

Parliament of the Commonwealth of Australia

The Hinchinbrook Channel Inquiry

**Report of the Senate Environment, Communications,
Information Technology and the Arts References Committee**

September 1999

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- Senator Woodley for the committee's inquiry into the development of Hinchinbrook Channel

TERMS OF REFERENCE

On 14 May 1998 the Senate resolved:

That the following matters be referred to the Environment, Recreation, Communications and the Arts References Committee for inquiry and report by 30 June 1998:

- (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.

The reporting date was subsequently extended to 27 September 1999.

In the new parliament (from 10 November 1998) the Committee was renamed the Environment, Communications, Information Technology and the Arts References Committee.

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ABBREVIATIONS

ANZECC	Australian and New Zealand Environment and Conservation Council
ASS	acid sulfate soil
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DEH	[Queensland] Department of Environment and Heritage (now known as Environmental Protection Agency)
DEST	[Commonwealth] Department of Environment, Sport and Territories
DNR	[Queensland] Department of Natural Resources
EIA	environmental impact assessment
EIS	environmental impact statement
EPA	[Qld] Environmental Protection Agency (formerly known as Department of Environment and Heritage)
EPIC Act	<i>Environment Protection (Impact of Proposals) Act 1974 (Cth)</i>
ERR	Environmental Review Report
ESD	ecologically sustainable development
GBR	Great Barrier Reef
GBRMP	Great Barrier Reef Marine Park
GBRMPA	Great Barrier Reef Marine Park Authority
GBRWHA	Great Barrier Reef World Heritage Area
NECS	National Environmental Consultancy Services
NQCC	North Queensland Conservation Council
PASS	potential acid sulfate soil
QASSIT	Queensland Acid Sulfate Soils Investigation Team
SKM	Sinclair Knight Merz
USL	Unallocated State Land
WHPC Act	<i>World Heritage Properties Conservation Act 1983 (Cth)</i>

RECOMMENDATIONS

Recommendation 1 (para 3.31)

The Committee recommends that the Commonwealth, as a party to the Port Hinchinbrook Deed of Agreement, should engage an independent assessor to report on whether the developer has been and is complying with the Deed.

The Committee recommends further that if the developer is found to be in breach of any part of the deed, the Commonwealth should act to ensure the developer complies with it and take steps to remedy any breach.

Recommendation 2 (para 3.33)

The Committee recommends that in future, Deeds of Agreement should not be used as a means of avoiding compliance with an existing regulatory regime.

Recommendation 3 (para 3.87)

The Committee recommends that local councils, and State or Commonwealth governments when involved, commit to thorough, independent environmental impact assessments for significant developments. Terms of reference should be developed in consultation with the relevant stakeholders, and environmental impact assessments should be made available for public scrutiny and comment.

Recommendation 4 (para 3.87)

The Committee recommends that in cases where the Commonwealth government is involved, it should ensure that an early, consultative environmental impact assessment is conducted before any significant development is allowed to proceed.

Recommendation 5 (para 4.62)

The Committee recommends that a full assessment of acid sulfate soils at the Port Hinchinbrook development should be undertaken and a comprehensive acid sulfate abatement plan should be developed.

The Committee recommends further that if the developer is found to be in breach of the Acid Sulfate Management Plan the Commonwealth, as a party to

the Deed of Agreement, should act to ensure that the developer complies with the first part of this recommendation and remedies the effects of any breaches.

Recommendation 6 (para 4.62)

The Committee recommends that the Commonwealth should allocate special funds to the CSIRO to conduct both general research on acid sulfate soils and a special project that would expedite acid sulfate soil mapping around Australia.

Recommendation 7 (para 4.81)

The Committee recommends that, notwithstanding the difficulties, the Commonwealth and Queensland governments should expedite action to control threats to dugongs in the southern Great Barrier Reef region, including the reviewing of the use of gill nets in areas frequented by dugongs.

Recommendation 8 (para 5.33)

The Committee recommends that the Commonwealth and the Queensland governments should research the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area.

The Committee recommends further that pending improved knowledge of the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area, discharge of effluent to the World Heritage Area should not be permitted and no new aquaculture permits in the area should be issued.

Recommendation 9 (para 5.75)

The Committee recommends that in order to achieve more independent environmental assessments of proposed developments, planning authorities rather than the developer should be responsible for selecting consultants by lot from a short list of tenderers.

Recommendation 10 (para 5.151)

The Committee recommends that the Commonwealth should work with the Queensland Government and local Councils whose decisions may affect the World Heritage values of the Great Barrier Reef, to expedite making regional

plans that explicitly take into account world heritage conservation as a key material consideration in land-use planning and development control decisions.

Recommendation 11 (para 5.151)

The Commonwealth should fund a program of regional planning in local government areas where planning decisions may affect World Heritage values of World Heritage areas. Funding should be conditional on using best practice planning processes.

The Commonwealth should also fund a program of information and education about World Heritage conservation in those local government areas.

Recommendation 12 (para 5.152)

The Committee recommends that the Commonwealth, in co-operation with the State, should expedite studies to identify Australia's World Heritage properties or potential World Heritage properties and to update as necessary their statements of World Heritage significance.

Recommendation 13 (para 5.152)

The Committee recommends that the Commonwealth, in co-operation with the States, should expedite research into risks to the World Heritage values of Australia's World Heritage properties.

CHAIR'S FOREWORD

For more than a decade the proposal to develop a marina and resort at Oyster Point on the Hinchinbrook Channel, part of the Great Barrier Reef World Heritage Area, has been characterised by controversy, inter-governmental disputes and bungling at all levels. The issue has grown from one about short cuts in permit approvals to one about protection of an outstanding natural area, the rights of local communities to decent prosperity to a full blown national debate that arouses the strongest of emotions.

In the committee's view the management of development proposals at Oyster Point has been a tragedy of errors, the results of which have been unsatisfactory to all concerned. It has been unsatisfactory to the developer who has suffered uncertainty and delay; to the environment groups as the environment has not been adequately protected; and to the authorities who have had to handle the matter with vastly more trouble and expense trying to repeatedly justify and defend indefensible decisions and processes.

In retrospect a tremendous amount of expense and aggravation would have been avoided if the resort and marina project first proposed in 1987 had been subjected to a proper environmental assessment process.

This error was compounded when the project was revived in 1993-94, again with failure of the Queensland State government to insist on a full environmental impact assessment. Instead, the government opted for the lesser instrument of an "Environmental Review Report" which, FOI documents later revealed, was considerably influenced by the developer.

The controversy surrounding the development has been based around the environmental impacts of the development. While conservation, science and community expectation is that as a world heritage area, its unique values deserve the highest level of assessment, consideration and protection, the reality has been far from this.

The Hinchinbrook area is blessed by outstanding values, which include stunning scenery, endangered species and unique ecosystems found in abundance. It is these values which have inspired the level of passion and commitment from many Australians to protect the area.

Unfortunately the area is also a depressed regional economy where many local residents justifiably want the guarantee of economic prosperity which they do not have at present. The Port Hinchinbrook development promised regional jobs in an area which sorely needs them. It is important to note that despite the many, detailed and often conflicting reports commissioned on all sides about the environment, and despite the many assertions made by regulatory authorities to justify their decisions and the many public claims of the developer as to the economic value of the development, there has never been any economic assessment of the development.

The Committee received 166 submissions with the clear majority being from people who did not want the resort to proceed because of its dangers to the surrounding world heritage area. A number of independent submissions came in from scientists expressing grave concerns about the impacts of the resort and concerns about how the Government has managed the decision.

It is worth noting that a number of scientists reported being threatened or intimidated for putting their views forward about this development. The Committee finds this sort of behaviour unacceptable.

Evidence to the committee demonstrated there are serious environmental risks from this development which have been overlooked or downplayed by various Governments. It also shows those risks are ongoing. After the issue became a public bleeding sore for various political parties, a Deed of Agreement between the local and state governments and the developer was made.

The Commonwealth later entered the agreement under what is known as the Deed of Variation. This deed is only enforceable by the signatories and has never been legally enforced despite documented and acknowledged breaches. It is doubtful how it sits in a regulatory system and whether it will ever actually protect the surrounding area from the impacts of the development.

The committee found that the emphasis on the development is no longer on the resort and potential of the resort, it is on the real estate subdivision and residential sales.

The committee received evidence that there was a significant acid sulfate problem on site with doubts cast about the adequacy of its management. Concerns about liability and potential compensation have been raised for any Governments which give building approvals as a result. The Committee believes that concerns so far highlighted by the Queensland Acid Sulfate Soils Inspection Team and by Professor Ian White raise serious questions about the short and long term management of acid soil on site. This also raises serious concerns for any buyers of land in the area.

In the committee's view, the Port Hinchinbrook example is a clear case for government in how not to consider and deal with development applications in sensitive areas.

The attempts, mainly by State and local authorities, to shortcut even minimal environmental assessment has had the perverse effect of substantially increasing the costs in time, money and degradation to all parties – developers, regulatory agencies and the community.

It is also clear to the committee that the whole system of environmental impact assessment needs substantial overhaul. A system where parties interested in development both commission and pay for environmental impact assessments not surprisingly produces reports coloured to development. Independently or scientifically commissioned reports do not demonstrate anything like this unanimity.

Recommendations

Some key recommendations of the report are:

The Commonwealth, as a party to the Port Hinchinbrook Deed of Agreement, should engage an independent assessor to report on whether the developer has been complying with the Deed; and if there have been any breaches, the Commonwealth should act to ensure they are remedied. (recommendation 1)

There should be a full assessment of acid sulfate soils at the Port Hinchinbrook site, and the Commonwealth should act to ensure that any breaches of the Acid Sulfate Management Plan are remedied. (recommendation 5)

The Commonwealth should fund CSIRO to expedite research on acid sulfate soils and acid sulfate mapping around Australia. (recommendation 6)

The Commonwealth and the Queensland governments should expedite research into the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area. (recommendation 8)

The Commonwealth should fund a program of regional planning in local government areas where planning decisions may affect World Heritage values of World Heritage areas. Funding should be conditional on using best practice planning processes. The Commonwealth should also fund a program of information and education about World Heritage conservation in those local government areas. (recommendation 11)

The Commonwealth, in co-operation with the States, should expedite research into risks to the World Heritage values of Australia's World Heritage properties. (recommendation 13)

Senator Lyn Allison

Chair

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.¹ 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

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 Commonwealth² 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.’³

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

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.⁴
- 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.’⁵ It seems fairly clear that significant numbers of Cardwell people support the development.⁶ 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

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'.⁷ 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.⁸ In response the developer claimed to be the victim of a personal vendetta.⁹ 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.¹⁰

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

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.

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.¹

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.² 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.³ 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

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.⁴ 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.⁵

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;

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.⁶

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.⁷

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

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 1988.⁸ 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’.⁹ 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.’¹⁰ 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.’¹¹

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,

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.¹²

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.¹³

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 2,000.¹⁴

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

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.¹⁵ 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 1989.¹⁶ 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

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.'¹⁷ 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...'¹⁸ 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.¹⁹ 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

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.²⁰

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.²¹

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;

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.²² (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,²³ 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

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.²⁴ 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).²⁵ In **May 1996** baseline water quality and turbidity studies, commissioned by the Queensland government in accordance with the Deed of Agreement, were received.²⁶ 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

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.’²⁷ (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.²⁸

‘... 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.²⁹ 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.’³⁰ 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

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.

CHAPTER 3

DISCUSSION OF PORT HINCHINBROOK APPROVAL PROCESSES

The Tekin period

3.1 It is obvious that the Port Hinchinbrook dispute was set on its fateful course by the failure of the authorities to require a thorough up-front environmental impact assessment at the time the project was first proposed. In the Committee's view it must have been obvious to all even then that such a major project abutting a World Heritage Area might have environmental ramifications. Environmental groups were expressing concern, and urging the government to make an environmental impact study - without success - as early as 1987.¹ According to the Wildlife Preservation Society of Queensland (Tully & District Branch):

'As early as 1977, the Department of Harbours and Marine boat harbour feasibility study for Cardwell Shire and nearby areas recommended in the main against a boat harbour [at Oyster Point] but also stated that, if a boat harbour were to be considered, an environmental impact statement was necessary. If this sound advice had been heeded, the current potential threat to the channel may never have eventuated. We were still writing about the need for an environmental impact study many years later.' (C Muller, Wildlife Preservation Society (Tully & District Branch), Evidence 30 July 1998, p 112)²

3.2 The Committee was told that the 1988 rezoning '... did not require a Queensland Environmental Impact Assessment.'³ This and similar statements in evidence were vague on the detail of whether the local council or the State had no power to demand environmental assessment for that type of development at that time, or whether, regrettably, they exercised a discretion not to demand it. In fact the law at the time, the *Local Government Act 1936*, by virtue of 1973 amendments, cast a broad duty on local councils deciding development proposals to take into account environmental effects, and it gave them a broad power to make applicants provide

1 Wildlife Preservation Society of Queensland (Tully & District Branch), Submission 49, p 136-7.

2 Similarly, the Wildlife Preservation Society of Queensland said: 'Queensland Department of Harbours and Marine had already stated that "the area at Oyster Point should not be developed as a boat harbour" (p 9, chapter 2, Boat Harbour Feasibility Study for Cardwell Shire and Nearby Areas, 1980). "The site at Oyster Point would be expensive to develop and would provide only limited areas for future expansion and development", and "the boat harbour mooring area and entrance channel would be subject to severe siltation." and "a high capital investment would be required before any vessel could be moored at all" (ibid, p13).' Submission 121, p 501.

3 Environment Australia, Submission 157, attachment A, p 1; D Haigh, Submission 57, p 172.

environmental impact statements.⁴ However, unlike its successor, the *Local Government (Planning and Environment) Act 1990*, the earlier Act did not prescribe a list of ‘designated [types of] developments’ which the State government had a legislated role in assessing. This may be the point of the comments in evidence, if we read them as ‘the 1988 rezoning did not require *mandatory state-directed* environmental assessment.’⁵

3.3 It appears, then, that the local council of the day exercised its discretion not to demand environmental impact assessment for this major development proposal adjacent to a World Heritage Area. The Committee believes all concerned would agree that that initial omission has benefited no-one - not the developer who has suffered subsequent delays; not the environmental groups who are concerned about environmental impacts; not the public authorities who have had to handle the issue since then, with vastly more trouble and expense (both administrative and political) than if the job had been done properly in the first place.

‘If such an Environmental Impact Study had been conducted initially when it was obvious that there were potential problems with developing an environmentally sensitive area much of the present day difficulties may have been avoided.’ (Wildlife Preservation Society of Queensland (Tully & District Branch), Submission 49, p 137)

3.4 We note that Tekin carried out major earthworks for the marina - for which it had State and/or local approval - *before* securing the necessary Commonwealth and State approvals for the access channel *which was essential for the viability of the whole project*. At best this was rash; at worst it invites the accusation that Tekin was trying to pressure the authorities by presenting the project as a *fait accompli*. Such behaviour should not be condoned. Developers who start work in advance of having the necessary permits deserve no sympathy or special treatment if they suffer loss because the permits are refused. The prime duty of public decision-makers is to make

4 *Local Government Act 1936-1988* (Qld) as at 1987, s32A(1): ‘A Local Authority, when considering an application for its approval, consent, permission or authority for the implementation of a proposal under this Act or any other Act, shall take into consideration whether any deleterious effect on the environment would be occasioned ...’ s32A(2): [a Local Authority may adopt a policy prescribing environmental impact studies, and the matters they should deal with, for certain types of proposals as described in the policy] ... s32A(5) ‘[In the absence of a policy relevant to a particular proposal] where ... the Local Authority is of the opinion that the implementation of such proposal may have a deleterious effect on the environment, it may cause the applicant, at his expense, to submit an environmental impact study report and statement of impact in respect of his application and in that event shall specify the matters and things which shall be dealt with in such report and statement.’ Section 32A was inserted by Act no. 83 of 1973. Similar provisions were in the Act’s successor, the *Local Government (Planning and Environment) Act 1990*: sections 8.2(1), 8.2(12). Now the *Integrated Planning Act 1997* applies.

5 In the 1990 Act designated developments included ‘tourist resort development with accommodation for more than 1,000 people (including staff)’. *Local Government (Planning and Environment) Act 1990*, section 8.2. *Local Government (Planning and Environment) Regulation 1991*, section 16 & schedule 1. However, even under the 1990 Act, environmental assessment of designated developments was not mandatory: under certain conditions the Minister could decide that it was not necessary: section 8.2(4).

their decisions on the relevant criteria in the public interest, not to save developers from the consequences of their rashness.

The Queensland government's 1994 approval

3.5 The earlier mistake was perpetuated by the failure of the Queensland government to demand a comprehensive environmental impact assessment in 1993-94. That the State did not demand a comprehensive environmental impact statement in 1993-4 should not be disputed as a matter of fact, since the Environmental Review Report (ERR) which the State did produce virtually admits it: '... the impact assessment process adopted for the project has dealt mainly with those elements of the project for which approvals are not currently held ... the government does not have sufficient information to adequately quantify all potential impacts of such a project in this area.'⁶ In mitigation, we note that the State might not have had the power to demand a comprehensive EIS at this time - see paragraph 3.16.

In evidence the Great Barrier Reef Marine Park Authority (GBRMPA) regretted the lack of an environmental impact assessment at this time:

'It is the position of GBRMPA that 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 ... this was not possible under the relevant Commonwealth legislation (the Environment Protection (Impact of Proposals) Act - EPIP Act) at that time because there was no proposed Commonwealth action to which that Act could apply ... However, our view remains that the Queensland Government should have required an evaluation at the time this project was initially proposed in 1993 that addressed all of the Commonwealth's concerns about the protection of World Heritage values.' (GBRMPA, Submission 157a)

3.6 The Committee notes here that the Queensland government, though invited, declined to make a submission to this inquiry or to give evidence at a hearing. The State did answer some written questions put by the Committee subsequently, but its answers passed over in silence the Committee's question relating to the 1994 approval.⁷ Since the State has elected not to put its own case, we must rely on other evidence.

3.7 In the varied material relating to the Queensland government's 1994 deliberations which witnesses attached to their submissions, four themes stand out:

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

7 Questions by the Committee: further information p 64ff; replies of Qld Department of Premier & Cabinet, further information, p 702ff. The question which the State passed over in silence was: 'Did the State have the power to demand an Environmental Impact Statement in 1993-94; if so, why did it not do so?'

- The site is degraded and abandoned.
- The development would be economically beneficial.
- ‘... most of the required approvals had been granted by the previous government, such that full impact assessment became legally difficult to acquire.’⁸
- The controls set up by the Deed of Agreement will protect the environment.

3.8 The following statements by the State at that time illustrate these points, and show clearly how keen the government was to see the development proceed:

‘The assessment of impact recognises that the site has previously been degraded and abandoned.’ (Queensland Department of Environment and Heritage, *Environmental Review Report - Port Hinchinbrook*, May 1994, p 1)

‘... the proposed development at Oyster Point is located on a site that has received a range of prior approvals ... The current proposal is substantially in accordance with the original project and, as a consequence, it was considered appropriate that my Department should review the environmental impacts of the modified project rather than require a full Environmental Impact Study ... I believe that the approach outlined above provides a responsible basis upon which to progress this proposal - addressing the issues raised in the various reports that have been commissioned while at the same time recognising the particular circumstances surrounding the proposed development.’ (the Hon. M Robson, Qld Minister for Environment and Heritage, to Senator Faulkner, Commonwealth Minister for the Environment, 9 September 1994)

‘Strenuous efforts have been made by the Government to prevent environmental damage from this development while realising its undoubted social and economic benefit, evidenced by the strong support from local residents. This development is occurring on a previously degraded site for which most of the required approvals had been granted by the previous government, such that full impact assessment became legally difficult to acquire.’ (J Mickel, Office of the Premier, to North Queensland Conservation Council, 21 October 1994)

‘The Port Hinchinbrook Resort was approved in the 1980s by the National Party Government. That developer cleared and abandoned the site - leaving an ugly scar on the coastal landscape. When the present developer purchased the site and existing approvals it gave us the opportunity to demand environmental controls ... we approved a smaller project with some of the strictest environmental controls ever imposed on a development in this State ...’ (the Hon. W Goss, Qld Premier, ‘An open letter to the Federal Government’, *The Australian*, 23 November 1994, p 7)

8 J Mickel, Office of the Premier, to North Queensland Conservation Council, 21 October 1994.

‘We badly need more investment in hotels and resorts, and yet we saw a case here where a developer effectively had approval from three levels of government - local, State and Federal, but then had the project stopped in a very dramatic and public way, threatening a \$100 million investment and a thousand jobs.’ (the Hon. W Goss, Qld Premier, A.M. 2 December 1994)

3.9 The North Queensland Conservation Council, by contrast, believes that the 1994 Environmental Review Report process was a sham, and that the Queensland and local governments never intended that the development proposal should be halted or substantially modified because of environmental concerns:

‘Quite clearly, the public process of 1994 was inadequate in all respects: it did not reveal the whole of project, it did not restrict the project to what was described in *Cummings and Burns* [The Tekin 1987 Masterplan], it did not describe all the potential impacts, it was at times ambiguous, and it necessitated major changes in infrastructure for which no EIS was prepared.

‘Further, the submissions received from the public were never made public, and public concerns about the major changes in infrastructure (eg airport and water supply), were clearly not taken into account.

‘It is not an exaggeration to say that the 1994 ERR and public process was a sham, and that the Queensland and local governments never intended that the development proposal should be halted or substantially modified because of environmental concerns.’ (North Queensland Conservation Council, Submission 112b, p 6)

3.10 According to the developer:

‘On numerous occasions during the drafting of the Deed [in 1994] I was told directly by Mr John Down [Head, Queensland Office of the Co-ordinator General] that the Deed was being compiled solely to appease the Feds and the Greens.’ (Cardwell Properties, Submission 83, p 8)

3.11 The developer, for his part, emphasises the existing approvals and argues that the unlucky chance (for him) that existing approvals did not include the access channel allowed the government to put pressure on him:

‘The Queensland Government was not in a position to demand an EIS because the property had been purchased with appropriate town planning [approvals] in place and with formal consents to building the marina also in place. Furthermore, the Queensland Government regulations, at that time and throughout the term of the Goss Government, only required an EIS to be provided when the proposed development was to accommodate more than 2,000 guests. Regardless of their limited powers in regard to demanding an EIS the Queensland Government acted responsibly and more or less blackmailed me into a situation where I had to comply with extensive environmental obligations. They were able to do this because Tekin Australia Ltd had town planning approval for the resort site and the marina

but they only had approval in principle for the channel ...' (Cardwell Properties, Submission 83, p 7)⁹

3.12 The Committee has four comments. Firstly, to give the benefit of the doubt, perhaps the Queensland government honestly believed it would be better for the environment to complete the development than to leave a degraded site. However, a thorough environmental impact study might have provided some scientific basis for saying whether this belief was correct. Environmental groups have argued that the site could have been rehabilitated.¹⁰

3.13 Secondly: a government is entitled (within the limits of the decision-maker's legal discretion) to take account of the fact that a development would, in its opinion, be economically beneficial. It also has a duty to protect the environment. Finding the right balance between beneficial economic development and environmental conservation, where they conflict, is a matter of judgment. Communities have different interest groups, and we elect governments to make decisions on behalf of the whole community. Development control laws recognise this: they usually leave decision-makers a discretion to consider all issues (commanding them simply to 'take into account' environmental impacts); and they commonly include 'let-out' clauses (such as 'national interest' or 'no prudent and feasible alternative') to shortcut environmental assessment in certain cases or to allow environmentally detrimental development.¹¹ For example, the Queensland *Marine Parks Act 1982*, although its prime purpose is implicitly nature conservation, allows a person to apply for permission to 'enter or use' a marine park; and it gives the authority deciding this application a wide discretion having regard to both conservation aims ('the conservation of the natural resources of the marine park') and other possible interests

9 We are uncertain of the source for 'EIS only required when the proposed development was to accommodate more than 2,000 guests'. In fact the *Local Government (Planning and Environment) Act 1990* cast a broad duty on local councils deciding development applications to take into account environmental effects. Where a council considered that a proposal might have 'a deleterious effect on the environment', the Act imposed a duty on the council to 'require the applicant to submit an environmental impact statement' (this was a duty, not merely a discretion, as in the previous *Local Government Act 1936* - see paragraph 3.2 above, footnote). The Act prescribed a list of 'designated [types of] developments' which the State government had a role in assessing. These included 'tourist resort development with accommodation for more than 1,000 people ...'. The Act was not at issue in the case of Port Hinchinbrook in 1994 because Cardwell Shire Council had decided that no further town planning application was necessary - see paragraph 2.19. *Local Government (Planning and Environment) Act 1990*, section 8.2; *Local Government (Planning and Environment) Regulation 1991*, section 16 & schedule 1.

10 For example, Wildlife Preservation Society of Queensland (Tully & District Branch), Submission 49, Appendix 1; North Queensland Conservation Council, further information 10 March 1999, p 234.

11 For example, *Environment Protection and Biodiversity Conservation Act 1999* (Cth), sections 158(4) & 303A; *Australian Heritage Commission Act 1975* (Cth), section 30(1). An exception is in section 13 of the *World Heritage Properties Conservation Act 1983*: 'In determining whether or not to give a consent pursuant to section 9 ... the Minister shall have regard only to the protection, conservation and presentation, within the meaning of the [World Heritage] Convention, of the property.'

(‘the existing use and amenity, and the future or desirable use and amenity, of the area and of adjacent areas’).¹²

3.14 The Committee notes evidence to the inquiry arguing that the economic benefits of Port Hinchinbrook are unresearched and uncertain. See paragraphs 5.2-5.3.

3.15 Thirdly: to say that ‘the developer had existing permits’ was the truth, but not the whole truth. The access channel was essential to the development, and on the face of it there was every reason to think that breaching the Hinchinbrook Channel might have environmental impacts different from those already created by the Tekin work on the marina site further inland. There was never a permit to dredge the access channel before late 1994 and, in the absence of an environmental assessment, arguably the State should not have felt any obligation to grant one.¹³ The comment at paragraph 3.4 applies: the prime duty of public decision-makers is to make their decisions on the relevant criteria in the public interest, not to solve developers’ problems for them.

3.16 On the other hand, the State had the difficulty that a comprehensive environmental impact statement (EIS) for the whole project could not have been demanded under general planning law, since the project as a whole had already been approved by the local council.¹⁴ It could only have been demanded under the *Marine Parks Regulation 1990* in respect of the vital application to do work in the State marine park. There could be an argument over whether the *Marine Parks Regulation* empowers the State to demand an environmental impact statement in respect of activities not the subject of the application.¹⁵ This may be the reason for the State’s position at the time that ‘most of the required approvals had been granted by the

12 *Marine Parks Regulation 1991* (Qld), section 9. We say ‘the prime purpose of the Act is *implicitly* nature conservation’ deliberately. The *Marine Parks Act 1982* contains no purpose clause. Its gist is simply, ‘The Governor-in-Council may declare marine parks.’ A ‘marine park’ is simply ‘an area ... declared under this Act as a marine park.’ Criteria for declaring a marine park are uninformative (for example, section 12(1)(a) ‘the suitability of the area for the purposes of a marine park ...’). Most of the Act is administrative and procedural matters.

13 The developer says that Tekin ‘only had *approval in principle* for the [access] channel...’ (Cardwell Properties, Submission 83, p 7; emphasis added). We are uncertain what this refers to. The 1994 Environmental Review Report (p 1) says, ‘Approvals pursuant to section 86 of the Harbours Act 1955 were granted in 1988 for excavation of a marina basin and associated bund walls and, in 1989, for plans for construction of revetment walls, boardwalks and a boat ramp within the above marina. Approval from Department of Primary Industries was also given for mangrove removal in the marina basin. These approvals did not include construction of any access channel to the basin.’

14 The 1988 rezoning was conditional on development being ‘generally in accordance’ with Tekin’s 1987 *Cummings and Burns* Masterplan. Cardwell Shire Council had decided that the 1994 plan was ‘generally in accordance’, and so did not require any further town planning application - see paragraph 2.19. Some environment groups argued that the 1994 project was significantly different and the Council should not have so decided.

15 *Marine Parks Regulation 1990* (Qld), section 9(4): ‘The chief executive [of the Department of Environment and Heritage] may request an applicant for permission to give the chief executive further written particulars (including an environmental impact statement) as the chief executive may reasonably require to properly consider the application.’ The argument would turn on the meaning of ‘reasonably’.

previous government, such that full impact assessment became legally difficult to acquire.’¹⁶

3.17 Fourthly: to give the benefit of the doubt, we may allow that the Queensland government honestly believed that the Deed of Agreement would be adequate to protect the environment, and was a reasonable approach to take in view of the possible legal difficulties of demanding a whole-project EIS under the auspices of the *Marine Parks Act*. However, environment groups deny that the Deed has been adequate. They also argue that it is inappropriate because of its lack of transparency and accountability. The key issue is the difference between upfront environmental impact assessment *as an input to a decision on whether to grant approval*, and environmental management designed to *mitigate* the effects of an approved development. It seems that the Queensland government was unwilling to contemplate the possibility that a thorough impact assessment might suggest that the development should not go ahead.

3.18 Environmental groups (primarily the North Queensland Conservation Council) submitted much information (much of it official correspondence obtained through Freedom of Information, or summaries thereof), aiming generally to show that at this time the Queensland government was too close to the developer and negligent in its duty to protect the environment.¹⁷ For example:

- It was claimed that the developer had improper access to government deliberations and improper influence on the drafting of the Deed of Agreement.¹⁸

‘In 1994, the Wildlife Preservation Society of Queensland used FOI provisions to gain access to Queensland Department of Environment and Heritage documents relating to the ‘Port Hinchinbrook’ project. It was discovered that the developer had been given access to assessment and planning documents while they were still being prepared by departmental officers, a favour not shown to anybody else, and that he had been allowed to express his opinion of their contents before the documents were released for public comment ... (Wildlife Preservation Society of Queensland, Townsville Branch, submission 97, p 396)

- It was claimed that the developer was granted a special lease over Marine Park land: ‘alienation of public land and misappropriation of a public asset.’¹⁹
- It was claimed that in granting the vital permit to do work in the State Marine Park, the State disregarded the public notice procedures of the *Marine Parks Act 1982* and ignored the advice of its own officials:

16 J Mickel, Office of the Premier, to North Queensland Conservation Council, 21 October 1994.

17 See particularly North Queensland Conservation Council, submission 112a, p 40ff; also for example, Wildlife Society of Queensland, Submission 121, p 502ff.

18 For example, P Sutton (Wildlife Preservation Society of Queensland, Hinchinbrook Branch), Evidence 30 July 1998, p 120.

19 North Queensland Conservation Council, Submission 112, p 450.

‘If the reasonable use of the marine park is to be restricted by the permit then public comment is to be invited by the Director. The grant of the permit was made without sufficient scientific evidence that the permit would [not] contravene the above factors for consideration [*Marine Parks Regulation 1990*, section 9(5)] and without inviting public comment. Furthermore the Department of Environment (Northern Region) obtained an inhouse *Preliminary Permit Assessment Record* ... the Report concluded that the permit was not environmentally tenable. The Report was ignored and permits granted from the Brisbane office of QDEH. The legislative effect of the QDEH report should have been to stop any clearing of mangroves or other beach foreshore destruction.’ (D Haigh, Submission 57, p 173)

3.19 A consideration of these and similar claims in detail would double the length of this report. The Committee comments briefly:

- The *Marine Parks Act 1982* did not oblige the State to refuse the permit to clear mangroves. As noted in paragraph 3.16, the *Marine Parks Regulation 1990* gives the decision-maker a wide discretion to take into account effects on the environment and other matters including ‘the future or desirable use and amenity of the area and of adjacent areas’. Arguably, under this heading the decision-maker was entitled to take into account perceived economic benefits from the development. The decision-maker was entitled not to follow the officials’ advice, providing the decision followed due process and was a ‘proper exercise of power’ - for example, providing it considered relevant matters and not irrelevant matters, and was not flagrantly unreasonable.²⁰ Whether the decision was reasonable or not is a matter of opinion. We note that ‘the North Queensland Conservation Council did not appeal this decision due to lack of financial and human resources’.²¹
- Similarly, whether the proposed work in the marine park ‘restricted the reasonable use of a part of the marine park by persons other than the applicant’ (which is the test of the requirement for public notification²²) is a matter of opinion. Certainly, the State’s decision not to publicly notify this application was politically regrettable, since it only added to the concerns of environmental groups about the secrecy of the whole business.

3.20 In the late nineties, similar claims were made by environment groups concerning the State being too close to the developer, which may date later than 1994:

- The erosion prone zone declared under section 41A of the *Beach Protection Act 1968* was 110 metres wide north of Oyster Point; but in 1994 the Beach Protection Authority agreed to reduce it to 30 metres. In the Deed of Agreement the building setback from the seaward property boundary was 40 metres; in the

20 *Judicial Review Act 1991* (Qld), sections 21, 23.

21 D Haigh, Submission 57, p 174.

22 *Marine Parks Regulation 1990*, section 9(6).

1996 Deed of Variation this was reduced to 20 metres. The explicit or implicit claim is that these things were done without sufficient reason, to oblige the developer.²³

- It was claimed that the State has not prosecuted the developer as it should have under the *Environmental Protection Act 1994* for breaches of the Deed of Agreement causing environmental harm.²⁴
- In 1997 the Department of Local Government and Planning waived the requirement for an Environmental Impact Statement relating to the developer's application to rezone land south of the present development site to allow further development. The Committee comments from paragraph 3.48.
- Unallocated State Land lot 33 USL38644 (lying between Cardwell Properties land and the Hinchinbrook Channel, south of Stoney Creek) was designated as 'critical habitat' of the endangered mahogany glider. In mid-1997 the government revoked the 'critical habitat' designation of this land. The implicit claim is that this was done without good reason. Although the revocation was not publicised Cardwell Properties shortly afterwards applied to lease the land.²⁵

3.21 On the last point, the Committee notes that the Queensland government has recently advised that Cardwell Properties' application to lease lots 33 and 42 on USL38644 and lot 1 on PER 207862 has been refused. In relation to the mahogany glider habitat, the government explains:

'Lot 33 has not been included as critical habitat in the draft [mahogany glider conservation and recovery] plan as the Environment Protection Agency has recommended protected area status over this lot to my Department of Natural Resources, with the intention of protecting the area through national park status rather than through the mechanism of critical habitat.'²⁶

3.22 A general concern of objectors was what they regard as the undue secrecy of the Queensland government's deliberations in 1994, and the lack of public process surrounding the Deed of Agreement. For example:

'This abuse of due process and collusion between governments and developer was only possible because of secrecy maintained at all

23 Cairns & Far North Environment Centre, Submission 50, p 144; Wildlife Preservation Society of Qld (Townsville Branch), Submission 97, p 395; North Queensland Conservation Council, Submission 112, p 450, further information 17 March 1999, p 342ff, further information 30 March 1999, p 557ff.

24 Queensland Conservation Council, Submission 117, p 477.

25 North Queensland Conservation Council, Submission 112, p 457; see also Wildlife Preservation Society of Queensland (Bayside Branch), Submission 3, p 11; Wildlife Preservation Society of Queensland (Townsville Branch), Submission 97, p 396.

26 The Hon. R Welford, Minister for Heritage and Minister for Natural Resources, to North Queensland Conservation Council, 1 April 1999. NQCC, further information 21 April 1999, p 658-9.

government levels.’ (North Queensland Conservation Council, Submission 112b, p 6)

3.23 According to Dr Brian Robinson:

‘In May 1994 QDEH released an Environmental Review Report (ERR). 200 public submissions were received. The developer of Oyster Point made strong objections to the material in the ERR and the public comments. The Summary of Public Comments was suppressed by the Queensland Government ... The Queensland Government did not like the conclusions of the [August 1994] Valentine Report, and referred it to consultants Loder and Bayly. The Loder and Bayly Report (October 1994) strongly supported the Valentine Report. The Loder and Bayly Report was also suppressed by the Queensland Government ... (Dr B Robinson, Submission 80, p 302)

3.24 The Committee would qualify the claim that the Loder and Bayly report ‘strongly supported’ the Valentine Report: Loder and Bayly agreed with Valentine regarding the inadequacies of the EIS process, the lack of adequate baseline data, and the nature of the impacts; and disagreed on some other points.²⁷ Certainly, though, as far as we know neither the 200-odd submissions on the Environmental Review Report, nor any official summary or report on them were ever publicly released (the Queensland government refused this Committee’s request to see the Department’s summary of public comments on the ERR, saying ‘this is not available in final report form’²⁸). The Queensland government did not publicly notify the developer’s application to do work in the marine park - an omission which perhaps was permitted by the *Marine Parks Regulation 1990* (see paragraph 3.19) but still did not encourage confidence in the government’s commitment to a public procedure. The Deed of Agreement itself is a private contract with the developer.²⁹

3.25 In the Democrat Senators’ view this lack of public process was regrettable, and was not consistent with the undertakings of full disclosure and public consultation that the State made in the December 1993 letter of agreement with the Commonwealth (see APPENDIX 5). In the absence of evidence in reply from the Queensland

27 ‘While we agree with the findings of the Valentine report regarding the inadequacies of the EIS process; the lack of adequate baseline data; the lack of project detail; the nature of the likely impacts; and that most of the impact associated with the resort detail with better knowledge and management, could be overcome - we disagree with the findings regarding the inappropriate location of the proposed development at Oyster Point (we believe that existing planning strategies and documents produced by the Federal and State Authorities have recognised Cardwell and Oyster Point as a potential tourist node and have zoned adjacent World Heritage areas accordingly); and we question the implication that all of the impacts listed as critical are the responsibility of the developer. We believe that most of the concerns could be overcome or managed more effectively by an open and frank discussion by all interested parties, and tabling of an agreed environmental monitoring and proactive management programme which has appropriate incentives and disincentives to ensure its compliance, and adequate resourcing to ensure its effectiveness.’ Loder & Bayly (J Wood & R Ison), *A Review of the Draft Valentine Report Regarding World Heritage Values and the Oyster Point Proposal*, 8 July 1994, p 8.

28 Queensland Department of Premier and Cabinet, further information 21 April 1999, p 704.

29 The Deed of Agreement (1994), and the Deed of Variation which joined the Commonwealth to the Deed (1996), are reproduced in Environment Australia, Submission 157 attachments D & E.

government, we have no basis for drawing any more detailed conclusions on its administrative actions in relation to Port Hinchinbrook.³⁰ We remain concerned that, in its obvious eagerness to support the development, the government may not have always followed due process in a broader sense - if we define 'due process' as acting without bias and giving all interest groups fair and equal access to decision-makers.

3.26 The above claims that the State was too close to the developer generally show the extreme suspicion with which environment groups view every act of the authorities in relation to Port Hinchinbrook. In the Committee's view a consultative and public decision-making process is necessary not only to gather all the right information, but also to foster trust among the parties. A modicum of trust and respect for the views of others is essential for a civilised public debate on a matter of public interest. The lack of it during the Port Hinchinbrook debate has been a regrettable result of the non-transparent approach adopted by the authorities.

The Deed of Agreement

3.27 Opponents of Port Hinchinbrook attacked the 1994 Deed of Agreement between the developer, the Queensland government and Cardwell Shire Council not only because, in their view, it has not adequately protected the environment, but also for reasons of principle. It is a private contract between the parties. There was no public input to drafting its terms. Public interest groups have no way of appealing against decisions relating to it (amendments, for example), or initiating prosecution of breaches. It can only be enforced by the parties - and environmental groups, given their suspicion of the parties' commitment to environmental protection, naturally have no confidence that the parties would initiate this. It was also claimed that phrases like 'best engineering practice' are so vague as to make the Deed unenforceable even by the parties:

'The Hinchinbrook Deed of Agreement has effectively excluded the public from enforcement of environment protection measures and there are no enforceable environmental standards in the document. The adoption of phrases such as "best engineering practice" renders the document effectively meaningless and unenforceable even by the parties.' (Environmental Defender's Office Ltd, Submission 144, p 665)

3.28 The Committee notes the position of the Queensland government at the time that '... most of the required approvals had been granted by the previous government, such that full impact assessment became legally difficult to acquire.'³¹

3.29 Environmental groups claimed that the developer has breached the Deed of Agreement many times. Many of the claimed breaches relate to the Acid Sulfate

30 This refers to considerations such as: whether administrative decisions were within power in terms of the enabling statute; whether they followed correct procedures; whether they considered relevant matters and not irrelevant matters, having regard to the statutory limits of the decision-maker's discretion; whether they afforded natural justice to applicants.

31 J Mickel, Office of the Premier, to North Queensland Conservation Council, 21 October 1994.

Management Plan and acid runoff contrary to the Deed (discussed in chapter 4). Most other claimed breaches are procedural matters relating to a period shortly after the Commonwealth joined the Deed by a Deed of Variation in late 1996 - such as 'site works commenced without required plans being drafted and approved' or 'failure to have appointed an Independent Monitor before commencing work.'³²

3.30 The developer denies any breaches of the Deed.³³ However Senator Hill, Commonwealth Minister for the Environment, acknowledged certain breaches in November 1996.³⁴ Environment Australia (Commonwealth Department of the Environment) says that 'There have been ... occasions when there have been differences of opinion with the Queensland government and/ or the developer about the interpretation of the Deed ...', but denies any adverse impacts on the World Heritage Area.³⁵

3.31 That such simple matters of fact should be disputed suggests some lack of clarity in the terms of the Deed and is itself a criticism of it.

Recommendation 1

The Committee recommends that the Commonwealth, as a party to the Port Hinchinbrook Deed of Agreement, should engage an independent assessor to report on whether the developer has been and is complying with the Deed.

The Committee recommends further that if the developer is found to be in breach of any part of the deed, the Commonwealth should act to ensure the developer complies with it and take steps to remedy any breach.

3.32 The Democrat senator's view is that the Deed of Agreement was, in principle, an unsatisfactory way to proceed. We note the difficulties which the Queensland government said it faced in proceeding another way. The Deed was an *ad hoc* one-off which is not a satisfactory alternative to an orderly regime of planning law incorporating provisions for upfront environmental impact assessment with public advertisement and public submissions on significant development proposals. We hope that the authorities will never again be tempted to proceed in this way in order to bypass an orderly public approval process.

32 Queensland Conservation Council, Submission 117, p 477; North Queensland Conservation Council, Submission 112, p 454.

33 Cardwell Properties P/L, Submission 83, Annexure A, p 2.

34 'GBRMPA have advised that the Deed is not being complied with in that an Independent Monitor has not been appointed and certain works are occurring before the Turbidity Control Plan has been approved by the Commonwealth ... (the Hon. R Hill, Minister for the Environment, *Port Hinchinbrook*, press release 27 November 1996)

35 Environment Australia, Submission 157, p 22-3.

3.33 The Committee notes a recent report on acid sulfate management of Port Hinchinbrook which mentions several breaches of the Acid Sulfate Management Plan made pursuant to the Deed.³⁶ Comments on this issue are in chapter 4.

Recommendation 2

The Committee recommends that in future, Deeds of Agreement should not be used as a means of avoiding compliance with an existing regulatory regime.

Senator Faulkner's proclamations

3.34 Opinion on Senator Faulkner's November 1994 intervention halting the development was and is very polarised. The question of whether his intervention was warranted on environmental grounds is inextricably mixed with feelings about local autonomy versus national interest. Supporters of the development regarded it as an unwarranted interference in something that was being handled perfectly well at the State level; opponents regarded it as a laudable initiative, the State government being recalcitrant, to execute the Commonwealth's admitted responsibility to protect the World Heritage Area.

3.35 The Committee comments generally:

- It is unfortunate that the *World Heritage Properties Conservation Act 1983* provided only a power to prohibit damaging actions: it did not provide a constructive power (which would be comparable to that in the *Environment Protection (Impact of Proposals) Act 1974*) to require environmental impact assessment of proposals. This inevitably left the Commonwealth's intervention open to being portrayed as negative and spoiling. This problem has been remedied in the new *Environment Protection and Biodiversity Conservation Act 1999*. The Act gives the Commonwealth Environment minister the power to require environmental impact assessment of proposals which will or are likely to have a significant impact on the World Heritage values of a declared World Heritage property.³⁷
- The problem was exacerbated by the lack of a clear management plan for protecting the World Heritage values of the area. The Environmental Defender's Office Ltd argued that there was:

‘...a failure of the Commonwealth to put in place protective measures ahead of time, such as a plan of management, to indicate to the world at large what actions would and would not be permitted. Because of the belated involvement of the Commonwealth, there was an apparent reluctance on behalf of the Commonwealth to carry out environmental assessment.’
(Environmental Defender's Office Ltd, Submission 144, p 661)

36 Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999.

37 *Environment Protection and Biodiversity Conservation Act 1999*, sections 11,12.

3.36 The Great Barrier Reef World Heritage area is a huge and diverse area, and there are many interests to be accommodated in planning its conservation and development. In any large progressive survey program it is inevitable that problems will appear in places where the survey has not yet reached - as, for example, when developments are proposed for places that probably have heritage value but have not yet been listed. Environment Australia comments:

‘Management plans for the GBR have been developed and revised progressively. This is necessarily a time consuming process due to the complexities of the issues involved. Nevertheless, zoning plans and highly detailed management plans have been completed for 348,000 square kilometres of the GBR Marine Park. They have involved extended consultation with clients, required the resolution (where possible) of often strongly put and conflicting industry and conservation group positions, and have demanded pioneering planning approaches that were novel on a world scale. The two latest Plans of Management cover only 5 per cent of the GBR Marine Park (Cairns and Whitsundays), but these areas comprise over 95 per cent of the tourism use of the GBR World Heritage Area.’ (Environment Australia, further information 25 March 1999, p 415)

3.37 The Committee believes this work is useful. The Port Hinchinbrook dispute shows the importance of pro-active regional planning to provide certainty for both developers and interest groups and to pre-empt case by case disputes in future. The development of mandatory management plans for Australian World Heritage areas and the extension of the Commonwealth’s *World Heritage Properties Conservation Act 1983* to ensure that the Act applies to a buffer zone around World Heritage properties, as recommended in the Committee’s *Commonwealth Environment Powers* report,³⁸ would help avoid disputes of this kind.

Senator Hill’s 1996 consent

3.38 Opponents of Port Hinchinbrook criticised Senator Hill’s 1996 consent under the *World Heritage Properties Conservation Act 1983* on various grounds:

- It was claimed that the Minister misinterpreted or was misled by Dr Reichelt’s summary of the six reviews of the SKM Environmental Risk Assessment (see paragraph 2.31); Dr Reichelt’s most prominent summary comment - that the project ‘could go ahead without significant impact on the immediate environment around Oyster Point’ - was too narrow, and ignored, for example, possible effects of increased boat traffic on dugongs and possible long term effects of increased tourism on the nearby island national parks.³⁹ In any case,

38 See Senate Environment, Communications, Information Technology and the Arts References Committee, *Commonwealth Environment Powers*, May 1999, Recommendations 11 & 12.

39 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. Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Powers inquiry, 24 April 1998, p 207-8.

‘This [Dr Reichelt’s summary comment quoted just above] was clearly wrong as the scientific evidence clearly was the opposite even in the scientists allegedly supporting the Reichelt Report. They stated there was insufficient evidence to determine the matter with any certainty.’⁴⁰

The Committee comments: four of the six reviewers, though not specifically asked, raised broader issues, including the uncertainty about impacts, the effects of boating on dugongs and the effects of increased tourism. In the Committee’s view Dr Reichelt reported these comments fairly and prominently in his summary. The criticism, if any, should be directed not at Dr Reichelt but at Senator Hill for using Dr Reichelt’s summary in a deliberately selective way to justify his decision.⁴¹ See also paragraph 5.65.

- It was claimed that Senator Hill unreasonably disregarded the advice of the Australian Heritage Commission that granting consent would have adverse effects on national estate values.⁴²
- It was claimed that it was unreasonable for Senator Hill’s consent to rely on the uncertain future actions of other parties (through the Deed of Agreement and the Commonwealth-Queensland Memorandum of Understanding concerning regional planning) to mitigate impacts.⁴³
- It was claimed that generally the Minister failed to implement ‘the highest standard’ of World Heritage protection.⁴⁴
- It was claimed that the Prime Minister ‘... prematurely announced the Government’s intention to approve the project - before any results of scientific assessment had been examined by the appropriate Minister’ - suggesting a lack of commitment to due process.⁴⁵

40 D Haigh, Submission 57, p 181-2. Similarly North Queensland Conservation Council, Submission 112, p 446; Queensland Conservation Council, Submission 117, p 475; P Valentine, Submission 136, p 612.

41 The Hon. R Hill, *Statement of Reasons for my decisions under ... the World Heritage Properties Conservation Act 1983* (attachment K to Environment Australia, Submission 157), p 4. Senator Hill’s reasons quote verbatim the key sentence of Dr Reichelt’s summary (‘... could go ahead without significant impact on the immediate environment around Oyster Point, that is, within a few hundred metres ...’) and make no reference to any other part of it.

42 D Haigh, Submission 57, p 176,183; North Queensland Conservation Council, Submission 112, p 447-8. The Great Barrier Reef is listed in the Register of the National Estate, so section 30 of the *Australian Heritage Commission Act 1975* applies: a Commonwealth decision-maker may not take any action (including, make a decision) that adversely affects a listed place unless there is no feasible and prudent alternative.

43 Cairns & Far North Environment Centre, Submission 50, p 144,149; D Haigh, Submission 57, p 180; Queensland Conservation Council, Submission 117, p 476; Environmental Defender’s Office Ltd, Submission 144, p 662.

44 D Haigh, Submission 57, p 174.

45 P Valentine, Submission 136, p 612. The Prime Minister, Mr Howard, was quoted in the *Townsville Bulletin* of 24 July 1996 as saying: ‘I got personally involved in the decision because I knew it was a real sort of test of whether or not we could deliver in real terms to regional areas.’ Both he and the Deputy

- It was claimed that work started pursuant to Senator Hill's consent before the Acid Sulfate Management Plan (which was a condition of the Deed of Variation) had been completed and approved, suggesting that the parties to the Deed were not treating the plan seriously.⁴⁶ The Committee comments on this at paragraphs 4.23-4.24.

3.39 In response Environment Australia pointed to the detailed information which Senator Hill considered during his deliberations, argued that the Deed of Variation was an appropriate way to proceed (given that Senator Hill could not attach conditions to his consent under the *World Heritage Properties Conservation Act 1983*), and argued that in fact the Deed has protected the World Heritage values of the area:

‘The environmental management regime associated with Port Hinchinbrook addresses all of these potential impacts. It has so far ensured no significant impact on world heritage values.’⁴⁷

3.40 Senator Hill's consent has similar features to the Queensland government's 1994 approval. Firstly, it is obvious that the Commonwealth was mindful of the perceived economic benefits of the development. Senator Hill, in his reasons for granting consent under the section 10 of the *World Heritage Properties Conservation Act 1983*, took into consideration economic factors:

‘I found that because granting consent would facilitate the development of the resort it would accordingly deliver significant economic and commercial benefits to the Cardwell region. These benefits would be delivered principally through increased employment opportunities and through increased economic activity associated with the operation of the resort and with the growth of tourist numbers. However, I gave such considerations relatively little weight.’⁴⁸

3.41 Senator Hill gave similar reasons for concluding that, under section 30 of the *Australian Heritage Commission Act 1975*, there was ‘no feasible and prudent alternative’ to giving consent: ‘I found that adopting any of the alternatives [refusal] would have the effect of depriving the region of those benefits because the resort

Prime Minister, Mr Fischer, made several public statements around this time (in advance of Senator Hill's 22 August consent) supporting the development. In fairness it should be noted that Senator Hill had already (by press release of 9 July) announced that he was ‘inclined to consent’ providing he could be satisfied that best engineering practices could be ensured. The Hon. J Faulkner, Senate *Hansard* 8 October 1996, p3632. The Hon. J Howard, *A.M.* [radio program], 11 July 1996; *Herbert electorate dinner: transcript of address*, 19 July 1996. The Hon. T Fischer, *A.M.*, 10 July 1996. The Hon. R Hill, *Port Hinchinbrook*, 9 July 1996.

46 For example, Prof. I White, Submission 127, p 573, Evidence 10 August 1998, p 256.

47 Environment Australia, Submission 157, p 18.

48 Environment Australia, Submission 157, Attachment K, statement of reasons.

would not go ahead.’⁴⁹ Public statements by the Prime Minister and the Deputy Prime Minister around the same time also supported the development.⁵⁰

3.42 We repeat the comment at paragraph 3.13: the Commonwealth was entitled to want the economic benefits, providing it also fulfilled its duty to protect the World Heritage area. The key point of debate is whether it has fulfilled this duty adequately. In important respects the Committee thinks that the Commonwealth has not fulfilled this duty, as will be shown in the discussion of the environmental impacts of Port Hinchinbrook (summarised at paragraph 4.121).

3.43 Secondly, just as Queensland in 1994 proposed the Deed of Agreement because (it was thought) full environmental impact assessment was ‘legally difficult to acquire’ because of pre-existing approvals, so the Commonwealth in 1996 put forward the Deed of Variation in response to the fact that (it was thought) Senator Hill could not attach conditions to his consent under the *World Heritage Properties Conservation Act 1983*.⁵¹ Opponents of Port Hinchinbrook maintain their general arguments about the inappropriateness of relying on the Deed of Agreement to protect the environment (lack of transparency and public consultation; lack of powers of enforcement, lack of standing for public interest groups to prosecute breaches). They argue that in any case Senator Hill should have refused consent, based on the likely impacts on the World Heritage Area. This brings us to the discussion of the actual environmental impacts of Port Hinchinbrook in chapter 4.

The Friends of Hinchinbrook Federal Court challenge

3.44 The Friends of Hinchinbrook challenged Senator Hill’s consent under the *World Heritage Properties Conservation Act 1983* in the Federal Court on various administrative law grounds, mainly that he failed take into account relevant matters or took into account irrelevant matters, or that his decision was so unreasonable that no reasonable person could have made it.⁵² Key claims were that it was unreasonable for the Minister to rely on prospective actions by others (through the Deed of Agreement and the Memorandum of Understanding on regional planning); that the Minister failed to consider all relevant factors because he deferred some issues for later consideration;

49 Environment Australia, Submission 157, Attachment K, statement of reasons.

50 Comments by Prime Minister, Mr Howard, at a press conference 10 July 1996, A.M., 11 July 1998; and at a Herbert electorate dinner on 19 July. Comments by Deputy Prime Minister, Mr Fischer, A.M., 10 July 1996.

51 As far as we are aware a connection between the lack of power to impose conditions under the *World Heritage Properties Conservation Act 1983* and the Commonwealth’s decision to join the Deed of Agreement was never publicly stated at the time. In his press release of 22 August 1996 announcing his consent, Senator Hill made no allusion to this point. The connection is suggested by minutes of a meeting of 16-17 July 1996 between Commonwealth and State officials and the developer, as quoted during the Friends of Hinchinbrook court case challenging Senator Hill’s consent (see paragraph 3.44), and the court accepted it. The court agreed that the Minister did not have power to impose conditions on his consent. Federal Court: *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 55FCA (14 February 1997), p 36; 69 FCR 28 at 69.

52 *Administrative Decisions (Judicial Review) Act 1977*, section 5(2).

and that he was bound to apply the precautionary principle when making his decision.⁵³

3.45 Friends of Hinchinbrook lost their case. It should be emphasised that the court reviewed Senator Hill's actions on certain limited legal grounds such as those just mentioned, not 'on the merits' of the decision he reached. The court stressed that the role of the court is 'not to determine the desirability or otherwise of the Port Hinchinbrook development.'⁵⁴ The court simply ruled that Senator Hill's decision was 'lawful' in the sense of being within power and procedurally correct. This says nothing one way or the other about whether it was a *good* decision in a policy sense. Mr Haigh (an opponent of the Port Hinchinbrook development) comments:

'If the [World Heritage Properties Conservation] Act had allowed a merits review of the decision under the *Administrative Appeal Tribunal Act 1975* (Cth) then this would have been the preferred course of action. The failure of the *World Heritage Properties Conservation Act* to allow merits review is in stark contrast to the *Great Barrier Reef Marine Park Act* which allows Administrative Appeals Tribunal appeals on merits review on GBRMP Authority decisions. It is clearly nonsensical that the two Acts which provide for Commonwealth management over the same World Heritage Area ie the Great Barrier Reef World Heritage Area contact differing avenues for appeal. The [World Heritage] Convention requires the highest standard which requires a merits review where that appeal process would ensure the highest standard of World Heritage management.' (D Haigh, Submission 57, p178-9).

Changes to the development

3.46 Environmental groups are particularly concerned about changes to the development since the 1994 Environmental Review Report - without (as they see it) adequate environmental controls. The North Queensland Conservation Council speaks of '... the metamorphosis of the Oyster Point project from a 26 hectare integrated resort into a ??200 [sic] hectare residential/industrial canal estate.'⁵⁵ The Queensland Conservation Council says '... the developer now owns approximately 300 hectares and has applied for exclusive lease over another 60 hectares.'⁵⁶ [This application to

53 Federal Court: *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 55FCA (14 February 1997), 69 FCR 28; on appeal *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 789 FCA (6 August 1997), 77 FCR 153. See also A Fleming, 'Friends of Hinchinbrook Society Inc. v. Minister for Environment and Management of World Heritage', *Environmental and Planning Law Journal*, vol. 14 no. 4, August 1997, p 295ff.

54 Federal Court: *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 55FCA (14 February 1997), p 5; 69 FCR 28 at 36.

55 North Queensland Conservation Council, Submission 366 to Senate ECITA References Committee, Commonwealth Environment Powers inquiry 1998, p 2.

56 Queensland Conservation Council, Submission 117, p 476.

lease 60 hectares of Unallocated State Land between the developer's land south of Stoney Creek and the Hinchinbrook Channel has since been refused.^{57]}

Size of the development site

3.47 There is some vagueness in these statements about the size of the development. As far as we can tell from the rather confusing details given in evidence (much of the land description has changed in the last few years), the situation is:

- 'The Development Site' defined in the Deed of Agreement consists of 44 hectares which the developer owns or leases bounded by highway/railway, One Mile Creek and Stoney Creek (approximately), Hinchinbrook Channel, and a Council reserve on the southern outskirts of Cardwell.⁵⁸ This is the extent of the development proposed in the 1994 Masterplan. See Figures 5 and 7.
- 'The Land' defined in the Deed of Agreement consists of 'the Development Site' plus 90 hectares which the developer owns or leases abutting to the south (see Figure 5).⁵⁹ The main legal significance of 'the Development Site' versus 'the Land' in the Deed is that the operational plan and the powers of the Environmental Site Supervisor (a Queensland State official) apply to 'the Land', while conditions concerning beach and foreshore management, site population, water supply and sewerage apply to 'the Development Site'. The Turbidity Control Plan (which, since the 1996 Deed of Variation, includes the Acid Sulfate Management Plan) applies to 'the Development Site', but the Deed contemplates that dredge spoil ponds will be located on 'the Land'.
- The 90 hectares of 'the Land' is mostly cleared and partly occupied by the main canal and dredge spoil ponds. As a condition of the Deed of Agreement part of it ('the greater part of lot 3 [CP 889261]') will be transferred to Cardwell Shire Council as the site of a permanent dredge spoil pond for maintenance dredging.⁶⁰ Other parts (about 10.5 hectares, mostly south of the main canal) are the subject of a current application by the developer to rezone from Natural Resource Protection and Agricultural Zones to Special Facilities Zone. Proposed uses are residential (up to 300 long-term residents, such as resort staff and concessionaires); ancillary facilities for the resort; waterfront activities such as boat dealers, naval architects, chandlery, tour booking offices; and 'waterfront industrial landuses' such as slipway and boat building and maintenance.⁶¹ The

57 North Queensland Conservation Council, further information 8 April 1999, p 659.

58 Cardno & Davies, *Port Hinchinbrook Development at Cardwell - compilation of information ...*, March 1994, p 2; Deed of Agreement 1994, clause 1.1.

59 Deed of Agreement 1994, clause 1.1.

60 Deed of Agreement 1994, clause 7.6; Cardwell Properties P/L, *Port Hinchinbrook Acid Sulphate Management Plan - Long Term Acid Sulfate Management Plan*, 11 April 1997, p 2.

61 The land for which rezoning is sought is nominally lots 1,2&3 SP105672 (about 14.6ha) and part of lot 3 CP889261 (apparently about 4.5ha; the balance of lot 3 to become the permanent maintenance dredge spoil pond). Part of this land is now occupied by canals. Part of it (former Hare property between the railway, One Mile Creek and Stoney Creek) is now functionally part of the Port Hinchinbrook site (that

Committee is not aware of what long-term plans, if any, the developer has for the balance of ‘the Land’ (lot 17 RP732868, 61 hectares).

- The developer gave evidence that apart from ‘the Development Site’ and ‘the Land’,

‘... neither I nor Cardwell Properties Pty Ltd nor any member of my family nor any associate of my companies or family own any land in the area north of Townsville other than ... five by approximately 5 acre [2 hectare] blocks on the western side of the Bruce Highway directly opposite the site; two by approximately 15 acre [6 hectare] blocks on the eastern side of the Bruce Highway at the northern extremity of the urban area of Cardwell.’ (Cardwell Properties Pty Ltd, Submission 83, p 2)

Application to rezone parts of ‘the Land’ to Special Facilities

3.48 It appears that claims about the size of the development site are inconclusive. The Committee does not see how the fact that the developer owns other parcels of land in the vicinity is relevant to the environmental impacts of the Port Hinchinbrook site. More substantial concerns listed by the North Queensland Conservation Council include:

- the nature of the project was changed to include a Canal estate as well as a marina, with additional boat ramps and pontoons, when Senator Robert Hill gave consent in 1996. [The 1996 Deed of Variation which joined the Commonwealth to the Deed of Agreement redefined the canal, widening it from 60 to 100 metres.]
- the nature of the project was changed and the area extended when the Queensland government approved a residential canal estate without EIS, in 1997. [This appears to refer to the government’s waiver of requirement for an Environmental Impact Statement in relation to the land south of ‘the Development Site’ subject to application for rezoning - see below.]
- the nature of the project was changed when the developer excavated a third waterway parallel to the Bruce Highway in 1997.
- the nature of the project changed when the developer changed the plans for the area adjacent to the northern foreshore, removing the proposed esplanade and resort buildings, filling part of the Marine Park, and creating 20m wide building blocks along the entire length of the foreshore ...’ (North Queensland Conservation Council, Submission 112b, p 2-3)

3.49 The first three dotpoints quoted above relate substantially to land south of the Port Hinchinbrook ‘Site’ subject to current application for rezoning to allow special uses related to the resort (as described in paragraph 3.47). In 1997 the Queensland

is, it is north of the main canal) but, because of the oddities of the original lot boundaries, is not part of ‘the Development Site’ defined in the Deed. The developer proposes to adjust the boundary between ‘the Development Site’ and ‘the Land’ to follow the centre of the canal. This would transfer about 4.5ha from ‘the Land’ to ‘the Development Site’. Buckley Vann Pty Ltd, *Cardwell Properties Pty Ltd Proposed Rezoning - planning report*, November 1998, quoted in North Queensland Conservation Council, further information 10 March 1999, p 203ff; Cardwell Properties P/L, further information 9 February 1999, p 98.

Department of Local Government and Planning waived the requirement for an Environmental Impact Statement relating to the proposed uses of this land on the grounds that:

- Any potential impacts arising from the proposed development were considered to be of a similar type and character to the various impacts expected to arise on the adjoining site approved for the Port Hinchinbrook development.
- Information, studies and reports available in relation to potential impacts and their assessment pertaining to the approved development site.
- The existence of a Deed of Agreement between the State, Cardwell Properties Pty Ltd and Cardwell Shire Council which addresses development and environmental issues for the approved development site.
- Advice from referral agencies that an EIS was not required for development on the site provided the Deed of Agreement were appropriately to apply to any development proposal on the land and a condition of approval be imposed on any approval that an Environmental Management Plan be prepared for any development.’ (Dept of Local Government and Planning, 2 October 1997, quoted in North Queensland Conservation Council, further information 10 March 1999, p 219)

3.50 The waiver had a number of conditions, of which the most significant are that the Deed of Agreement (that is, including its environmental controls) should be amended to apply to the rezoning land; the population of the rezoning land should be limited to 300; the industrial uses should be limited to ‘minor ancillary operations associated with the marina only’; and an Environmental Management Plan as described in the Deed of Agreement should be prepared for the rezoning land.⁶²

3.51 On the other hand the North Queensland Conservation Council (NQCC) argues that the rezoning would generally exacerbate the various environmental impacts which (according to the NQCC) are caused by the Port Hinchinbrook development; it would tend to replace rather than strengthen the present Cardwell business district, contrary to State planning policies; it would involve the introduction of dogs, cats and urban activities close to the habitat of the endangered mahogany glider; and it would prevent the re-establishment of melaleuca wetlands in the area, which would otherwise be quite possible.⁶³ The NQCC commented generally:

‘The waiver was granted on the grounds that the area and/or the uses proposed had previously been the subject of reports or studies that satisfied assessment requirements and were not out of date. The claim in this case is demonstrably false. There is not a single report that examines any land uses south of Stony Creek ... No assessments have been made of cumulative or distal impacts of the original 26ha marina/resort proposal, and these impacts will clearly be increased in magnitude with the substantial increase in

62 Dept of Local Government and Planning, 2 October 1997, quoted in North Queensland Conservation Council, further information 10 March 1999, p 219.

63 North Queensland Conservation Council, further information 10 March 1999, p 222ff.

private boating traffic arising from the addition of a canal estate' (North Queensland Conservation Council, Submission 112, p 452-3)

3.52 The evidence discussed in chapter 4 on environmental impacts of Port Hinchinbrook was almost all expressed in relation to the development as a whole. The Committee has little basis on which to comment on what environmental impacts (if any) relate distinctively to the proposed rezoning. On the face of it the concerns of environmental groups seem reasonable. The commercial and industrial uses proposed for the rezoning land are significantly different from those of the approved Port Hinchinbrook, and are not contemplated in the existing Deed of Agreement or its various environmental management plans. The uses *might* be environmentally benign, if managed properly; but in the absence of environmental impact assessment we do not know this for sure; and as we do not know, it would be rash to use the present environmental management regime of Port Hinchinbrook as a justification for assuming the best.

3.53 Further, the reasons of the Queensland Department of Local Government and Planning for waiving environmental impact assessment of the rezoning, dotpointed at paragraph 3.49, seem to perpetuate the confusion between *upfront* environmental impact assessment and post-approval environmental management. A chief complaint of environmental groups is that Port Hinchinbrook was never the subject of a thorough upfront environmental impact assessment, which *could have informed the decision on whether to approve the development*. All the environmental controls contemplated by the Deed of Agreement are directed to monitoring, managing or mitigating impacts of a development which (it seems) the decision-makers assumed they were committed to. However, in the absence of an upfront assessment, the problem with relying on *ad hoc* post-approval environmental management of impacts as they appear is that while the approval is effectively irrevocable, there is no guarantee that the environmental management will be successful. Some later-appearing impacts may prove intractable, suggesting with hindsight that the development should not have been approved at all. The purpose of upfront environmental impact assessment is, hopefully, to discover these impacts before it is too late, to better inform the approval decision. (This is an in-principle comment that is not intended to pre-empt our discussion of the actual environmental impacts of Port Hinchinbrook in chapter 4).

3.54 Accordingly, Democrat Senators on the Committee are not convinced by the logic of the statement that the existence of environmental *management* plans for Port Hinchinbrook removes the need for upfront *environmental impact assessment* of the rezoning proposal -particularly since the proposed uses of the rezoning land are rather different from those of the approved Port Hinchinbrook. Whether the various information on environmental impacts of Port Hinchinbrook, assembled over the last few years in the context of the various management plans, is apt to constitute an environmental impact assessment for the rezoning land (or parts of one) depends on the facts of the case; but the question must at least be asked. The essence of upfront environmental impact assessment is that it ranges widely in search of possible impacts, without preconceptions. Relying on existing literature relating to an adjacent

site is unlikely to discover the critical point that no-one has yet thought of - which is the very purpose of upfront assessment.

3.55 The proposed rezoning was supported by Cardwell Shire Council (with conditions) at a meeting of 27 May 1999.⁶⁴ It is now (September 1999) being considered by the Queensland Department of Communication and Information, Local Government and Planning (formerly Department of Local Government and Planning).⁶⁵

Claimed change from 'integrated resort' to 'real-estate development'

3.56 Environmental groups claimed that since the 1994 Environmental Review Report the development has changed from being an 'integrated resort' to being a 'real-estate development'.⁶⁶ By this they refer to the fact that areas facing the channel and marina, shown on the 1994 masterplan as cluster housing and described as 'a combination of hotel/motel rooms, apartments, duplexes, individual cottages [and] residences ...' are now (in the 1997 masterplan) subdivided into 98 freehold house lots (see Figures 7 and 8). Whereas the 1994 Masterplan shows a 40-metre wide strip of apparently communal open space within the Port Hinchinbrook property fronting the Hinchinbrook Channel, the present waterfront lots extend to the property boundary at the high-water mark. The 1994 Masterplan states: '... it is intended that a large proportion of accommodation will be offered for sale on long term leases ...'⁶⁷ Neither the 1994 Environmental Review Report nor the 1994 Cardno and Davies report make any reference to freehold residential subdivision.

3.57 Supporters of the development tended to regard the freehold subdivision as sufficiently in keeping with the original development proposal:

'The shift, as it is tending now, is getting more and more close to the original development that was approved back in 1988 where there was a combination of beachfront cottages and beachfront terraces. There was nothing shown on the plan to say whether they were going to be individual titles, strata titles or whatever. The first stage of the development is actually a land subdivision to give individual titles so that an individual residence can be built on its own title. I do not see that as a major variance from the residential component of the original concept back in the 1980s.' (J Pettigrew, Cardwell Shire Council, Evidence 30 July 1998, p 102)

3.58 Townsville Enterprise Ltd, a local development promotion organisation, considered that whether the development ends up as 'resort' or 'real estate

64 Cardwell Shire Council, further information 4 August 1999, p 824.

65 The application was made under the *Local Government (Planning and Environment) Act 1990*. Under this Act a rezoning is made by the Governor in Council, advised by the Minister for Local Government and Planning. Now the *Integrated Planning Act 1997* applies.

66 For example, North Queensland Conservation Council, further information 17 March 1999, p 350.

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

subdivision', either way it deserves support as increasing the economic potential of the region.⁶⁸

3.59 The developer explained that his initial intention was to offer long term leases, but that this would restrict Cardwell Shire Council's rate income:

'... initially it was my intention to retain the whole of the freehold involved in 'the Site' and subdivide the land for residential, hotel, shopping and recreational purposes by way of leases or sub-leases. It was envisaged that such leases would be for a period anywhere from 100 to 500 years ... Although my original intention complied with all relevant regulations and was enormously successful at Hamilton Island I felt that in a mainland situation it could ultimately lead to conflict between the Cardwell Shire Council and my company because they would be deprived of at least 75 per cent of their rate income from my property ... the Valuer-General's valuation, as applied to one large area of undeveloped freehold land, is almost certain to be less than 25 per cent of the value that could be applied to say 200 individual lots. By leasing rather than selling freehold the land could only be rated as one parcel of unimproved land.' (Cardwell Properties P/L, further information 9 February 1999, p 99-100)

3.60 The developer argues further:

- The 1994 Masterplan is clearly marked as '... indicative only and does not purport to specify the precise location or configuration of any element of the development';
- 'Environmentally there can be no difference between a family living in a home built by the developer and a home which they build themselves.'⁶⁹

3.61 The Committee notes that the Deed of Agreement does not *oblige* the developer to build anything in particular, but simply *allows* him to build as permitted by the Special Facilities zoning, on conditions. Thus the Deed does not guarantee the construction of the resort as shown on even the 1997 Masterplan.⁷⁰

3.62 Most of those concerned by the change to freehold subdivision put forward no very clear reasons as to exactly why it is a bad thing or how it is relevant to environmental impacts. The North Queensland Conservation Council spoke of '...sewage impacts in the State Marine park and the World Heritage Area from septic tanks already installed in the new fill within about 20 metres of the Hinchinbrook Passage.'⁷¹ But it is unclear how this or the other environmental impacts of Port

68 Prof. E Scott, Townsville Enterprise Ltd, Evidence 31 July 1998, p 161.

69 Cardwell Properties P/L, further information 9 February 1999, p 99,101.

70 J Pettigrew, Cardwell Shire Council, Evidence 30 July 1998, p 102.

71 North Queensland Conservation Council, Submission 112b, p 3. Under the Deed of Agreement sewage may be treated by septic systems until the site population reaches 200, beyond which the developer must build a package treatment plant. J Pettigrew (Cardwell Shire Council), Evidence 30 July 1998, p 97.

Hinchinbrook described in chapter 4 are affected by whether buildings are leased or sold outright.

3.63 A possible exception relates to aesthetic impacts: if one is concerned about the aesthetic impact of the development on the Hinchinbrook Channel (as many were), there is a case that the impact of detached houses of disparate design on waterfront lots could be worse than the impact of cluster housing of integrated design separated from the high water mark by at least 40 metres of communal space (as suggested on the 1994 Masterplan).

3.64 However, this point was not specifically raised in submissions. Perhaps the concern about the freehold subdivision included a generalised resentment against what objectors see as the developer being able to change the development after approval. Again, exactly why *this* is a bad thing - *if* the environmental impacts are unaffected - was not argued through very clearly.

How to handle changes to development proposals?

3.65 This raises the general question of how decision-making authorities should handle incremental changes or additions to development proposals. Major development proposals may evolve during the period of construction as outside circumstances relating to the market or the economy change. Developers may change their desires for whatever reason. It would seem harsh to refuse all change to an approved development as a matter of policy. In any case, since development approvals create no obligation to build anything, nothing stops developers from abandoning an old approval and putting in a new application if their desires change. The question is really a question of administrative convenience: how much should an amended application be treated *de novo*, or how much should the deliberations that led to the first approval be allowed to influence a decision on the amended application?

3.66 Desired changes *might* be environmentally benign. But this cannot be certain without adequate environmental impact assessment. The question merges with the general question of how authorities should decide in advance what level of detail in environmental assessment is warranted in the circumstances of the case. An enlarged development proposal might create a new type of environmental impact - environmental impact assessment should discover this. Or it might simply enlarge a known environmental impact. Whether such cumulative effects warrant refusal is a harder question, which can be informed by environmental research, but in the end is a matter of opinion.⁷² The important thing is that amended applications must be considered on their merits without any favouritism arising from the fact that they are related to something already approved.

72 Some considerations are: • In what proportion does the impact increase as the size of the development increases? • In changed economic circumstances, is a change to the development necessary to secure its viability, such that some environmental detriment from the change is less than that which would result from the failure of a half-built development? This raises the question of how consideration of the initial application should take account of that risk.

3.67 In the case of Port Hinchinbrook, the North Queensland Conservation Council claims that the developer had planned certain changes long before revealing them:

‘... Replacement of integrated resort (as shown on Cardwell Properties *Masterplan* 1994) with residential and commercial blocks post-1996. The only vestige of the resort remaining is now a proposed hotel. Clearly the developer had wanted and planned these incremental changes starting in 1993-94 and evidently had some of them accepted officially, though not publicly, by 1996 ...’ (North Queensland Conservation Council, further information 17 March 1999, p 350)

3.68 The Committee makes no comment on this claim. We comment generally, that *if* public authorities are diligent in their duty of assessing amended applications on their merits without being swayed by the existence of a related approval, the question of whether a change is a *bona fide* late change (as opposed to something long planned but concealed for tactical reasons) becomes irrelevant.

Where a development needs a number of permits

3.69 A related phenomenon is ‘permit-shopping’. In a major development which needs a number of permits from different authorities for different details, a proponent may obtain approval of some detail from one authority, which may then be used to pressure other authorities by portraying the development as in some sense already approved and supposedly inevitable. Or (whether or not different authorities are involved) a proponent may obtain approval of some detail in advance of approval of the whole project, with the same aim. In the case of Port Hinchinbrook, the Committee has noted that in 1988 Tekin, with approval, started work on the marina *before* securing permits for the access channel *which was essential to the viability of the whole project* (see paragraph 3.4). At best this was rash; at worst it invites the accusation that Tekin was trying to pressure the authorities by presenting the project as a *fait accompli*.

3.70 The same problem may arise where both Commonwealth and State approvals are involved. In the case of Port Hinchinbrook, the Environmental Defender’s Office [NSW] argued:

‘Because of the belated involvement of the Commonwealth, there was an apparent reluctance of the Commonwealth to carry out environmental assessment. In effect the proponent was able to intimidate the Commonwealth by playing off the State against the Commonwealth, maintaining that all relevant assessment had been carried out and all approvals had been obtained at the Queensland level.’ (Environmental Defender’s Office Ltd, Submission 144, p 661)

3.71 A detailed action may be environmentally benign, considered alone; but it may pave the way for a development which, in total, is environmentally detrimental. It is clearly untenable to argue that because a permit for the first action has been granted, the others should be granted as well; or to argue that because the proponent has spent money carrying out the first action, it would be unfair to deny the other permits.

3.72 Conversely, a situation may arise where a proponent has approval in principle for a development, approval which the authorities might later regret having given - for example, if new information reveals some previously unsuspected environmental impact. This raises the question of whether it is right for the authorities to deny a consequential permit on some matter of detail as a way of trying to stop a development already approved in principle; or whether some other means of stopping the development should be formalised, and what rights of compensation the developer should have.⁷³

3.73 These problems confirm the need for thorough up-front whole project environmental assessment of significant proposals, both to prevent permit-shopping *and* to provide certainty for proponents. If after that the whole project is approved, detailed consequential applications may reasonably be considered as formalities (subject of course to satisfying relevant detailed conditions).⁷⁴ If the whole project is refused, consequential applications should logically also be refused. Consequential applications should not be decided until a whole project application has been decided.

3.74 The Committee understands that there are a number of tourist developments proposed on or near the Great Barrier Reef, perhaps dating back many years, which may have some permits but without overall environmental assessment or approval in principle. The above principles should apply.

3.75 These principles address permit-shopping; but they do not address the second scenario raised above - where new information makes an authority regret having given approval. In that case, how to arbitrate between the rights of the developer and the public interest in stopping, changing or delaying the development; and how to compensate the developer; are policy questions that call on underlying value judgments about the balance between private and public rights.⁷⁵

73 At Port Hinchinbrook in 1994, the development was already approved in principle by the local council but the developer still needed a State permit to build the vital access channel to the Hinchinbrook Channel. In evidence the developer argued that this allowed the State to 'blackmail' him into further environmental conditions via the Deed of Agreement (Cardwell Properties, Submission 83, p 7). On the other hand, the environmental impacts of the access channel had never been considered and there was every reason to think that they might be different from those of the already approved marina work. In this situation arguably the State did not need to feel any obligation to approve the access channel. 'Consequential' applications, in the argument of this section, are matters whose environmental effects have already been taken into account in a whole-project assessment.

74 Detailed conditions will typically relate to things like health and building regulations, provision of utilities, traffic management ... The point is that, if up-front whole-project environmental assessment has been done, authorities should be confident that the possible environmental effects of the detailed matters are insignificant or have already been allowed for.

75 Planning laws commonly include provisions that approvals lapse if the approved work is not started within a certain time. Such provisions implicitly assert that the approval is not a permanent and unconditional gift; and they implicitly acknowledge that if circumstances change, and it happens that non-commencement gives the approving authority the opportunity to revisit the matter, the authority does have the *right* to revisit the matter.

3.76 The Committee notes that when the *Environment Protection and Biodiversity Conservation Act 1999* commences, any action that ‘is likely to have a significant impact on the world heritage values of a declared World Heritage property’ will require the approval of the Commonwealth Minister for the Environment; and this requirement is not affected by the fact that a project may happen to have some State permits already.⁷⁶

3.77 Other relevant comments are at paragraph 5.67.

Conclusions on Port Hinchinbrook approval processes

3.78 The Committee expects that all will agree that the development approval process for Port Hinchinbrook has been unsatisfactory - unsatisfactory to the developer who has suffered uncertainty and delay, to the environment groups who believe that the environmental assessment has been patchy and inadequate, and to the authorities who have had to deal with the resulting conflict. 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)

3.79 In mitigation, we note the view of the Queensland government at the time that this might have been legally difficult to acquire because of pre-existing approvals. The alternative was the Deed of Agreement - an *ad hoc* response that only aggravated the concerns of environment groups because of its lack of public process and because the parties, obviously eager to see the development go ahead, did not inspire confidence in their commitment to environment protection.

3.80 The Committee stresses three things. Firstly, there is a fundamental difference between monitoring and mitigating environmental impacts of 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 case of Port Hinchinbrook 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, to be fair to them, 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.

76 *Environment Protection and Biodiversity Conservation Act 1999*, section 12.

3.81 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 coincidence: it does *not* retrospectively justify the poor process and the lack of upfront environmental assessment. In the words of the Environmental Defender's Office:

'Environmental impact assessment of important aspects of proposals after the approval has been given instead of beforehand ought to have no place in environmental management.' (Environmental Defender's Office Ltd, Submission 144, p 662)

3.82 In important respects the Committee doubts that the controls will be able to prevent harm, as will be discussed in chapter 4.

3.83 Secondly, 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. Environmental assessment may sometimes seem to decide the question, in cases where its information tips the balance decisively one way or the other (for example, where it brings to light some severe impact which, by community consensus, would be unacceptable); but the underlying value judgments weighing benefits against costs must still be made, even if tacitly. 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.

3.84 Thirdly, since development control decisions 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. 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;⁷⁷ and 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 the losers from being unhappy; but it will, hopefully, encourage all to respect each other's differences and to respect the fairness of the system.

3.85 In the Port Hinchinbrook debate, the lack of trust is striking. 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

77 Where interests conflict, any individual decision will inevitably leave one interest group happy and a conflicting one unhappy. The point of the comment is that a transparent process of public consultation is less likely to be *habitually* captured by a particular interest group.

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. At the moment I do not think we have the capacity to do that.’ (Prof. H Marsh, Evidence 31 July 1999, p 169)

3.86 The Committee is confident all would agree that we do not want to see the Port Hinchinbrook debate repeated up and down the coast. Local councils 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 the Regional Coastal Management Plan now under construction - proactive regional planning is vital so that as far as possible developers know in advance what sorts of development, in what locations, will or will not be acceptable.

3.87 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 upfront without being caught in the cross-fire of community disputes.

Recommendation 3

The Committee recommends that local councils, and State or Commonwealth governments when involved, commit to thorough, independent environmental impact assessments for significant developments. Terms of reference should be developed in consultation with the relevant stakeholders, and environmental impact assessments should be made available for public scrutiny and comment.

Recommendation 4

The Committee recommends that in cases where the Commonwealth government is involved, it should ensure that an early, consultative environmental impact assessment is conducted before any significant development is allowed to proceed.

CHAPTER 4

ENVIRONMENTAL IMPACTS OF PORT HINCHINBROOK

4.1 Concerns about inadequacies in the environmental impact assessment *procedures* at Port Hinchinbrook must be clearly distinguished from concerns about actual detrimental environmental *impacts*. A number of witnesses in the inquiry agreed that the lack of a thorough upfront environmental impact statement was regrettable, but claimed that the various controls under the Deed of Agreement are satisfactorily preventing environmental harm.¹ Environment groups, by contrast, say that the lack of a thorough upfront environmental impact statement was regrettable, and claim that the various controls under the Deed of Agreement are *not* preventing harm.

4.2 Potential environmental impacts of Port Hinchinbrook may be summarised as:

- possible effects on the marine biota from acid runoff (including possible mobilisation of heavy metals);
- impact on seagrass beds from dredging, removal of mangroves, and changes to the foreshore;
- impact on dugongs from possible decline in seagrass (which is their food) and from likely increase in boatstrike resulting from increased boating in the area;
- impact of a large waterfront development on the aesthetic and wilderness values of the Hinchinbrook Channel;
- impact of increased tourism in the area on the wilderness values of the neighbouring island national parks.

4.3 Many submissions simply spoke of ‘impacts’. It was often unclear whether they were speaking of certain future impacts of known severity; certain future impacts of uncertain severity; possible impacts, the likelihood of which is unknown but which, if they occur, cannot be avoided; impacts certain unless some avoiding action is taken, but capable of being avoided; and so on. Many submissions, implicitly, were describing every impact that *might* occur - an approach perfectly in keeping with the precautionary principle, but which does imply some further discussion of probabilities and possibilities for mitigation. Some submissions (especially from the scientists) were on the lines ‘such-and-such harm is avoidable if properly managed, but I don’t think it is being properly managed.’² An undesirable event may be very likely, but not

1 For example, Great Barrier Reef Marine Park Authority, Submission 157a, p 1.

2 For example, Prof. I White, Evidence 10 August 1998, p 258; Dr G Bowman, Evidence 10 August 1998, p 278.

severe in its effects, or not very likely, but severe if it does occur. These nuances should affect the appropriate management response to the risks involved.

Impacts of acid sulfate soil

4.4 'Potential acid sulfate soil' (PASS) is found widely in low-lying coastal areas. Lying below the watertable beyond the reach of air the soil is inert, but if disturbed by earthworks it reacts with air ('actual acid sulfate soil'), producing sulfuric acid. The acid moves through the soil acidifying groundwater and eventually surface waters. The acid can have various detrimental effects: reducing farm productivity; corroding metal or concrete such as building footings; preventing growth of lawns and gardens; killing or diseasing fish and sea plants. The acid can mobilise heavy metals in the soil, allowing them to enter the food chain. Once disturbed, the soil may continue producing acid for many years. More details are in APPENDIX 6.

4.5 Acid sulfate soils also contribute to the greenhouse effect. According to CSIRO, 'Carbon emissions from drained acid sulfate soils are likely to have made a significant contribution to Australia's carbon emissions over the past 20 to 30 years and have been underestimated.'³

4.6 Acid sulfate soils, though only recognised relatively recently in Australia, are now acknowledged as a serious environmental issue.⁴ For example, at one degraded site at East Trinity Inlet near Cairns, where acid sulfate soils were drained for canegrowing about 20 years ago, recent field investigations indicate that on average the equivalent of 4 million litres of concentrated sulfuric acid have been produced each year, together with 2,500 tonnes per annum of iron and aluminium concentrations in leachate that are 700 times higher than the maximum levels ANZECC guidelines recommend.⁵

4.7 The 1994 Deed of Agreement made no mention of managing acid sulfate soils at Port Hinchinbrook. According to the Queensland government 'approvals for the project were in place prior to identification of acid sulfate soil as an issue':

'The [1994] Environmental Review Report noted that, based on available information, acid sulfate soil should not be a problem at the site. This is supported by Professor White's statement (Prof. White evidence 10/8/98

3 Hicks W S, Bowman G M & Fitzpatrick R W, *East Trinity Acid Sulfate Soils - Part 1: Environmental Hazards*, CSIRO Land & Water Technical Report 14/99, April 1999, p 17,34. Acid sulfate soils are rich in organic carbon, which reacts with oxygen from the air to give off carbon dioxide. This is additional to the reaction of iron sulfide with oxygen to give off sulfuric acid.

4 'In the Netherlands they [acid sulfate soils] were discovered 276 years ago. The first detailed work in Australia was only done 30 years ago and interest really only started in 1987 when massive fish kills occurred on the Tweed River. Since that time, we have developed research expertise and professional practice in the consulting industry on using and managing acid sulfate soils.' Prof. I White, Evidence 10 August 1998, p 246.

5 CSIRO, Submission 111, p 442. See also Hicks W S, Bowman G M & Fitzpatrick R W, *East Trinity Acid Sulfate Soils - Part 1: Environmental Hazards*, CSIRO Land & Water Technical Report 14/99, April 1999.

p250) that “in 1993 when we held the first national conference on acid sulfate soils it was considered that acid sulfate soils were a New South Wales problem, that they did not exist in Queensland.” Acid sulfate was not identified as a problem until work was carried out on site by CSIRO (Bowman 1995) ...’ (Qld Department of Premier and Cabinet, further information 21 April 1999, p 704)

4.8 The Queensland government’s 1994 Environmental Review Report had said that ‘previous excavation on the site should have exposed the presence of any acid sulphate soils in the area to be excavated.’ As for managing acid sulfate soils -

‘The developer’s proposal to monitor pH levels to identify acid sulphate soils and take appropriate action should any potential problems be encountered, is considered adequate under these circumstances.’ (Qld Dept of Environment and Heritage, *Environmental Review Report - Port Hinchinbrook*, May 1994, p 16)

4.9 On the other hand, the Valentine report (August 1994), predating the Deed of Agreement, was aware of ‘serious concerns’ about acid sulfate soils in North Queensland:

‘Serious concern has been expressed about the problems of acid sulphate soils and a recent conference drew attention to the problem in the Cardwell to Cairns coastal area (Acid Sulphate Soils Conference held in Coolangatta, June 1993) ... A draft and unpublished report to the Queensland Department of Primary Industries outlines how acid-sulphate drainage may be contributing to low oxygen levels and fish abundances in flood-plain lagoons, in the Tully-Murray catchment, north of Cardwell ... Although QDEH states “previous excavation [at Oyster Point] should have exposed the problem” this is doubtful because the problem was not assessed at that time ...’ (P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 39)

4.10 Valentine was sceptical of the ability of ‘monitoring’ to control any problem:

‘It is highly unlikely a monitoring process can avoid the chemical reaction. It is most likely the evidence will be a fish kill. No details are given [in Cardno and Davies’ March 1994 report commissioned by the developer] on how the monitoring will be carried out to avoid this end result or how they would mitigate any effects the monitoring identified. This is yet another example of the weakness of the “environmental impact assessment” process adopted.’ (P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 39)

4.11 In evidence to this inquiry the developer said that the Queensland government had assured him there was no acid sulfate problem at Port Hinchinbrook:

‘At a meeting of those who were formulating the Deed, the Queensland Government’s senior representative handling this matter told me that there was no acid sulfate problem at Port Hinchinbrook. He later gave me a report

by academics at the James Cook University to support that there was no acid sulfate problem at Port Hinchinbrook.’ (K Williams, Cardwell Properties P/L, Evidence 24 August 1998, p 328)

4.12 There must have been some misunderstanding about this, either by the unnamed Queensland official or by Mr Williams. In fact the report concerned (which Mr Williams sent to the Committee) is a descriptive study of soil conditions sampled in certain stands of damaged mangroves along the Queensland coast (including Oyster Point). By no stretch of the imagination could it support a conclusion that there was no potential acid sulfate problem at Port Hinchinbrook, nor is it even particularly relevant to the question.⁶

4.13 In March 1995, engaged by the Commonwealth Department of Environment, Sport and Territories, CSIRO investigated the site. CSIRO found that ‘both actual and potential acid sulfate soil conditions exist at the Port Hinchinbrook development site’:

‘The soils have been considerably disturbed by excavation and earthmoving activities and they are currently oxidising and acidifying ... for some of the soil units investigated, including the spoil heaps, the production of acidified leachate has commenced, will continue for many years and will probably become more severe. Without a more detailed knowledge of the severity and total quantities of potential acid involved and the excavation/construction methods to be used it is not possible to specify the precise environmental consequences to the immediate surrounds of the site, including the Hinchinbrook Channel. However the situation is quite hazardous for organisms sensitive to acidified conditions or moderate to high levels of iron and aluminium in their environment. This would particularly apply to aquatic organisms in the intertidal zone and in estuarine water bodies receiving acid leachate from the development site ...’ (CSIRO (Dr G Bowman), *Preliminary Assessment of Acid Sulfate Soil Conditions Port Hinchinbrook Development Site Cardwell, North Queensland*, March 1995, p 20)

4.14 CSIRO recommended:

- ‘1. The development site should not be left in its current state. If the Port Hinchinbrook development does not proceed the site will require extensive remediation...
2. If the Port Hinchinbrook development does proceed a detailed acid sulfate soil management plan should be prepared...
3. Whether the Port Hinchinbrook development proceeds or not, the environmental effects of acidified leachate emanating from the site and

6 Kaly U L, Eugelink G & Robertson A L, ‘Soil Conditions in Damaged North Queensland Mangroves’, 1994; *Estuaries*, vol. 20 no. 2, June 1997, p 291-300. ‘The methods used could only provide results on surface soil pH, and although chosen as an indicator of acid sulphate conditions were not appropriate for detecting potential acid sulphate soils. To do that would have required more detailed geochemical work on pyritic sediment layers deeper in the soil. Our paper should not therefore be used to argue that there is no possibility of acid sulphate soils or acidic groundwater at the Oyster Point site.’ A Robertson, pers. comm. 27 May 1999. Further information p 735a.

other existing and planned commercial developments along the Hinchinbrook Channel should be investigated to ensure that they are not impacting adversely on World Heritage values.’ (CSIRO (Dr G Bowman), *Preliminary Assessment of Acid Sulfate Soil Conditions Port Hinchinbrook Development Site Cardwell, North Queensland*, March 1995, p 21; CSIRO, Submission 111, p 441)

The Acid Sulfate Management Plan

4.15 Presumably in response to these findings or generally in response to the greater awareness of acid sulfate soil problems since 1994, the August 1996 Deed of Variation included a new requirement for the Turbidity Control Plan to include ‘detailed proposals for the management of acid sulphate soils’, and a condition that water flowing from the land as a result of the company’s construction activities should have a pH from 6 to 9 inclusive (ie it should not be acidic - which would be represented by pH numbers lower than 6) (clause 7.5).

4.16 The developer, through Sinclair Knight Merz, produced a draft Acid Sulfate Management Plan. In October 1996 GBRMPA sought peer review from CSIRO (Dr Bowman) and Prof. Ian White (who, according to the Australian Society of Soil Science, is a ‘world renowned expert on acid sulfate soil’).⁷

4.17 Prof. White concluded that it was not possible to assess the effectiveness of the plan since it contained very little of the required information. He said that among the 180-odd environmental impact statements dealing with acid sulfate soils that he had seen, he would rank this one in the lowest 30 per cent. ‘The contrast between the Port Hinchinbrook acid sulfate soil management plan and recent plans elsewhere in Australia is marked ... The plan was essentially a dotpoint list of fairly vague information ...’ Prof. White listed 11 items of additional information required.⁸

4.18 Dr Bowman commented in summary: ‘The Acid Sulfate Management Plan does not conform with recognised “best practice” ASS assessment and management protocols ... no detailed investigation to delineate and quantify the extent of potential and actual acidity hazard ... insufficient sampling and analyses to permit adequate hazard assessment or to establish ASS baseline conditions ... However, with appropriate revision and the incorporation of recognised ASS best-practice techniques the deficiencies identified in this review could be overcome.’⁹

4.19 Cardwell Properties produced a revised draft dated 13 March 1997. This was not referred back to the original reviewers (Dr Bowman commented to this inquiry: ‘It is a pity they did not get back to us about it; they could have got some valuable

7 Australian Society of Soil Science Inc., Submission 126, p 566.

8 Prof. I White, Submission 127, p 572-3.

9 CSIRO (Dr G Bowman) to GBRMPA, 25 October 1996, *Peer Review of “Acid Sulfate Management Plan - Port Hinchinbrook”*, p 8.

information'¹⁰). Instead the revised draft was submitted to the Queensland Acid Sulfate Soils Investigation Team (QASSIT) in the Department of Natural Resources.¹¹ QASSIT commented, in summary:

'The lack of specific detail in the long-term plan is understandable to some degree given the many factors affecting progress of the development ... The revised Acid Sulfate Management Plan submitted by the Company is a substantially improved plan, and if complied with, should result in negligible risk to World Heritage Areas.' (QASSIT, *An assessment of the revised 'Acid Sulfate Management Plan' 13/3/97*, March 1997, p 2: further information 1 April 1999, p 447ff)

4.20 On the other hand, Prof. White gave evidence to this inquiry that 'I have been informed by QASSIT colleagues in Qld Department of Natural Resources that the adopted management plan was changed in only minor details.'¹² Prof. White regrets that the opportunity to showcase best practice management of a world heritage area has been lost:

'The eyes of the world are on us when we do any development that could potentially impinge on a world heritage area. Australia has developed and is developing a significant industry [in] environmental management ... There are significant consultancies and jobs out there for Australian industry in other parts of the world. I believe that, by not using best practice in such areas, we are sending a message out that our environmental management strategies are not up to scratch.' (Prof. I White, Evidence 10 August 1998, p 246)

4.21 Two years on, in evidence to this inquiry, QASSIT said that the final Acid Sulfate Management Plan (11 April 1997), although not best practice, was judged 'at the time' to be a practical alternative for a site which was in an advanced stage of development, with limited future options:

'QASSIT believe that the acid sulfate management plan (as finalised) was based on an inadequate assessment of the site ... the plan was drafted after major earthworks had been finished based on earlier approved management plans ... To enforce best practice on such a site would involve immense costs to undertake remediation with prospects of abandonment by the developer and possible compensation claims from governments. In the meantime, it is possible such abandonment would have left the site in an unmanaged state and a potential environmental disaster, a lose-lose situation for all parties. The 11 April plan, although not best management practice,

10 Dr G Bowman, Evidence 10 August 1998, p 272.

11 QASSIT advised that, contrary to some claims in evidence, it is not the 'independent monitor for acid sulfate soils' (a position which does not exist in the Deed of Agreement) and has no formal role in monitoring Port Hinchinbrook pursuant to the Deed of Agreement. Rather QASSIT provides technical advice on specific issues as requested. QASSIT, Submission 163, p 2. Environment Australia, Submission 157, p 21. K Williams (Cardwell Properties P/L), Evidence 10 August 1998, p 310.

12 Prof. I White, Submission 127, p 573.

was judged at the time to be a practical alternative for a site which was in an advanced stage of development, which limited future options.’ (QASSIT, further information 1 April 1999, p 444)

4.22 This assessment is rather less flattering than QASSIT’s 1997 opinion quoted in paragraph 4.19. QASSIT also has concerns about the long term fate and use of the site:

‘Unless acidified PASS materials left at the site are thoroughly mixed with correct quantities of lime, then acidification of the surface and ground waters will be of long term concern for future uses and the on and near site environment. Concrete and steel structures can be subject to extremely rapid corrosion from acidified soil or water, reducing their life. This is of particular concern for the positioning of underground fuel tanks for the proposed service station site and other infrastructure and foundations.’ (QASSIT, further information 1 April 1999, p 444)

4.23 Prof. White pointed out that in late 1996 major earthworks started before the Acid Sulfate Management Plan was approved, suggesting that the parties to the Deed were not taking it seriously.¹³ In this regard, the Committee notes that Senator Hill said on 27 November 1996:

‘GBRMPA have advised that the Deed is not being complied with in that an Independent Monitor has not been appointed and certain works are occurring before the Turbidity Control Plan [which included the Acid Sulfate Management Plan] has been approved by the Commonwealth. Accordingly, I have written to Dr McPhail, Chairman of the GBRMPA, asking him to take appropriate action to ensure the Deed is complied with.’ (the Hon. R Hill, Minister for the Environment, *Port Hinchinbrook*, press release 27 November 1996)

4.24 The Committee comments:

- The Acid Sulfate Management Plan even as finalised (11 April 1997) is still clearly far from best practice. On inspection the plan shows very little compliance with the recommendations of the 1996 peer reviewers, which corroborates Prof. White’s criticisms.¹⁴ We note the comments of QASSIT about the difficulties of enforcing best practice in the circumstances.
- The fact that site work resumed in late 1996 before approval of the plan, as Senator Hill noted, does suggest that someone (if not Senator Hill) was not taking it very seriously. The Committee notes a recent report on acid sulfate

13 Prof. I White, Submission 127, p 573, Evidence 10 August 1998, p 256.

14 Other acid sulfate experts who gave evidence relevant to acid sulfate management at Port Hinchinbrook were Prof. M Melville (Submission 150, Evidence 10 August 1998 p 222ff) and Mr J Sammut (Evidence 10 August 1998, p 222ff).

management of Port Hinchinbrook which mentions several breaches of the Acid Sulfate Management Plan.¹⁵ We comment further at paragraph 4.37.

Evidence on acid leachate

4.25 In 1997 QASSIT said, ‘The revised Acid Sulfate Management Plan submitted by the Company is a substantially improved plan, and if complied with, should result in negligible risk to World Heritage Areas.’¹⁶ This still leaves the question of whether the plan has been complied with.

4.26 The North Queensland Conservation Council (among others) claimed that there have been many breaches of the Deed of Agreement relating to runoff more acidic than the permitted limit of pH 6. For example:

‘During the 1996-97 wet season Department of Environment records show 39 discharges with a pH under 6.’ (North Queensland Conservation Council, Submission 112, p 454)

4.27 The developer denied any breaches of the Deed.¹⁷

4.28 It is hard to reconcile this totally conflicting evidence. The Committee, among various further questions to certain witnesses, asked the key parties this question: ‘Can you suggest any explanation for the totally contradictory claims of environmental groups and the developer concerning breaches of the Deed ... does disagreement arise because of dispute over whether certain facts occurred, or because of dispute over whether acknowledged facts constitute a breach of the Deed?’ Most of the claims about breaches of the Deed concerned alleged acid runoff.

4.29 The developer answered: ‘The environmental groups who claim that I have breached the Deed are, to say the least, reckless with the truth ...’¹⁸ The developer also laid stress on the fact that he is responsible only for water flowing off the site because of his construction works, not for the state of creek water or rain water flowing across the site, which may be naturally acidic.¹⁹

4.30 The Queensland government passed over in silence the general question, but in response to the North Queensland Conservation Council’s claim just quoted, said:

‘The Environmental Site Supervisor noted on several occasions that pH values were outside the limits specified in section 7.1(e)(ii) of the Deed, however appropriate management measures recommended by the

15 Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999. Further information p 853ff.

16 QASSIT, *An assessment of the revised ‘Acid Sulfate Management Plan’ 13/3/97 ...* March 1997, p2, in further information 1 April 1999, p 447ff.

17 Cardwell Properties P/L, Submission 83, Annexure A, p 2.

18 Cardwell Properties P/L, further information 9 February 1999, p 102.

19 K Williams (Cardwell Properties P/L), Evidence 10 August 1998, p 310, 24 August 1998, p 331.

Environmental Site Supervisor were undertaken by the Company to rectify the problem. The Environmental Site Supervisor also commented that “an assessment of activities on site and monitoring carried out has not provided any evidence to indicate that adverse environmental impacts on areas immediately adjacent to the site have occurred but that surface water flowing from the site has exceeded the parameters detailed in section 7.1 (e) of the Deed of Agreement.” (Qld Dept of Premier and Cabinet, further information 21 April 1999, p 705)

4.31 Environment Australia agreed with the developer’s claim that he has never breached the Deed in relation to acid run-off. On the general question, Environment Australia believed that the dispute was due to confusion over the definition of ‘receiving waters’ in the Deed. The question is whether the Deed requires runoff to be neutral on entering the Hinchinbrook Channel or on entering the main canal (former course of Stoney Creek) from the acid sulfate treatment pond, about 500 metres upstream. According to Environment Australia:

‘The parties to the Deed agreed that the definition of ‘receiving waters’ under the Deed had originally intended to mean water entering Hinchinbrook Channel ... there had been some instances when water exiting the acid sulphate treatment pond into the flooded canal had been of a pH below the parameters required in the original Deed for site discharges entering the ‘receiving waters’. Scientific advice obtained by GBRMPA was that it was an acceptable practice to buffer acid discharges into the canal with alkaline seawater providing neutral pH was achieved before the water exited the canal into Hinchinbrook Channel. This was always achieved.’ (Environment Australia, further information 25 March 1999, p 419-420)

4.32 Prof. Saenger, the Independent Monitor appointed under the Deed of Agreement, corroborated this. He also described an occasion of heavy rain when acidic surface drainage ‘from some of the old peat and spoil heaps’ entered the 100m-long outlet drain from the acid sulfate treatment pond to the main canal, thus acidifying the water entering the canal, where the environmental site supervisor measured it. This is presumably the relevance of the developer’s insistence that he is not responsible for the acidity of surface runoff from rainwater.²⁰

4.33 The North Queensland Conservation Council (NQCC) believed that dispute is due to both facts and interpretation of whether certain facts constitute a breach of the Deed.²¹ On the business of defining ‘receiving waters’, the NQCC commented:

‘Our appraisal of the monitoring regime was that it was set up and amended in such a way that acid discharges would be neutralised before reaching the chosen monitoring points. Hence Professor Saenger’s remarks at the bottom of p402 [of the proof transcript of evidence, 8 December 1998; p401 of the

20 Prof. P Saenger, Evidence 8 December 1998, p 401. See also Environment Australia, Submission 157, p 749-50.

21 North Queensland Conservation Council, further information March 1999, p 135.

final transcript], providing an excellent example of how little the Deed is worth: if the monitoring results don't stack up, shift the monitoring locations!' (North Queensland Conservation Council, further information March 1999, p 130)

4.34 The Committee considers that the uncertainty over measuring points probably explains most of the contradictions in evidence over breaches of the Deed relating to acid runoff. We are not confident that it explains all of them, and we cannot suggest any other explanation with confidence.

4.35 The general tenor of evidence from the scientists was that acid sulfate soils could and should be of little concern if managed properly - but they had doubts about whether they are in fact being managed properly. For example, Dr Bowman:

'In the balance of things, my opinion would be that Port Hinchinbrook, if it was managed adequately, would not have very substantial impact off site - if it was managed properly. I am not confident, in fact I am fairly sure that it has not been managed properly.' (Dr G Bowman, Evidence 10 August 1998, p 278)

4.36 The Committee heard evidence about an occasion in March 1998 when part of a bund wall retaining a dredge spoil pond collapsed, spilling dredge spoil mud over Crown land that lies between the dredge spoil pond and Hinchinbrook Channel, and killing some trees.²² There was some dispute over how the accident happened and how much mud was spilt.²³ Environment Australia considered that 'the spill is unlikely to have had a significant impact on the World Heritage property.'²⁴ This of course is a comment about the effects on the Hinchinbrook Channel, which is the focus of Environment Australia's submission, since World Heritage protection is strictly the Commonwealth's only responsibility in this matter. It does not comment on the effects on the Crown land that was actually inundated. The land is lowland melaleuca forest - an 'ecosystem of concern' - proposed to become national park.²⁵

4.37 All the above evidence dates from 1998. The Queensland Acid Sulfate Soils Investigation Team (QASSIT) inspected the Port Hinchinbrook site in January 1999. The Australian Democrats believe that the report of this inspection gives grounds for concern about the competence of acid sulfate management at Port Hinchinbrook, and that it tends to confirm the fears of the scientists mentioned above. The report stressed the difficulty of estimating environmental impacts of acid sulfate soils given the lack

22 The dredge spoil pond is on lot 17. The Crown land is lot 33. See Figure 5.

23 K Williams (Cardwell Properties P/L), Evidence to Senate ECITA References Committee Commonwealth Environment Powers inquiry, 24 April 1998, p 241.

24 Environment Australia, Submission 157, p 752.

25 'proposed to become national park': the Hon. R Welford, Minister for Heritage and Minister for Natural Resources, to North Queensland Conservation Council, 1 April 1999. Further information 21 April 1999, p 658-9.

of basic data about the geology and hydrology of the site.²⁶ It described several breaches (or ‘apparent’ breaches) of the Acid Sulfate Management Plan.²⁷ It expressed concerns about the concentration of heavy metals in some samples of runoff. It concluded generally:

‘Based on the limited monitoring information supplied by Professor Peter Saenger and the Environmental Protection Agency, currently there is no clear evidence that the Port Hinchinbrook site is a serious threat to World Heritage property to date. However, there is ongoing evidence of some leaking of acid, iron and probably aluminium from pond wall seepage and various spoil heaps (including Tekin spoil on Unoccupied State Land (USL)) onto the thin strip of USL adjacent to the World Heritage Area.’ (Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999, p 7,20-21. Further information p 864,877-878.)

4.38 Subsequent to QASSIT’s March 1999 report the Queensland Department of State Development commissioned further reports on the situation from AGC Woodward Clyde Pty Ltd. These reports, although they make a few perfunctory references to environmental impacts, are primarily focussed on showing whether the site is safe for building.²⁸ They conclude that it is. They acknowledge certain acid sulfate hot spots (most significantly, a service station and tennis court site near the north west corner of the property) and recommend remedial measures. They acknowledge certain breaches of the Acid Sulfate Management Plan.²⁹

4.39 Senator Hill advised that the developer has agreed in writing to undertake the required remedial work.³⁰

Evidence on environmental harm from acid leachate

4.40 ‘Acid runoff’ must be clearly distinguished from ‘environmental harm caused by acid runoff’. The latter is much harder to measure. It involves isolating cause and

26 ‘... data from site visits together with limited soil data [from] Cardwell Properties is substantially less than QASSIT would normally expect to be available to make informed comments on the site for a development of this type and size.’ Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999, p5; further information p 862.

27 Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999: p 7: marina excavation spoil dumped untreated as above ground fill; p 10: certain pumping facilities not in place; p 11: release of acidic water from dredge spoil ponds into Unallocated State Land to the east; p 15: additional ASS spoil dumped east of the burial pit. Further information p 853ff.

28 Topics are the stability of slopes (particularly around the marina), and the acidity of foundation soils.

29 Further information, p 915ff: AGC Woodward Clyde Pty Ltd, *Port Hinchinbrook Eastern Precinct - Site Environmental Audit*, 9 August 1999; *Port Hinchinbrook Site Environmental Audit for Acid Sulfate Soil Potential - Phase 2*, 6 August 1999, p 5-1.

30 The Hon. R Hill, Minister for the Environment and Heritage, further information 12 August 1998, p 852.

effect among incremental changes to complex ecosystems subject to many influences. As Dr Reichelt explained:

‘... we tend to look at the small changes in the system and we are not very good at understanding the cumulative effects and the big changes, so what you end up with is very well qualified ecologists who have been spending their lives working on these systems saying to people such as you, “All we can really tell you is that if you take away all of this particular part of the system it’ll be different. You may not have the fish there or the seagrasses or the dugongs. If you take away another two per cent, we can’t tell you whether that is critical or not.”’ (Dr R Reichelt, Australian Institute of Marine Science, Evidence 31 July 1998, p 128)

4.41 According to Dr Bowman:

‘We [CSIRO] have looked at what is coming out of these sites and what is being discharged. We have not really looked at where it goes, how it disperses or what its impact is.’ (Dr G Bowman (CSIRO), Evidence 10 August 1998, p 282)

4.42 There was little clear evidence one way or the other on whether acid runoff has caused environmental harm or - more significantly - whether it will in the longer term. According to the North Queensland Conservation Council, ‘Prawns died in the acid runoff south of Stoney Creek. Black-lipped oysters on the foreshore ... have all died.’³¹ Mr Sammut (an acid sulfate expert), commented generally:

‘... acid sulfate soils can cause fish kills, trigger a number of fish diseases and cause degradation to estuarine systems ... acid plays a role in the actual induction of [red spot disease] ... [Red spot disease] is present within Hinchinbrook Channel. I cannot confirm with you whether that is the result of any acid discharges coming off the Cardwell property, but certainly it is present.’ (Mr J Sammut, Evidence 10 August 1998, p 222,228-9)

4.43 The developer and the authorities, on the other hand, argue that there has not been acid runoff - or if there has, it has not resulted in environmental harm.³²

4.44 Of course, not observing environmental harm is a very different thing from being confident that it has not occurred and will not occur - particularly in the longer term. As well, even when some environmental change is observed, it may be hard to prove cause and effect. The precautionary principle should apply: in the absence of clear knowledge about the robustness of natural systems, the prudent course is to avoid interfering with them as far as possible. This is the very reason why, in environmental management, lacking clear measures of the desired outcome (‘no environmental harm’), we fall back on outputs that *are* measurable (such as ‘no acid

31 North Queensland Conservation Council, further information March 1999, p 136.

32 For example, Qld Dept of Premier and Cabinet, further information 21 April 1999, p 705; Environment Australia, further information 25 March 1999, p418-9.

runoff'). Since the very purpose of the output condition is to compensate for uncertainty, the Committee does not think it is adequate to excuse breaches by saying that no harm has been observed.

4.45 The Committee notes that acid may harm not only the natural environment but also constructions such as building footings, underground fuel tanks, lawns and gardens. We assume this type of harm would be more easily measurable. Prof. White commented:

'The spreading of untreated acid sulfate soil material and the use of unconsolidated sediments as fill constitute significant problems for approval for dwelling and infrastructure construction ... approval to build on such sites could attract future litigation for damages.' (Prof. I White, further information 12 August 1999, p 1007)

4.46 Two particular points of dispute in the evidence concerned the appropriateness of neutralising acid runoff with seawater (which is naturally alkaline), and the risks of environmental damage from heavy metals mobilised by acid.

4.47 The developer, supported by Professor Saenger (the Independent Monitor appointed under the Deed of Agreement), argued that buffering acid with seawater is an acceptable way of neutralising acid:³³

'Neutralisation of acidity by sea water has no downstream ecological effect except perhaps in that immediate mixing zone.' (Prof. P Saenger, Evidence 8 December 1998, p 402)

4.48 Others disagreed. Using seawater to neutralise acid depletes the alkalinity of the seawater, and the Committee was told that alkalinity is essential to many aquatic organisms.³⁴ CSIRO noted in its 1995 report that 'the use of seawater to neutralise acid leachate from ASS is not accepted by regulatory authorities in some jurisdictions.'³⁵ QASSIT said that 'the acceptance of buffering with seawater is contentious' and 'the extent of potential environmental risk to biota is largely speculative ...'

'On the other hand, uncontrolled discharge of acidic water from disturbed ASS sites has been shown to cause significant environmental impacts on marine species and habitats. The issue requires further research ... Therefore until adequate research has been undertaken on the biological effects of seawater neutralisation, QASSIT are of the opinion that the precautionary principle needs to apply, ie. direct discharge is not acceptable in new developments ... The key concerns about seawater buffering are the sensitivity of receiving waters to acid runoff and the volumes and

33 K Williams (Cardwell Properties P/L), Evidence 10 August 1998, p 309.

34 J Sammut, Evidence 10 August 1998, p 230.

35 CSIRO (Dr G Bowman) to GBRMPA, 25 October 1996, *Peer Review of "Acid Sulfate Management Plan - Port Hinchinbrook"*, p 3.

composition of acidic runoff. Each site will have a unique situation ...'
(QASSIT, further information 1 April 1999, p 438)

4.49 The related point of dispute concerned the risk of damage to the environment from toxic heavy metals mobilised by acid. Acid dissolves heavy metals in the soil and transports them to the sea, where they are precipitated as the acid is neutralised. The metal can enter the foodchain and can smother seagrass and the gills of fish and crustaceans.

4.50 QASSIT commented generally:

'Dissolved iron is a major product of acid sulfate soils disturbance ... [it] can smother sea grasses, thereby reducing their capacity to photosynthesize ... [it] may also affect the habitat of mud dwelling organisms amongst the mangroves. Mangroves in general do not seem to be greatly affected in the short term by iron, but may decline or die over time as a result of other ASS impacts such as extreme episodic acidification and aluminium toxicity. It should be emphasised that little research has been [done] in these areas.'
(QASSIT, further information 1 April 1999, p 439)

4.51 The evidence on whether there are risks from heavy metals at Oyster Point was conflicting. Prof. Saenger thought that there is no risk because there is no source heavy metals in the area - no 'garbage dumps or old car bodies or shipwrecks or chemical effluent.'³⁶ The North Queensland Conservation Council calls this 'wishful thinking ... There is a history of early tin mining, orchards, rubber and tobacco farming in the general vicinity ... A scientific response would have rested on actual tests and specific historical details, and would not have assumed that there were no metals present because no-one had looked for them.'³⁷

4.52 Mr Sammut and Dr Morris were concerned about risks from heavy metals.³⁸ Dr Morris described research he had done at Oyster Point finding 'raised heavy metal levels in the seagrass at the mouth of Stoney Creek [which] indicates a local source of contamination.' Dr Morris also claimed that he has in effect been cold-shouldered by GBRMPA, implicitly because GBRMPA found his results unwelcome.³⁹ GBRMPA replied that it has asked Dr Morris to submit his research for peer review in the normal way and the invitation is still open.⁴⁰

4.53 Dr Coles said:

36 Prof. P Saenger, Evidence 8 December 1998, p 405.

37 North Queensland Conservation Council, further information March 1999, p 132.

38 J Sammut, Evidence 10 August 1998, p 230; V Young (The Wilderness Society), Evidence 10 August 1998, p 205; Dr R Morris, further information 14 February 1999, p 78ff.

39 Dr R Morris, further information 14 February 1999, p 80ff.

40 Dr I McPhail (GBRMPA), Evidence 24 August 1998, p 389.

‘As I understand the issues, heavy metals are mobilised into a reactive form by low pH. As soon as this material meets the sea the pH rises and the heavy metals flock and settle out in a stable form that is eventually diluted by seawater and is unlikely to have significant effect. Biota in the channel may be affected.’ (Dr R Coles, further information 23 March 1999, p 413)

4.54 The Australian Institute of Marine Science stated: ‘... the risk of significant mobilisation of heavy metals and deleterious effects on biota is minimal in the Oyster Point area as a result of the Port Hinchinbrook development ...’

‘Unless there is evidence of a source of metals in the area (e.g. a rubbish tip), there is no reason to suspect that metal concentrations within sediments, soils and waters of the marina development would be greatly different from those in other areas of Hinchinbrook Channel. Most metals would be in particulate form or adsorbed onto clay and silt particles rendering them relatively inert to directly interfere with physiological processes of most aquatic organisms. We are not aware of any data from the development on abnormal concentrations of metals considered most toxic, such as cadmium, lead or mercury.’ (Australian Institute of Marine Science, further information 23 February 1999, p 115)

4.55 It is unclear whether the last sentence is intended to mean that AIMS is confident there are no abnormal concentrations. As noted in paragraph 4.44, absence of evidence is not necessarily evidence of absence.

4.56 QASSIT’s March 1999 report noted acid runoff from the March 1998 spill site into the adjacent Unallocated State Land, with levels of iron, manganese and aluminium which ‘... all substantially exceed background runoff water values by factors of up to a hundred fold.’⁴¹

4.57 The comment at paragraph 4.40 applies to heavy metals as to acid runoff more generally: measuring a certain discharge is a very different thing from being confident about what its environmental effects will be. In general, QASSIT commented:

‘Discharging large quantities of iron into waterways has been under some scrutiny recently, due to a possible association of toxic cyanobacteria (*Lyngbya sp.*) blooms with iron rich oceanic waters from acid sulfate disturbances in Southern Queensland ... the precautionary principle should apply ...’ (Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999, p 7. Further information p 864)

4.58 In relation to the March 1998 spill site just mentioned, QASSIT stated: ‘... the spill material and associated leachate are unlikely to pose a serious threat to the World

41 Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999, p 10. Further information p 867.

Heritage Property because of the modest volumes of acid potentially involved in any one acid event.’⁴²

4.59 However, QASSIT also emphasised that there has been little research in these areas.⁴³

4.60 Of course, all these potential problems are only at issue if there *is* acid runoff, which the developer and the authorities (in evidence pre-dating QASSIT’s March 1999 report) denied.

Comment

4.61 The Committee comments:

- As already noted, it is clear that the Acid Sulfate Management Plan for Port Hinchinbrook, even as finalised, is very far from best practice. It is regrettable that the opportunity was lost to showcase Australian best practice management of a World Heritage Area.
- QASSIT’s March 1999 report on acid sulfate conditions notes several breaches of the Acid Sulfate Management Plan. It tends to bear out the fears of environment groups and some scientists that while acid sulfate soils at Port Hinchinbrook could have been managed properly, in fact they may not have been managed properly.
- The evidence on actual environmental harm arising from acid sulfate soils at Port Hinchinbrook (whether present or future) is disputed. The Committee notes with concern that acid sulfate soils, once disturbed, can continue to produce acid for many years. We note that acid can damage buildings and other structures as well as the natural environment.
- Lack of baseline data and lack of research on potential impacts was a common theme in the evidence. The precautionary principle applies: in the absence of clear knowledge about impacts we should be especially cautious about interfering with natural systems.
- In this regard, we note that several expert witnesses regretted the fact that CSIRO has scaled down its research into acid sulfate soils. For example, Prof. Melville:

‘I was very disappointed to learn recently that this, the most prestigious scientific organisation in Australia [CSIRO], has again had to decide against further research on acid sulfate soils. I also believe that another Commonwealth organisation, AGSO, has also ceased its research concerning acid sulfate soils.’ (Prof. I Melville, Submission 150, p 696)

42 Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999, p 11. Further information p 868.

43 QASSIT, further information 1 April 1999, p 439.

4.62 In view of the widespread nature and potential seriousness of acid sulfate problems, this seems regrettable. The Committee believes that a national approach to acid sulfate research would be appropriate.

Recommendation 5

The Committee recommends that a full assessment of acid sulfate soils at the Port Hinchinbrook development should be undertaken and a comprehensive acid sulfate abatement plan should be developed.

The Committee recommends further that if the developer is found to be in breach of the Acid Sulfate Management Plan the Commonwealth, as a party to the Deed of Agreement, should act to ensure that the developer complies with the first part of this recommendation and remedies any breaches.

Recommendation 6

The Committee recommends that the Commonwealth should allocate special funds to the CSIRO to conduct both general research on acid sulfate soils and a special project that would expedite acid sulfate soil mapping around Australia.

Impacts on seagrass and dugongs

Background

4.63 Seagrass beds lie offshore north and south of Oyster Point. Hinchinbrook Channel has the third highest seagrass biomass along the coast between Cairns and Bowen. The seagrass is essential food for dugongs and sea turtles and is important habitat for the juveniles of a number of prawn species.⁴⁴

4.64 Dugongs are sea-dwelling mammals which grow up to three metres long. They are one of only four living species of sea cow (Sirenia) - as well as the dugong, three species of manatee are found in the Atlantic. Their closest relative on land is the elephant. Dugongs are found from East Africa to Vanuatu in coastal and island waters between 26 degrees north and south of the equator. It is believed that a significant proportion of the world's dugongs live in northern Australian waters from Moreton Bay in the east to Shark Bay in the west. Dugongs have high biodiversity value as being the only species in the Family Dugongidae and one of only four species in the Order Sirenia, all of which are listed as vulnerable to extinction by the World Conservation Union. Dugongs were specifically highlighted as one of the World Heritage values of the Great Barrier Reef World Heritage Area.⁴⁵

44 P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 18.

45 Cooperative Research Centre for the Ecologically Sustainable Development of the Great Barrier Reef, *Dugongs in the Great Barrier Reef - the current state of research*, August 1998. P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 19. H Marsh

4.65 Dugongs are listed as ‘vulnerable’ in Queensland (*Nature Conservation Act 1992*) and are listed as vulnerable to extinction in the IUCN Red List of Threatened Species and under schedule 2 of the Bonn Convention.⁴⁶ Dugongs are vulnerable because of their low rate of reproduction and because their shallow inshore habitats bring them into contact with human activities. Because dugongs are long living (over 70 years) and slow breeding (one calf each three to five years), the rate of population change is very sensitive to changes in survivorship. Even a slight rate of unnatural death resulting from human activities can cause a chronic decline in a dugong population.⁴⁷

4.66 Aerial surveys show that in the eight years to 1994 dugong populations in the southern Great Barrier Reef region south of Cooktown fell by about 50 per cent - in some areas by over 80 per cent. Anecdotal evidence suggests that the decline has been going on for decades. For such a slow breeding species this decline is a matter of great concern. The reasons for the decline are complex and include loss of habitat, accidental drowning in both commercial and illegal gill nets and in shark nets, and traditional hunting by Aboriginal people (there is now no hunting permitted south of Cooktown). The relative importance of the various impacts is uncertain but research suggests that incidental mortality in nets is a significant part of the problem. ‘Hunting, modern farming practices, increasing boat traffic, sewage outlets into seagrass beds, and land clearing causing a change in the composition of river run-off [affecting seagrass beds] must all be taken into account.’⁴⁸

4.67 Surveys suggest that in the southern Great Barrier Reef region the only important dugong population that has *not* declined is that between Cape Cleveland (near Townsville) and Dunk Island, including Hinchinbrook Island (with the proviso

et al, *The Status of the Dugong in the Southern Great Barrier Reef Marine Park*, GBRMPA research paper no. 41, 1996, p 1.

46 Cooperative Research Centre for the Ecologically Sustainable Development of the Great Barrier Reef, *Dugongs in the Great Barrier Reef - the current state of research*, August 1998. *Bonn Convention on the Conservation of Migratory Species of Wild Animals*, 23 June 1979. Dugongs are not listed under the Commonwealth *Endangered Species Act 1992* - a point which some supporters of Port Hinchinbrook stressed. Prof. Marsh comments: ‘The classification of species as ‘endangered’, ‘vulnerable to extinction’ etc. is technically complex and depends on the legislation which applies in the relevant political jurisdiction ... These considerations were not central to the decision to establish Dugong Protection Areas between Hinchinbrook Island and Hervey Bay in January 1998. These Areas were established in an effort to halt the decline of the dugong in the southern Great Barrier Reef World Heritage Area and Hervey Bay.’ Prof. H Marsh, notes tabled at public hearing, Townsville 31 July 1999. Cardwell Chamber of Commerce, Submission 123, p 537. Cardwell Properties P/L, Submission 83, annexure A1.

47 P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 18; Prof. H Marsh, Submission 125, p 557; H Marsh, Breen B & Morissette N, *Shoalwater Bay Queensland: a report on the importance of the marine environment of Shoalwater Bay with particular reference to mangroves, seagrasses, sea turtles, shorebirds, dugongs and dolphins*, James Cook University, 1992. Cooperative Research Centre for the Ecologically Sustainable Development of the Great Barrier Reef, *Dugongs in the Great Barrier Reef - the current state of research*, August 1998.

48 Prof. H Marsh, Submission 125, p 552,557. Cooperative Research Centre for the Ecologically Sustainable Development of the Great Barrier Reef, *Dugongs in the Great Barrier Reef - the current state of research*, August 1998.

that at the more local level survey data are statistically less reliable because of the smaller sample size).⁴⁹ In the Hinchinbrook area the most important dugong habitat is Missionary Bay on the north side of Hinchinbrook Island, but dugongs certainly do use the Hinchinbrook Channel and the area around Oyster Point.⁵⁰

4.68 Submissions on the impact of Port Hinchinbrook on dugongs feared an increase in collisions between boats and dugongs as boating in the area increases. To date boatstrike has not been a serious cause of death in Queensland, though collisions do occur - for example, in 1996 a Queensland Department of Environment patrol boat accidentally struck and killed a dugong in the Missionary Bay area of Hinchinbrook Island.⁵¹ Boatstrike *is* a serious cause of death of manatees (a similar species) in Florida, where there is a strong correlation between increase in boating traffic and increase in boatstrike deaths. This suggests that the low occurrence of boatstrike deaths in Queensland is mainly due to the relatively low level of boating activity by comparison with Florida. As well, Queensland dugongs tend to occur in more open water environments than Florida manatees - but Hinchinbrook Channel is an exception, being much more similar to manatee habitat than most dugong habitats are. These points suggest that boatstrike is *potentially* much more of a problem in the Hinchinbrook Channel than in most other parts of Queensland.⁵²

4.69 In August 1997 the Commonwealth and Queensland governments in a 'Dugong Communiqué' announced measures aiming to arrest the decline of dugongs in the southern Great Barrier Reef. They established a two-tiered system of Dugong Protection Areas (sometimes called 'sanctuaries'; in force from 12 January 1998), in which gill netting is banned or greatly restricted (Dugong Protection Area A) or subject to lesser controls designed to reduce the probability that a tangled dugong will drown (Dugong Protection Area B). The sea around Hinchinbrook Island, including the Hinchinbrook Channel, is a Dugong Protection Area A (see Figure 9). The governments acknowledged the need to address other threats to the dugong including

49 'The [aerial] surveys are designed to measure trends at this [Dunk Island-Bundaberg] regional scale and interpretation at a more localised scale must be cautious. Accepting this limitation, the surveys suggest that the decline has mainly occurred south of Townsville and that dugong numbers have not declined in the Hinchinbrook region since the mid-1980s.' Prof. H Marsh, Submission 125, p 552. 1986-7 and 1992 surveys were from Cooktown to the southern boundary of the GBRMP near Bundaberg. In the 1994 survey the sector from Cooktown to Dunk Island was omitted since it has little dugong habitat and few animals had been seen. H Marsh et al, *The Status of the Dugong in the Southern Great Barrier Reef Marine Park*, GBRMPA research paper no. 41, 1996, p 5-6.

50 Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Powers inquiry, 24 April 1998, p206. Prof. H Marsh, Submission 125, p 552-3, Evidence 31 July 1998, p 173.

51 P Illidge, *Recommended operational guidelines for QDE vessels in waterways in the Hinchinbrook Island area*, 30 August 1996.

52 Prof. H Marsh, Submission 125, p 552, 557. H Marsh et al, *The Status of the Dugong in the Southern Great Barrier Reef Marine Park*, GBRMPA research paper no. 41, 1996. Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Powers inquiry, 24 April 1998, p207.

‘Indigenous take, sharknetting, speed boats, and illegal hunting as well as steps to protect seagrass.’⁵³

4.70 The Hinchinbrook Dugong Protection Area A supports about 15 per cent of the dugongs in the southern Great Barrier Reef region.⁵⁴

4.71 Dugong expert Prof. Helene Marsh comments that the success of the dugong sanctuaries depends on conserving habitat *within* the sanctuaries, to discourage dugongs from moving away to places where they would be more at risk (research shows that dugongs do travel widely - for example, from the Hinchinbrook region to south of Cleveland Bay). In this regard the Hinchinbrook area is relatively important:

‘It will be particularly important to conserve dugong habitat in the DPA:As, especially the two DPA:As (Hinchinbrook and Shoalwater Bay) which together not only support more than 40 per cent of the dugongs in the region but are the only two areas in which gill-netting has been banned from adjacent rivers and creeks (which are used by dugongs). The long term effectiveness of the Hinchinbrook DPA:A which supports about 15 per cent of dugongs in the southern Great Barrier Reef region will depend on the capacity to control the boat traffic associated with resort and marina developments ... Some of the other DPA:As are unlikely to be effective in the long term. For example, it will be very difficult to maintain dugong habitat quality in Cleveland Bay, the port for Townsville, the large city in tropical Australia.’⁵⁵

4.72 On the other hand, Cardwell Chamber of Commerce seems to think that because the dugong population in the Hinchinbrook area is stable (by contrast with the population of the southern reef as a whole), there is *less* cause for concern in the Hinchinbrook area, and the Hinchinbrook area is being unfairly singled out for the sacrifices needed to protect dugongs:

‘There has been no suggestion by conservation groups that their recommendations for compulsory vessel speed limits for all commercial and recreational vessels in the Hinchinbrook area should also be applied to the Cleveland Bay Dugong Protection Area.’ (Cardwell Chamber of Commerce, Submission 123, p 538)

4.73 This suggests the need for public education on the issue. Prof Marsh:

‘That strategy [of dugong protection areas] is only going to work if the habitat in the Hinchinbrook area remains attractive to dugongs - if it remains a five-star dugong area ... I would see both management of habitat and

53 Great Barrier Reef Ministerial Council, *Dugong Communique*, 14 August 1997; reproduced in Environment Australia, Submission 157, attachment I.

54 Prof. H Marsh, Submission 125, p 553.

55 Prof. H Marsh, Submission 125, p 552-3,557ff.

management of boat speeds as central to that.’ (Prof. H Marsh, Evidence 31 July 1998, p 167)

4.74 Cardwell Chamber of Commerce also pointed out that the dugong population in the Great Barrier Reef north of Cooktown (when compared with the southern reef) is large and stable.⁵⁶ ‘Marsh and Saalfield (1991) estimated that the Torres Strait region could support an unselective harvest of at least 300 to 700 dugongs per year. Over the past five years [by contrast] there have been only four recorded dugong deaths in the Hinchinbrook Area.’ The implicit argument is that the abundance of dugongs further north makes the state of dugongs in the southern reef, or (by extension) in the Hinchinbrook area, less of a concern. If large numbers of dugongs are hunted in Torres Strait, why should we worry about a few deaths at Hinchinbrook?⁵⁷

4.75 In answer Prof. Marsh comments:

- Australian dugong populations show genetic variations, which suggest limits on dugongs from different areas interbreeding. This suggests that if dugongs disappear from one area (such as the southern reef) they are unlikely to recolonise it quickly, in spite of the much greater number of dugongs further north.
- Whether this is a matter of concern depends on one’s objective for the conservation of the dugong. ‘If the objective of management is **to maintain dugong numbers throughout their range in Australia especially in the Great Barrier Reef World Heritage Area**, then minimising deaths and maintaining dugong habitat in the Hinchinbrook region is crucial.’⁵⁸

4.76 The Committee considers that the objective of dugong conservation should indeed be to maintain dugongs throughout their natural range. This is the aim of the Dugong Protection Areas established by the Commonwealth and Queensland governments. It is not acceptable conservation policy to contemplate the extinction of the dugong over perhaps 1200 kilometres of coastal Queensland simply because there

56 Aerial surveys suggest, in the Torres Strait, a stable population of at least 30,000; in the northern reef, a stable population of at least 10,000; in the southern reef (Dunk Island to Bundaberg) a population declining from at least 3,500 in 1986 to at least 1,700 in 1994. Estimates are ‘at least’ because aerial surveys under-count by a proportion which is uncertain. However the surveys do reliably show percentage changes in population over time because they are done in a standard way. Cooperative Research Centre for the Ecologically Sustainable Development of the Great Barrier Reef, *Dugongs in the Great Barrier Reef - the current state of research*, August 1998. Prof. H Marsh, notes tabled at public hearing, Townsville 31 July 1998.

57 Cardwell Chamber of Commerce, Submission 123, p 537. Similarly Cardwell Properties P/L, Submission 83, annexure A1: ‘Vulnerable species may sound ominous but in fact it only requires that attempts must be made to maintain the species throughout its entire range but it does not mean that it must be maintained in every location.’

58 Prof. H Marsh, notes tabled at public hearing, Townsville 31 July 1998. Prof. Marsh estimates that the present rate of indigenous hunting in the Torres Strait is not sustainable ‘... but a [long-term] decline will be difficult to prove statistically until it is very large.’

are plenty of dugongs elsewhere - especially when the area concerned is a World Heritage Area. Accordingly, the abundance of dugongs in the northern reef region and Torres Strait is no cause for complacency about the serious decline of dugongs in the southern reef region.

4.77 In evidence the Queensland government described interim management arrangements for dugong conservation in the Hinchinbrook area which were agreed by Commonwealth and State environment ministers on 16 April 1998. The interim arrangements 'provide for':

- a series of voluntary vessel transit lanes and go slow areas within the Hinchinbrook Dugong Protection Area;
- a program to educate the public on the risk of boatstrike, the recommended transit lanes and the recommended speed limits (25 knots in transit lanes, 10 knots in important feeding areas outside transit lanes);
- monitoring 'to gauge adoption of recommended vessel transit lane use.'⁵⁹

4.78 Following a meeting of the Great Barrier Reef Ministerial Council on 30 July 1999, Senator Hill, Commonwealth Minister for the Environment and Heritage, described dugong protection measures which 'are being pursued', including:

- further restrictions on commercial fishing in Dugong Protection Areas;
- co-operative agreements with indigenous communities to control indigenous hunting;
- a 40 knot speed limit in the Hinchinbrook Channel.⁶⁰ [The speed limit is now 40 knots but with exemptions for water ski races.⁶¹]

4.79 On the matter of controlling on-land activities which threaten dugong habitats (such as sewage or agricultural runoff affecting seagrass beds), the ministers endorsed their officials' recommendations to 'request Queensland' to pursue legislative protection of riparian zones and wetlands; to implement integrated catchment management strategies; and to progress codes of management from voluntary to mandatory.⁶²

4.80 The Committee notes these measures with approval in principle. However we have some concern that two years after the *Dugong Communiqué*, these measures are still being described as 'provided for' or 'are being pursued' or 'request Queensland

59 Queensland Department of Premier and Cabinet, further information 21 April 1999, p 706-7.

60 The Hon. R Hill, Minister for the Environment and Heritage, *New measures announced to protect dugong*, media release 5 August 1999.

61 Queensland Department of Premier and Cabinet, further information 21 April 1999, p 706.

62 Great Barrier Reef Marine Park Authority, further information August 1999, p 1013.

...’ These phrases suggest good intentions but, to date, not much concrete achievement.

4.81 It is essential that the Commonwealth and Queensland governments should follow through the 1998 controls on gill-netting with appropriate management of the other threats acknowledged in their *Dugong Communiqué*, such as boat speed limits and damage to seagrass habitat. It would be poor management to allow the initiative on gill-netting to be negated by insufficient action on these other matters.

Recommendation 7

The Committee recommends that, notwithstanding the difficulties, the Commonwealth and Queensland governments should expedite action to control threats to dugongs in the southern Great Barrier Reef region, including the reviewing of the use of gill nets in areas frequented by dugongs.

Impacts on seagrass

4.82 Opponents of Port Hinchinbrook were concerned that removal of foreshore mangroves would expose the shore to erosion during storms, and that the ‘artificial beach’ which the developer built in one spot in December 1997 would erode. Their concern is that eroded material would tend to smother regrowth mangroves and seagrass beds (the Deed of Agreement obliges the developer to allow mangroves to regrow in certain areas ‘to assist further in stabilising the foreshore’).⁶³

4.83 GBRMPA commented in 1994: ‘... despite removal of this larger stand [of foreshore mangroves] in 1988/89, the offshore seagrass beds still remain intact.’⁶⁴ In evidence to this inquiry the developer said that regular surveys of the beach since 1996 show that there has been no erosion.⁶⁵ Environment Australia said that the sand placed on the foreshore in December 1997 has been driven inland by the weather, and has caused no damage to World Heritage values.⁶⁶ The Independent Monitor, Professor Saenger, said that ‘the waves ... will tend to wash it back up the beach, which is where the natural beach line is, and to the north.’⁶⁷ He added:

63 Depending on the point of view of different witnesses, the ‘artificial beach’ was also called ‘a test site to measure the effectiveness of foreshore stabilisation techniques’ (which is required by the Deed of Agreement) or ‘dumping material on the foreshore’. It extended outside the developer’s property and covered some regrowth mangroves (contrary to the Deed), and in evidence there was some argument about whether it was allowed by the Deed. GBRMPA disputed with the developer about it at the time. Environment Australia, Submission 157, p 25-26, Evidence 24 August 1998, p 374; North Queensland Conservation Council, further information 11 March 1999, p 14; *Deed of Variation* August 1996, clause 7.10 & schedule 3, Beach and Foreshore Management Plan.

64 GBRMPA to D Kay (DEST), 14 November 1994, in Cardwell Properties P/L, Submission 83b, attachment 4.

65 K Williams (Cardwell Properties P/L), Evidence 10 August 1998, p 308.

66 Environment Australia, Submission 157, p 751.

67 Prof. P Saenger, Evidence 8 December 1998, p 410.

‘In August 1996 a system of 12 transect lines was established by AUSLIG for detailed topographic surveys and these transects have been re-surveyed by Rowlands Surveys Pty Ltd on an annual basis since. Although the upper beach profiles have altered slightly as a result of sand placement, no significant changes have occurred on the lower beach, the mudflats or in the mangroves. Furthermore, the placement of an experimental sand site by the developer clearly showed that sand moved up the beach as well as to the north.

‘Because there has been no significant erosion, it follows that seagrass smothering by beach- and mudflat-derived sediments cannot have occurred to date. There is a low longer term risk that may result from a major storm event in the future. There is also a small risk that some seagrass smothering may occur because of changed sedimentation due to altered circulation patterns due to the access channel. Such changes are likely to be small and offset by seasonal changes in seagrass growth and recruitment.’ (Prof. P Saenger, further information March 1999, p 297-8)

4.84 Seagrass expert Dr Rob Coles has been involved in five surveys of seagrass in the area from September 1994 to December 1997.⁶⁸ He commented:

‘Seagrass surveys identified little immediate damage to seagrasses from the dredging exercise. However, on the last survey (November 1998) there was some evidence of seagrass loss and increased sedimentation. It is likely that this was a natural seasonable variation as other areas nearby registered similar changes.’ (Dr R Coles, further information 23 March 1999, p 411)

4.85 Dr Coles noted that tropical seagrasses (by contrast with temperate seagrasses, where most research has been concentrated) are naturally very variable from year to year and, therefore, long-term research is necessary to isolate unnatural changes; but ‘Unfortunately, there is no agreed plan for ongoing funding for the seagrass work at Port Hinchinbrook so any long-term changes will not be known.’⁶⁹

4.86 The North Queensland Conservation Council (NQCC) argued that ‘although long-shore drift is the principal mode of sand movement, it would be a brave scientist who would guarantee that some of it has not moved across the low water mark of the Hinchinbrook Passage and hence into the World Heritage Area ...’⁷⁰ The NQCC supplied July 1997 photographs allegedly showing erosion of material placed on the foreshore, saying:

68 R J Coles et al, *Distribution of Seagrasses at Oyster Point, Cardwell - a reconnaissance survey, September 1994*, Qld Dept of Primary Industries; R J Coles et al, *Distribution and Abundance of Seagrasses at Oyster Point, Cardwell, Spring (November) 1995 & Winter (August) 1996*, Qld Dept of Primary Industries; W J Lee Long et al, *Baseline Survey of Hinchinbrook Region Seagrasses - October (Spring) 1996*, GBRMPA; W J Lee Long et al, *Oyster Point Post-Dredging Seagrass Distribution, December 1997*, Qld Dept of Primary Industries.

69 Dr R Coles, further information 23 March, p 411.

70 North Queensland Conservation Council, further information March 1999, p 138.

‘The photos show the pattern of deposition of the material used as fill. It is clearly spreading seawards down the foreshore, over the eroding sediments of the denuded mangrove habitat. The developer claims that nothing finished up on the seagrass beds. We find this unbelievable ... What happens to the darker materials, the silts, the fines, that are dumped; that are no longer evidence in the appearance of the artificial beach? Silts and fines do not behave like beach sand. They become suspended by wave action for long periods of time, unlike beach sand which settles quickly. They travel with the water column they are in and settle out over time - onto the seagrass areas, for instance.’ (North Queensland Conservation Council, further information 11 March 1999, p 248-9)

4.87 The Committee does not have the expertise to reconcile this conflicting evidence.

Impacts on dugongs

4.88 According to Prof. Marsh, the possible impacts of Port Hinchinbrook on dugongs are threefold:

- Direct loss of seagrass habitat near the development site (seagrass is the main food of dugongs). Any disturbance is expected to be localised and short term.
- Reduction in the fecundity of dugongs due to general deterioration in their habitat - for example, being disturbed by boats or being denied optimal access to their feeding grounds. In the Hinchinbrook area some seagrass beds are only accessible at high tide, and this would presumably be the time of maximum boat traffic.⁷¹ Prof. Marsh could not estimate the severity of this risk.⁷²
- Death by boatstrike resulting from increased boat traffic in the area. As noted in paragraph 4.68, this is a serious risk. ‘If a population of 100 dugongs use the channel per year even one fatality per year is likely to be unsustainable on top of the other impacts.’ It is well established that the speed of boats rather than their size is the most important risk factor.⁷³ Prof. Marsh believes that a Boat Traffic Management Plan is essential to complement the existing Dugong Sanctuary.

4.89 Dr Preen commented:

‘The impact of this resort on dugongs will occur within a 20-kilometre radius of the site; there is just no question about that. It will occur over many years. It is going to build up slowly so it is not going to be in the next year that it is going to get worse and worse, and the impact of course will be felt forever or for a very long time.’ (Dr A Preen, Evidence to Senate

71 Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Powers inquiry, 24 April 1998, p 206.

72 Prof. H Marsh, Submission 125, p 559ff.

73 ‘It is easier for animals to get out of the way of big, slow-going boats than it is for very small, fast boats.’ Prof. H Marsh, Evidence 31 July 1998, p 166.

ECITA References Committee Commonwealth Environment Powers inquiry, 24 April 1998, p 207)

4.90 It seems there are differences of opinion on boat speed limits. The Committee notes that the present 40-knot speed limit in the Hinchinbrook Channel allows exemptions for races (by permit). We note the recommendation of officials to the Great Barrier Reef Ministerial Council (30 July 1999) that the Council should ‘... *again request* the Queensland Department of Transport to ensure that vessel speed limits in Hinchinbrook Channel are restricted to a maximum of 40 knots and that this include boat races ...’ [emphasis added] In any case, it is difficult to see why the Ministerial Council proposes a 40 knot speed limit for the Channel, if the recommended speed limit in transit lanes is 25 knots.⁷⁴

4.91 Cardwell Chamber of Commerce said: ‘The management strategies of confining high speed vessels to narrow deep water transit lanes and zoning slow and no go vessel areas have been successfully implemented [in Florida] ...’⁷⁵ Mr Tanzer of GBRMPA said: ‘In the major thoroughfare part of the channel there is room for flexibility. You do not want a situation where boats have to crawl along in areas dugongs often do not seem to frequent.’⁷⁶ On the other hand Prof. Marsh believes that speed limits should be imposed on *all* boats using the channel, since ‘... dugongs are at risk from boat strikes while travelling as well as feeding. As we have no data on how travelling dugongs use the Hinchinbrook Channel, it is not valid to assume that dugongs will not be hit by boats traversing the [central] shipping channel.’⁷⁷

4.92 In the Committee’s view it is obvious that Port Hinchinbrook will greatly increase boat traffic in the area, increasing the risk to dugongs. Given that this regrettable situation is now unavoidable, it is essential to control boat traffic and boat speeds so as to minimise the risk. The Committee agrees that boat speed limits should be based on appropriate research, within the aim of ensuring that Hinchinbrook region remains a ‘five-star dugong area.’⁷⁸ Public education is needed to explain why this is necessary even though Hinchinbrook dugongs seem to be relatively well-off already. We agree that high speed races in the Hinchinbrook Channel should not be allowed.

4.93 Comments from paragraph 4.117 on the difficulties of regulating environmentally detrimental human behaviour (as opposed to controlling environmentally detrimental natural processes) are also relevant.

74 Queensland Department of Premier and Cabinet, further information 21 April 1999, p 706-7. Great Barrier Reef Marine Park Authority, further information August 1999, p 1013.

75 Cardwell Chamber of Commerce, Submission 123, p 540.

76 J Tanzer (GBRMPA), Evidence 31 July 1998, p 151.

77 Prof. H Marsh, Submission 125, p 561.

78 Prof. H Marsh, Evidence 31 July 1998, p 167.

Impacts on other species

4.94 There were general concerns in evidence about possible impacts of the development on a number of other species, such as the endangered mahogany glider, the vulnerable irrawaddy dolphin, endangered sea turtles, the Torres Strait pigeon and the vulnerable beach stone curlew (a pair of which were nesting on the Oyster Point foreshore before being disturbed by earthworks).⁷⁹ Environment groups were also concerned about the developer's application to lease lowland melaleuca forest - an 'ecosystem of concern' and habitat of the mahogany glider - in lot 33 Unallocated State Land lying between the developer's property south of Stoney Creek and the coast; but this application has since been refused⁸⁰.

4.95 In relation to these species there was no information on how great the risk of impact is and, if the risked impact comes to pass, how serious the impact would be. The North Queensland Conservation Council (NQCC), when the Committee asked what proportion of the mahogany glider's habitat was affected by the development, said:

'No answer is possible, as the bare survival needs of the Mahogany Glider (listed as *endangered* under the *Nature Conservation Act* (Qld)) have not been ascertained. The Queensland Governments have mishandled the Mahogany Glider Rescue Plan, making habitat designations that mainly avoided privately held freehold rather than ascertaining the entire range and habitat of the glider first.' (North Queensland Conservation Council, further information March 1999, p 136)

4.96 Neither the NQCC nor the Queensland government knew of any research relevant to estimating how serious is the risk to the glider posed by this development. The government commented, 'Most of the current development site was previously cleared by Tekin and hence there is virtually none of the site subject to mahogany glider habitat.' The NQCC claimed that 'some land listed as *potential* habitat [of the glider] was cleared by Cardwell Properties, and the clearing of the trees (whether food trees or not) clearly prevented gliders from safely traversing the area as a route to the land listed as *critical habitat* that lies south of Stoney Creek.'⁸¹

4.97 In the Committee's view the precautionary principle should apply. The NQCC points out that to allow a development on the basis that it only affects a small proportion of a habitat would submit a species to death by a thousand cuts: 'It takes an

79 For example, Wildlife Preservation Society of Queensland, Submission 121, p 494ff; Cairns & Far North Environment Centre, Submission 50, p 147; M Moorhouse (North Queensland Conservation Society), Evidence 31 July 1998, p 195; North Queensland Conservation Society, further information 8 October 1998, p 40. See also P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 20ff.

80 The Hon. R Welford, Minister for Heritage and Minister for Natural Resources, to North Queensland Conservation Council, 1 April 1999. Further information 21 April 1999, p 658-9.

81 North Queensland Conservation Council, further information March 1999, p 137; Qld Dept of Premier and Cabinet, further information 21 April 1999, p 708.

impoverished mentality to attempt to justify acts potentially destructive of a species by claiming that one specific act was not the fatal last one.’⁸² Of course, for decision-makers who have to balance conflicting development and conservation interests, applying the precautionary principle still leaves difficult questions of how much risk is acceptable and how cautious they should be. In the case of endangered species it is clear that an extremely conservative approach is warranted.

Aesthetic impacts on the wilderness area

4.98 Hinchinbrook Island and the Hinchinbrook Channel are renowned for their scenic beauty. The 1994 Valentine Report quotes various academic and official sources: ‘The views of Hinchinbrook Island and Channel from many sites in the Cardwell Range are of exceptional natural beauty ...’; ‘... magnificent views [from Mt Bowen on Hinchinbrook Island] of the white sandy beaches and the Pacific Ocean to the east, the unique almost parallel tidal channel of the mangrove systems of Missionary Bay to the north, and the winding channels of the mangroves of Hinchinbrook Channel to the west ...’⁸³

4.99 The Draft Management Plan for Hinchinbrook Island National Park, both in the 1994 version and today, recognises the ‘exceptional natural and scenic values’ of the area, and speaks of ‘the distinctive and spectacular, rugged skyline of Hinchinbrook Island and the calm waters and twisting, mangrove-fringed waterways of the Channel which can be seen from several local vantage points.’ It proposes that ‘obtrusive facilities or developments such as floating hotels, permanently (or semi-permanently) moored vessel or pontoons ...’ should not be permitted in the national park.⁸⁴

4.100 The Queensland government’s 1994 Environmental Review Report (ERR) on Port Hinchinbrook noted that ‘The Hinchinbrook Channel represents a unique passage landscape. There are only four major passage systems in Queensland (and Australia), each occurring in different climatic zones and representative of different environments.’ Having said this the ERR, in keeping with its brief to consider ‘mainly those elements of the project for which approvals are not currently held’, omitted all further mention of the possible impact of the development on aesthetic values, apart from a two line comment that to preserve the landscape vista of the Hinchinbrook Channel will require restriction of building heights.⁸⁵

82 North Queensland Conservation Council, further information March 1999, p 137.

83 P Valentine, *Hinchinbrook Area World Heritage Values and the Oyster Point Proposal*, August 1994, p 16-17.

84 Qld Department of Environment, *Hinchinbrook Island National Park - draft management plan*, August 1996, pp 6,18.

85 Queensland Department of Environment and Heritage, *Environmental Review Report - Port Hinchinbrook*, May 1994, p 1,4,26.

4.101 Port Hinchinbrook, near the northern end of the largely unspoilt landscape of the Hinchinbrook Channel, and about 2 kilometres south of central Cardwell, replaces fringing mangroves with about 1 kilometre of waterfront housing.

4.102 The aesthetic impact of this was a concern to many opponents of the development. For many it was obviously a strong emotional driver of their opposition, even if they did not stress it in their submissions, presumably feeling obliged to give higher billing to the more objective ecological impacts. For example:

‘... a translocated slice of the Gold Coast ...’ (Wildlife Preservation Society of Queensland, Townsville Branch, Submission 97, p 398)

‘... planted coconut palms and an artificial beach ... A landscape alien and inappropriate to the area.’ (Prof. F Talbot, Submission 128, p 582)

‘Even one blemish is enough to destroy the visual beauty that people come to see.’ (S Chandler, Submission 28, p 72)

4.103 The lack of documentation of aesthetic values has not helped. Prof. Marsh comments that ‘the level of knowledge regarding aesthetic attributes of the Great Barrier Reef World Heritage Area is particularly poor’:

‘The lack of methodologies, and the limited understanding of what constitutes aesthetic value have hampered the documentation of these qualities. Although not formally articulated, I believe that this was a major concern of many of the opponents of the Port Hinchinbrook development. Many people thought that building ‘Hamilton Island at Oyster Point’ threatened the World Heritage values of the area, but because the aesthetic values of the World Heritage Area were not documented, it was hard to articulate objections based on threats to aesthetic qualities.’ (Prof. H Marsh, Submission 125, p 555)

4.104 A particular matter of concern for objectors was the change from the 1994 Masterplan (admittedly ‘indicative only’), which showed integrated, landscaped cluster housing separated from the high water mark by a 40 metre wide zone of apparently communal open space, to the 1997 Masterplan with private house lots to the high water mark. It is reasonable to expect that the latter may have a greater impact on views of the resort from the channel and Hinchinbrook Island.

‘Now, instead of an esplanade along the high watermark, the esplanade has gone. Instead of 50-something houses - they were not even a row of houses; they were actually groups of cottages mixed up with resort buildings - we now have wall-to-wall houses for a kilometre right on the edge of the high watermark without an esplanade.’ (M Moorhouse, North Queensland Conservation Council, Evidence 31 July 1998, p197)⁸⁶

86 The much-mentioned ‘esplanade’ seems to refer to the 40m-wide zone of apparently communal waterfront open space, shown on the 1994 Masterplan. As far as the Committee is aware the word

4.105 This absolute waterfront development contrasts with Cardwell, which has a strip of more or less wooded public space of varying width backing the beach along the length of the town. As the Port Hinchinbrook waterfront lots are presumably being marketed for their sea views, we cannot expect to see screening plantings springing up in their front yards.

4.106 Supporters of the Port Hinchinbrook development stressed that it is right next to Cardwell, which is hardly a wilderness:

‘The triangle bounded by Oyster Point, Hecate Point and Meunga Creek is certainly not wilderness. There are already dozens of boats in that area, many of them have permanent moorings in front of Cardwell, so even on the grounds of visual amenity, there is no justification for restricting the use of this northern triangle.’ (M Prior, Cardwell Air Charter, Evidence 30 July 1998, p 103)

4.107 In August 1996 the Australian Heritage Commission advised Senator Hill that the location of the resort was of ‘low wilderness quality’, but that nevertheless a development of this order would involve ‘significant change to this previously undeveloped landscape.’⁸⁷ Senator Hill, in his reasons for granting consent under the *World Heritage Properties Conservation Act 1983*, said:

‘To the extent that the establishment of the resort might impact on the aesthetic qualities or natural beauty of the adjacent areas including Hinchinbrook Channel and Hinchinbrook Island, I found that such impact would be insignificant having regard to a) the already degraded condition of the resort site; b) the previous extensive clearing of mangroves; and c) the restrictions imposed by the Deed on the height of the resort buildings.’ (Environment Australia, Submission 157, attachment K, p 9)⁸⁸

4.108 Aesthetic opinions, more than most, are inherently subjective. This was very clear from the opposing views that the parties held about the same phenomena. Opponents deplored the ‘Gold Coast style’ waterfront development and the ‘incongruous row of imported palms’.⁸⁹ The developer said:

‘The loop road [behind the waterfront blocks] is all high-quality asphalt. All the landscaping on that road has been done with foxtail palms, which are native to north Queensland.’ (K Williams, Cardwell Properties P/L,

‘esplanade’ does not occur in any of the primary sources describing this land, and the Committee has no evidence on what the intended treatment of this land was. The developer stresses that ‘reference to the original Tekin plans [by Cummings and Burns, 1987] will show clearly that there was no boulevard along the foreshore.’ Cardwell Properties P/L, Submission 83A, p 4. See Figures 6, 7 & 8.

87 Australian Heritage Commission to Senator Hill, 9 August 1996, attachment, p 1.

88 Under the Deed of Agreement ‘The Company must not construct any accommodation buildings on the Development Site with more than 2 levels of accommodation and one level of car park.’ (clause 20.2)

89 North Queensland Conservation Council, further information 11 March 1999, p 258.

Evidence to Senate ECITA References Committee Commonwealth Environment Powers Inquiry, 24 April 1998, p 240)

4.109 The Chair of the Committee comments that :

- Aesthetic values may be more subjective and less easily measurable than some other values, but they are no less important for that. ‘Natural beauty’ is a most significant element of people’s attitudes to the natural environment - indeed, it was the main driver of the early (19th century) national park movement. It is not acceptable to discount aesthetic values simply because they do not lend themselves to scientific measurement.
- Aesthetic impacts, even more than most impacts, were never properly considered in assessing the development proposal - whether in 1988, 1994 or 1996. The difficulty of assessing aesthetic impacts may explain but does not excuse this omission.
- The development is clearly detrimental to the aesthetic and wilderness values of the area. How serious a detriment is a matter of opinion - and on this matter more than most opinions are inherently subjective.

Impacts of increased tourism

4.110 Environmental groups fear that Port Hinchinbrook will exacerbate long term pressures to allow increased tourism in the nearby island national parks (Hinchinbrook Island, Brook Islands and Goold Island).⁹⁰ Likely impacts of this include disturbance to wildlife, track hardening and degradation around campsites, and loss of the ‘wilderness experience’ which people come for:

‘...the wilderness bit is lost if a wide range of impacts are allowed. If there are too many people on foot, you lose the sense of isolation that it is possible to get. If there are too many in boats, again you lose the beauty of sitting there, watching the sunset and feeling that it is just yours to see for that one particular moment.’ (P Sutton, Wildlife Preservation Society of Queensland (Hinchinbrook Branch) Evidence 30 July 1998, p 114)

4.111 These risks are well accepted and documented. The Hinchinbrook Island National Park Draft Management Plan acknowledges the fragility of the island’s environment and the need to control visitation for the common good:

‘The unique natural attributes which attract visitors to Hinchinbrook Island are often susceptible to pressures from overuse and the maintenance of these values will pose problems for managers.’ (Queensland Department of Environment & Heritage, *Hinchinbrook Island National Park Draft Management Plan*, August 1996, p 19)

90 For example, Cairns and Far North Environment Centre, Submission 50, p 148; Wildlife Preservation Society of Queensland (Townsville Branch), Submission 79a, p 296.

4.112 The Thorsborne trail on the east side of Hinchinbrook Island is already being used ‘to near capacity’ and a permit system operates to ration use.⁹¹ The Draft Management Plan proposes to continue limits on visitor numbers and commercial use of the island.

4.113 Supporters of the development argue, in effect, that managing the island national parks is not the responsibility of Port Hinchinbrook - if in future the authorities want to control visitation, nothing stops them. The developer argues that in any case his commercial interests lie in encouraging people to stay in the resort:

‘I support the Thorsborne Trail 100 per cent. I never want to see any of my guests over there because it is going to take them out of my resort for four or five days and that is not the idea of building a resort. So I am not really encouraging my guests to go and walk on the Thorsborne Trail.’ (K Williams, Cardwell Properties P/L, Evidence 10 August 1998, p 305)

4.114 Senator Hill, in his 1996 consent, acknowledged the risk of impacts from increased tourism in the area, but believed that the risk would be ‘adequately addressed’ by the proposed Cardwell/Hinchinbrook Regional Coastal Management Plan (which would be the first under the Queensland *Coastal Protection and Management Act 1995*). At the same time he concluded a Memorandum of Understanding with the Queensland government aimed at expediting the Plan.⁹² Opponents of Port Hinchinbrook are unhappy with what they call ‘delegating responsibility’ in this way.⁹³ They are concerned about the slow progress of making the Regional Coastal Management Plan and fear that it will be dominated by ‘development interests in the local community who view World Heritage with considerable suspicion and fear.’⁹⁴ More comment on the Regional Coastal Management Plan is in chapter 5.

4.115 More generally, environmental groups doubt that national park management will be able to resist the pressures that will arise:

‘There can be little confidence that existing controls on numbers, and monitoring of both private and commercial use of the Channel and islands, can be maintained in the face of the expected huge increase in numbers of people using the area and the demands of the resort operators and associated commercial interests.’ (Wildlife Preservation Society of Queensland (Townsville Branch), Submission 97, p 399)

91 Queensland Department of Environment & Heritage, *Hinchinbrook Island National Park Draft Management Plan*, August 1996, p 20.

92 Environment Australia, Submission 157, p 752 & attachment K (statement of reasons for consent under *World Heritage Properties Conservation Act 1983*), p 8.

93 Cairns & Far North Environment Centre, Submission 50, p 144,149; Queensland Conservation Council, Submission 117, p 476; Environmental Defender’s Office Ltd, Submission 144, p 662.

94 D Haigh, Submission 57, p 185.

4.116 The Chair of the Committee comments:

- Possible longer-term impacts from increased visitation, like aesthetic impacts, have been particularly badly considered in the development approval process for Port Hinchinbrook.
- It is already acknowledged in the national park draft management plans that pressure of visitation is a problem for managing the island national parks. It seems reasonable to assume that building a 2,000 bed resort at Port Hinchinbrook will increase the pressure.
- It is naïve to dismiss the issue by saying that this is not the responsibility of Port Hinchinbrook, on the grounds that if the authorities want to limit visitation, they can do so whenever they like at the stroke of a pen. Even in this inquiry there was obvious conflict between those who attach more importance to preserving the wilderness experience, and those who attach more importance to opening up the islands to more visitors (more comment is in chapter 5). The political pressure to accommodate increased visitation will be ongoing.

4.117 In particular, the Australian Democrats reject the implication that environmental impacts relating to human behavioural responses are of less concern than impacts relating to natural processes because - in theory - they can be controlled by regulation at the stroke of a pen. Impacts of human behaviour changing in response to development are just as important and can be just as intractable as impacts concerning natural processes. Refusing a development application in order to preempt some unwanted behaviour down the track is just as legitimate as refusing it in order to prevent erosion or pollution.

4.118 In all cases we must consider the risks involved and the difficulties of mitigation. Whether an impact is a natural event (such as ‘acid runoff’) or a human event (such as ‘pressure of increased tourism’), and whether possible mitigation is an engineering feat or simply making a regulation, is beside the point. Arguably, trying to influence people’s behaviour by regulation is often much harder politically than trying to influence natural processes by feats of engineering.

4.119 Accordingly, it is not adequate for Environment Australia (for example), to dismiss the issue by saying, ‘the location of a large integrated resort facility such as Port Hinchinbrook in an area that has not previously been exposed to large scale mass tourism is likely to require careful regulation of relevant activities to ensure no unacceptable impacts on the surrounding area.’⁹⁵ Such comments ignore the obvious possibility that ‘ensuring no unacceptable impacts’ by regulation may prove impossible.

4.120 This conclusion also applies to risks to dugongs from boatstrike. It would obviously be irresponsible to approve a development that increased the risk on the

95 Environment Australia, Submission 157, p 757.

grounds that boating could - in theory - be controlled. An approval decision must balance the desired benefits of the development against the risk that controlling the boats later would prove impractical or politically impossible.

‘Practically, it would be very difficult to impose a requirement that, say no more than 20 power boats may use the Hinchinbrook Channel at any one time, given that a 234 boat marina and a two lane public boat ramp would have been built. The viability of the proposal would be put at risk. This demonstrates the fundamental nature of the issues that required assessment prior to construction being approved.’ (Environmental Defender’s Office Ltd, Submission 144, p 662)

Conclusions on environmental impacts of Port Hinchinbrook

4.121

- In spite of the frequent promises of the authorities, the Committee considers that environmental management of Port Hinchinbrook has been very far from ‘best practice’. The credibility gap between the promises and the reality has been a major cause of public mistrust of the authorities’ handling of the development.
- Acid sulfate soils need to be managed properly. The Australian Democrats share the fears of most involved scientists that in fact they have not been managed properly. QASSIT’s March 1999 report of its January 1999 inspection tends to support this view.⁹⁶ The Acid Sulfate Management Plan is far from best practice, and has been breached in several ways.
- Possible impacts from mobilisation of heavy metals in acid leachate are disputed and we cannot reconcile the evidence. In view of the limited scientific knowledge of the impacts of mobilised heavy metals, the precautionary principle should apply.
- Contrary to the fears of environmental groups, surveys since 1994 have shown no detrimental effects on seagrass. However we note Dr Coles’ proviso that tropical seagrasses are naturally very variable from year to year and, therefore, long-term research is necessary to isolate unnatural changes.⁹⁷
- The Committee agrees with Prof. Marsh and others that there is a serious risk to dugongs from increased boat traffic caused by the development, and that a properly researched Boat Traffic Management Plan is essential to protect them.
- Harm to other endangered or vulnerable species mentioned in evidence is possible on the face of it but, in the absence of information about the total range and population of these species, the evidence gives no basis for saying how

96 Queensland Acid Sulfate Soils Investigation Team, *A Report of the Acid Sulfate Soil Situation, Port Hinchinbrook Development Site*, March 1999. Further information p 853ff.

97 Dr R Coles, further information 23 March, p 411.

likely harm is or how serious it would be. The precautionary principle should apply.

- In the Australian Democrats' view, the aesthetic impact of the development on the unspoilt natural landscape of the Hinchinbrook Channel is obviously detrimental. How serious the detriment is, is a matter of opinion - and on this matter more than most opinions are inherently subjective.
- The development will undoubtedly create pressure for increased tourism in the surrounding island national parks, and if this is not controlled long-term detriment to the wilderness values of the area is very likely. Now that Port Hinchinbrook is well under construction the authorities are right to turn their minds to planning the appropriate controls. The Australian Democrats hope that the appropriate controls will be effective but, given the political pressures involved, we cannot be confident of it - especially in the longer term. We reject the argument that because these impacts can, in theory, be controlled at the stroke of a pen, it was reasonable to discount them when approving Port Hinchinbrook. Impacts from human behaviour changing in response to a development are just as important and can be just as intractable as impacts concerning natural processes, and are just as valid a reason for refusing a development in order to avoid the risk.
- Lack of research, particularly into longer-term impacts, was a common theme in submissions, especially from the relevant experts.

4.122 In relation to the last point, the Committee was struck by the potential negative effects that could result from the lack of research on the environmental impact of various land uses in areas adjacent to pristine waters and areas recognised for their great aesthetic values and their biological diversity. In the Committee's view, governments should recognise their responsibility in that regard and encourage scientific research and environmental impact studies by appropriate experts.

4.123 These conclusions are mixed. In evidence environment groups often assumed that if a thorough upfront Environmental Impact Statement (EIS) had been made, the development would 'obviously' have had to be refused. We cannot be sure of this - lack of information cuts both ways. But the precautionary principle should apply: lack of scientific certainty should not be used as a reason for allowing a development where there are threats of serious or irreversible environmental damage.

4.124 Perhaps an up-front EIS would have recommended refusal. The Committee is more confident that if approval had been contemplated after an EIS, it would very likely have suggested conditions different from those of the present development (for example, a different-looking development to mitigate aesthetic impacts, or a smaller development to mitigate future pressure on the islands). Such conditions might have made the development economically unviable, but that is a separate question which is not relevant to environmental impact assessment.

4.125 In any case, decisions on development applications depend not only on the information revealed by environmental assessment, but also on value judgments about the relative weight that should be given to the bits of information and the relative weight that should be given to different interests. We repeat the main theme of this report: the purpose of upfront environmental impact assessment is simply to ensure that decisions on development applications are made on the best possible information. Where decisions involve balancing conflicting interests, the environmental assessment itself cannot objectively decide the question: balancing conflicting interests must remain a matter for the decision-maker taking into account all relevant factors and reflecting community values.

4.126 The purpose of environmental impact assessment is simply to ensure as far as possible that decisions are made with knowledge and foresight rather than with ignorance, so that developers and communities are not surprised further down the track by detrimental effects which they would have liked to avoid, had they thought about them in time. The Committee stresses again that environmental impact studies are not simply a matter of monitoring and mitigating effects of developments already committed, but must be done in advance in order to inform the decision on the development application.

CHAPTER 5

OTHER ISSUES

Social and economic effects of Port Hinchinbrook on Cardwell

5.1 Supporters of the Port Hinchinbrook development hold out various hopes from it - growth of Cardwell ensuring the retention of essential services, to turn around the decline that followed the end of the timber industry in the 1980s; jobs for young people as an alternative to leaving town; perhaps a high school to replace the dangerous hour-long drive to Tully.¹

‘The Port Hinchinbrook development is the first opportunity in this town’s 130-year history to have a major employer in our district. We are counting on it to reverse the trend of splitting up our families. We love it up here. We live here by choice and would love to have the opportunity to keep our family units together.’ (L Hallam, Cardwell Chamber of Commerce, Evidence 30 July 1998, p 9)

5.2 Others argue that the benefits are uncertain:

‘The people of Cardwell are mostly small shopkeepers and retired people who enjoyed the quiet style of the little fishing town. They had only to research the effects of the Port Douglas resort which resulted in an exodus of many of the original population, hit by high real estate values and loss of trade to self contained resort shops.’ (M Mackay, Submission 47, p 129)

5.3 Friends of Hinchinbrook listed 26 public statements about Port Hinchinbrook job creation by Cardwell Properties, Cardwell Chamber of Commerce and local MPs from 1993 to 1997, to show how speculative the estimates were (they ranged from 400 to 3,500). ‘We feel it is cruel to raise hopes so unrealistically.’² The North Queensland Conservation Council (NQCC) asks whether local businesses will be displaced by new businesses at Oyster Point, and whether ‘the now heavily residential nature of the development will result in a collapse of land prices in Cardwell’? The NQCC stresses that there has been no assessment of these impacts.³ The Cairns and Far North Environment Centre argued that ecotourism will be a better source of local business opportunities and employment than large resorts:

‘Ecotourism will provide, and is now providing, small business opportunities for residents from the small local populations along the Hinchinbrook Coast. Large increases in population and large tourist

1 For example Kookaburra Holiday Park, submission 72, p 242; R Walker, Submission 137, p 617; L Hallam (Cardwell Chamber of Commerce), Evidence 30 July 1998, p 12,19.

2 Friends of Hinchinbrook, Submission 129, p 589 & attachment 6.

3 North Queensland Conservation Council, Submission 112, p 452.

operations will result in long-term environmental degradation and widespread unemployment.’ (Cairns and Far North Environmental Centre, Submission 50, p 143)

5.4 The Committee asked the Queensland government, among other things, whether the State has any statutory responsibility to assess the social and economic impacts of large development proposals, and whether in fact the State has considered the likely social and economic effects of Port Hinchinbrook on the local area. In its answers the State passed over these questions in silence.⁴

5.5 The underlying issue is, what is the proper scope of the public interest in the effects of private developments in a free enterprise society? We have environmental impact assessment laws, but we do not have ‘social impact assessment’ laws (except indirectly in planning policies). Developments may have social costs as well as benefits - as, for example, when the construction of out-of-town shopping malls causes the death of old-established main streets, to the detriment of people who do not have a car to drive to the mall. Our planning laws are not good at accounting for these costs, especially where they are incurred not all at once but through a long period of gradual reaction (as with the gradual decline of the main street in the example just given). In this case, we are considering a development that will more than double the population of a rather isolated small town. On the face of it this might have significant impacts for better or worse, and some study of them, as an input to a decision on the development application, would have been prudent.

Infrastructure needs of the development

5.6 Environmental groups were concerned that the infrastructure needs of Port Hinchinbrook have not been properly considered. They point out that Cardwell’s water supply (from Meunga Creek) is even now scarcely adequate in dry times, and they fear that increased demand will lead to pressure for construction of dams in the area, particularly in the ‘scenic and environmentally valuable upper reaches of the Herbert River.’⁵

5.7 The developer replies:

‘From day one of our application we have offered to supply our own water from three creeks which run through our own property. At the Cardwell Shire’s request we have agreed to co-operate with them so that by economy of scale they will be able to improve water reticulation through the township of Cardwell.’ (Cardwell Properties P/L, Submission 83, annexure C, p 4)

4 Qld Department of Premier and Cabinet, further information 21 April 1999, p 702ff.

5 Wildlife Preservation Society of Queensland (Townsville Branch), Submission 97, p 399. Also D Anderson (Concerned Residents of Cardwell Shire Inc.), Evidence 30 July 1998, p 80.

5.8 Cardwell Shire Council says it is confident that Meunga Creek can supply Port Hinchinbrook and Cardwell. Installation of water meters in the last two years has significantly reduced peak demand.⁶

5.9 Environment groups note the developer's past proposals for upgrading of Dallachy airstrip north of Cardwell (which is now suitable only for light aircraft). According to Cardno and Davies (1994), the project anticipated upgrading of the Dallachy airport 'to accept regular public transport aircraft of the Boeing 737 type.' According to the 1994 Environmental Review Report, 'The developer plans a staged development ... that will, within 7 to 10 years, incorporate an upgrade of the Dallachy Airport to accept commercial jet aircraft (with further possible upgrading depending on the international visitor component)'.⁷

5.10 The Cardwell Shire Council Corporate Plan 1995-99 says, 'the construction of a regional airport at Dallachy is seen as important in the long term ...'⁸

5.11 In his submission to this inquiry, the developer said:

'The Cardwell Shire Council has questioned upgrading of their airstrip to accept commuter traffic but they have allocated land for this purpose. It will not require clearing in the Edmund Kennedy National Park.' (Cardwell Properties P/L, submission 83, annexure C, p 4)

5.12 On the other hand, the Wildlife Preservation Society claimed that upgrading Dallachy 'will require major clearing in both State Forest and Edmund Kennedy National Park (included in the Wet Tropics World Heritage Area), and will result in infrastructure and noise and air pollution inappropriate to the two World Heritage Areas ... Clearing of native vegetation to accommodate the airport will result in further displacement of mahogany glider habitat.'⁹

5.13 The key point of concern is that the more distant, longer term, incremental impacts of the development seem not to have been considered in the development approval process.

Economic viability of the development

5.14 The Committee notes submissions arguing that the viability of Port Hinchinbrook as a business is dubious. The North Queensland Conservation Council said:

6 J Pettigrew (Cardwell Shire Council), Evidence 30 July 1998, p 93-94.

7 Cardno & Davies, *Port Hinchinbrook Resort at Cardwell - compilation of information...*, March 1994, p 23; Queensland Department of Environment and Heritage, *Environmental Review Report - Port Hinchinbrook*, May 1994, p 10.

8 Cardwell Shire Council, *Corporate Plan 1995-99*, p 14

9 Wildlife Preservation Society of Queensland, Submission 121, p 499. Similarly Wildlife Preservation Society of Queensland (Townsville Branch), Submission 97, p 399.

‘Virtually all coastal resorts are losing money. Laguna Quays recently sold at approximately 1/10th of construction costs. There is ample evidence that the days of integrated resorts are over ...’ (North Queensland Conservation Council, Submission 112, p 451)

5.15 The Wilderness Society submitted a 1996 affidavit by Mr Dean Dransfield, an accountant specialising in the tourism industry.¹⁰ Mr Dransfield said:

‘... resort development in the Whitsundays and Far North Queensland has an unusually high development risk profile. This perceived risk is caused by the numerous economic failures of both island and mainland resorts and the subsequent resale of those facilities at substantial discounts to development costs ... resort development is considered high risk and in general terms not presently economically viable.’ (‘Dransfield affidavit’, p 9-10, tabled at hearing 10 August 1998; ref: Evidence p 216)

5.16 On the other hand it was argued that if a developer wants to risk his money, that is nobody else’s business:

Senator Ian Macdonald: ‘I would have thought that the economics of the development are a matter for the developer and no-one else. If he goes broke, if he wants to risk his money, surely that is his role and not anyone else’s.’ (Evidence 30 July 1998, p 45)

5.17 As well, it should be noted that the failure of a *resort owner* does not necessarily imply the failure - closure - of *the resort*. The viability of a business depends not only on cash flow but also on its ability to service capital debt (or yield an acceptable rate of return on equity, as the case may be). An operation may turn out non-viable for the entrepreneur, who has funded the entire development cost; but it may be perfectly viable for the lucky buyer who gets it for only a fraction as much and so does not need as much income to service their debt.

‘They spoke about failed resorts. Let us look at those failed resorts. Hamilton Island: is that a failed resort? It is now owned by one of the wealthiest companies in Australia, and going quite well ... All these things have had hiccups, but it has not cost the taxpayers a cent. They have gone on from strength to strength.’ (K Williams, Cardwell Properties P/L, Evidence 10 August 1998, p 309)

5.18 The Committee comments: it is true that public authorities have no business to be concerned *on behalf of the developers* about the risks that developers take. On the

10 The Friends of Hinchinbrook obtained Mr Dransfield’s affidavit to use in their 1996 Federal Court challenge to Senator Hill’s consents under the *World Heritage Properties Conservation Act 1983* (see chapter 3). The prime purpose of the affidavit was to describe *types* of information which, in Mr Dransfield’s opinion, Senator Hill could have and should have obtained before deciding that there was no prudent and feasible alternative to consent (given that his reasons for consent included the expected economic benefits of the development - see paragraph 3.38 above). Contrary to some claims in evidence, the affidavit was not an assessment of the feasibility of Port Hinchinbrook. It made no comments specific to Port Hinchinbrook.

other hand, they have every right to be concerned *on behalf of the public* about the risk that a failed development will leave the public to pick up the tab for environmental remediation. We have the example of the failed Tekin development at Oyster Point. The failed Magnetic Quays development on Magnetic Island near Townsville was also mentioned:

Senator Reynolds: ‘I do not want to see the environment violated and left - for how many years now ? - for five years as an absolute disgrace and eyesore - as happened on Magnetic Island.’ (Evidence 10 August 1998, p 217)

5.19 This raises the question of bonds for environmental remediation:

Senator Hogg: ‘... should there be some sort of trust account that developers must pay into such that, should they suffer a financial crisis and go bankrupt, then it is not the public purse that is going to pay for the remediation of the site[?]’ (Evidence 24 August 1998, p 342)

5.20 The Committee affirms the correctness of demanding environmental bonds from proponents of major developments that might have significant environmental effects. If private development activities damage the public realm, it is only fair that the developer, not the public, should pay. We acknowledge the difficulties of estimating the risk of failure, the risk of damage and costs of remediation, and deciding how big bonds should be and how long they should be held for.

‘I think it is a case of horses for course, Senator, with due respect ... It is a very difficult question and, as I said, you have to find a line of balance between the imposition you put on the developer and whether or not that will discourage development entirely.’ (K Williams, Cardwell Properties P/L, Evidence 24 August 1998, p 342-3)

5.21 Arguably, the more difficult it is to estimate these things, the more strongly should the precautionary principle apply in considering the application in the first place. Prevention is better than cure. The fact that an authority holds a bond (or may demand one) should not be an excuse to allow less rigorous environmental management - especially when, as may often happen, the costs of remediation are large and uncertain.

5.22 The Committee notes that Mr Dransfield’s evidence and similar submissions referred to the risks of North Queensland resort development in general. We presume that the circumstances of different developments may differ greatly. We have no basis for drawing any conclusion about the viability of Port Hinchinbrook in particular.

Other environmental issues for the Hinchinbrook Region

Aquaculture

5.23 There are several prawn and fish farms in the Hinchinbrook Channel, and several more under construction or approved. One prawn farm covers 127 hectares - about three times the size of the Port Hinchinbrook 'Development Site'.¹¹ Effluent from farms can be extremely polluting: the Committee heard that 'a single one hectare [prawn] pond ... could have a nutrient loading roughly equivalent to a resident population of 300-500 people, based on typical nutrient concentrations in secondary treated sewage.' This is a particular concern in the slow-flushing Hinchinbrook Channel: 'a flushing period of 50 days may be needed to eliminate wastewater from a single source discharging into the channel ...'¹²

5.24 Hinchinbrook Shire Council supports aquaculture for its job creation:

'... the only labour intensive industry in our shire is tourism or aquaculture ... We have had about three aquaculture projects in the Hinchinbrook area knocked on the head, mainly because of environmental concerns ... I have always said that you must have respect for the environment and where at all possible avoid any degrading effects. But at the end of the day jobs have to be created.' (G Giandomenico, Hinchinbrook Shire Council, Evidence 30 July 1998, p 72)

5.25 The National Parks Association of Queensland sees possible benefits from prawn farming in taking pressure off the 'destructive effects' of trawling, gill-netting and line fishing in the Great Barrier Reef Marine Park - *providing* effluent is treated before disposal.¹³

5.26 On the other hand, environment groups have serious concerns about whether the environmental impacts of aquaculture in the Hinchinbrook Channel are being controlled adequately. The North Queensland Conservation Council quoted a 1994 Department of Environment briefing paper:

'The establishment of the leases for the purpose of aquaculture did not consider the possible effects of the discharges, either individually or combined. The views of the Department of Environment and Heritage and Water Quality Council of Queensland were not considered prior to the granting of leases ... The Department of Primary Industries is encouraging the establishment of prawn farms ... In the Northern Region, the licensed discharge of wastewaters from prawn farms is about equal of greater than the licensed volume of all other industries combined ... The risk to the Hinchinbrook Channel is that the constant input of nutrients, algae and

11 Department of Primary Industries (Qld), further information 12 March 1999, p 281.

12 North Queensland Conservation Council, further information 17 March 1999, p 362-3, quoting a Queensland Dept of Environment briefing paper 25 March 1994.

13 National Parks Association of Queensland Inc., Submission 94, p 368.

bacteria will upset the ecology of the area. The volumes proposed for discharge from existing and potential prawn farms are very large - in the order of 20,000+ cubic metres per day. This is the equivalent in volume to the wastewater generated by a population of over 1 million people. Discharges of this magnitude are normally the subject of major impact assessment processes ...' (North Queensland Conservation Council, further information 17 March 1999, p 362-3, quoting a Department of Environment (Northern Region) briefing paper, 25 March 1994)

5.27 On this 1994 information there is fair cause for concern. The Committee has little information on the Queensland government's actions since then or the present position. According to the Department of Primary Industries (DPI), 'this [further aquaculture development in the Hinchinbrook Channel] would be subject to very tight scrutiny by DPI and DEH.' The Department of Primary Industries submitted its recent discussion paper on 'Sustainable Growth of Coastal Aquaculture Policy.' The paper proposes a risk assessment procedure for aquaculture proposals that 'have potential to cause an environmental or disease impact on existing aquaculture facilities.'¹⁴

5.28 The Committee notes with some concern that this paper, although it makes a few token references to avoiding environmental harm from aquaculture developments, is actually firmly focussed on avoiding risk of disease to existing nearby aquaculture developments. It does not propose a risk assessment process relating to possible environmental harm in general.

5.29 As to the actual environmental impacts from aquaculture effluent in the Hinchinbrook Channel: apart from the reasonable fear that 'the constant input of nutrients, algae and bacteria will upset the ecology of the area', the Committee heard no evidence on what the impacts are, or who is researching them. It seems that the impacts are unknown:

Senator HOGG—... who should be monitoring the impact of the aquaculture[?]

Mr Veitch—The Department of Primary Industries.

Senator HOGG—Do they?

Mr Veitch—No. They are not resourced to do so. (V Veitch, Sunfish, Evidence 30 July 1998, p 27)

5.30 According to the North Queensland Conservation Council (NQCC), the size of Seafarm [a 127 hectare prawn farm at Pig Creek, about 8km south of Cardwell] has doubled since 1994. The NQCC submitted a video and photos showing 'the dirty, green, foaming waste stream coming out of the Seafarm discharge point and hence into the Hinchinbrook Passage ... The photos show discharges that should be unacceptable anywhere in Australia, and clearly contravene the provisions of the *Environment Protection Act (Qld)*.' The NQCC claims that 'leases are readily

14 Dept of Primary Industries (Qld), *Discussion Paper - Sustainable Growth of Coastal Aquaculture Policy*, no date [1999], in Dept of Primary Industries, further information 12 March 1999, p 279ff.

freeholded according to DNR [Department of Natural Resources] land-use criteria, not QDEH [Queensland Department of Environment and Heritage] criteria ... Land-use decisions are made by DNR whose philosophy and culture are not environment-protection-based.’¹⁵

5.31 The Department of Environment and Heritage requires aquaculture license holders to monitor the water quality of their discharges.¹⁶ The North Queensland Conservation Council lists ‘self-monitoring of wastes’ as a cause of environmental problems.¹⁷ According to Sunfish NQ:

‘DoE [Department of Environment] ... are scared to prosecute big companies like CSR or big aquaculture companies. I will not say who told me, but I know that in Burdekin there were reports of about 10 aquaculture plots putting in more effluent and causing problems. A spokesman for DoE said, “We can’t touch them, they’re too big.” (V Vitale, Sunfish NQ, Evidence 30 July 1998, p 27)

5.32 In evidence the Queensland government said: ‘Please be assured that any future proposals to establish aquaculture or agricultural activities on State land in the vicinity of the Hinchinbrook Channel will be subject to rigorous suitability assessment, particularly in respect of environmental issues.’¹⁸ In a general comment to the Committee, the State said:

‘The Department [of Environment and Heritage] is actively working in conjunction with the aquaculture industry, other Government agencies, in particular the Department of Primary Industries, and interested members of the community to develop new technologies to improve the quality of aquaculture discharges and to manage any environmental impacts on the receiving environment and waterways such as the Hinchinbrook Channel.’ (Qld Department of Premier and Cabinet, further information 21 April 1999, p 712)

5.33 In the absence of evidence from the Queensland government specifically answering the claims of environmental groups, the Committee hesitates to draw strong conclusions. However, the evidence above is no cause for complacency. It seems that the authorities do not know the impacts of aquaculture effluent on the admittedly slow-flushing Hinchinbrook Channel, and are not researching them.¹⁹ The discussion paper on ‘Sustainable Growth of Coastal Aquaculture Policy’ does not consider

15 North Queensland Conservation Council, further information 12 March 1999, p 269, 20 March 1999, p 358.

16 Qld Department of Premier and Cabinet, further information 21 April 1999, p 712.

17 North Queensland Conservation Council, further information 20 March 1999, p 359.

18 The Hon. R Welford to NQCC, 20 November 1998, in North Queensland Conservation Council, further information 12 March 1999, p 275.

19 We note that licensees must monitor discharges, but this is not the same as researching the environmental effects of discharges.

environmental impacts. This does not seem to be best practice management of a World Heritage Area. As we have stressed throughout this report, ‘managing any environmental impacts’, worthy though it is, is no substitute for upfront environmental impact assessment to inform decisions on development applications.

Recommendation 8

The Committee recommends that the Commonwealth and the Queensland governments should research the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area.

The Committee recommends further that pending improved knowledge of the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area, discharge of effluent to the World Heritage Area should not be permitted and no new aquaculture permits in the area should be issued.

Cane farming

5.34 Much of the Herbert River delta at the south end of the Hinchinbrook Channel is under sugar cane. Development of land for cane usually involves drainage schemes that can affect estuarine and coastal water quality. Runoff may contain chemicals from fertilisers, and drainage schemes may expose acid sulfate soils. Proposals in the Herbert River catchment next to the Hinchinbrook Channel also involve works in mangrove areas. Nitrogen and phosphorus are two main chemicals used in sugar cane fertilisers. It is estimated that these chemicals now flow off the east Queensland coast in quantities between three and five times greater than before European settlement.²⁰

5.35 Acid sulfate expert Dr Bowman described problems arising from expansion of caneland:

‘My personal opinion is that excavations and developments such as the Port Hinchinbrook site are fairly minor in terms of their impact on acid sulfate soils and the consequent environmental effects compared with the more extensive impacts that result from industries such as drainage for sugar cane. We have a site at the southern end of the Hinchinbrook Channel that we monitored for about nine months—the project is now finished—showing production of very large quantities of acid ... it is being produced by lowering of the watertable due to drainage for sugar cane production, and it is also producing acid, iron, aluminium and other metals that are going straight into Hinchinbrook Channel ... It is not all cane land, it is only on acid sulfate, and we do not really know how extensive that is, but we think it is fairly extensive. Where areas are being drained and we have looked at it, it is definitely producing toxic leachate.’ (Dr G Bowman, CSIRO, Evidence 10 August 1998, p 276-7)

20 Environment Australia, Submission 157, p 757.

5.36 Prof. Melville described Tweed Shire Council's 1990 initiative in drawing up Australia's first government guidelines for dealing with acid sulfate soils. He thinks that in Queensland there is less acceptance of the potential problems:

'Within New South Wales, I believe that the industry generally accepts that acid sulfate soils are an issue that they are addressing successfully in many cases ... I think there is a contrast between New South Wales and Queensland in this respect. I do not believe that the Queensland sugar industry does broadly accept that acid sulfate soils are an issue or a problem. That is part of the problem of education, I suppose.' (Prof. M Melville, Evidence 10 August 1998, p 226)

5.37 The North Queensland Conservation Council claimed that 'There is now massive sugarcane expansion east of the Bruce Highway into areas below three metres AHD [Australian Height Datum] into intertidal areas and areas that are really marginal land.'²¹ Mr Sheedy of Herbert River Canegrowers denied this:

'One of the criteria that we have with assigning new land is that it should be above three metres AHD. There are some lands which are presently under sugarcane cultivation which were developed years ago and which would be probably not quite three metres AHD ... When three metres AHD was decided as a benchmark that was thought to be a good measure by our technical advisers from the Department of Natural Resources and the old DPI in Queensland in regard to acid sulfate soil disturbance—that you could cultivate the soils above that level without too much risk at all of disturbing acid sulfates that may be deeper down in the soil profile.' (P Sheedy, Canegrowers Herbert River District, Evidence 30 July 1998, p 70)

5.38 Herbert River Canegrowers generally stressed that they are 'going through a very detailed planning study for any expansion of canegrowing in our district', and 'the industry in the Herbert has both a planning process and a condition on the development of new assignment that will ensure that no new development will create an acid sulfate problem.'²²

5.39 Sunfish NQ claimed that the Sugar Industry Infrastructure Package for the Murray-Riversdale area has allowed the development of 11,000 hectares of ground that was previously wetland.²³ Mr Giandomenico of Hinchinbrook Shire Council said that the land was 'nowhere near wetlands or anything':

'All the wetlands at the moment have been mapped, and we as a council, in conjunction with the canegrowers, are working vigorously to stop any expansion anywhere near wetlands.' (G Giandomenico, Hinchinbrook Shire Council, Evidence 30 July 1998, p 76)

21 J Tager (North Queensland Conservation Council), Evidence 31 July 1998, p 198.

22 P Sheedy (Canegrowers Herbert River District), Evidence 30 July 1998, p 68; Canegrowers Herbert River District, Submission 165, p 3-4, Evidence 24 August 1998, p 348ff.

23 V Veitch (Sunfish NQ), Evidence 30 July 1998, p 27.

5.40 Sunfish NQ had concerns about pollution from canegrowing:

‘There are significant point source pollution problems ... Victoria Mill was partially blamed for the fish kill at Victoria Creek when it released low quality effluent into the top of the catchment during an unscheduled shutdown after heavy rain...Macknade Mill ... has received criticism from local residents and anglers for a number of years due to apparently careless release of toxic effluent. Much of this is released into the top of Macknade Creek catchment which flows north towards Hinchinbrook Island ... It is unable to sustain native populations of fish and is badly affected by invasive pasture grasses due to the removal of the riparian vegetation along its banks. Other pollution concerns include the past practice of dumping sump oil, and this still continues on some properties, as does the uncontrolled dumping of old pesticide and herbicide containers.’²⁴

5.41 Sunfish argues that ‘since land clearing began in the region there has been a significant build up of sediment at the mouths of most of our rivers and estuaries ...’

‘The key to controlling sediments is in development and maintenance of riparian strips ... Although this has been law in some other states since the early part of the century, there are no such mechanisms to protect these critical areas in Queensland.’ (Sunfish NQ, Submission 122, p 526)

5.42 Sunfish NQ also claimed that fish kills and red spot disease have been caused by acid runoff.²⁵ Sunfish submitted several diseased fish caught in creeks of the Herbert delta at the southern end of the Hinchinbrook channel.²⁶

‘What we have offshore is the Great Barrier Reef World Heritage Area. We have to stop using it as a big blue wheelie bin.’ (V Veitch, Sunfish NQ, Evidence 30 July 1998, p 26)

5.43 Herbert River Canegrowers denied claims that fish kills and red spot disease in the Herbert region are caused by acid runoff or other pollution from canegrowing. They provided research showing that red spot disease may occur naturally and has complex causes.²⁷

‘There is sometimes that association of acid sulfate with red spot disease in fish, but the veterinary biologists tell us that the problem occurs in a lot of cases where there are otherwise healthy streams simply through desalination with a major flush, changes in temperatures and things of that kind.’ (P Sheedy, Canegrowers Herbert River, Evidence 24 August 1998, p 360)

24 Sunfish NQ, Submission 122, p 525.

25 Sunfish NQ, Submission 122, p 523-4.

26 V Veitch (Sunfish NQ), Evidence 30 July 1998, p 20.

27 J Marohasy (Canegrowers Herbert River District), Evidence 24 August 1998, p 355.

5.44 Herbert River Canegrowers described its code of practice for sustainable canegrowing, and generally argued:

- ‘At the most, there are 898 hectares of shallow cane cultivation [in the Herbert region] overlaying an area that could have potential acid sulfate soils beneath the surface ... We are very confident that, in all of those areas that are under existing production, there is not going to be any further disturbance. They are developed to the extent that they are ever going to be developed. Where those drainage projects are proposed, there may be some disturbance. That is the disturbance that is going to be managed and mitigated through the management plan ...’
- ‘The positive side of those water management projects is that they also include the enhancement of wetlands in those areas.’
- ‘What I cannot emphasise enough is what the stream monitoring, which we have done under our water watch program, has come up with ... There is not a low pH amongst the lot.’
- ‘[In the Tully-Murray and Herbert regions] We are 100 per cent trash blanketing [an environmentally preferable alternative to burning off] ... so there certainly are not many sediments running off from the cane lands in the Herbert. We use relatively low levels of nitrogenous and other fertilisers compared with other industries.’
- ‘The emphasis now, as we develop sugar cane, is still on trying to preserve the riparian areas along flow paths and wetlands, things like that. They are certainly being identified. A lot of priority is now given to holding onto those.’
- ‘Canegrowers has plans for a very ambitious tree planting initiative ...’²⁸

5.45 The above evidence is not completely consistent. The Committee did not try to go into the matter in any more detail and has no basis for drawing any conclusion, except to say on the one hand, canegrowing obviously has potential environmental impacts; on the other hand, it seems that Herbert River Canegrowers are aware of this and say they are working to control them. We note that the code of practice on sustainable canegrowing is advisory rather than mandatory, and that scientists who have examined the issue have several outstanding concerns.

Dungeness marina proposal

5.46 The North Queensland Conservation Council (NQCC) described the ‘Club Hinchinbrook’ 50 berth marina and resort development, which is proposed at Dungeness near Lucinda at the south end of the Hinchinbrook Channel. The NQCC has similar concerns about environmental impacts at Dungeness as at Port Hinchinbrook, and believes that the *Environmental Impact Statement and Planning Report* produced for Hinchinbrook Shire Council in 1997 was inadequate. The NQCC

28 P Sheedy & J Marohasy (Canegrowers Herbert River), Evidence 24 August 1998, p 350,357ff.

submitted to the inquiry a permit assessment record obtained by Freedom of Information, in which a Department of Environment professional officer listed concerns about the development. The NQCC said: ‘The Department of Environment itself, the only department charged with the protection of the natural environment, does not stand up for its portfolio as do other departments. Instead, it conspires with local government and development interests to undermine its own legislation and its own charter.’²⁹

5.47 The Environmental Defender’s Office of North Queensland had a particular concern that in this case Hinchinbrook Shire Council owns the site and assumed the role of development proponent, intending to hand over the site to the actual developer once approvals are in place. Thus Council was in the position of applying to itself for the necessary approval. In the EDO’s view this creates an obvious conflict of interest:

‘The site of the development is freehold land owned by the Hinchinbrook Shire Council (HSC). The HSC apparently called for expressions of interest in developing the site and chose as its preferred developer, Bursill Enterprises Pty Ltd ... the HSC has retained ownership of the site and applied to itself for development approval ... it is difficult to understand how the Council could avoid, let alone be seen to avoid, a conflict of interest between its financial interest in the land and investment in the expressions of interest process and its duty to fairly and objectively assess the merits of the application in accordance with sound planning principles ...’ (Environmental Defender’s Office of North Queensland Inc., Submission 90, p 3)

5.48 The EDO accepted that there are sometimes good reasons for Councils to apply to themselves for planning consent (for example, where the development is a public facility), but argued that this was not the case here: Dungeness was always intended as a private recreational development. The EDO argued that to avoid the perception of conflict of interest the Council should have sold the land first and let the buyer apply for development approval in the normal way.³⁰

5.49 The Committee invited Hinchinbrook Shire Council to answer these claims. The Shire said:

‘Council maintains that its role in the planning process for Dungeness was in accord with State legislation and its planning scheme. The Council has completed, at great expense, its Environmental Impact Study (EIS) and further, has provided environmental management plans to the relevant agencies to finalise the process ... [Council] anticipates that all issues will be satisfactorily resolved ... The Council has at all times acted within and according to the Laws of this State, and refutes any suggestion to the contrary ...’ (Hinchinbrook Shire Council, further information 22 July 1999, p 796a-b)

29 North Queensland Conservation Council, further information 12 March 1999, p 302ff.

30 R Silva (Environmental Defender’s Office of North Queensland Inc.), Evidence 31 July 1998, p 200.

5.50 The Committee did not gather enough evidence on the Dungeness proposal to comment on the environmental impacts.

5.51 On the procedural matter - the Council applying to itself for approval - the Committee comments:

- There is undoubtedly a *potential* conflict of interest between the Council's duty to protect the public interest in orderly planning decisions, and its interest in maximising the value of its land by approving the development.
- This potential conflict of interest is inevitably present where a council owns land proposed for development. In this regard, whether the council acts as proponent, or whether the developer (as future buyer of the land) acts as proponent with the owner's consent, is not the main issue. In the first case, the council carries out environmental assessment; in the second, it will receive an environmental assessment provided by the proponent. The fear of environment groups is that in the first case a council may short-cut environmental assessment; in the second, it may assess the proponent's environmental assessment leniently, to ensure that the development is approved.

5.52 The Committee suggests that there is a need to ensure a process of transparent and independent assessment of such applications. The EDO suggested 'at minimum, there should be a legislative obligation to establish strong and effective "Chinese walls" in a local authority's handling of such applications'.³¹ The Committee suggests that the signs of probity would include:

- there is a strategic plan that shows that the land is surplus to community requirements and the development is appropriate to the site;
- the development application is assessed independently - for example, by external consultants whose role is to put themselves in the shoes of the council's planning staff;
- If the application is approved, the site is then sold by open tender to ensure that the best price is received and to prevent any charge of favouritism between the council and a particular developer.

5.53 The Committee has no evidence from which to make any specific comment on the Dungeness proposal.

The role of science in this type of debate

5.54 The role of scientists in the Port Hinchinbrook debate has been controversial. Several scientists who have been professionally involved with the development gave evidence to this inquiry, and most of these were concerned about inadequate environmental impact assessment. As well, on several occasions concerned scientists

31 Environment Defender's Office of North Queensland Inc., Submission 90, p 6.

in general (not limited to those who have had direct professional involvement) have lobbied publicly on Port Hinchinbrook. In late 1994, around the time of Senator Faulkner's proclamations halting work, an estimated 200 scientists signed a letter to the Minister expressing concern about the poor environmental impact assessment and the lack of baseline data from which to estimate impacts. In December 1995 six eminent scientists headed by Sir David Attenborough wrote to the Prime Minister urging him to stop the development. In August 1996 (when the new Commonwealth government was reconsidering the matter) an estimated 200 scientists wrote to the Minister for the Environment, Senator Hill, in similar terms.³² On 14 January 1997 the Australian Academy of Science wrote to Senator Hill urging the government to develop better environmental assessment procedures consistent with the status of a World Heritage Area.³³ Nine internationally renowned scientists had a letter published in *The Australian* (17 April 1998) calling on the Queensland and Commonwealth governments to stop the development.³⁴

5.55 This high profile has attracted criticism. Supporters of the development claim that scientists are biased:

'Even scientific research in the area is questionable. Many studies, often publicly funded, seek to find evidence to support the point of view of opponents to the development, rather than gathering data and then drawing unbiased conclusions from it.' (Cardwell Air Charter, Submission 88, p 341)

5.56 Or they claim that for every study an opposing study can be found:

'A particularly contentious issue has been the widely conflicting and often misleading information provided through the media and the great variation in the data provided in scientific reports and environmental impact assessment studies.' (Cardwell Chamber of Commerce, Submission 123, p 535)

5.57 The fact that scientists have personal as well as professional opinions arouses suspicion:

'We have numerous examples of scientists who are being used, who are absolute opponents of the Port Hinchinbrook development and are being put forward as experts in certain fields.' (L Hallam, Cardwell Chamber of Commerce, Evidence 30 July 1998, p 14)

5.58 The Australian Academy of Science comments generally:

'Science has a big stake in the consideration of development proposals with significant environmental impact. All sides in public debates use evidence

32 North Queensland Conservation Council, further information 18 June 1999, p 745ff. Senate *Hansard*, 17 November 1994, p 3244.

33 Prof. F Talbot, Submission 128, attachment.

34 A copy is at A Bunbery, Submission 40, p 103.

produced by researchers to support their cases, generally selectively. Governments use the scientific credentials of the impact assessment process to confirm that they have discharged their public duties in relation to the proposed development. In the resulting debates many of us feel that the good name of science is not always enhanced by the causes to which it is harnessed.’ (G Nossal, Australian Academy of Science, to Senator R Hill, Minister for the Environment, 14 January 1997; attachment to Submission 128, Prof. F Talbot)

5.59 The Committee comments: scientists are entitled to have personal opinions, and to express them. It is quite natural that they will have personal opinions about matters that they have come into contact with through their work. They in turn have a responsibility to keep their research results and their personal opinions clearly separate and, when expressing themselves as experts, to state clearly the limits of their expertise. In particular, this means distinguishing statements of scientific results from opinions on matters of policy drawing on scientific results. For example, to say ‘On present information, we do not know how serious this impact will be’ is a scientific statement. To continue, ‘Accordingly, we should refuse the development application/ approve the application on the following conditions to minimise risk/ postpone a decision pending further research ...’ is a matter of opinion, which scientists are as well entitled to express as anyone.

5.60 The Committee notes that in the absence of perfect information estimating and evaluating risks always has a subjective element to it. Statements about risk use words that do not have exact meanings (‘Slight risk’, ‘moderate risk’, ‘severe risk’...). Even when risks can be quantified by statistics and probabilities, the results are notorious for their poor correlation with the psychological reality of risk in the mind of the general public. In this situation the scientist’s professional judgment about risk (choosing words like ‘slight’, ‘moderate’ or ‘severe’) stands somewhere between a value-free scientific statement and a personal opinion. Because of the lack of thorough upfront environmental impact assessment of Port Hinchinbrook, such statements about risk have been prominent in the scientists’ contribution to the debate.

5.61 The Committee stresses that (setting aside the unsubstantiated general accusations quoted from paragraph 5.55), we heard nothing to suggest that any of the scientists concerned have behaved unethically by biasing their research to support personal opinions, or by putting forward personal opinions as though they were scientific statements. All the scientists that gave evidence were very conscious of the distinction and careful to avoid these traps.

5.62 The Committee suspects that criticism of scientists also arises from misunderstandings about the nature of science and the role of scientific statements in political debate. Decision-makers want clear answers, and may become impatient with scientists whose conclusions are cautious and hedged about with qualifications about the need for further information. Non-scientists with a simplistic view of science as ‘fact-finding’ may not understand that two scientists can disagree without it meaning that one of them is wrong or biased.

‘It’s the social curse of scientific illiteracy ... scientific and cultural thinking is not like business thinking. The skill with which the developer has sown the seeds of doubt about the scientific arguments of the case for a precautionary approach to development within the region exploits the scientific illiteracy of politicians. When politicians act recklessly instead of safely, and defend themselves by claiming that you can’t get two scientists to agree, it reveals a crucial technical incompetence.’ (A Thomas, Submission 131, p 600)

5.63 The Australian Academy of Science points out that ‘evidence on complex environmental matters is seldom complete and unambiguous.’³⁵

5.64 Furthermore, even when scientific results *are* clear, they cannot dictate what in the end are political decisions about the right balance between conservation and development. ‘If you destroy the habitat, the species will die’ is a value-free scientific statement. ‘So what should we do about it?’ is the consequential political question. In answering such questions the precautionary principle should apply. Decisions should be made on the best possible information - and deciding how much information is necessary should draw on the professional consensus of the experts concerned. Decision-makers must be prepared to acknowledge unwelcome as well as welcome information. Dr Preen comments:

‘My observation has been that scientists can put in information, and if it agrees with the people making decisions then it becomes the best scientific advice available. If it disagrees with the direction that the people making the decisions want to go, then it is said that scientists ‘disagree on this matter’. Look at the history of reports done on Oyster Point. There must have been six or so reports done. They were all just replaced by another one until a report came up that said that the project would go ahead without undue harm within 100 or 200 metres of the site. And all of a sudden that one was the best scientific advice available ...’ (Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Power Inquiry, 24 April 1998, p 213)

5.65 The reference is to Dr Reichelt’s 1996 report which summarised the comments of six scientists, who in turn were reviewing an ‘Environmental Risk Assessment’ produced by Sinclair Knight Merz (SKM) for the developer.³⁶ The six reviews and Dr Reichelt’s summary of them were part of the advice gathered by Senator Hill before his August 1996 consent under the *World Heritage Properties Conservation Act 1983* which allowed work to resume (see paragraph 2.28). Dr Preen:

35 G Nossal, Australian Academy of Science, to Senator the Hon. R Hill, Minister for Environment, 14 January 1997.

36 Sinclair Knight Merz, *Port Hinchinbrook - environmental risk assessment with reference to activities requiring ministerial consent*, March 1996. R Reichelt, *Overview of the scientific reviews of “Port Hinchinbrook Environmental Risk Assessment with reference to activities requiring Ministerial Consent”*, 9 June 1996.

‘... some of those six broadened it out into the big issues, because clearly that was what it was all about. But Russell Reichelt, who summarised it, cut it back down, qualified their comments all the time, came up with this conclusion that there would be no unacceptable impact within 100 to 200 metres of the dredging area. So I guess he 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)

‘Unfortunately the Commonwealth made obviously political decisions in directing its scientific reports to confine themselves to the actual site or immediately adjacent area. Such serious limitations fly in the face of ecological reality ...’ (P Valentine, Submission 136, p 612)

5.66 The Committee stresses that the complaint is *not* that Dr Reichelt acted unprofessionally, but rather that the government’s view of the question was unreasonably narrow. Four of the six reviewers, though not specifically asked, commented to the effect that ‘... [the SKM report] focuses almost entirely on the local impacts of the proposed development’ or ‘... decisions on developments such as Port Hinchinbrook [need] to be made in a more regional context.’³⁷ Dr Reichelt reported these views 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.³⁸

5.67 The Committee notes that the SKM report explicitly limited itself to ‘the activities requiring ministerial consent’ - dredging the access channel and implementing a beach and foreshore management plan. It considered the matter narrowly, dealing with things like the possible effects of dredging on seagrass beds.³⁹ This raises the question of whether such an assessment should also consider the broader knock-on ‘effects’ (if we may call them that) of one action (such as dredging) in *enabling* a total development that may have other environmental impacts. In the

37 R Reichelt, *Overview of the scientific reviews of “Port Hinchinbrook Environmental Risk Assessment with reference to activities requiring Ministerial Consent”*, 9 June 1996, p 6.

38 The Hon. R Hill, *Statement of Reasons for my decisions under ... the World Heritage Properties Conservation Act 1983* (attachment K to Environment Australia, Submission 157), p 4. Senator Hill’s reasons quote verbatim the key sentence of Dr Reichelt’s summary (‘... could go ahead without significant impact on the immediate environment around Oyster Point, that is, within a few hundred metres ...’) and make no reference to any other part of it.

39 ‘This document only examines issues which are directly relevant to the consent application as all State Government requirements to commence works have been satisfied except for an approval under the EPA (1994) covering discharge of waters from the spoil disposal ponds. The document includes information relevant to that process if such discharge is required.’ Sinclair Knight Merz, *Port Hinchinbrook - environmental risk assessment with reference to activities requiring ministerial consent*, March 96, p 3.

case of Port Hinchinbrook the question is sharpened by the arguments about the lack of up-front whole-project environmental assessment.⁴⁰

5.68 The Committee comments: such problems only confirm the need for thorough up-front whole project environmental assessment of significant proposals. If after that the whole project is approved, detailed consequential applications may reasonably be considered as formalities (subject of course to satisfying relevant detailed conditions). The point is that if up-front whole-project environmental assessment has been done, proponents and public authorities should be confident that the possible environmental effects of the detailed matters are insignificant or have already been allowed for.

5.69 Other relevant comments are at paragraph 3.65ff.

Claimed intimidation of scientists

5.70 The Committee heard various evidence concerning harassment and intimidation of scientists, presumably either because they had spoken out as personally opposed to Port Hinchinbrook, or because they gave professional advice unwelcome to Port Hinchinbrook's supporters. For example:

'I have been defamed for expressing my views. I care for my reputation and I do not expect to be defamed further.' (J Sammut, Evidence 10 August 1998, p 234)

'It is our understanding that individuals from CSIRO have been subject to some harassment in the press and by other individuals.' (Dr S Rogers, CSIRO, Evidence 10 August 1998, p 284)

'I will read the following article from the *Courier Mail* [13 September 1997]: "Mr Williams also warned James Cook University researcher Tony Preen that he would be sued unless he withdrew allegations that Port Hinchinbrook would harm seagrass beds and dugongs. 'I'll serve a writ on Monday if he does not give me an all-out apology for the comments he made in the *Townsville Bulletin*,' Mr Williams said." There has been a lot more of that. Several SLAPP [strategic litigation against public participation] writs have been issued during the progress of this development. That sort of intimidation is what keeps a lot of people from speaking out.' (Dr A Preen, Evidence to Senate ECITA References Committee Commonwealth Environment Powers Inquiry, 24 April 1998, p 210)

40 Senator Hill's reasons for consent were not limited to the matters dealt with by SKM, but also considered broader whole-project effects - effects of increased boating on dugongs; effects of increased tourism in the region; aesthetic effects on the wilderness area (on these matters his consent relied heavily on the proposition that these matters 'would be addressed by the proposed [Cardwell/Hinchinbrook] Regional [Coastal Management] Plan'). This acknowledges that the effects of a particular action may validly be defined to include not only its local effects (e.g. effects of dredging on seagrass), but also its broader effects in *enabling* a whole project that may have other impacts.

‘... Mr Williams has made defamatory comments about me in the context of the Valentine report and it was discussed (in 1994) at senior levels of James Cook University whether he should be sued. The University legal advisers indicated that it would cost a minimum of \$30,000 to get into court with Mr Williams and such funds were not available. I was invited to take up the action personally but unfortunately I do not have access to that kind of money either. Such is the nature of injustice in our country.’ (P Valentine, further information 25 September 1998, p 34)

5.71 Dr Ellison said:

‘This is a highly controversial development. For individual scientists there is concern about speaking about it at many levels ... This [James Cook] University is excellent in encouraging scientists to speak within their scientific expertise. Other state employers would not give that privilege ...’ (Dr J Ellison, Evidence to Senate ECITA References Committee Commonwealth Environment Powers Inquiry, 24 April 1998, p 210)

5.72 Disagreements among scientists are aired in a different style from disagreements among businessmen or politicians. Wealthy developers are more used to resorting to the law than private individuals. The developer commented:

‘The only people or scientists who have cause to be concerned about legal action are those who use their supposed scientific credentials to make defamatory or damaging statements and then cannot back up those statements. That is normal commercial practice.’ (K Williams, Cardwell Properties P/L, Evidence 10 August 1998, p 311)

CHAIR—At the end of last year you wrote to the Queensland Department of Natural Resources. I think you were complaining about a report that month which you regarded as ‘unnecessarily alarming’, your words... You said: “If you will not agree to amend this report and remove the reference to low risk or comparatively quantify such risk then I shall have no alternative but to take this matter up further with the relevant authorities and my legal advisors.” Is that not intimidatory and threatening?

Mr Williams—I do not think so. I am taking the risk. I can only win a case if they are wrong and I am right. (K Williams, Cardwell Properties P/L, Evidence 10 August 1998, p 320)

5.73 On the weight of evidence the Committee concludes that some scientists have been threatened and intimidated during the Port Hinchinbrook debate. The Committee thinks that this type of behaviour is unacceptable. It is acceptable to criticise scientific research on its scientific merits - that is, to test it against scientific standards of accuracy, objectivity and logic. Scientists do this to each other all the time through the conventions of peer review and debate on published work. It is not acceptable to threaten scientists or to denigrate their professional ethics or professional competence generally, simply because their findings are unwelcome or because one disagrees with their personal opinions on matters of public interest. There are public policy reasons

for saying this: if people are afraid to speak out, public authorities do not get the expert advice that they ought to be getting, and are more likely to make bad decisions.

Some general questions

How to ensure independent environmental assessment

5.74 A common complaint is that environmental studies produced by proponents (in practice, consultants paid by proponents) are likely to be biased in favour of the development - since a consultant who produces the desired conclusion is more likely to get the next job. This has been a debating point (without any fruitful outcome) for as long as Australia has had environmental impact assessment laws. The Committee comments briefly:

- The means of ensuring more independent assessments are not hard to find, if the political will is present. 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 (the developer would still pay for the consultancy). Then consultants would know that they could not be discriminated against in future tenders (whether by the proponent or by the authority) if they reach unwelcome conclusions.
- The thoroughness of the authorities in setting the terms of reference for environmental impact studies is most important.
- As noted in paragraph 5.59, it is important to distinguish scientific findings from professional advice on questions of policy. Some heat is taken out of this problem if the objective side of studies is distinct and recognisable (and therefore, amenable to peer review), and the more subjective conclusions are clearly marked off and open to debate in policy terms.

5.75 The Committee notes with approval that under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) it is an offence to provide information in an environmental impact statement under the Act with reckless disregard as to whether the information is false or misleading.⁴¹

Recommendation 9

The Committee recommends that in order to achieve more independent environmental assessments of proposed developments, planning authorities rather than the developer should be responsible for selecting consultants by lot from a short list of tenderers.

The right balance between environment and development

5.76 The Committee has discussed the concerns of environment groups about the poor environmental impact assessment and development approval process used at Port

41 *Environment Protection and Biodiversity Conservation Act 1999* (Cth), section 489.

Hinchinbrook. Aside from this, it is obvious that the main substantive cause of the Port Hinchinbrook dispute (and many similar disputes) is disagreement over the right balance between environmental conservation and economic development.

5.77 To speak of ‘balance’ in this way implies that environment and development must conflict. We digress to emphasise that this is not necessarily so. Intelligent environmental management and intelligent development may be beneficial to both the environment and the economy (‘no regrets’ greenhouse reduction policies, for example). Many things beneficial to both the environment and the economy are not done not only because of ignorance, inertia or vested interests. The benefits of conservation may seem less than the benefits of development only because the value of environmental capital is not put into the equation. Or costs of conservation may fall in one place and benefits in another, and although the benefits may outweigh the costs, this will not mollify those who bear the costs. Or costs of development may fall on future generations (through degradation of environmental capital) and benefits in the present - and persuading people to forgo present gain for the sake of future generations will always be a political challenge.

5.78 With those provisos, it is true that in the realm of practical politics conservation and development often conflict. How should we handle such conflict better than was done at Port Hinchinbrook?

5.79 On the need for a balance between conservation and development, it was striking how similar was the rhetoric of both supporters and opponents of Port Hinchinbrook - at a general level. Supporters said, ‘Of course we support the environment, but we need development too.’ Opponents said, ‘Of course we support development - providing it is environmentally responsible.’

‘We must have a balance between economic growth and protection of the environment... We cannot allow developers to do as they please. They must be responsible for protecting our environment. The same must go for environmentalists: they must allow responsible development.’ (F Smith, Submission 20, p 51)

‘It is inferred that if you are not a supporter [of Port Hinchinbrook] you are therefore anti-progress or anti-jobs, which is of course not the case. We also have families and wish to see the area prosper, but development must be appropriate and sustainable.’ (D Anderson, Concerned Residents of Cardwell Association Inc., Evidence 30 July 1998, p 81)

5.80 In detail, of course, the two sides mean very different things by such statements. For example, different people give different value to environmental goods such as an ‘unspoilt’ natural landscape. Environment groups deplored the aesthetic impact of Port Hinchinbrook on the landscape of the Hinchinbrook Channel; but someone with different views can say:

‘Port Hinchinbrook is not a uranium mine or some smoke belching factory. This is a project that all Australians can enjoy.’ (G Smith, Submission 21, p 53)

5.81 Environment groups were concerned about the possible effect of Port Hinchinbrook on the endangered mahogany glider; but someone with different views can say:

‘The Department of Primary Industry’s expansion programme, planting pine trees to the south of Cardwell, was stopped when the Mahogany Glider was discovered in the path of the pine forests. The fact that the ‘bloody squirrel’ was deemed more important than the jobs of the workers infuriated the community.’ (Mr & Mrs C Ollerman, Submission 72, p 244)

5.82 Different people give different weight to ‘conservation’ versus ‘presentation’ (both of which are envisaged by the World Heritage Convention) and the wilderness experience. From this flows the debate about controls on visitation to the island national parks, and the accusation that environment groups or park managers have a ‘lock-up mentality’:⁴²

‘This area is amongst the most beautiful in the world and we must look after it to ensure it continues to be beautiful. There is, however, no point in maintaining anything if people are not able to see and appreciate it ... the type of operations which have little or no impact on the environment should have almost no restrictions placed on them. Obviously scenic flights fit this bill as do cruises on comfortable vessels which have no need of a shore visit.’ (Cardwell Air Charter, Submission 88, p 338-9)

‘An aircraft flying overhead is really quite intrusive when you have been sitting there and the only noise you have made during the day is pushing through the bush yourself, occasionally meeting someone else, listening to some birds.’ (P Sutton, Wildlife Preservation Society of Qld (Hinchinbrook Branch), Evidence 30 July 1998, p 114)

5.83 This suggests the need for more information and education about why the environment of the island national parks is fragile and why visitation needs to be controlled, both for the sake of the natural environment and for the experience of the visitors themselves. On some criteria very specific controls may be indicated (for example, to prevent campers damaging bird nesting sites); on other criteria the appropriate level of control will remain a matter of debate (for example, what limits are desirable to preserve ‘the wilderness experience’).

5.84 Different people have different ideas about what the precautionary principle should mean in practice, and how much information is enough in environmental impact assessment having regard to the significance of the proposal. Environment groups deplored what they called the lack of sufficient research into the potential impacts of Port Hinchinbrook; by contrast Hinchinbrook Shire Council (speaking of the Dungeness marina proposal) said:

42 G Giandomenico (Hinchinbrook Shire Council), Evidence 30 July, p 66.

‘... our experience has been that generally they [State government departments] require environmental studies that are unrealistic, irrelevant and designed to frustrate, delay and hopefully result in Council or the developer abandoning the proposal. Council does however fully support the carrying out of Environmental Impact Assessment studies that are relevant to a development ...’ (Hinchinbrook Shire Council, Submission 59, p 196)

5.85 Of course, what is ‘relevant’ may be disputed. The precautionary principle,⁴³ though it aims to entrench in decision-makers’ minds an attitude favourable to the environment; cannot objectively decide what type of information and what level of detail is enough in the individual case. This will remain a matter of judgment, which should take account of professional advice and community norms.⁴⁴ Some think that in assessing Port Hinchinbrook the authorities have not been cautious enough;⁴⁵ others, too cautious.⁴⁶ Prof. Saenger commented:

‘In areas where further scientific research or information gathering is required about a likely adverse impact, no decision should be finalised until that research or information gathering has been undertaken. Unfortunately, in practice, the precautionary principle is often invoked in relation to fanciful (possible but not likely) impacts to stop a project rather than initiate appropriate research. In my view, the latter is a misuse of this important principle.’ (Prof. P Saenger, further information March 1999, p 297)

5.86 Words like ‘possible’ and ‘likely’ are themselves largely subjective (with provisos mentioned in paragraph 5.60). How much effort is warranted to pre-empt a ‘possible but not likely’ impact should have regard to the significance of the site, the likelihood of the impact and the likely severity of the impact if it does occur; but in the end it is a matter of opinion. On matters of detailed scientific research, the Committee suggests that the advice of the relevant expert group should have considerable weight - as, for example, in evidence to this inquiry about what constitutes a ‘good’ acid sulfate management plan.

5.87 Finally, different people give different value to the trade-off between acknowledged environmental costs and benefits of other sorts:

‘Cardwell have never had a safe anchorage point; now they have. Those are issues that you have to take into account. If they are detrimental to the

43 The precautionary principle: ‘Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.’ *National Strategy for Ecologically Sustainable Development*, Commonwealth of Australia, December 1992, p 8.

44 The precautionary principle may suggest that certain information should ‘obviously’ be gathered, or certain decisions should ‘obviously’ be made a certain way; but the underlying value judgments must still be made, even if by tacit agreement.

45 For example, D Haigh, Submission 17, p 171: ‘... the international environmental “precautionary principle” was ignored or set at such a high threshold as to be useless.’

46 For example, Cardwell Chamber of Commerce, Submission 123, p 539.

environment in a minute way—that is my personal belief—then you have to accept it. If you are going to build a road you are going to have to clear land. Anything you do is going to have an impact somewhere along the line. At the end of the day you have to minimise those impacts, assess them and try to improve things somewhere else. It can be done.’ (G Giandomenico, Hinchinbrook Shire Council, Evidence 30 July 1998, p 73)

‘Of course, jobs are important. People want economic security and jobs, but there are surely gentler ways of achieving these than by the destruction of wilderness, tranquillity, wildlife and a way of life that this inappropriate development inevitably would bring.’ (M Thorsborne, Friends of Hinchinbrook, Evidence 30 July 1998, p 38)

5.88 The Committee suggests that these different views about the value of environmental costs and the right balance between conservation and development arise partly, sometimes, from lack of information, which environmental impact assessment can remedy:

‘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 Ltd, Evidence 10 August 1998, p 289)

5.89 However, the Committee suggests that primarily, and most often, different views reflect the different value systems of different people, and their different subjective evaluations of the natural environment versus human activities. Environmental impact assessments, though essential to allow debates to proceed with full information, will not change these underlying views. Deciding between these conflicting values, case by case, is a matter for the political process, hopefully reflecting broad community values. The Committee stresses again that-

- decisions need to incorporate an orderly, transparent process of environmental assessment and public consultation, so that all interest groups may be confident they will be heard, and may respect the outcome even if they do not agree with it;
- decisions need to be consistent with an overarching regional plan that looks to the long term, to avoid the tyranny of small decisions whose cumulative effect may degrade the environment even though none of them seems objectionable taken individually (this is discussed further from paragraph 5.103).

5.90 The parties to these disputes should remember that, although they disagree on details, they do agree on many fundamentals.

‘The interesting thing about it is that the consensus for what we would like the place to look like in 20 years time is very strong. There have been some public meetings held where people were asked what their vision was for this area in 20 years time. There was very little disagreement about what we would like it to be in 20 years time. The major area of disagreement is how we get there in small steps. That is the process that is going to be time

consuming and will take a long time to get through.’ (P Sutton, Wildlife Preservation Society of Queensland (Hinchinbrook Branch), Evidence 30 July 1998, p 116)

Local interests versus national interests

5.91 Under this heading two questions arise: who should decide major development applications; and in that decision, whose interests should prevail? The questions are related since most people would probably give the same answer to both, on the grounds that the easiest way of serving one group’s interests is to give the decision to them.

5.92 Opinions on this varied. On the first question, the Shire Councils and Cardwell interest groups naturally thought that power should be local. Throughout their evidence ran a strong undercurrent of local resentment against outside interference, whether by ‘Townsville academics’, the Queensland government or the Commonwealth:

‘I believe that matters of planning and permits to develop or operate should be the province of the local councils. GBRMPA and DoE being government agencies and therefore not subject to private sector economic realities should be the collators of research and advisers to the Councils on matters concerning crown lands, but with all decision-making in the hands of the democratically elected Local Councils.’ (Cardwell Air Charter, Submission 88, p 340)

‘At the end of the day in the local area, we should have regard to people who want to use the area; but it is the local people who should be in control of their own destiny. I can guarantee you that it gets up my nose when people from Canberra, South Australia or Melbourne tell me what we should do with our district.’ (G Giandomenico, Hinchinbrook Shire Council, Evidence 30 July 1998, p 74)

5.93 Others thought that local Councils are ill-suited to making major land-use planning decisions with environmental implications:

‘Local councils, whether they be in the Hinchinbrook region or whether they be in Nowra in New South Wales or Broome in Western Australia, are unable to manage natural resources from a holistic perspective for the benefit of all Australians. The only body that can do that is the federal government.’ (V Veitch, Sunfish NQ, Evidence 30 July 1998, p 22)

5.94 Most environmental groups clearly mistrust local control, since the burden of their submissions was that the State and Commonwealth governments should have but did not protect the World Heritage Area from the local Council’s original decision approving the Oyster Point development. Some said explicitly that the Commonwealth should take greater control of environmental management.⁴⁷ More

47 For example, Queensland Conservation Council, Submission 117, p 477.

evidence on this is in this Committee's report on *Commonwealth Environment Powers*, May 1999.

5.95 Mr Valentine said, 'Recent changes in State laws [the *Integrated Planning Act 1997* (Qld)] are placing more and more responsibilities on poorly resourced Local Government with a history of environmental ignorance and abuse ...'

'... It is difficult to expect good environmental outcomes when Local Governments are staffed by engineers but not environmental officers and scientists; where the concept of community participation remains novel and where large developments are automatically welcomed in a time of perceived economic need. These are the more typical conditions in local governments adjacent to our World Heritage sites.' (P Valentine, Submission 136, p 613-614)

5.96 Mr Valentine recommended that the Commonwealth should fund employment of environmental officers in local government areas including or abutting a World Heritage property.⁴⁸ The Committee agrees. See paragraph 5.150 and following.

5.97 Townsville Enterprise thought that in the approval process for 'major projects' (which would be defined by clear criteria), while all levels of government might be involved, there should be one 'overriding body' - probably the State government - which, by agreement, would have control of the process.⁴⁹

5.98 As for whose interests should prevail, there was more consensus that both local and broader interests need to be considered. But how these interests should weigh in the balance, where they conflict, is a matter of opinion:

'I certainly want to see the aspirations, the hopes and the dreams of the local people respected, but not at the expense of those who are further away who have an equally passionate interest. Similarly, I do not want the far ones to dominate the locals ... the Hinchinbrook Channel is not any one person's body. It belongs to the future as much as the present. So some wise decisions, recognising long-term consequences, have to be taken. I do not believe that we can consider only the locals, and I do not believe I could generate a mathematical formula which would give you the right balance, because in the end what we are looking at here are value judgments, not adding up and taking away.' (P Sutton, Wildlife Preservation Society (Hinchinbrook Branch), Evidence 30 July 1998, p 117-118)

5.99 Whenever the costs of some government policy or decision fall more hardly on some than on others, there will be objections. This is particularly the case in land-use planning. Many government decisions create winners and losers who are widely scattered among the whole population, and so less likely to unite in objection; but land-use controls, though they may be national in importance (as in the case of World

48 P Valentine, Submission 136, p 614.

49 R Power (Townsville Enterprise Ltd), Evidence 31 July 1998, p 156.

Heritage protection) are also inherently local in effect, and so very likely to be controversial.

5.100 It is beyond the scope of this report to consider the general question of the right roles of the three levels of government in environment protection and development control (this is discussed in this Committee's recent report *Commonwealth Environment Powers*⁵⁰). In the Committee's view both local interests and broader interests must be considered in decisions on development applications. Where World Heritage is involved it seems reasonable that broader interests should have relatively greater weight - though this does *not* mean that local input may be omitted from decision-making procedures. Where local interests and broader interests conflict, deciding the balance between them is fundamentally a matter for political debate.

5.101 The Committee notes Mr Valentine's concern about the trend to delegate more matters to relatively ill resourced local councils. This is a matter of concern. Wherever decision-making power lies, adequate resources should be allocated so the decision-making authority can make responsible, fully informed decisions. It is not good enough to delegate the power out of a general philosophy of devolution, without ensuring the necessary resources.

The Regional Coastal Management Plan

5.102 Many witnesses on both sides of the Port Hinchinbrook debate stressed the need for better regional planning policies so that developers know in good time what sort of developments will or will not be acceptable in certain locations.

'Oyster Point has been polarised into a conflict situation because the rules haven't been clear to anyone. That's obviously been a problem for the developer, it's been a problem for the conservation lobby, it's been a problem for the local council.' (Prof. H Marsh, *Four Corners*, 23 September 1996)

'The lack of clear, unambiguous guidelines and planning continues to foster an atmosphere of uncertainty, increased risk, and is considered detrimental to the long-term development of jobs in this region ... Virtually all current problems stem from one simple fact: there is no coherent regional planning mechanism that enables all stakeholders to understand what is and is not likely to constitute acceptable development.' (Townsville Enterprise, Submission 78, p 266,268)

5.103 As well, a key purpose of regional planning is to set out a long-term vision, so that the environment is not unintentionally degraded by the accumulation of small changes. It is easy to say, 'The cove is beautiful and unspoilt, but surely a *little* campsite would do no harm?' What happens when, ten years later, people have

50 Senate Environment, Communications, Information Technology and the Arts References Committee, *Commonwealth Environment Powers*, May 1999.

forgotten how the cove used to be, and someone says, ‘The cove is no longer unspoilt, the campsite is there - surely it would do no harm to enlarge it?’ One purpose of regional planning should be to foresee these situations and to set rules that can be followed from the start.

‘I do not think the issue of incremental change on coastlines has been solved by any government ... Incremental change is the big problem for managing coastal habitats, and site-specific focused inquiries and evaluations contribute to the problem ... I do not think you need a scientific evaluation to know that putting a resort on top of a coastal habitat will alter that bit of coastal habitat. How much of that coastal habitat do you want to retain? Are you happy to see that little bit changed? Those are the sorts of questions that could be addressed by a regional approach.’ (Dr R Reichelt, Australian Institute of Marine Science, Evidence 31 July 1998, p 135)

5.104 The Memorandum of Understanding which the Commonwealth and Queensland signed in 1996, at the time when the Commonwealth gave consents under the *World Heritage Properties Conservation Act 1983* necessary for the Port Hinchinbrook development to resume, aimed to expedite a ‘Cardwell/ Hinchinbrook Regional Coastal Management Plan.’ The plan is the first to be made under the *Queensland Coastal Protection and Management Act 1995*. The effect of a plan is (in brief) to give the State government a development control power over declared coastal waters and land up to 400m inland from the high water mark. The Minister must appoint a regional consultative group to help prepare a plan, including representatives of local government, tourism, conservation, industry and Aboriginal and Torres Strait Islander interests. The consultative group must seek community involvement during the preparation of the plan.⁵¹

5.105 A general criticism of this scheme is that the Act, although it contains a suitable purpose clause referring to biological diversity and ecologically sustainable development, creates no explicit obligation to protect the coastal environment:

‘The lack of substantive obligations imposed on the Minister or other responsible authority means that the actual taking of conservation initiatives under the *Coastal Protection and Management Act 1995*, in common with all other [Queensland] statutes dealing with environmental matters, is entirely up to the discretion of the responsible authority. Past experience has proven that this is not adequate to ensure that ESD and the preservation of

51 *Coastal Protection and Management Act 1995* (Qld), sections 19,31,48,103. A regional coastal management plan, as well as describing policies for coastal management, may declare ‘control districts’, which may include coastal waters and land up to 400 metres inland from the high water mark. A regional plan may make provisions about anything on which a regulation may be made under the Act. The Governor in Council may make regulations concerning (among other things) ‘the use or development of land in a control district.’ The *Integrated Planning Act 1997* (Qld) does not explicitly command local Councils to make their decisions on development applications consistent with a regional coastal management plan, presumably because, by virtue of section 31 of the *Coastal Protection and Management Act*, this obligation is conferred by the plan itself.

biodiversity will be achieved.’ (M Peterson, *Environmental Law Reform in Queensland*, 1996, p 55)

5.106 Many submissions were concerned about the delays in making the Cardwell/Hinchinbrook Regional Coastal Management Plan. For example:

‘Unfortunately, state governments do not like taking orders from Canberra and National Party governments like doing so even less. Consequently, the Borbidge government dragged its feet deliberately over the implementation, or at least the preparation, of a coastal management plan. It should have been in place by May 1998, but the current state of affairs is that it will not even be published in draft form until early 1999.’ (D Kimble, Community for Coastal and Cassowary Conservation, Evidence 30 July 1998, p 115)⁵²

5.107 On the other hand, it was argued that local ownership of the plan is important, and working through controversial issues inevitably takes time:

‘It would be very nice to get such a plan in place quickly but if you do that you do not have local ownership of it. I think you will have heard enough today to realise that local ownership of a planning process like this is very important. It is not effective to simply impose a plan on a group of people if they are not comfortable with it. The really time consuming process is that public consultation process that allows the local people to see the sense of the plan and feel a sense of ownership of it. In the end they will be the ones who police it and drive it.’ (P Sutton, Wildlife Preservation Society of Qld, Hinchinbrook Branch, Evidence 30 July 1998, p 116)

5.108 Some thought that the consultation process was ‘unnecessarily politicised’⁵³, or would be captured by development interests:

‘The Queensland Government is also likely to favour short term economic gain over long term environmental protection in the preparation of its Regional Management Plan. Queensland legislation requires the advice of the Regional Consultative Group, which includes representatives of local government, tourism and industry and consequently has a strong interest in advancing the economic aspects of the development, to be taken into account.’ (The Hon. R Jones, Submission 156, p 723)

5.109 Others seemed to fear it being captured by environmental interests:

‘The people whom I come in contact with in the shire—just the average person in the street—have had it up to their back teeth with inquiries... Basically, they have lost faith in the system to protect the majority rights. (A Harvey, Hinchinbrook Shire Council, Evidence 30 July 1998, p 70)

52 Also for example, Wildlife Preservation Society of Qld (Tully & District Branch), Submission 41, p 141; Giringun Elders and Reference Group Aboriginal Corporation, Submission 143, p 640.

53 Giringun Elders and Reference Group Aboriginal Corporation, Submission 143, p 654.

5.110 Some criticised what they see as the Commonwealth opting out of the process, in spite of the Commonwealth's duty to protect the Great Barrier Reef World Heritage Area:

'The Regional Plan on which the [Commonwealth] Minister relied legally for his [1996] consent decision has simply not eventuated. What's left of it, according to Marc Rowell (Member for Hinchinbrook and Minister for Primary Industries (Qld)), is "in the hands of the Hinchinbrook and Cardwell Shire Councils" (Herbert River Express, 30/5/98). So much for Commonwealth protection of World Heritage.' (Cairns and Far North Environment Centre, Submission 50, p 149)

'There is no expertise in World Heritage management on any Queensland Government agency involved in the plan. There is no direction or overt recognition of the high standard of management required of a World Heritage area. World Heritage is merely a consideration among the social, economic and political issues when in fact it should be the dominant issue driving the determination of the final plan.' (D Haigh, Submission 57, p 185)

5.111 On the other hand, Environment Australia said:

'The agreement on the development of a regional plan for the Hinchinbrook area is a significant achievement. Commonwealth involvement in the regional planning process will give it the capacity to address in an integrated manner the full range of developments that could impact on World Heritage and National Estate values.' (Environment Australia, Submission 157, p 754)

5.112 The above comments date from mid-1998. The Committee has no details of the present situation. We note the recent comment of Cardwell Shire Council that, from its point of view, the situation has improved:

'The Draft Regional Coastal Management Plan had a very turbulent start especially as in the early stage of the draft plan the consultative committee had no ownership of the plan. The original draft did not represent the views and desires of the populace. With the withdrawal of the original draft, the engagement of an independent consultant and the rewriting of the draft in a systematic manner the wheels have definitely not fallen off the Regional Coastal Management Plan.' (Cardwell Shire Council, further information, 4 March 1999, p 117)

5.113 The Queensland government described the change of direction:

'In April 1998 the then Minister for Environment (Brian Littleproud) directed that the planning process for the draft Cardwell/Hinchinbrook Regional Coastal Management Plan (originally proposed to be completed by 30 June 1998) be amended, following community concern in relation to the level of consultation for the Plan. The new planning process commenced on 30 April 1998.... The content [of the plan] has been thoroughly evaluated in

order to achieve the highest possible level of consensus for the document. A strong majority of Regional Consultative Group members support the document.’ (Qld Dept of Premier and Cabinet, further information, 21 April 1999, p 710)

5.114 The Committee understands that the draft Cardwell/Hinchinbrook Regional Coastal Management Plan is now in the hands of the State Minister and has not yet been advertised for public comment under section 34 of the *Coastal Protection and Management Act 1995*. The Queensland government advised that it is planned for release for public comment by August 1999 with the final plan gazetted by January 2000.⁵⁴ The State said that the vision for the plan is to achieve:

‘... an ecologically sustainable managed region where World Heritage values are protected with:

- large areas of linked natural vegetation, clean rivers and coastal areas supporting biodiversity;
- compact and contained towns;
- a viable tourism industry with emphasis on ecotourism;
- a sustainable fishery;
- efficient use of suitable land for agriculture, horticulture, timber production and aquaculture, with value-added industries; and
- strong community involvement in management and development, particularly from Aboriginal people;

- all contributing with equal importance to social, cultural, ecological and economic security.’ (Qld Dept of Premier and Cabinet, further information, 21 April 1999, p 709)

5.115 The Committee affirms the importance of regional planning to prevent future Port Hinchinbrook style disputes, by giving more certainty to developers about what types of development will or will not be acceptable in what locations, and giving more confidence to the community that regional environmental issues have been adequately considered. As the Queensland government put it:

‘The “ground rules” for a wide range of developments will be addressed in the Cardwell/Hinchinbrook Regional Coastal Management Plan through the Plan providing comprehensive criteria for the assessment of proposed developments in the planning area.’ (Qld Dept of Premier & Cabinet, further information 21 April 1999, p 709)

5.116 As well, as noted in paragraph 5.103, a regional planning approach is necessary to prevent the unintended degradation of the environment by gradual attrition.

54 Qld Dept of Premier and Cabinet, further information 21 April 1999, p 708. More recent advice: a draft Plain English version of the plan is expected to be released for public comment by December 1999, and the section 34 draft is expected to be released by mid-2000. J McIlwain (Qld Department of Premier & Cabinet), pers. comm. 20 September 1999.

‘Having a clear vision for the longer term makes short term decisions very easy.’ (T Tootell, Submission 15, p 42)

5.117 A plan cannot always prevent case by case dispute, but at least, when dispute happens, 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. But it will only work if the plan represents not just the right rhetoric, but also a real commitment by all concerned, flowing through to individual development control decisions:

‘How did the two local authorities (Hinchinbrook and Cardwell) decide to support this mega-scale project [Port Hinchinbrook] in the light of their respective draft regional strategies (in 1994) which indicated their goal was for low-key environmental friendly developments? ... The implications here are that formal plans are of so little meaning that they may as well not exist. But such an outcome will ensure hundreds more development conflicts. The solution must come from more meaningful plans and greater commitment to their outcomes ...’ (P Valentine, Submission 136, p 612)

5.118 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.

The Hinchinbrook Island National Park Management Plan

5.119 Similar concerns to those relating to the Regional Coastal Management Plan were also expressed, both by environment groups and development interests, in relation to the Draft Management Plan for Hinchinbrook Island National Park.⁵⁵ Environment groups (as far as they mentioned it) generally approved the draft plan as it stands, and feared that the current delay in finalising it foreshadows a weakening:

‘The most recent proposed plan for these islands was, on the whole, a document which took into account the sensitivities of these wilderness areas and which we supported with a few exceptions ... Where is this plan now? Has it been declared or has it been put under hold so that the visitor numbers and usage may be altered and increased to suit new proposals in the area?’ (Wildlife Preservation Society of Qld (Tully & District Branch), Submission 49, p 141)

5.120 Development interests resented the delay as creating lack of security for tourist operators:

‘After nine years the Hinchinbrook Island draft management plan is still not a legislative document. For tourism to grow in this area there has to be some certainty for the future ... In the absence of management plans there is no

55 The draft management plans for Brook Islands National Park and Goold Island National Park raise similar issues, and comment in evidence on the Hinchinbrook Island plan also applies to them implicitly if not explicitly.

security of tenure for anyone involved in tourist operations in this area.’ (W Whiteman, Cardwell Chamber of Commerce, Evidence 30 July 1998, p 4)

5.121 There is dispute on the direction of the national park management plan concerning the need to control visitation. The Wildlife Preservation Society, for example, thought that the most recent version ‘takes into account the sensitivities of these wilderness areas’ adequately.⁵⁶ By contrast, Hinchinbrook Shire Council thought that the Hinchinbrook Island plan ‘puts a stranglehold on any possibility of reasonable [commercial] activities being introduced ... It’s the same lock up/no go mentality which prevails throughout.’⁵⁷

‘... unless the community is vigilant against these attempts to “lock up” the island we will be denied access to our own backyard.’⁵⁸

5.122 The Shires do not think that present levels of use cause a problem.⁵⁹ They also resent the imposition of the plan by ‘Bureaucratic State Government Department Officers’ without (as they see it) enough consideration of local views:

‘The remoteness of the architects of these plans has also contributed to the lack of suitability of the plans to gain widespread public support.’⁶⁰

5.123 As noted in paragraph 5.83, where controls on use are based primarily on considerations of ‘the wilderness experience’ (as opposed to more clearly visible environmental harm) they are bound to be controversial, since the value different people attach to the wilderness experience is a very subjective matter.

5.124 In the Committee’ view, the purpose of management plans is to look to the long term, to pre-empt the cumulative impact of incremental changes which might seem innocuous when viewed from day to day, but which over time 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. So when the Shire Councils say ‘the developments which have taken place within the Hinchinbrook Island/Channel area ... *have not* in Council’s opinion caused any detrimental effects to the environment’,⁶¹ or ‘it is absolute nonsense to suggest that the channel and island *is* under threat from development pressure’⁶² [emphasis added], the comments are not quite to the point, because they speak only of the present, not the future. A plan is

56 Wildlife Preservation Society of Qld, Tully & District Branch, Submission 49, p 141.

57 Hinchinbrook Shire Council, Submission 59a, p 202-3.

58 Hinchinbrook Shire Council, Submission 59, p 196.

59 Hinchinbrook Shire Council, Submission 59, p 196; Cardwell Shire Council, Submission 158, p 792.

60 Hinchinbrook Shire Council, Submission 59, p 195. Cardwell Shire Council, Submission 158, p 792.

61 Cardwell Shire Council, Submission 158, p 792

62 Hinchinbrook Shire Council, Submission 59, p 196.

made not only in response to a present situation, but also to prevent the unwanted results foreseen from an unplanned future. 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.

Ecotourism

5.125 The meaning of 'ecotourism' is not very exact, but the key elements seem to be:

- the natural environment is the attraction, with a component of education in the tourist experience;
- the tourist operation does not itself degrade the environment, and preferably contributes to protecting the environment - for example, by the financial contributions of visitors or the involvement of operators in conservation projects;
- there are benefits for local host communities.⁶³

5.126 For example:

'Ecotourism is nature based tourism that is ecologically sustainable and is based on relatively undisturbed natural areas; is non-damaging and non-degrading; provides a direct contribution to the continued protection and management of protected areas used; and is subject to an adequate and appropriate management regime.'⁶⁴

5.127 The Hinchinbrook region, with its national parks and World Heritage Areas, is fertile ground for ecotourism:

'A large proportion of the land area of the Cardwell and Hinchinbrook Shires (68 per cent in Cardwell Shire) is now National Park, World Heritage Wet Tropics, State Forest or other environmentally protected land ... The Cardwell and Hinchinbrook Shires do have enormous eco-tourism potential.' (Cardwell Chamber of Commerce, Submission 123, p 534)

'Living in North Queensland I come in contact with overseas tourists on a daily basis. These people visit this region specifically to enjoy the natural environment and not to stay at large resort style accommodation that is duplicated elsewhere in the world. It is the uniqueness of the North Queensland environment that attracts foreign spending. Visitors come here to have a wilderness experience not a five star experience.' (K Rickart, Submission 13, p 27)

5.128 There was general support for an emphasis on ecotourism in the future development of the region:

63 Commonwealth Department of Tourism, *National Ecotourism Strategy*, 1994, p 15ff.

64 P Valentine, 'Nature-based tourism' in *Special Interest Tourism*, eds M Hall & B Weiler, Belhaven Press, London 1991.

‘We do not want development to the extent of other areas such as Whitsunday, Gold Coast or Cairns, but we do want to be able to establish small eco-tourism ventures that will provide employment opportunities for our young people ...’ (Hinchinbrook Shire Council, Submission 59, p 196)

‘The people of Cardwell have a valid desire for employment opportunities, as do most Australians. Appropriate development, on a smaller and more local scale, has limitless possibilities. Conservationists endeavour to protect the most beautiful, the most valuable, and the unique places. They know that these special places will automatically increase in value as the rest of the world is altered by humans. We can all support the Cardwell area in sustainable development.’ (R Street, Submission 43, p 114)

5.129 As noted in paragraph 5.114, the vision of the Cardwell/Hinchinbrook Regional Coastal Management Plan is for ‘a viable tourism industry with emphasis on ecotourism.’

5.130 This raises the obvious question of whether the Port Hinchinbrook development is consistent with that vision. Cardwell Shire Council seems to think so:

‘Ecotourism does not prohibit large resorts ... The Port Hinchinbrook project is an integral part of the future economic development of the region. The population residing or visiting the development will ensure the viability of existing and future ecotourism ventures in the region.’ (Cardwell Shire Council, further information 4 March 1999, p 118)

5.131 Environment groups obviously do not agree. Ecotourism is not only nature-orientated but is also itself sympathetic to the environment. On this score we recall the Committee’s mixed verdict on actual environmental impacts of Port Hinchinbrook - particularly the threat to dugongs from increased boat traffic; the aesthetic impacts; the likely pressure of increased tourism on the islands (see chapter 4). To be most charitable, Port Hinchinbrook does not pass with flying colours. But that is history: we cannot blame Port Hinchinbrook for being inconsistent with a policy decided years later. A commitment to ecotourism in the region does suggest that the authorities should hesitate before approving any more Port Hinchinbrooks.

World Heritage management of the Great Barrier Reef

5.132 The Great Barrier Reef World Heritage Area extends from Bundaberg to Cape York. It is by far the biggest World Heritage Area in the world. As Prof. Marsh pointed out, this creates special problems for managing development in the region consistent with world heritage values:

‘The massive size of the GBR WH ... creates specific problems. In particular, determining the level of activity that should be allowed to occur in or adjacent to the WHA. This is the nub of the Port Hinchinbrook dispute.’ (Prof. H Marsh, Submission 125, p 554)

5.133 Cardwell Shire Council described the early hostility to World Heritage in the area:

‘In 1986, world heritage was thrust upon the residents of North Queensland by the rest of Australia. Most North Queenslanders agreed with the concept of world heritage but vehemently disagreed with the way it was implemented.’ (R Hunt, Cardwell Shire Council, Evidence 30 July 1998, p 91)

5.134 Mr Valentine thought this resulted, at least in part, from lack of community consultation and information:

‘We have also failed to properly inform our communities about the meaning and nature of World Heritage (required by the [World Heritage] Convention) and this has led to very significant misinformation being accepted and dispersed in many communities.’ (P Valentine, Submission 136a, p 780)

5.135 Environment Australia believes that the situation has improved:

‘We have advanced considerably since the early, sometimes conflictual, listing of World Heritage areas. As a result of patient, cooperative work with the States and with stakeholders, there is now substantially greater local community acceptance of the value of World Heritage listing. With this in mind, the government has put considerable effort into community consultation, particularly in the case of prospective new nominations such as the Greater Blue Mountains Area and Convict Sites.’ (Environment Australia, further information 25 March 1999, p 416)

5.136 The 25 year strategic plan for the Great Barrier Reef World Heritage Area asserts the principle of ‘multiple use’ of the area:

‘Sustainable multiple use: non-destructive activities which can continue forever, that is, in such a way that maintains the widest range of opportunities for appropriate sustainable use, and does not adversely affect the ecological integrity of its natural systems.’ (GBRMPA, *The Great Barrier Reef: Keeping it Great: a 25 year strategic plan for the Great Barrier Reef World Heritage Area, 1994-2019*, p 13)

5.137 The concept of multiple used has evolved over time. The equivalent concept in the *Great Barrier Reef Marine Park Act 1975* is ‘reasonable use’: in making zoning plans for the reef the Great Barrier Reef Marine Park Authority must have regard to (among other things) ‘regulation of the use of the Marine Park so as to protect the Great Barrier Reef while allowing the reasonable use of the Great Barrier Reef Region.’⁶⁵ Dr Cass, introducing the bill for the GBRMP Act in 1975, commented:

‘Undoubtedly the future declaration of marine parks and reserves will be difficult for most countries. Those with highly developed technologies will be torn between the desire physically to exploit the sea’s resources and the demands of conservationists and recreationists for areas to be reserved ...

65 *Great Barrier Reef Marine Park Act 1975*, section 32(7).

However, conservation and protection of the Great Barrier Reef will be the paramount aim of the [Great Barrier Reef Marine Park] Authority in all zones of the Marine Park.’ (the Hon. M Cass, Minister for Environment, House of Representatives *Hansard*, 22 May 1975, p 2680)

5.138 Some submissions were unhappy with the concept of ‘multiple use’, regarding it as compromising ‘the high purpose of World Heritage listing’.⁶⁶ On the other hand, Prof. Marsh regards a national park level of conservation as impractical for such a huge area:

‘It is relatively easy and uncontroversial to develop guidelines for protecting the World Heritage values of a small World Heritage site - it can be ‘locked up’ and given a level of protection equal to a national park. Affording this level of protection to the GBR WHA is impossible, as it would block coastal development from Cape York to Bundaberg.’ (Prof. H Marsh, Submission 125, p 554)

5.139 According to GBRMPA, ‘We will never totally win the ultimate conservation goals of locking a place up, nor will we fully satisfy a pro-development ethos ...’

‘We are in the middle trying to manage a balanced reasonable use. The words ‘reasonable use’ are subjective ones. We have heard in a number of other inquiries and estimates hearings that some people think it is reasonable and some people do not. Unfortunately for us, we are in the middle trying to balance that with the best available advice ...’ (C Cook, Great Barrier Reef Marine Park Authority, Evidence 31 July 1998, p 143)

5.140 Prof. Marsh regretted that, as she put it, ‘the [1994] 25 year plan for the Great Barrier Reef World Heritage Area has never been implemented.’⁶⁷ Environment Australia commented on the difficulty of obtaining commitment from diverse stakeholders:

‘To claim that it has never been implemented is to imply that the only party is GBRMPA. Other parties have readily abandoned commitment when faced with perceived threats by government to their economic circumstances or rights of access. The State of the Reef Report which was released by GBRMPA last November recognises that many of the management issues on the Reef are complex and their resolution involves consultation with a diverse range of stakeholders.’ (Environment Australia, further information 25 March 1999, p 422)

5.141 Several submissions regretted the lack of a timely management plan for the Hinchinbrook area before approval of such a major development as Port Hinchinbrook. For example:

66 Friends of Hinchinbrook, Submission 129, p 586. Similarly D Haigh, Submission 57, p 171.

67 Prof. H Marsh, Submission 125, p 555.

‘When an area is nominated for world heritage, that nomination ought to be accompanied by a plan of management so that it is clear, ahead of time, what the nomination and acceptance of an area of land of world heritage will mean.’ (J Johnson, Environmental Defender’s Office Ltd, Evidence 10 August 1998, p 288)

5.142 Environment Australia pointed out the logistical problems of making management plans for such a huge area as the Great Barrier Reef:

‘Management plans for the GBR have been developed and revised progressively. This is necessarily a time consuming process due to the complexities of the issues involved. Nevertheless, zoning plans and highly detailed management plans have been completed for 348,000 square kilometres of the GBR Marine Park. They have involved extended consultation with clients, required the resolution (where possible) of often strongly put and conflicting industry and conservation group positions, and have demanded pioneering planning approaches that were novel on a world scale. The two latest Plans of Management cover only 5 per cent of the GBR Marine Park (Cairns and Whitsundays), but these areas comprise over 95 per cent of the tourism use of the GBR World Heritage Area.’ (Environment Australia, further information, 25 March 1999, p 415)

5.143 Several submissions argued that management plans for the reef should include buffer zones - areas outside the World Heritage Area where developments may affect World Heritage values. The point was made specifically in relation to Port Hinchinbrook (which is separated from the Great Barrier Reef World Heritage Area only by the intertidal mudflat), but it also applies more generally, since activities like land clearance and agricultural development may cause runoff that affects the reef. According to Environment Australia, ‘Many of the issues affecting the GBRWHA occur outside the area over which GBRMPA has direct jurisdiction. As such GBRMPA and the Commonwealth more broadly, has no capacity to control landuse policies which ultimately affect the GBRWHA.’⁶⁸

5.144 Of course, in theory the powers of the *World Heritage Properties Conservation Act 1983* could be invoked to prohibit any act on Queensland soil that ‘is likely to damage or destroy’ the World Heritage Area, however distantly or indirectly.⁶⁹ This would have huge practical and political difficulties. Environment Australia claimed that the veto power under the Act is ‘designed as a means of last resort’. It said that ‘despite the absence of regulatory powers, the [Great Barrier Reef Marine Park] Authority generally acts as an ‘advisory body’ to Queensland during the assessment process for proposals which may have downstream impacts on the Great Barrier Reef Marine Park.’ Environment Australia said that ‘the proposed Environment Protection and Biodiversity Bill would, were it passed, provide incentives for the State government, local authorities and the proponents of major land

68 Environment Australia, further information 25 March 1999, p 416.

69 *World Heritage Properties Conservation Act 1983*, sections 6,9.

based developments to pay more careful regard to the protection of World Heritage values.⁷⁰

5.145 The *Environment Protection and Biodiversity Conservation Act 1999* was assented to on 19 July 1999. The Act prohibits a person from taking an action that will have or is likely to have a significant impact on the World Heritage values of a World Heritage property without the approval of the Commonwealth Minister for the Environment and Heritage. An action does not need Commonwealth approval if it is of a type covered by a bilateral agreement between the Commonwealth and the relevant State. Management plans made pursuant to bilateral agreements may be disallowed by either House of the Commonwealth Parliament.⁷¹

5.146 This Committee, in its recent report on Commonwealth Environment Powers, recommended that the *World Heritage Properties Conservation Act 1983* should be amended to apply to a defined and adequate buffer zone around World Heritage properties which takes into account the natural ecosystem to which the property belongs.⁷²

5.147 Because Queensland land management decisions may affect the World Heritage Area, there is clearly a need for co-operative regional plans that take into account World Heritage values:

‘... we have to devise means of maintaining those values, [means] which are compatible with the reasonable use of the GBR WHA and adjacent coast. This will require integrated regional-scale planning and coastal zone management and education of local Councils and the general public about World Heritage and what it means to the Region ... Integrated planning guidelines that are understood and accepted by all stakeholders need to be developed for the region.’ (Prof. H Marsh, Submission 125, p 554-5)

5.148 Prof. Marsh described the example of the city of Bath (UK), where world heritage considerations are explicitly incorporated into the planning scheme, to achieve a balance between world heritage protection and continuing economic activity.⁷³ Environment Australia agrees that incorporating world heritage as a ‘key material consideration’ in planning schemes is desirable:

‘As well, World Heritage cities are living areas where changes and growth can occur. I would contend that this analogy is appropriate to the GBR and is more relevant than the ‘National Park’ model.’ (R Beale, Environment Australia, further information, 25 March 1999, p 414)

70 Environment Australia, Submission 157, p 29-31; further information 25 March 1999, p 416-417.

71 *Environment Protection and Biodiversity Conservation Act 1999*, sections 11,29,46(6).

72 Senate Environment, Communications, Information Technology and the Arts References Committee, *Commonwealth Environment Powers*, May 1999, p 48.

73 Prof. H Marsh, Submission 125, p 555.

5.149 Environment Australia strongly supports a regional planning approach:

‘A similar approach is under consideration for the Daintree Region of the Wet Tropics World Heritage property. Strategic plans which incorporate broader regional considerations have already been developed for a number of other World Heritage Properties.’ (Environment Australia, further information, 25 March 1999, p 417)

5.150 It is vital that the principles of the strategic plan flow through to individual development control decisions. As noted in paragraph 5.95, some think that local Councils tend to be poorly resourced for considering developments with regional implications. Mr Valentine suggested that the Commonwealth should fund a program of specialist environmental officers in local government areas in or abutting World Heritage Areas, to help improve standards of environmental management. He also recommended that the Commonwealth fund a program of regional planning for areas abutting World Heritage properties, conditional on using best practice planning processes.⁷⁴ Environment Australia supported the concept of appointing specialised environmental officers to work with local councils, and commented that it has certain relevant activities already:

‘An Environmental Resource Officer has been funded by the Commonwealth to work with Queensland agencies on environmental issues, including matters relating to World Heritage. The Commonwealth also provides funding to various state government agencies to employ specialist officers who provide liaison and management coordination across the various levels of government in a number of World Heritage properties. A key role for these officers is to coordinate the development and implementation of strategic planning and community consultation processes.’ (Environment Australia, further information, 25 March 1999, p 417)

5.151 Mr Valentine’s recommendations are rather more ambitious than the activities Environment Australia described. The Committee agrees with Mr Valentine’s recommendations.

Recommendation 10

The Committee recommends that the Commonwealth should work with the Queensland Government and local councils whose decisions may affect the World Heritage values of the Great Barrier Reef, to expedite making regional plans that explicitly take into account world heritage conservation as a key material consideration in land-use planning and development control decisions.

74 P Valentine, Submission 136, p 614-615.

Recommendation 11

The Commonwealth should fund a program of regional planning in local government areas where planning decisions may affect World Heritage values of World Heritage areas. Funding should be conditional on using best practice planning processes.

The Commonwealth should also fund a program of information and education about World Heritage conservation in those local government areas.

5.152 Of course, measures to protect World Heritage significance cannot be made without adequate statements of significance. This suggests the need for comprehensive and up-to-date assessment of world heritage values, and risks to them, to inform strategic planning.

Recommendation 12

The Committee recommends that the Commonwealth, in co-operation with the State, should expedite studies to identify Australia's World Heritage properties or potential World Heritage properties and to update as necessary their statements of World Heritage significance.

Recommendation 13

The Committee recommends that the Commonwealth, in co-operation with the States, should expedite research into risks to the World Heritage values of Australia's World Heritage properties.

5.153 Australia was one of the earliest parties to the World Heritage Convention and has played a significant role in supporting the Convention and supporting World Heritage globally. Australia has acknowledged a duty to 'identify, protect, conserve, present and transmit to future generations' its World Heritage sites.⁷⁵ Australia is the leading nation in the world in natural World Heritage sites, having 13 sites listed. Australia is a relatively wealthy party, particularly among those responsible for tropical ecosystems. This suggests that Australia should feel a special responsibility:

'The experts'⁷⁶ regarded that [in the Great Barrier Reef World Heritage Area] there was a real chance of effective conservation management in

75 *Convention for the Protection of the World Cultural and Natural Heritage* [World Heritage Convention], 1972, article 4.

76 An expert group commissioned to assess the World Heritage values of the Great Barrier Reef: Lucas P and others, *The Outstanding Universal Value of the Great Barrier Reef World Heritage Area*, GBRMPA, 1997.

Australia which did not exist in many other tropical ecosystems ... for most tropical developing countries the challenge of looking after the natural environment is very great and very hard to achieve. So I would contend that Australia has a special responsibility.' (Prof. H Marsh, Evidence 31 July 1998, p 162-3)

5.154 Australia should feel an opportunity and a responsibility to set an example in best practice World Heritage management. The Australian Democrats do not believe that this has been done in the Hinchinbrook Channel.

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.

FIGURES

Figure 1. Ingham-Tully region

source: Department of Environment and Heritage [Queensland], *Environmental Review Report - Port Hinchinbrook*, May 1994

Figure 2. Hinchinbrook region

source: P Valentine, *Hinchinbrook Area - World Heritage Values and the Oyster Point Proposal - a report to DEST*, August 1994

Figure 3. Hinchinbrook region showing World Heritage Area boundaries

source: Environment Australia, submission 157

Figure 4. Cardwell and Oyster Point

source: topographic survey, 1:50,000: 8161 3, Cardwell
scale 1:25,000 on this copy

Figure 5. Oyster Point showing ‘the Development Site’ and ‘the Land’ defined in the Port Hinchinbrook Deed of Agreement

source: Cardno & Davies, *Port Hinchinbrook Resort at Cardwell - compilation of information...*, March 1994; plus annotations

**Figure 6. Oyster Point development:
Tekin’s August 1987 masterplan**

source: Department of Environment and Heritage [Queensland], *Environmental Review Report - Port Hinchinbrook*, May 1994

**Figure 7. ‘Port Hinchinbrook’:
Cardwell Properties’ March 1994 masterplan**

source: Cardno & Davies, *Port Hinchinbrook Resort at Cardwell - compilation of information...*, March 1994

**Figure 8. ‘Port Hinchinbrook’:
Cardwell Properties’ November 1997 masterplan**

source: *Port Hinchinbrook sales brochure*

Figure 9. Hinchinbrook region: Dugong Protection Areas

source: Environment Australia, submission 157

APPENDIX 1: SUBMISSIONS

Lists primary submissions received in response to May 1998 advertisement of the inquiry. Answers to questions, further comments and miscellaneous information submitted after the Committee's hearings are listed in APPENDIX 4, further information.

Excludes details of submissions which the Committee resolved to accept as confidential evidence. All such resolutions were at the submitter's request and all such requests were accepted.

1	Mr Ian N Wilkinson
2	Mr A Parker
3	Wildlife Preservation Society of Queensland (Bayside Branch)
4	Mr Peter Kingston
4 a	Mr Peter Kingston
5	Mr Jason John
6	Ms Rachael Gibson
7 & 7a	Confidential
8	Ms Joe Ann Lavelly & Mr Phil M Vaughn
9	Ms Thelma Martel
10	R Rudd
11	Confidential
12	Confidential
13	Mr Keith Rickart
14	Mr William Tait
14a	Mr William Tait
14b	Mr William Tait
14c	Mr William Tait
14d	Mr William Tait
14e	Mr William Tait
15	Mr Tom Tootell
16	Confidential
17	Ms Charlotte McCabe
18	Colin R and PM Kuskopf
18a	Mr Colin R. Kuskopf
19	Mr Mark Walsh
20	Ms Fiona Smith
21	Mr Greg Smith
22	Wildlife Preservation Society of Qld – Hinchinbrook Branch
23	Confidential
24	Mr David Cooper
25	P. Tyson
26	Ms Valerie Hutt

27	Talented Timber
28	Mrs S E Chandler
29	Mrs A Muller
30	The Wildlife Preservation Society of Qld, Caloundra Area Inc.
31	Ms Vivienne Nielsen
32	Mr A C Roark
33	Ms Lois Davies
34	Mr & Mrs John and Gwendolyn Bowden
35	Mr Alf Miller
36	Confidential
37	D. Payne
24a	Mr David Cooper
38	Mrs Glenys Bundy
39	Ms Elizabeth Jack
40	Mr Alec Blunbery
41	Ms Jacqui Sheils
42	Ms Heidi Cann
43	Mr Ross Street
44	Ms Barbara A. Young
45	Ms Elmer H ten Haken
46	Ms Margery Street
47	Mrs Margaret Mackay
48	Mr Craig Simmonds
49	The Wildlife Preservation Society of QLD, Tully & District Branch
50	Cairns and Far North Environment Centre - Cafnec
51	Mrs B Blunden
52	Mr Gavin Street
53	Mrs Isabel Jordan
54	Ms Yvonne Hyde
55	Mr Benedict Hardwick
56	Mrs A.C. Hunt
57	Mr David Haigh
58	Aboriginal and Torres Strait Islander Commission
59	Shire of Hinchinbrook
59a	Shire of Hinchinbrook
60	H Berger
61	Ms Barbara Lukoschek
62	Mrs Eileen King
63	Dr Ross Ulman
64	Dr Philip W. Childs
65	Ms Anna Johnson
66	Mr John Herdmun
67	Ms Sondra Shepherd
68	Pam & Bill Dietz
69	Mr Murray B. Holmes
70	Mr Shane Vaughn

71	Clive & Ros Ollerman
72	Kookaburra Holiday Park
73	Mr George Bateman
74	Mr Tim Stumer
75	Mrs Shirley Prout
76	Mrs Kylie Hubert
77	Mrs Anneke Meeder
78	Townsville Enterprise Limited
79	Wildlife Preservation society of QLD (Townsville Branch)
79a	Wildlife Preservation society of QLD (Townsville Branch)
80	Dr Brian Robinson FAA
81	Jayani
82	Dr Ian Dight
83	Cardwell Properties Pty Ltd
83a	Cardwell Properties Pty Ltd
83b	Cardwell Properties Pty Ltd
84	Australian Institute of Marine Science
85	Confidential
86	Ms Wendy Tubman
87	Ms Helen Wood
88	Cardwell Air Charter
89	Mr & Mrs R.B and M.H Gilmore
90	Environmental Defender's Office of Northern Queensland Inc.
91	Australian Conservation Foundation
92	Confidential
93	Davida Allen
94	National Parks Association Of Queensland Inc.
95	Mr Angus W. McIvor
96 & 96a	Confidential
97	The Wildlife Preservation Society of Qld
98	Ms Trish Pontynen
99	Wildlife Whitsunday
100	Pam & Peter Smith
101	Community for Coastal and Cassowary Conservation Inc.
102	Mr Richard Rowe
103	Confidential
104	Ms Carlene S. Runow
105	Confidential
106	Mr Lindsay Hallam
107	Mr Craig Hodges
108	Ms Eloise J. Carr
109	Ms Mona Wells
110	Confidential
111	CSIRO
112	North Queensland Conservation Council Inc.
112a	North Queensland Conservation Council Inc.

112b	North Queensland Conservation Council Inc.
112c	North Queensland Conservation Council Inc.
113	Richard and Heather Chadwick
114	Ms Trish Hammond
115	Mr Robert Stewart
116	Mr Ian Fox
117	Queensland Conservation Council
118	Mrs Carol Muller
119	D Paie
120	Kathleen & Robert Hinchley
121	Wildlife Preservation Society of Queensland
122	Sunfish NQ (Branch) Inc.
122a	Sunfish NQ (Branch) Inc.
122b	Sunfish NQ (Branch) Inc.
123	Cardwell Chamber of Commerce
124	National Union of Students National Office
125	Professor Helene Marsh
126	Australian Society of Soil Science Inc.
127	Professor Ian White
128	Professor Frank Talbot
129	Friends of Hinchinbrook Society Inc.
129a	Friends of Hinchinbrook Society Inc.
130	Ms Anne Beaumont
130	Mr Alex Thomas
131a	Confidential
132	Janice, Johnny, Jonas and Jina Allen
133	Norma and Bill Morgan
134	Mr Stan Tutt
135	Confidential
136	Mr Peter Valentine
136a	Mr Peter Valentine
137	RM & BD Walker
138	Confidential
139	Peter & Victoria Thompson
140	Confidential
141	A. F. Scheer
142	The Cooperative Research Centre for the Ecologically Sustainable Development of the Great Barrier Reef
143	Girringun Elders and Reference Group Aboriginal Corporation
143a	Mr Phillip Pentecost
144	Environmental Defender's Office Ltd
144a	Environmental Defender's Office Ltd
145	Confidential
146	Confidential
147	The Wilderness Society
148	Confidential

149	Mr John Elliott
150	Associate Professor M.D. Melville
151	M/- R Healy
152	Wildlife Preservation Society of Qld, Capricorn Branch Inc.
153	Mr James Crawford
154	Mr Pat Coleman
154a	Mr Pat Coleman
155	Mr Greg Willcox
156	The Honourable Richard Jones, M.L.C.
157	Environment Australia
157a	Great Barrier Reef Marine Park Authority
158	Council of the Shire of Cardwell
159	Mr Gordon Duffy
160	A.G. Schmidt
160a	Mr Graham John Schmidt
161	Mr Theodore Chrisohos
162	R.L. Agacy
163	Queensland Acid Sulfate Soils Investigation Team (QASSIT)
164	Mr John Asquith
165	CANEGROWERS Herbert River District
166	Dr Brian Robinson, FAA

APPENDIX 2: WITNESSES AT HEARINGS

THURSDAY, 30 JULY 1998, CARDWELL

Cardwell Shire Council

Mr Ian D. Adcock
Mr Ronald A. Hunt
Mr Frank C. McIntyre
Mr John W. Pettigrew

Concerned Residents of Cardwell Shire Association Inc.

Ms Denise Anderson
Mr Colin Kusopf

Girringun Elders and Reference Group Aboriginal Corporation

Mr Paul Fisk
Mr Phil Rist
Mr Paul Turpin

Hinchinbrook Shire Council

Mr Giuseppantonio Giandomenico (Mayor)
Mr Alan S. Harvey

Cardwell Chamber of Commerce

Mr Lindsay J. Hallam
Mr William G. Whiteman
Mrs Rosamond E. Oellermann

Sunfish

Mr Victor F. McCristal
Mr Vincenzo Vitale
Mr Vernon M. Veitch

Community for Coastal and Cassowary Conservation

Mr David A. Kimble

Wildlife Preservation Society of Queensland

Mr Paul J. Sutton
Ms Carolyn Muller

Canegrowers Herbert River District

Mr Peter E. Sheedy

Cardwell Air Charter

Ms Margaret E. Prior
Mr William G. Whiteman

Friends of Hinchinbrook Society Inc.

Mr Ken Parker
Mrs Margaret Thorsborne

FRIDAY, 31 JULY 1998, TOWNSVILLE

Australian Institute of Marine Science

Dr Daniel Michael Alongi
Dr David M. Williams
Dr Russell Reichelt

Great Barrier Reef Marine Park Authority

Mr John Tanzer
Mr Colin Trinder
Mr Clive Cook

Townsville Enterprise Limited

Mr Richard T. Power
Emeritus Prof. Edward Scott

Professor Helene D. Marsh**Mr Peter Valentine****The Hon. Bob Katter, MHR, Member for Kennedy****North Queensland Conservation Council Inc.**

Mr Jeremy Tager
Mr David Haigh
Ms Margaret J. Moorhouse

Environmental Defender's Office of North Queensland Inc.

Mr Rowan Silva

MONDAY, 10 AUGUST 1998, CANBERRA

Australian Conservation Foundation

Mr Mark Hortsman

The Wilderness Society

Ms Virginia Young

Associate Prof. Mike Melville**Mr Jes Sammut****Professor Ian White**

Professor Frank Talbot

CSIRO

Dr Gregory Mark Bowman
Dr Stephen Lloyd Rogers

Environmental Defender's Office (NSW) Ltd

Mr James Johnson

Cardwell Properties Pty Ltd

Mr Keith Williams

Mr Hamish Malcolm

MONDAY, 24 AUGUST 1998, CANBERRA

Cardwell Properties Pty Ltd

Mr Keith Williams

Herbert River Canegrowers

Mr Peter Sheedy
Ms Jennifer J. Marohasy

Environment Australia & Great Barrier Reef Marine Park Authority

Mr Roger Beale
Mr Gerry Morvell
Mr Daryl King
Ms Susan Reye
Mr Clive Cook
Dr Ian McPhail

TUESDAY, 8 DECEMBER 1998, CANBERRA

Professor Peter Saenger

APPENDIX 3: DOCUMENTS TABLED AT HEARINGS

other than documents recorded separately as ‘submissions’ or ‘supplementary submissions’ - see Appendix 1.

date	from/description [page reference in Committee’s evidence]
30/7/98	Cardwell Chamber of Commerce: email, 1p [p7] ‘Boaters Guide to Brevard County’ poster, 2pp [p10] extract Herbert River Express 23/5/98, 1p [p10] D Haigh letter, 1p [p14] extract Townsville Bulletin 10/5/96, 1p [p15] various correspondence, 11pp [p52]
30/7/98	Sunfish NQ: memo from NSW Fisheries 7/11/97, 4pp [p26]
30/7/98	Friends of Hinchinbrook: photographs, 5pp [p38] photos & notes 17pp; misc. correspondence 12pp [p38] extract Cardno & Davies 1994, 2pp [p39] extract Canberra Times 29/11/94, 1p [p43]
30/7/98	Herbert River Canegrowers: <i>Sustainable Cane Growing in Queensland</i> , 27pp [p67]
31/7/98	GBRMPA: photo, 1p [p148]
31/7/98	Prof. Marsh: Ackerman & Wright paper on manatees, 10pp [p165] Reef Research Centre, paper on dugongs, 6pp; misc. notes 2pp [p174]
31/7/98	The Hon. R Katter: misc. notes, 3pp [p175]
31/7/98	D Haigh (Friends of Hinchinbrook): correspondence, 3pp [p181]
31/7/98	M Moorhouse (NQCC): chronology, 13pp; notes & photos, 2+14pp [p183]
10/8/98	The Wilderness Society: Morris memo, 1p [p205] Dransfield affidavit, 13pp [p216]
10/8/98	Prof. Talbot: scientists’ letter, 2pp [p264]
10/8/98	Cardwell Properties: opening statement, 44pp; dugong research poster, 1p [p303]
24/8/98	Cardwell Properties: affidavit, 1p [p324] 1988 Tekin plan, 1p [p326]
24/8/98	Canegrowers Herbert River District: video, code of practice [p348-9] Herbert Existing Cane Area Water Management Project - Project Overview 1997; Water Management Scheme for the Riversdale-Murray Valley Area, 2vols, 1996; Riversdale/Murray Valley Water Management Scheme - Supplementary Report, n.d.; Herbert Water Management Project - Draft Environmental Management Plan, n.d.; Herbert Water Management Impact Assessment Study, n.d. [p352-3] Funding application to Natural Heritage Trust, 1998-99 [p353] Cooperative Research Centre for sustainable sugar production: annual report [p354] Herbert River Catchment Atlas [p360] graph & notes, 2pp [p365]

APPENDIX 4: FURTHER INFORMATION

Additional information accepted as evidence of the inquiry.

Excludes details of information which the Committee resolved to accept as confidential evidence. All such resolutions were at the submitter's request and all such requests were accepted.

type:

- A. answers to questions put by the committee
- B. replies to adverse comment (see report, paragraph 1.16)
- C. miscellaneous further comment
- D. miscellaneous documents

page	dated	type	from	topic (if not otherwise noted: Port Hinchinbrook)
1	31/7/98	A	Great Barrier Reef Marine Park Authority	March 1998 dredge pond spill
2	31/7/98	A	Great Barrier Reef Marine Park Authority	tourist flight permits
4	12/8/98	C	Great Barrier Reef Marine Park Authority	mangrove replanting
6	18/8/98	A	Prof. Frank Talbot	coastal planning
8	[8/98]	A	The Wilderness Society	various
19	20/8/98	A	Great Barrier Reef Marine Park Authority	tourist flight permits
21	[9/98]	A	North Queensland Conservation Council	Dransfield affidavit on economic viability of Nth Qld resorts
22	21/9/98	B,C	Mr Jes Sammut	reply to adverse comment; acid sulfate soils
29	21/9/98	B	Mr Hamish Malcom	reply to adverse comment
30	22/9/98	B	Mrs Margaret Thorsborne	reply to adverse comment
31	23/9/98	B,C	Mrs Margaret Moorhouse	reply to adverse comment
34	25/9/98	B	Mr Peter Valentine	reply to adverse comment
36	7/10/98	C	Cardwell Properties P/L	acid sulfate management plan
37	[10/98]	B	Prof. Frank Talbot	reply to adverse comment
40	8/10/98	C	North Queensland Conservation Council	beach & foreshore management & various
49	8/10/98	C	Townsville Enterprise Ltd	delayed developments in Qld
51	11/10/98	C	Mr Paul Sutton	siltation of Hinchinbrook Channel
53	13/10/98	A	Cardwell Shire Council	zoning of Port Hinchinbrook site
56	20/10/98	A	Australian Institute of Marine Science	regional planning
58	27/10/98	C	Great Barrier Reef Marine Park Authority	correction to GBRMPA's evidence concerning Mr Peter Valentine
58a	11/11/98	A	Friends of Hinchinbrook Society Inc.	FOH court costs
59	3/2/99	n/a	further questions from the committee to certain witnesses and others	
78	14/2/99	A	Dr Bob Morris	acid runoff & heavy metals
97	9/2/99	A	Cardwell Properties P/L	various
110	24/2/99	A	Cardwell Properties P/L	current state of Port H. construction
114	23/2/99	A	Australian Institute of Marine Science	acid runoff & heavy metals
116	5/3/99	A	North Queensland Conservation Council	QASSIT reports
117	4/3/99	A	Cardwell Shire Council	regional coastal management plan
119	[3/99]	A,C	North Queensland Conservation Council	various, inc. acid sulfate management, foreshore management, national park management plans
197	8/3/99	C	North Queensland Conservation Council	Cardwell Chamber of Commerce legal fighting fund

201	10/3/99	A	North Queensland Conservation Council	beach & foreshore management; 1999 rezoning application
222	10/3/99	C	North Queensland Conservation Council	1999 rezoning application
235	11/3/99	C	North Queensland Conservation Council	various; recent erosion
269	12/3/99	C	North Queensland Conservation Council	prawn farms
279	12/3/99	A	Department of Primary Industry (Qld)	aquaculture policy
295	[3/99]	A	Prof. Peter Saenger	acid sulfate management; foreshore management
302	12/3/99	C	North Queensland Conservation Council	Dungeness marina development
338	16/3/99	C	North Queensland Conservation Council	1999 rezoning application
342	17/3/99	A	North Queensland Conservation Council	Beach Protection Act
348	14/3/99	A	North Queensland Conservation Council	changes to the development
357	20/3/99	C	North Queensland Conservation Council	prawn farming
365	20/3/99	C	North Queensland Conservation Council	prawn farming
410	23/3/99	A	Dr Rob Coles	seagrass
414	25/3/99	A	Environment Australia/ GBRMPA	various
435	1/4/99	A	Queensland Acid Sulfate Soils Investigation Team (QASSIT)	acid sulfate management
462	30/3/99	C	North Queensland Conservation Council	various copies of correspondence concerning official decisions
557	30/3/99	A	North Queensland Conservation Council	Qld environmental law; beach protection
630	6/4/99	A	Cardwell Properties P/L	freehold subdivision
634	30/3/99	C	North Queensland Conservation Council	marinas overseas
638	8/4/99	A	North Queensland Conservation Council	changes to the development
651	8/4/99	A	North Queensland Conservation Council	Cardwell Properties' application to lease Unallocated State Land
662	9/4/99	C	North Queensland Conservation Council	various copies of official correspondence on Port H.
700	12/4/99	B	Prof. Peter Saenger	reply to adverse comment
702	21/4/99	A	Queensland Department of Premier & Cabinet	various
721	14/4/99	A	North Queensland Conservation Council	application to lease USL
725	20/5/99	A,C	North Queensland Conservation Council	breaches of deed of agreement
735a	27/5/99	C	Prof. A Robertson	potential acid sulfate conditions
736	14/6/99	C	North Queensland Conservation Council	Beach Protection Act
745	18/6/99	C	North Queensland Conservation Council	letters from scientists
785	19/6/99	C	North Queensland Conservation Council	1999 rezoning application
790	28/6/99	C	North Queensland Conservation Council	changes to development
795	4/7/99	C	Friends of Hinchinbrook Society Inc.	Port Hinchinbrook canal
796a	22/7/99	A,C	Hinchinbrook Shire Council	Dungeness marina development
797	27/7/99	C	North Queensland Conservation Council	aquaculture
819	2/8/99	A,C	Cardwell Shire Council	1994 decisions; 1999 rezoning
823	4/8/99	A	Cardwell Shire Council	1994 decisions; 1999 rezoning
826	3/8/99	C	North Queensland Conservation Council	QASSIT January 1999 inspection
838	6/8/99	C	North Queensland Conservation Council	QASSIT January 1999 inspection
843	10/8/99	C	North Queensland Conservation Council	QASSIT January 1999 inspection
851	12/8/99	C,D	Senator Hill, Minister for the Environment and Heritage	acid sulfate management; reports by QASSIT, Woodward Clyde
1001	12/8/99	D	Prof. Ian White	acid sulfate management
1009	[8/99]	A	Great Barrier Reef Marine Park Authority	dugong protection measures
1015	21/8/99	C	Alliance to Save Hinchinbrook	offers to sell Port H. to governments
1026	20/8/99	C	North Queensland Conservation Council	various 1994 documents obtained under Freedom of Information
1051	23/8/99	C	North Queensland Conservation Council	QASSIT March 1999 report
1058	7/9/99	C	North Queensland Conservation Council	QASSIT, Independent Monitor
1065	7/9/99	B	Cardwell Properties P/L	reply to adverse comment
1076	7/9/99	C	North Queensland Conservation Council	acid sulfate management

1084	7/9/99	C	North Queensland Conservation Council	acid sulfate soils
1087	7/9/99	C	North Queensland Conservation Council	correspondence with Qld EPA
1092	10/9/99	C	North Queensland Conservation Council	QASSIT March 1999 report
1108	10/9/99	C	North Queensland Conservation Council	various
1112	13/9/99	C	Prof. Peter Saenger	reply to adverse comment
1114	13/9/99	C	Alliance to Save Hinchinbrook	various
1116	14/9/99	C	North Queensland Conservation Council	acid sulfate management; boat ramp
1125	14/9/99	C	Alliance to Save Hinchinbrook	James Cook University
1129	17/9/99	B	Queensland Acid Sulfate Soils Investigation Team (QASSIT)	reply to adverse comment
1160	20/9/99	C	North Queensland Conservation Council	various
1167	20/9/99	C	North Queensland Conservation Council	acid sulfate management
1171	20/9/99	C	North Queensland Conservation Council	acid sulfate mapping
1173	20/9/99	C	North Queensland Conservation Council	various
	3/1994	D	Cardno & Davies, <i>Port Hinchinbrook Resort at Cardwell - compilation of information...</i>	
	2/5/94	D	Department of Environment and Heritage [Queensland], <i>Environmental Review Report - Port Hinchinbrook</i>	
	8/7/94	D	Loder & Bayly, <i>A Review of the Draft Valentine Report Regarding World Heritage Values and the Oyster Point Proposal</i>	
	8/1994	D	P Valentine, <i>Hinchinbrook Area - World Heritage Values and the Oyster Point Proposal - a report to DEST</i>	
	3/6/94	D	Cth Dept of Environment, Sport & Territories to Qld Office of the Co-ordinator General	
	9/9/94	D	The Hon. M Robson (Qld Minister for Environment & Heritage) to the Hon. J Faulkner (Cth Minister for Environment, Sport & Territories)	
	14/10/94	D	Cth Dept of Environment, Sport & Territories: brief to Minister	
	21/10/94	D	Office of Premier of Qld to North Qld Conservation Council	
	23/11/94	D	The Hon. W Goss (Premier of Qld) open letter in <i>The Australian</i>	
	2/12/94	D	The Hon. W Goss (Premier of Qld) radio interview, <i>A.M.</i>	
	29/11/94	D	'Pitman report' of scientific workshop 25/11/94	
	3/1995	D	Bowman G M, <i>Preliminary Assessment of Acid Sulfate Conditions, Port Hinchinbrook Development Site, Cardwell, North Queensland, CSIRO</i>	
	4/1995	D	Walker Civil Engineering, <i>The Shellcove Estate - Engineering Impacts</i> (extracts) (re: evidence 10/8/98, p250)	
	4/7/95	D	National Environmental Consulting Services, " <i>Port Hinchinbrook</i> " - <i>Assessment of potential environmental impacts on World Heritage property</i> *	
	10/95	D	minutes of site inspection by scientists, 30/9/95	
	4/1996	D	Sinclair Knight Merz, <i>Port Hinchinbrook - Environmental Risk Assessment with reference to activities requiring Ministerial Consent</i>	
	5/1996	D	Sinclair Knight Merz, <i>Oyster Point Baseline Water Quality and Turbidity Studies</i> , report for [Qld] Office of Major Projects *	
	6/1996	D	GBRMPA, <i>Port Hinchinbrook - scientific review of risk assessment with respect to ministerial consent</i> [compendium of peer reviews of SKM's 4/96 report, plus summary: R Reichelt, <i>Overview of the scientific reviews of "Port Hinchinbrook Environmental Risk Assessment with reference to activities requiring Ministerial Consent"</i> *	
	31/5/96	D	Australian Heritage Commission: opinion on effects of Port Hinchinbrook on the national estate	
	1/8/96	D	Australian Heritage Commission: opinion on effects of Port Hinchinbrook on the national estate	
	9/8/96	D	Australian Heritage Commission: opinion on effects of Port Hinchinbrook on the national estate	
	20/8/96	D	Commonwealth/Queensland memorandum of understanding concerning Cardwell/Hinchinbrook Regional Coastal Management Plan *	

	30/7/96	D	[Cardwell Properties] " <i>Port Hinchinbrook</i> " - <i>Acid Sulfate Soil - Control Plan</i> *
	24/10/96	D	Prof. I White, <i>Assessor's report Port Hinchinbrook Acid Sulfate Management Plan</i> *
	25/10/96	D	Dr G M Bowman, <i>Peer Review of 'Acid Sulfate Management Plan - Port Hinchinbrook'</i> *
	11/4/97		Cardwell Properties P/L, <i>Port Hinchinbrook Acid Sulphate Management Plan - Long Term Acid Sulfate Management Plan</i> *
	11/1997	D	Dept of Environment & Heritage, <i>Cardwell Hinchinbrook Regional Coastal Management Plan - preliminary draft discussion paper</i> (attachment to Qld Dept of Premier & Cabinet, further information 21/4/99, p702ff)
	6/1/98	D	Cardwell Properties P/L to B Powell (QASSIT) (re: evidence 10/8/98 p321)
	1998	D	Port Hinchinbrook: 2 sales leaflets
	1998	D	Australian Economic Consultants, <i>Report on the Townsville Regional Economy</i> , 1998
			* attachment to Environment Australia, further information 25/3/99, p414ff

APPENDIX 5: LETTER OF AGREEMENT 1993

Dear Mr Down,

LETTER OF AGREEMENT BETWEEN THE GREAT BARRIER REEF MARINE PARK AUTHORITY AND THE QUEENSLAND GOVERNMENT IN RELATION TO PORT HINCHINBROOK

In noting the special significance of the Hinchinbrook region including the channel and its status as a unique part of the Great Barrier Reef World Heritage Area, it is proposed that the Great Barrier Reef Marine Park Authority and the Queensland Government enter into a letter of agreement in respect of the environmental assessment of the impact of the Port Hinchinbrook development inside and as it relates to the World Heritage Area.

To further this aim I seek your agreement on the principles below which will be applied to the assessment of the project. These are as follows:

- the environmental impact assessment for the project will adequately take into account the possible impacts the project may have on the Great Barrier Reef Marine Park;
- there will be full public disclosure of all information related to the proposal and its environmental impact, except where there are legitimate reasons for confidentiality;
- there will be provided opportunities for appropriate and adequate public consultation on environmental aspects of proposals before the assessment process is complete; and
- the Authority will make available a suitably experienced staff member to give reasonable assistance to the Queensland Government during the environmental impact process and to participate in the assessment process.

To indicate your agreement to the above principles, please countersign the agreement in the place provided.

Yours sincerely,

Graeme Kelleher [Great Barrier Reef Marine Park Authority], 9/12/93

signed and agreed to by K J Down, Head, Office of the Co-ordinator General, 9/12/93

APPENDIX 6: ACID SULFATE SOILS

Summarised and paraphrased from Sammut J & Lines-Kelly R, *An Introduction to Acid Sulfate Soils*, Department of Environment, Sport & Territories [Commonwealth], no date; White I & others, *Acid Sulfate Soils - facing the challenges*, Earth Foundation Australia monograph 1, 1996.

What are acid sulfate soils?

Acid sulfate soils are soils which contain iron sulfide. Under natural conditions the iron sulfide layer usually lies below the watertable, where it is waterlogged and inert ('potential acid sulfate soil'). However, if the iron sulfide layer is exposed to air (for example, from lowering the watertable, or when disturbed by earthworks), it reacts with oxygen from the air to produce sulfuric acid ('actual acid sulfate soil'). The soil itself may be able to neutralise the acid, or some of it. The remaining acid moves through the soil, acidifying soil water, groundwater and, eventually, surface waters.

Acid sulfate soils are found in low-lying coastal areas, generally less than five metres above mean sea level. It is estimated that in Australia there are more than two million hectares of acid sulfate soil containing about one billion tonnes of iron sulfide. One tonne of iron sulfide, if oxidised, produces about 1.5 tonnes of sulfuric acid. Depending on the conditions (for example, how easily air can percolate through the soil) the soil may release acid for one year or hundreds of years. In some areas of Australia, acid sulfate soils drained 100 years ago are still releasing acid.

Acid is sometimes produced naturally (for example, when the watertable lowers in time of drought, allowing air to reach the iron sulfide layer). It is usually neutralised by tidal flows of alkaline sea water. But when waterlogged soils are drained or excavated it greatly increases the rate of oxidation. The released acid can overwhelm the stream's capacity to neutralise it.

Environmental impacts of acid on land

The acid can damage the environment in various ways:

Mobilisation of toxic heavy metals: The acid strips iron, aluminium and sometimes manganese from the soil. In some cases it also dissolves heavy metals such as cadmium. This can make the soil so acid and toxic that few plants can survive.

Reduced farm productivity: Acid conditions make several soil nutrients less available to plants. The acid dissolves iron and aluminium from the soil so that they become available to plants in toxic quantities in soil water. These conditions reduce plant growth and only acid-tolerant plants can survive. Animals may take in too much aluminium and iron by feeding on acid-tolerant plants and drinking acidic water.

Corrosion: The acid corrodes metal and concrete structures.

Landfill: Using acid soils as landfill can prevent establishment of lawns and gardens.

Environmental impacts of acid on fish and aquatic life

Acidic water may kill fish, crustaceans and sea plants, or trigger diseases like 'red spot' disease. Some 70% of our commercial fish species spend part of their life cycles in estuaries, so the impacts of acid water raise major concerns for the future of commercial and recreational fishing industries and the ecosystem.

Massive fish kills can occur when drought-breaking rains wash large amounts of acid and aluminium into waterways. More common are the chronic, less visible effects, such as reduced hatching and reduced growth rates. Mosquitoes may multiply because the fish which eat their larvae have declined.

Neutralisation of acid water by less acid stream water or sea water can make dissolved metals precipitate out. The metal can smother plants and damage fish gills, and may enter the food chain.

Only a few acid-tolerant water plants can survive in acid water. They can take over the drain or stream, so that even when pH returns to normal other species cannot re-establish.

Management of acid sulfate soils

Avoidance: The best way to manage acid sulfate soils is to avoid disturbing the iron sulfide layer in the first place. Iron sulfides are harmless when waterlogged.

Liming: Sulfuric acid can be neutralised with agricultural lime but this is too costly for large areas of badly affected land. Drains can be limed so that the acid produced in the drain walls is neutralised as it is washed out.

Covering with water: This may be a solution for badly affected areas where the land is scalded. The water cover encourages the growth of acid tolerant grasses such as water couch and provides drought pasture for stock. However, it is important that the water remains on the affected area: if it evaporates the soil will oxidise again.

Shallow drainage: Shallow drains allow surface water to drain quickly from low-lying land without exposing the deeper iron sulfide layer beneath the soil. Deep, narrow drains are more likely to expose the iron sulfide layer.

Burial beneath the water table: Potential acid sulfate spoil may be buried beneath the water table to prevent oxidation. An option for high-value land uses.

Capping: Has been used to control drainage from mine dumps. Spoil may be capped with a relatively impermeable layer to reduce the entry of oxygen and water. This slows down the production of acid and the rate at which acidic water is released.

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ALP SENATORS' MINORITY REPORT

The Hinchinbrook Channel inquiry was prompted by a long running controversy over the Port Hinchinbrook resort development. The inquiry has highlighted shortcomings in terms of environmental impact assessment and approval processes, and the relationship between Commonwealth, State and local governments, and developers. These shortcomings are not only relevant to this specific case, but also have wider implications.

Recommendations made in the report deal not only with the specific issue, but also have wider implications.

Specific recommendations in relation to Port Hinchinbrook include that:

The Commonwealth should ensure independent assessment of the development, and ensure that the developer remedies any breach of the existing agreement.

- A full assessment of acid sulphate soils at the Port Hinchinbrook development be undertaken, and steps taken to ensure the developer does not breach existing agreements.

Recommendations that deal with broader environmental planning issues include the need for:

- Improved procedures for early, open and independent environmental impact assessment.
- General research into acid sulphate soils, and the effects of aquaculture.
- Regional land use planning, including support for local governments.
- Commonwealth and State co-operation in the protection of World Heritage values.
- Control of threats to dugongs in the southern Great Barrier Reef.

Labor Senators feel that the recommendations accurately reflect the findings of the inquiry, however they do not agree with many of the comments made and the conclusions reached in the body of the report.

Labor Senators agree with all the recommendations of the Chair's report.

Senator Nick Bolkus

Senator M Bishop

Senator K Lundy

GOVERNMENT SENATORS' REPORT

by

SENATORS TIERNEY AND LIGHTFOOT

Introduction: Setting the Record Straight

1.1 Government Committee members emphatically reject the claim, which is both explicit in the majority report and implicit in its Terms of Reference, that the Commonwealth government neglected its duty to protect the environment in relation to the Port Hinchinbrook development project at Oyster Point in Queensland. In fact, the Minister for the Environment, Senator Hill, took a pro-active stance in relation to the World Heritage values of the area, and was vindicated for so doing by his Honour Justice Sackville in the Federal Court of Australia (see paragraph 1.13 below).

1.2 The Commonwealth government entered into a comprehensive Deed of Agreement, on 20 August 1996, with Cardwell Properties Pty. Ltd ("Cardwell"), Cardwell Shire Council and the State of Queensland, over Cardwell's ongoing proposal to construct and operate its tourist resort at Oyster Point, Queensland. That ratification took place in the historical context of a chronology of events that goes back to the 1980's, when the Cardwell Shire Council had initially approved a 'Special Facilities Zone' that effectively rezoned the area, and allowed the construction of the resort to proceed.

1.3 The Deed expressly noted that before the Minister for Environment, Senator the Hon. Robert Hill, was prepared to make a decision on the grant of consents, the Minister would specifically require that the company enter into certain legally enforceable arrangements, as to ensure the protection, presentation¹ and conservation of the world heritage values of the area. This included Cardwell undertaking to make adequate arrangements with respect to (i) the stabilisation of the foreshore; (ii) monitoring continuing erosion; (iii) best practice dredging; as well as (iv) acid sulphate soils, *vis-à-vis* the 44 hectare Port Hinchinbrook development.

1.4 The Commonwealth and Queensland governments also signed a Memorandum of Understanding (MOU), which contained a strict administrative agreement on the process, principles and timetable for the development of a regional plan and management arrangements for the Hinchinbrook region.

1.5 At Senator Hill's request, the Great Barrier Reef Marine Park Authority commissioned six independent scientists to review the 'Port Hinchinbrook -

1 presentation: "*mise en valeur*" within the context of the Convention for the Protection of the World Cultural and Natural Heritage.

Environmental Risk Assessment with reference to activities requiring Ministerial Consent' study, which had been prepared by Sinclair Knight Merz Pty Ltd on behalf of Cardwell.

1.6 The Director of the Australian Institute of Marine Science, Dr. Russell Reichelt, then provided Senator Hill with a synthesis and summaries of these reviews.² Senator Hill also received advice from the Australian Heritage Commission in relation to a number of further matters pursuant to the *Australian Heritage Commission Act 1975* (Cth). And he had invited the Queensland Minister for Environment, Mr. Brian Littleproud, MP, to submit his views. For nearly a month, officers from the Department of Environment, Sport and Territories held a series of discussions with Cardwell, which resulted in significant amendments to its 'Beach and Foreshore Management Plan.'

1.7 It was only after all of the various steps mentioned above, which eventually led to the Commonwealth entering into both the Deed and MOU, that Senator Hill gave his formal consent pursuant to sections 9 and 10 of the *World Heritage Conservation Act 1983* (Cth). Accordingly, on 22 August 1996, Senator Hill authorised:

- ☛ pursuant to s. 9(1), a consent to Cardwell Properties dredging the marina access channel;
- ☛ pursuant to s. 10(2), (3) and (4), a consent to Cardwell Properties dredging the marina access channel in the marina channel area;
- ☛ pursuant to s. 9(1), a consent to Cardwell Properties removing fallen mangroves from specified areas and coppicing (pruning or cutting) mangroves in some of these areas to a height of not less than four metres above average seabed level;
- ☛ pursuant to s. 10(3), a consent to Cardwell Properties removing fallen mangroves seaward in the specified areas and coppicing mangroves seaward in some of those areas;
- ☛ pursuant to s. 10(3), a consent to Cardwell Properties removing fallen mangroves landward in the specified areas and coppicing mangroves landward in some of those areas; and

2 The developer's report: Sinclair Knight Merz, *Port Hinchinbrook - Environmental Risk Assessment with reference to activities requiring Ministerial Consent*, April 1996. The six peer reviews: Great Barrier Reef Marine Park Authority, *Port Hinchinbrook - scientific review of risk assessment with respect to ministerial consent*, June 1996. R Reichelt, *Overview of the scientific reviews of "Port Hinchinbrook Environmental Risk Assessment with reference to activities requiring Ministerial Consent"*, 9 June 1996.

☛ pursuant to s. 10(4), a consent to Cardwell Properties removing fallen mangroves from the specified areas and coppicing mangroves in some of those areas.

1.8 Government Committee members therefore strenuously reject the gratuitous and unfounded claim that Senator Hill, as the Commonwealth Minister for the Environment, was negligent in his decision under the *World Heritage Conservation Act 1983* (Cth), which allowed work to resume at Oyster Point. It is beyond any doubt that the environmental management of Port Hinchinbrook has been undertaken in a meticulous fashion and, compared to other developments, that this has been onerous for the developer.

1.9 As already pointed out, through a process of wide and exacting consultation, Senator Hill scrupulously informed himself of all the relevant aspects of the development before giving his consent. As is self-evident in Senator Hill's attached 'Statement of Reasons', the grounds for his reaching that ultimate decision were quite comprehensive (see ATTACHMENT).

1.10 What needs to be also emphasised is that Senator Hill's consideration was not limited to the immediate environmental effects of dredging within a few hundred metres of the marina access channel. It is plain from his statement of reasons that he did consider broader issues to do with the development as a whole (such as the impact of increased tourism on the fragile island national parks). And he concluded on all the available data that if these matters were properly managed, the development would not have any detrimental impacts.

Consummate Failure in the Courts by the FOH

1.11 Friends of Hinchinbrook Inc. (FOH) challenged Senator Hill's sections 9 and 10 consent decision in the courts and failed completely to substantiate any of their allegations. There were eight separate hearings of the case of *Friends of Hinchinbrook Society v/s Minister for Environment and Others*, which spanned across the period of 1996-1998.³

1.12 There were six hearings before the Federal Court; one before the Administrative Appeals Tribunal; as well as an application for special leave to the High Court.

1.13 As the initial trial judge in the Federal Court, Justice Sackville rejected the arguments that were put forward by FOH. Commenting on the scope of Senator Hill's discretion under s 13 (1) of the *World Heritage Conservation Act 1983* (Cth) and the issue of whether the Minister had regard to the so-called 'precautionary principle', His Honour found that:

3 The substantive cases: Federal Court: *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 55 FCA (14 February 1997), 69 FCR 28; on appeal *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 789 FCA (6 August 1997), 77 FCR 153.

“. . . the Minister in fact applied the more stringent test laid down by Mason J in *Tasmanian Dams*.⁴ This test was less favourable to Cardwell Properties, since it was less likely to result in the granting of consent to the actions otherwise prohibited by s 9 (1) . . . Mr. Tobias QC, who appeared with Dr. Griffiths for the applicant [ie, the FOH], accepted that this submission was correct. . . This is a matter of some importance.⁵ . . . To the extent that the Minister was required to take into account of the need to exercise caution on the fact of scientific uncertainty, in my opinion he did so. There was a great deal of scientific material available to the Minister assessing the risks of the activities requiring Ministerial consent, much of which was summarised in a report by Dr R Reichelt of the Australian Institute of Marine Science. . . before making a final decision, he [the Minister] took steps to put in place arrangements designed to address the matters of concern identified in the scientific reports and other material available to him . . . the Minister accepted that he should act cautiously in assessing and addressing the risks to World Heritage values. . . he took into account the commonsense principle that caution should be exercised where scientific opinion is divided or scientific information is incomplete.”⁶

1.14 In the light of the rigorous analysis by His Honour Justice Sackville in the Federal court, and without any evidence whatsoever to the contrary, it is simply false, and a patent nonsense, for the majority report to assert that: “. . . Senator Hill [used] Dr. Reichelt’s summary in a deliberately selective way to justify his decision” (para 3.38).

1.15 It came as little surprise that on appeal to the full court of the Federal Court, Justices Northrop (ACJ), Burchett and Hill rejected all the grounds that were then put forward by the FOH. Among other things, the full court concluded that the FOH had “. . . persisted in insupportable claims.”⁷

1.16 And in a mere twenty minutes of yet another hearing, Justices Gaudron and McHugh in the High Court dismissed the arguments that were agitated by the FOH on the basis that there were simply no “. . . sufficient prospects of success to justify a grant of special leave.”⁸

4 that is to say, *The Commonwealth v/s The State of Tasmania* (1983) 158 CLR 1, as against the more liberal test of Mason CJ and Brennan J in *Richardson v/s The Forestry Commission* (1988) 164 CLR 261]

5 *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 55 FCA (14 February 1997), p26, 69 FCR 28 at 57.

6 *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1997] 55 FCA (14 February 1997), p45, 69 FCR 28 at 79.

7 *Friends of Hinchinbrook Society Inc. v. Minister for Environment and others* [1998] 432 FCA (30 April 1998), 84 FCR 185 at 189.

8 S99/1997 (13 March 1998) at p. 6.

Unethical Use of Committee Proceedings

1.17 Government Committee members also deplore the way in which some witnesses have used the committee's proceedings to make allegations that have nothing to do with environment protection, but apparently aim generally to undermine public confidence in commercial aspects of the development. In particular, two aspects need to be singled out:

- ☛ Claims that the economic viability of the development is dubious (majority report, paragraph 5.14ff). The Wilderness Society, for example, referred to a 'Dransfield Report' which purported to show that Port Hinchinbrook was 'not economically feasible'.⁹ On inspection it turns out that the 'Dransfield Report' is actually an affidavit made in the context of the FOH's Federal court case, in which Mr Dransfield described types of information which he thought Senator Hill *should* have gathered before making his 1996 decision. It made no comments whatever specific to Port Hinchinbrook.
- ☛ Claims that buildings on site are at risk from acid sulfate soils (see comments at paragraphs 4.45 and 4.61).¹⁰ It must be stressed that recent reports have specifically addressed this possible problem. They identified four small acid sulfate 'hot spots' - none of which are near residential areas of the site. They recommended remedial measures, which are routine in such situations, and the developer has agreed to carry out the remedial measures.¹¹

1.18 Many other claims have been advanced, which have nothing to do with environment protection. And paradoxically, they make no sense even in terms of the agenda of the environment groups that make them - since, if the Port Hinchinbrook development is not commercially successful, it is probably less likely that best practice environmental management will be maintained in the longer term. It can only be presumed, therefore, that such claims are made either with the continued hope of somehow stopping the development; or simply to gratify the witnesses' antipathy towards the developer.

Instrumental and Ideological Use of Science

1.19 Government Committee members would like to comment on the related tendency to deify scientific research in this debate, given the essentially speculative basis of so much of the so-called 'scientific judgment'.

9 V Young (The Wilderness Society), Evidence 10 August 1998, p 216.

10 North Queensland Conservation Council, further information 10 August 1999, p 849.

11 AGC Woodward Clyde Pty Ltd, *Port Hinchinbrook Eastern Precinct - Site Environmental Audit*, 9 August 1999; *Port Hinchinbrook Site Environmental Audit for Acid Sulfate Soil Potential - Phase 2*, 6 August 1999: further information, p 915ff. The Hon. R Hill, Minister for the Environment and Heritage, further information 12 August 1998, p 852.

1.20 Environmental chemistry is a complex and inexact science, given that chemicals behave differently because of a range of environmental changes that cannot always be predicted. Indeed, science itself is a complex and inexact human endeavour.

1.21 For decision-makers slavishly to defer to any particular scientific paradigm, or to any particular group of scientists is, therefore, for them to abdicate their responsibilities in favour of a system of human knowledge that is in an almost perpetual state of flux. To therefore invoke a favoured view as being synonymous with making a *scientific judgment*, whose pristineness is to be held in a lofty and deprecatory contrast with an unwanted view, which is termed a *political judgment*, is to reveal not only a gross ignorance of the scientific process, but it is to debase it.

1.22 In this context, any firm distinction between supposedly value-free statements of scientific ‘fact’, and professional advice or opinion drawing on the supposed facts, is dubious. This applies particularly when discussing less easily observable phenomena with less easily deducible chains of cause and effect. For example, ‘acid runoff’ may be easily measurable; ‘environmental harm caused by acid runoff’ is not. Likewise, the extent and effect of any modification to the hydrodynamic regime at Oyster Point, consequent upon the construction of breakwaters in the Hinchinbrook Channel is, fundamentally, a matter of sheer speculation.

1.23 Given these uncertainties, scientific advice can be no more than one of the factors that decision-makers are to take into account when making their decisions in the public interest. Government Committee members reject the attitude, implicit in the majority report, that the concerns of the scientists who gave evidence should be uncritically accepted as weighing conclusively against Port Hinchinbrook. Some of the scientists described possible environmental damage that can be avoided - and in the opinion of Government Committee members, through the controls of the Deed of Agreement it *is* being avoided.

1.24 Furthermore, it was obvious that some of the scientists who gave evidence were motivated by a personal dislike of the Port Hinchinbrook development. As a consequence, they tacitly adopted an instrumental and, therefore, an ideologically filtered approach to science and to scientific research. Not surprisingly, these so-called scientists effectively undermined their own credibility through their failure to keep their personal opinions and prejudices separate from the professional advice that they purported to give.

1.25 In the light of all of the preceding remarks, Government Committee members must also therefore object to the excessive use of a consensual “we” in the text of majority report, especially when referring to conclusions, when Committee members hold quite diametrically opposing views on how to interpret the ‘scientific’ evidence. And moreover, the *façade* of unanimity that the vocabulary of the main report contrives is a transparent one indeed when this report effectively consists of three reports: one main report, and *two* minority reports.

Comments on the Recommendations of the Majority Report

1.26 Government Committee members reject the recommendations of the majority report. The recommendations that relate to Port Hinchinbrook simply duplicate activities that already exist. Because certain environment lobby groups will not accept that the rigorous environmental management regime of Port Hinchinbrook has found no environmental harm, they demand that another futile, taxpayer funded layer of management should be superimposed, so as to monitor the monitors. Who will then monitor the monitors, monitoring the initial monitors? And at what point does the absurdity stop?

1.27 The other more general recommendations of the main report are either superfluous, or they involve broader issues which are strictly not relevant to the Terms of Reference of this particular inquiry. Further comments on the recommendations are provided below, and in these, some of the text of the recommendations from the majority report has been paraphrased for clarity.

Recommendation 1: The Commonwealth should engage an independent assessor to report on whether the developer has been complying with the Deed of Agreement

1.28 Government Committee members reject the clear conflicts of interest that such a naive and ill-conceived recommendation would pose for the Commonwealth. As one of the parties to the Deed, the Commonwealth is being asked to (i) step out of that role; (ii) then appoint an independent assessor to advise it; (iii) to then accept, review and make recommendations on the basis of that assessor's report; and (iv) to then step back into its role as one of the parties to the Deed, and act on its own recommendation(s) to itself.

1.29 Moreover, the proposal is superfluous because of the strict requirements that are already in place. Under the Deed of Agreement, there is already an Environmental Site Supervisor (a Queensland government official) with power to order the developer to cease or modify work so as to eliminate any adverse environmental impact; *and* an Independent Monitor (appointed by agreement of the parties) with various tasks to do with monitoring and advising on the environmental management of the site.

1.30 The clear implication of the recommendation is that these officials are ineffective, biased or under the influence of the developer. Opponents of Port Hinchinbrook believe that the development must be detrimental to the environment; and if monitoring does not show it, it must be that the monitors are biased. This reasoning is fallacious and totally without foundation. Apart from such defamatory allegations, the Committee heard no credible evidence whatsoever to suggest that either of these officials is biased.

Recommendation 2: Deeds of Agreement should not be used as a means of avoiding compliance with an existing regulatory regime.

1.31 Government Committee members reject the clear implication that the Port Hinchinbrook Deed of Agreement was effected as a mere contrivance so as to avoid compliance with a regulatory regime. This completely misrepresents the situation. When the project was revived in 1993-4, the Deed of Agreement was an initiative of the Queensland government to compensate for the fact that the development had already been approved in 1988: under 1994 planning law no further application was necessary and no further environmental assessment could be demanded. In the circumstances of the case, the Deed was in fact used to enhance environmental protection - not to diminish it.

Recommendation 3: Authorities should commit to thorough independent environmental impact assessments for significant developments.

Recommendation 4: Where the Commonwealth is involved it should ensure early, consultative environmental impact assessment of significant developments.

1.32 Government Committee members emphatically reject the assertions that Australian governments are not sufficiently committed to environmental protection. All tiers of governments have development control laws with provision for environmental assessments of significant developments. How 'significant' a development is, so as to warrant a certain level of assessment; and how much effort should be devoted to environmental assessment in particular circumstances; and how that environmental assessment ought to be weighted against other factors in the minds of decision-makers, are all matters of judgment and debate. Regrettably, this is a debate that the majority report has failed to make a useful contribution to.

Recommendation 5: A full assessment of acid sulfate soils at Port Hinchinbrook should be undertaken ... the Commonwealth should ensure that the developer remedies any breaches.

1.33 The recommendation is superfluous. There is a Port Hinchinbrook Acid Sulfate Management Plan. No evidence in the inquiry showed actual environmental harm from acid runoff, particularly to World Heritage values. Both the Commonwealth and Queensland governments have demonstrated, and continue to maintain, their pro-active commitment to World Heritage values.

Recommendation 6: The Commonwealth should allocate special funds to CSIRO for acid sulfate research and acid sulfate mapping.

Recommendation 8: The Commonwealth and Queensland should research the effects of aquaculture on the Great Barrier Reef World Heritage Area ...

Recommendation 10: The Commonwealth, State and local government should expedite making regional plans in areas where planning decisions may affect the World Heritage values of the Barrier Reef.

Recommendation 11: The Commonwealth should fund a program of regional planning in areas where planning decisions may affect the World Heritage values of a World Heritage property. The Commonwealth should fund a program of information and education in those areas about World Heritage conservation.

Recommendation 12: The Commonwealth and States should expedite identifying World Heritage properties and update statements of significance.

Recommendation 13: The Commonwealth and States should expedite research into risks to world heritage values of Australia's World Heritage properties.

1.34 Government Committee members reject the implication that the Commonwealth is insufficiently committed to World Heritage protection. The government has consistently acknowledged its interest and responsibility in World Heritage protection. A further initiative of the present government is manifest in its *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which has the effect of strengthening Commonwealth involvement in World Heritage protection.

1.35 Under the Act, persons proposing developments likely to have a significant impact on world heritage values, must seek the approval of the Commonwealth Minister for the Environment, and provide environmental impact assessments.

Recommendation 7: The Commonwealth and Queensland should expedite action to control threats to dugongs in the southern Great Barrier Reef Region.

1.36 This recommendation is superfluous. Senator Hill has articulated further measures to protect dugongs, which were agreed to by a meeting of the Great Barrier Reef Ministerial Council on 30 July 1999. This included further restrictions on commercial fishing; co-operative agreements on indigenous hunting; speed limits in the Hinchinbrook Channel; and commitments from the Queensland government to pursue efforts to minimise the effects of on-land activities on dugong habitats.¹²

Recommendation 8: . . . pending improved knowledge of the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area, discharge of effluent to the World Heritage Area should not be permitted and no new licences should be issued.

1.37 Whilst Government Committee members support, in principle, research on the environmental effects of aquaculture, any assumption, without credible evidence, that the environment has no capacity to assimilate the slightest amount of effluent safely, is simply untenable. The Commonwealth government is committed to the principle that an appropriate regime be maintained for the discharge of effluent. In the absence of perfect knowledge, decisions about the risks of development, and what the

12 The Hon. R Hill, Minister for the Environment and Heritage, *New measures announced to protect dugong*, media release 5 August 1999.

precautionary principle ought to mean in practice, are matters of judgment that should, among other things, take community values into account.

Recommendation 9: Planning authorities rather than developers should be responsible for selecting consultants for environmental impact studies by lot from a short list of tenderers.

1.38 The recommendation is quite unsupported by any substantive evidence or discussion in the report. It is yet another gross example of the main report's proof by assertion. Ironically, it flies in the face of the majority's hysterical exhortation of the Commonwealth government to use 'scientific judgment', through now recommending the very abdication of that lofty rigour in favour of a process of selection 'by lot'.

1.39 Moreover, this recommendation blithely disregards the rights of developers to have some say in how their money is spent. It is oblivious of the likely administrative ramifications and difficulties, such as, for example, how to ensure that tenderers do in fact have the necessary expertise, and how to finalise a short list fairly and expeditiously. It must be stressed that the EIA process in all jurisdictions has been, and continues to be, for the respective proponents to prepare, pay for, and submit the necessary environmental impact assessment documentation. And there are other mechanisms within that process to ensure its transparency, such as, for example, assessment by various government agencies as well as through public consultation.

Conclusion

1.40 Government Committee members consider that the stringent environmental controls in the Deed of Agreement; the Memorandum of Agreement; the cautionary steps that Senator Hill undertook; as well as the other Commonwealth and Queensland regional planning initiatives since then, have ensured, and will continue to ensure, that the development at Oyster Point has no significant environmental impacts.

1.41 However unnecessary this inquiry was in that regard, it might at least have had a useful purpose if it had served to bring the hostile parties together for some constructive end. The majority report has missed that opportunity.

1.42 Instead, the report's inveterate bias, which is, among other things, reflected in the fact that its Terms of Reference simply problematised a one-sidedly 'green' agenda and outcome, meant that much of the energy of certain 'green' groups and cohorts, would invariably be given over to acrimonious exchanges, hysterical displays, as well as to apportioning blame for the fantasised sins of the developer and/or various authorities.

Senator John Tierney,
Deputy Chair