

Melbourne Strategic Assessment: Draft Growth Corridor Plans, Biodiversity Conservation Strategy and Sub-Regional Species Strategies

Legal Briefing Note

9 December 2011

The Victorian Government has recently released a series of draft documents for public comment, as part of the Melbourne Strategic Assessment: four Growth Corridor Plans, a Biodiversity Conservation Strategy and three Sub-Regional Species Strategies.

This document briefly explains the legal context for the Melbourne Strategic Assessment and these documents, to assist environmental groups to prepare their comments.

What is the Melbourne Strategic Assessment?

The 'Melbourne Strategic Assessment' is an environmental assessment process, which the Victorian Government is using to obtain Commonwealth Government's approval to implement its policy decision to expand the urban growth boundary (**UGB**).

The *Environment Protection and Biodiversity Conservation Act 1999* (**the EPBC Act**) requires Commonwealth Government approval for any action that is likely to have a significant impact on a matter of national environmental significance (such as listed threatened species of flora and fauna or Ramsar wetlands).

In 2009, the Victorian Government and the Commonwealth Government agreed that the expansion of the UGB was likely to have an impact on matters of national environmental significance. Rather than follow the usual EPBC Act procedure and deal with each action (that is, each new development) separately, the Victorian and Commonwealth Governments agreed to assess the impact of the policy's implementation as a whole. This can be done under the EPBC Act's 'Strategic Impact Assessment' process.

The Strategic Impact Assessment process set out in the EPBC Act has proceeded as follows:

- Firstly, the Victorian Government must prepare a 'Program Report' explaining how the UGB expansion is to be implemented. The Program Report was finalized in December 2009, and is entitled 'Delivering Melbourne's Newest Sustainable Communities: Program Report'. The Commonwealth Environment Minister endorsed this Program Report on 2 February 2010. The Program Report is the core document in the Assessment process: all subsequent approvals must be in accordance with this Report.
- Secondly, before any actions can commence, the Victorian Government must obtain approval for that action (or class of actions) from the Commonwealth Minister. An 'action' is defined in the EPBC Act as a project, a development or an activity (such as works or vegetation clearance) – a class of actions is a broader category of such actions. The Minister can only approve classes of action that are in accordance with the Program Report.
- The Program Report identifies four different classes of actions that the Victorian Government must obtain the Minister's approval for:
 1. Actions associated with the development of the Regional Rail Link.
 2. Actions associated with the development of the Outer Metropolitan Ring Road.
 3. Actions associated with the urban development within 28 precincts within the previous UGB.

4. Actions associated with the urban development of four new growth areas which are within the new UGB (Melton/Wyndham, Sunbury, Whittlesea/Hume and Casey).

- The Minister's approval of these classes of actions can be subject to conditions: in carrying out the action, these conditions must be complied with to avoid breaching the EPBC Act.
- The Program Report also requires the preparation of other documents, which the Minister must approve before specific actions are carried out. These include the Biodiversity Conservation Strategy and the Sub-Regional Species Strategies. The actions will also have to comply with these documents, once they are finalized.

Where are we up to now?

To date, the Minister has approved two of the four classes of action: the development of the Regional Rail Link and the urban development within the 28 precincts.

The Minister's approval of each of these classes of action is subject to conditions. For example, the Minister's approval states that any urban development within the 28 precincts must be in accordance with the listed 'prescriptions', which contain rules for the protection of specific species and ecological communities.

The Victorian Government is now seeking the Commonwealth Minister's approval for actions associated with the urban development of the new growth areas.

The Program Report states that the following must be prepared before this class of actions can take place:

- *Four Growth Area Framework Plans, one for each growth area.* The Victorian Government has released four such draft plans, called 'Growth Corridor Plans'.
- *Four Biodiversity Conservation Strategies, one for each growth area.* The Victorian Government has released one overarching draft Strategy – not the four Strategies as required by the Program Report.
- *Sub-Regional Strategies for specific matters of national environmental significance.* The Victorian Government has released three Strategies: one each for the Growling Grass Frog, the Southern Brown Bandicoot and the Golden Sun Moth.

The Victorian Government has released each of these draft documents for comment until **5 pm on 20 December 2011**. Comments are provided to the Growth Areas Authority (**GAA**).

Once the GAA has received and considered the comments, it will likely finalise the documents, and submit them to the Commonwealth Minister for approval. The Victorian Government will then likely seek the Minister's approval to carry out actions associated with the urban development of the new growth areas.

What are the documents?

The Program Report (pages 26 – 7) describes the function of the documents. To be finally approved by the Commonwealth Minister, the documents should be consistent with this description.

The Sub-Regional Species Strategies are to:

- Identify important populations, areas to be retained (where known) as required by prescriptions and habitat links.
- The Program Report does not limit the number of species that the Strategies can apply to. It suggests, as examples, the Growling Grass Frog, the Southern Brown

Bandicoot and the Golden Sun Moth. However more Strategies could be prepared under the Program Report.

- The Strategies must be approved by the Commonwealth Minister prior to the finalization of the Biodiversity Conservation Strategy.

The Biodiversity Conservation Strategies are to:

- Outline how the areas of biodiversity value (state and commonwealth) within the growth areas will be managed and will spatially identify how outcomes for matters of national environmental significance will be delivered within the Growth Area.
- The Strategies must be approved by the Commonwealth Minister prior to finalization of the Growth Area Framework Plans.

The Growth Corridor Plans:

- Show broad land use patterns (including the location of principal and major activity centres) committed and proposed transport networks, regional open space, important waterways and areas of environmental sensitivity.
- The Plans must be developed following the finalization of the Biodiversity Conservation Strategies and the Sub-Regional Species Strategies, and must be developed in a manner that is consistent with these Strategies.
- The Plans must be submitted to the Commonwealth Minister for comment, but the Minister's approval is not required.

How do we assess the documents?

In preparing comments on the draft documents, environment groups may want to consider the following questions:

- Do they meet their descriptions and purposes, as set out in the Program Report? In particular, is it a problem that:
 - There is only one, rather than four, Biodiversity Conservation Strategy?
 - That the documents have been prepared simultaneously, rather than in the order envisaged by the Program Report?
 - That there are only three Sub-Regional Species Strategies?
- Are they consistent with the fundamental environmental requirements of the Program Report, in particular those set out at pages 9 and 10, and Chapter 10?
- Are the documents consistent with the matters which the Commonwealth Minister must ultimately consider in deciding whether or not to approve the development in the growth areas, which include:
 - The principles of ecologically sustainable development?
 - In relation to EPBC Act listed threatened species:
 - The Biodiversity Convention.
 - The Apia Convention.
 - CITES.
 - A recovery plan for the species or community or a threat abatement plan.
 - Any other approved conservation advice for the species or community.
 - In relation to EPBC Act listed migratory species:
 - The Bonn Convention.
 - CAMBA.
 - JAMBA.
 - The Ramsar convention.

What about the other documents that the Victorian Government has released?

At the same time as releasing the above documents, the Victorian Government has announced:

- *The Time Stamping Project:*

The Project will fix in time native vegetation information for the growth areas, for the purpose of calculating offsets for future clearing. The Program Report required the time stamping project to be completed by 2010 (page 16): this was clearly not achieved.

While the Project itself is not officially open for public comment, the time stamping Project data has been used in the Biodiversity Conservation Strategy.

- *Precinct Structure Plans for the Growth Areas:*

The Growth Areas Authority has released seven Precinct Structure Plans for comment until **23 December 2011** (Botanic Ridge, Diggers Rest, Lockerie, Lockerie North, Merrifield West, Rockbank North and Toolern Park). The Growth Areas Authority has also announced a further Precinct Structure Plan for Alfred Road, with comments open until **11 January 2012**.

Precinct Structure Plans lay out the locations of housing, facilities and biodiversity sites for local community areas. The recently released Precinct Structure Plans all relate to areas within by the Growth Corridor Plans. They must be prepared in accordance with the Growth Corridor Plans, the Precinct Structure Planning Guidelines and the prescriptions.

The Program Report states that these Precinct Structure Plans should also be accompanied by Conservation Management Plans. It does not appear that any such Plans have been released.

The Precinct Structure Plans must be approved by the Victorian Minister for Planning, and will then be incorporated into the local Planning Schemes. There may be a Planning Panel hearing in relation to this incorporation. Once incorporated, planning permits may then be able to be granted for areas set aside for development without further advertising or third party appeal rights.

What would happen if the Melbourne Strategic Assessment ended?

If the Victorian Government or the Commonwealth Government decided to cancel the Strategic Impact Assessment process to assess the urban growth boundary expansion, the usual process under the EPBC Act would apply.

That is, each individual action (each development or vegetation removal) that may have a significant impact on a matter of national environmental significance would need to be separately assessed and approved by the Commonwealth Minister before it could proceed.

What about the Victoria's State planning and environment laws?

Victoria's State planning and environment laws apply separately, and in addition, to the requirement for approval under the EPBC Act. These approvals will need to be obtained before development begins, unless a relevant exemption applies. Often these approvals are being considered as part of the broader Melbourne Strategic Assessment process.

For example, Victorian Planning Schemes (made under the Victorian *Planning and Environment Act 1987*) all state that a permit is required to remove native vegetation (unless an exemption applies). This requirement will be considered as part of the Precinct Structure Plan and Native Vegetation Precinct Plan processes.

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Melbourne Strategic Assessment

What is required for approval under the EPBC Act Melbourne Strategic Assessment?

(as at 8 December 2011)

LEGEND

- Not yet complete
- Partially complete
- Complete

The Commonwealth Minister must endorse the Program Report, 'Delivering Melbourne's Newest Sustainable Communities', December 2009
Endorsed: 2 February 2010

Minister must approve specific classes of actions

**Class of Action 1:
Development of the Regional Rail Link**

**Class of Action 2:
Urban development within 28 precincts**

**Class of Action 3:
Urban development in new growth areas**

**Class of Action 4:
Development of the Outer Metropolitan Ring Road**

Minister must approve class of action
Approved: 11 June 2010

Minister must approve prescriptions
9 prescriptions have been approved

Minister must approve Sub-Regional Species Strategies

Minister must approve Biodiversity Conservation Strategies

Minister must approve class of action

Minister must approve class of action
Approved: 8 July 2010

Growth Corridor Plans must be submitted to Minister for comment (approval is not required)

Minister must approve class of action

Development has EPBC Act approval to begin, subject to:
-compliance with prescriptions
-preparation and implementation of Ecological Impact Management Plan

Development has EPBC Act approval to begin, subject to:
-compliance with prescriptions

Development has EPBC Act approval to begin subject to conditions

Development has EPBC Act approval to begin, subject to conditions

Building and native vegetation clearance begins!

Victorian Government must prepare Conservation Management Plans

Victorian Government must go through Precinct Structure Plan process

Victorian Government must go through Precinct Structure Plan process

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