



3 March 2017

Submission from the City of Greater Geelong:

**Review of the Native Vegetation Clearing Regulations
Proposed amendments to the Victorian Planning Provisions
(Clause 12.0-1, 12.01-2, 52.17, 52.16, 81 of the Victorian Planning Provisions)**

The City of Greater Geelong (the City) appreciates the extensive consultation and clear communication during the review, and welcomes the opportunity to work closely with the Victorian Government to ensure that implementation of the NVCR aligns with local planning policy and Council strategies.

This submission was prepared by the Environment Planning Officers from the Environment Unit, with assistance from the Strategic and Statutory Planning. Officers from the Environment Unit are active members of the Biodiversity Planning Network who provided considerable support in the preparation of this submission.

Introduction

Historically, and like many other municipalities, the City relied heavily on the Native Vegetation Clearing Regulations (NVCR) to protect biodiversity - particularly *Clause 52.17 Native Vegetation*. As such, the City developed few local environmental policies.

Over the past ten years, the City has experienced unprecedented residential growth which is anticipated to continue with the direction of population growth to regional areas. In 2016, The City's Environment Unit received 216 planning permit applications for assessment and comment (165 applications received in 2015, 169 in 2014, and 150 in 2013).

Biodiversity decisions within growth areas are informed by Precinct Structure Plans (PSPs) and subsequent Native Vegetation Precinct Plans (NVPPs). The City is not guided by metropolitan assessments (Metropolitan Strategic Assessment) or authorities (Metropolitan/Victorian Planning Authority). We currently have eight incorporated NVPPs, two draft NVPPs, and an estimated 5-10 new NVPPs within future growth areas – all prepared in accordance with *Clause 52.16 Native Vegetation Precinct Plan*.

As remnant native vegetation now covers less than 5% of this municipality, the City also utilises *Clause 12.01-1 Protection of Biodiversity* to protect fauna and habitat that are not directly linked to native vegetation such as migratory bird flight paths and freshwater species including platypus, frogs and fish.

As such, the City is directly affected by any changes to the NVCR and is responsible for implementing any proposed amendments. This submission provides key recommendations; recommended changes to the proposed VPPs; and a list of proposed amendments supported by the City.

Envisaged impact to The City of Greater Geelong

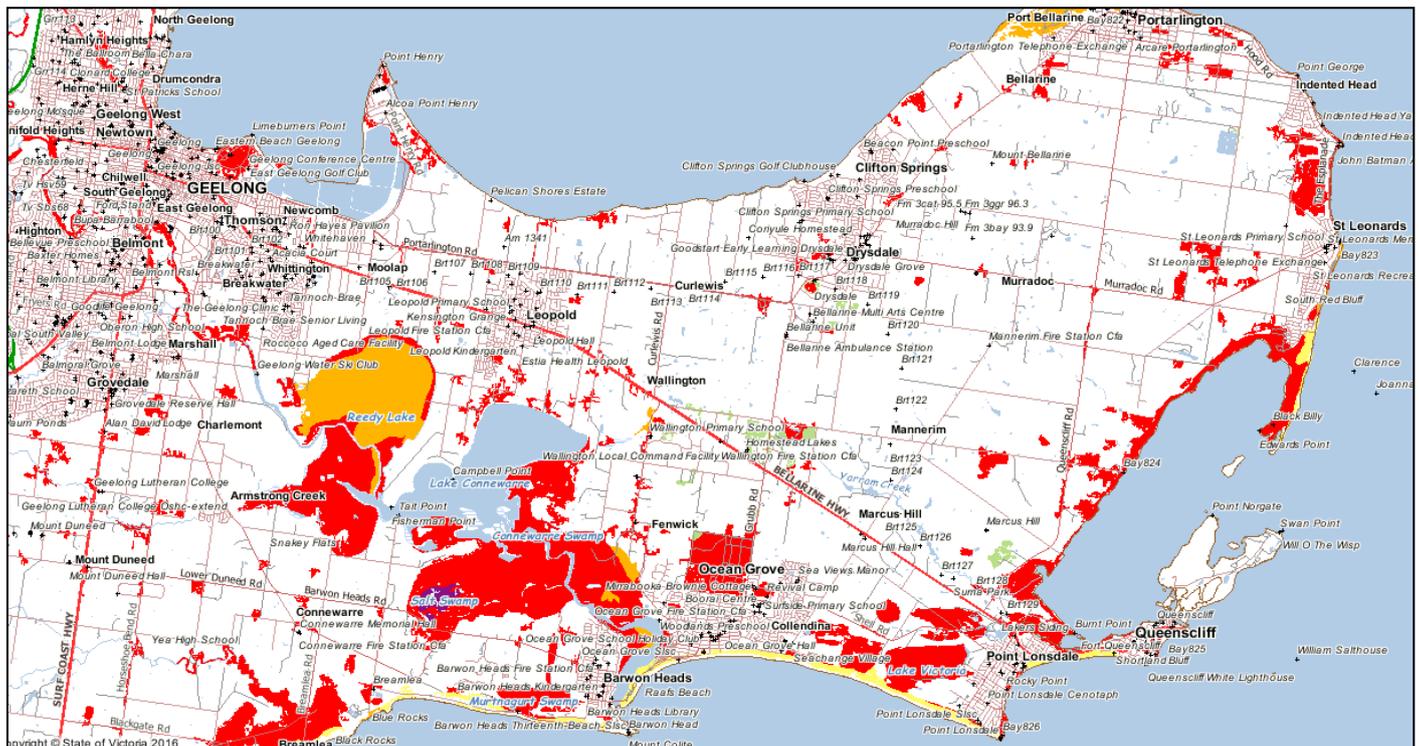
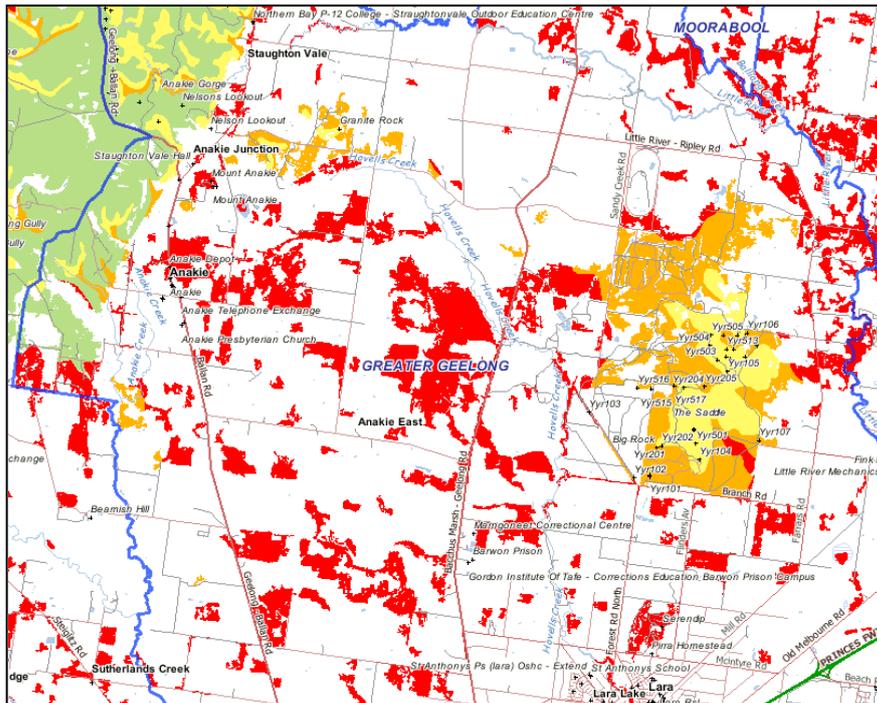
Overall the proposed amendments are welcomed by the City, and are considered to deliver better planning decisions when compared to the current VPPs (gazetted in December 2013). The envisaged impacts of the proposed amendments on the City include:

- **Positive:** The majority of applications received by the City will be within the intermediate pathway due to the presence of endangered vegetation communities. Therefore, the majority of applications received by the City will be required to avoid and minimise native vegetation removal, the preferred approach. See figures 1 and 2 below.
- **Negative:** Applications located within the Brisbane Ranges/Staughton Vale, You Yangs/Little River, Portarlington, Wallington woodland, and fore-dune coastal areas are not required to avoid and minimise removal if clearing less than 0.5 ha. This will result in the incremental loss of local vegetation and habitat for fauna which is of significant concern to Council. See figures 1 and 2 below.



- **Resources:** The City will need additional resources to assess planning permit applications – particularly a person(s) accredited in applying the Vegetation Quality Assessment methodology (habitat hectares) in order to identify endangered vegetation communities, large old trees, and rare/threatened species where classification is questionable.

Figure 1 and 2 Extent of remnant native vegetation on the Bellarine Peninsula (below) and Staughton Vale-You Yangs area (above). White = no native vegetation present; **Red = endangered vegetation (avoid and minimise required); Yellow/orange/green = non-endangered vegetation (no avoid and minimise).** Biodiversity Interactive Map, Victorian Government.





Limitations to the submission

This submission is limited to the review of the following:

- [Review of the native vegetation clearing regulations – summary of proposed amendments to the Victoria Planning Provisions](#) (VPP) (Proposed amendments to the VPP)
- The draft [Native vegetation clearing – assessment guidelines](#) (Assessment guidelines)

Many of the proposed amendments available for review refer to and are reliant upon further guidance material which are yet to be developed. Therefore, it is difficult to truly assess the impact of the proposed amendments without access to these key documents (Assessment Handbook) and tools (Location Map, other mapping layers).

Acronyms

- **The City** = The City of Greater Geelong.
- **NVCR** = Native Vegetation Clearing Regulations (Clause 12.0-1, 12.01-2, 52.17, 52.16, 81 of the Victorian Planning Provisions).
- **The Guidelines** = The Assessment Guidelines. Incorporated document at Clause 81 and referenced in 12.01-1, 12.01-2, 52.17 and 52.16. Sets purpose, scope, objectives for the Native Vegetation Clearing Regulations. Currently known as the BAG (Biodiversity Assessment Guidelines).
- **The Handbook** = Assessment Handbook. An implementation document for the native vegetation clearing regulations – yet to be developed). Currently known as the BAH (Biodiversity Assessment Handbook).
- **A&M** = Avoidance and minimisation. Principles which apply to applications for the removal of native vegetation (i.e. applicants must actively avoid and minimise removal, before offsetting).
- **VROT** = Victorian Rare or Threatened Species. Listed by the Victorian Government and considered in the NVCR.



KEY RECOMMENDATIONS

1. Biodiversity Legislation in Victoria

The Planning and Environment Act 1987 is not the only legislation in Victoria which considers impacts of activities on biodiversity. According to the Victorian Government, “*the Flora and Fauna Guarantee Act 1988 is the primary Victorian legislation providing for conservation of threatened species and ecological communities, and the management of processes that threaten the sustainability Victoria’s native flora and fauna*” (Auditor General, 2009).

The Victorian Government is also currently reviewing the FFG Act. While both regulatory frameworks (the FFG Act and the NVCR) include requirements to consider the impacts of activities on threatened species, the reviews were undertaken in isolation. There are there are no synergies within the proposed amendments and no requirement to consider either legislation during the application of the other.

Recommendations:

Pre December 2013, the *Flora and Fauna Guarantee Act 1988* was referenced in the Victorian Planning Provisions as a strategy and policy guideline to consider when making planning decisions.

- Return species and communities (and critical habitat) recognised by the FFG Act to the list of strategies, decision guidelines and policy guidelines in Clause 12.01-1 Protection of Biodiversity and 12.01-2 Native Vegetation Management.
- Add species and communities (and critical habitat) recognised by the FFG Act to be considered by planning in 52.17 and 52.16 (similar to Large Old Trees, Endangered EVCs and sensitive coastal/wetland vegetation).
- Additional recommendations are detailed in Section 11.

2. Plain English – Nature Should be Accessible

Please ensure all documentation is provided in plain English. The NVCR are already confusing and extremely difficult to explain. The wording of the current NVCR disconnects people from biodiversity which results in poor environmental outcomes and frustration with the statutory planning process. Council requests all wording to be kept simple.

Recommendations:

- Maintain the assessment pathways as “low”, “moderate” and “high” - basic, intermediate, detailed is simply a name change which creates unnecessary confusion without benefit.
- Remove unnecessary words and sentences within the VPPs:

i.e. *To assist the protection and conservation of Victoria’s biodiversity = **Protect and conserve biodiversity.***

i.e. *Assists in identifying opportunities to increase biodiversity value through the re-establishment of links between areas that contain high biodiversity value = **Re-establish biodiversity links.***

3. When to Consider Biodiversity?

The planning scheme requires the consideration of biodiversity during:

- Strategic planning - as required by Clause 12.01-1 (Amendments, Structure Plans, Development Plans, Native Vegetation Precinct Plans), and
- The removal of native vegetation (when not exempt) - as required by Clause 52.17 and 52.16.

As stated earlier, the City contains less than 5% remnant native vegetation, which is currently estimated to be 3%



given the growth experienced during the past 15 years since the last native vegetation audit in 2003. Therefore, much of The City's biodiversity (fauna and habitat) is not directly linked to the presence of native vegetation.

However, native vegetation and biodiversity are inextricably linked in the statutory planning process – biodiversity impacts cannot be considered unless the removal of native vegetation is triggered. So, in a municipality where native vegetation covers <3% of this land, how do we consider impacts to biodiversity when native vegetation is not removed?

Currently, Clause 12 relies on strategic planning to adequately consider and protect biodiversity, and Clause 65 only considers vegetation (to the exclusion of fauna or habitat). For example, how should the City consider impacts to a RAMSAR wetland from the construction and use of a caravan park on adjacent land (Section 2 use in the Farming Zone)? Or impacts to Yarra Pygmy Perch or Australian Grayling (endangered fish) during the construction a bridge?

Recommendations:

- Include biodiversity (i.e. identified fauna/ habitat) as a decision guideline in Clause 65:
“Before deciding on an application or approval of a plan (application to subdivide land), the responsible authority must also consider, as appropriate:
 - *The extent and character of native vegetation and biodiversity and the likelihood of its destruction.*
 - *Whether native vegetation and biodiversity can be protected.”*
- Provide clarity on the definitions of native vegetation and biodiversity. They are not the same. The definition of native vegetation in Clause 72 does not include biodiversity.
- Provide clarity regarding which “applicable biodiversity strategies” are to be considered by planning in 12.01-1 Policy Guidelines, and how these guidelines are to be considered.
- Add additional policy guidelines to 12.01-1 such as “Communities and species listed under the Flora and Fauna Guarantee Act 1988”, “Communities and species listed under the Environment Protection and Biodiversity Conservation Act 1999”.
- Additional recommendations are detailed in Section 11.

4. Net Gain v No Net-loss

The City advocates for a return to the “net-gain” objective as per the NVCR pre 2013.

- Pre- 2013 objective: *To achieve a net gain in the extent and quality of native vegetation.*
- Proposed objective: *To ensure permitted clearing of native vegetation results in no net loss Victoria's biodiversity.*

The City understands that the Victorian Government proposes “to improve the overall extent and condition of native habitats” (i.e. net-gain) via actions within the Victorian Biodiversity Strategy (currently draft) such as securing additional land into the reserve system, and increasing the protection of the current reserve system. Improving the overall extent and condition of native habitats via these mechanisms alone is unachievable.

Much of our biodiversity exists on private land:

- *Native terrestrial habitats on private land have declined to the extent that our existing network of conservation reserves cannot sustain a healthy environment on its own (Victorian Biodiversity Strategy, 2016)*
- *We need to see an increase in the area and quality of private land managed for conservation, to make up for significant ongoing losses of quality and extent of habitats, and for the legacy of past clearing (Victorian Biodiversity Strategy, 2016).*

Reversing trajectories of decline must be the responsibility of all Victorians – including applicants proposing to remove native vegetation. All biodiversity legislation must aim to redress this loss.

Recommendation:



- Revert to the net-gain objective.
- Adjust offset multipliers accordingly to achieve a net-gain in the extent of native vegetation across Victoria (pre 2013).
- Additional recommendations are detailed in Section 11.

5. When is clearing not permitted?

Managing community expectations is the most effective way to protect biodiversity when making planning decisions. The NVCR should clearly, regularly and transparently not support the removal of native vegetation – unless required by exceptional circumstances. Pre 2013, the NVCR articulated this outcome well - the removal of very high conservation significance vegetation was not permitted (*The Framework*, NRE 2002):

APPENDIX 4 RESPONSES AND OFFSET CRITERIA - SUMMARY				
TABLE 6. SUMMARY OF RESPONSES AND OFFSET CRITERIA GRADED ACCORDING TO CONSERVATION SIGNIFICANCE				
CONSERVATION SIGNIFICANCE	VERY HIGH	HIGH	MEDIUM	LOW
Response to proposal to clear & offset	In keeping with the principles in Section 4 and in the context of the Net Gain approach which has, as a priority, the avoidance of further permanent losses of native vegetation through clearing (page 19): Clearing not permitted unless exceptional circumstances apply (i.e. impacts are an unavoidable part of a development project, with approval of the Minister for Environment and Conservation (or delegate) based on considerations of environmental, social and economic values from a statewide perspective)	clearing generally not permitted	clearing generally not permitted	clearing may be permitted but only as part of an appropriate sustainable use response as determined by the responsible planning authority
If some clearing is to be permitted, the following offset requirements must be met				

Recommendation:

- Develop clear thresholds for when clearing will not be permitted (i.e. specific offsets unavailable, practical opportunity exists to avoid and minimise).
- Clearly and frequently communicate when clearing is not be permitted (i.e. Pre 2013 *The Framework: The removal of Very High Conservation Significance Vegetation – not permitted*). Include this information in Clauses 52.16, 52.17 and the Assessment Guidelines.
- Additional recommendations are detailed in Section 11.

6. Avoid, Minimise, Offset

As stated earlier, the majority of applications received by the City will be within the intermediate assessment pathway, which requires applicants to avoid and minimise native vegetation removal.

However, applications within the Brisbane Ranges/Staughton Vale, You Yangs/Little River, Portarlington, Wallington woodland, and fore-dune coastal are not required to avoid and minimise removal. These areas are also the City’s most vegetated, and applications will result in the incremental loss of habitat for local flora and fauna through permitted clearing.

Requiring all applicants to firstly think about how they can avoid vegetation removal is the most effective and



resource efficient way to achieve the policy objective, whilst also ensuring expectations are appropriately managed from the outset.

Recommendations:

- All applications required to demonstrate steps undertaken to avoid and minimise the removal of native vegetation.
- Alternatively, avoidance is required “*where there is a practical opportunity to site the building or works to avoid the removal, destruction or lopping of native vegetation*” (pre 2013 wording in the Farm Zone exemption).
- Incorporated NVPPs must outline what steps were undertaken to avoid and minimise the removal of native vegetation at the strategic level.
- Additional recommendations are detailed in Section 11.

7. Biodiversity Tools (mapping/modelling)

The proposed amendments allow the use of site based information to ‘supplement’ (i.e. amend) DELWP habitat modelling. Information collected at a site, by an ecologist, can:

- Remove rare/threatened species habitat at clearing sites (i.e. the rare/threatened species modelled to occur within the clearing site is not present).
- Add rare/threatened species habitat at credit sites (i.e. the credit site is not modelled to contain habitat for a rare/threatened species, but the species is present).

Both of the above uses benefit the applicant only (i.e. easier to secure offsets) and do not benefit rare/threatened species. Species habitat models are concepts calculated on *known* records and environmental predictors. However, site records are not regularly updated or maintained by DELWP, leaving porosity in the models – which is the case for Bellarine Yellow Gum (BYG) within the City:

- Clearing within the Armstrong Creek growth area typically requires specific offsets for BYG (albeit the species does not exist within Armstrong Creek).
- Clearing within Ocean Grove/Wallington area does not require specific offsets for BYG (albeit the species is restricted to this area).

The end result is the continued loss of BYG, and an inability to protect areas of known habitat to compensate for the removal of known habitat (i.e. a lose-lose situation for BYG).

If site based information can be used to remove habitat from a clearing site, or add habitat to a credit site, then the inverse should be applicable to clearing sites which do contain listed species but don’t require specific offsets (Ocean Grove/Wallington area).

Recommendations:

- Use of site based information should be allowed to supplement modelled information when clearing sites contain listed species. Commensurate offsets should be required.
- Update data used to create species models regularly via the Victorian Biodiversity Atlas, and in a transparent manner (develop a regular process to peer review data).
- Additional recommendations are detailed in Section 11.

8. Securing offsets



Once native vegetation is avoided and minimised, permitted removal must be offset (replaced onsite or offsite). But there are many obstacles to delivering offsets.

Recommendations:

- Where specific offsets are unavailable, the removal should not be permitted. Further avoidance and minimisation should be required, prior to the consideration of alternative arrangements.
- Security options for offsets require further investigation by the State Government. Council cannot accept Section 173 Agreements if the offset is to be vested to Council in the long term (i.e. offset site within growth area).
- The City has also received legal advice that the *Planning and Environment Act 1987* does not require the consideration of security agreements signed under the *Conservation, Forest and Lands Act 1987* (Section 69) or the *Victorian Conservation Trust Act 1972* (Trust for Nature). A planning permit can be issued for a use or development on a property which may impact biodiversity, even though one of these agreements is attached to the title. There is no requirement to consider these agreements when making planning decisions.
- Offsets should not be permitted on Crown Land – as technically, these areas should already be protected and managed for conservation (land managed by Parks Victoria). They are already secured, therefore placing offsets within this land will not achieve the ‘no net-loss’ objective.
- Tracking of the NVCR objective (no-net loss) must be undertaken annually and reported (by either Local or State Government); this should also include unpermitted and exempt clearing. All data tracking should be easily accessible and transparent.

9. Exemptions

Exemptions (including the use of Clause 52.48 Bushfire Exemptions) allow the greatest amount of vegetation removal within this municipality.

Recommendations:

- As an aside to the review of the NVCR, the City of Greater Geelong would like to take this opportunity to reiterate the request made to the Minister for Planning in early 2016 that, Clause 52.48 Bushfire Protection: Exemptions, be more strategically applied to only include areas with an identified bushfire threat. The current blanket approach is continuing to see the loss of important urban vegetation under the guise of bushfire protection where no bushfire threat exists. We understand some work on this issue has been undertaken by the Department and the City would welcome this matter be resolved in 2017.
- Additional recommendations are detailed in Section 11.

10. Implementation

As stated above - the NVCR are often misinterpreted. All users need training and regular monitoring/auditing in order to achieve the policy objective and good environmental outcomes. We need to learn from this own and each others mistakes.

Recommendations:

- Continue to work closely with Local Government Officers to implement the NVCR. The City would appreciate an opportunity to provide comments on other key documents (Assessment Handbook) and tools (Location Map, other mapping layers) prior to gazettal.
- Create a centralised place and process for communication and updates. Different policy advice is often provided by the DELWP Melbourne and regional offices.



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- Training on the implementation of the NVCR – PLANET course (not run by consultants, but by Local Government Officers who implement the regulations).
 - Vegetation Quality Assessment accreditation must be delivered as part of the implementation of the NVCR, must be accessible across the State, and a requirement for all users (consultants, Local Government Officers and DELWP Officers).



THE VICTORIAN PLANNING PROVISIONS

11. Proposed amendments supported by the City:

- 12.01-2. Additional objective in Clause 12.01-2 for other considerations (land and water degradation, aboriginal sensitivity, landscape and amenity etc), although climate adaptation and protection (ESD) should be included. Relevant section of the Assessment Guidelines updated accordingly.
- 52.16. Clarifying that 52.17 does not apply to land where an incorporated NVPP exists (52.16-2 Permit Requirement, and page 6, Assessment Guidelines). Although further articulation is required regarding this matter as there is still some confusion as how to apply 52.16!! This could be achieved by inserting the purpose into the 'permit requirement' and the Assessment Handbook.
- 52.17. Avoid and minimisation statement for all applications as detailed in 52.17 and 12.01-2. The Assessment Guidelines should be updated to require A&M in "basic" applications – where practical opportunity exists to locate the development or use to avoid native vegetation removal.
- 52.17-7. Addition of an exemption to undertake Conservation Work. Will the details of this exemption will be provided in the Assessment Handbook?
- 52.17-7. Providing clarity (wording) regarding application of the fences exemption.
- 52.17 and 52.16. Deleting reference to managing native vegetation for bushfire protection from the purpose 52.17 and 52.16.
- Assessment Guidelines. Inclusion of different standard areas for the removal of Large and Small Scattered Trees.
- Assessment Guidelines. Lowering the threshold to 0.5ha of clearance (previously 1.0 ha).
- Assessment Guidelines. Requiring avoidance and minimisation when removing Large Trees, Endangered EVCs and sensitive wetlands and coastal vegetation.
- Assessment Guidelines. Overlap between extent of scattered trees is dissolved. Is this also true for scattered trees and remnant patches which may overlap? (page 9 of the Guidelines).
- Assessment Guidelines. The strategic Biodiversity Score of offsets can be reduced by 10% if additional area/ biodiversity units or Large Trees can be secured. Flexibility is good.

12. Additional recommendations:

- 12.01-1. Remove "areas of high value" from the strategic planning strategy (dot point one) and "high biodiversity value" from dot point 3. In some growth areas (structure plans/PSPs etc), there is no biodiversity listed under state or federal legislation or high biodiversity value... but rather important local biodiversity not recognised by legislation/state information (i.e. large mammals such as kangaroos and wallabies, platypus habitat and other common fauna).
- 12.01-1. Replace "*Assists in identifying opportunities to re-establish links....*" with "*Assists in the re-establishment of links....*" or just "*Re-establish links....*". Let's link, not just identify opportunities to link. This wording is as per the current VPP.
- 12.01-1. Reference the FFG Act in the Policy Guidelines – as there are some species/communities listed under the FFG Act, but not considered a VROT.
- 12.01-2. Avoid, minimise and offset should be the first strategy listed.
- 12.01-2. The Assessment Handbook (which we haven't seen) is now listed/referenced as policy guideline.



This document should be available for comments/amendments prior to gazettal.

- 52.16. Require NVPPs to include an avoid and minimisation statement/actions/steps undertaken. This will identify areas of native vegetation/biodiversity of key importance, and will provide weight against future applications proposing to impact native vegetation protected by a NVPP (i.e. subdivision application in the Armstrong Creek East NVPP which removed greenways and conservation reserves protected by the NVPP).
- 52.16. Add the Conservation Work exemption to 52.16 (The City has many offset sites within Growth Areas).
- 52.17 and 52.16. Reinsert 'minimum extent necessary' into the table heading at 52.17-7 Exemptions. Alternatively, provide justification/reasoning for removing 'minimum extent necessary' in the table heading – particularly for the lopping and pruning for maintenance.
- 52.17 and 52.16. Insert climate adaptation and protection (ESD) into decision guidelines: *“Impacts on other values of the native vegetation to be removed, destroyed or lopped, including land and water protection, landscape values, [climate adaptation and protection](#), and native vegetation protected under the Aboriginal Heritage Act 2006, as set out in the Assessment guidelines”*.
- 52.17. Require all applications to demonstrate avoidance and minimisation. *“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, ~~as set out in the Assessment guidelines.~~”* (i.e. remove reference to the Guidelines, and add oxford comma after “avoided”). Update the Guidelines to reflect this requirement, and provide examples of appropriate A&M in The Handbook.
- 52.17 -7. Insert *“This exemption does not apply where there is practical opportunity to avoid the removal of native vegetation”* to the exemptions in the Farming Zone and Rural Activity Zone. As per the exemption pre 2013 changes.
- 66.02. Provide clarity on whether 'extent' is for the current application only, or the total extent permitted for removal within the past five years. This could be achieved in the Assessment Handbook?
- Assessment Guidelines: Make it very clear what sensitive wetlands and coastal areas are. Provide links, maps, lists - not just a foot note on page 12. Alternatively, this information could included in the Assessment Handbook.
- Assessment Guidelines: Add Endangered EVCs and sensitive wetlands to Table 3. *Determining the assessment pathway* (page 13).
- Assessment Guidelines: The footnote on page 13 states: *If a site assessment conducted by an accredited native vegetation assessor determines that an endangered EVC is present (but is not shown in the location map) the decision guideline about impacts to endangered EVCs can be applied. The responsible authority cannot require the applicant to engage an accredited native vegetation assessor.* This footnote must also state that the Responsible Authority can arrange for an accredited native vegetation assessor to inspect the site for endangered EVCs, and that Council Officers may be accredited.
- Assessment Guidelines: Add 10 year timeframe to 5.2.1 or 5.2.2 (page 25): *“manage the site to maintain and improve the current condition of native vegetation on a specific site [for a minimum of 10 years](#)”*. The City has recently had difficulties with land developers challenging the 10 year management period of offset sites (i.e. “show me where in the planning scheme/incorporated document is the requirement to manage an offset site for 10 years?”).
- Assessment Guidelines: Add requirement that offset sites cannot be located within 50m of a dwelling (new or proposed) as we have many developers wanting to use small treed areas completely surrounded by residential development as offsets – these reserves become “dog parks” and cannot be practically managed for conservation with high density residential areas so close (fire risk/snakes etc).
- Assessment Handbook. Provide clarification regarding the type/format/distance/resolution of photos required within applications.