Smart Planning Program
Department of Environment, Land, Water and Planning
1 Spring Street
MELBOURNE VIC 3000
Sent via email: smart.planning@delwp.vic.gov.au

Dear Sir/Madam,

REFORMING THE VICTORIAN PLANNING PROVISIONS

Thank you for the opportunity to comment on the Smart Planning Program Discussion Paper about reforming the Victorian Planning Provisions. We are pleased to provide comments from our perspective as the public land manager of the Public Use Zone (PUZ4-Transport) and as fourth largest landowner in the State.

Our perspective is unique. VicTrack owns the majority of Victoria’s railway land, assets and infrastructure. We hold land for current and future transport requirements including the metropolitan, regional passenger and freight and the national freight line operations. The rail corridor also accommodates an array of government communications, electricity and transmission lines, water and sewer services, and pipelines carrying flammable products including distribution and transmission pipelines.

While our function and responsibilities are set out in the Transport Integration Act 2010 we have daily interactions with the Victorian Planning Provisions in the following ways especially through:

- Responding to 500+ notices per year that we receive under s52 of the Planning and Environment Act 1987, for development proposed on land that abuts the rail corridor throughout Victoria; and

- Preparing planning scheme amendments and permit applications for various works within the Public Use Zone (PUZ4-Transport) ranging from small urban renewal projects including station upgrades to railway works and improvements;

We work closely with the transport agencies namely Transport for Victoria, VicRoads, Metro Trains Melbourne (MTM), V/Line, Yarra Trams and the Level Crossing Removal Authority and Melbourne Metro Rail Authority.

In consultation with Transport for Victoria, VicTrack is finalising the preparation of guidelines for development adjacent to the rail corridor, which seek to protect railway land by providing guidance on an appropriate interface between new development and the rail corridor. It sets out the key issues and recommended approaches that need to be considered when planning development next to railway land including the required distances from pipelines and high voltage overhead powerlines.
We would be happy to discuss these with you and expand on the comments and recommendations made below.

**VicTrack recommendations**

We support the proposed Interface Provisions and trust that it will include guidance on the required setbacks from pipeline and high voltage overhead powerlines that are set out in the Pipelines Act 2005 and Electrical Safety Victoria Regulations respectively. Please also consider using VicTrack's guidance on how to develop adjacent to the rail corridor.

The review of the Victorian Planning Provisions is an excellent opportunity to make the following additional changes:

1) In the relevant Zones, remove the floor area condition on ‘Railway Station’ use.

2) Create a consistent, standard definition of railway activities that are exempt and consolidate into one easy to find location (such as the head provisions) instead of being in schedules.

3) Amend Planning Practice Note No. 2 to ensure that public land is not rezoned “without the written consent” of the public land manager.

4) Exempt State urban renewal projects including VicTrack’s Station Precinct Development Program from the requirements of Clause 52.01, if the equivalent provision of public open space is being provided on State-owned land.

5) Consider whether VicTrack is a suitable candidate to become a recommending or determining authority.

Encl: Attachment 1 - VicTrack’s comments on possible reforms of specific provisions
Attachment 2 - VicTrack letter to DELWP
## Attachment 1 – VicTrack’s response to the Discussion Paper

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<tr>
<th>ID. No.</th>
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|        | Proposal 1.1 | Proposed interface provisions | Provide interface provisions relating to the required clearances set out in:  
- the Pipelines Act 2005; and  
- Electrical Safety Victoria regulations for high voltage overhead powerlines. | We support the creation of ‘Interface provisions’ where the provisions set out requirements for planning decisions that may affect other legislative processes and instruments. This is of particular relevance to the rail corridor and interfacing legislation such as Electrical Safety Victoria Regulations for overhead high voltage cables or Australian Standards for train derailment or the Pipelines Act.  
VicTrack provided input into the Major Hazards Facilities Advisory Committee on the matter. A large network of pipelines carrying flammable products are constructed within VicTrack land and particularly in the operational rail corridors. These pipelines interface with both metropolitan, regional passenger and freight lines and the interstate freight lines and can be located above ground and along the rail corridors or placed underground to a minimum depth of 1200mm. They can also be located in open culverts crossing under the rail lines.  
As land is rezoned to accommodate residential developments, there are many instances of large scale developments that have been developed or are in the planning phase for development next to operational railway lines.  
The major issue arising involves the impact on the adjoining development in the case of a train derailment. Should, as a consequence of the derailment the pipeline be punctured causing the product to ignite, the impacts of the scale of the flashpoint must be considered as part of the overall site planning proposal.  
VicTrack is aware of a recent example where a large scale development proposed to introduce a child care facility on the property boundary line directly abutting the operational freight line where the Somerton pipeline is located. This was later overturned by the Tribunal however guidance on the matter could have avoided such a proposal.  
While it is recognised that the pipeline has legislative protection that requires a 3 meter buffer zone, in the event of an incident that causes the pipeline to ignite and depending on the pressure at which the pipeline is operating, the 3 meter buffer can potentially be inadequate insofar as the protection of the residents is concerned.  
Furthermore, VicTrack spends substantial time in providing guidance to developers on the appropriate setbacks and clearances from 22kv overhead cables that are present along the rail corridor. Simplifying the Electrical Safety Victoria regulations and incorporating them into the planning stage of development would be of great benefit. |
|        | Proposal 2.3 | Expanded Policy Themes | Provide design guidance on how development should interface with the rail corridor.  
Either as an expanded policy to Clause 18.01-2 or set out in the Interface Provisions. | Clause 18.01-2 provides a range of strategies to support the State transport system. A pertinent strategy for VicTrack, as public land manager of railway land is to “plan or regulate new uses or development of land near an existing or proposed transport route to avoid detriment to, and where possible enhance the service, safety and amenity desirable for that transport route in the short and long terms”. VicTrack regularly applies this clause as the basis for responding to over 500 notices we receive per year under s52 of the Planning and Environment Act 1987.  
Land adjacent the rail corridor is prime land to accommodate higher density development, yet there is no State-wide consistent guidance on how to appropriately interface with the rail corridor to ensure its future protection and the safe.  
Too often applicants propose developments with openable windows and balconies on the common boundary, relying on railway land for access to daylight, ventilation and fire protection. |
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<tr>
<td>new</td>
<td>n/a</td>
<td>'Railway Station' as a use class</td>
<td>In the relevant Zones, remove the floor area condition on Railway Station.</td>
<td>Railway land and infrastructure is a high risk environment. It is never static and carries an intergenerational responsibility to provide for the transport requirements of the future. With elevated tracks increasingly used as a design solution to provide additional tracks, there should be more guidance on what is an appropriate interface with railway land. The reforms could include an expanded detail at Clause 18.01-2 or advice could be set out in the Interface Provisions on how development should interface with the rail corridor. Within the Table of Uses of the majority of zones, Railway Station is a section 1 use (as-of-right) conditional upon the total leasable floor area for selling of food, drink and other convenience goods and services not exceeding 50 square metres (sq.m). There is no strategic reason to retain the cap on floor area.</td>
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<tr>
<td>12</td>
<td>40</td>
<td>All overlays exemptions</td>
<td>Create a consistent, standard definition of railway activities that are exempt; and Consolidate into one easy to find location (such as the head provisions) instead of being in schedules.</td>
<td>As fourth largest landowner in Victoria, various overlays apply to railway land through intention or historical error, triggering the need for approval for railway works. On this basis, exemptions for railway activities are very important to ensure that critical transport projects are delivered without delay. Exemptions for railway activities exist but are set out in multiple locations and vary from scheme to scheme. We acknowledge that the Department of Environment, Land, Water and Planning is reviewing the railway exemptions allowed under Clause 52.17-7 for native vegetation. We have registered our concerns with the proposed Procedure and wish to strike a balanced approach to managing our native vegetation while enabling a safe and efficient operational railway. For your background, we include our correspondence on the matter (Attachment 2).</td>
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<td>48</td>
<td>N/a</td>
<td>Practice Notes</td>
<td>Amend Planning Practice Note No. 2 to say &quot;without the written consent&quot; of the public land manager.</td>
<td>VicTrack regularly objects to planning scheme amendments initiated by Council’s that seek to rezone VicTrack land to Public Park and Recreation Zone without our written consent. The Planning Panel findings of Melbourne Amendment C190 confirmed that it should not do this without VicTrack’s written consent. The Planning Practice Note on Public Use Zones currently states that any rezoning of public land requires consultation with the public land manager. It would be helpful if the Planning Practice Note could be amended to say &quot;without the written consent&quot; of the public land manager.</td>
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<td>new</td>
<td>52.01</td>
<td>Public open space contribution</td>
<td>Exempt State urban renewal projects including VicTrack’s Station Precinct Development Program from the requirements of Clause 52.01 if the equivalent provision is being provided on State-owned land.</td>
<td>Clause 52.01 creates ongoing issues for State urban renewal projects and in particular VicTrack’s Station Precinct Development Program. VicTrack’s program of delivering station precinct improvements is funded through development of underutilised land. The works more often involves creating a station forecourt and a new urban public realm, including DDA compliance. Creating a space that is safe, attractive and accessible at all times, to all of the community, not just commuters. Our issues relate to: - the potential duplication of outcomes when the State delivers projects on State owned land (by this we mean the Council has the ability to enjoy the new form of open space and take cash for other open space); - issues around ongoing maintenance; - the Council’s ability to accept open space that is not vested with Council; - the fact that VicTrack is not empowered to transfer (or gift) land; and - the land that is within our control usually serves a dual purpose in that it is also required to maintain secure and permanent access to the Station. Jewell Station Upgrade is case in point. The project proposes a $2.1million investment in the creation of new public open space. It will create a 1220sq.m new station forecourt with a small park, public art piece and other amenities. This offer is significantly more than the 6.3% contribution required in the Moreland Planning Scheme which equated to $399,000 in cash or 113sq.m of land. Yet the Council requests the 6.3% contribution on top of what is going to be provided. To ensure that the State’s investment in Station Precincts is optimised we would like to discuss with you the opportunity to exempt projects delivered on State-owned land from the requirements of Clause 52.01.</td>
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<td>42</td>
<td>66</td>
<td>Referral and Notice Provisions</td>
<td>Consider whether VicTrack is a suitable candidate to become a recommending or determining authority.</td>
<td>A key purpose of the referral process is to give authorities whose interests may be affected by an application the opportunity to give advice back to the Responsible Authority about whether a permit should be granted. Applications are typically referred to: - Obtain particular expertise in the assessment of the application. - Ensure standards or defined criteria are met. - Protect public assets. - Protect land acquired for a public purpose. - Protect public safety. Based on the criteria above, VicTrack is a suitable candidate to become a recommending or determining authority. VicTrack’s current practice is to work closely with Transport for Victoria and to feed into its responses to applications triggered under Clause 52.36. For the applications that do not meet the threshold set out in Clause 52.36, VicTrack responds under ss52 of the Planning and Environment Act 1987. This means it’s at Council’s discretion as to whether it adopts VicTrack’s suggested conditions. Not all instances are we successful and as a consequence the future capacity of the rail corridor can be jeopardised. We note that the reforms will review the informal referrals with the aim of limiting their use. We request any removal of informal notice to VicTrack is done so in consultation with VicTrack.</td>
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Re: Draft Railways Exemption, Procedure for the Removal of Native Vegetation

Thank you for the opportunity to provide comment on the draft procedure for the removal of native vegetation (the Procedure) which is proposed to replace the existing railways exemption (Existing MOU) in July 2018. We believe the Procedure is not ready for publication and additional work is required to ensure all parties impacted by the changes are suitably informed and endorse the new approach to management and consultation when implementing the Procedure.

Our specific comments on the Procedure can be found in Attachment 1, with highlights noted as follows:

- The Procedure allows for exemptions for Maintenance and Construction type activates. While the processes under the former appears to be reasonable, there is additional administrative burden required for some types of Construction activities that will add time and delays to critical transport safety projects, at what appears to be no additional value to the environment.

- I am informed a number of items discussed during consultative meetings between transport and DELWP, have now been excluded from the Procedure which may have added benefit to the understanding of definitions and processes within the Procedure.

- There are substantial errors and incorrect references throughout the Procedure that should be addressed.

The Department appears to be progressing with the finalisation of the Procedure prematurely and we therefore welcome the opportunity to comment on a further Procedure following consideration of our comments. This will ensure there is a balanced approach for managing our native vegetation while enabling a safe and efficient operational railway.
ACCESS TO RAILWAYS EXEMPTION

Any rail manager seeking access to the Road safety exemption included in relevant clauses of local planning schemes in Victoria must obtain written agreement from the Secretary of DELWP. If granted, the written agreement for assessing the exemption under Clauses 52.16 and 52.17 will require compliance with this procedure. Written agreement for assessing the exemption under Clauses 42.01, 42.02, 42.03, 44.01, 44.02 will require the road manager to notify the responsible authority before beginning construction works in those environmental areas.

COMMENCEMENT

This Railways exemption procedure for the removal of native vegetation takes effect after planning scheme amendment VC 136 is incorporated in the Victoria planning provisions and all local planning schemes. It replaces all other approaches used to access the Railways exemption within the Victoria Planning Provisions.
1 Introduction ................................................. 2
  1.1 Legislative framework .................................. 2
  1.2 Procedure purpose ..................................... 3
  1.3 Monitoring Evaluation Reporting ........................ 3
  1.4 Compliance ............................................ 3
  1.5 Transitional arrangements ............................. 3
2 The procedure requirements .................................. 4
  2.1 Maintenance ............................................ 4
  2.2 Construction projects .................................. 5
Appendix 1 – Quick Reference .................................... 9
Appendix 2 – Exempt Project Endorsement Form ................... 10
Glossary ..................................................... 11

1.2 Procedure purpose

This procedure outlines the requirements that rail managers must comply with if the Secretary to DELWP provides written agreement for them to access the Railways exemption under Clauses 52.16 and 52.17 of local planning schemes. This procedure replaces all other approaches (e.g. Railways MOUs) between the Secretary to DELWP and the rail manager.

If the native vegetation removal is proposed under any other exemptions it must comply with any specifications of that other exemption, which includes keeping the removal of native vegetation to the minimum extent necessary.

This procedure only applies to railways under the direct management of the rail manager. It exempts the requirement for a planning permit to remove native vegetation when maintaining or upgrading construction on existing railways and railway access roads as defined in this procedure.

This ensures the native vegetation removal regulations objective of 'no net loss' is achieved by requiring:

- native vegetation removed for maintenance as defined in this procedure is exempt from the requirement for a planning permit to remove native vegetation, and does not require native vegetation offsets
- native vegetation removed for construction as defined in this procedure is exempt from the requirement for a planning permit, but impacts must be assessed and offset in accordance with the Guidelines.

Native vegetation removal for purposes not defined in this procedure must apply for a planning permit or other relevant approval process as applicable.

1.3 Monitoring Evaluation Reporting

This procedure will be published on the DELWP website together with a list of rail managers that the Secretary to DELWP has provided written agreement to.

DELPWP will prepare an annual report on the native vegetation removal for construction under this procedure.

DELPWP will review this procedure one year after its commencement, and periodically thereafter. As required this procedure and the written agreement from the Secretary to DELWP will be amended.

1.4 Compliance

The rail manager is responsible for complying with this procedure. Where written agreement has been provided by the Secretary.

DELPWP is responsible for monitoring compliance, and reviewing and endorsing construction projects.

If a dispute arises concerning the implementation of this procedure, the rail manager and DELWP will attempt to resolve the matter at an operational level. Disputes which cannot be resolved at an operational level must be escalated to senior representatives from each organisation for resolution.

Breaches of this procedure, including a failure to provide annual offset evidence, by the rail manager may lead to the withdrawal, suspension or variation of the written agreement to access the Railways exemption.

Unauthorised removal of native vegetation will be addressed as provided under the Planning and Environment Act 1987.

1.5 Transitional arrangements

Rail managers that have previously written agreement from the Secretary to DELWP to access the Railways exemption via the CDS-Que approach to the planning permit exemption (under the Victoria Planning Provisions) to remove, identify or take native vegetation to maintain the safety and efficiency function of roads and railways, can apply that approach until 21 June 2016, when new written agreement is given.
with, or reported to DELWP. Native vegetation offsets are not required.

2.1.2 Best practice

Minimisation

Rail managers planning large maintenance programs involving the removal of native vegetation along long lengths of railway, or through known areas of significant biodiversity should be reviewed to potential impact to biodiversity values that can be

Rail managers should use internal resources and expertise including DELWP biodiversity information such as Victoria’s Biodiversity Atlas records and species maps. DELWP regional staff may be able to assist as needed. Identified biodiversity values should be considered and impacts avoided, minimised or mitigated when possible. This assessment should include potential impacts to matters listed under the FFG Act and EPBC Act.

2.2 Construction projects

This section describes the requirements if the activity is determined to be a Biodiversity project. Construction projects to maintain the safe and efficient function of an existing railway, or railway access roads may require the removal of native vegetation. These projects can have light time frames and the administrative process of obtaining a planning permit delays implementation. Construction project

This procedure only applies to single construction projects that remove less than 0.5 hectares of native vegetation along an existing railway. Construction work that will remove 0.5 hectares or more native vegetation requires a planning permit and are not covered by the Railways exemption or this procedure.

2.2.1 Requirements

Understand the biodiversity values of native vegetation to be removed
Native vegetation removal must be identified in accordance with the Guidelines and mapped in the online Native Vegetation Information Management Native vegetation removal tool (NV removal tool).

The extent of native vegetation removal includes the considered extent of any patch of native vegetation and any associated trees, considering past removal from previous project stages, and assumed loss of native vegetation as detailed in the Guidelines, and listed below:

- variable access and impacts of construction activities
- need for ongoing access
- changes to hydrology
- compaction and excavation
- impacts to tree protection zones in accordance with the Australian standard 4920:2009 Protection of trees on development sites (NSW 4920:2009). If more than 10% of a TPZ is impacted, an arborist is required to determine whether the impact will have a significant impact on the survival of the tree.

The NV removal tool includes several map layers that show biodiversity values that may be impacted. These include:

- biodiversity
- species
- biodiversity value
- ecological vegetation class
- wetlands
- species habitat (represented by location 3 in the location map when less than 0.5 hectares of native vegetation is to be removed).

The NV removal tool determines the assessment pathway for the proposed (Basic, Intermediate, Detailed). Based on the extent of native vegetation removal and its location in the landscape in accordance with section 6 of the Guidelines as shown in the Table 1 below. The pathway indicates potential risk to biodiversity based on the biodiversity values that can be affected. Other DELWP costs including NativeRIP can be used to view species information.

The NV removal tool will generate a report and a dataset of the area of native vegetation to be removed.

- statement of how impacts have been avoided or minimised.
- if there is project flexibility considering context sensitive design

DELWP consultation may help:
- verify the extent of native vegetation removal
- identify opportunities to avoid and minimise impacts on biodiversity values
- identify required offsets
- conduct mitigation measures for construction
- identify other legislative requirements

If effective, early consultation will ensure timely and safe vegetation removal, as the project is formally submitted to DELWP. Early consultation can also ensure any offset availability issues can be identified and solutions investigated.

Local design and prepare required information
Once the project design is finalised, the extent of native vegetation to be removed is mapped in the NV removal tool, and the proposal is in the Basic or Intermediate Assessment Pathway this tool will produce a NV report that indicates most of the information needed for DELWP to endorse the proposal, including biodiversity information and offset requirements. A habitat assessment can be done to replace impacted condition score and mapped ecological vegetation class.

Proposes a DETAILED ASSESSMENT PATHWAY

The NV removal tool or another GIS system, DELWP will provide a NV report that contains the offset requirements using modified condition scores, a habitat assessment is not required. An Example Project Assessment Form included in Appendix 2 (with required attachments) must be completed. The following information is required:

- impact details
- toposhographical and land information
- recent photographs of native vegetation proposed for removal
- avoid and minimise statement
- NV report detailing impacts on biodiversity and offset requirements to be secured
- offset statement,

The offset statement must demonstrate that a compliant offset can be secured and may include:
- an identified offset on the Native vegetation credit register, or
- a property identified to meet the offset requirements, with a landowner willing to secure it as an offset, in this case the Native vegetation offset report must be attached.

Project endorsement
The rail manager must seek endorsement from DELWP confirming the native vegetation removal is compliant and covered by this procedure. If the Example Project Assessment Form is incomplete or missing attachments, DELWP will request further information. Once all information has been supplied DELWP will provide a written response within 10 working days. If a response from DELWP is not received within the time frame, the rail manager can consider the project endorsed and proceed with the works.

DELWP’s written response will be in the form of a letter and:
- confirm that the project meets the requirements of this procedure;
- request further information, if;
- state the project does not meet the requirements of this procedure and that a planning permit is required;
- may include conditions for mitigating measures to be put in place before the work commences to protect any linked vegetation that may be at risk.

When endorsed, DELWP will record the extent of native vegetation removal.

Offset
Native vegetation removed for construction projects is exempt from the requirement for a planning permit, but impacts from the removal of native vegetation must be offset in accordance with the Guidelines, with the following exception:
- offsets are not required to be secured prior to native vegetation removal, although this is still an option
- avoidance of the second offsets (allocated credit) extract or first party offset agreement) for all the
Appendix 1 – Quick Reference

Quick reference – Does this procedure apply?

1. Will native vegetation be removed?
   - Yes – Proceed to Question 2
   - No – Do not apply this procedure.

2. Is the native vegetation removal exempt (other than the Railways exemption), or has it been re-established in an area that was previously cleared and offset?
   - Yes – Apply avoid and minimise principle, and comply with relevant exemption.
   - No – Proceed to Question 3

3. Is the native vegetation removal considered maintenance?
   - Yes – Apply maintenance requirements.
   - No – Proceed to Question 4

4. Is the extent of native vegetation less than 3.5 hectares?
   - Yes – Apply construction requirements of this procedure.
   - No – Apply for a planning permit or other approval to remove native vegetation.

Process guide

**Maintenance requirements**
- Early in development of maintenance regime
- Prior to native vegetation removal
- As part of internal processes

**Construction requirements**
- Early in project planning
- Early in project planning and as soon as potential impacts are understood
- Once project’s final design is known
- Once project’s final design is known
- Prior to native vegetation removal
- Prior to September 30

**Timing**
- Early in development of maintenance regime
- Prior to native vegetation removal
- As part of internal processes

**Railways exemption – Procedure for the removal of native vegetation**

Biodiversity value – Values of native vegetation considered in the Guidelines that relate to biodiversity including extent of native vegetation, large trees, native vegetation condition, EVC, sensitive wetlands and coastal areas, strategic biodiversity value, and habitat for rare or threatened species.

Construction project – Any railway project where the extent of native vegetation removed is less than 3.5 hectares.

Existing railway – A railway track that is currently capable of being used by rolling stock.

Extent of native vegetation - The area of land covered by a patch and/or a scattered tree, measured in hectares.

Footprint – The surface area of a railway track or rail infrastructure, including the area required to maintain it in its current state of condition.

Habitat hectares assessment – An assessment of native vegetation to determine its condition, extent (in hectares), Ecological Vegetation Class (EVC) and bioregional conservation status. The assessment must be completed by an accredited native vegetation assessor following methodology described in the Vegetation Quality Assessor Handbook, Version 1.3 (or its successor) and updated in the Assessor’s handbook.

Large tree – A native canopy tree with a Diameter at Breasted Height (DBH) greater than or equal to the large tree benchmark for the relevant bioregional EVC. A large tree can be either a large isolated tree or a large tree contained within a patch.

Native vegetation – Native vegetation is defined in Clause 72 of the Victorian Planning Provisions and all local planning schemes as ‘plants that are indigenous to Victoria, including trees, shrubs, herbs, and grasses’.

No net loss – An outcome where the gain in biodiversity value (the offset) is equivalent to the loss in biodiversity value from the removal of native vegetation.

Patch – A patch of native vegetation is:
- An area of vegetation where at least 25 per cent of the total perennial understory stem cover is native, or
- Any area with three or more native canopy trees where the drip line of each tree touches the drip line of at least one other tree, forming a continuous canopy, or
- Any mapped wetland included in the Current wetlands map available in DELWP systems and tools.

Rail infrastructure – A facility that is used to operate a railway as defined in the Rail Management Act 1996.

Railway exemption – Procedure for the removal of native vegetation

**Commentary:**

1. [Page 10] To ensure the safe and efficient functioning of the rail network, this exemption is limited to certain classes of native vegetation. If this exemption is not applicable, the rail authority must undertake an environmental assessment for the railway project.

2. [Page 11]巴 下列部门/单位的书面批准，我们不能接受任何其他形式的手写或口头批准。