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## ***Varying Conservation Area boundaries in Melbourne's Growth Areas***

The Victorian Department of Environment, Land, Water and Planning (DELWP) released the working document *Guidance note: implementing the Biodiversity Conservation Strategy for Melbourne's Growth Areas* (Guidance Note) in February 2015. The Guidance Note has implications for developers and landowners in Melbourne's Growth Areas, and for the achievement of conservation objectives. As DELWP is now applying it across the Growth Areas and is consulting as to its application, it is important for landowners and developers to take into account the opportunities and constraints it presents.

### **Background to the Guidance Note**

In 2010, the Commonwealth Minister for the Environment approved the expansion of Melbourne's Urban Growth Boundary (UGB). That and subsequent related EPBC Act approvals were conditional on the State meeting the requirements of *Delivering Melbourne's Newest Sustainable Communities: Program Report* (Program Report) as to how impacts on matters of national environmental significance (MNES) would be managed. Those requirements included the development and implementation of the *Biodiversity Conservation Strategy for Melbourne's Growth Areas* (BCS).

Development processes in the expanded UGB were underway from 2010. The BCS was approved in August 2013. In February 2015, DELWP produced the Guidance Note to inform its implementation.

### **What does the Guidance Note cover?**

The Guidance Note covers five matters.

#### **1. *Criteria for variations to Conservation Area boundaries***

The BCS establishes Conservation Areas (CAs) for MNES, including native vegetation and the Growling Grass Frog (GGF).

The Program Report, BCS and related documents, including underlying technical reports that anticipated variations to CA boundaries in response to new site-specific information and to accommodate infrastructure associated with development. Whilst some such variations have occurred, they have proven difficult.

The Guidance Note now sets out criteria for variations to GGF CAs to 'maximise [their] design and function' (p 11). The criteria require that the proposed adjustment:

- is 'necessary';
- would not negatively impact the GGF;
- is 'slight' or 'minor'; and
- would not result in a net loss of area of the CA.

A further criterion requires the written agreement of any landowners materially affected by the variation. Whilst certainty and development imperatives are clearly motivations behind agreements between the State and Commonwealth concerning the expansion of the UGB, it is unclear why this requirement applies.

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### 2. *Preparation of Conservation Area Concept Plans (CACPs) and Conservation Interface Plans (CIPs)*

The Guidance Note provides that the Metropolitan Planning Authority or local councils are to prepare CACPs and CIPs for each Precinct Structure Plan (PSP). The PSP is the urban structure plan for each section of the expanded Urban Growth Boundary (UGB).

- CACPs are to set out conservation objectives for each CA and indicate areas suitable for land uses compatible with conservation.
- CIPs are to describe land uses within 30 metres of CAs.

### 3. *Uses and development permitted in Conservation Areas*

The Guidance Note provides decision guidelines for determining suitable uses or developments within a CA. They include the need for the use or development, its impact on biodiversity and environmental values and consistency with the CACP.

### 4. *Retention of native vegetation outside Conservation Areas*

Under the BCS, habitat compensation fees must be paid on development of areas of identified native vegetation or habitat. The Guidance Note provides for exemptions from this requirement where, amongst other things, a specified area of a particular native vegetation or habitat class is retained though development, is owned by or vested in a public authority and is secured by an on-title agreement with DELWP.

### 5. *Determining scattered trees on a property*

Similarly, the Guidance Note provides exemptions from habitat compensation fees where development retains scattered trees. The land containing the scattered trees must be owned by or vested in a public authority and development must avoid protective 'tree retention zones'.

DELWP welcomes feedback on the Guidance Note and indicates that it will adjust it 'from time to time' as it gathers data concerning its use. Its status as a 'working document' should not lead to any misconception – it is being applied with fervour. As a new addition to the suite of policy relevant to Melbourne's Growth Areas, it imposes yet more constraints and another layer of bureaucratic process. Positively, it provides significant new opportunities to ensure conservation outcomes for MNES whilst optimising development.

Robert Forrester  
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