



**Approval**

**Gourlay Road Duplication, Caroline Springs, VIC (EPBC 2009/5247)**

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Proposed action**

**person to whom the approval is granted**

Melton Shire Council

**proponent's ABN**

ABN 22 862 073 889

**proposed action**

To upgrade Gourlay Road between Becca Way and Hume Drive in Caroline Springs, Victoria, to a two-lane, two-way divided road.  
(See EPBC Act referral 2009/5247)

**Approval decision**

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved with conditions

**conditions of approval**

This approval is subject to the conditions specified below.

**expiry date of approval**

This approval has effect until 1 February 2022.

**Decision-maker**

**name and position**

Charmayne Murray  
A/g Assistant Secretary  
Environment Assessment Branch

**signature**

**date of decision**

7 February 2012

**Conditions attached to the approval:**

1. For the protection of Spiny Rice-flower (*Pimelea spinescens* subsp. *spinescens*) during **construction** the following measures must be implemented:
  - a. Spiny Rice-flower plants within 5 metres of the construction works must be protected by fencing, in the manner described in the **preliminary documentation**. These excluded "no go" areas must be marked by clear signage; and

- b. all staff involved in construction activities must receive and engage with the **Environmental Management Site Induction**.
2. To compensate for impacts on the Spiny Rice-flower the person taking the action must, within 6 months of the date of this approval, secure the approval by **the Minister** of a suitable **biodiversity offset**. The **protected land** must:
    - a) include a population of at least fifteen (15) Spiny Rice-flower plants; and
    - b) provide for additional conservation benefits, such as landscape connectivity, resilience and long-term viability, proximity to impact area and existing reserves, protection of critical or priority habitat areas, and protection of additional threatened species or their habitat.
  3. To establish the **biodiversity offset** the person taking the action must, prior to the **commencement of construction**, enter into a written agreement with **Trust for Nature** ("the **Engagement Agreement**") to identify potential sites to form the basis of the **biodiversity offset** (as required under Condition 2) and to secure the protection in perpetuity of the **protected land**. A copy of the **Engagement Agreement** must be provided to the **department** within 7 days of its signature by all parties.
  4. To establish the **biodiversity offset** the person taking the action must, prior to the **commencement of construction**, provide a sum of \$500,000 (five hundred thousand dollars) to **Trust for Nature** to be held until such time as the **biodiversity offset** is approved by **the Minister**, at which time the money will form the basis for the purchase of environmental services from the owner of the **biodiversity offset**. If the cost of purchasing the environmental services is greater than \$500,000 the person taking the action must provide additional funds to **Trust for Nature** as required. If the cost of purchasing the environmental services is less than \$500,000 surplus funds will be returned to the person taking the action.

The arrangements for the provision of expenditure of the funds must be set out in an agreement ("the Funding Agreement"). A draft copy of the Funding Agreement must be provided to the **department** for approval prior to its signing by all parties. A copy of the Funding Agreement must be provided to the **department** within 7 days of its signature by all parties.

5. Within 12 months of the date of this approval, a **Deed of Covenant** for the **protected land** must be executed with **Trust for Nature** and lodged with the **Victorian Titles Office** for registration. Evidence of **lodgement** must be provided to the **department** within 2 weeks of **lodgement**.
6. Within 12 months of the date of this approval, the person taking the action must secure the approval by **the Minister** of an Offset Management Plan for **the protected land**. The Offset Management Plan must:
  - a) clearly define the location and boundaries of the **protected land**, through maps, textual descriptions, an accompanying **shapefile** and the **biodiversity offset attributes**;
  - b) describe the ecology of **the protected land**, with particular reference to Spiny Rice-flower populations;
  - c) include provisions for the conservation and enhancement of Spiny Rice-flower populations and habitat, and include specific measures to:
    - i. control weed species, pest animals and any other threats;
    - ii. control access to the **biodiversity offset**, including fencing;
    - iii. enhance the environmental quality of the **biodiversity offset** for the Spiny Rice-flower, including biomass reduction, recruitment and revegetation;
    - iv. monitor the status and condition of the Spiny Rice-flower population and habitat; and
    - v. annually report the results of monitoring and management activities to the **department** on or before 31 December each year for the duration of the **Offset Management Plan**.
  - d) include performance objectives and benchmarks as well as corrective actions and contingency measures to be implemented where monitoring indicates degradation of the Spiny Rice-flower population;

- e) include measures to ensure that actions taken to enhance the environmental quality of the **biodiversity offset** for the Spiny Rice-flower populations have no detrimental impact on the populations or habitat of other listed threatened species and communities that are identified as occurring on **the protected land**; and
  - f) remain valid and be implemented for a period of 10 years from the date of its approval by **the Minister** (subject to any approved review regime).
7. Within seven (7) days after the **commencement** of the action, the person taking the action must advise the **department** in writing of the actual date of **commencement**.
  8. The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the management plans required by this approval, and make them available upon request to the **department**. Such records may be subject to audit by the **department** or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the **department's** website. The results of audits may also be publicised through the general media.
  9. Within three (3) months of every twelve (12) month anniversary of the **commencement** of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the **department** at the same time as the compliance report is published.
  10. If the person taking the action wishes to carry out any activity otherwise than in accordance with the plans, reports or strategies associated with or relevant to the above conditions of approval the person taking the action must submit for the **Minister's** approval a revised version of any such plan, report or strategy. The varied activity shall not commence until the **Minister** has approved the varied plan, report, or strategy in writing. The **Minister** will not approve a varied plan, report or strategy unless the revised plan, report or strategy would result in an equivalent or improved environmental outcome over time. If the **Minister** approves such a revised plan, report or strategy, that plan, report or strategy must be implemented in place of the plan, report or strategy originally approved.
  11. If the **Minister** believes that it is necessary or convenient for the better protection of listed threatened species and ecological communities to do so, the **Minister** may request that the person taking the action make specified revisions to the plans, reports or strategies specified in the conditions and submit the revised plan, report or strategy for the **Minister's** written approval. The person taking the action must comply with any such request. The revised approved plan, report or strategy must be implemented. Unless the **Minister** has approved the revised plan, report or strategy, then the person taking the action must continue to implement the plan, report or strategy originally approved, as specified in the conditions.
  12. If, at any time after three (3) years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the **Minister**.
  13. Unless otherwise agreed to in writing by the **Minister**, the person taking the action must publish all plans, reports or strategies referred to in these conditions of approval on their website. Each plan, report or strategy must be published on the website within one (1) month of being approved.

## Definitions:

**Biodiversity offset** means an area of land secured in perpetuity by; gazettal and formal reservation; a Trust for Nature Conservation Covenant under Section 3A of the Victorian *Conservation Trust Act 1972*; or a Section 173 Agreement under the Victorian *Planning and Environment Act (1987)*; to compensate for impacts on listed threatened species and communities caused by the proposed action.

**Biodiversity offset attributes** - an '.xls' file capturing relevant attributes of the **biodiversity offset**, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.

**Commencement** means the construction of any infrastructure, excluding signage, associated with the proposed action to develop the Gourlay Road reserve site between Becca Way and Hume Drive, Caroline Springs, Victoria, including clearing vegetation, development of roads and supporting infrastructure, general earthworks, installation of drainage or sewage pipelines and cut/fill activities.

**Construction** means any works, including any preparatory works required to be undertaken such as clearing vegetation, earthworks, trenching and/or the erection of onsite temporary structures.

**Covenant** means a written agreement between the seller and purchaser of a piece of land restricting what the land can be used for.

**Deed of Covenant** means an encumbrance registered on the title of the protected land and may include the Offset Management Plan and any other document that the owner of the protected land is required to comply with.

**Department** means the Australian Government department responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

**Engagement Agreement** means the legal agreement between Trust for Nature and the person taking the action. The agreement stipulates the obligations of each party, including financial payments, to manage the protected land for a period of 10 years

**Environmental Management Site Induction** means a written document that is to be presented to all persons involved in construction activities at Gourlay Road that includes the requirements of this approval under the EPBC Act in relation to Spiny Rice-flower and mitigation measures to be adhered to.

**Lodgement** means the submission of specific documents to the Victorian Titles Office, necessary to register a dealing.

**Minister** means the Australian Government Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

**Preliminary documentation** means the referral and attachments dated 1 December 2009.

**The Protected land** means the land protected in fulfilment of Condition 2.

**Shapefile** means an ESRI Shapefile containing '.shp', '.shx' and '.dbf' files and other files capturing attributes including at least the EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.

**Trust for Nature** means the Trust for Nature (Victoria) as established and defined by the *Victorian Conservation Trust Act 1972*

**Victorian Titles Office** means the Victorian Government's key agency, currently Land Victoria, responsible for land administration and land information, including for the registration of land titles.