

CHAPTER 6

CONCLUSIONS

6.1 In conclusion, the Committee stresses its main findings on ‘what lessons have been learnt and what can be done to prevent problems like this occurring in the future’ (terms of reference 5):

Unsatisfactory environmental assessment procedures at Port Hinchinbrook

6.2 The Port Hinchinbrook dispute was caused by the regrettable lack of a thorough up-front environmental impact assessment of this major development proposal *before approval*. The most important question - ‘*Having considered environmental impacts, should the development be approved or refused?*’ - was never asked. This omission has left the field wide open for ongoing argument about what the environmental impacts will be. It is at the root of claims by environment groups that all subsequent environmental management actions are prejudiced by the political need to justify the initial approval decision.

6.3 The Committee hopes that all will agree that the resulting conflict has been unsatisfactory for all concerned - unsatisfactory to the developer who has suffered uncertainty and delay, to the environment groups who believe that the post-approval environmental management has been inadequate, and to the authorities who have had to handle the matter with vastly more trouble and expense (both administrative and political) than if the job had been done properly in the first place. As the Great Barrier Reef Marine Park Authority said:

‘... it would have been desirable that a comprehensive Environmental Impact Statement (EIS) be prepared for the Port Hinchinbrook development at the time this project was initially proposed in 1993.’ (GBRMPA, Submission 157a, p 1)

6.4 The same comment applies equally validly back to 1988, when the local council of the day, in spite of the concerns of environment groups at that time, exercised its discretion not to demand environmental impact assessment of this major development adjacent to a World Heritage Area.

Need for upfront environmental impact assessment

6.5 There is a fundamental difference between monitoring and mitigating environmental impacts of a development already approved, and upfront environmental impact assessment as an input to deciding whether to approve a development. The purpose of upfront environmental assessment is to ensure that decisions are based on the best possible information, so that decision-makers can weigh in the balance all the costs, benefits and risks involved. In the Port Hinchinbrook case there was never an upfront environmental impact assessment. The controls of the Deed of Agreement are focussed on monitoring and mitigating, because the Queensland government in 1993-

94 and the Commonwealth in 1996 were clearly unwilling to contemplate the possibility that the development should not go ahead (and perhaps because they felt bound by the history of the 1988 approval and the degraded site). But the 'monitor and mitigate' approach disregards the possibility that some environmental impacts may prove intractable, suggesting with the wisdom of hindsight that the development should not have been approved.

6.6 In the case of Port Hinchinbrook, if the various *ad hoc* controls in the Deed of Agreement succeed in preventing environmental harm, this would be coincidental: it does *not* retrospectively justify the lack of upfront environmental assessment. In important respects the Committee doubts that the controls will be able to prevent harm - we refer to the risks to dugongs from increased boat traffic, the obvious impact of the waterfront development on the aesthetic values of the renowned natural landscape of the Hinchinbrook Channel, and the likely long term impacts from pressure of increased tourism in the island national parks.

6.7 Planning authorities must commit to thorough, independent, up-front environmental impact assessment of significant development proposals. Environmental impact assessment of important aspects of proposals after the approval has been given instead of before should have no place in environmental management. This is particularly the case in management of World Heritage, where the highest standards, and the most cautious application of the precautionary principle, should apply. In the Committee's view the history of Port Hinchinbrook approvals is very far from best practice World Heritage management.

6.8 As well, there is a need for better processes to ensure the independence and impartiality of environmental impact statements. For example, instead of proponents engaging consultants directly, it would be possible for planning authorities to choose a consultant by lot from a short list of tenderers with the necessary expertise. Then consultants would know that they could not be discriminated against in future tenders if they reach unwelcome conclusions. The thoroughness of the authorities in setting the terms of reference for environmental impact studies is also most important.

Need for transparent rules for public input

6.9 Environmental impact assessment alone, no matter how expert, cannot objectively decide whether a development should be approved. That decision must take into account all factors, environmental, economic, and social. Where there are conflicting interests the decision is usually a compromise which - hopefully - reflects broad community values. The purpose of environmental impact assessment is not itself to decide the question, but to ensure that decision-makers can decide the question on full information. The precautionary principle should apply: lack of scientific certainty should not be an excuse for allowing development that may have serious or irreversible environmental impacts.

6.10 Since decisions on development applications must often mediate between conflicting interests, it is all the more important that their processes are fair *and are seen to be fair*. In the Port Hinchinbrook debate a chief complaint of environmental

groups concerned the lack of public process. The Deed of Agreement was an *ad hoc* one-off response to the situation - a private contract which contained no public input and no possibility for interest groups to initiate prosecution of breaches.

6.11 A transparent public consultation process, set out for all to see in development control law, is important for at least three reasons. It is most likely to elicit all the relevant information, as different interests compete to put their cases on the record most persuasively. It is less likely to be captured by one interest group. Above all, it is necessary to promote trust in the fairness of the decision. Due process will not stop people from having conflicting interests, and in the individual case it will not stop some from being unhappy; but it will, hopefully, encourage all to respect each other's differences and to respect the fairness of the system.

'A public assessment process often goes a long way towards reducing the level of dispute, because at least you have a more agreed foundation of scientific fact upon which to base debate and to move on from.' (J Johnson, Environmental Defender's Office of NSW Ltd, Evidence 10 August 1998, p 289)

6.12 In the case of Port Hinchinbrook, the Committee notes the considerable evidence that objectors to the development, and scientists who have given unwelcome advice on it, have been harassed and intimidated. In a society that values free speech, this is most regrettable and unacceptable.

Need for regional planning

6.13 Many witnesses on both sides of the Port Hinchinbrook debate stressed the need for better regional planning policies to give clear ground rules to developers about what sort of developments will or will not be acceptable.

6.14 The Committee agrees. Regional plans are most important to prevent future Port-Hinchinbrook style disputes, by giving more certainty to developers and giving more confidence to environmental groups that regional environmental issues have been adequately considered. A plan cannot always prevent case by case dispute, but at least, when dispute occurs, one side or the other should be able to point clearly to the plan as supporting their position, which should allow the question to be decided more quickly and with less acrimony than we saw at Port Hinchinbrook. Prof. Marsh commented:

'I was very struck by the polarisation in the submissions, particularly the polarisation from ordinary Australians, on both sides of the debate ... I would really hate to see this very alienating situation repeated up and down the coast. We need to have good processes in place so that we can move forward and strike the right balance between development and conservation.' (Prof. H Marsh, Evidence 31 July 1999, p 169)

6.15 As well, a key purpose of regional planning is to set out a long-term vision that can be followed from the start, so that the environment is not unintentionally degraded by the accumulation of small changes. Incremental changes may seem

innocuous when viewed from day to day, but over time may add up to a situation which no-one has planned or wanted and which might be very hard to undo later. It is not hard to think of places around the world where incremental tourist developments over many years have spoilt the thing that the tourists came to see. No one would want that fate to befall the Hinchinbrook region. A threat may seem far-off now; but by the time it seems close, it may already be too late to act. The purpose of strategic planning is to prevent the threat getting that close.

6.16 However, regional planning is only purposeful if the plan represents a real commitment by all concerned, flowing through to individual development control decisions. Long term goals are always at risk from the temptations of short-term expediency. The prospect of more Port Hinchinbrook-style disputes up and down the coast should be enough motive for decision-makers to resist the temptation.

Conclusion

6.17 The Committee is confident all would agree that we do not want to see the Port Hinchinbrook debate repeated up and down the Australian coast. Local councils, as well as State and Commonwealth governments when they are involved, must commit to thorough, independent environmental impact assessments for significant developments, which should be made available for public scrutiny and comment. All must commit to Regional Coastal Management Plans. Upfront independent environmental impact assessment, transparent procedures, clear rules about public consultation, Freedom of Information as the backstop, wide standing for interested parties to challenge administrative decisions - these things are all part of a package the purpose of which is both to get fully informed decisions *and* to encourage public confidence in the fairness of decisions. They are essential to repair trust among interest groups of all stripes, and will hopefully take a lot of the heat out of Port Hinchinbrook-type disputes. They will give community groups the confidence that their voice will be heard, and they will give developers confidence that when they propose developments they will get clear answers and upfront certainty.