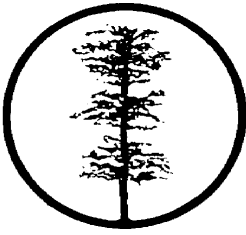


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Dr Wright
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Dear Dr Wright

GREAT BARRIER REEF MARINE PARK AUTHORITY REVIEW

We refer to the above matter and welcome the opportunity to make a submission about the review of the Great Barrier Reef Marine Park Authority (GBRMPA) and its legislative powers.

The Environmental Defenders Office of Queensland Inc and Environmental Defender's Office of Northern Queensland (EDOs) are community legal centres that specialise in public interest environmental law.

The EDOs support the unique role played by GBRMPA in ensuring that both Queensland and the Australian Government work together to manage the GBR WHA. Its unique management arrangements and iconic nature require the continued presence of a statutory authority that is independent of both these Governments. It is also vital that the management of the authority continues in the region to ensure it has a good day to day working knowledge of the GBR.

In this submission, we make the following recommendations:

1. That the GBRMPA be given greater ability to regulate and manage impacts on the GBR WHA under the EPBC Act, provided that the laws and level of assessment are consistent with those imposed under the EPBC Act.
2. That clear guidelines be made for when the GBRMPA will refer a matter to the Department of Environment and Heritage for assessment under the EPBC Act.

3. That the notice provisions under the GBR Regulations (Regulation 75) be amended to remove the discretion for requiring notice so that the Authority *must* require the advertisement of applications for entering the marine park.
4. That the system for issuing permits under the GBRMP Act be amended to adopt a system similar to that under the EPBC Act in order to provide for greater public consultation.
5. That any permit applications, EIS or other assessments, and any permit together with its conditions should be available on the GBRMPA website so that members of the public are able to clearly ascertain the way decisions are made under the regulations.
6. That the tests for approving a matter under the GBR Regulations be amended to include considerations such as the environmental history of the applicant and the World Heritage Values of the GBR.
7. That the GBRMP Act be amended to specify that the precautionary principle and the principles of Ecologically Sustainable Development apply to all decisions under the Act.
8. That the GBRMP Act be amended to ensure the cumulative impact of developments is considered in assessing applications.
9. That the GBRMPA be given greater authority to assess coastal developments and other activities that could impact on the GBRMP.
10. That the powers under s66 of the GBRMP Act be bolstered to allow the GBRMPA to take action against any activities that may harm the reef.
11. That the prohibition of mining in the GBR under s38 be extended to the GBR Region, including the Coral Sea.
12. That the boundaries of the GBR Marine Park be clarified so that they coincide with the boundaries of the GBR World Heritage Area.
13. That the GBRMP Act be amended to include third party rights for enforcement of the Act, to bring it in line with similar provisions in the EPBC Act and other Acts.
14. That the penalties under the GBR Regulations be increased to match the penalties contained in the EPBC Act.
15. That greater resources be dedicated to the Authority for bringing enforcement action.

In reviewing the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act) it is important to ensure that there is consistency with other Commonwealth environmental legislation and in particular, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Relationship between EPBC Act and Great Barrier Reef Marine Park Act

The GBRMPA Environmental Impact Management Policy makes it clear that some actions in the Great Barrier Reef Marine Park may be assessable by both GBRMPA for a permit application and the Department under the EPBC Act. However, an approval under Part 9 of the EPBC Act is not required (where an action would otherwise need an approval under the EPBC Act) if the action is occurring in the GBRMP and the person is authorised to take that action under a permit, zoning plan or plan of management under GBRMP Act. While this may be useful to ensure lack of duplication, there are as outlined below a number of differences in assessment under the GBRMP Act, in comparison to the EPBC Act. We have discussed this at length below in comparing the two Acts. The EDOs support GBRMPA being given greater ability to regulate and manage impacts on the GBR under the EPBC Act provided that the laws and level of assessment are consistent with those imposed under the EPBC Act.

There are also no clear guidelines or policies on when, for example, the Great Barrier Reef Marine Park Authority will refer a matter to the Department of Environment and Heritage (the Department) for assessment under the EPBC Act, where for example a development may occur outside the GBR jurisdiction. Clear policies to assist in this regard would be useful, so that developers are encouraged and in some cases required to refer their matters to the Department for consideration.

Permits under the GBRMP Act

At present, the system of granting a permit under the GBRMP Act can result in a number of assessment approaches. These assessment approaches are based on whether the application is a minor project, a small project or medium to large scale project. The assessment levels all have different requirements regarding impacts and studies, with some degree of public consultation for the medium and large scale impacts. However, there is no requirement for the advertisement of applications for entering into the marine park, as Regulation 75 states that the Authority *may* by written notice require the advertising of a particular development. Most permits on the GBRMPA website are not advertised for public comment, although a comprehensive permit system has existed since 2002.

In considering the granting of a permit, there are a large number of factors that must be considered by the Authority (see Regulation 74) including conservation of natural resources in the Marine Park, objectives of the zone, likely effects on adjacent areas, and the nature and scale of the proposed use amongst others. There are also particular factors that must be considered in relation to permits for the Traditional use of marine resources (reg 74(6)).

Comparison with provisions under EPBC Act

Under section 75 of the EPBC Act, the test for whether a matter is a controlled action is whether the matter will have an adverse impact on one of the controlling provisions, the relevant one in this case being the Great Barrier Reef World Heritage area. Case law requires the assessment of all impacts including those that may be indirect (see *Minister for the Environment and Heritage v Queensland Conservation Council* [2004] FCAFC 190) in determining whether a development is a controlled action. The Full Court stated that impacts include “effects which are sufficiently close to the action to allow it to be said, without straining the language, that they are, or would be, the consequence of the action on the protected matter” [at 53]. The assessment process under the EPBC Act requires all matters that are referred to the Department, to determine whether they are

controlled actions, to be subject to public comment. This is done through notices that are placed on the EPBC website that call for submissions within certain timeframes.

Once a matter is determined to be a controlled action, the Minister then has to make a decision as to what is the appropriate level of assessment (ranging from preliminary documentation to a full Environmental Impact Study). Once the assessment level is determined, the proponent provides an assessment in accordance with the agreed assessment approach to the Department. Again those assessment documents are available for public inspection and a time is allowed for comments on them. This provides a greater degree of public consultation than the *Great Barrier Reef Marine Park Regulations* 1983 (GBR Regulations) allow, as there is a discretion as to whether notice is given under the GBR Regulations. All decisions about matters under the EPBC Act are also published on the EPBC website.

The EDOs submit that a similar system to the EPBC Act should be adopted in regard to the issuing of all permits under the GBRMP Act. Applicants should be required to provide the material required under Regulation 74, as well as why it should be assessed a particular way. This material should then be publicly available for a comment over a short period, so that persons in the community can comment on the what form of assessment should occur. Likewise, once the level of assessment is determined, the public should be provided with an opportunity to comment on the EIS or other assessment. This could be done through the publication of that EIS or other assessment on the Great Barrier Reef Marine Park Authority website so that people can comment on these matters. This is done at present for all permits but they contain only basic information and for example no details of permit conditions. Not all permits issued by the Authority go through a public advertising and comment stage also. All permits together with their conditions should also be published on the website so that members of the public are able to clearly ascertain the way that decisions are made under the regulations.

The tests for approving a matter under the GBR Regulations include a number of matters. They however omit some important issues such as the environmental history of an applicant, and the World Heritage Values of the GBR. The GBR Regulations do not allow the GBRMPA to examine an applicant's environmental history, only whether they have overdue payments to the park (s 74). The EDOs submit that the environmental history of an applicant is an important factor in whether they should be granted a permit. The GBR Regulations also do not require the Authority to consider the impacts on World Heritage values of the Great Barrier Reef and are therefore not consistent with the EPBC Act and Australia's International obligations under the World Heritage Convention. They should be amended so that the permits are not granted that would conflict with the World Heritage Values of the GBR.

Likewise, as the GBRMP Act predates the Intergovernmental Agreement on the Environment, it would be useful for it to specify that both the precautionary principle and the principles of Ecologically Sustainable Development adopted in that agreement apply to all decisions under the GBRMP Act. At present under s 39Z, the precautionary principle only applies to preparation of management plans.

Cumulative Impacts:

There is currently no assessment of the cumulative impacts of development in the GBR Act. In the context of the GBR World Heritage Area, extending over 2000 km, the impact of a single development may be assessed as not being of significance or effect on the GBR but a different conclusion may be reached if the impact of cumulative development were included in the assessment. The EPBC Act allows the Department of Environment and Heritage to consider a

development as a whole rather than in stages. The GBRMP Authority should have a similar ability. Further, to recognise the extensive critical habitats for certain species and significant World Heritage values of the GBR, assessment of the overall impact of a series of unrelated developments on specific factors should be possible. For example, if the effect of several developments on migratory species, such as dugongs, are each assessed in isolation, it is difficult to prove that any one development will have a significant impact on a particular species. However, if considered cumulatively, there may be a clear impact. Permit applications need to be assessed in this context. GBRMPA needs a greater role also in assessing coastal developments and other activities that could impact on the GBRMPA. At present in Queensland, GBRMPA has limited rights to comment on proposed coastal developments but no binding powers under State planning legislation (*Integrated Planning Act 1997*). This is particularly relevant in the case of agriculture and other activities that are often not assessed under planning laws and are conducted as of right.

There are also a number of species that are part of the World Heritage values of the Great Barrier Reef but are migratory and may from time to time exist outside the GBR boundaries. The protections in the GBRMP Act should be strengthened to ensure the overall impacts on migratory species such as turtles, dugong and dolphins, threatened species and marine species are able to be regulated by GBRMPA.

Water Quality issues:

While discharges from aquaculture and non-agricultural industries (including sewage treatment plants) are relatively well regulated under the *Environmental Protection Act 1994* (Qld), agricultural run-off remains virtually unregulated in practice under the current Queensland environmental legal system. Although the EPA has power to bring actions under the *Environment Protection Act 1994* for “environmental harm” (ss 437 and 438) few such actions have been taken by the EPA, and none in relation to agricultural run-off into the Great Barrier Reef. The GBRMP Act at s 66 has the power to regulate or prohibit acts outside the Marine Park that may pollute water in a manner harmful to animals and plants, however this has not been utilised. In the absence of the GBRMP Act and Queensland legislation being used to protect water quality in catchments flowing to the GBR, the EDOs consider it necessary for the GBRMPA to play a greater role in relation to this issue. We would encourage that the powers under s 66 of the GBRMP Act be bolstered to enable GBRMPA to take action against any activities that may harm the reef and in particular the few fringing coastal reefs along the GBRMPA. In the absence of such measures, the sediment and nutrient targets established by the *Great Barrier Reef Water Quality Protection Plan Annual Report 2003-2004* will not be met.

Mining in the GBRMP

At present, s 38 of the GBRMP Act prohibits mining in the GBR. The EDOs would support the extension of this prohibition to the GBR region, including the Coral Sea. It is imperative that the risks associated with mining are prohibited throughout the region, in particular as there is significant pressure to commence petroleum operations in the Coral Sea region. Such mining could have devastating effects on the WH values of the Great Barrier Reef area if there were spills from mining operations or cyclonic events in the adjoining area that destroyed oil drilling platforms.

Boundaries of the Marine Park:

The EDOS are aware that the GBR World Heritage area does not always mimic the area of the GBR Marine Park. In particular, the Hinchinbrook Channel that is an important part of the GBR World Heritage Area where there is considerable doubt as to whether it comes within the Marine Park. The EDO seeks a commitment as part of this review that the boundaries of the GBR Marine Park be amended so that they clearly coincide with the boundaries of the GBR World Heritage Area.

Standing and Enforcement:

At present, the *Great Barrier Reef Marine Park Act 1975* has no third party rights that enable a person to take enforcement action in regard to breaches of the Act.

The EPBC Act has enhanced standing rights for third parties with an interest in environmental issues (s 487). It allows members of the public and environmental organisations who can satisfy the tests for standing to bring proceedings to seek injunctions under the EPBC that a breach of the Act is occurring and to seek to remedy it. Similar provisions are included in the *Nature Conservation Act 1992* and *Marine Parks Act 2004* for example. Third parties who have a demonstrated interest in protection and conservation of the environment should be also be able to bring enforcement action under the GBRMA Act. This would enable third parties to enforce the GBRMP Act where for some reason the GBRMPA does not bring action for a breach of a permit conditions. The powers under the *Nature Conservation Act* were recently used by Dr Booth against a farmer Frippery in relation to killing of flying foxes. Third party rights have also been extensively utilised under the EPBC Act.

At present there is also a discrepancy between the penalties imposed for breach of the EPBC Act and those under the GBR Regulations. Penalties for breaches of permits under the GBR Regulations include penalties of \$22,000 for individuals and \$110,000 for body corporates. Under the EPBC Act, the fines are approximately \$231,000 for companies and \$46,200 for individuals. The EDOs recommend that the fines be increased so there is consistency between the GBRMP Act offences and those under the EPBC Act. Obviously, the EDOs would also support greater resources being dedicated to bringing enforcement action. Deterrence through such prosecutions is an important part of both protecting the environment and educating the public on the need to comply with such laws.

Yours faithfully

Environmental Defenders Office (Qld) Inc. and
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