

**AN AGREEMENT BETWEEN THE COMMONWEALTH OF
AUSTRALIA AND THE STATE OF NEW SOUTH WALES**

**UNDER SECTION 45 OF THE COMMONWEALTH
*ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999***

**RELATING TO ENVIRONMENTAL IMPACT
ASSESSMENT**

Aim

- 1 The agreement aims to minimise duplication of environmental impact assessment processes, strengthen intergovernmental co-operation and promote a partnership approach to environmental protection and biodiversity conservation. In particular, this agreement provides for the accreditation of the New South Wales environmental impact assessment processes (set out in Schedule 1) to ensure an integrated and coordinated approach for actions requiring approval from both the Commonwealth (under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*) and the State of New South Wales. This agreement will therefore enable the Commonwealth to rely primarily on the New South Wales assessment processes set out in Schedule 1 in assessing actions under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 2 The specific objects of this agreement are to contribute to:
 - (a) protecting the environment;
 - (b) promoting the conservation and ecologically sustainable use of natural resources;
 - (c) ensuring an efficient, timely, and effective process for environmental assessment and approval of actions; and
 - (d) minimising duplication in the environmental assessment of relevant impacts within the meaning of section 82 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* through Commonwealth accreditation of New South Wales processes.

Note: The provisions of this bilateral agreement are to be read in conjunction with the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, the New South Wales Environmental Planning and Assessment Act 1979, the New South Wales Threatened Species Conservation Act 1995, and the New South Wales Fisheries Management Act 1994.

Parties to the agreement

- 3 The parties to this agreement are the Commonwealth and the State of New South Wales.

Term of agreement

- 4 This agreement will commence on the date on which the agreement is executed.
- 5 The agreement will expire five years after commencement, noting that a review of the operation of the agreement must be carried out before it ceases to have effect.

Nature of the agreement

- 6 This agreement is a bilateral agreement made under section 45 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 7 The parties note that assessment means assessment of the relevant impacts, within the meaning of section 82 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. Notwithstanding this, the parties also note the commitments in clause 10 by the State of New South Wales in relation to assessing impacts other than the relevant impacts.
- 8 The parties do not intend this agreement to create contractual or other legal obligations between the parties, or that a breach of the agreement will give rise to any cause of action, or right to take legal proceedings.

Effect of this agreement

- 9 Certain actions in a class of actions do not require assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*
- 9.1 Pursuant to subsection 47(1) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, it is declared that a controlled action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if:
- (a) the action is assessed in accordance with the requirements set out in Part A of Schedule 1 to this agreement; or
 - (b) the action is assessed in accordance with Part B of Schedule 1 of this agreement and the only controlling provisions for the action are sections 18 or 18A of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- Paragraph (b) of this clause does not limit paragraph (a).
- 9.2 Clause 9.1 applies to actions which are taken wholly within the State of New South Wales, including its coastal waters. In relation to actions taken in more than one jurisdiction (including New South Wales), or which are taken in New South Wales but have relevant impacts in other jurisdictions, the parties agree to consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process, such as those set out in Schedule 1.
- 9.3 The parties note that the provisions of this bilateral agreement do not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency. However, the parties further note that discussions will take place between the Commonwealth and New South Wales in relation to implementing Attachment 3 of the COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment ("Compliance with State Environment and Planning Laws"). Following those discussions, the parties intend to amend this agreement or

make a new agreement, as necessary, so that it will apply to actions in a Commonwealth area, and actions taken by the Commonwealth or a Commonwealth agency, where it is agreed that those actions will be subject to State environment and planning laws.

- 9.4 This agreement applies to all matters of national environmental significance as stipulated in Part 3, Division 1 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* with the exception of nuclear actions (as defined in section 22 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*).

10 New South Wales to ensure that impacts on matters that are not of national environmental significance are assessed

- 10.1 This clause applies to an action that:
- (a) is a controlled action (as determined by the Commonwealth Environment Minister) taken or proposed to be taken in New South Wales; and
 - (b) does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if an assessment is conducted in accordance with Schedule 1 of this agreement; and
 - (c) is an action:
 - (i) taken or proposed to be taken by a constitutional corporation;
 - (ii) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and Territory, or between two Territories; or
 - (iii) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- 10.2 The State of New South Wales undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have (other than the relevant impacts) are assessed to the greatest extent practicable.
- 10.3 The Commonwealth Environment Minister cannot decide whether to approve an action covered by section 130(1C) of the Commonwealth *Environment Protection and Biodiversity Conservation 1999* until a written notice described in section 130(1B) has been received from the State of New South Wales. The written notice must state that the impacts referred to in clause 10.2 have been assessed to the greatest extent practicable and explain how they have been assessed. The State of New South Wales undertakes to use its best endeavours to provide such a written notice in relation to actions covered by section 130(1C).
- 10.4 The parties agree that 'greatest extent practicable' in clauses 10.2 and 10.3 is satisfied where the assessment has been undertaken in a specified manner of assessment in Schedule 1.

- 10.5 If the Consent Authority or Determining Authority for an action is a council (as defined in the New South Wales *Environmental Planning and Assessment Act 1979*), the New South Wales Minister will provide to the Commonwealth Environment Minister a written notice under section 130(1B) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* certifying that the action has been assessed in accordance with the requirements of the New South Wales *Environmental Planning and Assessment Act 1979*.

Procedures to be followed

11 New South Wales to use best endeavours to ensure that actions are referred

- 11.1 The parties will work cooperatively to ensure that proponents are aware of their obligations under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and will use their best endeavours to encourage proponents to refer actions that are proposed to take place in New South Wales that may require approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to the Commonwealth Environment Minister.
- 11.2 The parties agree to develop administrative arrangements which will streamline the referral process for proponents. Where possible the parties will develop administrative arrangements which will allow proponents to simultaneously satisfy both Commonwealth and State of New South Wales requirements. In this respect, the parties note that the State of New South Wales or a New South Wales Government agency that is aware of a proposed action may refer the action to the Commonwealth Environment Minister.
- 11.3 Subject to sections 69, 70 and 71 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the parties recognise that the responsibility for referring actions which may require approval from the Commonwealth Environment Minister under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* lies with the person proposing to take the action. In making the undertakings set out in this clause, the parties do not accept any responsibility for the actions of proponents who may or may not choose to refer actions.

12 Commonwealth to inform New South Wales of decision about whether a proposed action is a controlled action

- 12.1 This clause applies to an action or proposed action that is:
(a) referred to the Commonwealth Environment Minister under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
(b) proposed to be taken in New South Wales.
- 12.2 The Commonwealth undertakes that the Commonwealth Environment Minister will give written notice of his or her decision whether the action is a

controlled action to the New South Wales Minister within ten business days of making the decision.

- 12.3 The Commonwealth undertakes that the written notice referred to in clause 12.2 will indicate:
- (a) whether the Commonwealth believes that the action covered by the notice is an action to which this clause applies; and
 - (b) if so, which of paragraphs (i)-(iii) in clause 10.1(c) applies to the action.

13 Confirmation by New South Wales that an accredited process will apply

- 13.1 This clause applies where:
- (a) the State of New South Wales receives a written notice from the Commonwealth Environment Minister that an action proposed to take place in New South Wales is a controlled action; and
 - (b) the action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if assessed in the manner specified in Schedule 1 to this agreement.
- 13.2 The State of New South Wales undertakes that as soon as practicable, the New South Wales Minister will indicate in a written notice given to the Commonwealth Environment Minister whether the action will be assessed in the manner specified in Schedule 1 to this agreement.

14 Assessment documentation

- 14.1 The State of New South Wales undertakes that when an action is assessed in the manner specified in Schedule 1 to this agreement it will:
- (a) provide a copy of the Assessment Report, or the part of the relevant report that addresses the relevant impacts of a controlled action, and recommended approval conditions to the Commonwealth Environment Minister as soon as possible; and
 - (b) provide copies of any other assessment documentation pertaining to the relevant impacts to the Commonwealth Environment Minister as soon as possible.
- 14.2 The State of New South Wales may, when it provides the Assessment Report, or the part of the relevant report that addresses the relevant impacts of a controlled action, or the other assessment documentation referred to in clause 14.1, also provide additional information on social and economic matters (if not included in the Assessment Report and only where the provision of this information does not breach privacy or commercial in confidence information requirements) if such information will be relevant to the Commonwealth Environment Minister's decision whether to approve the action under section 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

15 Additional information

- 15.1 If, in deciding whether to approve the taking of an action assessed under this agreement, the Commonwealth Environment Minister uses any information described in section 136(2)(e) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth Environment Minister undertakes to provide a copy of this information to the New South Wales Minister. The intention of this clause is to give the State of New South Wales an opportunity to comment on the accuracy of this information before the Commonwealth Environment Minister decides whether to approve the taking of the action, subject to the requirements of section 130 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* relating to the time period within which the Commonwealth Environment Minister must decide whether to approve the action.

16 Monitoring compliance with conditions

- 16.1 This clause applies where an action:
- (a) is taken in New South Wales;
 - (b) requires the approval of the Commonwealth Environment Minister under Part 9 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (c) requires approval (however described) under New South Wales legislation.
- 16.2 The parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication. To this end the parties agree:
- (a) that each party will inform the other of any conditions attached to the approval(s) to take the action; and
 - (b) that best endeavours will be used to put cooperative arrangements in place for monitoring compliance with conditions on any action which is approved by both parties. The aim of these arrangements is to ensure that reporting requirements for the proponent, and other monitoring efforts such as site inspections, are not duplicated.

17 Enforcing conditions on approvals

- 17.1 The parties agree to inform one another, as soon as practicable, of any action to prosecute a person for breaching conditions of an approval for an action which has been approved by both parties, where the conditions relate to, or affect, a matter protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

18 Conditions attached to an approval

- 18.1 The parties recognise the need to avoid attaching inconsistent conditions to approvals and will avoid, to the extent practicable, attaching different conditions to approvals in relation to the protection of matters of national

environmental significance for an action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and New South Wales legislation referred to in Schedule 1 to this agreement. To this end, the parties:

- (a) agree where practicable to consult on the conditions to be attached to approvals granted by either party;
- (b) note the provisions of section 134 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, which include a requirement for the Commonwealth Environment Minister to consider any relevant State conditions when deciding whether to attach a condition to an approval; and
- (c) agree to inform one another before varying the conditions attached to an approval for an action which has been approved by both parties, where the condition relates to, or affects, a matter protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The parties also agree to advise one another of any such variation after it has been made.

19 Administrative procedures

- 19.1 The parties agree to jointly develop administrative procedures to ensure that the requirements of this agreement are administered efficiently in accordance with their separate legal requirements. The parties note that the administrative procedures will provide for consultation with the other party on draft assessment documentation, including draft assessment reports. The administrative procedures will also include guidelines on the exchange of any information about assessments between the parties.

Maintaining the agreement

20 Monitoring compliance with the agreement

- 20.1 The parties recognise that, under the Commonwealth *Auditor-General Act 1997*, the Commonwealth Auditor-General may audit the operation of the Commonwealth public sector (as defined in section 18 of that Act) in relation to this agreement.

21 Reviewing the agreement

- 21.1 The parties agree that the review of this agreement required under section 65 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* will be carried out jointly by the parties, and will:
- (a) evaluate the operation of the agreement against the objects of the agreement;
 - (b) seek the views of key stakeholders; and
 - (c) commence at least eight months before the agreement is due to expire, and be completed at least three months before the agreement expires.

22 Cancelling or suspending the agreement

- 22.1 The parties note that sections 57 – 64 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provide that the Commonwealth Environment Minister may cancel or suspend all or part of this agreement (either generally or in relation to actions in specified classes) under certain circumstances.
- 22.2 The Commonwealth Environment Minister must cancel or suspend all or part of this agreement at the request of the New South Wales Minister, but only if the request is made in accordance with this agreement.
- 22.3 The parties agree that a request to cancel or suspend all or part of this agreement is made in accordance with this agreement if:
- (a) the request is made on the grounds that the New South Wales Minister is not satisfied that the Commonwealth has complied or will comply with the agreement; or
 - (b) the request is made on the grounds that the New South Wales Minister is not satisfied that the objects of the agreement are being achieved; and
 - (c) before making the request, the New South Wales Minister has informed the Commonwealth Environment Minister in writing of the reason(s) for requesting the suspension and allowed a period of at least twenty business days for the Commonwealth Environment Minister to respond.

Exchange of information

- 23 Each party agrees to promptly comply with any reasonable request from the other party to supply information relating to the management or administration of assessments covered by this agreement.
- 24 The parties agree that they may each use data within the control of the relevant departments of government of the other party for the purposes of meeting their respective responsibilities relating to the agreement or the assessment of environmental impacts under their respective Acts, and to make data available to the other. The parties agree that data will remain the property of the owner and its use will be subject to such licence conditions as may be agreed. The parties agree that, subject to clauses 28 and 30, data will not be used or communicated to any other person without the permission of the owner, except as otherwise required by law.

Conflict resolution

- 25 In the event that any dispute arises under this agreement, the parties will settle it by direct negotiation using their best endeavours, acting in a spirit of cooperation. The parties agree that in the event of a dispute, discussions aimed at resolution will normally take place at officials level in the first instance. This clause does not purport to limit the rights and obligations of each party under relevant sections of the Commonwealth *Environment*

Protection and Biodiversity Conservation Act 1999 (including those sections dealing with cancelling and suspending bilateral agreements).

- 26 The parties will notify and consult each other on matters that come to their attention that may improve the operation of this agreement.

Relevant plans and agreements

- 27 The parties note that a number of agreements and plans may be relevant to assessments under this agreement. The parties undertake that, when actions are assessed under this agreement, relevant agreements and plans will be taken into account as necessary. The parties agree that where the assessment covers impacts on:
- (a) World Heritage values of a World Heritage property, any management plan for the property is relevant;
 - (b) National Heritage values of a National Heritage place, any management plan for the place is relevant;
 - (c) the ecological character of a Ramsar wetland property, any management plan for the wetland is relevant;
 - (d) a listed threatened species or ecological community, any recovery plan for the species or community, and any threat abatement plan for a process that threatens the species or community is relevant; and
 - (e) a listed migratory species, any wildlife conservation plan for the species is relevant.

Freedom of information legislation

- 28 Subject to New South Wales and Commonwealth legislation, if a party receives any request, including under Freedom of Information legislation, for any documents originating from another party and which are provided pursuant to this agreement, which are not otherwise publicly available, the parties will consult on the release of those documents.
- 29 The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met without delay.

Public access to assessment documentation

- 30 The parties agree that documents relating to assessments conducted in accordance with this Agreement, which would be publicly available under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the laws of New South Wales, will be made available to the public in accordance with the provisions set out in Schedule 1 to this agreement.

Groups with particular communication needs

- 31 The State of New South Wales will, in giving effect to the requirements in Schedule 1, make special arrangements, if appropriate, to ensure that affected groups with particular communication needs have adequate opportunity to

comment on actions assessed in the manner specified in Schedule 1. The parties note that indigenous people affected by a proposed action may have particular communication needs, and will ensure, where appropriate, that affected indigenous people have adequate opportunity to comment on actions assessed in the manner specified in Schedule 1.

Funding

- 32 The parties agree that, twelve months after the commencement of this agreement, and every twelve months thereafter until the expiry of the agreement, they will review the additional implementation costs (including the cost of advertising in a newspaper circulating in every State and Territory in accordance with Schedule 1) that the State of New South Wales may have incurred during the relevant twelve month period of the agreement. The Commonwealth agrees to reimburse New South Wales the additional implementation costs.
- 33 In clause 32, the additional implementation costs are the costs that the Commonwealth and the State of New South Wales agree:
- (a) have been incurred by New South Wales in implementing this agreement; and
 - (b) would not, in the absence of this agreement, have been incurred by New South Wales in carrying out an assessment of each action to which Schedule 1 applies.

Interpretation

- 34 A reference in this agreement to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the New South Wales *Environmental Planning and Assessment Act 1979*, the New South Wales *Threatened Species Conservation Act 1995*, or the New South Wales *Fisheries Management Act 1994* is a reference to the relevant Acts as in force at the date of this agreement. If any of the Acts are subsequently amended in a manner that affects the operation of this agreement, the parties will seek to agree as soon as practicable on whether it is necessary to make another bilateral agreement varying or replacing this agreement.
- 35 A reference in this agreement to an Act includes a reference to any regulations and instruments under that Act.
- 36 Unless the contrary intention appears, the terms used in this agreement have the same meaning as in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 37 **Assessment documentation** means any formal report, study, agreement, submission or correspondence prepared by or received as part of the formal assessment processes set out in Schedule 1. This includes draft reports or studies that would normally be publicly available under the assessment process.

- 38 For the purposes of Part A of Schedule 1, **assessment report** means material prepared in accordance with an assessment approach that is submitted to the *consent authority* to be taken into consideration by the *consent authority* when making a determination. The **assessment report** may comprise material prepared by the proponent and material prepared by the *consent authority* as part of the assessment approach.
- 39 **Commonwealth Environment Minister** means the Minister administering the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of the Minister.
- 40 For the purposes of this agreement, **consent authority** means, as appropriate:
- a consent authority, approval authority or determining authority as defined in the New South Wales *Environmental Planning and Assessment Act 1979*, which may include as appropriate, the Minister administering the Act, a local council, or delegate;
 - for the New South Wales *Fisheries Management Act 1994*, the Minister administering the Act, the Director General of the Department of Primary Industries, or delegate; or
 - for the New South Wales *Threatened Species Conservation Act 1995*, the Director General of the Department of Environment and Conservation, or delegate.
- 41 **Constitutional Corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.
- 42 **Director-General** has the same meaning as in the New South Wales *Environmental Planning and Assessment Act 1979*, the New South Wales *Threatened Species Conservation Act 1995*, or the New South Wales *Fisheries Management Act 1994*, as appropriate.
- 43 **Inquiry Report** means the findings and recommendations of a public statutory inquiry.
- 44 For the purposes of administration of this agreement, the **New South Wales Minister** means the Minister administering the *New South Wales Environmental Planning and Assessment Act 1979*. For the purposes of environmental impact assessment carried out in accordance with this agreement, the **New South Wales Minister** means, where relevant, the Ministers administering the New South Wales *Environmental Planning and Assessment Act 1979*, the New South Wales *Threatened Species Conservation Act 1995*, or the New South Wales *Fisheries Management Act 1994*, and includes a delegate of the Minister.
- 45 **Public statutory inquiry** means an independent hearing assessment panel under Part 3A of the New South Wales *Environmental Planning and Assessment Act 1979*, or a Commission of Inquiry held under Division 2 of Part 6 of the

New South Wales *Environmental Planning and Assessment Act 1979*, or any other statutory inquiry commissioned as part of an assessment.

Signed for and on behalf of the
State of New South Wales by:

Signed for and on behalf of the
Commonwealth by:

SIGNED

SIGNED

The Hon F E Sartor, MP
Minister for Planning
Date: 18 January 2007

Senator, the Hon Ian Campbell
Minister for the Environment and
Heritage
Date: 20 December 2006

Schedule 1

Preamble

Subsection 47(1) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provides that a bilateral agreement may declare that actions need not be assessed under Part 8 of that Act if the actions have been '*assessed in a specified manner*'.

Clause 9.1 of this bilateral agreement declares that a controlled action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if it is assessed in a manner specified in Part A or Part B of this Schedule.

Part A – Development Assessment

The Specified Manner of Assessment

In New South Wales most developments that would be controlled actions in relation to matters of national environmental significance are assessed and approved under the New South Wales *Environmental Planning and Assessment Act 1979*.

It is recognised that under the New South Wales *Environmental Planning and Assessment Act 1979* there is an obligation on all consent authorities to consider the impacts of the development on the environment (including biophysical, social and economic factors) including impacts on:

- (a) World Heritage values of a World Heritage property in New South Wales;
- (b) National Heritage values of a National Heritage place in New South Wales;
- (c) the ecological character of a Ramsar wetland property in New South Wales;
- (d) threatened species, populations or ecological communities and their habitats listed under the New South Wales *Threatened Species Conservation Act 1995*, where any recovery plan for the species or community, and any threat abatement plan for a process that threatens the species or community is relevant; and
- (e) listed migratory species.

For the purposes of regulations made under section 50 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the manner of assessment specified in Part A of this Schedule provides for the following assessment approaches:

- assessment under Part 3A of the New South Wales *Environmental Planning and Assessment Act 1979*, which may include an environmental assessment report pursuant to section 75I informed by:
 - the environmental assessment under section 75F;
 - the assessment report of an independent hearing and assessment panel, pursuant to section 75G;
 - any preferred project report pursuant to section 75H; or
 - the report of any Commission of Inquiry appointed by the Minister under Division 2 of Part 6;

this assessment approach corresponds to assessment by Environmental Impact Statement and meets the requirements of a Public Environment Report under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; or

- assessment under Part 4 of the New South Wales *Environmental Planning and Assessment Act 1979*, including an evaluation of the matters under section 79C, and which may include:
 - environmental impact statement pursuant to subsection 78(8)(a) of Part 4, if the application is for designated development;
 - a statement of environmental effects, pursuant to Part 1 of Schedule 1 of the Regulation, if the development is not designated development;
 - a species impact statement pursuant to subsection 78(8)(b) of Part 4, if the application is in respect of development on land that is, or is part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities; and/or
 - the report of any Commission of Inquiry appointed by the Minister under Division 2 of Part 6;

this assessment approach corresponds to assessment by Environmental Impact Statement and meets the requirements of a Public Environment Report under the Commonwealth *Environment Protection and Biodiversity Act 1999*; or

- assessment of activities under Part 5 of the New South Wales *Environmental Planning and Assessment Act 1979*, which may include:
 - an environmental impact statement for activities that are likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats; and/or
 - the report of any Commission of Inquiry appointed by the Minister under Division 2 of Part 6;

this assessment approach corresponds to assessment by Environmental Impact Statement and meets the requirements of a Public Environment Report under the Commonwealth *Environment Protection and Biodiversity Act 1999*.

Any controlled action subject to this bilateral agreement and assessed using one of the three assessment approaches under the New South Wales *Environmental Planning and Assessment Act 1979* set out above must also be subject to the following additional requirements.

Guidelines or Directions

1. In addition to standard guidelines and directions, the *New South Wales Minister*, the *Director-General* or the *consent authority* must issue guidelines¹ to proponents of controlled actions to ensure that material prepared by the proponent as part of the assessment:
 - a. contains an assessment of all relevant impacts that the controlled action has, will have or is likely to have;
 - b. contains enough information about the controlled action and its relevant impacts to allow the *Commonwealth Environment Minister* to make an informed decision whether or not to approve the controlled action under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*; and
 - c. addresses the matters outlined in Schedule 4 of the *Commonwealth Environment Protection and Biodiversity Conservation Regulations 2000*.

Public Comment

2. The assessment must be released for public comment, and the public given at least 30 days to provide comments to the *consent authority*.
3. When the public is invited to comment, the invitation must be published:
 - a. on a website approved by the New South Wales Department of Planning as appropriate, and linked to the Commonwealth Department of the Environment and Heritage website; and
 - b. in a newspaper circulating generally in each State and Territory.
4. The advertisements must advise the name of the action, a brief description of the action, its location(s), the relevant matters of national environmental significance, the name of the person intending to take the controlled action, the name of the designated proponent (if not the person intending to take the controlled action), how the relevant documents may be obtained, and the deadline for public comments.

Assessment Report

5. The *assessment report* must include:
 - a. a description of the controlled action; and
 - b. a description of the relevant impacts of the controlled action; and
 - c. a description of feasible mitigation measures, changes to the controlled action or procedures, which have been proposed by the proponent or suggested in public submissions, and which are intended to prevent or minimise relevant impacts; and

¹ The *New South Wales Minister*, the *Director-General* or the *consent authority* may issue a generic set of guidelines or may issue guidelines on a case-by-case basis.

- d. to the extent practicable, a description of any feasible alternatives to the controlled action that have been identified through the assessment, and their likely impact.
6. The *consent authority* must submit to the *Commonwealth Environment Minister*:
 - a. a copy of the *assessment report* or part of the *assessment report* that addresses the relevant impacts of the controlled action; and
 - b. a copy of the approval conditions that apply, or are proposed to apply, to the controlled action, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the controlled action;
 - c. any other information available to or used by the *consent authority* in the decision making process; and
 - d. if a *public statutory inquiry* is held, a copy of the inquiry report.
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Part B – Threatened Species

This Part of the Schedule applies to an action if:

- the only controlling provisions for the controlled action are sections 18 or 18A (listed threatened species and communities) of the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*; and
- the action is not to be assessed in accordance with Part A of this Schedule.

The Specified Manner of Assessment

For the purposes of regulations made under section 50 of the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*, the manner of assessment specified in Part B of this Schedule provides for the following assessment approaches:

- assessment under Part 6 of the *New South Wales Threatened Species Conservation Act 1995*, including a species impact statement; or
- assessment under Part 7A of the *New South Wales Fisheries Management Act 1994*, including a species impact statement.

These assessment approaches correspond to assessment by Environmental Impact Statement under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

Any controlled action subject to this bilateral agreement and assessed using one of the assessment approaches set out above must also be subject to the following additional requirements.

Guidelines or Directions

1. In addition to standard guidelines and directions, the *New South Wales Minister*, the *Director-General* or the *consent authority* must issue guidelines² to proponents of controlled actions to ensure that material prepared by the proponent as part of the assessment:
 - a. contains an assessment of all relevant impacts that the controlled action has, will have or is likely to have on any threatened species or ecological community listed as a threatened species or ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, including those threatened species or ecological communities that may or may not be listed under New South Wales legislation; and
 - b. contains enough information about the controlled action and its relevant impacts to allow the Commonwealth Environment Minister to make an informed decision whether or not to approve the controlled action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
 - c. addresses the matters outlined in Schedule 4 of the Commonwealth *Environment Protection and Biodiversity Conservation Regulations 2000*.

The Assessment

2. The *consent authority* must ensure that the assessment:
 - a. contains an assessment of all relevant impacts that the controlled action has, will have or is likely to have on any threatened species or ecological community listed as a threatened species or ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, including those threatened species or ecological communities that may or may not be listed under New South Wales legislation; and
 - b. contains enough information about the controlled action and its relevant impacts to allow the *Commonwealth Environment Minister* to make an informed decision whether or not to approve the controlled action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
 - c. addresses the matters outlined in Schedule 4 of the Commonwealth *Environment Protection and Biodiversity Regulations 2000*.

Public Comment

3. The assessment must be released for public comment. The public must be given at least 30 days to provide comments to the consent authority on the assessment.
4. When the public is invited to comment, the invitation must be published:
 - a. on a website approved by the New South Wales Department of Environment and Conservation, or the New South Wales Department of Primary

² The *New South Wales Minister*, the *Director-General* or the *consent authority* may issue a generic set of guidelines or may issue guidelines on a case-by-case basis.

Industries, the Department of Natural Resources, or the relevant New South Wales Catchment Management Authority, as appropriate, and linked to the Commonwealth Department of the Environment and Heritage website; and

- b. in a newspaper circulating generally in each State and Territory.
5. The advertisements must advise the name of the action, a brief description of the action, its location(s), the relevant matters of national environmental significance, the name of the person intending to take the controlled action, the name of the designated proponent (if not the person intending to take the controlled action), how the relevant documents may be obtained, and the deadline for public comments.
6. The *consent authority* must seek to ensure that the proponent provides any additional information, or changes to the assessment, needed to take into account the public comments received during the public comment period.

Assessment Report

7. An Assessment Report must be prepared. In preparing the Assessment Report, the *consent authority* must take into account:
 - a. material prepared by the proponent and the *consent authority* as part of the assessment;
 - b. any comments provided by the public during the public exhibition period;
 - c. any additional information, or changes to the assessment, provided by the proponent under clause 6; and
 - d. any other relevant information.
8. The Assessment Report must include:
 - a. a description of the controlled action; and
 - b. a description of the relevant impacts of the controlled action; and
 - c. a description of feasible mitigation measures, changes to the controlled action or procedures, which have been proposed by the proponent or suggested in public submissions, and which are intended to prevent or minimise relevant impacts on listed threatened species and listed threatened ecological communities; and
 - d. to the extent practicable, a description of any feasible alternatives to the controlled action that have been identified through the assessment, and their likely impact on listed threatened species and listed threatened ecological communities.

Note: The Assessment Report may comprise material prepared by the proponent as part of the assessment.

9. The *consent authority* must submit to the *Commonwealth Environment Minister*:
 - a. a copy of the Assessment Report or part of the Assessment Report that addresses the relevant impacts of the controlled action; and
 - b. a copy of the State approval conditions that apply, or are proposed to apply, to the controlled action, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the controlled action.
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