



***ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999***

***Part 10 Strategic Assessments  
Section 146 (1) Agreement***

Relating to the assessment of the impacts of the Program to develop the Growth Centres in  
Western Sydney, NSW

between

**THE COMMONWEALTH OF AUSTRALIA**

and

**THE STATE OF NEW SOUTH WALES**

## CONTENTS

1. PARTIES .....	2
2. DEFINITIONS .....	2
3. PREAMBLE .....	3
4. BACKGROUND.....	3
5. TERMS OF REFERENCE FOR THE REPORT .....	4
6. PREPARATION OF THE REPORT .....	4
7. CONSIDERATION OF THE REPORT .....	5
8. ENDORSEMENT OF PROGRAM.....	5
9. APPROVAL OF ACTIONS.....	6
10. VARIATION .....	6
11. DISPUTE RESOLUTION .....	6
12. TERMINATION .....	6
Attachment A: Locality of the Growth Centres .....	8
Attachment B: Draft Terms of Reference.....	10
Attachment C: Strategic Assessment - Endorsement Criteria.....	14

## 1. PARTIES

### 1.1. The Parties to this Agreement are:

The Commonwealth of Australia, represented by the Minister for the Environment, Heritage and the Arts

and

The State of New South Wales, represented by both the Minister for Climate Change and the Environment and the Minister for Planning.

## 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:

*DECC* means the NSW Department of Environment and Climate Change.

*DEWHA* means the Australian Government Department of the Environment, Water, Heritage and the Arts.

*DoP* means the NSW Department of Planning.

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

*Growth Centres* means the North West Growth Centre and the South West Growth Centre as defined by the *NSW State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (and as depicted in the map at Attachment A).

*Minister* means the Minister for the Environment, Heritage and the Arts.

*Parties* means the parties to this Agreement.

*Program* means urban development in the Sydney Region Growth Centres as described in the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* and the relevant biodiversity measures under Part 7 of Schedule 7 to the *Threatened Species Conservation Act 1995*.

*State* means the State of New South Wales.

*The Act* means the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

*TSC Act* means the *Threatened Species Conservation Act 1995* (NSW).

*Working days* means a business day as measured in Canberra, ACT.

### **3. PREAMBLE**

- 3.1 The Parties agree that the Growth Centres contain significant environmental values, as well as significant social and economic values in relation to the future growth of Sydney.

Recognising these significant values and the benefits that may be derived from implementing the Program, the Parties commit to:

- a) undertaking an assessment of the impacts of actions under the Program on all matters protected by Part 3 of the Act; and
- b) sharing information and working collaboratively to undertake the activities within this Agreement.

### **4. BACKGROUND**

- 4.1 Section 146(1) of the Act allows the Minister to agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under that policy, plan or program on a matter protected by a provision of Part 3 of the Act. The policy, plan or program for the purposes of this Agreement is the Program as defined in Clause 2 of this Agreement.
- 4.2 The Program has, among other things, identified conservation measures and development areas to manage and accommodate Sydney's population growth through the identification and development of the Growth Centres.
- 4.3 Assessment of the impacts of the Program will be undertaken through a report prepared in accordance with section 146(2) of the Act. This will include preparation of Terms of Reference for a report on the impacts of the Program, preparation of the report and consideration by the Minister of that report. The Minister may then endorse the Program under Section 146(2)(f).
- 4.4 After considering the report, the Minister may decide to endorse the Program if satisfied that the requirements stated in section 146(2)(f) of the Act have been met. Importantly, the Parties acknowledge that the endorsement of the Program, of itself, does not constitute any approval under the Act for the taking of actions for which approval is required under the Act.
- 4.5 If the Minister decides to endorse the program under section 146(2)(f) of the Act, the Minister may then, under section 146B of the Act, decide to approve the taking of an action, or a class of actions, in accordance with the Program. The effect of this decision is that actions or classes of actions (if any) approved under section 146B would not need further approval from the Minister under the Act. 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 still capable of seeking approval for that action via the ordinary channels for assessment and approval established under Parts 7, 8 and 9 of the Act.

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

- 5.1 DoP shall as soon as practicable seek public comment on the Draft Terms of Reference (Attachment B) for the preparation of a report on the impacts of actions under the Program.

DoP shall provide the Draft Terms of Reference for public comment by notice:

- a) posted on the DoP website; and
  - b) published in newspapers circulating in NSW.
- 5.2 The notice in 5.1 must advise that the Draft Terms of Reference are available and how copies may be obtained, provide contact details and invite public comments on the Draft Terms of Reference for not less than 28 days.
- 5.3 The Parties may each notify other organisations or individuals of the public comment notice and of the availability of the Draft Terms of Reference. Each Party will make copies of the notice and Draft Terms of Reference available electronically through its website.
- 5.4 Following the consideration of public comments on the Draft Terms of Reference the State will submit to the Minister:
- a) public responses relating to the Draft Terms of Reference;
  - b) the Revised Draft Terms of Reference; and
  - c) comments on how the public responses have been taken into account in the Revised Draft Terms of Reference.
- 5.5 Following receipt of the Revised Draft Terms of Reference, the Minister shall as soon as practicable notify the State that the Revised Draft Terms of Reference (for assessment of the impacts of the actions under the Program):
- a) are approved; or
  - b) are not approved. In this instance the Minister will:
    - i) notify the State of his concerns and invite the State to provide a further Revised Draft Terms of Reference which take those concerns into account; and
    - ii) within 15 working days of receipt of the further Revised Draft Terms of Reference mentioned above, either:
      - (A) notify the NSW Government of his approval of the further Revised Draft Terms of Reference; or
      - (B) provide approved Terms of Reference that meet his requirements.

## **6. PREPARATION OF THE REPORT**

- 6.1 The State will cause a Draft Report to be prepared in accordance with this Agreement and the Terms of Reference once approved in accordance with Clause 5 of this Agreement.

DoP shall provide the Draft Report for public comment by notice:

- a) posted on the DoP website; and
- b) published in news papers circulating in NSW.

- 6.2 The notice in 6.1 must advise that the Draft Report is available and how copies may be obtained, provide contact details for obtaining further information, invite public comments on the Draft Report and set a period of not less than 28 days within which comments must be received.

The Parties:

- a) may each notify interested parties of the notice and of the availability of the Draft Report; and
  - b) will each make copies of the notice and Draft Report available electronically through their websites.
- 6.3 The State will prepare, following closure of the public comment period, a Revised Draft Report, or a Supplementary Report to the Draft Report, taking account of the comments received.

## **7. CONSIDERATION OF THE REPORT**

7.1 The State will submit to the Minister:

- a) public responses relating to the Draft Report;
- b) the Final Report, comprised of:
  - i) the Revised Draft Report; or
  - ii) the Draft Report and a Supplementary Report;
- c) comments on how the public responses have been taken into account in the Final Report; and
- d) the Program.

7.2 The Minister will consider the Final Report.

- a) The Minister may make recommendations to the State, as he considers appropriate, regarding the Final Report and/or the Program.
- b) The State may provide the Minister with advice, or seek clarification from the Minister on recommendations in subclause (a).
- c) The State will provide to the 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 Program.
- d) The Minister will consider the revised Program and supporting material and may accept the Final Report or request further information or clarification if not satisfied that it addresses adequately the impacts of the actions to which this Agreement relates.

## **8. ENDORSEMENT OF PROGRAM**

8.1 The Minister will endorse the Program if satisfied that:

- a) the Report adequately addresses the impacts to which this Agreement relates;
- b) any recommended modifications to the Program or modifications having the same effect have been made; and
- c) the requirements set out in the endorsement criteria in Attachment C are met.

## **9. APPROVAL OF ACTIONS**

- 9.1 If the requirements of Sections 146F-M of the Act and the endorsement criteria at Attachment C are met, 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 Act.

## **10. VARIATION**

- 10.1 This Agreement may only be varied by written agreement (including electronic communications) between the Parties or otherwise in accordance with the Act.

## **11. DISPUTE RESOLUTION**

- 11.1 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.

## **12. TERMINATION**

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

SIGNED BY:

  
The Hon. Peter Garrett AM MP  
Minister for the Environment, Heritage and the Arts

Dated 22 August 2009

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**John Robertson MLC**

The Hon. ~~Carmel Tebbutt MP~~  
Minister for Climate Change and the Environment

Dated



11 November 2009

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The Hon. Kristina Keneally MP  
Minister for Planning

Dated



20/9/09



**Attachment A: Locality of the Growth Centres**  
 NB: this map is for illustrative purposes only. The Growth Centres are defined by the NSW State Environmental Planning Policy (Sydney Region Growth Centres) 2006.



