

Environmental Defenders Office of Northern Queensland Inc.



14 December 2012

VIA EMAIL (GBRportsstrategy@dsdip.qld.gov.au)

GBR Ports Strategy Project Manager
Department of State Development, Infrastructure and Planning
PO Box 15009
City East QLD 4002

**Re: Great Barrier Reef Ports Strategy 2012-2022 – Written Submissions
of Environmental Defenders Office of Northern Queensland Inc.**

Dear Sir/Madam,

The Environmental Defenders' Office of Northern Queensland Inc. ("**EDO-NQ**") is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. Like other EDOs located in each of Australia's states and territories, EDO-NQ provides specialised legal representation, advice and information to individuals and communities regarding environmental law matters of public interest. We also take an active role in environmental law reform and policy formulation, and offer community legal education programs designed to facilitate public participation in environmental decision making.

The *Great Barrier Reef Ports Strategy 2012-2022* ("**GBR Ports Strategy**"), released for public consultation by the Department of State Development, Infrastructure and Planning ("**DSDIP**") on 1 November 2012, among other things:

- seeks to "ensure that port development in the Great Barrier Reef region occurs in a balanced and incremental way to support economic development while maintaining the outstanding environmental value of this world renowned icon";
- commits the Government to "work with industry and stakeholders to optimise the use of existing port areas and minimise environmental impacts";
- commits the Government to "finding the right balance between economic development and environmental protection";
- promotes the strategy as helping to "provide greater confidence, transparency and certainty for industry, community and all stakeholders";¹ and

¹ GBR Ports Strategy, p iii; accessed at <http://www.dsdip.qld.gov.au/resources/plan/great-barrier-reef-ports-strategy.pdf>.

- “complements the Great Barrier Reef Coastal Zone Strategic Assessment being undertaken by the Queensland Government”.²

EDO-NQ is based in Cairns and provides service to the public from Sarina north to the Torres Strait and west to the state border. The entire eastern coast of this area lies adjacent to the Great Barrier Reef and numerous industrial and commercial ports lie within this area, including Abbott Point, Dudgeon Bay, Hay Point, Townsville, Cairns, and Mackay.³ Many of the communities and individuals served by EDO-NQ are located in close proximity to the coast of this region. The GBR Ports Strategy has clear and significant impacts on coastal issues that affect communities and individuals in EDO-NQ's service area. EDO-NQ welcomes the opportunity to lodge submissions with the DSDIP regarding the GBR Ports Strategy.

SUBMISSIONS

I. GENERAL CONCERNS

A. Relationship to GBR Coastal Zone Strategic Assessment

As noted above, the GBR Ports Strategy will complement the Coastal Zone Strategic Assessment of the GBR being undertaken by the Queensland Government, pursuant to an agreement with the Commonwealth under s 146 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). A draft of the report stemming from that assessment is anticipated in February/March 2013, when it is released for public review and comment before being finalized and submitted to the Commonwealth Environment Minister.

EDO-NQ notes that, unlike the marine component of the GBR Strategic Assessment being undertaken by the Great Barrier Reef Marine Park Authority (“**GBRMPA**”), there has been no public consultation undertaken by the State of Queensland with respect to the coastal component of the assessment. In fact, at an 11 December 2012 workshop conducted by GBRMPA in Cairns, State officials advised that there is no plan to undertake any stakeholder meetings or other public consultation on the coastal component assessment prior to the release of the draft report. Given the lack of public consultation on the coastal component of the strategic assessment, EDO-NQ is concerned about the degree to which the State will take submissions on the GBR Ports Strategy into consideration.

In addition, EDO-NQ questions the wisdom of pushing forward with a GBR Ports Strategy before the completion of the strategic assessment process, before the completion of a strategic assessment report, and before the United Nations is able to consider and act upon that report at the next meeting of the World Heritage Committee. EDO-NQ submits that it would be more appropriate to postpone development of a GBR Ports Strategy until after the conclusion of the strategic

² *Ibid*, p 5.

³ See *ibid*, Figure 1, p 8.

assessment and report – and more appropriately, until after the United Nations has reviewed and acted on the strategic assessment report.

B. The Focus Of The GBR Ports Strategy Is On Economic Development Rather Than Increased Protection Of The GBR World Heritage Area’s And Reversal Of Its Deteriorating Condition

There is no question but that the condition of the GBR World Heritage Area is under threat, and that the outstanding universal values for which the GBR was inscribed on the World Heritage List are deteriorating. This state of affairs led the World Heritage Committee to dispatch a reactive monitoring mission to Australia in March 2012, and led to the issuance of two reports expressing alarm over the increasing industrial development of the Reef and the deteriorating condition of the World Heritage property.⁴ EDO-NQ notes that the World Heritage Committee’s decisions, and findings upon which its concerns are based, are not referenced in the GBR Ports Strategy.

Instead, the GBR Ports Strategy – relying apparently on the *GBR Outlook Report 2009* (“**2009 Outlook Report**”) – downplays the significance of threats to the Reef’s health from ports and shipping as “moderate” and “localised”.⁵ This is not entirely consistent with the 2009 Outlook Report and is troubling. For example, the 2009 Outlook Report noted:

The impacts of dredging and construction of port facilities - such as seabed disturbance, transport or resuspension of contaminants, alteration of sediment movement and changes in coastal processes - ***can be significant, but are localised***. For example, monitoring of the Hay Point dredging project in 2007 showed significant environmental impacts at the dredge and disposal sites and minor impacts to corals at sites up to 12 kilometres away (recovery is expected at these sites).⁶

“Significant” is not synonymous with “moderate”. Moreover, the 2009 Outlook Report expressed concerns about the impact of increased port development and shipping on the Reef – exactly the sort of activity that the GBR Ports Strategy contemplates.⁷

⁴ See, e.g., *Decisions Adopted by the World Heritage Committee at its 36th Session*, WHC-12/36 COM 7B.8, para 10, p 58 (St. Petersburg, 2012).

⁵ GBR Ports Strategy, p 9.

⁶ 2009 Outlook Report, s 4.5.3, p 76 (emphasis added).

⁷ *Ibid.* On this point, the 2009 Outlook Report noted (at p 77):

[F]urther development of ports within the Great Barrier Reef Region, such as an increase in construction of new shipping berths and shipping channels or an increase in maintenance dredging activities, are likely to have local impacts on the marine environment. While continued careful management of shipping activity will minimise the risk of major incidents, the predicted increase in shipping will increase the likelihood of a major incident as well as increasing the potential for more introduced species to occur.

More significantly, more recent assessment of threats to the GBR's condition suggests that ports and shipping activity, and related coastal development, is having a more significant impact on the Reef's health than recognized in the 2009 Outlook Report. Specifically, in the draft GBR Biodiversity Conservation Strategy released by the GBR Marine Park Authority in August 2012, the significant threat posed by increased port development and consequent shipping is discussed at length. For example, the draft Biodiversity Conservation Strategy notes:

The resources boom in Queensland has outstripped the capacity of current port facilities to handle the export of coal and other commodities. ***The scale and scope of the expansion programs for existing ports and proposals for new ports to meet these export demands is unprecedented and will necessitate the development of large-scale coastal infrastructure and commensurate increases dredging activities, shipping movements and the number of ships moored in the Great Barrier Reef Marine Park awaiting loading. Many of the at-risk habitats, species and groups of species identified in this draft Strategy can be found in these areas.***

The rapid urban expansion, mining and development or expansion of ports and related infrastructure currently occurring along the Great Barrier Reef is adding further pressures to inshore biodiversity and must be considered in the context of the decline of water quality from catchment run-off, habitat loss from other coastal development, some remaining impacts of fishing, illegal fishing and poaching, climate change and recent cyclones and the extreme weather events of 2010/2011.⁸

Likewise, the GBR Ports Strategy appears to decouple the significant decline in overall coral coverage on the Reef, according to the recent Australian Institute of Marine Sciences ("AIMS") study, from port development and associated dredging, shipping and industrial activity.⁹ Coral cover declines are attributed to storm damage, Crown of Thorns predation and coral bleaching.¹⁰ However, the GBR Ports Strategy makes no attempt to consider underlying reasons why these events, particularly storm damage, are having such devastating impacts on Reef corals and whether increased industrial activity, such as that associated with ports, is linked to reduced resilience/increased vulnerability of Reef coral to such events.

Furthermore, the GBR Ports Strategy focus on declining coral cover – and exclusion of ports and shipping activities from consideration as contributing to that decline – also ignores corresponding declines to seagrass extent within the GBR. As the draft GBR Biodiversity Conservation Strategy notes, seagrass meadows make up some 61% of the GBR ecosystem – compared to 7% associated with coral. Crown of thorns outbreaks and coral bleaching do not affect seagrasses. Yet seagrass coverage has declined markedly as well, and the draft Strategy attributes that decline to increased coastal development – which includes ports, dredging associated with port

⁸ Draft GBR Biodiversity Conservation Strategy, pp 15-16 (August 2012) (emphasis added).

⁹ Glean De'atha, *Proceedings of the National Academy of Sciences (PNAS)*, "The 27-year decline of coral cover on the Great Barrier Reef and its causes" (1 Oct. 2012); accessed at www.pnas.org/content/early/2012/09/25/1208909109.

¹⁰ *Ibid.*

operation, and other industrial activities associated with ports – and recent flooding events.¹¹

In the GBR Ports Strategy discussion of environmental impacts on the Reef, and management of those impacts, the Government refers to its effort to “balance the protection of important habitats and environmental values with the need to facilitate economic infrastructure that ensures the growth of Queensland’s four pillar economy”.¹² However, there is virtually no discussion of how the Government proposes to balance environmental protection against the pressure to grow the four pillar economy it promotes.

C. Relationship To Queensland Ports Strategy

At page 5 of the Draft GBR Ports Strategy it is noted that:

Consultation on this document will inform a *Queensland Ports Strategy* and the actions that government undertakes with industry, port authorities, communities and other partners to optimise the future operation and function of ports in Queensland.

No information is provided on which strategy (the Queensland Ports Strategy or the GBR Ports Strategy) will have precedence or higher priority, or how potential conflicts between the two will be resolved.

Moreover, and as noted above, the quoted passage again emphasizes that the draft strategy is focused exclusively on “optimizing” future operations and functions of ports in Queensland from an economic perspective – not protection of the GBR’s outstanding universal values.

D. Failure To Consider GBR WHA’s Outstanding Universal Values

The draft Strategy is deficient in that, as mentioned above, it fails to Furthermore, the Strategy fails to discuss how impacts associated with current, let alone greatly increased, port development and operations will impact the GBR WHA’s Outstanding Universal Values (“**OUV**”). This omission must be dealt with since the World Heritage Committee has made it clear that Australia’s management framework for the Reef fails to adequately address protection of the GBR WHA’s OUV. On this point, the World Heritage Committee noted:

A central issue is that there does not appear to be consistent or specific recognition of OUV in plans and decision taking processes, and there is concern regarding the protection of a range of aspects that make up the OUV of the property, as these are not all being consistently considered.¹³

¹¹ See, e.g., Draft GBR Biodiversity Conservation Strategy, p 15.

¹² GBR Ports Strategy, p 9.

¹³ See WHC-12/36.COM/7B.Add, p 26.

E. The Strategy's Time Frame Should Be Consistent With The Strategic Assessment

As the Draft GBR Ports Strategy notes, the Strategic Assessment of the GBR currently being undertaken by the State of Queensland and GBRMPA is intended to “guide the management of the reef for the next 25 years”.¹⁴ However, the draft strategy is intended to guide the Government’s approach to port development and planning for a considerably shorter time frame – only until 2022.¹⁵

Given the obvious interplay between the management goals sought in the strategic assessment and the draft ports strategy, EDO-NQ submits that the planning horizons should be identical. Accordingly, the GBR Ports Strategy planning and management horizon should be based on port development and operations over the next 25 years, rather than the next 10 years and thus the strategy should be in place until 2038.

II. CONCERNS REGARDING SPECIFIC PROVISIONS OF THE GBR PORTS STRATEGY

In addition to the foregoing, broad concerns regarding the draft GBR Ports Strategy, EDO-NQ offers the following submissions regarding specific provisions of the draft.

A. The Draft Strategy Understates Future Shipping Volumes

The draft Strategy appears to understate future shipping volumes (e.g., call numbers) over the next 10 years. The State notes that, based on SDIP’s modeling scenarios, “the highest likely ship call numbers in 2022 is approximately 6100”.¹⁶ However, the State then suggests that a more realistic number is between 5650 and 5900, based on annual growth in Queensland’s trade volume over the past 10 years.

EDO-NQ submits that the Strategy inappropriately “low balls” shipping volumes. For one thing, growth in trade volumes over the past 10 years obviously does not include the vast expansion in port capacity – and volumes of mine and gas output expected to be shipped out of those ports. In other words, growth during historic periods when port capacity and mine output was lower is not an appropriate basis upon which to project shipping volumes once proposed port and mine/gas production has come on line. Moreover, the State appears to discount the PGM Environment study that forecasts a “probable case” of 7448 ship calls by 2020.¹⁷ EDO-NQ submits that proper application of the precautionary principle, coupled with the importance of taking a conservative approach intended to adequately protect the GBR WHA’s OUV, warrants utilizing PGM Environment’s higher shipping projections for planning and management purposes.

¹⁴ GBR Ports Strategy, p 5.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p 11.

¹⁷ *Ibid*, p 11 n 1.

B. Deficiencies In Principle 2

Principle 2 of the draft GBR Ports Strategy deals with finding the right balance between economic development and environmental protection. EDO-NQ has a number of concerns with the elements contained in this principle.

1. “Significant” port development is undefined

For one thing, Principle 2 proposes to “[r]estrict any significant port development, within and adjoining the Great Barrier Reef World Heritage Area, to within existing port limits for the next 10 years”.¹⁸ There are no criteria provided that allows “significant” port development to be defined or characterized. In other words, port development that does not meet – in the State’s opinion – the undefined concept of “significant” apparently could be permitted outside existing port limits over the next 10 years. Depending on how “significant” is defined and applied, this is a large hole in the management framework through which conceivably very large port developments with potential to impact the Reef could be driven.

2. 10-year time frame is inappropriate

Similarly – and for the reasons stated above – the restriction on port development to existing areas should apply for the entire 25 year planning horizon adopted in the Strategic Assessment, rather than the shorter 10 year time frame contained in the draft strategy.

3. Offsets proposed are inappropriate

Principle 2 also proposes a “whole of region approach to offsetting impacts, that cannot be avoided or mitigated, and that directs funds to tackle the most significant issues facing the Great Barrier Reef region”.¹⁹ EDO-NQ submits that, as written, this proposal is inappropriate.

For one thing, “whole of region approach” is an undefined phrase that could mean virtually anything. The draft strategy needs to specify what is meant by this phrase and then entertain further consultation once it has been clarified.

More importantly, the draft strategy appears to contemplate a movement to cash-based offsets, rather than “like for like” offsets.²⁰ The World Heritage Committee

¹⁸ Draft GBR Ports Strategy, p 17.

¹⁹ *Ibid.*

²⁰ This is made abundantly clear in the “Review of Offsets” discussion at page 19 of the draft Strategy, where it is noted that:

The review will refocus offsets towards: financial payments directed towards land management; restoration and recovery works; and provide a more strategic approach for provision of land-based offsets.

has previously expressed its view that it is inappropriate to use offsets to replace areas of outstanding universal value adversely impacted by proposed development.²¹ EDO-NQ submits that the proposed offsets provision contained in Principle 2 goes one further on a bad idea: continuing offsets but dispensing with the need for like-for-like offsets of OUV and replacing that concept with cash offsets applied to any project the government wants to fund.

4. Undefined partnership approach for measuring cumulative impacts.

The draft strategy's Principle 2 also states that "cumulative impacts of development requires a partnership approach to adaptive environmental management".²² Given that the State acknowledges its lack of experience with cumulative impact assessments, EDO-NQ submits that this partnership approach needs to be defined more clearly and, in any event, should include not only the development's proponent but also communities and individuals affected by the proposed development.

C. Deficiencies In Principle 3.

Principle 3 in the draft Strategy emphasizes "streamlin[ing] regulation and environment assessment and approval processes to provide certainty".²³ In light of the endangered health of the GBR WHA, EDO-NQ submits that "streamlining" regulation and environmental assessments and approvals is an inappropriate objective, to the extent the objective is likely to lead to favour development of ports and related activities.

CONCLUSION

EDO-NQ appreciates the opportunity to submit comments on the Draft GBR Ports Strategy and urges the DSDIP to take account of – and consult further upon – our submissions and concerns herein, and to make revisions to the draft Strategy that resolve those concerns.

Faithfully yours,

EDO-NQ



PATRICK PEARLMAN
Principal Solicitor

²¹ See Fanny Douvere (UNESCO World Heritage Centre) & Tim Badman (IUCN), *Mission Report: Reactive Monitoring Mission to Great Barrier Reef (Australia) 6th to 14th March 2012*, WHC-12/36.COM/7B.Add (June 2012), pp 47 & 54.

²² Draft GBR Ports Strategy, p 18.

²³ *Ibid*, p 20.