



ENVIRONMENT PROTECTION (SEA DUMPING) ACT 1981

Paragraph 19 9(b) Agreement

BETWEEN

THE GREAT BARRIER REEF MARINE PARK AUTHORITY ON BEHALF OF THE COMMONWEALTH OF
AUSTRALIA

AND

NORTH QUEENSLAND BULK PORTS CORPORATION LIMITED (ACN 136 880 218)

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1. PARTIES

1.1. The Parties to this agreement are:

The Great Barrier Reef Marine Park Authority (GBRMPA) on behalf of the Commonwealth of Australia, 280 Flinders Street Townsville, Queensland.

and

North Queensland Bulk Ports Corporation Limited (ACN 136 880 218), Level 1, Waterfront Place, Mackay Marina QLD, Queensland (NQBPP).

2. DEFINITIONS

2.1. Unless stated otherwise in this Agreement, the definitions, meanings and terms in the *Environment Protection (Sea Dumping) Act 1981* apply to this Agreement.

2.2. In this Agreement:

Agreement means this agreement entered into between the Great Barrier Reef Marine Park Authority and North Queensland Bulk Ports Corporation on the date the last Party duly executes this agreement.

Application means the application under the Sea Dumping Act dated 25 October 2018 by North Queensland Bulk Ports Corporation as applicant for the grant of a permit for dumping at sea of maintenance dredge material associated with the Port of Hay Point in the State of Queensland.

GBRMP means the Great Barrier Reef Marine Park as established by the *Great Barrier Reef Marine Park Act 1975* (Cth).

GBRMPA means the Great Barrier Reef Marine Park Authority as established by the *Great Barrier Reef Marine Park Act 1975* (Cth).

GBRMP Act means the *Great Barrier Reef Marine Park Act 1975* (Cth).

Minister means the Minister responsible for administering the *Environment Protection (Sea Dumping) Act 1981* or the Minister's authorised delegate.

NQBP means North Queensland Bulk Ports Corporation Limited (ACN 136 880 218).

Parties mean the GBRMPA and NQBP together, each a **Party**.

Sea Dumping Act means the *Environment Protection (Sea Dumping) Act 1981*.

3. BACKGROUND

- 3.1. NQBP is the applicant named in the Application.
- 3.2. Pursuant to Subsection 19(9) of the Sea Dumping Act a delegate of the Minister advised NQBP that it required, before granting a permit for dumping, that NQBP enter into an agreement with the Commonwealth that includes a provision that the applicant will investigate as specified in the Agreement, the possibility of avoiding or reducing the need for further dumping of dredge material associated with the Port of Hay Point at sea by the applicant in the future.
- 3.3. The parties have agreed to enter into this Agreement for the purposes of subsection 19(9) of the Sea Dumping Act as follows:

4. AGREEMENT

- 4.1. The parties agree that they will act reasonably in the performance of their rights and responsibilities pursuant to this Agreement.
- 4.2. NQBP agrees that it will, at its own expense, for the duration of this Agreement:
 - (a) take a long term strategic approach to avoiding or reducing maintenance dredge material disposal at sea associated with the Port of Hay Point;
 - (b) investigate the possibility of avoiding or reducing the need for further dumping of maintenance dredge material associated with the Port of Hay Point at sea by NQBP by:
 - i. implementing a program that investigates the feasibility of beneficial re-use of dredge spoil material to contribute to avoiding or reducing the need for further dumping of maintenance dredging material associated with the Port of Hay Point at sea; and

- ii. identifying other opportunities to avoid or reduce the need for further dumping of maintenance dredge material associated with the Port of Hay Point at sea; and
- iii. outline a program that describes how NQBP will action any opportunities identified under subparagraphs (i) and (ii) that will avoid or reduce the need for further dumping of maintenance dredge material associated with the Port of Hay Point at sea.

5. REPORTING REQUIREMENTS

5.1. NQBP agrees that it will, at its own expense:

- (a) provide, within the 6 months of the commencement of this Agreement a report in a form and containing information that is satisfactory to GBRMPA, on the methodology of how the feasibility of options for beneficial re-use referred to in 4.3(c)(i) above will be assessed; and
- (b) thereafter provide annual updates for the duration of this Agreement, on the anniversary of the date of commencement of this Agreement to GBRMPA on the progress made towards achieving the intent of the Agreement in a form and containing such information that is satisfactory to GBRMPA, unless otherwise advised in writing by GBRMPA.

5.2. Notwithstanding NQBP's obligations under sub-clauses 5.1(a) and 5.1(b), should GBRMPA not be satisfied with the methodology and updates prescribed in those clauses, the Parties agree that:

- (a) NQBP will not be in breach of this Agreement where NQBP has complied with the timeframes for the provision of the said methodology and updates; and
- (b) the Parties will continue to consult with each other in order to best achieve the level of satisfaction required by GBRMPA.
- (c) The Parties acknowledge that, notwithstanding the approval to dump at sea associated with the Sea Dumping Permit 19/01 and Marine Park permit G19/40185.1, the Parties agree that if superior disposal or re-use options are identified by NQBP during its investigations pursuant to this Agreement, NQBP will implement (where there are no undue risks to human health or the environment or disproportionate costs) those options prior to disposal in the Great Barrier Reef Marine Park.

6. VARIATION AND CONFLICT RESOLUTION

6.1. This Agreement may only be varied by written agreement (including electronic communications) between the Parties and in accordance with the Sea Dumping Act.

- 6.2. Where there is a dispute between the Parties to this Agreement on a particular matter, the Parties will consult in the spirit of mutual cooperation in relation to that matter and will use their best endeavours to negotiate a mutually acceptable resolution.
- 6.3. In the event that the parties are not able to resolve a dispute, the parties may agree to refer the dispute to an independent third person with power to:
- (a) Intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - (b) Mediate and recommend some form of non-binding resolution.
- 6.4. If the parties have been unable to agree to refer the dispute to an independent person, or they have agreed and a resolution is not reached within 20 business days (or such other period as the parties may agree in writing), either party may commence legal proceedings.
- 6.5. The parties will cooperate fully with any process instigated under clause 6.3 in order to achieve a speedy resolution.
- 6.6. Each party will bear its own costs of complying with this clause 6, and the parties will bear equally the cost of any this person engaged under clause 6.3.
- 6.7. To avoid any doubt, nothing in clause is intended to override the provisions of the Sea Dumping Act.

7. DURATION OF AGREEMENT

- 7.1. This Agreement will remain in force a period of 10 years from the date the last Party duly executes this Agreement.

8 TERMINATION OF THE AGREEMENT

- 8.1 This Agreement may be terminated by written agreement (including electronic communications) between the Parties.

9 NOTICES

- 9.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:
- (a) if given by NQBP to GBRMPA – addressed to the Assistant Director Major Projects and Tourism Assessments and Permissions (or the person acting in that position or similar title) and sent or hand delivered to 280 Flinders Street Townsville or as otherwise notified in writing by GBRMPA; or

(b) if given by GBRMPA to NQBP – addressed the Senior Manager Environment and Planning of NQBP (or the person acting in that position or similar title) and sent or hand delivered to the registered office of NQBP or as otherwise notified in writing by NQBP.

9.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

9.3 A notice, request or other communication will be deemed to have been received:

(a) if delivered by hand, upon delivery;

(b) if sent by pre-paid ordinary post within Australia, upon the expiration of two (2) Business Days after the date on which it was sent; and

(c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

10 SIGNED SEALED AND DELIVERED

this 23 day of January 2019

BY:

EXECUTED for and on behalf of the
GREAT BARRIER REEF MARINE
PARK AUTHORITY by:



Signature of Authorised Delegate

SIMON BANKS

Full name



Signature of witness

JOANNE LEVERTON

Full name

EXECUTED for and behalf of North
Queensland Bulk Ports Corporation
Limited ACN 13 688 0218 by

Executed by North Queensland Bulk Ports Corporation
Limited ACN 136 880 218 by its duly appointed attorney,
Nicolas Francois Jacques Fertin / ~~Brendan Nicholas Webb~~
under registered power of attorney number 718975671
dated 21 August 2018



Signature of Authorised Person

Nicolas Francois Jacques Fertin

Full name



Signature of Witness

Tania Lara Conallin

Full name