



**CORANGAMITE  
SHIRE**

Review of the Native Vegetation Clearing Regulations  
Regulatory Strategy and Design  
Department of Environment, Land, Water and Planning  
PO Box 500  
**EAST MELBOURNE VIC 8002**

Sent via email: [nativevegetation.review@delwp.vic.gov.au](mailto:nativevegetation.review@delwp.vic.gov.au)

24 January 2017

Dear Sir/Madam

**Re: Submission to DELWP on the Review of the Native Vegetation Clearing Regulations**

Corangamite Shire Council has prepared the following submission in response to the Review of the Native Vegetation Clearing Regulations dated November 2016. Council is concerned that the review is a missed opportunity to simplify the overly complex native vegetation regulations that negatively impact on landowners and Council alike. Council believes that further consultation with peak bodies such as the VFF and rural councils is required.

Council receives regular complaints and feedback from landowners about their concerns with the current native vegetation controls particularly in regard to the impact on farming operations and roadside vegetation management.

Corangamite is a large rural Shire of 4200 km<sup>2</sup>, located in Victoria's south-west and stretches from Skipton in the north to the Southern Ocean in the south and is responsible for managing 2,205 km of roads across the Shire.

The following areas are the key matter of concern to Council:

- The lack of flexibility and responsiveness of the regulations to differing circumstances. The adoption of a 'one size fits all' approach is considered problematic and not practical, given the widely differing local circumstances across Victoria. There needs to be greater local discretion to achieve appropriate local outcomes.
- The impacts on landholders, particularly on farmers and the curtailment of the right to farm are considerable. Farmers are generally good environmental managers, and it is considered the native vegetation regulations should allow more flexibility for enhancing agricultural practices to improve productivity and environmental outcomes. Council is also concerned that the proposed application process to remove native vegetation is complex and imposes significant burden and cost on rural landowners. It is onerous to expect that applicants will be required to engage independent technical specialists to assist the application making process, for example to determine pathways and offsets.

**CORANGAMITE SHIRE COUNCIL**

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- Greater flexibility should be allowed around the provision of offsets, including simpler provisions for 'on site' or first party offsets. There should be no requirement for these 'on site' or first party offsets to be registered and the proposed offset system should also be simplified so that applicants can calculate and manage their own offsets without the need and cost of engaging a native vegetation assessor.
- The costs of providing vegetation offsets can have a significant negative economic impact on small businesses and farmers. Greater consideration of the costs versus benefits of providing offsets should be given.
- The scope of exemptions in relation to Council works and maintenance within road reserves. Councils must be allowed the ability to undertake works and maintain roads, drains and roadside reserves and the envelope within which these works can be undertaken needs to be enlarged. There is also a need for greater flexibility around annual fire prevention works on both private and publicly managed land and for roadside slashing as these are important community safety obligations.
- The reforms have failed to reduce "red tape" and the proposed regulations increase complexity of the regulatory framework. The review outcomes increase the layers of complexity and add a significant burden on local government and permit applicants alike. The failure to reduce red tape will likely further increase non-compliance and matters requiring enforcement.
- The potential for further cost shifting from State Government to local government is significant. In this regard it is Council's position that the proposed regulations are not consistent with the *Victorian State - Local Government Agreement 2014* in relation to cost shifting. Council will not accept or be responsible for implementation of those parts of any changed regulations which it considers involve cost shifting to local government. The review will result in continued cost shifting to local government through an increase in enforcement matters being identified and reported by DELWP for Council action. Arrangements in relation to future monitoring and reporting are also likely to further increase the burden on local government in relation to implementation of State-wide provisions.

Further detailed comments on the proposed changes are attached.

Should you require further clarification or would like to discuss our concerns further please contact me on 5593 7100.

Yours faithfully



Andrew Mason  
**Chief Executive Officer**

## Submission to DELWP on the proposed amendments to the Native Vegetation Clearing Regulations

Amendments to Victorian Planning Provisions		
Planning Provision	Proposed Key Changes	Comment
Clause 12.01 <i>Biodiversity</i>	<p>Updating text to:</p> <ul style="list-style-type: none"> <li>Ensure appropriate consideration of impacts from the removal, destruction or lopping of native vegetation.</li> <li>Ensure permitted clearing of native vegetation results in no net loss to biodiversity.</li> </ul>	<ul style="list-style-type: none"> <li>The review strengthens the focus on avoidance of clearing native vegetation as a first option. There is a need for greater recognition that native vegetation removal will legitimately be required in some circumstances. The permit application and assessment process needs to be simplified, and there needs to be greater flexibility around provision of offsets.</li> </ul>
Clause 52.16 <i>Native Vegetation Precinct Plan</i> Clause 52.17 <i>Native Vegetation</i>	<ul style="list-style-type: none"> <li>Clarifying the three step approach (avoid, minimise, offset) in the purpose to Clause 52.16. This includes an increased focus on avoiding and minimising in areas where the value of the native vegetation is high.</li> <li>Amend the table of exemptions to improve their operability, remove ambiguity and reflect updates to other legislation. This includes clarification of wording around emergency works, fencing and planted vegetation exemptions, widening of the scope of Crown land exemptions, an additional exemption for utility installations and a new exemption for conservation work.</li> </ul>	<ul style="list-style-type: none"> <li>The rewording of the exemptions for emergency works, dead vegetation, personal use, fences and planted vegetation provide greater clarity around when these exemptions can be applied.</li> <li>Council is pleased to see improved clarity on the clearing width for fence lines on public land.</li> <li>Council is pleased to see the introduction of an exemption for 'conservation work' as this will be particularly useful for the removal of native weeds where it is not possible for these to be listed under the schedule to clause 52.17.</li> <li>However, the requirement to have the works approved by the DELWP Secretary adds unnecessary red tape and it would be more appropriate for these conservation works to be approved by Council.</li> <li>The Crown land exemption needs to be broadened to include works undertaken by a Crown land CoM if the Crown land manager has provided consent. Currently not all CoM works are excluded under this exemption.</li> <li>Exemptions for local government should be included in the table and not hidden away in planning scheme agreements or MOU's. There is a need to include expanded exemptions for local government works on roadsides, and for annual fire prevention works, so as to better acknowledge community safety obligations.</li> <li>Council would like to see further review of local government agreements for the removal of native vegetation to maintain the safe and efficient function of public roads, and the simplification of the current agreement through the inclusion of a 'road maintenance envelope' which exempts planning permit requirements in this zone. Council would also like to see the agreement broadened to exempt vegetation removal associated with upgrades on existing infrastructure, such as intersections and bridges.</li> <li>The revised thresholds for the three assessment pathways (basic, intermediate, detailed) are appropriate as it provides tighter controls for the removal of more than 0.5ha of native vegetation.</li> <li>Council is concerned around the provisions for consideration of large trees in the assessment pathway.</li> </ul>

<b>Amendments to Victorian Planning Provisions</b>		
<b>Planning Provision</b>	<b>Proposed Key Changes</b>	<b>Comment</b>
Clause 66.02-2 <i>Use and Development Referrals- Native Vegetation</i>	Minor wording change to refer to the total <i>extent</i> to be cleared as opposed to the total <i>area</i> to be cleared to remove confusion of when an application is to be referred to DELWP.	<ul style="list-style-type: none"> <li>Support clarification on wording to remove ambiguity.</li> </ul>
Clause 81.01 <i>Table of documents incorporated into this scheme</i>	Update the table to reference the new assessment guidelines incorporated document: <i>"Native Vegetation Clearing-Assessment Guidelines"</i> (Department of Environment, Land, Water and Planning 2017).	<ul style="list-style-type: none"> <li>This is an administrative requirement and is supported.</li> </ul>
Incorporated Document	<p>The following changes in the <i>"Native Vegetation Clearing-Assessment Guidelines"</i> that are not already detailed above are:</p> <ul style="list-style-type: none"> <li>Broadening of the biodiversity value of native vegetation to include large trees, endangered EVCs and sensitive wetlands and coastal areas.</li> <li>Classification of scattered trees into two sizes- small and large.</li> <li>Replace the native vegetation location risk map with an updated map of highly localised habitats, rare or threatened species, habitat, endangered EVCs and sensitive wetlands and coastal areas.</li> <li>The inclusion of large trees as an assessment pathway determinant.</li> <li>Providing for the following alternative arrangements to include: <ul style="list-style-type: none"> <li>The ability to submit site-based information to supplement species habitat maps</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Requiring an 'avoid and minimisation statement' for basic applications is unnecessary and places additional burden on local government to provide guidance to applicants on meeting this requirement.</li> <li>An applicant is not required to avoid and minimise impacts from the removal of native vegetation on biodiversity values in the Basic Assessment Pathway, however they are still required to prepare a statement and may still need to avoid and minimise other impacts. This will create confusion for applicants and simple applications should be excluded from the requirement for an 'avoid and minimisation statement'.</li> <li>A definition of what constitutes an accredited native vegetation assessor is supported as this will remove ambiguity as is further detail of how and when a site assessment process should occur. An accredited native vegetation assessor should meet universally recognised criteria.</li> <li>The review fails to address issues associated with calculating, assessing and implementing offsets. The offset system requires simplification, particularly for simple applications which will now require an offset statement.</li> <li>The current method of calculating offsets is overly complex, particularly for applicants who want to undertake first party offsets. Without guidance from a qualified native vegetation assessor, it is difficult for an applicant to determine what on-ground works (i.e. revegetation, protection of remnant vegetation) are required to achieve a first-party offset. This places additional burden on local government to assist applicants to calculate their offsets and provide advice on how to achieve the offset. For simple applications, the offset system should also be simplified so that applicants can calculate and manage their own offsets without the need and cost of engaging a native vegetation assessor. Due to the complexity, it is also difficult for local government to assess the appropriateness of proposed offsets.</li> </ul>

<b>Amendments to Victorian Planning Provisions</b>		
<b>Planning Provision</b>	<b>Proposed Key Changes</b>	<b>Comment</b>
	<ul style="list-style-type: none"> <li>• Alternative specific offset arrangements when offsets for major strategic projects for complex sites cannot be secured</li> <li>• Accessing alternative offset arrangements for private native forest timber harvesting.</li> <li>• Requirement for an avoid and minimisation statement to be included as a requirement for all applications (this is not currently required for the low-risk pathway).</li> </ul>	<ul style="list-style-type: none"> <li>• There is a limited availability of third party offsets, particularly over the counter offsets, within Corangamite Shire. Primarily a rural area, landholders in our municipality often prefer to achieve first party offsets. The complexity of the system, the expense of meeting the security arrangements, and the excessive revegetation requirements make it difficult for applicants to achieve first party offsets, particularly for basic assessment applicants.</li> <li>• Crown land offsets must also be subject to the same credit register requirements and reporting. This also needs to be extended to roadsides to allow councils to undertake offsets in close proximity to removals.</li> <li>• Agree that third party offsets through the credit register are more straightforward for applicants and councils as they remove the requirement for ongoing monitoring. However, experience has been that they can be outrageously expensive, which is a significant deterrent for applicants to use this type of offset.</li> </ul>

<b>Changes Outside of the Planning Scheme</b>		
<b>Monitoring and Reporting</b>	<b>Proposed Key Changes</b>	<b>Comment</b>
	<p>Implement monitoring and reporting with local government and in consultation with other relevant stakeholders to improve monitoring and reporting on:</p> <ul style="list-style-type: none"> <li>• Permitted native vegetation clearing and offsets that are occurring.</li> <li>• Levels of known non-compliance with the regulations, including with management of offset agreements.</li> <li>• Gains in native vegetation that is occurring at offset sites.</li> </ul>	<ul style="list-style-type: none"> <li>• Council has concerns around the administrative burden that will be placed on local government from additional reporting. There is limited capacity for local government to undertake additional reporting. Local government has limited resources to capture and maintain this information and therefore this role should be completed by State Government and managed at a central location.</li> <li>• Consultation should involve the VFF, MAV, rural councils and representatives of the industries and enterprises likely to be affected.</li> </ul>
	<ul style="list-style-type: none"> <li>• Establish a native vegetation regulations advisory group to provide feedback and advice on the functioning of the regulations and opportunities for improvement.</li> </ul>	<ul style="list-style-type: none"> <li>• This is supported if it results in continued improvements to the system and can be efficiently accessed.</li> </ul>
	<ul style="list-style-type: none"> <li>• Undertake a native vegetation offset market review to identify opportunities to improve its operation.</li> </ul>	<ul style="list-style-type: none"> <li>• This is supported if it results in a more simplified approach to offsets, especially for types or locations with low offset availability. Council has experienced instances where offsets cannot be obtained through this process and therefore recommend that an alternative calculation should be available if the other offset criteria cannot be achieved (e.g. class and quality).</li> </ul>

Information and Guidance	Proposed Key Changes	Comment
	<ul style="list-style-type: none"> <li>• Provide clearer guidance on when to refuse an application to remove native vegetation.</li> <li>• Guidance to applicants for compiling a permit application.</li> <li>• Guidance to support strategic planning for native vegetation protection and management.</li> <li>• Development of an assessment handbook for responsible and referral authorities to guide assessment and decision making.</li> <li>• Guidance for exemptions including the purposes and principles of the exemptions and how the exemptions are intended to apply.</li> </ul>	<ul style="list-style-type: none"> <li>• Due to the complexity of the system, Council often receives poor quality permit applications particularly from applicants who want to remove only a small amount of vegetation. This has created a significant burden on local government to assist applicants through an already complex process.</li> <li>• The guidance and support for strategic planning will also assist statutory planning and applicants if the controls can be simplified to reduce complexity.</li> </ul>
Compliance and Enforcement	Proposed Key Changes	Comment
	<ul style="list-style-type: none"> <li>• DELWP will develop a compliance and enforcement strategy in collaboration with local government and the MAV. The compliance and enforcement strategy proposes to adopt a co-regulatory approach between agencies including local government.</li> </ul>	<ul style="list-style-type: none"> <li>• Many rural councils have little resources for enforcement, particularly compliance activities. While it is acknowledged that DELWP will identify and develop key guidance and support material to assist with the delivery of compliance and enforcement programs, these efforts may be of little value <u>without funding</u> and technical expertise being provided to councils to support the roles. Currently councils receive little support from DELWP in enforcement issues, even though it is the DELWP personnel who have the required skills and expertise in native vegetation.</li> <li>• Do not agree that DELWP should only assist councils with advice and resources to then go and complete enforcement. This will only increase the financial burden for local government resourcing. Enforcement should be undertaken by DELWP and not forced onto local government once breaches are identified.</li> <li>• Support expanded powers for DELWP officers to allow DELWP to undertake direct enforcement processes across Victoria. Do not support DELWP officers increasing workloads for local government by increasing the number of investigations or driving councils into enforcement action.</li> <li>• Consideration should be given to the environmental and economic benefits of having more DELWP regulator staff. Scarce resources might be better directed at weed management.</li> </ul>

<b>Native Vegetation Information Mapping (NVIM)</b>	<b>Proposed Key Changes</b>	<b>Comment</b>
	<ul style="list-style-type: none"> <li>Place greater emphasis on key areas of habitat for dispersed species in decision making and offset requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Council supports improvements to the native vegetation information system (NVIM) mapping, including the inclusion of more localised habitats.</li> <li>Further improvements to the functionality of the mapping is needed, particularly aerial imagery to allow applicants to utilise the mapping at a property scale for improved accuracy.</li> </ul>