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

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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

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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:

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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)
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> '… 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)
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> '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)
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> '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.
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> '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.
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> '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

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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

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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:

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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 notification[22]) 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

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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

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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

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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

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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.

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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)

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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]

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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

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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;

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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

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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

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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

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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

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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.

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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]

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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.

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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 - pro-active 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.