

TERMS OF REFERENCE FOR A STRATEGIC IMPACT ASSESSMENT REPORT FOR THE OSBORNE SUBMARINE CONSTRUCTION YARD UNDER THE EPBC ACT

On 24 November 2023 the Australian Submarine Agency (**ASA**) entered into an agreement (**the Agreement**) with the Commonwealth Minister for the Environment (**the Commonwealth Minister**), pursuant to section 146(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), to undertake a strategic assessment of the impacts of actions or classes of actions to be taken to construct and operate a Submarine Construction Yard in a defined area on the Lefevre Peninsula in Adelaide, South Australia (**Strategic Assessment Area**), on matters protected by a provision of Part 3 of the EPBC Act (**Protected Matters**).

The Agreement requires the ASA to, among other requirements, prepare the following documents which will be considered by the Commonwealth Minister:

- The Strategic Assessment Plan (**the Plan**). The Plan will describe:
 - the actions, or classes of actions that are to be undertaken to construct and operate the Osborne Submarine Construction Yard in the Strategic Assessment Area;
 - the outcomes that will be achieved for Protected Matters, to which actions under the Plan relate, in accordance with the requirements of the EPBC Act.
- The Strategic Impact Assessment Report (**the Report**). The Report will include:
 - a description of the environment to which actions under the Plan relate;
 - an assessment of the impact of implementing the Plan on Protected Matters; and,
 - details of how likely or potential impacts will be avoided, mitigated and offset (where necessary or appropriate) to make sure that Protected Matters are protected and managed in the long term.

These Terms of Reference specify what must be included in the Report to satisfy the Commonwealth Minister's requirements under Part 10 of the EPBC Act.

Steps or processes in the assessment of the impacts of the actions to be taken in accordance with the Plan under Part 10 of the EPBC Act may be done concurrently with the South Australian impact assessed development assessment process under the *Planning, Development and Infrastructure Act 2016* (SA) as provided for in Clause 5 of the Agreement.

1. DEFINITIONS

1.1. Unless otherwise stated, the definitions, meanings, and terms in the EPBC Act apply to these Terms of Reference.

1.2. In these Terms of Reference:

Agreement means the Strategic Assessment Agreement entered into by the Parties on the 24 November 2023 and includes any attachments and any variations agreed by the Parties.

Approval Holder means the person or entity responsible for implementing the endorsed Plan identified and granted such status by an approval decision and ensuring the conditions attached to the strategic assessment approval are met, including the delivery of commitments for the protection of the Protected Matters.

Commonwealth Minister means the Minister with responsibility for administering the EPBC Act and includes a person to whom that Minister's power under section 146(1) of the EPBC Act has been delegated.

Environment means 'environment' as defined in section 528 of the EPBC Act. It includes:

- a) ecosystems and their constituent parts including people and communities ('ecosystem' is defined in the EPBC Act as 'a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functioning unit'); and
- b) natural and physical resources; and
- c) the qualities and characteristics of locations, places and areas; and
- d) heritage values of places ('heritage value' is defined in the EPBC Act as including 'the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.' 'Indigenous heritage value' is defined as meaning 'a heritage value of the place that is of significance to Indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history'); and
- e) the social, economic and cultural aspects of a thing mentioned in paragraph a), b), c) or d).

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

Parties means the ASA and the Commonwealth Minister.

Plan means the documentation (which constitutes a 'policy, plan or program' pursuant to section 146 of the EPBC Act) to be prepared by ASA that describes the actions or classes of actions that are to be undertaken to construct and operate the Osborne Submarine Construction Yard.

Protected Matter means a matter protected by a provision of Part 3 of the EPBC Act. The specific matter protected by each provision is set out in section 34 of the EPBC Act.

Report means the Strategic Impact Assessment Report to be developed to assess the impact of implementing the Plan.

Strategic Assessment Area means the area displayed within the Strategic Assessment Area in Attachment 1 of the Agreement (Figure 1).

2. PURPOSE OF THE REPORT

- 2.1. The purpose of the Report is to assess the impacts of implementing the Plan, including the impacts of actions or classes of actions proposed under the Plan on all relevant Protected Matters.

2.2. The Report will enable the Commonwealth Minister to evaluate the ability of the Plan to ensure the protection and conservation of all relevant Protected Matters.

2.3. The Report must demonstrate how the Plan has been developed to meet the requirements of the Agreement, including the endorsement criteria (Attachment 2 of the Agreement).

3. DESCRIPTION OF THE PLAN

3.1. The Report must describe and summarise the key elements of the Plan to which the Agreement relates, including:

- a) A summary of the Plan's overall purpose, key elements, spatial extent and timeframes, including how long the Plan is to be in effect.
- b) The conservation outcomes and commitments to be delivered for Protected Matters, including measures to avoid the impacts of implementing the Plan.
- c) The conservation outcomes and commitments to be delivered for Protected Matters including measures to mitigate the impacts of implementing the Plan.
- d) If a significant residual impact is assessed, measures to be undertaken to offset the impacts of implementing the Plan.
- e) The identification of an action or classes of actions to be taken under the Plan over the life of the Plan.
- f) To avoid doubt, the identification of relevant actions or classes of actions that are beyond the scope of the Plan.
- g) The relationship of the Plan to other relevant Commonwealth and South Australian State policies, laws (including international treaties), plans, guidelines, commitments, regulations and legislation (including environmental approvals).
- h) The legal and administrative frameworks that will be implemented to ensure compliance with the Plan, and the persons and authorities responsible for the implementation of and compliance with the Plan, including, but not limited to, breach protocols or reporting/notification requirements.
- i) Management and funding arrangements for implementing the Plan and complying with any approval given with respect to the Plan under Part 10 of the EPBC Act, including but not limited to a description of the mechanism(s) that will be used by the Approval Holder(s) to verify the persons who are proposing to take an action in accordance with the Plan, and to inform those persons of any relevant obligations and conditions of the approval.

3.2. The Report must describe the need and justification for the Plan, including the environmental, social and economic drivers for its implementation.

3.3. The Report must describe the decision-making framework used in developing the outcomes and commitments for the Plan. It should identify the alternative options

that were evaluated to reach the draft Plan, and why these options were not supported.

- 3.4. The Report must describe how the principles of ecologically sustainable development are considered and incorporated into the development and implementation of the Plan.

4. DESCRIPTION OF PROTECTED MATTERS THAT RELATE TO THE PLAN

- 4.1. The Report must describe the nature of the Environment to which actions under the Plan relate. This must include, at a minimum:

- a) A description and map of current and historical land use.
- b) A description of the extent, type and quality of vegetation present.
- c) A description of the condition of natural and physical resources, ecological processes, and current and plausible threatening processes.
- d) A description of the landscape scale values, such as habitat connectivity, habitat fragmentation, and ecological processes.
- e) A description of heritage values in the Strategic Assessment Area.
- f) A map or maps of areas that are protected (including national parks, nature reserves, and known offset areas) under Commonwealth and/or South Australian State legislation.

- 4.2. The Report must identify and describe all Protected Matters to which actions under the Plan relate; including, but not limited to:

- a) The location of any declared World Heritage properties and/or National Heritage places within or relevant to the Strategic Assessment Area, including a description of the associated heritage values (Part 3, Division 1, Subdivision A and AA).
- b) A description of the ecological character of any Ramsar wetland within or relevant to the Strategic Assessment Area (including Ramsar wetlands within the same catchment as the Strategic Assessment Area) including the biological, physical and chemical components of the wetland ecosystem, and their interactions, which maintain the wetland and its products, functions, and attributes (Part 3, Division 1, Subdivision B).
- c) A description of, and spatial information for EPBC Act-listed ecological communities found within or relevant to the Strategic Assessment Area, outlining their known and potential extents (in hectares), condition, listing status, threatening processes, habitat quality and landscape context (Part 3, Division 1, Subdivision C). The Report must also consider matters that are potentially eligible for listing as a result of inclusion in a final priority assessment listing held by the Commonwealth, or a recommendation to the Commonwealth Minister for listing by the Threatened Species Scientific Committee, prior to the Report being submitted.

- d) A description of, and spatial information for listed threatened and/or migratory species within or relevant to the Strategic Assessment Area. Details are to include listing status, documented habitat type and documented or surveyed estimates of population size or abundance and distribution, habitat presence quality and area (in hectares), landscape context and existing threatening processes (Part 3, Division 1, Subdivision C and D). The Report must also consider matters that are potentially eligible for listing as a result of inclusion in a final priority assessment listing held by the Commonwealth, or a recommendation to the Commonwealth Minister for listing by the Threatened Species Scientific Committee, prior to the Report being submitted.
- e) The identification of critical or important areas for Protected Matters, including consideration of the importance of areas of habitat, habitat connectivity, position in the landscape and areas likely to be important for maintaining ecological processes.
- f) Maps detailing habitat type and extent for the listed threatened species, migratory species and ecological communities that are known, likely or may occur within or relevant to the Strategic Assessment Area.
- g) A description of the Environment within or relevant to the Strategic Assessment Area (Part 3, Division 1, Subdivision E and F, and Part 3, Division 2, Subdivision A and B).
- h) Justification as to the suitability of the methodologies, surveys or processes used to identify/estimate the presence/absence and potential extent of Protected Matters within the Strategic Assessment Area.
- i) Details of any information gaps or uncertainties in identifying the Protected Matters found within the Strategic Assessment Area, including any further studies or measures required to address these gaps.

4.3. The Report, in identifying the Protected Matters potentially impacted by the Plan, must:

- a) Be compiled and assessed with regard to relevant Commonwealth statutory documents and policies, including but not limited to: recovery plans, conservation advice, threat abatement plans and referral guidelines.
- b) Be compiled and assessed in accordance with the mitigation hierarchy (in line with the *EPBC Act Environmental Offsets Policy, 2012*¹).
- c) Describe how uncertainty will be dealt with in accordance with the precautionary principle, up to and including worst-case scenarios.

5. ASSESSMENT OF THE IMPACTS OF IMPLEMENTING THE PLAN ON PROTECTED MATTERS

¹ Published by the former Department of Sustainability, Environment, Water, Population and Communities. As amended from time to time, or any other Commonwealth policy that replaces this policy.

- 5.1. The Report must describe and assess the likely direct, indirect and cumulative impacts on Protected Matters of implementing the Plan. The detail provided will be proportionate to the level of likely severity of impacts to each Protected Matter in consideration of intensity, scale, duration and frequency of the potential impact.
- 5.2. The Report must describe and provide justification for the method used to assess impacts to all Protected Matters arising from actions proposed to be taken under the Plan. The method must:
- a) Be appropriate for assessment at the temporal and spatial scales as applicable to the proposed actions and consider the intensity, scale, duration and frequency of the potential impact of implementing the Plan.
 - b) Rely on the best available information including by collection of site-specific data (e.g. field surveys).
 - c) Discuss uncertainty, including by reference to the data and information sources relied upon. Identify where there is a high degree of uncertainty (in line with the precautionary principle).
 - d) Detail the approach to the assessment of impacts, including, a detailed risk assessment of the Plan, that details potential impacts, their likelihood and consequence.
- 5.3. The Report must identify:
- a) The duration, extent, area and likely severity of the impacts of implementing the Plan.
 - b) How impacts to Protected Matters will be avoided.
 - c) How impacts to Protected Matters will be mitigated, including a description of mitigation measures that will be implemented and their likely effectiveness to reduce impacts to Protected Matters.
 - d) How residual impacts to Protected Matters that cannot be avoided or mitigated will be offset in accordance with the principles of the *EPBC Act Environmental Offsets Policy, 2012*².
 - e) The proposed funding arrangements and timeframes for the delivery of avoidance, mitigation and offset requirements.
 - f) Environmental outcomes and commitments for the management and conservation of Protected Matters for the life of the Plan.
- 5.4. The Report should also consider matters that are potentially eligible for listing as a Protected Matter as a result of inclusion in a final priority assessment listing held by the Commonwealth, or a recommendation to the Commonwealth Minister for listing by the Threatened Species Scientific Committee, prior to the Report being

² As above.

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

5.5. The Report must provide evidence as to the adequacy and likely effectiveness of the environmental outcomes and commitments proposed in the Plan in conserving and managing Protected Matters. To do this, the Report must:

- a) Demonstrate how the environmental outcomes and commitments will effectively protect and manage Protected Matters for the life of the Plan.
- b) Demonstrate how environmental outcomes and commitments for Protected Matters are to be documented, delivered and adequately resourced throughout the life of the Plan.
- c) Demonstrate the anticipated effectiveness of implementation frameworks (including other permitting and future licencing requirements), funding arrangements and administrative processes to deliver the environmental outcomes and commitments proposed in the Plan.
- d) Outline how the proposed environmental outcomes and commitments will be tracked and managed to improve their implementation, especially in situations where monitoring demonstrates the delivery of the outcomes and commitments is not leading to the effective management and conservation of Protected Matters.
- e) Identify how new information relating to Protected Matters, including legislative changes, will be assessed and accounted for in the implementation of the Plan.
- f) Provide evidence to demonstrate how the proposed outcomes and commitments will be enforced and administered to third-parties to ensure Protected Matters are managed and protected over the life of the Plan.

5.6. The Report must detail the plausible future climatic conditions of the Strategic Assessment Area in the assessment of impacts on Protected Matters of implementing the Plan (where such data exists). This should include, but not be limited to:

- a) How changes in climate would affect the impacts of implementing the Plan on Protected Matters over time, and what (if any) effect this would have on the outcome for Protected Matters.
- b) Discussion of loss, fragmentation, or drying of potential climate refugia for threatened species or communities as a result of the proposed Plan – consider the potential impacts of removing or otherwise impacting this climate refugia for the long-term survival of the species in the region.
- c) Discussion of increased risk of fire as a result of the Plan under drier conditions and periods of extreme heat.

- d) Discussion of changes in the frequency and intensity of extreme weather events that may exacerbate impacts to Protected Matters within and downstream of the Strategic Assessment Area.
- e) Inclusion of different climate scenarios in any site water management modelling, including flooding, storm surge events and sea level rise.

5.7. The Report must consider the extent to which the impacts from actions proposed under the Plan on Protected Matters would be consistent with the requirements and objectives of the EPBC Act (in accordance with Part 10, Division 1, Subdivision C), including but not limited to:

- a) To the extent the Plan relates to a declared World Heritage property, an assessment of how approving an action or class of actions to be taken in accordance with the Plan, if endorsed, would not be inconsistent with:
 - i. Australia's obligations under the World Heritage Convention; or
 - ii. the Australian World Heritage management principles; or
 - iii. a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321 (see section 146G of the EPBC Act).
- b) To the extent the Plan relates to a National Heritage place, an assessment of how approving an action or class of actions to be taken in accordance with the Plan, if endorsed, would not be inconsistent with:
 - i. the National Heritage management principles; or
 - ii. an agreement to which the Commonwealth is a party in relation to the National Heritage place; or
 - iii. a plan that has been prepared for the management of the National Heritage place under section 324S or as described in 324X (see section 146H of the EPBC Act).
- c) To the extent the Plan relates to a declared Ramsar wetland, an assessment of how approving an action or class of actions to be taken in accordance with the Plan, if endorsed, would not be inconsistent with Australia's obligations under the Ramsar Convention (see section 146J of the EPBC Act).
- d) To the extent the Plan relates to a listed threatened species or ecological community:
 - i. an assessment of how approving an action or class of actions to be taken in accordance with the Plan, if endorsed, would not be inconsistent with:
 - a. Australia's obligations under:
 - i. The Biodiversity Convention; or

- ii. The Apia Convention; or
 - iii. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); or
 - b. A recovery plan for the species or community or a threat abatement plan; and
 - ii. How regard has been given to any relevant approved conservation advice for the species or community (see section 146K of the EPBC Act).
- e) To the extent the Plan relates to a listed migratory species, an assessment of how approving an action or class of actions to be taken in accordance with the Plan, if endorsed, would not be inconsistent with whichever of the following conventions or agreements because of which the species is listed:
- i. The Bonn Convention;
 - ii. The China - Australia Migratory Bird Agreement (CAMBA);
 - iii. The Japan - Australia Migratory Bird Agreement (JAMBA);
 - iv. An international agreement approved under subsection 209(4) of the EPBC Act (see section 146L of the EPBC Act).
- f) To the extent the Plan relates to approving an action or class of actions listed in section 146M of the EPBC Act, an assessment of how approving such an action or class of actions to be taken in accordance with the Plan, if endorsed, would not be inconsistent with section 146M.

6. IMPLEMENTATION AND ASSURANCE FRAMEWORK

6.1. As established in the Agreement, The Plan must include:

- a) An implementation framework (Endorsement Criteria 4a) that describes how the Plan will be efficiently and effectively implemented (including how outcomes and commitments for the conservation of Protected Matters set out in the Plan will be achieved); and
- b) An assurance framework (Endorsement Criteria 4b) that describes how the Approval Holder will address and adaptively manage the effectiveness of proposed regulatory, administrative and Protected Matter outcomes.

6.2. The Report must assess the effectiveness and efficiency of the proposed implementation framework and assurance framework to explain how:

- a) If applicable, the administrative process that will be used to track the use of the Commonwealth Minister's Part 10 Approval by persons who are undertaking an action in accordance with the Plan.

- b) Third parties undertaking actions under the Commonwealth Minister's Part 10 Approval are informed of, and understand, their obligations under the Plan and approval.
- c) Outcomes and commitments for Protected Matters will be monitored, documented, delivered, and adequately resourced throughout the life of the Plan.
- d) Governance arrangements will be developed to implement the Commonwealth Minister's Part 10 Approval, including the roles and responsibilities of the Parties and the named Approval Holder throughout the life of the Plan.
- e) The named Approval Holder will monitor, evaluate, review and manage the effectiveness of proposed regulatory, administrative and Protected Matter outcomes, commitments and approval conditions; this must include a process for auditing and reporting to provide transparency for stakeholders.

7. EVALUATION OF THE OVERALL OUTCOMES OF THE PLAN

7.1. The Report must evaluate the overall conservation commitments and environmental outcomes for Protected Matters, taking into account likely impacts to Protected Matters from implementing the Plan. The evaluation must include:

- a) The extent to which Protected Matters are represented in the Strategic Assessment Area.
- b) The extent to which Protected Matters are represented in areas to be protected or managed under the Plan.
- c) The extent to which any areas to be protected or managed under the Plan will provide for the long-term protection of each Protected Matter within the Strategic Assessment Area, including maintaining the function of key ecosystem services needed for the viability of Protected Matters.
- d) Whether there will be serious and irreversible impacts to any Protected Matters.
- e) The extent to which the outcomes and commitments proposed under the Plan address vulnerabilities of Protected Matters including climate change projections modelled under plausible climate change scenarios.
- f) The likely effectiveness of the outcomes and commitments of the Plan in protecting and managing Protected Matters and any risks and uncertainties.
- g) An assessment of how the Plan meets the endorsement criteria, as set out in Attachment 2 of the Agreement.
- h) An analysis and justification, with regards to matters the Commonwealth Minister must consider, as to why the ASA considers that the impacts to Protected Matters of implementing the Plan are acceptable.

7.2. The Report must evaluate how the Plan meets the objectives of the EPBC Act.

8. ADDRESSING UNCERTAINTY AND RISK

8.1. The Report must identify key uncertainties and risks associated with implementing the Plan, responses to these and proposed adaptations to changing circumstances. Key uncertainties may include:

- a) Knowledge gaps in scientific understanding and responding to new knowledge.
- b) Assumptions made in assessing potential impacts and benefits.
- c) How changes to Commonwealth, South Australian State and relevant local government legislation, policies, plans and advice are to be accounted for in the management of the Strategic Assessment Area.
- d) The capability and capacity of the Approval Holder to make sure that the Plan is implemented.

9. INFORMATION SOURCES

9.1. The Report must identify:

- a) The sources of information and data relied upon including the reliability and currency of the data.
- b) Any other relevant supporting information.

9.2. If sources of information, data, or other relevant supporting information are publicly available, the Report will provide details of where they are publicly available.