



# **Sustainable Ports Development Bill 2015**

**Report No. 6, 55<sup>th</sup> Parliament**

**Infrastructure, Planning and Natural Resources Committee**

**September 2015**

## **Infrastructure, Planning and Natural Resources Committee**

**Chair** Mr Jim Pearce MP, Member for Mirani

**Deputy Chair** Mr Michael Hart MP, Member for Burleigh

**Members** Mr Glenn Butcher MP, Member for Gladstone  
Mr Shane Knuth MP, Member for Dalrymple  
Mrs Brittany Lauga MP, Member for Keppel  
Mr Lachlan Millar MP, Member for Gregory

**Staff** Ms Erin Pasley, Research Director  
Ms Margaret Telford, Principal Research Officer  
Ms Mary Westcott, Principal Research Officer  
Ms Dianne Christian, Executive Assistant

**Technical Scrutiny of Legislation Secretariat** Ms Renée Easten, Research Director  
Mr Michael Gorringe, Principal Research Officer  
Ms Kellie Moule, Principal Research Officer  
Ms Tamara Vitale, Executive Assistant

**Contact details** Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**Telephone** +61 7 3553 6621

**Fax** +61 7 3553 6699

**Email** [ipnrc@parliament.qld.gov.au](mailto:ipnrc@parliament.qld.gov.au)

**Web** [www.parliament.qld.gov.au/ipnrc](http://www.parliament.qld.gov.au/ipnrc)

### **Acknowledgements**

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## Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resource Committee's examination of the Sustainable Ports Development Bill 2015.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the departmental officials who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



Jim Pearce MP  
**Chair**

September 2015

## Acronyms and abbreviations

AMCS	Australian Marine Conservation Society Inc.
EDO NQ	Environmental Defenders Office of Northern Queensland
EDO Qld	Environmental Defenders Office (Queensland)
EIS	environmental impact statement
EP Act	<i>Environmental Protection Act 1994</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
FLP	fundamental legislative principle
GBR or the Reef	Great Barrier Reef
GBRMP	Great Barrier Reef Marine Park
GBRMPA	Great Barrier Reef Marine Park Authority
GBRWHA	Great Barrier Reef World Heritage Area
GPC	Gladstone Ports Corporation
LGAQ	Local Government Association of Queensland
LTSP or the Plan	<i>Reef 2050 Long-Term Sustainability Plan</i>
MEDQ	Minister for Economic Development Queensland
NQBP	North Queensland Bulk Ports
OUV	outstanding universal value
POTL	Port of Townsville Limited
QELA	Queensland Environmental Law Association
QPA	Queensland Ports Association
QPP	Queensland Planning Provisions
QRC	Queensland Resources Council
SPA	<i>Sustainable Planning Act 2009</i>
TIA	<i>Transport Infrastructure Act 1994</i>
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO WHC	United Nations Educational, Scientific and Cultural Organization World Heritage Committee

## Recommendations

### **Recommendation 1** **3**

The committee recommends the Sustainable Ports Development Bill 2015 be passed with amendments.

### **Recommendation 2** **16**

The committee unanimously recommends the Bill be amended to require the Minister to table in Parliament a master plan, an amended master plan, and a summary of the outcomes of the consultation.

### **Recommendation 3** **16**

The committee unanimously recommends the Bill be amended to:

- (a) require the Minister to provide the relevant port authority and local government with a copy of the final or amended master plan
- (b) provide copies of notices to the relevant port authority and local government when a decision is made to not make or amend a master plan, and
- (c) advise the relevant port authority or local government about a decision to take no further action in relation to a review of a master plan.

### **Recommendation 4** **16**

The committee unanimously recommends the Bill be amended to provide public consultation during the review of a master plan.

### **Recommendation 5** **16**

The committee unanimously recommends clause 56 of the Bill be amended to require the chief executive to publish documents associated with the review of a master plan on the public register.

### **Recommendation 6** **23**

The committee unanimously recommends the Bill be amended to require consultation on a port overlay.

### **Recommendation 7** **24**

The committee recommends the Minister address the potential uncertainty identified by the Queensland Environmental Law Association regarding existing development applications and approvals in his second reading speech.

### **Recommendation 8** **31**

The committee unanimously recommends clause 34 of the Bill be amended to strengthen and clarify the policy intent.

### **Recommendation 9** **31**

The committee unanimously recommends the Bill be amended to provide a definition of 'beneficial reuse' using, but not limited to, the examples included in the explanatory notes.

**Recommendation 10** **31**

The committee recommends the Minister clarifies the application of the Bill in relation to the temporary placement of dredged material for rehandling.

**Recommendation 11** **32**

The committee recommends the Minister provides additional information on the government's policy regarding the transitional provision and if it would apply to projects that do not require an Environmental Impact Statement.

**Recommendation 12** **38**

The committee unanimously recommends the Minister considers declaring the Port of Cairns as a priority port following a considered assessment of:

- the environmental impacts on the Great Barrier Reef
- the economic benefits to the Cairns region, and
- the government's commitments made to UNESCO and under the Reef 2050 Long-Term Sustainability Plan.

**Recommendation 13** **42**

The committee unanimously recommends the Minister provides advice on the timeframe for the delivery of the maintenance dredging framework and ensures that the views expressed by stakeholders during the committee's inquiry are taken into account in the framework.

## 1 Introduction

### 1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of government and non-government members.

The committee's areas of portfolio responsibility are:<sup>1</sup>

- Transport, Infrastructure, Local Government, Planning and Trade, and
- State Development, Natural Resources and Mines.

### 1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 3 June 2015, the Sustainable Ports Development Bill 2015 was referred to the committee for examination and report. The Legislative Assembly fixed the committee's reporting date of 1 September 2015.

### 1.3 The committee's inquiry process

On 5 June 2015, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 2 July 2015. The committee received 52 submissions which included a form email submission from over 1500 individuals (see Appendix A).

On 25 June 2015, the committee held a public briefing with the Department of State Development. On 13 July 2015, the committee held a public hearing in Brisbane. On 29 and 30 July 2015, the committee held public hearings in Cairns and Mackay (see Appendix B).

Copies of the submissions and transcripts of the public briefing and public hearings are available from the committee's webpage.<sup>2</sup>

### 1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:

- give effect to the government's commitments made in the *Reef 2050 Long-Term Sustainability Plan* (LTSP)
- protect greenfield areas by restricting new port development in and adjoining the Great Barrier Reef World Heritage Area (GBRWHA) to within current port limits
- restrict capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of Gladstone, Hay Point/Mackay, Abbot Point and Townsville (to optimise the use of infrastructure at these long established major bulk commodity ports)

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<sup>1</sup> Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015).

<sup>2</sup> See [www.parliament.qld.gov.au/ipnrc](http://www.parliament.qld.gov.au/ipnrc). At the time of writing this report, the transcripts of proceedings were proof transcripts.

- prohibit the sea-based disposal of material into the GBRWHA generated by port-related capital dredging
- mandate the beneficial reuse of port-related capital dredged material, such as for land reclamation, or disposal on land where it is environmentally safe to do so, and
- require master plans at the long-established major bulk commodity ports of Gladstone, Hay Point/Mackay, Abbot Point and Townsville to optimise the use of existing port infrastructure and address operational, economic, environmental and social relationships as well as supply chains and surrounding land uses.<sup>3</sup>

### 1.5 The Government's consultation on the Bill

The explanatory notes state there was an urgent imperative to introduce the Bill before the 39<sup>th</sup> session of the United Nations Education, Scientific and Cultural Organization World Heritage Committee (UNESCO WHA) in Bonn, Germany (from 28 June to 8 July 2015).<sup>4</sup> Brief consultation was undertaken with the following stakeholder groups:

- the Australian Marine Conservation Society (AMCS)
- the Environmental Defenders Office Queensland (EDO Qld)
- Ports Australia
- the Queensland Ports Association (QPA)
- the Queensland Resources Council (QRC), and
- the World Wildlife Fund – Australia (WWF-Australia).<sup>5</sup>

The department further advised:

We commenced work in 2011 on the strategic assessment of the Great Barrier Reef coastal zone. That was a very rigorous exercise that needed to be completed under the terms of the Environment Protection and Biodiversity Conservation Act. That provided a body of evidence with respect to issues along the coast that were creating impacts on the Great Barrier Reef.

As part of that work, we developed a draft Great Barrier Reef ports strategy that was subject to a process of public consultation and also quite extensive engagement with other stakeholders, particularly with the ports industry. Under the previous government, there was a draft ports strategy that was then confirmed as a ports strategy. We have then evolved that piece of work in line with the Reef 2050 Long-Term Sustainability Plan and developed this piece of legislation in line with the policy commitments of the long-term sustainability plan that have been through a thorough stakeholder engagement process, spearheaded by the partnership group ...<sup>6</sup>

### 1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee recommends the Bill be passed. The committee has also recommended amendments to the Bill.

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<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> Ibid, p 5.

<sup>5</sup> Ibid, p 5.

<sup>6</sup> Public briefing transcript, 25 June 2015, pp 2-3.

**Recommendation 1**

The committee recommends the Sustainable Ports Development Bill 2015 be passed with amendments.

## 2 Examination of the Bill

### 2.1 Policy context – Great Barrier Reef World Heritage Area

The Great Barrier Reef was declared a World Heritage Area (GBRWHA) in 1981 because of its 'outstanding universal value'. The Great Barrier Reef (GBR) is recognised as one of the most remarkable places on earth and for its natural worth. There are more than 3000 separate coral reefs within the GBRWHA.

The GBRWHA spans 348,000 square kilometres, which is bigger than the United Kingdom, Holland and Switzerland combined. It extends from the top of Cape York to north of Bundaberg, and from the low water mark on the Queensland coast to the outer boundary of the Great Barrier Reef Marine Park (GBRMP), which is beyond the edge of the continental shelf. See Appendix D for a general reference map.

The *Great Barrier Reef Marine Park Act 1975* (Cth) is the primary Act relating to the GBRMP. Approximately 99 per cent of the GBRWHA is within the GBRMP. The remaining one per cent is within Queensland's jurisdiction which covers 3600 square kilometres and includes most islands, ports and other internal state waters.<sup>7</sup>

The GBRMP is covered by a Zoning Plan that identifies where certain activities are permitted and where activities are not. In most of the adjoining waters, the Queensland Government provides complementary zoning in virtually all the GBRWHA.

The health of the Great Barrier Reef (GBR) is protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

The explanatory notes provide:

Queensland's legal jurisdiction over GBRWHA waters is constrained. In addition to the three nautical mile limit on the application of State powers, the 1979 Offshore Constitutional Settlement gives primacy to the Great Barrier Reef Marine Park Act 1975 (Cth) over State law. This applies to areas declared as GBRMP which, with some exceptions (for example, around ports), extends to the low-water mark on the Queensland coast.<sup>8</sup>

#### 2.1.2 UNESCO WHC and Reef 2050 Long-Term Sustainability Plan

In July 2011, the UNESCO WHC requested that the Australian Government undertake a comprehensive strategic assessment of the GBR and develop a long-term plan for sustainable development that will protect the region's outstanding universal values (OUV).<sup>9</sup> The UNESCO WHC continued to consider the state of conservation of the GBRWHA in three sessions from 2012 to 2014 and made recommendations to the Australian Government.<sup>10</sup>

The Australian Government and the Queensland Government have completed a comprehensive strategic assessment of the GBRWHA and adjacent coastal zone in accordance with the EPBC Act:

The comprehensive strategic assessment has helped to identify, plan for and manage existing and emerging risks to ensure ongoing protection and management of the unique environmental values

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<sup>7</sup> Great Barrier Reef Marine Park Authority, '[Great Barrier Reef World Heritage Area](#)' and '[Differences between the Marine Park and World Heritage Area](#)'.

<sup>8</sup> Explanatory notes, p 11.

<sup>9</sup> For a definition of outstanding universal value, refer to the World Heritage Convention's '[Operational Guidelines](#)'.

<sup>10</sup> Australian Government, '[The Great Barrier Reef, Queensland - More Information](#)'.

of the Great Barrier Reef World Heritage Area and also ensure that development within and adjacent to the World Heritage Area is sustainable.<sup>11</sup>

The LTSP was developed by the Australian and Queensland governments with input from scientists, communities, Traditional Owners, industry and non-government organisations. Public consultation was conducted on the draft plan.

The Plan was submitted to the UNESCO World Heritage Centre in March 2015 for consideration at the 39th session of the WHC.

The Plan is the overarching framework for the long-term protection and management of the GBR.<sup>12</sup>

On 1 July 2015, the WHC announced its decision to not place the GBR on its world heritage in-danger list and supported the efforts made in relation to the LTSP.<sup>13</sup> The Australian Government, the Great Barrier Reef Marine Park Authority (GBRMPA) and the Queensland Government will lead the implementation of the LTSP.

Under the LTSP, the Queensland Government has committed to a number of initiatives relating to port development, including:

- protecting greenfield areas from port development by restricting new port development in and adjoining the Great Barrier Reef World Heritage Area to within current port limits
- restricting capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of Gladstone, Hay Point/Mackay, Abbot Point and Townsville
- ensuring that any new development inside these port limits is also consistent with the *Great Barrier Reef Marine Park Act 1975*, the *Queensland Marine Parks Act 2004*, their regulations and zoning plans
- prohibiting the sea-based disposal of material into the GBRWHA generated by port-related capital dredging
- mandating the beneficial reuse of port-related capital dredged material, such as through land reclamation or disposal on land where it is environmentally safe to do so
- establishing a maintenance dredging framework
- requiring master plans at the major ports of Gladstone, Hay Point/Mackay, Abbot Point and Townsville which optimise infrastructure and address operational, economic, environmental and social relationships as well as supply chains and surrounding land uses
- adopting the best practice principles identified in the Gladstone Independent Review reports and integrate into port planning and development
- ensuring GBR ports planning incorporates evidence-based measures to support protection, restoration and management of coastal ecosystems that contribute to Reef health and resilience
- supporting on-land disposal or land reclamation for capital dredged material at Abbot Point
- requiring all proponents of new dredging works to demonstrate their project is commercially viable prior to commencement
- not supporting transshipping operations that adversely affect the GBRMP, and

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<sup>11</sup> Ibid.

<sup>12</sup> Australian Government, [About the Reef 2050 Plan](#).

<sup>13</sup> UNESCO World Heritage Committee, [Decision: 39 COM 7B.7 Great Barrier Reef \(Australia\) \(N 154\)](#).

- further protecting the Fitzroy Delta, including North Curtis Island and Keppel Bay which are clearly outside the Gladstone port area, through:
  - extension and strengthened conservation zoning in the Great Barrier Reef Coast Marine Park
  - extension of the existing fish habitat area
  - establishment of a new net-free zone under fisheries legislation, and
  - additional protections in associated intertidal and terrestrial areas.<sup>14</sup>

The Bill proposes to implement a number of commitments made by the Queensland Government.<sup>15</sup>

## 2.2 Key policy objectives of the Bill

The key policy objectives of the Bill are to provide for the protection of the GBRWHA through managing port-related development in and adjacent to the area.<sup>16</sup>

The Bill proposes to:

- require master plans and port overlays for the ports of Gladstone, Hay Point/Mackay, Abbot Point and Townsville (priority ports)
- restrict new port development to within current port limits in, and adjoining, the GBRWHA
- restrict capital dredging for the development of new, or expansion of existing, port facilities to within the regulated port limits of the priority ports
- prohibit sea-based disposal of port-related capital dredged material in the GBRWHA, and
- mandate the beneficial reuse of port-related capital dredged material, such as for land reclamation or disposal on land where it is environmentally safe to do so.<sup>17</sup>

The department advised:

The bill confirms to UNESCO that port development in and adjacent to the Great Barrier Reef World Heritage Area will be managed sustainably. Both the UNESCO WHC and the Australian government have acknowledged the value of stand-alone legislation and have expectations in this regard. Stand-alone legislation has been supported by members of the Reef 2050 Long-Term Sustainability Plan Partnership Group including organisations such as Ports Australia, the Queensland Resources Council and the World Wide Fund for Nature, WWF. The LTSP Partnership Group—including the resources, ports, tourism, fishing, agriculture, Indigenous, local government, research and conservation sectors—supported the Australian and Queensland governments in developing the long-term sustainability plan, the LTSP.<sup>18</sup>

### 2.2.1 Purpose of the Act

Clause 2 of the Bill states that the purpose of the Act (if passed) is to provide for the protection of the GBRWHA through managing port-related development in and adjacent to the area. The purpose would be achieved by:

- prohibiting particular future development in the GBRWHA

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<sup>14</sup> Department of State Development, '[Reef 2050: Queensland Government's port related initiatives](#)'.

<sup>15</sup> Explanatory notes, p 1.

<sup>16</sup> Clause 2.

<sup>17</sup> Explanatory notes, p 1.

<sup>18</sup> Public briefing transcript, 25 June 2015, p 1.

- providing for the development of master plans that establish a long-term vision for the future development of priority ports consistent with the principles of ecologically sustainable development, and
- implementing master plans through port overlays that regulate development in and surrounding priority ports.

Also, the purpose is to be achieved in a way that includes the following:

- long-term planning for priority ports to provide a strategic and coordinated approach to managing economic, environmental, cultural and social values in the GBRWHA
- concentrating port development in priority ports
- recognising the diverse functions of the port network, including trade, tourism and defence operations
- efficiently using port and supply chain infrastructure
- expanding port and supply chain capacity in a staged and incremental way to meet emerging demand for imports and exports, and
- identifying and protecting land and infrastructure critical to the effective operation of the port network.

### **2.2.2 Priority ports and master plans**

#### Queensland Ports

There are 20 ports along the coast of Queensland (15 trading ports, two community ports and three smaller gazetted ports).<sup>19</sup> The waters surrounding the majority of Queensland's ports fall within the GBRWHA, but not within the GBRMP. See Appendix C for a map of Queensland's ports.

Clause 5 of the Bill declares four of Queensland's ports as priority ports:

- Port of Abbot Point
- Port of Gladstone
- the Ports of Hay Point/Mackay, and
- Port of Townsville.

The priority ports are considered GBRWHA strategic bulk ports necessary to increase investment and create jobs. In 2013–14, the combined total throughput of the priority ports was over 242 million tonnes, representing 77 per cent of the total throughput of all Queensland ports. The combined trade worth of the priority ports is \$32 billion.<sup>20</sup>

#### Master plans

Clause 6 of the Bill provides that each of the priority ports would be required to have a master planned area approved by regulation.

The regulation of port planning has typically been limited to land use planning on land owned or controlled by a port authority (ie. strategic port land).<sup>21</sup> The Bill proposes long-term master planning to be undertaken over a wider geographical area at each priority port. This would enable the impacts

<sup>19</sup> Department of Transport and Main Roads, '[Ports](#)'.

<sup>20</sup> Explanatory notes, pp 6, 13.

<sup>21</sup> Department of State Development, '[Port Master Planning: Guideline for determining a master planned area boundary, Draft, June 2015](#)'.

of port development to be considered in planning decisions and more strategic consideration of the best use of a port.<sup>22</sup>

In addition to the LTSP, the policy basis for master planning has been generated from a range of national-level initiatives including:

- Ports Australia's report – Leading Practice: Port Master Planning – Approaches and Future Opportunities (2013)
- National Ports Strategy (2012), and
- Independent Review of the Port of Gladstone – Supplementary Report (2013).<sup>23</sup>

The initiatives identified key outcomes to be achieved through implementing master plans including:

- improved strategic environmental management of the GBR including improved consideration and protection of the outstanding universal value of the GBRWHA
- considering the community benefits derived from the GBR through state-level policy and planning instruments and development and management decisions
- adopting best practice principles for port planning as identified in the Independent Review of the Port of Gladstone – Supplementary Report
- using buffer strategies in policies and plans to limit potential conflict between land uses
- improving supply chain coordination
- achieving consistency in regulatory outcomes, and
- ensuring greater community engagement and transparency in port planning.<sup>24</sup>

#### Master planned area

The master planned area boundary will span a 30-year planning horizon.<sup>25</sup> The master planned area may include land that is outside the port's strategic port land.<sup>26</sup> It cannot include an area covered by tidal water outside the port's port limits, or an area within a Commonwealth or State marine park even if the area is within the port's port limits.<sup>27</sup>

Clause 7 of the Bill requires priority ports to have a master plan which identifies the master planned area for the port and applies to all of the master planned area. In making the instrument, the Minister must be satisfied that the master plan adequately considers the principles of ecologically sustainable development.<sup>28</sup>

After a master plan takes effect, a port overlay must be made by an instrument. The master plan will determine the spatial coverage of a port overlay. The port overlay is the regulatory tool for implementing the master plan and is discussed in more detail after this section.

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<sup>22</sup> Ibid; Public briefing transcript, 25 June 2015, p 9.

<sup>23</sup> Department of State Development, 'Port Master Planning: Guideline for determining a master planned area boundary, Draft, June 2015.'

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Strategic port land is determined under provisions of the *Transport Infrastructure Act 1994* which require ports (except the Port of Brisbane) to prepare a land use plan for the Minister's approval.

<sup>27</sup> Clause 6(2)-(3).

<sup>28</sup> Clause 7(3).

Content of master plans

Clause 8(1) prescribes the content of a master plan. A master plan must:

- state the strategic vision, objectives and desired outcomes for the master planned area; and
- identify the State interests affected, or likely to be affected, by:
  - existing uses at the port, and
  - future development at, or for, the port, and
- include an environmental management framework that:
  - identifies and maps environmental values in the master planned area and surrounding areas
  - identifies any impacts development in the master planned area may have on the environmental values, and
  - states objectives, and measures (the priority management measures), for managing the impacts identified, and
- include any other matter prescribed by regulation.

A state interest is defined as an interest the Minister considers to be:

- an economic, community or environmental interest of the State or part of the State, or
- the interest of ensuring the Act's purpose is achieved, having regard to the matters mentioned in section 2.

Port state interests are the types of matters that must be dealt with consistently across each planning instrument in a master planned area:<sup>29</sup>

... the land that is considered in the study area that will be a master planning area will have a range of different land uses. There will be some land that will be protected for environmental areas. There will be some land or precincts that will be appropriately identified for future development. There will be other pieces of land that will be identified as important supply chain corridors or buffers between residential areas, for example. So it is really about bringing all the planning systems together in a coordinated way to ensure there are not any inadvertent land use conflicts.<sup>30</sup>

Making, amending, repealing or reviewing a master plan

Clauses 9 to 17 of the Bill set out the procedures and requirements for making, amending, repealing or reviewing a master plan.

In making or amending a master plan, the Minister is required to give a notice of proposal to the relevant port authority and local government/s in the area. The entities can make a written submission to the Minister about the proposal within 20 business days.<sup>31</sup>

After giving notice of a proposed plan, the Minister must prepare a draft plan (or amendment) and publish a notice outlining how an entity may make a submission. The proposed submission period is 30 business days for making a master plan and 20 business days for amending a master plan. The consultation period commences after the notice is published in the gazette. The Minister is also

<sup>29</sup> Department of State Development, 'Port Master Planning: Guideline for determining a master planned area boundary, Draft, June 2015'.

<sup>30</sup> Public briefing transcript, 25 June 2015, p 9.

<sup>31</sup> Clause 10.

required to give the relevant port authority and local government a copy of the notice and draft instrument.<sup>32</sup>

After the Minister considers the submissions, the Minister must decide to make or amend the master plan, with or without changes, or not to make or amend the master plan. The Minister's decision must be published in a public notice. A copy of the notice must be provided to the relevant entities. The master plan or amendment has effect on the day after the public notice is published in the gazette or a later day stated in the master plan or amendment.<sup>33</sup>

A master plan may be repealed by making another master plan. This would also repeal the port overlay.<sup>34</sup>

The Minister is required to review the master plan at least every 10 years. The review must include whether the boundaries of the master planned area are still appropriate, whether the implementation of the priority management measures have been effective in managing the impacts of development on the environmental values and whether the measures should be changed.<sup>35</sup>

Notice of the review must be given to the relevant port authority and local government. The entities may make a written submission to the Minister with 20 business days.<sup>36</sup> The entities may also be required to provide the Minister with information the Minister is satisfied is relevant to the review.<sup>37</sup>

After reviewing the plan, the Minister must prepare a new plan, amend the plan or take no further action. If the Minister decides to take no further action, the Minister must table a report in the Legislative Assembly stating the reasons for the decision.<sup>38</sup>

### Guidelines

Clause 18 provides that the Minister may make guidelines about matters that may be considered in preparing or reviewing a master plan. The Minister must publish the guidelines on the department's website.

### Overall timeframe for preparing a master plan

A port master planning process will take approximately 12 months, depending on the nature of each priority port.<sup>39</sup> A master plan for the Gladstone Port is currently being prepared. Public consultation on the proposed boundary for the Gladstone port master planned area was conducted between 9 June 2015 and 20 July 2015.

A draft guideline for determining a master planned area boundary was used to identify the proposed boundary. The draft guideline was made available for public comment as part of consultation on the proposed boundary.

The Gladstone port master planning process will continue during 2015 and is expected to be completed in 2016. Master planning for Abbot Point is due to commence later this year, and the following year for Townsville and Hay Point/Mackay.

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<sup>32</sup> Clause 11. The Minister would also be required to give a copy to the Coordinator-General and Minister for Economic Development Queensland when relevant.

<sup>33</sup> Clause 12.

<sup>34</sup> Clause 13.

<sup>35</sup> Clause 14

<sup>36</sup> Clause 15.

<sup>37</sup> Clause 16.

<sup>38</sup> Clause 17.

<sup>39</sup> Department of State Development, '[Sustainable port development in Queensland Fact sheet—June 2015](#)'.

The draft guideline will be finalised pending the outcome of the Legislative Assembly's consideration of the Bill.<sup>40</sup>

### Registers

Clause 56 of the Bill requires the chief executive to keep a register of each of the following:

- master plans, or amendments
- proposed master plans or amendments, and
- port overlays or amendments of port overlays.

Under clause 57, other documents or information relating to the Act (if passed) could be kept on a register. The documents included in the registers must be published on the department's and port authorities' websites. The register must be open for inspection by the public and the chief executive must allow persons to search and take extracts from the register. If a person requests a copy of part or all of the information, the department is to provide it at a fee decided by the chief executive.

### Stakeholder views on master plans

Submitters were generally supportive of the master planning process. Some environmental groups and local governments had concerns in relation to the areas to be included or excluded from the master planned area and the public accessibility of master planning documentation.

Ports authorities identified areas requiring further detail or clarification and raised concerns about their level of participation in the making of a master plan. Local governments also raised concerns about their involvement in the process and the associated timeframes. Some of the issues raised by stakeholders also overlap with the port overlay process and are also discussed in the section on 'port overlays'.

### *Content of master plans and master planned area boundaries*

North Queensland Bulk Ports stated:

... the bill excludes the areas of overlap between the Great Barrier Reef Marine Park and port limits from the master planning process. This is contrary to recommendations in the Reef 2050 Plan that 'require port master planning that considers potential marine based as well as land based environmental impacts'. In addition, the recent independent review of the Port of Gladstone recommended planning encompass the entire extent of port limits. So that is a distinction that we believe needs to be made, that a master plan ought to be for the whole of the port and all of the operations within the port, and the cumulative impacts and so on from the whole of that port activity, rather than simply stopping the planning at a boundary.<sup>41</sup>

Ports Australia recommended that all areas relevant to port operations, including anchorages and sea channel areas, should be included within the port master plan.<sup>42</sup>

The department advised that the scope of the Bill is port-related development in and adjacent to the GBRWHA. Operation matters such as anchorages will continue to be addressed through other legislation.<sup>43</sup>

<sup>40</sup> Department of State Development, ['Gladstone Port Master Planning'](#).

<sup>41</sup> Public hearing transcript, 30 July 2015, pp 15-16.

<sup>42</sup> Ports Australia, Submission 50.

<sup>43</sup> Department of State Development, correspondence dated 10 July 2015, p 15.

The Environmental Defenders Office North Queensland (EDO NQ) requested:

... environmentally sensitive and ecologically significant areas, such as estuarine conservation zones and fish habitat areas, should be excluded from the master plan and protected by GBRMPA/Queensland National Parks, not the Port Authority.<sup>44</sup>

The AMCS recommended the master planning process consider the overall demand for port facilities and the most efficient and less environmentally damaging approach across all four priority port areas.<sup>45</sup>

The Queensland Ports Authority (QPA) suggested clause 8 be amended to include more detail on the content required for master plans and the environmental management framework to better communicate the level of technical detail to be included.<sup>46</sup>

The department advised that the draft guideline provides matters to be considered in determining a proposed port master planned area boundary including:

- Key environmental values (land and marine)
- Land and marine areas likely to be associated with port development and operation over a 30 year outlook period, based on economic scenario analysis
- Key supply chains as well as supply and capacity requirements
- Areas identified for beneficial reuse or land base disposal of port related capital dredge material
- Marine areas within existing port limits but outside of the GBRMP and Great Barrier Reef Coast Marine Park
- Community values
- Heritage values.<sup>47</sup>

Mackay Regional Council raised concerns that the content of master plans did not include local government interests or recognising local planning instruments or guidance for addressing Queensland Planning Provisions (QPP).

The department advised:

Given the interaction between the master plan and the planning regime (Clause 28), it is intended that as far as practicable the master plan will be consistent with the terminology and usage of the QPP.<sup>48</sup>

### *Guidelines*

The QPA requested that the guidelines for making a master plan appropriately reflect the operational realities of ports and the complex strategic planning work undertaken by ports, local governments and state government in and around port precincts.<sup>49</sup>

The Queensland Resources Council (QRC) suggested the guidelines should clearly indicate that they would be used by agencies other than the department and include information about how other agencies would use master plans and port overlay to assess against their approval systems.<sup>50</sup>

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<sup>44</sup> Environmental Defenders Office North Queensland, Submission 5.

<sup>45</sup> Australian Marine Conservation Society, Submission 52.

<sup>46</sup> Queensland Ports Association, submission 18. See also, North Queensland Bulk Ports, submission 36; Gladstone Ports Corporation, submission 37.

<sup>47</sup> Department of State Development, correspondence dated 10 July 2015, p 13.

<sup>48</sup> Ibid, p 18.

<sup>49</sup> Queensland Ports Association, submission 18.

<sup>50</sup> Queensland Resources Council, submission 28.

The department advised:

A broader guideline covering more aspects of master planning is being developed for the use of all parties involved in the preparation of master planning documentation. ... Additionally, there will be a subsequent public consultation period on the guideline, followed by a publicly available consultation report.<sup>51</sup>

Stakeholders also raised concerns about the guidelines being non-statutory in nature.<sup>52</sup> The department advised:

The guideline will be non-statutory to allow easier amendment. This ensures the guidelines will remain flexible enough to respond to any concerns about its operation during implementation.<sup>53</sup>

### *Consultation*

QPA expressed concern that there was no legislative requirement for ports to be involved in the development of a master plan.<sup>54</sup>

We certainly believe that the ports need to play an active role in any of the port master planning. While we understand that that is likely the intent of the department, it is not clear in the legislation.<sup>55</sup>

Ports Australia advocated for ports authorities to be responsible for master planning.<sup>56</sup> The department advised:

Local government and port authorities are key participants in an open and transparent port master planning process. This will be expressed in the port master planning guidelines and is recognised in the formal notification and formal consultation requirements.<sup>57</sup>

The department will work closely with relevant stakeholders throughout the master plan preparation process, including entities with planning jurisdiction in the master planned area... Peak bodies including environmental groups and industry participants will also be consulted.<sup>58</sup>

The Local Government Association of Queensland (LGAQ) and Whitsunday Regional Council recommended the Minister be required to respond to each entity in writing noting how each submission had been addressed or taken as a condition of the master plan or amendment.<sup>59</sup> The department advised that consideration would be given to including a step in the guidelines for the preparation of a summary of the results of consultation.<sup>60</sup>

The Gladstone Ports Corporation (GPC) recommended clauses 12 and 17 be amended to require the Minister to provide the ports authority for a priority port with a final copy of the master plan or amendment. The submitter also requested amendments be made to require the Minister to provide a copy of the notice to the port authority when a decision was made to not make the proposed master plan or amendment and to advise the port authority of a decision to take no further action in relation to a review.<sup>61</sup>

<sup>51</sup> Department of State Development, correspondence dated 10 July 2015, p 25.

<sup>52</sup> Public hearing transcript, 13 July 2015, p 14; Local Government Association of Queensland, submission 29; Mackay Regional Council, submission 34.

<sup>53</sup> Department of State Development, correspondence dated 10 July 2015, pp 16-17.

<sup>54</sup> Public hearing transcript, 13 July 2015, p 2.

<sup>55</sup> Ibid, p 5.

<sup>56</sup> Ports Australia, submission 50.

<sup>57</sup> Department of State Development, correspondence dated 10 July 2015, p 14.

<sup>58</sup> Ibid, p 15.

<sup>59</sup> Whitsunday Regional Council, submission 19; Local Government Association, submission 29.

<sup>60</sup> Department of State Development, correspondence dated 10 July 2015, p 14.

<sup>61</sup> Gladstone Ports Corporation, submission 37.

### *Review of master plan*

The EDO Qld and Mackay Conservation Group recommended that the review process for a master plan should be open for public consultation.

... with documents informing the minister's review required to be available to the public so the public is able to understand on reflection how successful the master plan has been.<sup>62</sup>

GPC and the Port of Townsville (POTL) requested the Bill be amended to include provision for an entity to request the Minister undertake a review of the master plan.<sup>63</sup>

Some environmental stakeholders requested that the timeframe for a review of a master plan be reduced from 10 to 7 years.<sup>64</sup>

The department advised that an entity could request a review or amendment of a master plan at any time without a specific provision being included in the Bill.<sup>65</sup>

### *Public access to documents*

Some environmental stakeholders requested all material in relation to master planning be published to the department's website during public notification periods. Some also suggested that documents informing a master plan review be made public.<sup>66</sup>

The EDO Qld contended:

Public notification processes must assist the public in providing easy access to the documents they are seeking consultation on, otherwise they are not effective.<sup>67</sup>

The North Queensland Conservation Council recommended that it should be mandatory for all documents informing decisions (particularly documents informing a master plan review) to be kept on the public register. This would ensure that stakeholders understood the success of the priority management measures in managing environmental impacts.<sup>68</sup>

The department advised:

It is proposed that supporting documentation used in developing, amending or reviewing a master plan would be made publicly available.<sup>69</sup>

### *Timeframes*

The Whitsunday Regional Council and LGAQ recommended extending the time for consultation on the making, amending or reviewing of a master plan. Whitsunday Regional Council recommended between 40 and 60 business days and LGAQ recommend a minimum of 40 business days.

Specific to local governments, LGAQ noted that a longer timeframe would enable consideration by full council (or equivalent elected committee) and more effective consultation. LGAQ also noted that

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<sup>62</sup> Public hearing transcript, 13 July 2015, p 10.

<sup>63</sup> Gladstone Ports Corporation, submission 37 & Port of Townsville Limited, submission 41.

<sup>64</sup> Protect Keppel Bay, submission 21; Environmental Defenders Office (Qld), submission 27; Mackay Conservation Group, submission 40; Australian Marine Conservation Society, submission 52.

<sup>65</sup> Department of State Development, correspondence dated 10 July 2015, p 12.

<sup>66</sup> Cairns and Far North Environment Centre Inc, submission 25; Environmental Defenders Office, submission 27; Queensland Environmental Law Association, submission 38; Mackay Conservation Group, submission 40; Public hearing transcript, 13 July 2015, p 10.

<sup>67</sup> Public hearing transcript, 13 July 2015, p 10. WWF-Australia also endorsed the comments made by EDO Qld in its submission.

<sup>68</sup> North Queensland Conservation Council, submission 15.

<sup>69</sup> Department of State Development, correspondence dated 10 July 2015, p 6.

a 40 day period would be consistent with the timeframe included for consultation on land use plans under the *Transport Infrastructure Act 1994*.<sup>70</sup>

The department advised:

The period given is considered adequate for a response to the notification of intent; this does not require a comprehensive analysis of a 'new' planning document. ... The consultation periods stated in the Bill are the minimum requirements and the Minister can choose a longer period.<sup>71</sup>

The QPA was concerned that the Bill did not provide detail on the timeframe or process of developing a master plan and suggested that a new clause be inserted to outline how the master plan would be developed and to increase transparency.<sup>72</sup>

#### Committee comment

The committee supports the proposed master planning process and acknowledges the national initiatives which led to the generation of port master planning.

The committee understands that it may not be possible to detail every scenario in primary legislation in relation to the master planning process. The committee is confident the department will continue to incorporate the views of stakeholders in the process of finalising the guidelines to be developed under clause 18.

We have heard a lot of comments and questions raised today about the port master planning guidelines in particular, and I think the feedback that we have received through the submission process has been incredibly instructive.<sup>73</sup>

The committee encourages the department to revisit the submissions and evidence provided to the committee when finalising all components of the guidance material. The committee is satisfied that the guidelines are non-statutory in order to facilitate amendment.

The committee is also satisfied with the timeframes for consultation provided by the Bill and is reassured by the department that both port authorities and local governments would form a vital part of the port master planning process.

A range of stakeholders were generally satisfied with the level of consultation in relation to the master planning process. However, the committee considers there are a few areas which could be strengthened.

For example, the department advised that consideration would be given to including a step in the guidelines to prepare a summary of the results of consultation. The committee considers this process should be a requirement under the Bill.

The master plan is the 'strategic document' that would be used to inform the development of the port overlay. There is no requirement for the master plan to be tabled. Accordingly, only the regulation declaring the making of a master plan would be disallowable by the Parliament. The port overlay would also be subject to disallowance by the Parliament.

In order for the Parliament to adequately inform itself during consideration of a regulation prescribing a master plan or a port overlay, the committee recommends the Bill be amended to require the Minister to table in Parliament the master plan or the amended master plan, as well as a summary of the outcomes of the consultation.

<sup>70</sup> Local Government Association of Queensland, submission 29. Section 285C of the *Transport Infrastructure Act 1994* requires a port authority to consult on its draft land use plan for at least 40 business days.

<sup>71</sup> Department of State Development, correspondence dated 10 July 2015, pp 13-14.

<sup>72</sup> Queensland Ports Association, submission 18.

<sup>73</sup> Public hearing transcript, 13 July 2015, p 24.

This issue is also discussed in the context of fundamental legislative principles in part 3 of this report.

**Recommendation 2**

The committee unanimously recommends the Bill be amended to require the Minister to table in Parliament a master plan, an amended master plan, and a summary of the outcomes of the consultation.

The committee recommends the Bill be amended to require the Minister to provide the relevant port authority and local government with a copy of the final or amended master plan.

The committee also recommends the Bill be amended to provide copies of notices to the relevant port authority and local government when a decision is made to not make a master plan or amendment and to advise the relevant agencies if a decision is made to take no further action in relation to a review.

**Recommendation 3**

The committee unanimously recommends the Bill be amended to:

- (a) require the Minister to provide the relevant port authority and local government with a copy of the final or amended master plan
- (b) provide copies of notices to the relevant port authority and local government when a decision is made to not make or amend a master plan, and
- (c) advise the relevant port authority or local government about a decision to take no further action in relation to a review of a master plan.

The committee also considers the review of a master plan should be open to public consultation. This would enable a wider range of stakeholders to assess the effectiveness of implementing the priority management measures and whether they should be changed.

**Recommendation 4**

The committee unanimously recommends the Bill be amended to provide public consultation during the review of a master plan.

The committee acknowledges the department's advice that it is proposed that supporting documentation used in developing, amending or reviewing a master plan would be made publicly available. While clause 56 does not preclude the chief executive from publishing material about a review of a master plan, the committee considers that it is important to stakeholders that this is prescribed by the Bill.

Accordingly, the committee recommends clause 56 be amended to require the chief executive to publish documents associated with the review of a master plan on the public register.

**Recommendation 5**

The committee unanimously recommends clause 56 of the Bill be amended to require the chief executive to publish documents associated with the review of a master plan on the public register.

### 2.2.3 Port overlay

#### Making a port overlay

As soon as practicable after the master plan takes effect, the Minister must make a port overlay for the priority port's master planned area to implement the master plan.<sup>74</sup> Port overlays will extend over larger areas than the strategic port land so that matters of state interest, such as supply chain corridors, can be planned for and managed.<sup>75</sup>

It is intended that a port overlay will have a similar effect to a State planning regulatory provision under the *Sustainable Planning Act 2009* in that it will:<sup>76</sup>

- regulate development under the *Sustainable Planning Act 2009* to the extent of any inconsistency until planning instruments are amended, and
- include codes with performance outcomes and acceptable solutions, and criteria for assessing development.

An overlay may include development assessment provisions which are to be used until the relevant planning instrument is amended to incorporate requirements of the overlay.<sup>77</sup>

The Minister may make or amend a port overlay by publishing a public notice stating:<sup>78</sup>

- the day the port overlay, or amendment, was made
- where a copy of the port overlay or amendment is available for inspection and purchase, and
- for an amendment of a port overlay, a brief description of the amendment.

The Minister must give a copy of the notice, and the port overlay or the amendment, to the following entities:<sup>79</sup>

- the relevant port authority
- each affected local government
- if the master planned area is within, or includes, a priority development area—Minister for Economic Development Queensland (MEDQ), and
- if the master planned area is within, or includes, a State development area—the Coordinator-General.

Within 14 sitting days after the port overlay or amendment is made, the Minister must table a copy of the instrument in the Legislative Assembly.<sup>80</sup> The port overlay is not subordinate legislation,<sup>81</sup> but it is subject to disallowance in the Legislative Assembly as if it were subordinate legislation.<sup>82</sup>

<sup>74</sup> Clause 19. See also clause 2(2)(c). A port overlay is a statutory instrument under the *Statutory Instruments Act 1992*: clause 20(1).

<sup>75</sup> Public briefing transcript, 25 June 2015, p 9. See also, Explanatory notes, p 9. See *Transport Infrastructure Act 1994*, Chapter 8, Part 4 for details about strategic port land.

<sup>76</sup> Explanatory notes, p 9; Department of State Development, correspondence dated 10 July 2015.

<sup>77</sup> Explanatory notes, p 9. See also, Department of State Development, correspondence dated 10 July 2015.

<sup>78</sup> Clause 22(1).

<sup>79</sup> Clause 22(2).

<sup>80</sup> Clause 22(3).

<sup>81</sup> Clause 20(2).

<sup>82</sup> Clause 22(5).

A port overlay for the priority port's master planned area is repealed if the Minister repeals the master plan.<sup>83</sup> A port overlay may also be repealed if the Minister makes another port overlay for the master planned area that specifically repeals the existing port overlay.<sup>84</sup>

#### Stakeholder views on port overlays

Port authorities were, in the main, supportive of the concept of port overlays as set out in the Bill, while some other stakeholders, such as councils and environmental groups, had reservations.

The QPA supported the Bill's proposal to implement port overlays for priority ports' master planned areas and noted that it is consistent with views expressed by Ports Australia.<sup>85</sup>

The LGAQ was concerned about the potential implications of port development on local governments. The organisation recommended the process to develop port overlays (and master plans) should consider potential impacts on local government infrastructure and appropriately mitigate any adverse impacts, including related infrastructure funding, in consultation with the relevant council.<sup>86</sup> Mackay Regional Council expressed concern that the port overlay will be 'overly advantageous to the port' and represent 'yet another new planning layer or process'.<sup>87</sup>

The department reassured the committee regarding the impact of port overlays on local governments, stating it 'will work closely with local governments throughout the master plan and port overlay drafting process to address potential impacts'.<sup>88</sup>

#### Consultation on port overlays

Some environmental group submitters contended that the making and amending of port overlays should be subject to public consultation 'to ensure there is no ability for Ministers to make changes to these statutory instruments that do not reflect master plans which were subject to public consultation'.<sup>89</sup> EDO NQ noted that the Minister's powers 'are substantial as they permit land use planning decisions without consultation or consent that override both planning instruments under the Planning Act and land use plans under the Transport Infrastructure Act'.<sup>90</sup>

The EDO Qld recommended that a new clause be inserted into the Bill requiring public consultation along the lines of that in clause 11.<sup>91</sup> EDO NQ submitted that port overlays (and master plans) 'should be subject to objection and appeal provisions similar to those in planning legislation for impact assessable development'.<sup>92</sup> The organisation considered that the department's position that public consultation would be undertaken on the master plan and therefore is not required for the port overlay was not supportable because '[t]he force of a port overlay as a planning instrument is so substantial that [it] should be subject to public scrutiny'.<sup>93</sup>

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<sup>83</sup> Clause 13(3). The port overlay is repealed on the day the master plan replacing the repealed master plan has effect: clause 13(4)

<sup>84</sup> Clause 23.

<sup>85</sup> Queensland Ports Association, Submission 18. See also, for example, North Queensland Bulk Ports Corporation, submission 36.

<sup>86</sup> Local Government Association of Queensland, Submission 29. See also, public hearing transcript, 13 July 2015, p 14.

<sup>87</sup> Mackay Regional Council, submission 34.

<sup>88</sup> Department of State Development, correspondence dated 10 July 2015.

<sup>89</sup> Environmental Defenders Office Queensland, submission 27; Keppel and Fitzroy Delta Alliance working to Protect Keppel Bay, submission 21; Mackay Conservation Group, submission 40.

<sup>90</sup> Environmental Defenders Office of Northern Queensland, submission 5.

<sup>91</sup> Environmental Defenders Office Queensland, submission 27.

<sup>92</sup> Environmental Defenders Office of Northern Queensland, submission 5.

<sup>93</sup> Ibid. See also, Department of State Development, correspondence dated 10 July 2015.

GPC considered that providing priority ports with the opportunity to review the draft overlay prior to public notification would 'enable ports to assist in the preparation of codes for development assessment, identify opportunities for delivering LTSP outcomes through enforceable management of tenant activities on port land and identify any inconsistencies with the port Land Use Plan'.<sup>94</sup> GPC recommended that a new provision be inserted in the Bill enabling ports and other relevant entities to review the draft port overlay and provide input into its preparation.<sup>95</sup>

#### *Delay between making the master plan and making the port overlay*

Some port authority submitters advocated for amending the Bill to require the port overlay to be made at the same time as the master plan. This, they contended, would mean that consultation could be undertaken for both, it would eliminate the need for a separate process, and there would be no delay between the making of the master plan and the making of the port overlay.<sup>96</sup>

The Queensland Environmental Law Association (QELA) recommended amending clause 19 to include a statutory timeframe, or a 'no later than' period, for the Minister to make a port overlay for the priority port's master planned area so as to provide certainty to those affected by a master plan for a port.<sup>97</sup>

The department advised the committee that, in practice, 'preparation of a port overlay will occur concurrently with preparation of a master plan to ensure any implementation issues are considered in preparing the master plan'.<sup>98</sup>

#### *Relationship with other Acts and instruments*

A port overlay cannot regulate development in a priority development area (PDA) or State development area (SDA).<sup>99</sup>

#### *Relationship with Economic Development Act*

If the master planned area is within, or includes, a PDA, the MEDQ must, as soon as practicable after a port overlay takes effect, consider whether the development scheme for the PDA under the Economic Development Act (ie *Economic Development Act 2012*) is consistent with the port overlay and, if there is an inconsistency, decide whether to amend the development scheme to remove the inconsistency. If the MEDQ decides not to amend the development scheme, the MEDQ must, within 14 sitting days after making the decision, table a report about the reasons for the decision.<sup>100</sup>

In making or amending a development scheme for a PDA, the MEDQ must consider, but is not bound by, a requirement under a port overlay. If the MEDQ makes or amends a development scheme for a PDA which is within, or includes, a priority port's master planned area, and the development scheme or amendment is inconsistent with the port overlay, the MEDQ must table a report in the Legislative Assembly within 14 sitting days after making the development scheme or an amendment stating the reasons for making the scheme or amendment despite the inconsistency.<sup>101</sup>

#### *Relationship with State Development Act*

If the master planned area is within, or includes, an SDA, the Coordinator-General must, as soon as practicable after a port overlay takes effect, consider whether an approved development scheme for

<sup>94</sup> Gladstone Ports Corporation, submission 37.

<sup>95</sup> Ibid.

<sup>96</sup> See, for eg, North Queensland Bulk Ports, submission 36; Queensland Ports Association, submission 18.

<sup>97</sup> Queensland Environmental Law Association, submission 38.

<sup>98</sup> Department of State Development, correspondence dated 10 July 2015.

<sup>99</sup> Clause 19.

<sup>100</sup> Clause 26.

<sup>101</sup> Clause 27.

an SDA under the State Development Act (ie *State Development and Public Works Organisation Act 1971*) is inconsistent with the port overlay, and if there is an inconsistency, decide whether to amend the approved development scheme to remove the inconsistency. If the Coordinator-General decides not to amend the approved development scheme, the Coordinator-General must, within 14 sitting days after making the decision, table in the Legislative Assembly a report about the reasons for the decision.<sup>102</sup>

In making or amending an approved development scheme for a SDA, the Coordinator-General must consider, but is not bound by, a requirement under a port overlay. If the Coordinator-General makes or amends an approved development scheme for an SDA which is within, or includes, a priority port's master planned area, and the approved development scheme, or amendment, is inconsistent with the port overlay, the Coordinator-General must, within 14 sitting days after making the scheme or amendment table a report in the Legislative Assembly stating the reasons for making the instrument despite the inconsistency.<sup>103</sup>

#### *Relationship with Planning Act and planning instruments under the Act*

The Planning Act (ie *Sustainable Planning Act 2009*) applies for development on land in a priority port's master planned area. If there is an inconsistency between clause 28 of the Bill and the Planning Act, clause 28 prevails to the extent of the inconsistency. If a development application is for development in a priority port's master planned area and stated in the port overlay to be assessable development under the Planning Act, the assessment manager's decision about the development application must not be inconsistent with the port overlay.<sup>104</sup>

If there is an inconsistency between a port overlay and a planning instrument under the Planning Act, the port overlay prevails to the extent of the inconsistency.<sup>105</sup>

#### *Relationship with land use plans under Transport Infrastructure Act*

If there is an inconsistency between a port overlay and a land use plan made under Chapter 8, part 4 of the *Transport Infrastructure Act 1994*, the port overlay prevails to the extent of the inconsistency.<sup>106</sup>

#### Amendments to related Acts

Section 286 of the *Transport Infrastructure Act 1994* requires all ports to submit land use plans to the Minister for approval. Land use plans regulate development at each port. Clause 64 of the Bill amends section 286 to require a port's land use plan to be consistent with a port overlay for the master planned area.

Schedule 2 of the Bill proposes to make consequential amendments to the *Economic Development Act 2012* and the *State Development and Public Works Organisation Act 1971* and the *Sustainable Planning Regulation 2009* to ensure a port overlay is considered when making or amending a development scheme or assessing development.

#### Inability of the port overlay to regulate development in a PDA or SDA

North Queensland Bulk Ports (NQBP) expressed its support for port overlays but submitted that confusion may arise over the State interests because the Coordinator-General and MEDQ can implement land use outcomes that conflict with port overlays. It recommended that clause 19 be amended to allow the port overlay to regulate development in PDAs and SDAs. It considered that

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<sup>102</sup> Clause 29.

<sup>103</sup> Clause 30.

<sup>104</sup> Clause 28.

<sup>105</sup> Clause 24.

<sup>106</sup> Clause 25.

because there will be a comprehensive planning process under the control of the State to prepare the master plan and port overlay, the State interests in the overlay should be fully implemented in the PDAs and SDAs in the way that they are proposed to be for port authority and local government planning schemes.<sup>107</sup>

Port authority submitters pointed out that the presence of PDAs and SDAs within or including or in close proximity to ports may reduce the applicability of port overlays. At Abbot Point, for example, the Abbot Point SDA covers all of the onshore strategic port land owned by NQBP and at Townsville, a PDA adjoins the operational port area and there is an SDA in close proximity to the port.<sup>108</sup> POTL stated:

This [ie the presence of the PDA and SDA] may have the unintended effect that the Bill will not be able to achieve the purpose of regulating development surrounding Townsville as a Priority Port, nor being able to identify and protect land and infrastructure critical to the effective operation of the Port network.<sup>109</sup>

QPA claimed that 'it seems like a lost opportunity to not have the final port overlay ... regulate development in the priority port area and state development area, both of which are controlled by the state'.<sup>110</sup> It asserted that the port overlay should be the one document which represents the state's interests.<sup>111</sup>

The QRC recommended widening the circumstances in which the MEDQ and the Coordinator-General have to determine whether there is an inconsistency between the development scheme for a PDA or approved development scheme for an SDA by including situations that adversely affect a priority port's master planning area.<sup>112</sup>

#### Link with other land use plans

GPC stated that master plans and port overlays do not link with the existing regulatory requirements for development (port Land Use Plans). It recommended that clause 2 of the Bill be amended to require port overlays regulate development in conjunction with port Land Use Plans.<sup>113</sup>

The department advised:

The master plan requires that existing land use plans under SPA and the TIA be amended to be consistent with the master plan and that the Coordinator-General and MEDQ consider the application of the master plan over areas under their planning control and either amend their instruments or table a report in Parliament stating the reasons for making the instrument despite the inconsistency.

The master plan and port overlay do not control land in the same way as the land use plan for strategic port land and any changes to levels of assessment, development rights or applicable codes and conditions are developed through a public process.<sup>114</sup>

<sup>107</sup> North Queensland Bulk Ports Corporation, Submission 36. See also, Queensland Ports Association, Submission 18 and Public hearing transcript, 13 July 2015, p 2.

<sup>108</sup> Port of Townsville, submission 41; North Queensland Bulk Ports Corporation, submission 36. See also, Queensland Ports Association, submission 18 and Public hearing transcript, 13 July 2015, p 2.

<sup>109</sup> Port of Townsville, Submission 41.

<sup>110</sup> Public hearing transcript, 13 July 2015, p 2.

<sup>111</sup> Ibid.

<sup>112</sup> Queensland Resources Council, submission 28.

<sup>113</sup> Gladstone Ports Corporation, submission 37.

<sup>114</sup> Department of State Development, correspondence dated 10 July 2015, p 19.

Existing development applications and approvals

Clauses 38 and 39 prescribe how a port overlay will impact existing development approvals and existing development applications. QELA submitted that there is uncertainty in the Bill in relation to the impact of a port overlay in circumstances where:

- an appeal has been filed in court in relation to a development application (before the commencement of the Bill) but is undecided at the time of commencement of the Bill
- an application to amend an existing development approval is made before the commencement of the Bill but is undecided at the time of the commencement of the Bill, and
- an application is made to change an existing development approval after the commencement of the Bill.<sup>115</sup>

Compensation for port overlays

In certain instances, an owner of an interest in land is entitled to be paid compensation by the State if the application of a port overlay, or an amendment of a port overlay, results in a reduction of the value of the owner's interest in land.<sup>116</sup> The amount of compensation payable is the difference between the market value of the land immediately before and immediately after the planning change, taking into account other relevant matters, such as benefits accruing to adjacent land owned by the same land owner as a result of the planning change or because of the construction of infrastructure on the adjacent land under the port overlay.<sup>117</sup>

A claim for compensation must be made to the Minister within three years after the day the port overlay has effect,<sup>118</sup> and the Minister must decide a compensation claim within 60 business days after the claim is made.<sup>119</sup> A person who is dissatisfied with the Minister's decision about a compensation claim may appeal to the Planning and Environment Court.<sup>120</sup> The court must decide to confirm the decision, or change the decision, or set the decision aside and make a decision replacing it.<sup>121</sup>

QELA stated that the effect of a claim for compensation having to be made within three years after the day the port overlay has effect 'will have practical implications for land owners and planning consultants in that they will need to be vigilant in considering the implications of a port overlay immediately after the port overlay takes effect and be swift in preparing and lodging development applications accordingly'. QELA suggested that 'consideration might be given to extending an entitlement to claim compensation to within six months after the development application is deemed to have been decided. This would be consistent with the compensation provisions in the *Sustainable Planning Act 2009*'.<sup>122</sup>

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<sup>115</sup> Queensland Environmental Law Association, submission 38.

<sup>116</sup> Clauses 41-43, 45.

<sup>117</sup> Clause 48.

<sup>118</sup> Clause 44.

<sup>119</sup> Clause 46.

<sup>120</sup> Clause 51, Schedule 1; *Sustainable Planning Act 2009*, Schedule 3.

<sup>121</sup> Clause 53(3).

<sup>122</sup> Queensland Environmental Law Association, submission 38.

There is no consequence in the Bill if the Minister does not decide the compensation claim within 60 business days. For certainty, QELA recommends that consideration be given to the inclusion of a 'deemed refusal', like that in Schedule 3 of the *Sustainable Planning Act 2009*.<sup>123</sup>

The EDO (Qld) and EDO NQ recommended that the committee consider amending the compensation provisions. EDO NQ described the compensation provisions as 'excessive',<sup>124</sup> beyond that provided in the *Sustainable Planning Act 2009* (SPA) and the *State Development and Public Works Organisation Act 1971*.<sup>125</sup> EDO NQ considered that the compensation provisions 'could easily limit the ability of the Bill and port overlays to achieve desirable land uses consistent with the port's master plan'.<sup>126</sup>

The department advised the committee that it is considering the compensation provisions based on the submissions received by the committee.<sup>127</sup>

#### Committee comment

The committee is satisfied the department is looking into the matters raised in the submissions in relation to compensation for port overlays.

The committee appreciates the department's advice that, in practice, the preparation of a master plan and a port overlay would occur at the same time and is satisfied that there should not be a lengthy delay between the two processes.

The issue of consultation on the port overlay is important to stakeholders when making or amending a port overlay. Despite the department's advice that the port overlay is merely implementing the master plan, stakeholders should be provided the opportunity to comment on how the various elements of a master plan have been incorporated into the statutory instrument.

Accordingly, the committee recommends the Bill be amended to require consultation on a port overlay. The committee is cognisant of the fact that the majority of issues are likely to be canvassed during the master planning process, and therefore the consultation period would not have to be as long. Additionally, consultation may not be considered necessary for a minor amendment to a port overlay.

This issue is also considered by the committee in relation to fundamental legislative principles in part 3 of this report.

#### **Recommendation 6**

The committee unanimously recommends the Bill be amended to require consultation on a port overlay.

The committee is satisfied with the relationship between port overlays and other Acts and instruments.

The committee recommends the Minister address the potential uncertainty identified by QELA regarding existing development applications and approvals in his second reading speech.

<sup>123</sup> Ibid. Queensland Environmental Law Association notes that if its recommendation is adopted, clause 51 would have to be suitably amended.

<sup>124</sup> Environmental Defenders Office North Queensland, submission 5.

<sup>125</sup> Ibid. See also, Environmental Defenders Office Queensland (EDO (Qld)), submission 27. The EDO (Qld)'s comments with respect to the compensation provisions were endorsed by WWF-Australia: WWF-Australia, submission 51.

<sup>126</sup> Environmental Defenders Office North Queensland, submission 5.

<sup>127</sup> Department of State Development, correspondence dated 10 July 2015.

**Recommendation 7**

The committee recommends the Minister address the potential uncertainty identified by the Queensland Environmental Law Association regarding existing development applications and approvals in his second reading speech.

**2.2.4 Restrictions on capital dredging and on new port development**

Capital and maintenance dredging and the disposal of dredge material are subject to a variety of State and Commonwealth approval processes that are determined by the location of the dredging or disposal activity.<sup>128</sup>

Two objectives of the Bill are to:

- protect greenfield areas by restricting new port development in and adjoining the GBRWHA to within current port limits, and
- restrict capital dredging for the development of new, or expansion of, existing port facilities to within the regulated port limits of Gladstone, Hay Point/Mackay, Abbot Point and Townsville.

It is considered that optimising the use of existing port infrastructure would minimise the environmental impacts of ports, particularly on the GBR.<sup>129</sup> The provisions implementing these objectives give effect to commitments made by the State Government in the LTSP.<sup>130</sup>

Clause 32 provides that an assessment manager must refuse a development activity for a port facility<sup>131</sup> if it is within the Great Barrier Reef Coast Marine Park (the State marine park), or within a restricted area<sup>132</sup> that is outside a port's existing port limits.<sup>133</sup> The clause does not, however, apply to development that is dredging or disposal of dredged materials.<sup>134</sup>

Clause 33 provides that capital dredging is prohibited for port development within a restricted area if it is for the purpose of establishing, constructing or improving a port facility, unless it is a port facility in a priority port's master planned area or a small-scale port facility to be used for a tourism or recreation purpose. This means that capital dredging for purposes relating to a port facility will only

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<sup>128</sup> Dredging and the disposal of dredge material undertaken in state waters requires a range of State approvals such as tidal works approval under the *Sustainable Planning Act 2009* and Environmentally Relevant Activity (ERA) approval under the *Environmental Protection Act 1994*. If the activity occurs within a State Marine Park, it may also require a State Marine Park Permit. Additional approvals under the *Fisheries Act 1994* and/or the *Coastal Protection and Management Act 1995* may also be required depending on the location and nature of the dredging/disposal works. Approval processes under the *Sustainable Planning Act 2009* for tidal works, or otherwise disposing of dredge material or other solid waste material in tidal water, require assessment against the *National Assessment Guidelines for Dredging 2009*. All dredging in Queensland must be consistent with the requirements of the Protocol to the London Convention (the London Protocol).

<sup>129</sup> Explanatory notes, p 12.

<sup>130</sup> Explanatory notes, pp 1, 12, 13; Australian Government, *'Reef 2050 Long-Term Sustainability Plan'*, 2015, p 26.

<sup>131</sup> A port facility is a facility or land used in the operation or strategic management of a port authority's port. It does not include a small-scale port facility to be used for a tourism or recreation purpose: Schedule 1.

<sup>132</sup> A restricted area is an area that is within the Great Barrier Reef World Heritage Area but outside the Commonwealth marine park: clause 31.

<sup>133</sup> Existing port limits means the port's port limits under the *Transport Infrastructure Act 1994* immediately before the commencement of the proposed Sustainable Ports Development Act: clause 32. The port limits are provided for in the *Transport Infrastructure (Ports) Regulation 2005*.

<sup>134</sup> Clauses 33 and 34 deal with capital dredging and disposal of dredge material.

be permitted in the master planned areas of the Port of Abbot Point, the Port of Gladstone, the ports of Hay Point and Mackay, and the Port of Townsville and at small-scale port facilities used for tourism or recreation purposes.<sup>135</sup>

Capital dredging is defined in Schedule 1 as dredging carried out for the purpose of:

- creating or enlarging a channel, basin, port, berth or other similar thing
- removing material that is unsuitable as a foundation for a port facility
- creating a trench for a pipe, cable or tube, or
- an activity incidental to any of the above activities, but does not include dredging to maintain the safe and effective ongoing operation of a port facility.

*Impact of the capital dredging and new port development restrictions*

The majority of submitters were in favour of prohibiting capital dredging for port facilities outside the four major ports and limiting the development of port facilities to the existing ports in the GBRWHA because of the protection they will provide for the GBR,<sup>136</sup> but some stakeholders were concerned about the impact of the restrictions.

Ports Australia submitted that restricting capital dredging and other development to within priority port areas ‘will be detrimental to the Queensland economy, particularly in regional areas ...’<sup>137</sup> The Port of Cairns, in particular, is expected to be greatly impacted by the proposed restrictions on capital dredging outside the priority ports. The situation in relation to the Ports of Cairns and Mourilyan is discussed separately below.

NQBP noted that the prohibition on port development outside the ‘restricted area’ means that a large part of many ports is excluded from development, including some existing port facilities and infrastructure. By way of example, it stated that the Port of Hay Point’s departure path is outside the restricted area, as is the port’s designated site for relocation of material from maintenance dredging and 102 ship anchorages.<sup>138</sup>

POTL noted that a master plan may not be made for Townsville Port until possibly 2017 and thus the port will not be able to undertake capital dredging until then. This is of concern to the submitter because POTL ‘has several projects planned for completion in 2015–2016 that involve capital dredging (as part of the project)’. POTL sought to have the Bill amended to enable the works to be undertaken.<sup>139</sup> With respect to this, the department stated:

The intent of the Bill is that these projects would proceed as per current assessment and approval process. The Bill does not intend to prohibit or delay these projects provided they meet current approval requirements and are not [inconsistent] with the policy commitments expressed through the Bill.<sup>140</sup>

<sup>135</sup> The Bill does not regulate maintenance dredging: see discussion below.

<sup>136</sup> See, amongst others, submission 46 – a form email received from over 1500 submitters. See also, for example, Environmental Defenders Office Qld, submission 27; Ports North, submission 23; Keppel and Fitzroy Delta Alliance working to protect Keppel Bay, submission 21.

<sup>137</sup> Ports Australia, submission 50.

<sup>138</sup> North Queensland Bulk Ports Corporation, submission 36.

<sup>139</sup> Port of Townsville, submission 41. See also, Queensland Ports Association, submission 18; North Queensland Bulk Ports Corporation, submission 36.

<sup>140</sup> Department of State Development, correspondence dated 10 July 2015.

Regulation of non-port related capital dredging

Many stakeholders were concerned that the Bill did not contain controls on capital dredging for development other than that for ports, such as for harbours and marinas, which can also involve large amounts of dredge material and have similar impacts.<sup>141</sup> The example cited in some submissions was the Shute Harbour marina proposal which includes dredging of approximately 500,000m<sup>3</sup> of material.<sup>142</sup>

WWF-Australia recommended amending the Bill to place volumetric limits on capital dredging for other types of developments. It suggested that amounts less than 100,000m<sup>3</sup> may be appropriate for non-port development in state waters within the GBRWHA.<sup>143</sup> Alternatively, it recommended that the government 'should specify the method and timeframe for implementing restrictions on non-port related development, dredging and offshore dumping of dredge material'.<sup>144</sup>

EDO Qld did not support the exemption provided to small-scale port facilities used for tourism or recreation purposes as it is of the view that the Bill 'should comprehensively address all port development, dredging and dredge spoil disposal from any port or marina in the GBR WHA, regardless of size'.<sup>145</sup> The EDO Qld stated that the smaller facilities are usually located in areas of high environmental values and biodiversity 'where the impact of even small scale operations may be magnified by the sensitivity of the local environment'.<sup>146</sup>

The department advised that development for minor marine infrastructure, including marinas, boat ramps and boat harbours, would not be prohibited as part of government policy. Additionally, the department stated that these are not considered *port facilities* and fall outside the scope of the Bill.

The department advised:

The purpose of the Bill is restricted to the management of development at ports as defined in Schedule 1 of the *Transport Infrastructure (Ports) Regulation 2005*. It will not regulate development that is unrelated to ports. Disposal of dredge spoil from non-port related processes is already dealt with under existing Queensland legislation.<sup>147</sup>

The department sought to alleviate concerns about any adverse impact that may occur as a result of dredging, and the disposal of dredge material, for the development of minor marine infrastructure:

The SPA contains reserve powers that can be used if the Minister is satisfied there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions happening in a planning scheme area.

The Deputy Premier is currently conducting a review of existing powers which will seek advice on the most appropriate way to minimise the impacts of dredging works from minor marine infrastructure and the disposal of dredge material.<sup>148</sup>

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<sup>141</sup> See, for example, WWF-Australia, Submission 51; Form email, Submission 46; North Queensland Conservation Council, Submission 15; Australian Marine Conservation Society Inc, Submission 52; Environmental Defenders Office Queensland, Submission 27; Environment Council of Central Queensland, Submission 16.

<sup>142</sup> Australian Marine Conservation Society Inc, Submission 52; Environmental Defenders Office Queensland, Submission 27.

<sup>143</sup> WWF-Australia, Submission 51.

<sup>144</sup> Ibid. See also, for example, Environment Council of Central Queensland, Submission 16.

<sup>145</sup> Environmental Defenders Office Qld, Submission 27. See Schedule 1, 'port facility'.

<sup>146</sup> Environmental Defenders Office Qld, Submission 27.

<sup>147</sup> Department of State Development, correspondence dated 10 July 2015, p 5.

<sup>148</sup> Ibid.

Definitions of restricted area and capital dredging

Stakeholders raised concerns about the definitions of ‘restricted area’ and ‘capital dredging’.<sup>149</sup>

NQBP recommended that the term ‘restricted area’ be changed to a more appropriate term, such as ‘controlled use area’ or ‘principal port area’.<sup>150</sup> QPA suggested, for similar reasons, that the term be changed to ‘designated area’.<sup>151</sup>

The department advised the committee that it is reviewing the term ‘restricted area’, amongst others, for the purpose of simplification/clarification.<sup>152</sup>

QPA suggested amending the definition of ‘capital dredging’ to clarify that capital dredging does not include maintenance work at ‘small-scale port facilities’.<sup>153</sup>

The department advised that the capital dredging definition ‘was developed having regard to the LTSP commitment, the National Assessment Guidelines for Dredging, and the definition of capital dredging in the *Great Barrier Reef Marine Park Regulations 1983*’.<sup>154</sup>

NQBP considered that clause 33 (no approvals for particular capital dredging) was difficult to understand because of its use of negatives and that it would be clearer if it stated when an approval may be granted rather than when it must be refused.<sup>155</sup>

Application of the Bill to the GBRMP

Some environmental group submitters contended that the Bill should be amended to regulate certain aspects of development that extend into the GBRMP.<sup>156</sup> The department affirmed there is a complex jurisdictional framework in the GBRWHA and advised that the Queensland Government is continuing to work with the Australian Government ‘to ensure the best outcomes for the Great Barrier Reef’.<sup>157</sup>

Committee comment

The committee is satisfied with the department’s response in relation to non-port related development and acknowledges the matters fall outside the scope of the Bill and are addressed by other legislation.

The committee notes the Deputy Premier is reviewing the existing powers under the SPA in order to determine the best way to minimise impacts of those dredging works and encourages the Deputy Premier to announce the findings of the review as soon as practicable.

The committee is generally satisfied with the definitions of capital dredging and restricted area. However, the committee considers it is ideal that the department review the proposed definitions to achieve greater clarity for stakeholders where possible.

<sup>149</sup> The Queensland Ports Authority also raised the issue of extending the definition of ‘port facility’ to ‘small-scale port operational requirements’. This issue is canvassed in the section on the Port of Cairns and Mourilyan.

<sup>150</sup> North Queensland Bulk Ports Corporation, submission 36.

<sup>151</sup> Queensland Ports Association, submission 18.

<sup>152</sup> Department of State Development, correspondence dated 10 July 2015.

<sup>153</sup> Queensland Ports Association, submission 18.

<sup>154</sup> Department of State Development, correspondence dated 10 July 2015.

<sup>155</sup> North Queensland Bulk Ports Corporation, submission 36.

<sup>156</sup> See, for example, Keppel and Fitzroy Delta Alliance working to protect Keppel Bay, submission 21; Environmental Defenders Office Queensland, submission 27.

<sup>157</sup> Department of State Development, correspondence dated 10 July 2015.

### **2.2.5 Disposal of port-related capital dredged material**

Clause 34 (Restriction on granting approvals for disposal of prescribed dredge material) proposes to implement the government's commitments to:

- prohibit the sea-based disposal of material generated by port-related dredging into the GBRWHA, and
- mandate the beneficial reuse of port-related capital dredged material, such as land reclamation in port development areas, or disposal on land where it is environmentally safe to do so.<sup>158</sup>

Clause 34 also provides that an approving authority may grant an approval for development that is, or includes, the disposal of prescribed dredge material<sup>159</sup> within a restricted area only if:

- it is impracticable to beneficially reuse the prescribed dredge material, and
- the prescribed dredge material will be deposited on land, other than tidal land,<sup>160</sup> in a way that is consistent with the principles of ecologically sustainable development.<sup>161</sup>

Possible beneficial reuses include but are not limited to:<sup>162</sup>

- engineered uses – eg: land reclamation; beach nourishment; offshore berms; capping material
- agriculture and product uses – eg: aquaculture, construction material, liners, and
- environmental enhancement – eg: restoration and establishment of wetlands, upland habitats, nesting islands and fisheries.

If the Bill is passed, the Australian Government's and the Queensland Government's bans would mean that there would be no sea-based disposal of port-related capital dredge material in the GBRWHA.<sup>163</sup>

The Queensland Government has committed to administratively rescind the Port of Townsville's 'Berth 12' project approval for sea-based disposal in the GBRWHA.<sup>164</sup>

#### Lack of clarity

A number of submitters commented that the drafting of clause 34 was not very clear.<sup>165</sup> GPC, for example, suggested that 'clause 34(1) implies that beneficial reuse can only occur outside the

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<sup>158</sup> Explanatory notes, p 13; Australian Government, 'Reef 2050 Long-Term Sustainability Plan', 2015, pp 26-27.

<sup>159</sup> Prescribed dredge material is material generated from capital dredging in a priority port's master planned area carried out for the purpose of establishing, constructing or improving a port facility in the master planned area.

<sup>160</sup> Tidal land is land that is submerged at any time by tidal water. Land is any land, whether above or below the ordinary high-water mark at spring tides.

<sup>161</sup> As set out under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), section 3A.

<sup>162</sup> Explanatory notes, p 14.

<sup>163</sup> See the Great Barrier Reef Marine Park Regulations 1983 (Cth), reg 88RA; Explanatory notes, p 13. The Australian Government ban on the disposal of certain capital dredge spoil material in the GBRMP commenced on 2 June 2015: Australian Government, '[Ban on capital dredge material disposal](#).'

<sup>164</sup> Department of State Development, correspondence dated 10 July 2015.

<sup>165</sup> See, for example, Ports North, submission 23; Port of Townsville, submission 41; Friends of the Port of Cairns, submission 39; Gladstone Ports Corporation Limited, submission 37; North Queensland Bulk Ports Corporation, submission 36; Queensland Ports Association, submission 18; Environmental Defenders Office Qld, submission 27.

restricted area'.<sup>166</sup> The EDO Qld also stated that the provision 'appears to allow ocean dumping if beneficial reuse is impracticable, but also then appears to require depositing on non-tidal land in an ecologically sustainable manner'.<sup>167</sup>

GPC recommended clause 34 be amended to provide clarity and reflect:<sup>168</sup>

- beneficial reuse is permissible within the restricted area, and
- where beneficial reuse within the restricted area is impracticable than disposal on land may be approved.

Other submitters sought clarification in relation to the concept of 'beneficial reuse'.<sup>169</sup> Suggestions for amendment included:

- the definition of beneficial reuse in the explanatory notes, with the inclusion of the words 'within the World Heritage Area' after 'capital dredged material' be included in the Bill, and<sup>170</sup>
- beneficial reuse be defined and with wide ranging examples.<sup>171</sup>

Both GPC and QPA sought clarification of the terms 'land' and 'tidal land'.<sup>172</sup>

Whitsunday Regional Council submitted that greater prescription needs to be placed around the word 'impracticable' as it is currently uncertain what would be approved. The Council recommended that a proposal 'be assessed against particular issues, such as economic viability, environmental reporting and public safety'.<sup>173</sup>

#### Extent of the ban

There was much support amongst submitters for the ban on sea-based disposal of capital dredge spoil in the GBRWHA.<sup>174</sup> Some submitters requested that the ban match that imposed by the Australian Government.<sup>175</sup>

Ports North requested the clause be extended to cover capital dredging from small-scale port facilities and projects covered by the transitional arrangements that are not within priority port areas.<sup>176</sup>

#### Impact of the ban

Ports Australia submitted that the prohibition on sea disposal of capital dredge material from within priority ports 'will result in both economic and ecological detriment'.<sup>177</sup> It further stated that 'the

<sup>166</sup> Gladstone Ports Corporation Limited, submission 37.

<sup>167</sup> Environmental Defenders Office Qld, submission 27.

<sup>168</sup> Gladstone Ports Corporation Limited, submission 37.

<sup>169</sup> See, for example, Ports North, submission 23; Port of Townsville, submission 41; Gladstone Ports Corporation Limited, submission 37.

<sup>170</sup> Queensland Ports Association, submission 18.

<sup>171</sup> Ports North, submission 23.

<sup>172</sup> Gladstone Ports Corporation, submission 37; Queensland Ports Association, submission 18.

<sup>173</sup> Whitsunday Regional Council, submission 19.

<sup>174</sup> See, for example, Environmental Defenders Office Qld, submission 27; Keppel and Fitzroy Delta Alliance working to protect Keppel Bay, submission 21; Form email, submission 46.

<sup>175</sup> See, for example, Environment Council of Central Queensland, submission 16; Cairns and Far North Environment Centre Inc, submission 25; Australian Marine Conservation Society Inc, submission 52; Keppel and Fitzroy Delta Alliance working to protect Keppel Bay, submission 21. See also, Great Barrier Reef Marine Park Regulations 1983, s 88RA.

<sup>176</sup> Ports North, submission 23.

<sup>177</sup> Ports Australia, submission 50.

inability of ports to consider the full range of disposal options ... for suitable dredge material does not align with the London Protocol ... nor the principles outlined within the National Assessment Guidelines for Dredging'.<sup>178</sup> It stated that issues related to onshore disposal of dredged material include:

- taking years to dry
- needing to be stored within containment walls, and able to cater for cyclones and storm surges
- large areas of land close to the port are required, and
- reclamation results in a loss of shallow coastal habitats and may cause foreshore erosion.<sup>179</sup>

The cost difference between disposing of capital dredged material onshore or at sea will differ between projects but it is likely that banning sea-based disposal will increase the cost of future port development and it may make projects unviable.<sup>180</sup>

Friends of the Port of Cairns was of the view that the Queensland Government should provide funding (including grants and long-term loans) for ports to cover the costs of onshore disposal of dredge spoil and for research and development.<sup>181</sup>

QPA noted that land disposal options may have environmental risks and will require 'large areas of coastal lands being used for dredge material management'.<sup>182</sup>

#### Rehandling of dredged material

GPC were concerned that the Bill does not allow for the rehandling of dredged material:

[Rehandling] ... is often necessary due to the inability of the dredger to pump material direct from its hopper to a disposal site. In such cases it is often required to undertake a rehandling of the material involving the temporary placement onto the seabed at a controlled site within the restricted area. This material is then re-dredged by more suitable equipment for pumping to shore.<sup>183</sup>

GPC asserted that if temporary placement of dredge material was not permitted, it would be detrimental to 'future expansion and concentration of industry and port development'<sup>184</sup> at the port at Gladstone. GPC sought assurance that it would be able to temporarily place material on the seabed prior to final disposal.

#### Committee comment

The committee supports the intent of clause 34 regarding the commitment in the LTSP to prohibit sea-based disposal of port-related capital dredge material and mandate beneficial reuse or disposal on land where it is environmentally safe to do so.

However, the committee is concerned that the current drafting does not adequately reflect the policy intent. For example, if it is intended that beneficial reuse be considered before the material could be deposited on land, this needs to be made clear. Secondly, the circumstances when prescribed dredge material could be disposed within a restricted area needs to be clearer.

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<sup>178</sup> Ibid.

<sup>179</sup> Ibid. See also, Queensland Ports Association, submission 18.

<sup>180</sup> See, for example, public hearing transcript, 30 July 2015, p 15; Gladstone Ports Corporation, submission 37; Cairns Regional Council, submission 9; Advance Cairns and Cairns Chamber of Commerce, submission 30; Queensland Ports Association, submission 18; Public hearing transcript, 25 June 2015, p 8.

<sup>181</sup> Friends of the Port of Cairns, submission 39.

<sup>182</sup> Queensland Ports Association, submission 18.

<sup>183</sup> Gladstone Ports Corporation, submission 37.

<sup>184</sup> Ibid.

Accordingly, the committee recommends clause 34 be amended to strengthen and clarify the policy intent.

**Recommendation 8**

The committee unanimously recommends clause 34 of the Bill be amended to strengthen and clarify the policy intent.

To assist in providing clarity, the committee recommends that ‘beneficial reuse’ be defined in the Bill using, but not limited to, the examples provided in the explanatory notes.

**Recommendation 9**

The committee unanimously recommends the Bill be amended to provide a definition of ‘beneficial reuse’ using, but not limited to, the examples included in the explanatory notes.

The committee understands GPC’s concerns with respect to the temporary placement of dredged material for rehandling and recommends that the Minister clarifies the application of the Bill in relation to the temporary placement of dredged material for rehandling.

**Recommendation 10**

The committee recommends the Minister clarifies the application of the Bill in relation to the temporary placement of dredged material for rehandling.

**2.2.6 Transitional provision**

Clause 60 provides an exemption for developments from clauses 32 and 33 that were the subject of an environmental impact statement (EIS) process before the Bill commences.

Port authorities supported the transitional provision but considered that it should also include other smaller projects that have commenced a formal approval process that does not trigger an EIS process.<sup>185</sup>

Ports North provided the example of the proposed common user Barge Ramp Facility which is included in the Port of Cairns master planning and is currently subject to an approval process. The port authority submitted that more minor works, such as this, were likely to have a lesser environmental impact than works subject to an EIS but are not permitted to occur.<sup>186</sup>

The department advised that the approach taken in the Bill regarding these projects was consistent with government policy.<sup>187</sup>

Matters relating to the transitional provision with respect to transshipping and the Port of Cairns are discussed below.

Committee comment

The committee recommends the Minister provides additional information on the government’s policy regarding the transitional provision and if it would apply to projects that do not require an EIS.

<sup>185</sup> Queensland Ports Association, submission 18; Ports North, submission 23.

<sup>186</sup> Ports North, submission 23.

<sup>187</sup> Department of State Development, correspondence dated 10 July 2015.

**Recommendation 11**

The committee recommends the Minister provides additional information on the government's policy regarding the transitional provision and if it would apply to projects that do not require an Environmental Impact Statement.

**2.3 Other matters****2.3.1 Breakwater Casino Development Act 1984**

The Port of Townsville submitted that the Bill does not refer to the *Breakwater Casino Development Act 1984* which regulates certain planning and development activities relevant to the port.<sup>188</sup> The department advised it was considering how to best apply the Bill in relation to the *Breakwater Casino Development Act 1984*.<sup>189</sup>

**2.3.2 Ports of Cairns and Mourilyan**

A number of submitters advocated for the Port of Cairns to be designated a priority port. Some submitters also suggested the Port of Mourilyan be designated the same.<sup>190</sup> The main reason that submitters argued for the Port of Cairns to be designated as a priority port was to allow capital dredging to proceed at the port for the purpose of developing new, and expanding existing, port facilities. Submitters argued that excluding the Port of Cairns as a designated priority port would have significant economic impacts on the region. North Queensland Bulk Ports summarised its concerns as:

A ban on capital dredging for these ports—Cairns and Mourilyan—will prevent future growth to accommodate the government's strategy of developing the north of Australia. Regional ports such as these are critical to the logistics chain and provide goods and services to regional communities.<sup>191</sup>

Further arguments for including the Port of Cairns as a designated priority port include:

- The ports of Cairns and Mourilyan are similar in scale and regional importance as the port of Mackay, which is included in the Bill.<sup>192</sup>
- Loss of opportunity to dredge will hamper future development opportunities, including minor port developments such as barge ramps, wharf expansions and marine support facilities, which will result in a potential loss to the Gross Regional Product of \$554 million and more than 5,000 jobs.<sup>193</sup>
- Deepening the channel could stimulate spending in the Cairns economy, over a 25-year period, to the order of an additional \$5b, with a net present value.<sup>194</sup>
- Restricting capital dredging and the expansion of port facilities would adversely affect the tourism industry:

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<sup>188</sup> Port of Townsville, submission 41.

<sup>189</sup> Department of State Development, correspondence dated 10 July 2015, p 25.

<sup>190</sup> Cairns Regional Council Submission 9; Ports North, submission 23; Advance Cairns and Cairns Chamber of Commerce, submission 30; Yarrabah Aboriginal Shire Council, submission 32; Norship Marine, submission 35; Gladstone Ports Corporation, submission 37; Friends of the Port of Cairns, submission 39; Cruise Line International Association Australasia, submission 47.

<sup>191</sup> Public hearing transcript, 13 July 2015, pp 1-2.

<sup>192</sup> Ports North, submission 23.

<sup>193</sup> Ibid.

<sup>194</sup> Friends of the Port of Cairns, submission 39.

- currently, larger cruise ships are unable to dock due to the depth of the channel, which results in costly shore transfers for cruise operators, loss of time to passengers to transfer, and possible loss of tourism dollars spent within Cairns and the region when inclement weather results in passengers being unable to come ashore.<sup>195</sup>
- loss of opportunity for Cairns to become a home porting of vessels for the expanding cruise industry into Papua New Guinea and the Pacific.<sup>196</sup>
- The Port of Cairns is the third busiest seaport in Queensland.<sup>197</sup>
- The size of ships commonly used for the transport of sugar, fertilisers and fuel are now larger and these ships are unable to enter and leave the port with full loads, even on high tides. This results in costly inefficiencies and impacts on the competitiveness of many industries.<sup>198</sup> Ports North stated:

One of our major concerns with not having the ability to undertake incremental growth is that we are going to lose competitiveness and the ability to maintain our existing trades, let alone develop. It is not a question for the Cairns port about creating new berths for coal or even cruise shipping for that matter. The cruise shipping berth and the terminal is infrastructure that is already there. Our concern is losing the ability to service those existing trades.<sup>199</sup>

Submitters argued that fuel imports are a major factor in the viability of many other industries and activities in the region. The fuel is used at the Cairns international airport, which is ‘vital to the region’s \$3 billion a year tourism sector’; in the maritime sector; and for Queensland’s tourism and fishing fleets.<sup>200</sup> According to the Cairns Chamber of Commerce:

Anecdotally, about 30 per cent of the freight that is brought into the Cairns port is used for aviation fuel, so if we are not able to continue the servicing of our tourism industry via aviation—and remembering that \$1 that is invested in route development into our economy returns \$6 to our economy—that would have serious economic impacts.<sup>201</sup>

Ports North argued that history has shown that incremental growth in the Port of Cairns is needed:

The Cairns channel was expanded in the sixties from a width of 25 metres to 40 metres; in the early seventies from 45 to 60 metres; in the early nineties from 60 to 75 metres; and then to where it is now. Cairns growth in shipping has been very low compared to other ports. There has been a steady growth in existing industries.

In terms of the existing trades ... many of the ships coming into Cairns have to come in not with their maximum efficiencies because of the draft of the existing channel. The widening of the channel that happened in the late nineties was driven by fuel ship sizes. So we widened the channel from, I think, 76 metres to 90 metres ... Clearly, the requirement for channel width and depth in the future will be dependent on the industry requirements ...<sup>202</sup>

Submitters emphasised their support for the protection of the GBR but stated that the Port of Cairns could be expanded via dredging without any adverse environmental impacts.<sup>203</sup>

<sup>195</sup> Friends of the Port of Cairns, submission 39 and Public hearing transcript, 29 July 2015, p 7.

<sup>196</sup> Public hearing transcript, 29 July 2015, p 7.

<sup>197</sup> Friends of the Port, submission 39.

<sup>198</sup> Ibid.

<sup>199</sup> Public hearing transcript, 29 July 2015, p 15.

<sup>200</sup> Friends of the Port of Cairns, submission 39; Public hearing transcript, 29 July 2015, p 5.

<sup>201</sup> Public hearing transcript, 29 July 2015, p 11.

<sup>202</sup> Ports North, Public hearing transcript, 29 July 2015, p 15.

<sup>203</sup> Cairns Regional Council, p 17; Ports North, p 13, Advance Cairns, p 13: Public hearing transcript, 29 July 2015.

The primary recommendation from these submitters was that the Bill be amended to include the Port of Cairns, and, to a lesser extent, the Port of Mourilyan, as priority ports under clause 5.

*Amendment to definition of 'port facility'*

Several submitters recommended that, if clause 5 was not amended to include Cairns and Mourilyan Ports as priority ports, the definition of 'port facility' in the Bill be amended to allow non-priority ports to conduct capital dredging for the development of small-scale port facilities for port operations.<sup>204</sup>

As mentioned in the sections above, some submitters argued that the capital dredging exemptions under the definition of 'port facility' for tourism or recreation purposes should be extended to include other small-scale port facilities within existing port limits. It was considered that this would reflect the multiple uses of the Port of Cairns.<sup>205</sup> Examples provided included barge ramp constructions, cargo wharf expansions, and the re-fit of wharfs and defence berths to cater for the demands of the Navy, fishing industry and other marine services industries in Cairns.<sup>206</sup> Submitters stated that this approach would restrict the development of facilities in greenfield sites while allowing for incremental growth and flexibility for port facilities within Cairn's existing port limits to meet growing regional requirements.<sup>207</sup>

Advance Cairns and the Cairns Chamber of Commerce also argued that the Bill should provide a mechanism to review priority ports based on circumstances changing, such as changes to vessel size or other operational aspects. They stated that not providing a mechanism in this regard 'strengthens the case for the designation of Cairns and Mourilyan as priority ports'.<sup>208</sup>

The department advised:

The four ports the government has nominated as priority ports are the same four bulk commodity ports the former government nominated as priority port development areas. The Queensland Government, in the LTSP, committed to restricting capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of Gladstone, Hay Point/Mackay, Abbot Point and Townsville (priority ports), and requiring master plans at these ports.<sup>209</sup>

The department explained that the decision to designate the four ports as priority ports would deliver on the policy to optimise existing infrastructure in ports with the greatest throughput:

This commitment reflects the Queensland Government's election commitment to optimise the use of existing infrastructure at these four priority ports. The Bill will implement the Queensland Government's commitment.

In 2013-2014, the four priority ports represented trade worth \$32 billion and 77 per cent of the total throughput of all Queensland ports.<sup>210</sup>

The department provided the following response regarding the recommendation to amend the definition of 'port facility' in the Bill to allow non-priority ports to conduct capital dredging for the development of small scale port facilities for port operations:

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<sup>204</sup> Cairns Regional Council, submission 9; Queensland Ports Association, submission 18; Ports North, submission 23.

<sup>205</sup> Cairns Regional Council, Public hearing transcript, 29 July 2015, p 19.

<sup>206</sup> Ports North, Public hearing transcript, 29 July 2015, p 13; Cairns Regional Council, submission 9.

<sup>207</sup> Public hearing transcript, 13 July 2015, pp 1, 13; Ports North, submission 23.

<sup>208</sup> Advance Cairns and the Cairns Chamber of Commerce, Ssubmission 30.

<sup>209</sup> Department of State Development, correspondence dated 10 July 2015, p 11.

<sup>210</sup> Ibid.

Consistent with the government's commitment in the LTSP to restrict capital dredging for the development of new or expansion of existing port facilities to within the priority ports' port limits, the Bill provides that no approvals for capital dredging may be granted for the purpose of establishing or improving a port facility other than in a priority port's master planned area.

The definition of 'port facility' in Schedule 2 provides that small-scale port facilities for the purpose of tourism or recreation are not included in the definition of 'port facility'. Approvals for capital dredging for other small-scale port facilities outside of the priority ports cannot be granted under clause 33.<sup>211</sup>

### Opposition to the Ports of Cairns and Mourilyan as priority ports

The committee heard similarly strong views from stakeholders opposed to the Ports of Cairns and Mourilyan being designated priority ports.<sup>212</sup>

A summary of their objections follows:

- Designating Cairns and Mourilyan as priority ports would be in conflict with the purpose of the Bill—to manage port development within the GBRWHA. The four priority ports offer the opportunity to optimise major port facilities, which would ensure that further port development is not undertaken unnecessarily.
- Cairns and Mourilyan are small ports in terms of export quantity compared with the four priority ports and, therefore, there is no demand for either port to become priority ports.
- The location of the Cairns and Mourilyan Ports, under the northern part of the Great Barrier Reef, make them inappropriate for significant development. This part of the Reef is still in good condition due to less development.<sup>213</sup>
- Trinity Inlet, a shallow bay that would require capital dredging and frequent maintenance dredging, was not suitable to develop a major bulk cargo port due to its environmental values.
- Development at Cairns and Mourilyan Ports could still be allowed to some extent under the Bill.
- Designating these ports as priority ports would 'dishonour' commitments made to the World Heritage Committee and could 'risk a reduction in the World Heritage status' of the GBR.
- Developing Cairns into a major industrial port would be detrimental to its reputation as a tourism destination and could impact the tourism industry. The Cairns and Far North Environment Centre disagreed that capital dredging is required to allow larger cruise ships to ensure the prosperity of the tourism industry in Cairns and referred to a study from James Cook University:

A recent study from James Cook University indicates that whether a ship calls via anchorage or quayside berthing bears no discernible impact on the proportion of passengers and crew who disembark.<sup>214</sup>

<sup>211</sup> Ibid, p 10.

<sup>212</sup> Environmental Defenders Office Queensland, correspondence dated 12 August 2015; North Queensland Conservation Council, correspondence dated 7 August 2015; and Cairns and Far North Environment Centre, correspondence dated 10 August 2015; Wavelength Reef Cruises, correspondence dated 14 August 2015; Australian Marine Conservation Society, correspondence dated 14 August 2015.

<sup>213</sup> Environmental Defenders Office Queensland, correspondence dated 12 August 2015

<sup>214</sup> Cairns and Far North Environment Centre, correspondence dated 10 August 2015: J Thomas, *Economic opportunities and risk of Cruise Tourism in Cairns*, James Cook University, April 2015.

The key recommendation from these submitters was that the Bill not be amended to include Cairns or Mourilyan Ports as priority ports.

#### *Cairns Shipping Development Project*

Stakeholders also raised the status of the Cairns Shipping Development Project in the context of designating Cairns and Mourilyan as priority ports.<sup>215</sup>

The Cairns Shipping Development Project proposes to upgrade the Port of Cairns to improve access for larger shipping. The upgrade would include dredging to widen, deepen and lengthen the existing outer shipping channel (the Trinity Inlet) and widen and deepen the existing inner harbour channel and Crystal Bay Swing Basin.<sup>216</sup>

The draft Environmental Impact Statement (EIS) was available for public comment between 20 April 2015 and 1 June 2015. The Coordinator-General received 193 public submissions. In April 2015, the Queensland Government withdrew funding for the project following the release of the draft EIS. The EIS concluded that at-sea disposal of dredge spoil was the preferred option given the higher costs of land-based placement of capital dredge material.<sup>217</sup> The government's financial support for the project was withdrawn on the policy grounds of opposing the disposal of dredge spoil in the GBRWHA.<sup>218</sup>

The Cairns Chamber of Commerce stated the uncertainty that surrounds the project has resulted in 'a serious negative impact on business confidence'.<sup>219</sup> Ports North is concerned that the Bill would not allow channel deepening or widening in the long term:

Obviously the transitional arrangements for the Cairns Shipping Development Project cover that [the deepening and widening of the channel] in the short term, but if that project does not progress or if there is a new project required in 10 years' time to meet a change in the size of a fuel ship to come in and service Cairns and the airport, then there are no provisions in the bill for the port to look at an economic case of deepening and widening the channel to allow for a larger cargo or fuel ship to come in in five years' time.<sup>220</sup>

The Minister for State Development and Minister for Natural Resources and Mines, Hon Dr Anthony Lynham MP, addressed concerns relating to the economic future of Cairns if the port was not designated a priority port and the question of the future of the Cairns Shipping Development Project:

There has been conjecture in the community that without the Cairns port being a priority port it will not be allowed to ever expand... I wish to start by saying that it is simply not true. What we are doing is ensuring that the correct type of development occurs in the port of Cairns.<sup>221</sup>

The Minister further stated:

The government's election commitment is not to allow the project to proceed unless there is a financially responsible plan for disposal of the dredge material. The commitment does not necessarily rule out alternate proposals within the port of Cairns that would be consistent with

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<sup>215</sup> Advance Cairns, Cairns Chamber of Commerce, Ports North, Cummings Economics, Cairns Regional Council: Public hearing transcript, 29 July 2015.

<sup>216</sup> Department of State Development, '[Cairns Shipping Development Project](#)'.

<sup>217</sup> Cairns Shipping Development Project, '[Draft: Environmental Impact Statement](#)', p 22.

<sup>218</sup> The Honourable Curtis Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, media release, '[Draft dredging report exposes LNP's Great Barrier Reef shame](#)', 18 April 2015; Department of State Development, '[Cairns Shipping Development Project](#)'.

<sup>219</sup> Public hearing transcript, 29 July 2015, p 10.

<sup>220</sup> Ibid, p 15.

<sup>221</sup> Minister for State Development and Minister for Natural Resources and Mines, Estimates hearing transcript, 19 August 2015, p 62.

government policy and were financially and environmentally responsible... A number of options were investigated for disposal of dredge material on land and at sea. Sea disposal of capital dredge material for this project is not consistent with the Reef 2050 Long-Term Sustainability Plan this government prepared with the federal government ...<sup>222</sup>

The Minister followed this statement by acknowledging the importance of the tourism industry in Cairns and the related reputation the region has for its natural environment:

Cairns is a wonderful port. It is a wonderful area of Queensland. Cairns primarily is internationally renowned for its natural beauty and being a gateway to the Great Barrier Reef. The tourist trade is the bread and butter of this region... the government is committed to protecting the Great Barrier Reef whilst also protecting the economic future of Cairns, which is intrinsically linked to its tourist trade. A study by Deloitte Access Economics in 2013 estimates that the value added economic contribution of the Great Barrier Reef World Heritage area to the Australian economy in 2011-12 was \$5.68 billion and it generated almost 69,000 full-time equivalent jobs. These figures speak for themselves. It would be a travesty to place this at risk.<sup>223</sup>

In relation to the status of the EIS, the Coordinator-General has advised the proponent of the outcome of the consultation on the draft EIS and the additional information and project changes required to progress the EIS and meet the government's policy. The Coordinator-General extended the coordinated project declaration lapse date to 31 March 2016.<sup>224</sup>

#### Committee comment

The committee supports the purpose of the Bill which gives effect to the Government's commitments made in the LTSP. The committee understands that the designation of the four priority ports, which excludes the Ports of Cairns and Mourilyan, is for the purpose of managing the impacts of port development on the environment, particularly within the GBRWHA. The committee also understands that the Government's commitments in this regard have informed the decision to restrict capital dredging outside of these priority ports with the exception of small-scale port facilities to be used for tourism or recreation purposes.

The committee supports the view that excluding the Port of Cairns as a priority port may have a detrimental impact on the growth of the region, including adversely affecting employment, tourism, and business.

The committee is of the view that submitters have provided reasonable arguments in favour of declaring the Port of Cairns as a priority port. However, the committee did not receive any overwhelming evidence to support the Port of Mourilyan as a priority port.

The committee does not want the future growth of the Port of Cairns to be stilted if it is not designated a priority port. The committee is also mindful of the government's commitments made under the LTSP and the strong contrary views expressed by stakeholders. Therefore, a decision to include the Port of Cairns as a priority port should be based on a considered assessment of the environmental impacts on the GBR, the economic benefits to the region and the government's commitments made to UNESCO and under the LTSP.

Accordingly, the committee recommends the Minister considers declaring the Port of Cairns as a priority port following a considered assessment of:

<sup>222</sup> Ibid, pp 62-63.

<sup>223</sup> Ibid, p 62.

<sup>224</sup> The Honourable Curtis Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, media release, 'Draft dredging report exposes LNP's Great Barrier Reef shame', 18 April 2015; Department of State Development, 'Cairns Shipping Development Project'.

- the environmental impacts on the Great Barrier Reef
- the economic benefits to the Cairns region, and
- the government's commitments made to UNESCO and under the LTSP.

**Recommendation 12**

The committee unanimously recommends the Minister considers declaring the Port of Cairns as a priority port following a considered assessment of:

- the environmental impacts on the Great Barrier Reef
- the economic benefits to the Cairns region, and
- the government's commitments made to UNESCO and under the Reef 2050 Long-Term Sustainability Plan.

### **2.3.3 Transshipping**

A number of submitters recommended that the Bill include a ban on transshipping in the GBRMP, which would legislate the Queensland Government's election commitment to ban transshipping.<sup>225</sup> Submitters argued transshipping operations involved 'unacceptable risks', including the potential for spillage in open waters, which could have a detrimental impact on the environment: causing damage to reef and seagrass communities; increasing noise, dust and light pollution for local communities and the marine environment; and decreasing water quality.<sup>226</sup>

The Keppel and Fitzroy Delta Alliance was concerned that the Bill, which would place restrictions on capital dredging and the development of port facilities outside of priority ports, 'could lead to an increase in applications for transshipping'.<sup>227</sup>

Of particular concern to some submitters is the Mitchell Ports' proposal, the Bowen Basin Terminal Project, which would involve a transshipping operation at the Port of Hay Point.<sup>228</sup> Mitchell Ports is currently seeking a coordinated project declaration. The EIS for the project commenced in 2014. Some submitters have argued that transshipping is only able to be used in sheltered waters, such as bays, fiords and estuaries, and not in the open waters as proposed at Hay Point. They contend that this increases the risk of spillages, which could result in damage to the GBR. Submitters argued that there would also be impacts on the local community and environment, both on land and in the water environment.<sup>229</sup>

Mitchell Ports responded that transshipping will be critical for Queensland's future economy and that it is used globally and, 'in many parts of the world, meets very high environmental standards and restrictions and the types of operations which we are considering and doing the science on and looking at would be leading edge use of technologies'. Further, Mitchell Ports stated that the

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<sup>225</sup> See submissions 1, 3, 6, 10, 11, 12, 14, 14, 15, 16, 21, 22, 24, 25, 27, 40, 49, 52. Transshipping is defined as 'the transfer to bulk commodities such as coal, bauxite, or other minerals from one vessel to another while at sea.' Department of State Development, correspondence dated 10 July 2015, p 2.

<sup>226</sup> North Queensland Conservation Council, submission 15; R Barnes, submission 24; Environmental Defenders Office North Queensland, submission 5; Hay Point Community Action Group, submission 49.

<sup>227</sup> Keppel and Fitzroy Delta Alliance, submission 21.

<sup>228</sup> K & S Hellwege, submission 1; P Dallas, submission 3; Hay Point Community Action Group, submission 49.

<sup>229</sup> Tabled documents, Public hearing, 30 July 2015.

advantages of transshipping include that it requires minimal or no dredging and limited onshore infrastructure.<sup>230</sup>

#### *Recommendations proposed by submitters*

Some submitters recommended a ban on transshipping in the GBRMP. The Environment Council of Central Queensland suggested the ban could be enacted by prohibiting onshore development which facilitates transshipping operations.<sup>231</sup>

The Mackay Conservation Group recommended extending the ban to all transshipping operations and not just those that include barging operations in the GBRMP, but within port boundaries also. Mackay Conservation Group argued:

One of the key dangers of transshipping operations is risk of ship accidents and collisions resulting in losing significant amounts of coal dust into the marine environment.<sup>232</sup>

The EDO Qld proposed a number of amendments to the Bill in order to prohibit any development within Queensland's jurisdiction that would facilitate transshipping operations in the GBRMP, which are supported by the Mackay Conservation Group. These amendments include:

- a new provision under clause 32 that no approvals for development that includes or facilitates transshipping in a State or Commonwealth marine park will be granted.
- defining transshipping as the transfer of bulk commodities, for example coal, from vessel to vessel.
- amending transitional provisions to ensure current transshipping applications, for example, the Wongai Project, are not allowed to progress where they could impact the GBRMP.<sup>233</sup>

#### *Departmental response*

The department advised that implementing the Queensland Government's election commitment to ban transshipping 'is a high priority'. However, the department stated that the Bill was not considered the 'most effective vehicle' for including a ban on transshipping. The department advised that transshipping:

... is a commitment under the long-term sustainability plan. There are a range of port related commitments in the long-term sustainability plan, including around transshipping and maintenance dredging, that are not addressed in the bill because of the technical complexities and the need for the consideration of the appropriate mechanisms, which have been deemed at this point not to be in the Sustainable Ports Development Bill.<sup>234</sup>

The department acknowledged that the jurisdictional arrangements that exist across the GBRWHA impact on how a transshipping ban would be legislated. However, the department is currently considering how policy and other matters which cross State and Commonwealth boundaries can best be implemented. The Department of Transport and Main Roads 'is working with other state government agencies and the GBRMP Authority, including through the use of the Great Barrier Reef and Torres Strait Vessel Traffic Service, to ensure there are no transshipping operations that adversely affect the GBRMP.'<sup>235</sup>

In regard to the Wongai Project, the department advised:

...the project is currently subject to an active Environmental Impact Statement (EIS) process which is due to expire on 27 July 2015. A request for extension has been made for this project. Under section

<sup>230</sup> Public hearing transcript, 30 July 2015, p 10.

<sup>231</sup> Environment Council of Central Queensland, submission 16.

<sup>232</sup> Mackay Conservation Group, submission 40.

<sup>233</sup> Environmental Defenders Office Qld, submission 27.

<sup>234</sup> Public briefing transcript, 25 June 2015, p 3.

<sup>235</sup> Department of State Development, correspondence dated 10 July 2015, p 2.

27A of the State Development and Public Works Organisation Act 1971 (SPDWOA), the Coordinator-General may grant an extension prior to the declaration lapsing. In deciding whether to grant an extension, the Coordinator-General may consider any relevant matter.<sup>236</sup>

The committee notes that the department did not respond to specific concerns regarding the Mitchell Ports proposal at Hay Point.

#### Committee comment

The committee understands submitters concerns that the Bill does not include a ban on transshipping. However, the committee is satisfied that the department is working on the best way to implement its commitment to banning transshipping given the jurisdictional issues across the GBRWHA. The committee is satisfied with the department's advice that the Department of Transport and Main Roads is actively working with the GBRMPA to ensure that no transshipping operations adversely affect the GBRMP.

#### **2.3.4 Maintenance dredging**

Environmental organisations and a number of individuals were concerned that the Bill did not address maintenance dredging and recommended the Bill be amended to provide for the management of maintenance dredge disposal or ban/phase out offshore dumping of such dredge spoil.<sup>237</sup>

The EDO NQ argued that excluding maintenance dredging from the Bill would contribute to the 'inadequate protection' of the GBRWHA due to the cumulative impacts of maintenance dredge spoil on seagrass beds and inshore reefs. For this reason, EDO NQ recommended the government undertake an audit of the environmental impacts of all maintenance dredging and prohibit the ongoing disposal of dredge spoil at-sea which is unsustainable or has extensive impacts.<sup>238</sup>

North Queensland Conservation Council also argued that the Bill should provide for the management of maintenance dredging, as the volume of maintenance dredging material far exceeds the amount of capital dredging material being addressed by the Bill.<sup>239</sup>

Several submitters recommended introducing an annual cap for maintenance dredging to reduce sea-disposal of maintenance dredging and better manage onshore disposal.<sup>240</sup>

Several submitters called for the Bill to deliver on the Queensland Government commitment under the LTSP to establish a maintenance dredging framework to reduce the impacts of maintenance dredging. The commitment in the LTSP was to:

Develop a State-wide coordinated maintenance dredging strategy which:

- identifies each port's historical dredging volumes and likely future requirements and limits
- identifies appropriate environmental windows to avoid coral spawning, seagrass recruitment, turtle breeding and weather events
- examines opportunities for the beneficial reuse of dredge material or on-land disposal from maintenance activities
- establishes requirements for risk-based monitoring programs.<sup>241</sup>

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<sup>236</sup> Ibid. At the time of writing this report, the Department of State Development's website indicated that the 'Coordinated project' declaration had lapsed. See ['Wongai Project: Project overview'](#).

<sup>237</sup> Submissions 5, 10, 12, 15, 16, 21, 25, 39, 40, 42, 43, 44, 45, 51, 52.

<sup>238</sup> Environmental Defenders Office North Queensland, submission 5,

<sup>239</sup> North Queensland Conservation Council, submission 15.

<sup>240</sup> Environmental Council of Central Queensland, submission 16; Cairns and Far North Environment Centre Inc, submission 25; Australian Marine Conservation Society Inc., submission 52.

The Mackay Conservation Group recommended the framework include that sea dumping should be a matter of last resort, similar to the London Protocol, and provide guidance on calculating the relative impacts of different onshore and offshore dumping proposals.<sup>242</sup> Other submitters also sought clarification on the timing and method of the framework.<sup>243</sup>

In contrast, industry supported the Bill not including any changes to maintenance dredging as the current arrangements underpin the importance of maintenance dredging to the operation of ports.<sup>244</sup> QPA was satisfied that the Bill clearly distinguished between capital and maintenance dredging. Ports North, however, was of the view that the Bill should be explicit in stating that maintenance dredging would continue to be permitted. Ports North also recommended that a definition of maintenance dredging be provided that included 'dredging as a result of weather events'.<sup>245</sup>

QPA expressed concern about the potential impacts of any future change to the policy of at-sea disposal of maintenance dredge material:

Any ban or restriction on the long established maintenance dredging process of placing natural sediments (transported from nearby shallow areas by floods and currents into deeper shipping channels and berths) at designated at-sea sites would be devastating economically for ports and their client industries and render some unviable.<sup>246</sup>

In response to concerns about the impacts of maintenance dredging, QPA stated that maintenance dredging is 'highly regulated, well understood and comprehensively studied with extensive monitoring and shown to have only localised and short-term impacts'.<sup>247</sup> Both WWF and EDO Qld stated they understood maintenance dredging was necessary for port operations but that the government needs to analyse the impacts of maintenance dredging in order to determine the best way to manage it.<sup>248</sup>

The department advised that the ongoing operation of ports, which includes maintenance dredging, falls outside the Bill's scope. The operation of ports will continue to be regulated under the *Transport Infrastructure Act 1994* (TIA). The government, however, has committed to managing the environmental impacts of maintenance dredging through a maintenance dredging framework. The maintenance dredging framework will be administered by the Department of Transport and Main Roads as the administering authority for the TIA.<sup>249</sup>

The department advised that 'technical complexities and the need for the consideration of the appropriate mechanisms' were part of the reason why maintenance dredging was not included in the Bill.<sup>250</sup> However, the department further advised that, although the Bill did not implement all port-related commitments of the LTSP, including the maintenance dredging framework, it would use other mechanisms to do so:

The bill represents a major step in implementing port related long-term sustainability plan commitments. It does not attempt to implement all port related commitments of the long-term

<sup>241</sup> Australian Government, *'Reef 2050 Long-Term Sustainability Plan'*, 2015, p 43.

<sup>242</sup> Mackay Conservation Group, submission 40.

<sup>243</sup> Keppel and Fitzroy Delta Alliance, submission 21; Environmental Defenders Office Queensland, submission 27.

<sup>244</sup> Advance Cairns and Cairns Chamber of Commerce, submission 30; Queensland Ports Association, submission 18; Ports North, submission 23; Ports Australia, submission 50.

<sup>245</sup> Ports North, submission 23.

<sup>246</sup> Queensland Ports Association, submission 18.

<sup>247</sup> Public hearing transcript, 13 July 2015, p 2.

<sup>248</sup> Ibid, p 11.

<sup>249</sup> Department of State Development, correspondence dated 10 July 2015, p 3; Public briefing transcript, 25 June 2015, p 3.

<sup>250</sup> Ibid.

sustainability plan. For example, it does not address the commitments to establish a maintenance dredging framework which identifies future dredging requirements, ascertains appropriate environmental windows to avoid coral spawning and protects seagrass and examines opportunities for beneficial re-use of dredge material or on-land disposal where it is environmentally safe to do so... The government will utilise other mechanisms including, where appropriate and necessary, amendments to other legislation to deliver on these commitments.<sup>251</sup>

The department addressed industry concerns relating to any future policy changes to maintenance dredging:

... maintenance dredging is an ongoing and necessary part of any port, whether it be a priority port or any of the others. We are very keen that those ports can continue to operate, as well as the priority ports, and undertake whatever maintenance dredging they need to do ...

There is no proposed change to the way that maintenance dredging is currently conducted.<sup>252</sup>

#### Committee comment

The committee is satisfied with the department's advice that maintenance dredging, including the maintenance dredging framework, will be provided under an alternate mechanism. The committee also agrees with the department's advice that the Bill is not the most appropriate way in which to regulate maintenance dredging given that the dredging is carried out to ensure the safe and effective ongoing operation of a port, which falls under the scope of other legislation.

However, the committee recommends that the key points raised by submitters in relation to the management of maintenance dredging should be taken into account during the preparation of the maintenance dredging framework. The committee notes that the department did not advise the timeframe for the development of the framework and seeks clarification in this regard.

#### **Recommendation 13**

The committee unanimously recommends the Minister provides advice on the timeframe for the delivery of the maintenance dredging framework and ensures that the views expressed by stakeholders during the committee's inquiry are taken into account in the framework.

### **2.3.5 Protection of the Fitzroy Delta (Port Alma)**

Some submitters expressed their support for not permitting capital dredging at Port Alma. Under the Bill, capital dredging will not be permitted at Port Alma as it will not be designated a priority port. While submitters expressed their support for this, some were concerned that the Bill would not explicitly prohibit an expansion of port facilities for new activities beyond the current uses of the port. Some submitters recommended the Bill restrict port development in Port Alma to only necessary improvements to existing facilities. Submitters argued that this would implement the commitment to ensure the full protection of the Greater Fitzroy Delta.<sup>253</sup>

EDO Qld and WWF-Australia argued:

As currently written the Bill will not prevent significant expansion of port facilities at Port Alma, using the existing shipping channel. This development could include proposals for trans-shipping operations.<sup>254</sup>

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<sup>251</sup> Public briefing transcript, 25 June 2015, p 2.

<sup>252</sup> Ibid, p 6.

<sup>253</sup> Submissions 2, 16, 21, 25, 27, 51, 52.

<sup>254</sup> Environmental Defenders Office Qld, submission 27 & WWF-Australia, submission 51.

Consequently, both submitters recommended the following:

(a) To ensure that the Greater Fitzroy Delta is protected, specific provisions should be provided to restrict port development in Port Alma to only necessary improvements to the existing facilities, not new facilities for different purposes.

(b) The Committee should request the Reef Ministerial Forum to specify when and how improved conservation measures will be put in place for the Delta, to meet the Government's other commitments for the region outlined in the Reef 2050 Plan.<sup>255</sup>

The department responded to concerns by highlighting that Port Alma (Port of Rockhampton) would not be designated a priority port under the Bill, which would prohibit capital dredging.

The department further advised that the changes to the conservation zoning in the Great Barrier Reef Coast Marine Park have positively impacted the size of the Port of Rockhampton:

The government has extended and strengthened conservation zoning in the Great Barrier Reef Coast Marine Park. The exclusion of the Great Barrier Reef Coast Marine Park from the area that could be subject to port-related development means the Port of Rockhampton is effectively halved, in terms of development potential.

The Port of Rockhampton (i.e. Port Alma, the Fitzroy Delta, Keppel Bay and North Curtis Island) has been excluded from the proposed master-planned boundary for the Port of Gladstone ...<sup>256</sup>

The department stated that these measures confirm the Government's election commitment to 'prohibit any development in the Greater Fitzroy Delta and ensure that any increase in port capacity is confined within the existing Port of Gladstone'. Further, the department stated that this prohibition:

... directly aligns with the World Heritage Committee decisions in 2014 which welcomed the Australian Government's intent to exclude the Port of Rockhampton (i.e. Port Alma, the Fitzroy Delta, Keppel Bay and North Curtis Island) from those key strategic ports in the GBRWHA targeted for optimised development.<sup>257</sup>

#### Committee comment

The committee is satisfied with the department's advice and the measures undertaken to protect the Fitzroy Delta.

### **2.3.6 Accountability and transparency**

#### Third party enforcement and judicial review

Some submitters suggested the Bill be amended to provide for third party enforcement and judicial review for all decision making referred to in the Bill to ensure greater accountability and transparency, and that this would align with similar provisions in the SPA and the *Environmental Protection Act 1994*.<sup>258</sup> The QRC suggested that consideration be given to 'how applications for merits review or judicial reviews might be managed in a manner which allows legitimate community concerns to be heard and addressed, but also allows the views of vexatious litigators to be discounted'.<sup>259</sup>

EDO Qld suggested a number of amendments which would enable third party enforcement, including:

<sup>255</sup> Ibid.

<sup>256</sup> Department of State Development, correspondence dated 10 July 2015, p 4.

<sup>257</sup> Ibid.

<sup>258</sup> Submissions 2, 5, 15, 16, 21, 25, 27, 28, 29, 52.

<sup>259</sup> Queensland Resources Council, submission 28.

(a) Inserting a clause which provides for third party rights ('open legal standing') to seek a court order from the Planning and Environment court to remedy or restrain the commission of an offence (c154) with 'each pay own costs'.

(b) Inserting a clause which provides for third party rights ('open legal standing') to seek a court declaration with 'each pay own costs' with respect to actions and decisions regulated under the Bill.

(c) Amending other legislation referred to in the Bill where it does not have third party legal standing to provide for that standing and to provide jurisdiction to the Planning and Environment Court with 'each pay own costs'.<sup>260</sup>

The department advised that the Bill is a 'facilitating piece of legislation' and, as such, 'relies on existing jurisdictions and processes under existing legislation and retains the autonomy of existing decision markers'.<sup>261</sup>

Submitters also recommended that the Bill provide for judicial review of decisions made under the Bill and also consider how judicial and merits review would be assessed. EDO Qld recommended:

(a) Ensure judicial review is available for all decisions relevant to port development regulated under the bill. For example, ensure that exclusions from judicial review provided under the SDPWO Act and *Transport Infrastructure Act 1994* (Qld) do not apply to decisions relevant to port related development.

(b) Provide extended standing for judicial review as under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), section 487.<sup>262</sup>

The department advised that decisions made under the Bill would be subject to judicial review.<sup>263</sup>

#### Providing false or misleading information

EDO NQ and EDO Qld recommended amendments to clause 54, which would provide that it is an offence to provide false or misleading information to the Minister. EDO NQ stated that the clause was inconsistent with similar provisions in the *Environmental Protection Act 1994* (EP Act), the *State Development and Public Works Organisation Act 1971* and the SPA. Both organisations recommended amending clause 54(1) by inserting 'the person knows, or ought to reasonably know', as provided in the equivalent section of the EP Act, section 480(1).

Submitters also recommended that the defences provided under clause 54(2) be removed.<sup>264</sup> The department stated that 'not all of the legislation to which the Bill relates currently provides for these rights and it is not considered appropriate that this Bill impose additional obligations'.<sup>265</sup>

#### Local governments as assessment managers

The LGAQ expressed concern that a local government would be accountable for any applicable appeal proceedings where the local government is the relevant assessment manager for a development in a port master plan area:

Given port planning instruments prevail over local planning instruments to the extent of any inconsistencies and limited assurances for local government that their concerns raised during the development of port planning instruments will be addressed, the LGAQ maintains that the State Government must be party to any appeal proceedings. This aligns with the intent of provisions that already exist in the *Sustainable Planning Act 2009* that regulate the State Government as a party to

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<sup>260</sup> Environmental Defenders Office (Qld), Submission 27.

<sup>261</sup> Department of State Development, Correspondence dated 10 July 2015, p 8.

<sup>262</sup> Environmental Defenders Office (Qld), Submission 27.

<sup>263</sup> Department of State Development, Correspondence dated 10 July 2015, p 6.

<sup>264</sup> Environmental Defenders Office of Northern Queensland, Submission 5 and Environmental Defenders Office (Qld), Submission 27.

<sup>265</sup> Department of State Development, correspondence dated 10 July 2015, p 6.

appeals in certain circumstances where State Interests are applicable (e.g. SPA Sections 485(5) and (6) where an appeal is about a concurrence agency's response).<sup>266</sup>

The LGAQ recommended that the Queensland Government, therefore, 'must be party to any appeal proceedings for decisions made by local government about development in a port master plan area.'<sup>267</sup> The department advised this would be unnecessary because:

[T]here are no development approvals under the Bill. Development approvals will continue to be made under existing legislation.<sup>268</sup>

Committee comment

The committee is satisfied with the department's advice relating to accountability and transparency matters.

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<sup>266</sup> Local Government Association of Queensland, Submission 29.

<sup>267</sup> Ibid.

<sup>268</sup> Department of State Development, correspondence dated 10 July 2015, p 6.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLP) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee examined the application of FLPs to the Bill and considers clauses 6, 12, 22, 32, 34, 42 and 59 raise potential concerns. The Bill also proposes one offence provision.

##### 3.1.1 *Rights and liberties of individuals*

Section 4(2)(a) of the LSA provides the principles of FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. Sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.

Clause 22 provides for the making or amending of port overlays, including notification requirements. Clauses 32 to 34 prohibit the following in the GBRWHA:

- the development of port facilities outside existing port limits and in a State marine park
- port related capital dredging other than for priority ports, and
- the sea-based disposal of port-related capital dredged material.

##### Clause 22

The committee considered whether clause 22 was inconsistent with principles of natural justice and whether it had sufficient regard to the rights and liberties of individuals.

The clause provides for the Minister to make or amend a port overlay for a priority port’s master planned area. In making or amending a port overlay, the Minister will not be required to publicly notify or consult on the proposed instrument.

The explanatory notes state:

It is considered that this is justified as the port overlay is merely the regulatory tool to implement the State’s interests as identified in the master plan. In preparing a master plan, the Minister must conduct a comprehensive public notification and consultation process, including consideration of all submissions received on the master plan during that process.

Though the port overlay will not be subordinate legislation, it must be tabled in the Legislative Assembly and will be subject to disallowance.<sup>269</sup>

##### Clauses 32 to 34

The committee considered how the prohibitions in the GBRWHA provided by clauses 32 to 34 removed existing rights. The explanatory notes state:<sup>270</sup>

The government has committed to implementing these actions to protect the GBRWHA. The potential abrogation of rights and liberties is considered proportionate and relevant to the issue being addressed. Careful consideration was given to implications of applying the

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<sup>269</sup> Explanatory notes, pp 3-4.

<sup>270</sup> Ibid, p 4.

prohibitions/restrictions. The approach taken in the Bill is considered to provide the best balance between individual and community interests.

#### Clause 42

Sufficient regard to rights and liberties of individuals also depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.<sup>271</sup>

Clause 42 provides that the owner of an interest in land is entitled to compensation from the State if the owner no longer has the right to use the land for a particular alternative purpose as a result of a port overlay (or amendment of an overlay) taking effect and this results in a loss in the value of the owner's interest in the land.

The limited entitlement to compensation under clause 42 is a potential FLP breach that may affect or take away existing rights; for example, an overlay may make particular development assessable, which previously did not require a development permit.

The explanatory notes state:

Limiting compensation to a loss of use rights is consistent with the compensation provisions in the *State Development and Public Works Organisation Act 1971*, on which the provisions were based. This limitation of compensation is considered appropriate. The provision does not limit existing rights to compensation and existing lawful uses of premises and buildings are protected (as are existing development approvals) by the Bill. As a port overlay will not regulate State development areas or priority development areas, no compensation in relation to these areas is included in the Bill.<sup>272</sup>

#### Committee comment

In relation to clause 22, the committee has made a recommendation for the port overlay process to be subject to public consultation in part 2 of this report. The committee acknowledges that the master planning process would involve public consultation and that the port overlay would be subject to disallowance; however, the committee's recommendation to require consultation would alleviate stakeholder concerns and ensure greater regard to the rights and liberties of individuals.

In relation to clauses 32 to 34, the committee is supportive of the policy proposal to protect the GBRWHA and considers that the potential removal of existing rights is justified in order to achieve the policy intent. The committee's detailed consideration of the implications of the prohibitions are outlined in part 2 above.

In relation to clause 42, the committee considers the limited right to compensation is justified in the circumstances and is consistent with other legislation.

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<sup>271</sup> *Legislative Standards Act 1992*, s 4(3)(i).

<sup>272</sup> Explanatory notes, p 4.

### **3.1.2 Institution of Parliament**

Section 4(4)(b) of the LSA provides the FLPs include requiring that legislation has sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the legislative assembly.

#### Clauses 6, 12, 22 and 59(2)

Clause 6 states that the master planned area for a priority port is the area identified in the master plan and approved by regulation as the master planned area for that port. In identifying the area, the Minister must prepare a draft master plan identifying the boundaries of the area. The draft master plan must then be publicly notified and submissions about the draft master plan, including the proposed master planned area, must be considered by the Minister in making the master plan.

Clause 12 provides for the making and amending of a proposed master plan.

Clause 59(2) provides that the Minister may make a regulation to approve the master planned area. Once a master planned area has been established, the Minister must make a port overlay for the master planned area. As mentioned above, the port overlay will have a similar effect to a State planning regulatory provision and will be able to regulate development in the master planned area.

Clause 22 provides for the making or amending of port overlays, including notification requirements.

According to clause 20, a port overlay is a statutory instrument but is not subordinate legislation. Under clause 22(4), a copy of the port overlay must be tabled within 14 sitting days after the instrument is made.

The explanatory notes state:<sup>273</sup>

It may be argued that this arrangement does not provide for certainty or have sufficient regard to the institution of Parliament. The approach in the Bill is considered appropriate to allow the flexibility needed in deciding the master planned area for a priority port, including allowing for comprehensive consultation with affected stakeholders and the community. Under the *Statutory Instruments Act 1992*, the regulation approving the master planned area must be tabled in the Legislative Assembly and will be subject to disallowance.

Whilst the master planned area is to be approved via a regulation, the master plan itself will not be contained in, or attached to, the regulation.

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the master plan) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it could be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

#### Committee comment

The committee considered whether the master plan and port overlay should be included in primary legislation. While the proposal incorporates the necessary flexibility required for the development of the master plan and port overlay process, the committee has recommended the Minister table in Parliament the master plan or amended master plan, as well as a summary of consultation, once it is made (in part 2 above). This would ensure greater regard for the institution of Parliament.

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<sup>273</sup> Ibid, p 5.

### 3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4.

The committee considers that the 'achievement of policy objectives' section may have been confusing for stakeholders. The section refers to a broad range of port-related commitments for action by the Government that were not being implemented by the Bill, such as transshipping and maintenance dredging. The committee considers this section of the explanatory notes should include a brief statement of the way the policy objectives will be achieved by the Bill (ie how the Bill implements the policy objectives outlined and why a particular way is reasonable and appropriate).

The committee appreciates that there was an urgent imperative to introduce the Bill into the Legislative Assembly before the relevant session of the UNESCO WHC. However, the explanatory notes do not provide enough detail about the targeted consultation. Specifically, the explanatory notes do not include the method of consultation, the views of those stakeholders or any changes made as a result of the consultation undertaken.

The committee raises these matters for consideration by the department when preparing future explanatory notes.

## Appendices

### Appendix A – List of submitters

Sub #	Name
1	K & S Hellwege
2	Jonathan Peter
3	Peter Dallas
4	Kay Wilson
5	Environmental Defenders Office of North Queensland
6	Randini Dissanayake
7	Mike Halenko
8	Paul Jack
9	Cairns Regional Council
10	Garry Scadding
11	Claudia Udink
12	Zan Schubert
13	Stuart Heath
14	Michele Venables
15	North Queensland Conservation Council
16	Environment Council of Central Queensland
17	Scott Nickels
18	Queensland Ports Association
19	Whitsunday Regional Council
20	Ros Blackwood
21	Protect Keppel Bay
22	Stan & Patrice McDonnell
23	Ports North
24	Robert Barnes
25	Cairns and Far North Environment Centre Inc.
26	Confidential
27	Environmental Defenders Office Queensland
28	Queensland Resources Council
29	Local Government Association of Queensland
30	Advance Cairns and Cairns Chamber of Commerce
31	Rio Tinto Alcan

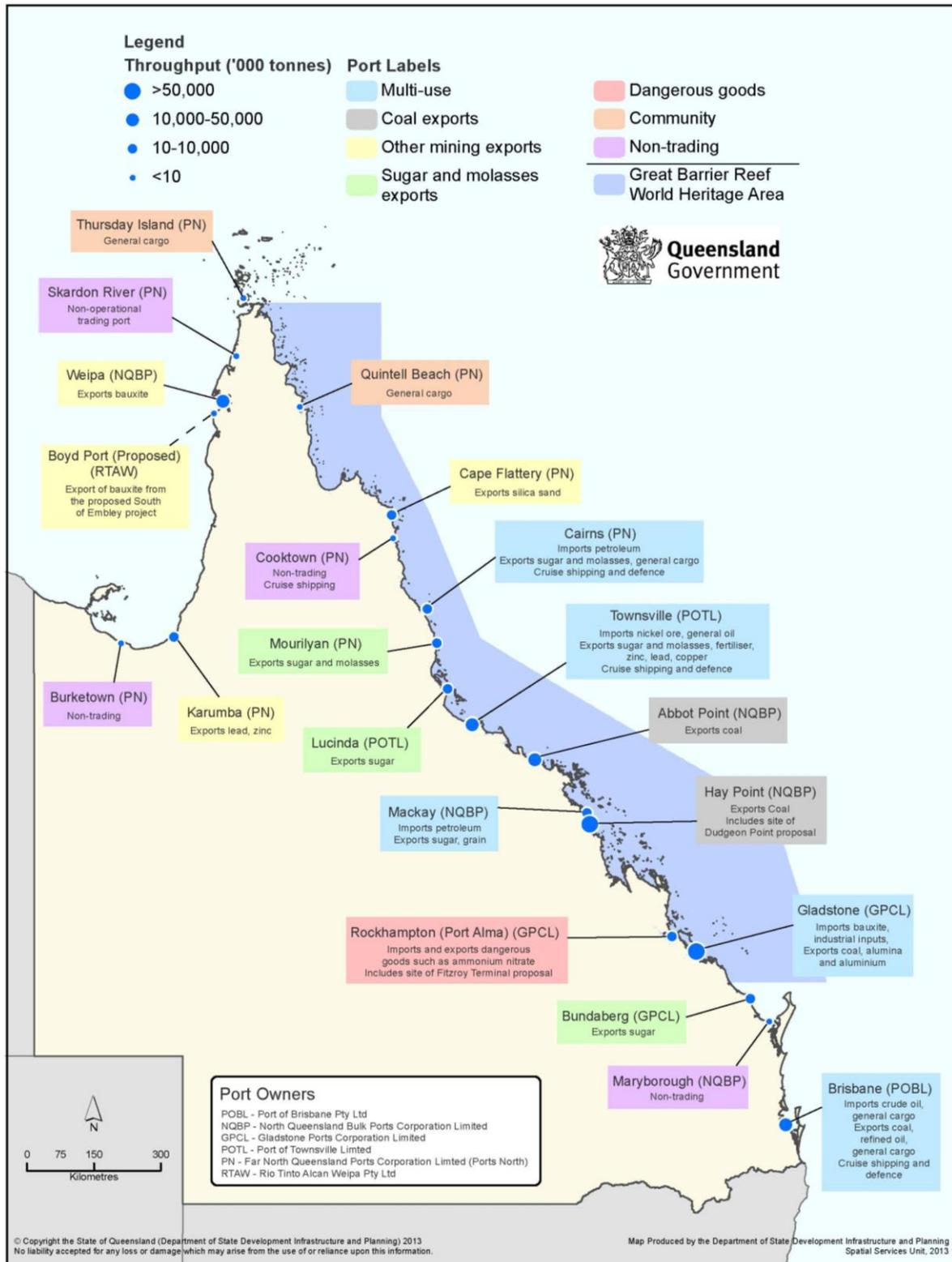
<b>Sub #</b>	<b>Name</b>
32	Yarrabah Aboriginal Shire Council
33	Queensland Tourism Industry Council
34	Mackay Regional Council
35	Norship Marine
36	North Queensland Bulk Ports Corporation
37	Gladstone Ports Corporation
38	Queensland Environmental Law Association
39	Friends of the Port of Cairns
40	Mackay Conservation Group
41	Port of Townsville Limited
42	Wayne Zanders
43	Susie Miller
44	Rockley Boothroyd
45	Lawrie Walton
46	Form email (see committee's website for a list of names)
47	Cruise Lines International Association
48	Tourism Tropical North Queensland
49	Hay Point Community Action Group
50	Ports Australia
51	WWF-Australia
52	Australian Marine Conservation Society Inc.

**Appendix B – List of witnesses at the public hearings**

<b>Witnesses – Public Hearing held Monday 13 July 2015</b>	
1	Mr Chris Boland – Chairman, Queensland Ports Association
2	Mr Paul Doyle – Chairman, Queensland Ports Association Planning and Environment Committee
3	Mr Bob Brunner – Senior Manager Planning, North Queensland Bulk Ports
4	Ms Louise Matthiesson – World Wildlife Fund
5	Ms Revel Pointon – Solicitor, Environmental Defenders Office of Queensland
6	Mr Luke Hannan – Manager-Advocacy, Planning, Development and Natural Environment, Local Government Association of Queensland
7	Mr Greg Hoffman PSM – General Manager-Advocacy, Local Government Association of Queensland
8	Mr Andrew Barger – Director Infrastructure and Economics, Queensland Resources Council
9	Ms Nicola Garland – Policy Advisor, Queensland Resources Council
10	Mr Michael Roche – Chief Executive, Queensland Resources Council
11	Ms Sally McCone – Project Manager Policy and Legislation, Department of State Development
12	Ms Sally Noonan – Executive Director Policy and Legislation, Department of State Development
13	Mr Peter Silvester – Director Policy and Legislation, Department of State Development
<b>Witnesses – Public Hearing held Wednesday 29 July 2015</b>	
1	Mr Brynn Mathews – Treasurer Management Committee, Environmental Defenders Office of North Queensland
2	Mr Ron Crew – President, Cairns Port Development Inc.
3	Mr Bill Cummings – Principal, Cummings Economics
4	Mr Adam Gowlett – President Cairns Branch, Urban Development institute of Australia
5	Mr Peter Senior – Principal, Senior Consulting
6	Ms Deb Hancock – Chief Executive Officer, Cairns Chamber of Commerce
7	Mr Sam Marino – President, Cairns Chamber of Commerce
8	Mr Trent Twomey – Chair, Advance Cairns
9	Mr Chris Boland – Chief Executive Officer, Ports North
10	Mr Alan Vico – General Manager, Planning and Infrastructure, Ports North
11	Mr Bob Manning – Mayor, Cairns Regional Council
12	Mr Neil Quinn – Executive Manager Mayor’s Office, Cairns Regional Council
13	Mr Bernard Gallen, Maritime Union of Australia

14	Mr Terence O'Shane, Maritime Union of Australia
15	Mr David Rainbow, Maritime Union of Australia
<b>Witnesses – Public Hearing held Thursday 30 July 2015</b>	
1	Ms Patricia Julien – Research Analyst, Mackay Conservation Group
2	Ms Ellen Roberts – Coordinator, Mackay Conservation Group
3	Mr Peter Dallas – Spokesman, Hay Point Community Action Group
4	Ms Patrice Brown – Director, Hay Point Exports
5	Mr Ben King – Director, Mitchell Ports Project
6	Mr Bob Brunner – Senior Manager Planning, North Queensland Bulk Ports Corporation
7	Mr Jeff Stewart-Harris – Chief Operating Officer, North Queensland Bulk Ports Corporation
8	Mr Jaco Ackerman – Strategic Planning, Mackay Regional Council
9	Ms Julie Brook – Senior Planner, Mackay Regional Council

Appendix C – Map of Queensland Ports



Source: Department of State Development.

Appendix D – General reference map



## Statements of Reservation



**Glenn Butcher MP**  
Labor Member for Gladstone

**ELECTORATE OFFICE**  
2/191 Philip Street  
Gladstone, Q. 4680  
Ph: (07) 4904 1100  
Toll Free: 1800 810 547  
Fax: (07) 4904 1109  
Email: gladstone@parliament.qld.gov.au

 Glenn Butcher - Member for Gladstone

31 August 2015

Erin Pasley  
Research Director  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
BRISBANE Qld 4000

Dear Erin,

### Statement of Reservation

As a follow up to the Committee teleconference of 28/08/2015, the Government Members of the Committee approve the following Statement of Reservation to be sent to Minister Lynham for consideration.

*Government Members of the Committee in support of recommendation 12, wish to make it clear that we do not want the future economic development of Cairns to be shut down. However, we as members of the committee do not support the at sea disposal of dredge spoils – as it is not consistent with the Reef 2050 Long-Term Sustainability Plan prepared in partnership with the Federal Government.*

*We note that the transitional provisions provided by the Sustainable Ports Development Bill 2015 would enable the Cairns shipping development project to proceed if it was approved following the conclusion of the EIS process and encourage all stakeholders to allow this process to occur.*

Kind Regards



**Glenn Butcher MP**  
Member for Gladstone  
Member of the Infrastructure Planning and Natural Resources Committee



## Michael Hart MP State Member for Burleigh

31 August 2015

Mr Jim Pearce  
Chairperson  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Mr Pearce

**RE: - Sustainable Ports Bill 2015**

We wish to notify the Committee of our reservations about aspects of Report No.6 of the Infrastructure, Planning and Natural Resources Committee.

While the Opposition members of the committee support the recommendations in the committee report, we wish to express our reservations at the level of clarity, transparency and accountability in the provisions of the Sustainable Ports Bill as it currently stands.

To that end, we urge the Minister to provide further explanation and clarity regarding certain aspects of the Bill, as reflected in committee recommendations 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13.

The Opposition intends to outline other reservations and concerns during the second reading debate on this bill and looks forward to scrutinising the government response to the committee recommendations. We also specifically note recommendation 1 of the report.

Yours sincerely



**Michael Hart**  
Member for Burleigh



**Lachlan Millar**  
Member for Gregory



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**Phone:** 5526 6024 **Fax:** 5526 6135 **Email:** [burleigh@parliament.qld.gov.au](mailto:burleigh@parliament.qld.gov.au)  
**Office:** 1 Paradise Avenue, Miami QLD 4220 **Post:** PO Box 2093 Burleigh Waters QLD 4220



Serving Dalrymple

**SHANE KNUTH MP**

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31 August 2015

Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**Statement of Reservation re Sustainable Ports Development Bill 2015**

While the purpose of the Sustainable Ports Development Bill 2015 (the Bill) is fundamentally supported, reservation is expressed due to the limitations it imposes at the ports of Cairns and Mourilyan.

Submissions rightly confirm that the ports of Cairns and Mourilyan are strategic ports, critical for enabling economic and employment growth in North Queensland.

These ports are also vital to the state and national economy.

Substantial private and public sector economic opportunities are linked to the capacity of the ports of Cairns and Mourilyan. Therefore limiting the development of the ports of Cairns and Mourilyan controversially restricts and risks economic and employment opportunities.

On this basis while endorsing the importance of the Reef 2050 plan and acknowledging the inherent contribution of the Bill, it is held that the Bill does not sufficiently support nor enable sustainable economic development at the ports of Cairns and Mourilyan as vital to the future of North Queensland.

Yours sincerely

A handwritten signature in black ink, appearing to read "S Knuth".

**Shane Knuth MP, Member for Dalrymple**  
**Member of the Infrastructure, Planning and Natural Resources Committee**

Silo Central Shopping Centre PO Box 1667 Atherton QLD 4883 Ph: 07 4091 5861 Fx: 07 4091 4675 Free Call: 1800 245 247  
Email: dalrymple@parliament.qld.gov.au

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