

Managing native vegetation on roadsides

A guideline for implementing agreements
under the local government public road exemption

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1 Introduction

1.1 Purpose of guidelines

The purpose of these guidelines is to assist Local Councils to determine if works involving the removal of native vegetation are exempt under the *Planning and Environment Act 1987* (Victorian).

Clause 52.17 of the Victoria Planning Provisions (VPP) lists exemptions from the requirement for a permit in relation to native vegetation.

1.1.1 Purpose of Clause 52.17

To protect and conserve native vegetation to reduce the impact of land and water degradation and provide habitat for plants and animals.

Clause 52.17 sets out to achieve the following objectives:

- To avoid the removal of native vegetation.
- If the removal of native vegetation cannot be avoided, to minimise the removal of native vegetation through appropriate planning and design.
- To appropriately offset the loss of native vegetation.
- To provide for the management and removal of native vegetation in accordance with a Property Vegetation Plan.
- To manage native vegetation near buildings to reduce the threat to life and property from wildfire.

Under Clause 52.17 of the VPP, no planning permit is required to remove, destroy or lop native vegetation to the minimum extent necessary if the native vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road managed by the relevant responsible road authority (as defined by the *Road Management Act 2004* (Vic)) in accordance with the written Agreement of the Secretary of the Department of Sustainability and Environment (DSE).

These guidelines provide additional information to guide Council staff in relation to the Agreement with DSE for maintenance and safety works that activates the Public Roads exemption where it

applies. The guidelines detail the types of activities which are covered by the exemption, the notification requirements, data collection, reporting and auditing processes.

1.1.2 Roadsides

Roadsides are the non-paved areas within the road reservation, including areas between carriageways. Roadsides serve a number of functions. The roadside allows access for adjoining landowners and for maintenance and development activities of the road. Infrastructure essential to the safe and efficient operation of the road such as signs is also located on roadsides.

Native vegetation is critical for maintaining the health of Victoria's land and catchments as well as protecting the habitats of the State's threatened flora and fauna.

Remnant vegetation within existing roadsides is biologically important as it often provides the only remaining examples of intact indigenous vegetation communities. Native roadside vegetation often contains significant flora species and forms part of a network of linkages between larger patches of vegetation. Vegetation in road reserves provides for linear movement and population dispersion, and occasional nesting sites and food reserves for fauna. Wider rural roadsides can also provide permanent habitat for fauna. They also make an important contribution to landscape values, and can provide a valuable source of seed and plant material for the propagation and cultivation of this vegetation.

Accordingly, the removal of native vegetation along roadsides can represent significant loss of biodiversity value.

Vegetation can pose a potential risk to road users if it is located close to road verges and offers little in the way of space to provide a safety buffer for passing vehicles or vehicles that have lost control. Sufficient room within the safety buffer would be required for a vehicle to recover and avoid potential collision with hazardous vegetation.

2 The Exemption

2.1 Amendment VC49

Amendment VC49 was gazetted on 15 September 2008 and, amongst other things, inserted new exemptions for native vegetation removal in Clause 52.17 of the VPPs under the *Planning and Environment Act 1987*. One of these exemptions relates to works on Public Roads.

Note: A VC Amendment is a change to VPP and council planning schemes.

Native Vegetation

Native vegetation is defined in the *Native Vegetation – Guide for Assessment of Referred Planning Applications* (DSE 2007) as meaning plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses (as defined in Clause 72 of the VPP).

2.1.1 Clause 52.17

Under the VPP, Clause 52.17-2 discusses the Permit requirements and details the following:

A permit is required to remove, destroy or lop native vegetation, including dead native vegetation. This does not apply: if the table to Clause 52.17-6 specifically states that a permit is not required.

Therefore, if an activity falls within the Public Roads exemption as described within Clause 52.17-6, a planning permit is not required, if a Council is party to the Agreement with DSE.

2.1.2 The exemption

Clause 52.17-6 now provides that no planning permit is required to remove, destroy or lop native vegetation to the minimum extent necessary if the following applies:

Public Roads

The native vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road managed by the relevant responsible road authority (as defined by the *Road Management Act 2004* (Vic) in accordance with the written Agreement of the Secretary of the Department of Sustainability and Environment (DSE).

The key operational elements of this exemption are that:

- Exempt activities must relate to maintaining the safe and efficient function of existing public roads.
- Native vegetation removal should be to the minimum extent necessary.
- A written Agreement between DSE and Councils is required.

So that these elements do not have to be negotiated in each individual case an Agreement has been negotiated between DSE and Councils. Once formally accepted by Councils, this Agreement outlines the way in which the exemption is intended to operate.

The details of the Agreement are outlined in Sections 2.2, 3 and 4 of these Guidelines.

2.1.3 The Exemption and Planning Scheme Overlays

The exemption under Clause 52.17 of the VPP also applies to areas designated under Planning Scheme overlays, including:

- Vegetation Protection Overlays (VPO)
- Significant Landscape Overlays (SLO)
- Erosion Management Overlays (ELO)
- Environmental Significant Overlays (ESO).

This means no planning permit is required to remove native vegetation, despite the presence of an overlay.

Please note that some **non**-native vegetation can be covered by Significant Landscape Overlays or Heritage Overlays and a permit may still be required to remove or impact this type of vegetation.

2.1.4 The exemption and other permits and legislation

It is important to note that this exemption only relates to the requirement to obtain a planning permit under the *Planning and Environment Act 1987*. **It does not apply to any of the other flora and fauna permits that Councils may be required to obtain for relevant works** (e.g.

permits under the *Flora and Fauna Guarantee Act 1988*, referrals under the *Environment Protection and Biodiversity Conservation Act 1999*).

Councils must still comply with all other relevant Victorian and Commonwealth legislation in relation to works in roadsides, including but not limited to:

- *Flora and Fauna Guarantee Act 1988*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Catchment and Land Protection Act 1994*
- *Wildlife Act 1975*
- *Environment Effects Act 1978*
- *Aboriginal Heritage Act 2006*
- *Heritage Act 1995*
- *Road Management Act 2004*
- *Road Safety Act 1986*
- *Local Government Act 1989*
- *Country Fire Authority Act 1958*
- *Electricity Safety Act 1998*.

It is therefore important for Council staff to remember that whilst an exemption may apply other permits may still be required.

2.1.5 Other exemptions relevant to Councils

A number of the other exemptions listed in Clause 52.17-6 can also be relevant to Councils works in individual cases.

Relevant exemptions include those related to:

- Regrowth
- Dead vegetation (if less than a 40cm diameter or less than 1.3m from the ground)
- Weeds
- Land use conditions
- Land management notices
- Planted vegetation
- Emergency works
- Fire protection
- Surveying
- Utility installations
- Fences
- Vehicle access from public roads.

Please refer to Clause 52.17-6 of the VPP for further details.

2.2 The DSE / Council Agreement

Once formally accepted, the Agreement represents the written Agreement of DSE for Councils to use the Public Roads exemption, and outlines the way in which the exemption is intended to operate.

The Agreement outlines a practical approach whereby the Victorian Government's native vegetation management objectives are recognised, while ensuring the safe and efficient operation of the transport system. It also ensures effective integration of transport and land use planning for future development, and that competing policy objectives and priorities are identified and addressed.

The full text of the **Agreement** is included as **Appendix 1** to these Guidelines.

The Agreement outlines:

- Key principles and operational elements
- The types of maintenance and safety activities that fall within the scope of the exemption
- Key processes in relation to notification and reporting.

The activities that fall within the scope of the exemption are outlined in Section 3 of these Guidelines.

Key operational processes (such as notification and data collection) that apply to exempt activities are outlined in Section 4 of these Guidelines.

2.2.1 Key principles

The Public Roads exemption, under Clause 52.17-6 of the VPP was created to assist Councils in undertaking their responsibilities to maintain the safe and efficient function of existing roads. This exemption previously did not exist and was advocated for by Councils and the Municipal Association of Victoria.

To this end the Agreement aims to streamline administrative processes and timeframes associated with carrying out works on roadsides, whilst still recognising the importance of the 'avoid and minimise' goals of the Net Gain approach under Victoria's *Native Vegetation Management – A Framework for Action* (DSE 2002).

'Avoid and Minimise'

The exemption is based on the following principles as detailed within Victoria's *Native Vegetation Management – A Framework for Action* (DSE 2002):

Avoid where practical

The Public Roads exemption will not apply where there is a practical opportunity for the works to avoid the removal, destruction or lopping of native vegetation. Council staff should therefore always carefully assess the location of new works to avoid impacts on native vegetation where it is practical to do so.

This requirement implements the first step (avoid) of the three step approach to native vegetation management.

Minimum extent necessary

All exemptions operate on the basis that the removal, destruction or lopping of native vegetation is to be undertaken to the minimum extent necessary. Where the removal, destruction or lopping of native vegetation under an exemption cannot be avoided, the extent and impacts of clearing must be minimised through the planning, design and carrying out of works. This minimisation will need to be demonstrated by Council staff.

This requirement implements the second step (minimise) of the three step approach to native vegetation management.

There should be certainty about the extent and type of native vegetation which can be removed, destroyed or lopped under the exemption.

Some exempt activities under the Public Roads exemption include a limit on the extent or type of vegetation which can be removed or destroyed without a planning permit. These thresholds are discussed further in Section 3 of these Guidelines.

The third step of native vegetation management is identifying appropriate offsetting options, where actions to achieve commensurate gains should be considered. Under the Public Roads exemption, offsets are not mandatory but may be volunteered as detailed in Section 4.3

Other key principles behind the operation of the exemption and the Agreement include that Councils and DSE will:

- share information and collaborate in their work to seek consensus and ensure there is a common understanding of transport and native vegetation policies
- respond to issues in a timely manner.

2.2.2 Review of the Agreement

The Agreement will be reviewed annually on the request of either DSE or Councils if required to ensure the exemption is operating effectively.

This will include a review of the effectiveness of notification between Councils and DSE.

As such it is important that Council staff apply the exemption in accordance with the conditions of the Agreement as any abuse or ongoing breaches are likely to lead to its amendment or revocation.

3 Works covered by this exemption

As outlined in Section 2.1 of these Guidelines the Public Roads exemption is intended to cover actions undertaken on existing roads to maintain their safe and efficient function, in accordance with the obligations of the responsible road authority.

The Agreement highlights that a range of actions are undertaken in order to maintain this function. In particular it specifies that the Public Roads exemption will be used for the following categories of actions:

- maintenance activities.
- road safety treatments.

Under the exemption a native vegetation removal threshold will apply to all safety treatments except lopping where less than one third of the canopy is removed as outlined in Section 3.2. Maintenance activities are those that are standard practice as detailed in Section 3.1.1.

The exemption only applies to native vegetation on road reserves owned or managed by the responsible road authority (e.g. Councils), not any other land owned or managed by the responsible authority.

Project categorisation

A project is defined by an area of works which are separated from any other works being undertaken by the relevant Council by more than 2km within the period of 1 year.

Council staff should not classify projects in a particular way so that the Public Roads exemption applies.

3.1 Types of works covered by this exemption

3.1.1 Maintenance activities

Maintenance activities keep roads in a condition that is safe and retains the integrity of the infrastructure to ensure it is functioning correctly.

Maintenance activities can vary in scope from small short term works such as drain clearing, weed spraying or repairing a damaged sign, to larger longer term works such as replacing significant lengths of safety barrier.

The Agreement specifies that maintenance activities include:

- drainage maintenance
- trimming/lopping of vegetation (see definition under section 3.1.1)
- grass mowing, weed spraying and edge trimming
- removing fallen timber
- sign and guidepost maintenance
- maintaining sight lines
- safety barrier maintenance
- fencing maintenance
- resealing and re-sheeting pavements
- track surfacing and maintenance
- embankments and cuttings maintenance
- fire prevention maintenance
- maintenance access
- tie renewal
- signalling equipment and maintenance
- aerial and underground services maintenance
- buildings and car parks maintenance
- level crossing maintenance
- stand-sites maintenance
- bridge/culvert maintenance, including waterway maintenance
- structures maintenance.

Where an Council's activity falls within one of these maintenance categories, it will be exempt from the requirement to obtain a planning permit under the *Planning and Environment Act 1987*. No thresholds will apply to Maintenance activities. Furthermore, no consultation processes with DSE apply to lopping activities where less than one third of the foliage is removed.

Data collection (as specified in Section 4.2 of these Guidelines) is required for exempt maintenance activities aside from lopping where less than one third of the foliage is removed.

As specified within the 'regrowth' exemption, outlined under Clause 52.17-6 of the VPP, removal of any native vegetation which is naturally established or regenerated on land lawfully cleared of naturally established native vegetation and is less than 10 years old, will not require a permit.

Lopping / trimming of vegetation

Lopping is defined in Native Vegetation – *Guide for Assessment of Referred Planning Applications* (DSE 2007) as meaning the removal from a tree of foliage which does not comprise the trunk(s), and that does not affect the continued health of the vegetation.

If more than one-third of foliage is removed, for example, a single tree, a planning permit will be required unless the works can be classified as a maintenance activities or safety treatments. For Safety treatments, the vegetation threshold limits would apply (Refer to Section 3.2 of these Guidelines).

Removal of dead and/or fallen timber

While the Agreement specifies that maintenance activities involving the removal of dead or fallen timber is exempt from the requirement to obtain a planning permit, ideally this vegetation, which includes logs, and old or dead trees, should be kept on site where possible to provide valuable habitat for wildlife. It should only be removed if it presents a hazard to road users.

Scarred trees

Councils should be aware that regardless of relevant exemptions, scarred trees should not be trimmed without consultation with the Local Regional Aboriginal Party, Aboriginal Affairs Victoria or the local indigenous community.

3.1.2 Road safety treatments

Road safety treatments under the Agreement are described as follows.

Infrastructure safety works including:

- safety barrier installation (e.g. wire rope and guard rail), shoulder sealing / widening; and associated road formation works
- removal/trimming of hazardous vegetation, where the aim is to remove or reduce known likely safety risks posed by native vegetation, rather than risks that are unlikely threats to safety.

The vegetation thresholds (as detailed within Section 3.2), apply to all road safety treatments.

Notification will be required as detailed within Section 4.1.

3.2 The vegetation removal thresholds

3.2.1 The thresholds

The exemption applies to safety treatments which result in clearing below the following area thresholds for any project:

- Less than 0.5ha of Native Vegetation in an Ecological Vegetation Class (EVC) with Bioregional Conservation Status of Endangered, Vulnerable or Rare.
- Less than 1ha of Native Vegetation in an EVC with Bioregional Conservation Status of Depleted or Least Concern.
- Less than 6 scattered trees if the trees are assessed as a Medium, Large or Very Large old tree by applying the relevant EVC benchmark.

If the proposed road safety treatments do not fall within **all of these thresholds**, the exemption will not apply and a planning permit will be required.

NB: The following will not be subject to the above area thresholds:

- Maintenance activities associated with the safe and efficient function of existing roads (see section 3.1.1).
- Lopping/trimming of native vegetation which results in less than one-third of the foliage being removed.

Key definitions for terminology used in the thresholds are outlined below.

Bioregion – Bio-geographic areas that capture the patterns of ecological characteristics in the landscape or seascape, providing a natural framework for recognising and responding to biodiversity values. A landscape based approach to classifying the land surface using a range of environmental attributes such as climate, geomorphology, lithology and vegetation.

Bioregional Conservation Status – A state wide classification of the degree of depletion in the extent and/or quality of an Ecological Vegetation Class within a bioregion in comparison to the State's estimation of its pre-1750 extent and condition. The assessment takes account of how commonly it originally occurred, the current level of depletion due to clearing, and the level of degradation of condition typical of remaining stands. There are 6 classes: Presumed Extinct, Endangered, Vulnerable, Depleted, Rare and Least Concern as described on

page 51 of Victoria's Native Vegetation Management - *A Framework for Action* (DSE 2002).

Diameter at Breast Height (DBH) – The diameter of the main trunk of a tree measured 1.3m above ground level.

Ecological Vegetation Class (EVC) – A type of native vegetation classification that is described through a combination of its floristic, life form and ecological characteristics, and through an inferred fidelity to particular environmental attributes. Each EVC includes a collection of floristic communities (i.e. lower level in the classification that is based solely on groups of the same species) that occur across a bio-geographic range, and although differing in species, have similar habitat and ecological processes operating.

Native Vegetation – Native vegetation is plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses (as defined in Clause 72 of the planning scheme).

Medium Tree and Medium Old Tree – A tree with a DBH equal to or greater than 0.75 of the large tree diameter in the relevant EVC benchmark but less than the DBH for a large old tree.

Old Tree – A tree with a DBH equal to or greater than 0.75 of the large tree diameter as specified in the relevant EVC benchmark. Includes medium old trees and large old trees (see separate definitions).

Large Old Tree – A tree with a DBH equal to or greater than the large tree diameter as specified in the relevant EVC benchmark.

Very Large Old Tree – A tree with a DBH equal to or greater than 1.5 of the large tree diameter as specified in the relevant EVC benchmark.

Scattered Trees – Trees that occur at densities below benchmark densities and are within areas where total understorey plant cover comprises at least 75% of weeds or non-native plants.

Remnant Patch or Patch - An area of vegetation, with or without trees, where less than 75% of the total understorey plant cover is weed or non-native (bare ground is not included). That is at least 25% of the understorey cover is native, or a group (i.e. three or more) of trees where the tree canopy cover is at least 20%.

3.2.2 Application of the thresholds

The thresholds apply to all road safety treatments. When deciding whether the thresholds apply, Councils will need to consider the:

- amount of vegetation being removed, both in terms of area-based clearance and number of trees being removed
- Bioregional Conservation Status of the relevant EVC
- amount and type of vegetation to be removed will need to be estimated by the relevant Council Officer or contractor.

Information about Bioregional Conservation Status, Ecological Vegetation Class and Benchmarks (for tree sizes etc...) can be found on the DSE website (<http://www.dse.vic.gov.au>) under Land Management > Land > Native Vegetation > Native Vegetation Information.

The Bioregional Conservation Status of EVCs can also be determined using the [DSE Biodiversity Interactive Map](#) available on the DSE website above.

Once the amount of vegetation being removed and the Bioregional Conservation Status of the EVC is known, you can determine if the thresholds apply.

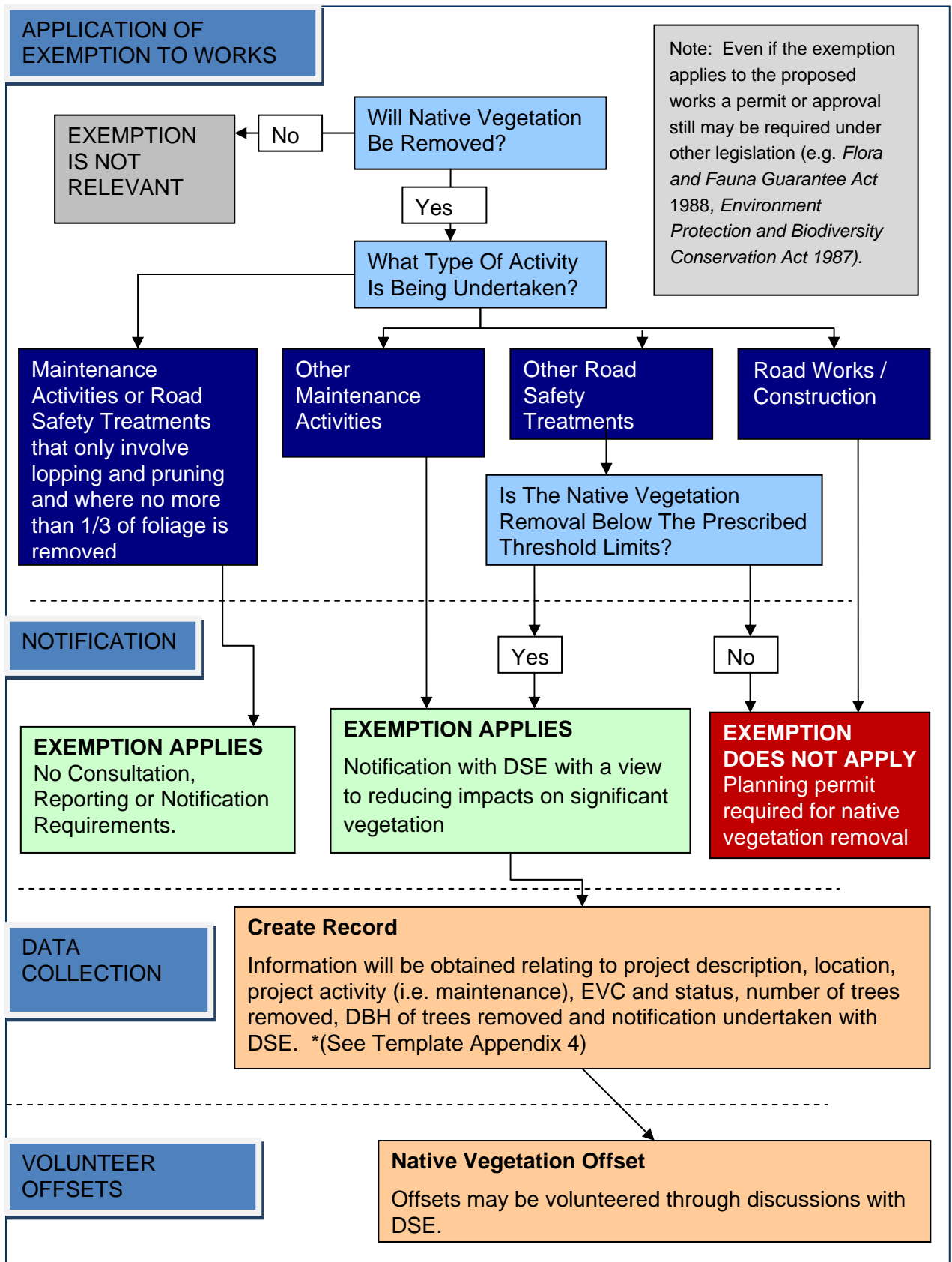
3.2.3 Additional information

Other permits

As described previously, the Public Roads exemption only applies to planning permits required under the *Planning and Environment Act 1987*.

If the works interfere with any Commonwealth Matter of National Environmental Significance or State protected species, a separate permit or referral may be required under other legislation (e.g. the *Flora and Fauna Guarantee Act 1988* or *Environment Protection and Biodiversity Conservation Act 1987*).

4 Process for exempt works



4.1 Notification

4.1.1 Notification with DSE

The Agreement specifies that notification with DSE will occur on all maintenance activities and road safety treatments which involve the removal or destruction of native vegetation (except lopping and trimming, see Section 3.1.1), with the view of reducing impacts on significant native vegetation wherever possible.

Notification will involve contacting the relevant DSE office to discuss the proposed clearing. If proposals are considered significant, a site visit to discuss opportunities to avoid or minimise impacts on biodiversity may be necessary.

Strong working relationships with DSE will be crucial to the effective implementation of the Public Roads exemption and, where possible, a collaborative approach should be taken in all cases.

The requirement for Councils to notify DSE under this Agreement also provides a risk management opportunity to receive advice from the Department on other permit requirements that may exist (Section 2.1.4).

4.1.2 Community consultation

Community involvement and/or consultation with community groups may be undertaken in cases where Council are concerned and environmental issues have been identified as a risk during the project risk assessment.

4.2 Data collection on exempt activities

Councils will be required to record the amount of native vegetation removed under the Public Roads exemption. This data collection will facilitate the auditing and review process outlined in Section 4.3 of these Guidelines.

As such, Council staff will be required to keep records of this vegetation removal. This information should be recorded by the relevant Council Officer.

A record should be created for each activity falling under the Public Roads exemption (except lopping/trimming where less than one third of canopy is removed), and should include the following information:

Project description

- Project name and location
- Brief project description (including the reason for vegetation removal)
- Project type (i.e. maintenance activities, road safety treatments).

Notification

A record of notification undertaken between DSE and Council in relation to the native vegetation removal or destruction under the exemption.

Native vegetation removal

- Date of the removal
- Native vegetation description (including Bioregion, EVC and Bioregional Conservation Status).

Quantity of vegetation removed including:

- tree numbers
- approximate diameter of trees at breast height (1.3 metres above ground) or
- the size class of the trees according to EVC Benchmark (e.g. Medium tree); and
- number of hectares cleared.

Suggested additional documentation for auditing processes

Each Activity should be the subject of an Environmental Risk Assessment that outlines the following:

- Demonstrated avoidance and minimisation with regards to native vegetation impacts.
- Any offsite impacts such as stockpiles and/or erosion from runoff.
- Requirements for rehabilitation including stabilisation, revegetation and/or drainage.

Councils will need to provide a report to DSE on aggregate native vegetation losses. DSE suggests that this occurs at minimum on an annual basis.

4.3 Native vegetation offsets

The Agreement specifies that offsets are not required with respect to losses incurred in the case by case use of the exemption, but that they may be volunteered by Councils in recognition and to mitigate these losses.

Any such offsets will be based on the data collected by Councils on net vegetation losses from exempt activities (as specified in Section 4.2 of these Guidelines).

4.4 Breaches

It is critical that Councils implement the Public Roads exemption appropriately.

Where an Council applies the exemption incorrectly (e.g. due to a false classification of activity, or through erroneous application of the vegetation removal thresholds) and proceeds with works without obtaining required planning permits, the organisation may be liable for a penalty of up to \$120,000 under s.127 of the *Planning and Environment Act 1987* or an appeal to the Victorian Civil and Administrative Tribunal.

5 References

Department of Sustainability and Environment (2006) *Native Vegetation: Guide for assessment of referred planning permit applications*. The Victorian Government, Department of Sustainability and Environment, East Melbourne.

Department of Natural Resources and Environment (2002) *Victoria's Native Vegetation Management – A Framework for Action*. Department of Natural Resources and Environment, East Melbourne.

6 Appendix 1 - DSE-Local Government approach the Planning Permit Exemption (Under the VPP) to remove, destroy or lop native vegetation to maintain the safe and efficient function of existing public roads

This Agreement outlines the shared approach agreed by the Department of Sustainability and Environment (DSE), the Municipal Association of Victoria and Local Government Authorities (Councils) to provide a common understanding of how the exemption will be implemented by DSE and Councils, to ensure that roads are managed for their safe and efficient function, that administrative processes are streamlined, and that the objectives of the Government's policy for native vegetation are delivered. This Agreement outlines the exemption and the principles that have been developed to describe the shared areas of interest between the portfolios. The principles are underpinned by a practical list of key operational elements to be followed in the use of the exemption.

Exemption

Under the Victoria Planning Provisions (VPP), no planning permit is required to remove, destroy or lop native vegetation to the minimum extent necessary if any of the following apply:

To maintain the safe and efficient function of an existing public road managed by the relevant Responsible Road Authority (as defined by the *Road Management Act 2004*) in accordance with the written Agreement of the Secretary of DSE.

The exemption also applies to areas designated under Planning Scheme overlays, so that no planning permit is required despite the presence of an overlay. These include:

- Vegetation Protection Overlays
- Significant Landscape Overlays
- Erosion Management Overlays
- Environmental Significance Overlays.

The exemption does not apply to the permit requirements under the *Flora and Fauna Guarantee Act 1988* (where a permit may still be required) and the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

Principles

- DSE and Councils are both committed to contributing to the Government's objective of a Net Gain in native vegetation and the principles and approaches identified in Victoria's Native Vegetation Management Framework.
- DSE and Councils will work together to develop practical approaches to achieve the Victorian Government's Net Gain objective for native vegetation, while ensuring safe and efficient operation of transport system and that competing policy objectives and priorities are identified and addressed.
- DSE and Councils will collaborate to simplify and streamline administrative processes for meeting native vegetation requirements in relation to transport planning and operations and to projects that are not covered by the exemption.
- DSE and Councils will share information and collaborate in their work to ensure there is a common understanding of transport and native vegetation policies.
- DSE and Councils will seek to achieve consensus on operational elements of the use of the exemption by actively facilitating problem solving approaches.

Key operational elements in the use of the exemption

- The exemption applies in order to maintain the safe and efficient function of existing public roads.
- The exemption aims to both streamline administrative processes and recognise avoidance and minimisation goals of the Net Gain approach.
- The exemption only applies to native vegetation on road reserves owned or managed by the Responsible Road Authority, not any other land owned or managed by an Council.
- The exemption applies for maintenance activities needed to maintain the safe and efficient function of existing roads.
- The exemption does not require the provision of offsets but these may be volunteered.

Notification

Councils will notify DSE prior to any clearing involving the removal or destruction, not including lopping (see below), of native vegetation proposed under the exemption. The notification will involve contacting the relevant DSE Biodiversity Group Manager to discuss the proposed clearing. If the proposal is considered significant by DSE, a site visit may be required to discuss options for avoiding or minimising impacts to biodiversity.

Maintaining safe and efficient function

The function of a road is to provide safe and efficient travel and transport for the community and the appropriate use of road reserves. A range of activities are undertaken in order to maintain this function including the following categories of actions for which the exemption will be used:

- maintenance activities
- safety treatments

Maintenance activities covered by this exemption are:

- drainage maintenance
- lopping/trimming of vegetation (see definition)
- grass mowing, slashing/reach arm mowing, weed spraying and edge trimming
- removing fallen timber
- sign and guidepost maintenance
- maintaining sight lines
- safety barrier maintenance
- fencing maintenance
- resealing and resheeting pavements
- track surfacing and maintenance
- embankments and cuttings maintenance
- fire prevention maintenance
- maintenance access
- tie renewal
- signalling equipment and maintenance
- aerial and underground services maintenance
- buildings and carparks
- level crossing maintenance
- standsites maintenance
- bridge/culvert maintenance, including waterway maintenance
- structures maintenance

Lopping/trimming

Removal of less than one-third of the foliage from any individual plant is not considered to affect the continued health of the plant. On this basis, lopping of branches or trimming of trees which results in no more than one-third of the foliage being removed from any individual plant, is not considered to constitute tree removal and there are no requirements to notify or report the lopping to DSE.

Safety treatments covered by this exemption are:

- safety barrier installation (e.g. wire rope/guard rail), shoulder sealing/widening and associated road formation works
- removal/trimming of hazardous vegetation, where the aim is to remove or reduce known likely safety risks posed by native vegetation, rather than risks that are unlikely threats to safety

Clearing thresholds

The exemption may only be used for safety treatments that result in a loss of the majority of basal cover of perennial native species below the following area thresholds for any particular project:

- < 0.5 ha of native vegetation in an EVC with a bioregional conservation status of endangered, vulnerable or rare.
- < 1 ha of native vegetation in an EVC with a bioregional conservation status of depleted or least concern.
- < 6 medium, large or very large old trees (as assessed by reference to the relevant EVC benchmark) whether they are in a patch of native vegetation or classed as scattered trees.

If works exceed the thresholds then a permit will be required.

Applying the thresholds

The thresholds apply to Projects involving the removal of native vegetation for safety treatments. A safety treatment Project involving the removal of native vegetation should be separated by at least two kilometres from any other safety treatment Project operating under this exemption. Furthermore, once a project has reached completion, one year must pass before another road safety treatment Project can operate under this exemption within a distance of two kilometres. Councils should not classify projects in a way so that the Public Road exemption applies.

Records

Each Council will keep a record of all maintenance activities and safety treatments undertaken and provide an annual report to DSE of the aggregate losses that have occurred under this exemption in accordance with the reporting template provided by DSE.

Offsets

Offsets are not required with respect to losses incurred in the case by case use of the exemption, but may be volunteered by a Council from time to time in recognition of and to mitigate these losses.

Review of Agreement

This Agreement may be reviewed within 12 months if required by either party.

Breach of Agreement

The relevant Council will advise DSE of any breaches of these Operational Elements as soon as possible after they occur. If there are regular breaches, this Agreement will be reviewed. A breach of this Agreement by a Council may result in the Agreement being revoked.

7 Appendix 2 - Case studies and examples

Example 1: Maintenance works

Identified the works are Maintenance works as they are doing sight line clearance.
The sight lines must be done to provide a safe and efficient function for the road users
Vegetation needs to be pruned back to allow vehicle users a clear sight line.
Determine if the vegetation is likely to be significant.
<p>No No, the vegetation being pruned is just a few branches off a shrub/tree that were planted a few years ago. Proceed to end.</p> <p>Yes The vegetation is significant as it's in a conservation site, checked the State and Commonwealth legislation to see if any rare plants or animals will be affected. If a permit is required, proceed to next box, if no permit is required proceed to end box.</p>
A permit is required as the vegetation removal for sight line clearance may affect the Growling grass frog – obtain permit prior to commencing works.
Remove vegetation in accordance with the Agreement. No permit required.

Example 2: Road safety treatment

Step 1	Removal of hazardous vegetation falls into road safety treatment.
Step 2	Yes the vegetation is a danger to road users as it has been hit by a car and is unstable and may fall onto the road and is being done to maintain the safety function of the road. There will be some native vegetation will need to be removed.
Step 3	As the works are classified as road safety treatments, the vegetation threshold applies. Is the removal of the native vegetation below the threshold limits listed in Section 4.3.2 and 4.3.3? If No – the works are not exempt and a permit is required. If yes, proceed. <i>Yes, only 1 scattered tree will be removed.</i>
Step 4	Check State and Commonwealth legislation to see if any rare plants or animals will be affected. If a permit is required, proceed to step 5, if no permits are required proceed to step 6.
Step 5	Obtain a permit if required to comply with <i>FFG Act 1988</i> .
Step 6	Notify DSE, if the vegetation is significant a site visit might be required by a DSE officer to see if the impacts can be reduced on the significant vegetation. Must be able to show to DSE how the “avoid and Minimise” technique has been used.
Step 7	All the information has been recorded for the project.
Step 8	Vegetation has been removed in line with the Agreement and the works record has been updated. End of process.

Note: Vegetation removed from within a patch would be subject to the area threshold and not the scattered tree threshold. The area thresholds include:

- Less than 0.5 ha of Native Vegetation in an Ecological Vegetation Class (EVC) with Bioregional Conservation Status of Endangered, Vulnerable or Rare.
- Less than 1 ha of Native Vegetation in an EVC with Bioregional Conservation Status of Depleted or Least Concern.

8 Appendix 3 - Reporting template

Project description

Project name	
Location	
Project description	
Project type	
Notification of DSE	

Native vegetation removal

Date of removal	
Bioregion	
Ecological Vegetation Class	
Bioregional Conservation Status	
Quantity of native vegetation removed in hectares including number of trees and size class according to EVC benchmark (e.g. Medium tree)	

