



***ENVIRONMENT PROTECTION AND
BIODIVERSITY CONSERVATION ACT 1999 (Cth)***
Part 10 Strategic Assessment
Section 146 Agreement

Strategic Assessment of road and traffic management works assessed under Part 5 of
the *Environmental Planning and Assessment Act 1979* (NSW) with regard to
Specified Protected Matters

between

THE COMMONWEALTH OF AUSTRALIA

and

THE NEW SOUTH WALES ROADS AND MARITIME SERVICES

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1. **PARTIES**

The parties to this Agreement are:

The Commonwealth of Australia, represented by the Department of the Environment as delegate for the Environment Minister
and

New South Wales Roads and Maritime Services, represented by the Chief Executive

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 and Attachments.

2.2 In this Agreement:

Agreement means this agreement made under section 146 of the EPBC Act and includes its schedules, annexures and Attachments.

Attachment means an attachment to this Agreement.

Department means the Commonwealth Department of the Environment or any other Commonwealth agency that administers this Agreement from time to time.

Environment Minister means the Commonwealth Minister for the Environment or delegate responsible for administering the EPBC Act for the purposes of this Agreement.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

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

NSW means the state of New South Wales.

Parties means the Commonwealth and RMS.

Program describes guidelines for the application of Part 5 (excluding Part 5.1) of the EP&A Act, and subsequent decision-making, in relation to the undertaking of road and traffic management works by, or on behalf of, RMS, with regard to the Specified Protected Matters. The guidelines must be documented. This constitutes the 'policy, plan or program' pursuant to section 146 of the EPBC Act and is to be described more fully in the Program Report.

Program Report means the report describing the Program (for which endorsement will be sought under section 146(2)(f) of the EPBC Act) including guidelines for assessment and decision making, and any commitments and undertakings for protection of Specified Protected Matters.

Protected Matter means a matter protected under Part 3 of the EPBC Act that may be impacted if the Program is implemented.

Recommendation Report means a document prepared by the Department for the Minister when the final Program and Strategic Assessment Report are presented for endorsement and approval of a class of actions under Section 146B of the EPBC Act.

RMS means Roads and Maritime Services NSW. RMS is a NSW Government Agency established under section 46 of the *Transport Administration Act 1988* (NSW).

Specified Protected Matters means listed threatened species and ecological communities protected by sections 18 and 18A of the EPBC Act and listed migratory species protected by sections 20 and 20A of the EPBC Act.

Strategic Assessment Report means the report describing impacts of actions under the Program on Specified Protected Matters, as contemplated by section 146(2)(a) EPBC Act.

Terms of Reference means the terms of reference prepared under clause 5 of this Agreement.

Supplementary Report means the report which contains a copy of all the public comments received, a summary of the public comments received and sets out how those comments have been addressed through modification/s to the Program Report or Strategic Assessment Report, if relevant, following public exhibition of the draft Strategic Assessment Report and draft Program Report.

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

Working Day means a day that is not a Saturday, Sunday or a national public holiday in Canberra, ACT.

2.3 In this Agreement references to the singular include the plural.

3. **PREAMBLE**

3.1 Works that may, will have or are likely to have, a significant impact on a Protected Matter require assessment and approval under the EPBC Act. Some road and traffic management works being undertaken by RMS, also require environmental assessment in accordance with Part 5 of the EP&A Act.

3.2 The Parties agree to undertake a strategic assessment under the EPBC Act of the Program in relation to road and traffic management works being undertaken by, or on behalf of, RMS, in relation to Specified Protected Matters.

3.3 The strategic assessment will ensure the administration of the Program is aligned with the objectives of the EPBC Act, while reducing regulatory burden and maintaining high environmental standards.

3.4 Recognising the benefits that may be derived from implementing the Program, the Parties commit to:

(a) undertaking an assessment of the impact of implementing the Program on Specified Protected Matters, and

(b) working collaboratively to progress the strategic assessment. To this end the Parties will develop and agree to a joint schedule of tasks, timelines and resourcing to ensure a timely, efficient and effective strategic assessment. The schedule of tasks, roles and responsibilities is Schedule 1 to this Agreement.

3.5 The Parties acknowledge that where a person proposes to take an action in accordance with the program, that is not the subject of an approval under section 146B of the EPBC Act it is possible to seek approval for that action in accordance with Parts 7, 8 and 9 of the EPBC Act. Further, sections 87(3)(b)

and 136(2)(e) of the EPBC Act provide for the information in a strategic assessment report on the impacts of actions under a policy, plan or program to be taken into account in deciding the level of assessment and approval for actions that are subject to Parts 7, 8 and 9 of the EPBC Act.

4. TERMS OF REFERENCE FOR REPORTS

- 4.1 The Parties agree to the preparation of Terms of Reference for a Strategic Assessment Report on the impacts of actions under the Program on Specified Protected Matters pursuant to section 146(1B)(a) of the EPBC Act.
- 4.2 The Parties agree that the Terms of Reference will be substantially in the form outlined in Attachment A. The final form of the Terms of Reference will be agreed between the Parties by exchange of letters.

5. PREPARATION OF THE STRATEGIC ASSESSMENT REPORT AND PROGRAM REPORT

- 5.1 RMS is responsible for:
- (a) preparing a draft Program Report in accordance with this Agreement;
 - (b) preparing a draft Strategic Assessment Report in accordance with the EPBC Act, this Agreement and the Terms of Reference (refer section 146(2)(a) EPBC Act).
- 5.2 RMS agrees to provide the draft Program Report (refer clause 5.1(a)) and draft Strategic Assessment Report (refer clause 5.1(b)) to the Department for comment prior to them being released for public comment under clause 5.4.
- 5.3 The Department agrees to assist RMS:
- (a) in ensuring that the draft Strategic Assessment Report provided under clause 5.2 adequately addresses the requirements for strategic assessments described in Part 10 of the EPBC Act and to provide comments on the report in a timely manner; and
 - (b) by providing comments on the draft Program Report provided under clause 5.2 in a timely manner.
- 5.4 Following the completion of the process contemplated in clause 5.3, RMS will exhibit the draft Program Report and draft Strategic Assessment Report for public comment by notice in accordance with clause 5.5 below. The notice must:
- (a) advise that the draft Program Report and draft Strategic Assessment Report are available;
 - (b) advise where and how copies of the draft Program Report and draft Strategic Assessment Report may be obtained;
 - (c) provide contact details of both Parties as per clause 5.5 below for obtaining further information on the draft Program Report and draft Strategic Assessment Report;
 - (d) invite public comments on the draft Program Report and draft Strategic Assessment Report;
 - (e) advise the address to which such public comments should be provided; and

- (f) state the period set by the Environment Minister of at least 28 days within which public comments must be received, in relation to the draft Strategic Assessment Report (refer section 146(2)(b) EPBC Act).
- 5.5 The Department and RMS must each:
- (a) notify interested parties, including principal stakeholders, of the notice under clause 5.4 and of the availability of the draft Program Report and draft Strategic Assessment Report; and
 - (b) make copies of the draft Program Report and draft Strategic Assessment Report available electronically through their websites, and in hardcopy via post if requested.
- 5.6 Following public exhibition of the draft Program Report and draft Strategic Assessment Report by notice under clause 5.4, RMS will prepare:
- (a) a revised Strategic Assessment Report that takes account of the public comments received (refer section 146(2)(c) EPBC Act);
 - (b) a Program Report that takes account of the public comments received; and
 - (c) if requested by the Department, a Supplementary Report.
- 5.7 RMS agrees to provide drafts of the reports prepared under clause 5.6 to the Department for comment prior to their finalisation. The Department agrees to assist RMS in ensuring that the Strategic Assessment Report prepared under clause 5.6 adequately addresses the requirements for strategic assessments described in Part 10 of the EPBC Act and to provide comments on the reports prepared under clause 5.6 in a timely manner.
- 6. *CONSIDERATION OF THE STRATEGIC ASSESSMENT REPORT AND PROGRAM REPORT***
- 6.1 The reports referred to in clause 5.6 must be submitted to the Environment Minister for endorsement of the Program.
- 6.2 If the Environment Minister is not satisfied that the Strategic Assessment Report adequately addresses the impacts of the actions to which this Agreement relates, then:
- (a) the Environment Minister will make recommendations to RMS regarding the Strategic Assessment Report;
 - (b) RMS may provide the Environment Minister with advice, or seek clarification from the Minister on the recommendations in subclause (a);
 - (c) RMS must provide to the Environment Minister a summary of the recommendations, advice or clarification in subclauses (a) and (b), and how those recommendations, advice or clarification are given effect through modifications to the Strategic Assessment Report; and
 - (d) the Environment Minister may accept the Strategic Assessment Report as modified, and supporting material or request further information or clarification if not satisfied that it adequately addresses the impacts of the actions to which this Agreement relates.
- 6.3 The Environment Minister may request any additional information considered necessary to be satisfied that the impacts of actions under the Program have been adequately addressed.

6.4 Modifications to the Program, if any, as a consequence of the process in section 146(2)(e) of the EPBC Act must be made prior to the submission of the Program Report to the Environment Minister.

7. *ENDORSEMENT OF THE PROGRAM*

7.1 The Environment Minister may endorse the Program if satisfied that:

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

7.2 In determining whether or not to endorse the Program, the Environment Minister will have regard to the extent to which the Program meets the objectives of the EPBC Act including how the Program:

- (a) protects the environment, especially Specified Protected Matters;
- (b) promotes ecologically sustainable development;
- (c) promotes the conservation of biodiversity;
- (d) promotes a cooperative approach to the protection and management of biodiversity and Specified Protected Matters; and
- (e) assists in the co-operative implementation of Australia's international environmental responsibilities.

7.3 RMS must make the final Strategic Assessment Report, Program Report and (if relevant) Supplementary Report publicly available for the life of the Program after endorsement of the Program by the Environment Minister under section 146(2)(f) of the EPBC Act.

8. *APPROVAL OF ACTIONS*

8.1 The Environment Minister may approve, or approve with conditions, the taking of an action or class of actions in accordance with the endorsed Program pursuant to section 146B and subject to Subdivision C of Division 1 of Part 10 of the EPBC Act. In doing so, the Environment Minister must act in accordance with sections 146F – 146M of the EPBC Act.

8.2 In accordance with section 146C of the EPBC Act, the Environment Minister must seek comment from any other Commonwealth Ministers with administrative responsibilities relating to the action or class of actions before deciding whether or not to approve the taking of the action or class of actions.

8.3 The Department and RMS must make the approval, any approval conditions and the Program publicly available:

- (a) electronically through their websites; and
- (b) in hardcopy via post if requested;

unless the approval satisfies the criteria for exceptions to public disclosure provided in section 146B(4) of the EPBC Act.

9. GOVERNANCE ARRANGEMENTS

- 9.1 The Department and RMS will use best endeavours to establish agreed timelines within two weeks 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.
- 9.2 The Department and RMS will meet at least once a month to exchange information and monitor progress against deadlines.

10. VARIATION

- 10.1 The Parties may vary this Agreement by an exchange of letters or electronic communications to the extent only that such variation is consistent with the provisions of the EPBC Act.

11. DISPUTE RESOLUTION

- 11.1 The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises among 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 Working Days of receipt of a notice of Dispute (or a time frame 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 Working Days (or other time frame agreed in writing between the Parties), the Dispute will be taken to the:
 - (i) Chief Executive of RMS; and
 - (ii) the Deputy Secretary of the Department,who will endeavour to reach agreement regarding the Dispute.

12. TERMINATION

- 12.1 This Agreement may be terminated by written agreement at any time (including by way of electronic communication) between the Parties.

13. GENERAL

- 13.1 Any notice given by a party under this Agreement must be in writing and hand delivered or sent by pre-paid post, fax or email to the appropriate representative at the specified address. The appropriate representative for each Party is:
- (a) General Manager, Environment Branch, Roads and Maritime Services; or

(b) Assistant Secretary, South-Eastern Australia Environment Assessment Branch, Department of the Environment.

13.2 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 for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by

Malcolm Thompson, Deputy Secretary,
Department of the Environment



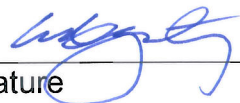
Signature

14/8/14.

Date

SIGNED for and on behalf of the **RMS**
represented by

Geoff Fogarty, Acting Chief Executive



Signature

1st August 2014

Date