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1 July 2015

**EDO NQ**
ABN 32 017 484 326
Level 1, Suite 1, 96-98 Lake Street
Cairns QLD 4870 AUSTRALIA
E: edonq@edonq.org.au
W: www.edonq.org.au
T: +61 7 4031 4766
F: +61 7 4041 4535

Environmental Defenders Office of Northern Queensland

1 July 2015

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane QLD 4000
By email: ipnrc@parliament.qld.gov.au

Dear Sir/Madam,

**Sustainable Ports Development Bill 2015**

We welcome the opportunity to provide a submission to the Infrastructure, Planning and Natural Resources Committee on the Sustainable Ports Development Bill (**Ports Bill).**

**Who we are**
The Environmental Defenders Office (Northern Queensland) (**EDO NQ**) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. When we were adequately funded we were able to provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest and also deliver community legal education. However, we still have volunteers who can review and comment on proposed law reforms such as this draft Bill.

**Overview**
The UNESCO World Heritage Committee requested the Queensland government to '*rigorously implement all of its commitments of the 2050 LTSP, including where necessary through their inclusion in legislation, in order to halt the current documented declines in the property, create the conditions for sustained recovery and to enhance the property's resilience'* (Draft decision, UNESCO World Heritage Committee (39 COM 7B.7), clause 6). We congratulate the government on introducing the Ports Bill as a step towards meeting a number of its pre-election and Reef 2050 Long-Term Sustainability Plan (**Reef 2050 Plan**) commitments to protect our Great Barrier Reef (**GBR)**.

However, whilst the Bill puts in place measures to deal with inappropriate port development, capital dredging and dumping of dredge spoil, we have serious concerns about inadequacies and omissions from this Bill, including some notable commitments from your government, which should be addressed to prevent unsustainable port development activities in the Reef and to increase the effectiveness of this Bill in protecting the GBR. Our concerns and recommendations are listed below:

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1. ***Lack of Definition of Port Limits:***
   Explanatory notes (p.1) restrict new port development to within current port limits. If these are the existing port limits for control of navigation, as shown in Attachments 1 to 4, they are a substantial area likely to contain in-shore reefs and seagrass beds. On page 2 references are

made to “current port limits” and “regulated port limits” as being the areas in which port development and capital dredging will be allowed.

However, Clause 7(2)(a) of the bill states that the master plan for each of the four ports must “identify the master planned area for the port”. As the extent of this defined area is such a significant factor in the scale of impacts on the GBR lagoon they should be identified and subjected to public scrutiny up front rather than one at a time at unspecified times in the future during the development of master plans. The previous LNP government had stated that the boundaries of the equivalent priority port development areas would be made public by December 2014, this never happened and now they’re still not being made public.

2. ***Environmental Values Should Be Identified Up Front:***
The identification and mapping of environmental values within the master plan area and measures to protect these values are stated as content of the master plans. Surely this process should be part of defining the master planned areas so that environmentally sensitive and ecologically significant areas, such as estuarine conservation zones and fish habitat areas, are excluded from the master plan not just areas of marine park. The proper agencies for protecting such areas are GBRMPA and Queensland National Parks NOT the Port Authority under a master plan or port overlay.

3. ***Unregulated Ministerial Powers to Amend Port Overlays:***
The effect of Clause 22 of the bill is highlighted in the explanatory notes as it gives substantial powers to the Minister to change exempt and other types of development within the master plan area, through making or amending a port overlay, with no opportunity for public scrutiny and comment. If the area in question is State land, local government may well find itself excluded from any approvals process for the area. The Ministers powers to create and amend port overlays 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. Clause 28(6) of the bill even prohibits the assessment manager for a development application from making a decision that is “inconsistent with the port overlay”.

4. ***Lack of Public Involvement in Master Plans and Port Overlays:***
The claim that no public notification or consultation is required for port overlays as they are only implementing the master plan, and that this public engagement took place for the master plan, is not supported. The force of a port overlay as a planning instrument is so substantial that they should also be subject to public scrutiny.

   Both master plans and port overlays potentially can have such a significant impact on areas of high public interest and environmental value that they should be subject to objection and appeal provisions similar to those in planning legislation for impact assessable development. A high level of public oversight is a necessity to ensure that the interests of the whole world community in the Great Barrier Reef World Heritage Area (GBR WHA) are being adequately protected from expedient government decisions such as those of the previous government.

5. ***Inadequate Protection of GBR World Heritage Area:***
The provisions of Part 3 that relate to the protection of the GBR World Heritage Area fail to address any impacts other than those from ports managed by a port authority, and even then with extensive exceptions.

   5.1. Dredging and dredge spoil dumping are permitted under Clause 32(2) in both State marine parks and areas of the GBR WHA outside the Commonwealth marine park. Clause 33 then permits capital dredging for a priority port in areas of the GBR WHA outside the Commonwealth marine park but only within the as yet undefined master planned area for the port. This could easily lead to legal arguments as capital dredging is unarguably dredging and could be remedied by the following additions to Clause 32(2):

*(2) However, subsection (1) does not apply to the following development –*
*the carrying out of dredging **that is not capital dredging**;*
*the disposal of material generated from dredging activities **other than capital dredging**.*

5.2. Clause 32(2) also fails to deliver a pre-election promise to audit the environmental impacts of all maintenance dredging and prohibit ongoing dredge spoil ocean disposal with unsustainable or extensive impacts. This environmental audit and assessment process has not been addressed in the Bill. Maintenance dredge spoil dumping is already damaging many areas of seagrass beds and inshore reefs and contributing to the degradation of the GBR WHA ecological community. The collective impact of all maintenance dredging and dredge spoil dumping needs to be addressed, as the death of a thousand cuts is still a death.

5.3. Clause 33 effectively prohibits all capital dredging in the GBR WHA outside a priority port's master planned area, and we endorse this. However, this master planned area is still undefined and will certainly include State marine parks as well as environmentally sensitive and ecologically significant areas, such as estuarine conservation zones and fish habitat areas, that should be explicitly protected from dredging.

5.4. Clause 34 fails to deliver the promise of a ban on all dredge spoil dumping from capital dredging in the waters of the GBR WHA as made to the World Heritage Commission and welcomed by them. It not only is restricted to priority ports master planned areas, but is poorly drafted in that it 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.

5.5. Part 3 of the Bill, by focusing on capital dredging and dredge spoil dumping, fails to address other port expansions/developments that don't require additional capital dredging but may still impact on the GBR WHA. The definition of "port facility" excludes small scale ports for tourism or recreation purposes. These 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. We believe 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.

6. ***Ban on Transhipment in GBR Lagoon:***
Another pre-election commitment was to ban any transhipment in the GBR WHA. Again this is not addressed in the Bill. Transhipment would enable small ports to load large vessels from barges without any requirement for port expansion. The proposed transhipment site off the Flinders Island group for coal from the proposed Wongai mine on Princess Charlotte Bay is just one example with an alarming potential for water quality impacts and damage to reef and seagrass communities in a currently undeveloped area of the GBR WHA.

7. ***Provision of False or Misleading Information:***
Clause 54, which makes it an offence to provide false or misleading information to the Minister, is inconsistent with similar provisions in the *Environmental Protection Act 1994* (Qld) (**EP Act**), *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**) and **SPA.** In particular we believe that:
   - the offence of giving false and misleading information in Clause 54(1) should be amended to apply where a person 'knows, or ought reasonably to know'; and
   - the defences provided in Clause 54(2) do not exist in other legislation and we see no reason why these defences have been provided in this Bill.

8. ***Need for More Accountability and Transparency:***
The Queensland ALP government has committed to the principles of accountability and transparency in implementing the Reef 2050 Plan. We believe that essential aspects to

achieving this include access to information and access to justice to ensure adequate and informed public participation in decision making and the Bill fails to deliver on these and the following matters:

8.1. The public register of documents in Clause 56 currently only requires a limited number of documents to be available to the public. We believe that a properly transparent decision making process should include public access to any supporting documents, such as environmental impact studies, audits of progress in delivering the Reef 2050 targets. The chief executive may decide to make this material available under Clause 56(2), but we would prefer that this is a statutory requirement by adding the following to Clause 56(1):
*(d) all documents, including supporting documents, which inform decision making undertaken by the Minister under this Act.*

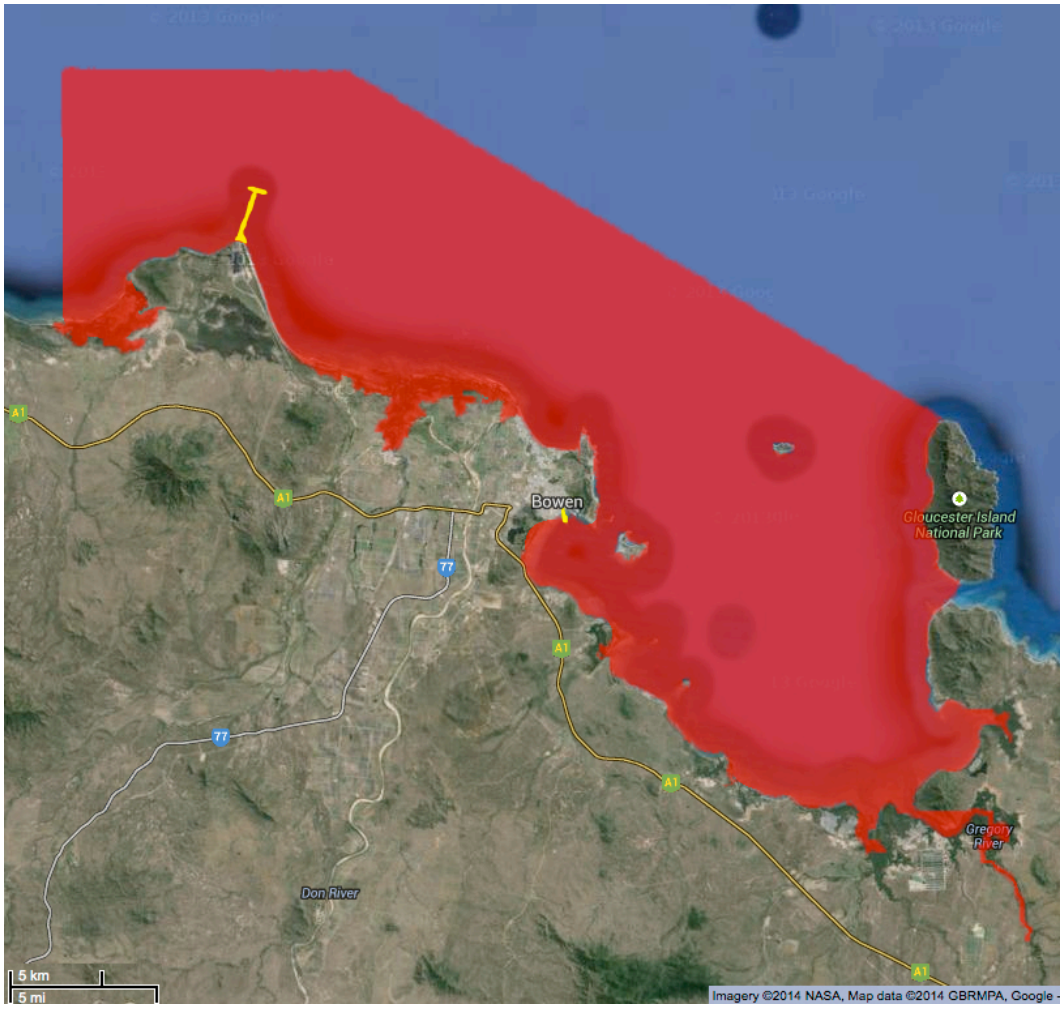
8.2. We believe that the Bill needs third party enforcement provisions for non-compliance and the ability to obtain declarations, as with **SPA** and the **EP Act**, to ensure accountability and encourage compliance. Not all of the acts to which this Bill relates provide for third party enforcement rights or rights to obtain a declaration, nor the right to judicial review around related decision making. The provision of these through this Bill would go a long way to delivering the accountability and transparency to which the government has committed.

9. ***Excessive Compensation Provisions:***
The compensation provisions proposed under Part 4, Division 2 greatly exceed those available under the **SPA** and the **SDPWO Act** and could easily limit the ability of the Bill and port overlays to achieve desirable land uses consistent with the port's master plan. There is also the issue of how this relates to State owned land, which we assume will include most of the areas of the priority ports. We believe that the clauses 38 to 50 weaken the delivery of the Bill and should be reconsidered.

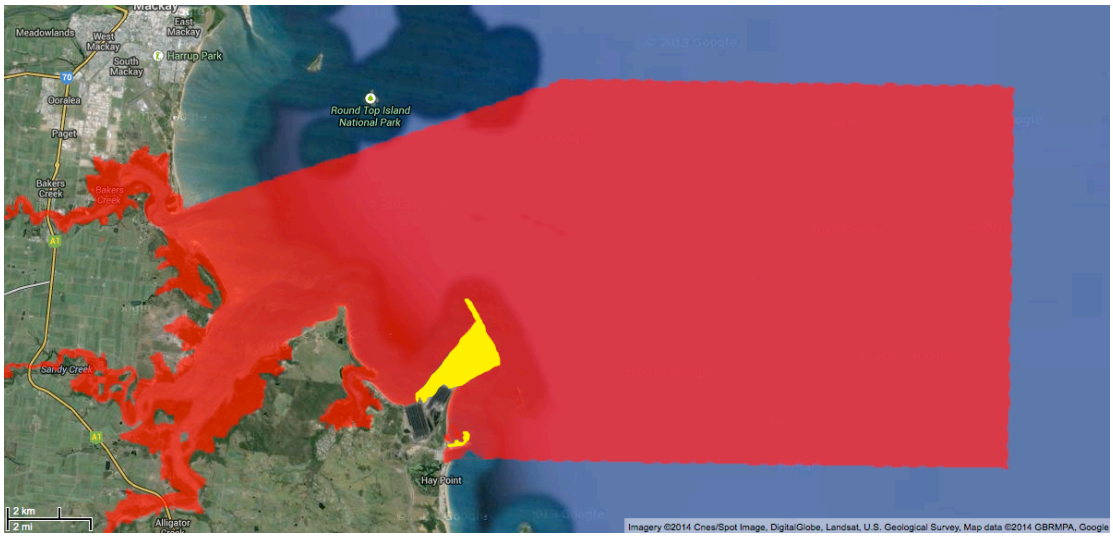
In conclusion, whilst this Bill is a major step in delivering several of the Queensland government's pre-election commitments and others made under the Reef 2050 Plan, there are some major omissions and inadequacies in this Bill as detailed above, which should be addressed to prevent ongoing harm to the GBR from existing port activities, from new port development activities and to maximise the effectiveness of this Bill in protecting the GBR.

Yours sincerely

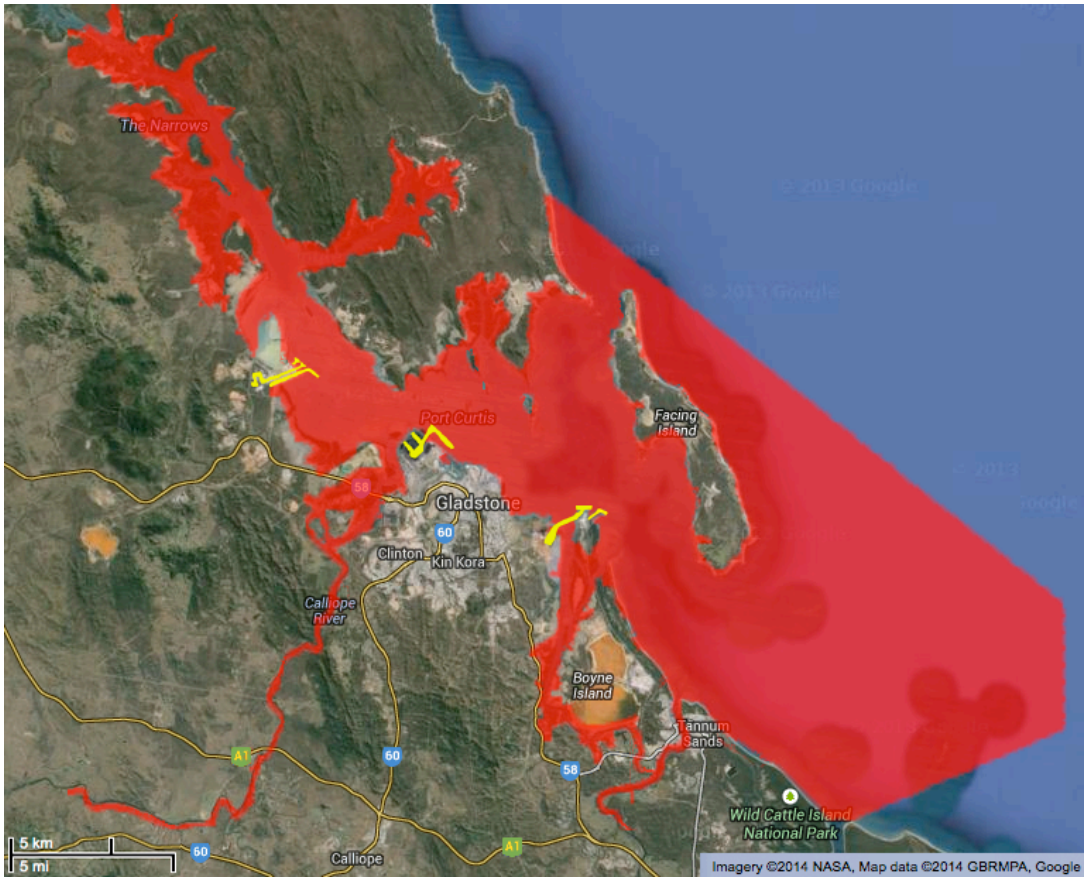
Mark Buttrose – President of Management Committee
EDO NQ



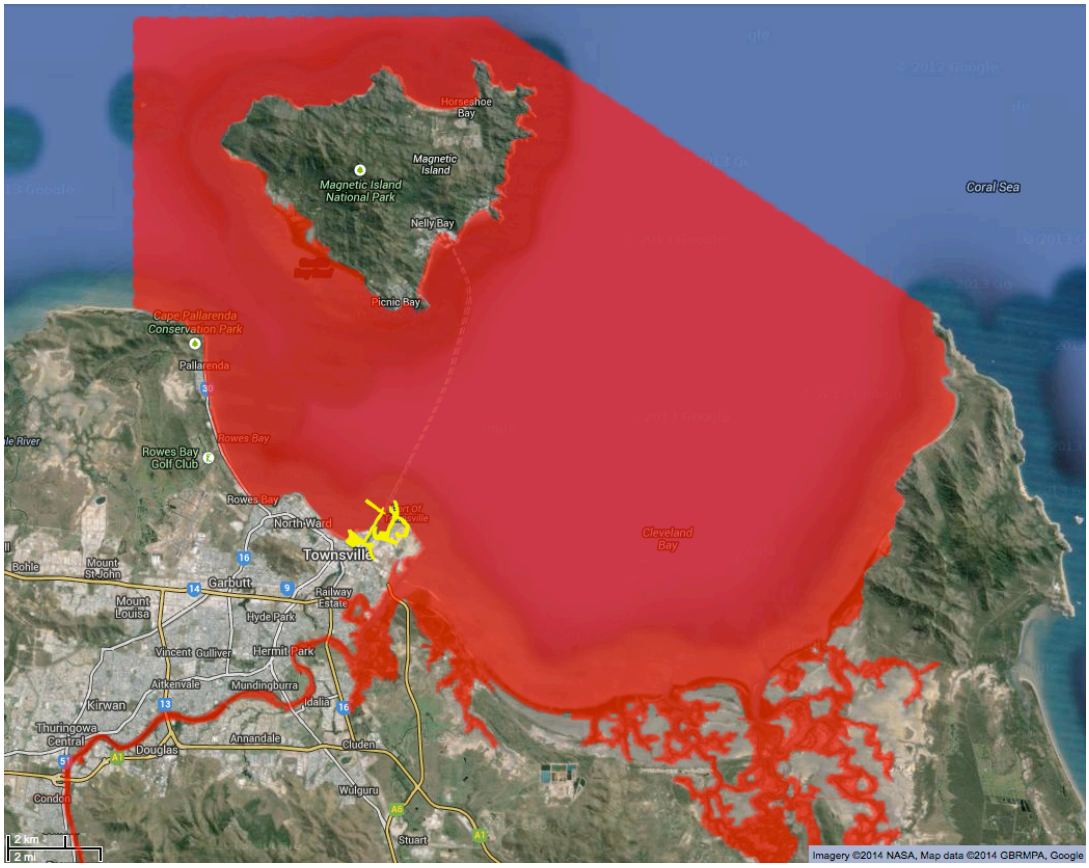

**Attachment 1: Abbott Point – Port infrastructure in yellow and current port limits in red**


**Attachment 2: These two areas join together to form the port of Hay Point/Mackay – Port infrastructure in yellow and current port limits in red**




**Attachment 3: Gladstone**
**– Port infrastructure in yellow and current port limits in red**




**Attachment 4: Townsville**
**– Port infrastructure in yellow and current port limits in red**