



***ENVIRONMENT PROTECTION AND
BIODIVERSITY CONSERVATION ACT 1999 (Cth)***

Part 10 Strategic Assessment

Section 146 agreement

Strategic Assessment of the impacts of actions taken on Christmas Island
on matters protected by Part 3 of the EPBC Act

between

**THE COMMONWEALTH MINISTER FOR THE ENVIRONMENT AS REPRESENTED
BY THE DEPARTMENT OF THE ENVIRONMENT AND ENERGY**

and

**THE COMMONWEALTH ASSISTANT MINISTER FOR REGIONAL DEVELOPMENT
AND TERRITORIES AS REPRESENTED BY THE DEPARTMENT OF
INFRASTRUCTURE, REGIONAL DEVELOPMENT AND CITIES**

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1. Parties

1.1 The parties to this agreement are:

the Commonwealth Minister for the Environment as represented by the Department of the Environment and Energy

and

the Commonwealth Assistant Minister for Regional Development and Territories as represented by the Department of Infrastructure, Regional Development and Cities.

2. Definitions

2.1 Unless the context indicates otherwise in this agreement, the definitions, meanings and terms in the EPBC Act apply to this agreement including its attachments.

2.2 In this agreement:

Agreement means this strategic assessment agreement entered into between the **parties** on the date the last party executes this agreement, and includes any attachments and any variations.

Attachment means an attachment to this agreement.

Environment Department means the Commonwealth Department with responsibility for administering the EPBC Act from time to time.

Minister means the Commonwealth Minister with responsibility for administering the EPBC Act, and includes a delegate of the Minister.

DIRDC means the Commonwealth of Australia as represented by the Department of Infrastructure, Regional Development and Cities or Commonwealth Department with responsibility for administering the Territories from time to time.

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

Impact means an impact as defined under section 527E of the EPBC Act.

Impacts to which this agreement relates means the impacts of actions under the Plan on any matter protected by a provision of Part 3 of the EPBC Act.

Parties means the parties to this agreement as set out at clause 1.

Plan means the *Policy, Plan or Program* which will be prepared pursuant to clauses 4 and 5 of this agreement and which constitutes a 'policy, plan or program' pursuant to section 146 of the EPBC Act.

Protected matter means a matter protected under Part 3 of the EPBC Act.

Strategic Assessment Area means all land on Christmas Island, as shown in the map at **Attachment 1**.

Strategic Assessment Report means the report describing and assessing the impacts of actions under the Plan on protected matters, as contemplated by section 146(2)(a) of the EPBC Act, and prepared under clauses 4,5 and 6 of this agreement.

Supplementary Report means a report which includes:

- a) a summary of all the public comments received; and
- b) sets out how comments have been addressed through modification/s to the Plan or Strategic Assessment Report, if any, following the public comment period on the draft Strategic Assessment Report and draft Plan.

Terms of Reference means the terms of reference for the Strategic Assessment Report prepared under clause 4 of this agreement.

In this agreement references to the singular include the plural.

3. Context and scope

- 3.1 The Parties acknowledge that Christmas Island has unique environmental values that must be considered alongside the economic and social benefits of development on the island.
- 3.2 The Parties agree to undertake a strategic assessment of the impacts from actions taken on Christmas Island under a plan, policy or program (the Plan), which will be prepared by DIRDC, on all matters protected under Part 3 of the EPBC Act.
- 3.3 A whole-of-island strategic assessment will enable economic development and environmental protection up to the next 50 years. It will support the consideration of future land uses and opportunities in an open and transparent manner, and provide greater certainty to stakeholders.
- 3.4 The Plan will aim to provide opportunities for the sustainable development of Christmas Island (excluding areas within the Christmas Island National Park). Development may include, but is not limited to, residential, commercial, tourism (including eco-tourism), industrial developments, mining, agriculture and supporting infrastructure.

- 3.5 Development within the boundary of the Christmas Island National Park will continue to require approval under the EPBC Act and meet the requirements of the Christmas Island National Park Management Plan. Development within the boundary of the Christmas Island National Park is not intended to be covered by the strategic assessment.
- 3.6 DIRDC agrees to share information and work closely and collaboratively with the Environment Department throughout the strategic assessment process.
- 3.7 The Environment Department agrees to share information it holds on the environment of Christmas Island, including within the Christmas Island National Park.

4. Terms of Reference for the Strategic Assessment Report

- 4.1 Pursuant to section 146(1B)(b) of the EPBC Act, the Parties agree to the preparation of draft Terms of Reference for a Strategic Assessment Report on the impacts of actions under the Plan on protected matters.
- 4.2 DIRDC must make available for public comment, by notice, the draft Terms of Reference for the Strategic Assessment Report. DIRDC must ensure that, at a minimum, the notice:
 - a) is posted on the DIRDC website;
 - b) is published in The Islander;
 - c) is published in a national newspaper and a state daily newspaper circulating in Western Australia;
 - d) mentions:
 - i. that the draft Terms of Reference are available for public comment;
 - ii. the provision of the EPBC Act that requires the draft Terms of Reference for the Strategic Assessment Report to be published (i.e. section 146(1B)(b)(ii));
 - iii. where and how copies may be obtained in an electronic and hard copy form without charge or at a reasonable cost;
 - iv. contact details for obtaining further information, including reasonable access for persons with special needs; and
 - e) invites public comment on the draft Terms of Reference for the Strategic Assessment Report for a period specified by the Minister. The specified period must be at least 28 days and must be included in the notice.
- 4.3 The Environment Department will make the notice and draft Terms of Reference available electronically on the Environment Department's website.

- 4.4 The Parties may separately notify any person of the notice in clause 4.2 and of the availability of the draft Terms of Reference.
- 4.5 Following consideration by DIRDC of the public comments (if any) on the draft Terms of Reference and the making of any revisions by DIRDC, DIRDC will submit to the Minister:
- a) any revised draft Terms of Reference; and
 - b) a copy of all public comments relating to the draft Terms of Reference; and
 - c) a document summarising whether and how the public comments have been taken into account in the revised draft Terms of Reference.
- 4.6 If the Minister is satisfied that the revised draft Terms of Reference will provide for a Strategic Assessment Report that adequately addresses the impacts to which this Agreement relates, the Minister will notify the Parties that the Terms of Reference can be finalised.
- 4.7 On receipt from the Minister of a notification under clause 4.6, the Parties must finalise the Terms of Reference.

5. Development of the Plan

- 5.1 The Parties agree that DIRDC will develop a Plan that will seek to conserve protected matters that occur within, or adjacent to, the agreed Strategic Assessment Area through a whole-of-island approach.
- 5.2 The Plan will include, but is not limited to:
- a) the identification of areas suitable for development
 - b) commitments and outcomes for conservation of protected matters in the agreed Strategic Assessment Area
- 5.3 The Plan will include an implementation framework that describes how the outcomes and commitments for conservation of protected matters set out in the Plan will be achieved and monitored. This implementation framework will address the following:
- a) how outcomes and commitments for protected matters will be documented, delivered and adequately resourced throughout the life of the Plan;
 - b) a framework for adaptive management, mechanisms for reporting the progress with implementing the outcomes and commitments for protected matters, and provision of a 5 yearly assurance report.

- 5.4 The Plan will include a framework that describes how the commitments and outcomes taken in accordance with the Plan will be tracked and how a person taking an action in accordance with the Plan will be made aware of their obligations under the Plan and any relevant Part 10 approval.
- 5.5 The Plan may include additional content relating to other responsibilities of DIRDC.
- 5.6 The Plan will clearly identify and address protected matters and apply the 'avoid, mitigate and offset' hierarchy of principles.
- 5.7 DIRDC agrees to consult with relevant stakeholders, including the Shire of Christmas Island, the Western Australian Government and non-government stakeholders on the development of the draft Plan.

6. Preparation of the Strategic Assessment Report

- 6.1 DIRDC must prepare a draft Strategic Assessment Report in accordance with this Agreement and the finalised Terms of Reference.
- 6.2 DIRDC will provide the draft Plan and draft Strategic Assessment Report to the Environment Department for comment prior to both documents being released for public comment under clauses 6.4 - 6.5.
- 6.3 The Environment Department will assist DIRDC to ensure the draft Strategic Assessment Report and the Draft Plan adequately addresses the matters outlined in this agreement by providing comments in a timely manner.
- 6.4 Following the completion of the process set out in clause 6.1 – 6.3 of this Agreement, DIRDC must make the draft Strategic Assessment Report and draft Plan available for public comment, DIRDC must ensure that, at a minimum, a notice:
 - a) is posted on the DIRDC website;
 - b) is published in The Islander;
 - c) is published in a national newspaper and a state daily newspaper circulating in WA
 - d) mentions:
 - i. that the draft Plan and draft Strategic Assessment Report are available for public comment;
 - ii. where and how copies may be obtained in an electronic and hard copy form without charge or at a reasonable cost;
 - iii. contact details for obtaining further information, including reasonable access for persons with special needs;
 - iv. the address to which public comments should be provided; and

- e) invites public comment for a period specified by the Minister. The specified period must be at least 28 days and included in the notice.
- 6.5 The Parties may separately notify any person, of the notice under clause 6.4 and of the availability of the draft Plan and draft Strategic Assessment Report.
- 6.6 The Environment Department will make the draft Plan and draft Strategic Assessment Report available electronically on its website.
- 6.7 Following consideration of any public comments received, the DIRDC will prepare, and then submit to the Environment Department for further comment:
 - a) a copy of all public comments;
 - b) a revised draft Strategic Assessment Report that takes account of the public comments received (if any);
 - c) a revised draft Plan that takes account of the public comments received (if any); and
 - d) a Supplementary Report which addresses how all public comments have been addressed.

The comments provided by the Environment Department may include recommended modifications to the draft Strategic Assessment Report, the draft Plan or both.

- 6.8 DIRDC must then finalise and submit the following documents to the Minister:
 - a) the Strategic Assessment Report; and
 - b) the Plan; and
 - c) the Supplementary report.

7. Consideration of the Strategic Assessment Report and the Plan

- 7.1 Following receipt of the Strategic Assessment Report and the Plan in accordance with clause 6.8 of this Agreement, the Minister may make recommendations to DIRDC about the Plan (including recommendations for the modification of the Plan).
- 7.2 The Minister may request any additional information he or she considers necessary in order to consider whether the Strategic Assessment Report adequately addresses the impacts to which this Agreement relates.
- 7.3 If the Minister makes recommendations about the Plan, DIRDC may:
 - a) seek clarification from the Minister on the recommendations;
 - b) modify the Plan to give effect to the Minister's recommendations; or

- c) modify the Plan in a manner that has the same effect as the modifications recommended by the Minister.

7.4 If DIRDC modifies the Plan in response to the Minister's recommendations, DIRDC must submit to the Minister for consideration:

- a) the modified Plan; and
- b) a summary of how the Minister's recommendations were given effect.

7.5 Following receipt of the modified Plan, the Minister may request any additional information he or she considers necessary in order to consider whether the impacts of actions under the Plan on protected matters have been adequately addressed.

8. Endorsement of the Plan

8.1 The Minister may endorse the Plan if satisfied that:

- a) the Strategic Assessment Report adequately addresses the impacts to which this Agreement relates (that is, impacts of actions under the Plan on protected matters); and
- b) either the recommended modifications to the Plan, or modifications having the same effect, have been made.

8.2 In determining whether or not to endorse the Plan, the Minister may also consider the extent to which the commitments for the protection and management of protected matters are enforceable and achievable over the life of the Plan.

8.3 In determining whether he or she is satisfied that the Strategic Assessment Report adequately addresses the impacts to which the Agreement relates, the Minister must have regard to the extent to which the Plan meets the objectives of the EPBC Act, including how the Plan:

- a) protects the environment, especially those aspects of the environment that are protected matters under Part 3 of the EPBC Act;
- b) promotes ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- c) promotes the conservation of biodiversity;
- d) provides for the protection and conservation of heritage;
- e) promotes a cooperative approach to the protection and management of the environment; and

- f) assists in the co-operative implementation of Australia's international environmental responsibilities.

- 8.4 If the Plan is endorsed by the Minister, DIRDC and the Environment Department must make the Strategic Assessment Report, Plan and (if relevant) Supplementary Report, publicly available electronically through an official website for the life of the Plan.
- 8.5 The Parties acknowledge that the endorsement of the Plan itself does not constitute any approval for the taking of actions under Part 10 of the EPBC Act.
- 8.6 The Parties may agree to seek independent peer review of components of the Plan or Strategic Assessment Report or studies commissioned to inform their preparation.

9. Approval of actions

- 9.1 The Parties acknowledge that, under section 146B of the EPBC Act, the Minister may approve the taking of an action, or class of actions, in accordance with an endorsed Plan. 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 Plan and any conditions attached to the Part 10 approval.
- 9.2 The Parties agree that an approval holder (or holders) will be named for any approval of actions, or classes of actions, granted under section 146B of the EPBC Act.

10. Environmental information management

- 10.1 The Parties agree to work cooperatively and share information, to the fullest extent practical, so as to avoid duplication of work in undertaking the strategic assessment pursuant to this Agreement, subject to meeting requirements under the EPBC Act. The Parties commit to the following open access objectives:
 - a) Information is accessible and reusable by the community, business, government and other stakeholders.
 - b) Information is published under an Open Licence (preferably Creative Commons Attribution licence), and available in the public domain.
 - c) Information is published and described in a way that maximises discovery and reuse, preferably online, and in open formats.
 - d) Information is published at the highest resolution and accuracy available.

- e) Information is released electronically at no cost to users or, if other formats are required, at minimal cost.
- f) The Parties agree to restrict information access only where necessary to adequately manage sensitive or confidential information.

10.2 The Parties agree to develop and maintain a Data Management Plan to record the key pieces of data and information generated to support the decision for this strategic assessment.

10.3 Parties will endeavour to apply best practice standards to data management and environment impact assessment to enable effective and transparent monitoring and reporting.

11. Governance arrangements and dispute resolution

11.1 The Parties agree to use best endeavours to establish agreed timelines within one month of the signature of this Agreement for deliverables and arrangements to ensure adequate communications to progress the strategic assessment. This may include preparation of joint or individual project plans. The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them in the course of carrying out this Agreement (dispute). A party will not terminate this Agreement as a result of a dispute until the following process has been exhausted:

- a) If there is a dispute between the Parties concerning this agreement, either party may give written notice of the Dispute to the other party which will state that it is a notice under this clause and will specify the details of the dispute concerned.
- b) Management representatives of each of the Parties will endeavour in good faith to agree upon a resolution of the dispute.
- c) Should management representatives fail to reach a resolution within 14 business days of receipt of a notice of dispute (or another timeframe agreed in writing between the Parties), the dispute will be taken to senior executive service (SES) or equivalent representatives of each of the Parties.
- d) SES representatives will endeavour in good faith to agree upon a resolution of the dispute.
- e) Should the SES representatives fail to resolve the dispute within 10 business days (or other time frame agreed in writing between the Parties), the dispute will be taken to the:
 - i. relevant Deputy Secretary of the Environment Department, and

- ii. relevant Deputy Secretary, DIRDC.

12. Variation

- 12.1 The Parties may vary this Agreement by written agreement only to the extent that the varied Agreement is consistent with the provisions of the EPBC Act.
- 12.2 Any variation to this agreement shall be published on the DIRDC and Environment Department websites.

13. Termination

- 13.1 This Agreement may be terminated at any time by written notice from either Party, except where the termination relates to a Dispute and the procedure at clause 11.1 has not been followed.

14. General

- 14.1 Any notice given by a party under this Agreement must be in writing and hand delivered or sent by pre-paid post or email to the appropriate representative at the specified address. The appropriate representative for each Party is:
 - i. General Manager of the Branch with responsibility for the Indian Ocean Territories within the Department of Infrastructure, Regional Development and Cities (General Manager, Indian Ocean Territories Branch, Department of Infrastructure, Regional Development and Cities, GPO Box 594 Canberra ACT 2601).
 - ii. Assistant Secretary of the Branch managing the strategic assessment within the Department of the Environment and Energy (Assistant Secretary, Assessments and Post Approvals Branch, Environment Standards Division, GPO Box 787 Canberra ACT 2601).
- 14.2 Notwithstanding any other provision of this Agreement, the Parties may disclose information about this Agreement, including personal information, where required or permitted to be disclosed by law.

SIGNED by the **Commonwealth Minister
for the Environment**, represented by:

The Hon Melissa Price MP

Alannah Pentony
Name of Witness

Signature

Signature of Witness

14/2/19
Date

SIGNED by the **Commonwealth
Assistant Minister for Regional
Development and Territories**,
represented by:

The Hon Sussan Ley MP

The Hon Sussan Ley MP

Sophie Beeton
Name of Witness

Signature

Signature of Witness

ATTACHMENT 1: INDICATIVE MAP OF STRATEGIC ASSESSMENT AREA



Australian Government
Department of the Environment and Energy

Acknowledgements:
State Borders (c) PMSA (2017); Collaborative Australian Protected Areas Database (2016).
Commonwealth of Australia, Department of Environment and Energy; Australian Statistical Geography Standard (ASGS); Volume 4 - Urban Centres and Localities (2016), Australian Bureau of Statistics.

Date: 17/01/2019

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Produced by the Environmental Resources Information Network (ERIN), Australian Government Department of the Environment and Energy, 2019.