased shipping risks: 80% of shipping accidents are known to be caused by human error. How much risk can the GBRWHA take? The Whitsunday region is located between the proposed major coal ports of Mackay and Abbott Point. One shipping accident will have catastrophic impacts on the Whitsunday environment and economy.

- Water Quality



Plumes in the Molle Passage and Whitsunday Passage lasted for weeks in 2008. Plumes to this extent and duration have not to our knowledge been recorded before.

The Whitsundays would be “book-ended” by the two largest coal ports in the world, if plans proceed. Abbot Point in the north and Hay Point in the south.

Anchor damage: Large anchors and chain scour seabeds and resulting damage increases turbidity. It is not unusual to see 40 or more sugar and/or coal ships at anchor off the Mackay Coast. As there is no monitoring of this, we can only report anecdotally from professional divers and from the increasing loss of visibility in the Whitsundays that this action is adding to deteriorating

water clarity. Shipping companies must accept responsibility for impacts and one way would be to install ship's moorings offshore. Plumes of turbidity are routinely seen on the eastern side of the Whitsunday Islands, areas where they have never been seen before. Loss of inner reefs is on the increase with reports of visibility at Daydream Island reducing from an average of 5m prior to 2008 to average of 1m today.

There can be no doubt that failed development control plans are a significant contributing factor.



13 hec (of 387 hec) illegal clearing including endangered remnant coastal forest, Dryander National Park and into waters of GBRMP at Clarke's Cove 2008, developer prosecuted but the damage has been done. (SOF photo).

Dredging:

It is the opinion of this group that dredge dumping at sea within the GBRMP WHA is not an option. (We acknowledge that spoil grounds currently do exist offshore).

Legislation and development control plans are not capable of addressing the proposed increase and size of commercial ports and associated dredging. They focus on minimization, not protection.

With respect to Whitsunday's marina dredging, it is clear that developers are routinely UNDERSTATING the amount of dredging needed and Government authorities are either turning a blind eye or are under-resourced to make correct judgments.

For example:

Port of Airlie declared they would need to dredge every 17 years. (Public meeting statement). To anyone operating a private or commercial boat in the Whitsundays, this is patently wrong.

Abel Pt Marina now has access to deep-keeled vessels only at high tide. Stage 2 of Abel Pt Marina required 180,000m³ of dredging which was deposited into its spoil pond at the southern side of the development. In 2008 with the pond full and acid-sulfate spoil leaching from its base into adjacent waters, 30,000m³ of spoil was removed and placed on the banks of the Proserpine River with local and state government approval ⁴. We are somewhat critical of the role of highly paid developer's consultants such as Dr Hugh Lavery when in our experience, such reports are biased in favour of development outcomes. No monitoring (we are advised by Whitsunday Regional council Apr 2012) has been done through 2 wet seasons since the riverside dumping.

4. Carrying capacity of the coast – population, economic

Could the TOR address the difficult concept of a carrying capacity of the coast? For example, population has been capped in the southern coastal area of Noosa. This has been

successful move for that region but took strong leadership to implement.

In the case of both Whitsunday marinas in receivership it is clear that there is no demand or need for additional infrastructure today or well into the future. Yet outdated Government policy states there IS a need.

5. Increase the role of community groups in coastal monitoring programmes

There is the potential for community groups to do more for local plans and better outcomes. **Baseline (biodiversity) monitoring** is badly needed in areas where there is coastal development and where coal and gas mining is planned.

Any monitoring programme needs good quality control and technical support with data to be of acceptable quality to Government departments (or it could be useless and unacceptable in a court of law for planning needs).

⁴a & b. Applications to dump dredge spoil
Jan 08

Without quality control and proper equipment and trained monitors, it would simply be a PR exercise by Government. This is not a money-saving exercise.

Community groups would need to be resourced and operated under the recognized peak groups in their regions.

We contend that the Great Barrier Reef coastline and Great Barrier Reef is under such severe pressure and cumulative stresses from what should be locally controllable land-based impacts as well as wider impacts such as global warming and climate change, that only the legislative shift from MINIMISING harmful impacts to a PROTECTION based legislation will make the difference. If the collapse of the coastal eco-systems and Great Barrier Reef is the alternative there really isn't an option.

Political will is required to take the tough decisions and shift from a development and population growth

driven at-any-cost mentality to a longer term sustainable state.

The environment is given no VALUE at present, it is simply there to be exploited unsustainably and wasted.

Whether it is coal ports, shipping or the Shute Harbour marina project, it is symptomatic of the tendency of successive Queensland governments to favour short term commercial interests over the long term interests of the many users and biodiversity of the Great Barrier Reef and the coastline.

Legislation has not kept pace with knowledge and as science has learnt more and more about the fragility and inherent interconnectivity of this unique eco-system, there have been many opportunities to do better. It is a grave failure of vision from governments at all levels that they have failed to keep up with new information and knowledge

Brief history of Whitsunday coast marina development and related problems with CASE STUDY: SHUTE HARBOUR MARINA in MDA:

1.1 Abel Pt Marina construction

Stage 1: 1987-1988

Stage 2: 2003- present

visible on left side (SE) corner of project.



1.2 Port of Airlie, Muddy Bay 2008 - present



The first marina on the Whitsunday Coast was built at Abel Point. Stage 1 was located partially within the only relatively deep-water anchorage in the area but still required initial dredging and on-going maintenance dredging. It is the location for the majority of commercial and private boating business on the Whitsunday coast.

Stage 2 partially completed 2002-03
The property is in financial receivership. Dredge spoil pond

A 1980's development proposal that commenced in 2008.

Development has ceased as the project is in financial receivership and legal dispute.

Resulted in significant environmental losses (seagrass, mangroves, turtle & dugong feeding area) as well as public foreshore amenity losses to the town.



Case Study: Inappropriately placed coastal development proposal:



**Shute Harbour EIS & Executive Summary (att)
Shute Harbour Marina and
Integrated Residential development:**



This third large marina proposal is another lease from the mid 1980's and has appeared in many forms with floating breakwaters to tidal lock systems.

The lease expired in 1999 but was re-created and backdated in 2003 5 under questionable circumstances. The lease EXPIRED 24 February 2013 and was NOT extended by the current QLD Government. However, a 12 month Permit to Occupy was instead issued.

Independent planning report 6 proves the project is driven by waterfront real estate sales from reclaimed seabed and NOT a marina ie the basis for its application.

Shute Harbour is of interest because it is not yet approved but is in the final Supplementary EIS stage. It has been the recipient of special Government treatment in its

term to date with two (2) EIS processes allowed. The second EIS was completed in December 2008. The March 2013 SEIS was some 4 years in arrears of its due date of April 2009.

The E3Planning report notes that this is an unsustainable way to provide housing. On evidence, this proposal fails the social, economic and environmental test and we ask it is highlighted as an example of the critical need for URGENT Legislative Reform



Shute Harbour Marina concept (from EIS)

5. Lease conditions (some) of backdated, expired lease

6. E3 Planning Report

One of the failures of the Queensland Legislation is that there is no deadline to provide a Supplementary EIS, this can be extended indefinitely.

In addition, legal advice is that the Queensland Government has incorrectly been drawing a connection between two (2) separate pieces of legislation ie the Land Act 1994 and Environmental Protection Act 7 and on this basis has been illegally extending permits on expiration.

Traditional Owners:



Ngaro Traditional Owners headed by Elder Irene Butterworth, centre, Shute Harbour 2008 (Photo SOF)

Whitsunday Ngaro Traditional Owners were excluded from the signing of an earlier ILUA (Indigenous Land Use Agreement), protested on the site at the same

time and dispute the agreement, leading the initiation of a Native title claim. ⁸

Lessors have recently dropped a “Permit to Occupy” in a section of the development located within the Great Barrier Reef Marine Park WHA which would have required approval from the Traditional Owners.

7. Gilkerson Lawyers advice to Queensland Government Dec 2011

8. Whitsunday Times Traditional Owners protest

According to the revised plan for the SEIS, the Shute Harbour development would be located on approximately

- 18 hectares of reclaimed seabed and would require removal of the existing natural coastal ecosystem.

The proposed development site is within the waters of Shute Harbour. It is in:

- a World Heritage area,
- a National Heritage area,
- A Great Barrier Reef Coastal Marine Park,
- a Fish Habitat Protection Zone and
- an Area of State Significance (scenic)

- fish nurseries
- dugong and turtle habitat.

The project has been declared a significant project under Part 4 of the *State Development & Public Works Organisation Act 1971 (28/10/2003)*.

This designation effectively overrides all other legislation other than the Federal EPBC act. With respect to the EPBC Act, the Bi-lateral agreement between the Queensland Government’s historical patterns confirm the Federal Government is more than likely than not to concur with the Queensland decision.

Shute Harbour is enclosed by Conway National Park, Mt Rooper National Park and the waters and islands of the Great Barrier Reef Marine Park. It is adjacent to an Open Space Zone within the Whitsunday Regional Council planning area.

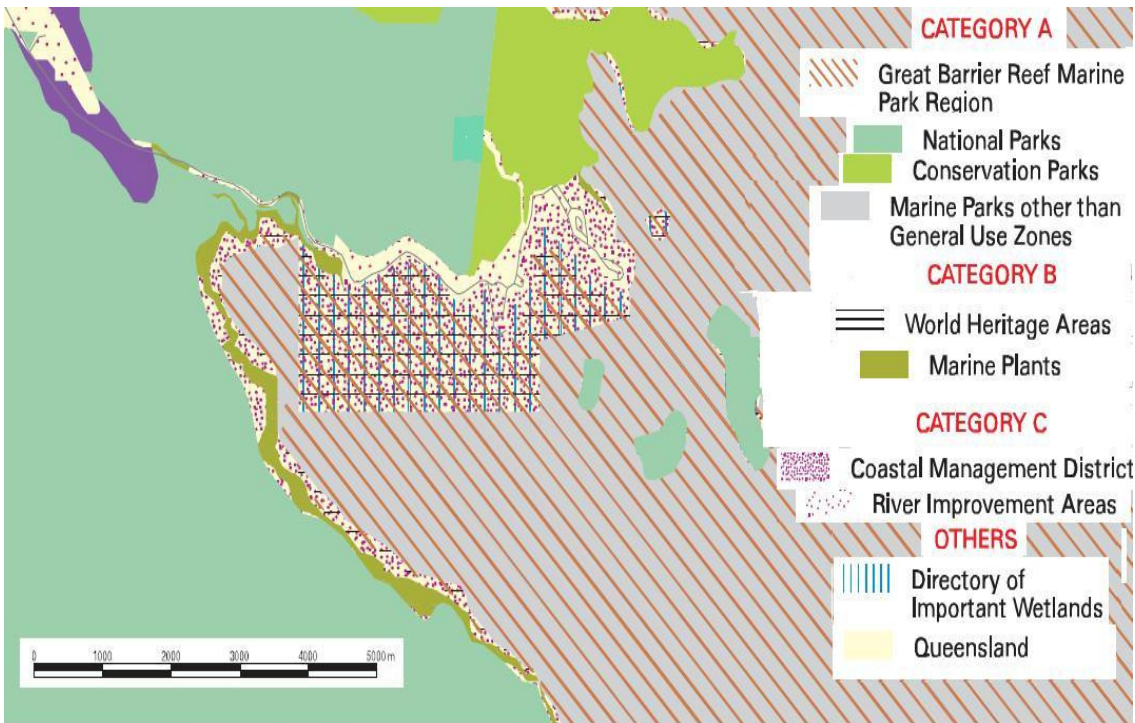
In spite of this it is listed as a Marine Development Area in the new Queensland Coastal Plan, a plan which we believe gives LESS protection than the one it replaced. (Mackay Whitsunday Regional Coastal Plan).

Mangroves: Dr Norm Duke and Prof Colin Fields conducted a survey of the mangroves. Their report does not agree with the findings of the Shute Harbour Marina developers.^{9a} & ^{9b}

disputes the findings of the proponents EIS report. ¹⁰

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- 9a Duke & Fields Mangrove Report
 - 9b Duke letter
 - 10 Kirkman Seagrass Report

Seagrass: Dr Hugh Kirkman has provided a report which also



Environmentally Sensitive Areas (Adapted from DERM map April 5th 2012)

“An action is likely to have a significant impact on the World Heritage values of a declared World Heritage property if there is a real chance or possibility that it will cause:

altered, modified, obscured or diminished.

1. *one or more of the World Heritage values to be lost;*
2. *one or more of the World Heritage values to be degraded or damaged; or*
3. *one or more of the World Heritage values to be notably*

The Shute proposal would impact on the WHA values of the area dredging (Initial and ongoing) of the seabed, construction of a solid breakwater wall across a portion

of the natural harbour and land reclamation to provide for the commercial areas and apartments

This requires destruction of

- sea-grasses,
- mangroves,
- benthic communities,

It is a site visited by a number of bird species, including migratory. It was an important transitory feeding ground for dugong and turtle after recent weather events wiped out much of southern seagrass areas. An on-going monitoring of the site through GBRMPA's Sightings Network has recorded the variety of biodiversity in the area.

Birds:

There are at least 129 bird species that are found within a 5km radius of the proposed marina site. Of these the following are listed as threatened or migratory birds likely to be in or near the site at some time include:

(EPA's Nature Conservation (Wildlife) Regulations)

Little Tern Listed Marine & Migratory Bonn, CAMBA, JAMBA treaties (EPBC) and listed Endangered (EPA's

Nature Conservation (Wildlife) Regulations)

Vulnerable Bird Species (EPA's Nature Conservation (Wildlife) Regulations)

Painted Snipe; Beach Stone Curlew;

Rare species (5 Species) (EPA's Nature Conservation (Wildlife)

Regulations) likely to be on or near the site from time to time are the Radjah Shelduck; Osprey; Grey Goshawk; Eastern Curlew; Sooty Oyster Catcher (also listed by EPA as significant in the region and feeds on mud flats north of the site which could be impacted by dredge spoil mining and sediment plume flows from the site which could reduce or increase sediment flows to the site);

Federal Environmental Biodiversity and Protection Act & International

Treaties Listed as Vulnerable (4 species) Eastern Curlew; Painted Snipe;

Little Tern; Crested Shrike-tit

Listed as **Migratory (28 species)**

Brown Booby; Eastern Egret; Great Egret; Osprey; White-bellied Sea-Eagle; Latham's Snipe; Black-tailed Godwit; Whimbrel; Eastern Curlew; Marsh

Sandpiper; Common Greenshank ;
Common sandpiper; Grey-tailed Tattler;
Ruddy Turnstone; Great Knot; Red
Knot; Red-necked Stint; Sharp-tailed
Sandpiper; Curlew Sandpiper; Painted
Snipe; Lesser Crested Tern;
Black-naped Tern; Common Tern;
Bridled Tern; Little Tern; White-
throated Needletail; Fork-tailed Swift;
Rainbow Bee-eater

UNESCO can have no confidence that
legislation is in place to protect MNES
such as Shute Harbour. Urgent
legislative reform is needed to move to
an environmental protection based
system.

References Weblinks

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