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REFORMS TO VICTORIA'S NATIVE VEGETATION PERMITTED CLEARING REGULATIONS

AMENDMENTS TO THE VICTORIA
PLANNING PROVISIONS





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Cover images: Creek line grassy woodland, Fringe Lily, Foothill forest, Victoria

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1. INTRODUCTION

This document sets out the clauses that will be amended in the Victoria Planning Provisions (VPP) and all planning schemes in Victoria in order to implement reforms to the native vegetation permitted clearing regulations (see Appendix 1). Only the clauses that will be amended are included in this document.

This document should be read alongside *Permitted clearing of native vegetation – Biodiversity assessment guidelines* which will be incorporated into the Victoria Planning Provisions.

This document includes a brief explanation of the amendments. The changes that have been made to the clauses are outlined along with how these changes seek to implement the reforms to the native vegetation permitted clearing regulations.

For more information on the reforms to the native vegetation permitted clearing regulations, including the rationale for the changes and how they will be implemented, see the following documents:

- > *Reforms to Victoria's native vegetation permitted clearing regulations – Overview*
- > *Reforms to Victoria's native vegetation permitted clearing regulations – Summary of consultation process.*

These documents can be accessed at:
www.depi.vic.gov.au/nativevegetation

2. EXPLANATION OF AMENDMENTS TO THE VICTORIA PLANNING PROVISIONS

The amendments to the Victoria Planning Provisions are included at Appendix 1. An explanation of these changes is set out below.

STATE PLANNING POLICY FRAMEWORK

12.01 Biodiversity

12.01-1 Biodiversity protection

Changes to this sub-clause have been made to implement:

- > priority reform 1 – clarify and amend the objective of the permitted clearing regulations
- > priority reform 3 – improve decision making.

The changes are also designed to support the delivery of supporting reform 1 – define state and local government regulatory roles.

The purpose of this sub-clause is to set the overarching objective for land-use planning in relation to Victoria's biodiversity. The sub-clause also provides direction about how potential impacts on biodiversity should be considered in site-based decision making.

This sub-clause replaces the existing biodiversity protection clause (12.01) which lists a range of biodiversity factors for consideration but does not include clear direction about how they should be addressed in planning decision making.

Changes to this sub-clause seek to clarify that planning has two key tools to protect and conserve biodiversity:

- > strategic land-use planning
- > site-based decision making regarding planning permits.

The changes highlight the importance of considering the impacts of use and development on biodiversity through strategic land-use planning. Biodiversity can be most effectively protected and managed at the strategic planning stage, including addressing cumulative impacts, ensuring native vegetation connectivity and providing signals about appropriate land use.

The clause now specifies that the application of planning tools to protect and conserve biodiversity should focus on high value biodiversity. Biodiversity value is determined by the condition and connectedness of native vegetation in a location, along with the rarity and level of depletion of the species that inhabit this location. The Department of Environment and Primary Industries's biodiversity information systems are used to determine the biodiversity value of locations.

12.01-2 Native vegetation management

Changes to this sub-clause have been made to implement:

- > priority reform 1 – clarify and amend the objective of the permitted clearing regulations.

The changes to this clause clarify that the objective for the native vegetation permitted clearing regulations in relation to biodiversity is 'no net loss in the contribution made by native vegetation to Victoria's biodiversity.' This change seeks to address the confusion between 'net gain' and 'no net loss' and confirms the role permitted clearing plays in achieving biodiversity objectives.

The focus of the no net loss objective has been clarified so that it is not 'native vegetation,' but rather the 'contribution that native vegetation makes to Victoria's biodiversity.' This aligns the objective of the native vegetation permitted clearing regulations with their intent, to protect and manage native vegetation for biodiversity outcomes, such as the protection of the habitat of a threatened species.

This sub-clause has also been amended to bring it into line with the underlying policy supporting the native vegetation permitted clearing regulations. How the mitigation hierarchy is applied to achieve the no net loss objective has been clarified. It is now noted that the three step approach; avoid, minimise and offset, is applied based on the contribution that that native vegetation proposed to be removed makes to Victoria's biodiversity.

12.01-3 Preparation of biodiversity strategies

This sub-clause has been removed.

The preparation of biodiversity strategies is not required to achieve the biodiversity objectives of the State Planning Policy Framework. The removal of this sub-clause does not prevent a local government from preparing a biodiversity strategy.

Changes to clause 12.01-1 Biodiversity protection seek to ensure biodiversity considerations are better incorporated into strategic land-use planning. This is an effective way for local government to plan for biodiversity protection and management in their local area.

PARTICULAR PROVISIONS

52.16 Native vegetation precinct plan

The intent of this clause has not changed. Changes have been made to this clause so that it is in line with reforms to the native vegetation permitted clearing regulations. See explanation for amendments to particular provision 52.17 Native vegetation for details.

No changes have been made to the exemptions from requiring a permit under this clause.

52.17 Native vegetation

Changes to this clause are to implement:

- > priority reform 1 – clarify and amend the objective of the permitted clearing regulations
- > priority reform 2 – improve how the biodiversity value of native vegetation is defined and measured
- > priority reform 3 – improve decision making
- > priority reform 4 – ensure offsets provide appropriate compensation for the environment.

This clause is the principal clause that governs decisions relating to an application for a permit to remove native vegetation in the planning system. Amendments are made to this clause to implement the reforms to the native vegetation permitted clearing regulations.

The purpose of this clause has been changed so that it reflects the amended and clarified biodiversity related objective for native vegetation management (see clause 12.01-2 Native vegetation above). The non-biodiversity objectives for native vegetation management have been more clearly and separately set out in the clause's purpose.

Biodiversity considerations are now more clearly and separately addressed throughout the clause; in the application requirements and decision guidelines sub-clauses. Biodiversity considerations have been made distinct from the other objectives for managing native vegetation. This is to provide decision makers and permit applicants with clarity as to which objectives for native vegetation management the application requirements and the decision guidelines relate.

The other key change to this clause has been made to implement risk-based pathways for the assessment of an application for a permit to remove native vegetation. Changes have been made to implement a simplified approach for applications under the low risk-based pathway, including standard application requirements and streamlined decision guidelines. This clause now includes additional information requirements and decisions making guidelines that are only applied to applications assessed under the moderate and high risk-based pathways. As these applications pose a higher potential risk to Victoria's biodiversity, a higher level of obligations and assessment is required.

The requirement that the removal of native vegetation should be offset now has its own sub-clause. The offset requirements have been updated to be more explicit and comprehensive. These changes are part of ensuring that offsets provide better targeted outcomes for the environment.

The changes to this clause are key to improving decision making by ensuring that permit applicants' obligations are clear and proportionate to the impacts that their proposal to remove native vegetation could have on biodiversity.

No changes have been made to the exemptions from requiring a permit under this clause.

66 REFERRAL AND NOTICE PROVISIONS

66.02-4 Native vegetation

This clause sets out triggers for referral of applications for permits to remove native vegetation to the Secretary of the Department of Environment and Primary Industries (DEPI). Changes to this clause have been made to reflect the new system of classification and measurement of the contribution native vegetation makes to biodiversity, which have been developed to support the application of the native vegetation permitted clearing regulations.

EVC Bioregional Conservation Status has been replaced with locations on the *Native vegetation location risk map*. This map outlines risk categories based on rarity and depletion of biodiversity values at a location. The referral triggers have been updated to align with the reformed regulations that seek to improve how the biodiversity value of native vegetation is defined and measured.

These changes are not expected to significantly alter the relative responsibilities of DEPI and local government when considering applications to remove native vegetation.

81.01 Table of documents incorporated in this scheme

Changes to this clause contribute to implementing all the priority reforms.

This clause has been amended to remove the incorporated document *Victoria's Native Vegetation – A Framework for Action* (the Framework). The Framework was referenced in relation to native vegetation management throughout the VPP, including in relation to the assessment of an application to remove native vegetation.

The Framework has been replaced with a new incorporated document *Permitted clearing of native vegetation – Biodiversity assessment guidelines*. These Guidelines are a fit for purpose guide for the assessment of an application for a permit to remove native vegetation in relation to its biodiversity impacts. The Guidelines provide detail on the whole permit application process, including decision making and rules on how to determine offset requirements.

The Guidelines can be accessed at: www.depi.vic.gov.au/nativevegetation.

APPENDIX 1 – CLAUSES IN THE VICTORIA PLANNING PROVISIONS TO BE AMENDED

STATE PLANNING POLICY FRAMEWORK

12.01 Biodiversity

12.01-1 Biodiversity protection

Objective

To assist the protection and conservation of Victoria's biodiversity, including important habitat for Victoria's flora and fauna and other strategically valuable biodiversity sites.

Strategies

- > Utilise statewide biodiversity information to identify high value biodiversity and consider the impact of land use and development on these values.
- > Ensure strategic planning:
 - Avoids and minimises significant impacts, including cumulative impacts, of land use and development on Victoria's biodiversity.
 - Considers indirect or off-site impacts of land-use changes and developments that may affect the biodiversity value of adjoining national parks and conservation reserves or nationally and internationally significant sites such as wetlands and wetland wildlife habitat designated under the Convention on Wetlands of International Importance (the Ramsar Convention), or utilised by species designated under the Japan-Australia Migratory Birds Agreement (JAMBA) or the China-Australia Migratory Birds Agreement (CAMBA).
 - Assists in the protection and management of sites containing high value biodiversity, including those which are under-represented in conservation reserves.
 - Assists in the re-establishment of links between isolated habitat remnants that contain high value biodiversity.
- > Ensure that decision making takes into account the impacts of land use and development on Victoria's high value biodiversity.

Policy guidelines

Planning must consider as relevant:

- > *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, Department of Environment and Primary Industries, 2013.
- > The Victorian Government's biodiversity information system.
- > *Biodiversity Conservation Strategy for Melbourne's Growth Corridors*, Department of Environment and Primary Industries, 2013.

12.01-2 Native vegetation management

Objective

To ensure that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity.

Strategies

- > Apply the risk-based approach to managing native vegetation as set out in *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, as follows:
 - Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
 - Minimise impacts on Victoria's biodiversity from the removal of native vegetation.
 - Where native vegetation is permitted to be removed, ensure it is offset in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.

Policy guidelines

Planning must consider as relevant:

- > *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, Department of Environment and Primary Industries, 2013.
- > The Victorian Government's biodiversity information system.

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PARTICULAR PROVISIONS

52.16 NATIVE VEGETATION PRECINCT PLAN

Purpose

- > To provide for the protection, management and removal of native vegetation in accordance with a native vegetation precinct plan.
- > To ensure permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity. This is achieved through the following approach:
 - Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
 - Minimise impacts on Victoria's biodiversity from the removal of native vegetation.
 - Where native vegetation is permitted to be removed, ensure it is offset in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.
- > To manage native vegetation to minimise land and water degradation.
- > To manage native vegetation near buildings to reduce the threat to life and property from bushfire.

52.16-1 Application

This clause applies to land if a native vegetation precinct plan corresponding to that land is incorporated into this scheme.

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52.16-2 Native vegetation precinct plans

A native vegetation precinct plan is a plan relating to native vegetation within a defined area which is incorporated into this scheme and listed in the schedule to this clause.

A native vegetation precinct plan may form part of a more general strategic or precinct structure plan.

A native vegetation precinct plan may require specified works to be provided or specified payments to be made to offset the removal, destruction or lopping of native vegetation.

The native vegetation precinct plan must:

- > Specify the purpose of the plan.
- > Specify the area to which the plan applies.
- > Specify the native vegetation which can be removed, destroyed or lopped.
- > Specify the native vegetation to be protected.
- > Set out the works, payments or other actions necessary to offset the removal, destruction or lopping of native vegetation.
- > Relate the need for the works, payments or other actions to the proposed removal, destruction or lopping of native vegetation in the area.
- > Provide for the procedures for the collection of any payments.

A native vegetation precinct plan may include any other information necessary to achieve the purpose and effective implementation of the plan.

52.16-3 Permit requirement

A permit is required to remove, destroy or lop any native vegetation, including dead native vegetation. This does not apply:

- > If the removal, destruction or lopping of native vegetation is in accordance with a native vegetation precinct plan incorporated into this scheme. Any conditions or requirements specified in the plan must be met.
- > To the removal, destruction or lopping of native vegetation specified in the table to Clause 52.16-4, unless a native vegetation precinct plan specifies otherwise.

52.16-4 Table of exemptions

[No change]

52.16-5 Application requirements

All applications to remove, destroy or lop native vegetation must be accompanied by the following information, as appropriate:

- > The application requirements in Clause 52.17-3.
- > A written statement which explains how the proposal responds to the decision guidelines in Clause 52.16-6.

52.16-6 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- > The decision guidelines in Clause 52.17-5
- > The purpose and objectives of the native vegetation precinct plan.
- > The effect on native vegetation identified for protection in the native vegetation precinct plan.
- > The potential for the effectiveness of the native vegetation precinct plan to be undermined.
- > The potential for the proposed development to lead to the loss or fragmentation of native vegetation identified for protection in the native vegetation precinct plan.
- > Offset requirements in the native vegetation precinct plan.

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52.17 NATIVE VEGETATION

Purpose

- > To ensure permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity. This is achieved through the following approach:
 - Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
 - Minimise impacts on Victoria's biodiversity from the removal of native vegetation.
 - Where native vegetation is permitted to be removed, ensure it is offset in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.
- > To manage native vegetation to minimise land and water degradation.
- > To manage native vegetation near buildings to reduce the threat to life and property from bushfire.

52.17-1 Native vegetation precinct plans

This clause does not apply if a Native vegetation precinct plan corresponding to the land is incorporated into this scheme.

52.17-2 Permit requirement

A permit is required to remove, destroy or lop native vegetation, including dead native vegetation. This does not apply:

- > If the table to Clause 52.17-7 specifically states that a permit is not required.
- > To the removal, destruction or lopping of native vegetation specified in the schedule to this clause.
- > To an area specified in the schedule to this clause.

52.17-3 Application requirements

Applications for permits to remove, destroy or lop native vegetation fall into one of the following risk-based pathways; low, moderate or high, as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*. Applications in the moderate and high risk-based pathways have additional application requirements as set out below.

General application requirements

All applications to remove, destroy or lop native vegetation must be accompanied by the following information, as appropriate:

- > The location of the site where native vegetation is to be removed.
- > A description of the native vegetation to be removed, including the area of the patch of native vegetation and/or the number of any scattered trees to be removed.
- > Maps or plans containing information set out in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*.
- > Recent photographs (dated) of the native vegetation to be removed.
- > Topographic information, highlighting ridges, crests and hilltops, streams and waterways, slopes of more than 20 per cent, drainage lines, low lying areas, saline discharge areas, and areas of existing erosion.
- > Where the removal, destruction or lopping of native vegetation is to create defensible space, a statement explaining why removal, destruction or lopping of native vegetation is required having regard to other available bushfire risk mitigation measures. This does not apply to the creation of defensible space in conjunction with an application under the Bushfire Management Overlay.
- > A copy of any property vegetation plan that applies to the site.
- > Details of any other native vegetation that was permitted to be removed on the same contiguous parcel of land with the same ownership, where the removal occurred in the five year period before the application for a permit to remove native vegetation is lodged.
- > The strategic biodiversity score of the native vegetation to be removed.
- > The offset requirements should the native vegetation be permitted to be removed.

Additional requirements for moderate and high risk-based pathway applications

Moderate and high risk-based pathway applications must also include the following, as appropriate:

- > A habitat hectares assessment of the native vegetation to be removed.
- > A statement outlining what steps have been taken to minimise the impacts of the removal of native vegetation on biodiversity.
- > The habitat importance score(s) of the native vegetation to be removed.
- > An offset strategy that details how a compliant offset will be secured to offset the biodiversity impacts of the removal of native vegetation.

52.17-4 Property vegetation plans

Any permit granted to remove, destroy or lop native vegetation in accordance with a property vegetation plan:

- > May include conditions which reflect relevant restrictions or obligations contained in that plan.
- > Must include the following condition:
 - “This permit will expire if one of the following circumstances applies:
 - the development or any stage of it does not start within ten years of the date of this permit.
 - the development or any stage of it is not completed within ten years of the date of this permit.”

52.17-5 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

Biodiversity considerations

- **For all applications**
 - > The contribution that native vegetation to be removed makes to Victoria’s biodiversity. This is determined by:
 - The extent and condition of the native vegetation
 - The biodiversity value of the native vegetation, including whether the native vegetation is important habitat for rare or threatened species.
 - > Whether the removal of native vegetation is defined as being in the low, moderate or high risk-based pathway, as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, and apply the decision guidelines accordingly.
 - **For moderate risk-based pathway applications**
 - > Whether reasonable steps have been taken to minimise the impacts of the removal of native vegetation on biodiversity.
 - > That an offset that meets the offset requirements for the native vegetation that is to be removed as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, has been identified.
 - **For high risk-based pathway applications**
 - > Whether reasonable steps have been taken to minimise the impacts of the removal of native vegetation on biodiversity.
 - > Whether the native vegetation to be removed makes a significant contribution to Victoria’s biodiversity.
 - > That an offset that meets the offset requirements for the native vegetation that is to be removed as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, has been identified.

Other matters

The responsible authority may also consider the following issues, as appropriate:

- > The need to remove, destroy or lop native vegetation to create defensible space to reduce the risk of bushfire to life and property, having regard to the other available bushfire risk mitigation measures.
- > The role of native vegetation in:
 - Protecting water quality and waterway and riparian ecosystems, particularly within 30 metres of a wetland or waterway and in special water supply catchment areas listed in the *Catchment and Land Protection Act 1994*.
 - Preventing land degradation, including soil erosion, salination, acidity, instability, and water logging, particularly:
 - > Where ground slopes are more than 20 per cent.
 - > On land which is subject to soil erosion or slippage.
 - > In harsh environments, such as coastal or alpine area.
 - Preventing adverse effects on groundwater quality in land:
 - > Where groundwater recharge to saline waterbodies occurs.
 - > That is in proximity to a discharge area.
 - > Which is a known recharge area.
- > In the case of timber production, the benefits of including a condition requiring operations to be carried out in accordance with any relevant code of practice under Part 5 of the *Conservation, Forests and Land Act 1987*.
- > To manage native vegetation to preserve identified landscape values.
- > The conservation of native vegetation protected under the *Aboriginal Heritage Act 2006*.

52.17-6 Offset requirements

The biodiversity impacts of the removal of native vegetation are required to be offset, in accordance with the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*. The conditions on the permit for the removal of native vegetation must specify this offset requirement. The offset requirements take account of:

- > The location of the native vegetation to be removed.
- > The condition and extent of native vegetation to be removed.
- > The strategic biodiversity score of the native vegetation to be removed.
- > Whether the native vegetation to be removed is important habitat for rare or threatened species, and the proportional impact of the removal on those species' habitat.

52.17-7 Table of exemptions

[no change]

66 REFERRAL AND NOTICE PROVISIONS

Kind of application	Referral authority
<ul style="list-style-type: none"> > To remove or destroy native vegetation where the area to be cleared is 0.5 hectares or more. 	Secretary to the Department of Environment and Primary Industries (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>)
<ul style="list-style-type: none"> > To remove or destroy any native vegetation which is in Location C on the <i>Native vegetation location risk map</i>. 	
<ul style="list-style-type: none"> > To remove or destroy 15 or more native scattered trees. 	
<ul style="list-style-type: none"> > To remove or destroy any native scattered trees which are in Location B on the <i>Native vegetation location risk map</i>. 	
<ul style="list-style-type: none"> > To remove, destroy or lop native vegetation if a property vegetation plan applies to the site. 	
<ul style="list-style-type: none"> > To remove, destroy or lop native vegetation on Crown land which is occupied or managed by the responsible authority. 	

81.01 Table of documents incorporated in this scheme

Permitted clearing of native vegetation – Biodiversity assessment guidelines

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