

POST/EMAIL SUBMISSION DETAILS		
Date Received	10/03/2017	
Name	[REDACTED]	
Organisation	Greater Shepparton City Council	
Email	[REDACTED]	
Postcode	3630	
Privacy Options	I am making this submission on behalf of an <b>organisation</b> , and understand that it may be published and will include the name of the organisation unless otherwise requested	
Privacy Statement Correct?	Yes	
Privacy Collection Notice Read?	Yes	
Submission Type	Local Government	
Previous engagement in review?	Info session 2015	Yes
	Workshop 2015/16	Yes
	Targetted consultation	Yes
	SRG	
	Written submission to CP?	Yes
Other? Describe		
Will changes improve function of regs?		
Reasons	Refer to attached submission for all responses from Greater Shepparton City Council	
Implementation issue with proposed changes?	Yes	
Reasons	Refer to attached submission for all responses from Greater Shepparton City Council	
Guidelines – guidance or clarification needed?	Yes	
Details	Refer to attached submission for all responses from Greater Shepparton City Council	
Terms to include in guidelines glossary?	Yes	
Details	Refer to attached submission for all responses from Greater Shepparton City Council	
Subscribe to e-newsletter?	Yes. Please send information updates to my email address	
Other comments	Refer to attached submission for all responses from Greater Shepparton City Council. We provided a formal submission in this instance because we had a lot of feedback to provide. We are very hopeful that our comments will be used to further improve the proposed improvements outlined and we are very eager to provide input into the development of the Handbook and Guidance Notes.	
Written submission provided?	Yes – attached	

# **Greater Shepparton City Council – Submission Proposed changes to the Native Vegetation Clearing Regulations**

## ***Introduction & Context***

The Greater Shepparton region is one of the most cleared regions in Victoria, the most cleared state in Australia. Less than 2.5% of the pre-European settlement remnant vegetation remains in the Greater Shepparton region. Remaining areas of native vegetation are generally confined to refugia along waterways and road reserves, although there are patches of remnant vegetation and remnant scattered trees on private land.

Scattered remnant paddock trees are of significant biodiversity importance in our largely cleared landscape and are the corner-stones of the floristic communities or Ecological Vegetation Classes (EVC's) that were once present across the municipality. Prior to European settlement, the Greater Shepparton landscape contained a richly diverse and complex mosaic of various EVC's but around 80% of the Greater Shepparton landscape contained EVC 803 - Plains Woodland. This EVC (with its fertile soils) is ideal for agriculture and is now listed as endangered in the City of Greater Shepparton. At least 45 EVC's are present within Greater Shepparton, 21 are listed as endangered and at least one is listed as extinct.

The native fauna dependant on this native vegetation for habitat is under significant threat of becoming locally extinct. The diversity of fauna within Greater Shepparton has greatly declined since European settlement with many species already extinct from the area. The native vegetation that remains is providing critical habitat for the majority of the 84 threatened fauna species located within Greater Shepparton. Scientific evidence recognizes that the loss of hollow-bearing large old trees from rural landscapes is a significant threat to already struggling populations of native fauna.

The rich agricultural tapestry of our shire is constantly evolving and this continues to put pressure on our biodiversity assets.

The Commonwealth's policy of providing incentives for water efficiency to increase environmental water availability in the Murray Darling Basin has had a significant impact on the types of native vegetation loss in our municipality. Investment in new technology such as pivot and lateral irrigators has become common. While this ensures the efficient usage of water for agriculture, it has also resulted in the removal of a considerable amount of large old paddock trees from our landscape.

The modernisation of the irrigation system has likewise contributed greatly to the efficient use of water. But this has also contributed to a spike in the loss of native vegetation through exemptions for water authorities. We have no requirement to officially record these losses but have anecdotal evidence they are significantly contributing to local biodiversity loss.

Council adopted the Greater Shepparton Environmental Sustainability Strategy in 2014. This document, along with our Council Plan, clearly articulates our commitment to protecting and improving the natural environment.

We undertake annual revegetation programs (we are the only council in Australia to plant one tree for every child in our municipality), have a Roadside Management Strategy, protect remnant

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vegetation and invest in mitigating and adapting to climate change. We also participate in regional networks (such as the Goulburn Broken Local Government Biodiversity Reference Group and the Land and Biodiversity Implementation Forum) to ensure consistency in approach and objectives in these projects.

The change from the *Framework for Native Vegetation Controls* to the *Native Vegetation Clearing Regulations Guidelines* in 2013 created many issues for us. It took many hours and resources to respond to the initial consultation period, then learn the new processes (including many phone calls and emails to DELWP staff in Melbourne) and translate that to the applicants.

The Guidelines policy is focussed on state wide biodiversity outcomes and the Greater Shepparton region has been deemed to be not representative of those outcomes. Only a small percentage of our municipality is considered having significant biodiversity value towards Victoria's biodiversity despite our region containing mostly endangered EVC's and a high proportion of threatened fauna dependant on this vegetation. Therefore the presumption from "the Guidelines" was that the majority of remaining native vegetation is not worth protecting and enhancing. This message is not what we want for our community, nor what they want from us.

It is within this context that Greater Shepparton City Council provides comment on the *Native Vegetation Clearing Regulations Review*. We are very pleased to be able to provide comment on the proposed improvements to the clearing regulations that should be aligned to the Victorian Government's statement that '*Labor acknowledges that protecting and restoring biodiversity underpins the well-being of the environment, society and the economy.*' The outcomes of the clearing regulations review will also determine whether the Victorian Government can achieve its commitment to '*Modernise threatened species protection to adopt world's best practice*'.

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# Greater Shepparton City Council – Submission

## Proposed changes to the Native Vegetation Clearing Regulations

### ***General comments on the review***

We are pleased that DELWP have recognised the comments provided via the previous consultation round. The importance of scattered large trees and endangered EVCs has been recognised and the three step approach of Avoid-Minimise-Offset will once again be applied. These are key elements for the regulations, particularly for our region.

The increased communication with, and inclusion of Local Government on working groups throughout the review has led to clear improvements in the process of environmental legislation change. We welcome and value the opportunity to work closely with DELWP to ensure environmental planning policy and implementation of the State planning provisions aligns with local planning policy and municipal strategies to protect biodiversity.

Local Government resourcing is under significant pressure and this will only increase with the introduction of rate capping. We strongly suggest that DELWP staff resourcing be increased in the Goulburn Broken catchment to assist us (and our neighbouring councils) to monitor and report on the implementation of the regulations and to ensure that compliance and enforcement objectives are met.

We congratulate DELWP on having the foresight to review the *Native vegetation clearing regulations, Protecting Victoria's Environment - Biodiversity 2036* and the *Flora and Fauna Guarantee Act 1988* (FFG Act). Currently, there is a disconnect between the current clearing regulations and these key pieces of legislation. It is critical that the native vegetation clearing regulations are amended to interact cohesively and productively with key legislation and policies including Biodiversity 2036, the FFG Act and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

We note that Goal One of the two goals of Biodiversity 2036 is '*To encourage more Victorians to value nature*'. The native vegetation clearing regulations are an important mechanism to meet this goal. This regulatory tool should highlight, in very practical terms, how the State Government values nature – not higher relative contributions to biodiversity. The fact that all resources are being directed to the later does not reflect the intent of Biodiversity 2036.

It is unclear how a net gain objective can be paramount in Biodiversity 2036 but no net loss is still the principle objective of the native vegetation regulations. This is inconsistent and it is unclear how this discrepancy can be either reconciled or measured. We strongly believe a consistent net gain objective is crucial to protecting Victoria's environment and biodiversity.

Likewise, the current policy focus of *overall contribution to Victoria's Biodiversity* indicates that the biodiversity in Greater Shepparton is considered of lesser value than other regions. It is unclear how this paradigm will engender Victorians in Greater Shepparton to value nature when the Victorian Government's native vegetation clearing regulations have not recognised its value.

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## ***General comments on the key themes***

### Permit process and decision making

We are supportive of measures that allow councils to accurately assess biodiversity values at a local level. The inclusion of large and/or hollow trees, endangered Ecological Vegetation Classes (EVCs), landscape features and rare and threatened species as additional considerations for assessing applications is particularly welcomed. These measures will allow increased protection to significant remnant indigenous vegetation and ecosystems. Other welcome additions are sensitive wetlands and the role of vegetation in protecting land and water.

### Biodiversity information tools used in decision making and offset rules

We are generally supportive of the proposed improvements relating to biodiversity information tools used in decision-making and offset rules, however the following points are critical if these tools are to be relied upon to guide any decisions made that allow impacts to Victoria's biodiversity:

- It is very important that the mapping data can be challenged by applicants and the determining authority.
- It is also very important that the 1750 EVC conservation status mapping data is used instead of the 2005 EVC data or 90% of our applications will be incorrect in this regard.
- The modelling used for mapping values must have increased transparency, including what data is being used to update current models or to prepare new models.
- The process, including timeframes, for requesting amendments to biodiversity information tools must be formalised and clarified.
- DELWP must undertake regular updates of flora, fauna and habitat data used for decision making via input to the Victorian Biodiversity Atlas (VBA) or future systems.
- Peer reviews of the results of the models are critical to ensure they accurately reflect habitat and species.
- DELWP must consistently allow supplementation of information about habitat and species at the site with accurate and up to date records, regardless of their presence in State databases. Sources of information that will be accepted and will withstand challenges, such as VCAT, must be clarified.

### Offset Delivery

Rules for offsetting have a significant impact on the extent of protected vegetation as the vast majority of clearance in our region is offset through the credit register as 'general' offsets. This non like-for-like offset arrangement allows for vegetation removal that can be offset anywhere in a Catchment Management region, which is obviously very large and diverse.

The impact of opening the offset market to the catchment scale and removing the requirement for like for like offsetting has had significant impacts on our biodiversity assets.

Our native vegetation from endangered Plains Woodland EVC is continuing to decline as a result of the disproportionate spread of offsets under the existing scheme. For example, very large grey and yellow box trees (endangered Plains Woodlands EVC) are being depleted through the permitted

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(and illegal) clearing of native vegetation whilst more common, lower biodiversity value, river red gum EVCs on less productive land are being protected as offsets. Bioregional like-for-like offsetting must be reintroduced to address this.

We support the increased acknowledgement of local biodiversity assets, including specific ecosystems and landscape features. To complement these changes we recommend that further improvements to offsetting include:

- Specific offsets for all vegetation removal within endangered EVCs.
- Specific offsets for all vegetation removal within the intermediate and detailed pathways.
- Requirements for offsets to be secured within the municipality where vegetation removal occurs.
- Where specific offsets are not available, the removal of vegetation should not be permitted. The opportunity for negotiation by applicants should not be provided in this instance. Negotiating these offsets contributes to the potential extinction of particular species and habitats.
- Offsetting on Crown Land must contribute to overall gain of native vegetation quality and quantity across the state. Land which should already be protected and managed by the state government for conservation purposes should not be available for offsets.

### Exemptions

As outlined in the draft Protecting Victoria's Environment – Biodiversity 2036 p36, entitled uses and exemptions represent the largest cause of native vegetation loss in Victoria. Recording and reporting this loss is crucial to understanding what the true loss of native vegetation is in Victoria and whether the net gain/no net loss objectives are being achieved.

There is currently no framework for the exemptions to be tested or reported against. This is a big concern that needs to be addressed. A system which monitors and incorporates tracking vegetation removed under the exemptions is critical and must be implemented.

An important inclusion should be that exemptions should only be valid if written confirmation from the determining authority deems that the use of a particular exemption is appropriate. This is the only way that the native vegetation losses via exemptions could be recorded and reported upon. It is impossible to have any idea if you are achieving your objectives if you do not record the major losses occurring via an exemption. The NVIM tool could be utilised to assist this process.

We support the minimisation requirement ('minimum extent necessary') but also strongly advocate for avoid as the first requirement. The exemptions should be consistent with the native vegetation clearance guidelines. The avoid and minimise principles must still apply to all of the exemptions in 52.17 even though a permit is not required.

Currently the wording and intent of many exemptions are not clear nor evidence based. The wording of some exemptions (such as the fencing exemption) is subjective and can be applied in various ways depending on the interpretation of the decision maker. Guidance material needs to be very clear and give Officers the confidence to apply a consistent approach.

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Planning Schemes are public documents and therefore must be expected to be read by interested members of the public. Accordingly, guidance relating to exemptions should be provided within the revised Biodiversity Assessment Handbook, an incorporated document.

Having clear explanations and advice on the application of exemptions within The Handbook will streamline the planning process significantly; in particular, the exemptions must be accessible and able to be read as legally meaningful by legal advisers, community leaders or interest groups. Only an incorporated document is likely to be adequately useful.

Importantly, the interactions of the Clause 52.48 Bushfire Exemptions on native vegetation require serious consideration. Whilst the review of the Cl. 52.48 exemptions is not part of the current regulations review, the impact on native vegetation from the bushfire exemptions cannot be ignored, given the significant impact it has on the condition and extent of native vegetation across Victoria. Exemptions will continue to seriously compromise the assessment of the quantity of permitted clearing of vegetation in Victoria and therefore the overall objectives of net gain or no net loss to Victoria's biodiversity.

Native vegetation on roadsides is particularly valuable and the exemptions relating to clearing for road safety and the fencing must be clarified.

Council must have input into the development of any MOU/CoP Agreements for public authorities or councils that removes the requirement for a permit to remove native vegetation (VicRoads, Water Authority CoPs etc.). Although a permit may not be required to remove native vegetation under these agreements it is very important that the avoid and minimise principles still apply and strict notification and reporting conditions must be included.

## Compliance and enforcement

We are very supportive of the improvements in this key theme. We emphasise the importance of providing adequate DELWP staff resources and strengthening the ability of Councils to confidently and consistently prosecute offenders. It is critical that these changes are implemented soon and under the guidance of Local Government. DELWP need to provide a lot of support to councils in this space.

Compliance and enforcement should not just be the responsibility of Councils. Current resourcing pressures will make this even more difficult. This should be a joint approach with DELWP.

However, we are very concerned that DELWP doesn't have adequate resources for practical support with compliance and enforcement. We strongly recommend that DELWP regional staff numbers are increased. Councils need regional DELWP Officers (catchment based compliance and enforcement teams) who can assist with monitoring and reporting of compliance and enforcement investigations and outcomes.

In particular, there should also be improved monitoring of offset sites and checking that permit conditions have been fulfilled. We do not consider local government is the appropriate party to undertake this due to our limited resources. Regional DELWP Officers should be employed to undertake this role.

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DELWP also needs to be in a position to undertake compliance and enforcement with little support from Councils in some circumstances, as many regional and rural Councils have no resources for environmental compliance, and priorities and values can shift with changes in Senior Management and Councillors.

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## Proposed changes to the Native Vegetation Clearing Regulations

### ***Comments on proposed improvements***

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

Strongly support the reintroduction of avoid, minimise and offset principles for all native vegetation clearance applications.

Support the wording '*significant contribution to Victoria's biodiversity*' being removed from the purpose section of 52.17 as the Guidelines incorrectly determined that the vast majority of our regionally significant native vegetation was not making a significant contribution to Victoria's biodiversity.

Support the addition of 'destruction and lopping' to the avoid and minimise steps.

A minimisation statement outlining the steps taken to avoid and minimise must be required for all three pathways (basic, intermediate and detailed) for biodiversity and or other values. For the majority of applications in Greater Shepparton, this will provide no greater burden but ease the confusion for applicants.

Minimisation statements considering biodiversity values for all pathways would result in a more consistent planning process and ensure that landholders and planners are reminded that biodiversity should be at the forefront of decision making in regards to the clearing regulations.

We do not support the continuation of the no net loss objective. We strongly advocate for a net gain objective as is proposed in the Biodiversity 2036 consultation paper and outlined in Labor's pre-election platform in 2014. Suggest the primary focus of the policy should be changed to 'The three step approach (Avoid-Minimise-Offset) is applied to all removal of native vegetation to achieve net gain objectives'.

The policy is concerned with overall biodiversity contribution. This is an immeasurable and theoretical concept - to what degree of certainty can we determine the loss of particular native vegetation will affect biodiversity and what is a significant contribution?

- 2. Consolidate comprehensive policy guidance for native vegetation removal.***

Strongly supported.

It is very important that a clearly defined process is developed to ensure decision makers are able to fairly and consistently apply the policy. Other matters to be taken into consideration in the assessment of the planning application have been largely overlooked due to current lack of clarity, particularly in relation to the intent and application of exemptions. Whilst 52.17 requires the decision maker to consider the LPPF, the LPPFs role in decision making is often ignored or given little weight particularly for low risk applications. The assumption is that for low risk there is an automatic deemed consent for removal and local policy is not to be applied.

There is a strong need for other matters (particularly the LPPF for low risk applications) to be clearly articulated in 52.17 and include protection of water ways, habitat values, regional policy

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guidelines, relevant legislation such as cultural heritage, EPBC Act, Wildlife Act, CALP Act, FFG Act etc.

We strongly support including native vegetation, ecosystem services and biodiversity objectives into zone considerations and decision guidelines eg. farming zone. The earthworks provisions within the farming zone can often impact on native vegetation outcomes if native vegetation is not considered as part of the assessment process for earthwork applications.

52.17 Application requirements – good to see the removal of “as appropriate” in the first sentence. As appropriate comment added some level of ambivalence to the requirements section and provided an out clause to some applicants from supplying some of the necessary requirements.

We also strongly support the development of the guidance materials with LGA's from across the state. Guidance material should be within a policy section of the SPPF, not only in a guidance document.

The impact of Clause 52.48 Bushfire Exemptions on vegetation across the landscape should be considered and incorporated into the comprehensive policy guidance.

There are concerns about the potential use of Native Vegetation Precinct Plans as a streamlined process for removing native vegetation on a larger scale. An incorporated NVPP should not remove the requirement for a permit to remove veg under 52.17, as removal and offsets are hard to track and don't address other values of native vegetation. NVPPs should be managed similar to PSPs, be a guiding document, but still require permits or notifications at subdivision level. Some options to improve the system are:

- Local Government Authorities should be the determining authority.
- Cl. 52.16 could be removed completely and NVPPs become incorporated documents under Cl. 52.17.
- NVPPs could have a statutory notification process, ensuring the Responsible Authority and DELWP are notified when the proponent is actually commencing removal of vegetation

The handbook and guidance notes need to clearly outline how the determining authority is required to assess the minimisation statement. A clear definition of the terms “minimum extent necessary” and “where possible” are also required to guide consistent decision making.

Ambivalence in regulation terminology leads to inconsistencies in decision making and also results in a reluctance to take further action or prosecute at the conclusion of compliance or enforcement investigations into illegal clearing incidents.

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

Support the development of the guidance material in partnership with DELWP but would strongly emphasise that resourcing is a major concern for council. The recent trend to push regulatory

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responsibility to Local Government is not sustainable, particularly with rate capping. Council is not in a position to absorb any further burden for native vegetation protection or compliance.

We agree with the following MAV response:

*While the intent of this recommendation is supported, the roles and responsibilities for strategic planning are unclear. Councils believe government should have a greater role in mapping and protecting vegetation. If this is done through planning schemes sufficient resources should be provided at a State level to run planning scheme amendment processes, provide ongoing referral responses, lead VCAT appeals and be involved in monitoring and compliance.*

The guidance material must be developed using reliable and accurate mapping, have consideration for climate change impacts, is regularly updated and is supported by site assessments. The current mapping needs vast improvements.

We still suggest the review and reintroduction of the Goulburn Broken Catchment Native Vegetation Guidelines and the inclusion of regional biodiversity strategies and relevant plans. This will provide clear biodiversity priorities for local areas taking into account our significant scattered trees, and endangered and vulnerable EVCs.

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 biodiversity assets. The State Government needs to provide more support for the development of local overlays that protect local and regional biodiversity by facilitating processes that help address these issues, such as:

- Reducing resources required to implement the process of planning scheme amendments.
- Adopting a new streamlined approval process to facilitate development and implementation of Environmental Significance Overlays
- Providing templates and practical guidance to assist Local Government Authorities with creating and formatting amendments.

Section 12 of the SPPFs could be updated in consultation with Local Government to provide a more supportive framework for the development of local policies relating to biodiversity protection.

The inclusion of climate change as a serious consideration in strategic planning for biodiversity should be incorporated into the guidance documentation. Encouraging and supporting local government to undertake strategic planning at a local level to support resilience of ecosystems to climate change could be implemented through a strategy under clause 12.

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

Strongly supported – this action is a key priority for the regulations to achieve the no net loss objective. A state-wide system that records and monitors all vegetation that is avoided or removed and offset is critical and should be implemented as a priority.

Effective monitoring to determine if the regulations were meeting their objectives was hampered by the shift from the Framework (which considered measurable native vegetation losses) to the current Guidelines (using biodiversity equivalence losses from the removal of native vegetation based on inaccurate and poorly understood data).

A system which monitors and reports on native vegetation removed via an exemption is critical and must be implemented. An important additional inclusion that should be introduced is that exemptions should only be valid if written confirmation from the determining authority deems that the use of a particular exemption is appropriate. This is the only way that native vegetation losses via exemptions are recorded and reported upon. It is impossible to have any idea if you are achieving your objectives if you do not record the major losses occurring via exemptions (or non-permitted clearing incidents). It is suggested that all native vegetation removed via an exemption be recorded and reported on using the online application tool.

There must be sufficient investment in systems so councils are not burdened with additional monitoring requirements. We suggest that catchment-wide on-ground monitoring and compliance DELWP Officers be employed as a cost effective and efficient way to achieve the outcomes required.

Monitoring and reporting must be regular and transparent, and should be accessible at a local level for individual LGAs to track an individual municipality's performance.

#### *5. Reduce the low risk-based pathway threshold*

Strongly supported. The current land size threshold of one hectare is considered too large, and large, old trees that have significant habitat value are not being protected.

The proposed threshold of 0.5ha is a significant improvement over the current threshold however, for largely cleared landscapes such as Greater Shepparton, a 0.2ha threshold would be more appropriate. Applications to remove 0.2ha of native vegetation from some of our woodland vegetation types that do not qualify as threatened EVCs could conservatively represent the removal of approximately 80 trees. Thus, the thresholds may need to relate more closely to site-specific conditions such as vegetation community or local significance.

It is recommended that the thresholds are reviewed when reporting on the overall vegetation losses across the state, to ensure the incremental loss is within the acceptable level assumed by DELWP in the development of The Guidelines.

Again, it is vital that applications with reduced low-risk thresholds can be refused by Council if an application does not address avoidance and minimisation principles or is not consistent with DELWP guidance and local planning policy about 'other matters'.

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Strongly support the inclusion of large trees shifting the application into the intermediate assessment pathway.

The majority of the clearing in Greater Shepparton currently falls under the low risk pathway that has absolutely no regard for the significant scattered trees well over one metre in diameter – at least 100 years old. It is not uncommon for us to receive applications to remove up to 15 grey and yellow box trees over one metre in diameter. This currently does not require on-site inspection under the guidelines nor does it provide for the ability for officers to negotiate a minimisation of the loss. Trees of this size are significant and provide vital habitat for our threatened and non-threatened native fauna species.

Training/assistance will be required for planners to determine Large Old Trees for many councils, specifically those who do not have the resources of a dedicated Environment Planner/Officer

Desktop assessments alone are not appropriate. Site assessments are very important to reduce the errors in the identification of proposed losses.

The current thresholds serve to send the message to the community that these biodiversity sentinels have no value. Greater Shepparton have clearly stated that we place a very high value on these trees as captured in the Greater Shepparton Environmental Sustainability Strategy and Roadside Management Strategy. This is also supported by the community.

Consideration of the patch size and quality, the proximity to water ways, corridors and other remnants should also be required.

**6. *Replace the Native vegetation location risk map with an updated map of highly localised habitats***

Very supportive of the removal of the location risk map and the ongoing updates and review of the mapping tools.

The new location map must include data from the 1750 EVC conservation status layer.

The new "location map" does not appear to be much of an improvement on the location risk map. The location map may include data from the highly flawed 2005 EVC data layer. The 2005 EVC map has very rarely (<10%) matched with the native vegetation that I have observed on site. The mapped EVC is often missing altogether from areas of native vegetation but present at other locations such as sporting fields and constructed waterbodies. The 1750 layer will be far more reliable to use to determine the EVC conservation status of a site.

We acknowledge the increased data entered into the VBA throughout the review, and encourage DELWP to continue finding ways to frequently input available records to work towards VBA or other databases containing 'real time' data.

However, we are still very concerned that there is insufficient data relating to many rare or threatened species. We request that DELWP invest heavily in data collection/research efforts to gather more data for each rare or threatened species, prioritising species in areas of high vegetation clearance.

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We request the development and publication of a published schedule of timeframes and/or deadlines for submission of data for inclusion into these scheduled updates which would allow Local Government and local community groups to prepare adequately for these data submissions.

More information is needed for determining rare/threatened species habitat, and how this data can be added or challenged where the species are found on site but not mapped in state databases. It is vital that both landholders and Councils have the ability to challenge the mapping data. Landholders will only provide additional site information if it reduces the score or offsets required at a particular site.

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

Support however, the application of the avoid and minimise principles for biodiversity values must be applied to all applications to remove native vegetation, regardless of the assessment pathway.

The review material is contradictory in this regard. How can the avoid and minimise principles be a primary focus and a minimisation statement be a requirement for all three pathways, but then allow an applicant to state that "steps were not taken to avoid and minimise impacts on the biodiversity value of native vegetation" for a basic pathway application? This is unnecessarily complicated for applicants and planners, and will not improve the way the regulations work.

The inclusion of avoid and minimise principles for biodiversity values for all applications would provide Officers with a greater capacity to work with landholders and farmers, re-designing plans where possible and achieving a higher biodiversity outcome for our mostly cleared municipality now and importantly, for future generations. This worked very well under the previous framework and goes some way to providing confidence with the community that council is working to reduce native vegetation loss.

Some definitions and wording in The Guidelines require clarification, and may need further explanation within The Handbook. Councils must be provided with the opportunity to provide input into the development of The Handbook and guidance notes when drafts are available.

The handbook and guidance notes need to clearly outline how the determining authority is required to assess what the applicant submits for their minimisation statement. A clear definition of the terms "minimum extent necessary" and "where possible" are also required to guide consistent decision making. Ambivalence in regulation terminology leads to inconsistencies in decision making and also results in a reluctance to prosecute or issue fines at the conclusion of compliance or enforcement investigations into illegal clearing incidents.

The Handbook needs to define the principles of avoid and minimise, and give guidance to assist Councils assessing avoid and minimisation statements. This is particularly important for less resourced Local Governments, as this support and guidance for decision-making will be vital for consistent outcomes across the state. The handbook and guidance notes will be required to outline when it is appropriate to refuse an application based on the avoid and minimise principles and ensure consistency in decision making.

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

Supported.

From memory, no applicants purchased third party offsets in our municipality under the Framework. Since the introduction of the Guidelines every applicant has purchased third party offsets.

Applications should be encouraged to provide first party offsets where they can demonstrate capability to manage them. The current system strongly encourages third party offsets which have led to a net loss of significant native vegetation in our region due to a lack of available like-for-like offsets.

Adequate offsetting requires like-for-like EVC offsets to be a requirement of the regulations.

Our region has been losing significant very large old Yellow and Grey Box trees from endangered EVC's that were present prior to European settlement. The offsets purchased for the removal of these trees are commonly located on River Red Gum Swamp country that has low production value for the owner. Offset sites are rarely the same EVC, let alone an EVC with an endangered conservation status.

One of the few positive elements of the Guidelines was the introduction of the condition that offsets must be secured prior to the native vegetation being removed. It is good to see this continue. The specific offset requirement was also an improvement.

**9.** *Change to two pathways, a 'lower assessment pathway' and a 'higher assessment pathway'*

Not implemented.

The three pathways are logical. The name changes for the pathways are appropriate.

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

Very strongly supported and suggest the information be clear and upfront in the application process.

The handbook and guidance notes need to clearly outline how the determining authority can refuse an application. Subjective language in the regulations and poor guidance/support/leadership from DELWP has led to the current of low rates of prosecution. As already stated, ambivalence in regulation terminology leads to inconsistencies in decision making.

Councils and the CMA's must have input in the development of the handbook and guidance notes.

Need clarification on the landscape features that can be used, and how to ensure they are within local planning schemes

State-wide training is required to be provided by the State, to ensure consistency of application and intent of guidance material.

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DELWP support will be vital to ensure successful testing at VCAT if necessary.

**11.** *Include a decision guideline that allows councils to consider locally important biodiversity when assessing applications*

Strongly support in principle and would strongly recommend the state develop the guidelines, with CMA's and LGA's, to ensure regional and local priorities are adequately considered and included in planning schemes. Supportive of the broadening of values that will be assessed on sites where an application is submitted to remove native vegetation. In collaboration with Council, we see benefit in DELWP officers being appropriately resourced to assess and to protect broader biodiversity values through the planning system.

Strongly supportive of measures that allow Councils to accurately assess biodiversity values at a local level, and consider these values in our assessment of permits. For example, the recognition of threatened EVCs, landscape features and rare and threatened species as additional considerations for assessing applications is welcomed. These measures will allow increased protection to much more significant remnant indigenous vegetation and ecosystems. Other welcome additions are sensitive wetlands and the role of vegetation in protecting land and water.

Further assistance from DELWP with strategic planning should clearly articulate how local biodiversity of importance should be referenced in local planning schemes to provide increased protection.

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 are constrained by relatively small budgets, do not have the option to develop environmental overlays necessary to protect local biodiversity assets. The State Government needs to provide more support for the development of local overlays that protect local and regional biodiversity by facilitating processes that help address these issues, such as:

- Reducing resources required to implement the process of planning scheme amendments.
- Adopting a new streamlined approval process to facilitate development and implementation of Environmental Significance Overlays
- Providing templates and practical guidance to assist Local Government Authorities with creating and formatting amendments.

This improvement will have a significant positive impact on reducing the incremental loss of large old scattered, hollow bearing trees and threatened EVC's in the City of Greater Shepparton.

**12.** *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*

Support. Site assessments are critical to inform an appropriate decision as the mapping data is known to have lots of inconsistencies.

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The process for requesting amendments to biodiversity information tools if they are inaccurate must be outlined. How will this work? Council must have input into the development of the Handbook and the guidance notes.

Our understanding is that the landholder can have a native vegetation assessor assess the site if they disagree with the mapped data but Councils would not have the power to do the same? Councils must be able to have the site checked by a native vegetation assessor if they are doubtful of the data provided by NVIM.

Can the collection of on-site information be used to supplement the mapping? Planners should be able to use known information about habitat and species at the site with accurate and up to date records, regardless of their presence in state databases. We need clarity on what sources of information will be accepted and will withstand challenges at VCAT

Regular VBA updates are required.

Peer review required for the results of the models.

The introduction of an independent data review expert panel - Council, proponents and other stakeholders could engage the independent panel to review and approve changes wrought by the site-collected data ('expert' conciliation, pre-VCAT).

**13.** *Increase the information available about the maps used in the regulations and improve their accessibility*

Supported but must be in conjunction with improving the quality of data in the mapping and include other related mapping data such as Atlas of Living Australia, EPBC mapping etc. Currently, the scale on NVIM is too large.

Mapping modelling transparency required, including what data is being used to prepare new models. Transparency is vital for trust in the system and for the ability to challenge (and defend) the system. Increasing information about the maps will give transparency to users and should lead to continual improvement in the data.

Models and assumptions should be peer reviewed and published

**14.** *Place greater emphasis on key areas of habitat for dispersed species in decision making and offset requirements*

Supportive but how will this be achieved? We need clear guidance on how this data will be collected, who will collect this data and how it will influence decision-making.

'Habitat for dispersed species' needs to be defined in the handbook.

Information will need to be gathered on-site. This is often the only way hollows are detected or other significant habitat features such as fallen timber and understorey native vegetation.

**15.** *Differentiate between the biodiversity value of scattered trees for use in decision making and offset requirement determination*

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Strongly support.

The two size classes are good. Using the EVC benchmark large tree size is a logical method to determine the size category of the tree.

The sizes of slow growing species must also be taken into consideration. This link ([https://www.gbcma.vic.gov.au/downloads/Native\\_Veg\\_Retention/Addendum\\_to\\_Native\\_Vegetation\\_Retention\\_Controls\\_120310\\_.pdf](https://www.gbcma.vic.gov.au/downloads/Native_Veg_Retention/Addendum_to_Native_Vegetation_Retention_Controls_120310_.pdf)) provides an outline of our local slow growing species. How will these species be considered under the new Assessment Guidelines? Does the GB CMA Retention Controls documents need to be a reference document in the planning scheme again?

Currently large, old scattered trees with high habitat value are not being appropriately considered for biodiversity value. The information required should include species, diameter, location, presence of hollows, EVC (and its conservation status) and bioregion.

Consequently, the offset for this loss is not being met adequately. This is a significant issue in Greater Shepparton as large old scattered trees are over represented in our permit applications.

Very supportive of the requirement for the offset site containing at least one large tree for each large tree removed.

The Biodiversity Equivalence Units (BEU) score is inherently troublesome in the offsetting process. It is almost impossible to inform an applicant of the offset requirement for the removal of a set number of trees. There is no logic or tangible explanation or outcome. The framework system of requiring a certain number of trees to offset the loss was an easily communicable system that provided better like-for-like offset sites.

The Goulburn Broken Regional Native Vegetation Retention Controls provided a clear, concise and workable methodology for determining the value of scattered trees. It was easy to communicate with applicants and officers were clear on the offsets required. We recommend that this tool be reviewed and formulate the appropriate measurement for this improvement.

### ***16. Increase the use and functionality of the Credit Register***

Further to our recommendations on offset rules, State-wide offset delivery is an ongoing concern. Key concerns to address as a priority are:

- The lack of ready access to the register of available offsets. A transparent register should be available online and updated frequently to allow councils and applicants to search for available offsets
- Councils need DELWP support to find local offsets that are available, whether on the credit register or potential sites
- Information about potential offset sites. A register should be created or a function added to the credit register to highlight sites that have potential as offset locations but have not yet been formalised. Formalising these sites can be costly and landholders are unlikely to pursue the process without any certainty of income

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- Tracking of overall net gain or loss across the state and within individual LGAs. The gain from offset sites should be analysed against the losses due to permitted removal of native vegetation at least annually and reported on by DELWP; this should extend in a timely manner to unpermitted and exempt clearing.
- Third party offsets should be like-for-like. The same or very similar EVC's.

### *17. Support the development of the market for low availability offsets*

Specific offsets should be required for sensitive wetlands, coastal areas, endangered EVCs, LOTs; these should be like for like.

If a suitable offset site cannot be sourced then the permit should not be granted.

Both detailed and intermediate pathways should require offsetting within the municipal boundary or an adjoining municipality under only certain circumstances. The entire catchment region is far too large an area, especially considering all of the different bioregions and EVC's within the one catchment.

Supported but not just for low availability offsets. There is the potential for regional offsets in priority biodiversity areas and this should be pursued to gain best outcomes.

How will DELWP actively engage landholders to seek out new offset sites?

This should also be developed at a local perspective with material that can be given to local landholders with good quality native vegetation and outlining the incentives and benefits of participating.

### *18. Require that all third party offsets are registered on the Credit Register and meet its standards, including standards for securing the offset*

Supported with the consideration of regional EVC's that are declining as a result of the existing scheme. For example, very large grey box trees in the endangered Plains Woodlands EVC are being depleted through the permitted (and illegal) removal of native vegetation whilst lower quality, more common red gum communities on less productive land are being protected for offsets.

There is a need to establish an interrelated system for first party offsets.

### *19. Redesign the revegetation standards to ensure desirable revegetation can occur*

Very supportive

Local government representatives must be involved in the development and piloting of the new kit. First party offsets are often the only way to secure offsets locally for habitat loss, and provide a way for landholders to acknowledge loss of habitat and engage in actions to improve the condition and extent of native vegetation.

Attending councils were advised at the MAV briefing session on 25 January 2017 that the First Party Offset Kit will be simplified and made more accessible to landholders. The process is

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presently costly and time consuming for landholders; a streamlined approach is required to encourage involvement. The process should encourage first party offsets on properties that have the required habitat by making the process simpler. The proposed improvements should include an easy online system with a management plan approval process that is signed-off by DELWP.

High and very high conservation value rated roadsides should also be included. Important to also include regional native vegetation guidelines (Retention Controls) and be based on EVC information.

### **20.** *Create a framework for offsetting on Crown land*

Too many potential issues to support – all offsets should be treated and managed equally. Crown land offsetting raises important questions such as:

- Does the reserve status of the land change once offsets are applied – does a state forest then become a State Park?
- Who is responsible for compliance and how will enforcement be administered.
- Will activities such as fuel reduction burning be excluded?

### **21.** *Formalise a set of exemption purposes and principles*

Supported. As outlined in the draft Protecting Victoria's Environment – Biodiversity 2036 p36, entitled uses and exemptions represent the largest cause of native vegetation loss in Victoria. Recording and reporting this loss is crucial to understanding what the true loss of native vegetation is in Victoria and if the net gain/no net loss objectives are being achieved.

Currently many exemptions are not clear nor evidence based. Exemptions such as the fencing exemption can be applied in various ways depending on the interpretation of the decision maker. Guidance material will provide officers with the knowledge and confidence to apply a consistent approach.

We support the minimisation requirement but also strongly advocate for avoid as the first requirement. The exemptions should be consistent with the native vegetation clearance guidelines and the avoid and minimise principles must still apply to all of the exemptions in 52.17 even though a permit is not required.

There is currently no framework within which the exemptions can be tested or reported against. This is a big concern that needs to be addressed so it is important that a mechanism is created to capture native vegetation lost via exemptions and non-permitted clearing.

An important inclusion is that exemptions should only be valid if written confirmation from the determining authority deems that the use of a particular exemption is appropriate. This is the only way that the native vegetation losses via exemptions are recorded and reported upon. It is impossible to have any idea if you are achieving your objectives if you do not record the major losses occurring via exemptions.

A system which monitors and incorporates tracking vegetation removed under the exemptions is critical. It is suggested that an addition to the application process requiring simple online reporting

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in lieu of a permit application for all native vegetation removal that is undertaken through an exemption.

The Goulburn Broken Regional Offset study will specifically cover the potential of providing volunteer offsetting options to meet regional biodiversity priorities.

Training, provided by the state, will also be required for council staff to ensure a consistent and effective approach to the application of exemptions.

Suggest the development of the purposes and principles is undertaken with local authorities and other stakeholders.

### *22. Clarify wording of exemptions*

Good to see to the minimum extent necessary in the wording of most exemptions but we need DELWP to clearly define this term.

Planted trees exemption – Still need guidance on how to determine what is publicly funded, what the intent was and what evidence is required (especially with old plantings)?

Wording of exemptions needs to be clear enough for compliance purposes – terms like 'deliberately destroyed' require officers to prove intent. It would be better to state 'illegally cleared' and/or via 'negligence' etc.

DELWP staff need to be able to confidently give advice on exemptions and planning issues; sometimes they are not confident enough or do not want to provide clarification in writing. They may need more support/training.

Farming Zone exemption:

- need wording about prioritising areas already cleared for new buildings – 'where there is practical opportunity to site the buildings or works to avoid the removal, destruction or lopping of native vegetation' should be inserted
- this exemption should not apply to properties covered entirely by native vegetation, where farming practices would not be practical or viable
- this exemption should only apply to properties >40ha

Bracken – should be areas of ONLY bracken, or bracken among exotic species. 25% cover should include bracken where it is part of a patch with other native vegetation.

Reword stone exploration exemption to avoid loopholes

Roadside native vegetation is a significant environmental asset in our largely cleared landscape. We are pleased that "to the minimum extent necessary" has been added to the road safety exemption but this term needs to be well defined to ensure that the significant biodiversity and connectivity values of our roadsides are protected via the implementation of the new agreements made between Councils and the Department Secretary.

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Fencing exemption – Should only be the boundary between two properties. Only applies when access from one side is not available. If two trees are on either side of a fence, the least significant tree should be removed to provide access. The 1m clearing of native vegetation on public land content requires further clarification. Written consent from the Responsible Officer (not the grader driver) from the relevant public land manager must be provided before any removal occurs on public land.

The Conservation Work exemption is a good addition as long as it is not exploited.

### ***23. Provide guidance on the intent and application of exemptions***

Strongly supported. Use of exemptions should be documented by the user, in the event that the clearance is questioned

### ***24. Adopt a consistent approach to agreements referenced in the exemptions***

Supported. There should be a review of agreements and Code of Practice. Monitoring should also be built into agreements and Codes.

Although a permit may not be required to remove native vegetation under these agreements, it is very important that the avoid and minimise principles still apply and strict notification and reporting conditions are included. Council must have input into the development of the new MOU Agreements. Do these need to be incorporated documents for improved enforcement outcomes?

Principles should be developed that clearly outlines the intent and contents of the agreements.

All the terms and definitions should be consistent through all agreements.

All agreements that are the responsibility of LGA's should all require that approval is sought to apply the exemption prior to the works.

All agreements, and all losses under the agreements, should be made publically available by the state.

Mandatory annual reporting of losses under the agreements to both the state and the responsible authority at a minimum.

### ***25. Develop a compliance and enforcement strategy***

Supported,

Compliance and enforcement is a difficult space for Local Government due to limited staffing and financial resources. Compliance and enforcement would be a more efficient process and investigations would achieve better outcomes if it were a joint approach and DELWP were the lead agency.

However, we are very concerned that DELWP currently doesn't have adequate resources for practical support with compliance and enforcement. We strongly recommend that DELWP regional staff numbers are increased to support compliance and enforcement. Councils need regional

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DELWP Officers (catchment based teams) who can assist with monitoring and reporting of compliance and enforcement investigations and outcomes.

A strong deterrent is required to ensure compliance regardless of greatest benefit relative to impact.

### ***26. Provide guidance and support materials for compliance and enforcement activities***

See comments to 25.

Supported but also acknowledge that resources will significantly constrain what can be achieved in this area. While support materials may be useful for those able to undertake activities, it will not be enough if the resources are not there. The training will be necessary.

DELWP need to provide support to councils in this space.

There should also be improved monitoring of offset sites and we do not consider local government is the appropriate party to undertake this.

### ***27. Improve information gathering for compliance and enforcement***

See comments to 25 & 26.

Supported. Councils are keen to understand how this improvement will be achieved. However, compliance needs to be a shared responsibility with DELWP.

If non-compliance occurs – it shouldn't matter whether it's in areas of greatest concerns. Perpetrators have no concern for this distinction. The approach needs to be consistent.

There also needs to be sufficient deterrents for non-compliance and clear guidelines on what evidence is required for enforcement to be successful.

### ***28. Promote co-regulatory support***

Council is supportive of co-regulation, particularly with all levels of government.

DELWP needs to be in a position to undertake compliance and enforcement with little support from Councils, as many regional and rural Councils have no resources for environmental compliance, and priorities shift with changes in CEO, Exec or Councillors etc.

There is little detail on how this will be achieved. We note that the support will be focussed on councils having the greatest difficulty. Suggest this applies to all councils as we all lack appropriate resources.

As noted in 25, 26, DELWP staff resourcing will need to be increased in regional areas.

### ***29. Review the overarching compliance and enforcement framework***

Very, very important inclusion. Councils must have further input into the strengthening of any frameworks. This is a very frustrating area for Councils.