



# IFFA Submission on a Victorian Government Review of Native Vegetation Planning Controls

8th March 2017

We welcome the proposed changes to the planning controls over removal of native vegetation and thank the Department of Environment, Land, Water and Planning for responding to community feedback. In particular, we are pleased that the changes will:

- Return to the three-step approach of avoid, minimise and offset (though we would prefer that it also apply to 'Basic' permit applications);
- Return to recognising the importance of endangered Ecological Vegetation Classes and large trees;
- Place greater weight on site-assessed information in decision making; and
- Increase monitoring and reporting on native vegetation losses and offsets.

We thank the Department of Environment, Land, Water and Planning for responding to our earlier submission on these matters.

Nevertheless, we would like to see the changes discussed in the rest of this submission.

## Inconsistencies

As discussed in our previous submission, we believe the Victoria Planning Provisions should recognise the value of native vegetation to humans in all the ways recognised under Goal 1 and Priority 1 of the draft biodiversity strategy, *'Protecting Victoria's Environment – Biodiversity 2036'*. We agree with that document's recognition of ecosystem services and the contribution to people's health, wellbeing and quality of life that arises from spending time with native vegetation and the associated landscapes, birds and other fauna. By contrast, the proposed planning provisions ignore these values, as reflected in Table 1 of the draft 'Native Vegetation Clearing Assessment Guidelines'.

If this discrepancy between the biodiversity strategy and the planning controls is not going to be corrected as part of the proposed amendment, we urge that it happen at the earliest subsequent opportunity.

We also have broader concerns about disconnections, discrepancies and oversights between the three currently overlapping state government reviews related to biodiversity, namely the reviews of the state-wide native vegetation planning controls, the biodiversity strategy and the *Flora and Fauna Guarantee Act 1988* ('FFG Act'). For example, an opportunity has been missed to correct discrepancies in the threatened species distribution maps used in the planning controls compared with FFG Act action statements. As another example, the reviews of planning controls and the FFG Act ignore the novel habitats to which many threatened species are having to adapt in the face of environmental changes such as climate change. One part of the Department of Environment, Land, Water and Planning promotes revegetation as a tool to help species relocate in response to climate change but the proposed planning controls do little to stop that revegetation being destroyed.

We would therefore like to see improved coordination between sections of the Department of Environment, Land, Water and Planning.

## Proposed Ordinance

### Application Requirements

One of the stated objectives of the review was to remove unnecessary duplication of content between the ordinance and the separate 'Assessment Guidelines' document. We think the proposed listing of application requirements in clauses 52.16-4 and 52.17-2 as well as in the 'Assessment Guidelines' amounts to unnecessary duplication and is undesirable. Permit applicants and others should only have to check through one list, not two that have different levels of detail but cover the same things. The incorporated document is the more appropriate place because of the level of detail involved.

We draw your attention to the seventh bullet point of clauses 52.16-4 and 52.17-2 and item 7 in Table 4 of the 'Assessment Guidelines', concerning prior clearing. By specifying only 'permitted' removal, destruction or lopping, this item allows illegal removal to be omitted from consideration. In addition, the words 'on the same property with the same ownership' can be interpreted as meaning that clearing by previous owners of a property can be ignored, but that is presumably not what is intended. We recommend taking the opportunity of the proposed amendment to change the wording to something unambiguous like 'Details of any other native vegetation removed, lopped or destroyed under permit or unlawfully in the five years prior to the application, anywhere on the property or on contiguous land in the same ownership'.

Two points further down in clauses 52.16-4 and 52.17-2, it would be desirable (if the lists of items are to be retained at all) to take the opportunity of the proposed review to clarify the phrase 'property vegetation plan' because most applicants do not know that they need to search in clause 72 to find its meaning. Without reference to clause 72, a wide range of documents could be construed as property vegetation plans. Better wording would be 'A copy of any property vegetation plan (as defined at clause 72) that applies to the site' or 'A copy of any property vegetation plan contained within an agreement made pursuant to section 69 of the *Conservation, Forests and Lands Act 1987* that applies to the site'. Similarly at clause 52.17-3.

The eighth application requirement is ‘An avoid and minimisation statement explaining why the native vegetation removal, destruction or lopping cannot be avoided and how impacts on biodiversity and other values of native vegetation have been minimised...’ The ‘Assessment Guidelines’ then exempt an applicant from this requirement if the ‘Basic’ pathway is followed. This makes the application requirements confusing and inconsistent, particularly as this appears to be a case of an incorporated document seeking to effectively overrule the ordinance.

The problem could be overcome by removing the lists from clauses 52.16-4 and 52.17-2 altogether and rewording item 8 in Table 4 of the ‘Assessment Guidelines’ to:

‘An avoid and minimisation statement that includes:

- ‘In the case of the ‘Intermediate’ and ‘Detailed’ pathways, why the impacts on ‘biodiversity’ values in Table 1 cannot be avoided and how they have been minimised, e.g. by choice of location or design;
- ‘In cases where there are impacts on ‘other values’ in Table 1, why they cannot be avoided and how they have been minimised, e.g. by choice of location or design;
- ‘A description of any strategic planning process to which the site has been subject that has minimised impacts on biodiversity or other values;
- ‘If relevant, a description of how the proposed use or development will be managed to minimise any offsite impacts on biodiversity.’

However, we disagree with the exemption of ‘Basic’ permit applications from the requirement to ‘avoid and minimise’ biodiversity impacts. We prefer that the first bullet point above be omitted and the second bullet point be extended to include biodiversity values.

## Decision Guidelines

The Decision Guidelines cause us the same concern as the Application Requirements in regard to unnecessary duplication between the ordinance and the ‘Assessment Guidelines’ document. Applicants and others should not have to cross-check between a shorter and longer version of the guidelines; The ordinance should simply refer to one, definitive list in the incorporated document.

## Exemptions

Similarly to the existing VPPs, the proposed heading to the table of exemptions in clauses 52.16 and 52.17 states that no permit is needed to remove, destroy or lop native vegetation that falls under the conditions in the table. This is not strictly correct if a permit is required under a relevant overlay, and it may mislead someone not well familiar with planning law. We would prefer wording such as ‘Unless required by an overlay in this planning scheme, no permit is required to...’.

We would like the exemption for ‘planted vegetation’ to be narrowed. As noted above, revegetation is becoming increasingly important as environmental change forces species out of their original habitats. There are numerous private landholders who have voluntarily undertaken well-designed revegetation on their land with site-indigenous species for conservation purposes, providing habitat values deserving the same protection as naturally occurring native

vegetation. Corridors that are being created, e.g. for climate change adaptation, need the security of planning scheme protection.

In addition, it is unclear whether the progeny and subsequent generations of plants in revegetation are protected under the VPPs or are subject to the 'Regrowth' exemptions.

There appears to be a fault in the exemption headed 'Weeds', in both the existing and proposed ordinance. A maximum of fifteen small native trees may be removed, destroyed or lopped under this exemption but there is no limit on larger native trees. We presume that the intent was to exclude all trees with trunk diameters of 20 cm and above from the exemption. In that case, the wording needs to change to something like 'This exemption does not apply to native trees with trunk diameters of 20 cm and above. The extent of other native vegetation that may be ...'. Note that the word 'maximum' is redundant in view of the additional phrase, 'must not exceed'.

## The Draft Assessment Guidelines

As noted above, we think it is a significant fault that the draft Assessment Guidelines document ignores Goal 1 and Priority 1 of the draft Biodiversity Strategy, as reflected in Table 1.

In the two bullet points at the top of the second column of page 6, Local Planning Policies and the Municipal Strategic Statement have been overlooked and should be added. Those overlooked tools become even more important as a result of the failure of the proposed state-wide planning controls to recognise values of native vegetation beyond those listed in Table 1. The importance of the Local and State Planning Policy Framework is recognised very briefly on page 4 and also at the bottom of page 13 of the 'Outcomes Report'.

The second paragraph of page 7 states that 'An application under Clause 52.17 must include a copy of any PVP that applies to the site'. It should say, 'An application under either clause 52.16 or clause 52.17 ...'.

The subsequent paragraph's first sentence should begin, 'Except where a planning overlay imposes stronger controls,', or words to that effect. There are enough problems already with applicants and their consultants focusing on the state-wide controls to the exclusion of overlays, without the Assessment Guidelines encouraging that approach.

On pages 8 and 9, we presume the reference to 'Biodiversity Interactive Map' will be replaced with a reference to 'Biodiversity Information Portal', as we understand that the latter will make the former obsolete by mid-2017.

The green rectangle on the same page presumes that no overlay will ever specify an offset for native vegetation other than a patch or scattered tree. We prefer the first sentence to say '...is not required under clauses 52.16 or 52.17...' and for the paragraph to end with 'In some cases, an overlay may separately impose requirements to compensate for vegetation loss'.

In regard to the discussion of NVIM on page 8, we urge that funding be provided to improve the reliability and ease of use of NVIM.

On page 9, the word 'dissolved' should be clarified as in 'dissolved, i.e. any area of overlap between circles representing scattered trees is only counted once', or similar wording. Most readers will not be familiar with the technical use of the word 'dissolved' in Geographic Information Systems.

On page 10 in the sentence following the heading, ‘Highly localised habitats...’, the use of the word ‘extent’ conflicts with standard technical use of that term in connection with threatened species. As defined under the IUCN Red List threat categories (which are used by DELWP), the extent of occupancy means the area of the smallest convex polygon enclosing all known occurrences of the species, which is evidently not what is intended in the ‘Assessment Guidelines’. It would be better to replace ‘are limited in extent’ with ‘occupy limited areas’, which matches the accepted meaning of ‘area of occupancy’. Similarly, two paragraphs down, replace ‘are less limited in extent’ with ‘occupy a larger total area’.

We note that context and connectivity have been modelled as more important than habitat condition for fauna species, and *vice versa* for flora. These are simplistic assumptions and wrong for many species; e.g. for most threatened waterbirds. We hope that this flaw in the modelling will be removed in due course.

The mathematical formulae in Section 3.2.3 are incorrect and need to be rectified. The formulae given are:

General biodiversity score = habitat hectares × strategic biodiversity value score; and

Specific biodiversity score = habitat hectares × habitat importance score,

followed by a footnote saying ‘The landscape scores (strategic biodiversity value and habitat importance) are weighted to have half the influence of site-based information (habitat hectares) within the formula to calculate the biodiversity score’. Mathematically, it is not possible for the footnote to be true if the formulae are correct, so we checked with departmental staff. It was then revealed that in the formulae above, the terms ‘strategic biodiversity value score’ (or SBV) and ‘habitat importance score’ (HIS) are actually not the scores themselves but linear transformations of the scores. We were given the linear transformations and could see that the true formulae are actually:

General biodiversity score = habitat hectares × ( 1 + SBV ) / 2; and

Specific biodiversity score = habitat hectares × ( 1 + HIS ) / 2.

With this correction, it becomes clear to the reader that the general and specific biodiversity scores are not proportional to SBV or HIS (as they have been and as wrongly indicated in the draft Assessment Guidelines). They are actually the average of the habitat hectares and the product of habitat hectares × [ SBV or HIS ].

We note also that the formula for specific biodiversity score is not used whenever HIS is below an (undisclosed) threshold.

We strongly urge that the misrepresentations of the formulae in the draft document be corrected.

We are satisfied that the new formula for general biodiversity score represents a desirable shift in policy. We cannot tell whether the new formula for specific biodiversity score is justified because it depends on the undisclosed threshold value of HIS. We urge that details, basis and testing of the formulae be disclosed. See also the section below headed ‘Transparency’.

Section 4.1 again overlooks that clauses 52.16 and 52.17 are not the only planning provisions that can require a permit for removal, lopping or destruction of native vegetation. Because one of the stated aims of the review was to remove unnecessary duplication between the planning ordinance and the ‘Assessment Guidelines’, the unwieldy first sentence and footnote 11 of page 12 would be better deleted and the subsequent sentence should be revised to say, ‘There are

three assessment pathways for assessing an application<sup>12</sup> under clauses 52.16 or 52.17 to remove native vegetation:’.

In Table 3, ‘<’ and ‘≥’ should be spelled out. Too many people mix up the meanings of these symbols.

In section 4.2, we believe that the requirement for on-site assessment (as per Table 5) should be extended to the Intermediate Assessment Pathway. We also believe that a responsible authority should be able to require an on-site assessment whenever there is evidence of material errors in information provided with an application.

Section 4.3 says clause 66 requires referral ‘To remove, destroy or lop native vegetation if the extent to be cleared is 0.5 hectares or more. This extent includes the extent of other native vegetation that was permitted to be removed on the same property with the same ownership, in the five year period before an application to remove native vegetation is lodged’. However, that is not what the proposed clause 66 literally states and we have concerns about a bullet point in an incorporated document that appears to overrule or reinterpret planning ordinance. If the intention is to take into account contiguous ownership and a five-year period (which we would support), that should be stated in the planning scheme (i.e. at clause 66), not an incorporated document. If that is to happen, the sloppy wording of ‘the same property with the same ownership’ should be fixed, as discussed above in the section headed ‘Proposed Ordinance’.

In Section 4.4, we would like to see more detail given about assessing whether adequate effort has been made to avoid and minimise vegetation loss. A model for this is provided by the 2006 endorsed policy document, ‘Guide for Assessment of Referred Planning Permit Applications’. That kind of guidance would provide more certainty to all parties concerned. The guidance might be given by way of a series of questions that have to be answered in each permit application.

As discussed above, we disagree that ‘Basic’ permit applications should be exempt from the requirement to ‘avoid and minimise’ biodiversity impacts.

In Table 4 on page 15, we would like item 5 to include the health and species identity of each large tree, not just the circumference.

On page 23 in the section on ‘Vicinity’, we wish to reiterate a concern we expressed in our submission on the discussion paper. We remain of the view that there should be a change to favour offsets as close as practicable to the location of the vegetation removal, within the constraints of the other offset requirements. It should not be open to a permit holder to minimise their costs by buying cheap offsets far away, in disregard of the impacts of the vegetation loss on the local community and environment.

On page 25, the bullet point about ‘perimeter to area ratio’ is mathematically invalid. Firstly, the description in words is actually the ‘area to perimeter ratio’ (as it should be), not the other way around, i.e. the numerator and denominator have been transposed. Secondly, the parameter ‘area to perimeter ratio’ has units of length, so the target value should be expressed in metres, e.g. 20 metres, not 1:20. (This is not a mathematical nicety; it is a reflection of the important fact that the ratio scales proportionally to the linear dimensions of the revegetation area, e.g. if you double the lineal dimensions of the area without changing the shape, the area to perimeter ratio doubles.) Thirdly, it should be expressed as a minimum, not a specific value that must be met. Fourthly, it conflicts with the preceding specification (average width of  $\geq 20$  m), since it is not mathematically possible for an area of at least 1 ha and a 20 m average width to have an area to perimeter ratio as high as 20 m. (For example, any rectangle with width 20 m and length  $L$  has an area to perimeter ratio of  $0.5 \times (L \times 20 \text{ m}) \div (L + 20 \text{ m})$ . Setting this to the target of 20 m

yields  $L = -40$  m, which is obviously impossible.) Finally, while edge to area ratios are very important for habitat viability and management, a minimum width requirement adequately deals with that in a simple way while simultaneously helping to provide adequate cover for fauna along the centreline of the revegetation.

On page 27, we are very dissatisfied with the arrangements in cases where threatened species are found on a site but the presence has not been predicted by a computer model, either because no modelling has been done or the modelling is flawed. These are not uncommon situations. We believe that if a threatened species is known to be present and at risk from a proposed use or development, it should be mandatory that the presence be taken into account, not that this information ‘cannot be used to impose additional requirements on applicants’. In other words, a missing or demonstrably faulty prediction should not overrule a known fact. Why should threatened species suffer as a consequence of inaccurate or missing modelling, which is all too common?

## Transparency

We are pleased to see transparency being recognised in the ‘Outcomes Report’.

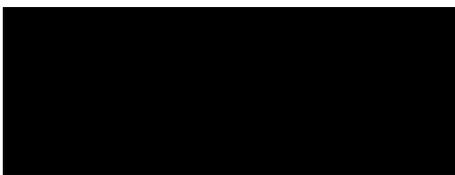
We look forward to the release of the document, ‘Native vegetation clearing – biodiversity information products’ mentioned on page 15 of that report. As discussed in our submission on the discussion paper, we urge swift disclosure of the currently secret aspects of the methods used to create the maps referenced in the ‘Assessment Guidelines’. We will be particularly interested in the explanation of the Strategic Biodiversity Score mapping, given the anomalies we demonstrated in our earlier submission.

## Compliance, Enforcement and Monitoring

We believe that proper monitoring of offsets requires that all offsets should be registered through the Credit Register. That includes on-site offsets, not just third party offsets (as proposed). This would improve transparency and the ability to assess how well the permit system is achieving its aims.

For cases involving significant clearance of native vegetation and biodiversity values, we believe the *Planning and Environment Act 1987* does not adequately provide tools and penalties to act as a deterrent. We urge the state government to review those tools and penalties. In addition, the current review of the *Flora and Fauna Guarantee Act 1988* should ensure that significant breaches can be enforced by the state government and its agencies on both public and private land.

Yours sincerely,



PRESIDENT