24 April 2013

Ms Sophie Dunstone
Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: ec.sen@aph.gov.au

Re. Senate Committee Review – *EPBC Amendment (Great Barrier Reef) Bill 2013*

Dear Ms Dunstone,

The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission to the Senate Committee Review of the *EPBC Amendment (Great Barrier Reef) Bill 2013*.

As you are aware, the MCA represents over 85% of minerals production in Australia. The MCA's strategic objective is to advocate public policy and operational practice for a world class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

MCA members commit to continuous improvement in their performance, beyond regulatory requirements, as signatories to *Enduring Value – The Australian Minerals Industry Framework for Sustainable Development*. Key elements in this Framework are the commitments to 'contribute to conservation of biodiversity and integrated approaches to land use planning' and 'continuous improvement in their environmental performance'.

In this submission, the MCA does not seek in any way to diminish the importance of effective protection of the environment, but rather promotes improvements to the efficiency and co-ordination of legislation and planning regimes and greater use of risk based, strategic approaches to achieve an overall better environmental outcome.

The minerals industry recognises the importance of World Heritage areas and this is reflected in the MCA endorsement of the International Council on Mining and Metals *Position Statement on Mining in Protected Areas*[1] and reflected as follows in the MCA Land Stewardship Policy[2]:

"Exploration and mining should not be undertaken in World Heritage properties. Mining operations which already exist within World Heritage properties, and existing and future operations adjacent to such areas, should ensure activities do not adversely impact on their listed values."

The industry recognises and fully respects the Outstanding Universal Value of the Great Barrier Reef and is committed to maintaining its 'social license to operate' in those areas where industry activities intersect with this iconic property.

The MCA does not support the Amendment Bill. The Amendment Bill brings with it significant risks to future port development and industry generally, without any commensurate environmental benefit. The MCA considers the Amendment Bill is duplicative and unnecessary. The Amendment Bill disregards the comprehensive regulatory arrangements already in place and the extensive range of initiatives ongoing or underway as part of the Australian Government response to the World Heritage Committee[3]. Furthermore the Amendment Bill is inconsistent with the intent of the World Heritage Committee recommendations and the jurisdiction of the Australian Government.

The attached submission provides specific feedback on the Amendment Bill.

[1] http://www.icmm.com/our-work/sustainable-development-framework/position-statements
[2] http://www.minerals.org.au/focus/sustainable_development/industry_policy/land_stewardship_policy
[3] Australian Government – State Party Report on the State of Conservation of the World Heritage Area, Property ID N154, 1 February 2013

Yours sincerely

CHRIS MCCOMBE
ASSISTANT DIRECTOR – ENVIRONMENTAL POLICY

Enquiry into the *EPBC Amendment (Great Barrier Reef) Bill 2013*

Minerals Council of Australia Comments

Overview

The MCA considers that the case for the Amendment Bill is weak. Specifically, it has not been clearly articulated why legislative change is the best option to address the 'problem' identified. The MCA has a number of significant concerns with the Amendment Bill including:

- The Amendment Bill poses significant risks to the minerals industry in Queensland and will unnecessarily impact on port development and other activities without any commensurate benefit to the protection of the outstanding universal value of the Great Barrier Reef (GBR).
- The Amendment Bill will duplicate or even override the existing provisions the EPBC Act and Queensland regulation. Development proposals are already required to comprehensively assess and manage potential impacts to the GBR.
- 'Reactionary' changes to national environmental law and 'blanket' approaches to development approvals are a poor substitute to sound policy development. Management failures, where they exist, should be identified and addressed in a measured way, based on sound science.
- The Australian Government is progressing a range of initiatives to identify and address failures in existing management approaches. The Amendment Bill will only serve to complicate or circumvent these initiatives.
- There is a disproportionate focus on port development with little recognition of the broader risk factors for the GBR, (including land based agricultural runoff and the crown of thorns starfish).
- The Amendment Bill is inconsistent with the role of the World Heritage Committee and the mandate of the Australian Government.
- The scope of activities captured by the Amendment Bill would include many land based activities occurring within the catchment area of the GBR, rendering it problematic to administer.
- The concept of 'net benefit' to be applied to future developments is inconsistent with existing provisions of the EPBC Act and impractical to apply.

Duplicative and Unnecessary

The MCA considers the 'value add' in legislating the World Heritage Committee recommendations has not been demonstrated. Developments which intersect with the GBR are already comprehensively covered under existing regulation at both the Commonwealth and Queensland State government levels. In addition, there are a large number of major initiatives already in existence or underway which aim to improve the way the GBR is managed and to address the concerns raised by the World Heritage Committee. The following provides a non-exhaustive list of relevant regulatory controls and initiatives:

1. Queensland Legislation (including development and planning approvals/environmental regulation)[4].
2. Commonwealth Legislation (through the *Environment Protection and Biodiversity Conservation (EPBC) Act and Great Barrier Reef Marine Park Act*).
3. *EPBC Act* Strategic Assessment – Queensland Government Coastal Strategic Assessment (including land use planning for urban, industrial and port development).
4. *EPBC Act* Strategic Assessment – Great Barrier Reef Marine Park – Marine Strategic Assessment.
5. Commonwealth Government response to WHC recommendations, as contained within the 2013 State Party Report including the undertaking an independent review of the management arrangements and environmental concerns surrounding Gladstone Harbour and Curtis Island for completion by 30 June 2013.
6. The Port Curtis Integrated Monitoring program and Gladstone Healthy Harbour Program are well established.

The MCA considers that where failures in existing controls are identified, it is those existing controls which should be improved. The highly prescriptive regulatory solution put forward in the Amendment Bill does not address in any sustainable way the perceived failures of existing GBR management and risks simply complicating the range of existing controls and initiatives. In

[4] Greater detail on Queensland Regulation is provided in the Queensland Resources Council submission to the Senate Committee Enquiry

fact, the provisions of the Amendment Bill are retrograde as they move away from the progressive concepts of risk based assessment and sustainable development, which are central to the Commonwealth and Queensland environmental/development approval processes.

Risks to Industry

The MCA considers that the Amendment Bill poses significant risks to the minerals industry in Queensland. In addition, the Amendment Bill may unnecessarily impact not only port developments but on a wide range of other activities within the zone of influence on the GBR at potentially significant cost. Specific impacts of the Amendment Bill on the minerals sector could include:

- *Disincentive for investment* – The proposed moratorium on development and the move away from merit based assessment creates great regulatory uncertainty. This will impact on future investment on what are essential infrastructure projects.
- *Port capacity limitations* – Unnecessary restrictions leading to a 'bottleneck' or constraints on future port capacity would result in a less cost competitive environment. This may also create significant market loss and associated opportunity costs for the industry.
- *Flow on affects to economic growth* – Ports are essential infrastructure for multiple industries. Unnecessary restrictions on port development would create flow on effects throughout the Queensland economy and impact on mine and infrastructure development, transport, suppliers and the service industry. This in turn may adversely affect a broad range of communities.
- *Operational Safety* - Port efficiency and safety is dependent on port infrastructure upgrades which include dredging activities. Uncertainty or unnecessary limitations on the approval of these activities may not only be costly for proponents, but may result in unintended safety impacts.

Lack of Recognition of Broad Risk Factors

The outline of the Amendment Bill provided in the explanatory memorandum is to implement 'in our national environmental laws the key environmental recommendations that the World Heritage Committee has made to ensure the Great Barrier Reef does not get added to the "world heritage in danger" list'.

The *Australia, State of the Environment Report 2011*[5] provides that the Great Barrier Reef faces a range of pressures, resulting from a variety of anthropogenic activities and natural events. Of significance, land use practices (e.g. agriculture) within the catchment of the GBR have long contributed nutrients, pesticides and suspended sediments to create poor water quality outflow into the GBR[6]. These land use practices, although improving, continue to impact on the reef and are likely to remain a key source of ongoing impacts to the outstanding universal values of the GBR.

The MCA considers that if the objective of the Amendment Bill is to protect the outstanding universal value of the GBR then the Amendment Bill should focus on all activities which may impact on that value. By attempting to align the Amendment Bill with the 2012 WHC recommendations there is a disproportionate focus on port development, while the major drivers of impacts on the GBR may not be captured. Accordingly, the Amendment Bill is clearly inconsistent with the intention to protect the outstanding universal value of the GBR.

Scope of Activities covered by the Amendment Bill

Should the Amendment Bill be conservatively interpreted, its reach would be extensive. Over 25% of the Queensland landmass drains into the GBR[7], encompassing a wide variety of anthropogenic activities including not only mining and port development, but also agriculture, coal seam gas extraction, towns, infrastructure development, fishing, tourism and other mixed uses. While individually these activities may pose a low risk, cumulatively they may have the potential to impact on the GBR. Some of the highest risks to the reef (including that posed by nutrients or suspended sediment in runoff) are characterised by their potential to impact cumulatively on the values of the GBR.

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[5] *Australia, State of the Environment Report, 2011* – Department of Sustainability, Environment, Water population and Communities
[6] http://www.reefplan.qld.gov.au/resources/assets/reef-plan-2009.pdf
[7] http://www.reef.crc.org.au/publications/brochures/Landuse%20brochureJune2003_web.pdf

A moratorium on all developments 'for an activity that is likely to individually or cumulatively have a significant impact on the Great Barrier Reef', could potentially delay or even halt developments across a vast swathe of Queensland, encompassing many land based sectors. Further to this, should the 'net benefit' test (section 24G) be applied to developments which have an 'impact' (not a significant impact) on the GBR, almost all activities be captured under this provision. The MCA considers it would be difficult to justify that inland activities would contribute to improving the world heritage values of the GBR. As a result, very little development would be likely to secure approval in the future. Further commentary on the concept of 'net benefit' is provided in subsequent sections of this submission.

The MCA considers that the potentially wide coverage of the Amendment Bill combined with the requirement to demonstrate 'net benefit' would pose a significant risk to all development within the GBR catchment areas.

Duplication of Existing Controls within the EPBC Act

The *EPBC Act* provides for the robust and merit-based assessment of activities which may have a significant impact on matters of National Environmental Significance (mNES), including the protection of World Heritage Properties and specific provisions around the protection of the Great Barrier Reef Marine Park area.

The MCA considers that this requirement duplicates and may even circumvent the existing provisions of the EPBC Act under Part 3, Division 1, Subdivisions A and FA. As a matter of National Environmental Significance (mNES), under the existing requirements of the EPBC Act, the Commonwealth Minister already has to take into account the likelihood of potential significant impacts on the Great Barrier Reef. Should actions trigger the EPBC Act, any potential impacts are comprehensively assessed though an environmental impacts assessment process which informs the Minister's decision.

It is important to note that in addition to the requirements of the EPBC Act, significant assessment and approvals requirements exist under Queensland planning and environmental protection legislation. In addition to these processes, Queensland also has specific provisions which relate to port development (Port Land Use Plans as supported by the Queensland *Transport Infrastructure Act).*

Exclusionary zoning is inconsistent with the EPBC Act (Section 24D)

The industry is committed to minimising its environmental footprint and this is recognised in the Minerals Council of Australia's Land Stewardship Policy[8]. Specifically, *it is recognised that in some cases, mining or exploration activities may not be compatible when balanced with the surrounding values (conservation, economic, social or cultural).* Furthermore they MCA policy provides that *the industry will apply the 'avoid-minimise-mitigate' approach to managing land values*. These principles are taken into account when considering the merits of brownfield and greenfield developments.

Clause 24D of the Amendment Bill provides that the Minister must not approve port development in designated areas. The MCA considers that an exclusionary zoning approach is inconsistent with the 'merits-based' assessment which is central to the EPBC Act. The exclusion areas provided in the Amendment Bill align with the UNESCO World Heritage Centre Mission Report[9]. The MCA considers that World Heritage Centre Mission, while in a position to raise genuine concerns regarding the state of the GBR world heritage area, did not have the mandate nor capacity to undertake the detailed environmental assessments necessary to make any determination on potential impacts of specific developments.

Under the EPBC Act, development proposals undergo a comprehensive evaluation of all relevant direct and indirect environmental impacts, including impacts on the GBR. In addition, there is an increasing focus on the assessment of cumulative impacts as part of EPBC approvals. It is important to note that State Assessment of these projects is also undertaken. On the basis of the outcomes of the Commonwealth and State assessments, projects are either approved with strict conditions or rejected should developments be determined to have unacceptable impacts on the listed values of the GBR. Accordingly, the MCA considers that development decisions should be made within the existing Australian framework of risk/merits-based assessment. Accordingly, blanket exclusions on port development on the basis of the WHC recommendations are inconsistent with the assessment approaches under both the EPBC Act and relevant State legislation.

[8] http://www.minerals.org.au/focus/sustainable_development/industry_policy/land_stewardship_policy

[9] UNESCO Mission Report Great Barrier Reef (Australia) (N 154), 6-14 March 2012

Moratorium on Development and the role of the World Heritage Committee (Section 24F)

Section 24F of the Amendment Bill provides that a moratorium be imposed on all developments impacting the reef until a strategic assessment is completed. Specifically, 'the Minister must not give an approval, or revoke or amend an approval, for an activity that is likely to individually or cumulatively have a significant impact on the world heritage values of the Great Barrier Reef on or after 20 March 2013'. The moratorium on development would be extended until the World Heritage Committee has completed its review and considered it to be 'adequate'.

Recommendation 6 of the World Heritage Committee (WHC) Decision 36COM 7B.8 provides that the State Party should 'complete the Strategic Assessment and long term plan for the sustainable development of the world heritage property for consideration by the World Heritage Committee at its 39th session in 2015[10]'. The WHC will consider the strategic assessments and associated plans as part of its deliberations on whether the Great Barrier Reef is to be placed on the 'World Heritage in Danger' List.

The MCA considers that while the WHC provides a forum for deliberating on the management of World Heritage Properties, including deciding whether world heritage properties should be placed in the "world heritage in danger list", the role of the WHC does not extend to endorsement or approval of a particular strategy (as is implied in the Amendment Bill). In addition, the Committee does not have a 'vetoing' role on economic development decisions of an individual State Party. The implication that WHC 'endorsement' of the GBR strategic assessments and management plans is required before the Minister can make determinations on development activities is misrepresentative of the role of the WHC. Australia has obligations under the World Heritage Convention for the protection of world heritage. This requirement is enshrined in the EPBC Act and these obligations are accounted for as part of the Commonwealth Minister's decision making.

Furthermore, legislating an interpretation of WHC recommendations would create great uncertainty for proponents, as the WHC may make subsequent recommendations after consideration of the finalised GBR Strategic Assessment. The Amendment Bill would therefore set a poor precedent as it is unclear whether these further recommendations would be also incorporated into national environmental law.

The Principle of Net Benefit (section 24G)

Section 24G of the Amendment Bill provides that all developments which may impact the GBR must meet a 'net benefit' test for approval. Specifically, the Amendment Bill 24G(1) states that:

'the Minister must not approve the taking of an action that impacts the Great Barrier Reef world heritage area if the action will not deliver an overall net benefit for the world heritage values of the Great Barrier Reef world heritage area'.

The concept of net benefit arises from the WHC Recommendation 8:

"Recommends the State Party, in collaboration with its partners, to sustain and increase its efforts and available resources to conserve the property, and to develop and adopt clearly defined and scientifically justified targets for improving its state of conservation and enhancing its resilience, and ensure that plans, policies and development proposals affecting the property demonstrate a positive contribution to the achievement of those targets, and an overall net benefit to the protection of Outstanding Universal Value".

Within the EPBC Act, the Minister must give due regard to the principles of Ecological Sustainable Development (ESD), The principles of Ecologically Sustainable Development are already recognised in the objects of the Act. Relevant principles provided in the EPBC Act include:

Section 3A (Part 1), Principles of Ecological Sustainable Development

(a) decision making processes should effectively integrate both long term and short term economic , environmental, social and equitable considerations; and

(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making

[10] http://whc.unesco.org/en/decisions/4657/

Currently, the Commonwealth Minister must consider ESD and assess environmental, social and economic outcomes in the decision making process. The Minister's has a responsibility to balance economic development and the societal benefits it brings with environmental and other values in the context of longer term sustainability.

Very large world heritage areas such as the GBR need to remain available for multiple uses, including economic development (where it is not inconsistent with the outstanding universal value of the GBR). This is acknowledged by both the WHC and GBRMPA[11]. The net benefit 'test' provided for individual development proposals would seem inconsistent to the balancing of multiple values within the zone of influence on the GBR and does not appear to align with the intent of the WHC, which is seeking net improvement to the protection of the outstanding universal value of the GBR over time.

The MCA considers that the application of a 'net benefit' test for individual proposals would not only be inconsistent with WHC recommendations, but it would be highly problematic to administer. The net benefit test would apply to all projects which would have an 'impact' on the GBR. Given the trigger for this provision is an 'impact' and not a 'significant impact', an enormous range of activities across the GBR catchment area would be captured. As noted previously in this submission, activities which may potentially impact on the GBR are not restricted to coastal development, indeed the main drivers of impacts (significant or not) may be located within the large catchment area which drains into the GBR. It would be difficult if not impossible to justify that these inland activities would 'deliver an overall net benefit for the world heritage values of the GBR' (24G(1)) and would therefore not be approved.

The overarching goal of improving the protection of the outstanding universal value of the reef should be undertaken in a more strategic manner, incorporating all activities (including conservation/management programs) and seek continuous improvement in the practices which impact on the GBR. A broader, more strategic approach to managing impacts on the GBR provides tangible benefits, as demonstrated by initiatives to improve land management practices in the contributing catchments[12].

A more strategic approach to improving the values of the GBR is consistent with existing initiatives (including strategic assessments) and aligns more closely with the overall intent of the WHC Recommendation which is to improve the protection of the outstanding universal value of the GBR.

Australian Government Response to World Heritage Committee Recommendations

The MCA considers that the Amendment Bill is unnecessary in light of the State Party Report, provided to UNESCO by the Commonwealth on 1 February 2013. In the report the Australian Government provides comprehensive responses to all of the WHC recommendations, which form the basis of the Amendment Bill. Key aspects of the Governments response include:

- Significant investments have been made in conservation programs such as the Reef Plan/Reef Rescue Initiative;
- A comprehensive set of existing regulatory controls for developments which may impact on the GBR are already in place.
- There is a significant program underway aimed at improving the way impacts on the GBR are assessed and managed, these include a shift towards cumulative impact assessments and the North-East shipping Management Plan;
- Comprehensive strategic assessments are underway for both the GBR and Coastal zones;
- An independent review of the management arrangements for Gladstone Harbour has been initiated; and

The MCA considers that given the significant commitment by the Australian and Queensland governments to addressing the concerns of the WHC, the Amendment Bill is unnecessary.

Industry Initiatives

The minerals industry recognises the need for ongoing improvements in the way port developments, among other activities are integrated and managed. The minerals industry is committed to sustainable development and maintaining our 'social license to operate'. Continuous improvement in environmental performance is an important aspect of this commitment.

There are recent examples of industry taking a leading role in the development of integrated 'cumulative' environmental assessments for port development'. The Abbott Point port development provides one example of industry taking the initiative in

[11] GRMPA – Outlook On line 2009 – frequently asked Questions
[12] Great Barrier Reef Second Report Card 2010 – Reef Water Quality Protection Plan, State of Queensland, 2013

multi-company cooperation and the development of a cumulative impacts approach to port development. Further Information on this leading practice initiative has been provided in Attachment A.

As part of its commitment to social license, the industry has continued to invest in reef conservation and management programs, an example of which is the eReefs program being rolled out under the Great Barrier Reef Foundation. Details of this program have been provided in Attachment B.

Attachment A

Abbott Point – Cumulative Impact Assessment

ABBOT POINT CIA CASE STUDY

Whilst the current regulatory framework is seen to be effective in the assessment of land use and environmental impacts, it has been identified that in certain circumstances the regulatory framework can be enhanced through the use of cumulative impact assessments – as was the case for the Port of Abbot Point

Cumulative Impact Assessment Case Study

The Port of Abbot Point is currently the subject of a number of proposed terminal developments that have the potential to increase the coal export capacity of the Port. All projects will undergo an individual environmental impact assessment via the necessary legislative pathways.

However, it was recognised that the developments proposed at Abbot Point may present a different impact scenario, when impacts are considered cumulatively. Therefore, a coordinated and combined approach to environmental impact assessment was needed, in order to address the potentially interactive nature of various project components. Accordingly, in mid 2011 the current port development proponents at Abbot Point (i.e. those with formal port development status) and the Port Authority (NQBP) determined that they would work together to undertake a voluntary cumulative impact assessment (CIA). It is believed that the CIA undertaken is one of the first of its type globally.

The purpose and need for a cumulative assessment was to:

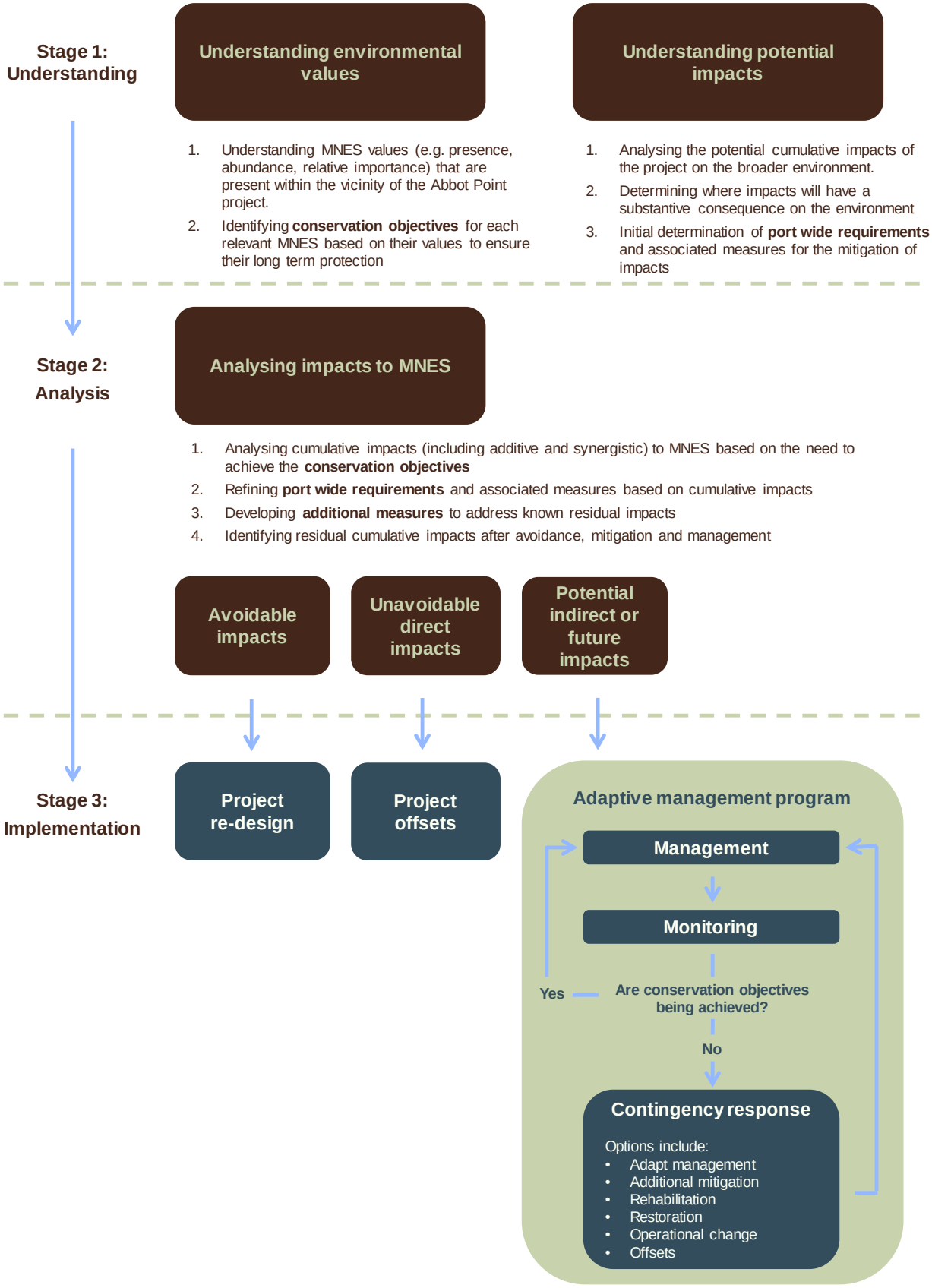
- determine the nature and scale of cumulative impacts on MNES and other important environmental values from existing and proposed projects at the Port;
- identify where modifications to individual projects may be required to reduce impact, and to establish performance requirements for future development;
- identify desired conservation objectives and environmental outcomes;
- develop a management framework that can deliver these environmental outcomes and report on success of achieving conservation objectives in a coordinated and scalable manner;
- provide a platform for future development proposals to assess additional cumulative impact and to participate in the management framework; and
- provide the decision makers with the ability to understand the potential cumulative impacts at Abbot Point during the assessment of individual projects.

The methodology employed involved understanding the environmental and heritage values present at Abbot Point and detailing the types of cumulative impacts occurring in order to analyse the effect on MNES. This included the development of port-wide **conservation objectives and** identification of additional management measures (including mitigation, monitoring and offsets) to achieve the these **conservation objectives**.

The full cumulative impact assessment approach undertaken is illustrated in Figure 1.

The CIA has resulted in three key outcomes:

- Identification of port wide conservation objectives to maintain or enhance the environmental values at Abbot Point. The objectives focus on the key values such as migratory shorebirds and World Heritage, as well as the broader marine, wetland and terrestrial values of the area.
- A proposed Joint Environmental Management Framework (JEMF) that will provide for coordinated and adaptive management of the Port in order to achieve the conservation objectives.
- A set of best practice shipping requirements relating to Abbot Point that recognise the sensitivity of the marine environment of the Great Barrier Reef World Heritage Area.



(Source: Abbot Point CIA)

Figure 1: Abbot Point CIA Methodology

Attachment B

Great Barrier Reef Foundation - eReefs Program

BHP Billiton Mitsubishi Alliance

Media Release

29 February 2012

Further $5 million BMA research contribution for the Great Barrier Reef

The BHP Billiton Mitsubishi Alliance (BMA) has announced that it will continue and extend research support for the Great Barrier Reef through funding of $5 million for a major new research support project for the Reef.

BMA will provide seed funding of $1 million per year over 5 years through the Great Barrier Reef Foundation to support the delivery of the eReefs project to assist in the protection and preservation of the Reef.

BMA Asset President Stephen Dumble said BMA is proud to be part of a world class project to support one of the natural wonders of the world.

“This is a practical example of BMA’s commitment to key support activities for the Reef and our commitment to broader sustainability activities in Queensland,” Mr Dumble said.

“It is also the culmination of extensive work between BHP Billiton and the Great Barrier Reef Foundation on the development of this exciting new research activity and an extension of BHP Billiton’s specific support”.

The eReefs project is a collaboration between the Great Barrier Reef Foundation, BMA, the Bureau of Meteorology, CSIRO, the Science and Industry Endowment Fund, the Australian Institute of Marine Science, the Great Barrier Reef Marine Park Authority and the Australian and Queensland Governments.

This unique project seeks to integrate Reef related research and resources, to provide for the Reef products similar to those which the Bureau of Meteorology provides for the weather – historic and current Reef information and Reef forecasts - to more effectively manage the Reef in relation to the threats it faces.

The support extends an existing relationship between BHP Billiton and BMA with the Great Barrier Reef Foundation. Previous support includes $3.4 million for the CReefs research project and $300,000 for the GBRF Research Portfolio. BHP Billiton also participates in the Foundation's ZooX Ambassador Program, which engages employees in the company's investment in the Reef.

-ENDS-