

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

ENGINEERING AND INFRASTRUCTURE

16 MAY 2016

9.2

**REVIEW OF THE NATIVE VEGETATION
CLEARING REGULATIONS**

Attachment No: 1

**Submission to the Native Vegetation Clearing
Regulations Review Submission**

Review of the Native Vegetation Clearing Regulations

DRAFT - Proposed submission

NATIVE VEGETATION CLEARING POLICY			
Proposed Improvement	Description	Rationale	Proposed Comments from Mitchell Shire Council
<p>1. Clarify that the primary focus of the regulations is to ensure avoidance of native vegetation removal where possible</p>	<p>Clearly state that the regulations achieve the objective of 'no net loss' in the following manner:</p> <ul style="list-style-type: none"> • Preventing the removal of native vegetation that makes a significant contribution to Victoria's biodiversity. • Applying the three step approach: <ul style="list-style-type: none"> - avoid the removal of native vegetation where possible - minimise the impact on Victoria's biodiversity from the removal of native vegetation, that cannot be avoided - for any native vegetation that is removed, provide an offset that makes an equivalent contribution to Victoria's biodiversity. 	<p>Sets out a clear approach to achieve the objective of the regulations. Ensures that the regulations are focussed around avoiding impacts on native vegetation as a first step.</p>	<p>Mitchell Shire welcomes back the three step approach of avoid, minimise offset for native vegetation removal.</p> <p>The cumulative impacts of small scale removal of vegetation must be considered and recognised.</p> <p>Remove "where possible" in the statement <i>avoid the removal of native vegetation where possible</i>.</p> <p>Remove "that cannot be avoided" in the statement "minimise the impact on Victoria's biodiversity from the removal of native vegetation that cannot be avoided".</p>

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<p>2. <i>Consolidate comprehensive policy guidance for native vegetation removal</i></p>	<p><i>DELWP will provide consolidated guidance to inform decision making about native vegetation removal. This may include a reference to the importance of biodiversity and strategic planning, identify priorities for protection of native vegetation, details on how biodiversity and 'other matters' in Clause 52.17 are considered when deciding a permit, the intent of the exemptions, and compliance and enforcement.</i></p>	<p><i>The current Guidelines focusses on biodiversity considerations in the permit assessment process and does not include broader policy guidance about the consideration of native vegetation removal across the planning system. This has led to inconsistencies and gaps in the application of the regulations. New guidance will equip decision makers with policy reference points to inform their work.</i></p>	<p>Developed in close consultation with local government.</p> <p>It is important to define where the <i>Environmental Protection and Biodiversity Conservation Act 1999 and the Flora and Fauna Guarantee Act 1988</i> fit in this proposed improvement.</p>
<p>3. <i>Develop guidance to support strategic planning relating to native vegetation protection and management</i></p>	<p><i>DELWP in partnership with councils, will develop guidance to support strategic planning e.g. a planning practice note. This would include information on when it could be undertaken, what tools can be used, what information is available to inform this and the roles and responsibilities of any parties involved.</i></p>	<p><i>This provides a framework to improve the quality and the consistency of strategic planning for biodiversity across the state, including for overlays, focused on planning to protect and conserve biodiversity and to avoid significant impacts. ¹</i></p>	<p>This could be in the form of a Practice Note.</p>

¹ The development of mechanisms to protect the highest value areas for biodiversity, which could include the use of critical habitat determinations, will be considered as part of the Government's commitment to review the Flora and Fauna Guarantee Act, 1988.

<p>4. <i>Improve monitoring to determine if the regulations are achieving their objective and make this information publicly available</i></p>	<p><i>Improve monitoring and reporting on:</i></p> <ul style="list-style-type: none"> • <i>Native vegetation removal that is being avoided.</i> • <i>Permitted native vegetation clearing and offsets that are occurring (including linking clearing and offsets).</i> • <i>Clearing under exemptions.</i> • <i>Levels of non-compliance with the regulations, including with management of offset agreements.</i> • <i>Assessment of the improvements in native vegetation that are occurring at offset sites.</i> 	<p><i>This increases transparency by making data about system performance publicly available. It also enables the government to assess the effectiveness of the regulations in achieving their stated objective of 'no net loss'.</i></p>	<p>It is not clear who the monitoring will be done by, local government or DELWP. The expectation on local government is not clear and should be more clearly defined. If it is local government a data management system that is consistent across the state would be required.</p>
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PERMIT PROCESS AND DECISION MAKING

<i>Proposed Improvement</i>	<i>Description</i>	<i>Rationale</i>	<i>Proposed Comments from Mitchell Shire Council</i>
<p>5. <i>Reduce the low risk-based pathway threshold</i></p>	<p><i>Reduce the threshold so that fewer applications are assessed in the low risk-based pathway. For example, instead of a hectare or 15 trees driving a higher level of assessment,</i></p>	<p><i>A hectare or 15 trees, if they are large and old, is considered a significant amount of clearing to receive a relatively low level of assessment. This issue will be addressed in part through changes to the</i></p>	<p>Agree with the proposed reduction in the low risk pathway thresholds, however a qualitative measure would also be useful to introduce, such as Ecological Vegetation Class</p>

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	<i>this could be reduced to 0.5 hectares or 7 trees.</i>	<i>decision guidelines for the low risk-based pathway (see solutions 7 and 8 in this section).</i>	Benchmarks, so higher values are placed on large old trees in the landscape.
<i>6. Replace the Native vegetation location risk map with an updated map of highly localised habitats</i>	<i>Use an updated map of highly localised habitats to indicate where a small amount of clearing could have a significant biodiversity impact. Clearing of any size at these locations should be considered in a higher assessment pathway.</i>	<i>Determining the assessment pathway cannot be based on area alone, as this does not pick up small amounts of clearing that could have a significant biodiversity impact. A map of areas where a small amount of clearing could still have a significant biodiversity impact is therefore needed. The current Native vegetation location risk map is difficult to explain and is often misunderstood. The map used for this purpose should represent tangible biodiversity values.</i>	Welcome updated mapping information.
<i>7. Require an avoid and minimisation statement for all applications and consider this in decision making</i>	<i>Include an application requirement to provide an avoid and minimisation statement for all applications. Include the assessment of this statement as a decision guideline. A minimisation</i>	<i>So that opportunities to avoid and minimise impacts of clearing can be utilised for all applications. This requires proponents to explain why they cannot avoid removing native vegetation</i>	It is important that the statements made for avoid and minimise are meaningful and tie in with objective one. Guidance for local government officers should be provided as part of proposed improvement 3 <i>Develop guidance</i>

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	<i>statement is currently only required for moderate and high risk-based pathway applications.</i>	<i>completely and what steps they have taken to minimise their impacts on Victoria's biodiversity. This allows councils to work with proponents to avoid and minimise impacts to achieve improved biodiversity outcomes.</i>	<i>to support strategic planning relating to native vegetation protection and management</i>
<i>8. Require an offset strategy for all applications and consider this in decision making</i>	<i>Require that all applicants state how they will offset their impacts should a permit be granted. Require that the correct offset be identified before a permit can be granted. An offset strategy is currently required for moderate and high risk-based pathway applications only.</i>	<i>To ensure all applicants understand offset requirements and make provisions for these in the planning stage of their proposal. To ensure that permit applications are only approved if an offset is available and has been identified. This will also assist in improving compliance with offset requirements.</i>	Support
<i>9. Change to two pathways, a "lower assessment pathway"</i>	<i>Reduce the number of assessment pathways to two. Consolidate application requirements and decision guidelines for moderate and</i>	<i>Removing the word 'risk' from the pathways will help to avoid confusion about their meaning and focus the pathways on the level of the assessment</i>	Support this simplification of the process.

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<i>and a “higher assessment pathway”</i>	<i>high risk-based pathway applications. Remove the word ‘risk’ from the pathway description.</i>	<i>that is applied to the application. Ensures that more comprehensive decision guidelines can be applied to all applications in the higher assessment pathway (e.g. the high risk-based pathway decision guidelines apply to the higher assessment pathway).</i>	
<i>10. Provide clearer guidance on when to refuse an application to remove native vegetation</i>	<i>Provide a clearer explanation of the criteria that should be used to assess whether a proposal will have a significant impact on Victoria’s biodiversity and whether a permit should be refused on these grounds.</i>	<i>This will ensure the regulations are providing the required protection for biodiversity by not permitting the removal of native vegetation that would have a significant impact on Victoria’s biodiversity. This will also assist proponents to plan to avoid native vegetation removal that would be unlikely to be approved and assist decision makers to make consistent and evidence based decisions.</i>	Support.

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PERMIT PROCESS AND DECISION MAKING

<i>Proposed Improvement</i>	<i>Description</i>	<i>Rationale</i>	Proposed Comments from Mitchell Shire Council
11. Include a decision guideline that allows councils to consider locally important biodiversity when assessing applications	Include in the other matters section of Clause 52.17 a decision guideline relating to whether the native vegetation has been identified within the planning scheme to have local biodiversity importance.	Including this separate decision guideline in other matters enables councils to consider biodiversity values that are locally important but are not reflected in the statewide view of importance, without needing to develop an overlay. These values need to be referenced in their planning scheme.	It is unclear how this will be achieved in the local Planning Schemes; one option is through the Local Planning Policy Framework. Further clarity is sought on this proposed improvement with a suite of options for Councils to identify local biodiversity values in their local planning schemes.

BIODIVERSITY INFORMATION TOOLS USED IN DECISION MAKING AND OFFSET RULES

<i>Proposed improvement</i>	<i>Description</i>	<i>Rationale</i>	Proposed Comments from Mitchell Shire Council
12. Allow habitat characteristic information collected at the site to be used to supplement the maps of a species habitat in the permit application process and for offset sites	Describe the circumstances that would allow information collected at a site by a suitably qualified ecological consultant to be used to supplement the habitat importance maps. Detail of what site collected information can be incorporated into decision making	To address issues with the maps' accuracy or coarseness of scale at the site level while managing the impact of bias and observability associated with site-collected data.	The "circumstances" mentioned in the description should be defined.

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<i>Proposed improvement</i>	<i>Description</i>	<i>Rationale</i>	<i>Proposed Comments from Mitchell Shire Council</i>
	<i>and when, and the criteria on which decisions are based, would be developed.</i>		
<i>13. Increase the information available about the maps used in the regulations and improve their accessibility</i>	<i>Provide clear information about the data and methodologies that were used to create the maps. Improve accessibility of the maps and ensure they are user-friendly.</i>	Allows users to better-understand the regulatory outcomes that the maps inform. Assists users to provide valuable feedback on the maps' accuracy and usefulness.	Support
<i>14. Place greater emphasis on key areas of habitat for dispersed species in decision making and offset requirements</i>	<i>Give greater consideration for impacts on areas of key habitat for dispersed species, such as breeding sites.</i> <i>This would consider the specific offset threshold.</i>	To allow for greater differentiation within habitats for highly dispersed species. This would provide greater protection for important habitat sites for rare or threatened species with dispersed habitats ² .	Support, with data provided by DELWP.

² This would consider the correlation between sites of important habitat and endangered EVCs

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Proposed improvement	Description	Rationale	Proposed Comments from Mitchell Shire Council
<p>15. Differentiate between the biodiversity value of scattered trees for use in decision making and offset requirement determination</p>	<p>When a site assessment is undertaken collect information to differentiate between the biodiversity value of scattered trees. For example, information about the tree's species, age and/or location. Use this information when making a decision on a permit application. Where a scattered tree has high biodiversity value and a permit is granted, require the offset be of equivalent value and include trees.</p>	<p>To better reflect the biodiversity value of scattered trees in decision making.</p> <p>So that the removal of high value scattered trees can be specifically compensated for.</p>	<p>The use of EVC benchmarking in previous native vegetation controls was beneficial and something that Mitchell Shire Council would support reintroducing.</p>

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OFFSET DELIVERY

Proposed improvement	Description	Rationale	Proposed Comments from Mitchell Shire Council
<p>16. Increase the use and functionality of the Credit Register</p>	<p>Increase the information recorded in the Credit Register and make this available to councils, offset purchasers, offset providers and government investment programs. This could include:</p> <p>Registering potential offset sites before they are established so buyers can identify them, and offset providers do not incur the costs of setting up an offset site before they have a buyer.</p> <p>Linking offset and permit information for greater transparency.</p> <p>Recording first party offsets.</p>	<p>Improved information about offset availability, particularly potential offsets, will decrease barriers to entry to the offset market for potential offset providers and reduce costs for offset purchasers.</p> <p>Establishing a single system for tracking and reporting on offset delivery would provide greater transparency and confidence in the provision of offsets and a clearer link between clearing and offset sites.</p>	<p>Support, especially for specific offsets</p> <p>Include working with Catchment Management Authorities.</p>
<p>17. Support the development of the market for low availability offsets</p>	<p>Work with conservation groups (including Trust for Nature) to develop programs that target potential offset providers, especially focussed on offset types or locations with low availability. Improve external access to species information to</p>	<p>This work will build the profile of offsetting in the community, with an aim to increase market participation for low availability offset types or locations.</p>	

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OFFSET DELIVERY

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	<i>support identification of potential species specific offsets. Increase use of over the counter agreements.</i>		
18. <i>Require that all third party offsets are registered on the Credit Register and meet its standards, including standards for securing the offset</i>	<i>Require that all third party offsets are registered on the Credit Register. This means that trades and use of the credits will be tracked and that payment to the offset provider will be linked to the delivery of the offset management plan.</i>	<i>Provide greater confidence in offset outcomes being achieved for purchasers, the community and the environment, through higher levels of transparency, monitoring and compliance. Encourage larger strategic offsets to be established and delivered by third parties. Increase the likelihood that credits are available on the Credit Register to meet offset obligations.</i>	Support greater use of Section 69 agreements under the Conservation, Forests and Lands Act 1987.
19. <i>Redesign the revegetation standards to ensure desirable revegetation can occur</i>	<i>Design more comprehensive revegetation standards so they encourage desirable revegetation.</i> <i>Potential changes could include:</i>	<i>Ensures that revegetation offsets are well connected and strategic and deliver biodiversity outcomes.</i> <i>Ensure revegetation is available as an offsetting option to help address local loss in biodiversity.</i>	Mechanisms need to be in place to support offsets being secured locally. Revegetation on site for small scale native vegetation removal should be supported.

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OFFSET DELIVERY			
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	<p><i>Modifications to gain scoring to encourage revegetation in sites with scattered trees.</i></p> <p><i>Encourage revegetation to be in areas well connected to remnant vegetation.</i></p> <p><i>Include specific revegetation offset site eligibility criteria to ensure the viability of the site.</i></p>		Clarification on how revegetation offsets relate to Biodiversity Equivalence units is required.
20. Create a framework for offsetting on Crown land	<p><i>Create a framework to ensure that Crown land offsetting meets offsetting standards. Including that the site is eligible to be an offset, that the offset is transparent and secured in perpetuity and that it provides 'additionality', that is, that the management actions undertaken at the site are in addition to the statutory requirements for the management of the land.</i></p>	<p><i>Current Crown land offsetting approaches are variable and there is not an agreed process to establish offsets on Crown land. There are circumstances where Crown land offsets can create important benefits for biodiversity by compensating for clearing that is occurring.</i></p>	Support

EXEMPTIONS

<i>Proposed improvement</i>	<i>Description</i>	<i>Rationale</i>	Proposed Comments from Mitchell Shire Council
21. <i>Formalise a set of exemption purposes and principles</i>	<i>The purposes and principles for exemptions include that exemptions are clear, consistent and evidence based. They also require that the clearing that occurs under exemptions is minimised. Where significant new footprint permanent clearing occurs under exemptions, that this is recorded, reported and its impact on biodiversity counterbalanced through native vegetation investment and management at a statewide level.</i>	Provides for consistency in the development and application of the exemptions. Ensures environmental impacts resulting from exemptions, are minimised and counterbalanced, in order to meet overarching statewide native vegetation objectives. This includes the accountabilities for and demonstrating how the environmental impacts resulting from exemptions on public land are minimised and counterbalanced.	Agreed, however a monitoring and reporting framework needs to be developed and the expectations on local government made clear.
22. <i>Clarify wording of exemptions</i>	<i>Make wording changes to some exemptions to clarify the removal of native vegetation that is allowed without a permit under these exemptions.</i>	To ensure consistency in application of the exemptions, address common misinterpretations and enable improved levels of compliance and better enforcement.	Supported

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EXEMPTIONS			
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23. <i>Provide guidance on the intent and application of exemptions</i>	<i>Develop guidance material about the application and intent of the exemptions to assist councils and proponents. Provide an explanation of what the exemptions are intending to achieve.</i>	Enables councils to apply exemptions consistently across the State and supports compliance.	Support
24. <i>Adopt a consistent approach to agreements referenced in the exemptions</i>	<p><i>Ensure that the approach to agreements in exemptions is consistent by:</i></p> <ul style="list-style-type: none"> • <i>developing principles for the intent and content of agreements</i> • <i>using consistent definitions and terms</i> • <i>adopting a standard level of consultation in the development of an agreement</i> • <i>ensuring agreements are publicly available</i> 	Provide a clear, transparent and consistent approach to developing and implementing agreements referenced in the exemptions.	It is Mitchell Shire preference that the review of the roadside vegetation agreement with DELWP is reviewed as soon as possible following the finalisation of the permitted clearing guidelines review.

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	<ul style="list-style-type: none"> <i>recording and reporting clearing and offsetting that occurs under agreements.</i> 		

COMPLIANCE AND ENFORCEMENT.			
<i>Proposed improvement</i>	<i>Description</i>	<i>Rationale</i>	Proposed Comments from Mitchell Shire Council
<i>25. Develop a compliance and enforcement strategy</i>	<p><i>Prepare a risk-based compliance and enforcement strategy for councils that they can use to inform their compliance activities, including the development of compliance plans.</i></p> <p><i>The strategy will address issues from education and cultural change to enforcement tools and identify roles and responsibilities to support delivery.</i></p>	<p><i>Provides a consistent statewide approach to ensuring compliance with the regulations that is focussed on the activities that deliver the greatest benefit relative to impact.</i></p>	<p>This should include reference to the ability to use the Planning and Environment Act for infringements and replanting.</p> <p>The development of an enforcement strategy should include a study of recent VCAT hearings.</p>

COMPLIANCE AND ENFORCEMENT.

<i>Proposed improvement</i>	<i>Description</i>	<i>Rationale</i>	Proposed Comments from Mitchell Shire Council
26. <i>Provide guidance and support materials for compliance and enforcement activities</i>	<i>Provide guidance (including training) to assist councils and third parties to address non-compliance with the regulations. This includes how to best focus efforts based on risk, tools for different circumstances, information to assist in monitoring and acting on non-compliance, appropriate responses to illegal clearing, and when DELWP may be able to provide support for compliance activities.</i>	<i>Empowers councils and community groups to proactively address compliance in a systematic way and identify and take action in response to non-compliance.</i>	<p>The support of DELWP for large scale illegal native vegetation removal is critical.</p> <p>Change wording from <i>DELWP may be able to provide support for compliance activities to DELWP WILL provide support.....</i></p>
27. <i>Improve information gathering for compliance and enforcement</i>	<i>DELWP in conjunction with councils to gather and report on the level and drivers of illegal clearing and non-compliance with permit conditions (particularly the requirement to provide offsets).</i>	<i>Changes the culture around compliance with regulations through collectively gathering and sharing information on non-compliance. This will enable more councils to understand the extent of compliance issues in their area, so that compliance efforts can be well directed and focussed on areas of key concern.</i>	The expectations on local government are not clear for this proposed improvement.

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COMPLIANCE AND ENFORCEMENT.

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<i>28. Promote co-regulatory support</i>	<i>DELWP to work with councils, the Commonwealth Government and other relevant agencies to address non-compliance, with a focus on activities that have significant impacts on Victoria's biodiversity.</i>	<i>Helps support councils having greatest difficulty in addressing non-compliance.</i>	Support ongoing practices.
<i>29. Review the overarching compliance and enforcement framework</i>	<i>Covering a number of components this could include a future assessment of the legislative framework of the regulations and whether change is warranted to address compliance and enforcement issues.</i>	<i>Provides opportunities (that are beyond the scope of this review) to examine the regulations' compliance framework more broadly, to ensure it is efficient and effective.</i>	Support

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