

19 April 2013

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Members of the Senate Standing Committee on Environment and Communications,

Thank you for the opportunity to provide a submission to the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013.

The Great Barrier Reef (GBR) is unquestionably one of the most important features of Australia's biodiversity, as evidenced by its World Heritage listing through the recognition of its outstanding universal values. The resources sector has a very strong social licence to operate interest in preserving the biodiversity of the iconic GBR and our industry recognises that the health of both the reef and the resources sector are intertwined.

The overarching message we would like to give the Committee is that the Queensland Resources Council (QRC) completely rejects the contents of the Bill and its proposed amendments to the EPBC Act. We would assert that they are not only completely unnecessary, but are in direct conflict with the principles of ecologically sustainable development (ESD), and are solely driven by a political, anti-resources agenda.

The purpose of our submission is to outline and reinforce:

- the importance of Queensland's ports to regional communities and the state and national economies;
- the failure of the Bill to appropriately reflect the World Heritage Committee recommendations under 36COM 7B.8;
- the stringent regulatory system already in place within the GBR region;
- the inherent problems of a net benefit test in the context of the EPBC Act;
- the resource industry's performance and role in managing major project developments; and
- the current voluntary industry partnerships already underway within the GBR.

Yours sincerely

Michael Roche
Chief Executive

QRC submission

Working together for a shared future



**Submission to the Senate Standing
Committee on Environment and
Communications**

19 April 2013



QRC Submission: EPBC Amendment (GBR) Bill

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EXECUTIVE SUMMARY

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. Our membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QRC appreciates the opportunity to make this submission to the Senate Standing Committee on Environment and Communications on the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013 and its proposed amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

The overarching message we would like to give the Committee is that QRC completely rejects the contents of the Bill and its proposed amendments to the EPBC Act. We would assert that they are not only completely unnecessary, but are in direct conflict with the principles of ecologically sustainable development (ESD), and are solely driven by a political, anti-resources agenda.

The continued efficient operation and development of ports along the Queensland coast is intrinsically linked to the activities of QRC members; both as an avenue to international markets for mineral and gas products but also to supply essential fuels and equipment. The resources sector has developed and managed ports and port terminals in a number of key Queensland locations in close partnership with the various Queensland port authorities over a long period of time. Together we have built and operated a series of global leading practice port facilities with a long history of responsible environmental management.

Accordingly, the promotion of leading environmental management practices is a key goal of QRC, and is vital to ensuring the Queensland resources sector retains a strong social licence to operate.

The Great Barrier Reef (GBR) is unquestionably one of the most important features of Australia's biodiversity, as evidenced by its World Heritage listing through the recognition of its outstanding universal value. The resources sector has a very strong social licence to operate interest in preserving the biodiversity of the iconic GBR and as such the QRC recognises that the health of both the reef and the resources sector are intertwined.

The industry values the reef for all the same reasons as the rest of Australia, but like other important Queensland export industries cannot avoid the need to pass along and through the GBR in the export of minerals and gas. The development and sale of these commodities are an essential part of Queensland and Australia's economy, and provide an important ongoing financial contribution to the programs which provide for the continuing protection of the GBR.

Australia has a long and proud history of well-planned and smart development within World Heritage areas. Neither the GBR nor the resource industry's existence need be at the expense of the other. The GBR has always been a multi-use national asset with activities encompassing tourism, recreation, fishing, agriculture, transport, resources, and science. The impacts on the reef from those activities are cumulative and from multiple sources over time.



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QRC's fundamental position in relation to the GBR and industry is that there needs to be a focus on a risk management approach and on the activities that actually impact on the reef, rather than populist or emotive reactions to interest group and media commentary. The fulfilment of (legal and ethical) obligations and transparent presentation of factual scientific information by industry, governments and the community is essential if this is to occur.

The QRC is supportive of leading practice approaches to all aspects of project development and environmental management, but strongly opposes the introduction of legislative limits or moratoriums that are based on emotive ideology and which are not supported with scientific evidence.

→ Purpose of Submission

The Queensland Resources Council is disappointed that The Greens have attempted to undermine the aims and objectives of the *Environmental Protection and Biodiversity Conservation Act 1999*, by proposing a moratorium on port development and other development applications potentially impacting the GBR.

The purpose of our submission is to outline and reinforce:

- the importance of Queensland's ports to regional communities and the state and national economies;
- the failure of the Bill to appropriately reflect the World Heritage Committee recommendations under 36COM 7B.8;
- the stringent regulatory system already in place within the GBR region;
- the inherent problems of a net benefit test in the context of the EPBC Act;
- the resource industry's performance and role in managing major project developments; and
- the current voluntary industry partnerships already underway within the GBR.

It is our strongly held view that the existing governance, planning and environmental assessment and management arrangements regulating the Great Barrier Reef have delivered positive environmental, social and economic outcomes.

→ Overarching Principles

QRC would like to highlight a number of overarching principles developed by the Queensland resources industry regarding the utilisation of ports within the GBR.

QRC supports the maximisation of use of existing port precincts and associated infrastructure (brownfield) prior to the development of new (greenfield) port infrastructure within the GBR, provided circumstances meet the following tests:

- The primacy of market forces has prevailed and it can be demonstrated that the maximisation of brownfield infrastructure in comparison with greenfield infrastructure is a viable economic and environmentally sound option for proponents;
- Brownfield ports are subject to efforts to improve port efficiency and lower costs with clear performance benchmarks and there is capacity for expansions to be developed quickly and efficiently to meet new growth; and
- Resource projects are not sterilised based on their lack of access to brownfield infrastructure.



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Furthermore, economic development and environmental protection should not be considered mutually exclusive and it should be recognised that the ability to conduct project by project assessments that consider cumulative impacts is significantly improving.

QRC and our members firmly reject the underlying premise of the Bill and that all port development should be halted based on the automatic assumption that there will be impacts on the GBR. The insinuation is that industry and government do not undertake development assessments and approvals in an appropriate and accountable way. This is patently untrue as will be show in the rest of this submission.

Instead of simplistic blanket bans that do not recognise the balance between all the elements of ecologically sustainable development, QRC and industry have therefore long supported a risk-based approach to regulation. Fundamentally, government should be ensuring that regulation operates in the 'high-risk sphere', and should not limit the prerogative and innovation of industry to address matters where there is low risk of significant environmental impacts.

QRC continues to support the use of the hierarchy of risk minimisation¹ as a tried and tested mechanism to manage significant environmental impacts, and believes that any assessment and approval regulation for port development should have this built into the framework.

In conjunction with this risk based approach, QRC and industry recognise the importance of assessing cumulative impacts, particularly in the context of the GBR, and QRC and its members support the adoption of clear and consistent voluntary industry-led cumulative impact assessments for major port developments, in partnership with government. The leading practice work undertaken through the Abbot Point Cumulative Impact Assessment² has established a new standard of environmental impact assessment in this regard.

Fundamentally, future port development in the GBR must be underpinned by long term planning undertaken by government, ports and resource proponents, to ensure sustainable development in Queensland (in the context of all the principles of ecological sustainable development). Inherently such planning must be informed by peer-reviewed science. Government has a role to play in ensuring that communities and other stakeholders (national and international) are well informed with the facts.

→ Further Consultation

The QRC would be pleased to meet with members of the Senate Standing Committee on Environment and Communications to further discuss and elaborate on the information contained in the submission.

¹ First avoid then minimise, manage, mitigate and then offset the impact

² See www.abbotpointworkinggroup.com.au



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1. PURPOSE AND INTENT OF THE EPBC (GBR) AMENDMENT BILL

The QRC would like to firstly take this opportunity to express our disappointment that this Bill completely ignores the scientifically proven key impacts on the GBR. Simply put, a moratorium on all future port development, as well as a moratorium on all development impacting on the Great Barrier Reef will serve only to destroy the Queensland economy with no commensurate environmental benefits.

In the first instance it is worth noting that “the best science available estimates that around 90 per cent of the loads of sediments, nutrients and toxic chemicals entering the Great Barrier Reef lagoon come from agricultural practices in the Great Barrier Reef catchment.”³

Furthermore, the independent Australian Institute of Marine Science (AIMS) notes that approximately 42% of coral loss has been a result of the Crown of Thorns starfish. They state that by “reducing COTS populations, by improving water quality and developing alternative control measures, could prevent further coral decline and improve the outlook for the Great Barrier Reef.”⁴

As such, the QRC queries why a Bill introduced into the Senate, that is purportedly aimed at protecting this incredible national icon, has completely failed to address the primary impacts on the GBR.

The Explanatory Memorandum to the Bill notes that the purpose of the Bill is to implement “in our national environment laws key recommendations that the World Heritage Committee has made to ensure that Great Barrier Reef does not get added to the “world heritage in danger” list.”⁵ This statement completely fails to recognise that both the Australian and Queensland Governments are currently implementing and responding to the recommendations made by the WHC under 36COM 7B.8.⁶ This includes but is not limited to, the two strategic assessments currently being completed by the Queensland Government and GBRMPA, the Independent Review into the Port of Gladstone currently being chaired by Anthea Tinney, the Gladstone Healthy Harbour Partnership which is currently being developed as well as a number of other crucial initiatives.

Remarkably, the Bill also completely fails to understand the processes that are currently being undertaken as a result of the World Heritage Committee recommendations under 36COM 7B.8. Firstly, regarding s24F(c) of the Bill, the WHC will not assess the adequacy of the strategic assessments that are currently being completed by the Queensland Government and the Great Barrier Reef Marine Park Authority (GBRMPA). This is the role of the Federal Environment Minister under the EPBC Act. Instead, the WHC will decide in 2015 whether or not the GBR should be listed as a World Heritage in Danger. In determining whether to list the GBR as a World Heritage in Danger, the WHC will take a number of issues into consideration, not simply the adequacy of the strategic assessments.

The QRC believes that this is yet another case of policy and legislative drafting on the run, which fails to take any notice of the vast scientific evidence available and the existing comprehensive regulatory framework. Responsible law making should not respond to populist and anti-industry agendas, but instead should take a measured and reasonable assessment of the best information available and respond accordingly.

³ GBRMPA, see Great Barrier Reef Outlook Report, available at http://www.gbrmpa.gov.au/_data/assets/pdf_file/0018/3843/OutlookReport_Full.pdf

⁴ Australian Institute of Marine Science, 2013, *The 27-year decline of coral cover on the Great Barrier Reef and its causes*, available at <http://www.pnas.org/content/early/2012/09/25/1208909109>

⁵ Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013, Explanatory Memorandum, circulated by authority of Senator Waters, available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s915_ems_dc247504-6d5a-461c-8330-a02a3cdd52c3/upload_pdf/13091em.pdf;fileType=application%2Fpdf

⁶ World Heritage Committee, July 2012, Great Barrier Reef (Australia) (N 154) , available at <http://whc.unesco.org/en/decisions/4657>



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2. THE QUEENSLAND PORTS INDUSTRY

As the National Ports Strategy notes “Australia is an island whose place in the international economy and whose productivity, living standards and quality of life depend on trade performance. As a nation dependent on maritime trade, Australia’s ports are an important gateway for goods. Consequently, ports and associated infrastructure are of the utmost economic and social importance to Australia.”⁷

As shown in Figure 1 there are eleven commercial trading ports located within the GBR region. By total volume these ports primarily service the export demands of the Queensland agricultural and mineral provinces and, in a broader context, also act as the domestic trade portal for millions of people.

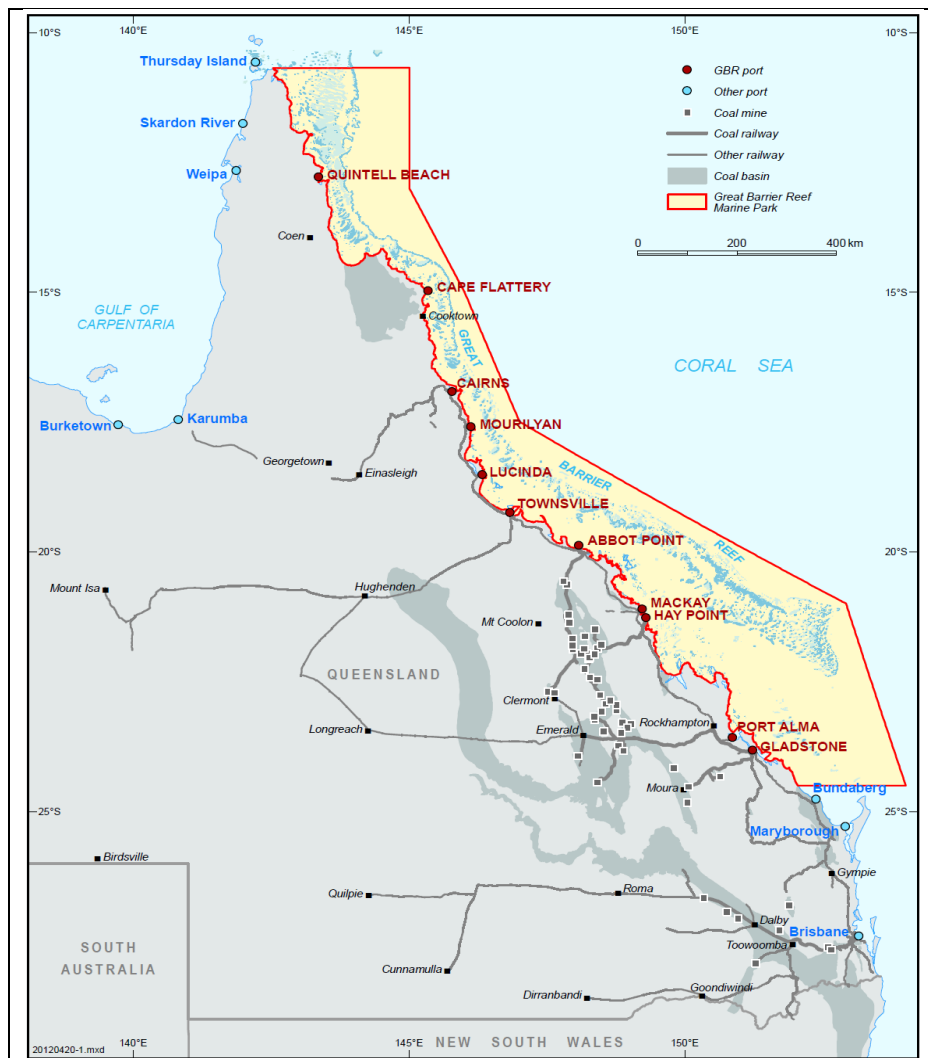


Figure 1: Primary Trading Ports of the GBR Region⁸

⁷ National Ports Strategy 2012. Page 6. Available at : http://www.ntc.gov.au/filemedia/Reports/Nat_Ports_StratCOAGFinal2012.pdf

⁸ Source: BHP Billiton



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These GBR regional ports also contribute significantly to the underlying economic well-being and social infrastructure of Queensland by supporting thousands of jobs (directly and indirectly) throughout the state and Australia. The ports of the GBR region, from north to south, and their dominant cargoes are outlined in Table 1.

Table 1: Ports within the GBR Region⁹

Port	Cargo type	Dominant Cargo (by ship numbers)
Quintell Beach	Dry Bulk	General Cargo
Cape Flattery	Dry Bulk	Silica Sands
Cairns	Mixed	General Cargo, Tourist
Mourilyan	Dry Bulk	Sugar
Lucinda	Dry Bulk	Sugar
Townsville	Mixed	Minerals, Sugar, General Cargo
Abbot Point	Dry Bulk	Coal
Mackay	Mixed	Bulk Liquids, Chemicals
Hay Point	Dry Bulk	Coal
Port Alma	Dry Bulk	Chemicals
Gladstone	Mixed	Coal, LNG, Bauxite, General Cargo

⁹ Data source: Queensland Ports Association and Ports Australia



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3. PORTS WITHIN THE WORLD HERITAGE AREA

The eleven GBR regional ports are located within the GBRWHA boundary and outside but adjacent to the Great Barrier Reef Marine Park (GBRMP).

The Great Barrier Reef received World Heritage status in 1981, the first coral reef ecosystem in the world to have this distinction. It is one of the better-known coral reef ecosystems in the world and remains one of the world's best-managed natural wonders.

The presence of major industrial ports within a World Heritage property is clearly not unique or mutually exclusive. In establishing the GBRWHA boundaries in 1981 the presence of a number (11) of commercial trading ports inside the boundary was a clear recognition that port infrastructure and operations were not considered to be unworkable or unmanageable in a World Heritage context.

During the period (since 1981) that these ports have been located within the GBRWHA, development of certain ports has continued, with all developments and operations being subject to stringent regulation at local, state and national levels. Operations have also been subjected to a wide range of international conventions regarding the continued development and operation of a trading port, including dredging and commercial shipping operations.

The Great Barrier Reef Marine Park Authority (GBRMPA) and a number of other regulatory agencies, including: the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPAC), Maritime Safety Queensland (MSQ), Queensland Department of Transport and Main Roads (DTMR), the Australian Maritime Safety Authority (AMSA) and the Queensland Department of Environment and Heritage Protection (DEHP) combine to administer the vast amount of regulatory provisions relevant to the operation of the port, and its place within the GBRWHA.

The continued development at ports within the GBRWHA has for over 30 years, been undertaken within the World Heritage framework including the guidelines and conventions of the World Heritage Committee.



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4. CURRENT REGULATORY FRAMEWORK

The regulatory environment which controls development in and around ports is both multifaceted and substantial due to the range of relevant international, federal, state and local regulations and policies that apply.

In the following sections QRC will outline how through a multi tiered system of:

- port planning and management;
- environmental assessment; and
- compliance with World Heritage obligations.

The regulatory framework is more than sufficient to ensure that leading practice sustainable port development can occur within the GBRWHA without the need for the extreme proposal of a complete moratorium as drafted in the Bill.

→ Port Planning and Management

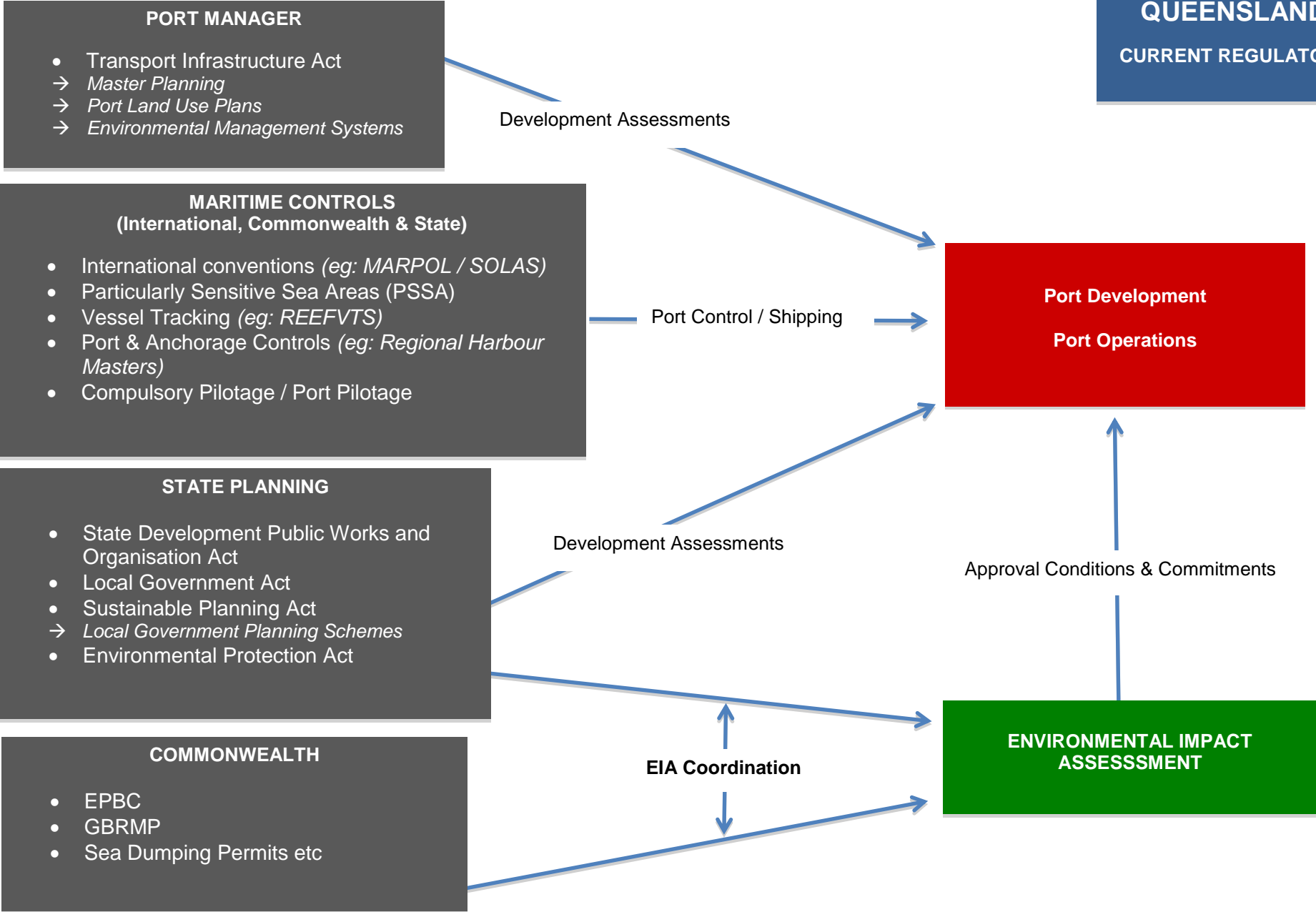
This section outlines the major regulatory instruments in place across the port area, and the number of regulatory agencies that are involved in the administration of these regulations.

Under the Transport Infrastructure Act 1994 (TI Act), a port authority is appointed to carry out the following:

- undertaking strategic port planning;
- ensuring maritime safety and security at the Port;
- issuing licences, leases and permits to other organisations for the use of port land, infrastructure and facilities;
- coordinating the development of port business and infrastructure development;
- maintaining navigable port depths for shipping;
- working with the port users to develop efficient and sustainable port practices;
- protecting the environment by minimising impact of operation and development; and
- addressing community concerns about port activities.

Figure 2 demonstrates the main regulatory influences at play in and around the port.

Figure 2
QUEENSLAND PORTS
CURRENT REGULATORY CONTEXT





QRC Submission: Independent review of the Port of Gladstone

Port Land Use Plan:

Statutory land use planning activities in ports in Queensland are primarily regulated in accordance with the approved Land Use Plan (LUP) administered via the TI Act.

The current Land Use Plans for resource ports in the GBR include:

- Port of Gladstone;
- Port of Abbot Point;
- Port of Hay Point;
- Port of Townsville;
- Port of Cape Flattery.

The preparation of a Port LUP involves:

- preparation of a '**Statement of Proposals**' which identifies the matters that the port authority anticipates that the land use plan will address;
- a **public consultation** period of at least 40 business days for the statement of proposal, including providing a copy to the relevant local government authority for comment;
- the preparation of a '**draft LUP**' taking account of the issues raised in the consultation process for the statement of proposal;
- **public consultation** on the draft LUP; and
- **finalisation** of the draft LUP, which addresses issues raised in the consultation period including from the relevant local governments for Ministerial approval.

Specifically, LUPs under the TI Act are required to:

(a) specify details of:

- (i) the port authority's strategic port land; and
- (ii) land the port authority proposes to become strategic port land; and
- (iii) the current and proposed uses of the land; and

(b) coordinate and integrate the *core matters* relevant to the land use plan (these include: 'land use and development', 'port facilities' and valuable features'); and

(c) identify **desired environmental outcomes** (DEOs) for the land; and

(d) include measures that will help achieve the desired environmental outcomes¹⁰.

Community Wellbeing

- Port operations are conducted in a manner that is safe for people and property;
- Adverse amenity impacts on adjoining areas from port operations and development are minimised and where possible continuously improved or avoided through management techniques, increased development requirements for newly establishing operations, improved on-site practices, and land use planning;
- Public access is provided to waterfront areas including boat ramps, public open space and a relevant marina where it does not compromise safety, security, operational or environmental values of port lands; and
- Land use planning of port lands has regard to land uses and land use planning on surrounding land.

Natural Environment

- Environmental risks are continually assessed and managed;

¹⁰ See Section 285(4) of the *Transport Infrastructure Act 1994* (Qld)



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- The State Planning Policy will be a consideration in future long term planning and development decision making on Strategic Port Land, in particular the importance of local habitats, degree of biodiversity and cultural heritage considerations;
- Future expansion and development of the ports facilities will address environmental and ecological considerations including air, land, water, noise and odour quality requirements, impacts on fauna and flora, including remnant vegetation and significant habitats, when assessing options or alternatives; and
- Open space and environmental buffers are provided between port facilities and vulnerable ecological features.

To ensure 'appropriateness of use' and 'protection of valuable features' around the port, the LUP divides all strategic port land into a series of precincts. This determination recognises both operational and environmental values of the port area ensuring that development of the port is sustainable and appropriate. The precincts are as follows:

- Port Industry Precinct
- Wharves (Off-Shore) Precinct
- Port Operations Support Precinct
- Light Industry and Commercial Precinct
- Marine Industry Precinct
- East Shores Precinct
- Parkland and Education Precinct
- Buffer Precinct
- Environment Precinct

All proposed developments are consequentially assessed in accordance with the LUP 2012 to determine:

- consistency with the 'development vision' for the port,
- correlation with the intent of the relevant locality and land use precinct, and
- the ability of the development to meet relevant development assessment criteria.

Figure 3 shows the relationship of various planning instruments relevant for land use planning and development assessment.



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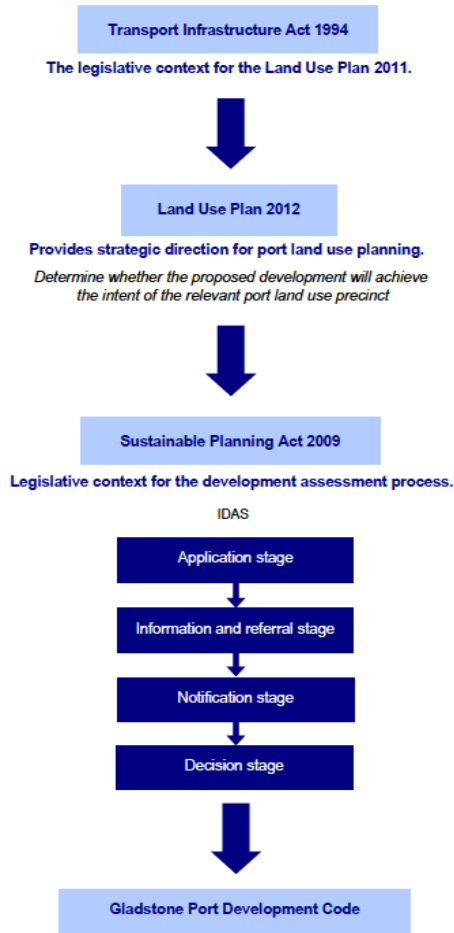


Figure 3: Relationship between relevant land use planning instruments



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→ State Planning Legislation

In addition to the use of LUPs, there is a series of other state-based legislation relevant to the development and operation of ports in Queensland, a summary of which is provided below.

Transport Infrastructure Act, 1994 (Qld)

The *Transport Infrastructure Act 1994* (TI Act) facilitates the planning, construction and operation of State roads, railways and ports, in conjunction with the *Transport Planning and Coordination Act 1994*. The overall objective of the TI Act is to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure.

Sustainable Planning Act, 2009 (Qld)

The *Sustainable Planning Act 2009* (SP Act) provides the regulatory structure for consideration of applications not administered by LUPs. It is relevant on port land only where uses are deemed to be inconsistent with the LUP provisions. It does however, have a central role in the consideration of development proposals on non-SPL within the port environs.

Environmental Protection Act, 1994 (Qld)

The *Environment Protection Act 1994* (EP Act) establishes a system of environmental assessment and approvals for conducting particular activities.

Under the EP Act it is an offence to cause serious or material environmental harm.

Environmental impact assessment (when triggered) is used to integrate environmental management with the approvals process for proposals and is intended to:

- ensure that proponents assume primary responsibility for protection of any environmental values that may be affected by their proposals;
- address environmental management for the expected life of proposals;
- contribute to statutory decisions on whether a proposal should proceed, and if so, decide what environmental management and monitoring conditions should apply; and
- where legislation allows, incorporate community and stakeholder views in assessment and decision-making processes.

Other relevant legislative instruments:

In addition to the legislation listed above, a number of specific environmental and management laws apply in Queensland depending on the activity proposed. These include the:

- *Coastal Protection and Management Act 1995*
- *Vegetation Management Act 1999*
- *Nature Conservation Act 1992*
- *Fisheries Act 1994*



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5. ENVIRONMENTAL ASSESSMENT

Throughout Queensland major new projects are subject to detailed and comprehensive environmental assessment, depending on the type and scale of the project the proposed project may trigger environmental assessment at the federal, state and local government level. The following is an outline of the environmental assessment frameworks relevant for most major port developments.

State Development and Public Works Organisation Act 1971 (Qld)

Under the *State Development and Public Works Organisation Act 1971* (SDPWO Act) proponents of a project with one or more of the following characteristics may apply to have their project 'declared' a 'coordinated project' by the Coordinator-General under the SDPWO Act:

- complex approval requirements, involving local, state and federal governments;
- significant environmental effects;
- strategic significance to the locality, region or state, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide; and/or
- significant infrastructure requirements.

While the primary establishment and protection of World Heritage areas occurs through federal legislation (see below), state legislation and in particular the SDPWO Act is able to assess impacts on World Heritage through accredited bilateral assessments between state and federal jurisdictions. An accredited assessment enables the Terms of Reference for an Environmental Impact Statement (EIS) to include areas of federal interest as well as matters of concern to the Queensland Government.

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

As the Committee is well aware, the Federal Government regulation to protect the environment is specifically focused on protecting Matters of National Environmental Significance (MNES). The primary legislative instrument that gives effect to the protection of MNES is the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) which establishes a need for environmental assessment and approval of actions that are likely to have a significant impact on a MNES. This approval process is extensive and there is no demonstrated need for it to be altered in the way proposed by the Bill.

The eight MNES are:

- Commonwealth Marine Area;
- Great Barrier Reef Marine Park;
- National Heritage Places (e.g. the Great Barrier Reef);
- World Heritage Properties (e.g. the Great Barrier Reef World Heritage Area);
- Threatened Species and Ecological Communities;
- Migratory Species;
- wetlands of international importance; and
- the environment where nuclear actions are involved.

When an action may significantly impact a World Heritage Property, such as the GBRWHA, proposals are required to address all possible impacts on World Heritage values. When considering whether or not to approve the taking of an action likely to have significant impact on a World Heritage Property, and what conditions to attach to such an approval, the Federal Environment Minister must not act inconsistently with:

- Australia's obligations under the World Heritage Convention; or
- the Australian World Heritage management principles; or
- a plan that has been prepared for the management of a declared world heritage property.



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Great Barrier Reef Marine Park Act, 1975 (Cth)

The Great Barrier Reef Marine Park (GBRMP) is a multiple-use area. Throughout the GBRMP a system of zoning and permits is used to manage and protect the values of the Park. Each zone has different rules for the activities that are allowed, the activities that are prohibited, and the activities that require a permit. Zones may also place restrictions on how some activities are conducted. The permits system enables the GBRMPA to:

- reduce impacts on high-use and sensitive areas;
- separate potentially conflicting activities;
- encourage responsible behavior by all Park users;
- collect data for planning; and
- monitor activities.

As a general guide, the following activities require a permit.

- commercial activities, including tourist operations;
- installation and operation of structures, such as jetties, marinas, pontoons;
- dredging and dumping of spoil, placement and operation of moorings;
- waste discharge from a fixed structure;
- research; and
- educational programs.

In assessing an application, the GBRMPA must consider criteria outlined in the *Great Barrier Reef Marine Park Regulations 1983* including:

- the potential impacts of the activity on the environment and on the social, cultural and heritage values of the Marine Park ;
- options for monitoring, managing and mitigating the potential impacts of the activity; and
- if the proposed activity will take place in an area to which a zoning plan applies — the objectives of the zone as set out in the zoning plan.

As the Marine Park is also part of the World Heritage Area, the GBRMPA must consider the effect that a proposal is likely to have on World Heritage values.

Environment Protection (Sea Dumping) Act 1981 (Cth)

The international agreement relating to the dumping of wastes and other matter in marine waters, including dredged material, is known as the London Protocol. Australia is a signatory to the Protocol and implements its obligations through the *Environment Protection (Sea Dumping) Act 1981* (the Sea Dumping Act).

For port operations the primary relevance of the Sea Dumping Act is in the assessment and disposal of dredging spoil generated in the development and maintenance of shipping channels and berths. The National Assessment Guidelines for Dredging 2009¹¹ set out the framework for the environmental impact assessment and permitting of the ocean disposal of dredged material. The framework includes:

- evaluating alternatives to ocean disposal;
- assessing loading and disposal recent sites;
- determination that the material is 'clean' and suitable for ocean disposal;
- assessing potential impacts on the marine environment and other users, and
- determining management and monitoring requirements.

¹¹ Available at <http://www.environment.gov.au/coasts/pollution/dumping/publications/pubs/guidelines09.pdf>



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6. NET BENEFITS TEST IN CONTEXT OF EPBC ACT

→ **Ecologically Sustainable Development**

The concept of 'ecologically sustainable development' (ESD) is the cornerstone of the EPBC Act, which is recognised under s3(1)(b) and s3A of the Act. The principles of ESD are to be distinguished from the concept of pure environmental protection, in that ESD recognises that there should be a balancing of long and short-term economic, environmental, social and equitable considerations in a decision-making process.

ESD recognises that these considerations are not mutually exclusive. As such, QRC queries how the concept of a moratorium on all developments potentially impacting on the GBR until 2015, as well as a complete moratorium on future port development, aligns with a recognition of the importance of economic, social and equitable considerations. It would appear that the Bill is completely at odds with the objects of the EPBC Act, in that it places environmental protection as the only object of the Act.

→ **Outstanding Universal Value (OUV)**

Concept of Outstanding Universal Value

As a World Heritage Area, the GBR is recognised under the World Heritage Convention as having Outstanding Universal Value (OUV). The concept of OUV is defined in the Operational Guidelines for the Implementation of the World Heritage Convention (the Guidelines, UNESCO 2011) as "cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity".

The OUV of a World Heritage Property is articulated in a Statement of Outstanding Universal Value which is normally prepared at the time of inscription. Besides describing the attributes of the property that contribute to its OUV, the Statement of OUV provides the basis for the future protection and management of the property. A Statement of OUV was not prepared for the GBRWHA at the time of inscription. A retrospective Statement of OUV was only recently prepared and adopted by the World Heritage Commission in July 2012.

All World Heritage properties are required to be adequately protected and managed to ensure that their OUV (including the conditions of integrity at the time of inscription) are sustained or enhanced over time (UNESCO 2011).

The Operational Guidelines for the implementation of the World Heritage Convention outline the broad level requirements. This includes:

- appropriate legislative, regulatory and contractual measures for protection;
- boundaries for effective protection;
- buffer zones;
- appropriate management systems; and
- reporting.

The Guidelines also provide for the sustainable use of World Heritage Areas where that use does not adversely impact on the OUV of the property. In circumstances involving World Heritage areas it is also necessary to approach ESD with a conscious and evidence based focus on preserving the Outstanding Universal Value of the property, as outlined in the Operational Guidelines for the Implementation of the World Heritage Convention.¹²

¹² Refer to paragraphs 90 and 119 of the *Operational Guidelines of the Implementation of the World Heritage Convention*



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→ Proposed Net Benefit Test

As noted above, the cornerstone of the EPBC Act is the concept of 'ecologically sustainable development'. At its heart, ESD is a recognition that development can occur whilst simultaneously there can be acceptable environmental and biodiversity outcomes.

The proposed net benefit test is completely contrary to the concept of ESD, as it seeks to place environmental protection and restoration as the only object of the EPBC Act. Furthermore, it does this only in the context of the Great Barrier Reef. While QRC accepts the outstanding universal value of the Great Barrier Reef, it is not the only environmental asset of significance in Australia.

Furthermore, the concept of a net benefit test is a fundamentally flawed concept, as it seeks to impose restoration costs on the resources and ports industries as a result of 100 years of agricultural activities, fishing, coastal development, nutrient inputs and introduced species.

As contained in the core principles of ESD it is essential that all human activities balance their respective environmental outcomes with their economic and social outcomes in line with community expectations. A concentration or weighting on one particular industry or activity will not achieve the necessary balance needed to deliver ESD for the whole of the environment; especially if that industry/activity is a minor contributor to any ongoing environmental decline.

The addition of the 'net benefit test' is contrary to the existing management arrangements for the GBR WHA. The existing approach for the assessment of projects under the EPBC Act is one which recognises and supports multiple uses of the GBR and is based on the reality of the size of the GBR WHA.

A report commissioned by the GBRMPA titled "The Outstanding Universal Value of the Great Barrier Reef World Heritage Area"¹³ identifies that the very scale of the Great Barrier Reef WHA, the varied status of its constituent parts and the diversity of pre-existing uses, precludes the strict limitations of uses which would generally be expected in a small site listed for its natural qualities.¹⁴

This position was also supported by the House of Representatives Standing Committee on the Environment and Heritage report "*Managing Australia's World Heritage*" tabled in 1996. Terms of Reference for the report included inquiry into the management arrangements for inscribed World Heritage Areas and the extent of the Commonwealth's responsibilities in meeting its international and national obligations for world heritage properties. In respect of the Great Barrier Reef WHA, the report provides that:

*"Unlike many world heritage areas in developed countries overseas, some segments of most of Australia's world heritage areas did not have the status of a national park before they were listed as world heritage areas. These segments frequently brought with them into the world heritage areas their former uses. Rather than being 'national parks' within the IUCN's classification of protected areas, they are "Managed Resource Protected Areas" The Committee considers that multiple use of the world heritage areas is reasonable, particularly in very large world heritage areas, provided that all activities are 'subject to the overriding requirement to maintain world heritage values'."*¹⁵

Consistent with the finding of the Standing Committee, the GBRMPA has recognised that "*in very large WH areas like the GBR there really is no other option than a multiple-use approach*".¹⁶

¹³ (1997) Lucas et al.

¹⁴ Ibid at p 60.

¹⁵ See paragraph 4.125.

¹⁶ see UNESCO case study: great barrier ref: whc.unesco.org/uploads/events/documents/event-396-5.ppt; and GBRMPA webpage: http://www.gbrmpa.gov.au/corp_site/key_issues/conservation/world_heritage_fa.



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The multiple-use approach is consistent with the fact that much of the Great Barrier Reef, such as the sea surrounding the reef, was nominated to ensure the integrity of the site¹⁷ but not all of this area would rate highly in terms of world heritage values.

Consistent with this approach, the 25 year Strategic Plan for the Great Barrier Reef World Heritage Area (initiated and coordinated by the GBRMPA) aims to maintain World Heritage values while allowing reasonable use of the GBR's resources, and identifies that shipping, ports and associated activities in the WHA are of national economic significance.

Finally, it is worth noting that it is ambiguous as to the way in which a 'net benefits test', as is provided in the Bill, would operate in practice.

QRC is of the opinion that it could be interpreted that the concept of a net benefits test would amount to an ever increasing hurdle for proponents to pass, as it assumes that the benefits provided by previous proponents must be exceeded. Proponents that enter the assessment pipeline later are thus precluded from passing their application process, not because their application is not environmentally sound, but for no other reason that they cannot afford to enter into a 'net benefits race'.

The lack of a basic understanding of ESD and OUV in the provisions of the Bill, as well as the ambiguity and lack of transparent legislative drafting further convinces QRC that this Bill is not about protecting the GBR, but is instead yet another example of the Greens anti-industry agenda.

¹⁷ Great Barrier Reef Marine Park Authority, Nomination of the Great Barrier Reef by the Commonwealth of Australia for Inclusion in the World Heritage List Jan 1981, p6.



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7. VOLUNTARY INDUSTRY-LED PARTNERSHIPS

Along with the completely undemonstrated need for the proposed legislative changes under the Bill, by default the Bill also implies that the resources and ports industries do not undertake any activities in regard to the GBR that do anything more than meet the current regulatory requirements. This is patently untrue, and QRC has taken the opportunity to provide some case examples of current voluntary industry-led partnerships below.

→ Abbot Point Cumulative Impact Assessment

The recent application of a Cumulative Impact Assessment (CIA)¹⁸ methodology used at the Port of Abbot Point has showcased a leading practice approach to environmental impact assessment.

QRC and industry recognise the importance of assessing cumulative impacts, particularly in the context of the GBR, and QRC and its members support the adoption of clear and consistent voluntary industry-led cumulative impact assessments for major port developments, in partnership with government.

Using a CIA framework for assessment has been highly effective in enhancing the statutory 'project-by-project' assessments by adding a 'cumulative' picture of likely impacts and consequential management strategies. The success of the approach adopted at Abbot Point was based on:

- The flexible nature of the assessment - allowing a methodology and scope to be developed that was suitable for the Abbot Point situation. Overly prescriptive and statutory terms of reference have in the past been a constraint in this area.
- A partnership approach between proponents, port authority and government enabling a comprehensive study to be undertaken in under 18 months.
- The development of conservation objectives to protect key environmental values (including OUV) and guide port development.

The adoption of clear and documented environmental objectives is an excellent example of how port development can be managed to ensure acceptable environmental outcomes and achieve ESD.

It is therefore recommended that cumulative impact assessment frameworks be used in similar development and coastal environmental settings.

→ Integrated Monitoring Programs and Partnerships

Governments, port authorities and industry are increasingly looking at opportunities to integrate monitoring data, which adopts a 'whole of reef' approach.

To ensure community involvement and avoid duplication and inconsistent methodologies it is recommended that where they exist, such programs be incorporated into regulatory monitoring and approval conditions.

Two examples of the monitoring programs currently underway are:

Port Curtis Integrated Monitoring Program

¹⁸ See www.abbotpointworkinggroup.com.au



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The Port Curtis Integrated Monitoring Program (PCIMP)¹⁹ was established in 2005 to monitor the ecological health of Port Curtis. The annual water quality monitoring historically included measures of metals and nutrients assessed through physio-chemistry monitoring, water grab sample analysis, diffusive gradients in thin-films (DGT) samplers, oyster accumulation and eco-indicators (settlement nets).

In 2011, PCIMP was restructured and became an incorporated association (PCIMP Inc) to improve governance, including formalising procedural and management controls. As part of this restructure the program was independently reviewed (Hart et al. 2012²⁰), and based on the recommendations of the review PCIMP Inc established a Technical Sub-Committee which designed a new water quality monitoring program. The new program, which commenced in 2012, was also independently reviewed by both government specialists and some members of the original review panel.

PCIMP Inc facilitates collaboration of 15 local industries (including a number of resource companies) and organisations, and focuses on ambient mid- to far-field water quality monitoring, based on discharges and compliance requirements. Individual industries are responsible for monitoring near-field receiving environments and discharges as specified in project approvals and associated licence conditions.

The water quality monitoring program is conducted quarterly, and includes bioaccumulation of metals in oysters. The aims of the water quality monitoring program are to:

- monitor the health of water assets in Port Curtis;
- collect data on key water quality parameters;
- maintain a longitudinal study;
- include adequate sampling frequency to understand temporal changes;
- ensure coverage of water bodies in the Port Curtis region;
- allow identification of cumulative impacts; and
- compare monitoring data to reference sites.

Gladstone Healthy Harbour Partnership

The Gladstone Healthy Harbour Partnership (GHHP)²¹ is a proposed partnership between community, industry, government and research institutions to work together to develop a comprehensive understanding of the water quality and aquatic ecosystem health in Gladstone Harbour and report to the community on the health of the Harbour. Community engagement will be a key component of the program.

Organisations engaged in GHHP discussions are in the process of discussing how to progress towards a formal partnership.

→ Voluntary Industry-Led Partnerships

Recognition and utilisation of voluntary partnerships across governments, industry and other stakeholders can build on the important work that is already being done to plan for, and minimise, the environmental impacts of port development and operations. Adoption of real and proactive partnerships with stakeholders should be regarded as a vital component of ensuring the protection of

¹⁹ <http://www.pcimp.com.au>

²⁰ Hart, B., Abal, E., Babcock, R., and Schaffelke, B. (2012) Independent Review of Port Curtis Integrated Monitoring Program (PCIMP). Report to Independent Chair, PCIMP Inc. Board, February 2012.

²¹ <http://www.ehp.qld.gov.au/gladstone/healthy-harbour>



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the GBR. Some examples of such partnerships, with which the resources sector is already involved, are given below.

Rio Tinto Alcan

The industry's commitment to working with government and various community stakeholders is reflected through a number of organisations leading practice work on the GBR, such as Rio Tinto Alcan's work with the Great Barrier Reef Foundation and CSIRO on monitoring ocean chemistry along the length of Australia's Great Barrier Reef Marine Park.

BMA Coal

BMA Coal is also currently working with the Great Barrier Reef Foundation in the delivery of the eReefs project to assist in the protection and preservation of the GBR. BMA Coal is also a ZooX Ambassador participant and is committed to increasing the awareness of the GBR and leading practice reef management activities with its employees, their families and communities.

In addition, BMA Coal is also a supporter and sponsor in Mackay Turtle Watch. BMA has installed 'turtle friendly' lighting at the Port of Hay Point and the foreshore at the Port is managed for the protection of turtle nesting under a Land for Wildlife agreement.

QGC

QGC is working in partnership with Conservation Volunteers Australia on the Gladstone Harbour Catchment Care (GHCC) Program which will assist in protecting and enhancing water quality in the Gladstone Harbour such as by identifying and reducing marine debris. QGC has also funded a turtle triage facility within existing Gladstone Area Water Board fish hatchery operations in Gladstone to assist in the management of turtle health.



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8. CONCLUSION

As noted above, the GBR is unquestionably one of the most important features of Australia's biodiversity, as evidenced by its World Heritage listing through the recognition of its outstanding universal values. The resources sector has a very strong social licence to operate interest in preserving the biodiversity of the iconic GBR and our industry recognises that the health of both the reef and the resources sector are intertwined.

The overarching message we would like to give the Committee is that the Queensland Resources Council (QRC) completely rejects the contents of the Bill and its proposed amendments to the EPBC Act. We would assert that they are not only completely unnecessary, but are in direct conflict with the principles of ecologically sustainable development (ESD), and are solely driven by a political, anti-resources agenda.

As such we would invite the Committee to recommend that the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013 be rejected as completely inconsistent with the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

The QRC would be pleased to meet with members of the Senate Standing Committee on Environment and Communications to further discuss and elaborate on the information contained in the submission.