



**ENVIRONMENT PROTECTION AND BIODIVERSITY  
CONSERVATION ACT 1999**

*Part 10 Strategic Assessments*

*Section 146 (1) Agreement*

Relating to the assessment of the impacts of a Plan for the protection of Matters of National Environmental Significance in the Perth and Peel regions, Western Australia.

between

**THE COMMONWEALTH OF AUSTRALIA**

and

**THE STATE OF WESTERN AUSTRALIA**

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## 1 PARTIES

The Parties to this Agreement are:

The Commonwealth of Australia, represented by the Minister for Sustainability, Environment, Water, Population and Communities

and

the State of Western Australia, represented by the Minister for Planning and the Minister for Environment.

## 2 COMMENCEMENT OF THE AGREEMENT

2.1 This agreement will commence on the date on which the agreement is signed by both parties.

## 3 DEFINITIONS

3.1 Unless stated otherwise in this Agreement, the definitions and terms in the *Environment Protection and Biodiversity Conservation Act 1999* apply to this Agreement and its attachments.

3.2 In this Agreement:

**Minister** means the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities (or delegate of the Minister).

**MNES** means matters of national environmental significance protected under the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*.

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

**The EP Act** means the *Environmental Protection Act 1986 (WA)*.

**The Environmental Protection Authority** means the Authority established under Part II of the EP Act.

**The Final Report** means a compilation of the:

- (i) revised draft impact assessment report, or
- (ii) draft impact assessment report and a supplementary report.

**The MNES Plan** means the plan for the protection of matters of national environmental significance in the Perth and Peel regions within the boundary defined by *Directions 2031 and beyond – metropolitan planning beyond the horizon* (August 2010), and the Yanchep pine plantations and adjacent lands vested in the Conservation Commission immediately north of the *Directions 2031 and beyond* boundary (Attachment A).

**Directions 2031** means *Directions 2031 and beyond – metropolitan planning beyond the horizon* (August 2010).

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

WA means the State of Western Australia.

## 4 PREAMBLE

4.1 The Parties agree that:

- a) the Perth and Peel regions have significant environmental values, and that
- b) important environmental, social and economic benefits may be derived from implementing:
  - *Directions 2031*, and
  - the plan for the protection of matters of national environmental significance in the Perth and Peel Regions of WA (the MNES Plan).

4.2 Recognising those environmental values, the Parties commit to:

- a) undertake a strategic assessment of the impacts of actions under the MNES Plan on matters of national environmental significance protected by Part 3 of the EPBC Act,
- b) share information, including but not limited to mapping, spatial and other data, and
- c) work collaboratively to undertake the activities within this Agreement.

4.3 The Parties recognise that the MNES Plan, and associated actions and classes of action, will be implemented through planning instruments, State planning, environmental and other instruments and policies. The Parties note:

- all planning schemes made or amended after the commencement of the *Planning Legislation Amendment Act 1996* (WA) [“the planning amendments”] have been referred to the Environmental Protection Authority (“post-1996 land”);
- planning schemes made or amended prior to the planning amendments have not been referred to the Environmental Protection Authority (“pre-1996 land”);
- significant proposals (as defined in section 37B (1) of the EP Act) on pre-1996 land that have occurred after the planning amendments may have been referred to the Environmental Protection Authority.

The parties note that where possible it is desirable:

- that in satisfying the requirements of the *EPBC Act*, the MNES Plan recognise existing State planning and environmental approvals for pre and post-1996 land; and
- to establish mechanisms within the MNES Plan to allow for approved actions or classes of actions on pre and post-1996 land to occur.

## 5 BACKGROUND

5.1 Section 146(1) of the EPBC Act allows the Minister to agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3 of the EPBC Act. For the purpose of Section 146(1) of the EPBC Act the Agreement relates to the MNES Plan as defined in clause 3.2.

5.2 *Directions 2031* is a high level strategic plan that establishes a vision for future growth of the Perth and Peel regions of WA, and provides a framework to guide the detailed planning and delivery of housing, infrastructure and services necessary to accommodate that growth.

- 5.3 The MNES Plan is to be developed by WA to operate in conjunction with *Directions 2031*. The MNES Plan will provide for the taking of actions within the boundary of the Strategic Assessment (Attachment A) subject to measures that will specifically address the impacts on MNES. Key issues that must be addressed in the MNES Plan are included (but not limited to) those issues included at Attachment B.
- 5.4 Assessment of the impacts associated with implementing the MNES Plan will be undertaken through a report prepared in accordance with Section 146(2) of the Act. This will include preparation of Terms of Reference for a report on the impacts associated with implementing the MNES Plan, preparation of the draft impact assessment report and consideration by the Minister of that report.
- 5.5 After considering the final report, the Minister may decide to endorse the MNES Plan in accordance with section 146(2)(f) of the EPBC Act if the Minister is satisfied that the report adequately addresses the impacts to which this Agreement relates and that recommended modifications, or modifications having the same effect, have been made.
- 5.6 The Parties acknowledge that the endorsement of the MNES Plan itself does not constitute any approval under the EPBC Act for the taking of actions for which approval is required under the EPBC Act.
- 5.7 If the Minister decides to endorse the MNES Plan under section 146(2)(f) of the EPBC Act, the Minister may then, under section 146B of the EPBC Act, decide to approve the taking of an action, or a class of actions, in accordance with the endorsed MNES Plan. The effect of such a decision would be that actions or classes of actions (if any) approved under section 146B would not need further approval under the EPBC Act for the purposes of the matters of national environmental significance specified by the Minister in the approval made under section 146B of the EPBC Act.
- 5.8 The Parties acknowledge that, where proponents propose to take an action in accordance with the MNES Plan that is not the subject of an approval under section 146B, they are still capable of seeking approval for that action via the ordinary channels for assessment and approval established under Parts 7, 8 and 9 of the EPBC Act.
- 5.9 For the removal of doubt, the provision of this part is intended to be statements of information and intent only.

## **6 TERMS OF REFERENCE FOR THE REPORT**

- 6.1 WA shall as soon as practicable and possible seek public comment on the draft Terms of Reference for the preparation of a report on the impacts of actions under the MNES Plan (the draft impact assessment report).
- 6.2 WA shall provide the draft Terms of Reference for public comment by notice:
- (a) posted on the relevant WA agency's website; and
  - (b) published in major WA newspapers.

- 6.3 The notice must advise that the draft Terms of Reference are available and how copies may be obtained, provide contact details and invite public comments on the draft Terms of Reference for a period of at least 28 days.
- 6.4 The Parties may each notify other parties of the notice in clause 6.2 and of the availability of the draft Terms of Reference. Each Party will make copies of the notice and draft Terms of Reference available electronically through its website.
- 6.5 Following the consideration of public comments on the draft Terms of Reference WA will submit to the Minister:
- (a) the revised draft Terms of Reference;
  - (b) public responses relating to the draft Terms of Reference; and
  - (c) comments on how the public responses have been taken into account in the revised draft Terms of Reference.
- 6.6 Following receipt of the revised draft Terms of Reference, the Minister shall as soon as practicable notify WA that the revised draft Terms of Reference (for assessment of the impacts of the actions under the MNES Plan):
- (a) are to the Minister's satisfaction; or
  - (b) are not to the Minister's satisfaction. In this instance the Minister will:
    - (i) notify WA of his concerns and invite WA to provide revised draft Terms of Reference which take those concerns into account; and
    - (ii) within 15 working days of receipt of the revised draft Terms of Reference mentioned above, either:
      - notify WA of his approval of the revised draft Terms of Reference; or
      - provide approved Terms of Reference that meet his requirements.

## **7 PREPARATION OF REPORT**

- 7.1 WA will as soon as practicable cause a draft impact assessment report to be prepared in accordance with the approved Terms of Reference (Attachment C).
- 7.2 WA shall provide the draft impact assessment report for public comment by notice:
- (a) posted on the relevant WA agency's website; and
  - (b) published in major WA newspapers.

The notice must advise that the draft report is available and how copies may be obtained, provide contact details for obtaining further information, invite public comments on the draft impact assessment report and set a period of at least 28 days within which comments must be received.

- 7.3 The Parties:
- (a) may each notify interested parties of the notice in clause 7.2 and of the availability of the draft impact assessment report; and
  - (b) will each make copies of the notice in clause 7.2 and draft impact assessment report available electronically through their websites.
- 7.4 Following closure of the public comment period, WA will prepare a:
- (a) revised draft impact assessment report; or

(b) supplementary report to the draft impact assessment report

Taking account of the comments received.

## **8 CONSIDERATION OF THE REPORT**

8.1 WA will submit to the Minister:

- (a) the MNES Plan, and
- (b) the Final Report, comprised of:
  - (iii) the revised draft impact assessment report, or
  - (iv) the draft impact assessment report and a supplementary report (clause 7.4),
- (c) public responses relating to the draft impact assessment report, and
- (d) comments on how the public responses have been taken into account in the final impact assessment report.

8.2 The Minister will consider the Final Report. If the Minister is not satisfied that the Final Report adequately addresses the impacts of the actions to which this Agreement relates:

- (a) The Minister will make recommendations to WA, as he considers appropriate, regarding the Final Report and implementation of the MNES Plan.
- (b) WA may provide the Minister with advice, or seek clarification from the Minister on recommendations in subclause (a).
- (c) WA will provide to the Minister a summary of the recommendations, advice or clarification in subclauses (a) and (b), and how those recommendations, advice or clarification are given effect through modifications to the MNES Plan.
- (d) The Minister will consider the revised MNES Plan and supporting material and may accept the Final Report or request further information or clarification if not satisfied that it addresses adequately the impacts of the actions to which this Agreement relates.

## **9 ENDORSEMENT OF THE PLAN**

9.1 The Minister may endorse the MNES Plan if satisfied that:

- (a) that any recommended modifications to the MNES Plan or modifications having the same effect have been made; and
- (b) the Final Report adequately addresses the impacts to which this Agreement relates

9.2 In considering whether to endorse the Program, the Minister will also consider the endorsement criteria at Attachment D.

## **10 APPROVAL OF ACTIONS**

10.1 If requirements of sections 146 F, G, H, J, K, L and M of the EPBC Act are met the Minister may approve, or approve with conditions for the purposes of the matters of national environmental significance affected by the MNES Plan, the taking of an action or class of actions in accordance with the endorsed MNES Plan and section 146B of the EPBC Act.

## **11 VARIATION**

- 11.1 The parties may vary this Agreement by an exchange of letters (including electronic communications) indicating acceptance to the extent only that such variation is consistent with the provisions of the Act.

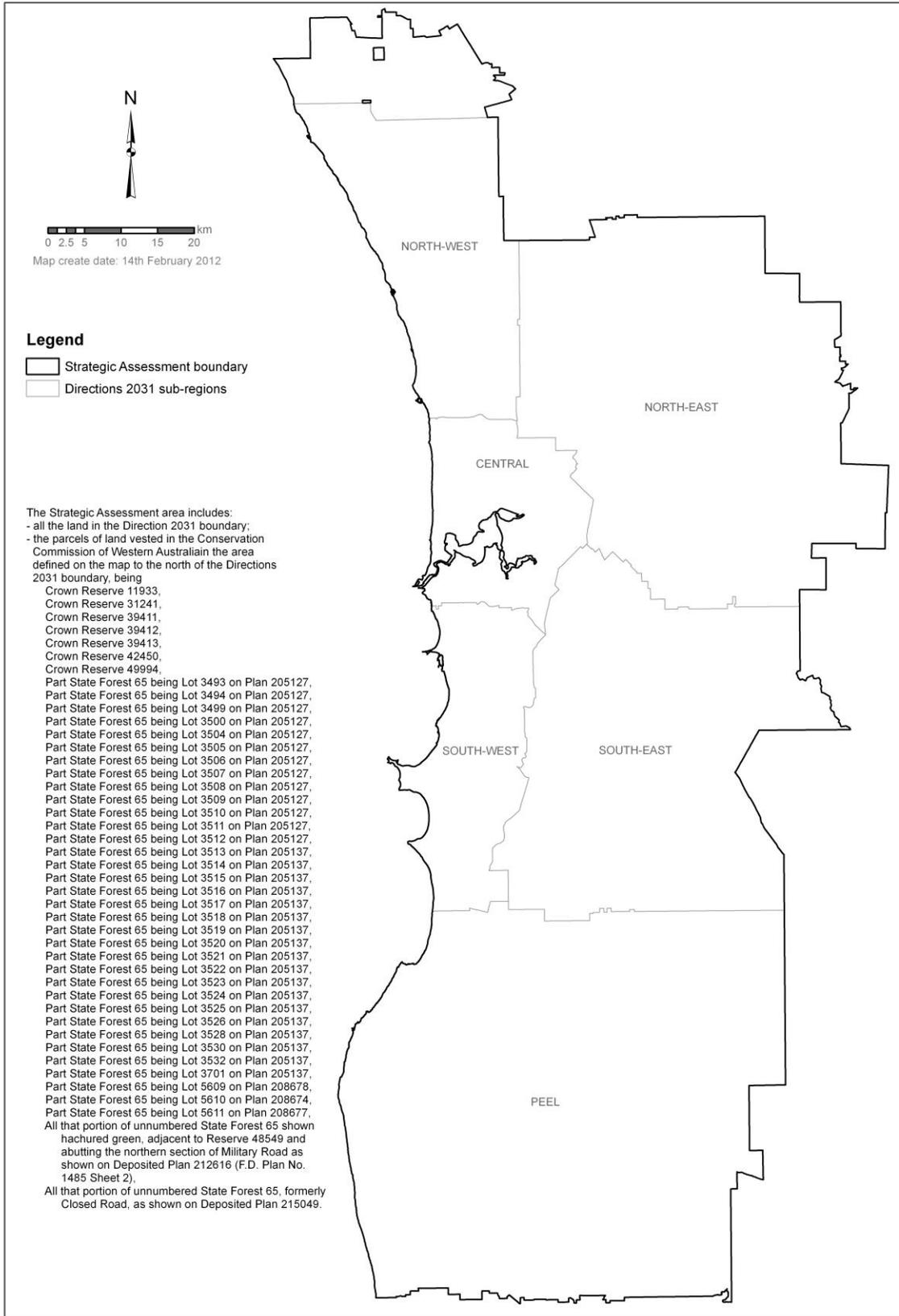
## **12 DISPUTE RESOLUTION**

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

## **13 TERMINATION**

- 13.1 Either party may at any time terminate this Agreement by correspondence to the other Party (including electronic communications).

# Attachment A: Map of the spatial boundary of the Strategic Assessment of the Perth and Peel regions, Western Australia.



## **Attachment B: Key issues to be addressed in the MNES Plan**

- 1.1 The MNES Plan prepared for this strategic assessment has a wide audience, including the general public, government regulators and developers, so it will:
  - a) use plain English to ensure readers who do not have background in or detailed knowledge of the MNES Plan understand its intent, where it applies, what must/must not be happening, and the planning system of the relevant jurisdiction(s);
  - b) address anticipated community concerns, and
  - c) provide clarity about legal responsibilities affected by the MNES Plan following endorsement.
- 1.2 The MNES Plan will clearly articulate outputs and outcomes to be achieved and the actions and processes to be used. These outputs, outcomes, actions and processes should address (but not be limited to) the following:
  - a) matters of national environmental significance;
  - b) data management and sharing;
  - c) stakeholder engagement and communication; and
  - d) monitoring, auditing evaluation and adaptive management.
- 1.3 The MNES Plan will describe how relevant matters of national environmental significance in the area are being addressed through avoidance, mitigation or offset measures. To be endorsed, the MNES Plan will adequately address all relevant matters of national environmental significance.
- 1.4 The MNES Plan will address in a clear and upfront manner issues such as (but not limited to):
  - a. how environmental impacts will be addressed, the monitoring, auditing, evaluation, adaptive management processes to be implemented including those for addressing failure to meet environmental outcomes; and
  - b. mechanisms that seek to achieve ecologically sustainable development including actions to maintain or enhance biodiversity, having regard for species diversity and abundance, and the extent, condition, connectivity and protection of native vegetation.
- 1.5 Any further state legislation, procedures, guidelines, etc on how the MNES Plan is to function will need to be presented in the MNES Plan itself or clearly referenced and made readily available.
- 1.6 The MNES Plan must continue to be effective despite changes to relevant WA planning, legislative and policy provisions underpinning the plan. It is also important that such changes will not affect the ability of the MNES Plan to deliver the endorsed outcomes, actions and processes in the future. The MNES Plan must give a clear, secure basis for building confidence that the benefits and outcomes committed to at the time of endorsement will be delivered. The MNES Plan must also clearly describe how it has allowed enough flexibility to deal with unforeseen changes, respond to adaptive management outcomes, or to have elements added to the plan.
- 1.7 The MNES Plan should also be clear on things that cannot be altered without breaching the plan (for example minimum environmental outcomes).
- 1.8 All references cited in the MNES Plan are to be included in a bibliography.

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## **Terms of Reference for the Strategic Assessment of the Plan for the Protection of Matters of National Environmental Significance in the Perth and Peel Regions of WA (the MNES Plan).**

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### **1. PURPOSE**

The purpose of this Strategic Assessment is to assess the MNES Plan to ensure that relevant matters of national environmental significance are managed in accord with the objectives of the EPBC Act. The MNES Plan is being developed by WA to be implemented in conjunction with the *Directions 2031 Spatial Framework for Perth and Peel*. These terms of reference are to be applied by WA to the report on the impacts of the MNES Plan (impact assessment report). The Agreement between the Commonwealth of Australia and State of Western Australia provides further information on the MNES Plan, impact assessment report and terms of reference and how these relate to each other. The impact assessment report prepared for this strategic assessment has a wide audience, including the general public, government regulators and developers. The Report must use plain English to ensure that readers, who do not have background in or detailed knowledge of the MNES Plan, understand the nature and extent of the impacts of the MNES Plan.

### **2. DESCRIPTION OF THE PLAN BEING ASSESSED**

The impact assessment report, as referred to in clause 7 of the Agreement, will include a detailed description of the MNES Plan to which the Agreement relates, including (but not limited to):

- a) how the MNES Plan has been developed;
- b) the regional context (human and natural (e.g. Interim Biogeographic Regions of Australia)) of the MNES Plan;
- c) the legal and administrative frameworks that will ensure the implementation of the MNES Plan. This should include:
  - legal standing of the MNES Plan,
  - the relationship of the MNES Plan to other relevant policies, plans, guidelines, commitments and legislation/regulation,
  - the basis of land and asset tenure for the MNES Plan area,
  - the management and approval arrangements of WA and the person(s) or authority responsible for the adoption or implementation of the Plan;
- d) the actions or classes of action that are subject of the MNES Plan, including the short, medium and long term aspects of those actions or classes of action. These will include construction and operational aspects as well as a description of the proposed urban development and associated infrastructure.

### **3 PROMOTING ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

### **3.1 Project need and justification.**

The Report will provide the social and economic basis for the MNES Plan to allow those aspects, in addition to environmental matters, to be considered by the Minister in deciding whether to endorse the MNES Plan. To this end it must outline the socio-economic costs and benefits of the MNES Plan derived during the period of its implementation. Principle assumptions underpinning the socio-economic assessment should be outlined.

### **3.2 Planning for ecologically sustainable development.**

The report will provide the social and economic context for the MNES Plan as described in *Directions 2031 Spatial Framework for Perth and Peel*. The Report will outline the planning and design process underpinning the MNES Plan and how environmental and cultural heritage has been treated through assessment and selection of alternative scenarios to align and maximise environmental, social and economic outcomes.

The MNES Plan will describe how principles of ecologically sustainable development have been considered in the development of the MNES Plan and how the Plan promotes these principles as described in section 3A of the EPBC Act.

The report must describe mechanisms and strategies that seek to achieve ecologically sustainable development including actions to maintain or enhance biodiversity, having regard for species diversity and abundance, and the extent, condition, connectivity and protection of native vegetation. These mechanism and strategies will include, but are not limited to:

- environmental flows and water for ecosystems,
  - recovery plans for matters of national environmental significance listed under the EPBC Act or WA legislation,
  - threat abatement plans for key threatening processes listed under the EPBC Act or WA legislation,
  - other introduced and/or translocated pest animals, plants and wildlife diseases,
  - managing native vegetation, and
  - biodiversity conservation, including climate change adaptation.
- a) the extent that existing WA management strategies may need to be modified to achieve their objectives in the MNES Plan area, due to implementation of the MNES Plan.

## **4. AVOIDING IMPACTS ON MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE AND PROMOTING THE PROTECTION AND CONSERVATION OF BIODIVERSITY AND HERITAGE VALUES.**

### **4.1 Environment affected by the MNES Plan**

The Report will provide:

- a) a detailed description of the environment likely to be directly or indirectly impacted by the implementation of the MNES Plan. This includes the environment beyond the planning area identified in the MNES Plan that could be affected by the proposed development (e.g. the offsite

impacts from stormwater management measures on water quality entering Ramsar wetlands and/or the marine environment);

- b) a detailed description of any physical processes (e.g. fire, flooding, past and current land and water use) influencing the environmental characteristics of the MNES Plan area or surrounds, or influencing the potential impacts on the MNES Plan area or surrounds,
- c) a profile for each matter of national environmental significance affected by the MNES Plan. Each profile must include:
  - the conservation status of the matters of national environmental significance under both the EPBC Act and relevant WA legislation,
  - a brief description of the matters of national environmental significance (including images),
  - mapping to show the distribution/location of the matters of national environmental significance (both historic and current) across its range in WA and within the MNES Plan area,
  - where appropriate, a description of the habitat requirements (e.g. foraging, breeding) for the MNES,
  - where appropriate, mapping to show the location, amount (hectares), quality (including criteria used) and type of the habitat (e.g. foraging, breeding) for the matters of national environmental significance within the MNES Plan area, and
  - key threats to the matters of national environmental significance and recovery/conservation management priorities.

A profile will also be developed for matters of national environmental significance that are potentially eligible for listing as a result of their:

- inclusion in a final priority assessment listing<sup>1</sup>, or
- otherwise recommended to the Minister for listing by the Threatened Species Scientific Committee prior to submittal of the Report.

## **4.2 Nature and implication of impacts affected by the MNES Plan.**

The Report will include an assessment of the potential impacts (including direct and indirect impacts, as defined by Section 527E of the Act) on each matter of national environmental significance affected by the MNES Plan including those matters that are potentially eligible for listing under the Act.

The assessment may be included in the Report as part of the profiles developed in Item 4.1 above for each matter of national environmental significance affected by the MNES Plan. The assessment must address (but not be limited to):

- a) the nature and extent of the potential impacts, whether short, long term or irreversible, local or regional, discrete or cumulative. Where appropriate, this will include the provision of maps to show the location, amount (hectares), quality and type of the habitat (e.g. foraging, breeding) for the MNES that will be either degraded, destroyed, or retained within the MNES Plan area;
- b) whether or not, and if so the extent to which, the impacts will be exacerbated by anticipated impacts of climate change, adaptation to the impacts of climate change or key threatening processes listed under the Act;

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<sup>1</sup> <http://www.environment.gov.au/biodiversity/threatened/nominations-fpal.html>

- c) the degree of potential impacts on known (or prospective) matters of national environmental significance – with reference to the relevant plans, policies or guidelines;
- d) the scientific confidence associated with the likelihood and consequence(s) of potential impacts, including reference to technical data, traditional/indigenous knowledge or other information relied upon in assessing the environmental impacts of the MNES Plan; and
- e) principal assumptions underpinning the assessment provided above.

### **4.3 Management, mitigation or offset of likely impacts of implementing the MNES Plan**

The Report will include a description and assessment of the *management measures* (e.g. works, on-ground actions, regulatory interventions, area-specific management plans and market based instruments) that will be implemented by WA prior to, during or post the implementation of the MNES Plan. The management measures are intended to avoid, minimise, rehabilitate or offset potential impacts on matters of national environmental significance caused by implementing the MNES Plan.

The assessment may be included in the Report as part of the profiles developed in Item 4.1 above for each matter of national environmental significance affected by the MNES Plan. For management measures, the Report must include an assessment of:

- a) the appropriateness of the approach taken (e.g. when compared to other potential approaches) to addressing the impacts of the actions or classes of actions proposed in the MNES Plan;
- b) the predicted effectiveness of the proposed measures. Claims regarding effectiveness of measures must be substantiated, including a description of the methodology used to formulate these predictions/confidence limits;
- c) the predicted efficiency of maintenance or operational requirements associated with proposed management measures;
- d) the predicted effectiveness of the compliance and enforcement requirements associated with proposed management measures;
- e) the statutory power and responsibility of the agency or agencies to implement the MNES Plan; and
- f) the appropriateness of the timelines and accountabilities for implementing proposed measures and associated compliance and maintenance requirements, and
- g) the appropriateness of the proposed offsets in the context of evolving or approved policy including (but not limited to):
  - Commonwealth EPBC Act Environmental Offsets Policy, Consultation draft, August 2011
  - Commonwealth threat abatement plans, recovery plans, conservation advices and other relevant policy statements;

Where appropriate, information on proposed offsets will include the provision of maps to show the location, amount (hectares), quality and type of the habitat (e.g. foraging, breeding) for the relevant matters of national environmental significance:

- within the MNES Plan area, and
- across its range in WA.

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

The Report must identify key risks associated with the management measures and undertakings for protecting matters protected by the Act, and the responses for addressing these risks and adapting to changed circumstances.

The Report must set out:

- a) key risks (for example risks about timing, effectiveness, or capacity to enforce measures);
- b) the responses to addressing these risks;
- c) the circumstances in which the MNES Plan will be reviewed and modified (for example new information or changing standards); and
- d) the procedures which would be undertaken to review, modify or abandon the MNES Plan, including regular reviews.

## **6 AUDITING AND REPORTING**

The Report must set out:

- a) proposed monitoring and public reporting processes and timeframes that address the effectiveness of the management measures during and post the implementation of the MNES Plan; and
- b) commitments for independent, third party auditing of the MNES Plan implementation.

## **7 ENDORSEMENT CRITERIA**

The Report must include an assessment of how the MNES Plan together with any associated management arrangements meets the criteria set out in *Attachment D – Strategic Assessment Endorsement Criteria*.

## **8 INFORMATION SOURCES**

For information used in the assessment, the Report must state:

- (a) the source of the information;
- (b) how recent the information is;
- (c) how the reliability of the information was tested; and
- (d) what uncertainties are in the information.

## **Attachment D: Strategic Assessment - Endorsement Criteria**

When deciding whether to endorse a policy, plan, or program the Minister must be satisfied that the assessment report adequately addresses the impacts to which the agreement relates, and that any recommendations to modify the policy, plan or program have been responded to appropriately.

In determining whether or not to endorse the MNES Plan the Minister will also have regard to the extent to which the MNES Plan meets the Objects of the Act. In particular, that it:

- protects the environment, especially matters of national environmental significance;
- promotes ecologically sustainable development;
- promotes the conservation of biodiversity; and
- provides for the protection and conservation of heritage.

Accordingly, the MNES Plan should:

- avoid actions from being taken in any location that have an impact on matters of national environmental significance or of high biodiversity or heritage values where ever possible; or
- where potential impacts can not be avoided, then the impacts should be reduced to an acceptable level; and
- provide for effective mitigation or offset where the likely impacts cannot be avoided; and
- contain effective arrangements for adaptive management for conservation measures; and
- contain a system for monitoring, auditing and publicly reporting on implementation.

The Minister will also consider the extent to which the MNES Plan adequately:

- identifies and includes management measures for matters the Minister considers to have a high likelihood of being potentially eligible for listing as matters of national environmental significance.