

PSP 25.2

# English Street

Precinct Structure Plan

## Appendix 5



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

**FINAL APPROVAL FOR URBAN DEVELOPMENT IN THREE GROWTH CORRIDORS UNDER THE MELBOURNE URBAN GROWTH PROGRAM STRATEGIC ASSESSMENT**

This approval decision is for actions falling within the specified class of actions below. Conditions of approval are at [Annexure 1](#). Further information and explanation is at [Annexure 3](#).

**Approved class of actions** All actions associated with urban development in the Western growth corridor (Melton and Wyndham), North-western growth corridor (Sunbury) and Northern growth corridor (Hume, Whittlesea and Mitchell) in the expanded Melbourne 2010 Urban Growth Boundary as described at page 4 in the *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013) approved under the endorsed Program - *Delivering Melbourne's Newest Sustainable Communities* (Victorian Government, December 2009).

The approved class of actions excludes development in the Northern growth corridor within the boundary of Hearn's Swamp as shown at [Annexure 2](#).

The approved class of actions excludes developments in properties 3, 4, 6, 7 and 9 identified in the Victorian Government *Diggers Rest Precinct Structure Plan* (Growth Areas Authority, 2012).

**Relevant controlling provisions** This approval has effect for:

- World heritage properties (sections 12 and 15A)
- National heritage places (sections 15B and 15C)
- 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 1](#).

**Period for which approval has effect** The approval has effect until 31 December 2060.

**General** Further explanatory information related to this approval decision is at [Annexure 3](#).

**Person authorised to make decision**

**Name and Position** The Hon Mark Butler MP  
Minister for the Environment, Heritage and Water

**Signature**

**Date of decision**

5/9/13

## CONDITIONS OF APPROVAL

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 Ramsar site and the Western Port Ramsar site.

*Actions must be undertaken in accordance with approved strategies*

- 1) Persons taking actions must undertake the actions in accordance with the following strategies approved by the Minister pursuant to the Program of the Victorian Government for Melbourne's urban growth, as described in *Delivering Melbourne's Newest Sustainable Communities* (Victorian Government, December 2009), for protection of matters of national environmental significance:
  - a) *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013)
  - b) *Sub-regional Species Strategy for the Golden Sun Moth* (Victorian Government Department of Environment and Primary Industries, May 2013)
  - c) *Sub-regional Species Strategy for the Growling Grass Frog* (Victorian Government Department of Environment and Primary Industries, May 2013).

*Actions cannot occur in conservation areas without agreement*

- 2) Persons must not take any actions, resulting in a net loss of habitat for listed ecological communities and listed species, in any of the 36 conservation areas described in Section 5 of the *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013) unless agreed by the Minister.

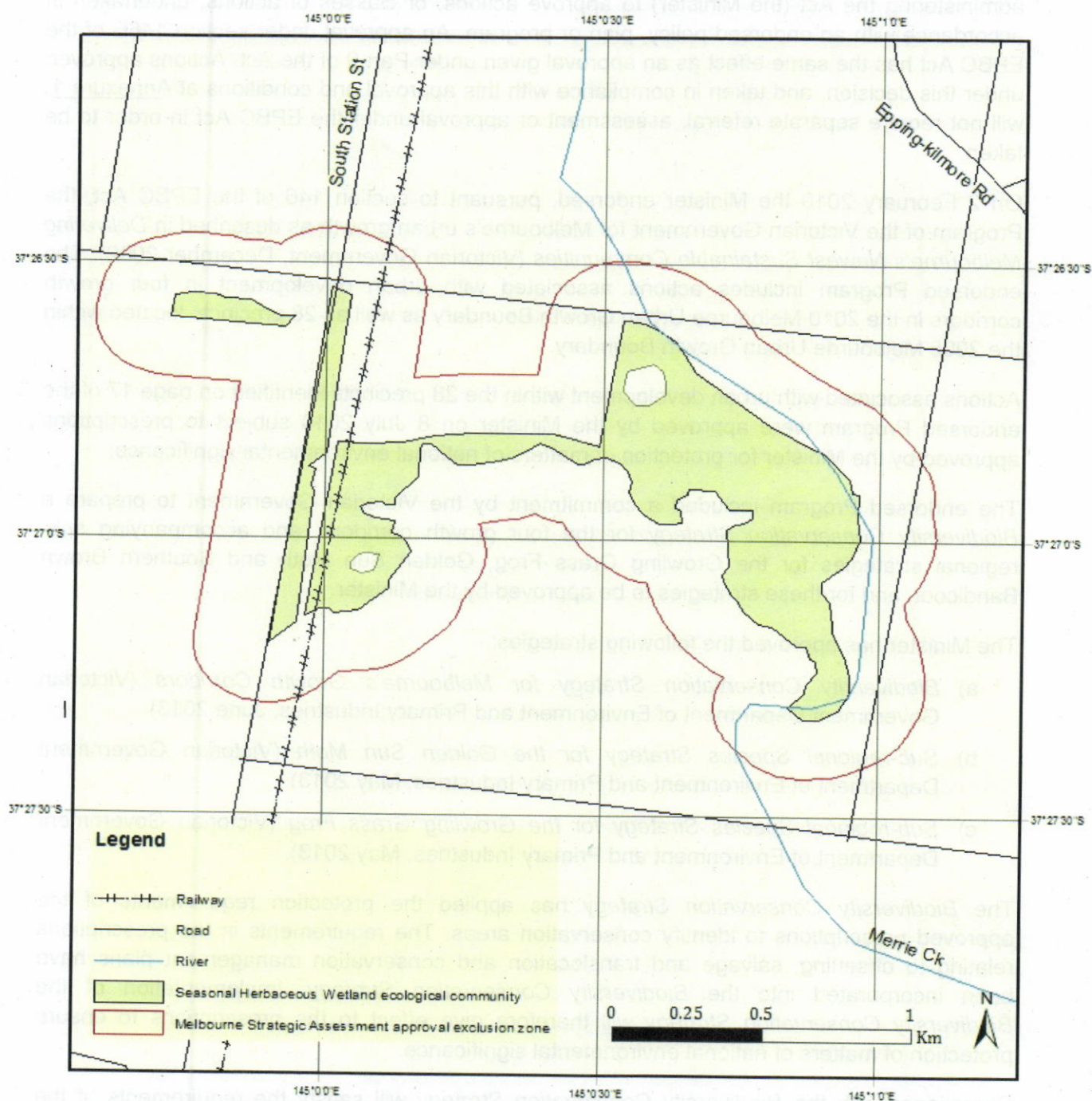
*Changes to the area or boundaries of conservation areas cannot occur without agreement*

- 3) Persons must not take any actions that would cause, or otherwise facilitate, a net loss of area of the conservation areas numbered 10, 14, 15, 18, 20, 21, 28, 33, 34, 35 and 36 as described in Section 5 of the *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013), unless agreed by the Minister.
- 4) Persons must not take any actions that would cause, or otherwise facilitate, a change in the boundaries of the conservation areas numbered 1 to 9, 11 to 13, 16, 17, 19, 22 to 27, and 29 to 32 as described in Section 5 of the *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013), unless agreed by the Minister.

*Habitat compensation requirements for actions potentially affecting listed ecological communities and species*

- 5) Persons taking actions must comply with the habitat compensation arrangements and fees described in the following documents:
  - *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013)
  - *Habitat compensation under the Biodiversity Conservation Strategy – Melbourne Strategic Assessment* (Victorian Government Department of Environment and Primary Industries, August 2013) and as amended by the Victorian Government from time to time.

# Map of Hearn's Swamp showing area excluded from the approved class of actions



## EXPLANATORY INFORMATION

### Background

This approval decision is made under section 146B of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which provides for the Minister responsible for administering the Act (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. Actions approved under this decision, and taken in compliance with this approval and conditions at Annexure 1, will not require separate referral, assessment or approval under the EPBC Act in order to be taken.

On 2 February 2010 the Minister endorsed, pursuant to section 146 of the EPBC Act, the Program of the Victorian Government for Melbourne's urban growth as described in *Delivering Melbourne's Newest Sustainable Communities* (Victorian Government, December 2009). The endorsed Program includes actions associated with urban development in four growth corridors in the 2010 Melbourne Urban Growth Boundary as well as 28 precincts located within the 2005 Melbourne Urban Growth Boundary.

Actions associated with urban development within the 28 precincts identified on page 17 of the endorsed Program were approved by the Minister on 8 July 2010 subject to prescriptions approved by the Minister for protection of matters of national environmental significance.

The endorsed Program included a commitment by the Victorian Government to prepare a *Biodiversity Conservation Strategy* for the four growth corridors, and accompanying sub-regional strategies for the Growling Grass Frog, Golden Sun Moth and Southern Brown Bandicoot, and for these strategies to be approved by the Minister.

The Minister has approved the following strategies:

- a) *Biodiversity Conservation Strategy for Melbourne's Growth Corridors* (Victorian Government Department of Environment and Primary Industries, June 2013)
- b) *Sub-regional Species Strategy for the Golden Sun Moth* (Victorian Government Department of Environment and Primary Industries, May 2013)
- c) *Sub-regional Species Strategy for the Growling Grass Frog* (Victorian Government Department of Environment and Primary Industries, May 2013).

The *Biodiversity Conservation Strategy* has applied the protection requirements of the approved prescriptions to identify conservation areas. The requirements in the prescriptions relating to offsetting, salvage and translocation and conservation management plans have been incorporated into the *Biodiversity Conservation Strategy*. Implementation of the *Biodiversity Conservation Strategy* will therefore give effect to the prescriptions to ensure protection of matters of national environmental significance.

Compliance with the *Biodiversity Conservation Strategy* will satisfy the requirements of the prescriptions in relation to the existing 28 precincts for which a planning scheme amendment to introduce a precinct structure plan is approved after 1 March 2012, as well as the Truganina Employment Area (described at page 4 of the approved *Biodiversity Conservation Strategy*).

To remove doubt, compliance with the *Biodiversity Conservation Strategy* will fully meet the requirements of the approval made by the Minister on 8 July 2010 for the precincts included in the approved *Biodiversity Conservation Strategy*. The previous approval made on 8 July 2010 continues to apply for the remainder of the 28 precincts. There are also several additional areas of land within specified precincts in the growth corridors for which the prescription for Golden Sun Moth will continue to apply (page 16 of the *Biodiversity Conservation Strategy*).

In implementing this approval, the endorsed Program and approved *Biodiversity Conservation Strategy* will provide the basis for any necessary interpretation and resolution. The Minister will provide final interpretation and guidance if required.

### **Excluded actions**

This approval excludes actions within the area of land at Hearn's Swamp in the Northern growth corridor shown at Annexure 2 containing potential occurrences of *Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains*, a listed ecological community under the EPBC Act.

The excluded area has been identified from the report *The Impact of Melbourne's growth on 'Seasonal herbaceous wetlands (freshwater) of the temperate lowland plains'* (Victorian Government Department of Environment and Primary Industries, May 2013). This report identified potential occurrences of the listed ecological community at Hearn's Swamp. The area excluded includes a 200 metre buffer from the mapped potential occurrences of the ecological community.

To remove doubt, actions within the area of land identified at Annexure 2 are not prohibited by this approval, but must meet the normal requirements of the EPBC Act and may be referred and considered in accordance with the requirements of Parts 7, 8 and 9 of the EPBC Act.

The approval also excludes developments in properties 3, 4, 6, 7 and 9 identified in the Victorian Government *Diggers Rest Precinct Structure Plan* (Growth Areas Authority, 2012) which, at the time of this approval, were subject to separate consideration under Parts 7, 8 and 9 of the EPBC Act.

### **Approval conditions**

The approval conditions require actions (whether individually or collectively) to fully comply with the approved *Biodiversity Conservation Strategy* and sub-regional species strategies for Golden Sun Moth and Growling Grass Frog for avoidance, mitigation and offset of impacts on matters of national environmental significance. In addition, all actions must comply with the habitat compensation arrangements and fees described in the document *Habitat compensation under the Biodiversity Conservation Strategy – Melbourne Strategic Assessment* (Victorian Government Department of Environment and Primary Industries, August 2013) and as amended from time to time by the Victorian Government.

Approval condition (2) states that no actions associated with urban development, resulting in a net loss of habitat for listed ecological communities and listed species, will occur in the 36 conservation areas described at Section 5 (pages 47 to 126 and identified in Figures 23 to 51) of the *Biodiversity Conservation Strategy* unless agreed by the Minister. This is to ensure that urban-related developments, such as roads, bridges and utility corridors, do not erode the values of the conservation areas for matters of national environmental significance over time.

Condition (2) does not require approval for actions where there is no net loss in habitat for an individual conservation area. Habitat means an area of land containing a listed ecological community under the EPBC Act or supporting individuals or populations of listed threatened species under the EPBC Act. The condition recognises that there may be instances where urban infrastructure cannot be avoided and there could be a net loss of habitat in an individual conservation area. Such instances will need to be approved by the Minister. Instances may be approved if there are no reasonable alternatives, there is a net conservation gain elsewhere for the relevant protected matters and it can be demonstrated that the values of the conservation area will be maintained.

Approval condition (3) states that no actions that could result in, or facilitate, a *net loss of area* of the specified conservation areas can occur unless agreed by the Minister. The *Biodiversity Conservation Strategy* (Section 5) provides for minor changes to the boundaries of the specified conservation areas. This is permitted under the condition provided there is no net loss in the area.

Approval condition (4) states that no actions that could result in, or facilitate, a *change in the boundary* of the specified conservation areas can occur unless agreed by the Minister. The intent is to ensure that the boundaries of the specified conservation areas do not change over the life of the Program.

### **Program evaluation and consistency reports**

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 prepare and submit a Monitoring and Reporting Framework to the Minister for approval.

As an interim measure, the Victorian Government Department of Environment and Primary Industries has agreed, consistent with the requirements of the Program, to provide reports to the department on implementation of this approval for each of the precincts covered by the approval. The reports will be provided within 28 calendar days following adoption of each Precinct Structure Plan. The reports will demonstrate how the relevant measures in the approved *Biodiversity Conservation Strategy* have been applied and the measurable outcomes achieved for protection of matters of national environmental significance. Each report will include the following minimum information:

- a) Applicable measures, requirements and commitments for each matter of national environmental significance from the *Biodiversity Conservation Strategy* for each precinct.
- b) Implementation of conservation area requirements (if any) identified in the *Biodiversity Conservation Strategy* for each matter of national environmental significance.
- c) Implementation of avoidance, mitigation and habitat compensation requirements identified in the *Biodiversity Conservation Strategy* and relevant sub-regional species plans for each matter of national environmental significance, including calculated habitat compensation requirements.
- d) Figure or maps showing final conservation areas.