Interdisciplinary Conservation Science Research Group

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School of Global Urban and Social Studies

RMIT University

Submission to the Department of Environment, Land, Water and Planning on the Review of the Native Vegetation Clearing Regulations

May 2016

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Who are we?

RMIT University's Interdisciplinary Conservation Science Research Group is a team of academic researchers based within the School of Global, Urban and Social Studies at RMIT University. Our research focuses on understanding the interaction between society and our environment. We recognise that managing biodiversity demands a multidisciplinary approach that reconciles ecological, social and economic concerns.

General comments

We welcome the opportunity to provide a submission to the Department of Environment, Land, Water and Planning on the Review of the Native Vegetation Clearing Regulations (the Review). Many of the proposed improvements outlined in the Review are well placed to improve the protection of biodiversity through management of native vegetation clearing regulations and biodiversity offsetting. In particular, we support the renewed emphasis on the 'achieving net gain' objective. We will also be providing a submission concerning the draft *Biodiversity 2036* plan, which will expand on several points related to this submission. Below we provide a range of specific comments ordered according to the structure of the consultation document, as well as offering a number of recommendations that capture our key points. We first make some general comments on the Review.

We are disappointed that the Review only discusses relatively minor changes to the current system of native vegetation clearing regulations. Prior to the current system under review, Victoria was a world leader in terms

of the biodiversity offsets required as a consequence of clearing; the changes to the current system relaxed many offset requirements and made them more readily accepted as a compensation for native vegetation clearing. It was our hope that this Review would present a greater range of options for more systemic change to the regulations. With biodiversity offsets continuing to be the cornerstone by which the "no net loss" objective is to be met, we note that there is growing evidence that offsetting is incapable of delivering this, other than in very limited circumstances.[1] As such, appropriate supplementary measures must be considered if offsetting is to remain a key component of a native vegetation management strategy capable of actually delivering no net loss of biodiversity.

The current approach to offsetting, which uses the strategic biodiversity score map to "provide a standard measure of biodiversity value across the State which allows both clearing and offsetting sites to be compared using the same measurement" (page 26 of the consultation document) is problematic. Aggregating biodiversity value in this way results in 'out-of-kind offsets', where the vegetation type used in the offset can be different to the vegetation type impacted by clearing. This makes the definition of "no net loss" somewhat more ambiguous, as it's not clear that the loss of one vegetation type and the offset of another would or should comprise "no net loss". In our view it is important for offsets to match the cleared vegetation as closely as possible, or if this is not possible, comprise a more threatened vegetation community. Where this cannot be achieved, the application for clearance should be rejected; out-of-kind offsets further afield do not constitute an adequate offset. In other words, for no net loss to have the best chance of being delivered, there must be some threshold of threat or extent beyond which an ecosystem is deemed too significant to be cleared.

A second area of general concern relates to the failure of the Review to adequately consider urban vegetation. Urban areas are important places for biodiversity conservation because they harbour a disproportionately high number of threatened plant and animal species[2] and provide the best opportunity to engage the general public with nature[3] (the latter being one of the two pillars of Victoria's Biodiversity Policy). However, the current native vegetation clearing regulations do not adequately consider these environments and will not deliver either the no net loss or the net gain objectives in cities.[4] There is a significant risk that important vegetation types in these areas will be lost (particularly if out-of-kind offsets remain allowable) and that native vegetation in these areas will not be subject to appropriate consideration when determining strategic objectives and assessing state-wide losses and gains.

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[1] Bekessy, S.A., Wintle, B.A., Lindenmayer, D.B., Mccarthy, M.A., Colyvan, M., Burgman, M.A., Possingham, H.P., 2010, 'The biodiversity bank cannot be a lending bank', Conservation Letters; Curran, M., Hellweg, S., Beck, J., 2014, 'Is there any empirical support for biodiversity offset policy?', *Ecological Applications*; Gibbons, P, Evans, M, Maron, M et al 2015, 'A loss-gain calculator for biodiversity offsets and the circumstances in which no net loss is feasible', *Conservation Letters*; Gordon, A., Bull, J.W., Wilcox, C., Maron, M., 2015, 'FORUM: Perverse incentives risk undermining biodiversity offset policies', *Journal of Applied Ecology*; Maron, M., Bull, J.W., Evans, M.C., Gordon, A., 2015, 'Locking in loss: Baselines of decline in Australian biodiversity offset policies', *Biological Conservation*; Quétier, F., Regnery, B., Levrel, H., 2014, 'No net loss of biodiversity or paper offsets? A critical review of the French no net loss policy', *Environmental Science & Policy*.; Department of Sustainability and Environment, 2008, *Native Vegetation Net Gain Accounting: first .approximation report*, State of Victoria, Department of Sustainability and Environment, East Melbourne

[2] Ives CI, Lentini PE, Threllfall CG, Ikin K, Shanahan DF, Garrard GE, Bekessy SA, Fuller RA, Mumaw L, Rayner L, Rowe R, Valentine LE, Kendal D, 2016, Cities are hotspots for threatened species. *Global Ecology and Biodiversity,* 25: 117-126.

[3] Miller JR., 2005. Biodiversity conservation and the extinction of experience. *Trends in Ecology & Evolution*, 20(8), 430-434.

[4] As an example, developed areas of Melbourne do not contain any information on the Vegetation Risk or Strategic Score maps; see Appendix 1 and 2.

Urban systems are characterised by a unique set of factors that require them to be treated separately when considering native vegetation clearing regulations. First, native vegetation in urban areas is likely to persist as small, isolated remnants (or even individual trees), which may be subject to mapping limitations (see section 2, below). Second, native vegetation in urban areas is likely to be highly modified and may not therefore meet the cover or species composition benchmarks for listed ecological vegetation classes. Third, particularly in urban environments, there is no inherent incentive for a proponent to try to 'avoid' or 'mitigate' vegetation loss.

Recommendation 1 *– Review the current offset rules, with a view to reinstating the requirement for 'like-for-like or better' offsets.*

Recommendation 2 *– Include a dedicated section on native vegetation clearing regulations in urban environments, which addresses the unique characteristics of these environments, to ensure environmental justice for all Victorians to have the opportunity to engage with native vegetation on a regular basis.*

Specific comments

1. *Permit process and decision making*

Although we welcome the proposed emphasis of the 'avoid' and 'minimise' steps to be considered prior to clearing and offsetting, we note that the Review does not contain specific detail about how this will be undertaken. We are also of the view that the over-the-counter approach for purchasing general offsets is not suited to reinforcing this hierarchy, and that it does not provide an incentive to avoid vegetation clearing (see relevant comments below). We note that the precautionary principle is imbedded within Australia's National Vegetation Framework,[5] which in this context, requires that native vegetation be protected and clearing avoided, as far as possible prior to other options (i.e. clearing and offsetting) being considered. Giving greater emphasis to the precautionary principle in the Victorian Native vegetation Clearing Regulations would underscore the importance of the 'avoid' and 'minimise' steps and better communicate that the role of offsets is to help achieve no net loss where clearing cannot be avoided; *offsets should not be used simply as biodiversity compensation wherever vegetation clearing is desired*.

Recommendation 3 *– Reconsider the degree to which it is appropriate to rely on biodiversity offsetting to compensate for permitted native vegetation clearing, with a view to minimising permitted clearing by emphasising the 'avoid',' mitigate' hierarchy.*

Recommendation 4 *– Give greater prominence to the precautionary principle that currently sits buried within the Native Vegetation Clearing Regulations.*

[5] COAG Standing Council on Environment and Water (2012) Australia's Native Vegetation Framework http://www.environment.gov.au/system/files/resources/76f709dc-ccb3-4645-a18b-063fbbf0a899/files/native-vegetation-framework.pdf

2. *Biodiversity information tools used in decision making and offset rules*

The strategic biodiversity score map and the habitat importance maps for the 1,750 rare or threatened species' habitats is based on predictive modelling where known occurrences of the species are extrapolated across Victoria based on environmental covariates. As with any type of modelling, the limitations of the approach must be recognized and adequately dealt with by policies that rely on them. In this vein, the Review recognises the potential for adverse outcomes as an inevitable result of the verbatim reliance in the case of low biodiversity risk applications. And whilst we support the proposed improvements to the current map and modelling limitations, we do not believe that these will be adequate to ensure no net loss of biodiversity contributed from native vegetation. Low risk pathway applications are likely to often involve the clearing of small amounts of vegetation, or vegetation in already fragmented and degraded landscapes. Yet these are the very types of environments that are the most difficult to model because of the fine scale and spatial heterogeneity inherent in these areas. The Review itself notes that such areas are often undervalued.

A particular concern is that most records used in the models underpinning the strategic biodiversity score map and the habitat importance maps come from public land, with very few records from private land. The significant and inherent environmental differences between public and private land (e.g. rural private land is much more likely to be in agriculturally productive areas), mean the model predictions are likely to be more accurate for public land than private land. Despite this, the current modelling is used to determine biodiversity values on private land, where they have the least predictive accuracy. In addition, this over-reliance on public land records will tend to result in the allocation of higher strategic biodiversity scores on public land compared to private. This will drive offsets to be implemented on public land, rather than private land and further exacerbate threatened species habitat loss on private land.

Given the acknowledged limitations to the modelled data, we suggest consideration be given to re-instating on-site assessments for determining native vegetation value. This would ideally be a permanent measure, but should at least persist until such time as the modelled data is demonstrably fit for purpose. This includes ensuring that the predictive accuracy of these models is clearly understood and accounted for, with any risks and limitations factored into the clearing regulations.

Evaluating the risks and limitations could be achieved by randomly selecting a proportion of clearing applications (and associated offsets) and conducting detailed on-site assessments to test the predictions of the modelled habitat. Over time this would allow a clear picture of what biodiversity values might be at risk of being overlooked, particularly on private land. Once this is understood, this can then be accounted for in the offset requirements, for example by using an offset multiplier. Ongoing improvements to the modeled habitat maps and the implications of using them as a stand-alone tool for assessing low risk pathway applications may be evaluated using this approach.

Recommendation 5 *– Evaluate the accuracy of the habitat modelling for private and public land to understand how much important habitat may be being lost as a result of inaccuracies in the habitat predictions on private land. Particular focus should be given to the performance of the modelled habitat on private land.*

Recommendation 6 *—On-site vegetation assessments should be re-instated for low risk pathway applications permanently, or until such time as the modelled vegetation maps are of sufficient quality to be fit for purpose.*

3. *Offset delivery*

We do not agree that offsets necessarily provide an incentive to avoid and minimise clearing. The 'over-the-counter' offset programs that allow offsets to be purchased at a fixed price largely reduce offsets to a simple 'fee for clearing'. This creates a distance between the act of clearing by a proponent and their subsequent setting aside or creation of an appropriate offset. From the perspective of the proponent, this renders the vegetation proposed to be cleared as a pre-determined dollar value, and thus the decision to clear will be one born of convenience and cost-effectiveness. Whilst this provides some compensation for the cleared vegetation, it fails to reinforce the 'avoid' and 'minimise' steps that ought to be worked through before offsetting is even considered, and certainly before it is permitted.

We are also of the view that the term 'offset' should not be applied to over-the-counter offsets. These consist of fees paid into a pool of offset money that is then strategically invested by DELWP. As such, there is no connection between cleared vegetation and a corresponding offset of equivalent biodiversity value, but rather the money is received as compensation for the destruction of biodiversity. Because the term 'offset' carries an implication of equivalence (and thus of no net loss of biodiversity) it is misleading to use the term in this context. We are of the view that an alternative term such as 'biodiversity clearance fee' would better reflect the policy in these cases.

Another concern is that allowing offsets to be purchased in a location distant from where the clearing occurs may lead to local or regional species extinctions, and may contribute to reduce the geographic ranges of species and ecological communities. Overall, range reductions have well documented negative implications for the genetic diversity of species and their capacity to respond to habitat disturbance and climate change. This in turn may lead to the undesirable situation where species that are not currently threatened become threatened because of incremental losses of habitat.

Recommendation 7 – *The term 'offset' should not be applied to over the counter offsets as it is misleading to infer that this fee payment results in the protection of biodiversity equivalent to that lost from the associated clearing. Instead, 'biodiversity clearance fee' or similar terms should be used.*

Recommendation 8 *– Offsets should be located as close as possible to the site of permitted clearing for which it is intended to compensate.*

4. *Exemptions*

The current range of exemptions should be reviewed and maintained only:

- where necessary for public safety; or
- where necessary for some other purpose and subject to an alternative approval process that adequately considers biodiversity impacts.

Many of the exemptions relate to work undertaken by public authorities. We note here a potential conflict of interest in that the Victorian Government is responsible for vegetation clearing policy, including determining exemptions, but are also often the beneficiary of these exemptions. Therefore, such a review of exemptions should be undertaken in a way (perhaps through and independent authority) that removes any potential for conflicts of interest. In any case, we are of the view that all Victorian Government agencies should commit to become 'no net loss agencies', providing an example of world-class land management to which private

landholders might aspire. Each agency should be fully accountable for their own vegetation losses, including best-practice avoidance, mitigation and offsetting practices.

Exemptions are insensitive to regional differences; a particular action may be insignificant in some regions, but ecologically disastrous in others. It may be possible to link the operation of exemptions to regional vegetation management plans to ensure that exemptions are appropriate given the vegetation values of the region. In any case, exemptions from the requirement of a clearance permit should be limited only to vegetation that would ordinarily be assessed via the lower risk pathway.

At present, it is almost impossible to assess the ecological significance and implications for biodiversity conservation of the vegetation clearance permit exemptions. It is our view that an exemption clearing recording system should be put in place to monitor the amount of vegetation clearance that result from exemptions. Implementation of an exemption recording system would require that a responsible body (preferably a Victorian Government body, perhaps DELWP) be notified of any clearance of vegetation, including clearing that is exempted from permit requirements. Combined with a permits database, this would comprise a powerful tool for regional and state-wide monitoring of vegetation clearing. Without a recording and reporting system, the government (and public) will be blind to the extent and consequences of clearing (both permitted and exempted) and be incapable of evaluating whether or not the no net loss objective is being achieved.

Recommendation 9 *– The current range of exemptions should be reviewed and maintained only: i) where necessary for public safety; or ii) where necessary for some other purpose and also subject to an alternative approval process that adequately considers biodiversity impacts.*

Recommendation 10 *- All Victorian Government agencies should commit to become 'no net loss agencies', providing an example of world-class land management.*

Recommendation 11 *– Exemptions should be limited to vegetation that would ordinarily be assessed via the lower risk pathway.*

Recommendation 12 *– An exemption clearing recording system should be put in place to monitor the amount of vegetation clearance that result from exemptions.*

5. *Compliance and enforcement*

To ensure public confidence in the delivery of offsets, and in order to promote transparency, it is vital that the Native Vegetation Credit Register be made publicly available. We note that proposed improvement 16 (page 35 of the consultation document) is to make the Credit Register available to councils, offset purchasers, offset providers and government investment programs. While we strongly agree with this proposal, this information should also be made available to the public, and only withheld where there may be a public interest in doing so. The Western Australian Government provides a good model for this with their public Environmental Offsets Register (https://offsetsregister.wa.gov.au/public/home), which has the stated aim to provide a "central public record of all offset agreements in Western Australia, contributing to the broader objectives of transparency and accountability".

We understand that the responsibility for compliance lies predominantly with the 79 local councils and that DELWP's formal role in ensuring compliance under this Act is limited. While we agree that all of the proposed

improvements for compliance and enforcement (proposed improvements 25-29) are important additions, they do not address the underlying issue that it is chiefly a lack of council resources and expertise that limits their ability to undertake appropriate compliance and enforcement measures. Thus while the development of a "compliance and enforcement strategy" and "provid[ing] guidance (including training) to assist councils and third parties to address noncompliance with the regulation" will certainly be of assistance, it will not solve the underlying lack of resources. One way to redress this could be to incorporate compliance costs into the price of the over-the-counter biodiversity offsets.

Alternatively, consideration could be given to removing the requirements concerning native vegetation clearing from the planning scheme and to codify this in its own legislation. Such a 'Native Vegetation Act' could relieve councils of their current burden for implementation and enforcement and give the Victorian Government greater responsibility for clearing applications, assessment and enforcement. This would facilitate data collection and monitoring and better enable statewide strategic biodiversity considerations. It would also send an important message about the value of remaining native vegetation as well as providing clarity by locating the associated requirements in one place. This could be funded by incorporating compliance costs into the price of the over-the-counter biodiversity offsets, and by collecting appropriately levied fines for non-compliance.

In any case, penalties and fines should be reviewed to ensure they are commensurate with the environmental impact and sufficient to discourage illegal clearing.

We support the suggested implementation of a centralized reporting mechanism for non-compliance (proposed improvement 26 at page 43), and believe that it is vital that this information also be made publicly available. Providing infrastructure for centralized and publicly available reporting on clearing, offsets, and known cases of non-compliance is one of the most effective ways of providing incentives for compliance. In addition this would also allow community groups to more effectively assist with monitoring of offsets or clearing, particularly in cases where impacts and/or offsets occur on crown land. Without adequate compliance, and reporting of non-compliance, there is no way that "no net loss" of biodiversity can be achieved, and furthermore, without adequate and centralized reporting, it is not even possible to know how far short from no net loss the policy is falling.

We also understand that the current process for developing Conservation Management Plans for offset sites is prohibitive to the effective implementation of adaptive management strategies. Adaptive management strategies can be a very effective approach to delivering successful native vegetation management, and as such should be facilitated wherever appropriate.

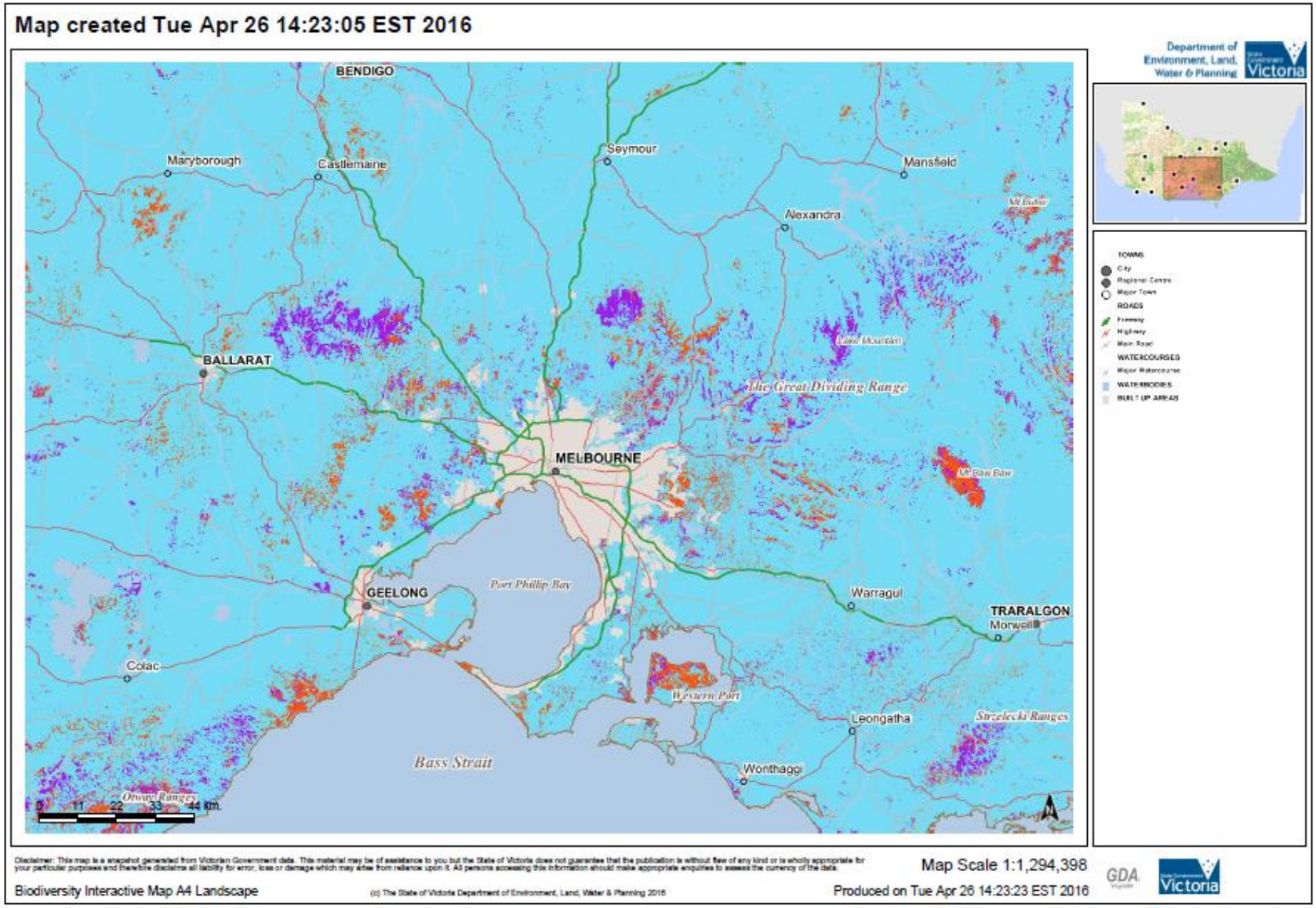
Recommendation 13 *– To ensure public confidence in the delivery of offsets, it is vital that data in The Native Vegetation Credit Register be made publicly available unless there are compelling reasons where information on specific offsets should be withheld.*

Recommendation 14 *– Consider ways for incorporating compliance costs into the price of biodiversity offsets.*

Recommendation 15 *– Penalties and fines should be reviewed to ensure they are commensurate with the environmental impact and sufficient to discourage illegal clearing.*

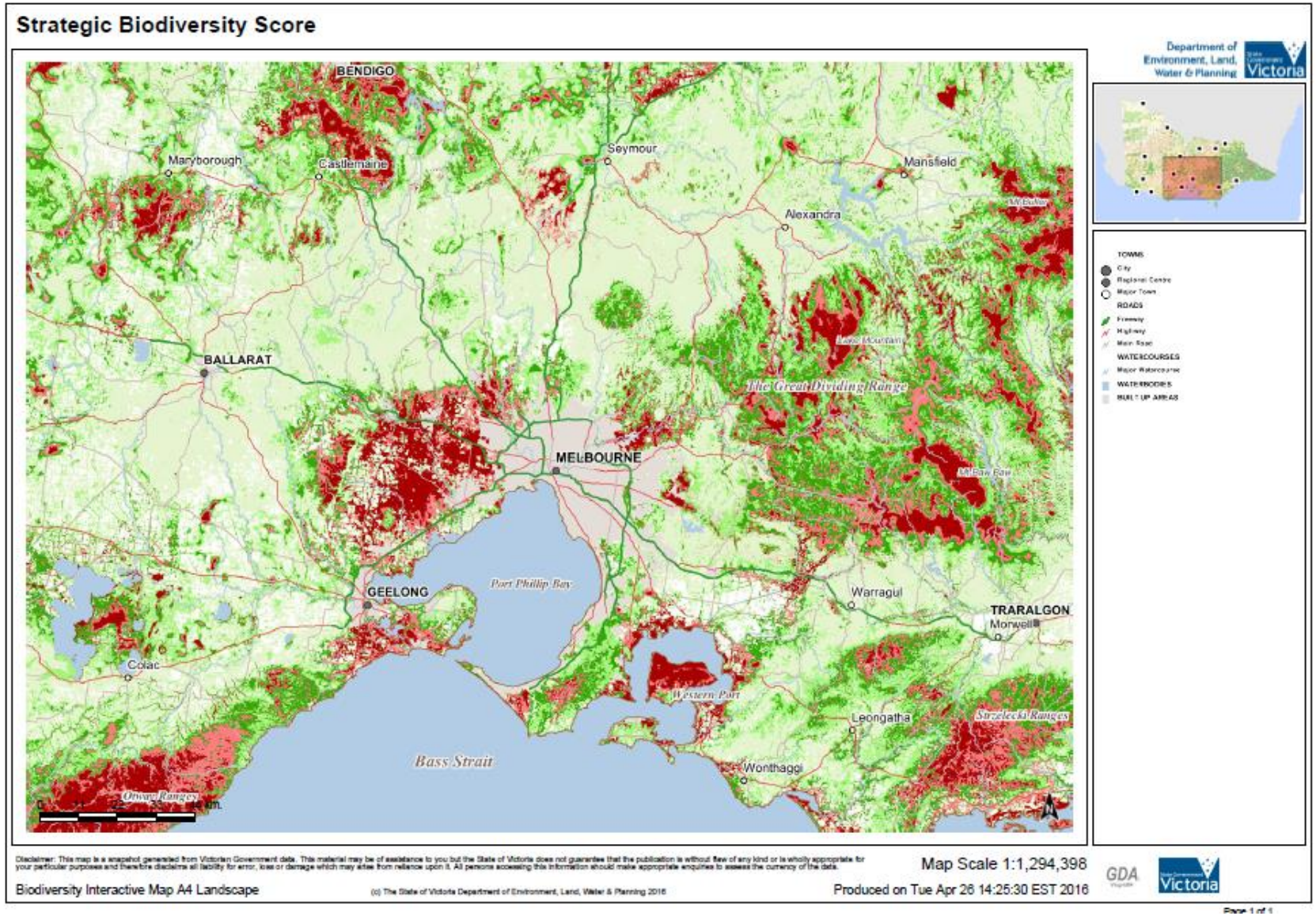
Recommendation 16 *– Improve the mechanism for developing offset site Conservation Management Plans to facilitate a better uptake of adaptive management approaches.*

APPENDIX 1 – Native Vegetation Location Risk 2013



Source: DEPI, Biodiversity Interactive Map. Blue: low risk; Purple: medium risk; Red: high risk. Note urban Melbourne greyed out.

APPENDIX 2 – Strategic Biodiversity Score 2013



Source: DEPI, Biodiversity Interactive Map. Red areas represent areas of high score, and green low score. Note urban Melbourne greyed out.