

Contact: [REDACTED]
Direct line: [REDACTED]
Email: [REDACTED]
Partner: [REDACTED]
Our Ref: [REDACTED]



8 September 2025

Chris Duckett
Manager Sustainable Growth
Ballarat City Council

By email only: growthareas@ballarat.vic.gov.au

Dear Chris,

Late submission - Amendment C234ball to the Ballarat Planning Scheme
39 Miles Street, Sebastopol VIC 3356

We act on behalf of [REDACTED], in respect of the land at 39 Miles Street, Sebastopol. We make this submission (albeit as a late submission) that specifically addresses the provisions relating to the Growling Grass Frog.

We request the Council accept this as a late submission and refer it to a Panel/Advisory Committee assuming that unresolve submissions will be so dealt with.

In summary, our client believes, for the reasons that follow, that there a number of inconsistencies and unsatisfactory and unreasonable provisions that are proposed in the exhibited documentation.

Our reasons follow.

1. The starting point for the purposes of this submission is the Ballarat West PSP and DCP review background document (**the background document**) and its discussion commencing at paragraph 247 under the heading "Growling Grass Frog Conservation Management Plan".
2. As is apparent from that section of the background document, the Council has sought advice from both DEECA and the DTP on how the amended PSP should deal with the issue of the Growling Grass Frog.
3. Leaving aside its legal status, it appears to be common ground that the existing Growling Grass Frog Conservation Management Plan, December 2011 is no longer fit for purpose.
4. Indeed, the Council in recognition of this has engaged Practical Ecology to prepare a revised GGF CMP but Council has taken the view as expressed in paragraph 254 as:

"...However, at this stage it is not proposed to be included in this amendment. Further investigation is required to determine whether the revised GGF (we assume this is a reference to a revised management plan) will be required in the future..."

5. At paragraph 255 of the background document the Council summarises the advice it has received from DEECA as follows insofar as is relevant:

- *From a State perspective, DEECA has no authority to require a GGF CMP.*

- *There is no specific mechanism mandating one under State legislation or regulations outside of the Melbourne Strategic Assessment area.*
 - *Notwithstanding these limitations, DEECA supports City of Ballarat's proposed retention, review and update of the GGF CMP but recommends the City review and (re) confirm its reasons for having a GGF CMP in the PSP.*
6. Following receipt of that advice, Council sought advice from DTP on how best to deal with the GGF in the Planning Scheme Amendment. Again, at paragraph 256, a summary of that advice is included which it would appear that the Council has, in part, accepted, and in part, rejected.
 7. For example, the advice from DTP was that deletion of the Ballarat West Conservation Movement Plan from the implementation section of the PSP at Sections 5.5.2 and 5.6.2 due to the relevant content now being included in the PSP.
 8. However, whilst it has been deleted from Section 5.5.2 it remains at Section 5.6.2.
 9. Notwithstanding the advice from DEECA that it has no authority to require a duty of CMP and if we would submit DEECA has no authority so neither does the Council. There is continued reference to the need for an application for a planning for subdivision to have regard to a GGF CMP.
 10. The problem is elevated because in the proposed Schedule 2 to Clause 37.07 the following appears as an application requirement:

Any application for a development within the Growling Grass Frog trigger area shown in plan 8 of the Ballarat West Precinct Structure Plan, or an area which is likely to impact on a Growling Grass Frog habitat, must be accompanied by a statement of how the Growling Grass Frog objectives and design requirements in Section 5.1.3 of the Ballarat West Precinct Structure Plan are met and also address the requirements below to the satisfaction of the Responsible Authority.

 - *Advice regarding approvals under the Flora and Fauna Guarantee Act 1987 and/or Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth).*
 - *If required, the Growling Grass Frog compensatory offset plan requirements (sic) if relocation is required.*
 11. Whilst there is no reference to a GGF CMP in Section 5.1.3, the PSP in Section 5.6 under the heading "Biodiversity Assets" includes a further section namely 5.6.3 under the heading "Biodiversity Planning and Design Guidelines" and includes this requirement:

Development on any site identified in the Ballarat West Conservation Management Plan as being the site where Growling Grass Frog has been found or has been in the Growling Grass Frog offset trigger area must be in accordance with the Ballarat West Conservation Management Plan and any approvals pursuant to the Environment Protection Biodiversity (EPBC Act) 1999.
 12. In effect, this provision introduces a potential new set of Design Guidelines beyond those set out in 5.1.3 to be found in, what is described as, the "Ballarat West Conservation Management Plan". It is unclear as to what this document is. Is it the GGF CMP of 2011? Is it intended to be a reference to a revised GGF CMP? Or is it a document that has nothing to do with the GGF CMP?
 13. The application requirements in the proposed Schedule that we have referred to do not require a reference to be made to the Ballarat West Conservation Management Plan and so there is no link to the application requirement and the PSP in this regard. The background document

says that the UGZ Schedule was updated with “*clarity to the implementation to the GGF requirement in the PSP...*”. With all due respect, we think that the opposite has occurred.

14. The advice from DEECA was correct in that the State and we submit the Council has no legal basis upon which to require the preparation of a Conservation Management Plan for the Growling Grass Frog. The protection of the Growling Grass Frog is provided under the *EPBC Act* and it is that Act which controls any action such as the subdivision of land which may have a significant impact upon the species.
15. It is a matter for DCCEEW to decide whether such impacts occur and how they should be managed. If Council wants to be involved in a discussion on how that management ought to occur then that should be done as a process with DCCEEW so that guidelines are prepared by DCCEEW in circumstances where there is habitat for the Growling Grass Frog and where an action might have a significant impact upon that habitat or upon the species itself.
16. What this means that the PSP should not have any requirement that the development must be undertaken in accordance with the “Ballarat West Conservation Management Plan” (whatever that document might be). The protection of the frog is not a matter for the Council. It is a matter that is to be determined in accordance with the provisions of the *EPBC Act* by DCCEEW. Accordingly, there should be no reference in the PSP to the Growling Grass Frog Conservation Management Plan. The preparation of such document is outside the jurisdiction of the Council as it has been advised by DEECA.
17. Further, the PSP should not refer to any Growling Grass Frog offset trigger area. The area of impact, if any, in relation to the Growling Grass Frog is to be determined in accordance with the provisions of the *EPBC Act* and any guidelines that have been prepared by DCCEEW to assist in the assessment of whether or not an action is a controlled action for the purposes of that Act in relation to any specie or species under that Act.
18. Accordingly, the application requirement in Schedule 2 should be amended so that it deletes reference for any offset trigger area and under the heading of Growling Grass Frogs simply provides as follows:

An application for development must provide evidence to the satisfaction of the Responsible Authority that any approvals have been obtained where necessary under the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth).
19. The Growling Grass Frog objectives and design requirements in Section 5.1.3 can remain but include the qualifier that if any of those guidelines are inconsistent with any requirements of any approval obtained under the *EPBC Act* then the requirements of that approval would prevail.

Yours faithfully

Best Hooper

Partner