



16 May 2013

Senate Standing Committee on Environment and Communications  
P.O. Box 6100  
Parliament House  
Canberra ACT 2600

Dear Ms Dunstone

**Environmental Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013**

Thank you for the opportunity to provide a submission on the *Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013 (Bill)*.

**Adani**

Adani is an \$8 billion sales turnover group based in India with market-leading positions in India in each of the verticals it operates in, viz. power generation, port ownership and operation and coal mining and coal trading.

Adani's investment in Australia represents the largest Indian investment in Australia to date. In August 2010, Adani purchased the Carmichael coal tenement in the Galilee basin; an investment of \$500 million. This was the first and the largest Indian investment in the Australian thermal coal sector, a ground-breaking investment, which led to much follow-on investment by Indian companies in the Australian resource sector.

In order to realise an integrated mining and logistics model, Adani made a follow-on investment in May 2011, with the \$1.83 billion purchase of a 99-year lease of the existing operational Terminal 1 at Abbot Point Coal Terminal from the Queensland Government. Stable policies together with the regulatory regime followed by Australia (unlike other jurisdictions evaluated) gave a sense of comfort to Adani when it made the multi-billion dollar investment decision.



A very significant value was attached by Adani to the expansion potential of the Terminal, which will service Adani's own Carmichael mine and enable the integration of mining and logistics to render the large investment viable.

Accordingly, Adani is planning to expand the capacity of the port through development of Terminal 0 and is well advanced in the assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* (referral EPBC 2011/6194). Adani has also invested significantly in the cumulative impact assessment of its Terminal 0 project and other proposals at Abbot Point, including the possible development of Terminals 2 and 3 and related dredging activities.

Terminal 0 at Abbot Point will support the development of the proposed Adani Carmichael Coal Mine and associated rail infrastructure. The mine, rail and port development is expected to represent an investment of between \$7-8 billion.

### **World Heritage Area**

Adani recognises the unique nature and iconic value of the Great Barrier Reef (GBR) and supports a strategic vision for port development within the GBR region. As with other resource industry participants, we firmly believe that port development and operations can continue to occur under current regulatory arrangement.

The presence of major industrial ports within a World Heritage Property is clearly not unique or mutually exclusive. At the time of establishment of the *World Heritage Area in 1981*, there were 11 commercial trading ports inside the defined boundary. This represents a clear recognition that port infrastructure and operations were not considered to be unworkable in a World Heritage context.

### **Existing Environmental Protection Regime**

Unlike many other World Heritage areas, the GBR is protected by a strong legal system. Numerous regulatory agencies combine to administer the vast array of regulatory provisions relevant to the development and operation of ports and their place within the GBR World Heritage Area. Key regulatory agencies include: the Commonwealth Department of Sustainability, Environment, Water, Population and Communities; the Great Barrier Reef

Marine Park Authority; the Australian Maritime Safety Authority; the Queensland Department of Environment and Heritage Protection; Queensland Department of Agriculture, Fisheries and Forestry; Maritime Safety Queensland; and Queensland Department of Transport and Main Roads.

The Great Barrier Reef Marine Park and World Heritage Area are already considered matters of national environmental significance under Part 3 of the EPBC Act, and developments likely to have a significant impact on them are subject to Federal environmental review and conditioning.

Industry has also demonstrated a strong desire to extend well beyond the statutory planning and approval requirements, which have historically reflected individual project proposals, by initiating detailed and consultative assessments of cumulative impacts. The additional studies supply the Minister and regulatory agencies with unprecedented levels of information upon which comprehensively considered approval determinations can be made. A key case study in this regard is the Abbot Point Cumulative Impact Assessment, which was initiated by Abbot Point development proponents, and highlighted in the State Report to UNESCO in February 2013.

Regretfully, during the course of seeking the relevant approvals under the EPBC Act for the developments, there have been constant changes to Commonwealth environmental legislation, which increasingly destabilise the planning and approvals landscape while increasing risk to investors. The Bill represents another significant amendment to the EPBC Act and has the potential to seriously jeopardise investment in Queensland and Australia, with substantial consequential impacts on the livelihood of regional coastal communities along the GBR coast.

### **Port Development Impacts**

The Bill appears to be based on an assumption that the predominant cause of impacts to the GBR relates to development and operation of ports.

Recent research and assessment within the *Informing the Outlook for Great Barrier Reef Coastal Ecosystems Technical Report 2012* identified that declining water quality, extreme weather events as well as increasingly frequent outbreaks of the Crown of Thorns starfish are

implicated as key contributors to a 25-50 per cent decline in coral cover primarily on reefs in the central region of the GBR over the past 27 years. During this time, port development and operation along the GBR coast has been cyclical but progressive and minor within the context of the World Heritage Area.

Port development and operation is recognised in the *Great Barrier Reef Outlook Report 2009* as being a medium risk to the reef, however an increase in port related development proposals over very recent years has raised the profile of ports as a potential cumulative contributor to further decline. The increase in development proposals occurred at a time of the resources boom; however the apparent appetite of industry to meaningfully progress these developments has been severely tampered by market forces resulting in an increasing number of planned resource developments being deferred or abandoned. Hence, the urgency for reactive management measures does not appear to have been realised and it could be argued that port related development remains no higher than medium risk to the reef.

The Bill effectively seeks to give priority to amending legislation in a manner that focuses on a medium risk activity ahead of activities presenting higher risks. Effective management of the GBR for long-term sustainability necessitates that legislation and management efforts and programs resulting from the strategic assessments should maintain a primary focus on areas representing high risks as this is where most value is likely to be gained.

### **Importance of Port Developments**

The high value provided by ports to sustaining Australia's economy needs to be appropriately recognised and better reflected against the medium risks posed by ports to the reef. The value of ports is well summarised in the following statement from the National Ports Strategy, which was endorsed by COAG in July 2012:

*“Australia is an island whose place in the international economy and whose productivity, living standards and quality of life depend on trade performance. As a nation dependent on maritime trade, Australia's ports are an important gateway for goods. Consequently ports and associated infrastructure are of the utmost economic and social importance to Australia.”*

Focusing on restricting port activities in the manner proposed in the Bill creates an immediate risk to the economic sustainability of Queensland and Australia. Sustainable management involves the balancing of ecological needs with the economic and social / cultural needs of a community. The Bill fails to balance these needs in the short, medium or long-term and also fails to consider transitional arrangements.

### **Broader Context**

Adani believes that an amendment to the EPBC Act of this nature is premature and unwarranted given the existing strong legal system and rigorous regulatory regime, the medium risk posed by port development and operations, the large amount of work that is currently being undertaken toward the Strategic Assessments, and the fact that the outcomes of this work are not yet available.

The Commonwealth and State have reasonably complied as requested with the World Heritage Committee's (**WHC**) decision 36COM 7B.8 (cited in the explanatory memorandum for the Bill), by:

- Submitting an updated State Party report on the conservation of the Great Barrier Reef World Heritage Area (submitted 1 February 2013), which outlines how the outstanding universal value of the reef is being managed and protected.
- Entering an agreement for the purpose of Section 146 of the EPBC to strategically assess the impacts of action on the reef (the **Agreement**, refer attached). The Agreement between the Commonwealth Government was counter-signed by Minister Burke on 16 February 2012.

Adani submits that the Agreement must be honoured. The Agreement clearly states at section 3.7:

*“The strategic assessment does not affect the application of the EPBC Act in the strategic assessment area in relation to actions or activities already approved or for which approval is sought through the assessment and approval process established under Parts 7, 8 and 9 of the EPBC Act.”*

Similar commitment is also made under Section 3.7 of the corresponding agreement between Minister for Sustainability, Environment, Water, Population and Communities (on behalf of the Commonwealth Government) and the Great Barrier Reef Marine Park Authority (refer attached). This agreement was similarly counter-signed by Minister Burke on 16 February 2012.

Such commitment to the continuation of due process during periods of strategic review and potential transitional arrangements is essential if the Queensland and Commonwealth Governments are to minimise investment risks.

### **Moratorium**

We understand the strategic assessment under the Agreement will be completed and provided to the WHC in late 2013. However, per item 11 of WHC Decision 36COM 7B.8, the strategic assessment will not be reviewed by the WHC until its 39th session in 2015.

As currently drafted, clause 24F under the Bill prohibits developments - not just of existing Port infrastructure, but any developments likely to have an impact on the GBRWHA - until such time as the WHC has assessed the strategic assessment and decided that it is adequate. As this moratorium would extend until at least 2015, we consider this to be an unreasonable restriction on necessary economic development along the majority of Queensland's eastern seaboard.

### **Net Benefit**

We consider it reasonable to recognise that the benefits of maintaining the Great Barrier Reef's World Heritage and ecological values coexist and are balanced with the benefits provided by economic development of the Queensland coastline.

As currently drafted, clause 24G of the Bill does not consider the critical economic and social benefits, effectively limiting the Minister's consideration to benefits to the reef only. We consider that this is not a net benefit consideration at all. If considered only from the perspective of benefits to the reef, virtually all developments, regardless of type or size, would have a negative net impact on the reef. Any net benefit analysis must take into



consideration benefits other than to the world heritage values of the reef. Clause 24G is improperly drafted.

Adani submits to the Senate Standing Committee that this Bill should not be considered or passed in either House of Parliament.

Kind regards

Harsh V. Mishra  
Chief Executive Officer – Australia  
Adani Group

Enc.:

Copy of agreements under Part Section 146 of the *EPBC Act* between:

- The Minister for Sustainability, Environment, Water, Population and Communities on behalf of the Commonwealth Government and the Great Barrier Reef Marine Park Authority; and
- The Commonwealth of Australia and the State of Queensland.



**ENVIRONMENT PROTECTION AND BIODIVERSITY  
CONSERVATION ACT 1999**  
*Part 10 Strategic Assessments*  
*Section 146 Agreement*

Strategic assessment of the impacts of actions on the values of the Great Barrier Reef World Heritage Area, other relevant matters of national environmental significance, and the management arrangements to deal with such impacts under the jurisdiction of the Great Barrier Reef Marine Park Authority.

between

**THE MINISTER FOR SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION AND COMMUNITIES ON  
BEHALF OF THE COMMONWEALTH GOVERNMENT**

and

**THE GREAT BARRIER REEF MARINE PARK AUTHORITY**



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## 1 PARTIES

The Parties to this agreement are:

The Minister for Sustainability, Environment, Water, Population and Communities on behalf of the Commonwealth Government

and

The Great Barrier Reef Marine Park Authority.

## 2 DEFINITIONS

2.1 Unless stated otherwise in this Agreement, the definitions, meanings and terms in the *Environment Protection and Biodiversity Conservation Act 1999* apply to this Agreement and its attachments.

2.2 In this Agreement:

**agreement** means this strategic assessment agreement entered into between the Minister for Sustainability, Environment, Water, Population and Communities and the Great Barrier Reef Marine Park Authority on the date the last Party executes this agreement.

**day** means a business day as measured in Canberra, Australian Capital Territory.

**Department** means the Australian Government department administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**endorsement criteria** means the endorsement criteria detailed in Attachment C of this Agreement.

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**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).

**GBRMPA management arrangements** means those management arrangements under the jurisdiction of GBRMPA, and may include partnership and collaborative arrangements with other Commonwealth and Queensland Government agencies and partnerships with stakeholders and members of the Great Barrier Reef coastal community. These management arrangements include, but are not limited to, those described in Attachment B.

**GBRWHA** means the Great Barrier Reef World Heritage Area and is the same as the area described in Schedule 1 to the GBRMP Act.

**Great Barrier Reef Region** has the same meaning as described in the GBRMP Act.

**Minister** means the Minister responsible for administering the EPBC Act or the Minister's authorised delegate.

**MNES** means matters of national environmental significance protected under Part 3 of the EPBC Act.

**Queensland strategic assessment** is defined in clause 3.5 of this Agreement.

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

**Program** is the 'policy, plan or program' (section 146 of the EPBC Act) of the GBRMPA management arrangements that will apply to those parts of the strategic assessment area as described in the Program Report and for which endorsement by the Minister is sought.

**Program Report** means a report prepared specifically for this strategic assessment that describes the Program.

**strategic assessment** means the strategic assessment to which this Agreement relates, namely the strategic assessment of the impacts, including cumulative impacts, of actions on the environmental values of the strategic assessment area, relevant MNES and the GBRMPA management arrangements to deal with such impacts.

**strategic assessment area** is the Great Barrier Reef Region (map at Attachment A) and areas outside the Great Barrier Reef Region, to the extent that actions in those areas may affect the Great Barrier Reef Region.

**Strategic Assessment Report** means the report prepared in accordance with the Terms of Reference assessing the likely impacts, including cumulative impacts, on MNES from implementing the Program.

**Supplementary Report** means the report submitted to the Department following public exhibition of the draft Strategic Assessment Report which addresses and responds to public comments including revisions to the Strategic Assessment Report.

**Terms of Reference** means the terms of reference for the preparation of the Strategic Assessment Report.

**Work Plan** means a plan jointly developed by the Parties for undertaking the strategic assessment, documenting a common understanding about what strategic assessment tasks will be completed by whom, by when, and what resources are required for those tasks, amongst other things.

### 3 PREAMBLE

- 3.1 Australia's Great Barrier Reef is the largest coral reef ecosystem on earth. In 1975 the Great Barrier Reef Region was established and today provides for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region.
- 3.2 The Great Barrier Reef Region extends more than 2,300 km along the Queensland coastline and covers 346,000 square kilometres. In 1981 the area was listed as a World Heritage property for its outstanding universal value and in 2007 it was listed as a National Heritage property.
- 3.3 Both the Australian and Queensland Governments have legislative responsibilities within the GBRWHA. The *Great Barrier Reef Intergovernmental Agreement 2009* sets out the joint management arrangements between the two governments to ensure an integrated and collaborative approach to the management of the marine and land environments within and adjacent to the GBRWHA.
- 3.4 The strategic assessment will examine the impacts, including cumulative impacts, of actions on the GBRWHA, other relevant MNES, and the GBRMPA management arrangements to deal with such impacts.
- 3.5 The strategic assessment will complement the Queensland Government's strategic assessment of the impacts of actions on the values of the GBRWHA under the Queensland coastal management, planning and development framework (the Queensland strategic assessment). The GBRMPA strategic assessment combined with the Queensland strategic assessment will form a comprehensive strategic assessment of the entire GBRWHA property and its values and the adjacent coastal zone.
- 3.6 The Parties agree that the GBRWHA and the adjacent coastal zone contain MNES that are highly inter-related. The Parties commit to:
- (a) undertaking a strategic assessment of the impacts, including cumulative impacts, of actions on all MNES under the jurisdiction of GBRMPA, other than nuclear actions.
  - (b) developing a Work Plan for the strategic assessment describing governance arrangements, key milestones and deliverables, public exhibition requirements, communication and data sharing agreements and other responsibilities of the Parties to ensure timely completion of the strategic assessment.
  - (c) working collaboratively with the Queensland Government on the complementary Queensland strategic assessment.
- 3.7 The strategic assessment does not affect the application of the EPBC Act or GBRMP Act in the strategic assessment area in relation to actions or activities already approved or for which approval has been sought through the assessment and approval process
- (a) established under Parts 7, 8 and 9 of the EPBC Act; or
  - (b) established under Part 2A of the *Great Barrier Reef Marine Park Regulations 1983* (Clth).



## **4 BACKGROUND**

- 4.1 Subsection 146(1) of the EPBC Act allows the Minister to agree in writing with a person responsible for the adoption or implementation of a policy, plan or program to assess the impacts of actions taken under that policy, plan or program on MNES.
- 4.2 This Agreement is intended to be an agreement for the purposes of subsection 146(1) of the EPBC Act to assess the impacts of actions taken under the Program.
- 4.3 A draft Strategic Assessment Report and draft Program Report will be made available for public comment for a minimum of at least 28 days. Following the public comment period, a Supplementary Report (addressing public comments) and a revised Program Report will be submitted to the Minister. After considering these, the Minister may decide to endorse the Program if satisfied that the reports adequately address the impacts and endorsement criteria to which this Agreement relates and that recommended modifications (if any) to the Program made by the Minister, or modifications having the same effect, have been made.
- 4.4 The Parties acknowledge that the endorsement of the Program itself does not constitute any approval for the taking of actions under Part 10 of the EPBC Act.
- 4.5 If the Minister endorses the Program, the Minister may then approve the taking of an action, or a class of actions, in accordance with the Program and the EPBC Act. The effect of this approval decision is that any actions or class of actions approved under section 146B would not need further approval by the Minister under the EPBC Act if taken in accordance with the endorsed Program.
- 4.6 The Parties acknowledge that, where proponents propose to take an action in accordance with the Program that is not the subject of an approval under section 146B, they are able to seek approval for that action through the assessment and approval process established under Parts 7, 8 and 9 of the EPBC Act. Paragraphs 87(3)(b) and 136(2)(e) of the EPBC Act provide that the strategic assessment report for a policy, plan or program must be taken into account in deciding the level of assessment and approval for actions that are referred under the EPBC Act.

## **5 TERMS OF REFERENCE FOR THE STRATEGIC ASSESSMENT REPORT**

- 5.1 The Parties will prepare draft Terms of Reference for the strategic assessment report that include the following (at a minimum):
- Purpose and description of the Program;
  - Description of the area in which the Program will be implemented;
  - MNES affected by the Program;
  - Identification and analysis of the potential impacts, including cumulative impacts, on MNES;
  - Consideration of existing pressures on MNES;
  - Measures to enhance the existing environment, including management of existing threats;

- Measures to avoid, mitigate and offset likely impacts, including impacts of cumulative impacts, on MNES;
- Consideration of ecologically sustainable development principles;
- Adaptive management and risk management; Auditing and reporting requirements; and
- Review, modification and abandonment of the Program.

5.2 The GBRMPA will seek public comment on the draft Terms of Reference. The GBRMPA will provide the draft Terms of Reference for public comment by notice consistent with arrangements for other major environmental impact assessment projects, including:

- (a) posting on the GBRMPA's website;
- (b) publishing in newspapers circulating in Queensland; and
- (c) circulation to key stakeholder groups agreed between the Department and the GBRMPA.

5.3 The notice must state:

- (a) that the draft Terms of Reference are available for public comment;
- (b) how copies may be obtained;
- (c) the contact details for obtaining further information; and
- (d) that public comments are invited for a period of at least 28 days as specified by the Minister.

5.4 Following the public comment period for the draft Terms of Reference in accordance with clause 5.3(d), the GBRMPA will submit to the Minister:

- (a) proposed Terms of Reference;
- (b) public responses relating to the draft Terms of Reference; and
- (c) a report on how the public responses have been taken into account.

5.5 Following receipt of the proposed Terms of Reference, the Minister will notify the GBRMPA that the proposed Terms of Reference:

- (a) are approved, or
- (b) are not approved, in which case the Minister will notify the GBRMPA of any concerns and invite the GBRMPA to provide revised Terms of Reference which take those concerns into account.

5.6 Within 15 working days of receipt of the revised Terms of Reference from the GBRMPA in accordance with clause 5.5(b), the Minister will either:

- (a) notify the GBRMPA of the Minister's approval of the revised Terms of Reference; or
- (b) provide approved Terms of Reference that meet the Minister's requirements.

## **6 PREPARATION OF THE STRATEGIC ASSESSMENT REPORT AND PROGRAM REPORT**

6.1 The GBRMPA will prepare a Strategic Assessment Report and Program Report in accordance with this Agreement and the Terms of Reference approved in accordance with clause 5.5(a) or clause 5.6.

6.2 The GBRMPA will provide a draft Strategic Assessment Report and draft Program Report to the Minister for comment prior to finalising the documents for public comment.

6.3 The GBRMPA must release the draft Strategic Assessment Report and draft Program Report for public comment by notice consistent with arrangements for other major environmental impact assessment projects, including:

- (a) posting on the GBRMPA's website;
- (b) publishing in newspapers circulating in Queensland; and
- (c) circulation to key stakeholder groups agreed between the Department and the GBRMPA.

6.4 The notice must state:

- (a) that the draft Strategic Assessment Report and draft Program Report are available for public comment;
- (b) how copies may be obtained;
- (c) provide contact details for obtaining further information; and
- (d) that public comments are invited on the draft reports for a period of at least 28 days as specified by the Minister.

6.5 The GBRMPA will:

- (a) prepare a Supplementary Report and revise the Program Report, taking into account any public comments received in accordance with clause 6.4(d);
- (b) provide drafts of these reports to the Minister for comment prior to their finalisation; and
- (c) incorporate any recommendations by the Minister.

6.6 The Department agrees to assist the GBRMPA in ensuring that the reports adequately address the requirements for strategic assessments described in Part 10 of the EPBC Act and to provide comments in a timely manner.

## **7 ENDORSEMENT OF THE PROGRAM**

7.1 The GBRMPA will submit to the Minister:

- (a) the Strategic Assessment Report (which was exhibited for public comment);
- (b) the Supplementary Report (explaining how relevant public responses have been taken into account and addressed in the impact assessment and revised Program);
- (c) the Program Report (incorporating any revisions in light of public comments);
- (d) public comments received during the consultation relating to the Strategic Assessment Report and Program Report;
- (e) any other documents required to support the GBRMPA's submission.

7.2 If the Minister is not satisfied that the reports adequately address the impacts of actions on MNES in the strategic assessment area, or that the Program does not provide for adequate protection of MNES, then:

- (a) the Minister can make recommendations to amend the Program;
- (b) the GBRMPA may seek clarification from the Minister on the recommendations;
- (c) the GBRMPA will then submit to the Minister for consideration the revised Program, and a summary of how the Minister's recommendations were given effect;



- (d) the Minister will consider the revised Program, and any supporting material provided, and may accept it as the final Program; and
- (e) the Minister may request further modifications if still not satisfied that the Program provides for adequate protection of MNES.

7.3 The Minister may endorse the Program if satisfied that the reports submitted under clause 7.1 adequately address the impacts to which this Agreement relates, and that any recommended modifications to the Program (clause 7.2) or modifications having the same effect have been made. In considering whether to endorse the Program the Minister will also consider the endorsement criteria at Attachment C.

## **8 APPROVAL OF ACTIONS UNDER THE PROGRAM**

8.1 The Minister may approve, or approve with conditions, the taking of an action or class of actions in accordance with the endorsed Program under Section 146B of the EPBC Act. In doing so, the Minister must act in accordance with sections 146F-M of the EPBC Act. This includes considering MNES in the area affected by the Program and economic and social matters.

8.2 The Minister will seek comment from other Australian Government Ministers with administrative responsibilities relating to the actions before approving the taking of an action, or class of actions, pursuant to section 146C of the EPBC Act.

8.3 Both Parties will make publicly available electronically through their websites the endorsed Program (including the Program Report), the Strategic Assessment Report, the Supplementary Report and any approval decision and conditions.

8.4 Approvals for actions or classes of actions may occur progressively after endorsement of the Program.

## **9 VARIATION, CONFLICT RESOLUTION AND TERMINATION**

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

9.2 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.

9.3 Either party may at any time terminate this Agreement by written correspondence to the other Party.

9.4 The Parties do not intend this Agreement to create contractual or other legal obligations, or that a breach of the Agreement will give rise to any cause of action, or right to take legal proceedings.

9.5 To avoid any doubt, nothing in clause 9.4 is intended to override the provisions of the EPBC Act.



**SIGNED BY:**

16.2.12

The Hon. Tony Burke MP  
Minister for Sustainability, Environment, Water,  
Population and Communities

Dated

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Dr Russell Reichelt  
Chairperson, Great Barrier Reef Marine Park Authority

Dated

6/1/2012

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### STRATEGIC ASSESSMENT AREA

The strategic assessment area is the Great Barrier Reef Region (refer Figure 1) and areas outside the Great Barrier Reef Region, to the extent that actions in those areas may affect the Great Barrier Reef Region.

Figure 1: Great Barrier Reef Region



## GBRMPA MANAGEMENT ARRANGEMENTS

Management of the GBRWHA relies upon a number of Commonwealth and Queensland **agencies** using a combination of management **tools** (including zoning plans, plans of management, permits, species recovery plans, the Reef Water Quality Protection Plan and shipping management arrangements), along with various management **approaches** (including education, planning, environmental impact assessment, monitoring, stewardship, enforcement) to regulate access, and to control and/or mitigate impacts associated with **activities** (such as tourism, fisheries, shipping) or address **pressures** (including climate change or declining water quality).

For the purpose of this strategic assessment, **GBRMPA's management arrangements** mean those management arrangements under the jurisdiction of GBRMPA. They include, but are not limited to, the following:

- Statutory instruments, including regulations, zoning plans, plans of management and permits;
- Non-statutory mechanisms including policies, position statements and guidelines;
- Partnership and collaborative arrangements with other Commonwealth and Queensland Government agencies;
- Partnerships with Traditional Owners in the management of marine resources;
- Partnership and stewardship programs, including education programs and engagement with local governments, communities, Indigenous persons and industry; and
- Research and monitoring programs.

## ENDORSEMENT CRITERIA FOR STRATEGIC ASSESSMENT

When deciding whether to endorse the Program, the Minister must be satisfied that the Strategic Assessment Report adequately addresses the impacts to which this Agreement relates, and that any recommendations by the Minister to modify the Program have been responded to appropriately.

In determining whether or not to endorse the Program, the Minister will have regard to the extent to which the Program meets the objects of the EPBC Act. In particular, that it:

- protects the environment, especially those aspects of the environment that are MNES;
- promotes ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- promotes the conservation of biodiversity;
- provides for the protection and conservation of heritage;
- promotes a cooperative approach to the protection and management of the environment; and
- assists in the co-operative implementation of Australia's international environmental responsibilities.

Without limiting the matters the Minister may consider when making the decision to endorse the Program, the Minister will consider the manner in which the Program:

- identifies direct, indirect and cumulative impacts on MNES;
- avoids impacts on MNES;
- mitigates the impacts on MNES;
- offsets the impacts on MNES;
- contributes to the enhancement of the existing environment and management of existing threats; and
- demonstrates adaption to reasonable climate change scenarios.

Commitments in the Program must be adequately resourced throughout its life. The Program must demonstrate an effective system of adaptive management that addresses uncertainty and contingency management as well as procedures for monitoring, independent auditing and public reporting on implementation.

The Program must address all of the above matters for it to be considered for endorsement by the Minister in accordance with the EPBC Act.



**ENVIRONMENT PROTECTION AND BIODIVERSITY  
CONSERVATION ACT 1999**  
*Part 10 Strategic Assessments*  
*Section 146 Agreement*

Strategic assessment of the impacts of actions on the values of the Great Barrier Reef World Heritage Area, and other relevant matters of national environmental significance, under the Queensland coastal management, planning and development framework.

between

**THE COMMONWEALTH OF AUSTRALIA**

and

**THE STATE OF QUEENSLAND**

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## 1 PARTIES

The Parties to this agreement are:

The Commonwealth of Australia, represented by the Minister for Sustainability, Environment, Water, Population and Communities

and

The State of Queensland, represented by the Deputy Premier, Treasurer and Minister for State Development and Trade, and the Minister for Environment.

## 2 DEFINITIONS

2.1 Unless stated otherwise in this Agreement, the definitions, meanings and terms in the *Environment Protection and Biodiversity Conservation Act 1999* apply to this Agreement and its attachments.

2.2 In this Agreement:

**agreement** means this strategic assessment agreement entered into between the Commonwealth of Australia and the State of Queensland on the date the last party executes this agreement.

**day** means a business day as measured in Canberra, Australian Capital Territory.

**Department** means the Australian Government department administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**endorsement criteria** means the endorsement criteria detailed in Attachment C of this Agreement.

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**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).

**GBRMPA strategic assessment** means the strategic assessment being prepared by the Great Barrier Reef Marine Park Authority under its jurisdiction and to which its management arrangements apply.

**GBRWHA** means the Great Barrier Reef World Heritage Area and is the same as the area described in Schedule 1 to the GBRMP Act.

**Great Barrier Reef Region** has the same meaning as the area described in Schedule 1 to the GBRMP Act.

**Minister** means the Minister responsible for administering the EPBC Act or the Minister's authorised delegate.

**MNES** means matters of national environmental significance protected under Part 3 of the EPBC Act, other than nuclear actions.

**Parties** mean the Minister and the State of Queensland (the State), each a Party.

**Program** is the 'policy, plan or program' (section 146 of the EPBC Act) under the Queensland coastal management, planning and development framework that will apply within the strategic assessment area as described in the Program Report and for which endorsement by the Minister is sought (Attachment B).

**Program Report** means a report prepared specifically for this strategic assessment that describes the Program.

**strategic assessment** means the strategic assessment to which this agreement relates, namely the strategic assessment of the impacts of actions on MNES in the strategic assessment area and the management arrangements to deal with such impacts under the jurisdiction of the State.

**strategic assessment area** is the geographic extent of the assessment as described in Attachment A.

**Strategic Assessment Report** means the report assessing the likely impacts on MNES from implementing the Program.

**Supplementary Report** means the report submitted to the Department following public exhibition of the draft Strategic Assessment Report which addresses and responds to public comments including revisions to the Strategic Assessment Report.

**Terms of Reference** means the terms of reference for the preparation of the Strategic Assessment Report.

**Work Plan** means a plan jointly developed by the Parties for undertaking the strategic assessment, documenting a common understanding about what strategic assessment tasks will be completed by whom, by when, and what resources are required for those tasks, amongst other things.



### 3 PREAMBLE

- 3.1 Australia's Great Barrier Reef is the largest coral reef ecosystem on earth. In 1975 the Great Barrier Reef Region was established and today provides for the long term protection and conservation of the environment, biodiversity and heritage values of this globally significant area.
- 3.2 The Great Barrier Reef Region extends more than 2,300 km along the Queensland coastline and covers 346,000 square kilometres. In 1981 it was listed as a World Heritage property for its outstanding universal value and in 2007 it was listed as a National Heritage property.
- 3.3 Both the Australian and Queensland Governments have legislative responsibilities within the GBRWHA and are committed to its sustainable management and protection of its environmental values. The *Great Barrier Reef Intergovernmental Agreement 2009* sets out the joint management arrangements between the two governments to ensure an integrated and collaborative approach to the management of the marine and land environments within and adjacent to the GBRWHA.
- 3.4 The strategic assessment will examine the impacts of actions on the matters of national environmental significance (MNES) in the GBRWHA and adjoining coastal zone under the Queensland coastal management, planning and development framework.
- 3.5 The strategic assessment will complement the GBRMPA strategic assessment of the impacts of actions on the MNES in the GBRWHA that fall under its jurisdiction and to which its management arrangements apply. The State strategic assessment and the GBRMPA strategic assessment combined, will form a comprehensive strategic assessment of the entire GBRWHA property and the adjacent coastal zone.
- 3.6 The Parties agree that the GBRWHA and the adjacent coastal zone contain MNES that are highly inter-related. The Parties commit to:
- (a) undertaking a strategic assessment of the impacts, including cumulative impacts, of actions within the jurisdiction and administrative responsibility of the State on all MNES other than nuclear actions.
  - (b) developing a Work Plan for the strategic assessment describing governance arrangements, key milestones and deliverables, public exhibition requirements, communication and data sharing agreements and other responsibilities of the Parties to ensure timely completion of the strategic assessment.
  - (c) working collaboratively with the GBRMPA on the complementary GBRMPA strategic assessment.
- 3.7 The strategic assessment does not affect the application of the EPBC Act in the strategic assessment area in relation to actions or activities already approved or for which approval is sought through the assessment and approval process established under Parts 7, 8 and 9 of the EPBC Act.

## **4 BACKGROUND**

- 4.1 Subsection 146(1) of the EPBC Act allows the Minister to agree in writing with a person responsible for the implementation of a policy, plan or program to assess the impacts of actions taken under that policy, plan or program on MNES.
- 4.2 This Agreement is intended to be an agreement for the purposes of subsection 146(1) of the EPBC Act to assess the impacts of actions taken under the Program.
- 4.3 A draft Strategic Assessment Report and draft Program Report will be made available for public comment for a minimum of at least 28 days. Following the public comment period, a Supplementary Report (addressing public comments) and a revised Program Report will be submitted to the Minister. After considering these, the Minister may decide to endorse the Program if satisfied that the reports adequately address the impacts and endorsement criteria to which this Agreement relates and that recommended modifications (if any) to the Program made by the Minister, or modifications having the same effect, have been made.
- 4.4 The Parties acknowledge that the endorsement of the Program itself does not constitute any approval for the taking of actions under Part 10 of the EPBC Act.
- 4.5 If the Minister endorses the Program, the Minister may then approve the taking of an action, or a class of actions, in accordance with the Program and the EPBC Act. The effect of this approval decision is that any actions or class of actions approved under section 146B would not need further approval by the Minister under the EPBC Act if taken in accordance with the endorsed Program. This may be iterative with different classes of action approved over time as science and/or management evolves.
- 4.6 The Parties acknowledge that, where proponents propose to take an action in accordance with the Program that is not the subject of an approval under section 146B, they are able to seek approval for that action through the assessment and approval process established under Parts 7, 8 and 9 of the EPBC Act. Paragraphs 87(3)(b) and 136(2)(e) of the EPBC Act provide that the strategic assessment report for a policy, plan or program must be taken into account in deciding the level of assessment and approval for actions that are referred under the EPBC Act.

## **5 TERMS OF REFERENCE FOR THE REPORT**

- 5.1 The Parties will prepare draft Terms of Reference for the Strategic Assessment Report that will include the following (at a minimum):
- Purpose and description of the Program
  - Description of the area in which the Program will be implemented
  - MNES affected by the Program
  - Identification and analysis of the potential impacts on MNES
  - Consideration of existing pressures on MNES
  - Measures to enhance the existing environment, including management of existing threats

- Measures to avoid, mitigate, offset likely impacts on MNES
- Consideration of ecologically sustainable development principles
- Adaptive management and risk management
- Auditing and reporting requirements
- Review, modification and abandonment of the Program

5.2 The State will provide the draft Terms of Reference for public comment by notice consistent with arrangements for other major environmental impact assessment projects, including:

- posting on relevant agency websites
- publishing in newspapers circulating in Queensland
- circulation to key stakeholder groups agreed between the Department and the State.

5.3 The notice must state that:

- the draft Terms of Reference are available;
- how copies may be obtained;
- the contact details for obtaining further information; and
- that public comments are invited for a period of at least 28 days.

5.4 Following the public comment period for the draft Terms of Reference, the State will submit to the Minister:

- proposed Terms of Reference
- public responses relating to the draft Terms of Reference
- a report on how the public responses have been taken into account.

5.5 Following receipt of the proposed Terms of Reference, the Minister will notify the State that the proposed Terms of Reference:

- are approved, or
- are not approved, in which case the Minister will notify the State of any concerns and invite the State to provide revised Terms of Reference which take those concerns into account

5.6 Within 15 working days of receipt of the revised Terms of Reference from the State addressing the Minister's concerns, the Minister will either:

- notify the State of the Minister's approval of the revised Terms of Reference, or
- provide approved Terms of Reference that meet the Minister's requirements.

## **6 PREPARATION OF THE STRATEGIC ASSESSMENT REPORT AND PROGRAM REPORT**

6.1 The State will prepare a Strategic Assessment Report and Program Report in accordance with this Agreement and the Terms of Reference approved in accordance with clause 5.5(a) or clause 5.6.

6.2 The State will provide the draft Strategic Assessment Report and draft Program Report to the Department for comment prior to finalising the documents for public exhibition.

- 6.3 The State must release the draft Strategic Assessment Report and draft Program Report for public comment by notice consistent with arrangements for other major environmental impact assessment projects, including:
- (a) posting on the relevant agency websites
  - (b) publishing in newspapers circulating in the State and the assessment region
  - (c) circulation to key stakeholder groups agreed between the Department and the State.
- 6.4 The notice must state that:
- (a) the draft Strategic Assessment Report and draft Program Report are available for public comment;
  - (b) how copies may be obtained;
  - (c) provide contact details for obtaining further information; and
  - (d) invite public comments on the draft reports for of at least 28 days as specified by the Minister.
- 6.5 The State will:
- (a) prepare a Supplementary Report and revise the Program Report, taking into account any public comments in accordance with clause 6.4(d).
  - (b) provide drafts of these reports to the Department for comment prior to their finalisation and to incorporate any recommendations by the Minister.
- 6.6 The Department agrees to assist the State in ensuring that the reports adequately address the requirements for strategic assessments described in Part 10 of the EPBC Act and to provide comments in a timely manner.

## **7 ENDORSEMENT OF THE PROGRAM**

- 7.1 The State will submit to the Minister:
- (a) the Strategic Assessment Report (which was exhibited for public comment).
  - (b) the Supplementary Report (explaining how relevant public responses have been addressed in the impact assessment and revised Program).
  - (c) the Program Report (incorporating any revisions in light of public comments).
  - (d) public comments received during the consultation relating to the Strategic Assessment Report and Program Report.
  - (e) any other documents required to support the State's submission.
- 7.2 If the Minister is not satisfied that the reports adequately address the impacts of actions on MNES in the strategic assessment area (including the GBRWHA), or that the Program does not provide for adequate protection of MNES, then:
- (a) the Minister can make recommendations to amend the Program.
  - (b) the State may seek clarification from the Minister on these recommendations.
  - (c) the State will then submit to the Minister for consideration the revised Program, and a summary of how the Minister's recommendations were given effect.
  - (d) the Minister will consider the revised Program, and any supporting material provided, and may accept it as the final Program.

(e) the Minister may request further modifications if still not satisfied that the Program provides for adequate protection of MNES.

7.3 The Minister may endorse the Program if satisfied that the reports submitted under clause 7.1 adequately address the impacts to which this Agreement relates, and that any recommended modifications to the Program (clause 7.2) or modifications having the same effect have been addressed. In considering whether to endorse the Program the Minister will also consider the endorsement criteria at Attachment C.

## **8 APPROVAL OF ACTIONS UNDER THE PROGRAM**

8.1 The Minister may approve, or approve with conditions, the taking of an action or class of actions in accordance with the endorsed Program under Section 146B of the EPBC Act. In doing so, the Minister must act in accordance with sections 146F-M of the EPBC Act. This includes considering MNES in the area affected by the Program and economic and social matters.

8.2 The Minister will seek comment from other Australian Government Ministers with administrative responsibilities relating to the actions before approving the taking of an action, or class of actions, pursuant to section 146C of the EPBC Act.

8.3 Both Parties will make publicly available electronically through their websites the endorsed Program (including the Program Report), the Strategic Assessment Report, the Supplementary Report and any approval decision and conditions.

8.4 Approvals for actions or classes of actions may occur progressively after endorsement of the Program.

## **9 VARIATION, CONFLICT RESOLUTION AND TERMINATION**

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

9.2 Where there is a dispute between the Parties to this Agreement on a particular matter, the Parties will consult in a spirit of mutual cooperation in relation to that matter and will use their best endeavours to negotiate a mutually acceptable resolution.

9.3 This Agreement may be terminated by either party by written notice to the other.

9.4 The parties do not intend this Agreement to create contractual or other legal obligations, or that a breach of the Agreement will give rise to any cause of action, or right to take legal proceedings.

9.5 To avoid any doubt, nothing in clause 9.4 is intended to override the provisions of the EPBC Act.

**SIGNED BY:**

16.2.12

The Hon. Tony Burke MP  
Minister for Sustainability, Environment, Water,  
Population and Communities

Dated

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8.2.12

The Hon. Andrew Fraser  
Deputy Premier of Queensland, Treasurer and  
Minister for State Development and Trade

Dated

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11-2-12

The Hon. Vicky Darling  
Minister for Environment

Dated

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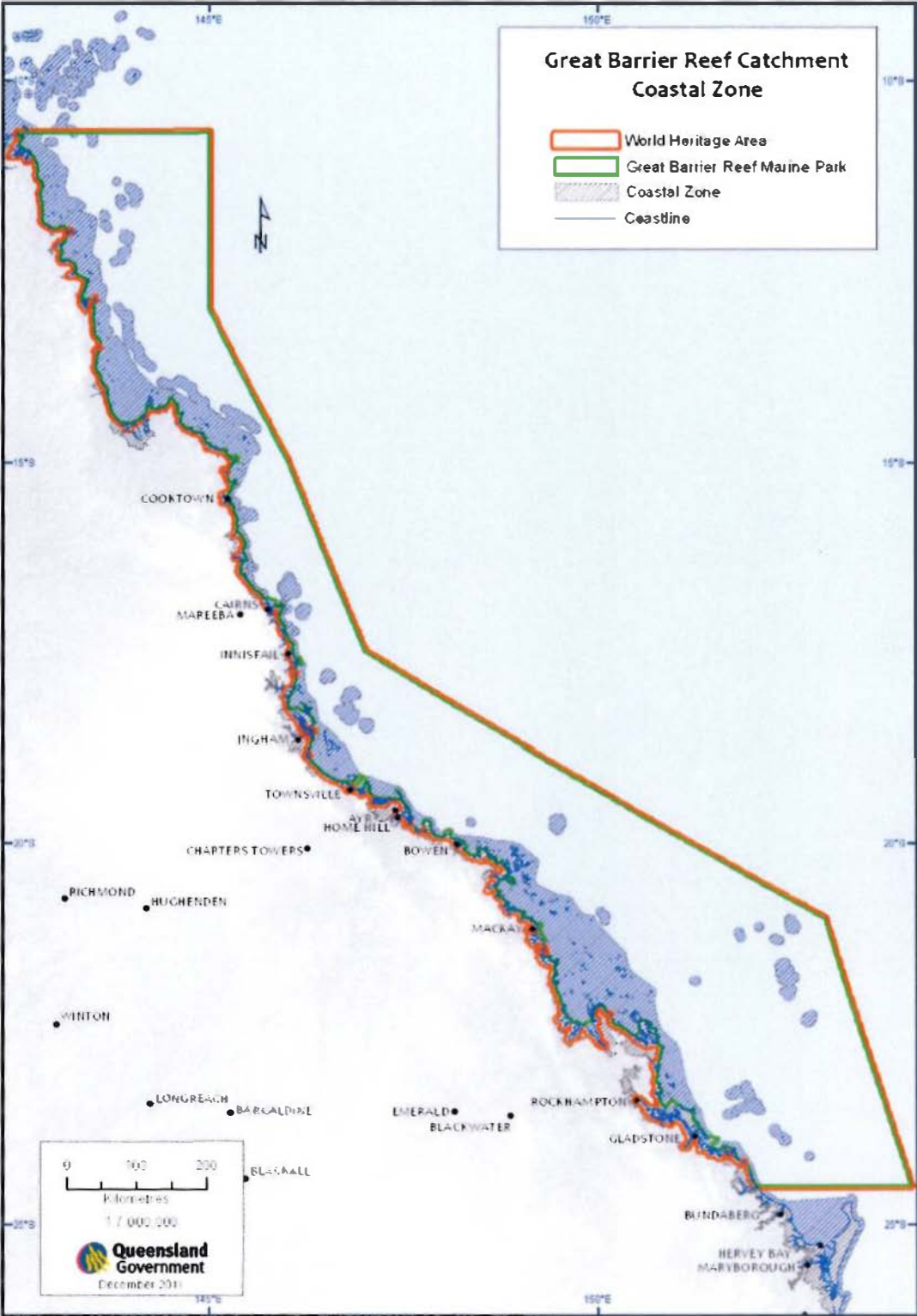
## STRATEGIC ASSESSMENT – GEOGRAPHIC AREA

The geographic extent of the strategic assessment area is illustrated at Figure 1 below. The strategic assessment area includes:

- Marine parks and terrestrial national parks on islands within the GBRWHA that fall under the State's jurisdiction.
- The Queensland coastal zone adjacent to and overlapping the GBRWHA as defined in the *Queensland Coastal Protection and Management Act 1995* including Queensland waters, all islands and adjacent inland areas (5km inland or 10 meters AHD contour, whichever is further).

This is the area in which the program applies. However, when analysing cumulative impacts on MNES, impacts upstream and downstream of this area may also be analysed.

Figure 1: Geographic scope of strategic assessment





## **QUEENSLAND COASTAL MANAGEMENT, PLANNING AND DEVELOPMENT FRAMEWORK**

The strategic assessment will examine the impacts of actions on the MNES in the GBRWHA and adjoining coastal zone under the Queensland coastal management, planning and development framework, including:

- plans, policies and programs relevant to the GBR Region and catchments, within the State's jurisdiction including those associated with national park islands, State marine parks, shipping activities and reef water quality initiatives
- the methodology for mapping areas of national and state environmental significance and the policy requirements that apply to these areas
- the application of policy requirements to matters of national and state environmental significance through the Coastal Plan, regional plans, local plans and development assessment processes under Queensland's planning legislation.
- the application of policy requirements to matters of national and state environmental significance through State legislation and plans relating to State Development Areas, Ports and Urban Development Areas.

## ENDORSEMENT CRITERIA FOR STRATEGIC ASSESSMENT

When deciding whether to endorse the Program, the Minister must be satisfied that the Strategic Assessment Report adequately addresses the impacts to which this Agreement relates, and that any recommendations by the Minister to modify the Program have been responded to appropriately.

In determining whether or not to endorse the Program, the Minister will have regard to the extent to which the Program meets the objects of the EPBC Act. In particular, that it:

- protects the environment, especially those aspects of the environment that are MNES;
- promotes ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- promotes the conservation of biodiversity;
- provides for the protection and conservation of heritage;
- promotes a cooperative approach to the protection and management of the environment; and
- assists in the co-operative implementation of Australia's international environmental responsibilities.

Without limiting the matters the Minister may consider when making the decision to endorse the Program, the Minister will consider the manner in which the Program:

- identifies direct, indirect and cumulative impacts on MNES
- avoids impacts on MNES
- mitigates the impacts on MNES
- offsets the impacts on MNES
- contributes to the enhancement of MNES and management of existing threats
- demonstrates adaption to reasonable climate change scenarios

Commitments in the Program must be adequately resourced throughout its life. The Program must demonstrate an effective system of adaptive management that addresses uncertainty and contingency management as well as procedures for monitoring, independent auditing and public reporting on implementation.

The Program must address all of the above matters for it to be considered for endorsement by the Minister in accordance with the EPBC Act.