

The Ethics Tribunal for the Rights of Nature and Mother Earth

The Great Barrier Reef, Australia

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1. Opening remarks

I am honoured to present this case on behalf of the Great Barrier Reef to the International Ethics Tribunal for the Rights of Nature and Mother Earth. I submit to the Tribunal that the Rights of Mother Earth are being violated, because the Great Barrier Reef's very existence is under threat. The Reef is under threat from a combination of: land based marine pollution, the existing and proposed expansion of coal port development in human settlements adjacent to the reef and the escalating carbon pollution in the atmosphere, which is causing devastating climate change.

The Universal Declaration for the Rights of Mother Earth¹ states that Mother Earth and all beings of which she is composed have inherent rights, including the right to “regenerate its bio-capacity and to continue its vital cycles and processes, free from human disruptions”². It also states that the rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth³. This case will demonstrate that human activities are disrupting the Great Barrier Reef's ability to continue its vital cycles and processes, and argues that the Queensland and Australian governments (i) must be held to account for allowing the volume of industrial development that is now occurring on the Queensland coast and threatening the Reef and (ii) must set limits on human developments and ensure the Great Barrier Reef can continue its vital cycles and processes and continue its evolutionary journey.

2. Case facts

Overview

The Great Barrier Reef (GBR) is the world's largest coral reef system. It is the world's biggest single structure made by living organisms and can be seen from outerspace. It runs for 2,300 kilometres, from the Torres Strait Islands, at the most northern tip of Australia, south to Bundaberg along the coastline of the Australian state of Queensland. It is comprised of 3000 individual reef systems and coral cays and almost 900 beautiful tropical islands. It supports a vast array of marine creatures, including 1625 species of fish, 600 types of soft and hard corals, more than 100 species of jellyfish, 133 varieties of sharks and rays, more than 30 species of whales and dolphins and

¹ A copy of the Universal Declaration for the Rights of Mother Earth can be found here:
<http://pwccc.wordpress.com/programa/> last accessed 8 April 2014

² Universal Declaration for the Rights of Mother Earth, Clause 2(c)

³ Universal Declaration for the Rights of Mother Earth, Clause 1.7

3,000 species of molluscs. The GBR is also unique as it extends over 14 degrees of latitude, from shallow estuarine areas to deep oceanic waters.

The Great Barrier Reef was listed by Australia as a National Park in 1975 and covers 344,400 km in area. It was listed as a UNESCO World Heritage Property of Value in 1981. Until very recently, it was considered a pristine natural ecosystem. It is a major tourist destination for international and Australian years, and in the year ending December 2012, 1.99 million tourist visitor days were calculated. This tourism brings \$AU3 billion into the Australian economy every year.

In June 2011, UNESCO issued, for the very first time, a warning to the Australian government that the GBR was under threat of significant damage from the escalation of coal port expansions and other industrial developments along the coastline adjacent to the reef. UNESCO warned that if the planned developments continued, the GBR might have to be named on the 'World Heritage in Danger' list. The expansion of new and existing coal ports on the coastline (used to ship coal from Australia to other countries) is seriously threatening the health of the reef – so too are the increases in shipping volume and activities such as dredging and especially sediment from agricultural runoff. Tropical cyclones, coral predation by crown-of-thorns starfish (COTS), and coral bleaching accounted for 48%, 42%, and 10% of the respective estimated losses of coral over the years 1985 to 2012.⁴

Australia is a Constitutional Monarchy, with a Federal system of government. It has one national or Federal Government, called the Australian Government. The Federation is made up of 6 States and 11 Territories (2 of these Territories are on the mainland, the remainder are smaller islands within Australia's jurisdiction). Two levels of government are responsible for the management of the Great Barrier Reef, and for approving the developments that are projected to destroy the reef – the Australian Government and the State Government of Queensland.

Chronology of events.

Australia has a long history of mining coal and other minerals. Coal mining began in the 1830s. In the 1960s, the volume of coal extraction in Queensland began to increase. In the 1990s, a large number of new coal mine permits were issued, and this has meant coal extraction has more than doubled from **50.8 MEGA TONNES (ie 50.8 million tonnes of coal)** per annum (Mtpa) in 1985-1986 to 124 Mtpa by 2000 and 200mtpa by 2013.

Today, there are 4 *existing* coal ports along the Queensland coast, in the cities of Gladstone, Bowen, Mackay and Brisbane. Today, 1 new coal port and 3 port expansions are proposed. The proposed new coal port is at Port Alma; the 3 ports to be expanded are Abbot Point, Hay Point and Gladstone. Please see Table 1 below for details about the coal ports, the tonnage of coal that moves through the ports each year and what the proposed increases are.

⁴ De'ath G, Fabricius KE, Sweatman H, Puotinen M. 2012. "The 27 year decline of coral cover on the Great Barrier Reef and its causes". PNAS 109(44) 17995-17999
<http://www.pnas.org/content/early/2012/09/25/1208909109>

Please note: two additional coal ports had previously been proposed, but these have been cancelled indefinitely as the major investors withdrew from the projects. BHP recently pulled out of Abbot Point T2 (Bowen, \$5bn, 60mtpa export) and Xstrata-Glencore pulled out of Balaclava Island (Fitzroy Delta)

Table 1 – Coal Ports on the Queensland Coast – current and proposed

Coal Port	Current Capacity (MT moved through the port each year)	Actual usage 2012-13	Planned Capacity (MT pa)
Abbot Point	50	17.7	250
Hay Point	129	96.5	320
<ul style="list-style-type: none"> • Hay Point Coal Terminal • Dalrymple Bay Coal terminal • Proposed: Dudgeon Point 	44 (HPCT) 85 (DBCT)	34.1 (HPCT) 62.4 (DBCT)	75 (HPCT) 85 (DBCT) 180 (DP)
Gladstone	83	57.2	240
Port Alma	-	-	32
Total	262	171.4	842

Sources for Table 1: http://apo.org.au/files/Research/CPD_Too_Many_Ports-2013.pdf, Appendix 1 and Qld govt: <http://mines.industry.qld.gov.au/assets/coal-stats/12-month-reports/coal-stats-fin-year-2012-2013.xlsx>

The new coal ports are going to be built in order to receive and export coal produced by several proposed ‘mega-mines’ in Queensland. These mines are as follows: Alpha Coal, 30mtpa

- Alpha Coal, 30mtpa
- Kevin’s Corner, 30mtpa
- China First, 40mtpa
- Carmichael Coal Mine, 60mtpa
- China Stone, 60mtpa

Note: the impact of these massive new coal mines on greenhouse gas emissions will be devastating. The international non-government organization called “350.org” estimates that extraction and use of the coal in all of Queensland would be “roughly equivalent to releasing 30% of the world’s carbon budget between now and two degrees”. This figure is widely debated, and depends on the extent of coal developments permitted, but nonetheless, this group and many others are running campaigns to “keep Queensland’s coal in the ground”.⁵

⁵ Bill McKibben, 350.org, quoted in Sydney Morning Herald – “Climate campaigner warns of burning need to keep coal in the ground”, <http://www.smh.com.au/environment/climate-change/climate-campaigner-warns-of-burning-need-to-keep-coal-in-the-ground-20130603-2nm3z.html> - last accessed 13 January 2014

In March 2012 UNESCO/IUCN launched a monitoring mission to the GBR and at the World Heritage Commission's annual meeting in June 2012, it noted "with great concern the potentially significant impact on the property's Outstanding Universal Value resulting from the unprecedented scale of coastal development currently being proposed within and affecting the GBR". A report was issued which listed 14 recommendations for the Australian government, to ensure the long term health and good management of the GBR. These recommendations are set out in the section below.

In February 2013, two Australian environmental non-government organisations (NGOs), WWF Australia and the Australian Marine Conservation Society (ACMS) prepared a third party report on the state of the reef and the government responses to UNESCO. The report is called "Status of Implementation of Recommendations in World Heritage Committee Decision 36 COM 7B.8, Great Barrier Reef (Australia) and the March 2012 Reactive Monitoring Mission"⁶. This report noted that all of the new coal mines, coal ports and dredging projects were still scheduled to proceed – neither the Australian nor State Government had taken action to stop these new developments.

In addition, a detailed report was prepared by a public interest environmental law NGO called the Environmental Defenders Office Qld (EDO QLD), documenting the extensive legislative and policy changes implemented by the State Government of Queensland. They noted that these legislative changes primarily focused on removing environmental protections in existing legislation and that "none of the legislative changes amounted to increased protection for the GBR"⁷.

In early 2013, the Federal Government responded to UNESCO with a very positive report, claiming that the Great Barrier Reef would continue to be managed well, despite the escalation of coal mining, coal ports, dredging and other activities. They did not indicate that any of the developments would be halted or stopped to Protect the GBR.

3. Damage determination

Impact on Nature:

During 2012 a number of important scientific and technical reports were released that provided updated understanding of the status of the GBR World Heritage Area and the present and future threats. One of these is listed in Appendix 1. These reports emphasise an alarming decline in the Reef's coral cover, continuing serious concerns about the status of key inshore habitats and

⁶ This report can be found at:

http://awsassets.wwf.org.au/downloads/mo030_fight_for_the_reef_report_to_the_unesco_world_heritage_committee_1feb13.pdf - last accessed 13 January 2014

⁷ WWF Australia & the Australian Marine Conservation Society *Report to UNESCO World Heritage Committee* -

http://awsassets.wwf.org.au/downloads/mo030_fight_for_the_reef_report_to_the_unesco_world_heritage_committee_1feb13.pdf, Legal Advice, Appendix 4.

species, and significant loss and degradation of coastal ecosystems critical to the health of the reef.

The causes of this decline in the coral reef's health are listed as follows:

- land based marine pollution and run off (eg from agricultural practices, urban settlements etc);
- impacts of the crown of thorn star fish (which is a naturally occurring predator which eats coral and destroys it at a rapid rate)
- coral bleaching and ocean acidification from climate change impacts and
- the unprecedented expansion along the GBR coastline of coastal ports and industrial development accompanied by a projected near doubling in shipping, major coastal reclamation works and massive seabed dredging and dredge spoil disposal – all either immediately adjacent to, or within the World Heritage Area.

Impact on people/communities

One coastal community is currently acutely affected by pollution and health problems arising from an existing coal port and related seabed dredging activities. This township is called Gladstone. Environmental and community groups have expressed grave concern about water quality in the Gladstone Harbour, and documented impacts include: reports of painful skin rashes from people fishing and exposed to water in the Harbour, sick and dead fish and sick, injured and dead dolphins and sea turtles.

People in communities where new or expanded coal ports are planned are very concerned about the impacts of the developments on their beautiful natural environment (harbours, bays, islands, marine life, coastal health), human health and economic benefits of tourism. The following townships have very active resistance to proposed coal ports – Yeppoon/Keppel Bay, near Port Alma, Louisa Creek near Dudgeon Point (where coal dust is an existing problem) and resistance is growing in Airlie Beach near Abbot Point and Mackay.

Evaluation of future damage/impact

If the proposed coal port expansion takes place, and the resulting increases in shipping traffic, dredging and dumping and airborne coal dust pollution, it is predicted that many parts of the southern Great Barrier Reef will be impacted and there will be significant coral die off, loss of marine life and interference with the complex interactions in the ecosystem that will have ongoing negative impacts on the thousands of interdependent life forms who call the reef "home". It will also decrease tourism income in the affected and adjacent areas.

4. Identification of responsible parties

The coal mines and coal port developments are funded by private coal mining companies and joint ventures, and are sanctioned and subsidized by the Queensland and Australian governments. See Appendix 2 for a list of those private companies.

Government involvement

State Governments are responsible for approving coal mine developments and coal port developments under the *Mineral Resources Act 1989*, the *Environmental Protection Act 1994* and the *State Development and Public Works Organisation Act 1971*. The Queensland State government has primary responsibility, but the Federal government also plays a role. It has final approval and has the power to block developments with major impacts on the grounds that the GBR is protected under Fed legislation/World Heritage legislation. The governments are not making a sufficient effort to regulate land-based pollution that affects the reef or to stop damaging coastal dredging and marine dumping.⁸

Role of courts

Several court challenges have been launched by civil society groups to stop the coal mines from being approved, See Appendix 3

5. The rights of the Reef

As this Tribunal aims to protect the rights of nature, this case submits that in this Tribunal, we should be allowed to break out of the narrow legalistic discourse that has been created by western culture, and to truly attempt to speak for the Reef, and present the case from its point of view.

I am not a traditional custodian of the Reef and I pay my deepest respects to all traditional custodians in Australia - and in Quito, where this Tribunal is meeting. I am merely the human being presented with the opportunity to speak for the Reef here and now, so in a humble and no doubt flawed attempt to do this, I offer the following: -

“You can quantify my length and my size and the fact that I can be seen from outer space, but in my world I am a home. I am a colourful, vibrant network of connected coral villages, made by the collective effort of millions of coral polyps over millions of years. Free swimming coral babies float about until they find a place to settle, and they normally settle on the comforting skeletons of their ancestors. They have made walls and mounds and hills of coral, that in turn are the home for others in our community: algae, sponges, starfish, molluscs, sea snakes, fish. These coral homes weave in and out and around hundreds of islands. The islands themselves are homes to crabs, who scuttle in the shallows, turtles who entrust their eggs to the warm, sandy beaches. Many of these beaches are disappearing for them. Without our reef, there is no home, no cosy place to play, nowhere to hide from predators, nowhere to lay their eggs. If our reef dissolves and disappears, so will all of the thousands of species of life that call this place home. If our reef disappears, there is nowhere else for our communities of life. If the world above us grows hotter, the world of the reef will change. And the world is surely changing.

For thousands of years people would visit us: pop in and out of the reef with their little boats, take some fish with great respect, then go home. But now the ships have gotten bigger. The ships have gotten scarier. And we watch the coastline with fear when there are

⁸ For example, in decision EPBC 2011/6213 on 10 December 2013 the Federal Minister for the Environment approved dredging at Abbot Point and dumping in the Great Barrier Reef Marine Park.

great rains, as the rivers fill up with sediment, destroyed and disturbed by the people on the land, and the garbage and litter and junk comes out of the rivers to our Reef.

In conclusion, how might the Reef feel? I would imagine the Reef feels the same way that people who love and care about the Reef feel. We are frightened. We are frightened that something precious and irreplaceable and ancient will die.

6. Request of the Tribunal

I request that the Tribunal admit the case for litigation, and support the Great Barrier Reef to take action against the Queensland and Australian Governments. While many private parties are involved in the coal and coal port developments, the Governments of the Queensland and Australian governments have the ability to stop further coal developments, regulate land-based pollution and save the reef.

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APPENDICES

APPENDIX I: Scientific and Technical Reports

De'ath G, Fabricius KE, Sweatman H, Puotinen M. 2012. "The 27 year decline of coral cover on the Great Barrier Reef and its causes". PNAS 109(44) 17995-17999

APPENDIX 2: Private Companies involved with Coal Ports

Private companies

1. Companies who are building the coal ports:
 - a. Hancock Coal
 - b. Adani
 - c. Port of Townsville
 - d. Waratah Coal
 - e. Mitchell Group
 - f. North Queensland Bulk Ports Corporation
 - g. Anglo American

2. Companies responsible for the dredging
 - a. Gladstone Ports Corporation and North Queensland Bulk Ports Corporation are responsible for the dredging and subcontract the work out.

3. Companies who are building the coal mines in Queensland
 - a. Qcoal
 - b. GVK-Hancock
 - c. Peabody Energy
 - d. Stanmore Coal
 - e. Vale
 - f. Anglo American
 - g. Glencore-Xstrata
 - h. Waratah Coal
 - i. Bandanna Energy
 - j. Linc Energy
 - k. Shehuo
 - l. Cockatoo Coal
 - m. Metro Coal
 - n. Carabella Resources
 - o. MacMines
 - p. Yancoal
 - q. BHP Mitsubishi Alliance (BMA)

APPENDIX 3: Community Groups launch actions to stop climate change and save the reef.

- **Wandoan Case** – run by the Environmental Defender’s Office Queensland for client Friends of the Earth
 - Court/jurisdiction – Land Court of Queensland
 - Main arguments – the mine would cause severe and adverse environmental impacts to Queensland due to the large emissions of greenhouse gases from the mining and use of coal, including leading to ocean acidification.
 - Outcome – Court action unsuccessful but investment decision that mine will not proceed
- **Alpha Case** – run by the Environmental Defender’s Office Qld for client Coast and Country Association of Queensland – waiting on decision
 - Court/jurisdiction – Land Court of Queensland
 - Main arguments – approval should not be granted on the basis of the mine’s climate change impact from the use of coal, the groundwater modelling was flawed and thus the impact assessment was too and that the company had overstated the economic benefits of the project while ignoring the detriments.
 - Outcome – still to be decided
- **Xstrata-Newland Coal Mine Case** – run by the Environmental Defender’s office of Queensland for client Queensland Conservation Council
 - Court / Jurisdiction: Queensland Land and Resources Tribunal
 - Main arguments: adverse impacts of greenhouse emissions from the mining, transport and use of coal.
 - Outcome: the objection was dismissed by the Land and Resources Tribunal, Queensland Conservation Council successfully appealed the decision to get a re-trial and the Queensland Government passed amendments to legislation to prevent a re-hearing.