

## CHAPTER 2

### DESCRIPTION OF PORT HINCHINBROOK

2.1 The Port Hinchinbrook marina and resort development at Oyster Point near Cardwell, North Queensland, was started in 1988; halted in 1990 by the failure of the development company; restarted in 1994 by the present developer, Cardwell Properties Pty Ltd; halted in late 1994 by the Commonwealth government, pending further study, because of fears of environmental damage to the adjacent Great Barrier Reef World Heritage Area; and restarted in late 1996 with permits from the new Coalition Commonwealth government. It has usually been called an 'integrated resort', although environment groups argue that since 1997 changes to the plan it is really a 'real estate development' (see paragraph 3.56). At early 1999 the development is well under construction. Apart from the main canal, earthworks are almost complete. Several houses have been built facing the Hinchinbrook Channel, and a two-storey office facing the marina.<sup>1</sup>

2.2 This chapter gives a description and history of the project. Most commentary is held over to chapter 3 - discussion of how the authorities have handled the development. The history focuses on matters relevant to the discussion.

#### **Brief description of Port Hinchinbrook**

2.3 The Port Hinchinbrook development occupies a roughly triangular site south of Cardwell, bounded by the Bruce Highway/railway, One Mile Creek and Stoney Creek (as they were before being obliterated by earthworks) to Oyster Point, the Hinchinbrook Channel, and a council reserve on the southern outskirts of Cardwell.<sup>2</sup> The northern boundary of the site is about 500 metres from the southern edge of the built-up area of Cardwell, and Oyster Point is about 2.5 kilometres from Cardwell centre. (Supporters of the development quote the first distance to argue that the development is effectively part of Cardwell; opponents quote the second distance to argue that it is not.<sup>3</sup> This is relevant mainly to arguments about aesthetic impacts on the World Heritage Area - see chapter 4.) See Figures 4 and 5.

2.4 The boundary of the property is the high water mark. The landward boundary of the Great Barrier Reef World Heritage Area is the low water mark. The boundary of the Townsville-Whitsunday State Marine Park is the high water mark. The boundary of the Great Barrier Reef Marine Park (established under Commonwealth

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1 Cardwell Properties P/L, further information 24 February 1999, p 110.

2 It was pointed out that strictly the Hinchinbrook *Passage* is the whole waterway between the mainland and Hinchinbrook Island, and the Hinchinbrook *Channel* is the navigable route in the centre of the passage. But most witnesses spoke of the Hinchinbrook Channel indiscriminately (as do topographic maps), and for simplicity this report will follow that lead.

3 For example, North Queensland Conservation Council, further information 8 March 1999, p 197.

law) runs east from the mainland just north of Cardwell to Hecate Point, the northwestern tip of Hinchinbrook Island, so as to exclude the Hinchinbrook Channel and Hinchinbrook Island. At its nearest it is about 3.5km away from Oyster Point. At Oyster Point Hinchinbrook Island - a Queensland national park as well as being in the World Heritage Area - is 3.5km away across the Hinchinbrook Channel. The boundary of the Wet Tropics World Heritage Area is about 6km southwest of Oyster Point in the Cardwell Range, and turns to reach the coast about 12km south of Oyster Point.<sup>4</sup> See Figure 3.

2.5 The Oyster Point development was first proposed by Tekin Australia Ltd in 1985. The August 1987 concept plan (which describes itself as 'indicative only') is at Figure 6. It shows:

1. Tourist boat wharf (9 berths);
2. marina (210 berths);
3. arrival and recreation centre;
4. commercial centre/shops;
5. central bars and restaurants;
6. marina service and service station;
7. recreation centre;
8. motel (48 units);
9. beachfront cottages (2 bedroom - 62 of);
10. harbourfront townhouses (2 bedroom - 50 of);
11. harbourfront terraces (3 bedroom - 36 of);
12. theme park;
13. carparking;
14. campers;
15. caravan park;
16. treeline terraces (3 bedroom - 30 of);
17. island view terraces (3 bedroom - 24 of);
18. peninsula cottages (3 bedroom - 34 of);
19. fishtrap restaurant.<sup>5</sup>

2.6 Tekin, having cleared the site and partly excavated the marina, failed, leaving the property in a degraded state. The property was bought by Cardwell Properties Pty Ltd in 1993. The development shown in the Cardwell Properties Masterplan dated March 1994 (which was the basis of the Queensland government's Environmental Review Report, discussed below) is similar in broad outline to Tekin's 1987 plan, though different in many details. See Figure 7. The legend on the 1994 plan reads:

#### PORT HINCHINBROOK - CONCEPT MASTERPLAN

It is intended that the project as illustrated will be operated as a comprehensive integrated resort and as such the legend is intended to illustrate the types of accommodation, services and facilities to be provided. This concept Masterplan is indicative only and does not purport to specify the precise building style or location of any element of the development.

#### LEGEND

1. Tourist and commercial boat wharf - 24 berths approx.
2. Marina - 210 berths (may vary in accordance with demand for small or larger berths);
3. Arrival centre;
4. Restaurants;
5. Retail village - including restaurant bars;
6. Carparking;

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4 Environment Australia, Submission 157, p 16.

5 Cummings & Burns plan of Oyster Point, August 1987.

7. Accommodation - limited to 2000 guests. Accommodation shall be a combination of hotel/motel rooms, apartments, duplexes, individual cottages, residences and caravan park built in accordance with demand and economic viability. It is intended that a large proportion of accommodation will be offered for sale on long term leases and purchasers will be given the option to place their property with the resort management for letting on a daily basis. Legend number not indicated on plan as accommodation location will be at developer's discretion.

8. Marina service and boat ramp; 9. Recreation centre; 10. Beach bar and pool - including restaurant, snack bar and bar; 11. Convention centre; 12. Tennis club; 13. Railway station - possible future application; 14. Helipad - possible future application; 15. Caravan park.<sup>6</sup>

2.7 The November 1997 Masterplan (see Figure 8) shows further significant changes:

- The land facing Hinchinbrook Channel shown in 1994 as occupied by an 'indicative' arrangement of 'hotel/motel rooms, apartments, duplexes, individual cottages and residences' has been subdivided into separate house lots: 55 lots stretching about 1 kilometre along the Hinchinbrook Channel, and 43 lots facing the marina or canal. The 1994 plan shows what appears to be communal open space occupying a 40 metre wide strip facing the channel; whereas the 1997 house lots extend to the property boundary at the high water mark.
- The canal is widened and extended and residential, commercial and ship maintenance uses are proposed on land south of the canal. This land, owned or leased by the developer and now largely occupied by dredge spoil ponds, is not part of the 'site' defined in the Deed of Agreement. It is now the subject of an application by the developer for rezoning to allow the proposed uses.<sup>7</sup>

2.8 The Committee mentions these details in relation to claims by environmental groups that the development has changed and enlarged significantly since 1994, with possible environmental impacts on the World Heritage Area that have not been adequately considered; and that what was approved as an 'integrated resort' is now a 'real estate development'. We comment further on this in chapter 3.

### History of the development

2.9 The following summary is drawn from several sources, mainly the submission of Environment Australia (Commonwealth Department of the Environment; submission 157, attachment A), and others as noted. The sources do not all agree with

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6 Cardwell Properties P/L, Masterplan Port Hinchinbrook, 931084 CP3 1, March 1994.

7 The rezoning was supported by Cardwell Shire Council (with conditions) at a meeting of 27 May 1999, and is now (August 1999) being considered by the Queensland Department of Communication and Information, Local Government and Planning. Cardwell Shire Council, further information 4 August 1999, p 824.

each other on all details. The Committee has tried to reconcile discrepancies only where it seemed important.

### *Tekin development 1980s*

2.10 In **1985** Resort Village Cardwell Pty Ltd, a subsidiary of Tekin Australia Ltd, proposed a marina and resort development at Oyster Point. In 1987 Tekin applied to Cardwell Shire Council for the necessary rezoning of the land to Special Facilities, and the rezoning was gazetted on 14 May 1988.<sup>8</sup> The new zoning was:

‘Special Facilities (multiple dwelling, duplex dwelling, dwelling, hotel, motel, indoor entertainment, outdoor entertainment, recreation centre, camping ground, service station, tavern, shop, shopping centre, information centre, marina and associated facilities, market, laundry, mini-brewery, hot bread shop, refreshment service, group housing showrooms, commercial premises, health care and licensed club, generally in accordance with the attached plan prepared by Cummings and Burns, Architects, dated August 1987) Zone.’ (Deed of Agreement, 29 September 1994, p 1)

2.11 Under State law at the time, whether to demand an environmental impact assessment of the development was at the discretion of Cardwell Shire Council. Council did not demand one. Further comment is at paragraph 3.2.

2.12 It is said that the development proposed at that time was to be for ‘over 2000 guests’.<sup>9</sup> The Committee is uncertain what the primary source for this figure is. Neither the zoning nor the August 1987 masterplan names a figure. The August 1987 masterplan, as quoted in paragraph 2.5, shows 596 residential bedrooms and 48 motel units. Cardwell Properties claims that ‘extrapolation of these figures on a maximum occupancy basis will result in a population in excess of 2,500.’<sup>10</sup> At about four people per bedroom, this seems excessive. In 1994 Cardno and Davies (consultants to Cardwell Properties), said, ‘the project architects, who were also architects for Tekin Australia Ltd, have confirmed that the Tekin proposal accommodated a maximum of 2,099 guests whereas, by comparison, Cardwell Properties Pty Ltd has stated a self imposed upper limit of 2,000 guests.’<sup>11</sup>

2.13 In **1988 and 1989** approvals were granted for earthworks and mangrove removal relating to construction of the marina (but not the associated access channel to the Hinchinbrook Channel). Around this time the land was extensively disturbed,

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8 Cardwell Shire Council, Submission 158, p 790.

9 Environment Australia, Submission 157, attachment A, p 2.

10 Cardwell Properties P/L, further information 9 February 1999, p 4. Similarly K Williams (Cardwell Properties P/L), Evidence 24 August 1998, p 326: ‘If you multiply out the various things on the Tekin plan, it comes to about 2,600 people...’

11 Cardno & Davies, *Port Hinchinbrook Resort at Cardwell - compilation of information*, March 1994, p 7.

the marina basin was partly excavated and mangroves were cleared from the marina basin and - without the necessary permits - from parts of the foreshore.<sup>12</sup>

2.14 The developer still needed a State permit to build the access channel from the marina to Hinchinbrook Channel, encroaching on the State Marine Park. As well, at the time Hinchinbrook Channel was thought to be part of the Great Barrier Reef Marine Park and so a permit was needed from the Great Barrier Reef Marine Park Authority (GBRMPA - a Commonwealth statutory authority). In **January 1989** GBRMPA designated the project under the Commonwealth *Environment Protection (Impact of Proposals) Act 1974* (the EPIP Act) and in June 1989 the Commonwealth Minister for the Environment, Senator Richardson, determined that a Public Environment Report was required.<sup>13</sup>

2.15 In **1990** Tekin went into liquidation and the project was abandoned. The site was left in a degraded state with no rehabilitation measures carried out. The Public Environment Report required for the Commonwealth in relation to the access channel and breakwaters was never completed.

#### *Cardwell Properties development proposal 1993-4*

2.16 In **May 1993** Cardwell Properties Pty Ltd bought the site. Cardwell Properties proposed a development similar in concept to the earlier one, though different in details (a matter raised by environment groups in this inquiry was whether the new proposal was 'generally in accordance' with the August 1987 plan - which was a condition of the 1988 rezoning of the site). The \$100 million development, a 'comprehensive resort of three/four star standard', would be constructed over a seven to ten year period. Stage 1 (about \$30 million) would include 'removal of mangroves parallel to beach north of Stoney Creek... essential so as to permit the development of a recreational beach'; marina construction, access channel and breakwaters; landscaping and construction of parts of the resort. Stages 2 and 3 would include further resort construction and possibly a helipad and railway station. The developer anticipated upgrading of the Dallachy airport north of Cardwell (which is bounded by national park and mahogany glider habitat) 'to accept regular public transport aircraft of the Boeing 737 type.' The total site population was to be 2,000.<sup>14</sup>

2.17 The development could use some of the permits granted to the previous developer but required some amendments to those permits as well as additional

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12 Queensland Department of Environment and Heritage, *Environmental Review Report - Port Hinchinbrook*, May 1994, p 1.

13 Under the EPIP Act, a Commonwealth authority proposing an action that is likely to affect the environment to a significant extent must refer the matter to the Environment Minister, and the Environment Minister may require an Environmental Impact Statement or (typically in less important cases) a Public Environment Report. 'Action' includes decision, and therefore would have encompassed GBRMPA's decision on the application to do work in the Great Barrier Reef Marine Park.

14 Cardno & Davies, *Port Hinchinbrook Resort at Cardwell - compilation of information...*, March 1994, p 12ff,20,23.

permits. Due to the size of the project the Queensland Office of the Co-ordinator-General co-ordinated impact assessment requirements.

2.18 By this time GBRMPA had had legal advice (in 1992) that the whole Hinchinbrook Channel was part of the internal waters of Queensland, and so was not part of the Great Barrier Reef Marine Park.<sup>15</sup> This meant that GBRMPA had no involvement in approving the project and accordingly had no power to demand environmental impact assessment under Commonwealth law, as it had done in 1989.<sup>16</sup> However, the Commonwealth was still concerned to protect the World Heritage values of the Great Barrier Reef World Heritage Area, the boundary of which runs along the low water mark at Oyster Point. In **December 1993** GBRMPA negotiated with the Queensland Government a letter of agreement stating that there would be an environmental impact assessment under Queensland law. Key points of that agreement were that there would be full public disclosure of all information relating to the proposal (except where there were legitimate reasons for confidentiality), and that there would be opportunities for appropriate public consultation. The letter of agreement is appended to the Queensland government's 1994 Environmental Review Report (described below) and is reproduced in APPENDIX 5.

2.19 In **1994** the developer submitted his new plan (see Figure 7). Cardwell Shire Council had to decide whether this plan was 'generally in accordance' with the 1987 plan, since this was a condition of the 1988 rezoning to Special Facilities. Council decided that it was 'generally in accordance' (a decision which environment groups have been unhappy with). The effect of this was that no further town planning application to Council was needed. Cardwell Shire Council explained to the Committee:

'The developer at the time [1988] commenced works on-site shortly after the rezoning, and therefore his lawful land use rights were protected ... After extensive planning and legal advice, Council considered the new [1994] plan complied with the intent of the zoning [ie it was 'generally in

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15 The boundary of the Great Barrier Reef Marine Park at this point is 'the mainland at low water'. The legal advice concerned whether Hinchinbrook Island was so closely aligned with the mainland as to be effectively part of it in common law. The North Queensland Conservation Council argued to this inquiry that GBRMPA prompted a positive answer (which would have the effect of excluding the island and channel from the GBRMP). GBRMPA's position at the time was '...the opinion of the most senior legal advisor in the Commonwealth government, the Solicitor-General, was sought and his view was that a court would *most likely* find that the Hinchinbrook Channel is internal waters of Queensland' [emphasis added]. North Queensland Conservation Council, further information 30 March 1999, p 462-3, p 487 quoting GBRMPA to D Haigh 17 November 1993.

16 'It may have been open to the GBRMPA to make regulations under s66(2)(e) of the *GBRMP Act*, which allows regulations to be made for the purpose of prohibiting or regulating acts, whether inside or outside the Marine Park, that may pollute waters in a manner harmful to animals and plants in the Park. However, no such action was taken by the GBRMPA.' Sackville J, *Friends of Hinchinbrook Society Inc. v. Minister for Environment & others*, 55 FCA (14 February 1997), p 9, 69 FCR 28 at 40. GBRMPA's position at the time was 'there is no reason for the authority to invoke this power.' North Queensland Conservation Council, further information 30 March 1999, p 487, quoting GBRMPA to D Haigh, 17 November 1993.

accordance' with the 1987 plan]. Therefore, no further application [to Council] was required to allow construction to proceed.' (Cardwell Shire Council, further information 2 August 1999, p 819)

*May 1994: the Queensland government's Environmental Review Report*

2.20 In **May 1994** the Queensland government released an 'Environmental Review Report' (ERR) and some consultants' studies for a four week public comment period. The Environmental Review Report was not made pursuant to any Queensland environment protection or land-use planning legislation, but rather was an independent initiative of the government. It 'was compiled by the Department of Environment and Heritage from information supplied by the developer and comments from government departments.' It did not purport to be a comprehensive environmental impact statement, but rather '...dealt mainly with those elements of the project for which approvals are not currently held.' Implicitly it assumed that the development would and should proceed (based on 'improved local services' and 'economic benefits'); it admitted that 'the Government does not have sufficient information to adequately quantify all possible impacts'; and it recommended an Environmental Management Agreement to 'monitor and mitigate potential impacts.'<sup>17</sup> The Queensland government received 192 submissions critical of the ERR including one from the Commonwealth, which believed that '...the documentation inadequately considers the potential impacts of the Oyster Point proposal on the World Heritage values of the area. We recommend that a much more comprehensive assessment of the proposal be undertaken...'<sup>18</sup> These submissions were never made public.

2.21 This retrospective approach to environmental impact assessment, the lack of a thorough up-front environmental assessment *as an input to a decision on whether to grant approval*, and the secrecy which surrounded the government's deliberations at the time, have been major causes of subsequent objections by environmental groups.

2.22 In **June 1994** the Commonwealth Department of Environment, Sport and Territories (DEST) wrote to the Queensland Office of the Co-ordinator General expressing concerns about the development's possible impacts on World Heritage values, and saying that the Environmental Review Report was inadequate in considering these impacts.<sup>19</sup> DEST recommended that the Queensland Government require preparation of a statement of natural and cultural values of the area. DEST also engaged a consultant, world heritage expert Mr Peter Valentine, to prepare a report on the world heritage values of the area.

2.23 Mr Valentine's report of **August 1994** criticised the lack of a full environmental impact statement for Port Hinchinbrook, listed 15 possible impacts on

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17 Queensland Department of Environment and Heritage, *Environmental Review Report - Port Hinchinbrook*, May 1994, p 1,14.

18 DEST, minute to Minister 14 October 1994, p 2; G Early (DEST) to J Bimrose (Qld Office of the Co-ordinator General), 3 June 1994, p 8.

19 G Early (DEST) to J Bimrose (Qld Office of the Co-ordinator General), 3 June 1994.

the World Heritage Area, and commented that in many instances the full extent of possible impact or the potential for mitigation was unclear, mostly because of lack of information. Key concerns were -

- impacts of dredging on seagrass beds;
- impacts on dugongs and sea turtles from likely increase in boat traffic;
- possible impacts of increased tourism on the outstanding beauty and wilderness qualities of the Hinchinbrook and Brook Islands;
- changes to the environmental values of the Hinchinbrook Channel caused by the presence of a major resort and the consequences of that over the next few decades as the character of the area is modified.<sup>20</sup>

2.24 In **August** and **September 1994** the Commonwealth and Queensland governments continued to discuss these issues. The Commonwealth's position was that dredging of the access channel should not begin until the results of baseline studies were available, appropriate standards set and agreed monitoring programs put into place. If these studies concluded that World Heritage values would not be protected, then the developer should be refused Queensland government permission to dredge.<sup>21</sup>

#### *September 1994: the Deed of Agreement*

2.25 On **29 September 1994** the Queensland Government, Cardwell Shire Council and Cardwell Properties Pty Ltd signed a Deed of Agreement. The Deed is not made pursuant to any Queensland environment protection law, but in effect is a private contract which sets out various baseline studies and environmental controls and monitoring which the State and the Council required from the developer as a condition of granting further permits necessary for the development. Key environmental elements of the Deed were:

- An Independent Monitor is appointed by the Queensland government in consultation with the developer to carry out an Environmental Monitoring Program, including baseline studies of seagrass, turbidity and water quality, and ongoing monitoring;
- An Environmental Site Supervisor (a Queensland government official) is appointed with power to order work to be stopped or modified to mitigate adverse environmental impacts;
- The company must make a Turbidity Control Plan to ensure (among other things) that the turbidity of dredge tailwater discharged from the site does not exceed the natural turbidity of the Hinchinbrook Channel;

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20 P Valentine, *Hinchinbrook Area - World Heritage Values and the Oyster Point Proposal - a report to DEST*, August 1994, p ii-iii.

21 Senator Faulkner, letter to Qld Minister for Environment and Heritage, Molly Robson, 29 September 1994, précised in Environment Australia, Submission 157, Attachment A, p 3.



- The company must make an Insect Management Plan;
- The company must make a Beach Management Strategy, including monitoring of any loss of sand from the foreshore, and a strategy for beach nourishment if necessary;
- The company must make an Environmental Management Plan, which is a compendium of the above items plus details on some other matters mentioned in the Deed (such as disposal of sewage, refuse and stormwater).
- The parties acknowledge that the zoning of the site is for a maximum population of 1500 [compared with the 2000 earlier proposed by the developer].

2.26 Around this time the Queensland government gave the permits needed to clear foreshore mangroves and build the access channel, and in **October 1994** Cardwell Properties started work.

2.27 Reports from the Queensland Department of Primary Industries, GBRMPA and other scientific advisers differed as to the likely effect of mangrove clearing and channel dredging on seagrass beds and dugong habitats. The Commonwealth Department of Environment, Sport & Territories (DEST) proposed a moratorium on the permit to clear mangroves while an attempt was made to achieve a consensus of scientists and marine managers on the likely effect of mangrove clearing, dredging and other works. DEST recommended that if the developer or the Queensland Government did not agree with the moratorium the Minister should use the *World Heritage Properties Conservation Act 1983* (the WHPC Act) to halt the project until a consensus could be achieved. The WHPC Act allowed the Minister to prohibit work that 'is likely to damage or destroy' a declared World Heritage property; but regrettably, it did not empower the Minister to demand environment impact assessment up front or set conditions of approval; nor did it create meaningful penalties for unlawful damage.<sup>22</sup> (These problems have been remedied in the *Environment Protection and Biodiversity Conservation Act 1999*.)

*November 1994: Senator Faulkner's proclamations halt work*

2.28 As the developer refused to stop work, on **15 November 1994** Senator Faulkner, Commonwealth Minister for the Environment,<sup>23</sup> made proclamations under the *World Heritage Properties Conservation Act 1983* to stop further clearing of mangroves. On **18 November** regulations were made under the WHPC Act prescribing (that is, prohibiting without consent) certain work, including dredging, removing native plants, and constructing a breakwater. This effectively stopped work on the project. Senator Faulkner stressed that this stoppage was not intended to be permanent, but merely pending acceptable environmental assessment of impacts on

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22 *World Heritage Properties Conservation Act 1983*, sections 7,9,10. The Act gives a court power to grant an injunction restraining a person from doing an unlawful act (section 14), but creates no other penalties for doing an unlawful act.

23 Formally, the Governor-General on Senator Faulkner's advice.

World Heritage values.<sup>24</sup> His action was controversial and widely reported. On **23 November** the Premier of Queensland, Wayne Goss, published in *The Australian* a full-page 'open letter to the Federal Government' defending his government's record on Port Hinchinbrook and conveying his displeasure at Senator Faulkner's interference (part of it is quoted at paragraph 3.8).

2.29 On **24 December** a meeting of 13 scientists (chaired by Professor Michael Pitman, then the Prime Minister's Chief Science adviser) discussed the likely impacts of the development on seagrasses and other World Heritage values. As a result of their concerns a number of steps were agreed with the Queensland government for future management of the project, including the development of a Beach and Foreshore Management Plan, and the Turbidity Control Plan required by the Deed of Agreement, to protect the seagrass beds offshore from the site.

2.30 In **February 1995**, the developer applied to Senator Faulkner for consent under the *World Heritage Properties Conservation Act 1983* for various elements of the project - foreshore works, dredging of the access channel and construction of breakwaters. Senator Faulkner commissioned a report by National Environmental Consultancy Services (NECS), to assess the likely impacts of these activities on World Heritage values. This was complete by **July 1995**. The NECS report concluded that there was insufficient data to provide an adequate basis for assessing the likely impacts for setting conditions to control activities and prevent or mitigate the impacts. NECS suggested a program of data collection. Following further discussions with Senator Faulkner and review of the NECS report, the developer withdrew his applications relating to dredging and construction of breakwaters. In **October 1995** Senator Faulkner gave approval for part of the proposed foreshore works, viz. removing fallen mangroves (but not mangrove roots), cutting back some mangroves, clearing some mangroves and coppicing *Avicennia marina* mangroves.

*1996: reconsideration by the new Commonwealth government*

2.31 In **April 1996** the developer submitted new applications for the foreshore works and access channel to Senator Hill (Minister for the Environment in the new Coalition Commonwealth government), supported by a new 'Environmental Risk Assessment' study by Sinclair Knight Merz (SKM) (the application to build the breakwater was abandoned).<sup>25</sup> In **May 1996** baseline water quality and turbidity studies, commissioned by the Queensland government in accordance with the Deed of Agreement, were received.<sup>26</sup> GBRMPA commissioned six independent scientists to review the SKM Environmental Risk Assessment, and their reviews in turn were summarised by Dr Reichelt, Director of the Australian Institute of Marine Science. Dr

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24 The Hon. J Faulkner, Minister for the Environment, *Commonwealth proclaims Hinchinbrook to protect world heritage values*, media release 15 November 1994.

25 Sinclair Knight Merz, *Port Hinchinbrook - Environmental Risk Assessment with reference to activities requiring Ministerial Consent*, April 1996.

26 Sinclair Knight Merz, *Oyster Point Baseline Water Quality and Turbidity Studies*, report for [Qld] Office of Major Projects, May 1996.

Reichelt said, among other things: ‘... The reviewers’ overall conclusions are that [the development] could go ahead without significant impact *on the immediate environment around Oyster Point, that is, within a few hundred metres*, provided best practice engineering approaches are used.’<sup>27</sup> (emphasis added). Senator Hill relied on this sentence in his later reasons for giving consent. The narrow scope of this conclusion (which does not refer to possible impacts of increased boating on dugongs, or possible impacts of increased tourism on the island national parks) has been a cause of concern to environment groups.<sup>28</sup>

‘... I guess he [Dr Reichelt] was being directed by his terms of reference ... Basically, I think the process was cooked to get an outcome.’ (Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Power Inquiry, 24 April 1998, p 212-3)

2.32 Further comments on this matter are at paragraph 3.38 and 5.65 of this report.

2.33 On **9 July 1996** Senator Hill indicated that he was inclined to consent subject to agreement on the use of best engineering practice and regional planning issues being addressed.<sup>29</sup> On **16-17 July** the Commonwealth, the State and the developer met and discussed how the Commonwealth’s concerns could be addressed in a legally enforceable way. From this meeting came the proposal for the Commonwealth to join the Deed of Agreement. On **20 August 1996** the Commonwealth became a party to the Deed of Agreement through a Deed of Variation. Senator Hill commented: ‘The Deed of Agreement means that we now have in place all the necessary conditions to ensure the protection of the world heritage values in the immediate vicinity of the site.’<sup>30</sup> The most significant additions to the Deed were:

- a requirement for the developer to comply with the ‘beach and foreshore management plan’ attached to the Deed of Variation [this includes a régime for dealing with the foreshore mangroves, which the developer had earlier wished to remove entirely];
- a requirement for ‘detailed proposals for the management of acid sulfate soils’ was added to the Turbidity Control Plan specified by the original Deed. A condition was added that water flowing from the land as a result of the

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27 R Reichelt, *Overview of the scientific reviews of “Port Hinchinbrook Environmental Risk Assessment with reference to activities requiring Ministerial Consent”*, 9 June 1996, p 1.

28 Four of the six reviewers, though not specifically asked, raised broader issues, and in the Committee’s view Dr Reichelt reported their comments fairly and prominently in his summary. The complaint is essentially that the Minister, in making his decision, seized on the one sentence in Dr Reichelt’s summary most favourable to the development (‘... could go ahead without significant impact on the immediate environment around Oyster Point, that is, within a few hundred metres ...’) and passed over all the cautions.

29 The Hon. R Hill, Minister for the Environment, *Port Hinchinbrook*, press release 9 July 1996.

30 The Hon. R Hill, Minister for the Environment, *Strict conditions set for Port Hinchinbrook*, press release, 22 August 1996.

company's construction activities should have a pH from 6 to 9 inclusive (that is, it should not be acidic).

2.34 Also on **20 August 1996** the Commonwealth and Queensland concluded a Memorandum of Understanding establishing processes to expedite a regional coastal management plan for the area under the *Coastal Protection and Management Act 1995* (Qld).

2.35 On **22 August 1996** Senator Hill gave the consent for dredging necessary for work to resume. Work resumed in **September 1996** and has continued to the present.