

The purpose of this VPP Practice Note is to give guidance to planning authorities about the preparation of a schedule to the Rural Zone as it relates to timber production. In particular, the Practice Note deals with the issue of road damage during harvesting operations.

What is the issue?

The Rural Zone schedule provides for an area to be specified above which a permit is required to use land for timber production. This area must not be less than 40 hectares.

The Government's intention is that a permit be required only if the need for additional control over and above that specified in the *Code of Forest Practices for Timber Production* can be justified.

Many rural councils exhibited an area of 40 hectares to retain a mechanism to address the issue of road damage. Councils contend, and the timber industry acknowledges, that logging trucks can cause substantial damage to roads and bridges, particularly due to the concentration of heavily-laden vehicles during harvesting operations.

The timber industry is concerned that if permits are required, plantation expansion will be impeded and potential investors will be discouraged. This would be contrary to the Victorian *Private Forestry Strategy Private Forestry in Victoria: Strategy Towards 2020*, May 1998, a joint industry-government strategy that aims to treble Victoria's plantation area by the year 2020, in line with the national target for plantations set in July 1996 by the Ministerial Council on Forestry, Fisheries and Aquaculture. The timber industry is also concerned that councils will impose a range of disparate conditions on permits, particularly relating to the issue of roads. This will undermine the opportunity to achieve a consistent Statewide approach to timber production.

Panels/advisory committees for the new format planning schemes have recommended a consistent Statewide approach to resolving this issue.

Does the *Local Government Act* deal with the issue of road damage?

Section 207F of the *Local Government Act 1989* (Right of Council to recover for damage to road from person responsible) is specifically intended to address the type of concerns which councils have about damage caused to roads by logging trucks. However, difficulties associated with the use of Section 207F include:

- It creates a right of action, not an obligation which clearly identifies who is responsible for what type of damage and in what type of circumstance.
- It only offers a remedy in the courts, thus necessitating the expenditure of legal fees in order to recoup the damages claimed.
- The remedy is for damages, not reinstatement. A council must therefore incur expense to repair the road itself, instead of seeking to have the works done so it is not out of pocket pending recovery of the cost.
- There are problems with proving the damages claimed. Costing the amount of damage may also prove difficult.

Do the *Victoria Planning Provisions* deal with the issue of road damage?

Amendment VC2 to the *Victoria Planning Provisions* (VPP), gazetted on 9 July 1998, included an additional provision in the VPP (new Clause 52.18-4) to place an obligation on a forest owner or manager who causes damage to a road as a result of harvesting operations to repair that damage.

The Timber Harvesting Plan, which must be lodged with the responsible authority under the *Code of Forest Practices for Timber Production* and which requires the proposed cartage route to be identified, provides the mechanism to trigger an inspection of the roads to be used as a cartage route so that their condition can be established before harvesting operations commence. This provides a benchmark against which the condition of the roads at the conclusion of harvesting operations can be established in order to ascertain if any damage has been caused. It is only if damage has been caused that the forest owner or manager will be required to undertake restoration. The primary onus is upon them to restore the road, but if they fail to take action or the repairs do not match the condition the road was in before the commencement of harvesting operations, the council can take action under Section 207F of the *Local Government Act 1989*.

The new provision is linked to Section 207F of the *Local Government Act 1989* to avoid any argument that the cartage of timber during harvesting operations is not extraordinary traffic.

By a combination of these means, the responsibility to repair damage to roads caused by timber harvesting will fall on forest owners or managers irrespective of when the timber production commenced. It will apply to both new and existing plantations in the same way as the obligations under the *Code of Forest Practices for Timber Production* apply to all timber production.

No permit is required to implement this new mechanism. It therefore removes the primary justification given by many rural councils for specifying an area in a schedule to the Rural Zone above which a permit is required for timber production. Another advantage of this mechanism is that it applies to all land used for timber production, not just to plantations in excess of 40 hectares.

It is also proposed to amend Section 207F of the *Local Government Act 1989* to overcome the current difficulties associated with its use.

Other concerns of councils and local communities

Panels/advisory committees for the new format planning schemes found that other concerns about fire hazard, wilding escape, increase in land values (making it more difficult for existing farms to expand) and loss of population from rural areas do not justify the requirement for a permit for timber production. Concerns which are of an ongoing land management nature should be dealt with on a consistent, industry-wide basis, rather than being left to individual action by councils. Permit conditions are not an appropriate means of dealing with these problems. Other mechanisms need to be found to deal with them.

Is the requirement for a permit ever justified?

There will usually be no justification for requiring a permit for timber production in the Rural Zone.

However, the option to require a permit for timber production on areas above 40 hectares continues to be available for those situations where there is reasonable question about whether a location is appropriate for timber production. For example, an area of high quality productive agricultural land that is particularly well suited to some other crop which the council wishes to encourage as part of its Local Planning Policy Framework or an area of environmental or landscape significance may justify the exercise of a discretion about the use and therefore the need for a permit for timber production, particularly because overlays generally do not control use. In some situations, it may be appropriate to apply the Environmental Rural Zone.

If a permit is to be required for timber production, the strategic justification and the policy basis for decision making should be clearly set out in the Local Planning Policy Framework.

Note: This practice note is derived from the discussion paper Timber Production - A Common Approach To New Format Planning Schemes by Helen Gibson, Chief Panel Member, Planning Panels Victoria. The discussion paper accompanied the report of the panel/advisory committee for the new format Glenelg Planning Scheme.