Fraser Island Defenders Organisation

FIDO — The Watchdog of Fraser Island

www.fido.org.au —

Aim: *To ensure the wisest us of the natural resources of Fraser Island*

30th January, 2013

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Re: Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012

The Fraser Island Defenders Organisation was founded in January 1971 with the aim *"to ensure the wisest use of the natural resources of Fraser Island"*. FIDO has never wavered from that objective for 42 years. FIDO's pursuit of that aim led to campaigns that saw the abandonment of sandmining on Fraser Island on 31 December 1976. It also saw the end of logging in December 1991 and Fraser Island inscribed on the World Heritage List in 1992. For the last 20 years FIDO has actively participated in shaping a Management Plan for Fraser Island and serving on the Community Advisory Committee and collaborating with government and non government agencies through the Fraser Island Natural Integrity Alliance (FINIA) to actively protect the natural values.

It is vital to understand the history to appreciate that the three major challenges for FIDO throughout the 1970s and 1980s sandmining, logging and World Heritage Listing were all actively opposed by the then Queensland Government. The Queensland Government applied different and woefully inadequate standards of environmental assessments that permitted the industrialization of this outstanding and unique natural resource that is now inscribed on the World Heritage List for its outstanding universal value (OUV). None of the conservation outcomes that FIDO has been able to achieve for Fraser Island would have been possible if Queensland had been applying its environmental standards to the EPBC Act and its predecessor, the Environmental (Impact of Proposals) Act. B

Fraser Island Sandmining

An example of the differences in standards applied was first demonstrated in the 1971 Mining Warden's Hearing. The proceedings of this tribunal were little short of farcical. Yet in 1975 they were held up to be the equivalent of an Environmental Impact Statement by the then Federal Minister for Minerals and Energy Hon Rex Connor who had the transcript printed and tabled in Federal Parliament *(1975 — Parliamentary Paper No 108)*

The irony and absurdity was not only that the proceedings failed to include most of the evidence of witnesses for FIDO's case because they were tendered as separate statements and it failed to recognize the shortcomings in the unethical procedures used in the Mining Warden's hearing. The Mining Warden was the same Warden involved in a subsequent

case that ended Appeal before the High Court of Australia. The case is discussed in detail in *"Places Worth Keeping — Conservationists, politics and law"* Allen and Unwin 1993.

Bonyhady's book and William J. *Lines' "Patriots — Defending Australia's Natural Heritage"* University of Queensland Press 2006 comprehensively cover the vitally significant role that the Commonwealth Government has played in exercising its approval powers on environmental matters in the face of opposition from various states. Both describe some of the more significant fights to protect other parts of Australia as well as Fraser Island in the public interest.

Another example of the very different standards and procedures was the 1975 Fraser Island Environmental Inquiry initiated by the Commonwealth Government to examine the future of sandmining and other land uses. The inquiry was constituted under the Environmental Protection (Impact of Proposals) Act of 1974 that was the forerunner to the Environmental Protection Biodiversity Conservation Act. The Queensland Government not only refused to cooperate with the Inquiry and failed to provide witnesses or evidence but tied to frustrate it wherever possible making the inquiry a much longer and more expensive process.

The Queensland Government's refusal to cooperate or assist the Commonwealth on matters of contention, particularly environmental matters then is not much different from the positions taken in more recent times. Thus it would not bode well with the environment if the State's position is allowed to prevail through the delegation of the EPBC Act powers to the States.

It should also be mentioned that the validity of the Environmental Protection (Impact by Murphyores with the support of the Dillingham Corporation. (See Murphyores Inc Pty Ltd v The Commonwealth of Australia [1976] HCA 20; (1976) 136 CLR 1 (14 April 1976). It is worth noting that the appellants that challenged the scope of the trade and commerce powers is part of the natural constituency of the Business Council of Australia who have always preferred to have the environmental impacts of any projects adjudicated by the much more relaxed standards of the States and have since 1974 been opposed to the Commonwealth having any role in environmental management in Australia.

Fraser Island Ministerial Rezoning

The Queensland Government's disregard for proper processes when it comes to environmental disputes is epitomized by the Ministerial intervention to allow the establishment of a township at Orchid Beach that is described in the attached Backgrounder. In 1983 while FIDO's appeal to the Local Government Court was still pending Queensland Minister for Local Government, Russell Hinze used his powers to prevent FIDO from appealing against a rezoning. The land in dispute though was only freehold land because the Queensland Government had earlier applied different environmental standards to the Commonwealth that had previously offered funds for the State to acquire. The Commonwealth's Commission of Inquiry into the National Estate had examined the proposed subdivision and deemed that it was contrary to the public interest to allow such a proposal to go ahead. The State facilitated the eventual subdivision of the Orchid Beach township against the recommendations of the Fitzgerald Inquiry.

Fraser Island Logging and World Heritage

The decision to stop sandmining on Fraser Island was greeted with fury by the Queensland Government despite the rationality of the decision and the compensation package delivered by the Commonwealth. It was because the Queensland Government had foreseen that Commonwealth powers under the World Heritage Convention could be used to stop logging on Fraser Island that the Queensland Government under Premier Bjelke-Petersen was implacably opposed to listing any part of Queensland as Biosphere Reserves under the Man and the Biosphere Convention, wetlands of International Significance under the Ramsar Convention and World Heritage sites. Listings of any part of Queensland under any international conventions were only made following a change of Queensland Government in 1989. This is some indication that environmental considerations and the protection of environmental values in Queensland have been at times a very low priority and we trust that Commonwealth will not cede its environmental powers back to state governments that have such poor regard for the environment.

It is interesting to note that the Bjelke-Petersen views on World Heritage were also shared by the State Government of Western Australia that only reluctantly allowed the nomination of Shark Bay to the World Heritage List in 1991 in order to be able to host the General Assembly of the International Union for the Conservation of Nature (IUCN) to Perth that year.

As a result of political changes the Queensland Government in 1990 appointed a Commission of Inquiry into the Conservation, Management and Use of Fraser Island and the Great Sandy Region headed by Tony Fitzgerald QC to consider the merits of the claims of Fraser Island and Cooloola for World Heritage listing and also the sustainability of the timber industry on the island. After a most detailed examination of all submissions the inquiry recommended that the whole of the Great Sandy Region deserved World Heritage nomination and that the timber industry be phased. Logging ceased in December 1991 and Fraser Island was inscribed on the World Heritage List in December 1992.

The lack of a statutory Management Plan for Fraser Island

Some indication of the lack of environmental priorities is the fact that even since its inscription on the World Heritage List more than 20 years ago, Fraser Island has lacked a statutory Management Plan. While a Great Sandy Region Management Plan was developed in 1994 it has served as a guideline only lacking any statutory powers. This has allowed the Queensland Government to avoid having to address many critical issues on Fraser Island including transport and access and adhering to zoning plans.

The Queensland Government began a belated process of reviewing that Management Plan under the Nature Conservation Act which would have given it statutory force in 2011, but as an indication again of the extremely low priority the Queensland Government offers for environmental protection of the values of this World Heritage site this process has now been deferred indefinitely much to the frustration of those trying to protect those values. Attachment B presents a detailed outline of what World Heritage listing has meant for Fraser Island and it shows that Fraser Island has fared badly since World Heritage listing under the management and budget provided by the Queensland Government.

Other World Heritage sites:

While FIDO's primary interest has with Fraser Island, we are particularly interested in all of Australia's World Heritage properties. These are outstanding examples of values that justify their protection in the public interest. However, as one looks at the various Australian World Heritage properties it is worth reflecting on the difference in the environmental standards between the Commonwealth and the State Governments over the listing of some of them. It appears that while the Commonwealth considers environmental issues in the national interest some states take a more parochial view. In dealing with other major natural sites of national significance the writer summarizes some of the points made in Serventy Memorial Lecture *"Protecting Australia's World Heritage Values"* delivered in September 2005 and included as Attachment C. It shows that our concern over the weaker environmental standards applied by the states has a long history

The Great Barrier Reef

Judith Wright has very well documented the history of the protection of the Great Barrier Reef in her book, *"Coral Battleground"*. It is worth recalling though that the Queensland Government was supportive of allowing oil drilling on the Great Barrier Reef and if it had not been for the Federal intervention in initiating the Great Barrier Reef Royal Commission, the Great Barrier Reef may have been converted into an industrial landscape. Indeed the Queensland Government was so hostile to the conservation measures the Commonwealth pursued as a result of that Royal Commission that it opposed the inscription of the World's largest living organism on the World Heritage List.

When the World Heritage Committee met in 1978 to consider the very first sites to be inscribed on the World Heritage List, Australia did not put forward any nominations. The reason was that the then Premier of Queensland, Joh Bjelke Petersen, was intransigently opposed to surrendering any of his perceived "State's rights" to the Commonwealth Government. Joh had fanatically supported to oil drilling on the Great Barrier Reef where he had oil search prospect rights. He saw allowing the Great Barrier Reef to be nominated as ceding some of his powers and "state's rights" to the national government.

Despite its World Heritage Listing the Great Barrier Reef now being degraded at an alarming rate. This is an indictment of the appalling failure of the Queensland Government to apply higher environmental standards. Again other submissions can be expected to deal with these matters in greater detail.

A recent report by the Australian Institute of Marine Science points out that the Great Barrier Reef has lost 50% of its coral in the last 27 years. The scale of new port development and shipping movements being allowed by the Queensland Government within the Great Barrier Reef World Heritage area may result in the world's largest living organism being placed on the World Heritage in Danger List.

Queensland Wet Tropics World Heritage Site

Doubtless there will be many other submissions referring to the differences in environmental standards applied to Queensland's Wet Tropics. The Queensland Government wanted unfettered rights to continue degrading the Outstanding Universal Value of these ancient and unique forests that may still be being logged if it were not for Commonwealth intervention. Even this was not enough to stop the Queensland Government from sending a delegation to the meeting of the World Heritage Committee at

Rio de Janeiro to try to stop this listing occurring. This is yet another example of the interpretation of environmental standards between the Commonwealth and the States where a state has opted for a lower standard of environmental protection than the national government.

Kakadu Stage 3 World Heritage renomination

The precent of the Queensland Government lobbying against a World Heritage nomination by the Commonwealth at World Heritage Committee meetings was also pursued by the Government of the Northern Territory when it came to adding Stage 3 of Kakadu to the World Heritage List. The Northern Territory Government tried to deny Kakadu's OUV and present to the Committee that it was merely "clapped out buffalo country".

Tasmanian Wilderness World Heritage

Because this matter will be doubtless dealt with in detail by other submissions it is not proposed to dwell on the many disputes between the Tasmanian State Government and the Commonwealth over the environmental standards applied with respect the inscription and protection of the OUV of the Tasmanian Wilderness now inscribed on the World Heritage List. Suffice it to say that if the environmental standards of the State had prevailed the Gordon-below-Franklin Dam would have flooded a large and very significant part of this World Heritage site and many unique old growth forests would not have the protection they now enjoy.

Gondwana World Heritage site

While this site now incorporates a number of very important parts of South East Queensland's temperate and sub-tropical rainforests, until 1990 the Queensland Government was reluctant to allow these National Parks and State Forest areas to be added to the existing New South Wales Temperate Rainforest World Heritage site.

The New South Wales State Government under Neville Wran had wrestled over the future of the state's outstanding rainforest that had until the 1980s had provided the basis for a significant timber industry. However the industry was contracting and public demand was growing that the remaining forests be protected. The Wran Government announced that logging would be stopped in the NSW rainforests and they would be protected under state legislation. This immediately provoked the then NSW Opposition to state that if they were elected to government they would reverse that policy and allow logging to resume in the rainforest. Premier Wran moved to prevent any future government in New South Wales unilaterally reversing that decision by nominating the temperate and sub-tropical rainforests of eastern Australia as World Heritage site. The site was inscribed in 1986.

Sometimes even state governments want the Commonwealth Government to exercise their constitutional powers to protect the environment and particularly World Heritage sites against policy reversals by subsequent administrations.

The original NSW proposal was to include the Lamington National Park in the nomination but Queensland objected and the nomination was amended to include only those rainforests in New South Wales, although it was recognized that Queensland included rainforests of Outstanding Universal Value. This is an example of the States having differing environmental standards.

Summary

This submission goes to the historical differences in environmental standards between the Commonwealth Government and the States and in some instances such as World Heritage sites between the states. While the New South Wales and South Australian State Governments have enthusiastically welcomed World Heritage Listing if the sites within their state boundaries other states have been less than enthusiastic even to the point of being openly hostile to the application of the Commonwealth's application of its environmental standards. This organization has no reason to believe that the States have lifted their levels of environmental assessments and enforcement to the standards that the Commonwealth demands. Evidence of this can be seen daily. The industrialization of the Burrup Peninsula with appalling impact on priceless rock art, the continuing impact of the modification of Gladstone Harbour despite the warning indicators, the determination to lay a gas pipeline through Arnhemland to the Gove Peninsula, the diversions of water in the Murray Darling Basin for cotton growing on Cubbie Station and the ignoring the impact on bilbies of the James Price Point development are just a few examples of environmental irresponsibility by State Governments.

If State environmental standards had prevailed in the past Australia would now also see sandmining on Fraser Island, oil drilling on the Great Barrier Reef, continued logging of Queensland's Wet Tropics and flooding of the Tasmania wilderness.

State Governments are too susceptible to pursuing cargo cult policies at the expense of the environment. They are too easily rolled by concerted pressure from the Business Council of Australia and its larger constituent members. State Governments are more focussed on growth and competition with each other for industry, tourists and income to let environmental considerations get in their way.

FIDO is therefore arguing that it is vital for the Commonwealth Government to retain its environmental powers under the EPBC Act and not relegate

Yours sincerely

John Sinclair,
Honorary Project Officer.

Attachments:

Appendix A. FIDO Backgrounder No 57 (2012) *"A Short History of Orchid Beach"*

Appendix B. FIDO Backgrounder No 52 (2011) "*What World Heritage has meant for Fraser Island"*.

Appendix C. Serventy Memorial Lecture (2005) *"Protecting Australia's World Heritage Values"*