



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

Assessment of the impacts of developing Heathcote Ridge, West Menai, NSW, under  
the *Environment Protection and Biodiversity Conservation Act 1999*

between

**THE COMMONWEALTH OF AUSTRALIA**

and

**GANDANGARA LOCAL ABORIGINAL LAND COUNCIL**

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## 1 PARTIES

The parties to this agreement are:

The Commonwealth of Australia, represented by the Department of Sustainability, Environment, Water, Population and Communities (the department) as delegate for the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* and

The Gandagara Local Aboriginal Land Council (GLALC).

## 2 DEFINITIONS

2.1 Unless stated otherwise in this agreement, the definitions, meanings and terms in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) apply to this agreement and attachments.

2.2 In this agreement:

**Commonwealth land** means the adjacent Holsworthy Military Training Area.

**Draft Strategic Impact Assessment Report** means the report written in accordance with section 6 of this agreement and the agreed terms of reference, describing potential impacts from the Program on matters protected under the EPBC Act.

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

**Heathcote Ridge Development Site** means the lands within the development area illustrated in the map at Attachment A.

**GLALC** means Gandagara Local Aboriginal Land Council. GLALC may appoint an agent to act on their behalf to carry out various tasks for the purposes of this agreement.

**Minister** means the Minister or delegate responsible for administering the EPBC Act, in this case the department for the purposes of this agreement.

**MNES** means matter of national environmental significance listed pursuant to Part 3 of the EPBC Act that may be impacted if the Program is implemented.

**Program** means the development, construction and management of the Heathcote Ridge Development Site which is to be described more fully in the Program Report.

**Program Report** means the report describing the Program for which endorsement is sought, including any commitments and undertakings for protection of matters of national environmental significance. The draft Program Report is released for public comment and the final Program Report, addressing any public comments as necessary, is submitted for endorsement.

**SEPP** means a Major Development *State Environmental Protection Policy* under Schedule 3 of the *Environmental Planning and Assessment Act 1979* (New South Wales) to facilitate development and conservation of the site at Heathcote Ridge.

**Site** means the development site as illustrated in the map at Attachment A.

**State** means the State of New South Wales.

**Supplementary Report** means the report submitted to the department following public exhibition of the draft Strategic Impact Assessment Report and draft Program Report, and which addresses and responds to public comments.

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

### **3 PREAMBLE**

- 3.1 The parties agree that significant environmental, social and economic values may be derived from implementing the Program.
- 3.2 Recognising those significant environmental values, the parties commit to undertake a strategic assessment of the impacts of actions under the Program on MNES and the environment of Commonwealth land protected by Part 3 of the EPBC Act.
- 3.3 The parties agree to work cooperatively with all relevant State agencies, to the fullest extent practical, so as to avoid duplication of work in undertaking this strategic assessment (and subject to meeting requirements under the EPBC Act).

### **4 BACKGROUND**

- 4.1 Section 146(1) of the EPBC 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 the policy, plan or program on MNES. For the purpose of section 146(1) of the EPBC Act this agreement relates to the Program as defined in clause 2.2.
- 4.2 The Program Report will;
  - (a) describe the Program;
  - (b) detail the framework of planning regulations and policies that relate to the Heathcote Ridge development and that have implications for MNES and the environment of Commonwealth lands (Holsworthy Military Training Area); and
  - (c) describe the legislative underpinning for protection and management of MNES, including within the proposed amendment to the SEPP and Heathcote Ridge Masterplan.
- 4.3 An assessment of the impacts on MNES from implementation of the Program will be undertaken and described in a draft Strategic Impact Assessment Report. The draft Strategic Impact Assessment Report and draft Program Report will be made available for public comment for a minimum of 28 calendar days in accordance with section 146 of the EPBC Act. A Supplementary Report addressing public comments, and the final Program Report, will then be submitted to the Minister.
- 4.4 Section 146(2)(e) provides for the Minister to make recommendations for modifications to a program. The Minister may decide to endorse the Program in accordance with section 146(2)(f) of the EPBC Act if he is satisfied that the report adequately addresses the impacts to which this agreement relates and that any recommended modifications have been made to the final Program.

- 4.5 The parties acknowledge that the endorsement of the Program itself does not necessarily constitute any approval under the EPBC Act for the taking of actions for which approval is required under the EPBC Act.
- 4.6 If the Minister decides to endorse the Program under section 146(2)(f) of the EPBC Act, the Minister may then, under section 146B of the EPBC Act, decide to approve the taking of an action, or a class of actions, in accordance with the endorsed Program. Approvals may be considered at the same time as endorsement of the Program. The effect of an approval decision is that actions or classes of actions (if any) approved under section 146B would not need further approval from the Minister under the EPBC Act if taken in accordance with the endorsed Program.
- 4.7 The parties acknowledge that where proponents propose to take an action in accordance with a 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 EPBC Act. Further, sections 87(3)(b) and 136(2)(e) provide for the program to be taken into account in deciding the level of assessment and approval for actions that are referred via ordinary channels.

## **5 TERMS OF REFERENCE FOR REPORTS**

- 3.2.1 The parties agree on the terms of reference for the reports comprising the strategic assessment under the EPBC Act (Attachment B). The terms of reference have been prepared pursuant to section 146(1B) of the EPBC Act.

## **6 PREPARATION OF THE REPORT AND PROGRAM**

- 6.1 GLALC is responsible for preparing and exhibiting the draft Strategic Impact Assessment Report and draft Program Report in accordance with this agreement and the terms of reference.
- 6.2 GLALC agrees to provide the draft reports to the department for comment prior to them being released for public comments. The department agrees to assist GLALC in ensuring that the reports adequately address the requirements for strategic assessments described in Part 10 of the EPBC Act and to provide comments in a timely manner.
- 6.3 GLALC will provide the draft reports for public comment by notice. The notice must advise that the draft reports are available and how copies may be obtained, provide contact details for obtaining further information, invite public comments on the draft report and plan and state the period set by the Minister of at least 28 days within which comments must be received.
- 6.4 GLALC will prepare the Supplementary Report and final Program Report and submit these reports to the Minister for endorsement following public exhibition. GLALC agrees to provide drafts of these reports to the department for comment prior to their finalisation. The department agrees to assist GLALC in ensuring that the reports adequately address the requirements for strategic assessments described in Part 10 of the EPBC Act and to provide comments in a timely manner.

## **7 CONSIDERATION OF THE REPORT AND PROGRAM**

- 7.1 The Minister may make recommendations to GLALC for modifications to the Program pursuant to section 146(2)(e) of the EPBC Act.
- (a) GLALC may seek clarification from the Minister on these recommendations, if any.
  - (b) GLAC will then submit to the Minister for consideration a revised Program, and a summary of how the Minister's recommendations were given effect through modifications to the Program, if relevant.
- 7.2 The Minister may request any additional information considered necessary to be satisfied that the impacts of the Program have been adequately addressed.
- 7.3 Clauses 7.1 – 7.2 of this agreement may be taken in parallel with necessary actions by GLALC to address state planning requirements and in finalising the amendments to the SEPP. Modifications to the Program, if any, as a consequence of this process must be made prior to the submission of the final Program to the Minister.

## **8 ENDORSEMENT OF THE PROGRAM**

- 8.1 The Minister may endorse the Program if satisfied that:
- (a) the reports adequately addresses the impacts to which this agreement relates (e.g. impacts on MNES and the environment of Commonwealth land potentially affected by implementation of the Program); and
  - (b) any recommended modifications to the program, or modifications having the same effect, have been adequately made or otherwise addressed.
- 8.2 The Minister will also consider the endorsement criteria at Attachment C.

## **9 APPROVAL OF ACTIONS**

- 9.1 The 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 of the EPBC Act. In doing so, the Minister must act in accordance with sections 146F-M of the EPBC Act. This includes considering relevant MNES, the environment of Commonwealth land, economic and social matters, and principles of ecologically sustainable development.
- 9.2 The Minister will seek comment from any other Commonwealth Ministers with administrative responsibilities relating to the actions or classes of actions before approving the taking of an action, or class of actions, in accordance with section 146C of the EPBC Act.

## **10 GOVERNANCE ARRANGEMENTS**

- 10.1 The parties will, under a best endeavours approach, 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 by

the parties. The parties will meet at regular intervals to exchange information and monitor progress against deadlines.

## 11 VARIATION

11.1 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.


## 12 DISPUTE RESOLUTION

12.1 Where there is a dispute between the parties to this agreement on a particular matter, the parties will consult in a spirit of cooperation in relation to that matter and will use their best endeavours to negotiate a mutually acceptable resolution.

## 13 TERMINATION

13.1 This agreement may be terminated by written agreement (including by way of electronic communication) between the parties.

SIGNED BY:

  
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on 16 / 11 /2011

Kimberley Dripps, Deputy Secretary  
Department of Sustainability, Environment, Water, Population and Communities

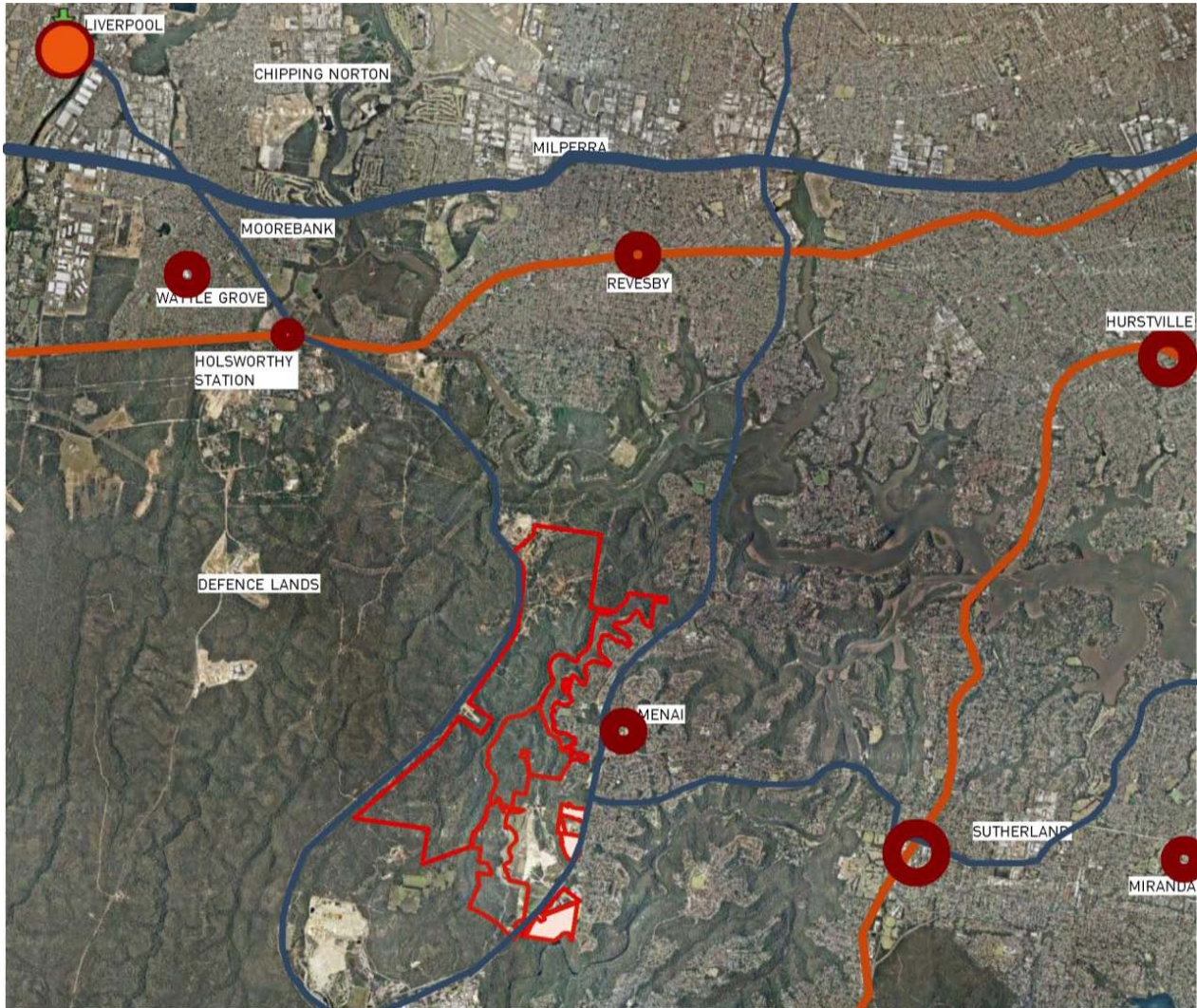
  
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on 27 / 10 /2011

Insert Name and Title  
GLALC

MARK (JACK) JOHNSON  
CEO

## Attachment A: Heathcote Ridge Development Site





**Terms of Reference for a Strategic Impact Assessment Report**

**1 PURPOSE AND DESCRIPTION OF THE PLAN BEING ASSESSED**

- 1.1 The reports, referred to in clause 6 of the agreement, must briefly summarise the Program, including:
- (a) how the Program has been developed and its legal standing
  - (b) the regional context (natural and human)
  - (c) the land use planning (zoning) arrangements and outcomes,
  - (d) the basis of land and asset tenure for all land within the scope of the Program
  - (e) the legal and administrative frameworks that have supported development of the Program that will ensure its implementation, including for protection of natural assets, MNES and the environment of Commonwealth land. This should include legal standing and relationship to other relevant policies, plans, guidelines, commitments and legislation/regulation, including
  - (f) the consultation activities that have been undertaken to-date
  - (g) the actions that will take place under the Program over the short, medium and long term. This may include relevant construction and operational aspects associated with urban, commercial and industrial development, and
  - (h) State, local government and GLALC management, planning and approval arrangements and the entity responsible for their implementation.

**2 THE ENVIRONMENT AND MNES IN THE HEATHCOTE RIDGE VICINITY**

**2.1. Environment affected by the Program**

- 2.1.1 The reports must describe the general environment likely to be affected by the Program. This includes the environments within, adjacent to and downstream of development sites that are likely to be directly or indirectly impacted. The environmental assets and characteristics, together with biophysical, ecological and hydrological processes, including considerations of surface and ground water and recharge and discharge, must be identified and discussed.
- 2.1.2 The reports must discuss all MNES under the EPBC Act that may be affected by the Program and should describe methodologies used to identify areas of high priority for MNES, biodiversity, or other natural value.
- 2.1.3 The reports must briefly describe the general environment of Commonwealth land in the adjacent Holsworthy Military Training Area that may potentially be impacted by implementation of the Program.

**2.2. Identifying areas of high environmental value**

- 2.2.1 The reports must identify areas considered to provide a long term and viable contribution to the persistence and resilience of MNES, and the conservation of biodiversity and ecological processes. These include, but are not limited to:
- (a) habitat for EPBC Act listed species including migratory species

- (b) EPBC Act listed ecological communities
- (c) areas containing native vegetation with habitat for listed species
- (d) riparian corridors
- (e) Ramsar wetlands (if relevant)
- (f) National Heritage Places and other heritage sites including those on the Register of National Estate, and
- (g) the environment on Commonwealth land.

### **3. HOW THE PLAN WILL PROMOTE ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

- 3.1** The reports must provide the background, history and basis for development of Heathcote Ridge. The report should also briefly describe social and economic factors and considerations associated with development under the Program.
- 3.2** The reports must identify the mechanisms for achieving ecologically sustainable development including actions to maintain or enhance biodiversity.

### **4. IMPACTS ON MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE**

#### **4.1 Nature and extent of impacts**

The reports must include an analysis of the potential short, medium and long term, direct and indirect impacts of implementing the Program on MNES. The report must describe the protection and conservation measures within the Program and their basis and justification. The impact analysis should make specific reference to the areas described in section 2.2 where they affect the management of impacts on MNES. The analysis must also discuss the likely influence of projected climate change scenarios on these impacts.

#### **4.2 Management, mitigation and offsetting of likely impacts**

The reports must describe the measures and undertakings to be implemented under the Program to avoid, mitigate and offset potential impacts on MNES. The report must set out statutory and other arrangements in place to implement commitments and undertakings for protection and management of MNES, including intended monitoring, evaluation and compliance responsibilities and reporting.

#### **4.3 Impacts on Commonwealth land**

The reports must describe potential direct and indirect impacts on the environment of Commonwealth land at the Holsworthy Military Training Area and any intended measures to avoid, mitigate or otherwise manage any adverse impacts identified.

### **5 ADAPTIVE MANAGEMENT: ADDRESSING UNCERTAINTY AND MANAGING RISK**

- 5.1** The reports must identify the uncertainties associated with implementing the Program and intended actions or responses to address uncertainties, and to adapt to changed circumstances, where there are risks to MNES or the environment of Commonwealth land.

- 5.2** The reports must also set out the circumstances in which the planning mechanisms and frameworks that will implement the Program may be reviewed or modified, to ensure better protection of MNES or the environment of Commonwealth land, and the procedures, if any, that would be used to ensure an adaptive management approach.

## **6 AUDITING AND REPORTING**

- 6.1** The reports must set out:
- (a) monitoring, public reporting and independent auditing to be undertaken
  - (b) record keeping and review processes under the Program, and
  - (c) the person(s)/authorities responsible for these actions.

## **7 INFORMATION SOURCES**

- 7.1** The reports must identify the source of information and data relied upon to make judgments, including, but not limited to the impacts and appropriateness of mitigation measures.
- 7.2** The information and analysis contained within the reports must be informed by all relevant current Commonwealth policies.
- 7.3** All information is to be presented in a clear and unbiased manner.

**Strategic Assessment Endorsement Criteria**

Under section 146 of the EPBC Act, in order to endorse a policy, plan or program, the Minister must be satisfied that the Strategic Impact Assessment Report adequately addresses the impacts to which the agreement relates and that any modifications to the program recommended by the Minister, or modifications having the same effect, have been made.

In determining whether to endorse the Program as described in the final Program Report, the Minister will have regard to the extent to which the Program is consistent with the objectives of the Act in that it:

- protects the environment, especially MNES and the environment of Commonwealth land
- promotes ecologically sustainable development
- promotes the conservation of biodiversity
- demonstrates adaption to reasonable climate change scenarios
- provides for the protection and conservation of heritage.

Without limiting the matters the Minister may consider when making the decision to endorse the Program, the Minister will consider the manner in which the Program:

- provides for the avoidance of impacts on MNES or areas of high biodiversity or heritage value
- mitigates impacts on MNES
- offsets impacts on MNES
- contributes to the enhancement of the existing environmental and management of existing threats
- provides a comprehensive framework of adaptive management, monitoring, auditing and public reporting.