



**ENVIRONMENT PROTECTION AND  
BIODIVERSITY CONSERVATION ACT  
1999**

***Part 10 Strategic Assessment  
Section 146 Agreement***

Relating to the assessment of the impacts of urban development at Solomon Heights,  
Sunshine North, Victoria, on matters protected under Part 3 of the EPBC Act

between

**THE COMMONWEALTH  
MINISTER FOR THE  
ENVIRONMENT AND ENERGY**

and

**GLEN ORA ESTATE PTY LTD  
ACN: 004 118 674**

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## 1. PARTIES

The Parties to this Agreement are:

the Commonwealth Minister for the Environment and Energy  
and  
Glen Ora Estate Pty Ltd, ACN: 004 118 674

## 2. DEFINITIONS

2.1. Unless otherwise provided by this Agreement, the definitions, meanings and terms in the EPBC Act apply to this Agreement and its Attachment.

2.2. In this Agreement:

**Agreement** means this agreement made pursuant to section 146 of the EPBC Act and includes each Attachment.

**Attachment** means an attachment to this Agreement.

**Commonwealth Minister** means the Commonwealth Minister responsible for administering the EPBC Act from time to time and includes a person to whom the relevant powers under Part 10 of the EPBC Act have been delegated.

**Department** means the Commonwealth Department of the Environment and Energy or any other Commonwealth agency that administers the EPBC Act from time to time.

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

**Glen Ora** means Glen Ora Estate Pty Ltd, ACN: 004 118 674

**Plan** means proposed actions to be undertaken by Glen Ora at Solomon Heights, Sunshine North, Victoria and the associated environmental assessment and management procedures applied to avoid and mitigate impacts on Protected Matters and to be developed in accordance with clause 4 of this Agreement.

**Parties** means the parties specified in clause 1 of this Agreement.

**Protected Matters** means the matters protected by a provision of Part 3 of the EPBC Act.

**Solomon Heights** means all that area in Sunshine North, Victoria bounded by and including Munro Avenue in the south, Whitehill Avenue in the north and Vermont Avenue to the east, and bounded by the railway line to the west.

**Strategic Assessment Report** means the report prepared pursuant to section 146(2) of the EPBC Act and clause 5 of this Agreement.

**Terms of Reference** means the terms of reference for the Strategic Assessment Report and the Plan prepared in accordance with clause 5 of this Agreement and set out in Attachment B.

2.3. In this Agreement:

- a) references to the singular include the plural and vice versa; and
- b) references to one gender include all genders.

### **3. PREAMBLE**

- 3.1. The Parties agree that the area subject to the Plan, located in Sunshine North, Victoria, contains significant environmental, social and economic values.
- 3.2. Recognising those values, and in accordance with section 146 of the EPBC Act, the Parties agree that:
  - a) Glen Ora will, in accordance with this Agreement, prepare a Strategic Assessment Report to assess the impacts to which the Agreement relates; that being the impact of actions under the Plan on Protected Matters; and
  - b) The Parties will share information and work collaboratively to undertake the activities within this Agreement.
- 3.3. The Parties acknowledge that the endorsement of the Plan by the Commonwealth Minister does not constitute approval under the EPBC Act for the taking of actions for which approval is required under Part 9 of the EPBC Act.

### **4. DEVELOPMENT OF THE DRAFT PLAN**

- 4.1. The Parties agree that Glen Ora will develop a draft Plan in accordance with this Agreement.
- 4.2. The draft Plan must address the issues set out in Attachment A to this Agreement.
- 4.3. In addition to any other requirements in this Agreement, Glen Ora may consult with interested stakeholders on the development of the draft Plan. This may include seeking stakeholder feedback on parts or all of the draft Plan.

### **5. TERMS OF REFERENCE FOR THE STRATEGIC ASSESSMENT REPORT**

- 5.1. Pursuant to section 146(1B)(b) of the EPBC Act, the Parties agree to the preparation of draft Terms of Reference for the Strategic Assessment Report, as set out in Attachment B to this Agreement.
- 5.2. Glen Ora must make available for public comment, by notice, the draft Terms of Reference for the Strategic Assessment Report. Glen Ora must ensure that the notice:
  - a) is posted on Glen Ora's website;
  - b) is published in a national newspaper and a state daily newspaper circulating in Victoria;
  - c) mentions:
    - i. that the draft Terms of Reference are available for public comment;
    - ii. the provision of the EPBC Act that requires the draft Terms of Reference for the Strategic Assessment Report to be published (i.e. s 146(1B)(b)(ii));
    - iii. where and how copies may be obtained in an electronic and hard copy form without charge or at a reasonable cost;
    - iv. contact details for obtaining further information, including reasonable access for persons with special needs; and

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- d) invites public comment on the draft Terms of Reference for the Strategic Assessment Report for a period of 28 calendar days.
- 5.3. In regards to the notice in clause 5.2, the Parties may directly notify any party they think may have an interest in the Strategic Assessment Report and the Plan.
- 5.4. Following consideration of the public comments on the draft Terms of Reference, Glen Ora will submit to the Commonwealth Minister:
- a) revised draft Terms of Reference; and
  - 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.
- 5.5. Following receipt of the revised draft Terms of Reference, the Commonwealth Minister must notify Glen Ora as soon as practicable that the revised draft Terms of Reference:
- a) are approved; or
  - b) are not approved. In this instance the Commonwealth Minister will:
    - i. notify Glen Ora of any concerns and invite Glen Ora to provide further revised draft Terms of Reference, which address matters specified by the Commonwealth Minister; and
    - ii. on receipt of the further revised draft Terms of Reference either:
      - A. notify Glen Ora of the Minister's approval of the further revised draft Terms of Reference; or
      - B. provide finalised and approved Terms of Reference.

## **6. PREPARATION OF THE STRATEGIC ASSESSMENT REPORT AND PLAN**

- 6.1. Once the Terms of Reference for the Strategic Assessment Report have been finalised by the Commonwealth Minister, Glen Ora must prepare a draft Strategic Assessment Report in accordance with the Terms of Reference.
- 6.2. Glen Ora agrees to provide the draft Strategic Assessment Report and the draft Plan to the Department for comment prior to releasing both documents for public comment under clause 6.6.
- 6.3. The Department will assist Glen Ora in ensuring that the draft Strategic Assessment Report provided in clause 6.1 adequately addresses the requirements for strategic assessments in Part 10 of the EPBC Act by providing comments on the draft Strategic Assessment Report in a timely manner. The Department further agrees to assist Glen Ora by providing comments on the draft Plan in a timely manner.
- 6.4. The Department's comments may recommend modifications of the draft Strategic Assessment Report, the draft Plan or both.

- 6.5. Following the completion of the process set out in clauses 6.2-6.4 of this Agreement, Glen Ora must, by notice, make the draft Strategic Assessment Report and draft Plan available for public comment. Glen Ora must ensure that a notice:
- a) is posted on Glen Ora's website;
  - b) is published in a national newspaper and a state daily newspaper circulating in Victoria
  - c) mentions:
    - i. that the draft Plan and draft Strategic Assessment Report are available for public comment;
    - ii. where and how copies may be obtained in an electronic and hard copy form without charge or at a reasonable cost;
    - iii. contact details for obtaining further information, including reasonable access for persons with special needs; and
  - d) invites public comment on the draft Strategic Assessment Report and draft Plan for a period of 28 calendar days.
- 6.6. The Parties:
- a) may separately notify interested parties, including principal stakeholders, of the notice in clause 6.6 and of the availability of the draft Strategic Assessment Report and draft Plan for public comment; and
  - b) must make copies of the draft Strategic Assessment Report and draft Plan available electronically through their websites.
- 6.7. Glen Ora must provide hard copies of the draft Strategic Assessment Report and draft Plan to interested parties via post if requested.
- 6.8. Following consideration of any public comments received, Glen Ora must provide the draft Strategic Assessment Report and the draft Plan to the Department for further comment. The Department agrees to assist Glen Ora in ensuring that the draft Strategic Assessment Report adequately addresses the impacts to which this Agreement relates by providing comments in a timely manner. The comments provided by the Department may include recommendation modifications to the draft Strategic Assessment Report, the draft Plan or both.
- 6.9. Following consideration of the Department's comments, Glen Ora must finalise the draft Strategic Assessment Report and the draft Plan.
- 6.10. Glen Ora must then submit the following documents to the Commonwealth Minister:
- a) the Strategic Assessment Report; and
  - b) the Plan; and
  - c) a supplementary report that summarises any public comments received and how the public comments were addressed by Glen Ora through modifications to the Strategic Assessment Report and the Plan.

## **7. CONSIDERATION OF THE STRATEGIC ASSESSMENT REPORT AND ENDORSEMENT OF THE PLAN**

- 7.1. Following receipt of the Strategic Assessment Report and the Plan in accordance with clause 6.10 of this Agreement, the Commonwealth Minister may, if not satisfied that the Strategic Assessment Report adequately addresses the impacts to which this Agreement relates, make recommendations to Glen Ora about the Plan (including recommendations for modification of the Plan).
- 7.2. The Commonwealth Minister may request any additional information the Minister considers necessary to be satisfied that the Strategic Assessment Report adequately addresses the impacts to which this Agreement relates, being any impacts to Protected Matters of actions taken under the Plan.
- 7.3. Where the Commonwealth Minister makes recommendations about the Plan, Glen Ora may:
  - a) seek clarification from the Commonwealth Minister on the recommendations;
  - b) provide the Commonwealth Minister with additional documentation explaining how the recommendations are responded to through the Plan; or
  - c) modify the Plan to give effect to the Commonwealth Minister's recommendations.
- 7.4. Glen Ora may modify the Plan as a consequence of the process described in clauses 7.1-7.3 before the Commonwealth Minister determines whether to endorse the Plan.
- 7.5. Where Glen Ora modifies the Plan to give effect to the Commonwealth Minister's recommendations, Glen Ora must submit both:
  - a) the revised Plan; and
  - b) a summary of how the Minister's recommendations were given effect;to the Commonwealth Minister for consideration.
- 7.6. The Commonwealth Minister may request further modifications if still not satisfied that the Plan provides for adequate protection of Protected Matters.
- 7.7. The Commonwealth Minister may endorse the Plan if satisfied that:
  - a) the Strategic Assessment Report adequately addresses the impacts to which the Agreement relates, being any impacts to Protected Matters of actions taken under the Plan; and
  - b) either the recommended modifications to the Plan (if any) have been made or any modifications having the same effect have been made.
- 7.8. When determining whether the Minister is satisfied that the Strategic Assessment Report adequately addresses the impacts to which the Agreement relates, the Commonwealth Minister may have regard to the Terms of Reference.
- 7.9. If the Plan is endorsed by the Commonwealth Minister, Glen Ora must make the Strategic Assessment Report and the Plan publicly available by publishing them electronically on its website and maintaining public access to electronic copies and hard copies of both documents for the life of the Plan.

## **8. APPROVAL OF ACTIONS**

- 8.1. Following endorsement of the Plan, Glen Ora may request that the Commonwealth Minister approve the taking of an action or class of actions in accordance with the endorsed Plan.
- 8.2. Subject to s 146C(1) of the EPBC Act, the Commonwealth Minister may approve, with or without conditions, the taking of an action or class of actions in accordance with the endorsed Plan, pursuant to section 146B of the EPBC Act.

## **9. VARIATION**

- 9.1 This Agreement may only be varied by written agreement (including electronic communications) between the Parties, and only to the extent that the variation is consistent with the EPBC Act.

## **10. DISPUTE RESOLUTION**

- 10.1 Where there is a dispute between the Parties to this Agreement on a particular matter, management representatives of the Parties will consult in a spirit of mutual cooperation in relation to that matter and will use their best endeavours to negotiate a mutually acceptable resolution.

## **11. TERMINATION**

- 11.1 This Agreement may be terminated by either party by giving written notice to the other party at any time, except where the termination relates to a dispute in which case clause 10 must be complied with first.
- 11.2 If the Parties are unable to resolve a dispute in accordance with clause 10 of this Agreement, either party may terminate this Agreement by giving written notice to the other party.

## **12. GENERAL**

- 12.1. Any notice given by a party under this Agreement must be in writing and delivered by:

- a) hand
- b) pre-paid post, or
- c) email

to the representative of the receiving party. The Parties must specify an address, number or email address to which notices can be sent.



12.2. Notwithstanding any other provision of this Agreement, the Parties may disclose information about this Agreement, including personal information, where required by law or government policy.

**SIGNED** by the delegate of the **Commonwealth Minister for the Environment and Energy**:

Signed: 

Dated: 5/6/2017

Mr James Barker  
Assistant Secretary, Department of the Environment and Energy

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**SIGNED** for **Glen Ora Estate** by:

Signed: 

Dated:

2 June 2017

Mr Ron Silverstein  
Glen Ora Estate Pty Ltd

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## **Attachment A**

### **REQUIREMENTS FOR THE DRAFT PLAN**

#### **1. DESCRIPTION**

The Plan must describe:

- a) the proposed action(s) that are the subject of the Plan, including all works to be undertaken, methods, timing and future activities;
- b) likely third party activities at the site that will be facilitated by the proposed action(s);
- c) the background and justification for the Plan;
- d) how the Plan has been developed;
- e) the geographic extent and description of the area and surrounding areas to which the Plan applies, including tenures;
- f) the regional context (environmental, social and economic) in which the Plan operates;
- g) any state/local council approvals that have been or will be required to be obtained and conditions that apply (or are reasonably expected to apply) to those approvals;
- h) specific outcomes and commitments to protect Protected Matters;
- i) key studies and investigations that have informed the Plan;
- j) description and justification for methodologies used to identify and prioritise desirable conservation outcomes for the area to which the Plan applies;
- k) mechanisms, including avoidance, mitigation and offset arrangements, to achieve the identified conservation outcomes; and
- l) identification of the proposed approval holder who will be responsible for implementing the Plan and compliance with any subsequent approvals and approval conditions.

#### **2. MAPS**

The Plan must include maps, including identification of the location, the area that will be assessed by the Strategic Assessment Report and Protected Matters that are present in or adjacent to the area.

### **3. MEASURES TO AVOID, MITIGATE, OFFSET AND ADAPTIVELY MANAGE IMPACTS ON PROTECTED MATTERS**

The Plan must identify specific measures that will be implemented to avoid, mitigate and offset impacts on Protected Matters, including:

- a) identifying areas of high conservation or biodiversity value that will be avoided;
- b) measures to mitigate impacts where direct or indirect impacts are expected or likely;
- c) offsets to compensate for residual significant impacts, including:
  - i. description of offset site(s) including location, size, condition and environmental values present;
  - ii. information on and justification of how the offset(s) will deliver a conservation outcome that will maintain or improve the viability of the Protected Matter consistent with the EPBC Act Environmental Offsets Policy (October 2012) (Offsets Policy); and
  - iii. details on how the offset will be secured, managed and monitored over the life of the Plan; and
- d) the identification of any suitably qualified person(s) involved in carrying out the proposed measures.

### **4. ADAPTIVE MANAGEMENT: ADDRESSING UNCERTAINTY AND MANAGING RISK**

The Plan must describe how the adaptive management strategies will be implemented to ensure Protected Matters are effectively protected over the life of the Plan. This includes:

- a) how monitoring of Protected Matters will occur, including monitoring of progress in achieving the desired conservation outcomes identified in the Plan;
- b) how the monitoring will be analysed throughout the life of the Plan;
- c) how the results of the monitoring will influence management measures; and
- d) how new information relating to Protected Matters or the Plan is to be assessed and accounted for in management of the area affected by the Plan.

### **5. AUDITING AND REPORTING**

The Plan must set out:

- a) monitoring, public reporting and independent or third party auditing to be undertaken
- b) a process that will incorporate these findings into ongoing management of the area to which the Plan relates;
- c) who is responsible for overseeing and taking these actions; and

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d) record keeping and review processes under the Plan.

**6. REVIEW, MODIFICATION OR ABANDONMENT**

The Plan must identify and analyse the likely circumstances and procedures that may result in the review, modification or abandonment of the Plan. This is to include a discussion of how any commitments under the Plan will continue to be met.



## **Attachment B**

### **DRAFT TERMS OF REFERENCE FOR THE STRATEGIC ASSESSMENT REPORT**

#### **1. PURPOSE**

The purpose of the Strategic Assessment Report is to assess the impacts of actions taken under the Plan on Protected Matters. These Terms of Reference are to be applied by Glen Ora in the development of the Strategic Assessment Report. The Agreement provides further information on the Strategic Assessment Report, the Plan and the Terms of Reference and how these relate to each other. These Terms of Reference form part of the Agreement and adopt the definitions used in clause 2 of the Agreement.

#### **2. PROTECTED MATTERS**

##### **Identification of affected Protected Matters**

The Strategic Assessment Report must describe Protected Matters likely to be impacted by actions taken under the Plan. The following Protected Matters must be addressed:

- a) World heritage properties (sections 12 & 15A)
- b) National heritage places (sections 15B & 15C)
- c) Wetlands of international importance, also known as Ramsar wetlands (sections 16 & 17B)
- d) Listed threatened species and communities (sections 18 & 18A)
- e) Listed migratory species (sections 20 & 20A)
- f) Nuclear actions (sections 21 & 22A)
- g) Commonwealth marine areas (sections 23 & 24A)
- h) The Great Barrier Reef Marine Park (sections 24B & 24C)
- i) A water resource, in relation to coal seam gas development and large coal mining development (sections 24D & 24E)
- j) Commonwealth land (sections 26 & 27A)
- k) Commonwealth heritage overseas (sections 27B & 27C)

The Strategic Assessment Report must describe the Protected Matters within the geographic extent of the Plan. This includes the Protected Matters likely to be directly or indirectly impacted by actions taken under the Plan. The Strategic Assessment Report must:

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- a) describe the current and past condition of Protected Matters;
  - b) describe the past and projected trends of Protected Matters;
  - c) describe the existing threats to Protected Matters;
  - d) identify those aspects of the environment considered critical to the continued presence and functioning of Protected Matters identified as potentially at risk;
  - e) describe the methodology for identifying Protected Matters, together with an analysis of the strengths, limitations and expected effectiveness of methodologies used; and
  - f) identify any key information gaps, further studies needed and any proposals to address critical information needs.

#### **Identification and analysis of potential impacts**

The Strategic Assessment Report must identify and analyse the likely impacts of development on biodiversity and Protected Matters within the area actions are proposed to be taken under the Plan, and against the desired conservation outcomes identified in the Plan. The Strategic Assessment Report must include analysis of:

- a) the nature of potential development and description of the types of impacts considered, including short and long term, direct, indirect, cumulative, consequential and offsite impacts;
- b) relevant conservation advices, recovery plans and threat abatement plans for listed threatened species and communities;
- c) aspects of the environment considered critical to the continued presence and functioning of Protected Matters and long term influences on the supporting landscape ecosystems at a local and regional scale; and
- d) whether any impacts to Protected Matters are likely to be unknown, unpredictable or irreversible.

#### **Measures to avoid, mitigate, offset and adaptively manage impacts on Protected Matters**

The Strategic Assessment Report must include an analysis of the likely effectiveness of the Plan in protecting Protected Matters and in achieving conservation outcomes at the regional landscape scale, including how any risk and uncertainty has been managed.

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

The Strategic Assessment Report must describe and assess how the principles of ecologically sustainable development (section 3A of the EPBC Act) have been applied in developing the Plan and how these will be implemented.

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#### **4. ADAPTIVE MANAGEMENT: ADDRESSING UNCERTAINTY AND MANAGING RISK**

The Strategic Assessment Report must identify and assess the adequacy of key adaptive management measures included in the Plan that are intended to address uncertainties, information gaps and inherent risks. Uncertainties could, for example, include knowledge gaps in scientific understanding and the timing, effectiveness, or capacity to implement, maintain, operate and enforce management measures.

#### **5. INFORMATION SOURCES**

For information and data used in the assessment of the Plan, the Strategic Assessment Report must state:

- a) the source and currency (date) of the information;
- b) the names of persons involved in preparing the documentation and the work prepared by each of these persons; and
- c) the reliability and limitations of the information.

