Suggested approval conditions – Offsets into WGR

Background

On 2 February 2010, the Minister endorsed the Victorian Government's Program for Melbourne's urban expansion as described in the document *Delivering Melbourne's Newest Sustainable Communities Program Report* (Victorian Government, December 2009). The key assessment document underpinning this approval is *Delivering Melbourne's Newest Sustainable Communities Strategic Impact Assessment Report* (Victorian Government 2009a).

On 11 June 2010 and 8 July 2011 the Minister approved classes of actions associated with the Regional Rail Link (Stage 2) and the 28 precincts identified in the Program. The approvals were made under section 146B of the EPBC Act which provides for the Minister to approve actions, or classes of actions, undertaken in accordance with an endorsed policy, plan or program. An approval under section 146B of the EPBC Act has the same effect as an approval given under Part 9 of the Act.

Program evaluation, monitoring and reporting requirements for approved classes of actions under the Program are described at Section 11 of the Program report. These requirements are the responsibility of the Victorian Government. In particular, the Victorian Government must submit a Reporting and Monitoring Framework to the Minister for approval by June 2012. There are interim reporting requirements to demonstrate how the relevant prescriptions have been applied and the measurable outcomes achieved for protection of MNES.

The Part 10 approval for the 28 precincts is at Attachment A. The prescriptions are at Attachment B. Actions that are not able to meet the prescription rules for offset cannot be considered under the new policy approach (essentially when the prescriptions do not allow clearing. This will be described in the allowable projects definitions. An 'enforcement' letter prepared by AGS to a reticent proponent about application of the NTGVVP prescription is at Attachment C.

Recommended conditions (based on Program approval conditions)

1. Persons taking actions must provide offsets for permissible clearing of Natural Temperate Grasslands of Victorian Volcanic Plains, habitat for the Golden Sun Moth or Spiny Rice Flower in accordance with the prescriptions approved by the Minister pursuant to *Delivering Melbourne's Newest Sustainable Communities Program Report* (Victorian Government, December 2009) (Annexure 1):
   - *Final Prescription for Natural Temperate Grassland of the Victorian Volcanic Plain* (approved 16 April 2010)
   - *Final Prescription for Spiny Rice-flower* (approved 16 April 2010)
   - *Final Prescription for Golden Sun Moth* (approved 16 April 2010)

2. Persons taking actions must maintain accurate records substantiating all activities associated with or relevant to compliance with the prescriptions, and make them available upon request to the Minister within 28 days from the date of a request.

Australian Government

Department of the Environment, Water, Heritage and the Arts

APPROVAL DECISION FOR THE TAKING OF ACTIONS IN ACCORDANCE WITH AN ENDORSED PROGRAM UNDER THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

This decision is made under section 146B of the *Environment Protection and Biodiversity Conservation Act 1999*.

General	Further explanatory information related to this approval decision is at Annexure 1.
Approved action/class of actions	All actions associated with urban development, undertaken in accordance with the endorsed program report *Delivering Melbourne's Newest Sustainable Communities*, Victorian Government, December 2009 (the Program), within the 28 precincts identified on page 17 (Map 7).
Relevant controlling provisions	The approval has effect for: • Wetlands of international importance (sections 16 & 17B) • Listed threatened species and communities (sections 18 & 18A) • Listed migratory species (sections 20 & 20A)
Conditions of approval	This approval is subject to the conditions specified at Annexure 2.
Period for which approval has effect	The approval has effect until 31 December 2060.

Person authorised to make decision

Name and Position	The Hon Peter Garrett AM MP Minister for Environment Protection, Heritage and the Arts
Signature	
Date of decision	5th July 2010

Explanatory information

This approval decision is made under section 146B of the EPBC Act which provides for the Minister for the Environment (the Minister) to approve actions, or classes of actions, undertaken in accordance with an endorsed policy, plan or program. An approval under section 146B of the EPBC Act has the same effect as an approval given under Part 9 of the Act, therefore actions approved under this decision will not require separate referral, assessment or approval under the EPBC Act in order to be taken.

On 2 February 2010, the Minister endorsed the Program of the Victorian Government for Melbourne's urban growth as described in *Delivering Melbourne's Newest Sustainable Communities* (Victorian Government, December 2009). Among other things, the endorsed program includes actions associated with urban development proposed to occur in 28 precincts located within Melbourne's urban growth boundary as identified on page 17 of this document.

This approval only applies to the specified class of actions that are undertaken in accordance with the requirements of the Program and the conditions at Annexure 2 of this approval decision.

Program evaluation, monitoring and reporting requirements for approved classes of actions under the Program are described at Section 11 of the Program report. These requirements are the responsibility of the Victorian Government. In particular, the Victorian Government must submit a Reporting and Monitoring Framework to the Minister for approval within 12 months of the date of this approval.

As an interim measure, the Victorian Government Department of Sustainability and Environment has agreed, consistent with the requirements of the Program, to provide reports to the Department of the Environment, Water, Heritage and the Arts (the department) on implementation of the prescriptions for protection of matters of national environmental significance (MNES) for each of the 28 precincts covered by this approval. The reports will be provided within 28 calendar days following adoption of each Precinct Structure Plan. The reports will demonstrate how the relevant prescriptions have been applied and the measurable outcomes achieved for protection of MNES. Each report will include the following minimum information:

a) applicable prescriptions for the precinct
b) outcomes of flora and fauna surveys (if required)
c) outcomes required for each applicable prescription
d) *In situ* reserve requirements (if needed) and adopted measures for *in situ* protection of each MNES (if needed)
e) offset requirements and how these will be attained, including calculation of any habitat hectare requirements under the Victorian *Native Vegetation Management Framework,* and
f) a figure or map showing *in situ* offsets (if needed) and other protection areas.

Conditions

Actions must be undertaken in accordance with the following conditions to ensure protection of listed threatened species and ecological communities, listed migratory species and the ecological character of the Port Phillip Bay (Western Shoreline) and Bellarine Peninsula, the Edithvale Seaford and Western Port Ramsar sites.

1. Persons taking actions must undertake the actions in accordance with the following prescriptions approved by the Minister for protection of matters of national environmental significance (MNES):
   - *Final Prescription for Natural Temperate Grassland of the Victorian Volcanic Plain* (approved 16 April 2010)
   - *Final Prescription for Spiny Rice-flower* (approved 16 April 2010)
   - *Final Prescription for Golden Sun Moth* (approved 16 April 2010)
   - *Final Prescription for Matted Flax-lily* (approved 16 April 2010)
   - *Final Prescription for Striped Legless Lizard* (approved 16 April 2010)
   - *Final Prescription for Grassy Eucalypt Woodland of the Victorian Volcanic Plain* (approved 27 May 2010)
   - *Final Prescription for Growling Grass Frog* (approved 27 May 2010)
   - *Final Prescription for Southern Brown Bandicoot* (approved 27 May 2010)
   - *Final Prescription for Migratory Species* (approved 27 May 2010).
2. Persons taking actions must maintain accurate records substantiating all activities associated with or relevant to these conditions of approval, including application of the MNES prescriptions to developments within the 28 precincts covered by this approval, and make them available upon request to the Minister within 28 days from the date of a request.

FINAL PRESCRIPTION FOR GOLDEN SUN MOTH[1]

Preamble

This prescription must be read in conjunction with any sub-regional strategy for Golden Sun Moth prepared by the Department of Sustainability and Environment in conjunction with the Growth Areas Authority and approved by the Commonwealth.

Before approving clearing of confirmed Golden Sun Moth habitat, decision makers must first check with the Department of Sustainability and Environment to determine the current level of protection across the relevant bioregion of confirmed 'high contribution' habitat.

In this case, protection means the same as it does for a Victorian native vegetation offset: that is, a permanent binding management agreement or public conservation reserve which targets the conservation of the species.

Surveys of Golden Sun Moth will be undertaken by the Growth Area Authority and Department of Sustainability and Environment across the Bioregion over the next two years according to a standard methodology set out in the *Biodiversity Precinct Structure Planning Kit*. If Golden Sun Moth is recorded at a site, habitat within the whole land parcel in which it is recorded will be designated as 'confirmed', unless the parcel is >3ha in size and DSE has approved a finer scale assessment to determine actual habitat. Such a finer scale assessment would utilise the methodology in the *Biodiversity Precinct Structure Planning Kit and would only be applicable to areas of medium or low contribution to species persistence habitat (see below)*. Instead of assuming all habitat on the parcel is confirmed (ie. occupied) on the basis of finding five Golden Sun Moths, it would instead survey the whole parcel systematically (two repeat visits with decreasing sized transects) to record a circle of 100 metre radius centred on every point where an actual moth was located. At the end of this process the recorded circles will represent the confirmed habitat for the purposes of this prescription.

The native vegetation data collected during site surveys will be used by the Department of Sustainability and Environment to confirm the relevant habitat classes (contribution to species persistence) actually on that site. The three species persistence categories are described in Appendix 3 of the Strategic Impact Assessment Report October 2009 and summarised as follows.

> **High**: Areas of native vegetation (grassland, grassy woodland) within potentially well connected Golden Sun Moth habitat (native and non-native) where connected habitat is separated by breaks in habitat of <200m. Native vegetation here essentially means that native species comprise at least 25 per cent of the understorey vegetation cover.
>
> **Medium**: Areas of non-native vegetation within well connected Golden Sun Moth habitat as above.
>
> **Low**: Native or non-native vegetation within poorly connected habitat.

Once this step has been undertaken, the area to be reconciled with the 80 per cent protection target across the bioregion is then the area of 'high contribution to species persistence' habitat on the land parcel as a whole.

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[1] Approved on 16 April 2010 by the Australian Government Minister for the Environment pursuant to the endorsed Program *Delivering Melbourne's Newest Sustainable Communities* (December 2009)

Areas retained for Golden Sun Moth that meet the 100ha threshold below could be either scattered habitat within a broader public open space network or condensed habitat surrounded by urban development. Any retained habitat must be able to be practically managed given the current and future land use context. The thresholds below have been chosen partly for this reason. Management requirements include identification of a practical biomass reduction regime (where required) that can be implemented in the long-term and that manages risk of collateral damage to the Golden Sun Moth population on the site (e.g. as a result of fire or slashing). The determination of a practical management area and shape will be undertaken by the Department of Sustainability and Environment. This may exclude from the reserve areas deemed to be impractical or required for local infrastructure (eg. bike path, local road, etc.) as long as the reserve provides for protection and management of Golden Sun Moth within the precinct (or other development). In situations where this cannot practically be achieved, the matter must be referred to the Commonwealth for resolution.

Detail

Prior to permitting clearing, surveys to confirm presence or absence of Golden Sun Moth must be undertaken according to the standard methodology set out in the *Biodiversity Precinct Structure Planning Kit* and relevant native vegetation data must be collected to enable application of this prescription, in any areas shown as habitat on Figure 38 of this report or as updated by the Department of Sustainability and Environment.

Clearing of native vegetation on a land parcel confirmed to support Golden Sun Moth may not occur until there is:

> *protection across the relevant bioregion (through appropriate management) of at least 80 per cent of the total area of places where 'high contribution to species persistence' and 'confirmed habitat' intersect,*

as confirmed by the most recent publicly available report compiled by the Department of Sustainability and Environment;

or

If the 80 per cent target of 'protected confirmed high contribution habitat' has not been reached across the bioregion (as advised by the Department of Sustainability and Environment) such clearing may be permitted in the following circumstances:

1. If the clearance is unavoidable for the provision of infrastructure of state significance; **or**
2. If the native habitat that could otherwise be retained within the land parcel contains >25 per cent cover of high threat perennial grassy weeds; **or**
3. If the habitat proposed to be cleared is not located within an area of at least 100ha comprising native habitat patches less than 200m apart.

Non-native habitat (ie. 'medium' and 'low' contribution habitat) and areas of non-habitat on that land parcel may be cleared, subject to native vegetation or other requirements (see below).

If clearing of high contribution habitat (native grassland or grassy woodland) is permitted, an offset must be found and secured prior to the commencement of the associated clearing of native vegetation or habitat. In these cases offsets will be determined by treating the vegetation to be removed as Very High conservation significance as a result of its habitat values for the Golden Sun Moth, and the relevant like for like criteria followed including a requirement that the offset site must contain a population of Golden Sun Moth. Offsets in these cases must be located within areas of 'high contribution to species persistence' habitat containing a population of Golden Sun Moth (eg. Western Grassland Reserves, Grassy Eucalypt Woodland Reserve or areas of native vegetation retained within the urban growth boundary that meet prescription requirements for retention of Golden Sun Moth).

Prior to clearing of confirmed 'medium' contribution habitat an equivalent area of native vegetation confirmed to support Golden Sun Moth must be found and secured. If the Department of Sustainability and Environment has approved a finer scale assessment of confirmed habitat, any area not included within a confirmed habitat circle would be excluded from offsetting requirements.

Prior to commencement of clearing of confirmed 'low contribution' habitat the proponent must commission surveys and confirm the presence of an area of confirmed Golden Sun Moth habitat outside the Urban Growth Boundary equivalent to that proposed to be cleared.

In circumstances agreed by the Department of Sustainability of Environment, the requirement to identify and secure offset habitat prior to clearing may be met through credits arranged with the Department of Sustainability and Environment and BushBroker for the future acquisition of offsets within the reserve areas described above.

Any sites retained as a result of this prescription must be managed to the standards specified for a native vegetation offset under Victoria's *Native Vegetation Management Framework* in terms of security and management. A fully costed Conservation Management Plan must be prepared to the satisfaction of the Department of Sustainability and Environment prior to commencement of clearing within the sub-precinct setting out the detailed management arrangements for the Golden Sun Moth within the retained area.

FINAL PRESCRIPTION FOR NATURAL TEMPERATE GRASSLAND OF THE VICTORIAN VOLCANIC PLAIN[1]

Preamble

Between the proposed new Urban Growth Boundary[2] and the existing Urban Growth Boundary clearing of native grasslands has already been avoided and minimised. Further areas will only be retained within these areas if required to meet another relevant prescription (e.g. Spiny Rice-flower, Matted Flax-lily, Golden Sun Moth).

Inside the current Urban Growth Boundary (as at 1/1/2010) the Precinct Structure Planning process will seek to avoid and minimise impacts on native grasslands, as required by the *Native Vegetation Management Framework*. Priority will be given to retention of areas of native grassland that support other nationally significant species, where these different assets can be effectively managed within the retained area over the medium to long term.

Areas retained for Natural Temperate Grassland that meet the prescription requirements below must be able to be practically managed given the current and future land use context. These management requirements include identification of a practical biomass reduction regime (where required) that can be implemented in the long-term and that manages risk of damage to plant and animal populations on the site (e.g. as a result of fire or slashing). The determination of a practical management area and shape will be undertaken by DSE. This may exclude from the reserve areas deemed to be impractical or required for local infrastructure (eg. bike path, local road, etc.) as long as this does not undermine conservation objectives and the reserve provides for protection and management of Natural Temperate Grassland within the precinct (or other development). In situations where this cannot practically be achieved, the matter must be referred to the Commonwealth for resolution.

Detail

- Grasslands will be retained between the proposed new Urban Growth Boundary and the existing Urban Growth Boundary if the site contains an endangered or critically endangered orchid species.
- Inside the current Urban Growth Boundary native grasslands within precincts will be retained if they are manageable and demonstrably able to retain their values in the long term, that is, part of a contiguous area of native vegetation under the same type of management typically of at least 150ha including adjacent areas outside the precinct.
- All permitted clearing of native grasslands will be offset in accordance with the Victorian *Native Vegetation Management Framework* and offsets will be secured prior to commencement of clearing. Offsets for clearing of Natural Temperate Grassland will be sourced from the proposed Western Grassland Reserves.

In circumstances agreed by the Department of Sustainability of Environment, the requirement to identify and secure offset habitat prior to clearing may be met through credits arranged with the Department of Sustainability and Environment and BushBroker for the future acquisition of offsets within the reserve areas described above.

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[1] Approved on 16 April 2010 by the Australian Government Minister for the Environment pursuant to the endorsed Program *Delivering Melbourne's Newest Sustainable Communities* (December 2009)
[2] As per *Delivering Melbourne's Newest Sustainable Communities* Program Report

FINAL PRESCRIPTION FOR SPINY RICE-FLOWER[1]

Preamble

Before approving clearing of confirmed Spiny Rice-flower habitat, decision makers must first check with the Department of Sustainability and Environment to determine the current level of protection across the relevant bioregion of confirmed 'high contribution' habitat.

In this case, protection means the same as it does for a Victorian native vegetation offset: that is, a permanent binding management agreement or public conservation reserve which targets the conservation of the species.

As part of the Precinct Structure Planning process, land will be further surveyed for native vegetation and threatened species (including Spiny Rice-flower) according to a standard methodology set out in the *Biodiversity Precinct Structure Planning Kit*. If Spiny Rice-flower is recorded at a site all the vegetation within the land parcel in which it is recorded will be designated as 'confirmed habitat'.

The native vegetation data collected during site surveys will be used by the Department of Sustainability and Environment to confirm the relevant habitat classes (contribution to species persistence) actually on that site. The three species persistence categories are described in Appendix 5 of the Strategic Impact Assessment Report October 2009 and summarised as follows.

High: Areas of native grassland of at least 0.2 site condition score and within contiguous habitat of at least 500ha, OR areas of native grassland of at least 0.35 site condition score within contiguous habitat of at least 50ha.

Medium: Areas of native grassland of less than 0.2 site condition score and within contiguous habitat at least 50ha, OR areas of native grassland of at least 0.2 site condition score and within contiguous habitat of at least 25ha but no more than 500ha, OR areas of native grassland of at least 0.35 site condition score and within contiguous habitat of at least 1ha but no more than 50ha.

Low: Areas of native grassland of less than 0.2 site condition score and within contiguous habitat at least 1ha but no more than 50ha, OR areas of native grassland of at least 0.2 site condition score and within contiguous habitat of no more than 25ha.

Definitions

"**Habitat**" is defined as areas shown as habitat in the most recent modelled Spiny rice-Flower habitat map (with size classes) displayed on the Department of Sustainability and Environment website.

Contiguous means a gap of non-habitat of no more than 100m.

Population means at least 20 Spiny Rice-flower plants where there is no more than a 100m distance between any two plants, and between 40% and 60% of the plants are male.

Determination of which habitat class (contribution to species persistence) applies at any particular site therefore requires:

- confirmation that the species is present;
- native vegetation site condition data; and
- reference to the DSE map showing habitat size classes.

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[1] Approved on 16 April 2010 by the Australian Government Minister for the Environment pursuant to the endorsed Program *Delivering Melbourne's Newest Sustainable Communities* (December 2009)

Once this step has been undertaken, the area to be reconciled with the 80 per cent protection target across the bioregion is then the area of 'high contribution to species persistence' habitat on the land parcel as a whole.

Areas retained for Spiny Rice-flower that meet the prescription requirements below must be able to be practically managed given the current and future land use context. These management requirements include identification of a practical biomass reduction regime (where required) that can be implemented in the long-term and that manages risk of damage to the Spiny Rice-flower population on the site (e.g. as a result of fire or slashing). The determination of a practical management area and shape will be undertaken by the Department of Sustainability and Environment. This may exclude from the reserve areas deemed to be impractical or required for local infrastructure (eg. bike path, local road, etc.) as long as this does not further impact on individual Spiny Rice-flower plants and the reserve provides for protection and management of Spiny Rice-flower within the precinct (or other development). In situations where this cannot practically be achieved, the matter must be referred to the Commonwealth for resolution.

Detail

Prior to permitting clearing, surveys to confirm presence or absence of Spiny Rice-flower must be undertaken according to a standard methodology set out in the *Biodiversity Precinct Structure Planning Kit* and relevant native vegetation data must be collected to enable application of this prescription, in any areas shown as habitat on the most recent habitat map displayed on the Department of Sustainability and Environment website.

Clearing of native vegetation on a land parcel confirmed to support Spiny Rice-flower may not occur until there is:

> *protection across the relevant bioregion (through appropriate management) of at least 80 per cent of the total area of places where 'high contribution to species persistence' and 'confirmed habitat' intersect,*

as confirmed by the most recent publicly available report compiled by the Department of Sustainability and Environment;

or

1. If the clearance is unavoidable for the provision of infrastructure of state significance; **or**
2. If the native vegetation that would otherwise be retained within the land parcel contains >25 per cent cover of high threat perennial grassy weeds and the population of Spiny Rice-flower is less than 200 plants; **or**
3. If the vegetation removal will impact on no more than 50 per cent of the Spiny Rice-flower plants within a land parcel that supports more than five and less than 200 plants; **or**
4. If there are no more than five Spiny Rice-flower plants within the land parcel.

Notwithstanding the above, clearing of native vegetation on a land parcel confirmed to support Spiny Rice-flower may not occur if the vegetation removal will impact on more than 20 per cent of the Spiny Rice-flower plants within a population of at least 200 Spiny Rice-flower plants.

If clearing of high contribution habitat is permitted, an offset must be found and secured prior to commencement of that clearing. In these cases offsets will be determined by treating the vegetation to be removed as Very High conservation significance as a result of its habitat values for the Spiny Rice-flower, and the relevant like for like criteria followed including a requirement that the offset site must contain a population of Spiny Rice-flower.

The remaining 'medium' and 'low' contribution habitat and areas of non-habitat on that land parcel may be cleared, subject to native vegetation or other requirements (eg. native vegetation offsets will be required where the plants occur in patches of native vegetation).

Any sites retained as a result of this prescription must be managed to the standards specified for a native vegetation offset under Victoria's *Native Vegetation Management Framework* in terms of security and management. A fully costed Conservation Management Plan must be prepared to the satisfaction of the Department of Sustainability and Environment prior to commencement of clearing within the sub-precinct setting out the detailed management arrangements for the Spiny Rice-flower within the retained area.

Before Spiny Rice-flower plants are approved for removal, a fully costed translocation and/or propagation and *ex situ* conservation plan must be prepared to the satisfaction of the Department of Sustainability and Environment and in consultation with the *Pimelea spinescens* Recovery Team. Translocation or the establishment of propagated specimens must be to areas of suitable habitat within secure conservation reserves (either on or off site), preferably to the proposed Western Grassland Reserves unless a better outcome is likely to be achieved elsewhere. Translocation must follow the Translocation Protocol prepared by the *Pimelea spinescens* Recovery Team (Mueck 2009) (or as updated) and Guidelines for the Translocation of Threatened Plants in Australia, 2nd Ed (or as updated). Any translocation attempted must be fully documented and monitored.

Australian Government
Department of Sustainability, Environment, Water, Population and Communities

s47F
Senior Associate
Norton Rose Australia
GPO Box 4592
MELBOURNE VIC 3001

Dear s47F

Wyndham Planning Scheme Amendment C123 - Truganina South Community Precinct Structure Plan Further Panel Report (March 2011)

I refer to your letter of 17 May 2011, on behalf of your client Central Equity Limited (CEL), in relation to the potential application of the *Environment Protection and Biodiversity Conservation Act 1999* ('EPBC Act') to proposed clearing at 105 Palmers Road, Truganina ('the Property').

As advised in our letter of 4 April 2011, the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (the Department) does not agree with the interpretation and recommendation by the Panel for the Wyndham Planning Scheme ('the Panel') that offsets are not required for the removal of native vegetation at the Property.

You have requested that the Department provide:

1. Details of the legal basis for its position; and

2. Details of any possible breaches of the EPBC Act if CEL acts in accordance with the Panel's recommendation.

1. Requirement for offsets in relation to clearing of native grasslands

As you are aware, on 8 July 2010 the Minister approved under s 146B of the EPBC Act, 'all actions associated with urban development, undertaken in accordance with the endorsed program report *Delivering Melbourne's Newest Sustainable Communities*, Victorian Government, December 2009 (the Program), within the 28 precincts identified on page 17' ('the Approval').

This Approval is subject to the conditions specified at Annexure 2. Under s 134 of the EPBC Act, the Minister may attach a condition to an approval where he is satisfied that the condition is necessary or convenient for protecting a Part 3 matter, or repairing or mitigating damage to a Part 3 matter, for which the approval has effect. The Part 3 matters for which the Approval has effect include listed threatened species and communities (ss 18 and 18A of the EPBC Act). The Natural Temperate Grassland of the Victorian Volcanic Plain was listed as a critically endangered ecological community on 21 June 2008.

The conditions at Annexure 2 of the Approval include that persons taking actions must undertake the actions in accordance with the *Final Prescription for Natural*

Temperate Grassland of the Victorian Volcanic Plain which was approved by the Minister on 16 April 2010 ('the Prescription').

The Prescription details the circumstances in which native grasslands will be retained as follows:

- *Grasslands will be retained between the proposed new Urban Growth Boundary and the existing Urban Growth Boundary if the site contains an endangered or critically endangered orchid species.*

- *Inside the current Urban Growth Boundary native grasslands within precincts will be retained if they are manageable and demonstrably able to retain their values in the long term, that is, part of a contiguous area of native vegetation under the same type of management typically of at least 150ha including adjacent areas outside the precinct.*

In situations where native grasslands are permitted to be cleared, the Prescription then provides:

- *All permitted clearing of native grasslands will be offset in accordance with the Victorian Native Vegetation Management Framework and offsets will be secured prior to commencement of clearing. Offsets for clearing of Natural Temperate Grassland will be sourced from the proposed Western Grassland Reserves.*

Accordingly, the Prescription determines the circumstances under which native grasslands must be retained and then determines, where clearing is permitted, that such clearing will be offset. The Prescription clearly states that **all** permitted clearing of native grasslands **will be** offset in accordance with the Victorian Native Vegetation Management Framework ('the Framework'). It does not say that all permitted clearing will be offset, if required, in accordance with the Framework.

Having stipulated that all permitted clearing of native grasslands will be offset, the Prescription then provides that such offsets will be in accordance with the Framework. Accordingly, it is necessary to calculate the level of required offsets by reference to the document '*Victoria's Native Vegetation Management - A Framework for Action*' which was published by the Victorian Department of Natural Resources and Environment in 2002. In particular, Appendix 4 of this document sets out a summary of responses and offset criteria.

In addition to the Framework, the Victorian Department of Sustainability and Environment (DSE) has developed a number of documents which supplement the Framework and guide assessment under the Victorian legislation. These include *Native Vegetation - Guide for assessment of referred planning permit applications* which was published by DSE in 2007. Such documents are of general application and relevant to how DSE will assess planning permit applications under Victorian legislation. However, these supplementary documents are only relevant to calculating the level of offset for the permitted clearing of native grasslands as this is to be done in accordance with the Framework. They are not relevant to determining whether an offset is required for the clearing of native grasslands in the first place. The Prescription determines that all permitted clearing will be offset. This Commonwealth requirement cannot be overridden or displaced by a subordinate policy document developed for Victorian planning purposes.

In this respect, page 16 of *Delivering Melbourne's Newest Sustainable Communities - Program Report* (December 2009) deals with grassland reserves and relevantly states (emphases added):

> *The increased legal protection and improved management of grasslands within the reserves will create gains in native vegetation quality and extent. These gains will be made available (as native vegetation credits) for purchase by developers requiring offsets for permitted clearing in accordance with the Program.* ***The calculation of native vegetation losses and gains (in habitat hectares), and like for like criteria for offsets will be in accordance with Victoria's Native Vegetation Management: A Framework for Action and related implementation tools.*** *In some case, where specified by prescriptions, offsets for threatened species in addition to native vegetation offsets in the Native Vegetation Framework may be required. The grassland reserves will also provide a source of these threatened species offsets where relevant.*

The department's view is that this interpretation of the Prescription (and therefore of the conditions to which the approval is subject) is the ordinary one conveyed by the text. For this reason it is to be preferred. This interpretation is also consistent with the objects of the EPBC Act, in particular the protection of this critically endangered ecological community.

2. Possible actions for breaches of the EPBC Act if CEL follows the Panel's recommendation

Breach of conditions

CEL, as a developer undertaking an action associated with urban development within the 28 precincts, is required to comply with the conditions attached to the Approval (see s 146D of the EPBC Act).

An approval holder who contravenes any condition attached to an approval will be subject to civil penalties and criminal liability under ss 142, 142A and 142B of the EPBC Act. Section 142 provides that a person whose taking of an action has been approved must not contravene any condition attached to the approval subject to a civil penalty. Sections 142A and 142B impose criminal liability on a person whose taking of an action has been approved and who contravenes an approval condition.

Section 498B of the EPBC Act deals with the conduct of directors, employees and agents.

In addition to giving rise to a civil penalty and/or criminal sanctions, the EPBC Act contains a range of other enforcement options which may be relevant, such as the following.

Injunction

Under s 475 of the EPBC Act, if a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of the EPBC Act or the regulations, the Minister or certain other persons, may apply to the Federal Court for an injunction to restrain the person from engaging in the conduct or require a person to do an act.

Remediation orders

The Minister can apply under s 480A of the EPBC Act to the Federal Court for a remediation order in relation to conduct by a person constituting an offence or other contravention of the EPBC Act or the regulations. The Federal Court may make an order requiring the person to take action to repair or mitigate damage that may or will be, or has been, caused to the environment by the contravention of the EPBC Act.

If you have any queries, the author of this letter can be contacted on 02 6274 s47F.

Yours sincerely

s47F

Director
EPBC Act Strategic Assessments (East)
Strategic Approaches and Species Management Branch

24 June 2011

FOI 190720
Document 7

From: s47F
To: s47F
Cc: s47F ; s47F ; s47F ; s47F ; s47F ; s47F ; s47F ; s47F ; s47F
Subject: FW: Part 9 Offsets into WGR - Assessment notes [SEC=UNCLASSIFIED]
Date: Thursday, 2 February 2012 5:04:05 PM
Attachments: Assessment Information.doc

Please find attached Item 2 re the email below. These notes have been drawn together quickly, but should, hopefully, be sufficient in terms of justifications for the approach in any recommendations report. They are primarily written around the 'prescriptions' since this is the mechanism for delivery of offsets on the ground. Please let me know if more material is needed.

There is certainly spare capacity in the WGR (it was designed into the WGR taking a conservative approach)

The design and size of the WGR has taken a precautionary approach by including excess capacity to accommodate NTGVVP and other MNES against future contingencies. The excess (eg beyond what is required for clearing under the Program) is 555.4 habitat hectares which is equivalent to 1000-1500ha of moderate quality listed NTGVVP. Based on experience to date, this extra capacity is not likely to be needed and could be used for offset of developments outside the Program area. A further description of 'habitat hectares' is at the end of this paper.

The assessment information contains the main arguments why additional offset into the WGR will provide good outcomes for MNES. This is because the WGR outcomes are aimed at the entire 2.2 million hectare VVP Bioregion over which the NTGVVP occurs, and not just the narrower confines of the Program.

I've also tried to update with more recent work where relevant. This is particularly the case for the GSM:

According to the *Sub-regional Species Strategy for the Golden Sun Moth* (DSE, November 2011), some 10,460ha of GSM habitat will need protection to meet the 80% target across the VVP Bioregion. The availability of 8,100ha of habitat has been confirmed in the WGR and the *in situ* reserves in the new growth areas. This leaves 2,360ha to be achieved outside the Program area and the WGR. This will be achieved through additional offset requirements to be imposed within the growth areas.

From: s47F
Sent: Thursday, 2 February 2012 2:50 PM
To: s47F
Cc: s47F ; s47F ; s47F ; s47F ; s47F ; s47F ; s47F ; s47F
Subject: Part 9 Offsets into WGR [SEC=UNCLASSIFIED]

Hi s47F. Thanks for chairing the implementation meeting on 31 January 2012. At the meeting, I undertook to provide 3 main inputs:

1. Better definition of the actions that may be considered under the new policy approach
2. Background assessment information that could be used in recommendations reports
3. Suggested conditions

I am still working on items 1 and 2 and will forward as drafts as soon as possible. I note that the Intrapac proposal may become urgent and am therefore concentrating on items 2 and 3. I

assume that Intrapac will provide a letter from DSE stating that spare capacity exists in the WGR and that the [quantum of offset required] will be accepted for the WGR.

I attach item 3 together with various attachments. The suggested approach draws on the Part 10 approval conditions. We think that this is all that is needed as DSE must report on compliance and implementation. We are meeting with DSE on 7 February and will ask for any Part 9 offsets to be kept separate for accounting, monitoring and reporting purposes. Part of the policy approach is also to minimise the post-approval work needed by the division. The approval conditions would attach the relevant prescriptions as an annexure. I also attach a 'compliance style' letter prepared by AGS addressed to a recalcitrant proponent (they subsequently complied).

Assessment Information

Background

On 16 April 2010 the Minister approved prescriptions for protection of Natural Temperate Grasslands of the Victorian Volcanic Plain, Golden Sun Moth and the Spiny Rice-flower. These prescriptions describe the mandated rules for avoidance, mitigation and offset of impacts from developments on MNES under *Delivering Melbourne's Newest Sustainable Communities Program Report* (Victorian Government, December 2009) endorsed by the Minister under Part 10 of the EPBC Act on 2 February 2010 (the Program).

While prepared for the Program, the prescriptions also provide a basis for the management and offset of the relevant MNES in a broader context. This is because the prescriptions are aimed at achieving beneficial and measurable outcomes at the broader Victorian Volcanic Plains (VVP) Bioregion level rather than just the geographic extent of the Program.

The prescriptions describe what onsite surveys, prior to any development, are required as part of the precinct planning process. They also specify how MNES found through these surveys must be managed. They variously specify targets (such as 80% of high priority habitats to be retained within the broader VVP Bioegion), mitigation measures (for example buffers along riparian corridors), and requirements for offsets when clearing occurs. They establish the rules for calculating like for like offsets (and multipliers for high quality habitat) that must be acquired within the proposed Western Grassland Reserves (WGR).

The prescriptions are described in the *Delivering Melbourne's Newest Sustainable Communities Strategic Impact Assessment Report* (SIAR) released for public comment. The department assessed the adequacy of the prescriptions as part of the endorsement process for the Program (*Strategic Assessment Report for Endorsement Decision* contained at Brief B09/3534) and concluded that the prescriptions would ensure adequate protection of MNES.

Approach to WGR

Public comments on the SIAR were generally supportive of the establishment of large reserves as providing the best option for protection of MNES. However, some submissions considered that the prescriptions should also provide for protection of small urban reserves if certain biodiversity triggers were met. While the prescriptions provide for additional urban reserves if they meet specified 'landscape-scale' thresholds, they do not generally require protection of small areas except in special cases (for example if >200 Spiny Rice Flower plants are present).

The SIAR modelled future outcomes for maintenance and protection of native grassland ecological reserves under several scenarios including no management/ current status, 'project by project' assessment and establishment/ management of *ad hoc* urban reserves, and establishment of large strategic reserves. The project by project outcomes were similar to the 'no management/current status' scenario in providing lower long term certainty for protection of grassland ecological function. The large strategic reserve scenario provided the best outcome in terms of long term protection of NTGVVP and associated species.

The department's assessment report supported the approach of large reserves over multiple small urban reserves. While there is ongoing scientific debate over whether 'larger is better', the large grassland reserves required as part of the Program provide

better inherent protection and resilience to disturbance. The Program provides the opportunity to secure the protection of the best remnant high quality grasslands in the VVP Bioregion, before they are threatened or fragmented by inevitable urban pressures over the next 50 years, and at an affordable cost.

The reserve areas have been selected on a precautionary basis as representative of the best remaining listed grasslands on the VVP and to ensure adequate protection of ecological communities and species that may be listed within the life of the Program (Plains Grassy Wetland, Buloke Grassy Woodlands and Werribee Blue Box). The reserves also provide the best mechanism to protect listed species needing a wide range (eg Plains Wanderer) and for reintroduction of locally extinct species such as the Eastern Barred Bandicoot.

Additionally, given that many fauna dependent on the grassland habitat have poor mobility (for example Golden Sun Moths), larger, well managed reserves increase resilience against edge effects and urban disturbances. Large reserves will be more beneficial to biological persistence over time and are more cost effective to manage than numerous, but potentially isolated, smaller reserves.

On the other hand, floristic representation may be unique within a smaller grassland patch or there may be high endemic biodiversity. Additionally, smaller patches may assist in conserving such diversity for future re-establishment after stochastic events in other areas, or loss through the effects of climate change.

The listing advice by the Threatened Species Scientific Committee for native grasslands noted that small patches of grassland can retain their conservation values despite their size. The department also recognises that many smaller grassland reserves in the ACT and Melbourne appear to be viable in the medium-term, though information on their management and resource intensity is not readily available.

There is strong agreement both within and outside of government for the scenario that, if the current project by project approach were to be undertaken over the same timeframe as the program, grassland communities would be at significant long term risk of being overwhelmed through fragmentation, weed invasion and urban edge effects. There are also significant ecosystem management constraints, such as fire control and weed suppression, for such reserves in an urban setting.

The department recognises that trade-offs must be made to cater for urban expansion. The trade-off in this case is establishment of cost effective large scale reserves securing MNES at the landscape scale versus prescriptions requiring protection of additional small urban reserves that can be demonstrated to meet certain biodiversity or species refuge criteria. The department's assessment concluded that such additional reserve requirements may not add materially to conservation outcomes and were of uncertain cost benefit. The Victorian Government considered that such prescriptions would draw inevitably draw resourcing away from the large reserves and reduce flexibility and certainty in terms of planning for future substantive urban development. This uncertainty could, in turn, be at odds to government approaches for better housing affordability and provision of public infrastructure.

While the offset and acquisition program has not been publicly costed, the offsets required will be more that ample to acquire the reserve lands. The Program will generate up to $1.5bn in offsets over its 20 year life for acquisition of the grassland

reserves. Acquisition of the reserve lands is estimated to average $75,000 per hectare (approx. $1.1bn for 15,000ha).

Establishment of WGR
The Program committed to a planning Acquisition Overlay to be placed on the WGR. The planning instrument giving effect to these arrangements was passed in 2011.

This means that landowners within the 15,000ha WGR must (if they wish to sell their properties) sell to the Victorian Government and that such acquisitions must be for the purposes of conservation to establish the WGR. The overlay also requires the Victorian Government to compulsorily acquire properties not purchased within 10 years.

The Victorian Government has also placed an Environmental Significance Overlay over the WGR. This means that any activities that might involve clearing or degradation of NTGVVP must be permitted. The ESO was also extended over a number of nearby additional NTGVVP (approx. 5000ha) to cover the eventuality that the WGR could be extended if there is a surfeit of offsets.

Offset capacity in the WGR
The design and size of the WGR has taken a precautionary approach by including excess capacity to accommodate NTGVVP and other MNES against future contingencies. The excess (eg beyond what is required for clearing under the Program) is 555.4 habitat hectares which is equivalent to 1000-1500ha of moderate quality listed NTGVVP. Based on experience to date, this extra capacity is not likely to be needed and could be used for offset of developments outside the Program area. A further description of 'habitat hectares' is at the end of this paper.

We think it unlikely that the number of Part 9 proposals that meet the suggested new policy approach could ever fill this gap. The gap (which will comprise scattered lower quality properties buried within the WGR) will need to be acquired by the Victorian Government (the mechanism for this must be determined in Year 15 of the Program).

The Victorian Government has in place the necessary regulatory regime to retain the WGR, but the properties must still be acquired by offset contributions as they accrue through development in the Program areas. Hastening the acquisition process, and securing areas of the WGR sooner rather than later, maximises the MNES outcome because sympathetic conservation management can begin sooner to address ongoing degradation pressures.

This is demonstrated by RMIT modelling undertaken as part of the Program which looked at various development scenarios - no management; project by project assessment and establishment of ad hoc reserves; future establishment of a large strategic reserves; and establishment of a large strategic reserve prior to development. The 'establish strategic reserve prior to development' scenario provided the best conservation outcome because decline and ongoing degradation could be halted soonest through proper management. The quicker management for conservation commences, the better the landscape outcomes for NTGVVP.

From a MNES outcome perspective, the WGR has been selected on a precautionary basis as representative of the best remaining NTGVVP and to ensure adequate protection of ecological communities and species that may be listed within the life of the Program (Plains Grassy Wetland, Buloke Grassy Woodlands and Werribee Blue Box). The reserves also provide the best mechanism to protect listed species

needing a wide range (eg Plains Wanderer) and for reintroduction of locally extinct species such as the Eastern barred Bandicoot.

Natural Temperate Grasslands of the Victorian Volcanic Plains (NTGVVP)
A summary of the current status, expected impacts and conservation outcomes from the Program for NTGVVP is in the tables at the end of this paper. In summary, implementation of the Program and prescription will achieve the following key landscape outcomes:

- Two conservation reserves totalling 15 000ha of which 10 000ha is NTGVVP, to be owned and managed by the Victorian Government.
- 20% remaining NTGVVP in the Victorian Volcanic Plains Bioregion (compared to 2% currently) will be secured in these reserves.
- Additional retention of NTGVVP within the new urban growth area of 2 674ha in retained reserves and open spaces.
- Environmental Significance Overlays outside the growth areas will be added to planning schemes for Melton and Wyndham Local Government Areas (where most NTGVVP remains) providing legislative protection for listed grasslands on private farm lands outside the reserves. This is a significant regulatory advance in that Victoria's native vegetation controls do not include grasslands (only wooded vegetation). This means that agricultural developments impacting native grasslands are not currently regulated. The planning scheme amendments will bring native grasses within the state's native vegetation controls for the first time.

The NTGVVP prescription is premised on the basis that the Program will result in adequate and representative conservation of listed grasslands, when measured at the bioregional scale, primarily through the two new conservation reserves described above. These reserves will protect the highest quality and most extensive native grasslands remaining throughout the Victorian Volcanic Plains Bioregion.

The program approach generally allows clearing of marginal and lower quality NTGVVP, but requires protection of higher quality NTGVVP. The reserves contain 2609ha of mapped 'high quality' NTGVVP that remain relatively undisturbed and have the highest conservation values. This compares to the 72ha of similar 'high quality' grasslands to be cleared under the Program (offset ratio of nearly 40:1). Further comparisons are in the tables at Attachment B.

The prescription provides for additional protection of NTGVVP within development areas if the following rules are met following surveys required as part of the precinct planning process:

- Surveyed grasslands contain an endangered or critically endangered listed orchid species.
- Surveyed grasslands form part of a contiguous grassland of >150ha (including adjacent areas outside the precinct).

Victoria considers that the150ha threshold is the minimum needed to ensure long term protection of listed grassland values, and provides for more efficient management compared to a number off smaller grassland reserves within an urban footprint. The department accepts this approach and considers that the Program will adequately protect the best examples of remaining grasslands.

There is no current recovery plan for NTGVVP under development. The NTGVVP advice prepared by the Threatened Species Scientific Committee (TSSC) at the time of listing recommended that 'there be a bioregional plan for the Victorian Volcanic Plain as a strategic initiative'. The committee advice also states that the conservation

value of a patch of the ecological community is enhanced if it shows any of the following features:

- a high native plant species richness;
- large patch size;
- minimal weed invasion;
- presence of threatened plant and/or animal species;
- presence of natural exposed rock platforms and outcrops; or
- presence of mosses, lichens or a soil crust on the soil surface.

The Program and resultant strategic identification, protection and management of the 15 000ha grassland reserves is consistent with the TSSC advice. The reserves will also provide for the protection of the highest quality NTGVVP consistent with the conservation values described by the TSSC above.

Spiny Rice Flower (SRF)*, Pimelea spinescens* subsp. *spinescens*

A summary of the current status, expected impacts and conservation outcomes from the Program for SRF is at the end of this attachment. In summary, implementation of the Program and prescription will achieve the following key outcomes:

- Large areas (at least 15 000 hectare reserve) of permanently protected grassland habitat will be established and managed in a way that enables the species to be sustained over the long term through a series of connected populations and adaptive management regimes.
- Eighty per cent of highest priority habitats for this species within the Victorian Volcanic Plains bioregion (confirmed sites contributing most to species persistence as defined in the methodology guiding the prescription for this species) will be permanently protected and managed.
- Protection of 4 of the 7 known populations of more than 200 plants (2 of these are currently protected and the remaining population falls outside the Program area).
- A selection of smaller reserves and protected areas under targeted management in areas with the greatest contribution to species persistence will be maintained and managed, providing insurance against risk of catastrophic events in the large reserves.
- Minimisation of the risk of extinction of SRF in the wild and an increase in the probability of important populations becoming self-sustaining in the long term.

SRF is typically associated with NTGVVP and protection of this ecological community at the bioregional and landscape scale will also secure long term protection for this species. While the species is listed as critically endangered, intensive surveys over the last 5 years indicate that it is more widespread and persistent than envisaged at the time of listing. Removal of heavy grazing pressure will allow the species to regenerate in circumstances where good quality grasslands remain.

There are currently seven known populations of greater than 200 plants in the metropolitan region and only two of these are protected. The Program, and application of the prescription, will result in the protection of an additional four of these populations. The remaining population is outside the Program considerations.

Under the prescription, DSE and the Growth Areas Authority will be conducting surveys for the SRF, and other MNES, within the revised urban growth boundary over the next two years. This will identify any site specific requirements for achievement of 80% protection of ‘highest priority habitat’. This habitat has been mapped using modelling criteria to reflect expected persistence of the species in the landscape (essentially habitat meeting criteria for self-sustaining populations of SRF in the long term under passive management regimes). The ‘highest priority habitat’ is

where the modelled habitat is confirmed through surveys as containing SRF. DSE will maintain, manage and update the 'highest priority habitat' mapping to register the percentage of protection as surveys are completed and offsets settled, until the achievement of statutory protection of 80% of the habitat.

Offsetting impacts on the SRF will be in accordance with the prescription and the Victorian *Native Vegetation Management Framework*. The proposed western grassland reserves are expected to account for the majority of offsetting.

The prescription requires fully funded propagation and translocation plans to be implemented for plants affected by clearing to ensure maintenance of the genetic stock in reserve localities.

A national recovery plan has been prepared for the SRF under the EPBC Act (12 December 2006). The stated goal of the plan is to minimise the probability of extinction of the species in the wild and to increase the probability of important populations becoming self-sustaining in the long term. More specific objectives are stated as:

- Acquisition of accurate information for conservation status assessments.
- Identification of habitat that is critical, common or potential.
- To ensure that all populations and their habitat are protected and managed appropriately.
- Management of threats to populations.
- Identification of key biological functions.
- Determination of the growth rates and viability of populations.
- To build community support for conservation.

The Program is consistent with the goals of the recovery plan in that it will ensure the protection of known self-sustaining populations in the grassland reserves as well as the additional four grassland areas currently supporting more than 200 plants. The surveys to be undertaken by DSE and the Growth Areas Authority will provide accurate information for conservation status assessments and identification of habitat that is critical, common or potential (the Program has developed and utilised a methodology meeting this objective). The Program will also manage threats to populations and identify key biological functions through management of the grassland reserves.

The recovery plan also states that all populations and their habitat should be protected. Arguably, the Program and prescriptions are inconsistent as they may allow the clearing of populations of less than 200 plants. This situation exists for individual project assessments where clearing is often allowed, subject to offsets. Fragmented populations may not persist within small urban reserves and have limited conservation values.

The department considers that the outcomes of the Program and the prescription are consistent with the intent and goals of the recovery plan.

Golden Sun Moth (GSM), *Synemon plana*

A summary of the current status, expected impacts and conservation outcomes from the Program is at Attachment A. It is noted that more recent GSM surveys across the VVP, undertaken by DSE under the prescription (*Sub-regional Species Strategy for the Golden Sun Moth*, DSE, November 2011), have identified several hundred additional populations to date. In summary, implementation of the Program and prescription will achieve the following key outcomes:

- Large areas (at least 15 000 hectare reserve) of permanently protected grassland habitat will be established and managed in a way that enables the species to be sustained over the long term through a series of connected populations and adaptive management regimes.
- Eighty per cent of highest priority habitats for this species within the Victorian Volcanic Plains bioregion (confirmed sites contributing most to species persistence as defined in the methodology guiding the prescription for this species) will be permanently protected and managed.
- Large areas (greater than 1 200ha) of permanently protected grassy woodland habitat managed in a way than enables GSM to be sustained over the long term through a series of connected populations and adaptive management regimes.
- Protection of an additional three reserves, known to support important populations of GSM within the new urban growth boundary, totalling 300ha.
- A selection of smaller reserves and protected areas under targeted management in areas with the greatest contribution to species persistence will be maintained and managed, providing insurance against risk of catastrophic events in the large reserves.
- Greatly improved information on GSM distribution within Victoria to support important research and management knowledge.
- Minimisation of the risk of extinction of GSM in the wild and an increase in the probability of important populations becoming self-sustaining in the long term.

GSM is typically associated with NTGVVP and protection of this ecological community at the bioregional and landscape scale will also secure long term protection for this species. While the species is listed as critically endangered, intensive surveys over the last five years indicate that it is perhaps more widespread and persistent than envisaged at the time of the listing. The species is cryptic and it is only recently that reliable survey techniques have been developed to systematically locate populations.

Under the prescription, DSE and the Growth Areas Authority will be conducting surveys for the GSM, and other MNES, within the revised urban growth boundary over the next two years. This will identify any site specific requirements for achievement of 80% protection of 'highest priority habitat'. This habitat has been mapped using modelling criteria to reflect expected persistence of the species in the landscape (essentially habitat meeting criteria for self-sustaining populations of GSM in the long term under passive management regimes). The 'highest priority habitat' is where the modelled habitat is confirmed through surveys as containing GSM. DSE will maintain, manage and update the 'highest priority habitat' mapping to register the percentage of protection as surveys are completed and offsets settled, until the achievement of statutory protection of 80% of the habitat.

The surveys undertaken by DSE and the Growth Areas Authority will also inform the preparation of a sub-regional species strategy consistent with the prescription for the GSM. This sub-regional species strategy will identify important populations, habitat, and areas to be retained as required by the prescription. The sub-regional species strategy will inform the biodiversity conservation strategy for the relevant growth area and will influence the design of precincts through the precinct structure plans. The sub-regional strategy must be approved by the Minister for the new growth areas. It is not applicable for precincts within the existing growth boundary covered by the Program.

Offsetting impacts on the GSM will be in accordance with the prescription and the Victorian *Native Vegetation Management Framework*. The proposed western grassland reserves are expected to account for the majority of offsetting.

According to the *Sub-regional Species Strategy for the Golden Sun Moth* (DSE, November 2011), some 10,460ha of GSM habitat will need protection to meet the 80% target across the VVP Bioregion. The availability of 8,100ha of habitat has been confirmed in the WGR or within *in situ* reserves planned for the new growth areas. This leaves 2,360ha to be achieved outside the Program area and the WGR. This will be achieved through additional offset requirements to be imposed within the growth areas.

There is not currently a national recovery plan under the EPBC Act or other relevant conservation advice issued by the TSSC. The department has prepared and published significance threshold guidelines to assist developers and other stakeholders determine when referral under the EPBC Act is likely to be required. These relate to significance thresholds for referral of individual projects under the EPBC Act and are not relevant to the GSM prescription.

Habitat Hectares

A 'habitat hectare' is a calculated score based on both the quality (habitat score) and quantity (hectares) of NTGVVP. The methodology ensures a common terminology to determining the environmental value of native vegetation, including for offset purposes. A 'habitat hectare' essentially represents one hectare of perfect quality habitat.

The habitat score (representing the quality of the NTGVVP) is based on survey criteria established by DSE. This ranks NTGVVP quality on a scale of 0.0 – 1.0 with 1 being the highest and representing pristine/perfect grasslands. The habitat score is multiplied by the number of hectares to derive the total 'habitat hectares' to be cleared.

High quality NTGVVP (few weeds or exotics and high biodiversity) typically has habitat scores of 0.6 – 0.9. Low quality NTGVVP (high weed cover, low biodiversity and degraded) typically rates 0.0 to 0.3 and may be marginal in terms of whether it forms the listed ecological community under the EPBC Act. Medium quality grasslands, as occurs in the existing precincts, rank between these condition classes and typically have a degree of weed invasion and degradation from past agricultural practices. Biodiversity is typically low and the grasslands have a limited capacity for improvement (eg degradation will continue under existing land uses).

The required offset to achieve a net gain is the 'habitat hectare' value to be cleared times an offset multiplier based on the vegetative class and its scarcity.

Applying the prescribed formulae, the NTGVVP offset required for urban development within the existing 28 precincts, based on the clearing of 290 'habitat hectares', is 530 'habitat hectares' (offset ratio of approx. 2:1). This offset may be discharged in a number of ways including through acquisition, rehabilitation or other recognised habitat credits contributing to net gain. As an example, acquisition of 1,060ha of medium quality NTGVVP (with a habitat score of 0.5) in the WGR would meet the offset requirements for the existing 28 precincts based on the above calculations (eg 1,060ha X 0.5 = 530 'habitat hectares').

The habitat hectare requirement can be converted to a cash sum managed by Bushbroker and used for acquisitions as land becomes available. The main component is the average land price for acquisitions within the WGR. There are also additional multipliers based on any estimated capital expenses and management for 10 years. An administrative component (for example, 10%) is typically added.

Natural Temperate Grassland of the Victorian Volcanic Plain (NTG)

Current Status	Impacts	Conservation outcome	Activities to Achieve Outcome
▪ <5% remains or 65 000ha (of original estimated extent of 870 000ha on the 2.3 million ha VVP Bioregion) ▪ Most (93%) on private lands and quality on these unsecured sites is deteriorating due to weed invasion and development pressures. ▪ Only 2% secure in conservation estate: o Craigieburn Grasslands Reserve (340ha), o Derrimut Grassland Reserve (154ha), o Boral Deer Park Grassland (90ha) o Laverton Grasslands (52ha) ▪ Most remnants west of Melbourne and subject to urban growth pressures ▪ Vic legislation does not protect NTG on private farming lands under threat from agricultural development	▪ Clearing 4 665ha grasslands o 525ha OMR/E6 (241 habitat ha) o 95ha RRL (37 habitat ha) o 3278 new precincts (1354 habitat ha) o 796 existing precincts (290 habitat ha) ▪ Total comprises o 72ha high quality, o 3696ha medium quality and o 897ha low quality ▪ Habitat hectare offset required under Vic *Native Vegetation Framework* is 3599ha.	▪ 2 conservation reserves totalling 15 000ha of which 10 000ha is NTG, to be owned and managed by the Crown ▪ Total comprises o 2609ha high quality o 7375ha medium quality o 108ha low quality ▪ Habitat hectare worth/gain is 4154ha ▪ 20% remaining NTG in VVP bioregion secured in reserves ▪ Additional retention of NTG in UGB of 2674ha in reserves and 'open spaces': o 158ha high quality o 2211ha medium quality o 306ha low quality ▪ Additional reserves in precincts subject to commonwealth approved Prescription and Biodiversity Strategy ▪ Reserves within UGB to be acquired as Crown lands and managed by Parks Victoria, ensuring consistent and sympathetic management ▪ Environmental Significance Overlays to be added to planning schemes for Melton and Wyndham LGA (where most NTG remain) providing legislative protection for NTG on private farm lands (permit needed for clearing)	*Primary* ▪ Public Acquisition Overlay in planning scheme by June 2010 ▪ Environmental Significance Overlay in relevant local planning schemes by June 2010 ▪ Relevant prescriptions provided to DEWHA and approved by Minister- NTG, GSM, SLL, SRF, MFL *Secondary Activities* ▪ Acquisition schedule provided to DEWHA by December 2010 ▪ Interim Management Plan provided to DEWHA by December 2010 ▪ Monitoring reports to DEWHA on progress of implementing the interim management plan. Due to be submitted every six months in 2010-2011, and then annually until land is acquired. ▪ Approval of relevant sub-regional species strategies and bio-diversity conservation strategies by 2011. ▪ Performance standards for management monitoring and methodology provided to DEWHA by June 2011. ▪ New mapping program undertaken on private land to inform ESO's to protect other grasslands remnants on Werribee plains, provided by June 2013. ▪ Reports to DEWHA of Breaches of planning permits, clearing not in accordance with NVPP, CMP or relevant transport infrastructure document.

Golden Sun Moth (GSM)

Current status	Impacts	Conservation Outcomes	Activities to Achieve Outcomes
▪ Typically associated with NTG, wide distribution beyond VVP ▪ Unlikely to recolonise once extinct from a site ▪ Populations may be fragmented by barriers (eg absence suitable habitat) >200m ▪ 50 recorded sites in Melbourne region, half of which are <10ha and less than 10 are protected ▪ Poorly protected mainly in small urban grassland reserves ▪ An estimated 15% of habitat in the VVP modelled as 'high contribution to species persistence' is protected ▪ Main Melbourne region reserves are: o Craigieburn Grassland Reserve (320ha) o Cooper Street Grassland Reserve (40ha) o Derrimut Grassland Reserve (152ha) o Woodlands Heritage Park (40ha) o Altona Reserve (4ha) o Amberfield Reserve (2ha) o Highlands Craigieburn (40ha) o Amaroo Reserve (20ha)	▪ Clearing 5 374ha potential habitat (NTG and GEW) ▪ Habitat matrix approach to be used to achieve protection of highest priority populations and habitat o Maps have been prepared identifying habitat modelled as likely to have a significant contribution to the persistence and protection of the species o The mapping is based on known records of GSM and NTG habitat, and uses modelling to predict areas of low, medium and high value for the species o Surveys must be undertaken in accordance with the *Biodiversity Precinct Structure Planning Kit* to confirm (or otherwise) the presence of the species o Like for like offsets must be provided for clearing of GSM habitat. o Clearing of habitat cannot occur until 80% of high contribution habitat is protected in the VVP bioregion (15% is currently protected)	▪ Protection 16 200ha of potential habitat ▪ Protection of an additional 300ha within the UGB known to hold populations ▪ Two year surveys across growth areas and VVP to be undertaken to confirm/identify 'high contribution' habitat ▪ 80% 'high contribution' habitat to be conserved within the VVP ▪ Surveys undertaken prior to clearing – clearing of confirmed GSM habitat not permitted until 80% rule met (apart from exceptions in prescription) ▪ Clearing known habitat requires offset of equivalent quality habitat (with confirmed GSM) before proceeding ▪ GSM sites retained within the UGB (eg not offset) must be under permanent protection tenure (can be donated to Crown) with a 10 year fully funded management plan	*Primary Activities* ▪ Prescription for GSM submitted to DEWHA and approved by the Minister. ▪ Targeted surveys for GSM undertaken across range for two seasons with date provided to DEWHA. ▪ Sub-regional species strategy for GSM submitted to DEWHA for approval by June 2011. ▪ Prescriptions implemented in existing precincts and then precincts within revised urban growth boundary. ▪ Proposed grassland and woodland reserves established, providing large areas of permanently protected suitable habitat for the species. *Secondary Activities* ▪ Guidance note for implementation of prescriptions published by 2010 for stakeholders. ▪ Reporting on progress towards 80% retention published every two years. ▪ Conservation areas for the species within the program area secured through native vegetation precinct plans and conservation management plans prepared in accordance with biodiversity precinct planning kit. ▪ Reports to DEWHA of breaches of planning permits, clearing not in accordance with native vegetation precinct plans and conservation management plans or relevant transport infrastructure document.

Spiny Rice Flower (SRF)

Current status	Impacts	Conservation Outcomes	Activities to Achieve Outcomes
▪ Typically associated with NTG, wide distribution in VVP ▪ 184 known populations in Victoria with 9 protected ▪ Threats include habitat degradation through weed invasion and inappropriate grazing and fire regimes ▪ May not persist in smaller urban reserves - populations under threat from fragmentation due to requirement for male and female plants for reproduction and poor seed germination (requires fire and rain) ▪ Regional status (inside and outside the UGB) is o 46 known populations o 33 support <30 plants o 3 support 30-100 plants o 7 support >100 plants ▪ The 7 largest populations are: o Truganina Cemetery (375 plants) – unprotected o Ravenhall Grasslands (500 plants) - unprotected o Griegs Rd, Rockbank (400 plants) - unprotected o Kirks Bridge Road (400 plants) - unprotected o Melbourne Water site - protected o Rockbank site - protected) o Burnside – not protected	Clearing 5 374ha potential habitat (NTG and GEW) ▪ Habitat matrix approach to be used to achieve protection of highest priority populations and habitat o Maps have been prepared identifying habitat modelled as likely to have a significant contribution to the persistence and protection of the species o The mapping is based on known records of SRF and NTG habitat, and uses modelling to predict areas of low, medium and high value for the species o Surveys must be undertaken in accordance with the *Biodiversity Precinct Structure Planning Kit* to confirm (or otherwise) the presence of the species o Like for like offsets must be provided for clearing of SRF habitat. o Clearing of habitat cannot occur until 80% of high contribution habitat is protected in the VVP bioregion (	▪ Protection 16 200ha potential habitat, including known populations within the proposed grassland reserve ▪ Three of the 7 known large populations will be secured and protected by the Program o Truganina Cemetery o Ravenhall Grasslands o Kirks Bridge Road ▪ Application of the prescription will result in protection of the Griegs Rd site (>200 plants) ▪ 80% 'high contribution' habitat to be conserved within the VVP ▪ Surveys undertaken prior to clearing – clearing of confirmed SRF habitat not permitted until 80% rule met (apart from exceptions in prescription) ▪ Clearing known habitat requires offset of equivalent quality habitat before proceeding ▪ SRF sites retained within the UGB (eg not offset) must be under permanent protection tenure (can be donated to Crown) with a 10 year fully funded management plan ▪ Sites with >200 plants must be protected ▪ If species present, and clearing is allowed under the prescription, a fully costed translocation and/or propagation plan to satisfaction of DSE is required	*Primary Activities* ▪ Prescription for SRF submitted to DEWHA and approved by the Minister. ▪ Prescriptions implemented in existing precincts and then precincts within revised urban growth boundary. ▪ Proposed grassland and woodland reserves established, providing large areas of permanently protected suitable habitat for the species. *Secondary Activities* ▪ Guidance note for implementation of prescriptions published by 2010 for stakeholders. ▪ Reporting on progress towards 80% retention published every two years. ▪ Conservation areas for the species within the program area secured through native vegetation precinct plans and conservation management plans prepared in accordance with biodiversity precinct planning kit. ▪ Reports to DEWHA of breaches of planning permits, clearing not in accordance with native vegetation precinct plans and conservation management plans or relevant transport infrastructure document.

FOI 190720
Document 8

From: s47F
To: s47F
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Subject: FW: Part 9 Offsets into WGR - Assessment notes [SEC=UNCLASSIFIED]
Date: Friday, 3 February 2012 4:03:34 PM
Attachments: Projects captured by New Policy.docx

Hi s47F

As per previous emails, please find attached an initial draft describing the criteria to be used in determining whether an action can be offset into the Western Grassland Reserves. I understand that this will be considered by Vic/Tas against current/expected referrals with a view to comments.

In general, 4 criteria are used (summarised below):

- Geographic location (defined as LGAs in the mapped North Western Metropolitan Region)
- Zoning provisions (excludes Cwlth lands and projects where current state zoning is aimed at conservation)
- Type of action (essentially local urban and related infrastructure, excludes extractive industries etc)
- Nature of offset required (must be <10 habitat hectares and meets prescription requirements for permissible clearing)

Projects captured by new policy

This guideline describes criteria to be used in determining whether a proposed action may be considered for offset into the Western Grassland Reserves (WGR). The general intent is to provide an option for developments associated with urban growth to be considered in a consistent way as developments captured under the endorsed *Delivering Melbourne's Newest Sustainable Communities*, Victorian Government, December 2009 (the Program).

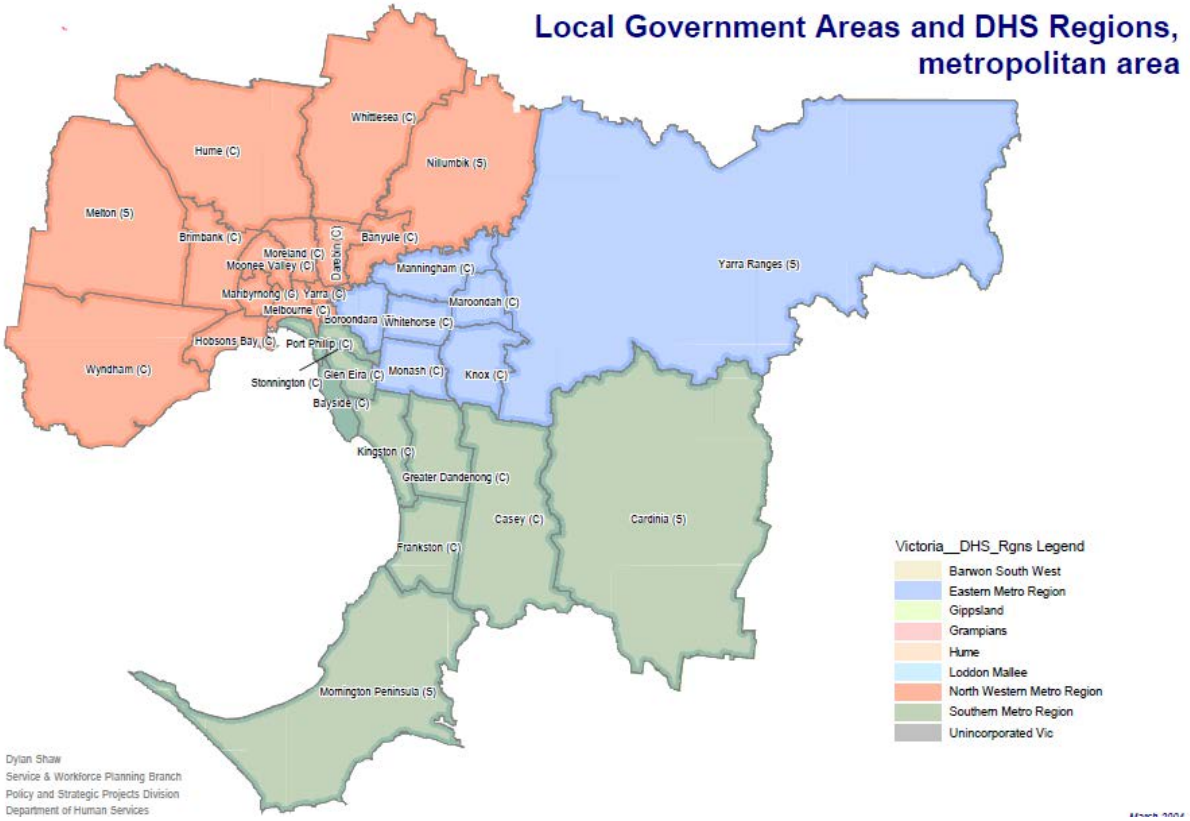
The approach is aimed at achieving flexibility and efficiencies, while delivering good outcomes for MNES, for actions similar to 'classes of action' considered in the Program. Certain actions are not covered by this policy because of their size or general inconsistency with the types of activities and offsetting arrangements in the Program. Offsets in such cases will be determined on a case by case consistent with normal practices.

Criteria against which proposals may be considered for eligibility are:

- Geographic location
- Zoning provisions
- Type of action
- Nature of offset required.

<u>Geographic location</u>

Eligible projects fall on the Victorian Volcanic Plains Bioregion within the North Western Metropolitan area (see map below), including the outer Melbourne local government areas of Wyndham, Melton, Hume and Whittlesea. The more inner areas of Brimbank, Darebin and Moreland are also included. Developments within adjacent Local Government Areas (Moorabool, Great Geelong and Golden Plains) may be considered if the developments meet the other specific criteria in this guideline.



Zoning provisions

Zoning provisions must allow for housing and associated development, or the proponent must demonstrate that there is a reasonable expectation (as evidenced by official correspondence) that any necessary zoning changes to allow development will occur. Examples of permissible zonings include business, industrial, residential or special purpose (with allowable development).

Actions falling within state zonings where conservation is a priority land use will not be considered under this guideline even if there is a reasonable prospect for future rezoning changes. Actions by Commonwealth agencies or on Commonwealth lands (where the matter protected is the 'environment') are also excluded. Excluded state zonings include:

- Commonwealth land
- Environmental Rural
- Green Wedge
- Public Conservation and Resource
- Public Parks and Recreation
- Rural Conservation.

Type of action

The type of actions that may be considered under this policy are urban, commercial or light industrial development related to growth in the North Western Metropolitan area and nearby township areas. This includes infrastructure directly servicing such development (service roads, pipelines and other utilities). Generally, developments will be smaller scale (<50ha) and involve <1000 dwellings.

Excluded are major new freeways, transport, electricity or sewerage infrastructure not directly related to servicing the development under consideration. Also excluded are extraction industries and heavy industry (including power stations).

Nature of offset required

This policy only provides for offsets related to Natural Temperate Grasslands of the Victorian Volcanic Plains (NTGVVP), Golden Sun Moth (GSM) and Spiny Rice Flower) undertaken consistent with the prescriptions approved by the Minister pursuant to *Delivering Melbourne's Newest Sustainable Communities Program Report* (Victorian Government, December 2009):

- *Final Prescription for Natural Temperate Grassland of the Victorian Volcanic Plain* (approved 16 April 2010)
- *Final Prescription for Spiny Rice-flower* (approved 16 April 2010)
- *Final Prescription for Golden Sun Moth* (approved 16 April 2010)

All proposals for offsets into the WGR must be accompanied by a letter from DSE advising that the offset required has been calculated in accordance with the prescription requirements and that capacity is available in the WGR. The calculated offset must be <10 habitat hectares.

As per the prescriptions, the following cannot be considered for offset into the WGR under this policy:

- The number of SRR plants on the development site exceeds 200.
- The development will affect any part of GSM habitat where the contiguous habitat extent is greater than 100 ha (see prescription for calculation method).
- The development will affect any part of NTGVVP where the contiguous habitat extent is greater than 150 ha (see prescription for calculation method).