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Contact: Kate Sullivan 5261 0604

1 Merrijig Drive
Torquay, Victoria

POST
PO Box 350, Torquay
Victoria 3228

PHONE
03 5261 0600

FAX
03 5261 0525

WEB
www.surfcoast.vic.gov.au

EMAIL
info@surfcoast.vic.gov.au

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Review of the native vegetation clearing regulations
Regulatory Strategy and Design
Department of Environment, Land, Water and Planning
PO Box 500
East Melbourne VIC 8002

Dear Sir/Madam

Submission on the review of the native vegetation clearing regulations consultation paper

Thank you for the opportunity to respond to the review of the native vegetation clearing regulations consultation paper.

The Surf Coast Shire community strongly supports the preservation and enhancement of the environment. The Surf Coast Shire Council Plan 2013-2017 has as its vision "*Working towards an engaged, innovative and sustainable community*" and recognises that:

"The natural environment is a defining feature of the Surf Coast Shire. From spectacular rugged coastlines to dense native forests and rolling rural plains, the Shire is strongly influenced by physical and natural features that impact on urban development and land management.

There are many areas in the Surf Coast Shire of special natural significance including heathlands, wetlands, bushland, grasslands, coastal and marine environments. These areas are home to a wide range of plants and animals that contribute to the unique biological diversity and natural character of the region."

The Council Plan identifies five key themes which are the priorities for Surf Coast Shire; Theme 1 is Environment: "*We pursue innovative and sustainable practices that will preserve and enhance our natural environment for all, by being socially responsible and environmentally aware.*"

It must be recognised that Surf Coast Shire and all Councils have a number of sometime conflicting roles in native vegetation management including as responsible authority for the planning scheme, a landowner and manager of Crown land, road management authority, a manager of pest plants and animals and emergency management manager. In this context, Surf Coast Shire supports regulations which make these conflicting roles easier.

Surf Coast Shire has examined the Municipal Association of Victoria submission on the review and supports that submission on the proposed improvements. Further, Surf Coast Shire makes the following supplementary comments:

Native vegetation clearing policy

Proposed improvement	Comment
1. Clarify that the primary focus of the regulations is to ensure avoidance of native vegetation removal where possible	Supported. Noting that this is further addressed by other proposed improvements, additional guidance is required on how this principle is to be practically applied and where this might conflict with other regulations for example managing pests such as rabbits.
2. Consolidate comprehensive policy guidance for native vegetation removal	Supported, however policy guidance should be consolidated in both content and format. The present situation of multiple guidance documents makes it difficult to locate sought after information.
3. Develop guidance to support strategic planning relating to native vegetation protection and management	Consistent with the above comment on improvement 2.
4. Improve monitoring to determine if the regulations are achieving their objective and make this information publically available.	Supported, however it isn't clear which body or bodies are to be responsible for increased monitoring and reporting. Concern about an increased burden on local government to collect and report this information.

Permit processing and decision making

Proposed improvement	Comment
5. Require an avoid and minimisation statement for all applications and consider this in decision making	Guidance is required on what matters should be considered in applying the principles of avoidance and minimisation.
6. Require an offset strategy for all applications and consider this in decision making	This could result in a significant burden for applicants as the offset requirement may change if a proposal is amended during the application process.

In addition to the comments on the proposed improvements, the following submissions are made:

- Reinstate DELWP as a determining referral authority for “higher assessment pathways”. Where the loss of native vegetation may impact on State significant biodiversity values, DELWP should have ‘veto’ power over an application and responsibility to support their decision in any application for review.
- Substantial areas of native vegetation within Surf Coast Shire are protected by overlays for its local biodiversity values and significant landscape values. Many applicants are unaware of the layering of controls. Better guidance is required to clarify the range of regulations controlling the removal native vegetation and how these apply.

Biodiversity information tools

Proposed improvement	Comment
7. 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	Supported. However it should also be recognised that local site information may be held by local government or other sources. Where there is an identifiable mapping inaccuracy the responsible authority should be able to require an ecological assessment from the applicant.

In addition to the comments on the proposed improvements, the following submissions are made:

- The Native Vegetation Information Management System mapping tool does not provide for accurate identification of vegetation and in turn confirmation by the assessing authority of the accuracy of information. On small scale proposals, including scattered trees, the loss of the aerial photograph layer at high zoom makes it difficult to pinpoint the location of vegetation potentially altering the assessment or the extent of vegetation. It would be beneficial if the NVIM information could be integrated with GIS, GPS and drafting software to enable accurate identification of the extent of impact.

Offset delivery

Proposed improvement	Comment
8. Increase the use and functionality of the Credit Register	The recording of permit information and first party offsets should be through a system which does not create a reporting burden for Councils.

Exemptions

Proposed improvement	Comment
9. Clarify wording of exemptions	Supported. Examples of exemptions which require clarification: <ul style="list-style-type: none"> ▪ Crown land – whether a committee of management acts on behalf of the Secretary ▪ Fences – the application of the exempted clearing width ▪ Fire protection – whether the making of a fuel break or fire fighting access track is available as an exemption at all times ▪ Planted vegetation – whether the requirement for the vegetation to be grown as a result of direct seeding applies to all of the listed activities or only Crop raising.
10. Adopt a consistent approach to agreements referenced in the exemptions	State wide standard agreements should be prepared.

In addition to the comments on the proposed improvements, the following submissions are made:

- Under changes to the *Catchment and Land Protection Act 1994* the responsibility of pest plant and animal control on roadsides is the responsibility of the local municipality and Councils are required to prepare a Roadside Weed and Rabbit Control Plan. An exemption should be provided to facilitate the removal of native vegetation in accordance with an approved Roadside Weed and Rabbit Control Plan.
- Whilst it is recognised that the exemptions provided by Clause 52.48 are considered out of scope of this review, the use of these exemptions are having a significant cumulative impact, particularly in areas with small lots. Examples of the inappropriate use of the exemption include:
 - Removal of vegetation within urban areas without a material risk from bushfire;
 - Selective removal of vegetation without reducing the risk from bushfire (eg a tree in a view line, whilst retaining continuous vegetation close to the building).

The Tribunal has established, on at least one occasion, that it is appropriate for the responsible authority to consider the impact on native vegetation from the creation of defensible space for a new building albeit that the removal of this vegetation will be exempt on approval of the building (*Savicky v Mornington Peninsula SC* [2014] VCAT 1373). However

this approach is not consistently applied by applicants and their consultants, or necessarily by all responsible authorities.

It is important that the exemptions of Clause 52.48 be urgently reviewed to provide greater clarity on the application of the exemptions.

Compliance and enforcement

Proposed improvement	Comment
11. Develop a compliance and enforcement strategy	The strategy must recognise the limited resources available to councils and differing capacity between councils. It should be based on a co-regulatory response and outline responsibilities for DELWP.
12. Provide guidance and support materials for compliance and enforcement activities	Resources will significantly constrain what can be achieved in this area. Community groups are increasingly expecting council to act. While support materials may be useful for those able to undertake activities, it will not be enough if the resources are not there. Guidance is required on a standard approach, accepted by the Tribunal and courts, to establish the impact of non-compliant vegetation loss and appropriate offsetting.
13. Improve information gathering for compliance and enforcement	Supported but with reservations about how this information might be gathered and the potential burden on council of doing so.
14. Promote co-regulatory support	Where activities will have significant impacts on Victoria's biodiversity, DELWP should be the lead agency to address non-compliance. DELWP should also be available to assist councils with expert advice on matters of local significance.
15. Review the overarching compliance and enforcement framework	Generally the burden on council to successfully undertake enforcement proceedings or prosecution is significant and often not commensurate with the penalty. Rarely, if ever, will council recover all its costs. As a result only the most significant breaches are pursued in the Tribunal or the courts, failing to create a meaningful disincentive. A robust risk based enforcement framework is required to efficiently address all levels of non-compliance and to act as an evident disincentive.

If you have any enquiries concerning this matter please contact me on 5261 0604.

Yours faithfully



Kate Sullivan
General Manager Environment and Development