Review of the
Native Vegetation Clearing Regulations

April/May 2016

Submission by [Redacted]
Introduction

Thank you for the opportunity to comment on the consultation paper 'Review of the Native Vegetation Clearing Regulations'. This submission was prepared by [Name]. I am currently the Biodiversity Officer with [Council] and work with the Clearing Regulations on an almost daily basis. Due to the timeframes from release of the Discussion Paper to submission deadline, this submission has not been considered by Council and may therefore include comments that do not reflect Council's views in either substance or nuance.

Native vegetation outside the reserve system faces numerous challenges from a lack of appreciation of its numerous contributions to productive landscapes through, in many, places lack of visibility and a deep seated belief that small patches and individual trees are not important as "there's lots more out there". More recently, climatic and market conditions have led to increasing conversion of grazing to cropping land with significant implications for remaining habitats and native vegetation components such as scattered trees and ground flora. A co-ordinated approach to landscape and vegetation planning is urgently required to facilitate climate adaptation in agriculture while achieving meaningful vegetation outcomes.

I am concerned that the Native Vegetation Clearing Regulations have changed considerably in recent years with significant implications for how land is managed and community perceptions around what is and isn't acceptable in relation to native vegetation.

I look forward to remaining involved in the review and assisting in implementation and ongoing review processes.
General comments

Basing the review on characteristics of a good regulatory system is to be commended. Generally, the proposed improvements in the six key themes are supported and it is expected will result in considerable improvement to the regulations. and awaits more detail of the implementation strategy.

Whilst it was been stressed that exemptions were beyond the scope of the current review, it is imperative that consideration of the relevant exemptions, including those under Clause 52.48 Bushfire Exemptions is undertaken alongside this review of the Native Vegetation Clearing Regulations.

I am keen to remain engaged with the review process including implementation strategies, guidance documents, and an effective enforcement and compliance strategy. Considerations of robust decision making around local biodiversity and how this will be adequately defended when challenged is high on my agenda, while a review of the relevant exemptions is also of critical importance to resource-constrained Council’s such as that in which I operate.
Response to the Key Themes identified in the Review

1. Native vegetation clearing policy

It is vital that the guidance material developed be included in one document and that the document be an incorporated document under Cl. 52.17 of the Victorian Planning Provisions. State Government assistance will be required to develop and adopt local overlays that ensure local biodiversity is prioritised and protected.

2. Permit process and decision making

Protection of large and/or hollow trees is critically important for protection of Victoria’s biodiversity. Proposed improvement 15 goes some way to addressing this, but additional improvements are required.

3. Biodiversity information tools

Improvements to the biodiversity information tools used in decision-making and offsetting are urgently required. The tools must clearly assist (not hinder as is arguably the current situation) in understanding what is significant biodiversity, what risks apply to that biodiversity, and how decision-making relating to native vegetation removal proposals is to be made and to be defended:

- The tools need to be based upon the best information available – currently, significant (and very knowledgeable) groups within our community and within Local Government know that the VBA is plagued by gross inaccuracies and is so slow to incorporate data that they refuse to submit data to the VBA. This severely compromises the quality of the information within the VBA and results in models that are not based on the best information and so are not sufficiently accurate.
- A repeatable and documented process must be established as a result of this review which enables and requires DELWP to officially capture the situations where information in the tools is shown to be inaccurate and to provide a timely written response to Responsible Authorities documenting that the specific information in question is to be ignored (false positives) or utilised (false negatives).
4. Offset delivery

Offsetting beyond the municipality in which losses are generated poses particular problems for regional LGAs where a s.173 Agreement is requested as the security mechanism. The long-term resourcing of monitoring and ensuring compliance with s.173 security mechanisms has the potential to be a significant burden on the host LGA with limited or no benefit perceived by the ratepayers.

5. Exemptions

Planning Schemes are public documents and therefore must be expected to be read by interested members of the public. Accordingly, guidance relating to exemptions under Cl. 52.17 should be immediately accessible. The guidance is as much required by the general public (who generally do not seek advice on how to interpret exemptions) as it is by professional planners and others. Suggestions of a Biodiversity Practice Note will not adequately address this need as they are not readily accessed (or read as legally meaningful) by legal advisers, community leaders or interest groups (e.g. VFF). Only guidance incorporated into the VPPs is likely to be useful. Hyperlinks in digital versions of planning schemes might be worth exploring.

The review of the Native Vegetation Clearing Regulations is incomplete without a thorough review of the exemptions associated with Cl. 52.17 Native Vegetation. A prominent note appended to Cl. 52.17 should alert readers to check for overlays that extinguish these exemptions in specified circumstances and areas.

6. Compliance and enforcement

Without improvements in this area outcomes from the remainder of the review will be severely limited; priority areas to be considered include funding, training, guidance, and departmental support and leadership.
Assessment of Proposed Improvements

1. Clarify that the primary focus of the regulations is to ensure avoidance of native vegetation removal where possible

The application of the avoidance and minimisation principle for all applications is supported.

The principles of avoidance and minimisation needs to be extended to ‘other matters’ such as local biodiversity matters, erosion, salinity and environmental landscape values to ensure that all applications are considered holistically. Such ‘other matters’ combine to impact on Victoria’s biodiversity.

2. Consolidate comprehensive policy guidance for native vegetation removal

Guidance material is critical for effective, fair and consistent implementation of the Native Vegetation Clearing Regulations. In particular, how ‘other’ matters interact with native vegetation removal.

Other matters should include:

- ‘Cumulative impacts’ should be another added as an ‘other matter’ in 52.17 e.g. cumulative impacts on native vegetation, erosion, salinity.
- Flora and Fauna Guarantee Act 1988 (FFG Act) threatening processes that relate to native vegetation removal (i.e. loss of hollow-bearing trees).
- checklist when submitting an application under Cl. 52.17, with a statement addressing other legislation (FFG & EPBC), to ensure they have considered and addressed the other relevant legislation, as is already required for Cultural Heritage.

3. Develop guidance to support strategic planning relating to native vegetation protection and management

Currently, developing or updating environmental overlays is costly, time consuming and slow to get approved. Consequently, municipalities that support areas of significant environmental values worthy of protection, but that are constrained by relatively small budgets do not have the option to develop environmental overlays necessary to protect local environmental (including biodiversity) assets.
The process of planning scheme amendments needs to be simplified to facilitate Local Governments setting local biodiversity priorities. As stated on page 16 of the Consultation Paper, ‘Many Councils also stated that the undertaking and updating their strategic plans to protect and conserve biodiversity was prohibitively expensive and not a priority.’ Therefore, as well as providing guidance, DELWP needs to support local Councils by facilitating processes that help address these issues – such as simplifying and reducing resources required to implement the process of planning scheme amendments.

4. Improve monitoring to determine if the regulations are achieving their objective and make this information publicly available

It is critical that a mechanism be introduced to monitor native vegetation cleared under clearing exemptions. A process for tracking exempt vegetation clearance is fundamental to success of the permitted clearing regulations – currently, there is no way to regulate exempt vegetation removal, however a simple online system or aerial imagery analysis could be useful. An online register system could be developed whereby people seeking to remove vegetation under exemptions would enter the address, location and extent of the clearing with no (or limited, almost instant) approvals process. This would prevent enforcement action erroneously being taken against legitimately exempt vegetation removal and would provide better opportunities to track the extent of threatened species habitat cleared, including that cleared under exemptions. In this way, such a system would assist monitoring the implementation of the regulations and whether the regulations are achieving their objectives.

It is of concern that the responsibility and economic/resource burden of achieving this (necessary) aerial or satellite imagery analysis should be undertaken as part of monitoring efforts. The State Government should be tracking changes revealed by imagery analysis along with tracking the permits. This type of analysis can be broken down into any land tenure for further investigation, for example Local Government Area, Bioregion, CMA, etc. Such analysis also could be a tool to trigger enforcement action or investigation for substantial vegetation clearance.

In addition, adequate reporting must be mandatory for MoUs if monitoring is going to be credible.

5. Replace the native vegetation location risk map with an updated map of highly localised habitats
Highly localised habitats do not represent habitats for every threatened species. Therefore, focussing on highly localised habitats will not prevent impacts on all threatened species.

Threatened EVCs (at least endangered and vulnerable) should be included in consideration of planning applications under Cl. 52.17. Threatened Communities of Flora & Fauna as listed under the FFG Act should also be considered (FFG Communities are now mapped/modelled by DELWP)

6. **Require an avoid and minimisation statement for all applications and consider this in decision making**

An avoidance and minimisation statement should be required for all applications.

This requires explanation to ensure meaningful and adequate avoidance and minimisation statements are received.

Guidance to define the principle of avoid and minimise, and assist Councils assessing avoid and minimisation statements.

The rationale for this proposed improvement refers to steps taken to avoid or minimise their impacts on Victoria’s biodiversity – it is vital that impacts on locally significant biodiversity are considered, as incremental losses to locally significant biodiversity manifest as significant impacts on the State’s biodiversity?

7. **Require an offset strategy for all applications and consider this in decision-making**

I strongly support all applicants providing a strategy or description about how offset requirements will be satisfied. This proposal will ensure applicants understand their future offset costs or land management requirements at the earliest stages.

8. **Provide clearer guidance on when to refuse an application to remove native vegetation**

Clearer guidance about when to refuse an application and on what grounds is required.
9. Include a decision guideline that allows Councils to consider locally important biodiversity when assessing applications

I support the inclusion of a decision guideline that allows Councils to consider locally important biodiversity when assessing applications however guidance will be required in several areas:

- What test or measure would be used to determine locally important biodiversity?
- How would this interact with local planning controls (namely overlays)?
- Many Councils do not have resources to develop local threatened species strategies or conduct scientific studies to generate maps of local biodiversity. In the absence of such documents how would Council measure the impacts to local biodiversity? Such requirements to determine local importance could lead to biodiversity only being protected by municipalities who can afford local biodiversity plans; thus biodiversity protection may be directly proportional to how much money a Council has to undertake studies or develop policies.

The decision guideline needs to clearly articulate how local biodiversity of importance should be referenced in local planning scheme(s) to provide increased protection.

10. 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

Habitat data (e.g. hollows, logs, etc.) collected at the site should be able to be used as supplementary information for assessing permit applications and for determining offsets/offset sites.

There is concern at the rationale: 'while managing the impact of bias and observability associated with site-collected data' – the impact of errors in the data and models may be more significant than the impact of bias errors associated with site-collected data.

It is important the system can operate to both increase and decrease habitat importance.

There must be very explicit data standards without being exclusionary (the data just needs to be verifiable (i.e. photo of Powerful Owl nesting in a hollow tree could be submitted)). Quality control of the datasets is more critical.
11. Increase the information available about the maps used in the regulations and improve their accessibility

The information provided must include the methodology used to generate the models and critically their limitations of use. Transparency is vital for trust in the system and for the ability to challenge (and defend) the system.

12. Increase the use and functionality of the credit register

Will this hold up approvals and become an unreasonable administrative burden for under resourced Councils.

13. Support the development of the market for low availability offsets

First party offsets are valuable as they improve local biodiversity, (generally) reduce offsetting costs for permit holders and keep offsets in the local area. They also encourage increased custodianship and environmental stewardship through compulsory land management (via offset management plans).

First party offsets for scattered trees or small patches of vegetation need to be made simpler and more accessible.

14. Require that all third-party offsets are registered on the credit register and meet its standards, including standards for securing the offset

As long as this does not cause significant delays in the system that impact permit holders’ ability to secure offsets and achieve permit compliance.

The cost of setting up and registering offsets on the Credit Register currently is expensive and often prohibitive, acting as a disincentive to potential credit holders and impacting on market functionality.

A threshold should be added to this proposed improvement; for example, if one tree cleared generates an offset of five trees that are planted on a neighbour’s property, the receiving site should be registered on the credit register but not necessarily subject to all the Credit Register standards. This could be based on the extent of clearing or offset area thresholds and an assessment of risk.
15. **Redesign the revegetation standards to ensure desirable revegetation can occur**

There is value in revegetation of a size less than two hectares (e.g. planting along degraded creek corridors or to link remnant patches) and the minimum two hectare revegetation requirement be modified – possibilities include smaller revegetation areas that contribute to a contiguous patch of at least two hectares. The reintroduction of the revegetation option for scattered trees is highly desirable.

16. **Create a framework for offsetting on Crown land**

Whilst it is acknowledged that some loss of habitat fragments that may occur due to permitted clearing can only be effectively offset on Crown Land, the risks of the having the Crown as a trading player in the offset market are significant. The offsetting of losses from Crown Land elsewhere on Crown Land also has significant issues around transparency. Much thought will be required in this area.

17. **Formalise a set of exemption purposes and principles**

Strongly support.

18. **Clarify wording of exemptions**

I strongly support clarifying the wording of exemptions within Clause 52.17. We also suggest that this be accompanied by simple, easy to follow diagrams that people seeking to remove native vegetation under exemption(s) can use.

We strongly support the idea of clearly defining the exemptions, including their intent, purpose, principles, evidence (i.e. the need for each exemption and extent of use), how impacts will be avoided/minimised, common misinterpretations, and public transparency measures (e.g. notification, advertising, annual reporting, etc.).

19. **Provide guidance on the intent and application of exemptions**
Guidance is urgently required.

Clarification is sought relating to the perceived exemption of timber harvesting operations impacting native vegetation when crossing road reserves. At present, plantations complying with the Code of Practice for Timber Harvesting are exempt from requiring a planning permit when harvesting. Operators are only required to advise relevant LGAs of intended harvests through a Timber Harvest Plan (THP) 28 days prior to commencing and the template provided in the Code for these THPs does not address the impact of activities off the plantation land except road usage. As a consequence, no notification is provided of potential native vegetation impacts on roadsides, with operators considering themselves exempt from the requirements of the Planning Scheme. Councils therefore have limited (if any) ability to know of native vegetation losses and whether the losses are truly exempt under 52.17 or if, in reality, the vegetation removal requires a planning permit. The THP template requires modification and clear directions are required in the exemptions within the VPPs to consider specific issues that may still require a permit.

20. **Adopt a consistent approach to Agreements referenced in the exemptions**

Certainly

21. **Develop a compliance and enforcement strategy**

Strongly support the need for the State to develop a compliance and enforcement strategy relating to the implementation of Cl. 52.17.

The *Planning and Environment Act 1987* (P&E Act) should be amended to allow DELWP officers to be authorised officers for the purposes of enforcing compliance (and notifying Council) under Clauses 52.16 and 52.17 on private property.

There is an urgent need to address the serious issue where it is cheaper to pay Planning Infringement Notices (PINs) than it is to be compliant with a planning permit, including where applications involve the removal of native vegetation under Cl. 52.17. PINs/fines need to increase significantly to act as a deterrent and encourage compliance.

Clarification is required of the role and legitimacy of retrospective planning applications for vegetation removal. If they are legitimate, can modelled data be used to calculate vegetation loss? How can offsets be required for vegetation removal if a retrospective permit is not issued?
22. **Provide guidance and support materials for compliance and enforcement activities**

Adequate guidance, support and training for Local Government compliance/enforcement staff is critical to the on-going implementation of the Native Vegetation Clearing Regulations.

23. **Improve information gathering for compliance and enforcement**

Support is required for Local Government in planning investigations relating to Cl. 52.17 particularly when they are likely to progress to VCAT or Magistrates Court.

24. **Promote co-regulatory support**

It is unclear how this will be achieved.