



East Gippsland Shire Council submission to:

***Proposed amendments to the
Victoria Planning Provisions
– Review of the Native Vegetation Clearing
Regulations***

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1. Introduction

This submission has been prepared to provide comment in relation to the proposed amendments to the Victoria Planning Provisions as a result of the Review of the Native Vegetation Clearing Regulations.

The submission has been prepared collectively within the statutory, strategic and planning compliance directorates of the Council and is endorsed by the Chief Executive Officer.

The East Gippsland Shire Council will be briefed on the Submission after the due date, therefore the submission should be viewed as an Officer Level submission.

Given limited financial resources, an executive summary approach of the position of East Gippsland Shire Council position is provided below.

East Gippsland Shire Council indicates a willingness to participate in future drafting and development of any supporting material and guidelines (subject to resourcing).

1.1. Executive Summary

Council's position overall is to provide support for the proposed improvements and implementation program. It is considered essential that the implementation of the reforms are premised upon the preparation and drafting of additional guidelines and practice notes.

Council embraces a co-regulatory approach, which is considered essential given limited resources within the local government sector, however stresses the expectation that DELWP resources its obligations sufficiently so there are not unreasonable delays in the provision of information, mapping and plans.

A compliance approach rather than emphasis on enforcement is supported. Concentrating on behaviours and education, premised upon a risk based approach is sound, practical and logical.

Our key themes contained in a response are as following and relate to; significant resourcing issues, the need for an increased level of guidelines and practice notes concentrating on a series of topics such as exemptions and enforcement; a partnership approach between Agencies, importance of good relationships and reinforcement of principles relating to biodiversity within a sound strategic planning framework.

The reduction in regional and local support at the local level of DELWP is having an impact on daily operations and discussions on matters at the local government level.

Like all policies, the effectiveness is in how it is it is resourced and implemented. East Gippsland Shire cautions against expecting to shift responsibility for implementation to local government and stresses the need for DELWP to be sufficiently resourced to meet all the obligations outlined in the paper.

East Gippsland Shire has long advocated for more equity in the manner that Native Vegetation clearing regulations are applied to Crown land managed by the State and Crown or public land managed by local government – especially to road side clearing. It is noted that some concessions have been made in the draft regulations that go some way to addressing this gap in equity. However the Victorian Government is encouraged to go further in addressing this inequity in the ways the regulations are applied.

2. Planning Response

2.1 Strategic Planning

It is agreed that the proposed changes to the State Planning Policy Framework (SPPF) to reflect greater emphasis on biodiversity as part of the aims and objectives for strategic planning will assist by influencing biodiversity at a larger and cumulative scale, in addition to the site by site basis. The strategic planning process allows for contextual and cumulative impacts to be assessed 'up front'. There is considered to be greater opportunity to address revegetation and whole of precinct approach. A precinct approach adopted as part of preparation of structure plans allow for significant biodiversity to be protected, and in some instances improved.

Whilst the approach is embraced, the financial implications are significant. This is particularly evident in local government proponent lead structure planning exercises. Without the direct support of regional officers of DELWP at the ground level, the strategic work required is often deferred to the Applicant as part of the preparation of development plan approval on a site by site basis.

We agree with the notion that good decision making for significant biodiversity includes strategic planning; via planning scheme amendments and consideration of development plans. A whole of precinct approach for biodiversity is valid and preferable, where resources are available to apply this approach.

We agree that there are significant advantages to considering the holistic perspective at a strategic planning level, when and if resourcing permits.

There is a need for the creation of a funding stream such as grant and non-competitive funding opportunities for local government to pursue assistance with the preparation of native vegetation precinct plans.

The time delay associated with the preparation of native vegetation precinct plans must be noted. We suggest that the preparation of the native vegetation precinct plans require direct regional officer support and understanding. These documents often become the subject of long and protracted legal proceedings and it is critical that DELWP officers have appropriate and sufficient information in relation to the planning scheme amendment processes.

In addition to the environmental content, the drafting of the native vegetation precinct plans are required to be drafted in unambiguous and clear language to meet the tests of interpretation as part of implementation. A good understanding of drafting and legal requirements at a statutory planning level is vital and often missing.

The environmental accounting associated with the loss and gain equations, including methodology for the implementation, needs to be clearly articulated. There is a need to gather information in relation to existing examples and draft a practice note tool which assists local government in the preparation of the documentation. We suggest that there is a need for protocol documents and a reference material source of 'good working examples'.

We agree that the preparation of native vegetation precinct plans is a good planning tool. There is significant time, logistical and financial considerations in the preparation of the documents. They require extensive input, collaboration and collective resources from DELWP to prepare.

There is a need for further recommendations relating to ongoing management of offset sites, the accounting process and the registration of security management at a practical and operation level.

Clearer guidance in relation to perpetuity and security of offsets within native vegetation precinct plans is required.

The proposed improvement which proposes clarification that 52.16 plays a role in assessment of applications which do not comply with a native vegetation precinct plan is useful and essential.

In times of significant resource constraints for local government, it is inevitable that the preparation of native precinct plans will be increasingly difficult to resource and will ultimately be deferred to a development plan overlay process on a site by site basis. This may undermine the advantages of addressing these matters early and strategically in a development approval process where the development plan overlay triggers a particular approval path.

2.2 Proposed drafting clarifications

The removal of the reference to bushfire threat in the biodiversity guidelines is appropriate. Additional reference to biodiversity into Clause 52.47 Planning for Bushfire assists in the clarification of the purpose of each of the controls. The issue of the reconciliation of each of the purposes becomes the subject to a site by site assessment on a case by case basis.

The updating of the application requirements as proposed appears logical and practical.

The clarification of assessment pathways and role of biodiversity provides in decision making is a good outcome.

It is considered vital that in any proposed changes to the Victorian Planning Provisions (VPP's) that appropriate transitional arrangements are documented and made clear.

Consistency between the wording of clauses 52.16 and 52.17 is supported.

2.3 Exemptions

The clarifications to the tables of exemptions in 52.16 and 52.17 are the most discussed items within the proposed amendments to the VPP's within our Council.

The intent to improve clarity, intent and to streamline alternate approval processes for exemptions for railways, road safety and utility installations is warranted and required.

There is a need to clarify whether an Arboricultural Report is required to support an exemption for 'emergency purposes'.

There is a need for greater clarity in relation to the fence line clearing exemptions. Greater clarity is required in relation to the cumulative impact of fence line and in cases wherein one side of the fence is already cleared. This section of the exemptions is used extensively. There is a need for non-ambiguous language in this section. A section in the practice note with diagrams would be useful.

There is a need for greater clarity relating to fires protection exemptions. There is ambiguity with reference to planted and/or grown naturally, as to whether this is to read as both being required.

The interpretation of the timber harvesting exemptions requires clarity in relation to naturally grown or re-growth and in these instances a planning permit and offsetting is not required.

A drafting of a simple fact sheet in relation to exemptions contained within 52.71 would be very useful.

The inclusion of a 'new' exemption for conservation works as proposed in clauses 52.16 and 52.17 is supported.

Council agrees with the notion of exemption for DELWP and Parks Victoria in instances where there is a matter of compliance with Crown land clearing procedure. We agree that there is limited value-add provided by local government in these circumstances. The issue of duplication warrants a streamlining of procedures.

We also advance that there is a need for exemptions to apply when local government is the crown land manager as land manager and committee of management.

An added exemption to ensure works associated with road safety and efficient functioning of utilities are welcomed and supported. This is an important improvement that is required immediately.

We agree with the included reference to exemptions to apply to works approved in notices served under the *Catchment and Land Protection Act 1994*. The situation to require a further approval is not logical and again represents unnecessary duplication.

We proposed an additional question as to whether 'conservation works' identified within *Coastal Management Act* consents such as a Foreshore Management Plan should also form an exemption. The same argument applies, that the conservation value and outcomes of the works have been deemed as satisfactory in the coastal management act consent, which would avoid a duplication of processes.

We advance that we disagree that the conservation works must be in an 'approved management plan' and meet the test of no net loss to biodiversity. The approval of the management plan will often have to balance the outcomes loss of vegetation clause. The precinct approach often results in the balance of loss and gain on an overall scale and holistic manner. The duality of the tests appears on face value to be difficult to meet, requiring that the elements require the issue of a planning permit.

We agree that utility installations should be consistently framed and defined as defined in other areas such road safety and railway exemptions. The proposed categorization is logical and practical.

The need to clarify and remove all ambiguity from the 'emergency works' exemption clause is supported and promoted. Words such as extent and area require further clarification. The question of cumulative calculation of area and extend requires further clarification.

We also stress the need for more equity in the way exemptions are applied, as the present system provides more exemptions to State agency managers of Crown land than to Local government managers of Crown land reserves – especially road reserves. This is neither fair nor equitable management of Native Vegetation. For example, several years ago Council had to hand back funding to upgrade a dangerous local road, as the project could not afford the offsets required. Recently DELWP has identified this same road as a potential fire break road and has commenced upgrading and widening the road. The same offsets were not applied to DELWP. Whilst the upgrade and widening of the road is ultimately a good outcome, the inequity of the two approaches to clearing offsets is clearly demonstrated in this example.

2.4 Use of Agreements

The use of agreements by the DELWP Secretary as the mechanism to access exemptions rather than a Code of Practice incorporated in a planning scheme has significant merit. Agreements are able to be more efficiently processed, without reliance on planning scheme amendments for the retraction and incorporation of new documents which is sound and reduces red tape.

It is important that the 'agreements by the DELWP Secretary be readily available and accessible for the statutory planners who are charged with the responsibility at a local level to administer the planning scheme. This is about the ease to make efficient and effective decision making at the statutory planning level. There needs to be an accessible record of such agreements.

Preparation of agreements needs to be standardised.

We agree with improvement 24 that the agreements are 'standardised' to cover principles, content, consistent in terms and definitions, contain a standard level of consultation and engagement, are publically available and make a record for permanent clearing and offsetting.

2.5 Enforcement

A key element which requires partnership is the issue of enforcement and education. The planning system is complex and the native vegetation clearing process including offset calculations is also inherently complex. The key is greater education and community awareness of the importance of values associated with biodiversity and cumulative assessment of any loss of biodiversity values.

Local government does not have the adequate resources and expertise to undertake enforcement in relation to illegal clearing matters. The reliance that the system has for specialist reports and legal counsel is such that many instances of illegal clearing are not currently pursued.

We agree that the joint development of a state-wide risk based compliance and enforcement strategy in collaboration with local government and the MAV is a suitable strategy for action.

We agree that the focus on compliance rather than enforcement is the preferred approach. We understand compliance to be a term used to describe behaviour and education, in relation to planning permit conditions. Concentrating on greater compliance with permit conditions is agreed to, however given current resourcing issues, it makes it difficult to action at the local government level.

Council has limited opportunity to undertake an investigative function as part of greater compliance on planning matters.

We agree that compliance and enforcement are co-regulatory functions. Given limited resources and the quantum of current planning compliance matters, there is a need to prioritise premised upon risk based approaches and functions designed to target key compliance tasks. Greater support from regional offices of DELWP is vital to achieving improvements. We support the identified target areas premised upon the areas at significant risk based on significance of conservation value.

2.6 Preparation of additional guidelines and practice notes

The preparation of updated and comprehensive guidance materials is critical to the success of the land use planning processes. These documents need to be application requirements focused with clear statements of level and detail of information required. We agree that the preparation of a comprehensive Practice Note for preparation of applications is a very sound outcome of the review process.

An update to the Assessment Handbook for application is supported.

The drafting of a new Practice Note to assist strategic planning exercises is also supported. We emphasise the need to be executed in partnership with local government, at metropolitan and regional/ rural representatives present to contribute.

The preparation and drafting of separate practice note relating exclusively to 'exemptions' is welcomed and actively encouraged.

Themes relating to exemptions and matters of terminology and interpretation make good candidates for a practice note. The proactive note needs to document the intent and then the in practice definition and interpretation. Incorporation of valid case studies and working examples is a good methodology.

The preparation of a practice note addressing compliance and enforcement is warranted. The drafting of a matrix which advances a series of options for compliance approach and methods for enforcement will enhance local government (improvement 26).

Increased training and ongoing education and sharing of knowledge is always advanced as a key goal.

2.7 Co-regulatory Approach

East Gippsland Shire is keen to pursue the opportunities associated with a co-regulatory, with formal and organised arrangements, of which would result in a partnership approach. We strongly agree with the aim to pursue a model of operation which is cost sharing and efficient with financial resourcing.

We are proactive with the continued learning and sharing of information between the organisations upon which this legislation is dependent upon. The issue of updating of maps and development of schedules to the Environmental Significance and Vegetation Protection is an ongoing resourcing issue and a question of access to expertise.

Co-regulation is dependent upon clear agreement between DELWP and local government in relation to roles and responsibilities.

2.8 Planning scheme amendment planning processes

The fluidity associated with the process of updating the mapping and reliance on a planning scheme amendment to do so is inherently time consuming, resource expensive and problematic.

The drafting of decision criteria premised upon the ecological classification is also a very complex task which often requires particular expertise for both the assembly of information and making interpretation through the controls accessible to non-experts.

We welcome the improvement to the biodiversity clause and updates contained therein. We advocate the need for biodiversity statements to be inserted into local planning schemes to reflect the significance at a local level.

We agree exemption clearing needs to be documented (not by local government) from a biodiversity perspective to ensure that mapping is accurate and up to date (not local government).

It is imperative that exemptions are mapped for both the public realm and private sector to gain an understanding on a cumulative basis of the level of clearing that has and is occurring as a result of tracking mapping. This is not a function of local government.

The updating of the mapping is a state government function.

2.9 Functioning of the credit register / offsets

The aim to increase the use and functioning of the credit register is a good initiative. Making the information available to Councils will assist in the decision making process. The issue of financial assistance to land owners and offset providers in the establishment of credit offset providers is supported. Greater transparency for first party offsets is also supported.

We strongly support the notion of working with conservation groups to identify and facilitate the establishment of 'potential' offset sites, especially given the types and low availability of some specie groups within East Gippsland. We advocate that there is an appetite for land owners to explore the commerciality associated with the land bank site. There is a need for the role to be actively facilitated. The provision of offsets can often be a difficult system to navigate.

We also request that once offsets are established they are maintained. In the past Council has purchased land to cover future offsets, to then find that the offset requirements have been changed and the offset property purchased no longer has value for Council.

We strongly agree that the correct department is Department of Treasury and Finance and the Department of Economic Development, Jobs, Transport and Resources and must be in consultation with the key user groups and land owner representatives.

The improvement which is focused on prioritising actions towards the higher level strategic goals of revegetation of key 'gaps' in significant conservation value vegetation is supported. The notion of promoting connection of the key vegetation types and patches is an important strategic goal. There needs to be mechanism at a strategic and practical level to ensure that the integration occurs. The idea of providing greater connection to scattered trees is highly desirable and is perhaps best pursued at the native vegetation precinct plan stage.

We strongly agree with the concept for improvement in creating a framework for offsetting on Crown land. We advocate the need for the development at policy level for Crown Land offsetting policy that addresses in perpetuity/ security arrangements, eligibility criteria, management actions and ability for third party to purchase. This is considered a critically important initiative that the system desperately requires.

2.10 DELWP Referral Status

Council supports the nomination of DEWLP as a determining referral authority in matters and applications which fall within the 'detailed pathway'.

3. MAV Draft Submission

The East Gippsland Shire Council concurs with the key position as outlined in the MAV submission to the matter dated March 2017.

4. Concluding Remarks

The subject matter is complex and requires a partnership between statutory and strategic planners and DELWP at a local and regional level. We actively support the series of improvements and implementation measures proposed.

The key recommendations in relation to greater clarity within the exemptions sections is supported and actively encouraged. An increased level of guidance and practice note material is supported.

The proposed modifications to the biodiversity statement within the State Planning Policy Framework are supported together with support for greater emphasis at the strategic level is supported and requires a partnership approach in its drafting and development.

We consider that the outstanding elements as contained in the 'Outcomes Report' be progressively implemented in a proactive and collaborative manner.

In closing, we emphasise our previous position in relation to the lack of equity in the way policy is applied to Crown Land which inherently differs to how policy applies to local government and private land owners.


CHIEF EXECUTIVE OFFICER

7 March 2017

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