Corporations with Authorisation Orders

Traditional Owners who have entered into a Natural Resource Agreement with the State have specific rights set out in Natural Resource Authorisation Orders (NRAOs) made under s.82 and s.84 of the Traditional Owner Settlement Act 2010.

Clauses 52.16 and 52.17 of the Victorian Planning Provisions (VPP) provide exemptions for the requirement of a permit where ‘the vegetation is to be removed, destroyed or lopped …by a person acting under or in accordance with an authorisation order under s. 82 or 84 of the Traditional Owner Settlement Act 2010.’

We note the review considers amendment to clause 52.17 but does not suggest any amended wording. We assume this will occur as part of Phase 3 and look forward to hearing from you in the future as to any proposed new wording.

We further note that proposed amendments to the Traditional Owner Settlement Act 2010 (Vic) contemplate modifications to the NRAO framework which need to be accounted for in amending clause 52.17 of the VPP.

Corporations with no Authorisation Orders but Written Permission from the Secretary of the Department of Environment, Land, Water and Planning

There are instances where a Traditional Owner Corporation does not have Authorisation Orders under a settlement act agreement but may have written permission authorising the take and use of natural resources as part of a binding agreement with the State. Permits are again exempted under Clause 52.17. We seek confirmation that corporations utilising this exemption will not be affected by any proposed changes.

Corporations without Authorisation Orders or Written Permission from the Secretary of the Department of Environment, Land, Water and Planning

Where an Aboriginal Corporation does not have Authorisation Orders or Written Permission from the Secretary the corporation is required to apply for a permit and could potentially be affected by proposed changes, mainly:

- Proposed improvement 5: Reducing the threshold for ‘lower assessment’ from 1 hectare/15 scattered trees to 0.5 hectare/7 scattered trees
- Proposed improvement 8: Require an offset strategy for all applications and consider this in decision making
- Proposed improvement 9: Change to two assessment pathways ‘lower assessment’ and ‘higher assessment’ instead of three tiers
- Proposed improvement 20: Create a framework for offsetting on Crown land
- Offsetting at time of clearing for all permit holders (however it can be first party offsets)

It is timely to remind the department of the provisions of s.211 of the Native Title Act s211 which may relieve native title holders of the need to hold licences under state, Commonwealth or territory laws for activities akin to those provided for under an Authorisation order or written permission from the Secretary. This exemption can apply whether or not there has been a determination of native title.

We look forward to further consultation with the department in the event such improvements are considered so as to ensure they align with Traditional Owner’s rights and aspirations and that the tenets of s.211 of the Native Title Act are protected.

Proposed Improvements which may affect exemptions
Proposed improvement 4: Improve monitoring to determine if the regulations are achieving their objective and make this information publicly available
‘Improve monitoring and reporting on
• Clearing under exemptions’

We look forward to further consultation with the department in the event such improvements are considered so as to ensure they align with Traditional Owner’s rights and aspirations.

Proposed Improvement 21: Formalise a set of exemption purposes and principles
‘The purpose and principles for exemptions include that exemptions are clear, consistent and evidence based. They also require that the clearing that occurs under exemptions is minimised.’

We look forward to further consultation with the department in the event such improvements are considered so as to ensure they align with Traditional Owner’s rights and aspirations.

Proposed Improvement 22: Clarify wording of exemptions
‘Make working changes to some exemptions to clarify the removal of native vegetation that is allowed without a permit under these exemptions’

We look forward to further consultation with the department in the event such improvements are considered so as to ensure they align with Traditional Owner’s rights and aspirations.