

TERMS OF REFERENCE FOR THE MIDDLE ARM SUSTAINABLE DEVELOPMENT PRECINCT UNDER THE EPBC ACT

On 31 March 2022, the Chief Minister of the Northern Territory Government entered into an agreement (**the Agreement**) with the Commonwealth Minister for the Environment (**the Commonwealth Minister**), pursuant to section 146(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), to undertake a strategic assessment of the impacts of actions taken within the defined Middle Arm Sustainable Development Precinct (**strategic assessment area**) on matters protected by a provision of Part 3 of the EPBC Act (**protected matters**).

The Agreement requires the Department of Infrastructure, Planning and Logistics (**the proponent**) to prepare the following documents which will be considered by the Commonwealth Minister:

- A Program (**the Program**). The purpose of the Program is to provide opportunities for the sustainable development of the strategic assessment area in accordance with the requirements of the EPBC Act.
- An Environmental Impact Statement (**EIS**). The purpose of the EIS is to:
 - assess the impact of implementing the Program, including from a class of actions proposed under the Program on protected matters; and
 - address how those impacts will be avoided, mitigated and offset (where necessary or appropriate) to ensure the long-term protection of those protected matters.

These Terms of Reference specify what must be included in the draft EIS to satisfy Commonwealth requirements under Part 10 of the EPBC Act.

Steps or processes in the assessment of the impacts of the actions to be taken in accordance with the Program under Part 10 of the EPBC Act may be done concurrently with the *Environmental Protection Act (NT)* proponent initiated Environmental Impact Statement as provided for in Clause 4 of the Agreement.

1. PURPOSE OF THE DRAFT EIS

- 1.1. The draft EIS must assess the impacts of implementing the Program, including the impacts of a class of actions proposed under the Program, on protected matters.
- 1.2. The draft EIS will enable the Commonwealth Minister to evaluate the ability of the Program to ensure the long-term protection and conservation of the protected matters within the strategic assessment area.
- 1.3. The draft EIS must demonstrate how the Program has been developed to meet the requirements of the Agreement, including the endorsement criteria.

2. DESCRIPTION OF THE PROGRAM

- 2.1. To assess the impacts of implementing the Program, the draft EIS must describe and summarise the key elements of the Program to which the Agreement relates, including:
 - a. A summary outlining the Program's overall purpose, key elements, spatial extent and timeframes, including how long the Program is to be in effect.

- b. The conservation outcomes and commitments to be delivered for protected matters including measures to avoid, mitigate and offset the impacts of implementing the Program.
 - c. The identification of a class of actions to be taken under the Program over the life of the approval¹.
 - d. The identification of a class of actions that is outside the scope of the Program.
 - e. The relationship of the Program to other relevant Commonwealth and Northern Territory policies, plans, guidelines, commitments, regulations and legislation (including environmental approvals). In particular, an assessment of why implementing the Program will not be inconsistent with any relevant Recovery Plan or Threat Abatement Plan, and how the Program has had regard to any relevant Conservation Advice.
 - f. The legal and administrative frameworks to implement and ensure compliance with the Program, and the persons and authorities responsible for the implementation of and compliance with the Program.
 - g. Management and funding arrangements for implementing the Program and complying with any approval given with respect to the Program under Part 10 of the EPBC Act, including but not limited to a description of the mechanism that will be used by Department of Infrastructure, Planning and Logistics to verify the persons who are proposing to take an action in accordance with the Program, and to inform those persons of any relevant obligations and conditions of the approval.
- 2.2. The EIS must describe the need and justification for the Program, including the environmental, social and economic drivers for its implementation.
- 2.3. The EIS must describe the decision-making framework used in considering alternatives and developing the outcomes and commitments for the Program. It should identify the alternative options that were evaluated to reach the draft Program, and why these options were not supported.
- 2.4. The EIS must describe how the principles of ecologically sustainable development (as set out in section 3A of the EPBC Act) are considered and incorporated into the development and implementation of the Program.

3. DESCRIPTION OF THE PROTECTED MATTERS IMPACTED BY THE PROGRAM

- 3.1. The EIS must describe the nature of the environment within the strategic assessment area that may be impacted by actions proposed to be taken under the Program. This must include, at a minimum:
- a. A description and map of current and historical land-use, including consideration of areas which may be subject to environmental impact.
 - b. The broad extent, type and quality of vegetation present in the strategic assessment area.

¹ Please note that actions or classes of actions that have not been assessed through the Report cannot be covered by a Part 10 approval.

- c. A description of the nature of the environment, including the state of natural and physical resources, ecological processes, and threatening processes.
 - d. A description of the landscape containing key environmental matters, such as any known habitat connectivity, habitat fragmentation, and ecological processes.
 - e. A map or maps of areas that are already protected, including national parks, nature reserves, and known offset areas under both Commonwealth and Northern Territory legislation.
- 3.2. The draft EIS must identify and describe each protected matter that may be impacted directly, indirectly and cumulatively by actions proposed to be taken under the Program. This must include, at a minimum:
- a. Descriptive and spatial information for listed threatened and/or migratory species found within or adjacent to the strategic assessment area outlining habitat type, quality and area (in hectares), landscape context, listing status, threatening processes, estimates of population size or abundance and distribution.
 - b. Descriptive and spatial information for listed ecological communities found within or adjacent to the strategic assessment area, outlining their known and potential extents (in hectares), condition, listing status, threatening processes, habitat quality and landscape context.
 - c. The identification of any critical or important areas for protected matters, including consideration of the importance of both small and large areas of habitat, habitat connectivity, their position in the landscape and areas likely to be important for maintaining ecological processes for protected matters.
 - d. Maps detailing habitat type and extent for the listed threatened species, migratory species and ecological communities found within the strategic assessment area.
 - e. The location of any declared World Heritage properties or National Heritage places found within the strategic assessment area, including a description of the associated heritage values.
 - f. Justification as to the suitability of the methodologies, surveys or processes used to identify/estimate the presence/absence and potential extent of protected matters within the strategic assessment area.
 - g. Details of any information gaps or uncertainties in identifying the protected matters found within the strategic assessment area, including any further studies or measures required to address these gaps.
- 3.3. The draft EIS, in identifying the protected matters potentially impacted by the Program, must:
- a. Be compiled and assessed with regards to relevant EPBC Act statutory documents or policies, including but not limited to: Recovery Plans, Conservation Advices, Threat Abatement Plans and Referral Guidelines.

- b. Assume the worst-case scenario where there is a high degree of uncertainty or risk, in line with the precautionary principle (for example, assume the presence of a listed threatened species unless it can be proven otherwise).

4. ASSESSMENT OF THE IMPACTS OF IMPLEMENTING THE PROGRAM ON PROTECTED MATTERS

- 4.1. The draft EIS must describe and assess the likely direct, indirect and cumulative impacts of implementing the Program, including any actions taken under the Program, on protected matters. The level of assessment will be proportionate to the level of likely risk to each protected matter.
- 4.2. The draft EIS must describe and provide justification for the method used to assess likely impacts to all protected matters arising from actions proposed to be taken under the Plan. The method must:
 - a. Be appropriate for assessment at a strategic scale.
 - b. Rely on the best available information.
 - c. Preference, where possible, the collection of site-specific data (e.g. field surveys).
 - d. Discuss uncertainty, including reference to the data and information sources relied upon.
 - e. Assume the worst-case scenario where there is a high degree of uncertainty or risk (i.e. apply the precautionary principle to the assessment of impacts).
- 4.3. The draft EIS must identify:
 - a. How impacts to protected matters will be avoided.
 - b. The duration, extent, area and likely severity of the impacts, assessed in accordance with the precautionary principle.
 - c. The mitigation measures that will be implemented and their likely effectiveness to reduce impacts to protected matters.
 - d. How residual impacts that cannot be avoided or mitigated will be offset in accordance with the principles of the EPBC Act, *Environmental Offsets Policy, 2012*².
 - e. The proposed funding arrangements and timeframes for the delivery of avoidance, mitigation and offset requirements.
 - f. Environmental outcomes and commitments for the management and conservation of protected matters for the life of the Program.

² As amended from time to time, or any other Commonwealth policy that relates to offsets that replaces this policy

4.4. The draft EIS must provide evidence as to the adequacy and likely effectiveness of the environmental outcomes and commitments proposed in the Program in conserving and managing protected matters. To do this, the draft EIS must:

- a. Demonstrate how the environmental outcomes and commitments will effectively manage and conserve protected matters for the life of the Program.
- b. Demonstrate how environmental outcomes and commitments for protected matters are to be documented, delivered and adequately resourced throughout the life of the Program.
- c. Demonstrate the effectiveness of implementation frameworks, funding arrangements and administrative processes to deliver the environmental outcomes and commitments proposed in the Program, including the identification of individuals who will be responsible for the delivery of proposed commitments.
- d. Outline how the proposed environmental outcomes and commitments will be tracked and adaptively managed to improve their implementation, especially in situations where monitoring demonstrates the delivery of the outcomes and commitments is not leading to the effective management and conservation of protected matters.
- e. Identify how new information relating to protected matters, including legislative changes, will be assessed and accounted for in the implementation of the Program.
- f. Provide evidence to demonstrate how the proposed outcomes and commitments will be enforced and administered to third-parties to ensure protected matters are managed and protected over the life of the Program.

4.5. The draft EIS must provide evidence as to the adequacy and likely effectiveness of proposed outcomes and commitments for the achievement of administrative and regulatory efficiencies. To do this, the draft EIS must:

- a. Identify and assess how the proposed implementation of the Program and Part 10 Approval will deliver reduced administrative burden to third-parties who will utilise the approval, other parties who may be impacted by the approval, and regulators.
- b. The effectiveness of the proposed administrative systems to inform, educate, verify, administer and track third-party requests to undertake an endorsed action under the Program.
- c. The effectiveness of proposed administrative systems to capture/monitor the environmental impacts of each action taken under the Plan and ensure compliance with the Program will be monitored and non-compliance reported.

4.6. The draft ES may also consider matters that are potentially eligible for listing as a result of inclusion in a final priority assessment listing held by the Commonwealth, or a recommendation to the Commonwealth Minister for listing by the Threatened Species Scientific Committee, prior to the draft EIS being

submitted, to ensure that all protected matters listed at the time of the endorsement decision have been considered.

- 4.7. The draft EIS must detail how adaptation to reasonable climate change scenarios has been considered where such data exists or is required to be considered by a particular EPBC Act statutory document for a protected matter (such as a Recovery Plan), and what (if any) effect this would have on the outcome for protected matters.
- 4.8. The draft EIS must consider the extent to which the impacts to protected matters of actions proposed under the Program would be consistent with the requirements and objectives of the EPBC Act, including but not limited to:
 - a. How approving a class of actions to be taken in accordance with the Program, if endorsed, would not be inconsistent with Australia's international obligations, including but not limited to, the Biodiversity Convention, Apia Convention, CITES, World Heritage Convention, Ramsar Convention, Bonn Convention, CAMBA, JAMBA and any other international agreement (section 146G, 146J, 146K and 146L of the EPBC Act).
 - b. How approving a class of actions to be taken in accordance with the Program would not be inconsistent with any relevant Recovery Plans or Threat Abatement Plans (section 146K(2) of the EPBC Act).
 - c. How regard will be given to the objectives, conservation actions and other relevant information in any relevant Conservation Advices (section 146K(3) of the EPBC Act).
 - d. How approving a class of actions to be taken in accordance with the Program would not be inconsistent with management plans for National Heritage places (sections 324S and 324X of the EPBC Act), management plans for declared World Heritage properties (sections 146G of the EPBC Act), the Australian World Heritage management principles (section 146G of the EPBC Act) and the National Heritage management principles (section 146H of the EPBC Act).
- 4.9. The draft EIS must assess how the Program meets the objectives of the EPBC Act, including how the plan promotes the principles of ecologically sustainable development (as set out in section 3A of the EPBC Act).

5. IMPLEMENTATION AND ASSURANCE PLAN

- 5.1. As established in the Agreement, the Program must commit to and outline an Implementation Plan (Clause 5.3(e)) that describes how the Program will be efficiently and effectively implemented (including how outcomes and commitments for the conservation of protected matters set out in the Program will be achieved) and Assurance Plan (Clause 5.3(f)) that describes how the named approval holder (or holders) will demonstrate and adaptively manage the effectiveness of proposed regulatory, administrative and protected matter outcomes.
- 5.2. The draft EIS must assess the effectiveness and efficiency of the proposed Implementation and Assurance Plan to explain how:

- a. The verification process will be used to administer and track the use of the Part 10 Approval by persons who are undertaking an action in accordance with the Program.
- b. Third-parties undertaking actions under the Part 10 Approval are informed of, and understand, their obligations under the Program and approval.
- c. Outcomes and commitments for protected matters, and regulatory and administrative efficiencies, will be monitored, documented, delivered, and adequately resourced throughout the life of the Program.
- d. Governance arrangements will be developed to implement the Part 10 Approval, including the roles and responsibilities of the Parties and the named approval holder (or holders) throughout the life of the Program.
- e. The named approval holder (or holders) will monitor, evaluate, review and adaptively manage the effectiveness of proposed regulatory, administrative and protected matter outcomes, commitments and approval conditions; this must include a process for auditing and reporting to provide transparency for stakeholders.

6. EVALUATION OF THE OVERALL OUTCOMES OF THE PROGRAM

- 6.1. The draft EIS must evaluate the overall conservation commitments and environmental outcomes for protected matters, taking into account likely impacts to protected matters from implementing the Program (including any actions proposed to be taken under the Program) and the Assurance and Implementation Plan.
- 6.2. The evaluation must include:
 - a. The extent to which protected matters are represented in the strategic assessment area.
 - b. The extent to which protected matters are represented in areas to be protected or managed under the Program.
 - c. The extent to which any areas to be protected or managed under the Program will ensure the long-term protection of each protected matter, and the on-going function of any key ecosystem services needed for the on-going viability of protected matters.
 - d. Whether there will be serious and irreversible impacts to any protected matter.
 - e. The extent to which the outcomes and commitments proposed under the Program address any significant vulnerabilities of protected matters including under reasonable climate change scenarios.
 - f. The likely effectiveness of the outcomes and commitments proposed under the Program in protecting and managing protected matters and any risks and uncertainties.
 - g. An assessment of how the Program meets the endorsement criteria, as set out in the Agreement at Attachment 2.

- h. An analysis and justification as to why Department of Infrastructure Planning and Logistics considers that the impacts of implementing the Program are acceptable.

7. ADDRESSING UNCERTAINTY AND RISK

- 7.1. The draft EIS must identify key uncertainties and risks associated with implementing the Program, responses to these and proposed adaptations to changing circumstances. Key uncertainties may include:
 - a. Knowledge gaps in scientific understanding and responding to new knowledge.
 - b. Assumptions made in assessing potential impacts and benefits.
 - c. How changes to Commonwealth, Northern Territory and local government legislation, policies, plans and advice are to be accounted for in the management of the areas impacted by the implementation of the Program.
 - d. The effectiveness or capacity to ensure the Program is implemented.

8. INFORMATION SOURCES

- 8.1. The draft EIS must identify the sources of information and data relied upon including the reliability and currency of the data.
- 8.2. The draft EIS may include summaries of independent peer review processes. If the review(s) are publicly available, the draft EIS will provide details of where they are publicly available.