



Magnetic Island Community Development Assoc
PO Box 133, Nelly Bay,
Magnetic Island, Queensland 4819

ABN 88 303 909 978 Incorporated Association: 11505
HERITAGE INFRASTRUCTURE and PLANNING GROUP

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The Secretary
Senate Standing Committee on Environment
Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600

**Submission to the Senate Inquiry into the Operation of the Environment
Protection and Biodiversity Conservation Act (EPBC) 1999**

This submission is from the Heritage Infrastructure and Planning Working Group (HIP) of the Magnetic Island Community Development Assoc (MICDA) a not for profit community group.

We welcome the opportunity to provide our views to this Inquiry into the EPBC Act. Members of HIP represent a range of scientific and professional fields.

This submission relates to the operation of the EPBC in relation to matters of national environmental significance on World Heritage Magnetic Island. The thrust of our submission is that Magnetic Island has not been effectively protected by the EPBC:

- Magnetic Island is part of the Great Barrier Reef World Heritage Area, and is the only large island in the dry tropical part of the WHA. Magnetic Island includes critical habitats for threatened species, and has a number of terrestrial ecological communities that have an extremely limited extent in the World Heritage Area (GBRWHA). The island is subject to multiple administrative jurisdictions and land tenures and is experiencing significant development and urbanisation pressures.
- Many expressions of World Heritage values on Magnetic Island are significant at the scale of the entire GBRWHA. Some values are uniquely expressed on Magnetic Island.

[We draw to the attention of the Senate *A Preliminary Assessment of the World Heritage Values of Magnetic Island* prepared in 2004 by regional scientists, working with MICDA and Magnetic Island Nature Care Assoc. (<http://www.reeffutures.org/share/whmp.pdf>). The conclusions of this report are consistent with a subsequent report in 2005, *World Heritage Attributes and Values Identified for Magnetic Island and the Surrounding Marine Environment*, by independent consultants Richard Kenchington & Eddie Hegerl, contracted by the Australian Government Department of Environment Water Heritage and the Arts. This report identified 24 World Heritage values on Magnetic Island, of which 10 (40%) were assessed as a value uniquely expressed on Magnetic Island].

The failure of the EPBC to protect the natural values of Magnetic Island is exacerbated by the concurrent failure of State environmental and planning legislation and of local planning schemes. Prior to the March 2008 local council amalgamation, there has been a history of lack of support and active opposition from the local government to community initiatives to conserve the island.

This submission addresses five components of the Inquiry Terms of Reference [Items (a), (b), (d), (f) and (g)]. These items are headers to our comments.

Our recommendations are based in the lessons learned from our experience over a twenty year period of what is necessary to provide effective protection to a significant but threatened area such as Magnetic Island – a holistic approach that includes conservation planning, and responsive development control planning and implementation, so that major development proposals comply with the conservation principles of the EPBC. These efforts have not been supported by the EPBC, the overarching conservation legislation that applies to the island. Its failure is allowing continuing incremental damage to the World Heritage Values of Magnetic Island – a ‘death by one thousand cuts’.

Executive Summary

1. **Lessons learnt from the first 10 years of operation of the EPBC Act in relation to the protection of critical habitats of threatened species and ecological communities and potential for measures to improve their recovery ;(Item b)**

1.1 MICDA/HIP submits that

1.1.1 The EPBC has been ineffective in protecting critical habitats of threatened species and restricted ecological communities on Magnetic Island. We provide an **Attachment 1** of demonstration **case studies**. The Senate's attention is drawn to four cases which involved the EPBC – the proposed development at Radical Bay by Juniper Holdings Pty Ltd (2005 Ministerial determination), the proposed development (clear fill and subdivide) of 57 – 60 Sooning St, Nelly Bay by the Catholic Diocese in Townsville (2002 Ministerial determination), the referral under the EPBC by Meridien Holdings Pty Ltd of the proposed construction. of the multi storey development, Number One Bright Point on Bright Point between Nelly Bay and Geoffrey Bay and a proposal for camel husbandry and camel tours at West Point. Other case studies in Attachment 1 demonstrate the failure of State environmental and planning legislation and of local planning schemes. An **Attachment 2** outlines a succession of legislative and policy reviews in recent years and the absence of outcomes for Magnetic Island.

1.1.2 In our experience, the Australian Government Department of the Environment, Water, Heritage and the Arts (DEWHA) which administers the EPBC does not respond quickly to problems with policy implementation. Our comments outline a recent case in point on Magnetic Island involving an apparent breach of the conditions of approval by a developer.

2. **The impact of programme changes and cuts in funding on the decline or extinction of flora and fauna ;(Item g)**

2.1 MICDA/HIP posits that the extensive delay in completion of the policy statement for Magnetic Island and the associated ineffectiveness of the EPBC to provide protection to the island's flora and fauna is mostly a function of such programme changes and funding cuts. Much operational time in the administering department of Environment Water Heritage and the Arts (DEWHA) seemed to be lost to constant staff changes, and associated recruitment action and loss of corporate memory, despite the best endeavours of individual officers at the coal face.

3. **The findings of the National Audit Office Audit 38 Referrals, Assessments and Approvals under the EPBC Act 1999 ;(Item a)**

3.1 MICDA/HIP believes this Audit Office finding bears on a recent compliance investigation in relation to a Ministerial approval in 2005 for the construction and operation of a tourist resort at Radical Bay on Magnetic Island by Juniper Holdings Pty Ltd. It appears that the contractors to the developers were not aware of the conditions to the approval under the EPBC, and the accountability of the developer under the EPBC appears to be difficult to enforce.

And

4. **the effectiveness of responses to key threats identified within the EPBC Act, including land-clearing, climate change and invasive species, and potential for future measures to build environmental resilience and facilitate adaptation within a changing climate; (Item d)**

4.1 MICDA/HIP suggests that a two year delay in response to notification of an apparent breach of approval conditions (land clearing including a listed ecosystem) demonstrates that the EPBC is ineffective to respond to key threats.

5. the impacts of other environmental programmes, eg EnviroFund, GreenCorps, Caring for our Country, Environmental Stewardship Programme and Landcare in dealing with the decline and extinction of certain flora and fauna. (Item f)

5.1 A grant in 2002 of \$100,000 under the Commonwealth's National Heritage Trust Fund to the Magnetic Island Nature Care Association (MINCA) enabled the purchase for \$165,000 of a lowland 40 acre (16.177 ha) block of land at Bolger Bay on Magnetic Island. That block is now a Conservation Park under the Queensland Conservation Act, conserving flora and fauna in the central part of the island's least disturbed bay. The park forms a lowland link between the Unallocated State Land and National Park on the hilly uplands of the Island, and the bays coastal wetlands. the Unallocated State Land and National Park on the hilly uplands of the Island to the water's edge.

5.2 This block contains a wide range of lowland habitats previously unrepresented in the protected estate. Many more lowland habitats, that harbour listed species, are currently completely unrepresented in protected areas, and are most at risk of loss due to future development. Thus, further land purchases are necessary.

5.3 MICDA/HIP, applauds provision by the Commonwealth of funding for such land purchases, but notes that the viability of further land purchases on Magnetic Island is threatened by the escalation of market prices. We hope that comparable market-adjusted funding will continue to be available so that as appropriate, further areas of Magnetic Islands can be purchased and protected.

5.4 Despite being part of the National Reserves System, as well as World Heritage, the EPBC failed to stop an application to change land use on an adjoining lot to Intensive Animal Husbandry, and the department provided no support to local landholders appealing the decision.

6. General comment

6.1 MICDA/HIP has noted a recent media release by the Hon Peter Garrett AM MP Minister for Environment, Heritage and the Arts, about a landmark agreement under which the Australian and ACT Governments will conduct the first strategic environmental assessment in Australia for urban development to be conducted in accordance with S146 of the EPBC Act. As stated by Minister Garrett, "The use of strategic planning, assessment and approvals provisions of the Act will mean more timely and efficient measures for protecting our unique environment and facilitating sustainable development," and in this case "a strategic assessment will ensure sustainable development and matters of national environmental significance are considered early in the development planning process".

6.2 From our experience seeking protection for Magnetic Island, MICDA/HIP is of the opinion that this section of the Act would be more effective if its scope is extended to include agreements with Local government authorities as well as State and Territory Governments.

7. Recommendations

To redress the failings of the EPBC to protect critical habitats of threatened species and restricted ecological communities in a World Heritage Area, and the parallel failure of State environmental and planning legislation and Local government planning to provide this protection, MICDA/HIP proposes that:

- 7.1.** Local Government planning is made a cause for EPBC action. This will ensure that the protection of WH values is an outcome of the local planning process;
- 7.2.** The ability of the EPBC to deal with the cumulative impact of incremental change is strengthened;
- 7.3.** Consideration is given to reviewing the legacy of previous decisions under the EPBC where development action has not yet occurred, or where remediation action has not been taken. Such decisions are like an environmental time bomb, because action now will damage a now acknowledged World Heritage location;
- 7.4.** Commonwealth funding for land purchases for conservation purposes continues, and matches escalating market prices;
- 7.5.** Consideration is given to extending the scope of EPBC Section 146 to include local government authorities.

1 **lessons learnt from the first 10 years of operation of the EPBC Act in relation to the protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery [Item b]**

1.1 MICDA/HIP submits that

1.1.1 The EPBC has been ineffective in protecting critical habitats of species and restricted ecological communities on Magnetic Island.

We provide an **Attachment 1** of demonstration **case studies**. The Senate's attention is drawn to three cases which involved the EPBC – the proposed development at Radical Bay by Juniper Holdings Pty Ltd (2005 Ministerial determination), the proposed development (clear fill and subdivide) of 57 – 60 Sooning St, Nelly Bay by the Catholic Diocese in Townsville (2002 Ministerial determination), and the referral under the EPBC by Meridien Holdings Pty Ltd of the proposed construction of the multi storey development Number One Bright Point on Bright Point between Nelly Bay and Geoffrey Bay. Other case studies in Attachment 1 demonstrate the failure of State environmental and planning legislation and of local planning schemes. An **Attachment 2** outlines a succession of legislative and policy reviews in recent years and the absence of outcomes for Magnetic Island.

1.1.2 In our experience the Australian Government Department of the Environment, Water, Heritage and the Arts (formerly the Department of the Environment and Water Resources) (DEWHA) which administers the EPBC does not respond quickly to problems with policy implementation.

1.1.3 By way of example, we outline the outcomes of our proactive action to redress this failure, namely the preparation in 2004 of *A Preliminary Assessment of the World Heritage Values of Magnetic Island*.

1.1.4 In early 2005 following submission of the Preliminary Assessment report to the Commonwealth Minister for the Environment and the Heritage Division of DEWHA, two compliance officers visited the Island.

1.1.5 The Department then initiated a policy development project as part of its strategic planning for a number of fast developing areas at different points on Australia's coast, namely Busselton Bunbury W.A., Great Ocean Road Vic, and Mission Beach and Magnetic Island in Queensland. The Strategic Planning area of DEWHA contracted an independent consultant's report into the World Heritage Values of Magnetic Island,

1.1.6 The conclusions of the Preliminary Assessment report are consistent with the subsequent 2005 report *World Heritage Attributes and Values Identified for Magnetic Island and the Surrounding Marine Environment*, by independent consultants Richard Kenchington & Eddie Hegerl, contracted by the department. This report identified 24 World Heritage values on Magnetic Island, of which 10 (40%) were assessed as a value uniquely expressed on Magnetic Island (**Attachment 3**).

1.1.7 Those consultants visited the island in 2005. MICDA cooperated enthusiastically to assist their investigations and followed up regularly with the department. In November 2006 DEWHA commenced a consultation process with stakeholders including MICDA, visiting the island for one meeting.

1.1.8 MICDA/HIP followed up with a number of letters to the Minister, raising a number of issues relating to the operation of the EPBC to the Island. We have received two responses from the Minister, dated 13 May and 28 August 2008 respectively, each relying on "development of an EPBC Policy Statement for Magnetic Island." We are advised as recently as 11

September by departmental officers that this policy project is now nearly complete (after some 3 years).

2. the impact of programme changes and cuts in funding on the decline or extinction of flora and fauna [Item g]

2.1 MICDA/HIP suspect that the extensive delay in completion of the policy statement for Magnetic Island and the associated ineffectiveness of the EPBC to provide protection to the island's flora and fauna was a function of such programme changes and funding cuts. Much operational time seemed to be lost to constant staff changes, and associated recruitment action and loss of corporate memory, despite the best endeavours of individual officers at the coal face.

3. the findings of the National Audit Office Audit 38 Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999 [Item a]

3.1 MICDA.HIP understands that Audit Report No 38 in 2002-3 includes a case study on survey work on Christmas Island, where the department's contractor bulldozed a track through a rehabilitated area without obtaining environmental clearance. This report led to a requirement that contractors receive appropriate advice on their obligations to comply with the provisions of the EPBC Act, and raised awareness in both the Christmas Island Administration and the Perth Office in charge of capital works of the importance of meeting EPBC Act requirements before work commences.

3.2 This finding bears on a recent compliance investigation in relation to the previously mentioned Ministerial approval in 2005 of a tourism resort development at Radical Bay on Magnetic Island by Juniper Holdings Pty Ltd. In a letter dated 23 April 2008 MICDA/HIP drew the attention of the Minister to a possible breach of the conditions of the approval. This breach involved clearing of the site including destruction of an adjacent listed ecosystem, an evergreen vine thicket. Compliance officers have conducted an investigation and have written to Junipers seeking an explanation. After nearly 4 months the only advice we have received is that Junipers has not replied.

3.3 Without pre-empting the results of the compliance investigation, MICDA/HIP is of the view that the EPBC Act requirements have not been communicated to contractors and have not been met.

And

4. the effectiveness of responses to key threats identified within the EPBC Act, including land-clearing, climate change and invasive species, and potential for future measures to build environmental resilience and facilitate adaptation within a changing climate [Item b]

4.1 In relation to the Radical Bay development there is a further earlier example of slow response by the administering department DEWHA. In November 2006 a concerned island resident and HIP member advised the Compliance and Audit Section of DEWHA by e-mail about the nature and extent of clearing of native vegetation at Radical Bay, and provided supporting photographs and a map. She was advised by return e-mail at the end December 2006 that that the matter would be looked into early in 2007. After more than 2 years she had received no further advice and it was only after further representations in 2008 that action was taken by DEHWA. Compliance officers have been very professional in their

investigation, have apologised for the delayed response and it seems to us that they have limited power to call the developer to account.

5. the impacts of other environmental programmes, eg EnviroFund, GreenCorps, Caring for our Country, Environmental Stewardship Programme and Landcare in dealing with the decline and extinction of certain flora and fauna [Item (b)]

- 5.1** Funding from the Commonwealth Government under the National Heritage Trust Fund (a grant of \$100,000 in 2002) enabled purchase for \$165,000 by the Magnetic Island Nature Care Association (MINCA) of a lowland 40 acre (16.177 ha) block of land at Bolger Bay on Magnetic Island on the hilly uplands of the Island to the water's edge. The block is now a Conservation Park under the Queensland Conservation Act, conserving flora and fauna in the central part of the island's least disturbed bay. The park forms a lowland link between the Unallocated State Land and National Park on the hilly uplands of the island and the bay's coastal wetlands. The block is also home to the rare and vulnerable *Single Striped Delma* and the *Rusty Monitor* which are also listed as rare. The block was purchased with contributory funding from the Queensland State Government (\$45,000), and funds raised by MINCA from private donations.
- 5.2** The purchase of this block has contributed many lowland habitats to the protected estate that were previously unrepresented there. This is significant, as some World Heritage values that are uniquely expressed on Magnetic Island arise as a result of its extensive lowland habitats, which are home to many listed species. Unfortunately, these lowland areas coincide with the areas at most risk of destruction through development. Further land purchases with transfer to the protected estate are necessary.
- 5.3** MICDA/HIP hopes that comparable market adjusted funding will continue to be available so that as appropriate, further areas of Magnetic Islands can be purchased and protected.

CASE STUDY EXAMPLES

PROPOSALS CONSIDERED UNDER EPBC

RADICAL BAY

Issue: Proposed development by Junipers Holdings Pty Limited on freehold land at Radical Bay of Sea Temple Resort

- **Impact of the proposed development on the obligation to “present or make available for public viewing” the World Heritage Value of Magnetic Island. Relevant is the potential restriction of access to the public beach for the general public, particularly the mobility disadvantaged,**
- **Impact of the proposed development on the World Heritage Value of “Exceptional Natural Beauty”**
- **Impact on fauna and flora of surrounding national park of potential increased road traffic (pollution and road kill)**

Juniper’s proposed development of a Sea Temple Resort at Radical Bay, is for 100 units in blocks effectively five stories high, plus twelve private beachfront mansions, plus carpark and infrastructure. The proposed development would impose a very large non-natural construction in the centre of the Bay’s lowland. On a site stretching 250 metres across the beach (virtually the length of the beach) and between 70 metres and 270 metres inland, the development would replace a large proportion of natural features of the Bay with non-natural constructions. The addition of up to 394 overnight visitors (the maximum possible is 540) plus staff and over 200 day visitors would inevitably place a significant impact on the beach and near shore waters of, not only Radical Bay, but also the adjacent Florence Bay (part of Magnetic Island National Park) and Arthur Bay. Radical Bay is a recognised turtle nesting area and an official dugong protection area.

This proposal was assessed by the Commonwealth Minister for the Environment under the EPBC, deemed to be a “controlled action” and received conditional approval in May 2005, effective until December 2105. This assessment took into account the World Heritage Values of GBRMPA not the subsequently identified land based World Heritage Values of Magnetic Island.

The only action taken by the developers in the next 2 years has been work to improve the road access to Radical Bay, and most significantly clear of the site with bulldozers, resulting in total destruction of the native vegetation on site. This action was taken despite the condition of the approval that the Junipers submit to the Minister a plan “to minimize the impact of construction on the Great Barrier Reef World Heritage values” including “measures to minimize impact on existing vegetation, particularly the evergreen vine thicket ecosystem on site”. This vegetation is now gone. A compliance investigation in 2008 established that there may have been a breach of approval conditions. Add to this the rumour is that the site is again for sale.

Radical Bay, with its spectacular scenery, is acknowledged to be one of the best examples of the exceptional natural beauty of Magnetic Island, a core world Heritage value. The peace and tranquillity, features that contribute so greatly to the social and other amenity values of course would be destroyed by the development...

Much of the land is earmarked for parking lots (130 car park space) – leaving the only unfenced access to the beach a walkway (to be constructed) around the perimeter of the planned resort. A second required access to the beach is a rough bush track, crossing a creek bed. This will make significantly more difficult access to the beach, especially for the mobility disadvantaged,

Land access to Radical Bay is by road through National Park. Increased traffic due to resort clientele, staff, and service vehicles will damage the World Heritage Values of the National Park: Vegetation and habitat close to the road would be damaged by dust, fumes and emissions and increased road kill of native fauna is inevitable.

NELLY BAY

57-69 Sooning Street

Issue: Need to review referral decision in light of new information (identification of World Heritage Values of Magnetic Island)

A referral decision was made under the EPBC to allow a proposal by the Catholic diocese of Townsville to clear fell and subdivide this block of remnant lowland native vegetation, including a copse of mature poplar gum, the only such block remaining in Nelly Bay.

No development action has been taken in the subsequent 6 years. Following the identification of the terrestrial world heritage values of Magnetic Island, approval of such an action now is unlikely.

NELLY BAY/ GEOFFREY BAY viewscape

146 Sooning Street "One Bright Point"

In 2004 the proponents, Meridien Pty Ltd, referred to the Department of Environment & Heritage this proposal to build blocks of 5- storey units (a total of 124 units, and 265 bedrooms holding from about 400 to 530 persons) on the rock shelf projecting from Bright Point.

Issue: EPBC did not protect Geoffrey Bay World Heritage viewscape – the "exceptional natural beauty" of the Island

No evidence of enforcement of apparently agreed remediation action (tree planting)

MICDA/HIP made submissions about this multi-storey development, including a request for Ministerial Review of the proposal. Information provided included a photo montage of the proposed development, from plans and information supplied by Meridien and position verified through the Meridien office. (Copy is attached as Appendix)

This illustrated the visual impact of building complex (with internal and external lighting) on the natural aesthetics World Heritage scenic view of adjoining Geoffrey Bay, a Great Barrier Reef Marine Park B Zone (no fishing or collecting). When completed the new northern profile of the buildings (masking the natural decline from the ridge completely) exactly matches what MICDA/HIP submitted.

We believe that the department accepted assurances by the developers that trees (Hoop pines) would be planted on the Geoffrey Bay side to assist in mitigating any possible viewshed spoiling. There is no sign of any enforcement to plant the trees. (Some trees planted died within 3 months -and were never replanted).

WEST POINT

Issues: Proposal for camel husbandry and camel tours

- **Commonwealth and State legislation do not prevent land use which threatens the World Heritage Values of Magnetic Island:**
- **Recourse to the court system has achieved an outcome: A 2005 proposal for material change of use of a lot at Bolger Bay for**

camel husbandry and use of the public road to west Point for camel tours, which put at risk the great diversity of coastal ecosystems in close proximity, was prevented only by unilateral action by concerned residents and referral of this case to the Land and Environment Court.

The proposal was to house 8 camels in a set of three 20m x 20m pens on a flood plain lot adjoining Bolger Bay Conservation Park (purchased with assistance from the National Reserves Strategy Program) and the Marine Park. The location was in the centre of the most natural and least developed bay on the island. The daily nutrient load to be generated was to be equivalent to that of approximately 150 adult humans.

The use was inconsistent with the Green Zone but was approved by TCC despite local objections and concerns about the adjoining wetlands. The only assessment code applied was the Works Code that specified limits on noise and dust while constructing the star dropper fence for the pen. Despite the proposal clearly being Intensive Animal Husbandry under the definitions in City Plan, the National Code for Penning Camels was ignored, as were the relevant City Plan codes, and there were no structures required to contain the effluent.

State issues were not addressed. EPA assessment was not triggered due to the small size of the pens. It was not referred to DPI Fisheries despite the lot containing tidal land. It was not referred to DNRW despite the lot containing remnant vegetation.

Environment Australia was not concerned because it was not considered to be likely to have a significant impact on WH values.

Local residents appealed and took TCC and the proponent to the Land and Environment Court. The proponent eventually retired from the court case and the Court over-ruled the approval.

OTHER CASE STUDIES

NELLY BAY HARBOUR

Issues: Following the completion of Nelly Bay Harbour in 2002 and the subsequent construction of approved developments (Number 1 Bright Point and Pepper's Blue on Blue) a number of issues remain which can impact on future management of the World Heritage values of the island:

- **Density of development:**
The NBH development alone has doubled the island's population, by adding almost 2000 equivalent persons. This has been possible as there is no overall population cap for the island to suit its World Heritage status and existing infrastructure, especially roads;
- **No consequent development of a visual/aesthetic building code** for this location or Magnetic Island as a whole, again to conserve the World Heritage values of the island. The risk is an extension of a "concrete jungle";
- **Loss of World Heritage criterion "Exceptional Natural Beauty"** in Geoffrey Bay, a protected Marine National Park Zone, which is now overlooked by Number 1 Bright Point.
- **Environmental damage arising** including the impact of the NBH breakwater on the Nelly Bay beach, as follows:
 - The original design of the Nelly Bay Harbour breakwater was modified to resolve a constitutional issue, that it might extend the boundary of Queensland. This would require the consent of the other States and legislation passed through both houses of the Commonwealth Parliament. Therefore the breakwater was constructed separated from the land, with a bridge from the land to an island breakwater. However, within weeks of opening the bridge, beach sand began moving along and under the bridge. After a few months the sand had effectively rejoined the 'island' breakwater to the land, with no open water under the bridge at low tide. The GBRMPA had no option but to enforce the law and order the removal of that sand to maintain the constitutional obligation. Excavated sand was transported about half a kilometre along the beach and spread – at the expense of Queensland Transport which 'owns' the harbour and breakwater. Within twelve months the whole operation was repeated and by 2007 the sand had been shifted five times (said to be at a cost of \$100,000 per year).
 - With each excavation conducted, new beach erosion began, changing the beach shape in front of houses on the Esplanade and toppling well established casuarinas along the shore. Whereas in the 1990s the beach retreated perhaps ten metres, then stabilised, this new dynamic has seen at least a further 10 metres lost in less than 5 years.
 - Extracting sand under the bridge might briefly solve the constitutional question but it seems to be creating a more intractable instability in the beach dynamics. This situation could worsen dramatically as sea levels rise and exceptional circumstances like storm surges exacerbate the already vulnerable shore. The excavation needs to stop, now, and some other non-physical means needs to be found to fix the constitutional question.

- It is reported in October 2007 that the TCC and State Government are jointly funding \$80,000 for a project towards development of a Shoreline Erosion Management Plan. The Council will use this Plan to develop long term management strategies for the sustainability of areas experiencing erosion problems (such as Rowes Bay, Cungulla and Nelly Bay). The study is expected to take up to two years to complete. What will be the foreshore erosion in Nelly Bay in these 2 years?

NELLY BAY

124-126 Sooning Street

Issue: A 2004 development application for 48 units in one large complex, plus restaurant, shops and spa/gym, on a 8610 sq m. site. The thirteen storey development, 4 units wide, would stretch from Sooning St up the hill to a height of over 35 metres (115 ft) above street level.

In response to a Council condition that the developers consult with the community on this proposal, the developers referred the matter to the Planning and Environment Court. We believe that a compromise was reached in an out of court arrangement – with agreed limits to the height to the development. It has not yet been possible to confirm this understanding with the new Townsville City Council.

HORSESHOE BAY

Issue: **Ongoing Subdivision development** in Horseshoe Bay can impact on future management of the World Heritage values of the island through:

- **Loss of habitat**
- **Impact on World Heritage criterion "Exceptional Natural Beauty", and**
- **Hydrology and loss of recharge. It is a given that change to hydrology in Horseshoe Bay will also impact directly on the GBRMPA.**

Horseshoe Bay is the largest of the lowland areas of the Island and has large hydrology systems that drain from the uplands to a series of lagoons in the back beach swale.

The following outline of some of key development over recent years highlights the risks. Prior to the 1980s, the majority of this land was in large blocks, mainly 10 or 20 acres either undeveloped, or used for farming or hobby-farming land. The eastern side of the lowlands was pineapple farms and in the 1980s this was the first area to be developed into "inland" residential land, all of reasonable sized suburban blocks

Island Crest, Gifford Street

The southern (uphill) side of Gifford Street had one small subdivision completed some years ago. (Dolphin Court) that was large blocks. The large parcel of land (and abutting that first development) now known as Island Crest was developed by a local family who wished to undertake an environmentally more sensitive development and proposed to Townsville City Council that the land be divided into approx acre blocks with "aussie cycle" sewerage treatment that would return the water to the owner's own land. This proposal was deemed by TCC to be unacceptable, and the headworks charges were set at a figure that meant the developer (it was part of his company's superannuation investment) had little choice but to develop in suburban blocks, and he chose not to debate further with the Council and so kerb and channelling and "regular" roads were built. As part of the development and under Council supervision natural seasonal

creekflows have been diverted into drains and piped away to another creek system (not without problems at the point the drains join that creek). This changed the total hydrology of the lowlands.

The Townsville City Council in 2006 commissioned a major study on the whole hydrology of that section of Horseshoe Bay. That report is not available to the public.

Sandals

The former Mango Farm, and now "Sandals" is built absolutely adjacent to the wetlands, with what MICDA regards as some unacceptably small blocks (300sq metres), and the only concession won is that there is natural road drainage into gravel drains, not kerb and channelling. However, roof runoff can be diverted into the new sewerage, depriving the wetlands of vital recharge.

The Black Stump, Horseshoe Bay Road

In 2006-7 the area known as "The Black Stump" adjoining Horseshoe Bay Road and backing on to the National Park has been clear felled (not that there was a lot, but there was some large tree cover). This area is being sub divided into more suburban blocks, as are several other land parcels within the Bay (eg subdivisions known as The Forts, former "Koala Park", Bayside Park, Mountain View Circuit, former "Brodie land" (This one subdivides the floodplain to a seasonal creek).

PICNIC BAY

Issue: : Infill of residential beachfront/creekfront land, Magnetic Street
 ➤ **No regulation of environmentally damaging action by landowner**

The site is a large block of residential beachfront land and at the beach end of Magnetic St, where a creek is has been infilled, by owner/developer (Mr Watson) presumably as a beachfront development

The road is gazetted but not made where this block fronts this road. The block actually fronts Butler Creek and Picnic Bay Beach, and is located at the extreme eastern end of urban residential land in Picnic Bay

Work on of this site has included infilling of a tributary creek and engineering to the natural hydrology (installation of culverts etc.) on beachfront/creekfront land. Residents have reported that the owner first infilled the creek that runs the length of the block using mulch from the green tip (estimated about 150 truckloads of mulch, each load being 5 cubic metres -- estimated total 7,500 cubic metres), and has also done ad-hoc works to stabilize this fill. He is reported to have topped the mulch with fill obtained from the Nelly Bay Harbour site (crushed marine sediment). An estimated 50 truckloads totalling 2,500 cubic metres have been delivered and placed in the creek to compact the mulch. Apparently this work is ongoing.

Concerns for this site:

1. quality of engineering, fill and stabilizing works -- apparently a home grown job, with no assessment. This may have profound local erosion impacts on the Butler Creek estuary and Picnic Bay.
2. alteration of natural watercourse and damage to Butler creek system
3. quality of fill: fill from tip will decay with leaching of nutrients to Butler creek; fill from Nelly Bay Harbour is reportedly hyper saline, with potential to damage the watercourse ecology.
4. removal of native vegetation.

COCKLE BAY:**Issue: Sewage Treatment Plant (STP)
Environmental impact on land based World Heritage values of
installation of tertiary sewage system in Cockle Bay, further to the TCC
1996 Wastewater Strategy**

This state of the art \$8.3 m tertiary level treatment plant installed in 2003 and designed to protect marine WH values, has in the process impacted on terrestrial values.

The STP was built on the delta of the major creek running into the second largest wetland on the island, smothering the delta and diverting the creek, and encroaching on the margins of the wetland.

It involved the destruction of substantial structural remains of an historic building, without the knowledge of the Cultural Heritage section of the EPA

The STP then became the justification for rezoning the adjoining council owned bushland to Industrial, despite the land containing the largest remnant of the most threatened lowland ecosystem on the island (see below).

Issue: Industrial Land**Ambiguous jurisdictional boundaries and fragmented decision making,
with negative environmental impact.**

TCC compulsorily acquired this land for community purposes (sewage treatment), when it was zoned Park Residential due to the "significant environmental values and constraints". TCC then built the STP on an adjoining reserve on a wetland/creek delta and rezoned its own land "Residential", prior to the release of CityPlan. Changes in zoning are not covered by the EPBC, and state advice was ignored.

Council then offered to lease some of this land to a business for a concrete batching plant, and the associated Application for a Material Change of use was challenged by local residents. After languishing for many months in court, TCC avoided the appeal by amending its own plan to change the preferred use for the area next to the STP, on its own land, to Industrial.

The land rezoned is a discharge area adjoining the second largest wetland on the island, the largest remnant of high level alluvial woodland remaining on the island, and habitat for the EPBC listed Endangered *Delma labialis*.

State advice was ignored, despite the change in use being against policies of the State Coastal Plan. State involvement in the decision was avoided by using a lease arrangement rather than a subdivision (which would have been captured under the Coastal Management Act). EPBC was not triggered because a change in zoning is not captured. EPBC would be triggered by the start of clearing, but on past record the impact would not be considered "significant".

TCC has ignored, ie not replied, to two requests to list the land under its Local Law (Vegetation Management). The State Vegetation Management Act will not be triggered because Industrial is considered an "urban use".

Despite being "community owned" land, TCC has allowed the land to be used as a racetrack and a car body dumping ground by local youths, which is continuing to degrade the World Heritage values of the land.

ALMA BAY**Issue: Density of Development/No visual/aesthetic building code**

A development proposal was lodged with TCC in 2004 by Indigo Arcadia and BMD Properties Pty Ltd for a \$60 million resort in Alma Bay. The resort comprises a total of 218 residential units (84 in the initial stage) and a small village centre with shops and restaurants. The resort is planned for the site of the current Arkie's Resort, on the four hectare parcel of land opposite Alma Bay Beach. It was following a community consultation about the proposed development in September 2004 that the developers agreed to reduce the

allowable population density in the proposal for the site from 392 to 252 people (or 140 occupants less), to reduce the number of units from 246 to 218 and to drop the maximum height of their buildings from four to three levels.

The developers claim the development has a number of built in environmental features. The most notable being a storm water creek which will flow through the development and include ponds where reeds and other plants will be used to remove nutrients. The creek will also work to relieve the run-off from the streets above the development so as to clean any water before eventual discharge to Geoffrey Bay. Other features of the development include the preservation of the historic Hayles House as well as the likely retention and restoration of one of the existing cottages. The Arkies pub building will also be retained but remodelled so as to make for a walk-through retail area with a small bar and a community arts centre upstairs.

In May 2005 it was reported that the development was on hold because of skilled labour shortages. In 2007 it was reported that that the developer was reviewing the project.

Concerns: While the consultation process has been a positive and applauded approach by the developers, concerns about the proposed development remain, namely that it will:

- Change the character of beach and Alma Bay, which is currently relatively uncrowded and peaceful, features which contribute to the social and other amenity values of the Island.
- Significantly increase, and possibly even double, the Alma Bay population with this one development

These concerns are exacerbated by the cumulative impact of ongoing development across the island.

Legislative and Planning Reviews

Date	Review of	Review by	Status	Result for Magnetic Island
2008	State Coastal Plan in accordance with Coastal Protection and Management Act 1995	Minister for Sustainability, Climate Change and Innovation and Environment Protection Agency	ongoing	unknown
2007	Review of Local Government Act 1993	Minister for Local Government, Planning and Sport and Department of Local Government, Planning, Sport and Recreation	Completed	None known
2006-7	Integrated Planning Act 1997	Environment Protection Agency	Completed	None known

Policy Development

Date	Policy issue	Commitment by	Status	Result for Magnetic Island
2008	Queensland Iconic Places Act 2008 – nomination of iconic places: community nomination of Magnetic Island as a state "Iconic Place"	legislation	Determinations by Minister by 30 June 2008	None known
2004	Policy principles for World Heritage properties legislation	endorsed by Queensland Cabinet	on hold pending further consultation with Commonwealth.	None known

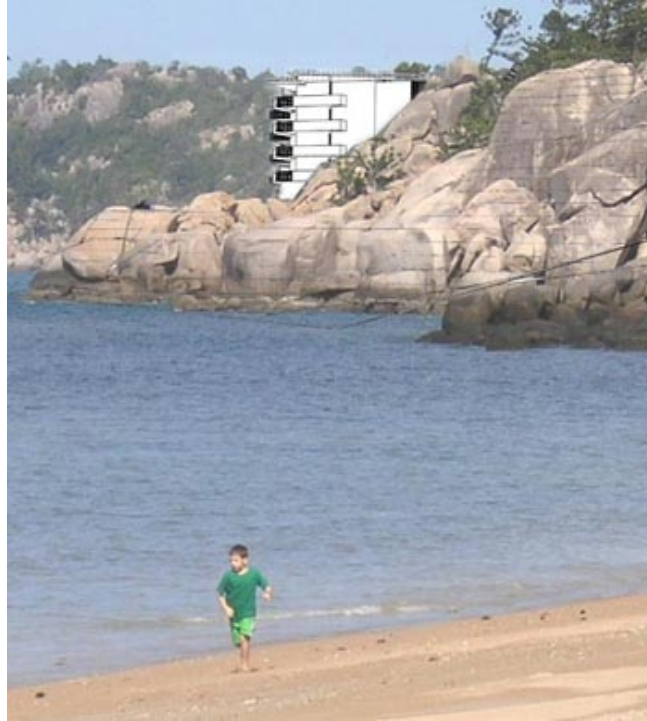
Date	Policy issue	Commitment by	Status
Coastal Planning further to above Review of State Coastal Plan	EPA MICDA President was asked in 2006 to participate in the development of this plan as a member of the Regional Consultative Group. However, probably due to the intervening election, this group has not yet met, although public submissions have been called for consideration in this proposed plan.	no action	None known
from 2003	Conversion of Unallocated State Land to Magnetic Island National Park	Ministerial correspondence	Not actioned. Various reasons cited in Ministerial correspondence including need to resolve indigenous issues, cost of proposed transfer, pending advice from TCC, (though TCC has no legal standing in due process)

Appendix to Attachment 1

Meridien Development at Bright Point Nelly Bay Magnetic Island

View of the seaward end of the development as viewed from Geoffrey Bay, the next bay north – a bay with no inappropriate development.

Image created by MICDA – from plans and information supplied by Meridien and position verified through the Meridien office.



Magnetic Island World Heritage Values

Magnetic Island's World Heritage values are identified according to the criteria used in the 1981 nomination of the GBRWHA and are scored as follows:

- *** A value uniquely expressed on Magnetic Island
- ** A Value for which Magnetic Island contains a highly significant expression or the majority of expressions in the GBRWHA; and
- * A value for which Magnetic Island is a minor component of expressions in the GBRWHA

Many of the identified values are not uniformly expressed on Magnetic Island or within the areas in which they occur. In the context of management of a site or area where a particular value occurs, it is generally necessary to understand the condition and contribution of that site to the conservation and protection of that value in Magnetic Island as a whole.

Criterion from 1981 Nomination	Identified Magnetic Island component value	Relative WH contribution
i) outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features	<ul style="list-style-type: none"> ● It is the largest continental island in the Dry Tropics of the GBRWHA and the seventh largest and fourth highest island within the entire World Heritage Area 	***
	<ul style="list-style-type: none"> ● The island provides significant examples of high geological and geomorphological diversity 	**
ii) outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals	<ul style="list-style-type: none"> ● Combination of high terrestrial diversity and a high diversity of tidal and marine habitats in a relatively small area makes the island significant for addressing the range World Heritage obligations with respect to the natural and cultural values of the GBRWHA 	**
	<ul style="list-style-type: none"> ● The intact and regenerating ecosystems of the island provide a significant local example of the ecological processes of resilience in response to present and past impacts of stock grazing, feral animals and introduced weeds 	*
	<ul style="list-style-type: none"> ● The marine ecosystems and communities are structurally and biologically diverse reflecting a gradient of exposure to marine and coastal 	**

	<p>influences and differences in oceanographic processes in their community composition</p> <p>Cockle Bay represents an outstanding example of the inter-related intertidal and subtidal marine habitats that can be found in association with the continental islands of the GBRWHA. Cockle Bay is the longest established sea grass monitoring site in the GBRWHA</p> <ul style="list-style-type: none"> • The nearshore seagrass beds are significant nursery areas for penaeid prawn species and fishes of recreational and commercial importance to GBRWHA visitors and residents 	<p>**</p> <p>*</p>
(iii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance	<ul style="list-style-type: none"> • The island has mountainous terrain and a shoreline with a rich variety of landscapes and seascapes of exceptional beauty 	***
(iv) contain the most important and significant natural habitats for in situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation	<ul style="list-style-type: none"> • With semi-permanent freshwater areas and a fairly large area of lowlands, the island supports a dry tropical, granite-associated continental island flora that is unique in the GBRWHA • Magnetic is the only Dry Tropics continental island in the GBRWHA with highly varied fringing reefs formed in many of the shoreline embayments • The island is one of the two most botanically diverse of the continental islands of the GBRWHA. It supports over twenty-five distinctive terrestrial ecosystems in less than 5,200 ha. • The island supports the third largest number of rare and endangered vascular plants species of the continental islands within the GBRWHA • The island has a rich butterfly fauna and supports an endemic butterfly subspecies - one of the two known from the GBRWHA • The island supports Sadliers dwarf skink that is one of only three known island endemic reptiles in Queensland • The general diversity of habitats, makes the island a nationally significant refuge for many 	<p>***</p> <p>**</p> <p>**</p> <p>***</p> <p>***</p> <p>***</p> <p>***</p>

	<p>species. These include the single striped delma and twelve other species of animals that are listed as endangered, rare or vulnerable under the Queensland Nature Conservation Act</p> <ul style="list-style-type: none"> ● Part of the Gustav Creek Area supports one of the highest known densities and diversities of small lizards known in North Queensland ● The nearshore seagrass beds associated with the island support the third highest diversity of seagrass species known from the GBRWHA and provide important nursery habitat for many fish and invertebrate species ● The nearshore seagrass beds are a crucially important habitat for the survival of dugong in the southern GBRWHA and also are used as a feeding area by the endangered green and turtle, which nests in small numbers on several island beaches ● The fringing reefs vary in physical and biological structure, are easily accessible and support a significant percentage of the total number of hard coral species known from the GBRWHA ● One of the island's shallow water fringing reefs supports a rare deepwater soft coral that is not known from any other location in the GBRWHA 	<p style="text-align: right;">*</p> <p style="text-align: right;">**</p> <p style="text-align: right;">**</p> <p style="text-align: right;">**</p> <p style="text-align: right;">***</p>
<p>The area in this nomination contains many middens and other archaeological sites of Aboriginal or Torres Strait Islander origin</p>	<ul style="list-style-type: none"> ● Indigenous Place, Florence Bay recognized on Register of the National Estate ● Features identified as culturally significant for the Wulgurukaba people. Locations and details not available: <ul style="list-style-type: none"> ○ Middens ○ Archaeological sites ○ Quarry sites ○ Stone artefact scatters ○ Burial sites ○ Fish traps ○ Rock shelters with cultural deposits ○ Contact sites where middens incorporate European materials in their upper levels ○ Historic camping and fishing locations 	<p style="text-align: right;">***</p> <p style="text-align: right;">**</p>
<p>There are over 30 historic shipwrecks in</p>	<ul style="list-style-type: none"> ● The national shipwrecks database records 553 wrecks within the GBRWHA. Seven of these 	<p style="text-align: right;">*</p>

the area	<p>are recorded for Magnetic Island:</p> <p><u>Bee</u> 17/03/01 Picnic Bay</p> <p><u>City of Adelaide</u> 01/01/1915 Cockle Bay</p> <p><u>Fate</u> 01/01/1896 Magnetic Island</p> <p><u>May Queen</u> 01/01/1913 Magnetic Island</p> <p><u>Moltke</u> 01 /01/91 Geoffrey Bay</p> <p><u>Norseman</u> 04/02/1893 Horseshoe Bay</p> <p><u>Presto</u> 01/01/ 1896 Nelly Bay</p> <p>None is noted as having particular historic significance. A further 6 shipwrecks in Magnetic Island waters are identified by the Maritime Museum of Townsville. These are: Burdekin, George Rennie, Magnet, Octopus, Palmosa and Platypus (Vivienne Moran pers comm.)</p>	
on the islands there are ruins and operating lighthouses that are of cultural and historic significance	<ul style="list-style-type: none"> • Places on Register of the National Estate <ul style="list-style-type: none"> - Forts Complex, Radical Bay Road 	***

Sources of heritage information include:

Australian National Shipwreck database <http://eied.deh.gov.au/nsd>

Register of the National Estate <http://www.ahc.gov.au/register>

Australian Heritage database <http://www.deh.gov.au/heritage>

Queensland Heritage Register
<http://www.epa.qld.gov.au/projects/heritage/listing.cgi>