

AMENDING AGREEMENT NO. 1

Bilateral agreement made under
section 45 of the *Environment
Protection and Biodiversity
Conservation Act 1999* (Cth)

Amending the Original Agreement
relating to environmental
assessment

Commonwealth of Australia
(**Commonwealth**)

and

The State of New South Wales
(**NSW**)



Details

Parties

The parties to this Agreement are:

1. the Minister for the Environment for and on behalf of the Commonwealth of Australia (**Commonwealth**); and
2. each of the Minister for Planning and the Minister for the Environment, for and on behalf of the State of New South Wales (**NSW**).

Background

- A. The Commonwealth and NSW entered into a bilateral agreement for environmental assessment under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* dated 26 February 2015 (the **Original Agreement**).
- B. Since entering into the bilateral agreement, NSW has repealed the *Threatened Species Conservation Act 1995* (NSW) and each of the *Biodiversity Conservation Act 2016* (NSW) and *Environmental Planning and Assessment Amendment Act 2017* (NSW) have commenced.
- C. Pursuant to clause 19.3 of the Original Agreement, the Commonwealth and NSW have agreed to amend the terms of the Original Agreement in accordance with this Amending Agreement No 1.

Provisions

1. Commencement

This Amending Agreement No 1 commences on signature by the last party to sign.

2. Amendments to the Original Agreement

With effect from the commencement of this Amending Agreement No 1, the parties agree to the following amendments to the Original Agreement. The Original Agreement is varied by:

- (a) inserting all clauses and words that are double underlined; and
- (b) deleting all clauses and words that are crossed through,

in the copy of the Original Agreement that forms Attachment A to this Amending Agreement No 1.

3. Nature of the Agreement

The Original Agreement continues in full force and effect, as amended by this Amending Agreement No 1.



parties will jointly develop new Administrative Arrangements as set out in clause 11.1 of the Original Agreement (as amended by this Amending Agreement No 1) within 6 months after the commencement of this Amending Agreement No 1.

5. Transitional Arrangements

Where:

- (a) in respect of an action:
 - (i) the NSW Minister has indicated in a written notice to the Commonwealth Minister that the action would be assessed in the manner specified in Schedule 1 to the Previous Bilateral Agreement; and
 - (ii) the relevant assessment process for that action had not been completed before the revocation of the Previous Bilateral Agreement; or
- (b) in respect of an action:
 - (i) paragraph (a) of this clause 5 of this Amending Agreement No 1 does not apply; and
 - (ii) Part 7 of the *Biodiversity Conservation Act 2016* (NSW) does not apply; and
 - (iii) the provisions of the *Environmental Planning and Assessment Act 1979* (NSW) that would be in force if that Act had not been amended by the *Biodiversity Conservation Act 2016* (NSW) do apply,

the provisions of the Original Agreement will continue to apply to that action without the amendments made by this Amending Agreement No 1.

In this clause 5 a reference to the '**Previous Bilateral Agreement**' is to the bilateral agreement, dated 20 December 2013, between the Commonwealth and the State of New South Wales, relating to environmental impact assessment.

6. Interpretation

A reference in this Amending Agreement No 1 to the Commonwealth *Environment Protection Biodiversity Conservation Act 1999* (Cth) is a reference to the relevant Act as in force at the commencement of this Amending Agreement No 1.

Unless the contrary intention appears, the terms used in this Amending Agreement No 1 have the same meaning as in the Original Agreement.

7. Counterparts

This Amending Agreement No 1 may be executed in counterparts. All executed counterparts constitute one document.

Execution page

EXECUTED as an Agreement

SIGNED for and on behalf of the Commonwealth of Australia as represented by:

The Hon Melissa Price MP
Minister for the Environment

Date

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

The Hon Anthony Roberts MP
Minister for Planning

Date

The Hon Gabrielle Upton MP
Minister for the Environment

Date

ATTACHMENT A TO AMENDING AGREEMENT NO 1

BILATERAL AGREEMENT

Bilateral agreement made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) relating to environmental assessment

Commonwealth of Australia
(**Commonwealth**)

and

The State of New South Wales
(**NSW**)



Table of contents

Details	<u>38</u>
Provisions	<u>510</u>
1. Definitions and interpretation	<u>510</u>
2. Nature of this Agreement	<u>712</u>
3. Agreement Period	<u>712</u>
4. Effect of this Agreement	<u>712</u>
5. Cooperative approach to referrals	<u>813</u>
6. Assessment	<u>914</u>
7. Relevant plans, policies and other instruments	<u>1417</u>
8. Information, access to information and transparency	<u>1521</u>
9. Co-operation	<u>1723</u>
10. Heritage management plans	<u>1824</u>
11. Administrative Arrangements	<u>1824</u>
12. Reports	<u>1925</u>
13. Review	<u>2026</u>
14. Sharing Information – ongoing EPBC Act matters	<u>2127</u>
15. Audit	<u>2228</u>
16. Escalation	<u>2228</u>
17. Suspension or cancellation	<u>2329</u>
18. Transitional	<u>2430</u>
19. Amendment	<u>2430</u>
20. Freedom of information	<u>2530</u>
21. General provisions	<u>2531</u>
Schedule 1 – Declared classes of actions	<u>2632</u>
1. Preamble	<u>32</u>
2. Classes of actions to which clause 4.1 applies	<u>32</u>
3. General	<u>34</u>
Schedule 2 – Open access to Information	<u>3138</u>
Schedule 3 – Guidance documents for Matters of National Environmental Significance	<u>3441</u>

DRAFT

Schedule 4 – Additional streamlining measures

3643

Execution page

3845

Details

Parties

The parties to this Agreement are:

1. the Minister for the Environment for and on behalf of the Commonwealth of Australia (**Commonwealth**); and
2. the Minister for Planning for and on behalf of the State of New South Wales (**NSW**).

Background

- A. The parties are committed to working together across their shared responsibilities to protect and conserve Australia's environment.
- B. Both the Commonwealth and NSW are committed to strengthen intergovernmental cooperation on the environment and to minimise costs to business while maintaining high environmental standards.
- C. A manner of assessment specified in Schedule 1 of this Agreement applies only to an action that has been determined to be a controlled action by the Commonwealth Minister and where the NSW Minister has provided notice that the action will be assessed in accordance with a manner specified in Schedule 1 to this Agreement.

Objects

- D. Under the Memorandum of Understanding dated 5 November 2013, the Commonwealth and NSW committed to establish a 'One-Stop Shop' for environmental approvals under the EPBC Act, removing duplication of assessment and approval processes while maintaining high environmental standards.
- E. This Agreement facilitates the establishment of a 'One-Stop Shop' for environmental regulation by:
 - a. accrediting, under section 47 of the EPBC Act, certain NSW processes for assessment under the *Environmental Planning and Assessment Act 1979* (NSW) and in accordance with Schedule 1; and
 - b. declaring that actions assessed in a manner specified in Schedule 1 do not require assessment under Part 8 of the EPBC Act; and
 - c. committing NSW to preparing an Assessment Report and a recommendation to the Commonwealth on whether to approve an action and if so under what conditions, which, to the greatest extent possible, address impacts to Matters of NES so that there are not unacceptable or unsustainable impacts on those matters; and
 - d. committing the Commonwealth to making its best endeavours to ensure that conditions under the EPBC Act are strictly limited to matters not addressed, or likely to be addressed, by NSW conditions.
- F. This Agreement aims to:
 - a. ensure Australia complies fully with its international environmental obligations;

- b. ensure Matters of NES are protected as required under the EPBC Act;
 - c. promote the conservation and ecologically sustainable use of natural resources;
 - d. ensure an efficient, timely and effective process for environmental assessment and approval of actions; and
 - e. minimise duplication in the environmental assessment and approval processes of the Commonwealth and NSW.
- G. The parties will use their best endeavours to implement the commitments in this Agreement acting in a spirit of cooperation and consultation to achieve an efficient, timely and effective process for environmental assessment and approval.
- H. The parties agree to use their best endeavours to finalise an approval bilateral agreement.

Provisions

1. Definitions and interpretation

1.1. Definitions

In this Agreement, except where the contrary intention is expressed, terms have the same meaning as in the EPBC Act and otherwise the following definitions are used:

Accredited Process	a manner of assessment specified in Schedule 1 of this Agreement.
Administrative Arrangements	administrative arrangements made under clause 11 of this Agreement.
Agreement	this bilateral agreement made under section 45 of the EPBC Act between the Commonwealth and NSW, as amended from time to time, including its Schedule(s).
Assessment Report	<u>an assessment report for the purposes of section 130(2)(a) of the EPBC Act, that is prepared under an Accredited Process and provided by NSW to the Commonwealth in accordance with clause 6.2. To avoid doubt, this definition does not affect the definition of an assessment report for the purpose of NSW laws, the report provided by NSW to the Commonwealth described in clause 6.2, which is an Assessment Report for the purpose of s.130(2)(a) of the EPBC Act,</u>
Commencement Date	the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so.
Commonwealth Minister	the Minister administering the EPBC Act and, where relevant, including a person authorised by the Minister for the purposes of this Agreement, or a delegate of the Minister.
Department	the Commonwealth Department of the Environment <u>and Energy</u> , or any other Commonwealth Agency that administers this Agreement from time to time.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
<u>EPBC Regulations</u>	<u>the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i>.</u>
Information	includes data.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the

	common law and rules of equity, as applicable from time to time.
Matter of NES	a matter of national environmental significance protected by a provision of Part 3 of the EPBC Act.
NSW Minister	<p>(a) the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> (NSW); and</p> <p>(b) if the term is used in connection with an assessment of a controlled action under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) or a dispute that relates to the administration of such an assessment, includes the Minister who is the determining authority for the controlled action, or to whom the determining authority for the controlled action is responsible, and a person authorised by that Minister for the purposes of this Agreement; and</p> <p>(c) includes a person authorised by the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> (NSW) for the purposes of this Agreement, or a delegate.</p>
Previous Bilateral Agreement	the bilateral agreement, dated 20 December 2013, between the Commonwealth and the State of New South Wales, relating to environmental impact assessment.
Schedule	a schedule to this Agreement.
Senior Officers' Committee	the committee established under clause 11.2.

1.2. Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;
- (d) a reference to a clause, paragraph, Schedule or annexure is to a clause or paragraph of, or Schedule or annexure to, this Agreement;
- (e) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (f) notes and headings are for convenient explanation or reference only and do not form part of this Agreement or affect the meaning of the provisions to which they relate.

1.3. Priority of Agreement documents

- (a) If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
 - (i) Schedule 1;
 - (ii) the details and operative provisions of this Agreement;
 - (iii) Schedules 2, 3 and 4, in their order of appearance.
- (b) Administrative Arrangements will be read subject to this Agreement.

1.4. Undertakings by NSW

- (a) An undertaking by NSW (however expressed) in this Agreement does not operate to require NSW or any person in NSW to do anything to the extent that the doing of that thing would be inconsistent with NSW Laws.
- (b) To avoid doubt, this Agreement does not require NSW to make, to amend or to repeal any NSW Laws.

2. Nature of this Agreement

- (a) This Agreement is a bilateral agreement for the purposes of section 45 of the EPBC Act.
- (b) The parties do not intend this Agreement to create contractual or other legal obligations between the parties, other than as provided for in the EPBC Act.
- ~~(c) Transitional support from the Commonwealth in the form of embedded officers will be provided in accordance with the Administrative Arrangements.~~

3. Agreement Period

3.1 Term of Agreement

This Agreement commences on the Commencement Date and continues until it is rescinded or revoked by further agreement between the parties or it is cancelled in accordance with the EPBC Act.

Note: Section 65(2) of the EPBC Act requires the Commonwealth Minister to cause a review of the operation of this Agreement to be carried out at least once every five years while this Agreement remains in effect. The operation of provisions of this Agreement may also be suspended under the EPBC Act for a period of time specified in a notice of suspension.

4. Effect of this Agreement

4.1. Declaration

Subject to clause 4.2 and 4.3, it is declared that an action does not require assessment under Part 8 of the EPBC Act if the action is in the class of actions specified in Schedule 1 to this Agreement.

4.2. Scope

- (a) Clause 4.1 applies to actions which occur within NSW, including the coastal waters of NSW.

- (b) Where an action forms part of a larger action that does not occur wholly within the State of NSW, NSW will consult and use its best endeavours to coordinate its assessment and approval processes with other relevant jurisdictions.
- (c) Consistent with section 49 of the EPBC Act, the provisions of this Agreement including clause 4.1 do not have effect in relation to:
 - (i) an action in a Commonwealth area;
 - (ii) where an action is not wholly within a Commonwealth area – that part of the action that is in a Commonwealth area; or
 - (iii) an action taken by the Commonwealth or a Commonwealth agency, but only where:
 - (iv) the action is State significant development or State significant infrastructure within the meaning of the *Environmental Planning and Assessment Act 1979* (NSW); and
 - (v) before the environmental impact statement for the action is published as required under the *Environmental Planning and Assessment Act 1979* (NSW), the Commonwealth Minister and NSW Minister agree in writing that the action is to be assessed under this Agreement.
- (d) Clause 4.1 This Agreement applies to an action that is outside a Commonwealth area, but has, will have or is likely to have a significant impact on a Commonwealth area.

4.3. Determination that an action is not within a class of actions

- (a) The Commonwealth Minister may determine that a particular action is not within a class of actions to which clause 4.1 applies.
- (b) The Commonwealth Minister cannot make a decision under clause 4.3(a) after the NSW Minister has given notice under clause 5.4 advised the Commonwealth Minister whether the action will be assessed under an Accredited Process.

4.4. Previous bilateral agreement

The Previous Bilateral Agreement is revoked from the Commencement Date and replaced by this Agreement.

5. Cooperative approach to referrals

5.1 NSW to inform proponents of need to refer under the EPBC Act

- (a) NSW will use its best endeavours to inform proponents that an action may need to be referred to the Commonwealth.
- (b) The parties note that, under section 69 of the EPBC Act, the State may refer a proposal to the Commonwealth Minister for a decision on whether the proposal is a controlled action.

5.2 Commonwealth consideration of proposed action

Where a Commonwealth agency becomes aware of an action that may belong to a class of actions to which the declaration in clause 4.1 applies, the Commonwealth

agency may direct the proponent of the action to NSW for a decision on whether the action will be assessed in a manner specified in Schedule 1 to this Agreement.

5.3 Commonwealth Minister to inform NSW Minister about whether an action is a controlled action

The Commonwealth Minister must notify the NSW Minister of every action that:

- (a) is proposed to be taken in NSW; and
 - (b) the Commonwealth Minister determines is a controlled action,
- within 10 business days of the Minister deciding that the action is a controlled action.

5.4 Notification by NSW Minister whether an accredited process will apply

- (a) Where:
 - (i) the Commonwealth Minister has notified the NSW Minister that an action proposed to take place in NSW is a controlled action; ~~and~~
 - (ii) the action does not require assessment under Part 8 of the EPBC Act if assessed ~~in a manner specified in Schedule 1 of this Agreement,~~under an Accredited Process; and
 - (iii) the NSW Minister has not previously advised the Commonwealth Minister in writing whether the action will be assessed under an Accredited Process.

the NSW Minister must, within 10 business days after receiving the written notice referred to in clause 5.3, advise the Commonwealth Minister, in writing, whether the action will be assessed ~~in a manner specified in Schedule 1 to this Agreement~~under an Accredited Process.

5.5 Use of Accredited Process to assess an action

~~(b)~~The parties agree to use their best endeavours, including by giving full effect to clause 5.1, to ensure that the Accredited Process is used for the assessment of an action to the greatest extent possible.

6. Assessment

6.1. Identification of impacts on Matters of NES

If an action is likely to have a significant impact on a Matter of NES, NSW will, as early as possible:

- (a) take reasonable steps to make the proponent of the action aware that there may be requirement for an approval of the action under Part 9 of the EPBC Act; and
- (b) require or request (as relevant to the Accredited Process) the proponent of the action to identify any impacts or likely impacts of the action on each Matter of NES.

Note 1: Depending on the Accredited Process, Information may either be required or requested by the relevant NSW decision-maker.

Note 2: The obligation under clause 6.1 may be undertaken in accordance with standard guidelines, which outline the requirement of proponents to consider the application of the EPBC Act where an action is likely to have a significant impact on a Matter of NES.

Note 3: The requirement to identify impacts on Matters of NES in an application referred to in clause 6.1 may be included in guidelines or standard templates for applications.

6.2. General approach to assessment

- (a) NSW will ensure there is sufficient Information in the Assessment Report on the impacts of a controlled action covered by this Agreement on each relevant Matter of NES so that the Commonwealth decision-maker may consider those impacts when determining whether to approve the action and, if so, on what conditions. The extent of the assessment will be proportionate to the level of likely environmental risk.
- (b) In particular, NSW will ensure that:
- (i) all impacts of the action on each relevant Matter of NES are separately identified in the assessment of the action, where those impacts are likely to be significant; and
 - (ii) in relation to each listed threatened species, listed threatened ecological community or listed migratory species (within the meaning of the EPBC Act) likely to be affected by the action, the impacts of the action on the species or community in NSW are assessed having regard to the full extent of the species' or community's range or habitat; and
- Note: For example, clause 6.2(b)(ii) would require an assessment of impacts with regard to the national extent of a listed threatened species' habitat.*
- (iii) where the impacts of the action on a Matter of NES are likely to be significant, those impacts are addressed in the relevant Assessment Report and, where any material, opinion or Information has been relied on to a significant extent in the assessment of those impacts on the Matter of NES, that material, opinion or Information is, subject to clause 8.2(d), identified in the Assessment Report; and
 - (iv) where guidelines to inform the assessment of impacts on a Matter of NES are identified in the Administrative Arrangements, those guidelines are used or referred to in the assessment of the impacts of the action.
- (c) NSW will provide to the Commonwealth an Assessment Report that satisfies the requirements of clauses 6.2(a) and (b), and contains:
- (i) the recommendation to the NSW decision-maker regarding the determination of the relevant application in relation to the controlled action, including any recommended conditions to manage impacts on ~~M~~Matters of NES; and
 - (ii) a copy of the NSW decision when it is taken, along with a statement setting out:
 - (iii) a recommendation to the Commonwealth Minister relating to whether the action should be approved and, if so, what conditions (if any) should be attached to manage the impacts on Matters of NES, and reasons for the recommended decision and conditions; and
 - (iv) whether or not the recommendation (including recommended conditions) to the Commonwealth Minister is consistent with each of the factors in clause 7 of this Agreement.
- (d) To avoid doubt, the Assessment Report may be provided to the Commonwealth in parts and at separate times. The matters in clause 6.2(c)(i) may be provided to the Commonwealth before the matters in clause 6.2(c)(ii).

- ~~(e) To avoid doubt, a reference to the Assessment Report in this clause is a reference to that report for the purpose of the section 130(2)(a) of the EPBC Act. That definition does not affect the definition of an assessment report for the purpose of NSW laws.~~

6.3. Seeking expert advice

- (a) NSW will ensure that:
- (i) NSW will, jointly with the Commonwealth, obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development if the taking of the action, or a class of actions that includes the action, is determined to be a controlled action that is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity; and
 - (ii) NSW will take into account, when preparing the Assessment Report and in making a recommendation (including recommended conditions) to the Commonwealth Minister, any relevant advice obtained from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.
- (b) NSW may seek advice from other expert advisory bodies established under the EPBC Act or from the Department, through the Senior Officers' Committee, with details to be set out in the Administrative Arrangements.
- (c) The Commonwealth may seek expert advice from NSW in relation to the Assessment Report and the recommended decision (including recommended conditions) in the form of Information provided directly to the Commonwealth Minister, including but not limited to, through the presence of NSW officers at the briefing of the Commonwealth Minister, for the purposes of informing the Commonwealth Minister's decision on whether to approve the taking of an action under Part 9 of the EPBC Act.

6.4. Statutory undertaking

- (a) Where an action:
- (i) is taken or proposed to be taken in the State of NSW; and
 - (ii) is covered by the declaration in clause 4.1; and
 - (iii) is:
 - (A) taken or proposed to be taken by a constitutional corporation; or
 - (B) taken or proposed to be taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between the State and a Territory, or between two Territories; or
 - (C) an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

NSW undertakes to ensure that the environmental impacts of the action on a matter that is not a matter that is protected by a provision of Part 3 of the EPBC Act are assessed to the greatest extent practicable.

- (b) The parties agree that an impact is assessed to 'the greatest extent practicable' under clause 6.4(a) if it has been assessed to the greatest extent

practicable in accordance with applicable NSW Laws in which the Accredited Process is set out.

7. Relevant plans, policies and other instruments

7.1. Avoid, mitigate, offset hierarchy

- (a) To avoid unacceptable or unsustainable impacts that an action may have on Matters of NES, NSW will ensure that consistent with applicable NSW laws, the 'avoid, mitigate, offset' hierarchy of principles is applied when assessing the impacts of a controlled action and developing a recommendation (including recommended conditions) to the Commonwealth Minister.
- (i) ~~ensure that to the extent consistent with applicable NSW laws, the 'avoid, mitigate, offset' hierarchy of principles is applied when assessing the impacts of a controlled action and developing a recommendation (including recommended conditions) to the Commonwealth Minister;~~
- (ii) ~~if a residual significant adverse impact on a Matter of NES cannot be (or is not recommended to be) offset consistently with clause 7.2, take the first step in the escalation process set out in clause 16.1(a), as if there were a dispute between the parties.~~
- (b) For the purposes of clause 7.1, the 'avoid, mitigate, offset' hierarchy of principles are, in order of priority, the following:
- (i) significant adverse impacts on Matters of NES should be avoided;
- (ii) after all reasonable avoidance measures have been put in place, any residual significant adverse impacts on Matters of NES should be mitigated;
- (iii) if, after all reasonable avoidance and mitigation measures have been put in place, there are still residual significant adverse impacts on a Matter of NES, offsets should be applied.
- (c) Where:
- (i) an action will have a residual significant adverse impact on a Matter of NES; and
- (ii) an offset for the residual significant adverse impact on a Matter of NES can be determined through a NSW offset mechanism mentioned in clause 7.2(b); and
- (iii) NSW have not complied, or propose not to comply, with the requirements in clause 7.2(b) for the Assessment Report for the action, NSW must notify the Commonwealth as soon as practicable.

7.2. Offsets

- (a) The parties acknowledge that the NSW Biodiversity Offsets Scheme has been endorsed by the Commonwealth Minister as an 'endorsed state policy' for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999 Condition-setting policy*, as updated from time to time.
- (b) Where an action will have a residual significant adverse impact on a listed threatened species, listed threatened ecological community, or listed migratory species or a Matter of NES that relates to the natural environment,

NSW will ensure that, for the purpose of considering offsets as referred to in clause 7.1(b)(iii) and of ensuring that long-term environmental outcomes are achieved in accordance with the objects of the EPBC Act:

- ~~(i) if the action is, or is part of, a major project as referred to in the NSW Biodiversity Offsets Policy, the Assessment Report for that action will address how that Policy (including the Framework for Biodiversity Assessment) has been applied; and~~
- (i) Where an offset for the residual significant adverse impact can be determined through the NSW Biodiversity Offsets Scheme, the Assessment Report for the action must:
 - A. identify the residual significant adverse impact that is proposed to be offset; and
 - B. set out any condition that is recommended by NSW to be imposed on the grant of development consent or approval to offset the impact; and
 - C. set out the reasons for recommending a condition referred to in clause 7.2(b) (i) (B) if the condition does not reflect the offset requirements as determined through the NSW Biodiversity Offsets Scheme;
- (ii) where relevant, in any other case, the Assessment Report for the action must ~~will~~ address how the rules established under ~~section 127B of the Threatened Species Conservation Act 1995 (NSW), or the Fisheries NSW Policy and Guidelines for Fish Habitat Conservation and Management (as appropriate) have been considered and~~ applied.

Note: The relevant An environmental assessment report for on the relevant action will identify how the biodiversity offset was derived.

- (c) Where relevant, biodiversity offsets may contribute to the biodiversity conservation priorities of the Commonwealth and NSW as described in plans, such as recovery plans and threat abatement plans or other instruments, referred to in clause 7.3 or 7.4, or identified in the Administrative Arrangements.
- (d) Where a NSW decision-maker requires a biodiversity offset, whether by way of a condition of a development consent or approval or by any other instrument, NSW will provide the Commonwealth with Information regarding the nature of the offset, and, if relevant, its location, consistently with the arrangements for exchange of Information outlined in Schedule 2.
- (e) To ensure that biodiversity offsets derived in accordance with this clause 7.2 are delivering long-term environmental outcomes for relevant Matters of NES in accordance with the objects of the EPBC Act:
 - (i) ~~the transitional~~ five year reviews of this Agreement referred to in clause ~~43.2~~ 13.1 will include a review of the effectiveness of the NSW Biodiversity Offsets ~~Policy~~ Scheme in meeting the objectives of this clause 7.2; and
 - (ii) the terms of reference for that review will be agreed by the Senior Officers' Committee, including any key performance indicators, referred to in clause ~~13.1~~ 13.2.

- (f) A reference in this clause 7.2 to
- ~~(i) the NSW Biodiversity Offsets Policy is a reference to the policy entitled “NSW Biodiversity Offsets Policy for Major Projects” and published by the Office of Environment and Heritage for the NSW Government in September 2014, and includes a reference to that Policy as amended from time to time; the NSW Biodiversity Offsets Scheme is a reference to the biodiversity offsets scheme in the *Biodiversity Conservation Act 2016* (NSW) and the *Biodiversity Conservation Regulation 2017* (NSW);~~
 - ~~(ii) the Framework for Biodiversity Assessment is a reference to the Framework for Biodiversity Assessment referred to in the NSW Biodiversity Offsets Policy and as amended from time to time;~~
 - ~~(iii) an offset includes a reference to a supplementary measure as described in the NSW Biodiversity Offsets Policy;~~
 - ~~(iv) the rules established under section 127B of the Threatened Species Conservation Act 1995 (NSW) is a reference to those rules as in force for the time being; and~~
 - ~~(v) —~~
 - (ii) the Fisheries NSW Policy and Guidelines for Fish Habitat Conservation and Management is a reference to the *Fisheries NSW Policy and Guidelines for Fish Habitat Conservation and Management (2013 update)*, published by the Department of Trade and Investment, Regional Infrastructure and Services for the NSW Government in June 2013, and includes a reference to the policy and guidelines as updated from time to time.
- ~~(f)(h) NSW will consult with the Commonwealth before making any amendments to policies, rules and guidelines mentioned in clause 7.2(e).~~

~~Note: NSW may provide notice to the Commonwealth if it proposes to make a decision that is inconsistent with the requirements of this clause 7.2 and, if so, escalation procedures apply as provided for by clause 16.~~

7.3. Assessment not inconsistent with plans, etc

NSW will ensure that the Assessment Report for a controlled action covered by this Agreement addresses whether granting (or not granting) approval for the taking of the action (and the conditions that may be attached to any such approval) is not inconsistent with the following:

- (a) for the world heritage values of a declared World Heritage property:
 - (i) Australia’s obligations under the World Heritage Convention;
 - (ii) the Australian World Heritage management principles; or
 - (iii) a management plan that has been prepared for the property under section 316 of the EPBC Act or as described in section 321 of the EPBC Act;
- (b) for the National Heritage values of a National Heritage place:
 - (i) a management plan that has been prepared for the place under section 324S of the EPBC Act or as described in section 324X of the EPBC Act;
 - (ii) the National Heritage management principles; or
 - (iii) an agreement to which the Commonwealth is a party in relation to a National Heritage place;

- (c) for the ecological character of a declared Ramsar wetland:
 - (i) Australia's obligations under the Ramsar Convention;
 - (ii) the Australian Ramsar management principles; or
 - (iii) a management plan that has been prepared for the wetland as described in section 333 of the EPBC Act;
- (d) for a listed threatened species or ecological community:
 - (i) Australia's obligations under the Convention on Biological Diversity (Biodiversity Convention), the Convention on Conservation of Nature in the South Pacific (Apia Convention), or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); or
 - (ii) a relevant recovery plan or threat abatement plan; and
- (e) for a listed migratory species, Australia's obligations under the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), the China–Australia Migratory Bird Agreement (CAMBA), the Japan–Australia Migratory Bird Agreement (JAMBA), the Republic of Korea–Australia Migratory Bird Agreement (ROKAMBA), or another international agreement approved under section 209(4) of the EPBC Act.

7.4. Consideration of policies and guidelines

- (a) NSW will, when assessing an action and developing a recommendation (including recommended conditions) to the Commonwealth Minister, consider such of the following as are relevant to avoid unacceptable or unsustainable impacts on any Matter of NES:
 - (i) any relevant bioregional plans;
 - (ii) any Information on the relevant impacts of actions of the same kind that was given to the Commonwealth Minister under an agreement under Part 10 of the EPBC Act, that is, a strategic assessment report;
 - (iii) other policies, advice (including approved conservation advice) or guidelines relating to Matters of NES, as published by the Commonwealth from time to time.
- (b) The obligation of NSW under clause 7.4(a) relates only to such plans and other written material that are identified in the Administrative Arrangements for the purpose of that clause.

Note: NSW will ensure that, in accordance with their standard practice, the plans and other material referred to in this clause that are relied on to a significant extent in an assessment of a Matter of NES are identified in relevant Assessment Reports. Such policies may include, for example, policies relating to determining whether particular activities may have a significant impact on a Matter of NES; and policies relating to the carrying out of surveys.

7.5. Assessment based on principles of environmental policy

NSW undertakes to ensure that, subject to applicable NSW Laws, NSW will have regard to the principles of sustainable development or ecologically sustainable development, as set out in the applicable NSW Laws, when assessing an action that is subject to the declaration in clause 4.1 and in making a recommendation (including recommended conditions) to the Commonwealth Minister.

7.6. Conditions

- (a) To promote transparency, NSW will ensure that any terms or conditions recommended as part of an assessment that are designed to protect Matters of NES are identified in the relevant assessment documentation (whether by inclusion of a note relating to the terms or conditions or otherwise).
- (b) To minimise duplication to the extent possible for actions assessed under this Agreement, the Commonwealth will use its best endeavours to ensure that conditions under the EPBC Act are strictly limited to matters not addressed, or likely to be addressed, by the conditions subject to which the NSW approval is granted.
- (c) To the extent permissible under NSW laws, NSW will use its best endeavours to ensure that decisions to approve actions and attach conditions (if any) address the likely significant impacts on Matters of NES, where relevant.

8. Information, access to information and transparency

8.1. Indigenous peoples

- (a) The parties agree that, in relation to an action that is likely to have a significant impact on any Matter of NES, which may be approved following assessment under an Accredited Process under clause 4.1, the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources should, where relevant, be recognised in the assessment of the impact of the action.
- (b) The parties will promote the cooperative use of Indigenous peoples' knowledge of biodiversity and Indigenous heritage.
- (c) NSW will ensure reasonable steps are taken to obtain the views of any group of Indigenous people directly affected by the taking of a controlled action covered by this Agreement if that action will have or is likely to have a significant impact on a Matter of NES that relates to their Indigenous cultural heritage (which may include impacts on biodiversity).

Note: Taking reasonable steps to obtain the views of Indigenous peoples for the purpose of paragraph 8.1(c) may include steps taken to consult with Indigenous peoples in relation to a proposal that will occur on or affect land or waters that may be subject to native title.

- (d) In particular, NSW will ensure that:
 - (i) the views of Indigenous people are treated as the primary source of information on the value of Indigenous cultural heritage to which a particular Matter of NES relates; and
 - (ii) regard is had to guidelines published by the Commonwealth for consulting with Indigenous peoples in relation to proposed actions that are likely to affect Matters of NES, if relevant and appropriate.
- (e) The Commonwealth will consult with NSW before amending or adopting any guidelines referred to above.

8.2. Public access to documentation

- (a) NSW will ensure that Information is published on the internet (whether on the same or different websites) in relation to a proposed action affecting or likely

to affect a Matter of NES for which approval is sought following assessment under an Accredited Process, including the following where relevant:

- (i) environmental assessment requirements (in the case of development or infrastructure for which an environmental impact statement is prepared);
 - (ii) environmental impact assessment documentation (in the case of development or infrastructure for which an environmental impact statement, or species impact statement or biodiversity development assessment report is prepared);
 - (iii) the terms of reference of any review or formal request for advice relating to the proposed action in accordance with the applicable NSW Law;
 - (iv) any submissions received in relation to the proposed action.
- (b) NSW will ensure that Information that is provided to decision-makers to assist decision-makers in the exercise of their functions or powers following assessment under an Accredited Process (in so far as those functions or powers may relate to Matters of NES) is published on the internet (whether on the same or different websites), and, wherever possible, before that Information is used by the decision-makers.

Note: Information referred to in clause 8.2(b) may include assessment guidelines, rules, policies or precedents relating to assessment and determination of applications for approval.

- (c) NSW will ensure that the terms of any approval granted by NSW decision-makers, and the primary material on which the determination or decision was based, is published on the internet (whether on the same or different websites) as soon as practicable after the grant of the approval (or earlier) where the approval relates to an action to which the declaration in clause 4.1 applies.
- (d) Clauses 8.1(a), (b) and (c), clause 6.2(b)(iii) and clause 13.32(b)(ii) are not breached if:
- (i) the publication by NSW (or a NSW public authority) of the Information is prohibited under NSW Laws; or
 - (ii) the publication by NSW (or a NSW public authority) of the Information could, in the opinion of the relevant officer, be an infringement of copyright or give rise to liability in defamation, or could otherwise expose NSW (or the authority) to a claim for damages or other compensation or payment of fees or remuneration; or
 - (iii) there would be an overriding public interest against disclosure of the Information under the *Government Information (Public Access) Act 2009* (NSW); or
 - (iv) the Information is not published (or is published in a particular manner) because the Information is:
 - (A) confidential in nature; or
 - (B) the personal Information of an individual; or
 - (C) identified as being sensitive by the Indigenous group who has provided the Information or likely to be considered sensitive by an Indigenous group (including a kinship group), including Information relating to the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group; or

- (v) environmentally sensitive Information that, if published or published in a particular manner, may increase the risk of damage to a specific Matter of NES.

8.3. Public access – particular needs groups

- (a) NSW will, in providing public access to assessment and approval documentation, endeavour to make special arrangements, as appropriate, to ensure affected groups with particular communication needs have an adequate opportunity to:
 - (i) comment on actions assessed by NSW in accordance with an Accredited Process; and
 - (ii) comment on, and otherwise access, approval documentation for such actions.
- (b) The parties note that Indigenous people affected by a proposed action may have particular communication needs, and NSW will endeavour to make arrangements to ensure that affected Indigenous people have reasonable opportunity to comment on actions assessed by NSW in accordance with an Accredited Process.

8.4. Public comments

NSW will seek to ensure that comments in relation to an action that will have or is likely to have a significant impact on a Matter of NES made by any person within Australia will be accepted and considered, if they are made in accordance with the applicable Accredited Process.

9. Co-operation

9.1. Open access to Information

- (a) To improve environmental outcomes and maximise efficiency for business and government, and ensure Information on which regulatory decisions are made is fit for purpose, the parties commit to the following principles for open access to Information about the environment and regulated activities:
 - (i) Information is discoverable, accessible and reusable by the community, business, government and other stakeholders;
 - (ii) Information is published under an Open Licence, as defined in Schedule 2, and available in the public domain;
 - (iii) Information is published and described in a way that maximises discovery and reuse, preferably online, and in open formats;
 - (iv) Information is published at the highest resolution and accuracy available; and
 - (v) Information is released at no cost to users.
- (b) The parties commit to an active and cooperative process of mutually improving Information discovery, documentation, access and use.
- (c) The parties will seek to give practical effect to the principles in clause 9.1(a), by endeavouring to implement the protocols in Schedule 2, as described in Item 2(d) of that Schedule.

9.2. Guidance documents

- (a) The parties commit to cooperating in the development, maintenance, review, and implementation of guidance documents relating to Matters of NES and the operation of this Agreement.
- (b) For the purposes of this clause 9.2, guidance documents may include:
 - (i) generic advice (rather than advice on particular projects) regarding whether referral to the Commonwealth Minister is required under the EPBC Act;
 - (ii) referral/application guidelines in relation to significant impacts on Matters of NES;
 - (iii) guidance documents for species and ecological communities in accordance with Schedule 3; and
 - (iv) policies relating to Matters of NES prepared by the Commonwealth that would impact on the operation of this Agreement, which may include guidance specific to discrete populations or components of Matters of NES relevant to NSW.

10. Heritage management plans

The parties agree to work cooperatively, on an ongoing basis, to ensure the protection of the values for which each World Heritage property and National Heritage place is listed and, according to World and National Heritage principles, prepare and implement:

- (a) management plans for:
 - (i) World Heritage properties under section 321 of the EPBC Act; and
 - (ii) National Heritage places under section 324X of the EPBC Act; or
- (b) suitable alternatives to those plans.

11. Administrative Arrangements

11.1. Administrative Arrangements

To ensure that the requirements of this Agreement are administered co-operatively and efficiently, the parties will jointly develop Administrative Arrangements for the implementation of this Agreement that:

- ~~(a) are to include details of transitional support from the Commonwealth in the form of embedded officers;~~
- (a) may include co-operative arrangements for the assessment and approval of actions proposed in NSW, but which are not within the scope of this Agreement; and
- (b) may include guidelines on the exchange of Information for the purposes of clause 9.1.

~~on or by the Commencement Date.~~

11.2. Senior Officers' Committee

- (a) The Administrative Arrangements will detail and provide for the establishment of a Senior Officers' Committee to oversee the implementation of this Agreement.

- (b) Except as set out in the Administrative Arrangements, the Senior Officers' Committee will meet at least quarterly in the first 12 months after the Commencement Date, and then at least every 6 months.
- (c) Terms of reference for the Senior Officers' Committee will be set out in the Administrative Arrangements.
- (d) Without limiting the terms of reference for the Senior Officers' Committee, the Senior Officers' Committee will in each year after the Commencement Date, other than in a year in which a review is undertaken under clause 13, evaluate the operation of this Agreement (which may include an evaluation done by an audit or other review).
- (e) The parties may agree, at any time, that an evaluation under clause 11.2(d) is not to be undertaken in a particular year or years.
- (f) An evaluation, under clause 11.2(d), may include, but is not limited to, an evaluation of:
 - (i) systemic outcomes relating to this Agreement; and
 - (ii) the operation of this Agreement;
 against key performance indicators identified for the purpose of this clause in the Administrative Arrangements.
- (g) The parties agree that a report of the evaluation will be published on the Department's website as soon as practicable after it is completed. The parties will agree on the content of the report to be published.

Note: The parties intend that the Senior Officers' Committee will have alternating Chairs; and will deal with both specific matters arising, including matters in dispute, but also be responsible for the ongoing operation of the Agreement, including making recommendations to governments on a continuous improvement basis, and considering the implications of any legislative or other system changes proposed by either party.

12. Reports

12.1. Reports

- (a) Each year, on a date specified in the Administrative Arrangements (or such other time agreed in writing between the parties), NSW will provide a report to the Commonwealth for the purpose of the Department's annual reporting obligations under the EPBC Act, including an analysis of how this Agreement has been implemented.
- (b) The annual report will include Information relating to the monitoring by NSW government agencies of compliance with conditions of the NSW approval of the taking of a controlled action covered by this Agreement that are designed to ensure that any impact on a Matter of NES is avoided or mitigated or offset during the relevant 12 month period.
- (c) The annual report will include Information on any substantial variations to conditions of approvals, which relate to, or affect, a matter protected by Part 3 of the EPBC Act.
- (d) The annual report will include Information, in relation to an Accredited Process, concerning the number of complaints made by members of the public in accordance with a complaints handling policy and procedure formally adopted by the NSW Public Service agency or other authority with responsibility for the administration of the Accredited Process. For the purposes of the annual report, only complaints made that concern the

administration of the Accredited Process in relation to Matters of NES are relevant, and complaints for which there is an established or formal right of review or reconsideration are not relevant. Information relating to the resolution of complaints is to be included where practicable. Further details as to the Information to be provided for the purpose of this clause 12.1(d) may be included in Administrative Arrangements.

- (e) The annual report will include Information reasonably requested by the Commonwealth to meet its annual reporting obligations under the EPBC Act.
- (f) The annual report will include Information concerning any payments made into the NSW Biodiversity Conservation Fund for the purpose of offsets related to Matters of NES.
- (g) An agreed form of reporting will be set out in the Administrative Arrangements, with reporting requirements to be tailored to the systems and processes of NSW.
- (h) For the purpose of meeting the requirements of clause 12.1(a) to (f) of this Agreement, a separate report is not required to be prepared by NSW if the required Information specified in clause 12.1(b), (c) or (d) and clause 12.1(e) is publicly available in a form that is accessible and adapted to allow the Commonwealth to efficiently meet its relevant reporting obligations under Commonwealth Laws.

12.2. Additional Information

- (a) Each party will comply promptly with any reasonable request from the other party to supply Information relating to this Agreement where that Information is not already publicly available, and noting that the parties will seek to rely on publicly available Information to the extent practicable.
- (b) The Commonwealth may, from time to time, request NSW to provide copies of studies, reports and other Information (including non-published Information) in addition to the reports required under clause 12.1, where those studies, reports or other Information are in the possession of NSW.

13. Review

13.1. Five year reviews

- (a) A review of the operation of this Agreement must be carried out at least once every five years while the Agreement remains in effect in accordance with section 65 of the EPBC Act.
- (b) Each review of this Agreement will be carried out jointly as agreed by the Senior Officers' Committee, with each party to meet their own costs.
- (c) Each review will include an evaluation of the operation of this Agreement against the objects of this Agreement. For the purpose of each review, the parties will also specify key performance indicators in the Administrative Arrangements.
- (d) Following consultation with the ~~relevant~~ NSW Minister, the Commonwealth Minister must publish the report of a review in accordance with the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth) EPBC Regulations, and is to give a copy of the report of each review to NSW, as soon as practicable after the review is completed and before it is published.

13.2. Transitional reviews

- ~~(a) An initial review will be undertaken 12 months after the Commencement Date.~~
- ~~(b) A review under this clause 13.2 will be undertaken by the Senior Officers' Committee, unless the parties decide otherwise. The reviews will focus on whether the objects of this Agreement are being achieved and whether the Agreement has been implemented and is working effectively, while also providing an opportunity to ensure national consistency between bilateral agreements.~~
- ~~(c) For the purpose of considering the matters on which a review is to be focussed, the parties may also specify key performance indicators related to those matters in the Administrative Arrangements. The parties may agree to seek public comments for the purpose of a review under this clause 13.2.~~
- ~~(d) The Commonwealth may, after consulting NSW, publish the results of the review under this clause 13.2 as soon as practicable after the review is completed.~~
- ~~(e) The parties may choose not to undertake a transitional review of this Agreement if, before that review would otherwise be undertaken:
 - ~~(i) the need to make another bilateral agreement or vary or replace this Agreement is identified following the amendment or proposed amendment of legislation as envisaged by clause 19.3; or~~
 - ~~(ii) the Agreement is subject to an evaluation under clause 11.2 or a review under clause 16.1(b).~~~~

13.32 Third party studies

- (a) A review under clause 13.1 ~~or 13.2~~ may include studies, evaluations and other activities intended to analyse the success of the Agreement in achieving its objects.
- (b) Each party will, if requested by the other for the purpose of a review, and at the requesting party's expense:
 - (i) allow third parties reasonable access to the offices of NSW Public Service agencies to undertake analysis and evaluation of the Agreement; and
 - (ii) subject to clause 8.2(d), make records and other Information (including reports) available to third parties for the purposes of the evaluation and analysis.

14. Sharing Information – ongoing EPBC Act matters

- (a) The parties note that the Commonwealth remains responsible for compliance and enforcement under the EPBC Act.
- (b) The parties agree to share Information and co-operate on compliance activities.
- (c) The parties agree to use their best endeavours to notify each other of actions in NSW that have been taken without approval and have resulted, or are likely to result, in a significant impact on a Matter of NES.
- (d) The Commonwealth will use its best endeavours to inform NSW before commencing enforcement action against a person for a contravention of Parts 3 to 9 of the EPBC Act for an action in NSW.

- (e) NSW will use its best endeavours to inform the Commonwealth before commencing enforcement action under a relevant law against a person for taking an action to which the EPBC Act may apply.

15. Audit

15.1. Commonwealth Auditor-General

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

16. Escalation

16.1. Escalation process

- (a) Acting in a spirit of cooperation, the parties agree that the process set out below is the primary mechanism for resolving any dispute or concern arising during the course of this Agreement:
 - (i) the party claiming that there is a dispute or concern will advise the other party and set out the nature of the dispute or concern;
 - (ii) the parties will seek to resolve the matter by direct negotiation using their best endeavours;
 - (iii) the parties will seek to resolve the matter as early as practicable;
 - (iv) discussions aimed at resolution will normally take place in the following order:
 - (A) at senior officials level, between officers of the Senior Officers' Committee;
 - (B) between the Secretary of the Department and the Secretary of the relevant NSW Department or head of the relevant NSW Public Service agency;
 - (C) between the Commonwealth Minister and the relevant NSW Minister; and
 - (v) if discussions mentioned in clause 16.1(a)(iv) are unable to resolve the matter:
 - (A) either party may issue a letter to the other party outlining the concerns or the nature of the dispute;
 - (B) a copy of the letter referred to in clause 16.1(a)(v)(A) will be provided to the proponent of the proposed action; and
 - (C) the reasons for issuing the letter, and a description of the Information on which the letter was based, may be made publicly available after the letter is issued.
- (b) In response to a dispute arising under clause 16.1(a), either party may undertake an audit, review or evaluation ('a review'), if:
 - (i) in the opinion of the initiating party, there has been or is likely to be an adverse systemic outcome relating to this Agreement, whether or not the outcome relates to a failure to comply with this Agreement; and

- (ii) the reasons for that opinion are provided to the other party before the review is initiated; and

the parties have consulted on the terms of reference for the review and, if relevant, appointment or nomination of a person to undertake the review.

- (c) If there is a dispute under this clause 16.1, the Commonwealth may, at the request of NSW, agree in writing that:
 - (i) the requirements for assessment (including the Assessment Report) in clause 6.2 have been substantially met; and
 - (ii) NSW has met the requirements of any other clause of this Agreement.
- (d) A party to this Agreement may publish a report of the review under clause 16.1(b), after consulting the other party.
- (e) This clause 16.1 is subject to the rights and obligations of each party under relevant provisions of the EPBC Act (including those sections dealing with cancellation and suspension of bilateral agreements).

16.2. Obligations continue

Despite the existence of a dispute or concern under this clause 16, both parties must continue to perform their respective obligations under this Agreement, except to the extent this Agreement is suspended or cancelled in accordance with the EPBC Act, or is revoked or rescinded.

17. Suspension or cancellation

17.1. By Commonwealth Minister

Sections 57 to 64 of the EPBC Act provide that the Commonwealth Minister may cancel or suspend all or part of the Agreement (either generally, in relation to actions in a specified class or for a particular provision of Part 3 of the EPBC Act to which the Agreement relates) under certain circumstances. Sections 57 to 64 of the EPBC Act also set out a process for consulting on the cancellation or suspension of all or part of the Agreement.

17.2. At the request of the ~~relevant~~ NSW Minister

- (a) Section 63 of the EPBC Act requires the Commonwealth Minister at the request of the NSW Minister to cancel or suspend all or part of this Agreement if the request is made in accordance with this Agreement.
- (b) A request by the NSW Minister under section 63 of the EPBC Act to cancel or suspend all or part of this Agreement is made in accordance with this Agreement if:
 - (i) before making the request, the NSW Minister has consulted with the Commonwealth Minister about the reasons for requesting the suspension or cancellation and allowed at least 20 business days for the Commonwealth Minister to respond; and
 - (ii) the request is made on the ground that the NSW Minister is not satisfied that:
 - (A) the Commonwealth has complied, or will comply, with this Agreement (including the objects of this Agreement and the Administrative Arrangements); or

- (B) the implementation of this Agreement is no longer achieving one or more of the objects of this Agreement; or
- (C) the implementation of this Agreement has become impracticable.

18. ~~Transitional~~Not used

- ~~(a) A class of actions described in Schedule 1 includes actions where:
 - ~~(i) the NSW Minister has indicated in a written notice to the Commonwealth Minister that the action would be assessed in the manner specified in Schedule 1 to the Previous Bilateral Agreement; and~~
 - ~~(ii) the relevant assessment process for that action had not been completed before the revocation of the Previous Bilateral Agreement.~~~~
- ~~(b) For projects that commenced assessment in accordance with the Previous Bilateral Agreement, prior to the commencement of this agreement, when providing to the Commonwealth the Assessment Report referenced in clause 6.2(c) NSW may also advise the Commonwealth in relation to any clause or requirement of this Agreement that was not complied with in the assessment of that action due to the commencement of the assessment of that action having occurred under the Previous Bilateral Agreement.~~

19. Amendment

19.1. Continuous improvement

The parties will notify and consult each other on matters that come to their attention that may improve the operation of this Agreement. The Administrative Arrangements may detail notification and consultation procedures to give effect to this clause.

19.2. Minor amendment

- (a) The parties note that section 56A of the EPBC Act provides that the Commonwealth Minister may make a written determination that an intended draft amendment to a bilateral agreement will not have a significant effect on the operation of the Agreement.
- (b) Before making a determination under section 56A of the EPBC Act, the Commonwealth Minister must consult with the NSW Minister to seek agreement on the wording of the amendment.

19.3. Amendment of legislation

If the EPBC Act or an Accredited Process is amended or is proposed to be amended, the Commonwealth and NSW, respectively, agree to notify the other promptly with a view to agreeing on the effect of the amendment or proposed amendment on the operation of this Agreement and whether it is necessary to make another bilateral agreement varying or replacing this Agreement.

20. Freedom of information

- (a) If a party receives any request, including under freedom of information laws, for any documents originating from another party which are not otherwise publicly available, the parties will, subject to the requirements of relevant freedom of information Laws, consult on the release of those documents.

- (b) The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met.

21. General provisions

21.1. Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

21.2. Notice

A party giving notice or notifying under this Agreement must do so in writing or by electronic communication.

21.3. Disclosure of Information

Notwithstanding any other provision of this Agreement, the Department may disclose Information about this Agreement required by Commonwealth Law to be reported by the Department.

Schedule 1 – Declared classes of actions

1. Preamble

- (a) Section 47(1) of the EPBC Act provides that a bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8 of that Act.
- (b) Clause 4.1 of this Agreement declares that an action in any of the classes of actions specified in this Schedule does not require assessment under Part 8 of the EPBC Act.
- (c) In this Schedule 1, 'consent authority', 'Planning Secretary', '~~determining authority~~', 'State significant development', 'designated development', 'Sydney district or regional planning panel', 'local planning panel', 'Independent Planning Commission' and 'complying development' have the same meaning as given by the *Environmental Planning and Assessment Act 1979* (NSW).
- (d) In this Schedule 1, a reference to the *Environmental Planning and Assessment Act 1979* (NSW) is a reference to that Act as applying in accordance with Part 7 of the *Biodiversity Conservation Act 2016* (NSW) and Part 7A of the *Fisheries Management Act 1994* (NSW).

2. Classes of actions to which clause 4.1 applies

- (a) Subject to Items 2(b) and (c) of this Schedule 1, for the purposes of the declaration in clause 4.1 of this Agreement, the classes of actions are:
 - (i) actions that are assessed under Part 4, Division 4.17 of the *Environmental Planning and Assessment Act 1979* (NSW), including an evaluation of the matters under section ~~79C4.15~~, and which includes an environmental impact statement, ~~and may also include the report of the Planning Assessment Commission~~, where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - (ii) actions that are assessed under Division 5.2 of Part 5 ~~Part 5.4~~ of the *Environmental Planning and Assessment Act 1979* (NSW), and which include an environmental impact statement, where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - (iii) actions that are assessed under Part 4, Division ~~74.9~~ of the *Environmental Planning and Assessment Act 1979* (NSW), and are classified State significant development, where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - (iv) actions that are assessed under ~~Schedule 6A~~, section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) pursuant to Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW), where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.

- (v) actions that are assessed as designated development that can be carried out with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW), and which includes an environmental impact statement, where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - (vi) actions that are not classified as State significant development or complying development or designated development and are assessed as development that can be carried out with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW), which assessment includes a species impact statement prepared under Part 7A of the *Fisheries Management Act 1994* (NSW) or ~~Division 2 of Part 6 of the *Threatened Species Conservation Act 1995* (NSW)~~ a biodiversity development assessment report prepared under Part 6 of the *Biodiversity Conservation Act 2016* (NSW) and has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - (vii) actions that are not classified as State significant development or complying development or designated development and are assessed as development that can be carried out with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW), which assessment does not include a species impact statement prepared under Part 7A of the *Fisheries Management Act 1994* (NSW) or ~~Division 2 of Part 6 of the *Threatened Species Conservation Act 1995* (NSW)~~ a biodiversity development assessment report prepared under Part 6 of the *Biodiversity Conservation Act 2016* (NSW) and has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - (viii) actions that are not classified as State significant development or complying development and are assessed under Part 4, Division ~~74.9~~ of the *Environmental Planning and Assessment Act 1979* (NSW), which assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.
 - ~~(ix) actions that are assessed under Part 5 (other than Division 5 Part 5 or where an EIS is required) of the *Environmental Planning and Assessment Act 1979* (NSW) where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.~~
 - ~~(x) actions that are assessed under Part 5 (other than Division 5 of Part 5) of the *Environmental Planning and Assessment Act 1979* (NSW), and which includes an environmental impact statement, where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1.~~
- (b) Subject to clause 18, a class of actions described in Item 2(a) of this Schedule 1 does not include actions which have been:
- (i) determined to be a controlled action pursuant to section 75 of the EPBC Act prior to the Commencement Date; or
 - (ii) prescribed under subsection 25(1) of the EPBC Act.

- (c) A class of actions described in Item 2(a)(v), (vi), (vii); and (viii); ~~(ix) and (x)~~ of this Schedule 1 does not include actions in respect of which the consent authority ~~or determining authority~~:
- (i) is a local council ~~(including a Joint Regional Planning Panel exercising a council's consent authority functions)~~ (or a local planning panel exercising the consent authority functions of a council on behalf of the council) or is a Sydney district or regional planning panel, or
 - (ii) is otherwise not the State of NSW or an agency of the State of NSW.
- (d) For the purposes of regulations made under section 50 of the EPBC Act the manner of assessment specified:
- (i) in each of Items 2(a)(i), (ii), (iii), (iv) and (v) ~~and (x)~~ of this Schedule is taken to correspond to assessment by Environmental Impact Statement under the EPBC Act;
 - (ii) in Item 2(a)(vi) of this Schedule is taken to correspond to assessment by Public Environment Report under the EPBC Act; and
 - (iii) in each of Items 2(a)(vii) and (viii) ~~and (ix)~~ of this Schedule is taken to correspond to assessment by Preliminary Documentation under the EPBC Act.
- (e) An action may only be assessed in accordance with a class of actions described in Item 2(a)(vii); or (viii) ~~or (ix)~~ of this Schedule 1 if:
- (i) the Commonwealth Minister has been given an opportunity to ask that another assessment approach be used and the Minister has not done so; or
 - (ii) the Commonwealth Minister has agreed in writing that the assessment approach be used.

3. General

3.1 Overview

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

3.2 Guidelines or Directions

- (a) This Item 3.2 of Schedule 1 does not apply to the class of actions specified in Items 2(a)(vii) or (viii) ~~or (ix)~~ of this Schedule 1.
- (b) In addition to standard guidelines and directions, the NSW Minister, the Planning Secretary; or the consent authority ~~or the determining authority~~ must issue guidelines to proponents of controlled actions that are designed to ensure that material prepared by the proponent as part of the assessment:
 - (i) contains an assessment of all impacts that the action has, will have or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;
 - (ii) contains enough information about the controlled action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the controlled action under the EPBC Act; and

- (iii) addresses the matters outlined in Schedule 4 of the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)~~EPBC Regulations~~.
- (c) The NSW Minister, the Planning Secretary, or the consent authority ~~or the determining authority~~, will, if appropriate, seek public comment, having regard to any comments from the Commonwealth Minister and the objects of the EPBC Act, on the guidelines before they are made. If public comments are sought, the publication requirements described in Items 3.3(c) and 3.3(d) must be complied with.

Note: The New South Wales Minister, the Planning Secretary or the consent authority may issue a generic set of guidelines or may issue guidelines on a case by case basis.

- (d) The proponent must ensure that the assessment documentation adequately addresses the guidelines issued.

3.3 Public Comment

- (a) For each class of actions specified in Item 2(a) of this Schedule 1 other than the classes of actions specified in Items 2(a)(vii), and (viii) ~~and (ix)~~, documentation about each assessment (including the assessment) that was prepared in accordance with the guidelines required to be issued under Item 3.2(b) of this Schedule 1, must be made available to the public and released for public comment, and the public given at least 28 days to provide comments to the NSW Minister, or the consent authority ~~or determining authority~~.
- (b) For each class of actions specified in Items 2(a)(vii), and (viii) ~~and (ix)~~, documentation about each assessment (including the assessment) that describes:
 - (i) the proposed action;
 - (ii) the likely relevant impacts of the action, as defined in section 82 of the EPBC Act, and includes an assessment of those impacts;
 - (iii) to the extent practicable, any feasible alternatives to the proposed action that could avoid or reduce relevant impacts; and
 - (iv) possible mitigation measures,
 must be made available to the public and released for public comment, and the public given at least 14 days to provide comments to the consent authority ~~or determining authority~~.
- (c) When the public is invited to comment, the invitation must be published:
 - (i) on a website approved by the NSW Minister, or the consent authority ~~or the determining authority~~, as appropriate, and linked to the Commonwealth Department of the Environment and Energy website; and
 - (ii) in a newspaper circulating generally in each State and Territory.
- (d) 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.

- (e) The proponent must have:
 - (i) been provided with submissions made by the public during the period that the assessment is released for public comments; and
 - (ii) prepared a written response for inclusion in the assessment documentation, which summarises or takes into account the issues raised by the public in those submissions.

3.4 Assessment Report

- (a) The Assessment Report must be prepared for each action that is assessed, or if an inquiry is held, the persons holding the inquiry must prepare an inquiry report, which takes into account:
 - (i) the information in the assessment documentation;
 - (ii) an assessment of all relevant matters required under the *Environmental Planning and Assessment Act 1979* (NSW),
 - (iii) any assessment of impacts on biodiversity values required under Part 7 of the *Biodiversity Conservation Act 2016* (NSW); and
 - ~~(iii) if a review is carried out by the Planning Assessment Commission, a copy of that review report; and~~
 - (iv) any other relevant information available to the decision-maker or inquiry.
- (b) The Assessment Report or inquiry report must also include:
 - (i) a description of:
 - (A) the action;
 - (B) the places affected by the action; and
 - (C) any Matters of NES that are likely to be affected by the action;
 - (ii) a summary of the relevant impacts of the action;
 - (iii) 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;
 - (iv) 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;
 - (v) a statement of recommended conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance, including consideration of any offsets;
 - (vi) a statement of NSW approval requirements and conditions that apply, or are proposed to apply, to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action; ~~and~~
 - (vii) the information, data and opinion on which the assessment is based, or its source; and
 - (viii) if the biodiversity offsets scheme in the *Biodiversity Conservation Act 2016* (NSW) and the *Biodiversity Conservation Regulation 2017* (NSW) applies to the action, a copy of any biodiversity development

assessment report that is prepared in respect of the action under Part 6 of the *Biodiversity Conservation Act 2016* (NSW).

- (c) The NSW Minister must make available to the Commonwealth Minister:
- (i) a copy of the Assessment Report or part of the Assessment Report that addresses the relevant impacts of the controlled action;
 - (ii) 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;
 - (iii) any other information available to or used by the decision maker (being either the NSW Minister, ~~or a consent authority or determining authority,~~ as applicable) in the decision making process; and
 - (iv) if a public statutory inquiry is held, a copy of the inquiry report.

Schedule 2 – Open access to Information

1. Definitions

Open Licence	a licence which establishes clear re-usage rights of, and open access to, public sector Information such as those in the Creative Commons licences available at www.ausgoal.gov.au/the-ausgoal-licence-suite
Public Sector Information	Information that is created, collected, or funded, by or on behalf of: <ul style="list-style-type: none">(a) the Commonwealth;(b) a State;(c) a Territory; or(d) an agency or authority of the Commonwealth, a State or a Territory.
Restrictive licence	a licence used for material that has some form of limiting or restrictive condition, for example it contains material that is personal, or of environmental or cultural sensitivity, or is confidential Information which has a high risk associated with its release.

2. Background

- (a) There is a worldwide movement to improve (open) access to public sector information¹. Public sector information broadly means information that is created, collected, or funded, by or on behalf of the Commonwealth, a State or Territory, or an agency or authority of these. Australian governments have committed to open information in policies and legislation² and there is practical guidance and assistance for agencies³.
- (b) The rationale for open public sector information (as described in the footnote references) is that it does deliver significant efficiencies and achieve better environmental outcomes by enabling governments, industry and the community to discover, access, reuse, and contribute to information about the environment and heritage. It will also enable monitoring of the effectiveness of environmental regulation.
- (c) Open information in the environmental domain brings a range of benefits, including:
 - (i) Enabling business to access existing information rather than duplicate it;
 - (ii) Reducing transactional costs for all stakeholders by removing the need to negotiate licences to access information;
 - (iii) Enabling all stakeholders to access Information relevant to them;
 - (iv) Allowing decisions to be made using the same information base;

¹ www.ausgoal.gov.au/what_is_open | www.oaic.gov.au/information-policy/information-policy-resources/information-policy-agency-resources/principles-on-open-public-sector-information | www.oecd.org/internet/economy/40826024.pdf

² www.finance.gov.au/policy-guides-procurement/declaration-of-open-government/

³ www.ausgoal.gov.au/overview

- (v) Enabling innovation by using information differently to the purpose for which it was obtained; and
 - (vi) Helping to ensure that all information used for decisions is fit for that purpose.
- (d) The protocols outlined in this Agreement are intended to provide high-level guidance for the parties on key elements needed to achieve the policy intent of clause 9.1 of this Agreement. These protocols are not intended to dictate specific approaches or timeframes for implementation and recognise that extensive guidance on achieving open information exists in the public domain and that parties will be implementing specific actions as part of existing initiatives. The parties recognise that capacity to implement the protocols is dependent on the resources available.

3. Information open access protocols

To give effect to clause 9.1 of this Agreement, the parties will endeavour to implement the following protocols:

- (a) Apply standard, consistent Open Licences to information, preferably Creative Commons, and apply the least restrictive licence possible (that is, a Creative Commons Attribution licence).
- (b) Ensure it is made clear to third parties, including proponents supplying information for environmental assessments and under conditions of approval, of the intention to apply an Open Licence, preferably a Creative Commons Attribution licence, to their information so that it will become Public Sector Information for the purposes of this Agreement.
- (c) Ensure that, where information is licensed under a Restrictive Licence or cannot be published as open, it will be exchanged between parties and subject to appropriate information management practices and protocols.
- (d) Publish information online, in machine readable form using open, standards-based formats.
- (e) Attach high quality, understandable metadata to information so that it can be easily found and appropriately used.
- (f) Adopt, use and reference commonly used metadata standards (where these exist) and lodge metadata covering the format, content and provenance in an appropriate open catalogue.
- (g) Publish information as open access in a timely manner, preferably as it is collected or generated under this Agreement.
- (h) Provide alerts to make it easy for users to know that new information exists.
- (i) Manage information such that it is available under open access for at least the life of this bilateral agreement, and any regulated activities initiated under it.

4. Information scope

- (a) Examples of Information about environment and heritage include among other things:
 - (i) listed Matters of NES (including location and condition of critical habitats for species)
 - (ii) other flora and fauna species including migratory species, ecological communities, wetlands, cultural and natural heritage places, marine environments

- (iii) threatening processes and prevalence of threats
 - (iv) natural and cultural heritage places and sites
 - (v) water and air quality
 - (vi) nature and location of offsets
- (b) Examples of Information about regulated activities include among other things:
- (i) locations and details of referred projects and approved projects
 - (ii) public comments and responses
 - (iii) project approval condition returns such as environmental monitoring data and other compliance information
 - (iv) geographic areas protected in reserves, parks, protected land and 'corridors', areas subject to conservation covenants or rehabilitation activities or offsets agreed as part of a project approval
 - (v) geographic areas subject to development planning decisions.

5. Information that does not have to be published or provided in a particular manner

Clauses 9.1(a) and 9.1(b) are not breached, where:

- (a) the publication by NSW (or a NSW public authority) of the information is prohibited under NSW Laws; or
- (b) the publication by NSW (or a NSW public authority) of the information could, in the opinion of the relevant officer, be an infringement of copyright or give rise to liability in defamation, or could otherwise expose NSW (or the authority) to a claim for damages or other compensation or payment of fees or remuneration; or
- (c) there would be an overriding public interest against disclosure of the information under the *Government Information (Public Access) Act 2009* (NSW); or
- (d) the information is not published (or is published in a particular manner) because the information is:
 - (i) confidential in nature; or
 - (ii) the personal information of an individual; or
 - (iii) likely to be considered sensitive by an Indigenous group (including a kinship group), including information relating to the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group; or
- (e) environmentally sensitive information that, if published or published in a particular manner, may increase the risk of damage to a specific Matter of NES.

Schedule 3 – Guidance documents for Matters of National Environmental Significance

1. Background

1.1. Streamlining and provision of advice

- (a) The Commonwealth and NSW undertake to streamline policy and guidance documents developed by each party for assessments and approvals.
- (b) As per clause 7.4, all guidance material and relevant policies and plans, identified for the purpose of that clause, will be detailed in the Administrative Arrangements.
- (c) Where the Commonwealth holds specific expert advice that could be made available to NSW to assist with decision-making, NSW may seek and take into account that expert advice as per clause 6.3.

1.2. Guidance documents for listed species and communities

- (a) The Commonwealth develops guidelines, advice, plans and other documents for particular species and ecological communities, to guide assessments and approvals, as well as long term conservation and management efforts. NSW will have appropriate regard to those documents in assessing controlled actions covered by this Agreement, and making recommendations to the Commonwealth Minister, for the purposes of this Agreement.
- (b) The Commonwealth will continue to develop such guidance documents as needed to support the effective operation of bilateral agreements.
- (c) The parties note that there will continue to be a need to provide certainty, clarity and consistency in decisions regarding listed species and ecological communities, particularly those that cross State and Territory borders. Documents that support this include:
 - (i) statutory documents:
 - (A) approved conservation advice;
 - (B) recovery plans;
 - (C) threat abatement plans;
 - (D) wildlife conservation plans;
 - (E) advice provided by the Threatened Species Scientific Committee under section 190 of the EPBC Act; and
 - (F) advice provided by the Threatened Species Scientific Committee under section 189 of the EPBC Act.
 - (ii) non-statutory documents, such as:
 - (A) listing advice from the Threatened Species Scientific Committee;
 - (B) the Commonwealth's Species Profile and Threats database profiles;
 - (C) ecological community guidelines and fact sheets;
 - (D) Matters of NES significant impact guidelines; and
 - (E) survey guidelines.

1.3. Improving guidance documents

In consultation with the States and Territories, the Commonwealth will, from time to time, review the guidance documents outlined in Item 1.2 of this Schedule 3, including to:

- (a) revise approved conservation advices, recovery plans, threat abatements plans and other guidance documents for listed threatened species and ecological communities as progress is made on recovery actions and as knowledge of a species' or ecological community's ecology or distribution changes; and
- (b) continue to develop a range of strategic responses to the conservation of threatened species and ecological communities including regional recovery planning approaches.

2. Co-operation

- (a) The Commonwealth will seek the views and co-operation of NSW (and other States and Territories) to develop and review the guidance documents identified in Item 1.2 of this Schedule.
- (b) Without limiting Item 2(a), NSW will participate in the consideration and development of guidance documents in the following ways:
 - (i) priorities for the development of guidance documents will be informed by comments provided by NSW;
 - (ii) responsibilities for drafting guidance documents will be discussed between the Department and States and Territories; and
 - (iii) the Commonwealth will seek endorsement from the relevant States and Territories for the content of guidance documents, subject to the responsibilities of the Commonwealth Minister and the Threatened Species Scientific Committee under the EPBC Act. Disputes about priorities or the content of advice notes will be addressed through best endeavours at resolution. If this fails, the Commonwealth will make a decision on the disputed matter.

Schedule 4 – Additional streamlining measures

1. Background

- (a) This Agreement is intended to make a significant contribution to reducing duplication and double-handling of assessment and approval processes while maintaining high environmental standards.
- (b) The parties agree that there remains opportunity to develop further streamlining measures to achieve greater process efficiency while maintaining high environmental standards.

2. Additional streamlining measures

1.1 Approval bilateral agreement

The parties agree to pursue the finalisation of an approval bilateral agreement.

1.2 Additional streamlining measures

The parties agree to work cooperatively to progress the following additional streamlining measures outlined in Table 1 for the purposes of this Agreement.

Table 1

Streamlining activity
<p>Prepare additional guidance for authorities</p> <ul style="list-style-type: none"> • Assessing Matters of NES and determining significance.
<p>Undertake a review of Commonwealth and NSW species listings with a view to better standardising threatened species lists.</p>
<p>Finalise strategic assessments of a Biodiversity Plan for Coal Mining in the Upper Hunter Valley NSW and a Program for protection of Matters of NES in the Lower Hunter Region and to progress approval of classes of actions under these strategic assessments.</p>
<p>Development of an agreed priority list for existing and future strategic assessments in NSW, including consideration of a strategic assessment of the NSW biodiversity certification process under the <i>Threatened Species Conservation Act 1995</i> (NSW).</p>
<p>Undertake work to determine if Conservation Agreements can be used to further streamline assessment and approval processes.</p>
<p>The parties note that significant reforms to Aboriginal cultural heritage legislation are currently being undertaken in NSW. Making Indigenous consultation processes within NSW clearer and more effective is part of this reform process. The parties agree to explore further alignment of Commonwealth and NSW Indigenous consultation requirements under the bilateral agreement with a view to ensuring best practice approaches and improving the efficiency and effectiveness of engagement between project proponents and Indigenous stakeholders.</p>

Continue to explore options to reduce any residual duplication between the Commonwealth and other NSW assessment and approval processes that may emerge following the implementation of this Agreement, including the prospective accreditation of the Public Priority Infrastructure process, if passed into law.

~~Undertake a strategic assessment of NSW's approach to assessing environmental impacts under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW).~~

Exploring options to streamline assessments that require a permit under the *Environment Protection (Sea Dumping) Act 1981* (Cth).

Explore options to streamline the fishery export approval process for NSW commercial fisheries assessed under Parts 13 and 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Identify and progress the most efficient way to streamline Commonwealth assessment and approvals for activities at the Sydney Opera House for the purposes of the EPBC Act that are not covered by this Agreement.

The Commonwealth will work with NSW to put a proposal to the Senior Officers' Committee to streamline the consideration of conservation advices within 6 months.

Execution page

EXECUTED as an Agreement

SIGNED for and on behalf of the
Commonwealth of Australia as
represented by:

The Hon Greg Hunt MP

Minister for the Environment

Date

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

The Hon Pru Goward MP

Minister for Planning

Date