

# Appendix 6

## Abbot Point Dredging Project

### Overview of project<sup>1</sup>

#### *Introduction*

6.1 On 5 December 2011, North Queensland Bulk Ports Corporation Limited referred a proposal under the EPBC Act to undertake capital dredging of approximately 3 million cubic metres at the Port of Abbot Point, and for the disposal of the dredged material (including options at sea). The proposal would facilitate the development of Terminal 0, Terminal 2 and Terminal 3 at the Port of Abbot Point in Queensland.

#### *Impact of the project*

6.2 On 6 January 2012, the project was determined to be a controlled action due to likely significant impacts on World Heritage properties; National Heritage places; listed threatened species and communities; listed migratory species; Commonwealth marine areas; and the Great Barrier Reef Marine Park.

#### *Assessment of the proposal*

6.3 The project was assessed by Public Environment Report (PER) with 103 submissions received on the draft document. The proposal was approved on 10 December 2013 subject to 41 conditions, including requirements to mitigate and manage impacts on the environment and for the provision of offsets.

#### *Offset requirements*

6.4 Condition 31 of the EPBC Act approval conditions requires the proponent to submit an Offsets Plan to the Minister for the Environment for approval prior to commencement of dredging and disposal activities. Under the approval decision,<sup>2</sup> the Offsets Plan must:

- address the loss of seagrass from the dredge area and areas of potential seagrass loss resulting from the dredge plume extent;
- outline the process to undertake actions that will result in a net benefit outcome for the World Heritage Area;

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1 The following overview of the project is based on the information provided by the Department of the Environment, *Submission 79*, Attachment A, pp 13–14. See also EPBC Referral 2011/6213 [http://www.environment.gov.au/cgi-bin/epbc/epbc\\_ap.pl?name=referral\\_detail&proposal\\_id=6213](http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=6213) (accessed 6 June 2014).

2 <http://www.environment.gov.au/epbc/notices/assessments/2011/6213/2011-6213-approval-decision.pdf> (accessed 6 June 2014).

- consider how these offsets will contribute to programs or incentives and align with the broader strategies and programs for the Great Barrier Reef, including Reef Trust 2050;
- 150% of the total amount of fine sediments, potentially available for re-suspension into the marine environment from the dredging and disposal activities, must be offset by a reduction in the load of fine sediments entering the marine environment from the Burdekin and Don catchments. This can take account of information on the sedimentation of fine sediments as it becomes available (condition 31(d));
- monitor and report on performance of the actions undertaken in relation to the targets required at 31(d);
- outline the consultation process undertaken with the Great Barrier Reef Marine Park Authority in developing the Offsets Plan;
- publish an annual public report outlining how the actions are achieving the targets in 31(d) for the duration of this approval; and
- outline contingency actions and additional management measures to address any deficiencies to meet the targets at 31(d).

6.5 Condition 32 states that 'the approved Offsets Plan must be implemented'.

6.6 The Department's submission states that:

The offsets were considered within the framework of the EPBC Act Environmental Offsets Policy and to demonstrate that the outcome would result in a net benefit. In relation to the 150% offset requirement, the proponent suggested investment in sediment reduction options in the Great Barrier Reef catchment, and the Department put forward the quantum required to get a meaningful improvement in water quality.<sup>3</sup>

6.7 The Department's submission further advises that 'an independent technical advice panel will review the adequacy of the mitigation, monitoring, research and offset requirements and whether they meet the conditions of approval, before any dredging begins'.<sup>4</sup>

6.8 The Department's submission states that:

Overall, the implementation of the conditions of approval will result in a net benefit to the health of the Great Barrier Reef and better environmental protection in the long-term.<sup>5</sup>

### **Legal challenge**

6.9 The committee notes that the Minister's approval decision is being challenged by the Mackay Conservation Group in the Federal Court under the *Administrative*

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3 Department of the Environment, *Submission 79*, Attachment A, p. 14.

4 Department of the Environment, *Submission 79*, Attachment A, p. 14.

5 Department of the Environment, *Submission 79*, Attachment A, p. 14.

*Decisions (Judicial Review) Act 1977* (Cth). The case has been set down for trial in October 2014.<sup>6</sup>

### Issues with the proposed offsets

6.10 As noted in Chapter 6, the committee does not intend to comment on particular projects. However, the committee notes that submitters and witnesses raised a number of key issues in relation to the offsets conditions for this project. These included:

- the feasibility of achieving the offset condition requiring 150% of fine sediments to be offset by a reduction in the load of fine sediments entering the marine environment from the Burdekin and Don catchments. Submitters described this requirement as 'undoable', 'impossible' and 'highly complex'.<sup>7</sup> For example, the Mackay Conservation Group calculated that this would require around 1.62 million tonnes to be offset, and argued that in the past decade the Reef Water Quality program only managed to reduce sediment loads from rivers flowing into the Great Barrier Reef World Heritage marine waters by 320,000 tonnes;<sup>8</sup>
- whether the offsets requirement is 'like for like' (as discussed further in Chapter 3) due to, for example, the differences between sedimentation from river discharges and sedimentation from dredging;<sup>9</sup>
- whether it is appropriate to be offsetting impacts on a World Heritage Area at all (see Chapter 3);<sup>10</sup>
- whether the mitigation hierarchy (as discussed in Chapter 3) has been properly followed, including whether mitigation measures and alternative options such as the disposal of spoil on land, were adequately and fully

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6 See further Environmental Defender's Office (Queensland), *Abbot Point Dredging Case Summary — Federal Court Judicial Review*, <http://www.edo.org.au/edoqld/news/mcg-v-minister-for-the-environment-and-nqbp-dredging-case/> (accessed 17 June 2014).

7 See, for example, North Queensland Conservation Council, *Submission 18*, pp 5–6; Mackay Conservation Group, *Submission 75*, p. 10; WWF-Australia, *Submission 73*, p. 4; ANEDO, *Submission 60*, p. 21.

8 Mackay Conservation Group, *Submission 75*, p. 11; see also North Queensland Conservation Council, *Submission 18*, pp 5–6; Mrs Patricia Julien, Research Analyst, Mackay Conservation Group, *Committee Hansard*, 7 May 2014, p. 26; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth, *Committee Hansard*, 7 May 2014, p. 44

9 See, for example, Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth, *Committee Hansard*, 7 May 2014, p. 44; Mrs Patricia Julien, Research Analyst, Mackay Conservation Group, *Committee Hansard*, 7 May 2014, p. 26; WWF-Australia, *Submission 73*, p. 5; see also ANEDO, *Submission 60*, p. 21.

10 Mrs Patricia Julien, Research Analyst, Mackay Conservation Group, *Committee Hansard*, 7 May 2014, p. 30.

considered.<sup>11</sup> In addition, only fine sediments 'potentially available for re-suspension' are covered by the offset requirement, and as such, it was suggested that not all the residual impacts being offset;<sup>12</sup>

- whether the principle of additionality (discussed further in Chapter 3) has been met—given that the Reef Water Quality Protection Plan 2013 already aims to improve the quality of water entering the reef from broadscale land use. Given this objective, ANEDO argued that no water quality offset can be 'additional' in the sense required by the EPBC Act Offsets Policy;<sup>13</sup>
- the capacity to measure this offset in a timely and accurate way;<sup>14</sup>
- the lack of specificity in the offset conditions, for example, the method for achieving reductions in sedimentation is not detailed, nor any timeframes for meeting the catchment sediment reduction. Similarly, the requirement to 'address the loss of seagrass' was described as 'loosely framed';<sup>15</sup>
- transparency issues in relation to the process for negotiating and deciding on offsets (discussed further in Chapter 4). For example, Greenpeace advised that they had obtained documents through freedom of information requests, which they claimed:

...show that they [the proponent] were presenting very different numbers to the environment department than are available in the public documentation. The public documentation does not at all articulate what quantity of fine sediment will be available for resuspension, so you cannot scrutinise it.<sup>16</sup>

- lack of consultation with traditional owners;<sup>17</sup>
- scientific uncertainties in relation to offsetting in the marine environment, (discussed further in Chapter 4), such as the 'fundamental problems with rehabilitating seagrass';<sup>18</sup> and

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11 Mr Adam Walters, Greenpeace Australia, *Committee Hansard*, 5 May 2014, p. 24; Mrs Patricia Julien, Research Analyst, Mackay Conservation Group, *Committee Hansard*, 7 May 2014, pp 30–31; Mackay Conservation Group, *Submission 75*, p. 11; Greenpeace, *Submission 61*, pp 7–8; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth, *Committee Hansard*, 7 May 2014, pp 43–44.

12 Mrs Patricia Julien, Research Analyst, Mackay Conservation Group, *Committee Hansard*, 7 May 2014, pp 29–30.

13 ANEDO, *Submission 60*, pp 20–21.

14 Dr Su Wild-River, *Submission 38*, p. 7; ANEDO, *Submission 60*, p. 21.

15 ANEDO, *Submission 60*, p. 21; NELA, *Submission 31*, p. 11.

16 Mr Adam Walters, Greenpeace Australia, *Committee Hansard*, 5 May 2014, p. 23; see also Greenpeace, *Submission 61*, pp 7–8; Mackay Conservation Group, *Submission 75*, p. 11.

17 Indigenous Advisory Committee, *Submission 82*, p. 2.

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- timing issues in relation to the approval condition requiring the preparation of an offset plan before dredging commences. Submitters were critical that 'no timeframe is specified for approval of the plan or implementation of offset activities',<sup>19</sup> and that there is no requirement that the actual offsets be identified or implemented prior to the commencement of dredging.<sup>20</sup> Timing issues are discussed more generally in Chapter 4.

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18 Dr Justine Bell, *Committee Hansard*, 7 May 2014, p. 4; Mr Jeremy Tager, Nanotechnology Campaigner, *Committee Hansard*, 7 May 2014, p.41; Dr Megan Saunders and Dr Justine Bell, *Submission 24*, p. 2; Greenpeace, *Submission 61*, p. 5. Note that issues with offsetting in the marine environment are discussed further in Chapter 4.

19 Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth, *Committee Hansard*, 7 May 2014, p. 40; NELA, *Submission 31*, p. 11.

20 ANEDO, *Submission 60*, p. 20.

