

**From:** [Richardson, Geoff](#)  
**To:** s22  
**Cc:** s22  
**Subject:** RE: South eastern highlands grasslands Briefing [SEC=UNCLASSIFIED]  
**Date:** Friday, 10 March 2017 3:19:11 PM

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I agree s22

I was just at Allara and ran into s22 and Monica – explained this issue to them and how we wanted to get together to fully understand the compliance action that is underway.

They were happy to meet. G  
Geoff Richardson  
AS - Protected Species and Communities Branch  
Department of the Environment and Energy  
s22

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**From:** s22  
**Sent:** Friday, 10 March 2017 3:15 PM  
**To:** Richardson, Geoff <Geoff.Richardson@environment.gov.au>  
**Subject:** RE: South eastern highlands grasslands Briefing [SEC=UNCLASSIFIED]

Hi Geoff,

It would be good if you, s22 and me could also sit down and discuss the definition and condition thresholds to be on the same page before we meet with anyone else. They can be complicated but I was thinking yesterday of the easiest way to think about them and the key points to get through to MO and Angus Taylor.

Cheers  
s22

Sent with Good ([www.good.com](http://www.good.com))

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**From:** s22 on behalf of Richardson, Geoff  
**Sent:** Thursday, 9 March 2017 10:48:13 PM  
**To:** s22; Collins, Monica; s22  
**Subject:** South eastern highlands grasslands Briefing [SEC=UNCLASSIFIED]  
**When:** Friday, March 17, 2017 12:00 AM-12:30 AM.  
**Where:** Geoffs Office 2AS.159

Hi Monica and s22

In a conversation with s22 (MO) yesterday, he raised the recent email traffic on the Natural Temperate Grassland of the South eastern Highlands EC. He started quizzing me on the changed definition, and I gave him some basic information on the thresholds that were applied in the new listing in 2016. He made the point that for famers in the Monaro this is the “number 1 issue” of concern to them. When I tried to draw him on how the “issue” was manifesting, ie. stopping them from doing stuff on

their land, or confusion over the definition and therefore what might constitute a significant impact, he couldn't really explain it.

He is now keen for s22 [redacted] and I to meet with Angus Taylor to answer questions on the technical aspects of the listing outcome. Before agreeing to that, s22 [redacted] and I need a full picture of any departmental sensitivities, including any compliance action underway (that we would of course stay out of completely).

I will set up a meeting early next week so we can be briefed on current issues, and what has triggered all of the recent interest in this EC listing.

Cheers Geoff

[Geoff Richardson](#)

[Assistant Secretary | Protected Species and Communities Branch](#)

[Department of the Environment and Energy](#)

s22 [redacted]

[The Department acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.](#)

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**From:** Oxley, Stephen  
**Sent:** Thursday, 16 March 2017 7:36 AM  
**To:** Geoff Richardson  
**Cc:** Deb Callister ; Lenore Cuthbert  
**Subject:** RE: Meeting with Angus Taylor [SEC=UNCLASSIFIED]

Thanks

I can come if you want me there

Stephen

Sent with Good ([www.good.com](http://www.good.com))

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**From:** Richardson, Geoff  
**Sent:** Wednesday, 15 March 2017 6:55:03 AM  
**To:** Oxley, Stephen  
**Cc:** Callister, Deb  
**Subject:** FW: Meeting with Angus Taylor [SEC=UNCLASSIFIED]

Bonjour Stephen

As you will see from the email below, I have agreed to meet with Angus Taylor, Member for Hume, to clarify the listing of the South Eastern Highlands Grassland EC, including the consultation that was conducted prior to Minister Hunt's listing decision. s22 [REDACTED] will also attend, and we will confine our discussion to the EPBC Act listing process, including the statutory and non-statutory consultation we undertook, the technical description of the listed entity including the thresholds that were introduced at the time of the 2015 listing decision, and the guidance material the department has published to assist landholders post-listing.

Deb has let Dean know about the meeting.

**s37(1)(a)**

I don't yet know if Monica or Matt Cahill will attend the meeting with Mr Taylor. I haven't been able to speak to Monica today.

Let me know if you are interested in attending the meeting on Monday at APH.

Au revoir Geoffrey

Geoff Richardson  
AS - Protected Species and Communities Branch  
Department of the Environment and Energy  
T: 02 6274 2531  
M: 0427 015 690

**From:** Richardson, Geoff  
**Sent:** Wednesday, 15 March 2017 1:43 PM  
**To:** s22; s22 v.au>; Collins, Monica <Monica.Collins@environment.gov.au>  
**Cc:** Cahill, Matt <Matt.Cahill@environment.gov.au>; s22 au>;  
Callister, Deb <Deb.Callister@environment.gov.au>  
**Subject:** RE: Meeting with Angus Taylor [SEC=UNCLASSIFIED]

Hi s22

I am available at that time, and to best cover the issues you list below, I will be accompanied by s22  
Director, Ecological Communities Section.

Is the meeting in Minister Frydenberg's offices at APH?

Regards Geoff

Geoff Richardson  
AS - Protected Species and Communities Branch  
Department of the Environment and Energy  
T: s22  
M: s22

**From:** s22  
**Sent:** Wednesday, 15 March 2017 10:41 AM  
**To:** Richardson, Geoff <Geoff.Richardson@environment.gov.au>; Collins, Monica  
<Monica.Collins@environment.gov.au>  
**Cc:** Cahill, Matt <Matt.Cahill@environment.gov.au>  
**Subject:** Meeting with Angus Taylor [SEC=UNCLASSIFIED]

Geoff and Monica

I am meeting with Angus Taylor at 11am on Monday at APH to discuss the listing of the Monaro grasslands. Geoff, I need you there to discuss history, consultation, thresholds, practicalities, etc. Monica, it would be good to have you there also if you can make it.

Does this time work?

s22

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s22

Office of the Hon Josh Frydenberg MP  
Minister for the Environment and Energy | Federal Member for Kooyong  
4 Treasury Place, East Melbourne VIC 3002 | p: s22  
Parliament House, Canberra ACT 2600 | p: s22  
e: s22 | w: [www.joshfrydenberg.com.au](http://www.joshfrydenberg.com.au)

**Geoff Richardson**

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**Subject:** Discuss listing of the Monaro grasslands  
**Location:** APH  
**Start:** Mon 20/03/2017 11:00 AM  
**End:** Mon 20/03/2017 11:30 AM  
**Recurrence:** (none)  
**Meeting Status:** Meeting organizer  
**Organizer:** Richardson, Geoff  
**Required Attendees:** s22

Meeting at APH with Angus Taylor, Monica Collins and s22 to discuss the listing of the Monaro grasslands.

**From:** s22  
**To:** s22  
**Cc:** s22  
**Subject:** Re: NTG SEH EC: updated 2 pager for MO meeting with Angus Taylor [SEC=UNCLASSIFIED]  
**Date:** Monday, 20 March 2017 12:11:27 PM  
**Attachments:** [NTG SEH on the Monaro 3 pager revised for MO meeting.docx](#)

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Thanks. Here's the version that went up with us.....

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**From:** s22  
**Sent:** Monday, 20 March 2017 7:25 AM  
**To:** s22 <s22>; Richardson, Geoff  
<Geoff.Richardson@environment.gov.au>  
**Subject:** RE: NTG SEH EC: updated 2 pager for MO meeting with Angus Taylor [SEC=UNCLASSIFIED]

s22 and Geoff,

In this attached version I've trimmed some of the existing text but feel the remainder still contains important messages. So, with the new text (still in blue) it's now 3 pages.

Cheers,  
s22

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**From:** s22  
**Sent:** Friday, 17 March 2017 4:50 PM  
**To:** s22 <s22>; Richardson, Geoff  
<[Geoff.Richardson@environment.gov.au](mailto:Geoff.Richardson@environment.gov.au)>  
**Subject:** NTG SEH EC: updated 2 pager for MO meeting with Angus Taylor [SEC=UNCLASSIFIED]

s22 and Geoff,

Attached is an updated version of the summary document, with some of the additions we discussed today (blue text). I've cut some bits of the existing text out but it needs more trimming to get it back down to 2 pages. I can work on this by Monday morning before you head up to the MO, but I thought I'd send this version through just in case.

Cheers,  
s22

## ***Natural Temperate Grassland of the South Eastern Highlands* threatened ecological community on the Monaro**

### *Background*

- The Natural Temperate Grassland of the South Eastern Highlands has been protected, including in the Monaro region, as endangered since the EPBC Act was introduced in 2000; following a listing review it was listed as critically endangered in 2016. The 2016 listing revision has not placed any additional administrative or compliance burden on Monaro landholders that was not present before the revised listing came into effect.
- The revised listing includes condition thresholds which means that many areas previously included on farms etc, and hence potentially requiring consideration for referral for significant impact, no longer require referral.
- Temperate grasslands are collectively among the most threatened vegetation types in Australia. Only around 5% or less exists in relatively undisturbed condition. The three main temperate grasslands, the south-eastern highlands, the Victorian Volcanic Plain, and the Tasmanian lowlands, are all listed as threatened under the EPBC Act.
- Around 20 nationally listed threatened species occur in the grassland ecological community.

### *Listing considerations*

- In line with international (Convention on Biological Diversity) obligations, the EPBC Act requires that a national list of ecological communities be identified.
- Threatened ecological community and species listing decisions are based on science, specifically whether they meet statutory criteria for listing as threatened. Socio-economic matters are not considerations for listing decisions, but are taken into account when considering approval of referred actions, on a case by case basis.
- The listing revision found that the grasslands merits listing as critically endangered against three out of six listing criteria (at least one criterion must be met to enable listing). Not only have the grasslands been highly cleared, but what remains is highly fragmented and continues to be threatened by further degradation including weed invasion. Therefore remaining large and high quality grassland patches are particularly important to protect.

### *Implications*

- There is a perception of a significant burden, but the regulatory impact due to ecological community listings has historically been minor for individual landholders and the agriculture sector. Most EPBC Act referrals are for large projects in urban development, mining and other major infrastructure. There have been about 45 referrals for actions impacting the grasslands since 2000, mostly for windfarms and residential development around Canberra. There have been no referrals for agriculture in that time but there is one compliance case currently under investigation which covers a large area.
- In general, the regulatory impact of national ecological community listings is intended to be, and has historically been, minor. This is primarily because:
  - There are exemptions under the EPBC Act for routine and ongoing activities that remove the need for most farming activities to be referred (e.g. on the Monaro, most farming activities involve long term grazing);
  - Most activities undertaken by individual farmers will not have a significant impact;
  - The condition thresholds exclude the many small and/or degraded patches.

- Revising the listed ecological community had a negligible regulatory impact on farmer activities. The use of condition thresholds means that the more degraded areas within the existing extent of the ecological community no longer triggers a referral.
- If there are changes in land use that may impact on MNES, under the EPBC Act we expect that these actions be referred. It is highly unlikely that this will stop the activity but it sets out a process for the Department to work with proponents to avoid, mitigate and offset any impacts, for example by setting aside some areas for sustainable land management that maintains the ecological community.
- Assisting farmers to conserve important biodiversity and ecosystem services has been the preferred approach. One of the positive implications of listings in agricultural regions has been to help encourage funding, such as through Landcare, to deal with common threats to the environment and agricultural productivity, such as weeds and pest animals. On-farm revegetation work also becomes a key target for listed woodlands and forests through programs such as the Australian Government's 20 Million Trees initiative and this can help deal with other threats to productivity such as salinity.
- If a landowner does have good quality occurrences of the grasslands on their property (that meet the defined 'condition thresholds') it shows their land management practices have supported the conservation of the ecological community. A continuation of sustainable land management practices is vitally important if the ecological community is to persist for the benefit of future generations.

#### *Consultation*

- There was statutory public consultation on the original listing and throughout development of a recovery plan for the grasslands in the mid to late 2000s.
- In addition, public consultation on the 2016 review exceeded the statutory requirements of the EPBC Act. Targeted emails were sent to a wide range of stakeholders, including all councils, Local Land Services, and state agencies where the ecological community occurs, and the National Farmers' Federation (NFF) and NSW Farmers' Association. These Farmers' groups were contacted by the Department's Environment Liaison Officer with the NFF, and the Department met with the NFF to discuss the listing on multiple occasions.
- In response to the call for public comments, a submission by the NFF did not oppose the listing but asked for further clarification on some issues with the listing assessment and raised some concerns about complexity for farmers. The Department's response to the NFF addressed their concerns and some broader issues around EPBC Act that were being discussed with them at the time. The NFF did not reply in writing again, but there were ongoing conversations with the NFF about the grasslands listing review over almost 2 years following their submission and before Minister Hunt made the final listing decision on 6 April 2016. This culminated in publication of a post-listing information guide that the NFF helped the Department draft to address their concerns about helping farmers better understand the listing. No such guide was available for the original listing in 2000.
- With changes to the NSW legislation there is an opportunity to increase awareness of the listing and EPBC Act in general. Agencies such as Local Land Services can play a big role in this by using their connections with local communities and individual landholders.

### *Guidance – identification and minimum condition thresholds*

- The revised ecological community listing now requires that grassland patches must be at least 1000m<sup>2</sup> (0.1 Hectare) in size, must have >50% native cover (compared to exotic species), and in some cases must meet additional condition thresholds (e.g. the diversity of non-grass native species, the presence of particular ‘indicator species’). This is intended to exclude low conservation value grasslands, such as low diversity native pastures.
- Detailed information about how to recognise a patch of the grassland and what condition it might be in are given in the approved conservation advice and information guide for the grasslands developed in consultation with the NFF. Most usefully, the information guide provides a simple flowchart to help landholders determine the condition of the grassland.
- Most landholders have a great knowledge of the species occurring on their properties and would be able to apply the flow chart to determine if they are likely to have the threatened grasslands community. If there is still a question as to whether the ecological community is present, then landholders may seek further guidance from the Department, or Local Land Services officers. A list of suggested contact agencies is within the information guide.

### *Guidance – recommendations for management*

- The information guide provides an overview of what can be done to manage the listed grassland, with greater detail and guidance in the conservation advice.
- Weed invasion is a particular threat for both the ecological community and agricultural productivity. Where weeds are occurring in or near a patch of the listed grasslands it is recommended that methods used that are sensitive to the ecological community, to avoid adverse long-term impacts including impacts on non-target species. For example, by using selective spot spraying of weeds rather than broader applications of herbicides.

### *Mapping*

The Department and Threatened Species Scientific Committee utilise existing state mapping when assessing ecological communities for listing. The Department uses this mapping to produce an indicative distribution map for the ecological community. It is not possible to produce property-scale maps that show where any particular matter of national environmental significance (including ecological communities) occur, because they need verification on the ground as they may be variable from year to year.

### *Awareness of Natural Temperate Grassland listing*

- The national Recovery Plan included work to increase awareness of the ecological community, including the establishment of the Southern Tablelands Conservation Management Network and work in the early-mid 2000s by WWF.
- South East Local Land Services acknowledge the National Landcare Programme and EPBC Act in their 2016-21 strategic plan and have received money through the Programme to administer grants to restore the NTG EC, among other projects.
- NSW OEHL have worked to increase community engagement with the listed ecological community and worked collaboratively with partners (e.g. Kosciusko to Coast initiative).

### *Delisting process*

- There is a process for nominating delisting of ecological communities and based on a recommendation by the TSSC to the Minister. Given the TSSC’s revision was recently conducted it is highly unlikely they would recommend reviewing the ecological community again.

## Geoff Richardson

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**From:** Richardson, Geoff  
**Sent:** Friday, 24 March 2017 4:50 PM  
**To:** s22  
**Cc:** Stephen Oxley; Dean Knudson; s22  
**Subject:** Update on the Monaro grassland EC [SEC=UNCLASSIFIED]

Hi s22

Following our meeting with Angus Taylor on Monday, we are exploring options to deal with the concerns raised related to the Natural Temperate Grasslands of the South Eastern Highlands Ecological Community.

Since the meeting, we have had some initial discussions with the regional Local Land Services office. There appears to be little confusion about interpreting the refined definition, so we are focussing our thinking on clarifying when a particular action may have a significant impact on the listed community, and thus potentially trigger the EPBC Act. As we mentioned on Monday, the presence of the listed EC, as with the presence of any MNES on a particular 'development site', does not preclude the development progressing; it triggers a need for the proponent to consider any significant impacts of their actions, and consider how to best address any significant impacts.

We will have further discussion with agronomists to better understand any uncertainty with interpreting and applying the minimum condition thresholds that are part of the updated listing (e.g. how areas with non-native species such as clover are assessed). s37(1)(a)

We are also looking further into the NSW native vegetation regulations and changes that are due to come into effect 1 July, to clarify how non-native annual species are treated in assessments and if there is any substantial difference with the national approach to minimum condition thresholds. I would also note that all the details of these changes and their consequences for individual landowners have not yet been made clear.

We plan to explore the issue further with NFF, and in particular through the Agriculture and Environment Consultative Committee. This may result in better education about the grassland and the EPBC Act, including a significant impact guidance document for this particular grassland. This would be a similar approach as is being pursued in western Victoria to address interactions between farming and black cockatoos.

We aim to provide further advice, in conjunction with ESD, on how best to clarify the significant impact test for landowners in the Monaro as soon as possible. Significant impact guidelines are not quick or easy to develop for species or ECs, and require considered input from ESD and legal colleagues.

I will keep you informed of progress.

Regards Geoff

**Geoff Richardson**  
Assistant Secretary | Protected Species and Communities Branch  
Department of the Environment and Energy  
s22

The Department acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

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Geoff Richardson

**From:** s22  
**Sent:** Thursday, 13 April 2017 1:17 PM  
**To:** Geoff Richardson  
**Cc:** s22; s22; Stephen Oxley; Dean Knudson; de Brouwer, Gordon; s22  
**Subject:** RE: Update on South Eastern Highlands Grassland Ecological Community [DLM=For-Official-Use-Only]

Thanks – Very helpful.

s22

**From:** Richardson, Geoff  
**Sent:** Thursday, 13 April 2017 1:08 PM  
**To:** s22; s22  
**Cc:** s22; s22; Oxley, Stephen <Stephen.Oxley@environment.gov.au>; Knudson, Dean <Dean.Knudson@environment.gov.au>; de Brouwer, Gordon <Gordon.deBrouwer@environment.gov.au>; s22  
**Subject:** Update on South Eastern Highlands Grassland Ecological Community [DLM=For-Official-Use-Only]

Hi s22

As requested to support your discussions with Angus Taylor MP, Member for Hume, below is an update on our progress following up on concerns raised about the natural temperate grassland EC listing on the Monaro, and options to address these. The options being considered include increasing communication regarding the ecological community, reviewing condition/size thresholds that help define the ecological community (i.e. the first step of determining whether the EC is present), as well as introducing significant impact guidance and/or thresholds (i.e. the next step to help define when the EPBC Act regulations may apply to particular actions).

The Department is continuing to investigate the broader implications of the revised listing. One year on since the revision, people with experience working at the interface between farming and NSW and EPBC legislation welcome the clarity in the revised listing definition. The Department has spoken to regional NSW Office of Environment and Heritage officers and regional Local Land Services (LLS) officers. These officers collectively have expertise in providing advice to farmers about native vegetation regulations and management, as well as agronomy advice, and regularly receive feedback from farmers. Discussions have covered the operation of the EPBC listing, NSW legislation, and details including groundcover assessment methodology. They have confirmed that the annual exotic measure (>50% native groundcover) to help define the EPBC Act-listed ecological community is consistent with current state rules. The NSW methodology states that groundcover assessments should be carried out when the proportion of native species to exotic species cover is at its highest, which effectively excludes the times when exotic annuals may dominate.

So there does not appear to be a widespread misunderstanding of the clarified definition and condition thresholds for the natural temperate grassland. The concern is that for the small proportion of landholders with large patches on their properties who want to significantly change land use, some may consider that the new condition thresholds are significant impact thresholds, when they are not. That is, some landholders might mistakenly believe that if the defined ecological community has been identified on their property, they are prevented from taking any action that might impact on the grassland without EPBC Act consideration.

Most landholders in the region are graziers who are exempt from the need to refer under the EPBC Act because they either (i) do not have native grassland on their property, particularly of the size and quality required to meet the EPBC definition; (ii) ongoing grazing is a continuing use that is exempt from EPBC Act consideration, or (iii) because typical changes in grazing practices would not have a significant impact.

Notwithstanding this, some landholders are likely to still find aspects of the definition challenging and understanding how to evaluate significant impact could be a problem for the few landholders with large/high-quality patches who have the resources to take advantage of favourable market conditions to convert higher quality natural temperate grasslands to exotic pastures and/or crops. The potential concerns around the EPBC Act and protection of the grasslands are exacerbated given upcoming changes to NSW legislation from 1 July.

The Department has also started a conversation with NFF about how to address these issues.

We think at this stage that more education around the EC listing and the operation of the EPBC Act regulatory provisions is the best option, but that further guidance around Significant Impact thresholds could also be explored. To implement this we need to consult further with Environment Standards Division (ESD) and the NFF Agriculture and Environment Consultative Committee about how this fits in with the broader approach of engagement with the agriculture sector. Any steps taken will consider best practice regulation, conservation and recovery implications for the critically endangered grassland, implications for farmers and implications for other proponents (e.g. urban, energy and communications infrastructure, roads and other developers that are the sectors which have referred actions under the EPBC Act for this grassland since 2000).

The expected deadline for policy improvements is 1 July 2017, in line with new NSW native vegetation laws becoming effective. However, some options may be able to be implemented earlier. Discussions will continue with the NSW Government in the lead up to this, as the new NSW native vegetation methodologies are not yet finalised.

Note that a more detailed preliminary analysis of the options is attached but is not ready for broader circulation at this stage.

Regards Geoff

Geoff Richardson  
Assistant Secretary | Protected Species and Communities Branch

2/4/17

s22

1/0 Grasslands - answer is quite specific to grasslands

Don't read direction into questions

- want to understand Minister's powers & obligations

Need to know boundaries within which Minister can operate  
(Minister wants to know what he can do)

\* One paragraph - on additional legal threshold  
→ no discretion → even if wanted to go beyond TSSC.

s22

**From:** Oxley, Stephen  
**Sent:** Saturday, 22 April 2017 5:46 PM  
**To:** s22; s22  
**Cc:** Dean Knudson; de Brouwer, Gordon; s22; Geoff Richardson  
**Subject:** Update on South Eastern Highlands Grassland Ecological Community [DLM=For-Official-Use-Only]

Giddy s22

I understand that you had several specific questions about the South Eastern Highlands Grassland ecological community that is listed as critically endangered under the EPBC Act. Answers to each of these are summarised below, together with some further background.

- Could the Minister vary the listing without Threatened Species Scientific Committee (TSSC) advice?

No. Under the EPBC Act, a Minister's decision regarding the listing status of a species or ecological community, including a variation of listing status, must only consider eligibility for listing and the effect that may have on the ecological community's survival (Section 187). In making that decision, the Minister must have regard to advice from the TSSC and from public comment (in relation to listing eligibility and effect on survival of the ecological community) (Section 194Q).

Ecological communities must be assessed against six listing criteria set out in the EPBC Regulations. The TSSC provides listing recommendations against each criteria after a comprehensive review that includes a thorough examination of available scientific literature, data, management plans and expert opinion. There must also be a minimum 30 day public consultation period.

Since the start of the EPBC Act, the Department is unaware of any instance where a Minister's listing decision for a threatened ecological community (or species) has been different to what was recommended by the TSSC.

As mentioned in previous advice, the Department would not expect the TSSC to come to a different conclusion to what it did recently when the ecological community was "uplisted" by Minister Hunt from endangered (its listing status under the EPBC Act since 2000) to critically endangered in 2016. The TSSC would likely also be concerned about being asked to prioritise a review of the ecological community given it only recently completed a review between 2013-2016. The Department is not aware of any new or different data available that would substantiate claims that it is no longer critically endangered.

- Could the Minister vary the condition thresholds without Threatened Species Scientific Committee (TSSC) advice?

No. The condition thresholds are published as part of the approved conservation advice. If the Minister proposes to change an approved conservation advice, the Minister must consult the TSSC about the change. The Department believes the Committee would be reluctant to recommend changes to the condition thresholds as they were only recently developed in close consultation with scientists and other experts, including from the NSW Office of Environment Heritage.

The aim of condition thresholds is to clearly (and legally) exclude areas that are no longer naturally functioning, or are very degraded, from national protection. They help define the ecological community that is protected nationally. They have been used in almost all ecological community listings over the past

decade and were introduced because of earlier concerns from the farming sector that all areas of native pasture may trigger the EPBC Act referral requirements.

As mentioned previously, including to Angus Taylor MP, they are not the same as significant impact thresholds. Therefore, having the ecological community on a property that meets condition thresholds does not automatically trigger the EPBC Act assessment process (or compliance concerns). An action must be planned or undertaken that is likely to have a significant impact on the defined ecological community for those EPBC Act provisions to be triggered.

s37(1)(a)

The reasons for the low regulatory impact on farmers is included in the email below of 13 April 2017.

There have been a number of EPBC Act approvals for infrastructure projects impacting on the grasslands over the past 17 years, particularly for urban infrastructure in Canberra and windfarms in the surrounding region. As a general rule, these sectors welcome national condition thresholds as they provide more regulatory certainty. Removal of the thresholds, for example, would revert to the original listing where impacts on lower quality areas may also need to be considered for referral.

- If the Minister went against TSSC advice, would the reasons for that have to be published?

Any listing decision must be published, but the reasons must only be provided to the nominator (in this case the nominator could be the TSSC) (Section 194Q). Although there is no legal requirement to publish the reasons, since the start of the EPBC Act the TSSC has chosen to publish all of its analysis against listing criteria and the listing recommendations on the Department's website. These are currently contained within approved conservation advices. The reasons for any change to the 2016 listing decision, and currently published conservation advice would be heavily scrutinised and subject to normal FOI requirements.

- Would it be open to legal challenge?

Yes, any decisions relating to listing (whether to list, delist or transfer) can be subject to legal challenge. Any advice from the TSSC that has undergone a rigorous scientific assessment and been subject to public consultation would form crucial evidence for any challenge. There have not been any legal challenges to TSSC listing advice or approved conservation advices to date. Written TSSC advice on condition thresholds has been used successfully to support compliance case outcomes, including in court.

Also note that listing decision instruments are disallowable by the Parliament.

- Could the Commonwealth align the grassland listing with changes to NSW vegetation laws?

The approved conservation advice, including condition thresholds, was developed in close consultation with experts from NSW agencies to ensure alignment where possible. As noted in previous briefing, this includes the groundcover assessment methodologies that Angus Taylor MP has mistakenly been advised are not aligned.

s37(1)(a)

Also in previous briefing we noted that discussion with NSW agencies indicates that they have not yet decided on final process and methodologies for the change in regulations on 1 July 2017. It is important to note that EPBC Act requirements are not intended to fully align with NSW native vegetation regulations. This is because State vegetation laws cover all native vegetation, while national ecological community

listings complement state vegetation laws by providing specific protection to select Australian species and ecosystem functions that are at most risk of extinction.

## **Further Background**

The purpose of listing ecological communities is to identify, protect and restore the most threatened ecosystems in Australia. EPBC listed ecological communities are taken into account during major new developments; and encourage and target conservation efforts, including through Australian government programs directed to farmer and other community groups such as the National Landcare Programme. Protecting and funding management of listed ecological communities on private land complements other landscape or ecosystem-level measures, because their species and ecosystem functions are often under-represented in the national reserve system. The nationally listed ecological communities often fill important gaps and provide connectivity for wildlife between conservation reserves. There are now 77 protected under the EPBC Act, including 11 listed in the past 2 years, and with many occurring across agricultural regions of Australia.

The Natural Temperate Grassland of the South Eastern Highlands represents one of the most threatened ecosystems in Australia. Its extent has declined by around 90% and it has become heavily fragmented and degraded. This has resulted in large reductions in the number and size of regional populations of many plants and animals, including local extinctions. The loss of native grassland has also led to broader soil and erosion problems and significant spread of weeds that affect other biodiversity and agriculture in the region. However, some large or high quality remnants persist, particularly in the Monaro region of NSW, and they provide vital habitat for at least 19 threatened species. The native grassland is also important for the long-term sustainability of agriculture on the Monaro, particularly the main source of ongoing income from grazing in the region, because they provide year round forage and are relatively drought tolerant, including recovering quickly from extended drought. This makes them useful for low input production systems, and for fine wool production. Routine ongoing grazing and established land management practices do not typically require consideration under the EPBC Act. However large new pasture and cropping projects designed to take advantage of temporary market conditions may need to be EPBC approved to allow them to proceed whilst avoiding lasting significant impacts on the grassland.

Over the past approximately 20 years since the listing of the grassland, they have been taken into account in about 50 EPBC Act project approvals including strategic assessments for urban development in the ACT. No projects have been rejected, and many have been approved without change, but some have been approved subject to conditions to minimise impact on the grassland. In addition, there have been a large number of Commonwealth government investments to help landholders and community groups to manage and recover the grassland, particularly in relation to weeds that threaten both biodiversity and agriculture.