

# CHAPTER 1

## OVERVIEW

### Conduct of the inquiry

1.1 The Senate referred this inquiry to the then Environment, Recreation, Communications and the Arts References Committee on 14 May 1998. The inquiry was re-adopted by the renamed Environment, Communications, Information Technology and the Arts References Committee when the new Parliament met after the October 1998 general election. The terms of reference for the inquiry are:

- 1) The relationships between Federal, State and local governments and developers in the Hinchinbrook Channel
- 2) The effect of developments on the environment of the Hinchinbrook Channel and surrounding environs
- 3) Whether governments have met their obligations under the various Acts and agreements that deal with the Hinchinbrook area
- 4) Alternatives to the existing regime
- 5) What lessons have been learned and what can be done to prevent problems like this occurring in the future.

1.2 The inquiry was prompted by continuing public controversy over the Port Hinchinbrook resort development at Cardwell, North Queensland, an area adjacent to the Great Barrier Reef World Heritage Area. The Cardwell site was cleared in the late 1980s; the development company failed; a new developer resumed work in 1994 until stopped by the former Labor Commonwealth government in November 1994 because of concerns about possible environmental impacts on the adjacent World Heritage Area. In August 1996 the newly elected Coalition Commonwealth government gave the approvals necessary for work to resume, and the development is now well under construction. A more detailed chronology of the Port Hinchinbrook development is in chapter 2.

1.3 The Committee advertised the inquiry on 19 May 1998 in the *Brisbane Courier Mail*, the *Townsville Bulletin*, *The Australian* and a number of North Queensland regional newspapers. It received 166 primary submissions (see APPENDIX 1) plus a large amount of additional information (see APPENDIX 4). The Committee heard 60 witnesses at hearings in Cardwell, Townsville and Canberra (see APPENDIX 2). During its visit to Cardwell the Committee inspected the Port Hinchinbrook development site by invitation of the developer, Mr Keith Williams.

1.4 The Committee relied for its information on written submissions, evidence given at hearings, and further information received in answer to questions which the Committee addressed to certain parties following the hearings (see APPENDIX 4).

1.5 The Committee was expected to report by 17 September 1998, but was delayed by the election campaign at that time and the need to re-establish the Senate committees in the new parliament. In the first half of 1999 the Committee had to give priority to a number of other major or urgent inquiries, including an inquiry into the environmental effects of the government's tax reform package, an inquiry into the Environment Protection and Biodiversity Conservation Bill 1998, an inquiry into the Commonwealth's environmental powers, an inquiry into the Jabiluka uranium mine, and inquiries in the broadcasting and telecommunications area.<sup>1</sup> Consequently, the reporting date was extended to September 1999.

### **Overview of submissions**

1.6 The controversial Port Hinchinbrook development was the focus of most submissions. Most of these submissions divided clearly into supporters and opponents of the development. A clear majority of the submissions were opposed to the development.

1.7 Supporters of the development were mainly local interest groups (such as Cardwell and Hinchinbrook Shire Councils and the Cardwell Chamber of Commerce) and sympathetic individuals. They argue that Port Hinchinbrook will provide much-needed economic development for the region; that the development does not have detrimental environmental impacts; or that the various environmental controls will adequately prevent or mitigate impacts. They argue generally that there has to be a 'balance' between jobs and the environment. Their view of where the right balance lies is obviously much different from that of environmental groups. The right balance between conservation and development is discussed in chapter 5.

1.8 Opponents of the development were predominant in submissions to this inquiry. They were mainly environment groups (both local and national) and sympathetic individuals. They deplore the lack of a thorough upfront environmental impact assessment for such a major development abutting the Great Barrier Reef World Heritage Area (the reasons for this lack, dating back to the 1980s, are discussed in chapter 3). They say that such a study should have been an input into the decision whether to approve the development in the first place, not merely an afterthought concerned with monitoring and mitigating environmental impacts. They do not think that the Deed of Agreement between the developer and the governments (explained in chapter 2) is a satisfactory substitute. They think that the authorities involved at all three levels of government have been too eager to expedite the development, at the expense of their duty to protect the environment. They claim that the development is

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1 The inquiries referred to were conducted by the Senate ECITA Legislation Committee as well as the ECITA References Committee. The committees share secretariat resources and most committee members.

having detrimental environmental impacts. They agree with the need for ‘appropriate’ economic development in the region, but think that this development is not appropriate. They argue that the benefits of the development to the local economy of Cardwell are unresearched and uncertain, and the development is just as likely to draw economic activity away from the existing town as towards it.

1.9 The Commonwealth<sup>2</sup> and Queensland governments and the developer (Cardwell Properties Pty Ltd: principal Mr Keith Williams) assert that there are no significant detrimental impacts and the environment is adequately protected by the various environmental management measures under the Deed of Agreement. The developer additionally argues that he has complied with all the environmental requirements of the authorities and ‘...if the opponents of Port Hinchinbrook have any justifiable grievances then they should level their criticism at the government and not at my company.’<sup>3</sup>

1.10 The Committee received submissions and evidence from a number of scientists, mostly in relation to the risk of damage to the environment from acid runoff from the Port Hinchinbrook property (discussed in chapter 4). These had mixed opinions about the extent of actual environmental damage; but significantly, almost all were concerned about the risk of damage and believed that the procedures used in approving and controlling the development have been flawed.

1.11 Some submissions talked about other environmental threats to the Hinchinbrook region (particularly effluent from aquaculture and effects of clearing land for canegrowing). These submissions were not numerous enough or detailed enough to support more than brief comments by the Committee (see chapter 5).

### **Controversial character of the Port Hinchinbrook development**

1.12 The Port Hinchinbrook development has been unusually controversial and much of the argument about it has been bitter. The Committee attributes this to the unhappy conjunction of several factors:

- The lack of a thorough upfront environmental impact assessment (for historical reasons dating back to the 1980s) leaves the field wide open for ongoing argument about what the environmental impacts will be. It fuels the claims of environment groups that the authorities are too biased in favour of development at the expense of environmental protection. The Deed of Agreement, because it is so obviously a one-off measure to compensate for the lack of upfront assessment, does not assuage the concerns of environment groups. The Committee notes evidence that in certain respects (mainly in relation to

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2 The Commonwealth's submissions were made variously by Environment Australia (the Department of the Environment; now the Department of the Environment and Heritage) and by the Great Barrier Reef Marine Park Authority (GBRMPA). In the Port Hinchinbrook matter GBRMPA has no statutory role but has been acting as the agent of the Minister.

3 Cardwell Properties P/L, Submission 83, annexure C.

management of acid sulfate soils) the Deed has not been fully complied with. See paragraphs 3.29, 4.23 and 4.37. Despite evidence of repeated breaches the matter has never been tested in court.

- The long period of intermittent action on the development has allowed the debate to simmer, the question apparently unresolved, for an unusually long time. Although development was approved in 1988, and major earthworks were done around that time, the environment movement conclusively lost its battle to stop the development only in mid-1997, when Friends of Hinchinbrook Inc. lost its Federal Court appeal against the August 1996 decision by Senator Hill (Minister for the Environment in the newly elected Coalition Commonwealth government) which had allowed work to resume.<sup>4</sup>
- The development is a major one, abutting the Great Barrier Reef World Heritage Area, and about 6 kilometres from the Wet Tropics World Heritage Area; as well, there are a number of endangered species involved; so the stakes are high for both its supporters and its opponents.
- The geographical situation is such that one fairly small and isolated town clearly ‘owns’ the development. In the late 1980s Cardwell suffered from loss of timber jobs consequent on the declaration of the Wet Tropics World Heritage Area. The town hopes for job opportunities from this development. People fear the loss of essential services if the population does not increase; or they hope that the development will ‘... bring enough additional families to the area for us to have our own high school.’<sup>5</sup> It seems fairly clear that significant numbers of Cardwell people support the development.<sup>6</sup> Thus the more factual science-based debate about actual environmental impacts becomes quickly submerged in a more political debate about local sovereignty versus broader national interests (this is discussed in chapter 5).
- Many of the hostile parties have very different opinions on key matters - for example, where the right balance lies between environment and development; how much impact is ‘significant’; what the precautionary principle should mean in practice; how much expense is warranted to avoid a certain level of risk. These are matters of value judgment that in the end must be decided by the political process.

1.13 A few of the submissions and evidence to this inquiry - but including some key ones - were acrimonious, and attacked each other’s *bona fides* in various ways. Some supporters of the development spoke of ‘rentacrowd objectors’ and ‘militant fanatical elements who masquerade as conservationists’, or claimed that the

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4 See paragraphs 3.42ff.

5 For example R Walker, Submission 137, p 617; L Hallam, Evidence 30 July 1998, p 12.

6 Cardwell Properties P/L, Submission 83, p 16 & attachment A, p 3; Friends of Hinchinbrook, Submission 129, p 591; L Hallam (Cardwell Chamber of Commerce), Evidence 30 July 1998, p 3; C Kuskopf, Evidence 30 July 1998, p 81.

conservation movement in this matter has a 'political agenda'.<sup>7</sup> In this there is obviously a strong undercurrent of generalised local resentment against outside interference, whether by 'Townsville academics', the Queensland government or the Commonwealth. Some environment groups attacked the development not only by arguing about environmental impacts, but also by various statements apparently aimed at generally undermining the credibility and reputation of the developer.<sup>8</sup> In response the developer claimed to be the victim of a personal vendetta.<sup>9</sup> He also attacked a number of scientists who have expressed concern about the development as having 'political motives' or 'bastardising their credentials' - the specific accusation is unclear but the general idea seems to be that they have compromised their professional ethics in some way because of personal opposition to the development.<sup>10</sup>

1.14 The Committee is satisfied that the developer is motivated by a *bona fide* desire to build a profitable development. We are satisfied that the local interest groups who support him are motivated by a *bona fide* desire to obtain beneficial economic development for the region. We are satisfied that the environment groups and the many individuals who oppose the development are motivated by a *bona fide* concern to prevent environmental harm to one of the most beautiful areas on the Queensland coast. The main dispute is over where the right balance lies between conservation and development, and how big an environmental impact must be to be called 'significant'.

1.15 The Committee would like to comment specially on the position of the scientists in this debate. The scientists who came forward to give evidence did so because they have relevant expertise or have somehow been involved with the development. Most of them obviously also had personal opinions about the development - and their opinions were mostly negative. They are entitled to have personal opinions, and to express them. Others with different personal opinions are entitled to disagree with them. On the other hand, the Committee has no evidence whatever to suggest that any scientists have acted unethically - for example, by designing their research programs, doctoring their research results or tailoring their professional advice to support predetermined conclusions based on personal opinions. The Committee deplores personal attacks on scientists because their research results

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7 Cardwell Properties P/L, Submission 83, p 6. L Hallam, Submission 106, p 427. For example G Bateman, Submission 73, p 247; K Williams (Cardwell Properties P/L), Evidence 10 August 1998, p 303.

8 For example: North Queensland Conservation Council, Submission 112, p 451, further information 17 March 1999, p 350,352 & 19 June 1999, p 785; Cairns & Far North Environment Centre, Submission 50, p 144.

9 Cardwell Properties P/L, Submission 83, annexure C. See also, for example, M Prior, Evidence 30 July 1998, p 110: '... It was only when Keith Williams actually bought the site with all the permits in place that people started objecting ... I think it is some personal political agenda - that people do not like Keith Williams perhaps.' On the other hand, the Wildlife Preservation Society of Qld (Tully & District Branch) gave evidence that it was expressing concern about the development, and urging the authorities to make an environmental impact study, as early as 1987. Wildlife Preservation Society of Qld (Tully & District Branch), Submission 49, p 136-7.

10 K Williams (Cardwell Properties P/L), Evidence 10 August 1998, p 309ff; 24 August 1998, p 332.

or their professional advice happen to be unwelcome to the attacker. More comment on the role of scientists in this type of debate is in chapter 5.

1.16 Senate committee procedures provide that where evidence ‘adversely reflects’ on a person or organisation (for example, by accusing them of deliberate lies or illegal acts), that person or organisation should have a reasonable right of reply. In a number of cases in this inquiry the Committee pointed out ‘adverse reflections’ to the affected parties and invited reply. Their replies are part of the public evidence of the inquiry (unless the Committee accepted a request for confidentiality) and are noted in APPENDIX 4.

### **Overview of issues**

1.17 The Port Hinchinbrook dispute stands as an example of some interesting general problems about development control and environmental impact assessment. For example:

- the difficulties of regional land-use planning involving three levels of government;
- the difficulties of deciding where the right balance lies between conservation and development (where they conflict); the conflicts that may arise between economic goals and environmental, cultural and social goals;
- the difficulties of compromising between local aspirations and broader national interests (where they conflict);
- the difficulties of environmental impact assessment where not all the desirable information is at hand or reasonably obtainable; the means of dealing with uncertainty about possible future impacts; the meaning of the precautionary principle in practice; how to compromise between environmental protection and the permit-holder’s rights when new information about likely impacts is discovered late in the day; the means of handling possible long-term impacts;
- the role of scientific evidence in informing decisions on development applications;
- the common perception that environmental impact statements or similar reports are unlikely to be impartial when they are prepared or paid for by proponents (or, even if paid for by governments, use consultants chosen by proponents);
- the means of controlling major developments that require a number of permits in principle and in detail over some years; the means of ensuring that the threshold question of whether the development should take place at all is considered without prejudice before any commitments are made; the political problems that arise when an authority may wish to wind back an approval that it considers was given rashly by others in the past; the ethics of withholding a routine permit to achieve this end after in-principle approval has been given;

- the need for clear criteria showing how much detail in environmental impact assessment is needed in what circumstances; the need for criteria for deciding whether incremental changes to a development during the period of construction are significant; and generally, the means of deciding what is a reasonable balance between legislated criteria and administrative discretion in these matters;
- the need for co-ordinated whole of government control of the cumulative effects of different types of development in a region.

1.18 The Port Hinchinbrook development is discussed in chapters 2, 3 and 4. Most comments on more general questions are in chapter 5.