

Review of the Victorian Native Vegetation Clearing Regulations

8 March 2017

Submission by:

Manningham City Council

Executive Summary

Manningham City Council officers welcome the opportunity to make a submission in response to comments being sought by the Department of Environment, Land, Water and Planning (DELWP) on the proposed regulatory system changes involving the following two (2) documents:

- *Review of the native vegetation clearing regulations – summary of proposed amendments to the Victoria Planning Provisions (VPP); and*
- *The draft Native vegetation clearing – assessment guidelines.*

This review forms part of Phase 3 – Release VPP changes for public comment and it is noted that Manningham City Council had previously made a formal submission in response to consultation undertaken in relation to Phase 2 of the *Review of the native vegetation clearing regulations* (public consultation paper, March 2016), in May 2016.

This submission provides a response to each of the 29 Proposed Improvements, noting that DELWP is seeking comments on matters for immediate implementation, as well as matters that will require on-going work.

Manningham City Council officers are members of the LGPro Biodiversity Planning Network and officers attended a meeting to discuss the proposed improvements on 16 January 2017. In addition to issues specific to Manningham, many of the comments in the officer's submission reflects views expressed by Manningham officers and other members of the network at that meeting.

Officers commend DELWP on the commitment for the on-going improvements to the regulatory system in response to a range of key stakeholders. Whilst a number of the proposed improvements have addressed a number of matters raised in Council's previous submission, which was lodged during Phase 2 of the *Review of the Victorian Native Vegetation Regulations*, it is noted that in this submission, officers are also reiterating a number of previously raised issues.

In summary, officers generally support the proposed changes which aim at delivering on the government commitment to sensibly protect sensitive vegetation and look forward to on-going involvement in the matters to be addressed in the future.

Assessment of Proposed Improvements

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

Support the primary focus of the regulations to avoid native vegetation removal.

It is further submitted that a 3 step approach should be considered for all applications to remove native vegetation, not just the 2 higher pathways. This is on the basis that the 3 step approach aligns more appropriately with our local (Environmental Significance Overlays – ESO) provisions. It is likely that the 3 step approach may be also applicable for other municipalities.

Proposed Improvement 2: Consolidate comprehensive policy guidance for native vegetation removal

Support the Assessment Handbook being updated to implement the updated regulations and consider that rather than a guidance document that this should also be given weight by inclusion in the State Planning Policy Framework (SPPF).

Whilst it is acknowledged that a review of the Clause 52.48 bushfire exemptions is outside the scope of this process, it is submitted that the impact of these exemptions should be given due consideration and incorporated into the comprehensive policy guidance.

It should be noted that no comments are raised in relation to the proposed changes to Clause 52.16, as this particular clause doesn't apply in Manningham.

Proposed Improvement 3: Develop guidance to support strategic planning relating to native vegetation protection and management

Request that consultation with local government on the development of the guidance be undertaken to ensure that more positive local outcomes are achieved.

It is acknowledged that it is important to get the system right and officers consider that improvements can be achieved if the system is developed in consultation with Local Government. This is particularly important as local government is the end user.

In line with the views expressed by the Biodiversity Planning Network (BPN), it is recommended that Clause 12 of the State Planning Policy Framework (SPPF) be

updated in consultation with local government to provide a more supportive framework for the development of local policies relating to biodiversity protection.

Currently, developing or updating environmental overlays is costly, time consuming and the processing and approval of planning scheme amendments is a lengthy procedure. It is also challenging when changes to the Victoria Planning Provisions do not filter down to changes to local provisions, resulting in inconsistencies between State and local provisions.

Additionally, the inclusion of climate change is a serious consideration in strategic planning for biodiversity and should be incorporated into the guidance. 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 of the SPPF.

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

Support for improvements to the monitoring. Manningham City Council already attempts to track both permitted and illegal vegetation removal.

It is considered that a state-wide system which records and monitors all vegetation that is avoided or removed and offset is critical, and should be implemented as a priority.

Monitoring the results should be transparent and should be released regularly i.e. on an annual or biannual basis. Data should be accessible at a local level for individual Local Government Authorities (LGAs) to track an individual municipality's performance.

It is considered important to monitor and identify the vegetation that has been removed under exemptions, in conjunction with permitted clearing.

Resource implications of monitoring by local governments is a matter of concern and DELWP should take more responsibility to ensure consistent monitoring of native vegetation losses across the State.

Proposed Improvement 5: Reduce the low risk-based pathway threshold

Whilst a reduction in the current threshold of 1ha to 0.5ha is an improvement in the low-risk (basic) pathway, Manningham City Council requests a further reduction to 0.2ha. This is on the basis that with even a threshold of 0.5ha, in Forest and Woodland type EVCs, where there is an already fragmented landscape, there could be significant tree and vegetation loss.

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

It is vital that applications with reduced low-risk thresholds are able to 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'.

Proposed Improvement 6: Replace the native vegetation location risk map with an updated map of highly localised habitats

The replacement of the location risk maps with maps of highly localised habitats is important to Manningham because there was insufficient data relating to rare or threatened species used in the previous location risk map.

The highly localised maps circulated in mid February are a significant improvement on the previous location risk map, however Manningham's review of the new maps has identified that some are poorly modelled and inaccurate. There needs to be regular updates and ongoing improvements to the maps, as data is peer reviewed and new data is recorded. We request a published schedule of reviews to allow for timely preparation and input.

Proposed Improvement 7: Require an avoid and minimisation statement for all applications and consider this in decision making

Support, but need to ensure that The Guidelines and The Handbook are prepared in a 'user friendly' format, with clear definitions to minimise ambiguity.

Examples of definitions that should be addressed, include:

- The definition for 'minimum extent necessary' requires clarification, as what is deemed to be necessary in development can be subjective, e.g., a single dwelling with eight bedrooms is likely to require an more extensive area of vegetation removal; and
- The difference between biodiversity and native vegetation needs to be clearer. Currently, the terms are used interchangeably and in reality native vegetation is only a small subset of biodiversity. Clearer distinction could assist applicants to achieve a better outcome for biodiversity.

Proposed Improvement 8: Require an offset strategy for all applications and consider this in decision making.

Generally support, but note that as this is identified as further work to be undertaken, officers cannot provide any comment at this stage.

Proposed Improvement 9: Change to two pathways – a ‘lower assessment pathway’ and a ‘higher assessment pathway’

Noted that this improvement has been replaced with three new assessment pathways (Basic, Intermediate and Detailed).

Proposed Improvement 10: Provide clearer guidance on when to refuse an application to remove native vegetation

Support this proposed improvement on the basis that there is currently very little detail provided for when Councils can refuse an application.

Request that consultation with local government on the development of the guidance be undertaken, to ensure that more positive local outcomes are achieved.

Proposed Improvement 11: Include a decision guideline that allows Councils to consider locally important biodiversity when assessing applications

Supportive of measures that allow Councils to accurately assess biodiversity values at a local level and to consider these values in our assessment of permits. For example, the role of vegetation in protecting land and water is particularly important in our steep shale soils with sensitive creeks and the Yarra River.

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

Proposed Improvement 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 proposal. It is considered that ‘ground truthing’ the DELWP maps with what is actually on the site is very important. Planners should be able to supplement information about habitat and species at the site with accurate and up to date records, regardless of their presence in State databases. However clarity is needed in relation to what sources of information will be accepted and what will withstand challenges such as at VCAT.

Request that local governments be involved in consultation process with regards to identifying the process for requesting amendments to biodiversity information tools, if they are inaccurate.

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

Proposed Improvement 13: Increase the information available about the maps used in the regulations and improve their accessibility

Officers are supportive of this proposed improvement. Transparency of mapping modelling is 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.

Models and assumptions should be peer reviewed and published. As part of this process, it also requested that a stronger commitment for their updating be identified.

Proposed Improvement 14: Place greater emphasis on key areas of habitat for dispersed species in decision-making and offset requirements

There is a lack of clarity about how this will be achieved. In particular, clear guidance about who will be responsible and how this data will be collected is requested and importantly, how it will influence decision-making.

There is also a need for '*Request for Habitat for dispersed species*' to be defined in the Glossary.

Proposed Improvement 15: Differentiate between the biodiversity value of scattered trees for use in decision making and offset requirement determination

Support this improvement. Scattered trees should be identified in three size classes (small, medium and large) rather than two, small and large. In some steep, exposed, shaly upslopes in Manningham area such as Warrandyte trees grow very slowly. If there are only two size classes even very old trees may never reach 'large'.

Support a 'like for like' offset e.g., requiring a large tree in the offset, where a large tree is proposed to be removed.

Proposed Improvement 16: Increase the use and functionality of the credit register

Support the increased use and functionality of the credit register, particularly in linking offset and permit information for greater transparency. This should be made

available online and readily accessible and frequently updated to allow both councils and applicants to search for available offsets.

Support registering potential offset sites before they are established so that offset providers do not incur the cost associated with the establishment of an offset site before they have a buyer.

Councils need DELWP support to find local offsets that are available, whether on the credit register or potential sites.

Request 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.

Proposed Improvement 17: Support the development of the market for low availability offsets

Support 'like for like' offsetting, particularly for large old trees and vegetation types.

No offsets available should mean no clearing.

Both detailed and intermediate pathways should require offsetting within a municipal boundary or an adjoining municipality. A Catchment Management Authority (CMA) region is too big, especially with the vast array of vegetation types across CMAs like Port Phillip and Westernport Catchment Management Authority (PPWCMA).

For example, Manningham City Council is eastern Melbourne and has no natural grasslands, yet offsets for forest and woodland vegetation have been going to grasslands west of Melbourne.

Proposed Improvement 18: Require that all third-party offsets are registered on the credit register and meet its standards, including standards for securing the offset

At the MAV briefing session on 25 January 2017, it was outlined that the First Party Offset Kit would be simplified and made more accessible to landholders. The current process is both expensive and time consuming for landholders. A more 'user-friendly' process 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.

It is requested that local government be consulted/involved in the development of the proposed First Party Offset 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.

Proposed Improvement 19: Redesign the revegetation standards to ensure desirable revegetation can occur

Officers are supportive of being involved in reviewing the updated standards as they are developed. As part of redesigning the revegetation standards, officers request that it be consistent with current best practice to ensure the structure of offset sites reflects the habitat lost from clearing.

Proposed Improvement 20: Create a framework for offsetting on Crown land

Investigate creating a framework for offsetting on crown land including ensuring any offsetting is in addition to statutory land management requirements and the framework is developed in consultation with community groups and council planners.

Proposed Improvement 21: Formalise a set of exemption purposes and principles

Whilst it is acknowledged that it was beyond the scope of the current process, to review the relevant exemptions, it is noted that a full review of the implementation and implications of the Native Vegetation Clearing Regulations is not complete without consideration of the relevant exemptions, including those that apply under Clause 52.48 Bushfire Exemptions. These exemptions are achieving huge vegetation losses across the landscape that affect the target of 'no net loss'.

DELWP should keep clear records of what has been cleared and under which exemption. In Manningham exempted clearing under the 52.48 bushfire exemptions is contributing to a net loss (this relates to exemptions that currently exist).

Query whether the use of an exemption should require some sort of approval from Council, or at a minimum that Council should be notified? This may avoid any misinterpretation of the existing exemptions.

Query how the State is going to track losses from exemptions? The 'no net loss' principle will never be accurate if losses aren't tracked.

Proposed Improvement 22: Clarify wording of exemptions

The following changes are requested in the Table of exemptions under Clause 52.17-7.

Planted vegetation: Query whether guidance is, or will be made available on how to determine what is publicly funded, what the intent was and what evidence is required (especially with old plantings)?

Regrowth: Request that Bracken should only be exempt if it is growing alone or amongst exotic vegetation. 25% cover should include bracken where it is part of a patch with other native vegetation.

Weeds: It is considered that the following thresholds in this exemption are excessive and unwarranted and often result in further land management issues:

- 0.5 ha of native vegetation
- 15 native trees with any DBH
- 5 native trees with >40cm DBH
- Bracken - 25% cover should include bracken where it is part of a patch with other native vegetation.

Proposed Improvement 23: Provide guidance on the intent and application of exemptions

Support. It is considered that the guidance should also require that the use of any exemption should be documented by the user, in the event that the clearance is questioned.

DELWP should keep clear records of what has been cleared and under which exemption. In Manningham, the exempted clearing under 53.48 bushfire exemptions is contributing to a net loss (this relates to exemptions that exist).

Query whether the use of an exemption should require some sort of approval from Council, or at a minimum that Council should be notified? This may avoid any misinterpretation of the existing exemptions.

How are the state government going to track losses from exemptions? The no net loss principle will never be accurate if losses aren't tracked.

Proposed Improvement 24: Adopt a consistent approach to agreements referenced in the exemptions

Support adopting a consistent approach to agreements referenced in the exemptions.

Proposed Improvement 25: Develop a compliance and enforcement strategy

Support this improvement, however there is concern that DELWP doesn't have resources for practical support with compliance. Councils need a regional contact who can assist with individual compliance cases.

Proposed Improvement 26: Provide guidance and support materials for compliance and enforcement activities

As for improvement 25. Support this improvement, however there is concern that DELWP doesn't have resources for practical support with compliance and enforcement activities. Councils need a regional contact who can assist with individual compliance cases and enforcement.

Proposed Improvement 27: Improve information gathering for compliance and enforcement

As for improvement 25. Support this improvement, however there is concern that DELWP doesn't have resources for practical support with compliance and enforcement activities. Councils need a regional contact who can assist with individual compliance cases and enforcement.

Proposed Improvement 28: Promote co-regulatory support

DELWP needs to be in a position to undertake compliance and enforcement, with minimal support from Councils, to ensure a consistent approach. Many regional and city councils have no resources for environmental compliance.

Proposed Improvement 29: Review the overarching compliance and enforcement framework

Support this improvement but more clarity is required about the review process and timeline for when the review will be undertaken.