



MAGNETIC ISLAND
NATURE CARE
ASSOCIATION INC.

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Dr Allan Hawke
Independent Review of the EPBC Act
GPO Box 787
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Australia

Dear Dr Hawke

**Submission into the Independent Review of the EPBC Act from
Magnetic Island Nature Care Association Inc (MINCA)**

It is with pleasure and keen interest that we make this submission to the Independent Review of the EPBC Act on behalf of Magnetic Island Nature Care Association Inc. (MINCA).

Established in 1997 as a community-based voluntarily run NGO, MINCA works primarily to conserve the natural environment of World Heritage-listed Magnetic Island and its surrounding waters. It also supports similar local and regional bodies. Earlier this year MINCA became trustees for Bolger Bay Conservation Park, a large area of remnant lowland vegetation on the island purchased with state and federal assistance through the National Reserves System program.

In the course of the last few years MINCA and the Magnetic Island Community Development Association (MICDA) have contributed to a number of major assessments of the natural values of the island. These natural values have not and are not being protected by the EPBC, despite their known uniqueness. This submission is supportive of those assessments and submissions, which clearly identify the islands natural values, and the threats they face. They include:

- *Magnetic Island's World Heritage Values: A Preliminary Assessment* (MICDA and MINCA. 2004)
- *World Heritage Attributes and Values Identified for Magnetic Island and the Surrounding Marine Environment* (Kenchington and Hegerl. 2005)

- *Review of Kenchington and Hegerl (2005) “World Heritage Attributes and Values Identified for Magnetic Island and the Surrounding Marine Environment”* (MICDA. 2006)
- *Senate Inquiry into the Operation of the Environment Protection and Biodiversity Conservation Act (EPBC) 1999* (MICDA. 2008)

Copies of any reports and submissions are available by request.

The relative brevity of this submission reflects community resources rather than level of concern, and it should be seen as a summary document.

Before turning to the operation of the EPBC Act, we comment briefly on the interpretation of the ‘key Australia Government policy objectives’ used to set the framework for your review. Our concern here is that the ‘essential ecological processes and systems’ appear to have been given a secondary role, supportive of (and subservient to?) ‘Australia’s economic development’ and ‘Expenditure Review Principles’.

Until such time as the ecological foundation of our life on earth is clearly acknowledged and its protection given priority in policy, the pursuit of economic wants will continue to overwhelm ecological needs – to the ultimate (but not necessarily distant) detriment of both.

We turn now to specific issues related to the operation, achievement, appropriateness and effectiveness of the EPBC Act 1999 (as amended).

- **Expansion of coverage of EPBC Act**

It is strongly suggested that, given the national (international) importance of many environmental issues and the need to act at a large-scale coordinated level, the EPBC Act be expanded to cover all issues of national environmental significance. This would include issues such as forestry (RFAs), climate change and water extraction.

- **Clarity of outcome**

The effectiveness of the EPBC would be greatly increased if it required the use of explicit zoning plans to provide clarity and certainty over contentious areas. The current results of assessment under the EPBC reflect the knowledge and whims of the current officer. Leaving planning and development approval of World Heritage Magnetic Island in the ‘discretionary’ hands of local council has largely led to its environmental values being ignored and degraded.

- **Consideration of cumulative impacts**

The effective operation of the EPBC Act has been severely limited by its inability to take full account of the cumulative impacts of actions that threaten the environment. On Magnetic Island this has led to a situation of 'death by a thousand cuts', no single development being considered significant in its own right. One example is that because Magnetic Island is (spatially) a small part of the Great Barrier Reef World Heritage Area, deleterious impacts that occur on the Island are dismissed as unimportant and/or insignificant – this is despite the fact that 10 world heritage values have been officially assessed as values uniquely expressed on Magnetic Island (Kenchington and Hegerl. 2005).

The non-cumulative aspects of the EPBC Act can be and have been exploited by local government. The existence of a waste-water treatment plant placed by Council on a flood fan immediately adjacent to one of two ephemeral wetlands on the Island (and alleged by the Council to have no detrimental impact), was subsequently used *by Council* as an example of a loss of environmental value that then 'allowed' it to authorize the rezoning its own adjacent land to allow an industrial estate (land previously identified by Council as 'critical conservation habitat').

- **The exclusion of anticipated activities**

The inability of the EPBC Act to consider development plans has, in the case of Magnetic Island (and elsewhere), created a loophole for councils and developers. Plans are approved without EPBC compliance assessment, and that approval used as a defense for subsequent action that might otherwise trigger EPBC referral. Small communities are left to challenge such cases in the courts – a means of conservation that is unsustainable because it soon becomes financially impossible.

State and local government planning and assessment instruments for areas captured by the definition of Matters of National Environmental Significance (MNES) need to be subject to the requirements of the EPBC Act.

- **Matters of National Environmental Significance**

MNES need to be expanded to take into consideration Australia's international environmental obligations. As the world increasingly understands the vital need for joint action on environmental issues, the need to comply with international obligations – and be seen to comply – becomes more and more apparent.

It is further suggested that the existence of environmental impacts of specific actions be assumed, and that their existence not be a discretionary matter for those wanting to take action. In the case of Magnetic Island, with its World Heritage status, no potential developer should be able to assert that a proposed action will have no impact on a MNES unless explicitly supported by policy. Actions should be specifically defined in EPBC policy by their nature and extent.

There needs to be clarity of “significant impact” in the act or policies. For example “clearing of native vegetation” or “an increase in intensity of use” could be defined as assessable activities. Therefore the action is referable and the impact is assessable. In this way low impact activities could be identified and not be referable.

- **Merit Review**

The application and assessment process should be transparent. Interested parties should be able to request a merit review of all decisions under the EPBC.

- **Strengthen enforcement**

There needs to be greater enforcement of aspects of the Act and of decisions made under the Act. In the case of Magnetic Island (Radical Bay), staff responsible for the assessment of applications under the Act gave scant attention to what could only be seen as the provision of false and misleading information by the applicant. The findings of a scientific report submitted by the applicant were changed by having the word ‘not’ inserted on two separate occasions in relation to the faunal use of marine grasses in the Bay. When pointed out to Federal government staff (by the community and the authors of the report), the fraudulent change was laughed of as an exaggeration typical of developers.

Similarly, the lack of policing of a ban on protected vegetation (vine thicket) removal (which was a condition of a development application approval at Radical Bay) resulted in the vegetation being removed by the developer. No penalty was applied.

Also in relation to enforcement, it is suggested that the Act allow for parties to bear their own costs when activities are challenged in court. When governmental enforcement is lacking, action often falls to community groups – which are at a great financial disadvantage in relation to developers. Such assistance to community groups seeking merit reviews should also be available.

- **Better address threatened species**

MINCA suggests that the findings of the Audit report in relation to threatened species and communities be addressed, with the reinstatement of a science-based public approach to nominations and listing; the provision of interim protection measures; and the requisition that nominations be considered on the basis of conservation status alone.

We commend this brief submission to you and wish you well in your endeavours to ensure that Australian environmental processes, systems and values are zealously guarded in the face of potentially catastrophic and irrevocable global environmental change.

Jenny Terrey, Vice President
for
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President
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6 December 2008